

CHAPTER THREE

ONE COUNTRY, TWO SYSTEMS

Democratic Structures

3.1 Despite the pledges of continuity, the achievement of a smooth transfer is a complex task. It involves: localisation of laws and personnel, negotiations between Hong Kong and third parties over treaty arrangements, the review of a variety of systems in policing, customs, immigration and so on. The smooth implementation of the transfer is the responsibility of the Joint Liaison Group (JLG), based in Hong Kong but meeting also in Beijing and London. It consists of a senior representative from each side and four other representatives with up to 20 supporting staff. Much has been achieved; however areas of dispute and concern have arisen, almost always to do with extension of political democracy, the structures for democratic government - the legislature, the executive, the electoral processes and the courts - and the protection of human rights.

The Legislature

3.2 The legislature is one of the keys to democratic government.¹ In Hong Kong, the controversy over the shape and nature of the post-transfer legislature is fuelled by the late application of democratic forms to the local legislature, by the reaction of the people of Hong Kong to the events in China in 1989 and the subsequent reaction of the Chinese Government to international condemnation.²

3.3 A Legislative Council was established within a year of Hong Kong becoming a Crown colony. The Charter issued in 1843 by the British Government instructed the first Governor, Sir Henry Pottinger, to establish a Legislative Council with advisory capacity only. It was to have no real powers and no non-official members until 1850, and then they were carefully selected. It was a situation which remained unchanged until 1985.³ In 1985, the first elections for members of the Legco were through the functional constituencies, many of whom were elected unopposed. Direct elections through geographic constituencies did not occur until 1991. In 1991 the Legco consisted of 3 ex-officio members, 18 appointed members, 21 members elected by functional constituencies and 18 directly elected by geographical constituencies. The historian Frank Welsh makes the point that, in 1991, each geographic member was responsible for 225,000 constituents while some of the functional constituencies represented as few as 216 votes.⁴

1 In conjunction with an independent judiciary (see the end of this chapter) and a free press (see Chapter 4), free and fair elections under universal suffrage are the cornerstones of democratic government.

2 See Chapter 2, paragraphs 2.12-2.17 for a discussion of the impact of the Tiananmen Square massacre.

3 This should be qualified by the substantial changes in the actual workings of the colony: the extensive system of consultation, the increase in the non-official members of the Legco and the increasing democracy at the municipal level of government. See discussion in paragraphs 1.10-1.17.

4 Welsh, *op. cit.*, p. 516.

3.4 The late partial democratisation of Hong Kong has meant that there was little experience of democracy or development of political parties in Hong Kong. Democratic processes were not embedded as Hong Kong moved into the transition to Chinese sovereignty. The Committee heard many complaints about this situation from many quarters during its visit in January 1997.

Support for Greater Democracy

3.5 However, the support for greater democracy in Hong Kong has been problematic. According to some accounts, the reason for this is that Hong Kong subjects have not pressed for greater democracy. Many, being refugees, have been apolitical; others, preoccupied with business interests, have seen no advantages in democracy in a colony which operated on a laissez-faire economic system and a rule of law, both implemented with bureaucratic efficiency. The colonial dictatorship has been largely benign, consultative, open and liberal. Further arguments have been put forward about the lack of democratic tradition amongst the Chinese and a Confucian passivity in the face of authority and colonial dependency.⁵

3.6 Nevertheless, there is evidence that interest in democratic reform has not been absent from Hong Kong's aspirations. It is clear that the strikes of the late sixties led to demands for greater participation through an expanded Legco and these pro-democracy movements have intensified since Tiananmen Square in 1989. In the elections that were held in 1991 and 1995⁶ the pro-democracy candidates have won by far the greatest support. Surveys of democratic interest have confirmed this trend, especially amongst the young:

Our survey findings show that Hong Kong Chinese do want more democracy in general and more directly elected seats to the Legislative Council in particular. ... [T]hose people who are younger, better educated, and wealthier tend to perceive the need to participate in politics [and] show the highest level of support for further democratisation.⁷

3.7 The above authors do not see this support for democracy as straight-forward. They believe it is only a partial vision which has a clear goal of the preservation of individual freedom and the autonomy of Hong Kong vis a vis China, but that this does not necessarily mean that an elected legislature is the only way to keep executive government or China in check. The partial vision is a result of the partial reforms; the only form of democracy the people of Hong Kong have experienced.⁸ The Committee would conclude, however, that despite these reservations, the surveys and the election results reveal majority support for greater democracy in Hong Kong.

5 These issues were canvassed in a variety of documents presented to the Committee, including Chen, op. cit., pp. 91-99; and Kuan Hsin-chi & Lau Siu-kai, 'The Partial Vision of Democracy in Hong Kong: A Survey of Popular Opinion', in *The China Journal*, No. 34, July 1995, pp. 239-248 (Exhibit Nos 7(b) & 7(f)).

6 They won 17 of the 18 directly elected seats in 1991 and 16 of the 20 seats in 1995.

7 Kuan Hsin-chi & Lau Siu-kai, op. cit., pp. 248-251.

8 *ibid.*, p. 263.

Governor Patten's Reforms

3.8 Governor Patten's arrival in Hong Kong in 1992 as its last governor coincided with the period of greatest uncertainty engendered by the events in Tiananmen Square and the subsequent clamour for greater protection. These demands were widely based but specifically formulated by the Office of Members of the Executive and Legislative Councils (OMELCO) which recommended that all members of the Legislative Council should be directly elected by 2003. In taking up these demands, Governor Patten, somewhat differently from his professional diplomat predecessors,⁹ brought a specifically political perspective to his term of office. In October 1992, he introduced modest proposals for constitutional change in Hong Kong which would accelerate the long overdue development of democracy in the territory. They were:

- to lower the voting age from 21 to 18 (the voting age in both the UK and China is 18);
- to replace the 1991 system of double member constituencies which are directly elected, with single seat constituencies;
- to replace the corporate voting in existing functional constituencies by individual voters;
- to propose nine new functional constituencies with wide electorates;
- to make all District Board members elected and to abolish appointed members of Municipal Councils;
- to give District Boards responsibility for local public works projects; and to increase their funding (this proposal has been implemented);
- for the Election Committee in 1995 to have all or most of its members from the District Boards.¹⁰

3.9 The proposals were draft proposals. They were to be presented in the first instance to the Hong Kong Legislative Council. The Governor and the British Government decided that the people of Hong Kong needed to be informed first about proposals that were to be the basis of negotiations with China. Nevertheless, two weeks before their presentation 'the Foreign and Commonwealth Secretary informed the Chinese Foreign Minister of their substance. The Governor subsequently wrote to a senior Chinese official outlining the proposals and indicating his intention to explain and discuss the proposals more fully'.¹¹

3.10 The Legislative Council voted in favour of the proposals on three occasions between October 1992 and January 1993.

9 Some of Patten's most trenchant critics have been former British Ambassadors to China and office holders in Hong Kong.

10 Exhibit No. 1(v), Foreign Affairs Committee, op. cit., p. xxxvii.

11 Exhibit No. 29, *Representative Government in Hong Kong*, Presented to Parliament by the Secretary of State for Foreign and Commonwealth Affairs by Command of Her Majesty, February 1994, p. 8.

3.11 Even before the talks began, Chinese hostility was exhibited by strident and personal attacks on Governor Patten. The Chinese threatened to disrupt Hong Kong's economic stability by withholding support for the infrastructure projects¹² and to abandon the Joint Declaration. They set up the Preliminary Working Committee (PWC) which, through its economic and legal sub-groups and those of its successor, the Preparatory Committee, has sought, contrary to the promised autonomy of 'one country, two systems' and prior to the resumption of sovereignty, to have considerable governance over the affairs of Hong Kong.¹³

3.12 Dr Nihal Jayawickrama commented on the impetus behind China's attitude in the following terms:

Since the first general election in 1991 it has been evident that in a free and fair election based on universal adult suffrage in single-member geographical constituencies, the Democratic Party and its allies, and other liberal-minded candidates will comfortably secure the largest number of seats. Such a result appears to be unacceptable to the Chinese government. In fact, the Chinese government has refused to have any dealings with the elected members of the Democratic Party¹⁴ and has refused to issue visas to them to visit Beijing to lobby against the establishment of the provisional legislature.¹⁵

3.13 Both the Chinese and the British Governments have given accounts of the conflict which ensued over these negotiations. The negotiations did not begin for some months and when they did they were protracted, extending over 17 rounds of talks from April to December 1993.

3.14 The Chinese put forward in an eight point plan an alternative proposal to Governor Patten's reform package. This proposal sought to maintain the *status quo*, that is Hong Kong governed by the executive, and the Chinese negotiators were uncompromising on any suggestion that would have increased the representative nature at any level of government. Their proposal was in fact a non-proposal as it demanded no change. It included the recommendation that:

- the 'executive led' political structure should be maintained in Hong Kong before 1997 in order 'to converge' with the Basic Law (point 3);
- the District Boards and Municipal Councils 'not being political organs', therefore, 'their functions should remain unchanged, so shall be their method of formation' (point 5);
- the directly elected geographical seats in Legco in 1995 should be 20 and 'shall not be increased openly or in a disguised manner' (point 6);

12 Chek Lap Kok airport and Container Terminal No 9.

13 In 1993 the economic sub-group of the PWC suggested that it have a role in the budget setting of Hong Kong and the legal sub-group has suggested changes to the legislature and the Bill of Rights Ordinance which have since been acted upon.

14 Qian Qichen gave an indication at a later stage that he was willing to have a dialogue with the Democrats and they responded willingly. DFAT, Transcript, 13 November 1996, p. 20.

15 Jayawickrama, Submission, p. S354.

- the purpose of functional constituencies was to ensure the representation in Legco of business and financial sectors, therefore the functional constituency elections 'being indirect elections, shall not be turned into a form of direct elections on occupational basis' (point 7); and
- the Election Committee should be formed 'in accordance with the composition and ratio prescribed in ... the Basic Law' (point 8).¹⁶

3.15 The Chinese argued against Governor Patten's proposals on the grounds that they were outside the Joint Declaration and that there was a lack of convergence with the Basic Law. These arguments appear to have little validity. First, both documents are silent on the methods of election or selection for the Legislative Council, talking only about its composition and its powers.¹⁷ The reform proposals were in strict compliance with the Basic Law - '20 members returned by geographical constituencies through direct elections, 10 members returned by an election committee and 30 members returned by functional constituencies'.¹⁸

3.16 Second, the only guidance as to the intention or spirit of the Joint Declaration and the Basic Law suggests movement towards democracy, not away from it.¹⁹ The Joint Declaration and the Basic Law declare that Hong Kong should enjoy a 'high degree of autonomy', that the Legislative Council shall be 'constituted by election' and that 'the ultimate aim is the election of all members of the Legislative Council by universal suffrage'. Annex II of the Basic Law confirms this in its stipulated progressive movement, over the second and third terms of the Legislative Council, towards greater numbers elected by direct elections in the geographical constituencies. This arrangement would mean that Hong Kong might have half of its Legislature directly elected by geographical constituencies by 2007, far short of the request of the OMELCO recommendations that all members be directly elected by 2003.

3.17 This Committee concludes that the reforms Governor Patten proposed fitted within both the spirit and the strict letter of the agreements made between China and Britain and that they were important reforms in line with the promise of autonomy, stability and prosperity for Hong Kong. The reforms were not only legal, but moderate and accompanied by extensive consultation,²⁰ both within Hong Kong and with China.²¹ In the light of this, it appears that the Chinese response was and continues to be an unfortunate over-reaction,

16 Exhibit No. 7(d), Martin, *op. cit.*, pp. 28-29.

17 Joint Declaration 3(2), and Annex 1(1), and Basic Law Section 3, Decision of the National People's Congress on the Method for the Formation of the First Government and the First Legislative Council of the Hong Kong Special Administrative Region (6) and Annex II.

18 Basic Law, Decision of the National People's Congress on the Method for the Formation of the First Government and the First Legislative Council of the Hong Kong Special Administrative Region (6)

19 This is also in line with the aspirations of Hong Kong people. See paragraphs 3.5 and 3.7.

20 The Legislative Council accepted the proposals, albeit with reservations on the part of the majority party, the Democrats, that they did not go far enough. See *The Frontier*, Submission, p. S207, and *Democratic Party*, Submission, p. S659. Consensus with the Chinese proved not to be possible. After 17 rounds of negotiation agreement had been reached only on lowering the voting age. *DFAT*, Submission, p. S368.

21 Various exhibits supplied to the Committee give considerable detail of the negotiations on this matter. Chinese responses on the whole did not address or substantially contradict the view that every means of consultation and compromise was attempted. Claims of secret understandings given by the British would not appear to have much standing in the face of contradictory public statements and treaty agreements. If such secret assurances were made by the British, they were in no position to make them so far as they contradict the treaty agreements.

unnecessary in its specific approach and damaging in its consequences for Hong Kong.²² More significantly, it has led China to break the treaty agreements²³ covering the transfer and to undermine its credibility and good faith, both in Hong Kong and in the wider international community.

3.18 The 'through train' was a phrase often used in the Committee's discussions in Hong Kong, a graphic description of continuity in politics, the judicial system, administration and commerce. This meant that systems which had been established before the 1 July handover would be allowed to continue under the rule of the People's Republic of China. The political 'through train' was derailed when Beijing set up a second Legco, meeting in Shenzhen, at a time when the elected Legco still had ostensible authority. This was described sourly as 'one country, two legislatures'. The judicial, administrative and economic 'through trains' stayed on track.

The 1995 Elections

3.19 Elections under the new arrangements were held on 25 September 1995. The pro-democracy parties took 29 of the 60 seats, up from 20 in the 1991 elections. They won 16 of the 20 directly elected seats. The pro-China candidates won 13 seats, up from 6 in the 1991 elections. They won two by direct election. The pro-business candidates won 18 seats, one by direct election.²⁴ Full details of the election results are at Appendix 8.

3.20 Dr Jocelyn Chey described the 1995 election in the following terms:

This historic event was competently managed by the election authorities and decided by the people of Hong Kong in a mature and generally peaceable way, resulting in a Council with a strong showing by the Democratic Party as well as business and professional representation. ... [T]his is the first cleanly-run fully-elected legislature held (sic) anywhere in China. Whether or not this particular Council lasts beyond July 97, its significance will extend well beyond its geographical and historical boundaries. It certainly demonstrates that Hong Kong has achieved a good deal of political maturity.²⁵

22 The Chinese have selected an alternative Provisional Legislature and stated an intention to abolish the Municipal and District Councils elected in 1994 and 1995 under the new arrangements. DFAT, Submission, p. S369.

23 In the establishment of the Provisional Legislature and the threatened roll back of the legislation dealing with free speech and assembly.

24 Exhibit No. 30, Department of Foreign Affairs and Trade, *Hong Kong Brief*, December 1996, p. 4.

25 Chey, Submission, p. S299.

The Provisional Legislature

3.21 Perhaps the most destabilising action of the transition, after the Tiananmen Square massacre, has been the creation of the Provisional Legislative Council. On 31 August 1994, the National People's Congress announced an intention to dismantle the Legco elected in 1995 and on 24 March 1996, the Preparatory Committee resolved to set up the Provisional Legislature. It has been soundly opposed by all legal experts. Both during the visit to Hong Kong²⁶ and at public hearings in Australia, all experts in the field have put the same view to the Committee: the Provisional Legislative Council has no basis in law; constitutionally it does not exist.²⁷ In particular, the Preparatory Committee, itself established under the Basic Law, has no authority from the Basic Law or any decision of the National People's Congress to establish any legislature other than one as proscribed in the Basic Law.²⁸

3.22 The current Legislative Council as constituted by the 1995 elections is in compliance with the Joint Declaration and the Basic Law,²⁹ the Provisional Legislature is not. There is no provision in the treaty or the constitution for a fully appointed legislature. The requirement is that the Legislature shall be constituted by elections.

3.23 Moreover, in terms of its composition, the Provisional Legislature does not conform to the Decision of the National People's Congress on the Method of Formation of the First Government and the First Legislative Council of the HKSAR, which stipulates that its composition will be of 60 members: 20 members returned by direct elections in geographical constituencies; 10 members returned by an election committee and 30 members returned by functional constituencies. The Basic Law states that the role of the Preparatory Committee will be to prepare for the establishment of the first legislature in 'accordance with the Decision'. Furthermore, there was a promise that, if the last Legislative Council was in conformity with the Decision and the members pledged allegiance to the HKSAR, then it could continue as the first Legislative Council of the HKSAR, the 'through train'.³⁰ Given the compliance described above,³¹ there was every expectation that this would happen.

The Reaction to the Proposal for a Provisional Legislature

3.24 The Executive Councillor of the Hong Kong Executive Council, Mr Denis Chang, QC, wrote to the *South China Morning Post* in April 1996 warning that there was no justification for the Provisional Legislature and that its creation was politically retrograde and legally dubious.³²

3.25 The Legco Panel on Constitutional Affairs also provided legal advice on the prospect of a Provisional Legislature in June 1996. Its view, in part, was as follows:

26 The Bar Association, the Confederation of Trade Unions, Non-Government Organisations in Hong Kong and all the pro-democracy parties in Hong Kong strongly expressed this view during the visit.

27 Dowd, Transcript, 30 January 1997, p. 129; Hong Kong Human Rights Commission, Submission, pp. S13-14, S29 & S73-S74; Ma, Submission, p. S167; Scott & Lui, Submission, p. S199; The Frontier, Submission, p. S207; Jayawickrama, Submission, pp. S354-S355; DFAT, Submission, p. S370; Lee, Submission, p. S631; Democratic Party, Submission, p. S663.

28 Jayawickrama, Submission, pp. S354-355.

29 See paragraphs 3.15 and 3.16.

30 Decision of the National People's Congress on the Method of Formation of the First Legislative Council of the HKSAR, (6).

31 Paragraphs 3.15, 3.21.

32 Exhibit No. 20.

(1) Under the Letters Patent and Royal Instructions (the 'Constitutional Instruments') there is provision for one Legislative Council in Hong Kong. The Constitutional Instruments specify the composition of the Council and its lawful function as regards the passing of Bills.

(2) No other body in Hong Kong has lawful authority to pass Bills.
...

(4) If the body purported to pass legislation, but did not describe the legislation as a 'Bill', it could be held to be acting contrary to the Constitutional Instruments if its procedures mirrored, or were similar to, those of the lawfully established Legislative Council.

(5) If the body, when purporting to pass proposed legislation, expressly stated that it was not to take effect until certain legislative procedures had been complied with after 30 June 1997, such a disclaimer would not necessarily be sufficient to avoid unlawfulness under the Constitutional Instruments, if the substance of its activities was in fact similar to that of the lawfully constituted Legislative Council. ...

(6) Since such a breach of the Constitutional Instruments in the circumstances described above would amount to breach of the prerogative, it would be open to the Crown (acting through the Hong Kong Government) to seek remedy in the Hong Kong courts, probably by way of injunction. In a clear and serious case it would have the constitutional duty to do so. It would also be open to the Legislative Council, or to individual Members, to seek remedy in the courts. ...

(7) If a body purported to pass Bills in the manner described above, but transacted all its 'business' outside Hong Kong, there would be both jurisdictional and evidential difficulties preventing the taking of legal action in Hong Kong courts.³³

3.26 In their opening statement to the UN Human Rights Committee in October 1996, both Mr Henry Steel for the British Government and Mr Daniel Fung, the Solicitor General for Hong Kong, stated their opposition to the proposed creation of the Provisional Government:

The electoral arrangements by which the present Hong Kong Legislative Council was elected in 1995 were open, fair and fully consistent with the Joint Declaration and the Basic Law. The firm view of the British Government is that the members of the present Legco should be allowed to serve their natural four year term. ... There can be no justification for disrupting Hong Kong's transition in this way. British Ministers have made clear to their Chinese colleagues in

unambiguous terms that the UK is opposed to a provisional legislature.³⁴

3.27 The Senate of the United States passed a unanimous resolution on 26 June 1996 recalling the binding nature of the Joint Declaration and the passage of the *United States-Hong Kong Policy Act, 1992* which expressed the strong support of the Senate and the United States for the continuation of human rights in Hong Kong. The Resolution reminded the parties of their obligations and expressed the view that the Provisional Legislature would be a violation of those obligations.³⁵

3.28 In early December 1996, the International Commission of Jurists released a report on the transition. As a result of that report, the ICJ adopted, *inter alia*, the following resolution:

The legitimacy and integrity of the present Legislative Council should be protected. The attempt by China to establish in its place an alternative 'Legislative Council' should be condemned.

The selection of members of the alternative 'Legislative Council' by 400 persons, appointed in effect by the Government of China, is in clear breach of the agreement in the Sino-British Joint Declaration and the provisions of the Basic Law of Hong Kong which guarantee that the Hong Kong Legislative Council will be constituted by elections after the territory reverts to China.

The proposed selection is not an 'election', and is also in breach of international human rights law. The Government of Hong Kong should strive to make China understand this.³⁶

3.29 Not even those who defend China's action do so on legal grounds. They argue, but do not demonstrate, that Governor Patten's reforms did not conform to the Basic Law,³⁷ that, given the requirement for more intense cooperation in the second half of the transitional period, Governor Patten's inability to get agreement from the Chinese concerning the reforms was sufficient cause for the dissolution of the Legco;³⁸ and they also argue, it would seem erroneously,³⁹ that there was no due process or consultation on the reforms.⁴⁰ The International Commission of Jurists has characterised these arguments for the establishment of the Provisional Legislature as 'unconvincing'.⁴¹

3.30 On the other hand, the complaint heard most often by the Committee during its visit was that, if there were a lack of consultation or open process, it was in the work of the committees which decided on the Provisional Legislature and the proposed changes to the

34 Exhibit No. 1(l), UN Human Rights Committee Hearing, 23 October 1996: Opening Statement by Henry Steel.

35 Exhibit No. 20, copy of the US Senate Resolution, 104th Congress, 2nd Session, 27 June 1996.

36 Exhibit No. 9, ICJ, *Hong Kong: the Countdown Continues*.

37 The Better Hong Kong Foundation, Submission, p. S177.

38 Croucher, Transcript, 30 January 1997, p. 163.

39 See paragraphs 3.9, 3.10 and 3.13.

40 Chan, Submission, p. S800.

41 Exhibit No. 9.

laws in Hong Kong. A number of groups and individuals expressed concern that the announcements which were coming out of these committees were ad hoc; the committees themselves were unrepresentative; they operated in-camera and decisions were announced without consultation, explanation or documentation. It appeared to both lawyers and democratic political groups in Hong Kong that there was scant understanding of or adherence to the processes inherent in a rule of law. At the same time, discussions with pro-Beijing groups in Hong Kong revealed remarkable complacency about questions of illegality; there was a tendency to dismiss both questions and concerns.

3.31 The Committee recommends that:

- 1. the Australian Government urge the Government of the HKSAR not to implement the decision of the Preparatory Committee to dissolve the three tiers of representative government elected throughout 1994-95, the Municipal Councils, the District Boards and the Legislative Council.**

The Process for Selecting the Provisional Legislature

3.32 The Provisional Legislature is a body that was suggested by the political sub-group of the Preliminary Working Committee (PWC). The PWC was set up unilaterally by the Chinese Government in 1993 in response to Governor Patten's reform proposals. It was a precursor to the Preparatory Committee, which is identified in the Basic Law. The PWC advised the National People's Congress on transition matters. It ceased to exist at the end of 1995.

3.33 The Preparatory Committee, established in January 1996, has a membership of 150, of whom 94 are from Hong Kong. Most of the Hong Kong members were from the business and professional communities, 11 were members of the Legislative Council, but none were from the Democratic Party or parties. It was and is chaired by the Foreign Minister of China, Mr Qian Qichen. Its task during 1996, among other transition matters, was to select the Selection Committee of 400 (Hong Kong residents). This committee was to be responsible for the selection of the Chief Executive. After the announcement on 24 March 1996 that the Beijing Government intended to replace the democratically elected Legislative Council with a new provisional legislature, it was also responsible for the selection of its members.⁴²

3.34 The selection for the Provisional Legislature took place on 21 December 1996. The process of selection was a complicated one - each candidate had to be nominated by 10 selection members and each of the 340⁴³ Selection Committee members could in turn nominate up to five candidates.⁴⁴ Despite this 'electoral college' process, the legislature is an appointed one not elected as specified in the Basic Law. It has 60 members, 33 of whom are from the current Legislative Council. The Democrats refused to participate on the grounds that the body was illegal. During meetings in Hong Kong, the democratic politicians also questioned the validity of the dual membership of legislatures by those members who belonged to both the Legco and the Provisional Legislature.

42 Exhibit No. 1(t), British High Commission, *Hong Kong: Basic Facts*.

43 This number excludes the National People's Congress (NPC) and Chinese People's Political Consultative Conference (CPPCC) members. See DFAT, Submission, p. S373.

44 DFAT, Transcript, 13 November 1996, p. 19.

3.35 Despite the cross membership of the two legislatures, the Provisional Legislature has a fundamentally different character from the Legco. Its make-up reflects strong pro-China sympathy rather than reflecting the representation of Hong Kong interests that elections in 1991 and 1995 consistently produced. Whereas the pro-democracy camp holds 52 per cent of the seats in the Legco, they have approximately 8.3 per cent of the seats in the Provisional Legislature; and whereas the Pro-China camp has 45 per cent of the seats in the Legco, they have, depending on the leanings of a number of independents, up to 90 per cent of the seats in the Provisional Legislature. Eighty-five per cent (51 candidates out of 60) of those who were 'elected' to the Provisional Legislature were members of the selection committee appointed by Beijing to elect it. Twenty-nine people who failed to be elected in 1995 also stood for the Provisional Legislature.⁴⁵

3.36 By the time the Provisional Legislature was put in place in January 1997, it was to operate outside Hong Kong and the question of its purpose and modus operandi, in particular a possible legislative program, remained uncertain and confused. The rationale for its existence had shifted to the necessity to have a legislative body in place on 1 July 1997. Various people whom the Committee spoke to in Hong Kong stated that this argument was unconvincing. The Committee was told that, if the Chinese insisted on a new legislature, there was time for new and proper elections to be held in Hong Kong either prior to 1 July or immediately after. There were precedents and processes in place for the continuation of government while an election took place. The nationality law, the other reason proffered for the existence of the Provisional Legislature, was capable of being passed by the existing Legislative Council once agreement was reached by Britain and China in the JLG.

3.37 Apart from a certain euphoria in Shenzhen, the reaction internationally and in significant sections of Hong Kong to the establishment of the Provisional Legislature has been one of disappointment and anxiety about the future autonomy of Hong Kong. The British Foreign Secretary issued a statement recalling the binding nature of the Joint Declaration, the strong support in Hong Kong for the electoral reforms and the serious setback that the Provisional Legislature posed for the development of representative government in Hong Kong. Britain sought Chinese cooperation for an independent legal settlement on the question by the International Court of Justice and assurances that genuine elections should be held as soon as possible after the handover.⁴⁶

3.38 The United States described the new legislature as 'unwise, unjustified and unnecessary'. The European Council 'underlined the European Union's full support for the specific status of the SAR and its citizens in all respects, including their right to representative democratic institutions as already established'.⁴⁷ The Australian Government, through the Foreign Minister, Hon Alexander Downer, MP, issued a press release expressing disappointment and the hope that the life of the Provisional Legislature would be as short as possible and reaffirming the view that the 'maintenance and development of democratic political institutions to be important factors in Hong Kong's continued success as an international business centre'.⁴⁸

45 See Appendix 8 for full results of the elections in 1995 and the composition of the Provisional Legislature.

46 Exhibit No. 26, *Hong Kong: Provisional Legislature*, Statement by the Foreign Secretary: 20 December 1996.

47 *ibid.*

48 Exhibit No. 3(f), Media Release, Minister for Foreign Affairs, 22 December 1996.

3.39 The Committee recommends that:

2. **the Australian Government urge the Government of the HKSAR:**
 - a. **to present for public comment, at the earliest possible date, an electoral law, based on the widest possible franchise, for a properly constituted, elected legislative council; and**
 - b. **hold elections according to that law, as soon as possible after 1 July 1997.**

The Chief Executive

3.40 On 1 July 1997, the British colonial governor of Hong Kong will be replaced by the Chief Executive of the Hong Kong Special Administrative Region. The position is defined in the Basic Law, Chapter IV, Section 1. According to the constitution, the Chief Executive shall be:

- accountable to the Central People's Government and to the HKSAR (Article 43);
- a Chinese citizen, over 40 years of age, a permanent residence of the HKSAR with 20 years continuous residence in Hong Kong and no right of abode in any foreign country (Article 44);
- selected by election or consultation, (however, the ultimate aim is selection by universal suffrage) (Article 45);
- selected for a period of five years (Article 46);
- required to declare his assets (Article 47).

3.41 Like its predecessor, the position of Chief Executive is one of wide powers to sign bills and promulgate laws, to decide on government policies and issue executive orders, to appoint principal officials, judges, holders of public office, to implement the directives of the Central People's Government, including the conduct of external affairs as authorised by the Central Authorities. The Chief Executive also approves the introduction of motions regarding revenues or expenditures, decides whether government officials will testify before the Legislative Council or its committees, pardons convicted persons and handles petitions.

3.42 The Basic Law puts in place an arrangement for the breaking of deadlocks between the Executive and the Legislature, giving the Chief Executive the right to dissolve the Legislature if consensus cannot be achieved on legislation, but forcing the Chief Executive to resign if the same deadlock occurs with a new Legislature after elections have been held. (See Articles 49-52) The Basic Law requires the Chief Executive to consult with the Executive Council on policy, except on discipline matters or in states of emergency. It also requires the establishment of an independent commission against corruption and an independent commission of audit.

3.43 The Chinese Government has taken pride in the fact that the arrangements for the new Chief Executive are more accountable than the colonial arrangements, in particular that in the selection process there would be consultation with the people of Hong Kong through the establishment of the Selection Committee. This committee was composed of 400 Hong

Kong citizens taken from representatives of Hong Kong on the National People's Congress, representatives from the National Committee of the Chinese People's Political Consultative Conference (CPPCC)⁴⁹ as well as people from the executive, legislative and advisory organs of Hong Kong. This group makes up 25 per cent of the Selection Committee. The remaining members are to be 25 per cent from the industrial, commercial and financial sectors, 25 per cent from the professions and 25 per cent from labour, grass roots, religious and other sectors.

3.44 Nominations for the Selection Committee opened on 15 August 1996 and closed on 14 September 1996. Five thousand eight hundred and thirty-three people applied of which 5,791 were declared valid. A number of significant organisations withdrew from the process in protest when it was announced that the committee was also to select a Provisional Legislature as well as the Chief Executive. These included the President of the Law Society, the Hong Kong Bar Association,⁵⁰ the Confederation of Trade Unions and the Democratic Party of Hong Kong, the largest political party in the current legislature. The Preparatory Committee decided on the final 340 members of the Selection Committee (ie, the non NPC/CPPCC members).⁵¹

3.45 For the election of the Chief Executive, the process specified in the Basic Law was followed to the letter. It was not democratic, being weighted heavily in favour of business and professional groups that are largely pro-China in outlook. To this extent it disenfranchised those groups who want to see greater democracy in Hong Kong. Nevertheless it was still fully legal and more representative than previous appointments.

Mr Tung Chee Hwa

3.46 The First Chief Executive, Mr Tung Chee Hwa, was selected on 11 December 1996. Three hundred and twenty-one of the 400 members of the Committee voted for him. There were four candidates for the position and, while the Chinese Foreign Minister, Qian Qichen, declared that China had no preferences and that the Chief Executive had to be acceptable to the people of Hong Kong, it was widely speculated in the press that Tung was an 'approved' candidate before the selection took place.

3.47 Tung Chee Hwa was born in Shanghai in 1937. His family fled at the time of the revolution in 1949. His father built up a shipping company to be the second largest in the world with 150 tankers and container ships. Tung was educated in England and in the United States, where he lived for 10 years. He was a member of the CPPCC from 1985 to 1990, the Executive Council of Hong Kong up to 1996. He was Vice Chairman of the Preparatory Committee and held the directorship of over 200 other organisations.⁵²

3.48 The universal opinion of Tung Chee Hwa offered to the Committee when it was in Hong Kong was that he was a 'decent man' and a 'good man'. On his appointment, the various descriptions of him in the international press were largely positive: a man of 'quiet diplomacy', of 'modesty, wisdom and caution', a man who 'believes in freedom of choice' and,

49 The Hong Kong members of the NPC (26) were automatically to be part of the Selection Committee and 34 of the CPPCC were allocated places, the two groups thereby constituting 60 of the 100 places set aside for this quarter of the Selection Committee.

50 While the Bar Association as an organisation did not participate, it did verify the membership of eight of its members who applied as individuals.

51 DFAT, Submission, pp. S372-373.

52 Exhibit No. 3(f).

in his business operations, a man who consults his employees when he is about to change systems and 'earns respect because he shows respect for his colleagues', a 'conciliator and a master of the quiet compromise', 'very polite and very confident'.⁵³

3.49 Such glowing reports were balanced by reservations about Tung's political conservatism, 'the impeccably conservative Mandarin'⁵⁴ and a preference for 'personal obligation rather than individual rights'.⁵⁵ In Hong Kong, many groups who spoke to the Committee expressed fears that his obligations to China for the mainland's US\$120 million rescue of his business in the 1980s might affect his judgement and fears about whether his decency would be matched by strength of purpose to defend Hong Kong's autonomy. It was regrettable that the Committee was unable to meet Mr Tung Chee Hwa during its visit to Hong Kong in spite of a request by the Committee to do so.⁵⁶

3.50 His initial actions and statements as Chief Executive did not allay these fears. He has expressed Chinese rather than Hong Kong attitudes in key areas where there is an inherent conflict of values between the People's Republic of China and Hong Kong: the endorsement of the Provisional Legislature, support for the repeal of Hong Kong laws relating to rights and freedoms;⁵⁷ repetition of what are essentially Chinese fears about international conspiracies in the West against China or Hong Kong; objections to those in Hong Kong who advocate Taiwanese or Tibetan independence; and criticism and accusations of a lack of patriotism against those who travelled abroad to seek support for Hong Kong's future autonomy.⁵⁸

3.51 However, Tung has indicated that the death penalty will not be reintroduced into Hong Kong: it was 'inappropriate', despite its widespread use in the PRC.⁵⁹ The last execution in Hong Kong was in 1966 although the death penalty was not repealed until 1992. Mr Tung has also dismissed concerns about demonstrations in Hong Kong as they are 'a part of Hong Kong's way of life'. He has stated that the free press will be preserved and he has vowed in general to uphold Hong Kong's autonomy.

Chinese Minister Qian Qichen brought gasps in October when he said that Hong Kong people could not mock Chinese leaders, nor commemorate the June 4 Tiananmen Massacre. Tung has said both will be allowed - though only within the bounds of 'the law'.⁶⁰

53 Exhibit No. 4, *Newsweek*, 9 December 1996.

54 Exhibit No. 4, *Financial Review*, 11 December 1996, p. 13.

55 Exhibit No. 4, *Newsweek*, 9 December 1996.

56 Subsequently, the Chairman of the Joint Standing Committee on Foreign Affairs, Defence and Trade, Rt Hon Ian Sinclair, MP, and Senator Cheryl Kernot were received by the Chief Executive designate, Mr Tung Chee Hwa on 29 April 1997. Mr Sinclair was able to canvass a number of the issues of concern raised by the submissions to the inquiry.

57 His defence of the repeal of the civil liberties laws has been constant, including support for the White Paper, a consultative document released on 30 April 1997. See paragraphs 4.57-4.61. Subsequently opinion polls in Hong Kong have reported a decline of five per cent in Mr Tung's 'fitness for the post of Chief Executive' and a decline of 10 per cent in his 'trustworthiness'. Exhibit No. 4, *Reuters*, 13 April 1997.

58 *ibid.*

59 Singapore, often promoted as a model for Hong Kong, (see paragraph 4.112) is a leading exponent of the death penalty.

60 Exhibit No. 4, *Far Eastern Economic Review*, 19 December 1996, pp. 14-19.

3.52 The question of what will be the law is a vital and as yet uncertain one.

3.53 The Committee recommends that:

3. **Australian ministers and officials, through representations to the Chief Executive of the HKSAR, urge the continuation of Hong Kong's open way of life, the maintenance of the Bill of Rights and the rapid introduction of a fully and freely elected legislature.**

The Civil Service

3.54 Hong Kong has a strong civil service of 188,000 staff made up of 63 departments and agencies. It is headed by the Chief Secretary, currently Mrs Anson Chan Fang On-sang. As well there is a Financial Secretary, currently Mr Donald Tsang Yam-kuen, responsible for financial and economic policies and the presentation of annual estimates of revenue and expenditure to the Legislative Council and an Attorney-General, currently Mr Jeremy Matthews, the Government's legal adviser, who is independently responsible for the conduct of prosecutions. These three secretaries are currently ex-officio members on the Executive Council. There are 19 officials at secretary level. A process of localisation has been underway for some time. In 1990, 74 per cent of the 2,639 posts in the senior management/professional grades were held by local officers.⁶¹ Tung Chee Hwa is reviewing the most senior positions and at the time of writing had retained both the Chief Secretary and the Financial Secretary.

3.55 The Basic Law provides for the continuity of service, pay and conditions for civil servants, as long as they meet the requirements of residency or, for the most senior positions, the requirements of nationality. Selection by merit is to continue and civil servants will be required to swear allegiance to the HKSAR and uphold the Basic Law.⁶² It is expected that most civil servants with the exception of a number of expatriates will remain at their posts throughout the transition.

3.56 The Hong Kong civil service has a reputation for clean, efficient, impartial public administration and it is one of its great strengths in maintaining the rule of law. These factors underpin Hong Kong's reputation as a predictable, orderly and fair society upon which rests much of the confidence in Hong Kong as a place to do business. During its visit, the Committee was able to meet a number of senior and middle range civil servants and was impressed by the extremely high degree of professionalism and dedication all displayed.

3.57 In her visit to Australia in September 1996, Mrs Anson Chan described the civil service in Hong Kong as independent and apolitical and increasingly accountable to the Legislative Council, a culture she believed it was important to retain.⁶³

3.58 The Committee recommends that:

61 Exhibit No. 1(g), Foreign and Commonwealth Office, *Hong Kong*, p. 9.

62 In early 1996, some concern was expressed after Chinese officials suggested that civil servants might be required to swear allegiance to the Provisional Legislature. Discussions between British and Chinese ministers clarified the situation and reaffirmed the Basic Law formula.

63 Exhibit No. 4, *The Canberra Times*, 21 September 1996, p. C5.

4. **the Australian Government maintain direct links between Australian authorities and the HKSAR Civil Service to promote its continued independence as guaranteed under the principle of 'one country, two systems' and defined in the Joint Declaration and the Basic Law.**

The Judiciary

3.59 The Basic Law proposes little change to the judiciary of Hong Kong, promising a 'through train' in the legal system, method and personnel. It ensures that 'the judicial system previously practised [the common law system] ... shall be maintained',⁶⁴ that 'the courts [of the Region] ... shall exercise judicial power independently, free from any interference',⁶⁵ that trial by jury shall be maintained, along with a fair trial without delay and with the presumption of innocence. 'The principles previously applied in Hong Kong and the rights previously employed by parties to proceedings shall be maintained'.⁶⁶

3.60 The most significant change to be brought about by the Basic Law will be the establishment of a Court of Final Appeal to replace appeal to the Judicial Committee of the Privy Council in London. The current method for the appointment of judges, by the Governor on the advice of the Judicial Services Commission, will remain largely unchanged. After 1 July, 'judges of the courts ... shall be appointed by the Chief Executive on the recommendation of an independent commission composed of judges, persons from the legal profession and eminent persons from other sectors'.⁶⁷

3.61 The Basic Law also allows for an invitation to judges from other common law jurisdictions to sit on the Court of Final Appeal.⁶⁸ This would make judges from the mainland ineligible as they do not belong to a common law jurisdiction.

The Court of Final Appeal

3.62 The Court of Final Appeal will be established on 1 July 1997 according to Section 5 of the Court of Final Appeal Ordinance. The Chief Justice of the Court of Final Appeal and the Chief Judge of the High Court are required to be Chinese citizens who are permanent residents of the HKSAR with no right of abode in any foreign country.⁶⁹ In order to invite foreign judges to sit on this court, Section 9 of the ordinance provides that there shall be a list of judges from other common law jurisdictions. Section 16 of the Court of Final Appeal Ordinance stipulates that an appeal shall be heard and determined by five judges:

- (a) The Chief Justice (or a permanent judge designated to sit in his place) sitting as President;
- (b) Three permanent judges nominated by the Chief Justice; and

64 Basic Law, Article 81.

65 Basic Law, Article 85.

66 Basic Law, Article 87.

67 Basic Law, Article 88.

68 Basic Law, Article 82.

69 Basic Law, Article 90.

- (c) One non-permanent Hong Kong judge or one judge from another common law jurisdiction selected by the Chief Judge and invited by the Court of Final Appeal.⁷⁰

3.63 As yet, the protocols for the listing of foreign judges for the panels have not been developed. The inclusion of foreign judges is at the invitation of the Court; they are not mandatory on the panels. Dr Jayawickrama, in his submission, saw this as an unusual provision, especially as the legal profession in Hong Kong is strong in 'both quality and numbers'. However, it was an important provision, he believed, to help maintain the vibrancy and dynamism of the profession and to maintain the confidence of the business sector in the independence of the judiciary, especially as the foreign judges would not be subject to the 'pervasive influence of Beijing'.⁷¹

70 DFAT, Submission, p. S714.

71 Jayawickrama, Submission, p. S341.

3.64 The Committee recommends that:

5. the Attorney-General:

- a. having in mind concerns expressed to the Committee by Justice Dowd on behalf of the International Commission of Jurists, investigate the means by which serving judges in Australia might be included in the lists for panels of judges to serve in Hong Kong;**
- b. write to the Courts in Australia asking them to consider favourably their response to a request from the Hong Kong Judicial Commission to participate in panels for the Court of Final Appeal, should that occur; and**
- c. urge the legal profession in Australia to maintain its links with the legal profession in Hong Kong after 1 July 1997 through as many formal and informal channels as possible, including the exchange of judges.**

The Court of Final Appeal and Articles 19 and 158

3.65 It would appear that the independence of the judiciary is potentially compromised by the articles of the Basic Law dealing with the power of interpretation, Articles 19 and 158.⁷² As discussed in the last chapter of this report, these articles together broaden the interpretation of the scope of the matters which the Court of Final Appeal must refer to the Standing Committee of the National People's Congress. What might have been the limits of 'as to' defence and foreign affairs has been written as 'such as' defence and foreign affairs thus broadening the matters which the Court of Final Appeal must refer to the Standing Committee. Such matters are subject to a certificate obtained by the Chief Executive from the Central People's Government. The interpretation of this certificate 'shall be binding on the Court of Final Appeal' almost wholly reducing the court's right of independent interpretation.⁷³

3.66 Justice Dowd argued before the Committee that such a process might inhibit judges from other common law jurisdictions from sitting on panels in Hong Kong: 'I could imagine that our High Court would take a very wary view of being part of something where a political body can direct the interpretation of a final court of appeal'.⁷⁴

3.67 This matter was drawn to the attention of the Committee by a number of witnesses to the inquiry and it was argued universally that it would be an unacceptable interference in the judiciary of Hong Kong by the CPG and an unacceptable direction by a political body of a court findings; a failure to uphold the separation of powers.⁷⁵ To date Hong Kong has prided itself on the independence of its judiciary and the Basic Law, at one level, promised to maintain that independence.

72 See Paragraphs 2.36-2.37 and 2.43-2.44.

73 Dowd, Transcript, 30 January 1997, pp. 130-132.

74 *ibid.*, p. 131.

75 Ma, Submission, p. S156; Jayawickrama, Submission, pp. S342-343; Dowd, Transcript, 30 January 1997, pp. 130-132.

3.68 The Committee recommends that:

6. **the Australian Government urge the Government of the HKSAR to:**
 - a. **adhere to the promise of judicial independence in the fullest sense as defined in Articles 2 and 85 of the Basic Law;**
 - b. **amend Section 4 (2) of the Court of Final Appeal Ordinance in order to confine the meaning of 'an act of state' to defence and foreign affairs; and**
 - c. **provide clarification on how Articles 19 (limitation of HKSAR judicial power over acts of state such as defence and foreign affairs) and 158 (the power of interpretation of the Standing Committee of the National People's Congress) might work in practice.**

The Court of Final Appeal and the Provisional Legislature

3.69 An early test of the independence of the judiciary is likely to be the expected challenge to the legitimacy of the Provisional Legislature, either the legislature itself or a piece of legislation passed by that body. Such a challenge is likely to go to the Court of Final Appeal for judgement. Dr Peter Wesley-Smith, Professor of Law, University of Hong Kong, believed that the very first case that went to the Court of Final Appeal was likely to challenge the constitutionality not only of the Provisional Legislature but of the Court itself.⁷⁶

The Meshing of Systems

3.70 As with so many issues related to the transfer of sovereignty, the issue comes down to the vast differences of history, perception, system and expectation. During the Committee's visit to Hong Kong a number of people raised the question of the use of Chinese in the courts. Currently, this is occurring in the lower courts where Cantonese is used in the majority of cases but it is likely to expand into higher courts over time. The Committee was told that some problems arise out of this process. Common law legal concepts did not always have an equivalent in Cantonese, nor was the style of language as well suited to the formality of the legal process. In the higher courts the use of Cantonese would, for the most part, also preclude the use of foreign judges. Furthermore, the translation of laws, regulations and cases into Cantonese would take a considerable amount of time.

3.71 Legal matters are at the core of the transition. The negotiations between the British and the Chinese reveal numerous instances of misunderstandings and misinterpretations which have in turn bred suspicion. Nevertheless, the differences are real and important, especially as the prospect of 'one country, two systems' appears to have increasingly dubious validity. Professor Wesley-Smith detailed the differences in the two legal systems in the following terms:

It [the Chinese legal system] differs fundamentally from a common law system in style, organisation, institutions, objectives, values and methods. It rejects such bourgeois notions as the rule of law, the

76 Wesley-Smith, Transcript, 30 January 1997, p. 124.

separation of powers, the independence and impartiality of the judiciary, the dominance of law over politics, individual rights and limited government: law is an instrument of governmental power (rule by law), of dictatorship ('socialist legality'), of class struggle, of the will of the majority (as devined and implemented by the Communist Party). ... a disciplinary system ... one [system] services revolutionary socialism and the other services a capitalist economic order.⁷⁷

3.72 The optimists before the inquiry spoke confidently about the 50 years of distinction between the systems as stipulated in the Joint Declaration and the Basic Law or they offered a scenario by which the two systems merged imperceptibly, each influencing the other: for example, Hong Kong bringing to China knowledge of the rule of law, especially through experience of company law and Chinese lawyers in Shenzhen training themselves in common law practice and procedure in order to deal with the commercial integration evident in the south of China. There was, the Committee was told, already a keenness in China to learn how Hong Kong works.⁷⁸

3.73 There was also evidence of reform of the law in China itself. This is a relatively new process, dating back to the mid 1980s but largely since 1989, and the gains have yet to filter through the system. The reforms do not represent a separation of powers but they are directed at greater supervision, at making the law less arbitrary and more consistent. Much of the emphasis has been on procedural aspects of the legal system and the professionalisation of the legal actors. Legal reform in China included the following:

- A lawyers' law: aimed at establishing a body of rules which govern lawyers' work - qualifications, practical experience, registration, internal professional discipline, education and the provision of legal assistance to poor clients;
- A criminal procedure law: providing earlier access by defence lawyers to accused people;
- A law relating to the police, judges and the procurate: an attempt to specify publicly the rules and parameters within which each of these organs of the state do their work (previously in State Council documents not publicly available);
- Administrative law: a defining of the powers of the state organs and the powers for supervision of the exercise of those powers. In particular, a power given to courts to review the legality of administrative decisions and a requirement for administrative agencies to appear, if necessary, as defendants in courts; and finally
- An administrative punishments law: specifying the organs of state which can pass rules about punishments - this was to clear the channels of authority and to specify mandatory procedures for punishments.⁷⁹

3.74 A number of inhibitions to the implementation of these changes remain: the historical and cultural attitude that it is wrong for citizens to question administrative agencies

77 Exhibit No. 7(e), Wesley-Smith, op. cit., p. 107.

78 DFAT, Transcript, 13 November 1996, pp. 9-13.

79 Biddulph, Transcript, 31 January 1997, pp. 184-188.

or demeaning for administrative agencies to appear in court to defend their actions; the status, or lack of it, of the organs implementing the changes;⁸⁰ the overlapping of legal and Communist Party personnel in a number of agencies; and simply a resistance to change and a lag between the reform and the implementation. As a result, the extension of the rule of law to China is still incipient. Professor Wesley-Smith concluded that:

[T]he ideological function of the rule of law as legitimating the exercise of power by the state is largely absent, at least outside the economic sphere.⁸¹

He went on to cite the further view that:

Political interference with the courts, for example, is still institutionalised. Whilst interference is less evident in civil cases where the party and the state generally have no interest in the outcome, in criminal, administrative and even economic cases political interference is legend.⁸²

3.75 The view was put to the Committee on numerous occasions that, despite the agreements between the Chinese Government and the British Government, what happened to Hong Kong depended on what happened to China. If this is so, then the legal reform movement in China is of vital importance to Hong Kong. It is the only way in which there can develop in China some understanding of and sympathy for the importance of the rule of law to Hong Kong. Given the slowness of the process in China, a more pessimistic conclusion of the nature of the meshing of the systems was reached by most people who spoke to the Committee: in particular the argument that Article 158 of the Basic Law will be the means by which Hong Kong law will be drawn into the politically dominant, centrally controlled legal system of China.

3.76 The process is already evident. The Committee deplores the decision of the National People's Congress to replace the properly elected legislature of Hong Kong with an appointed one and believes that the stated intention to overturn the laws governing future elections and human rights is a matter of grave concern.

3.77 The preservation of Hong Kong's way of life, therefore, lies in the promised autonomy of the Basic Law. China has a prime responsibility to keep faith with its own principles and promises in this respect. But the preservation of their liberties is also the responsibility of Hong Kong people themselves, the Chief Executive, the electorate, the press and especially the judiciary, insisting on their independence and on the letter and the spirit of the constitution.⁸³

80 *ibid.*, pp. 186-190.

81 Exhibit No. 7(e), Wesley-Smith, *op. cit.*, p. 107.

82 *ibid.*, p. 108.

83 This argument was put to the Committee in many conversations in Hong Kong and argued most eloquently in Exhibit No. 7(e), Wesley-Smith, *op. cit.*, pp. 116-117.

