

OFFICIAL REPORT OF PROCEEDINGS**Thursday, 18 October 1984****The Council met at half past nine o'clock****PRESENT**

HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)
SIR EDWARD YOUDE, G.C.M.G., M.B.E.

THE HONOURABLE THE CHIEF SECRETARY
SIR CHARLES PHILIP HADDON-CAVE, K.B.E., C.M.G., J.P.

THE HONOURABLE THE FINANCIAL SECRETARY
SIR JOHN HENRY BREMRIDGE, K.B.E., J.P.

THE HONOURABLE THE ATTORNEY GENERAL
MR. MICHAEL DAVID THOMAS, Q.C.

THE HONOURABLE ROGERIO HYNDMAN LOBO, C.B.E., J.P.

THE HONOURABLE DENIS CAMPBELL BRAY, C.M.G., C.V.O., J.P.
SECRETARY FOR HOME AFFAIRS

THE HONOURABLE DAVID AKERS-JONES, C.M.G., J.P.
SECRETARY FOR DISTRICT ADMINISTRATION

DR. THE HONOURABLE HARRY FANG SIN-YANG, C.B.E., J.P.

THE HONOURABLE LO TAK-SHING, C.B.E., J.P.

THE HONOURABLE FRANCIS YUAN-HAO TIEN, O.B.E., J.P.

THE HONOURABLE CHEN SHOU-LUM, C.B.E., J.P.

THE HONOURABLE LYDIA DUNN, C.B.E., J.P.

THE HONOURABLE ALAN JAMES SCOTT, C.B.E., J.P.
SECRETARY FOR TRANSPORT

THE HONOURABLE PETER C. WONG, O.B.E., J.P.

THE HONOURABLE WONG LAM, O.B.E., J.P.

DR. THE HONOURABLE THONG KAH-LEONG, C.B.E., J.P.
DIRECTOR OF MEDICAL AND HEALTH SERVICES

DR. THE HONOURABLE HO KAM-FAI, O.B.E., J.P.

THE HONOURABLE ALLEN LEE PENG-FEI, O.B.E., J.P.

THE HONOURABLE ANDREW SO KWOK-WING, O.B.E., J.P.

THE HONOURABLE HU FA-KUANG, J.P.

THE HONOURABLE WONG PO-YAN, O.B.E., J.P.

THE HONOURABLE DONALD LIAO POON-HUAI, C.B.E., J.P.
SECRETARY FOR HOUSING

THE HONOURABLE WILLIAM CHARLES LANGDON BROWN, O.B.E., J.P.

THE HONOURABLE CHAN KAM-CHUEN, O.B.E., J.P.

THE HONOURABLE COLVYN HUGH HAYE, C.B.E., J.P.
DIRECTOR OF EDUCATION

THE HONOURABLE STEPHEN CHEONG KAM-CHUEN, J.P.

THE HONOURABLE CHEUNG YAN-LUNG, M.B.E., J.P.

THE HONOURABLE MRS. SELINA CHOW LIANG SHUK-YEE, J.P.

THE HONOURABLE MARIA TAM WAI-CHU, O.B.E., J.P.

DR. THE HONOURABLE HENRIETTA IP MAN-HING

THE HONOURABLE PIERS JACOBS, O.B.E., J.P.
SECRETARY FOR ECONOMIC SERVICES

THE HONOURABLE DAVID GREGORY JEAFFRESON, C.B.E., J.P.
SECRETARY FOR SECURITY

THE HONOURABLE HENRY CHING, C.B.E., J.P.
SECRETARY FOR HEALTH AND WELFARE

THE HONOURABLE CHAN NAI-KEONG, J.P.
SECRETARY FOR LANDS AND WORKS

THE HONOURABLE RONALD GEORGE BLACKER BRIDGE, J.P.
COMMISSIONER FOR LABOUR

THE HONOURABLE CHAN YING-LUN

THE HONOURABLE MRS. PAULINE NG CHOW MAY-LIN

THE HONOURABLE PETER POON WING-CHEUNG, M.B.E., J.P.

THE HONOURABLE YEUNG PO-KWAN, C.P.M.

THE HONOURABLE KIM CHAM YAU-SUM, J.P.

THE HONOURABLE KEITH LAM HON-KEUNG, J.P.

THE HONOURABLE CARL TONG KA-WING

ABSENT

THE HONOURABLE ALEX WU SHU-CHIH, C.B.E., J.P.

THE HONOURABLE ERIC PETER HO, C.B.E., J.P.
SECRETARY FOR TRADE AND INDUSTRY

THE HONOURABLE JOHN JOSEPH SWAINE, O.B.E., Q.C., J.P.

THE HONOURABLE MRS. RITA FAN HSU LAI-TAI

THE HONOURABLE MICHELANGELO PAGLIARI, J.P.
SECRETARY FOR EDUCATION AND MANPOWER (*Acting*)

IN ATTENDANCE

THE CLERK TO THE LEGISLATIVE COUNCIL
MR. LI WING

Unofficial Member's Motion

THE FUTURE OF HONG KONG

Resumption of debate on motion (16 October 1984)

THE FINANCIAL SECRETARY:—Sir, it is natural that the implementation of some of the provisions of the draft agreement should require further work. For example, one of the first tasks of the Joint Liaison Group when it is established will be to consider action to be taken by the British and Chinese Governments to ensure the maintenance of Hong Kong's participation in the G.A.T.T., the M.F.A. and other international arrangements. But the draft agreement itself is a substantial and thorough document which covers a great deal of ground in the necessary detail.

I hope that Mr. Francis TIEN'S, Mr. P. Y. WONG'S and Mr. CHAN Ying-lun's concerns can thus be assuaged. Section XI of Annex I of the draft agreement is also quite specific. The S.A.R. Government will be in a position to represent and reflect the economic interests of the territory after 1997 and to do so on its own.

Mr. TIEN will additionally note that under section VI of Annex I the word 'exclusively' is applied to the enjoyment of export quotas, tariff preferences and other similar arrangements obtained by the S.A.R.

Mr. Stephen CHEONG'S points about the G.A.T.T. and international organisations, civil aviation and marine arrangements can similarly be answered.

I note the advice of Mr. P. Y. WONG that the Government should support the efforts of entrepreneurs. With trade amounting to 163 per cent of G.D.P. a major focus of government policy has long been the encouragement of exports. It has clearly been most successful. We accept also as a major commitment the provision of a basic infrastructure, including low taxation, which is friendly and supportive to entrepreneurs. This does not and will not include any element of subsidy or special treatment. All must stand on their own feet.

Annex III of the draft agreement with regard to land leases is precise. Mr. POON has echoed much publicly expressed concern about the effect of the provision for sharing capital land revenue with the S.A.R. Mr. K. C. CHAN was also worried. I do not myself however believe that these future commitments will seriously affect fiscal or budgetary policy. The premium income to be divided is net of the average cost of production, while the 50 hectare limit specifically excludes grants to the Housing Authority for public rental housing. Moreover the limit applies to land granted under lease, and not to land made available by the Government for public purposes, for instance roads, without a lease. It seems likely to me that the actual premium income reserved for the future S.A.R. by the Government will not be large in proportion to total annual revenue. The actual sums will seem big, but I doubt if they will be significant in terms of overall budgetary policy. Moreover while a return to the boom

conditions of the early 1980s is neither expected nor wanted, the likely improvement in land prices will help to offset the effect of sharing premium income. There is also specific provision for the Land Commission to make recommendations to the Chinese side after examination of proposals for drawing on the S.A.R.'s share of premium income, and to consider requests to exceed the annual 50 hectare limit.

I turn now to Mr. Kim CHAM'S comments on the future economic, financial and monetary scene with particular reference to the role and management of the Exchange Fund. I do not disagree with what he says, though I must confess to a degree of *deja vu*. The exercise of prudence and wisdom is of paramount importance. Safe and highly liquid investments, sensible maturities, a proper spread of hard currencies, are ever present considerations of the Fund Management, conducted both directly and through overseas agents. This is an area of major responsibility for the Financial Secretary and for the Secretary for Monetary Affairs, assisted ably by the Exchange Fund Advisory Committee. I can also assure Mr. CHAM that, as the Exchange Fund Ordinance provides, the Exchange Fund's operations are separate and distinct from the fiscal system. He may find it fruitful to study closely the terms of the Ordinance. The size of the Fund and the regular critical assessments of its management are kept confidential, but I can at least assure Mr. CHAM that our currency is far more than fully backed by high quality assets. The draft agreement provides for continuity in our existing systems.

SECRETARY FOR LANDS AND WORKS:—Sir, land plays an important part in the economy and development of Hong Kong and an effective system of land administration is essential to the well-being of the territory. There should also be as much certainty and clarity about future policies as it is possible to achieve. I am glad, therefore, of this opportunity to respond to the various points made in this debate concerning Annex III to the draft agreement which deals comprehensively with land leases, and provides a framework within which land policies and procedures will be developed in the coming years.

The most important feature of Annex III is the extent to which it provides for continuity. The rights under existing leases granted outside the New Territories and New Kowloon (mainly 75 years renewable for 75 years and 999-year leases) are recognised in Annex III and will be protected under the Laws of the Special Administrative Region. All leases in the New Territories, including New Kowloon, which expire in June 1997 will be extended for 50 years up to June 2047. This will also normally apply to 75 year non-renewable leases on Hong Kong Island and in Kowloon which expire no later than 30 June 1997. New leases may also be issued to expire not later than 2047 and the present system of granting modifications of lease conditions will continue.

In addition, Annex III provides clarity and as much certainty as possible so far in advance as to the financial implications for most lessees beyond 1997. No new obligations are imposed in the case of leases which extend beyond June

1997. Renewable leases will be renewed as at present at a fixed annual rent of 3 per cent of the rateable value at the date of renewal. New Territories, including New Kowloon, leases and 75 year non-renewable leases expiring not later than 30 June 1997 will normally be extended at an annual rent of 3 per cent of current rateable value, that is a rent which will change as rateable values change. In the case of leases of Old Schedule lots, village lots, small house lots and similar rural holdings held by indigenous villagers on 30 June 1984, the rent on extension will remain unchanged so long as the property continues to be held by that person or one of his successors in the male line. New leases will normally be granted at a premium and nominal rent up to 30 June 1997 and then at a rent of 3 per cent of current rateable value, that is a changing rent.

The Annex also contains clear provisions about the limit on new land to be granted, the scope of the limit, the method of sharing premium income and the use of such income, which is to be exclusively for land development and public works in Hong Kong. Provisions for increasing the limit and for using the Special Administrative Region Government's share of the premium income are also included in the terms of reference of the Land Commission.

I therefore commend Annex III as a sound basis for the development of land policies and procedures in the future. There will inevitably be matters of detail or individual concern. Some of them were raised in this debate.

Mr. F. K. HU, Mr. Stephen CHEONG and Mr. K. C. CHAN have referred to the 50-hectare limit on new land to be granted each year described in paragraph 4 of Annex III. The Financial Secretary in his speech in this debate has already explained what this 50 hectares covers and drawn attention to the mechanism for increasing it. All I wish to add in this connection is that the Special Committee on Land Supply's estimate of future land needs show that a total of less than 50 hectares should be sufficient to meet anticipated land sales programmes, including Home Ownership and Private Sector Participation Scheme projects and the normal demand for land.

Mr. HU mentioned a number of other points about leases. First was the question of non-renewable leases which expire after 30 June 1997. While Annex III provides for the recognition and protection of rights granted before 30 June 1997 beyond that date, it does not lay down any provisions for the granting of new rights after it, as this will be a matter for the future Hong Kong Special Administrative Region Government. No doubt appropriate arrangements will be made at the right time.

Secondly, as regards the extension of non-renewable leases for land zoned for government, institutional and community use or open space on town plans, I believe the provision in the Annex for the extension of leases on a rental rather than a premium basis will provide for more flexibility in dealing with land required by Government at some future date. I am therefore sympathetic towards Mr. HU's approach and we will be considering carefully how best to use

this flexibility. However, as I have already indicated, we can only be concerned at this stage with leases expiring not later than 30 June 1997.

As regards Mr. HU's third point about leases for special purposes, the position is that there is such a large variety of these leases, from those for recreational purposes, to petrol filling stations, to sites for public utilities, and they require such a variety of special conditions of grant that they could not possibly have been covered within the terms of Annex III, detailed though it is. They are, however, now being given further consideration within the Government.

Mr. Stephen CHEONG has drawn attention to the complicated relationship between tender offers, land premium and government's contingent liabilities under the Private Sector Participation Scheme. The practice has been to treat tender offers as premium, while contingent liabilities and profits in relation to flat sales have been dealt with under the Home Ownership Fund. This seems to offer a practical basis on which to continue to deal with P.S.P.S. cases.

As regards the redemption of outstanding Letters B, to which Mr. CHEONG also referred, it is the intention to clear this commitment as soon as possible and certainly before 1997.

Referring now to Mr. CHEUNG Yan-lung's question about the position of those who have bought land held by or granted to indigenous villagers, I can confirm that his conclusion is correct, that is rent will only remain unchanged where a lot continues to be held by the original indigenous owner or his successors through the male line.

Mr. CHEUNG also mentioned the problem of calculating future rents on the basis of rateable values in the case of agricultural land. It is true that agricultural land is not rateable at present and hence rateable values are not assessed. This is a practical issue which will have to be considered when the detailed arrangements for extending non-renewable leases beyond 30 June 1997 are drawn up.

Sir, with these remarks, I support the motion.

SECRETARY FOR SECURITY:—As far as the responsibilities of the Security Branch are concerned, Members have made a number of points on nationality and on defence and law and order. Most of them are points firmly to bear in mind in the coming years. But I would like to comment on two issues in respect of nationality. They are:

- the acceptability internationally of travel documents issued by the S.A.R. and British Governments, and
- the position of non-Chinese former British Dependant Territories citizens with a Hong Kong connection after 1997.

Acceptability of travel documents

A number of Members seemed pessimistic about the extent to which passports used by the Hong Kong people after 1997 would be accepted internationally.

At present Hong Kong residents travel to countries other than China mainly on two types of documents: passports for British Dependant Territories (Hong Kong) citizens and certificates of identity for Chinese residents who have been ordinarily resident in Hong Kong for a period of not less than seven years and who have not acquired British nationality. H.M.G. and the Hong Kong Government have achieved recognition of both types of document by almost all countries in the world; and both documents have a high reputation among immigration authorities overseas.

Also, by virtue of visa abolition agreements B.D.T.C. passport holders can visit a large number of countries for limited periods without visas. As visa abolition agreements do not normally extend to holders of certificates of identity, only a few countries have waived visa requirement for holders of certificates of identity as well.

The wide acceptability of both types of documents is due mainly to the reliability of these documents as seen by immigration authorities overseas. They see a travel document as reliable if the returnability of the holder of the document is guaranteed by the authority which issued it. Over the years the Hong Kong Government has helped to make these documents widely acceptable by making both passports and certificates of identity valid for a long period (ten years) and, more important, by guaranteeing the returnability of Hong Kong residents holding these documents.

Sir, section XIV of Annex I to the Joint Declaration provides for the Government of the future Hong Kong Special Administrative Region to issue passports and travel documents of the S.A.R. to persons lawfully residing in the S.A.R. These passports and documents will be valid for all states and regions. Most important in terms of their acceptability overseas, they will record the holder's right of return to the Special Administrative Region. The Annex also provides explicitly for the S.A.R. Government to be assisted or authorised by the Central People's Government to conclude visa abolition agreements with states or regions. Thus a framework exists for arrangements to be made to secure a high degree of international acceptance for S.A.R. passports and travel documents after 1997. Given this framework, and bearing in mind the wide support which the draft agreement has received internationally since its publication, there is every reason to be confident that international acceptance of S.A.R. passports and travel documents will not be a problem.

Annex I to the Joint Declaration further provides that residents of the Hong Kong S.A.R. may use travel documents issued by other states, and that holders of permanent identity cards of the S.A.R. may have this fact stated in their travel documents as evidence that they have the right of abode in the S.A.R. The Exchange of Memoranda associated with the Joint Declaration and its Annexes also makes clear that Hong Kong B.D.T.C.s who hold British passports issued before 1 July 1997 will after that date retain an appropriate status which will entitle them to continue to use British passports. They will be able to have these

British passports renewed or replaced after 1997. Sir, the British and Hong Kong Governments will do everything possible to secure for the holders of these British passports the same access to other countries as they enjoy at present.

Position of non-Chinese former B.D.T.C.s

Turning now to non-Chinese former B.D.T.C.s. Miss Maria TAM and Mr. Carl TONG were particularly concerned over the future of non-Chinese B.D.T.C.s, of whom there are about 10 000 at present.

Under the terms of Annex I to the Joint Declaration, non-Chinese B.D.T.C.s will have the right of abode in the Hong Kong Special Administrative Region if they have ordinarily resided in Hong Kong for a continuous period of seven years or more and have taken Hong Kong as their place of permanent residence. The children born in the S.A.R. after 1997 to such non-Chinese B.D.T.C.s will also have the right of abode while they are under 21 years of age, and will continue to have that right after the age of 21 if they have themselves lived in Hong Kong for seven years and have made Hong Kong their place of permanent residence.

As regards the nationality of these non-Chinese B.D.T.C.s, the United Kingdom Memorandum stipulates that all Hong Kong B.D.T.C.s, including non-Chinese, who hold or are included in a British passport relating to the new status issued before 1 July 1997 will acquire a new status under the British Nationality Act. In some cases, a non-Chinese Hong Kong B.D.T.C.s may also have the nationality of the country from which he originated, depending on the law of the country concerned. It would also, I understand, be open to any non-Chinese person who has settled in the S.A.R. to apply for naturalisation as a Chinese national under Chinese Nationality Law.

The only problem which could arise in respect of non-Chinese B.D.T.C.s concerns the nationality of the children born to them after 1997. The new status under the British Nationality Act will not be transmissible by descent. Thus, a child born after 1997 to a non-Chinese holder of the new status would be stateless (that is to say, would have no nationality) unless either parent has some other nationality and is able under the law of the country concerned to transmit that nationality to the child, or unless the child acquires automatically the nationality of the country of his birth. Bearing in mind H.M.G.'s international obligations to reduce statelessness, it is the British Government's firm intention to make provision, in the relevant legislation, for such children to acquire British nationality at birth if they would otherwise be stateless.

THE ATTORNEY GENERAL:—Many people in Hong Kong including Mr. Stephen CHEONG in this Council have praised the quality of the drafting of the Joint Declaration. They have praised its lucidity, its detail, its coherence and its arrangement and as your principal law officer, Sir, I have no hesitation in agreeing with their view and in commending the Joint Declaration to the people of Hong Kong as a clear and specific foundation for the future of this territory.

Nowhere are the merits of the Joint Declaration better illustrated than in sections II and III of Annex I which provide for the continuity beyond 1997 of all the essential elements of Hong Kong's legal and judicial system.

I would say that the concept of the rule of law, based upon independent judicial power, is Britain's greatest contribution to good government. I have pointed out before that the common law with its emphasis upon individual rights and freedoms, the equality before the law, the control of the executive through judicial remedies, and its sophisticated ideas to provide and facilitate investment and the growth of trade and commerce at home and overseas, have all provided the ideal conditions for the rapid development of this territory by its enterprising people.

It follows that if Hong Kong is to continue to be prosperous and stable, it is of prime importance that its legal system should be maintained so far as practicable in the future.

The last occasion on which I addressed this Council on the importance of the legal system was on the 27 June when Unofficial Members called for an adjournment debate on that subject. Miss TAM, the late Father MCGOVERN and Mr. John SWAINE on that occasion spoke eloquently about the essential elements of Hong Kong's legal system which they would wish to see incorporated in future arrangements. I then reminded the Council that the Secretary of State had said that it was possible to foresee a situation after 1997 when Hong Kong's autonomy would include the maintenance of Hong Kong's own familiar system of justice and where the laws of Hong Kong would be based upon the present system, and I concluded by saying that if the parties to the negotiations were able to reach agreement achieving that end, this would be one of the most reliable guarantees to them that their freedoms and their rights would continue to be respected and enjoyed in the years ahead.

Sir, my judgment is that in the last three months, the negotiators on both sides have reached an agreement which amply provides the guarantee of which I spoke. It does indeed contain detailed provisions for the continuation of Hong Kong's familiar legal system. I recognise that Mr. John SWAINE'S reservations arise from other aspects of the agreement and not its legal provisions. But in his speech of the 27 June he usefully identified the principles which in his words must be translated into practical measures for inclusion in the arrangements for the future. So let us test these sections of Annex I against those requirements as he formulated.

- (1) The rights of individuals and rights of property must be safeguarded.

See now section XIII of Annex I with its detailed provisions for the maintenance of rights and freedoms, and the important provision at the beginning of section VI about property rights.

- (2) The Government must be subjected to the jurisdiction of the ordinary courts at the instance of the ordinary citizen.

That is provided expressly in section XIII. 'Every person shall have the right to challenge the actions of the executive in the courts'.

- (3) The independence of the Judiciary and the legal profession should be safeguarded.

Section III provides for the maintenance of the judicial system, with detailed provisions to safeguard the independence of the Judiciary, and for the continued existence of the legal professions.

- (4) An independent, professional prosecuting authority should be ensured.

Section III expressly provides that a prosecuting authority of the Hong Kong S.A.R. will control criminal prosecutions free from any interference.

- (5) An independent body, similar to the Judicial Service Commission, should exist to advise on judicial appointments. Appointments to the judiciary should be on the basis of merit, free of external influence and non-political.

These important points are secured in section III, which provides for an independent commission to advise on appointments, which are to be made on the basis of 'Judicial' qualities.

- (6) Removal of judges should only be on the grounds of inability or misbehaviour, and only on the recommendation of an independent tribunal.

This is secured in section III, which provides for the establishment of a tribunal of local judges to decide whether these grounds for removal exist.

- (7) Members of the English Bench should be invited to sit on the courts.

Section III provides that judges may be recruited from other common law jurisdictions; and that judges from other common law jurisdictions may be invited to sit on the court of final appeal.

- (8) Our law must keep pace with that of other common law jurisdictions.

Section III provides that the courts of the S.A.R. may refer to precedents in other common law jurisdictions, judges from other common law jurisdictions may be recruited and there is also provision for foreign lawyers to practise in the S.A.R.

- (9) The English language should be accorded legal status in the courts.

Section I provides that English may be used in the courts.

- (10) The final court of appeal should be in Hong Kong and not Peking.

Section III provides for that, and for judges to be invited to sit on it from other common law jurisdictions.

Sir, accordingly matched against those requirements expressed in this Chamber, these provisions in the agreement that deal with the law and the judicial system provide in a most significant way for the continuation of

Hong Kong's familiar system of justice. They illustrate the thorough understanding of the Hong Kong legal system that was achieved by the negotiators on both sides prior to the initialling of the agreement and the commitment of the Chinese Government to the maintenance of that system, so very different from that in the People's Republic of China. It is particularly noticeable that they have recognised the importance of Hong Kong sharing in the organic development of the common law system, which is applied in many courts throughout the world. Mr. Peter C. WONG has stressed the importance of the common law and of the other features of the laws of Hong Kong that are specifically mentioned in this part of the Annex and which will be maintained in the S.A.R.

Mr. WONG Lam and Mr. Keith LAM have raised questions about the future relationship between the laws of Hong Kong, the Basic Law and the Constitution of the People's Republic of China. This is, of course, an important matter and in the fullness of time will need to be worked out in a way that fulfils both the spirit and the letter of the Joint Declaration. It would not have been possible at this stage to resolve all these questions in detail, 13 years in advance of the establishment of the S.A.R., and before the Basic Law is drafted. The agreement does however provide for the future constitutional status of the S.A.R. The S.A.R. will be established in accordance with Article 31 of the Constitution of the People's Republic of China. The Basic Law will stipulate that the socialist system and socialist policies will not be practised in the S.A.R. and that Hong Kong's capitalist system and lifestyle will remain unchanged. The laws previously in force in Hong Kong will be maintained except for any that contravene the Basic Law, and subject of course to future amendment by the elected legislature of the S.A.R.

Finally and fundamentally the Joint Declaration contains very explicit provision about the subject matter and the duration of the Basic Law under which Hong Kong will enjoy its future beyond 1997. Firstly, the agreement constitutes both a foundation upon which the Basic Law must be constructed and a source for its content. The drafting of the Basic Law must be consistent with the terms of the agreement. And the agreement itself requires that the policies which are contained in the Joint Declaration and Annex I, in a degree of detail which has been widely praised not only at home but also overseas, must be stipulated in the Basic Law. This is already a substantial achievement in securing what the Basic Law will say. Secondly, the agreement also provides the policies to be stipulated in the Basic Law will endure for a period of 50 years after the establishment of the S.A.R. What is to happen at the end of those 50 years is not determined by the agreement. The Government of the P.R.C. have simply reserved to themselves the right to decide whether or not the policies stipulated in the Basic Law shall be continued for a further period without change.

But taken together, Sir, I believe that all these provisions go a very long way to allay the natural concerns which have been expressed in this debate.

But this is the beginning. Several Members have stressed in this debate the need to consult the people of Hong Kong about the drafting of the Basic Law. These views and the views of the general public cannot fail to attract the attention of those who will be embarking upon the task of transforming the policies set out in the agreement into the instrument of a Basic Law in the years that lie ahead. That is one of the reasons why this debate is an important one. In addition, the report of the Assessment Office will put on record the concerns that the Hong Kong people have expressed on particular aspects of the agreement.

I would like to turn now to the subject of individual rights, upon which some Members have spoken. If the section on the legal and judicial system is reassuring, no less so is that which deals with rights and freedoms. Earlier this year, whilst negotiations were still taking place in Peking, another adjournment debate took place in this Council when several Members spoke of the importance to Hong Kong's lifestyle of particular rights and freedoms. I am sure, Sir, now that the results of the negotiations are known, Members who at that time feared that individual rights should be neglected under the agreement, will see that their voices were heard. In particular, Members will recall the strong concern expressed by the late Father MCGOVERN that there should be freedom of religious education and the right to form and join trade unions. These now stand part of the agreement. In this debate, Mrs. Pauline NG has raised some further queries. I would answer her in this way, section X of Annex I expressly provides that students shall enjoy freedom to pursue their education outside the Hong Kong S.A.R. and in section XIII there is express mention of freedom of speech and of the press. I am confident that individual rights and freedoms in the S.A.R. will be genuinely protected, given the commitment to maintain those rights and freedoms now enjoyed under the laws of Hong Kong and the undertaking that the International Covenants will remain in force.

Mrs. NG has pointed out that some reservations made in the past by the United Kingdom in relation to the International Covenants may not be appropriate to the Hong Kong of the 1980s and 1990s, and that the Covenants may as a result merit fuller application to Hong Kong than is presently required. But the fact that reservations have been made in the past need not inhibit Hong Kong from fully applying the Covenants. A reservation indicates that there is no commitment to the provisions to which it applies but it does not prevent a fuller application of the Covenants in the light of political, economic and social change.

Dr. Ho Kam-fai and Mr. CHEUNG Yan-lung have sought reassurance about the legal status of the Exchange of Memoranda.

Let me deal with the matter in this way. The two Memoranda contain formal statements by the British and Chinese Governments of their respective position on the status after 30 June 1997, of persons who are British Dependent Territories citizens on that date, and on certain related issues. The Memoranda are not part of the Joint Declaration and its Annexes. On the other hand, they

are associated with the Joint Declaration, and the drafts of the Memoranda were initialled on the same occasion as the initialling of the draft agreement. The exchange therefore forms part of the package which emerged at the end of two years of negotiation between the two Governments. The exchange should be read in conjunction with section XIV of Annex I to the Joint Declaration, which is of course legally binding, and particularly with the third paragraph, which concerns the travel documents which may be used by residents of the future Hong Kong S.A.R. for the purpose of travelling to and from the S.A.R., It is natural that these matters, which do not depend upon the laws of the Hong Kong S.A.R., should be dealt with separately as a practical arrangement. There is no reason to doubt either Government's firmness of commitment to that arrangement.

This is a convenient point for me to deal with a matter raised by Mr. Peter POON about the freedom to leave the S.A.R. Section XIV of Annex I includes a provision that holders of valid travel documents shall be free to leave the S.A.R. without special authorisation 'unless restrained by law'. Mr. POON has cogently made the point that the meaning of the phrase 'unless restrained by law' should be amplified in the Basic Law on the basis of the present practice. The achievement of this provision is that it ensures the right of holders of travel documents to depart from the S.A.R. free from arbitrary interference, so that they may fully enjoy the freedom of travel and the freedom of movement that are enshrined elsewhere in the agreement.

But it also recognises that a person's freedom is necessarily subject to some restraints arising under the law. These include, for example, conditions attached to bail, and restraints upon absconding debtors.

Sir, I have confined my remarks so far to the legal aspects of the Joint Declaration. But let me offer in conclusion a personal reflection on the package as a whole. No-one, says Miss Henrietta IP, can predict the future. Life, says Mrs. Selina CHOW, is full of uncertainties.

Change is inevitable in the next 13 years, still more over the next 63 years. Hong Kong itself will continue to develop. Just think how much has changed in the last half century. Who can tell what challenges will face the people of Hong Kong in the remaining years of this century, or in the first half of the next? Think of all the important variable. The terms of trade, changing social attitudes. The flow of capital. Improvements in communications. The development of markets. Technological advances. Freedom of the seas. The supply of vital resources. Who is there to predict what impact these will have upon the shape of the economy and the nature of society as Hong Kong passes into the 21st century.

In the last few years, fears about the future, and our relationship with China became the foremost cause of anxiety and doubt. But why these and why not the other uncertainties? The answer is because *something could be done now* to remove these uncertainties. And this historic agreement is the achievement of

that task. It is surely the most that any territory facing political uncertainty could expect to gain. A solemn legally binding agreement between two major nations resolving their previous differences—with a mutual commitment by their leaders to fulfil its performance. An imaginative synthesis of the political principle of sovereignty and political, economic and social realities . . . ‘one country, two systems’. A detailed positive prospectus of the arrangements that will continue in Hong Kong despite a change of flag.

Hong Kong surely has now the firmest possible base from which to move forward. Doubts about the terms of the Joint Agreement are nothing compared with the fears this territory would have increasingly if Britain and China had failed to reach agreement. This agreement is even better than the people of Hong Kong expected. I am sure, Sir, that this Council would be right to commend it to the people of this territory and I support this motion.

THE CHIEF SECRETARY:—Sir, as Mr. LOBO has pointed out, the draft agreement published on 26 September 1984 is perhaps the most important document in Hong Kong’s history. The debate on this motion has matched the occasion. It has also reflected the wider discussion which is now taking place throughout the community—a discussion in which the Urban Council, District Boards and other organisations are playing their part and in which the public at large is increasingly participating. I am sure I speak also for you, Sir, when I say that Members of this Council have again demonstrated their commitment to Hong Kong by the positive spirit in which they have examined the draft agreement and the tasks which lie ahead.

I think there is a general consensus that the agreement is a package and must be taken as a whole. In the view of the British Government and of the Hong Kong Government, the draft agreement meets squarely the essential requirements which you, Sir, spelled out in your speech to this Council on the day on which it was initialled. It provides, in sufficient detail and in language familiar to those living and working in Hong Kong, for continuity of the social, economic, financial, monetary, legal, judicial and other systems, except to the extent that changes are required by the transfer of sovereignty and the right of administration from Britain to China. And it contains a binding commitment on the part of both the British and Chinese Governments to implement all the provisions of the agreement.

The great majority of Members have seen the agreement in this light. Accordingly, they have stated that they are prepared to commend it to the people of Hong Kong as not only the best agreement available, but one which should secure the continuation of established systems and thereby ensure Hong Kong’s stability and prosperity in the years before and after 1997.

Reservations have been expressed on particular points and that is entirely natural: as you, Sir, have recognised, it would not have been possible to achieve an agreement which was regarded as completely satisfactory by all those whom

it affects. Mr. SWAINE and Mr. K. C. CHAN have concluded that their reservations are such that they cannot commend the agreement. I respect their profound sincerity. But I cannot agree with Mr. SWAINE that the British Government did not do everything in their power for Hong Kong during the course of the negotiations. Those negotiations were protracted and intensive. The British Government's commitment to them, and to the task of achieving the best possible set of arrangements for Hong Kong, is amply demonstrated by the close personal attention which the Prime Minister, the Secretary of State and other Ministers devoted to the talks at every stage during the past two years. The British Government's efforts on Hong Kong's behalf were fully recognised by Executive Council as evidenced by their advice that the draft agreement should be initialled and commended to the people of Hong Kong.

As Miss DUNN reminded us, the draft agreement is the embodiment of the Chinese Government's imaginative concept of one country, two systems'. It is true that this is a unique and untried concept but, as Mr. Peter WONG argued, the untried is not necessarily unreliable and, as Mr. S. L. CHEN said, the conviction and commitment of the Chinese leadership to this concept is, in itself, grounds for confidence. Hong Kong is a unique place whose social structure and growth momentum are products of a unique combination of circumstances. It is no surprise to me, therefore, that the two Governments should have found a unique way of ensuring Hong Kong's continued social stability and economic prosperity.

The Financial Secretary, the Secretary for Security, the Secretary for Lands and Works and the Attorney General have already responded to a number of the major themes which have emerged during the debate. I shall now deal with the remainder.

Several questions were raised on the future structure of Government: for instance, Mr. WONG Lam wished to see more detail in the agreement on the appointment of the chief executive and on how the executive itself could be made responsible to the legislature. Mr. CHEUNG Yan-lung thought that further consideration would need to be given to the way in which the chief executive and members of the legislature should be selected. Mrs. Selina CHOW asked how the legislature might be dissolved. I would say only that the agreement lays down the essential principles for the future structure of government in Hong Kong. It provides a framework within which that structure will be able to continue to develop as the years progress. I entirely agree with Miss DUNN'S and Mr. Allen LEE'S view that we shall need to erect a suitable (i.e. a credible and acceptable) structure to replace the present structure well before 1997. That new structure must be at least as operationally efficient as the present structure and the aim should be to provide a smooth transition through Hong Kong's change of status in 1997.

As you, Sir, told the Council in your address at the opening of this session on 4 October, a White Paper will be published after the Executive Council has

considered the views expressed on the Green Paper on the further development of representative government. This is not the most appropriate occasion for me to respond definitively to the various comments on this subject by Mr. Peter POON who advised against premature and hasty changes, Mr. P. K. YEUNG who stressed the need for the electorate to exercise their right to vote, and Mrs. Pauline NG who argued the importance of civic education, but all their points are well taken.

I now turn to the public service. The draft agreement provides in considerable detail for continuity in this vital area. Mr. Peter WONG stressed the importance of retaining the existing systems of appointments and promotions and advisory bodies, such as the Public Service Commission and the Standing Commission on Civil Service Salaries and Conditions of Service, in order to ensure fair and impartial treatment. I am glad to assure him that section IV of Annex I to the agreement contains the important provision that '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 . . . be maintained'. Section IV also contains the provision that 'the appointment and promotion of public servants shall be on the basis of qualification, experience and ability'. This is the same basis as at present.

Mr. Peter WONG also drew attention to the fact that the career prospects of at least some expatriate members of the public service will be adversely affected when the Government of the Special Administrative Region comes into being and he referred in that context to a letter which I addressed to all members of the public service immediately after publication of the agreement. In my capacity as head of the public service, I can assure expatriate members of the service that their special concerns, that is to say, their concerns about career prospects, are understood and will be recognised.

Miss Maria TAM, Mr. Peter WONG and Dr. Ho Kam-fai also reminded us of the importance of the voluntary and subvented sectors, particularly in the fields of education and social welfare. While it is true that these agencies, and those who work in them, are not specially mentioned in the draft agreement, I think Members will recognise that the agreement could not deal in detail with every aspect of our complex society. But provision is made for the maintenance of prevailing social and economic systems and also, as stated in section V of Annex I, for the Hong Kong Special Administrative Region to 'deal on its own with financial matters, including disposing of its financial resources and drawing up its budgets and final accounts'. It follows that the Government of the Special Administrative Region will be free to continue to subvent voluntary agencies.

A number of Members referred to the Joint Liaison Group which is to be established after the entry into force of the agreement. Mr. CHAN Ying-lun stressed the need for the responsibilities of the Joint Liaison Group to be clearly defined. Dr. Henrietta IP mentioned that anxieties were being expressed that the

Joint Liaison Group might acquire executive functions. I think a close study of the terms of reference of the Joint Liaison Group as set out in detail in Annex II will reassure them. That Annex states explicitly that 'the Joint Liaison Group shall be an organ for liaison and not an organ of power. It shall play no part in the administration of Hong Kong or the Hong Kong Special Administrative Region. Nor shall it have any supervisory role over that administration'. It is in the context of this explicit description of the Joint Liaison Group that I see it playing a useful role right up to the year 2000. Moreover, as Premier ZHAO Ziyang reminded the Hong Kong delegation to the National Day celebrations in Peking recently, the Joint Declaration states in paragraph 4 that ' . . . during the transitional period . . . the Government of the United Kingdom will be responsible for the administration of Hong Kong . . . '. I assured Premier ZHAO that, through the Hong Kong Government, H.M.G.'s responsibility for Hong Kong would be discharged as conscientiously and as singlemindedly in the next 12-13 years as in the past. Thus I see no serious grounds for concern that any specialist sub-groups which may be established might interfere in the administration of Hong Kong. Such sub-groups will only be set up by agreement between the two Governments and in order to deal with particular subjects requiring expert assistance.

Mrs. Selina CHOW, Mr. Francis TIEN and Mr. Carl TONG put forward the view that the Joint Liaison Group should include Hong Kong members. On this I would only draw Members' attention to the provision in Annex II that each Government shall determine the composition of its delegation to particular meetings of the Joint Liaison Group or sub-groups. I know that the people of Hong Kong attach great importance, Sir, to your assurance that it is the British Government's intention that appropriate Hong Kong Government officials should participate, on the British side, in the business of the group or sub-groups.

Members also raised a number of questions relating to defence and the stationing of Chinese troops in the Hong Kong Special Administrative Region after 1997. Defence and internal security questions are dealt with only briefly in the agreement and it is not possible at this stage for detailed answers to be provided to all the points which have been raised. But it is very helpful that Members' concerns should be clearly on the public record, and I am sure they will be noted. I would, however, draw Members' attention to two provisions in section XII of Annex I which I believe to be of the greatest importance. The first is that the maintenance of public order in the Special Administrative Region will be the responsibility of the Government of the Special Administrative Region. The second is that military forces stationed in the Special Administrative Region for the purpose of defence will not interfere in the internal affairs of the Special Administrative Region. These are very clear and specific statements and should help to meet the concerns which have been expressed, both in this Chamber and outside it.

While I sensed that there was general understanding of the reasons underlying the White Paper's judgment that the agreement must be accepted or rejected as it stands and that there is no possibility of an amended agreement, a number of Members asked about the possibility of supplementing or amplifying it at a later stage. They did so, I take it, because they recognise that an agreement negotiated 13 years ahead cannot take into account every single detail which may need to be worked out in the years between now and 1997. It does, however, contain all the essential features. But, as the Secretary of State himself has pointed out in New York recently, if there is a need to supplement the agreement, or to amplify it, or to clarify it, and if both sides agree, this could no doubt be done with the same good sense as the two Governments have dealt with the agreement itself.

So, having regard to all that has been said in this debate earlier this week and by my Official colleagues this morning, it is my view that the draft agreement is not only the best that could be negotiated, but it is a good agreement. Yet a question in many Members' minds, and naturally so 13 years ahead of the date when sovereignty is to revert to China, is whether the agreement will be carried into effect. Miss DUNN has identified six reasons why we should be confident that it will be implemented and other Members have shared her optimism. The reasons she put forward are indeed powerful. They include the fact that the agreement is legally binding and that the two Governments have publicly committed their prestige to it. But, as many Members have pointed out, there are also solid arguments of national self-interest, including the role which Hong Kong has played, and I believe will continue to play, in China's modernisation programmes. As Mr. BROWN said, the agreement has been very favourably received by international organisations and foreign governments, including the governments of our own major trading partners. This suggests that they, too, believe that the agreement will be faithfully implemented, in the spirit and the letter and that they will be supportive of the Government of the Special Administrative Region.

Yet, in the final analysis, the fact that a good agreement has been negotiated notwithstanding, the stability and prosperity of Hong Kong cannot be achieved by the two Governments—of Britain and China—simply by decree. The future of Hong Kong, as Dr. IP and Mr. So among many others have recognised, depends on the attitudes and efforts of the people of Hong Kong. In approaching the agreement in a positive spirit and with determination to make it work, I believe Members have reflected the views of the people of Hong Kong.

It is now for the people of Hong Kong to put their views on the overall acceptability of the agreement in writing to the Assessment Office. While I agree with many of the points made by Mr. WONG Lam in his speech, I do not agree with him that the acceptability exercise is pointless and that the Assessment Office is a waste of taxpayers' money. I believe it is essential that the people of Hong Kong should have an opportunity to make their views on the agreement known and that those views should be carefully recorded and assessed. This is no

cosmetic exercise. It is a genuine effort to establish the reaction of the people of Hong Kong to the agreement—and Mr. WONG Lam recognised that Parliament did need to know the views of the people of Hong Kong. It is also very much in the interests of the people of Hong Kong that their views on the agreement should be set out to be studied at leisure by *all* those concerned with its implementation. I join Mr. LOBO and Mr. Alex WU, therefore, in urging the community at large to make known their views. I hope that the action recently taken to allay any concerns which there might have been about confidentiality of submissions will ensure that Mr. MACPHERSON'S postbag between now and the middle of November is a very heavy one.

Many Members have paid a generous tribute for the invaluable contribution which you, Sir, Sir S. Y. CHUNG and other Members of the Executive Council made to the successful outcome of the negotiations. I am sure my Official colleagues in this Council would wish to be associated with that tribute; and I would also like to have recorded, in the official report of the proceedings of this Council, the devotion to duty shown by the negotiators and those members of our own public service who worked so tirelessly for so long behind the scenes.

With these remarks, Sir, I have pleasure in supporting the motion.

MR. LOBO:—Sir, the motion before this Council invites Members to endorse the draft agreement and to commend it to the people of Hong Kong.

There are few aspects of the agreement and the future we have not touched upon in the course of these three days of debate and I am grateful to you, Sir, for the latitude you have allowed in this regard.

Many of my colleagues have spoken of their uncertainties about the future and I will not now attempt to summarise the wide ranging and diverse views we have heard.

Of course, the Unofficial Members of this Council have no common position nor platform; we participate in these proceedings as individuals, drawn from a wide spectrum of society, and the views we express are our own in furtherance of how we, individually, perceive the public interest. I believe this debate has responsibly reflected the reservations, fears, and worries which trouble many people of Hong Kong about the future. No doubt they will be taken into account both by the Assessment Office here in Hong Kong and the Parliament in the U.K.

Ours would be a strange community if we were not apprehensive about our future. We are to participate in an unprecedented experiment which will see the absorption of our free enterprise society into a communist state. No amount of padding can disguise this hard fact nor the uncertainty that attaches to this step into the unknown.

Sir, I am grateful that the Chief Secretary and his Official colleagues who in their order of speeches and replies are the Financial Secretary, the Secretary

for Lands and Works, the Secretary for Security and the Attorney General who have reviewed point by point the major issues we have raised, and I would also like to thank the Chief Secretary for his kind remarks about the Unofficials.

But in the final analysis we are being afforded the opportunity to approach this great experiment with a plan to preserve our stability and prosperity or we can approach the great experiment without such a plan.

As you have said, Sir, in this Council not too long ago,
' . . . The draft agreement takes account of Hong Kong's needs and the realities of history. It foresees that change must come but in providing for that change it provides also for the preservation of the essential elements of our society. In as far as it is possible for governments today to provide for the future, it removes the uncertainty which existed because of the 1997 deadline. It constitutes a blueprint for a new stage in Hong Kong's development . . . '

All but two Unofficials have indicated their support for the motion before this Council and only time and history will tell whether our high hopes for the agreement are justified and whether we have discharged our duties adequately.

With these remarks, Sir, I beg to move.

Question put and agreed to.

Adjournment and next sitting

HIS EXCELLENCY THE PRESIDENT:—In accordance with Standing Orders I now adjourn the Council until 2.30 p.m. on 24 October 1984.

Adjourned accordingly at forty minutes past ten o'clock.