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Archival Study of Selected Policies / Events**

**1997年前的香港管治系統：
特選政策／事件的檔案研究**

-- Final Report --

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The Governing System of Pre-1997 Hong Kong: Archival Study of Selected Policies / Events

Abstract of Research

This study intends to shed light on the following puzzle: does the governing system of the pre-1997 Hong Kong have anything to do with the unsatisfactory performance of the HKSARG, and if so, in what way and to what extent? To solve the above puzzle, we need to systematically study the pre-1997 governing system. In particular, we need to identify the critical components of the governing system of the pre-1997 Hong Kong, and to study how these components work to maintain the functioning of the governing system. After presenting an analysis of the pre-1997 governing system in Hong Kong, two case studies are selected to illustrate our analysis: the handling of corruption problems and the establishment of the Independent Commission Against Corruption in 1974, and the British preparations for the Sino-British negotiation over Hong Kong's future before 1982, making use of the declassified documents available in the National Archives of the UK. Finally, some observations and policy recommendations are presented.

1997年前的香港管治系統： 特選政策／事件的檔案研究

研究撮要

本研究旨在解開以下的謎團：一九九七年前香港的管治系統，與一九九七後特區政府表現不濟是否相關？如果是的話，是如何相關？相關程度為何？要解開上述謎團，需要系統地研究一九九七年前香港的管治系統，尤其是確認系統的關鍵組成部分，以及這些不同部分如何運作，以維繫一九九七年前香港的管治系統。在作出這樣的分析後，本研究透過兩個個案研究以作說明：處理貪污問題和1974年成立廉政公署，以及1982年前英國為中英兩國就香港前途談判所作的準備。個案研究的素材，是來自英國國家檔案館的解密檔案。最後，本研究會提出一些觀察和政策建議。

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1. Introduction

Just a few years after the handover in 1997, the governing ability and capacity of the Hong Kong Special Administrative Region Government (HKSARG) has been, or at least widely seen to be, deteriorating. The public perception of the quality of Hong Kong's public governance has been unsatisfactory. As a result of many alleged shortcomings, majority of the public was disappointed with the HKSARG's performance and has therefore lost their trust in the government in general and its governing team in particular. Some might even go as far as suggesting the existence of a governance crisis in Hong Kong. This unsatisfactory state of affair reached its climax and was reflected in the mass demonstration on 1 July 2003. Subsequently, this attracted a remark from President Hu Jintao of the People's Republic of China on 20 December 2004 that the Chief Executive and the Principal Officials of the HKSAR "must consolidate our experience, identify inadequacies and further improve our governance".¹

What are the factors that have contributed to such a state of affairs in Hong Kong? One possible reason is the incomplete transformation of the governing system of pre-1997 Hong Kong after 1997. A widely held view about the governing system in post-1997 Hong Kong is that the pre-1997 governing system needs only a few modifications and can "work" effectively after 1997. This view has downplayed the magnitude of political changes ignited by the handover, and is also insensitive to the de-institutionalization of the pre-1997 governing system due to the withdrawal of Britain from Hong Kong.

To the leaders of the Central People's Government (CPG), the transformation of Hong Kong after the handover might look like the replacement of the Unions Jack by the National Flag of the People's Republic of China, and the Governor by the Chief Executive. There was a popular saying at that time that dancing and horse-racing would be continued after 1997 as if Hong Kong would undergo a minimal change only or even remain unchanged for 50 years. This feeling is especially real for those Hong Kong

¹ The Government of the Hong Kong Special Administrative Region, Information Services Department, 20 December 2004, Chief Executive's remarks after meeting President Hu [Press release], retrieved from <http://www.info.gov.hk/gia/general/200412/20/1220261.htm>

people who want to keep their live style as it is and for those who do not have much confidence after 1997.

Hope and aspiration are one thing, and reality is another. It is quite obvious that the transfer of sovereignty from Britain to China would generate changes at different levels and in different aspects. Some of these changes may receive widespread attention, like the relationships between Mainland China and Hong Kong under the principle of “one country, two systems”, and further democratization of the Hong Kong’s political system in terms of the election of the Chief Executive and all the members of Legislative Council by universal suffrage ultimately. However, others may be more subtle, like the issue of the governing ability and capacity of the HKSARG.

In many people’s mind, it has been taken for granted that the governing system operated before 1997 would survive after 1997. However, if we examine how the governing system operated in the British era, we may come to a conclusion that the British governing system established in Hong Kong had been de-instituted amid the handover in 1997. In other words, the British governing system in Hong Kong was gone after July 1997.

Locating “where we were” is important in identifying “where we are” and “where we will be”. We need to find out what the shape and make-ups of the governing system under British colonial rule were before we can identify if there are any missing links in the governing system of post-1997 Hong Kong. During and after the 1997 transformations, some critical components in the governing system are still in place, while others may be gone already. By reconstructing the governing system practiced during the British rule, we may have a better understanding of the problems HKSAR encounters. In other words, this study highlights the relevance of how the pre-1997 governing system operated to our understanding of how the post-1997 governing system fails.

1.1 Literature Review: Explaining the Governing Problem

For an observer of Hong Kong politics, it is not difficult to find that the HKSARG has encountered difficulties in governing Hong Kong after 1997. These difficulties have not only be seen in the first few years after 1997, as reflected in the mass demonstration in July 2003 and the premature departure of C. H. Tung in 2005, but also hanged over up to the present, as reflected in the Occupy Central Movement in 2014 and in the legislative gridlock of approving the establishment of a new Innovation and Technology Bureau.

Scott (2007) offers one explanation for the governing problem and attributes this state of development to a legitimacy crisis or deficit. A legitimacy deficit is defined as “a condition short of a legitimacy crisis which still enables a government to function effectively although not at maximum efficiency” (Scott, 2007: 32). The colonial government of Hong Kong had been encountering a legitimacy crisis ever since its establishment in 1840s (Scott, 1989). The nature of colonial state made it impossible to have an institutional arrangement that subjected the state officials to the control of the people in a colony.

Post-1997 Hong Kong has inherited the problem of consent from its colonial predecessor. The handover of Hong Kong may have provided an opportunity to address the problem of consent by allowing the executive head and all the legislative councillors be elected by universal franchise. Indeed, the Basic Law has such a stipulation but the controversy is about the timing of introduction and its implementation details. Nevertheless, the issue of electing the Chief Executive and all LegCo members by universal franchise has been debated for nearly 30 years and the problem of consent of the governed is still there. The problem of consent has not been lessened but only intensified, and taken the form of civil disobedience as reflected in the Occupy Central movement in 2014.

The problem of consent could be reduced to a manageable level by the policy performance of the colonial government. This was achieved by the Hong Kong government in and after 1970s. Through the increased policy outputs of housing, education, public health and so on, the Hong Kong government had strengthened its

governing position and was able “to claim performance legitimacy”. In other words, the Hong Kong government “provided what the people wanted” and “had a moral mandate to rule” (Scott, 2007: 32).

Unfortunately, the HKSARG suffers from a lack of “performance legitimacy” as well. Since 1997, the general public of Hong Kong have experienced nearly no improvement of their living standard. Some of the contributing factors are out of the HKSARG’s control, like the Asian financial crisis and the effects of globalization. However, the problematic public policies have also contributed to the hardship of Hong Kong people, such as the housing policy, not to mention the government inability to address the critical problem of wealth polarization, rocketing property price, and so on.

Another school of thought in explaining the difficulties in governing Hong Kong employs institutional analysis focusing on the faulty institutional design or arrangement. Regarding the capacity of resolving conflict, Li (1997) points out that the post-1997 institutional design and arrangement had contributed to the fragmentation of the Legislative Council and its dominance by the established interests, the distortion of popular views in the decision-making process, the insulation of the Chief Executive from popular election and the resultant weakening public accountability of the Chief Executive. These have worked to antagonize and polarize the conflicts of the day and to de-legitimize the conflict resolution mechanism established by the Basic Law.

Lee (1999) argues that the outdated colonial political and administrative institutions that “are preserved in the Basic Law are no longer compatible with the socioeconomic institutions of the post-colonial era” (p. 941). The governance crisis is only the consequence of this institutional incongruity, which “has manifested itself as problems in executive leadership, accountability and legitimacy, and policy and administrative performances” (p. 946).

The incongruity between the political, social and economic institutions has created tensions in the governing process. However, this institutional incongruity and its interaction with “the domestic politics of the transition” have caused disarticulation of the post-1997 political system, which is characterized as the “uncoordinated, poorly developed, fractious and sometimes dysfunctional” relationships between the executive,

the legislature and the bureaucracy. Such a disarticulation has imposed “important constraining effect on the real powers of both the political executive and the legislature, with consequent implications for post-handover politics and the coherence and implementation of public policy” (Scott, 2000: 29). Scott identifies the following five critical factors in producing such a disarticulated political system: 1) the Chinese government does not have a blueprint for the political and institutional framework; 2) the defection of most of the conservative business establishment from the British camp during the transitional period; 3) British shifting constitutional policies; 4) the rise of the democrats; and 5) a decline of the legitimacy of the HKSARG immediate after 1997.

Cheung (2005) focuses on the changing relationship between the major political players and institutions before and after 1997. This changing relationship takes place on the institutional basis of the colonial system of government that the Basic Law left it largely intact. This institutional parameter has obviously failed to take into account of the new political developments and awareness after the transfer of sovereignty and the implementation of “Hong Kong people governing Hong Kong”. In other words, “the formal power arrangements as configured in the Basic Law had displayed increasing incompatibility with the actual interplay of powers and expectation among various players and institutions” (p. 140).

So far, the institutional analysis focuses on the ineffective institutional design and its failure to cope with societal demands. Lam (2005) directs our attention to some of the missing “smoothing mechanisms” within the government after 1997 because “the HKSAR government has been shifting away from the tradition principle of ‘positive noninterventionism’” and “has taken away a focal point that the civil servants took as the reference for policy formulation” (p. 643). Because of such missing elements, “[t]he bureaucracy that was considered a pillar of Hong Kong’s stability and prosperity during the colonial era has appeared to turn into an inefficient and outdated structure that has generated blunder after blunder” (pp. 633-634). These “smoothing mechanisms” are regarded as the “arrangement and procedures, both formal and informal, which facilitate reciprocity and trust among actors in a bureaucratic setting” (p. 634) and “[t]he reciprocity and trust in turn provided the foundation for agencies to engage in policy coordination” (p. 644).

The third theoretical framework employed to explain the governing difficulties of the post-1997 Hong Kong is the political decay thesis. Huntington (1965) takes exception to the then popular definition of political development as political modernization, and argues that “[r]apid increases in mobilization and participation, the principal political aspects of modernization, undermine political institutions. Rapid modernization, in brief, produces not political development, but political decay” (p. 386). Alternatively, he defines political development as “the institutionalization of political organizations and procedures”. The institutionalization is referred to “the process by which organizations and procedures acquire value and stability”. Therefore, the institutional change is not regarded as one-way traffic because “institutions . . . decay and dissolve as well as grow and mature”. The level of institutionalization is suggested to be measured by “the adaptability, complexity, autonomy, and coherence of its organizations and procedures” (pp. 393-405).

Making use of the political decay framework, Lo (2001) argues that Hong Kong has been experiencing political decay since 1997, reflecting in the unconsolidated political institutions that “have become infused with personal rule” and its inability to absorb public demands (pp. 11-12). The political decay of the HKSAR has been characterized by:

a more personal style of governance; a chaotic implementation of public policies; an increasingly politicized judiciary whose decisions have been politically challenged by Beijing and its supporters in Hong Kong; endangered civil liberties including academic freedom; an amalgamation of political labeling and mobilization; a failure of political institutions to absorb public pressure and demands; and a governmental insensitivity to public opinion (p. 13).

Coincided with political decay is the communication gap and legitimacy crisis which have a combined effect of contributing to “the roots of the HKSAR government’s problematic governance” (p. 28). Lo finds a sharp difference between the pre-1997 and post-1997 Hong Kong’s political situations:

Governor Patten prevented Hong Kong from moving toward political decay by strengthening the horizontal and vertical communication and by consolidating his performance legitimacy. Conversely, the Tung administration plunged the HKSAR into political decay by widening the elite-mass communication gap and by failing to improve its performance legitimacy especially after the Asian economic crisis (p. 299).

The fourth school of thought takes the state capacity as a core variable in explaining the governance crisis encountered by the HKSARG. Making use of the concepts of “state embeddedness”, “state autonomy” and “governing coalition building”, Fong (2015) put forward an integrated conceptual framework to account for governance and state capacity (p. 67). To build a viable governing coalition for effective governance, the state is required to “engage in institutionalized negotiation with major socio-economic actors (state embeddedness)” and to “maintain its relative autonomy from these co-opted interest groups (state autonomy)” (p. 68). He argues that the post-1997 governance crisis is not because of the legitimacy deficit, but because of the failure of the state-business alliance after 1997 (p. 35). The governance crisis after 1997 is attributed to “the erosion of intermediary role of co-opted business elites and the fragmented linkages between the state, business and society”, “the business sector’s growing challenge to the relative autonomy of the post-colonial state”, and “the political quagmire of pervasive public discontent and public distrust” (pp. 234-243).

Before 1997, the idea of building a governing coalition has been advocated by Lau (1988). Other than the constitutional mechanisms established by the Basic Law that “can aggregate political power into collective authority and can increase the autonomy of the political system” (p. 23), some extra-constitutional mechanisms should be developed to help achieve that function. “[T]he most likely extra-constitutional mechanism to appear as a power aggregator, consensus builder and constructor of collective authority is a loose alliance among elites from the different parts of the political and socio-economic system”. This loose alliance is regarded as the governing coalition that comprises of “the established interests”, and “China and the expanding pro-China forces and forces which prefer to adopt an accommodative stance toward China”, and that China would “play a critical role” in its formation (pp. 33-34).

However, the effectiveness of the governing coalition as “a solidary political group” and its dominance should not be exaggerated due to: 1) limited resource base; 2) potential conflicts between the bourgeoisie; 3) fragmented and heterogeneous interests and organization; 4) no powerful ideological doctrine or a clear political platform; 5) the important but not dominant role played by China in integrating the governing coalition; and 6) the lack of charismatic leaders (pp. 35-37).

Having said that, the governing coalition can perform the following functions: 1) to produce a certain measure of coherence in the political system by providing a political forum for the diverse interests to build consensus; 2) to act as a politically reactive and preemptive mechanism; 3) to be an electoral organization; 4) to serve as a co-optive device; 5) to recruit and train political leaders; and 6) to provide some measure of legitimacy to the HKSARG (pp. 37-38).

The building of the governing coalition is believed to be critical to the survival of the executive-led political system and has been regarded as a significant step to achieve a lasting good order under the Basic Law. Moreover, without the support of a strong governing coalition, the HKSARG could not govern Hong Kong effectively, and the legitimacy and rationality of the whole political system would be challenged (Lau, 2000: 14).

However, the governing coalition has not been successfully built after more than 15 years of handover (Lau, 2012). Several reasons have been identified, but the major one is that the CPG has yet to see the urgency of integrating and strengthening the establishment forces. According to Lau, the CPG has believed for a long time that the Basic Law has given the Chief Executive enough constitutional and formal powers that shall enable the HKSARG to have a strong and effective governing, even without the help from the governing coalition (pp. 179-182).

1.2 An Alternative Explanation: System Dysfunction

This study adopts a different approach to explain the post-1997 governance problems in Hong Kong, which is fundamentally different from the four approaches discussed above. We employ a system view of the governance. In short, governing is not just the responsibility of a single political leader, would s/he be called President, Prime Minister or Chief Executive, but is the collective work of a governing team. The governing team comprises not only of the elected government officials, but also political appointees and supporting staff. On top of staffing, the ideas of how to govern and the fitness of public policy in steering socio-economic progress are also significant to good governance.

However, the recruitment, training and deployment of governing elites, and the generation and adoption of policy ideas are embedded in a governing system. The governing team is selected from a pool of capable political talents who have already prepared well for taking up the role of governing elites and are in adequate supply. The think tanks and the related research community should be in the picture because of its vital role in providing the governing team the knowledge basis for decision-making and policy-making. Without the intellectual inputs from think tanks and research community, the public policies may lead to nowhere because the causal relationship between the policy measures adopted and the policy objectives expected to be achieved could not be defined or understood.

Within such a system view, the governance problems to be examined in the context of state transition of Hong Kong in 1997 and from a political system perspective. The capacities required for state transition depend on the nature of the emerging state and the system configurations before its transition. As mentioned earlier, the transition of Hong Kong is from a British colony to a Chinese special administrative region. In other words, Hong Kong is transitioned from a dependent system characterized by “governing by others” and low level of political participation, to a partially democratic system characterized by self-government (high degree of autonomy) and higher level of political participation (Hong Kong people governing Hong Kong). The capacities required are not only the extractive, distributive, regulative and symbolic capacities identified by Almond and Powell (1978, pp. 286-321, & 356-357), or the penetrative, extractive, negotiatory and coordinating capacities put forward by Weiss and Hobson (1995, pp. 2-8), or the steering capacity suggested by Peters and Pierre (2006, p. 215-216), but the integration and employment of these capacities to craft and prepare for the successful state-building and an effective governance after transition.

Before and during the transition period, public officials/governing elites have to show their vision and understanding in retaining and even consolidating those compatible values and institutions prevailed at the time of transition, and in building up a new system that works to support the emerging state. Needless to say, this system- or nation-building project is not an easy task and has a strong requirement of knowledge and leadership on the governing team of the day. If there is such a capable governing team available, the pressure of participation and mobilization may be manageable, the

societal constraints may be contained, and a comfortable room for institutional-building may be obtained. Therefore, the governing team leading the transition is critical for the emerging state and state-society relations.

In view of the significant impact of the environmental change associated with the handover in 1997 on the political system of Hong Kong, the existing political structure and culture inevitably come under stress to make adjustment or reform. A corresponding and sequential institutional and behavioural change is very likely. For example, the replacement of the appointment system by an election system before and after 1997 has eventually changed the recruitment criteria of political leaders and has paved the way for the development of political party. As suggested by political system theory, the constituent units of the system are interdependent and therefore “when one variable in a system changes in magnitude or quality, others may be subjected to strains and may be transformed” (Almond and Powell, 1978, pp. 5-6). Functions and performance in the system, process and policy levels are also interrelated and interacted with each other.²

[T]he stability of the system itself depends on a dynamic balance among all three levels. If the same structures (such as competitive parties, elections, and a legislature) are to go on performing the same functions (such as interest aggregation and policy making) over time, such synchronization must be achieved between system, process, and policy levels. If the synchronization breaks down, then strains appear and new leaders may be recruited.

To restore the synchronization, the newly-recruited leaders may either “use the existing structures to create new structures”, or “lead efforts to adapt and rebuild the system”. Alternatively, “existing elites change their attitudes and role performance” (Almond and Powell, 1978, p. 16).

Hong Kong has embarked on a state transformation and system-building process since the initiation of the Sino-British Joint Declaration in late 1984. Gone will be those values, cultures and institutions that are not compatible with the post-1997 political

² System functions refer to the system maintenance and adaptation functions of political recruitment, political socialization and political communication; process functions refer to the conversion functions of interest articulation and aggregation, policy making and implementation; and policy performance analysis on the outputs, outcomes and feedback of the political system. For details, see Almond and Powell (1978), pp. v-vi, 13-16.

order, but the problem is whether the emerging public officials are capable to lead the system-building project during the turbulence time of state and regime transformation. This is an issue of creating a new and effective governing system.

This study aims to demonstrate the operation of the pre-1997 governing system of Hong Kong through selected policies or events based on the British declassified archived documents, and to argue that the governing difficulties encountered by and the underperformance of the HKSARG are the consequence of the inability of the emerging public officials to adapt and re-configure the pre-1997 colonial governing system to meet the challenges of the post-1997 political order.

In other words, this study intends to shed light on the following puzzle: does the governing system of the pre-1997 Hong Kong have anything to do with the unsatisfactory performance of the HKSAR, and if so, in what way and to what extent? To solve the above puzzle, we need to systematically study the pre-1997 governing system. In particular, we need to identify the critical components of the governing system of the pre-1997 Hong Kong, and to study how these components work to maintain the functioning of the governing system.

Previous effort (Li, 2012) has aimed at theorizing a general British colonial governing system in Hong Kong based on the British declassified archived documents. The current study extends the previous effort and tries to examine two cases in greater detail and see if these case studies could provide further information and evidence about how the British colonial governing system operated in Hong Kong. In other words, with the aid of the British declassified documents, we could have a better grip on the mechanisms and operation logic of the British governing system in the pre-1997 Hong Kong. It is hoped that this study could uncover some clues on what causes the current governing problems in Hong Kong.

1.3 Why Archival Study?

This research aims to demonstrate the operation of the governing system of Hong Kong before 1997 through selected policies or events based on the British declassified

archived documents, and to see if any hints we can find to account for the governing difficulties encountered by the HKSARG. In choosing what specific policy or event to study, the pool is limited by the availability of the British declassified documents. Even with this limitation, the decision to employ the archived materials available at The National Archives at Kew is justified for its authoritative status and reliability. One of the purposes of this study is to understand the operation of the governing system of Hong Kong under the British rule. It is therefore legitimate to make use of the correspondences, dispatches, minutes and letters between the senior officials of the Hong Kong Government and the Colonial Office or the Foreign and Commonwealth Office; or those from the British government departments that have a policy portfolio over Hong Kong.

These archived documents provide a reliable and official source to understand not only the operation but also the dynamics of the governing system of Hong Kong under British rule, which is the subject of this study. In other words, the declassified documents have provided us an unique opportunity to understand the thoughts and considerations of the key decision makers involved in a particular public policy or issue, the interactions among the parties concerned within the British government about how to handle the issue, and the context and environment that these decision-makers were working in or being shaped by them. From these declassified documents, one can also trace the origin of the policy or issue under study, and the flow of events leading to its final outcome or settlement. Therefore, the limitation of choice is actually not a limitation as long as the archived documents are recorded the actual way of working of the governing system of Hong Kong.

However, the use of declassified archived documents should be cautious. Given that they are created by different government officials in different government agencies over a period of time, the readers may not find a complete set of documents that render a full picture of a particular policy or decision. Moreover, some documents have been destroyed or withheld because of security or sensitivity reason. These are the limitations of the study of declassified documents and the price we pay for the unique insights offered by such a study.

Case study research has been discounted for its limited use in generalization of its findings and is not suitable for hypotheses testing and theory building (Flyvbjerg, 2006). However, facts and information extracted from the archived declassified documents are used to provide context-dependent knowledge, which is critical for our understanding of the actual functioning of the pre-1997 Hong Kong governing system. The attempt here is a modest one. The use of cases here is just for illustrative purpose, not to test any theory (Thomas, 2011). Even for this small step, we need to start a process of accumulating cases leading to our better understanding of the functioning of the pre-1997 governing system. As Thomas Kuhn argues, “a discipline without a large number of thoroughly executed case studies is a discipline without systematic production of exemplars, and that a discipline without exemplars is an ineffective one. In social science, a greater number of good case studies could help remedy this situation” (quoted in Flyvbjerg, 2006: 242).

The policies or events chosen for this study are: corruption and the establishment of ICAC, and preparations for the Sino-British Negotiation over Hong Kong. The cases selected for study here are for illustrative purpose: to illustrate how the governing system of Hong Kong under the British rule actually worked and functioned. The corruption case is a domestic problem of Hong Kong, while the case of Sino-British negotiation over Hong Kong is a foreign policy matter. In addition, the first case is involved a system-building exercise, while the second case is taken place on the usual diplomatic platform. Substantively speaking, the first case is used to demonstrate the dynamic process leading to the triggering of the control and checking mechanisms in London to deal with the corruption issue in Hong Kong, and the coordinated efforts made by the Governor and the Foreign and Commonwealth Office (FCO) to establish the ICAC in terms of staffing and institutional design, while the second case is to illustrate the role of the Governor and its aides in Hong Kong in preparing the then upcoming Sino-British negotiations, and the functioning of the support system in the preparation process.

2. The Colonial Governing System in the Pre-1997 Hong Kong

Before proceeding any further, let me firstly introduce the British colonial governing system instituted in pre-1997 Hong Kong. Needless to say, the institutions established in Hong Kong were a part of the British colonial governing system. In other words, the Hong Kong governing system was a part of the British colonial governing system under which a very strong linkage existed between the British Government and its governments established in the British colonies in terms of staffing, policy guidance, control and checking mechanisms. How strong the linkage between the British governing system and a specific British colony depend on their constitutional relationships. For example, the linkage would be weaker for those colonies that were advanced to self-rule or independent, or to be handed over to another sovereign state as in the case of Hong Kong because of the fading away of the British governing authority, and vice versa. The weakening of the local British governing system could have the effect of making room for the development of a full-fledged home-grown governing system. However, there was no guarantee that a full-fledged home-grown governing system would be ready to serve under a new political landscape, which would depend on whether the critical functions that made the previous colonial governing system operative could be successfully incorporated in the newly emerged governing system, or a brand-new effective governing system could be put in place after the British departure. What I mean the British governing system here included:³ the governing team sent to Hong Kong by the British Government in London, the support system based in London that provided necessary inputs and advices to the governing team in Hong Kong when required, and the control and monitoring mechanisms presented within the British Government and in the British society.

³ The theorizing of the governing system of Hong Kong established by Britain was first put up by this researcher (Li, 2012) and the description of the governing system of Hong Kong in this section is largely followed that of Li with revisions and updates.

2.1 The Pre-1997 Governing Team

Due to its colonial nature, pre-1997 Hong Kong was governed by a team of British officers recruited in Britain, and trained and deployed by the British Government to its colonies. This team of British officers mainly came from Her Majesty's Colonial Service (Colonial Service), which was established to staff the senior positions of the British colonies overseas and to provide leadership in the governing of British colonies.⁴ The Colonial Service had some twenty branches under which officers from the Colonial Administrative Service were expected to be promoted to the governorship and colonial/chief secretaryship of a colony, and therefore formed the backbone of the governing team of the British colonies. This was reflected in the high percentage of officers who had a full-time career in the Colonial Service being appointed to the post of governorship during the period 1940-1960 (about 71%, 78 out of 110 governors) (Kirk-Greene, 1999: 102). During its heyday in 1954, the Colonial Service had a total of 18,000 members of staff, of which 2,360 belonged to the Colonial Administrative Service (Kirk-Greene, 1999: 51).

In order to maintain an adequate supply of qualified candidates for senior or top posts, there was a standing succession arrangement within the Colonial Service. For example, there were two lists being compiled in the case of the promotion/appointment of governorship and colonial/chief secretaryship.⁵ List "A" included the names of officer below the age of 55 who were eligible for promotion to a governorship when a vacancy occurred. The list also included the names of serving governor who were eligible for promotion to a senior governorship.⁶ List "B" included the names of officers with proven record of competence who were regarded as a potential candidate for the colonial/chief secretaryship in case such a vacancy arose. The performance of a colonial/chief secretary would determine whether the officer in question would be promoted to List "A" (Kirk-Greene, 1999: 101-102).

⁴ Her Majesty's Colonial Service had been renamed as Her Majesty's Overseas Civil Service (Overseas Civil Service) since 1954.

⁵ Notable exceptions where someone outside the Colonial Service was appointed as Governor included Murray MacLehose (a diplomat) and Christopher Patten (a politician).

⁶ There were four different grades of governorship. See Kirk-Greene (1999: 99-100).

In general, a government is made up of (1) a governing team of political leaders who are responsible for setting the essential policy direction of the government and providing leadership; and (2) an executive team of civil servants who are responsible for the execution of policy decisions made by the governing team. Members of the governing team are usually chosen through election or political appointment, while those of the executive team are recruited mainly through examinations. Because of its colonial political system, the British Government had appointed the British officers from either the Colonial Service or other services to staff the governing team of the pre-1997 Hong Kong. The governing team would then be dominated by the British officers until the time the colony was embarking on the road of decolonization leading to independence, or the development of a colony rendered a more inclusive approach towards local officers or political leaders. In the case of Hong Kong, the Hong Kong Government started to implement the localization policy since the end of the Second World War, but the progress was very slow and far from satisfactory. Even though the localization policy had gained momentums since 1970s, and more and more local officers were appointed to the posts of headship and secretaryship since the 1980s, a dozen of posts were still restricted only to British officers because of their vitality and sensitivity in governing Hong Kong.

These posts would be regarded as the core group of the governing team of the pre-1997 Hong Kong and were divided into two layers. The top layer's posts, List A, had to be occupied by British officers and they were Governor, Colonial Secretary, Secretary for Security, Commissioner of Police, Director of Special Branch, some Special Branch Officers and Government Security Officer. The second layer's posts, List B, should be occupied by British officers and were further divided into two subcategories: Part 1 of List B included Financial Secretary, Deputy Commissioner of Police and Deputy Secretary for Security (Operations) – officers taking these posts might act for those posts in List A; Part 2 of List B included Attorney General, Solicitor General, and Secretary for the Civil Service – these posts ought to be filled by British officers since it was worried that social pressure might affect their reliability if they were local Chinese.⁷

In fact, the core group of the governing team of the pre-1997 Hong Kong had always

⁷ See FCO 40/493, f 16, Roberts to Stuart, 17 August 1974. Colonial Secretary was renamed Chief Secretary in 1976.

been constituted by British officers. Local Chinese officers were not promoted to these posts until a few years before 1997. These officers included (in chronological order): Li Kwan Ha, Commissioner of Police (December 1989); Anson Chan Fang On-sang, Secretary for the Civil Service (April 1993) and Chief Secretary (November 1993); Daniel Fung Wah-kin, Solicitor General (October 1994); Peter Lai, Secretary for Security (February 1995); and Donald Tsang Yam-kuen (September 1995). The posts of Director of Special Branch and Attorney General continued to be held by British officers – the former until the dissolution of the Special Branch in 1995, and the latter until the eve of the Handover in 1997.

Other than the core group, there were about 600 “sensitive” senior posts which were subject to positive vetting, of which two-thirds were being found in the Police Force. The requirement of British origin was released for this group of senior posts. However, measure had been taken to divert sensitive material from these local officers if they were acting in posts mentioned in List B above.⁸ In fact, the number of British officers who had occupied the senior posts (at deputy director/commissioner and above, and High Court Judges and above) was 92 in February 1978.⁹

Senior British officers were mainly concerned with the actual governing of the colonial territory rather than the execution of policies, so the key requirements for their appointment were political wisdom and capability, as evident in the requirements for the recruitment of Governors for the Falkland Islands, Belize and Montserrat set in 1979.¹⁰ It is worth mentioning that the Government of Hong Kong recommended five British Administrative Officers (AOs) to apply for these three governor positions, but none of them succeeded.¹¹

The British officers, whether they were from the Colonial Service or otherwise, colonized the top position of a colonial government, while the administrators or civil

⁸ FCO 40/493, f 16, Roberts to Stuart, 17 August 1974.

⁹ FCO 40/874, f 1, List of Senior British Expatriate Officers Serving in Dependent Territories, February 1978.

¹⁰ FCO 40/1036, f 31, Shakespeare to McLaren, 30 March 1979; FCO 40/1036, f w32, Governor Falkland Islands: Job Description, undated.

¹¹ FCO 40/1036, f 48, Tsang to Gregory, 1 May 1979; FCO 40/1035, f 28, Annex J, Dependent Territories Senior Appointments Board, 4 June 1979.

servants recruited in the colony were expected to take up the managerial role to ensure the smooth operation of the government. The local officers were nurtured to be an effective administrator, but not a governing team member that could provide political leadership and policy direction to the government. In other words, the British officers and the locally-recruited officers were two different groups of officers who had a distinctive role and function to be discharged: the former served or were expected to serve as political leaders and policy makers, while the latter as administrators and policy executors.

This dichotomy of role and function between the British and local officers had naturally given rise to the monopoly of almost all the senior posts of the governing team by the British officers. The local officers were therefore encouraged to develop their administrative and management skills and talents. This kind of division of labour might function well in a colonial setting, but would cause a disruption in the leadership succession when the British officers withdrew from the colony in a short period of time. The locally-recruited and -trained but capable administrators had to replace the British officers and to provide political leadership to the newly-established government. The jump from an administrator to a political leader was so large that made the latter very difficult, if not impossible, in adjusting their roles successfully to that required by political leader. The departure of the British governing team would definitely open up a lot of vacancies for local senior civil servants and it is sure that there are adequate local civil servants to fill these vacancies. The question is: do the local civil servants equip with the kind of quality and capability that the British governing team members in general and its core governing members in particular possessed?

2.2 The Support system

The British governing team did not govern a colony by itself. There was a support system based in London that provided helps and assistances of whatever type to the governing teams overseas. This support system provided a platform for the coordination and interaction between the Foreign and Commonwealth Office (FCO) in London and

the governing team in the colonies.¹² The platform provided an arena through which the governing team in any given British colonies could seek policy advices and request for staffing backup from Britain, and the FCO, in return, would supervise the governing team in the colonies at an arm's length, and provide guidance and even instructions to the colonial government concerned when required. While the FCO was the major coordinating party in this platform, other British ministries might also have a part of it and a significant role to play as well.

In order to give useful advice and provide suitable guidance, the FCO and other British ministries had to equip themselves with policy knowledge and information about the colonies. The policy knowledge provided a solid basis of policy decision, while the information was badly needed for making a policy judgment. Such knowledge and information were also needed by the governing team being sent to the British colonies overseas as well. Needless to say, the more the colony was in an advanced stage of development, the higher the sophistication of the knowledge and information was required. It was therefore not surprising to learn that the British Government had built up its research capacity on colonial affairs.

To the British Government, knowledge of the various facets of the British colonies had practical value as it could not only help them develop the economic potential of those territories and facilitate their governance given the vast cultural difference between Britain and its colonies, but also provide reliable materials for public discussion and media report within Britain so that a favourable social environment was formed for achieving social and policy consensus. Under the motto "Knowledge is the only sure basis for any sound development", the British Government gradually established a system for colonial research.¹³ The British Government's chief research institution for colonial studies was mainly based and coordinated in Britain, and would partner with universities in colonial territories on specific studies when necessary in order to better utilise resources and practise the economy of scale. There was, therefore, no need for each of the colonial governments to set up its own local research institution.

¹² The Colonial Office was responsible for colonial affairs (except India before its independence in 1947) in and before 1966, and the Commonwealth Office had taken up the responsibility for a brief period from 1966 to 1968 before it was succeeded by the FCO in 1968.

¹³ CO 927/116/2, f 3, Notes on Colonial Research, p. 13, January 1951.

The Colonial Office (CO) had long been conducting researches concerning colonial territories. As regards research expenditure, the budget for researches for the 10-year period from 1946 to 1956 was 13 million British Pounds under the Colonial Development and Welfare Acts of 1950 while the actual expenditure of that period was 10.36 million British Pounds.¹⁴ In addition to the considerable research expenditure, the CO set up a Research Department responsible for promoting colonial research work in 1945 under the supervision of an Assistant Under-Secretary. Since the British academics and research institutions at the time were not keen on colonial studies, suitable researchers were offered flexible recruitment and terms of employment in order to attract them to join the colonial research team. In addition, Colonial Research Service, a branch under the Colonial Service, was established in 1949. In early 1955, as many as 452 research officers were employed to conduct colonial researches.¹⁵ Furthermore, Colonial Research Fellowships and Research Studentships were established to encourage participation in studies and investigations concerning colonial development, and to create a pool of talent for colonial studies.¹⁶ In order to engage academics and specialists with expertise and experience to assist in the endorsement and review of colonial research schemes, and to provide expert advice on colonial development and governance, the CO established a number of research advisory committees or councils. In 1955, there were 26 such research advisory committees or councils covering a wide range of policy subjects (Colonial Office, 1955: 19-26).

Furthermore, the CO hired 42 full-time advisers and specialists (Colonial Office, 1955: 7-8). In general, prior to handing out advices or instructions to a colonial government, officials from the CO would first consult the full-time advisers or specialists concerned before making the relevant decision.

Therefore, the policy knowledge creation and application machinery established to provide support for the governing of British colonies were made possible by combining

¹⁴ CO 927/116/2, f 3, Notes on Colonial Research, p. 7, January 1951; CO 927/536, f 75/76, C. D. & W. Research Requirements: 1955/60, 10 April 1955; CO 927/537, f 119, Colonial Development and Welfare Research Schemes, 20 June 1956.

¹⁵ CO 927/578, f 10, Colonial Research Appointments, 26 January 1955.

¹⁶ CO 927/116/2, f 3, Notes on Colonial Research, p. 9, January 1951.

the considerable research expenses financed by the British Government, the establishment of the Research Department and specialist research committees by the CO, the formation of the Colonial Research Service by the colonial public service system, and the employment of a number of full-time advisers and specialists.

The FCO, the successor of the CO, had also had its own Research Department which was in charge of providing information and case analysis concerning political issues at the time, and studying the problems the FCO had encountered and their implications on policies in order to support the planning staff responsible for policy planning and giving advice. In 1979, the Research Department had a nominal establishment of 91 (supporting staff included);¹⁷ there were 46 Research Officers in the nominal establishment while in 1979, the actual number of Research Officers employed was 39.¹⁸

The Joint Intelligence Committee under the Cabinet Office responsible for the assessment and supervision of intelligence work also took part in research activities. The Joint Intelligence Committee completed 10 research reports in 1978. Among those reports, the one titled “The Threat from China to Hong Kong” was nowhere to be found in the relevant file.¹⁹

The creation of policy knowledge through research was not confined within the British Government. By sponsoring or collaborating with various British universities or institutions, research and learning programmes, information sharing and resource exchange hubs were established outside of the government. There were 35 associations or institutions connected with colonial affairs as listed in the CO List of 1955, including British Academy Archaeological and Historical Advisory Committee; British Council; Imperial Forestry Institute, University of Oxford; London School of Hygiene and Tropical Medicine, Royal Empire Society; School of Oriental and African Studies, and so on (Colonial Office, 1955: 27-41).

¹⁷ FCO 51/446, f 15, Research in the Foreign and Commonwealth Office, p. 3, December 1979.

¹⁸ FCO 51/446, f 12, Summary of Activities September 1978-79, pp. 2-3, 9 October 1979.

¹⁹ FCO 51/446, f 3, Maxey to Gooderham, 19 March 1979.

Other than research activities, policy knowledge could also be derived from the policy experience acquired in the governing process of Britain and other British colonies. This policy reference system provided abundant real-life and feasible examples and experience for imitation and adoption by the British colonies. For example, the British welfare policy had been practiced and survived for a period of time, and the logic and argument of having such a policy as well as the lessons drawn from it might serve as a reference and even policy option for those colonies that their social development required the consideration of such a policy. The importation of the policy experience from Britain might save a lot of time and effort, and it was also safer because these British policies had already been tried out and tuned in the real policy arena. However, the downside of this policy reference system was the likely imposition of constraints on new policy initiatives from the colonies, and the suitability and relevance to a particular colony because of cultural and socio-economic diversity of the British colonies. Whether the results were good or bad, it was beyond doubt that the British policy experience did have impacts on the policy formulation and decision of each of the British colonies.

The policy knowledge provides a tentative causal relationship between/among issues or events. The causal relationship between/among issues or events is vital for policy-making because it determines the effectiveness of a policy, i.e. whether the intended policy objectives can be achieved and if so, to what degree? However, the policy knowledge found in one policy context may or may not fit a different policy context. The transfer and application of policy knowledge to a particular policy context in a specific colony therefore require the adaptation of policy knowledge into a particular circumstance. In fact, the adaptation process is the process of translating policy knowledge into a policy option adopted by the colonial government. Whether this adaptation process is a successful one depends, among others, on the availability of the key information relevant to the policy under deliberation by the local governing team.

The collection of reliable information via open and covered channels may correct the possible bias, if any, resulted from cultural, religious and socio-economic differences, or suffered from the lack of such information. The collection of information via public sources is a must for any sound policy planning and a modern government has thus spent a lot of resource to build up data-bases of key information covering different

aspects of the society. Special institutions or mechanisms have to be set up to collect the information or intelligence not available in the public domain.

For sure, Britain was no exception to this. A comprehensive system of collection and analysis of information/intelligence had been established when governing the colonies. Such a system included institutions and committees established at the following levels:

- The local level: intelligence bodies based in the colonies (e.g. special branch) and the Local Intelligence Committee;
- The regional level: the regional Joint Intelligence Committee; and
- The central level: the Joint Intelligence Committee in London.

In general, the Governor of a colony had to submit regular reports to the Secretary of State for the Colonies, providing assessment of political and security intelligence obtained from various local sources and conclusion on the possible trend of future development. In addition, the Local Intelligence Committee, made up of local senior government officials responsible for intelligence work and representatives sent to the colonies from the relevant intelligence agencies in Britain, also had to submit regular reports. Besides being the chief source of intelligence for the Governor, the Chair of the Committee also had to attend relevant meetings on intelligence work with the Joint Intelligence Committee in London, the CO and the Security Service headquarters. Furthermore, the Local Intelligence Committee had to maintain close contact with its regional Joint Intelligence Committee, as well as other colonial Local Intelligence Committees in the region. Security Liaison Officer appointed to the colony by the Military Intelligence, Section 5 (MI5) chiefly acted in an advisory role and as the contact person with the extensive British intelligence network. The CO in London also maintained close contact with the MI5.²⁰

In the case of Hong Kong, there might be different arrangements at different periods of time. In 1956, the Governor had weekly security meetings with the Colonial Secretary, the Secretary of Chinese Affairs, the Commissioner of Police, the Commissioner of Labour, the Director of Education, the Defence Secretary, the Political Adviser and the Public Relations Officer to hear their reports and these officers could report to the

²⁰ CO 1035/49, f 1, Alan Lennox-Boyd's Top Secret Circular Dispatch, 28 April 1956.

Governor in private when necessary. In parallel, there was a Local Intelligence Committee of Hong Kong, chaired by the Colonial Secretary. Other members of the Committee included the Commissioner of Police, the Political Adviser and representatives of other various intelligence agencies. Besides serving as the Secretary of the Local Intelligence Committee, the Political Adviser was also the chief official in charge of the storage and handling of day-to-day intelligence, and was the link between intelligence agencies and government departments.²¹ However, it was a senior officer from the Security Branch (Alan Mason) that had acted as the Secretary of the Local Intelligence Committee in 1980.²²

As described above, the British Government had built up a solid and resourceful policy support/consultation system and policy research community so that relevant policy knowledge and policy option would be generated and made ready for shopping by the British colonies, and that policy advices had been made possible to the British colonies by the British Government when requested.

There were different formats for interaction and exchange of views between the British Government and the governing team in the colonies:

- The Governor or the designed senior government officers taking initiatives to seek advices or recommendations from the British Government via the FCO on the related policies should problems arise.
- The periodic duty visit (returning) of the Governor and other senior officials to London for reporting to the FCO and/or consultation with other British Government departments.
- The scheduled visit of the Secretary of State for the Colonies/for Foreign and Commonwealth Affairs, its Parliamentary or Permanent Under-Secretary, advisors and the desk officials from the related geographical department within the FCO (i.e. the Hong Kong and General Department of the FCO in early 1980s, and the Hong Kong and West Indian Department of the CO in 1965).

²¹ CO 1035/49, f 2, Officer Administering the Government to Lennox-Boyd, 18 August 1956.

²² FCO 40/1159, f 18A, Clift to Morrice and Bridgwood, 12 March 1980.

- The ad-hoc visits based on issues or events, which were arranged from time to time when required.
- The inter-departmental meeting or consultation between or among the British Government departments for issues that required joint efforts from London.

Through the above channels, the London officials could get hold of the first-hand information and observation about the local affairs and developments in a colony, while the colonial government officials could access to London's latest thinking on colonial affairs. More importantly, these exchanges had served an important function of mixing and matching the policy expectation between the British Government and the governing team in the colony.

An example suffices to illustrate the possible policy consequences of these exchanges. A written report was produced by Mrs Eirene White, Parliamentary Under-Secretary of State for the Colonies after her visit to Hong Kong in 1966. There, White set out her suggestions for the progress of Hong Kong: pointing out the negative social impact of marginalising the Chinese language and encouraging government departments to respond to the public's enquiries in Chinese; expressing discontent as all senior government positions were held by British officials; not considering the adoption of Westminster democracy in Hong Kong; criticising that there was no representation of the working class in the Hong Kong system; recognising the demand for greater public participation on local affairs; encouraging both the grass-root and top levels to develop consultative democracy; suggesting that the municipal government (Urban Council) should be given more room for development (e.g. having Councillors hear the complaints of the public, widening the franchise, the expansion of some powers and a proper budget); opposition to introducing election to the Legislative Council; considering indirect election for Legislative Council possible in the future (by including representatives from local councils); strongly demanding the appointment of someone other than a representative of the business elite to the Executive Council as Unofficial Member.²³

²³ CO 1030/1748, f 6, Visit of Parliamentary Under-Secretary of State to Hong Kong 4th - 11th January 1966.

A wide range of measures taken by the Hong Kong Government from the early 1970s onwards coincided with this written report (although it was not certain whether they were adopted because of the report or because they were affected by it). For example, the Chinese Language Committee was established in 1971 and Chinese became an official language of Hong Kong under the Official Languages Ordinance in 1974; a white paper on the Urban Council on its future organisation, scope and finances was issued in 1971, announcing that from 1973 onwards, the Urban Council would be reorganised – there would be no more official members, the election franchise would be widened, the chairperson would be elected among the Council members, it would be given financial autonomy, and a meet the public scheme would be implemented; Legislative Council included seats for members elected by the Electoral Colleges in 1985, i.e. Urban Council, Regional Council and District Boards.

A minute submitted by an official responsible for Hong Kong affairs at the FCO after his visit to Hong Kong in early 1980 illustrated the coverage of topics discussed with the Hong Kong Government officials (i.e. the Chief Secretary, the Secretary for the Civil Service, the Director of Administration Services and the Attorney General). These topics included: the division of work between secretaries and directors, and the question of supervision; the problem of substandard personnel management; the housing problem of civil servants; the over-expansion of civil service; shortages of middle level civil servants; staff exchanges between civil servants from Hong Kong and the United Kingdom; and the attrition of Law Officers in the Government.²⁴

2.3 The Control and Monitoring Mechanisms

Even though the officials of the British Government and the governing team members being sent to the colonies might have their own concerns, priorities and constraints, they were in fact coming from the same governing system and trained to have a similar social value and policy orientation. What was more was their shared responsibility in governing the British colonies. The FCO and the CO had been charged with the task of overseeing the governing of the British colonies in different periods of time. The

²⁴ FCO 40/1159, f 18A, Clift to Morrice and Bridgwood, 12 March 1980.

respective Secretary of State was the one who has held the responsibility of good governance of the British colonies to the British Parliament. Therefore, any problem happened in any colony might be picked up and questioned by the Members of Parliament (MPs) and the British mass media. The problems of a colony might be easily transformed into a subject of British politics which might then generate political pressure for action from the ruling party. Failing to do so, the ruling party might suffer from the loss of public support or even its political fortune. The opposition party might take advantage of the failure of the colonial policy in general and the mal-administration of the colonial government in particular to push through their views or alternative colonial policy. The Conservative Party and the Labour Party had been engaged in a hot debate over the British colonial policy in the late 1940s and 1950s, with the Labour Party advocating a more rigorous decolonization policy.

Under the logic of party competition, the Foreign Secretary/the Colonial Secretary was under constant pressure to keep the British colonies in a proper shape or at least to prevent the colonial affairs becoming an agenda in British politics. However, the British media had from time to time carried story about the problems happened in the colonial territories or the deficiency of colonial governments. The political activists or the British resided in the colonies might contact the British officials or their MPs in London for any complaint about things happened in the colonies. In return, the British Government might follow up with the colonial government concerned for an answer or a report. For the MPs, they might raise questions or even move debates in the Parliament if they thought fit.

Given that the Parliament was the focus of British politics, any matter raised there was highly attentive by the British Government and the wider British public. The British Government had in one way or the other developed certain procedure in handling its business in the Parliament. The Hong Kong and General Department (HKGD) was responsible for Hong Kong affairs within the FCO and had laid down a very detailed procedure of handling matters related to Hong Kong in the Parliament. It was the normal practice for the HKGD to pass the related parliamentary questions to Hong Kong Government for a suggested reply or background information before responding to the Parliament. There were different deadlines and requirements for different types of

questions raised in the Parliament and correspondence with MPs.²⁵

In other words, there were two different mechanisms that had worked to monitor the performance of the British governing team sent to the colonies: the British Government via the FCO, and the British Parliament with inputs from mass media and the wider society. The latter might be regarded as a network or system external to the British Government which did not supply policy advice and recommendation, but had served an important function of exerting pressure to prompt the British Government and its governing team in the colonial territories to be responsible and answerable for their policy and action towards the British colonies.

In summary, Britain had developed a sophisticated system for the governing of her colonies. Although this governing system had a centre (the British Government in London) and local (colonial governments) components, it was by no means that they were separated from each other functionally. Instead, these two components were highly connected and dependent upon each other in governing British colonies. To maintain the efficiency of this governing system, the British Government not only maintained a pool of colonial administrative and professional talents in Britain, but also deployed them to the major positions of the colonial governments. In addition, these British officials would become the members of the core governing teams in the colonies and had exercised the governing power on the spot with the support system in London. Indeed, there were a number of functions that helped support the colonial administration. They included the collection and analysis of intelligence, the creation and application of policy knowledge, and the provision of policy guidance and reference. However, without the inputs from “the people on the spot” (British officials sent to the colonies), the effective functioning of this support system would become doubtful. But equally important was whether there was a mechanism that was able to confirm if the colonial governments had performed up to a certain standard or an acceptable level. To achieve such a purpose, the devices used were the internal control of the British Government via the FCO and other government agencies, and the external check by the British Parliament with inputs from mass media and the wider British society.

²⁵ FCO 40/1260, f 1, Memorandum on the Handling of Parliamentary Business by Hong Kong and General Department, November 1979.

The cases reported below are selected with the aim to illustrate how the governing system described above was actually working in Hong Kong. Needless to say, the selected cases may not provide us the fullest picture of the working of this complicated governing system, but they may indeed equip us with part-and-parcel of the working of that system.

3. Case Study - Corruption and the Establishment of ICAC

Corruption had always been an issue in Hong Kong. Corruption cases had been reported, and sometimes led to actions through criminal prosecution in court. Sometimes, corruption cases led to disciplinary actions against the officers. Many corruption cases were among the police, but officers in other departments might also be involved.

It has been recorded in various files that governments of different periods all attempted to tackle corruption but it was difficult to judge the seriousness of the problem. For instance, the number of corruption cases reported was not in an increasing trend; for the period of 1956-59, there were 92 prosecutions against public servants and private individuals of whom 56 were convicted in Court on charges of corruption. For the same period, disciplinary action on grounds of corruption or kindred charges were against 241 public servants, of whom 203 were proved against (116 from the Police Force and 87 from other Departments) and most of them were dismissed.²⁶ Offences involving corruption in the period of January to June 1962 led to 74 persons being charged²⁷, while in 1972, there were 74 prosecutions in connection with alleged cases of corruption.²⁸ In fact, in 1960, the Colonial Office (CO) commented that there was no evidence of an increase in corruption in Hong Kong, and a “reasonable amount of corruption” did not warrant the appointment of a Commission of Inquiry. Also, Governor Black acknowledged in 1960 the existence of corruption in Hong Kong but not on the scale alleged by the critics.²⁹ He stressed that the Government had been doing its best to eliminate corruption, but was hampered by lack of information.

As a domestic problem, corruption certainly warranted government attention. The Hong Kong Government had taken many measures to deal with the problem. Officers who were found guilty in corruption cases were subject to either disciplinary actions/dismissals or criminal prosecutions. Starting from the Prevention of Bribery Ordinance (1948), penalties against corruption were greatly increased. Also, the

²⁶ CO 1030/1386, f 17, Hong Kong (O.A.G) to Secretary of State for the Colonies, 20 April 1960.

²⁷ CO 1030/1387, f 78, 151 Allegations of Corruption Against Government Officers, 31 July 1962.

²⁸ FCO 40/451, f 8, Stuart to Wilford, 27 March 1973.

²⁹ CO 1030/1386, f 50, Governor to Secretary of State for the Colonies, 2 September 1960.

operations of the Anti-Corruption Branch, which was under the Police Force, were strengthened. From time to time, measures were taken to improve the Branch's structure, efficiency and public status. A Standing Committee on Corruption (later renamed as the Advisory Committee on Corruption) was appointed to make recommendations on matters related to corruption. The Advisory Committee on Corruption presented valuable recommendations, including proposing the Prevention of Bribery Bill in 1969. It is noticeable that there were suggestions that the Anti-Corruption Branch should be independent from the Police Force. While such suggestions won many supports, the Commissioner of Police was strongly against the idea and the Anti-Corruption Branch remained under the Police Force.

During the late 1960s and early 1970s, after exhausting means of correcting corruption domestically, cases were filed with the British government and/or members of Parliament. Two individuals, Alan Ellis and Mrs. Elsie Elliott, had been particularly prominent in this regard. Members of Parliament of the opposition party then used the cases to accuse the ruling party of being incompetent in dealing with corruption in the colonies. It was this feature of British democracy that transformed a domestic Hong Kong problem to a British political problem. To defend against the opposition party's attacks, the British Government needed to take the Hong Kong corruption problem seriously. As a result, the Hong Kong Government was also forced to face its own problem accordingly.

Then the Godber case. There was a public outcry in Hong Kong questioning how an under investigation police official, Chief Police Superintendent. Peter Godber, could have escaped from Hong Kong and asking for extraditing Godber to Hong Kong for trial. The British opposition party also used the Godber case to attack the ruling party. Suggestions had been made of forming an independent commission by the British Government to deal with the corruption issue in Hong Kong. Such suggestions embarrassed the Governor since they effectively accused the Governor of Hong Kong of being incapable of handling Hong Kong's corruption.

The Governor of Hong Kong was opposed to the suggestions. In response, he formed the Commission of Inquiry chaired by Sir Alastair Blair-Kerr. The Commission produced two reports, with the first report dealing with specifically the Godber case and

the second dealing with the effectiveness of the Prevention of Bribery Ordinance and making recommendations on possible changes of the prosecution arrangements concerning corruption. After careful deliberations, the Governor decided to establish the Independent Commission Against Corruption (ICAC) which would be independent of the Police Force. The New Scotland Yard London provided a report making detailed suggestions on the structure and procedures of the operations department of ICAC. The British Government also provided numerous inputs in advising the staffing of ICAC.

One complication concerning the Godber case was that it was not possible to extradite Godber from the UK under the Fugitive Offenders Act, because Godber's alleged offence of being in possession of unexplained wealth was not an offence under the UK law. Hong Kong Government suggested that the British Government should amend the law so that it became possible to extradite Godber. The British Government of course was reluctant to do so. The incident came to a close, not because the British Government finally agreed to amend the law, but because Godber was implicated in a normal bribery charge, which was a returnable offence under the Fugitive Offenders Act. Godber was then extradited to Hong Kong for trial.

3.1 Hong Kong Government's Attitude toward Corruption: Before 1974

3.1.1 Corruption cases and Hong Kong Government's responses

These cases show how the Hong Kong Government handled corruption in the 1930s to 1950s. These cases were ones domestic to Hong Kong, but the British Government was also involved when an appeal or a petition was made to the Secretary of State for the Colonies. Note that the cases were those mentioned in the declassified documents and might not, and probably did not, represent all the corruption cases in Hong Kong in the covered period (the same comment would apply to the cases of complaints, parliamentary questions, and press stories, which will be discussed below).

A. A case reported in 1937 with action through prosecution in court

This is a corruption case that did not involve the police. Henry Richard Major, Revenue Officer, Imports and Exports Department of the Government of Hong Kong was recommended by Sir Geoffry Northcote, the Governor of Hong Kong (1937-1941) to William Ormsby-Gore, the Secretary of State for the Colonies (1936-1938), for dismissal from the service on charges of misconduct after his acquittal on the charge of bribery.³⁰

The decision was based upon a report from a Committee of the Executive Council on recommendation of such dismissal.³¹ Major had been informed of his dismissal and he would passage to England with his son with £50 granted “*ex misericordia*”. A copy of the letter addressed to him on the decision by T. Megarry, acting Colonial Secretary was also attached together with the report to the Secretary of State.³²

At first Major was indicted at the Supreme Court for charges of bribery and was acquitted later on. However, he was brought to a Committee of Executive Council on charges of misconduct as follows:

- First charge against Major was that being a Revenue Officer on the 23 June 1937, he accepted from one, Lai Kwok, a present of \$100 contrary to General Order 65 of the Hong Kong Government and contrary to the rules of honesty and integrity;
- Second charge was being a Revenue Officer, he failed to report to the Superintendent of Imports and Exports and the Head of his Department, that on the 23 June 1937, he had been offered and had accepted a present of \$100 from one Lai Kwok (not being a gift from a personal friend) contrary to General Order 69 of the Hong Kong Government and contrary to the rules of honesty and integrity;
- Third charge was being a Revenue Officer, he failed to report to the Superintendent that on the 23 June 1937, he had been offered a bribe of \$40 by one Lai Kwok contrary to General Order 69 of the Hong Kong Government; and

³⁰ CO 850/102/18, f 1, Governor to Secretary of State for the Colonies, 24 November 1937.

³¹ CO 850/102/18, f 1, Enclosure No. 1, Report of Committee of the Executive Council, 8 November 1937.

³² CO 850/102/18, f 1, Enclosure No. 2, Colonial Secretary to Henry Richard Major, 24 November 1937.

- Fourth charge was being a Revenue Officer, he acted with gross negligence and without authority in the performance of his duties by allowing unmanifested cargo to import to Hong Kong.

The criminal proceedings were instituted on the advice of Fraser, the Acting Attorney General, at a time when Grenville Alabaster was acting as Chief Justice. The proceedings were conducted by Abbott, Assistant Crown Solicitor. Alabaster had nothing to do with the case except approving and signing the indictment after the magistrate had committed Major for trial.³³ After Major was acquitted on the charge of bribery, the Governor appointed a Committee of the Executive Council with Alabaster as the Chairman with Sir Henry Pollock and John Johnstone Paterson, both unofficial members of the Executive Council as committee members to enquire into the question of Major's dismissal. The constitution of the Committee was as laid down by General Order 77 (Colonial Regulation 68(ii)).³⁴

The case received great publicity given in the press during Major's trial at the Supreme Court and later at the meeting of the Legislative Council that he had been dismissed from the service merely as a deterrent to other Revenue Officers as suggested from Major's appeal to the Secretary of State against the decision of the Governor's recommendation for his dismissal.³⁵ He did not know that acceptance of a gift was an offence and further made allegations that there were wholesale acceptance of bribes as admitted by the Chinese Revenue Officers due to laxity and absence of discipline and proper supervision of the Import and Export Department whilst other Chinese Revenue Officers who had also admitted the acceptance of bribes and whose conduct was severely criticized by the Chief Justice, have as yet been dismissed from the Government Service, but were merely suspended.

In regards of Major's appeal, the Governor commented that Major was disingenuous; his acquittal on the charge of bribery was on technical grounds; his admission of having received a present, which was not an offence in law, was part of the defence set up by

³³ CO 850/102/18, f 2, Governor to Secretary of State for the Colonies, 3 December 1937.

³⁴ CO 850/102/18, f 1, Attorney General's notes, 5 December 1937.

³⁵ CO 850/102/18, f 2, Memorial from Major to Secretary of State for the Colonies, 30 November 1937.

him and was no proof of honesty on his part; the fact that the wolfram was removed before the money in question passed was on the other hand disproof of his honesty and a rebuttal of his defence. On Major's allegation, the Governor commented that there was no reason to accept it as true. The Governor concluded that there were no grounds in the appeal for any modification of his recommendation for Major's dismissal.³⁶

During the course of Major's inquiry, he also appealed on the payment of his half salary retained by the government through his representing solicitor, Johnson Stokes & Master, to the Superintendent of Imports and Exports.³⁷ After a number of correspondences, the Colonial Secretary wrote to inform Major that the Secretary of State had approved the recommendation of his dismissal.³⁸ Major later further appealed to Ormsby-Gore against the decision of the Governor in Council to recommend him for dismissal from the service and his half salary retained by the government for the period from 14 July to 1 October 1937.³⁹ At last, the government upheld the decision of dismissing Major but agreed to pay him the half salary retained because it was found that he was entitled to full salary for the period in question.⁴⁰

B. A case reported in 1958 with action through private investigations

This is a corruption case that involved the police. Sixteen police officers were summarily dismissed by the Governor under Colonial Regulation 56 with the approval of the Secretary of State for the Colonies in December 1958. Their case was very thoroughly investigated at the time and the procedure followed had the agreement of the Secretary of State.⁴¹

³⁶ CO 850/102/18, f 2, Governor to Secretary of State for the Colonies, 3 December 1937.

³⁷ CO 850/102/18, f 4, Johnson Stokes & Master to the Superintendent of Imports & Exports, 7 October 1937 & 13 October 1937.

³⁸ CO 850/102/18, f 4, Colonial Secretary to Major, 30 December 1937.

³⁹ CO 850/102/18, f 4, Major to Secretary of State for the Colonies, 12 April 1938.

⁴⁰ CO 850/102/18, f 10, Smith to Macdonald, 14 July 1938.

⁴¹ CO 1030/1715, f 4, Huijeman to Kentish, 2 November 1965.

Eight Inspectorates and eight Rank and Files of the Hong Kong Police Force were dismissed in 6 December 1958 in accordance with Colonial Regulation 56 and Section 33 of the Police Force Ordinance as informed in their dismissal letter signed by the Acting Deputy Colonial Secretary on 4th December 1958, their pension and gratuity rights were also being forfeited. Although the eight Inspectorates were interviewed at the Anti-Corruption Office during September and November 1957 regarding their duties at the Macau Ferry Wharf but there was no exact accusation which warrant their dismissal and they have not been given an opportunity to answer such accusation and defend themselves accordingly as indicated in their petition to Alan Lennox-Boyd, the Secretary of State for the Colonies (1954-1959).⁴²

A private enquiry by a judge was given to the petitioners in 1960 with the attendance of their lawyers only and later the petitioners also attended another private enquiry by the same judge in March 1961 but no witnesses were present as supplemented by the petitioners in their second appeal letter of 1964 to Lady Lennox-Boyd, the wife of Lennox-Boyd.⁴³

3.1.2 Anti-corruption measures

Prior to the 1973, the Hong Kong Government had spent efforts in fighting corruption. The anti-corruption measures launched included Northcote's attempts to investigate corruption in 1938-1941, passing the Prevention of Corruption Ordinance, issuing a new General Order No. 444, setting up the Standing Committee on Corruption (later renamed as Advisory Committee on Corruption) in the early 1960s, improving the Anti-Corruption Branch (which was under the Hong Kong Police Force) and studying the recommendations of the Advisory Committee on Corruption in the late 1960s.

⁴² CO 1030/1715, f 1, Eight Inspectorates of the Hong Kong Police Force to Secretary of State for the Colonies, undated.

⁴³ CO 1030/1715, p 31, Petitioners to Lord Alan Lennox-Boyd, September 1964.

A. Governor Northcote's attempts to investigate corruption (1938 to 1941)

It had been talks for years that certain government departments were rotten with corruption, including the Police, Imports and Exports Department, Public Works Department and Urban Council. In 1938, Northcote made an ineffectual attempt to catch the corrupted officials but could not get the necessary evidence.⁴⁴ In 1941, he appointed a Commission with P. E. F. Cressall as Chairman to investigate possible bribe-taking in Air Raid Precautions (A.R.P.) works in 1941. Captain Hobbs, engineer at Public Works Department, was suspected shot himself rather than face certain condemnation, and several other government officers were under suspicion of having taken bribes or presents. It was not certain how far into the civil service corruption extended, but at least two cadets might be shown to have taken bribes (though not in connection with A.R.P.). According to the Governor, the Commission report was likely to reveal "serious laxity in the control of Government Expenditure, at any rate on defence works. . . . I discovered . . . that the tunneling arrangements made with Marsman Ltd. Last September on a cost plus percentage basis were not only subject to the sketchiest supervision but had not been reduced a formal contract and still rest on a few letters exchanged between a Senior Officer of Public Works Department and Marsmans, being subject to termination at one month's notice by either side!"

Receiving the report from the Chairman of the above Commission,⁴⁵ Northcote's successor, Mark Young, decided to appoint another Commission which was charged with the duty of enquiring generally into the existence of corruption in the Public Service in general.⁴⁶ Obviously, Northcote viewed corruption as a serious problem in Hong Kong. In contrast, Governor Sir Mark Aitchison Young had a more relaxed view that ". . . the belief [that corruption is prevalent in the Public Service] is widely held, and . . . is not unfounded, though I am glad to be able to believe that the number of black sheep is greatly exaggerated in the public mind".

Because of the intervention of the war, this commission did not produce a report.

⁴⁴ CO 129/590/14, f 4, Northcote to Gent, 8 September 1941.

⁴⁵ CO 129/590/18, pp 5-6, Cressall to Governor, 16 October 1941.

⁴⁶ CO 129/590/18, f 5, Young to Lord Moyne of Bury St. Edmunds, 7 November 1941.

B. The Prevention of Corruption Ordinance (1948)

In 1948, the Prevention of Corruption Ordinance was passed.⁴⁷ The Ordinance covered corruption of public officers as well as commercial employees. The penalties were greatly increased when the offence was committed in relation to a Government servant or public contract. The terms of imprisonment up to 7 years might be imposed. There were two sections which were worth mentioning. One was Section 12, as special rules of evidence:

It is hereby declared that in any trial or inquiry by a magistrate or a court in respect of an offence against this Ordinance it may be proved and taken into consideration by such magistrate or court that an accused person –

- (a) is in possession or has disposed of pecuniary resources or property disproportionate to his known sources of income for which he cannot satisfactorily account; or
- (b) has at or about the time of an alleged offence obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account.

Another section that made Section 12 powerful was Section 9:

Notwithstanding any rule of practice or procedure to the contrary in the event of a person being charged with an offence against section 3 or section 4, a judge shall not be required to direct the jury that it is dangerous to convict on the evidence of an accomplice without corroboration in a material particular implicating the accused, but in every such case the jury shall be directed to convict if they are satisfied beyond reasonable doubt that the evidence of such accomplice is worthy of belief.

Section 9 was particularly controversial, because this represented a departure for English practice.⁴⁸ As corruption is one of the most difficult offences to prove in courts since by the very nature of the offence, entirely independent evidence can rarely be available. Section 9 was to overcome this difficulty by leaving it to the judge's discretion (in England, the judge did not have such discretion) to draw attention to the danger of convicting on the evidence of an accomplice.

⁴⁷ CO 129/616/3, pp 30-34, Supplement No. 1 to the Hong Kong Government Gazette, 30 July 1948.

⁴⁸ CO 1030/1386, f E15B, Brief for Secretary of State: Adjournment Debate, 28 April 1960.

C. General Order No. 444 (1959)

After consulting the Executive Committee of the Association of European Civil Servants and of the Chinese Civil Servants' Association, a new General Order No. 444 was introduced by the Hong Kong Government in September 1959 to deal with those public officers who had failed to maintain a high standard of integrity.⁴⁹ This exceptional system, which was not in force in any other colonial territory, empowered the Governor to call upon any officer to explain his standard of living if it was above his known financial circumstances. A tribunal would be set up to make appropriate enquiry if the officer failed to provide explanation to the Governor's satisfaction. After considering the report of the tribunal, if the Governor was of the opinion that the officer failed to give a satisfactory explanation of his living standard, the officer concerned would be dismissed or compulsorily retired, subject to the Secretary of State's approval. At one time, the Solicitor General, Arthur Hooton, thought of the possibility of incorporating General Order No. 444 into the criminal law in March 1961. However, he regarded this move as a very drastic measure and might well provoke considerable opposition.⁵⁰

Note that this General Order No. 444 and its similar provision in later ordinances required the suspected officer to explain his standard of living, thus placed the burden of proof on the suspect officer. In 1969, Hong Kong introduced the Prevention of Bribery Ordinance, *inter alia* making it an offence for a public servant to be in possession of pecuniary resources disproportionate to his official emoluments, unless he could find a satisfactory explanation.⁵¹ The reason for such a provision was because it proved difficult to get evidence of bribery of policemen. The Ordinance provided that the Attorney General, before consenting to a prosecution, should give the person concerned an opportunity of making representation. There was no equivalent offence in the United Kingdom. This might be contradictory to the common law tradition, thus paved the way to the legal barrier that prevented the extradition of Godber in the 1970s (to be explained below).

⁴⁹ CO 1030/1386, pp 221-223, Secretariat Temporary Circular No. "G" 12: Bribery and Corruption - New General Order, 10 September 1959.

⁵⁰ CO 1030/1386, f 67, Enclosure E, Minute 20 from Solicitor General, 11 March 1961.

⁵¹ FCO 40/452, f 94, Crowson's minute to Norris and Gratten, 2 August 1973.

D. Standing Committee on Corruption (1960)

A Standing Committee on Corruption was appointed on 16 March 1960. Its function was to consider and keep under review the extent of and problems presented by corruption in relation to the public service of Hong Kong, and to make recommendation from time to time.⁵² Rather than engaging in investigations of individual cases, the Committee presented themselves publicly through the press on 17 May 1960 that they were a policy and advisory committee. In accord to its function and the re-organization later recommended in their first report, the Committee was renamed as the Advisory Committee on Corruption who later published the third to sixth report. Members of the Committees were as follows:⁵³

Standing Committee on Corruption (the first and second report)

Hon. A. Ridehaigh, Q.C. (Chairman)
Hon. R. C. Lee, O.B.E.
Hon. C. Y. Kwan, O.B.E. (appointed as an additional unofficial member)
Hon. H. D. M. Barton, M.B.E. (G. M. Goldsack on Barton's temporary absence)
K.A. Bidmead, Esq., O.B.E., Deputy Commissioner of Police,
T. D. Sorby, Esq., Establishment Officer.

Advisory Committee on Corruption (the third to sixth report)

C. E. M. Terry, C.B.E. (Chairman) (appointed September 1960)
Hon. R. C. Lee, O.B.E. (appointed as Chairman on March 1962 replacing Terry⁵⁴)
Hon. C. Y. Kwan, O.B.E.
Hon. H. D. M. Barton, M.B.E.
G. M. Goldsack, Esq. (retired on March 1962)
Hon. W. C. G. Knowles, O.B.E. (appointed as member on March 1962 replacing Goldsack)
E. Tyrer, Esq., Acting Deputy Commissioner of Police
G. C. Hamilton, Esq., Establishment Officer (A. Todd, Esq., during the absence of Mr Hamilton)

⁵² CO 1030/1387, f 77, Reports of the Standing Committee and the Advisory Committee on Corruption, p. 1, undated.

⁵³ CO 1030/1387, f 77, Reports of the Standing Committee and the Advisory Committee on Corruption, p. 75, undated.

⁵⁴ CO 1030/1387, f 76, HKDIB, Hon R. C. Lee Appointed Chairman of Advisory Committee on Corruption, 23 March 1962.

The advice from the Standing Committee was to appoint someone not associated in the public mind with the executive branch of the Government. The then Chairman suggested to invite Hogan, the Chief Justice, to serve as the Chairman. However, Governor Black and the Executive Council judged that the public might find it difficult to separate Hogan as a Chairman of the Committee from his judicial status. Finally, Black proposed to appoint C. E. M. Terry, an unofficial member of Executive Council, to chair the Standing Committee on Corruption. In addition, Black suggested paying honorarium to Terry because it was believed that he might not accept appointment as Chairman without remuneration because he had retired for some years and thought of undertaking further employment so as to supplement his savings.⁵⁵ CO seemed to be not supportive to appoint Terry because of the possible gossip and rumour that linking Terry's financial position with his appointment, leading to the undermining of public confidence in the Committee. CO went further to suggest that the successor should be independent of and not connected with Government and that the appointment of the Chief Justice would not be open to the objections the Governor saw.⁵⁶ Later on, Black reported his decision of not considering the issue of honorarium anymore and that he had invited Terry to serve as Chairman and that Terry accepted immediately.⁵⁷

The first report was published on 5 August 1960 addressed to Black, which laid down the framework of the Committee with recommendation to set up three Working Parties:⁵⁸

- The Working Party on Public Co-operation; to study how best to secure a new approach by the public and to prepare plans to this end;
- The Working Party on Departmental Procedures; to study the existing performance and procedures of Government Departments whose day-to-day contacts with the public render them most vulnerable to corrupt practices and to put forward proposals for improving the procedures; and
- The Working Party on Legal and General Matters; to consider what new measures, legislative or otherwise compatible with the rights of the individual in a free society

⁵⁵ CO 1030/1386, f 51, Governor to Secretary of State for the Colonies, 8 September 1960.

⁵⁶ CO 1030/1386, f 54, Governor to Secretary of State for the Colonies, 16 September 1960.

⁵⁷ CO 1030/1386, f 56, Governor to Secretary of State for the Colonies, 23 September 1960.

⁵⁸ CO 1030/1387, f 77, Reports of the Standing Committee and the Advisory Committee on Corruption, pp. 1-4, undated.

can be introduced to strengthen the hand of those responsible for bringing corrupt persons to book.

A member of the Committee would serve as Chairman of each working party and empowered to co-opt members as required. The main responsibility of the Committee during the next two years was to direct and co-ordinate the activities of the three Working Parties. A separate secretary would be required for each working party.

The first report also laid down the Committee's recommendation on the composition of the Committee, as follows:

- The Committee suggested that there would be some advantage if the Chairman of the Committee was someone not associated in the public mind with the executive branch of Government whilst the present Chairman, Arthur Ridehaigh being the Attorney General of Hong Kong (1952-1961) who was very much concerned with the executive side of Government contradicted this idea;
- If the above is acceptable, the Attorney General or Solicitor General could serve on the Working Party on Legal and General Matters;
- The Working Party on Public Co-operation would draw on advice and assistance from senior Government officials as the Secretary for Chinese Affairs, the Director of Education and the Director of Information Services, as well as Church and Kaifong leaders, and the leading commercial institutions; and
- The Working Party on Departmental Procedures should be strengthened by the appointment of a full time adviser familiar with 'Organization and Methods' techniques without delay. To start with, this Working Party should confine to an overhaul of the under-mentioned activities of the following departments:
 - Police Force: Traffic, Immigration and Licensing;
 - Public Works Department: Buildings Ordinance Office and Crown Lands and Surveys Office;
 - Commerce and Industry Department: Certification, Licensing, and Inspection Branches;
 - New Territories Administration: Land transactions;
 - Labour Department: Registration and Inspection of Industrial Undertaking; and
 - Urban Services Department: Licensing and Inspection.

Earlier in July 1960, Black informed CO that he considered setting up a Citizens Advice Bureau under the direction of the Secretary for Chinese Affairs both to combat

corruption and to maintain public morale.⁵⁹ His idea is to ask a panel of Unofficial Justices of the Peace to hear any representations made by the public. A small secretariat would then investigate the matter and to prepare reply or follow up the representations. Furthermore, he asked CO if there were similar bureaux run in the UK or other Commonwealth countries and their effectiveness and difficulties, and also for comments on the Ombudsman system in Denmark. In reply, CO informed Governor Black that there were differences between the proposed Citizens Advice Bureau in Hong Kong and such bureaux in UK in terms of composition and functions. The Social Welfare Adviser of CO was quoted to advise that the proposed bureau might be administered by Hong Kong Council of Social Service, with the help of Social Welfare Department.⁶⁰ However, the idea of setting up a Citizens Advice Bureau had been substantially altered after inter-departmental consultations and an Enquiry Service would be created instead. It was tentatively assigned to be operated under the Secretary for Chinese Affairs and an outline plan of operation would be devised by a senior Administrative Officer.⁶¹

According to the Governor's intention to proceed with a scheme in the nature of a Citizens' Advice Bureau, the panel for which would be composed of members of the public who would sit regularly and be accessible to the ordinary citizen for advice, the Committee suggested on a smaller scale to have such a body to whom the ordinary citizen could turn for advice on matters concerning Government licensing and permit procedures.

Finally as appended on the first report, the Committee commented that the accommodation of the Anti-Corruption Branch of the Police Force was both inadequate and unsuitable, and its technical equipment required improvement after a preliminary study of the activities of the Branch, and recommended that a highly qualified expert on anti-corruption procedures from Scotland Yard or some other suitable source should be appointed to review the organization and operation of the Branch in consultation with the Committee. While this specific recommendation was not implemented, it could still

⁵⁹ CO 1030/1386, f 45, Governor to Secretary of State for the Colonies, 2 July 1960.

⁶⁰ CO 1030/1386, f 46, Governor to Secretary of State for the Colonies, 4 August 1960.

⁶¹ CO 1030/1386, f 57, Colonial Secretary to Attorney General, 12 September 1960.

be seen that the British support (i.e. Scotland Yard) was seen by the Committee as a last resort to forming a technically competent unit against corruption.

In total the Committee had prepared six reports which Government published as a press release on 1962.⁶² As commented in the press release, the Committee had made 5 reports to Government on individual aspects of corruption and with the completion of their sixth report the Committee felt “that they have reached the stage when they could comment on all aspects of the problem and made comprehensive recommendations rather than limiting their proposals to individual points as they have done in their previous proposals”.⁶³

The press release summarized the reports of the Advisory Committee on Corruption and its recommendations under consideration by the Government, as follows:⁶⁴

- Licensing procedures: Government agreed with the Committee that the licensing departments should examine their procedures to make sure that they were as simple and effective as possible, the procedures should be understood by the public and suggested that bilingual forms and explanatory pamphlets should be introduced and full reasons should be given when applications were rejected. Accordingly the procedure for issuing licences in a number of departments such as Police, the Fire Services Department and the Urban Services Department was examined with a view to introducing such improvements as were possible;
- Guidance for Civil Servants: recommendation had been accepted that pamphlet dealing with the dangers of corruption should be given to all Government officers on first appointment;
- Onus of Proof: one of the most important of the recommendations was legislation should be introduced to make it an offence for a public servant to be in possession of property acquired from corrupt transactions, the onus being on the accused to establish that any property not commensurate with his income was not derived

⁶² CO 1030/1387, f 77, Reports of the Standing Committee and the Advisory Committee on Corruption, undated.

⁶³ CO1030/1387, f E/72, Report of the Advisory Committee on Corruption: Recommendations under Consideration by Government [press release], 17 January 1962.

⁶⁴ CO1030/1387, f E/72, Report of the Advisory Committee on Corruption: Recommendations under Consideration by Government [press release], 17 January 1962.

from corrupt activities and examination of the legislation to shift the onus of proof would be undertaken accordingly. Legislation should be introduced to enable the Courts could confiscate money or monies worth forming the subject of a charge of corruption, and further recommended that the penalties under the Corruption Ordinance should be increased. Government was not yet in a position to say whether these recommendations could be accepted. The Committee made a number of recommendations designed to simplify the procedure for a disciplinary enquiry against a public servant as laid down in Colonial Regulations and advised the Government must consult the Secretary of State for the Colonies before a decision was taken on these proposals. The Commissioner of Police was considering the recommendations concerning the Anti-Corruption Branch of the Police Force;

- **Publicity Campaign:** there should be a publicity campaign based on an appeal to the community spirit of the public on the moral issue of corruption, and also this should be introduced into the Civics Syllabus for secondary schools. Government was in accord with the Committee that an effective method of reducing corruption was to discourage the offering of inducement;
- **Working Party on Departmental Procedures:** the second report expressed the concern of the Committee that delays in Government procedures were providing opportunities for corruption and upon the recommendation that the Governor to appoint a Board to enquire into delays in Government procedure, the Working Party on Departmental Procedure of the Advisory Committee itself was set up to examine the allegations of delays;
- **Complaints from the Public:** the public were invited to submit their complaints in writing to the Committee at P.O. Box 1000, Hong Kong. Only a small part of the evidence studied by the Committee came from this source, so far only 22 complaints had been received. However, during the period 1 January 1961 to 30 November 1961, 422 complaints alleging corruption were made to the Police;
- **Gifts to Civil Servants:** as recommended in the third report, guidelines for receiving gifts by Government officers were incorporated in the General Orders for Government servants;
- **Rules of Evidence:** proposals on the fourth report on the rules of evidence and the standard of proof for Disciplinary Proceedings against Government officers on

charge of corruption have been amplified and overtaken by the sixth report with reference above; and

- **Building Regulations:** the fifth reports detailed the results of investigation into the procedure of the Building Ordinance Office of the Public Works Department, some recommendations have been implemented and others would be considered by the Organisation & Methods consultants when they came to examine the Building Ordinance Office.

The day after press release, a telegram was sent from the Governor of Hong Kong to the Secretary of State for the Colonies attaching copies of the sixth report with the press release, promising that his detailed comments to the various proposals would follow.⁶⁵ The Secretary of State for the Colonies replied that the enclosed report had been studied with great interest and enclosed a note on the Anti-Corruption Branch prepared by the Deputy Inspector-General of the Colonial Police⁶⁶, which is to be discussed in the next subsection. We cannot locate documents showing further responses by the CO to the Advisory Committee's recommendations.

E. Anti-Corruption Branch of the Royal Hong Kong Police Force

Back in early 1962 after the Advisory Committee on Corruption had released their sixth report of their recommendations on anti-corruption measures, N.G. Morris, an official at the CO, presumably the Deputy Inspector-General of the Colonial Police, prepared note responding to Chapter VI of the report on the subject of Anti-Corruption Branch.⁶⁷ According to the report, the Advisory Committee had only considered two possibilities: the Anti-Corruption Branch as a police organisation or as an organisation divorced from the police. It rejected the second possibility, and concluded that the Branch "must continue to be staffed by serving officers of the Police Force and must remain under the authority of the Commissioner of Police".⁶⁸ Morris did not support the idea of a full-

⁶⁵ CO 1030/1387, f 72, Governor to Secretary of State for the Colonies, 18 January 1962.

⁶⁶ CO 1030/1387, f 75, Secretary of State for the Colonies to Governor, 26 March 1962.

⁶⁷ CO 1030/1387, f 77, Reports of the Standing Committee and the Advisory Committee on Corruption, pp. 45-47, undated.

⁶⁸ CO 1030/1387, p 4-5, Morris's minute, 21 February 1962.

scale Police Anti-Corruption Branch on ground that the public were reluctant to complain to the police of whom they were afraid; and 50% of all complaints about corruption concern the police. He suggested a third possibility: a Government Anti-Corruption Bureau consisted of the police, the legal department and the administration. Accordingly he suggested the Branch working under a Control and Policy Committee chaired by the Colonial Secretary, with the Attorney General and the Commissioner of Police as members. The Branch was to be under the control of a Director appointed by the Governor with three main sub-Branches: Legal Branch headed by Crown Counsel, Investigation Branch headed by a Senior Superintendent of Police and Information and Administration Branch headed by the Secretariat Office. The Investigation Branch would be mainly staffed by police officers but could include certain specially selected officers from other government departments with specialist knowledge. Such an organisation as suggested on the one hand would possess the special knowledge and competence to do its job and on the other hand, could disarm criticism and gain public confidence. Although the suggested Anti-Corruption Bureau still consisted of the Commissioner of Police as one of its key members, it was not under the Police Force and thus could be regarded as an “embryo” of ICAC established in 1974.

In 1954, a Hong Kong police officer, G.A.R. Wright-Nooth, paid a visit to the Corrupt Practices Investigation Bureau in Singapore which was divorced from the Police Force and directly responsible to the Colonial Secretary, and prepared a report afterward.⁶⁹ The Advisory Committee studied the report, which made use of a British colony’s experience in fighting corruption, and commented that although civilian investigators were used, they were insufficiently trained to carry out proper investigations. It was also concerned about the danger that civilians permanently employed in such work would themselves become corrupted in which case the opportunity to post them to other duties and the discipline to deal with them effectively would be lacking.

In view of the above report, the Advisory Committee concluded that the Anti-Corruption Branch must continue to be staffed by serving members of the Police Force and must retain under the authority of the Commissioner of Police. While there was evidence that the public had become more willing to approach the police with general

⁶⁹ CO 1030/1387, f 77, Reports of the Standing Committee and the Advisory Committee on Corruption, pp. 45, undated.

problems or complaints, the Committee suggested that partly through fear and partly because the police themselves were felt to be corrupt, there still existed in the minds of the public a definite reluctance to become involved with the police in relation to complaints of corruption. On the other hand, the public did not appear to be any more willing to complain to a civilian body; out of 422 complaints alleging corruption were made to the police; only 28 complaints had been received by the Committee. The fact was that too many people had a strong interest that corruption should be allowed to continue.

In the belief that it would improve the efficiency of the Anti-Corruption Branch, the Working Party had put forward two recommendations in an attempt to solve the lack of continuity in the Branch caused by the gazetted officers being posted away too frequently:

- The Officer in charge of the Branch and the Officers in Charge of the two sub-divisions should be men with the status of a “Corps d’Elite” with a corresponding increase in salary and if necessary in rank; and
- These three officers should be very carefully selected with the object that they should remain permanently in the Branch.

The above proposal was discussed with the Commissioner of Police who emphasized that no specialized knowledge other than experience in criminal investigation was required for investigating corruption and that if gazetted officers of the Branch were given the status of a “Corps d’Elite” with corresponding increase in rank to compensate for their loss of promotion prospect, this would upset the balance with the commercial crime, traffic and special branches and some posts connected with the criminal records officer, for which specialized knowledge was required. He further stated that it would be impracticable to post three gazetted officers to the Anti-Corruption Branch permanently because a consecutive period of one tour was all that a man could normally manage in the Branch while still keeping a proper sense of perspective, it would not be right to limit the post of Officer in Charge to being a promotion post for the two subordinates; the two Officers in Charge of the sub-divisions need to be good at investigation but would not necessarily have the administrative ability required for the higher post. In light of the Commissioner’s view, the Committee suggested that acting appointments to the Branch should be made as infrequently as possible.

A new Target Committee was formed which consisted of the Deputy Commissioner of Police, the Director of Criminal Investigation, the Senior Superintendent in charge of the Anti-Corruption Branch and a representative of the Colonial Secretary; this new system were able to sift the complaints of corruption and to decide which ones should be referred to local police units and which should be investigated by department.

The Committee did not make a detailed examination of the organization and work of the Anti-Corruption Branch but their main concerns were that the Branch was not held in sufficient regard by the public, there was no continuity that the posting of officers to and from the Branch, and the staff of the Branch might be called upon to investigate allegations of corruption against a former colleague.

The Committee also did not make any concrete recommendations towards increasing the efficiency and public status of the Branch. The former Standing Committee in its first report recommended that a highly qualified expert in anti-corruption procedures from Scotland Yard or some other suitable source in the UK should be appointed to review the organization and operation of the Branch, however, as informed by the Colonial Secretary that the Home Office considered it was very doubtful whether there was any UK Police Officer with the necessary experience who could be spared to undertake the assignment; the Home Office believed that Hong Kong Police officers have a far greater knowledge of local conditions than any UK officer could have. The Committee then suggested that serious consideration should be given to the possibility of employing a top flight senior officer who has retired from the Hong Kong Police Force to carry out a careful and detailed examination of the Branch.

The official forwarded his suggestion to the Hong Kong Government for consideration after receiving green light from the CO.

F. Advisory Committee on Corruption's recommendations

The above was put forward from the Committee, chaired by C.Y. Kwan to Sir David Trench, Governor of Hong Kong (1964-1971).⁷⁰ In Kwan's paper, the Committee recommended the following:

- The proposed Prevention of Bribery Bill should be considered as part of the Hong Kong law; the rank should be raised to senior inspector or above to exercise the functions as set out in the subsection for Special powers of investigation, and deletion of the subsection which offered the Attorney General to have the power to obtain information under the proposed Bill;
- Introduction of non-police personnel into both the Target Committee and Anti-Corruption Bureau, composition of the Target Committee, as follows:
 - Deputy Commissioner of Police – who would sit as Chairman as at present
 - Director of Criminal Investigation
 - One senior Crown Counsel – should not be from the Prosecutions Section of Attorney General's Chambers
 - One senior Departmental or Secretariat Officer – recommended the Director of Audit
 - Establishment Officer's representative
 - a secretary
- Staffing of the Anti-Corruption Bureau:
 - secondment to the Bureau of an accountant, either from the Treasury or from Inland Revenue Department;
 - secondment of two Crown Counsel to the Bureau; one of these officers should have experience background of public prosecution who would have the authority to prosecute in all cases;
 - secondment of a junior Crown Counsel to the Bureau; and
 - institution of a preventive section within the Bureau.

Kwan's paper had considered representations made by the Attorney General for the introduction of setting up an Independent Anti-Corruption Bureau separate from the Police Force and of the Commissioner of Police against it, after a Crown Counsel and the Chief Superintendent of Police of Anti-Corruption Branch's visit to Singapore in 1968 to study their anti-corruption methods and later the Attorney General's visit to Ceylon for the same purpose.

⁷⁰ FCO 40/234, f 1, Chairman of Advisory Committee on Corruption to Governor, 3 June 1969.

Both the Crown Counsel and the Attorney General were in favour of an independent Anti-Corruption Bureau whilst the Commissioner of Police took opposite view with argument that the staffing of an independent organisation would cause considerable difficulty and if the Bureau were to be removed from the Police, this would cast aspersions on the reputation of the Police Force as a whole which the Committee considered undesirable in the circumstances, particularly those arising from the showing of a film on the RTV English television channel in April 1969, entitled “A Case to Answer” alleged that in the Police Force in Hong Kong corruption was rife.

In order to deprecate such an unfair misrepresentation of the Hong Kong Police Force and at the same time to reassure the public that action under the Prevention of Bribery Bill would not depend entirely on the decision of a Target Committee and an Anti-Corruption Bureau consisting mostly of policemen, the Committee recommended the introduction of non-police personnel into both organisation, and the Bureau would remain under the Police Force for a trial period of three to five years.

On contrary to the Advisory Committee’s recommendation on the Anti-Corruption Bureau continue to operate under the Hong Kong Police Force, Alan Ellis persistently pursued that an externally-appointed commission of inquiry must be the initial answer to the problem of organised graft in the Colony. There can be no confidence in inquiries conducted by the local government⁷¹ and he maintained in common with others that the problem of organized graft in the Colony would not begin to be solved and public confidence would not exist until an externally-appointed commission of inquiry examines all aspects of corruption and maladministration in the Colony as expressed in his letters to the Foreign and Commonwealth Office (FCO).⁷²

⁷¹ FCO 40/451, f 14, Ellis to Royle, 1 April 1973.

⁷² FCO 40/451, f 21, Ellis to Royle, 6 April 1973.

3.2 External Checking Mechanisms at Work

Corruption in Hong Kong was no doubt a Hong Kong issue. However, the corruption cases in Hong Kong sometimes became British political issues through different channels: complaints, the press and the British Parliament. These occurred more often in the late 1960s and early 1970s. Turning corruption in Hong Kong a British political issue inevitably put pressure on the Hong Kong Government to take corruption more seriously.

3.2.1 Roles played by complaints

The Hong Kong Government dealt with allegations of corruption with different degrees of enthusiasm and effectiveness. The concerned parties increasingly realized that when complaints could be made to the British Government, the Hong Kong Government would put more effort in dealing with the complaints.

A. Allegations of corruption in Hong Kong Police Force made directly to the Prime Minister

This case involved allegations of corruption made directly to the Prime Minister. D. F. Milton, Private Secretary of Commonwealth Relations Office reported the case to Sir Philip De Zulueta, Private Secretary for Foreign Affairs to the Prime Minister (1955-1964) that Sir Ivo Stourton, Inspector-General of Colonial Police would be discussing with the Governor and the Commissioner of Police about the allegations of John Wallace, a Police Inspector of Hong Kong, when Sir Ivo Stourton, Inspector-General of Colonial Office, visited Hong Kong in January 1964. Milton thought that they should send the summary of Wallace allegations before the visit of Stourton and Wallace's admission that he had taken bribes needed to be investigated. The Head of Hong Kong Department in the CO would write to the Governor to express that such direct approach to the Prime Minister from Wallace would need careful handling, and clearly the

Governor was placed in a difficult situation to tackle corruption in such circumstances. The Governor's action would be advised after Stourton's visit.⁷³

On 17-30 January 1964, Sir Ivo Stourton, Inspector-General of Colonial Police in the CO, carried out inspection on the Hong Kong Police Force and submitted an inspection report to Governor Black on 12 February 1964. Stourton indicated in the report that the "great" problem of corruption appeared to be fairly widespread in Hong Kong and he had discussed it with the Commissioner of Police, who was quoted to express that it was very small if corruption existed at all in the gazetted officer rank. The senior police officers also assured him that police corruption was confined to criminal vice and did not extend to normal cases of crime.⁷⁴

The press reported that inquiries of allegations of corruption in Hong Kong Police Force were touched off by a letter written by police officers about corruption to a Member of Parliament and the Government replied to the press that the investigation started since a report had been made locally and they could not confirm whether such a letter was written or not. Someone might know that a police officer did write several letters of allegation to the Prime Minister and it was difficult not to admit it, as the Governor suggested that if pressed further, he would say that an officer told his Assistant Commissioner that he had written privately to the Prime Minister's office about corruption as commented by the Governor on his telegram of 19 February 1964 in reply to the Secretary of State's letter of 31 December 1963.⁷⁵

Further supplementary comments were prepared by the Governor on 16 March 1964 to address the parliamentary questions tabled on the above case that it was normal practice not to give names of officers suspended from duty pending disciplinary proceedings, this applied to all grades in the public service. A Police Inspector and an Assistant Director of Public Works were interdicted under separate investigations and the Advisory Committee on Corruption was consulted and concurred on the case.

⁷³ CO 1037/250, f 4, Private Secretary of Commonwealth Relations Office to Private Secretary for Foreign Affairs to the Prime Minister, 20 December 1963.

⁷⁴ CO 1037/214, f E2, Stourton to Black, 12 February 1964.

⁷⁵ CO 1030/1716, f 10, Governor to Secretary of State for the Colonies, 19 February 1964.

Nevertheless, in light of press comment the Government was reviewing the practice and consulting the staff associations.⁷⁶

H.W.E. Heath, Commissioner of Hong Kong Police, prepared a report to Edmund Brinsley Teesdale, Colonial Secretary of Hong Kong (1963-1965) on 12 August 1964 after his investigation to the allegation of corruption in Hong Kong Police Force made by Wallace.⁷⁷ The report was promised after the visit from Stourton and J. D. Higham of CO to Hong Kong, and was later been sent to Higham by Sir David Trench, Governor of Hong Kong (1964-1971) on 12 October 1964.⁷⁸

Trench's own comments on the report were as follows: "It is, I think, a good and well-balanced report, even if, it does not take us much further in defining the extent of corruption, either generally or in the particular Police Division concerned. The investigation itself has, I am sure, had a salutary effect throughout the Force and upon Wallace himself and some of his young associates. Wallace emerges from the report much as we had expected: a naive and inexperienced young man, rather lacking in stability and character. Nevertheless, we are persevering with him, and as you will see the Commissioner is not taking action against him for the offences he may have committed".

The report was also put before the Advisory Committee on Corruption who expressed themselves satisfied that everything possible was being done to eliminate corruption in the Police Force and in the public service in general. One member remarked that the report showed too much softness to Wallace and paid too much attention to his views as further commented from Trench.

B. Allegation of corruption in the management of the firewood stock-pile of the Hong Kong Government made to the House of Commons

⁷⁶ CO 1030/1716, f 12, Governor to Secretary of State for the Colonies, 16 March 1964.

⁷⁷ CO 1037/250, f 10, Report by Commissioner of Police to Colonial Secretary of Hong Kong, 12 August 1964.

⁷⁸ CO 1037/250, f 10, Governor to Higham, 12 October 1964.

This case involved an allegation of corruption made to a Member of Parliament. Jeremy Arnold, a civilian in London, wrote to Donald Wade, Member of Parliament, about alleged corruption in the management of the firewood stock-pile of the Hong Kong Government from Tung Hwa Company, a firewood supplier. Wade in turn sought Duncan Sandys, Secretary of State for the Colonies (1962-1964) for comments on 9 June 1964 as follows:⁷⁹

In the past a number of firewood importers had been invited by the Government to tender periodically for the award of the firewood contract, but since the early 1950s Tung Hwa managed successfully to get succession of bids, despite the fact that they were not an importer of firewood, and had to buy its supplies from other importers which they had to underbid in order to get the contract from Tung Hwa. It was suggested that Tung Hwa was bribing officials in the Department of Commerce and Industry, eventually the Government dropped the practice of inviting tenders and Tung Hwa became a monopoly of the firewood supply to the Government. In 1961, Chiung Fat Company, one of the largest firewood importers wrote to the Director of Commerce and Industry expressing his dissatisfaction of the current system and asked for the opportunity to tender for any renewal of the contract upon the advice of an Englishman Nash. Chiung Fat was later being rejected on their request and did not receive any order from Chung Hwa since his complaint in 1961. Nash decided to press the matter and wrote to the Advisory Committee on Corruption.

In January 1962, the Advisory Committee published a report and stated that it was wrong that Tung Hwa had a monopoly of the firewood supply since there was no other company to bid. But the committee recommended the Government to make changes in the procedure of the firewood supply in order to remove the impression of corruption. Two months later, Nash received another reply from the Deputy Colonial Secretary via the Secretary of the Advisor Committee that the tender system of the firewood supply would not be resumed.

It was suggested that the Advisory Committee on Corruption lacked credibility because it was itself a department of the administration whose activities were those it was

⁷⁹ CO 1030/1716, f 18, Wade to Secretary of State for the Colonies, 9 June 1964.

required to investigate, and a committee should be appointed by, and directly responsible to, the British Government at Westminster.

In a telegram of 17 June 1963, the Governor described the firewood supply and demand situation in Hong Kong as well as the information and background of Tung Hwa. The Advisory Committee on Corruption did not find corruption, but referred the matter to the Working Party on Departmental Procedures. Based on their comments, the Committee expressed their concern that these procedures created an impression in the minds of the public that Tung Hwa had corrupted Government officers and reached the conclusion as recommended in their January 1962 report. The Advisory Committee on Corruption did not pursue the matter further. In November 1962, the stockpile of firewood was discontinued and Government's participation in the trade was terminated and the stockpile of firewood was finally disposed by the end of June 1964.⁸⁰ The Governor's message was delivered to Wade on 14 September 1964 from the CO.⁸¹

C. Allegation of corruption by Mrs Elsie Elliott, Member of the Urban Council, made to a Member of Parliament

This is another case of allegations of corruption made to a Member of Parliament. This case did not result in many follow-up actions because of the poor quality of the allegations, and shows that cases made to MPs or the British Government might not necessarily lead to actions that the alleger(s) desired. The letters received by Nigel Fisher, Member of Parliament from Mrs Elsie Elliott were for the most part concerned with general allegation against the Police and various other government employees. Without specific details to support the cases, it was impossible to take effective action in such cases, as stated in the letter from the FCO to Fisher.⁸² The reply to Fisher's enquiries was drafted in line with the Governor's telegram to the Secretary of State on Elliott's allegation, as follows:⁸³

⁸⁰ CO 1030/1716, f 26, Governor to Secretary of State for the Colonies, 17 June 1964.

⁸¹ CO 1030/1716, f 28, Lansdowne's minute to Wade, 14 September 1964.

⁸² FCO 40/120, f 12, Shepherd to Fisher, 16 October 1968.

⁸³ FCO 40/120-1968, f 11, Governor to Secretary of State for Foreign and Commonwealth Affairs of FCO, 21 September 1968.

- (i) Anonymous letter from “A supporter of Good Law & Order”

The corrupt activities of Court Bailiffs was received by the Anti-Corruption Branch from Elliott, the Police could not accept the conditions that Elliott imposed on the conditions to disclose the name and address of the informant. Elliott had been urged to persuade the informant to come forward under secure conditions for investigation.

- (ii) A person was moved from the Judicial Department because he would not join in corruption

If Elliott was prepared to divulge to the Police the particulars of the person concerned, the matter might likely be investigated.

- (iii) Corruption in Resettlement Department

This was sent to the Anti-Corruption Branch by Elliott and she was informed to provide more details if investigation was to be proceed.

- (iv) Allegation about a sergeant in the Hawker Control Force in 1965

A full investigation was undertaken and it was the advice of the Attorney General there was insufficient evidence to prosecute anyone other than the sergeant. The matter was reported to the Urban Council in December 1965

The Government was seeking to tighten up the law and an amendment to the Prevention of Corruption Ordinance was recently enacted and also consideration of other amendment to the Ordinance with a view to embodying stronger and more searching provisions than at present exist.

D. Allegations of suppression of evidence and organised corruption and maladministration in the Police Force leading to many follow-up actions

This is another case of allegations of corruption made to a Member of Parliament. The allegor was persistent in making allegations of corruption, without much support. Even when it was made to a Member of Parliament, the case did not lead to serious investigations. Alan Ellis, an ex-inspector from the Hong Kong Police Force, pursued his contention on the conspiracy of corruption in the Hong Kong Public Service to Anthony Royle, Parliamentary under Secretary of State for Foreign and Commonwealth Affairs (1970-1974) of the FCO, after he learned of Royle's parliamentary reply to James Johnson, Member of Parliament's call to Sir Alex Douglas-Home, Secretary of State for Foreign and Commonwealth Affairs (1970-1974) of FCO, to appoint an inquiry into corruption recently. Ellis' purpose was to indicate to the UK Government that an externally-appointed commission of inquiry had to be the initial answer to the problem of organised graft in the Colony. According to Ellis, there was no confidence in inquiries conducted by the local government.⁸⁴

As indicated in Ellis' letter of 1 April 1973 to Royle, there was a departmental inquiry of 1963 conducted by an Assistant Commissioner of the Hong Kong Police who was then the Director of Criminal Investigation, N. G. Rolph; Ellis alleged that his own signed statement was held by the Police Headquarters, destroyed, and substituted with a "true typed copy". There was suppression of evidence and no witnesses were examined during the course of the inquiry.⁸⁵

Regarding Ellis' two inquiries, Frederick Lee, the Secretary of State for the Colonies, wrote to Patrick Jenkin, Member of the Parliament, that "I am satisfied that the procedures followed and the conclusions reached were correct" and Jenkin was convinced that "there had been found to be no truth in them" and "the allegations were regarded as being without foundation".⁸⁶

⁸⁴ FCO 40/451, f 14, Ellis to Royle, 1 April 1973.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

Due to Ellis' understanding that evidence was being suppressed by the Hong Kong Government, as suggested there were six attempts by people with ground-level experience of Hong Kong to obtain British Government intervention from London.⁸⁷

- 1962: Ellis and a few British police inspectors agreed that the answer to the problem of organised graft was a Royal Commission.
- 1963: Inspector Christopher St John Wallace, with the support of other few police inspectors asked Sir Alec Douglas-Home, the Prime Minister of UK (1963-1964) to intervene.
- 1964: the late Frederick Joss, Fleet Street journalist, sought a British inquiry into the export of gold bullion from London to Macau to Hong Kong, believing it was financing international narcotics trafficking.
- 1965: the Reform Club of Hong Kong sub-committee on organised crime and corruption calls for an inquiry.
- 1966: Mrs Elsie Elliott, member of the Urban Council Hong Kong (1963-1995) came to London, unsuccessfully seeking a Royal Commission from the UK Government.
- 1973: the *China Mail* launched a campaign for an independent public inquiry into corruption.

There was a discussion between Ellis and Royle with the presence of another officer from the FCO follow to Ellis letter of 1 April 1973.⁸⁸ During the discussion, Royle stated that he was seeing him because Ellis was his constituent; over the years Ellis' complaint had been looked into by 1) two Commissions of Inquiry in Hong Kong and also 2) by the Governor and 3) by members of different political parties in Britain, they had not found substance in his complaints, and from the report submitted by the Inspector General of Colonial Police after his recent visit to Hong Kong, Royle could not find justification for allegation of corruption on any significant scale. The Anti-Corruption Branch in Hong Kong might carry out investigations on a routine basis, and a separate body might be possible, but there was no guarantee.

⁸⁷ *Ibid.*

⁸⁸ FCO 40/451, f 16, Record of conversation: Call by Mr Alan Ellis on Mr Royle, 5 April 1973.

Ellis repeated his argument and emphasized that a Hong Kong Government inquiry was not adequate, the morale of the Force needed a proper inquiry appointed by UK Government, and many people, including Elliott, had expressed their lack of confidence in the Hong Kong police and indeed the Hong Kong Government.⁸⁹

The discussion concluded with suggestion that Royle would ask the Inspector General to look through Ellis' papers personally to see if he would find anything should be investigated further and Ellis would receive his written reply.⁹⁰

Ellis later followed up with Royle on his allegation and expressed that he maintained in common with others that the problem of organized graft in the Colony would not begin to be solved and public confidence would not exist until an externally-appointed commission of inquiry examines all aspects of corruption and maladministration in the Colony, and welcomed Royle's suggestion on him meeting with the Inspector General to review his case.⁹¹

The draft record of conversation together with the draft reply was submitted to the Legal Advisor for review in consideration of Ellis' tenacious character and contact in the press⁹², the Legal Advisor redrafted the letter trying to convey to Ellis finality, and to leave as little as possible for him to be able to use for a reply.⁹³

The circumstances of Ellis' discharge from the Hong Kong Police in July 1963 and subsequent petition in appeal against his discharge were summarized by the meeting notes prepared by Michael Macoun, the Inspector General, after his meeting with Ellis arranged by the FCO, as follows:⁹⁴

Ellis joined the Hong Kong Police in January 1962 and was awarded the Baton of Honour upon completion of a course of instruction at the Police Training School,

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

⁹¹ FCO 40/451, f 21, Ellis to Royle, 6 April 1973.

⁹² FCO40/451, f 24, Crowson to Rushford, 13 April 1973.

⁹³ FCO 40/451, f 25, Bickford to Crowson, 18 April 1973.

⁹⁴ FCO 40/451, f 54B, Macoun to Crowson, 3 July 1973.

however, he claimed that his instructor commented that he would be unlikely to progress far in the Force for being an honest and outspoken officer. During his service as a Patrol Inspector in Kowloon, he encountered what he described as “pressure to join the corruption conspiracy”. In support he quoted two instances where he was handed \$500 by the office boot black suggesting it was from the Superintendent, and it was the practice to accept “hush money” and to ignore petty offences committed by hawkers, street gamblers, etc. He also claimed to witness blatant instances of condonation of offences by his Inspector colleagues, both British and Chinese.

Later he was transferred to the Police Training contingent where he was removed from his command, during the three months period serving as platoon commander he alleged that young officers were formally advised by a senior officer on the subject of corruption “do not accept small bribes - take a large bribe and then get out of the Force”.

Eventually he was discharged from the Force on the grounds of being “temperamentally unsuitable for police service” after another transfer to a Police sub-division in Kowloon with two months of service.

He consulted with a Hong Kong solicitor on the preparation of a petition to the Governor in appeal against his discharge and felt that no local police officer would be willing to be involved in a locally conducted enquiry.

Upon his return to UK in 1964, without success on getting a meeting with the CO he then addressed a petition to Mrs Eirene White, Parliamentary Under-Secretary of State of the CO (1964), alleging suppression of evidence in his own case and organised corruption and maladministration in the Police Force.

In 1965, an internal enquiry was ordered by Sir David Trench, the Governor of Hong Kong (1964-1971). It was conducted by the local police but his personal assistance and testimony in the enquiry was not accepted since it was a “local internal enquiry” as told. Later he learned that a full enquiry had been conducted and that the decision to discharge him stood.

He was convinced that the only remedy was an external commission of enquiry and intended to pursue his long-standing “campaign” to this end.

E. Telephone enquiry about alleged corruption in the police by Tom Dribery, Member of Parliament

This is a case of an allegation of corruption made to a Member of Parliament, who passed on to the FCO. Some information was passed on to the FCO by Dribery on 1 August 1973 about allegedly corrupted police officers in Hong Kong from an anonymous informant. This information was transferred to Hong Kong Government and as Dribery said the informant was not willing to come forward with concrete allegation, and with the Director of Anti-Corruption had also pointed out the information was not concrete enough to form a useful basis for enquires, the case closed. Later in mid-September, Charles Sutcliffe, Commissioner of Hong Kong Police enquired again for a detailed statement from the informant, FCO suggested not to approach Dribery as they thought the informant would not willing to come forward.⁹⁵

F. Written enquiry about corruption in general from Tam Dalyell, Member of Parliament

This is another case of allegations of corruption made to a Member of Parliament who inquired the FCO. Tam Dalyell, Member of Parliament, wrote to Royle of FCO on 24 September 1973 asking for information on their actions following recent allegations of corruption in Hong Kong.⁹⁶ The FCO agreed on the basis that no disclosure of detailed measures as proposed in Blair-Kerr’s second report, or to the proposed amendments to the Colonial Regulations and the proposed changes to the Anti-Corruption Branch Office, accordingly a draft reply was prepared on general term highlighting the course of the Godber’s incident, Blair-Kerr’s inquiry and their close cooperation with Hong Kong Government.

⁹⁵ FCO 40/454, f 188, Crowson to Davis, 17 September 1973.

⁹⁶ FCO 40/454, f 218, Wotton to Stuart and Crowson, 3 October 1973.

G. Further enquiries about the necessity of appointing an external commission from Alan Ellis

This case shows an unnamed Member of Parliament who disagreed with a Hong Kong newspaper's view on corruption. Ellis later wrote to Macoun about an article in *Hong Kong Star* of 3 September 1973 which publicly represented views that the graft problem would be solved purely by the appointment of "a more energetic Commissioner of Police" and he would leave for Hong Kong to refute the view of an unnamed Member of Parliament that an externally constituted judicial commission of enquiry is unnecessary to deal with the graft problem in Hong Kong.⁹⁷ His purpose was apparently to defend the reputation of Charles Sutcliffe, the Commissioner of Police, for whom he expressed with great respect as informed by Douglas-Home, Secretary of State, to the Governor by telegram.⁹⁸

H. Other complaints of corruption handled by the FCO

The following are miscellaneous cases of allegations of corruption in Hong Kong handled by the FCO.

(i) Anonymous complaint to Public Works Department and escape of Peter Godber

There was an anonymous complaint to the Minister of Foreign and Commonwealth Affairs about corruption allegation in the Public Works Department; two architects in collaboration and with the help of a clerk-of-works covered up many defaults of several contracts for many large housing contracts, the clerk-of-work alleged corruption in the new project of the construction of Lai Chi Kok Hospital and the escape of Godber, Chief Police Superintendent. The letter was later remarked with "we have taken no action" by the FCO.⁹⁹

⁹⁷ FCO 40/454, f 199, Ellis to Macoun, 24 September 1973.

⁹⁸ FCO 40/454, f 200, Secretary of State for Foreign & Commonwealth Affairs of FCO to Governor, 25 September 1973.

⁹⁹ FCO 40/451, f 48, Complainants to Minister of Foreign and Commonwealth Affairs, 29 June 1973.

(ii) Complaint about corruption allegation against an ex-police officer from Lee Yuk Tak

There was also another letter from Lee Yuk Tak on corruption allegation against an ex-police officer that it should not be treated as a petition after an official spoke to two personnel in Gibraltar & General Department that offered such opinion.¹⁰⁰ A copy of the letter was sent to Hong Kong “asking them to take whatever action they think appropriate”.¹⁰¹

3.2.2 Roles played by the press

Allegations of corruption in Hong Kong might appear in the press, local or foreign. It was often the case that once such allegations became publicized through the press, more serious actions would be taken.

A. Press report on the dismissal of 16 police officers

This was a case that a news story about corruption led to serious actions, especially when the story was passed to the Hong Kong Government by the CO. In the 1958 case of the dismissal of 16 police officers, the dismissed officers sent their appeal letter to Lady Lennox-Boyd (as outlined in subsection 3.1.1.B above). They also sent a copy of the article appeared in the Chinese newspaper *Express* in two parts on 22 and 23 July 1964 to Lady Lennox-Boyd in support to their allegation of corruption of a Chinese non-commissioned officer (N.C.O.) in the Criminal Investigation Department of the Hong Kong Police Force who voluntarily retired without any charges.¹⁰²

¹⁰⁰ FCO 40/451, f 46, Lee Yuk Tak to Heath, 16 June 1973.

¹⁰¹ FCO 40/451, f 49, Wotton to Crowson, 28 June 1973.

¹⁰² CO 1030/1715, f 1, Petitioners to Lady Lennox-Boyd, September 1964.

The appeal letter and copies of the column were transferred to the Governor of Hong Kong from the CO seeking Government advice on the allegation.¹⁰³ The Governor provided the translation in English of the article and commented that further reply would be provided later upon comments of the Commissioner of Police were sought.¹⁰⁴

The article was about a story of an “influential man” who was quite junior at the time and not qualified for a high position in a Government Department, against all odds was promoted with the help of his foster father with strong backing. The “influential man” had become the popular friend of wealthy people who vied with one another to seek his favour but in a dinner party his superior officer was not happy that the “influential man” outshined him. In one gambling occasion, after the “influential man” had lost all his cash he signed a large sum of money in cheque to a wealthy man. Once his superior officer knew about this, investigations were secretly carried out on his standard of living, financial condition of his family and all his sources of income. The “influential man” was not dismissed but transferred to serve “in the street” after the investigation, with no other alternative he retired voluntary.¹⁰⁵

Later the Governor replied to the CO with comments that “the letter to Lady Lennox-Boyd regarding a Chinese N.C.O. in the Criminal Investigation Department of the Hong Kong Police Force and the two columns from the Express of 22nd and 23rd July 1964 did not appear to relate to any police matter of which the Commissioner of Police had any knowledge. It could only be assumed that, as was often the case in Hong Kong, the articles was the product of the inventive mind of a newspaper reporter, and the letter was from someone similarly disposed”.¹⁰⁶

¹⁰³ CO 1030/1715, f 5, Secretary of States for the Colonies to Officer administrating the Government of Hong Kong, 5 November 1964.

¹⁰⁴ CO 1030/1715, f 7, Governor to Secretary of States for the Colonies, 23 November 1964.

¹⁰⁵ CO 1030/1715, f 5, Governor to Secretary of States for the Colonies, 23 November 1964.

¹⁰⁶ CO 1030/1715, f 9, Governor to Secretary of States for the Colonies, 16 December 1964.

B. Newspaper comments on corruption in Hong Kong

In 1960, a correspondent from *China Mail*, a local newspaper, asserted that an impartial commission of inquiry was needed to investigate corruption in Hong Kong and it would be received with wide approval.¹⁰⁷ The above was extracted from an article which commented that corruption had become a millstone around the neck of Hong Kong and the situation was not confined to any particular strata of society or government department. Any senior government official would tell that bribes were “not offered singly or occasionally, but come in non-stop barrage”.

The article further commented that the action Government took would never get to the heart of the matter and the difficulty of proving corrupt intention had been demonstrated in local courts. Hong Kong needed to admit corruption was a serious problem and the orthodox solution as suggested must begin with a restatement of moral values and a basic re-education of the entire community thereon an impartial inquiry to probe the problem to its true depths. Unfortunately, we cannot locate documents showing follow-up actions.

C. Press report about the establishment of ICAC

S. M. Ali, a journalist of Bangladesh who lived in Hong Kong and worked as a freelance writer, published an article in Gemini News Services titled “Drive against corruption in Hong Kong gets under way” in 1974. Ali reported that the new drive against graft in Hong Kong has now got under way with the appointment of ICAC since then momentum has gained considerable when formal investigations were started against a number of police officers and a handful of them were found guilty and dismissed. One senior-ranking British superintendent was sentenced to 12 months’ imprisonment on a charge of “living beyond his means”. Ali also reported that the campaign turned into a declared war on corruption not only within the administration but also in the private sector when the government formally launched ICAC and gave it wide-ranging powers to deal with every form of graft in Hong Kong. Local civic bodies

¹⁰⁷ CO 1030/1388, f 1, Extract from *China Mail*, 12 February 1960.

and the press have welcomed the decision that the ICAC would be totally free from any control of the Police Department and the general mood is cautiously optimistic on the success of the ICAC, which could be summed up in the view expressed by a civic leader that if the Commissioner could not clean up some of the government department of known and unknown corrupt officials, nobody else could. However, questions raised on the Commission to probe graft in the private sector as well as the lack of social motivation against corruption among the society which laid the biggest challenge facing the ICAC.¹⁰⁸

3.2.3 Roles played by the British Parliament

Some Members of Parliament, especially those of the opposition party, were keen to raise questions about corruption in Hong Kong in the Parliament in order to embarrass the British Government in power. In order not to be embarrassed, the Government tried to press the Hong Kong Government to contain the corruption problem. As a result, the Hong Kong Government needed to pay extra efforts to explain the cases and improve the situation.

A. Queries by Ernest Thornton, Member of Parliament

This is a case of a Member of Parliament who was very acknowledged about Hong Kong's corruption problem. He raised questions in the Parliament, whose reply the Governor of Hong Kong was involved, and the questions prompted actions by the Hong Kong Government. He participated in the Parliamentary debate on Hong Kong's corruption, which forced the British Government to be concerned and acknowledged about corruption in Hong Kong.

Thornton asked the Secretary of State if he would appoint an independent commission to investigate bribery and corruption in Hong Kong on 10 March 1960. The answer at

¹⁰⁸ FCO 40/554, f 54 , "Drive Against Corruption in Hong Kong Gets Under Way", undated.

the time was no and the subject was kept under frequent review by the Governor, with the assistance of a standing committee.¹⁰⁹

Further supplementary notes were prepared by the CO for the Secretary of State:¹¹⁰

- No evidence of an increase in corruption in Hong Kong, the Governor comment was quoted: “a reasonable amount of corruption does not, in these circumstances, warrant the appointment of a Commission of Inquiry; and there is no special consideration which would warrant it”.
- Governor’s power to deal with corruption was written under the Prevention of Corruption Ordinance of which the maximum penalty was up to 7 year imprisonment, and any Government Officer who had too high living standard, may be asked by the Governor to justify it and if the officer concerned could not do so, as the Governor introduced in 1959, a tribunal might be set up consisting of a judicial officer nominated by the Chief Justice as Chairman and two other officers appointed by the Governor to make appropriate enquiries and if the tribunal’s report was unsatisfactory to the answers sought, the officer, subject to the approval of the Secretary of State’s approval, could be dismissed or compulsorily retired;
- The Chief Justice and acting Attorney General referred in their opening speech in the Supreme Court that it was difficult to ask witnesses to give evidence in corruption cases hence difficult to prosecute successfully.

Thornton pursued on the corruption allegations by Burns, Hogarth and the Mountain Lead Mines of which no evidence has been found to substantiate the allegations which have been made.¹¹¹ The Secretary of State was suggested that he should not be drawn if any reference was made to this case.

Thornton also pursued an article from *China Mail* of 12 February 1960 in favour of a commission of enquiry to investigate corruption. The Governor did not believe that any responsible public opinion was behind the request. Given the article from *China Mail* and Thornton’s interest in Burns/Hogarth cases, CO asked the Governor if there is any

¹⁰⁹ CO 1030/1388, p 4, Macleod to Thornton, 19 March 1960.

¹¹⁰ CO 1030/1388, pp 6-10, Macleod to Thornton, 19 March 1960.

¹¹¹ CO 1030/1386, f E15B, Annex A, The Burns/ Hogarth Affair, 28 April 1960.

possibility to set up an independent commission of enquiry as soon as possible, in responding to the demand from *China Mail*'s article.¹¹²

The Governor responded that he didn't believe that "any responsible public opinion is behind the request for the enquiry", and said that Standing Committee on Corruption was there and that tribunals could be set up to enquire into those officers "who are obviously living above their means".¹¹³ The Governor further advised that a Commission was justified only if: 1) there were well known offenders who had escaped punishment because of the inadequacy of government control; 2) there were positive evidence that there had been a substantial increase in corruption over a "reasonable" level; and 3) it were generally accepted that there were under existing legal principles practical ways in which government control of corruption could be tightened up.

In responding to CO's enquiry (preparing answer for a Parliamentary Question from Thornton), Governor Black listed out the membership and terms of reference of 1956 Committee (old) and 1960 Committee (new), and said that appointment of a new committee did not mean that corruption had deteriorated in Hong Kong.¹¹⁴

Black reported that a possible case of Western District's police officers receiving bribes from triad society was reported in 30 May 1960's *Hong Kong Standard*.¹¹⁵ CO replied to Thornton's enquiry of the above case of possible police corruption by triad society.¹¹⁶ CO told the Governor that Thornton pressed on the investigation of the above possible police corruption.¹¹⁷ The Governor reported on 27 August 1960 that the investigation had been completed and disciplinary action had been taken against 14 members of the Police Force (one Staff Sergeant of the CID and one Corporal of the Uniformed Branch to apply for retirement on pension, and the reversion of two Uniformed Branch Sergeants to Corporal and 10 Corporals to Constable). However, the Commissioner of

¹¹² CO 1030/1386, f 4, Secretary of State for the Colonies to Governor, 25 February 1960.

¹¹³ CO 1030/1386, f 5, Governor to Secretary of State for the Colonies, 26 February 1960.

¹¹⁴ CO 1030/1386, f 7, Governor to Secretary of State for the Colonies, 19 March 1960.

¹¹⁵ CO 1030/1386, f 33, Governor to Secretary of State for the Colonies, 17 June 1960.

¹¹⁶ CO 1030/1386, f 34A, Perth to Thornton, 20 June 1960.

¹¹⁷ CO 1030/1386, f 38, Secretary of State for the Colonies to Governor, 7 July 1960; CO 1030/1386, f 41, Governor to Secretary of State for the Colonies, 9 July 1960.

Police found that there was no acceptable evidence that any police officer had acted corruptly.¹¹⁸

Thornton secured UK Parliamentary Adjournment Debate on Bribery and Corruption in Hong Kong on 28 April 1960.¹¹⁹ The brief for the adjournment debate provided information of various aspects of Hong Kong's corruption to inform the Secretary of State.¹²⁰

B. Parliamentary Questions prompted by the *China Mail's* campaign on anti-corruption

This case shows again that parliamentary questions on corruption in Hong Kong prompted answers that involved the Governor of Hong Kong and might trigger actions on the part of the Hong Kong Government. Sir Murray MacLehose, Governor of Hong Kong (1971-1982) replied to FCO in his telegram of 26 March 1973 on parliamentary questions on corruption in Hong Kong raised by James Johnson, Member of Parliament.¹²¹ A senior police inspector suspected of corruption together with his wife received letters by the Attorney General for explanations of the source of their assets. This was leaked to the press, probably by the officer concerned (as suggested by MacLehose). *China Mail* then published a news item, saying that some fifty senior officers had been written to in this way. Following an official denial which gave the true facts, the *Mail* had for some weeks been running a sensational anti-corruption campaign based largely on views expressed by the public in public opinion polls but on no hard evidence. Alan Ellis was reviving his allegations of wrongful dismissal from the police force. In addition, it has publicised an action against Government by Police Sergeant Khan arising from his revision from inspector to a lower rank. In 1968 at the end of his inspectors' initial training course, he alleged he was reverted because he refused to pay

¹¹⁸ CO 1030/1386, f 49FED, Governor to Secretary of State for the Colonies, 27 August 1960.

¹¹⁹ CO 1030/1386, f 15, Secretary of State for the Colonies to Hong Kong (O. A. G.), 12 April 1960; CO 1030/1386, f 22, Extract from Official Report, House of Commons, 28 April 1960.

¹²⁰ CO 1030/1386, f E15B, Brief for Secretary of State: Adjournment Debate – 28th April 1960, undated.

¹²¹ FCO 40/451, f 4, Governor to Douglas-Home, 26 March 1973.

graft; in fact he had passed his examination at the end of the course in bottom place and had not been adjudged suitable to pass out.

MacLehose further commented in his telegram of 26 March 1973 that “it would not be in the public interest to disclose details of particular lines of investigation being pursued, or of any enquires made of individuals about their financial position. When sufficient evidence of corrupt behaviour was available for criminal proceedings these are of course instituted, if evidence does not suffice for them, disciplinary proceedings are when possible taken instead”.

An Anti-Corruption office was headed by an Assistant Commissioner of Police, advised by a Principal Crown Counsel with a workforce of 191. Overall guidance was given by a Committee apart from the Chairman, consisted of two prominent members of the public and three officials outside the Police. All allegations of corruption or extortion were examined by the Committee, which decided which of them warrant further investigation. There was no institution of separate enquiry. In 1972, there were 74 prosecutions in connection with alleged cases of corruption with 58 convictions and 12 acquittals, other cases not yet having been completed.

C. Parliamentary Question from James Johnson, Member of Parliament

This is another case of parliamentary questions on corruption in Hong Kong prompting answers that involved the Governor of Hong Kong and possibly triggering concrete actions. James Johnson, Member of Parliament, has tabled a parliamentary question for written answer on 17 October 1973 to ask the Secretary of State what communication he has had with the Governor regarding the matter of corruption by public servants in Hong Kong; and whether he would institute an anti-corruption squad independent of the local police force. The Governor was informed accordingly with suggestion of suitable reply.¹²² The Governor agreed to FCO’s suggestion that the reply to Johnson should coincide with the Governor’s announcement of the new Anti-Corruption

¹²² FCO 40/454, f 225, Kelly to Stuart and Crowson, 5 October 1973.

Commission.¹²³ The reply was drafted on the lines to the text of the Governor's speech: "Mr Anthony Royle, my right honourable friend and I had extensive discussions about this problem with the Governor of Hong Kong when he was in this country recently. On 17 October, the Governor announced the setting-up of a separate Anti-Corruption Commission under a Civilian Commissioner. The Commissioner will have under him an Operations Unit which will take over the function and the files of the Anti-Corruption Branch of the Police".¹²⁴

D. Parliamentary Question from Ken Mark, Member of Parliament

This is another case of parliamentary questions on corruption in Hong Kong prompting answers that involved the Governor of Hong Kong. Maurice Tracy from Hong Kong wrote to Ken Mark, Member of Parliament, regarding the appointment of George Liu, editor-in-chief of the *Hong Kong Standard* Group of newspapers as Director of Community Relations. Tracy shared his concern with Mark on the suitability of Liu's appointment as reflected in Liu's negative attitude towards the anti-corruption fight, such as Liu's widely voiced personal opinion that "corruption can never be beaten in Hong Kong" and, statement that corruption was not as serious an evil because it seldom "results in terror of bodily harm" following the escape of Godber in his editorial.¹²⁵

MacLehose replied to FCO's enquiry that Liu had not been offered the post of Director of Community Relation in ICAC nor had he applied to be considered. The post remained vacant as no obvious candidate emerged from those who were interviewed following advertisements inviting applications for the post.¹²⁶

¹²³ FCO 40/455, f 231, Secretary of State for Foreign & Commonwealth Affairs of FCO to Governor, 5 October 1973.

¹²⁴ FCO 40/455, f 256, Stuart to Youde, 16 October 1973.

¹²⁵ FCO 40/558, f 40, Mark to Callaghan, 1 May 1974.

¹²⁶ FCO 40/558, f 41, Governor to Callaghan, 3 May 1974.

3.3 Window for Change: The Godber Incident

The establishment of ICAC in 1974 marked a turning point in Hong Kong's history of fighting corruption. It was a direct consequence of the Godber incident. The Godber incident stirred the Hong Kong and British societies, effectively transforming the problem of corruption in Hong Kong a political problem in Britain. To tackle the corruption problem in Hong Kong at root, the Hong Kong Government decided to set up ICAC, an anti-corruption agency that was independent of the Police. The Hong Kong Government had done a lot in setting up ICAC, but with British inputs. In particular, in the issues of designing ICAC's structure and deciding ICAC's staffing, the British Government had been greatly involved.

3.3.1 The Godber case

Godber was a police officer and a suspect in a corruption case. He managed to escape and stayed in the UK. It turned out that it was technically difficult to extradite him because Godber's alleged offence in Hong Kong was not an offence in the UK. It was this legal issue that created a barrier preventing the Hong Kong Government from extraditing Godber back to Hong Kong easily. In the Godber's case, the British Government was heavily involved, because Godber stayed in the UK, and more important, to the British Government, there was no ground for Hong Kong to extradite him. On the one hand, the strong legal tradition of the UK slowed down the extradition process. On the other hand, the British Government's involvement prompted the Hong Kong Government to fundamentally solve Hong Kong's corruption problem.

In the Godber case, the British Government was heavily involved. Various government departments offered advice, including the FCO, Treasury, Law Officers' Department, and Scotland Yard. Members of Parliament raised questions, and the Leader of Opposition issued a letter to the Government. Press interest was profound. The Godber case was turned into a British political issue.

The Attorney General had written to Peter Godber, Chief Superintendent, to make representations on his source of assets with deadline on 11 June 1973. But Godber

managed to escape from Hong Kong to Singapore on 8 June 1973 even though there was proceeding against him under the Prevention of Bribery Ordinance in an advanced stage, this was reported in MacLehose's telegram of 13 June 1973 to the FCO.¹²⁷

MacLehose sent a secret telegram to the Hong Kong Government Office in London with instructions on the preventative measure from Godber disappeared again in UK. With the help from the FCO, it was arranged that:¹²⁸

- If Godber presented his passport to an immigration officer at an airport or seaport it would be withdrawn;
- If he applied for another passport, his application would be referred to the FCO;
- To avoid any unavoidable loopholes, a private agency was engaged to keep him under surveillance. The Commissioner in Hong Kong has telephoned the Deputy Assistance Commissioner, CID, of the Metropolitan Police of a referral; and
- Guidance on detailed instructions to the agency was sent to the Office for handover to a retired Hong Kong Assistant Commissioner of Police as recommended by the Commissioner to help briefing the agency.

The minute from the Hong Kong and Indian Ocean Department (HKIOD) of FCO summarised the Godber's affair and Blair-Kerr's first report as follows.¹²⁹

On 4 June 1973, Chief Superintendent Godber was handed a letter, signed by the Acting Attorney General, informing him that a prosecution under the Ordinance was under consideration and giving him 7 days in which to make representations. On 11 June, Godber managed to leave Hong Kong even though he had been put on the airport watch list. He flew to Singapore and on to the UK.

Hong Kong did not tell FCO about the Godber affair until 13 June by MacLehose's telegram. This telegram outlined the facts and informed FCO that, with the agreement of Executive Council, the Governor of Hong Kong had set up an inquiry, under the Commission of Enquiry Ordinance, firstly to report on the circumstances in which a

¹²⁷ FCO 40/451, f 32, Governor to Douglas-Home, 13 June 1973.

¹²⁸ FCO 40/452, f 90, Governor to Hong Kong Government Office, London, 1 August 1973.

¹²⁹ FCO 40/452, f 94, Crowson to Norris and Gratten, 2 August 1973.

person, against when proceedings under the Prevention of Bribery Ordinance were at an advanced stage, was able to leave Hong Kong; and secondly to suggest possible amendments to the Ordinance and any other changes in current arrangements. Sir Alastair Blair-Kerr, the Senior Puisne Judge, was appointed sole Commissioner. Blair-Kerr had then made his first report. MacLehose consulted FCO before publication and FCO agreement to publication was conveyed.

Blair-Kerr reported that Godber had the equivalent of some £330,000 in bank accounts in Hong Kong, Canada, the UK, the USA and Australia which was about six times his total earnings over 21 years in the Colony. He found no indication that the money had been acquired by inheritance or luck. He found no evidence at all of collusion by other police officers in helping Godber to escape. However, he did criticise the Ordinance that, because it allowed a suspect time to explain his wealth, it also allowed Godber time to escape. He also criticised the police for failing to put Godber under surveillance, to ask him to surrender his passport, and to seek his interdiction and therefore suspension from duty, and the withdrawal of his police warrant and airport pass. The latter probably enabled Godber to slip out of Hong Kong without going through the Immigration channel, where he would have been detained.

Although Godber had been charged with an offence in Hong Kong under the Prevention of Bribery Ordinance, it was not possible to extradite him from the UK under the Fugitive Offenders Act, because the offence of being in possession of unexplained wealth was not also an offence under UK law. Hong Kong was doing their utmost to find evidence of the commission of an extraditable offence, but they had not succeeded so far, largely because of the extreme difficulty of obtaining evidence of an actual bribe.

In response to Hong Kong's request, FCO arranged through the Home Office for Godber to be placed on the watch list and also on the stop list for the issue of a UK passport. Royle, Parliamentary Under Secretary of State of FCO, had spoken personally to Sir Peter Rawlinson, Attorney General for England & Wales (1970-1974), to see whether more could be done to find a way of getting Godber back to Hong Kong. But the Attorney General and Legal Advisors considered that it was impossible unless Hong Kong was able to bring extraditable charges.

The British Government had considered the possibilities of extraditing Godber on some technical grounds, effectively getting around the extradition obstacle. Charges under Exchange Control Regulation were considered, but Treasury's advice was that they were not feasible. Consideration that Godber's taking his police warrant and airport card out of Hong Kong accounted to theft therefore formed a basis for an extraditable charge was also not feasible. The Legal Advisor and the Law Officers' Department considered that if such charges were brought, Godber could successfully plead that they were trivial and not made in good faith but as an excuse for getting him back to Hong Kong.

Scotland Yard and the Home Office were consulted about police surveillance. At Under Secretary level, the Home Office said that they could not ask any police force to provide such surveillance, partly because to do so would tie up too many policemen, but more importantly because the surveillance would become known and would arouse protests against harassing a UK citizen against whom there were no charges under the UK law.

Royle further took the matter up with the Home Office at Ministerial level. Carlisle confirmed the view that the Home Office could not ask the police to conduct surveillance on Godber. However, he would have no objection to FCO referring to this refusal if they had to defend in public the decision to allow Hong Kong to hire a private detective agency to watch Godber. The Hong Kong Government had arranged private surveillance through the Hong Kong Commissioner and with the assistance and advice of Scotland Yard, and recently retired Hong Kong Assistant Commissioner of Police. MacLehose regarded it a total disaster if Godber were to slip through their fingers again.

James Johnson, Member of Parliament, earlier asked a question about this case, and spoken to Royle. FCO had also received a letter on behalf of Leader of the Opposition, written as a result of a copy of a letter to the Prime Minister about the case being sent to him by the Hong Kong Students Federation. Hong Kong Government was consulted about a reply. Press interest was considerable.

If Hong Kong could find extradition charges and Godber was tried and sentenced, the situation might not significantly differ from other corruption cases. However, in the Godber case, the UK Government came under increasing pressure to institute a UK enquiry into corruption in the Hong Kong Police, which will be detailed below. This

demonstrates how the British press and the Parliament served as an external monitor that exerted pressure on the ruling party in Britain. Should the Hong Kong Government be unable to deliver performance, the British Government would do something itself (in this case, to institute a UK enquiry) to protect itself against the pressure.

3.3.2 First report of the Commission of Inquiry under Sir Alastair Blair-Kerr

The Godber case became a British political issue. Obviously, the Hong Kong Government was embarrassed. It wanted to demonstrate its competence in solving the corruption problem in general and, in particular, handling the Godber case. It needed to show that it could solve the corruption problem by itself. Setting up the Commission of Inquiry under Blair-Kerr was to achieve just that.

With the agreement of the Executive Council, MacLehose set up an enquiry under the Commissions of Enquiry Ordinance to report on the facts on 13 June 1973. The Commissioner was Blair-Kerr, Senior Puisne Judge of Hong Kong (1971-1973). The terms of reference were:

- To report on the circumstances in which a person against whom proceedings under the Prevention of Bribery were in an advanced stage, was able to leave Hong Kong;
- In the light of experience of the working of the Prevention of Bribery Ordinance, and having regard also to the need to preserve basic human rights under the law, to:
 - report on the effectiveness of the Ordinance and to suggest amendments; and
 - suggest any other changes in current arrangement, considered necessary.

The Commission had been asked to report within three weeks and three months respectively on the above.

The above incident might indicate a turning point which opened to the Commissioner to suggest the separation of the Anti-Corruption Branch from the Police, if he considered that this has been proved desirable as indicated by MacLehose in his telegram of 13 June 1973.

Although Godber's escape had caused great public disquiet, it was noticeable that the basic reactions of journalists, in particular those of the Chinese press, were friendly to the Police. The press noted that this incident was resulted from the vigour with which the Police were pressing corruption charges, even in the highest rank.

The escape of Godber also highlighted several legal problems. There were considerable difficulties that inhibited the Police from effectively preventing his departure and it was necessary to review the working of Prevention of Bribery Ordinance.

Basically, the first report outlined the facts and background of the Godber case as described in the previous subsection.¹³⁰ It also made three technical recommendations:

- To repeal two sub-sections and to add a new sub-section in the Prevention of Bribery Ordinance.
- To consider the desirability of introducing legislation empowering the authorities to compel a person suspected of an offence under the Prevention of Bribery Ordinance to surrender his travel documents to the Police upon an order to this effect being made by the Attorney General.
- To consider the question of tightening security arrangements at Kai Tak Airport.

For more substantive recommendations, we need to wait until the second report of the Commission of Inquiry.

3.3.3 Second report of the Commission of Inquiry under Sir Alastair Blair-Kerr¹³¹

On the second report, the Commission was required to:

- Report on the effectiveness of the Prevention of Bribery Ordinance and suggest amendments;
- Suggest any other changes in current arrangements, i.e. include all the machinery by which the provisions of the Ordinance are applied and enforced,

¹³⁰ FCO 40/452, f 83, First Report of the Commission of Inquiry under Sir Alastair Blair-Kerr, June 1973.

¹³¹ FCO 40/455, f 241/E, Second Report of the Commission of Inquiry under Sir Alastair Blair-Kerr, September 1973.

namely the Anti-Corruption office of the Royal Hong Kong Police Force, the Advisory Committee on Corruption and the Target Committee on Corruption.

Blair-Kerr inquiries did not involve any public hearings regarding the matters covered by the second term of reference. Several appeals were made through the news media for information, and this elicited little of direct value having regard to the terms of reference. Letters were also addressed to a number of individuals and official bodies with fairly good response. These included members of the Executive, Legislative and Urban Councils of Hong Kong, the Heads of a number of Government departments, the City District Officers, and members of both branches of the Legal Profession in private practice.

Blair-Kerr also had informal discussions with the following:

Mr F. de F. Stratton, O.B.E.	Principal Crown Counsel
Sir Ronald Holmes, C.M.G., C.B.E., M.C., E. D., M.A.	Chairman, Public Services Commission
Mr Charles P. Sutcliff, C.B.E., Q.P.M., C.P.M., J.P.	Commissioner of Police
Mr Christopher J.R. Dawson, Q.P.M., C.P.M., J.P.	Deputy of Commissioner of Police
Mr Desmond O'Reilly Mayne, Q.C.	Director of Legal Aid
Mrs Elsie Elliott	Member of the Urban Council
Mr Patrick Yu	Barrister-at-Law
Mr A. Sanguinetti	Barrister-at-Law
Mr Raymond Moore	Solicitor, Deacons
Mr W. Turnbull	Solicitor, Deacons
Mr Norman Barrymaine	Publisher
Mr Mak Pui-Yuen	Members of the public
Mr Mak Ping-On	Members of the Public

B. A. Sceats, Counsel for the Commission, also had interviews with members of the Target Committee, the Commissioner of Police, and the Director of the Anti-Corruption Office and reported to Blair-Kerr on the substance of those interviews.

The main sources of information as to the history of the present Prevention of Bribery Ordinance were the Attorney General's legislation files. As regards the working of the Ordinance since it came into force in May 1971 and the organization of the Anti-

Corruption Office, main source of information was a report by Morrin, the Director of the Anti-Corruption Office.

Blair-Kerr's second report put forward suggested amendments to:

- the Prevention of Bribery Ordinance; so that an accused person could be convicted for failing to provide adequate explanations of property held not only by himself but also by his near relatives;
- the Colonial Regulations; to make it easier to retire officers suspected of corruption and the practice as regard to disciplinary procedure;
- the Compulsory retirement after attaining the age of 45;
- the Fugitive Offenders Act 1967; and
- whether Anti-Corruption Office should be separated from the Police.

Blair-Kerr commented in his report regarding the suggested amendment to the Fugitive Offenders Act 1967 that: "I do not think that this falls within my terms of reference: but the inability of the Hong Kong Government to obtain an order for the return to Hong Kong of P.F. Godber has aroused so much public anger that it may not be out of place for me to say a word or two on the subject, even if I do not add anything to what has already been said by others". He suggested that serious consideration be given to making representations to the Secretary of State that paragraph (c) of section 3(1) of the Act be amended so as 1) to make it apply only offences against the law of "designated Commonwealth countries"; alternatively, 2) that a proviso be added to the effect that it shall not apply to offences contained in Colonial legislation in respect of which Her Majesty has not exercised Her power of disallowance; alternatively, 3) that it be declared that paragraph (c) shall not apply to Hong Kong. He also recommended that the amendment should be made retrospective to 1967.

Blair-Kerr's second report was despatched to FCO and Sir Hugh Norman-Walker, Colonial Secretary of Hong Kong (1969-1973), requested for the FCO urgent attention on the recommendations put forward in the report on his two telegrams of 3 September 1973, highlighting that due to the report to be published soon, there bound to be a public inquiry as to the attitude of UK Government on the amendment of the Fugitive

Offenders Act¹³² and if FCO prepared to agree to the proposals for amending the Colonial Regulations as recommended.¹³³

There were more telegram correspondences on the subject and subsequently Douglas-Home, the Secretary of State, replied to the Governor by telegram about FCO's preliminary comments on the proposals in the report for changes in the Law and Regulations;¹³⁴ for the Fugitive Offenders Act of 1967, the law officers in UK have considerable reservations about changing the Law to catch one man and FCO was awaiting comments from the Home Office who was responsible for extradition.

3.3.4 Initial approach to the amendment of the Fugitive Offenders Act 1967

As explained earlier, Godber was charged with an offence of being in possession of unexplained wealth in Hong Kong under the Prevention of Bribery Ordinance. However, being in possession of unexplained wealth was not also an offence under UK law, and so it was not possible to extradite him from the UK under the Fugitive Offenders Act 1967, which was a UK law. The complication was that the British Government was not willing to amend the Fugitive Offenders Act simply to enable Hong Kong to extradite Godber.

The following materials show that various persons and departments, in Hong Kong or in the UK, had contributed to the consideration of whether and how to amend the Fugitive Offenders Act. There had been fierce arguments, if not confrontations, between the British Government and Hong Kong Government. At the end, the British Government still refused to amend the Act.

¹³² FCO 40/454, f 164, Norman-Walker to FCO, 3 September 1973.

¹³³ FCO 40/454, f 165, Norman-Walker to FCO, 3 September 1973.

¹³⁴ FCO 40/454, f 198, Secretary of State for Foreign & Commonwealth Affairs of FCO to Governor, 21 September 1973.

A. Proceedings under the Act

An official from the Nationality and Treaty Department commented that it was necessary to consult the Home Office because proceedings under the Extradition or Fugitive Offenders Acts could not be commenced in the UK without specific Home Office authority. This authority was customarily communicated to the Chief Metropolitan Magistrate at Bow Street who would hear the case for surrendering the prisoner to the requesting State or Territory. Appeals from his decision could be made to higher courts. After the legal proceedings were complete the final decision whether or not to sign the warrant surrendering the fugitive lies with the Home Secretary. Proposal should go to the Head of C3 Division at the Home Office, Charles Prior.¹³⁵

B. Proposal to amend the Fugitive Offenders Act 1967 in order to extradite Godber

The Deputy Legal Advisor drafted a letter to the Home Office as requested by the FCO with a copy to the Law Officers Department for their comments as well on the proposal to modify the Act as recommended in Blair-Kerr's report and also on the feasibility of preventing Godber from leaving UK.¹³⁶

The letter was later despatched from HKIOD of FCO to the Head of C3 Division, Home Office on 13 September 1973 explaining details and background on why it was not possible for the Hong Kong Government to obtain Godber's extradition from UK under Fugitive offenders Act 1967; the fact that there was no equivalent offence in England, however, as suggested by Blair-Kerr there was no need to retain a double-criminality rule for the purpose of extradition to Hong Kong from UK, and has recommended that the Act should be modified so as to exclude the terms in such cases. The FCO suggested that it would be possible by means of an Order in Council approved in draft by each House of Parliament. The FCO also emphasized that they would be pressed by the Hong Kong Government to modify the Act as the departure of Godber from the Colony has

¹³⁵ FCO 40/454, f 175, Hanham's minute, 10 September 1973.

¹³⁶ FCO 40/454, f 175, Rushford's minute, 7 September 1973.

caused much public indignation and if he was not returned UK Government would be blamed.¹³⁷

Royle, Parliamentary under Secretary of State of FCO, had decided that they should drop the idea of a change in the Fugitive Offenders Act after discussion with the Attorney General and the Chief Whip and took in consideration of the reaction from the Home Office.¹³⁸ The Attorney-General was most reluctant to consider an amendment of this Act for the following reasons:

- Changes in the law to deal with a single case tended to produce “bad law”;
- If the law were changed to catch Godber it would have to be changed retrospectively and the law officers were loathe recommending this; and
- Godber would almost certainly get wind of the proposed amendment and leave the country thus defeating the real purpose of the amendment thus embarrassing the Government.

The Chief Whip strongly opposed the idea as there would be considerable opposition in the House of Commons to an attempt by the Government to introduce such amendment if the motive behind was to have Godber sent back to Hong Kong.

The Home Office did not think that it would be right to amend the law according to FCO’s proposal to abolish the double-criminality rule, so as to enable Godber to be returned to face a charge of “possession of unexplained property”. Their point of view was that the mess was because the Hong Kong authorities were not able to prevent his leaving the Colony and had not been able, since he left, to produce a prima facie case against him of an extraditable offence under existing law, and “the resulting situation can hardly be laid at the door of the UK”. With respect to the Secretary of State minute of 20 September 1973 to the Prime Minister, it was because Godber was not “accused of large scale corruption” that the difficulty had arisen.¹³⁹

¹³⁷ FCO 40/454, f 182, Stuart to Prior, 13 September 1973.

¹³⁸ FCO 40/454, f 219, Guest to Stuart, 3 October 1973.

¹³⁹ FCO 40/454, f 227, Brennan to Stuart, 4 October 1973.

A draft letter was prepared for the agreement from the Parliamentary Unit before sending to Hong Kong Government on proposals and comments regarding amendments to the Fugitive Offenders Act of 1967 where Royle had decided that FCO would take no steps to change the Act, Prevention of Bribery Ordinance and Colonial Regulations of which MacLehose planned to put the whole question to Executive Council on 9 October 1973.¹⁴⁰

MacLehose rejected the draft speech by FCO for not amending the Fugitive Offenders Act issue to bring back Godber and prepared a new text for his speech on 17 October 1973.¹⁴¹ HKIOD pointed out in their report to the Parliamentary Unit that it was better to accept it gracefully as there was nothing they could do further to persuade the Governor to soften his speech, however, unlike the original version the new text did not commit the Governor personally that would embarrass him if the FCO rejected the issue and the best way to deal with Godber would be to find evidence of actual corruption for which he could be returned under the existing Fugitive Offenders Act. The Parliamentary Unit commented that the Governor was laying up trouble for the future in emphasising so pointedly UK Government's power of veto and the Secretary of State's responsibility for the laws of Hong Kong and they should only approved laws in Hong Kong which would be acceptable to legal and public opinion in the UK.

3.3.5 Enquires of the Fugitive Offenders Act of 1967 and the extradition of Godber

Many people, including Members of Parliament and concerned figures in Hong Kong, made enquires to the British Government of the Fugitive Offenders Act and the extradition of Godber. These enquires demonstrated that the Godber case indeed became a controversial and public issue in Britain, which in turn exerted pressure on the British Government and the Hong Kong Government to deal with the Godber case satisfactorily.

¹⁴⁰ FCO 40/454, f 222, Stuart to Youde and Watson, 4 October 1973.

¹⁴¹ FCO 40/455, f 258, Stuart to Youde, 16 October 1973.

A. Written enquires from A.G. Morren to the Secretary of State

The HKIOD of FCO explained to A.G. Morren the difficulties of asking UK Government to bring back Godber as he had not been charged with an offence which would render him liable to return to Hong Kong under the Fugitive Offenders Act of 1967.¹⁴² Morren expressed his dissatisfaction with the Law and commented that it had to be changed, and said that he would bombard the Members of Parliament until he could get some satisfaction on this matter.¹⁴³

B. Written enquires from Erice Ogden, Member of Parliament from the House of Commons to Under-Secretary

Ogden asked the Under-Secretary about his comments on the introduction of a private member's bill to allow for extradition to Hong Kong of United Kingdom citizens charged with offences in Hong Kong.¹⁴⁴

C. Written enquiries from John Tilney, Member of Parliament, to Royle, Parliamentary Under Secretary of State of FCO

Royle commented in his reply to John Tilney, Member of Parliament, that MacLehose had indicated in his speech that the Fugitive Offenders Act would not present a person charged with corruption from being brought to trial in Hong Kong. However, according to Royle, it was the lack of evidence of an extraditable offence, which, together with the failure to hold him in Hong Kong, had led to the situation. Under the double criminality rule of the Act, return was only possible when the offence concerned was known to the law in both countries and Godber was charged with offence of possession of unexplained wealth by a public officer did not constitute an offence under English Law. The only way to change the situation so as to catch Godber would be to change the Act

¹⁴² FCO 40/454, f 194, Stuart to Morren, 20 September 1973.

¹⁴³ FCO 40/454, f 196, Morren to Stuart, 20 September 1973.

¹⁴⁴ FCO 40/454, f 224, Ogden to Under-Secretary, 3 October 1973.

retrospectively. Parliament was suspicious of retrospective legislation or legislation designed to deal with one single case. Royle was not hopeful that it would bring a solution in the case of Godber.¹⁴⁵

D. Written enquiries from A.G. Tilton, ex-policeman, to the House of Lords

Tilton wrote to Lord Carrington, Leader of House of Lords, on 12 October 1973 about the case of Godber whilst sharing his own experience being a specialist in major criminal investigations, suggested that Godber to be interviewed by Scotland Yard with the assistance of Treasury Officers to extract from him details of his financial transactions.¹⁴⁶ The FCO highlighted the difficulties of Godber returning from Britain as he has not been charged with an offence which would make him liable to return to Hong Kong under the UK Fugitive Offenders Act of 1967. The interview as suggested was impracticable as Godber, who believed to be in UK remained silent and has provided no explanation to the Hong Kong authorities in response to the request made to him under the Hong Kong Ordinance. The FCO further commented that the Governor was taking very determined measures to combat the problem of corruption and he has the full support of the Secretary of State; and the need for the new Anti-Corruption Commission to get the flow of information going properly; to get complainants to give evidence in corruption cases.¹⁴⁷

E. Written enquires from Tom Pendry, Member of Parliament, to Sir Alec Douglas-Home, Secretary of State for Foreign & Commonwealth Affairs

Pendry enquired if Sir Alec Douglas-Home, Secretary of State for Foreign & Commonwealth Affairs, was in a position to say whether it was the Government's intention to amend the Fugitive Offenders Act of 1967 and the proposal he had after his meeting with the Governor on the case of Godber. Also if Douglas-Home was taking his

¹⁴⁵ FCO 40/455, f 283, Royle to Tilton, 24 October 1973.

¹⁴⁶ FCO 40/456, f 284, Tilton to Lord Carrington, 12 October 1973.

¹⁴⁷ FCO 40/456, f 292, Stuart to Tilton, 26 October 1973.

suggestion that Scotland Yard be sent to the Colony to assist the case and he was not putting the matter before the House of Commons until Douglas-Home sorted this out.¹⁴⁸

F. Written enquires from Mrs Ann Maher via Anthony Grant, Member of Parliament, to Royle, Parliamentary Under Secretary of State of FCO

Mrs Ann Maher's sister, who was residing in Hong Kong, asked about the case of Godber. Royle replied with extract copy of MacLehose speech expressing the Governor's decision on the vigorous measure to tackle the problem of corruption in the Colony and it was not the fault of the legal system that failed to bring back Godber. According to Royle, it was the lack of evidence of an extraditable offence, and the failure to hold him in Hong Kong that led to the situation. Royle further elaborated on the long term policy of Hong Kong and their support to the Hong Kong Government.¹⁴⁹

G. Parliamentary Question for oral answer from the FCO

James Johnson, Member of Parliament, had tabled a parliamentary question for oral answer on 7 November 1973 to ask the Secretary of State what request he had received relating to the extradition of Godber, what reply he had given and whether he would make a statement.

FCO had prepared a draft answer that Godber had not been charged with a relevant offence under the provision of the Fugitive Offenders Act of 1967. No request for his return under the Act had therefore been received.¹⁵⁰ MacLehose was unhappy about this answer as it might lay the Hong Kong Government open to the charge that it had been inactive or indifferent in the matter. This would be rather damaging as well as unfair; so the answer should be "consequently it is not open to the Hong Kong Government to

¹⁴⁸ FCO 40/456, f 300, Pendry to Douglas-Home, 16 October 1973.

¹⁴⁹ FCO 40/456, f 301, Royle to Grant, 29 October 1973.

¹⁵⁰ FCO 40/456, f 311, Secretary of State for Foreign & Commonwealth Affairs of FCO to Governor, 1 November 1973.

make any request for the return of Godber under that Act,” as commented in his telegram of 2 November 1973.¹⁵¹

Supplementary notes were also drafted by FCO in accordance to the parliamentary question:

- The Blair-Kerr report recommended amendments to the Act. The Government had represented to the Secretary of State the strong feelings on this subject in Hong Kong. MacLehose urged the Secretary of State to stress that he was aware of the strong feelings of the Hong Kong Government and the public, and further means should be found to bring Godber to justice. The principle proposal made was that the Act should be amended so as to enable Godber, and other offenders’ charges with criminal offences which were not relevant offences under the Act, to be extradited to Hong Kong to stand trial. MacLehose further suggested the Secretary of State to mention that the public pressure for the return of Godber to Hong Kong had been, and still was, powerful and sustained;
- The FCO were considering the whole question but there were considerable difficulties, particularly about retrospective amendment;
- Godber could be returned to Hong Kong if evidence of a returnable offence could be found. The Hong Kong Police were working on this;
- The Prevention of Bribery Ordinance was agreed because of the particular situation in Hong Kong, and recent events had shown that it was needed;
- The FCO supported the setting up of an Independent Ant-Corruption Commission in Hong Kong and the strong measures which the Government was taking to deal with the admitted problem of corruption; and
- The detailed recommendations of the Blair-Kerr report were still under review.

H. Parliamentary Questions for oral answer prepared by the Home Office

Robert Hughes, Member of Parliament, also tabled a question for answer on 7 November 1973 to ask the Secretary of State if he would review the Fugitive Offenders Act and if he would make a statement on this. This question was transferred to the

¹⁵¹ FCO 40/456, f 312, Governor to Douglas-Home, 2 November 1973.

Home Office. The Home Office prepared the reply: “An eye is kept on the operation of the Fugitive Offenders Act as relevant cases arise. I do not think additional form of review is necessary”. Notes for supplementary notes on Godber’s offence, the Commonwealth Scheme, the double criminality rule and special procedure for Hong Kong, and background note were prepared accordingly.¹⁵²

I. Written enquires from A.G. Tilton, ex-policeman to HKIOD

Tilton wrote to HKIOD again on 13 November 1973, suggesting that the move to catch Godber was to cut him off from associates who were likely to support him. If these could be picked out it was likely that they would be attracted to take a reward, or in cases where applicable, to cooperate by giving information so that they would be spared from prosecution for offences involving them with Godber’s activities. He was still of the opinion that it would pay to have Godber interviewed by Scotland Yard. He also suggested a new documentation system introduced back in the 1930’s in Shanghai. Under such system, Information Report with every reported offence was actioned and recorded with follow-up actions providing inspecting officers with all the materials to afford close scrutiny of all work. Statistics gave an accurate account of work done by all officers and the results from this approach to police work were remarkable.¹⁵³

Stuart of HKIOD passed the comments of Tilton to John Prendergast, Director of Operation for ICAC and asked him to contact Tilton if necessary.¹⁵⁴

J. Criticism from a scholar of the University of Aberdeen to Royle, Parliamentary Under Secretary of State of FCO, prompted by an article in the UK press, Guardian

¹⁵² FCO 40/456, f 319, Home Office’s note, 7 November 1973.

¹⁵³ FCO 40/456, f 338, Tilton to Stuart, 11 November 1973.

¹⁵⁴ FCO 40/456, f 339, Stuart to Prendergast, 13 November 1973.

Robert Moore from the University of Aberdeen questioned Royle of his remarks of introducing the retrospective principle into British law as “unhealthy” as reported on *the Guardian* of 24 November 1973. A copy of Moore’s letter to the Editor of *the Guardian* was also sent to Royle which stated that such a principle had been introduced already by the Government in its Immigration Act and suggested Royle of being racist.

The article with headline of “Britain cannot send back Hong Kong Policeman” was about the Godber case and commented that efforts had been abandoned because the introduction of the retrospective principle into British law was regarded as “unhealthy” by Royle and that the lawyers had reached a dead end on Godber case.

K. Further enquiries from Alan Ellis

Ellis wrote to Royle, Member of Parliament, again on the case of Godber. He quoted an article “Politicians, Parliament & Corruption” from the *Observer* Magazine of 2 December 1973 by Montgomery Hyde, in which reference was made to an Act of Parliament of 1793 which resulted from the trial of Warren Hastings and was apparently designed to deal with similar “nabobs”. He also urged for the result of his own case. His letter was transferred to Peter Blaker, new Parliamentary Under Secretary of State for Foreign Affairs of FCO, for comments.¹⁵⁵

HKIOD passed the letter to Legal Advisor for his comments on the trial of Warren Hastings so as to consolidate a reply, including Ellis’ own case for Blaker to Royle.¹⁵⁶

L. Allegations from Mrs. Elsie Elliott, Member of the Urban Council (1963-1995)

Elliott wrote to HKIOD about the evidence she could provide to indicate Godber’s guilt on corruption. She suggested the best proof was that Godber had enormous wealth

¹⁵⁵ FCO 40/554, f 3, Ellis to Royle, 7 January 1974.

¹⁵⁶ FCO 40/554, f 13, Kelly to Rushford, 23 January 1974.

which he could not explain and the fact that he ran away. She thought Britain was protecting a despicable criminal.

She also stated her encounter with Godber back in 1970 about a mini-bus racket in which gangsters were forcing drivers to pay money and there was police involvement. She reported the case to Godber who was then traffic chief. But he replied that both the Anti-Corruption Branch and police had found no evidence to substantiate the allegations. She later published an article with photographs showing gangsters collecting money from the drivers with policemen on watch. The police denied there were reports of such extortion made prior to her article. During a television interview she showed the letter which she had sent to Godber. The police then said that they had made a mistake and a report had been made. Eventually several men were arrested. But no action was taken against Godber and he was even promoted. An appeal was made to the Governor, but with no reply. The mini-bus racket continued in another form where Elliott reported and exposed it again in 1972.

Elliott concluded her experience that “May I add that nothing less than a Royal Commission of Enquiry will suffice, as the Hong Kong people have no confidence in the Government officials here (except in the Governor himself). To deny this is to propagate the corrupt system”.¹⁵⁷

Elliott’s letter and HKIOD’s suggested reply were passed to Legal Advisor for review before sending out to Elliott and the Colonial Secretary of Hong Kong as “Elliott is such a controversial figure and liable to publish anything she receives”. as commented.¹⁵⁸

A HKIOD’s letter to Elliott urged her support to the new Anti-Corruption Commission and the Governor’s plea that people with direct evidence of actual corruption by a given officer should come forward.¹⁵⁹

¹⁵⁷ FCO 40/554, f 8, Elliott to Stuart, 7 January 1974.

¹⁵⁸ FCO 40/554, f 9, Stuart to Rushford, 21 January 1974.

¹⁵⁹ FCO 40/554, f 9, Stuart to Elliott, 22 January 1974.

Both Elliott's letter and HKIOD's reply were sent to Sir Denys Roberts, Colonial Secretary of Hong Kong (1973-1976), for his comments and action if Elliot decided to pursue further.¹⁶⁰

M. Letter from Eric Ogden, Member of Parliament, to the Secretary of State on Godber case

As reported from R.B. Crowson, HKIOD of FCO, to Youde of Parliamentary Office and Lord Goronwy-Roberts, Parliamentary under Secretary of State for Foreign & Commonwealth Affairs (1974-1975), Eric Ogden, Member of Parliament, had written to the Secretary of State during the Foreign Affairs debate on 19 March 1974 again on Godber case. FCO was still discussing with the Governor the difficulties inherent in any change to the Fugitive Offenders Act and Lord Goronwy-Roberts had agreed that this question to be discussed in a later meeting. Draft reply was prepared for Lord Goronwy-Roberts as an interim reply to Ogden.¹⁶¹

3.3.6 The Fugitive Offenders Act 1967 and the application of double criminality rule to Hong Kong

It was not true that the whole British Government was unwilling to amend the Fugitive Offenders Act. As the Godber incident unfolded, the FCO tried to change the Act in such a way that the double criminality rule as applied to all the dependent territories was dropped, but without retrospection. Such a change, if implemented, would not make the British Government look ugly for changing the law in order to suit one particular case, and would give an impression that the British Government had done something. Apparently, FCO's attitude was due to the fact that the British Prime Minister was about to visit Hong Kong and the Godber case had to be somehow solved before the Prime Minister's visit. More importantly, the Chinese in Hong Kong speculated that the British Government favoured Godber, a European, and did not help Godber's

¹⁶⁰ FCO 40/554, f 10, Stuart to Roberts, 22 January 1974.

¹⁶¹ FCO 40/555, f 75, Crowson to Youde and Lord Goronwy-Roberts, 10 April 1974.

extradition. However, FCO's enthusiasm failed to convince others, especially the Law Officers and those from Home Office.

Noting Royle's decision to drop the idea of a change in the Fugitive Offenders Act, the Secretary of State felt that "[t]his creates difficulty in Hong Kong, but it is I feel right. Was I not told however that there was in any event a general case for amending the Act?"¹⁶²

A minute by A.C. Stuart of HKIOD mentioned that Royle had decided to return to the charge with the Home Office with the aim of agreeing to changing the double criminality rule in its application to the dependent territories, but without retrospection. The above decision was sent to A.R. Rushford, Legal Advisor, J.S. Champion of Gibraltar & General Department and H.V. Richardson of National & Treaty Department.¹⁶³

Richardson did not support the proposal to modify the Act so as to exclude the operation of the double criminality rule in relation to dependent territories. He expressed his arguments in favour of the principle of double criminality that were well set out in a journal "Extradition in International Law" by I. A. Shearer, and there were reasons behind to do so. He pointed out that if the FCO was to recommend such proposal to the Home Office, they would put up a stronger case other than arguing that there was no need whatsoever to maintain the double criminality rule for dependent territories or the UK Government had consented to a certain act being made criminal in the laws of a particular colony that it necessarily followed that it should regard such an offence as extraditable from the UK. More information had to be obtained for all the circumstances where it would be met desirable that the principle did not apply so far as the dependent territories were concerned. An offence against the Hong Kong Prevention of Bribery Ordinance alone might not be sufficient to justify the departure of the rule. He further suggested that the only way to punish an offender against the Prevention of Bribery Ordinance was to ensure him to be prevented from leaving the territory.¹⁶⁴

¹⁶² FCO 40/454, f 226, Grattan to HKIOD, 4 October 1973.

¹⁶³ FCO 40/456, f 290, Stuart to Rushford, 24 October 1973.

¹⁶⁴ FCO 40/456, f 302, Richardson to Rushford, Champion and Stuart, 29 October 1973.

The discussion by Rushford with Michael G de Winton of the Law Officers Department was discouraging.¹⁶⁵ de Winton suggested that it would be very unlikely for the Attorney General to support the proposal in relation to offence against the Prevention of Bribery Ordinance as one appropriate for extradition.

A proposal was re-drafted accordingly by Stuart, circulated to the same parties,¹⁶⁶ and there were no further comments on the proposal.¹⁶⁷ HKIOD also reported to the Parliamentary Unit about the difficulties they encountered with the Law Officers, Whips and the Home Office who unanimously considered that they could not change the law retrospectively to catch Godber. However, they were taking up with the Home Office the possibility of a non-retrospective change in the law on general grounds. The question might have to go to Ministers since it was not encouraging from the Home Office or the Law.¹⁶⁸

In the meantime, Royle agreed to the despatch of the telegram to be sent from Douglas-Home to all Governors of dependent territories except Hong Kong seeking their view on removing the double criminality rule altogether in relation to the dependent territories or established a schedule of offence to which the rule would not apply.¹⁶⁹ He also requested HKIOD to try to reach agreement at the official level before writing to the Home Office at Ministerial level hence a recast proposal to Carlisle was prepared accordingly from Sir Duncan Watson of Parliamentary Unit to Graham-Harrison, Deputy Under-Secretary of State at the Home Office. The proposal was submitted to the Parliamentary Unit for comments;¹⁷⁰ several options were suggested in the proposal, as follows:¹⁷¹

¹⁶⁵ FCO 40/456, f 305, Rushford to Stuart, 31 October 1973.

¹⁶⁶ FCO 40/456, f 306, Stuart to Rushford, Champion and Richardson, 24 October 1973.

¹⁶⁷ FCO 40/456, ff 307-309, Rushford, Champion and Hanham to Stuart, 1 & 2 November 1973.

¹⁶⁸ FCO 40/456, ff 313, 315, Stuart to Watson and Youde, 2 November 1973.

¹⁶⁹ FCO 40/456, f 325, Secretary of State for Foreign & Commonwealth Affairs of FCO to all Governors except Hong Kong, 7 November 1973.

¹⁷⁰ FCO 40/456, f 335, Stuart's minute to Youde and Watson, 13 November 1973.

¹⁷¹ FCO 40/456, f 335, Stuart's draft minute to Youde and Watson, 13 November 1973.

- The application of the double criminality rule to the dependent territories was illogical and therefore to be abandoned altogether or;
- To examine the list of dependent territory legislation to which the rule at the time applied and to agree upon a schedule of returnable offences or;
- To consider whether any special conditions should attach to service under the Crown, by which public servants should be made answerable for their acts in all British territories.

Graham-Harrison expressed in his reply of 22 November 1973 as he put it that FCO had reached a conclusion that there was nothing that could be done about the case of Godber unless the Hong Kong Government was able to proceed against him for a returnable offence under the existing law. Though he agreed that, if anything was to be done, it had to be as a matter of general policy in relation to all the dependencies and they were quite ready to consider it on that basis. He further commented that the Home Office was not convinced that it would be desirable or politically easy to propose the withdrawal or qualification of the double criminality safeguard, which was a widely recognised principle of extradition. He concluded that a meeting should be arranged together with an invitation to the Law Officers Department and copies of both Watson's proposal and his reply would be sent to Hetherington of Law Officers Department. He also suggested that before the meeting, it would be helpful to review the list of offences which the double criminality rule was thought to exclude so that they could see more clearly the nature and extent of the problem.¹⁷²

A summary of replies received from the dependent territories and examples of offences in Gibraltar for which imprisonment for a year or more imposed but did not appear to have counterpart in the UK were submitted from the Gibraltar & General Department to HKIOD for their meeting with the Home Office.¹⁷³ The summary was commented in their later meeting that other dependent territories' different laws disclosed the existence of much significance other than Section 10 of the Hong Kong Prevention of Bribery Ordinance.

¹⁷² FCO 40/457, f 353, Graham-Harrison to Watson, 22 November 1973.

¹⁷³ FCO 40/457, f 354, Champion to Stuart, 26 November 1973.

A meeting was arranged to discuss the implications of the double criminality rule in the Fugitive Offenders Act of 1967, in relation to offences committed in Hong Kong on 27 November 1973.¹⁷⁴ The meeting was chaired by F. L. T. Graham-Harrison of Home Office. The participants were mainly from the Home Office and the FCO, and one was Law Officer.

Sir Duncan Watson of FCO explained the double criminality rule in the Act had prevented them from sending back to Hong Kong a police officer being accused under Section 10 of the Prevention of Bribery Ordinance of Hong Kong of having unexplained control of pecuniary resources disproportionate to his emoluments. The incident had caused a serious political problem with their relations with Hong Kong. The Prime Minister was going to Hong Kong on 12 January 1974 and he had directed that the opportunity should be taken to resolve the bilateral issues before his visit therefore it would be necessary to make submission to Ministers before the Prime Minister's visit. He also added that the Chinese in Hong Kong felt that the UK Government failed to take action against a European who was being allowed to live unmolested in the UK, and believed that this would not have been allowed to happen if the fugitive had been a Chinese. The Godber case had thrown a new light on their decision in 1966 to apply double criminality rule to the dependent territories.

Both parties then exchanged their respective standpoint and arguments on FCO's initial suggestion and options that were put forward to the Home Office. After discussion, it was agreed that if any changes were to be made it should be restricted to Hong Kong and for presentational reason, it would have to allow return for any offence without specifying the Prevention of Bribery Ordinance. The Chairman later concluded that he did not consider that a strong enough case had been presented by FCO to persuade the Home Secretary to go along with their views on the need to modify the provisions of the Act. It was agreed that the Home Office should await the paper to be presented by the Secretary of State at a debate of parliament meeting on 5 December 1973 on the general questions of Hong Kong's relations with the UK. A draft was prepared to the Home Office to agree certain passages with regard to the death penalty, and corruption and the

¹⁷⁴ FCO 40/457, f 358, Note of a meeting held at the Home Office on 27 November 1973 to discuss the implications of the double criminality rule in the Fugitive Offenders Act 1967, in relation to offences committed in Hong Kong, 30 November 1973.

Fugitive Offenders Act. The aim should be to produce an agreed document for debate of parliament, but if this did not prove possible, it would be necessary for both Secretaries of State to put in separate papers.

de Winton later supplemented his comments to add on the above meeting notes that: “The Attorney General was consulted when the Prevention of Bribery Ordinance was introduced and advised that some of its provisions, and in particular Section 10, was contrary to the basic principles of English criminal law and that he would not be able to justify those provisions on legal grounds”. Copy of his minutes was forward to the HKIOD since a similar passage would be appropriate for the brief for the Prime Minister’s visit to Hong Kong on bilateral issues.¹⁷⁵

The debate on the Motion for the Christmas Adjournment was to take place on 20 December 1973. FCO suggested that the question of corruption in Hong Kong, Godber case and the Fugitive Offenders Act might be raised. Therefore HKIOD had accordingly prepared a short background note and accompanying reference, together with a short paragraph on the line to take which the Lord President could use verbatim explaining why there was no need to keep the House in session in order to debate that subject were submitted to the Parliamentary Unit.¹⁷⁶

3.3.7 UK’s decision not to amend the Fugitive Offenders Act of 1967

In the Legislative Council meeting of 17 October 1973, MacLehose mentioned the Godber affair which has highlighted the case for amendment of the Fugitive Offenders Act upon the recommendation of Blair-Kerr.¹⁷⁷ He had represented strongly to the Secretary of State on the requirement of double criminality. He also commented that amending the Act was not the only way to bring Godber back for trial if someone could come forward and give conclusive evidence of a corrupt transaction.

¹⁷⁵ FCO 40/457, f 366, Winton to Massey, 7 December 1973.

¹⁷⁶ FCO 40/457, f 378, Crowson to Youde, 20 December 1973.

¹⁷⁷ See Legislative Council Debates Official Report, 17 October 1973, pp. 15-19.

However, Peter Blaker, new Parliamentary Under Secretary of State for Foreign Affairs, wrote to MacLehose on 13 February 1974 that they could not change the Fugitive Offenders Act retrospectively, which meant that they could not send Godber back to Hong Kong unless Hong Kong could find evidence to charge him with something that was also an offence in UK. They were also unable to reach agreement on any future change in the double criminality rule under the Act.

After they had consulted the other Governors that the only dependent territory law of importance to which the double criminality rule applied was Section 10 of the Prevention of Bribery Ordinance, and this confirmed the Law Officers in their opposition to any change, of which they disapproved this provision and could not support it in Parliament.

The FCO asked for MacLehose's advice on how to announce their decision in a way that would cause minimum controversy.¹⁷⁸

3.3.8 Another attempt to amend the Fugitive Offenders Act 1967 under new Home Office Ministers

This subsection shows that FCO made use of legal advice from a private law firm representing the Hong Kong Government. A.R. Rushford, Deputy Legal Adviser for FCO, arranged with Charles Russell & Co to have Michael Neligan, solicitor of the firm, to give an opinion as to whether it might be possible to have Godber returned to Hong Kong under the Fugitive Offenders Act.¹⁷⁹

Neligan studied the report of Blair-Kerr and the facts capable of proof as set out in the Attorney General's note:

- Between August 1952 and 14 June 1973, Godber was a serving officer in the Hong Kong Police Force, reaching the rank of Chief Superintendent.

¹⁷⁸ FCO 40/554, f 50, Blaker to Governor, 13 February 1974.

¹⁷⁹ FCO 40/554, f 71, Russell to Rushford, 4 April 1974.

- By the 31 May 1973 he had become entitled to and been paid the sum of \$767,237 by way of salary.
- Sometime before the 4 June 1973, his superiors became aware that he was in control of pecuniary resources disproportionate to his official emoluments.
- Such resources to the tune of some \$4.3 million have been traced.
- By the 4 June 1973 Godber was carrying out duties with the anti-vice squad responsible for the Kowloon district.
- On the 4 June 1973, he was served with a notice under Section 10(2) of the Prevention of Bribery Ordinance, a prosecution against him under Section 10(1)(b) of that ordinance being under consideration. He was given until the 11 June 1973 to make representations under the ordinance to the Attorney General.
- On the 4 June 1973, his car was searched and in it were found 3 folders containing various addresses, some at all events, of which were vice establishments in Kowloon, Hong Kong Island and the New Territories. Sums of money were also mentioned in the folders.
- It should be noted that there was nothing to show either that Godber had received sums or that such sums formed any part of the \$4.3 million in accretion to his wealth.
- On the 8 June 1973, Godber left Hong Kong, eventually arriving in the United Kingdom.

Neligan's advice was there was no doubt that the mentioned facts in the Godber case would merit his prosecution under the Ordinance. However, there was no such offence in the criminal calendar of the UK. Any attempt to extradite him for prosecution under Section 10 would therefore be doomed to failure. Also based on the evidence at hand, proceedings could not be launched under Section 4(2) of the Ordinance unless a link could be shown between the sums of money mentioned in the folders and their receipt by Godber. Hence he concluded that unless fresh evidence was found, extradition proceedings could not be successfully undertaken.¹⁸⁰ The advice was also sent to the Attorney General by FCO.

¹⁸⁰ FCO 40/555, f 93, Russell to Rushford, 25 April 1974.

With the election of the new Labour Government in April 1974, the Hong Kong Government launched a second attempt to amend the Fugitive Offenders Act. This time, the result was not as hopeless as before. The Governor had asked the FCO to have another look at the possibility of changes to the Fugitive Offenders Act 1967 and to make it possible to return people for trial in Hong Kong for offences which were not regarded as crimes under UK law. A meeting note was prepared for Lord Goronwy-Roberts to resolve this issue. It summarized the background of previous attempts and highlighted FCO's official opinion which favoured a change in the law, both because of the situation in Hong Kong, and because the current rule had illogical and undesirable effects. FCO saw the single case of Godber was damaging. If others took the same refuge in the UK it would be worse. But the contrary arguments were strong and it was probable that any attempt to change the law would be opposed by the Home Office and the Law officers.¹⁸¹

After the meeting, Sir Duncan Watson of FCO wrote to MacLehose that Lord Goronwy-Roberts had agreed to support another initiative at getting agreement to a non-retrospective change of the Fugitive Offenders Act. FCO accordingly put up a draft once again with the Home Office at Ministerial level. Watson also highlighted the fact that Lord Goronwy-Roberts had not yet considered the general question of Section 10 of the Prevention of Bribery Ordinance. In fact, the official reluctance in the Home Office and the Law Officers to agree to a change in the Fugitive Offenders Act was their distrust of Section 10 on general legal grounds.¹⁸²

In response to Watson's letter, MacLehose asked if there would be a serious risk that the proposed non-retrospective change of the Fugitive Offenders Act might result in disallowance of Section 10 of the Prevention of Bribery Ordinance. He commented that "this would drive a horse and cart through the operations of the new ICAC and in addition raise a mammoth storm in UK/Hong Kong relations".¹⁸³ A side note of Duncan's minute to Stuart stated that the Secretary of State had approved non-

¹⁸¹ FCO 40/555, f 80, Stuart to Watson and Lord Goronwy-Roberts, 17 April 1974.

¹⁸² FCO 40/555, f 84, Watson to Governor, 19 April 1974.

¹⁸³ FCO 40/555, f 95A, Governor to Watson, 27 April 1974.

disallowance which could enable FCO to reassure the Governor to some extent and a draft reply was prepared accordingly.

3.3.9 Arrest of Godber

While the Hong Kong Government and FCO tried to amend the Fugitive Offenders Act so as to make extraditing Godber possible, there was another development. A police officer implicated Godber and Godber's offence was an extraditable one. Then, it became possible for the Hong Kong Government to extradite Godber to Hong Kong for trial.

After learning from John Hopley, Attorney General of Hong Kong (1973-1979), that Hong Kong Government was able to charge Godber with bribery on strength of evidence from Superintendent Ernest Hunt, James Callaghan, Secretary of State for Foreign & Commonwealth Affairs (1974-1976) sent a secret telegram to Hong Kong advising if they would consider to take steps to secure Godber's early arrest under provisional warrant pursuant to section 6(1)(B), and the procedure and documentation required from Metropolitan Police to arrest Godber in the UK. Proceedings before Hong Kong Magistrate were imminent. Callaghan also advised that Godber was still stop listed, but if he was actually stopped, it would be necessary to justify this by reference to pending proceedings.¹⁸⁴

Stuart of HKIOD, FCO then wrote to Lord Goronwy-Roberts enclosing the above telegram and explained their prudent decision to draw Hong Kong's attention to the procedure for a provisional warrant under the Fugitive Offenders Act. This was to take a quick action to arrest Godber before he managed to escape again. Stuart also reported the background of Hunt, a policeman who has recently been convicted under Section 10 of the Prevention of Bribery Ordinance and sentenced to 12 months imprisonment. After an unsuccessful appeal to the Privy Council, Hunt implicated Godber in a normal bribery charge, which was a returnable offence under the Fugitive Offenders Act. Lord

¹⁸⁴ FCO 40/555, f 90, Callaghan to Hong Kong Government, 23 April 1974.

Goronwy-Roberts agreed to FCO's recommendation that Godber remained stop listed for the time being and to review the stop listing in a later date.¹⁸⁵

Based on Superintendent Hunt's statement that on one occasion he was present when Godber corruptly received \$25,000, the acting Attorney General was urgently considering the sufficiency of available evidence to prosecute Godber no later than 29 April 1974. MacLehose believed that Hunt although convicted himself, would be a good witness to the evidence to support the charge that: "Godber in March 1971 at Wanchai Police Station being a member of a public body ... did corruptly receive \$25,000 from Cheng Hon-Kuen for himself as a fee or reward for having assisted the said Cheng Hong-Kuen in being appointed to the post of Divisional Superintendent of the Police Division of Wanchai, a matter in which the said Royal Hong Kong Police Force was concerned, contrary to section 3 of the Prevention of Corruption Ordinance". Hunt had been informed that he would not be prosecuted further in respect of German accounts if he gave true evidence and to prevent any information or rumours reaching Godber, Cheng was not questioned until Godber had been arrested. MacLehose proposed to initiate procedure in Callaghan's above telegram of 24 April 1974 subject to further and final consideration of the papers by the Attorney General and provided he had received no adverse comment from FCO.¹⁸⁶

Callaghan responded that "if your advisers consider that a prima facie case has been made out, it is open to you to apply for a provisional warrant immediately".¹⁸⁷

On 29 April 1974, MacLehose telegraphed the Commissioner of Metropolitan Police London via the FCO that warrant was issued in Hong Kong by P. M. Corfe, Magistrate, Central Magistracy for the arrest of Godber. The charge was listed with offence which was a relevant offence within the meaning of Section 3 of Fugitive Offenders Act and a request for Godber's return was made under Section 5 of the Act. MacLehose requested the Metropolitan Police to apply for provisional warrant in Chambers, to execute warrant as soon as possible, and to oppose release on bail as strongly as possible. Any

¹⁸⁵ FCO 40/555, f 91, Stuart to Lord Goronwy-Roberts, 24 April 1974.

¹⁸⁶ FCO 40/555, f 94, Governor to Callaghan, 26 April 1974.

¹⁸⁷ FCO 40/555, f 95, Secretary of State for Foreign & Commonwealth Affairs to Hong Kong Government, 26 April 1974.

subsequent publicity should be kept to absolute minimum.¹⁸⁸ MacLehose commented that he could count on the FCO's assistance in view of the political importance and significance of Godber case in their drive against corruption in Hong Kong.¹⁸⁹

Callaghan informed Hong Kong by telegram that provisional warrant was issued on the same day and police would execute warrant later that evening.¹⁹⁰ Later, the warrant was executed and Godber was held in Police custody, due to appear at Bow Street Magistrates Court the next morning. On behalf of the UK Police, Callaghan requested Hong Kong Government of their advice on publicity made by the Police in UK.¹⁹¹

The Hong Kong Reuter on 30 April 1974 reported that Godber was arrested in England. John Prendergast, the acting Commissioner of ICAC, told in a press conference that Godber was arrested on provisional warrant issued under the Fugitive Offenders Act on 29 April 1974 and served on him by a London Magistrate. Prendergast released the details of charge and added that Superintendent Cheng Hong Kuen, the man named in the warrant, was in detention in Hong Kong. The offence Godber was charged under a Prevention of Corruption Ordinance that carried a maximum penalty of five years jail and a \$10,000 fine. R. E. Penlington, an Assistant to the Attorney General, said Hong Kong had to obtain the consent of the British Government to receive the warrant, and this would be done by forwarding to London the necessary evidence to support the charges against Godber.¹⁹²

Stuart of FCO passed the message of Prendergast of ICAC to C. P. J. Woods, Assistant Commissioner, Scotland Yard, to express his gratitude on a perfectly executed operation and in regard to publicity. Prendergast advised that details of charge had been released in Hong Kong but not information as to evidence and any reference to informer or

¹⁸⁸ FCO 40/555, f 97, Governor to Commissioner, Metropolitan Police, London, 29 April 1974.

¹⁸⁹ FCO 40/555, f 96, Governor to Commissioner, Metropolitan Police London, 29 April 1974.

¹⁹⁰ FCO 40/555, f 98, Secretary of State for Foreign & Commonwealth Affairs to Hong Kong Government, 29 April 1974.

¹⁹¹ FCO 40/555, f 99, Secretary of State for Foreign & Commonwealth Affairs to Hong Kong Government, 29 April 1974.

¹⁹² FCO 40/555, f 101, Note on Hong Kong Reuter's report, 30 April 1974.

potential witnesses. FCO added that if the case was carried through in the courts, it would remove a substantial political embarrassment in UK/Hong Kong relations.¹⁹³

A report was prepared by N. S. Howell, Chief Superintendent of the Criminal Investigation Department of New Scotland Yard, to his Commander, and copies were forwarded to Stuart of FCO and Massey, C3 Department of the Home Office for their information. The report dealt with the arrest of Godber on the 29 April 1974 at his home in Sussex by Howell on a warrant granted at Bow Street Magistrates' Court that day. Godber was taken to Bow Street Police Station where he was charged on a warrant granted by E. G. Russell, a Metropolitan Stipendiary Magistrate, sitting at Bow Street Magistrates' Court on the 29 April 1974. Godber was accused of bribery against the law of Hong Kong. Godber appeared at Bow Street Magistrates' Court on 30 April 1974 before Barraclough and was remanded in custody to appear at that Court on 7 May 1974. He was represented by Birkett of Counsel who did not oppose the application for the remand in custody. The solicitors for the Hong Kong Government were Charles Russell and Co. and a report has been forwarded to them detailing the circumstances of the arrest.¹⁹⁴

MacLehose was seeking Neligan of Charles Russell Co.'s comments on the provision of Section 12 under the Prevention of Corruption Ordinance on which the Hong Kong Government wished to rely for trial of Godber in Hong Kong, and whether they should include in the affidavits the evidence of the possession of apparently inexplicable resources, by virtue of Section 12 or by normal common law rules. MacLehose also advised that he was waiting on the decision of Cheng if Cheng would give evidence on bribery of Godber with the offer that he could be immune from all charges if he gave such evidence.¹⁹⁵ Comments from Neligan were quoted via Callaghan by telegram on the next day.¹⁹⁶

¹⁹³ FCO 40/555, f 102, Stuart to Woods, 30 April 1974.

¹⁹⁴ FCO 40/555, f 112, Howell's report, 30 April 1974.

¹⁹⁵ FCO 40/555, f 114, Governor to Russell, 7 May 1974.

¹⁹⁶ FCO 40/555, f 117, Secretary of State for Foreign & Commonwealth Affairs to Hong Kong Government, 8 May 1974.

3.4 Drive to Build a New Anti-Corruption System

The Godber case changed how both the British Government and Hong Kong Government perceived severity of corruption in Hong Kong. There were at least two forces in combination that led to the setting up of ICAC. One was the Hong Kong Government and FCO. To them, corruption was a problem that needed to be fundamentally fixed. Setting up an anti-corruption agency independent of the Police was a necessary condition of fixing the corruption problem. The second force was many advocates in Britain. To them, the Hong Kong Government might not be competent enough to fix the corruption problem, and they demanded the British Government to form a team to fix the corruption problem in Hong Kong. Should such a team be formed, the Hong Kong Government would be greatly embarrassed. To avoid such embarrassment, the Hong Kong Government needed to take the initiative. Establishing ICAC was a demonstration of Hong Kong Government's determination and competence to fix the corruption problem in Hong Kong.

3.4.1 Deciding to establish ICAC

A. An important meeting between the Governor and the FCO

Before MacLehose went to London, he requested the HKIOD of FCO to arrange a meeting for him with the Gibraltar & General Department, Legal Advisor and also Overseas Police Advisor to discuss about further matter connected with corruption in the Hong Kong Police, arising out of the Godber case.¹⁹⁷ HKIOD quoted the Governor: "Our problem is the difficulty of legal proof sufficient for a court of law. We would therefore like to consider amending the conditions of service of the police and others in the public service to provide for the possibility of terminating someone's employment at the Queen's pleasure, for reasons good enough to satisfy the Secretary of State. I have in mind in particular evidence of corruption obtained from e.g. telephone tapping or

¹⁹⁷ FCO 40/454, f 177, Crowson to Champion, 7 September 1973.

other clandestine means. In such cases pension rights would not be affected, nor would there be any slur on a man's official record – but we could get rid of him".¹⁹⁸

During the meeting MacLehose explained his need to be able to retire compulsory police and other public service officers, at the Queen's pleasure, for reasons good enough to satisfy the Secretary of State, when those reasons would either not be admissible or would not stand up in front of the court of law. Governor's power within the existing Colonial Regulations was discussed and MacLehose commented that he felt Hong Kong could do the things they needed, which would also be sustainable under Colonial Regulations and asked the FCO to carry out an urgent study of Blair-Kerr's recommendations. This was agreed by the FCO that results would be sent to the Governor within 10 days.¹⁹⁹

A draft letter was prepared for the agreement from the Parliamentary Unit before sending to Hong Kong Government on Blair-Kerr's recommendations and comments regarding amendments to the Fugitive Offenders Act of 1967, Prevention of Bribery Ordinance and Colonial Regulations of which MacLehose planned to put the whole question to Executive Council on 9 October 1973.²⁰⁰

Also as recorded of a later meeting between Anthony Royle, Parliamentary Under Secretary of State for Foreign and Commonwealth Affairs of FCO, and P. C. Woo, Senior Unofficial Member of Legislative Council of Hong Kong, Woo pointed out that to tackle the problem of corruption, it would be better if the Anti-Corruption Office could be made a separate department, away from the police.²⁰¹

¹⁹⁸ FCO 40/454, f 176, Governor to FCO, 5 September 1973.

¹⁹⁹ FCO 40/454, f 186, Note for meeting with the Governor to discuss Blair-Kerr's recommendation on amendment to Colonial Regulations governing retirement of public service officers, 19 September 1973.

²⁰⁰ FCO 40/454, f 222, Stuart to Youde and Watson, 4 October 1973.

²⁰¹ FCO 40/454, f 221, Record of a Meeting between Parliamentary Under Secretary of State for Foreign and Commonwealth Affairs and Mr P. C. Woo, 14 September 1973.

B. British inputs to the decision to establish ICAC

The following suggestions were mostly not made by the advocates of setting up ICAC. Instead, many people making the suggestions favored the appointment of a British team external to Hong Kong to fix the corruption problem in Hong Kong.

In fact, by August 1973, there had been pressure building up for a UK appointed enquiry into corruption in Hong Kong. James Johnson, Labour MP for Hull West, an expert in colonial affairs, raised the Godber case in the Commons and mentioned that there was an urgent need for an inquiry into the police, but it must be conducted from London.²⁰² He believed that in addition to an internal Hong Kong Enquiry, a judicial Commission of Enquiry appointed in the country was needed to investigate organized corruption in the Colony.²⁰³ The judicial Commission of Enquiry should be headed by a man of unquestioned integrity. He thought that Lord Devlin was the right person. Members might include an MP from each of the 3 parties, and people with wide police experience, for example the Inspector General of Colonial Police. There should be nobody on the Commission directly connected with Hong Kong, in order to ensure its complete independence.

Alan Ellis, ex-Inspector, was in touch with Johnson and had been campaigning for the appointment of a UK Commission of Enquiry into corruption in the Hong Kong Police through his contacts in the press.²⁰⁴

Anthony Royle of FCO came up with two options:²⁰⁵

- Appointment of a UK external commission of enquiry into alleged corruption in Hong Kong, particularly in the Police; and
- The secondment of a group of UK Fraud Squad Police Officers to investigate corruption in the Hong Kong Police.

²⁰² FCO 40/453, f 100/(1), “Drugs, Brothels, Bribery – and a British Colony’s Police Force”, *Sunday Times*, 30 July 1973.

²⁰³ FCO 40/453, f 121, FCO’s note on the Call on Mr Amery by James Johnson, MP, 10 August 1973.

²⁰⁴ FCO 40/453, f 119, Crowson to Rawlinson, 9 August 1973.

²⁰⁵ FCO 40/453, f 118, Crowson to Guest, 8 August 1973.

Royle sought advice from Michael Macoun, Overseas Police Officer, through R. B. Crowson, Hong Kong & Indian Ocean Department.²⁰⁶ Macoun favoured the first option for the following reasons:

- The appointment of an external UK Commission of Enquiry would indicate HMG's concern in widespread allegations of corruption in Hong Kong and its determination to endeavor not only to substantiate or disprove these allegations but also to accept its responsibility as the administering authority of what is a Crown Colony.
- The composition of the Commission should include one or more senior detective officers from the UK Police Service with fraud investigation experience.
- It would be necessary to include in the Commission an accountant and an officer with Colonial Service Administrative experience (not in Hong Kong) would probably be desirable.
- Although the secondment of a team of experienced UK Fraud Squad Officers might appear to be a simple short-cut to more effective investigation of corruption in the police and public services, there would be a number of obstacles inherent in such an operation.
- They would be largely dependent upon the Hong Kong Police and in particular, the Anti-Corruption Branch of that Force for co-operation and information.
- They would be unfamiliar with the sources of information (informants, etc.) and again be entirely dependent upon the Branch, which was being subjected to campaign of discredit by the media.
- Macoun could foresee resentment by the Hong Kong Police, which had already suffered a considerable blow to morale, to what might be considered an unwelcome intrusion.

Royle was well aware that a UK enquiry would be a major blow to Hong Kong because it would be seen as implying a lack of confidence by the British Government in Hong Kong's ability to run their own affairs.²⁰⁷ It would also be a blow to police morale, especially if the enquiry were to be concentrated solely on the Police Force. However, Royle was prepared that it would become necessary to have such a commission

²⁰⁶ FCO 40/453, f 117, Macoun to Crowson, 8 August 1973.

²⁰⁷ FCO 40/453, f 118, Crowson to Guest, 8 August 1973.

appointed, and sought from Dependent Territories Departmental Practice the procedures of the appointment of Royal Commissions, which had not been appointed from the UK for many years. Royle intended to talk to the Governor about his views on the options. What Royle did demonstrate clearly how the press and the Parliament transformed the issue of corruption in Hong Kong into a political issue in Britain and exerted pressure on the British Government. In view of the political pressure, the British Government, as an external monitor, exerted pressure on the Hong Kong Government to improve performance.

In response, Hong Kong Government, through Sir Hugh Norman-Walker, Colonial Secretary of Hong Kong (1969-1973), despatched a copy of Blair-Kerr's second report to FCO and indicated to FCO that an Executive Council paper was being prepared to propose the Executive Council asking the report to be published and that its recommendations should all be accepted.²⁰⁸ Although Blair-Kerr did not firmly recommend separation of the Anti-Corruption Branch from the Police, it hinted that this was probably an unavoidable decision for political reasons. The Executive Council paper was being drafted on the basis that there should be a separation.

The above suggest that the British inputs had played a critical role in the setting up of ICAC because they embarrassed the Hong Kong Government, and such embarrassment and its avoidance led to setting up ICAC.

3.4.2 Announcing the decision to establish ICAC

On 17 October 1973, MacLehose made a speech at the opening of Legislative Council announcing the setting up of an Independent Anti-Corruption Commission with the double task of rooting out corruption and education the public on the evils of graft. The new Commission was to be headed by Jack Carter, former Secretary for Home Affairs, who has been specially released from his contract with the Telephone Company to

²⁰⁸ FCO 40/454, f 180, Colonial Secretary of Hong Kong to Secretary of State for Foreign & Commonwealth Affairs of FCO, 10 September 1973.

enable him to undertake this new service to Hong Kong and he would be assisted by Prendergast, who was appointed Director of Operations with immediate effect.²⁰⁹

He further spoke of one or two more from UK police forces with special experience in anti-corruption work would be appointed at different levels. The independence of the Commissioner for anti-corruption should be established by his position being apart from the civil service in the same way as that of a judge. The Commission would have an operation unit and a civil or preventive section. The operation unit would take over the functions of the Anti-Corruption Branch. Its staff would be selected by the Commissioner and his Director of Operations. The main task of the civil unit would be to educate the public and also critically examine administrative procedures which lend themselves to corrupt practices. On the recommendations of the Commission of Inquiry conducted by Blair-Kerr, the government generally accepted the objective of the recommendations which were being examined in detail in consultation with the FCO. On the Godber affair, he added that the report had highlighted the case for amending the Fugitive Offenders Act and stressed his determination of bringing back Godber for trial. Both reports of the Commission of Inquiry into the Godber case had been published in full.

3.4.3 British immediate reactions

Upon the announcement of setting up a new Independent Anti-Corruption Commission by MacLehose on 17 October 1973, Ellis wrote to Royle showing support of the Governor's appointment on the new Commission. He did not agree with some of the recommendations in the second report of Blair-Kerr, in particular the recommendation that Establishment Regulations 303 should be redrafted or revoked. He continued to press for an externally appointed judicial commission of inquiry into corruption in Hong Kong and for further action on his own particular case.²¹⁰ His case was put forward by Sir Alec Douglas-Home, Secretary of State for Foreign & Commonwealth Affairs of FCO (1970-1974) to Hong Kong and it was suggested to refer the Ellis' own case

²⁰⁹ FCO 40/456, f 294, Governor's speech, 17 October 1973.

²¹⁰ FCO 40/455, f 272, Ellis to Royle, 17 October 1973.

informally to the new Commission, meanwhile a reply to Ellis would be prepared on the general question that Royle supported the Governor appointment of the new Commission and that there was no need for an external enquiry.²¹¹

Tilney wrote to Royle of FCO on 7 November 1973 asking why it was not publicly said that the UK police would be helping the new Anti-Corruption Commission in Hong Kong.²¹² Upon discussion internally, the FCO decided that there was no reason why he should not do so, since the Governor had already announced it in his speech of 17 October 1973 but it might be better to wait until an officer was actually appointed.²¹³ Accordingly Royle replied to Tilney that no UK Police Officers had yet been appointed and there was no reason why they should not say publicly. The Governor and Prendergast had discussed about the appointment of UK police officer with UK police authorities, including Mark and a public reference to help from the UK police might have more impact if they could wait until an appointment was actually made.²¹⁴

A debate on defence and foreign affairs was held in the House of Lords on 31 October 1973.²¹⁵ A defensive speaking note was prepared by the FCO on corruption in Hong Kong, and it summarized the following:

- the Governor's speech on 17 October 1973, which gave details of measures designed to eradicate corruption in the Police Force and the Public Service, in particular the setting-up of a new Anti-Corruption Commission, separate from the Police Force, under a civilian Commissioner;
- the reasons for the failure to return Godber to Hong Kong, which were mainly due to the double criminality rule in the Fugitive Offenders Act, so return was only possible when the offence concerned was known to the law in UK;
- the second report of the Commission of Inquiry into the Godber case by Blair-Kerr, which recommended amendment of the Fugitive Offenders Act to enable Godber to be returned to Hong Kong, retrospective legislation apparently designed to catch on

²¹¹ FCO 40/456, f 317, Secretary of State for Foreign & Commonwealth Affairs of FCO to Governor, 5 November 1973.

²¹² FCO 40/456, f 336, Tilney to Royle, 7 November 1973.

²¹³ FCO 40/456, f 345, Stuart to Youde, 13 November 1973.

²¹⁴ FCO 40/456, f 344, Royle to Tilney, 14 November 1973.

²¹⁵ FCO 40/456, f 288, Speaking Notes, Debate on the Address: Defence and Foreign Affairs, House of Lords: 31 October 1973, 24 October 1973.

man was not readily accepted by the Parliament and the Governor's representations to the Secretary of State on this issue was being carefully considered.

3.4.4 The Independent Commission Against Corruption Bill 1974

On 25 September 1973, the Executive Council members expressed the opinion that a separate anti-corruption organization should be established with a civilian as Commissioner, the Commission would have an operation unit which investigate corruption and also a civil section which would devote attention to the prevention of corruption and to the education of the Public against it. Members approved the recruitment of senior personnel for the Commission from abroad and initially the operations unit would be staffed by seconded police officers.

On 17 October 1973, the Governor announced this decision and emphasized that his intention was that the Commissioner's impartiality and freedom from official pressure and influence should be demonstrated by his position being apart from the civil service.

On 29 November 1973, in his speech to the Legislative Council, the Colonial Secretary stated that, in order to emphasize the fact that the Commission would not be another department of Government, it was intended to establish it as an independent statutory body, though naturally, since it will be financed wholly from Government funds, the Commission's estimate will be subject to the approval of the Governor. Also he stated that the Governor had the right on the constitution of the ordinance; the appointment of the Commissioner and some of the senior officers of the Commission; and the selection of staff would be carried by the Commissioner with the terms of service subject to the approval of the Governor.

In order to implement the above decisions, the Independent Commission Against Corruption Bill 1974 had been drafted in consultation with the members of Executive Council whether the said Bill should be introduced into the Legislative Council:

The draft bill made provision for the issue of warrant cards by the Commissioner to his staff; for powers of arrest and detention to be conferred on staff of the Commission

authorised by the Commissioner; for the making of standing orders by the Commissioner for the regulation of the Commission. The staff of the Commission would be subject to Colonial & Government Regulation, except those modified by standing orders made by the Commissioner, with the approval of the Governor. The duties and powers of the Commission were set out in details in the clauses.²¹⁶

Jack Carter, the Commissioner Against Corruption, A.J. Scoot, the Secretary for the Civil Service and B.A. Sceats, the Assistant to the Law Officers attended before the Council for the discussion of the Bill.

3.4.5 Structure of ICAC

To take a broader meaning, the structure of ICAC includes: (a) the detailed organizational structure and each sub-structure's functioning, power and responsibilities; and (b) the elaborate committee structure assisting ICAC to fulfil its functions. Designing the structure of ICAC was a non-trivial job done mainly by the Hong Kong Government, but with significant British inputs.

A. Legislative Council meeting of 17 October 1973²¹⁷

The decision to set up a separate Anti-Corruption Commission under a civilian Commissioner was reached upon the advice of the Executive Council and MacLehose announced the decision during the Legislative Council meeting of 17 October 1973; such unit was entirely independent and separate from any department of the Government, including the police. This was the intention from MacLehose that the Commissioner's independence was established by the latter position being apart from the civil service in the same way as that of a judge or, say, the Chairman of the Public Services Commission and he could have access to the Governor.

²¹⁶ FCO 40/456, f 3, Draft bill for Independent Commission against Corruption Bill, 9 January 1974.

²¹⁷ See Legislative Council Debates Official Report, 17 October 1973, pp. 15-19.

B. Legislative Council meeting of 29 November 1973²¹⁸

It appeared that the legislation part of setting up ICAC was mainly done in Hong Kong, without many British inputs. However, “all important legislation was subject to scrutiny in London”, and the new bills on the Prevention of Bribery and the establishment of the Anti-Corruption Commission were no exception.

Denys Roberts, the Colonial Secretary of Hong Kong (1973-1976), later updated the progress in the establishment of a separate Anti-Corruption Commission and the recommendations contained in Blair-Kerr’s second report during the Legislative Council meeting of 29 November 1973. He stated that the Commission would not be another department of Government and was intended to be established as an independent statutory body, financed wholly from Government funds with estimates subject to the approval of the Governor.

The Commission was likely to be served, in its initial stages both by officers seconded from other government departments and by persons recruited from outside the public service. The selection of staff would be carried out by the Commissioner and such appointments would not be subject to the advice of the Public Services Commission. The appointment of the Commissioner and some of the senior officers would be made by or subject to the approval of the Governor. The terms of service upon which the officers of the Commission would also be subject to the approval of the Governor whilst these officers serving with the Commission who were public servants, their service in the Commission, with the Secretary of State’s approval, would be designated as other public service for the purpose of pensions laws.

The Commission would comprise three main divisions:

- Operations Division, responsible for the investigation and prosecution of offences;
- Preventive and Administration Division, to deal with the prevention of corruption, principally by advice or the adoption of procedures which were likely to reduce the opportunities for corruption; and

²¹⁸ See Legislative Council Official Report of Proceedings, 29 November 1973, pp. 249-251.

- Community Relations Division, to involve the public in the fight against corruption through education, publicity and by influencing public opinion.

The Ordinance under which the Commission would be formally constituted provided the Commission accordingly, subject to the control and direction of the Governor. These measures should make it clear that the Commissioner and his staff were intended to be free from the departmental and inter-departmental pressures to which members of the public service might be liable and were in fact independent of the Government, though subject to the control of the Governor.

There were discussions between the Secretary for the Civil Service and three Staff Associations concerning Blair-Kerr's proposal to change the Colonial Regulations so as to make it easier to remove government servants against whom no conviction for corruption could be obtained because of insufficient evidence. Roberts hoped that they could be able to reach a formula which was both acceptable to the associations and to serving officers and yet would enable the Government to get rid of corrupt officers with a reasonable degree of speed and certainty. Attitudes from representatives of the staff associations were reasonable and responsible.

The Attorney General had considered the suggested improvements to the Prevention of Bribery Ordinance made by Blair-Kerr, in consultation with the Secretary of State's legal advisers. It was hoped that the Bill would be introduced in the Legislative Council early 1974, and would propose that:

- the maximum penalty for an offence under section 10 of the Prevention of Bribery Ordinance be increased from 7 to 10 years;
- a court would be empowered to make a forfeiture order in favour of the Crown against a person convicted under section 10, in relation to those pecuniary resources or property of which the accused failed to explain his possession satisfactorily to the court;
- a machinery to prevent banks and other institutions from dealing with the assets of a person under investigation; and
- the inspection and investigation of any bank account operated by a Crown servant.

However, a file note regarding Roberts's speech on anti-corruption legislation quoted that new measures were being incorporated in draft legislation which would implement most of the recommendations in Blair-Kerr's second report that included a maximum penalty of 7 years' imprisonment for an offence under Section 10 of the Prevention of Bribery Ordinance, as against the then maximum of 3 years.²¹⁹

Further Douglas-Home of FCO enquired Hong Kong Government by telegram on 28 January 1974 about an article in *Hong Kong Star* which quoted the Attorney General as saying that the new bills on the Prevention of Bribery and the establishment of the Anti-Corruption Commission had not been shown to FCO before they were published in Hong Kong. Such statement was inaccurate and the FCO had had drafts of both bills which they had confirmed. In the answer to the parliamentary question tabled from Andrew Faulds, Member of Parliament, it was said that all important legislation was subject to scrutiny in London.²²⁰

C. Report from a New Scotland Yard Commander on the future structure and procedures of the operations department of ICAC

A very detailed report on the future structure and procedures of the operations department of ICAC was prepared by a Commander of Metropolitan Police Office, New Scotland Yard London. This represented an important technical input to improving ICAC's structure. It could not be said that ICAC's structure copied directly from this report. However, it could be safely said that in designing and improving ICAC's structure, reference must have been made to this report, and considerations of whether to follow the report's advice on particular aspects must have been deliberated.

The Home Office had agreed with Sir Robert Mark, Commissioner of Metropolitan Police, to release Commander R. H. Anning for a three week advisory visit in March/April. Anning took part in planning the Metropolitan Police Complaints Investigation Branch and had been head of the branch since its inception two years ago.

²¹⁹ FCO 40/457, f 365A , Anti-Corruption Legislation Being Strengthened, 29 November 1973.

²²⁰ FCO 40/554, f 20, Secretary of State for Foreign & Commonwealth Affairs of FCO to Hong Kong Government, 28 January 1974.

The Commissioner had also suggested that Anning to be accompanied by another senior metropolitan police officer with specialist investigative experience.²²¹

Upon receipt of a copy of Anning's report of 2 April 1974 for the Director of Operations of the ICAC at the conclusion of his visit in Hong Kong, Stuart of FCO commented that the report was helpful; the question of whether the discipline and court cases sections should be amalgamated was for Hong Kong and not UK, and the rest of the report were merely policeman's impatience with red-tape on which he suggested not to comment. Macoun, police advisor for FCO, also commented the report was useful in a sense that it identified weaknesses in the organisation and also provided useful procedural guidelines to ICAC.²²²

According to Anning's report on ICAC's proposed structure of operations department, a Deputy Director reporting to the Director would be responsible for the special projects section. The department would further divide into two sides, Operations and Discipline & Support, each headed by an Assistant Director.²²³ Under the Operations side, there were three groups consisting investigation sections for syndicated corruption group, preliminary enquiries group and section 10 cases group. Under the Discipline & Support side, it consisted of investigation sections for disciplinary cases group, support group with 4 sections for surveillance, training, security and technical aids and research group with 2 sections for report centre, general research, overseas general administration, operations registry and interpretation/translation. Anning's suggestions on the structure and procedures were as follows:

(i) Organisation & Method

To make for a deeper investigation, increased efficiency, a saving of time and negatives imputation of two bites at the cherry where the criminal matter was first investigated followed by a second investigation on the disciplinary side, it was suggested that the separate 'Disciplinary Cases' group should not be inaugurated and the personnel then

²²¹ FCO 40/558, f 12, FCO to Hong Kong Government, 7 February 1974.

²²² FCO 40/555, f 136, Anning to Stuart, 22 May 1974.

²²³ FCO 40/555, f 136, Annex 'A' of Anning's report, 2 April 1974.

distributed to the Syndicated Corruption Group whereas responsibility for the Preliminary Enquiries group would be transferred to the Assistant Director in Support. The investigating officer who actually investigating an allegation would be to present an investigation, having himself probed all criminal and disciplinary aspects and made suitable recommendations on both.

Anning also commented on the prolonging procedure and papers before punishment could be imposed and impressed by the usefulness of having an Assistant to the Attorney General attached to but independent from the Commission as his function as an advisor in legal matters would become even more important when new members of little previous criminal investigatory experience join the Commission. He also suggested to develop a similar relationship with a senior representative of the Civil Service Branch who would be available to give advice on disciplinary matters if required and his role could be developed to assist in shortening some of the existing procedures, for instance, the views of Heads of Departments could be sought at a much earlier stage and the recommendations and knowledge of the Investigating Officer and other senior officers of ICAC could be conveyed to the Civil Service Branch more quickly and effectively than otherwise.

(ii) Powers of Arrest

The power of arrest and detention conferred by Section 10 of Ordinance No.7 of 1974 was restrictive and Anning suggested a comprehensive power of arrest to cover all criminal offences and could considered to confer such wide powers to senior officer of ICAC.

(iii) Powers of Investigation

Exercise of the powers of investigation available to officers of ICAC was laid down in Section 13 of the Prevention of Bribery Ordinance which was dependent on the written authorization of the Commissioner in each particular case. Anning suggested consideration be given to providing this in the form of a certificate containing 'blanket' authority for issue to each Investigating Officer.

(iv) Operations Department Report Centre

The report centre being the entity which received the first official intimation of corruption required confidentiality and security and this could be improved by the addition of a counter across the room, whereby personnel unconnected with this particular duty were physically denied access to the operational part of the room, other non-sensitive matters requiring a 24 hour supervision such as registers for recording movements of personnel could be located on the more public side of the counter.

The tape recording incoming telephone call could be eradicated by the connection of all phones in the report centre to a permanent automatic recording device.

The report centre should employ experienced personnel who could speak and understand both the Chinese and English language and have the capability of typing Chinese/English translations, the senior officer should be a man of fairly high rank and capable of making reasonable decisions on the information received.

Matters which did not amount to a complaint of corruption to be recorded in an Occurrence Book, typed in a duplicate loose leaf form, whereby the top copy could be forwarded to other department in concern, the second copy remaining the ICAC record.

In connection with the actual recording of complaints, Anning suggested the design and production of a numbered pro-forma on self-copying paper. This pro-forma could be completed in English and in quadruplicate. One copy kept in a binder within the report centre under secure condition and under the control of the senior officer. The other copies would go to the Secretary to the Target Committee who would file one copy which would form the present M.R.B which also could be designed to record progress or assist compilation of statistics. The third copy would pass to whichever senior officers require sight of same and later form part of the Morning Report. The last copy would be sent by the Secretary to the Target Committee to Registry for immediate search and form the basis of a registered docket. This could then pass to the appropriate Group Head accompanied by reference to other correspondence.

(v) Compilation of Investigation Files

The present system of reporting and making up a file leave a lot to be desired; Anning suggested that this aspect to be re-examined with a view to devising a system which would provide for ease of understanding and reference to the investigation file with all extraneous matters being dealt with on a second docket. The investigation file would consist of the initial complaint (pro-forma) with a minute sheet as against the case diary. As the investigation progressed the file could be brought up to date by the completion of a final or intermediate report with numbered paragraphs running through the investigation. All statements would be filed together in chronological order, numbered and properly indexed as would all documentary exhibits. The reports should contain marginal references to the relevant statements and documents. The minute sheet could record enclosures, movement of the file and submissions or recommendations of junior officers and directions, etc. of senior officers.

(vi) Technical Aids to Investigation

After discussion with John Hui from Technical Support section on many of the aids and devices used in the Metropolitan Police, Anning suggested keeping the use of a permanent ICAC photographer with capability in the field of long range photography and the standing of an 'expert' witness would be beneficial. He also recommended facilitating system of personal radio communication, acquisition of some nondescript vehicles for the purpose of both static and mobile surveillance and someone within the Technical Support section should be knowledgeable about tape recording.

Recruitment of one or two ex-traffic patrol officers from the UK who would able to give expert evidence in connection with corruption occurred in connection with traffic accidents and M.V. Inspectors.

Other attributes would be the provision of a really fast car and more motor cyclists and some personal disguise capability for use when required.

(vii) Staff

In view of the expected outflow of police officers from ICAC, it was foreseen that there would be short of officers of any real investigatory experience and the department might need to go beyond Hong Kong to redress the balance. Also there was a shortage of good typists and translators, it would be preferable to employ a public relations officer within the Department to deal with the media. If it was decided to recruit additional investigatory staff from the UK, Anning suggested doing this by means of advertisement in the “Police Review”, a publication widely read by serving and ex-police officers.

(viii) Conclusion

Finally Anning suggested that positive results would likely to ensue if a system were designed with the following broad guidelines:

- That firm recommendations on formal disciplinary action should be made by the Director of Operations;
- That the decision on these recommendations should be made by the senior official of the Civil Service Branch; and

That the Investigating Committee should be headed by a permanent chairman of stature or alternatively that the chairman and members of the Committee be drawn from a small panel of persons, preferably with knowledge of establishment affairs.

D. Organisation, structure and establishment of the ICAC

Vacancies in the ICAC were published in the Civil Service Branch Circular on 18 January 1974 inviting applications from serving officers for appointments in the Operations Branch and in the Administration Division of the Prevention and Administration Branch.²²⁴ As an interim measure, there would be a period of secondment of serving Police Officers and civilian staff of the Anti-Corruption Office

²²⁴ FCO 40/558, f 6, Civil Service Branch Circular No. 5/74: Vacancies in the Independent Commission Against Corruption, 18 January 1974.

in the Police Force to ICAC until the Commission was able to introduce independent means of recruitment and appointment of staff to the Commission's establishment.

The Commission comprised of three main Branches:

- The Operations Branch, headed by a Director, J.V. Prendergast, who was also the Deputy Commissioner. He would be responsible for the detection of corruption and for the preparation of cases for the courts or for reference to Government for disciplinary action.
- The Prevention and Administration Branch, headed by a Director who, apart from being responsible for administration, would have responsibilities for the prevention of corruption within Government and within organization and public bodies as defined in the Prevention of Bribery Ordinance.
- The Community Relations Branch, headed by a Director who would be responsible for publicity, public education and involvement of the public in the fight against corruption by the motivation and influencing of public opinion through public organisations, education in schools, campaigns and by liaison with kaifongs, district and area committees, mutual aid committees, student groups, industrial and commercial undertakings and District Officers in the urban and rural areas.

In addition to posts at directorate level the Commission has a general staff structure of Senior Commission Against Corruption Officer, sub-divisional head responsible to Assistant Director of specific division; Commission Against Corruption Officer, principal assistant to Senior Commission Against Corruption Officer and Assistance Commission Against Corruption Officer to provide general or special support services in the various branches of the Commission. Their duties in one or more of the following fields:

- Operations Branch
 - Investigation
 - Surveillance
 - Research
 - Intelligence
 - Civil processing
 - Criminal processing
 - Security
 - Targets

- Prevention and Administration Branch
 - Systems and procedures
 - Professional services
 - Research
 - Legal advice
 - Special appointment
 - Training
 - Liaison with Heads of Department and outside organisations

- Community Relations Branch
 - Publicity (campaigns, media, publications, speeches, etc.)
 - Education (general public schools, youth and student bodies, universities, Government departments, public utilities, commercial and business organisations)
 - Community relations liaison (Urban Council wards, kai-fongs, mutual aid committees, rural committees, clansmen's and other associations, professional and technical institutes, civil service staff associations, student groups etc.)

Their terms of appointment would be secondment or agreement on leave without pay or agreement by transfer from agreement terms with the Government or retirement and employment on agreement and they were required to work outside normal working hours including shift duties.

MacLehose replied to FCO by telegram on 1 February 1974 about the Parliamentary Questions tabled by Ray Carter, Member of Parliament, on the new Anti-Corruption Commission. He clarified that the Commission was not a commission of inquiry which was going to provide a definitive report on corruption. In fact, it was a permanent body and its functions broadly were to investigate complaints of corruption, to take steps for the prevention of corruption and to enlist community support in its elimination. Its work would be continuous and long term, the Commissioner would be required to report annually to the Governor and the legislative Council.²²⁵

²²⁵ FCO 40/554, f 31, Governor to Douglas-Home, 1 February 1974.

E. Second reading of the ICAC Bill by the Colonial Secretary in the Legislative Council

On 30 January 1974, Denys Roberts, the Colonial Secretary, disclosed that the ICAC was to be assisted in its work by a number of new advisory bodies on which members of the public would be represented when moving the second reading of the ICAC Bill in the Legislative Council.²²⁶ The new committees were:

- Advisory Council on Corruption, its task would be to advise the Commissioner Against Corruption on such matters as he may refer to it, and to make recommendations generally about dealing with corruption in Hong Kong. It would also advise the Commissioner on the engagement of staff and their terms of reference;
- Target Committee, with roughly the same terms of reference as the one which assisted the Police Anti-Corruption Office in deciding priorities to be given to investigations. It would probably be under the chairmanship of the Commissioner with a representative of the Attorney General and two or three unofficial members appointed by the Governor;
- Corruption Prevention Committee, which would advise on the work of the Commission's Corruption Prevention Department; and
- Citizens Advisory Committee on Community Relations, which would be broadly representative of the community and would advise on the work of the Community Relations Department.

F. Advisory Committee on Corruption

A committee had been set up to advise the Governor and the Commissioner against Corruption on major policy aspect of the work of the ICAC.²²⁷ The Committee was chaired by Jack Cater, the Commissioner himself and the members were Sir Yuet-keung Kan, Dr. Rayson Huang, Mrs Joyce Symons, Patrick S.S. Yu, Michael Clinton and John Prendergast, the Deputy Commissioner Against Corruption. All appointments were for

²²⁶ FCO 40/558, f 7, New Council to be Set Up to Advise on Ways to Fight Graft, 30 January 1974.

²²⁷ FCO 40/559, f 117, Advisory Committee on Corruption Formed, 19 November 1974.

one year. The duty of the committee was to advise the Commissioner on any aspect of the problem of corruption in Hong Kong whether within or outside the Government service and also responsible for keeping the policies of the ICAC under review; for considering the annual estimates of expenditure of the ICAC, and for scrutinizing the ICAC's annual report before its submission to the Governor.

3.5 Recruitment for ICAC's Top Posts

The new anti-corruption agency needed to be staffed by officers with expertise in anti-corruption. Hong Kong simply did not have enough people with such expertise. So the new agency needed to recruit senior people from overseas, mainly the UK. These senior people were from the UK Police or Scotland Yard.

The British inputs to ICAC's staffing were not limited to supplying competent officers filling the senior posts of ICAC. Some senior British Government officials, notably the Secretary of State, were involved in participating in making individual hiring decisions. Others provided advices on staffing policy.

3.5.1 British inputs: from Douglas-Home

D. A. L. Wriqth, Colonial Secretary of Hong Kong, and Norman-Walker, Hong Kong Commissioner of London, sent a telegram²²⁸ to Hong Kong Government Office at London about the appointments of the new anti-corruption agency on 13 August 1973 and asked to arrange for contents of this telegram to be forwarded to MacLehose:

- Blair-Kerr had been informally sounded out by Roberts as to the possibility of him as first director running the new anti-corruption agency.
- Blair-Kerr expressed himself as interested in being the director of the new anti-corruption agency.

²²⁸ FCO 40/453, f 125, Colonial Secretary of Hong Kong to Norman-Walker, 13 August 1973.

- General opinion seemed to be that lawyer rather than police officer should be the director of the agency. Alternative to Blair-Kerr might be District Judge, perhaps Yang. Second in command might be an experienced police officer.
- They did not think that Prendergast was a suitable candidate since he was 61 and had been out of action for seven years.
- They might consider in making preliminary enquiries as to possibility of a secondment from the Metropolitan Police.

Guest, Private Secretary to Royle, FCO, wrote to Crowson about the talks between Royle and the Governor.²²⁹ The details were as follows:

- The Governor intended to set up an anti-corruption unit to investigate allegations of corruption in the police. He also intended to appoint Prendergast with Royle's support.
- The Governor intended to make an announcement that the unit had been set up (providing Prendergast agreed) around 16 October to coincide with the beginning of the short session of Parliament on that date.
- The Governor was totally opposed to an outside enquiry. Royle said that this idea should now be dropped.
- Sutcliffe, the Commissioner of Police, showed his honesty to the Governor and told him that there might be another twelve senior police officers who might have been involved in corrupt activities. It was unlikely that their names would be made public.

In his telegram to the Governor on 14 August 1973, Douglas-Home had following comments on the new anti-corruption unit:²³⁰

- He had already approached Prendergast for the issue of the appointing him to be the director of the new anti-corruption unit.
- He asked the Governor not to make any further moves vis-a-vis Blair-Kerr.
- The separation of a new anti-corruption unit from the Police and the introduction of someone from outside, would have sufficient immediate cosmetic effect to hold

²²⁹ FCO 40/453, f 126, Guest to Crowson, 10 August 1973.

²³⁰ FCO 40/453, f 129, Douglas-Home to Governor, 14 August 1973; FCO 40/453, f 130, Wright to Crowson, 14 August 1973.

opinion in Hong Kong and also the House of Commons but this would boomerang unless results are achieved quickly.

- He highly recommended Prendergast as the director of the new anti-corruption unit.
- The secret planning for the management of a new anti-corruption unit should proceed now and not await Blair-Kerr's report with a view to an announcement in October. Nevertheless, they still needed to wait for the report, since it would make Sutcliffe easier to accept the new anti-corruption unit.

The Governor informed Prendergast about the corruption problem in Hong Kong and asked for his interest in being the director of the new anti-corruption unit.²³¹

Douglas-Home sent a telegram to the Governor on 22 August 1973:²³²

- Both Macoun and Sir Y K Kan supported Prendergast to be the director of the new anti-corruption unit.
- Prendergast was interested in being the director of the new anti-corruption unit.
- Douglas-Home would interview Prendergast to assess whether he was qualified.
- Sutcliffe had objection about the appointment of Prendergast.

Douglas-Home sent another telegram to the Governor on 22 August 1973:²³³

- The Overseas Police Adviser did not agree with the Governor about Prendergast's competence.
- Douglas-Home would plan to obtain one or two officers from the Anti-Fraud Squad from Scotland Yard.
- He took Governor's point about the ineffectiveness of criminal proceedings against corruption.
- The recommendation about amendment of regulations that would enable them to get rid of police officers and civil servants who they knew to be corrupt without reason being given, i.e. at the Queen's pleasure.
- Such recommendation would enable them to weed out persons who they were satisfied were corrupt even though they could not prove it in law. The exercise

²³¹ FCO 40/453, f 135, Governor to Prendergast, 9 August 1973.

²³² FCO 40/453, f 144, Douglas-Home to Governor, 22 August 1973.

²³³ FCO 40/453, f 145, Douglas-Home to Governor, 22 August 1973.

would be one of identification rather than working up a case and therefore well suited to Prendergast's expertise.

3.5.2 Appointments of Cater, Prendergast and others

In the Legislative Council meeting of 17 October 1973, Jack Cater was appointed as the Commissioner. Cater's contract with the Telephone Company was released by Chairman, Dr. Lee, to allow him to undertake this service to Hong Kong. The Commissioner has an operations unit which took over the functions of the Anti-Corruption Branch of the police and a civil or preventive section. After taken careful advice from the Overseas Police Adviser to the Secretary of State and others on the position of operations unit, Prendergast was appointed as the Director of Operations, who was a policeman with experience of Hong Kong between 1960 and 1966 being Director of Special Branch. One or two more personnel from United Kingdom police forces, at different levels, with special experience of anti-corruption work would be appointed. The Commission staff would be selected by the Commissioner and his Director of Operations.

For the appointment of Prendergast, Norman-Walker was quite confident that a separate organisation would get co-operation from the Police, but he had doubt whether that co-operation would be continuing while Charles Sutcliffe, Commissioner of Hong Kong Police, was still in charge. Hence it would be better for Prendergast did not arrive until Sutcliffe left in January 1974 and not advisable going firm on the offer of employment yet.

Upon the approval from the Executive Council on setting up of a new Anti-Corruption Commission under a civilian Commissioner (name not yet decided), MacLehose telegraphed directly to Prendergast on his proposed offer of Director of Operations, which had also been agreed by the Executive Council.²³⁴ The operation unit would take over the function of the present Anti-Corruption Branch of the Police and the Director would be the No.2 in the new Commission.

²³⁴ FCO 40/454, f 201, Governor to Prendergast, 26 September 1973.

In MacLehose's telegram of 26 September 1973, he also suggested Prendergast to take part in a meeting in London with Brian Slevin, Deputy Commissioner of Hong Kong Police and Michael Macoun, Overseas Police Advisor to Secretary of State to interview Frank Williamson, a former Inspector of Constabulary at the Home Office who was being strongly recommended to assist in the Commission.

At the same time, MacLehose also telegraphed to Macoun about the appointment of Williamson who would report to Prendergast and asked for recommendations of a more junior officer familiar with fraud and corruption work.²³⁵

Prendergast accepted the appointment as the Director of Operations in the new Commission with report date on 1 December 1973 and commented he had most useful meeting at Rome airport with Slevin.²³⁶ MacLehose forward Prendergast's telegram to Slevin and Macoun, whom both were attending Interpol meeting in Vienna to enquire the outcome of Williamson's appointment²³⁷ and later supplemented another telegram to Slevin and Macoun that he received a letter from Sir Robert Mark, Commissioner Metropolitan Police Scotland Yard, who stated Williamson could be approached and had interest in the staff appointment in the new Commission.²³⁸ In total, MacLehose had sent out five telegrams on the same day regarding the staffing issue for the new Commission.

MacLehose had counted on the appointment of a specialist in anti-corruption to balance possible criticism of Prendergast as being too restricted a background. However, there was a setback on the appointment of Williamson who was found unsuitable after interviewed by Macoun and Prendergast. The substitute for Williamson was requested accordingly from the Governor.²³⁹

²³⁵ FCO 40/454, f 202, Governor to Macoun, 26 September 1973.

²³⁶ FCO 40/454, f 213, Prendergast to Governor, 1 October 1973.

²³⁷ FCO 40/454, f 211, Governor to Slevin and Macoun, 1 October 1973.

²³⁸ FCO 40/454, f 215, Governor to Slevin and Macoun, 1 October 1973.

²³⁹ FCO 40/455, f 265, Governor to Royle, 17 October 1973.

MacLehose informed Prendergast on the content of his speech at 17 October 1973 regarding his appointment as Director of Operations. Suggestions were put forward to Prendergast that he could not comment on any specific problems involved until he was on board if asked by the press and also he could count on the support of the police if questioned about the separation of anti-corruption work from the police.²⁴⁰

Trevor Bedford, Deputy Secretary for Security in the Colonial Secretariat, was appointed on 22 October 1973. With a background of a law degree and having joined Hong Kong Civil Service since 1960, he would head a special planning group set up to consider the organisation of the new Commission.²⁴¹

MacLehose suggested that Prendergast should see Anning and the Home Office during his stay in London, promising that any UK Policemen sent to Hong Kong would be properly used. A meeting was arranged for Royle of FCO to meet with Prendergast before the latter left for Hong Kong to take up his appointment.²⁴² Prendergast's own view was that there was no hurry about an appointment of seconded police officers from the UK since he was not yet sure what sort of a man was needed. However, FCO pointed out the political need for the Governor to be seen to take prompt action.

Prendergast's appointment had received very favourable publicity in the Hong Kong press. But an article in the *Guardian* of 6 November 1973 expressed surprise at his appointment in view of the fact that he was an experienced counter-intelligence and counter-subversion expert, not an expert in anti-corruption. The article concluded by quoting "critical observers of the Hong Kong scene" who believed that the new unit would achieve little since "Prendergast's force would largely be staffed in Hong Kong policemen seconded from normal duties, and would still be an arm of the Hong Kong administration, which has done little to eradicate corruption in the past".

The first meeting of the ICAC Operations Target Committee was held on 10 April 1974. Sitting on this advisory body were Hon. Joyce Symons, Sir Ronald Holmes, Dr Rayson

²⁴⁰ FCO 40/455, f 275, Governor to Prendergast, 17 October 1973.

²⁴¹ FCO 40/456, f 296, Special Assistant to Anti-Corruption Commissioner Appointed, 22 October 1973.

²⁴² FCO 40/456, f 320, Stuart to Youde, 7 November 1973.

Huang, the Commissioner of Police or his representative, a Principal Crown Counsel representing the Attorney General, Carter and Prendergast.²⁴³

In his letter to Stuart of FCO, Carter, Commissioner of ICAC, explained their philosophy of recruitment to counter the danger that the ICAC might be thought to be merely a police unit in a different guise.²⁴⁴ Firstly, Carter intended to retain only those policemen of proven integrity who voluntarily wish to remain with the Commission and to do so where possible on contract and not secondment terms. Secondly, to recruit (from outside as well as inside Government) people of the right caliber and to give priority in this to the Operations Department in order to reduce the police element there as soon as possible and to bring it up to strength. Thirdly, to keep to an acceptable minimum of expatriate element by giving preference to local candidates where possible.

Trevor Bedford accepted the post as the Director of Prevention Corruption on contract and Gerry Harknett was the Deputy Director of Operations who joined on 1 February 1974 assisting Prendergast, Director of Operations. Carter hoped to fill up another vacancy of similar deputy Director's level after Anning's visit by recruiting a Metropolitan police officer whilst other remaining key directorate posts by local recruitment.

Posts vacant included those for Director and an Assistant Director of the Community Relations Department, and an Assistant Director of the Corruption Prevention Department. These departments would be staffed entirely by civilians and hopefully largely from outside the Government Service. Several local officers from the Government Service at a slightly lower level were recruited.

The response to advertisements in the local press and within Government had been most encouraging as commented which received over 5,300 applications, of which 35 applications in respect of the two senior posts of Director and Assistance Director to head the Community Relations Department.

²⁴³ FCO 40/558, f 36, I. C. A. C. Operations Target Committee Gets Down to Work, 10 April 1974.

²⁴⁴ FCO 40/558, f 23, Carter to Stuart, 26 February 1974.

Carter planned to expand the Operations Department to approximately 500 men by recruitment of University graduates. The response from the members of the Police Force has been far from overwhelming in that out of 1,800 applications for posts in the Operations Department only 100 have come from police officers. The Policemen who applied would be interviewed and strictly vetted. They would be required to accept contracts with the Commission and only in the exceptional circumstances of the early days of the Commission; former policemen would be accepted on secondment.

3.5.3 British inputs: from Sir Robert Mark, Commissioner Metropolitan Police Scotland Yard

Douglas-Home had discussion with Mark on the staffing situation.²⁴⁵ Mark who noted with agreement that the Anti-Corruption Commission would be completely independent but expressed uncertainty of the condition and organisation for action existed so hesitated to send any of his best man to Hong Kong, however, he suggested the FCO to approach the Home Office to explain the situation and opened for profession advice, he would then prepare to suggest to the Home Office to send Anning, his top man on anti-corruption to Hong Kong to evaluate the problem and made recommendations for the secondment or appointment of suitable staff. Douglas-Home commented Mark's proposal would be a best chance of dispelling misunderstanding about the situation in Hong Kong and the Government determination to tackle the problem of corruption, at the same time might be the best way of getting the right staff. He also suggested Prendergast could meet Anning beforehand.

MacLehose welcomed the idea of Anning coming to Hong Kong but suggested the visit should be delayed until the early of the New Year as the new Commission was unlikely to be in operation before February 1974. He agreed that Prendergast should meet Anning before he came to Hong Kong, and Carter could meet Anning if he came to London on business occasions.²⁴⁶ Douglas-Home did not think it would be a good idea to delay the visit which might not help them to get the best man on time then it would

²⁴⁵ FCO 40/455, f 268, Douglas-Home to Governor, 18 October 1973.

²⁴⁶ FCO 40/455, f 278, Governor to Douglas-Home, 19 October 1973.

have to await Cater and/or Prendergast to convince the Police Authorities of England.²⁴⁷ MacLehose agreed it would be best to await Carter and/or Prendergast, and while Carter was occupied it would be Prendergast who would wish to have the opportunity to meet with Anning about the possible candidates, their role and Hong Kong Government's determination to use them to full advantage. He left it to Prendergast on the arrangement.²⁴⁸ MacLehose decision was transferred to Mark accordingly by FCO²⁴⁹ with Mark's acknowledgement that it would be helpful for all concerned if any necessary arrangements could be made through the Home Office.²⁵⁰

3.5.4 British inputs: from Sir Arthur Peterson, Permanent Under Secretary of State of the Home Office

Alan Scott, Secretary for the Civil Service of Hong Kong, has written to Sir Arthur Peterson, Permanent Under Secretary of State of the Home Office, regarding the search for a new Director of Criminal Investigation in the Hong Kong Police Force. The request was initiated by Brian Slevin, the Commissioner of the Royal Hong Kong Police Force, to Sir Robert Mark, the Commissioner of Metropolitan Police, who advised formal request should be put through the Home Office.²⁵¹

The gist of Scott's letter was Mark had suggested Detective Chief Superintendent Howell for the post but MacLehose felt that the job needed somebody of Commander Rank. Hence Scott wrote to Peterson whether other police members in the UK might be approached.²⁵² FCO was not in the loop regarding the appointment of Chief Superintendent Howell and reported to the Parliamentary Office that it could have been conveyed more tactfully, as the last nomination from Mark for the Anti-Corruption Commission was also turned down by Slevin and Prendergast after an interview in the

²⁴⁷ FCO 40/455, f 277, Douglas-Home to Governor, 19 October 1973.

²⁴⁸ FCO 40/455, f 281, Governor to Prendergast, 23 October 1973.

²⁴⁹ FCO 40/455, f 282, Stuart to Mark, 23 October 1973.

²⁵⁰ FCO 40/456, f 297, Mark to Stuart, 25 October 1973.

²⁵¹ FCO40/558, f 48/E/1, Scott to Peterson, 7 May 1974.

²⁵² FCO40/558, f 52, Stuart to Governor, 28 May 1974.

UK.²⁵³ At the same time, FCO had received from Prendergast a request for 17 experienced police officers to work with ICAC. Therefore Stuart of FCO wrote to MacLehose to explain his concern that Mark had been rather taken aback by the rejection by Slevin, Prendergast and Macoun of his original suggestion of a retired police officer to work with the Commission. The rejection of Howell, coupled with the request for such a large number of other officers for Hong Kong, might disincline him to be helpful in the future. FCO passed Mark's view to MacLehose that Howell was the best candidate for the post and Mark would be prepared to promote him to the rank of Commander before he left the Metropolitan Police on secondment to Hong Kong as Mark regarded him as being certain to attain that rank in the event of his continued service in the Metropolitan Police. FCO finally suggested MacLehose to have a word with Peterson and even with Mark on the latter's forthcoming visit to UK.

3.6 Concluding Remarks

Starting from Governor Northcote's efforts to investigate alleged corruption in the late 1930s to early 1940s, Hong Kong Government had spent a lot of effort on dealing with the corruption problem. The measures taken included passing laws and regulations to deal with corruption charges, setting up committees to make recommendations, and improving the operations of the Anti-Corruption Branch. These were attempts to contain the corruption problem as a domestic one, making sure that the discussions of the problem would be restricted to Hong Kong and not spill over into the British soil. Of course, the FCO discussed the corruption problem with Hong Kong Government, but the discussions stayed between the FCO and Hong Kong Government.

However, since the late 1960s, Members of Parliament and the British press had been paying more attention to corruption in Hong Kong. When the Godber incident occurred, the British voice was loud and asked for appointing an external commission from the UK to investigate corruption in Hong Kong. The events became a textbook illustration of what Chapter 2 has explained: the external checks by the British opposition party and

²⁵³ FCO40/558, f 48, Stuart to Watson, 17 May 1974.

the press forced the British Government to deliver performance, and the British Government was forced to press Hong Kong Government to deliver performance.

In response, Hong Kong Government decided to establish ICAC. The process of establishing ICAC is another textbook illustration of what Chapter 2 has explained: with British inputs of different kinds (Scotland Yard Police's advice on ICAC structure, supply of qualified and competent overseas officers taking the key ICAC posts, advice from Secretary of State and FCO on ICAC structure and staffing, etc.), Hong Kong finally established ICAC in 1974 which is independent of the Police, thus turned a new page on fighting corruption in Hong Kong.

Performance matters and is an instrument to earn public trust and to acquire credibility for the newly-established institutions. If the ICAC is going to remove corruption successfully, the trust of the general public is a must. The sound strategy of winning over the public trust on the ICAC is not the repeated pledged determination of wiping out corruption in Hong Kong, but the result of combating corruption with flying colours. This performance test is very critical in building up the credibility of the ICAC.

4. Case Study - Preparations for the Sino-British Negotiations over Hong Kong

Unlike corruption, “the future of Hong Kong” was a diplomatic issue to the British, not an issue domestic to Hong Kong. Therefore, we would expect that when dealing with the Hong Kong issue, only the British Government would be the major player, and the Hong Kong Government should be little involved, if at all.

The period under study is from the mid-1970s to early 1982 when the 1997 deadline was approaching and the Hong Kong issue became more urgent. In the late 1970s, the following persons were principally involved in devising the British tactics of the Hong Kong issue:

- Murray MacLehose, the Governor of Hong Kong;
- Robin J. T. McLaren of Hong Kong and General Department, FCO;
- Percy Cradock, British Ambassador in Beijing; and
- Anthony R. Rushford, Deputy Legal Advisers at Hong Kong and General Department, FCO.

Here, the Hong Kong Government was heavily involved in “the future of Hong Kong” issue. The chief reason was the appointment of MacLehose, an official with extensive diplomatic experience, as Hong Kong Governor in 1971. The diplomatic credentials of MacLehose were impressive.²⁵⁴ He joined the Foreign Service in 1947, and served in Hankow until 1950. In 1959, he was seconded to Hong Kong as Political Adviser to the Governor. On his return to the Foreign Office in 1963 he became Head of Far Eastern Department. From 1965-1967, he was Principal Private Secretary to the Secretary of State (first Michael Stewart and later George Brown). In 1967, he was appointed HM Ambassador in Saigon and in 1969, HM Ambassador in Copenhagen. We may conjecture the reason for the British appointment of such a highly qualified diplomat as Hong Kong Governor. Britain had a tradition of trusting and respecting Governors of dependent territories in handling domestic affairs because Governors were the “persons on the spot” and they knew things that Britain did not. But to elicit useful inputs to the

²⁵⁴ PREM 19/789, f 1, Wall to Cartledge, 11 June 1979.

British policy on Hong Kong, which was diplomatic in nature (with some domestic dimensions, of course), the “person on the spot” needed to have diplomatic exposure and understanding. Therefore, the British appointment of MacLehose as Hong Kong Governor must have an objective in mind: to let MacLehose understand various aspects in Hong Kong (to become “person on the spot”) and, with such understandings and his previous diplomatic experience, help the British in solving “the future of Hong Kong” issue.

In addition to the principal officials mentioned above, in some occasions, a few other persons also contributed to devising the British tactics, e.g. David C. Wilson (Political Adviser at Hong Kong Government). Throughout the time, the Secretary of State (David Owen before May 1979 and Lord Carrington after May 1979) was kept informed about the development and occasionally participated in devising some specific British tactics.

In other occasions, British needed inputs from other sources. One was the research inputs, which were to find out the historical and legal basis for the British rule over Hong Kong, and to provide relevant experience of other British colonies/dependent territories that might shed light on how to handle “the future of Hong Kong” issue. Another was the legal inputs. Although the principal players were all familiar with the law, they were not legal experts themselves. Since in the late 1970s and early 1980s (which is the focus of the present study), as explained later, the British basically viewed “the future of Hong Kong” as a legal issue, legal inputs were particularly important. Both Hong Kong and British legal inputs could be located.

The British made use of all the available sources. An example was the report of Eric Ho, Director to Home Affairs, in 1975 of Stanley Ho’s lunch party.²⁵⁵ Since by the late 1970s, China was still a relatively closed country and it was not easy for people outside China to speculate what the Chinese leaders thought. So, those ethnic Chinese in Hong Kong with connections with the Communists would be a source of information to the British. In the lunch party, Ho was said to mention that Li Chu-sheng, a NCNA representative, had said that even though China did not recognize the treaties between

²⁵⁵ FCO 40/956, f 76, Donald to Martin, 24 September, 1975.

Britain and China, China would have regard to the date 1997. When arrived, it was not certain that China would wish to regain control of Hong Kong immediately, and much would depend upon the precise situation at that time. But if China did decide to recover Hong Kong, it would be by negotiation with the British Government. Another example was the Governor's conversation with Y. K. Pao about the latter's meeting with Gu Mu, Deputy Premier of China, about the possibility of Britain's making substantial export credits and untied loan to China.²⁵⁶ Still another example was what Roger Lobo, a LegCo member, told Roberts in confidence about what his brother, P. H. Lobo (a leading member of the Conserve Group Adim and a reserve member of the Macau Consultative Council) told him about the conditions for establishing diplomatic relations between Macau and China raised by the Chinese, which will be detailed below.

"The future of Hong Kong" was a diplomatic issue. How the British proceeded to handle it was held in strict confidence. Times and again, the importance of keeping how the issue had been proceeding confidential was emphasized.²⁵⁷ As a result, on this issue, the British Parliament and the press in Britain and Hong Kong could not serve as an external monitor of the British Government, as in the case of the corruption problem of Hong Kong. Members of Parliament still raised questions on Hong Kong, but invariably, the British Government replied along the official line and offered answers that were already public knowledge.²⁵⁸ The British and Hong Kong Governments did pay attention to the press, but only as locating an indicator showing the public's attitude towards how well the Hong Kong issue had been handled and as a source of information about the Chinese Government's position.²⁵⁹

²⁵⁶ PREM 19/789, f 17, MacLehose to FCO, 12 January 1982.

²⁵⁷ For example, FCO 40/1060, f 202, McLaren to Cortazzi, 28 September 1979; FCO 40/1061, f 242, Carrington to MacLehose, 25 October 1979; FCO 40/1061, f 244, Carrington to MacLehose, 25 October 1979; FCO 40/1061, f 274, Quantrill to Murray, 14 November 1979; FCO 40/1061, f 283A, Wilson to Clift, 13 December 1979.

²⁵⁸ For example, FCO 40/1061, f 282, Written Answers to Parliamentary Questions, 4 December 1979; FCO 40/1164, f 159, Written Answers to Parliamentary Questions, 2 December 1980.

²⁵⁹ For example, FCO 40/1059, f 100, MacLehose to Carrington, 17 May 1979; FCO 40/1059, f 117, Orr to McLaren, 14 June 1979; FCO 40/1164, f 149, MacLehose to FCO, 26 November 1980.

4.1 The Hong Kong Issue

4.1.1 Sovereignty over Hong Kong: the British and Chinese positions

The British position was that the three treaties regarding Hong Kong were valid:²⁶⁰

- Treaty of Nanking (1842), which provided the basis for the British perpetual claim to Hong Kong Island;
- Convention of Peking (1860), which provided the basis for the British perpetual claim to the Kowloon Peninsula and Stonecutters Island;
- The 1898 Convention for the Extension of Hong Kong (1898), which specified that the New Territories leased to Great Britain for 99 years (1 July 1898 to 30 June 1997).

To the British, the sovereignty over the ceded area of Hong Kong Island and Kowloon Peninsula was clear, but the question of sovereignty over the leased area of the New Territories was not free from doubt.²⁶¹ The position was that China retained ultimate sovereignty over the leased territories, but during the term of the lease, Britain was entitled to exercise full sovereignty, subject to the qualification regarding Kowloon Walled City.

The official Chinese position on the Hong Kong issue was clearly spelt out in a letter by Huang Hua, Permanent Representative of China to the United Nations, to the Chairman of the UN Special Committee.²⁶² The letter said:

As is known to all, the questions of Hong Kong and Macau belong to the category of questions resulting from the series of unequal treaties left over by history, treaties which the imperialists imposed on China. Hong Kong and Macau are part of Chinese territory occupied by the British and Portuguese authorities. The settlement of the questions of Hong Kong and Macau is entirely within China's sovereign right and does not at all fall under the ordinary category of "colonial Territories". Consequently, they should not be

²⁶⁰ FCO 40/956, f 75, Pare to Thompson, 30 January 1978.

²⁶¹ FCO 40/956, f 75, Hong Kong and the United Nations, 23 June 1964.

²⁶² FCO 40/956, f 76, Annex I, Letter dated 8 March 1972 from the Permanent Representative to the United Nations Addressed to the Chairman of the Special Committee, 8 March 1972.

included in the list of colonial Territories covered by the Declaration on the Granting of Independence to Colonies and Peoples. With regard to the questions of Hong Kong and Macau, the Chinese Government has consistently held that they should be settled in an appropriate way when conditions are ripe. The United Nations has no right to discuss these questions. For the above reasons, the Chinese delegation is opposed to including Hong Kong and Macau in the list of colonial Territories covered by the Declaration and requests that the erroneous wording that Hong Kong and Macau fall under the category of so-called “colonial Territories” be immediately removed from the documents of the Special Committee and all other United Nations documents.

The British reaction to the Chinese claim can be found in a U.K. 1972 official statement on Hong Kong’s status at UN General Assembly:²⁶³

My Government have asked me to inform Your Excellency that . . . they have decided that no useful practical purpose would be served by continuing to transmit information on Hong Kong . . . My Government have also asked me to state that the action of the General Assembly in no way affects the legal status of Hong Kong. The views of my Government about this status are well known. They are unable to accept any differing views which have been expressed or may hereafter be expressed by other Governments.

4.1.2 Chinese policy towards Hong Kong in the British eyes

The clearest expressions of China’s policy on Hong Kong were made during Foreign Secretary Sir Alec Douglas Home’s visit to China in 1972.²⁶⁴ During a meeting with the Chinese Foreign Minister, Ji Pengfei, Sir Alec was told that the Chinese were “not in a hurry to recover Hong Kong” and “the settlement of the Hong Kong problem was a matter for the future”. The Chinese Premier, Zhou Enlai in another meeting said that the Chinese view to international issues of territorial matters was that they should be settled through negotiation and consultation. Zhou said Hong Kong was “a matter . . . left over by history”, and that “the issue of Hong Kong was one which would be settled by negotiation. The Chinese Government would take no ‘surprise action’”. The

²⁶³ FCO 40/956, f 75, Attachment, Crowe to the Secretary-General of the United Nations, 14 December 1972.

²⁶⁴ FCO 40/956, f 76, Attachment, Hoare to Martin, 13 October 1975.

Chinese would not take over Hong Kong by force and there was no need to discuss the issue of Hong Kong at that time.

Hong Kong had been useful to China in a variety of ways:²⁶⁵

- As an important source of foreign exchanges (roughly one-third of China's foreign exchange earning derived from or through Hong Kong in the late 1970s);
- As an entrepot centre for Chinese foreign trade;
- As a source of financial, technical and commercial expertise; and
- As an international point of entry and exit.

These functions developed during the years of China's comparative isolation. Their importance might diminish in the longer term, but in the short and medium term, Hong Kong would continue to be important in Chinese economic planning. The new developments of direct Chinese investment in Hong Kong, the encouragement of joint ventures between Chinese enterprises and Hong Kong firms, the improvement of transport links between Hong Kong and Guangdong, the new agreement on water supplies, and the agreement for China Light and Power to supply electricity to Guangdong were evidence for the Chinese determination to extract maximum economic, financial and commercial benefits from Hong Kong over a considerable period.

The British view that the Chinese wanted the status quo to continue at least until 1997 was confirmed by the pragmatic turn of the Chinese after Mao.²⁶⁶ It was further confirmed by the Chinese repeated reassurances given to the business circle in Hong Kong. Early examples included the Chinese reassurances given to Jardines and Stanley Ho by NCNA representatives in 1975.²⁶⁷

However, the eventual China aim was to end the British connection and reintegrate Hong Kong into China.²⁶⁸ The official Chinese statements, conveniently devoid of a timescale, offered no clue as to when or how this might happen. In the British eyes, it

²⁶⁵ FCO 40/1059, f 88, Hong Kong in the 1980s, April 1979.

²⁶⁶ FCO 40/956, f 77, Cradock to Bowring, Hamilton and Moduk, 31 July 1978; FCO 40/956, f 27, China after the Fall: A Firm Farewell to Mao's Ede, 13 January 1978.

²⁶⁷ FCO 40/956, f 76, Donald to Martin, 24 September 1975.

²⁶⁸ FCO 40/1059, f 88, Hong Kong in the 1980s, April 1979.

was unlikely that the Chinese would be ready to look much beyond 1997, or be willing to commit themselves to any particular timescale for an eventual settlement. They wished to keep their options open.

4.1.3 The British approach to the Hong Kong issue

To the British, the Chinese position on and policy towards Hong Kong were:²⁶⁹

- Hong Kong is part of China and China has sovereignty over Hong Kong;
- Hong Kong had been useful to China and China wanted to continue the status quo at least until 1997; and
- China did not look much beyond 1997 and just wanted to keep their options open,

Accordingly, the British approach to the Hong Kong issue was:

- To obtain Chinese approval for the British tactic on leases without giving anything in return. Their approval would have to include agreement to the British making some public reference to their having been informed of what the British were doing and having raised no objection;
- To erode the significance of 1997 but without substituting a specific alternative date; and
- To obtain Chinese assurances (public if possible) about their acceptance of the status quo for a long time to come. That would have to be in general terms but would look for formulae which made the commitment as long term as possible.

The objective was to do something, with the prior agreement of Chinese (tacit or explicit), that would remove the significance of the terminal date of the New Territories lease.²⁷⁰ The Chinese perceived a mutual interest in this, since their plans for the 1980s, or probably 1980s and 1990s, would assume that the foreign exchange and other benefits conferred on them by the then status of HK would continue.

²⁶⁹ FCO 40/957, f 132, Annex C, Possible Chinese demands on Hong Kong, Undated.

²⁷⁰ FCO 40/957, f 132, MacLehose to McLaren, 21 December 1978.

4.2 The Leases Problem

4.2.1 Timing

Before 1978, the common understanding was that the British should raise the Hong Kong issue with Chinese in the mid-1980s. It was most evident in a detailed report prepared by the Governor in 1976.²⁷¹ According to the Governor, the Ambassador in Beijing, Edward Youde, had agreed with the report's contents. The report pointed out that Hong Kong was useful to China and there was no reason why things should not continue like this for about 10 years, but it would be pointless to attempt to discuss at that time (i.e. in 1976) with the Chinese leaders what should be done in the mid-1980s, because they were not ready to do. The Governor tried to dismiss the arguments for talking to the Chinese soon than the mid-1980s, e.g. since the then current relations were so good, and the status quo so valuable to China, then would be a good time to negotiate a long-term arrangement, and maintained that the mid-1980s would be the right time for the British to talk to the Chinese.

Hong Kong and General Department (HKGD) also held the same view. The arguments for and against opening negotiations were examined.²⁷² The arguments for talking to the Chinese at that time included:

- In 1976 following Mao's death and Hua Guofeng's succession, the political situation in China had become more settled, and it could be argued that no future administration in Beijing was likely to be more inclined than the then current one to take a line favourable to Hong Kong's continued separate existence after 1997.
- As 1997 approached, the then current Beijing Government attempted at reviving the Chinese economy would be successful to the point of significantly decreasing Hong Kong's value to China and, in consequence, the latter's need for the Colony. If the Chinese could be bound then, at a time when the foreign exchange that Hong Kong provided was indispensable to their economy, to an agreement on Hong Kong's future after 1997, the terms gained might be better than they were likely to be if the British waited.

²⁷¹ FCO 40/713, f 4, Despatch on the Future of Hong Kong, 13 February 1976.

²⁷² FCO 40/764, f 25, David to Duffy and Milton, 17 May 1977.

- The settlement at that time of the question of Hong Kong's future would take much of the urgency out of profit-making in Hong Kong and permit the Hong Kong Government to raise taxes and spend more on improving the lot of Hong Kong residents. It would also render more practical those very few investment projects then being considered (the Western section of the MTR was one) the capital investment in which could not easily be amortised within the unexpired portion of the lease.

The arguments for doing nothing at that time included:

- the Chinese had indicated no desire whatsoever to negotiate Hong Kong's longer term future. In the Chinese view, Hong Kong was a problem to be shelved until conditions were ripe. The British could hardly negotiate with a government that was unwilling to listen and the Beijing Government was unlikely to wish to respond to any overture for some years to come.
- In the interim, no matter whether the attempt to negotiate was successful, if it became publicly known that the United Kingdom had wished to negotiate, this fact could easily have an adverse effect on Hong Kong's economy and so precipitate the very event that any negotiations would be designed to avoid.

After deliberating both sides of the arguments, the conclusion was not to open negotiations with the Chinese at that time.

In another letter from the HKGD in 1978, it was said that "by 1983 it would still be too early for the expiry of the lease to be dominating the thoughts of potential investors. That stage would only be reached in the private sector, which as far as confidence was concerned was the one that mattered, when the end of the pay-back period for investment drew close to 1997".²⁷³

In a 1977 letter from the Research Department to the Far Eastern Department and HKGD, the point that talking should start in the mid-1980s was restated:²⁷⁴

On the hypothesis that the Chinese would insist on the formal termination of the Lease at the due date in 1997, we thought it reasonable to assume that it would be in the Chinese interest that Hong Kong should still be a going

²⁷³ FCO 40/956, f 1, Thompson to Quanttrill and Stewart, 4 January 1978.

²⁷⁴ FCO 40/764, f 48, Hainworth to Samuel and Stewart, 11 November 1977.

concern when they took over. In other words, it would not be in the interest of China for investment in Hong Kong to peter out in the middle of the next decade, which was about the length of time that investors would require to ensure that they got their money back. From this we went on to deduce that some time in the middle of the next decade, say between 1985 and 1987, an understanding would have to be reached between the CPG and ourselves as to what arrangements would be made for the final decade of the Lease, to prevent a total collapse of confidence.

The British did not want to raise the Hong Kong issue with the Chinese at that time, and they even tried to avoid the term “Crown Colony” in official usage. In a 1977 letter, it was queried why there was reference to the fact that Hong Kong was not a “Crown Colony”.²⁷⁵ The reply was that the meaning of the term “Crown Colony” might be ambiguous and the term was no longer in use to describe any the British colonies, including Hong Kong.²⁷⁶ It was especially pointed out that the British generally tried to avoid using the term “Colony” (and, still more, “Crown Colony”) in relation to Hong Kong, in deference to China’s views on the status of the territory. The British were concerned that the Chinese might think, quite wrongly, that this implied some change in the status of Hong Kong. The conclusion was that it would seem best to continue to avoid using the term “Colony” when possible.

It seemed that things began to change in the mid-1978. In a letter from R. J. T. McLaren of the HKGD to D. C. Wilson, Political Adviser, when discussing how to revise a paper, it was mentioned that they “do need to look again, post Mao, at the various possibilities for reaching an understanding with China over the future of Hong Kong, and the time has probably come to give further thought to the nature and timing of an eventual approach to the Chinese”.²⁷⁷

In response, Wilson wrote that the Governor had decided that they should add some preliminary thoughts on the question of how to deal with legal aspects of continuing land leases in the New Territories beyond 1997 and how to approach the Chinese of the subject.²⁷⁸ In a letter from Denys Roberts, Chief Secretary (who signed the letter for the

²⁷⁵ FCO 40/764, f 31, David to Rushford, 22 June 1977.

²⁷⁶ FCO 40/764, f 32, Rushford to David, 23 June 1977.

²⁷⁷ FCO 40/956, f 34, McLaren to Wilson, 20 June 1978.

²⁷⁸ FCO 40/956, f 63, Wilson to McLaren, 6 July 1978.

Governor), to McLaren, it was said that the Governor was less explicit about the timing.²⁷⁹ The letter said that “it is still too early to present it with the problem of the Lease. . . . Nevertheless, sooner or later the problem must be tackled, certainly by 1985, and preferably considerably sooner”.

To the Governor, the lease issue was the single most important and difficult issue that demanded concentration from the concerned parties, and once this issue had been resolved, with Chinese acquiescence, other aspects of future development in Hong Kong would be relatively easy to consider.²⁸⁰ He made his proposal in the letter which Denys Roberts signed for him mentioned in the last paragraph. He was anxious to make progress, and would like others to study the legal and political aspects of the proposal and to be able to reach a tentative view as to whether the proposal offers the best prospect of success, and, if so, what further work should be work on it.²⁸¹

Anthony R. Rushford, Deputy Legal Adviser, and the HKGD responded by really studying the various aspects of the Governor’s proposal.²⁸²

Even when the Secretary of State’s still held the view that the British should be in no hurry to approach the Chinese about the future of Hong Kong, and that the British should give the then current Chinese administration time to settle down first,²⁸³ the Governor and HKGD started to do the preparatory work for solving the lease problem, occasionally seeking help from other people and offices.

By the end of 1978, the Governor wrote a letter to McLaren, and the letter represented the joint position of the Governor and Percy Cradock, the British Ambassador to Beijing.²⁸⁴ On the timing issue, the relevant factors to be considered included:

- The successor regime to Mao/Zhou was firmly in the saddle.

²⁷⁹ FCO 40/956, f 64, Roberts to McLaren, 6 July 1978.

²⁸⁰ FCO 40/956, f 70A, Murray to Quantrell, 21 July 1978.

²⁸¹ FCO 40/956, f 81, MacLehose to Cortazzi, 20 July 1978.

²⁸² FCO 40/956, f 79, Thompson to Rushford, 24 July 1978.

²⁸³ FCO 40/956, f 87, Walden to Roberts, 2 August 1978.

²⁸⁴ FCO 40/957, f 132, Governor to McLaren, 21 December 1978.

- The situation over the leases could be seen by the Chinese to be an actual and urgent one. They would understand that the British would not wish to wait until things began to slide.
- The Chinese Government saw Hong Kong as playing an important part in China's modernization.
- Dominant role of Liao Chengzhi in the direction of Hong Kong and Macau affairs; Liao understood Hong Kong. However, Liao's health was not good.
- The speed of development and change in China was bewildering, and had elements which were disconcerting as well as encouraging for Hong Kong.

The last three factors suggested that the time for action should be earlier, and the Governor thought that a wait of about a year would be the maximum.

4.2.2 Nature of the problem

In a 1979 letter, McLaren explained the substance of lease problem clearly.²⁸⁵ The Chinese official position was that Hong Kong is Chinese territory which must one day return to China, but that the problem would be solved by negotiation "when the time is ripe". It was highly improbable that any Chinese regime would be in a hurry to reincorporate Hong Kong. But it was equally improbable that they would agree to a formal extension of the New Territories lease for a specific number of years, or to any other arrangement which affectively tied their hands, even if the British were to renounce sovereignty. The problem was that all the land leases granted in the New Territories had been written to expire three days before 1 July 1997. As time went on the shortening span of existing leases, and the inability of the Hong Kong Government to grant new leases either with a terminal date after 1997 or without a specific terminal date at all, would become an increasing point of concern and a deterrent to new investment. Therefore, some form of arrangement needed to be installed so that leases would not automatically expire in July 1997.

²⁸⁵ FCO 40/1058, f 8, McLaren to Murray, 26 January 1979.

Such a “solution” to the lease problem should satisfy some conditions:²⁸⁶

- It needed to obliterate the legal and administrative significance of 1997 in a way which was not open to challenge in the Courts of Hong Kong.
- It needed to be acceptable to the Chinese, which meant that it would have to be compatible with their position on the treaties, and their view that the problem of Hong Kong was one to be settled “in an appropriate way when the time is ripe”.
- It needed to be highly desirable that the solution should be one which required no action on the part of the Chinese.

In Cradock’s view, the lease problem was the ideal issue “to put to the Chinese together with a proposed solution”.²⁸⁷

Here, we can see that the British characterized the Hong Kong issue as a legal one.

4.2.3 Studies of historical documents and statements and experience of other colonies

To the British Government, negotiating with China over Hong Kong’s was a new problem. They needed to know the historical and legal basis for their rule over Hong Kong. They also needed to know how the Chinese Government viewed the Hong Kong issue and what public statements the Chinese Government had made. Similarly, they needed to know what public statements the British Government had made thus far. In addition, they were also interested in the locating the relevant experience of other British colonies/dependent territories in which the extension of the land lease beyond the British rule was involved.

The Research Department under FCO had done a great job in providing the British Government the above information. The only exception might be that there was only very limited relevant experience of other British colonies/dependent territories, because the Hong Kong issue was a completely new one to the British.

²⁸⁶ FCO 40/957, f 97, McLaren to MacLehose, 8 September, 1978.

²⁸⁷ FCO 40/957, f 93, Cradock to Wilson, 8 August 1978.

A. Studies of historical documents and statements

To deal with the lease problem, the British Government needed a definitive position on its sovereignty over Hong Kong. The treaties of course provided basis for the British Government's claim of its sovereignty over Hong Kong, and a number of official communications and public statements also contained an implicit assertion of British sovereignty. Through a series of studies, the Research Department and other offices gave a clear picture of the historical documents and statements that might provide basis for British sovereignty over Hong Kong:²⁸⁸

- The three treaties governing Hong Kong (Treaty of Nanking (1842), Convention of Peking (1860) and Convention for the extension of Hong Kong (1898));
- A 1964 paper "Hong Kong and the United Nations" from Foreign Office to Her Majesty's Representatives;
- Britain's 1972 official statement on Hong Kong's status at the UN General Assembly;
- British official statements on British sovereignty over Hong Kong over the years; and
- Britain's official responses to China's rejection of the "unequal treaties" over the years.

The same set of studies and some additional ones also gave a clear picture of the Chinese positions on the issue of sovereignty over Hong Kong:²⁸⁹

- China's 1972 official UN statement on the status of Hong Kong; and
- Chinese official statements over the status of Hong Kong over the years (before and after 1949).

²⁸⁸ FCO 40/956, f 9, Upton to Thompson, Quantrill and Stewart, 31 January 1978; FCO 40/956, f 15, Peres to Thompson, 30 January 1978; FCO 40/956, f 75, Hong Kong and the United Nations, 23 June 1964.

²⁸⁹ The additional studies include: FCO 40/1058, f 55, Webb to McLaren, 30 March 1979; FCO 40/1058, f 55, Chinese Statements on the Status of Hong Kong, undated; FCO 40/1058, f 55, Draft memorial, Chinese Policy on Specific Issues Related to Hong Kong, undated.

B. Studies of experience of other colonies

J. Thompson of HKGD asked the Research Department on 17 July 1978 about possible precedents or parallel cases in other territories for the extension of under leases within the New Territories beyond 1 July 1997, and the answer was that no exact precedents or parallel cases could be located.²⁹⁰ It had been suggested that if the leasing of bases applied in the New Territories, then there might be Caribbean parallels, e.g. Turks and Caicos Islands.²⁹¹ It was also suggested that a 1968 Research Department Memorandum on three cessions of British territory of Heligoland in 1890, Gambia and Los Islands in 1904 and Jubaland in 1924 might provide some parallels.²⁹²

In December 1980, Wilson asked P. Morrice of HKGD about the relevance of a cession of sovereignty in the Falklands bargained against a long lease back arrangement with the Argentine Government to the situation in Hong Kong, especially on the legal implications of a cession of sovereignty.²⁹³ In his reply, Morrice attached the papers on the leaseback option for the Falkland Islands, but pointed out that the full legal implications had only been touched lightly, and that there was little prospect of concluding an arrangement with the Argentines on those terms because the Islanders themselves had a right of veto.²⁹⁴

4.2.4 Options available

In June 1978, the Governor outlined the legal measures to extend jurisdiction in the New Territories after 1997, in view of the fact that the rights of the Crown in the New Territories (a) to exercise jurisdiction generally; and (b) in particular, to grant land leases would expire with the 99-year lease on 1 July 1997.²⁹⁵ Assuming tacit

²⁹⁰ FCO 40/956, f 65A, O'Brien to Thompson, undated.

²⁹¹ FCO 40/ 956, f 65A, US/UK Talks on Latin America and the Caribbean, 18 May 1978.

²⁹² FCO 40/956, f 65A, B. The Saveguards Provided for the Inhabitants in Previous cases and their Sufficiency, undated.

²⁹³ FCO 40/1164, f 159D, Wilson to Morrice, 16 December 1980.

²⁹⁴ FCO 40/1164, f 164, Morrice to Wilson, 22 December 1980.

²⁹⁵ FCO 40/956, f 64, Roberts to McLaren, 6 July 1978; FCO 40/956, f 64, Legal Measures Required to Extend Jurisdiction in the New Territories after 1997, undated.

concurrence by the Chinese Government, the question of the exercise of general jurisdiction after that date needed not to arise until 1997. But the question of the right to issue leases extending beyond 1997 was likely to become an issue quite soon. Confidence would start to fall due to erosion of land values and reluctance to invest. Things could be managed within the requirements of British law, assuming:

- that the Chinese Government would be unwilling to grant an explicit extension of the Lease, or to take any overt action to achieve this in practice, but
- would wish to find a way of maintaining for itself the benefits of continued British administration and prosperity in Hong Kong for the time being, and would realize that to achieve this, some action by HMG over the leases was necessary; and
- would signify its approval through silence if HMG acted to produce the necessary results, provided this did not prejudice China's basic position over Hong Kong.

The options available to the British were:

- the leases would have to be extended for a specific period (without the Chinese Government extending the Lease of the New Territories), or
- powers would have to be taken to exercise jurisdiction and to grant leases in the New Territories for an indeterminate period instead of, as at that time, until 1 July, 1997.

To implement the options, the British needed to legislate something like Order in Council.

Discussions lengthened the list of options:²⁹⁶

- The conversion of current leases to leases for a fixed term (e.g. 75 or 99 years); and the grant of new leases for the balance of that term;
- Fixed term leases incorporating a clause which would give the Crown the right to determine on 28 June 1997 (or some other suitable date) and each subsequent 28 June "if the Crown shall cease to occupy the leased territories".
- Fixed term leases with the rider "if the Crown shall so long occupy the territories".
- Leases without fixed term "for so long as the Crown may occupy the leased territories".

²⁹⁶ FCO 40/957, f 97, McLaren to MacLehose, 8 September 1978.

- Leases (as at present) until 28 June 1997, “thereafter for as long as the Crown may occupy the leased territories”.

Through lengthy discussions of the options on the list (see below), one option was adopted: to issue future leases in the New Territories without a fixed term, valid “so long as Her Majesty may administer the territories”, and to convert existing leases into indeterminate leases of the same kind, with a need for legislation in Hong Kong, and a covering Order in Council.²⁹⁷

4.2.5 Discussions of the options

The options were intensely debated among the principal players involved (including the Governor, McLaren, Rushford, Cradock and the Secretary of State), with key inputs from legal officials, both in Hong Kong and in Britain.

When the Governor outlined his list of options (fixed-time leases and indetermined leases) to solve the lease problem, he obviously favoured the latter.²⁹⁸ For the option to work, the Chinese Government needed to agree in advance with the British. Dealing with leases in this way had the attraction for the Chinese Government of requiring no public action or agreement on their part, or any change of position on the validity of the treaties. The Chinese Government’s acceptance would simply be implied by the absence of public objection. The Governor believed that such action by the British over leases, blessed by the silence of the Chinese Government, would be sufficient to maintain confidence and investment in Hong Kong and obliterate the legal and administrative significance of 1997, and would cover the British against any charge of acting *ultra vires* in land matters. However, the Governor also pointed out the disadvantages of this approach: legalities and legislative action necessary were complex and would be difficult to explain to the Chinese. In addition, some mention of the possibility of exercising jurisdiction beyond 1997 would be necessary in the Order in Council, and

²⁹⁷ FCO 40/1058, Hong Kong: New Territories Leases, 22 March 1979.

²⁹⁸ FCO 40/956, f 64, Legal Measures Required to Extend Jurisdiction in the New Territories after 1997, Undated.

that might be something that might raise Chinese suspicion. The Governor asked the Hong Kong Solicitor General how the options could be managed.

The reply of G. C. Thornton, Solicitor General in Hong Kong, was as follows:²⁹⁹

- At common law, a lease must have a definite limit and a lease for an indeterminate term is not possible.
- Assuming nothing had been done, leases beyond 1997 in the New Territories would not be valid after 1997 when the Crown's leasehold interest expired in 1997.
- Legislation was the only way to solve the problem.
- There was a further difficulty: the Hong Kong legislature did not have the power to legislate for the New Territories which was legally part of China after 1997. If Hong Kong was to legislate, the validity of the legislation could be challenged in the Hong Kong courts.
- The prerogative of Her Majesty extended to enable legislation on a land matter affecting legally post-1997 China. When Her Majesty claimed jurisdiction to legislate, the courts would not generally interfere. So if post-1997 there was made an Order in Council in relation to New Territories land, it would be very unlikely that the courts would consider whether Her Majesty had the necessary jurisdiction.
- Her Majesty Government would not be prepared to make an Order in Council without some prior authority from the Chinese Government. Possibly it would be sufficient to have a prior and private understanding which would later be continued by tacit acceptance of the new situation.

Rushford, Deputy Legal Adviser at FCO, disagreed with the Hong Kong Law Officers' (i.e. Thornton's) contention that it would not be possible for the Hong Kong Government to grant leases extending beyond 1997, probably because of their erroneous belief that the relationship between the U.K. and China under the Convention 1898 was one of landlord and tenant governed by the municipal law of leasehold property.³⁰⁰ To Rushford, granting leases expiring after 1997 was permissible in international law, permissible under the Constitution of the colony, and permissible under the municipal law of the colony. The Hong Kong Law Officers appeared to

²⁹⁹ FCO 40/956, f 64, Leases for an Indeterminate Term, undated.

³⁰⁰ FCO 40/956, f 85, Rushford to McLaren, 9 August 1978; FCO 40/956, f 84, McLaren to Rushford, 10 August 1978; FCO 40/957, f 95, Hong Kong: Crown Leases in the Leased Territories, 17 August 1978.

conceive of the matter as governed by the municipal law of real property, and to have overlooked the fact that the Convention of 1898 operated in international law and not in municipal law. Also, they appeared to think that if leases extending beyond 1 July 1997 were granted, their validity might be challenged in the Hong Kong courts. Rushford expected that if challenged, the validity of the grants would be upheld. If the leases were held to be invalid, then validating legislation could be enacted by the Hong Kong legislature or by Order in Council. To Rushford, an indeterminate lease would amount to the grant to a perpetual tenure and thus would equate with a freehold. So Rushford's advice was to drop the idea of "indeterminate leases" and favoured the notion of perpetual leases.

McLaren of HKGD commented that Hong Kong regarded the "indeterminate" solution as the better choice for essentially political reasons: it would get rid of the legal significance of 1997 in relation to land tenure without requiring the Chinese government to approve, tacitly or otherwise, an arrangement which would effectively involve an extension of the Lease for a specific period, as would be the case if leases were granted for fixed terms beyond 1997.³⁰¹

When he reported the above difference in opinions of HKGD's Legal Adviser and Hong Kong Solicitor General regarding whether legislation be needed before granting leases extending beyond 1 July 1997, McLaren suggested that the specifically legal issues could be pursued separately, and it might be helpful to get the opinion of HKGD's law officers.³⁰² He also thought that whatever the legal objections to the device proposed by Hong Kong, it had its political attractions: for the Chinese, it would not commit them to an extension of the lease to a specific period; and for the British, they would avoid the setting of a new deadline with all the attendant hazards. Also, the problem of the New Territories leases might be a suitable approach to the Chinese, as this practical issue would be possible without at least a tacit approval of the Chinese Government.

R. B. Gardner, Principal Assistant Solicitor at the Conveyancing Division of Treasury Solicitor's Department, was consulted, and commented that if Rushford was correct in

³⁰¹ FCO 40/956, f 84, McLaren to Rushford, 10 August 1978.

³⁰² FCO 40/956, f 89, McLaren to Murray, 11 August 1978.

asserting that the territories acquired under the 1898 Convention were not held by the Crown on a strict leasehold basis and that the Crown exercised full sovereign rights thereover, then the Crown would be free to grant leases of the territories for any duration recognized by law.³⁰³ That meant a straight 99 year term or a 75 year term renewable for a further 75 years would suffice “if the Crown shall so long occupy the territories”. Also, Gardner did not know whether “perpetual leases” referred to by Rushford were leases in perpetuity or leases for a fixed term with a provision for perpetual renewal. If the Government was inhibited about the grant of freeholds or long leaseholds (beyond 1997), leases in perpetuity or perpetually renewable leases would not solve the problem.

However, McLaren dismissed Gardner’s comments as unimportant when he said “I do not think [Gardner] has understood the problem” and did not include them for discussion.³⁰⁴ This shows that even a legal advice from a legal expert in Britain might not be listened to regarding Hong Kong issue.

After listening to so much, McLaren made the following comments:³⁰⁵

- The requirements for a new form of lease to replace the Crown leases in the New Territories had to satisfy two criteria:
- The chosen solution needed to “obliterate the legal and administrative significance of 1997” and to be not open to challenge in the Courts of Hong Kong; and
- It needed to be acceptable to the Chinese, i.e. to be compatible with their position on the treaties, and their view that the problem of Hong Kong was one to be settled “in an appropriate way when the time is ripe”, and highly desirable if the solution required no action on the part of the Chinese.
- The Governor’s proposal to change the term of current leases to “undetermined” meets most of these criteria. It was simple. It got rid of 1997 and it committed the Chinese to nothing new. On the other hand it did require explanation and interpretation and might therefore be more difficult to negotiate with the Chinese. Furthermore HKGD’s legal adviser was doubtful about this solution.

³⁰³ FCO 40/957, f 95, Hong Kong: Crown leases in the territories acquired by the 1898 Convention, 22 August 1978.

³⁰⁴ FCO 40/957, f 96, McLaren to Rushford, 7 September 1978.

³⁰⁵ FCO 40/957, f 97, McLaren to MacLehose, 8 September 1978.

- The most promising solutions were:
- fixed term leases with the rider “if the Crown shall so long occupy the territories”;
- leases (as at present) until 28 June 1997, “thereafter for as long as the Crown may occupy the leased territories”; and
- leases without fixed term “for so long as the Crown may occupy the leased territories (proposed by the Governor).
- The solutions needed to put the legal issues involved to the United Kingdom Law Officers at some stage, but should take the matters further among themselves before doing so.

In response, the Governor commented that fixed term leases should not be considered because the Chinese acceptance of them implied their acquiescence in an extension of the Lease (of the New Territories).³⁰⁶ Since HKGD favoured most the option of fixed term leases with the rider “if the Crown shall so long occupy the territories”, the Governor did not want to rule it out, but would only see it as resulting from substantive negotiations with China rather than from obtaining Chinese acquiescence to a unilateral move designed to solve the immediate problem whilst leaving the Chinese options open. In considering the remaining solutions, the Governor pointed out that any solution which did not require legislation (or Order in Council) in the U.K. suffered from the disadvantage that it would not solve the more general problem of ensuring the authority of the Governor to apply the laws of Hong Kong in the New Territories after 30 June 1997 being open to challenge in the courts in Hong Kong.

Rushford clarified that none of his listed solutions required legislation in the U.K., whether by Order in Council or Act of Parliament, though the introduction of forms of lease unknown to common law would require legislation by the Hong Kong legislature or by Order in Council.³⁰⁷ It was believed in Hong Kong that local legislation (or leases granted under existing powers) would be challenged in the courts. Rushford believed that the challenge would fail, but the litigation would be tiresome, so it might be worth considering sanctioning new forms of law by Order in Council.

³⁰⁶ FCO 40/957, f 98, MacLehose to McLaren, 8 September 1978.

³⁰⁷ FCO 40/957, f 101, Rushford to McLaren, 9 September 1978.

E. T. Davies of HKGD commented that any fixed term solution, apart from probably being unacceptable to the Chinese Government, simply postponed the problem.³⁰⁸ He favoured the undetermined solution. Also, he queried that it might be possible to grant freehold, and thus did not eliminate the option of perpetual lease.

The Governor maintained that both the options of extending leases for a fixed term and of perpetual leases or freeholds would be presented as an extension of the Lease itself and so would not be acceptable to the Chinese.³⁰⁹ The only way out would be some variants on the approach of converting standard Crown leases written to end three days before 1 July 1997 to leases of “undetermined” length. This approach had the advantage of being close to the Chinese official position, and defensible as such by both the British and Chinese. The disadvantage was that it would lie outside common law and therefore require the cover of special legislation. The Governor conceded that “undetermined” might be too vague a term for the period of a lease and agreed with the alternative of “for so long as the Crown administers the Territories” proposed by McLaren. There was a need for legislation backed by an Order-in Council in London to cover the grant of leases for a period which had no predetermined length, even if it was not strictly necessary, for the reason, among others, that the validity of the legislation to extend leases expiring after 1997 might be challenged.³¹⁰ The Governor also pointed out that the legislation in the U.K. could deal with leases alone, but that would leave unresolved the question of the Hong Kong Government’s right to exercise general jurisdiction in the Leased Territories after 1997. So something needed to be done to deal with this problem at the same time as that of the land leases.

The Secretary of State was informed about the debate, and asked for comments on the draft Order in Council (the first draft of the Order in Council was dated 17 October 1978³¹¹).³¹² He agreed with the Governor that there was a strong political case for an

³⁰⁸ FCO 40/957, f 105, Davies to HKGD, 2 October 1978.

³⁰⁹ FCO 40/957, f 115, MacLehose to McLaren, 24 October 1978.

³¹⁰ FCO 40/957, f 115, Circumstances in which Legislation to Extend the Validity of NT Crown Leases post-1997 might be Challenged, undated.

³¹¹ FCO 40/957, f 113, Draft Order in Council (First draft), 19 October 1978.

³¹² FCO 40/957, f 830, Owen to MacLehose, 8 November 1978.

Order in Council to provide backing for legislation in Hong Kong.³¹³ If there was to be an Order in Council, this should precede action in Hong Kong. He also offered detailed comments on the draft Order in Council.

Cradock commented that indeterminacy had its attractions, but might be misconstrued. It would be necessary to anticipate and correct any idea that the new formula implied resignation on the British Government's part to an earlier termination date than 1997.³¹⁴ For this reason, Cradock suggested that some explanation to the Chinese through appropriate channels would be needed. This could also be the opportunity to ask them to think with the British beyond 1997 date and to sound out whether they were ready to show something of their hand.

Rushford and J. W. D. Hobley, Law Officers Chambers of Hong Kong, reached the following conclusions:³¹⁵

- The problem caused by the fact that leases of Crown land in the New Territories were due to expire in June 1997 could be dealt with by converting such leases into leases for 75 years, such as are granted in the rest of the Colony.
- Doing this would not require any legislation. The problem could also be dealt with by converting such leases into indeterminate leases, but this would require legislation, since indeterminate leases are unknown to the common law.
- Legislation for the purpose could be enacted by the Hong Kong legislature. Neither solution would require the agreement or consent of China. There might well be a political case for acting without consultation with them.
- There was some risk that the action taken might be challenged in Hong Kong, but if necessary it would easily be validated by Order in Council.
- Since what could be done by the Hong Kong legislature could also be done by Her Majesty in Council, provision for indeterminate leases could be made by Order in Council.
- It was unusual for Her Majesty in Council to legislate for Hong Kong on a matter within the competence of the Hong Kong legislature. An Order in Council

³¹³ FCO 40/957, f 125, Owen to MacLehose, 24 November 1978.

³¹⁴ FCO 40/957, f 120, Cradock to McLaren, 8 November 1978.

³¹⁵ FCO 40/957, f 126, Note of conclusions by Hobley and Rushford on 16 November 1978, 21 November, 1978.

providing for indeterminate leases would cast doubt on the power of the Hong Kong Government and Legislature to provide for other matters in relation to the New Territories. Such an Order in Council would therefore need to contain saving provisions to guard against this.

Later, the Governor reported the following joint position of the Governor and Cradock:³¹⁶

- With the prior agreement of the Chinese, the British should issue leases of undetermined length and convert the existing leases expiring in 1997 to leases of undetermined length.
- This required legislation in Hong Kong, as there was no such thing as a lease of undetermined length under Common Law.
- This legislation should be covered by an empowering Order in Council in the U.K. It might not be necessary under international law, but it was highly desirable in Hong Kong.
- Order in Council should make clear that the Hong Kong Government would be acting within its legal rights in legislating for a future beyond 1997.
- The question of post-1997 jurisdiction should be covered by a saving clause in Order in Council.

By the end of January 1979, HKGD basically adopted the position taken by the Governor and Ambassador to Beijing on indeterminate leases:³¹⁷ to convert existing leases expiring in 1997 to leases of “undetermined” length and to issue future leases in the same way. Such a solution required for legislation in Hong Kong (since leases of undetermined length were unknown under Common Law) and, for political rather than strictly legal reasons, a covering Order in Council in the U.K.

Meanwhile, the contents and the exact wordings of Order in Council were intensely debated,³¹⁸ and many different versions of Order in Council had been drafted for

³¹⁶ FCO 40/957, f 132, MacLehose to McLaren, 21 December 1978.

³¹⁷ FCO 40/1058, f 8, McLaren to Murray, 26 January 1979.

³¹⁸ For example, FCO 40/1058, f 1, McLaren to Rushford, 2 January 1979; FCO 40/1058, f 4, McLaren to Rushford, 17 January 1979; FCO 40/1058, f 9, Owen to MacLehose, 1 February 1979; FCO 40/1058, f 10, Owen to MacLehose, 1 February 1979; FCO 40/1058, f 11, MacLehose to Owen, 5 February 1979; FCO 40/1058, f 13, Owen to MacLehose, 5 February 1979; FCO 40/1058, f 14, MacLehose to Owen, 6

discussion.³¹⁹ In February 1979, the Secretary of State took the then agreed text for ministerial approval.³²⁰

4.3 Approaching the Chinese

4.3.1 Preparing the Governor's visit to Beijing

In early 1979, Cradock hinted the possibility of a visit of by the Governor to Beijing.³²¹ The Secretary of State agreed with Cradock's recommendation and thought that it was a good idea that the Governor should visit Beijing before the Secretary of State himself to sound out the Chinese about the leases.³²²

In a telegram to the Secretary of State in February 1979, the Governor outlined his tactics to play with the Chinese. He suggested that the British should not show the text of Order in Council so early, and it was essential to keep the approach in a low key fashion, not to appear to be either asking a favour or attempting to bounce the Chinese.³²³ The Chinese needed time to realize that what the British proposed to do was as much to the advantage of the Chinese as that of the British. The first step was to establish Chinese confidence over the role played by Hong Kong and its government in the Chinese modernization programme and economic development generally. Once the necessary confidence had been established, what the British proposed over the leases would fall into perspective as an incidental (and British domestic) part of a general design of industrial and other development in the Hong Kong/Guangdong region. Therefore, during his visit to Beijing, the Governor would encourage a dialogue on development plans in Hong Kong and in Guangdong, their inter-relationship (including

February 1979; FCO 40/1058, f 16, Owen to MacLehose, 6 February 1979; FCO 40/1058, f 17, Owen to MacLehose, 6 February 1979; FCO 40/1058, f 18, MacLehose to Owen, 7 February 1979; FCO 40 1058, f 19, Owen to MacLehose, 7 February 1979; FCO 40/1058, f 20, Rushford to McLaren, 7 February 1979; FCO 40/1058, f 21, MacLehose to Owen, 8 February 1979.

³¹⁹ For example, FCO 40/957, f 126, Draft, 17 November 1978; FCO 40/957, f 128, Draft, 28 November 1978; FCO 40/1058, f 10, Owen to MacLehose, 1 February 1979.

³²⁰ FCO 40/1058, f 22, Owen to MacLehose, 8 February 1979.

³²¹ FCO 40/1058, f 2, Cradock to McLaren, 4 January 1979.

³²² FCO 40/1058, f 6, Walden to FED, 26 January 1979.

³²³ FCO 40/1058, f 25, MacLehose to Owen, 12 February 1979.

joint ventures), and how each could help the other. In the process, the Governor was ready to take in subjects such as immigration, tourism, land, sea and air communications, water, electricity and fuel supplies, and also K.M.T. and Soviet activities. When this economic-slanted dialogue proceeded well, the Governor would then mention the problem of the leases:

- Something had to be done quite soon if the more valuable type of long-term investment was not to be deterred.
- This was a problem of Hong Kong domestic law resulting from how leases had been written. The Hong Kong Government would find an answer fairly soon if the right sort of development was to continue.

The British might allow an interval for reflection and proceeded to mention the following:

- The answer would avoid prejudice to China's well-known position on Hong Kong.
- The essence of the action would be to stop issuing leases drafted to expire on 29 June 1997, and substitute a validity for "as long as the Crown administer" the territories. Existing leases with a terminal date would be similarly amended. This would involve a simple piece of legislation.

The Governor did not want to give advance explanations to NCNA about leases, though they could be used to follow up afterwards if necessary.

McLaren did not query the Governor's tactics, and recommended that the Governor be given maximum discretion to play the hand as he thought best.³²⁴ The Secretary of State could then decide, in the light of the Governor's report of his discussions, what follow up actions should be taken during his visit to Beijing. McLaren added that the British approach was deliberately restrictive to the problem of the leases in the hope that the Chinese would be prepared to deal with that question in isolation. He also pointed to the possibility that the Chinese would seek to widen the discussion or seek concessions in return for acquiescence in the proposed action. In fact, the Governor and

³²⁴ FCO 40/1058, f 34, McLaren to Murray, Cortazzi and Lord Goronwy-Roberts, 2 March 1979.

Ambassador to Beijing had prepared a compendium of possible Chinese demands and their suggested British responses.³²⁵

The Secretary of State said to the Governor that he agreed that (a) the British objective should be to secure Chinese agreement to the issue of new leases “for as long as Her Majesty may administer the Territories” and to the conversion of existing leases into indeterminate leases; and (b) there was a strong political case for an Order in Council and the legislation necessary in Hong Kong.³²⁶ He also agreed that the Governor should be left to decide, in consultation with the Ambassador in Beijing, how much of the hand to expose at the preliminary state.

McLaren added that it was essential to avoid making any public reference to the action the British had in mind before obtaining Chinese agreement: if it became known that the British had made an approach and had been rebuffed, the effect on confidence could be serious.³²⁷

The Governor responded to the Secretary of State by saying that the objective was to get the Chinese to accept that what the British proposed was in the Chinese interest, but in any case something within the British own jurisdiction and strictly a British affair to which the Chinese needed not object since it left their own position on the future of Hong Kong unaffected.³²⁸ If the Chinese thought that the British were trying to push things faster than the situation merited, or the British appeared over-anxious, they might put a stiff price on their acquiescence. The Governor pointed to the importance of maintaining secrecy, and suggested that background briefing for the press in advance of the Secretary of State’s visit would avoid suggestion that Hong Kong or the leases were major items in his agenda. He also stressed the difficulty of making swift progress over the leases with the Chinese and that on no account the British would risk a setback through over-preoccupation with a quick push.

³²⁵ FCO 40/1058, f 34, Possible Chinese demands on Hong Kong, undated.

³²⁶ FCO 40/1058, f 36, Owen to MacLehose, 13 March 1979.

³²⁷ FCO 40/1058, f 37, McLaren to Murray, 14 March 1979.

³²⁸ FCO 40/1058, f 39, MacLehose to Owen, 15 March 1979.

Cradock reiterated that the British should be prepared to “play this slowly and carefully”.³²⁹

In mid-March 1979, stories coming from London suggested that more serious things were to be discussed during the Governor’s visit to Beijing, and the Governor had had an indirect approach from the First Director of the NCNA trying to sound out the British intentions and hinting that the Chinese would be prepared to discuss the lease question.³³⁰ Therefore, the Governor suggested that the British should drop a hint beforehand to the Chinese that the Governor wanted to say something about land leases in the New Territories (so that the Governor could talk to somebody senior and acknowledgeable, e.g. Liao Chengzhi), and the opportunity to do so was a meeting between the Second Director of the NCNA and the Political Adviser.

The Secretary of State circulated a memorandum “Hong Kong: New Territories leases” to brief the cabinet’s Defence and Oversea Policy Committee (DOP) and the Prime Minister.³³¹ The Prime Minister agreed to the proposal in the memorandum that future leases in the New Territories should be issued without a fixed term, valid “so long as Her Majesty may administer the Territories” and the Governor of Hong Kong should sound out the Chinese on this idea, without commitment, during his visit to Beijing.³³² He considered that special attention would have to be given to the public presentation of a change of policy on leases in the New Territories and, in particular, to what was said about the extent of Chinese acquiescence in the change. According to a letter from McLaren, the Prime Minister also made a comment that DOP should be informed of any Chinese reactions to the Governor’s approach on this subject, and should have the opportunity to consider them, before the Secretary of State’s departure for China.³³³ The Secretary of State then instructed the Governor of Hong Kong along the Prime Minister’s lines.³³⁴ In a later telegram to the Governor, he repeated the Governor’s point that the British proposal might fall short of what many people in Hong Kong

³²⁹ FCO 40/1058, f 40A, Cradock to FCO, 16 March 1979.

³³⁰ FCO 40/1058, f 41, MacLehose to FCO, 19 March 1979.

³³¹ FCO 40/1058, f 47, Hong Kong: New Territories Leases, 22 March 1979.

³³² FCO 40/1058, f 47, Cartledge to Wall, 26 March 1979.

³³³ FCO 40/1058, f 48, McLaren to Cortazzi, 27 March 1979.

³³⁴ FCO 40/1058, f 49, Owen to MacLehose, 27 March 1979.

would have liked and he was concerned about the Hong Kong reaction to the undetermined leases idea.³³⁵ He also emphasized the importance to avoid any public suggestion that the leases question would be raised during the Secretary of State's visit.

4.3.2 Governor's visit to Beijing

In March 1979, the Governor of Hong Kong paid his first official visit to China. On 29 March 1979, Deng met with the Governor. During the meeting, many different issues had been discussed which included, among others, the following:³³⁶

- Deng said he understood that the people of Hong Kong were concerned about the future status of Hong Kong. China had a consistent policy: sovereignty over Hong Kong belonged to China. But Hong Kong had her own special status. People were concerned about the way out for the New Territories in 1997. Any solution of the status of the New Territories would have as its prerequisite that Hong Kong was part of China. China would respect the special status of Hong Kong. The Chinese Government gave a clear assurance that when there was a political solution, it would never affect investment.
- Deng said that China had not taken over Macao and the Macao issue had not even been raised with the Portuguese.
- The Chinese position on and the policy towards Hong Kong, Macao as well as Taiwan were clear. The Chinese adopted this policy because they needed Hong Kong. The policy was beneficial to socialist construction and its modernization programmes.
- The Governor said Deng made the Chinese position very clear, and Hong Kong's long term future was a matter between the Chinese and British Governments. It was frequently said that the problem could be solved when the time was ripe. But Hong Kong faced an immediate problem, concerning the leases issued to people in the New Territories (which ran into tens of thousands, and were being issued each month by the hundred). They were all written with a validity lasting only until June 1997. The Governor said he had thought of the solution to the problem which

³³⁵ FCO 40/1058, f 52, Owen to MacLehose, 28 March 1979.

³³⁶ FCO 40/1059, f 71A, Record of a conversation between HE The Governor of Hong Kong and HE Vice-Premier Deng Xiaoping at the Great Hall of the People at 1000 Hours, 29 March 1979.

was not contradictory to the Chinese position on Hong Kong. If this problem could be solved, the right sort of investment could be attracted to keep Hong Kong competitive in world markets. This would be of benefit to both China and the U.K.

- Deng said that he formally requested the Governor to ask investors to put their hearts at ease. It was China's long term policy to regard Hong Kong as a special case, no matter what political solution was reached by 1998. The Governor said that the problem could not be overcome by generalized assurances, and the solution was to replace the leases valid to 1997 with leases valid as long as Britain administered the New Territories. This would get rid of the date.
- Deng commented that it would be best to avoid wording which mentioned continued British administration. The future of Hong Kong was guaranteed, but he could not confirm that the political situation would remain unchanged. To put it more clearly, in the 20th Century and in the beginning of the 21st Century, Hong Kong would be continuing with a capitalist system, while China was continuing with a socialist system. By 1997 China might take over Hong Kong. But this would not affect her economy. There were two solutions by 1997, to take Hong Kong over, or to allow present realities to remain. Whatever political solution was adopted, investors would not be affected.
- The Governor said that what he proposed to do would not affect the Chinese position. All China needed to do was to acquiesce, or not to object. Deng concluded that the key point was that investors should feel easy.

In short, the Governor had told Deng about the proposed solution to the lease problem: to replace the leases valid to 1997 with leases valid as long as Britain administered the New Territories and Deng responded that it would be best to avoid wording which mentioned continued British administration. In addition, Deng mentioned two points: Deng formally requested the Governor to ask investors to put their hearts at ease; and there were two solutions by 1997, to take Hong Kong over, or to allow present realities to remain, and whatever political solution was adopted, investors would not be affected. Deng did not mention that China would take over Hong Kong, nor he said otherwise; he only said that by 1997 China might take over Hong Kong.

After meeting with Deng, the Governor also talked to Huang Hua (the Foreign Minister) and Liao Chengzhi (a senior leader with particular responsibilities for Hong Kong) in

turn.³³⁷ There was little new from the meetings, but Liao said he could not go further than Deng.

When he returned to Hong Kong at a press conference, the Governor characterized his visit to China as a goodwill visit, not a negotiating visit or visit to draft agreements.³³⁸ He mentioned that the point that was repeatedly stressed to the British at all levels was the importance which the Chinese leaders attached to the value of Hong Kong, to the contribution that it could make to the modernization programmes, to the importance of maintaining investment and confidence in Hong Kong, and of increased Hong Kong investment in China. He said “Vice Premier Deng Xiaoping formally requested me to ‘ask investors in Hong Kong to put their hearts at ease’”. However, he mentioned nothing about the British proposed solution to solving the lease problem, not to mention Deng’s responses and his mentioning of the two solutions of Hong Kong by 1997. In particular, he did not mention what Deng told him: by 1997 China might take over Hong Kong.

Cradock was the first one to comment on the Governor’s talk with Deng:³³⁹

- The overall comment was that the meeting with Deng was on the whole a good one.
- Deng showed himself very alive to the importance of confidence and investment in Hong Kong.
- On the lease question, “he was at first rather baffled by English legal concepts, but eventually appeared to accept that all that was proposed was the removal of the terminal date in leases, that this required no Chinese action and did not conflict with the Chinese position”.
- The Chinese reaction to the British proposal was not clear: no immediate negative response, and Liao did not signal that the British were on the wrong lines.
- The British should give an opportunity for what had been said to sink in and no immediate follow-up action was required.

Cradock said the Governor had seen and agreed with his comments.

³³⁷ FCO 40/1058, f 53, Cradock to Cortazzi, 30 March 1979.

³³⁸ FCO 40/1058, f 68, Opening Statement by H.E. The Governor, Sir Murray MacLehose, at a Press Conference on His Visit to China, 6 April 1979.

³³⁹ FCO 40/1058, f 54, Cradock to FCO, 30 March 1979.

McLaren commented that Deng's responses suggested that he might not have fully understood the nature of the British proposal and the reasons why something like it was necessary.³⁴⁰ For McLaren, at least the reaction was not immediately negative and Deng's general remarks about the future of Hong Kong were encouraging. He also agreed that the British should let the matter rest for a while and the Chinese had to be given time to absorb and consider the proposal. He reminded that although the situation had altered, the Secretary of State might still wish to inform his DOP colleagues of the outcome of the Governor's visit. He also noted that Deng did say something new, and that was in the long run, Hong Kong's future would be under Chinese sovereignty and with some political change, but with its economic life and security of investment assured by a special status.³⁴¹ However, he only mentioned briefly that this concept for Hong Kong of a specially guaranteed status under Chinese sovereignty and new undefined political arrangements was new and so its implications needed to be carefully considered, but did not himself go further to study its implications.

The Secretary of State reported the outcome of the Governor's visit to the Prime Minister, and agreed with the advice of the Governor and the Ambassador that the British should let the matter rest for a while.³⁴²

Later, the Governor offered his detailed comments on his visit to China.³⁴³

- Throughout the whole visit to China, it was the intention of the Chinese to impress the British, with their willingness to deal with the Hong Kong Government and their satisfaction with its performance; their desire for increased trade, tourism and investment, and for cooperation to achieve this; their need for some time to come, and perhaps into the next century, of what they got out of Hong Kong with its present form of economy; and realization that in all this the maintenance of investor confidence played a major part. Although the British knew all these before, but the Chinese statement in such unequivocal terms and at such high levels was new and reassuring.

³⁴⁰ FCO 40/1058, f 57, McLaren to Murray, 4 April 1979.

³⁴¹ FCO 40/1059, f 71A, Visit to China and the Lease, 10 April 1979.

³⁴² FCO 40/1058, f 62, Owen to the Prime Minister, 9 April, 1979.

³⁴³ FCO 40/1058, f 67, Governor to McLaren, 10 April 1979.

- In the short term, the Chinese were vague and obviously no move of any sort was contemplated. But in the long term, and this was new, Deng saw Hong Kong's future as being under Chinese sovereignty and with political change, but with its economic life and security of investment assured by a special status. This was new and its implications needed to be carefully considered.
- Deng believed that a statement of such a policy would reassure Hong Kong, whereas the Government did not think it would. About how damaging it might be, the Governor was not clear. People would remember what a special status did for Tibet. Moreover, the value of an economic assurance could not be separated from an economy's political framework. It was far from accepted that political stability in China in the future could be guaranteed.
- Deng was recorded as objecting to the British use of the phrase "as long as British administration continues", probably under a misapprehension that the British were talking about a statement with which China would be associated. But the record was there for Chinese officialdom to see. Therefore, the British should take the best advice possible on a phrase alternative to "so long as Her Majesty may administer" (though saying much the same thing) so that the phrase to which Deng objected would not recur.
- The British needed to reconsider what reaction would be to a statement on Hong Kong's future prospects along the lines made by Deng. It was necessary firstly because it seemed likely that this formulation would become known in some way and the British had to be ready with the right response. Secondly, because if the British concluded its affect not to be seriously adverse, it might help the lease exercise to suggest it was made simultaneously. But the Governor's instinct was to avoid precipitating formal public endorsement of such a statement for several years to come.

The British side interpreted Deng's reaction to the Governor's proposal as a neutral one, a not-yes-not-no one. For the Governor, Deng's reaction reflected that Deng did not fully grasp the significance of the proposal and its background.³⁴⁴ Wilson shared the

³⁴⁴ FCO 40/1059, f 69, Quantrill to Rushford, 24 April 1979.

Governor's view, and said he could not be certain how well Deng understood the problem.³⁴⁵

Cradock was more optimistic about Chinese endorsement for an Order in Council.³⁴⁶ To him, the Chinese position was that Hong Kong was Chinese territory and would at the appropriate moment return to the motherland. However, Deng did not say when sovereignty might be exercised, and later recognized the possibility of "allowing present realities to remain" after 1997.

For W. E. Quantrill of HKGD, there might be two reasons for Deng's reaction: (a) Deng was simply objecting in principle to any written reference to British administration in the future; and (b) Deng wanted the reference to British administration removed because he thought the leases should be so phrased that they could continue in force in the scenario he envisaged, in which Hong Kong would pass nominally under Chinese sovereignty, while continuing to be run on its present basis.³⁴⁷ Such a view was endorsed by the then Secretary of State, David Owen.³⁴⁸

In April 1979, the British Government asked MacLehose to stay on as Governor until 1980, and MacLehose agreed to stay until April 1980.³⁴⁹

4.3.3 British speaking note to China

Although the exact reasons for Deng's reaction were not clear to the British, one thing was clear: Deng objected to any explicit references to future British administration, which would become the received truth in the Party circles in Hong Kong. The British side continued to modify its proposal so as to make it more acceptable to the Chinese. In April 1979, a revised version of Order in Council was drafted, and this version did

³⁴⁵ FCO 40/1059, f 71A, Wilson to the Chief Secretary, 27 April, 1979.

³⁴⁶ FCO 40/1059, f 73, Cradock to McLaren, 23 April 1979.

³⁴⁷ FCO 40/1059, f 70, Quantrill to Murray, 26 April 1979.

³⁴⁸ FCO 40/1059, f 71, Owen to MacLehose, 27 April 1979.

³⁴⁹ FCO 40/1058, f 68, Owen to Wyatt, 19 April 1979.

not make any references to future British administration.³⁵⁰ Another round of commenting on and revising the Order in Council followed.³⁵¹

During the debate, Quantrill raised a fundamental objection to indeterminate leases, on the ground that such leases had certain inherent draw-backs.³⁵² He believed that common law did not recognize indeterminate leases and such leases were by their very nature legally unsound. Quantrill did not agree with the Solicitor-General (and R. B. Gardner, the Principal Assistant Solicitor in the Treasury Solicitors Department concerned with conveyancing) that this problem could be overcome by statute. A phrase “for so long as the Crown shall administer the Territory” in the leases might be adequate to meet the requirement for some indication of the term, but then such a phrase was ruled out! Quantrill also believed that Hong Kong Government could grant the issue of land leases beyond the term of the New Territories lease.³⁵³ That meant that there was no objection to the Hong Kong Government simply issuing leases in the New Territories on exactly the same basis as they already did in the rest of Hong Kong. This was greatly to be preferred to indeterminate leases. Quantrill feared that having gone so far down the path towards indeterminate leases, it might be difficult to set off in a new direction at that stage. He suggested that the British could tell the Chinese that, in the light of Deng’s assurances to the Governor, the British had dropped the complicated idea of introducing indeterminate leases and instead proposed simply to issue leases in the New Territories on the same basis as those issued in the rest of Hong Kong.

³⁵⁰ FCO 40/1059, f 69, The Hong Kong (New Territories) Order 1979: Revised Draft A, 24 April 1979.

³⁵¹ For example, FCO 40/1059, f 75, MacLehose to FCO, 3 May 1979; FCO 40/1059, f 80, SOSFCA to Cradock, 4 May 1979; FCO 40/1059, f 81A, MacLehose to FCO, 8 May 1979; FCO 40/1059, f 87, McLaren to Rushford, 9 May 1979; FCO 40/1059, f 101, MacLehose to FCO, 18 May 1979; FCO 40/1059, f 106, Rushford to McLaren, 11 May 1979; FCO 40/1059, f 108, Rushford to McLaren, 16 May 1979; FCO 40/1059, f 112, Carrington to MacLehose, 7 June 1979.

³⁵² FCO 40/1059, f 86, Quantrill to McLaren, 9 May 1979.

³⁵³ According to Quantrill, the New Territories lease was an unusual, possibly unique, arrangement under which one country ceded to another sovereignty over a specific part of its territory for a specified period. According to the Research Department, the closest comparison to the situation was the period when a colony was coming to independence and it was known that at a specific date in the future the territory was going to come under the sovereignty of a different government. That fact did not invalidate leases and contracts extending beyond the point at which the change of political sovereignty was to take place: it was taken for granted that the new government would assume the obligations of its predecessor – although from the moment it took over, it would then be open to the new regime to repudiate any obligations which it did not want to continue. But the fact that the new government would have the power to do that in no way detracted from the legal validity of the leases, contracts, etc. when first signed. Similarly in Hong Kong, the fact that the current government could not guarantee that leases etc. issued then would not be repudiated after 1997 did not of itself make such leases etc. invalid. See FCO 40/1059, f 86, Quantrill to McLaren, 9 May 1979.

Wilson simply disagreed with Quantrill.³⁵⁴ For Wilson, apart from the argument about whether the British had gone too far down one particular road to draw back, there were reasons not to amend the original proposal. The British had told the Chinese about the plans on leases, and did not know the Chinese reactions. As the British saw it, what they were suggesting was compatible with Deng's vision of Hong Kong's future, genuinely in the mutual interest of both China and Hong Kong, and neutral with regard to China's long-term intentions. On the other hand, there were major disadvantages of Quantrill's suggested approach. Aside from other technical aspects, Quantrill's scheme failed to meet the British real objective, and that was to remove all the legal impediments on the British aide to the Chinese allowing the arrangements at that time to drift on beyond 1997 if this was what they wished.

In mid-June 1979, Rushford (Deputy Legal Adviser at FCO) wrote to Michael G. de Winton at Law Officer's Department seeking legal opinions on draft Order in Council.³⁵⁵ In the letter, Rushford talked about the Governor's reasoning and his suggested indeterminate leases, and did not say a word on Quantrill's proposal.

It was notable that McLaren's reactions to de Winton's comments on the draft³⁵⁶ were that McLaren was reluctant to see changes made in the text of the draft Order in Council unless they were really necessary, and that he would like to meet with de Winton so as to be sure that de Winton fully understood the background to the problem and the reasons why the wording in the draft had been chosen.³⁵⁷

When the British were modifying the draft Order in Council, they were thinking about presenting the Chinese with what the British proposed to do and seeking Chinese endorsement of it. In this regard, Cradock suggested this approach should be at working Embassy level.³⁵⁸ He feared that any more high level approach would give the exercise too much political content and detract from the British presentation of it as a

³⁵⁴ FCO 40/1059, f 110, Wilson to Quantrill, 23 May 1979.

³⁵⁵ FCO 40/1059, f 118, Rushford to de Winton, 18 June 1979.

³⁵⁶ FCO 40/1059, f 120A, de Winton to Rushford, 26 June 1979.

³⁵⁷ FCO 40/1059, f 125, McLaren to Rushford, 27 June 1979.

³⁵⁸ FCO 40/1059, f 73, Cradock to McLaren, 23 April 1979.

piece of legal house-keeping designed simply to maintain investment in the interest of both sides. The Governor suggested allowing a 3-month gap between telling the Chinese about the British proposal and announcing new legislation to deal with land leases.³⁵⁹ He agreed with Cradock that the next approach should be in Beijing and suggested the British could in parallel tell the NCNA in Hong Kong about the timing and general content to ensure that an assessment of the local significance and necessity of the move would get to Beijing. The Governor was explicit that at that stage, the British should limit themselves to land leases without talking about continuing powers of administration.³⁶⁰ While Cradock and the Governor agreed over the general approach, they disagreed over whether the British should reveal the details about the legislation the British intended to introduce over the land lease issue: the Governor was affirmative while Cradock was negative.³⁶¹

In mid-May 1979, the British started to draft the “speaking note” which explained what the British intended to do and was to be sent to the Chinese.³⁶² The speaking note included the following points:

- The long term future of Hong Kong was a matter to be settled between the Chinese and British Governments.
- There was a short term problem about land leases which had to be tackled soon if investment was to continue unabated.
- The British intended to take the necessary legislative steps to eliminate the date from existing land leases in the New Territories and to substitute a more indefinite form of words. This had to be done by legislation because (1) there was then no legal concept of a lease without a fixed date; and (2) thousands of existing individual leases which had to be altered by a blanket provision. Legislation about leases had to include provision for the Governor’s administrative powers without reference to any particular date.
- The British intention was to do the above when the Legislative Council resumed in October 1979, after relevant enabling action had been taken in the U.K.

³⁵⁹ FCO 40/1059, f 76, MacLehose to FCO, 3 May 1979.

³⁶⁰ FCO 40/1059, f 93, MacLehose to FCO, 11 May 1979.

³⁶¹ FCO 40/1059, f 96, Cradock to FCO, 14 May 1979.

³⁶² FCO 40/1059, f 95, Cradock to FCO, 14 May 1979.

- The effect of the legislation was purely permissive on the British side and without prejudice to the Chinese position on Hong Kong or to any actions they might take consequent to this position. Such legislation would however relieve the British from the pressure as a result of the legal implications for investment with the shortening period of existing leases.
- This was not a matter on which the Chinese Government needed to comment. But the British wished to keep the Chinese informed about the nature of the British proposed action and the reasons why it had become necessary.

In later drafts and the final version of the speaking note, the above points were elaborated and put in ways that sounded more “friendly” to the Chinese.³⁶³ Note that the speaking note needed ministerial approval.³⁶⁴

On 5 July 1979, British Ambassador at Beijing, Cradock left a copy of the speaking note with Chinese Assistant Foreign Minister, Song Zhiguang, and added orally that what was being proposed required no action on the part of the Chinese authorities.³⁶⁵

Both the Governor and Cradock were concerned that follow-up actions might alarm the Chinese and thus preferred to try to keep a low profile and present their action as an essential piece of legal housekeeping in the common interest of both the British and Chinese.³⁶⁶ Cradock suggested explanations to NCNA in Hong Kong who would use a different channel for reporting to the Chinese leaders and avoiding further action in London. However, McLaren and R C Samuel of Far Eastern Department suggested that Hugh Cortazzi of FCO let Mr Chu of the Chinese Embassy in London know the action taken in Beijing, but without giving him the speaking note.³⁶⁷ Cortazzi followed the advice, and added that the action taken in Beijing was taken with the knowledge and

³⁶³ FCO 40/1059, f 125, MacLehose to FCO, 30 June 1979; FCO 40/1060, f 136A, Speaking note on New Territories leases – left with Chinese Assistant Foreign Minister, Song Zhiguang on 5 July 1979, undated.

³⁶⁴ FCO 40/1059, f 99, MacLehose to Cradock, 15 May 1979; FCO 40/1059, f 119, Carrington to Cradock, 21 June 1979.

³⁶⁵ FCO 40/1060, f 136, Cradock to Carrington, 6 July 1979.

³⁶⁶ FCO 40/1060, f 137, Cradock to Carrington, 6 July 1979.

³⁶⁷ FCO 40/1060, f 144, McLaren to Cortazzi, 13 July 1979.

support of Ministers in London.³⁶⁸ Later, David Wilson, Political Adviser, spoke to Li Jusheng, the Second Director of the NCNA (who had just returned from an extended visit to Beijing) in Hong Kong on 30 July, 1979 and handed over copies of the speaking note (both in English and Chinese).³⁶⁹ Wilson also added that what was proposed called for no action on the part of the Chinese. The Governor held the view that by the time when Wilson spoke to Li, the overall reaction from the Chinese had been good: they had not ruled out the action the British proposed.

In the course of waiting, the British side considered carefully whether to take some actions to push the Chinese side for response.³⁷⁰ The arguments against actions included:

- Since the beginning of July 1979, the land values had sharply risen and the demand for construction had grown excessively. To include a statement on the leases in 1979's LegCo speech, with Chinese consent, would give the already inflated demand a strong push.
- The Chinese were given the British proposal serious consideration and it took time. If the British appeared over-anxious, it would not help to get the answer they wished.
- The inflated demand described earlier made implausible any suggestion that a statement on the leases was urgently required to prevent a drop in confidence.

The arguments for actions included:

- With a definitive statement proposed, the opportunity to extract acquiescence from the Chinese should not be allowed to pass.
- The previous argument had particular force with the combination of the then current leadership and political and economic climate, making it the best opportunity to get the Chinese to acquiesce as the British were ever likely to have.

After deliberating the arguments for and against actions, the Governor came to the conclusion that the British should continue to wait and take no steps to nudge a

³⁶⁸ FCO 40/1060, f 148, Wye to McLaren, 13 July 1979; FCO 40/1060, f 150, Carrington to Cradock, 16 July 1979.

³⁶⁹ FCO 40/1060, f 173, MacLehose to Carrington, 30 July 1979.

³⁷⁰ FCO 40/1060, f 181A, MacLehose to McLaren, 30 August 1979.

comment out of the Chinese. Lord Carrington, the Secretary of State for Foreign and Commonwealth Affairs, firstly agreed with the Governor.³⁷¹ However, Cradock did not agree with Governor, arguing that if the British did not do anything in response to the Chinese lack of response, the Chinese would believe that the issue was less urgent and serious than the British claimed and that action could be deferred indefinitely.³⁷² Cradock was to meet with Song on 10 September 1979, and he proposed to talk to Song. The Governor did not object to Cradock's raising the subject with Song, but maintained that the Chinese side might need more time.³⁷³ He believed that when the Chinese had considered the matter adequate, they would agree with the British proposed action. Carrington later agreed with Cradock's proposal to remind Song that the British were still waiting.³⁷⁴ Cradock clarified that the British idea was that the British might have to interpret silence as acquiescence, and at no stage did they ask for Chinese approval for the British proposed action, because the British had assured the Chinese that no action was required on their part.³⁷⁵

While the British were waiting for the Chinese response to what the British proposed to do, the efforts to improve the Order in Council did not stop.³⁷⁶

³⁷¹ FCO 40/1060, f 185, Carrington to MacLehose, 4 September 1979.

³⁷² FCO 40/1060, f 186, Cradock to FCO, 5 September 1979.

³⁷³ FCO 40/1060, f 188, MacLehose to Cradock, 6 September 1979.

³⁷⁴ FCO 40/1060, f 189, Carrington to Cradock, 6 September 1979.

³⁷⁵ FCO 40/1060, f 190, Cradock to Carrington, 6 September 1979.

³⁷⁶ For example, FCO 40/1060, f 141, Williamson to McLaren, 12 July 1979; FCO 40/1060, f 142, MacLehose to Carrington, 12 July 1979; FCO 40/1060, f 145, McLaren to Rushford, 12 July 1979; FCO 40/1060, f 146, Carrington to MacLehose, 13 July 1979; FCO 40/1060, f 151, George to FCO, 16 July 1979; FCO 40/1060, f 154, de Winton to Rushford, 16 July 1979; FCO 40 1060, f 155, McLaren to Cortazzi, 19 July 1979; FCO 40/1060, f 156, Cater to Carrington, 20 July 1979; FCO 40/1060, f 157, de Winton to Rushford, 19 July 1979; FCO 40/1060, f 158, McLaren to Rushford, 20 July 1979; FCO 40/1060, f 160A, Rushford to de Winton, 23 July 1979; FCO 40/1060, f 168, Carrington to MacLehose, 25 July 1979; FCO 40/1060, f 169, McLaren to Cortazzi, 26 July 1979; FCO 40 1060, f 172, MacLehose to Carrington, 28 July 1979; FCO 40/1060, f 175, Carrington to MacLehose, 30 July 1979.

4.3.4 Chinese rejection of the British proposed action

Cradock was summoned to the Foreign Ministry on 24 September 1979 by Assistant Foreign Minister Song Zhiguang, who read out to him the Chinese reply to the British proposal:³⁷⁷

- The Chinese Government's position on the question of Hong Kong was consistent and clear, and well known to the British Government. In a conversation with MacLehose, Deng Xiaoping reaffirmed that Hong Kong was part of China's territory and when the time came to deal with this problem in future, the Chinese would take into account the special interests of the investors. Deng's remarks should serve to stabilize the confidence of the investors.
- The Chinese Government considered as unnecessary and inappropriate the legal steps that the British side proposed to take regarding the term of administration of the New Territories by the Governor of Hong Kong and the question of leases for land in the New Territories.
- Therefore, the Chinese Government urged the British side to desist from taking the proposed actions, for the repercussions therefrom would adversely affect the interests of both the Chinese and British sides.

In short, the British proposed actions met with outright rejection from the Chinese Government. Song added that:

The Chinese Government . . . took the view that, so long as both sides cooperated, confidence could be maintained. . . . The British side had probably guessed the likely Chinese response when they put the proposals forward. If the British side did not follow Chinese advice they could guess what Chinese reaction would be and that would not assist confidence. Both sides should try to encourage the further development of Hong Kong, on the basis that China's position was not prejudiced.

Cradock's immediate reaction to the Chinese rejection was that this was a disappointing reply and a more thorough rejection than envisaged.³⁷⁸ To Cradock, the Chinese did not understand the need for British legislative measures (as opposed to general Chinese statements) in order to reassure investors, and the Chinese wanted to keep their options

³⁷⁷ FCO 40/1060, f 194, Cradock to FCO, 24 September 1979; FCO 40/1060, f 195, Cradock to FCO, 24 September 1979.

³⁷⁸ FCO 40/1060, f 196, Cradock to Carrington, 24 September 1979.

open and to avoid a situation in which the British seemed to be taking the lead on the future of the colony and China acquiesced. They seemed particularly nervous about the effect of this abroad. On the possible British response to the Chinese response, Cradock suggested that given the firmness of the Chinese line, it would be unwise to try at once to argue through the whole issue again. But the immediate aim should be at least to keep a dialogue going and keep this rebuff secret.

The Governor was unconvinced that Deng's remarks were enough to stabilize investors' confidence.³⁷⁹ He could not understand the reasons for the Chinese rejection and interpreted the rejection as merely a device to gain time, thinking that the later the problem was dealt with, the easier it would be to do so on their terms – probably without any very clear idea at the moment what these might be. To the Governor, the market forces were on the British side. The important thing was that the problem had been squarely put to the Chinese. Soon or later, the British would get hints of what the Chinese had in mind through some channels. So, the Governor agreed with the Ambassador that the British should not argue about the Chinese reply, and the Governor suggested no formal or informal reply in Beijing was necessary. However, the British had to put on record again with the Chinese regarding the reality and importance of this problem and that solution would not wait indefinitely.

In view of the importance of secrecy, the Governor suggested that neither in Beijing nor in London should discussion of the subject be initiated with the Chinese or anyone else, and the British should take special steps to guard their own security. Carrington had formulated several lines ready for with the press in case there was a leak.³⁸⁰ The Governor took Carrington's lines and supplemented them for possible perfectly innocent questions about the shortening term of leases in the New Territories.³⁸¹

In a submission to the Prime Minister to keep her informed about the lease issue, McLaren speculated the reasons for the Chinese rejection:³⁸²

³⁷⁹ FCO 40/1060, f 197, MacLehose to Carrington, 27 September 1979.

³⁸⁰ FCO 40/1060, f 199, Carrington to MacLehose, 26 September 1979.

³⁸¹ FCO 40/1060, f 200, MacLehose to Carrington, 27 September 1979.

³⁸² FCO 40/1060, f 202, McLaren to Cortazzi, 28 September 1979.

- An assessment that the problem of maintaining confidence in Hong Kong was not yet serious and could safely be postponed.
- Failure to understand the need for British legislative measures as opposed to general Chinese assurances.
- An unwillingness to allow the British and Hong Kong Governments to take the lead in any matter affecting the future of Hong Kong.
- Concern about reactions abroad and, in particular, the implications for their handling of the Taiwan problem and negotiations with the Russians on border territories ceded under the “Unequal Treaties” of the 19th Century.

McLaren emphasized again the importance of maintaining secrecy.

Carrington briefed the Prime Minister about the Chinese rejection of the British proposed action in a submission on 9 October 1979.³⁸³

Cradock’s second comments on the Chinese rejection were thoughtful.³⁸⁴ Cradock disagreed with the Governor that the Chinese were under pressure of market forces coming to accept the British proposals, and thought that the Chinese were prepared to incur economic damage in pursuit of their political objectives in the future. In fact, the Chinese might calculate that the British were under economic pressure and that the British approach was proof of this. Hence, unlike what Governor thought, time was on the Chinese side, and the Chinese rejection was more than a time-seeking device. To Cradock, the Chinese almost certainly saw the only way ahead as one requiring some form of recognition of Chinese sovereignty, and they might judge that in the last resort, they could impose this point upon the British. Against this background, Cradock proposed that the British said should make the point that Chinese general assurances failed to address the real problem and the Chinese should think again. The most important thing was to encourage the Chinese to develop their ideas on the future in concert with the British rather than expect them to come round to the British way of thinking.

³⁸³ FCO 40/1060, f 218, Carrington to Prime Minister, 9 October 1979.

³⁸⁴ FCO 40/1060, f 206, Cradock to Carrington, 5 October 1979.

The time was that Chinese Premier Hua Guogeng was to visit London from 28 October to 3 November 1979.³⁸⁵ Hua's visit involved many bilateral and multinational issues that were of interest to both Britain and China, and the Hong Kong issue was just one of them, maybe not one of the highest priorities.³⁸⁶ Officials involved in Hong Kong were preparing briefs for the Prime Minister's discussions with Hua.³⁸⁷

The Governor used the opportunity to comment further on the situation after the Chinese rejection.³⁸⁸ He viewed that the Chinese thought that Deng's remarks had dealt with confidence issue so the British proposals were unnecessary. Time would prove the Chinese wrong, and they would have to find a solution. But the solution would not be the one that the British proposed. The Chinese might hope that they could keep confidence going long enough to allow the short-term and medium-term problems to be tackled together, by coupling something on leases with concession by the British on sovereignty and Chinese representation. The British made the proposal in the hope of solving the short-term problem without having to pay the political price that would be inevitable in medium- or long-term solutions, and the proposal was rejected. The British thus had firmly put the Chinese on record that the British saw a short-term problem. According to the Governor, the British should stick to reiterating that there was a short-term problem, and then wait and see what happened. It was useless to seek a dialogue until the Chinese accepted that there was a fairly urgent problem to have a dialogue about. It was preferable to wait until pressures on the Chinese mounted from Hong Kong. Therefore, the Governor suggested that the Secretary of State confined himself to making it clear to the Chinese that the British proposal about leases was a carefully thought solution to a genuine problem, without prejudicing the Chinese position on the long-term future. The problem might not need to be solved immediately, but had to be dealt with soon, and general assurances would not be sufficient to deal with the problem. The Governor suggested going no further. McLaren endorsed the Governor's wait-and-see approach.³⁸⁹

³⁸⁵ FCO 40/1060, f 208A, Fursland to Assistant Heads of EESD, SEAD, UND, NENAD and Willson, 5 October 1979.

³⁸⁶ FCO 40/1060, f 208A, Annex A, Premier Hua's Visit to London, undated.

³⁸⁷ FCO 40/1060, f 208, Carrington to MacLehose, 5 October 1979.

³⁸⁸ FCO 40/1060, f 216, MacLehose to Carrington, 9 October 1979.

³⁸⁹ FCO 40/1060, f 225, McLaren to Cortazzi, 12 October 1979.

There was only a tangential discussion of the lease issue in the meeting between the British Prime Minister and Premier Hua, and the British talks were basically along the lines suggested by the Governor.³⁹⁰

4.4 Flows of Information between the Hong Kong Government and FCO

McLaren visited Hong Kong in October 1978, and raised the issue of information flows between the Hong Kong Government and FCO.³⁹¹ He made the point to various senior officials (among them the Chief Secretary and certain other Secretaries) that it would be helpful if Secretaries and Heads of Department could consider the possibility of writing to FCO informally from time to time to explain current developments in their areas of responsibility and provide an insight into their thinking about future policy. Such letters would help FCO to have a more accurate “feel” for the way things were going. From the documents, it was not clear the reason for FCO’s move, but it can be conjectured that as the Hong Kong issue approached, the FCO might need to have a more accurate “feel” for the ways things were going in Hong Kong which served as inputs to FCO so that it could formulate a better and more timely plan for Hong Kong’s future.

At that time, FCO received full reports about disputes and other matters likely to arouse Parliamentary interests, and they also got White Papers, Green Papers, ExCo papers and so on. But there was rarely anything in between except when the Governor chose to write about a particular subject. Letters written by the Political Adviser (at the Governor’s request) on education and the Police as notable were exceptions.

Until October 1978, the procedure was for papers to be sent to FCO at the same time as they were issued to Members prior to discussion.³⁹² This usually meant on the Friday next but one before the date on which the item was to be discussed. This gave Members two clear weekends to study the papers. After the meeting, the minutes of Executive

³⁹⁰ FCO 40/1061, f 253, Record of Second Plenary Discussion between the Prime Minister and Premier Hua Guogeng: 1 November 1979, 5 November 1979.

³⁹¹ FCO 40/957, f 116, McLaren to Quantrill and Thompson, 2 November 1978.

³⁹² FCO 40/957, f 116, Macpherson to McLaren, 25 October 1978.

Council were sent to FCO together with a full set of papers discussed at the relevant meeting. This, in effect, meant that FCO receive at FCO two sets of all Executive Council papers; one in advance of the discussion and one with the record of the meeting.

On the question of background information, Director of Administration and Management Services (under Hong Kong Government Secretariat) wrote to all Secretaries and Head of major Departments in Hong Kong asking them to send FCO and Denis Bray, Hong Kong Commissioner in London, background telegrams or, if appropriate, a letter on anything of particular interest which might be boiling up or on which an important Executive Council paper would be issued in the near future. Letters would be addressed personally to McLaren and telegrams would be marked for McLaren so that he would have as much advanced warning as possible.

As *quid pro quo*, McLaren would copy to Bray any telegrams to or from Hong Kong which passed across his desk but which had not been copied to Bray and which might of interest to him.

Obviously, McLaren was not very satisfied with the new arrangements when he said “my arguments fell on largely on deaf dears”, but still admitted that they might prove slight better than before.³⁹³

4.5 The Macau Issue

In 1975, Portugal was beginning to talk about establishing diplomatic relations with China. Britain was concerned because how China dealt with Macau’s status had obvious implications on the future of Hong Kong, and so tried to influence the Portuguese Government in such a way that the outcome would benefit the British on the Hong Kong issue. When the British Embassy in Lisbon reported to the FCO that “[t]he Portuguese press has published the text of an official statement issued yesterday by the Ministry of Foreign Affairs stating that the Portuguese Government wishes to establish normal relations with the People’s Republic of China”, it also said that “[t]he statement

³⁹³ FCO 40/957, f 116, McLaren to Quantrill and Thompson, 2 November 1978.

says that in this connection Portugal considers Taiwan to be an integral part of China. The Portuguese Government also considers that the territory of Macao could be the subject for negotiations at an appropriate moment between the two Governments”.³⁹⁴

On 5 January 1975, Portugal issued an official statement saying that:

The Portuguese Government moreover considers that the territory of Macao could be the subject of negotiations at a moment convenient to the two Governments, bearing responsibility meanwhile for the strict respect of the rights of Chinese citizens who live there.³⁹⁵

In other words, the statement did not spell out whether the Portuguese recognized that Macao was part of China.

In June 1978, Lord Moran, the British Ambassador in Lisbon, asked for the documentation on the legal status of Hong Kong, anticipating the Portuguese’s talks with China over Macao.³⁹⁶ David Owen, the British Foreign Secretary, replied that the Chinese had consistently maintained that the future of Hong Kong (like that of Macau) was a question to be settled “in an appropriate way when conditions are ripe”. The Chinese leaders had also made it privately that conditions were unlikely to be ripe for many years ahead and that they were content with the status quo in the meantime.³⁹⁷ MacLehose joined the discussion and hoped the Portuguese would avoid any reference to Hong Kong if they got involved in discussions with the Chinese about the status of Macau or in any public comment on the subject and would keep the British informed about any substantive discussions on the status of Macao.³⁹⁸ His only concern was that the Portuguese might put forward some form of words about the status of Macau (e.g. that it is Chinese territory temporarily administered by Portugal) that could later be used as a lever against Hong Kong, but “I do not think the likelihood or the risk is great”.³⁹⁹ McLaren of the HKGD thought that the Chinese might not accept a Portuguese offer to return Macao to China because that would upset Hong Kong’s status quo and hurt Hong

³⁹⁴ FCO 40/956, f 51, Attachment 1, Trench to FCO, 7 January 1975.

³⁹⁵ FCO 40/956, f 51, Attachment 2, Clark to March, 7 January 1975.

³⁹⁶ FCO 40/956, f 36, Moran to FCO, 26 June 1978.

³⁹⁷ FCO 40/956, f 37, Owen to Moran, 28 June 1978.

³⁹⁸ FCO 40/956, f 38, MacLehose to FCO, 28 June 1978.

³⁹⁹ FCO 40/956, f 42, MacLehose to Owen, 29 June 1978.

Kong's business confidence, and suggested that it was in the British interests to discourage the Portuguese from raising the question of the status of Macao in their negotiations with the Chinese over the establishment of diplomatic relations.⁴⁰⁰ Cradock, the British Ambassador in Beijing, also suggested that the British should emphasize to the Portuguese that it was in the interests of none of the parties concerned to link in any way the status and future of Macau and Hong Kong.⁴⁰¹

On 30 June 1978, Owen met with Vitor Sa Machado, Portuguese Foreign Minister.⁴⁰² He asked for assurances that Portugal would consult Britain before changes in relation to Macao were made because the issue affected Hong Kong and other British interests. He advised that the issue should not be raised with the Chinese, and thought that the Chinese did not want Macao back, nor the offer of it. He hoped that the Portuguese would consult Britain before any major decision was made. Sa Machado said that Macao was held by Portugal under an unwritten convention and there was no treaty.⁴⁰³ The 1933 (Salazar) Constitution had defined Macao as an integral part of Portuguese territory but the 1976 Constitution stated that "the territory of Macao, under Portuguese Administration, shall be governed by a Statute in keeping with its special situation". Sa Machado confirmed that the Chinese Ambassador in Paris had mentioned that Macao belonged to China during negotiations, and the Portuguese were disturbed that the issue of Macao had been raised. The Portuguese side would merely quote from the Constitution.

In July 1978, it was reported that, again, the Chinese were pressing the Portuguese to recognize Macao as part of China.⁴⁰⁴

⁴⁰⁰ FCO 40/956, f 40, McLaren to Murray, Cortazzi and Lord Goronwy-Roberts, 28 June 1978.

⁴⁰¹ FCO 40/956, f 41, Cradock to Owen, 29 June 1978.

⁴⁰² FCO 40/956, f 51, Attachment, Record of a conversation between British Foreign Secretary and Portuguese Foreign Minister at the FCO on 30 June 1978, Undated.

⁴⁰³ Wilson pointed out that this was a fallacy and in fact, there was a treaty: "Following successful attempts by other powers to annex parts of China (including Hong Kong), the Portuguese signed a treaty in 1887 under which the Chinese conceded that Macau was an inalienable part of Portugal in perpetuity. This treaty is, of course, considered by the Chinese to be an 'unequal' one. This is why, in their official statements, the Chinese lump together the questions of both Hong Kong and Macau, saying that both derive from unequal treaties and that both are historical problems to be settled 'when conditions are ripe'. See FCO 40/956, f 82, Wilson to Masefield, 22 July 1978.

⁴⁰⁴ FCO 40/956, f 50, Collecott to Fullerton and Daunt, 6 July 1978.

However, Hong Kong had a different version of the story.⁴⁰⁵ Li Chu-sheng, the Director of the NCNA, mentioned that discussions were going on between China and Portugal about establishing diplomatic relations, and the Chinese did not intend to raise the question of Macau during these discussions, adding that, when relations with Britain had been raised to the ambassadorial level, Hong Kong had not been mentioned. He said he hoped the Portuguese would not raise the matter either, and was worried that they might do so because of the influence of the Portuguese Communist Party acting under the encouragement of the Russians. He avoided comment on how the Chinese would react in such circumstances.

McLaren of the HKGD spotted an apparent contradiction: (a) the Portuguese said the Chinese were demanding them a statement recognizing Chinese sovereignty over Macau; and (b) the Director of the NCNA told the Political Adviser that the Chinese did not intend to raise the question of Macau during these discussions about establishing diplomatic relation and hoped the Portuguese would not raise the matter either. He also suggested the 1975 Portuguese statement might be a reaffirmation of Chinese sovereignty over Taiwan, not a statement about Macau.

The British government wanted to find out whether the Chinese Government had raised the Macau issue to the Portuguese. One way was to talk to the Director of the NCNA.⁴⁰⁶ Another was to confirm through its own connections. Roger Lobo, a LegCo member, told Roberts in confidence about what his brother, P H Lobo (a leading member of the Conserve Group Adim and a reserve member of the Macau Consultative Council, which was equivalent to the Executive Council in Hong Kong) told him.⁴⁰⁷ According to the Macau Lobo, the Portuguese Foreign Minister, Dr Da Machado, telephoned to Dr Carlos Assumcao (Head of Adim and President of the Legislative Assembly) to say that the Chinese had raised three conditions for diplomatic relations: (1) a statement in the usual terms about Taiwan being part of China; (2) a declaration of mutual non-interference in internal affairs; and (3) a statement saying that Macau was

⁴⁰⁵ FCO 40/956, f 44, MacLehose to FCO, 30 June 1976.

⁴⁰⁶ FCO 40/956, f 52, Owen to Lisbon, Hong Kong and Peking, 7 July 1978.

⁴⁰⁷ FCO 40/956, f 54, Roberts to Owen, 10 July 1978.

Chinese territory governed by Portugal. Point (3) had been discussed by the Consultative Council and later at a more restricted meeting of Adim leaders.

Finally, the British came to the conclusion that the Chinese had indeed brought the Macau issue into their Paris discussions with the Portuguese.⁴⁰⁸ However, it was interesting to learn that Governor of Macau, Leandro, had heard nothing about any recent request by the Chinese for an assurance that Portugal considered Macau to be Chinese territory,⁴⁰⁹ and Li Chu-sheng, who thought China's position was that the matter should not be raised "at present", was surprised when told that the Chinese had raised the Macau issue with the Portuguese.⁴¹⁰

Cradock advised the government that the British should consider approaching the Portuguese to repeat the advice that they ignore the issue, and a concession could be very damaging in Hong Kong and a private concession would probably leak.⁴¹¹ Quantrill of HKGD disagreed with Cradock,⁴¹² because the British Foreign Minister had made the British position quite clear to the Portuguese Foreign Minister, and when the British Ambassador in Lisbon discussed the question again with the Political Director of the Portuguese Ministry of Foreign Affairs, the Political Director seemed clearly to understand the significance of the problem. Therefore, it was unnecessary to instruct the British Ambassador in Lisbon to make another approach to the Portuguese.

At the end, the Portuguese Government wanted to instruct his ambassador to say that the Portuguese had taken note that the Chinese were satisfied with what they had said about Macau in 1975 and to leave it at that.⁴¹³ In other words, it was in effect to ignore the Chinese enquiry about whether to go any further.

⁴⁰⁸ FCO 40/956, f 58, Cradock to FCO and Hong Kong, 11 July 1978.

⁴⁰⁹ FCO 40/956, f 59, Roberts to Owen, 15 July 1978; FCO 40/956, f 71, Wilson to Samuel, 20 July 1978.

⁴¹⁰ FCO 40/956, f 61, Roberts to Owen, 15 July 1978.

⁴¹¹ FCO 40/956, f 58, Cradock to FCO and Hong Kong, 11 July 1978.

⁴¹² FCO 40/956, f 66, Quantrill to Murray, 18 July 1978.

⁴¹³ FCO 40/956, f 67, Moran to Cradock, 20 July 1978.

The British had been preparing for the worst, and prepared contingency planning to evacuate the 114 British subjects in Macao registered since 1974 related to emergency there.⁴¹⁴

In September 1978, the British learned from its source that the Portuguese might have misinterpreted the Chinese when the latter raised the Macau issue.⁴¹⁵ The Chinese mentioning of the Macau issue was to seek an assurance from the Portuguese that no reference would be made to the possibility of Macau being returned to China in any statements concerning the establishment of diplomatic relations between China and Portugal!

In February 1979, Portugal established diplomatic ties with China. The Communique on Establishment of Diplomatic Relations with Portugal issued in Paris on 8 February 1979 made no reference to Macao, nor was Macao mentioned in an accompanying front page leader in the People's Daily of 8 February 1979.⁴¹⁶

4.6 Lord Privy Seal's Visit to China in January 1982

This section shows how the British policy towards "the future of Hong Kong" issue was formulated in late 1981 - early 1982. We can see that all of the principal players were involved in the process. In addition, the Secretary of State was also involved.

4.6.1 Draft OD Paper: "Future of Hong Kong: Contingency Options"⁴¹⁷

In December 1981, a draft OD paper was prepared by the Secretary of State for Foreign and Commonwealth Affairs. Several key personnel involved in the issue had

⁴¹⁴ FCO 40/956, f 86, Morrison to Parkinson, 4 August 1978.

⁴¹⁵ FCO 40/957, f 99, Unidentifiable sender to Westbrook, 24 September 1978.

⁴¹⁶ FCO 40/1058, f 23, Cradock to Owen, 9 February 1979.

⁴¹⁷ FCO 40/1291, f 255, Annex, Draft OD paper: Future of Hong Kong: Contingency Options, Undated.

contributed to the draft, including Cradock (Ambassador to Beijing), Murray MacLehose (Governor of Hong Kong), and R.D. Clift (HKGD)⁴¹⁸.

In the draft OD paper, two options were proposed:

- (a) A Chinese public undertaking to give long-term notice (say, 15 years) of change in the status of the Territory);
- (b) Statements by the UK and China that Hong Kong was Chinese territory temporarily under British administration and that no change was intended for many years to come.

The draft paper pointed out that the price for option (a) would almost certainly be renunciation of sovereignty by HMG. Option (b) also amounted to technical renunciation of sovereignty. However, judging by the British contacts with the Chinese and the then recent statements on Taiwan, the British were unlikely to reach an agreement without this concession.

The British aim in being prepared to bargain on sovereignty would be to obtain well before 1997 an assurance that a separate British-administered Hong Kong would continue after that date. At the least, they would need Chinese acquiescence in amendment to the 1898 Order in Council by which British administration over the New Territories ended in 1997.

It was noted that relinquishment of sovereignty would require an Act of Parliament. Provided that the Chinese agreed, recognition of their sovereignty could legally be combined with continuing responsibility by HMG for domestic administration and external relations.

Towards the end of the paper, it was recommended that the British should not make a premature offer on sovereignty.

⁴¹⁸ FCO 40/1291, f 253, MacLehose to FCO, 1 December 1981; FCO 40/1291, f 254, Clift to Elliot, 2 December 1981.

4.6.2 Working out the details of the contingency options

W. Morris of the HKGD studied the legal implications of a relinquishment of sovereignty.⁴¹⁹ He listed out a number of possible problems and offered solutions to (some of) the problems:

<u>Problem</u>	<u>Solution</u>
(a) End of legal basis of British Administration over the New Territories in 1997	Amendment to the Order in Council of 1898. To be effective it requires at least Chinese acquiescence.
(b) Relinquishment by the UK of Sovereignty over the whole of the territory and the transfer of sovereignty to China. Combined with:	Act of Parliament (in respect of the whole territory)
(c) Continuation of HMG's responsibility for domestic administration and external relations (including currency, law and the position of Governor)	
(d) Continuation of the application of existing international treaties signed by the UK (the entering into of new treaties?)	Either explicit agreement with China or quotable acknowledgement. (Any action required with international bodies?)
(e) Citizenship (BDTC) and provision for consular and other protection overseas	Amendment of the British Nationality Act (?)
(f) Maintenance of a British military presence	
(g) Continuation of air services rights.	
(h) ?	

⁴¹⁹ FCO 40/1291, f 256, Morris to Rushford, 3 December 1981.

In response to Morris, Rushford, Deputy Legal Adviser, offered a detailed analysis of the legal implications of various options⁴²⁰:

- If the PRC Government was willing to enter into an agreement with the U.K. authorizing the U.K. to administer the New Territories after 1997.06.30 in the same way as before, all that would be required in U.K. municipal law to give effect to the agreement would be an amendment to the Order in Council of 1898.
- HMG might need to make some sort of political declaration acknowledging the China sovereignty over Hong Kong while allowing the status of Hong Kong in U.K. law as part of Her Majesty's dominions to remain unchanged.
- If the Chinese were to insist that the territory of Hong Kong then under the sovereignty of the U.K. as a matter of international law should be ceded back to China, it would be necessary for this matter, and all important incidental and consequential matter, to be dealt with in the agreement and the U.K. would have to implement the agreement in its own law by means of an Act of Parliament.

Rushford proceeded to go into detail with the topics including responsibility for external affairs, responsibility for the civil government, citizenship, responsibility for defence, responsibility for immigrants, registration of ships and aircraft, currency and postal matters, air services, grant of lease of public land, and duration and termination of the arrangements.

A political declaration would raise fewer complications than a formal cession of territory. However, if the Chinese would agree to the continuance of the existing British regime more or less intact after cession of the territory the legal arrangements should not present much difficulty

Rushford thought that although one might expect the agreement between the U.K. and China to be a formal and detailed one in view of its importance, an informal agreement in broad terms, avoiding legalistic terms, might suit both parties better. Broad treatment would make it possible to avoid enumerating every particular matter that remained with U.K. competence.

⁴²⁰ FCO 40/1291, f 260, Rushford to Morris, 7 December 1981.

Rushford emphasized that any agreement should preserve the exclusive right of the U.K. to make laws for the territory on all matters. An Act of Parliament divesting the U.K. of sovereignty would need to declare that all existing laws would continue to apply in relation to the territory as if there had been no change of status except in so far as they were specifically modified by the Act or subsequently amended or revoked.

Clift of the HKGD studied the political difficulties associated with the concession of British acknowledgement of Chinese sovereignty over Hong Kong, with implications for other Dependent Territories, notably the Falkland Islands and Gibraltar⁴²¹.

In the case of the Falkland Islands, a lease-back in return for acknowledgement of Argentine sovereignty had already been canvassed. On Gibraltar, the Spaniards had been demanding little more than British acknowledgement of their sovereignty - although they would see the next step as autonomy under the Spanish Constitution. The whole idea was anathema to the vast majority of Gibraltarians, who relied on the British pledge that they would not pass under sovereignty of another State against their freely and democratically expressed wishes. Any move over Hong Kong's sovereignty would be watched carefully by the Spanish Government and could further complicate HMG's already tricky task in handling negotiations with them.

Clift pointed out some important differences between the situation in Hong Kong and Gibraltar, namely, there was no question of avoiding change of some sort in 1997 as regards the New Territories, and there was no specific pledge for Hong Kong comparable to that made to the Gibraltarians.

People of Hong Kong wanted the present position to continue so far as possible under a British umbrella but there was no reason to suppose that they regarded sovereignty in itself as the key point. A concession on sovereignty would therefore be a price worth paying for the removal of uncertainty and the maintenance of a form of British administration for as long as possible beyond 1997. "Thus with this option HMG would stand a change of obtaining a realistic arrangement for Hong Kong, which would assist

⁴²¹ FCO 40/1291, f 255, Clift to Youde, 3 December 1981.

our relations with the Chinese and be a considerable foreign policy success. Without it we would have little effective bargaining power”.

4.6.3 Points to make during Lord Privy Seal’s visit to China

Humphrey Atkins, the Lord Privy Seal (LPS), was to visit China and Tokyo in January 1982. Obviously, LPS would and should raise the Hong Kong issue with the Chinese leaders, as the British Government was planning to have the Prime Minister, Mrs Margaret Thatcher, visit Beijing in the second half of 1982. The problem was: what should LPS say to the Chinese leaders during his visit to China?

In the beginning, Lord Carrington, the Secretary of State for Foreign and Commonwealth Affairs, drafted “points to make” during Lord Privy Seal’s visit to China.⁴²²

A. Line with Chinese leaders

- Recall Lord Carrington’s discussion with Chinese leader in April 1981. Glad relations over HK were so good. Grateful for Chinese assurances. Value practical cooperation with Guangdong.
- As Lord Carrington explained there was a legal problem over 1997, particularly over length of land leases in the New Territories. This was subject to growing discussion in Hong Kong and could affect confidence. Common interest in bolstering confidence. Grateful for Chinese views on ways of doing this.
- (Providing the Prime Minister’s visit had been agreed) Mrs. Thatcher, who discussed Hong Kong in general terms with Hua Guofeng in 1979, would want to follow- up when she visited, and would certainly hope to make progress.
- (If Chinese repeated assurances) We accepted these. Problem was that public opinion and investors might not. Confidence could slip.
- (If Chinese asked for our specific views) Here to learn rather than go into detail. Of course, we had been thinking but needed to know Chinese ideas. Exchange of views between officials would be useful. Should aim to recommend measures to

⁴²² FCO 40/1291, f 259, Carrington to Governor and Political Advisers, 4 December 1981.

maintain confidence of investors in HK economy and ensure continuing stability. Should cover question of land leases.

B. Line with press in Hong Kong

- Hong Kong naturally came up in our bilateral discussions. We agreed on the importance of maintaining stability and confidence. Convinced of the seriousness of Chinese assurances to investors in Hong Kong. Meanwhile our relations with China and practical cooperation over Hong Kong were first class.
- (If asked whether any agreement with China on 1997 was sought) Atkins was in China to learn. It was right at this stage to concentrate on getting their views on a range of problems.
- (If asked and depending on status of Prime Minister's visit) Mrs. Thatcher agreed with Premier Hua Guofeng in 1979 to keep in touch with the Chinese Government on HK. Her visit would provide an opportunity to do this.

MacLehose suggested modifying the "points to make".⁴²³ He suggested "to wait until the need to act to protect their and our interests in Hong Kong is more apparent to the Chinese. We have acted once prematurely and I wish to avoid doing it again". The Governor specifically asked to add the following paragraphs to the "points to make":

As Lord Carrington explained, there is growing concern about the future in Hong Kong and this could soon affect investment. The assurances given by the Chinese Government have been of great value, and they would be enough to maintain confidence indefinitely were it not for the fact that their effect is undermined by the Order-in-Council which is the legal basis for the present administration. The problem is not the credibility of Chinese assurances, but the time limit imposed by British law. As it now stands, this Order requires U.K. administration, including land leases granted by the Hong Kong Government, to end in the New Territories in 1997, and there is no question of British administration continuing in the rest of Hong Kong if it ceases in the New Territories. Local and overseas investors (and their lawyers and accountants) therefore have to assume that the present arrangements in Hong Kong, including its laws, currency and trade agreements, will come to an end on that date. They do not know what successor arrangements might be made.

This situation could lead to the rapid dispersal of the capital and industrial resources of Hong Kong within the next few years unless clear and firm

⁴²³ FCO 40/1291, f 265, MacLehose to Clift, 8 December 1981.

arrangements for the medium term future are agreed between the Chinese and British Governments and announced to the people of Hong Kong. If the Chinese agree that it would be desirable to remove the present certainty about the date of the termination of British administration, the arrangements would need to include replacement or amendment of the present provisions of British law in a manner which would not prejudice China's position with regard to Hong Kong.

This is a mutual problem which the Chinese Government has [sic] also no doubt studied. We should be interested to hear their ideas.

The Governor proceeded to add that the above points should not be made at a level lower than that of foreign minister. Furthermore, the Governor wanted to include a specific reference to British administration of Hong Kong without the New Territories being impossible. This point had not been said to the Chinese before, and the Governor thought it was time to do so.

Clift of HKGD disagreed with the Governor.⁴²⁴ According to Clift, LPS simply should not go into considerable detail on the nature of the legal problem and the sort of solution which the British had in mind. The main problem was that there was too much emphasis on the ending of British administration in the New Territories in 1997, and by implication on the need for a continuation of that administration. Of course, that was what the British would like to achieve. But it was difficult for the Chinese to concede and the British had to approach it gradually. The main reason why the Chinese rejected the British suggestions in 1979 was almost certainly because they did not want to endorse British legislation extending beyond 1997. If a senior Minister were to speak on the lines suggested by the Governor, the Chinese leader concerned might feel himself obliged to take a negative position.

Clift also disagreed with Governor's opinion that "there is no question of British administration continuing in the rest of Hong Kong if it ceases in the New Territories". Clift pointed out that in the first place, no British Ministerial decision had been taken on such an important point (which implied relinquishment of sovereignty over Hong Kong Island and Kowloon), and in the second place the statement could be read by the

⁴²⁴ FCO 40/1291, f 266, Clift to Lord Privy Seal, 9 December 1981.

Chinese as an implied threat by the British to get out of Hong Kong if the Chinese did not meet the British requirements. Clift thought that the Chinese suspected the British of wanting this. The British would get nowhere by confirming the Chinese suspicious.

Furthermore, Clift disagreed with the Governor's suggestion for LPS to mention examples of the options in the background paper on the basis that they were unlikely to have endorsement of these proposals by the Secretary of State and the Prime Minister by the time of LPS' visit and the risk that specific proposals would produce a premature rejection which would inhibit later negotiation.

Humphrey Atkins, LPS, wrote to the Lord Carrington, the Secretary of State for Foreign and Commonwealth Affairs to express his thoughts⁴²⁵. Atkins did not think that it would be right to put a draft OD paper to the Prime Minister at that stage. The draft OD paper raised major questions of substance on Hong Kong which the Prime Minister would certainly wish to take time to consider. This applied particularly to a possible concession to the Chinese on sovereignty over Hong Kong. To Atkins, it would be best to submit to her on the substantive issues after his visit.

Atkins recalled that the Ambassador in Beijing would like to give clear advance notice to the Chinese that the British wanted to make progress during the Prime Minister's visit, and Hong Kong's Governor believed that the British should move more cautiously - ideally leave the problem until weakening confidence in Hong Kong forced the Chinese to talk. However, the Governor recognised that the Prime Minister's visit injected a new factor. Both he and the Ambassador would like LPS to give to the Chinese a fairly full expose of the legal problems connected with 1997 and to emphasise the difficulties caused by the ending of British administration in the New Territories in 1997.

Atkins thought that this would be going too far. Even if he were to put forward ideas on the basis that the Chinese might "chew them over" before the Prime Minister's visit, there would be a risk of their turning them down on the spot, particularly if they got the

⁴²⁵ FCO 40/1291, f 271, Lord Privy Seal to Carrington, 11 December 1981.

idea that the British were trying to bounce them into agreeing then to the British staying on beyond 1997.

Lord Carrington, the Secretary of State for Foreign and Commonwealth Affairs, wrote to the Prime Minister about LPS Humphrey Atkins' visit to Peking and Tokyo in January 1982.⁴²⁶ Carrington thought that Atkins should take the opportunity of putting down a marker both with Chinese and the Japanese that the Prime Minister hoped in principle to visit in the second half of September 1982, and it would be important to get the lead up to the Prime Minister's visit right. Atkins' visit would be an important link. He should not try to pre-empt any substantive discussions which the Prime Minister might have. There was always a risk of scaring the Chinese off by pushing them too fast. But he should try to establish whether there had been any shifts in Chinese thinking since they last tackled them and to see what line they would be likely to take with the Prime Minister. It would be helpful to know whether the Prime Minister agreed with this general plan and in particular to have before Christmas the Prime Minister's views on what Humphrey Atkins might say about the Prime Minister's Far East visit.

At the end, the Secretary of State adopted the opinions of Clift and Atkins⁴²⁷ and did not adopt the Governor's suggestions, and the version of "points to make" as in the Brief for "Lord Privy Seal's Visit to Hong Kong: 8 to 10 January 1982" was basically the HKGD's version.⁴²⁸

4.7 Concluding Remarks

The Hong Kong issue was a diplomatic issue to the British, but Hong Kong Government was greatly involved in devising tactics to deal with it. MacLehose was appointed the Governor of Hong Kong so that he could become the "person on the spot" who were familiarize with the Hong Kong affairs and, making use of his diplomatic

⁴²⁶ FCO 40/1291, f 272, Carrington to Prime Minister, 15 December 1981.

⁴²⁷ "The Secretary of State decided I [i.e. LPS] should refer merely to his discussions last March and to the Prime Minister's visit if approved. We must not scare the Chinese off. The brief reflects this." See FCO 40/1291, f 275, Lord Privy Seal's Visit to China: 8 to 10 January 1982, undated.

⁴²⁸ FCO 40/1291, f 275, Lord Privy Seal's Visit to China: 4 to 8 January 1982, undated.

background and experience as well as his knowledge about Hong Kong affairs, contribute to the formulation of appropriate British tactics on the Hong Kong issue.

The formulation of the British tactics on the Hong Kong issue again illustrates what Chapter 2 has shown. The Governor of Hong Kong, British Ambassador to Beijing, and FCO's HKGD people were the core team working together to devise a British tactic. Since the British tactic contained many legal elements, inputs from Research Department and legal advices from various offices were sought. The Secretary of State was personally informed throughout the whole process. During the process, HKGD tried to solicit more information from Hong Kong so that it could understand Hong Kong affairs more.

5. Observations and Policy Recommendations

5.1 Observations

In Chapter 2, we discussed the pre-1997 colonial governing system in Hong Kong. Specifically, we highlighted (1) the governing team sent to Hong Kong by the British Government in London; (2) the support system based in London that provided necessary supports to the governing team in Hong Kong; and (3) the control and monitoring mechanisms within the British Government and the British society to ensure effective governance in Hong Kong. In Sections 3 and 4, we presented two case studies: corruption and the establishment of ICAC; and preparations for the Sino-British negotiations over Hong Kong. In this section, we are going to integrate the discussions and try to understand the pre-1997 governing system in the light of the case studies. In addition, we want to understand the inadequacies of the post-1997 governing system in the light of our discussions of the pre-1997 governing system.

5.1.1 From exogenous to endogenous formation of the governing team

Before 1997, Britain maintained an adequate supply of qualified candidates for senior or top posts in its colonies. These candidates mainly came from the Colonial Service, but might also come from other sources (for example, Governor MacLehose was an official with diplomatic background; he had served as the British Ambassador to South Vietnam and to Denmark before being appointed Hong Kong Governor). These candidates from Britain filled in the posts, dominating the top government positions and providing political leadership, while the officers recruited locally were trained to be efficient and effective administrators.

The dominance of the British officers in Hong Kong can be seen clearly from the establishment of the ICAC that the key appointments were made to British officers (e.g. Jack Cater as the Commissioner, John Prendergast as Director of Operations). Many of these appointments were made to people from the UK Police or Scotland Yard. In fact,

Hong Kong did not have enough people with the required expertise nor the credibility (not perceived as a corrupted official) in fighting corruption by the mid-1970s, and so the newly created ICAC needed to recruit senior people from overseas. It can also be seen from the fact that in the preparations for the Sino-British negotiations over Hong Kong, the principal players for devising the British tactics were all British (Governor Murray MacLehose, Robin McLaren of the Hong Kong and General Department, Percy Cradock, Ambassador to Beijing, and Anthony Rushford, Deputy Legal Adviser at Hong Kong and General Department).

Sometimes, the British officers might serve some extra functions. One such function was that they were distant from the local officers and thus were seen as free from collusion with them. This could be witnessed in the first generation of ICAC's top management. In the early 1970s, in the public's eyes, corruption was seen as widespread and permeated the entire government in Hong Kong. To root out the problem, Hong Kong Government, with heavy involvement of the British Government, deliberately appointed the British officers with no or little local connections as ICAC's top management so as to gain credibility from the public.

Here, even if there was a political will and determination to eradicate the corruption problem, a system would be need to facilitate the implementation of such a reform plan. As documented in Chapter 3, it only took about two months' time to establish a new institutions in Hong Kong to combat corruption. If there were no qualified candidates available to lead the institutional-building project and to staff the top posts of the newly-established ICAC, then the effectiveness of the reform efforts would be discounted. Also, as to be shown in the next section, if there were no ideas or knowledge of how to combat corruption among the governing elites in London and Hong Kong, there would not be a chance for the reform plan to be a success.

The governing team sent to Hong Kong by the British Government had been pulled out just before July 1997. Like other former British colonies, Hong Kong has encountered difficulties in forming its governing team with capable governing elites with political perspectives. The short supply of governing elites is not unexpected given the colonial political system of Hong Kong and the domination of apolitical value and culture in the Hong Kong society. In addition, Hong Kong did not experience the kind of political

mobilization that has normally associated with nationalist movement or anti-colonial movement. Without a widespread nationalist or anti-colonial movement, the emerging local political leaders have not gone through the normal brewing process of acquiring political maturity and credibility. During the colonial British rule, the capable young people are encouraged to either joining the government as civil servants or becoming businessmen or professionals. There is neither the incentive nor the environment that help build a pool of capable and credible political talents. In fact, Hong Kong did have a pool of administrative talents in the government (e.g. the Administrative Officers) who were trained and expected to conduct administrative and managerial works. This was the design of the British Government to have the locally-recruited civil servants responsible for administrative works, while the British officials sent from London taking up the role of policy makers/political leaders. Distinction should be made between the Administrative Officers from the Colonial Service/Overseas Civil Service and those from the Hong Kong Civil Service. They shared the title of position, but were charged with different jobs and responsibilities. This dichotomy of British-recruited AOs as policy makers/political leaders and Hong Kong-recruited AOs as policy administrators was the political design of a colonial system.

Due to the “one country, two systems” and “Hong Kong people governing Hong Kong” design, the Chinese Government cannot appoint its political elites to senior political posts in Hong Kong after 1997, just as what the British Government did before 1997. As a result, senior positions in HKSARG need to be filled by either local AOs or local political leaders. Even though a handful of local AOs were promoted to the core positions of the Hong Kong governing team a few years before 1997, it is not easy for them to adjust their role from administrators to political leaders in a short period of time given that they were trained and expected to play the role of policy administrator when they first admitted as AOs some twenty years ago!!! The mind set and skill set are so different that the role transformation from policy administrator to policy maker/political leaders becomes very difficult if not impossible. Unfortunately, the difficulty of such role transformation is not well appreciated. Sometimes, the need for such role transformation is even not comprehended.

Regarding the formation of a governing team, it is not the simple sum of individual capable political leaders. It is more than the sum of individuals. It is the teamship and

team spirit that make a team work. In fact, Hong Kong is lacking not only a pool of capable political leaders, but also the platform that helps build the governing team. During the colonial era, the British Government had built up an extensive pool of talents who came from similar social background, going to the top British universities, undergoing similar training after admission to the Colonial Service/Overseas Civil Service, and working in the same department for years. They had developed certain policy consensus and similar value orientation as far as their job was concerned. Otherwise, they had already been screened out in the early stage of their career. The Colonial Service/Overseas Civil Service was the system that helped form the colonial governing teams by putting together the social talents and equipping them with the required mind set and skill set of governing.

The best candidates would be selected for the top posts in the colonial governments if and only if there were a large number of qualified candidates competing for these posts. In other words, selecting the best would only be possible if there is competition, and competition is possible only if there are a sufficient number of qualified candidates around. The size principle is therefore critical for the selection of best candidate for the job. Given the large establishment of the Colonial Service/Overseas Civil Service (some 18,000 officials in 1955, of which about 2,400 were in the Administrative Officers), there was an adequate supply of qualified staff to lead the colonial governments.

Here, the importance of the British officers is generally under-appreciated. In pre-1997 Hong Kong, British officers, including the governing core, senior management officers and senior professional staff, might include thousands of people. These British officers might have different technical backgrounds, but they shared more or less the same set of values and rules of conduct. With such a governing team with support from British officers, newly appointed senior officers who worked elsewhere prior to the appointments would find themselves compatible with the governing team and could work comfortably and effectively in Hong Kong. It can be imagined that even Lee Kuan-yew or Zhu Rong-ji, if appointed to be Chief Executive or Chief Secretary, could not function well in the post-1997 Hong Kong context because they were not compatible with the governing team in Hong Kong!

As documented in Section 3.5, the decision to set up a new anti-corruption unit (it was eventually named as ICAC) and the related senior staff recruitment and appointment had taken place and finished in about two months' time. This efficiency is only possible when there is a political will and determination from the above (such as Secretary of State Douglas-Home and Governor MacLehose), and there are enough candidates available for various senior posts of the ICAC. As the founding members, those being appointed should be of high calibre and credibility. Among them, John Prendergast (the Director of Operations) is an example. He served as the Director of Special Branch of Hong Kong Police between 1960 and 1966. Before coming to Hong Kong, he held various top colonial intelligence posts in Kenya, Cyprus and Aden, and was awarded the George Medal for his works during Mau Mau Emergency in Kenya in 1955.⁴²⁹

With the fading out of the British officials, Hong Kong did fill up their vacancies by the locally-recruited AOs. But the question is the locally-recruited AOs have not been equipped individually and collectively with the qualities to perform the required functions of governing. There is a significant mismatch. Up to July 2002 (before the introduction of the Accountability System for Principal Officials), HKSARG heavily relied on the locally-recruited AOs in forming the governing team. The positive side is that they could work as a team among the AOs themselves, but the negative side is that they are yet to acquire individually and collectively the necessary qualities of governing. The introduction of the Accountability System for Principal Officials in July 2002 has not worked to strengthen the governing team as expected because the newly-appointed principal officials who were not AOs are not equipped with the necessary qualities.

In pre-1997 Hong Kong, senior officers were selected from the pool of candidates mainly in Colonial Service with adequate training in and experience as governing elites with political perspectives. However, post-1997 Hong Kong does not have a systematic mechanism to provide such training in and experience as governing elites. Thus, the newly-appointed non-AO principal officials simply are not well-prepared and lack the qualities and experience necessary for governing elites with political perspectives. They do not have a prior experience of working as a team before joining the HKSARG and are not compatible with the rest of the governing team. In other words, these principal

⁴²⁹ The Official Gazette of the Colonial and Protectorate of Kenya, 4 October 1955, p. 976.

officials, be they locally-recruited AOs during the British colonial rule or the newly-converted professionals who are appointed after July 2002, are lacking the political mind set and skill set as well as political credibility in the eyes of the public. The governing team is further handicapped by the fact that they are not working as a team most of the time.

The failure of having a pool of political elites and the missing of an organizational base for the emergence of a governing team after 1997 are some of the signs pointing to an unsuccessful system transformation. Localization means that those posts previously occupied by the British officials are now replaced by the locally-recruited officials. But equally important is whether the locally-recruited officials have the required qualities for the posts. For most of the positions in the professional grade, the problem may not be serious because of the availability of such a pool of qualified persons. However, the posts in the governing team were not open to the locally-recruited officials until a few years leading to 1997, and there was no concrete and effective measure to train up a pool of political leaders to succeed these posts before or after 1997.

The staffing and formation of the governing team of Hong Kong had been **exogenous** before 1997. When the British pulled out from Hong Kong in 1997 together with its large pool of potential candidates for filling Hong Kong's senior government posts, Hong Kong was nearly certain to experience a problem of a shortage of political talents necessary for forming its governing team. Such a problem could be avoided if the Chinese Government realized the possibility of the problem and succeeded to train sufficient number of political talents before 1997. It seems that the Chinese Government did realize the problem,⁴³⁰ but, judging from the outcomes, it is obvious that it has not

⁴³⁰ The following passage may suggest that Deng Xiaoping, the architect of the "one country, two systems" model of Hong Kong, indeed realized the problem no later than April 1983 when he said the following on 22 April 1983:

[F]rom now on until 1997, in this 14 years of the transition period, [we need to decide] how to guarantee there will be no chaos in Hong Kong, both [the British and the Chinese] will not do things harmful to Hong Kong's prosperity, how to transfer smoothly, the ways how Hong Kong people gradually participate in different affairs, especially political, economic, legal and external affairs and others. The patriots of Hong Kong need to participate gradually in administrative management, and participate in the legislative agency, judiciary agency and administrative agencies (Chinese Communist Party Central Document Research Office, 2011: 459. Original in Chinese, translation mine).

done enough to produce sufficient number of political talents who have the right qualities and calibre to become the governing elites after 1997. The above-mentioned problems of staffing and formation of the governing team might be alleviated if the HKSARG could rebuild its capacity of having a pool of political elites and the necessary organization base for the emergence of a governing team. However, the HKSARG fails in the job. Indeed, the deliberate restriction of party politics in Hong Kong makes it difficult for political elites to emerge. In this regard, the problem that Hong Kong encounters is one of the failure to make the staffing and formation of the governing team **endogenous** after 1997.

5.1.2 The support system in the making

The catching up is not confined to the supply of political leaders and the organizational basis for the emergence of the governing team, but also extended to other critical components of the governing system. The support system is one of them, which involves the generation and application of policy knowledge and ideas. The support system can be seen as one that provides a flow of policy knowledge and experience from London to the colonies concerned. It is a must to have sound knowledge and reliable information for making a wise policy judgment or decision. Policy knowledge is required for establishing a causal relationship between/among things, while policy experience is indispensable for shortening the processing time for a decision. There should be a group of people whose works are to relate or apply all these policy knowledge and ideas to the real political and policy situation, such as to support the formulation and implementation of governing strategies, to provide policy supervision, to input policy advises, and so on. This group of people may be named as the *aides-de-camp* of the governing team. Only with this thick layer of *aides-de-camp* are the governing elites able to provide effective political and policy leadership. Such a thick layer of *aides-de-camp* (based in Hong Kong and London) served as an essential support to effective governance before 1997 but basically weakens in the post-1997 Hong Kong because of the incomplete system and role transformation. This is

Deng conveyed a similar message on 25 June 1983 (Chinese Communist Party Central Document Research Office, 2011: 467) and on 3 October 1984 (Deng, 1994: 81-82).

especially the case when a higher and different quality and calibre are required in the post-1997 political context.

In the pre-1997 support system, the Foreign and Commonwealth Office (FCO) in London played a pivotal role in coordination and interaction with the governing team in Hong Kong: the governing team in Hong Kong sought policy advices and request for staffing backup from Britain, and in return, the FCO supervised and provided guidance and even instructions to the governing team in Hong Kong, sometimes with the help of other British ministries. This is obvious in our documented evidence detailing the back-and-forth exchanges between MacLehose and the FCO on various issues of extraditing Godber and establishing the ICAC. This is also confirmed by our documented lengthy discussions and drafting and redrafting of the Order in Council intended to provide legal justification for the possibility of exercising jurisdiction beyond 1997 mainly among the Governor, Rushford, McLaren and Cradock. In fact, our case studies show that the Secretary of State was personally involved in many issues.

Other than the FCO, other ministries might play an important role in the pre-1997 support system. Depending on the nature of the help needed, the relevant ministries provided the necessary support. For example, in 1960, the Social Welfare Adviser of CO advised that the proposed Citizens Advice Bureau to combat corruption and the proposed Bureau might be administered by Hong Kong Council of Social Service, with the help of Social Welfare Department. When the Godber incident occurred, the legal validity of extraditing Godber was raised and the legal departments offered advices in various occasions. More revealing was the report proposing the future structure and procedures of the operations department of ICAC by R. H. Anning, a Commander of Metropolitan Police Office, New Scotland Yard London. On the future of Hong Kong issue, numerous legal inputs from both Hong Kong and London could be located, as the British viewed “the future of Hong Kong” basically as a legal issue.

There had been scheduled visits of British officials to Hong Kong. These officials included the Secretary of State for the Colonies/for Foreign and Commonwealth Affairs, its Parliamentary or Permanent Under-Secretary, advisors and the desk officials from the related geographical department within the FCO. For example, during his visit to Hong Kong in 1964, Sir Ivo Stourton, Inspector-General of Colonial Police discussed

with the Governor and the Commissioner of Police about the allegations of John Wallace, a Police Inspector of Hong Kong. Sometimes, ad-hoc visits based on issues or events were arranged when required. For example, Commander Anning paid a three week advisory visit to study the corruption problems in Hong Kong in 1974 (after the visit, Anning drafted the report concerning the ICAC operations department mentioned in the last paragraph).

The Colonial Office (CO) and its successor, the FCO, had long been conducting researches concerning colonial territories and had its own Research Department, principally for providing information and case analysis for policy planning and giving advice. Furthermore, the British Government had put in place a substantive policy research community on colonial affairs in London so as to build up her understanding and knowledge about her colonies. The policy experience gained in Britain might serve as a guide or a target of imitation by the colonial policy-makers.

For example, in 1954, a Hong Kong police officer visited the Corrupt Practices Investigation Bureau in Singapore which was divorced from the Police Force and directly responsible to the Colonial Secretary, and in 1968, a Crown Counsel and the Chief Superintendent of Police of Anti-Corruption Branch visited Singapore in 1968 to study their anti-corruption. In 1960, when Governor Black was considering setting up a Citizens Advice Bureau to combat corruption, he asked CO if there were similar bureaux run in the UK or other Commonwealth countries and their effectiveness and difficulties, and also for comments on the Ombudsman system in Denmark. As regards to the future of Hong Kong issue, research inputs were sought for to find out the historical and legal basis for the British rule over Hong Kong, and to provide relevant experience of other British colonies/dependent territories that might shed light on how to handle “the future of Hong Kong” issue. Specifically, the research departments provided the official British position on the Hong Kong issue (treaties, official statements, etc.), the official Chinese position/policy on the Hong Kong issue, the official Chinese statements, and the British view of the Chinese position/policy on HK (i.e. the British view of the usefulness of Hong Kong to China). They also reminded the officers that talking with China should start in the mid-1980s. In addition, they tried to locate British colony examples of land lease extension after decolonization.

Policy knowledge and experience could be easily absorbed, exchanged or adapted through the routine duty visits of the senior governing team members in the colonies, the scheduled inspection tours of the FCO/CO officials to the colonies, joint meeting or conference, and so on. The policy knowledge and experience of the governing team of Hong Kong and the officials from the FCO/CO or other British ministries were highly compatible because they were all coming from the same British system. More importantly, the political institutions and procedures of Hong Kong were built on the British model since its establishment in 1842. The whole system had been operating with periodic adjustments for over 150 years. It could be said that Hong Kong replicated the British system under the British guidance. Therefore, British officials would not find it difficult to work with and understand the Hong Kong system.

The research community in pre-1997 Hong Kong was not developed at all. It did not matter because Hong Kong had a British reference system: there was no need for a research community in Hong Kong to do local policy research and policy knowledge and experience necessary to Hong Kong's policy making could easily be obtained from the British support system. The British departure in 1997 signified the cut off of Hong Kong from the British support system.

Under such circumstance, Hong Kong has to put up a new and self-sufficient policy support system locally. This is good in that there is no incompatibility problem because the support system originates in Hong Kong. But it requires time and mechanisms to nurture the support system even when HKSARG realises the need to develop a self-sufficient policy support system and takes appropriate steps along the process. However, HKSARG has been slow in refocusing or re-prioritizing its resource and policy in building up such a policy support system in Hong Kong. Even though it has been aware of the need to have policy research and started to launch a public policy research programme under government funding in 2005, the resource being set aside for that purpose is rather disproportionately small (HK\$20 million per year).

The current situation regarding the policy research community is depressing and there is a widespread lack of appreciation of the importance of policy research, and not enough resources devoted to policy research. The HKSARG does not regard policy research as important and the research capability of the policy bureaux is not strong. Political

parties do not have enough resources to do quality policy research and their policy positions are based more on ideology and political instinct rather than conclusions from policy research. Think tanks are numerous in Hong Kong, but the scale and research capacity of these think tanks are small and limited. Also, different think tanks do not compete on policy research outputs: there are hardly any cases that different think tanks put forward different policy proposals on the same policy areas at roughly the same time.

The situation of universities needs special mention. The incentive structure of the universities in Hong Kong is not friendly to local public policy research. Universities in Hong Kong are mostly publicly funded (except Hong Kong Shue Yan University, the only private university in Hong Kong at present). Evaluating the performance of public-funded organizations is a key to ascertaining public funds are not misused, and one of tools to evaluate the performance of universities in Hong Kong is the Research Assessment Exercise (RAE) conducted by the University Grants Committee (UGC). The RAE assesses the research output performance of the UGC-funded institutions, and partly determines the amount of funding each institution obtains. Currently, the RAE puts heavy emphasis on “top journals”, which is the other name for prestigious journals in the United States and other western countries. Articles published in these journals are counted as “research output”, and articles published elsewhere are not. However, “top journals” are not interested in publishing articles on public policy research relevant to Hong Kong. The pressure of performing well in the RAE is on the universities. The universities transmit the pressure to the departments, and the departments in turn transmit the pressure to individual professors and lecturers. As a result, academics teaching in UGC-funded institutions are not keen to spend efforts on local policy research, because local policy research outputs are extremely difficult to get published in “top journals” and therefore not counted as “research output” in the RAE. That means although local public policy research may be crucial to effective public governance in Hong Kong, local academics have low or even no incentives to conduct research on Hong Kong.

Also, the policy-makers in Hong Kong seem to rely more on their personal experience than the knowledge derived from policy research. It is not surprising for those policy initiations that fail to have undergone a rigorous and solid research and feasibility study

to be dropped at a later stage prematurely or miss its intended policy objective, e.g. the cyberport project during C. H. Tung's administration.

In a word, the policy research community in Hong Kong, if it exists, is underdeveloped and in an embryonic stage and the value of policy research is not respected.

One may naturally think if the Chinese Government could set up a support system that provides the necessary advices and help to the Hong Kong governing team, similar to the one run by the British. However, this may not be feasible. The Chinese Government of course has a large research capacity and it may be thought that its government departments and research institutions can well provide policy advices to HKSARG, just like what the British Government had done before 1997. However, Britain was an imperial power with many colonies. It had accumulated decades, if not centuries, of experience in running colonies. Hong Kong was just one of British colonies. Based on its rich experience in running colonies, the British could easily provide policy advices to Hong Kong that were compatible with Hong Kong's social, economic and political environments. However, due to the "one Country, two systems" principle, Hong Kong practises the capitalist system and continues its previous way of life, which are fundamentally different from the political, economic and social systems and the way of life in China. Relatively speaking, China does not have much experience in dealing with Hong Kong; in fact, Hong Kong, as a Special Administrative Region, is new to China. That means the Chinese government departments and research institutions are more or less not familiar with and sometimes may misunderstand some of the important aspects of Hong Kong. The contrast is most obvious in the legal advices. Both the UK and Hong Kong practice common law, but China does not. In pre-1997, the British Government offered numerous legal advices to Hong Kong (with examples documented in Chapters 3 and 4), while in post-1997, the legal advices offered by the Chinese to Hong Kong have been controversial, to say the least, if not counter-productive.

Other than policy research that creates policy knowledge, the collection and analysis of information/intelligence are also a critical component of this support system. As mentioned earlier, the intelligence system of Hong Kong was melted with that of the British, and the Governor and the senior governing team members were deeply involved in the operation of this system. However, it is not sure how the intelligence system

operates in Hong Kong after 1997, and what the roles of the Chief Executive and the senior governing team members in both the intelligence systems of Hong Kong and China are. But it is likely that these two previously separated intelligence systems before 1997 are still finding ways to have a seamless integration or coordination for the governing of Hong Kong.

5.1.3 The transformation of the control and monitoring mechanisms

The FCO and the CO had been charged with the task of overseeing the governing of the British colonies in different periods of time, and the Secretary of State held the responsibility of good governance of the British colonies to the British Parliament. Members of Parliament (MPs), especially those of the opposition party, would pick up the issues should problems arise in the colonies. The logic of party politics dictated that such problems of the colonies would easily be transformed into domestic political issues in Britain. On the one hand, the opposition party wanted to take advantage of the colonial policy failure to attack the ruling party and to push through their views or alternative colonial policy. On the other hand, the ruling party wanted to defend its colonial policy and fend off the opposition party's attacks. Also, as a result of competition among the British mass media and media professionalism, colonial issues would surely be picked up by the media so as to arouse public attention and enhance media popularity. Furthermore, the political activists or the British resided in the colonies might contact the British officials or their MPs in London for complaints. In return, the British Government needed to follow up with the colonial government concerned for an answer or a report. For the MPs, they might raise questions or even move debates in the Parliament. The Hong Kong and General Department (HKGD) within the FCO was responsible for Hong Kong affairs. There had been a very detailed procedure of handling matters related to Hong Kong in the Parliament: the HKGD passed the related parliamentary questions to Hong Kong Government for a suggested reply or background information before responding to the Parliament.

Regarding corruption, our case study has detailed the numerous questions raised by MPs and their answers in the 1950s to 1970s. Some MPs had been consistent in raising questions on corruption over the years. Also, Mrs Elsie Elliott, member of the Urban

Council, was also consistent in publicizing corruption issues in Hong Kong. Our case study of corruption in Hong Kong also documented the role played by the British mass media. Since the issue of negotiations over Hong Kong was a diplomatic one and the British Government had kept its details confidential, MPs could only raise general questions on Hong Kong's future, and FCO could draft very general answers to these questions. The British Government had been careful in dealing with press on the issue of Hong Kong's future. For example, it has repeatedly emphasized the importance of keeping some specific details from the public. Also, it had been extremely calculative in determining the government's "line to take" following some diplomatic events. A notable example was that in a press conference after his visit to China in March 1973, Governor MacLehose did repeat Deng Xiaoping's message of "ask investors in Hong Kong to put their hearts at ease" but did not mention what Deng told him by 1997 China might take over Hong Kong.

It was not enough that the FCO and the CO were responsible for making sure of good governance in British colonies and that they had an incentive to do so. MP questioning and the British press coverage of problems in British colonies served as an external check of making sure that the governing of the British colonies was in line with the British national interests and the colonial policy of the day and put pressure on the ruling party and the British Government to improve governance in British colonies and to correct any mistakes or maladministration of the colonial governments. In other words, these control and monitoring mechanisms could perform a quality assurance function.

In fact, the corruption case study shows this quality assurance function very clearly. In the 1950s and 1960s, Hong Kong Government had adopted administrative measures and tried to learn experiences overseas to combat corruption. However, it was content only to implement limited legal and administrative reforms to contain the corruption problem, and had no determination to eradicate the problem. In particular, it was unwilling to implement structural reform in the anti-corruption branch of the Police. There were complaints about the corruption of government officials by the general public, but the public showed no trust on the anti-corruption branch. An ironic case was that an ex-inspector, Alan Ellis, repeatedly filed complaints about police corruption. He even complained to the CO, but the latter only passed the case back to the Governor to

handle. Other than lodging complaints to authorities in Hong Kong and the UK, Ellis and others also made use of the mass media and MPs to put forward their cases. The result was not fruitful, but the British media and some MPs were aware of the complaints.

External check might produce very positive results. In 1973, the corruption problem in Hong Kong, as dramatized by the Godber's escape, became a British political issue. Some MPs suggested establishing a commission conducted from London to investigate corruption in Hong Kong. The FCO and Hong Kong Government then had to choose either to send a commission to Hong Kong to do the investigation or to take a drastic move to tackle the problem locally. Establishing such a commission would amount to a great embarrassment to the Hong Kong Government. Obviously, the FCO and the Governor would opt for the second solution and want a quick decision. This was not only because of the party and parliamentary politics in Britain, but also because the inaction or indecision would bring harm to the grand strategy of building HK for strengthening British bargaining power in the anticipated negotiation with China over the future of Hong Kong. Arguably, the suggestion of establishing such a commission was one of the reasons for the Hong Kong Government's decision to establish an independent anti-corruption agency in 1974.

In essence, the presence of a political will and determination, the availability of capable government officials, the provision of sound policy ideas and knowledge, and the performance demand on government by the control and monitoring mechanisms contributed jointly to the success of the ICAC in combating corruption in Hong Kong in such a short period of time.

The control and checking mechanisms established during the British colonial rule were also de-instituted after 1997. However, because of the principles of "one country, two systems", "Hong Kong people governing Hong Kong" and "high degree of autonomy", the control and checking mechanisms established outside of Hong Kong after 1997 has become a very sensitive issue. Sensitive as it may be, it is legitimate to explore how these control and checking mechanisms be installed and function under the principle of "one country, two systems". The aims of having such control and checking mechanisms in place may be the same as those of Britain, but the institutional design and the

functioning logic are different. First of all, the perimeter of these mechanisms has been transformed from the British parliamentary democracy to the Chinese party state. One cannot expect the kind of checking functioned through the British Parliament and mass media is going to be replicated by the Chinese National People's congress and party-controlled mass media. In fact, there would be a different set of institutions and ways of handling that have been emerging for such control and checking purposes. The Central People's Government (CPG) was prompt in responding to the governing problems of Hong Kong. For example, the Accountability System for Principal Officials was introduced in July 2002 to resolve the internal divisions of the governing team of Hong Kong, and the "sudden resignation" of C. H. Tung after the mass demonstration of 1 July 2003 resulted from the under-performance of the HKSARG since 1997. Furthermore, the deterioration of the governing capacity of the HKSARG has triggered the adoption of the maximum involvement policy by the CPG, as indicated by the release of "White Paper on the Practice of 'One Country, Two Systems' Policy in the Hong Kong Special Administrative Region" on 10 June 2014, instead of the minimum involvement policy adopted shortly after 1997. Given that the Chinese policy-making process is not very open and transparent, observers may not fully understand the dynamics working behind these decisions, and the deliberations on and the objectives of these policies.

There may be three possible scenarios of development for such control and checking mechanisms: the Mainland model, the Hong Kong model, and the hybrid of the two models. In the Mainland model, the Chinese Communist Party plays a leading role in control and checking through its party-state system. In contrast, in the Hong Kong model, control and checking spread among different social and political organizations. In particular, the institutional design of the HKSARG already consists of elements of internal control. Also, Hong Kong's civil society is well developed and performs external checking on government. As far as the domestic affairs of Hong Kong are concerned, control and checking in Hong Kong are internal and through the mechanisms developed under the Basic Law and the civil society. But, for matters that fall within the CPG's jurisdiction as stated in the Basic Law, control and checking on Hong Kong may likely be external and through the mechanisms practiced in Mainland China. Therefore, the third model, i.e. the hybrid model, will be likely the road ahead. Whatever model may evolve, the critical test of its effectiveness is: to what degree these

control and checking mechanisms work to achieving good governance of Hong Kong in general and to ensuring governing team's performance that is up to certain standards commensurate to the principle of good governance.

5.1.4 Summary observation: system dysfunction of the governing system

Many observers had queried why the governance in Hong Kong had deteriorated so much, given the fact that the administrative arm of the HKSARG has been run by the same group of officials (i.e. the AOs) as in pre-1997 Hong Kong. This study has demonstrated that governance deterioration in Hong Kong after 1997 is no accident, and offers one plausible explanation.

Smooth functioning of a governing system in Hong Kong has three components:

- A continual supply of political talents to form the governing team in Hong Kong.
- A well-functioning support system providing necessary supports to the governing team in Hong Kong.
- The control and monitoring mechanisms to ensure good governance in Hong Kong.

Before 1997, the British Government delivered the required three components. Unfortunately, the Chinese Government has yet to deliver the required components, nor is Hong Kong able to develop these components by itself:

- In the Hong Kong context, political talents cannot come from elsewhere and have to come from Hong Kong. The AOs do not have the training and experience of political leadership, and the political environment in Hong Kong does not favour the emergence of political talents. So, there has been a shortage of political talents for forming the governing team in Hong Kong.
- Given the significant differences in the institutional design, operational logic and system configuration of the system practising in Hong Kong and Mainland, and the uniqueness of HKSAR under “one country, two systems” principle, the Chinese Government and its departments and research institutions may not have the expertise to provide “fit and sound” support in most, if not all, policy areas in Hong Kong. HKSARG has been slow in realizing the need to develop the support

system. Worse, it has not put enough resources into this area and not modified the incentives unfavourable to the development of the support system.

- With the one party system and not-so-free press in China, the external check of good governance in Hong Kong after 1997 similar to the external check by the MPs and British mass media prior to 1997 is simply absent.

With all three components necessary for good governance absent, Hong Kong suffers a problem of **system dysfunction of the governing system**. This is our fundamental diagnosis of governance deterioration in Hong Kong after 1997.

5.2 Policy Recommendations

The dysfunction of post-1997 Hong Kong governing system is argued to be responsible for the difficulties encountered by and the underperformance of the HKSARG. The dysfunction is manifested in the lack of “men” (the availability of governing elites with fine quality and right caliber), “plans” (the application of policy knowledge and experience to problem-solving), and “watchdog” (the assuring mechanisms for performance). The missing or dysfunction of these critical components of “men”, “plans” and “watchdog” is due to the incomplete structural and functional transformation of pre-1997 to post-1997 Hong Kong governing system. Why are these components critical? The governing elites possess the state power and privileged position to direct and steer the development of a place. They are being selected for performing the role of leadership and governing because they have the fine quality and right caliber of doing so. Having “men” only is not enough for effective governing, but we need “plans” and “watchdog” as well. If there is not a logical and effective work plan available, then the governing elites may not be able solve the pressing societal problems of the day. If there is no “watchdog” available, how can we be assured the “men” are capable and their preferred work plans are effective? The performance assurance mechanisms, just like the quality assurance of a product, is to make sure the performance of the governing team is acceptable, at least, by the public. The interplay and interaction among these three are constituted an effective governing system.

In pre-1997 Hong Kong, the governing system was one based on (1) a governing team consisting of governing elites selected from the pool of British officials who had worked in Britain and/or British colonies; (2) a support system that was primarily British; and (3) a control and monitoring system internal and external to Hong Kong. In post-1997 Hong Kong, this governing system needs to adapt and reconfigure to meet the challenges of the post-1997 political order. It should be clear by now that the problem with post-1997 Hong Kong's governance is systemic. It is a corollary that to fix the problem, the solution also needs to be systemic.

The following are the guiding principles in making recommendations regarding the above-mentioned system dysfunction problems:

- the task of re-building the system capacity rests with the governing elites of the day;
- the quantity issue of political talents should be addressed before the quality issue be solved (i.e. picking the best available via competition);
- the role and structural differentiation is required to meet new challenges (i.e. some new specialized posts and institutions be created);
- the linkage among these three components should be strengthened so as to better achieve the goals of the system; and
- the evaluation of governing system should be based on performance.

5.2.1 The “men” dimension

We have explained that in pre-1997 Hong Kong, the staffing and formation of the governing team of Hong Kong had been exogenous, but HKSARG fails to make the staffing and formation of the governing team endogenous after 1997. The British retreat cut off from Hong Kong the large pool of British political talents available to filling Hong Kong's top positions, and there has not been an effective mechanism to generate locally a pool of political talents to replace the previous British pool. A three-stage approach is therefore adopted to strengthen the political recruitment and socialization function so that capable and professional political leaders and workers could be emerged:

- i. Upstream: this stage aims to create a learning environment in universities and in the society that can equip people with a sound knowledge and understanding about politics and governing in terms of skill set and mind set (academic and professional training).
- ii. Middle-stream: this stage aims to provide opportunities to those persons who are interested in becoming political leaders and workers to experience the demand and challenge of different political posts inside or outside of the government;
- iii. Downstream: this stage aims to provide platform or anchor for those like-minded and matured political leaders to strengthen their political chemicals and policy consensus for their subsequent elevation to the top government posts.

There comes to the issues of quantity and quality. Let us address the quantitative issue first. Hong Kong does not need to have a pool as large as the pre-1997 British pool which consisted of tens of thousands of governing talents. However, to be useful for providing candidates for filling the senior posts of the governing team, the pool of political talents cannot be too small and has to include a few hundreds of people at least, if not thousands. Some maintain that the governing core in Hong Kong consists of fewer dozens persons, and a pool of tens of political talents may serve the purpose. However, this view is simply wrong. It is because a weak governing core may be resulted due to a low degree of competition among a small pool of political talents. In addition, the governing team is more than the governing core, which is small, but as explained, it actually consists of hundreds, if not thousands, of persons.

To produce large number of political talents, more political training or grooming positions have to be created within or without the government. Within the government, a layer of contracted posts be formed to absorb certain amount of these training or grooming demands, starting from the entry level of internships to the senior level of policy advisors. Outside of the government, political parties, think tanks and NGOs should be encouraged to expand their organization size so that there are adequate opportunities available for the potential political leaders to experience the diversity of political and electoral works.

Let us turn to the quality issue, which involves substantive and procedural aspects. Education and intellectual capacity are the only way to quality. The idea that political leaders emerge from political and power struggles and not from the classroom may contain some truth. But it does not suggest that one should ignore the contribution of intellectual capacity in shaping and building an all-round political leader with visions and understanding. Political leaders and workers acquiring certain training in logic, philosophy, history, social sciences, and others relevant subjects must be a plus, given that the modern society has developed into such a high degree of specialization and sophistication. On top of political mind set is the requirement of political skill set. Indeed, all these point to the requirement of intellectual capacity. It is therefore suggested to develop new programmes of studies in universities of Hong Kong which are commensurate with the current state of political development of Hong Kong.

Quantity creates quality through competition. A career ladder should be created not only to attract good quality persons to join the political profession, but also to provide a selection mechanism that helps pick the best available to fill higher posts. The admission or promotion to a higher post in the ladder should not be automatic and should be subject to a screening process based on performance and achievement criteria. Political loyalty, though important, should not be the only consideration in making appointments. Basically, this process may “screen in” persons with capabilities and potentials, but “screen out” those who do not have the qualities. It is a game of competition for political talents: governing team or political party that can hire and retain the best qualified political leaders would in the leading position of the political game. This career ladder can be created by the joint efforts of government, political parties, think tanks and NGOs. Each of these organizations can contribute by offering different learning and employment opportunities for those interested persons with different caliber and potentials.

Last but not the least, an arrangement has to be put in place to facilitate the formation of the would-be governing core before the Chief Executive election. Given that the appointment of principal officials is rested with the CPG, any team-building efforts before the CE election, if any, should be low profiled. In addition, the incentive for lining up the potential members of the governing core well in advance is missing because the endorsement of the “real” CE candidate by the CPG is only forthcoming

near the start of the CE election. The potential governing core members would withhold their agreement to serve any would-be CE candidates because of the latter's risk of being not elected at a later time. The whole process of forming the governing core is therefore delayed until the CE election result is known. The governing core formed in this way and in such a short period of time is not conducive to a governing core with a high team spirit and policy consensus. Because of this, the honeymoon period, that is supposedly the best timing to put forward any important policy initiative, is now reserved for the newly-formed governing core to put its house in order. The lapse of such an opportunity is proved to be detrimental to government performance. This is unsatisfactory, and the challenge is to devise an arrangement to facilitate the formation of the governing core before the Chief Executive election.

5.2.2 The “plans” dimension

Recommendations with regard to the support system are related to three aspects: staff support, a research community and the linkage between the research community and the government.

In many countries, an appointed or elected political official enters the government together with a handful of personal aides, in addition to a number of official aides in the government. As explained above, in pre-1997 Hong Kong, senior government officials had many *aides-de-camp* stationed in Hong Kong and London and thus could exert effective political and policy leadership. However, since 1997, the governing core members have few personal aides and a few official aides in the government. No wonder political leadership of the governing core has been weak. To improve the situation, the layer of *aides-de-camp* or staff support needs to be thickened so as to facilitate political and policy leadership of the governing core.

The British support system is gone after 1997 and a research community is needed in Hong Kong. But public policy research in Hong Kong is far lagged behind the normal requirement of governing a modern city. Without solid knowledge and understanding of the problems Hong Kong encounters, there is no ground for effective policy making and informed public policy debate. The guiding principle is to create a healthy policy

research community and to increase the supply of policy research.

Policy research outputs come from the following: the government, political parties, think tanks, universities and NGOs:

- The research capability of HKSARG needs to be strengthened. The Central Policy Unit should have a larger establishment with more resources to do policy research. Also, the research capability of the policy bureaux needs to be strengthened.
- Political parties need to have more resources and to do policy research. They have incentives to do policy research, because then they had solid ground for their policy advocacy and can criticise the government and other political parties based on their policy research. Every political party does the same and tries to impress the public, so it can be said that there is competition among political parties. What is important here is that all political parties, including those whose political positions are not very much “pro-establishment”, should have more resources, because competition among political parties based on policy research can contribute to good governance and policy research outputs from parties of different political positions are crucial to such competition.
- Mechanisms should be designed so that more resources will flow to think tanks, be they public or private, and different think tanks will compete on policy research outputs. The government may put up more funds directly to finance public think tanks. More research funds should be put up for public and private think tanks’ applications. Tax exemptions for think tanks also help. Private companies and private individuals should be encouraged to donate and sponsor think tanks. One important principle is that the amount of resources available to a think tank (public or private) should depend on the quantity and quality of its research outputs.
- Universities should engage more in local policy research. We should not drop the Research Assessment Exercise (RAE) altogether, otherwise there is no ground to evaluate the research performance of the UGC institutions. Instead, the journal lists used in the RAE should be modified so that papers appearing in journals that publish local policy research relevant to Hong Kong should also be counted as “research outputs”. To ensure such changes to be meaningful, Hong Kong should establish its own policy research journals that appear high in the RAE journal lists. All these will eliminate the perverse incentives in Hong Kong’s tertiary institutions

not to conduct research on Hong Kong.

- Although changes may not be needed to devote more resources to NGOs to do more policy research, HKSARG should put more emphasis on the good intentions of the NGOs and the positive impacts of their research, even when their research may have adverse implications on the government policy positions.

To sum up, Hong Kong needs competition in the policy research. There should be competition in policy research among different parts of the government, among political parties, among think tanks, among universities and among NGOs, and there should also be competition in policy research among the government, political parties, think tanks, universities and NGOs. Also, the government should take the lead to value knowledge and theories derived from policy research and to use them as the basis for policy-making, and take procedure to create a healthy policy research community.

Even when the research community can generate many policy research outputs, it is not guaranteed that the government *will* and *is able to* incorporate the knowledge from policy research into policy deliberations and policy making.

Of primary importance is to overcome the problem of a general lack of appreciation of the value of policy research and the importance of policy knowledge in public policy making so as to make sure that HKSARG will value and seek the knowledge from policy research. Also, there should be expert advisers to the government and its various policy bureaux. They should be familiar with policy research and served as a linkage between the government and the policy community concerned so as to better advise the government and the policy bureaux on policy matters. There should also be an intermediate layer of staff (*aides-de-camp*) relating the policy research findings generated from the policy community to the governing team. The expert advisors and the *aides-de-camp* are to ensure that the government has the capability to incorporate the knowledge from policy research into public policy making. At present, there are a number of expert advisors in the government and their number should definitely be increased. Also, posts such as policy advisors of different seniority and policy areas should also be created.

5.2.3 The “watchdog” dimension

Before 1997 (especially before the 1980s), Hong Kong’s civil society was not very developed. The local press was by and large influenced by the colonial government. So, the local checks on effective governance were weak. However, with party politics and free press in Britain, the external control and monitoring on effective governance in Hong Kong had been strong. Governance scandals in Hong Kong could be transformed quickly to political issues in London through MP questioning and the British press coverage. However, the external control and monitoring from Britain on effective governance in Hong Kong, which was important before 1997, is gone and whether there can be a replacement is a question of system-building efforts here in Hong Kong and in Beijing.

The development of the internal control and monitoring mechanisms on the performance of the governing team after 1997 have been conditioned by a vibrant civil society developed since the 1990s and the inclusion of election in the post-1997 political system.

Performance-based control and monitoring mechanisms should be developed and its associated value and culture should be encouraged and institutionalized. Partisan and ideological competitions dominate the headlines of mass media and public debates. This is one aspect of life. However, if the CE and his governing team, Legislative Councillors, and political leaders are going to be evaluated by their performance related to their respective posts, then a new ball game would emerge. Therefore, election serves an instrument to enhance political competition on the basis of performance. Electoral reforms should be put into this context for consideration. Subject the performance of the CE and all Legislative Councillors to the evaluation of the general public has been stipulated in the Basic Law. The Basic Law has been stipulated that the CE and all Legislative Councillors shall ultimately be returned by universal suffrage. The hard fact is that proposals have been formally put forward to elect the CE by universal suffrage and it is unfortunate that all the parties concerned have yet to reach a consensus for various reasons.

The present system of electing the CE by election committee is just to maintain a fragmented mechanism of performance evaluation. Obviously, the election committee members may have their own standards and criteria to evaluate the performance of the CE, while the general public may have their own. It is more often than not that the performance evaluation results of the election committee members and the general public are different from each other. This might not only discredit the current institutional mechanism of electing the CE, but also fail to put the performance demand of the general public on the CE and his governing team. Without the performance evaluation by the general public, the effectiveness of the internal control and monitoring mechanisms might be compromised and discounted.

Other than election, a free press and a vibrant civil society are also instrumental in contributing to the smooth functioning of the internal control and monitoring mechanisms. There has been worry about the erosion of press freedom in Hong Kong, but the local press is basically free. The HKSARG should vow and take steps to maintain press freedom in Hong Kong. In particular, acts of limiting press freedom have to be condemned and investigated, be they committed by members of HKSARG or not.

As far as the external control and monitoring from CPG is concerned, it is difficult to make any concrete recommendations because of a lack of knowledge and transparency of these control and monitoring mechanisms. It is generally accepted that China does not have a free press at present, and is a one-party state. Therefore, the kind of external check of Hong Kong's governance by party politics and free press in Britain is absent in Hong Kong after 1997. It is sure that Chinese government has put in place certain control and monitoring mechanisms. Otherwise, C. H. Tung should not suddenly resign from the post of Chief Executive in 2005. Moreover, the CPG has decided to adopt a policy of maximum involvement of Hong Kong governing since 2014. The effective of this maximum involvement policy is yet to be evaluated. But the working of these mechanisms should be more open, transparent and accessible by the general public of Hong Kong, and should be included a more elaborated set of standards assessing the performance of the governing team here in Hong Kong.

External control or monitoring will come in when Hong Kong's performance is bad, and should aim at improving Hong Kong's performance. When external control comes from China, it is imperative that agents from China (top leaders, government officials, political elites, the media, etc.) are conscious about the peculiarity of Hong Kong's position, and knowledgeable about the operation logic of the prevailing systems practicing in Hong Kong.

For the purpose of mutual understanding and the creation of an informed decision environment, Hong Kong should put more emphasis on *ne jiao* (内交), or Hong Kong-China interactions, so as to make Hong Kong's peculiarity and the operation logic of Hong Kong's prevailing systems known to more mainlanders, including Chinese government officials and scholars. Such interactions should be in all levels (political, social, cultural, etc.) and beyond economic interactions. Educational and intellectual interactions are the cornerstone of such exchange activities.

A meaningful evaluation depends on whether there is a common set of evaluation criteria of governing performance of the governing team accepted by both the evaluators and the one being evaluated here in Hong Kong and in Beijing. Obviously, this set of evaluation criteria of governing performance has yet to emerge. Efforts are therefore required in this aspect of building the external control and monitoring mechanisms.

5.2.4 Summary recommendation: recognition of system dysfunction

This study tries hard to demonstrate that the problem with post-1997 Hong Kong's governance is not fragmentary. Instead, Hong Kong's governing system suffers system dysfunction. In the previous subsections, we outlined our policy recommendations. These recommendations should be taken a *systemic* solution to Hong Kong's problems at present. That means to be successful, the recommendations should be adopted in totality; adopting one or two recommendations above while neglecting others may even worsen the governance problem, not improve it.

Unfortunately, there is a general lack of recognition of system dysfunction in Hong Kong. The danger with fragmentary discourses is that they recommend fragmentary

solutions, which may indeed worsen the problem. Therefore, what is needed before implementing any specific recommendations is a kind of **mental revolutions on the part of the government officials, political leaders, scholars and the general public: recognition of system dysfunction of Hong Kong's governing system after 1997.**

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