



Oral evidence: [The UK's relations with Hong Kong: 30 years after the Joint Declaration](#), HC 649

Wednesday 17 December 2014

Ordered by the House of Commons to be published on 17 December 2014

Members present: Sir Richard Ottaway (Chair); Mr John Baron; Mike Gapes; Sandra Osborne; Mr Frank Roy

Questions 134-190

Examination of Witnesses

Witnesses: **Jitendra Joshi**, President, Foreign Correspondents Club in Hong Kong, and **Francis Moriarty**, Chairman, Press Freedom Committee, FCC in Hong Kong, gave evidence.

[This evidence was taken by video conference]

Q134 Chair: Could you give me your name for the record?

Jitendra Joshi: Yes, it is Jitendra Joshi. I am the president of the Foreign Correspondents Club here in Hong Kong. We will be joined by my colleague, Francis Moriarty, who has just had to step away momentarily. Francis a member of the board of the FCC and chairman of our press freedom committee.

Q135 Chair: Thank you very much. You are aware that this session is being recorded?

Jitendra Joshi: Yes, I am.

Q136 Chair: Great. A number of members of the Foreign Affairs Committee are here. It is a pretty early start for us, but it is getting a bit later in the day for you. We are very grateful to you for coming along. Thank you very much.

Jitendra Joshi: Not at all. Thanks for the opportunity.

Q137 Chair: The Hong Kong Journalists Association called 2014 the “darkest” year “for press freedom for several decades”. Do you agree with that?

Jitendra Joshi: I think the signs of late—not just this year, but building up to this year, in the last couple of years—have been pretty dismal on a lot of fronts. We have seen, at one extreme, outright violence and intimidation of members of the press. One notorious case, which I am sure you are aware of, was regarding the former editor of *Ming Pao* newspaper, Kevin Lau, who is still recovering nine months after suffering a pretty savage beating. There have been smaller scale, but no less worrying, incidents of similar physical violence.

Some people in the Lau incident are being prosecuted, but there is no really clear indication as to what caused this attack. But you don't have to be able to join all the dots together to see a climate developing, whereby people who are in the media who are outspoken on certain issues—notably to do with the influence of China, for instance, in various fora—are singled out and their publications are singled out. Other cases that have been much in the news of late are that of the *Apple Daily* group—we have seen attacks on its print works, for example—and like cases.

On a lesser scale, but perhaps more insidious, is self-censorship, where you see individual journalists, newsrooms collectively and editors second-guessing themselves. We hear this over and over again. It is hard to pinpoint; that is the very nature of self-censorship, and it is about trying to determine to what extent people are biting their tongues, as it were, and restricting themselves in what they write.

Anecdotally, from talking to people we know and our colleagues in the Hong Kong Journalists Association, that kind of self-censorship is there and it is real. Outright dictates are being issued. We saw one incident of late arising from the Occupy Central protest movement. In the newsroom of TV station TVB, the journalists were up in arms and they circulated a petition about what they saw as management imposition of heavy-handed editing of material coming out of the protests, which the journalists thought was designed to lessen the impact of some police excesses on the protest lines, specifically concerning journalists. In the protest movement of late, we have seen journalists being targeted for arrest and intimidation as they go about their reporting.

It adds up to a worrying picture—more worrying, I would say, than at any time since the handover. That is not to say that the issues are new. These problems have always been there and they existed under British rule, but when you bring in the very real fear that China is watching and that people are having to restrict what they say or suffer the consequences then, yes, it does add up to a pretty dismal picture.

Q138 Chair: Thank you. I presume that Francis Moriarty has now joined you.

Jitendra Joshi: He is just here now, yes.

Chair: Good morning.

Francis Moriarty: Can you see me?

Chair: Yes, I can, thank you, and we can hear you.

Francis Moriarty: Good.

Q139 Chair: Mr Joshi, following on from what you have just said, where is this coming from? Is it coming from the Hong Kong authorities or the Chinese authorities?

Jitendra Joshi: That is hard to say. In many cases, it is not coming from any authority at all; it is coming from commercial interests. Bear in mind that, with the exception of Jimmy Lai and the *Apple Daily* group, most of the mainstream media—publishing and TV—in Hong

Kong are owned by business groups, tycoons, who are heavily invested in mainland China. It does not take too much insight to figure out that they do not necessarily want the boat rocked by their media outlets recording stuff that might reflect badly on them and their business interests in China.

Q140 Chair: You mentioned briefly a moment ago that this went on under British rule. Is there a trajectory here? Is the situation getting worse? How does it compare with, say, 10 years ago?

Jitendra Joshi: I mentioned the pre-handover situation just to say that this is not entirely new. There were instances in the past when people felt the heavy hand of authority and were warned off, but I do not think that we have seen anything as heavy-handed as we have seen of late. The trajectory, certainly in my recollection, I do not recall as being this bad. It has certainly got a lot worse over the past year or two.

Q141 Chair: As you know, we are famously banned, and I am only too sorry that we are not sitting there with you and talking across a table. Do you think that banning us is in the same category—a product of the same sort of thinking—as what is leading you to say that it is as bad as it ever has been?

Jitendra Joshi: Your experience on the visa front is unfortunate for you but actually brings to light something that journalists in China and Hong Kong have long been experiencing. We have seen it over the past couple of years among several western media outlets when they have been trying to get visas to send staff into Beijing or Shanghai, or they have staff in those places who have seen their visas suddenly withdrawn. In one case, a journalist with *The New York Times* was outright kicked out, although it is not usually that overt. What you tend to see is that, under the Chinese system, all the journalist visas are renewed en masse at the end of the year—we are coming up to that now—and no reason will ever be given if your visa renewal is denied at short notice. Suddenly, you find yourself homeless and having to retreat to Hong Kong or somewhere else—wherever your employer might be willing to let you go into exile. We have quite a growing group of journalists here who are, technically, employed in China, but who are unable to get in there.

The impact on a free press is, again, that people are looking over their shoulders. It is inevitable that, if you feel that writing the wrong thing means your entire existence in a place is then going to be affected, you might pull your punches. I can't say that happens for sure, but, anecdotally, from talking to colleagues, there is a sense in which people worry, "Is my visa going to be renewed?" We are seeing that in several cases now.

Chair: Thank you.

Q142 Mike Gapes: You referred to visas. British citizens do not need visas to go to Hong Kong.

Jitendra Joshi: No.

Q143 Mike Gapes: But do people from other countries who want to go to Hong Kong to work as journalists need official accreditation?

Jitendra Joshi: There is no system of official accreditation in Hong Kong. Some countries and some nationalities require visas to enter Hong Kong. The British, Americans, people from most of the European Union and most countries in Asia do not need a visa to visit Hong Kong. You will need a visa to work here, though, if you study beyond a certain period.

Francis Moriarty: The issue is not a direct visa issue. The question within your question is, what identifies a person to be a journalist? In Hong Kong, we have no central accreditation of journalists, which sets us apart in another way from China, where if you want to work as a journalist, whether you are domestic or foreign, you are going to have to register with the All-China Federation of Journalists, which is, of course, a Government, Party organisation. In Hong Kong, we don't have that, and we have not wanted it.

The issue for us so far is not coming in here, although there have been cases of people who have been banned—for example, the artist who did the statue that is brought out every year for the 4 June memorial. He is Dutch, and he has not been allowed into Hong Kong for a few years. But it is not so much about coming in: it's about how, once you get here and you want to work, you show yourself as a journalist, especially if you are a freelancer. If you come from *The Guardian*, Deutsche Welle or whatever, you are going to have a letter from your employer that says, "Here you are, this is what you do." You'll get accreditation. If you are a freelancer—today, with the internet and the whole changing media scene, that is a real, live issue—it gets more difficult. In a way, while we have been focusing on traditional media organisations—that is to say, those that have radio stations or TV stations or that print on paper—the future now is people who do websites and collect news on websites. How are they journalists? What is a citizen journalist?

When the police began asking people during Occupy Central to show their press ID, they were determining for themselves what they would accept as press ID and what they wouldn't. You can work your way back from this to see what our basic concern is: who accredits journalists? In the past, we have never had to worry about that—you said you were a journalist, you had a business card that said so, you went and did your work, and people dealt with you. But now we can see the forces of order laying groundwork. For example, when they cracked down on the final day of Occupy Central, they gave us a warning and said, "If you don't leave at this point through the approved route, after this you will only be able to go out of one exit and you will have to show your ID for recording purposes"—whatever that means. So, if you went out and you had press ID that they accepted as press ID, you just passed through; if you didn't, I guess you were suspected to have been one of the participants. They would have recorded your name and your ID card information.

This put freelancers in a very difficult situation, because many news organisations will use a freelancer's work—even extensively—but not provide them with a letter that says, "Here's the situation: this person works for us. Please afford them the usual courtesies of the press." They will not give them that, because they are concerned, for example, about liability. So you have journalists who are now caught in a very difficult situation. One can foresee that

the Government might say at some point, “Gee, wouldn’t it be convenient if we had some organisation that provides people with accreditation and we could all agree that that was the accreditation? Wouldn’t that be an improvement?” We can see it coming.

Chair: Mr Moriarty, I apologise for interrupting. Unfortunately, time is quite limited on this link at the moment, and we have—

Francis Moriarty: I am sorry, but I just want to point out that the squeeze comes from many directions. It is not always so overt.

Chair: Great. That is really helpful. Thank you very much indeed.

Q144 Sandra Osborne: Good morning, or good afternoon I should say in your case. The Hong Kong Journalists Association has noted that the right to freedom of speech in the press is still protected by a law in Hong Kong. Do you think that the law is being sufficiently enforced? If not, why not?

Jitendra Joshi: That comes back to the issue of intimidation, for instance. If people are attacked because they have written or reported things that find disfavour and people are not prosecuted speedily, or if the evidence is there and people are seen to be dragging their feet, it would appear then that that fundamental freedom is not being protected, but as I say, it is a hazy situation, because no one ever comes out and says, “Yes, I attacked so-and-so because I don’t like what he wrote.” It is an insidious situation, but the climate is clear—there is intimidation out there. To answer your specific point, the question would be, have the SAR Government been sufficiently outspoken in defending those rights? I would say not—not when it comes to recent events when we have seen cases of journalists and photographers being apparently singled out for rough treatment or arrest.

Q145 Sandra Osborne: You have already talked about self-censorship vis-à-vis the owners of the press and so on. Has the pattern of ownership changed? Are new people coming in and buying up things?

Jitendra Joshi: To an extent, the same business groups are as heavily involved as ever in a lot of the titles, but there have been changes. What changes there have been have generally involved switching ownership from one set of owners who are heavily invested in China to another set in a similar situation, so the overall editorial direction may not change.

I should stress, I suppose, that media proprietors the world over—you know this very well in the UK—have commercial interests and sometimes seek to impose those interests, that line, on their editorial titles. It is not a situation that is unique to Hong Kong, but one of the things that makes Hong Kong—this is a point that is very relevant to your deliberations—so different and so advantageous for a lot of people, including the media, is that it is a part of China and yet set apart from China. Basic freedoms are enshrined in the law here—freedoms that are just not found anywhere on the mainland. Hong Kong therefore is a uniquely advantageous vantage point from which to observe and report on China. Those freedoms, it feels to me, are being slowly eroded.

Francis Moriarty: I would add one point. In the past, you would have had owners who had financial interests in China, but increasingly we see ownership patterns where mainland interests are direct investors in the media.

Sandra Osborne: That is precisely what I was going to ask you about, so thank you.

Q146 Mr Baron: Good afternoon to you. The Committee is also looking at whether the UK Government have been robust enough in their response to what is perceived to be the Chinese authorities' crackdown on the democratic movement and so forth. As part of that, we noted the last six-monthly report, in which the Foreign and Commonwealth Office stated that freedom of the press "is one of the fundamental freedoms protected by the Joint Declaration." It added that it takes "seriously concerns about press freedom" and welcomes "the Chief Executive's clear statements on press freedom". Do you think these statements go far enough?

Jitendra Joshi: I am not sure what the clear statements from the Chief Executive are. If the FCO can point us to those, that would be helpful. The SAR Government, to be fair, were clear in condemning the attacks we have mentioned, but, at the same time, journalists here—the HKJA has commented on this—do not feel there is a particularly conducive environment or a very supportive Administration when it comes to taking interests on.

Fundamentally, your point is whether the FCO and the UK Government have been sticking by their part of the Joint Declaration and speaking out on those issues. I think that is a political question, which I am not entirely qualified to answer. I can only relate the feeling here among many, which is that the UK perhaps has a moral responsibility to speak out, and some would say it has not spoken out as forcefully as it might have done.

Q147 Mr Baron: May I pursue that with you? We are concerned that the UK Government are not speaking out more robustly, but realistically what can they do to protect freedom of speech and the freedom of the press, as outlined in the Joint Declaration? If you had a blank sheet, what would you want the UK Government to do and, perhaps more importantly, what effect do you think it would have?

Jitendra Joshi: Let's be realistic here: there is limited room for manoeuvre when it comes to applying specific pressure points—the UK does not have those, I would say. There is value, nevertheless, in making a declaration, sticking by it and speaking out when you feel the other party to that declaration is falling short. I could make one comparison: the Americans, through the consulate here, issued some very pointed language earlier in the year on a number of fronts regarding press freedom here; we have not seen similar language—or at least not until very late in the day—from the UK. As to what effect that has, that is debatable. Leaving aside the protestors—I am not qualified to talk about what motivates them—perhaps I can talk about what the media here might benefit from. They want to know the world has their back. The one country that is uniquely qualified to have a moral say in this is the UK, as the former administrator here.

Francis Moriarty: You could also say that if press freedom is protected by law here, which it is, that stems in part from the Joint Declaration, but it also stems in part from the Bill

of Rights ordinance that was brought into effect in the early 1990s under British Administration, which reflects the guarantees contained in the International Covenant on Civil and Political Rights, signed by Britain and extended to Hong Kong. There should be forums available to discuss what might be perceived as possible violations of those agreements. It is for the Foreign and Commonwealth Office to determine what those forums are, but if you sign something that is registered with the United Nations, that would seem an obvious venue for discussion. I do not know what the venue would be for the ICCPR, but there should be one. At least to that degree, you have a basis on which you could raise concerns. I also think that press freedom could fall under universal rights, because of the right to express information and the right to receive it, which are stated in article 19 of the ICCPR.

Jitendra Joshi: The specific point here is that the UK Government felt strongly enough in the '80s and '90s to have this written into the Joint Declaration, in the face of a lot of resistance in Beijing. Many in the media here now feel that that language is not being respected in full. Having fought for it then, should not the UK—this is the view here—now be speaking out?

Q148 Mr Baron: Have you made representations to the FCO out there, our consul general and all the rest of it about this? If so, what has been the feedback, if any? What has been your impression?

Jitendra Joshi: We have had meetings with your colleagues from the House of Commons—a couple of delegations have come out on fact-finding trips over the last few months and we have spoken to them to relay our own concerns in forums where we have joined colleagues from the Hong Kong Journalists Association and other followers of the media scene in Hong Kong. Those meetings have been joined by members of the consulate, so I think our voice and our message are certainly out there and should be clear.

Francis Moriarty: We have met with EU representatives as well, so the consuls were represented in those meetings.

Q149 Mr Baron: Yes, but—very briefly, because I am conscious that other colleagues have questions—have you actually made representations? We are doing a report and our job is to scrutinise the UK Government's response to this issue. Have you made representations to FCO officials or the Foreign Office about how you see the situation? If so, what has been the response? I take your point about colleagues visiting, but I want you to address your remarks, if you don't mind, please, to Government officials.

Jitendra Joshi: Do you mean: have we written formally to relay our concerns to the consulate here? No.

Q150 Mr Baron: Written or spoken, or in any other way made representations to Government officials—not MPs but officials.

Francis Moriarty: Yes.

Q151 Mr Baron: What has been the response been, may I ask?

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Francis Moriarty: A very polite listening to our concerns.

Q152 Mr Baron: But in your view, not doing enough.

Francis Moriarty: We would always like more, but I do not know what was done when I was not present. All I know is that we express our views and your consul general will have heard them very clearly in meetings that we had. What has been done after those discussions is something to which we are not privy.

Mr Baron: Okay, thank you.

Q153 Mr Roy: Just on that point, you said that you met fellow parliamentarians—our colleagues. Could you tell us what groups those were? Who were they? Was it an all-party group?

Jitendra Joshi: It was an all-party group. There was one group from the Lords in June, in the summer. Prior to that, there was an all-party group of MPs. Those were all off the record, mind—we were invited to give our views on an off-the-record basis when we met with these delegations.

Francis Moriarty: Plus the EU meetings that I mentioned.

Q154 Mr Roy: Okay. In relation to the six-monthly report, what would the effect be in Hong Kong if, in that six-monthly report, there was a much stronger line on protection of press freedom?

Jitendra Joshi: I do not want to second-guess what the coverage would be if the report were to say something along those lines. What I can say is that any time the UK Government issues any kind of language on Hong Kong, it gets reported everywhere—in all the print and broadcast media. People here are listening and looking for cues from London to see what the view is, and that gets reported extensively—and it will get spun extensively, depending on the media group involved and what their position is on these issues of pro-China, pro-democracy or whatever the rival camps are. Fundamentally, you are guaranteed a wider audience.

Q155 Mr Roy: How is the UK generally perceived in Hong Kong? Has that perception changed over time?

Jitendra Joshi: I suppose the trajectory has been an outpouring of patriotic fervour, mingled with some anxiety about what the future would hold under Chinese rule, but also a strong sense of patriotism at Hong Kong's return to the motherland; that has ebbed over time. I would say that the UK's standing here has never been so good, but a lot of that is a reaction to what is seen as heavy-handed, officious handling of Hong Kong by China. You have seen the Union Jack and the Hong Kong colonial flag staging a revival at protest and rallies, but a lot of that is not genuine—no one is seriously talking about trying to campaign for Hong Kong to return to British rule; it is very much “one in the eye” for the mainland Government,

a way of registering protest in quite an extreme way when you have a Government in China that is so wrapped up in the flag, in patriotism and in itself.

Q156 Mr Baron: Can I explore a little further the role of the UK Government and how it is perceived? We have had witnesses saying that we could be more robust—when I say “we”, I am talking about the UK Government and certainly the FCO being more robust in its language. We have heard certain human rights groups describe the response so far as “feeble”. Can you give us a sense from your point of view—from the press’s point of view—of how that perception has been played out in Hong Kong? I sense that you think the criticism is reasonably fair, but what is your take on that? More specifically, what could the UK Government do more? Can I bring you back to the question, and press you if I may, on what effect it would have? We live in an information age, and winning the argument is important. Do you think it would do the protesters any good?

Jitendra Joshi: We are straying into territory that I am not really qualified to talk about, if what you mean by that is: what could the UK do to help this or that lobby or interest group? What I can say from our perspective in the FCC is that we are worried about the climate of press freedom in Hong Kong. Press freedom is enshrined as a fundamental liberty and that liberty is guaranteed under an agreement that was jointly signed by the UK Government—indeed, it only came about because of pressure on the UK Government. At a time when many in the media here are worried about intimidation or outright violence—more worried than at any point since the handover—one of the two original signatories to that agreement might want to say a bit more about that.

Francis Moriarty: The statement that has appeared in any number of reports has always been that the “one country” system appears to be working well—you can find that in virtually every one of the reports—when it has been quite obvious to people on the ground here that the second system has been under increasing pressure from the one country. Taking a second look at that boilerplate and examining it more closely might be useful but, beyond that, I cannot say what you should or should not do to assist any particular group of protesters.

Mr Baron: Okay, thank you.

Q157 Chair: Mr Joshi and Mr Moriarty, that completes our line of questioning. Is there anything that you would like to say to wrap this up, in conclusion?

Jitendra Joshi: No, just to thank you for your time. We look forward to having this discussion with you in person at some point.

Francis Moriarty: I would second that. For journalists in Hong Kong who are out on the front line—I speak particularly of my local colleagues—it is sometimes a very lonely position to be in and sometimes a very scary, confrontational one, as we saw during recent events. Having someone who is just there covering your back is a meaningful thing, even if it is only in document form.

Chair: Great. We are quite clearly watching this very closely and your input is hugely appreciated. You have given us an angle and a dimension which we have perhaps not been looking at closely enough. It is very much valued. On behalf of the Committee, I thank you very much indeed.

Jitendra Joshi: Thank you.

Francis Moriarty: Perhaps the next time meet, it will be at the FCC.

Chair: I hope so—in the bar.

Examination of Witnesses

Witnesses: **Alan Lung**, Chairman, Hong Kong Democratic Foundation, and **Professor Simon Young**, Hong Kong University Faculty of Law, gave evidence.

[This evidence was taken by video conference]

Q158 Chair: Good morning—afternoon, rather.

Alan Lung: Good day.

Chair: Thank you both very much for coming along. For the record, could you identify yourselves, giving your name and position?

Alan Lung: I am Alan Lung, the chairman of the Hong Kong Democratic Foundation.

Professor Young: I am Simon Young, professor and associate dean of the faculty of law at Hong Kong University.

Q159 Chair: Are you both aware that this is an on-the-record session and that we are recording it?

Alan Lung: Yes.

Professor Young: Yes.

Q160 Chair: Good. Can I thank you both hugely for coming in? I am only too sorry that we are not with you in person, as famously we have been banned from coming to see you, but thanks to modern technology we can still have this conversation.

Can we talk about the recent protests in Hong Kong? It would be helpful to us if you could set out what you saw as the main goals of the student protesters?

Professor Young: I think the main goal was directed at the Standing Committee's decision of 31 August, which set some pretty strict conditions on the nomination process. People were quite surprised by those conditions, which seemed to be more conservative than any proposal that was presented to the Government, so the protests were directed at that decision. That was the primary target. The secondary target was the Hong Kong Government

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and how it conducted the whole political reform exercise. That is why you saw calls in the early stages, not only for the reversal of the Standing Committee's decision, but for Government officials to step down, including the Chief Executive. There was some unhappiness with how the Government had conducted this reform process.

Alan Lung: Nobody seems to be sure why, so to speak, the NPC Standing Committee slammed the gate so hard. That is still a mystery. As Professor Young says, the protests were for democracy—a petition to give more room in the constitutional reform process. But nobody seems to know why it happened, because just before the so-called slamming of the gate, many were talking about asking the NPC to give as much room as possible. Why it happened is still a mystery. Of course, the protest was not about any anti-China movement. It was all about asking for the promise of universal suffrage to be fulfilled. Hong Kong wanted genuine choice.

Q161 Chair: As I understand it, what really sparked things off was the White Paper, published in June this year. Do you think that that White Paper marked a shift towards a more limited interpretation of autonomy in Hong Kong?

Alan Lung: I looked at the White Paper slightly differently from what the mass media reported. China as a whole, including the mainland Beijing leadership, has never been very good at the so-called public relations, or good communication. They are very used to this very top-down style of communication: “I’m the power; you listen.” The way I saw it, there was nothing new in the White Paper. My opinion is almost the same as Tim Summers’s paper. There were majors errors of interpretation of the rule of law in the White Paper. That was the main thing.

Rule of law as understood in China is not rule of law; it is rule by law. Rule of law, the concept, is really well understood in Hong Kong, even by the popular press and the average person in the street—not only does it have to be fair, but it has to be seen to be fair—but that is not the understanding of the mainland leadership. Their interpretation that the judiciary is part of the Administration is obviously wrong. I think that they now realise it, and they could be reviewing not just their communication, but the so-called “two systems” in Hong Kong—that Hong Kong runs a different judicial system.

Professor Young: I share Alan’s view on this. I think there was a tendency for some to see this document as a greater threat than it really it was in its terms, but it was of such concern that you did see lawyers coming out to protest—you had about 1,000 lawyers marching—and you also saw the former Chief Justice coming out and saying some very strong words about the White Paper. So there was enough there to get people concerned, but as Alan has suggested, part of the problem was simply a problem of communication and poorly understanding the Hong Kong common law system of rule of law.

Q162 Chair: Do you think that the requirement that judges should be “patriotic” was a rather odd thing to find in the paper?

Alan Lung: How do you define “patriotic”? Does it mean to shoeshine bosses up there as much as possible?

Chair: Flag-waving is how I describe it.

Alan Lung: Does it mean that if you say things that they like to hear, you get favours, whether political or commercial? How do you define patriotism? It is a concept that cannot be adequately defined by law. Some things, such as sedition, can be defined negatively, but how do you define that someone is more patriotic than me or Simon?

Professor Young: That is one of the things that the former Chief Justice Andrew Li had said in his writing on the White Paper. He said that there needed to be clarification. What do you mean by “patriotic”? Do you mean patriotic in one’s decision making, or patriotic simply in taking the judicial oath? I think everyone here is very content with judges taking the judicial oath as a sign of patriotism, but if it reaches as far as how you actually go about deciding cases, then that seems to go too far.

Alan Lung: May I add just one comment? We are sort of blaming mainland officials, or mainland China as a whole, but Hong Kong is not totally faultless. The average Hong Konger really does not understand the Chinese system or China’s aspiration. Together with this, the Comintern—the communist international—constitution of China of, I believe, 1919, defined democracy as democratic centralism. Of course, there is a big conflict of this constitution and this concept of the state with the very diehard liberalism of Hong Kong. You cannot take the liberalism of Hong Kong away. Hong Kong is absolutely liberal down to the very bottom, and you cannot change that; nobody can change that.

Q163 Chair: With that point in mind, how do you think China sees its role in exercising sovereignty over Hong Kong?

Professor Young: First and foremost, and consistent with the Basic Law, it sees itself conducting Hong Kong’s foreign affairs and defence as it does for the whole country. Secondly, it sees that it has to protect national security. That is why it gets very upset at the fact that Macau has been able to pass national security laws while Hong Kong has not. Thirdly, it sees itself as watching over the political system, and that is why we are in this dilemma about how much autonomy Hong Kong has in deciding its political system.

Alan Lung: In one of the prepared notes, I said that, as we all know, China will become very irrational if Taiwan declares independence. They will defend their sovereignty at all costs—they will fight even if they know that they have a good chance of losing the war, but this is China. It is the same for Hong Kong: if they think that sovereignty is at risk, they will become very, very irrational. There are people—mainland officials as well as people in Hong Kong—who say that they represent the mainland’s view, but in this mainland system, who really makes the final decision? We all know that it is the Politburo—certain people in the Politburo, and recently the power is even more concentrated in the form of Xi Jinping. The final decision is never made on Hong Kong’s political development or how they treat Hong Kong until it gets to Xi Jinping’s level.

I tried to show a picture to many people—this front-page picture.

Chair: We can just about see it.

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Alan Lung: This is a picture of Xi Jinping receiving CY Leung in Beijing during APEC. The people who are normally running Hong Kong's affairs are not there—even the head of the Hong Kong and Macau Affairs Office is sitting in the least important position. The one sitting in the most important position, to the left of Xi Jinping, is someone called Wang Huning. People in your Foreign Office will recognise him; he is a foreign affairs adviser to Xi Jinping.¹ I actually showed the same picture to one of your former FCO officials, Tim Summers, and he was immediately able to tell me, “Wang Huning, he is party secretary. The one to the left is the head of the CCP's Central Committee office. He's Guizhou party secretary. I know him,” and so on. There are obviously people within your Foreign Office who know China extremely well, but this is not common knowledge in Hong Kong.

Who makes the final decision? Even for us who read Chinese newspapers and some of us who read Chinese mainland blogs, we are still reading tea leaves because the mainland system is not transparent. The thing we know is that decisions made on Hong Kong—this picture tells us that decisions made on Hong Kong are now at the very top level, particularly on Occupy Central.

Chair: That is helpful. Thank you.

Q164 Mike Gapes: Both of you submitted proposals during the first round of the public consultation in Hong Kong suggesting potential reforms to the process for the election of the Chief Executive in 2017 in line with Article 45 of the Basic Law. Can you explain for us what your proposed reforms to the process would be?

Alan Lung: To judge whether the central leadership, which is the Politburo or even Xi Jinping, would grant so-called genuine choice to Hong Kong you really have to look at their actions and not at the hot air that is blown around by people who are trying to be politically correct.

The proposal that I have prepared conforms totally to the Basic Law and the most recent declaration by the NPCSC. Whether the mainland leadership will grant it, we do not know. I will describe it in very simple terms. There are three steps: entry, screening—which everybody was screaming about—and exit. On entry, the proposal is very simple: one eighth of the 1,200 nomination committee members, which is the same as before. The Democrats have proven that they can nominate someone through this.

Then there is the second step. The NPC requires that that be screened down to two or three candidates, which is very specific, but they did not say exactly how you could screen them. Our proposal is to have the screening done exclusively by LegCo members. To be screened into those two or three people, you have to get 20 votes. The advantage of that is really turning this very negative aspect of screening into a very positive aspect, because it builds the links between the executive branch and the legislative branch that are missing now. For example, can you imagine your Government running without your support? It is impossible. How does Obama run the US Government if he has zero votes in Congress and

¹ Note by witness: Wang Huning is the Party Secretary's foreign policy advisor.

the Senate? This is exactly the situation in Hong Kong. This would at least give 20 votes to the future Chief Executive. Will they allow it? We do not know.

Finally, exit is the most controversial part. According to the NPC's requirements, exit requires 50% approval by the nomination committee. We actually stole an idea from the so-called group of 13 scholars, which used an economic theory called game theory, which states that 50% must be for the entire list. They could reject or accept the entire list of two or three. If they reject a nomination, it goes back to the beginning again. Presumably, because voters are rational, they could replace the person who has been rejected with someone who is more acceptable to the entire nomination committee and therefore Beijing. That is still a controversial part, but is the glass half full or half empty? Is Hong Kong an independent state? How do you address Beijing's worry that the CE, who really has provincial governor status, will work against the central Government? At least with the last one, exit, the 50% approval by an entire list addressed their concern to some extent.

This is, in very simple words, a proposal that could happen. We do not know if Beijing will consider it. We do not even know that the Pan-Democrat legislators will consider it. That is the situation.

Professor Young: I will try to explain my proposal. First, let me situate it in the debates that were happening at the time. At that time, we did not know that they would come on so strongly with those three restrictions. We thought they would not, but we were not exactly sure. There was a spectrum of different proposals. At the far liberal end were the so-called proposals that advocated civic nomination: giving the people the right to nominate if you had a certain number—1% or 2% of the electorate. There had been some clear signs from the Hong Kong Government and the Beijing Government that that would not be accepted, so I tried to avoid the civic nomination proposal in the pure form. At the other end is what some of the DAB—the pro-China groups—were advocating, which looked a lot like what came down in the end, so I tried to move away from that.

The status quo was not a bad situation because, as Alan mentioned, it was able—when you just get the one eighth from 1,200—at least to return a Democrat. Most people would be happy with the status quo. People were not so happy with the make-up of the nominating committee and wanted to see that changed, but there were also demands for civic nomination.

My proposals are sort of situated between civic nomination and the status quo because I thought that the status quo would not be accepted because the threshold would be too low; Article 45 talks about nomination by the committee as a whole, not just one eighth. My proposal was to have a two-track system. One track would be that you get the nomination by the committee by a vote, and if you are in the top three in number of votes, you can be in. The other track is if you have public support—I describe this as civic endorsement, not civic nomination—plus the lower, one eighth threshold, then you could also come in. Those are the two ways. I tried to come up with, more or less, a compromise solution that is respectful of the language of Article 45 but has the element of civic nomination. Of course, Beijing did not accept either of those.

Q165 Mike Gapes: Thank you. Mr Lung, the Hong Kong Democratic Foundation sent us a written submission arguing that the National People's Congress 31 August decision contravened the Basic Law and the Joint Declaration. Can you explain why you think that?

Alan Lung: It is difficult for me to argue about this because that was submitted by George Cautherley. Even if you argue with this, this is quite useless because the power is with the sovereign power of China. There are legal arguments, and lawyers can argue in many ways, but what is the point?

Q166 Mr Roy: Now that the protests have essentially ended over the past few days, where will the political reform process go from here? Do you think there is any scope for compromise?

Professor Young: I think that there is scope for compromise. That is my own personal view. I have recently written an article in *Hong Kong Law Journal* entitled "Realising Universal Suffrage in Hong Kong after the Standing Committee's Decision". I espouse a view—probably a minority view now—that even with the conditions imposed on 31 August, it is still possible to design a system that is consistent with the idea of universal suffrage, but both sides would need to compromise and sit down.

The crucial element in my proposal is the power of the people to reject all the candidates. What we are left with, with the Standing Committee's decision, is essentially de facto Beijing control over nominations, but they do not have control over the election itself or the election result; that is still up for discussion. I submit in my paper that if we can effectively give that power to the people, we can have a balanced system because that power of the people to reject all the candidates will effectively determine or affect how Beijing goes about the nomination process. Realistically, Beijing will have to come up with candidates who have the support of the people. I espouse the view that there is still a lot of room for discussion here.

The other thing that has to happen, unfortunately, is that the Government needs to come up with a better process. The Chief Secretary, Carrie Lam, has already talked about establishing a kind of multi-party platform. I am not exactly sure if that is the best proposal, but they are at least talking about different mechanisms to gather people's views. I have proposed that there should be some kind of independent consultation committee that helps the Government to conduct the consultation exercise, led by a very credible former or sitting judge. That could give a lot of credibility to the system and provide a forum for the protesters to have their voices heard in an effective way. These are the kinds of thing that many people are hoping to see occur.

Alan Lung: One of the very amazing things that the students in Occupy Central achieved is that it actually made the leadership in Beijing and Hong Kong, including the students and activists, agree on one thing: the economic policy practised in Hong Kong after 1997 is not working. Too much favour was given to the property tycoons. Too much emphasis has been put on the financial market. Opportunities for young people are basically ignored; they keep ignoring them. There are housing problems and so on. According to my reading of the Chinese newspapers, that economic development aspect is already well

understood by the leadership in Beijing, so there will perhaps be changes in innovation and technology and more job creation at the high end.

The UK could play a strong role in assisting Hong Kong in moving towards that development, but the political order of post-Occupy Central is far from finalised because it is a very difficult situation. On one hand, there are demands—slightly extreme demands, like civic nomination—demanded by students. That is not going to happen. Then, on Beijing, there is the inability to communicate and the fear that the Chief Executive will work against Hong Kong. There is a fear that even people like Simon and I, coming to talk to you, are subversive, anti-China and linking up with very bad external forces. That is the hot air blown out by some people in Hong Kong. But those people actually have more influence than people like us across mainland China.

In terms of post-Occupy Central and the political development, the international community—including people like you, the UK Government, the Germans, the Americans and the European Union—actually has a very important role to play. Remember, we are the good boys and girls. We never asked for independence. Truly, we never did. Our demonstration has been peaceful. It was non-violent. In Hong Kong there is no good ending, no good outcome. There could be no good ending for the Tibetans, for Xinjiang and there are also some other internal problems that China is facing. As a Foreign Affairs Committee, I am sure you are aware of all those things.

I do not subscribe to the theory that China is the evil empire because it is not. As part of China, we cannot say those things. On the one hand, it is trying very hard to become almost a world citizen, trying to play useful roles in world affairs and it does care very much about what the international community thinks about it. You perhaps have a role in having a calming effect and trying to convince not just us in Hong Kong, but mainland China, to act on hope and not on fear.

Perhaps everyone, including some of your colleagues within your group, is acting on fear or humiliation—I know that it is difficult to be refused entry and you feel humiliated—but you can have a strong calming effect on China and work with them to assist not just Hong Kong's constitutional development, but our major deficit in policy development. I hate to say that, when the British left, we were not able to make policy choices, decisions or development.

Mr Roy: That might come up in some of the later questions from my other colleagues.

Chair: Time is running a bit short, so I will keep things moving.

Q167 Mr Baron: Good afternoon and thanks for joining us. The Committee is looking at whether the UK Government—our role is to scrutinise our own Government and the FCO—have been robust enough in speaking up for the protest movement, the democratic movement in Hong Kong. How would you assess the UK Government's response to recent developments in Hong Kong, specifically since the publication of the White Paper in June of this year? Do you think it has been robust enough?

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Professor Young: Generally speaking, most foreign Governments have been very quiet in the past couple of months, and for good reasons. If you are just looking at this narrow period of time, speaking up would probably not have helped the protestors because of these allegations, because of the poisoned environment of suggesting that there is foreign interference. I think it was probably wise not to say too much in this environment. I will leave it at that.

Alan Lung: I think there is contention over the decision taken by the FCO of welcoming China's objective and the details of the constitutional package for Government—it is for Hong Kong's Government, the Chinese Government and the people of Hong Kong to decide—without mentioning the Joint Declaration. That was perhaps the contention. We know—we have links with your consulate general in Hong Kong—almost everyone who wrote the six-monthly report and we know that both former and current officials working in the Foreign and Commonwealth Office are sinologists. They have deep knowledge of China—the one I mentioned told me everything I don't know about China. Because of their deep knowledge, of course their judgment could be slightly different from Hong Kong and from people who are not sinologists. They speak better Putonghua than we do, honestly, because we are Cantonese speakers and we always stutter when we speak in Mandarin. That is not a fault—that is a particular feature of the British foreign service.

I believe some of your people could feel hurt if you accuse them of not doing their job. I know that they have Hong Kong's best interests at heart. There are people who have a different opinion—that is normal in a democratic society—but personally, I trust their judgment, because they can tell me things I don't know. The Foreign Affairs Committee might blame them or say, "They are not doing their job," but in our opinion they are doing the best they can to preserve not just you but us, and they are trying to best serve China's interests too.

Q168 Mr Baron: You are being very magnanimous. Previous witnesses in other sessions—not just today—have suggested that they feel the UK Government could have been a little bit more robust. After all, there are obligations on both sides of the Joint Declaration. May I press you on this? What you're saying, basically, is you feel that the British Government have got a difficult course to set and, from your position, you are satisfied that they have done what they can in speaking out on behalf of the protest movement. Will you also address the perhaps more relevant question? Even if the Government did speak out, what impact do you think it would have?

If I may, Mr Lung, I will pick up on something you said earlier: that the Chinese Government does care about how it is perceived on the international stage. Being devil's advocate, I therefore put this to you: do you not think that more robust criticism, within the spirit of the Joint Declaration, could have more of an effect on the Chinese Government and authorities than you have suggested?

Alan Lung: I think, because of their system, you have to be quite careful about strong public criticism of the Chinese, because it could be misconstrued as anti-China. I know that a different Government—the largest country in Europe—does criticise China in private; very strong criticism. I was told that this is the only Government that has human rights dialogues

with China. The Chinese fear the sovereignty issue and do not have this sort of dialogue. It is important to be politically correct in mainland China, because the politics is not transparent. You do not know what forces still exist in China, even at this moment, so I encourage you to criticise them strongly, perhaps behind closed doors, first.

Publicly, take care of their concern about the sovereignty issue. They are very sensitive, particularly regarding the UK. Perhaps they are not as sensitive with the Germans—Karl Marx and Engels were Germans—and perhaps they trust them more. Perhaps they perceive the Germans as more direct, and feel that this is something they can deal with. We don't know. Some Governments have a strong relationship, which diplomats are very good at building. You on the Foreign Affairs Committee are also diplomats—don't stir up their fear, stir up their hope. That is the major strategic direction you could consider taking.

Q169 Sandra Osborne: But we are not diplomats; we are Members of Parliament. Could I ask you about the six-monthly reports that the FCO produces? They have never identified a breach of the Joint Declaration. Do you agree with them?

Professor Young: As a lawyer, I would generally agree. The situation that we are in right now is not a clear breach of the Joint Declaration or the Basic Law. We are still trying to work out the meaning of universal suffrage as it is to be implemented under the “one country, two systems” framework. The argument that China has been making—probably the strongest argument—is that, since Hong Kong is not an independent country, and since the Chief Executive has to be accountable to the central Government, they should have some say over how that process works. That argument is very difficult to refute. How much say is the very question, and that is what we are still working out.

As I said earlier, there are still a lot of question marks about what the system will look like. First, we are only talking about the Chief Executive. We have not even got to the legislature yet and the functional constituencies. If, through a rational process of negotiation and bargaining, we are able to come up with a system that has proper balance and counterbalance, it may well still be consistent with the Joint Declaration and Basic Law. The ultimate safeguard, of course, is the two-thirds veto or the one-third veto of the legislature. This is not something that we are forced to take. You have to remember that the amendment formula allows one third of legislatures to veto any political reform. That is the ultimate safeguard here. We are trying to avoid that, of course, so that we can have universal suffrage. But it is not so clear that there is a breach.

Alan Lung: I know that in George Cautherley's submission he argued for a breach. That is a very contentious position, because we know that the Hong Kong SAR Government and the Chinese Government immediately argue that the Joint Declaration never mentioned universal suffrage. In all our constitutional reform proposals, we never rely on the Joint Declaration. We rely on the Basic Law totally. Going down this argument—whether there is a breach or not—is, to me, really irrelevant because we know that if the Beijing Government argued the other way, we would never win, so why go down this argument in the first place? It will simply stir up fear. It is not good for our sake. It is not good for Hong Kong as we move forwards. I would much prefer for the constitutional reform argument to be totally

based on the Basic Law, because this is the Chinese Parliament's constitution. That is my point of view.

Q170 Sandra Osborne: So you think that the rights and freedoms of the Joint Declaration are being upheld?

Alan Lung: Even in the press very lately, Chen Zuoer, former Joint Liaison Group chief Chinese representative, would not dare to say that the Joint Declaration is null and void; he only said that the spirit of the Joint Declaration is alive and well. This is the fear factor that your Committee should be aware of. If you keep accusing that there is a breach, they will become quite irrational, because they think their international reputation and their sovereign rights over Hong Kong are threatened. That is never, never a good line or a good strategy to take, for our sake.

I said to one of your senior officials, Julian King, when we met him that there are lots of fans of Chris Patten in Hong Kong, and I'm one of them. I like him very, very much. I like his accent; I like the way he says things, and his presentation. He is actually closely linked to us. I really like this tart-eating, flesh-pressing Governor of Hong Kong, but the tone of his argument, to me, this antagonistic attitude towards China—it's almost like *déjà vu*; this honourable retreat again. It should have happened 70 years before. It's not helpful to Hong Kong SAR passport holders like us. I hold no foreign passport, and we're stuck. Whether we like it or not, we have to make this constitutional reform work. We cannot afford not to. China can afford not to. The question is whether the Foreign Affairs Committee will help us to convince China that democracy is good for China, not just for Hong Kong. That is a critical strategy and direction that you should consider and I hope you take.

Professor Young: Can I just say a few things about rights and freedoms? We're now debating political rights, but if you ask about all other rights and freedoms, the answer is that they are very much intact and protected, primarily because of our independent judiciary, so if China does not meddle with the judiciary, we're going to be okay; and so far it hasn't, and so our judiciary has adopted a very robust approach to protecting constitutional rights. When one reads the judgments, particularly from the Court of Final Appeal, where you have the sitting foreign judge—many judges from the UK, at the highest level, have sat on our cases—these are very inspiring judgments.

At policy level, could Government do more to protect human rights? I think definitely, yes. But I think that is more a symptom of lack of democracy in policy making, as Alan mentioned earlier; but at the level of the courts, we are still very good.

Q171 Chair: Thank you both very much. Time has caught up with us. I am only sorry that we are not sitting on the other side of the table from you having this conversation. This has been really helpful to us and is much appreciated.

Professor Young: Thank you.

Alan Lung: Thank you. I hope you do come to Hong Kong sometime. I am sure the people of Hong Kong will welcome you.

Chair: We'll come tomorrow if they let us!

Examination of Witness

Witness: **Yvonne Leung**, Hong Kong Federation of Students, gave evidence.

[This evidence was taken by video conference]

Chair: Good afternoon, Yvonne. Very nice to talk to you; thank you for coming along.

Yvonne Leung: Good afternoon and thank you for your time.

Q172 Chair: Yvonne, can we establish the basis of this conversation? Do you want it to be in private or are you happy for it to be on the record?

Yvonne Leung: It's okay for it to be on the record.

Q173 Chair: Excellent. We will be recording this and then it goes on to our website, basically.

Yvonne Leung: Okay, no problem.

Q174 Chair: Lovely; thank you. First of all, could you identify yourself and your position for the record, please?

Yvonne Leung: I am the representative of the Hong Kong Federation of Students, which was an active group participating in the umbrella movement. We are formulated by the eight students' unions in the universities in Hong Kong. I am 21 years old and I'm the president of the Hong Kong USU. I am here to pledge to the Committee on the recent situation in political reform in Hong Kong and how there may be a potential breach of the duties by the Chinese Government in the Sino-British Joint Declaration.

Q175 Chair: We will take all those points in sequence, and my colleagues here will put questions to you, but could you start by setting out the main goals of the student protesters during the recent protests?

Yvonne Leung: The main goal of the students' protest has been to call for a genuine, free and democratic election in Hong Kong that really reflects the free-will expression of the Hong Kong people, consistent with the ICCPR. We are here to request the attention of the Parliament of the United Kingdom on this issue, because we have observed that the Sino-British Joint Declaration was a contract or an international treaty that governs the future of Hong Kong and affects the destiny of the 7.8 million people in Hong Kong, but throughout these years we can observe different breaches by the Chinese Government of this international treaty. I have actually prepared a few points to elaborate on how the Joint Declaration was breached, so—

Q176 Chair: May I interrupt? You will have a good opportunity in a few minutes' time to talk in detail about the Joint Declaration, so if you could just stay on our questions. You want to talk about the Joint Declaration and we want a slightly wider perspective as well, so I

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would be very interested in your views, but we will come to the Joint Declaration in a minute. What do you think of the reaction of the Hong Kong and Chinese authorities to the protests?

Yvonne Leung: I think the Beijing Government made no direct response. They did not really respond to the protest directly; instead, they just asked the Hong Kong SAR Government to respond to the protest. We were very disappointed with the response by the Hong Kong Government, because they just used the NPCSC decision issued in late August as a shield to restrain the Hong Kong people from attaining a genuine universal suffrage. When we touched on the unconstitutional part of the NPCSC decision, which means stating its status as an infringement of the Basic Law provision—so it was unconstitutional—the Hong Kong Government gave no response on that either, so we were very disappointed by both the Hong Kong SAR Government and the Beijing Government.

Q177 Chair: Do you think there is any willingness to compromise by the authorities at the moment?

Yvonne Leung: No. I was one of the representatives of the students who had a direct conversation with the Government, which was live broadcast in Hong Kong, and you can see that the Government did not compromise on anything. Instead, they just said they would file reports on public opinion they observed in these two months. But they won't give any suggestions or any stance to the Beijing Government for their consideration, which means they will only write into the report that there is a large-scale protest in Hong Kong, while, at the same time, there have been other, anti-Occupy groups who have also voiced their opinions. So, basically, the report will do nothing to bring Hong Kong nearer to general universal suffrage.

Q178 Mr Roy: Yvonne, on a general point, what are your views on the direction in which Hong Kong is going? Do you think that “one country, two systems” is working well and is sustainable?

Yvonne Leung: It is definitely not working well. There are several points we could to go to in investigating how “one country, two systems” is actually working. We can see that, in “one country, two systems”, the fundamental civil and political rights of Hong Kong citizens should be well preserved. We can see that, from what is stated in the Basic Law, we could have universal suffrage subsequent to 2007. Up to this moment, there have been a few times where interpretation of the Basic Law has been carried out by the National People's Congress, not upon the request of the courts, but instead of the Chief Executive himself, which is inherently against the Basic Law provision. Up to this moment, we are only promised an election with a small-circle nomination process, where only 7%—or even less than 7%—of the Hong Kong electorate could indirectly elect some representatives to further choose the candidates for the Chief Executive election.

The same situation is found in the legislature. We are still not having universal suffrage in the legislature. Half of the seats are actually functional constituencies. The representatives of the Hong Kong people are elected by corporations and professionals in some constituencies—which is definitely not enjoying equal voting rights. We have constituencies like the education sector, which has around 80,000 voters, but we have other

sectors, like the fishermen's, which are actually held by several hundred people who have voting rights. So you can see that none of the sectors or branches of our Government is really universally or fairly elected. So, basically, there is infringement of the fundamental civil and political rights of Hong Kong.

Concerning the living style, which is the gist of "one country, two systems", we can see what has happened over the years with freedom of the press in Hong Kong. Before 2009, we were classified by Freedom House as a free region, but after 2009, there were instances of harming the freedom of the press in Hong Kong, which now makes us only a partially free region. I think we can really draw a direct correlation between that and the deterioration of "one country, two systems".

The judicial part is the part really worth highlighting, because in the Basic Law, we are guaranteed the final adjudication power in the Court of Final Appeal in Hong Kong. Over the years, there have been four interpretations of Basic Law by the National People's Congress. Only one of them was carried out according to the procedures stipulated in the Basic Law. The other three were raised by the executive branch, which were definitely not provided for by the Basic Law provisions. Some of them were even challenged—that the decision by the National People's Congress was totally contradictory to the law in Hong Kong, but they provided no sufficient reasons when they imposed such a decision on that interpretation. So I believe there are different aspects showing that "one country, two systems" is deteriorating in Hong Kong.

Q179 Mr Roy: Now that the protests have been ended, what do you think will be the next step for the student movement?

Yvonne Leung: The federation cannot represent all the students in Hong Kong at the moment. The students are having different organisations newly set up, even outside the umbrella movement. For our federation, we are going to take note of some critical time-points, especially the second stage of the political reform consultation, which may be coming in a few months, and also the passage of the Government's proposal in the Legislative Council perhaps in March or April next year. At those two critical time-points, we are going to have other movements. I will not rule out any possibilities.

There may be another Occupy movement, or there will be movements trying to crash into those locations if we are not granted a right to enter the venue upon application, because we do have some opinions to express in those consultative forums. But there have been precedent cases in which the Government have tried to ban Hong Kong citizens from entering those consultative forums, so we will not rule out the possibility of other actions or movements if that is the case.

Q180 Mike Gapes: The purpose of our inquiry is mainly to focus on the Foreign and Commonwealth Office or UK Government response to the situation in Hong Kong. How does your generation of Hong Kong people perceive the United Kingdom and its relationship with Hong Kong?

Yvonne Leung: When the Sino-British Joint Declaration was signed, I was not even born. I have no way of altering the decision laid down by the Government of the United Kingdom and the Central People's Government of China. The future of Hong Kong has already been decided, but up to this moment what we observe is that one contractual party is in potential breach of the Joint Declaration. We are trying to avoid that happening and trying to make the Chinese Government stick to what they promised 30 years ago. We are asking for nothing new. We are just trying to seek your assistance in making China fulfil the promise made 30 years ago.

Most of the youngsters in Hong Kong really wish to see justice in Hong Kong. We want to see China fulfilling the promise that they laid down 30 years ago, and then we will be satisfied.

Q181 Mike Gapes: Thank you. Is the attitude of your generation and those who were perhaps two, three or four years old in 1997 different from those who were adults at the time of the handover?

Yvonne Leung: I don't think there are inherent differences. I mentioned asking the Chinese Government to stick to what they have promised; I think this is a view shared by all generations of Hong Kong people. On the means by which we attain that, there might be slight differences. For example, on the umbrella movement, all generations participated in the movement, but when it comes to escalation of actions and what we have said we might do, such as crashing into the consultative forums, some of those means might not be agreed by all the generations of Hong Kong people. As to what we are going to achieve—the ends of all these actions—I believe all generations of Hong Kong people share the same will.

Q182 Mike Gapes: So this is a discussion about different approaches to tactics, rather than strategy?

Yvonne Leung: I would say that for these actions, such as asking the Parliament of the United Kingdom to assist us in enforcing the Sino-British Joint Declaration and realising its principles in Hong Kong, it is a view shared by all generations of Hong Kong people. There might be disagreements about ways and means of actions and some other strategies.

Q183 Mike Gapes: How do you assess the response that there has been from the United Kingdom Government to the umbrella movement?

Yvonne Leung: I am sorry to say this, but I see no concrete response from the British Government. What I was expecting was more honourable actions, including an active investigation that came earlier on whether there were any parties trying to breach the Sino-British Joint Declaration. There also could have been actions of condemnation if there was a breach. I believe that those are actions that could really pressurise the Chinese Government in responding to the movement. The movement is not really over, but the occupation area has all been cracked down on by the Hong Kong police. It has already been two months since the start of the movement, and since the use of tear gas by our Government on those peaceful protestors. Over those two months, what I felt was despair, and it felt really lonely trying to bring about a change. I wish all this assistance could have come earlier.

Mike Gapes: Thank you.

Q184 Mr Baron: Welcome, Yvonne. Can I press you on the Joint Declaration? You wanted to make a number of comments right at the beginning, and we have now moved on to the phase in our questioning where we are focusing on the Joint Declaration. Can I give you the opportunity to say what you wanted to say at the beginning?

Yvonne Leung: I think the Joint Declaration promised Hong Kong people democracy. How it will be practically implemented is further stated in the Basic Law. The Basic Law preamble has stated very clearly that it is to realise the basic policies of the Central People's Government over Hong Kong. The Joint Declaration could be observed if the Basic Law was duly observed.

We can go into the articles in the Joint Declaration. In Article 3 it says that the Chief Executive of Hong Kong "shall be selected by election or through consultations held locally and be appointed by the Central People's Government." The intention in the Joint Declaration must be having an election in compliance with the International Covenant on Civil and Political Rights. In Article 25 of the ICCPR has stated that "Every citizen shall have the right and the opportunity...without unreasonable restrictions" to "vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage". General Comment No. 25 adopted by the United Nations Human Rights Committee also states that any state or region adopting the means of election should, in choosing the representative, state their measures "to guarantee genuine, free and periodic elections". We can see that, up to this moment, the universal suffrage which has been promised in the Basic Law should also be in compliance with Article 25 of the ICCPR.

Some may argue that there has been reservation made by both the British Government before 1997 and the Chinese Government after 1997 on the case of Hong Kong, which means that Article 25 should not be applied in the case of Hong Kong. In the general comments, it is also mentioned that once a state uses the means of election to select their representative of the people, Article 25 must apply to the case. That was reaffirmed by the UN Human Rights Committee in a case study in Hong Kong in 2006, which said that Article 25 will apply in Hong Kong once we have universal suffrage. But the decision made by the NPCSC in late August stated that there will be a small-circle nomination committee covering less than 7% of Hong Kong's electorate. There will be a 50% threshold in the nomination committee, which means that a candidate must attain nomination from at least 600 people to become a candidate in the CE election.

Basically, those are the two hurdles which prevent Hong Kong people from having free expression of the will of the electorate. This is a direct breach of the ICCPR's Article 25. We can see that the intention of the Sino-British Joint Declaration was to allow Hong Kong to have a free election in compliance with the ICCPR, but it turns out that the Beijing Government has been imposing a design of electoral system in which public opinion or unreasonable restrictions will be used as grounds to deprive someone from the right to stand for election. That is a direct breach of the Sino-British Joint Declaration, in most Hong Kong people's views. The reason stated by a Beijing official—the vice-chairman of the NPC

Standing Committee's Basic Law Committee, Zhang Rongshun—was that Hong Kong people should be re-enlightened in their understanding of Basic Law.

If we read that together with the information in the White Paper issued by the State's Council in June this year, which says that some people in Hong Kong are still "confused" in their understanding of "one country, two systems" and the Basic Law, we can deduce that there is an intention for the Central People's Government in the PRC to rewrite its own promise by ignoring the virtue of Basic Law, which was stated in the preamble as mentioned. The basic policies of PRC regarding Hong Kong have been elaborated in the Sino-British Joint Declaration. The Basic Law to be practised in Hong Kong SAR should ensure the implementation of the basic policies of the People's Republic of China regarding Hong Kong.

The point is that once the Basic Law is not duly fulfilled or not duly practised in Hong Kong, we can see that there is also a potential breach by the Beijing Government and the Hong Kong SAR Government of the Sino-British Joint Declaration. It is clear that when they are not imposing a genuine universal suffrage and genuine free election, there is a potential breach of both the Sino-British Joint Declaration and the Basic Law. That is the problem that we are confronting.

Q185 Mr Baron: Okay. Yvonne, can I just be absolutely clear about something? We are short of time, so I will have to keep this short. You used the word "potential", but it is your view that there has actually been a breach of the Joint Declaration. I take that as a yes, for the reasons that you have given.

Yvonne Leung: Yes.

Q186 Mr Baron: Can I briefly bring you back to a point raised by a colleague earlier? There has been a breach, and you have been disappointed with the response by the UK Government to that breach, because there are obligations on both sides of this Joint Declaration. What effect would a more robust approach by the FCO and the UK Government have, do you think, on the Chinese authorities?

Yvonne Leung: I believe that international pressure up to this moment is still effective in bringing the Chinese Government to duly observe what has been stated in an international treaty, by which I mean the Joint Declaration. I think that the identity of the Government of the United Kingdom is a bit special, compared with the other Governments around the globe, because the Government of the United Kingdom is one of the contractual parties of the Joint Declaration. It is an international treaty. When we are talking about a contract, if a party is breaching the terms in it, the other contractual party definitely has the right to bring them to some penalty or condemnation. The Parliament of the United Kingdom should take that honourable action to speak out for the Hong Kong people.

Mr Baron: Can I thank you for your bravery in your protests, and for being with us today?

Q187 Sandra Osborne: You will be aware of the six-monthly report that the FCO produce. They have never identified a breach of the Joint Declaration, and they continue to say that "one country, two systems" works well. Obviously, you do not agree with that. What do you

think the UK response should be if there is a breach or if the Joint Declaration is under threat?

Yvonne Leung: Sorry; I couldn't hear the question clearly.

Q188 Sandra Osborne: Are you aware of the six-monthly reports that the FCO produces about Hong Kong?

Yvonne Leung: Yes.

Q189 Sandra Osborne: They have never identified a breach of the Joint Declaration, and they say in the latest report that "one country, two systems" continues to work well. From what you say, I assume that you do not agree with that analysis. If the Joint Declaration is under threat, what do you think the UK should do about that?

Yvonne Leung: I think firstly that there should definitely be condemnation. If there is still no improvement from the Chinese Government, this is an international treaty and I would request that the UK Government seek some legal measures in asking the Chinese Government to duly observe an international treaty.

Q190 Chair: Yvonne, thank you very much indeed. That has been really helpful. We have finished our line of questioning. Is there anything else that you would like to say in conclusion?

Yvonne Leung: Thank you for your time. I hope that justice will come to Hong Kong.

Chair: Can I endorse what my colleague John Baron has said? It shows a lot of courage to come and speak publicly about this. We wish you well. Please keep in touch with us.

Yvonne Leung: Thank you.

Chair: Thank you.