



Oral evidence: [Hong Kong](#), HC 575

Wednesday 16 July 2014

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Members present: Sir Richard Ottaway (Chair); Sir Menzies Campbell; Mike Gapes; Mark Hendrick; Sir John Stanley; Nadhim Zahawi

Questions 1-29

Witnesses: **The Hon. Anson Chan** and **Mr Martin Lee QC**, gave evidence.

Q1 Chair: May I welcome members of the public to this sitting of the Foreign Affairs Committee? I welcome Anson Chan, who is the first woman and the first Chinese person to become head of the Hong Kong civil service, and Martin Lee, who has been for many decades one of the most respected legal practitioners in Hong Kong.

May I make one point clear at the outset? The Committee has been keeping an eye on the situation in Hong Kong for some time, and last week we decided that we will be doing a report on the situation. We will be announcing it, probably, either later this week or early next week, and publishing the terms of reference as we do. It is not a report into the internal operations of Hong Kong. The British Government publish a six-monthly report on Hong Kong, and we are fulfilling our job to look at the British Government's policy towards Hong Kong as set out in the report. That is the basis on which we are proceeding.

I welcome you both. Before we go into questioning, is there anything you want to say by way of an opening statement?

Anson Chan: Yes.

Good morning Chair and Members. Speaking on behalf of Martin and myself, we would like to say first of all how much we appreciate the opportunity to give evidence to this public inquiry into UK relations with Hong Kong, 30 years after the joint declaration. Martin and I are here because we are concerned that neither of the two signatories to the joint declaration—China and Britain—is adequately fulfilling their respective responsibilities under the terms of this internationally binding treaty.

The concept of “one country, two systems” is enshrined in the joint declaration and in the basic law, which is Hong Kong's constitution that flows from the joint declaration. Under this concept, the Hong Kong SAR Government are to enjoy a high degree of autonomy, except in foreign and defence affairs, which are the responsibilities of Beijing. Hong Kong is vested with executive, legislative and independent judicial power, including that of final adjudication.

Unfortunately, 17 years after the return of sovereignty, this concept is under serious attack. First, there is increasingly blatant interference in Hong Kong's internal affairs by the central Government, primarily through their representative liaison office in Hong Kong, including the direct lobbying of Government officials and legislators on policy matters. Secondly, there is an insidious erosion of basic freedoms, in particular the freedom of the press, by intimidation of journalists and, for example, the pressuring of businesses to withdraw advertising from independent news media. Thirdly, there is a climate of increasing authoritarianism and targeting of pro-democracy activists. These concerns have been brought to a head by the publication of the recent White Paper by the state council of the PRC, which calls into question Hong Kong's high degree of autonomy and implies that this degree of autonomy can be given or taken away at Beijing's pleasure. Martin will deal with that issue later in his evidence.

Another point of serious concern is the lack of progress on constitutional reform. Our current Chief Executive was elected to office by just 689 individual votes out of an election committee of 1,200 people. In short, he has no electoral mandate and no real legitimacy to govern.

While Hong Kong people have been promised the right to elect the Chief Executive by universal suffrage in 2017, recent developments have made clear that Beijing is determined to control the outcome of that election by ensuring that only candidates approved by the central Government are nominated by the nominating committee, which is stacked with Beijing loyalists. This will make a mockery of universal suffrage. Unless Hong Kong people are granted universal suffrage that measures up to internationally accepted norms—in other words, that voters have a genuine choice of candidates and there are no unreasonable restrictions placed on people standing for election—there is a real danger of Hong Kong becoming ungovernable. This would be a shameful outcome for both China and Britain. It would also place at risk Hong Kong's hugely important role in the continuing development of China's economy, as well as the significant financial and commercial interests of the United Kingdom and other overseas investors who rely on Hong Kong's rule of law and other trusted institutions to safeguard their enterprises.

Hong Kong punches above its weight in many areas of international relations. It is a signatory in its own right to a host of bilateral treaties in the fields of trade, commerce, aviation, shipping and international law enforcement. It is Asia's leading financial services centre, home to hundreds of banks and firms, providing associated businesses such as insurance broking, private banking and asset management. It is a sophisticated hub for logistics, telecommunications and IT.

It is vital that the British Government do not turn a blind eye to current developments in Hong Kong as they have been doing in the context of recent six-monthly reports to Parliament. In connection with this, I very much welcome your earlier statement that this body will be doing a report on the six-monthly reports and the situation in Hong Kong.

We understand that the UK, like many other nations, is keen to expand its trade ties with an increasingly wealthy and economically powerful China. We welcome this, but I want to stress that this cannot and must not be at the expense of its legal and moral obligations to Hong Kong under the terms of the joint declaration. We need the UK to speak up forcefully in defence of the core values and way of life that distinguish Hong Kong so sharply from the

rest of China. As the co-signatory of the joint declaration, where the UK leads, the rest of the international community will follow.

Q2 Chair: Thank you.

The British Government's position, as they say in their latest report, is that the "position is clear: Hong Kong's unique constitutional framework has worked well." This is the framework set up under the joint declaration. From your opening statement, you clearly disagree with that. Can I go right to the heart of one of your complaints? As far as I can see, the main complaint at the moment is that the forthcoming election of the Chief Executive won't be fair. The Government say: "The important thing is that the people of Hong Kong have a genuine choice and feel that they have a real stake in the outcome." You just said in your opening statement that the nominating committee would be stacked with Beijing loyalists. How do the Beijing loyalists get on to the nominating committee?

Anson Chan: The nominating committee, according to the basic law, has to be broadly representative.

Q3 Chair: Who appoints them?

Anson Chan: Yes, broadly representative, and the nomination process has to be democratic. Currently, we are discussing the composition of the nominating committee. The nominating committee is actually the successor to the election committee. Prior to today, the election committee was actually responsible for electing the Chief Executive—that was the case with the 2012 election of the Chief Executive—but in 2017, the election committee can be replaced, or there can be an entirely new body, known as the nominating committee. Therefore, the composition of the nominating committee, and who is eligible to be a member of and who is eligible to be nominated to the nominating committee, are crucial in terms of whether it widely represents the 3.5 million voters of the registered electorate, or continues to be dominated—as the current election committee is—by Beijing loyalists.

This is the crux of the matter and, so far, everything emanating from Beijing and pro-Beijing forces in Hong Kong suggests that Beijing intends strictly to control the nominating process so that they are 100% certain of the election outcome. This does not meet the international definition of universal suffrage.

Q4 Chair: So it is not currently stacked with Beijing loyalists, but your concern is that it will be.

Anson Chan: It is, I am afraid. It is common knowledge and an open secret that of the 1,200 on the last election committee, probably about 950 were Beijing loyalists. Perhaps Martin would like to add to that.

Martin Lee: Article 26 of the basic law—our constitution—actually says: "Permanent residents of the Hong Kong Special Administrative Region shall have the right to vote and the right to stand for election in accordance with law." What Beijing now wants is to give the Hong Kong people a vote—one person one vote—in the Chief Executive election in 2017, but the nomination process will be controlled by Beijing through a body called the nomination committee, the majority of whose members will be under Beijing's control. They

will succeed, because the election of those members of the nomination committee will be by a functional constituency type of election.

At the moment, if you look at the Chief Executive election committee, which is formed again by a functional constituency type of election, of the 1,200 members, Beijing controls at least 950. So if you leave the nomination to this committee, it will screen out anyone who is not trusted by Beijing, even though they are trusted by the Hong Kong people, so the whole thing cannot work. In other words, they will give the people a vote, but they will pick all the candidates. That is a problem.

Q5 Chair: Mr Lee, you recently said in an interview with the *Financial Times*: “Why is it that the American voice is more robust in Hong Kong than the British?” Do you think that the Americans are taking a tougher line on this than the British Government?

Martin Lee: Let me give a very quick example: the publication of the White Paper, which is in seven languages—not only Chinese and English. We see a lot of problems in that paper, because instead of promising Hong Kong, as in the joint declaration, that apart from defence and foreign affairs we will be masters of our own house, they now claim that China’s central Government have comprehensive jurisdiction over the affairs of Hong Kong. The two concepts simply cannot sit together.

Further, they now require our judges to be loyal to both China and Hong Kong. In the oath of allegiance sworn by every judge before taking office, they are required to owe allegiance only to Hong Kong. To require them to owe allegiance to China, which includes a huge part of socialist China, will make life simply impossible for them. They are required to love the country, and the White Paper says that they are expected to “safeguard the country’s development interests”, among other things. The judge must look at China’s development interests when adjudicating cases in Hong Kong.

Q6 Chair: I was talking about whether the US was being more robust—

Martin Lee: I will come straight to that. Right after the publication of the White Paper, the State Department of the US Government immediately said something in public, which I watched on the television: the US Government continue to support Deng Xiaoping’s “one country, two systems”. The US Government supported the joint declaration when it was first published on 26 September 1984 and they still support it, but on the basis of Deng Xiaoping’s “one country, two systems”, not the present policy of “one country, two systems”, which contains at least those very basic flaws I mentioned.

The Foreign Office said nothing, and your consulate general in Hong Kong said nothing. That is the worrying thing. When you have a joint declaration, which we accept and support, and one signatory to it says, “This is our present policy on Hong Kong and ‘one country, two systems’”, and it contains those two very express statements in writing, and the other Government say nothing, you are really saying to the other party, “Go ahead and do as you like.”

Q7 Sir John Stanley: You referred in your opening statement to a degree of intimidation of the free and independent press. I would like to ask you about other aspects of freedom of expression. Have there been any attempts by Beijing to curtail freedom of expression through radio, television or the internet?

Anson Chan: Yes, there is, for all forms of media. Just to give you some statistics, the 2014 world press freedom index, which is compiled by Reporters Without Borders, records that Hong Kong has fallen in the press freedom ranking from 18 in 2008 to 61. The Hong Kong Journalists Association, the overarching body that looks after the media as a whole, described the past 12 months as the worst ever for press freedom.

We have seen interference and pressure brought to bear even on commercial organisations such as banks to lift advertisements from independent newspapers. Surely it is in the interest neither of the average man in the street nor of commercial organisations to have no free-flow of information and no unfettered press, but that is what is happening and continuing to happen. There is increasing self-censorship. There was recently a vicious attack, which was widely reported, against the ex-editor of *Ming Pao*. There was a summary dismissal of a popular talk show host because she happened to be a vocal, and very popular, critic of the Government.

All those things compound fears that the scope for freedom of expression and freedom of the media is getting narrower and narrower. If you drain the media of their main source of revenue—advertising—they cannot survive in the long term. For example, the amount of advertising lifted by HSBC, Standard Chartered and the Bank of East Asia last year came to about 28 million Hong Kong dollars.

Q8 Sir John Stanley: May I just raise two other crucial freedoms in Hong Kong? On the freedom of peaceful protest, is there any change of policy from Beijing on your right to peacefully protest? Can you tell us what happened during the demonstrations in Hong Kong at the time of the anniversary of Tiananmen square?

Martin Lee: Thank you for the question. We still enjoy the freedom of assembly and demonstration, but I am afraid there are changes. Formerly, under British rule, you would have the occasional scuffle between young people and policemen, with each side pushing over a barrier, for instance, and nobody was ever prosecuted in those days. In the early years after the handover, it remained the same. However, recently, every time there is a scuffle of any kind, you find policemen falling on the ground—you have watched soccer, so you know what that means; somebody touches you and you immediately fall. Then the members of the public are normally brought to court for assaulting a policeman. I have done quite a number of those cases on a pro bono basis, so I know that things are tightening.

In the last march on 1 July, again there was a peaceful assembly—we were allowed to take part—but the police did everything to make life difficult for the demonstrators. They have an undoubted constitutional duty, so says our Court of Final Appeal, to facilitate demonstrations. That is why organisers of demonstrations must give them advance notice—so that they can provide enough policemen to facilitate the demonstration. But now they are trying to block and to make it difficult for us to walk.

These things are not known to the outside world. I hope that you, Mr Chairman and Members, will have the opportunity to visit Hong Kong. Otherwise, you will not feel or see these things, but we in Hong Kong feel it and live it.

Q9 Sir John Stanley: Just a last one to Mr Lee: has there been any change relatively recently with regard to the independence of judiciary of Hong Kong?

Martin Lee: I would say that, up to today, I don't see any judge bending to pressure, but how long can this last?

What is said in the White Paper has to be read in the light of what the President of China said in 2008—when he was not President of China, but Deputy President. He visited Hong Kong in an official capacity and, in a public occasion that the Chief Executive, the Chief Justice and other people attended, he said to Hong Kong's judges that they must co-operate with the Government. That turns the concept of separation of powers on its head. Now it is coupled with this White Paper, published when he is now the President, requiring our judges to be patriotic.

It hasn't happened yet, but judges have expressed to me privately their great concern, so lawyers showed our support of the judges—the judges could not speak up. Lawyers—1,600 of us—wore dark suits on a hot summer day and marched silently from the High Court to the Court of Final Appeal, sweating all over—dry-cleaners had lovely business after that—but not a word was reported in this half-yearly report, even though it took place within the reporting period, at the end of June. This is a very significant factor. Lawyers and judges are worried. We are prepared to do our best to uphold the independence of the judiciary, but we need help from the other signatory.

Q10 Nadhim Zahawi: Welcome, Mr Lee and Madam Chan. We have an article entitled *White Paper Does Not Mark Major Shift on Hong Kong*, from Dr Tim Summers, a fellow at Chatham House based in Hong Kong. I want to get to the bottom of this White Paper issue. I am sure you have read this—if you haven't, I could let you see it. One of the points he concludes is that the White Paper does not describe judges as administrators. In the Chinese words, it is the same as saying, "Hong Kong people running Hong Kong". His conclusion is that this is more about the politics, not the text, of the White Paper.

I want to put that to bear. It feels to me as if you have a number of concerns about the direction of travel and the politics, but actually the White Paper has not really changed things in terms of the interpretation of the basic law. Is that accurate?

Martin Lee: May I read out just two paragraphs in the half-yearly report to Parliament where the British Government dealt with it? This is at the bottom of page 9: "The White Paper resulted in significant media coverage and intense debate in Hong Kong. Many in the pro-democratic camp criticised the paper, arguing that it was in breach of the Joint Declaration and attempted to limit Hong Kong's autonomy. There was specific criticism from the Hong Kong Bar Association, which voiced concern that the paper appeared to categorise the judiciary as part of the machinery of government, which they described as 'an error' that risked undermining judicial independence." These were the two things I mentioned. It goes on: "Some also raised concern over the reiteration in the paper of the notion that those who govern Hong Kong 'should above all be patriotic'."

Those are the comments, indeed, and look at the way the British Government dealt with it: "In response, both the CPG and the Hong Kong SAR government explicitly denied that it marked a change in the Chinese Government's policy towards Hong Kong. Chief Secretary Carrie Lam said the paper did not undermine Hong Kong's autonomy" and so on.

That enabled then Foreign Secretary, the right hon. William Hague, in his foreword to Parliament, to say: “In June, the Central People’s Government issued a White Paper on the practice of the ‘One Country, Two Systems’ model. Some commentators have suggested that this threatens Hong Kong’s high degree of autonomy, though I note that both the Central People’s Government and the Hong Kong Special Administrative Region Government have been explicit that the paper did not mark a change in policy.” But surely, when one Government took the trouble of publishing a long White Paper in seven languages stating their position in relation to these two important areas, the other Government cannot say, “But I have heard them also tell me that it doesn’t mean a change of policy.” Why publish it? The British Government cannot pretend that the document that is published in black and white is not intended to be acted upon by China. How can you accept that assurance unless you tell them that in that case they had better amend it or strike out those paragraphs? They didn’t. That was why I thought it necessary to remind you of what the present leader had to say in 2008 about the independent judiciary.

Anson Chan: May I add to that? I think you have to read the White Paper in context—the entire document. Anybody who does that cannot fail but to come away with the distinct impression that this is an attempt to redefine the boundaries of “one country, two systems”. It is significant that this White Paper makes absolutely no mention of the joint declaration. Much less does it refer to a central tenet of the joint declaration, which is: “The Hong Kong Special Administrative Region will enjoy a high degree of autonomy, except in foreign and defence affairs which are the responsibilities of the Central People’s Government.” Instead, the White Paper lays great emphasis throughout on the fact that Beijing has comprehensive jurisdiction over Hong Kong and that the autonomy that we enjoy is not an inherent power.

Your six-monthly report refers to “some commentators”. Can I just point out that this is not just some commentators? Some 800,000 Hong Kong people participated in the civil referendum to press for democracy and to impress their anger at the White Paper. Half a million people took to the streets in the annual 1 July march, again to show great anger, anxiety and concern over the White Paper, which is a direct threat to “two systems”, to our lifestyle and to our core values.

Nadhim Zahawi: I have one more question, if I may?

Chair: Before you do, we only have a fairly limited amount of time. Could I ask you to keep your answers succinct? Thank you.

Q11 Nadhim Zahawi: My second question is on the civil referendum. Can you describe to the Committee a little bit more detail about how that was conducted? What was the oversight like around that?

Anson Chan: It was not officially sanctioned. It was unofficially organised. A large part of the voting was done electronically. Despite the fact that there was a world-class massive cyber-attack on the whole electronic voting system, the service providers managed to overcome that and, by and large, the voting went ahead. In parallel, the organisers, in the light of the cyber-attack, also decided to open polling stations, so that people could go to the polling stations to vote. In fact, some people did both. They did electronic voting and—

Q12 Nadhim Zahawi: How do you overcome the same people voting twice?

Anson Chan: Electronic voters were automatically ruled out at the polling station. There was no double counting.

Q13 Mike Gapes: May I get back to the essence of the White Paper? The Chatham House paper is interesting, because it concludes that the intention of the Chinese Government in Beijing was simply to “restate long-standing official policy on ‘One Country Two Systems’”. What the Chatham House paper described as “high octane...politics” has been interpreted by you and others as meaning that there is some change, but, in fact, Beijing’s intention is simply a restatement of the existing position. Can you point to any fundamental change in the Beijing position? I did not interpret what you said, Mr Lee, as a fundamental change in their position; I interpreted it as your interpretation of what their intentions might be. Can you be specific about whether there has been a shift in Beijing’s actual position on these matters?

Martin Lee: I think the Chatham House comments are partly right, because if you read the whole White Paper, in many areas it only represents China claiming success over the implementation of the “one country, two systems” policy in the past 30 years. To me, that is an over-exaggeration, but it does not matter; I cannot say it is therefore totally untrue. However, in relation to the two areas that I highlighted—the high degree of autonomy and the independence of the judiciary—there is no doubt that I am right and they are wrong, and I will tell you why. The language in which it was expressed is not just an interpretation that can go either way, particularly when it comes to the independence of the judiciary. If it is read in the light of what Mr Xi Jinping said in 2008, that is the only conclusion you can draw. That is why so many lawyers are so worried and took part in the march.

Q14 Mike Gapes: Can I put it to you that one paragraph in this paper says, “the White Paper does not describe judges as administrators”?

Martin Lee: But it did.

Q15 Mike Gapes: “Although the English translation says judges ‘administrate’...the Chinese word...is the same as in ‘Hong Kong people running Hong Kong’. The text is therefore including judges among those that ‘run Hong Kong’, hardly controversial. At the very least, in its original language the White Paper does not describe judges as administrators.” What is your reaction to that?

Martin Lee: In Chinese, the three characters 治港者—zi gong ze— mean “people who rule Hong Kong”, so you can say “the people who administer Hong Kong”, but judges have never been treated as such under our system. Under the common-law system, even judges’ salaries are not tied to civil service salaries. It is important to separate judges from the Government; otherwise, we would not have separation of powers. What is more, it does not simply say that judges must be patriotic. It can be argued that English judges owe allegiance to the Queen and US judges swear allegiance to the constitution. I agree, but then it is “one country, two systems”. We swear allegiance to Hong Kong. Yes, we uphold the Hong Kong constitution—the basic law—but that it is. We are confined to this one system, which is separate from the other system—the social system. Yes, all right, you can say judges are patriotic, but in Hong Kong you are considered to be patriotic as long as you discharge your duties. That is fine. But that is not what the Chinese Government want. They require judges to have regard to the development interests of the country.

There was recently a case in Hong Kong that concerned the construction of a huge bridge joining Hong Kong, Macau and another city in mainland China, Zhuhai. One old woman took proceedings by judicial review against the Government for failure to do a proper environmental protection assessment study. On those grounds, she challenged the Government, and the judge ruled in her favour. If a judge had to say, “I am one of the administrators and I must take into account the country’s development interests, so the bridge must be built,” how could they possibly give a judgment to her?

I am afraid it cannot be explained away by saying, “The words appear to say this, but it is not intended.” If that is so, why doesn’t the Chinese Government come out and say, “Okay, I will reassure you that it is no such thing.”? They may have given assurance to the British Government people, but they certainly have not stated a single word in public to reassure the people of Hong Kong. It is the only explanation given by the Hong Kong officials, and this document is not issued by them. So it is very dangerous when you have got a clear statement of policy on the part of central Government that is not contradicted, in spite of all the concerns, and then the other signatory says nothing. They will implement that now as the policy in Hong Kong.

Q16 Mark Hendrick: Isn’t it clear that the other signatory says nothing because China is doing what it agreed in terms of the declaration? For once in my life, I find myself agreeing with William Hague—the Foreign Secretary until yesterday—when he writes, “the Central People’s Government issued a white paper on the practice of the ‘one country, two systems’ model. Some commentators”—I know it says some, and therefore not all—“have suggested that this threatens Hong Kong’s high degree of autonomy, though I note that both the Central People’s Government and the Hong Kong Special Administrative Region Government have been explicit that the paper did not mark a change in policy.” Isn’t it the case that you are trying to dress up the White Paper as something that it is not? Isn’t it in fact a restatement of Chinese Government policy and what was agreed in the joint declaration?

Martin Lee: The problem with this is that we are dealing with the joint declaration, which is a document that is supposed to last for 50 years. The people of Hong Kong’s future is based on the faithful implementation of that international treaty. Then one party says, “Now, this is my policy,” and state it in black and white. Then, when the other party, behind closed doors says, “What do you mean?” and they respond, “Oh don’t worry”—

Q17 Mark Hendrick: This is a published document; it is not behind closed doors. The Foreign Secretary published this document.

Martin Lee: I know. I am sorry, but reassurance was given in saying, “though I note that both the Central People’s Government and the Hong Kong Special Administrative Region Government have been explicit that the paper did not mark a change in policy.” But I have certainly not heard any statement from the Chinese Government that says, in spite of the White Paper in relation to the high degree of autonomy, that it has made a marked change in policy. They have not said so in public. They might have said so to reassure the British Government in private. This is a—

Q18 Mark Hendrick: This is speculation. You do not know any more about what they might have said in private than I do, but what has been said publicly by our Foreign Secretary is that this is not a departure from the joint declaration.

May I move on to my next question? The independent Chatham House paper produced by Dr Tim Summers makes clear that, “the Basic Law is a national Chinese law—the rest of China does not follow common law—and as such its interpretation is ultimately something for Beijing, not the Hong Kong courts.” Therefore, as it is part of Chinese law, Hong Kong judges will have been given by administrators an equivalent but they can operate only within the parameters set by Beijing in what constitutes the second of the two systems. In every other country, politicians, lawyers and administrators have a loyalty to the country; but in Hong Kong, they want to be loyal not to the country, but to the second part of the system. Why should that be the case?

Martin Lee: Let me give you a little history, if I may.

Chair: Briefly.

Martin Lee: It was I who negotiated with the Chinese Government to allow Hong Kong to continue to use our common-law system. I had a private word in Hong Kong with one of the people from the New China News Agency in 1982, before the negotiations actually started, and I was able to persuade him that Hong Kong’s common-law system must continue in Hong Kong, and that was agreed. So it was written into the joint declaration and now into the basic law.

I also persuaded another person that a Court of Final Appeal should be set up in Hong Kong and not in Beijing, although before the handover the final court of appeal was here in London, in the Privy Council. I was also successful in persuading them to allow the Court of Final Appeal to invite other, overseas judges to sit in the CFA, including judges from England, Scotland, Australia and New Zealand. All these are promises that are contained in the joint declaration and the basic law.

Q19 Mark Hendrick: But what’s the point you are making?

Chair: Let him answer.

Martin Lee: I make this point because it was suggested by Chatham House that the basic law is a law that governs Hong Kong. But the basic law—any basic law in China—is applicable to and has to be followed by the entire country. That is why it is called a basic law. This is the basic law of the Hong Kong Special Administrative Region, which applies to the whole country. It is wrong for the commentator from Chatham House to say that it applies only to Hong Kong; it applies to the whole of China. The basic law, which applies to the whole of China, says that common law applies to Hong Kong. Nobody can disagree with that in China. So I think there is a complete misunderstanding of the law.

With respect, if I had an opportunity to read this document and was able to comment on it, I would have done so with pleasure. I feel very aggrieved, now for someone in England, to justify this sort of blatant attempt to rewrite the joint declaration.

Q20 Mark Hendrick: The common law is Chinese law, you are accepting—

Martin Lee: No, the common law is English common law.

Q21 Mark Hendrick: Sorry. I mean that common law in Hong Kong exists under the basic law, and the basic law is Chinese. What I am saying is that Hong Kong law, as is agreed, exists only because Chinese law—the basic law—allows it to continue in the same way that, in the current situation when Scotland has its own Parliament, it has its own Parliament only in as much as this Parliament says it can have it. That is the basically the relationship you have in China at the moment, as is ours towards the Scottish Parliament. If they get independence, that is something different, but you don't have independence; you are in a two-system operation, but operating under Chinese law. That has not changed.

Martin Lee: But supposing that there is an arrangement with Scotland that there will be “one country, two systems” for Scotland. Then, later on, one party says, “No, no, from now on, we exercise comprehensive jurisdiction over you.” That is a change.

Chair: We are running out of time. Anson Chan.

Anson Chan: Allow me to amplify on that. First, it is important to remember that this basic law flows from the joint declaration. Section 12 of the joint declaration makes it very clear: “The above-stated basic policies of the People's Republic of China regarding Hong Kong and the elaboration of them in Annex I to this Joint Declaration will be stipulated, in a Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, by the National People's Congress of the People's Republic of China, and they will remain unchanged for 50 years.” This basic law flows directly from the joint declaration—

Q22 Mark Hendrick: I agree with you.

Anson Chan: Which both Britain and China signed.

You say that nothing has changed. I give you just one example. There is a definite change in the increasingly blatant interference from the liaison office that represents Beijing, contrary to article 22 of the basic law, which states: “No department of the Central People's Government and no province, autonomous region, or municipality directly under the Central Government may interfere in the affairs which the Hong Kong Special Administrative Region administers on its own in accordance with this Law.” It is this interference that is causing anxiety in Hong Kong. It is a fact; we are not the only two who are saying this. It is a pity that your six-monthly report does not begin to reflect the real situation on the ground in Hong Kong. It contains hardly any critical analysis.

In light of the White Paper, it is astounding to us in Hong Kong how the then Foreign Secretary can simply comment on “some commentators” without taking a stance. Surely, the British Government have a stance on this White Paper in your capacity as co-signatory of the joint declaration. You are not just a bystander.

Chair: Ms Chan, we've got the point. Last question with John Stanley.

Q23 Sir John Stanley: May I come back to the first question I put to you? I didn't get an answer to the specific points that I asked about freedom of expression. You came back to me on the issue of the press. In relation to radio, has there been any clampdown on access to radio for ordinary people in Hong Kong? Television: has there been any clampdown or not on access to television for ordinary folk in Hong Kong? Internet: have there been any restrictions to access to the internet for ordinary folk in Hong Kong?

Martin Lee: If you mean access by switching on the radio and receiving signals then there is no problem; likewise with television and the internet.

Q24 Sir John Stanley: No, the actual stations. Have any stations been cut out? Can you get access on, say, a radio to the World Service? Is there jamming going on?

Martin Lee: Stations are not cut out, but you can see the tightening of contents. So if the programme host is critical of the Government all the time and is very popular, then one such person—a lady—was removed. So it is that sort of thing that is happening. It is not just closing the station altogether. It has not come to that yet, but you can see the signals and the signs are there. If I may come back—

Q25 Sir John Stanley: And the internet?

Martin Lee: People can still go to the internet.

Q26 Sir John Stanley: No change?

Martin Lee: No change, but even people in China now go on the internet, although they have control over specific topics, like 4 June. So you can't have 4/6 in your internet messages. So instead of 4 June, people now refer to it as the 35th May and you get away with it. You add four more days. No, the 34th May. Then people know it is 4 June. People know how to deal with that in China. In Hong Kong, we haven't reached that stage yet. The problem is, when China has already stated their policy in a White Paper in such solemn form, you just cannot afford to wait until China actually does it before you say, "Ah, I should have known better." You can't do it. We cannot afford this sort of treatment, I'm afraid.

Q27 Chair: Thank you very much. I am afraid that time has run out. It is quite obvious that we could have gone on a lot longer, but it has been very useful to us. Ms Chan, you picked up the six-monthly report and said it doesn't say anything. I want you to fully understand that that is the focus of our attention. We are going to try to reach a judgment as to whether we think it is accurate or whether it is missing something out. That is our job and that will be the focus of our inquiry.

Anson Chan: We very much welcome that.

Q28 Chair: May I thank you both? It has been tremendous. I know the original offer was to come about a month ago and you were delayed. We are delighted that you have been able to find time to come here before Parliament goes into recess. As you can see, this is the beginning of a very busy day in Parliament—

Martin Lee: Can I say one word please? I hope Parliament will look at what is happening in Hong Kong, but not treating Hong Kong simply as China. China is so big, and if you simply look at Hong Kong as a little bit of China then we will never get sufficient protection.

Q29 Chair: Mr Lee, the reason we are looking at this is that Britain has one signature on the joint declaration. That is our locus in the situation, and we want to make sure that what Britain signed up to is being delivered.

Martin Lee: Thank you.

Chair: That is the purpose. Once again, thank you both very much.