

FOREIGN AFFAIRS COMMITTEE HEARINGS

1997 judicial plans 'alien' to territory

THE Executive and Legislative Councillors will tell the British Foreign Affairs Committee in a working dinner tonight that the system of legislative interpretation as proposed in the draft Basic Law is "alien" to Hongkong.

The Office of Members of the Executive and Legislative Councils (Omelco) members will raise four key points in the revised draft Basic Law and three other issues concerning British obligations to Hongkong during the banquet.

Mr Andrew Wong Wang-fat, who heads the Omelco Constitutional Development Panel, will ask that the power to interpret the judiciary aspects of the Basic Law be made to rest with the Special Administrative Region (SAR) Court of Final Appeal.

While welcoming Article 157 of the revised draft stipulating that the Final Court of Appeal will be vested with the power of interpretation,

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Mr Wong will argue that the provision does not go far enough to advance the autonomy of the SAR Court.

Article 157, one of the most crucial Basic Law clauses, also states that the power for the Hongkong court to interpret cases pertaining to sovereignty will have to be sought from the National People's Congress (NPC) Standing Committee.

"This system of legislative interpretation is alien to Hongkong," Mr Wong is expected to say.

"A large majority of members consider that the power to interpret all the articles of the Basic Law should be delegated to the HKSAR Court of Final Appeal, which is to exercise this power of interpretation of the NPC Standing Committee."

The councillors had agreed on their line of arguments in their recent in-house meeting.

Legislator Ronald Ar-

culi will ask for a clarification of the legality of the preamble to the Basic Law.

What concerns Omelco is the scant reference to the Joint Declaration in the Basic Law. The Joint Declaration is explicitly mentioned only in the Basic Law preamble and in Article 158.

If the legal parameters of the Basic Law preamble, which also refers to the Chinese Constitution, are not defined, it could create confusion and ambiguities in the future.

Mr Arculli, a lawyer, will suggest that the SAR follow Common Law jurisdictions "so that the preamble will have no legal effect but will still be an aid to the interpretation of the Basic Law by the courts".

He will also seek a clarification from the committee, which will visit Beijing on Saturday, on what articles in the Chinese Constitution will specifically apply to Hongkong.

Mr Stephen Cheong

Kam-chuen, on the other hand, will ask for a clearer definition of the prerogative of the NPC, the future Hongkong legislature and the SAR chief executive to seek amendments to the Basic Law.

Article 158 states that before the SAR could propose amendments to the Basic Law to the NPC, it must obtain the blessing of two-thirds of the Hongkong deputies to the Chinese congress, a similar percentage of local legislators and the chief executive.

Such a constraint is not imposed on the NPC Standing Committee of the State Council, the highest Chinese state power organ.

Mr Cheong will argue that giving the SAR delegates to the NPC a say in Basic Law amendments could turn these individuals into "an organ of power". "In any case, there should be no need to involve deputies to the NPC," he is expected to say.

VISITING British parliamentarians have responded favourably to calls for an early enactment of a Bill of Rights for Hongkong before 1997.

Deputy chairman of the Hongkong Branch of Justice, Mr Neil Kaplan, said after an audience with the FAC yesterday: "The impression gathered from discussion with FAC members is that they can see no reason why a human rights ordinance ought not to be in place very quickly."

Human rights activists and legal professionals are due to meet the Attorney-General, Mr Jeremy Mathews, next week, during which the Bill of Rights issue is likely to be raised.

Last month, at the opening session of public hearings in London, the MPs were told by the Foreign Secretary, Sir Geoffrey Howe, that a Bill of Rights should be enacted before the territory becomes a Special Administrative Region of China in 1997.

But Hongkong's Secretary for Constitutional Affairs, Mr Michael Suen

Early HK Bill of Rights endorsed

HUMAN RIGHTS

Ming-yeung, said later the human rights legislation should not be enacted until after the promulgation of the Basic Law in 1990.

Mr Kaplan said he disagreed with the Government's argument.

"We cannot see any reason why these rights in the two international human rights covenants ought not be made part of Hongkong law as soon as possible," he said.

In a separate session, a leading Christian leader said an early enactment of a Bill of Rights would help protect human rights even if the two international covenants on human rights were not given constitutional status in the Basic Law.

The Basic Law draft says the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hongkong shall remain in force and shall be implemented through the laws of the Hongkong SAR.