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PRIME MINISTER

HONG KONG: MEETING OF OD(K), 11 JANUARY 1984

1. I have now circulated to you and OD colleagues a revised version of the paper enclosed with my minute of 23 December. The meeting of OD(K) on 11 January (which Richard Luce will attend in my absence abroad) will provide an opportunity to take stock before the Governor of Hong Kong visits London with the Unofficial members of his Executive Council. They will be seeing you on the morning of 16 January.

2. At the OD(K) meeting you may wish to cover the following ground:
- (a) the line we should take in discussing our strategy with EXCO Unofficials;
 - (b) the tactics for the negotiations during the next few months;
 - (c) the public position of HMG on the future of Hong Kong;
 - (d) testing of acceptability of an eventual agreement to the people of Hong Kong;
 - (e) the development of Government structures in Hong Kong up to 1997.

Recent Developments

3. In Peking, Sir Percy Cradock's calls on Chinese leaders before his departure in December were reasonably encouraging, although Chinese views on a number of important points remain open. There was no indication of any shift on the essentials of the Chinese position but a general welcome on the Chinese side for the start of a constructive dialogue and some hint of flexibility on issues which are causing us concern. On a fundamental point, the question of stationing of Chinese troops in Hong Kong, no undertakings were given but there was a readiness to listen to our point of view and we may be able to make some progress in arguing how badly such a move would hit confidence.

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4. We have circulated separately an assessment of the change of Chinese negotiator.

Governor's Discussion with EXCO

5. Sir E Youde discussed with EXCO on 5 January the paper for the Council attached to my minute of 23 December. Their reaction was interesting. There was clear readiness, even by Sir S Y Chung, to acknowledge that it was no longer realistic to aim for continuing British administration after 1997. But Sir S Y and others argued that, before going much further with the present tactic of detailed discussion with the Chinese, or at least in parallel with it, we should seek to pin the Chinese down on the nature of assurances which might tie them to respect Hong Kong's autonomy after 1997. The Governor believes that when they visit London, many Unofficial members will argue that we need more than a simple Chinese statement that they will refrain from interference for 50 years after 1997.

Strategy for Negotiations

6. Sir S Y Chung and his supporters want us to press the Chinese now to agree either to a self-denying ordinance which would in effect give a future Hong Kong SAR a veto on changes in the territory during the 50 years after 1997; or to some other arrangement involving for instance an international advisory commission, including representatives of the UK, which would have to approve proposals for changes to Hong Kong's "basic law". The Unofficials are right that we shall, at the proper time, need to press the Chinese hard for the most convincing assurances possible. I do not myself believe that the idea of an international commission is a starter, given the Chinese clear objection to outside involvement in Hong Kong. They are likely also to be cagey about agreeing to an absolute ban on their initiating changes for Hong Kong; they might see this as conflicting with their sovereignty. Nevertheless they have already made public statements saying that there will be no change for 50 years after the new arrangements come into effect. We shall need to consider whether this can be improved on in negotiation.

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7. The key point is timing. I do not believe that we should make this shift of gear at this stage. There is strong logic in pursuing our present course in order to establish that the content of an eventual agreement is likely to be acceptable. We have now got the Chinese to agree to this. Some progress has already been made and we have clearly got the Chinese leadership thinking at last on some key points. If we were now to interrupt that process with demands that the Chinese should tie themselves to respect an unspecified agreement, they would, I am sure, react very badly. I therefore believe that we must continue the present process as energetically as possible, for at least another two or three rounds.

Tactics

8. EXCO however have a good point. We may well lose out if we allow detailed discussion to go on too long without at the right moment taking the initiative to sum up the points of agreement, and to pin the Chinese down to acceptance of them in terms as binding as possible. We have to take account of their intention to announce at any rate the outline of their ideas formally in September 1984. We must not allow ourselves to be stampeded by such a "deadline" but I believe that if we handle things carefully we can take advantage of it and of the declared Chinese desire for a joint rather than a unilateral statement at that time. We need therefore to have ready the text of an agreement. Work is in hand on this within the FCO and I shall of course be consulting you and our colleagues on it. We may well need to present a draft as early as March or April, having discussed it with EXCO beforehand.

9. We should also keep up the momentum in the presentation and discussion of our working papers, including those on key issues. Some EXCO members do not accept this. I myself do not think we should be rushed. The subjects we are about to cover, including Defence and Internal Security, Nationality and Citizenship, the Civil Service and, above all, central Government structures require very careful study on our part. But both Sir P Cradock and Sir E Youde believe that in order to have a fruitful discussion with the Chinese, we must cover all the elements of a package as soon as is reasonably possible. I agree with that.



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HMG's Public Position

10. Decisions on this must to some extent await agreement on strategy. However EXCO members themselves accept that there are dangers in continuing to give the impression that we are seeking continuing British administration. Our public line must be geared to give a fair wind to an eventual settlement, without prejudicing our stand of conditionality. Given that we shall still be negotiating, I believe that this can probably best be done by judicious briefing of the press and members of Parliament rather than by Ministerial statements, although we shall of course have to consider the form of these very carefully.

Acceptability of Agreement

11. This important subject is covered in the Policy Review paper (paragraphs 20-24). The arguments against a referendum, which reflect the Governor's views, are convincing. We shall have to devise a system which will be credible both in Hong Kong and here. This will be very difficult. My preliminary view is that this will have to be based on the methods of consultation already existing in Hong Kong.

Government Structures and Development of Autonomy up to 1997

12. I have minuted separately on this.

13. I am copying this minute to other members of OD(K), to Sir Robert Armstrong, Sir Percy Cradock and Sir Richard Evans,

(GEOFFREY HOWE)

Foreign and Commonwealth Office
9 January 1984

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FUTURE OF HONG KONG: POLICY REVIEW

Development of Negotiations

1. The Chinese position has not altered in essentials since the Prime Minister's visit to Peking in September 1982. They stated then that they intended to recover sovereignty and control by 1997 and to establish Hong Kong as a Special Administrative Region of the PRC within the Chinese constitution. Even at that stage it seemed possible that they would not agree to any authoritative role for Britain continuing after 1997. But this was by no means clear and, given Hong Kong's concern to maintain the status quo, (strongly endorsed by the Executive Council) our negotiating objective over the next few months was to establish whether a sovereignty/administration deal could be struck. The Chinese continued to insist that their premise on sovereignty must be accepted before substantive talks could begin. While we were not prepared to concede acceptance of this premise, in order to make possible the holding of substantive talks the Prime Minister gave to the Chinese Premier a conditional assurance that, if an arrangement acceptable to the two Governments and to the people of Hong Kong could be agreed, she would be prepared to recommend a transfer of sovereignty to Parliament.

2. The first few rounds of substantive discussion in the summer showed that the Chinese would not agree to continuing British administration. They maintained that the essential purpose of the negotiation was to agree on smooth arrangements for a transition to Chinese sovereignty including the right of administration with protection for undefined British "interests". In October 1983 Ministers agreed with EXCO against this background that we should examine whether a satisfactory arrangement could be built on the basis of the Chinese proposals, still with the condition that if the final package was not acceptable HMG would not be prepared to recommend it to Parliament.

3. This move produced progress towards detailed discussion but only after we had refined our position to spell out that, still under the same conditions, we did not intend for the purpose of the negotiations to make any proposals involving an authoritative link between Hong Kong and the UK after 1997.

4. On that basis, genuinely detailed discussion began at the seventh round in December and the Chinese offered comments on three of the working papers which we had already submitted. This more forthcoming attitude was reflected in their propaganda which, during the autumn, changed from a strongly hostile tone to a theme of reassurance for the people of Hong Kong that the establishment of a Special Administrative Region would not threaten the essentials of their way of life and that there would be continuity in the territory's economic, legal and social systems. There are however still criticisms of HMG and warnings that we have no right to be consulted on internal arrangements in Hong Kong after 1997.

Factors affecting the British and Chinese Positions

5. This evolution has reflected the consistent balance of strength in the negotiation. The Chinese are ultimately able to impose their will on Hong Kong. They reject our view of the validity of the 19th Century Treaties. These are thus a bargaining card only in the sense that we can insist that Parliament must judge an overall package before sovereignty could be given up. The current Chinese administration under Deng Xiaoping though pragmatic to the extent of being ready to see a capitalist regime continue in Hong Kong, strongly shares the nationalist feeling of all Chinese administrations since 1911 in seeing the recovery of Hong Kong as a step in the "sacred task" of reunifying China. China values the economic benefits which it obtains from Hong Kong but does not value them above national pride. The Chinese do not accept the argument that the people of Hong Kong have an overriding right to decide their future. In the Chinese view they are Chinese first and Hong Kong people second: their wishes must be subordinated to those of the people of China as a whole.

6. We have one positive card in the negotiations: the fact that the Chinese would like our cooperation, and it will be necessary if stability and prosperity are to be preserved. They would much prefer not to be obliged to impose a solution on Hong Kong, which would destroy confidence, remove most of the economic benefits and leave them with a major problem in administering a recalcitrant population. This explains their contradictory themes of insisting that Britain gives up its "colonial" power in 1997 and of

threatening intervention if there are major disturbances in Hong Kong (by implication caused directly or indirectly by HMG). They will aim to get our cooperation on their terms but may be prepared to adjust their position to some extent. They will not, however, give ground on principle in order to obtain it. In the last resort they would seek to settle the question without it.

Position of Hong Kong Executive Council

7. EXCO, in particular the Chinese Unofficial members, clearly agreed to our move in October with mixed feelings. They were prepared to recognise that it was important to keep the talks going and so far as possible to avoid confrontation with China in order to maintain confidence in Hong Kong. But a number of them remained extremely sceptical about the chances of negotiating an agreement on the basis of the Chinese proposals which would maintain confidence. Some of them saw the move not as likely to lead to an acceptable agreement but as a good way of demonstrating that the Chinese would not provide any satisfactory guarantees and of placing HMG and the Hong Kong Government in a more publicly presentable position in which to reject the Chinese ideas.

8. The progress in the talks since October has not lessened EXCO's concern. They made clear then their strong preference for continuing British administration. They still believe that only that would provide really satisfactory assurances for continuity in Hong Kong. Although they received our assessment in November that the Chinese would not agree to British administration, they make a distinction between a tactical shift which took account of this and a decision by HMG to abandon British administration as an objective. They are concerned that the clarifications which we have subsequently made of our move in October, although still on a conditional basis, have made it more difficult to withdraw and to take up a position under which we would reject the Chinese proposals as insufficient to command confidence.

9. EXCO have requested a clear statement of HMG's current objectives, if we have in fact abandoned the continuation of British administration as an aim. They have asked:

(a) If we are working simply for the highest degree of autonomy on

the basis of the Chinese proposals, what precise assurances would HMG try to build into an arrangement in order to maximise the incentive to the Chinese to observe that autonomy and minimise the opportunities for interference? Are there particular points which we would regard as essential for that autonomy? Would we make them sticking points in a negotiation and refuse to associate ourselves with any Chinese plan which did not contain them? -

- (b) How would HMG see an agreement with China on Hong Kong being monitored and enforced after 1997? What action would HMG take if China broke it?

Paper for EXCO

10. The separate paper for EXCO and annexed assessment examine the position frankly. It concludes that there is no realistic point in continuing to seek British administration. Given that, it poses the alternatives of breaking off the talks and continuing on our present course. It discusses a redefinition of our objective: to agree with the Chinese Government that after 1997 there should be full internal autonomy for Hong Kong, consistent with the assumption by China of sovereignty and the right of administration. This would require changes from the present systems to be confined to those which would be consistent with the resumption of Chinese sovereignty and of the right of administration. We should aim to ensure that such an agreed arrangement would be as specific and detailed and as binding as possible on the Chinese Government.

11. The paper for EXCO examines the chances of obtaining an acceptable arrangement by continuing on our present course of building on the Chinese proposals. It notes that we are still at an early stage in establishing how much can be built into an arrangement. It discusses a number of key elements for inclusion in any agreement. It notes that it might be impossible to negotiate a satisfactory package with the Chinese and that new decisions would be required in that event. Finally the annexed assessment considers the implications of confrontation, resulting either from suspension of talks now or a later refusal to accept Chinese proposals.

Discussion with EXCO

12. The Governor's assessment is that, if they believe that HMG would be prepared to reject an unsatisfactory package, EXCO would probably agree to continue to support negotiation on the present basis. When they visit London in mid-January, however, they are likely to need very strong persuasion and to be brought face to face with the reality of China's dominant position and the need to negotiate a settlement which will provide the best possible deal for the great majority of the population who have nowhere else to go. It will of course be necessary to acknowledge the sincerity of EXCO's concern to get an arrangement which will inspire confidence. But Ministers may have to impress upon them that it would be irresponsible to decide now that we cannot usefully pursue talks on the present lines, before we know better what can be built on the Chinese proposals; and that a balanced long-term view may well point to settling for the best we can get from Peking rather than standing out, however honourably, for more. The latter course might win short term approval in Hong Kong but would almost certainly be worse for the territory in the end because it would involve first confrontation with Peking and then an imposed solution. It has to be faced in either event that many people would leave Hong Kong, the economy would decline and immigration problems for the UK would ensue. While HMG would continue to press strongly for the best possible arrangement and there could be circumstances in which HMG would have to dissociate itself from a Chinese plan, EXCO should be under no illusion that we could expect to get all our requirements built into it. At the same time we must also keep in mind that what may be negotiable with the Chinese may fail to command confidence in Hong Kong and thus, even if endorsed by HMG, would not avoid the collapse of the economy and the departure from Hong Kong of those who are able to leave. The concern of EXCO is not to make difficulties for HMG but to ensure that HMG are fully aware of the risks involved and that they will not be accused later in the day of having failed to bring them to HMG's attention.

Tactics

13. If it is agreed that we should continue to probe and attempt to build on the Chinese proposals our tactics over the next nine months

will need very careful planning and monitoring. We need to take account of the following factors:

- (a) Our need for an arrangement which will command the maximum confidence in Hong Kong and will meet our publicly declared objective of acceptability to the people of Hong Kong.
- (b) The need for Parliamentary endorsement of any arrangement.
- (c) The Chinese "deadline" of September 1984, when they intend to announce their "plan";
- (d) The Chinese are now prepared to comment on our working papers. Although at the last round they appeared to relax the clear distinction which they had earlier drawn between matters falling within their right of administration and "British interests" they may well revert to this.
- (e) The Chinese intention to keep the drafting of a basic law (or "mini-constitution") for Hong Kong to themselves, with undefined "discussion" with the people of Hong Kong. This would take place after September 1984). The Chinese now say that they would include in the basic law points on which they had reached agreement with us; but the risk of our appearing to be squeezed out remains.

14. When we began to probe the Chinese proposals, our initial aim was to build up section by section a framework of agreed points, starting with less contentious areas and concluding with the most difficult-central constitutional issues including the position of the Governor. Sir Percy Cradock and the Governor agree that, although we have been able to note some common ground, we are unlikely to make much progress unless we speed up the process of discussion and put in all our working papers, including the more contentious ones, quickly. If we do not make clear our own ideas on the constitutional issues soon, our chances of influencing the Chinese on this and other key areas will diminish. It was apparent from the Ambassador's farewell calls on Chinese leaders that the Chinese are currently receptive to our ideas and are keen to learn the extent of them. It is therefore in our interests to push ahead as quickly as we can with feeding in our thoughts on areas of major concern. To this end we should aim to submit at least one major working paper in advance of the next round. We must make the most of the Chinese statement in the December round of talks that "current practices" might continue after 1997 until the SAR decided

to replace them. The Chinese have asked for the rest of our working papers before the next round of 25/26 January. That is impracticable but we could reasonably aim to get them in after that session. They should include the following subjects: Future Constitutional Development; Defence and Internal Security; the Future of the Civil Service; and Citizenship and Nationality after 1997. It will be necessary in preparing the working papers and the statements to be made by the British delegation in the early round of the next phase to take full account of the assurances which HMG will wish to seek as a guarantee of the final settlement - hence the need to decide now on what those assurances will be. (The points to be discussed with EXCO under this head are set out in paras 5 to 7 of the discussion paper.) The next series of papers will in consequence raise more difficult issues and the course of the talks is likely to become more bumpy as a result: on the other hand they will provide us with a chance to make clear points which will be necessary in order to maintain confidence in Hong Kong. An important example would be the question of stationing of troops in Hong Kong.

Chinese Deadline of September 1984

15. It is clear that the Chinese intend to make a public statement on Hong Kong in September 1984. They have stated that they would prefer to make a joint statement with us, but if, for whatever reason, that is impossible, they will make a unilateral statement anyway. In either situation their present intention is probably that the statement should be along the lines of their 12 point plan, perhaps with some additions, but without going into much detail. This will have a major bearing on our tactics in the talks. We shall have to monitor progress very carefully and to time our moves in order to avoid being left at a disadvantage by the Chinese deadline. There are a number of possibilities:

- (a) To reach agreement with the Chinese before September 1984. This would be the best outcome, provided that the resulting arrangement was comprehensive and satisfactory to us. It would enable us to issue a definitive joint statement describing the arrangement. The pace of the negotiations however may not permit this. Because the issues discussed will become more complex, both sides will need to take high

level decisions. We face in addition the need for Parliament to endorse an arrangement. Therefore if the negotiations are still proceeding satisfactorily but are not complete by September we may have to settle for:

- (b) An interim bilateral statement, or
- (c) Separate but complementary Chinese and British interim statements. In either case we should aim to say that we had reached full agreement on certain points and that it was intended that discussion should continue on the remaining points. But to avoid the risks posed by the Chinese deadline, we shall need to keep our options open and be ready to take the initiative in putting forward proposals either for a comprehensive joint declaration describing a package deal or for interim joint or complementary statements.

16. In any event we must avoid finding ourselves in the late summer bogged down in discussion and possible dispute on key issues to the extent that the Chinese decide to go ahead with a statement on their own. They might include in such a statement those of our suggestions which suited them. The resulting package would be fuller than the proposals they have made public so far and to that extent an improvement. But this would not be enough for confidence. Any arrangement for Hong Kong must have two elements: the maximum specific assurance that current systems will continue and existing freedoms be maintained; and enshrinement in a bilateral understanding which would be seen placing a commitment on the Chinese. !!

Eventual Agreement or Arrangement

17. Both the content and form of the eventual agreement will be important. There are a number of possibilities:

- (a) One, and in our view the best, would be a formal legally binding treaty registrable at the UN. This would describe in detail the principles determining the future arrangements for the administration of Hong Kong after 1997. The Constitutional and other implications of such an agreement are still under study. It is however very unlikely that the Chinese will agree to that. They regard the preparation of the "mini-constitution" for Hong Kong as

their affair and will resist our involvement in it. They will try to whittle any agreement down to an acknowledgement of their sovereignty on our part, an undertaking on theirs to look after our "interests" and a joint undertaking to cooperate in a smooth transition. But we must make it clear that any agreed arrangement should include assurances of Hong Kong's effective autonomy and Chinese non-interference for 50 years after 1997. One way of doing this would be:

(b) a joint declaration referring to a more detailed statement, possibly a unilateral Chinese one, as its Annex which would describe the essential continuity of systems, freedoms and laws etc in some detail. This would have the advantage that, unlike a formal agreement, it would not require immediate Parliamentary legislation on a transfer of sovereignty although general endorsement by Parliament of the package would be necessary.

18. While we must try to make any arrangement as binding as possible, we shall also need to get international support for Hong Kong's autonomy and to encourage other governments to impress this on China. This will need a sustained diplomatic effort. The most practical context will be the negotiation of agreements for continuation of Hong Kong's special status in international economic relations, eg the special regimes enjoyed under GATT and the multi-fibre arrangement. Under the GATT and under GSP agreements such arrangements could continue only so long as Hong Kong's autonomous status persisted. This point should be brought firmly home to China.

Public Position of HMG and the Hong Kong Government

19. So far we have stuck to the principle of confidentiality in the talks and have not responded to Chinese declarations of their aims. This has been necessary to avoid pushing the Chinese into unnecessarily hard attitudes, and to take account of adjustments in our own negotiating position. It is however likely to become increasingly untenable, and positively dangerous as a public announcement of an arrangement approaches. Expectations in Hong Kong, which started high, have now slumped. There is concern about the lack of any clear statement of HMG's aims in the negotiations. While few people believe that the Chinese plan will work, there is a

growing feeling that there is little which HMG can do to prevent it being imposed. We shall need to explain our own adjusted objectives, not merely to EXCO and to LEGCO, but in outline to the Hong Kong people as a whole and convince them that there is still a future for Hong Kong. This will apply also to the line we take in Parliament. In other words, if we assess that Hong Kong's long term interests will in practice best be met by an arrangement based on the Chinese plans we shall need to prepare Hong Kong and UK opinion for it. While discussions continue in Peking, great care will be required not to present any public statement in a confrontational fashion. To do so would generate a public argument with the Chinese, sour the atmosphere of the talks and thus reduce their chances of success.

Acceptability

20. People in Hong Kong are likely to demand an opportunity to voice opinions on any agreement reached with the Chinese Government. Public opinion in the UK will be less concerned (at least initially) but there could be considerable pressure in Parliament for a convincing demonstration that HMG's undertaking on acceptability had been honoured. The degree of pressure will depend partly on whether EXCO Unofficials, and to a lesser extent those of LEGCO, are prepared to endorse an arrangement. Carrying EXCO with us therefore must remain a priority in our tactics on acceptability. But other means of testing opinion need to be reviewed, although it will not be possible to decide finally on the form of such a text until the form which that agreement will take is clear, and the time at which the test will be required is known.

21. One of our objectives must be to counter Chinese attempts to conduct their own survey of opinion (and thus improve their claim to involvement in Hong Kong before 1997). That would almost certainly rule out any type of assessment of acceptability conducted jointly with the Chinese. Our own arrangements must be convincing, while taking realistic account of likely Chinese sensibilities.

22. A referendum is unlikely to be practicable. Even if questions intelligible to the population at large could be devised, given the complexity of the agreement it would be very difficult to make a

simple vote a valid test of opinion and there would be great difficulty in deducing from it the true views of a society as disparate as that of Hong Kong. Moreover the Chinese, who challenge HMG's right to represent the people of Hong Kong (and that of the Hong Kong people to override the views of the people of China as a whole), would be likely to seek to frustrate or manipulate the referendum process, to the extent that it would cease to be a convincing demonstration of opinion.

23. On the other hand if the Chinese were prepared to acquiesce it would be possible to conduct a consultative process over a period of a few months involving a wide range of associations, councils and district boards. This might be carried out after the initialling of an agreement but before signature. It could involve the issue of a "green paper" describing the proposed arrangement in general. The mechanics of such an exercise would need careful handling. In order to make the results of the consultation acceptable in Parliament it might well be that a Parliamentary Committee would wish to take part in the consultative process in Hong Kong although we should not want to encourage this. But we should avoid anything on the lines of a Rhodesian "Pearce Commission" which would smack of colonial manipulation.

24. The bodies consulted in this way are partly elected. On present plans the elected component will be increased in 1985 and 1986 (see the separate paper on constitutional and governmental development). If the test could wait until 1985 it could take advantage of the proposed increase in the elected membership of the District Boards.

Government Structures and Development of Autonomy in Hong Kong up to 1997

25. Hong Kong has already developed considerable effective autonomy. This has led to important modifications to the normal colonial pattern. Looking to the future, we need to consider how local and central government should evolve further to respond to popular demand and to strengthen confidence in Hong Kong that a

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local administration will be established before 1997 which can remain genuinely autonomous and resist Chinese interference after that date. A separate paper on this subject is in preparation.

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