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Prime Minister.

Yes

Agree that the working paper should be given to the Chinese?

or would you prefer to have a

No - discussion first?

most other Ministers have agreed

A.S.C. 2/3

PM/84/46

PRIME MINISTER

Future of Hong Kong: Working Paper on Nationality, Citizenship, Right of Abode, Freedom of Travel, Emigration and Immigration

1. I enclose a draft working paper on Nationality, Citizenship, Right of Abode, Freedom of Travel, Emigration and Immigration. It is probably the last of the working papers that we intend to present to the Chinese in this phase of talks in Peking, and deals with issues of great complexity and sensitivity - for us, for the Chinese and for the Executive Council and people of Hong Kong.

2. The working paper has been agreed with the Governor and the Ambassador. It has also been seen and agreed (in an earlier, but substantially unchanged form) by the Home Secretary and by the Executive Council. EXCO had previously had the opportunity to discuss the issues in general terms with Richard Luce in London on 17 January and in Hong Kong on 27 February.

3. The main aims of the working paper are to define a citizenship of Hong Kong (China) that would be a special category of Chinese nationality, to retain the existing freedoms of travel and right of abode for the people of Hong Kong, to retain the SAR Government's powers to control immigration, and to provide for the retention of the rights of

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those who hold British Dependent Territories Citizenship (BDTCs) immediately prior to 1 July 1997. The most important of these rights are:

- (a) the right of abode in Hong Kong under local legislation;
- (b) transmissibility of BDTC status by descent, in general for one generation but in certain circumstances for more;
- (c) eligibility for consular protection by HMG in third countries.

It is the retention of rights of BDTCs that raises the most difficulties. The Unofficial members of the Executive Council attach great importance to it and have stated their view that people in Hong Kong may judge the acceptability of the overall agreement with China in the light of what we agree on the question of national status.

4. At present, BDTCs from Hong Kong, although having the right of abode in Hong Kong, are subject to immigration control into the UK. To maintain that control, the Home Secretary is very strongly of the view that if we are to retain the rights of BDTCs after 1997, we must provide for them automatically to acquire Hong Kong (China) citizenship as well and to enjoy an unrestricted right of entry to and abode in Hong Kong. The proposals in the working paper meet these two points.

5. We do not believe that the Chinese will accept the retention of the title British Dependent Territories Citizen after 1997. Zhou Nan, the chief Chinese negotiator, said as much on 22 February when discussing appointments to senior posts in the Hong Kong civil service. The Executive Council, who have previously expressed the view that we should at least attempt to retain the term, have now also concluded

/that it



that it is not worth the risk of seriously upsetting the Chinese. They consider it essential however that the existing rights of BDTCs in Hong Kong should be retained under another name.

6. From what we know of Chinese thinking in this area, it seems likely that they would accept this. But it would mean that we would in due course have to pass legislation to create a new category of British nationality. The creation of a new category is not desirable but seems preferable to the alternative of reclassifying Hong Kong BDTCs into the existing category of British Overseas Citizens (BOCs). BOCs cannot pass on that status to their children and do not have an automatic right of abode anywhere. It seems best to create a new category which is related specifically to the problems of Hong Kong and to grant those in that category as nearly as possible the rights that they presently enjoy as BDTCs. I understand that the Home Secretary accepts this approach.

7. In devising a name for this new category, we have to bear in mind that the Executive Council, and Hong Kong BDTCs in general, will not accept anything that throws any doubt on the British nationality of Hong Kong BDTCs, but that the Chinese are unlikely to accept any title which implies that Hong Kong remains British territory or is independent of China. With these points in mind, the name that I would suggest for the new category is 'British: Hong Kong (China) citizen'. This has the advantage of consistency with our proposals in the rest of the working paper and should therefore be acceptable to the Chinese. The Governor has not yet formally consulted the Executive Council but believes that they will agree to it. From our point of view, it has the further advantage of referring specifically to this limited group and avoiding the possible danger, which a more general term might carry, that other groups might claim eligibility for it. I understand

/that



that the Home Secretary would prefer to omit the colon between 'British' and 'Hong Kong'. I believe that the Chinese would find offensive the implication that this would give of 'British Hong Kong'. I also see merit from our point of view in separating in the title the concepts of British nationality and Hong Kong (China) citizenship. This is a subject in which there is likely to be a great deal of interest in the House. We are likely to come under attack both for letting the people of Hong Kong down and for opening the way for large-scale immigration from Hong Kong. I believe that we will be best able to defend ourselves if we are able to state that we have done the best we can for Hong Kong within the practical limitations of the situation, and that our proposals do not change in any way the rights of those concerned or give them new immigration rights into the UK. The approach outlined above would enable us to do this. The question of what provision we might at a later stage have to make for those who might be in actual danger in 1997 is a separate one which we shall have to consider in due course.

8. I should be grateful to know if you are content that we should put this working paper to the Chinese.

9. I am copying this minute to other members of OD(K) and to Sir Robert Armstrong.

(GEOFFREY HOWE)

Foreign and Commonwealth Office
9 March 1984

FUTURE OF HONG KONG: WORKING PAPER ON NATIONALITY, CITIZENSHIP,
RIGHT OF ABODE, FREEDOM OF TRAVEL, EMIGRATION AND IMMIGRATION

CHINESE PLAN

1. The SAR would enjoy a high degree of autonomy. The current social and economic systems would remain unchanged. So too would the lifestyle. Freedom of travel, of migration and change of residence would be ensured. The Hong Kong SAR would be able to issue its own travel documents for entry into and exit from Hong Kong. The SAR could on its own enter negotiations with foreign countries in the fields of the economy, culture and tourism and could sign agreements in these fields as Hong Kong, China.

BACKGROUND

2. Apart from small numbers of citizens of commonwealth countries, aliens and visitors, persons lawfully resident in Hong Kong comprise the following main categories under the Hong Kong Immigration Ordinance (Cap 115):-

(a) "Hong Kong Belongers" (ie persons born or naturalised in Hong Kong or otherwise closely connected with Hong Kong). They number approximately 3 million. They have an absolute right of abode in Hong Kong and cannot be removed or deported in any circumstances.

(b) "Immigrants":

(1) "Chinese resident" (ie persons wholly or partly of Chinese race who have at any time been ordinarily resident in Hong Kong for a continuous period of not less than 7 years). They number approximately 1.8 million. They have the right to "land" (ie enter and stay) in Hong Kong but may be deported in limited circumstances.

(2) "Resident British citizens" and "British citizens" (ie persons with the right of abode in the United Kingdom: those who have at any time been ordinarily resident in

Hong Kong for a continuous period of not less than 7 years are classified as "resident British citizens"). Together they number approximately 20,000. "Resident British citizens" have the right to land in Hong Kong while "British citizens" may enter Hong Kong for any purpose without visas. Both categories may be deported in limited circumstances.

- (3) New arrivals from China (ie persons of Chinese race who have remained in Hong Kong for less than 7 years). They number approximately 336,000. They remain in Hong Kong at the discretion of the Hong Kong immigration authorities and may be required to leave.

3. Unless specifically exempted from doing so, all persons remaining in Hong Kong for more than 6 months are required to hold Hong Kong identity cards. All "Hong Kong Belongers", "Chinese residents" and "resident British citizens" are entitled to identity cards which indicate that they have the right to land in Hong Kong or to remain in Hong Kong unconditionally. Identity cards issued to other categories of persons indicate that they are on conditional stay in Hong Kong.

4. Under British nationality law, most of the "Hong Kong Belongers" are British Dependent Territories citizens (BDTCs) by virtue of their connection with Hong Kong, and thus have this form of British nationality under the British Nationality Act 1981, irrespective of their racial origins. In accordance with that law, their BDTC status is as a general rule transmissible by descent for one generation.

5. It is the UK Government's understanding that, under Chinese nationality law, most "Hong Kong Belongers" of Chinese race are Chinese nationals, but that any persons who have acquired foreign nationality through birth or naturalization are not Chinese nationals.

(A) IMPLICATIONS: NATIONALITY, CITIZENSHIP AND RIGHT OF ABODE

6. In accordance with UK law, all persons who immediately before

1 July 1997 were BDTCs by virtue of their connection with Hong Kong would on and after that date continue to retain the status and rights of BDTCs. The British proposal is that they should retain these rights but under some other appropriate form of British nationality.

7. Existing rights of abode in Hong Kong, including the existing freedom or protection from removal or deportation from Hong Kong, would remain unchanged. In the interests of reassuring the people of Hong Kong that there would be continuity in this important area, and in recognition of the high degree of autonomy envisaged for the Hong Kong SAR in the Chinese plan, the British side suggest that:-

- (a) a distinctive citizenship of Hong Kong (China), as a special category of Chinese nationality, should be created in 1997 for persons whose status would depend upon connection with the Hong Kong SAR;
- (b) subject to further examination of the position of certain specific categories, such as British nationals with right of abode in the UK, the following would, unless they were nationals of third countries with the right of abode in those countries, acquire citizenship of Hong Kong (China), in addition to any other national status they might hold, and would have an absolute right of abode in Hong Kong:
 - (1) all persons who immediately before 1 July 1997 were BDTCs as a result of their connection with Hong Kong;
 - (2) all 'Chinese residents' and all persons in Hong Kong on 1 July 1997 who, by continuing to reside there for the qualifying period, would become 'Chinese residents';
 - (3) all persons born in Hong Kong before 1 July 1997 who were not BDTCs; and
 - (4) all persons born in Hong Kong on or after 1 July 1997.
- (c) acquisition of Hong Kong (China) citizenship by these means, and

acquisition after 1 July 1997 by naturalization or other means, would be defined under the laws of the Hong Kong SAR.

(B) IMPLICATIONS: FREEDOM OF TRAVEL

8. The SAR Government would, on its own authority, issue Hong Kong (China) travel documents in accordance with the policy followed immediately prior to 1 July 1997 for Hong Kong travel documents. Consular officers of the UK Government would issue British travel documents.

9. Hong Kong (China) travel documents would be valid for all countries or territories (subject only to immigration requirements of the country or territory of destination) and would guarantee the holder's right of return to the SAR within the period of validity of the document. The SAR Government would only withhold or withdraw travel documents in specific circumstances defined by the law of the SAR.

10. The Government of the SAR would be empowered to negotiate new visa abolition agreements for holders of Hong Kong (China) travel documents. The UK Government would use its good offices to assist this. It would also be for the SAR to determine what the rights of access to the SAR should be for nationals not from states party to such visa abolition agreement. The UK Government would ~~to~~ try to persuade third states, which immediately prior to 1 July 1997 allowed visa-free entry to persons who were BDTCs by virtue of their connection with Hong Kong, to continue to allow them visa-free entry after that date.

11. Persons travelling abroad would be entitled to the range of consular services and the degree of consular protection consistent with their nationality status.

(C) IMPLICATIONS: EMIGRATION AND IMMIGRATION

12. Subject to exceptions which are both allowed by law and consistent with the International Covenant on Civil and Political

Rights, all persons would be free to leave the SAR in order to emigrate or for any other purpose. Holders of valid Hong Kong (China) travel documents or of British passports issued to persons who possessed British nationality by virtue of their connection with Hong Kong would have the right to enter and re-enter the SAR by virtue of their absolute right of abode in the SAR, and arrangements would be required to ensure that each of these documents stated that right. The present arrangements for allowing travel between Hong Kong and Macau and the present arrangements for allowing travel between Hong Kong and other parts of China would continue.

13. The existing arrangements for persons with no right of abode in Hong Kong to visit, reside in and leave the SAR would remain. Any changes to these arrangements would be the sole responsibility of the SAR Government.

14. Persons who have no right of entry to the Hong Kong SAR would not be permitted to enter the SAR without the permission of the immigration authorities of the SAR.

15. All illegal immigrants or overstayers would be removed in accordance with the laws of the Hong Kong SAR.

16. Entry into the Hong Kong SAR from other parts of China would continue on the same basis as at present. Any changes in these arrangements would have to be agreed between the SAR Government and the Central government of the PRC.

Hong Kong Department
March 1984 (A)

SECRET



*File 10
advis P Craddock
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10 DOWNING STREET

From the Private Secretary

12 March 1984

Dear Peter,

HONG KONG: WORKING PAPER ON
NATIONALITY, CITIZENSHIP,
RIGHT OF ABODE, FREEDOM OF
TRAVEL, EMIGRATION AND IMMI-
GRATION

The Prime Minister has seen the Foreign and Commonwealth Secretary's minute of 9 March and the Working Paper enclosed with it.

Mrs. Thatcher is content that the Working Paper should be given to the Chinese.

I am copying this letter to the Private Secretaries of other members of OD(K) and Richard Hatfield (Cabinet Office).

*you ever
file Wla.*

Peter Ricketts Esq
Foreign and Commonwealth Office

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