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Prime Minister.

This is for discussion at
ad (K) on Thursday. but
you may care to look at it
tonight.

Foreign and Commonwealth Office

London SW1A 2AH

1 May 1984

A.F.C. $\frac{1}{5}$

Dear John,

Hong Kong: Revised Draft Agreement

The Foreign Secretary is minuting to the Prime Minister in advance of the OD(K) meeting on 3 May, outlining his views on our general strategy on Hong Kong. In that minute he refers to the possibility of our presenting the Chinese with a revised draft agreement fairly soon in order to keep up the momentum created by his visit to Peking.

I enclose a revised draft. This follows the modular pattern which Sir Geoffrey favours, although he has not had time to study it in detail. It takes the form of two parallel declarations on our part to restore the Hong Kong area to China and on the Chinese part to make provision for autonomy. Detail would be expressed in annexes which would amplify the Chinese declaration. The key section would be a provision (paragraph 6) whereby the two governments would agree that Hong Kong's future should be settled in accordance with both declarations and with the annexes. It has been designed to retain the essentials of our position, including considerable detail and provision for the agreement as a whole and the annexes to be binding. At the same time it has adopted some of the Chinese language. It also meets the Chinese insistence that the 12 point plan should be included in the agreement. The latter has been amended to remove a reference to the "unequal treaties" and there is in addition a disclaimer in paragraph 2 which would explicitly dissociate HMG from the Chinese view of the status of Hong Kong.

Depending on the outcome of the latest round of talks and our study of the full draft which we expect the Chinese to table in mid-May, we should be ready to present them with a revised draft on these lines. We should be able to preserve considerable negotiating flexibility because there are still elements which could be chopped, notably in paragraph 4 of the draft, describing the attributes of the Basic Law. Sir Geoffrey Howe believes that we should keep open the option of discarding this section at the right tactical moment in order to enable us to argue forcibly for the points which are of real concern to us. We should then be relying on the employment of detail in the annexes and

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should of course need to watch carefully that these were not whittled down in negotiation so that key points were lost.

Another possible approach would be to treat the revised draft as a set of modules which could be fed into the negotiation piecemeal, as tactics demanded. (The draft agreement is therefore annotated to indicate divisions on these lines.)

I am copying this letter to the Private Secretaries of other members of OD(K).

*Yours ever,
Peter Ricketts*

(P F Ricketts)
Private Secretary

A J Coles Esq
10 Downing Street

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EXPLANATORY NOTES ON MODULES OF DRAFT JOINT DECLARATION

(Roman numerals refer to passages in attached draft joint declaration.)

I Preamble (para 1) can be varied. Based on Chinese text.

II UK Declaration (para 2). Can be varied but needs:

(a) Provision reserving our view on status of Hong Kong

(b) Statement on continuing British administration until 30
June 1997. _____

(order of reference to two Governments will be reversed in Chinese text, as in standard treaty practice).

III Link between Chinese declaration and Basic Law (introduction to para 3). Highly desirable, in order to ensure that the agreement is reflected in Basic Law.

IV Chinese Declaration 'A' (para 3). The 12 points. Not necessary for us but likely to be Chinese requirement in some part of agreement and provides in body of agreement a useful undertaking on autonomy. Reference to unequal treaties removed.

V Chinese Declaration 'B' (para 4). Adaptation of the old Articles 2(3) and 2(4) from our maximalist draft. Should be included in first revision but could be dropped in negotiation as these points could all be covered in Annexes.

VI Chinese Declaration 'C' (para 5). Stipulates that Basic Law will be in accordance with Annexes. Essential in some form in order to commit the Chinese to the Annexes as well as their declaration.

VII Agreement on implementation of Chinese and UK Declarations. (Para 6). Key point for us but could be covered in other form, eg Exchange of Notes, constituting a legally binding international agreement, which would oblige both parties to act in accordance with the Joint Declaration.



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VIII Continued co-operation and representations to other governments. (Paras 7 and 8) Not essential for us but desirable, particularly para 8.

IX Points On Nationality and Land. (Paras 9 and 10). Desirable presentationally but could be dropped if covered in Annexes.

X Entry into force. (Para 11). Some provision essential. Simple entry into force on ratification keeps our options open.

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JOINT DECLARATION OF THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND OF THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA.

- I | 1. The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China have reviewed with satisfaction the friendly relations existing between the two governments and peoples in recent years and agreed that a proper negotiated settlement of the question of Hong Kong is conducive to the further strengthening and development of the relations between the two countries. With the common aim of maintaining the future stability and prosperity of Hong Kong, and recognising Hong Kong's historical position as part of China and its unique status as an international commercial and financial centre and free port, with its own society and way of life, the two governments make the following Joint Declaration.
- II | 2. The United Kingdom Government declare that on 1 July 1997 and without prejudice to the position of either government before that date with regard to the status of Hong Kong, they will restore the Hong Kong area (including Hong Kong Island, Kowloon and the New Territories) to the People's Republic of China. Accordingly the United Kingdom Government declare that they will continue to administer Hong Kong until 30 June 1997 and will, with effect from 1 July 1997, terminate all powers of administration which they exercise with respect to Hong Kong.
- III | 3. The Government of the People's Republic of China declare that, with effect from 1 July 1997, the status, administration and way of life of Hong Kong will be governed by a special Basic Law which will be drawn up in accordance with the following principles:
- IV | (1) The government of the People's Republic of China declare that they have decided to establish, in accordance with the provisions of Article 31 of the constitution of the People's Republic of China, a Hong Kong Special Administrative Region of the People's Republic of China, hereafter referred to as 'Hong Kong (China)'.

- (2) Hong Kong (China) will be directly under the authority of the Central People's Government of the People's Republic of China. Hong Kong (China) will enjoy a high degree of autonomy, except in foreign and defence affairs which are the responsibilities of the Central People's Government.
- (3) Hong Kong (China) will be vested with the power of legislation and independent judicial power, including that of final adjudication. The laws, decrees and ordinances currently in force will remain basically unchanged.
- IV (4) The Government of Hong Kong (China) will be constituted by local inhabitants. The Chief Executive will be appointed by the Central People's Government on the basis of the results of elections or consultations to be held locally. The principal officials will be nominated by the government of Hong Kong (China) for appointment by the Central People's Government. The Chinese and foreign nationals working in the public and police services in the departments of the British authorities in Hong Kong may remain in employment. British and other foreign nationals may also be employed to serve as advisers in organs at various levels in Hong Kong (China).
- (5) The current social and economic systems in the Hong Kong area will remain unchanged, and so will the life-style. Freedoms of speech, of the press, of assembly, of association, of travel, of movement, of correspondence, of strike, of choice of occupation, of academic research and of religious belief will be ensured by law in Hong Kong (China). Private property, ownership of enterprises, legitimate right of inheritance and foreign investment will be protected by law.
- (6) Hong Kong (China) will retain the status of a free port and a separate tariff area.
- (7) Hong Kong (China) will retain the status of an international financial centre, and its markets for foreign exchange, gold, securities and futures will remain open. There will be free flow of capital. The Hong Kong dollar will circulate and be

convertible as usual.

(8) Hong Kong (China) will have independent finances.

IV (9) Hong Kong (China) may establish mutually preferential economic relations with the United Kingdom. British economic interests in the Hong Kong area will be taken care of.

(10) Using the name of 'Hong Kong, China' the Hong Kong Special Administrative Region of the People's Republic of China may on its own maintain and develop economic and cultural relations and sign agreements on these matters with foreign countries and regions and relevant international organisations. The Government of Hong Kong (China) may issue on its own travel documents for entry into and exit from Hong Kong.

(11) The maintenance of public order in Hong Kong (China) will be the responsibility of the government of Hong Kong (China).

(12) The above-stated principles concerning Hong Kong (China) will be given effect in a Basic Law for the Hong Kong Special Administrative Region of the People's Republic of China to be enacted by the National People's Congress of the People's Republic of China as the paramount law for Hong Kong (China), and they will remain unchanged for at least fifty years.

V 4. The Government of the People's Republic of China further declare that all rights and powers in relation to external defence and, subject to the provisions of sub-paragraph 6 of this paragraph, the conduct of external affairs will remain with the Central People's Government, but that otherwise Hong Kong (China) will enjoy autonomy within the People's Republic of China under the Basic Law which will be drawn up in accordance with the following provisions:

(1) The right and power of administration within the territory of Hong Kong (China), including responsibility for internal security and public order, will be vested through the Basic Law

[exclusively] in the Chief Executive and executive authorities of Hong Kong (China). The exercise of administrative power by the executive authorities and by officials of the public service will be liable to challenge or review by the courts in Hong Kong (China) in accordance with established legal procedures.

- (2) The right and power of legislation for Hong Kong (China) will be vested through the Basic Law [exclusively] in the legislative authorities of Hong Kong (China). Laws enacted by the Legislature will be reported to the Standing Committee of the National People's Congress for the record but there will be no right or power of disallowance or annulment outside or within Hong Kong (China).
- (3) The right and power of final adjudication over all criminal and civil disputes in Hong Kong (China) including the right to interpret its laws and the powers of punishment will be vested through the Basic Law [exclusively] in the established courts of Hong Kong (China) whose judges will function independently and without interference from the Executive or Legislature of Hong Kong (China) or from outside Hong Kong (China). Hong Kong (China) will have the right to recruit and employ judges from other common law jurisdictions.
- (4) The laws of Hong Kong (China) on and after 1 July 1997 will be the common law, rules of equity and Ordinances, subordinate legislation and customary law and practices in force in Hong Kong immediately before 1 July 1997 save only for changes in nomenclature or references consequent upon the severance of constitutional links with the United Kingdom. Hong Kong (China) will be subject to no other laws save for the Basic Law and for those enacted after 1 July 1997 by the legislative authorities of Hong Kong (China).
- (5) In pursuance of the common aim, the object and the intent of the Basic Law will be to ensure that persons within Hong Kong (China) will continue to enjoy, at least until 1 July 2047, their existing rights and freedoms under the law, their way of life and their social, economic, monetary, fiscal and commercial

systems.

- (6) The Chief Executive of Hong Kong (China) will be authorised by the Basic Law in the name of Hong Kong (China) to conclude agreements governing trade, economic, shipping, air services, legal and cultural matters with foreign states and regional and international organisations.
- (7) In consequence of the severance of constitutional links with the United Kingdom, the Basic Law will make provision for the continuation of the essential structure and organs of government within Hong Kong (China) including the rights, duties, powers and functions of the Chief Executive of Hong Kong (China), its executive and legislative authorities and the election and appointment of its members, the establishment of the courts of Hong Kong (China) the Judicial Services Commission and the Public Services Commission.
- V (8) Hong Kong (China) will provide continuity of employment to all members of the public service in employment on 30 June 1997 on terms and conditions of service no less favourable than those previously enjoyed. Hong Kong (China) will take over responsibility for the payment of all pensions and similar allowances and associated benefits earned and due to members of the public service who have retired before 1 July and to their dependents. Hong Kong (China) will also become responsible for payments to members of the public service who continue to serve after 30 June 1997 and their dependants of all earned emoluments, gratuities and all pensions and similar allowances and associated benefits which by that date are, or may thereafter become, due to them.
- (9) No taxes will be levied in Hong Kong (China) save by the legislature of Hong Kong (China).

VI 5. The Government of the People's Republic of China also declares that the Basic Law will be in accordance with the annexes to this Joint Declaration which contain further clarification of the status of Hong Kong (China) and of the means by which Hong Kong's

[systems, laws and freedoms will be preserved.

VII [6. The United Kingdom Government and the Government of the People's
| Republic of China agree that Hong Kong's future shall be settled in
| accordance with the preceding declarations and with the annexes to
| this Joint Declaration.

VIII [7. In furtherance of their common aim, of a smooth transition to
| the status of a Special Administrative Region of The People's
| Republic of China, in accordance with this Joint Declaration, the
| two Governments, in a spirit of friendship, agree to continue their
| discussions and to co-operate upon the effective implementation of
| this Joint Declaration. [They agree to establish a consultative
| commission to assist in the implementation of this Joint
| Declaration.]

| 8. The two Governments agree to cooperate in promoting
| understanding by the international community of the autonomous
| status of Hong Kong (China), in economic, cultural and other related
| matters, as defined by The People's Republic of China in this Joint
| Declaration and its annexes, with the particular aim of securing the
| retention by Hong Kong (China) of the benefits existing immediately
| prior to 1 July 1997 in relation to the General Agreement on Tariffs
| and Trade and other international agreements and arrangements.

[9. [A paragraph on Nationality]

IX |

[10. [A paragraph on Land]

X [11. This Joint Declaration shall enter into force upon exchange of
| instruments of ratification.

Done in duplicate at _____ on _____ day of 1984, in the
Chinese and English languages, both texts being equally
authoritative.



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For the Government of the
United Kingdom of Great Britain and
Northern Ireland:

[signed]

For the Government of
the People's Republic
of China:

[signed]

27 April 1984
Hong Kong Department

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