



PM/84/122

PRIME MINISTERFuture of Hong Kong: Nationality

1. I minuted to you on 9 March seeking your agreement that a working paper on nationality, citizenship, right of abode, freedom of travel, emigration and immigration should be put to the Chinese. John Coles' letter of 12 March confirmed that you were content for this to be done.
2. The Chinese responded to the working paper in the talks on 27 March. At the dinner given for the two delegations that evening, members of the Chinese delegation enlarged on these comments. They made it clear that while the Chinese could not formally recognise dual nationality or a separate citizenship they would in fact permit dual nationality to operate in practice (eg by permitting Hong Kong residents to travel on passports issued by other states).
3. I raised the question of nationality with Chinese Foreign Minister Wu Xueqian during my visit to Peking in April, and reiterated the reasons why we considered dual nationality and a separate Hong Kong citizenship to be necessary. Wu restated the formal Chinese position. He also seemed concerned that we proposed to provide consular protection for former BDTCs against the SAR Government and other Chinese authorities after 1997.
4. This discussion was followed up at the 13th round of talks on 28 April. Sir R Evans explained that we did not intend to seek consular protection for former BDTCs in Hong Kong or other parts of China after 1997. Zhou Nan noted /this,

COB 17/7

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cc P.C.
Mickalvin

Prime Minister

For OJ(k) on

17 July

CDP 13/7



this, but added that four of our proposals conflicted with the basic spirit of Chinese nationality law and the principle of sovereignty and were therefore not feasible. These were:

- (a) a separate category of citizenship within Chinese nationality;
- (b) transmission of British nationality even for one generation;
- (c) explicit Chinese recognition of dual nationality after 1997; and
- (d) a statement of right of abode in Hong Kong being included in British passports held by Hong Kong people.

Zhou said that the Chinese side understood our difficulties but that we would have to find a solution that did not conflict with Chinese principles. He hoped we could continue our exploration of this issue and wished us success.

5. At the fourteenth round on 9 May, the Chinese tabled a draft agreement, exchange of notes and protocol. Paragraph 14 of the Chinese draft note covered the issue of identity cards by the SAR government, the right of abode in the SAR and the issue of travel documents. It made no reference to national status.

6. In the past two months, FCO officials have been working, in close contact with Home Office officials, Hong Kong and Peking, to draft an annex on nationality that met our requirements while taking account of Chinese sensitivities.

/ I attach a draft which (subject to one area of square bracketing - see below) has been agreed by all concerned on our side. With the same caveat it was also approved by the Hong Kong Executive Council on 9 July.

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7. The first two paragraphs of the draft take the form of unilateral statements by the two sides on nationality. This enables us to state within the agreement our intention that Hong Kong BDTCs should continue to hold British nationality after 1997 without the Chinese having formally to agree to this or to the concept of dual nationality. The Chinese declaration makes it clear that they consider these people to be Chinese nationals, an important point for us in the event that any of them should attempt to claim right of abode in the UK on the grounds of their British nationality. The rest of the annex sets out points to be agreed by the two sides, covering right of abode in Hong Kong, the issue and use of travel documents, consular protection, visa abolition agreements and entry into the SAR.

8. Paragraph 2(b) of the annex deals with transmissibility of British nationality after 1997. Although the Chinese have said that they cannot accept this, it is just possible that they may do so if it is part of a unilateral British statement. The paragraph at present contains 5 alternative versions of the second sentence, which relates to the transmissibility of the new form of nationality. The Executive Council has expressed unanimous support for the first version, which involves the preservation of the existing situation. As you know, they attach great importance to the concept. I doubt, however, if the Chinese can possibly be brought to accept this apparently unlimited statement. I therefore suggest that we put to them the second alternative, which limits transmissibility to one generation. This is in effect only a marginal change as there are only a few cases in which BDTC status can under existing law be transmitted to the second generation. I also suggest that in the event that the Chinese refuse to accept this, we should fall back to the third alternative, which proposes the retention of transmissibility for 50 years after 1997 and is consistent
/with



with our general approach that there should be no change to systems in force in Hong Kong during that period.

9. I believe it is of great importance for our relations with Hong Kong that we should be seen to fight for these relatively generous definitions of transmissibility. It was implicit in the text of the working paper which we tabled with the Chinese, after full consideration between the Ministers concerned and full discussion with EXCO, that we were prepared to go for something very like the existing position of BDTCs. It will already be a disappointment to EXCO that we should seek to reduce these to transmissibility for one generation only. Any further scaling-down of our objective at this stage would be seen by them as reneging on the commitment earlier made. Given the strength of Chinese opposition to the whole concept of transmissibility it is very likely that we shall have to lower our sights further. But it is necessary for our relations with EXCO, which are already fragile, that we should be seen to do this on tactical grounds related to the strength of Chinese opposition rather than because of second thoughts over policy. Given the care with which the annex is worded to ensure that those who maintain a form of British nationality after 1997 will have both Chinese nationality and right of abode in Hong Kong (and we would separately make it quite clear when the agreement is published that they had no right of abode in the UK), I do not think we need allow any anxieties on immigration grounds to deter us from giving the maximum psychological support to the Hong Kong people in this area of such importance to them.

10. One other point to note is in paragraph 6. As stated above, the Chinese seem to have ruled out any arrangements for entering in their British passports the fact that former BDTCs have the right of abode in Hong Kong (China). There is a danger that without such a statement these people might be

/returned



returned to the UK rather than to the SAR. It is therefore proposed, as an alternative, that any state who permitted a Hong Kong (China) person to travel on passports issued by them could insert in them that the person was the holder of a Hong Kong (China) identity card that was evidence of his right of abode in the SAR.

11. I should be grateful to know if you are content for the annex to be put to the Chinese, with the second alternative version of the second sentence in paragraph 2(b).

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

(GEOFFREY HOWE)

Foreign and Commonwealth Office
13 July 1984

FUTURE OF HONG KONG: DRAFT ANNEX ON NATIONALITY

1. The Government of the People's Republic of China declare that all persons born in Hong Kong or Hong Kong (China) having a parent who is a Chinese national, and all persons born outside Hong Kong or Hong Kong (China) having such a parent who was born in Hong Kong or Hong Kong (China) will after 30 June 1997 continue to have Chinese nationality subject to certain limited exceptions provided by law.

2. The United Kingdom Government declare that:

(a) All persons who, on 30 June 1997, are British Dependent Territories Citizens (BDTCs) under United Kingdom law by virtue of a connection with Hong Kong will cease to be BDTCs on 1 July 1997, but will retain an appropriate form of British nationality.

(b) No person will acquire BDTC status on or after 1 July 1997 by virtue of a connection with Hong Kong or Hong Kong (China).

[No person born on or after 1 July 1997 will acquire the form of nationality referred to as being appropriate in sub-paragraph (a) of this paragraph except by descent from a person who held that form of nationality at the time of the birth.]

[No person born on or after 1 July 1997 will acquire the form of nationality referred to as being appropriate in sub-paragraph (a) of this paragraph unless born of a father or mother who held that form of nationality on 1 July 1997 and at the time of the birth.]

[No person born on or after 1 July 1997 shall acquire the form of nationality referred to as being appropriate in sub-paragraph (a) of this paragraph unless born before 1 July 2047 of a father or mother who had that form of nationality on 1 July 1997 and at the time of the birth.]

[No person born on or after 1 July 2007 will acquire the form of nationality referred to as being appropriate in sub-paragraph (a) of this paragraph by virtue of descent from a person referred to in that paragraph.]

[No person born on or after 1 July 1997 may acquire British nationality by virtue of descent from a person referred to in sub-paragraph (a) of this paragraph.]

3. The following persons shall have the right of abode in Hong Kong

(China) and shall become entitled on that date to obtain permanent identity cards issued by the Government of Hong Kong (China):-

(a) All persons who, on 30 June 1997, had the status of "Hong Kong Belonger" under Hong Kong law:(1)

(b) All Chinese nationals born in Hong Kong or in Hong Kong (China):

(c) All Chinese nationals who have been ordinarily resident in Hong Kong or in Hong Kong (China) for a continuous period of not less than seven years; and

(d) All other persons who have taken Hong Kong or Hong Kong (China) as their place of permanent residence and who:

(i) were born in Hong Kong or in Hong Kong (China): or

(ii) have been ordinarily resident in Hong Kong or in Hong Kong (China) for a continuous period of not less than seven years.

The qualifications and procedures for the acquisition of permanent identity cards shall continue to be defined by law.

4. The Government of Hong Kong (China) may issue and renew:

(a) Hong Kong (China) passports, which guarantee the holder's right of return to Hong Kong (China), to persons who are eligible to hold permanent identity cards issued by the Government of Hong Kong (China); and

(b) Other Hong Kong (China) travel documents, which enable the holder to return to Hong Kong (China) subject to the prior approval of the immigration authorities of Hong Kong (China), to persons who are not eligible to hold permanent identity cards issued by the Government of Hong Kong (China) but who are lawfully resident in Hong Kong (China).

Hong Kong (China) passports and other travel documents shall be valid for all countries and territories. The Government of Hong Kong (China) may withhold or withdraw travel documents only in specific circumstances defined by the law of Hong Kong (China).

5. Consular officers of the United Kingdom Government may issue and renew British passports and other travel documents in Hong Kong (China) to British nationals.

6. All persons may use travel documents issued by the Government of Hong Kong (China), or by other competent authorities of the People's

Republic of China, or by the competent authorities of any other state, for the purpose of travelling to and from Hong Kong (China). All travel documents issued to persons who have the right of abode in Hong Kong (China) shall either state this right or state that the holder has a permanent identity card which is evidence of the holder's right of abode in Hong Kong (China).

7. Persons who have the right of abode in Hong Kong (China) shall be entitled when in third countries to the consular services and the consular protection consistent with their nationality status.

8. The Government of Hong Kong (China) may negotiate visa abolition agreements for holders of Hong Kong (China) travel documents if the Government of the other country concerned agrees. Otherwise, visa abolition agreements shall be negotiated for Hong Kong (China) by the Central People's Government. The Government of Hong Kong (China) shall determine what rights of entry to Hong Kong (China) shall be enjoyed by nationals from states not party to such visa abolition agreements.

9. Subject to exceptions which are both allowed by law and consistent with the International Covenant on Civil and Political Rights, all persons holding valid travel documents shall be free to leave Hong Kong (China) in order to emigrate or for any other purpose and without the need for any exit visa or any other form of special authorisation.

10. No person who has the right of abode in Hong Kong (China) may be deported or removed from Hong Kong (China).

11. The arrangements existing immediately prior to 1 July 1997 for persons with no right of abode in Hong Kong to visit, reside in or leave the area shall continue, unless and until changed by the Government of Hong Kong (China).

12. Persons who enter or stay in Hong Kong (China) in breach of its laws may be removed in accordance with those laws.

13. There shall continue to be controls on entry into Hong Kong



(China) from other parts of the People's Republic of China. Changes in these controls may be made by agreement between the Government of Hong Kong (China) and the Central People's Government.

NOTE

1. The term `Hong Kong believer` covers all persons who have the right of abode in Hong Kong now and includes all BDTCS who derive their status from a connection with Hong Kong, whether or not they are residents of Hong Kong.

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FROM: M H Jay
DATE: 16 July 1984

Mr Galsworthy, HKD

cc: Sir P Cradock -

FUTURE OF HONG KONG: NATIONALITY

1. The PUS saw, over the weekend, the paper attached to Mr Mound's minute of 12 July to the Private Secretary. The PUS has noted that this has now been circulated as an OD(K) paper. The PUS agrees with the recommendations in the paper, but has one comment on the Annex which you might like to take into account in any revision of the paper. The PUS takes it that paragraph 3 of the Annex is not covered by the preamble to paragraph 2 that 'the United Kingdom Government declare that...' since paragraph 3 deals with matters relating to Chinese sovereignty. The PUS is not clear of the status of paragraph 3: is it a joint declaration, for example? He has suggested that this point should be clarified in a subsequent draft in order to avoid misunderstanding with the Chinese.

M H Jay

M H Jay
PS/PUS

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