



PM/84/145

PRIME MINISTER

Prime Minister

You may like to look at this partial White Paper over the week-end. It is for discussion at OD(K) on 12 September. It looks very much on the right lines.

Future of Hong Kong: Draft White Paper

1. I am circulating under cover of this minute a copy of part one of a draft White Paper on the negotiations on the future of Hong Kong for discussion at the meeting of OD(K) on 12 September. It puts the agreement in the context of the history of the negotiations, and of the alternatives open to us. Part two of the White Paper will consist of the Agreement itself, part three will be a detailed commentary on the agreement, and part four will include appended relevant documents.

2. The text of the White Paper cannot be finalised until we have initialled the Agreement. It is, however, important that we publish the White Paper immediately after initialling so that the Agreement is seen in Hong Kong in its proper context from the start. We therefore intend to have the White Paper set in print in the near future and then amend it to take account of the final stages of negotiation.

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

GEOFFREY HOWE

Foreign and Commonwealth Office

7 September, 1984

SECRET

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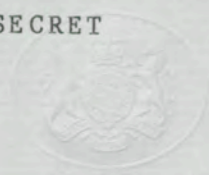
DRAFT WHITE PAPER

A DRAFT AGREEMENT BETWEEN THE UNITED KINGDOM AND THE PRC ON THE
FUTURE OF HONG KONG

PART ONE

INTRODUCTION

1. On .. September 1984 representatives of the Governments of the United Kingdom and of the People's Republic of China initialled the draft text of an agreement on the future of Hong Kong. The agreement, contained in Part Two of this White Paper, consists of a joint declaration including three annexes, and an associated exchange of memoranda. These documents are the outcome of two years of negotiations between the two governments, undertaken with the common aim of maintaining the stability and prosperity of Hong Kong.
2. The purpose of this White Paper is to present these documents in the context of the history of Hong Kong and of the last two years' negotiations and to explain their contents. The text of this White Paper is also being published in Hong Kong by the Hong Kong Government, and the people of Hong Kong are being invited to comment on the overall acceptability of the arrangements which it describes. Thereafter the matter will be debated in Parliament.



TREATIES

3. Britain acquired the Crown colony of Hong Kong (through three treaties concluded with the then Chinese Government during the nineteenth century: the Treaty of Nanking, signed in 1842 and ratified in 1843 under which Hong Kong Island was ceded in perpetuity; the Convention of Peking in 1860 under which the southern part of the Kowloon Peninsula and Stonecutters Island were ceded in perpetuity; and the Convention of 1898 under which the New Territories (comprising 92% of the total surface area of the territory) were leased to Britain for 99 years from 1 July 1898. It was the fact that the New Territories are subject to a lease with a fixed expiry date which lay behind the decision by Her Majesty's Government to seek to enter negotiations with the Government of the People's Republic of China (referred to hereafter as "The Chinese Government") on Hong Kong's future. *came to Britain*

4. The attitude of the Chinese Government towards the treaties has been clearly stated: it is that Hong Kong and Macau "belonged to the category of unequal treaties left over by history"; that they should be settled peacefully through negotiations when conditions were ripe; and that pending a settlement the status quo should be maintained. The Chinese Government also made its view of Hong Kong's status clear in a letter to the UN Special Committee on Decolonisation in March 1972. This argued that the question of Hong Kong was a matter of China's sovereign right and did not fall within the ordinary category of colonial treaties and should not be included in the list of territories covered by the Declaration on the Granting of Independence to Colonial Countries and Peoples.

THE BACKGROUND TO THE NEGOTIATIONS

5. In the late 1970's, as the period before the termination of the New Territories lease continued to shorten, significant concern about the future of Hong Kong began to be expressed both in the territory itself and among foreign investors. In particular there was increasing anxiety about individual land leases granted in the New Territories, all of which are set to expire 3 days before the expiry of the New Territories lease in 1997. There was a danger that the steadily shortening span of these leases, and the inability of the Hong Kong Government to grant new ones extending beyond 1997, would deter investment and damage confidence.
6. The Government had by this time, following a careful examination of the problem conducted in consultation with the Hong Kong Government, concluded that confidence would begin to erode quickly in the early to mid-1980s if nothing was done to alleviate the uncertainty caused by the 1997 deadline in a way consistent with the position of the Chinese Government on Hong Kong's future. Accordingly, when the Governor of Hong Kong visited Peking in March 1979 at the invitation of the Chinese Minister of Foreign Trade, discussions took place on the problem of land leases in the New Territories. These discussions did not result in measures to solve the problem.
7. In the course of the next two years there was increasing awareness of the need to remove the uncertainty which the 1997 deadline generated, and some discussion of how this might be achieved. The importance of the issue was publicly stressed by the senior Unofficial member of the Executive Council in May 1982. In January 1982 Sir (then Mr) Humphrey Atkins, Lord Privy Seal, visited Peking and was given significant indications of Chinese policy towards Hong Kong by Chinese leaders, which confirmed the view of the Government that negotiations should be opened with the Chinese Government.



THE PRIME MINISTER'S VISIT TO CHINA

8. Against this background the Government decided that the Prime Minister's visit to China in September 1982 would provide an opportunity to open discussions with the Chinese Government on the future of Hong Kong. It was evident that the Chinese Government had reached the same conclusion, and substantive discussions took place during the visit. Following a meeting between the Prime Minister and Chairman Deng Xiaoping on 24 September 1982 the following joint statement was issued:

"Today the leaders of both countries held far-reaching talks in a friendly atmosphere on the future of Hong Kong. Both leaders made clear their respective positions on this subject.

They agreed to enter talks through diplomatic channels following the visit with the common aim of maintaining the stability and prosperity of Hong Kong."



THE COURSE OF THE NEGOTIATIONS

9. The Prime Minister's visit was followed by the first phase of negotiations conducted by H M Ambassador, Peking and the Chinese Foreign Ministry. These consisted of exchanges between the two sides on the basis on which the negotiations would be conducted, and on the agenda. On 1 July 1983 it was announced that the second phase of the talks would begin in Peking on 12 July. The pattern of negotiation in the second phase, which was continued until the end of the negotiations, was for formal rounds of talks to be held between delegations led by HM Ambassador in Peking and a Vice-Minister of the Chinese Foreign Ministry, supplemented as necessary by informal contacts between the two delegations. The Governor of Hong Kong took part in every round of formal talks as a member of the British delegation.

10. In the course of the negotiations the British side explained in detail the systems which prevail in Hong Kong and the importance for these systems of the British administrative role and link.

Following extensive discussion, however, it became clear that, since in the Chinese view, sovereignty and the right of administration over Hong Kong were inseparable, no continuation of British administration after 1997 would be acceptable to China. After full consultation with the Governor and the Executive Council of Hong Kong, the British side therefore proposed that the two sides discuss on a conditional basis what effective measures other than continued British administration might be devised to maintain the stability and prosperity of Hong Kong and explore further the Chinese ideas which had at that stage been explained to them, in order to see whether China and Britain could construct on this basis arrangements which would ensure lasting stability and prosperity for Hong Kong. The Chinese side were told that if this process was successful, the British Government would consider recommending to Parliament a bilateral agreement enshrining the arrangements. The British Government also undertook in this event to assist in the implementation of such arrangements, and to recommend to Parliament that sovereignty and administrative control pass to China.

Following this, the British side presented to the Chinese a series of working papers which took as the basis for discussion China's proposals for Hong Kong as a Special Administrative Region and examined their implications. In response to these papers the Chinese side further elaborated their ideas on the policies which the Chinese Government were proposing to pursue in Hong Kong after 1997.

11. In April 1984 the two sides completed initial discussion of the working papers. There were a number of outstanding unresolved points, but it was by then clear that an acceptable basis for an agreement might be possible. Both sides tabled draft agreements. At the invitation of the Chinese Government the Foreign and Commonwealth Secretary visited Peking from 15 to 18 April. During his meetings with Chinese leaders the two sides reviewed the course of the talks on the future of Hong Kong, and further progress was made. In Hong Kong on 20 April Sir Geoffrey Howe made a statement on the Government's approach to the negotiations. He said that it would not be realistic to think of an agreement that provided for continued British administration in Hong Kong after 1997: for that reason the Government had been examining with the Chinese Government how it might be possible to arrive at arrangements that would secure for Hong Kong, after 1997, a high degree of autonomy under Chinese sovereignty, and that would preserve the way of life in Hong Kong, together with the essentials of the present systems. He made it clear that the Government were working for a framework of arrangements that would provide for the maintenance of Hong Kong's flourishing and dynamic society, and an agreement in which such arrangements would be formally set out.

12. After Sir Geoffrey Howe's visit in April negotiations continued. A working group was established in June 1984 to meet full-time in Peking and consider documents tabled by both sides. In July 1984 the Foreign and Commonwealth Secretary again visited Peking. The visit was devoted almost entirely to the future of Hong Kong. Sir Geoffrey Howe announced in Hong Kong on 1 August that very substantial progress had been made towards agreement on the form and content of documents which would set out arrangements for Hong Kong's future with clarity and precision, in legally binding



form.

13. Sir Geoffrey also announced on the same occasion that the two sides had agreed to establish a joint liaison group which would come into being when the agreement came into force. It would meet in Peking, London and Hong Kong until 1 July 1988 when it would establish its principal base in Hong Kong, although it would also continue to meet thereafter also in London and Peking. It was agreed that the group would not be an organ of power. Its functions would be: liaison, consultation on the implementation of the agreement, and exchange of information. It was agreed that it would play no part in the administration of Hong Kong. The British Government would continue to be responsible for the administration of Hong Kong up to 1997.

14. [Last phase of negotiations.]



CONSULTATION WITH THE PEOPLE OF HONG KONG

15. From the beginning of the negotiations the Government have been conscious that the negotiations concerned the interests and future of the five and a half million people of Hong Kong. It has been the Government's consistent position that any agreement with the Chinese Government on the future of the territory should be acceptable to the people of Hong Kong as well as to the British Parliament and the Chinese Government.
16. The negotiations had to be conducted on a basis of confidentiality. This was crucial to their success, but the maintenance of confidentiality also caused much concern and anxiety among the people of Hong Kong who were understandably anxious to know what was being negotiated for their future. The Official and Unofficial members of the Executive Council, as the Governor's closest advisers, were kept fully informed on the negotiations and consulted on a continuing basis throughout the period. The Unofficial members of the Executive and Legislative Councils (UMELCO) provided invaluable advice to the Governor and to Ministers on the course of the negotiations and on the attitude of the people of Hong Kong.
17. At a number of crucial points in the negotiations the Unofficial members of the Executive Council visited London for consultations with the Prime Minister and other Ministers. British Ministers also paid a series of visits to Hong Kong, to consult the Executive Council and the Unofficial members of the Executive and Legislative Councils and to keep in touch with opinion in the territory. The Secretary of State for Foreign and Commonwealth Affairs was able to describe the approach of the British Government to the negotiations in his statement in Hong Kong on 20 April 1984, and to fill in more details of the content of the agreement in a further statement in the territory on 1 August 1984. In the course of the negotiations, and in particular since the statement of 20 April, numerous individuals and groups in Hong Kong have made specific proposals on what should be included in an eventual agreement. The Government has paid close attention to these proposals which the Hong Kong Government has relayed to Ministers

and to views about the future expressed through a variety of channels - by and through UMELCO, through debates in the Legislative Council, through the press, through individual communications addressed to the British Government or the Hong Kong Government. In this way the Government have sought to take into account the views of the people of Hong Kong to the maximum extent possible in negotiating with the Chinese Government over the future of the territory.

18. In the same way the maintenance of confidentiality has made the task of consulting Parliament on the negotiations more difficult. Despite this there were debates on Hong Kong in October and November 1983 and in May 1984, and part of the Foreign Affairs Debate in March 1984 was also devoted to Hong Kong. Members of Parliament have kept in close touch with the people of Hong Kong, both through visits to the territory and through meetings with Hong Kong delegations visiting the United Kingdom.



INTRODUCTION TO THE AGREEMENT

19. The full text of the draft agreement is included as Part Two of this White Paper. It consists of a joint declaration including three annexes, together with an associated exchange of memoranda on nationality. Each part of the agreement has the same status. The whole makes up a formal international agreement, legally binding in all its parts. An international agreement of this kind is the highest possible form of commitment between sovereign states.

20. The Joint Declaration consists in part of linked declarations by the British and Chinese Governments. In paragraph one the Chinese government declare that they will resume the exercise of sovereignty over Hong Kong on 1 July 1997. In paragraph two the British Government declares that it will restore Hong Kong to the Chinese Government from that date. In paragraph three the Chinese Government sets out its policies towards Hong Kong after 1997. In paragraph 4 the two Governments jointly declare that the British Government will remain responsible for the administration of Hong Kong up to 1997. Paragraphs 5 and 6 deal with the Joint Liaison Group and land. Paragraph 6 constitutes the important link between the declarations by the two parties; together with paragraph 7 it has the effect of making the joint declaration and the annexes to it legally binding in their entirety on the two governments. If the agreement is approved by Parliament it will be signed and will enter into force on ratification. This last step will be taken as soon as possible after the necessary legislation has been enacted.

21. Annex one contains an elaboration of Chinese policies for the Hong Kong Special Administrative Region. The annex deals in detail with the way Hong Kong will run after 1 July 1997, and describes the extent of the autonomy and continuity which will prevail then. It covers:

- (a) constitutional arrangements and government structure;
- (b) the legal system;
- (c) the public service;

- (d) the financial system;
- (e) the economic system and external economic relations;
- (f) the monetary system;
- (g) shipping;
- (h) civil aviation;
- (i) culture and education;
- (j) external relations;
- (k) defence, security and public order;
- (l) rights and freedoms.
- ? (m) nationality

22. Annex two sets out the provisions concerning the establishment of a Sino-British joint liaison group. The joint liaison group will be established on the entry into force of the agreement and will meet in Peking, London and Hong Kong. From 1 July 1988 it will be based in Hong Kong, although it will also continue to meet in Peking and London. It will continue its work until 1 January 2000. The annex includes terms of reference which clearly indicate that the group will be a forum for liaison only and not an organ of power. It will neither play a part in the administration of Hong Kong or have any supervisory role.

23. Annex three sets out provisions governing land. [To be expanded.]

24. The agreement sets out clearly the relationship between the provisions which it contains and the Basic Law of the Hong Kong Special Administrative Region, to be promulgated by the National People's Congress of the People's Republic of China. Article 3(12) of the joint declaration provides that the basic policies in the joint declaration and the elaboration of them in Annex 1 will be stipulated in the Basic Law. They will remain unchanged for 50 years.

25. Part Three of this White Paper contains further explanatory notes on the text of the agreement and its annexes.

VIEWS OF HER MAJESTY'S GOVERNMENT ON THE AGREEMENT

26. As recorded in para 10 above, the Government have sought to see whether on the basis of proposals put forward by the Chinese Government arrangements could be constructed which would ensure lasting stability and prosperity for Hong Kong. They have negotiated energetically and they believe successfully to secure an agreement which meets the needs and wishes of the people of Hong Kong. The negotiations have been hard and long, and subject to the common aim of both sides to maintain stability and prosperity in Hong Kong, (have also needed to take account of the political requirements of both sides) Taking the agreement as a whole the Government are satisfied that it does provide a framework in which the stability and prosperity of Hong Kong can be maintained after 1997 as a Special Administrative Region of the People's Republic of China.

27. The negotiators have at all times taken into account the views expressed during the negotiations by the Hong Kong people and their interests. The text of the agreement has been initialled by both sides. This is simply a certification by the negotiators that it represents accurately the outcome of the negotiations. However, as is normal with international agreements negotiated between nations however, there is no realistic possibility of amending the text. The agreement must be taken as a whole. In addition the Chinese Government has made it clear that once the agreement has been initialled and published they are not willing to entertain proposals for amendment.

28. The Government have a duty to make clear beyond any possibility of misunderstanding the alternative to acceptance of the agreement set out in this White Paper. In their view, there is no possibility of an improved agreement. The alternative to acceptance of the present agreement is to have no agreement at all. In this case the Chinese Government have made it plain that negotiation would be at an end and that they would publish their own plan for Hong Kong. There is no guarantee that such a unilateral plan would include all the elements included in the draft agreement, nor would it have the same status as a legally binding agreement between the two

countries. Whether or not there is an agreement between the British Government and the Chinese Government the New Territories will revert to China on 1 July 1997 under the terms of the 1898 Convention of Peking. The remainder of Hong Kong (the ceded territories of Hong Kong Island, Kowloon and Stonecutters Island) would not be viable alone. Hong Kong, including the New Territories, has since 1898 become an integral whole and the British Government is satisfied that there is no possibility of dividing the New Territories which revert to China on 1 July 1997 from the ceded territories. The choice is therefore between reversion of Hong Kong to China under agreed, legally binding international arrangements or reversion to China without such arrangements. This is not a choice which the Government have wished to impose on the people of Hong Kong. It is a choice imposed by the facts of Hong Kong's history.

29. However the Government believe that the agreement is a good one. They have no hesitation in commending it to the people of Hong Kong and to Parliament. It provides a framework to preserve Hong Kong's unique economic system and way of life as a Special Administrative Region of the People's Republic of China from 1 July 1997. The Agreement preserves Hong Kong's familiar legal system and the body of laws in force in Hong Kong, including the common law. The agreement gives Hong Kong a high degree of autonomy in which it will be able to administer itself and pass its own legislation. It will enable Hong Kong to continue to decide on its own economic financial and trade policies, and to participate in international organisations and trade agreements such as GATT. The Government are confident that the agreement provides the necessary assurances about Hong Kong's future to allow the territory to continue to flourish and to maintain its unique position in the world.



THE AGREEMENT AND THE PEOPLE OF HONG KONG

30. The Government have consistently stated that an agreement on the future of Hong Kong must be acceptable to the people of Hong Kong as well as to Parliament. In his statement on 20 April 1984 in Hong Kong the Secretary of State for Foreign and Commonwealth Affairs stated that the people of Hong Kong would need to have time to express their views on the agreement, before it was debated by Parliament. The people of Hong Kong will now have this opportunity.

31. The text of this White Paper is also being published in Hong Kong by the Hong Kong Government and will be circulated through a wide variety of channels in the territory. An assessment office has been set up in Hong Kong under the charge of a senior official of the Hong Kong Government, directly responsible to the Governor. This office will provide Her Majesty's Government and Parliament with an analysis and assessment of opinion in Hong Kong on the draft agreement. Two monitors, Sir Patrick Nairne and Mr Justice Simon Li, have been appointed by Her Majesty's Government to observe the work of the assessment office and to report independently to the Secretary of State for Foreign and Commonwealth Affairs on whether they are satisfied that the assessment office has properly, accurately and impartially discharged its duties. In the light of these two reports the Government will decide what recommendation to make to Parliament.

32. The people of Hong Kong are now invited to comment on the overall acceptability of the arrangements negotiated between HMG and the Chinese Government for Hong Kong, in the light of the background set out in this White Paper.