

PART IIIBritish Aim

21. If these alternatives have to be ruled out, the best practical way to maintain confidence is the continuation of British administration over the whole territory, and a public commitment by the PRC that this would last well beyond 1997.

However, it is clear that no solution would be politically acceptable to the PRC unless it included British recognition of Chinese sovereignty over the whole territory. Thus, the main objective of British policy should be to reach early agreement with the PRC on continuing British administration and control. If this could be obtained, a concession on sovereignty could be contemplated.

Possible Approaches to the Problem of SovereigntyToken Acknowledgement of eventual Sovereignty

22. Much will depend upon what the PRC mean when they talk about the recovery of Chinese sovereignty. If they were to be content with a formal acknowledgement that sovereignty over the whole of Hong Kong would eventually revert to China, and agree to the continuation of British administration until the transfer of sovereignty at some unspecified date, this would be very satisfactory. The date of 1997 would cease to have significance and the benevolent attitude of China, coupled with continued British administration in Hong Kong, should ensure the territory's prosperity for the foreseeable future. However, the Chinese are unlikely to see any attraction in this.

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Acknowledgement with some visible signs of Chinese Sovereignty

23. If the PRC were to insist that there must be some concrete manifestation of our acceptance that sovereignty over the whole of Hong Kong will eventually be restored to China, this might be accommodated by concessions eg the acceptance of an official Chinese representative, provided that British administration was maintained without any serious erosion of the UK's existing powers.

Likely PRC Stand on Sovereignty

24. It seems probable, however, that the PRC will ask for more than a token acknowledgement of eventual sovereignty, even with some visible change, as the price for allowing the territory a special governmental regime that would preserve its economic prosperity after 1997. They could well seek formal abrogation of the 'unequal treaties' to take effect in or before 1997, thus removing the justification for British administration in international law. Even if they do not go as far as this they are likely to want early and unequivocal recognition by the UK of Chinese sovereignty over the whole of Hong Kong.

25. The Chinese appear to envisage that the whole territory should be incorporated into the PRC as a Special Administrative Region within the meaning of Article 30 of the new constitution of the Republic. As such, the territory would be allowed a
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considerable degree of autonomy but with the implication that the PRC would not only possess sovereignty but might also exercise sovereign powers, leaving no room for the exercise of such powers by the UK.

A Possible Solution

26. Given the gap between the British and Chinese positions, the most promising way of reconciling our requirements with those of the Chinese would be to work for a satisfactory 'management contract', providing for continuity of British control over the whole territory after 1997, indefinitely or for a period of years in return for an acknowledgement of Chinese sovereignty. The negotiation of an agreement of this kind would be difficult and could be slow. But if it could be achieved there are very good prospects that it would be honoured by the Chinese. The Chinese Communists have a generally good record of sticking to agreements once made; and an arrangement whereby the PRC obtained British acknowledgement of Chinese sovereignty over Hong Kong without sacrificing the economic benefits China derives from the territory would be very much to the Chinese advantage. Even if, as seems unlikely in the medium term, there were major changes in the political balance of the Chinese leadership, there is no reason why a successor administration should regard an agreement on these lines as prejudicing China's interests. From the UK point of view, there would be an agreed basis for the

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continuation of British administration in substitution for treaties whose validity is not accepted by China. Negotiation of such a 'management contract' would be regarded as a major achievement in Hong Kong, and in the world at large.

27. It would of course be necessary to justify such an arrangement in Parliament. The essential points are:

- (a) it would meet the wishes of the local people;
- (b) Hong Kong owes its existence up to now to constructive co-operation between Britain and China;
- (c) the new arrangement would ensure the continuation of effective British administration over the whole territory as opposed to its early run down and eventual loss.

Nature of Management Contract

28. The UK would need to be given substantial powers to act as 'caretaker' for the whole territory internally and internationally for a term of years running into the next century or, preferably, for an indefinite term, terminable by either country on as long notice as possible. In jurisprudential terms, this means that the UK would be accorded under international law the exclusive right to administer the territory and to conduct external relations in respect of the territory. This need not preclude the establishment of autonomous institutions in the territory or

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some delegation of international authority to the local government nor arrangements for regular consultation between the UK and the PRC on important matters of common interest.

29. Such an arrangement (ie trading sovereignty for administrative control) should ideally be embodied in an international agreement registrable at the United Nations. The agreement need not necessarily be of a formal or detailed character so long as it clearly established the rights and obligations of the parties under international law. A unilateral declaration by the PRC or a joint communiqué might suffice for this purpose provided it described the arrangement in sufficiently precise terms. While it is desirable that the arrangement should be legally enforceable by the UK (however unlikely it may be that the PRC would submit to adjudication by a third party) the most important consideration is to obtain a commitment from the PRC to abide by its terms which would provide a sound basis in international law for the exercise by the UK of powers and jurisdiction in accordance with its terms. The arrangement would need to be sanctioned by Parliament and implemented in UK legislation by Order in Council (and would almost certainly require an Act of Parliament).

/Scope

Scope for making the Territory a Special Administrative Region (SAR)

30. Whether an effective management contract could be squared with the apparent Chinese intention to make the territory a SAR of the PRC must depend on whether or not the PRC would be prepared to allow the UK to administer the Region. Making the territory a SAR would introduce an unacceptable complication if it implied the exercise by the PRC of sovereign powers. If the SAR status were purely nominal it might not be incompatible with the satisfactory operation by the UK of a management contract. But the positive co-operation of the PRC would be essential.

Detailed Studies

31. Annexes G to O to this paper deal with certain key areas. We have examined whether, in a form of management contract, no change in the situation is either possible or likely to be acceptable to the PRC or to HMG, what changes could be contemplated and the difficulties which could flow from change either in Hong Kong or in the UK. The areas concerned are as follows:

- G) Constitutional Position of Hong Kong;
- H) External Relations;
- I) Currency and Finance;
- J) Defence and Internal Security;
- K) Citizenship, Nationality and Immigration;
- L) Legal System;
- M) External Trade;
- N) Civil Aviation and Shipping;
- O) Crown land leases in the New Territories.

32. These studies show that, provided agreement was reached that Britain would retain full responsibility for administration, there would be no problem about domestic government within the territory in most fields. The main issues would arise under:

- G) Constitutional Position: There are clear precedents (eg in the Gulf States, the Malay States, Brunei and in mandated territories and protectorates) for a state to acquire administrative powers, including responsibility for external affairs, in a territory over which it does not have sovereignty. Provided there is a clear agreement, such powers are effective in domestic and international law. In the case of Hong Kong it would be possible under such arrangements to continue British control with only minor changes.
- H) External Relations: The continuation of British responsibility for external relations would be essential for confidence in the new arrangement. Legally this would not be a problem provided that Chinese agreement could be obtained. But the Chinese could well find this difficult for reasons of prestige.

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- I) Currency and Finance: If the present legal system were maintained intact and HMG continued to be responsible for Hong Kong's external relations, there is no necessary reason why the same fiscal and monetary policies that have facilitated the economy's growth performance and diversification in the past should not be equally successful in the future. But if there were any doubts whatsoever about the management contract, the exchange value of the Hong Kong dollar would deteriorate as attempts were made to sell Hong Kong dollars for a dwindling supply of foreign currencies.
- J) Defence and Internal Security: To ensure effective control and continuing confidence the UK would need to retain responsibility for defence and internal security and the power to deploy forces there. While there would be no legal bar to the continued stationing of British troops the Chinese might have strong objections.
- K) Citizenship and Nationality: Acknowledgement by HMG of Chinese sovereignty over Hong Kong might be thought to imply the relinquishment of any

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form of British nationality or citizenship by its inhabitants. However this would arouse fundamental opposition from people in Hong Kong who would not trust an arrangement which involved the removal of British protection. Moreover from the British point of view it would be unworkable if the UK were responsible for Hong Kong's external relations but China protected its people abroad. The removal of British Dependent Territories' Citizenship from the people of Hong Kong would paradoxically have serious immigration implications for the UK in that it would damage confidence so seriously that an exodus from the territory would be likely, probably before any agreement had taken effect. Even though BDT status of itself confers no right of abode in the UK, this would mean that a large number of people, still retaining British passports, would demand entry to the UK and would expect special treatment on the analogy of that accorded to the Falkland Islanders. On the other hand if an arrangement for continuing British administration were reached with China, and British Dependent Territories' Citizenship was retained for those born or naturalised in Hong Kong, people would be encouraged to stay.

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- L) Legal System: The present arrangements could be maintained more or less intact although the PRC might demand some adjustments, eg the ending of appeals to the Privy Council.
- M) External Trade: Hong Kong's trade would be seriously damaged if its present participation in international trade arrangements through the UK was ended.
- N) Civil Aviation: Britain's responsibility for Hong Kong in civil aviation negotiations, which brings us considerable advantage, could be maintained provided that China agreed to continued British responsibility for external affairs. Some concessions might have to be made to the Chinese on the use of Hong Kong but we should aim to retain the right to treat the territory as part of our civil aviation assets in dealing with third countries.

Conclusions

33. A Independence will not be acceptable to the Chinese. ~~Some other obvious options are likely to prove either impracticable or unacceptable.~~
- B Nevertheless, a solution must be found quickly in order to maintain confidence in Hong Kong, and to avoid serious difficulties for HMG and a dangerous sense of frustration on the part of China.

C So far, the solution which offers the best prospect of reconciling the positions of the two Governments, and which would at the same time be acceptable in Hong Kong, is that of a management contract. This would be practicable.

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THE FUTURE OF HONG KONG

A SPECIAL STUDY

BY THE FOREIGN & COMMONWEALTH OFFICE

AUGUST 1982

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FUTURE OF HONG KONG

SPECIAL STUDY

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- P. Illustrative Questions and Answers following the Prime Minister's Visit to China



PRIME MINISTER
FIRST LORD OF THE TREASURY

FUTURE OF HONG KONG

SPECIAL BRIEFING

To Be Retained
Do Not Destroy

FUTURE OF HONG KONG

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