

HONG KONG STUDY

ANNEX K

CITIZENSHIP, NATIONALITY, IMMIGRATION

Present Situation

Citizenship

1. A very small minority of the population in Hong Kong are Citizens of the UK and Colonies (CUKCs) with a right of abode in the UK and will become British Citizens in 1983.
2. About 2.5 million people are CUKCs without right of abode in the UK and will become British Dependent Territories Citizens (BDTCs) in 1983.
3. The remainder, apart from a few aliens and citizens of Commonwealth countries, are holders of Hong Kong residence permits which give no citizenship status under UK law.
4. The overwhelming majority of Hong Kong residents are of Chinese descent. They are usually termed 'compatriots' by the Government of the PRC, which regards them as citizens of the PRC.

Nationality and Protection

5. British citizens and BDTCs resident in Hong Kong will be UK nationals for the purpose of protection in other countries. However, since the Hong Kong Chinese are regarded by the PRC only as Chinese citizens, the right of protection by the UK in China is not recognised by the Chinese authorities. All Hong Kong Chinese residents travelling to China are normally obliged to use Chinese travel documents. The PRC have not challenged our right of protection in third countries.

/Immigration and Visa Control

Immigration and Visa Control

6. The Hong Kong Government are responsible for immigration control into the territory. The Hong Kong Immigration Department also act on behalf of the Home Office in issuing passports, visas or entry certificates for entry to the UK.

7. Immigration from the PRC is subject to special understandings with the PRC. The latter do not accept the right of the Hong Kong Government to limit immigration from the PRC for persons to whom its Government have given permission to travel. But they recognise the need for control and themselves limit the numbers leaving to an average of about 150 a day. About 25% of these are theoretically visitors (though they seldom return to China); the remainder have one-way permits for permanent settlement in Hong Kong. In practice the Hong Kong Government admits these 'legal immigrants', although they regard the numbers permitted to travel as too high and are trying to persuade the PRC to reduce them.

8. The Chinese co-operate in measures to prevent the unauthorised emigration of people to Hong Kong and accept back all 'illegal immigrants' caught or discovered in Hong Kong.

Visas for Taiwan Residents

9. As a matter of practical convenience (there is no British representation in Taiwan), the Hong Kong Immigration Department issue visas for the UK to Taiwan residents on behalf of the Home Office.

/Possible Changes

Possible ChangesA. Recognition of Chinese Sovereignty with Continuing British AdministrationCitizenship and Nationality

10. The future citizenship and nationality of the people of Hong Kong would need to be decided in negotiations about a 'management contract' with the PRC. The options, not all of them practicable, which might need to be considered are:-

(1) British Dependent Territories Citizenship (BDTC).

At present the roughly 2.5 million citizens of the United Kingdom and Colonies without the right of abode in the United Kingdom are due to become British Dependent Territories citizens. It would be possible for them to retain this status either:-

- (a) transitionally (ie all who now have it would retain it but there would be no new additions); or
- (b) indefinitely (ie additional people could acquire the citizenship through the usual specified connections with Hong Kong, which would still be regarded for nationality purposes as a dependent territory).

Under (b) persons born in Hong Kong after transfer of sovereignty (of a parent who was a BDTC or settled there) would become BDTCs. This would have attractions, both for the people of Hong Kong, who would be no worse off than they are now, and for HMG, who would not have entered into any new immigration commitment. But there might be difficulties if the settlement with the PRC implied that Hong Kong could no longer be regarded as a dependent territory in any meaningful sense (or if the PRC objected specifically to the use of the term 'dependent territory' in this connection). The status of British Dependent Territories Citizen can be altered only by amending legislation.

/(2) British Overseas Citizenship

(2) British Overseas Citizenship is a residual status to be held by those who are citizens of the United Kingdom and Colonies but who do not have the right of abode in the United Kingdom nor any connection with either the UK or any existing colony. Usually the connection is with a former colony. It might be regarded as an appropriate status for BDTCs if Hong Kong were incorporated in the PRC without any arrangements for continuing British administration, but it was agreed with the Chinese that some British connection should continue to be recognised (at least in the case of those who have BDTC status now). But if there were satisfactory arrangements for continuing British administration, a change of status from British Dependent Territories citizenship to British Overseas citizenship would be regarded as a downgrading, would be resented as such by the people of Hong Kong and could undermine confidence.

(3) British Protected Person Status. This was the usual status for the inhabitants of a foreign territory administered by the UK. However, it would not be regarded as acceptable by people in Hong Kong, and probably not by the PRC.

(4) British Subject Status. The term 'British subject' is under the 1981 Act confined to certain residual categories of people who were British subjects before 1949. It is therefore not appropriate for use in this context, though the title 'British subject' might have some attractions for people in Hong Kong.

(5) British Administered Territory Citizenship. A new form of citizenship (eg British Administered Territories Citizenship) designed to reflect accurately the new circumstances might be created by amendment of the British Nationality Act 1981.

/Though

Though a logical approach to a new situation, it would probably be regarded in Hong Kong as inferior to BDT status.

(6) Local Hong Kong Citizenship. A local citizenship could be created and guaranteed by the local constitution. Although the UK might still protect Hong Kong citizens internationally as caretaker, it might be possible to distinguish them from persons who were British nationals by virtue of possessing a citizenship created by the British Nationality Act 1981. But it would probably be resisted by the Chinese as smacking too much of independence. It would however be unlikely to have any attractions for people in Hong Kong since it would be seen as weakening the effectiveness of the British link.

(7) Chinese Citizenship. The Chinese might well take the view that the retention of any form of British citizenship was incompatible with British recognition of Chinese sovereignty over Hong Kong, and demand that Hong Kong Chinese without the right of abode in another country should become Chinese citizens for all purposes. Although there are numerous precedents for depriving inhabitants of newly independent territories of their British citizenship, Hong Kong would be in a different position if British administration continued. The ending of British citizenship would also be likely to damage confidence so severely that it could lead to widespread demands from BDTs for admission to the UK, even though they had no right of abode in this country. It could therefore have serious immigration implications.

(8) Dual Citizenship. Since the Chinese

/Government

Government already regard all Hong Kong Chinese as Chinese citizens there might be scope for an agreement whereby all persons connected with Hong Kong by birth, descent, marriage etc should (with appropriate exceptions) be formally accorded the status of citizens of the PRC, it being understood that they would not thereby be precluded from possessing in addition a British citizenship, such as BDTC or BPP, or a local Hong Kong citizenship. There is no impediment to 'dual citizenship' in UK law, but the PRC's Nationality Law, promulgated in 1980, specifically excludes this concept.

B. Hong Kong as a Special Administrative Region (SAR)

11. The options described above would theoretically be open if Hong Kong became formally a Special Administrative Region, so long as Britain retained responsibility for (or responsibility for the conduct of) external affairs. But it might be less easy to negotiate the retention of the status quo (option 1), or variants of it (options 2, 3, 4 and 5). The Chinese might press for exclusive Chinese citizenship (option 7). A local Hong Kong citizenship (option 6) or dual citizenship (option 8) could be negotiable.

British Nationals

12. Whatever citizenship is decided on, Hong Kong are likely to press for some kind of declaration (preferably statutory) that the people of Hong Kong are 'British nationals'.

/In

In international law terms these people are 'UK' or 'British' 'nationals' for the purpose of protection by HMG abroad and could continue to be so if Hong Kong were administered by the UK. However, a proposal that they should be so described in our domestic law was resisted by the Government during the passage of the British Nationality Bill because of the possible implication that in the last resort the people of Hong Kong could enter the United Kingdom.

Conclusions on Citizenship and Nationality

13. The choice of citizenship for Hong Kong people under arrangements providing for continuing British administration will need to reconcile the conflicting interests of:-

(a) HMG, who will wish to ensure:

(i) that those arrangements are workable and inspire confidence locally, which implies British responsibility for external relations, and therefore for the protection of Hong Kong people in third countries other than China, which in turn implies the retention of some form of British citizenship; but

(ii) that existing immigration commitments from Hong Kong are if possible reduced, and certainly not increased; and

(iii) that there is no sudden slide in confidence which would lead to demands from Hong Kong people without the right of abode in the UK to be admitted here.

/(b) The PRC,

(b) The PRC, who may take the view that the acknowledgement of Chinese sovereignty involves the ending of any form of British citizenship.

(c) The people of Hong Kong, who, if British administration is to continue would almost certainly prefer no change in present citizenship arrangements.

14. If the Chinese could be brought to accept it, the solution which would be most likely to preserve confidence in Hong Kong without damaging UK interests would be the retention of British Dependent Territories Citizenship (option 1). If this were not possible a new status such as British Administered Territory Citizenship (option 5) or a local Hong Kong Citizenship (option 6) might serve, but would be less likely to command confidence in Hong Kong and to reduce immigration pressures. Dual citizenship (option 8) could conceivably be a fallback. Chinese citizenship (option 7) would be likely to undermine confidence so severely that it would result in a large scale exodus, with serious immigration implications for the UK.

Immigration

15. If new arrangements for continuing British administration were to command confidence the Hong Kong Government would need to retain its present control over immigration (except for immigration from China - see paragraph 7 above). This should be negotiable under a simple acknowledgement of Chinese sovereignty. If Hong Kong became a Special Administrative Region of the PRC the Chinese could press for some form of Chinese control.

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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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