



PM/83/81

PRIME MINISTER

Future of Hong Kong: Talks with the Chinese

1. You are chairing the first meeting of OD(K) on 25 October. A background note has already been circulated to members of the Committee. That paper described the message which you agreed with Unofficial members of the Executive Council should be conveyed by the Ambassador in Peking to the Chinese Government. Sir P Cradock has now reported on his delivery of that message on 14 October and on the latest round of talks on 19 and 20 October.
2. The message was generally well received. The Chinese negotiator attached importance to your efforts to move forward and hoped that this would lead to a satisfactory agreement at an early date. The atmosphere was considerably better than at the last round of talks and the Ambassador's judgement is that your instructions have resulted in significant progress towards inducing the Chinese to start talks on concrete questions.
3. At the same time the Chinese continued to place great emphasis on their premise that sovereignty should be restored to them and that administration is indivisible from it. They made a number of demands for explicit confirmation that we accepted this. Sir P Cradock explained patiently the constitutional limits on HMG, and our readiness, on the basis of the Chinese proposals, to see whether satisfactory arrangements could be agreed which would allow a recommendation to be put to Parliament. We must expect the Chinese to revert to the premise. There is much hard negotiation ahead. But the Ambassador believes

/that



that the Chinese probably accept that progress is possible without our explicitly accepting their pre-conditions. Certainly they have withdrawn their previous threats to break off negotiations and, as you have seen, have agreed to further talks on 14 and 15 November.

4. It has also been agreed that the Ambassador should keep in informal contact with the Chinese negotiator. Sir Percy believes that this will keep up the momentum and that we should make full use of this contact to put ourselves in the best possible position for the next formal round. We have for some time suspected that the Chinese ideas for a Special Administration Region have not been worked out in any detail. The reluctance of the Chinese negotiator to take up our proposal that they should enlarge on their proposals seems to confirm this. Sir P Cradock therefore believes that if we continue to insist that the next step should be for the Chinese to tell us more of their ideas, we shall make little progress. He suggests that we should change our tack and put forward our own ideas on how different areas of Hong Kong's administration should work. He believes that this would bring the discussion more onto our own ground and pre-empt a Chinese move to offer detailed ideas of their own which are unlikely to be satisfactory to us, and which could well become set in concrete as the views of the leadership.

5. Sir Percy Cradock recommends that we should move quickly and that he should give the Chinese negotiator well before the next round informal working papers covering the legal and financial systems and that we should be ready by the next formal session with further papers on other areas. It is clear from informal contacts in the margins of the talks that the Chinese would welcome this.

6. The Governor of Hong Kong agrees generally with the Ambassador's proposals. I also agree. We have, of course,

/been



been cautious in the past about being drawn into putting forward a complete blueprint for our own ideas on the Government of Hong Kong because of the risk that they would either be rejected at an early stage or that we might find ourselves being manoeuvred into giving away too much. That would apply to general suggestions covering the key question of administrative control, including the position of the Governor. We should not run the same risk if we were to focus on areas of general administration which, while still of great importance to confidence, can be dealt with in isolation from the question of overall control. The Ambassador is right to suggest that we start with the legal system and finance since in these sectors there is a fair chance of achieving common ground on a number of issues. Thereafter we could move onto other subjects, such as external trading relations, where we hold some useful cards through our membership of GATT, from which Hong Kong benefits.

7. We must of course keep EXCO with us on this. Before we put anything to the Chinese we would need to get their agreement to the general proposition of putting our own ideas on detailed subjects to the Chinese. The sooner this is done, the better (as you know, the Governor discusses the future with EXCO every Wednesday).

8. I suggest that a meeting tomorrow might focus on this next step, with a view, perhaps, to at least a preliminary discussion between the Governor and EXCO on Wednesday (although the timing will of course be right). I hope to have available for the meeting an outline of what the proposed papers to go to the Chinese might say (we are already

/discussing

SECRET



discussing details of suitable drafts with Peking and Hong Kong).

9. I am copying this minute to the Lord President of the Council, the Home Secretary, the Chancellor of the Exchequer, the Secretary of State for Defence, the Lord Privy Seal, the Secretary of State for Trade and Industry, the Attorney-General and Richard Luce, Minister of State, FCO.

A handwritten signature in dark ink, appearing to be 'G. Howe', written in a cursive style.

(GEOFFREY HOWE)

Foreign and Commonwealth Office  
24 October 1983

SECRET

2-4 Jun 1968

12 11 10 9 8 7 6 5 4 3 2 1

HONG KONGTHE LEGAL SYSTEMChinese Proposals

1. Laws would be basically unchanged. There would be a high degree of autonomy and legislative power. There would be independent judicial power including the power of final judgement.

Points for further discussion(a) The Hong Kong Legal System

2. Existing law, including English laws already applied, English common law and rules of equity would remain in force. The Hong Kong courts would continue to rely, as now, on precedents cited from other common law jurisdictions as well as precedents established in Hong Kong. The terminology of Hong Kong laws and ordinances which derives from colonial administration would be progressively amended but the normal terminology of existing statute law and common law would be retained.

3. In the making of new law, the Hong Kong legislature would be supreme. The power of delegation, eg to the Urban Council, in respect of by-laws would continue. There would be no power of disallowance outside Hong Kong.

4. Machinery would remain in being which would consider the adoption in Hong Kong of principles of law, eg relating to evidence, offences, procedure, etc adopted in other common law jurisdictions and make recommendations thereon, through the executive, to the legislature.

5. The existing system of courts would continue. Appeals to the Privy Council would cease. The highest instance of appeal would be the Hong Kong Court of Appeal.

(b) The Judiciary

6. The judiciary would remain independent of the executive. The exercise of the power to govern would remain accountable to the law.

7. It would remain open to Hong Kong to recruit legal officers including judges, court officials, members of the legal commissions etc, from other common law jurisdictions applying systems similar to that in Hong Kong. Only legal officers holding qualifications recognised under such jurisdictions would be eligible for appointment in Hong Kong.

8. Judges would be appointed by the Hong Kong Government but with the present constraints on their removal, including on compulsory retirement. In relation to the appointment, promotion and removal of any member of the judiciary, action would only be taken on recommendation of a judicial services commission, or, in the matter of removal, of a tribunal appointed by the Chief Justice and consisting of not less than three judges who hold, or have held, office as judge of a court having unlimited jurisdiction in Hong Kong or in similar jurisdictions.

HONG KONGFINANCIAL SECTORChinese Proposals

1. Socio-economic systems and way of life would remain unchanged. Private ownership of property and foreign investments would be protected. Hong Kong would be a free port and international financial centre. Foreign exchange, gold securities and future markets and the free flow of capital would continue. The Hong Kong dollar would continue to circulate freely and remain fully convertible.

Points for further discussion

2. (a) Guarantees for the continuation of the socio-economic systems. Provision for protection of private property including foreign and domestic investments.
- (b) Free movement of capital.
- (c) Full convertibility of Hong Kong dollar. Hong Kong dollar to be linked if necessary and as appropriate to another convertible currency but not to the RMB or other non-convertible currency.
- (d) Hong Kong to remain a member or associate member of international economic organisations on present basis (eg Asian Development Bank (ASB), Economic and Scientific Commission for Asia and the Pacific (ESCAP)). Provision for future adherence to similar bodies.
- (e) Currency to be issued by present note-issuing banks.
- (f) Exchange Fund to continue to be managed under direction of Hong Kong Financial authorities, with no outside interference.
- (g) Exchange Fund Advisory Commission and Exchange Banks Association to continue on present lines.
- (h) Appropriate arrangements for the provision of such expert assistance on the working of a free market economy as the Hong Kong authorities may request from overseas.



(i) Any changes in the foregoing provisions to be decided only by the Hong Kong authorities.