



PM/83/103

PRIME MINISTER

There is no point in magnifying the difficulties. had never Prime Minister
 had an election before but would in strength - To note
 23/12

Future of Hong Kong: Constitutional and Governmental Development

1. At the OD(K) meeting on 13 December, you asked that among the papers commissioned in preparation for the visit of Unofficial members of the Executive Council in January, there should be one examining the scope for increasing internal self-government in Hong Kong. We had another talk about all this yesterday afternoon.
2. As I said at the OD(K) meeting, the Governor has been giving careful thought to this for some time. I enclose a copy of Hong Kong telno 1973 which sets out a draft paper which he has prepared. As you will see the Governor examines the question from the point of view both of demand for increased representational government in the territory and of improving our position as we approach 1997 in order to put autonomy on as sound a basis as possible by that date. As I explained on Thursday, we face at least the minimum need to design a mechanism to replace the present system for appointment of the Governor. It would obviously be helpful if the new arrangements could be engineered from Hong Kong rather than from Peking. This is much more easily said than done.
3. The Governor puts considerable emphasis on the need to build on Hong Kong's existing institutions and to retain continuity. For that reason he favours a system of collegiate, rather than direct election, whereby various boards and councils produce the indirectly elected Legislative Council which in turn would elect a Governor. Sir Percy Cradock has been considering the same questions and has, in his preliminary comments, come down in favour of direct elections.



3. There is, I think, much sound sense in the Governor's draft paper. But, as I explained on Thursday, I am not yet quite so convinced of the wisdom of going too far down the democratic road. In Sir Percy Cradock's last round of informal talks in Peking, there was some signs of Chinese reservations on this point - for example, from Ji Pengfei. And we both, I think, have some anxieties about the risk that elections might stir up conflict in Hong Kong itself. Even so, we cannot escape the need to suggest some mechanism to replace existing procedures, so as to avoid leaving a constitutional vacuum which the Chinese could exploit.

4. This is a key question in our strategy for the future of Hong Kong and we must consider it with great care. I believe that includes getting the views of the Hong Kong Executive Council. We shall have a chance of talking to them in January but the Governor feels strongly that these discussions will only be productive if EXCO have had a chance to consider the issue beforehand on the basis of a discussion paper.

5. As I explained, I wanted you to see now the full paper with the Governor's ideas. But I am sure that it would not be right for him to put it to EXCO until we have had more time to consider it. I have, therefore, asked Sir E Youde to recast the paper in shorter and more interrogative form, rather than as proposals for a set course of action. He will report EXCO's views after their discussion and we can then decide what we might put to colleagues on this subject before the meeting of OD(K) on 11 January.

6. I should add that while I am against rushing things, I believe that we should aim to reach agreement at least on certain basic points quickly. The negotiations require this. Sir P Cradock and the Governor are agreed that it is important for us to keep up the momentum by putting in further working papers on central issues, including future constitutional arrangements for Hong Kong. We shall need to know our own minds, and to agree with EXCO at any rate on the

/outline



outline of our objectives so that we can at an early stage in the talks put in a paper which will describe the arrangements which we would envisage as a substitute for the present constitutional link with the UK. This would include in principle at least the manner in which a Governor/Chief Executive would be appointed.

(GEOFFREY HOWE)

Foreign and Commonwealth Office
23 December 1983

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YOUR TELNO 687.

FUTURE OF HONG KONG: CONSTITUTIONAL AND GOVERNMENTAL DEVELOPMENT

1. THE FOLLOWING IS THE DRAFT OF A PAPER ON CONSTITUTIONAL AND GOVERNMENTAL DEVELOPMENT IN HONG KONG. SOME COMMENT ON IT WILL FOLLOW IN A SEPARATE TELEGRAM.

INTRODUCTION

1. THIS PAPER DISCUSSES A SCHEME UNDER WHICH PROGRESS TOWARDS A SELF SUSTAINING AND REPRESENTATIVE GOVERNMENT STRUCTURE COULD BE MADE IN HONG KONG. IT COVERS MEANS BY WHICH THE MEMBERSHIP OF BOTH THE LEGISLATIVE AND EXECUTIVE COUNCILS COULD BE FORMED BY AN ELECTIVE PROCESS, AND THE ELECTION AND APPOINTMENT OF A GOVERNOR OR CHIEF EXECUTIVE.

THE PRESENT POSITION

2. THE GOVERNOR IS APPOINTED BY THE QUEEN AND DERIVES HIS AUTHORITY FROM THE LETTERS PATENT, WHICH ESTABLISH THE BASIC FRAMEWORK OF THE ADMINISTRATION OF HONG KONG. TOGETHER WITH THE ROYAL INSTRUCTIONS, WHICH LAY DOWN PROCEDURES TO BE FOLLOWED, THEY FORM THE CONSTITUTION OF HONG KONG. THE LETTERS PATENT CREATE THE OFFICE OF GOVERNOR AND COMMANDER IN CHIEF AND DEAL WITH THE CONSTITUTION OF THE EXECUTIVE AND LEGISLATIVE COUNCIL AND THE GOVERNOR'S POWERS IN RESPECT OF LEGISLATION, DISPOSAL OF LAND, THE APPOINTMENT OF JUDGES AND PUBLIC OFFICERS. THE ROYAL INSTRUCTIONS DEAL WITH THE APPOINTMENT OF MEMBERS OF THE EXECUTIVE AND LEGISLATIVE COUNCILS. THE EXECUTIVE COUNCIL CONSISTS OF FOUR EX OFFICIO MEMBERS (THE CHIEF SECRETARY, COMMANDER OF BRITISH FORCES, THE FINANCIAL SECRETARY AND THE ATTORNEY GENERAL, TOGETHER WITH OTHER MEMBERS APPOINTED BY THE GOVERNOR ON THE INSTRUCTIONS OF THE SECRETARY OF STATE. THERE ARE 11 APPOINTED MEMBERS, 9 UNOFFICIAL AND TWO OFFICIAL.

3. THE LEGISLATIVE COUNCIL CONSISTS OF 3 EX-OFFICIO MEMBERS (THE CHIEF SECRETARY, THE FINANCIAL SECRETARY AND THE ATTORNEY GENERAL), 15 NOMINATED OFFICIAL MEMBERS AND 29 NOMINATED UNOFFICIAL MEMBERS. ALL MEMBERS, APART FROM THE GOVERNOR AND OTHER EX-OFFICIO MEMBERS, ARE APPOINTED BY THE GOVERNOR WITH THE APPROVAL OF THE SECRETARY OF STATE.

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4. THE EXECUTIVE COUNCIL'S ROLE IS TO ADVISE THE GOVERNOR, WHO IS REQUIRED BY THE ROYAL INSTRUCTIONS TO CONSULT IT ON ALL IMPORTANT MATTERS OF POLICY. ITS PROCEEDINGS ARE CONFIDENTIAL. THE ROLE OF THE LEGISLATIVE COUNCIL IS PRIMARILY TO ENACT LEGISLATION, INCLUDING LEGISLATION FOR THE APPROPRIATION OF PUBLIC FUNDS. ITS PROCEEDINGS ARE PUBLIC.

5. THE URBAN COUNCIL AND THE DISTRICT BOARDS ARE THE ONLY BODIES WITH ELECTED MEMBERS. THE FIRST URBAN COUNCIL ELECTIONS WERE HELD IN 1935. THE FIRST DISTRICT BOARD ELECTIONS WERE IN 1961/92. THE URBAN COUNCIL HAS 30 MEMBERS, HALF OF WHOM ARE ELECTED AND HALF NOMINATED BY THE GOVERNOR. IT HAS EXECUTIVE POWERS IN SUCH AREAS AS PUBLIC SANITATION, HYGIENE IN RESTAURANTS AND FOOD SHOPS, RECREATION AND CULTURAL ACTIVITIES, MARKETS, PARKS AND PLAY-GROUNDS. IT IS FINANCIALLY AUTONOMOUS, DERIVING ITS INCOME FROM RATES, FROM ENTRANCE FEES TO ITS FACILITIES AND LICENCE FEES. ITS JURISDICTION IS RESTRICTED TO THE URBAN AREA (I.E. HONG KONG ISLAND, KOWLOON AND NEW KOWLOON - SEE MAP AT ANNEX A).

6. THE 19 DISTRICT BOARDS HAVE ELECTED, NOMINATED UNOFFICIAL AND OFFICIAL MEMBERS. IN ADDITION, ELECTED RURAL COMMITTEE CHAIRMEN AND URBAN COUNCILLORS ARE EX-OFFICIO MEMBERS OF THE BOARDS. ALTOGETHER A TOTAL OF 174 MEMBERS ARE ELECTED OUT OF A TOTAL UNOFFICIAL MEMBERSHIP OF 324. THE BOARDS VARY IN SIZE, BUT THERE ARE ROUGHLY EQUAL NUMBERS OF ELECTED AND APPOINTED UNOFFICIAL MEMBERS ON EVERY BOARD. THE DISTRICT BOARDS ARE ADVISORY, BUT HAVE BEEN ALLOCATED SMALL SUMS OF PUBLIC FUNDS FOR LOCAL CULTURAL AND RECREATIONAL ACTIVITIES AND MINOR ENVIRONMENTAL WORKS.

7. THE DISTRICT ADMINISTRATION SCHEME, IN ADDITION TO CREATING THE DISTRICT BOARDS, CREATED A UNIFIED FRANCHISE FOR BOTH DISTRICT BOARDS AND URBAN COUNCIL ELECTIONS ON A CONSTITUENCY BASIS. ALL RESIDENTS OVER 21 WHO HAVE LIVED IN HONG KONG FOR AT LEAST 7 YEARS ARE ELIGIBLE TO REGISTER AS ELECTORS. ANY ELECTOR WHO HAS BEEN IN HONG KONG FOR 10 YEARS OR MORE MAY BE A CANDIDATE IN ANY CONSTITUENCY PROVIDED HIS NOMINATION IS SUPPORTED BY 10 ELECTORS OF THAT CONSTITUENCY.

THE NEED FOR DEVELOPMENT

8. THERE ARE INCREASING DEMANDS IN SOME QUARTERS FOR DEMOCRACY IN HONG KONG OR AT LEAST FOR EARLY MOVES TOWARDS SELECTING THE MEMBERS OF THE LEGISLATIVE AND EXECUTIVE COUNCILS ON A MORE FORMALLY AND VISIBLY REPRESENTATIVE BASIS THAN THE PRESENT APPOINTED SYSTEM. THESE DEMANDS HAVE BEEN PARTLY ENGENDERED BY THE INCREASING MATURITY OF HONG KONG SOCIETY, NOTABLY THROUGH THE EMERGENCE OF AN ARTICULATE PROFESSIONAL MIDDLE CLASS, MANY OF WHOM WERE EDUCATED IN THE UNITED STATES, CANADA AND BRITAIN. THE APPROACH OF 1997 AND THE NEGOTIATIONS ON THE FUTURE HAVE ALSO STIMULATED PUBLIC DEBATE ON CONSTITUTIONAL AND GOVERNMENTAL ISSUES.

9. UNDER THE PRESENT SYSTEM THE LINK OF AUTHORITY WITH BRITAIN IS BOTH THE SOURCE OF THE GOVERNOR'S AUTHORITY AND PROVIDES THE ASSURANCE THAT HIS AUTHORITY (WHICH IS IN THEORY ALMOST UNLIMITED) WILL BE EXERCISED IN ACCORDANCE WITH THE LARGELY CUSTOMARY, UNWRITTEN CONSTRAINTS WHICH IN THE BRITISH SYSTEM ARE THE GUARANTEES OF THE RIGHTS AND FREEDOMS OF THE INDIVIDUAL. IF THE LINK WITH BRITAIN IS TO BE BROKEN, AND THE APPOINTED SYSTEM ENDED, A NEW SOURCE OF AUTHORITY WILL BE NEEDED TO PROVIDE THE POLITICAL INSTITUTIONS OF GOVERNMENT.

10. THE ATTITUDE OF THE CHINESE GOVERNMENT HAS ALWAYS BEEN CONSIDERED A MAJOR OBSTACLE TO THE INTRODUCTION OF A MORE REPRESENTATIVE FORM OF GOVERNMENT IN HONG KONG. THE CHINESE HAVE NOW INDICATED THAT THEY ENVISAGE SOME FORM OF ELECTIVE OR CONSULTATIVE PROCESS FOR THE SELECTION OF THE GOVERNOR/ CHIEF EXECUTIVE POST 1997. THE CHINESE HAVE ALSO SUPPORTED CALLS BY GROUPS IN HONG KONG FOR A GREATER DEGREE OF DEMOCRACY. IT MAY THEREFORE BE THAT THE CHINESE WOULD NOT NECESSARILY SEEK TO FRUSTRATE ALL MOVES IN THE DIRECTION OF GREATER DEMOCRACY.

THE ESSENTIAL REQUIREMENTS

11. TO GIVE IT THE GREATEST INTERNAL STRENGTH HONG KONG WILL NEED A REPRESENTATIVE STRUCTURE WHICH TAKES ACCOUNT OF THE DISTINCTIVE FEATURES OF ITS OWN SOCIETY AND THE PRESENT STATE OF ITS POLITICAL DEVELOPMENT. IN SPITE OF ITS SUPERFICIAL WESTERN ASPECT THERE ARE STILL STRONG CHINESE TRADITIONS IN THE COMMUNITY. IN AS FAR AS THERE HAS BEEN A PUBLIC POLITICAL PROCESS IN HONG KONG THE COMMUNITY HAS SUPPORTED POLICY FORMATION BASED ON CONSULTATION AND CONSENSUS AND NOT ON AN ADVERSORIAL PARTY SYSTEM AS IN THE UNITED KINGDOM. GIVEN THE EXTREMELY DELICATE STATE OF PUBLIC CONFIDENCE IT WILL BE VITAL TO MAINTAIN STABILITY DURING THE PROCESS OF CHANGE. IT WILL BE EASIER TO MAINTAIN THIS STABILITY IF THE INSTITUTIONS OF GOVERNMENT, EVEN THOUGH DERIVED FROM AN ELECTIVE SYSTEM, REMAIN FAMILIAR AND IF THE NEW STRUCTURE IS BUILT PROGRESSIVELY ON WHAT ALREADY EXISTS. ANY ATTEMPT TO RUSH THE PROCESS AND IMPOSE SUDDEN AND DRAMATIC CHANGE COULD PROVE DISASTROUS. THERE IS MORE THAN A DECADE TO GO BEFORE 1997 AND THERE IS TIME TO DEVELOP THE PROCESS OVER THIS PERIOD.

12. THERE ARE ALSO LIMITING FACTORS TO BE TAKEN INTO ACCOUNT. THESE ARE AS FOLLOWS:

(A) THE ELECTIVE SYSTEM IN HONG KONG IS IN ITS INFANCY. 900,000 OUT OF 2.7 MILLION QUALIFIED TO REGISTER HAVE DONE SO. OF THOSE WHO REGISTERED 39.8 PER CENT PARTICIPATED IN THE 1981/82 URBAN COUNCIL AND DISTRICT BOARD ELECTIONS.

(B) MOVING TOO QUICKLY COULD LEAD TO RAPID POLARISATION OF THE COMMUNITY AND MIGHT CREATE A DANGER OF POLITICAL RIVALRIES. (E.G. BETWEEN PRO-TAIWAN AND PRO-CHINA ELEMENTS) IRRELEVANT TO HONG KONG'S REAL CONCERNS.

(C) CHINESE SENSITIVITIES MUST BE TAKEN INTO ACCOUNT. AT THE SAME TIME CHECKS AND BALANCES MUST BE BUILT IN TO MINIMIZE OPPORTUNITIES FOR CHINESE INTERFERENCE.

(D) THE PROPORTION OF THE POPULATION TAKING PART IN ELECTNS IS STILL SMALL: AND MANY COMMUNITY LEADERS WOULD NOT BE WILLING TO SUBMIT THEMSELVES TO ELECTION OUTSIDE THEIR SOCIAL AND PROFESSIONAL GROUP. UNTIL HONG KONG HAS GAINED GREATER EXPERIENCE AND PUBLIC SUPPORT FOR THE ELECTIVE PROCESS, DIRECT ELECTIONS BASED ON UNIVERSAL ADULT SUFFRAGE WOULD BE LIKELY TO PRODUCE DISTORTED REPRESENTATIONAL STRUCTURES. TO ENSURE THAT ALL SECTORS OF SOCIETY WERE FAIRLY REPRESENTED, THE CONSTITUENCIES WOULD NEED TO BE FUNCTIONALLY AS WELL AS TERRITORIALLY BASED.

(E) POWER MUST BE DIFFUSED TO PREVENT DOMINATION AND MANIPULATION BY ANY PARTICULAR INTEREST GROUP.

13. IN CONSEQUENCE IT WILL NOT BE PRACTICABLE TO MOVE RAPIDLY AND DIRECTLY TO A FULL SCALE PARLIAMENTARY AND GOVERNMENTAL SYSTEM ON THE U.K. MODEL. IN ANY CASE, THE EXACT FORM OF THE FINAL STRUCTURE WITH WHICH HONG KONG SHOULD MAKE THE TRANSITION IN 1997 SHOULD BE FOR THE HONG KONG COMMUNITY TO DECIDE. WHILE THEREFORE PROPOSALS FOR CHANGE SHOULD ALLOW FOR PROGRESSIVE MOVEMENT TOWARDS A FULLY ELECTIVE SYSTEM THEY SHOULD NOT NOW DECREE IT.

PROPOSALS FOR CHANGE

PROPOSALS ALREADY BEING CONSIDERED

4. A REVIEW OF THE DISTRICT ADMINISTRATION SYSTEM IS ALREADY IN PROGRESS. THE REVIEW IS CONSIDERING WHETHER THE DISTRICT BOARDS SHOULD BECOME BY STAGES ENTIRELY ELECTED AND IN WHAT AREAS THEY MIGHT BE GIVEN LOCAL EXECUTIVE POWERS. IT IS ALSO CONSIDERING THE EXTENSION OF THE ELECTIVE SYSTEM AT THE URBAN COUNCIL LEVEL TO THE REST OF THE TERRITORY THROUGH THE ESTABLISHMENT OF A SECOND REGIONAL COUNCIL WITH AT LEAST HALF ITS MEMBERS ELECTED BY DIRECT FRANCHISE. THIS WOULD CREATE A CONSTITUENCY BASED ELECTIVE SYSTEM AT BOTH DISTRICT BOARD AND REGIONAL COUNCIL (URBAN COUNCIL) LEVEL THROUGHOUT THE TERRITORY. EXECUTIVE COUNCIL WILL BE CONSULTED ON THIS SCHEME IN JANUARY 1984 AND, SUBJECT TO THEIR ADVICE CHANGES COULD BE INTRODUCED AT THE TIME OF THE NEXT DISTRICT BOARD ELECTIONS IN 1985 AND THE NEXT URBAN COUNCIL ELECTIONS IN 1986.

THE NEXT STEPS

LEGISLATIVE COUNCIL.

15. FOR THE REASONS GIVEN IN PARAGRAPH 11 ABOVE, TO MOVE IMMEDIATELY TO A DIRECTLY ELECTED LEGISLATIVE COUNCIL WOULD NOT BE A PRACTICAL OPTION. THE MEMBERSHIP OF THE LEGISLATIVE COUNCIL COULD HOWEVER BE GENERATED IN PART THROUGH ELECTIONS BY AN ELECTORAL COLLEGE OF DISTRICT BOARD AND REGIONAL COUNCIL.

MEMBERS: AND IN PART THROUGH ELECTIONS FROM IDENTIFIED FUNCTIONAL GROUPS SUCH AS INDUSTRIAL ASSOCIATIONS, THE UNIVERSITIES, THE MEDICAL PROFESSION, LABTUR BOARDS AND SO ON. OFFICIAL MEMBERS WOULD CONTINUE TO ATTEND WITH THE RIGHT TO SPEAK AND PRESENT LEGISLATION. SUCH A PROCESS WOULD DIFFUSE POLITICAL POWER WIDELY IN THE COMMUNITY AND AVOID THE RISKS OF MANIPULATION.

EXECUTIVE COUNCIL

16. THE NEXT STEP WOULD BE TO PROVIDE A MEANS OF CREATING THE EXECUTIVE COUNCIL OTHER THAN BY SIMPLE APPOINTMENT.

CONSISTENT WITH THE PRINCIPLE OF DEVELOPING EXISTING INSTITUTIONS, THE EXECUTIVE COUNCIL MIGHT BE MADE UP AS FOLLOWS:

7 OR 8 MEMBERS ELECTED BY THE LEGISLATIVE COUNCIL FROM AMONG THEIR OWN NUMBER.

3 OR 4 EX OFFICIO MEMBERS FROM THE SENIOR CIVIL SERVICE AS AT PRESENT.

2 RESERVED SEATS , ONE FOR A REPRESENTATIVE OF ONE OF THE NOTE ISSUING BANKS AND ONE FOR A REPRESENTATIVE OF OVERSEAS COMPANIES ESTABLISHED IN HONG KONG.

THE POSSIBILITY OF A MINISTERIAL SYSTEM ALONG THE LINES OF THE UK CABINET, GIVING UNOFFICIAL MEMBERS OF EXCO RESPONSIBILITY FOR GOVERNMENT PORTFOLIOS HAS BEEN CONSIDERED. SUCH A PROPOSAL WOULD BE A RADICAL DEPARTURE FROM THE EXISTING INSTITUTIONS WHICH WOULD INTRODUCE AN ADDITIONAL ELEMENT OF UNCERTAINTY TO THE POLITICAL SCENE AT A TIME WHEN THERE ARE ALREADY MORE THAN ENOUGH UNCERTAINTIES. IT COULD NOT IN ANY CASE BE INTRODUCED UNTIL POLITICAL FIGURES CARRYING TERRITORY WIDE AUTHORITY HAD BEEN IDENTIFIED. AT LEAST AT THE FIRST STAGE OF REFORM, IT WILL BE PREFERABLE TO RETAIN THE PRESENT SYSTEM WHEREBY GOVERNMENT DEPARTMENTS ARE SUPERVISED BY SENIOR OFFICIALS OF THE GOVERNMENT SECRETARIAT (THE LOCAL EQUIVALENT OF PERMANENT SECRETARIES) WHO SUBMIT PROPOSALS TO THE EXECUTIVE COUNCIL FOR ENDORSEMENT, AMENDMENT, OR REJECTION, AND AS MEMBERS OF LEGISLATIVE COUNCIL ANSWER FOR GOVERNMENT POLICY AND SPONSOR BILLS.

GOVERNOR.

17. THERE IS NO PARTY POLITICAL PROCESS IN HONG KONG WHICH COULD GENERATE A CHOICE BETWEEN A FEW OBVIOUS CANDIDATES OF TERRITORY-WIDE POLITICAL STATURE OR A CHOICE BASED ON CANDIDATES WHO WILL THEMSELVES HAVE EMERGED FROM THE ELECTIVE PROCESS.

THE DANGERS OF SIMPLE DIRECT ELECTION TO THE POST OF GOVERNOR ARE THE SAME AS FOR THE LEGISLATIVE COUNCIL. TO SURVIVE, THE GOVERNOR WOULD NEED TO BE NOT ONLY SUFFICIENTLY INDEPENDENT TO GIVE ASSURANCE TO THE PEOPLE OF HONG KONG BUT ALSO ACCEPTABLE TO PEKING AS NOT HOSTILE TO THEIR INTERESTS. CANDIDATES FOR THE POST ARE MOST LIKELY TO BE FOUND IN LEGCO BUT THERE COULD BE OCCASIONS WHEN A CANDIDATE MIGHT BE FOUND NOT IN THE ELECTED BODIES BUT OUTSIDE, ON THE STRENGTH OF HIS OR HER STANDING IN THE COMMUNITY GENERALLY. THESE CONSIDERATIONS SUGGEST AN

ARRANGEMENT WHEREBY A LOCAL CONSULTATIVE PROCESS WOULD LEAD TO A CHOICE CONFIRMED BY ELECTION.

18. AN ELECTION FOR THE POST OF GOVERNOR BASED ON THE LEGISLATIVE COUNCIL ALONE WOULD NOT GIVE HIM SUFFICIENT AUTHORITY AND STANDING IN THE COMMUNITY, BUT THE BODY OF ELECTORS SHOULD NOT BE SO LARGE AS TO RULE OUT A PRIOR STAGE OF INFORMED CONSULTATION. A COLLEGIATE ELECTION BY ALL MEMBERS OF THE EXECUTIVE COUNCIL, LEGISLATIVE COUNCIL AND THE ELECTED MEMBERS OF THE REGIONAL COUNCILS AND DISTRICT BOARDS WOULD BEST SERVE THE PURPOSE. EVEN NOW, THIS ELECTORATE WOULD COMPRISE NEARLY 200 MEMBERS. IT WOULD GROW SUBSTANTIALLY IN THE NEXT FEW YEARS ASSUMING THE REVIEW MENTIONED IN PARAGRAPH 12 ABOVE RESULTS IN THE INCREASE IN THE NUMBER OF ELECTED MEMBERS OF DISTRICT BOARDS OVER THE NEXT DECADE: AND TO THE EXTENT THAT AN ELECTORAL COLLEGE OF PROFESSIONAL AND COMMERCIAL ASSOCIATIONS HAD BEEN ESTABLISHED TO GENERATE MEMBERS OF THE EXECUTIVE AND LEGISLATIVE COUNCILS.

19. ONCE THE COLLEGIATE ELECTIVE SYSTEM FOR LEGCO AND THE GOVERNOR WERE ESTABLISHED, IT WOULD BE FOR CONSIDERATION WHETHER THERE SHOULD BE A FURTHER MOVE TO DIRECT ELECTIONS BY ALL REGISTERED VOTERS. BUT THIS CONSIDERATION WOULD HAVE TO TAKE INTO ACCOUNT THE FACTORS SET OUT IN PARAS 11 AND 12.

20. THE GOVERNOR WOULD NEED A DEPUTY TO ACT IN CASE OF ILLNESS, ABSENCE OR DEATH. HE COULD BE ELECTED BY THE SAME PROCESS. THE DEPUTY WOULD BE A MEMBER OF THE EXECUTIVE COUNCIL AND PRESIDE IN THE ABSENCE OF THE GOVERNOR.

21. THERE WOULD NEED TO BE A CHANGE IN THE GOVERNOR'S RELATIONSHIP WITH THE EXECUTIVE COUNCIL, HE WOULD STILL CHAIR THE COUNCIL BUT AS CHIEF EXECUTIVE OF THE GOVERNMENT HE WOULD BE BOUND TO ACCEPT AND IMPLEMENT THE COUNCIL'S DECISIONS, UNLESS THERE WERE AREAS RESERVED FOR HIS PERSONAL DECISION BY LAW. SINCE NO GOVERNOR HAS GONE AGAINST THE ADVICE OF THE EXECUTIVE COUNCIL IN LIVING MEMORY THIS WOULD ONLY FORMALISE AN EXISTING SITUATION. MOREOVER THE EXECUTIVE COUNCIL WOULD ITSELF HAVE BEEN LARGELY ELECTED BY THE LEGISLATIVE COUNCIL AND WOULD THUS HAVE A POLITICAL LEGITIMACY IN ITS OWN RIGHT.

22. THE RELATIONSHIP OF THE GOVERNOR TO THE JUDICIARY WOULD BE SUBSTANTIALLY UNCHANGED.

CONSULTATION AND IMPLEMENTATION

23. AS MENTIONED ABOVE, THE ELECTIONS IN 1985 AND 1986 PROVIDE A READY MADE OPPORTUNITY FOR LAUNCHING THE FIRST STEP IN THE SEQUENCE OF WIDENING THE ROLE OF ELECTIONS IN THE TERRITORY. PARAGRAPH 13 REFERS TO THE REVIEW OF DISTRICT ADMINISTRATION WHICH

IS IN PROGRESS. THERE IS ALREADY STRONG EVIDENCE TO SUGGEST THAT A STRENGTHENING OF THE ELECTED ELEMENT WOULD BE SUPPORTED. AN ANNOUNCEMENT OF THE PROPOSAL TO INCREASE THE PROPORTION OF ELECTED MEMBERS IN DISTRICT BOARDS, COULD BE MADE IN EARLY 1984. THIS WOULD BE FOLLOWED BY PUBLIC DISCUSSION BEFORE NECESSARY CHANGES WERE MADE IN THE RELEVANT LEGISLATION IN THE MIDDLE OF THE YEAR. THE CREATION OF A SECOND REGIONAL COUNCIL WITH ELECTED MEMBERS, COULD BE PROPOSED EITHER AT THE SAME TIME OR IN THE GOVERNORS ADDRESS TO THE LEGISLATIVE COUNCIL IN THE AUTUMN OF 1984. THIS SECOND REGIONAL COUNCIL FILLS A GAP IN THE PATTERN OF LOCAL GOVERNMENT AND IMPLEMENTATION WOULD BE STRAIGHT FORWARD, SINCE THE ELECTIONS WOULD BE ON A FRANCHISE AND CONSTITUENCY BASIS ALREADY ESTABLISHED.

24. THERE WOULD THEN NEED TO BE A FURTHER ANNOUNCEMENT ON THE PROPOSED ESTABLISHMENT OF COLLEGIATE ELECTIONS TO THE LEGISLATIVE AND EXECUTIVE COUNCILS AND THE EVENTUAL ELECTION OF THE GOVERNOR. THIS TOO WOULD BE FOLLOWED BY A PERIOD OF PUBLIC DISCUSSION BEFORE THE NECESSARY LEGISLATION WAS INTRODUCED INTO THE LEGISLATIVE COUNCIL. THE INTRODUCTION OF THIS ELECTIVE PROCESS WOULD NEED TO BE PROGRESSIVE, IN ORDER TO CONSOLIDATE EACH STAGE BEFORE MOVING ON TO THE NEXT. IT COULD REASONABLY BE COMPLETED BY THE END OF THIS DECADE. SOME CHANGES COULD BE BROUGHT IN AT EARLIER STAGES, E.G. THE ELECTION BY THE LEGISLATIVE COUNCIL OF ITS OWN SPEAKER, AND THE INCREASING APPOINTMENT OF LEGCO MEMBERS FROM AMONG ELECTED MEMBERS OF DISTRICT BOARDS AND THE REGIONAL COUNCILS. THE FORMAL REQUIREMENT FOR THE GOVERNOR TO ACCEPT THE ADVICE OF THE EXECUTIVE COUNCIL COULD ALSO BE INTRODUCED AS SOON AS IT HAD BECOME AN ELECTED BODY ALTHOUGH IT WOULD BE NECESSARY TO RESERVE THE GOVERNOR'S AUTHORITY IN RESPECT OF DEFENCE, SECURITY AND EXTERNAL RELATIONS AS LONG AS HONG KONG REMAINED A DEPENDENT TERRITORY.

YOUDE

FUTURE OF HONG KONG

LIMITED

- ED/EKD
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AN ASSESSMENT OF THE CHINESE POSITION ON THE FUTURE OF HONG KONG
CHRONOLOGY OF THE TALKS

1. Agreement for the talks was reached during the Prime Minister's September 1982 visit to Peking. A joint statement was approved announcing that the two sides would hold talks through diplomatic channels with the common aim of maintaining the stability and prosperity of Hong Kong. The Chinese leaders made it clear in their talks with the Prime Minister in September 1982 that they sought recovery of sovereignty and administration over all Hong Kong after 1997. Deng Xiaoping indicated that he considered this to be the premise for negotiations.

2. From the first contacts on the subject in October 1982, the Chinese pressed for UK affirmation of the premise for entering formal talks. The British position was that HMG would be prepared to consider recommending a transfer of sovereignty to Parliament if administrative arrangements were made which would command confidence and would be acceptable to the people of Hong Kong: and that the maintenance of confidence required the maintenance of British administration. Sterile wrangling ensued until the Prime Minister's letter of 10 March 1983 to Premier Zhao Ziyang which slightly strengthened her original assurance on sovereignty. She said that provided agreement could be reached between the UK and Chinese Governments on administrative arrangements which would guarantee Hong Kong's future prosperity and stability and would be acceptable to Parliament and to the people of Hong Kong as well as to the Chinese Government, the Prime Minister would be prepared to recommend to Parliament that sovereignty over the whole of Hong Kong would revert to China. The Chinese then agreed to open formal talks, but argument about the agenda caused further delay. The compromise reached placed post-1997 arrangements as the first item followed by arrangements in the period up to 1997 and finally questions relating to transfer of sovereignty.

3. During the first four rounds of talks (July to September) the British side argued steadily for continuing British administration, whilst the Chinese demanded explicit UK affirmation of agreement to transfer sovereignty and all associated administrative rights over

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the whole of Hong Kong. Breakdown of the talks threatened by the end of September. Following consultations in London on 6-8 October the text of a message from the Prime Minister, delivered on 14 October, was agreed. The Prime Minister proposed, in pursuance of her earlier letter and without prejudice to any final agreement, that the two sides should examine the Chinese proposals to see if on that basis arrangements of lasting value for Hong Kong could be built. If the resulting package was satisfactory the British Government was prepared to recommend it to Parliament. It was subsequently made clear to the Chinese that for the purposes of discussion HMG were no longer insisting on British administration as a prerequisite.

4. Deep Chinese suspicions of British motives remained. The Chinese were then formally told on 28 November that in pursuing the discussions proposed in the Prime Minister's message of 14 October, HMG envisaged no link of authority or accountability between Britain and Hong Kong after 1997, would make no proposal conflicting with the Chinese premise and saw the UK role as one of assistance not authority. The first substantial discussion of detail was thus made possible at the 7/8 round.

But if this was subject to the condition that a satisfactory agreement or defined close should be reached

THE CHINESE POSITION

5. The following are the most important elements in the Chinese position. it is clear that they have been laid down from the top and that they are basic principles for the Chinese.

- (a) sovereignty and the right of administration over the whole of Hong Kong must revert to China by 1997. British administration or co-administration in any form are unacceptable:
- (b) After 1997 Hong Kong will be established as a Special Administrative Region (SAR) of China under Article 31 of the Chinese constitution. The National People's Congress (NPC) will lay down a basic law for the Hong Kong SAR under that article.
- (c) The Chinese 12 point plan (see appendix A) will form the basis of this law.

In addition the Chinese have made it clear that their policies and guidelines for Hong Kong after 1997 will be announced publicly not later than September 1984. The Chinese hope for agreement with the UK before then, but failing that will issue a unilateral statement.

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within the terms of the instructions A 3qf6
which Eric saw when
the plan noted No. 10.

6. Prior to the 7th round (7/8 December) deep Chinese mistrust of British ambitions and intentions regarding Hong Kong was clearly evident. These suspicions seem to have been largely dissipated by the Ambassador's clarificatory statement of 28 November about the future British role. As a result the rigid Chinese position of insistence upon explicit affirmation by the British side of the Chinese premise that sovereignty and the power of administration would revert to China in 1997 has been relaxed. The 7th round of talks showed the first real discussion of detail of the Chinese plan.

7. A number of points have become clearer as a result of the last round and discussions since then:

- (a) The Chinese 12 point plan as announced by Yao Guang on 14 November is at appendix A. A note detailing additional elements of Chinese policy as enunciated in subsequent discussion is at appendix B.
- (b) The Chinese have offered substantial comment on the first three working papers submitted. Inevitably not all the detail has been to our liking, but a number of points in our working papers have been accepted. (A list of working papers so far submitted is at appendix C and the texts of the first three working papers identifying those elements so far accepted by the Chinese at appendix D). The Chinese have told us that our working papers are helpful and have promised comment on outstanding ones. The charge that our working papers contained 'excessive detail' had not been repeated and we now have a good chance of discussing detailed arrangements over a wide area of Hong Kong's various systems. The Chinese are no longer drawing their earlier sharp distinction between those matters relating to Hong Kong's future which they considered their internal affairs and on which they will listen to HMG's comments but decide for themselves and those more limited areas affecting British interests in Hong Kong over which more genuine negotiation would be possible. Zhao Ziyang has told the Ambassador that anything can be discussed if it does not conflict with the premise, and that points of agreement will be reflected in the basic law.
- (c) The Chinese have informally drawn our attention to Yao Guang's 8

SECRET

SECRET

December statement that it was not impossible that current practice in those areas for which the future SAR would be responsible could continue unchanged after 1997 until the SAR Government decided otherwise. This too is an important improvement on the earlier Chinese position that such discussion was impossible because all relevant decisions were for the future SAR to take. It may be possible to develop this.

MODIFICATIONS TO THE CHINESE POSITION

8. Since September 1982 the Chinese side, while remaining wholly inflexible on basic principle, has nevertheless modified its stance in response to UK argument on a number of occasions: The Prime Minister's letter of 10 March persuaded the Chinese to enter formal talks although the Chinese demand for explicit affirmation of their premise was not met:

- (b) The Chinese revised their original position on the agenda to meet our wishes:
- (c) The Prime Minister's message of 14 October and the clarification about the future British role delivered on 28 November made possible detailed discussion at the seventh round despite the fact that the Chinese had earlier maintained that the British side should first explicitly affirm the Chinese premise.
- (d) It is impossible to assess the exact degree to which the Chinese may have modified their ideas on detailed arrangements as this detail was not made known to us before we expressed our own ideas. However discussion of the first three working papers submitted shows that a considerable number of points in those papers now figure in the elaborated Chinese plan. It is reasonable to suppose that this has to some extent been influenced in a direction favourable to us.
- (e) Recent contacts, though not yet entirely conclusive, tend to show that the Chinese are relatively open-minded and receptive to our ideas so long as our proposals do not conflict with fundamental Chinese principles. Zhao Ziyang said this explicitly. Recent discussion has shown signs of flexibility, eg over continuity in the civil service and appointment of judges.

SECRET

DEGREE OF FLEXIBILITY IN THE CHINESE POSITION

9. The Chinese are publicly committed to an announcement of their policies in September 1984. Some announcement at that time is now inevitable. Its precise terms will no doubt depend on how much progress is made in the talks in the meantime. But the Chinese clearly envisage announcing their 12 Point Plan in September. They are also keen to reach a bilateral agreement by then. There are however indications that failing conclusion of such an agreement, the talks could continue beyond the September announcement.

10. The Chinese have made clear that the basic elements in their position (see para 5 above) are matters of principle and not negotiable. All the evidence suggests that they mean this and our assesment is that they will not modify these basic elements. However there may well be scope for modification of some of the detail contained in the 12 Point Plan and subsequent Chinese explanations of its implications. We are however unlikely to establish this until the Chinese have reacted to our counter-suggestions. This process may take some rounds of discussions. This process may take some rounds of discussion. We are still at an early stage in that process.

IMPLICATIONS OF CONFRONTATION

11. In our judgement there is no possibility that the Chinese would back down on their principles if faced with confrontation. Indeed it would be political suicide for any Chinese leader to be seen to yield to British pressure on these points, to which the Chinese are already publicly committed. Deng Xiaoping has said repeatedly that he is not prepared to be another Li Hungzhang (the eminent Chinese statesman who signed the New Territories lease). If he were to give way it is questionable whether even he could survive. We see no prospect of any successor to Deng, whether supporter or opponent of his policies, taking a softer line on Hong Kong.

12. These considerations rule out any Chinese concessions resulting from confrontation. On the contrary confrontation would be likely to produce a hardening of the Chinese position to the point of total rigidity. Hostile Chinese propoganda would be resumed with

SECRET

more intensity and there is a strong likelihood that the Chinese would formally announce their proposals well before the September 1984 date, quite possibly immediately. In that event the scope for negotiations would be further reduced since the Chinese would almost certainly refuse to retreat from any points which had been included in a unilateral announcement. Confidence would collapse with resultant consequences for the economy. A considerable outflow of Hong Kong inhabitants would ensue. Local Government would become increasingly difficult. If the situation in Hong Kong became unstable, there is a chance that the Chinese would carry out their threat to take control of the territory before 1997.

13. The implications of a confrontation are therefore grave. If the outcome of the negotiations was unsatisfactory, these implications would have to be balanced against the immediate consequences involved in accepting an agreement which did not command confidence in Hong Kong. These consequences would themselves include a rapid decline in the economy, serious and increasing difficulty in administering the territory and accelerated preparations for departure on the part of those people in a position to leave.

SECRET