



Mr Clift, HKD

FUTURE OF HONG KONG: BRITISH CONSTITUTIONAL REQUIREMENTS

1. This morning we discussed the note attached to your submission of 21 March about Chinese obstacles.
2. Paragraph 2(a) moots the idea that we could bring our agreement with the Chinese into force on signature, and only after that legislate for a transfer of sovereignty. The second obstacle to that course which is mentioned is in my view insuperable, ie that there is a constitutional requirement for legislation, divesting the United Kingdom of sovereignty over the ceded territories, to precede the entry into force of any agreement which acknowledges that China will have sovereignty over those areas.
3. It will be essential, before committing ourselves to recognise Chinese sovereignty over the ceded areas, to obtain the necessary authority by Act of Parliament. We have planned to seek that authority between the establishment of the text of the agreement and its ratification.
4. I have hitherto envisaged an Act which in substance would say in Section 1 that with effect from 1 July 1997 Her Majesty shall cease to have sovereignty or jurisdiction over any part of Hong Kong. The Act would also probably need to confer some power to appoint, eg/Order in Council, a date for the coming into operation of that Section, so that such date could be made to coincide with the date on which ratifications of the agreement were subsequently exchanged.
5. A variation, which I mentioned this morning, might be to seek an Act which would enable Her Majesty by Order in Council to declare that with effect from 1 July 1997 She would cease to have sovereignty or jurisdiction over Hong Kong.
6. Parliament will no doubt expect to be given, before passing an Act as described in paragraph 4 or 5 above, the fullest possible account of the terms and conditions upon which Hong Kong will become part of China. The best course would be to show it the text of the agreement and all related documents, including the Basic Law, when presenting the Bill. Whether, and if so to what extent, Parliament might accept less are questions for political assessment and judgment.

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7. It seems to me likely that, as a condition for accepting the variation in paragraph 5, Parliament would insist that any such Order in Council should be subject to approval or annulment by Parliament. In that event we could not safely allow any undertaking to recognise Chinese sovereignty to come into operation until after Parliament had decided to approve the Order, or not to annul it. This variation would in that case achieve nothing. Even if Parliament were prepared to pass an Act which allowed such an Order to be made without being subject to any kind of Parliamentary control, we could still not with complete safety allow our international undertaking to come into force immediately thereafter, because there would still always be the risk that the Privy Council would not subsequently adopt the necessary Order in Council. I can, however, imagine circumstances in which you might feel able to recommend that Ministers should take that risk.

8. In short, I do not myself see the procedure in paragraph 5 as offering any scope for quick legislation, followed by speedy ratification of a sketchy agreement. Its only likely value would be in a situation where we could show Parliament the text of a full and a detailed agreement with the Chinese, and could persuade them that such few details as remained to be worked out could safely be left to the judgment of the Privy Council, without any further form of Parliamentary control.

*F. Burrows*

F Burrows  
Legal Counsellor

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Copies to:

✓ Sir P Cradock  
Dr Wilson  
Mr Thomson, FED  
Mr Hum, HKD  
Mr Powell, HKD