



FCS/86/016

SECRETARY OF STATE FOR THE HOME DEPARTMENTHong Kong Nationality Order in Council

I am becoming seriously concerned about the situation which is developing around the Hong Kong Nationality Order in Council. You are I think aware of the general background.

A tremendous head of steam has now built up in Hong Kong on this issue. The Hong Kong Legislative Council, supported by the Hong Kong Government, have made three requests :

- (a) that we should grant British citizenship to non-Chinese BDTCs if they become stateless;
- (b) that we should grant British citizenship to some 500 former servicemen who fought in the Second World War; and
- (c) that we should agree to put an endorsement in BN(O) passports indicating that holders do not require a visa or entry certificate to visit the UK.

As you know the senior Unofficial member of the Legislative Council, Miss Lydia Dunn, has written to all Members of Parliament about these requests. The Hong Kong Council of Indian Associations have also written about the non-Chinese BDTCs, and have sent a small delegation to the UK which has in recent days achieved considerable publicity for their cause.

/Debates have



Debates have now been held in both Houses. You will, I am sure, have received reports on these from David Waddington and Simon Glenarthur. In the Commons almost every speaker urged the Government to make concessions, though a few on the Government side suggested that to concede British citizenship to the ethnic minorities would be wrong at this stage. In the Lords, no-one spoke in favour of the Government : most of the speakers favoured concessions on all three of the Legislative Council requests, with particular emphasis on the extension of British citizenship to the ethnic minorities.

If we make no concessions on any of these proposals, the Governor of Hong Kong has advised that there will be an open confrontation between HMG and the Hong Kong Legislative Council. We have managed, not always easily, to come through the last three difficult years in Hong Kong, including the period of the conclusion of the agreement, without such a confrontation : to fail now would be very damaging, not least to the Hong Kong Government, and it would undermine what we have achieved so far by the agreement. If we make no moves, the Unofficial members of the Hong Kong Executive and Legislative Councils will not give up : they will send a delegation here to lobby the Prime Minister, and they will lobby extensively in Parliament against the Order. Since it cannot be amended in Parliament when we put it forward for final approval, they will ask for its rejection. I therefore think that we need to consider what moves might be possible.

/The Governor



The Governor of Hong Kong has advised that of the three UMELCO requests, the one which is held most strongly is that relating to the passport endorsement. If this were met, but the other two requests were not, it is unlikely that there would be a confrontation between the Legislative Council and HMG. From this point of view therefore, the crux is the question of the passport endorsement. This is an area where I think that a move should be possible. David Waddington and Tim Renton discussed this possibility before the debates, and the former most helpfully agreed to take the line in the debates that we would keep looking for an acceptable formula.

I accept that it would not be right to put an endorsement in a passport which gave a misleading impression that the holder was not subject to the immigration rules. However I believe that Hong Kong would be satisfied with an endorsement which read :

"The holder of this passport does not require an entry certificate or a visa to enter the UK as a bona fide visitor".

This is a correct statement of fact. There is also a clear implication that the bona fide status of visitors can be checked by immigration officers. In order to make sure that there was no confusion among the holders of such passports, I would propose that a leaflet be issued at the same time as the passport advising the holder exactly what his immigration status with regard to the UK is. This leaflet could also explain the advantage of obtaining an entry certificate, so that there would be no suggestion of discouraging visitors from Hong Kong from using this facility.

/It is clear



It is clear that nothing less than an endorsement in the passport will be sufficient to prevent a confrontation between the Legislative Council and HMG. There may be some room for adjustment of the formula of this endorsement, but I am bound to say that it will not do any good in Hong Kong unless it makes clear that prior entry clearance is not necessary for bona fide visitors.

I understand that the main argument which has been advanced against this kind of endorsement is that, because it could not be removed from the passport, it would commit future governments not to introduce a visa or entry certificate requirement for visitors from Hong Kong. I do not find this argument convincing. The logical conclusion would be that no government could ever put any endorsement in a passport in case it made it more difficult for a future government to change the law or practice : this would apply equally for instance to right of abode endorsements.

The imposition of a visa or entry certificate requirement for visitors from Hong Kong would be difficult enough at any time : as you know, in response to enquiries from MPs about whether visas would be required, we have told them firmly that BN(O)s would be subject to the same rules as BDTCs are subject to now. But if there ever were a crisis, such as occurred with the Tamils last year, I do not think that the use of the endorsement I propose would make it significantly more difficult for a future government to introduce a visa requirement for BN(O)s from Hong Kong. It would be necessary to announce that in view of the crisis the rules were being changed and that notwithstanding the endorsement visas would be required.

/To sum up



To sum up on this point I think that by agreeing to this endorsement we would lose nothing, and would stand a very good chance of avoiding the worst of the confrontation in Hong Kong which now threatens.

I can see that the moves which are requested for the ethnic minorities and the ex-servicemen pose much greater problems. From the strictly Hong Kong point of view, given the Governor's advice, I would not have felt justified in pressing you to make concessions on them. However I am becoming concerned about the Parliamentary situation, particularly in the House of Lords. Although UMELCO may acquiesce in failure to meet these requests, they are unlikely to drop them publicly. If the Order, which is essential to the implementation of the nationality provisions of the Sino-British agreement, were to suffer a defeat in the Lords, we should be severely embarrassed vis-a-vis the Chinese Government. It would also be very damaging to our relationship with Hong Kong. I therefore propose that we should set in hand urgently more detailed studies of the implications of concessions in the two areas of the ethnic minorities and the ex-servicemen. I understand that the Hong Kong Government are prepared to send officials to London to assist in this. At the very least, even if we decide that no concessions are possible, this will demonstrate clearly the Government's seriousness in reconsidering the position following the two debates.

I hope very much that you can agree to these proposals.

/I am

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I am copying this letter to the Prime Minister,
Members of OD(K), John Wakeham and Lord Denham.

A handwritten signature in dark ink, appearing to read 'G. Howe', is written over a faint rectangular stamp.

GEOFFREY HOWE

Foreign & Commonwealth Office

22 January 1986

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