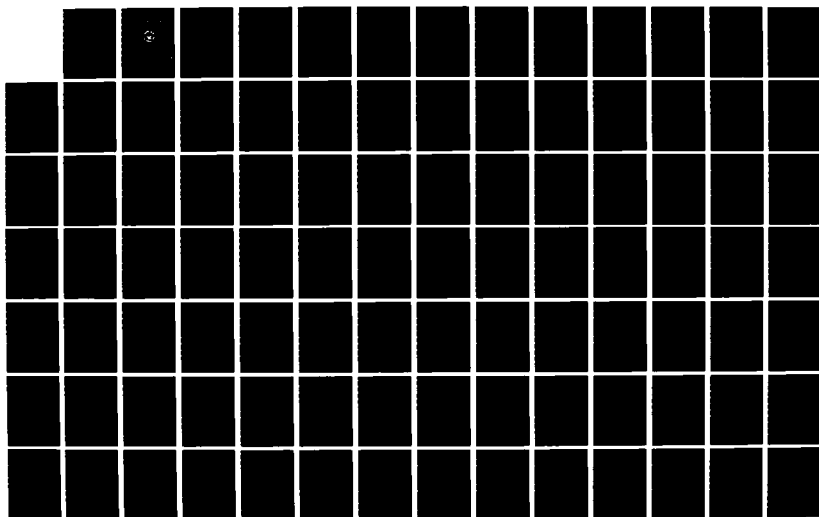


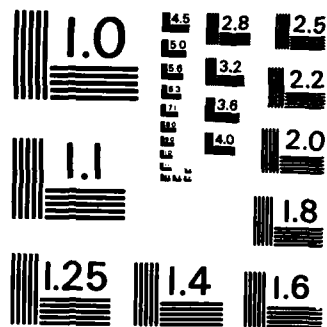
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THESIS

RETROCESSION OF HONG KONG

by

Charles Weston Cunningham

June 1985

Thesis Advisor:

C. A. Buss

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Retrocession of Hong Kong

by

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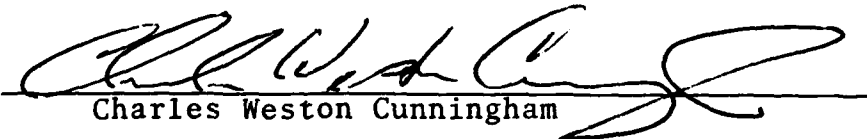
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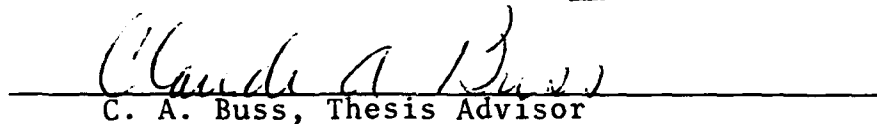
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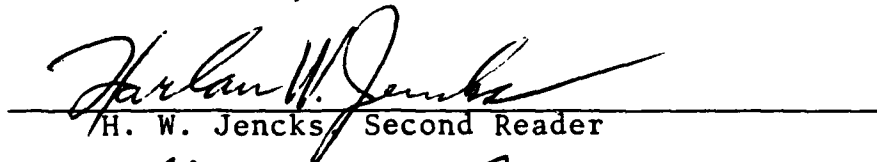
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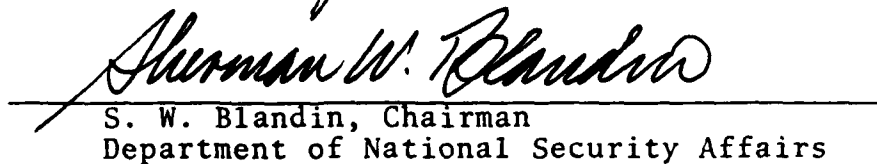
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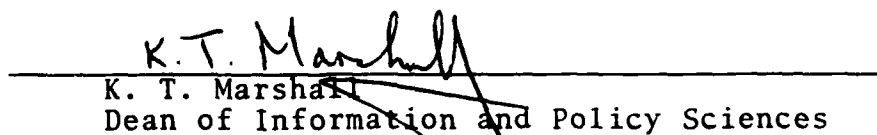

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ABSTRACT

The People's Republic of China and Great Britain have set a precedent in negotiating the peaceful return of Hong Kong's sovereignty and administration to China. This thesis examines the political, economic and social forces operating within China, Hong Kong and Great Britain to determine the future success of the Joint Declaration in maintaining Hong Kong's stability and economic prosperity. It also investigates the commitment of all three parties to the future success of the Hong Kong Special Administrative Region (SAR). Although optimistic about the success of the Hong Kong SAR, it recognizes the need for continued pragmatism and restraint by Beijing and Hong Kong. The Hong Kong people must be committed to maintaining the SAR's independence by avoiding any radical changes in their political or social systems that would threaten their prosperity and stability.

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I. INTRODUCTION

The retrocession of Hong Kong to China in 1997 is a significant historical and political event with wide ranging impact upon the future prosperity and security of the region. Its significance goes beyond the simple return of territory to the People's Republic of China. Instead, it has regional and global implications. While this retrocession redresses three of the remaining "unequal treaties," it poses a serious challenge to China: the successful management of Hong Kong ensuring its economic prosperity and vitality. The Joint Declaration on Hong Kong establishes the legal framework for continued prosperity and stability in Hong Kong to the year 2047 under Chinese leadership. Importantly, this declaration with its three annexes makes up a legally binding formal international agreement.¹ It is an agreement ratified by both countries and committing them to the future of Hong Kong.

The peaceful transfer of sovereignty from the United Kingdom to the PRC promised in the Joint Declaration is important to all sides. The future prosperity of Hong Kong cannot be guaranteed without the preservation of Hong Kong's unique freedoms, legal system and way of life. China has

¹Great Britain, Foreign Office, Draft Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Future of Hong Kong, 26 September 1984, p. 5.

promised to maintain Hong Kong's rights and freedom until 2047. The Joint Declaration states:

The Hong Kong Special Administrative Region Government shall maintain the rights and freedoms as provided for by the laws previously in force in Hong Kong, including freedom of speech, of the press, of correspondence, of travel, of movement, of strike, of demonstration, of choice of occupation, of academic research, of belief, inviolability of the home, the freedom to marry and the right to raise a family freely.²

These promises are wide-ranging, comprehensive and essential for the maintenance of investor confidence in the future. China's greatest source of foreign exchange is Hong Kong, with estimates varying from twenty-five to forty percent of China's total foreign exchange earnings.³ If Hong Kong is to continue producing such high levels of foreign exchange, investors and manufacturers must have confidence in the stability of the Hong Kong market.

Hong Kong has one of the finest harbors in the Orient. This makes it well suited for the entrepôt role in Southern China. The British established Hong Kong as a commercial center for British operations in China after the Opium War (1842). Hong Kong's economic importance declined after the opening of China and the development of Shanghai as the commercial and manufacturing center of China and by the late 1880's it had been eclipsed by Shanghai. Hong Kong remained

²Ibid., p. 23

³Lucian W. Pye, "The International Position of Hong Kong," The China Quarterly 95 (September 1983): 461.

competitive due to its excellent geographic location on the trade routes and the security and stability guaranteed by British rule. This security promoted Hong Kong's development as the commercial headquarters of the major British and Western trading firms and the growth of a Chinese community adept at business and trade. Shipping and commerce under both the Europeans and the Chinese in Hong Kong ensured the colony's continued success as an entrepôt of China.

After the collapse of the Nationalist Government and the victory of the Chinese Communists, Hong Kong regained its position as the premier entrepôt and commercial center for the China trade. Since 1949, Hong Kong has developed into a major manufacturing center as well as entrepôt. The value of its goods and services has increased significantly since then and was worth \$31.9 Billion (U.S.) in 1984.⁴ There is no reason why this should alter significantly with the return of Hong Kong to China. Hong Kong's goods and services will still demand a share of the international market, thus continuing to earn foreign exchange for China. China will continue to earn a large portion of its foreign exchange through Hong Kong and will acquire experienced international businessmen and technicians needed to help guide China's modernization program. Following the retrocession of Hong Kong, China must practice moderation and self-restraint and abide by the Joint

⁴Hong Kong and Shanghai Banking Corporation, Economic Report (April 1985): 2.

Declaration if it is to retain the support and confidence of the Hong Kong business community. It is expected that Hong Kong's major role in the development and modernization of China will be as the major entrepôt of China. Hong Kong surpasses all other Chinese ports with its highly developed port facilities, transportation system, communications and financial facilities.

China, the United States and Japan have considerable economic interests in Hong Kong. They trade and invest heavily with the territory and are responsible for fifty-five percent of Hong Kong's trade.⁵ This investment commits them to its future prosperity. This commitment could change over time, especially with the quick amortization of investment in Hong Kong, but the trend appears to be increasing rather than decreasing. There has been continued growth in both trade and investment since 1982 and especially since the signing of the Joint Declaration, thus demonstrating renewed investor confidence in Hong Kong's future. There is good reason for this confidence, the history of Hong Kong since 1949 has demonstrated

⁵Hong Kong's external trade figures for the U.S., P.R.C., and Japan in 1984, (all figures in U.S. dollars):

Total trade with U.S.: \$12.5 Billion; Imports from U.S.: \$3.125 Billion; Domestic Exports to U.S.: \$7.87 Billion; Re-exports to U.S.: \$1.53 Billion;

Total Trade with PRC: \$10.9 Billion; Imports from PRC: \$7.15 Billion; Domestic Exports to PRC: \$1.45 Billion; Re-exports to PRC: \$2.31 Billion;

Total Trade with Japan: \$8.0 Billion; Imports from Japan: \$6.75 Billion; Domestic exports to Japan: \$0.66 Billion; Re-exports to Japan: \$0.59 Billion; from Hong Kong, Census & Statistics Department, Hong Kong in Figures, 1985 ed., p. 3.

the CCP's restraint and determination in maintaining Hong Kong's prosperity to the mutual benefit of China and Hong Kong.

There are several questions that must be answered regarding the retrocession of Hong Kong to the People's Republic of China. These questions include: 1) What will the future hold for Hong Kong under the Joint Declaration? 2) Will the PRC abide by the provisions of the Joint Declaration? and 3) Will the PRC allow Hong Kong to govern itself within the framework of the Joint Declaration without interference? To answer these questions this thesis will examine the political, economic and social forces operating within China, Hong Kong and Great Britain. It will also investigate the commitment of all three parties to the future success and prosperity of the Hong Kong Special Administrative Region.

been accomplished if it had not been for the New Territories lease which gave Hong Kong the land necessary for industrialization and housing for the flood of refugees.

The 1956 riots were the result of clashes between Communist and Kuomintang supporters during the October First and "Double Ten" celebrations. The demonstrators changed the focus of their attacks from each other to all foreigners in the colony. The Hong Kong authorities moved quickly against the demonstrators and the major disorders were suppressed by midnight on 11 October 1956.²⁹ The riots and the British response brought about Chinese charges that the British were allowing anti-Communist (KMT) elements to agitate and provoke China. After the 1956 riots Premier Zhou Enlai warned Britain that China would not ignore or allow such disturbances in the future.³⁰ This episode demonstrated to the British the need for closer surveillance of possible troublemakers, including KMT agents and Chinese gangsters, and a quicker response to trouble so as to avoid any possibility of intervention by China.

The 1967 riots were the result of spillover from the Great Proletarian Cultural Revolution in China. The heaviest anti-British rioting in Hong Kong occurred in May and June 1967,

²⁹"3,000 Arrested in Hongkong after Riots," Times (London), 15 October 1956, p. 8; "Secret Societies' Part in Riots," Times (London), 17 October 1956, p. 8.

³⁰"Chou Cautions British on Hong Kong Rioting," New York Times, 15 October 1956, p. 6.

this change ushered in the peaceful resolution of the Hong Kong problem.

A. THE 1950's and 1960's

These decades were turbulent in China but they did not affect Hong Kong's growth and development. The domestic turmoil in China temporarily spilled over into Hong Kong in 1956 and 1967. The unrest generated by the Chinese Communist Party in Hong Kong was quickly quelled in 1956 and silenced by midsummer in 1967. For the sake of foreign exchange earnings, the central leadership of the CCP appeared committed to keeping Hong Kong free of the violence and turmoil suffered by the rest of China.

Hong Kong changed dramatically during this time period. The Korean War and the embargo of China by the Western world forced Hong Kong to change from China's entrepôt into a "Newly Industrializing Country" (NIC).²⁸ The industrialization of Hong Kong was assisted by two factors, the flight of capital out of China and the flood of Chinese refugees escaping to Hong Kong. These factors combined in Hong Kong to produce a dynamic business environment. The cheap labor and ready capital and expertise led to the growth of Hong Kong's textile and clothing industry, electronics assembly and other light industries. Much of this industrialization could not have

²⁸Melinda J. Parsons, ed., Hong Kong 1984 (Hong Kong: Hong Kong Government Publications, 1984), p. 248.

Chiang Kai-shek succeeded in getting the United States and Great Britain to relinquish their special rights in China. Britain refused to give up its claim to Hong Kong but in the midst of World War II it did, along with the United States, give up extraterritoriality, the right to station troops in China and all other land rights in China.²⁵

The official Chinese position on Hong Kong was that it is a "problem left over by history" that should be resolved peacefully when the time is ripe.²⁶ This position was reiterated several times over the past forty years from Mao Zedong's statement in 1959 that China was in no "hurry to take it back" to the official pronouncements on Hong Kong in late September 1982.²⁷ As the PRC became more involved economically in Hong Kong during the 1970's and Anglo-Chinese relations were normalized in 1972, China softened its stand on Hong Kong by 1979. These moves opened the door to the Sino-British negotiations on the future of Hong Kong.

This chapter will look at Chinese policy toward Hong Kong, how this policy has changed over the last forty years and how

²⁵Chiang Kai-shek, China's Destiny (New York: Roy Publishers, 1947), pp. 151-154.

²⁶Huang Hua, United Nations, Letter Dated 8 March 1972, (U.N. Document A/AC. 109/396).

²⁷Joseph Y. S. Cheng, ed., Hong Kong In Search of a Future (Hong Kong: Oxford University Press, 1984), p. 45; Christopher Wren, "China Calls Hong Kong Pacts Invalid," New York Times, 1 October 1982, p. 3.

III. CHINESE POLICY TOWARDS HONG KONG (1949-1980)

The People's Republic of China has maintained a tolerant and pragmatic position towards Hong Kong and the British role in administering the territory since the Communist victory in 1949. There have been periodic spurts of unrest and turmoil in the 1950's and 1960's, but they were controlled and kept limited in scope by both the CCP leadership and the Hong Kong authorities. The riots of 1956 and 1967, while covered exhaustively by the world press, did not affect the colony's economic performance. In fact, productivity and trade increased ten percent in August 1967, the height of Communist agitation.²³ As Hong Kong moved into the 1970's, China increased its economic role in Hong Kong expanding into the industrial and retail sectors, as well as banking, so that by 1984, Chinese investment in Hong Kong was estimated at three to four billion U.S. dollars.²⁴ This investment position gives the Chinese a large stake in maintaining Hong Kong's prosperity and stability.

The Communists were not the first to call for an end to the Unequal Treaties. Sun Yat-sen spoke against them and

²³"Communists unable to halt Hongkong's economic growth," Times (London), 15 September 1967, p. 24.

²⁴United States, Consulate General Hong Kong, Hong Kong Investment Statement, 23 November 1984, p. 4.

Hong Kong's total land mass and has become the major resettlement area in Government efforts to relieve urban congestion.

In 1982, the impending expiration of the New Territories lease forced the United Kingdom to open negotiations with the People's Republic of China on the future of Hong Kong. The British and the Chinese realized it would be impossible to maintain the prosperity and stability of Hong Kong if its territorial integrity were disturbed. Britain realized that China would not renew the lease, and without a valid lease after 1997 it would be bound to return the leased lands to China without any agreement safeguarding the future of the territory.

and the imperialist competition in China, gave Britain the opportunity and justification for extending Hong Kong's boundaries.

The Convention Respecting an Extension of Hong Kong Territory was negotiated and signed in Beijing on 9 June 1898. This treaty increased Hong Kong's land area by 365.5 square miles and guaranteed continued Chinese jurisdiction within the city of Kowloon. The lease's terms were for ninety-nine years, terminating at midnight 30 June 1997. On 20 October 1898, the British Court issued an Order in Council which incorporated the leased territory, with the exception of the city of Kowloon, into the Colony of Hong Kong. Fifteen months later an Order in Council was issued that took away Chinese jurisdiction in the city of Kowloon stating that it had been "found to be inconsistent with the military requirements for the defence of Hong Kong."²² These actions bound the New Territories to the ceded portions of Hong Kong thus making it extremely difficult to give up the lease without affecting all of Hong Kong.

The integration of Hong Kong Island, Kowloon and the New Territories into a single entity makes it impossible to separately return the New Territories to China. The leased lands have become extremely important to the operation and survival of the Crown Colony. It makes up ninety percent of

²²Godfrey E. P. Hertslet, Hertslet's China Treaties vol. 2, (London: His Majesty's Stationary Office, 1908), p. 750.

Asia and as the entrepôt of China. Shipping and commerce expanded as the volume of Asian trade grew. Hong Kong became the major stopping point for repairs and stores as well as the largest transshipment point on the China coast.¹⁸

The growth and prosperity of Hong Kong contributed to the pressure for expansion of the colony's boundaries. The military felt that Hong Kong could not be defended if they did not control the islands and mainland overlooking the Colony and the harbor entrances.¹⁹ The commercial interests desired less interference from the Chinese authorities in Kowloon and the removal of the Chinese customs depots to facilitate the smuggling of opium within extended boundaries.²⁰ These two special interests groups were operating within the context of Britain's overall policy of attempting to maintain the territorial integrity of China against the efforts of Japan, Russia, Germany and France to acquire its territory. China had become more adept at foreign policy and international law but was still susceptible to gunboat diplomacy.²¹ The combination of military and commercial interests in Hong Kong,

¹⁸George B. Endacott, An Eastern Entrepot (London: Her Majesty's Stationary Office, 1964), pp. ix-xv.

¹⁹Wesley-Smith, pp. 11-15.

²⁰Ibid., pp. 18-20.

²¹Anthony Dicks, "Treaty, Grant, Usage or Sufferance? Some Legal Aspects of the Status of Hong Kong," The China Quarterly 95 (September 1983): 447-448; Wesley-Smith, pp. 21-28.

By 1858, all parties had agreed upon the terms of the Treaty of Tientsin but the Chinese refusal to allow its ratification in Beijing forced a second phase to the Second Sino-British War. A large Anglo-French force assembled in Hong Kong and in October 1860, entered Beijing as conquerors. The Convention of Peking ended the conflict and forced further concessions from the Chinese.

The growth of Hong Kong as the center of British trade and shipping in the Far East, and the steady influx of Chinese laborers and merchants, led to the need for more land. This need became even more apparent during the assemblage of the Anglo-French invasion force in 1860. The British Commissioner in Guangzhou, Harry Smith Parkes, negotiated a perpetual lease of the Kowloon peninsula and Stonecutters Island with the Governor-General of Guangdong and Guangxi provinces on 20 March 1860. Article VI of the Convention of Peking superceded the lease by ceding the territory to Great Britain for incorporation into the Colony of Hong Kong. The Convention of Peking also confirmed the provisions of the Treaty of Tientsin (1858), in which Article I reaffirmed the validity of the Treaty of Nanking. Thus the Chinese recognized and affirmed the British possession of Hong Kong Island.

C. NEW TERRITORIES LEASE

Between 1860 and 1898 Hong Kong prospered and developed into the headquarters of Western commercial trade in East

greater freedom along the China coast, did not satisfy the needs of the British merchants and officials. Both groups wanted the legalization of the opium trade, protection from the vagaries of Chinese officials, greater access to the interior of China and diplomatic representation at the Qing Court. The Treaty of the Bogue (1843) settled several of the trade problems and granted extraterritoriality, but it did not resolve the major problems.

Demands for change increased during the 1850's as xenophobia and anti-foreign acts increased in Guangzhou. Ye Mingchen, the Governor-General of Guangdong inflamed anti-foreign sentiments among the Cantonese and incited attacks upon the British.¹⁶ The rising tide of xenophobia led to the trial and execution of a French priest at Silin in mid-1856, a direct violation of the Imperial edicts of 1844 and 1846 promising toleration towards Christian missionaries in China.¹⁷ Matters were made worse by the Chinese seizure of the *Lorcha Arrow*, a British-registered Hong Kong Chinese-owned boat in violation of the Treaty of the Bogue. Britain and France used these incidents to start hostilities against China for the purpose of gaining further concessions in a new treaty.

¹⁶Fairbank, pp. 277-279.

¹⁷Holt, pp. 192-193.

supported the occupation and development of Hong Kong despite Lord Palmerston's low opinion of the island's value as a future base for British Far Eastern operations.¹³ Pottinger succeeded in extracting the Treaty of Nanking from the Qing Imperial Commissioner Yijing after a series of military operations that threatened the security of Nanking.¹⁴

The Treaty of Nanking ended the Opium War between China and Great Britain. This treaty also granted several other concessions to Britain besides the ceding of Hong Kong. These concessions included the opening of five treaty ports to British trade, the abolition of the co-hong system of trade and the payment of an indemnity of twenty-one million silver dollars.¹⁵ It also started the process of altering the traditional basis for Chinese foreign relations. In theory, foreign states were to be treated as equals and not tributary states.

B. CONVENTION OF PEKING

The need for a new treaty between China and Great Britain became obvious shortly after the signing of the Treaty of Nanking. The Treaty of Nanking, while granting the British

¹³Endacott, A History of Hong Kong, pp. 19-21.

¹⁴Ibid., pp. 21-22; Paul H. Clyde and Burton F. Beers, The Far East: A History of Western Impacts and Eastern Responses, 1830-1975, 6th ed., (Englewood Cliffs, New Jersey: Prentice Hall, Inc., 1975), p. 84.

¹⁵China, Inspectorate General of Customs, The Maritime Customs, Treaties, Conventions, Etc., between China and Foreign States, vol. 1, 2d ed., (Shanghai: Inspectorate General of Customs, 1917), pp. 351-356.

trading in Canton began selling opium in the late 1700's as a means of generating capital needed to purchase Chinese goods, especially tea and silks. By the 1830's, the volume of the opium trade had exceeded the level of exports resulting in a perceived silver drain on the Chinese economy. This perception was coupled with the perceptions of the Chinese bureaucracy that China did not need to trade with anyone and that all foreigners should come to China as supplicants and not equals. The British contributed to this problem. Their merchants persisted in trading in opium, not only in Canton but along the entire South China coast.¹² The end of the British East India Company's monopoly created even more problems for Chinese officials who desired one representative to deal with. The British Government appointed a series of officials who refused to deal with the Chinese officials with flattery, bribery and humility that was expected. Instead the British officials demanded treatment as equals and representatives of one sovereign to another.

After seizing Hong Kong Island and declaring British sovereignty on 26 January 1841 under the terms of the Convention of Chuenpi, the British began developing Hong Kong as the center of British merchant operations in the Far East. Although Captain Elliot was recalled to Britain in disgrace, his replacement, Sir Henry Pottinger, enthusiastically

¹²Fairbank, pp. 66-71.

These three treaties constitute the United Kingdom's claim to territorial sovereignty over Hong Kong. The People's Republic of China repudiates all of them as unequal treaties and thus null and void, but chooses to maintain the status quo until the time is ripe for change. The expiration of the New Territories Lease provided Britain and China the opportunity to change Hong Kong's status. The retrocession of Hong Kong was agreed upon during the Sino-British negotiations in 1984. China will assume sovereignty and administration of Hong Kong in accordance with the Joint Declaration on the Future of Hong Kong. To understand the British and Chinese positions it is necessary to examine each of the treaties.

A. TREATY OF NANKING

Hong Kong was established by the British during the Opium War of 1839-1842. This experience demonstrated to them the necessity for a British colony on the China coast that could serve as an enclave protected from the vagaries of Chinese politics. British colonial interests, including the opium traders, needed a secure base of operations for their Chinese coastal operations. Their superior military and naval forces were able to force the cession of Hong Kong Island in perpetuity in the Treaty of Nanking.

The Opium War resulted from misperceptions and growing hostilities on both sides. British and American merchants

The first expansion of Hong Kong's territory was during the Second Sino-British War. Harry Smith Parkes, one of the Anglo-French Commissioners in Guangzhou, negotiated a lease on behalf of the British Government, of the Kowloon peninsula with the Governor-General of Guangdong and Guangxi provinces on 20 March 1860 (Appendix B).⁹ This lease was superseded by Article VI of the Convention of Peking signed 24 October 1860 (Appendix C). The Convention of Peking ceded the Kowloon peninsula and Stonecutters Island to Great Britain for incorporation into the Colony of Hong Kong.¹⁰

Pressure from military and commercial interests for continued growth and expansion of Hong Kong's territory became extremely strong by the 1890's.¹¹ In 1898, these interests succeeded in extending Hong Kong's boundaries with the signing of the Convention Respecting an Extension of the Hong Kong Territory (Appendix D). This Convention is commonly known as the New Territories Lease, and it expires 1 July 1997. The New Territories make up approximately ninety percent of the total land area of the territory, and since December 1899 have been an integral part of the Colony of Hong Kong.

⁹Edgar Holt, The Opium Wars in China (London: Putnam and Company, Ltd., 1964), p. 253; Hong Kong, Laws, Statutes, etc., Laws of Hong Kong 1964 ed., vol. 24, Appendix IV, p. F1.

¹⁰Endacott, A History of Hong Kong, p. 110.

¹¹Peter Wesley-Smith, Unequal Treaty 1898-1997 (Hong Kong: Oxford University Press, 1980), pp. 11-28.

II. HONG KONG UNDER THE UNEQUAL TREATIES

Hong Kong grew from a small, sparsely populated island in the Pearl River estuary into a teeming international center of commerce and manufacturing. Foreign Secretary Lord Palmerston, who opposed the seizure of Hong Kong, described it contemptuously as "a barren island with hardly a house upon it,"⁶ in his dispatch to Captain Elliot on 21 April 1841. Palmerston's low regard for Hong Kong led to Elliot's recall and disgrace.⁷ Over the next one hundred and forty years the territory grew not only in wealth and importance but in size, both in area and population. Hong Kong's success under the British created greater demand for more land for development and protection. This land was acquired through a combination of military coercion and diplomacy.

The Royal Navy under Sir Gordon Bremer seized Hong Kong Island on 26 January 1841 and proclaimed British sovereignty under the aborted Convention of Chuenpi.⁸ The Qing Court formally ceded the island to Great Britain in Article III of the Treaty of Nanking, (Appendix A), marking the end of the Opium War and the beginning of British administration.

⁶George B. Endacott, A History of Hong Kong (London: Oxford University Press, 1958), p. 18.

⁷John K. Fairbank, Trade and Diplomacy on the China Coast (Cambridge, Massachusetts: Harvard University Press, 1953), p. 81.

⁸Endacott, A History of Hong Kong, pp. 17, 25.

corresponding with the height of the Cultural Revolution. Disturbances started in March over labor disputes which became politicized after pro-Communist and pro-Nationalist workers clashed. The lack of concrete direction from Beijing led to the radicalization of the Chinese Communist Party in Hong Kong and an increase in rioting and violence in May and June. It is often charged that the outside support for the rioters in Hong Kong came from the Communists in Guangzhou, under the leadership of the party notable Tao Zhu.

The Guangzhou-backed riots in Hong Kong failed to succeed in overturning British rule in the colony for several reasons. The Communist Party was divided into four factions, a moderate political faction associated with Premier Zhou Enlai; another with ties to the disgraced party leader of Guangdong province, Tao Zhu; a third faction made up of moderate Chinese merchants and bankers linked to the Chinese leadership; and a fourth consisting of the trade unions under the leadership of Yeung Kwang and Fei Yi Min.³¹ This lack of unity helped to splinter the efforts of the Hong Kong CCP and provided the Hong Kong Government and police an opportunity to counter their efforts without alienating the majority of Hong Kong people. The rise of the radical Red Guard-inspired trade union faction in Hong Kong and the incidents at the Hong Kong-China border strengthened the British stand against the radicals.

³¹David Bonavia, "Strikes called in Hongkong," Times (London), 24 May 1967, p. 5; "Communists at odds in Hongkong," Times (London), 30 September 1967, p. 3.

The British were able to limit the scope of the strikes and effectively stopped them before they became too destructive to the economy. One action was the firing of striking workers and the hiring of replacements by both the Government and private firms.³² The PRC, aware of Hong Kong's value as a foreign exchange earner, did not wish to suffer a severe financial hardship by losing their Hong Kong market for farm produce and other export goods. This was demonstrated when the PRC refused to abide by the food stoppage strike beyond a token one day stoppage of deliveries that did not affect food supplies in Hong Kong. The Chinese did however refuse to start water delivery early despite a critical water shortage in Hong Kong.³³

Beijing eventually reacted to the economic unrest and lack of genuine progress in disrupting the British administration in Hong Kong. In late May 1967 it was reported that the CCP sent an emissary to Hong Kong to rebuke the local CCP leaders for their inept tactics.³⁴ This was followed by a directive published in People's Daily which called upon the Hong Kong Communist Party to unify and change its tactics in

³²"More lose jobs in Hongkong," Times (London), 13 June 1967, p. 5.

³³"Hong Kong Gets Sufficient Food," New York Times, 4 July 1967, p. 3.

³⁴David Bonavia, "China blames Hongkong tactics," Times (London), 25 May 1967, p. 3.

preparation for the future.³⁵ Despite the turmoil in China, the Chinese leadership felt it necessary to safeguard the prosperity of Hong Kong by stopping future rioting.

B. THE 1970's

Hong Kong continued to prosper and develop throughout the 1970's. This growth was linked to the state of Sino-American and Sino-British relations. The Vietnam War had helped to fuel Hong Kong's industrialization, but it took the thaw in Sino-American relations in 1972 to spark a resurgence of entrepôt trade between China and the West through Hong Kong. Normalization of Sino-British relations helped to expand Hong Kong's entrepôt role and promoted the growth of Hong Kong's international business community. Hong Kong emerged from this decade as China's major entrepôt and a major center of Asian-Pacific finance.³⁶

China increased its investment in Hong Kong during the 1970's. The Chinese expanded their retail and banking operations. They also invested in various Hong Kong companies involved in land development and light industry. By 1980 there were thirteen Chinese State-Controlled Banks in Hong Kong offering a full range of financial services. These banks, as a consortium, overtook the Chartered Bank as the second

³⁵David Bonavia, "Peking's Call to Hongkong Youth," Times (London), 6 July 1967, p. 5.

³⁶A.J. Youngson, China and Hong Kong: The Economic Nexus (Hong Kong: Oxford University Press, 1984), p. 24.

largest banking group in Hong Kong.³⁷ China succeeded in establishing itself as a major financial presence in Hong Kong. Looking to increase the volume of exports, China established a year-round trading presence in Hong Kong ranging from the national China Resources Corporation to the provincial Fujian Enterprises Company Ltd. These agents are responsible for expanding the market for Chinese products to increase the level of foreign exchange earnings. Hong Kong's entrepôt facilities give China the flexibility needed to expand this trade regardless of the political orientation of the buying nation (i.e. Taiwan and the Republic of Korea).

Early in 1972, China restated its position on Hong Kong and Macau. Huang Hua, in a letter to the United Nations Special Committee on the Granting of Independence to Colonial Countries and People, stated that Hong Kong and Macau should not be considered, the question of Hong Kong and Macau was a matter of Chinese sovereignty that would be resolved "when conditions are ripe."³⁸

Great Britain and China normalized relations on 13 March 1972 and upgraded the British mission in Beijing to an Embassy.³⁹

³⁷ Ibid., pp. 31-36.

³⁸ Huang Hua, United Nations, Letter Dated 8 March 1972 (U.N. Document A/AC. 109/396).

³⁹ Alvin Shuster, "London in Peking Accord; To Close Taiwan Offices," New York Times, 14 March 1972, p. 1.

Britain had been one of the first countries to recognize the People's Republic of China after the Communist victory in 1949. Disputes over Taiwan and the Korean Conflict had prevented the formal exchange of ambassadors.⁴⁰ The 1972 breakthrough opened the door to greater cooperation and ties between Hong Kong and China.

C. SETTING THE STAGE FOR NEGOTIATIONS

Hong Kong-PRC relations changed significantly during the 1970's. Three significant changes in China's attitude toward Hong Kong were seen in 1979. Premier Hua Guofeng gave a press conference on 7 October 1979 in which he outlined the new Chinese position. He recognized the legality of British authority in Hong Kong; the need to protect investors interests in Hong Kong; and the acceptability of negotiations to resolve the 1997 problem.⁴¹ The recognition of these points by China set the stage for the Sino-British negotiations.

China and Hong Kong began exchanging official visits and notes in late 1978 when Chinese Foreign Trade Minister Li Qiang visited Hong Kong in December 1978. During this visit Li talked of Hong Kong's role in China's modernization. This visit was followed by an official visit to China by the

⁴⁰"Britain and China to Establish Full Ties," New York Times, 13 March 1972, p. 1.

⁴¹"Premier Hua Holds Press Conference on Upcoming European Visit," Federal Broadcast Information Service Daily Report, China, (FBIS China), 9 October 1979, p. L4.

Governor of Hong Kong, Sir Murray MacLehose, in late March 1979. His eleven day visit provided the first direct talks between the Chinese leadership in Beijing and the British administration in Hong Kong.⁴²

Hua's assurances to Hong Kong investors demonstrated a partial understanding of the complex dynamics of Hong Kong's economy. China would have to recognize interests other than its own and be willing to adopt pragmatic policies to maintain the territory's prosperity and stability. Pledging to protect investors was a first step towards maintaining this stability and building China's credinility.

The third major point made by Hua was the recognition of the need to negotiate a peaceful transfer of sovereignty. It appeared that China was now willing to negotiate with the United Kingdom in an attempt to maintain the territory's economic prosperity.

China moved away from its traditional hard-line stand toward Hong Kong and the Unequal Treaties. The Chinese appeared ready to follow a pragmatic policy toward the 1997 problem. Their recognition of British rule in Hong Kong and the need for negotiations established a criteria by which the United Kingdom could open negotiations on the future of Hong Kong.

⁴²Mary Lee, "Another step up the ladder," Far Eastern Economic Review, 16 March 1979, pp. 36-37.

IV. HONG KONG: SUBJECT OF SINO-BRITISH NEGOTIATIONS

A. INTRODUCTION

The Sino-British negotiations on the future of Hong Kong began in 1982. Prior to actually negotiating, it was necessary to establish the basic criteria for the negotiations. This process had begun in the late 1970's when China recognized the legality of British authority in Hong Kong and the need for negotiations to ensure the smooth transition of power and maintain investor confidence.⁴³ Britain responded to these Chinese pronouncements in January 1982 during the meeting between Premier Zhao Ziyang and British Lord Privy Seal Humphrey Atkins.⁴⁴ This meeting marked the start of more than two and a half years of talks and negotiations on the future of Hong Kong. After much propagandizing, educating and cajoling the Joint Declaration was drafted and initialed on 26 September 1984. The United Kingdom and China had succeeded in drafting a working document that would attempt to preserve Hong Kong's economic prosperity and vitality.

The negotiation process was hampered by British and Chinese intransigence over the basic issues of sovereignty

⁴³Clare Hollingworth, "Hua hints at stricter policing of border," Daily Telegraph (London), 2 November 1979, p. 4; Nigel Wade, "Mao's widow will face trial soon," Daily Telegraph (London), 8 October 1979, pp. 1, P.

⁴⁴"China steps cautiously in Hongkong," Times (London), 11 January 1982, p. 5.

and future administration, which the Chinese insisted be agreed upon prior to the start of substantive talks. The Chinese insisted upon two major points: that the sovereignty of Hong Kong belonged to China and that the expiration of the lease in 1997 would mark the end of colonial rule not only in the leased territory but the entire colony. The British maintained that sovereignty of the ceded territories (Hong Kong Island, Kowloon and Stonecutters Island) belonged to the United Kingdom, and that there is a need for continued British rule or guidance for the good of the people. All of these problems existed under the shadow of impending seizure of the territory by the People's Republic of China in 1997 and with the understanding that Hong Kong was militarily indefensible, having survived since 1949 at the sufferance of the Chinese.

The negotiations went through several phases before agreement on the Joint Declaration was reached. The Chinese followed a pattern of negotiations with the British similar to that seen in earlier negotiations with the United States.⁴⁵ The initial phase involved agreeing to negotiate. This was pretty straight forward and took until late September 1982. The next phase lasted from October 1982 to July 1983. In this phase both sides attempted to establish an agenda and procedures for future talks. The Chinese held up this phase

⁴⁵Derek Davies, "How Britain fell for the Peking game-plan," Far Eastern Economic Review, 21 June 1984, pp. 44-45.

until the British agreed to recognize the Chinese position on sovereignty. Officially the third phase, which involved substantive negotiations, began on 12 July 1983, but progress was not made until after the September 1983 economic crisis. Up to that time the Chinese were attempting to apply pressure upon the British to give up everything prematurely and the British were attempting to teach the Chinese how and why the Hong Kong system operated. It is important to remember that the Chinese leadership mistrusted the United Kingdom. Deng Xiaoping was also concerned about what history would say of him and did not want to be remembered as another Li Hong-Jang. As a member of the old revolutionary leadership, it was important that he be remembered as the man who reunified China and redressed the humiliation of China at the hands of the British in the Nineteenth century.

Eight rounds of substantive talks were held between October 1983 and mid-April 1984. In April, Sir Geoffrey Howe revealed that the negotiators had reached agreement on the basic framework of the Joint Declaration, but still had several difficult issues to resolve.⁴⁶ Negotiations continued after the Howe visit and on 21 June 1984 a working group was established to meet full time in Beijing. This group worked six days a week hammering out the differences between the two

⁴⁶"Foreign Secretary Howe's Hong Kong Press Conference," FBIS China, 23 April 1984, pp. W1-W3.

sides on the major problems. Most important of these was that the agreement be balanced, secure and binding and not overridden by the Basic Law, Hong Kong's future constitution. Howe announced, after his second visit to Beijing in late July, that a major breakthrough had been reached in the negotiations based upon the British acceptance of China's proposal for Special Administrative Region (SAR) status for Hong Kong. The Chinese, feeling the pressure of their own September deadline, agreed to the basic framework of an agreement which would maintain Hong Kong's way of life and be legally binding.⁴⁷ Negotiations continued on the remaining unresolved issues after Howe's visit. An additional ad hoc working group was established in Beijing on 24 August and both sides continued pushing toward the September deadline. The English and Chinese texts of the agreement, annexes and memoranda were approved by the negotiators on 18 September 1984 and were initialed in Beijing by the Chief Negotiators, British Ambassador to China Sir Richard Evans and Chinese Vice-Foreign Minister Zhou Nan on 26 September. The Sino-British Joint Declaration was finally signed on 19 December 1984 in Beijing by Premier Zhao Ziyang and Prime Minister Margaret Thatcher.

⁴⁷ Emily Lau and Derek Davies, "Suddenly it's summer," Far Eastern Economic Review, 9 August 1985, pp. 10-14; "Howe Holds News Conference on Talks with PRC," FBIS China, 1 August 1984, p. W1.

This chapter will examine the course of the Sino-British negotiations in order to understand the dynamics involved in reaching agreement of Hong Kong's future. It will also trace the evolution of the key terms of the Joint Declaration.

B. THE OPENING ROUNDS

Time was running out for continued British rule in Hong Kong by 1982. Business and commercial interests, both foreign and domestic, began worrying about the future of the territory, especially in regards to the New Territory and the legality of future land leases. It was obvious that the Honk Kong Government could not continue leasing land in an area that they would no longer control. These business forces overruled those who preached for continued British rule by ignoring the expiration of the New Territories lease, while insisting upon the legitimacy of the Treaties of 1842 and 1860. This position would have violated international law and weakened the United Kingdom's claim to have a say in determining the future of Hong Kong.⁴⁸

The United Kingdom opened the negotiations during the meeting between Premier Zhao Ziyang and Lord Privy Seal Humphrey Atkins on 6 January 1982. During this meeting, they discussed the Hong Kong lease and the need for negotiations to solve the various problems and issues raised when China

⁴⁸David Bonavia, Hong Kong 1997 (Hong Kong: South China Morning Post, 1983), p. 5.

reasserts its sovereignty over the territory. Zhao reasserted China's claim of sovereignty over all of Hong Kong but expressed concern over maintaining its economic prosperity, its status as a free port and as a center of international trade and finance.⁴⁹ To accomplish the smooth transition of power Zhao stated that joint UK-PRC discussions would be held to arrive at "formal arrangements for Hong Kong's future status."⁵⁰ This meeting and the subsequent press releases laid the groundwork for future negotiations on Hong Kong.

The September 1982 meetings between Prime minister Thatcher and Premier Zhao Ziyang and Chairman Deng Xiaoping started the actual negotiation on the future of Hong Kong. Both sides reiterated their positions on Hong Kong and formally agreed to enter into diplomatic talks to reach "the common aim of maintaining the stability and prosperity of Hong Kong."⁵¹ Although both sides agreed to start the negotiations on Hong Kong's future they started from very different legal positions. China, while agreeing that promises had to be made to ensure the economic prosperity and stability of Hong Kong, remained adamant that sovereignty of all of Hong Kong belonged to them and would be reasserted in

⁴⁹"Hsin Wan Pao Comments on Future of Hong Kong," FBIS China, 19 January 1982, pp. W1-W2.

⁵⁰"Ming Pao Cites Zhao-Atkins Talks on Hong Kong," FBIS China, 26 January 1982, p. W1.

⁵¹"Prime Minister Thatcher Holds Press Conference," FBIS China, 28 September 1982, p. W1.

1997, regardless of what the British did.⁵² Mrs. Thatcher responded to these statements by insisting that the three treaties were valid and legal and that Britain intended on keeping its treaty obligations including the lease on the New Territories.⁵³ Her insistence upon the legality of the treaties and Britain's responsibility for the welfare of the people of Hong Kong prompted protests from China and the whipping up of anti-British sentiment within China and Hong Kong. These protests against the "imperialist" British spread and left a generally negative impression of the British position throughout the World. China reacted virulently against her legalistic claims upon Hong Kong and her assertion that Britain had a moral obligation to ensure the welfare of the Hong Kong people. They perceived these assertions as demonstrations of the British distrust of and lack of respect for the Chinese side.

The Chinese succeeded in portraying the British as evil colonialists determined to hold onto Hong Kong despite the "illegality" of the "Unequal Treaties." Their "war dance" villified the British and proclaimed the PRC as the true protectors of the Hong Kong Chinese and the reunifiers of China. The Chinese propaganda campaign continued until the end of

⁵²Derek Davies and Mary Lee, "Don't panic chaps," Far Eastern Economic Review, 8 October 1982, pp. 8-9.

⁵³"Prime Minister Thatcher Holds Press Conference," FBIS China, 28 September 1982, pp. W4,W6.

October 1982, by which time they had established their case not only within China but internationally.⁵⁴

The Chinese realized that they could easily dictate the terms of the retrocession since the colony was militarily indefensible, but they wanted the cooperation and assistance of the British and Hong Kong interests in maintaining the territory's prosperity at the least political costs to the PRC. Their "war dance" must be seen as part of this effort. They attempted to achieve four objectives: 1) to force the British into precipitously giving up what the PRC wanted; 2) to both frighten and seduce the Hong Kong Chinese away from the British; 3) to pacify a very powerful bureaucracy in Beijing that does not want to give anything away too quickly; and 4) to villify the British so that when concessions were made later in the negotiations it would still appear as a great victory for China. The campaign achieved most of its objectives although it was another year before the British conceded sovereignty and the Hong Kong people, while generally desirous of continued British rule, came to accept the eventual Communist takeover.⁵⁵

⁵⁴The Chinese propaganda effectively went beyond the normal internal and external channels of PRC propaganda to influence reports carried on the BBC and in the New York Times. (examples: Daniel Nelson, "Maggie sinks in the West," Far Eastern Economic Review, 8 October 1982, p. 9; Christopher S. Wren, "China Calls Hong Kong Pacts Invalid," New York Times, 1 October 1982, p. 3; "Thatcher View of Hong Kong Treaties Rapped," FBIS China, 29 October 1982, p. G1.

⁵⁵Joseph Y.S. Cheng, ed., Hong Kong In Search of a Future (Hong Kong: Oxford University Press, 1984), p. 85.

approved the texts on 18 September 1984. The Joint Declaration was initialled by the Chief Negotiators, Chinese Vice-Foreign Minister Zhou Nan and British Ambassador Sir Richard Evans on 26 September 1984. This ceremony included the initialling and exchange of the Joint Declaration, its three annexes and an exchange of memoranda on the post 1997 nationality status of the 2.5 million holders of Hong Kong British Dependent Territory Citizen passports.⁷⁶

The Sino-British Joint Declaration was signed with great ceremony by British Prime Minister Margaret Thatcher and Chinese Premier Zhao Ziyang on 19 December 1984 in the Great Hall of the People in Beijing. This ceremony formally started the retrocession of Hong Kong back to China and marked the end of 155 years of British colonial rule.⁷⁷ Both the United Kingdom and the People's Republic of China are required to ratify the Joint Declaration to give it the force of a formal treaty in international law. The British Parliament approved the agreement on 28 March 1985 and the New People's Congress is expected to approve it before July 1985.⁷⁸

⁷⁶Christopher S. Wren, "Hong Kong Accord Initialed in China," New York Times, 26 September 1984, p. A10; Christopher S. Wren, "Chinese-British Accord States That Life in Hong Kong Will Be Basically Unchanged," New York Times, 27 September 1984, p. A12.

⁷⁷Mary Lee and Emily Lau, "The World is witness," Far Eastern Economic Review, 27 December 1984, p. 10.

⁷⁸"This Week: Hongkong," Far Eastern Economic Review, 11 April 1985, p. 9.

Once nationality and land policy were resolved, all attention turned to civil aviation. The British expanded the working group to ten with the addition of a civil aviation expert on 5 September 1984.⁷⁴ This action was perceived as signalling general agreement on the aviation issue and the start of the actual working out of details. Civil aviation was a problem area because of the dual role played by the General Administration of Civil Aviation of China (known as CAAC). CAAC functions as the flag airline of China and the department of civil aviation. Problems arose over the issue of Air Services Agreements (ASAs) and whether they should revert to Hong Kong or China. British negotiators wanted the ASAs to revert to Hong Kong as they came up for revision and continue to be under Hong Kong's jurisdiction after 1997. CAAC opposed this, wanting instead complete control of Hong Kong's landing and traffic rights making it just another destination in China and making Cathay Pacific the Number Two airline operating, if at all. The Chinese negotiators finally conceded to the British and gave the Hong Kong Special Administrative Region the authority to negotiate ASAs with third countries and to maintain their own airlines.⁷⁵

The negotiators completed drafting both the Chinese and English texts by the middle of September and both sides

⁷⁴"British Aviation Expert Joins Talks," FBIS China, 6 September 1984, pp. W5-W6.

⁷⁵Michael Westlake, "Still up in the air," Far Eastern Economic Review, 6 September 1984, pp. 14-15.

D. THE FINAL DRIVE TO AGREEMENT

Although substantial progress had been made by early August 1984 another seven weeks of hard work remained before the texts of the agreements were drafted and approved. There were several very important issues that needed to be resolved prior to initialing. These issues included land policy, nationality, the nature of the future Hong Kong Government, defense and security, civil aviation and the civil service.⁷³ The working group continued meeting six days a week and was expanded by five members to deal with the large volume of material and to speed up the drafting of the agreement.

By early September several of the issues had been resolved but the problems still remained over the issues of civil aviation and nationality. The nationality issue was never solved to the satisfaction of the Hong Kong Chinese. China refused to accept the concept of dual citizenship, and Great Britain has been guilty of cheapening the status of British Hong Kong passports with the Nationality Act of 1981, which changed them to Hong Kong British Dependent Territory Citizen (BDTC). The 2.5 million holders of HK BDTC's are unable to use their passports to settle in the United Kingdom. The PRC saw the Nationality Act of 1981 as a lack of British resolve on the nationality issue. This perception allowed them to ignore the British position and insist upon their own.

⁷³Emily Lau, "Unanswered questions," Far Eastern Economic Review, 16 August 1984, pp. 14-15.

succeeded in getting the PRC to concede on the key aspects of the agreement. This included agreement upon "the framework and key clauses of an agreement that would preserve Hong Kong's unique economic system and way of life" and assurances that the agreement and the annexes would be legally binding upon all parties.⁷¹ Howe got the Chinese to concede those points by using the issue of the Joint Liaison Group and their own September deadline. China had been determined to get a group formed that could function as a shadow government, an idea that has been opposed by the United Kingdom and Hong Kong Governments since the 1950's. In return for agreement on the framework and key clauses of the Joint Declaration the United Kingdom conceded the formation of a Joint Liaison Group but forced the Chinese to delay its formation until 1988; to agree that it would have no power or role in administering Hong Kong; and to extend its period of operation until the year 2000, thus granting the British two and a half years of extended official presence in Hong Kong.⁷² This breakthrough would not have been achieved without the intervention of Deng Xiaoping during the meetings between him, British Foreign Secretary Howe, Chinese Foreign Minister Wu Xueqian, and Premier Zhao Ziyang.

⁷¹"Howe holds News Conference on Talks with PRC," FBIS China, 1 August 1984, p. W1.

⁷²Emily Lau and Derek Davies, "Suddenly it's summer," Far Eastern Economic Review, 9 August 1984, pp. 12-13.

a legally binding agreement guaranteeing the preservation of the Hong Kong way of life.

The negotiations continued after Howe's visit and enough progress was made by mid-June to justify the establishment of a working group on 21 June 1984. This group met full-time in Beijing to intensively analyze, discuss, and draft position papers on the various problem areas between the two sides. Working six days a week, the working group attempted to resolve problems between scheduled sessions.

Many in Hong Kong feared that the British Foreign Office was being out-manuevered by the Chinese negotiators and thus not achieving the best deal for Hong Kong. "An Open Letter to Sir Geoffrey Howe" in the Far Eastern Economic Review was representative of the feelings of the Hong Kong leadership, both political and economic, in their lack of confidence in an agreement being reached.⁷⁰ In that article, Howe was called upon to stand fast and draw the line over which Britain would not yield rather than continuing to follow the perceived policy of continued concessions. The British negotiators did hold fast to their insistence upon an agreement that was balanced, secure, and not overridden by the Basic Law.

A major breakthrough was achieved during Sir Geoffrey Howe's second visit to Beijing in late July 1984. He

⁷⁰Derek Davies, "An Open Letter to Sir Geoffrey Howe," Far Eastern Economic Review, 21 June 1984, pp. 40-43.

two of the major hongts threatened to destroy the remaining confidence in the territory's future and lead to the flight of capital out of Hong Kong.⁶⁹ Luckily the majority of the investors and corporations assumed a "wait and see" attitude rather than commit themselves to either long-term investments in Hong Kong or capital flight. The Hong Kong and Chinese Governments demonstrated their commitment to the future prosperity of Hong Kong by continuing to invest in long-term projects such as the MTR and various commercial and residential projects.

Sir Geoffrey Howe, the British Secretary of State for Foreign and Commonwealth Affairs, was invited to Beijing by the Chinese Government in April 1984 to discuss the negotiations. He met with the Chinese leadership from 15 to 18 April and reached agreement over the basic framework of the Joint Declaration. Following those meetings, Howe announced to the media the British Government's position on the future administration of Hong Kong. He announced the British acceptance of Chinese sovereignty with a highly autonomous Hong Kong Government under the label of a Special Administrative Region (SAR). He also stressed that the United Kingdom and PRC still had several major issues to resolve before reaching

⁶⁹ Christopher Wood and Philip Bowring, "Jardine's Bermudan rig," Far Eastern Economic Review, 12 April 1984, pp. 46-48; William Kay and Philip Robinson, "Hong Kong shares slump on news of Jardine moves," Times (London), 30 March 1984, p. 17.

agreement.⁶⁶ They stressed that if the United Kingdom refused to negotiate or stonewalled they would announce unilaterally their own plan for the future of Hong Kong which would not have the status of an international treaty. As a result the talks continued with the British conditionally conceding to the Chinese both sovereignty and future administration. By April, the negotiators completed their initial discussions on the problems of maintaining Hong Kong's prosperity and had reached "a basis for agreement."⁶⁷

Speculation on a British retreat from Hong Kong led to a poor investment climate in Hong Kong throughout 1983 and 1984. Jardine Matheson and Hutchinson Whampoa demonstrated a clear lack of confidence in the ability of the Sino-British negotiations to reach an acceptable agreement that would guarantee the future prosperity and stability of Hong Kong. On 28 March 1984, Jardine Matheson announced the moving of its corporate headquarters to Bermuda, and Hutchinson Whampoa paid a big dividend to its stockholders rather than reinvesting its profits into Hong Kong assets.⁶⁸ News of these actions by

⁶⁶Teresa Ma, "Cinderella syndrome," Far Eastern Economic Review, 20 October 1983, pp. 29-30.

⁶⁷Great Britain, Foreign Office, Draft Agreement on the Future of Hong Kong, p. 3.

⁶⁸"Jardine Matheson Transferring Company to Bermuda, Jardine's Chairmen Comments." FBIS China, 28 March 1984, p. W1; Philip Robinson, "Jardine moves legal base from Hong Kong," Times (London), 29 March 1984, p. 1; Christopher Wood, "Hutchinson's Bonanza," Far Eastern Economic Review, 12 April 1984, p. 75.

opposed to reunification. These claims soured when China lost a considerable amount of foreign exchange in the September dollar collapse. This experience convinced them that Hong Kong needed an agreement that would give investors and the business community sufficient guarantees to prevent the wild fluctuations based upon perceived political and economic uncertainty. It also convinced the Chinese and British of the necessity to bargain in good faith, and for both sides to give on the issues of sovereignty and future administration.

The negotiations entered a more realistic substantive phase after the September economic crisis. Talks restarted on 19 October 1983 under more optimistic circumstances than in September, with their statements prior to the meeting showing an improvement in the atmosphere of the Sino-British talks and a "backing off from confrontationist attitudes."⁶⁵ The British and the Chinese realized the importance of the talks and reportedly took more reasonable positions on the sovereignty and future administration issues. Eight rounds of talks passed between October 1983 and April 1984 when the next major announcement was made.

China increased its pressure upon the British negotiators by placing a September 1984 deadline on reaching an

⁶⁵ Philip Bowring and Teresa Ma, "Warming to the task," Far Eastern Economic Review, 3 November 1983, p. 20.

to Beijing; 2) to transfer all power over to the People's Republic of China; and 3) to leave for home without destroying economic confidence in Hong Kong. Their attack destroyed investor confidence in Hong Kong's future and precipitated the collapse of the Hang Seng and the disastrous drop in the value of the Hong Kong dollar. The closing of the September 22-23 session without the usual optimistic statement sent the HK dollar to a record low of HK \$9.55 against the U.S. dollar and the Hang Seng recorded a 63.58 drop to 785.48 points.⁶³ Both the drop in the HK dollar and the drop in the Hang Seng reflected the loss of confidence in the future of Hong Kong by the local and international business communities. The Hong Kong Government finally intervened to prevent any further decline in the value of the HK dollar by pegging it to the U.S. dollar at HK \$7.80 to the U.S. \$1.00.⁶⁴ This move stabilized the HK dollar's exchange rate and demonstrated to the PRC the Hong Kong Government's determination to maintain prosperity and stability.

China accused the United Kingdom of playing the economic and public opinion cards by blaming Beijing for the loss of confidence in the Hong Kong dollar and investments as well as the British insistence that the Hong Kong people were

⁶³Michael Blendell, "Panic Stations Over Hong Kong Talks," Sunday Times (London), 25 September 1983, p. 55; David Bonavia, "Hong Kong Panic," Sunday Times (London), 25 September 1983, p. 2.

⁶⁴Philip Bowring, "Pegged to the future," Far Eastern Economic Review, 27 October 1983, p. 56.

to make early concessions. Instead they held fast to their initial positions. The Chinese used the leftist Hong Kong press and various visitors to China to propose various solutions and test their acceptability. These proposals promised various guarantees to the Hong Kong people, but the Chinese negotiators were unwilling to put them into a legally binding document. Instead they attempted to force the British into conceding everything without giving any concessions. This ploy became increasingly apparent in late August and early September with Hu Yaobang's and Deng Xiaoping's statements on the future of Hong Kong asserting that China would take possession of Hong Kong on July 1, 1997 and that the Sino-British talks only dealt with the "question of how to gradually carry out the transition from now until 1997."⁶² These statements were accompanied by an intense Chinese propaganda campaign aimed at softening the British negotiating position by attacking it. The British interpreted the Chinese moves as an ultimatum demanding an act of surrender rather than an agreement transferring sovereignty while maintaining prosperity. As a result the British held firm at the September 22 meeting and refused to concede anything.

The Chinese propaganda attack appeared to be demanding three things from the British: 1) to concede all sovereignty

⁶²"Hu Yaobang: PRC to Recover Hong Kong 1 July 1997," FBIS China, 16 August 1983, p. W1; "Deng Outlines Policies, Moves in Hong Kong," FBIS China, 1 September 1983, PP. W1-W4.

the Hong Kong press carried reports that his participation in the talks would not be welcomed by the Chinese since it could lead to the introduction of the "three-legged stool" concept by having Hong Kong interests represented by a separate participant.⁶⁰ The Chinese Foreign Ministry responded quickly by stating that the talks were "bilateral" and that Governor Youde was a member of the British Government delegation and thus only able to represent the British Government.⁶¹ Governor Youde's prestige was further lessened when the Chinese refused to grant a visa to Peter Tsao, who was to serve as Youde's personal press officer. This action was seen not only as a personal affront to Youde but as a reminder that China was guiding the talks and did not want any Hong Kong presence at the talks.

C. THE SUBSTANTIVE PHASE

The substantive phase of the negotiations on Hong Kong began on 12 July 1983. These talks were to focus on the concrete problems caused by the expiration of the 1898 lease and to develop a workable solution. Talks began then, but little progress was made towards reaching a consensus on the basic framework for an agreement ensuring the future prosperity and stability of Hong Kong. Both countries refused to

⁶⁰"Paper Claims Youde Not Wanted in Talks," FBIS China, 1 May 1983, pp. W7-W9.

⁶¹"PRC Spokesman on Youde's Participation in Talks," FBIS China, 11 July 1983, p. E1.

United Kingdom had to tacitly concede the sovereignty issue if the negotiations were to proceed and the British were to have any input into determining the future of Hong Kong. This move allowed the Chinese to reinitiate the talks while keeping the United Kingdom in the role of a supplicant and not an equal. As supplicants, the British were not able to use Hong Kong's economic importance to China as leverage in gaining concessions, instead they were constantly placed in the position of asking favors from the Chinese.

After the September 1983 economic collapse, the British bargaining position vis-à-vis the Chinese improved. The Chinese began to realize that the Hong Kong system was extremely volatile and easily upset by sudden unpredictable changes and that if they were to maintain its prosperity they must listen to the British and guarantee the continuation of the present system without political interference. This change meant that the Chinese could not keep the British in the supplicant role.

Prior to the start of the second round of talks in early July 1983, the Governor of Hong Kong, Sir Edward Youde, announced that he would participate in the talks as the Governor of Hong Kong and the representative of the people of Hong Kong.⁵⁹ This remark generated quite a row. In April

⁵⁹"Governor Returns from U.K., Discusses Negotiations," FBIS China, 7 July 1983, p. W3.

economic system. The Hang Seng index fell 83.7 points on September 27 and continued to fall until early December when it reached a low of 676.3 points, a total drop of 420 points from 24 September 1982.⁵⁸ The Hong Kong dollar suffered a similar decline by falling to a low of HK\$ 6.60 to the U.S. dollar. When the talks broke down in October over the sovereignty issue, investor confidence declined further and prolonged the economic downturn. China accused the United Kingdom of manipulating the Hong Kong economy to frighten them, but they gradually learned throughout 1983 that Hong Kong's economy is extremely volatile and susceptible to changes in the political climate.

Although formal talks were stalled until July 1983 both sides were busy. Various scenarios for the future of Hong Kong were developed and proposed as were recommendations for different methods of negotiating. One of these proposals was the "three-legged stool" concept in which Hong Kong people would play an active role in determining their future. This proposal was vetoed by the Chinese immediately, but the concept remained extremely popular within Hong Kong.

Progress was made when Mrs. Thatcher conditionally conceded to China the sovereignty principle in a letter to Zhao Ziyang in February 1983. It had become quite clear that the

⁵⁸Christopher Wood, "Down and down it goes," Far Eastern Economic Review, 8 October 1982, p. 8.

The first round of talks were held in Beijing in early October between the British Ambassador to China, Sir Percy Cradock and the Chinese Foreign Ministry, with Hong Kong represented by the political advisor Robin MacLaren.⁵⁶ This round was concerned primarily with setting up an agenda and procedures for future negotiations.⁵⁷ As with future rounds of the negotiations, both sides maintained confidentiality and ended the talks without releasing any information. It was later revealed that Chinese insistence upon establishing their "two principles" prior to continuing the negotiations resulted in the suspension of formal talks until July 1983. These principles were that sovereignty and administrative responsibility for Hong Kong would revert to Beijing on 1 July 1997.

The eight months between the first and second round of negotiations saw the collapse of the Hong Kong stock market and the weakening of the Hong Kong dollar. The volatile Hong Kong stock market reacted negatively to all the uncertainty generated by the Sino-British talks, especially the virulent Chinese propaganda campaign against the three treaties. Fear of Chinese control of Hong Kong generated wide-spread panic among investors who had been looking for concrete guarantees from China that there would be no disruption of the territory's

⁵⁶Bonavia, Hong Kong 1997, pp. 120-121.

⁵⁷Great Britain, Foreign Office, Draft Agreement on the Future of Hong Kong, p. 3.

Once the agreement is ratified the British, Hong Kong and the Chinese will have twelve years to complete the transition from a British colony to a Special Administrative Region of the PRC. This period marks the start of a new political and economic experiment for China and the World. China is attempting to peacefully regain the sovereignty of Hong Kong without disturbing its economic, social and political systems under the framework established in the Joint Declaration. Deng Xiaoping's concept of "One Country-Two Systems" forms the basis by which the Chinese granted Hong Kong its guarantees in the Joint Declaration, and explains their rationale for accepting the continuation of Capitalism in post 1997 Hong Kong.

V. SINO-BRITISH JOINT DECLARATION ON HONG KONG

The Sino-British Joint Declaration on the Future of Hong Kong is a detailed and reasonable document that resulted from two years of intense and at times bitter negotiations between the United Kingdom and the People's Republic of China. It represents the hopes, promises and commitment of both sides to the maintenance of prosperity and stability in Hong Kong. Despite its official title of Joint Declaration, the United Kingdom and the PRC have recognized it as a legal international treaty. It is this document that differentiates Hong Kong's status as a Special Administrative Region from that of Tibet. China, by freely joining in an international agreement, has formally committed itself to following the guidelines laid down in the declaration as a prerequisite for continued investor confidence in the territory.

The agreement covers a wide range of topics and provides some fairly generous, if general, guarantees to the people of Hong Kong and the rest of the international community. China gave in to British demands for a legally binding document that spelled out in sufficient detail the Chinese promises and the framework within which they would operate. While recognizing British administration and responsibility for Hong Kong up through 1997, it proclaims China's claim to sovereignty over Hong Kong and the Chinese assumption of

administration after 1997. China, faced with resistance on the mainland over the promises given to Hong Kong, justifies its promises for the maintenance of Hong Kong's capitalist system until 2047 under the guise of "One Country- Two Systems." This system allows China to reunite Hong Kong with the mainland without losing the economic and technical benefits inherent in the current system. The success of the "One Country- Two Systems" line in Hong Kong is seen as a possible lure to the Chinese on Taiwan in the PRC's bid to reunite all of China.

The full text of the Joint Declaration is contained in Appendix E, but this chapter will examine in detail six major issues crucial to the future of Hong Kong. These issues are: 1) China's twelve point guarantee to continue Hong Kong's present system for fifty years; 2) the future government of the Hong Kong SAR and its future constitution, the Basic Law; 3) Land Leases; 4) Civil aviation; 5) Nationality; and 6) the Sino-British Joint Liaison Group. Not all of these issues were fully resolved during the negotiations and problems have already emerged. These problems include the status of non-Chinese Hong Kongers after 1997; who will be the final court of appeal for cases stemming from the Basic Law, Beijing or Hong Kong; the future role and accountability of the PLA stationed in Hong Kong; and the role of Hong Kong Chinese in the Joint Liaison Group.

A. CHINA'S 12 POINT POLICY REGARDING HONG KONG

The People's Republic of China declared in the Joint Declaration and elaborated in the first annex its twelve point policy regarding Hong Kong. This statement of policy establishes Hong Kong as a Special Administrative Region (SAR), in accordance with Article 31 of the Chinese Constitution. The Hong Kong SAR was granted an exceptional degree of autonomy in domestic affairs and limited control over its own foreign affairs. China granted Hong Kong special guarantees to ensure its continued economic prosperity including promises that the retrocession of Hong Kong would not change the existing social, political or economic systems operating in the territory or subject them to the direct control of the mainland. All of these promises and guarantees would remain in force for a period of fifty years, until the year 2047, and be contained in Hong Kong's future constitution, the Basic Law.

The elaboration and detailing of the various Chinese guarantees to Hong Kong within the Joint Declaration were a major victory for the United Kingdom. The Chinese, throughout the negotiations, wanted a blanket statement by the British returning all of Hong Kong to the PRC without any references to specific guarantees to the people of Hong Kong. By forcing the delineation of these promises in a legally binding international agreement, the British were able to provide the international business community and the Hong

Kong people a legal guarantee, by the Chinese, ensuring the stability of Hong Kong until the year 2047 under the current social, political and economic systems. This was the sort of guarantee needed to ensure the maintenance of confidence in Hong Kong as a vital and secure economic and financial center of Asia. Without a treaty delineating Chinese policy, there existed no guarantee that China would not repeat their actions of Tibet in 1959 or Shanghai in 1950.

China's promises to Hong Kong are wide-ranging, covering social, political and economic issues. The maintenance of Hong Kong's economic prosperity is important to China. To accomplish this, China promises to preserve Hong Kong's legal and socio-economic systems and to forestall any attempt to force socialism upon the SAR. Hong Kong will retain its position as a free port and separate customs zone as well as its status as an international financial center with markets for foreign exchange, gold, securities and futures. The SAR will also retain the use of the Hong Kong dollar as the official currency and maintain the dollar's status as a freely convertible world currency, thus allowing the freer flow of capital. These actions are coupled with Hong Kong's independent status from the Central People's Government on the issues of taxes and finance, and participation in international organizations and trade agreements (GATT, MFA). By granting Hong Kong the authority to decide its own economic, financial and trade policies, the PRC is granting Hong Kong

authority to expand and maintain economic relations with all nations, including those states not recognized by the PRC (i.e. Taiwan and the Republic of Korea).

B. THE FUTURE GOVERNMENT OF HONG KONG

Hong Kong's current government and legal system are based upon British Common Law, the Letters Patent and the Royal Instructions. These constitutional instruments theoretically permit the Governor to practice almost dictatorial power over the colony, while in reality, he is constrained by various customs, conventions and unwritten rules. Instead of a dictatorship the government is consultative in that the Governor consults with the Executive Council (EXCO) and Legislative Council (LEGCO) prior to reaching a decision.⁷⁹ The Chinese desired a continuation of this system but the British insisted upon a more representative form of government. The representative government is not currently in place in Hong Kong, but progress has been made at slowly implementing it.⁸⁰ It is because of the British attempt to install a representative form of government in Hong Kong prior to 1997, rather than retaining the current system, that the Joint Declaration is

⁷⁹Norman J. Miners, The Government and Politics of Hong Kong 2d ed. (Hong Kong: Oxford University Press, 1977), pp. 63-67.

⁸⁰Plans for the development of representative government in Hong Kong were released by the Hong Kong Government in 1984. The first plan was a Green Paper released in July 1984, which was further refined and released as a White Paper in November 1984.

vague on the actual composition and method of selecting a Chief Executive and legislature.

When Hong Kong becomes a Special Administrative Region (SAR) of the PRC, the Basic Law will replace the Letters Patent and the Royal Instructions as constitutional instruments, but will retain the Common Law system. These unwritten laws provide the legal system with credibility. The international business community needs the assurance and protection of Western Common Law if it is to invest and work in Hong Kong.

The United Kingdom is attempting to establish a constitutional system in Hong Kong that will last after 1997. Although faced with a time constraint, the British realize that the system cannot be rushed into place. Rushing it would show undue haste and give the impression that the United Kingdom was washing its hands of the entire matter. Instead the British have been accused of going too slow towards representative government and democracy by the Hong Kong Press.⁸¹ What is desired in Hong Kong is the election of both the Chief Executive and Legislature, with the Chief Executive Bound to the Legislature and the Basic Law. This is a much better position for the British since it will be harder for the Chinese to criticize the British efforts as

⁸¹Emily Lau, "A shade of difference," Far Eastern Economic Review, 29 November 1984, pp. 15-16; Huang Chen-ya "Green paper, primrose path," Far Eastern Economic Review, 13 September 1984, pp. 40-41.

"colonial tricks" if the people of Hong Kong are demanding more rapid democratization. Hong Kong will not have a democracy in the same sense as the United States, it will have direct elections to the District and Rural boards but the Chief Executive and Legislature will most likely be elected indirectly. It is important to the future stability of Hong Kong not to move too quickly towards full democracy, since it risks tremendous social costs, but it must move in that direction if the government is to be firmly implanted in the Hong Kong community and have the support of all levels of society.

There is a rising tide of interest in politics and democracy in Hong Kong. This interest is especially pronounced within the liberal intellectual middle class who are calling for rapid democratization along U.S. lines. Emily Lau of the Far Eastern Economic Review is representative of this group and one of the most outspoken critics of the British administration's plan to increase democracy.⁸² Hong Kong businessmen recognize the dangers of too rapid democratization and fear the economic disruption that could result from widespread political unrest. They are determined to forestall the disruptive effects of democracy that were observed in both Singapore and the Philippines. The British

⁸²Emily Lau, "A shade of difference," Far Eastern Economic Review, 29 November 1984, pp. 15-16.

plan for greater representation in Hong Kong's Government is intended to limit the growth and influence of political parties, prevent socio-political unrest and forestall Chinese intervention in Hong Kong's politics.

The National People's Congress (NPC) of the PRC will draft The Basic Law of the Hong Kong SAR. This document will function as the SAR's constitution, will embody the provisions of the Joint Declaration and its Annexes, and specifically state that Hong Kong's current "capitalist system and life-style shall remain unchanged for 50 years," and that "the socialist system and socialist policies shall not be practiced" in Hong Kong.⁸³ The Joint Declaration gives the Hong Kong courts the power of final judgement and final adjudication. The common interpretation of this includes the Hong Kong courts right to interpret the Basic Law, much like the U.S. Supreme Court.⁸⁴ The chairman of the standing committee of the National People's Congress, Peng Zhen, stated that the "right to interpret the Basic Law should rest with the NPC standing committee."⁸⁵ This has led to much speculation within Hong Kong over China's intent. If China insists upon the right to interpret the Basic Law, it could contravene

⁸³Great Britain, Foreign Office, Draft Agreement on the Future of Hong Kong, p. 14.

⁸⁴Ibid., pp. 15-16.

⁸⁵Emily Lau, "The Basic Question," Far Eastern Economic Review, 18 April 1985, p. 12.

the Joint Declaration by taking away the Hong Kong court's right of final adjudication. China could establish a dangerous precedent by using the right to interpret the Basic Law to overturn judgements of the Hong Kong courts. Meddling in the decisions of the Hong Kong courts could cause a loss of confidence in China's willingness to abide by the Joint Declaration, not only in Hong Kong but throughout the world. This issue is still not resolved but it appears likely that China will not push the issue for fear of damaging Hong Kong's prosperity and stability.

The future Chief Executive of Hong Kong must be acceptable to both the Hong Kong and international business communities and the People's Republic of China. As such he cannot be too pro-West or anti-Communist. Instead he must be a proven administrator capable of leading Hong Kong without antagonizing the communist leadership in Beijing. The most likely candidate will come out of the Hong Kong Chinese business community with ties to both the West and China. Ethnic Chinese with close ties to the British colonial administration will be viewed with suspicion and thus not acceptable to Beijing.⁸⁶ If Hong Kong is to survive and prosper the people of Hong Kong must learn to administer themselves successfully so that economic prosperity is maintained and China is not provoked or tempted to meddle in Hong Kong's affairs. It

⁸⁶ This group would include the current unofficial members of the Executive and Legislative Councils (Umelco).

will not be easy, for it will require not only a skillful and responsible Chief Executive but great self-restraint on the part of the Chinese leadership to adhere to the terms of the Joint Declaration and not attempt to manipulate either the political or economic system.

Even with all these problems, progress is being made to establish a workable representative government responsive to the needs of capitalist Hong Kong and sensitive to the fears and desires of the Chinese Communist leadership. China has promised considerable autonomy to the Hong Kong SAR Government. If they can abide by the agreement and do not attempt to manipulate the Basic Law or political system, Hong Kong should prosper and develop a reasonable and effective representative government committed to maintaining the SAR's autonomy and prosperity.

C. LAND LEASES

Land leases and land tenure posed serious problems for the British as the 1997 deadline approached. It was vital to reach some agreement on the future of the leases, since the Hong Kong Government could not legally continue leasing land after 30 June 1997. The United Kingdom attempted to solve this problem prior to reaching a political solution, but it was thwarted by the Chinese who wanted to resolve the sovereignty issue first. Once work started on the land issue it became apparent that the mixture of land arrangements,

ranging from freehold rights in the New Territories to Royal grants and 75 year non-renewable leases in the urban areas, posed the greatest technical difficulty faced in the negotiations.

This issue was resolved and explained in Annex III of the Joint Declaration. The British and Chinese agreed to the establishment of a Sino-British Land Commission to oversee the Hong Kong Government's management of land sales and receipts. China is concerned that the United Kingdom would attempt to sell off all the crown land to maximize current revenues and leave the Hong Kong SAR with no source of income. To prevent this the present Hong Kong Government is restricted to leasing only fifty hectares per year and must place one half of the land lease proceeds into a Hong Kong bank account reserved for the SAR Government. In return the PRC and SAR Governments will honor the terms of all leases extended by the British and which run beyond 1997. It was also agreed that all leases could be extended to the year 2047 without the payment of a premium but would be subject to an annual rent equivalent to three percent of the property's current rated value. This three percent rent will also apply to those leases issued by the British between 1984 and 1997, the only exception to the three percent rent will be the village lands in the New Territories held by direct male descendents of the original inhabitants of Hong Kong prior to 1898.

The land policy established and laid out in Annex III is reasonable and in sufficient detail to prevent difficulties. It ensures a steady income for both the British administration and the Hong Kong SAR Government. Land rents and premiums provide the bulk of the Hong Kong Government's revenues and this income has been protected by the Joint Declaration.

D. CIVIL AVIATION

Civil aviation was one of the last issues resolved between China and the United Kingdom. It was a problem due to the dual role played by the General Administration of Civil Aviation of China (CAAC). CAAC insisted that it should exercise complete control over Hong Kong's landing and traffic rights as a matter of sovereignty. The British negotiators insisted on allowing the Hong Kong SAR to maintain and revise Air Services Agreements (ASAs) after 1997. It was argued that local control of Hong Kong's landing and traffic rights was essential if the SAR was to remain a center of international and regional aviation. This control includes the allocation of international routes and the maintenance of routes to states not officially recognized by the PRC. The negotiators also argued for the protection and maintenance of Hong Kong based airlines from undue competition from CAAC.⁸⁷ These points were conceded to the British and

⁸⁷Michael Westlake, "Still up in the air," Far Eastern Economic Review, 6 September 1984, pp. 14-15.

Section IX of Annex I details the Hong Kong SAR's authority to negotiate ASA's with third countries and to maintain their own airlines.

This agreement protects Cathay Pacific Airline's future by granting it the status of a Hong Kong incorporated airline even though it is owned by a British company, Swires Pacific. It will also allow the Hong Kong SAR to remain a center of international and regional aviation and commerce by allowing the SAR to retain aviation links between Taiwan and the Republic of Korea. This link will enable China to maintain covert ties with those countries without having to recognize either one.

E. NATIONALITY

The Nationality issue has not been solved to the satisfaction of the Hong Kong people. The major problem is China's refusal to grant or recognize dual nationality. The British have contributed to the problem by cheapening the value of British Passports with the Nationality Act of 1968. This act essentially created two British passports, one for whites with full privileges and one for non-whites which denied them the right of abode in Britain. This effectively made non-white British citizens second-class citizens. This issue was brought to a head in 1972 when Idi Amin expelled more than 50,000 Asians from Uganda.⁸⁸ They became stateless

⁸⁸Hilary Ng'weno, "Uganda and Racism," New York Times, 9 November 1972, p. 47.

These done in duplicate, each of the parties aforesaid one copy at Canton, this twentieth day of March in the year of the Christian era 1860 (in words) being the 28th day of the second month of the tenth year of the reign of the Emperor of Sheen fung.

Source: George B. Endacott, An Eastern Entrepot (London: Her Majesty's Stationary Office, 1964), pp. 288-289).

APPENDIX B

THE LEASE OF KOWLOON

- (a) A Deed of Lease [Enclosed in a Dispatch from Sir Hercules Robinson to Duke of Newcastle, NO. 33, 20 March 1860]

Between Laou, wearing a decoration of the first rank, a Director of the Board of War, Censor of Right, Governor-General of the Provinces of Kwangtung and Kwang-se, and commander-in-Chief of the same on the part of the Chinese Government, and Harry Smith Parkes Esq., one of the Allied Commissioners for the Government of the City of Canton on the part of the British Government to hold in proof of the undermentioned agreement.

Whereas Tseem-sha-tsuy and its neighbourhood situated in the subdistrict of Kowloon in the district of Sun-on, and consisting for the most part of barren hills that cannot be cultivated, has hitherto formed a place of resort for thieves and outlaws, who, availing themselves of the immediate proximity of Victoria, constantly cross to Hong Kong and commit depredations in that settlement to the serious injury of British subjects who can obtain no redress against these marauders. - therefore Laou the Governor-General and Harry Smith Parkes, the Commissioner, aforesaid, have agreed and determined that all that part of the Kowloon Peninsula lying south of a line drawn from a point near to but south of the Kowloon fort to the northern-most point of Stonecutter Island, together with that Island, as shown in the accompanying map, shall be leased, as a preliminary measure, to Harry Smith Parkes, the Commissioner aforesaid, acting on behalf of the British Government, in order that the latter may exercise complete control over the same, and take measures for the protection of the good population and the expulsion or punishment of the bad, as well as for bringing the whole locality into order and preventing it becoming a resort for thieves. It is further stipulated and agreed that a rental of five hundred taels of silver shall be annually paid for the same to the local Chinese authorities, and that no claim can ever be made by the Chinese Government for the return of the said ground as long as the British Government punctually pay to them the said amount of rent. And this agreement will continue in force until, in due representation to be made by the Governor-General Laou, aforesaid, to the Supreme Government of China the commands of his Imperial Majesty shall be received authorising the conclusion of other arrangements of a more permanent character.

APPENDIX A

TREATY OF NANKING, 1842

TREATY OF Peace, Friendship, Commerce, Indemnity, &c., Between Great Britain and China, Signed at Nanking, 29 August 1842. (Ratifications exchanged at Hong Kong, 26 June 1843.)

Article III. It being obviously necessary and desirable, that British subjects should have some Port whereat they may careen and refit their Ships, when required, and keep Stores for that purpose, His Majesty the Emperor of China cedes to Her Majesty the Queen of Great Britain, etc., the Island of Hongkong, to be possessed in perpetuity by her Britannic Majesty, Her Heirs and Successors, and to be governed by such Laws and Regulations as Her Majesty the Queen of Great Britain, etc., shall see fit to direct.

Done at Nanking and Signed and Sealed by the Plenipotentiaries on board Her Britannic Majesty's ship "Cornwallis," this twenty-ninth day of August, 1842, corresponding with the Chinese date, twenty-fourth day of the seventh month in the twenty-second Year of Taou Kwang.

(This Treaty was renewed and confirmed by Article I of the Treaty of Tientsin in 1858)

Source: China, Inspectorate General of Customs, The Maritime Customs, Treaties, Conventions, Etc., between China and Foreign States, Vol. 1, 2d ed. (Shanghai: Inspectorate General of Customs, 1917), pp. 351-356.

made in the region and those companies that are optimistic about the future of Hong Kong and Hong Kong's role as China's entrepot will lead the way. Commitment to the success of Hong Kong on the part of the British and the Chinese is extremely important, but the PRC must also practice restraint and not openly intervene in the economic, political and social systems operating within Hong Kong. By not intervening, the PRC will be expressing confidence in the ability of the Hong Kong people to run the region effectively and profitably, contributing to the success of China's "One Country- Two Systems" concept.

attempting a novel experiment in socio-political relations that is bound to experience minor problems. The "One Country-Two Systems" approach to the Hong Kong problem provides many chances for success and failure. Deng Xiaoping and the central CCP leadership are committed to this approach, but if Western and Hong Kong business interests abandon Hong Kong, China will not be able to replace the lost capital and maintain the prosperity of the SAR. Thus it is necessary that China make every effort to abide by the Joint Declaration so as to maintain investor confidence and to ensure the continued economic prosperity of Hong Kong.

The issue of Taiwan works in Hong Kong's favor. China wishes to demonstrate to Taiwan its willingness to abide by the "One Country-Two Systems" approach. The PRC hopes to convince Taiwan of its sincerity and commitment to this theory in an attempt to reunite China. As long as Taiwan remains independent, the Hong Kong experiment agreed to in the Joint Declaration has a reasonable chance for success.

Hong Kong's future is bright despite the possible economic and political difficulties. The British achieved a major diplomatic victory in the Joint Declaration on Hong Kong. China has entered into a legally binding international agreement that grants Hong Kong special status with assurances that the freedoms and unique way of life in Hong Kong can continue until the year 2047, in an attempt to maintain its economic vitality and prosperity. Profit is still to be

China would be legally allowed to renounce the agreement if there were a change in the economic prosperity and stability of the Hong Kong SAR. This change would warrant the PRC's invoking rebus sic stantibus, a device in international law that permits either of the contracting countries in a treaty to legally abrogate the treaty due to changed circumstances.⁹² This would be extremely useful if there is a complete collapse of the Hong Kong economy or extreme political and social unrest. This collapse could result from too rapid democratization, so the liberal middle class Hong Kongers must not push the British or the Chinese too fast for increased democracy. Too much democracy too fast could endanger the social and political stability of Hong Kong and force the Chinese to severely restrict political activity, freedom of the press and assembly.

The success of the Joint Declaration lies with the Hong Kong people. They must realize that their independence and way of life depend upon the success of the Hong Kong SAR experiment. They must ensure that the SAR remains economically prosperous and socio-politically stable to keep the provincial and central Communist leadership from interfering even once in the administration of Hong Kong.

Business interests in Hong Kong must also practice restraint and patience with the PRC. The Chinese are

⁹²Oliver J. Lissitzyn, "Treaties and Changed Circumstances (rebus sic stantibus)," American Journal of International Law 61 (October 1967): 895-898.

VI. CONCLUSIONS

The introduction asked three questions about the future of Hong Kong and the viability of the Joint Declaration. Although it is not a perfect document, it does establish a workable system for the retrocession of Hong Kong back to China and the Hong Kong SAR's future administration. As with any treaty, it is only as good as the intentions and commitment of the parties involved in signing the agreement. The People's Republic of China has an excellent record of abiding by its international treaties. This record gives substantial weight to China's credibility in this agreement. Unlike China's agreements with Tibet and the Shanghai industrialists, this agreement is an international treaty, reached between China and a Western Power, Great Britain.

The Joint Declaration on the future of Hong Kong is a fair document that resolves three of the remaining Unequal Treaties at the lowest social and political costs to China while promising to maintain Hong Kong's prosperity and stability. Although it promises to maintain Hong Kong's unique social, economic and legal system until the year 2047, it will be up to the Hong Kong people and the Chinese leadership to ensure that situations do not erupt that would force the abrogation of the treaty.

social system. Any act of manipulation that contravenes the Joint Declaration could seriously threaten the entire system established in Hong Kong.

agreement and are now full of hope and belief in the commitment of both the Chinese and British to make it work. Hong Kongers have a growing realization that their future as an independent SAR depends upon their continued economic prosperity and development as a responsible and vital region of the PRC.

Both sides are committed to making the agreement work not only up to 1997 but beyond. It is not an iron-clad guarantee that China will not interfere in Hong Kong's government or economy if it is believed that they are operating contrary to the interests and well-being of the SAR and the PRC. China will quickly learn that such interference, if done in a blatant and heavy-handed manner, will backfire and cause a rapid decline in the SAR's economy due to a loss of confidence in China's willingness to abide by the Joint Declaration. Once confidence is lost it will be difficult, if not impossible, to bring back. Investors and businessmen in Hong Kong need a stable environment to prosper. Any Chinese interference would be perceived as breaking the Joint Declaration and threatening the foundation of Hong Kong's stability, the rule of law. If the rule of law is lacking there could develop a massive flight of capital out of Hong Kong and the collapse of Hong Kong as a center of international commerce and finance in the region. For these reasons, China should think very carefully before attempting to manipulate any aspect of the Hong Kong SAR's government, economy or

confidence in China's commitment to following the remainder of the agreement. The fragility of investor and resident confidence must be understood by China if they are to administer Hong Kong successfully.

G. SUMMING-UP THE JOINT DECLARATION

The Joint Declaration is not a perfect document but it does contain guarantees that, if followed by China, could protect Hong Kong from the vagaries of Chinese Communist politics. It is in the interests of China to maintain Hong Kong's prosperity and stability at the lowest social and political costs to the rest of China. This agreement accomplishes that by returning sovereignty to China and making Hong Kong responsible for its own administration under the guise of a Special Administrative Region of the People's Republic of China. The Joint Declaration guarantees Hong Kong's retention of its capitalist system and way of life until the year 2047 and grants the SAR Government considerable autonomy in domestic affairs and in maintaining its role in various international organizations and agreements. All of these measures are necessary if Hong Kong is to remain one of the leading commercial and financial centers of the world.

The majority of Hong Kongers, while not ecstatic over the Joint Declaration, believe the British have achieved a better than expected agreement. They have become more optimistic about Hong Kong's future since the signing of the

the original Sino-British negotiations and as such the Chinese state that China will represent Hong Kong's interests. If Britain wishes to include the Hong Kong Chinese, it may be allowed to include them as part of the five member British delegation or part of the twenty member supporting group. The Hong Kong members would be recognized not as Hong Kong interests. Any attempt to alter the composition of the JLG along the lines of a "three-legged stool" would go against Chinese desires and the wording of the Joint Declaration.

Care must be taken on the part of the Chinese and the British not to alter the Hong Kong people's perceptions of the JLG. The bureaucratic members of the group must remember that they are to only serve a liaison and consultative role and not attempt to influence the administration of Hong Kong or promote themselves as an alternate source of power in Hong Kong. Any attempt to expand the JLG's role or power must be nipped in the bud to forestall the formation of a shadow government. The British should be able to do this since they will be equal members of the JLG. It is also in China's interests not to transform it into a shadow government since it could prove a hinderance after 1997.

Since the Joint Declaration clearly spells out the role of the Joint Liaison Group, China would have much to lose in any attempt to alter the function of the JLG. Any attempt to change the JLG's mission would be perceived as contravening the Joint Declaration, thus threatening a loss of

to 1997. Both British and Hong Kong Governments had opposed this idea since the 1950's, since it could provide the framework necessary for the development of a Chinese shadow government in Hong Kong. A Chinese shadow government would threaten the stability of Hong Kong by challenging the authority of the Hong Kong Government. Britain conceded to the formation of a Joint Liaison Group in return for agreement on the framework and key clauses of the Joint Declaration. The Chinese were also forced into agreeing that the JLG would not be an organ of power and would have no role in administering or supervising the administration of Hong Kong.⁹¹

This group is to meet three times a year, starting 1 July 1988 and ending 1 January 2000, to discuss problem areas related to the smooth transfer of Hong Kong's sovereignty to China. Both governments hope to use the JLG to ensure the transition goes smoothly and to protect Hong Kong's role and participation in various international organizations and agreements, such as the General Agreement on Tariffs and Trade (GATT), the Multifibre Arrangement (MFA), and various Air Services Agreements (ASAs).

The Hong Kong Chinese desire a role in the Joint Liaison Group but China has refused to allow separate Hong Kong representation. The Chinese view this as an extension of

⁹¹Emily Lau and Derek Davies, "Suddenly it's summer," Far Eastern Economic Review, 9 August 1984, pp. 12-13; Great Britain, Foreign Office, Draft Agreement on the Future of Hong Kong, pp. 26-27.

the Hong Kong SAR. It is doubtful that such a document will have much value since it does not specify the holders place of abode nor guarantee the repatriation of the holder back to the Hong Kong SAR.

The Chinese feel they do not need to compromise on the nationality issue. They feel it is a straight-forward issue directly related to sovereignty and not open to discussion. Since Britain has denied non-white British subjects the right of abode in Britain since 1968, the Chinese feel they are justified in standing firm in the face of Britain's history of racism towards its non-white subjects.

There is no solution to the nationality issue that will please all parties. It can only be hoped that after 1997 cool heads will prevail to prevent discrimination against or expulsion of the non-Chinese minority. Recognition of the BNO passport as a legitimate travel document is essential if Hong Kong is to continue as a vibrant center of international finance and trade. Hong Kong businessmen need a travel document that provides them with greater freedom and acceptability than a PRC passport. Prior to this happening, the United Kingdom and China must work out the details of the document in the Joint Liaison Group so that it will meet the requirements of Hong Kong, Britain and China.

F. THE SINO-BRITISH JOINT LIAISON GROUP

The Sino-British Joint Liaison Group (JLG) emerged out of a Chinese demand for an official presence in Hong Kong prior

people when the United Kingdom refused to recognize them as British subjects with the right of abode in the United Kingdom. The British Nationality Act of 1981 did not resolve the issue when it changed the status of Hong Kong British Subjects to Hong Kong British Dependent Territory Citizens (BDTC), since it still denied them the right of abode in Britain.

The Chinese have offered all Hong Kongers the right of abode in the Hong Kong SAR after 1 July 1997, but they do not recognize all of them as Chinese nationals. In the Chinese memorandum it states that "all Hong Kong Chinese compatriots... are Chinese nationals."⁸⁹ but it does not specify the status of the 7,000-10,000 non-Chinese Hong Kongers. There is a fear among the non-Chinese that they will suffer discrimination at the hands of the Chinese and possibly face expulsion and statelessness.

Britain has decided to grant the 2.5 million holders of Hong Kong BDTC passports the new status of British National Overseas (BNO) after 1997.⁹⁰ This new status would be in accordance with the exchange of memoranda on nationality, in which former BDTC passport holders would be allowed to use British passports as travel documents outside of China and

⁸⁹ Great Britain, Foreign Office, Draft Agreement on the Future of Hong Kong, p. 33.

⁹⁰ Emily Lau, "Riddle with a catch," Far Eastern Economic Review, 7 February 1985, p. 24.

APPENDIX C

CONVENTION OF PEKING (1860)

PREAMBLE OF CONVENTION

Her Majesty the Queen of Great Britain and Ireland, and his Imperial Majesty the Emperor of China, being alike desirous to bring to an end the misunderstanding at present existing between their respective Governments, and to secure their relations against further interruption, have for this purpose appointed Plenipotentiaries; that is to say, Her Majesty the Queen of Great Britain and Ireland, the Earl of Elgin and Kincardine, and His Imperial Majesty the Emperor of China, His Imperial Highness, the Prince of Kung, who having met, and communicated to each other their full powers, and finding these to be in proper form, have agreed upon the following Convention in Nine Articles:-

ARTICLE VI. With a view to the maintenance of law and order in and about the harbor of Hongkong, His Imperial Majesty the Emperor of China agrees to cede to Her Majesty the Queen of Great Britain and Ireland, and to Her Heirs and Successors, to have and to hold as a dependency of Her Britannic Majesty's Colony of Hongkong, that portion of the township of Kowloon, in the province of Kwangtung, of which a lease was granted in perpetuity to Harry Smith Parkes, Esquire, Companion of the Bath, a Member of the Allied Commission at Canton, on behalf of Her Britannic Majesty's Government, by Lau Tsung Kwang, Governor-General of the Two Kwang.

It is further declared that the lease in question is hereby cancelled, that the claims of any Chinese to property on the said portion of Kowloon shall be duly investigated by a mixed Commission of British and Chinese Officers and that compensation shall be awarded by the British Government to any Chinese whose claim shall be by the said Commission established, should his removal be deemed necessary by the British Government.

Done at Peking in the Court of the Board of Ceremonies on the twenty-fourth day of October in the year of Our Lord one thousand eight hundred and sixty.

Source: China, Inspectorate General of Customs, The Maritime Customs, Treaties, Conventions, Etc., between China and Foreign States, Vol. 1, 2d ed. (Shanghai: Inspectorate General of Customs, 1917), pp. 430-434.

APPENDIX D

CONVENTION RESPECTING AN EXTENSION OF THE HONGKONG TERRITORY* - June 9, 1898

Whereas it has for many years past been recognized that an extension of Hong Kong territory is necessary for the proper defence and protection of the Colony,

Territory leased. - It has now been agreed between the Governments of Great Britain and China that the limits of British territory shall be enlarged under lease to the extent indicated generally on the annexed map. The exact boundaries shall be hereafter fixed when proper surveys have been made by officials appointed by the two Governments. The term of this lease shall be ninety-nine years.

Jurisdiction in leased territory. - It is at the same time agreed that within the city of Kowloon the Chinese officials now stationed there shall continue to exercise jurisdiction except so far as may be inconsistent with the military requirements for the defence of Hong Kong. Within the remainder of the newly-leased territory Great Britain shall have sole jurisdiction. Chinese officials and people shall be allowed as heretofore to use the road from Kowloon to Hsinan.

Rights of Chinese ships. - It is further agreed that the existing landingplace near Kowloon city shall be reserved for the convenience of Chinese men-of-war, merchant and passenger vessels, which may come and go and lie there at their pleasure; and for the convenience of movement of the officials and people within the city.

Railway. - When hereafter China constructs a railway to the boundary of the Kowloon territory under British control, arrangements shall be discussed.

Expropriation of natives. - It is further understood that there will be no expropriation or expulsion of the inhabitants of the district included within the extension, and that if land is required for public offices, fortifications, or the like official purposes, it shall be bought at a fair price.

Extradition. - If cases of extradition of criminals occur, they shall be dealt with in accordance with the existing Treaties between Great Britain and China and the Hong Kong Regulations.

*Text as reprinted in Rockhill, p. 58, from British Treaty Series, 1898, No. 16. Printed also in Customs, Vol. I, p. 539; Hertslet, p. 120; Am. Int. Law Journal, Supplement, 1910, p. 295. For the original concession of the Hongkong territory, see Article 6 of the Anglo-Chinese Convention of peace and friendship, October 24, 1860 (Hertslet, p. 48).

Reproduction of the Map attached to the
Convention between Great Britain and China
signed at Peking on the 9th of June 1898



Chinese war ships. - The area leased to Great Britain as shown on the annexed map, includes the waters of Mirs Bay and Deep Bay, but it is agreed that Chinese vessels of war, whether neutral or otherwise, shall retain the right to use those waters.

This Convention shall come into force on the first day of July, eighteen hundred and ninety-eight, being the thirteenth day of the fifth moon of the twenty-fourth year of Kuang Hsu. It shall be ratified by the Sovereigns of the two countries, and the ratifications shall be exchanged in London as soon as possible.

In witness whereof the Undersigned, duly authorized thereto by their respective Governments, have signed the present Agreement.

Done at Peking in quadruplicate (four copies in English and four in Chinese) the ninth day of June, in the year of our lord eighteen hundred and ninety-eight, being the twenty-first day of the fourth moon of the twenty-fourth year of Kuang Hsu.

[L. S.]
[L. S.]

Claude M. MacDonald
(Seal of the Chinese Plenipotentiary.)

Source: John V.A. MacMurray, Treaties and Agreements with and Concerning China 1894-1919, Vol 1 (New York: Oxford University Press, 1921) pp. 130-131.

APPENDIX E

JOINT DECLARATION OF THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA ON THE QUESTION OF HONG KONG

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China have reviewed with satisfaction the friendly relations existing between the two Governments and peoples in recent years and agreed that a proper negotiated settlement of the question of Hong Kong, which is left over from the past, is conducive to the maintenance of the prosperity and stability of Hong Kong and to the further strengthening and development of the relations between the two countries on a new basis. To this end, they have, after talks between the delegations of the two Governments, agreed to declare as follows:

1. The Government of the People's Republic of China declares that to recover the Hong Kong area (including Hong Kong Island, Kowloon and the New Territories, hereinafter referred to as Hong Kong) is the common aspiration of the entire Chinese people, and that it has decided to resume the exercise of sovereignty over Hong Kong with effect from 1 July 1997.
2. The Government of the United Kingdom declares that it will restore Hong Kong to the People's Republic of China with effect from 1 July 1997.
3. The Government of the People's Republic of China declares that the basic policies of the People's Republic of China regarding Hong Kong are as follows:
 - (1) Upholding national unity and territorial integrity and taking account of the history of Hong Kong and its realities, the People's Republic of China has decided to establish, in accordance with the provisions of Article 31 of the Constitution of the People's Republic of China, a Hong Kong Special Administrative Region upon resuming the exercise of sovereignty over Hong Kong.
 - (2) The Hong Kong Special Administrative Region will be directly under the authority of the Central People's Government of the People's Republic of China. The Hong Kong Special Administrative Region will enjoy a high degree of autonomy, except in foreign and defence affairs which are the responsibilities of the Central People's Government.
 - (3) The Hong Kong Special Administrative Region will be vested with executive, legislative and independent judicial power, including that of final adjudication. The laws currently in force in Hong Kong will remain basically unchanged.

- (4) The Government of the Hong Kong Special Administrative Region will be composed of local inhabitants. The chief executive will be appointed by the Central People's Government on the basis of the results of elections or consultations to be held locally. Principal officials will be nominated by the chief executive of the Hong Kong Special Administrative Region for appointment by the Central People's Government. Chinese and foreign nationals previously working in the public and police services in the government departments of Hong Kong may remain in employment. British and other foreign nationals may also be employed to serve as advisers or hold certain public posts in government departments of the Hong Kong Special Administrative Region.
- (5) The current social and economic systems in Hong Kong will remain unchanged, and so will the life-style. Rights and freedoms, including those of the person, of speech, of the press, of assembly, of association, of travel, of movement, of correspondence, of strike, of choice of occupation, of academic research and of religious belief will be ensured by law in the Hong Kong Special Administrative Region. Private property, ownership of enterprises, legitimate right of inheritance and foreign investment will be protected by law.
- (6) The Hong Kong Special Administrative Region will retain the status of a free port and a separate customs territory.
- (7) The Hong Kong Special Administrative Region will retain the status of an international financial centre, and its markets for foreign exchange, gold, securities and futures will continue. There will be free flow of capital. The Hong Kong dollar will continue to circulate and remain freely convertible.
- (8) The Hong Kong Special Administrative Region will have independent finances. The Central People's Government will not levy taxes on the Hong Kong Special Administrative Region.
- (9) The Hong Kong Special Administrative Region may establish mutually beneficial economic relations with the United Kingdom and other countries, whose economic interests in Hong Kong will be given due regard.
- (10) Using the name of "Hong Kong, China", the Hong Kong Special Administrative Region may on its own maintain and develop economic and cultural relations and conclude relevant agreements with states, regions and relevant international organisations.

The Government of the Hong Kong Special Administrative Region may on its own issue travel documents for entry into and exit from Hong Kong.
- (11) The maintenance of public order in the Hong Kong Special Administrative Region will be the responsibility of the Government of the Hong Kong Special Administrative Region.

(12) The above-stated basic policies of the People's Republic of China regarding Hong Kong and the elaboration of them in Annex I to this Joint Declaration will be stipulated, in a Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, by the National People's Congress of the People's Republic of China, and they will remain unchanged for 50 years.

4. The Government of the United Kingdom and the Government of the People's Republic of China declare that, during the transitional period between the date of the entry into force of this Joint Declaration and 30 June 1997, the Government of the United Kingdom will be responsible for the administration of Hong Kong with the object of maintaining and preserving its economic prosperity and social stability; and that the Government of the People's Republic of China will give its cooperation in this connection.

5. The Government of the United Kingdom and the Government of the People's Republic of China declare that, in order to ensure a smooth transfer of government in 1997, and with a view to the effective implementation of this Joint Declaration, a Sino-British Joint Liaison Group will be set up when this Joint Declaration enters into force; and that it will be established and will function in accordance with the provisions of Annex II to this Joint Declaration.

6. The Government of the United Kingdom and the Government of the People's Republic of China declare that land leases in Hong Kong and other related matters will be dealt with in accordance with the provisions of Annex III to this Joint Declaration.

7. The Government of the United Kingdom and the Government of the People's Republic of China agree to implement the preceding declarations and the Annexes to this Joint Declaration.

8. This Joint Declaration is subject to ratification and shall enter into force on the date of the exchange of instruments of ratification, which shall take place in Beijing before 30 June 1985. This Joint Declaration and its Annexes shall be equally binding.

Done in duplicate at Beijing on 1984 in the English and Chinese languages, both texts being equally authentic.

For the
Government of the United Kingdom
of Great Britain and Northern Ireland

For the
Government of the
People's Republic of China

ANNEX I

ELABORATION BY THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA OF ITS BASIC POLICIES REGARDING HONG KONG

The Government of the People's Republic of China elaborates the basic policies of the People's Republic of China regarding Hong Kong as set out in paragraph 3 of the Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong as follows:

I

The Constitution of the People's Republic of China stipulates in Article 31 that "the state may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by laws enacted by the National People's Congress in the light of the specific conditions." In accordance with this Article, the People's Republic of China shall, upon the resumption of the exercise of sovereignty over Hong Kong on 1 July 1997, establish the Hong Kong Special Administrative Region of the People's Republic of China. The National People's Congress of the People's Republic of China shall enact and promulgate a Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (hereinafter referred to as the Basic Law) in accordance with the Constitution of the People's Republic of China, stipulating that after the establishment of the Hong Kong Special Administrative Region the socialist system and socialist policies shall not be practised in the Hong Kong Special Administrative Region and that Hong Kong's previous capitalist system and life-style shall remain unchanged for 50 years.

The Hong Kong Special Administrative Region shall be directly under the authority of the Central People's Government of the People's Republic of China and shall enjoy a high degree of autonomy. Except for foreign and defence affairs which are the responsibilities of the Central People's Government, the Hong Kong Special Administrative Region shall be vested with executive, legislative and independent judicial power, including that of final adjudication. The Central People's Government shall authorise the Hong Kong Special Administrative Region to conduct on its own those external affairs specified in Section XI of this Annex.

The government and legislature of the Hong Kong Special Administrative Region shall be composed of local inhabitants. The chief executive of the Hong Kong Special Administrative Region shall be selected by election or through consultations held locally and be appointed by the Central People's Government. Principal officials (equivalent to Secretaries) shall be nominated by the chief executive of the Hong Kong Special Administrative Region and appointed by the Central People's Government. The legislature of the Hong Kong Special Administrative Region shall be constituted by elections. The executive authorities shall abide by the law and shall be accountable to the legislature.

In addition to Chinese, English may also be used in organs of government and in the courts in the Hong Kong Special Administrative Region.

Apart from displaying the national flag and national emblem of the People's Republic of China, the Hong Kong Special Administrative Region may use a regional flag and emblem of its own.

II

After the establishment of the Hong Kong Special Administrative Region, the laws previously in force in Hong Kong (i.e. the common law, rules of equity, ordinances, subordinate legislation and customary law) shall be maintained, save for any that contravene the Basic Law and subject to any amendment by the Hong Kong Special Administrative Region legislature.

The legislative power of the Hong Kong Special Administrative Region shall be vested in the legislature of the Hong Kong Special Administrative Region. The legislature may on its own authority enact laws in accordance with the provisions of the Basic Law and legal procedures, and report them to the Standing Committee of the National People's Congress for the record. Laws enacted by the legislature which are in accordance with the Basic Law and legal procedures shall be regarded as valid.

The laws of the Hong Kong Special Administrative Region shall be the Basic Law, and the laws previously in force in Hong Kong and laws enacted by the Hong Kong Special Administrative Region legislature as above.

III

After the establishment of the Hong Kong Special Administrative Region, the judicial system previously practised in Hong Kong shall be maintained except for those changes consequent upon the vesting in the courts of the Hong Kong Special Administrative Region of the power of final adjudication.

Judicial power in the Hong Kong Special Administrative Region shall be vested in the courts of the Hong Kong Special Administrative Region. The courts shall exercise judicial power independently and free from any interference. ~~Members of the judiciary shall be immune from legal action in respect of their judicial functions.~~ The courts shall decide cases in accordance with the laws of the Hong Kong Special Administrative Region and may refer to precedents in other common law jurisdictions.

Judges of the Hong Kong Special Administrative Region courts shall be appointed by the chief executive of the Hong Kong Special Administrative Region acting in accordance with the recommendation of an independent commission composed of local judges, persons from the legal profession and other eminent persons. Judges shall be chosen by reference to their judicial qualities and may be recruited from other common law jurisdictions. A judge may only be removed for inability to discharge the functions of his office, or for misbehaviour, by the chief executive of the Hong Kong Special Administrative Region acting in accordance with the recommendation of a tribunal appointed by the chief judge of the court of final appeal, consisting of not fewer than three

local judges. Additionally, the appointment or removal of principal judges (i.e. those of the highest rank) shall be made by the chief executive with the endorsement of the Hong Kong Special Administrative Region legislature and reported to the Standing Committee of the National People's Congress for the record. The system of appointment and removal of judicial officers other than judges shall be maintained.

The power of final judgment of the Hong Kong Special Administrative Region shall be vested in the court of final appeal in the Hong Kong Special Administrative Region, which may as required invite judges from other common law jurisdictions to sit on the court of final appeal.

A prosecuting authority of the Hong Kong Special Administrative Region shall control criminal prosecutions free from any interference.

On the basis of the system previously operating in Hong Kong, the Hong Kong Special Administrative Region Government shall on its own make provision for local lawyers and lawyers from outside the Hong Kong Special Administrative Region to work and practise in the Hong Kong Special Administrative Region.

The Central People's Government shall assist or authorise the Hong Kong Special Administrative Region Government to make appropriate arrangements for reciprocal juridical assistance with foreign states.

IV

After the establishment of the Hong Kong Special Administrative Region, public servants previously serving in Hong Kong in all government departments, including the police department, and members of the judiciary may all remain in employment and continue their service with pay, allowances, benefits and conditions of service no less favourable than before. The Hong Kong Special Administrative Region Government shall pay to such persons who retire or complete their contracts, as well as to those who have retired before 1 July 1997, or to their dependants, all pensions, gratuities, allowances and benefits due to them on terms no less favourable than before, and irrespective of their nationality or place of residence.

The Hong Kong Special Administrative Region Government may employ British and other foreign nationals previously serving in the public service in Hong Kong, and may recruit British and other foreign nationals holding permanent identity cards of the Hong Kong Special Administrative Region to serve as public servants at all levels, except as heads of major government departments (corresponding to branches or departments at Secretary level) including the police department, and as deputy heads of some of those departments. The Hong Kong Special Administrative Region Government may also employ British and other foreign nationals as advisers to government departments and, when there is a need, may recruit qualified candidates from outside the Hong Kong Special Administrative Region to professional and technical posts in government departments. The above shall be employed only in their individual capacities and, like other public servants, shall be responsible to the Hong Kong Special Administrative Region Government.

The appointment and promotion of public servants shall be on the basis of qualifications, experience and ability. Hong Kong's previous system of recruitment, employment, assessment, discipline, training and management for the public service (including special bodies for appointment, pay and conditions of service) shall, save for any provisions providing privileged treatment for foreign nationals, be maintained.

V

The Hong Kong Special Administrative Region shall deal on its own with financial matters, including disposing of its financial resources and drawing up its budgets and its final accounts. The Hong Kong Special Administrative Region shall report its budgets and final accounts to the Central People's Government for the record.

The Central People's Government shall not levy taxes on the Hong Kong Special Administrative Region. The Hong Kong Special Administrative Region shall use its financial revenues exclusively for its own purposes and they shall not be handed over to the Central People's Government. The systems by which taxation and public expenditure must be approved by the legislature, and by which there is accountability to the legislature for all public expenditure, and the system for auditing public accounts shall be maintained.

VI

The Hong Kong Special Administrative Region shall maintain the capitalist economic and trade systems previously practised in Hong Kong. The Hong Kong Special Administrative Region Government shall decide its economic and trade policies on its own. Rights concerning the ownership of property, including those relating to acquisition, use, disposal, inheritance and compensation for lawful deprivation (corresponding to the real value of the property concerned, freely convertible and paid without undue delay) shall continue to be protected by law.

The Hong Kong Special Administrative Region shall retain the status of a free port and continue a free trade policy, including the free movement of goods and capital. The Hong Kong Special Administrative Region may on its own maintain and develop economic and trade relations with all states and regions.

The Hong Kong Special Administrative Region shall be a separate customs territory. It may participate in relevant international organisations and international trade agreements (including preferential trade arrangements), such as the General Agreement on Tariffs and Trade and arrangements regarding international trade in textiles. Export quotas, tariff preferences and other similar arrangements obtained by the Hong Kong Special Administrative Region shall be enjoyed exclusively by the Hong Kong Special Administrative Region. The Hong Kong Special Administrative Region shall have authority to issue its own certificates of origin for products manufactured locally, in accordance with prevailing rules of origin.

The Hong Kong Special Administrative Region may, as necessary, establish official and semi-official economic and trade missions in foreign countries, reporting the establishment of such missions to the Central People's Government for the record.

VII

The Hong Kong Special Administrative Region shall retain the status of an international financial centre. The monetary and financial systems previously practised in Hong Kong, including the systems of regulation and supervision of deposit taking institutions and financial markets, shall be maintained.

The Hong Kong Special Administrative Region Government may decide its monetary and financial policies on its own. It shall safeguard the free operation of financial business and the free flow of capital within, into and out of the Hong Kong Special Administrative Region. No exchange control policy shall be applied in the Hong Kong Special Administrative Region. Markets for foreign exchange, gold, securities and futures shall continue.

The Hong Kong dollar, as the local legal tender, shall continue to circulate and remain freely convertible. The authority to issue Hong Kong currency shall be vested in the Hong Kong Special Administrative Region Government. The Hong Kong Special Administrative Region Government may authorise designated banks to issue or continue to issue Hong Kong currency under statutory authority, after satisfying itself that any issue of currency will be soundly based and that the arrangements for such issue are consistent with the object of maintaining the stability of the currency. Hong Kong currency bearing references inappropriate to the status of Hong Kong as a Special Administrative Region of the People's Republic of China shall be progressively replaced and withdrawn from circulation.

The Exchange Fund shall be managed and controlled by the Hong Kong Special Administrative Region Government, primarily for regulating the exchange value of the Hong Kong dollar.

VIII

The Hong Kong Special Administrative Region shall maintain Hong Kong's previous systems of shipping management and shipping regulation, including the system for regulating conditions of seamen. The specific functions and responsibilities of the Hong Kong Special Administrative Region Government in the field of shipping shall be defined by the Hong Kong Special Administrative Region Government on its own. Private shipping businesses and shipping-related businesses and private container terminals in Hong Kong may continue to operate freely.

The Hong Kong Special Administrative Region shall be authorised by the Central People's Government to continue to maintain a shipping register and issue related certificates under its own legislation in the name of "Hong Kong, China".

~~With the exception of foreign warships, access for which requires the permission of the Central People's Government,~~ ships shall enjoy access to the ports of the Hong Kong Special Administrative Region in accordance with the laws of the Hong Kong Special Administrative Region.

IX

The Hong Kong Special Administrative Region shall maintain the status of Hong Kong as a centre of international and regional aviation. Airlines incorporated and having their principal place of business in Hong Kong and civil aviation related businesses may continue to operate. The Hong Kong Special Administrative Region shall continue the previous system of civil

aviation management in Hong Kong, and keep its own aircraft register in accordance with provisions laid down by the Central People's Government concerning nationality marks and registration marks of aircraft. The Hong Kong Special Administrative Region shall be responsible on its own for matters of routine business and technical management of civil aviation, including the management of airports, the provision of air traffic services within the flight information region of the Hong Kong Special Administrative Region, and the discharge of other responsibilities allocated under the regional air navigation procedures of the International Civil Aviation Organisation.

The Central People's Government shall, in consultation with the Hong Kong Special Administrative Region Government, make arrangements providing for air services between the Hong Kong Special Administrative Region and other parts of the People's Republic of China for airlines incorporated and having their principal place of business in the Hong Kong Special Administrative Region and other airlines of the People's Republic of China. All Air Service Agreements providing for air services between other parts of the People's Republic of China and other states and regions with stops at the Hong Kong Special Administrative Region and air services between the Hong Kong Special Administrative Region and other states and regions with stops at other parts of the People's Republic of China shall be concluded by the Central People's Government. For this purpose, the Central People's Government shall take account of the special conditions and economic interests of the Hong Kong Special Administrative Region and consult the Hong Kong Special Administrative Region Government. Representatives of the Hong Kong Special Administrative Region Government may participate as members of delegations of the Government of the People's Republic of China in air service consultations with foreign governments concerning arrangements for such services.

Acting under specific authorisations from the Central People's Government, the Hong Kong Special Administrative Region Government may:

- renew or amend Air Service Agreements and arrangements previously in force; in principle, all such Agreements and arrangements may be renewed or amended with the rights contained in such previous Agreements and arrangements being as far as possible maintained;
- negotiate and conclude new Air Service Agreements providing routes for airlines incorporated and having their principal place of business in the Hong Kong Special Administrative Region and rights for overflights and technical stops; and
- negotiate and conclude provisional arrangements where no Air Service Agreement with a foreign state or other region is in force.

All scheduled air services to, from or through the Hong Kong Special Administrative Region which do not operate to, from or through the mainland of China shall be regulated by Air Service Agreements or provisional arrangements referred to in this paragraph.

The Central People's Government shall give the Hong Kong Special Administrative Region Government the authority to:

- negotiate and conclude with other authorities all arrangements concerning the implementation of the above Air Service Agreements and provisional arrangements;
- issue licences to airlines incorporated and having their principal place of business in the Hong Kong Special Administrative Region;

- designate such airlines under the above Air Service Agreements and provisional arrangements; and
- issue permits to foreign airlines for services other than those to, from or through the mainland of China.

X

The Hong Kong Special Administrative Region shall maintain the educational system previously practised in Hong Kong. The Hong Kong Special Administrative Region Government shall on its own decide policies in the fields of culture, education, science and technology, including policies regarding the educational system and its administration, the language of instruction, the allocation of funds, the examination system, the system of academic awards and the recognition of educational and technological qualifications. Institutions of all kinds, including those run by religious and community organisations, may retain their autonomy. They may continue to recruit staff and use teaching materials from outside the Hong Kong Special Administrative Region. Students shall enjoy freedom of choice of education and freedom to pursue their education outside the Hong Kong Special Administrative Region.

XI

Subject to the principle that foreign affairs are the responsibility of the Central People's Government, representatives of the Hong Kong Special Administrative Region Government may participate, as members of delegations of the Government of the People's Republic of China, in negotiations at the diplomatic level directly affecting the Hong Kong Special Administrative Region conducted by the Central People's Government. The Hong Kong Special Administrative Region may on its own, using the name "Hong Kong, China", maintain and develop relations and conclude and implement agreements with states, regions and relevant international organisations in the appropriate fields, including the economic, trade, financial and monetary, shipping, communications, touristic, cultural and sporting fields. Representatives of the Hong Kong Special Administrative Region Government may participate, as members of delegations of the Government of the People's Republic of China, in international organisations or conferences in appropriate fields limited to states and affecting the Hong Kong Special Administrative Region, or may attend in such other capacity as may be permitted by the Central People's Government and the organisation or conference concerned, and may express their views in the name of "Hong Kong, China". The Hong Kong Special Administrative Region may, using the name "Hong Kong, China", participate in international organisations and conferences not limited to states.

The application to the Hong Kong Special Administrative Region of international agreements to which the People's Republic of China is or becomes a party shall be decided by the Central People's Government, in accordance with the circumstances and needs of the Hong Kong Special Administrative Region, and after seeking the views of the Hong Kong Special Administrative Region Government. International agreements to which the People's Republic of China

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is not a party but which are implemented in Hong Kong may remain implemented in the Hong Kong Special Administrative Region. The Central People's Government shall, as necessary, authorise or assist the Hong Kong Special Administrative Region Government to make appropriate arrangements for the application to the Hong Kong Special Administrative Region of other relevant international agreements. The Central People's Government shall take the necessary steps to ensure that the Hong Kong Special Administrative Region shall continue to retain its status in an appropriate capacity in those international organisations of which the People's Republic of China is a member and in which Hong Kong participates in one capacity or another. The Central People's Government shall, where necessary, facilitate the continued participation of the Hong Kong Special Administrative Region in an appropriate capacity in those international organisations in which Hong Kong is a participant in one capacity or another, but of which the People's Republic of China is not a member.

Foreign consular and other official or semi-official missions may be established in the Hong Kong Special Administrative Region with the approval of the Central People's Government. Consular and other official missions established in Hong Kong by states which have established formal diplomatic relations with the People's Republic of China may be maintained. According to the circumstances of each case, consular and other official missions of states having no formal diplomatic relations with the People's Republic of China may either be maintained or changed to semi-official missions. States not recognised by the People's Republic of China can only establish non-governmental institutions.

The United Kingdom may establish a Consulate-General in the Hong Kong Special Administrative Region.

XII

The maintenance of public order in the Hong Kong Special Administrative Region shall be the responsibility of the Hong Kong Special Administrative Region Government. Military forces sent by the Central People's Government to be stationed in the Hong Kong Special Administrative Region for the purpose of defence shall not interfere in the internal affairs of the Hong Kong Special Administrative Region. Expenditure for these military forces shall be borne by the Central People's Government.

XIII

The Hong Kong Special Administrative Region Government shall protect the rights and freedoms of inhabitants and other persons in the Hong Kong Special Administrative Region according to law. The Hong Kong Special Administrative Region Government shall maintain the rights and freedoms as provided for by the laws previously in force in Hong Kong, including freedom of the person, of speech, of the press, of assembly, of association, to form and join trade unions, of correspondence, of travel, of movement, of strike, of demonstration, of choice of occupation, of academic research, of belief, inviolability of the home, the freedom to marry and the right to raise a family freely.

Every person shall have the right to confidential legal advice, access to the courts, representation in the courts by lawyers of his choice, and to obtain judicial remedies. Every person shall have the right to challenge the actions of the executive in the courts.

Religious organisations and believers may maintain their relations with religious organisations and believers elsewhere, and schools, hospitals and welfare institutions run by religious organisations may be continued. The relationship between religious organisations in the Hong Kong Special Administrative Region and those in other parts of the People's Republic of China shall be based on the principles of non-subordination, non-interference and mutual respect.

The provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong shall remain in force.

XIV

The following categories of persons shall have the right of abode in the Hong Kong Special Administrative Region, and, in accordance with the law of the Hong Kong Special Administrative Region, be qualified to obtain permanent identity cards issued by the Hong Kong Special Administrative Region Government, which state their right of abode:

- all Chinese nationals who were born or who have ordinarily resided in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region for a continuous period of 7 years or more, and persons of Chinese nationality born outside Hong Kong of such Chinese nationals;
- all other persons who have ordinarily resided in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region for a continuous period of 7 years or more and who have taken Hong Kong as their place of permanent residence before or after the establishment of the Hong Kong Special Administrative Region, and persons under 21 years of age who were born of such persons in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region;
- any other persons who had the right of abode only in Hong Kong before the establishment of the Hong Kong Special Administrative Region.

The Central People's Government shall authorise the Hong Kong Special Administrative Region Government to issue, in accordance with the law, passports of the Hong Kong Special Administrative Region of the People's Republic of China to all Chinese nationals who hold permanent identity cards of the Hong Kong Special Administrative Region, and travel documents of the Hong Kong Special Administrative Region of the People's Republic of China to all other persons lawfully residing in the Hong Kong Special Administrative Region. The above passports and documents shall be valid for all states and regions and shall record the holder's right to return to the Hong Kong Special Administrative Region.

For the purpose of travelling to and from the Hong Kong Special Administrative Region, residents of the Hong Kong Special Administrative Region may use travel documents issued by the Hong Kong Special Administrative Region Government, or by other competent authorities of the People's Republic of China, or of other states. Holders of permanent identity cards of the Hong Kong Special Administrative Region may have this fact stated in their travel documents as evidence that the holders have the right of abode in the Hong Kong Special Administrative Region.

Entry into the Hong Kong Special Administrative Region of persons from other parts of China shall continue to be regulated in accordance with the present practice.

The Hong Kong Special Administrative Region Government may apply immigration controls on entry, stay in and departure from the Hong Kong Special Administrative Region by persons from foreign states and regions.

Unless restrained by law, holders of valid travel documents shall be free to leave the Hong Kong Special Administrative Region without special authorisation.

The Central People's Government shall assist or authorise the Hong Kong Special Administrative Region Government to conclude visa abolition agreements with states or regions.

ANNEX II

SINO-BRITISH JOINT LIAISON GROUP

1. In furtherance of their common aim and in order to ensure a smooth transfer of government in 1997, the Government of the United Kingdom and the Government of the People's Republic of China have agreed to continue their discussions in a friendly spirit and to develop the cooperative relationship which already exists between the two Governments over Hong Kong with a view to the effective implementation of the Joint Declaration.

2. In order to meet the requirements for liaison, consultation and the exchange of information, the two Governments have agreed to set up a Joint Liaison Group.

3. The functions of the Joint Liaison Group shall be:

- (a) to conduct consultations on the implementation of the Joint Declaration;
- (b) to discuss matters relating to the smooth transfer of government in 1997;
- (c) to exchange information and conduct consultations on such subjects as may be agreed by the two sides.

Matters on which there is disagreement in the Joint Liaison Group shall be referred to the two Governments for solution through consultations.

4. Matters for consideration during the first half of the period between the establishment of the Joint Liaison Group and 1 July 1997 shall include:

- (a) action to be taken by the two Governments to enable the Hong Kong Special Administrative Region to maintain its economic relations as a separate customs territory, and in particular to ensure the maintenance of Hong Kong's participation in the General Agreement on Tariffs and Trade, the Multifibre Arrangement and other international arrangements; and

- (b) action to be taken by the two Governments to ensure the continued application of international rights and obligations affecting Hong Kong.
5. The two Governments have agreed that in the second half of the period between the establishment of the Joint Liaison Group and 1 July 1997 there will be need for closer cooperation, which will therefore be intensified during that period. Matters for consideration during this second period shall include:
- (a) procedures to be adopted for the smooth transition in 1997;
 - (b) action to assist the Hong Kong Special Administrative Region to maintain and develop economic and cultural relations and conclude agreements on these matters with states, regions and relevant international organisations.
6. The Joint Liaison Group shall be an organ for liaison and not an organ of power. It shall play no part in the administration of Hong Kong or the Hong Kong Special Administrative Region. Nor shall it have any supervisory role over that administration. The members and supporting staff of the Joint Liaison Group shall only conduct activities within the scope of the functions of the Joint Liaison Group.
7. Each side shall designate a senior representative, who shall be of Ambassadorial rank, and four other members of the group. Each side may send up to 20 supporting staff.
8. The Joint Liaison Group shall be established on the entry into force of the Joint Declaration. From 1 July 1988 the Joint Liaison Group shall have its principal base in Hong Kong. The Joint Liaison Group shall continue its work until 1 January 2000.
9. The Joint Liaison Group shall meet in Beijing, London and Hong Kong. It shall meet at least once in each of the three locations in each year. The venue for each meeting shall be agreed between the two sides.
10. Members of the Joint Liaison Group shall enjoy diplomatic privileges and immunities as appropriate when in the three locations. Proceedings of the Joint Liaison Group shall remain confidential unless otherwise agreed between the two sides.
11. The Joint Liaison Group may by agreement between the two sides decide to set up specialist sub-groups to deal with particular subjects requiring expert assistance.
12. Meetings of the Joint Liaison Group and sub-groups may be attended by experts other than the members of the Joint Liaison Group. Each side shall determine the composition of its delegation to particular meetings of the Joint Liaison Group or sub-group in accordance with the subjects to be discussed and the venue chosen.
13. The working procedures of the Joint Liaison Group shall be discussed and decided upon by the two sides within the guidelines laid down in this Annex.

ANNEX III

LAND LEASES

The Government of the United Kingdom and the Government of the People's Republic of China have agreed that, with effect from the entry into force of the Joint Declaration, land leases in Hong Kong and other related matters shall be dealt with in accordance with the following provisions:

1. All leases of land granted or decided upon before the entry into force of the Joint Declaration and those granted thereafter in accordance with paragraph 2 or 3 of this Annex, and which extend beyond 30 June 1997, and all rights in relation to such leases shall continue to be recognised and protected under the law of the Hong Kong Special Administrative Region.
2. All leases of land granted by the British Hong Kong Government not containing a right of renewal that expire before 30 June 1997, except short term tenancies and leases for special purposes, may be extended if the lessee so wishes for a period expiring not later than 30 June 2047 without payment of an additional premium. An annual rent shall be charged from the date of extension equivalent to 3 per cent of the rateable value of the property at that date, adjusted in step with any changes in the rateable value thereafter. In the case of old schedule lots, village lots, small houses and similar rural holdings, where the property was on 30 June 1984 held by, or, in the case of small houses granted after that date, the property is granted to, a person descended through the male line from a person who was in 1898 a resident of an established village in Hong Kong, the rent shall remain unchanged so long as the property is held by that person or by one of his lawful successors in the male line. Where leases of land not having a right of renewal expire after 30 June 1997, they shall be dealt with in accordance with the relevant land laws and policies of the Hong Kong Special Administrative Region.
3. From the entry into force of the Joint Declaration until 30 June 1997, new leases of land may be granted by the British Hong Kong Government for terms expiring not later than 30 June 2047. Such leases shall be granted at a premium and nominal rental until 30 June 1997, after which date they shall not require payment of an additional premium but an annual rent equivalent to 3 per cent of the rateable value of the property at that date, adjusted in step with changes in the rateable value thereafter, shall be charged.
4. The total amount of new land to be granted under paragraph 3 of this Annex shall be limited to 50 hectares a year (excluding land to be granted to the Hong Kong Housing Authority for public rental housing) from the entry into force of the Joint Declaration until 30 June 1997.
5. Modifications of the conditions specified in leases granted by the British Hong Kong Government may continue to be granted before 1 July 1997 at a premium equivalent to the difference between the value of the land under the previous conditions and its value under the modified conditions.
6. From the entry into force of the Joint Declaration until 30 June 1997, premium income obtained by the British Hong Kong Government from land transactions shall, after deduction of the average cost of land production, be shared equally between the British Hong Kong Government and the future Hong Kong Special Administrative Region Government. All the income obtained by the British Hong Kong Government, including the amount of the above mentioned deduction, shall be put into the Capital Works Reserve Fund for the financing of land development and public works in Hong Kong. The

Hong Kong Special Administrative Region Government's share of the premium income shall be deposited in banks incorporated in Hong Kong and shall not be drawn on except for the financing of land development and public works in Hong Kong in accordance with the provisions of paragraph 7(d) of this Annex.

7. A Land Commission shall be established in Hong Kong immediately upon the entry into force of the Joint Declaration. The Land Commission shall be composed of an equal number of officials designated respectively by the Government of the United Kingdom and the Government of the People's Republic of China together with necessary supporting staff. The officials of the two sides shall be responsible to their respective governments. The Land Commission shall be dissolved on 30 June 1997.

The terms of reference of the Land Commission shall be:

- (a) to conduct consultations on the implementation of this Annex;
- (b) to monitor observance of the limit specified in paragraph 4 of this Annex, the amount of land granted to the Hong Kong Housing Authority for public rental housing, and the division and use of premium income referred to in paragraph 6 of this Annex;
- (c) to consider and decide on proposals from the British Hong Kong Government for increasing the limit referred to in paragraph 4 of this Annex;
- (d) to examine proposals for drawing on the Hong Kong Special Administrative Region Government's share of premium income referred to in paragraph 6 of this Annex and to make recommendations to the Chinese side for decision.

Matters on which there is disagreement in the Land Commission shall be referred to the Government of the United Kingdom and the Government of the People's Republic of China for decision.

8. Specific details regarding the establishment of the Land Commission shall be finalised separately by the two sides through consultations.

EXCHANGE OF MEMORANDA

(A) UNITED KINGDOM MEMORANDUM

MEMORANDUM

In connection with the Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the question of Hong Kong to be signed this day, the Government of the United Kingdom declares that, subject to the completion of the necessary amendments to the relevant United Kingdom legislation:

- (a) All persons who on 30 June 1997 are, by virtue of a connection with Hong Kong, British Dependent Territories citizens (BDTCs) under the law in force in the United Kingdom will cease to be BDTCs with effect from 1 July 1997, but will be eligible to retain an appropriate status which, without conferring the right of abode in the United Kingdom, will entitle them to continue to use passports issued by the Government of the United Kingdom. This status will be acquired by such persons only if they hold or are included in such a British passport issued before

1 July 1997, except that eligible persons born on or after 1 January 1997 but before 1 July 1997 may obtain or be included in such a passport up to 31 December 1997.

- (b) No person will acquire BDTC status on or after 1 July 1997 by virtue of a connection with Hong Kong. No person born on or after 1 July 1997 will acquire the status referred to as being appropriate in sub-paragraph (a).
- (c) United Kingdom consular officials in the Hong Kong Special Administrative Region and elsewhere may renew and replace passports of persons mentioned in sub-paragraph (a) and may also issue them to persons, born before 1 July 1997 of such persons, who had previously been included in the passport of their parent.
- (d) Those who have obtained or been included in passports issued by the Government of the United Kingdom under sub-paragraphs (a) and (c) will be entitled to receive, upon request, British consular services and protection when in third countries.

Beijing,

1984.

(B) CHINESE MEMORANDUM

Translation

MEMORANDUM

The Government of the People's Republic of China has received the memorandum from the Government of the United Kingdom of Great Britain and Northern Ireland dated 1984.

Under the Nationality Law of the People's Republic of China, all Hong Kong Chinese compatriots, whether they are holders of the "British Dependent Territories citizens' Passport" or not, are Chinese nationals.

Taking account of the historical background of Hong Kong and its realities, the competent authorities of the Government of the People's Republic of China will, with effect from 1 July 1997, permit Chinese nationals in Hong Kong who were previously called "British Dependent Territories citizens" to use travel documents issued by the Government of the United Kingdom for the purpose of travelling to other states and regions.

The above Chinese nationals will not be entitled to British consular protection in the Hong Kong Special Administrative Region and other parts of the People's Republic of China on account of their holding the above-mentioned British travel documents.

Beijing,

1984.

Source: Great Britain, Foreign Office, Draft Agreement on the Future of Hong Kong, 26 September 1984, pp. 11-33.

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