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香港特別行政區基本法諮詢 委員會涉外事務專責小組 會議記錄

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大學
圖書館
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香港特別行政區基本法諮詢 委員會涉外事務專責小組 會議記錄

涉外事務專責小組第一次會議

1986年4月10日

1. 組員名單

鄧燦基	徐是雄	梁振英	伍淑清	堵綏滿
王敏超	羅德丞	林邦莊	蘇海文	沙理士
石 慧	吳 坦	張柏枝	陶學祁	林光宇
吳少鵬	王英偉	梁智鴻	楊孝華	陳永棋
文漢明	李啓明	陳 彬	馮煒光	麥 燦
馮國綸				

2. 小組討論範圍

- ② 對外文化、體育協定及其他 132
- ① ③ 關稅、關貿 ← 332
- ① ③ 航運、民航、陸運
- ③ 駐外機構
- ① ③ 旅行簽證事務
- ① ③ 郵政、電訊
- ① ③ 稅務協定
- ① ③ 移民

3. 議程

- ① 推選是次會議召集人、副召集人；
- ② 擬定小組工作計劃，定出各次會議日期、時間，以及各次討論的題目；
- ③ 小組分組；
- ④ 討論邀請有專長之會外人士成為小組成員事宜；
- ⑤ 其他。

18/4/86 5.00-5.00 滿座
 推選召集人、副召集人。

附件 8, 9, 11.
 2 小時會議 5.30-7.30
 2 80A-72

- ① Tue
- ✓ ② Tue
- ③ Tue
- ✓ ④ Tue
- ⑤ 1-2-3 Thurs.
- ⑥ 1-2-3 Mon.
- ⑦

涉外事務專責小組第一次會議 會議紀錄

日期：一九八六年四月十日（星期四）

時間：下午5時30分

地點：基本法諮詢委員會會址

出席者：鄧燦基	徐是雄	梁振英	伍淑清	王敏超
林邦莊	蘇海文	沙理士	吳坦	張柏枝
陶學祁	林光宇	吳少鵬	王英偉	文漢明
馮焯光	麥燦	馮國綸		
缺席者：石慧	羅德丞	李啓明	梁智鴻	陳彬
楊孝華	堵綏滿	陳永棋		

- 議程：①推選是次會議召集人、副召集人；
②擬定小組工作計劃，定出各次會議日期、時間，以及各次討論的題目；
③小組分組；
④討論邀請有專長之會外人士成為小組成員事宜；
⑤其他。

1. 會議推選了是次會議的召集人為梁振英委員，副召集人為林光宇委員。
2. 會議議決：將討論範圍分下列三部分：
 - ①對外文化、體育協定及其他；
 - ②航運、民航、陸運、郵政、電訊；
 - ③關稅、關貿、駐外機構、旅行簽證事務。每部分各討論一次，經過三次會議後，再議定下一階段的工作。
3. 會議議決：頭三次會議開會時間為每兩周一次，每次會議2小時（下午5時30分至7時30分），討論題目為：4月30日討論第2個題目，5月14日討論第1個題目，5月28日討論第3個題目。
4. 會議議決：本專責小組不再分組。
5. 會議議決：會議的召集人及副召集人由前一次會議推選產生。4月30日會議的召集人為林光宇委員。
6. 會議議決：暫不考慮邀請專家為成員。
7. 會議無其他討論事項，於6時45分結束。

副召集人：

林光宇

附 錄

1. 組員名單

鄒燦基	徐是雄	梁振英	伍淑清	堵綏滿
王敏超	羅德丞	林邦莊	蘇海文	沙理士
石 慧	吳 坦	張柏枝	陶學祁	林光宇
吳少鵬	王英偉	梁智鴻	楊孝華	陳永棋
文漢明	李啓明	陳 彬	馮煒光	麥 燦
馮國綸				

2. 小組討論範圍

- ✓ 一對外文化、體育協定及其他
- ✓ 一關稅、關貿
- ✓ 一航運、民航、陸運
- 一駐外機構
- 一旅行簽證事務
- 一郵政、電訊

涉外事務專責小組 第二次會議通知

日期：一九八六年四月三十日（星期三）

時間：下午五時三十分

地點：基本法諮詢委員會會址

召集人：林光宇委員

討論範圍：航運、民航、陸運、郵政、電訊

議程：①推選下次會議召集人、副召集人；

②會議討論；

③其他。

涉外事務專責小組

第二次會議總結

日期：一九八六年四月三十日（星期三）

時間：下午五時十五分

召集人：林光宇委員

發言人次：六十三次

組員名單：鄒燦基※	徐是雄※	梁振英※	伍淑清	堵綏滿
王敏超	羅德丞	林邦莊※	蘇海文※	沙理士
石 慧	吳 坦	張柏枝※	陶學祁	林光宇★
吳少鵬※	王英偉	梁智鴻	楊孝華※	陳永棋※
文漢明※	李啓明	陳 彬	馮煒光※	麥 燦
馮國綸				
★召集人	※出席者			

一、是次會議的主要內容是由蘇海文委員解釋及說明“航運與民航問題”，其他委員也圍繞着蘇委員的發言及“航運與民航”的書面意見提出問題，蘇委員一一解答。

二、蘇海文委員的發言重點是：最基本的原則應寫入基本法內，包括

- (1) 97年後在香港登記的船隻，其國籍將會是中國，這是反映出主權問題；
- (2) 其他國家的船隻也可以來港登記；
- (3) 香港的船東，絕對有自由選擇在何港口登記；(2)、(3)點均體驗維持資本主義制度的精神，符合中英聯合聲明；
- (4) 國營船隻與私營船隻應有公平競爭；
- (5) 只要受過正式訓練及考試，任何國籍人仕，均可在港當船員。
- (6) 在香港登記之船隻，應絕對有自由到其他地方貿易；
- (7) 船隻在外賺錢，在港不應抽利得稅。

蘇委員指出：目前沒有一個國家，有兩種船舶登記法律；用掛“兩支旗”方式（一支中國國旗，一支香港區旗）可能是一種解決辦法。

蘇委員還建議：英國政府應作一些讓步，讓香港儘早有一套獨立登記的法則，逐漸脫離英國的系統，逐漸與中國的安排接近些。中英兩國由現在至97年之間，安排向世界解釋，爭取其他國家承認。

三、有些委員則指出：香港應儘量爭取做國際組織中的獨立會員；但若不能，而只能以中國的附屬會員身份出現時，則有關香港問題應由香港代表發言。

四、是次會議只是一般性地討論了海運及航空等問題，未有達到任何結論。

林光宇

召集人：_____

涉外事務專責小組 第三次會議通知

日期：一九八六年五月十四日（星期三）

時間：下午五時三十分

地點：基本法諮詢委員會會址

召集人：林邦莊委員

議程：1. 推選下次會議召集人

2. 分組討論

3. 其他

討論提要：對外文化體育協定及其他

① 參與：國際組織／機構

全國組織／機構

在層面、地位及代表數目方面作考慮

訂立協議的能力

② 香港在文化體育的代表性：國際比賽、全國比賽

③ 香港人在文化體育上作為中國代表的合適性

④ 其他

討論資料：

1. 聯合聲明

香港特別行政區可以“中國香港”的名義單獨地同各國、各地區及有關國際組織保持和發展經濟、文化關係，並簽訂有關協定。

附件一

第十一節

在外交事務屬中央人民政府管理的原則下，香港特別行政區政府的代表，可作為中華人民共和國政府代表團的成員，參加由中央人民政府進行的與香港特別行政區直接有關的外交談判。香港特別行政區可以“中國香港”的名義，在經濟、貿易、金融、航運、通訊、旅遊、文化、體育等領域單獨地同世界各國、各地區及有關國際組織保持和發展關係，並簽訂和履行有關協定。對以國家為單位參加的、與香港特別行政區有關的、適當領域的國際組織和國際會議，香港特別行政區政府的代表可作為中華人民共和國政府代表團的成員或以中央人民政府和上述有關國際組織或國際會議允許的身份參加，並以“中國香港”的名義發表意見。對不以國家為單位參加的國際組織和國際會議，香港特別行政區可以“中國香港”的名義參加。

中華人民共和國締結的國際協定，中央人民政府可根據香港特別行政區的情況和需要，在徵詢香港特別行政區政府的意見後，決定是否適用於香港特別行政區。中華人民共和國尚未參加但已適用於香港的國際協定仍可繼續適用。中央人民政府根據需要授權或協助香港特別行政區政府作出適當安排，使其他有關的國際協定適用於香港特別行政區。對中華人民共和國已經參加而香港目前也以某種形式參加的國際組織，中央人民政府將採取必要措施使香港特別行政區以適當形式繼續保持在這些組織中的地位。對中華人民共和國尚未參加而香港目前以某種形式參加的國際組織，中央人民政府將根據需要使香港特別行政區以適當形式繼續參加這些組織。

外國在香港特別行政區設立領事機構或其他官方、半官方機構，須經中央人民政府批准。同中華人民共和國建立正式外交關係的國家在香港設立的領事機構和其他官方機構，可予保留，尚未同中華人民共和國建立正式外交關係國家的領事機構和其他官方機構，可根據情況予以保留或改為半官方機構；尚未為中華人民共和國承認的國家，只能設立民間機構。

聯合王國可在香港特別行政區設總領事館。

2. 結構 (草案)

香港特別行政區的對外事務

- (一) 參與有關的外交談判
- (二) 參加有關的國際組織、國際會議，簽訂和履行有關國際協定
- (三) 國際協定在香港的適用問題
- (四) 簽發護照和其它旅行證件的問題
- (五) 同外國或外地區互免簽證的問題
- (六) 在外國或外地區設立官方、半官方的經濟貿易機構
- (七) 外國或外地區在香港設立機構的條件和程序

涉外事務專責小組 第四次會議通知

日期：一九八六年五月二十八日（星期三）
時間：下午五時三十分
地點：基本法諮詢委員會會址
召集人：張柏枝委員
議程：1. 推選下次會議召集人

2. 分組討論

3. 其他

討論提要：(1)如何維持香港特別行政區作為獨立關稅地區；

(2) 97年後香港在關稅及貿易總協定的地位，以及享有最惠國待遇的可能性；

(3) “一國兩制”對關貿協定的影響；

(4)香港特別行政區政府在參與國際組織時，如何保留原有的對外策略；

(5)未來的關貿協定內容的演變對香港的影響。

中英聯合聲明

附件一

六

香港特別行政區將保持自由港地位，並繼續實行自由貿易政策，包括貨物和資本的自由流動。香港特別行政區可單獨同各國、各地區保持和發展經濟和貿易關係。

香港特別行政區為單獨的關稅地區。香港特別行政區可參加關稅和貿易總協定、關於國際紡織品貿易安排等有關的國際組織和國際貿易協定，包括優惠貿易安排。香港特別行政區取得的出口配額、關稅優惠和達成的其他類似安排，全由香港特別行政區享有。香港特別行政區有權根據當時的產地規則，對在當地製造的產品簽發產地來源證。

香港特別行政區可根據需要在外國設立官方或半官方的經濟和貿易機構，並報中央人民政府備案。

附件二

關於中英聯合聯絡小組

四、在聯合聯絡小組成立到一九九七年七月一日的前半段時期中審議的事項包括：

(一)兩國政府為使香港特別行政區作為獨立關稅地區保持其經濟關係，特別是為確保香港特別行政區繼續參加關稅及貿易總協定、多種纖維協定及其他國際性安排所需採取的行動；

(二)兩國政府為確保同香港有關的國際權利與義務繼續適用所需採取的行動。

註釋

(出自 1984·9·26 英國政府白皮書)

24. 香港參加關稅及貿易總協定，從而在主要出口市場享受到最優惠國的待遇，這是香港能成為成功的出口地區的重要因素。在紡織和成衣兩方面，關稅及貿易總協定的自由貿易原則受到多種纖維協定所修改。多種纖維協定是經各國協商同意不遵照關稅及貿易總協定的若干常規而產生出來的。即使在這兩方面，香港仍可以在多種纖維協定範圍內，以及根據這協定的條文進行談判所達成的雙邊協定，發展貿易。有一點更重要的，就是香港在關稅及貿易總協定和多種纖維協定兩方面都有積極的參與。因此，保留香港在關稅及貿易總協定的成員地位，是非常重要的。同時，假如多種纖維協定在一九八六年期滿後再延期的話，香港也有保留它在這個協定的成員地位的必要。這兩點也在附件中這節條文列明。

SUMMARY OF THE FOURTH MEETING OF
THE SPECIAL GROUP ON EXTERNAL AFFAIRS

DATE : 28 May, 1986 (Wednesday)
 TIME : 5:30 p.m.
 VENUE : CCBL Premises
 CONVENOR : Mr Cheung Pak Chi
 TOPIC : General Agreement on Tariffs and Trade
 SPEAKER-COURTS : 100

MEMBERS OF THE SPECIAL GROUP :-

Kenneth Chow	Zee Sze Yong *	Leung Chun Ying
Annie Ng	To Shui Moon	Ronnie M.C. Wong
Lo Tai Shing	Lamborun, J.S *	Sohmen, H *
Sales, A.de O	Shek Wai	Harold T. Wu *
Cheung Pak Chi #	Edwin H.C. Tao	Lam Kwong Yu *
Steve Ng *	Wilfred Y.W. Wong	C.H. Leong
Howard Yeung	Chan Wing Kee	Man Hon Ming
Lee Kai Ming *	Chan Pun	Fung Wai Kwong *
Mak Chan	William W.L. Fung *	

Convenor

* Present at this meeting

SUMMARY:

- The decision made by the members regarding the next three meetings was as follows:

Date	Convenor	Topic
25th June	Mr Fung Wai Kwong	Postage and tele- communication
9th July	Mr William K.L. Fung	Overseas office
23rd July	to be decided	Matters concerning travel documents and visas

2. The discussion of the meeting was concluded as follows:

2.1 To maintain HKSAR as a separate customs territory

It was stated in Clause 6 of Annex 1 of the Sino-British Joint Declaration and "The Structure of the Basic Law (Draft)" that HKSAR would retain its status as a separate customs territory. Recently Hong Kong had been accepted as a separate contracting party to the General Agreement on Tariffs and Trade (GATT). Thus it would not be hard for Hong Kong to retain that status provided that the conditions in the GATT would be observed in the future and the present policies, such as the absence of openly subsidized industries, or restriction on tariff, were unchanged. Some members thought that since Hong Kong relied heavily on import and export trade, both the GATT and the Multi-Fibre Agreements were very important to the territory. In order to have a substantial guarantee, the members hoped that it would be stated in the Basic Law that the future SAR's Government had to observe the conditions imposed on the SAR by the GATT, or would not interfere with Hong Kong's status in the GATT.

2.2 Many members thought that it would be necessary for HKSAR to have independent or separate (Note: regarding the meaning of "independent" or "separate", some members thought that the word "separate" which appeared in the Joint Declaration referred to the situation in which Hong Kong was allowed to make its own decision but the Central Government reserved the right of control, whereas the word "independent" meant that Hong Kong was able to make its own decision without any intervention.) free trade and economic policies. For instance, Hong Kong should have the right to act on its own decision when China exercised economic sanction against certain countries. Some members suggested that, in this respect, the power of policy-making granted to the SAR's Government should be clearly defined so that a line could be drawn between matters which were solely subject to the decision of the Central Government and matters which were at the SAR Government's discretion.

2.3 Some members pointed out that Hong Kong only had limited power in trade negotiations and asked whether Hong Kong could, through China, gain a better position in such negotiations after the reversion of sovereignty to China. But in such a case, Hong Kong might lose considerably her power of decision-making. As it was difficult to determine the desirability of this practice, some members thought that to state it in the Basic Law would be unnecessary, if not impossible. However, in practice, Hong Kong could cleverly let its trading partners realize that China's economy would not be affected, even indirectly, by the actions which had economic effects on Hong Kong.

3. It was agreed that government officials who were familiar with the discussion topics would be invited to the meeting for providing relevant information and briefing the members before the discussion. Moreover, it was hoped that those members with had a good knowledge of the topics concerned would submit their written opinions as discussion papers.

Convenor: _____

* If there is any discrepancy between the Chinese and the English versions, the Chinese version shall prevail.

SUMMARY OF THE FIFTH MEETING OF
 THE SPECIAL GROUP ON EXTERNAL AFFAIRS

DATE : 25 June, 1986 (Wednesday)
 TIME : 5:30 p.m.
 VENUE : CCBL Premises
 CONVENDOR : Mr Fung Wai Kwong
 ADMINISTRATIVE OFFICER : Ms June W.Y. Wong

MEMBERS OF THE SPECIAL GROUP :-

Kenneth Chow	Zee Sze Yong #	Leung Chun Ying#
Annie Ng	To Shui Moon	Ronnie M.C. Wong
Lo Tai Shing	Lamborun, J.S #	Sohmen, H
Sales, A.de O.	Shek Wai	Harold T. Wu
Cheung Pak Chi #	Edwin H.C. Tao	Lam Kwong Yu #
Steve Ng	Wilfred Y.W. Wong	C.H. Leong
Howard Yeung	Chan Wing Kee	Man Hon Ming
Lee Kai Ming	Chan Pun	Fung Wai Kwong #
Mak Chan.	William W.L. Fung	

Convenor

* Present at this meeting

IN ATTENDANCE : Mr Tommy Y.Y. Cheung

SUMMARY:

1. Report on the invitation to the Postmaster General

The convenor reported that the Secretariat had invited the Postmaster General to speak on the following matters at the Consultative Committee:

- 1.1 Hong Kong's participation in international postal and telecommunication organisations at present;
- 1.2 Hong Kong's participation in these organisations during her transitional period;

- 1.3 If Hong Kong is to preserve her right of participation in this respect, what measures should be taken with regard to the drafting of the Basic Law?

In his reply, the Postmaster General accepted the invitation in principle but he pointed out that as items 2 and 3 were within the scope of discussion of the Sino-British Joint Liason Group, they were to be kept confidential at present. Thus, he could only speak on item 1. Since he would be out of town on 25th June, he hoped that the committee could arrange for another date.

After discussing with the Secretariat, the convenor noted that as the group members would be busy attending the discussion sessions with the Drafting Committee members in early July, he and the Postmaster General agreed to shelve the talk temporarily.

2. Postal services and telecommunications

2.1 A member feared that communication between Hong Kong and the countries which had no diplomatic relations with China e.g. Taiwan and South Africa would be affected after the reversion of sovereignty to China in 1997. A member suggested that if international organisations guaranteed that their members could communicate with each other even if no diplomatic relations exist between them, it would not be necessary to state this right of communication in the Basic Law; but if this right was not protected by international organizations, the Basic Law should state clearly that Hong Kong was allowed to communicate with countries which had no diplomatic relations with China.

2.2 Members were not sure of the present status of Hong Kong in international communication organisations - whether Hong Kong was an independent member or under the membership of Britain. A member, however, was confident that Hong Kong should be able to join these organisations as an independent member.

- 2.3 A member noted that at present telecommunication services in Hong Kong were mainly provided by Cable and Wireless (Hong Kong) Limited whose major shareholder was Britain. He feared that if external communication was mainly controlled by foreign capital, there might be potential danger after 1997. Hence, a member pointed out that consideration should be given to the question whether telecommunication services should be run by organisations owned by Hong Kong people or by companies registered in Hong Kong. A member added that as the franchise granted to Cable and Wireless by the Hong Kong Government would remain effective for more than ten years after 1997, and setting up a new telecommunication company would involve colossal capital and many technical problems, it was unlikely that any competing companies would emerge in the near future.
- 2.4 A member asked if there would be any great changes in Hong Kong's telecommunication during the coming decade. Another member remarked that he did not expect any.
- 2.5 A member expressed the worry that Hong Kong might have to use the satellite launched by China after 1997. Another member commented that it all depended on the price and it was therefore improbable that that China would intervene in the future.

3. Discussion sessions with Drafting Committee members

The group members agreed that Mr William K.L. Fung would be the chairman of the discussion session held between the Central/SAR Subgroup of the Drafting Committee and this Special Group on External Affairs. Mr Fung was asked to contact other Consultative Committee members who were conversant with external affairs, and to prepare discussion papers.

Convenor: _____

If there is any discrepancy between the Chinese and the English versions, the Chinese version shall prevail.

Government and Quasi-Government Organisations with Overseas Offices
Hong Kong Government

 a) Trade & Industry Branch -- Overseas Offices (7)

London	Geneva
Manchester (sub-office)	New York
Edinburgh (sub-office)	Washington
Brussels	

 b) Industrial Promotion Division (5)

New York	London
San Francisco	Stuttgart
Tokyo	

Hong Kong Trade Development Council (20)

London	New York
Manchester	Los Angeles
Frankfurt	Chicago
Hamburg	Dallas
Stockholm	Toronto
Amsterdam	Panama
Vienna	Sydney
Zurich	Tokyo
Milan	Osaka
Paris	Beijing

Hong Kong Tourist Association (11)

New York	Paris
San Francisco	Frankfurt
Chicago	Singapore
Sydney	Tokyo
London	Osaka
Rome	

CCBL-SG/EXA-06-AP01-860723(E)

THE SPECIAL GROUP ON EXTERNAL AFFAIRS

In the first meeting, the Special Group on External Affairs has decided to discuss the following three topics in three meeting's time.

1. Shipping, civil aviation, land transportation, postage matter, and telecommunication.
2. International agreements on culture and sport, and others.
3. Tariff, overseas offices, matter concerning travel documents, and visas.

Members have given their opinions after preliminary discussions to the Special Group related to the Special Group of the Relationship between the Central Government and the HKSAR of the DCBL [Chapter 7, Structure of the Basic Law (draft)], the progress of this Special Group should follow the Special Group of the DCBL.

In the next step, this Special Group is going to have in-depth study of the mentioned topics. If necessary, experts and related organizations should be invited to participate in forums, talks, or seminars for further discussions. A preliminary report will be finished by October and handed to the Executive Committee for revision and approval before submitted to the Drafting Committee.

After October, this Special Group will focus on some specific topics suggested by the Drafting Committee and another report will be finished by the summer of 1987.

* If there is any discrepancy between the Chinese and English versions, the Chinese version shall prevail.

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SK JS

3/9/86
Burd.
or
10/9/86

17/9/86
高核

針對第七章

Government and Quasi-Government Organisations with Overseas OfficesHong Kong Governmenta) Trade & Industry Branch - Overseas Offices (6)

London	Geneva
Manchester (sub-office)	New York
Edinburgh (sub-office)	Washington
Brussels	San Francisco

b) Industrial Promotion Division (5)

New York	London
San Francisco	Stuttgart
Tokyo	

Hong Kong Trade Development Council (20)

London	New York
Manchester	Los Angeles
Frankfurt	Chicago
Hamburg	Dallas
Stockholm	Toronto
Amsterdam	Panama
Vienna	Sydney
Zurich	Tokyo
Milan	Osaka
Paris	Beijing

Hong Kong Tourist Association (11)

New York	Paris
San Francisco	Frankfurt
Chicago	Singapore
Sydney	Tokyo
London	Osaka
Rome	

涉外事務專責小組 第六次會議議程

日期：一九八六年七月二十三日（星期三）

時間：下午五時三十分

地點：基本法諮詢委員會會址

召集人：馮國綸委員

會務主任：黃蕙瑜小姐

討論題目：駐外機關

- 議程：
1. 討論專責小組時間表。（附件一）
 2. 選出下次會議召集人。
 3. 審閱第四、五次會議紀要。
 4. 駐外機關的定義。（附件二）
 5. 香港駐外機構和中華人民共和國駐外機構的關係。
 6. 香港特別行政區官員和中華人民共和國駐外機構的關係。

The Sixth Meeting of
the Special Group on External Affairs

Date : 23rd July, 1986 (Wednesday)

Time : 5:30p.m.

Place : CCBL Premises

Convenor : Mr. Fung Kok Lun

Administrative Officer : Ms. Wong Wai Yu, June

Discussion Topic : Overseas Offices

- Agenda :
1. To discuss the time table of the special group. (Appendix 1)
 2. To elect the convenor for the next meeting.
 3. To review summaries of the 4th and 5th meeting.
 4. To discuss the definition of overseas offices. (Appendix 2)
 5. To discuss the relationship between overseas offices of Hong Kong and overseas offices of the PRC.
 6. To discuss the relationship between officers of the HKSAR and overseas offices of the PRC.

涉外事務專責小組

涉外事務專責小組在首次會議決定以三個會議來討論下列三個題目：

1. 航運、民航、陸運、郵政、電訊；
2. 對外文化體育協定及其他；
3. 關稅、關貿、駐外機構、旅行簽證事務。

經過討論後，委員就上述問題已發表了初步意見，小組涉及的內容，與起草委員會的中央與地方關係專題小組相同，（《基本法結構（草案）》的第七章），故其工作進度應就該組的進展而定。

小組下一階段的工作，將就專門題目進行深入討論，有需要時，將邀請一些專家或有關團體發表意見，形式可用座談會、講座、研討會，務求在10月前做成初步報告，遞交執行委員會審訂，再交起草委員會參考。

10月後的工作，將按起草委員會的要求對某些專門性問題再作研究，收集意見。在87年夏季前交起草委員會參考。

涉外事務專責小組第四次會議紀要

日期：一九八六年五月二十八日

時間：下午五時三十分

召集人：張柏枝委員

討論題目：關稅貿易總協定

發言人次：一百次

委員名單：	鄒燦基	※徐是雄	梁振英	伍淑清	※培綏滿
	王敏超	羅德丞	※林邦莊	※蘇海文	沙理士
	石 慧	※吳 坦	★張柏枝	陶學祁	※林光宇
	※吳少鵬	王英偉	梁智鴻	楊孝華	陳永棋
	文漢明	※李啓明	陳 彬	※馮煒光	麥 燦
	※馮國綸				

★召集人

※出席委員

1. 是次會議議決有關下三次會議之事宜如下：

日期	召集人	議 題
六月二十五日	馮煒光委員	郵政、電訊
七月九日	馮國綸委員	駐外機構
七月二十三日	待 定	旅遊簽證事務

2. 會議之討論內容大致可歸納如下：

2.1. 如何維持香港特別行政區作為獨立關稅地區：

中英聯合聲明附件一第六節及《基本法結構(草案)》，均列明香港特別行政區單獨的關稅地區，而最近香港已獲得作為關貿協定的獨立締約成員地位，只要將來繼續遵守協定中的條件，並維持目前的政策，例如沒有公然補助工業，或實行關稅管制措施等，這樣的地位便不難保持。但由於香港的生存必須依靠出入口貿易，委員們都感到關貿協定及多種纖維協定對香港十分重要，所以為了進一步得到保證，個別委員希望在基本法中寫明，將來的特區政府必須遵照特區關貿協定的條件或說明將來的中央政府不會干擾香港在關貿協定中的地位。

- 2.2. 不少委員認為，將來香港特別行政區需要有獨立或單獨的（註：關於「單獨」和「獨立」的字眼，有委員認為聯合聲明中的「單獨」一詞，是指由中央政府放手，但仍保留着這個權力的情況下，香港可自行決定；獨立則指香港不受干預而自行決定）自由貿易及經濟政策，例如，若中國對另一個國家實行貿易或經濟制裁，香港有權作出自己的決定。還有委員建議，在這些問題上，中央與特區在決策權力方面，應有一個較明確分工，說明在某一層面上，特區應依循中央的決定，而在此一層面以下的，則特區可按自己實際情況辦理。
- 2.3. 一些委員提出，現時香港在貿易談判中，力量有限，將來主權回歸中國後，可否借助中國的力量，協助香港在談判中，爭取更有利的地位，然而香港可能因此失去一定程度的決策權力，故很難衡量這做法的利弊，所以有委員認為，無需且也不能把這些事情寫進基本法，但實際上，則可通過巧妙的設計，令貿易伙伴明白，一些對香港經濟有影響的行為也不能間接對中國的經濟造成打擊。
3. 會議同意下次會議召集人邀請熟悉該次討論題目之政府官員提供有關資料，並在會議上作介紹，好讓委員們對該等問題有了相當了解後，再進行討論。同時，希望熟悉該等問題之委員提交書面意見作討論文件。

召集人

王兆敏

涉外事務專責小組 第五次會議紀要

日期：一九八六年六月二十五日（星期三）

時間：下午五時三十分

地點：基本法諮詢委員會會址

召集人：馮煒光委員

組員名單：	鄧燦基	※徐是雄	※梁振英	伍淑清	堵綏滿
	王敏超	羅德丞	林邦莊	蘇海文	沙理士
	石慧	吳坦	※張柏枝	陶學祁	※林光宇
	吳少鵬	王英偉	梁智鴻	楊孝華	陳永棋
	文漢明	李啓明	陳彬	★馮煒光	麥燦
	馮國綸				

★召集人

※出席委員

紀要：

1. 召集人報告邀請郵政署官員的安排：

召集人報告秘書處曾發信給郵政署長，希望他能於六月二十五日親臨諮詢委員會的會議，向委員解釋下列問題：

- 1.1. 香港現在參予國際性郵電組織的情況；
- 1.2. 香港在過渡時期參予這些組織的情況；
- 1.3. 如果要保持香港參予這些組織的權利，草擬基本法時應該注意甚麼？

郵政處長的回信原則上接受邀請，但指出第二和第三項屬於中英聯合聯絡小組的討論範圍，暫時仍要保密，因此他只可以向諮詢委員會委員解釋第一項。但由於六月二十五日他不在香港，故希望能安排其他時間。

召集人與秘書處商討後，認為由於七月初草委到港進行交流，各委員要參加很多特別的交流會，工作將會很忙，故不适宜再在那段時間安排講座。因此與郵政局長商量，暫時擱置邀請，待日後有更適當的時間才再作安排。

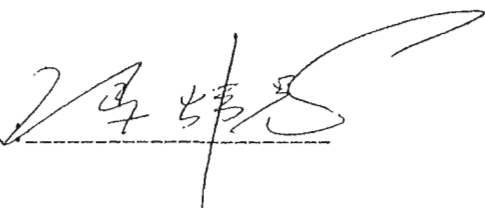
2. 商討有關郵政電訊的事項：

- 2.1. 有委員非常關心在一九九七年以後，香港會否因為主權回歸中國而影響它與其他國家和地區，尤其是與中國沒有邦交的國家和地區，比如台灣、南非等的通訊關係。因此，有委員提出：如果國際通訊組織保證成員地區可與沒有邦交的地區通訊，則基本法不需要詳細列出這權利，否則，基本法中應寫明香港可與和中國沒有邦交的組織通訊。
- 2.2. 在座委員不清楚香港現在究竟是以獨立身份，還是附屬英國的身份加入國際通訊組織，但其中一位委員估計在九七年後，香港能以獨立身份加入該等組織的機會很大。
- 2.3. 有委員指出現在香港的電訊服務主要由大東電報局負責，而該公司的大部份股份由英國佔有。因此擔心在九七年後，如果香港的對外通訊主要由外國資金佔有，便會產生危險，因為這等組織幾乎完全控制香港的對外溝通。因此有委員指出要詳細考慮未來特別行政區的電訊服務，是否應該由香港人擁有的機構，或者是在香港註冊的公司負責。但就這問題，另一委員補充說：香港政府與大東電報局簽定的專利權將會有效到九七年後的十多年，因此短期內亦不可能會有另一間公司出來與大東電報局競爭，況且，要成立一間新的電訊公司需要極龐大的資金，也會引起很多技術問題。
- 2.4. 有委員提出不知在未來的十多年內，香港在通訊方面會出現甚麼重大的改變，另一委員說他估計不會有。
- 2.5. 有委員擔心在九七年以後，中國會否規定香港一定要使用他們發射的衛星，但另一委員回答說：最根本的問題還在價錢，因此估計將來中國會干預的機會不大。

3. 商討與草委交流的事項：

在座委員一致同意邀請馮國綸先生作七月九日草委中央與香港特別行政區關係專題小組與涉外小組交流會的主持人，並且希望他能聯絡其他對涉外事務有認識的諮詢委員，事先預備討論文件。

召集人



涉外事務專責小組 第七次會議議程

日期：一九八六年八月十三日（星期三）

時間：下午五時三十分

地點：基本法諮詢委員會會址

召集人：吳坦委員

會務主任：黃蕙瑜小姐

- 議程：
1. 審閱上次會議紀要（附件一）
 2. 討論旅行證件（附件二、三）
 3. 討論簽證及其種類（附件二、三）
 4. 討論與旅行有關的行業及機構（附件二）
 5. 討論香港居民進出海外國家或中國的問題和海外及中國人士進出香港的問題（附件二、四、五）
 6. 其他

附件一

涉外事務專責小組

第六次會議紀要

日期：一九八六年七月二十三日（星期三）

時間：下午五時三十分

地點：基本法諮詢委員會會址

召集人：馮國綸委員

會務主任：黃慈瑜小姐

討論題目：駐外機關

組員名單：鄧燦基	徐是雄※	梁振英	伍淑清	堵綏滿
王敏超	羅德丞	林邦莊※	蘇海文	沙理士
石 慧	吳 坦	張柏枝※	陶學祁	林光宇
吳少譚※	王英偉	梁智鴻	楊孝華	陳永棋
文漢明	李啓明	陳 彬	馮煒光※	麥 熾
馮國綸★	張宇人			

★召集人 ※出席者

1. 討論專責小組時間表

召集人提出「涉外事務專責小組」七月初提議三次討論題目：

- a) 航運、民航、陸運、郵政、電訊。
- b) 對外文化體育協定及其他。
- c) 關稅、關貿、駐外機構、旅行簽證事務。

時未能參考基本法結構(草案)，故在結構草案公佈後，有所更改，希望能集中討論草案第七章「香港特別行政區的對外事務」，故召集人建議在八、九月分別討論以下兩個項目：

- d) 出入境簽證事項(草案第七章第四和五節)。
- e) 國際外交談判事項(草案第七章第一、二和三節)

而初步建議中包括的題目如關稅、貿易、航運和民航等，將會提議交給金融財務經濟專責小組之經濟制度分組討論。經各委員商討後，決定在八月的會議討論「出入境簽證事項」；九月的會議討論「國際外交談判事項」，並在是次會議邀請政務司署的 Mr. F. Burrows 親臨會議，向各委員解釋有關問題。

當討論完所有項目後，秘書處將會在九月初完成專責小組的初步報告，遞交各委員審閱。

2. 選出下次會議召集人

由於熟悉簽證事項及外交談判事項的委員當日都沒有出席會議，故召集人委托秘書處聯絡熟悉此兩題目的委員作以後會議的召集人。

3. 駐外機關的定義

聯合聲明提到未來香港的駐外機構及外國駐港的機構會分開三種：官方、半官方及民間機構，但要釐定這些機構的定義卻不容易。

有委員提到其中一種可行的分辨方法是：

a) 官方機構：從體制分，這種機構直接向國家的權力中心負責；從機力分，這種機構可代表國家簽證條約。

b) 半官方機構：這種機構與政府有極密切的關係，但並不受它控制。

但另一委員提到權力來源有時不容易清楚劃分，故這種劃分方法亦有問題。

此外，分別有委員提到以財政來源及機構的工作去界定駐外機構。但另一委員說，寫下定義不過是方便行政處理，並不影響香港將來處理涉外事務的原則或精神，因此不需要寫在基本法內。

此外，有委員提到未來香港除了如附件一第六節中提及的，設立處理經濟和貿易事務的官方或半官方駐外機構外，這些駐外機構應可處理附件一第十一節中提及的金融、航運、通訊、旅遊、文化和體育等事項。

4. 香港駐外機構和中華人民共和國駐外機構的關係：

有委員認為香港的駐外機構在外國的地位，純粹在乎該國的政府怎樣看，非香港人所能控制，而另一委員提到，為免誤會，希望香港和中華人民共和國的駐外機構分開，但另一委員認為這些細節不用寫在基本法內。

有委員提到聯合聲明指出香港有權處理有關的出入境事項，這是否就表示香港的駐外機構亦可以代表香港政府簽發出入境簽證，如果這樣，是否又侵犯中國主權，對這問題，另一委員說可提議中國授權香港政府簽發出入境証，這樣既可滿足本地人的要求，又不會傷害中國主權。但另一委員提到聯合聲明附件一已提到「對其他國家和地區的入境、逗留和離境，香港特別行政區政府可實行出入境管制」所以不需要中央政府授權。

不過，另一委員亦指出，香港現在所設立的駐外機構不多，如果將來只靠這些機構簽發入境証，必未能滿足外國遊客的需要，而估計將來亦不可能設立百多個駐外機構，所以提議在香港沒有設立駐外機構的地方可以借用中國領事館簽發證件，但要由香港官員獨立處理一切申請。但另一委員提到，現在需要有簽發證件才可訪港的國家主要是東歐和幾個其他的國家，所以問題不大。

5. 香港特別行政區官員和中華人民共和國駐外機構的關係：
有委員認為由於現在的港督在外交事務上享有大使的待遇，所以必需要求中國清楚表明，未來的香港特別行政區行政長官在外國的時候也應起碼有大使的待遇，如果有需要，當然可以更高。此外，小組委員亦建議中央與特別行政區的關係小組討論未來行政長官在中國的地位時，也要同樣考慮他在外國的地位。

馮國端

召集人：-----

附件二

基本法結構(草案), 及中英 聯合聲明中有關出入境簽證 的條款

基本法結構(草案)

1.1 第二章 中央與香港特別行政區的關係

(四)香港特別行政區享有行政管理權(香港特別行政區在人事、治安、財政、稅收、金融、貨幣、郵政、工商業、貿易、關稅和教育、科學、文化、出入境以及其他方面的管理權)

1.2 第三章 香港居民的基本權利和義務

(一)香港居民的定義

1.3 第五章 香港特別行政區的經濟

(六)航運管理和民航管理

1.4 第七章 香港特別行政區的對外事務

(四)簽發護照和其它旅行證件的問題

(五)同外國或外地區互免簽證的問題

聯合聲明

(二)香港特別行政區直轄於中華人民共和國中央人民政府。除外交和國防事務屬中央人民政府管理外,香港特別行政區享有高度的自治權。

(三)香港特別行政區享有行政管理權、立法權、獨立的司法權和終審權。現行的法律基本不變。

(五)香港的現行社會、經濟制度不變;生活方式不變。香港特別行政區依法保障人身、言論、出版、集會、結社、旅行、遷徙、通信、罷工、選擇職業和學術研究以及宗教信仰等各項權利和自由。私人財產、企業所有權、合法繼承權以及外來投資均受法律保護。

(十)香港特別行政區可以“中國香港”的名義單獨地同各國、各地區及有關國際組織保持和發展經濟、文化關係,並簽訂有關協定。

香港特別行政區政府可自行簽發出入香港的旅行證件。

備忘錄（英方）

聯繫到今天簽訂的大不列顛及北愛爾蘭聯合王國政府和中華人民共和國政府關於香港問題的聯合聲明，聯合王國政府聲明，在完成對聯合王國有關立法的必要修改的情況下，

一、凡根據聯合王國實行的法律，在一九九七年六月三十日由於同香港的關係為英國屬土公民者，從一九九七年七月一日起，不再是英國屬土公民，但將有資格保留某種適當地位，使其可繼續使用聯合王國政府簽發的護照，而不賦予在聯合王國的居留權。取得這種地位的人，必須為持有在一九九七年七月一日以前簽發的該種英國護照或包括在該種護照上的人，但在一九九七年一月一日或該日以後、一九九七年七月一日以前出生的有資格的人，可在一九九七年十二月三十一日截止的期間內取得該種護照或包括在該種護照上。

二、在一九九七年七月一日或該日以後，任何人不得由於同香港的關係而取得英國屬土公民的地位。凡在一九九七年七月一日或該日以後出生者，不得取得第一節中所述的適當地位。

三、在香港特別行政區和其他地方的聯合王國的領事官員可為第一節中提及的人所持的護照延長期限和予以更換，亦可給他們在一九九七年七月一日前出生並且原來包括在他們護照上的子女簽發護照。

四、根據第一節和第三節已領取聯合王國政府簽發的護照的人或包括在該護照上的人，經請求有權在第三國獲得英國的領事服務和保護。

第十四節：居留權、旅行證件及出入境

48. 本節條文是關於在香港特別行政區的居留權，特別行政區居民所使用的旅行證件及一般出入境的事宜。本節條文作出規定，使上述事宜在符合一九九七年七月一日香港地位轉變的情況下，盡可能得到繼續保持。

49. 第一段說明在香港特別行政區內有居留權（包括入境、回港、居住和工作的權利）的各類人士。這些人士包括：

（甲） 在香港出生或在香港連續居住最少七年的中國公民；

（乙） 擁有香港居留權的中國公民在香港以外地方所生的中國公民；

（丙） 所有非中國籍而以香港為永久居住地方，且在香港連續居住最少七年的人士；

（丁） 所有其他在一九九七年七月一日前只在香港有居留權的人士。

由有香港居留權的父母在香港所生的非中國籍人士，也有居留權，但須符合連續居留七年的條件及以香港為永久居住地方，才可在二十一歲以後保留其居留權。特別行政區政府將對所有在特別行政區有居留權的人士發給永久性居民身份證，證上載明持有人的居留權。

50. 本附件這節條文，列明在香港特別行政區有居留權的中國公民，有資格領取特別行政區政府發給的護照。其他在特別行政區有居留權的人士、或其他在特別行政區內合法居留的人士，則有資格領取特別行政區政府發給的其他旅行證件。上述各類人士都可以使用中華人民共和國或其他國家的有關當局所發給的旅行證件，進出香港特別行政區；這些證件包括英國發給的護照（參閱下文第六十三至六十四段）。

51. 本附件清楚說明，除在法律規定之一般例外情形下，居民可以繼續自由離開特別行政區，不論是為經商、求學、移民或其他目的。為方便特別行政區居民進入第三國家，所有發給他們的旅行證件都註明他們有返回特別行政區的權利，或註明他們持有永久性居民身份證，以示他們在香港特別行政區有居留權。此外，香港特別行政區政府可獲得中央人民政府協助或授權，與各國或各地區締結互免簽證協定。

八

香港特別行政區保持原在香港實行的航運經營和管理體制，包括有關海員的管理體制。香港特別行政區政府可自行規定在航運方面的具體職能和責任。香港的私營航運及與航運有關的企業和私營集裝箱碼頭，可繼續自由經營。

香港特別行政區經中央人民政府授權繼續進行船舶登記，並可根據法律以“中國香港”名義頒發有關證件。

除外國軍用船隻進入香港特別行政區須經中央人民政府特別許可外，其他船舶可根據香港特別行政區法律進出其港口。

九

香港特別行政區將保持香港作為國際和區域航空中心的地位。在香港註冊並以香港為主要營業地的航空公司和與民用航空有關的行業可繼續經營。香港特別行政區繼續沿用原在香港實行的民用航空管理制度，並按中央人民政府關於飛機國籍標誌和登記標誌的規定，設置自己的飛機登記冊。香港特別行政區自行負責民用航空的日常業務和技術管理，包括機場管理，在香港特別行政區飛行情報區內提供空中交通服務，以及履行國際民用航空組織的區域性航行規劃程序所規定的其他職責。

中央人民政府經同香港特別行政區政府磋商作出安排，為在香港特別行政區註冊並以香港特別行政區為主要營業地的航空公司和中華人民共和國的其他航空公司，提供香港特別行政區和中華人民共和國其他地區之間的往返航班。凡涉及中華人民共和國其他地區與其他國家和地區的往返並經停

香港特別行政區的航班，和涉及香港特別行政區與其他國家和地區的往返並經停中華人民共和國其他地區航班的民用航空運輸協定，由中央人民政府簽訂。為此，中央人民政府將考慮香港特別行政區的特殊情況和經濟利益，並同香港特別行政區政府磋商。中央人民政府在同外國政府商談有關此類航班的安排時，香港特別行政區政府的代表可作為中華人民共和國政府代表團成員參加。

經中央人民政府具體授權，香港特別行政區政府可以：對原有的民用航空運輸協定和協議續簽或修改，這些協定和協議原則上都可以續簽或修改，原協定和協議規定的權利儘可能保留；談判簽訂新的民用航空運輸協定，為在香港特別行政區註冊並以香港特別行政區為主要營業地的航空公司提供航綫，以及過境和技術停降權利；在同外國和其它地區沒有民用航空運輸協定的情況下，談判簽訂臨時協議。凡不涉及往返、經停中國內地而只往返、經停香港特別行政區的定期航班，均由本段所述的民用航空運輸協定或臨時協議加以規定。

中央人民政府授權香港特別行政區政府：同其他當局商談並簽訂有關執行上述民用航空運輸協定和臨時協議的各項安排；對在香港特別行政區註冊並以香港特別行政區為主要營業地的航空公司簽發執照；按照上述民用航空運輸協定和臨時協議指定航空公司；對外國航空公司除往返、經停中國內地的航班以外的其他航班簽發許可證。

外國在香港特別行政區設立領事機構或其他官方、半官方機構，須經中央人民政府批准。同中華人民共和國建立正式外交關係的國家在香港設立的領事機構和其他官方機構，可予保留；尚未同中華人民共和國建立正式外交關係國家的領事機構和其他官方機構，可根據情況予以保留或改為半官方機構；尚未為中華人民共和國承認的國家，只能設立民間機構。

聯合王國可在香港特別行政區設立總領事館。

十四

在香港特別行政區有居留權並有資格按香港特別行政區的法律獲得香港特別行政區政府簽發的載明此項權利的永久性居民身份證者為：在香港特別行政區成立以前或以後在當地出生或通常居住連續七年以上的中國公民及其在香港以外所生的中國籍子女；在香港特別行政區成立以前或以後在當地通常居住連續七年以上並以香港為永久居住地的其他人及其在香港特別行政區成立以前或以後在當地出生的未滿二十一歲的子女；以及在香港特別行政區成立前只在香港有居留權的其他人。

中央人民政府授權香港特別行政區政府依照法律，給持有香港特別行政區永久性居民身份證的中國公民簽發中華人民共和國香港特別行政區護照，並給在香港特別行政區的其他的合法居留者簽發中華人民共和國香港特別行政區其他旅行證件。上述護照和證件，前往各國和各地區有效，並載明持有人有返回香港特別行政區的權利。

香港特別行政區居民出入當地，可使用香港特別行政區政府或中華人民共和國其他主管部門，或其他國家主管部門簽發的旅行證件。凡持有香港特別行政區永久性居民身份證者，其旅行證件可載明此項事實，以證明其在香港特別行政區有居留權。

對中國其他地區的人進入香港特別行政區將按現在實行的辦法管理。

對其他國家和地區的人入境、逗留和離境，香港特別行政區政府可實行出入境管制。

有效旅行證件持有人，除非受到法律制止，可自由離開香港特別行政區，無需特別批准。

中央人民政府將協助或授權香港特別行政區政府同各國或各地區締結互免簽證協定。

備忘錄（中方）

中華人民共和國政府收到了大不列顛及北愛爾蘭聯合王國政府一九八四年 月 日的備忘錄。

根據中華人民共和國國籍法，所有香港中國同胞，不論其是否持有“英國屬土公民護照”，都是中國公民。

考慮到香港的歷史背景和現實情況，中華人民共和國政府主管部門自一九九七年七月一日起，允許原被稱為“英國屬土公民”的香港中國公民使用由聯合王國政府簽發的旅行證件去其他國家和地區旅行。

上述中國公民在香港特別行政區和中華人民共和國其他地區不得因其持有上述英國旅行證件而享受英國的領事保護的權利。

PASSPORT:

An official document issued by a competent public authority to nationals or to alien residents (mostly stateless persons) of the issuing country.

General: Passengers must hold a passport valid for all the countries to or via which they travel, unless:

1. an exemption to that effect is stated on the page of the country(ies) concerned;
2. they pass through a country without leaving the airport. A few countries do not allow this, in which case it is stated under 1. **Passport** on the page of the country concerned.

Nationality: A person's nationality can be established by checking the specific information under "nationality" or "national status" in his travel document (e.g. passport or national identity card). In general the permission to enter a country without visa is based on nationality and not on the country which issued his travel document.

Types of passports: Besides normal passports there are also:

1. aliens passports: issued to alien residents of the issuing country;
2. children's identity cards: issued to minors instead of a passport (e.g. West German "Kinderausweis". However, the West German "Kinderausweis" is not recognized by: Albania, Ecuador, Poland, Thailand, U.S.S.R.);
3. diplomatic or consular passports: issued to diplomatic, consular and other government officials on missions entitling the bearer to diplomatic or consular status under international law and custom;
4. International Red Cross passports, Nansen passports, "Laissez-Passer" issued by the United Nations, etc.;
5. joint passports (family passports) Persons travelling together may

hold joint passports which may be used to cover either,

- a. husband and wife with/without children, or
- b. holder of the passport and child/children under a certain age (not necessarily related), or
- c. two or more children.

For travel alone such passports may only be used by the person named first in the passport.

Examples: A wife may not use the passport for travel without her husband, or a child without its parent, or a younger child without the elder. Some countries deviate from above regulations.

6. official, special or service passports: issued to government officials, or other persons on government missions. Type of passport has to be inserted by issuing authorities.

Other travel documents: There are other travel documents, such as certificates of identity, identification cards, travel certificates, military I/D cards, seaman discharge books and records, affidavits, etc.

However, these documents may not always have the same legal effect as passports, and are valid only for limited countries and purposes.

Therefore, it is always necessary to check carefully whether such documents are recognized by the country of the passenger's destination and transit, even if such documents bear an endorsement for such countries.

British Protected Person. Holder of a "British Passport" wherein described as "British Protected Person".

British Visitor's Passport. British Visitor's Passports are passports of a simplified form and are issued in the United Kingdom (not in the Colonies).

Description of holder of this passport, if issued:

prior to 1 January 1983: "British subject, citizen of the United Kingdom and Colonies";

as from 1 January 1983: "British Citizen" or "British Dependent Territories Citizen" or "British Overseas Citizen".

This passport is valid only for travel to those countries with which the British Government has reached agreement for its acceptance.

In case such agreement has been reached this is specifically stated under the heading "1. Passport" on the page of the country concerned.

Merchant Seamen. They may be holders of a document adopted by the ILO member states (ILO = International Labour Organization): the seafarer's national identity document (issued pursuant to ILO Convention 108) and the Seaman's Book (issued pursuant to ILO Convention 22).

These documents are generally called in this manual "Seaman Book" (Dutch: "zeemansboek"; French: "Livret professionnel de marin"; German: "Seefahrtbuch"; Italian: "Libretto di navigazione" or validated "Foglio provvisorio di Navigazione"; Norwegian: "Sertifikat for" (followed by rank of officer); Spanish: "Cartilla de Navegación"). The "U.S. Merchant Mariner's Document", issued by the "United States Coast Guard" is usually called "Z card".

The seafarer's national identity document/Seaman's Book, stating identity of holder, is accepted in lieu of a passport if this is stated under the heading "1. Passport" on the page of the country(ies) concerned.

Seamen holding a seafarer's national identity document/Seaman's Book must also be in possession of a declaration of their shipping company that they are travelling on duty. Unless otherwise stated, the normal (transit) visa regulations apply.

2. VISA:

An entry in a passport or other travel document made by a (consular) official of a government to indicate that the bearer has been granted authority to enter or re-enter the country concerned.

Checking of visa: A visa, transit visa or a visa exemption for a country does not guarantee admission to that country.

The final decision rests with the competent authorities at the port of entry in the country concerned. It is necessary to check carefully the (transit) visas required by the authorities of:

1. the country of destination;
2. the country of departure (if returning to this country);
3. the transit stations.

a. If only a landing will be made en route the transit visas should be checked as well (See "Transit Documents Check" — "Transit Visas").

b. Passengers travelling in transit through a country must be able to prove that they will continue their journey within the prescribed period.

Unless otherwise stated they can do this by showing:

— a ticket for the remaining stretches of the journey;

— a ticket for the homeward journey;

— a sum of money in the required currency, sufficient to buy a ticket for the remaining stretches of the journey or for the homeward journey.

In addition, these passengers must be in possession of the documents required for entry into the country of destination and transit through the countries en route.

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Children: Children must also comply with the regulations for entrance in, transit through and departure from a country.

When their names are registered in and they travel on the passport of (one of) their parents or guardians, the (transit) visas or other endorsements in that passport must indicate that they are also valid for the child(ren) travelling on that passport. Children are not allowed to travel on a passport in which they are registered if they are not accompanied by the holder(s) of that passport.

Children not being of same nationality as their parents should carry their own passport and corresponding visas.

(TWOV): Denotes "Transit Without Visa" facilities and conditions.

Passengers complying with these conditions do not require a (transit) visa for the country concerned.

(TWOV) Facilities are **NOT** intended for those holding "ISA" (If Seat Available) tickets e.g. airline staff or other passengers travelling on industry discount.

(See also "Transit Documents Checklist" — "Transit visas", page 10).

Validity: The periods during which (transit) visas permit a passenger to stay in a country and the time within which the (transit) visa has to be used and how many times the passenger may enter the country on it can be found in the text of the (transit) visa.

Re-entry permit: Re-entry permits entitle the holder to return to the country of domicile. These permits are generally required for returning residents.

Exit permit: Exit permits entitle the holder to leave a country.

ENTRY INTO HONG KONG VISA REQUIREMENTS

Visa NOT required for citizens of the following countries for a visit of less than:

	6 mths.	3 mths.	1 mth.	14 days	7 days
Andorra		x			
Austria		x			
Australia		x			
Bahrain					x
Belgium		x			
Bolivia			x		
Brazil		x			
Canada		x			
Chile		x			
Colombia		x			
Costa Rica			x		
Denmark		x			
Dominican Rep.			x		
Ecuador		x			
El Salvador			x		
Finland			x		
France		x			
German Fed. Rep.			x		
Greece			x		
Guatemala			x		
Honduras			x		
Iceland			x		
Indonesia					x
Irish Republic		x			
Israel		x			
Italy		x			
India		x			
Japan					x
Korea (South)					x
Kuwait					x
Lebanon					x
Liechtenstein		x			
Luxembourg		x			
Malaysia		x			
Maldives		x			
Mexico			x		
Monaco		x			
Morocco			x		
Nauru		x			
Netherlands		x			
Nepal			x		
New Hebrides					x
New Zealand		x			
Nicaragua			x		
Norway		x			
Pakistan			x		
Panama			x		
Papua New Guinea		x			
Paraguay			x		
Peru			x		
Philippines					x
Portugal		x			
San Marino		x			
Saudi Arabia					x
Singapore		x			
Spain		x			
Sri Lanka		x			
Sweden		x			
South Africa Republic					x
Switzerland		x			
Thailand				x	
Tunisia			x		
Turkey		x			
United Arab Emirates					x
Uruguay			x		
United Kingdom	x				
U.S.A.			x		
U.S. Trust Terr.					x
The Vatican (except Vatican Service passports, for which visas are required)					x
Venezuela			x		

Hong Kong Visa Requirements

Nationals of the following countries or territories require, at present, visas for entry into Hong Kong:

Afghanistan
Argentina
Albania
Bulgaria
Cambodia
People's Republic of China
Cuba
Czechoslovakia
German Democratic Republic
Hungary
Iran
Laos
Libya
Mongolia
North Korea
Poland
Romania
The Soviet Union
Taiwan
Vietnam
Yemen

and all 'stateless' persons.

7.7.86

涉外事務專責小組 第八次會議 議程

- 日期：一九八六年九月三日
時間：下午五時三十分
地點：基本法諮詢委員會會址
召集人：鄧燦基委員
會務主任：黃蕙瑜小姐
- 議程： 1. 審閱涉外事務小組初步報告。（附件一）

AGENDA OF THE EIGHTH MEETING OF THE SPECIAL GROUP ON EXTERNAL AFFAIRS

- Date : September 3, 1986 (Wednesday)
Time : 5:30 p.m.
Venue : CCBL Premises
Convener: Mr. Chow, Kenneth Charn Ki
Administrative Officer: Ms. Wong, June Wai Yu
- Agenda : 1. To review the preliminary report of the Special Group
on External Affairs. (Appendix 1)

涉外事務專責小組 第七次會議紀要

- 日期：一九八六年八月十三日（星期三）
- 時間：下午五時三十分至七時
- 地點：基本法諮詢委員會會址
- 召集人：吳坦委員
- 會務主任：黃蕙瑜小姐
- 討論題目：旅行證件、簽證、簽證機構及中國其他地區人士進入香港特別行政區的問題
- 組員名單：
- | | | | | |
|-----|------|------|------|------|
| 鄒燦基 | ※徐是雄 | 梁振英 | 伍淑清 | 堵綏滿 |
| 王敏超 | 羅德丞 | ※林邦莊 | 蘇海文 | 沙理士 |
| 石 慧 | ★吳 坦 | ※張柏枝 | 陶學祁 | 林光宇 |
| 吳少鵬 | 王英偉 | 梁智鴻 | 楊孝華 | ※陳永棋 |
| 文漢明 | 李啓明 | 陳 彬 | ※馮煒光 | 麥 燦 |
| 馮國綸 | ※張宇人 | | | |

★召集人 ※出席委員

1. 旅行證件

- 1.1 有委員認為基本法應列明以下各點：
 - 1.1.1 香港特別行政區政府有權簽發護照；
 - 1.1.2 在香港出生及居住的人士在未滿21歲之前享有居留權。當這些人士年屆21歲及在香港居留至少七年以上，可持有香港特別行政區政府發出之護照。
 - 1.1.3 在1997年7月1日前在港出生或歸化英籍人士可持有英國發出之護照。
 - 1.1.4 英國總領事可留駐香港特別行政區；
 - 1.1.5 中國血統人士在香港及中國境內將視為中國公民，不能向英國領事要求保護。但當這些人士離開中國領土，如果他們持有英國護照，可向英國領事要求保護。
- 1.2 對於非中國籍之香港居民能否持有香港特別行政區護照，有兩種不同之意見。一種意見認為特別行政區護照只是一種旅行證件，故非中國籍之香港居民有權持有。另一種意見認為這些人士要先歸化中國籍才可持有香港特別行政區護照，否則他們只能持有身份證明書。

2. 簽證

有委員提議香港特別行政區政府有權給學生或來港工作人士發出簽證。


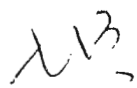
3. 簽證機構

有委員提議香港特別行政區政府可就簽證及貿易需要保留海外之辦事處。這些辦事處可獨立於中國領事館之外，即不附屬中國領事館。這些辦事處並無政治色彩，純為香港貿易及簽證辦事處。辦事處由香港人負責。

4. 中國其他地區人士進入香港特別行政區的問題

- 4.1 一位委員認為中國其他地區人士進入香港特別行政區的人數將會受到控制，因為「中英聯合聲明」附件一第十四項已規定：「對中國其他地區的人士進入香港特別行政區將按現在實行的辦法管理」。有委員提議把「現在實行的辦法」量化為一限額。
- 4.2 各委員對進入香港特別行政區的中國人士的品質表示關注。一位委員認為基本法無需列明香港特別行政區政府有權拒絕低於其所定標準之人士入境，因為這是一項行政權力，而有關政策亦可修改。
- 4.3 有委員提議在深圳設立辦事處處理大陸居民申請入港的事項。
- 4.4 有委員贊成要定下條件限制大陸居民來港定居，但所定的條件不能嚴格得像美國，加拿大等地方接納移民一樣，因為中國與香港總算是一個國家。
- 4.5 有委員認為這問題屬於中央與地區關係，而不是香港的涉外事務，故不適宜在此討論。

召集人

涉外事務專責小組 初步報告

1. 航運

1.1 有委員認為基本法應包括以下原則：

- (1) 九七年後在香港登記的船隻，其國籍將會是中國，這是反映出主權問題；
- (2) 其他國家的船隻也可以來港登記；
- (3) 香港的船東有自由選擇在任何港口登記；
- (4) 國營船隻與私營船隻應要公平競爭；
- (5) 只要受過正式訓練及通過專業考試，任何國籍人士均可在港當船員；
- (6) 在香港登記之船隻有自由到其他地方貿易；
- (7) 船隻在外賺錢，在港不應抽利得稅，應以定額收費代替（首次登記費及每年按船隻登記噸位課稅）。

1.2 有委員提出，九七年後，在香港登記的船隻如果只能掛香港區旗，其他國家可能不予承認，因為香港並不是主權國家。如果只掛中國旗，並不能顯示該船在香港登記。因此他建議掛兩支旗：區旗及國旗，表明船是在香港特別行政區登記，而不是在中國登記。他認為英國政府現在就要作出過渡安排，讓香港盡早有一套獨立登記的法則，逐漸脫離英國的系統，與中國的安排接近些。該委員建議由現在起在香港登記的船隻就掛兩支旗：英國國旗及香港區旗，九七年後，只要把英國旗換上中國旗，其他國家便可以繼續習慣性地承認了。中英兩國由現在至九七年之間，可向各國解釋，爭取承認。即使其他國家不接受「兩支旗」的方法，香港也可以在九七年前考慮其他方法。不過有委員認為，其他國家是否接受這個安排，是外交方面的問題，與基本法的内容無關。

1.3 有委員認為要在航運、民航各方面得到國際承認，唯一辦法就是參與有關的國際組織，成為會員。就算不能成為會員，而要以中國代表之一的身份參加，香港代表的發言和投票亦應以香港的利益為依歸，而且可以發表與中國代表不同的意見。另一委員認為此點應明確寫入基本法中。

2. 航空

2.1 有委員提出，正如船隻一樣，目前在香港註冊的飛機要懸掛英國旗，九七年之後，就要換中國旗，以反映其國籍。

2.2 有委員指出按政府的做法及現行標準，一間航空公司的「國籍」由公司持有人的國籍來界定（在航空協定中，通常稱為「由締約國的國民實質持有及有效控制」）。不過，聯合聲明在有關香港特別行政區與中國其他地區締結航空協定的規定，卻以「在香港特別行政區註冊並以特別行政區作主要營業地，作為香港航空公司的標準」。這點可以理解，因為如果以公司持有人是中國籍為基本條件，不論在現行航空協定的修改及續期，以及在新約的簽訂方面，都會產生困難。基本法應該釐清「香港航空公司」的資格。

2.3 有委員認為，基本法有關航空方面，應該包括以下各點：

- (1) 香港特別行政區在航空自治權方面的權限，以及在國際協約中香港特別行政區上空所涉及的主權問題；
- (2) 成為一間「香港特別行政區航空公司」的資格；
- (3) 中國其他航空公司在香港特別行政區境內的地位；
- (4) 有關國籍(國旗)原則及在香港註冊飛機的註冊性質；
- (5) 香港特別行政區政府就本地航空事務(技術及行政方面)以及按聯合聲明與外國交往的權限劃分。

3. 文化、體育

3.1 有委員認為基本法應包括下列四方面：

- (1) 如果國際組織的章程容許，香港應有權選擇以獨立身份或以中國代表團一份子的身份參加；
- (2) 如果某些國際組織規定香港不能以獨立身份參加，香港便應該以中國代表團的一部份參加，但代表香港的一定要是香港人；
- (3) 香港代表應該以香港的利益為大前題，他們投票時不一定要依從中國的意願；
- (4) 香港以「中國香港」的身份參加國際組織時，會費應由香港繳付。

3.2 有委員認為，目前香港所有受到國際體育組織承認為的獨立地位都可以保留。

3.3 有委員認為如果一些國際組織不容許香港以獨立身份參加，香港應有權要求中國為香港爭取這樣的地位。此外，在國際協定中亦應列明，凡是中國享有的權利，香港都可以無條件地享有。

3.4 有委員提出基本法應清楚列明香港有主辦或參與國際文化活動的自由，而不會受到國內同類機構的約束。

3.5 有委員為基本法應列明香港與其他國家在體育及文化上的關係可以繼續保持下去。

3.6 有委員認為基本法應列明在非政治性、民間性的國際組織中，香港作為地區分會的資格可繼續存在。

3.7 有委員認為基本法應列明當香港代表以中國代表團的成員這身份參加國際組織和會議時，香港代表有權就與香港有關的事情發言權。

4. 關稅貿易總協定

4.1 「中英聯合聲明」附件一第六節及《基本法結構(草案)》，均列明香港特別行政區為單獨的關稅地區，而香港已獲得作為關貿協定獨立締約成員的地位，只要將來繼續遵守協定中的條件，並維持目前的政策。例如沒有公然補助工業，或實行關稅管制措施等，這樣的地位便不難保持。但由於香港的生存必須依靠出入口貿易，委員們都感到關貿協定及多種纖維協定對香港十分重要，所以為了得到進一步保證，個別委員希望在基本法中寫明，將來的特區政府必須遵照關貿協定的條件，或說明將來的中央政府不會干擾香港在關貿協定中的地位。基本法亦應列明香港有獨立談判權，例如談判多種纖維協議(MFA)的配額問題。

- 4.2 不少委員認為，將來香港特別行政區需要有獨立或單獨的（註：關於「單獨」和「獨立」的字眼，有委員認為聯合聲明中的「單獨」一詞，是指由中央政府放手，但在仍保留著這個權力的情況下，香港可自行決定；「獨立」則指香港不受干預而自行決定）自由貿易及經濟政策，例如，若中國對另一個國家實行貿易或經濟制裁，香港有權作出自己的決定。在英國的行政管理之下，香港在這方面的政策有選擇權。基本法亦應訂明香港特別行政區也有這樣的權力。也有委員建議，在這些問題上，中央與特區在決策權力方面，應有一個較明確分工，說明在某一層面上，特區應依循中央的決定，而在某些層面以下，則特區按自己實際情況辦理。
- 4.3 一些委員指出，現時香港在貿易談判中，力量有限，將來主權回歸中國後，可否借助中國的力量，協助香港在談判中，爭取更有利的地位。然而香港可能因此失去一定程度的決策權力，故很難衡量這做法的利弊，所以有委員認為，這些事情不能亦無需寫進基本法內。而這些事情寫進基本法，應該用其他方法，令貿易伙伴明白，一些對香港經濟有影響的行為仍不能間接對中國的經濟造成打擊。

5. 郵政、電訊

5.1 有委員提出應否在基本法中列明香港特別行政區以獨立身份參加國際通訊組織，要考慮以下各點：

- (1) 香港是否有需要以獨立身份參加；
- (2) 這些組織會否接受；
- (3) 有沒有其它技術問題；
- (4) 香港人是否希望香港以獨立身份參加這些組織。

5.2 有委員認為在基本法第七章第二節中列明香港以獨立身份參加國際通訊組織便已足夠，其餘細節問題可留待香港特別行政區的代表在國際組織中談判和討論。

5.3 有委員對1997年後，香港特別行政區能否與那些和中國沒有邦交的國家或地區保持通訊的問題表示關注。該委員提出：如果國際通訊組織保證成員可與沒有邦交的地區通訊，則基本法不需要細列出這權利，否則，基本法應寫明香港可與那些和中國沒有邦交的地區通訊。

5.4 委員們都對1997年後香港特別行政區的對外電訊服務表示關注。有委員指出，目前香港香港所有對外電訊由香港大東電報局及香港電話公司以專利方式經營，而兩間公司大部份股權都由同一英國公司持有。香港大東電報局在1981年註冊為香港本地公司，但八成股份由英國大東持有，另外兩成股份由香港政府持有。香港政府委派民航署長及郵政署長為大東電報局董事。英國大東亦持有香港電話公司七成多的股票。英國政府則持有英國大東百分之五十一的股份。此位委員提出下列以下疑問：香港特別行政區政府是否會容許一間差不多由英資控制的公司控制香港所有的對外電訊。不過，成立一間新的電訊公司並不容易，因為香港政府已把大東電報局的專利權延長到1997年之後的十多年。況且，成立一間新的電訊公司的成本相當龐大，而且設備重覆，未必值得。

5.5 有委員提出，由現在到1997年的十一、二年內，香港的電訊狀況可態有重大改變，如果在基本法中就電訊方面作太具體規定，可能不太適合。不過，另一委員認為，由於大東電報局已享有的專利權超越97年，估計香港電訊狀況不會有太大變化。

5.6 有委員擔心97年以後，中國會否規定香港一定要使用他們發射的衛星。但另一委員認為中國干預的機會不大，因為最根本的問題是價錢。

5.7 當小組討論過郵政問題後，郵政署署長應小組要求，於七月十五日寄來一份文件：「香港及萬國郵政聯盟」，論及香港郵局在郵政方面的作用。以下是該文件的要點：

- (1) 萬國郵政聯盟的會員都是主權國家，只有兩個是例外的——「英國負責外交關係的海外領土」（英國海外屬土郵政機構聯合代表團 (the "British Ensemble")）及荷屬安的列斯群島 (Netherlands Antilles)。
- (2) 香港自 1878 年起以英國屬土身份加入萬國郵政聯盟。
- (3) 亞洲及太平洋郵政聯盟會議的參加者為主權國家，不過 1985 年 12 月在曼谷舉行的大會，香港曾以特別觀察員身份參加。
- (4) 萬國郵政聯盟的章則把「會員國」及「郵政區」分開。由於此種區分，香港郵政服務獨立於英國郵局，屬於獨立郵政區。這身份受萬國郵政聯盟所有的會員承認。
- (5) 作為獨立郵政區，香港訂定自己的郵費標準，發行自己的郵票及與其它郵政區就國際郵政及匯款事項進行雙邊協定。此外，香港郵局亦為一盈利機構。

6. 駐外機構的定義

6.1 「中英聯合聲明」附件一提到三類機構：官方、半官方、及民間機構，但没有界定這三類機構。

有委員提出一種分類方法：

- (1) 官方機構：從體制方面來看，這類機構直接向政府負責；從權力方面來看，這類機構可代表政府進行某些活動，如簽證或簽訂協定。
 - (2) 半官方機構：這類機構受政府資助、受有關法例限制，但政府並不直接管理這些機構，例如貿易發展局。
- 6.2 有委員認為，官方或半官方駐外機構的區分只是行政上的問題，無需在基本法中詳細規定，因為聯合聲明附件一第六項規定：「香港特別行政區可根據需要在外國設立官方或半官方的經濟和貿易機構」，只要不涉及國防或外交，不論這些機構是官方或是半官方，也不違反聯合聲明附件一的規定。此外，這些機構也可處理聯合聲明附件一第十一項提及的金融、航運、通訊、旅遊、文化及體育等事宜。不過，有委員認為，既然不違反聯合聲明附件一的規定，便可以把兩種機構的定義寫進基本法。

7. 香港駐外機構和中華人民共和國駐外機構的關係

- 7.1 有委員提到希望香港的駐外機構和中華人民共和國的駐外機構分開，不過這些細節並不需要寫進基本法。
- 7.2 有委員提到「中英聯合聲明」指出香港有權處理有關的出入境事宜，這是否就表示香港的駐外機構亦可以代表香港政府簽發出入境簽證。如果這樣是否又侵犯中國主權。對這問題，另一委員認為可提議中國授權香港政府簽發出入境証，這樣既可滿足本地人的要求，又不會傷害中國主權。但另一委員提到聯合聲明附件一已指明「對其他國家和地區的入境、逗留和離境，香港特別行政區政府可實行出入境管制」，所以不需要中央政府授權。

7.3 不過，另一委員亦指出，香港現在所設立的駐外機構不多，如果將來只靠這些機構簽發入境証，未必能滿足外國遊客的需要，而估計將來不可能設立百多個駐外機構，所以提議在香港沒有設立駐外機構的地方可借用中國領事館簽發證件，但要由香港官員獨立處理一切申請。但另一委員提到，現在需要有簽發證件才可訪港的國家主要是東歐和幾個其他的國家，所以問題不大。

8. 香港特別行政區官員和中華人民共和國駐外機構的關係：

8.1 有委員認為由於現在的港督在外交事務上享有大使的待遇，所以要求中國清楚表明，未來的香港特別行政區行政長官在外國的時候也應起碼有大使的待遇，如果有需要，當然可以更高。此外，小組委員亦建議中央與特別行政區的關係小組討論未來行政長官在中國的地位時，也要同樣考慮他在外國的地位。

9. 旅行證件

9.1 有委員認為基本法應列明以下各點：

- (1) 香港特別行政區政府有權簽發護照；
- (2) 在香港出生及居住的人士在未滿21歲之前享有居留權。當這些人士年屆21歲及在香港居留至少七年以上，可持有香港特別行政區政府發出之護照。
- (3) 在1997年7月1日前在港出生或歸化英籍人士可持有英國發出之護照。
- (4) 英國總領事可留駐香港特別行政區；
- ×(5) 中國血統人士在香港及中國境內將視為中國公民，不能向英國領事要求保護。但當這些人士離開中國領土，如果他們持有英國護照，可向英國領事要求保護。

9.2 對於非中國籍之香港居民能否持有香港特別行政區護照，有兩種不同之意見。一種意見認為特別行政區護照只是一種旅行證件，故非中國籍之香港居民有權持有。另一種意見認為這些人士要先歸化中國籍才可持有香港特別行政區護照，否則他們只能持有身份證明書。

10. 簽證

有委員提議香港特別行政區政府有權給學生或來港工作人士發出簽證。

11. 簽證機構

11.1 有委員提議香港特別行政區政府可就簽證及貿易需要保留海外之辦事處。這些辦事處可獨立於中國領事館之外，即不附屬於中國領事館。這些辦事處並無政治色彩，純為香港貿易及簽證辦事處。辦事處由香港人負責。

12. 中國其他地區人士進入香港特別行政區的問題

12.1 一位委員認為中國其他地區人士進入香港特別行政區的人數將會受到控制，因為「中英聯合聲明」附件一第十四項已規定：「對中國其他地區的人士進入香港特別行政區將按現在實行的辦法管理」。有委員提議把「現在實行的辦法」量化為一限額。

×12.2 各委員對進入香港特別行政區的中國人士的品質表示關注。一位委員認為基本法無需列明香港特別行政區政府有權拒絕低於其所定標準之人士入境，因為這是一項行政權力，而有關政策亦可修改。

遺 補

- 12.3 有委員提議在深圳設立辦事處處理大陸居民申請入港的事項。
- 12.4 有委員贊成要定下條件限制大陸居民來港定居，但所定的條件不能嚴格得像美國，加拿大等地方接納移民一樣，因為中國與香港總算是一個國家。
- 12.5 有委員認為這問題屬於中央與地區關係，而不是香港的涉外事務，故不適宜在此討論。

涉外事務專責小組

第八次會議紀要

日期：一九八六年九月八日（星期一）

時間：下午五時三十分

地點：基本法諮詢委員會會址

召集人：鄧燦基委員

會務主任：黃蕙瑜小姐

議程：審閱涉外事務小組報告

組員名單：鄧燦基★	徐是雄※	梁振英	伍淑清	堵綏滿
王敏超	羅德丞	林邦莊※	蘇海文	沙理士
石 慧	吳 坦	張柏枝※	陶學祁	林光宇
吳少鵬	王英偉	梁智鴻	楊孝華	陳永棋
文漢明	李啓明	陳 彬	馮焯光	麥 燦
馮國綸	張宇人			
★召集人	※出席者			

- 1.1. 有委員認為此點所紀錄的內容太簡約，有違原作者本來的意見，故希望將作者的原文照錄。
- 2.1. 有委員認為應在「九七年後」加上「如有需要」。
3. 有委員認為此項所有提及「獨立」的身份或地位等，都應改作「個別」的身份或地位。
- 3.6. 有委員對應否在基本法中列明此項予以保留。
- 4.3. 有委員認為應將「然而香港可能因此失去一定程序的決策權力」改為「然而香港可能因此失去一定程序的談判或決策權力」。
- 5.4. 有委員認為將「香港特別行政區政府是否會容許一間差不多由英資控制的公司控制香港所有的對外電訊」中的「是否會容許」改為「應否會容許」及將「差不多由英資控制」改作「差不多完全由英資控制」。
- 5.6. 有一委員認為應加上「香港亦有權發射自己的衛星」。但召集人對此有所保留。
6. 有委員認為此項中所有提及「政府」之處都應該更詳細的寫明是「香港特別行政區政府」。
- 7.1. 對於這些細節是否應該寫在基本法中，雖然有委員認為不需要，但會上亦有委員贊成應該寫。

- 7.2. 有委員認為香港的駐外機構為香港政府簽發出入境簽證並不侵犯中國主權。
- 8.1. 有委員認為在「未來的香港特別行政區行政長官在外國的時候也應起碼有大使的待遇」後加上「或外交特權」，並且建議將「如果有需要，當然可以更高」此句刪去。
- 9.1.(1)有委員建議應更清楚寫明香港特別行政區政府有權簽發「中國護照及香港特別行政區護照」。
- 9.2.(5)有委員認為此點極不清楚，因此尚待商討。
- 12.2. 就有委員對進入香港特別行政區的中國人士的品質表示關注，另一委員認為此等態度是歧視性和引人反感的。

此外，會上亦初步討論了涉外事務小組未來工作的建議，委員都贊成就「駐外機構」、「簽證」和「國際條約的參與」此三題目成立工作小組，並責成秘書處寄出報名表。

召集人：_____

鄧焯堃

涉外專責小組 未來工作形式建議

涉外專責小組自四月展開討論以來，共召開了七次會議，分別討論過航運和民航，對外文化及體育協定、關稅及貿易、郵政及電訊、駐外機關以及簽證。

由於最初釐定上述題目時，《基本法結構(草案)》還未公佈，故委員將數個不屬於《基本法結構(草案)》第七章：「香港特別行政區的對外事務」的題目包括在本組的討論內。(航運、民航、關稅、貿易等題目都應屬於第五章：「香港特別行政區的經濟」；對外文化及體育協定，郵政及電訊都屬於第六章：「香港特別行政區的教育、科學、技術、文化、體育和宗教。」)

待《基本法結構(草案)》公佈後，委員才決定集中討論其中第七章的題目，可總括為駐外機構、簽證、以及國際條約的參與三大項。

涉外小組原定於九月三日討論「國際條約的參與」，再於九月十七日討論小組的初步報告，後因希望趕及將初步報告送交九月十三日的執委會會議通過，故改於九月三日討論初步報告(後再因諮委辦事處當天停電，故會議改於九月八日舉行)。

展望涉外小組未來的工作，乃集中討論《基本法結構(草案)》第七章：「香港特別行政區的對外事務」中的三大題目。其中駐外機構及簽證在小組的月會上曾初步討論，但因為當時資料搜集未算充份，故不少委員認為值得在深入搜集資料後，再次討論。而「國際事務的參與」因更改時間表的關係，未暇討論。

秘書處建議涉外小組就上述三個題目成立工作組，以對這些題目展開更深入的討論，由於本組有關簽證的討論與中央及特區關係小組關於出入境管制的討論有莫大關係，故亦建議此兩工作組合併成一，共同合作。

為使各委員能更集中的參予工作組，就配合其他專責小組的工作程序，故建議工作小組分期進行。

涉外事務專責小組 工作組名單

(1) 駐外機構

馮國綸 林邦莊

(2) 簽證 (與中央與地方組關於出入境管制的工作組合辦)

馮國綸 吳 坦 梁振英 葉文慶 徐四民
曾憲梓

(3) 國際條約的參與

馮國綸 陶學祁 張柏枝 林邦莊 陳永棋
馮煒光

涉外事務專責小組
參與國際機構/協定的形式與安排
工作組
第一次工作會議

- 日期：一九八七年二月四日(星期三)
- 時間：下午五時三十分至七時
- 地點：基本法諮詢委員會會址
- 會務主任：何敏慧小姐
- 議 議：
1. 討論本工作組日後的工作方式及工作日程
 2. 討論「參與國際機構/協定的形式與安排」討論文件
 3. 下次開會日期

參與國際機構／協定的形式與安排

討論文件 (草稿)

(1987年1月27日)

- 此文件乃有關參與國際機構／協定的形式與安排之討論文件，是為涉外事務專責小組預備的，若有任何意見，歡迎提出討論，增減或修正。在未經委員接納前，此文件並不代表參與國際機構／協定的形式與安排工作組或涉外事務專責小組的意見。

中華人民共和國香港特別行政區基本法諮詢委員會

涉外事務專責小組

參與國際機構／協定的形式與安排工作組

1. 引言

- 1.1 香港現在身為國際貿易、金融、航運等中心，其安定與繁榮實有賴良好的國際聯繫，香港參與的國際組織及協定亦因此成為香港的命脈。
- 1.2 現時香港發展國際聯繫的身份皆源於目前的宗主國英國的聯繫，但可以通過某些安排，在國際會議及組織中單獨發表意向及爭取本身的利益。這些英國和香港之間的安排；亦依賴國際間對兩者間的安排和香港地位的尊重。
- 1.3 九七年後，中國收回香港主權時，香港的國際聯系又會如何？重要的是香港繼續能在國際層面上維護及爭取本身的利益。這便要視乎在主權轉移後，香港能否在有關的國際組織及協定中保留及爭取一地位，而此地位又應須經過怎樣的安排才能確保香港特區能夠有足夠的自主權維護本身的利益？這些將會是本討論文件探討的問題。
- 1.4 目前，中英聯合聯絡小組正展開工作研究香港特別行政區以何種方式繼續參加國際組織，如萬國郵盟、氣象組織、國際勞工組織、世界醫療機構及國際海事組織等。聯絡小組並對有關香港的協定加以研究，望可盡快在每條協定中尋求香港特區應有的地位。有關的協定內容亦因此歸類為機密文件。本討論文件將在大原則方面着眼，而不會把協定逐項或逐類研究。

2. 背景資料／現行情況

2.1 國際協定

根據香港政府律政署在八三年七月的資料顯示，應用於香港的國際協定達三百多條。這些條約的形式多為條約、公約、協議及議定書，並有國際規則及聲明。它們的範圍牽涉甚廣，包括：經濟、金融、貿易及商業，通訊、交通、法律、漁農業、文化、醫藥衛生等多方面。

2.2 參加形式

香港加入這些協議的身份皆為透過英國的聯繫。形式方面分以下幾類：

- 2.2.1 單獨以「香港」名義加入協定。其身份實為英國屬土，並得由英國政府授權才可以成為締約地區。香港在貿易方面經常有以此身份簽約。

2.2.2 通過英國參加：

- (1) 通常英國參加的協議都有「有效區域」的條款，此條款決定協議的內容是否應用於英國的附屬地區(例如香港)。英國在簽署這些協議的時候，可以在此條款下作出聲明，藉以保留協議的某些條文對英國的屬土的適用性。即是說保留某些條文，使其不適用於某些屬土。例如關於《公民權利和政治權利國際公約》，其中一項被保留不用於香港的條文是第二十五條(b)項，這是關於選舉權的條文。英國接受這公約時，香港的立法機關並沒有任何選舉產生的議席，所以，英國便保留了這條文，不用於香港。
- (2) 如果没有「有效區域」的條款的條約，便可能要視乎協議的內容及目的，從而推測是否適用於香港。某些協定是明顯地適用於香港的，例如英國與另一國家簽訂一條雙邊航空協約，而香港是在這航線上的。另一些協定可能是明顯地不適用於香港的，例如有關英倫本島海岸線的便是。
- (3) 如果協議的目的並不清晰，而締約國家又没有表明協定不適用於香港的話，此協定便會被假定為適用於香港。

在簽訂可能應用於香港的協定時，英國政府會先諮詢香港政府，然後才決定是否令協定內容引伸到香港。

2.3 國際協約如何在港生效

一國際協約如要在港生效，必得先考慮其內容與香港法律是否銜接及香港政府是否有足夠的法律權力來實行其中的條款，即此協議內容能否在現行的法律條文中得以應用。如果發現香港現行法律不足以確保協約在港生效的話，仍有以下幾個解決方法：

- 2.3.1 最方便的做法便是賦協議予法律效力，縱使香港現行法例可能與之有不銜接之處。香港政府以往亦曾運用此方法。
- 2.3.2 沿用習慣法
- 2.3.3 使用行政安排。

2.4 香港在國際協議／組織中的地位

現時，香港出席國際貿易協定及會議，香港的地位可能是由英國這締約國代表香港參加，有情況是英國代表團的其中一名成員代表香港發言，據悉這名成員必定是來自港府的官員。他可以代表香港的利益發言，在貿易利益有矛盾的情況下，香港可以採取與英國不同的立場。

2.5 香港以單獨身份加入「關稅及貿易總協定」

在「關稅貿易總協定」中，向來是由英國代表香港參加的。香港作為單獨的關稅地區享有「總協定」的各種優惠安排，並爭取減少各國對自己出口產品的排擠，對依靠自由貿易生存的香港至為重要。

自《中英聯合聲明》生效後，經中英聯絡小組安排，得中英雙方同意並向「總協定」提交聲明，在八六年四月香港成為「總協定」的締約成員，在處理其對外貿易關係和「總協定」所規定的其他事項方面有自決權。

中國現仍未加入「總協定」，但對香港特別行政區在「總協定」的地位已作確保：中國政府聲明，自一九九七年七月一日起，特區將可以「中國香港」名義繼續保持締約成員的地位。

3. 聯合聲明有關的條文

附件一第十一節：

3.1 在外交方面

「在外交事務屬中央人民政府管理的原則下，香港特別行政區政府的代表，可作為中華人民共和國政府代表團的成員，參加由中央人民政府進行的與香港特別行政區直接有關的外交談判。」

3.2 在其他方面

「香港特別行政區可以“中國香港”的名義，在經濟、貿易、金融、航運、通訊、旅遊、文化、體育等領域單獨地同世界各國、各地區及有關國際組織保持和發展關係，並簽訂和履行有關協定。」

3.3 參加形式

3.3.1 對以國家為單位的

「對以國家為單位參加的、與香港特別行政區有關的、適當領域的國際組織和國際會議，香港特別行政區政府的代表可作為中華人民共和國政府代表團的成員或以中央人民政府和上述有關國際組織或國際會議允許的身份參加，並以“中國香港”的名義發表意見。」

3.3.2 對不以國家為單位的

「對不以國家為單位參加的國際組織和國際會議，香港特別行政區可以“中國香港”的名義參加。」

3.3.3 參加國際協定

「中華人民共和國締結的國際協定，中央人民政府可根據香港特別行政區的情況和需要，在徵詢香港特別行政區政府的意見後，決定是否適用於香港特別行政區。中華人民共和國尚未參加但已適用於香港的國際協定仍可繼續適用。中央人民政府根據需要授權或協助香港特別行政區政府作出適當安排，使其他有關的國際協定適用於香港特別行政區。」

3.3.4 參加國際組織

「對中華人民共和國已經參加而香港目前也以某種形式參加的國際組織，中央人民政府將採取必要措施使香港特別行政區以適當形式繼續保持在這些組織中的地位。對中華人民共和國尚未參加而香港目前以某種形式參加的國際組織，中央人民政府將根據需要香港特別行政區以適當形式繼續參加這些組織。」

4. 有待考慮的問題

4.1 香港特區以甚麼形式參加國際協定：

有以下四個情況需要考慮：

4.1.1 中國締結的國際協定而未適用於香港者——《聯合聲明》列明中央人民政府可根據香港特區的情況和需要，在徵詢特區政府的意見後，決定是否適用於特區。這與現時的情況並無分別，英政府亦是先徵詢香港政府的意見後才決定是否適用於香港。而港府及特區政府皆應以能反映市民之意願為重。

4.1.2 中國和香港均已參加的國際協定／中國已參加而又已適用於香港的協定：

(1) 如果香港是以本身名義參加，即締約單位不需要是國家的話，香港特區當可以「中國香港」名義參加。

(2) 如果原本是由英國參加，而香港以殖民地或屬土引伸應用，香港特區將要改為由適用於中國的條款引伸應用於特區內。而此中有一可能為適用於英國和適用於中國的條款可能有所不同，因此香港特區亦需作適當的應變。

4.1.3 中國尚未參加但已適用於香港的國際協定——《聯合聲明》列明這些協定「仍可繼續適用」，這應該是指這些協定內容仍可在香港特區內應用。如果協定的內容已被容納入香港現行的法制里（見背景資料），因香港可保持其原有法律制度，這些協定內容當可繼續適用。

但國際協約每多有關締約國的相互關係，香港特區不可能單方面宣佈協定仍然適用，而定必需要得到其他締約組織的承認才行。

另外，各協定內容亦會因時制宜而有所改變，香港特區亦得有一名正言順的身份使協定內容適用於香港特區。

所以，如果認為某協定是對香港特區有益的話，便得正式參加締約才成。

(1) 若香港以往是以單獨身份參加締約的，可改為以「中國香港」名義參加。

(2) 若是以國家為參加單位的，而香港以往是以英國屬土或殖民地引伸應用的，則需透過中國的協助參加：

① 如果中國參加協定的話，香港特區可以其特區身份引伸應用協定的內容。

② 如果中國無意參加該協定，則《聯合聲明》並未有列明解決方法。其中一個可能性是由中國政府授權或協助香港特區以其他締約國可接受的形

式參加。但因為香港特區終究不是國家身份，所以特區是否可以參加，仍是決定於其他締約國是否接受這安排。還有一個問題為國際組織對非主權國締定公約的限制。例如，根據制訂國際勞工公約的國際勞工組織安排，非主權國家或地區施行的公約，不能超過其主權國所承認的公約。然中國現時只承認十數項國際勞工公約，但香港附屬英國施行的公約達四十九項之多。若香港特別行政區將來以中國附屬會員參加，香港勞工權益情況將有很大更改。此情形實需有妥善的解決方法。

4.1.4 中國和香港皆未有參加的國際協定——《聯合聲明》訂明中央人民政府根據需要授權或協助香港特區政府作出適當安排，使其他有關的國際協定適用於香港特區。

(1) 這裡所謂「其他有關的協約」當為中國和香港皆未有參加，而參加後會對香港有利，或是需要參加的協定：

- ① 如果中國本身參加的話，香港特區應可以特區身份引伸應用協定內容。
- ② 如果中國未有打算參加，而協定亦不需要以國家為單位參加的話，香港當可以「中國香港」名義參加。
- ③ 如果中國未有打算參加，而協定是以國家為單位參加的話，中國便需要授權或協助香港與協定的締約組織交涉，使香港得以參加締約。

(2) 由誰來決定那些是「有關的協約」？是由中央人民政府指定，還是由特區政府決定？這些問題在以國家為單位參加的情況下尤其關注。

- ① 中央政府指定
- ② 中央政府諮詢特區政府決定
- ③ 特區政府決定。

又如果香港特區決定某協定為對香港有利，並需要及要求中央人民政府授權或協助參加的，中央政府是否有「責任」幫助香港？它是否可以否決香港的要求？

4.2 香港特區以甚麼形式參加國際組織

以下有多個情況需要考慮：

4.2.1 中國和香港皆有參加的國際組織

《聯合聲明》訂明在此情況下，「中央人民政府將採取必要措施使香港特區以適當形式繼續保持在這些組織中的地位。」

《聯合聲明》亦有訂明「對不以國家為單位參加的國際組織和國際會議，香港特別行政區可以「中國香港」名義參加。」對以國家為單位參加的、與香港特別行政區有關的、適當領域的國際組織和國際會議，香港特別行政區政府的代表可①作為中華人民共和國的成員，或②以中央人民政府和上述有關國際組織或國際會議允許的身份參加，並以「中國香港」的名義發表意見。

4.2.2 中國已參加而香港特區未有參加的國際組織：

《中英聯合聲明》並沒有訂明特別在此情況下的做法。但若「與香港特別行政區

有關的、適當領域的國際組織和國際會議」，那麼，以國家為單位及非以國家為單位的兩種參加辦法當在此適用。問題是由誰決定甚麼組織和會議為與香港特別行政區有關或屬於適當領域？以非國家為單位的似還可由特區自行以「中國香港」名義決定參加與否，但以國家為單位的必要得到中國作出適當的安排。到時是由

- (1) 中央人民政府決定，還是
- (2) 香港特區政府決定，還是由
- (3) 中央政府「根據香港特別行政區的情況和需要，在徵詢香港特別行政區政府的意見後才決定（即如國際協定情況）？又徵詢特區政府的意見，是指甚麼機關或部門？

4.2.3 中國沒有參加而香港已參加的國際組織：

《聯合聲明》訂明「對中華人民共和國尚未參加而香港目前以某種形式參加的國際組織，中央人民政府將根據需要使香港特別行政區以適當形式繼續參加這些組織。」

- (1) 對不以國家為參加單位的組織，香港特別行政區應可以「中國香港」名義參加，但必須要得到該國際組織的接受。
- (2) 對以國家為參加單位的國際組織，《中英聯合聲明》中唯一適用的參加辦法應為「以中央人民政府和上述有關組織或國際會議允許的身份參加，並以「中國香港」名義發表意見。」此辦法是否有效實決定於該組織是否接受香港特區以「中國香港」名義參加一個國家為單位的組織。

4.2.4 中國和香港皆沒有參加的國際組織：

- (1) 在不須以國家為參加單位的情況下，香港特別行政區可以「中國香港」名義，單獨參加國際組織。
- (2) 根據《聯合聲明》，「對以國家為單位參加的、與香港特區有關的、適當領域的國際組織和國際會議，香港特別行政區的代表可...以中央人民政府和上述有關國際組織或國際會議允許的身份參加，並以「中國香港」名義發表意見。」

在這情況下仍有以往已有提及的兩個考慮點：

- ① 由誰來決定某國際組織是否與特區有關，或是否屬於適當領域？
- ② 此辦法是否行得通實決定於該組織是否肯承認香港特區以「中國香港」名義參加一個國家為單位的組織。

4.3 香港特區是否能夠繼續保持在國際組織或協定的地位：

由以上所見，香港將會以不同身份及形式繼續參加國際組織／協定。但因為有幾個情況下要依賴中央人民政府和上述有關國際組織／會議允許的身份參加，則香港特區的參加身份可能因不同組織而殊，實要視乎個別組織的不同情況和意願而決定。

再者，有些香港以往一直有參加的組織或應用的協定可能因宗主國的更換而難於繼續參加。例如，香港以英國的附屬地區引伸某協議內容不可把某類物資輸入共產國家，如香港將來欲以中國的特區身份參加這類協議的情況將會是困難而尷尬。

「中國香港」既為一個新的個體，特別行政區這身份亦非在國際中常見，香港特區以往的宗主國——英國又與中國在政治及經濟運作上又如此不同，香港特區之地位是否會受到國際間的接受尚為未知之素。

4.4 國際承認

香港特別行政區將來是否可以受到國際間的尊重與承認實為特區能否以滿意形式參加國際組織／協定的關鍵所在。而這則有賴有關方面能否成功地「推銷」香港的重要性及獨立自主性。

有提議為其中一個「推銷」手段是由中國當局向有關的國際組織或協議保證香港特別行政區的自主性。即除基本法的保障外，更有中國直接對有關組織提供的國際保證，藉以增強國際間對香港特別行政區自主性的信心，令香港可以在國際組織及協議中佔一受尊重之地位。一個切想實例証，香港特區爭取以中國附屬會員參加「國際貨幣基金組織」（IMF），並由中國提出保證，於收回香港主權後繼續讓香港儲備金自主及港元自主，港元與人民幣不直接掛鈎等等（見魯凡之文：“港人治港與港人信心”《廣角鏡》125期）。

另外，國際間必須清楚理解中國與香港特別行政區為分別的貿易個體，而中國亦尊重這關係。外國指定只給予香港特別行政區的配額、貿易特惠稅優待及有關科技、生產方面等的專利權（patent）、經銷權（franchise）等，必須受到中國的尊重，這樣才能使國際間相信香港特別行政區在國際貿易協定／組織中應佔一席位。

4.5 參加形式與獨立性

在各種不同的參加形式下，香港特區或「中國香港」的獨立性為何？

4.5.1 發表意見

有一疑問為根據《中英聯合聲明》，香港特別行政區是否在以下兩種參加情況下皆可以「中國香港」的名義發表意見？

- (1) 香港特區代表作為中華人民共和國政府代表團的成員；
- (2) 以中央人民政府和有關的國際組織或會議允許的身份參加。

又如香港特區的利益與中國有矛盾時，特區代表是否可以發表與中國相反的意見？

4.5.2 投票

如有投票情況，香港特區是否有獨立的一票？是否可以與中國投相反票？

4.6 外交事務與其他領域的界線：

以上所述情況皆為在外交事務以外的事宜，因為根據《聯合聲明》「外交事務屬中央人民政府管理……。」外交可被理解為涉及政治邦交者，但外交與其他各領域（經濟、貿易、金融、航運、通訊、旅遊、文化、體育等）的界線在那里？

有意見為特區在國際組織中向外國政府或官方組織進行游說工作，只要最終目的為促進經濟……體育等之利益，便不應被混淆為外交事務。

4.7 特別行政區與中國沒有邦交的國家的關係：

4.7.1 特區有沒有自主權決定與中國沒有邦交的國家建立非外交性協定及參加該國所主辦的組織或國際賽事？

有說下屆奧林匹克世運會在南韓舉行，中國已表示會參加比賽。照看既然中國也決定參加由沒有邦交的國家舉辦的國際賽事，那麼香港特區亦不需要有此憂慮。有說為保障特區的高度自治，只要那國家不是與中國在戰爭狀態中，香港特區仍有自主權與之建立非外交性協定及參加該國所主辦的組織或國際賽事。

4.7.2 香港特區是否有自主權邀請與中國沒有邦交的國家來港參加某由香港主辦的國際組織或賽事？

現時香港是較不歡迎例如東歐等國家的代表來港參加國際比賽或表演的。多國運動員如蒞港作短期賽事皆不需要人民入境事務處簽證入境，但隊中的蘇聯、古巴或亞根廷等運動員則必須預先申請並經簽證才能蒞港作賽。然則香港現時對與英國沒有邦交及多個共產國家皆有一定的政策及待遇，九七年之後情況又該如何？

4.7.3 在起草委員會「教育、科學、技術、文化、體育和宗教」專題小組第二次會議上（一九八六年九月十二日），有委員提出九七年後香港足球隊繼續參加國際足球協會及出賽的問題，結果，會議同意特區的體育隊可繼續與中國沒有邦交的國家及地區保持聯系。

4.8 退出國際協定／組織

如果中國已參加某國際協定／組織，而香港特區亦已以某種形式參加，若中國決定退出該協定／組織，香港特區是否有權選擇退出與否？

4.9 間接立法的問題：

有一疑慮為中央可以通過簽訂國際協定和使這些國際協定適用於香港這途徑，在一些應由特區政府所管理的領域間接地為香港特區制定一些適用於香港的法律，因而影響香港特區在這些領域上的自主權。

有提議為中國應放棄在經濟、貿易、金融、航運、通訊、文化、體育等領域內為香港特區締結協定的權力。如果這些協定要成為香港的法律，它們必須得到香港特區立法機關通過才能適用於香港特區。

提議又謂為了保持一個統一的立法形式，有關政治、外交等的協定，特區立法機關有義務通過這國際協定，而在其他領域上，香港特區立法機關有絕對自主權決定是否通過中央締結的協定。

4.10 追討責任及制裁

如果~~有~~締約國違反了協議或組織的規則，使另一個締約成員蒙受損失時，受損的成員應可追討責任，尋求補償、制裁或其他解決方法。追討的門徑可以是向協約組織本身提出投訴，或通過國際法庭以尋求制裁或解決方法。亦有例子受損國家自行單方面進行制裁的。追討的門徑可能因不同協議／組織而殊。

4.10.1 追討責任

若香港特別行政區為受損者，特別行政區怎樣進行追討？

(1) 以「中國香港」的名義參加的情況：

既然香港特別行政區以單獨身份參加，應可以單獨身份進行追討。

(2) 附屬於中國參加的情況：

既然參加單位為國家，進行追討的任務可能便要由中國負起。若特區利益受損，中國是否^有責任代為追討？

4.10.2 制裁不守規則的成員：

若中國的利益受損，又欲對不守規的成員加以制裁，例如減少其配額或停止與之貿易等。在此情形下，香港特區又是否必須跟隨中國對之制裁？

香港之繁榮向來依靠自由貿易，它的談判地位弱，因其沒有可運用的經濟及政治制裁的能力。在國際上，它只可以打起「自由貿易」旗幟，並嚴守規則，以望其他國家亦對之同樣對待。若中國一旦對其他國家進行制裁，而香港特區又必須參加的話，回轉頭來受制裁的國家要進行報復時，香港特別行政區必受波連，其影響對香港特別行政區難以預計，尤其因為香港堅持自由貿易的地位將會被破壞，其他國家將可更肆意地限制香港特別行政區的貿易利益。

4.10.3 若中國不守協議／組織規則而受到制裁，香港特別行政區是否在被制裁之列？例如，進行制裁的國家凍結中國在該國家本土之內的資產，香港特別行政區的資產會否同樣被凍結？又或該國決定減少予中國的配額，這會如何影響香港特別行政區？

(1) 如果香港特別行政區以「中國香港」名義單獨參加的話，該國理應不制裁香港特別行政區。但這又得視乎該國是否尊重及承認香港特別行政區實為不屬於中國的體系的地位，問題可能終究仍是在於是否可以成功地「推銷」特區的自主性。（見「國際承認」，即4.4段）

(2) 如果香港特別行政區附屬於中國參加，其他國家便更有可能一併把特區也算入制裁之列了。

CCBL-SG/EXA-WG01-AG01-870127 (E)

THE FIRST MEETING OF THE WORKING GROUP
ON THE PARTICIPATION IN INTERNATIONAL ORGANIZATION/AGREEMENTS

Date : 4 February, 1987 (Wednesday)

Time : 5:30 - 7:00 pm

Venue : CCBL premises

Administrative Officer: Ms Amy M. W. Ho

- Agenda :
1. To discuss the method and schedule of this working Group.
 2. To discuss the Discussion Paper on participation in international organization/agreements.
 3. To discuss the date of the next meeting.
- 6/3/87 dead-line.*

CCBL-SG/EXA-WG01-DP01-870128(E)

DISCUSSION PAPER ON ARRANGEMENT FOR
AND FORM OF PARTICIPATION IN
INTERNATIONAL ORGANISATIONS/AGREEMENTS (DRAFT)

(27/1/87 version)

This paper is a draft of the discussion paper prepared for the Special Group on External Affairs. Members are invited to comment on this draft which will then be amended accordingly. Without the members' approval, this paper does not represent the view of the Working Group on the Arrangement for and Form of Participation International Organisations/Agreements or the Special Group on External Affairs.

Working Group on
the Arrangement for and Form of Participation
International Organisations/Agreements

Special Group on External Affairs

1. INTRODUCTION

1.1 As a centre in fields such as international trade, finance, and shipping, Hong Kong depends heavily on well-established international connections for the maintenance of her stability and prosperity. Participation in international organisations and agreements is, therefore, the lifeblood of Hong Kong.

1.2 Although Hong Kong at present develops her international connections mainly through her link with Britain, her present metropolitan government, she is nevertheless able to express her own views and fight for her own interests in many international conferences and organizations via special arrangements. This relies on the arrangements made between Hong Kong and Britain, and also the international esteem that this arrangement and the status of Hong Kong enjoy.

1.3 After 1997, when China will resume the exercise of sovereignty over Hong Kong, what will become of Hong Kong's international connections? The important thing is Hong Kong's continued ability to safeguard and pursue her own interests in international level. This really depends on whether Hong Kong can still retain or gain a seat in international organisations and agreement after the transfer of her sovereignty, and on the future arrangements that will enable her to have enough autonomy in safeguarding her own interests. These are the main issues for study in this paper.

1.4 The Sino-British Joint Liasion Group is now in the process of considering how Hong Kong can continue to participate in international organisations such as the Universal Postal Union (UPU), the World Meteorological Organization, the International Labour Organization, the World Health Organization, and the International Maritime Organization etc.. The JLG is also studying all agreements that are related to Hong Kong, in the hope of identifying the status that Hong Kong should enjoy in each of these agreements. The contents of the agreements are therefore classified as confidential. In this paper, we will be focusing on the general principles rather than scrutinizing each and every single item or category of these agreements.

2. BACKGROUND/PRESENT SITUATION

2.1 International Agreements

According to the information released by the Legal Department in July 1983, international agreements that are applicable to Hong Kong amount to over 300. They are mainly agreement, conventions, and protocols, including some international regulations and declarations.

The scope is very wide, extending to fields such as economy, finance, trade and commerce, communications, transport, law, agriculture and fisheries, culture, medical and health etc..

2.2 Form of Participation

Hong Kong participates in these agreements mainly through her link with Britain. The different formats of participation are as follows:

2.2.1 Entering into agreements by herself in the name of 'Hong Kong'. Her status is still a British territory, and she can only become a ratifying party with the authorisation of the British government. Hong Kong often enters into trading agreements in this capacity.

2.2.2 Participation via Britain

- 1) Under agreements signed by Britain, there is very often a provision for "Territorial Application Article", which decides on whether the agreement is applicable to British dependent territories (such as Hong Kong). When Britain signs these agreements, she can make declarations under such an Article, to reserve the applicability of certain provisions to British dependent territories. That is to say, to keep certain provisions of the agreement from being applied to some British dependent territories. For example, under the 'International Convention on Civil and Political Rights', Clause 25(b), a provision on electoral rights is reserved as a clause not applicable to Hong Kong. When Britain accepted this Convention, Hong Kong did not have any elected seats to the legislature, and so Britain reserved the applicability of this particular provision to Hong Kong.
- 2) For agreements that have no Territorial Application Article, it would be necessary to decide on their applicability to Hong Kong by inference from their contents and purposes. Some agreements are clearly applicable to Hong Kong - such as when Britain signs a bi-lateral aviation agreement with another country, and Hong Kong happens to be on that particular air route, while others are clearly not applicable, like the one on the coastal line of the British Isle itself.
- 3) If ^{the relevant to H.K.} the purpose of an agreement is not clear, and if the ratifying country did not state clearly that the agreement is inapplicable to Hong Kong, then its applicability will be assumed.

Upon signing an agreement that may be applied to Hong Kong, Britain will consult the Hong Kong government first before deciding whether the application of the agreement should also be extended to Hong Kong.

香港
通商
條約
研究
會

2.3 How International Agreements ^{are given} Take ^{give} Effect in Hong Kong

For an international agreement to ^{give} take effect in Hong Kong, the issues of whether its content ^{converges} converges ^{with} with the law of Hong Kong, and whether the Hong Kong government has enough legal power to implement the provisions, .i.e. whether the content of the agreement can be implemented under the existing legal provisions, must be taken into account. If it is discovered that the existing law in Hong Kong is inadequate in ensuring the implementation of the agreement in Hong Kong, the following solutions are possible:

- 2.3.1 The easiest solution is to grant legal validity to the agreement, despite the existence of certain points of inconsistency between the agreement and the existing legislation in Hong Kong.
- 2.3.2 Follow the practice of the common law.
- 2.3.3 Make administrative arrangements.

2.4 The Status of Hong Kong in International Agreements/
Organizations

At present, there are international trade agreements and conferences in which Hong Kong is represented by the ratifying country, Britain. On some occasions, a member of the British delegation may speak ^{on} on behalf of Hong Kong, ^{and it is learnt that this member should be a} ~~and it is learnt that this member should be a~~ ^{official} ~~servant~~ servant from Hong Kong. He may speak up for the interests of Hong Kong, and Hong Kong may take a stand different from that of Britain in case there is a conflict of interest between the two.

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2.5 Hong Kong participating in GATT as a Separate Entity

Hong Kong used to be represented by Britain ~~in the~~ General Agreement on Tariff and trade (GATT). It is most important for Hong Kong to enjoy the right to all the preferential arrangements under GATT as a separate customs territory, and to be able to fight for less restrictions on her export imposed by other countries.

Since the Sino-British Joint Agreement came into effect, and after the Sino-British Joint Liaison Group made the necessary arrangements for gaining the consent of both China and Britain, a declaration was submitted to the GATT in April 1986, stating that Hong Kong was to become a ratifying member of the GATT, and to enjoy full autonomy in making decisions concerning her external trade relations and the provisions under GATT.

China has not yet joined GATT, but the status of the Hong Kong SAR in GATT has already been ensured. The Chinese government has declared that the future SAR may retain her status of a contracting member in GATT in the name of 'Hong Kong, China' beginning from 1st July 1997.

3. RELEVANT CLAUSES IN THE JOINT AGREEMENT

Section XI of Annex 1

3.1 On Foreign Affairs

"Subject to the principle that foreign affairs are the responsibility of Central People's Government, representatives of the Hong Kong Special Administrative Region Government may participate, as members of delegation 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."

3.2 Other Fields

"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."

3.3 Form of Participation

3.3.1 Fields Limited to States

"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 organisations or conferences concerned, and may express their views in the name of 'Hong Kong, China'."

3.3.2 Fields Not Limited to States

"The Hong Kong Special Administrative Region" may, using the name 'Hong Kong, China', participate in international organizations and conferences not limited to states."

3.3.3 Participation in International Agreements

"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 the People's Republic of China is not a party but which are implemented in Hong Kong may remain implemented in the Hong Kong Special Administrative Region. The Central 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 agreements."

3.3.4 Participation in International Organizations

"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."

4. ISSUES FOR CONSIDERATION

4.1 The capacities in which Hong Kong participates in international agreements

There are four possible situations ~~consideration~~ *to be considered*

4.1.1 International Agreements signed by China which are not applicable to Hong Kong - the "Joint Declaration" states that the Central People's Government shall decide on the application of the agreements, 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. This is no different from the present arrangement: the British *yet*

Government also seeks the views of the Hong Kong Government before deciding on the application of agreements to Hong Kong. ~~Both the Hong Kong Government and the SAR Government should naturally attach the greatest importance to reflecting the aspirations of the Hong Kong residents.~~

4.1.2 International Agreements in which both China and Hong Kong have participated/ Agreements to which China is a party and which are already applied to Hong Kong:

- 1) If Hong Kong is participating on her own, i.e. the ratifying unit is not limited to states, then she may use the name of 'Hong Kong, China' in participation.
- 2) If the Agreement is signed by Britain, and the application is just extended to Hong Kong, then arrangements have to be made, so that the extension of application to Hong Kong will only come from agreements that are applied to China. There is a possibility that the agreements that are applicable to China and Britain respectively may not be the same. The Hong Kong SAR will therefore have to make certain appropriate adjustments.

certain claims of

other by Britain

4.1.3 International Agreements ^{other} to which China is not a party but ^{by Britain} are applied to Hong Kong - the Joint Declaration states that these agreements 'may remain implemented'. This should mean that the content of these agreements will still apply to the Hong Kong SAR. If the content of these agreements has already been incorporated into the existing law of Hong Kong (see Background), and since Hong Kong may retain her existing legal system, it follows naturally that the content of these agreement may continue to be implemented. *been*

But since the validity of many international agreement depends largely on the relationship between contracting parties, it is impossible for Hong Kong to declare unilaterally that these agreements may still be implemented. Recognition by other contracting organisations must be obtained.

In addition, the contents of many agreements are subject to changes in accordance with circumstances. The Hong Kong SAR must have a formal status to ensure the application of the revised contents of the agreements to Hong Kong.

Therefore, if a certain agreement is regarded as beneficial to Hong Kong, Hong Kong should participate as a contracting party formally.

- 1) If Hong Kong used to participation is limited to states, and Hong Kong used to participate as a British dependent territory or colony to which the application is only extended, she should participate with the assistance of China:
- 2) ~~a) If China is participating in the agreement, the Hong Kong SAR can enjoy extended application of the agreement in the capacity of being a Special Region of China.~~ ^{willing in}
- b) In the case of which China has no intention of participating, the Joint Declaration offers no solution. One of the possibilities would be for China to delegate authority or give assistance to the Hong Kong SAR in order that the latter would be able to participate in a capacity acceptable to other contracting states. But since the Hong Kong SAR is after all not a state, the question of whether a Special Region can participate would mainly depend on the acceptability of such an arrangement to the other contracting states.

Another problem is the restriction imposed by international organisations on non-sovereign territory signing conventions. For example, according to the arrangements of the International Labour Organisation, which is responsible for enacting international labour conventions, the conventions applied to a non-sovereign territory should not exceed that recognised by its metropolitan government. At present, China only recognizes over ten international labour conventions, while the conventions that are implemented in Hong Kong the British dependent territory amount to the figure of 49. If the Hong Kong SAR is ~~to~~ participate as an associated member of China, there would be ^{great} change in the field of labour rights. It is therefore essential to find a ~~proper~~ ^{seek possible} solution to take care of such situations.

International Agreements to which neither China nor Hong Kong is ^{now} a party - the Joint Declaration states that 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.

4.1.4.1 "Other relevant international agreements" should be those to which neither China nor Hong Kong is a party, but which would be ~~beneficial to or necessary for Hong Kong to participate:~~ ^{either Central Govt or SAR Govt. feel which is}

- 1) If China is participating on her own, Hong Kong should be able to enjoy extended application of the agreements in the capacity of a Special Region of China.

going to be
accepted by
China 1.1.4
after 1997

2) If China has no intention of participating, and if the agreements are not limited to states, Hong Kong should be able to participate in the name of 'Hong Kong, China'.

3) If China has no intention of participating, and if the agreements are limited to states, China will have to authorise or assist Hong Kong in negotiations with the organisations concerned, so that Hong Kong will be able to become a contracting party. *should have the responsibility to do this*
should participate in same form.

4.1-4.2 Who is to decide on what "other relevant agreements" include? Is this to be decided by the Central People's Government, or the SAR Government? The answers to these questions are particularly important when the agreements are limited to states alone.

- a) Assigned by the Central Government.
- b) Decided by the Central Government after consultation with the SAR Government.
- c) Decided by the SAR Government.

and if the Hong Kong SAR Government decided that a certain agreement is beneficial to Hong Kong, and needs the authorisation or assistance of the Central Government for participation, does the Central Government has the "responsibility" to help Hong Kong? Can the Central Government veto the request made by Hong Kong?

4.2 The capacity in which Hong Kong participates in International Organisations

The following situations would need careful considerations:

4.2.1 International Organisations in which both China and Hong Kong participate, the Joint Declaration states that under such circumstance, "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."

The Joint Declaration also states that "The Hong Kong Special Administrative Region may, using the name 'Hong Kong, China', participate in international organizations and conferences not limited to states." As for international organisations or conferences in appropriate field limited to states and affecting the Hong Kong Special Administrative Region, representatives of the Hong Kong Special Administrative Region Government may

- a) Participate as members of delegations of the Government of the People's Republic of China, or

b) Attend in such other capacity as may be permitted by the Central Government and the organisations or conference concerned, and may express their views in the name of 'Hong Kong, China'.

4.2.2 International Organisations in which China has participated but Hong Kong has not:

The Joint Declaration makes no reference to the arrangements to be made under such appropriated fields and affecting the Hong Kong Special Administrative Region", then the respective capacities in which Hong Kong participate in organisation limited and unlimited to states should apply. The question is: who is to decide which organisations and conferences are affecting the Hong Kong SAR or are 'in appropriate fields'? If the organisation are not limited to states, the SAR may, presumably, decide on participation in the name of 'Hong Kong, China'; but for those limited to states, Hong Kong would need special arrangements made by China. Will it be

- a) Decided by the Central People's Government, or
- b) Decided by the Hong Kong SAR Government, or
- c) For the Central Government to decide, in accordance with the circumstances and needs of the Hong Kong Special Administrative Region and after consultation with the SAR Government (such as in the situation of international agreements)? and if the SAR Government is to be consulted, which institution or department in particular will be consulted?

4.2.3 International Organisations in which China has not participated but Hong Kong has:

The Joint Declaration states that "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."

- a) For organisations not limited to states, the Hong Kong Special Administrative Region should be able to participate in the name of 'Hong Kong, China' subject to the acceptance by the organizations concerned.

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b) For organisations limited to states, the only applicable solution offered by the Joint Declaration is "that the Hong Kong SAR" 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 views in the name of 'Hong Kong, China'.

In these situations, the two points for consideration previously mentioned also apply:

- a) Who is to decide whether a certain international organisation is affecting the SAR, or is in the appropriate fields?
- b) The feasibility of this arrangement would depend on whether the organisation concerned is willing to recognize the status of Hong Kong SAR, in the name of 'Hong Kong, China', as a participant in an organisation limited to states.

4.3 Whether HKSAR can still maintain her status in international organisations or agreements:

As seen from above, Hong Kong will continue to participate in international organisations and agreements in different status and capacities. But since the HKSAR will have to participate in such capacity as permitted by the Central People's Government and the international organisations/conferences concerned, the capacity in which she participates may vary in different organisations, depending on the different circumstances and wishes of individual organisations.

In addition, Hong Kong may find it difficult to participate in certain organisations or agreements to which she used to be a party after the change in her metropolitan state. For example, Hong Kong, as a British associated region to which one particular agreement is applicable by extension, is not permitted to export certain goods to communist countries. It would be difficult and embarrassing if Hong Kong is to participate in similar agreements in the capacity of a special region of China.

"Hong Kong, China" is a new entity, and the capacity of a special administrative region is yet unfamiliar to many the international level. Moreover, the political and economic operations of her former metropolitan state, Britain, are so very different from those of China that it is still impossible to predict whether the status of Hong Kong the SAR would be recognised internationally.

4.4 International recognition

The key to the question of whether the SAR can participate in international organisations/agreements in an appropriate

capacity really lies with the ability of the future Hong Kong Special Administrative Region to gain international recognition and respect. And this in turn depends on whether the authorities concerned can succeed in "marketing" the importance and autonomy of Hong Kong.

One of the suggested "marketing strategies" is for the Chinese authorities to guarantee HKSAR's autonomy in the international organisations and agreements concerned. That is, there is to be an extra international safeguard provided directly by China in addition to the safeguard contained in the Basic Law. This will enhance international confidence in the autonomy of the Hong Kong Special Administrative Region, and ensure that Hong Kong will enjoy a respected status in international organisations and agreements. Take one scenario for instance, as the HKSAR pursues participation in the IMF (International Monetary Fund), China will provide guarantees that in Hong Kong will continue to enjoy autonomy in deciding issues related to the Reserves and the Hong Kong dollar, and that the latter would not be pegged to the RMB etc., (see Lu Fanzhi's article "Hong Kong People Governing Hong Kong and the Confidence of the Hong Kong people". The Wide angled Mirror issue 125)

Besides, it must be made clear internationally that China and the HKSAR are two separate trading entities, and that China also respects such a relationship. China should also respect the quotas, preferential tariffs, patents, and franchise relating to technology or production which are granted to the HKSAR alone. Only thus will other countries be convinced of the necessity for the HKSAR to have her own seat in international organisations/agreements.

4.5 Capacities in participation and autonomy

What is the extent of autonomy to be enjoyed and by the HKSAR or "Hong Kong, China" under different ways of participation?

4.5.1 Expression of views

One question is: will the HKSAR be able to express views in the name of "Hong Kong, China" under the following two situations:

- 1) when the representatives of HKSAR is participating as members of the delegations of the Government of the People's Republic of China?
- 2) when the representatives of the HKSAR is participating in a capacity permitted by the Central People's Government and the international organisations or conferences concerned?

And if there is a conflict of interests between the HKSAR and China, may the representatives of the former express views contrary to that of China?

4.5.2 Voting

If voting is required, is the HKSAR entitled to an independent vote? May the HKSAR cast a vote contrary to that of China?

4.6 The line to be drawn between foreign affairs and other fields:

The above situations are all beyond the field of foreign affairs, as, according to the Joint Declaration, "foreign affairs are the responsibility of the Central People's Government". Foreign Affairs can be regarded to be one involving in political relationships with other countries, but where should one draw the line between foreign affairs and other fields (economic, trade, financial and monetary, shipping, communications, touristic, cultural, and sporting fields)?

Some think that if the SAR is canvassing for support from foreign countries or official bodies in international organisations, this should not be confused with foreign affairs as long as the ultimate goal is to promote the interests in the various 'other fields' mentioned.

4.7 The relationship between the SAR and countries with no diplomatic relations with China:

4.7.1 Does the SAR have autonomy in deciding on the establishment of non-diplomatic relationships with countries which have no diplomatic connections with China, or the participation in the organisation or international events organised by such a country?

It is learnt that the next round of Olympic Games would be held in South Korea, and China has already expressed her intention to participate. As China has already decided to participate in an international event held by a country which has no diplomatic relations with her, apparently Hong Kong may not need to worry over this issue. Some said that in order to safeguard a high degree of autonomy in the SAR, the HKSAR should enjoy autonomy in deciding whether she should establish non-diplomatic relationship with such a country or participate in an event held there, as long as that particular country is not in a state of war with China.

4.7.2 Does the HKSAR have the autonomy in deciding on the invitation of countries which have no diplomatic relations with China to go and participate in international organisations or events held by Hong Kong?

At present, Hong Kong is less welcoming to representatives from countries such as those in the Eastern Bloc who would like to participate in events or performances held in Hong Kong. Sportsmen from many countries need not get visas from the Immigration Department for coming to Hong Kong to participate in short-term events, but sportsmen from USSR, Cuba, or Argentina will have to apply for and obtain visa before they can come. So what should become of the standard policies and treatment towards the many communist countries and the countries which have no diplomatic relations with Britain after 1997?

4.7.3 During the second meeting of the Drafting Committee's Subgroup on Education, Science, Technology, Culture, Sports, and Religion" (12 September, 1986), the question on whether the Hong Kong soccer teams should continue to participate in the International Soccer league or international events was raised. The meeting concluded that the soccer teams of the SAR should still continue to maintain contacts with countries and regions which have no diplomatic relations with China.

4.8 Withdrawal from international agreements/organisations

If china is already a participant in a certain agreement/organisation, and the HKSAR has also participated in one capacity or another, does the latter have the right to decide on its own withdrawal when China decides to withdraw membership from that particular agreement/organisation?

4.9 The Question of Indirect Legislation

One of the worries is that China may, through ratifying international agreements and making these agreements applicable to Hong Kong, indirectly enact laws for Hong Kong in fields which should be administered by the SAR Government itself and thereby affect the autonomy of the SAR government in these fields.

It is suggested that China should relinquish the power of making agreements for the HKSAR in fields such as economy, trade, finance and monetary, shipping, communications, culture, sports, etc. If these agreements are to become the law of Hong Kong, they must first be endorsed by the legislature of the HKSAR before being implemented.

It is further suggested that, in order to maintain a consistent format of legislation, the SAR Government has the duty to endorse international agreements in the fields of politics and foreign affairs etc., and enjoys full autonomy in decisions regarding whether the agreements made by the Central Government should be endorsed.

4.10 Claims or liabilities and sanctions

If a contracting country violates the regulations of a certain agreement or organisation, and incur losses to another contracting party, the latter should be able to make claims on liabilities and compensations from, take sanctions against, or seek other possible solutions with the contracting country concerned. She may make claims to the organisation itself, or request for sanctions or other solutions through the International Court of Justice. There had been instances in which the damaged country applied unilateral sanctions on her own accord, and the channels for making claims may vary in accordance with different agreements/organisations.

4.10.1 Claims

If the HKSAR is the damaged party, how should the SAR make claims for the losses?

- 1) Participation in the name of "Hong Kong, China":
Since the HKSAR is a separate participant, she should be able to make claims in a separate capacity.
- 2) Participation through association with China:
Since membership is limited to states, it may be necessary for China to take charge of the duty of making claims. If the HKSAR suffers damages to her interests, does china have the responsibility to make claims on her behalf?

4.10.2 Sanctions against violating members

If China suffers damages to her interests, and would like to take sanctions against the violating member concerned, such as reducing the number of quotas granted or discontinuation of trading relations etc., will the HKSAR have to follow China's actions?

Hong Kong's prosperity has all along relied on free trade, and her negotiating status is weak due to a total lack of political sanctioning power exercisable. In the international scene, she can only uphold the banner of "Free Trade", and comply with all the regulations strictly, in the hope that other countries will give her reciprocal treatments. If China takes sanctions against other countries, and if the HKSAR has to follow suit, the countries sanctioned may take retaliating measures that will inevitably affect the HKSAR. The impact of this on the HKSAR is beyond predictions. And since the status of Hong Kong as a member advocating free trade is damaged, other countries will be given a freer rein in imposing further restrictions on the trading interests of the HKSAR.

4.10.3 China being sanctioned by other members:

If China is sanctioned due to her violation of the regulations of a certain agreement/organisation, will Hong Kong be included in the sanctions as well? For example, if the sanctioning country freezes China's assets in her territory, will the assests of the HKSAR be frozen too? Or if that particular country decides to reduce the number of quotas granted to China, how would this affect the HKSAR?

- 1) If the HKSAR participates in the name of "Hong Kong, China", the sanctions should not apply to her. But this will depend on whether the country concerned respects and recognizes the HKSAR as a separate entity from China. So the main question is still whether the autonomy of the HKSAR can be successfully "marketed". (see 4.4 International Recognition)
- 2) If the HKSAR participates via associations with China, then it is possible that the other countries will include the SAR in their sanctions.

* If there is any discrepancy between the Chinese and the English versions, the Chinese version shall prevail.

涉外事務專責小組 第九次會議紀要

日期：一九八七年二月十八日（星期三）

時間：下午五時三十分至七時

地點：基本法諮詢委員會會址

召集人：馮國綸委員

會務主任：何敏慧小姐

出席委員：李啓明 林邦莊 歐成威 夏其龍 馮國綸
徐是雄

1. 會議決定通過「參與國際機構／協定的形式及安排」討論文件成為最後報告，並在三月遞交執行委員會審閱。
2. 因會議通過的是文件的英文本，會議決定責成召集人馮國綸委員會同秘書處負責修改中文本，使其能與英文本配合。

召集人：馮國綸

參與國際機構／協定的形式與安排

最後報告

(1987年2月28日)

中華人民共和國香港特別行政區基本法諮詢委員會

涉外事務專責小組

1. 引言

- 1.1 香港現在身為國際貿易、金融、航運等中心，其安定與繁榮實有賴良好的國際聯繫，香港參與的國際組織及協定亦因此成為香港的命脈。
- 1.2 現時香港發展國際聯繫的身份皆源於目前的宗主國英國的聯繫，但可以通過某些安排，在國際會議及組織中單獨發表意向及爭取本身的利益。這些英國和香港之間的安排，亦依賴國際間對兩者間的安排和香港地位的尊重。
- 1.3 九七年後，中國收回香港主權時，香港的國際聯繫又會如何？重要的是香港繼續能在國際層面上維護及爭取本身的利益。這便要視乎在主權轉移後，香港能否在有關的國際組織及協定中保留及爭取一地位，而此地位又應須經過怎樣的安排才能確保香港特區能夠有足夠的自主權維護本身的利益？這些將會是本討論文件探討的問題。
- 1.4 目前，中英聯合聯絡小組正展開工作研究香港特別行政區以何種方式繼續參加國際組織，如萬國郵盟、氣象組織、國際勞工組織、世界醫療機構及國際海事組織等。聯絡小組並對有關香港的協定加以研究，望可盡快在每條協定中尋求香港特區應有的地位。有關的協定內容亦因此歸類為機密文件。本討論文件將在大原則方面着眼，而不會把協定逐項或逐類研究。

2. 背景資料／現行情況

2.1 國際協定

根據香港政府律政署在八三年七月的資料顯示，應用於香港的國際協定超過三百條。這些條約的形式多為條約、公約、協議及議定書，並有國際規則及聲明。它們的範圍牽涉甚廣，包括：經濟、金融、貿易及商業，通訊、交通、法律、漁農業、文化、醫藥衛生等多方面。

2.2 參加形式

香港加入這些協議的身份皆為透過英國的聯繫。形式方面分以下幾類：

- 2.2.1 單獨以「香港」名義加入協定。其身份實為英國屬土，並得由英國政府授權才可以成為締約地區。香港在貿易方面經常有以此身份簽約。

2.2.2 通過英國參加：

- (1) 通常英國參加的協議都有「有效區域」的條款，此條款列明協議的內容是否應用於英國的附屬地區(例如香港)。英國在簽署這些協議的時候，可以在此條款下作出聲明，藉以保留協議的某些條文對英國的屬土的適用性。即是說保留某些條文，使其不適用於某些屬土。例如關於《公民權利和政治權利國際公約》，其中一項被保留不用於香港的條文是第二十五條(b)項，這是關於選舉權的條文。英國接受這公約時，香港的立法機關並沒有任何選舉產生的議席，所以，英國便保留了這條文，不用於香港。
- (2) 如果沒有「有效區域」的條款的條約，便可能要視乎協議的內容及目的，從而推測是否適用於香港。某些協定是明顯地適用於香港的，例如英國與另一國家簽訂一條雙邊航空協約，而香港是在這航線上的。另一些協定可能是明顯地不適用於香港的，例如有關英倫本島領海的便是。
- (3) 如果不能清楚確定協議是否與香港有關，而英國又沒有表明協定不適用於香港的話，此協定便會被其他締約國家假定為適用於香港。

在簽訂可能應用於香港的協定前，英國政府會先諮詢香港政府，然後才決定是否令協定內容引伸到香港。

2.3 國際協約如何在港具有法律效力

在任何協定(不論以什麼途徑)應用於香港前，先要考慮該協定是否符合香港法律，及香港政府有沒有實行該協定所需的法律權力。如要為該協定修訂香港法律，則需在該協定在香港生效前進行。確保香港法律能與協定配合的方法很簡單，就是賦予該協定在港的法律效力，只要該協定本身具備構成法律效力的條件。

有很多協定已根據以下其中一項應用於香港及正式實行：現行法例、為該等協定而制定的新法例、普通法或其他的安排。

2.4 香港在國際協議／組織中的地位

現時，香港出席國際貿易協定及會議，香港的地位可能是由英國這締約國代表香港參加，有情況是英國代表團的其中一名成員代表香港發言，而這名成員通常是港府的官員。他可以代表香港的利益發言，在貿易利益有矛盾的情況下，香港可以採取與英國不同的立場。

2.5 香港以單獨身份加入「關稅及貿易總協定」

在「關稅貿易總協定」中，向來是由英國代表香港參加的。香港作為單獨的關稅地區享有「總協定」的各種優惠安排，並爭取減少各國對自己出口產品的排擠，對依靠自由貿易生存的香港至為重要。

自《中英聯合聲明》生效後，經中英聯絡小組安排，得中英雙方同意並向「總協定」提交聲明，在八六年四月香港成為「總協定」的締約成員，在處理其對外貿易關係和「總協定」所規定的其他事項方面有自決權。

中國現仍未加入「總協定」，但對香港特別行政區在「總協定」的地位已作確保：中國政府聲明，自一九九七年七月一日起，特區將可以「中國香港」名義繼續保持締約成員的地位。

3. 聯合聲明有關的條文

- 3.1 第三款第十項：「香港特別行政區可以“中國香港”的名義單獨地同各國、各地區及有關國際組織保持和發展經濟、文化關係，並簽訂有關協定。」

附件一第十一節：

3.2 在外交方面

「在外交事務屬中央人民政府管理的原則下，香港特別行政區政府的代表，可作為中華人民共和國政府代表團的成員，參加由中央人民政府進行的與香港特別行政區直接有關的外交談判。」

3.3 在其他方面

「香港特別行政區可以“中國香港”的名義，在經濟、貿易、金融、航運、通訊、旅遊、文化、體育等領域單獨地同世界各國、各地區及有關國際組織保持和發展關係，並簽訂和履行有關協定。」

3.4 參加形式

3.4.1 對以國家為單位的

「對以國家為單位參加的、與香港特別行政區有關的、適當領域的國際組織和國際會議，香港特別行政區政府的代表可作為中華人民共和國政府代表團的成員或以中央人民政府和上述有關國際組織或國際會議允許的身份參加，並以“中國香港”的名義發表意見。」

3.4.2 對不以國家為單位的

「對不以國家為單位參加的國際組織和國際會議，香港特別行政區可以“中國香港”的名義參加。」

3.4.3 參加國際協定

「中華人民共和國締結的國際協定，中央人民政府可根據香港特別行政區的情況和需要，在徵詢香港特別行政區政府的意見後，決定是否適用於香港特別行政區。中華人民共和國尚未參加但已適用於香港的國際協定仍可繼續適用。中央人民政府根據需要授權或協助香港特別行政區政府作出適當安排，使其他有關的國際協定適用於香港特別行政區。」

3.4.4 參加國際組織

「對中華人民共和國已經參加而香港目前也以某種形式參加的國際組織，中央人民政府將採取必要措施使香港特別行政區以適當形式繼續保持在這些組織中的地位。對中華人民共和國尚未參加而香港目前以某種形式參加的國際組織，中央人民政府將根據需要香港特別行政區以適當形式繼續參加這些組織。」

3.5 附件一第六節

「香港特別行政區為單獨的關稅地區。香港特別行政區可參加關稅和貿易總協定、關於國際紡織品貿易安排等有關的國際組織和國際貿易協定，包括優惠貿易安排。香港特別行政區取得的出口配額、關稅優惠和達成的其他類似安排，全由香港特別行政區享有。」

3.6 附件一第十三節

「《公民權利和政治權利國際公約》和《經濟、社會與文化權利的國際公約適用於香港的規定》將繼續有效。」

4. 有待考慮的問題

4.1 外交事務與其他領域的界線：

根據《聯合聲明》「外交事務屬中央人民政府管理……。」外交可被理解為涉及政治邦交者，但很難劃分外交與其他各領域（經濟、貿易、金融、航運、通訊、旅遊、文化、體育等）的界線。

當然，如中國及有關的國家正處於戰爭狀態，或特區的游說工作涉及國防，則香港特區在「其他領域」的自主性皆被暫時撤消。當情況的性質不明顯，難以界定事情是否屬外交時，而中國政府又與香港特區又對情況的界定有不同意見時，便得由「基本法的解釋」及「中央與特區關係」所提出的方案來解決。

4.2 香港特區以甚麼形式參加國際協定：

有以下四個情況需要考慮：

4.2.1 中國締結的國際協定而未適用於香港者——《聯合聲明》列明中央人民政府可根據香港特區的情況和需要，在徵詢特區政府的意見後，決定是否適用於特區。

這與現時的情況並無分別，英政府亦是先徵詢香港政府的意見後才決定是否引伸應用於香港。

4.2.2 中國和香港均已參加的國際協定

或

中國已參加而又已適用於香港的協定：

- (1) 如果香港是以本身名義參加，即締約單位不需要是國家的話，香港特區當可以「中國香港」名義參加。
- (2) 如果原本是由英國參加，而香港以殖民地或屬土引伸應用，適用於英國和適用於中國的條款可能有所不同，因此香港特區亦需作安排，使引伸應用於特區內的條款是來自適用於中國的協定。

基本法應授權香港特別行政區向中國提出要求，請中國安排有關協定得以適用於香港特別行政區。基本法應就這問題具體說明聯合聲明附件一第十一節的規定。

4.2.3 中國尚未參加但已適用於香港的國際協定，即香港已參加或由英國引伸應用於香港的協定——《聯合聲明》列明這些協定「仍可繼續適用」，這應該是指這些協定內容仍可在香港特區內應用。如果協定的內容已被容納入香港現行的法例里（見背景資料），因香港可保持其原有法律制度，這些協定內容當可繼續適用。

但國際協約每多有關締約國的相互關係，香港特區不可能單方面宣佈協定仍然適用，而定必需要得到其他締約組織的承認才行。

另外，各協定內容亦會因時制宜而有所改變，香港特區亦得有一名正言順的身份使協定內容適用於香港特區。

所以，如果認為某協定是對香港特區有益的話，便得正式參加締約才成。

- (1) 若香港以往是以單獨身份參加締約的，可改為以「中國香港」名義繼續參加。
- (2) 若是以國家為參加單位的，而香港以往是以英國屬土或殖民地引伸應用的，則需透過中國的協助參加：

① 如果中國願意參加協定的話，香港特區可以其特區身份引伸應用協定的內容。

② 如果中國無意參加該協定，則《聯合聲明》並未有列明解決方法。其中一個可能性是由中國政府授權或協助香港特區以其他締約國可接受的形式參加。但因為香港特區終究不是國家身份，所以特區是否可以參加，仍是決定於其他締約國是否接受這安排。還有一個問題為國際組織對非主權國締定公約的限制。例如，根據制訂國際勞工公約的國際勞工組織安排，非主權國家或地區施行的公約，不能超過其主權國所承認的公約。然中國現時只承認十四項國際勞工公約，但香港附屬英國施行的公約達四十九項之多。如香港特別行政區在九七年後所承認的國際勞工公約只限中國已承認者，香港勞工權益情況將有很大更改。此情形實需有妥善的解決方法。一個可能的方法，就是中國設法令香港特別行政區成為國際勞工組織的特別成員。

4.2.4 中國和香港皆未有參加的國際協定——《聯合聲明》訂明中央人民政府根據需要授權或協助香港特區政府作出適當安排，使其他有關的國際協定適用於香港特區。

(1) 這裡所謂「其他有關的協約」當為中國和香港皆未有參加，而中央或特區政府卻認為參加後會對香港有利，或是需要參加的協定：

- ① 如果中國本身參加的話，香港特區應可以特區身份引伸應用協定內容。
- ② 如果中國未有打算參加，而協定亦不需要以國家為單位參加的話，香港當可以「中國香港」名義參加。
- ③ 如果中國未有打算參加，而協定是以國家為單位參加的話，中國應負責授權或協助香港與協定的締約組織交涉，使香港能以某種形式參加這些協定。

4.3 香港特區以甚麼形式參加國際組織

以下有多個情況需要考慮：

4.3.1 中國和香港皆有參加的國際組織

《聯合聲明》訂明在此情況下，「中央人民政府將採取必要措施使香港特區以適當形式繼續保持在這些組織中的地位。」

《聯合聲明》亦有訂明「對不以國家為單位參加的國際組織和國際會議，香港特別行政區可以「中國香港」名義參加。」對以國家為單位參加的、與香港特別行政區有關的、適當領域的國際組織和國際會議，香港特別行政區政府的代表可①作為中華人民共和國的成員，或②以中央人民政府和上述有關國際組織或國際會議允許的身份參加，並以「中國香港」的名義發表意見。

4.3.2 中國已參加而香港特區未有參加的國際組織：

《中英聯合聲明》並沒有訂明特別在此情況下的做法。但若「與香港特別行政區有關的、適當領域的國際組織和國際會議」，那麼，以國家為單位及非以國家為單位的兩種參加辦法當在此適用。問題是由誰決定甚麼組織和會議為與香港特別行政區有關或屬於適當領域？以非國家為單位的，據聯合聲明清楚規定，還可由特區自行以「中國香港」名義決定參加與否，但以國家為單位的必要得到中國作出適當的安排。基本法應授權香港特別行政區向中國提出要求，使能參加各國際組織的中國代表團。基本法應就這一點具體說明聯合聲明附件一第十一節的規定。

4.3.3 中國沒有參加而香港已參加的國際組織：

《聯合聲明》訂明「對中華人民共和國尚未參加而香港目前以某種形式參加的國際組織，中央人民政府將根據需要使香港特別行政區以適當形式繼續參加這些組織。」

- (1) 對不以國家為參加單位的組織，香港特別行政區應可以「中國香港」名義參加，但必須要得到該國際組織的接受。
- (2) 對以國家為參加單位的國際組織，《中英聯合聲明》中唯一適用的參加辦法應為「以中央人民政府和上述有關組織或國際會議允許的身份參加，並以「中國香港」名義發表意見。」此辦法是否有效實決定於該組織是否接受香港特區以「中國香港」名義參加一個國家為單位的組織。

4.3.4 中國和香港皆沒有參加的國際組織：

- (1) 在不須以國家為參加單位的情況下，香港特別行政區可以「中國香港」名義，單獨參加國際組織。
- (2) 根據《聯合聲明》，「對以國家為單位參加的、與香港特區有關的、適當領域的國際組織和國際會議，香港特別行政區的代表可...以中央人民政府和上述有關國際組織或國際會議允許的身份參加，並以「中國香港」名義發表意見。」

4.3.5 在4.3.3(2)及4.3.4(2)情況下仍有以往已有提及的兩個考慮點：

- ① 基本法應授權香港特別行政區向中國提出要求，由中國參加各國際組織及協議並使香港特區參加中國的代表隊的中國代表團。基本法應就這一點具體說明聯合聲明附件一第十一節的規定。
- ② 此辦法是否行得通實決定於該組織是否肯承認香港特區以「中國香港」名義參加一個國家為單位的組織。

4.4 香港特區是否能夠繼續保持在國際組織或協定的地位：

由以上所見，香港將會以不同身份及形式繼續參加國際組織／協定。但因為有幾個情況下要依賴中央人民政府和上述有關國際組織／會議允許的身份參加，則香港特區的參加身份可能因不同組織而殊，實要視乎個別組織的不同情況和意願而決定。

再者，有些香港以往一直有參加的組織或應用的協定可能因宗主國的更換而難於繼續參加。例如，香港以英國的附屬地區引伸某協議內容不可把某類物資輸入共產國家，但很難令其他國家相信香港會以中國特別行政區的身份，繼續遵行這類協議。

「中國香港」既為一個新的個體，特別行政區這地位及自治程度亦非在國際中常見，香港特區以往的宗主國——英國又與中國在政治及經濟運作上又如此不同，香港特區之地位是否會受到國際間的接受尚為未知之素。

4.5 國際承認

香港特別行政區將來是否可以受到國際間的尊重與承認實為特區能否以滿意形式參加國際組織／協定的關鍵所在。而這則有賴中國及香港特別行政區的有關方面能否成功地「推銷」香港的重要性及高度獨立自主性。

香港作為在一國兩制構想下享有高度自治的特別行政區，如要取得國際承認，基本法是主要的工具。

中英聯合聲明是保障香港特別行政區自主性的另一工具。中英聯合聲明是一正式的國際協議。整個協議(包括其所有附件)都對英國及中國政府具法律約束力(參閱聯合聲明的引言)，而且將永久維持其效力。如任何一方違反中英聯合聲明，另一方則可向聯合國提出申訴。

有提議為其中一個「推銷」手段是由中國當局向有關的國際組織或協議保證香港特別行政區的自主性。例如對關稅貿易總協定已做到這一點：中國聲明香港將是個獨立的關稅地區。即除基本法的保障外，更有中國直接對有關組織提供的國際保證，藉以增強國際間對香港特別行政區自主性的信心，令香港可以在國際組織及協議中佔一受尊重之地位。一個建議為：香港特區爭取以中國附屬會員參加「國際貨幣基金組織」(IMF)，並由中國提出保證，於收回香港主權後繼續讓香港儲備金自主及貨幣制度自主，可作獨立管理。

為向各國清楚表明這一點，基本法應說明中國及香港特別行政區為分別的貿易個體，而中國也尊重這關係。基本法還須提及，中國保證香港特別行政區取得的配額、貿易特惠稅優待及其他類似的安排，都由香港特別行政區單獨享有，正如中英聯合聲明附件一第六節的規定一樣。對中英聯合聲明沒有論及的範圍，如香港特別行政區在科技、生產方面獲得的專利權、經銷權，也應作類似安排。這樣才能使國際間相信香港特別行政區在國際貿易協定／組織中應佔一席位。

4.6 自主性的程度

在各種不同的參加形式下，香港特區或「中國香港」的自主性應為：

4.6.1 發表意見

國際組織及會議是表達意見及解決糾紛的論壇，所以即使香港的參與是透過中國，香港在國際論壇上，也需表達自己的意見與立場。

基本法應保障香港特別行政區有權獨立發表意見，如香港特別行政區的利益與中國有矛盾時，特區代表可以發表與中國相反的意見。

4.6.2 投票

基本法應保障香港特別行政區有權獨立投票，包括投與中國相反的一票。

4.7 退出國際協定／組織

當中國決定退出某國際協定／組織，香港特區在該協定／組織的參與情況所受的影響：

- (1) 如香港特別行政區是以「中國香港」的名義參加，則有權自行決定是否退出。
- (2) 如香港特別行政區是以中國代表團成員身份參加，則須隨中國退出。基本法應授權香港特別行政區可向中國提出要求，請中國協助香港特別行政區以適當身份繼續參加。

4.8 在香港特別行政區間接引用國際協定而引致間接立法的问题

- 4.8.1 有一疑慮為中央可以通過簽訂國際協定和使這些國際協定適用於香港這途徑，在一些應由特區政府所管理的領域間接地為香港特區制定一些適用於香港的法律，因而影響香港特區在這些領域上的自主權。

4.8.2 有提議為中國應放棄在經濟、貿易、金融、航運、通訊、文化、體育等領域內為香港特區締結協定的權力。如果這些協定要被引用到香港，必須先由香港特區立法機關通過適當的法律才行。

4.8.3 提議又謂為了保持一個統一的立法形式，有關政治、外交等的協定，特區立法機關有義務通過這國際協定，而在其他領域上，香港特區立法機關有絕對自主權決定是否通過中央締結的協定。

4.8.4 有提議為根據中英聯合聲明附件一第二節，「在香港特別行政區實行的法律為《基本法》，以及上述香港原有法律和香港特別行政區立法機關制定的法律。」所以應不會出現中國通過簽訂國際協定而間接為香港立法的問題。

4.9 違反國際協定所引致的追討責任及制裁

如締約國同為一國際組織的成員，則可向該國際組織提出申訴。申訴的門徑可以是向協約組織本身提出投訴，或通過國際法庭以尋求制裁或解決方法。亦有例子受損國家自行單方面進行制裁的。追討的門徑可能因不同協議／組織而殊。

4.9.1 追討責任

若香港特別行政區為受損者，特別行政區進行追討應參照以下情況：

(1) 香港特別行政區以「中國香港」的名義參加國際組織／協定的情況：

基本法應列明若香港特別行政區以單獨身份參加，應可以單獨身份進行追討。

(2) 附屬於中國參加的情況：

既然參加單位為國家，進行追討的任務可能便要由中國負起。基本法應列明若特區利益受損，中國應有責任代為追討。

4.9.2 制裁其他不守規則的成員：

當中國的利益受損，又欲對不守規的成員加以制裁，例如停止與之貿易等。在此情形下，中國可能希望香港特區跟隨中國對之制裁。

然而，香港之繁榮向來依靠自由貿易，它的談判地位弱，因其沒有經濟及政治反擊的能力。在國際上，它只可以打起「自由貿易」旗幟，並嚴守規則，以望其他國家亦對之同樣對待。若中國一旦對其他國家進行制裁，而香港特區又必須參加的話，回轉頭來受制裁的國家要進行報復時，香港特別行政區必受波連，其影響對香港特別行政區難以預計，尤其因為香港堅持自由貿易的地位一旦被破壞，其他國家將可更肆意地限制香港特別行政區的貿易利益。

一如中英聯合聲明所述，香港特別行政區在外交以外的領域有自主權。意即香港特別行政區可自行決定是否跟隨中國制裁其他國家。基本法應列明這自主權。

4.9.3 中國被其他國家制裁：

若中國不守協議／組織規則而受到制裁，香港特別行政區可能會在被制裁之列。例如，進行制裁的國家凍結中國在該國家本土之內的資產，香港特別行政區的資產可能同樣被凍結。又或該國決定減少予中國的配額，這會如何影響香港特別行政區？

- (1) 如果香港特別行政區以「中國香港」名義單獨參加的話，該國理應不制裁香港特別行政區。但這又得視乎該國是否尊重及承認香港特別行政區實為不屬於中國的體系的地位，問題可能終究仍是在於是否可以成功地「推銷」特區的自主性。（見「國際承認」，即4.4段）
- (2) 如果香港特別行政區附屬於中國參加，其他國家便更有可能一併把特區也算入制裁之列了。因此，向世界各國推銷香港特別行政區的獨立自主性就更形重要了。

SUMMARY OF THE NINTH MEETING OF
SPECIAL GROUP ON EXTERNAL AFFAIRS

Date : 18th February 1987 (Wednesday)

Time : 5:30 - 7:00 p.m.

Venue : CCBL premises

Convenor: Mr. William K. L. Fung

Administrative Officer : Miss Amy M. W. Ho

Members present : Lee Kai Ming J. Lambourn
 Zee Sze Yong Eric S. W. Au
 Louis K. Ha William K. L. Fung

1. The meeting resolved to pass the amended Discussion Paper on Arrangement for and Form of Participation in International Organisations and Agreements as final report for review at the Executive Committee Meeting to be held in March.
2. Since the meeting passed the English version of the Discussion Paper, the meeting resolved that the Convenor, Mr. William K. L. Fung, should work in conjunction with the Secretariat to amend the Chinese version in accordance with the English one.

Convenor:_____

CCBL-SG/EXA-FR01-870218(E)

FINAL REPORT ON
ARRANGEMENT FOR AND FORM OF PARTICIPATION IN
INTERNATIONAL ORGANISATIONS/AGREEMENTS

(27/2/87)

Special Group on External Affairs

1. INTRODUCTION

- 1.1 As a centre in fields such as international trade, finance, and shipping, Hong Kong depends heavily on well-established international connections for the maintenance of its stability and prosperity. Participation in international organisations and agreements is, therefore, the lifeblood of Hong Kong.
- 1.2 Although Hong Kong at present develops its international connections mainly through its link with Britain, its present metropolitan government, Hong Kong is nevertheless able to express its own views and fight for its own interests in many international conferences and organisations via special arrangements. This relies on the arrangements made between Hong Kong and Britain, and also the international esteem that this arrangement and the status of Hong Kong enjoy.
- 1.3 After 1997, when China will resume the exercise of sovereignty over Hong Kong, what will become of Hong Kong's international connections? The important thing is Hong Kong's continued ability to safeguard and pursue its own interests at an international level. This really depends on whether Hong Kong can still retain or gain a seat in international organisations and agreements after the transfer of sovereignty, and on the future arrangements that will enable it to have enough autonomy in safeguarding its own interests. These are the main issues for study in this paper.
- 1.4 The Sino-British Joint Liaison Group is now in the process of considering how Hong Kong can continue to participate in international organisations such as the Universal Postal Union (UPU), the World Meteorological Organisation, the International Labour Organisation, the World Health Organisation, and the International Maritime Organisation etc. The JLG is also studying all agreements that are related to Hong Kong, in the hope of identifying the status that Hong Kong should have in each of these agreements. The contents of the agreements are therefore classified as confidential. In this paper, we will be focusing on the general principles rather than scrutinizing each and every single item or category of these agreements.

2. BACKGROUND/PRESENT SITUATION

2.1 International agreements

According to the information released by the Legal Department in July 1983, international agreements that are applicable to Hong Kong amount to over 300. They are mainly agreements, conventions, and protocols, including some international regulations and declarations.

The scope is very wide, extending to fields such as economy, finance, trade and commerce, communications, transport, law, agriculture and fisheries, culture, medical and health etc.

2.2 Form of participation

Hong Kong participates in these agreements mainly through its link with Britain. The different formats of participation are as follows:

2.2.1 Entering into agreements by itself in the name of 'Hong Kong'. Its status is still a British territory, and it can only become a ratifying party with the authorisation of the British Government. Hong Kong often enters into trading agreements in this capacity.

2.2.2 Participation via Britain

- 1) Under agreements signed by Britain, there is very often a provision for a "Territorial Application Article", which states whether the agreement is applicable to British dependent territories (such as Hong Kong). When Britain signs these agreements, it can make declarations under such an Article, to reserve the applicability of certain provisions to British dependent territories. That is to say, to keep certain provisions of the agreement from being applied to some British dependent territories. For example, under the 'International Convention on Civil and Political Rights', Clause 25(b), a provision on electoral rights is reserved as a clause not applicable to Hong Kong. When Britain accepted this Convention, Hong Kong did not have any elected seats to the legislature, and so Britain reserved the applicability of this particular provision to Hong Kong.
- 2) For agreements that have no Territorial Application Article, it would be necessary to decide on their applicability to Hong Kong by inference from their contents and purposes. Some agreements are clearly applicable to Hong Kong - such as when Britain signs a bi-lateral aviation agreement with another country, and Hong Kong happens to be on that particular air route, while others are clearly not applicable, like the one on the territorial waters of the British Isle itself.
- 3) If the relevance to Hong Kong of an agreement is not clear, and if Britain did not state clearly that the agreement is inapplicable to Hong Kong, then its applicability to Hong Kong will be assumed by the other parties to the agreement.

Prior to signing an agreement that may be applied to Hong Kong, Britain will consult the Hong Kong government first before deciding whether the application of the agreement should also be extended to Hong Kong.

2.3 How international agreements are given legal effect in Hong Kong

Before any new treaty is applied to Hong Kong, by whatever method, consideration is given to whether the law of Hong Kong will be consistent with it, and whether the Hong Kong government will have the necessary legal powers to implement it. Any necessary adjustment of the law of Hong Kong is brought into force not later than the date on which the treaty enters into force in respect of Hong Kong. One simple way of ensuring that the law of Hong Kong is consistent with a treaty is to give the treaty the force of law in Hong Kong, so far as it is capable of having that effect.

A large number of treaties have been applied to Hong Kong and implemented, either under legislation already in force, under new legislation enacted for the purpose, under the common law or by administrative means.

2.4 The status of Hong Kong in international agreements/organisations

At present, there are international trade agreements and conferences in which Hong Kong is represented by the ratifying country, Britain. On some occasions, a member of the British delegation may speak on behalf of Hong Kong, and this member is normally an official from the Hong Kong Government. He may speak up for the interests of Hong Kong, and Hong Kong may take a stand different from that of Britain in case there is a conflict of interest between the two.

2.5 Hong Kong participating in GATT as a separate entity

Hong Kong used to be represented by Britain in the General Agreement on Tariff and trade (GATT). It is most important for Hong Kong to enjoy the right to all the preferential arrangements under GATT as a separate customs territory, and to be able to fight for less restrictions on its exports imposed by other countries.

Since the Sino-British Joint Agreement came into effect, and after the Sino-British Joint Liaison Group made the necessary arrangements for gaining the consent of both China and Britain, a declaration was submitted to the GATT in April 1986, stating that Hong Kong was to become a ratifying member of the GATT, and to enjoy full autonomy in making decisions concerning its external trade relations and the provisions under GATT.

China has not yet joined GATT, but the status of the Hong Kong SAR in GATT has already been ensured. The Chinese government has declared that the future SAR may retain its status of a contracting member in GATT in the name of 'Hong Kong, China' beginning from 1st July 1997.

3. RELEVANT CLAUSES IN THE JOINT DECLARATION

3.1 Article 3 Clause 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."

Section XI of Annex 1

3.2 On foreign affairs

"Subject to the principle that foreign affairs are the responsibility of Central People's Government, representatives of the Hong Kong Special Administrative Region Government may participate, as members of delegation 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."

3.3 Other fields

"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."

3.4 Form of participation

3.4.1 Fields limited to states

"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 organisations or conferences concerned, and may express their views in the name of 'Hong Kong, China'."

3.4.2 Fields not limited to states

"The Hong Kong Special Administrative Region" may, using the name 'Hong Kong, China', participate in international organisations and conferences not limited to states."

3.4.3 Participation in international agreements

"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 is not a party but which are implemented in Hong Kong may remain implemented in the Hong Kong Special Administrative Region. The Central 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 agreements."

3.4.4 Participation in international organisations

"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."

3.5 Section VI of Annex I

"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."

3.6 Section XIII of Annex I

"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."

4. ISSUES FOR CONSIDERATION

4.1 The line to be drawn between foreign affairs and other fields:

According to the Joint Declaration, "foreign affairs are the responsibility of the Central People's Government". Foreign Affairs can be regarded to be one involving political relationships with other countries, but it is difficult to draw the line between foreign affairs and other fields" (economic, trade, financial and monetary, shipping, communications, touristic, cultural, and sporting fields) etc.

Of course, in cases where China and the country concerned are in a state of war or where defence is involved the HKSAR's autonomy in these "other fields" would be subject to suspension.

In less obvious cases, where the opinion of the Central Government and the HKSAR differ as to whether foreign affairs is involved, the matter will be resolved using the mechanism to be proposed for dealing with interpretation of the Basic Law or the relationship between the Central People's Government and the HKSAR.

4.2 The capacities in which Hong Kong participates in international agreements

There are four possible situations for consideration:

4.2.1 International Agreements signed by China which are not yet applicable to Hong Kong -- the Joint Declaration states that the Central People's Government shall decide on the application of the agreements, 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. This is no different from the present arrangement: the British Government also seeks the views of the Hong Kong Government before deciding on the extension of agreements to Hong Kong.

4.2.2 International Agreements in which both China and Hong Kong have participated; or

Agreements to which China is a party and which are already applied to Hong Kong:

- 1) If Hong Kong is participating on its own, i.e. the ratifying unit is not limited to states, then it may use the name of 'Hong Kong, China' in participation.
- 2) If the Agreement is signed by Britain, and the application is just extended to Hong Kong, there is a possibility that the arrangements that are applicable to China and Britain respectively may not be the same. Then, arrangements will have to be made at the request of the HKSAR so that the extension of application to Hong Kong will come only from agreements that are applied to China.

The Basic Law should empower the HKSAR to initiate a request to China to make necessary arrangements so that relevant agreements can be applied to HKSAR. The Basic Law should elaborate on Section XI, Annex I of the Joint Declaration concerning this point.

4.2.3 International Agreements to which China is not a party but are applied to Hong Kong (i.e. where Hong Kong is a party or where the agreement is extended to Hong Kong through Britain) -- the Joint Declaration states that these agreements 'may remain implemented'. This should mean that the content of these agreements will still apply to the Hong Kong SAR. If the content of these agreements has already been incorporated into the existing law of Hong Kong (see Background), and since Hong Kong may retain its existing legal system, it follows naturally that the content of these agreements may continue to be implemented.

But since the validity of many international agreement depends largely on the relationship between contracting parties, it is impossible for Hong Kong to declare unilaterally that these agreements may still be implemented. Recognition by other contracting organisations must be obtained.

In addition, the contents of many agreements are subject to changes in accordance with circumstances. The Hong Kong SAR must have a formal status to ensure the application of the revised contents of the agreements to Hong Kong.

Therefore, if a certain agreement is regarded as beneficial to Hong Kong, Hong Kong should participate as a contracting party formally.

- 1) Where Hong Kong participated on its own, it can continue to participate in the name of "Hong Kong, China."

2) Where participation is limited to states, and Hong Kong used to participate as a British dependent territory or colony to which the application is only extended, it should participate with the assistance of China:

a) If China is willing to participate in the agreement, the Hong Kong SAR can enjoy extended application of the agreement in the capacity of being a Special Region of China.

b) In the case where China has no intention of participating, the Joint Declaration offers no solution. One of the possibilities would be for China to delegate authority or give assistance to the Hong Kong SAR in order that the latter would be able to participate in a capacity acceptable to other contracting states. But since the Hong Kong SAR is after all not a state, the question of whether a Special Region can participate would mainly depend on the acceptability of such an arrangement to the other contracting states.

Another problem is the restriction imposed by international organisations on non-sovereign territories signing conventions. For example, according to the arrangements of the International Labour Organisation, which is responsible for enacting international labour conventions, the conventions applied to a non-sovereign territory should not exceed that recognised by its metropolitan government. At present, China only recognizes fourteen international labour conventions, while the conventions that are implemented in Hong Kong as a British dependent territory amount to 49. If the Hong Kong SAR is to be limited to the ILO conventions accepted by China after 1997, there would be great changes in the field of labour rights. It is therefore essential to find a proper solution to take care of such a situation. One possible solution is for China to seek a special membership for the HKSAR in the ILO.

4.2.4 International Agreements to which neither China nor Hong Kong is now a party - the Joint Declaration states that 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.

4.2.4.1 "Other relevant international agreements" should be those to which neither China nor Hong Kong is a party, but either the Central Government or the SAR Government finds beneficial to or necessary for Hong Kong to participate:

- 1) If China is participating on her own, Hong Kong should be able to enjoy extended application of the agreements in the capacity of a Special Region of China.
- 2) If China has no intention of participating, and if the agreements are not limited to states, Hong Kong should be able to participate in the name of 'Hong Kong, China'.
- 3) If China has no intention of participating, and if the agreements are limited to states, China should have the responsibility to authorise or assist Hong Kong in negotiations with the organisations concerned, so that Hong Kong will be able to participate in such agreements in some form.

4.3 The capacity in which Hong Kong participates in international organisations

The following situations would need careful considerations:

4.3.1 International organisations in which both China and Hong Kong participate, the Joint Declaration states that under such circumstance, "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."

The Joint Declaration also states that "The Hong Kong Special Administrative Region may, using the name 'Hong Kong, China', participate in international organisations and conferences not limited to states." As for international organisations or conferences in appropriate fields limited to states and affecting the Hong Kong Special Administrative Region, representatives of the Hong Kong Special Administrative Region Government may

- a) Participate as members of delegations of the Governemnt of the People's Republic of China, or
- b) Attend in such other capacity as may be permitted by the Central Government and the organisations or conference concerned, and may express their views in the name of 'Hong Kong, China'.

4.3.2 International organisations in which China has participated but Hong Kong has not:

The Joint Declaration makes no reference to the arrangements to be made under such appropriate fields and affecting the Hong Kong Special Administrative Region, then the respective capacities in which Hong Kong participate in organisation limited and unlimited to states should apply.

The question is: who is to decide which organisations and conferences are affecting the HKSAR or are 'in appropriate fields'? If the organisation are not limited to states, the HKSAR can clearly, by the Joint Declaration, decide on participation in the name of 'Hong Kong, China'; but for those limited to states, Hong Kong would need special arrangements made by China. The Basic Law should empower the HKSAR to initiate a request to China for participation to China's delegations to various international organisations. The Basic Law should elaborate on Section XI of the Joint Declaration concerning this point.

4.3.3 International Organisations in which China has not participated but Hong Kong has:

The Joint Declaration states that "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."

- a) For organisations not limited to states, the Hong Kong Special Administrative Region should be able to participate in the name of 'Hong Kong, China' subject to the acceptance by the organizations concerned.
- b) For organisations limited to states, the only applicable solution offered by the Joint Declaration is "that the Hong Kong SAR" 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 views in the name of 'Hong Kong, China'.

4.3.4 International Organisations in which both China and Hong Kong have not participated:

- a) For organisations not limited to states, the HKSAR should be able to participate in the name of "Hong Kong, China"
- b) According to the Joint Declaration, "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".

4.3.5 In the situations covered by 4.3.3 (b) and 4.3.4 (b) the two points for consideration previously mentioned also apply:

- a) The Basic Law should empower the HKSAR to initiate a request to China for China to participate in these organisations and for the HKSAR to participate in China's delegation. The Basic Law should elaborate on Section XI of the Joint Declaration concerning this point.
- b) The feasibility of this arrangement would depend on whether the organisation concerned is willing to recognize the status of Hong Kong SAR, in the name of 'Hong Kong, China', as a participant in an organisation limited to states.

4.4 Whether HKSAR can still maintain its status in international organisations or agreements:

As seen from above, Hong Kong will continue to participate in international organisations and agreements in different status and capacities. But since the HKSAR will have to participate in such capacity as permitted by the Central People's Government and the international organisations/conferences concerned, the capacity in which it participates may vary in different organisations, depending on the different circumstances and wishes of individual organisations.

In addition, Hong Kong may find it difficult to participate in certain organisations or agreements to which it used to be a party after the change in its metropolitan state. For example, Hong Kong, as a British associated region to which one particular agreement is applicable by extension, is not permitted to export certain goods to communist countries. It would be difficult to convince other countries that Hong Kong will continue to abide by such similar arrangements in the capacity of a special administrative region of China.

"Hong Kong, China" is a new entity, and the status and degree of autonomy of a special administrative region in the "one country two systems" arrangement is yet unfamiliar to many at the international level. Moreover, the political and economic operations of her former metropolitan state, Britain, are so very different from those of China that it is still impossible to predict whether the status of Hong Kong the SAR would be recognised internationally.

International recognition

The key to the question of whether the HKSAR can participate in international organisations/agreements in an appropriate capacity really lies with the ability of the future Hong Kong Special Administrative Region to gain international recognition and respect. And this in turn depends on whether the authorities concerned in both China and the HKSAR can succeed in "marketing" the importance and the high degree of autonomy of Hong Kong.

The Basic Law will be the key instrument to achieve international recognition for Hong Kong as a special administrative region having a high degree of autonomy under the "one country two systems" concept of China.

The Joint Declaration is another safeguard for the autonomy of the HKSAR. It is a formal international agreement, legally binding on the British and Chinese Governments in its entirety (i.e. including the Annexes) (see Introduction to the Agreement) and will stay in force indefinitely. Any violation of the Declaration on the part of either party could be brought before the United Nations by the other party to seek redress.

Another suggested "marketing strategy" is for the Chinese authorities to guarantee HKSAR's autonomy in specific international organisations and agreements concerned e.g. in GATT, this has been done: China declared that Hong Kong will be a separate customs area. That is, there is to be an extra international safeguard provided directly by China in addition to the safeguard contained in the Basic Law.

This will enhance international confidence in the autonomy of the Hong Kong Special Administrative Region, and ensure that Hong Kong will enjoy a respected status in international organisations and agreements. Taking another scenario for instance, as the HKSAR pursuing participation in the IMF (International Monetary Fund), China will provide guarantees that Hong Kong will continue to enjoy autonomy in deciding issues relating to the Fiscal Reserves and monetary policy will be independently managed.

In order to make it clear internationally it should be stated in the Basic Law that China and the HKSAR are two separate trading entities and that China also respects such a relationship. It should also be mentioned that China has undertaken to respect that export quotas, tariff preferences and other similar arrangements obtained by the Hong Kong Special Administrative Region shall be enjoyed exclusively by the HKSAR as set out in the Joint Declaration Section VI. Similar arrangements should be made for relevant areas not covered by the Joint Declaration e.g. patents and franchise relating to technology or production which are granted to the HKSAR alone.

Only thus will other countries be convinced of the necessity for the HKSAR to have her own seat in international organisations/agreements.

4.6 Extent of autonomy

The extent of autonomy to be enjoyed by the HKSAR under different ways of participation is suggested as follows:

4.6.1 Expression of views

International organisations and conferences are forums where opinions are heard and positions fought out. It is therefore necessary that the HKSAR has its own voice in such international forums, even when its participation is via China.

The Basic Law should safeguard the HKSAR's right to speak independently, and contrary to China when there is a conflict of interests between the two.

4.6.2 Voting

The Basic Law should safeguard the HKSAR's right to vote independently, including the right to cast a vote contrary to that of China.

4.7 Withdrawal from international agreements/organisations

The effect on participation of the HKSAR in agreement/organisation which China decides to withdraw membership from:

- 1) Where the HKSAR participated on its own using the name "Hong Kong, China", the HKSAR should have the right to autonomously decide whether it will withdraw or not.
- 2) Where the HKSAR participated as part of the Chinese delegation, the HKSAR's participation would have to be discontinued as a result of China's withdrawal. The Basic Law should empower the HKSAR to initiate a request to China for assistance to enable the HKSAR to remain or to resume participation in an appropriate capacity.

4.8 The question of application of international agreements leading to indirect legislation in the HKSAR:

Some views on this aspect have been expressed as follows:

- ##### 4.8.1
- One of the worries expressed in Hong Kong is that China may, through ratifying international agreements and making these agreements applicable to Hong Kong, indirectly enact laws for Hong Kong in fields which should be administered by the SAR Government itself and thereby affect the autonomy of the SAR Government in these fields.

4.8.2 It is suggested that China should relinquish the power of making agreements for the HKSAR in fields such as economy, trade, finance and monetary, shipping, communications, culture, sports, etc. If these agreements are to be extended to Hong Kong, the legislature of the HKSAR must first pass laws to implement the agreement.

4.8.3 It is further suggested that, in order to maintain a consistent format of legislation, the SAR Government has the duty to endorse international agreements in the fields of politics and foreign affairs etc., and enjoys full autonomy in decisions regarding whether the agreements made by the Central Government should be endorsed.

4.8.4 It has been suggested that according to Section II of Annex I of the Joint Declaration, "the laws of the HKSAR shall be the Basic Law, and the laws previously in force in Hong Kong and laws enacted by the HKSAR legislature" Therefore the problem of indirect legislation through China's ratification of international agreements should not arise.

4.9 Claims or liabilities and sanctions arising from violation of international agreements

Members of an international organisation being parties to an agreement can seek redress of complaints against each other to the international organisation concerned. It may file a complaint to the organisation or request for sanctions or other solutions through the International Court of Justice. There had been instances in which the damaged country applied unilateral sanctions on its own accord, and the channels for making claims may vary in accordance with different agreements/organisations.

4.9.1 Claims

If the HKSAR is the damaged party, the following should apply:

- 1) HKSAR participation in the organisation/agreement in the name of "Hong Kong, China":
It should be stated in the Basic Law that, where the HKSAR is a separate participant, it should be able to make claims in a separate capacity.
- 2) Participation through association with China:
Since membership is limited to states, it may be necessary for China to take charge of the duty of making claims. It should be stated in the Basic Law that, if the HKSAR suffers damages to its interests, China has the responsibility to make claims on its behalf.

4.9.2 Sanctions against other violating members

Where China suffers damages to its interests, and take sanctions against the violating member concerned, such as discontinuation of trading relations etc., it may wish the HKSAR to follow suit.

However, Hong Kong's prosperity has all along relied on free trade, and its negotiating status is weak due to a total lack of political retaliatory power. In the international scene, it can only uphold the banner of "Free Trade", and comply with all the regulations strictly, in the hope that other countries will give it reciprocal treatment. If China takes sanctions against other countries, and if the HKSAR has to follow suit, the countries sanctioned may take retaliatory measures that will inevitably affect the HKSAR. The impact of this on the HKSAR is beyond prediction. And once the status of Hong Kong as a member advocating free trade is damaged, other countries will be given a freer rein in imposing further restrictions on the trading interests of the HKSAR.

As set out in the Joint Declaration, the HKSAR has autonomy in the fields other than foreign affairs. This should be taken to mean that the HKSAR can autonomously decide whether it will follow China's example in taking sanctions against other countries. This autonomy should be specified in the Basic Law.

4.9.3 China being sanctioned by other members:

If China is sanctioned due to its violation of the regulations of a certain agreement/organisation, Hong Kong may be included in the sanctions as well. For example, if the sanctioning country freezes China's assets in its territory, the assets of the HKSAR may be frozen too? Or if that particular country decides to reduce the quantity of quota granted to China, how would this affect the HKSAR?

- 1) If the HKSAR participates in the name of "Hong Kong, China", the sanctions should not apply to it. But this will depend on whether the country concerned respects and recognizes the HKSAR as a separate entity from China. So the main question is still whether the autonomy of the HKSAR can be successfully "marketed". (see 4.4 International Recognition)
- 2) If the HKSAR participates via association with China, then it is possible that the other countries will include the SAR in their sanctions. The marketing of the HKSAR's autonomy to the world will, in this light, seem even more important.

If there is any discrepancy between the Chinese and the English versions, the Chinese version shall prevail.

第一批交流團名單

- | | |
|-----|--|
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| 歐成威 | 律政署法律草擬科高級檢察官 |

THE DISCUSSION PAPER ON
IMMIGRATION CONTROL; THE ISSUING OF
PASSPORTS AND TRAVEL DOCUMENTS

(18/2/87)

* This paper is a draft of the discussion paper which the Working Group on the Immigration Control; the Issuing of Passports and Travel Documents prepared for the Special Group on the External Affairs and the Relationship between the Central Government and the SAR. Members are invited to comment on this draft which will then be amended accordingly. Without the members' approval, this paper does not represent the view of the Special Group on the External Affairs or the Special Group on the Relationship between the Central Government and the SAR.

Working Group on
Immigration Control; the Issuing of
Passports and Travel Documents

Special Group on External Affairs;

Special Group on
the Relationship between
the Central Government and the SAR

1. Introduction

This discussion paper is divided into four parts. The second part lists out the provisions on immigration control and the issuing of passports and travel documents under the Joint Declaration. The third part is a brief description of the present immigration control in Hong Kong and the procedures required for different categories of persons applying for visas of entry into or exit from Hong Kong. The last part of the paper raises some major issues regarding immigration control of the SAR after 1997: procedures required for overseas persons applying to stay temporarily in the SAR, the quota for such application, coordination between the Central Government and the SAR regarding immigration of overseas persons to the SAR; are the persons enjoying the right of abode in Hong Kong because they were born of parents such right (as mentioned in the Joint Declaration) free from immigration control? What kind of people can obtain the right of abode in Hong Kong by marriage? Members are invited to thoroughly discuss these issues and the relevant proposals.

2. Provisions on immigration control and the issuing of passports and travel documents under the Joint Declaration :

2.1 Clause (2), Para 3 of the Joint Declaration :

"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."

Clause (10), Para 3 :

"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."

2.2 Provisions on the issuing of travel documents and passports in Annex I to the Joint Declaration:

2.2.1 Section XIV, Annex I:

"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.

2.2.2 "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."

2.2.3 "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."

2.2.4 "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."

2.2.5 "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."

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

2.2.7 "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."

2.3 Elaboration on the issuing of passports and travel documents in the Chinese Memorandum of the Joint Declaration:

"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."

3. The present policy of immigration control and the issuing of passports and travel documents in Hong Kong

3.1 The aim of the present immigration policy of Hong Kong is to restrict the growth of population, and to maintain an acceptable level of increase of population caused by immigration. On the other hand, the application procedures for entry into Hong Kong are kept simple for the convenience of the local citizens, tourists and businessmen travelling in and out of the territory.

3.2 The Immigration Department of Hong Kong is responsible for immigration control. Staff are stationed in immigration points to assist travellers in going through the entry and exit procedures. In addition, it provides travel documents and registration service to local citizens and persons staying in Hong Kong, including the issuing of travel documents, visas and identity cards, etc. Upon receipt of an application and the necessary fee, the Director of Immigration has the right to issue a certificate of identity (special passport), re-entry permit, Vietnamese refugee card or other documents to the applicant as he thinks fit.

At the same time, the Immigration Department is also to investigate and prosecute persons who have violated the Immigration Ordinance, and to repatriate illegal immigrants/unauthorised entrants to their own countries.

3.3.1 According to the Immigration Ordinance, the following categories of persons have the right to land and freedom from conditions of stay (please refer to the final report on Definition of Inhabitants for details):

- 1) Hong Kong belongers. Broadly speaking, Hong Kong belongers are persons who are British Dependent Territories citizens by virtue of a connection with Hong Kong.
- 2) Chinese residents. A Chinese resident is defined in section 2 of the Immigration Ordinance as an immigrant (that is, a person who is not a Hong Kong belonger) who
 - a) is wholly or partly of Chinese race; and
 - b) has at any time been ordinarily resident in Hong Kong for a continuous period of not less than 7 years
- 3) Resident British citizens i.e. a British citizen who has at any time been ordinarily resident in Hong Kong for a continuous period of not less than 7 years.
- 4) Resident United Kingdom belongers i.e. a United Kingdom belonger who has at any time been ordinarily resident in Hong Kong for a continuous period of not less than 7 years.

3.3.2 No visa is required for any purpose if the person entering Hong Kong holds any of the following travel documents:

- 1) Hong Kong British Passport
- 2) Hong Kong Certificate of Identity
- 3) Hong Kong Re-entry Permit (for entry from China and Macao only)
- 4) Hong Kong Seaman's Identity Book
- 5) Hong Kong Seaman's Certificate of Nationality and Identity
- 6) Travel documents bearing an endorsement for the right to land in Hong Kong

3.3.3 If the entrant is a British citizen or holder of a United Kingdom passport issued in the United Kingdom which is not endorsed to show that he is subject to immigration control, no visa is required for any purpose. However, on arrival in Hong Kong, he may have to satisfy the immigration officer that he has sufficient means of support for his stay in Hong Kong without working. He should also hold return or onward tickets (unless he is in transit to China or Macao), or evidence of definite employment in Hong Kong.

3.3.4 If neither 3.2.2 nor 3.2.3 applies to the entrant, he will require a visa before coming to work, study, establish or join in any business or to settle in Hong Kong for permanent residence.

3.3.5 Visitors coming to Hong Kong should hold passports issued by their home countries or other valid travel documents. Visitors who are in direct transit by air and if they do not leave the airport transit area, or will leave the territory by ship within a certain period of time, and have valid documents for entry into other countries, do not require visas if their stay is within a certain limit of time.

Generally, other visitors who stay in Hong Kong for a short time not exceeding the visa free period do not require a visa. (Appendix 1)

3.3.6 If applications for entry into Hong Kong have to be made overseas, applicants can apply for a visa from the nearest branch of the British Passport Office, or from a British Consulate, High Commission or Visa Office.

3.4 Restrictions of Stay

Visitors are required to have adequate funds to cover the duration of their stay without working and they are not allowed to enter employment (paid or unpaid), to establish or join in any business, or to enter school as a student, nor, except in the most unusual circumstances, are visitors allowed to change their status after arrival.

After obtaining the permission to enter Hong Kong, applicants who apply to study in Hong Kong can only study in schools as approved by the Director of Immigration, and they are not allowed to enter employment or to establish or join in any business.

Applicants who apply to work in Hong Kong can only enter employment as approved by the Director of Immigration.

In addition, contract seamen cannot stay in Hong Kong for more than 14 days after their craft has left the territory.

4. Major issues

4.1 Which department is responsible and what procedures are involved when overseas visitors apply for temporary stay in the HKSAR (for sightseeing/business/work/study/transit) ?

Proposals :

According to the Joint Declaration, the SAR government shall exercise immigration control, therefore, the Central People's Government should not have the power of immigration control in Hong Kong. Immigration control should be the responsibility of the executive authorities, such as the Immigration Department, of the SAR.

Which department shall be responsible for issuing visas?

Views have been expressed that persons who at present enjoy visa exemption should not require visas for entry to Hong Kong provided that they have sufficient funds and hold onward or return tickets. If visa application is required, it is proposed that:

- 1) The HKSAR may set up visa offices overseas. These offices can be independent of the Chinese Consulate, i.e. they are not affiliated to the Chinese Consulate, and are run by Hong Kong people.
- 2) The issuing of visas can be delegated by the SAR government to the overseas foreign affairs offices. Another view is that the SAR government may authorise the foreign affairs offices of the British Government to issue visas on her behalf.
- 3) Visas should be issued by the Chinese Ambassies overseas because it is impossible for Hong Kong to set up independent visa offices all over the world.
- 4) The issuing of visas can be delegated by the SAR government to Hong Kong trade offices overseas.

As regards the issuing of visas for persons of countries that do not have diplomatic relations with China, it can be delegated to the trade offices mentioned above or other countries be authorised to issue visas on behalf of the HKSAR.

4.2 Immigration to the HKSAR from overseas

Should review and approval be made by the SAR or the Central People's government ?

What coordination arrangements should be made between the Central Government and the SAR regarding this issue ?

Views have been expressed that as the SAR has absolute power on this issue, there is no need for coordination between the SAR and the Central People's governments on this issue.

4.3 According to the present Immigration Ordinance, mainland people who enter Hong Kong through illegal means will be

repatriated to the place they come from. However, the Joint Declaration provides that persons under the age of 21 who were born of persons having the right of abode shall have the right of abode in Hong Kong. On the other hand, Annex I also states that "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."

At present, mainland residents who have close relatives or members of their immediate families in Hong Kong may apply to settle in Hong Kong for permanent residence. They are to apply to their local Public Security Bureaus and their applications have to be approved by the State Council. The quota for Hong Kong and Macao entry/exit permits is 75 persons per day. (Please refer to the discussion paper on the relationship between the SAR and the various provinces/regions.)

Do children born in the mainland of parents who have the right of abode in Hong Kong automatically enjoy the right to land in Hong Kong? Or should they be treated equally as other mainland people and subject to quota restriction?

Proposals :

1) According to the Joint Declaration, this category of persons shall automatically enjoy the right of abode in Hong Kong without special application. Therefore, the quota of 75 persons per day shall not apply to them.

2) ~~If~~ this category of persons automatically enjoy the right of abode in Hong Kong, it will cause an influx of mainlanders into Hong Kong. Therefore, the SAR government should consider the priority of applications for entry into Hong Kong according to the economic situation and living standard in Hong Kong at the time of the applications are made.

4.4 The Joint Declaration does not mention which categories of persons may acquire the right of abode in Hong Kong through legitimate marriage. According to the existing legislation, the spouses of Hong Kong belongers are entitled to the right of abode in Hong Kong by virtue of their marriage. Should the following categories of persons be granted the right of abode?

1) Spouses of Chinese nationals who have ordinarily resided in Hong Kong before or after the establishment of the SAR for a continuous period of not less than 7 years or more;

2) Spouses of all other persons who have ordinarily resided in Hong Kong before or after the establishment of the HKSAR 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 HKSAR;

- 3) Spouses of all other persons who had the right of abode only in Hong Kong before the establishment of the HKSAR.

Views have been expressed that as long as the marital relationship of these people is an authentic one, it is reasonable that they should be entitled to the right of abode in Hong Kong. However, since the conditions of the HKSAR will be different from that of other regions, the SAR government should have the power to apply restrictions and control in order to reduce the pressure on the population, social welfare and other facilities in Hong Kong caused by the persons who immigrate to Hong Kong through marriage.

5. Conclusion

In summary, this discussion paper deals with four issues regarding immigration control and the issuing of passports and travel documents, and relevant proposals are listed. It first discusses the applications of overseas persons for temporary stay in the SAR. Views have been expressed that the SAR should have the power to control immigration. It was proposed that visa applications can be handled either by visa offices of the HKSAR overseas, China's overseas foreign affairs offices or Hong Kong trade offices overseas. On the coordination between the SAR and the Central People's Government regarding the immigration of overseas persons into the SAR, it was pointed out that as the SAR would have the power to deal with this issue under the Joint Declaration, there should not be any problem of coordination between the SAR and the Central Government. The paper also looks into the issue regarding the right of abode of the children who are born in the mainland of parents who have the right of abode in Hong Kong. It was suggested that this category of persons be automatically entitled to the right of abode in Hong Kong, whereas other views held that the SAR government should have the right to decide the priority of entry of this kind of people. The last issue discussed in this paper is on what categories of persons may acquire the right of abode in Hong Kong through marriage. Some members pointed out that as long as the marriage to a holder of permanent identity card of the HKSAR is authentic, the right of abode should be granted; however, the SAR government has to impose restrictions when necessary. These issues are brought up for the deliberations of the members of the special group, and their opinions will be submitted to the Drafting Committee.

If there is any discrepancy between the Chinese and the English versions, the Chinese version shall prevail.

中央與特別行政區的關係專責小組 及涉外事務專責小組 聯合會議

日期：一九八七年二月二十六日(星期四)

時間：下午五時三十分至七時

地點：基本法諮詢委員會會址

召集人：張柏枝委員

會務主任：劉豔梅小姐

議程：1. 由「入境管制、簽證問題」工作組召集人簡單介紹該份討論文件

2. 討論及通過「入境管制、簽證問題」討論文件

3. 其他

入境管制、簽證問題 討論文件

(1987年2月19日)

- 此文件乃有關入境管制、簽證問題工作組之討論文件，是為涉外事務專責小組及中央與特別行政區的關係專責小組而預備的，若有任何意見，歡迎提出討論，增減或修正。在未經委員接納前，此文件並不代表涉外事務專責小組及中央與特別行政區的關係專責小組的意見。

中華人民共和國香港特別行政區基本法諮詢委員會
涉外事務專責小組及
中央與特別行政區的關係專責小組合辦
入境管制、簽證問題工作組

1. 序言

本份討論文件分為 4 部份。第二部份列出中英聯合聲明中有關入境管制及簽證的規定。在第三部份則簡述香港現行的入境管制及各類人士進入香港的簽證手續。最後一部份會提出幾個有關九七年以後特區出入境管制的主要問題，包括外地人士進入特區作短暫停留的手續和名額？中央與特區在外地人士移居特區的協調應怎樣？中英聯合聲明中提及因其父或母在港有居留權而同樣享有居留權人士是否免受入境管制？又那些人士可因婚姻關係而獲得居港權利等。以上幾個問題及有關建議，請委員詳加討論，提供意見。

2. 中英聯合聲明中有關入境管制及簽證問題的規定

2.1 中英聯合聲明第三款第二條：

「香港特別行政區直轄於中華人民共和國政府。除外交和國防事務屬中央人民政府管理外，香港特別行政區享有高度的自治權。」

第三款第十條：

「香港特別行政區可以“中國香港”的名義單獨地同各國、各地區及有關國際組織保持和發展經濟、文化關係，並簽訂有關協定。

香港特別行政區政府可自行簽發出入香港的旅行證件。」

2.2 附件一中有關入境及簽證問題的條文

附件一第十四項：

2.2.1 「在香港特別行政區有居留權並有資格按香港特別行政區的法律獲得香港特別行政區政府簽發的載明此項權利的永久居民身份證者為：在香港特別行政區成立以前或以後在當地出生或通常居住連續七年以上的中國公民及其在香港以外所生的中國籍子女；在香港特別行政區成立以前或以後在當地通常居住連續七年以上並以香港為永久居住地的其他人及其在香港特別行政區成立以前或以後在當地出生的未滿二十一歲的子女；以及在香港特別行政區成立以前只在香港有居留權的其他人。」

2.2.2 「中央人民政府授權香港特別行政區依照法律，給持有香港特別行政區永久性居民身份證的中國公民簽發中華人民共和國香港特別行政區護照，並給在香港特別行政區的其他合法居留者簽發中華人民共和國香港特別行政區其他旅行證件。上述護照和證件，前往各國和各地區有效，並載明持有人有返回香港特別行政區的權利。」

2.2.3 「香港特別行政區居民出入當地，可使用香港特別行政區政府或中華人民共和國其他主管部門，或其他國家主管部門簽發的旅行證件。凡持有香港特別行政區永久性居民身份證者，其旅行證件可載明此項事實，以證明其在香港特別行政區有居留權。」

- 2.2.4 「對中國其他地區的人進入香港特別行政區將按現在實行的辦法管理。」
- 2.2.5 「對其他國家和地區的人入境、逗留和離境，香港特別行政區政府可實行出入境管制。」
- 2.2.6 「有效旅行證件持有人，除非受到法律制止，可自由離開香港特別行政區，無需特別批准。」
- 2.2.7 「中央人民政府將協助或授權香港特別行政區政府同各國或各地區締結互免簽證協定。」

2.3 中方備忘錄有關簽證問題的說明

「...考慮到香港的歷史背景和現實情況，中華人民共和國政府主管部門自一九九七年七月一日起，允許原被稱為“英國屬土公民”的香港中國公民使用由聯合王國政府簽發的旅行證件去其他國家和地區旅行。

上述中國公民在香港特別行政區和中華人民共和國其他地區不得因其持有上述英國旅行證件而享受英國的領事保護的權利。」

3. 香港現行的入境管制和簽證的處理

- 3.1 香港現行入境政策的目的是，是要限制人口增長，使由入境所造成的人口增加保持在一個可接受的水平。另一方面，入境手續則盡量簡化，方便本港居民、遊客和商人出入本港。
- 3.2 香港人民入境事務處負責執行入境管制的工作；派員駐守各個出入境管制站，協助旅客辦理出入境手續。此外並會為本港居民及居港人士提供旅遊證件及辦理註冊手續，包括簽發旅遊證件、簽證和身份證等。人民入境事務處處長在申請人提交申請及費用後，有權在他認為適當的情況下發出身份證明文件(特別護照)，回港證，越南難民證件及其他文件。同時，人民入境事務處亦致力偵查和檢控違反入境條例的人士，以及將非法入境人士遣返原地。

3.3 從外地進入香港的情況

香港入境權

- 3.3.1 根據人民入境條例，下列人士享有在港居留權及免受居留條件限制的自由（詳情參閱居民定義最後報告）

- (1) 香港本土人士。概括來說，“香港本土人士”是因與香港有關係而成為英國屬土公民的人。
- (2) 華籍居民。人民入境條例第二條把“華籍居民”界定為：
 - ① 有純粹或部份中國人血統；及
 - ② 通常在香港連續居住不少於七年的移民（即並非身為「香港本土人士」者）。
- (3) 在香港居住的英國公民。通常在香港連續居住不少於七年的英國公民。
- (4) 在香港居住的聯合王國本土人士。即在香港通常連續居住七年或以上的聯合王國本土人士。

3.3.2 如入境人士持有下列任何一種旅行證件，則不論來港的目的是甚麼，亦毋須領取簽證：

- (1) 香港英國護照
- (2) 香港身份證明書
- (3) 回港證(只限由中國或澳門返回本港的人士使用)
- (4) 香港海員身份證
- (5) 香港海員國籍及身份證明書
- (6) 蓋有香港入境權簽註的旅行證件

3.3.3 如入境人士屬英國公民或持有在聯合王國簽發的英國護照而該護照並無簽註限制持有人進入英國的，可毋須領取簽證。不過，在到達香港時，入境人士可能需要向入境事務人員證明在港期間毋須工作而備有充足的旅費以維持在香港的生活。此外，並須持有回程或續程的機票或船票(過境前往中國或澳門的人士除外)，或能證明在香港已有確實職業。

3.3.4 如不屬以上兩類人士(3.2.2及3.2.3)，則須預先領取簽證以便來港就業、就讀、經營生意，或作永久居留。
3.2. 3.3.2

3.3.5 來港遊客需持有由所屬國家發出之護照及有效旅行證件。如遊客乘搭航機直接過境或不離開機場過境等候室，又或是在規定時間內轉乘輪船離港，而又持有進入其他國家的有效證件，只要留港時間不超過規限，便毋須辦理簽證手續。

其他遊客如只在香港作短期逗留而不超越規限，在一般情況下不須簽證(附件一)。

3.3.6 申請入境人士如在海外申請，應向就近的英國護照辦事處申請簽證，或向任何英國領事館、高級專員公署或簽證辦事處辦理。

3.4 居留限制

凡來港旅遊人士應毋須工作而備有充足的旅費維持其在港的生活。旅遊人士均不得受僱從事任何職業(無論受薪或非受薪)、經營生意、或入學就讀；此外，除在極為特殊的情形下，旅遊人士於抵港後均不准改變其旅客身份。

申請來港讀書人士在獲得入境批准後，只能在人民入境事務處處長批准的學校中就讀，不能從事任何職業或經營生意。

申請來港工作人士，只能在人民入境事務處處長批准之職業中工作。另外，受僱的合約海員在其所屬船隻離開十四天後，不可以再逗留於香港。

4. 主要問題

4.1 外地人士如要進入特區作短暫停留(旅遊/經商/工作/求學/探親/過境)應由那機構負責？經什麼手續？

建議：

根據中英聯合聲明，特區政府應有入境管制權，因而中央政府不應在香港有入境管制權。

入境管制應由特區政府的行政機關如人民入境事務處負責。

應由那機構發出簽證？

有意見認為現時享有豁免簽證的地區人士如有足夠金錢及機票等，應毋須辦理簽證而進入香港。如要申請簽證，有下列建議：

- (1) 香港特別行政區可在地設立簽證處。這些辦事處可獨立於中國領事館之外，即不附屬於中國領事館，辦事處由香港人負責。
- (2) 特區政府可委托中國駐當地外交機關代辦；另有意見是特區政府亦可授權英國政府外交機關辦理。^{香港} ~~在1997年移交~~ ^{其他}
- (3) 簽證應由中國駐外地大使館簽發，因為香港亦不可能在世界各地設立獨立的簽證辦事處。^{外支辦} ~~處。~~ ^{另有會員對此表示反對。}
- (4) 特區政府簽證事務可交由香港駐外商務機關負責。

至於與中國無邦交地區人士的簽證手續可由上述商務機關或授權其他國家辦理。

4.2 外地人士移居特區

由特別行政區或中央政府審查批准？

中央與特別行政區如何協調？

有意見認為在這問題上，特區有絕對的權力，所以中央與特區不需協調。

4.3 根據現行入境條例，內地人士如以非法途徑進入香港，將會被遣送回原地。但中英聯合聲明指出，只要父或母一方在港有居留權，其在外地出生而未屆二十一歲的子女，將可享有在港的居留權。另一方面，在附一中亦表明「對中國其他地區的人進入香港將按現在實行的辦法管理。」

現時內地居民如有近親屬或直系親屬在香港，^如 ~~如~~ 要求定居香港，申請人需向所在地公安局申請，由國務院審批。每日發出之前往港澳通行證為七十五人。（請參閱特區與各省區關係討論文件）

有權在港居留人士而在內地出生的子女是否自動享有入境權利？應否與其他人一視同仁，受到名額限制？

建議：

- (1) 根據中英聯合聲明，該等人士應自動享有在港居留權，亦毋須特別申請。所以不應受限於每日七十五人之名額內。
- (2) ^(E) 如該等人士自動享有居留權，會引致太多人湧至香港。因此特區政府可按當時的經濟情況及生活水平決定來港的優先次序。

(3) 如

4.4 中英聯合聲明中未有提及那些人士可因合法的婚姻關係而獲取居留權。根據現行法例，^(F) ~~(G)~~ 港本土人士的配偶均可因婚姻關係而獲得居留權。）因此，下列幾類人士應否享有居港權利：

- (1) 在九七年之前或以後在特區通常居住連續七年以上的中國公民的配偶；
- (2) 在特區成立以前或以後在當地通常住連續七年以上並以香港為永久居住地的其他人的配偶；

(3) 在香港特別行政區成立以前只在香港有居留權的其他人的配偶。

有意見認為只要上述人士的婚姻關係為實質婚姻，其配偶按情理應可享有居留權。但因特區本身的情況有別於其他地區，特區政府應有權作出控制，以減少因婚姻關係而入境的人士對香港人口、社會福利和各種設施所做成的壓力。

5. 結語

綜合本份討論文件，討論了四個入境管制和簽證方面的問題，並列出有關建議。首先討論了外地人士要進入特區作短期停留的情況。有意見認為特區應有入境管制權。如入境人士需要辦理簽證手續，分別有提議由特區駐外簽證辦事處、中國駐外地外交機關或香港駐外商務機構負責。在外地人士移居特區的問題上，中央與特區如何協調；有意見指出根據中英聯合聲明，特區有權處理，所以中央與特區不存在協調問題。另外，討論到有權在港居留人士而在內地出生的子女的居港權利，有建議該等人士應可自動享有居留權，另一建議指出可由特區政府決定他們入境的優先次序。最後一個問題是討論到那幾類人士可因婚姻關係而獲得特區居留權，委員指出只要其配偶及持有永久居民性居民身份證人士的婚姻為實質婚姻，便應有居留權，但特區政府也可按當時的需要而實施管制。對於以上各問題及有關建議，希望專責小組成員能夠深入討論，提出正反意見，供起草委員會參考。

中央與特別行政區的關係專責小組 及法律專責小組 聯合會議

日期：一九八七年二月二十七日（星期五）

時間：下午五時三十分

地點：基本法諮詢委員會會址

召集人：馮華健委員、羅傑志委員

會務主任：陳露玲小姐

議程：1. 由「基本法解釋及修改權」工作組召集人簡單介紹該份討論文件

2. 討論「基本法解釋及修改權」討論文件（會上派發）

3. 其他

JOINT MEETING OF THE SPECIAL GROUPS ON
RELATIONSHIP BETWEEN THE CENTRAL GOVERNMENT AND THE SAR

Date : 27 February, 1987 (Friday)

Time : 5:30p.m.

Venue : CCBL Premises

Convenors : Mr. Daniel Fung

Mr. A. Rogers

Administrative Officer : Rosalind Chan

- Agenda : 1. To introduce the Discussion Paper on Power of Interpretation and Amendment of the Basic Law by the convenor of the Working Group
2. To discuss the Discussion Paper on Power of Interpretation and Amendment of the Basic Law (Appendix 1)
3. Any other business

(Appendix 1)

DISCUSSION PAPER ON THE POWER OF
INTERPRETATION AND ADMENDMENT OF
THE BASIC LAW
(24 February, 1987)

- This paper is a draft of the discussion paper prepared for the Special Group on Law. Members are invited to comment on this draft which will then be amended accordingly. Without the members' approval, this paper does not represent the view of the Working Group on The Power of Interpretation and Amendment of the Basic Law.

Working Group on The Power of Interpretation and
Amendment of the Basic Law

Special Groups on Law and
Relationship between the Central Government and the SAR

I Introduction

1. The Joint Declaration provides in Annex I Section 2 that: "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."

II The law as to the interpretation of legislation at present in force in Hong Kong

2. Under the common law, the legislature enacts legislation and the courts interpret the legislation and thereby declare the meaning of the law.
3. All courts of Hong Kong have the right to and must interpret any law which relates to the specific cases which they are adjudicating. Furthermore, all courts are bound to apply any legislation which is relevant to the case then being tried, even though the meaning may be obscure or the courts may consider the legislation is in need of amendment. Any judicial interpretation by the Court of Appeal is binding on all courts in Hong Kong including other courts of appeal. Judicial interpretation made by other courts are authoritative and binding on lower courts to a certain extent.
4. The courts in interpreting any law have the power to declare invalid any law which has not been passed in accordance with proper procedures or if it is subordinate or subsidiary legislation and contravenes the superior legislation.

5. The courts have no power to adjudicate on hypothetical issues and hence, decide either legal questions in the abstract or academic issues. Hence, the courts have no power to interpret laws other than as part of their judicial decision in a specific case.
6. Under the law of Hong Kong, there is no power of interpretation of laws by the legislature and indeed, insofar as the legislature may express opinions as to the meaning of certain legislation whether it be legislation to be passed or which has been passed, the same will not be considered by the courts. Furthermore, the courts will not give retrospective effect to legislation itself.
7. There is no power of executive interpretation under the law of Hong Kong. Interpretation made by the executive authority of laws in the course of its administration is unofficial, has no binding effect and is in any event, subject to review by the courts under their judicial functions.
8. Other interpretation of legislation, for example in textbooks may be allowed to be cited in courts if the author is considered as "authority" but as a legal matter, such interpretation has no more than persuasive effect.
9. There are certain matters, chiefly relating to foreign affairs where the declaration of the Government is treated as a conclusive statement binding upon the courts. Such declarations may be described as Acts of State. They relate to matters which fall to the executive to determine:-
 - a) Recognition of States or Government.
 - b) Status of Foreign States or Government.
 - c) The question whether a person is entitled to diplomatic status.
 - d) The existence of a state of war.
 - e) The extent of national territory.

This executive "Act of State" is treated as a declaration of an existing state of facts and not as interpretation of the law.

III Interpretation of laws and the system in force in the People's Republic of China

10. It is understood in the People's Republic of China, legal interpretation may be divided into 2 broad groups, namely: official and unofficial interpretation.

11. Official Interpretation

- a) By Articles 67(1) and (4) of the Constitution, the capital Standing Committee of the National People's Congress (NPC) has the function and power to interpret the Constitution and statutes. Although the Constitution does not empower the NPC itself to undertake the work of legislative interpretation by Article 62(11), the NPC may amend or cancel inappropriate decisions of the Standing Committee of NPC. In addition, apparently, local legislation may be interpreted by the relevant local legislature.
- b) Judicial interpretation carries with it a lower status and may be exercised not only by judges but also by the procuracy. The power of judicial interpretation is delegated to a given judicial or procuratorial body from the relevant legislative body and binds only the case under consideration wherein such a power was exercised. It has no generally binding effect.
- c) Executive interpretation likewise occupies a less than exalted status. It denotes that power of interpretation of the law exercisable by the executive organs of government when confronted with particular cases in the course of discharging their executive or administrative duties.

12. Unofficial interpretation

Unofficial interpretation mainly applies to the interpretation of laws in academic researches, publications and textbooks. This kind of interpretation has no legal binding effect.

IV The power of interpretation of the Basic Law

- 13. In keeping with the Joint Declaration and in particular, in applying the laws previously in force in Hong Kong, the courts of Hong Kong in applying the Basic Law will of necessity have to interpret all laws in force in Hong Kong including the Basic Law. Under the common law, no other interpretation other than a judicial interpretation by a court of record in Hong Kong would be recognised by the courts.
- 14. Any legislation made by the future legislature of the SAR or any existing legislation which were to contravene the Basic Law would under the common law be held invalid by the courts as part of their judicial function.

15. In keeping with the existing common law in Hong Kong, the courts in applying the Basic Law will defer to the PRC executive authority in respect of all declarations as to existing facts which relate to foreign affairs. The courts will themselves have to determine in each case whether the issue involved does constitute a matter of foreign affairs.

16. It has been proposed that if in the course of litigation a dispute arises as to whether the interpretation of the Basic Law involves a determination as to whether it is a matter of defence or foreign affairs, the question may be referred either by direction of the court or upon application of one of the parties to a body composed partially of representatives of NPC and partially of Hong Kong judges. Again, in keeping with the existing law, the courts would be empowered to reach their own conclusion in cases where they felt able but their decisions would be subject to review by the body.

There is a divergence of views as to whether the body referred to in paragraph 16 above should be a committee or a court. A committee could potentially exercise jurisdiction of its own motion whereas a court only exercises jurisdiction upon application. Likewise a committee is able to look into hypothetical questions whereas a court only looks at issues involved in a particular case.

Whether the body constitutes a committee or a court, it should be open to the parties to proceedings in court and to representatives of the NPC and the SAR Government (presumably the Attorney General or any later equivalent) to appear before the body and make representations.

No determination of the body referred to in paragraph 16 above should have retrospective or retroactive effect nor should it affect the validity of any act bona fide done under any law declared to be invalid as a result of a ruling of the body.

Legislation by the legislature of the SAR

The legislature of the SAR should be empowered to pass any law which does not deal with matters of foreign affairs or defence.

The provision in the Joint Declaration that the laws enacted by the legislature of the SAR are reported to the Standing Committee of the NPC for the record implies simply that the laws to be enacted are to be so reported. It does not include or imply a power to veto.

22. The view has also been expressed that there is no other right of veto either in the NPC or in the Standing Committee of the NPC of laws enacted by the legislature of the SAR provided that the laws do not relate to defence or foreign affairs.
23. Laws enacted by the legislature of the SAR which are thought to infringe the Basic Law may be submitted to the body referred to in paragraph 16 above for adjudication as to whether they contravene the Basic Law. Such a submission would have to be made within a specified time of the enactment being reported to the Standing Committee of the NPC. It is proposed that a suitable period would be 3 months.
24. In default of a submission as referred to in paragraph 23 above or as a natural part of the judicial process, any law enacted by the legislature of the SAR would be examined in the course of judicial proceedings in which its provisions fell to be considered.

VI Amendment of the Basic Law

25. Prior to any amendment of the Basic Law, a consultative process should be conducted in Hong Kong to consult the views of the people of Hong Kong in similar manner to the functioning of Consultative Committee for the Basic Law at present.
26. Prior to any amendment being made to the Basic Law, the proposed amendment should then be also submitted to the legislature of the SAR for approval.

中華人民共和國香港特別行政區
基本法諮詢委員會

THE CONSULTATIVE COMMITTEE FOR THE BASIC LAW
OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF
THE PEOPLE'S REPUBLIC OF CHINA

SSBL-SG/RCS/EXA-LE01-870302

敬啟者：

中央與特別行政區的關係專責小組及涉外事務專責小組聯合會議已於二月二十六日舉行，會議上討論了「入境管制、簽證問題」討論文件，並作若干修改。惟因出席委員數目未曾達到會議合法人數，故未能於當日通過該份討論文件。現決定於三月五日（星期四）下午五時正舉行涉外事務專責小組會議，而六時正則舉行中央與特別行政區的關係專責小組及涉外事務專責小組的聯合會議續會，通過「入境管制、簽證問題最後報告」隨即遞交執行委員會通過。請各位委員留意，準時出席。

此致

中央與特別行政區的關係專責小組及
涉外事務專責小組各委員

基本法諮詢委員會秘書處
聯合會議召集人
張柏枝 委員
(劉豔梅代行)
一九八七年二月二十七日

中央與特別行政區的關係專責小組 及涉外事務專責小組 聯合會議續會議程

日期：一九八七年三月五日（星期四）

時間：下午六時正

地點：基本法諮詢委員會會址

召集人：張栢枝委員

會務主任：劉豔梅小姐

議程：1. 通過「入境管制、簽證問題」最後報告

附：(1)中央與特別行政區的關係專責小組及涉外事務專責小組聯合會議紀要。

中央與特別行政區的關係專責小組 及涉外事務專責小組 聯合會議會議紀要

日期：一九八七年二月二十六日（星期四）
時間：下午五時三十分至七時
地點：基本法諮詢委員會會址
召集人：張栢枝委員
會務主任：劉豔梅小姐

1. 會議上討論並修改了「入境管制、簽證問題」討論文件。
2. 決定下次續會日期為三月五日（星期四）下午六時。

召集人：_____

張栢枝

入境管制、簽證問題 最後報告

(1987年3月2日)

- 此文件乃有關入境管制、簽證問題工作組之討論文件，是為涉外事務專責小組及中央與特別行政區的關係專責小組而預備的，若有任何意見，歡迎提出討論，增減或修正。在未經委員接納前，此文件並不代表涉外事務專責小組及中央與特別行政區的關係專責小組的意見。

中華人民共和國香港特別行政區基本法諮詢委員會
涉外事務專責小組及
中央與特別行政區的關係專責小組合辦
入境管制、簽證問題工作組

1. 序言

本份討論文件分為4部份。第二部份列出中英聯合聲明中有關入境管制及簽證的規定。在第三部份則簡述香港現行的入境管制及各類人士進入香港的簽證手續。最後一部份會提出幾個有關九七年以後特區出入境管制的主要問題，包括外地人士進入特區作短暫停留的手續和名額、中央與特區在外地人士移居特區的協調、中英聯合聲明中提及因其父或母在港有居留權而同樣享有居留權人士是否免受入境管制及又那些人士可因婚姻關係而獲得居港權利等。

2. 中英聯合聲明中有關入境管制及簽證問題的規定

2.1 中英聯合聲明第三款第二條：

「香港特別行政區直轄於中華人民共和國政府。除外交和國防事務屬中央人民政府管理外，香港特別行政區享有高度的自治權。」

第三款第十條：

「香港特別行政區可以“中國香港”的名義單獨地同各國、各地區及有關國際組織保持和發展經濟、文化關係，並簽訂有關協定。

香港特別行政區政府可自行簽發出入香港的旅行證件。」

2.2 附件一中有關入境管制及簽證問題的條文

附件一第十四項：

2.2.1 「在香港特別行政區有居留權並有資格按香港特別行政區的法律獲得香港特別行政區政府簽發的載明此項權利的永久居民身份證者為：在香港特別行政區成立以前或以後在當地出生或通常居住連續七年以上的中國公民及其在香港以外所生的中國籍子女；在香港特別行政區成立以前或以後在當地通常居住連續七年以上並以香港為永久居住地的其他人及其在香港特別行政區成立以前或以後在當地出生的未滿二十一歲的子女；以及在香港特別行政區成立以前只在香港有居留權的其他人。」

2.2.2 「中央人民政府授權香港特別行政區依照法律，給持有香港特別行政區永久性居民身份證的中國公民簽發中華人民共和國香港特別行政區護照，並給在香港特別行政區的其他合法居留者簽發中華人民共和國香港特別行政區其他旅行證件。上述護照和證件，前往各國和各地區有效，並載明持有人有返回香港特別行政區的權利。」

2.2.3 「香港特別行政區居民出入當地，可使用香港特別行政區政府或中華人民共和國其他主管部門，或其他國家主管部門簽發的旅行證件。凡持有香港特別行政區永久性居民身份證者，其旅行證件可載明此項事實，以證明其在香港特別行政區有居留權。」

- 2.2.4 「對中國其他地區的人進入香港特別行政區將按現在實行的辦法管理。」
- 2.2.5 「對其他國家和地區的人入境、逗留和離境，香港特別行政區政府可實行出入境管制。」
- 2.2.6 「有效旅行證件持有人，除非受到法律制止，可自由離開香港特別行政區，無需特別批准。」
- 2.2.7 「中央人民政府將協助或授權香港特別行政區政府同各國或各地區締結互免簽證協定。」

2.3 中方備忘錄有關簽證問題的說明

「....考慮到香港的歷史背景和現實情況，中華人民共和國政府主管部門自一九九七年七月一日起，允許原被稱為“英國屬土公民”的香港中國公民使用由聯合王國政府簽發的旅行證件去其他國家和地區旅行。

上述中國公民在香港特別行政區和中華人民共和國其他地區不得因其持有上述英國旅行證件而享受英國的領事保護的權利。」

3. 香港現行的入境管制和簽證的處理

3.1 香港現行入境政策的目的是，是要限制人口增長，使由入境所造成的人口增加保持在一個可接受的水平。另一方面，入境手續則盡量簡化，方便本港居民、遊客和商人出入本港。

3.2 香港人民入境事務處負責執行入境管制的工作；派員駐守各個出入境管制站，協助旅客辦理出入境手續。此外並會為本港居民及居港人士提供旅遊證件及辦理註冊手續，包括簽發旅遊證件、簽證和身份證等。人民入境事務處處長在申請人提交申請及費用後，有權在他認為適當的情況下發出身份證明文件（^{身份證明書}特別護照），回港證，越南難民證件及其他文件。同時，人民入境事務處亦致力偵查和檢控違反入境條例的人士，以及將非法入境人士遣返原地。

3.3 從外地進入香港的情況

3.3.1 根據人民入境條例，下列人士享有在香港入境權及免受居留條件限制的自由（詳情參閱居民定義最後報告）

(1) 香港本土人士。概括來說，“香港本土人士”是因與香港有關係而成為英國屬土公民的人。

(2) 華籍居民。人民入境條例第二條把“華籍居民”界定為：

① 有純粹或部份中國人血統；及

② 通常在香港連續居住不少於七年的移民（即並非身為「香港本土人士」者）。

(3) 在香港居住的英國公民。通常在香港連續居住不少於七年的英國公民。

(4) 在香港居住的聯合王國本土人士。即在香港通常連續居住七年或以上的聯合王國本土人士。

3.3.2 如入境人士持有下列任何一種旅行證件，則不論來港的目的是甚麼，亦毋須領取簽證：

- (1) 香港英國護照
- (2) 香港身份證明書
- (3) 回港證 (只限由中國或澳門返回本港的人士使用)
- (4) 香港海員身份證
- (5) 香港海員國籍及身份證明書
- (6) 蓋有香港入境權簽註的旅行證件

3.3.3 如入境人士屬英國公民或持有在聯合王國簽發的英國護照而該護照並無簽註限制持有人進入英國的，可毋須領取簽證。不過，在到達香港時，入境人士可能需要向入境事務人員證明在港期間毋須工作而備有充足的旅費以維持在香港的生活。此外，並須持有回程或續程的機票或船票 (過境前往中國或澳門的人士除外)，或能證明在香港已有確實職業。

3.3.4 如不屬以上兩類人士 (3.3.2及3.3.3)，則須預先領取簽證以便來港就業、就讀、經營生意，或作永久居留。

3.3.5 來港遊客需持有由所屬國家發出之護照及有效旅行證件。如遊客乘搭航機直接過境或不離開機場過境等候室，又或是在規定時間內轉乘輪船離港，而又持有進入其他國家的有效證件，只要留港時間不超過規限，便毋須辦理簽證手續。

其他遊客如只在香港作短期逗留而不超越規限，在一般情況下不須簽證 (附件一)。

3.3.6 申請入境人士如在海外申請，應向就近的英國護照辦事處申請簽證，或向任何英國領事館、高級專員公署或簽證辦事處辦理。

3.4 居留限制

凡來港旅遊人士應毋須工作而備有充足的旅費維持其在港的生活。旅遊人士均不得受僱從事任何職業 (無論受薪或非受薪)、經營生意、或入學就讀；此外，除在極為特殊的情形下，旅遊人士於抵港後均不准改變其旅客身份。

申請來港讀書人士在獲得入境批准後，只能在人民入境事務處處長批准的學校中就讀，不能從事任何職業或經營生意。

申請來港工作人士，只能在人民入境事務處處長批准之職業中工作。另外，受僱的合約海員在其所屬船隻離開十四天後，不可以再逗留於香港。

People's Port situation

4. 主要問題

4.1 外國人士如要進入特區作短暫停留 (旅遊 / 經商 / 工作 / 求學 / 探親 / 過境) 應由那機構負責？經什麼手續？

建議：

根據中英聯合聲明，特區政府應有入境管制權，因而中央政府不應在香港有入境管制權。

入境管制應由特區政府的行政機關如人民入境事務處負責。

應由那機構發出簽證？

有意見認為現時享有豁免簽證的地區人士如有足夠金錢及機票等，應毋須辦理簽證而進入香港。如要申請簽證，有下列建議：

- (1) 香港特別行政區可在地設立簽證處。這些辦事處可獨立於中國領事館之外，即不附屬於中國領事館，辦事處由香港人負責。
- (2) 特區政府可委托中國駐當地外交機關代辦；另有意見是特區政府亦可委托其他國家外交機關辦理。
- (3) 簽證應由中國駐外地外交機關簽發。
- (4) 特區政府簽證事務可交由香港駐外商務機關負責。

至於與中國無邦交地區人士的簽證手續可由上述商務機關或授權其他國家辦理。

4.2 外地人士移居特區

由特別行政區或中央政府審查批准？

中央與特別行政區如何協調？

有意見認為在這問題上，特區有絕對的權力，所以中央與特區不需協調。

- 4.3 根據現行入境條例，內地人士如以非法途徑進入香港，將會被遣送回原地。但中英聯合聲明指出，只要父或母一方在港有居留權，其在外地出生而未屆二十一歲的子女，將可享有在港的居留權。另一方面，在附一中亦表明「對中國其他地區的人進入香港將按現在實行的辦法管理。」

現時內地居民如有近親屬或直系親屬在香港，均可要求定居香港。申請人需向所在地公安局申請，由國務院審批。每日發出之前往港澳通行證為七十五人。（請情參閱特區與各省區關係討論文件）

有權在港居留人士而在內地出生的子女應否自動享有入境權利。或是應否與其他人一視同仁，受到名額限制。

意見建議：否

- (1) 根據中英聯合聲明，該等人士應自動享有在港居留權，亦毋須特別申請。所以不應受限於每日七十五人之名額內。

(2) 因該等人士自動享有居留權，會引致太多人湧至香港。因此特區政府可按當時的經濟情況及生活水平決定來港的優先次序。

(3) 如果特區政府覺得從大陸移民入香港的程序超過特區能夠負擔的，區政府有權向中央政府提出協商，減少每日入境之名額。

- 4.4 中英聯合聲明中未有提及那些人士可因合法的婚姻關係而獲取居留權。根據現行法例，如申請人在八三年一月一日前與其為英國屬土公民的配偶結婚，申請人便可於五年內向英國海外大使館辦理登記手續，只要能提出充分的證據證明申請人與配偶的關係為合法的婚姻

關係，申請人便可按登記手續而得到與其配偶相同的國籍身份，即英國屬土公民的身份。根據所獲得的國籍，因而自動享有香港入境權。至於在八三年一月一日後與身為英國屬土公民的香港人士結婚的申請人需先在其居住地向英領事館申請來港，進入香港後可申請居留簽證，在港居留約三至四年後，並在符合居留條件情況下，可向人民入境事務處申請歸化入英國屬土公民國籍，才可得到入境權及免受居留條件限制的權利。因此，下列幾類人士應否享有居港權利：

- (1) 在九七年之前或以後在特區通常居住連續七年以上的中國公民的配偶；
- (2) 在特區成立以前或以後在當地通常住連續七年以上並以香港為永久居住地的其他人的配偶；
- (3) 在香港特別行政區成立以前只在香港有居留權的其他人的配偶。

有意見認為只要上述人士的婚姻關係為實質婚姻，其配偶按情理應可享有居留權。但因特區本身的情況有別於其他地區，特區政府應有權作出控制，以減少因婚姻關係而入境的人士對香港人口、社會福利和各種設施所做成的壓力。

5. 結語

綜合本份討論文件，討論了四個入境管制和簽證方面的問題，並列出有關建議。首先討論了外地人士要進入特區作短期停留的情況。有意見認為特區應有入境管制權。如入境人士需要辦理簽證手續，分別有提議由特區駐外簽證辦事處，中國駐外地外交機關或香港駐外商務機構負責。在外地人士移居特區的問題上，中央與特區如何協調；有意見指出根據中英聯合聲明，特區有權處理，所以中央與特區不存在協調問題。另外，討論到有權在港居留人士而在內地出生的子女的居港權利，有建議該等人士應可自動享有居留權，另一建議指出可由特區政府決定他們入境的優先次序及當太多內地人士移民香港特區時，特區政府有權向中央政府提出協商，減少每日移民的名額。最後一個問題是討論到那幾類人士可因婚姻關係而獲得特區居留權，委員指出只要其配偶及持有永久居民性居民身份證人士的婚姻為實質婚姻，便應有居留權，但特區政府也可按當時的需要而實施管制。

意見認為
他地
無不
居留
但有
居留權
如按
總理
的
原
則

入境管制、簽證問題 最後報告

(1987年3月2日)

- 此文件乃有關入境管制、簽證問題工作組之討論文件，是為涉外事務專責小組及中央與特別行政區的關係專責小組而預備的，若有任何意見，歡迎提出討論，增減或修正。在未經委員接納前，此文件並不代表涉外事務專責小組及中央與特別行政區的關係專責小組的意見。

中華人民共和國香港特別行政區基本法諮詢委員會
涉外事務專責小組及
中央與特別行政區的關係專責小組合辦
入境管制、簽證問題工作組

1. 序言

本份討論文件分為4部份。第二部份列出中英聯合聲明中有關入境管制及簽證的規定。在第三部份則簡述香港現行的入境管制及各類人士進入香港的簽證手續。最後一部份會提出幾個有關九七年以後特區出入境管制的主要問題，包括外地人士進入特區作短暫停留的手續和名額、中央與特區在外地人士移居特區的協調、中英聯合聲明中提及因其父或母在港有居留權而同樣享有居留權人士是否免受入境管制及又那些人士可因婚姻關係而獲得居港權利等。

2. 中英聯合聲明中有關入境管制及簽證問題的規定

2.1 中英聯合聲明第三款第二條：

「香港特別行政區直轄於中華人民共和國政府。除外交和國防事務屬中央人民政府管理外，香港特別行政區享有高度的自治權。」

第三款第十條：

「香港特別行政區可以“中國香港”的名義單獨地同各國、各地區及有關國際組織保持和發展經濟、文化關係，並簽訂有關協定。

香港特別行政區政府可自行簽發出入香港的旅行證件。」

2.2 附件一中有關入境管制及簽證問題的條文

附件一第十四項：

2.2.1 「在香港特別行政區有居留權並有資格按香港特別行政區的法律獲得香港特別行政區政府簽發的載明此項權利的永久居民身份證者為：在香港特別行政區成立以前或以後在當地出生或通常居住連續七年以上的中國公民及其在香港以外所生的中國籍子女；在香港特別行政區成立以前或以後在當地通常居住連續七年以上並以香港為永久居住地的其他人及其在香港特別行政區成立以前或以後在當地出生的未滿二十一歲的子女；以及在香港特別行政區成立以前只在香港有居留權的其他人。」

2.2.2 「中央人民政府授權香港特別行政區依照法律，給持有香港特別行政區永久性居民身份證的中國公民簽發中華人民共和國香港特別行政區護照，並給在香港特別行政區的其他合法居留者簽發中華人民共和國香港特別行政區其他旅行證件。上述護照和證件，前往各國和各地區有效，並載明持有人有返回香港特別行政區的權利。」

2.2.3 「香港特別行政區居民出入當地，可使用香港特別行政區政府或中華人民共和國其他主管部門，或其他國家主管部門簽發的旅行證件。凡持有香港特別行政區永久性居民身份證者，其旅行證件可載明此項事實，以證明其在香港特別行政區有居留權。」

- 2.2.4 「對中國其他地區的人進入香港特別行政區將按現在實行的辦法管理。」
- 2.2.5 「對其他國家和地區的人入境、逗留和離境，香港特別行政區政府可實行出入境管制。」
- 2.2.6 「有效旅行證件持有人，除非受到法律制止，可自由離開香港特別行政區，無需特別批准。」
- 2.2.7 「中央人民政府將協助或授權香港特別行政區政府同各國或各地區締結互免簽證協定。」

2.3 中方備忘錄有關簽證問題的說明

「...考慮到香港的歷史背景和現實情況，中華人民共和國政府主管部門自一九九七年七月一日起，允許原被稱為“英國屬土公民”的香港中國公民使用由聯合王國政府簽發的旅行證件去其他國家和地區旅行。

上述中國公民在香港特別行政區和中華人民共和國其他地區不得因其持有上述英國旅行證件而享受英國的領事保護的權利。」

3. 香港現行的入境管制和簽證的處理

3.1 香港現行入境政策的目的是，是要限制人口增長，使由入境所造成的人口增加保持在一個可接受的水平。另一方面，入境手續則盡量簡化，方便本港居民、遊客和商人出入本港。

3.2 香港人民入境事務處負責執行入境管制的工作；派員駐守各個出入境管制站，協助旅客辦理出入境手續。此外並會為本港居民及居港人士提供旅遊證件及辦理註冊手續，包括簽發旅遊證件、簽證和身份證等。人民入境事務處處長在申請人提交申請及費用後，有權在他認為適當的情況下發出身份證明文件(特別護照)，回港證，越南難民證件及其他文件。同時，人民入境事務處亦致力偵查和檢控違反入境條例的人士，以及將非法入境人士遣返原地。

3.3 從外地進入香港的情況

3.3.1 根據人民入境條例，下列人士享有在香港入境權及免受居留條件限制的自由（詳情參閱居民定義最後報告）

- (1) 香港本土人士。概括來說，“香港本土人士”是因與香港有關係而成為英國屬土公民的人。
- (2) 華籍居民。人民入境條例第二條把“華籍居民”界定為：
 - ① 有純粹或部份中國人血統；及
 - ② 通常在香港連續居住不少於七年的移民（即並非身為「香港本土人士」者）。
- (3) 在香港居住的英國公民。通常在香港連續居住不少於七年的英國公民。
- (4) 在香港居住的聯合王國本土人士。即在香港通常連續居住七年或以上的聯合王國本土人士。

- 2.2.4 「對中國其他地區的人進入香港特別行政區將按現在實行的辦法管理。」
- 2.2.5 「對其他國家和地區的人入境、逗留和離境，香港特別行政區政府可實行出入境管制。」
- 2.2.6 「有效旅行證件持有人，除非受到法律制止，可自由離開香港特別行政區，無需特別批准。」
- 2.2.7 「中央人民政府將協助或授權香港特別行政區政府同各國或各地區締結互免簽證協定。」

2.3 中方備忘錄有關簽證問題的說明

「...考慮到香港的歷史背景和現實情況，中華人民共和國政府主管部門自一九九七年七月一日起，允許原被稱為“英國屬土公民”的香港中國公民使用由聯合王國政府簽發的旅行證件去其他國家和地區旅行。

上述中國公民在香港特別行政區和中華人民共和國其他地區不得因其持有上述英國旅行證件而享受英國的領事保護的權利。」

3. 香港現行的入境管制和簽證的處理

3.1 香港現行入境政策的目的是，是要限制人口增長，使由入境所造成的人口增加保持在一個可接受的水平。另一方面，入境手續則盡量簡化，方便本港居民、遊客和商人出入本港。

3.2 香港人民入境事務處負責執行入境管制的工作；派員駐守各個出入境管制站，協助旅客辦理出入境手續。此外並會為本港居民及居港人士提供旅遊證件及辦理註冊手續，包括簽發旅遊證件、簽證和身份證等。人民入境事務處處長在申請人提交申請及費用後，有權在他認為適當的情況下發出身份證明文件(特別護照)，回港證，越南難民證件及其他文件。同時，人民入境事務處亦致力偵查和檢控違反入境條例的人士，以及將非法入境人士遣返原地。

3.3 從外地進入香港的情況

3.3.1 根據人民入境條例，下列人士享有在香港入境權及免受居留條件限制的自由（詳情參閱居民定義最後報告）

- (1) 香港本土人士。概括來說，“香港本土人士”是因與香港有關係而成為英國屬土公民的人。
- (2) 華籍居民。人民入境條例第二條把“華籍居民”界定為：
 - ① 有純粹或部份中國人血統；及
 - ② 通常在香港連續居住不少於七年的移民（即並非身為「香港本土人士」者）。
- (3) 在香港居住的英國公民。通常在香港連續居住不少於七年的英國公民。
- (4) 在香港居住的聯合王國本土人士。即在香港通常連續居住七年或以上的聯合王國本土人士。

應由那機構發出簽證？

有意見認為現時享有豁免簽證的地區人士如有足夠金錢及機票等，應毋須辦理簽證而進入香港。如要申請簽證，有下列建議：

- (1) 香港特別行政區可在外地設立簽證處。這些辦事處可獨立於中國領事館之外，即不附屬於中國領事館，辦事處由香港人負責。
- (2) 特區政府可委托中國駐當地外交機關代辦；另有意見是特區政府亦可委托其他國家外交機關辦理。
- (3) 簽證應由中國駐外地外交機關簽發。
- (4) 特區政府簽證事務可交由香港駐外商務機關負責。

至於與中國無邦交地區人士的簽證手續可由上述商務機關或授權其他國家辦理。

4.2 外地人士移居特區

由特別行政區或中央政府審查批准？

中央與特別行政區如何協調？

有意見認為在這問題上，特區有絕對的權力，所以中央與特區不需協調。

- #### 4.3 根據現行入境條例，內地人士如以非法途徑進入香港，將會被遣送回原地。但中英聯合聲明指出，只要父或母一方在港有居留權，其在外地出生而未屆二十一歲的子女，將可享有在港的居留權。另一方面，在附一中亦表明「對中國其他地區的人進入香港將按現在實行的辦法管理。」

現時內地居民如有近親屬或直系親屬在香港，均可要求定居香港。申請人需向所在地公安局申請，由國務院審批。每日發出之前往港澳通行證為七十五人。（請情參閱特區與各省區關係討論文件）

有權在港居留人士而在內地出生的子女應否自動享有入境權利。或是應否與其他人一視同仁，受到各額限制。

建議：

- (1) 根據中英聯合聲明，該等人士應自動享有在港居留權，亦毋須特別申請。所以不應受限於每日七十五人之名額內。
- (2) 因該等人士自動享有居留權，會引致太多人湧至香港。因此特區政府可按當時的經濟情況及生活水平決定來港的優先次序。
- (3) 如果特區政府覺得從大陸移民入香港的程序超過特區能夠負擔的，區政府有權向中央政府提出協商，減少每日入境之名額。

- #### 4.4 中英聯合聲明中未有提及那些人士可因合法的婚姻關係而獲取居留權。根據現行法例，如申請人在八三年一月一日前與其為英國屬土公民的配偶結婚，申請人便可於五年內向英國海外大使館辦理登記手續，只要能提出充分的證據證明申請人與配偶的關係為合法的婚姻

關係，申請人便可按登記手續而得到與其配偶相同的國籍身份，即英國屬土公民的身份。根據所獲得的國籍，因而自動享有香港入境權。至於在八三年一月一日後與身為英國屬土公民的香港人士結婚的申請人需先在其居住地向英領事館申請來港，進入香港後可申請居留簽證，在港居留約三至四年後，並在符合居留條件情況下，可向人民入境事務處申請歸化入英國屬土公民國籍，才可得到入境權及免受居留條件限制的權利。因此，下列幾類人士應否享有居港權利：

- (1) 在九七年之前或以後在特區通常居住連續七年以上的中國公民的配偶；
- (2) 在特區成立以前或以後在當地通常住連續七年以上並以香港為永久居住地的其他人的配偶；
- (3) 在香港特別行政區成立以前只在香港有居留權的其他人的配偶。

有意見認為只要上述人士的婚姻關係為實質婚姻，其配偶按情理應可享有居留權。但因特區本身的情況有別於其他地區，特區政府應有權作出控制，以減少因婚姻關係而入境的人士對香港人口、社會福利和各種設施所做成的壓力。

5. 結語

綜合本份討論文件，討論了四個入境管制和簽證方面的問題，並列出有關建議。首先討論了外地人士要進入特區作短期停留的情況。有意見認為特區應有入境管制權。如入境人士需要辦理簽證手續，分別有提議由特區駐外簽證辦事處，中國駐外地外交機關或香港駐外商務機構負責。在外地人士移居特區的問題上，中央與特區如何協調；有意見指出根據中英聯合聲明，特區有權處理，所以中央與特區不存在協調問題。另外，討論到有權在港居留人士而在內地出生的子女的居港權利，有建議該等人士應可自動享有居留權，另一建議指出可由特區政府決定他們入境的優先次序及當太多內地人士移民香港特區時，特區政府有權向中央政府提出協商，減少每日移民的名額。最後一個問題是討論到那幾類人士可因婚姻關係而獲得特區居留權，委員指出只要其配偶及持有永久居民性居民身份證人士的婚姻為實質婚姻，便應有居留權，但特區政府也可按當時的需要而實施管制。

本說明書的目的在概述香港的簽證規例，而並非是一份詳述香港入境法例的刊物。

任何旅遊人士，不應以為祇要符合說明書內所述的一切條件，便必然獲准入境。除本說明書第一部所列述的人士外，香港的移民當局有權拒絕任何人士進入香港。

你如有任何有關個別情形的疑問而需要指導者，請向下列部門查詢：

(一) Chief British Passport Office,
Clive House, Petty France,
London SW 1 (01) 213 5010

(二) 任何英領事館，高級專員公署或簽證辦事處；或

(三) 香港九龍麼地六十一號人民入境事務處。
電話為三二七三三三三三

你前來香港時，是否要領取簽證？

如你由於在香港出生或居住的原故而與香港有密切關係，可能毋須領取簽證。請參閱本說明書第一部。

二、如果你是一名英國國民，亦可能毋須領取簽證。請小心閱讀本說明書第二部。（「英國旅遊護照」並不能使持證人獲准進入香港）

三、如你不屬於上述人士，而來香港的目的就是就業、就讀、經營生意、或定居，則要領取簽證。假如你是來港旅遊，則可能毋須領取簽證，但要視乎你的國籍而定。請參閱本說明書的第三部。

第一部

四、下列人士有權進入本港，不論來港的目的是甚麼，均毋須領取簽證：

(甲) 香港本土人士；

(乙) 在香港居住的英國公民；

(丙) 一九八三年一月一日前在香港居住的聯合王國本土人士；

(丁) 華籍居民。

有關詳情，請參閱小冊 ID 341 款。

五、如你持有下列任何一種旅行證件，則不論來港的目的是甚麼，亦毋須領取簽證：

香港英國護照

香港身份證明書

回港證（祇限由中國或澳門返回本港的人士使用）

香港海員身份證

香港海員國籍及身份證明書

蓋有香港入境權簽註的旅行證件

第二部

六、如你屬英國公民或持有在聯合王國簽發的英國護照而該護照並無簽註限制你進入英國的，可毋須領取簽證。

七、不過，在到達香港時，你可能需要向入境事務人員證明你毋須工作而備有充足的旅費以維持在香港的生活。你並須持有回程或續程的機票或船票（過境前往中國或澳門的人士除外），或能證明在香港已有確實職業。通常你最初可獲批准逗留六個月，其後可申請延期逗留，每宗申請須按其個別情況予以考慮。

八、如你持有英國或英聯邦護照，而不屬於第六段所述人士，請參閱本說明書第三部。

第三部

九、如你不屬於第一部或第二部所述人士，則須預先領取簽證以便來港就業、就讀、經營生意，或作永久居留。屆時，如你在英國申請，應向就近的英國護照辦事處申請簽證；或向任何英國領事館、高級專員公署或簽證辦事處辦理。否則，你可能在抵港時被拒入境。

十、下列來港旅遊人士通常都要申請簽證（但如他們是乘搭航機直接過境或不離開機場的過境等候室的，不在此限）：

- (甲) 阿富汗、亞爾巴尼亞、保加利亞、中華人民共和國、柬埔寨、古巴、捷克、東德、匈牙利、寮國、蒙古、北韓、波蘭、羅馬尼亞、越南、蘇聯、及也門民主人民共和國的公民；
- (乙) 持有阿根廷、台灣、伊朗、利比亞、也門阿拉伯共和國、敘利亞、伊拉克、黎巴嫩護照、梵蒂岡公務護照及哥斯達黎加臨時護照的人士；
- (丙) 所有「無國籍」人士；

十一、下列國家的公民，如來港旅遊不超過三個月，可毋須領取簽證：

- 英國（包括英國屬土公民、英國海外公民、英籍人士、受英國保護人士等）及英聯邦國家
- 安道耳
- 奧地利
- 比利時
- 巴西
- 智利
- 哥倫比亞
- 丹麥
- 厄瓜多爾
- 法國
- 愛爾蘭共和國
- 以色列
- 意大利
- 列士敦士登
- 盧森堡
- 摩納哥
- 荷蘭
- 挪威
- 葡萄牙
- 聖馬利諾
- 西班牙
- 瑞典
- 瑞士
- 土耳其
- 洪都拉斯
- 冰島
- 墨西哥
- 薩爾瓦多
- 摩洛哥

十二、下列國家的公民，如來港旅遊不超過一個月，亦毋須領取簽證：

- 波利維亞
- 哥斯達黎加
- 多明尼加共和國
- 薩爾瓦多

- 芬蘭
- 西德
- 希臘
- 危地馬拉
- 巴拉圭
- 秘魯
- 突尼西亞
- 尼泊爾
- 尼加拉瓜
- 巴基斯坦
- 巴拿馬
- 美國
- 烏拉圭
- 委內瑞拉

十三、泰國的公民，如來港旅遊不超過十四天，可毋須領取簽證。

十四、其他國家的公民（包括持有美國托管地護照人士），如來港旅遊不超過七天，均毋須領取簽證。

十五、凡來港旅遊的人士，應毋須工作而備有充足的旅費維持其在港的生活，並且除過境前往中國或澳門的人士外，必須持有續程或回程的船票或機票。如你想逗留的時間是較上述毋須領取簽證而獲准逗留的期限為長，便必須在啟程前向就近的英國簽證辦事處領取簽證。

十六、依照法律的規定，旅遊人士均不得在港受僱從事任何職業（無論受薪或非受薪）、經營生意、或入學就讀；此外，除在極為特殊的情形下，旅遊人士於抵港後均不准改變其旅客身份。

香港人民入境事務處

八、如你持有英國或英聯邦護照，而不屬於第六段所述人士，請參閱本說明書第三部。

第三部

九、如你不屬於第一部或第二部所述人士，則須預先領取簽證以便來港就業、就讀、經營生意，或作永久居留。屆時，如在英國申請，應向就近的英國護照辦事處申請簽證；或向任何英國領事館、高級專員公署或簽證辦事處辦理。否則，你可能在抵港時被拒入境。

十、下列來港旅遊人士通常都要申請簽證（但如他們是乘搭航機直接過境或不離開機場的過境等候室的，不在此限）：

- (甲) 阿富汗、亞爾巴尼亞、保加利亞、中華人民共和國、柬埔寨、古巴、捷克、東德、匈牙利、寮國、蒙古、北韓、波蘭、羅馬尼亞、越南、蘇聯、及也門民主人民共和國的公民；
- (乙) 持有阿根廷、台灣、伊朗、利比亞、也門阿拉伯共和國、敘利亞、伊拉克、黎巴嫩護照、梵蒂岡公務護照及哥斯達黎加臨時護照的人士；
- (丙) 所有「無國籍」人士；

十一、下列國家的公民，如來港旅遊不超過三個月，可毋須領取簽證：

- 英國（包括英國屬土公民、英國海外公民、英籍人士、受英國保護人士等）及英聯邦國家
- 安道耳 列士敦士登
奧地利 盧森堡
比利時 摩納哥
巴西 荷蘭
智利 挪威
哥倫比亞 葡萄牙
丹麥 聖馬利諾
厄瓜多爾 西班牙
法國 瑞典
愛爾蘭共和國 瑞士
以色列 土耳其
意大利
- 十二、下列國家的公民，如來港旅遊不超過一個月，亦毋須領取簽證：
- 波利維亞 洪都拉斯
哥斯達黎加 冰島
多明尼加共和國 墨西哥
薩爾瓦多 摩洛哥

- 芬蘭 尼泊爾
西德 尼加拉瓜
希臘 巴基斯坦
危地馬拉 巴拿馬
巴拉圭 美國
秘魯 烏拉圭

突尼西亞

委內瑞拉

十三、泰國的公民，如來港旅遊不超過十四天，可毋須領取簽證。

十四、其他國家的公民（包括持有美國托管地護照人士），如來港旅遊不超過七天，均毋須領取簽證。

十五、凡來港旅遊的人士，應毋須工作而備有充足的旅費維持其在港的生活，並且除過境前往中國或澳門的人士外，必須持有續程或回程的船票或機票。如你想逗留的時間是較上述毋須領取簽證而獲准逗留的期限為長，便必須在啟程前向就近的英國簽證辦事處領取簽證。

十六、依照法律的規定，旅遊人士均不得在港受僱從事任何職業（無論受薪或非受薪）、經營生意、或入學就讀；此外，除在極為特殊的情形下，旅遊人士於抵港後均不准改變其旅客身份。

香港人民入境事務處

This pamphlet gives an outline of Hong Kong's visa regulations. It cannot be taken as a full statement of the law governing immigration.

Even where all immigration requirements set out in this pamphlet are met, travellers should not assume that they can gain automatic entry. The Hong Kong immigration authorities reserve the right to refuse permission to land to any person except those in Part I of this pamphlet.

If you need advice on individual cases, please address your enquiries to:—

- (a) Chief British Passport Office,
Clive House, Petty France,
London SW 1 (01) 213 5010
- (b) Any British Consulate,
High Commission or
Visa Office; or
- (c) The Hong Kong Immigration Department,
61 Mody Road,
Kowloon, Hong Kong.
Tel. 3-7333111

Do you need a visa for Hong Kong?

If you have a close connection by birth or residence in Hong Kong, you may not require a visa. Please read Part I of this pamphlet.

2. If you are a British national, you may not require a visa. Please read Part II of this pamphlet. (A British Visitors Passport is not valid for Hong Kong.)
3. If the above does not apply to you, you will need a visa for employment, for education, to establish or join in any business, or for residence. However, you may not need a visa for visits, depending on your nationality. Please read Part III of this pamphlet.

Part I

4. The following persons have the right to land in Hong Kong. No visa is required for any purpose:—
 - (a) Hong Kong belongers;
 - (b) resident British citizens;
 - (c) persons who immediately before 1 January 1983 were resident United Kingdom belongers; and
 - (d) Chinese residents.

For details, please see booklet I.D. 341.

5. No visa is required for any purpose if you hold any of the following travel documents:—
 - Hong Kong British Passport,
 - Hong Kong Certificate of Identity,
 - Hong Kong Re-entry Permit (for entry from China and Macao only),
 - Hong Kong Seaman's Identity Book,
 - Hong Kong Seaman's Certificate of Nationality and Identity,
 - Travel documents bearing an endorsement for the right to land in Hong Kong.

Part II

6. If you are a British citizen or if you hold a United Kingdom passport issued in the United Kingdom which is not endorsed to show that you are subject to immigration control no visa is required for any purpose.

7. However, on arrival in Hong Kong, you may have to satisfy the immigration officer that you have sufficient means of support for your stay in Hong Kong without working. You should also hold return or onward tickets (unless you are in transit to China or Macao), or evidence of definite employment in Hong Kong. You will be normally allowed to stay for six months initially. Extensions of stay will be granted on individual merits.

8. If you hold a British or Commonwealth passport but do not fall in paragraph 6 above, please read Part III of this pamphlet.

Part III

9. Unless Part I or Part II applies to you, you require a visa to work, study, establish or join in any business or to settle in Hong Kong for permanent residence. And you must apply for the visa from the nearest branch of the British Passport Office if you are making application in the U.K., or from a British Consulate, High Commission or Visa Office. Otherwise you are taking the risk of being refused admission on arrival.

10. Visitors in the following categories always require visas (except in direct transit by air and when the person does not leave the airport transit area):—

(a) Nationals of Afghanistan, Albania, Bulgaria, People's Republic of China, Cambodia, Cuba, Czechoslovakia, German Democratic Republic, Hungary, Laos, Mongolia, North Korea, Poland, Romania, Vietnam, Soviet Union, and People's Democratic Republic of Yemen.

(b) Holders of Argentina, Taiwan, Iran, Libyan, Yemeni Arab Republic, Syria, Iraq, Lebanon passports, Vatican Service passports and Costa Rican Provisional passports.

(c) All other passport holders

11. Nationals of the following countries do not require visas for a visit not exceeding three months:—

Britain (including British Dependent Territories citizens, British Overseas citizens, British subject and British Protected persons) and Commonwealth citizens	Irish Republic
Andorra	Israel
Austria	Italy
Belgium	Liechtenstein
Brazil	Luxembourg
Chile	Monaco
Colombia	Netherlands
Denmark	Norway
Ecuador	Portugal
France	San Marino
	Spain
	Sweden
	Switzerland
	Turkey

12. Nationals of the following countries do not require visas for a *visit* not exceeding one month:—

Bolivia	Morocco
Costa Rica	Nepal
Dominican Republic	Nicaragua
El Salvador	Pakistan
Finland	Panama
German Federal Republic	Paraguay
Greece	Peru
Guatemala	Tunisia
Honduras	U.S.A.
Iceland	Uruguay
Mexico	Venezuela

13. Nationals of Thailand do not require visas for a visit not exceeding 14 days.

14. Nationals of other countries (including holders of U.S. Trust Territories passports) do not require visas for a *visit* not exceeding seven days.

15. Visitors are required to have adequate funds to cover the duration of their stay without working and, unless in transit to China or Macao, to hold onward or return tickets. If you want to stay longer than the visa free period allowed, you must apply for a visa from the nearest British Visa Office before travelling to Hong Kong.

16. Visitors are not allowed by law to enter employment (paid or unpaid), to establish or join in any business, or to enter school as a student, nor, except in the most unusual circumstances, are visitors allowed to change their status after arrival.

*Immigration Department
Hong Kong*

中華人民共和國香港特別行政區
基本法諮詢委員會
THE CONSULTATIVE COMMITTEE FOR THE BASIC LAW
OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF
THE PEOPLE'S REPUBLIC OF CHINA

Our Ref: CCBL-SG/RCS/EXA-LE01-870302(E)

4 March 1987

Dear Members,

The joint meeting of the Special Group on the Relationship between the Central Government and the SAR and the Special Group on External Affairs was held on 26 February. The discussion paper on "Immigration Control; the Issuing of Passports and Travel Documents" was discussed and amended at the meeting. However, the number of members present did not reach the quorum so the report could not be passed. It is now decided that the meeting of the Special Group on External Affairs be held at 5:00 p.m. on 5 March (Thursday) and continuation of the joint meeting with the Special Group on the Relationship between the Central Government and the SAR be held at 6:00 p.m. to pass the final report on "Immigration Control; the Issuing of Passports and Travel Documents". The report will then be submitted to the Executive Committee. Please attend the meeting punctually.

Yours sincerely,



Esther Lau (Miss)
for
Cheung Pak Chi (Mr)
Convenor for the Joint Meeting

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CCBL-SG/RCS/EXA-AG02-870302(E)

AGENDA FOR THE JOINT MEETING (CONTINUATION)
OF THE SPECIAL GROUP ON
THE RELATIONSHIP BETWEEN THE CENTRAL GOVERNMENT AND THE SAR
AND THE SPECIAL GROUP ON EXTERNAL AFFAIRS

DATE: 5 March 1987 (Thursday)
TIME: 6:00 p.m.
VENUE: CCBL Premises
CONVENOR: Mr Cheung Pak Chi
ADMINISTRATIVE OFFICER: Ms Esther Lau

AGENDA:-

1. To pass the Final Report on Immigration Control; the Issuing of Passports and Travel Documents.

APPENDIX:-

1. Summary of the joint meeting of the Special Group on the Relationship between the Central Government and the SAR and the Special Group on External Affairs.

SUMMARY OF THE JOINT MEETING
OF THE SPECIAL GROUP ON
THE RELATIONSHIP BETWEEN THE CENTRAL GOVERNMENT AND THE SAR
AND THE SPECIAL GROUP ON EXTERNAL AFFAIRS

DATE: 26 February 1987 (Thursday)

TIME: 5:30 - 7:00 p.m.

VENUE: CCBL Premises

CONVENOR: Mr Cheung Pak Chi

ADMINISTRATIVE OFFICER: Ms Esther Lau

AGENDA:-

1. The discussion paper on "Immigration Control; the Issuing of Passports and Travel Documents" was discussed and amended.
2. It was decided that a continuation meeting be held at 6:00 p.m. on 5 March (Thursday).

CONVENOR: _____

FINAL REPORT ON
IMMIGRATION CONTROL; THE ISSUING OF
PASSPORTS AND TRAVEL DOCUMENTS

(5/3/87)

- * This paper is a draft of the discussion paper which the Working Group on the Immigration Control; the Issuing of Passports and Travel Documents prepared for the Special Group on the External Affairs and the Relationship between the Central Government and the SAR. Members are invited to comment on this draft which will then be amended accordingly. Without the members' approval, this paper does not represent the view of the Special Group on the External Affairs or the Special Group on the Relationship between the Central Government and the SAR.

Working Group on
Immigration Control; the Issuing of
Passports and Travel Documents

Special Group on External Affairs;

Special Group on
the Relationship between
the Central Government and the SAR

1. Introduction

This discussion paper is divided into four parts. The second part lists out the provisions on immigration control and the issuing of passports and travel documents under the Joint Declaration. The third part is a brief description of the present immigration control in Hong Kong and the procedures required for different categories of persons applying for visas of entry into or exit from Hong Kong. The last part of the paper raises some major issues regarding immigration control of the SAR after 1997: procedures required for overseas persons applying to stay temporarily in the SAR, the quota for such application, coordination between the Central Government and the SAR regarding immigration of overseas persons to the SAR; whether the persons enjoying the right of abode in Hong Kong because they were born of parents such right (as mentioned in the Joint Declaration) are free from immigration control; and what kind of people can obtain the right of abode in Hong Kong by marriage.

2. Provisions on immigration control and the issuing of passports and travel documents under the Joint Declaration:

2.1 Clause (2), Para 3 of the Joint Declaration :

"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."

Clause (10), Para 3 :

"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."

2.2 Provisions on immigration control and the issuing of travel documents and passports in Annex I to the Joint Declaration:

2.2.1 Section XIV, Annex I:

"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.

2.2.2 "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."

2.2.3 "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."

2.2.4 "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."

2.2.5 "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."

- 2.2.6 "Unless restrained by law, holders of valid travel documents shall be free to leave the Hong Kong Special Administrative Region without special authorisation."
- 2.2.7 "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."
- 2.3 Elaboration on the issuing of passports and travel documents in the Chinese Memorandum of the Joint Declaration:

"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."

3. The present policy of immigration control and the issuing of passports and travel documents in Hong Kong

3.1 The aim of the present immigration policy of Hong Kong is to restrict the growth of population, and to maintain an acceptable level of increase of population caused by immigration. On the other hand, the application procedures for entry into Hong Kong are kept simple for the convenience of the local citizens, tourists and businessmen travelling in and out of the territory.

3.2 The Immigration Department of Hong Kong is responsible for immigration control. Staff are stationed in immigration points to assist travellers in going through the entry and exit procedures. In addition, it provides travel documents and registration service to local citizens and persons staying in Hong Kong, including the issuing of travel documents, visas and identity cards, etc. Upon receipt of an application and the necessary fee, the Director of Immigration has the right to issue a certificate of identity (special passport), re-entry permit, Vietnamese refugee card or other documents to the applicant as he thinks fit. At the same time, the Immigration Department is also to investigate and prosecute persons who have violated the Immigration Ordinance, and to repatriate illegal immigrants/ unauthorised entrants to their own countries.

3.3.1 According to the Immigration Ordinance, the following categories of persons have the right to land and freedom from conditions of stay (please refer to the final report on Definition of Inhabitants for details):

- 1) Hong Kong belongers. Broadly speaking, Hong Kong belongers are persons who are British Dependent Territories citizens by virtue of a connection with Hong Kong.
- 2) Chinese residents. A Chinese resident is defined in section 2 of the Immigration Ordinance as an immigrant (that is, a person who is not a Hong Kong belonger) who
 - a) is wholly or partly of Chinese race; and
 - b) has at any time been ordinarily resident in Hong Kong for a continuous period of not less than 7 years
- 3) Resident British citizens i.e. a British citizen who has at any time been ordinarily resident in Hong Kong for a continuous period of not less than 7 years.
- 4) Resident United Kingdom belongers i.e. a United Kingdom belonger who has at any time been ordinarily resident in Hong Kong for a continuous period of not less than 7 years.

3.3.2 No visa is required for any purpose if the person entering Hong Kong holds any of the following travel documents:

- 1) Hong Kong British Passport
- 2) Hong Kong Certificate of Identity
- 3) Hong Kong Re-entry Permit (for entry from China and Macao only)
- 4) Hong Kong Seaman's Identity Book
- 5) Hong Kong Seaman's Certificate of Nationality and Identity
- 6) Travel documents bearing an endorsement for the right to land in Hong Kong.

3.3.3 If the entrant is a British citizen or holder of a United Kingdom passport issued in the United Kingdom which is not endorsed to show that he is subject to immigration control, no visa is required for any purpose. However, on arrival in Hong Kong, he may have to satisfy the immigration officer that he has sufficient means of support for his stay in Hong Kong without working. He should also hold return or onward tickets (unless he is in transit to China or Macao), or evidence of definite employment in Hong Kong.

3.3.4 If neither 3.3.2 nor 3.3.3 applies to the entrant, he will require a visa before coming to work, study, establish or join in any business or to settle in Hong Kong for permanent residence.

3.3.5 Visitors coming to Hong Kong should hold passports issued by their home countries or other valid travel documents. Visitors who are in direct transit by air and if they do not leave the airport transit area, or will leave the territory by ship within a certain period of time, and have valid documents for entry into other countries, do not require visas if their stay is within a certain limit of time.

Generally, other visitors who stay in Hong Kong for a short time not exceeding the visa free period do not require a visa. (Appendix 1)

3.3.6 If applications for entry into Hong Kong have to be made overseas, applicants can apply for a visa from the nearest branch of the British Passport Office, or from a British Consulate, High Commission or Visa Office.

3.4 Restrictions of Stay

Visitors are required to have adequate funds to cover the duration of their stay without working and they are not allowed to enter employment (paid or unpaid), to establish or join in any business, or to enter school as a student, nor, except in the most unusual circumstances, are visitors allowed to change their status after arrival.

After obtaining the permission to enter Hong Kong, applicants who apply to study in Hong Kong can only study in schools as approved by the Director of Immigration, and they are not allowed to enter employment or to establish or join in any business.

Applicants who apply to work in Hong Kong can only enter employment as approved by the Director of Immigration.

In addition, contract seamen cannot stay in Hong Kong for more than 14 days after their craft has left the territory.

4. Major issues

4.1 Which department is responsible and what procedures are involved when overseas visitors apply for temporary stay in the HKSAR (for sightseeing/business/work/study/transit)?

Proposals :

According to the Joint Declaration, the SAR government shall exercise immigration control, therefore, the Central People's Government should not have the power of immigration control in Hong Kong. Immigration control should be the responsibility of the executive SAR authorities, such as the Immigration Department, of the SAR.

Which department shall be responsible for issuing visas?

Views have been expressed that persons who at present enjoy visa exemption should not require visas for entry to Hong Kong provided that they have sufficient funds and hold onward or return tickets. If visa application is required, it is proposed that:

- 1) The HKSAR may set up visa offices overseas. These offices can be independent of the Chinese Consulate, i.e. they are not affiliated to the Chinese Consulate, and are run by Hong Kong people.
- 2) The issuing of visas can be delegated by the SAR government to the overseas foreign affairs offices. Another view is that the SAR government may entrust the foreign affairs offices of other countries with this responsibility.
- 3) Visas should be issued by the Chinese diplomatic offices overseas.
- 4) The issuing of visas can be delegated by the SAR government to Hong Kong trade offices overseas.

As regards the issuing of visas for persons of countries that do not have diplomatic relations with China, it can be delegated to the trade offices mentioned above or other countries be authorised to issue visas on behalf of the HKSAR.

4.2 Immigration to the HKSAR from overseas

Should review and approval be made by the SAR or the Central People's government ?

What coordination arrangements should be made between the Central Government and the SAR regarding this issue ?

Views have been expressed that as the SAR has absolute power on this issue, there is no need for coordination between the SAR and the Central People's governments on this issue.

4.3 According to the present Immigration Ordinance, mainland people who enter Hong Kong through illegal means will be repatriated to the place they come from. However, the Joint Declaration provides that persons under the age of 21 who were born of persons having the right of abode shall have the right of abode in Hong Kong. On the other hand, Annex I also states that "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."

At present, mainland residents who have close relatives or members of their immediate families in Hong Kong may apply to settle in Hong Kong for permanent residence. They are to apply to their local Public Security Bureaus and their applications have to be approved by the State Council. The quota for Hong Kong and Macao entry/exit permits is 75 persons per day. (Please refer to the discussion paper on the relationship between the SAR and the various provinces/regions.)

Should children born in the mainland of parents who have the right of abode in Hong Kong automatically enjoy the right to land in Hong Kong or should they be treated equally as other mainland people and subject to quota restriction?

Proposals :

- 1) According to the Joint Declaration, this category of persons shall automatically enjoy the right of abode in Hong Kong without special application. Therefore, the quota of 75 persons per day shall not apply to them.
- 2) As this category of persons automatically enjoy the right of abode in Hong Kong, these may be an influx of mainlanders into Hong Kong. Therefore, the SAR government should consider the priority of applications for entry into Hong Kong according to the economic situation and living standard in Hong Kong at the time of the applications are made.
- 3) If the HKSAR Government felt that the number of mainland immigrants is more than it can take, it has the right to have consultations with the Central Government for reduction of daily immigration quota.

4.4 The Joint Declaration does not mention which categories of persons may acquire the right of abode in Hong Kong through legitimate marriage. According to the existing legislation, an applicant married to a British Dependent Territories citizen before 1 January 1983 may register with a British embassy within 5 years. With sufficient evidence to prove that he/she is the lawful spouse of a British Dependent Territories citizen, the applicant may, in accordance with the registration procedure, acquire the nationality of his/her spouse i.e. the citizenship of British Dependent Territories. This nationality will entitle the applicant the right to land in Hong Kong. An applicant married to a Hong Kong British Dependent Territories citizen before 1 January 1983 should first apply to the British embassy of his/her place of residence for entry into Hong Kong and, upon his/her entry, apply for residence in Hong Kong. Having resided in Hong Kong for 3 to 4 years and satisfied the residence requirements, he/she may apply to the Immigration Department for naturalisation as British Dependent Territories citizen, which will entitle him/her the right to land and the freedom from conditions of stay.

Should the following categories of persons be granted the right of abode ?

- 1) Spouses of Chinese nationals who have ordinarily resided in Hong Kong before or after the establishment of the SAR for a continuous period of not less than 7 years or more;
- 2) Spouses of all other persons who have ordinarily resided in Hong Kong before or after the establishment of the HKSAR 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 HKSAR;
- 3) Spouses of all other persons who had the right of abode only in Hong Kong before the establishment of the HKSAR.

Views have been expressed that as long as the marital relationship of these people is an authentic one, it is reasonable that they should be entitled to the right of abode in Hong Kong. However, since the conditions of the HKSAR will be different from that of other regions, the SAR government should have the power to apply restrictions and control in order to reduce the pressure on the population, social welfare and other facilities in Hong Kong caused by the persons who immigrate to Hong Kong through marriage.

5. Conclusion

In summary, this discussion paper deals with four issues regarding immigration control and the issuing of passports and travel documents, and relevant proposals are listed. It first discusses the applications of overseas persons for temporary stay in the SAR. Views have been expressed that the SAR should have the power to control immigration. It was proposed that visa applications can be handled either by visa offices of the HKSAR overseas, China's overseas foreign affairs offices or Hong Kong trade offices overseas. On the coordination between the SAR and the Central People's Government regarding the immigration of overseas persons into the SAR, it was pointed out that as the SAR would have the power to deal with this issue under the Joint Declaration, there should not be any problem of coordination between the SAR and the Central Government. The paper also looks into the issue regarding the right of abode of the children who are born in the mainland of parents who have the right of abode in Hong Kong. It was suggested that this category of persons be automatically entitled to the right of abode in Hong Kong, whereas other views held that the SAR government should have the right to decide the priority of entry of this kind of people and, if there are too many mainland immigrants, to have consultations with the Central Government for reduction of daily immigration quota.

The last issue discussed in this paper is on what categories of persons may acquire the right of abode in Hong Kong through marriage. Some members pointed out that as long as the marriage to a holder of permanent identity card of the HKSAR is authentic, the right of abode should be granted; however, the SAR government has to impose restrictions when necessary.

* If there is any discrepancy between the Chinese and the English versions, the Chinese version shall prevail.

涉外事務專責小組 第十次會議議程

日期：一九八七年三月五日（星期四）

時間：下午五時三十分至七時

地點：基本法諮詢委員會會址

召集人：林邦莊委員

會務主任：何敏慧小姐

議程：1. 討論及通過由工作組遞交的「駐外機構」討論文件

2. 其他事項

(文件之中文本稍後附上)

香港
通志
編纂
辦法
新
版
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CCBL-SG/EXA-10-AG01-870303(E)

AGENDA FOR THE TENTH MEETING OF
THE SPECIAL GROUP ON EXTERNAL AFFAIRS

DATE: 5 March 1987 (Tuesday)

TIME: 5:30 p.m.

VENUE: CCBL Premises

CONVENOR: Mr. J.S. Lambourn

ADMINISTRATIVE OFFICER: Ms. Amy M.W. Ho

AGENDA:

1. To discuss and pass the discussion paper "Overseas Offices" prepared by the Working Group
2. Any other business.

(The Chinese version of the paper will be available later)

DISCUSSION PAPER ON
OVERSEAS OFFICES

(3/3/87)

* This paper is a draft of the discussion paper prepared for the Special Group on External Affairs. Members are invited to comment on this draft which will then be amended accordingly. Without the members' approval, this paper does not represent the view of the Working Group on Overseas Offices or the Special Group on External Affairs

Working Group
on
Overseas Offices

Special Group
on
External Affairs

1 Introduction

The prosperity of Hong Kong lies to a great extent on its internationalism. It is as important for Hong Kong to present what it has to offer to the world at large as it is to keep a close tab on the pulse of the world.

Hong Kong does this partly through its overseas offices operating in most of the countries having close trading ties with Hong Kong. These offices carry out a variety of duties to bridge Hong Kong and the world. At present, these offices, especially the Government ones, have strong attachment to the British representational offices in the related countries. It is of dire significance that Hong Kong should continue to maintain its close overseas relations after 1997. How it is to achieve this when its sovereignty is reverted to China is the focus of this discussion paper.

2 Background/Present Situation

In order to establish and keep up Hong Kong's foreign relations, the Hong Kong Government, as well as Hong Kong Trade Development Council, and Hong Kong Tourist Association maintain overseas offices. Basically, these overseas offices provide a point of direct contact between Hong Kong and the foreign governments and organisations but their specific functions differ:

2.1 Government Offices

2.1.1 Trade and Industry Branch

The Hong Kong Government maintains representative offices in London, Geneva, Brussels, Washington, and New York. These overseas offices are administered by the Trade and Industry Branch of the Government Secretariat. They represent Hong Kong's commercial relations interests and provide information on international developments which may affect Hong Kong.

The London Office is the largest and carries the widest range of functions among the overseas government offices. It provides a point of direct contact in London between Hong Kong and departments of the British Government, Members of Parliament, and organisations with an interest in Hong Kong. It is also responsible for all recruitment in the United Kingdom to the Hong Kong Civil Service and the Royal Hong Kong Police Force and supervises further training courses.

Another division of the office liaises with Hong Kong people in Britain and helps with problems arising from their living in Britain or relating to their families and

interests in Hong Kong. It also provides advice and assistance to visiting Hong Kong residents, regarding problems encountered.

The Students Division of the office looks after the interests of Hong Kong students in the U.K. and runs the Hong Kong Students Centre in London.

The News and Public Affairs Division operates publicity services aimed at projecting Hong Kong's image to the British public.

As for the commercial and industrial side, the Office keeps under review British commercial, economic, and industrial developments and official thinking on international trade policies, and advises the Hong Kong Government on the likely repercussions of these developments. It also incorporates an industrial promotion office to advise United Kingdom firms about opportunities for investment in Hong Kong industries (more information on industrial promotion offices in the next section).

As for the other four overseas offices, they are heavily engaged in developing Hong Kong's commercial affairs in the countries they cover, the Geneva Office represents Hong Kong in the General Agreement on Tariffs and Trade (Gatt), and the United Nations Conference on Trade and Development (UNCTAD). It keeps under review developments arising from the deliberations of the Gatt, the UNCTAD and other international organisations in Geneva.

The Brussels Office represents Hong Kong's economic and related interests concerning the European Community and the governments of the Member States (other than the United Kingdom).

The New York and Washington Offices keep under review economic or other developments, proposed legislation, and other matters in the United States of America that might affect Hong Kong's economic interests in general and its trade with the United States in particular. The U.S. Government is the main target of the Washington Office while the New York Office pays special attention to the American private sector. In order to step up public relations, the Hong Kong Government has appointed a public relations company as consultant, working under the direction of the Commissioner (New York).

2.1.2 Industrial Promotion Division

There are five overseas investment promotion offices in London, Stuttgart, Tokyo, San Francisco, and New York under the Industrial Promotion Division of the Industry Department.

Their objective is to generate interest in Hong Kong as a manufacturing base, promotion activities are geared towards encouraging introduction into Hong Kong of new or improved production technology and processes, so that local industry can upgrade its methods and continue to move towards higher technology and higher manufacturing skills.

These overseas offices are linked to a "One Stop Unit" in Hong Kong, which, with its network of contacts in both the government and the private sector, aims at providing useful information to assist potential investors. This unit also helps local manufacturers to find overseas partners or firms willing to enter into licensing or other agreements.

2.2 Hong Kong Trade Development Council

The Hong Kong Trade Development Council is a statutory body responsible for promoting and developing Hong Kong's overseas trade and publicising the opportunities and advantages of Hong Kong as a trading partner.

The chairman is appointed by the Governor and the 18 other members include representatives of major trade associations, leading businessmen and industrialists, and two senior government officials. The council is financed by the net proceeds of an ad valorem levy on trade declarations other than foodstuffs, and by miscellaneous income from sources such as advertising fees and sales of publications.

The council has built up a network of 24 offices throughout the world. All offices process trade enquiries, provide up-to-date trade and economic information and offer advice to businessmen interested in developing trade with Hong Kong.

2.3 Hong Kong Tourist Association

The Hong Kong Tourist Association (HKTA) is responsible for developing tourism. A statutory body set up by the government in 1957, the HKTA co-ordinates the activities of the tourism industry and advises the government and the industry itself on measures aimed at ensuring growth.

The overseas marketing of Hong Kong as a destination is carried out primarily through the HKTA's overseas offices and representatives working in conjunction with the local travel trade. Offices are located in San Francisco, New York, Chicago, Sydney, London, Frankfurt, Singapore, Tokyo and Osaka, and there are representatives in Paris and Rome. In addition, the HKTA is represented by Hong Kong-based Cathay Pacific Airways in 48 cities in Asia, the United States, Europe, Australia and New Zealand, and the Middle East where the association does not have an office of its own.

2.4 Staffing

All the Government overseas offices are staffed by civil servants most of whom specialise in industry/trade promotion.

2.5 Finance

Besides the Government offices, the overseas offices of the Tourist Association and the Trade Development Council are also financed by the Hong Kong Government since it subvents the two organisations.

2.6 Location

Most of the Government offices are located within British Embassies.

3 Relevant Clauses in the Joint Declaration

3.1 Clause (10) of Paragraph 3

"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.

3.2 Annex I Section VI

"The HKSAR 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 record.

3.3 Annex I Section XI

"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.

3.4 Annex I Section XIV

"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."

4 Issues for Consideration

4.1 HKSAR Government Overseas Staff

It was suggested that HKSAR overseas offices should only be staffed by officers appointed by the HKSAR Government.

4.2 Status of Government Overseas Offices and the Government Officers working in them

It was suggested that the government overseas offices and the government officers working in them should have diplomatic status. This would mean that China would have to seek from the countries concerned the necessary recognition of HKSAR Government overseas offices and officers.

The Basic Law should specify that China would seek such diplomatic status for government officers the namelist of which will be submitted by the HKSAR Government.

The Basic Law should also specify that China should seek sovereign status for the premises of the HKSAR Government overseas offices.

4.3 Status of overseas offices/officers of the Trade Development Council and the Tourist Association

(a) It was suggested that the Trade Development Council and the Tourist Association overseas offices should be treated as private enterprises in the sense that they need only be responsible to the Trade Development Council and the Tourist Association.

4.4 Private Enterprises and Quasi-Government Organisations.

The Basic Law should stipulate that private enterprises and quasi-government organisations should have the right to freely establish offices in overseas countries/areas.

4.5 Location

It was suggested that HKSAR overseas offices should not be in the same premises as the Chinese Embassies so as to demonstrate HKSAR's autonomous status from China.

4.6 Issuing of visas

~~It is specified in the Joint Declaration that the government of the HKSAR may on its own issue travel documents for entry into and exit from Hong Kong.~~

4.6.1 It was suggested that the HKSAR Government should have the right to confer the visa-issuing power to its overseas offices.

~~4.6.2~~ Another suggestion was that the HKSAR Government should set up visa-issuing offices overseas, but since the HKSAR will not have the resources to set up offices in too many countries, the Basic Law should stipulate that HKSAR should have the right to request China to issue visas on its behalf, according to the criteria set by the HKSAR and after referring special cases back to the HKSAR for consideration.

~~4.6.3~~ Another suggestion was that the Chinese Consulate would have a HKSAR official attached to it to issue visas.

~~4.6.4~~ Yet another suggestion was that the HKSAR should have the right to request both China and Britain to issue visas on its behalf, subject to criteria set by the HKSAR.

4.7 The duty of the representational office of China/the HKSAR in states where one of them is not represented:

4.7.1 In countries where HKSAR is not represented but China is:

The HKSAR Government should have the right to request the Chinese Government representational office to take up some of the duties of the HKSAR's overseas office.

4.7.2 In countries where China is not represented but HKSAR is:

The HKSAR overseas office should take up some of the duties of a Chinese overseas office on request by China.

4.8 Can the HKSAR establish representational offices in the following states?

4.8.1 States with no formal diplomatic relations with China:

The Basic Law should empower the HKSAR to establish representational offices in such states.

4.8.2 States not recognised by China:

The Basic Law should empower the HKSAR to establish representational offices in such states.

4.9 "Commercial diplomacy" to be distinguished from foreign affairs:

In fact the overseas offices are now carrying out a kind of "commercial diplomacy." Often they have to lobby government officials and politicians in the countries concerned in order to further Hong Kong's commercial interests. These activities must be distinguished from diplomacy or foreign affairs which is strictly outside the ken of the HKSAR. The Basic Law should contain clauses to specifically allow such activities.

4.10 Foreign consular and other official or semi-official missions to be established in the HKSAR

The Joint Declaration has distinguished among official missions, semi-official missions and non-governmental institutions, but the difference among them is not spelt out.

4.11 Some criteria for distinguishing between official missions and semi-official missions were suggested:

4.11.1 Powers of ratifying treaties on behalf of the government:

It was suggested that missions that can ratifying treaties for the country should be considered as official missions.

4.11.2 Reporting to the Government:

It was suggested that official missions would be those reporting to the government; semi-official missions would be those with close relations with the government but not having to report to the government or be controlled by it.

4.11.3 Financing and Reporting to Government:

It was suggested that official missions would be those financed by and reporting to the government; semi-official missions would be those subvented by the government but having high degree of autonomy in its administration.

4.11.4 Reporting to the Government/Centre of Power:

It was suggested that official missions would be those reporting to the government centre of power in the country.

4.11.5 Criterion for non-governmental institutions

It was suggested that non-governmental institutions would be those organisations not financed by the government nor having to report to it.

4.12 It was suggested that the definition of the two types of missions and non-governmental institutions need not be specified in the Basic Law because the clarification of the distinction is but for administrative convenience, and should not affect the principles or spirit of handling external affairs.

4.13 Reciprocal Rights:

It was suggested that the presence of a foreign mission in the HKSAR should give the HKSAR the reciprocal right to establish official or semi-official missions in the country concerned.

4.14 Procedure for establishing foreign offices in the HKSAR:

It should be stipulated in the Basic Law that the procedure for establishing a foreign office in the HKSAR would be for the foreign country to make a request to the HKSAR Government which considers the application and then makes a recommendation as to whether or not the office should be established to the Central Government for approval.

The establishment of foreign offices in the HKSAR requires the recommendation of the HKSAR Government.

4.15 Action taken against foreign missions/Removal of staff of foreign missions in the HKSAR

When the activities of foreign missions or those of their staff are found to be against the interest of the HKSAR,

i. Official mission:

The eviction of staff/diplomats of foreign embassies and action taken against official foreign missions would be within the realm of foreign affairs which is an area reserved to the Central Government.

But Basic Law should stipulate that the HKSAR Government should have the right to make a recommendation to the Central Government for eviction of or action (e.g. warning) against such official missions or their staff.

ii. Semi-official mission:

Since the establishment of semi-official missions in the HKSAR would need the approval of the Central Government, eviction of staff of or action against such missions should be reserved for the Central Government.

Again, the Basic Law should stipulate that ~~but Basic Law should stipulate that~~ the HKSAR Government should have the right to make a recommendation to the Central Government for eviction of or action (e.g. warning) against such semi-official missions or their staff.

iii. Non-governmental institutions

The Basic Law should stipulate that the HKSAR Government has the right to autonomously take action against non-governmental institutions and their staff.

駐外機構 討論文件

(1987年3月5日)

■此文件乃有關駐外機構之討論文件，是為涉外事務專責小組而預備的，若有任何意見，歡迎提出討論，增減或修正。未經委員接納前，此文件不代表駐外機構工作組或涉外事務專責小組的意見。

中華人民共和國香港特別行政區基本法諮詢委員會

涉外事務專責小組

1. 序言

香港的繁榮大多依靠其國際。香港向世界展示它所能提供的種種與及香港密切注視世界脈搏是同等重要的。

香港的駐外機構即能發出上述所提的效能。大多數與香港有密切貿易聯繫的國家皆有香港的駐外辦事處的設立。它們實為香港與世界的橋樑。現時，這些辦事處，尤其是香港政府的機構有密切的關係。香港在九七年後能繼續保持與世界的緊密聯繫在至為重要。香港的主權在回歸中國後如何能保持此聯繫即為此討論文件的重點。

2. 背景資料

為要發展及保持香港的對外關係，香港政府、香港貿易發展局及香港旅遊協會皆有設有駐外機構。基本上，這些機構為香港和外國政府及組織提供直接接觸的機會，但它們亦各有特別職務：

2.1 政府海外辦事處

2.1.1 香港政府在倫敦、日內瓦、布魯塞爾、華盛頓和紐約均設有辦事處。這些辦事處皆隸屬政府的工業署。

它們代表香港在商業關係上的利益和提供對香港有影響的國際發展資料。

上述海外辦事處中，以香港政府駐英辦事處的規模最大，職務範圍最廣。該辦事處除代表香港與英國政府各部門、國會議員以及香港有關的宣傳媒介和組織直接聯絡外，還負責為香港政府及皇家香港警務處在英國進行招募，並負責監督深造訓練課程。

該處的另一部門則與留英香港人保持聯絡，協助解決其居留英國或其留港家屬及其在港利益的問題，更為訪英的香港居民就其所遇到問題提供意見及援助。

該處的學生組照顧留英香港學生的利益，以及在倫敦主辦香港學生中心。

該處的新聞及公共事務組，負責宣傳工作，向英國人民報導香港的情況及建立其形象。

在工商業方面，該處經常注意英國工商業發展、經濟情況及官方對國際貿易政策的意見，然後向港府指出香港可能遭受的影響。該處並設有立促進工業投資事務所，就本港工業投資的機會向英國商行提供意見。（促進工業投資事務所詳情見下段）

其他四個海外辦事處皆大力發展香港在所駐國家內的商務。駐日內瓦辦事處在「國際關稅及貿易總協定」，以及「聯合國貿易和發展會議」中，代表香港處理有關事宜。上述協定和會議，以及其他駐日內瓦國際組織審議事項所引起的發展，一直由該辦事處加以檢討。

駐布魯塞爾辦事處代表香港爭取在歐洲共同市場和共市成員國(英國除外)的經濟利益和其他有關利益。

駐紐約和駐華盛頓的辦事處，則凡是美國國內的經濟和其他發展，建議法例和其他與香港一般經濟利益息息相關，特別是影響香港與美國貿易的事宜，這兩個辦事處都會進行樽討。駐華盛頓的辦事處主要的工作對象是美國政府，而駐紐約辦事處則着重私人機構方面。為要增強公共關係，一家公共關係公司已獲委任為香港政府在美國的顧問，按照港府駐紐專員的指示工作。

2.1.2 促進工業投資事務所

工業署屬下的促進工業投資事務所設有五間海外工業投資促進親事處，設於倫敦、史圖加、東京、三藩市及紐約。

工業署促進投資的工作，是要鼓勵外商將嶄新或改良的生產技術和工序引進香港，使本港工業可以提高生產方法，繼續朝較高技術及製造技巧發展。

該等辦事處與設於香港的「工業投資服務組」保持聯繫。該組與政府及私人機構建立聯絡網，可以透過提供有用的資料，協助有意投資人士。該組亦幫助本港製造商找尋願意簽訂「特許製造協議」或其他協議的海外夥伴或公司。

2.2 香港貿易發展局

2.3 香港旅遊協會

香港旅遊協會的職責是發展旅遊業。該會是政府在一九七五年設立的法定機構，負責協調旅遊業的活動，及向政府和旅遊業建議發展該業的措施。

香港旅遊協會在海外宣傳香港，目的是吸引海外人士來港遊覽。協會的宣傳工作，主要是透過其海外辦事處及代表進行，他們與當地的旅遊業人士携手合作，促進本港的旅遊事業。該協會的海外辦事處分設於三藩市、紐約、芝加哥、雪梨、倫敦、法蘭克福、新加坡、東京和大阪，在巴黎和羅馬則駐有代表。此外，由於協會在亞洲、美國、歐洲、澳洲及紐西蘭，以及中東等地的48個城市並沒有設立辦事處，所以便委託以香港為基地的國泰航空公司代理有關旅遊事務。

2.4.2 工作人員

所有政府海外辦事處的工作人員都是公務員，大部份都善長於發展工業/貿易。

2.5 經費

除政府本身的海外辦事處外，旅遊協會及貿易發展局的海外辦事處都由政府提供經費。

2.6 地點

大部份的政府海外辦事處都設於英國大使館內。

3. 《中英聯合聲明》的有關規定

3.1 第三條第十款

(十)香港特別行政區可以“中國香港”的名義單獨地同各國、各地區及有關國際組織保持和發展經濟、文化關係，並簽訂有關協定。

3.2 附件一第六節

3.2 「香港特別行政區可根據需要在外國設立官方或半官方的經濟和貿易機構，並報中央人民政府備案。」

3.3 附件一第十一節

3.3 「外國在香港特別行政區設立領事機構或其他官方、半官方機構，須經中央人民政府批准。同中華人民共和國建立正式外交關係的國家在香港設立的領事機構和其他官方機構，可予保留；尚未同中華人民共和國建立正式外交關係國家的領事機構和其他官方機構，可根據情況予以保留或改為半官方機構；尚未為中華人民共和國承認的國家，祇能設立民間機構。

聯合王國可在香港特別行政區設立總領事館。」

3.4 附件一第十四節

「對其他國家和地區的人入境、逗留和離境，香港特別行政區政府可實行出入境管制。」

4. 須考慮的問題

4.1 香港特別行政區政府海外辦事處人員

建議香港特別行政區海外辦事處人員應是香港特別行政區政府委任的官員。

4.2 政府海外辦事處及其工作人員的地位

建議政府海外辦事處及其工作人員應享有外交地位，即中國需為香港特別行政區政府的辦事處及其人員取得有關國家的認可。

基本法應列明中國會為特區政府官員取得外交地位，官員名單由香港特別行政區政府提交。

基本法須列明中國應為香港特別行政區海外辦事處的所在範圍取得主權地位。

4.3 貿易發展及旅遊協會海外辦事處/人員的地位

建議貿發展局及旅遊協會的海外辦事處應視為私人企業，即這些海外辦事處只須各自向貿易發展局或旅遊協會負責。

4.4 私人企業及半政府機構

基本法應規定私人企業及半政府機構(例如貿易發展局、香港旅遊協會)有權在海外國家/地區自由設立辦事處。

4.5 地點

建議香港特別行政區的海外辦事處不應設於中國大使館內，以表明香港特別行政區的自主地位。

4.6 簽證

《中英聯合聲明》指出香港特別行政區政府可自行簽發出入香港的旅遊證件。

4.6.1 建議香港特別行政區政府亦有權把簽證授予其海外辦事處。

4.6.2 另一建議認為香港特別行政區政府應設立海外簽證辦事處，但由於香港特區不一定有足夠資源在多個家設立辦事處，基本法應規定香港特區有權要求中國根據香港所定的准則代其簽證；如遇特殊個案，則先交由香港特區考慮，才代其簽證。

4.6.3 另一建議認為中國領事館應駐設一負責簽證的香港特區官員。

4.6.4 但有建議認為香港特區有權要求中國及英國根據香港所定的准則代表其簽證。

4.7 在中國或香港特別行政區任何一方沒有設駐代表的國家，另一方所設代表的職務：

4.7.1 只有中國代表而沒有香港特別行政區代表的國家：

香港特別行政區應有權要求中國政府駐海外辦事處負責香港特區辦事處的某些職務。

4.7.2 只有香港特區代表而沒有中國代表的國家：

香港海外辦事處應按中國要求負責中國海外辦事處的某些職務。

4.8 香港特別行政區在以下國家設立駐海外辦事處：

4.8.1 與中國沒有正式外交關係的國家：

基本法應授權香港特別行政區在這些國家設立駐海外辦事處。

4.8.2 中國不承認的國家：

基本法應授權香港特別行政區在這些國家設立駐海外辦事處。

4.9 區別「商業外交」與外交：

其實駐外辦事處現正進行一種「商業外交」。這些辦事處時常要對外國政府官員及政治人物進行游說工作，藉以促進香港的商業利益。這些游說活動定必要與外交有所區分，因為外交乃不屬香港特別行政區的管轄範圍。基本法應有條文特別聲明許可此等活動。

4.10 外國在香港特別行政區設立領事機構或其他官方、半官方機構。

《中英聯合聲明》有把官方機構、半官方機構及民間機構區分，但卻沒有道出其中分別。

4.11 有關分辨官方及半官方機構的準繩的提議：

4.11.1 替政府簽訂條約的權力：

有提議為凡可替其政府簽訂條約的機構皆應被視為官方機構。

4.11.2 向政府負責：

有提議為官方機構為須向政府負責者；

半官方機構為與政府有緊密關係但不須向政府負責或被政府控制者。

4.11.3 有提議為官方機構為由政府提供經費及須向政府負責；

半官方機構為受政府資助但在行政上有高度自主權者。

4.11.4 向政府/權力中心負責：

有提議為官方機構為須向政府或國家權力中心負責者。

4.11.5 區別民間機構的準則：

有提議為民間機構為非由政府提供經費及不須向政府負責者。

4.12 有提議為基本法不須訂明官方及半官方機構的定義，因為這定義純為行政上的方便，對處理涉外事務的原則或精神沒有影響。

4.13 視互權利：

有提議為若外國在香港特別行政區設立駐外機構，香港特區應有權在該國家設立官方或半官方的機構。

4.14 外國在香港特別行政區設立駐外機構的程序基本法應訂明在香港特別行政區設立駐外機構的程序應該是先由該國家向香港特區政府遞交申請，再由特區政府予以考慮然後作出建議，交由中央政府批准。

外國在香港特區設立駐外機構須先得香港特區政府的建議。

4.15 對外國駐港機構採取對付行動/遣送外國駐港機構人員離境當發現外國的駐港機構或其人員的活動對香港特區不利時：

i. 官方機構：

遣送外國大使館的人員/外交人士出境及對外國駐港機構採取對付行動當為外交事務，即屬中(國)政府管理。

但基本法應訂明香港特別行政區政府有權向中央政府建議遣送這些人員或對這些機構及人員採取對付行動(例如警告)。

ii. 半官方機構

既然在港設立官方機構須得到中央政府的批准，遣送其人員或對該等機構採取對付行動亦當屬中(國)政府管理。

同樣地，基本法應訂明香港特別行政區政府有權向中央政府建議遣送這些人員或對這些機構及人員採取對付行動(例如警告)。

iii. 民間機構

基本法應訂明香港特區政府有自主權對民間機構及其人員採取對付行動。

涉外事務專責小組 第十次會議紀要

日期：一九八七年三月五日（星期四）

時間：下午五時三十分至七時

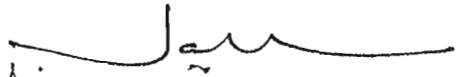
地點：基本法諮詢委員會會址

召集人：林邦莊委員

會務主任：何敏慧小姐

出席委員：張柏枝 林邦莊 歐成威 徐是雄 夏其龍
 曹宏威 李啓明 吳少鵬

1. 會議決定通過「駐外機構」討論文件為最後報告，並遞交執行委員會審閱。

召集人：  _____

入境管制、簽證問題 最後報告

(1987年3月9日)

- 此文件乃有關入境管制、簽證問題工作組之討論文件，是為涉外事務專責小組及中央與特別行政區的關係專責小組而預備的，若有任何意見，歡迎提出討論，增減或修正。在未經委員接納前，此文件並不代表涉外事務專責小組及中央與特別行政區的關係專責小組的意見。

中華人民共和國香港特別行政區基本法諮詢委員會

涉外事務專責小組及

中央與特別行政區的關係專責小組合辦

入境管制、簽證問題工作組

1. 序言

本份討論文件分為4部份。第二部份列出中英聯合聲明中有關入境管制及簽證的規定。在第三部份則簡述香港現行的入境管制及各類人士進入香港的簽證手續。最後一部份會提出幾個有關九七年以後特區出入境管制的主要問題，包括外地人士進入特區作短暫停留的手續和名額、中央與特區在外地人士移居特區的協調、中英聯合聲明中提及因其父或母在港有居留權而同樣享有居留權人士是否免受入境管制及又那些人士可因婚姻關係而獲得居港權利等。

2. 中英聯合聲明中有關入境管制及簽證問題的規定

2.1 中英聯合聲明第三款第二條：

「香港特別行政區直轄於中華人民共和國中央人民政府。除外交和國防事務屬中央人民政府管理外，香港特別行政區享有高度的自治權。」

第三款第十條：

「香港特別行政區可以“中國香港”的名義單獨地同各國、各地區及有關國際組織保持和發展經濟、文化關係，並簽訂有關協定。

香港特別行政區政府可自行簽發出入香港的旅行證件。」

2.2 附件一中有關入境管制及簽證問題的條文

附件一第十四項：

2.2.1 「在香港特別行政區有居留權並有資格按香港特別行政區的法律獲得香港特別行政區政府簽發的載明此項權利的永久居民身份證者為：在香港特別行政區成立以前或以後在當地出生或通常居住連續七年以上的中國公民及其在香港以外所生的中國籍子女；在香港特別行政區成立以前或以後在當地通常居住連續七年以上並以香港為永久居住地的其他人及其在香港特別行政區成立以前或以後在當地出生的未滿二十一歲的子女；以及在香港特別行政區成立以前只在香港有居留權的其他人。」

2.2.2 「中央人民政府授權香港特別行政區依照法律，給持有香港特別行政區永久性居民身份證的中國公民簽發中華人民共和國香港特別行政區護照，並給在香港特別行政區的其他合法居留者簽發中華人民共和國香港特別行政區其他旅行證件。上述護照和證件，前往各國和各地區有效，並載明持有人有返回香港特別行政區的權利。」

2.2.3 「香港特別行政區居民出入當地，可使用香港特別行政區政府或中華人民共和國其他主管部門，或其他國家主管部門簽發的旅行證件。凡持有香港特別行政區永久性居民身份證者，其旅行證件可載明此項事實，以證明其在香港特別行政區有居留權。」

- 2.2.4 「對中國其他地區的人進入香港特別行政區將按現在實行的辦法管理。」
- 2.2.5 「對其他國家和地區的人入境、逗留和離境，香港特別行政區政府可實行出入境管制。」
- 2.2.6 「有效旅行證件持有人，除非受到法律制止，可自由離開香港特別行政區，無需特別批准。」
- 2.2.7 「中央人民政府將協助或授權香港特別行政區政府同各國或各地區締結互免簽證協定。」

2.3 中方備忘錄有關簽證問題的說明

「...考慮到香港的歷史背景和現實情況，中華人民共和國政府主管部門自一九九七年七月一日起，允許原被稱為“英國屬土公民”的香港中國公民使用由聯合王國政府簽發的旅行證件去其他國家和地區旅行。

上述中國公民在香港特別行政區和中華人民共和國其他地區不得因其持有上述英國旅行證件而享受英國的領事保護的權利。」

3. 香港現行的入境管制和簽證的處理

3.1 香港現行入境政策的目的是，是要限制人口增長，使由入境所造成的人口增加保持在一個可接受的水平。另一方面，入境手續則盡量簡化，方便本港居民、遊客和商人出入本港。

3.2 香港人民入境事務處負責執行入境管制的工作；派員駐守各個出入境管制站，協助旅客辦理出入境手續。此外並會為本港居民及居港人士提供旅遊證件及辦理註冊手續，包括簽發旅遊證件、簽證和身份證等。人民入境事務處處長在申請人提交申請及費用後，有權在他認為適當的情況下發出身份證明文件，身份證明書，回港證，越南難民證件及其他文件。同時，人民入境事務處亦致力偵查和檢控違反入境條例的人士，以及將非法入境人士遣返原地。

3.3 從外地進入香港的情況

3.3.1 根據人民入境條例，下列人士享有在香港入境權及免受居留條件限制的自由（詳情參閱居民定義最後報告）

- (1) 香港本土人士。概括來說，“香港本土人士”是因與香港有關係而成為英國屬土公民的人士。
- (2) 華籍居民。人民入境條例第二條把“華籍居民”界定為：
 - ① 有純粹或部份中國人血統；及
 - ② 通常在香港連續居住不少於七年的移民（即並非身為「香港本土人士」者）。
- (3) 在香港居住的英國公民。通常在香港連續居住不少於七年的英國公民。
- (4) 在香港居住的聯合王國本土人士。即在香港通常連續居住七年或以上的聯合王國本土人士。

3.3.2 如入境人士持有下列任何一種旅行證件，則不論來港的目的是甚麼，亦毋須領取簽證：

- (1) 香港英國護照
- (2) 香港身份證明書
- (3) 回港證(只限由中國或澳門返回本港的人士使用)
- (4) 香港海員身份證
- (5) 香港海員國籍及身份證明書
- (6) 蓋有香港入境權簽註的旅行證件

3.3.3 如入境人士屬英國公民或持有在聯合王國簽發的英國護照而該護照並無簽註限制持有人進入英國的，可毋須領取簽證。不過，在到達香港時，入境人士可能需要向入境事務人員證明在港期間毋須工作而備有充足的旅費以維持在香港的生活。此外，並須持有回程或續程的機票或船票(過境前往中國或澳門的人士除外)，或能證明在香港已有確實職業。

3.3.4 如不屬以上兩類人士(3.3.2及3.3.3)，則須預先領取簽證以便來港就業、就讀、經營生意，或作永久居留。

3.3.5 來港遊客需持有由所屬國家發出之護照及有效旅行證件。如遊客乘搭航機直接過境或不離開機場過境等候室，又或是在規定時間內轉乘輪船離港，而又持有進入其他國家的有效證件，只要留港時間不超過規限，便毋須辦理簽證手續。

其他遊客如只在香港作短期逗留而不超越規限，在一般情況下不須簽證(附件一)。

3.3.6 申請入境人士如在海外申請，應向就近的英國護照辦事處申請簽證，或向任何英國領事館、高級專員公署或簽證辦事處辦理。

3.4 對中國各地區人士進入香港的情況(詳情請參閱中央與特別行政區的關係專責小組特區與各省區最後報告)

3.4.1 短期訪港者

大陸人士無論來港工作、經商、旅遊、求學及探親，需向各省區公安廳提交申請及證明文件，由公安機關發給「往來港澳通行証」或向國務院申請護照，一般限期為二至三個月。香港方面原則上無特定的入境條件及名額限制，但中國政府會主動控制人數，避免太多人湧至香港。根據香港政府的統計，八六年全年持「往來港澳通行証」入境的人士共655,590人。但每天卻沒有固定的限額，由羅湖入境，簽證前必須回國。

3.4.2 移居香港者

內地居民亦可因私人理由要求定居香港。現時中國發出之「前往港澳通行証」為每日七十五人。有意移居者須向所在地公安局申請，再由國務院公安部統籌。公安局將根據其本人意願及與在港親屬關係審批，香港方面由人民入境事務處處理。此名額經中港雙方同意為不論以任何理由移居香港之最高人數，未經雙方再行商定，不能超越。

3.5 香港本土人士申請配偶來港情況

3.5.1 外地人士

3.5.1.1 根據英國政府在八三年一月一日所實行的英國國籍法，如申請人在八三年一月一日前與其為英國屬土公民的香港配偶結婚，申請人可於五年內向英國海外大使館辦理登記手續，只要能提出充分的證據證明申請人與配偶的關係為合法的婚姻關係，申請人便可按登記手續而得到與其配偶相同的國籍身份，即英國屬土公民的身份。因着所獲取的國籍而自動享有入境權。

3.5.1.2 至於在八三年一月一日後與身為英國屬土公民的香港本土人士結婚的申請人需先在其所居住地^{3.5}向領事館申請來港，~~進入香港後可申請來港~~；進入香港後可申請居留簽證，在港居留^{3.5}一至四年後，並在符合居留條件情況下，可向人民入境事務處歸化入英國屬土公民國籍，得到入境權及免受居留條件限制的自由。

3.5.1.3 在八七年三月二日前在港居住的香港男性居民(包括永久性居民及臨時居民)配偶均有權以夫妻團聚為理由申請居留簽證，而在八七年三月二日行政局更動議通過~~放寬~~^{放寬}入境政策，准許本港女性居民以家庭團聚為理由，申請其外籍丈夫來港居留並享有與其配偶同等的居民權利，但夫婦二人的婚姻關係必須是可以證明的，而且該申請是否獲得批准，將會按個別情況而定。不過，新入境政策將不適用下列人士(不論男性或女性)

- (1) 自七五年四月三十日起，來自印度支那國家(例如柬埔寨、越南等)人士的申請，將不會被考慮。
- (2) 來自中國人士。
- (3) 前為中國居民人士，但自七九年一月十五日後定居澳門人士。

3.5.2 來自中國的配偶

香港人民入境事務處自七九年一月十五日開始實行凍結中國大陸人士入境政策，~~同時~~停止接受中國居民申請入境。此後中國居民如要移民香港，不論性別及年齡，均要向中國政府公安^局申請^{往來港澳通行證}。根據協議，~~每日最高限額為七十五人~~^{每日最高限額為七十五人}。一經批准，來港人士便可按指定日期離開中國，並在羅湖辦理入境手續。^{以上述方式來港定居之各類人士}

3.6 居留限制

凡來港旅遊人士應毋須工作而備有充足的旅費維持其在港的生活。旅遊人士均不得受僱從事任何職業(無論受薪或非受薪)、經營生意、或入學就讀；此外，除在極為特殊的情形下，旅遊人士於抵港後均不准改變其旅客身份。

申請來港讀書人士在獲得入境批准後，只能在人民入境事務處處長批准的學校中就讀，不能從事任何職業或經營生意。

申請來港工作人士，只能在人民入境事務處處長批准之職業中工作。另外，受僱的合約海員在其所屬船隻離開十四天後，不可以再逗留於香港。

4. 主要問題

4.1 外國人士如要進入特區作短暫停留(旅遊/經商/工作/求學/探親/過境)應由那機構負責?經什麼手續?

建議:

根據中英聯合聲明,特區政府應有入境管制權,因而中央政府不應在香港有入境管制權。✓

入境管制應由特區政府的行政機關如人民入境事務處負責。

應由那機構發出簽證?

有意見認為現時享有豁免簽證的地區人士如有足夠金錢及機票等,應毋須辦理簽證而進入香港。如要申請簽證,有下列建議:

- (1) 香港特別行政區可在地設立簽證處。這些辦事處可獨立於中國領事館之外,即不附屬於中國領事館,辦事處由香港人負責。
- (2) 特區政府可委托中國駐當地外交機關代辦;另有意見是特區政府亦可委托其他國家外交機關辦理。
- (3) 簽證應由中國駐外地外交機關簽發。
- (4) 特區政府簽證事務可交由香港駐外商務機關負責。

至於與中國無邦交地區人士的簽證手續可由上述商務機關或授權其他國家辦理。

4.2 外地人士移居特區

有意見認為在外地人士移居特區的問題上,特區有絕對審查和批准的權力,所以中央與特區不需協調。

有委員認為這問題並不存在,因為外地人士入境、逗留和離境,香港特別行政區可實行入境管制。如要取得居留權,則需在港通常居住連續七年或以上。對海外人士來說,要達到這項要求並不容易。

4.3^o 根據現行入境條例,內地人士如以非法途徑進入香港,將會被遣送回原地。但中英聯合聲明第十四項指出「在香港特別行政區有居留權者為:在香港特別行政區成立以前或以後在當地出生或通常連續居住七年以上的中國公民在香港以外所生的中國籍子女;在香港特別行政區以前或以後在當地居住連續七年以上並以香港為永久居住地的其他人及其在香港特別行政區成立以前或以後在當地出生的未滿二十一歲的子女」。

另一方面,在附件一中亦表明「對中國其他地區的人進入香港將按現在實行的辦法管理。」因此有權在港居留人士而在內地出生的子女,應否自動享有入境權利,或應否與其他人一樣,受到名額限制。

意見:

- (1) 根據中英聯合聲明,該等人士應自動享有在港居留權,毋須特別申請,所以不應受限於能進入香港之名額內。(現行名額是每日七十五人)
- (2) 另有意見認為根據中英聯合聲明另一條文「對中國其他地區的人進入香港將按現在實行的辦法管理」,該等人士未必應享有在港居留權,所以他們移居香港人數應包括在每日發出之名額內。

(3) 如果特區政府覺得從大陸移民入香港的程序超過特區能夠負擔的，特區政府有權向中央政府提出協商，增減每日入境之名額。至於現時中港政府同意的名額，到九七年時應由雙邊協議決定，不需要在基本法內規定。

有委員認為對有居留權的香港人，不可再加劃分。即使他們在中國大陸出生，也不可視為大陸人士。《中英聯合聲明》有關中國其他地區的人進入香港特別行政區的規定，是以大陸人士為對象。

4.4 中英聯合聲明中未有提及那些人士可因合法的婚姻關係而獲取居留權。因此，下列幾類人士應否享有居港權利：

- (1) 在九七年之前或以後在特區通常居住連續七年以上的中國公民的配偶；
- (2) 在特區成立以前或以後在當地通常住連續七年以上並以香港為永久居住地的其他人的配偶；
- (3) 在香港特別行政區成立以前只在香港有居留權的其他人的配偶。

有意見認為只要上述人士的婚姻關係為實質婚姻，其配偶按情理應享有居留權。但因特區本身的情況有別於其他地區，特區政府應有權作出控制，以減少因婚姻關係而入境的人士對香港人口、社會福利和各種設施所做成的壓力。

5. 結語

綜合本份討論文件，討論了四個入境管制和簽證方面的問題，並列出有關建議。首先討論了外地人士要進入特區作短期停留的情況。有意見認為特區應有入境管制權。如入境人士需要辦理簽證手續，分別提議由特區駐外簽證辦事處，中國駐外地外交機關或香港駐外商務機構負責。在外地人士移居特區的問題上，中央與特區如何協調；有意見指出根據中英聯合聲明，特區有權處理，所以中央與特區不存在協調問題。另外，討論到有權在港居留人士而在內地出生的子女的居港權利，有意見認為該等人士應可自動享有居留權，另一意見認為他們並不自動擁有居留權，因此特區政府可決定他們入境的人數及優先次序及當太多內地人士移民香港特區時，特區政府有權向中央政府提出協商，減少每日移民的名額。最後一個問題是討論到那幾類人士可因婚姻關係而獲得特區居留權，委員指出只要其配偶及持有永久居民性居民身份證人士的婚姻為實質婚姻，便應有居留權，但亦有委員指出——如按照現行辦法，到時特區政府也可按當時的需要而實施管制。

FINAL REPORT ON
IMMIGRATION CONTROL; THE ISSUING OF
PASSPORTS AND TRAVEL DOCUMENTS

(10/3/87)

* This paper is a draft of the discussion paper which the Working Group on the Immigration Control; the Issuing of Passports and Travel Documents prepared for the Special Group on the External Affairs and the Relationship between the Central Government and the SAR. Members are invited to comment on this draft which will then be amended accordingly. Without the members' approval, this paper does not represent the view of the Special Group on the External Affairs or the Special Group on the Relationship between the Central Government and the SAR.

Working Group on
Immigration Control; the Issuing of
Passports and Travel Documents

Special Group on External Affairs;

Special Group on
the Relationship between
the Central Government and the SAR

1. Introduction

This discussion paper is divided into four parts. The second part lists out the provisions on immigration control and the issuing of passports and travel documents under the Joint Declaration. The third part is a brief description of the present immigration control in Hong Kong and the procedures required for different categories of persons applying for visas of entry into or exit from Hong Kong. The last part of the paper raises some major issues regarding immigration control of the SAR after 1997: procedures required for overseas persons applying to stay temporarily in the SAR, the quota for such application, coordination between the Central Government and the SAR regarding immigration of overseas persons to the SAR; whether the persons enjoying the right of abode in Hong Kong because they were born of parents such right (as mentioned in the Joint Declaration) are free from immigration control; and what kind of people can obtain the right of abode in Hong Kong by marriage?

2- Provisions on immigration control and the issuing of passports and travel documents under the Joint Declaration:

2.1 Clause (2), Para 3 of the Joint Declaration :

"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."

Clause (10), Para 3 :

"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."

2.2 Provisions on immigration control and the issuing of travel documents and passports in Annex I to the Joint Declaration:

2.2.1 Section XIV, Annex I:

"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.

2.2.2 "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."

2.2.3 "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."

2.2.4 "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."

2.2.5 "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."

- 2.2.6 "Unless restrained by law, holders of valid travel documents shall be free to leave the Hong Kong Special Administrative Region without special authorisation."
- 2.2.7 "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."
- 2.3 Elaboration on the issuing of passports and travel documents in the Chinese Memorandum of the Joint Declaration:
- "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."
- 3. The present policy of immigration control and the issuing of passports and travel documents in Hong Kong**
- 3.1 The aim of the present immigration policy of Hong Kong is to restrict the growth of population, and to maintain an acceptable level of increase of population caused by immigration. On the other hand, the application procedures for entry into Hong Kong are kept simple for the convenience of the local citizens, tourists and businessmen travelling in and out of the territory.
- 3.2 The Immigration Department of Hong Kong is responsible for immigration control. Staff are stationed in immigration points to assist travellers in going through the entry and exit procedures. In addition, it provides travel documents and registration service to local citizens and persons staying in Hong Kong, including the issuing of travel documents, visas and identity cards, etc. Upon receipt of an application and the necessary fee, the Director of Immigration has the right to issue a document of identity, certificate of identity, re-entry permit, Vietnamese refugee card or other documents to the applicant as he thinks fit. At the same time, the Immigration Department is also to investigate and prosecute persons who have violated the Immigration Ordinance, and to repatriate illegal immigrants/ unauthorised entrants to their own countries.

3-3.1 According to the Immigration Ordinance, the following categories of persons have the right to land and freedom from conditions of stay (please refer to the final report on Definition of Inhabitants for details):

- 1) Hong Kong belongers. Broadly speaking, Hong Kong belongers are persons who are British Dependent Territories citizens by virtue of a connection with Hong Kong.
- 2) Chinese residents. A Chinese resident is defined in section 2 of the Immigration Ordinance as an immigrant (that is, a person who is not a Hong Kong belonger) who
 - a) is wholly or partly of Chinese race; and
 - b) has at any time been ordinarily resident in Hong Kong for a continuous period of not less than 7 years
- 3) Resident British citizens i.e. a British citizen who has at any time been ordinarily resident in Hong Kong for a continuous period of not less than 7 years.
- 4) Resident United Kingdom belongers i.e. a United Kingdom belonger who has at any time been ordinarily resident in Hong Kong for a continuous period of not less than 7 years.

3.3.2 No visa is required for any purpose if the person entering Hong Kong holds any of the following travel documents:

- 1) Hong Kong British Passport
- 2) Hong Kong Certificate of Identity
- 3) Hong Kong Re-entry Permit (for entry from China and Macao only)
- 4) Hong Kong Seaman's Identity Book
- 5) Hong Kong Seaman's Certificate of Nationality and Identity
- 6) Travel documents bearing an endorsement for the right to land in Hong Kong.

3.3.3 If the entrant is a British citizen or holder of a United Kingdom passport issued in the United Kingdom which is not endorsed to show that he is subject to immigration control, no visa is required for any purpose. However, on arrival in Hong Kong, he may have to satisfy the immigration officer that he has sufficient means of support for his stay in Hong Kong without working. He should also hold return or onward tickets (unless he is in transit to China or Macao), or evidence of definite employment in Hong Kong.

3.3.4 If neither 3.3.2 nor 3.3.3 applies to the entrant, he will require a visa before coming to work, study, establish or join in any business or to settle in Hong Kong for permanent residence.

3.3.5 Visitors coming to Hong Kong should hold passports issued by their home countries or other valid travel documents. Visitors who are in direct transit by air and if they do not leave the airport transit area, or will leave the territory by ship within a certain period of time, and have valid documents for entry into other countries, do not require visas if their stay is within a certain limit of time.

Generally, other visitors who stay in Hong Kong for a short time not exceeding the visa free period do not require a visa. (Appendix 1)

3.3.6 If applications for entry into Hong Kong have to be made overseas, applicants can apply for a visa from the nearest branch of the British Passport Office, or from a British Consulate, High Commission or Visa Office.

3.4 Entry into the HKSAR of persons from other parts of China (For details, see the final report on the SAR and the various provinces/regions prepared by the Special Group on the Relationship between the Central Government and the SAR).

3.4.1 For a short visit to Hong Kong

The mainlanders coming to Hong Kong for work, business, tour, study, and visiting relatives are to submit applications and certifying documents to the public security office of their respective provinces/regions for "Hong Kong and Macau entry/exit permit" valid for 2-3 months, or to apply to the State Council for passports. In principle, no special entry restriction or quota is imposed by Hong Kong whereas the Chinese Government is to control the number of people on her own initiative to prevent an excessive influx of people into Hong Kong. According to the Hong Kong Government statistics, holders of Hong Kong and Macau entry/exit permits entering Hong Kong amount to 655,590 in 1986. But there is no daily quota for entry to Hong Kong through Lo Wu. The holders of such permits are to return to China before their permits expire.

3.4.2 For migration to Hong Kong

The mainland residents may apply for migration to Hong Kong for personal reasons. The existing quota for Hong Kong and Macau entry/exit permits set by China is 75 per day. Those who wish to migrate to Hong Kong are to apply to their respective public security bureaus. The application is co-ordinated by the Ministry of Public Security under the State Council. The public security bureaus will consider each case in the light of the applicant's aspiration and his/her relation with the relatives in Hong Kong. On the part of Hong Kong,

the applications will be dealt with by the Immigration Department of Hong Kong. Both the PRC and Hong Kong agree that this quota is the maximum number of mainlanders migrating to Hong Kong for whatever reasons. Without further agreement between the PRC and Hong Kong, the quota may not be increased.

3.5 Hong Kong belongers applying for entry of their spouses

3.5.1 Overseas people

3.5.1.1 According to the Nationality Act of the United Kingdom enforced by the U.K. Government on 1 January 1983, an applicant married to a British Dependent Territories citizen before 1 January 1983 may register with a British embassy within 5 years. With sufficient evidence to prove that he/she is the lawful spouse of a British Dependent Territories citizen, the applicant may, in accordance with the registration procedure, acquire the nationality of his/her spouse i.e. the citizenship of British Dependent Territories. This nationality will entitle the applicant the right to land in Hong Kong.

3.5.1.2 An applicant married to a Hong Kong British Dependent Territories citizen after 1 January 1983 should first apply to the British embassy in his/her place of residence for entry into Hong Kong and, upon his/her entry, apply for residence in Hong Kong. Having resided in Hong Kong for 3 or 4 years and satisfied the residence requirement, he/she may apply to the Immigration Department for naturalisation as a British Dependent Territories citizen, which will entitle him/her the right to land and the freedom from conditions of stay.

3.5.1.3 The spouse of any male resident (either permanent or temporary resident) residing in Hong Kong before 2 March 1987 may, on the ground of reunion with her husband, apply for residence in Hong Kong. On 2 March 1987, the Executive Council proposed to pass a more lenient immigration policy, allowing any Hong Kong female resident to apply on the ground of family reunion, for the entry and residence of her husband of foreign nationality (the husband, if granted residence in Hong Kong, may enjoy equal residents' rights as the applicant), provided that the couple can produce substantial proof of their marriage. Whether or not the applications will be approved will depend on the conditions of individual cases. However, the new immigration policy will not be applicable to the following people (irrespective of their sex):

1. Applications from people of Indo-China (e.g. Cambodia, Vietnam, etc.) will not be considered.
2. People from China.
3. Macau residents who were PRC residents before 15 January 1979.

3-5-2 Spouses from China

The Hong Kong Immigration Department has adopted a frozen immigration policy towards mainlanders since 15 January 1979 and stopped accepting Chinese residents' applications at that time. From then on, should Chinese residents (irrespective of their sex and age) wish to migrate to Hong Kong, they are to apply to the public security bureaus of the Chinese Government for a Hong Kong and Macau entry/exit permit. As agreed, the daily quota is 75. Upon approval, the mainlanders may depart from China on the date specified and go through the entry procedures at Lo Wu.

3-6 Restrictions of Stay

Visitors are required to have adequate funds to cover the duration of their stay without working and they are not allowed to enter employment (paid or unpaid), to establish or join in any business, or to enter school as a student, nor, except in the most unusual circumstances, are visitors allowed to change their status after arrival.

After obtaining the permission to enter Hong Kong, applicants who apply to study in Hong Kong can only study in schools as approved by the Director of Immigration, and they are not allowed to enter employment or to establish or join in any business.

Applicants who apply to work in Hong Kong can only enter employment as approved by the Director of Immigration. In addition, contract seamen cannot stay in Hong Kong for more than 14 days after their craft has left the territory.

4. Major issues

- 4.1 Which department is responsible and what procedures are involved when overseas visitors apply for temporary stay in the HKSAR (for sightseeing/business/work/study/transit)?

Proposals :

According to the Joint Declaration, the SAR government shall exercise immigration control, therefore, the Central People's Government should not have the power of immigration control in Hong Kong. Immigration control should be the responsibility of the executive authorities, such as the Immigration Department, of the SAR.

Which department shall be responsible for issuing visas?

Views have been expressed that persons who at present enjoy visa exemption should not require visas for entry to Hong Kong provided that they have sufficient funds and hold onward or return tickets. If visa application is required, it is proposed that:

- 1) The HKSAR may set up visa offices overseas. These offices can be independent of the Chinese Consulate, i.e. they are not affiliated to the Chinese Consulate, and are run by Hong Kong people.
- 2) The issuing of visas can be delegated by the SAR government to the overseas foreign affairs offices. Another view is that the SAR government may entrust the foreign affairs offices of other countries with this responsibility.
- 3) Visas should be issued by the Chinese diplomatic offices overseas.
- 4) The issuing of visas can be delegated by the SAR government to Hong Kong trade offices overseas.

As regards the issuing of visas for persons of countries that do not have diplomatic relations with China, it can be delegated to the trade offices mentioned above or other countries be authorised to issue visas on behalf of the HKSAR.

4.2 Immigration to the HKSAR from overseas

Views have been expressed that as the SAR has absolute power of examination and approval on this issue of immigration to the HKSAR from overseas, there is no need for co-ordination between the SAR and the Central People's Government.

A member suggested that this problem did not exist because entry, stay-in and departure from Hong Kong would be regulated by immigration control of HKSAR. For the person to acquire a right of abode, seven years or more ordinary residence would be required. This would not be easy to achieve for people from overseas.

- 4.3 According to the present Immigration Ordinance, mainland people who enter Hong Kong through illegal means will be repatriated to the place they come from. However, the Joint Declaration specifies that persons who shall have the right of abode in the HKSAR are: "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; ~~and~~ 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."

On the other hand, Annex I also states that "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."

Thus, the question that arise are whether the children born in the mainland of parents who have the right of abode in Hong Kong should automatically enjoy the right to land in Hong Kong, or whether they should be treated equally as other mainland people and subject to quota restriction.

Views:

- 1) According to the Joint Declaration, this category of persons shall automatically enjoy the right of abode in Hong Kong without special application. Therefore, the quota shall not apply to them. (The existing quota is 75 persons per day)
- 2) As the Joint Delcaration provides that "entry into the HKSAR of persons from other parts of China shall continue to be regulated in accordance with the present practice", this category of persons may not necessarily be entitled to the right of abode in Hong Kong automatically. Hence, the number of these persons migrating to Hong Kong should be included in the daily quota.
- 3) If the HKSAR Government felt that the number of mainland immigrants is more than it can take, it has the right to have consultations with the Central Government for revision of the daily immigration quota. The quota presently agreed to by China and Hong Kong shall be decided through bi-lateral consultations after 1997 and needs not be specified in the Basic Law.

A member suggested that there could not be a distinction drawn among Hong Kong people with the right of abode. They could not be regarded as mainlanders even if born in the mainland. The regulation of entry of person from other parts of China as mentioned in the Joint Declaration should be regarded as referring to mainlanders.

- 4.4 The Joint Declaration does not mention which categories of persons may acquire the right of abode in Hong Kong through legitimate marriage.

Whether the following categories of persons should be granted the right of abode:

- 1) Spouses of Chinese nationals who have ordinarily resided in Hong Kong before or after the establishment of the SAR for a continuous period of not less than 7 years ~~or more~~;
- 2) Spouses of all other persons who have ordinarily resided in Hong Kong before or after the establishment of the HKSAR 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 HKSAR;
- 3) Spouses of all other persons who had the right of abode only in Hong Kong before the establishment of the HKSAR.

Views have been expressed that as long as the marital relationship of these people is an authentic one, it is reasonable that they should be entitled to the right of abode in Hong Kong. However, since the conditions of the HKSAR will be different from that of other regions, the SAR government should have the power to apply restrictions and control in order to reduce the pressure on the population, social welfare and other facilities in Hong Kong caused by the persons who immigrate to Hong Kong through marriage.

5. Conclusion

In summary, this discussion paper deals with four issues regarding immigration control and the issuing of passports and travel documents, and relevant proposals are listed. It first discusses the applications of overseas persons for temporary stay in the SAR. Views have been expressed that the SAR should have the power to control immigration. It was proposed that visa applications can be handled either by visa offices of the HKSAR overseas, China's overseas foreign affairs offices or Hong Kong trade offices overseas. On the co-ordination between the SAR and the Central People's Government regarding the immigration of overseas persons into the SAR, it was pointed out that as the SAR would have the power to deal with this issue under the Joint Declaration, there should not be any problem of coordination between the SAR and the Central Government. The report also looks into the issue regarding the right of abode of the children who were born in the mainland of parents who have the right of abode in Hong Kong. It was held that this category of persons should be automatically entitled to the right of abode in Hong Kong, whereas other views held that they would not be automatically entitled to the right of abode, hence, the SAR government should have the right to decide the priority of entry of this kind of people and their number; if there are too many mainland immigrants,

the SAR Government should have the right to have consultations with the Central Government for reduction of daily immigration quota. The last issue discussed in this paper is on what categories of persons may acquire the right of abode in Hong Kong through marriage. Some members pointed out that as long as the marriage to a holder of permanent identity card of the HKSAR is authentic, the right of abode should be granted. But a member pointed out that the SAR government could, in accordance with the present practice, impose restrictions when necessary.

* If there is any discrepancy between the Chinese and the English versions, the Chinese version shall prevail.

FINAL REPORT ON
OVERSEAS OFFICES

(10/3/87)

Special Group
on
External Affairs

1 Introduction

The prosperity of Hong Kong relies to a great extent on its international trade. It is important for Hong Kong to present what it has to offer to the world at large. To do this it must keep in close contact with the pulse of world trade.

Hong Kong does this partly through its overseas offices operating in most of the countries having close trading ties with Hong Kong. These offices carry out a variety of functions to present Hong Kong to the world. At present, these offices, especially the Government ones, have strong attachment to the British representational offices in the related countries. It is of crucial importance that Hong Kong should continue to maintain its close overseas relations after 1997. How it is to achieve this when sovereignty is reverted to China is the focus of this discussion paper.

2 Background/Present Situation

In order to establish and keep up Hong Kong's foreign relations, the Hong Kong Government, as well as Hong Kong Trade Development Council, and Hong Kong Tourist Association maintain overseas offices. Basically, these overseas offices provide a point of direct contact between Hong Kong and the foreign governments and organisations but their specific functions differ:

2.1 Government Offices

2.1.1 Trade and Industry Branch

The Hong Kong Government maintains representative offices in London, Geneva, Brussels, Washington, and New York. These overseas offices are administered by the Trade and Industry Branch of the Government Secretariat. They represent Hong Kong's commercial relations interests and provide information on international developments which may affect Hong Kong.

The London Office is the largest and carries the widest range of functions among the overseas government offices. It provides a point of direct contact in London between Hong Kong and departments of the British Government, Members of Parliament, and organisations with an interest in Hong Kong. It is also responsible for recruitment to the Hong Kong Government and carries out co-ordination work for further training courses.

Another division of the office liases with Hong Kong people in Britain and helps with problems arising from their living in Britain or relating to their families and

interests in Hong Kong. It also provides advice and assistance to visiting Hong Kong residents, regarding problems encountered.

The Students Division of the office looks after the interests of Hong Kong students in the U.K. and runs the Hong Kong Students Centre in London.

The News and Public Affairs Division operates publicity services aimed at projecting Hong Kong's image to the British public.

As for the commercial and industrial side, the Office keeps under review British commercial, economic, and industrial developments and official thinking on international trade policies, and advises the Hong Kong Government on the likely repercussions of these developments. It also incorporates an industrial promotion office to advise United Kingdom firms about opportunities for investment in Hong Kong industries.

As for the other four overseas offices, they are heavily engaged in developing Hong Kong's commercial relationships with the countries they cover, the Geneva Office represents Hong Kong in the General Agreement on Tariffs and Trade (Gatt), and the United Nations Conference on Trade and Development (UNCTAD). It keeps under review developments arising from the deliberations of the Gatt, the UNCTAD and other international organisations in Geneva.

The Brussels Office represents Hong Kong's economic and related interests concerning the European Community and the governments of the Member States (other than the United Kingdom).

The New York and Washington Offices keep under review economic or other developments, proposed legislation, and other matters in the United States of America that might affect Hong Kong's economic interests in general and its trade with the United States in particular. The U.S. Government is the main target of the Washington Office while the New York Office pays special attention to the American private sector. In order to step up public relations, the Hong Kong Government has appointed a public relations company as consultant, working under the direction of the Commissioner (New York).

2.1.2 Industrial Promotion Division

The Industrial Promotion Division, under the Department of Industry, operates five overseas investment promotion offices in London, Stuttgart, Tokyo, San Francisco, and New York under the Industrial Promotion Division of the Industry Department.

Their objective is to generate interest in Hong Kong as a manufacturing base, promotion activities are geared towards encouraging introduction into Hong Kong of new or improved production technology and processes, so that local industry can upgrade its methods and continue to move towards higher technology and higher manufacturing skills.

These overseas offices are linked to a "One Stop Unit" in Hong Kong, which, with its network of contacts in both the government and the private sector, aims at providing useful information to assist potential investors. This unit also helps local manufacturers to find overseas partners or firms willing to enter into licensing or other agreements.

2.2 Hong Kong Trade Development Council

The Hong Kong Trade Development Council is a statutory body responsible for promoting and developing Hong Kong's overseas trade and publicising the opportunities and advantages of Hong Kong as a trading partner.

The chairman is appointed by the Governor and the 18 other members include representatives of major trade associations, leading businessmen and industrialists, and two senior government officials. The council is financed by the net proceeds of an ad valorem levy on trade declarations other than foodstuffs, and by miscellaneous income from sources such as advertising fees and sales of publications.

The council has built up a network of 24 offices throughout the world. All offices process trade enquiries, provide up-to-date trade and economic information and offer advice to businessmen interested in developing trade with Hong Kong.

2.3 Hong Kong Tourist Association

The Hong Kong Tourist Association (HKTA) is responsible for developing tourism. A statutory body set up by the government in 1957, the HKTA co-ordinates the activities of the tourism industry and advises the government and the industry itself on measures aimed at ensuring growth.

The overseas marketing of Hong Kong as a destination is carried out primarily through the HKTA's overseas offices and representatives working in conjunction with the local travel trade. Offices are located in San Francisco, New York, Chicago, Sydney, London, Frankfurt, Singapore, Tokyo and Osaka, and there are representatives in Paris and Rome. In addition, the HKTA is represented by Hong Kong-based Cathay Pacific Airways in 48 cities in Asia, the United States, Europe, Australia and New Zealand, and the Middle East where the association does not have an office of its own.

2.4 Staffing

All the Government overseas offices are staffed by civil servants most of whom specialise in industry/trade promotion.

Staff of the Trade Development Council and the Hong Kong Tourist Association are employed by the two organisations and are not civil servants.

2.5 Finance

Besides the Government offices, the overseas offices of the Tourist Association and the Trade Development Council are also financed by the Hong Kong Government since it subvents the two organisations.

2.6 Location

Most of the Government offices are located within British Embassies.

3 Relevant Clauses in the Joint Declaration

3.1 Clause (10) of Paragraph 3

"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.

3.2 Annex I Section VI

"The HKSAR 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 record.

3.3 Annex I Section XI

"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.

3.4 Annex I Section XIV

"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."

4 Issues for Consideration

4.1 HKSAR Government Overseas Staff

It was suggested that HKSAR overseas offices should only be staffed by officers appointed by the HKSAR Government.

4.2 Status of Government Overseas Offices and the Government Officers working in them

- i) It was suggested that the government overseas offices and the government officers working in them should have diplomatic status. This would mean that China would have to seek from the countries concerned the necessary recognition HKSAR Government overseas offices and officers.

The Basic Law should specify that China would seek such diplomatic status for government officers the namelist of which will be submitted by the HKSAR Government.

The Basic Law should also specify that China should seek sovereign status for the premises of the HKSAR Government overseas offices.

- ii) Another view is that there is no need for China to seek this status if the HKSAR can do this on its own.

4.3 Status of overseas offices/officers of the Trade Development Council and the Tourist Association

- i) It was suggested that the Trade Development council and the Tourist Association overseas offices should be treated as private enterprises in the sense that they need only be responsible to the Trade Development Council and the Tourist Association.

- ii) It was suggested that the present arrangement for the offices and the officers working in them should continue.

4.4 Private Enterprises and Quasi-Government Organisations.

The Basic Law should stipulate that private enterprises and quasi-government organisations should have the right to freely establish offices in overseas countries/areas.

4.5 Finance

It was suggested that the present arrangement for financing of overseas offices should continue but some arrangements will have to be drawn up to cover situations where the HKSAR overseas offices undertake some duties for the Central Government where the Central Government does not have representative office or vice versa.

4.6 Location

i) It was suggested that HKSAR overseas offices should not be in the same premises as the Chinese Embassies so as to demonstrate HKSAR's autonomous status from China.

ii) Another view suggested that if it is regarded as advantageous by the HKSAR for it to set up its own separate overseas offices in the same premises as the Chinese Embassies this would be equally satisfactory.

4.7 Work of the official overseas offices in respect of issuing of visas for entry into the HKSAR

4.7.1 It was suggested that the HKSAR Government should have the right to confer the visa-issuing power to its overseas offices. (Please refer to the final report on Immigration Control; Issuing of Passports and Travel Documents of the Subgroup on External Affairs)

4.8 The duty of the representational office of China/the HKSAR in states where one of them is not represented:

4.8.1 In countries where HKSAR is not represented but China is:

It was suggested some of the duties of the HKSAR's overseas offices could be taken up by the Chinese representational office at the request of the HKSAR Government to the Central Government.

4.8.2 In countries where China is not represented but HKSAR is:

It was suggested the HKSAR overseas office could take up some of the duties of the Chinese overseas office at the request of the Central Government.

4.9 The establishment of HKSAR overseas representational offices in the following:

4.9.1 States which have no formal diplomatic relations with China:

It was suggested that the Basic Law should empower the HKSAR to establish overseas representational offices where no formal diplomatic relation with China exists.

4.9.2 States which are not recognised by China:

The Basic Law should empower the HKSAR to establish representational offices in such states.

Another suggestion was that non-governmental institutions could be established in such states.

4.10 "Commercial diplomacy" to be distinguished from foreign affairs:

It was suggested that in fact the overseas offices are now carrying out a kind of "commercial diplomacy." Often they have to lobby government officials and politicians in the countries concerned in order to further Hong Kong's commercial interests. These activities must be distinguished from diplomacy or foreign affairs which is a responsibility of the Central Government. The Basic Law should contain clauses to specifically allow such activities.

4.11 Foreign consular and other official or semi-official missions to be established in the HKSAR

The Joint Declaration has distinguished between official missions, semi-official missions and non-governmental institutions, but the difference between them is not spelt out. Some criteria distinguishing between official missions and semi-official missions were suggested:

4.11.1 Powers of ratifying treaties on behalf of the government:

It was suggested that missions that can ratify treaties for the country should be considered as official missions.

4.11.2 Directly responsible to their Government:

It was suggested that official missions would be those directly responsible to their government; semi-official missions would be those with close relations with the government but not being directly responsible to it.

4.11.3 Financing and Being Responsible to Government:

It was suggested that official missions would be those financed by and responsible to their governments; semi-official missions would be those subvented by their governments but having a high degree of autonomy in their administration.

4.11.4 Responsibility to their Government or Centre of Power:

It was suggested that official missions would be those reporting to their governments or centre of power in the country.

4.11.5 Criterion for non-governmental institutions

It was suggested that non-governmental institutions would be those organisations not financed by the government nor being responsible to it.

4.11.6 It was suggested that the definition of the two types of missions and non-governmental institutions need not be specified in the Basic Law because the clarification of the distinction is but for administrative convenience, and should not affect the principles or spirit of handling external affairs.

4.12 Reciprocal Rights:

It was suggested that the presence of a foreign mission in the HKSAR should give the HKSAR the reciprocal right to establish official or semi-official missions in the country concerned.

4.13 Procedure for establishing foreign missions in the HKSAR:

It was suggested that it should be stipulated in the Basic Law that the procedure for establishing a foreign mission in the HKSAR would be for the foreign country to make a request to the HKSAR Government which should consider the application and make a recommendation as to whether or not the mission should be established to the Central Government for approval.

It was suggested that the establishment of foreign missions in the HKSAR should require the recommendation of the HKSAR Government before being approved by the Central Government.

4.14 Action taken against foreign missions/Removal of staff of foreign missions in the HKSAR

It was suggested that when the activities of foreign missions or those of their staff are found to be against the interest of the HKSAR,

i. Official mission:

It was suggested that the eviction of staff/diplomats of foreign embassies and action taken against official foreign missions would be within the realm of foreign affairs which is an area of responsibilities reserved to

the Central Government. But the Basic Law should stipulate that the HKSAR Government should have the right to make a recommendation to the Central Government for eviction of or action (e.g. warning) against such official missions or their staff.

Another view suggested that this stipulation was unnecessary.

ii. Semi-official mission:

It was suggested that since the establishment of semi-official missions in the HKSAR would need the approval of the Central Government, eviction of staff of or action against such missions should be an area of responsibilities reserved to the Central Government.

It was suggested that the Basic Law should stipulate that the HKSAR Government should have the right to make a recommendation to the Central Government for eviction of or action (e.g. warning) against such semi-official missions or their staff.

Another view suggested that this stipulation was not necessary.

iii. Non-governmental institutions

It was suggested that the Basic Law should stipulate that the HKSAR Government has the right to autonomously take action against non-governmental institutions and their staff.

中央與特別行政區的關係專責小組
及涉外事務專責小組
聯合會議
第二次續會議程

日期：一九八七年三月十一日（星期三）

時間：下午五時三十分至七時

地點：基本法諮詢委員會會址

召集人：張柏枝委員

會議主任：劉豔梅小姐

議程：1. 討論及通過「入境管制、簽證問題」最後報告

2. 其他