

1997

The Future of Hong Kong: Not What It Used To Be

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Peter Wesley-Smith, *The Future of Hong Kong: Not What It Used To Be*, 30 *Vanderbilt Law Review* 421 (2021)

Available at: <https://scholarship.law.vanderbilt.edu/vjtl/vol30/iss3/2>

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The Future of Hong Kong: Not What It Used To Be

Peter Wesley-Smith*

ABSTRACT

With the re-integration of Hong Kong into the People's Republic of China in June 1997, this Article provides an insightful review and analysis of the history of the "Hong Kong question" from the cession of Hong Kong island to the British Crown in 1842 to the territory's current status in 1997. This Article begins with an overview of Hong Kong's early colonial history, examining the acquisition and retention of Hong Kong by the British Government. This Article then continues with a detailed account of the treatment of Hong Kong, including the eventual decision to return Hong Kong to the People's Republic of China, by both the United Kingdom and the People's Republic of China during the post-War period from 1945 to 1997. Finally, with Hong Kong's re-integration in the near future, this Article concludes that the future of Hong Kong rests with the idea and success of "one country, two systems."

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* This Article was prepared for the Hong Kong Symposium held at Vanderbilt University, School of Law, Nashville, Tennessee, March 1997.

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I know that the Chinese people are willing to go to war with England over Hong Kong, even if the Chinese Government is not.

—Lin Yu-tang¹

I. INTRODUCTION

Wrested by force or threat through “unequal treaties” and at the cost of the enduring hostility of the Chinese nation, Hong Kong as a British colony often seemed fragile and uncertain. Much of it was secured by a lease which would expire in 1997. Considerable efforts were therefore made at various times in Hong Kong and the Colonial Office to place the territory on a firmer footing, but from 1943 it seemed unlikely that even the *status quo* could long be defended in the post-war world. After 1949, the central issue was whether Hong Kong could survive at all as a British dependency on the periphery of Communist China. This Article, based on documents available up to the end of 1996 in the Public Record Office in London,² seeks to present British attitudes towards retention of its Far Eastern colony.

1. *Between Tears and Laughter*, quoted in the draft Kitson memorandum of 1946 referred to in *infra* note 24.

2. In general, British government records are subject to the “thirty year rule” and thus the primary material for this study stops at the mid-1960s. Documents for 1966 were not available, and some files that had begun before then but not yet completed remained closed; some records, usually of course the most important, sensitive, and interesting ones, are subject to a longer period of closure and cannot yet be consulted. The record is thus incomplete. As time goes on, more and more materials are released, and therefore judgments made on what is now available must always be subject to reconsideration. It should be noted as well that certain matters affecting Sino-British relations in regard to Hong Kong, such as the Walled City of Kowloon, territorial waters, the appointment of a Chinese consular officer, administration of the boundaries, customs matters, and construction of an airport in the New Territories, will not be discussed in this Article. While important in their own right, and giving rise to much urgent diplomatic activity, they did not significantly impinge on the question of the colony’s future.

This Article relies on records preserved by the British government at Kew. These records are identified by their department (e.g. CO or Colonial Office; FO or Foreign Office), the series to which they belong (e.g. CO129, Governor’s dispatches from Hong Kong to the Secretary of State for the Colonies; FO371, general correspondence), and, depending on the method of storage, the number of the volume or box or file in which they are deposited (e.g., CO537/1656). Sometimes there is a file within a box which is separately identified (e.g. FO371/5361 F2134). The normal method of citation is to refer to the particular item of correspondence

II. THE ACQUISITION AND RETENTION OF COLONIAL HONG KONG: 1842-1945

A. *British Acquisition of Hong Kong*

The island of Hong Kong, following the Opium War, was ceded to the British Crown by the Treaty of Nanjing 1842. A small strip of territory on the opposite mainland, known as Kowloon, and Stonecutters Island were ceded in 1860. Cession was then understood in international law to mean an absolute transfer of sovereignty over the territory in perpetuity. Legal title was therefore safe, at least until China was strong enough to demand retrocession. The last acquisition, however, of the New Territories, comprising rural hinterland and sea boundaries enclosing the ceded portions, was achieved through a ninety-nine year lease in 1898. Britain asserted sovereignty over the leasehold, though recognizing the obligation to restore it to China in 1997. In due course, it became clear that the ceded colony could not exist as a functioning territorial unit without the leased addition, and the primary objective in the first part of this century was to convert the lease into a formal cession.

B. *Proposals to Cede the New Territories*

Governors of Hong Kong were the principal movers in advancing the cause of cession, and no opportunity which might arise in Sino-British relations was lost. As early as 1909, Sir Frederick Lugard suggested cession as a condition for the return of Weihaiwei, a Chinese territory also leased in 1898 but for an uncertain term. The Colonial Office promised to give careful consideration to the proposal when the time came.³ Weihaiwei was not restored until 1930, and in the meantime Sir Cecil Clementi revived Lugard's proposal. A Colonial Office clerk minuted, "The outlook is an anxious one for Hong Kong but our best chance of saving the New Territories is to lie doggo and assume that the lease

which has initiated a file, by for example generating minutes within the departments or institutions of government (e.g., Grantham to CO, secret, tel No 79, 26 Jan. 1949, in FO371/7539; this indicates a secret cable from the Governor of Hong Kong to his Secretary of State on the date shown which has been copied to the Foreign Office and stored in their files). Occasionally there will be a free-standing memorandum as the only item in a file. Various storage methods and occasional untidiness and uncertainty appear, and thus citation cannot be an exact science.

3. PETER WESLEY-SMITH, *UNEQUAL TREATY 1898-1997: CHINA, GREAT BRITAIN AND HONG KONG'S NEW TERRITORIES* 155 (1980).

will run its normal course (another 70 years)."⁴ In 1929, the Foreign Office sought the views of Sir Miles Lampson, British Minister in Beijing, on whether the Chinese government would accept a package of Weihaiwei, money, and certain disputed tracts of land on the Burmese border in return for cession of the New Territories. Lampson scorned the idea. "For us to seek now to perpetuate or extend any existing alienation would be not only to invite a rebellion but to concentrate active attention on issues far better left dormant."⁵ The Colonial Office nevertheless wanted the question constantly in mind in case a "less unfavourable" opportunity should occur in the future.⁶ It was pressed again in 1930 in relation to what appeared to be agreement on customs, but Lampson remained firmly opposed. It was raised again a year later with equal lack of favour, by Sir William Peel and by Sir Geoffry Northcote in 1938, this time in return for a substantial loan to China.⁷ The time, however, was never ripe, and no approach to the Chinese government was ever made.

Opinion in the Foreign Office had in any event turned against such schemes, and once Britain was embroiled in World War II the issue was not cession of the New Territories but whether the entire colony should and could be preserved.

C. *Retention of Hong Kong*

The China specialists in the British diplomatic corps had long had doubts about maintaining the unequal treaties, including those by which Britain had acquired Hong Kong. In 1919, for example, Sir John Jordan, British Minister to China, favored the "neutralization or internationalization of all leased territories under conditions which will secure immunity from attack and render such terms as 'open door' and 'China's integrity' realities and not the meaningless expressions they too often are at present."⁸ One of his successors, Sir H. Seymour, in 1942 urged that Hong Kong be given up along with extraterritorial rights in China.⁹ The officials of the Foreign Office tended to waver, sometimes supporting outright retention, sometimes seeking to protect Hong Kong but restoring Chinese sovereignty. Sir John Pratt, previously from the consular service in China, argued in 1931 against annexation of the New Territories in favor of merely preserving the water supply and

4. On Clementi to Amery, tel, 19 Jan. 1927, in FO371/12399.

5. Lampson to Foreign Office, tel No 534, in CO129/517/12A.

6. Gent to Foreign Office, 24 July 1929, in FO371/13949.

7. WESLEY-SMITH, *supra* note 3, at 155-61.

8. *Id.* at 151.

9. See PREM3/157/4.

strengthening the case for preservation of the ceded colony alone.¹⁰ Ten years later he was prepared to abandon the entire territory.

After Japan's occupation of Hong Kong in 1941, the issue for the British was how to formulate a post-war policy for Hong Kong, given that the Americans under Roosevelt were hostile to British imperialism in the Pacific and that China was likely to demand rendition of Hong Kong as a consequence of the war. From 1941 to 1943, the trend of official opinion was in favor of accommodating China's wishes by some compromise arrangement, such as a joint mandatory system with the United States.¹¹ In 1942, the Colonial Office, traditionally a strong proponent of Hong Kong's retention, suggested that after victory in the war, and assuming satisfactory international co-operation, His Majesty's Government would be "ready to consider with the Government of China the future position in Hong Kong and will not for their part regard the maintenance of British sovereignty of the Colony as a matter beyond the scope of such discussions. They recognize that Hong Kong is geographically an integral part of China and that the services which the port and mart of Hong Kong can render to their ally China and to the development of good relations between China and all the United Nations should be the predominant factor in any reconstruction plans."¹² That is, Hong Kong should be returned "on terms."

There was much support for this notion, though strong dissents were registered, and it was in general agreed that readiness to re-cede Hong Kong would dissipate if conditions in China were not at the time propitious. The first major test of this tentative policy came with the Chinese counter-draft to Britain's draft treaty for the renunciation of British extraterritorial rights in China. Included was a demand that the New Territories convention be terminated. Britain was not prepared to concede, even at the cost of sacrificing the extraterritoriality treaty, but China unexpectedly relented, being content instead with a promise that the New Territories lease could be discussed after the war. At a conference on Pacific relations later in 1942, Sir John Pratt, to the displeasure of the Foreign Office, stated that he felt "confident that when the time came to deal with Hong Kong, the Chinese would be completely satisfied."¹³

Thereafter, during the war, the Hong Kong question subsided. China apparently believed that the deal was done, barring the paperwork, and that the whole colony would be returned to Chinese sovereignty once victory was won. British attitudes, however,

10. WESLEY-SMITH, *supra* note 3, at 159.

11. CHAN LAU KIT-CHING, *CHINA, BRITAIN AND HONG KONG 1895-1945*, 299 (1990).

12. *Id.* at 301.

13. *Id.* at 309; WESLEY-SMITH, *supra* note 3, at 161.

gradually moved towards retention. American opinion continued to favor the Chinese side, but its articulation was uncoordinated, and Winston Churchill expressed adamant opposition to rendition (he was not, he said, His Majesty's Prime Minister "to preside over the liquidation of the British Empire").¹⁴ Roosevelt offered Chiang Kai-shek support for the recovery of Hong Kong in return for a representative government in China and co-operation with the communists in the fight against Japan, hoping Chiang would make Hong Kong an international free port. Churchill was neither consulted nor amused, and refused to discuss the matter with Roosevelt when it was informally raised in November 1943. At Yalta in 1945, Roosevelt secretly mentioned to Stalin his ideas for the future of Hong Kong, as "he hoped that the British would give back the sovereignty of Hong Kong to China and that it would then become an internationalised free port."¹⁵ He sent General Patrick Hurley to London to discuss the issue. "[O]ver my dead body" was Churchill's response.¹⁶

By 1945, Britain was assuming that the *status quo ante bellum* would be restored in Hong Kong. A naval force under Rear-Admiral Sir Cecil Harcourt arrived in the colony on August 30 to assist in administration after Japan's collapse on the 14th. The urgent issue then became the formal acceptance of the Japanese surrender. Britain initially insisted that her sovereignty over Hong Kong was the crucial factor, whereas Chiang Kai-shek argued pre-eminence as commander-in-chief of the China theatre. With Truman and MacArthur's support, however, Britain offered acceptance of the surrender by Harcourt on behalf of both Britain and Chiang, and Chiang agreed.¹⁷ With the British flag once more ascendant, China's ambition to recover Hong Kong had to rely on post-war diplomacy.¹⁸

14. James T.H. Tang, *World War to Cold War: Hong Kong's Future and Anglo-Chinese Interactions, 1941-55* in Ming K. Chan (ed), *PRECARIOUS BALANCE: HONG KONG BETWEEN CHINA AND BRITAIN 1842-1992*, 109 (Ming K. Chan, Ed., 1994).

15. He said he knew that Mr Churchill would have strong objections to this suggestion, affirmed by Mr Churchill in the House of Commons in March 1955 ("That was certainly correct and even an under-statement"). Minute on FO371/115058.

16. See Note by Churchill, 11 Apr. 1945, in CO129/592/8: "I took him up with violence about Hong Kong and said that never would we yield an inch of the territory that was under the British flag."

17. CHAN LAU KIT-CHING, *supra* note 11, at 319-22. For Chiang's reasons, see Shian Li, *'he Extraterritoriality Negotiations of 1943 and the New Territories*, 30 *MODERN ASIAN STUDIES* 617, 648 (1996).

18. See Tang, *supra* note 14, at 110, on British reasons—prestige, pride, commercial interests, strategic concerns - for wishing to retain Hong Kong.

III. THE EARLY POST-WAR PERIOD: 1945-1949

The Colonial Office had nevertheless remained flexible on the future of Hong Kong, at least in regard to the New Territories. A note to the Far Eastern Economic Sub-committee of the War Cabinet in December, 1944 had stated the hope "that a favourable opportunity will be taken to secure at least a prolonged term arrangement with China which will assure the Colony of the non-interruption of the many public services dependent on the New Territories—Water supply, airfield, certain port facilities—and will permit of business confidence in development."¹⁹ A Cabinet paper, dated October 9, 1945, referred to several possibilities, including return of the New Territories, but with an Anglo-Chinese joint board of management for the airport and the water storage and supply system, a joint municipal board for the urban parts of the New Territories contiguous to British Kowloon, and a Chinese government representative on the port authority.²⁰ Early in 1946, a prominent Hong Kong businessman, John Keswick, suggested a "self-governing municipality" in place of the colony, and on January 25, Mr. G. V. Kitson in the Foreign Office minuted, "A settlement which would satisfy Chinese demands and conserve our interests for a generation at least would be to hand back the whole Colony to China and then lease it from China for, say, 30 years (on the Port Arthur precedent) ostensibly as a naval base, with limited Chinese participation in the local administration."²¹ This, or something similar, had been considered by the Far Eastern Civil Planning Unit, which commented that to retrocede Hong Kong outright was not an option until at least a strong and just government was established in China, able to deliver fair trading conditions for foreign enterprise.²²

The Foreign Office was perhaps more sensitive to post-war realities than the Colonial Office, officials expressing concern at the decision to send Sir Mark Young back as Governor in 1946. A British observer had complained that civil affairs staff in Hong Kong had returned "completely oblivious of what has happened in the Far East since 1941, with the one idea of getting things back to 'normal' as soon as possible, and by this they meant in the *first* place getting the clubs going again and leaving their offices at 5 p.m. These people will, of course, be disillusioned before very long, but in the meantime grave harm may be done to our relation with the Chinese,

19. See CO129/592/8.

20. McVittie to Colonial Office, 10 Oct. 1945, in CO129/592/8.

21. See a file on the future of the University of Hong Kong, FO371/53639 F752.

22. See CO537/1656.

both in Hong Kong and in China."²³ Kitson thought a mayor might be more appropriate than a traditional colonial governor. Kitson was much involved with the Hong Kong question, and later in February, 1946, he produced the first draft of an important memorandum titled "The Future of Hong Kong." He summarized the Chinese position (as "essentially a moral issue, and for her a vital one"), as well as the case for retention (commercial, political, and strategic), U.S. and Soviet attitudes, and China's tactical strength. He also made the case for an "adjustment" designed to meet Chinese aspirations. Rejecting outright cession of the whole colony as a betrayal of commitments to British business interests in Hong Kong, he surveyed the following possibilities: (1) retrocession of the New Territories alone, with safeguards regarding the airport and water supply; (2) retrocession of the entire territory followed by a lease-back, with U.N. involvement; and (3) introduction of a modern system of government along the lines of a "free port and municipality" with elective institutions. In paragraph 50, he wrote:

It is suggested that His Majesty's Government should issue a statement referring to our relinquishment of extraterritorial rights in China in 1943, and recalling that an understanding was reached on that occasion that His Majesty's Government would be prepared to discuss the question of the New Territories when victory was won. The statement could go on to say that, although our lease of the New Territories does not expire till 1997, His Majesty's Government is prepared, as a gesture of goodwill and in a spirit of friendship for the Chinese nation, to enter into negotiations forthwith with a view to the rendition, on suitable conditions, of the New Territories to Chinese control. The statement could add that, as regards Hong Kong itself, the present position is governed by Treaty arrangements, but in conformity with our feelings of goodwill and friendship His Majesty's Government is prepared to consider with the Chinese government any adjustment which may be called for by the conditions and requirements of the post-war world as applied to this territory, and which would take into account the benefits accruing from Sino-British co-operation in the Far East.²⁴

Meanwhile, the Colonial Office sent along for comment a proposed statement to be issued by Sir Mark Young on his resumption of the governorship from the interim military administration. Although this seemed in line with the third option of Kitson's draft memorandum, suggesting a fully representative municipal council to take over some government functions, Kitson was dismayed that, in failing to refer to China's aspirations, it would irritate and disappoint the Chinese,²⁵ though the text was only

23. See FO371/53631 F2134.

24. FO371/53632 F3237.

25. Minute on Lloyd to Sterndale Bennett, 13 Mar. 1946, *in* FO371/53633 F3865.

marginally amended.²⁶ Another idea was revived as well, the "internationalization" of Hong Kong. Kitson objected that it would give the Soviet Union a foothold in Hong Kong, and that "the Chinese would look askance at an internationalized Hong Kong representing another Shanghai International Settlement and a perpetuation of the 'unequal treaties.'"²⁷ Sir Mark Young thought that to return the New Territories while retaining the ceded districts was not practicable, even if New Kowloon (the urban area contiguous to ceded Kowloon) and the Walled City of Kowloon were by agreement with China retained. Sir Horace Seymour, Ambassador in Nanking, doubted whether China would be "willing to deal with the New Territories apart from the Colony . . . In any event the usual Chinese technique would be to take what they could get as a first installment towards the attainment of their full object."²⁸

Kitson produced a revised version of his memorandum in July, 1946. This time he suggested that return of the New Territories alone was no longer feasible: "Any attempt on our part to draw a distinction between Hong Kong and the New Territories would simply be treated as legal casuistry. The two have become inseparable in the Chinese mind, and no solution can be satisfactory unless it treats the problem as a whole."²⁹ A new alternative solution, equally not supported, was some form of Anglo-Chinese condominium over Hong Kong. He referred also to international control, his earlier objections being reiterated. Paragraph 50 of the first draft disappeared, and his principal recommendation was:

(a) that we should consider the restoration of Chinese sovereignty over Hong Kong and the termination of the existing lease of the New Territories;

(b) that with the surrender of sovereignty we should wish to secure our rights and interests in Hong Kong for, say, thirty years and to negotiate with the Chinese a position by which Hong Kong could function as a secure commercial base for not only British but also international interests; [and]

(c) that we should take the initiative by approaching the Chinese Government with a view to discussions on the basis of the proposal outlined in paragraph 43 above [which referred to a stipulation that Hong Kong, "in addition to being a free port, would be available for the joint use of Britain and China as a naval and

26. Secretary of State to Harcourt, secret, 5 Apr. 1946, in FO371/53634 F5707.

27. FO371/53635 F10373.

28. Memorandum, "Consideration of Development Policy in the New Territories" (53687/48), 7 Oct. 1948, in CO537/3712 (34056).

29. FO371/5365 F10572.

air base for maintaining security in the Pacific in accordance with their respective obligations under the United Nations Charter"].³⁰

No further action, however, was taken on this recommendation, and it seems simply to fade away in the available government records.

Just prior to Kitson's revised draft, and recorded in annexes no longer on file, Chiang Kai-shek and Wellington Koo "enquired informally whether conversations could be opened between our two Governments with a view to reaching a solution of the Hong Kong problem."³¹ The relevant original file in the Public Record Office at Kew is marked "retained in department," and this approach is not referred to in other open documents. Presumably Chiang and Koo were "informally" informed that the time was not yet ripe for conversation on that topic.

A joint CO-FO memorandum on the future of Hong Kong was prepared in November, 1946, proposing conditions for any premature surrender of the New Territories lease. These included joint management of the water supply system and an understanding regarding new government installations in the territory, and they were reiterated in a Colonial Office document in April 1947.³² The Colonial Office had meanwhile wanted a paper which included the case *against* a British initiative.³³ G. W. Swire strongly urged retention of Hong Kong in order to preserve Britain's China trade,³⁴ and the Vice-Chancellor of the University of Hong Kong complained that "in a hundred years, we have done almost nothing by education, social services or political education to foster a 'Hong Kong' patriotism among the Chinese."³⁵ Other, more urgent matters claimed attention.³⁶ Late in 1947, the KMT government, without expressly seeking discussions on the retrocession of the New Territories, issued instructions that elections for the National Assembly be held in the Walled City of Kowloon. Seymour's successor in Nanking, Sir Ralph Stevenson, reported the Chinese view that China as reversionary landlord had extensive powers of

30. *Id.*

31. Kitson to Vile, 26 Aug. 1946, in FO371/53636 F11428.

32. *See supra* note 28.

33. Lloyd to Dening, secret, 22 Aug. 1946, in FO371/53637 F12400.

34. Swire to Kitson, 13 Aug. 1946, in FO371/53637 F12400.

35. Sloss to Cripps, 11 Oct. 1946, in FO371/53638 F15424.

36. *See, however,* a long letter received by the Royal Institute of International Affairs, dated 16 Apr. 1947, quoting T.V. Soong's description of Hong Kong as "the thorn in the side of China" and urging the need to avoid causing economic problems to China, in FO371/63388 F6544. Further, N.L. Smith, former Colonial Secretary in Hong Kong, volunteered a memorandum in August 1948 proposing the return of the New Territories on condition that New Kowloon be ceded to Britain and that arrangements be made to protect the reservoirs ("A very large annual cash subvention might go some of the way to its solution") and the airfield, in CO537/3702 and CO129/609/8.

intervention in New Territories affairs. The same attitude appeared in relation to the Hong Kong government's attempt to evict squatters from the Walled City, which became a major controversy early in 1948.³⁷ Scott in the FO had little doubt "that the Chinese Government would have been only too glad to let sleeping dogs lie but they did not want the dog to go permanently to sleep."³⁸ Stevenson, however, cabled in late January 1948 that Kuomintang policy was "to keep agitation for return of Hong Kong alive and foster the genuine feeling on the subject which undoubtedly exists in this country."³⁹ Nevertheless, Britain would not shortly be faced with a formal approach for retrocession. As Stevenson stated, "My impression is that they do not yet regard the time as ripe for such a move."⁴⁰ Yet five months later he wrote that the Vice-Minister for Foreign Affairs had denied any intention on the part of the Chinese government to raise the question of the status of Hong Kong.⁴¹

In 1948 and 1949, the Colonial Office was concerned with proposals for developments in the New Territories, such as a reservoir at Tai Lam Chung and an airport at Deep Bay. Mr. J. B. Sidebotham minuted in October, 1948 that the government must assume a British decision not to hand back the New Territories until 1997; in any event, since there could be no legal basis for claiming compensation from China for investments in the leasehold, planning should proceed on the basis that capital costs would be fully amortized by that date. Continued development was desirable "as an indication to the Chinese that we intend to remain there until the end of the lease."⁴² Action was deferred pending discussion in Cabinet, when it was decided that HMG should stay in Hong Kong "in the absence of conditions in which the Colony's future can be discussed with a friendly and stable Chinese Government."⁴³

As the civil war in China neared its conclusion, of course, the other primary issue was to tailor policy to the expected new situation of a communist government assuming office. Hong Kong was particularly concerned about influxes of refugees,⁴⁴ and Grantham was anxious for a public assurance of the British position in the colony. The Under Secretary of State for Foreign Affairs had stated in the House of Commons on December 10, 1948

37. Stevenson to FO, secret, No. 6, 3 Jan. 1948, in FO371/69578 F1352. See WESLEY-SMITH, *supra* note 3, at 127.

38. *Id.*

39. Stevenson to FO, important, tel. No. 99, 28 Jan. 1948, in FO371/69578 F1471.

40. *Id.*

41. Stevenson to FO, important, confidential, tel. No. 523, 23 June 1948, in FO371/69574.

42. See minutes in CO537/3712 and FO371/115058.

43. *Id.*

44. See Grantham to CO, secret, tel. No. 1187, 24 Dec. 1948, in CO78/1.

that "it is the intention of HMG to maintain their position in Hong Kong . . . Indeed, we feel that in this particularly troubled situation the value and importance of Hong Kong as a centre of stability will be greater than ever."⁴⁵ But Grantham wanted further and unambiguous promises that that policy would not change.⁴⁶ Opinion was divided, and the matter was shelved for the time being, though Grantham, worried about recent developments in the Chinese civil war and their effect on morale in Hong Kong, unsuccessfully renewed his request in May 1949.⁴⁷ Indeed, Cabinet ministers were by then of the view that "it would be neither militarily nor politically possible for us to remain in Hong Kong if there were a settled Government of China which was one hundred per cent hostile to our staying there," and that it would be best to lie low until it was known what the communists wanted.⁴⁸ The former director of the Shanghai office of the Ministry of Foreign Affairs stated his belief the following month that the new leaders of China would be prepared to leave the question of Hong Kong in suspense, provided it was not thrust under their noses. Mr. F. S. Tomlinson minuted, "We have to devise means of giving our friends the maximum encouragement, while at the same time giving our enemies the minimum provocation."⁴⁹

In June 1949, the Cabinet asked for a new memorandum regarding long-term policy on Hong Kong. Mr. J. J. Paskin extracted from a minute by the Foreign Secretary's private secretary the following statement:

The study would have to be based on the assumption that, despite recent changes in the internal situation in China, it will not be possible for us to retreat from the position taken up with Marshal Chiang Kai-Shek during the war, *i.e.* that the future of Hong Kong would be a question discussable with the Government of China when the war was over. This basic assumption is necessitated both by our announced policy of desire to reach amicable relations with whatever government emerges in China and by the probable reactions of the United States, India and Australia to any other line on our part. If the new government of China raises this issue, we must be ready to tackle it on this basis.

The limited duration of the lease of the New Territories also makes this study necessary. The possibility of the loss of the New Territories on the prescribed date and the consequent effect on the

45. Secretary of State to Grantham, important, tel. No. 2, 1 Jan. 1949, in FO371/75839; see also the statement by Rees-Williams on 7 July 1948 that no change was contemplated in the status of Hong Kong as a Crown colony.

46. Grantham to CO, secret, tel. No. 79, 26 Jan. 1949, in FO371/75839.

47. Grantham to Creech Jones, top secret, No. 16, 3 May 1949, in FO371/75780.

48. Shanghai office to FO, top secret, priority, No. 411, 3 June 1949, in FO371/75874.

49. Brook, Cabinet Office, to Denning, Foreign Office, secret and personal, 12 May 1949, in FO371/75872.

situation of Hong Kong in itself calls for an evaluation of the future of the Colony and its status and defensibility in the changed circumstances.

There is however the important corollary that, so long as any menace to Hong Kong remains and there is any possibility of the use of force or measure of duress against it, no public intimation that His Majesty's Government would be prepared to discuss the future of the Colony can be given, in view of the disastrous effect which such intimation would have on local morale.⁵⁰

At a Cabinet meeting in August, a member had asked whether consideration had been given to an international regime for Hong Kong. Foreign Office clerks reviewed previous discussions in 1946, in Kitson's memoranda, and by the July working party, and Mr. P. D. Coates produced a paper on "International Control of Hong Kong" on September 5 that effectively ruled out further contemplation of the idea.⁵¹ The reasons given were that: (1) the United States (whose anti-colonialist attitudes had prompted the original discussions) opposed the idea unless both the USSR and communist China were kept out, and the U.N. would not endorse their exclusion; (2) few friendly powers would be willing to participate; (3) Chinese nationalist susceptibilities would be offended "as it would appear to defer sine die the return of Hong Kong to China," and the Chinese government would probably be provoked into immediate counter-action; and (4) the practical difficulties, in the face of Chinese hostility, would be overwhelming. There were equally conclusive arguments against trusteeship: the U.N. would wish to set up a commission to ascertain the wishes of the inhabitants of Hong Kong by plebiscite, and "even if a plebiscite were to record a majority for remaining under British sovereignty and Hong Kong were placed under United Kingdom trusteeship, the goal to which the Trusteeship Council would work would have to be the attainment of self-government or independence. Soviet and Chinese influence in the Council, together with the lukewarm attitude of other Powers, would ensure that the administration of Hong Kong became impossible."⁵²

Already in May it had been decided by Cabinet that further reinforcements proposed by the Ministry of Defence should be sent

50. Paskin to Scarlett, secret, 24 June 1949, in FO371/75839.

51. FO371/75839.

52. *Id.*; see also Denning's minute to the Foreign Secretary, 18 Aug. 1949, in FO371/75878 (rejecting an international solution for two reasons: it would be "a solution least likely to commend itself to the Chinese," and the likelihood of a Soviet veto in the UN). The Foreign Secretary's decision that a system of international control would not solve "the Hong Kong problem" was communicated to the Colonial Office in Paskin to Denning, secret, 31 Aug. 1949, in CO537/4805. Several years later, however, though with no effect on British policy, trusteeship was proposed by Sir John Slessor, Marshall of the Royal Air Force: *The Times*, 5 Sept. 1958, in CO1030/595.

to Hong Kong and that the United States should be asked "to support a policy of defending Hong Kong against aggression by Communist forces from the mainland and, if need be to make at the appropriate stage a public declaration in support of that policy."⁵³ Additionally, "[w]e are advised that the Communists might be in a position to stage an attack upon Hong Kong by the beginning of September at the earliest. While it is by no means certain that they will resort to such a course, we have decided that to be ready to meet such a threat will be the best way of averting it."⁵⁴ Mr. Denning had written to the Foreign Secretary that, "Mr Malcolm MacDonald tells me that he thinks we should make up our minds that we will stay in Hong Kong come what may and proceed from that decision to work out how we can get the maximum support for such a policy."⁵⁵

By September, British policy pending establishment of "a friendly and stable Government of a unified China"⁵⁶ (thought unlikely to exist in the foreseeable future) was set out in communications to Commonwealth governments. No long-term policy could be attempted, but until conditions had changed Britain would remain in Hong Kong. This was based, over and above Britain's "unassailable legal right," on the (presumed) interests and wishes of inhabitants, Hong Kong's value for international trade, its strategic value, and express or implied undertakings by the U.K. government that no alteration of the *status quo* was contemplated. Steps would be taken to deal with the threat or actual use of force by the Chinese communists or the use of pressure through fomenting internal unrest. Peaceful negotiations were not a live issue with the Nationalist government, and "[w]e should be unwilling to discuss Hong Kong with a China which was not united because its future would be likely to become a pawn in the contest between conflicting factions."⁵⁷ It did not seem likely that any Chinese government would be prepared to renew the lease in 1997.

53. FO to Council of Foreign Ministers, Paris (U.K. delegation), top secret, immediate, tel. No. 200, 28 May 1949, in FO371/75872; tel. No. 201 of the same date regarding general considerations to put to the U.S.

54. FO to Council of Foreign Ministers, Paris (U.K. delegation), top secret, immediate, tel. No. 201, 28 May 1949, in FO371/75873.

55. Dated 19 May 1949, in FO371/75872.

56. See Tang, *supra* note 14, at 125-26 (referring to a file closed in the Public Record Office but available in the Arthur Creech-Jones Papers: Cabinet agreed in August that Britain should discuss the future of Hong Kong only with a Chinese government that was friendly, democratic—though that requirement was later deleted - stable, and in control of a unified China.)

57. Enclosures in MacLennan, Commonwealth Relations Office, to Paskin, top secret, immediate, 31 Aug. 1949, in FO371/75839. The statement was in draft form but the Colonial Office agreed, and the actual text appears in Commonwealth Relations Office to High Commissioners, top secret, tel. Nos. 325 and 326, 7 Sept. 1949, in CO537/4805.

"Without these territories Hong Kong would be untenable and it is therefore probable that before 1997 the U.K. Government of the day will have to consider the status of Hong Kong."⁵⁸ But that question could not be considered "some two generations in advance."⁵⁹

Perhaps the last official position taken by the Nationalist government on Hong Kong was a statement to the U.N. Special Committee on Information from Non-Self-Governing Territories in August, 1949. This is of particular interest because it anticipated by some fifteen years the crucial objection to the jurisdiction of the "Committee of Twenty-Four" lodged by the representative of the People's Republic of China (PRC). The objection was crucial because it effectively destroyed any opportunity within the international community of asserting the right of Hong Kong people to self-determination. Mr. Li (China) asserted that, if the fact that sovereignty over a territory rested with a state other than the administering power was a reason for ceasing to transmit information to the Special Committee (as the United States had argued in relation to the Panama Canal Zone), then information should cease to be transmitted on Kowloon and the New Territories. While not a request that the exercise of sovereignty be restored to China, Li's statement caused some concern in the Colonial Office, which hastily reviewed its position on the issue of sovereignty over the leasehold.⁶⁰

The British were in theory prepared to discuss the future of Hong Kong with the Kuomintang government, and if a formal request had been made, it could not have resisted. Nevertheless, they remained mindful of Hong Kong's value as a British possession and reluctant to let the colony go. As the civil war in China intensified, the Nationalists became increasingly unable to contemplate the huge task of absorbing Hong Kong. The establishment of the People's Republic on October 1, 1949, which it was feared would soon lead to invasion or peremptory demands for retrocession, in fact secured the *status quo* for the next nearly fifty years.

58. *Id.*

59. *Id.*

60. See Fletcher-Cooke to CO, confidential, priority, tel. No. 170, 26 Aug. 1949, Creech Jones to Grantham, secret, No. 53, 19 Nov. 1949, and other correspondence and minutes in CO537/4800; see also FO371/75931 F135472.

IV. THE EARLY COMMUNIST PERIOD: 1950-1964

[W]hen that part that is leased goes back to China, in my opinion, the rest of the colony could not continue as a viable entity, and therefore will be surrendered by Britain. Which all leads to my theory, and it is nothing more than a theory, that in thirty-nine years' time, China will get Hong Kong back on a plate with all the buildings and everything. And therefore, they're not dumb: why on earth should they disturb this state of affairs by trying to attack Hong Kong now; they've got to wait less than forty years and they get the whole thing back on a plate.

— Sir Alexander Grantham, 1958⁶¹

Although there was a concentration of Chinese troops near the Hong Kong border, the communist government did not attempt to take over the colony by force. There were to be some anxious moments over the next three years. In retrospect, however, it seems that China had more urgent priorities,⁶² and although British preconditions of a stable government of a unified China had soon been met—and of a friendly government as well, at least in the sense that Britain had accorded diplomatic recognition to the new Chinese regime in February, 1950—no formal demand for the return of Hong Kong was made until 1982. In the meantime, the colony was urgently adjusting to new influxes of refugees, the sudden collapse of its entrepôt economy (with the Korean War-related U.S. embargo on China trade in December 1950 and the U.N. embargo on dealing with China in strategic goods imposed six months later),⁶³ and the need to industrialize. The most sensitive political problem was not democratization—constitutional reform, promoted by Sir Mark Young, was a dead issue⁶⁴—but mainland rivalries being played out in Hong Kong. For as long as the local

61. Transcript of a radio interview with the recently retired Governor of Hong Kong, 9 Sept. 1958, in CO1030/595.

62. Reuter's man in Hong Kong had been told by the head of the New China News Agency that there was no intention of forcibly recovering the colony. Nevertheless Britain was not prepared to relax vigilance against a possible move by the communists. See STEVE YUI-SANG TSANG, *DEMOCRACY SHELVED: GREAT BRITAIN, CHINA, AND ATTEMPTS AT CONSTITUTIONAL REFORM IN HONG KONG, 1945-1952* 86-87 (1988). Soon after the establishment of the PRC, NCNA staff were told that "the eventual recovery of Hong Kong remains a long-term mission, but you need not worry about it now." Tang, *supra* note 14, at 117.

63. On the economic depression in Hong Kong in 1951-52; see Tsang, *supra* note 62, at 169-72. Hong Kong was described by an American journalist in 1951 as "this dying city," with its trade cut off by the fiat of outside nations engaged in a struggle against communism." G B ENDACOTT, *A HISTORY OF HONG KONG* 316 (2nd ed. 1973).

64. It was officially discarded in October 1952. See generally Tsang, *supra* note 62; N.J. Miners, *Plans for Constitutional Reform in Hong Kong, 1946-52*, 107 *China Quarterly* 463 (1986).

government could enforce neutrality on this question, or more particularly prevent the colony from being used as a base to subvert the PRC, it could avoid provoking serious mainland interference with its affairs or, worse, demands for rendition.

The Acting Governor noted in July, 1950 that recent events—an embargo on the shipment of oil products, controls on exports of strategic materials, and resentment over the detention of aircraft at Kai Tak airport—had significantly decreased Hong Kong's value to China. He feared that “a more creative policy of pressure in Hong Kong” would soon be pursued by the Chinese government, although “China cannot yet afford to cut itself off from Hong Kong, which remains its only open door to the South Seas and to the rest of the world.”⁶⁵ Further, the Peking government had during the previous six months deliberately soft-pedaled in its attitude to Hong Kong, with personnel apparently under strict instructions “to behave correctly and to create no trouble.” Moreover, “[w]hile it is quite clear and axiomatic that the ultimate aim of the Central People's Government of China is to recover Hong Kong, there is as yet no direct evidence to suggest that this aim is in the immediate forefront of their programme.”⁶⁶ Communist influence in labour circles had lost ground, but in education it presented a growing threat.⁶⁷ There remained nervousness about China's military intentions; a defence policy for Hong Kong, with special regard to attack by China, was approved in October,⁶⁸ and consideration was given to the evacuation of Hong Kong in an emergency.⁶⁹ The Secretary of State for the Colonies publicly stated on May 2, 1951, that, “despite the unsettled conditions in the Far East, I am glad to note that Hong Kong sets an example of courage and commonsense in a difficult period, and I wish to repeat the assurances that have been made before that His Majesty's Government have every intention of discharging their responsibilities in Hong Kong both as regards defence and the welfare of the population.”⁷⁰ In the summer, Unofficial Members of the Legislative Council pressed HMG for a further statement of intentions towards Hong Kong,⁷¹ and the Secretary of State obliged in December during a visit to the

65. Officer Administering the Government to CO, secret, priority, tel No 840, 24 July 1950, in FO371/83397.

66. Officer Administering the Government to James Griffiths MP, secret, 21 July 1950, in FO371/83263.

67. *Id.*

68. Ministry of Defence to GHQ Far East Land Forces, top secret, tel 'Cossea' 774, 4 Oct. 1950, in FO371/83398.

69. GHQ Far East Land Forces to HQ Land Forces, Hong Kong, top secret, tel. 'SEC' 5/2, 14 Oct. 1950, in FO371/83398.

70. Hong Kong. Memorandum by the Secretary of State for the Colonies, 19 Nov. 1951, secret, Cabinet paper C(51)25, in CAB129/48.

71. *Id.*

Colony.⁷² Early in 1952, the Governor, Sir Alexander Grantham, sent a secret memorandum to the Colonial Office in which he reported that "the internal situation in the Colony is delicate and potentially explosive" with concerns of unemployment, overcrowding, divided political loyalties amongst the Chinese population and left-wing propaganda, and concern lest China cut supplies of food. Apart from direct military attack, "there exist within the Colony itself ample opportunities for stirring up very serious trouble should the Chinese authorities decide on such a move in retaliation for what they regarded as evidence of hostility in the Hong Kong Government's handling of the internal situation."⁷³ Grantham stated that firm action was being taken against any political activity, of whatever persuasion, likely to prejudice security; avoidance of both provocation and appeasement was necessary.⁷⁴ In fact, the communists began a propaganda campaign in January, complaining about strong colonial government action against sympathisers, but "what really distinguished it" was its relative restraint, and by June it was over.⁷⁵

The colonial government's policy was evidently successful, and dispatches and other documents on the future of Hong Kong are scarcely to be found among the British records from 1952 to 1956. Steve Tsang writes that, in the latter half of 1952, communist officials "resumed their old policy of conciliation towards the colonial government. They had not changed their fundamental attitude and policy towards the colony, and there was no indication that they intended to approach the British with regard to its political status. Their threat to Hong Kong's security remained more potential than immediate."⁷⁶

The Political Adviser in Hong Kong, a Foreign Office appointee, provided in June 1956 a useful review of policies up to that time. Communist tactics had first been aggressive, including incitement to violence, but these had failed. "The violence was suppressed, ringleaders were deported and, generally speaking, such aggressive tactics were ill received by the general public."⁷⁷ After political campaigns on the mainland had caused "a revulsion of feeling" in Hong Kong against the communists, a new tactic of "peaceful penetration" was adopted through more positive efforts in labour and education. Then, in 1955, Chinese policy moved "from passive

72. Minute in FO371/115058.

73. Enclosure in Paskin to Scott, secret, 9 Jan. 1952, in FO371/99243.

74. *Id.*

75. See Tsang, *supra* note 62, at 175-79.

76. *Id.* at 174.

77. Dalton to O'Neill, secret, 22 June 1956, in FO371/120910.

non-violence to active gestures of friendship,"⁷⁸ which included invitations to visit the republic, large business contracts for selected merchants, and negotiations for resumption of the through train service to Canton. This had to be treated with caution and suspicion by the Hong Kong government, though it was suggested that, "by and large, our policy is approved by the great majority of the population."⁷⁹ That policy continued to the end of the 1950s and beyond, exercised through the censorship of films and school books, powers in the Education Ordinance to deal with left-wing schools,⁸⁰ interference with the right of schools to fly the Chinese flag, and so on, all matters which the Chinese government and local left-wing newspapers criticized. But it was even-handed in execution, being directed at both leftist and rightist activities (Malcolm MacDonald met Zhou Enlai in 1962 who "spoke appreciatively of Hong Kong Government's efforts to stop representatives of 'the Chiang Kai-shek clique' from using Hong Kong for improper, violent purposes against China.")⁸¹ Over the last ten years, the Governor reported in 1959, Chinese policy had aimed at the long-term preparation of the Chinese population for peaceful absorption into China.⁸² A year later the Chinese government was still reacting moderately to such provocations as the deportation of communist front personnel and the prosecution of narcotics dealers in the Walled City.⁸³

Negotiations on the through train—over the Sham Chun River at Lo Wu, not the modern sense of Hong Kong's institutions surviving the takeover on July 1, 1997—had broken down, but in January 1958, Mr. Zhou Enlai, China's Foreign Minister, asked through an intermediary that they be resumed. He also wanted a properly accredited Chinese representative in the colony and the

78. *Id.* According to Dick Wilson (though I found no reference to it in the government records), Sir Alexander Grantham went to Beijing in 1955, spoke to Zhou Enlai, and returned with the unofficial message that China accepted the British presence and would not undermine it, that Hong Kong was a problem left over by history which could be resolved at leisure, and that China accepted the *status quo*—as long as Britain kept order, and did not allow Hong Kong to become either self-governing (because that would rule out rejoining China) or a Guomindang base. To these "conditions" was later added an injunction against allowing the Russians to build up a presence there. This was the basic British-Chinese understanding about Hong Kong which was to last into the 1990s, in HONG KONG! HONG KONG! 196 (1990).

79. See *supra* note 77.

80. See, *e.g.*, the decision by the Executive Council that Mr Parker To's registration as manager of a left-wing school and his permit to teach be cancelled and that he be deported. CO131/161.

81. See extract from MacDonald to FO, tel. No. 12, 14 Nov. 1962, in CO1030/114.

82. Enclosure in Black to CO, secret, No 130, 21 Jan. 1959, in CO1030/596.

83. Black to CO, No 246, 1 Feb. 1960, in CO1030/1338.

suppression of KMT agents.⁸⁴ The day before, Lieutenant Colonel Kenneth Cantlie had been summoned to an interview with Zhou whose main object, Cantlie reported, was to warn the United Kingdom against an alleged conspiracy by right-wing Chinese, assisted by Americans, to turn Hong Kong into a self-governing Dominion within the Commonwealth.

Chou En-lai said that any such development would be most unwelcome to the Chinese, who did not want to see Hong Kong made into "another Singapore." A self-governing Hong Kong would, in their opinion, open its doors to Chiang Kai-shek and the Americans. "The workers of Hong Kong and the Chinese Government wished to see it continue in peace as a British colony."⁸⁵

This is a highly significant statement, for it not only shows Chinese goodwill towards Hong Kong, but it demonstrates that the failure of the colonial authorities to provide a democratic political system was directly attributable, at least since 1958 if not before,⁸⁶ to Chinese intervention. Norman Miners writes that "unofficially [British] ministers and officials have claimed that the People's Republic of China objects to free elections and Britain has found it expedient to give heed to China's views."⁸⁷ He adds, "This has never been publicly and unambiguously admitted by any Minister of the Crown while in office to avoid diplomatic embarrassment."⁸⁸ Further, "Communist China could live with a colony ruled by British administrators but would not long have tolerated one which

84. Acting High Commissioner in India to Commonwealth Relations Office, secret, priority, No. 179, 31 Jan. 1958, in CO1030/595.

85. Peking Embassy to FO, secret, No. 59, 1 Feb. 1958, in CO1030/595; see also the annex to a secret draft note, dated 21 September 1962, containing an extract from the Zhou-Cantlie interview. Zhou had stated: "China wished the present Colonial status of Hong Kong to continue with no change whatever The enormous American Consulate-General in Hong Kong was merely a base for subversive activities in China and this would become worse if Hong Kong were self-governing. China wanted peace with Hong Kong." See CO12030/1334.

86. See *supra* note 78.

87. See *supra* note 64, at 463.

88. *Id.*; see also minute by Lord Perth, having spoken to the British chargé d'affaires in Peking, to the effect that China wanted no constitutional change in Hong Kong, preferring the direct government they know. CO1030/114; see also Sir David Trench's concern about the proposal to extend municipal government in New Territories towns: "It is possible that they [the Chinese] might see in this the beginning of an unwelcome desire on our part to move the Colony towards self-government or independence, and object strongly." Trench to Wallace, secret, 26 May 1965, in FO371/181000. A different view was taken by the Colonial Office in 1964: "Hong Kong's constitutional development cannot be along normal lines leading to self government and independence since that would mean laying it open to Communist penetration and control." Poynton to Black, secret, 13 Jan. 1964, in FO371/175888.

offered opportunities for its political opponents to attain power.”⁸⁹ Despite this almost self-evident point, Britain recently has been frequently reviled for its failure to introduce democracy into Hong Kong, and pro-China polemicists have boasted that the selection of the Chief Executive-designate in 1996 was by a process more democratic than any by which a colonial Governor was chosen.

In 1961, several British Ministers questioned the value of Hong Kong to Britain and doubted the need to keep the colony. The Colonial Office referred to a minute by Mr. P. Selwyn that concluded that “it costs us very little to stay in Hong Kong, but would cost us a great deal to get out.”⁹⁰ A letter from the Governor in October 1962⁹¹ discussed the case of Hong Kong, in the event that the U.N. took an interest in its future, in the course of which he made several most interesting points: (1) Any movement towards self-determination and self-government had been specifically and secretly excluded by the British government on political grounds; (2) The United Kingdom clearly held Hong Kong at China’s sufferance; (3) Communist China had denounced the “unequal treaties” generally but never expressly called the Hong Kong treaties into question, most probably out of national self-interest; (4) “In recent months there has been evidence, which I can only describe as spectacular, of China’s new willingness to co-operate with us in matters of local and immediate concern;” (5) Any hint that Britain was considering the future could lead to “that constructive loss of confidence which we have always regarded as Hong Kong’s death knell;” (6) “It is vital for Hong Kong’s stability that there should be no official or authorised pronouncement on Hong Kong’s future until and unless this becomes clearly unavoidable;” and (7) China’s silence on Hong Kong had enabled the U.K. to keep the colony free from general pressures to liberate colonies. Specifically, the Governor stated:

There is a good deal of pragmatic truth in the paradox that Britain’s and China’s sense of history flows forward confidently into the future: she has an undaunted sense of time. There are no explanations for her failure to press her claims on Hong Kong hitherto, other than a conviction that time will not derogate from those claims and an assessment that her immediate interests counsel restraint. It is on this slim thread that the stability and, indeed, the security of Hong Kong depend. We speak here of “the timetable.” I have little doubt that a “timetable” for Hong Kong exists in China’s future policy. I have little doubt, too, that the “timetable” is capable of significant modification.⁹²

89. See *supra* note 64, at 482.

90. See CO1030/1300.

91. Black to Poynton, top secret and personal, 30 Oct. 1962, in CO1030/1300.

92. *Id.*

The Governor concluded:

If it is accepted that eventual incorporation with China is the only feasible long-term future for Hong Kong, and if it is also accepted that it is within the power of the Chinese alone to vary their "timetable" for Hong Kong, would it not be prudent for us to be thinking now of the terms we would wish to see if the Chinese advanced their programme, if they gave scope for some degree of negotiation, and if international relations made it impossible for Britain to resist or obstruct the Chinese intentions?⁹³

There was a proposal to hold an adjournment debate on Hong Kong in the House of Commons in 1963 which the Colonial Office tried to persuade its mover to drop (the last previous reference in the House to the future of Hong Kong was in February 1959, when an MP asked the Foreign Secretary whether he would take the initiative in discussing the matter with the Chinese government now rather waiting until the expiration of the lease; the reply was "No, sir.")⁹⁴ A memorandum by C. M. MacLehose, then a clerk in the Foreign Office but later Governor of Hong Kong who, ironically, raised the question of Hong Kong with Deng Xiaoping in 1979, summed up the dangers of parliamentary debate on Hong Kong. He referred to a recent editorial in the *People's Daily* stating that Hong Kong would be dealt with when the time was ripe, but that meanwhile the *status quo* should be maintained.⁹⁵

This was about as good as one could hope for, and suggests that the Chinese are prepared to accept the existence of the Colony for the time being and for what they can get out of it. If left alone this state of affairs might run on for a considerable time, but if we were ever to raise with them the principle of the future of the Colony their only possible reply, whether otherwise convenient to them or not, would be to demand its rendition. If the public in Hong Kong believed that the future of the Colony was under discussion an immediate collapse in confidence would ensue . . . [The Chinese might think the debate] an invitation to discuss the future of Hong Kong, which is precisely what we want to avoid.⁹⁶

However, the risk of discussing the Hong Kong question in Parliament was raised by the proposal to make a statement about the future of the remaining colonies. The statement was to apply to all small colonies except Hong Kong, which was in a unique position. What comments did the Governor and others have on this

93. *Id.*

94. CO to Black, restricted, immediate, tel No 116, 4 Feb. 1959, in CO1030/596.

95. The *People's Daily* article was assumed by the Foreign Office to have resulted from Krushchev needling the Chinese about Hong Kong and Macao on 12 December 1962. See MacLehose to Higham, secret, 6 May 1964, in FO371/175888.

96. Debate on Hong Kong, confidential, 9 Apr. 1963, in FO371/170635.

dilemma? Sir Robert Black was most concerned that the Secretary of State might be drawn to refer to the lease of the New Territories; "it would carry the implication of an official pronouncement that there was no future for Hong Kong beyond this date [1997]; and I have no doubt at all that this would have very serious consequences on confidence here."⁹⁷ Mr. T. W. Garvey in Peking was more sanguine, not expecting the Chinese to be looking for trouble, provided no impression were given that any early change in the colony's relationship with the U.K. was contemplated or that return to China on the termination of the New Territories lease was excluded.⁹⁸

The issue of how best to refer to Hong Kong in public, when reference was unavoidable, also arose in relation to the proceedings of the U.N. Special Committee on Colonialism (the Committee of Twenty-Four). The Special Committee had been charged with making recommendations on all remaining non-self-governing territories, including Hong Kong, in 1964. Higham in the Colonial Office admitted that the U.K. delegation would have to do "some delicate tiptoeing." He said, "If the Delegation is asked to state HMG's attitude to the treaties and the lease it can, we think, quite properly refuse to be drawn on the ground that these are matters outside the competence of the Committee."⁹⁹ The PRC was not then a member of the United Nations. The Formosan (Taiwan) government was not represented on the Committee, but if it were given permission to intervene as an interested party, the U.K. would simply refuse to discuss matters they might raise as inappropriate for consideration in that forum. Higham noted Formosa's statement in the General Assembly on December 2, 1963 that "any question about the status of Hong Kong and Macao should be discussed between the states concerned and that these territories do not seem to belong in the same category as other non-self-governing territories to be examined by the Committee."¹⁰⁰ This was precisely the view put forward, and accepted by the British and the Special Committee, by the PRC's Ambassador to the U.N. in 1972,¹⁰¹ and it meant the end of any hopes that the people of Hong Kong might be

97. Black to Poynton, secret, 29 Jan. 1964, in FO371/175888.

98. Garvey to FO, secret, tel No 169, 12 Feb. 1964, in FO371/175888.

99. Higham to MacLehose, secret, 12 Mar. 1964, in FO371/175888.

100. *Id.*

101. See I. JEROME COHEN & HUNGDAH CHIU, *PEOPLE'S CHINA AND INTERNATIONAL LAW: A DOCUMENTARY STUDY* 384 (1974). Garvey had predicted this when he wrote, "I should, in fact, expect the Chinese to see off any critics in the Assembly or Security Council and to tell, eg, the Committee of Twenty-Four, to mind their own business if they showed any inclination to probe into Hong Kong's affairs." Garvey to MacLehose, secret and guard, 10 Mar. 1964, in FO371/175931.

afforded the right of self-determination when the question of their future later arose.¹⁰²

In Sir Robert Black's final review of political and economic developments in March, 1964, he recognized that the calmer relations between Hong Kong and China since 1959 were the result of a deliberate change of policy on the Chinese side. This he ascribed to the Sino-Soviet dispute, failure of the Great Leap Forward, and the emergence of the border dispute with India. China, perhaps anxious not to alienate other countries, had greatly reduced its pressure on Hong Kong and indeed cooperated positively to provide water during acute shortages in the colony.¹⁰³ Problems had remained, including the extraordinary "invasion" of the colony by tens of thousands of people from Guangdong in 1962, China's reassertion of sovereignty over the Walled City of Kowloon in 1963, and sabotage activities against China by Kuomintang supporters in Hong Kong, though the Chinese authorities "ha[d] so far not pressed [them] particularly hard." However, he continued, "[W]e must not delude ourselves that the Chinese regard the present relative calm as more than a tactical pause or that their long-term objectives have in any way changed."¹⁰⁴ Both national pride and party dogma dictated the eventual recovery of Hong Kong. Meanwhile China would seek to extend its influence into every aspect of Hong Kong life, and the Chinese population of Hong Kong, as China's power and international standing grew, would become increasingly aware "of the importance of not burning their boats irretrievably."¹⁰⁵

The last major file on Hong Kong's future available in 1996 concerns the effect on the colony of the PRC achieving a seat in the United Nations. The conclusion reached, after discussion between Garvey, MacLehose, and Edward Youde (also later Governor of Hong Kong), was that, if and when this development occurred, it would "probably not tip the balance in favour of a demand for rendition, though we think that it will be a new and unfavourable factor for the Colony."¹⁰⁶

102. See Peter Wesley-Smith, *Settlement of the Question of Hong Kong* 17 CAL. W. INT'L L.J. 116, 117-22 (1987).

103. See Chancery to Peking Embassy, confidential, 22 Nov. 1960 (enclosing an agreement to supply water to Hong Kong from Sham Chun reservoir; signed between Hong Kong and the People's Council of Po On County) in FO371/150396.

104. Black to CO, secret, No. 762, 16 Mar. 1964, in FO371/175888.

105. *Id.*

106. MacLehose to Garvey, secret and guard, 1 Apr. 1964, in FO371/175931.

V. THE LATER COMMUNIST PERIOD: 1965-1997

There appears to have been no Chinese demand for rendition of Hong Kong until the British virtually invited it in the 1980s.¹⁰⁷ Riots in 1966 and grave disorder arising from the export of China's cultural revolution in 1967 did not provoke China to seek return of the colony.¹⁰⁸ Indeed, it is reliably rumored that the British offered to abandon the place in 1967, and this caused instructions to go to Hong Kong compatriots to tone down their activities. When the Portuguese sought discussions with the Chinese government on the rendition of Macao, after their "carnation revolution," in 1974 and 1975, China is thought to have ignored them for fear of upsetting the stability of Hong Kong.¹⁰⁹

Given the British determination in the 1960s not to make public mention of the future of Hong Kong lest China be provoked into demanding her sovereign rights, it might be thought somewhat surprising that MacLehose, now Governor, should have gone to China in 1979 and raised with Deng Xiaoping—in private but sure to be leaked—the question of land leases in the New Territories (set to expire on 27 June 1997). Circumstances were of course now different, in that expiry of the Peking Convention of 1898 was only eighteen years away, and fifteen years was regarded by some (mostly American) lawyers and bankers as a minimum period for mortgage security. After 1982, it was thought, no one could invest in New Territories property. Various accounts of the Deng-MacLehose interview have been published.¹¹⁰ and it seems that by referring to land leases rather than the lease of the New Territories themselves it was hoped that the central issue could be finessed. But Deng, either confused or in full understanding, made it clear

107. MARK ROBERTI, *THE FALL OF HONG KONG: CHINA'S TRIUMPH AND BRITAIN'S BETRAYAL* 29, 305 (rev. ed. 1996) (claiming that the Heath government decided in 1971 or 1972 that Hong Kong would be returned to China.) Of course, it had been recognized since at least 1943 that eventually there could be no other course.

108. "Eventually, Mao vetoed Jiang Qing's plans to reintegrate Hong Kong, ruling that its strategic importance required that it be left alone for the time being." *HONG KONG! HONG KONG!* 198 (1990).

109. After Mao's death in 1976 it is likely that the British raised the question of Hong Kong's future with Hua Guofeng, perhaps suggesting "that the ideal solution would be to combine outward signs of Chinese sovereignty with unfettered *de facto* British administration. *Id.* at 199. Hua decreed in a 1977 report to the Communist Party that recovery of Hong Kong should not be mentioned for the "next ten or twenty years or even a considerably longer time so that Hong Kong and Macau may enjoy a period of relative stability for development." WILLIAM MCGURN, *PERFIDIOUS ALBION: THE ABANDONMENT OF HONG KONG* 1997, 40 (1992).

110. See the discussion and references in Peter Wesley-Smith, *The Constitution of Hong Kong in Transition in China: Law, Society and Trade* 128-34 (Alice E-S Tay & Conita S. C. Leung eds., 1995).

that Hong Kong would be recovered, although he did not say expressly when,¹¹¹ and he added, famously, that investors could "put their hearts at ease."¹¹² Still there was no sign that China wanted to talk about the future of Hong Kong; only when Britain urged that discussions be held did China agree and did negotiations begin. That was in 1982. By 1984, an agreement was signed, one which arranged for the restoration of the entire colony to China at the moment the New Territories lease expired.

The Sino-British Joint Declaration on the Question of Hong Kong promised "one country, two systems" and a "high degree of autonomy," maintaining Hong Kong's separate way of life and the economic, social, and legal systems which sustained it, for fifty years. Detailed provisions were made in the annexes, and these were largely incorporated into the Basic Law, the codified constitution of what will become the Hong Kong Special Administrative Region on July 1, 1997. The manner or process of transfer of authority from Britain to China has become highly controversial and the prospect of promises being kept uncertain. The broad outlines of the future of Hong Kong, however, barring unexpected calamity, have now been settled.

VI. CONCLUSION

Britain has always recognized that the ultimate aim of the Chinese government and people was to reclaim Hong Kong. The Kuomintang authorities would no doubt have insisted on it before long if they had remained in power. The communist government,

111. According to Percy Cradock, Zhou Enlai had warned Malcolm MacDonald in 1971 that China would recover Hong Kong in 1997. PERCY CRADOCK, *EXPERIENCES OF CHINA* 162 (1994).

112. Mark Roberti writes:

MacLehose and Cradock have been accused of bungling the initial attempt to resolve the question of the New Territories lease during the meeting with Deng Xiaoping in 1979. Some colonial officials in Hong Kong even believe that these two diplomats deliberately provoked China into taking back Hong Kong to rid themselves of an obstacle to better Sino-British relations. To the contrary - they made a legitimate effort to keep Hong Kong British. Their mistake was in over-estimating Deng's grasp of the subtleties of the issues involved. Even if they had raised the matter with lower-level cadres more familiar with Hong Kong, as Executive Councillor Y K Kan suggested, Deng would never have accepted a British presence in Hong Kong after 1997. He had decided in 1978 that Hong Kong and Macao would be recovered under the formula being worked out for reunification with Taiwan.

ROBERTI, *supra* note 106, at 305-06.

however, never even hinted that retrocession was part of their immediate agenda. Garvey cabled in 1964. "This is partly for the money, partly because they fear American intervention in any crisis, perhaps also partly because our presence guarantees against a KMT takeover."¹¹³

Now, of course, circumstances have changed. China believes that the "one country, two systems" formula will secure the money. By the 1980s, the United States was at best a paper tiger when it came to protecting Hong Kong. There was no risk of resistance from Taiwan, and China's increasing prosperity and relatively stable foreign relations, as well as Britain's anxiety in the early 1980s to deal with the problem, gave China the confidence to absorb Hong Kong and thus initiate reunification of the motherland.

The future of Hong Kong was once the precarious maintenance of British authority. It is no longer what it used to be.

113 Garvey to FO, secret, tel No 169, 11 Feb. 1964, in FO371/175888; see also Black to Poynton, top secret and personal, 30 Oct. 1962, in CO1030/1300; minute by Youde, 23 Mar. 1964, on Garvey to MacLehose, secret and guard, 10 Mar. 1964, in FO371/175931; Black to CO, secret, No. 762, 27 May, 1964, in FO371/175888.

