

## **OFFICIAL RECORD OF PROCEEDINGS**

### **立法局會議過程正式紀錄**

**Wednesday, 5 December 1996**

一九九六年十二月五日星期四

**The Council met at half-past five o'clock**

下午 5 時 30 分會議開始

#### **MEMBERS PRESENT**

**出席議員：**

THE PRESIDENT

THE HONOURABLE ANDREW WONG WANG-FAT, O.B.E., J.P.

主席黃宏發議員，O.B.E., J.P.

THE HONOURABLE ALLEN LEE PENG-FEI, C.B.E., J.P.

李鵬飛議員，C.B.E., J.P.

THE HONOURABLE MRS SELINA CHOW LIANG SHUK-YEE, O.B.E., J.P.

周梁淑怡議員，O.B.E., J.P.

THE HONOURABLE NGAI SHIU-KIT, O.B.E., J.P.

倪少傑議員，O.B.E., J.P.

THE HONOURABLE EDWARD HO SING-TIN, O.B.E., J.P.

何承天議員，O.B.E., J.P.

THE HONOURABLE MRS MIRIAM LAU KIN-YEE, O.B.E., J.P.

劉健儀議員，O.B.E., J.P.

DR THE HONOURABLE EDWARD LEONG CHE-HUNG, O.B.E., J.P.

梁智鴻議員，O.B.E., J.P.

THE HONOURABLE ALBERT CHAN WAI-YIP

陳偉業議員

THE HONOURABLE CHEUNG MAN-KWONG

張文光議員

THE HONOURABLE CHIM PUI-CHUNG

詹培忠議員

THE HONOURABLE MICHAEL HO MUN-KA

何敏嘉議員

THE HONOURABLE EMILY LAU WAI-HING

劉慧卿議員

THE HONOURABLE LEE WING-TAT

李永達議員

THE HONOURABLE FRED LI WAH-MING

李華明議員

THE HONOURABLE JAMES TO KUN-SUN

涂謹申議員

DR THE HONOURABLE SAMUEL WONG PING-WAI, M.B.E., F.Eng., J.P.

黃秉槐議員，M.B.E., F.Eng., J.P.

DR THE HONOURABLE PHILIP WONG YU-HONG

黃宜弘議員

DR THE HONOURABLE YEUNG SUM

楊森議員

THE HONOURABLE HOWARD YOUNG, J.P.

楊孝華議員，J.P.

THE HONOURABLE ZACHARY WONG WAI-YIN

黃偉賢議員

THE HONOURABLE JAMES TIEN PEI-CHUN, O.B.E., J.P.

田北俊議員，O.B.E., J.P.

THE HONOURABLE CHAN YUEN-HAN

陳婉嫻議員

THE HONOURABLE ANDREW CHENG KAR-FOO

鄭家富議員

THE HONOURABLE CHENG YIU-TONG

鄭耀棠議員

THE HONOURABLE DAVID CHU YU-LIN

朱幼麟議員

THE HONOURABLE ALBERT HO CHUN-YAN

何俊仁議員

THE HONOURABLE AMBROSE LAU HON-CHUEN, J.P.

劉漢銓議員，J.P.

THE HONOURABLE LAW CHI-KWONG

羅致光議員

THE HONOURABLE LEE KAI-MING

李啟明議員

THE HONOURABLE LEUNG YIU-CHUNG

梁耀忠議員

THE HONOURABLE BRUCE LIU SING-LEE

廖成利議員

THE HONOURABLE MARGARET NG

吳靄儀議員

THE HONOURABLE SIN CHUNG-KAI

單仲偕議員

THE HONOURABLE TSANG KIN-SHING

曾健成議員

## **MEMBERS ABSENT**

### **缺席議員：**

THE HONOURABLE MARTIN LEE CHU-MING, Q.C., J.P.

李柱銘議員，Q.C., J.P.

DR THE HONOURABLE DAVID LI KWOK-PO, O.B.E., LL.D. (CANTAB),  
J.P.

李國寶議員，O.B.E., LL.D. (CANTAB), J.P.

THE HONOURABLE SZETO WAH

司徒華議員

THE HONOURABLE LAU WONG-FAT, O.B.E., J.P.

劉皇發議員，O.B.E., J.P.

THE HONOURABLE RONALD JOSEPH ARCULLI, O.B.E., J.P.

夏佳理議員，O.B.E., J.P.

THE HONOURABLE FREDERICK FUNG KIN-KEE

馮檢基議員

DR THE HONOURABLE HUANG CHEN-YA, M.B.E.

黃震遐議員，M.B.E.

THE HONOURABLE ERIC LI KA-CHEUNG, O.B.E., J.P.

李家祥議員，O.B.E., J.P.

THE HONOURABLE HENRY TANG YING-YEN, J.P.

唐英年議員，J.P.

THE HONOURABLE CHRISTINE LOH KUNG-WAI

陸恭蕙議員

THE HONOURABLE LEE CHEUK-YAN

李卓人議員

THE HONOURABLE CHAN KAM-LAM

陳鑑林議員

THE HONOURABLE CHAN WING-CHAN

陳榮燦議員

THE HONOURABLE PAUL CHENG MING-FUN

鄭明訓議員

DR THE HONOURABLE ANTHONY CHEUNG BING-LEUNG

張炳良議員

THE HONOURABLE CHEUNG HON-CHUNG

張漢忠議員

THE HONOURABLE CHOY KAN-PUI, J.P.

蔡根培議員，J.P.

THE HONOURABLE IP KWOK-HIM

葉國謙議員

THE HONOURABLE LAU CHIN-SHEK

劉千石議員

DR THE HONOURABLE LAW CHEUNG-KWOK

羅祥國議員

THE HONOURABLE LO SUK-CHING

羅叔清議員

THE HONOURABLE MOK YING-FAN

莫應帆議員

THE HONOURABLE NGAN KAM-CHUEN

顏錦全議員

DR THE HONOURABLE JOHN TSE WING-LING

謝永齡議員

THE HONOURABLE MRS ELIZABETH WONG CHIEN CHI-LIEN, C.B.E.,  
I.S.O., J.P.

黃錢其濂議員，C.B.E., I.S.O., J.P.

THE HONOURABLE LAWRENCE YUM SIN-LING

任善寧議員

## **PUBLIC OFFICERS ATTENDING**

### **出席公職人員：**

THE HONOURABLE DONALD TSANG YAM-KUEN, O.B.E., J.P.  
FINANCIAL SECRETARY

行政局議員財政司曾蔭權先生，O.B.E., J.P.

THE HONOURABLE JEREMY FELL MATHEWS, C.M.G., J.P.  
ATTORNEY GENERAL

行政局議員律政司馬富善先生，C.M.G., J.P.

MR MICHAEL SUEN MING-YEUNG, C.B.E., J.P.  
SECRETARY FOR HOME AFFAIRS

政務司孫明揚先生，C.B.E., J.P.

MR CHAU TAK-HAY, C.B.E., J.P.  
SECRETARY FOR BROADCASTING, CULTURE AND SPORT  
文康廣播司周德熙先生，C.B.E., J.P.

MR GORDON SIU KWING-CHUE, J.P.  
SECRETARY FOR TRANSPORT

運輸司蕭炯柱先生，J.P.

MR DOMINIC WONG SHING-WAH, O.B.E., J.P.

SECRETARY FOR HOUSING

房屋司黃星華先生，O.B.E., J.P.

MRS KATHERINE FOK LO SHIU-CHING, O.B.E., J.P.

SECRETARY FOR HEALTH AND WELFARE

衞生福利司霍羅兆貞女士，O.B.E., J.P.

MR RAFAEL HUI SI-YAN, J.P.

SECRETARY FOR FINANCIAL SERVICES

財經事務司許仕仁先生，J.P.

MR JOSEPH WONG WING-PING, J.P.

SECRETARY FOR EDUCATION AND MANPOWER

教育統籌司王永平先生，J.P.

MR PETER LAI HING-LING, J.P.

SECRETARY FOR SECURITY

保安司黎慶寧先生，J.P.

MR BOWEN LEUNG PO-WING, J.P.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS

規劃環境地政司梁寶榮先生，J.P.

MR KWONG KI-CHI, J.P.

SECRETARY FOR THE TREASURY

庫務司鄭其志先生，J.P.

MISS DENISE YUE CHUNG-YEE, J.P.

SECRETARY FOR TRADE AND INDUSTRY

工商司俞宗怡女士，J.P.

MR LAM WOON-KWONG, J.P.

SECRETARY FOR THE CIVIL SERVICE

公務員事務司林煥光先生，J.P.

MR KWONG HON-SANG, J.P.

**SECRETARY FOR WORKS**

工務司鄭漢生先生，J.P.

**CLERKS IN ATTENDANCE**

列席秘書：

MR RICKY FUNG CHOI-CHEUNG, SECRETARY GENERAL

秘書長馮載祥先生

PURSUANT TO STANDING ORDER 411, HIS EXCELLENCY THE GOVERNOR, THE RIGHT HONOURABLE CHRISTOPHER FRANCIS PATTEN, ATTENDED TO ADDRESS THE COUNCIL AND TO RECEIVE QUESTIONS.

總督彭定康先生根據《會議常規》第 4AA 條出席會議，向本局發表講話，並接受質詢。



主席：請各位議員繼續站立等候總督進入會議廳。

秘書：香港總督。

主席：總督會就領事保護權向本局發言。

### Addresses

#### 發言

**GOVERNOR:** Mr President, there has been considerable interest and a good deal of misunderstanding about consular protection for British nationals in Hong Kong after 30 June 1997. I wanted to come to the Council today to set the record straight and to try to clear up some of the concerns which Honourable Members may have. Can I straightaway express my gratitude to the Council for, as it were, accommodating me at short notice. I have just come from a summit this afternoon on disability and transport, the fourth one we have held. That stopped me coming to the Council earlier this afternoon, and I would just like once again to express my gratitude to the Council for making it possible for me to come here, which is the right place to come to deal with some of the anxieties which have been expressed in the last few days.

I want to deal with four of the myths which have, I think, arisen in the last 48 hours. First myth: that British passports issued under the British Nationality Selection Scheme (BNSS) are second-class documents and will be treated differently by British authorities from British citizen passports obtained in other ways. This is completely untrue. All British citizen passports are identical. There is only one form of British citizenship. I am not talking here about BNOs and BDTCs, but British citizens. The British Government draws no distinction whatsoever between British citizenship acquired under the BNSS or acquired in any other way. The BNSS is a means to a destination: British citizenship. Once you have reached that destination, it becomes utterly irrelevant how you got there.

Second myth: that the British Consulate will not extend consular protection to holders of passports issued under the BNSS, but it will do so to those who have obtained their passports in other ways. That is not true. There are no differences between the documents. The British Government and the future British Consulate-General will offer consular protection to British nationals in Hong Kong, BNSS and non-BNSS, irrespective of how that nationality was obtained, except in cases of dual nationality. Our consular officials will not be able to tell from a British citizen passport how it was obtained by its holder. Nor will China have any means of knowing.

Third myth: that Britain accepts that international law limits the ability of the United Kingdom to provide consular protection to BNSS recipients who are dual nationals, but does not accept it in the case of other British nationals. Again, untrue. Let me read to you the relevant sentence based on international law that is printed in every single British passport, BNSS or otherwise, including this passport, which happens to have a certain meaning for me since it is my own. Let me quote, if I can read it — I am getting short-sighted!

"British nationals who are also nationals of another country cannot be protected by Her Majesty's representatives against the authorities of that country."

Britain accepts — that is my passport, and it is the same as any other British passport — that international law limits the ability of the United Kingdom to provide full consular protection to dual nationals in the country or territory of their nationality. But it is a matter for the United Kingdom to decide what representations it makes in any individual case. And crucially, Britain does not accept that the way in which a British citizen obtained his or her passport would of itself be evidence of dual nationality.

Fourth myth: that Britain will regard any BNSS recipient seeking consular protection at the British Consulate as a dual national. Again, that is not true. British consular officials will not know from individuals' passports whether they have obtained their passports under the BNSS, and they will not ask them whether they have done so because, as far as Her Majesty's Government is concerned, that is completely irrelevant. A British citizen is a British citizen — fullstop. British practice in Hong Kong will be exactly the same as it is in France or Belgium or the United States or Canada or anywhere else in the world

where British nationals may be in difficulty. If an individual presented himself or herself at the British Consulate, claiming to be a solely British national, the British Consulate would accept that and act on his or her behalf unless it was presented with acceptable evidence of dual nationality. The Consul General would not seek such evidence. Even if Britain were persuaded that someone was a dual national, that would not in itself stop it from making representations on his or her behalf. That is something which Honourable Members know perfectly well we do already, including in cases in China.

The British Government takes seriously its responsibilities to all British nationals in Hong Kong, irrespective of how their British nationality was obtained and of whether they hold Chinese nationality. Britain would not, repeat not, regard any claim by the local authorities that a British passport had been obtained under the BNSS as of itself relevant or acceptable evidence of dual nationality. It is for the British Government, and the British Government alone to determine whether or not an individual holds British nationality. Britain cannot accept any suggestion that this can ever be a matter for any other government.

Finally, let me say this, Britain has a good record of standing up for its nationals in distress, whether they come from Hong Kong or anywhere else. In the case of Hong Kong, we do so even in cases of dual nationality today and we will continue to do so after the handover. Britain will not sit idly by if British nationals are in trouble. I understand Honourable Members' concern and the community's concern about some of the reports they have heard, many of which have been misleading in recent days. Those concerns are ill-founded.

I will be very happy to take any questions.

主席：議員現可以就發言內容向總督提出質詢。各位議員在提出質詢並獲答覆後，可提出一項簡短之跟進質詢，但只於要求闡明該答覆不明之處。請舉手示意。楊森議員。

楊森議員問：主席，今天總督先生召開這個會議，相信是因為有英國官員表示在香港取得居英權的人士不會獲得英國的領事保護，而這明顯是市民很關心的問題。我想提出一項有關英國政府信譽和香港政府信譽的質詢。當香港

政府在香港推行居英權計劃時，有否充分向香港市民解釋，他們在香港取得的居英權日後不會令他們在香港獲得領事保護？如果當初早已說清楚的話，何需今天召開這會議？為何當時英國政府和香港政府沒有清楚表達這信息呢？這是否一個關乎信譽的問題呢？

**GOVERNOR:** I am sure the Honourable gentleman would accept that in every country, in every country in the world under the Hague Convention and under international law, people with a dual nationality have difficulty in claiming full consular protection, and it states that explicitly, as I mentioned earlier, in every British passport, not passports issued under the BNSS, but every passport. I would think it highly likely that it says it also in the passports issued by other governments and countries. The Honourable Member next to Dr YEUNG Sum is nodding his head. I am sure that is the situation.

What I want to make clear is that people in Hong Kong will be treated in exactly the same way as they would be treated anywhere else. We will not accept that there is any distinction between one form of British passport for a British national and another. A British national, a British citizen is a British national, is a British citizen.

There is something else I would like to say about consular protection. The fact that full consular protection cannot always be provided in certain cases does not mean that a British Consulate or a British Embassy turns those who are in trouble away. Let me just tell the Honourable gentleman what it says in the guide, which is available to the public, on consular protection.

It tells the public what a consul can do: issue emergency passports; contact relatives and friends and ask them to help with money or tickets and so on and so on; and at the bottom of the list, the sort of things that are of concern to all Honourable Members: contact and visit British nationals under arrest or in prison, and in circumstances arrange for messages to be sent to relatives or friends; give guidance on organizations experienced in tracing missing persons; make representations on your behalf to the local authorities in certain circumstances.

And then it says the things that a consul cannot do, and it mentions intervening in court proceedings, getting you out of prison, and so on. And it

says at the bottom that a consul cannot formally assist dual nationals in the country of their second nationality. Note the word "formally assist", cannot "formally assist" under the international convention, but certainly can assist and would assist as British Embassies, as British Consulates do all over the world, even where a British national has dual nationality. That happens already.

The point I want to stress again is that there is no difference between a passport acquired under the BNSS and any other passport. As far as Britain is concerned, those passports give somebody full consular protection unless, as I said, evidence could be established to the contrary. And we do not and could not accept that your holding of a passport which you may have acquired under the BNSS is, as it were, adequate evidence of dual nationality. That is the point which I think there has been confusion about and that is the point that I want to make very clearly today.

楊森議員問：主席，一般對法律有認識的人都知道，如果擁有雙重國籍，在原居地不能獲得領事保護，這點我也很清楚。但當市民申請居英權時，香港政府為何不清楚告知他們，由於雙重國籍問題，他們在港取得居英權也不能享有英國的領事保護？我覺得香港政府當時並沒有就此作出解釋。為何香港政府當時不向市民簡單介紹這個法律理由或原則，現在卻要麻煩總督先生在這裏加以澄清？

**GOVERNOR:** Let me, if the Honourable Member does not mind, correct him on one point. The Honourable Member is suggesting that there is something particular about having a passport which you have acquired under the BNSS. That is not the case. The way you acquire a British passport does not affect the validity, does not affect the value, does not affect British authorities' attitude to that passport in any way. The BNSS is a route to acquiring a passport, like marriage can be a route to acquiring a passport, like birth can be a route to acquiring a passport. But once you have got that passport, it is exactly the same for everyone. And for everyone, in whatever country they are in, the same rules apply regarding dual nationality.

I want to make it clear that we would provide consular protection, full consular protection for anyone with a British passport which they may have acquired under the BNSS or under any other scheme. We would provide that

consular protection after 1997 unless there was evidence of dual nationality. And even where there was evidence of dual nationality, it does not mean we would wash our hands of whoever came to the British Consulate with a case about which they were concerned.

主席：吳靄儀議員。

**MISS MARGARET NG:** *Mr President, I do not have a written record, but perhaps the Governor can obtain a written record of the meeting between a delegation of this Council to London and the Foreign Secretary (I think it is in February or March). I raised the matter with the Foreign Secretary. Subsequent to that in Government House during the Prime Minister's visit, I raised that same question with the Prime Minister on dual nationality. I was given the answer that dual nationality does not prevent a holder of a British passport from obtaining consular protection in Hong Kong. I must confess I was a little surprised at the time, but that was the unequivocal answer I was given. I do not know whether it was because my question was not correctly asked or because I misunderstood the answer, but may I ask the Governor to check the written record.*

*But my question really is pertaining to something the Governor has just told this Council, which is that China has no way of telling how the passport was obtained, and presumably that includes whether the passport was obtained through the BNSS. Now, may I ask the Governor to elaborate on why we could feel assured that this is the case?*

**GOVERNOR:** Well, first of all, on the important first point the Honourable lady made, and I have too much respect for the Honourable lady to be implying in what I say to her that she has not told us the situation as she recalls it and as she believes it to have been. But I would be extremely surprised if either the Prime Minister or the Foreign Secretary had stated that anyone with dual nationality could receive formal consular protection. They can certainly receive consular assistance, and I would believe it as one of our moral responsibilities to go on showing concern for and providing assistance to people who had dual nationality. But I would be very surprised if they had said something which, as the

Honourable lady knows as a lawyer, is made absolutely clear in international covenants to which we are all signed up.

I do not believe that there is any way in which Chinese authorities will know how somebody acquired a British passport, but I must say that the Honourable lady has touched on the reason why this issue causes so much concern to people.

There was a statement in the *Hong Kong Standard* this morning which I regard as particularly chilling, and I very much hope that the Xinhua News Agency will disclaim that statement. Let me read it out to the Legislative Council: "An official of the Xinhua News Agency, Beijing's representative office in Hong Kong, said that identified BNSS passport holders would be regarded as Chinese nationals even if they had lived in Britain and returned to Hong Kong as British citizens. China would be able to trace such people even though their files were kept by Britain, the official said, on condition of anonymity."

What is it? What state of mind is it that brings people to make statements like that when what we are all attempting to do is to give people in Hong Kong reassurances about their future, about their future stability and about their future freedom? I can give this Legislative Council, this Honourable House, all the assurance supported by the British Prime Minister and Cabinet, all the assurance at my command about the status of a British passport, however it was acquired after 1997. What I cannot do is to pretend to this House that the way that Chinese nationality law is framed and the way it is often implemented does not cause worries and shocks. It does that now in China.

I invite Members to consider the consular cases involving other countries. I invite them to consider the case of Mr James PANG. There is a case of somebody with an Australian passport who has the greatest consular difficulties because of the way that Chinese officials interpret their nationality law.

Now, if that attitude obtains in Hong Kong after 1997, there will clearly be a large number of arguments on consular issues, not just with Britain, not just with Britain, but with other countries which have citizens holding a passport in Hong Kong. That is the truth of the matter. And Members in this Legislative Council know that to be the case.

So, I hope we can have less of this sort of chilling statement and a little more reassurance, and a little less of seeming to want to target people who have this particular passport or that. Those who are advising Chinese officials, those who are joining other organizations in Shenzhen, have a particular responsibility, in my judgment, to make sure that statements like that are not made.

**MISS MARGARET NG:** *Mr President, let me try to obtain a little more assurance in that case. Leaving the Chinese Government aside, and I quite understand the Governor's frustration, but concentrating just on the Hong Kong Government and the British Administration in Hong Kong. When people applied for British nationality under the BNSS, certain documents were submitted to the Hong Kong Government. Now, may I ask the Governor to inform this Council what happened to those documents, those applications, information contained anywhere within the government files in Hong Kong or in London about the names and the particulars of people who have applied and subsequently obtained British nationality?*

**GOVERNOR:** That is an extremely important point and I would not wish to mislead the Legislative Council in any respect in giving a comprehensive answer. So, I will give the Honourable lady a brief answer of what I understand the position to be, and then I will make clear that we give this Council a statement on exactly what the position is, where exactly all the information is and what is happening to the information.

As I understand it, the Immigration Department at present has some of this information. It is being sent back through the British Consulate General to the United Kingdom, and when the British Consulate General take over all their responsibilities in relation to passport issues at the beginning of next year, they will have all the information with them. But, I do not want there to be any possibility of misleading the Council, so that is a qualified and conditional answer. And I will write to the Honourable lady and make sure the letter is published giving exactly what that information is.

We are not unaware, not least because of statements like that, of the



sensitivity of this information and those documents, and I want to assure everybody in Hong Kong that we will do everything humanly, technologically, possible to keep that material secure and to keep that material confidential. The Honourable lady will know that it would be illegal for us to make information acquired under the BNSS public.

**PRESIDENT:** I am sorry, Miss NG, only one supplementary.

主席：廖成利議員。

廖成利議員問：主席，我同意《國際法》有關雙重國籍不能獲得全面領事保護的原則，我覺得這很合理。

總督先生，大部分申請居英權的香港市民都是想買政治保險，而保單的內容本應包括英國國籍和英國的領事保護權。今天這些“投保人”突然發現有關在英國提供領事保護方面，保單內原來加了一句，即如果“投保人”擁有雙重國籍則除外。他們現在發現這情況，請問總督先生，英國政府或香港政府會否向這些買了政治保險而又被誤導的市民作出賠償，例如退款或其他賠償呢？

**GOVERNOR:** I do not know whether I am being inarticulate or whether perhaps the Honourable gentleman has not fully grasped what I am saying. The only qualification, as far as British consular protection is concerned, for somebody who acquired a passport under the BNSS is exactly the same qualification that applies to the Governor of Hong Kong.

Because of the international conventions which are referred to in a British passport, we cannot give full consular protection when there is dual nationality. But the fact that somebody has a British passport under the BNSS is not itself relevant to or evidence of dual nationality. It is an extremely important point that people should recognize and that people should accept.

I repeat one other point, or make it perhaps in more robust language. If somebody turns up at the British Consulate after 1 July 1997 and says "I have got

a British passport. I am a British citizen. I want consular protection", somebody at the British Consulate is not going to say "did you get your passport through the BNSS? If you did I am afraid that we cannot offer you full consular protection." They are going to say "you have got a British passport. We will offer you full consular protection."

If the authorities then provided evidence of dual nationality, the British Consulate in those circumstances would not say, "Sorry, there is absolutely nothing we can do to help you." They would say, "Formally under the Hague Convention we cannot give you the assistance which we would otherwise have been able to provide, but we can still help you, as before 1997 we were helping people with dual nationality who got into consular difficulties in China."

So, I want the Honourable gentleman to recognize that there is no concession, that holding a passport under the BNSS implies or explicitly makes the point that one has dual nationality.

廖成利議員問：我沒有誤會，因為我也很詳細了解那例外的情況。請問英國政府在 4 年前，即推銷居英權計劃這份政治保單前，為何不公開向香港市民說清楚在雙重國籍下有關領事保護權的例外情況？請問在這事件上有否任何官員失職，誤導那些作為“投保人”的香港市民？

**GOVERNOR:** No, I do not believe they have. What I hope has been said at every stage is that a passport acquired under the BNSS is the same as the passport that I have got, and it gives you the same entitlements in Hong Kong as in Papua New Guinea or Panama City or Patagonia. Anywhere, you have the right to full consular protection unless, unless there is evidence, satisfactory evidence, of dual nationality.

If there is satisfactory evidence of dual nationality, it does not mean that a British Embassy or British Consulate is not prepared to go in and bat for you, is not prepared to fight your corner. What it does mean is there are restrictions on the extent to which it can do that. That is the same in Hong Kong as everywhere else. Hong Kong is not being put in a special category.

主席：何俊仁議員。

何俊仁議員問：主席，剛才總督先生已經將一些法律問題和將來所面對的問題說得很清楚。現時香港人更要知道他們於九七年後所須面對的現實環境，因為中國政府近這數年來已經清楚說明不會承認居英權計劃。我想問總督先生，第一，如果九七年後，一名持有英國護照的香港市民到香港的英國領事館要求領事保護，而香港政府或中國政府說他是中國籍公民，那麼領事館是否不會做任何事，直至澄清該名市民是否擁有雙重國籍；抑或領事館會一直提供協助，直至中國政府或香港政府取出證據，證明他擁有雙重國籍？第二，如果那時的香港政府或中國政府清楚公布法例或法令，規定透過這種方式取得居英權的人全都一定是中國公民，即以立法擁有方式把他們當作為中國公民，屆時英國政府會否無話可說，把他們全當作是雙重國籍，不會再加以審查，從而不給他們領事保護，或只是非常有限的領事保護？我想知道這些真正現實情況的答案。

**GOVERNOR:** Well, it is an important question and I am going to have to be slightly repetitive in answering it because we tend to be circling the same passports or the same passport issues.

But let me just make one point by way of introduction because it has been, I think, mis-stated in one of this morning's newspapers. It was said in the otherwise admirable *South China Morning Post* this morning, in its editorial, "both countries (that is, Britain and China) agreed that scheme passport holders are Chinese nationals, as was made clear by both sides with reference to holders of British Dependent Territories Citizen and British National Overseas Documents in memoranda attached to the Joint Declaration."

Well, the second part of the statement is true. The first part of the statement is not true and could not conceivably be true since the BNSS came into being seven years after the Joint Declaration. There is no agreement between Britain and China that scheme passport holders are Chinese nationals.

And it would be, let me make the point the other way round, what would China think if Britain said it was going to tell China who was a Chinese national? China would think that was the most monstrous impertinence. It would think it was an attack on Chinese national sovereignty. Nobody can tell Britain or the British Government who is a British citizen and who is not. That is a matter

within our sovereign gift and we are not going to throw it away for anyone.

The Honourable Member asked what would happen if somebody turned up with a passport which they had acquired under the BNSS and asked for consular protection. Let me make the point once again. That what will not happen is that there will not be any question at the British Consulate about how they got their passport, implying that if they got it through the BNSS it somehow entitles them to less than if they got it through birth or marriage or in some other way. They will get full consular protection until it can be established, or unless it is established, that they are a dual national.

Now, what would be the sort of evidence that would establish that? It is always extremely dangerous to get involved in hypotheticals and I am not going to do that this evening, but I will give you one obvious example where it would be difficult to refute that the person was a dual national. Let me read what it says in an SAR passport, if it is in slightly larger letters. An SAR passport says in the notes on Page 2, No. 2: "The bearer of this passport is a Chinese citizen."

So, it would be quite difficult to argue that somebody who had an SAR passport was not a dual national. But I repeat, that does not mean that that person in the British Consulate would not receive, not the formal consultation which I was reading out about earlier, but would not receive assistance in the way that people with dual nationality receive assistance today.

We have a particular obligation to our citizens, whether they are dual nationals or not. We have an enhanced obligation to those citizens where they are not dual nationals.

何俊仁議員問：我想提出一項很短的跟進質詢。據我理解，剛才總督先生給我的答覆是否指出，如果將來中國政府或特區政府發出公布或法律指令，規定任何透過居英權計劃取得護照而又沒有其他國家護照的人，仍然是中國公民；但日後如果這些人到香港的英國領事館要求英國的領事保護，領事並不會理會中國政府或香港政府那項法令或宣布，因為那兩個政府沒有可能知道哪些人是透過居英權計劃取得護照，因為你們不會說出來，沒有人會知道，也沒有人可以提出證明，所以中國政府所說的話是沒有證據的，市民不用理會，而領事館一定會提供百分之百的領事保護？

**GOVERNOR:** The Honourable gentleman is home in one. The point that I have been seeking to make is that no one else can tell Britain who is a British citizen, who has a British passport, and we would not accept it, to repeat myself, as relevant to or evidence of dual nationality that somebody had acquired their passport under the BNSS. So far as we are concerned, let me repeat again, a passport is a passport is a passport.

To go back to earlier questions, that does not, of course, mean that there may not be circumstances in which somebody who did acquire their passport under the BNSS is actually with good evidence a dual national. That will happen. I gave an example a moment or two ago. But the Honourable gentleman's clear assessment of the situation was correct. You turn up at the British Consulate with a British passport, whatever Chinese officials have said, whatever any officials anywhere have said, if you have got a British passport legally issued by the British Government, that is that.

主席：有兩位民主黨議員優先提出質詢，但因為有自由黨議員、內務委員會主席和前綫的議員尚未提出質詢，如果各位議員同意，陳偉業議員及單仲階議員可否讓他們先提出質詢。周梁淑怡議員。

周梁淑怡議員問：主席，我相信在座很多立法局議員也記得，其實立法局議員已多次提問，究竟持英國護照的港人，即不單止是指透過居英權計劃而取得英國護照的港人，可否在九七年七月一日後享有領事保護。不過，相信我的同事也同意我所說，從來沒有人給我們一個很切實的答覆。今天總督先生很清楚告知我們，透過居英權計劃取得英國護照，與使用其他方法取得英國護照沒有分別，它們都是英國護照，等級相同，沒有“二等護照”的問題出現。我認為我們應該關注的是，究竟香港人持着英國護照，無論該護照是透過居英權計劃，抑或是因曾在英國居住而取得，日後可否享有領事保護權？因為昨天外交部的聲明提到，而剛才總督先生也有提及，如何獲得護照不足以令對待有別，但市民持着護照去領事館時，必須沒有其他他們所說的“*acceptable evidence of dual nationality*”。這似乎意味如果有人可以提供證據，證明那人擁有雙重國籍，則他的領事保護權便可能會受到影響。請問總督先生可否清楚告知我們，何謂“*acceptable evidence of dual nationality*”？現時香港一般的市民在九七年七月一日成為了香港出生的中國公民後，這身分是否可作為

*"acceptable evidence of dual nationality"*？如果是的話，是否所有持英國護照到英國領事館的人的領事保護權因而有可能受到限制或甚至消失呢？

**GOVERNOR:** I said earlier that it is not for the Chinese authorities to say who is or who is not a British citizen. And I also — I think the Honourable lady at the time, I do not say it critically, was studying the Basic Law — said earlier that I could give one perfectly straightforward answer of what would presumably be regarded by most fair-minded people as acceptable evidence of dual nationality, and that is the holding of an SAR passport since an SAR passport declares very explicitly that "the bearer of this passport is a Chinese citizen". If you actually have one of these passports and travel on it, with that written inside, it would be quite difficult for a British Consul General to argue that dual nationality did not apply. I am sure the Honourable lady would accept that point.

In those circumstances, even if formal support could not be provided, I am sure that the British Consulate would want to assist in every possible way short of all that is provided for in the Hague Convention. But I repeat, it is not for China to say who is a British citizen any more than it is for Britain to say who is a Chinese citizen.

周梁淑怡議員問：主席，剛才總督先生很清楚說明，如果擁有第二本護照的話，便構成一個證據。當然，如果要領取另一本護照的話，市民要進行申請，採取主動行動。不過，如果是一般的香港市民，他們只是持有香港永久居民身分證，以及一本英國護照，沒有其他護照，他們會否被視為擁有雙重國籍呢？

**GOVERNOR:** What I cannot conceivably do, as the Honourable lady will know, is to say that the only case in which you could demonstrate dual nationality was one in which somebody was an SAR passport holder. I would be, anybody would be, exceptionally foolish to try to define every conceivable circumstance which would provide evidence of dual nationality. What I am saying is, as far as the British Government is concerned, as far as the British Consulate General after 1997 is concerned, holding a British passport entitles you to formal consular protection unless there can be acceptable evidence to the contrary. If we did not take that view, I am sure that many people would regard the consequences as being justiciable.

主席：梁智鴻議員。

**DR LEONG CHE-HUNG:** *Mr Governor, back on 23 February 1990, the former Foreign Secretary, Douglas HURD, actually mentioned what you just said, and that is, no matter where you get your British citizenship you will get the same consular protection, and I think you mentioned that just now quite succinctly. I think you used that to illustrate that the two types of passports are similar, in the sense that the holder of passports, of British citizenship like yourself and those from the BNSS are similar.*

*But can I put it to you that there are basically some subtle differences, or I say a little bit more than a subtle difference because people who acquired citizenship like yourself or anybody not from the BNSS will never have a dual nationality, or will not have a dual nationality but those who have acquired through the BNSS will, according to what China has always said, always have a dual nationality.*

*Now, of course the crux of the matter therefore is dual nationality itself. You mentioned just now repeatedly, that no one can tell the British Government who is a British citizen. Could I reverse the question and ask you, Mr Governor, who can tell the British Government that a person has a dual nationality, and using what method? You mentioned one, that is an SAR passport, but in your mind, are there other areas that you would consider?*

**GOVERNOR:** Well, let us follow through a likely course of events. Mr X goes to the British Consulate General and says "I am in trouble. I am a British citizen. I have a British passport. I want consular protection." The British Consul says "Fine, I will take up your problem with the authorities, with the Government." He goes to the Government and somebody says to him, "You cannot make formal representations on behalf of Mr X because we do not think that he is a solely British citizen. We think he has got dual nationality."

The Consulate General would presumably then say, "Where is your evidence? Show me your evidence." If the evidence that was shown seemed satisfactory to the Consul General, in the circumstances, he would still presumably wish to go on giving the person who had come to his door as much

assistance as he conceivably could. If he disagreed with the authorities about the evidence of dual nationality, then he would presumably argue about it and there would be a row.

A point I was seeking to make earlier is, if the sort of attitude expressed in that Xinhua statement, if the sort of attitude that one saw in the case of Mr James PANG, if that prevails in Hong Kong after 1997, there are going to be (if you will excuse my being demotic) a hell of a lot of rows on issues like this. And not just with the British Government and the British Consulate, but with other consulates as well.

**DR LEONG CHE-HUNG:** *Mr President, I would like to change the question a little bit, if I may, and ask the Governor whether he could inform this Council what prompted the high-ranking British official to make that statement two days ago that causes all this problem?*

**GOVERNOR:** Well, I think it is fair to say, and this is not a criticism of the media and it is not a criticism of legislators, these issues are invested with huge sensitivity. I wish they were not. The sensitivity with which they are invested is itself, in a sense, an expression of concern about civil liberties and related matters in the future.

In those circumstances, an attempt honestly to answer what would be the consequences if someone held dual nationality turned into a misunderstanding that what was being said was that nobody who had got a passport under the BNSS could get consular protection. That is not, as I hope I have, perhaps I have made heavy weather with the point repeating it over and over again, but that is not the case. But again to repeat myself, from Patagonia to Papua New Guinea, if you are a dual national, then the help you can get from a British Consulate or a French Consulate or a German Consulate or any consulate is limited because of the international conventions and because of the international law.

I think that it is understandable why the issue came up. The Chief Secretary and I were extremely keen to give as much and as clear reassurance as soon as possible, as comprehensively as possible. That is why we asked the Foreign Office to put out a statement yesterday and that is why, that statement



having been made, I wished to come to this Council as soon as possible to go through all the arguments again myself.

主席：劉慧卿議員。

**MISS EMILY LAU:** *First of all, I want to thank the Governor for agreeing with such alacrity to come to this Council to answer questions on this deeply controversial subject, a subject which stirs up not only high emotions but feelings of resentment, bitterness and abandonment in many Hong Kong people, and it touches on the question of Britain's honour, integrity and credibility.*

*Mr President, in spite of what the Governor has just told us earlier this afternoon, I think what is implicit in what Mr CORNISH said two days ago, and in the Foreign Office statement, is that the British Government probably suspects that the Chinese Government has already got a list of all the beneficiaries of the BNSS, and now what you want to do is to abdicate your responsibility for looking after those people as long as they are in Hong Kong after 1997.*

*I want the Governor to demonstrate to us that that is not the case, but I can assure you that is the feeling of many people in Hong Kong, and not just the beneficiaries because there are about only 140 000 of those. But it is a very widely shared view that you found out that is the case, whether that is to do with Lawrence LEUNG or whatever, and you say this is going to be an unholy mess and we are going to walk away from it.*

*Can you tell us what sort of assurance are you going to give, not just to the beneficiaries of the BNSS, but to all the other British nationals too? How will Britain deal with them when they come under Communist rule?*

**GOVERNOR:** Can I first of all assure the Honourable lady, and I do not know how, if one's veracity is suspected, one can put the point more strongly than I am going to. I know of no evidence, have no evidence, that Chinese officials have lists of those people who are beneficiaries under the BNSS. I have no evidence whatsoever of that. I am not surprised, when things like this are said that people worry. I can understand it. I would worry myself. But I want to

make it absolutely clear that we have no evidence of that whatsoever. I would not, I hope, even if I was a liar, put the point as explicitly, as comprehensively, as I have just put it.

The second point I want to make, with equal passion, is this. I am not unaware of the vital importance of Britain being seen to discharge its obligations, whether one likes the way it does it or not, as honourably as possible. It would be thoroughly dishonourable for Britain to walk away from its responsibilities to those who hold a British passport as a British national in Hong Kong.

They are entitled, I repeat, to full consular protection however they acquired that passport and they will get the same full consular protection in Hong Kong as they would get anywhere else in the world. The terms in which that is provided, or the conditions on which that can be provided, are those that I referred to earlier, and the question of dual nationality, a question of international law, applies in Hong Kong and everywhere else.

Let me go on from that. Even in those cases, even in those cases where there was dual nationality I believe that the British Government and the British Consulate would still feel obliged to provide as much assistance as they possibly could, even if they were not able under the Hague Convention and so on to provide "full consular protection". We cannot simply walk away from those responsibilities and we will not do so.

And if the Honourable lady ever has any evidence to the contrary in years to come, she can come and hang those words around my neck wherever she finds me.

**MISS EMILY LAU:** *Mr President, just a very brief follow-up. I want to ask the Governor, because earlier Mrs CHOW referred to the statement issued by the Foreign Office and said something about "until you are presented with acceptable evidence of dual nationality". If the Chinese authorities should come to the British Consulate in future and show you that list, the famous 50 000-people list, would that be accepted as acceptable evidence of dual nationality? And also, given the unique situation of Hong Kong, do you not think Britain should do a bit more than what you normally do for other nationals in terms of protecting their safety after 1997, within the confines of international*

*law?*

**GOVERNOR:** We have a record of doing more than is formally required of us in dealing with consular cases. There is a Member of this Council who has good reason to know that. There are other people who know that very well, so the answer is that we will do more and we do do more. And I am glad we do.

And on the Honourable lady's first point, the Honourable lady, when asking a dramatic question, is overlooking the point that I keep on making. The fact that you have a passport which was acquired under the BNSS is not relevant to, nor is it evidence of, dual nationality. So, even if a Chinese official came with the list that the Honourable lady referred to, it would not be evidence of dual nationality. But I do not believe, I have no evidence to suppose, that Chinese officials have such a list.

There are Honourable Members here today listening to the suggestions that Chinese officials may have such a list in a sort of po-faced way as though that is the sort of thing they do, as though that is the sort of thing they might be considering doing. And some of those Members looking in that po-faced way are Honourable Members who advise Chinese officials on what should happen in Hong Kong. I hope that they will express some of the anxieties which are represented by this controversy when they next talk to Mainland officials. And I hope in particular that they will join me in deploring the remarks made by this anonymous Xinhua official earlier, well, some time yesterday.

Thank you very much.

## **ADJOURNMENT AND NEXT SITTING**

休會及下次會議

主席：感謝剛才優先提出質詢的議員忍讓。按照《會議常規》，本席宣布本局休會，並宣布本局於一九九六年十二月十一日星期三下午2時30分續會。

*Adjourned accordingly at twenty-seven minutes to Seven o'clock.*

會議遂於下午 6 時 33 分休會。