

OFFICIAL RECORD OF PROCEEDINGS

Thursday, 5 December 1996

The Council met at half-past Five o'clock

MEMBERS PRESENT

THE PRESIDENT

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

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

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

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

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

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

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

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHIM PUI-CHUNG

THE HONOURABLE MICHAEL HO MUN-KA

THE HONOURABLE EMILY LAU WAI-HING

THE HONOURABLE LEE WING-TAT

THE HONOURABLE FRED LI WAH-MING

THE HONOURABLE JAMES TO KUN-SUN

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

DR THE HONOURABLE PHILIP WONG YU-HONG

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE HOWARD YOUNG, J.P.

THE HONOURABLE ZACHARY WONG WAI-YIN

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

THE HONOURABLE CHAN YUEN-HAN

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE CHENG YIU-TONG

THE HONOURABLE DAVID CHU YU-LIN

THE HONOURABLE ALBERT HO CHUN-YAN

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

THE HONOURABLE LAW CHI-KWONG

THE HONOURABLE LEE KAI-MING

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE BRUCE LIU SING-LEE

THE HONOURABLE MARGARET NG

THE HONOURABLE SIN CHUNG-KAI

THE HONOURABLE TSANG KIN-SHING

MEMBERS ABSENT

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

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

THE HONOURABLE SZETO WAH

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

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

THE HONOURABLE FREDERICK FUNG KIN-KEE

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

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

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

THE HONOURABLE CHRISTINE LOH KUNG-WAI

THE HONOURABLE LEE CHEUK-YAN

THE HONOURABLE CHAN KAM-LAM

THE HONOURABLE CHAN WING-CHAN

THE HONOURABLE PAUL CHENG MING-FUN

DR THE HONOURABLE ANTHONY CHEUNG BING-LEUNG

THE HONOURABLE CHEUNG HON-CHUNG

THE HONOURABLE CHOY KAN-PUI, J.P.

THE HONOURABLE IP KWOK-HIM

THE HONOURABLE LAU CHIN-SHEK

DR THE HONOURABLE LAW CHEUNG-KWOK

THE HONOURABLE LO SUK-CHING

THE HONOURABLE MOK YING-FAN

THE HONOURABLE NGAN KAM-CHUEN

DR THE HONOURABLE JOHN TSE WING-LING

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

THE HONOURABLE LAWRENCE YUM SIN-LING

PUBLIC OFFICERS ATTENDING

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

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

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

MR CHAU TAK-HAY, C.B.E., J.P.
SECRETARY FOR BROADCASTING, CULTURE AND SPORT

MR GORDON SIU KWING-CHUE, J.P.

SECRETARY FOR TRANSPORT

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

MRS KATHERINE FOK LO SHIU-CHING, O.B.E., J.P.
SECRETARY FOR HEALTH AND WELFARE

MR RAFAEL HUI SI-YAN, J.P.
SECRETARY FOR FINANCIAL SERVICES

MR JOSEPH WONG WING-PING, J.P.
SECRETARY FOR EDUCATION AND MANPOWER

MR PETER LAI HING-LING, J.P.
SECRETARY FOR SECURITY

MR BOWEN LEUNG PO-WING, J.P.
SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS

MR KWONG KI-CHI, J.P.
SECRETARY FOR THE TREASURY

MISS DENISE YUE CHUNG-YEE, J.P.
SECRETARY FOR TRADE AND INDUSTRY

MR LAM WOON-KWONG, J.P.
SECRETARY FOR THE CIVIL SERVICE

MR KWONG HON-SANG, J.P.
SECRETARY FOR WORKS

CLERKS IN ATTENDANCE

MR RICKY FUNG CHOI-CHEUNG, SECRETARY GENERAL

PURSUANT TO STANDING ORDER 4AA, HIS EXCELLENCY THE GOVERNOR, THE RIGHT HONOURABLE CHRISTOPHER FRANCIS PATTEN, ATTENDED TO ADDRESS THE COUNCIL AND TO RECEIVE QUESTIONS.

PRESIDENT (in Cantonese): Would Members please remain standing for the Governor?

CLERK (in Cantonese): His Excellency the Governor.

PRESIDENT (in Cantonese): The Governor will address this Council on the subject of consular protection.

Address

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.

PRESIDENT (in Cantonese): Members can now question the Governor on the address. After their questions have been answered, Members can follow up with a short question, but only to seek elucidation on what is not clear in the reply. A show of hands please. Dr YEUNG Sum.

DR YEUNG SUM (in Cantonese): *Mr President, the Governor called this meeting today presumably because a British official had said that Hong Kong people who have obtained the right of abode in Britain will not receive British consular protection. This is obviously a matter of grave concern to the public.*

I would like to raise a question concerning the credibility of the British Government and the credibility of the Hong Kong Government. When the Hong Kong Government introduced the British Nationality Selection Scheme in Hong Kong, was it fully explained to the Hong Kong people that the right of abode that they were going to obtain in Hong Kong would not entitle them to consular protection in Hong Kong in future? If this was made clear at that time, would this meeting be necessary today? Why was this message not clearly conveyed by the British Government and the Hong Kong Government at that time? Is this a question of credibility?

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.

DR YEUNG SUM (in Cantonese): *Mr President, anyone with some legal knowledge will know that a person who possesses dual nationality will not receive consular protection in the place of original abode. I am well aware of this point. But when Hong Kong people applied for the right of abode in Britain, why did the Hong Kong Government not tell them clearly that because of the question of dual nationality they will not receive British consular protection even if they have obtained in Hong Kong the right of abode in Britain? I think the Hong Kong Government failed to explain this point at that time. Why did the Hong Kong Government not simply explain to the public this point of law or legal principle at that time so that the Governor will not have to go to the trouble of clarifying it here?*

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.

PRESIDENT (in Cantonese): Miss Margaret NG.

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.

PRESIDENT (in Cantonese): Mr Bruce LIU.

MR BRUCE LIU asked (in Cantonese): *Mr President, I agree with the principle that a person with dual nationality cannot claim full consular protection under international law. This is most reasonable.*

Mr Governor, the majority of Hong Kong people who applied for the right of abode in Britain did so because they wanted to have a political insurance. This insurance policy should have included British nationality and British consular protection. Today, these "policy holders" suddenly realize that there is another clause to the policy regarding British consular protection and that is, "policy holders" with dual nationality are excluded. They realize the situation only now. May I ask, Mr Governor, will the British Government or the Hong Kong Government compensate these people who had been misled when they took out political insurance by giving them, for example, a refund or other forms of compensation?

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.

MR BRUCE LIU (in Cantonese): *I did not misunderstand the point because I am fully aware of the exceptional circumstances. I would like to know, when the British Government peddled this political insurance policy, the British Nationality Selection Scheme, four years ago, why did it not explain clearly and openly to Hong Kong people the exceptional circumstances of dual nationality*

regarding consular protection? Had any government official neglected his duty on this matter and misled those Hong Kong people who became "policy holders"?

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.

PRESIDENT (in Cantonese): Mr Albert HO.

MR ALBERT HO (in Cantonese): *Mr President, just now the Governor has already explained very clearly some of the legal issues and other problems we are going to face in future. At present, Hong Kong people should know more about the real situations they have to face after 1997. It is because in recent few years, the Chinese Government has already made it clear that it will not recognize the British Nationality Selection Scheme (BNSS). I would like to ask the Governor, firstly, if after 1997, a Hong Kong resident holding a British passport turns up at the British Consulate and asks for consular protection, while the Hong Kong Government or the Chinese Government says that he is a Chinese national, will the British Consulate do nothing for him until it is clear whether this person has dual nationality; or will the British Consulate continue to provide assistance to him until the Chinese Government or the Hong Kong Government can produce evidence to prove that he has dual nationality? Secondly, if the future Hong Kong Government or the Chinese Government clearly promulgates a law or decree stipulating that any person obtaining the right of abode in the United Kingdom through the BNSS will definitely be regarded as a Chinese national, which means classifying these people concerned as Chinese nationals by legislation, will the British Government say nothing but regard them all as dual nationals without going into further investigation and,*

consequently, give them no or only very limited consular protection? I would like to know the answer in the light of these real situations.

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.

MR ALBERT HO (in Cantonese): *I would like to ask a very short follow-up question. I want to know if, as I understand, this is what the Governor points out in his reply to my question. Let us assume that the Chinese Government or the Hong Kong Special Administrative Region Government publicly makes an announcement or issues a legal order to the effect that anyone who has obtained a passport under the British Nationality Selection Scheme (BNSS) without, at the same time, holding any passport issued by other countries, is still a Chinese national. However, if later on, these people turn up at the British Consulate in Hong Kong and ask for consular protection, the Consulate will not pay any regard to the legal order or announcement of the Chinese Government or the Hong Kong Government since it is impossible that the two Governments will know who have obtained the passports through the BNSS, as you will not tell anybody about it. No one will know about the details. No one can produce any proof of dual nationality. Therefore, there is no evidence for what the Chinese Government may say and people can just ignore it. The British Consulate will surely provide 100% consular protection. Is that true?*

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.

PRESIDENT (in Cantonese): Two Members from the Democratic Party have already proposed to raise questions. However, since Members from the Liberal Party, Chairman of the House Committee and Members from the Frontier have not yet asked their questions, would Mr Albert CHAN and Mr SIN Chung-kai let them ask their questions first, if Members have no objection? Mrs Selina CHOW.

MRS SELINA CHOW (in Cantonese): *Mr President, I believe many Members here would recall that this Council has in fact repeatedly asked whether Hong Kong people who are holding British passports, and not just those who are holding passports issued under the British Nationality Selection Scheme (BNSS), will be accorded consular protection after 1 July 1997. However, I believe my colleagues would agree with me that no one has ever given us a very clear and specific answer. Today, the Governor has made it clear to us that there is no difference between a British passport acquired under the BNSS and any other British passport acquired through other routes. They are British passports with identical status. There is no question of second-class documents. I think what we should be concerned about is whether Hong Kong people who are holding British passports will be accorded consular protection in future no matter whether they have acquired their passports through the BNSS or by residence in the United Kingdom. Yesterday a statement from the Foreign Office stressed one point which is also touched upon by the Governor just now and that is that the way a person acquires a British passport will not cause a difference in treatment that he will receive. However, when a person holding a British passport approaches the British Consulate for consular protection, there must*

not be any what they called "acceptable evidence of dual nationality". This seems to imply that if evidence is provided to prove that the person has dual nationality, the consular protection to be given to him would be adversely affected. Could the Governor clearly tell us what is "acceptable evidence of dual nationality"? The current situation is that Hong Kong people will automatically become Hong Kong-born Chinese citizens after 1 July 1997. Will this identity be regarded as "acceptable evidence of dual nationality"? If that is the case, does it mean that Hong Kong people who are holding British passports and who approach the British Consulate for consular protection will find that limited or even no protection will be offered to them?

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.

MRS SELINA CHOW (in Cantonese): *Mr President, the Governor has just made it clear that holding a second passport will constitute an evidence. Certainly, people have to make application for a second passport before they can get one. In other words, they have to take the initiative to do so. However, for the general Hong Kong public, they will only hold a Hong Kong Permanent Identity Card and a British passport. They will have no other passport. In*

this case, will they be regarded as having dual nationality?

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.

PRESIDENT (in Cantonese): Dr LEONG Che-hung.

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.

PRESIDENT (in Cantonese): Miss Emily LAU.

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

PRESIDENT (in Cantonese): I thank the Members who have already proposed to raise questions for giving way. In accordance with Standing Orders, I now adjourn the sitting until 2.30 pm on Wednesday, 11 December 1996.

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