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FM OTTAWA 162035Z OCT 81

TO PRIORITY FCO

TELEGRAM NUMBER 565 OF 16 OCTOBER

MF

CANADIAN CONSTITUTION: CONTINGENCY PLANNING

1. JUST AT THE MOMENT IT IS IMPOSSIBLE TO SAY WHETHER MR TRUDEAU, BY MODIFYING HIS PACKAGE, CAN REGAIN THE SUPPORT OF THE NDP AND PERHAPS DETACH SOME PROVINCES FROM THE DISSENTING GROUP OF EIGHT. IF HE COULD DO THIS, IT WOULD GREATLY REDUCE OUR PROBLEMS. BUT THE ODDS ARE AGAINST IT. SO I THINK WE SHOULD CONTINUE TO PLAN ON THE REASONABLE ASSUMPTION THAT THE REQUEST IN SUBSTANTIALLY ITS PRESENT FORM, OPPOSED BY A MAJORITY OF THE PROVINCIAL GOVERNMENTS, WILL COME TO LONDON IN THE REASONABLY NEAR FUTURE.
2. LAST DECEMBER THE CHANCELLOR OF THE DUCHY TOLD MR TRUDEAU (OTTAWA TELNO 552 OF 19 DECEMBER 1980) THAT IT WAS HIGHLY QUESTIONABLE WHETHER IT WOULD BE POSSIBLE AT THAT TIME TO ACHIEVE THE PASSAGE OF THE NECESSARY LEGISLATION THROUGH PARLIAMENT. MR PYM HAD TWO DAYS EARLIER TOLD THE PRIME MINISTER THAT IN HIS VIEW A BILL EMBODYING THE CANADIAN REQUEST (WHICH HAS NOT SO FAR CHANGED) WOULD GET THROUGH NEITHER THE HOUSE OF COMMONS NOR THE HOUSE OF LORDS AND HAD ARGUED THAT QUOTE HMG MUST NOT GET INTO A POSITION WHERE THEY ATTEMPTED TO PASS LEGISLATION ON BEHALF OF THE CANADIAN GOVERNMENT, AND FAILED BECAUSE OF OPPOSITION IN THE CONSERVATIVE PARTY UNQUOTE.
3. I DO NOT KNOW WHAT VIEW MINISTERS NOW TAKE OF THE LIKELIHOOD OF SUCH A BILL PASSING IF THE PROVINCIAL LINE-UP IN CANADA REMAINS UNALTERED. BUT I IMAGINE THAT THE SUPREME COURT JUDGEMENT, WHICH SAYS THAT THE REQUEST WOULD BE TECHNICALLY LEGAL BUT NEVERTHELESS UNCONSTITUTIONAL BECAUSE IT FLOUTS CONSTITUTIONAL CONVENTION, HAS MADE PASSAGE LESS NOT MORE LIKELY. AND I HAVE OBSERVED THAT THOSE MEMBERS OF BOTH HOUSES WHO HAVE COME HERE RECENTLY (THE LATEST IS LORD LIMERICK) APPEAR TO BE IMPRESSED BY THE DEGREE OF OPPOSITION TO THE FEDERAL GOVERNMENT'S PROPOSALS AND TO RETURN TO LONDON WITH THEIR DOUBTS REINFORCED.
4. ALMOST ANY COURSE WE TAKE AFTER RECEIVING A REQUEST FROM THE FEDERAL GOVERNMENT MAY HAVE IMPORTANT IMPLICATIONS FOR OUR INTERESTS IN CANADA. PROLONGED DEBATES IN EITHER HOUSE WOULD IN THEMSELVES BE HOTLY RESENTED IN CANADA, HOWEVER UNREASONABLY. WE HAVE ALREADY HAD A FORETASTE OF THIS IN THE PETULANT PRESS REACTION TO MR JONATHAN AITKEN'S COMPARATIVELY INNOCUOUS REMARKS HERE. THE SPECTACLE OF BRITISH PARLIAMENTARIANS HOLDING FORTH ON A CANADIAN ISSUE IS, I AM AFRAID, BOUND TO IRRITATE CANADIANS, AND THE LONGER THE DEBATES GO ON THE ANGRIER THEY WILL BECOME.

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5. FROM THE POINT OF VIEW OF OUR RELATIONS IT WOULD BE DAMAGING, IN MY VIEW, FOR HMG TO INTRODUCE THE BILL AND SEE IT FAIL. MR TRUDEAU, HIS GOVERNMENT AND HIS PARTY, MIGHT WELL THEN CAMPAIGN AGAINST US AS COLONIALIST, CLAIMING THAT WE WERE DENYING CANADIANS THEIR OWN CONSTITUTION AND OPPOSING THE ESTABLISHMENT OF THEIR FUNDAMENTAL RIGHTS. THEY WOULD PULL NO PUNCHES AND WOULD NOT HESITATE TO ATTACK BRITAIN AND THE BRITISH PARLIAMENT HOWEVER UNFAIRLY. I BELIEVE THAT EVEN AMONG THOSE WHO DO NOT NORMALLY SUPPORT MR TRUDEAU FEELINGS WOULD RUN HIGH AGAINST US, THOUGH THE FEDERAL GOVERNMENT MIGHT BE HARD PUT TO IT TO FIND MANY CONCRETE STEPS THEY COULD READILY TAKE AGAINST US.

6. I SUGGEST THAT IF WE JUDGE IT POSSIBLE THAT EITHER HOUSE OF PARLIAMENT WILL FAIL TO PASS THE BILL WE OUGHT TO CONSIDER WHAT WE THEN DO. BEFORE MAKING SUGGESTIONS ON THIS IT WOULD BE HELPFUL TO KNOW URGENTLY WHAT THE LATEST ESTIMATE OF OPINION IN BOTH HOUSES IS.

MORAN

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MR DAY

MR URE

LORD N G LENNOX

CABINET OFFICE

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