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to...
MICHAEL FALLIS
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TO IMMEDIATE OTTAWA.

TELEGRAM NUMBER 309 OF 26 SEPTEMBER

YOUR TELNO 415 OF 24 SEPTEMBER : CANADIAN CONSTITUTION.

1. CANADIANS DULY DELIVERED PROPOSALS TO US YESTERDAY. THEY TOOK THE SHAPE OF AN EXPLANATORY NOTE, A RESOLUTION FOR A JOINT ADDRESS TO HM THE QUEEN, AN ACT TO AMEND THE CONSTITUTION OF CANADA (CANADA ACT) AND, AS SCHEDULE A TO THE LATTER, A CONSTITUTION ACT 1980. THE LATTER EMBODIES A CANADIAN CHARTER OF RIGHTS AND FREEDOMS (INCLUDING LANGUAGE RIGHTS), A PROVISION FOR EQUALISATION AND REGIONAL DISPARITIES, AN INTERIM AMENDING PROCEDURE AND A DEFINITIVE AMENDING PROCEDURE. THIS PROVIDES FOR THE CONTINUANCE OF THE PRESENT UNANIMITY SITUATION FOR UP TO FOUR YEARS, FOLLOWED BY THE APPLICATION OF THE VICTORIA FORMULA, SLIGHTLY AMENDED, UNLESS ANOTHER FORMULA HAS BEEN MEANWHILE AGREED. DEADLOCK-BREAKING REFERENDUM PROCEDURES ARE ALSO ENVISAGED. LEGISLATIVE TIDYING-UP PROCEDURES ARE ALSO EMBODIED IN THE PROPOSALS. THIS IS A SUMMARY ACCOUNT OF A LENGTHY (26 PAGE) DOCUMENT: LE GAULT OF THE CANADIAN TEAM (DEA) PROMISED HE WOULD LET YOU HAVE THE FULL TEXT ON MONDAY.

2. TALKS WITH THE CANADIAN TEAM TOOK PLACE THIS MORNING IN A FRIENDLY AND INFORMAL ATMOSPHERE. IN RESPONDING TO THE CANADIAN PROPOSALS WE AIMED TO STEER BETWEEN TWO EXTREMES. ON THE ONE HAND WE WISHED TO AVOID ANY IMPLICATION THAT WE WERE BACK-TRACKING ON MRS THATCHER'S UNDERTAKING TO MR TRUDEAU OF 25 JUNE THAT WHETHER OR NOT THE REQUEST FOR PATRIATION WAS WITH THE AGREEMENT OF ALL THE PROVINCES, IT WOULD BE AGREED IF IT WAS THE WISH OF THE GOVERNMENT OF CANADA. ON THE OTHER HAND, WE WANTED TO LEAVE THE CANADIANS IN NO DOUBT ABOUT THE PARLIAMENTARY DIFFICULTIES WHICH MIGHT BE EXPECTED IF THE QUESTION REMAINED A CONTROVERSIAL ONE IN CANADA. SIR I SINCLAIR, WHO LED THE BRITISH TEAM, EXPLAINED THAT THERE HAD BEEN LITTLE TIME TO STUDY

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THE CANADIAN PROPOSALS IN DETAIL: IT WAS OUR TASK TO EXAMINE THEM FROM THE TECHNICAL POINT OF VIEW AND DISCUSS MODALITIES, RATHER THAN SUBSTANCE. THE LATTER WOULD NEED TO BE CONSIDERED LATER. NONETHELESS, HE THOUGHT IT LEGITIMATE TO MAKE THE PRELIMINARY COMMENT THAT THE CANADIAN PROPOSALS WERE MORE EXTENSIVE THAN WE HAD ANTICIPATED THEY MIGHT BE. IN LATER DISCUSSION IT EMERGED THAT THE CANADIANS EXPECTED THE PROPOSALS TO EXCITE CONTROVERSY IN CANADA - THOUGH THEY HELD OUT SOME HOPE THAT IN THEIR PRESENT FORM THEY MIGHT POSE LESS DIFFICULTIES THAN HERETOFORE. WE EXPRESSED THE VIEW THAT THE EXTENT OF CONTROVERSY WHICH THE PROPOSALS MIGHT GENERATE IN WESTMINSTER WAS LIKELY TO MIRROR THE EXTENT OF CONTROVERSY WHICH THEY WOULD ENGENDER IN CANADA MPS MIGHT BE LOBBIED AND ASK WHY THE CANADIANS WANTED, IN EFFECT, TO PASS FAR REACHING CONSTITUTIONAL CHANGES THROUGH THE BRITISH PARLIAMENT RATHER THAN SORTING THEM OUT FIRST IN CANADA AND THEN COMING TO US SIMPLY FOR PATRIATION ALONG WITH AN AGREED AMENDING FORMULA. BRITISH MPS MIGHT ALSO TABLE AMENDMENTS.

3. THE CANADIANS RESPONDED BY SAYING THAT THEY HOPED BRITISH PARLIAMENTARIANS WOULD BE SATISFIED THAT THEIR CANADIAN OPPOSITE NUMBERS, WHOSE BUSINESS IT WAS, HAD SORTED MATTERS OUT TO THE MAXIMUM AND THAT THE BRITISH WOULD THUS PASS THE LEGISLATION IN ACCORDANCE WITH OUR UNDERTAKINGS. MEANWHILE, THE CANADIAN PROVISIONS WERE OF COURSE SUBJECT TO ALTERATION IN THE CANADIAN PARLIAMENT. THEY DOUBTED, HOWEVER, WHETHER SUCH ALTERATIONS WOULD BE VERY SUBSTANTIAL.

4. TECHNICAL DISCUSSION CENTRED MAINLY ON TWO OF THE POINTS MENTIONED IN MY TELNO 283 OF 9 SEPTEMBER, IE :

- (A) THE CANADIAN DESIRE TO HAVE THE BRITISH LEGISLATION IN BOTH FRENCH AND ENGLISH:
- (B) THE QUESTION OF THE DATE OF ENTRY INTO FORCE OF THE CANADA ACT IN BOTH COUNTRIES.

WE TOLD THE CANADIANS THAT AT FIRST SIGHT WE SAW NO INSUPERABLE DIFFICULTIES IN THESE PROPOSALS, THOUGH WE MIGHT WISH TO PROPOSE AN ALTERNATIVE FORMULA FOR (B). IN ALL CASES, WE REFERRED THEM FOR AN AUTHORITATIVE REPLY TO THIS AFTERNOON'S TAKS WITH SIR H ROWE, FIRST PARLIAMENTARY COUNSEL (SEE BELOW).

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5. THE CANADIANS TOLD US THAT THEY HOPED THE MEASURES MIGHT BE PUBLISHED AS EARLY AS THURSDAY, 2 OCTOBER. AT AROUND THIS TIME, THEY MIGHT ALSO ANNOUNCE (ALONG THE LINES ALREADY AGREED WITH YOU) THAT A CANADIAN TEAM HAD VISITED THIS COUNTRY FOR TECHNICAL TALKS ABOUT THESE CONSTITUTIONAL PROPOSALS, WITHOUT PREJUDICE TO THEIR DISCUSSION IN THE CANADIAN PARLIAMENT.

6. OVER LUNCH, MR TASSE, THE CANADIAN LEADER, INDICATED TO DAY THAT A CANADIAN EMISSARY MIGHT WANT TO PAY AN EARLY VISIT TO THE UK AND MENTIONED 6 OCTOBER AS A POSSIBLE DATE. DAY TOLD HIM THAT OUR PREFERENCE REMAINED THAT WE SHOULD RECEIVE SUCH AN EMISSARY AFTER THE MAIN LINES OF DISCUSSION IN CANADA HAD BECOME CLEAR IN PARLIAMENT. HE ALSO REMINDED TASSE OF MOVEMENTS OF THE SECRETARY OF STATE.

7. AT THE AFTERNOON MEETING, SIR H ROWE OPENED BY QUESTIONING WHETHER UK LEGISLATIVE ACTION WAS APPROPRIATE OR DESIRABLE. IN HIS PERSONAL VIEW, CANADA POSSESSED THE SOVEREIGN POWER TO ACHIEVE THE DESIRED RESULT. HE NEVERTHELESS ACCEPTED THE POINT MADE BY THE CANADIAN SIDE THAT CANADIAN CONSTITUTIONAL LAWYERS AND THE SUPREME COURT MIGHT BE OF A DIFFERENT PERSUASION.

8. THE MEETING THEN TURNED TO THE CANADA ACT. THE CANADIAN SIDE WERE RECEPTIVE TO SIR HENRY'S SUGGESTIONS FOR IMPROVEMENT AND SIMPLIFICATION. AGREEMENT WAS REACHED AS FOLLOWS :

TITLE - AN ACT TO AMEND THE CONSTITUTION OF CANADA.

RECITALS - DELETE SECOND RECITAL.

SECTION 1 - ADD AT END 'AS PROVIDED IN PARTS IV AND VI OF THAT ACT'.

SECTION 2 AND SCHEDULE B - DELETE.

SECTION 3 - DELETE 'THIS ACT' AND SUBSTITUTE 'THE CONSTITUTION ACT'. DELETE 'DEEMING' PROVISION.

SECTION 4 - CANADIANS TO SUGGEST FORMULA ALONG THE LINES OF :
'THE FRENCH AND ENGLISH VERSIONS OF THE CONSTITUTION ACT ARE EQUALLY AUTHORITATIVE. THE FRENCH TEXT OF THE REMAINDER OF THE ACT IS SET OUT IN ANNEX B' OR 'THE FRENCH VERSION OF THE TEXT, SO FAR AS NOT SET OUT IN SCHEDULE A, IS SET OUT IN SCHEDULE B'.

SECTIONS 5 AND 6 - DELETE

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SECTION 7 - NO CHANGE (ALTHOUGH SIR H ROWE'S PREFERENCE WAS TO
ADD A DATE).

THERE WAS NO DISCUSSION OF THE CONSTITUTION ACT.

9. SUBJECT TO ANY COMMENTS FROM OTTAWA AND CONSULTATIONS
AMONGST THEMSELVES, THE CANADIANS UNDERTOOK TO PUT A CLEAN TEXT
BACK TO US THROUGH HARDY EARLY NEXT WEEK.

10. WE SHALL BE CONSIDERING THE NEXT STEPS EARLY NEXT WEEK AND
WOULD BE GRATEFUL MEANWHILE FOR ANY COMMENTS.

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