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DESKBY 271200Z (FCO)

DESKBY 280100Z (HONG KONG)

FROM PEKING 27101TZ OCT 83

TO IMMEDIATE FCO

TELEGRAM NUMBER 1095 OF 27/10/83

REPEATED FOR INFO TO IMMEDIATE HONG KONG

HONG KONG TELS NOS 1609 AND 1610: FUTURE OF HONG KONG: EXCO

See attached telegram

1. I AM DISTURBED AT THE DEVELOPMENTS IN EXCO AND THEIR IMPLICATIONS FOR THE FUTURE OF THE INITIATIVE WHICH WE HAVE JUST BEGUN WITH THE PRIME MINISTER'S MESSAGE.
2. THE FACT IS THAT SIR S Y CHUNG AND COLLEAGUES ARE NOW ADVOCATING A COURSE DIRECTLY CONTRARY TO THAT WHICH THEY ENDORSED TWO WEEKS AGO IN LONDON AFTER FULL CONSULTATIONS WITH MINISTERS. WE ARE COMMITTED TO BUILD THE MOST WE CAN ON THE CHINESE PROPOSALS. S Y AND COMPANY ARE SEEKING EARLY CONFRONTATION. THIS IS NOT A TENABLE POSITION GIVEN THE MINISTERIAL DECISION AND EXCO'S ENDORSEMENT OF IT AND I AM SURE THAT THE GOVERNOR WILL CONSTANTLY REMIND THEM OF THIS CONTRADICTION, AS HE DID AT THE LAST MEETING.
3. I AM ALSO CONCERNED AT THE IMPLICATIONS OF THE GOVERNOR'S SUGGESTION THAT EXCO SHOULD BE SHOWN ALL THE WORKING PAPERS AND GIVEN AN OPPORTUNITY TO COMMENT ON THEM BEFORE THEY ARE GIVEN TO THE CHINESE. AS I UNDERSTAND IT, MINISTERS DECIDED (YOUR TEL NO 718) THAT THE TEXT NEED NOT BE CLEARED TEXTUALLY BY EXCO. PROVIDED THAT EXCO ENDORSE THE GAME PLAN IN GENERAL YOU WILL BE FREE TO GO AHEAD WITH THE PRESENTATION TO THE CHINESE OF INFORMAL WORKING PAPERS AS SOON AS FINAL VERSIONS ARE AGREED. THE EFFECT OF NONETHELESS PUTTING PAPERS BEFORE THEM AND GETTING THEIR COMMENTS BEFORE WE TAKE ACTION WILL BE TO FACE US WITH A CHOICE OF EITHER ACCEPTING EXCO'S COMMENTS, WITH SERIOUS RISK TO THE PAPERS, OR DISREGARDING EXCO'S VIEWS HAVING JUST SOLICITED THEM.

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4. MORE SPECIFICALLY, I FEAR THAT S Y CHUNG AND SOME OTHERS IN THEIR PRESENT MOOD WILL OBJECT TO THOSE ELEMENTS OF THE WORKING PAPERS THAT ARE SPECIFICALLY DESIGNED TO FIT WITH THE CHINESE PREMISE, EG THE ABOLITION OF APPEALS TO THE PRIVY COUNCIL. IT DOES NOT MAKE MUCH PRACTICAL DIFFERENCE WHETHER WE ARE ASKING FOR FORMAL ENDORSEMENT BY EXCO OR NOT. IF THEY KNOW THE PAPERS ARE BEING HELD UP UNTIL THEY HAVE COMMENTED THEY WILL BE ENCOURAGED TO TRY TO REVERSE WHAT THEY HAVE ALREADY AGREED IN LONDON. IF EXCO ADVISE AGAINST ELEMENTS OF THE PAPERS WHICH THEY DO NOT LIKE WE SHALL HAVE GREAT DIFFICULTY IN IGNORING THEIR ADVICE.

5. THE SUCCESS OF OUR PRESENT EXERCISE DEPENDS WHOLLY ON OUR BEING ABLE TO DEMONSTRATE THAT WE ARE BUILDING ON THE CHINESE PROPOSALS, AND THAT OUR WORKING PAPERS ARE CONSISTENT WITH THEM BOTH IN WHAT THEY SAY AND WHAT THEY DO NOT SAY. IF WE DEVIATE IN ANY WAY FROM THIS THE INITIATIVE STEMMING FROM THE PRIME MINISTER'S MESSAGE WILL BE STRANGLING AT BIRTH AND WE SHALL BE BACK TO THE PREMISE AND CONFRONTATION.

6. FOR THESE REASONS I STRONGLY HOPE THAT THERE WILL BE NO COMMITMENT TO HOLD UP ACTION ON OUR WORKING PAPERS UNTIL EXCO HAVE CLEARED THEM. THE INSTRUCTIONS IN YOUR TEL NO 718 WERE CLEAR THAT WE SHOULD GO AHEAD ONCE EXCO HAD APPROVED THE GENERAL LINE. HOWEVER GRUDGINGLY, THEY APPEAR TO HAVE DONE SO. I RECOGNISE THAT THE PAPERS WILL HAVE TO BE MADE AVAILABLE TO EXCO. I HAVE MUCH HOPE THAT WE SHALL ^{TELL} THEM THAT PRACTICAL CONSIDERATIONS RELATING TO THE TIMING OF MEETINGS HERE MAKE IT IMPOSSIBLE TO GUARANTEE THAT THEY WILL SEE WORKING PAPERS BEFORE THEY ARE USED. THE GOVERNOR COULD AGAIN POINT OUT THAT THE WORKING PAPERS DO NOT COMMIT US TO ANYTHING, AND ADD THAT EXCO COMMENTS, PROVIDED THAT HMG AGREED WITH THEM, WOULD BE DETAIL WITH IN LATER DISCUSSIONS WITH THE CHINESE OF THE SAME SUBJECTS. BUT I THINK IT ESSENTIAL THAT THE GOVERNOR SHOULD HAVE YOUR AUTHORITY TO REFUSE TO ENTERTAIN ANY SUGGESTION FROM EXCO ON THE PAPERS WHICH CONFLICTS WITH THE TERMS OF THE DECISION WHICH THEY ENDORSED IN LONDON. I SHOULD BE GRATEFUL FOR CONFIRMATION ON THIS POINT. S Y CHUNG AND COLLEAGUES CANNOT BE ALLOWED TO AGREE THE POLICY IN LONDON AND THEN FIGHT ITS IMPLEMENTATION IN HONG KONG. OTHERWISE THE PRESENT INITIATIVE - WHICH IS THE ONLY POSSIBLE WAY TO MAKE PROGRESS - IS BOUND TO FAIL.

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FUTURE OF HONG KONG

LIMITED

HD/HKD

HD/FED

HD/PLANNING STAFF

HD/PUSD

D/HD/PUSD(MR FLOWER)

RESEARCH DEPT(MR WALKER)

LEGAL ADVISER(SIR IAN SINCLAIR)

PS

PS/LADY YOUNG

PS/MR LUCE

PS/PUS

SIR J BULLARD

MR GIFFARD

MR DONALD

MR WRIGHT

COPIES TO:

MR ROBERTS NEWS DEPT

MR BURROWS LEGAL ADVISER

MR MARTIN ASSESSMENTS STAFF

CABINET OFFICE

MR COLES NO 10 DOWNING ST

SIR A PARSONS " "

MR GOODALL CABINET OFFICE

SIR PHILIP MOORE BUCKINGHAM PALACE

PS/LORD PRESIDENT OF THE COUNCIL

PS/HOME SECRETARY

PS/CHANCELLOR OF THE EXCHEQUER

PS/S OF S FOR DEFENCE

PS/LORD PRIVY SEAL

PS/SECRETARY FOR TRADE AND INDUSTRY

PS/ATTORNEY GENERAL

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DD 280100Z PEKING

GRS 467

SECRET

DESKBY 280100Z

FM FCO 271800Z OCT 83

TO IMMEDIATE PEKING

TELEGRAM NUMBER 726 OF 27 OCTOBER

INFO IMMEDIATE HONG KONG DESKBY 280100Z

PERSONAL FOR AMBASSADOR FROM DONALD

YOUR TELNO 1095 FUTURE OF HONG KONG

A. J. C. n/w
f-a

1. GIVEN THE ABSENCE OF MINISTERS AND CURRENT PREOCCUPATION IN THE OFFICE WITH SEVERAL OTHER PRESSING TOPICS I THOUGHT IT BEST IF I REPLIED TO THE POINTS WHICH YOU RAISE.
2. I FULLY RECOGNISE THE DIFFICULTIES CAUSED BY ATTITUDES IN EXCO AT THIS STAGE OF THE TALKS. EVERYONE HERE ACCEPTS THE NEED TO KEEP UP THE MOMENTUM AND TO AVOID BEING SIDETRACKED I KNOW THAT THE GOVERNOR IS EQUALLY AWARE OF THE DIFFICULTIES AND OF THE NEED TO KEEP EXCO IN LINE. MINISTERS APPRECIATE THE SKILL WITH WHICH HE HAS HANDLED THE UNOFFICIALS BOTH DURING THEIR VISIT TO LONDON AND SUBSEQUENTLY IN HONG KONG.
3. OBVIOUSLY WE MUST DISCOURAGE SIR S Y CHUNG FROM HAMPERING THE EFFORTS OF THE NEGOTIATING TEAM TO EXPLORE WHETHER WE COULD BUILD ON THE CHINESE PROPOSALS BUT EQUALLY WE HAVE TO TREAD CAREFULLY IN ORDER TO PREVENT A CONFRONTATION WITH THE UNOFFICIALS. I AGREE THAT MINISTERS GAVE AUTHORITY FOR PAPERS TO BE PRESENTED TO THE CHINESE ONCE EXCO HAD ACCEPTED THE GAME PLAN AND ACCEPTED THAT THESE NEED NOT BE CLEARED TEXTUALLY WITH EXCO. BUT I DO NOT THINK THAT IT WOULD BE PRACTICAL POLITICS TO DECLINE TO SHOW THE PAPERS TO EXCO BEFORE THEY ARE GIVEN TO THE CHINESE GIVEN THAT THE GOVERNOR WILL HAVE TO CONTINUE HIS REPORTS TO EXCO ON EACH CONTACT WITH THE CHINESE HE WOULD BE PLACED IN AN IMPOSSIBLE POSITION IF UNOFFICIALS WERE ABLE TO SAY THAT THEY DID NOT KNOW IN ADVANCE THE GENERAL CONTENT OF THE WORKING PAPERS EXPERIENCE HAS IN FACT SHOWN THAT UNOFFICIALS REACT MORE CONSTRUCTIVELY IF THEY ARE GIVEN A SIGHT OF A PIECE OF PAPER (CF MR LUCE'S DISCUSSION ON PASSPORTS IN THE SUMMER AND THE PM'S

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DISCUSSION OF HER MESSAGE IN OCTOBER).

4. THE DISTINCTION BETWEEN SIR SY CHUNG'S VIEWS AND THOSE OF MINISTERS DOES NOT SEEM AS BLACK AND WHITE AS YOU SUGGEST CERTAINLY IT HAS BEEN AGREED THAT WE SHOULD SEE WHETHER SATISFACTORY ARRANGEMENTS CAN BE DEvised ON THE BASIS OF THE CHINESE PROPOSALS. BUT IT IS CLEAR MINISTERS HAVE NOT NECESSARILY RULED OUT A RETURN TO OUR PREVIOUS POSITION IF THAT DOES NOT WORK. I AM NOT CONVINCED THAT IT WOULD BE HELPFUL TO PUSH SIR S Y CHUNG AND HIS SYMPATHISERS INTO A CORNER ON THIS ISSUE FROM WHICH THEY MIGHT TRY TO APPEAL TO LONDON AND REOPEN DISCUSSION WITH MINISTERS.

5. I HOPE ON REFLECTION THEREFORE THAT YOU WILL AGREE THAT WE SHOULD FOLLOW THE GENERAL TIMETABLE SUGGESTED IN HONG KONG TELNO 1610 AND THAT THE GOVERNOR SHOULD SHOW THE PAPERS TO EXCO ON THE BASIS THAT THEY CONTAIN THE GENERAL LINES OF THE MATERIAL WHICH YOU WOULD BE HANDING OVER, MAKING CLEAR THAT SINCE THEY WERE WORKING DOCUMENTS, THEY WOULD NOT COMMIT HMG OR HONG KONG AND NO FORMAL ENDORSEMENT WAS EXPECTED.

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FUTURE OF HONG KONG

LIMITED

HD/HKD

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D/HD/PUSD(MR FLOWER)

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PS

PS/PUS

PS/MR LUCE

MR DONALD

HD/HKD

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COPY TO:

MR COLES, No. 10 DOWNING ST

Mr ROBERTS, NEWS D

RESIDENT CLERK

IMMEDIATE

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FM HONG KONG 261037Z OCT 83

TO IMMEDIATE FCO

TELEGRAM NUMBER 1639 OF 26 OCTOBER

INFO IMMEDIATE PEKING

ADVANCE COPY

YOUR TELNO 718 TO PEKING: FUTURE OF HONG KONG

1. I DISCUSSED THE PROPOSED TACTICS WITH EXCO THIS MORNING. IT WAS NOT AN EASY MEETING SINCE SIR S Y CHUNG, WITH SUPPORT FROM MR T S LO, AND TO SOME EXTENT MISS DUNN ADVANCED ARGUMENTS WHICH WOULD IN AFFECT HAVE REOPENED DECISIONS TAKEN IN LONDON ON 6/7 OCTOBER. BUT THE COUNCIL EVENTUALLY ACCEPTED THAT THE NEGOTIATORS SHOULD PROCEED ON THE BASIS PROPOSED.

2. I INTRODUCED THE DISCUSSION BY SPEAKING ON THE LINES AGREED (PARA 3 OF YOUR TELEGRAM UNDER REFERENCE). IN DOING SO I OMITTED THE POINTS IN PARA 5(C) AND (D) OF MY TELNO 1581 BUT DREW ON THEM LATER IN RESPONSE TO QUESTIONS. SIR S Y CHUNG THEN READ A LENGTHY PREPARED STATEMENT, THE MAIN POINTS OF WHICH WERE:

(A) THE CHINESE PROPOSALS SEEMED GENEROUS. WHY THEN DID THE HONG KONG PEOPLE LACK CONFIDENCE IN THEM? THE ANSWER LAY IN THE POOR RECORD OF THE CHINESE COMMUNISTS, THEIR BROKEN PROMISES, THE FREQUENT CHANGES IN THE CONSTITUTION, AND THEIR FAILURE TO IMPLEMENT THE PROVISIONS OF THE EXISTING CONSTITUTION, AND THEIR FAILURE TO IMPLEMENT THE PROVISIONS OF THE EXISTING CONSTITUTION.

(B) THE CRUX OF THE PROBLEM WAS THEREFORE NOT SO MUCH THE DETAILS OF THE CHINESE PLAN BUT HOW TO ENSURE THAT ITS BASIC PRINCIPLES WERE IN FACT CARRIED OUT AFTER 1997.

(C) THERE WERE TWO SCHOOLS OF THOUGHT ABOUT HOW TO PROCEED:

(i) TO LOOK SEPARATELY AT HONG KONG'S SYSTEMS AND TRY TO BUILD INTO EACH OF THEM SOME KIND OF BRITISH LINK OR OTHER EFFECTIVE GUARANTEE. PURSUIT OF THIS WOULD ENABLE NEGOTIATIONS TO CONTINUE AND GIVE HONG KONG A FEW MONTHS OF COMPARATIVE CALM. BUT WE COULD GET LOST IN THE WOODS AND BE LED BY THE CHINESE TO A POINT FROM WHICH IT WOULD BE DIFFICULT IF NOT IMPOSSIBLE TO RETREAT.

~~BE DIFFICULT IF NOT IMPOSSIBLE TO RETREAT.~~

(14) TO START FROM THE TOP AND SEEK SOME KIND OF OVERALL INSULATOR: ONCE THE AUTHORITY, RESPONSIBILITY AND ACCOUNTABILITY OF THE GOVERNOR WERE CLEARLY DEFINED WITH EFFECTIVE SAFEGUARDS, THERE WOULD BE NO NEED TO GO INTO THE DETAILS OF THE CHINESE PLAN. THIS WOULD BE A MORE DIRECT WAY TO GET TO THE CHINESE BOTTOM LINE. BUT THERE WOULD BE A HIGH RISK OF A STALEMATE IN THE TALKS AND HONG KONG MIGHT HAVE TO FACE FURTHER TURBULENCE.

(D) SIR S Y CHUNG EXPRESSED HIMSELF FIRMLY IN FAVOUR OF THE SECOND OF THESE ALTERNATIVES, SAYING THAT IT WAS HIS CONSIDERED OPINION THAT UNLESS WE WERE PREPARED TO ACCEPT THE RISK OF A BREAKDOWN IN THE TALKS AND CONFRONTATION WITH THE CHINESE THE GAME WAS OVER. (HE LATER ADDED THAT BY THE "GAME" HE MEANT THE MANDATE FROM UMELCO TO SEEK CONTINUING BRITISH ADMINISTRATION).

3. I SAID THAT I DID NOT BELIEVE THE GAME WAS OVER. ON THE CONTRARY, IT HAD ONLY JUST STARTED. I RECALLED WHAT THE PRIME MINISTER HAD SAID AT THE OUTSET OF HER MEETING WITH THE UNOFFICIALS ON 7 OCTOBER. SHE HAD MADE IT CLEAR THAT SHE WAS NOT PREPARED TO EMBARK ON A CONFRONTATION WITH THE CHINESE WITHOUT FIRST SEEKING TO FIND OUT WHAT SPECIAL ARRANGEMENTS THEY WOULD BE PREPARED TO OFFER. I ALSO RECALLED THE TERMS OF THE PRIME MINISTER'S MESSAGE WHICH HAD BEEN AGREED BY THE UNOFFICIALS AND TOOK THE COUNCIL CAREFULLY THROUGH IT ONCE MORE. THE DISCUSSIONS THE PRIME MINISTER HAD PROPOSED IN THE FINAL PARAGRAPH OF THAT MESSAGE WERE IN PURSUANCE OF HER LETTER OF 10 MARCH AND WITHOUT PREJUDICE TO ANY FINAL AGREEMENT. SO THE POSITION WAS FULLY PROTECTED. MOREOVER THE PAPERS WOULD BE INFORMAL WORKING DOCUMENTS AND WOULD NOT CONSTITUTE COMMITMENTS.

THE NEGOTIATORS HAD CONCLUDED THAT THE RIGHT COURSE WAS TO START WITH THE UNCONTENTIOUS AREAS AND LEAVE THE MORE DIFFICULT ONES TILL LATER. IF WE STARTED WITH THE MOST DIFFICULT AND CONTENTIOUS QUESTIONS WE WOULD QUICKLY GET INTO ANOTHER STALEMATE. WHAT WE WERE SEEKING TO DO IN THE WORKING PAPERS WAS TO GET THE CHINESE TO CONFIRM IMPORTANT PRINCIPLES WHICH WERE NOT SPECIFIED IN THEIR PLAN (E.G., IN THE CASE OF THE LEGAL SYSTEMS, THE PRINCIPLES THAT EXISTING LAW WOULD CONTINUE TO APPLY, THE HONG KONG COURTS WOULD CONTINUE TO DRAW ON PRECEDENTS FROM OTHER COMMON LAW JURISDICTIONS, AND THAT HONG KONG WOULD CONTINUE TO BE ABLE TO RECRUIT LEGAL OFFICERS FROM COMMONWEALTH COUNTRIES). WE WOULD ALSO BE SEEKING TO DISCOVER WHAT ADDITIONAL ASSURANCES THE CHINESE WOULD BE PREPARED TO BUILD INTO THEIR PLAN. THIS WAS SURELY WORTHWHILE.

4. MR T S LO SAID THAT HE HELD TO THE POINTS HE HAD MADE IN DISCUSSION WITH THE SECRETARY OF STATE AND THE PRIME MINISTER. MISS DUNN CLAIMED NOT TO UNDERSTAND THE PROPOSED TACTICS, ASKING WHAT GUARANTEE THERE WOULD BE THAT THE CHINESE WOULD NOT CHANGE EVERYTHING ONCE THEY WERE IN A POSITION TO DO SO. I SAID THAT THIS QUESTION WAS BEST TACKLED LAST, ONCE WE HAD GOT IT CLEARLY ESTABLISHED THAT THE ESSENTIALS OF THE PRESENT SYSTEM WOULD CONTINUE. I REMINDED THE COUNCIL AGAIN THAT THE POSITION HAD BEEN FULLY DISCUSSED WITH THE PRIME MINISTER.

4. MR T S LO SAID THAT HE HELD TO THE POINTS HE HAD MADE IN DISCUSSION WITH THE SECRETARY OF STATE AND THE PRIME MINISTER. MISS DUNN CLAIMED NOT TO UNDERSTAND THE PROPOSED TACTICS, ASKING WHAT GUARANTEE THERE WOULD BE THAT THE CHINESE WOULD NOT CHANGE EVERYTHING ONCE THEY WERE IN A POSITION TO DO SO. HE SAID THAT THIS QUESTION WAS BEST TACKLED LAST, ONCE WE HAD GOT IT CLEARLY ESTABLISHED THAT THE ESSENTIALS OF THE PRESENT SYSTEM WOULD CONTINUE.

HE REMINDED THE COUNCIL AGAIN THAT THE POSITION HAD BEEN FULLY DISCUSSED WITH THE PRIME MINISTER, THAT THE TERMS OF HER MESSAGE HAD BEEN AGREED, AND THAT THE NEGOTIATORS WERE SEEKING TO PROCEED ON THE BASIS OF THAT MESSAGE.

5. MR NEWBIGGING SPECIFICALLY SUPPORTED THIS VIEW. OTHER UNOFFICIALS LARGELY CONFINED THEIR INTERVENTIONS TO REQUESTS FOR CLARIFICATION. AT THE END OF THE MEETING SIR S Y CHUNG EXPRESSED CONTINUING DOUBTS, THOUGH WITHOUT FORMALLY DISASSOCIATING HIMSELF FROM MY SUMMING UP TO THE EFFECT THAT THE COUNCIL WERE CONTENT FOR THE NEGOTIATORS TO PROCEED ON THE LINES I HAD DESCRIBED. IT IS CLEAR THAT HE, MR T S LO AND TO SOME EXTENT MISS DUNN CONTINUE TO HAVE RESERVATIONS ABOUT THE COURSE ON WHICH WE ARE NOW EMBARKED.

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