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FUTURE OF HONG KONG ADVANCE COPIES 10

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DESKBY 081100Z DEC

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TO IMMEDIATE FCO

TELEGRAM NUMBER 1315 OF 8TH DEC 83

INFO IMM TATE HONG KONG

FUTURE OF HONG KONG: SEVENTH ROUND: SECOND DAY COMMENT

1. THE GOOD ATMOSPHERE WHICH WAS ESTABLISHED YESTERDAY WAS MAINTAINED TODAY. THE CHINESE SIDE CONTINUED THE PROCESS OF CLARIFYING THEIR POLICIES, DEALING SPECIFICALLY WITH THE QUESTIONS WHICH I HAD ASKED IN MY STATEMENT OF YESTERDAY. THERE WERE SOME NEW DETAILS IN THIS, THOUGH MUCH WAS REPETITION. THEY ALSO PROMISED FURTHER COMMENT AT THE NEXT ROUND AND IN INFORMAL DISCUSSION BEFORE IT ON THE OTHER FOUR PAGES WHICH WE HAVE SUBMITTED AND ON THE FURTHER QUESTION WHICH I PUT THIS MORNING.

2. WHILE YAO AGAIN PRESSED HARD TO HAVE THE REST OF OUR WORKING PAPERS BEFORE THE NEXT ROUND AND SAID THAT THIS WOULD ENABLE THE CHINESE TO DEAL WITH OUR QUESTIONS IN THE MOST EFFICIENT MANNER, THE CHINESE SIDE SHOWED IN PRACTICE A WILLINGNESS TO TREAT THE VARIOUS SUBJECTS COVERED IN OUR WORKING PAPERS AND IN THE 12 POINT PLAN SERIATIM. IT IS HOWEVER STILL TOO EARLY TO SAY WHETHER THERE IS ANY DISPOSITION ON THE CHINESE SIDE TO MODIFY PROPOSALS ALREADY ENUNCIATED IN RESPONSE TO COMMENTS MADE BY THE BRITISH SIDE.

3. AMONG THE NEW POINTS MADE TODAY, THOSE WHICH PARTICULARLY STRUCK US WERE THE STATEMENT THAT THE SAR WOULD HAVE THE CHINESE FLAG AND EMBLEM AS WELL AS ITS OWN FLAG AND EMBLEM, THE STATEMENT THAT SENIOR OFFICIALS (PERHAPS DOWN TO HEADS OF DEPARTMENT) WOULD BE APPOINTED BY THE PRC ON THE NOMINATION OF THE HEAD OF THE SAR GOVERNMENT, AND THE REFERENCE TO A CHINESE GARRISON. THE LATTER IS PARTICULARLY ALARMING. IT IS NOT YET ENTIRELY CLEAR WHETHER IT IS STATED AS A FIRM INTENTION TO STATION A GARRISON IN

This is not mentioned in the detailed report. I have asked for clarification. A.J.C. &

~~IT IS STATED AS A FIRM INTENTION TO STATION A GARRISON IN HONG KONG OR WHETHER THE CHINESE SIDE IS RESERVING A RIGHT TO DO SO. WE SHALL ATTEMPT TO FIND OUT.~~

4. THE CHINESE HAVE ALSO STATED OUTRIGHT FOR THE FIRST TIME THAT IT IS THEIR INTENTION TO START DRAFTING THE BASIC LAW IN THE NPC AFTER THEIR ANNOUNCEMENT IN SEPTEMBER 1984, AND THEN TO CONSULT PEOPLE IN HONG KONG ABOUT ITS TERMS. IT IS STILL UNCLEAR WHAT PART, IF ANY, WE SHALL BE ABLE TO PLAY IN ESTABLISHING THE CONTENT OF THE BASIC LAW.

5. HOWEVER, OVERALL THESE TWO DAYS HAVE FOR THE FIRST TIME BROUGHT THE TWO SIDES INTO DIRECT DISCUSSION OF THE DETAILED IMPLICATIONS OF THE CHINESE PROPOSALS. THIS PROVIDES A WAY FORWARD AND SHOULD ENABLE THE TALKS TO PROCEED IN A REASONABLY CONSTRUCTIVE ATMOSPHERE FOR SOME TIME TO COME. ALTHOUGH IT IS STILL IMPOSSIBLE TO FORESEE THE OUTCOME, THE POSITION LOOKS BETTER THAN IT DID A MONTH AGO.

6. TO SUM UP WE HAVE AT LAST GOT THROUGH THE DOOR. THE ROOM BEYOND WAS PRETTY BARE BUT WE HAVE MANAGED TO PUT SOME OF OUR FURNITURE INTO IT. HOWEVER AT THE SAME TIME THE CHINESE HAVE MANAGED TO INTRODUCED SOME FAIRLY UGLY PIECES OF THEIR OWN.

CRADOCK

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DESKBY 081130Z DEC

FM PEKING 080912Z DEC 83

TO IMMEDIATE FCO

TELEGRAM NUMBER 1314 OF 8TH DEC 83

INFO IMMEDIATE HONG KONG

FUTURE OF HONG KONG: 7TH ROUND OF TALKS: SECOND DAY.

1. I AGAIN SPOKE FIRST. I WELCOMED YAO GUANG'S STATEMENT OF THE PREVIOUS DAY. I CONFIRMED THE FIVE POINTS OF UNDERSTANDING BETWEEN THE TWO SIDES WHICH YAO HAD LISTED THE PREVIOUS DAY, AND LINKED THEM SPECIFICALLY TO THE PRIME MINISTER'S MESSAGE. (PARA 3 OF MY TELNO 1310). I ASSURED YAO THAT WE WOULD DO OUR BEST TO MEET CHINESE WISHES AND SUBMIT THE REST OF OUR WORKING PAPERS AS QUICKLY AS POSSIBLE. I ALSO SAID WE SHOULD, SO FAR AS POSSIBLE, TRY TO MATCH OUR PAPERS TO THE CHINESE TWELVE POINT PLAN.

2. I THEN DEALT IN A PRELIMINARY FASHION WITH POINTS FROM YAO'S STATEMENT YESTERDAY ON THE LEGAL SYSTEM AND LEGAL WORKING PAPER. I WELCOMED HIS CONFIRMATION THAT THE JUDICIARY WOULD REMAIN INDEPENDENT OF THE EXECUTIVE, THAT THE EXECUTIVE WOULD CONTINUE TO BE OBLIGED TO ACT IN ACCORDANCE WITH THE LAWS OF HONG KONG, AND THAT THE ACTIONS OF THE EXECUTIVE WOULD BE SUBJECT TO CHALLENGE IN THE COURTS. I WELCOMED YAO'S CONFIRMATION THAT THE COURTS OF THE SAR WOULD DRAW ON PRECEDENTS FROM OTHER COMMON LAW JURISDICTIONS AS WELL AS HONG KONG ITSELF AND HIS CONFIRMATION THAT CITIZENS WOULD HAVE THE RIGHT TO REPRESENTATION IN THE COURTS BY LAWYERS OF THEIR CHOICE.

3. I SOUGHT FURTHER CLARIFICATION ON A NUMBER OF POINTS:
A) REFERENCE HAD BEEN MADE TO THE SAR REPORTING TO THE CENTRAL GOVERNMENT 'FOR THE RECORD', IN THE CONTEXT OF BOTH THE LEGAL AND FINANCIAL SYSTEMS. COULD WE ASSUME THAT THIS PHRASE MEANT THAT NO SPECIFIC ACT OF APPROVAL WOULD BE

PHRASE MEANT THAT NO SPECIFIC ACT OF APPROVAL WOULD BE REQUIRED FROM THE CENTRAL AUTHORITIES?

B) YAO HAD SAID IT WAS FOR THE FUTURE SAR TO DECIDE WHETHER THE EXISTING ARRANGEMENTS FOR THE DELEGATION OF POWER TO MAKE SUBORDINATE LEGISLATION WOULD BE RETAINED. I POINTED OUT THAT THE VOLUME OF HONG KONG'S SUBORDINATE LEGISLATION FAR EXCEEDED THAT OF ORDINANCES. THE DELEGATION OF POWER TO MAKE SUCH SUBORDINATE LEGISLATION WAS ESSENTIAL TO THE SMOOTH ADMINISTRATION OF HONG KONG AND IT WOULD CERTAINLY BE NECESSARY TO ARRANGE FOR IT TO CONTINUE.

C) IN STATING THAT EXISTING LAWS WOULD BE BASICALLY UNCHANGED YAO HAD SAID THAT ANY LAWS WHICH CONTAINED ELEMENTS IMPLYING COLONIAL RULE AND IMPAIRING CHINESE SOVEREIGNTY WOULD BE AFFECTED. THE ROYAL INSTRUCTION ETC APART, IT WOULD BE HELPFUL IF WE COULD BE GIVEN SOME EXAMPLES OF THESE TYPES OF LAWS.

D) YAO HAD SAID (PARA 6(C) OF MY TELNO 1309) THAT THE PRINCIPAL JUDGES WOULD BE ELECTED BY THE LEGISLATURE. THIS WAS A VERY BIG CHANGE IN THE EXISTING ARRANGEMENTS. IT SEEMED TO US UNNECESSARY AND CONTRARY TO THE GENERAL PRINCIPLE OF LEAVING THE HONG KONG SYSTEMS UNCHANGED. WE HAD OUTLINED IN OUR WORKING PAPER ARRANGEMENTS FOR THE APPOINTMENT OF MEMBERS OF THE JUDICIARY WHICH WOULD PROVIDE CONTINUITY, WHICH WERE NOT INCONSISTENT WITH CHINESE SOVEREIGNTY, AND WHICH HAD NO COLONIAL IMPLICATIONS. I HOPED THAT THE CHINESE WOULD REFLECT AGAIN ON THIS POINT.

E) YAO HAD ALSO SAID THAT THE QUALIFICATIONS AND METHOD OF APPOINTMENT OF OTHER MEMBERS OF THE JUDICIARY WOULD BE PRESCRIBED BY LAWS OF THE FUTURE SAR. THIS TOO WAS AN AREA WHERE WE SAW NO NEED FOR CHANGE. ANY ALTERATION AFTER 1997 WOULD MEAN THAT AN ESSENTIAL ELEMENT OF CONTINUITY WOULD BE LOST.

F) IN SAYING THAT THE SAR COULD RECRUIT LEGAL PERSONNEL FROM OTHER COMMON LAW JURISDICTIONS YAO HAD REFERRED TO POINT 4 OF THE CHINESE PLAN (THAT THE SAR COULD EMPLOY FOREIGNERS AS ADVISERS). DID THIS MEAN THAT FOREIGNERS COULD ONLY BE EMPLOYED IN THE JUDICIARY AS ADVISERS? (A JUDGE WAS A JUDGE.) ADVISERS HAD NO ROLE IN THE CURRENT LEGAL SYSTEM.

G) COULD YAO CONFIRM THAT THE COMMON LAW AND THE RULES OF EQUITY, WHICH HE HAD NOT SPECIFICALLY MENTIONED THE PREVIOUS DAY, WOULD REMAIN IN FORCE?

H) YAO HAD NOT COMMENTED ON THE PROPOSAL IN THE LEGAL WORKING PAPER THAT JUDGES FROM OTHER COMMON LAW JURISDICTIONS MIGHT SIT ON THE COURT OF FINAL APPEAL. THIS PROPOSAL HAD BEEN MADE TO TAKE ACCOUNT OF THE FACT THAT APPEALS TO THE PRIVY COUNCIL WOULD BE ENDED, AND WAS IN OUR VIEW CONSISTENT WITH CHINESE SOVEREIGNTY AND CARRIED NO COLONIAL IMPLICATIONS. IT WOULD BE HELPFUL TO HAVE THE CHINESE SIDE'S COMMENT ON IT.

4. I WELCOMED YAO'S REMARKS OF YESTERDAY ON THE FINANCIAL SYSTEM AND EXTERNAL ECONOMIC RELATIONS PAPERS. THERE WAS A GREAT DEAL OF AGREEMENT BETWEEN US IN BOTH THESE AREAS. ON THE FORMER, I REPEATED MY QUESTION ABOUT THE TERM 'FOR THE RECORD'. ON THE LATTER I REMINDED HIM THAT HONG KONG'S POSITION UNDER GATT AND THE MFA DEPENDED ON THIRD COUNTRIES. WE WOULD NEED TO DISCUSS IT FURTHER.

5. YAO EXPRESSED PLEASURE AT OUR GESTURE IN CONFIRMING THE FIVE POINTS OF COMMON UNDERSTANDING. HE SAID HE WOULD LIKE

5. ~~YA EXPRESSED PLEASURE AT OUR GESTURE IN CONFIRMING THE FIVE POINTS OF COMMON UNDERSTANDING.~~ HE SAID HE WOULD LIKE TO EXPLAIN FURTHER CHINESE POLICIES IN RESPONSE TO MY QUESTION OF YESTERDAY. I HAD ASKED ABOUT POINT 2 OF THE CHINESE PLAN AND EXACTLY WHAT POWERS THE SAR GOVERNMENT WOULD HAVE AFTER 1997. THE SAR WOULD ENJOY AUTONOMY MAINLY IN THE FOLLOWING AREAS:

- A) IT WOULD BE UNDER THE DIRECT AUTHORITY OF THE CENTRAL PEOPLE'S GOVERNMENT. IT WOULD ENJOY A HIGH DEGREE OF AUTONOMY EXCEPT FOR FOREIGN AFFAIRS AND NATIONAL DEFENCE WHICH WERE THE RESPONSIBILITY OF THE CENTRAL GOVERNMENT.
- B) IT WOULD USE THE NATIONAL FLAG AND EMBLEM OF THE PRC. IT COULD ALSO HAVE ITS OWN REGIONAL FLAG AND EMBLEM.
- C) THE GOVERNMENT WOULD BE COMPOSED OF LOCAL INHABITANTS. THE CHIEF EXECUTIVE OFFICIAL WOULD BE ELECTED THROUGH CONSULTATIONS OR ELECTIONS HELD LOCALLY AND APPOINTED BY THE CENTRAL PEOPLE'S GOVERNMENT. THE CHIEF OFFICIALS OF GOVERNMENT DEPARTMENTS WOULD BE NOMINATED BY THE SAR GOVERNMENT AND APPOINTED BY THE CENTRAL PEOPLE'S GOVERNMENT. OTHER OFFICIALS WOULD BE APPOINTED BY THE SAR GOVERNMENT.
- D) IT WOULD BE VESTED WITH THE POWER OF LEGISLATION AND INDEPENDENT JUDICIAL POWER INCLUDING FINAL JUDGMENT.
- E) IT WOULD BE GRANTED THE FOLLOWING POWERS IN CONDUCTING EXTERNAL AFFAIRS:
 - (i) IT COULD ON ITS OWN MAINTAIN AND DEVELOP ECONOMIC AND CULTURAL RELATIONS AND SIGN AGREEMENTS WITH FOREIGN COUNTRIES AND REGIONS AND RELEVANT INTERNATIONAL ORGANISATIONS, USING THE NAME HONG KONG CHINA.
 - (ii) IN DIPLOMATIC NEGOTIATIONS INVOLVING HONG KONG WHICH REQUIRED THE CENTRAL GOVERNMENT TO ACT ON HONG KONG'S BEHALF, THE SAR COULD PARTICIPATE AS A MEMBER OF THE CHINESE DELEGATION. THE SAR COULD ON ITS OWN ENTER NEGOTIATIONS WITH FOREIGN COUNTRIES IN THE FIELDS OF THE ECONOMY, CULTURE AND TOURISM. IT COULD SIGN AGREEMENTS IN THESE FIELDS AS HONG KONG CHINA.
 - (iii) THE CENTRAL GOVERNMENT WOULD EMPOWER THE SAR TO ISSUE ON ITS OWN AUTHORITY TRAVEL DOCUMENTS FOR ENTRY INTO AND EXIT FROM HONG KONG.
 - (iv) DEFENCE OF THE SAR WOULD BE THE RESPONSIBILITY OF THE CENTRAL GOVERNMENT. ARMED FORCES IN HONG KONG WOULD NOT INTERFERE IN THE SAR'S INTERNAL AFFAIRS. MILITARY EXPENSES WOULD BE BORNE BY THE CENTRAL GOVERNMENT. THE SAR GOVERNMENT WOULD ASSUME RESPONSIBILITY FOR KEEPING SOCIAL ORDER.
- F) IT WOULD HAVE INDEPENDENT FINANCES, AND REVENUE WOULD NOT BE HANDED TO THE CENTRAL GOVERNMENT, BUT THE BUDGET AND FINAL ACCOUNTS WOULD BE SUBMITTED TO THE CENTRAL GOVERNMENT FOR THE RECORD.

6. I HAD ALSO RAISED THE MATTER OF THE BASIC LAW FOR THE SAR. HE OFFERED THE FOLLOWING ELABORATIONS ON THIS:

- A) IT FOLLOWED FROM POINT 12 IN THE CHINESE PLAN (THAT THE POLICIES IN THE PLAN WOULD BE STIPULATED AS THE BASIC LAW) THAT THE BASIC LAW WOULD BE THE 'CONCRETISATION' OF THE 12 POINTS.
- B) THE BASIC LAW WOULD BE DRAFTED AND ENACTED BY THE NATIONAL PEOPLES' CONGRESS (NPC) AND WOULD CONTAIN SUCH ISSUES OF FUNDAMENTAL IMPORTANCE AS THE SOCIAL AND ECONOMIC SYSTEMS IN

~~FUNDAMENTAL IMPORTANCE AS THE SOCIAL AND ECONOMIC SYSTEMS IN~~
THE SAR, THE RELATIONSHIP BETWEEN THE CENTRAL AUTHORITIES AND
THE SAR, THE POWER OF AND RELATIONSHIP BETWEEN THE EXECUTIVE, THE
LEGISLATURE AND THE JUDICIARY, AND THE RIGHTS AND OBLIGATIONS OF
CITIZENS.

C) THE CHINESE PLAN WOULD OFFICIALLY BE MADE PUBLIC IN SEPTEMBER
1984. AT THE SAME TIME THE STANDING COMMITTEE OF THE NPC WOULD
BEGIN DRAFTING THE BASIC LAW. IN THE COURSE OF DRAFTING THE
VIEWS OF A WIDER RANGE OF PEOPLE IN HONG KONG WOULD BE SOUGHT.
THE BASIC LAW WOULD BE OFFICIALLY PROMULGATED AT AN APPROPRIATE
TIME.

7. YAO WELCOMED MY STATEMENT YESTERDAY THAT WE UNDERSTOOD THAT
IF THERE WAS NO LINK OF AUTHORITY BETWEEN THE UK AND HONG KONG
IT WOULD NOT BE POSSIBLE FOR THERE TO BE ANY ROYAL INSTRUCTIONS ETC.
HE NOTED MY POINT THAT THESE LAWS CONTAINED A CONSIDERABLE AMOUNT
OF PRACTICAL DETAIL ABOUT HOW VARIOUS ORGANS IN HONG KONG
FUNCTION WHICH WOULD HAVE TO BE LAID DOWN IN SOME OTHER FORM
IF THEY WERE ABOLISHED. HE SAID THE CHINESE SIDE WOULD BE
PREPARED TO MAKE COMMENTS ON THIS AFTER WE HAD PRESENTED OUR
RELEVANT WORKING PAER (IE THAT ON CONSTITUTIONAL ARRANGEMENTS).

8. YAO TOOK UP MY POINT ABOUT CONTINUITY IN 1997 AND THE
PROBLEMS OF SIMPLY LEAVING CERTAIN MATTERS FOR THE FUTURE SAR
TO DECIDE ON. WHEN THE CHINESE SAID IT WAS IMPOSSIBLE AND
UNNECESSARY TO PREJUDGE THESE MATTERS IT DID NOT (NOT) MEAN
THAT THEY WOULD REMAIN UNRESOLVED UNTIL 1997. AN IMPORTANT
TASK OF THE TRANSITIONAL PERIOD WOULD BE TO ENSURE A SMOOTH
TRANSFER OF POWER. HE BELIEVED APPROPRIATE ARRANGEMENTS WOULD
BE MADE. AS TO THOSE ISSUES WHICH WERE FOR THE FUTURE SAR,
IT WAS NOT IMPOSSIBLE THAT CURRENT PRACTICES WOULD CONTINUE
AFTER 1997 UNTIL THE SAR MADE A DECISION TO REPLACE THEM.
A SMOOTH TRANSITION WOULD NOT THEREFORE BE DIFFICULT.

9. HE SAID HE WOULD STUDY THE QUESTION I HAD RAISED THAT
MORNING AND WOULD DISCUSS THEM AT THE NEXT ROUND OR IN
INFORMAL CONTACTS BEFORE THEN. THE CHINESE SIDE WOULD ALSO
COMMENT FURTHER ON OUR FOUR OUTSTANDING WORKING PAPERS (IE
THE ECONOMIC SYSTEM, THE MONETARY SYSTEM, THE RIGHTS OF
INDIVIDUALS AND CULTURAL AND EDUCATION). HE HOPED THAT WE
COULD PRESENT ALL OUR REMAINING WORKING PAPERS BEFORE THE
NEXT ROUND. IF THE CHINESE SIDE HAD AN OVERALL UNDERSTANDING
OF THE PAPERS IT WOULD PLACE THEM IN A BETTER POSITION TO MAKE
COMMENTS.

10. IN RESPONSE I WELCOMED THE STATEMENT AS ANOTHER HELPFUL
ELABORATION OF CHINESE POLICIES. WE WOULD NEED TIME TO STUDY
IT BEFORE COMMENTING FULLY. I HOPED WE WERE NOW IN A PROCESS
OF GENUINE DISCUSSION AND THAT IF ONE SIDE PUT FORWARD A POINT
OF REAL SUBSTANCE THEN THE OTHER WOULD BE PREPARED TO REFLECT
ON IT AND PERHAPS CHANGE THEIR IDEAS ACCORDINGLY. AS REGARDS
LEAVING MATTERS FOR THE FUTURE SAR, I SAID THAT YAO'S REMARK
(PARA 8 ABOVE) WAS A STEP IN THE RIGHT DIRECTION. IT STILL
REQUIRED STRENGTHENING AND CLARIFICATION BUT THE TWO SIDES
WERE AT LEAST BEGINNING TO DEVELOP A COMMON UNDERSTANDING OF THIS
PROBLEM. I HOPED THIS COULD BE FURTHER DEVELOPED IN FUTURE.
ANOTHER GENERAL POINT OF VITAL IMPORTANCE WAS THE PRINCIPLE OF
KEEPING SYSTEMS IN HONG KONG UNCHANGED. THIS SEEMED TO BE

~~ANOTHER GENERAL POINT OF VITAL IMPORTANCE WAS THE PRINCIPLE OF~~
KEEPING SYSTEMS IN HONG KONG UNCHANGED. THIS SEEMED TO US
TO BE THE ONLY WAY TO ENSURE THAT PROSPERITY COULD BE
MAINTAINED. WE THEREFORE SAW AS DANGEROUS ANYTHING IN THE
CHINESE PLAN WHICH IN OUR VIEW WAS AN UNNECESSARY CHANGE.
HE SUGGESTED THAT THE CHINESE MIGHT WORK ON THE BASIS THAT AS
MUCH AS POSSIBLE WOULD BE RETAINED UNLESS IT RAN ABSOLUTELY
COUNTER TO CHINESE PRINCIPLES ON SOVEREIGNTY. CLARITY WAS
A FURTHER ESSENTIAL PRINCIPLE. HE SOUGHT CLARIFICATION OF THE
MEANING OF 'APPOINT' IN RELATION TO THE CHIEF OFFICIALS
OF GOVERNMENT DEPARTMENTS (PARA 5(C) ABOVE). WAS IT A
FORMALITY OR SOMETHING MORE? HE SAID FINALLY THAT HE HAD BEEN
ENCOURAGED BY THE WAY THE ROUND HAD GONE.

11. YAO RESPONDED BRIEFLY. HE AGREED THAT PROGRESS HAD
BEEN MADE THIS ROUND. HE REPEATED THAT IT WOULD BE EASIER FOR
THE CHINESE TO COMMENT WHEN THEY HAD ALL OUR WORKING
PAPERS. HE URGED THAT WE SHOULD FURTHER STUDY THE 12 POINT
PLAN, EACH POINT OF WHICH WAS ORGANICALLY LINKED TO THE OTHERS .

12. COMMENT FOLLOWS IN MIFT.

CRADOCK

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