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FM PEKING 160930Z DEC 83

TO IMMEDIATE FCO

TELEGRAM NUMBER 1367 OF 16TH DEC 83

INFO IMMEDIATE HONG KONG

FUTURE OF HONG KONG: LUNCH WITH YAO GUANG

1. I HAD YAO GUANG TO LUNCH TODAY: HIS INTERPRETER AND GALSWORTHY WERE ALSO PRESENT.

2. YAO BEGAN BY SAING THAT IF OUR IDEA WAS THAT WE SHOULD REACH A BILATERAL AGREEMENT AFTER COMPLETING THE THREE ITEMS ON THE AGENDA OF OUR TALKS THEN WE HAD A PRETTY HEAVY PROGRAMME PARTICULARLY AS THE BRITISH PARLIAMENT WENT INTO RECESS IN ABOUT JULY. WE NEEDED TO SPEED UP OUR DISCUSSIONS ON ARRANGEMENTS AFTER 1997, AND WE SHOULD BE GIVING THOUGHT NOW TO THE SECOND ITEM ON THE AGENDA, NAMELY THE TRANSITION PERIOD. HE HOPED THAT THE BRITISH SIDE WOULD ACCELERATE THE PRESENTATION OF THEIR WORKING PAPERS. I REPLIED THAT WE HOPED TO GET SOON TO THE CENTRAL ISSUES, BUT PAPERS ON THESE WOULD NEED CAREFUL PREPARATION. YAO SAID THAT HE UNDERSTOOD THAT WE WOULD NEED A CERTAIN TIME TO FORMULATE OUR IDEAS AND SUGGESTIONS. BUT SURELY WE KNEW WHAT THE BROAD LINES WERE EVEN IF THE MAIN ELEMENTS WERE NOT YET FINALISED. I HAD SPOKEN TO FOREIGN MINISTER WU OF "SEVERAL IMPORTANT AREAS" WHICH CONCERNED US. WHICH AREAS WERE THESE? IF THIS COULD BE MADE CLEAR EVEN WHILE DISCUSSIONS WERE PROCEEDING ON OUR WORKING PAPERS THEN THE CHINESE SIDE WOULD PAY ATTENTION TO THESE AREAS SO AS TO FACILITATE DISCUSSION.

3. I REPLIED THAT I HAD SPOKEN TO THE FOREIGN MINISTER OF SEVERAL SUCH AREAS, SUCH AS THE LAW AND THE CIVIL SERVICE TO ILLUSTRATE A GENERAL PRINCIPLE, THAT OF THE NEED FOR CONTINUITY. THERE SHOULD BE AS LITTLE CHANGE AS POSSIBLE IN MATTERS WHICH DID NOT AFFECT THE CHINESE BASIC PRINCIPLE. I COULD NOT GIVE AN EXHAUSTIVE LIST, BECAUSE NEW THINGS KEPT CROPPING UP IN THE TALKS, FOR INSTANCE THE QUESTION OF STATIONING TROOPS IN HONG KONG WHICH HAD BEEN RATHER UNEXPECTED. MY POINT WAS THAT THE AGREED BASIS ON THE PRESENT DISCUSSIONS ALREADY ASSURED THE CHINESE THAT THEIR FIRST PRINCIPLE OF SOVEREIGNTY AND THE RIGHT OF ADMINISTRATION WOULD BE MET, AND WE THEREFORE HAD TO GIVE ATTENTION TO THE SECOND PRINCIPLE WHICH WAS TO ENSURE PROSPERITY. FLEXIBILITY WAS VERY IMPORTANT AND WOULD COST THE CHINESE SIDE NOTHING: INDEED IT WOULD GAIN THEM MUCH.

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4. YAO SAID THAT THE 12 POINT PLAN WAS DESIGNED TO ENSURE CONTINUITY . HE REALISED THAT WE WANTED FURTHER CLARIFICATION AND HAD EXPRESSED AN INTEREST IN THE GUARANTEES WHICH COULD BE GIVEN FOR THE IMPLEMENTATION OF THE POLICY. BUT THE CHINESE SIDE STILL WISHED TO KNOW WHAT OUR MAIN WORRIES WERE SO AS TO MAKE SURE THAT THEY GAVE THESE AREAS APPROPRIATE CONSIDERATION. COULD HE SUM UP THE WORRIES WE HAD HITHERTO EXPRESSD AS

- 1) CONTINUITY IN THE LAW
- II) CIVIL SERVICE
- III) ELECTION OF PRINCIPAL JUDGES.

HE REALISED THAT THIS WAS NOT EXHAUSTIVE BUT THESE WERE POINTS HE HAD NOTED. FOR INSTANCE ON THE CIVIL SERVICE THE CHINESE SIDE HAD SAID THAT OVERSEAS CIVIL SERVANTS COULD STAY ON AS ADVISERS WHEREAS WE THOUGHT THEY NEEDED TO STAY ON AS OFFICIALS.

5. I SAID THAT HIS SUMMING UP DEMONSTRATED THE DANGERS OF SUCH AN EXERCISE: HE HAD LEFT OUT THE VERY IMPORTANT QUESTION OF STATIONING TROOPS IN HONG KONG. ALL THESE WERE AREAS ABOUT WHICH WE WERE WORRIED, BUT THERE WERE ALSO OTHERS. WE HAD FOR INSTANCE NOT YET COME TO THE QUESTION OF HOW CENTRAL GOVERNMENT INSTITUTIONS WOULD BE ORGANISED AND WHAT THEIR RELATIONSHIP WOULD BE TO PEKING. HOWEVER I WELCOMED WHAT HE HAD SAID ABOUT THE OBJECT OF THE 12 POINT PLAN BEING TO ENSURE CONTINUITY.

6. YAO SAID THAT ON STATIONING TROOPS, THE 12 POINT PLAN MADE IT CLEAR THAT DEFENCE AND FOREIGN AFFAIRS WERE THE RESPONSIBILITY OF CENTRAL GOVERNMENT, AND IT WAS IN THE LIGHT OF THIS THAT THEY HAD DISCUSSED STATIONING TROOPS IN HONG KONG. I SAID THAT WE DID NOT DISPUTE THEIR RIGHT TO STATION TROOPS ANYWHERE IN CHINA. BUT HAVING THE RIGHT AND ACUTALLY EXERCISING IT WERE TWO DIFFERENT THINGS. I STRONGLY HOPED THAT THE CHINESE SIDE WOULD THINK OF THE EFFECTS OF PUTTING TROOPS IN HONG KONG. YAO DID NOT RESPOND FURTHER ON THIS POINT.

7. HE WENT ON TO SAY THAT HE UNDERSTOOD OUR STATEMENT IN THE NEGOTIATIONS THAT WE WOULD NOT MAKE PROPOSALS WHICH CONTRAVENED THE PRINCIPLE OF CHINESE RESUMPTION OF SOVEREIGNTY AND ADMINISTRATION. HE COULD SAY FRANKLY THAT SO LONG AS WE DID NOT CONTRAVENE THESE PRINCIPLES WE COULD DISCUSS ANY PROBLEMS RELATED TO THE FUTURE OF HONG KONG. AS IF TO STRESS THIS HE REPEATED IT A SECOND TIME.

8. HE THEN ASKED ON THE LEGAL SYSTEMS IN WHAT AREAS WE THOUGHT THE CHINESE WERE PROPOSING TOO MUCH CHANGE. I REPLIED THAT I HAD COVERED THIS IN MY SPEECH ON THE SECOND DAY OF THE 7TH ROUND. THE CHINESE SIDE HAD SAID THAT SENIOR JUDGES WOULD BE ELECTED BY THE LEGISLATURE: HOWEVER OUR WORKING PAPER CONTAINED A SPECIFIC PROPOSAL WHICH WOULD HAVE PROVIDED CONTINUITY. WE THOUGHT THE CHANGE PROPOSED WAS UNNECESSARY.

WE WERE ALSO CONCERNED ABOUT THE STATEMENT THE "OTHER LAWS" WHICH IMPAIRED CHINESE SOVEREIGNTY WOULD BE ABOLISHED. YAO REPLIED THAT IN THIS RESPECT THE CHINESE WERE MAINLY REFERRING TO TERMINOLOGY: HE DID NOT THINK THAT THEY PROPOSED ABOLISHING LAWS, WHICH WOULD CONTRAVENE THE POLICY OF MAINTAINING CAPITALISM. I SAID THAT IF IT WAS A QUESTION OF TERMINOLOGY ALONE THERE WOULD BE LITTLE PROBLEM: WE HAD OURSELVES PROPOSED CHANGES TO TERMINOLOGY. BUT ABOLISHING LAWS WOULD BE DIFFERENT AND WOULD BRING GREAT UNCERTAINTY. I ADDED THAT WE ALSO WISHED TO KNOW HOW OTHER JUDGES APART FROM PRINCIPAL JUDGES WOULD BE APPOINTED: JUDGES IN HONG KONG MUST KNOW THEIR FUTURE. FURTHERMORE THE CHINESE HAD REFERRED IN THIS CONTEXT TO POINT 4 OF THEIR PLAN WHICH RELATED TO ADVISERS. A JUDGE COULD NOT BE AN ADVICER: HE MUST JUDGE. WE THEN EXPLAINED IN DETAIL WHY IT WOULD NOT BE POSSIBLE TO FIND ENOUGH JUDGES FROM HONG KONG ALONE BECAUSE OF ITS SMALL SIZE, AND THAT GIVEN THE TIME IT TOOK FOR SOMEONE TO REACH THE POSITION OF JUDGE FOLLOWING A LEGAL CAREER EVEN A DECISION NOW TO START TRAINING EXTRA PEOPLE WOULD ONLY PRODUCE JUDGES IN 20-25 YEARS TIME. HE SEEMED TO TAKE THIS ON BOARD.

9. HE THEN ASKED ABOUT OUR VIEWS ON THE CIVIL SERVICE. I SAID THAT THE GENERAL IDEA WAS THAT CIVIL SERVANTS WHETHER OF LOCAL OR OVERSEAS ORIGIN SHOULD STAY ON IN HONG KONG AND COMPLETE THEIR CAREERS. WE REGARDED THIS AS ESSENTIAL. IT BECAME APPARENT FROM YAO'S RESPONSE THAT HE HAD MISINTERPRETED OUR USE OF THE PHRASE "CIVIL SERVANTS SHOULD REMAIN AT THEIR POSTS" AND THOUGHT WE MEANT THAT THOSE POSTS AND THE PEOPLE IN THEM SHOULD AS IT WERE BE FROZEN FROM THAT POINT ON. HE PROTESTED THAT SINCE THERE WOULD HAVE TO BE SOME CHANGES IN THE CENTRAL ADMINISTRATIVE STRUCTURE IT WAS NOT POSSIBLE TO SAY THAT PEOPLE SHOULD REMAIN AT THEIR POSTS. I SAID THAT WE DID NOT IN ANY WAY ENVISAGE FREEZING THE STRUCTURE OF GOVERNMENT. THE STRUCTURE WAS IN ANY CASE IN A PROCESS OF CONSTANT EVOLUTION. THERE WERE BOUND TO BE CHANGES BEFORE 1997 AND THERE WOULD PROBABLY BE CHANGES THEREAFTER AS WELL. WHAT WE MEANT WAS THAT PEOPLE SHOULD CONTINUE TO SERVE AS CIVIL SERVANTS AND SHOULD COMPLETE THEIR CAREERS IN THE NORMAL WAY. YAO SAID THAT FOR THE CHINESE SIDE THE KEY QUESTION WAS OFFICIALS OF SECRETARY OR DEPUTY SECRETARY LEVEL. WHEN THEY SPOKE OF ADVISERS THEY WERE REFERRING TO ADVISERS TO PEOPLE AT THAT LEVEL OR TO THE HEAD OF THE SAR. ANYONE BELOW THIS LEVEL COULD CERTAINLY REMAIN AT THEIR POSTS. WE EXPLAINED THE IMPRACTICALITIES OF THIS, MAINLY ON THE GROUNDS THAT PEOPLE OF TALENT WOULD NOT CONTINUE TO SERVE IF THEIR PROSPECTS WERE LIMITED TO SERVICE BELOW DEPUTY SECRETARY LEVEL.

10. YAO THEN ASKED WHAT WE WANTED. I SAID THAT WE WANTED PEOPLE TO BE ALLOWED TO CONTINUE TO SERVE IN HONG KONG AFTER 1997. WE COULD NOT PREDICT EXACTLY WHAT FORM OF ORGANISATIONAL STRUCTURE THE HONG KONG GOVERNMENT WOULD THEN HAVE, BUT WE WISHED TO PRESERVE AS MUCH TALENT AS WE COULD. LOYALTIES WOULD

OF COURSE BE TO THE SAR GOVERNMENT. YAO ASKED WHETHER WE WOULD THINK THAT THE CHIEF SECRETARY, SHOULD HE BE A FOREIGNER IN 1997, SHOULD CONTINUE TO SERVE. I REPLIED THAT IF HE WAS A FOREIGNER, WHICH WAS BY NO MEANS CERTAIN, THE SAME PRINCIPLE SHOULD APPLY TO HIM. THERE SHOULD BE NO ABRUPT CHANGES IN 1997. BY DEFINITION HOWEVER THE CHIEF SECRETARY WAS A SENIOR OFFICIAL AND WOULD INEVITABLY ON APPOINTMENT HAVE ONLY A LIMITED PERIOD TO GO BEFORE REACHING RETIREMENT AGE. I STRESSED THAT THIS WAS A CENTRAL AREA OF CONCERN AND THAT I HOPED THE CHINESE SIDE WOULD SHOW FLEXIBILITY. YAO SAID THAT HE NOW HAD A CLEARER IDEA OF WHAT WE WERE SEEKING. THE PROBLEM MIGHT BE LINKED TO DISCUSSION OF NATIONALITY AND ALSO TO DISCUSSION OF ITEM TWO, THE TRANSITIONAL PERIOD. I SAID I HOPED THE CHINESE WOULD KEEP AN OPEN MIND ON THIS QUESTION. HE AGREED.

11. YAO SAID THAT HE WOULD REPORT AND REFLECT ON WHAT I HAD SAID ON THE LEGAL SYSTEM, CIVIL SERVICE AND APPOINTMENT OF JUDGES.

12. I THEN ASKED HIM WHETHER THE CHINESE SIDE INTENDED TO RECOMMEND TO THE NPC AREAS ON WHICH HE HAD REACHED AGREEMENT FOR INCLUSION IN THE BASIC LAW. HE CONFIRMED THAT THIS WAS THEIR INTENTION. IN THIS CONTEXT HE ASKED WHETHER WE SHOULD AT SOME STATE ATTEMPT TO SUMMARISE AREAS ON WHICH WE HAD REACHED AGREEMENT. I SAID THAT I THOUGHT WHEN WE HAD COVERED A FEW MORE WORKING PAPERS WE MIGHT TRY TO DO THIS, PERHAPS IN STATEMENTS DURING THE TALKS. I DID NOT WANT TO WASTE TOO MUCH TIME ON IT BY TRYING TO DRAFT A FORMAL DOCUMENT, BUT TO CHECK OUR COMMON UNDERSTANDING WOULD BE USEFUL.

13. I ASKED HIM WHAT THE CHINESE SIDE MEANT WHEN THEY SAID THEY WOULD BE SUBMITTING IDEAS TO THE HONG KONG PEOPLE FOR DISCUSSION. IT WOULD NOT DO IF WE REACHED AN AGREEMENT, AND IT WAS SUBSEQUENTLY CHANGED. YAO SAID THAT PERSONALLY HE THOUGHT THE DRAFTING OF THE BASIC LAW WOULD COME AFTER A BILATERAL AGREEMENT. THE BASIC LAW WOULD BE DRAWN UP IN THE LIGHT OF THE BILATERAL AGREEMENT AND THE CHINESE WOULD THEN SOLICIT OPINIONS IN HONG KONG. ALL THIS WOULD, HOWEVER, COME ONE OR TWO YEARS LATER. IT WOULD BE THE BASIC POLICIES AND NOT THE BASIC LAW WHICH WOULD BE ANNOUNCED IN SEPTEMBER. HE THOUGHT THERE WAS NOT LIKELY TO BE MUCH CONTRADICTION BETWEEN WHAT WE AGREED NOW AND OPINIONS EXPRESSED IN HONG KONG, AT LEAST ON BASIC PRINCIPLES. MAYBE SOME DETAILS WOULD BE FURTHER DEVELOPED. I SAID WE COULD NOT BE EXPECTED TO SIGN A BLANK CHEQUE. YAO SAID THAT WE SHOULD NOT WORRY, SINCE THE CHINESE MEANT WHAT THEY SAID.

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WE SHOULD BE PARTNERS NOT OPPONENTS. HE NOTED THAT THERE WAS NOW A STRONG DEMAND FOR DEMOCRATIC REFORM IN HONG KONG, AND HONG KONG PEOPLE TOOK THE VIEW THAT THEY HAD FREEDOM BUT NOT DEMOCRACY. I SAID THAT WE MIGHT PERHAPS DEAL WITH THIS BY PROVIDING A GOOD MEASURE OF DEMOCRACY BEFORE 1997. YAO DID NOT RESPOND DIRECTLY THOUGH HE APPEARED UNPERTURBED BY THE SUGGESTION.

COMMENT

14. THIS WAS ANOTHER CHEERFUL SESSION, THOUGH THE CHINESE ARE CLEARLY BECOMING NERVOUS ABOUT TIMING. IT IS ALARMING THAT THEY ARE EVIDENTLY THINKING OF TRYING TO CONCLUDE AN AGREEMENT AND EVEN OF ITS BEING SUBMITTED TO PARLIAMENT BEFORE SEPTEMBER. THIS HARDLY SEEMS POSSIBLE. IT IS HOWEVER ENCOURAGING THAT YAO SAID FIRMLY THAT THE AREAS OF AGREEMENT WHICH WE REACHED WOULD BECOME PART OF THE BASIC LAW. I ALSO THINK THAT FOLLOWING THIS MEETING WE UNDERSTAND EACH OTHER BETTER ON QUESTIONS OF CONTINUITY IN THE LAW AND IN THE CIVIL SERVICE.

15. THIS CONVERSATION HAS REINFORCED MY VIEW THAT WE NEED TO GET AHEAD WITH MAXIMUM SPEED ON THE IMPORTANT WORKING PAPERS SO AS TO MAKE SURE THAT OUR IDEAS ARE INJECTED INTO CHINESE THINKING AT AN EARLY STAGE. IT IS FAIRLY CLEAR THAT THEY ARE NOW WORKING ACTIVELY ON THEIR PLANS.

CRADOCK

FUTURE OF HONG KONG

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