

SECRET

FUTURE OF HONG KONG - ADVANCE COPIES

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MR COLES, NO.10 DOWNING ST
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SECRET

FROM PEKING 261010Z MAR 84

TO IMMEDIATE FCO

TELEGRAM NUMBER 568 OF 26/3/84

INFO IMMEDIATE HONG KONG

FUTURE OF HONG KONG: 11TH ROUND: FIRST DAY

SUMMARY

1. I RESPONDED TO ZHOU NAN'S REMARKS AT THE LAST ROUND ON THE CONSTITUTIONAL ARRANGEMENTS WORKING PAPER, ARGUING FOR A MORE FORTHCOMING CHINESE RESPONSE TO ITS PROPOSITIONS. I TABLED OUR PROPOSALS ON BRITISH REPRESENTATION AND CONSULAR REPRESENTATION IN HONG KONG AFTER 1997. ZHOU NAN COMMENTED ON THE CIVIL AVIATION PAPER: SOME OF ITS PROPOSALS WERE ACCEPTED BY IMPLICATION, BUT THE CHINESE STATED THAT THE SAR WOULD NEED AUTHORISATION FROM THE CENTRAL GOVERNMENT FOR THE NEGOTIATION AND CONCLUSION OF BILATERAL AIR SERVICE AGREEMENTS.

DETAIL

2. ZHOU BEGAN BY COMMENTING ON THE WORKING PAPER ON CIVIL AVIATION. HE RECALLED THAT POINT 6 OF THE 12 POINT PLAN STATED THAT HONG KONG WOULD REMAIN A FREE PORT AND A SEPARATE TARIFF AREA. HE ALSO RECALLED THAT THE CHINESE HAD STATED THAT HONG KONG WOULD RETAIN FREE TRADE POLICY, AND THAT EXISTING ECONOMIC AND TRADE SYSTEMS AND METHODS OF MANAGEMENT WOULD BE BASICALLY UNCHANGED. THE BASIC SPIRIT OF THIS WAS APPLICABLE TO CIVIL AVIATION.

3. ACCORDING TO RELEVANT INTERNATIONAL CONVENTIONS ON CIVIL AVIATION A STATE HAD COMPLETE AND EXCLUSIVE SOVEREIGNTY OVER



3. ACCORDING TO RELEVANT INTERNATIONAL CONVENTIONS ON CIVIL AVIATION A STATE HAD COMPLETE AND EXCLUSIVE SOVEREIGNTY OVER THE AIR SPACE ABOVE ITS TERRITORY. AFTER 1997 THE SAR GOVERNMENT WOULD HAVE TO OBTAIN AUTHORITY FROM THE CENTRAL GOVERNMENT IN HANDLING ANY MAJOR ISSUES ABOUT EXTERNAL CIVIL AVIATION RELATIONS WHICH INVOLVED SOVEREIGNTY. THE CENTRAL GOVERNMENT WOULD OF COURSE TAKE ACCOUNT OF THE SPECIAL NEEDS AND ECONOMIC INTERESTS OF THE SAR. THE WORKING PAPER USED IN SEVERAL PLACES THE TERM "EXCLUSIVE AUTHORITY". THIS WAS OBVIOUSLY CONTRARY TO THE PRINCIPLE OF SOVEREIGNTY AND THEREFORE MOST INAPPROPRIATE.

4. HONG KONG' CURRENT SYSTEM OF MANAGEMENT AND ITS LAWS AND REGULATIONS RELATING TO CIVIL AVIATION COULD REMAIN EFFECTIVE PROVIDED THEY DID NOT PREJUDICE CHINESE SOVEREIGNTY. THE SAR GOVERNMENT, IN ACCORDANCE WITH ITS LAWS AND RELEVANT PROCEDURES, WOULD PERMIT THOSE AIRLINES CURRENTLY OPERATING IN HONG KONG TO CONTINUE.

5. AFTER 1997 ALL EXISTING BILATERAL AVIATION AGREEMENTS OR CONVENTIONS WOULD BE HANDLED BY THE SAR GOVERNMENT, ON THE AUTHORISATION OF THE CENTRAL GOVERNMENT, ON A CASE BY CASE BASIS IN THE LIGHT OF THE ACTUAL CIRCUMSTANCES. IN PRINCIPLE, THESE AGREEMENTS AND CONVENTIONS COULD BE RENEWED BY APPROPRIATE PROCEDURES.

6. CHINESE APPROVAL WOULD BE NECESSARY BEFORE THE UK COULD SIGN, PRIOR TO 1997, ANY AVIATION AGREEMENTS OR CONVENTIONS APPLYING TO HONG KONG WHOSE VALIDITY WOULD EXTEND BEYOND 1997. SUBJECT TO THE AUTHORISATION OF THE CENTRAL GOVERNMENT, THE SAR GOVERNMENT COULD NEGOTIATE AND SIGN BILATERAL CIVIL AVIATION AGREEMENTS AND CONVENTIONS WITH FOREIGN COUNTRIES, INCLUDING THE UK.

7. THE CONTINUED APPLICATION OF RELEVANT INTERNATIONAL AVIATION CONVENTIONS AND AGREEMENTS TO THE SAR COULD BE HANDLED AS FOLLOWS:

(A) FOR THOSE TO WHICH CHINA WAS A PARTY, EG THE CHICAGO AND WARSAW CONVENTIONS, THE SCOPE OF APPLICATION COULD BE EXTENDED TO INCLUDE THE SAR.

(B) FOR THOSE TO WHICH CHINA WAS NOT YET A PARTY, EG THE INTERNATIONAL AIR SERVICES TRASIT AGREEMENT, THE CENTRAL GOVERNMENT COULD AUTHORISE THE SAR GOVERNMENT TO MAKE APPROPRIATE ARRANGEMENTS SO THAT AIRLINES HAVING THEIR PRINCIPAL PLACE OF BUSINESS IN HONG KONG COULD CONTINUE TO ENJOY THEIR EXISTING RIGHTS.

THE SAR COULD PARTICIPATE IN INTERNATIONAL ORGANISATIONS AND CONFERENCES RELATING TO CIVIL AVIATION ALONG THE GENERAL LINES ALREADY SET FORTH BY THE CHINESE. IN OTHER WORDS THE SAR COULD BE PART OF THE CHINESE DELEGATION WHEN PARTICIPANTS WERE LIMITED TO STATES, BUT COULD EXPRESS ITS VIEWS AS "HONG KONG (CHINA)" (SEMI-COLON), AND COULD PARTICIPATE AS "HONG KONG (CHINA)" WHEN PARTICIPANTS WERE NOT LIMITED TO STATES. IN NEGOTIATIONS WITH FOREIGN COUNTRIES ON CIVIL AVIATION MATTERS RELATING TO THE SAR WHICH HAD TO BE CONDUCTED BY THE

IN NEGOTIATIONS WITH FOREIGN COUNTRIES ON CIVIL AVIATION MATTERS RELATING TO THE SAR WHICH HAD TO BE CONDUCTED BY THE CENTRAL GOVERNMENT, THE SAR GOVERNMENT COULD BE REPRESENTED IN THE CHINESE DELEGATION.

8. AIR LINKS BETWEEN THE SAR AND THE MAINLAND WERE PURELY A MATTER OF DOMESTIC AIR TRAFFIC WITHIN CHINA, AND COULD BE SETTLED THROUGH ARRANGEMENTS MADE BETWEEN THE COMPETENT DEPARTMENT OF THE CENTRAL GOVERNMENT AND THE SAR GOVERNMENT WHEN THE TIME CAME. AFTER CHINA HAD RESUMED THE EXERCISE OF SOVEREIGNTY, THE AIR ROUTE BETWEEN HONG KONG AND THE UK WOULD CEASE TO BE A DOMESTIC BRITISH ROUTE, AND WOULD BE TREATED AS A ROUTE BETWEEN THE SPECIAL ADMINISTRATIVE REGION OF CHINA AND THE UNITED KINGDOM. THIS WAS SELF EVIDENT

9. ON THE AUTHORITY OF THE CENTRAL GOVERNMENT, THE SAR GOVERNMENT, IN ACCORDANCE WITH THE RELEVANT LEGISLATION, WOULD BE RESPONSIBLE FOR DEALING WITH THE MATTER OF ROUTINGS AND FOR TECHNICAL MATTERS SUCH AS THE MAINTENANCE OF AN AIRCRAFT REGISTER, THE ISSUING OF LICENCES, AND THE RUNNING OF AIRPORTS. THE SAR GOVERNMENT COULD ALSO BE AUTHORISED BY THE CENTRAL GOVERNMENT TO PROVIDE AIR TRAFFIC SERVICES FOR THE HONG KONG (CHINA) FLIGHT INFORMATION REGION AND TO UNDERTAKE ANY OTHER RESPONSIBILITIES ALLOCATED UNDER THE REGIONAL AVIATION PLANNING PROCEDURES OF THE INTERNATIONAL CIVIL AVIATION ORGANISATION.

ZHOU CONCLUDED THAT HE BELIEVED THAT THE TWO SIDES SHARED MANY COMMON VIEWS ON THIS WORKING PAPER.

10. I THANKED ZHOU FOR HIS STATEMENT, WHICH I SAID WE WOULD STUDY WITH GREAT CARE. I THEN SPOKE, IN TWO SEPARATE STATEMENTS, ON CONSTITUTIONAL ARRANGEMENTS AND ON BRITISH AND OTHER FOREIGN REPRESENTATION IN HONG KONG AFTER 1997. DETAIL ARE IN MY TEL NO 570.

11. IMMEDIATELY AFTER A BREAK I TOOK ZHOU UP ON HIS STATEMENT ABOUT CIVIL AVIATION. I NOTED THAT ALL HE HAD SAID HAD BEEN UNDER THE RUBRIC OF POINT 6 OF THE 12 POINT PLAN AND PICKED OUT IN PARTICULAR HIS STATEMENT THAT EXISTING BILATERAL AGREEMENTS AND CONVENTIONS APPLICABLE TO HONG KONG WOULD BE HANDLED BY THE SAR GOVERNMENT ON THE AUTHORITY OF THE CENTRAL GOVERNMENT ON A CASE BY CASE BASIS IN THE LIGHT OF ACTUAL CIRCUMSTANCES. I SAID THAT WE CONSIDERED THAT POINT 10 OF THE 12 POINT PLAN WAS RELEVANT IN THE CONTEXT OF CIVIL AVIATION (THAT THE SAR AS "HONG KONG (CHINA)" COULD ON ITS OWN SIGN AGREEMENTS IN THE ECONOMIC AND CULTURAL FIELDS WITH ALL COUNTRIES, REGIONS AND RELEVANT INTERNATIONAL ORGANISATIONS).

I EMPHASISED THAT IT WAS BECAUSE WE SAW THE QUESTION OF TRAFFIC

I EMPHASISED THAT IT WAS BECAUSE WE SAW THE QUESTION OF TRAFFIC RIGHTS IN THEIR CONTEXT THAT I HAD SPOKEN IN THE TERMS I DID WHEN INTRODUCING THE CIVIL AVIATION WORKING PAPER AT THE LAST ROUND. I REPEATED THE PART OF MY STATEMENT ON THAT OCCASION WHICH EXPLAINED THAT ARRANGEMENTS CONCERNING AIR TRAFFIC RIGHTS WERE AN INTEGRAL ASPECT OF ECONOMIC RELATIONS WITH FOREIGN COUNTRIES, AND THAT THE STARTING POINT FOR THE WORKING PAPER WAS THEREFORE POINT 10 OF THE 12 POINT PLAN. I SAID THAT THIS WAS MERELY A PRELIMINARY REACTION TO ZHOU'S STATEMENT AND THAT WE MIGHT HAVE FURTHER COMMENTS AND QUESTIONS LATER.

12. ZHOU SAID THEY WOULD GIVE CAREFUL STUDY TO ALL THAT I HAD SAID. HE HOPED TO COMMENT TOMORROW ON MY STATEMENT ABOUT CONSTITUTIONAL ARRANGEMENTS AND ALSO PROMISED A RESPONSE TO MY STATEMENT ON BRITISH AND OTHER FOREIGN REPRESENTATION, WHICH HE SAID HAD TOUCHED UPON A NUMBER OF IMPORTANT ISSUES. HE SAID IT WOULD HELP THEM IN MAKING THEIR STUDY IF I COULD ANSWER A NUMBER OF QUESTIONS RELATING TO BOTH STATEMENTS:

(A) I HAD SPOKE OF A QUALITATIVE DIFFERENCE BETWEEN THE BRITISH DIPLOMATIC REPRESENTATIVE IN HONG KONG AFTER 1997 AND OTHER CONSULAR REPRESENTATIVES. WAS THIS QUALITATIVE DIFFERENCE DEFINED BY THE THREE RESPONSIBILITIES OF THE BRITISH REPRESENTATIVE THAT I HAD OUTLINED? AND WHAT WAS THE DIFFERENT TITLE FOR THE BRITISH REPRESENTATIVE THAT WE HAD IN MIND?

(B) AS TO THIRD COUNTRIES, WHAT KIND OF REPRESENTATION WOULD BE MAINTAINED AFTER 1997? DID WE ENVISAGE BOTH CONSULATES AND HIGH COMMISSIONS? WHAT DID WE MEAN WHEN REFERRING TO THE UPGRADING OF REPRESENTATION IN HONG KONG?

(C) GOING BACK TO MY STATEMENT ON CONSTITUTIONAL ARRANGEMENTS, ZHOU PICKED OUT THE PART WHICH REFERRED TO THE CHIEF EXECUTIVE OF THE SAR BEING BOUND BY THE ADVICE OF THE EXECUTIVE AUTHORITIES IN THE SAR. THIS STRUCK HIM AS A NEW CONCEPT AND HE ASKED FOR CLARIFICATION OF ITS MEANING.

13 I OFFERED ZHOU THE FOLLOWING AS PRELIMINARY ANSWERS TO HIS QUESTIONS, BUT EMPHASISED IN EACH CASE THAT I SHOULD LIKE TO RESERVE THE OPTION OF RETURNING WITH A MORE CONSIDERED REPLY TOMORROW.

(A) I POINTED OUT THAT THE FIRST TWO OF THE THREE RESPONSIBILITIES I HAD OUTLINED FOR THE BRITISH REPRESENTATIVE WERE NORMAL RESPONSIBILITIES OF CONSULAR OFFICES. THE THREE TOGETHER DID NOT THEREFORE STRICTLY DEFINE THE QUALITATIVE DIFFERENCE WE HAD IN MIND BETWEEN THE BRITISH AND OTHER FOREIGN REPRESENTATIVES. WE HAD NO PROPOSAL AS YET FOR THE DISTINCTIVE TITLE FOR THE BRITISH REPRESENTATIVE.

(B) I POINTED OUT THAT I HAD REFERRED TO CONSULAR REPRESENTATION. IN REFERRING TO UPGRADING WE HAD HAD IN MIND THAT FROM

(B) I POINTED OUT THAT I HAD REFERRED TO CONSULAR REPRESENTATION. IN REFERRING TO UPGRADING WE HAD HAD IN MIND THAT FROM TIME TO TIME COUNTRIES WISHED TO CHANGE THE STATUS OF HER REPRESENTATIVES TO A CONSUL RATHER THAN AN HONORARY CONSUL OR TO A CONSUL-GENERAL RATHER THAN A CONSUL.

(C) I EXPLAINED THAT IN MY STATEMENT I HAD TOUCHED ON THREE TYPES OF POWER OR AUTHORITY IN RELATION TO THE AUTONOMY TO BE ENJOYED BY THE SAR. THESE WERE LEGISLATIVE AUTHORITY, JUDICIAL AUTHORITY AND EXECUTIVE AUTHORITY. OUR UNDERSTANDING OF THE EXECUTIVE AUTHORITY TO BE ENJOYED BY THE SAR AND THE MANNER IN WHICH THIS WOULD BE EXERCISED WAS SET OUT IN PARAGRAPHS 5, 6 AND 12 OF THE WORKING PAPER ON CONSTITUTIONAL ARRANGEMENTS AND GOVERNMENT STRUCTURE AND PARAGRAPH 6 OF THE WORKING PAPER ON THE LEGAL SYSTEM. I REFERRED ZHOU TO THESE PASSAGES.

14. ZHOU OBSERVED THAT ON QUESTION (A) IT WAS STILL NOT CLEAR HOW THE BRITISH REPRESENTATIVE WOULD BE QUALITATIVELY DIFFERENT FROM OTHERS. HE WOULD WELCOME FURTHER CLARIFICATION. ON QUESTION (B), HE POINTED OUT THAT COMMONWEALTH COUNTRIES HAD COMMISSIONS IN HONG KONG. WERE WE SUGGESTING THAT THESE SHOULD CHANGE THEIR STATUS?

15. FINALLY, ZHOU TURNED TO THE QUESTION OF THE LANGUAGE TO BE USED IN HONG KONG COURTS.

AFTER 1997 THE CHINESE LANGUAGE SHOULD IN PRINCIPLE BE USED IN HONG KONG COURTS. BUT, TAKING ACCOUNT OF HISTORICAL AND PRESENT CIRCUMSTANCES, THE CHINESE SIDE BELIEVED THAT CHINESE AND ENGLISH WOULD BOTH BE USED AT THE SAME TIME IN COURTS AND THAT BOTH WOULD BE AUTHENTIC. THE SPECIFIC ARRANGEMENTS FOR THIS WERE MATTERS WITHIN THE COMPETENCE OF THE FUTURE SAR GOVERNMENT.

16 THERE FOLLOWED SOME DISCUSSION ON YOUR VISIT AND OF THE DATES OF THE NEXT ROUND ABOUT WHICH I AM TELEGRAPHING SEPARATELY.

17 COMMENT FOLLOWS IN MIFT

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