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File
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 CONFIDENTIAL
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IMMEDIATE
 ADVANCE COPY

YOUR TELNO 1708: LAKER GRAND JURY.

1. I CALLED ON DAM THIS AFTERNOON TO DELIVER YOUR MESSAGE TO SECRETARY SHULTZ ON THE SAN JOSE MEETING (FCO TELNOS 1698 AND 1699 REFER). RECORD FOLLOWS BY BAG. I WENT ON TO RAISE THE LAKER CASE COMMENTING THAT IT WOULD BE HELPFUL IF THE DEPARTMENT OF JUSTICE COULD SHOW EQUAL SENSITIVITY TO INTERNATIONAL DIMENSIONS OF THEIR WORK AS THEY DID TO THE DOMESTIC.

2. I SAID THAT I HAD BEEN INSTRUCTED TO PROTEST AT THE RECENT ACTION OF THE DEPARTMENT OF JUSTICE IN INFORMING THREE BRITISH AIRWAYS EX-EMPLOYEES THAT THEY WERE IMPLICATED IN A CRIME UNDER INVESTIGATION BY A GRAND JURY. THERE WERE TWO ASPECTS. FIRST THE AMERICANS HAD GONE AHEAD WITHOUT INFORMING US IN ADVANCE. SECONDLY THEY HAD GONE AHEAD IN ADVANCE OF THE CONSULTATIONS IN OCTOBER. IN THE LIGHT OF THE DAM/RIFKIND EARLY WARNING SYSTEM IT SEEMED STRANGE THAT THE DEPARTMENT OF JUSTICE HAD ACTED DESPITE WHAT WE UNDERSTOOD TO BE AN OBLIGATION TO CONSULT US. I SAID THAT I WAS AFRAID THAT DOJ'S ACTION MAY HAVE SOURED THE ATMOSPHERE FOR THE CONSULTATIONS.

3. ON A MORE PERSONAL LEVEL I ADDED THAT IT SEEMED WE WERE STEERING INTO DEEP TROUBLE. IF THE DEPARTMENT OF JUSTICE DECIDED TO GO AHEAD, THE WHOLE BASIS OF THE GOVERNMENT-TO-GOVERNMENT BERMUDA TREATY SEEMED TO BE CALLED INTO QUESTION. MR TEBBIT HAD MADE THIS POINT TO THE U.S. AMBASSADOR IN LONDON, SAYING THAT HMG COULD NOT ACCEPT A CRIMINAL PROSECUTION IN THE U.S. AGAINST SOMETHING WHICH HAD BEEN DONE WITH THE KNOWLEDGE AND CONSENT OF THE TWO

WHICH HAD BEEN DONE WITH THE KNOWLEDGE AND CONSENT OF THE TWO GOVERNMENTS CONCERNED. AS FAR AS WE COULD TELL FROM THE DOJ THERE WAS NO EVIDENCE OF PREDATORY ACTION TO DRIVE LAKER OUT OF BUSINESS. RATHER IT WAS AN ANTI-TRUST CASE AGAINST THE AGREEMENT ON PRICE FIXING AND SCHEDULING EVEN THOUGH THESE ARRANGEMENTS WERE APPROVED BY THE GOVERNMENTS UNDER BERMUDA. I SAID WE BELIEVED CERTAIN DISCRETION WAS ALLOWED TO THE DEPARTMENT OF JUSTICE IN CASES WHERE U.S. INTERNATIONAL RELATIONS MIGHT BE HARMED. I HOPED THERE WOULD BE ADVOCATES IN THE STATE DEPARTMENT PERSUADING THE DOJ TO EXERCISE THIS DISCRETION.

4. IN REPLY DAM SAID THAT HE WAS NOT AWARE OF ALL THE DETAILS BUT THAT HE UNDERSTOOD THE LETTERS WHICH HAD BEEN ISSUED WERE A CIVIL LIBERTIES MEASURE IN ORDER TO GIVE THE RECIPIENTS AN OPPORTUNITY TO PREPARE THEIR DEFENCE. THE JUSTICE DEPARTMENT MIGHT NOT SEEK AN INDICTMENT. ON CONSULTATION HE SAID THAT THERE HAD BEEN A GOOD DEAL ALREADY. DAM WENT ON TO SAY THAT HE DID NOT KNOW THE NAME OF THE BA EMPLOYEE WHICH HAD BEEN WITHHELD FROM US. HE WAS GLAD THAT CONSULTATIONS WOULD BE HELD. THIS WOULD BE A GOOD VEHICLE FOR VOICING OUR CONCERNS. THE STATE DEPARTMENT HAD TO BE VERY CAREFUL AS THE DEPARTMENT OF JUSTICE HAD TO ACT INDEPENDENTLY. DISCRETION WAS EXERCISED BY THE DEPARTMENT OF JUSTICE ITSELF.

5. I SAID I DID NOT TAKE MUCH COMFORT FROM THAT EXPLANATION ALTHOUGH I WAS GRATEFUL FOR IT. THERE SEEMED TO BE A CONFLICT OF JURISDICTION: AMERICAN ANTI-TRUST LAWS ON THE ONE HAND AND A BINDING INTERNATIONAL AGREEMENT ON THE OTHER. THE DEPARTMENT OF STATE WAS THE REPOSITORY OF UK/US BILATERAL RELATIONS. WE LOOKED TO THE STATE DEPARTMENT TO HARMONISE THE U.S.'S INTERNATIONAL OBLIGATIONS WITH DOMESTIC LAW.

6. ONE OF DAM'S STAFF WENT ON TO SAY THAT ENFORCEMENT UNDER THE SHERMAN ACT WAS CONSISTENT WITH THE US'S INTERNATIONAL OBLIGATIONS. THIS HAD BEEN DISCUSSED WITH THE BRITISH GOVERNMENT. IN THE US'S VIEW THE BERMUDA II PROVISIONS WERE WRITTEN TO ALLOW CONTINUED ENFORCEMENT OF THE SHERMAN ACT. PRICE-SETTING AGREEMENTS COULD GO AHEAD ONLY AFTER ANTI-TRUST IMMUNITIES HAD BEEN OBTAINED.

7. IN CONCLUSION I INVITED DAM TO ACQUAINT HIMSELF PERSONALLY WITH THE DETAILS OF THIS CASE. I HOPED THE POLITICAL, IN ADDITION TO THE LEGAL, WING OF THE STATE DEPARTMENT WOULD BECOME INVOLVED.

8. COMMENT. THIS WAS NOT AN ENCOURAGING INTERVIEW. WHILE DAM IS A POLITICAL APPOINTMENT IN THE AMERICAN SENSE, HE IS NOT A POLITICIAN IN THE BRITISH SENSE. INDEED, THERE ARE ONLY TWO POLITICIANS IN THE U.S. ADMINISTRATION: THE PRESIDENT AND THE VICE-PRESIDENT. SO I WISH I COULD BE SURER THAN I AM THAT THE POLITICAL SENSITIVITY OF THIS ISSUE HAD BEEN REGISTERED WHERE IT COUNTS. I DO NOT SENSE THAT THE DEPARTMENT OF STATE IS VERY ZEALOUS IN REPRESENTING THE INTERNATIONAL INTERESTS OF THE UNITED STATES. AT THE RIGHT MOMENT I MAY HAVE TO RECOMMEND THAT THE PRIME MINISTER WEIGH IN WITH THE PRESIDENT: BUT NOT YET.

WRIGHT