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FM WASHINGTON 122052Z OCT 84  
TO IMMEDIATE FCO  
TELEGRAM NUMBER 3056 OF 12 OCTOBER

**IMMEDIATE**

**ADVANCE COPY**

YOUR TELNO 1753: LAKER CONSULTATIONS.

1. I WAS MOST INTERESTED TO SEE THE ADMIRABLE PAPER PREPARED BY OFFICIALS, AND IN PARTICULAR THE SECRETARY OF STATE FOR TRANSPORT'S COVERING MINUTE WHICH UNDERLINES THE NEED TO EXERT EFFECTIVE POLITICAL LEVERAGE BOTH INSIDE AND OUTSIDE THE CONSULTATIONS, IF WE ARE TO ACHIEVE THE OBJECTIVES SET OUT SO SUCCINCTLY IN THE THIRD SENTENCE OF YOUR TUR. I ENTIRELY AGREE.
2. WHAT WE NEED, AS MR RIDLEY POINTS OUT, IS A SUCCESSFUL OUTCOME TO THE DISPUTE RESTING ON AGREEMENT BETWEEN OURSELVES AND THE AMERICANS. WE SHALL NOT ACHIEVE SUCH AN AGREEMENT IF WE ALLOW THE AMERICANS TO OVERRIDE OUR BASIC POSITION OF PRINCIPLE: NOR SHALL WE BE SUCCESSFUL, IN MY VIEW, IF WE TRY TO MAKE THEM ABANDON THEIR PRINCIPLES. WE THEREFORE NEED AN OUTCOME WHICH DOES NOT CONTRADICT THE AMERICANS' VIEW OF THE RELATIONSHIP - UNDER THEIR CONSTITUTION - BETWEEN DOMESTIC AND INTERNATIONAL LAW, BUT AT THE SAME TIME ENSURES THAT OUR OWN PRINCIPLE, NAMELY THAT OUR BILATERAL AGREEMENT CANNOT BE SUBJECTED TO THE ARBITRARY WHIM OF AMERICAN LAW, IS ALSO FULLY PROTECTED. THE KEY TO THIS WILL OF COURSE BE THE EVENTUAL NEGOTIATION OF A FUTURE ARRANGEMENT FOR MANAGING OUR AVIATION RELATIONSHIPS WHICH MAY ITSELF ENTAIL PRACTICAL AND EVEN LEGISLATIVE CHANGES ON BOTH SIDES.
3. AS MR RIDLEY POINTS OUT, WE HAVE TWO WAYS OF PUTTING PRESSURE ON THE AMERICANS. ONE IS THE MOUNTING CONCERN BEING EXPRESSED AT POLITICAL LEVEL HERE BY MYSELF AND IN LONDON BY BRITISH MINISTERS, WHICH AMBASSADOR PRICE APPEARS TO BE RELAYING TO THE RIGHT PEOPLE IN WASHINGTON. SECOND IS THE THREAT OF ARBITRATION OR DENUNCIATION. HERE TOO WHILE I AGREE WITH MR RIDLEY THAT WE NEED TO HAVE A CREDIBLE THREAT UP OUR SLEEVES, MY PREFERENCE FOR THE MOMENT IS TO KEEP THE AMERICANS GUESSING. WE CAN HINT DURING THE CONSULTATIONS THAT WE ARE CONSIDERING OUR OPTIONS. BUT WE SHOULD TAKE NO ACTION UNTIL WE HAVE BEEN ABLE TO ASSESS THE CONSULTATIONS' OUTCOME.
4. AS FOR THE CHOICE BETWEEN ARBITRATION AND DENUNCIATION, IF AND WHEN THE TIME COMES, I COME DOWN FIRMLY ON THE SIDE OF ARBITRATION. DENUNCIATION WOULD OF COURSE UPSET THE US AIRLINES, AND THAT WOULD HAVE A USEFUL EFFECT HERE. THERE WOULD BE COMMERCIAL COSTS FOR US TOO, BUT YOU HAVE NO DOUBT TAKEN THOSE INTO ACCOUNT. DENUNCIATION IS HOWEVER BOTH THE ULTIMATE AND AN IMPRECISE WEAPON. THERE WOULD HAVE TO BE NEGOTIATIONS FOR A NEW AIR SERVICES AGREEMENT, AND THESE COULD NOT BE CONFINED SOLELY TO THE PROBLEMS OF ANTITRUST IN AVIATION. THE AMERICANS WOULD ALSO SEEK TO SECURE COMMERCIAL ADVANTAGES, SINCE THEIR FOLK MEMORY IS THAT THE US WAS OUTMANOEUVRED BY THE BRITISH IN NEGOTIATING BERMUDA II. MOREOVER, SINCE THE WORLD WOULD

BRITISH IN NEGOTIATING BERMUDA II. MOREOVER, SINCE THE WORLD WOULD KNOW THAT WE HAD DENOUNCED THE AGREEMENT BECAUSE OF OUR DISSATISFACTION OVER THE SHERMAN ACT, THE AMERICANS WOULD BE UNDER VERY STRONG DOMESTIC POLITICAL PRESSURE HERE TO MAKE NOT THE SLIGHTEST MOVE TOWARDS US ON THE CENTRAL ISSUE OF PRINCIPLE.

5. ARBITRATION WOULD, ON THE OTHER HAND, FOCUS PRECISELY ON THE PRACTICAL ISSUE OF HOW TO MANAGE THE AVIATION RELATIONSHIP, EVEN IN THE ABSENCE OF AGREEMENT ON THE ISSUE OF PRINCIPLE. OF COURSE WE COULD NOT EXPECT COMPLETE VICTORY: BUT THEN COMPLETE VICTORY ON PRINCIPLES IS NOT WITHIN OUR SIGHTS. BUT EVEN PARTIAL DEFEAT IN ARBITRATION WOULD MEAN FOR THE AMERICANS THAT THEIR POSITION

OF PRINCIPLE HAD TAKEN A SERIOUS BLOW AND THAT IS WORTH GOING FOR. THOUGH THEY BELIEVE THAT THEIR CASE BEFORE AN ARBITRATION TRIBUNAL WOULD BE GOOD, THEY ALSO KNOW THAT ALMOST ANY TRIBUNAL WOULD HAVE A MAJORITY OF PEOPLE ON IT OPPOSED TO AMERICAN ANTI-TRUST PRETENSIONS. THIS IS WHY THEY HAVE FEARED THE THREAT IN THE PAST AND RIGHTLY SO.

MOREOVER, OUR MAIN LINE OF ARGUMENT IS THE NEED TO OBSERVE CONTRACTUAL OBLIGATIONS. IT WOULD BE IN THE SPIRIT OF THOSE OBLIGATIONS TO USE THE ARRANGEMENTS OPEN TO US UNDER BERMUDA 2 TO BEGIN WITH - NAMELY ARBITRATION- RATHER THAN GO AT OVER TO THE MORE DRASTIC OPTION OF DENUNCIATION, WITH ITS UNFORESEEABLE CONSEQUENCES.

6. PERHAPS THE CONCLUSIVE ARGUMENT IS THAT WE CAN STILL DENOUNCE AFTER WE HAVE LAUNCHED AN ARBITRATION: BUT WE CANNOT DO IT THE OTHER WAY ROUND. AT THIS STAGE, THEREFORE, ARBITRATION YES, DENUNCIATION NO.

7. I SHOULD PERHAPS COMMENT ON THE SUGGESTION IN THE PAPER FOR AN AD HOC TRIBUNAL. SO FAR THE INDICATIONS ARE THAT THE JUSTICE DEPARTMENT HAVE FOUND NO EVIDENCE OF A CONSPIRACY TO PUT LAKER OUT OF BUSINESS. IF SO, THE ONLY PEOPLE WHO MIGHT CLAIM COMPENSATION FROM AN AD HOC TRIBUNAL WOULD BE THOSE WHO HAD INITIATED THE CLASS ACTION ON BEHALF OF TRANSATLANTIC PASSENGERS. THUS AT FIRST SIGHT THIS PROPOSAL WOULD NOT BE MUCH OF A BAIT FOR THE AMERICAN GOVERNMENT AND COULD CONCEIVABLY WORK AGAINST US.

8. MY CONCLUSION IS THAT THE RIGHT WAY TO PUT PRESSURE ON THE AMERICANS IS TO CONTINUE OUR MINISTERIAL INTERVENTIONS, TO HINT IN CONSULTATIONS THAT WE ARE CONSIDERING ALTERNATIVES, TO BE QUITE SURE IN OUR OWN MINDS THAT WE WOULD BE PREPARED TO CARRY THROUGH ANY THREATS, BUT TO AVOID COMMITTING OURSELVES AT THIS EARLY STAGE. MEANWHILE I WOULD ADVISE AGAINST FORCING THE AMERICANS INTO A CONFRONTATION ON PRINCIPLES, WHICH SEEMS BOUND TO BE STERILE.

ADVANCE COPIES TO: FCO- PS/SOFS, O'NEILL, GRAY (MAED), AUST (LEGAL ADVISERS)

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