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File

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DESKBY 310900Z
FM WASHINGTON 302159Z OCT 84
TO IMMEDIATE FCO
TELEGRAM NUMBER 3221 OF 30 OCTOBER

LAKER: MY TELNO 3204 AND JERUSALEM TEL NO 106

SUMMARY

1. I SAW DEPUTY SECRETARY DAM TODAY TO REVIEW THE POSITION REACHED IN THE LAKER ISSUE IN THE LIGHT OF THE CONSULTATIONS LAST WEEK. MODERATELY ENCOURAGING.

DETAIL

2. I SAID THAT THERE SEEMED TO BE TWO DISTINCT PARTS TO THE CONSULTATIONS: THE PROPOSED JUSTICE DEPARTMENT INDICTMENTS; AND THE DISCUSSION OF FUTURE ARRANGEMENTS. CONCERNING THE INDICTMENTS WE HAD PUT FORWARD ARGUMENTS WHICH WOULD BEAR ON THE DOJ'S PROSECUTORIAL DISCRETION. I DREW ATTENTION TO TWO GENERAL ASPECTS OF THOSE ARGUMENTS WHICH SEEMED TO BE OF CRUCIAL IMPORTANCE TO HMG'S APPROACH TO THE MATTER AND THEREFORE WE HOPED OF PARTICULAR INTEREST TO THE STATE DEPARTMENT. FIRST, WE CONSIDERED IT UNWISE FOR THE DOJ TO PROCEED WITH A PROSECUTION ON A MATTER WHICH THEY KNEW WOULD BE AN ATTEMPT TO IMPOSE THEIR POLICIES ON THE UK IN AN AREA WHICH WAS PRE-EMINENTLY INTERNATIONAL. SECONDLY, THE EVIDENCE ON WHICH THE DOJ WOULD BASE ANY INDICTMENTS RELATED TO AN ARRANGEMENT BETWEEN TWO BRITISH AIRLINES, AN ACTION NOT PUNISHABLE UNDER BRITISH LAW, DEPENDED ON EVIDENCE FOUND IN THE UK, AND PROVIDED BY A PARTY WHOSE MOTIVATION MUST BE SUSPECT. I POINTED OUT THAT HMG WOULD FIND IT VERY HARD TO ACCEPT INDICTMENTS ON THAT BASIS AND I HOPED THAT THE STATE DEPARTMENT WOULD ENSURE THAT THESE POINTS WERE AT THE FOREFRONT OF THE CONSIDERATION BY THE JUSTICE DEPARTMENT.

NOT?

3. THE SECOND PART OF THE CONSULTATIONS RELATED TO THE FACT THAT BOTH GOVERNMENTS NOW AGREED THAT THERE WAS A PRACTICAL PROBLEM OF MANAGING THE AVIATION RELATIONSHIP AND THAT SOLUTIONS HAD TO BE FOUND. WHILE WE UNDERSTOOD AND ACCEPTED THAT THE JUSTICE DEPARTMENT MUST DECIDE ABOUT THE INDICTMENTS STRICTLY IN ACCORDANCE WITH US LAW AND THAT THEY MUST MAINTAIN A DISTINCTION BETWEEN THE DISCUSSIONS ON FUTURE ARRANGEMENTS AND INDICTMENTS, COMMON SENSE SUGGESTED THAT THE TWO COULD BE ENTIRELY DIVORCED. IF THE GOVERNMENTS FOUND A SOLUTION TO THE PRACTICAL PROBLEMS THAT AROSE FROM THE CONFLICTS OF POLICY IN LAW THERE SHOULD BE SOME FEEDBACK TO THE DOJ'S CONSIDERATION OF INDICTMENTS: THERE WOULD NOT SEEM MUCH SENSE IN PROCEEDING WITH A PROSECUTION IF AN AGREED SOLUTION TO THE PRACTICAL PROBLEMS WOULD SATISFY BOTH GOVERNMENTS.

4. DAM, WHO INDICATED THAT HE HAD SINCE OUR LAST MEETING GIVEN MORE CAREFUL ATTENTION TO THE ISSUE, UNDERTOOK TO EMPHASISE THE

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/ POINTS

POINTS AT PARA 2 ABOVE TO THE DOJ. HE COMMENTED, HOWEVER, THAT WITH THE NARROWING OF THE DOJ'S PROPOSED INDICTMENTS (IE THE ELIMINATION OF THE PREDATORY PRICING ALLEGATION AND THE HOLLYWOOD PRICE FIXING ALLEGATION) THE LIKELY RISKS TO THE BRITISH AIRLINES IN RESULTING TREBLE DAMAGE ACTIONS WAS MUCH REDUCED. HMG NEEDED TO KEEP A SENSE OF PROPORTION. NEVERTHELESS HE RECOGNISED THE IMPORTANCE OF THE CONTINUING DISCUSSIONS IN RESOLVING THE RESULTING PRACTICAL PROBLEMS AND SAID THAT HE RECOGNISED THE POSSIBLE LINKAGE WITH THE INDICTMENTS. THIS WOULD HOWEVER, BE DIFFICULT AND WOULD HAVE TO BE RELATED MORE TO THE PROSECUTORIAL DISCRETION OF THE DOJ RATHER THAN ANY AUTOMATIC RETROACTIVITY IN AN AGREEMENT ON FUTURE ARRANGEMENTS.

COMMENT

5. DAM'S RESPONSE WAS SOMEWHAT MORE FORTHCOMING THAN HITHERTO (SEE MY TELNO 2967). IN PARTICULAR HIS CALM IF CAUTIOUS RESPONSE TO LINKAGE SUGGESTS THAT WE ARE RIGHT IN SEEING THE NEGOTIATIONS THIS WEEK AS HAVING SOME INFLUENCE ON THE DOJ'S VIEW OF THE INDICTMENTS. AS TO A POSSIBLE MESSAGE, I AM GLAD THAT YOU AGREE THAT A MESSAGE AT THE RIGHT TIME WOULD BE OPPORTUNE AND AM GRATEFUL THAT YOU WOULD BE PREPARED TO WRITE TO SHULTZ. AS TO TIMING, IN VIEW OF MY TALK WITH DAM, AND BEARING IN MIND THAT WE ALSO UNDERSTAND THAT THE DOJ ARE DELAYING DISCUSSIONS WITH THE AIRLINES' ATTORNEYS ABOUT THE INDICTMENTS I THINK THAT THE RIGHT MOMENT MIGHT WELL BE WHEN WE HAVE SOME FEEL FOR THE OUTCOME OF THIS WEEKS TALKS.

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