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FROM UKDEL MELBOURNE 060540Z OCT 81  
TO IMMEDIATE FCO  
TELEGRAM NUMBER 89 OF 6 OCT  
INFO SAVING OTTAWA.

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CANADIAN CONSTITUTION.

THE PRIME MINISTER AND MR TRUDEAU MET TO TAKE STOCK OF THE LATEST POSITION ON THIS MATTER AT THE RESIDENCE OF H M CONSUL GENERAL IN MELBOURNE ON MONDAY 5 OCTOBER 1981 AT 2.45 PM. THE PRIME MINISTER WAS ACCOMPANIED BY SIR ROBERT ARMSTRONG AND MR TRUDEAU BY MR MICHAEL PITFIELD.

2. THE PRIME MINISTER SAID THAT SHE HAD NOT HAD AN OPPORTUNITY OF READING THE JUDGMENT OF THE SUPREME COURT OF CANADA, BUT SHE UNDERSTOOD THAT THE COURT HAD RULED, BY A MAJORITY, THAT THE CANADIAN GOVERNMENT'S PROPOSALS WERE NOT ILLEGAL BUT WERE NOT IN ACCORDANCE WITH THE CONSTITUTIONAL CONVENTION WHICH REQUIRED PROVINCIAL CONSENT FOR MEASURES WHICH AFFECTED THE RELATIONSHIP BETWEEN FEDERAL AND PROVINCIAL GOVERNMENTS IN CANADA. THIS WAS LIKELY TO ENCOURAGE SOME OF HER SUPPORTERS TO PERSIST IN THEIR OPPOSITION TO WHAT WAS PROPOSED, IF AND WHEN A MEASURE CAME BEFORE THE HOUSE OF COMMONS. THE GOVERNMENT WOULD DO WHAT THEY WERE ASKED BY THE CANADIAN GOVERNMENT AND PARLIAMENT TO DO, AND THEIR OBJECT WOULD BE TO GET THE MEASURE THROUGH WITH THE GREATEST POSSIBLE DEGREE OF SUPPORT.

3. MR TRUDEAU SAID THAT HE COULD NOT ASK FOR MORE THAN THAT. HE ACKNOWLEDGED THE DIFFICULTIES WHICH THE PRIME MINISTER AND HER COLLEAGUES WOULD FACE AT WESTMINSTER, AND HE WOULD LIKE TO DO ANYTHING HE COULD TO MAKE IT EASIER FOR THEM. HE WAS GOING TO HAVE ONE MORE ROUND OF CONSULTATIONS WITH THE SPOKESMAN FOR THE PROVINCIAL PREMIERS. HE HAD TO SAY THAT THERE WAS NOT MUCH CHANCE OF A COMPROMISE. THE PROVINCIAL PREMIERS WHO ARE OPPOSED TO THE GOVERNMENT'S PROPOSALS HAD ALWAYS SAID THAT, EVEN IF THEY LOST THE LEGAL ISSUE, THEY WOULD CONTINUE THE POLITICAL FIGHT. THE SUPREME COURT'S RULING ON THE CONSTITUTIONAL CONVENTION HAD GIVEN THEM NEW AMMUNITION. IT WAS FOR THE CANADIAN GOVERNMENT AND PARLIAMENT TO DECIDE WHETHER TO CHANGE OR OVERRIDE THE CONVENTION, AS PROPOSED, AND THEY WOULD HAVE TO TAKE THE CONSEQUENCES POLITICALLY. IT WAS ALL RATHER UNSATISFACTORY, BECAUSE THOSE WHO SAID THAT THERE WAS A CONSTITUTIONAL CONVENTION WERE UNABLE TO DEFINE IT PRECISELY. DELAY IN DEALING WITH THE MATTER FROM NOW ON COULD ONLY HURT BOTH GOVERNMENTS AND ANGLO-CANADIAN RELATIONS.

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4. THE PRIME MINISTER SAID THAT, BEHIND ALL THE LEGAL AND CONSTITUTIONAL ARGUMENTS, THE POLITICAL REALITIES WERE THAT THE TWO PRIME MINISTERS AND GOVERNMENTS WERE DIRECTLY ELECTED BY AND RESPONSIBLE TO THEIR ELECTORATES, AND THAT IT WAS VERY IMPORTANT TO PRESERVE CLOSE AND FRIENDLY ANGLO-CANADIAN RELATIONS. HOW IT WAS HANDLED IN PARLIAMENT IN THE NEW SESSION WOULD DEPEND PARTLY ON PROGRESS IN CANADA AND PARTLY ON HOW THE BRITISH GOVERNMENT GOT ON WITH ITS OWN PROGRESS. MR TRUDEAU SAID THAT HE WAS ENTIRELY CONTENT TO RELY ON THE PRIME MINISTER'S DECISIONS ON TIMING AND PROCEDURE AT WESTMINSTER, IN THE SAME WAY AS SHE HAD TAKEN THE VIEW THAT INTERNAL AFFAIRS IN CANADA WERE NOT FOR THE BRITISH GOVERNMENT TO DEAL WITH. HE WOULD ONLY MAKE THE POINT, ON TIMING, THAT TIME COULD ONLY PLAY AGAINST HIMSELF AND THE PRIME MINISTER, IN TERMS OF ANGLO-CANADIAN RELATIONS. THE LONGER THINGS DRAGGED ON, THE MORE BRITISH MEMBERS OF PARLIAMENT WOULD VISIT CANADA AND THE MORE PROVINCIAL PREMIERS WOULD VISIT THE UNITED KINGDOM. AT SOME POINT HE WOULD HAVE TO TELL CANADIANS NOT TO LISTEN TO BRITISH BACKBENCHERS. AT SOME STAGE THE PRIME MINISTER MIGHT NEED TO SAY TO PROVINCIAL PREMIERS THAT SHE COULD NOT IN LAW TAKE COGNIZANCE OF THEIR ARGUMENTS.

5. MR TRUDEAU WENT ON TO SAY THAT MR LEVESQUE, THE PREMIER OF QUEBEC, WAS INTENT ON STIRRING UP TROUBLE. IF THERE HAD TO BE A FIGHT WITH QUEBEC, HIS OWN JUDGMENT WAS THAT THAT FIGHT WOULD BE BEST FOUGHT NOW THAN LATER. HE WOULD, THEREFORE, KEEP UP THE PRESSURE. IT WAS BETTER TO HAVE THE FIGHT NOW, WHEN THE MAJORITY OF CANADIANS SUPPORTED THE SUBSTANCE OF THE FEDERAL GOVERNMENT'S PROPOSALS, IF NOT THE METHOD OF PUTTING THEM INTO EFFECT; POLLS SHOWED THAT 70 TO 80 PER CENT OF THE PEOPLE IN EVERY PROVINCE WERE IN FAVOUR OF PATRIATION OF THE CONSTITUTION AND OF A BILL OF RIGHTS; BUT THERE WAS A MAJORITY AGAINST THE METHOD WHICH THE FEDERAL GOVERNMENT HAD CHOSEN TO ADOPT.

6. THE PRIME MINISTER ASKED HOW FAR THE CANADIAN PEOPLE WERE AGAINST THE PROPOSED BILL OF RIGHTS.

7. MR TRUDEAU SAID THAT 80 PER CENT OF THE PEOPLE WERE FOR IT. THE SUPREME COURT HAD NOT DISTINGUISHED BETWEEN PATRIATION AND THE BILL OF RIGHTS IN THEIR JUDGMENT. THE PROVINCES HAD NOT DARED TO CHALLENGE THE BILL OF RIGHTS ON SUBSTANCE BUT THEY WERE USING IT AS A WEAPON IN THEIR FIGHT AGAINST FEDERALISM. THIS WAS MISGUIDED; THE PROPOSED BILL OF RIGHTS WOULD REDUCE THE POWERS OF GOVERNMENT AT BOTH FEDERAL AND PROVINCIAL LEVEL. THE FEDERAL GOVERNMENT WAS PREPARED TO CONTEMPLATE SOME WEAKENING OR NARROWING OF THE PROPOSALS ON THE BILL OF RIGHTS, IF THAT WOULD HELP TO REDUCE THE OPPOSITION OF THE PROVINCIAL GOVERNMENTS. THAT WOULD BE A MATTER FOR NEGOTIATION. BUT MR LEVESQUE AND PROBABLY MR LYON WOULD SAY THAT THERE WAS NOTHING DOING, AND IT WAS PROBABLE THAT THE SPOKESMAN FOR THE PROVINCIAL PREMIERS (MR BENNETT OF BRITISH COLUMBIA) WOULD HAVE TO REPORT THAT THERE WAS NO CONSENSUS.

8. THE PRIME MINISTER ASKED WHEN THE CANADIAN GOVERNMENT PROPOSED TO INTRODUCE THE RESOLUTION IN THE CANADIAN PARLIAMENT.

9. MR TRUDEAU SAID THAT PRESENT PLANS WERE TO INTRODUCE IT ON 14 OCTOBER, BUT THAT IT MIGHT WELL BE A LITTLE LATER, DEPENDING ON NEGOTIATIONS WITH THE PROVINCIAL PREMIERS. THE DEBATE COULD LAST ONLY TWO DAYS IN THE HOUSE OF COMMONS, AND TWO IN THE SENATE: ONE OF THE DAYS IN THE SENATE COULD OVERLAP WITH THE SECOND DAY IN THE HOUSE OF COMMONS. AFTER THAT, THE RESOLUTION AND DRAFT BILL WOULD BE SENT TO LONDON.

10. THE PRIME MINISTER SAID THAT THE BRITISH GOVERNMENT WOULD WANT TO DEAL WITH IT AS SOON AS THEY COULD, AND TO DEAL WITH IT EFFECTIVELY.

11. THE PRIME MINISTER AND MR TRUDEAU SAID THAT THEY WERE CONTENT WITH THE DRAFT GUIDANCE FOR PRESS SPOKESMEN WHICH HAD BEEN PREPARED BY SIR ROBERT ARMSTRONG AND MR MICHAEL PITFIELD IN ADVANCE OF THEIR MEETING (SEE MY TEL 72).

12. THE PRIME MINISTER SAID THAT THE SPOKESMEN SHOULD ALSO MAKE IT CLEAR THAT THERE WAS AGREEMENT BETWEEN THE TWO PRIME MINISTERS ABOUT DEALING WITH THIS MATTER AS SOON AS IT COULD BE DEALT WITH, AND ABOUT THE IMPORTANCE FOR CLOSE AND FRIENDLY ANGLO-CANADIAN RELATIONS OF DOING SO.

13. MR TRUDEAU SAID THAT AT LUNCH MR IAN GOW HAD SAID TO HIM THAT ONE OF THE DIFFICULTIES WAS THAT THE FEDERAL GOVERNMENT HAD NOT BEEN LOBBYING IN LONDON AS THE PROVINCIAL GOVERNMENTS HAD BEEN. THEY HAD FELT INHIBITED FROM GOING OVER TO THE ATTACK WHILE THE ISSUE WAS BEFORE THE SUPREME COURT. HE ASKED FOR THE PRIME MINISTER'S ADVICE AS TO WHETHER THEY SHOULD DO SO NOW. THE PRIME MINISTER SAID SHE WOULD LIKE TO THINK ABOUT THAT AND LET MR TRUDEAU KNOW. AS FOR THE BRITISH GOVERNMENT, THE FIRST TASK WOULD BE TO REVISE THE DRAFT REPLY TO THE REPORT BY THE SELECT COMMITTEE ON FOREIGN AFFAIRS. SHE WOULD BE LOOKING CAREFULLY AT THAT ON HER RETURN TO LONDON. SHE WOULD HOPE TO KEEP IN CLOSE TOUCH WITH MR TRUDEAU THROUGH SIR ROBERT ARMSTRONG AND MR PITFIELD, AS SOON AS MR TRUDEAU'S CONSULTATIONS WITH THE SPOKESMAN OF THE PROVINCIAL PREMIERS WERE COMPLETED.

14. MR TRUDEAU SUGGESTED THAT THE PRIME MINISTER MIGHT LIKE TO HAVE IN THE BACK OF HER MIND THE POSSIBILITY OF COMPLETING THE PROPOSED BILL BY 11 DECEMBER 1981, WHICH WAS THE 50TH ANNIVERSARY OF THE STATUTE OF WESTMINSTER. SIR ROBERT ARMSTRONG RECALLED THAT IT WOULD BE IMPOSSIBLE TO INTRODUCE THE BILL EARLIER THAN 16 NOVEMBER, AND IT MIGHT, THEREFORE, BE EXTREMELY DIFFICULT TO TAKE THE BILL THROUGH ALL ITS STAGES BY 11 DECEMBER.

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15. THE PRIME MINISTER ACKNOWLEDGED THE DIFFICULTY, BUT AGREED THAT SHE WOULD KEEP THE DATE AT THE BACK OF HER MIND. MR TRUDEAU SAID THAT, WHEN ONE WAS GOING TO DO SOMETHING THAT WAS RIGHT, THERE WAS NOTHING TO BE GAINED BY PROCRASTINATION. THE FIGHT COULD NOT GET WORSE AND, THEREFORE, IT HAD BETTER BE BROUGHT TO A CONCLUSION. CANADA HAD Poured DECADES OF MENTAL AND PHYSICAL ENERGY INTO THIS QUESTION, WHICH HAD BEEN UNDER CONSIDERATION FOR 54 YEARS. THE TIME HAD COME TO GET IT BEHIND THEM, SO AS TO LIBERATE THE ENERGIES OF CANADA TO MAKE THE MOST OF ITS POTENTIALS FOR THE FUTURE.

16. THE MEETING CONCLUDED AT 3.20 PM.

FCO PLEASE PASS SAVING TO OTTAWA, AND SEND ADVANCE COPIES TO PRIVATE SECRETARIES TO PRIME MINISTER, HOME SECRETARY, LORD CHANCELLOR, LORD PRESIDENT, LORD PRIVY SEAL, CHANCELLOR OF THE DUCHY OF LANCASTER, CHIEF WHIP AND THE ATTORNEY GENERAL.

CARRINGTON

[ADVANCED AS REQUESTED]

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SIR I SINCLAIR }  
MR FREELAND } LEGAL ADVS.  
DR PARRY }

PS/CHANCELLOR OF THE DUCHY OF  
LANCASTER

PS/LORD CHANCELLOR

PS/LORD PRESIDENT

MR H STEEL, LAW OFFICERS' DEPT

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