

PO - CH / NL / 0085

PART B

Part B.

SECRET

(Circulate under cover and notify REGISTRY of movement)

Begins: 9/6/86
Ends: 19/11/86

**COMMERCIAL
IN CONFIDENCE**

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PO -CH /NL/0085



PART B

Chancellor's (Lawson) Papers:

**SANCTIONS AGAINST LIBYA
FOLLOWING ACTS OF
TERRORISM**

NL/0085

PO -CH

PART B

Disposal Directions: 25 Years

Sheldon

31/7/95

B C Simpson Esq
Chief Executive
Tobacco Advisory Council
Glen House
Stag Place
LONDON
SW1E 5AG



Chancellor of the Exchequer



CONFIDENTIAL



FROM: A W KUCZYS

DATE: 9th June 1986

MR C W KELLY

cc PS/Chief Secretary
PS/Economic Secretary
Sir P Middleton
Sir G Littler
Mr Lavelle
Mr Fitchew
Mr Mountfield
Mr Peretz
Mr Walker
Mr G Hosker - T.Sol.

US FREEZE ON LIBYAN ASSETS

The Chancellor was most grateful for your minute of 6th June. He is writing to Secretary Baker as you suggested. He has commented that any statement we may make will need to be considered very carefully indeed.

A handwritten signature in black ink, appearing to be "AWK".

A W KUCZYS

t/AWK



cc PS/Chief Secretary
PS/Economic Secretary
Sir P Middleton
Sir G Littler
Mr Lavelle
Mr Fitchew
Mr Mountfield
Mr Peretz
Mr Walker
Mr C W Kelly
Mr G Hosker - T.Sol.

Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

T P Lankester Esq
British Embassy
3100 Massachusetts Avenue NW
Washington DC 20008
United States of America

9th June 1986

Dear Tim

I would be grateful if you could forward the enclosed letter from the Chancellor to Secretary Baker.

Yours ever

Tommy

A W KUCZYS



Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

The Hon. James A Baker III
Secretary of the Treasury
Washington

9 June 1986

A handwritten signature in cursive script, appearing to read 'Jim Baker'.

Thank you for your letter of 2 June about the action started by the Libyan Arab Foreign Bank for the release of its blocked assets.

I understand that our officials are in close touch. I have had a detailed report of the useful meeting they had on 4 June and will make sure that I am kept fully briefed as the situation develops.

A handwritten signature in cursive script, appearing to read 'Nigel Lawson'.

NIGEL LAWSON

CONFIDENTIAL

FROM: C W KELLY
DATE: 25 JUNE 1986

CHANCELLOR

cc Chief Secretary
Economic Secretary
Sir P Middleton
Sir G Littler
Mr Lavelle
Mr Mountfield
Mr Peretz
Mr Walker

Mr Hosker - T.Sol

US FREEZE OF LIBYAN ASSETS

I reported the current state of play on the effect of the Libyan asset freeze on US bank branches here in my minute of 6 June.

2. Since then, we have continued to be as helpful as possible to the US within the constraints imposed by our ambivalence about what they have done. They have not yet taken up our offer to comment on Bankers Trust's lines of defence. But the Bank have helped them with the names of potential expert witnesses on the operation of the Euromarkets and with factual material on the arrangements for bank supervision. The FCO have also provided them with copies of relevant public statements made by UK ministers.

3. Unfortunately, as we expected, the existing statements did not amount to very much. The US are therefore pressing us strongly to arrange something more precisely tailored to their needs.

4. For the reasons explained in my earlier minute, this raises a number of difficulties. First, on a procedural point, any statement should ideally have been made before the action started. One made now might be judged to be contrived, and might therefore

be disregarded. Second, we cannot really say what the US want us to say. We do sympathise with, and share, their determination to do something about Libyan terrorism. It is also true that they have gone some way to meet our extraterritorial concerns by limiting the freeze to US branches here and not trying to extend it to subsidiaries. But we would much rather that they had not applied it even to branches.

5. An opportunity has now arisen for the Attorney General to include a passage on this subject in a speech he is giving to the American Bar Association in Washington on 30 June. The speech is mainly about extraterritoriality. So a few sentences on the Libyans would look fairly natural and uncontrived. After a discussion with some of us this morning, the Attorney General proposes to include the following sentences:

"The [Tokyo] statement recognised the concept of terrorism which is supported or sponsored by a state. We had in mind, of course, Libya. We have taken a number of significant measures to respond to this threat, including closing the Libyan People's Bureau, stricter immigration controls, and a ban on new defence contracts. We understand and sympathise with the reasons behind the US blocking of Libyan assets and, as a matter of public policy, we will not object to this particular measure and will not undermine it."

6. This has been designed to give the US most of what they want, without compromising our own position. It does not say that the action does not give rise to any concerns on our part. But it does say that we will not object to it in this particular instance. This is a statement of fact, giving no implication about our attitude towards any similar measures which may be taken in the future.

7. The mention of public policy is important. The rules determining which law should apply to a given contract contain a provision that means that even if the courts decide that the relevant law is US, that can be set aside if it would be in conflict with UK national interest. The sentence in the

Attorney's speech is intended to imply that if the courts were to find that US law applied, we would not regard it as in the national interest that this conclusion should be set aside.

8. This has no implication for whether US or UK law applies to begin with.

9. Elsewhere in the speech, in a passage explaining that the way to deal with extraterritorial issues is through cooperation rather than confrontation, the Attorney General will include the sentence:

"We have, for example, noted with appreciation that the US government has sought to meet some of our concerns about extraterritoriality in deciding to limit the recent measures against Libya to overseas branches, not subsidiaries, of US banks and then only to dollar-denominated accounts in those branches".

10. This deliberately does not say that the US government has succeeded in meeting all of our concerns.

11. I would much prefer to say nothing at all on any of these questions. But that is probably not a very realistic option, given our strong desire to cooperate as much as possible with the US on terrorism questions. Both Mr Hosker and I regard the passages set out above as a reasonable compromise. I do not think we would be giving any hostages to fortune.

CWK
C W KELLY



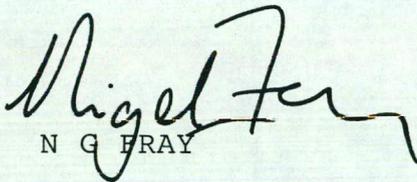
RF

FROM: N G Fray
DATE: 30 June 1986

MR C W KELLY

US FREEZE OF LIBYAN ASSETS

The Chancellor has noted and was grateful for your minute of 25 June.


N G FRAY

FROM: N G FRAY
DATE:

MR C W KELLY

US FREEZE OF LIBYAN ASSETS

The Chancellor has noted and was grateful for
your minute of 25 June

N G FRAY

CONFIDENTIAL

6/10/76
FROM: C W KELLY
DATE: 9 JULY 1986

CHANCELLOR

OK
cc Sir G Littler
Mr Lavelle
Mr Mountfield
Mr Walker

below
MISC 102(86)16 POSSIBLE SALE OF AIRBUS TO LIBYA

This report by officials describes the latest developments concerning the two airbus aircraft sold by British Caledonian which after a series of transactions now look like ending up in Libya.

2. Whether BCal turned a deliberate blind eye on the possible eventual destination of their aircraft is not entirely clear. At the very least they behaved rather foolishly, and now they appear to regret it.

3. The US administration are treating the matter seriously. Since about 30 per cent of the value of each aircraft was of US origin, BCal might be held to have violated United States export regulations. Retaliation against BCal in the States is therefore a distinct possibility should the aircraft reach Libya. We would naturally do our best to protest should this happen. But the outcome would be bound to be uncertain.

4. There is a danger of over-reaction in all this. The export of the aircraft has broken no British law (except that the spare engines that go with it, one of which appears already to have reached Libya, did require an export licence). On the other hand, it might look like undercutting United States sanctions against Libya and a public row with the Americans about it would do nothing to help the image of a united stance. Nor are the implications of potential US action against BCal trivial. BCal services to the US account for about one-third of their revenue.

5. In practice, there now seems very little that can be done. One of the aircraft is presently stalled in Dubai and the other in Oman. But the authorities there are running out of patience. BCal have rejected the option of attempting to repossess the aircraft and flying them back here, mainly because of fear of possible retaliation. They have decided to take legal action in Dubai and Oman instead. But they are not doing this with any great enthusiasm, nor with any great expectation of success. The main reason for doing it would be to seek to persuade the US that they had done all in their power to stop plans getting to Libya.

6. The report is mainly for information. There is no Treasury reason to request a meeting (which you would be asked to chair). The Cabinet Office hope that the conclusions can be endorsed in correspondence. I recommend that you should do so.

ch/
OK for me to let Cabinet Office know you have no comments on the paper, and don't want a meeting?

AWK
9/7

awk

C W KELLY

P1 attach

MISC 102(86)21
re-purchase adviceDEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

01-212 3434

CHIEF SECRETARY

REC. 30 JUL 1986

ACTION Mr P. Davis

COPIES TO Ex. Sec Peter Modell

Mr Butler Mr Lavelle

Mr Mountfield Mr Bugner

30 July 1986

Mr Gilmore Mr Scholer

Mr Cropper Mr Tyrrie.

The Rt Hon John MacGregor OBE MP
Chief Secretary
HM Treasury
Treasury Chambers
Parliament Street
LONDON
SW1P 3AG

Dear John.

POSSIBLE SALE OF EX BCal AIRBUSES TO LIBYA:
GOVERNMENT GUARANTEE FOR RE-PURCHASE

I attach a note by my officials which discusses whether the Government should be prepared to provide a financial guarantee to enable BCal to repurchase the two Airbus A310 aircraft currently destined for Libya.

My own view is that, on aviation policy grounds, there is no case for giving BCal a guarantee to facilitate a repurchase of the aircraft. Whilst it is difficult to predict the extent of any eventual US punitive measures against BCal, I would hope that BCal's and our efforts would prevent their being catastrophic. And there is a real risk that the costs of a buy-back, even with a guarantee, could cripple BCal - although this risk reduces with a longer guarantee period.

At the same time, I am conscious that this case raises wider issues, in particular the foreign policy "price" of allowing the aircraft to reach Libya, our stock in the Middle East, the need to defend BCal before the US authorities, and the possibility of counter measures by the UK against US airlines. If you, or colleagues, feel that these wider considerations constitute compelling reasons for HMG to consider giving a guarantee, I should be grateful if you would let me know by noon on Friday 1 August. BCal is hoping to arrange a further discussion with the Arab Bank of Investment Finance and Trade (ARBITF), and Libya Arab Airlines, on 2 August.

Copies of this letter go to the Prime Minister, to the members of MISC 102, to Sir Robert Armstrong and to Mr Mallaby, the Chairman of MISC 103.

A handwritten signature in black ink, appearing to read 'John Moore', with a stylized, cursive script.

JOHN MOORE

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**POSSIBLE SALE OF EX-B.CAL AIRBUSES TO LIBYA:
GOVERNMENT GUARANTEE FOR A BUY-BACK**

Note by the Department of Transport

1. Ministers are aware of the background to this problem, and the current position, from the MISC 102/103 minutes and reports, of which MISC 102(86)21) is the most recent. Ministers have ruled out any form of open-ended guarantee to B.Cal against the costs it might incur if it attempted to recover the aircraft, or to support its legal action in Amman. It is clear that the only option which would prevent the aircraft reaching Libya, sooner or later, would be a negotiated re-purchase by B.Cal from the Libyans.

2. After various tentative exchanges through intermediaries, David Coltman, Managing Director of B.Cal, met the Chairman of the Arab Bank of Investment, Finance and Trade (ARBIFT) - which financed the sale of the aircraft - and the chairman of Libyan Arab Airlines (LAA) on 26 July. The meeting was not hostile and, in Coltman's view, the Libyans were sufficiently concerned about their difficulties in obtaining and operating the aircraft to want a discussion. They expressed some interest in a commercial solution, provided it was "economically and politically defensible in Libya". They made it clear that they believed they had the upper hand in any negotiations. Since then they will have learned that the Jordanian authorities are prepared to release the aircraft currently in Amman, and will reason that the aircraft in Dubai is likely to follow shortly afterwards. That strengthens their negotiating position still further.

3. B.Cal says it is unable to make the Libyans a reasonable offer from its own resources. The £75m which it earned from the original sale of the aircraft went very largely towards redeeming loans on them. B.Cal has an overdraft limit of £120m, and has currently drawn £90m; it reckons it will need virtually all of the remaining £30m to get through the lean winter months to next summer. Its existing fleet is already heavily mortgaged, and would have to be completely refinanced if it were to yield security for further loans. The two Airbus aircraft themselves, in view of their recent history, are a doubtful security on which B.Cal believes the banks would not advance more than 50% of the original sale price: B.Cal could not raise the other 50%.

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4. DTP officials have asked B.Cal - entirely without commitment - whether it would be prepared to consider putting a reasonable offer to the Libyans if the Government were to guarantee the principal element of the necessary borrowings for the transaction on terms such as the following:

(a) The Government would guarantee principal up to £75m. If the repurchase price exceeded £75m, B.Cal would have to top up the difference from its own resources (including borrowings).

(b) The Government guarantee would lapse after nine months. If B.Cal had not sold the aircraft by then, it would have to renegotiate the financing package with the banks in order to provide them with fresh security in place of the lapsed guarantee. A nine month period would, however, take B.Cal through the to the beginning of the 1987 summer season, when the demand for aircraft should be more buoyant.

(c) The Government guarantee would be fully released within the nine-month period as soon as B.Cal sold the aircraft. The obligation would be on B.Cal to redeem the loans on the aircraft. If these exceeded the resale price, B.Cal would have to meet the difference from its own resources.

B.Cal, also without commitment, has said that such a guarantee might enable it to conclude a deal with the Libyans, although it has considerable reservations on (b) above (see para 11 below).

5. B.Cal has therefore understood that it would need to service the financing package for the aircraft, and meet the likely capital loss on resale. In effect the Government guarantee would only be called if B.Cal got into serious financial difficulties during the nine month period and before selling the aircraft. Although the Government, as guarantor, would have no special privileges in liquidation, it is for consideration whether the aircraft themselves should be the security for the guarantee. Then, if the guarantee was called, the call on the Exchequer would be the value of the guarantee less the value of the aircraft. Alternatively, if the banks had the aircraft as security, it is arguable that the Government guarantee should be limited to the excess of the principal over the value of the aircraft.

6. There are no appropriate powers in civil aviation or industrial support legislation providing for the Secretary of State or the Treasury to give guarantees to an airline to assist in the repurchase of aircraft. But the absence of such specific powers need not prevent a Government Department taking powers involving the incurring of expenditure in a way such as this, provided that doing so is not precluded either expressly or by necessary implications by other statutory provisions and provided that in accordance with established practice confirmed by the PAC and the Treasury the extended powers do not involve an annual charge over a period of years. We know of no statutory provision implicitly or expressly restricting the powers to give guarantees to airlines and the guarantee itself would, if called, involve a single payment which would not extend over more than one financial year. Treasury approval, is of course, required, and a minute would have to be laid before Parliament after the Recess. It would be preferable not to publicise the giving of the guarantee until the negotiations had been concluded: otherwise the Libyans would see HMG's deep pockets as enabling them to get a still higher price. The contingent liability would presumably have to be set against the Contingency Fund, though that would be a question for the Chief Secretary to decide.

Advantages of a Guarantee

7. A Government guarantee would have a number of advantages. If it enabled B.Cal to recover their aircraft, it would greatly reduce the risk of serious punitive action by the US authorities against B.Cal. This would avoid a major row with the US which would use up political capital better spent on other issues not least Bermuda II. It would also demonstrate to the authorities in Jordan and the United Arab Emirates that the Government had been serious in its desire to stop the aircraft reaching Libya, which might help to restore some of the political capital that has been spent there.

8. It must also be recognised that, however resolute the Government might be in its defence of B.Cal before the US authorities and however willing to contemplate reprisals against US airlines if the US authorities take punitive action, there can be no certainty that these would succeed. If B.Cal incurred a very heavy fine in the US, or was denied US technology, then it is doubtful whether the airline

could continue in its present form. That would be severe blow to the Government's multi-airline policy, as B.Cal is the only substantial UK competitor to BA on long-haul scheduled routes.

9. A guarantee would only be a contingent liability and, as I already mentioned, would only be incurred if, within the nine month period and before selling the aircraft, B.Cal got into serious financial difficulties. It has already been suggested that the net call on the Exchequer might be limited to the difference between the principal and the value of the aircraft.

Disadvantages

10. There would, however, be a number of disadvantages in a guarantee. The Government would be seen to be protecting B.Cal from the consequences of its own commercial actions (albeit in which it has probably been the victim of fraud). It would also be seen to be underwriting a transaction from which the Libyans may benefit substantially. Bearing in mind that, in the highly regulated world of international aviation, commercial actions often have political consequences, it would make it harder to resist future requests for Government support from airlines which have landed themselves in an awkward situation.

11. It cannot be assumed at this stage that the banks would regard a guarantee, with the conditions described above, as sufficient. The banks might be concerned that they would be left with the aircraft alone as security if B.Cal had been unable to sell them at the end of the nine month period. They might also have reservations about B.Cal's ability to redeem the loans in full if the resale price was significantly below the re-purchase price. B.Cal believes that the banks would therefore seek the right to call in the loans before the end of the nine month period, so that the Government as guarantor would redeem the principal. That would be quite unacceptable. B.Cal is also concerned that, if the banks had the right to call in the loans at any time after the nine month period, they might prefer to put the airline into liquidation rather than increase their exposure any further. It could be argued that the security of the aircraft, together with whatever security was yielded by a complete refinancing of the existing fleet, should provide sufficient cover for the banks

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at the end of the nine month period. But, in the absence of an indefinite guarantee from the Government, which Ministers would surely not wish to contemplate, the banks would take some persuading.

B.Cal has therefore suggested that the period of the guarantee should be two years. This would improve its prospects of reselling the aircraft for a reasonable price (so reducing the capital loss) and should lessen the concern about what will happen at the end of the guarantee period, although B.Cal would have to service the loans for a longer period. A two year guarantee would, however, considerably increase the Government's exposure, bearing in mind that, while there is no need to be unduly pessimistic, there could be no certainty about B.Cal's financial position in a couple of years' time. But it is clear that a nine month guarantee is the absolute minimum that B.Cal would be willing to consider

12. Although much depends on the guarantee period, it must be considered whether the Government might be expecting B.Cal to bite off more than it could chew. It has no operational requirement for the aircraft, and so the costs of servicing the loans (and maintaining the 'planes) would be an additional burden. The capital loss on the repurchase and resale could be considerable - say £20m - which would add to B.Cal's already considerable debt, with a further additional servicing burden. Any comprehensive refinancing of the existing B.Cal fleet would be yet another burden of debt on the airline's continuing operations. While there is no reason to doubt B.Cal's financial position at present, it must be recognised that it might be very difficult for the Government to avoid being drawn beyond the terms of the guarantee as currently envisaged, particularly if a refusal to extend the guarantee were to precipitate or contribute to the collapse of the airline.

US Punitive Action against B.Cal

13. The key question - for Government and for B.Cal - is whether the risk of crippling punitive action by the US authorities against B.Cal is judged to be so serious as to justify the expensive, and (depending on the terms of the guarantee) also potentially crippling alternative, of a buy back.

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14. The options open to the US authorities under their export administration legislation - the extraterritorial application of which has been the subject of a long running dispute between the US and other countries, including ourselves - include criminal as well as administrative action. Criminal action, however, seems a less likely possibility and DTI officials are unaware of any that has been brought successfully against a UK company. Administrative action could range from a formal warning through fines to being a blacklisted as a "denied party", with no further access to US technology. Clearly a formal warning would pose no problems for B.Cal, and even a fairly substantial fine of several million dollars would still be cheap when compared with the buy-back alternative (although the US Government would certainly wish to register a formal protest). Denial of US technology, however - if it included all US manufactured aircraft spares - would almost certainly ground most of B.Cal's fleet.

15. Officials are seeking US legal advice on the options open to the US authorities, the likely action they would take, the possible extent of the damage and the defences open to B.Cal. The Embassy in Washington has been asked to advise on the likely attitude of the US authorities, and has been given a line to take in heading off pressures for penal measures. This is a difficult area and there can at this stage be no confidence about the outcome. But a provisional assessment must be that the costs and risks of a buy-back for B.Cal (again depending on the terms of any guarantee) would probably outweigh the costs and risks of facing up to the possibility of punitive action by the US authorities.

Next Steps

16. B.Cal is arranging a further discussion with ARBIFT and LAA, possibly on Saturday 2 August. The aim of the first meeting would be to explore whether the Libyans are likely to accept a reasonable offer. If they are, and if the Government and B.Cal wish to pursue the buy-back further, B.Cal would seek a second meeting to put its offer on the table. But B.Cal will obviously need to know as soon as possible whether this is the Government's preferred option and a guarantee is likely to be forthcoming, so that the

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Board can consider whether it should set in hand the necessary discussions with the banks.

Department of Transport
30 July 1986

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DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET 5422
Telephone (Direct dialling) 01-215
GTN 215
(Switchboard) 01-215 7877

Secretary of State for Trade and Industry

**CONFIDENTIAL
COMMERCIAL IN CONFIDENCE**

1 August 1986

PPS

The Rt Hon John MacGregor, OBE MP
Chief Secretary
HM Treasury
Parliament Street
LONDON
SW1P 3AG

CHIEF SECRETARY	
REC.	1 AUG 1986
<i>Mr C. L. Kelly</i>	
<i>CX EST Sir Peter Middle</i>	
<i>Mr Butler Sir Geoffrey Little</i>	
<i>Mr Lavelle Mr Burgess</i>	
<i>Mr Gilmore Mr Mountfield</i>	

*Mr Scholte
Mr Gray
Mr Cropper
Mr Tyrrie*

Dear Chief Secretary,

POSSIBLE SALE OF EX BCAL AIRBUSES TO LIBYA : GOVERNMENT GUARANTEE FOR RE-PURCHASE

John Moore has sent me a copy of his letter to you of 30 July.

I have no reason to dissent from John Moore's view that, on aviation policy grounds, there is no case for giving BCal a guarantee. But I would prefer not to reach a final decision this week. I can well understand John Moore's reasons for wishing to have colleagues' views. If BCal are to have a further meeting with the Arab Bank of Investment Finance and Trade (ARBIFT) and Libya Arab Airlines on 2 August, it is important for the company to have the clearest guidance we can give on the question of a guarantee: and it would be right to make clear to BCal that we view the proposal with a great deal of hesitation.

At the same time, I would rather leave the final decision until early next week. My reasons are twofold. First, my officials, together with John Moore's and Geoffrey Howe's, are still in the process of assessing the likely scale of any US penalties against BCal for possible breaches of US export controls, in consultation with HM Embassy, Washington. Whatever its limitations, this assessment may help us to judge whether a buyback would be more costly to BCal than possible US penalties; and it might be unwise, meanwhile, to take a decision effectively ruling out the buyback option. Secondly, it will be important for BCal to demonstrate to

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19 86
BOARD OF TRADE
BICENTENARY



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the US authorities that they are continuing to make every effort to undo the transaction: it would be a pity if a decision now against a Government guarantee effectively put an end to BCal's efforts in this direction. In the meanwhile, however, as I have said, I am in full agreement that BCal should be told of our hesitations.

I am copying this letter to the Prime Minister, the members of MISC 102, to Sir Robert Armstrong and to Mr Mallaby, the Chairman of MISC 193.

Yours sincerely,

Michael Ciliberto

PC PAUL CHANNON

(Approved by the Secretary of State and signed in his absence)

0217/2585

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Mr Mountfield	Mr Mountfield
Mr Scholar	Mr Scholar
Mr Gray	Mr Gray
Mr Cropper	Mr Cropper
Mr Tyne	Mr Tyne
Mr Kelly	Mr Kelly
Mr Butler	Mr Butler
Sir P. Middleton	Sir P. Middleton
Sir G. Lither	Sir G. Lither
Mr Lawelle	Mr Lawelle
Mr Bungner	Mr Bungner
Mr Gilmore	Mr Gilmore

Treasury Chambers, Parliament Street, SW1P 3AG

Handwritten initials/signature

The Rt Hon John Moore MP
Secretary of State for Transport
Department of Transport
2 Marsham Street
London
SW1P 3BE

/ August 1986

Dear John,

**POSSIBLE SALE OF EX-BCAL AIRBUSES TO LIBYA:
GOVERNMENT GUARANTEE FOR REPURCHASE**

Thank you for your letter of 30 July.

I strongly endorse your view that we should not give British Caledonian a guarantee to facilitate the repurchase of these aircraft.

I am copying this letter to the Prime Minister, to members of MISC 102, to Sir Robert Armstrong and Mr Mallaby.

Yours,
JH

JOHN MacGREGOR

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FROM: C W KELLY
DATE: 1 AUGUST 1986

25

CHIEF SECRETARY

cc Chancellor ←
Economic Secretary
Sir P Middleton
Mr Butler
Mr Littler
Mr Lavelle
Mr Burgner
Mr Gilmore
Mr Mountfield
Mr Scholar
Mr Gray
Mr Cropper
Mr Tyrie

✓ M.

POSSIBLE SALE OF EX-BCAL AIRBUSSES TO LIBYA: GOVERNMENT GUARANTEE FOR REPURCHASE

The Secretary of State for Transport's letter of 30 July is the latest step in what has now become a long running saga.

2. I am not sure if you have been following the story line. Some weeks ago British Caledonian sold two airbuses to a shell company for £75 million. The proceeds were a considerable help to their cash flow at a time when they are under considerable financial pressure.

3. It transpired, however, that after a linked series of transactions the ownership of the aircraft ended up with Libya. Whether British Caledonian knew that this was a possibility is not entirely clear. The fact that the initial sale was to a shell company is apparently not in itself suspicious. Second hand aircraft are often sold in this way. But the Libyans had expressed interest in the aircraft at an earlier stage, and the price BCal were offered was a high one.

4. In any event, since the final destination of the aircraft came to light HMG, in concert with the French, Germans and the US and with the at times less than wholly committed support of BCal have been trying to prevent them getting there. At present one is grounded

in Amman and the other in Dubai. A substantial amount of political capital has been expended in the process with the authorities in those countries.

5. We have now almost reached the end of the road. The only serious option open is to persuade the Libyans to sell the aircraft back to British Caledonian. It seems unlikely that they will be prepared to do this. But there is a possibility that they might be persuaded, on the grounds that if they do not we, the US and other countries will make it very difficult for them to operate the aircraft on international routes or to obtain spares and servicing. Unfortunately British Caledonian do not have the cash, nor are they likely to be able to borrow enough unless they are given some form of Government guarantee for the purpose. The Secretary of State for Transport, who is in the lead on this, does not want to do it, but wants to share the decision with colleagues since the implication is that the aircraft could otherwise very soon go to Libya.

6. We clearly do have an interest in preventing the aircraft from getting there:

(i) They may indirectly have a military use, if only by substituting for other aircraft which can then be released for troop carrying.

(ii) The US feel very strongly on the issue and

(iii) If, despite all our efforts, the aircraft do reach Libya the US may take action of various degrees of severity which could damage British Caledonian's financial position even further.

7. On the other hand British Caledonian have broken no UK law, with the exception of a possible breach of ^{export} licensing regulations in respect of spare engines. Nor technically have they probably broken US law, even if we were to accept that it should apply. There is a ban under US law on reexporting the US engines and avionics in the aircraft to Libya. But, formally speaking, it was not British Caledonian who exported them. Nor, of course, would we take any US action against British Caledonian lying down. We would be bound to do our best

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to protect them, however silly we may think privately they have been, and might have some expectations of success. The FCO have already laid the ground work.

8. The guarantee, if it were to be given, would set a very undesirable precedent. If it were called it would add to public expenditure. Mr Moore has warned that it would be a claim on the contingency reserve, which is presumably why he has written to you. Moreover, British Caledonian would undoubtedly have to pay over the odds and are likely to experience some difficulty in reselling the planes to an alternative buyer. This course of action would therefore almost certainly add to their financial difficulties. Doing nothing only might do so.

9. There is certainly no Treasury interest in seeking to persuade the Secretary of State for Transport to give a guarantee against his wishes. Nor are other departments (even the FCO) likely to be advising their Ministers to do so. I recommend therefore that you agree with his conclusion.

10. I attach a short draft letter. The Department of Transport have asked for a reply by noon today. It might therefore be helpful if the message could be conveyed first by phone.

CWK

C W KELLY

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COMMERCIAL-IN-CONFIDENCE

DRAFT LETTER

TO: Secretary of State for Transport
Department of Transport
2 Marsham Street
LONDON
SW1P 3BE

POSSIBLE SALE OF EX-BCAL AIRBUSES TO LIBYA: GOVERNMENT GUARANTEE
FOR REPURCHASE

Thank you for your letter of 30 July. I strongly endorse your view that we should not give British Caledonian a guarantee to facilitate the repurchase of these aircraft.

I am copying this letter to the recipients of yours.

[J.M.]



DEPARTMENT OF TRADE AND INDUSTRY

1-19 VICTORIA STREET

LONDON SW1H 0ET 5422

Telephone (Direct dialling) 01-215)

GTN 215)

(Switchboard) 01-215 7877

Secretary of State for Trade and Industry

**CONFIDENTIAL
COMMERCIAL IN CONFIDENCE**

1 August 1986

The Rt Hon John MacGregor OBE MP
Chief Secretary
HM Treasury
Parliament Street
LONDON
SW1P 3AG

CH/EXCHEQUER	
REC.	01 AUG 1986
ACTION	CSI
COPIES TO	

1/8

Dear Chief Secretary,

POSSIBLE SALE OF EX BCAL AIRBUSES TO LIBYA : GOVERNMENT GUARANTEE FOR RE-PURCHASE

John Moore has sent me a copy of his letter to you of 30 July.

I have no reason to dissent from John Moore's view that, on aviation policy grounds, there is no case for giving BCal a guarantee. But I would prefer not to reach a final decision this week. I can well understand John Moore's reasons for wishing to have colleagues' views. If BCal are to have a further meeting with the Arab Bank of Investment Finance and Trade (ARBIFT) and Libya Arab Airlines on 2 August, it is important for the company to have the clearest guidance we can give on the question of a guarantee: and it would be right to make clear to BCal that we view the proposal with a great deal of hesitation.

At the same time, I would rather leave the final decision until early next week. My reasons are twofold. First, my officials, together with John Moore's and Geoffrey Howe's, are still in the process of assessing the likely scale of any US penalties against BCal for possible breaches of US export controls, in consultation with HM Embassy, Washington. Whatever its limitations, this assessment may help us to judge whether a buyback would be more costly to BCal than possible US penalties; and it might be unwise, meanwhile, to take a decision effectively ruling out the buyback option. Secondly, it will be important for BCal to demonstrate to

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BOARD OF TRADE
BICENTENARY



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the US authorities that they are continuing to make every effort to undo the transaction: it would be a pity if a decision now against a Government guarantee effectively put an end to BCal's efforts in this direction. In the meanwhile, however, as I have said, I am in full agreement that BCal should be told of our hesitations.

I am copying this letter to the Prime Minister, the members of MISC 102, to Sir Robert Armstrong and to Mr Mallaby, the Chairman of MISC 193.

Yours sincerely,

Michael Cilliberton

PC PAUL CHANNON

(Approved by the Secretary of State and signed in his absence)



DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

01-212 3434

Handwritten initials

Jill Rutter
Private Private to
The Chief Secretary to the Treasury
HM Treasury
Treasury Chambers
Parliament Street
LONDON
SW1P 3AG

CH/EXCHEQUER	
REC.	07 AUG 1986
ACTION	CS
COPIES TO	

Handwritten initials

6 August 1986

Dear Jill,

POSSIBLE SALE OF EX-BCAL AIRBUSES TO LIBYA:
GOVERNMENT GUARANTEE FOR REPURCHASE

I refer to my Secretary of State's letter of 30 July; Mr MacGregor's and Mr Channon's letters of 1 August; and Sir Geoffrey Howe's of 4 August.

In the light of this correspondence, officials in this Department have confirmed to British Caledonian that the Government would be highly unlikely to provide a guarantee to facilitate the repurchase of the aircraft. This news came as no surprise to BCal. There have been no further discussions between BCal and the Libyan side since the initial meeting on 26 July. BCal has made clear to the Libyans its willingness to continue the buy-back discussions, but to date there has been no response. Given that the aircraft in Amman has now left, and that in Dubai may well follow, the prospects for a buy-back now seem extremely poor: the more so since BCal, on its own resources, can really only offer to act as an intermediary in finding a new purchaser for the aircraft.

I am copying this letter to the Private Secretaries to the members of MISC 102, to Charles Powell at No 10, and to Michael Stark and David Jago at the Cabinet Office.

*Yours,
Richard.*

R A ALLAN
Private Secretary

2.9



DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

The Rt Hon Sir Geoffrey Howe QC MP
Secretary of State for Foreign &
Commonwealth Affairs
Foreign & Commonwealth Office
Downing Street
LONDON SW1

CH/EXCHEQUER	
REC.	14 AUG 1986
ACTION	CST
COPIES TO	

14/8

13 August 1986

Geoffrey Howe

SALE OF EX-BCAL AIRBUSES TO LIBYA

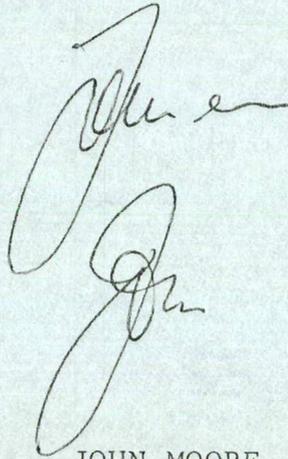
You will be aware from the telegrams that despite the determined efforts of our diplomatic staff in Amman and the Gulf we appear to have failed in our efforts to prevent the two aircraft from falling into Libyan hands. On 6 August the aircraft detained in Amman left under the control of an Algerian crew bound for an undisclosed destination: on 5 August the Dubai authorities informed us that unless we had any new legal arguments to advance, or were able to accept legal responsibility for further delay, they would be forced to release the second aircraft. It seems, therefore only a matter of time before this one passes under Libyan control also.

As you know, on 6 August HM Charge d'Affaires in Washington spoke to the US State Department expressing our regrets that one of the aircraft should be under Libyan control but pointing out that although, there have been breaches of UK law by intermediaries, BCal had not acted illegally. Our Embassy also reminded State of our opposition to the extraterritorial application of US domestic law and made it clear that not only would we not co-operate with them in any investigation under their domestic legislation but that we would be bound to reject any punitive action by the US authorities against BCal. A similar message was delivered to the US Department of Commerce on 7 August.

Although neither Department were able to confirm their future intentions, as might be expected, State understood our position and concerns and appeared to be prepared to consider working with us to find a solution. By contrast Commerce appeared more robust in their intention to take enforcement action. However, reports suggest that both Departments were keen not only to see BCal pursue its legal actions but also for HMG to undertake a thorough investigation of the sale.

My officials have received assurances from BCal that their legal actions will continue. Last Friday a meeting of MISC 103 considered what further action, if any, HMG should take. The prevailing view was in favour of continuing the investigation by HM Customs and Excise which is currently under way, and offering to share its findings with the US authorities. There was no inter-departmental support to go beyond this and hold a wider investigation by HMG. I therefore now put these conclusions forward for approval.

Unfortunately time is now of the essence and we need to give fresh instructions to our Embassy in Washington by early next week. I should be grateful, therefore, if by noon on 18 August you, and MISC 102 colleagues to whom I am copying this letter, could confirm your acceptance of the proposal agreed by officials in MISC 103 last week. I am also copying this letter to Sir Robert Armstrong.

A handwritten signature in dark ink, appearing to read 'John Moore', written in a cursive style. The signature is positioned above the printed name 'JOHN MOORE'.

JOHN MOORE

3361/066



CC Chancellor
CST
EST
Sir P. Middleton
Sir G. Little
Mr Butler
Mr Lowe
Mr Burger
Mr Gilmore
Mr Mountfield
Mr Scholier
Mr Gray
Mr H. Evans
Mr Cropper
Mr Tyrie.

Treasury Chambers, Parliament Street, SW1P 3AG

CONFIDENTIAL

Rt Hon John Moore MP
Secretary of State for Transport
Department of Transport
2 Marsham Street
London SW1P 3EB

15 August 1986

SALE OF EX-BCAL AIRBUSES

In the Chancellor's absence, I am writing to agree to the proposal that fresh instructions should be sent to Washington as agreed at MISC 103 last week.

Copies of this letter go to the members of MISC 102 and Sir Robert Armstrong.

NORMAN LAMONT

2/3070E

CONFIDENTIAL

FROM: H G WALSH
15 August 1986

FINANCIAL SECRETARY

cc Chancellor o/r
Chief Secretary
Economic Secretary o/r
Sir P Middleton o/r
Sir G Littler o/r
Mr Butler o/r
Mr Lavelle o/r
Mr Burgner
Mr Gilmore o/r
Mr Mountfield
Mr Scholar o/r
Mr Gray
Mr Cropper
Mr Tyrie
Mr H Evans o/r.

SALE OF EX-BCAL AIRBUSES TO LIBYA

The Secretary of State for Transport's letter of 13 August requests the agreement of his MISC 102 colleagues to fresh instructions to our Washington Embassy. These would convey our reactions to American indications of disapproval to the recent unfortunate development in which BCal allowed two of its Airbuses unwittingly to fall - through on-sales by intermediary purchasers - into Libyan hands. One aircraft is believed to already have been delivered to Libya and the other, now detained in Dubai, will almost certainly soon have to be released by the Dubai authorities and allowed to proceed to Libya.

2. Our immediate objective is to cooperate with the Americans sufficiently to avoid the authorities there (particularly the Department of Commerce) taking stiff action against BCal, while not in any way acknowledging that US legal restrictions on exports of products incorporating US technology have extraterritorial application. Officials have recommended that the Embassy should merely indicate that the Customs and Excise is continuing its investigation of a possible breach of British export regulations involved in the sale (involving a spare engine) and that BCal is pursuing its own legal action to prevent, at any rate, one of the aircraft reaching Libya.

3. A decision was taken earlier not to take high-profile action

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- such as repossession of the aircraft by BCal under a Government indemnity - which could have had public expenditure implications. Since there are no Treasury implications in what is now proposed, the Financial Secretary is recommended to reply in terms of the attached draft.

4. A reply is called for by noon on Monday, 18 August.

H. W.
H G WALSH

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DRAFT LETTER:

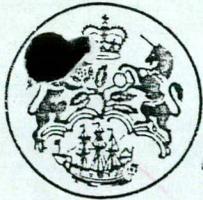
FROM: FINANCIAL SECRETARY

TO: SECRETARY OF STATE FOR TRANSPORT

SALE OF EX-BCAL AIRBUSES

In the Chancellor's absence, I am writing to agree to the proposal that fresh instructions should be sent to Washington as agreed at MISC 103 last week.

Copies of this letter go to the members of MISC 102 and Sir Robert Armstrong.



From the Minister for Trade

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET
Telephone (Direct dialling) 01-215)
GTN 215)5144
(Switchboard) 01-215 7877

RJD

Rt Hon John Moore MP
Secretary of State for Transport
Department of Transport
2 Marsham Street
LONDON
SW1P 3EB

18 August 1986

CH/EXCHEQUE	
REC.	18 AUG 1986
ACTION	<i>CSB</i>
COPIES TO	

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18/8

Dear Secretary of State

SALE OF EX-BCAL AIRBUSES TO LIBYA

Thank you for copying to Paul Channon your letter of 13 August to Geoffrey Howe.

I agree that we could offer to share with the US the findings of the HM Customs investigation already in hand, but it is clear that we should not undertake any wider investigation on our own account.

I am copying this letter to the other members of MISC 102 and to Sir Robert Armstrong.

yours sincerely
Steven Phillips
for ALAN CLARK

(Approved by the Minister and signed in his absence)

L05AMW

*b/f with advice
(or 30/9) JG*



DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

01-212 3434

The Rt Hon Sir Geoffrey Howe QC MP
Secretary of State for Foreign
and Commonwealth Affairs
Foreign and Commonwealth Office
Downing Street
LONDON SW1

19 September 1986

Don Geoffrey

CH/EXCHEQUER	
REC.	22 SEP 1986
ACTION	Mr WALSH
COPIES TO	GST FST M STET
	SIR P. MIDDLETON
	SIR G. LITTLER
	Mr MAUNFIELD

*✓
27/9*

MR ROBSON.

USPS/CBE

SALE OF EX-BCAL AIRBUSES TO LIBYA

We have to decide what line we should take with the Government if they decide to investigate BCal's role in this sale with a view to possible enforcement action for breaches of US export regulations.

For my part I am content that we should not depart in this case from the line that we normally take where the US seeks to apply extraterritorially its laws to British companies. This means:-

- (a) that we should not be prepared to co-operate directly with any formal US investigation (including not allowing UK officials to give evidence or make material available in relation to BCal's role in the sale);
- (b) that so far as BCal's participation in any US investigations are concerned we should not assist in the search for documents or witnesses in subpoena proceedings and that we cannot countenance any US attempt to compel BCal to produce documents;
- (c) that if the US authorities invite BCal's participation on a voluntary basis and if BCal decide they do wish to co-operate on this basis we should not seek to prevent this.

On the basis that we are as keen as the US that the lessons of this episode should be learned, we have offered to share with the US authorities the outcome of our own Customs investigation into possible breaches of UK export

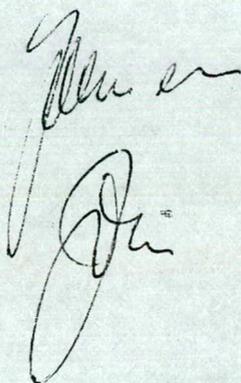
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controls; and the US Customs, who are carrying out their own enquiries, seem to be content for the moment to await the outcome of this. It may also be that if enforcement action against BCal is contemplated a firm reiteration of our position to the US Government might enable us to negotiate some form of damage-limitation framework to confine possible US enforcement action and penalties.

If you and MISC 102 colleagues, to whom I am copying this letter, are content, I propose that we adopt this general stance in our dealing with the US Government.

A handwritten signature in dark ink, appearing to read 'John Moore', written in a cursive style.

JOHN MOORE



10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

29 September 1986

**ADVICE BY CLOSE 30/9 PLEASE*

CH/EXCI EQUER	
REC.	29 SEP 1986
ACTION	Mr H. WALSH*
COPIES TO	Sir P. MIDDLETON
	Sir G. LITTLE
	Mr ROBSON

CST

Dear Tony,

RESTRICTIONS ON LIBYAN ARAB AIRLINE SERVICES
TO THE UNITED KINGDOM

The Prime Minister has seen the note by the Chairman of the Official Group on Libya on options for possible action against Libyan Arab Airlines (LAA) in the light of the outcome of the recent trial.

The note will presumably be considered urgently by the Ministerial Group on Libya. The Prime Minister's views, in advance of that and assuming that the judgement does indeed implicate LAA, are that security controls on LAA flights and employees at Heathrow should be instituted immediately, as proposed in paragraph 6 of the note; and that we should refuse on grounds of national security to renew LAA's permits when they expire at the end of October. We should seek parallel action by our European Community partners.

The Prime Minister would like to see recommendations from the Ministerial Group on Libya as soon as possible.

I am copying this letter to the Private Secretaries to members of the Ministerial Group on Libya and to Sir Robert Armstrong.

*Yours sincerely,
Charles Powell*

(Charles Powell)

A.C. Galsworthy, Esq., C.M.G.,
Foreign and Commonwealth Office.

POWELL
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GALSWORTHY
29/9

29/9/86

FCS/86/225THE HOME SECRETARY

CH/EXCHEQUER	
REC.	29 SEP 1986
ACTION	MR C. W. KELLY
COPIES TO	EST
	SIR P. MIDDLETON
	SIR G. LITTLE
	MR F. E. R. BUTLER
	MR KUTCATT
	MR MOUNTFIELD

Libyan-Sponsored Terrorist Activity

1. Now that the trial of Rasmi Awad and Nasser Mohamed is over I believe we should move quickly to take action against Libyan Arab Airlines. There is likely to be considerable pressure for action following the references in the judge's summing up to the involvement of Libyan Arab Airlines in this affair.

2. The paper circulated by MISC 103 to MISC 102 sets out the background and the options for action. It is clearly important given the recent spate of terrorist incidents overseas and the continued high level of threat posed by Libya to British interests that we are seen to be taking firm measures in response to this blatant involvement in terrorist related activity. I believe that it would not be sufficient merely to tighten up the security controls applied to LAA whilst allowing them to continue to operate. I therefore consider that we should now suspend airlinks with Libya (option (c) in the MISC 102 paper).

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3. It will be important in presenting such a decision to avoid any suggestion that suspension of airlinks would be our automatic response to future airline involvement in terrorism. The MISC 102 paper refers to the Hindawi case which is due to start on 6 October and to the possibility that Syrian Arab Airlines may be implicated. I believe it is both possible and important to draw a distinction between the two cases.

4. My officials have reported to me on the atmosphere at the recent TREVI meeting where our European partners showed an increased willingness to take strong measures against terrorists. I think we should take advantage of the current climate to seek support and endorsement of our actions by our European partners. I have in mind at least a statement to be issued on behalf of the Twelve which would include a commitment by our partners to examine closely the activities of Libyan Arab Airlines in their respective countries and to take action where appropriate.

5. I am copying this minute to the Prime Minister, the Attorney General and other members of MISC 102.

3052/2

FROM: H G WALSH

DATE: 30 September 1986

CHIEF SECRETARY

cc: PS/Chancellor
 Financial Secretary
 Sir P Middleton
 Sir G Littler
 Mr Lavelle
 Mr Evans o/r
 Mr Mountfield
 Mr Robson
 Mr Revolta
 Mr Colman
 Ms Life

Mr Hosker T.Sol
 Mr P R H Allen C&E

RESTRICTION ON LIBYAN AIRLINE SERVICES TO UNITED KINGDOM

Note by the Chairman of the Official Group on Libya

MISC 102(86)23

Introduction

A meeting of MISC 102 has been convened to discuss possible action against the Libyans following the conviction last Friday of a Jordanian on terrorist charges at the Old Bailey. It was alleged at the trial that in September 1985 he received fragmentation grenades from a man dressed in the uniform of the national Libyan Airline (LAA). References to this were made in the judge's summing up. It is proposed:

(i) to strengthen security procedures at Heathrow for handling incoming Libyan flights,

(ii) to cancel, as from end-October, the United Kingdom/Libya Air Services Agreement 1972.

Background

2. You should be aware that there are three main current issues affecting Libya in which the UK has an (economic) interest:

(i) The appropriate response to terrorist actions to which

H.G. WALSH
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LAA was apparently a party - the subject of tomorrow's discussion.

(ii) The case of the unwitting sale of two Airbuses by British Caledonian to the Libyans through intermediary purchasers, and

(iii) The current High Court case in which the Libyan Arab Foreign Bank is suing Bankers Trust Company of New York in British courts to unblock Libyan dollar balances held in the London branch of the Bankers Trust which have been blocked in response to an Executive Order of President Reagan.

3. Both 2(ii) and 2(iii) above involve the issue of the extra-territorial application of US law but there are no direct extra-territorial ramifications of 2(i).

Objectives

4. Treasury objectives on 2(i) are: not to agree any extra expenditure for additional searches or other security measures which should under normal practice (PE confirm) be absorbed within the budget of the BAA. (Customs and Excise confirm they have no interest in what is proposed and HE confirm that any proposal for extra Home Office expenditure at Heathrow would be resistable). We should also try to ensure that the British aviation industry is not damaged unnecessarily for political objectives.

Assessment

5. The Committee should not have to spend much time on discussing whether or not increased security precautions are required at Heathrow to prevent the importation of detonators and plastic explosives. They unquestionably are so long as LAA flies to Heathrow. The measures described in paragraphs 6 and 7 of the paper should therefore be agreed. Nor is there much of a case for expelling Libyan employees or closing the LAA office in London (paragraphs 8 and 9). The key issue is whether the United Kingdom/Libya Air Services Agreement 1972 should be terminated at the end of October on national security grounds. Both the Prime Minister and Foreign and Commonwealth Secretary believe

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that it should, to demonstrate firmness of purpose in relation to Libyan terrorism. (See attached letters).

6. The argument stated in MISC 102(86)23 in favour of taking action to terminate the Agreement is that, although there is no proof, it is believed that Colonel Qadhafi has probably lifted his moratorium on terrorist operations overseas and that we should for the time being assume a significantly increased level of threat, especially to US and UK interests (paragraph 2). FCO have obtained legal advice to the effect that termination would be valid in law.

7. The arguments adduced against termination are that such action against the Libyans - in contravention of the Air Services Agreement - will almost certainly cause the Libyans to retaliate by refusing permission for B Cal to resume services to Tripoli (which are profitable) before the end of the year. (This could give rise to a rise for compensation by B Cal but the assessment of both the Department of Transport and PE Division is that such a claim could be resisted.) Perhaps a more serious outcome would be that we should have to give way to pressure to apply the same measures to Syrian Arab Airlines that were taken against LAA since SAA appear to be implicated in a terrorist act in the same way as was LAA. The most likely form of retaliation by the Syrians would be to deny British Airlines rights to overfly Syrian territory (75 flights a week). This would be a damaging form of retaliation since (Department of Transport officials claim) it would add about 45 minutes to British flights to the Far East. But the Foreign and Commonwealth Secretary clearly contests whether the Libyan and Syrian cases are analogous. He may believe that if anything we should only need to take action against Syrian Embassy staff and thus avoid Syrian retaliation in the aviation field. Discussion may focus on how clearly he can distinguish between the Libyan and Syrian cases.

Assessment

8. The termination of the Air Agreement does not seem to be necessary for security reasons - paragraph 13 says that the risk of terrorist materials being brought by LAA into the United Kingdom

could be virtually eliminated by stricter security measures at Heathrow. Termination of the Air Agreement would add nothing. It is only alleged that the trial will stimulate public pressure for more radical action against LAA.

9. The balance of argument in the paper would seem to point to taking tighter security measures at Heathrow but - at least without firm evidence that Colonel Qadhafi has lifted his moratorium on terrorist acts - not terminating the 1972 Agreement at the end of October. Against this, the Foreign and Commonwealth Secretary may argue that the action is justified in order that the UK should be seen to be cooperating with President Reagan's objectives in this field as far as possible. There may be some political mileage in other contexts in taking a tough line on the Air Agreement and to be seen as in the lead in trying to coordinate parallel action by our EC partners. There is also the point that we certainly do not wish to surrender any extra-territoriality points to the Americans on the British Caledonian and Bankers Trust cases - particularly on the latter case. Action against LAA would at least be a gesture in the right direction and place us in credit with the Americans so that we are free to take a tough line elsewhere. An additional point - we have no powers to stop the Airbus sold by B Cal to the Libyans from flying in and out of London. Termination of the Air Agreement would avoid this embarrassment.

10. The arguments on the Air Agreement are finely balanced. Ministers will have to consider whether terminating the Air Agreement - which has great political appeal in terms of taking firm action against Libyan terrorism - is really merited. It is not strictly justified on security grounds, will probably impose at least some costs on our civil aviation industry, and raises the temperature with Qadhafi.

Line to take

11. Agree to stricter security measures being implemented at Heathrow along the lines of paragraphs 6 and 7 of the paper providing there is no net extra public expenditure. **[Depending on discussion]** Oppose termination of the United Kingdom/Libya

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Air Services Agreement 1972 on the grounds that such action is justified neither by an established security threat nor by the provision of any significant extra security by the termination of the Air Agreement. Any advantages deemed to be obtained by being seen to cooperate with the Americans would seem to be more than offset by the disadvantages to British civil aviation - specifically if the Libyans and (still more) Syrians retaliate and more generally because it is not in our interests that Air Agreements should be arbitrarily cancelled on national security grounds. [For use if it is agreed to terminate the Air Agreement] Agree that we should seek to coordinate our EC partners in measures against LAA and seek to treat the Syrians as a distinct and separate case.

H.W.

H G WALSH

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DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

30 September 1986

The Rt Hon Sir Geoffrey Howe QC MP
Secretary of State for Foreign
and Commonwealth Affairs
Foreign and Commonwealth Office
Downing Street
LONDON SW1

Dear Geoffrey,

CH/EXCHEQUER	
REC.	30 SEP 1986
ACTION	MR WASH 30/9
COPIES TO	CST
	SIR P. MIDDLETON
	SIR G. LITTLE
	MR F.E.R. BUTLER
	MR KITCATT
	MR MOUNTFIELD

LIBYAN SPONSORED TERRORIST ACTIVITY

You copied to me your minute of 29 September to the Home Secretary, proposing that we should now suspend air links with Libya. I have also seen Mr Powell's letter with the Prime Minister's initial views.

If there is sufficient current evidence that Libyan Arab Airlines' (LAA) continued operations to the UK present a threat to our civil aviation or our national security which can only be dealt with by stopping their services we should stop their services immediately. But to sever air services is an extreme step. We should be satisfied, before we take it, that it is appropriate and fully justified, and that there is no alternative.

Air services between Libya and the UK are governed by an air service agreement which has been applied administratively since it was signed in December 1972, but has not entered into force since the Libyans have not completed their constitutional formalities. Several other air service agreements (eg that with Saudi Arabia) are also applied administratively for similar reasons. It is important for us to avoid taking action which would undermine their validity.

In particular, the suspension or revocation of LAA's operating permits, or even a failure without sufficient notice to renew them, may be the subject of judicial review, and I should need to point to current evidence of terrorist activity by LAA which made that action necessary. Second, we should not want to give other countries any excuses for terminating air services for political ends. Our airlines, notably British Airways, depend heavily on rights

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to fly to or overfly a large number of countries whose governments' attitudes to us vary enormously. We must lead the way in rigorously upholding the requirements of international law. Third, there is some risk that drastic action by us against LAA could actually attract terrorist attack by the Libyans on British airlines and British citizens - or at least that the fear of reprisals would deter use of British airlines.

For these reasons, I believe that the more appropriate course would be to tighten up security measures at Heathrow. The present measures were introduced in April 1986 after the US attack on Tripoli, with the purpose of reducing the risk to the airport or to air services from weapons smuggled in on LAA aircraft. These measures were considered adequate for that purpose, but it is right to review them against the risk that LAA personnel or aircraft might be used as a means of bringing weapons and explosives into this country for attacks against the population. My own powers under the Aviation Security Act, limited though they are to the protection of airports from acts of violence, could be used to require the searching as rigorously as necessary of ground crew and LAA's London-based officials who have had access to the aircraft, in addition to the passengers and air crew who are already subject to search. I recognise that because of the limitations of this Act, it may be preferable in some circumstances for compulsory powers to be exercised by police officers under the Prevention of Terrorism Act. I have no doubt that officials could, with the help of the police and the Security Service, work out effective ways of reducing the risk to a very low level.

I believe that this would be an appropriate way of meeting our objective, while avoiding the risks of more dramatic action. We cannot prevent Libyans or their accomplices or goods coming here: if we cut off direct flights, they can travel via other countries which are less security-conscious than we are. But we can, I believe, be seen to be keeping the situation under control, and we could always bring in more drastic measures if there were evidence that these were required.

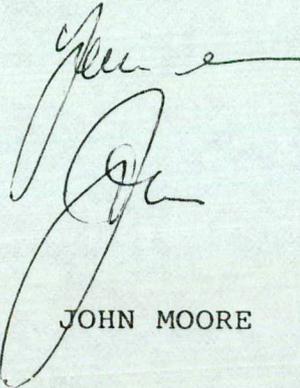
To go beyond this, to stop air services without clear justification on aviation or security grounds, would create a damaging precedent for ourselves and others. We should be under public pressure to cut off air services with Syria, Iran and other states whose policies are regarded as threatening and distasteful. Other states would be encouraged to act against our airlines for political purposes.

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If, despite these considerations, my colleagues consider it essential to cut off air services, we must be careful to do so in a way which minimises the risk of adverse consequences to our own airlines of the example we should set. A period of notice of one month would be unreasonably short to allow LAA to adapt its operations: the better course would be to give notice to the Libyan government that we would cease to apply the agreement administratively from the end of March 1987 (which is the end of the winter operating season.)

Whatever our decision, I can use the opportunity of the informal EC Council of Ministers of Transport on 3 October to explain our position. It is unlikely that there would be support for terminating air services.

Copies of this letter go to the Prime Minister, the Home Secretary, the Attorney General, other members of MISC 102 and to Sir Robert Armstrong.



JOHN MOORE

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LIBYAN ARAB AIRLINES

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FCS/86/227

SECRETARY OF STATE FOR TRANSPORT

CH/EXC-EG	
REC.	30SEP1986
ACTION	MR WALSH 30/9
COPIES TO	CST, FST, MST, EST
	SIR P. MIDDLETON
	SIR G. LITTLE
	MR ROBSON
	MR MOUNTFIELD
	PS/C&E

Sale of Ex-BCal Airbus to Libya

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MOORE
30/9

1. Thank you for your letter of 19 September seeking agreement for your proposed line in dealing with US efforts to investigate BCal's role in the Airbus to Libya affair with a view to possible enforcement action.
2. I agree that we need to be very careful to protect our position over extraterritoriality - though I regard it as equally important to avoid a row with the Americans on the subject if we possibly can. Following the latest developments over the US Customs investigation which has now been launched, our officials have proposed a course of action that seems consistent with the line proposed in your letter, essentially involving the maximum cooperation with the Americans within the constraints of the extraterritoriality problem.
3. The present relaxed US approach to this subject is encouraging and suggests that there is some prospect of keeping any damage to BCal's US interests within reasonable limits. But careful political management will continue to be needed if we are to be sure of achieving this.
4. I am copying this minute to Ministers in MISC 102.

(GEOFFREY HOWE)

Foreign & Commonwealth Office

30 September 1986

CONFIDENTIAL



PM/86/066

PRIME MINISTER

CHIEF SECRETARY	
REC.	- 2 OCT 1986
ACTION	<i>EX</i>
COPIES TO	

CH/EXCHEQUER	
REC.	6 OCT 1986
ACTION	Mr WASH
COPIES TO	EST, FST
	Sir P. Middleton
	Mr ROBSON
	Mr MOUNTFIELD

Mr REVERTA
Mr COLMAN
Ms LIFE
Mr HOOKER
Mr ALAN CTE

1/10/86

Libyan Arab Airlines

1. Following your Private Secretary's letter of 29 September to my Private Secretary, I held a meeting of the Ministerial Group on Libya (MISC 102) this morning to consider what restrictions should be imposed on Libyan Arab Airlines (LAA) services to the United Kingdom in view of the trial which ended on 26 September. In addition to the paper by officials (MISC 102(86)23) on which you had commented and my own minute of 29 September we took account of the factors raised by the Transport Secretary in his letter of 30 September.
2. The minutes of the meeting will be circulated shortly but you will wish to know immediately the conclusions we reached. We decided to refuse, for reasons of national security, to renew LAA's operating permits

/when



when they expire at the end of October. We agreed to terminate at the same time the administrative application of the Air Services Agreement of 1972 (the Agreement itself has never come into force since the Libyans have not completed their constitutional formalities). We also decided that tighter security controls should be applied to LAA at Heathrow for the final four weeks of their services to the United Kingdom.

3. We agreed that, in our public presentation of this decision, we would seek to avoid setting a precedent which could be used against us by other governments with whom we have air service agreements which are operated administratively (for example Saudi Arabia). We will also need to ensure that we do not arouse any automatic expectation in this country that we would act similarly when other airlines are accused of being implicated in terrorism, for instance in relation to Syrian Arab Airlines whose role in the Hindawi case, due to come to trial this month, seems to have been less than that of LAA in the present case. We should set out in the plainest possible terms our reasons for taking action against LAA, basing our decision not only on the recent case but also on wider evidence of LAA's involvement in terrorism.



4. I shall report these decisions at Cabinet tomorrow, and the non-renewal of LAA's operating permits will be announced by the Transport Secretary later that day. This will give nearly a month's notice, enough - with the case we shall make on grounds of national security - to minimise the risk of judicial review of our decision and to ensure that we would have every prospect of success in the event of judicial review.

5. I am already in touch with my European colleagues to promote an early collective response, and the Transport Secretary will use the opportunity of the informal EC Council of Ministers of Transport on 3 October to explain our position in detail and to encourage them to support us. In this particular case we should not be too optimistic about our partners' willingness to take matching action. But to have made the approach this time should help us to fashion a more effective common response in future cases.

6. I am sending copies of this minute to my colleagues on MISC 102, to the Attorney General and to Sir Robert Armstrong.

(GEOFFREY HOWE)

Foreign and Commonwealth Office

1 October 1986

3052/7

FROM: VIVIEN LIFE
DATE: 1 October 1986

1. MR WALSH
2. CHANCELLOR

cc: Chief Secretary
Financial Secretary
Economic Secretary
Minister of State
Sir P Middleton
Sir G Littler
Mr Lavelle
Mr Burgner
Mr Gilmore
Mr Mountfield
Mr Scholar
Mr H Evans
Mr Cropper

h.w.
2/10/86
ch
Letter to Benn?
AJK
6/10
OK

P R H Allen C&E
PS/C&E

SALE OF EX-BCAL AIRBUSES TO LIBYA

The Secretary of State for Transport's letter of 19 September seeks agreement of MISC 102 colleagues to his proposed line to take with the US Government should they decide to investigate BCal's role in this sale, with a view to enforcement action for breaches of US export regulations.

2. The Foreign Secretary has replied, giving his agreement while pointing out the need for careful political management.

3. As you may recall from the brief on Libyan Arab Airlines, this is one of two current issues affecting Libya in which the question of extraterritorial application of US law arises. The other is the High Court case in which the Libyan Arab Bank is suing Bankers Trust Company of New York for release of Libyan dollar balances held in London and blocked by US freezing of Libyan assets.

4. In both cases we have been anxious to preserve our position on extraterritoriality while supporting the US policy on Libya more generally. Therefore, in the case of the airbus sale we have taken the line that the relevant US export regulations cannot apply in the UK, that we therefore cannot cooperate overtly and

directly in any investigation and would reject punitive action by the US authorities against BCal. Nevertheless, we will share with them the outcome of the UK Customs own investigations.

5. Mr Moore's letter expands upon what he believes that should mean in practice. From a Treasury point of view we are keen to preserve the principle of extraterritoriality in general terms because of the economic implications. However, Customs & Excise have a more direct interest. They do not object to the approach proposed in the letter as it stands, but are concerned to preserve their good working relations with US Customs, which are of considerable benefit in, for example the fight against international trafficking in drugs and strategic goods. These are covered by the "Guidelines for law enforcement agents representing foreign Governments" issued in May 1986 (copy attached). There is a risk that in their efforts to protect BCal, Department of Transport may try to be less cooperative than these Guidelines provide. Customs would therefore like to make clear in your reply to Mr Moore that these Guidelines should be taken into account.

6. UK Customs own investigation concerns the airbus engine and other parts which were exported to Libya but not the aircraft themselves. The report of the investigation will be completed in two weeks or so and it has been agreed that a summary of the report and its conclusions will then be provided to US Customs. US Customs have been waiting for this information before taking forward their own enquiries in the UK. But given that the UK Customs enquiry does not cover the aircraft themselves the US authorities are unlikely to find the UK report sufficient and Customs & Excise's view, based on contact with their US counterparts, is that they will want to undertake their own enquiries in the UK, under the terms of the Guidelines.

7. I attach a draft reply, agreeing to Mr Moore's proposals subject the proviso on Customs Guidelines.

Vivien Life

VIVIEN LIFE

CONFIDENTIAL

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~~DRAFT~~ LETTER FROM THE CHANCELLOR TO THE
SECRETARY OF STATE FOR TRANSPORT

SALE OF EX-BCAL AIRBUSES TO LIBYA

Thank you for copying to me your letter of 19 September to Geoffrey Howe. I have also seen Geoffrey Howe's reply.

I agree with your proposals for the line we should take with the US Government should they decide to investigate BCal's role in this sale. In particular I agree that we should maintain our line on the extraterritorial application of US law. However, we should not lose sight of the advantages we gain by cooperation between the US and UK Customs authorities in other areas, such as drug trafficking. I therefore hope you and MISC 102 colleagues can agree not to be more restrictive than is provided for in the "Guidelines for law enforcement agents representing foreign Governments" issued to diplomatic missions in London on 30 May 1986.

I am copying this letter to the members of MISC 102 and to Sir Robert Armstrong.

NIGEL LAWSON

01 928 0533 2207

233 5149

28/2/6 Ms Life Tm

2/10

GUIDELINES FOR LAW ENFORCEMENT AGENTS REPRESENTING FOREIGN GOVERNMENTS

- (a) Officials representing foreign Governments, when conducting investigations in the United Kingdom relating to the possible contravention of their laws, should make enquiries in the United Kingdom only with the prior permission of the United Kingdom Government or agency representing the Government. Such permission may be withheld or given conditionally.
- (b) Reasonable notice should be given of any visit, of the matters under investigation and the nature of the enquiries which are intended to be conducted in the United Kingdom.
- (c) The United Kingdom Government or agency representing the Government maintain the right to have an official present at any interview. Interviews may only be conducted with the consent of the person to be interviewed, or with the support of judicial authority within the United Kingdom which may permit examination of a person in response to an order of a Court.
- (d) Officials representing foreign Governments must advise the United Kingdom Government or agency representing the Government of the developments in the enquiry conducted within the United Kingdom in the form requested by the Government or agency.

2410 RJ



DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

REC.	1-OCT 1986
ACTION	McWALSH
COPIES TO	CST, FST
	Sir P. Middleton
	Sir G. Lott
	McLAVALE

Robert Culshaw Esq
Private Secretary to the
Foreign Secretary
Foreign and Commonwealth Office
Downing Street
LONDON SW1

CHIEF SECRETARY	
REC.	- 10 OCT 1986
	CX

1 October 1986
Mr ROSSON
Mr LEVORZA
Mr COLMAN
Ms LIFE
Mr HOSKIN A. SOL
Mr ALLAN CBE

Dear Robert,

LIBYAN AIR SERVICES

It has been agreed that my Secretary of State will announce the decision on Libyan air services, following consideration by MISC 102 and Cabinet.

I enclose a copy of a draft press release which has been discussed with officials of the FC0 and the Home Office, and approved by my Secretary of State. My Secretary of State proposes to release it at 2.30 pm tomorrow (Thursday 2 October). He has seen Mr Boys Smith's letter of 10 October suggesting a paragraph on previous LAA involvement. He would prefer to keep the statement as short as possible, and to reserve the material suggestions by the Home Secretary for supplementary questions. I should be grateful to know, not later than noon tomorrow, whether your Secretary of State, or those to whose private secretaries I am copying this letter, have any comments.

I also enclose suggested answers to supplementary questions which have also been discussed between officials. It is clearly essential that all Departmental Press Offices adhere closely to this brief.

Copies of this letter go to Charles Powell (Number 10) and the Private Secretaries to the Home Secretary, the Secretary of State for Defence, the Secretary of State for Trade and Industry, the Chief Secretary, the Attorney General, and Sir Robert Armstrong.

Yours,
Richard

R A ALLAN
Private Secretary

GOVERNMENT STOPS LIBYAN ARAB AIRLINES FLIGHTS TO UK

John Moore, Secretary of State for Transport, announced today that flights by Libyan Arab Airlines to the UK will stop at the end of October. He issued the following statement.

The continuing involvement of Libyan Arab Airlines in support of terrorist activity makes it inappropriate in the Government's view for air services between the two countries to continue. The Government are therefore informing the Libyan authorities through the protecting power (Saudi Arabia) that they have decided to cease the administrative application of the UK-Libya Air Services Agreement of 20 December 1972 from 31 October when the temporary operating permits issued by the Department of Transport to LAA expire. In the meantime further security measures will be applied to LAA flights at Heathrow.

LIBYAN ARAB AIRLINES DECISION

GUIDANCE FOR PRESS OFFICE

The press office should as far as possible avoid disclosing material other than that in the press announcement itself. As and if necessary the following lines may be taken in reply to specific question from journalists.

Q1 WHAT EVIDENCE IS THERE THAT LAA IS SUPPORTING TERRORIST ACITIVITY?

A1 The "Pineapple" trial is not the only example of LAA involvement in terrorist related activities which are wholly incompatible with the normal commercial operation of an airline. In April 1985 a former LAA station manager in the United Kingdom was deported on conducive grounds. In view of the closure or reduction in size of Libyan People's Bureaux in the United Kingdom and elsewhere those who seek to promote terrorism are bound to use other official Libyan bodies such as LAA. It therefore makes sense to deprive them of that avenue."

Q2 WHY WAIT UNTIL THE END OF OCTOBER IF THERE IS A REAL SECURITY THREAT?

A2 Under international law we have to give a reasonable period of notice before ceasing to apply the ASA administratively. Tighter security measures are however being introduced at Heathrow with immediate effect (before the next LAA flight on Friday 3 October).

Q3 WHAT NEW SECURITY MEASURES WILL BE INTRODUCED?

A3 You cannot expect the Government to disclose the nature of its security measures since such disclosure would weaken their effect.

Q4 WHY IS A MONTH'S NOTICE GOOD ENOUGH FOR THE LIBYANS WHEN YOU SAY YOU HAVE TO GIVE [FOURTEEN MONTHS] NOTICE TO TERMINATE THE ASA WITH [SOUTH AFRICA]?

A4 If we decide to terminate an Air Services agreement we need to give the notice for which provision is made in that Agreement. The Agreement with Libya has not entered into force. It is being applied administratively. "Reasonable notice" is therefore required before we cease to apply it.

Q5 WILL YOU BE STOPPING SERVICES FROM SYRIA, IRAN OR LEBANON WHOSE AIRLINE COULD BE USED FOR TERRORIST ACTIVITIES?

A5 No. We attach importance to maintaining our air services agreements because of the importance of our civil Aviation industry. We should only contemplate terminating an Air Services Agreement on security grounds if as in this case there is conclusive proof of continuing involvement of the airline concerned in terrorist activity.

Q6 WHAT ABOUT BCAL? WHEN AND WHY DID THEY STOP SERVING TRIPOLI? WILL THEY EVER BE ABLE TO FLY THERE AGAIN?

A6 I understand that BCAL ceased serving Tripoli on 1 July for commercial reasons. They will not be entitled under the ASA to serve Tripoli after 31 October. It will be a matter for the Libyans to decide whether to allow them to do so.

Q7 WILL ANY OTHER EUROPEAN COUNTRIES FOLLOW YOUR EXAMPLE? WHAT ARE YOU DOING TO PERSUADE THEM?

A7 Secretary of State for Transport will be explaining the Government's decision to the Ministers of the other Community countries this evening. They are in London for an informal Council on civil aviation. It is for each government to reach their own decision on air services with Libya. Further action is a matter for the Foreign and Commonwealth Office.

From: THE PRIVATE SECRETARY

CONFIDENTIAL



CH/EXCHEQUER	
REC.	1- OCT 1986
ACTION	Mr WALSH ^{1/10}
COPIES TO	CST, FST
	Sir P. Middleton
	Sir G. Little
	Mr LAWELLE

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

1 October 1986

Dear Robert,

Mr MOUNTFIELD
 Mr ROBSON
 Mr REVOLT
 Mr CORMAN
 Ms LIFE
 Mr HOSKIN - I. SOL
 Mr P R HALLEN CBE

At MISC 102 this morning the Home Secretary undertook to provide a contribution, agreed with the Security Service, to the statement to be made by the Secretary of State for Transport about the Government's decision to terminate LAA Services to the United Kingdom.

Neither we nor the Security Service would wish to give too much information in a statement which is to be made public. A paragraph on the following lines might be included in the statement:

"This [the "Pineapple" trial] is not the only example of LAA involvement in terrorist related activities which are wholly incompatible with the normal commercial operation of an airline. In April 1985 a former LAA station manager in the United Kingdom was deported on conducive grounds. In view of the closure or reduction in size of Libyan People's Bureaux in the United Kingdom and elsewhere those who seek to promote terrorism are bound to use other official Libyan bodies such as LAA. It therefore makes sense to deprive them of that avenue."

I understand that the Secretary of State for Transport will be writing to colleagues later this evening with a draft of the statement he proposes to make. There have been discussions between officials about the draft and we do not think the paragraph above would sit badly in it.

I am copying this letter to the Private Secretary to the members of MISC 102, to the office of the Attorney General and to Christopher Mallaby and Nigel Brind at the Cabinet Office.

*Yours,
S W*

S W BOYS SMITH

BOYS SMITH
→ CUSHAW
1/10

Robert Culshaw, Esq.

CONFIDENTIAL

CONFIDENTIAL

RP

3052/5

FROM: H G WALSH

DATE: 1 October 1986

PS/CHANCELLOR

cc: Chief Secretary
Sir P Middleton
Sir G Littler o/r
Mr F E R Butler
Mr Lavelle
Mr Evans o/r
Mr Kitcatt
Mr Mountfield

LIBYAN SPONSORED TERRORIST ACTIVITY

A copy of the Secretary of State for Transport's letter of 30 September arrived with me only at 11 am this morning, and I am not sure whether a copy was available to the Chief Secretary for the MISC 102 meeting this morning. The points made in the letter were broadly covered in my brief of yesterday.

H.G.

H G WALSH

CONFIDENTIAL

052/9

FROM: H G WALSH

DATE: 2 October 1986

PS/CHANCELLOR

cc: PS/Chief Secretary
PS/Financial Secretary
Sir P Middleton
Sir G Littler
Mr Lavelle
Mr Mountfield
Mr Robson
Mr Revolta
Mr Colman
Ms Life
Mr Pickford

Mr Hosker T.Sol
Mr Allen C&E

LIBYAN AIR SERVICES

The letter from the Private Secretary to the Secretary of State for Transport of 1 October contains the terms of the announcement of the decision of MISC 102 yesterday - presumably confirmed by Cabinet this morning - that the Libyan Air Services agreement will be terminated. There are no points for the Treasury in the drafting of the announcement or background attached to Mr Allan's letter, which relate to Civil Aviation matters. The announcement will be made at 2.30 today.

H.W.

H G WALSH



DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

8

Robert Culshaw Esq
Private Secretary to the
Foreign Secretary
Foreign & Commonwealth Office
Downing Street
LONDON SW1

2 October 1986

Dear Robert,

LIBYAN AIR SERVICES

I attach the final text of the draft press release which my Secretary of State will issue today. A copy of the final version of the Question and Answer brief for press officers is also attached.

Copies of this go to Charles Powell and the Private Secretaries to the Home Secretary, the Secretary of State for Defence, the Secretary of State for Trade and Industry, the Chief Secretary, the Attorney General, and Sir Robert Armstrong.

Yours Sincerely

Jon Cunliffe

JON CUNLIFFE
Private Secretary

2/10

CH/EXCHEQUER	
REC.	2-OCT 1986
ACTION	Mr H. Wasit
COPIES TO	CST, FST
	Sir P. Middleton
	Sir G. Little
	Mr Lavelle

Mr Mountfield
Mr Robson
Mr Revolta
Mr Connan
Ms Life
Mr Hosker - T. So
Mr R. Azlan-Cte

2/10

CHIEF SECRETARY	
REC.	- 2 OCT 1986
ACTION	<i>[Signature]</i>
COPIES TO	

DRAFT PRESS RELEASE

GOVERNMENT STOPS LIBYAN ARAB AIRLINES FLIGHTS TO UK

John Moore, Secretary of State of Transport, announced today that flights by Libyan Arab Airlines to the UK will stop at the end of October. He issued the following statement.

The involvement of Libyan Arab Airlines in support of terrorist activity makes it inappropriate in the Government's views for air services between the two countries to continue. The Government are therefore informing the Libyan authorities through the protecting power - (Saudi Arabia) that they have decided to cease the administrative application of the UK-Libya Air Services Agreement of 20 December 1972 from 31 October when the temporary operating permits issued by the Department of Transport to LAA expires. In the meantime further security measures will be applied to LAA flights at Heathrow.

LIBYAN ARAB AIRLINES DECISION

GUIDANCE FOR PRESS OFFICE

The Press Office should as far as possible avoid disclosing material other than that in the press announcement itself. As and if necessary the following lines may be taken in reply to specific questions from journalists.

Q1 WHAT EVIDENCE IS THERE THAT LAA IS SUPPORTING TERRORIST ACTIVITY?

A1 The "Pineapple" trial is not the only example of LAA involvement in terrorist related activities which are wholly incompatible with the normal commercial operation of an airline. In April 1985 a former LAA station manager in the United Kingdom was deported on conducive grounds. In view of the closure or reduction in size of Libyan People's Bureaux in the United Kingdom and elsewhere those who seek to promote terrorism could very well use an organisation such as LAA. It therefore makes sense to deprive them of that avenue.

Q2 WHY WAIT UNTIL THE END OF OCTOBER IF THERE IS A REAL SECURITY THREAT?

A2 Under international law we have to give a reasonable period of notice before ceasing to apply the ASA administratively. Tighter security measures are however being introduced at Heathrow with immediate effect (before the next LAA flight on Friday 3 October).

Q3 WHAT NEW SECURITY MEASURES WILL BE INTRODUCED?

A3 You cannot expect the Government to disclose the nature of its security measures since such disclosure would weaken their effect.

Q4 WHY SHOULD ADDITIONAL SECURITY MEASURES BE INTRODUCED NOW?

A4 LAA operations at Heathrow have been the subject of enhanced security measures for some time - we adjust these measures from time to time in order to maintain an adequate level of security, and to retain the confidence of airport users.

Q9 WILL ANY OTHER EUROPEAN COUNTRIES FOLLOW YOUR EXAMPLE?
WHAT ARE YOU DOING TO PERSUADE THEM?

A9 Secretary of State for Transport will be explaining the Government's decision to the Ministers of the other Community countries this evening. They are in London for an informal Council on civil aviation. It is for each government to reach their own decision on air services with Libya. Further action is a matter for the Foreign and Commonwealth Office.

Q5 WILL THE SECURITY MEASURES PREVENT THE SMUGGLING OF WEAPONS?

A5 Security measures are directed at protecting aviation interests, and also preventing the smuggling of weapons. They involve the co-ordination of action by airport authorities, the Customs and the police.

Q6 WHY IS A MONTH'S NOTICE GOOD ENOUGH FOR THE LIBYANS WHEN YOU SAY YOU HAVE TO GIVE [FOURTEEN MONTHS] NOTICE TO TERMINATE THE ASA WITH [SOUTH AFRICA]?

A6 If we decide to terminate an Air Services agreement we need to give the notice for which provision is made in that Agreement. The Agreement with Libya has not entered into force. It is being applied administratively "Reasonable notice" is therefore required before we cease to apply it.

Q7 WILL YOU BE STOPPING SERVICES FROM SYRIA, IRAN OR LEBANON WHOSE AIRLINE COULD BE USED FOR TERRORIST ACTIVITIES?

A7 No. We attach importance to maintaining our air services agreements because of the importance of our civil Aviation industry. We should only contemplate terminating an Air Services Agreement on security grounds if as in this case there is evidence of involvement of the airline concerned in terrorist activity.

Q8 WHAT ABOUT BCAL? WHEN AND WHY DID THEY STOP SERVING TRIPOLI? WILL THEY EVER BE ABLE TO FLY THERE AGAIN?

A8 I understand that BCAL ceased serving Tripoli on 1 July for commercial reasons. They will not be entitled under the ASA to serve Tripoli after 31 October. It will be a matter for the Libyans to decide whether to allow them to do so.



CHIEF SECRETARY	
REC.	- 2 OCT 1986
DATE	CX
TO	

28

Foreign and Commonwealth Office

London SW1A 2AH

2 October 1986

CH/EXCHEQUER	
REC.	2-OCT1986
ACTION	MR H. WALSH
COPIES TO	CST, FST
	SIR P. MIDDLETON
	SIR G. LITTLE
	MR LAVELLE

2/10

Dear Richard

Libyan Air Services

MR MOUNTFIELD
 MR ROBSON
 MR REVOLTA
 MR COLMAN
 MS. WIFE
 MR HOSKIN
 MR R. ALLAN

Thank you for your letter of 1 October enclosing the statement and press line on the suspension of air services with Libya.

The Foreign Secretary is broadly content. However he thinks that the reference to "other official bodies" is likely to prompt the question "what are the other Libyan bodies in Britain and what are we doing about them". We therefore suggest that the third sentence should be amended to read "... bound to use an organisation such as LAA."

We are aware that in presenting this decision it is important to emphasise that the recent trial is only one of the factors which were taken into account. However the Foreign Secretary believes that it is essential to get over the facts about LAA involvement. We have prepared, in conjunction with the Security Service, a note on the key facts which you may wish to pass on to your press office for use in responding to further questions about the trial and LAA's involvement in this affair.

/Copies



Copies of this letter go to Charles Powell (Number 10) and the Private Secretaries to the Home Secretary, the Secretary of State for Defence, the Secretary of State for Trade and Industry, the Chief Secretary, the Attorney General, and Sir Robert Armstrong.

Done over

R N Culshaw

(R N Culshaw)
Private Secretary

Richard Allen Esq
PS/Secretary of State for Transport

CONFIDENTIAL

3052/14

FROM: H G WALSH

DATE: 6 October 1986

PS/CHANCELLOR

cc: PS/Chief Secretary

LIBYAN ARAB AIRLINES

The Foreign Secretary's minute of 1 October to the Prime Minister has already been reflected in the termination of the Air Services Agreement with Libya.

No action is required.

H.G.

H G WALSH

SECRET

8/10/86-



FCS/86/238

HOME SECRETARY

CH/EXCHEQUE	
REC.	17 OCT 1986
ACTION	MR WALSH 17/10
COPIES TO	CST
	SIR P. MIDDLETON
	MR ROBSON
	MR HOSKER
	MR P. ALLAN
	PS/C&E

Syria and the El Al Bomb

1. The current trial of Nezar Hindawi, a Jordanian accused of attempting to plant a bomb on an El Al aircraft in London, is likely to provoke considerable public outrage. Whether or not Hindawi is convicted, his allegations during the trial of Syrian complicity in the attempted bombing will result in strong pressure on HMG to take action against Syria. The consequences for British interests in the Middle East could be serious. I enclose a memorandum prepared by officials setting out details of the case and our available options for action against Syria.

2. I am in no doubt that we should demand the prompt withdrawal of the Syrian Ambassador after the trial, in order to reinforce the message that we shall not tolerate terrorism-related activity on British soil. But the evidence of direct Syrian complicity in the attempted bombing (as opposed to negligence) is not conclusive. On 16 May the JIC concluded only that there was a high probability that Syria planned and organised it. The Assessments Staff have reviewed this paper and concluded that the position has not substantially changed. We are likely to have much difficulty convincing third countries of direct Syrian

/responsibility

Howe
MURD
8/10

SECRET



responsibility. We know the Syrians are preparing material designed to refute Hindawi's allegations. They have already drawn attention to the Prime Minister's statement to CBS in May that we had at that time no evidence against Syria of state-sponsored terrorism of anything like the kind that obtained in the case of Libya. They could well inflict serious damage on our interests in the Middle East, where UK citizens, premises and aircraft would become vulnerable, if the UK was seen to be leading a campaign to pillory Syria as a terrorist state without the conclusive evidence which we required and had over Libya.

3. In the circumstances we need to steer a careful course which demonstrates our determination to take firm action against terrorist activity but without placing the UK ahead of our allies in a dangerously exposed position, especially over a crime which we may well find difficulty in substantiating to the satisfaction of others, who will have various reasons for reluctance to become involved. The attached paper sets out the action which I believe we should take, and the terms in which we should explain it to third countries.

4. I am copying this minute to the Prime Minister, the Secretaries of State for Defence, Trade & Industry, and Transport, the Attorney General, and to Sir Robert Armstrong.

Robert Curran (Private Secretary)

Foreign & Commonwealth Office
8 October 1986

GEOFFREY HOWE
(Approved by the Foreign
Secretary and signed in his
absence)

SYRIA AND THE EL AL BOMBING
MEMORANDUM BY OFFICIALS

Introduction

1. The trial of Nezar Hindawi, a Jordanian, started on 6 October. Hindawi was arrested on 18 April in London following the discovery at Heathrow airport of a sophisticated bomb in a holdall being carried by Hindawi's pregnant Irish girlfriend who was waiting to board an El Al flight to Tel Aviv.
2. Hindawi's story is that he was recruited in Damascus in late 1985/early 1986 by Syrian intelligence officials who briefed and financed him for the bombing attempt. After the bomb was discovered at Heathrow he was already on a Syrian Arab Airlines (SAA) bus intending to leave Britain disguised as an SAA crew member; but he was instead instructed to go to the Syrian Embassy where he met the Syrian Ambassador, Dr Haydar. Haydar placed him in the hands of Syrian Embassy officials, who would arrange for him to leave the country. But Hindawi became suspicious and fled, subsequently giving himself up to the Police.
3. Following initial statements by Hindawi the police sought to question three Syrian Embassy attaches. Because the Syrian authorities refused to waive diplomatic immunity we asked for them to be withdrawn. The Syrians expelled three members of our Embassy at Damascus in retaliation.
4. HMG has the following evidence of Syrian official involvement with Hindawi, not all of which will necessarily come out during the trial:
 - (a) the Syrian authorities issued Hindawi a Syrian official passport in a false name and twice provided official MFA notes to our Embassy in Damascus in support of his UK visa applications,
 - (b) Hindawi spent some time in London hotel accommodation reserved for SAA crew,

MEMO
BY
OFFICIALS

(c) forensic evidence that Hindawi spent the night of 17/18 April at Syrian Embassy accommodation where hair clippings and dye were found.

5. The Syrians have vigorously denied involvement in Hindawi's plot: they have admitted issuing him with a passport but claim that they did so to enable him to undertake a journalistic assignment. The Syrian Ambassador claims to have dismissed Hindawi from his office when the latter called on him on 17 April and that Hindawi was evicted from the Embassy house at which he spent the night.

6. It is difficult to see why Syria should have taken the risk of mounting an operation of such sensitivity which, if it went wrong, would lead directly to accusations of Syrian culpability. But the Syrian story of a frame up by others (Israelis or Palestinians) is even more implausible. There is also clear evidence from secret and reliable sources that the Syrian Ambassador and a member of his staff, Ammourah, were instrumental in arranging for a group of people, including Hindawi, to visit in January the Deputy Head of Syrian Air Force Intelligence, Haitham Said, who, as we know from other evidence, has been involved with other terrorist organisations including Abu Nidhal. Hindawi claims that Said briefed and financed him for the El Al operation. The JIC concluded that there was a high probability that senior Syrian intelligence officials planned and organised the bomb attempt. But we do not have actual proof of these matters. What can be conclusively proved is that the Syrians were culpable in issuing Hindawi with a Syrian official passport and providing official MFA notes in support of his visa applications, that details at 4(b) and (c) above are true and that the Syrian Ambassador was guilty of mendacity in at least one respect in that he has claimed no knowledge of Hindawi until he met him at the Embassy on 17 April.

7. The Syrians will react sharply if we try to brand them as a state sponsoring terrorism mainly on the basis of allegations by a convicted criminal, especially if we appear to be leading a crusade among our EC partners and the Summit Seven. Syria is an important regional power with a capacity to damage British interests in the

Middle East. A Syrian counter offensive leading to a complete break in relations would increase the exposure of British citizens to terrorist attacks and the threat to the lives of British hostages in Lebanon; harm our interests in moderate Arab countries who will be reluctant to admit Syrian guilt; and thereby reduce our ability to influence developments in the region. Our valuable overflying rights would be particularly vulnerable to Syrian retaliation for any action taken against Syrian Arab Airlines. The risks to our interests would be all the greater if the Israelis used the trial verdict as a pretext for taking some military action against Syria.

8. We shall have time to brief our EC and other allies before the end of Hindawi's trial. We believe that there will be a general reluctance among them to take measures of their own against Syria. The French Government have taken care not to point the finger directly at Syria over terrorist activity against French interests. The Americans have also been anxious to keep lines open to the Syrians. All intelligence concerning Syrian involvement in this affair which can be passed to our EC and Summit Seven partners is being passed on liaison channels. Another version of the intelligence will be given to moderate Arab governments at the end of the trial.

Conclusions

9. We must take firm action aimed at deterring the Syrians from involvement in terrorist activity in Britain. But we need to judge this so as to fit the facts that we can prove and to minimize damage to our interests in the Middle East. Our response should be tailored to the evidence of Syrian official complicity, avoiding automatic extension to Syria of measures taken against Libya, a country which avowedly uses state terrorism as a tool of foreign policy and against which evidence of guilt is conclusive. A list of options for diplomatic and other measures against Syria is attached.

10. Expulsion of the Syrian Ambassador: this can be justified on the grounds that his role in the affair has rendered his continued presence in London unacceptable. Some tightening of security

surrounding Syrian Arab Airlines operations is also called for. Officials are undertaking an urgent study, to be completed before the likely date of the end of the trial, of the degree of involvement of Syrian Arab Airlines in this affair and of what additional special measures are needed for the future. Our practice regarding the issue of visas to Syrians has been tightened and should be maintained. But more far reaching measures would imply that the government saw the verdict as proof of Syrian official complicity. They should therefore be kept in reserve for use in possible response to Syrian retaliation.

11. Our interests in maintaining relations with Syria are significant and we should do what we can to minimise the effects on them. Risk of Syrian retaliation, especially from terrorism, might be reduced to the degree that we can secure support from our allies and moderate Arab states. This points to the need for very careful presentation of the evidence to them. This should include:

(a) Syria. A message from Sir Geoffrey Howe to the Syrian Foreign Minister to explain why the Ambassador's continued presence was unacceptable, in a way designed to reduce the risk of retaliation against our interests in Syria or more widely in the Middle East.

(b) Other Arab Governments. Messages to moderate Arab states would put the withdrawal of the Ambassador in the context of the evidence of Syrian involvement.

(c) Allies. We should seek as much support as possible from our EC partners and Summit Seven allies. Although we must take care not to prejudge the verdict our chances of securing helpful action by our major European partners would be enhanced by early action to brief them in strict confidence of our intentions. Given the difficulty we shall have in persuading friendly countries to take action, this might best be done through visits to Bonn, Paris and Rome by a senior official.

CONTINGENCY MEASURES AGAINST SYRIA

Measures	Likely Syrian Response	Economic Cost	Political Cost
1. Expulsion of Syrian Ambassador	Expulsion of HMA Damascus, additional expulsions possible	-	Partial loss of access. An Embassy at Chargé level worth maintaining but efficiency/effectiveness in a crisis would be limited
2. Expulsion of Third Secretary Amourah	Expulsion of one or more members of HM Embassy Damascus	-	Our Embassy could probably sustain the loss of 3-4 junior members of staff, but loss of Counsellor and Ambassador would severely limit its effectiveness
3. Ceiling on staff of Syrian Embassy at present level of 26	Imposition of a ceiling on our Embassy (currently 20 UK based staff)	-	Acceptable provided that ceiling on our Embassy was not lower than that on Syrian Embassy
4. Lower ceiling on staff of Syrian Embassy	As above	-	As above. But the Embassy's effectiveness would be severely impaired and it would be hard to resist public pressure to break relations altogether if our presence in Damascus were seen to be merely token.

5. Breach of diplomatic relations	Closure of Syrian Embassy; possible direct or sponsored hostage-taking of British expatriates; possible sponsored attacks against UK Missions and other interests in the Middle East	Possible temporary reduction in UK exports (though trade with Libya has held up since 1984)	Would place us in a state of open confrontation. Severe repercussions for our Missions abroad, notably Beirut. Limit our ability to play constructive role on Middle East issues. Increase risk to non-diplomatic UK interests in the region. Drive Syria into even closer Soviet embrace
<u>OTHER MEASURES</u>			
6. Ban on export of Defence Equipment	Minimal - Syrians would turn to other suppliers	Possible future sales under negotiation, worth £55 m, would be jeopardised	Some damage to our defence equipment industry which would be sustainable
7. Suspension of new ECGD credit	Minimal - Syrians would turn to other suppliers	Reduction of our exports to Syria (£92m (1984) £81m (1985)) and possible retaliation over repayments (£12m currently covered by ECGD)	Minor, sustainable damage to UK exporters' interests
8. Exclusion of Syria from EC Export Restitution Scheme	(impracticable)	Minimal effort on UK exports to Syria	Unlikely that we would gain Community support

9. Suspension of Technical Cooperation (£390,000 pa)	Syrian irritation, but no retaliation	-	Detract from our longer term ability to exert influence
10. Suspension of cultural exchanges	Syrian irritation, but no retaliation	Loss of future possible educational management contracts (eg World Bank/UNDP 3 year project awarded in 1982 worth £1.1m)	Detract from our longer term ability to exert influence
11. Ban on Air Services	Closure of Syrian airspace to UK carriers	BA would need to re-route 75 long haul flights with annual additional fuel costs of £8m + pay load penalties + loss of traffic	No legal justification unless exceptional circumstances (eg aviation or national security). Potentially damaging precedent
12. Expulsion of expatriate personnel of non-diplomatic Syrian offices in UK: (provided there is sufficient evidence against each individual) (a) Syrian Arab News Agency (SANA)	Irritation but probably no significant retaliation	-	None, SANA has only 1 Syrian member of staff whose expulsion would not satisfy UK public opinion.

(b) Syrian Arab
Airlines (SAA)

Escalatory reprisals
eg against Embassy
staff or other UK
expatriates

-

Low: a possible useful option if
we had to act in response to
specific SAA involvement with
Hindawi, without resorting to
more drastic action over Air
Services (11 above)

AP1A EK



CONFIDENTIAL

1 TOLSON

- cc Chief Secretary
- Financial Secretary
- Economic Secretary
- Minister of State
- Sir P Middleton
- Sir G Litter
- Mr Laelle
- Mr Bourgues
- Mr Colborne
- Mr Mountfield
- Mr Scholar
- Mr H Evans
- Mr Walsh
- Ms Life
- Mr Cropper
- Mr P Allen CTE
- PS/CTE

Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

RP

10 October 1986

The Rt Hon John Moore MP
Secretary of State for Transport
2 Marsham Street
LONDON SW1P 3EB

SALE OF EX-BCAL AIRBUSES TO LIBYA

Thank you for copying to me your letter of 19 September to Geoffrey Howe. I have also seen Geoffrey Howe's reply.

I agree with your proposals for the line we should take with the US Government should they decide to investigate BCal's role in this sale. In particular I agree that we should maintain our line on the extraterritorial application of US law. However, we should not lose sight of the advantages we gain by co-operation between the US and UK Customs authorities in other areas, such as drug trafficking. I therefore hope you and MISC 102 colleagues can agree not to be more restrictive than is provided for in the "Guidelines for law enforcement agents representing foreign Governments" issued to diplomatic missions in London on 30 May 1986.

I am copying this letter to the members of MISC 102 and to Sir Robert Armstrong.

NIGEL LAWSON



Secretary of State for Trade and Industry

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET
Telephone (Direct dialling) 01-215
GTN 215)5422
(Switchboard) 01-215 7877

88

CONFIDENTIAL

13 October 1986

The Rt Hon John Moore MP
Secretary of State for Transport
Department of Transport
2 Marsham Street
LONDON
SW1

Dear John,

CH/EXCHEQUER	
REC.	14 OCT 1986
ACTION	MSV. LIFE
COPIES TO	MR P. MIDDLETON S. P. MIDDLETON S. C. LITTLE M. LAVERLE

14
10

MR BORGNER
MR GILMORES
MR MOUNTFIELD
MR WALSH
MR SCHULZAR
MR H. EVANS
MR CLOPPER
MR P. ALLANCTE
PS/CTE

SALE OF EX BCAL AIRBUS TO LIBYA

Thank you for copying me your letter of 19 September to Geoffrey Howe about the line which you propose for dealing with US attempts to investigate BCal's role in the Airbus to Libya sale with a view to possible enforcement action. I have also seen a copy of Geoffrey Howe's reply of 30 September.

The US proposal gives rise to a difficult choice. The alleged offence is extraterritorial, and that makes it difficult to countenance a US investigation. But we are also concerned to protect BCal's position, and that points to co-operation with the US authorities. Whatever choice is made could have implications for my using powers under the Protection of Trading Interests Act in this instance if the US authorities later attempted measures which we regarded as unacceptable. I agree that in principle we should not seek to prevent BCal from co-operating with the US authorities on a voluntary basis if they wish to do so. But if we and the company are to be effective in jointly defending their interests, we need to have a close understanding with them, and confidence in their strategy. I know that our officials are in touch about the need for a full discussion with BCal before irrevocable decisions are taken.

DW3BBX

17
19
86
BOARD OF TRADE
BICENTENARY



I certainly hope that, as Geoffrey Howe says in his letter, careful political management will enable us to ensure that any damage to BCal's US interests is kept within reasonable limits. We shall have to keep a close watch on developments. If it seems necessary I agree that we should firmly reiterate our position on possible enforcement action to the US authorities.

I am copying this to the other members of MISC 102.

*Y
ms,*

PAUL CHANNON
Paul



DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

The Rt Hon Douglas Hurd MP
Secretary of State for the
Home Department
Home Office
50 Queen Anne's Gate
LONDON
SW1H 9AT

CH/EXCHEQUER	
REC.	17 OCT 1986
ACTION	MR H. WALSH 17/10
COPIES TO	CST, FST
	SIR P. MIDDLETON
	MR MOUNTFIELD
	MR ROBSON

16 October 1986

Dear Douglas

MOORE
→ HURD
16/10

SYRIA AND THE EL AL BOMB

MR REVOLTA MR HOSKER
MR COLMAN MR P. ALLAN C&E
MS. LIFE PS/C&E

The report attached to Geoffrey Howe's minute of 8 October to you said that officials were undertaking a study of the additional security measures which might need to be taken in relation to Syrian Arab Airlines (SAA). Officials of my Department have carried out this study with those of yours and Customs and Excise, together with the Security Service, the Metropolitan Police and the Airport Security Manager at Heathrow. They have proposed that the increased security measures summarised in the Annex to this letter should be brought into force as soon as the outcome of the Hindawi trial is known.

I agree with you that it would be difficult to defend a response which did not apply to SAA stringent security measures on the lines now being applied to Libyan Arab Airlines (LAA). I am sure that colleagues would also agree, and will be content that their departments should play their part.

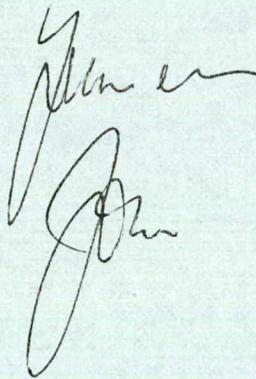
The measures here are in line with those applied to LAA. In addition officials propose that in order to prevent terrorists entering or leaving the country in the guise of aircrew, all SAA crew should be required to undergo full immigration procedures. To do this I understand that the concession whereby operational crew are exempt from formal immigration checks would have to be withdrawn by an Immigration Officer. As for the LAA measures, it would be necessary for customs officers to carry out a search of the aircraft once the passengers have left. Customs officers will also examine cargo consignments coming in on SAA aircraft. The Metropolitan Police will also be involved in helping to implement the additional measures. The searching of passengers and baggage would be carried out by security staff of Heathrow Airport Ltd under a direction under the Aviation Security Act.

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I propose that the measures should be kept under review in the light of changes in the assessment of the threat.

Preparations are in hand to implement these measures as soon as the Hindawi trial ends. I assume that you and my other colleagues are content.

I am copying this letter to the Prime Minister, the Foreign Secretary, the Chancellor of the Exchequer, the Secretaries of State for Defence and for Trade and Industry, and to Sir Robert Armstrong.

A handwritten signature in black ink, appearing to read 'John Moore', with a stylized flourish at the end.

JOHN MOORE

CONFIDENTIAL

CONFIDENTIAL.

SYRIAN ARAB AIRLINES - SECURITY MEASURESSummary of Note by Department of TransportBackground

1 Syrian Arab Airlines (SAA) has three flights a week to the UK, all to Heathrow. The aircraft is a Boeing 747 SP carrying, on average, about 200 passengers. All flights arrive in the evening and depart the next morning. Those on Saturday (departing Sunday) and on Monday (departing Tuesday), are to and from Damascus via Munich. That on Wednesday, departing Thursday, is to and from Damascus direct. The flights use Terminal 3. British Airways are the handling agents.

2 The Monday and Wednesday flights connect with SAA flights to India - on these perhaps 90% of passengers are Indian nationals. Because SAA fares are low many of these passengers are poor; they tend to have problems with immigration. Their numbers may diminish now that the new visa requirements apply.

The Threat

3 The Hindawi case suggests that the SAA operation might pose the following threats to security:

(a) transferring weapons and explosives airside for the purpose of hijacking or sabotaging a departing flight (Israeli, American and now perhaps British aircraft might be most at risk).

(b) bringing terrorists in and out of the country in the guise of aircrew.

ANNEX
SUMMARY
OF NOTE
BY DEPT.
OF TRANSPORT

(c) smuggling weapons and explosives into the country for use in terrorists attacks on aviation and elsewhere.

Summary of Proposals

4 The following additional security measures are proposed:

(a) placing the aircraft on a remote stand and coaching the passengers and crew and all their baggage to the terminal entry point;

(b) screening and searching all passengers, crew and baggage at the terminal entry point (all passengers and crew to be screened by AMD* and subject to hand search, all baggage to be screened by X-ray, and hand searched (passengers': 1 in 3, crews: 100%)). The search will be carried out by airport security staff: the police will normally be in attendance;

(c) the immigration concession to be withdrawn from the crew, who will be subject to normal immigration procedures as for passengers;

(d) Customs officers to search the aircraft once the passengers have disembarked; aircraft to be kept under surveillance throughout its stay by CCTV; airline to be required to remove means of access when the aircraft unattended;

(e) cargo to be inspected by customs.

Review

5 It is proposed that these measures should be reviewed at the end of November 1986.

DTP
CAP5

*Archway Metal Detector

October 1986

3052/17

FROM: H G WALSH
 DATE: 20 October 1986

CHANCELLOR

cc: Economic Secretary
 Sir P Middleton
 Sir G Littler
 Mr Lavelle
 Mr Evans
 Mrs Lomax
 Mr Mountfield
 Mr Hall

*Thanks.
 Ann*

Mr Hosker, T.Sol
 (Without attachments)

LIBYAN ARAB FOREIGN BANK vs BANKERS TRUST: US ASSETS FREEZE

You may wish to be aware (see attached telegrams) that last Thursday a British court allowed an application for summary judgment against the London branch of Bankers Trust Co of New York (BT), for repayment of a balance of \$131 million held on deposit by the Libyan Arab Foreign Bank in London. On Friday, however, the Court granted a stay of execution and BT intend to appeal (which will probably take up to 6 weeks). In the meantime, BT do not have to part with the money.

2. The fact that summary judgment has been granted means that the judge did not believe that Bankers Trust had a sufficiently arguable case to send it to trial in June, 1987 at the same time as a separate element of the case - relating to \$161 million of Libyan money held in New York. This is a somewhat surprising outcome, as there are a number of issues connected with the London dollar balances which might have been thought to require at least a full hearing. You will see from telno 2648 from Washington that Kimmitt (Chief Counsel, US Treasury) has gone so far as to say that the decision raised "serious questions" about the ability of US litigants to get a fair hearing in UK courts.

3. A team of lawyers from the US Government will be visiting London to discuss with officials what, if any, assistance could be given to the UK government at Court of Appeals stage. We shall almost certainly wish to resist pressure for a public

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statement going beyond existing pronouncements or participation in any legal proceedings. A further submission will be made when we know the nature of the Americans' request. But it seems that feelings may be running high in the US Treasury, and it is possible that Secretary Baker might approach you again on this issue.

H. W.

H G WALSH

CONFIDENTIAL

GRS 140

CONFIDENTIAL
FM WASHINGTON
TO IMMEDIATE FCO
TELNO 2661
OF 172300Z OCT 86

YOUR TELNO 1797: US FREEZE OF LIBYAN ASSETS: LIBYAN-ARAB
BANK V BANKERS TRUST

1. SMALL (STATE) HAS TOLD US THAT THE PROPOSED VISIT OF A US
GOVERNMENT TEAM OF LAWYERS WILL NOT NOW TAKE PLACE NEXT WEEK IN
THE LIGHT OF THE SUCCESSFUL APPLICATION FOR A STAY OF EXECUTION.
HIS UNDERSTANDING WAS THAT THE APPEAL PROCESS WOULD BE
EXPEDITED AND WE WILL BE CONTACTED ABOUT DETAILS ONCE THE NEW
LEGAL TIMETABLE HAS BEEN ESTABLISHED.

ACLAND

YYYY

ORWBAN 7166

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ESSD

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PS/MR EGGAR
PS/MR RENTON
PS/PUS
MR LONG
MR SLATER
MR DEREK THOMAS
MR FERGUSSON
MR BARRINGTON
MR GOODALL
MR DAUNT
SIR D MIERS
MR BRAITHWAITE
MR MAUD
MR RENWICK
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MR RATFORD

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FM FCO
TO IMMEDIATE WASHINGTON
TELNO 1797
OF 171330Z OCTOBER 86

YOUR TELNO 2648: US FREEZE OF LIBYAN ASSETS: LIBYAN ARAB BANK V
BANKERS TRUST

1. WE WOULD BE VERY WILLING TO HOLD DISCUSSIONS WITH A US GOVERNMENT TEAM OF LAWYERS AND WILL MEET THEM WHENEVER IS CONVENIENT.
 2. WE ARE SEEKING A COPY OF THE JUDGEMENT AND WILL SEND IT BY FACSIMILE WHEN IT ARRIVES.
 3. AS WE WERE NOT PARTY TO THE CASE AND WE HAVE NOT YET SEEN THE JUDGEMENT, WE ARE IN NO POSITION TO COMMENT ON ITS IMPLICATIONS. YOU SHOULD, HOWEVER, REFUTE ANY ALLEGATION OF LACK OF A FAIR HEARING AND JUDICIAL BIAS. SUMMARY JUDGEMENT UNDER ORDER 14 IS A WELL TRIED PROCEDURE AND THE LEGAL REPRESENTATIVES OF BANKERS TRUST HAD FULL OPPORTUNITY TO ARGUE THEIR CASE ON THE APPLICATION.
 4. WE HAVE JUST HEARD THAT THE COURT HAS GRANTED AN APPLICATION FOR STAY OF EXECUTION OF JUDGEMENT THIS MORNING ON TERMS THAT BT SHOULD NOT PART WITH THE MONEY. THAT SHOULD HELP A LITTLE TO RELIEVE ANXIETIES.
- HOWE

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PS/MR EGGAR
PS/MR RENTON
PS/PUS
MR LONG
MR SLATER
MR DEREK THOMAS
MR FERGUSSON
MR BARRINGTON
MR GOODALL
MR DAUNT
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 TO IMMEDIATE FCO
 TELNO 2648
 OF 162334Z OCTOBER 86

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MR. H. C. WALSH
 H. M. TREASURY

YOUR TELNO 1792: US FREEZE OF LIBYAN ASSETS: LIBYAN ARAB BANK V BANKERS TRUST

1. THE AMERICAN REACTION TO THE COURT'S DECISION IS PREDICTABLY ONE OF ANGER AND SURPRISE. KIMMITT TOLD HARRIS THAT A DECISION OF THIS SORT BASED LARGELY UPON AFFIDAVIT EVIDENCE RAISED SERIOUS QUESTIONS ABOUT THE ABILITY OF US LITIGANTS TO OBTAIN A FAIR HEARING. THE US LEGAL TEAM FELT STRONGLY THAT THE JUDGE HAD BEEN DETERMINED FROM THE OUTSET TO MAKE A DECISION WHICH HAD A POLICY IMPACT ON US EXTRATERRITORIAL LEGISLATION. THE FAILURE OF THE COURT TO HOLD OVER A DECISION UNTIL A FULL OPPORTUNITY WAS GIVEN TO BOTH PARTIES TO MAKE THEIR CASE WAS PARTICULARLY DISAPPOINTING.

2. KIMMITT CONFIRMED THAT THE JUDGEMENT WOULD BE APPEALED BY BANKERS TRUST. THE US SIDE ATTACHED PARTICULAR IMPORTANCE TO THE REQUEST FOR A STAY OF EXECUTION TOMORROW AND WOULD IF NECESSARY BE PREPARED TO GO ALONG WITH AN EXPEDITED APPEAL IF THAT WOULD PREVENT THE LIBYANS FROM WITHDRAWING THEIR FUNDS. A US GOVERNMENT TEAM OF LAWYERS WOULD BE SENT TO LONDON TO DISCUSS THE APPEAL AND WOULD WISH TO DISCUSS WITH HMG REPRESENTATIVES WHAT ASSISTANCE COULD BE PROVIDED AT THE COURT OF APPEALS STAGE. THE TIMING OF THIS VISIT WOULD DEPEND UPON THE OUTCOME OF TOMORROW'S HEARING. IT COULD BE EITHER NEXT WEEK OR SHORTLY THEREAFTER.

3. GRATEFUL FOR A COPY OF THE JUDGEMENT WHICH WE ARE TOLD RUNS TO 32 PAGES

ACLAND
 ORWGAN 7135

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MR. H. J. VAISH
H. M. TREASURY

CONFIDENTIAL
FM FCO
TO IMMEDIATE WASHINGTON
TELNO 1792
OF 161515Z OCTOBER 86

US FREEZE OF LIBYAN ASSETS: LIBYAN ARAB BANK V BANKERS TRUST

1. THE JUDGE IN THE LIBYAN ARAB BANK V BANKERS TRUST CASE GAVE HIS DECISION TODAY. HE FOUND IN FAVOUR OF THE LIBYANS AND HELD THAT THERE WAS NO ARGUABLE DEFENCE. THIS WAS A LONDON DEPOSIT ACCOUNT GOVERNED BY ENGLISH LAW AND WAS NOT SUBJECT TO US LAW.
2. THE JUDGEMENT WILL BE APPEALED. A REQUEST FOR A STAY OF EXECUTION WILL BE HEARD TOMORROW MORNING (17 OCTOBER).
3. FOR THE MOMENT THE LINE TO TAKE IN ANSWER TO PRESS ENQUIRIES IS THAT WE HAVE NOT YET SEEN THE JUDGEMENT BUT THIS IS A COURT DECISION AND HMG IS NOT A PARTY.
4. THIS LINE WILL BE SUBJECT TO REVIEW WHEN WE HAVE STUDIED THE JUDGEMENT.

HOWE
OCMIAN 9752

LIBYA - INTERNATIONAL SANCTIONS

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3052/18

CHANCELLOR

Handwritten notes in red ink:
OK. But volume
higher in clear
Plan 1 go with
accept X

FROM: H G WALSH
DATE: 21 October 1986

cc: Chief Secretary
Financial Secretary
Sir P Middleton
Mr Mountfield
Mr Robson
Mr Revolta
Ms Life

Mr Hosker, T.Sol
PS/Customs
Mr P R H Allen, Customs

WALSH
-> CHLEX
2/10

SYRIA AND THE EL AL BOMB

The Secretary of State for Transport's letter of 16 October ^{below} to the Home Secretary outlines the enhanced security arrangements which are proposed for flights of Syrian Arab Airlines (SAA) to Heathrow following the Hindawi case (a Jordanian is accused of attempting to plant a bomb on an El Al aircraft there and he has implicated the Syrians).

2. There are no expenditure implications of what is proposed by way of enhanced security, which is very much in line with what is being imposed on Libyan flights prior to the termination of their Air Agreement with the UK.

X | 3. The Customs and Excise are satisfied with the proposals but point out that, to contribute their part to the arrangements, manpower resources will have to be diverted from top-priority drug work. SAA has three flights a week to Heathrow.

4. Unlike the case with the Libyans, there are no plans to stop Syrian flights coming into Heathrow altogether. This will be justified on the grounds that the evidence that Syria uses SAA as an instrument of state terrorism is less strong than in the case of Libya and Libyan Arab Airlines. Termination of Syrian landing facilities in London would also endanger, inter alia, our valuable overflying rights in Syria.

Handwritten note:
This is ridiculous - it is becoming Customs' stock response to everything
AUK

SECRET

5. The Secretary of State for Transport assumes that his colleagues are content, so no reply to his letter is necessary.

A.W.

H G WALSH

CONFIDENTIAL



FROM: A W KUCZYS
DATE: 21 OCTOBER 1986

ES

MR H G WALSH

cc PS/Economic Secretary
Sir P Middleton
Sir G Littler
Mr Lavelle
Mr H P Evans
Mrs Lomax
Mr Mountfield
Mr Hall
Mr Hosker - T Sol

LIBYAN ARAB FOREIGN BANK vs BANKERS TRUST: US ASSETS FREEZE

The Chancellor was grateful for your note of 20 October. He has commented that this development is annoying.

A handwritten signature in black ink, appearing to be "A W KUCZYS".

A W KUCZYS



1. Cathy
2. h J

FROM: A W KUCZYS
DATE: 22 October 1986

MR WALSH

cc PS/Chief Secretary
PS/Financial Secretary
Sir P Middleton
Mr Mountfield
Mr Robson
Mr Revolta
Ms Life Miss Sinclair
Mr Hosker - T.Sol
Mr P R H Allen - C&E
PS/C&E

KUCZYS
→ WALSH
22/10

SYRIA AND THE EL AL BOMB

The Chancellor was content with the advice in your minute of 21 October. But he would like to make it clear that he does not accept the argument that Customs will have to divert manpower resources from drugs work in order to contribute their part to these arrangements.

Handwritten signature of A W Kuczys, appearing as 'AWK' with a stylized flourish.
A W KUCZYS



QUEEN ANNE'S GATE LONDON SW1H 9AT

23 October 1986

HURD
→ MOORE
23/10

Dear Tom,

SYRIA AND THE EL AL BOMB

Thank you for your letter of 16 October, with a paper setting out the detailed arrangements which you suggest might be applied to Syrian Arab Airlines.

This was discussed at the Prime Minister's meeting yesterday morning, but I do want to record that I know the security arrangements at Heathrow will impose a significant burden on BAA, as well as HM Customs and the police, and I am very grateful for the speedy work which your officials have done in reaching a satisfactory conclusion. I agree with you that it would be right to keep the measures under review in the light of experience during the first few weeks.

I am sending copies of this letter to those who had copies of yours.

CH/EXCHEQUER	
REC.	23 OCT 1986
ACTION	MR WALSH
COPIES TO	C ST FST SIR P. MIDDLETON MR MOUNTFIELD MR ROBSON MR RIGBY MR COLMAN MS LIFE

✓ 23/10
Lowry
Dyler

MR HURD
MR ALLAN
PS/CE

The Rt Hon John Moore, MP

SYRIA AND
THE EL AL BOMB

WALSH
→ PS/CH
23/10

CONFIDENTIAL

3052/23

1. Cothly
2. RPD

Don't think
80

FROM: H G WALSH
DATE: 23 October 1986

PS/CHANCELLOR

cc: Mr P R H Allen, Customs

SYRIA AND THE EL AL BOMB

No intervention by the Chancellor is required on the Home Secretary's letter of 23 October to the Secretary of State for Transport.

2. Customs and Excise are considering separately the Chancellor's comments (Mr Kuczys' minute of 22 October) about the possible diversion of manpower from drugs duty to security on SAA flights to Heathrow.

H.G.W.

H G WALSH

[Handwritten signature]



6/11/86-

Off with advice (or 10/11) A

FCS/86/257

HOME SECRETARY

CH/EXCHEQUER	
REC.	06 NOV 1986
ACTION	MR WALSH
COPIES TO	CST, FST
	SIR P. MIDDLETON
	MR MOUNTFIELD
	MR ROSSON

Comments before 10 November pl.

MR REVOLTA
MR COLMAN
MS. LIFE
MR HOSKER (TSY. SOL)
MR P. ALLAN CBE
PS/CBE

HOWE TO HOMESEC 6/11 SYRIA

Possible Application to Syria of Measures taken against Libya

/ 1. I enclose a Note by officials (Misc 118 (86) 36) about possible application to Syria of measures taken against Libya. The Note identifies the scope for additional action against Syria.

2. My views on the options identified in para 28 of the Note are :

a) We should hold in reserve the possibility of applying additional after entry controls to Syrian visitors.

b) We should not terminate the air services agreement with Syria but keep open the possibility of recovering our valuable overflying rights in exchange for a resumption of SAA flights to London (subject to appropriate security measures). We should however suspend SAA's operating permit, so that its flights to London cannot resume without our permission, and withdraw its overflying rights.

/c)



c) I have minuted separately to the Defence Secretary endorsing his proposal for an embargo on all new defence exports to Syria and a review of existing contracts. (not copied to us)

d) I agree that residual aid to Syria should be stopped.

e) This Recommendation has been overtaken and an amendment issued. (incorporated below)

f) I believe that we should concentrate at the meeting of Foreign Ministers of the Twelve on 10 November on securing partners' agreement to the suspension of arms sales and high level visits to Syria and to review the activities of Syrian Embassies and the security arrangements for SAA operations. I see little prospect for securing agreement to suspend bilateral aid programmes (although Germany has announced that disbursement of aid has been suspended) or to a review of entry requirements for Syria, which the French opposed at Luxembourg on the ground that this was already being dealt with.

I hope that our officials will be able to report soon on Syrian students in the UK, the Syrian News Agency's Office, Syrianair's London Office and ECGD cover for Syria.



3. I should be grateful to know whether colleagues are content that we should proceed accordingly. It would be helpful to have any comments before 10 November when I intend to review common action with Foreign Ministers of the Twelve.

4. I am copying this minute to colleagues whose departments were represented at the meeting of MISC 118 on 28 October and to the Prime Minister, the Lord President and the Secretary of State for Energy and to Sir Robert Armstrong.

A handwritten signature in black ink, appearing to be 'G. Howe', written in a cursive style.

(GEOFFREY HOWE)

Foreign and Commonwealth Office

6 November 1986

CONFIDENTIAL

FROM: H G WALSH
DATE: 7 NOVEMBER 1986

CHANCELLOR

cc Chief Secretary
Financial Secretary
Sir P Middleton
Sir G Littler
Mr Mountfield
Mr Robson
Mr Revolta
Mr Colman
Mr Crabbie

Mr Hosker T.Sol
Mr R Allen C&E
PS/C&E

Ch
If you are content
with this advice, then
rather than writing I
will 'phone your agreement
to the Foreign Secretary's
office. (They need to know
by Monday) AWK 7/11

POSSIBLE APPLICATION TO SYRIA OF MEASURES TAKEN AGAINST LIBYA

The possible further measures that could be taken against Syria are listed in paragraph 28 of MISC 118(86)36 (attached on top copy). The Foreign Secretary's minute of 6 November to the Home Secretary (paragraph 2) contains his views on further action, none of which appear directly to affect public expenditure or financial institutions and markets. The Foreign Secretary wishes to have confirmation that his colleagues should proceed as he proposes (and any comments before 10 November).

2
2. The approach recommended in paragraph 2 of the Foreign Secretary's letter on particular issues are:-

(a) Hold in reserve the possibility of applying additional after entry controls.

This is a matter for the Security Service/Home Office. So far there is no indication that tougher controls are warranted.

(b) Not terminate the air services agreement but suspend SAA's operating permit.

This approach enables us to exclude SAA flights while leaving open the possibility of ultimate resumption of our services and the regaining of overflying rights worth £15 million a year to British carriers in lower fuel costs. PE Division are content.

(c) **Embargo new defence exports and review existing contracts.**

DM Division are content with this.

(d) **Stop residual bilateral aid to Syria.**

This aid is in any case quite small. AEF Division are content.

(e) **Overtaken.**

Foreign Secretary's (f) and (e) in MISC 118(86) 36 Revise
~~(f)~~ Seek EC Foreign Ministers' agreement on 10 November to suspending arms sales and high-level visits to Syria and to reviewing the activities of Syrian Embassies and the security arrangements for SAA generations.

This is a minimalist request. EC Division are content.

3. The **position on Community aid to Syria** (paragraphs 24 and 25 of MISC 18(86)36) is that we shall block the new EC/Syria Financial Protocol, so that Syria will lose £100m over five years. The Commission has not yet decided how far it will restrict expenditure under the existing protocol where they have not as yet signed agreements with the Syrians.

4. **Export credit cover** is now already restricted because of concern over Syria's economic position and arrears. ECGD is considering (on economic grounds) whether all cover outside the short term field should be withdrawn. AEF Division are content with this approach, which is likely to be similar to that of other EC Member States.

Recommendation

5. **The Foreign Secretary's proposals have no significant economic implications, and you are recommended to confirm that you are content.** A draft letter is attached.

H.W.

H G WALSH

CONFIDENTIAL

DRAFT LETTER

From the Chancellor of the Exchequer
To the Foreign and Commonwealth Secretary

POSSIBLE APPLICATION TO SYRIA OF MEASURES TAKEN AGAINST LIBYA

This is to confirm that I am content with the approach to measures against Syria taken in your minute of 6 November to the Home Secretary.

Copies of this letter go to recipients of your minute.



DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

01-212 3434

AS

Robert Culshaw Esq
Private Secretary to
The Secretary of State for Foreign
and Commonwealth Affairs
Foreign and Commonwealth Office
Downing Street
LONDON SW1

CH/EXCHEQUER	
REC.	10 NOV 1986
ACTION	MR WALSH <i>10/11</i>
COPIES TO	CST, FST
	SIR P. MIDDLETON
	MR MOUNTFIELD
	MR ROBSON

10 November 1986

Dear Robert,

MR REVOLTA
MR COLMAN
MS. LIFE
MR HOSKER (T.SOL)
MR P. ALLAN CBE
PS/CBE

POSSIBLE APPLICATION TO SYRIA OF MEASURES TAKEN AGAINST LIBYA

This is to confirm our conversation this morning about the Foreign Secretary's minute to the Home Secretary, dated 6 November, about this subject.

My Secretary of State, who is in Brussels today and tomorrow, was content to proceed as recommended by the Foreign Secretary. In particular, he agreed that, as recommended in para. 2(b) of the minute, we should suspend Syrian Arab Airlines' operating permit, so that its flights to London cannot resume without our permission, and withdraw SAA's overflying rights: but that we should not terminate the Air Services Agreement with Syria. Officials of this Department stand ready to take the necessary action to suspend the operating permit and withdraw the overflying rights. We agreed, however, to consult further about the timing of that action in the light of the responses by other Ministers to the Foreign Secretary's minute, and of decisions on the timing and presentation of the measures as a whole.

I am copying this letter to the Private Secretaries to all Ministers whose Departments were represented at the meeting of MISC 118 on 28 October, and to Charles Powell (No 10), Joan MacNaughton (Lord President's Office), Geoff Dart (Department of Energy), and Trevor Woolley (Cabinet Office).

*Yours,
Richard.*

R A ALLAN
Private Secretary

28



HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

CH/EXCHEQUER	
REC.	11 NOV 1986
ACTION	MR WALSH
COPIES TO	CST, EST
	SIR P. MIDDLETON
	MR MOUNTFIELD
	MR ROBSON
	MR REVOLTA

10 November 1986

See Robert,

MR HOSKER (T. SOL)
MR P. ALLAN CBE
PS/CBE
MS. LIFE

**POSSIBLE APPLICATION TO SYRIA OF MEASURES
TAKEN AGAINST LIBYA**

The Home Secretary has seen the minute of 6 November from the Foreign and Commonwealth Secretary, and as I have reported on the telephone, is content with the proposal.

Copies of this letter go to the Private Secretaries to recipients of the Foreign Secretary's minute.

Now,
Steph

S W BOYS SMITH

Robert Culshaw, Esq

MR 2/58

CONFIDENTIAL



FROM: A W KUCZYS
DATE: 10 NOVEMBER 1986

MR WALSH

cc: Chief Secretary
Financial Secretary
Sir P Middleton
Sir G Littler
Mr Mountfield
Mr Robson
Mr Revolta
Mr Colman
Mr Crabbie

Mr Hosker T.Sol
Mr R Allen C&E
PS/C&E

POSSIBLE APPLICATION TO SYRIA OF MEASURES TAKEN AGAINST LIBYA

The Chancellor agreed with the advice in your minute of 7 November. In view of the time constraint, I have telephoned this message to the Foreign Secretary's office, rather than writing.

AWK
A W KUCZYS

SYRIA

AWK
TO
WALSH
10/11
SYRIA

3052/34

PS/CHANCELLOR

FROM: H G WALSH

DATE: 11 November 1986

cc: Mr Colman

SYRIA

No reply is required to the Private Secretary of the Secretary of State for Transport's letter of 10 November, which conveys Mr Moore's agreement to the Foreign Secretary's proposals on suspending SAA's operating permit but not terminating our air agreement with Syria.

A copy of Mr Allan's letter has been taken for IF1's files.

H.G.W.

H G WALSH

3052/13

CHANCELLOR

Meena
A thank
T.

FROM: H G WALSH

DATE: 19 November 1986

cc: Financial Secretary
Economic Secretary
Sir P Middleton
Sir G Littler
Mr Lavelle
Mr Evans
Mrs Lomax
Mr Mountfield
Mr Hall
Ms Life

Mr Hosker, T.Sol
Mr Fawcett, Inland Revenue

US ASSETS FREEZE: LIBYAN ARAB FOREIGN BANK V BANKERS TRUST

Further to my note of 20 October, you may wish to be aware in the latest developments in the above case about the application of a US Executive Order to deposits of the London branch of Bankers Trust.

2. Bankers Trust have entered a notice of appeal to the Court of Appeal against the (unexpected) summary judgement that was given against them by the Commercial Court on 16 October. The appeal is scheduled to be heard from 1 December to 3 December. Mr Kimmitt (General Counsel, US Treasury), is leading a team of US Government lawyers in discussing the case with the British solicitors involved this week and will be offered a meeting with Sir John Freeland (Legal Adviser at the Foreign Office) next Monday.

3. Although we shall be as helpful as possible to the Americans, they are almost certainly going to be disappointed with the substantive outcome. This - or even Sir John Freeland's fairly anodyne reply to Mr Kimmitt's letter (draft attached which may be substantially altered*) - could give rise to another approach to you from Secretary Baker further to his letter of 2 June (below) and also to demarches by the US Ambassador to the Attorney General or the Prime Minister - both of whom are being kept abreast of

* Final version, incorporating comments of Treasury Solicitor and Law Officers Department, will follow tomorrow.

developments as well as the Foreign and Commonwealth Secretary.

4. You will see from the attached letter that Mr Kimmitt asks for UK views on various matters concerning the operation of UK law. The substance of Sir John Freeland's reply is unlikely to give the Americans much comfort. UK Government lawyers do not believe, despite the legal advice that has been given to the Americans (which we are being careful not to usurp), that it would be useful for the US Government to have a counsel present at the appeal as amicus curiae because - in contrast to practice in the US - such friends of the court here do not usually represent interested third parties such as the US Government but are neutral. Still less can we give an assurance that such a presence would not involve a waiver of sovereign immunity. We are also unlikely to be able to help in getting the US Government's views brought before the court, although there may be ways in which Bankers Trust might be able to adduce these views.

5. The main action which HMG is asked to take is to argue either orally or in writing to the court in favour of overturning the summary judgement and sending the case to a full trial on public policy grounds. The Americans have gone so far as to draft a submission for HMG to put into the Court of Appeal that is unacceptable as it stands on several points. If we can avoid it, we do not anyway wish to make any such submission. Although the Americans are only asking us to intervene on a procedural matter, such an intervention could be open to the loose interpretation that, when it comes to fighting terrorism, we are not going to be firmly resistant to the extra-territorial application of American law to British financial institutions.

6. A new element may have been inserted into this case by the US Treasury. In the fourth paragraph of the proposed UK submission to the Court of Appeal, the US has noted "we note that on several occasions the US Government has assisted in obtaining court review of matters of significance to the United Kingdom arising in the context of private litigation". This could be an indirect reference to unitary taxation, and the fact that the US Government has entered amicus briefs in the Barclays and ICI/Alcan cases

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in California. If so, this sentence is aimed at us rather than at the Court of Appeal - who would be unlikely to regard a reference to a quid pro quo of this type in a very sympathetic light in an appeal against summary judgement. A possible danger is that the US Treasury may decide to retaliate by refusing to enter amicus briefs when the unitary cases go on appeal to the US Supreme Court. This however is unlikely to happen for some time and Secretary Baker has reaffirmed the US willingness to intervene in unitary court cases as recently as his letter to you of 3 November.

7. There is the further possibility that the US Government might extend its ban on legal support beyond unitary taxation. But the US Government only acts in US courts in its own interests. It seems unlikely that they would take retaliation so far as to refuse to enter briefs which support our interests even if this means not pleading their own interests. Nonetheless the possible implication for unitary tax is a further reason for cooperating in giving the best legal advice that we can to the Americans, and keeping discussions as friendly as we can without relenting on extra-territoriality.

H.W.

H G WALSH

DRAFT LETTER TO MR KIMMITT FROM SIR JOHN FREELAND

Mr Robert
Roger M Kimmitt ~~Esq~~
c/o Mr Jerry Newman
US Embassy
24 Grosvenor Square
LONDON W1A 1AE

1. You asked for our preliminary reaction to your letter of 12 November about the LAFB v Bankers Trust case. We shall have a chance to discuss the appeal on Monday, 24 November, before your departure, and I have provisionally arranged a meeting for 09.30/am. But you told us that you would like some indication of our views as soon as possible, and before you meet the solicitors on 20/21 November. I have had a word with officials and lawyers from other Whitehall departments, and our first thoughts are as follows.
2. It goes without saying that we want to be helpful. But it is hard ^{as far as right} to find a way into the court case that would really help you. The first of the possible courses to which you refer is that of having counsel present on behalf of the US Government, as amicus curiae. We note that your British legal representatives have advised you on the possibility of this course, and that they have expressed the view that such an appearance would not amount to a waiver of sovereign immunity. It is not for us to question the advice which you have had from your own British lawyers, who are of course much closer than we are to the detail of the case. So we

MLTAAX

think it must be for you to decide, in the light of their advice, whether or not to pursue this option.

3. You will know, however, from our earlier discussion ^{with you} ~~that~~ (and from the copy you have of the paper which the UK produced earlier this year for a discussion in OECD) that we find it hard to reconcile an appearance by the US Government as amicus curiae, in order to put before the Court submissions of the kind which you seem to have in mind, with the role of amicus curiae as normally understood in UK practice. That practice, which we realise may well differ significantly from the practice in your own courts, is, essentially, for ^{an} amicus curiae (as distinct from an intervenor as a party) to be present not to protect a particular interest but, at the discretion of the Court, to assist it by expanding impartially on the law.

4. As to whether a particular subject taken on behalf of the US Government would constitute a waiver of State immunity, that would be for the court to decide in the light of the provisions (notably Section 2) of our State Immunity Act 1978. I am afraid it is not an issue on which HMG could give an assurance one way or the other.

5. Your second possible course - participation by HMG - is one which we are looking into very carefully. ¶ We are consulting the Attorney General, and ¶ I hope to have more to say to you about it when we meet next Monday. Again, however, as you will know from our earlier discussions, we see considerable difficulty in it. We are far from sure

MLTAAX

that the Court of Appeal would be ready to entertain ^{by agreement} at this stage - when no such submission had been made in the court below - a submission by HMG on policy matters of the kind in question, going well outside the area of "public policy" as normally conceived in our law. A relevant factor here is the narrowness of ^{most of} the issues ^{arising} in the appeal from the judgement on the application under Order 14. [Quite apart from that, any submission by HMG on policy matters of this kind would have to reflect fairly the totality of our policies in this area; and ^{re} they must be a question whether a submission which struck the necessary balance would make a really helpful impact on the proceedings.] As I have said, however, this is a possibility which we are still looking into, and I shall of course let you know ~~when we meet~~ on Monday what further thoughts we have been able to come up with on this or any other aspects.

MLTAAX



GENERAL COUNSEL

DEPARTMENT OF THE TREASURY
WASHINGTON

NOV 12 1985

Dear John:

As you may imagine, we were both surprised and disappointed by the Commercial Court's grant of summary judgment in Libyan Arab Foreign Bank v. Bankers Trust Company. Based on the views expressed by the British solicitors involved, both private and governmental, we had fully expected the very important matters at issue here to come before the Court at a full trial next June.

We are currently preparing for the appeal, which we understand will be heard on December 1st through 3rd. It would greatly assist our efforts to have the benefit of your views on the matters set out below.

First, we are considering having counsel appear on behalf of the U.S. Government. Our British legal advisers have indicated that it would be helpful to have counsel present as amicus curiae, and that such an appearance would not waive our sovereign immunity. Our advisers believe that such counsel would be able to address matters of particular interest to the U.S. Government (e.g., supervening illegality), as opposed to matters clearly within the province of Bankers Trust (e.g., the agreement governing the account). We would appreciate your views concerning this approach, as well as your confirmation that an appearance of the sort described would not constitute a waiver of sovereign immunity. We would also appreciate your advice as to the role that Her Majesty's Government might play in assuring that the U.S. Government's views would be sought by the Court, were we to decide to pursue this course.

Second, we would like to reconsider at this point whether participation by Her Majesty's Government would be appropriate. As you are probably aware, the Court below specifically asked whether the Attorney General had been informed about the proceedings. We believe that the Justices of the Court of Appeal would find the views of Her Majesty's Government regarding this litigation to be helpful and important. We therefore would like to raise with you the question of whether and how Her Majesty's Government would make known to the Court of Appeal its views on the policy (as opposed to the legal) issues that are bound up in this litigation.

We have enclosed for your consideration a draft submission that might be presented orally or in writing to the Court of Appeal by Her Majesty's Government. We would appreciate your views on this statement and, if you think it has merit, on how it might best be brought to the Court's attention.

As you are aware, this appeal has been set for expedited hearing. Thus, we would appreciate hearing from you (directly or through Jerry Newman in London) at your earliest convenience.

Sincerely,

Bob Kimmitt
Robert M. Kimmitt
General Counsel

Sir John Freeland
Legal Adviser
Foreign and Commonwealth Office
London, SW1A 2AH
England

Enclosure

Proposed HMG Submission in the Court of Appeal

On October 16, 1986, Mr. Justice Evans of the Commercial Court handed down a decision granting summary judgment to the Libyan Arab Foreign Bank for a claim of \$131,000,000 against Bankers Trust Company, a banking institution chartered under the laws of New York. The decision involves a deposit in the London branch of Bankers Trust, which was blocked by an Executive Order of the President of the United States.

In the course of the proceedings in the Commercial Court, Mr. Justice Evans raised the question of whether the Attorney General had been informed of this litigation. We wish to notify this Court that Her Majesty's Government is aware of this case, and that it raises questions of significant public interest. As Attorney General Havers has stated, "We understand and sympathize with the reasons behind the U.S. blocking of Libyan assets and, as a matter of public policy, we will not object to this particular measure and will not undermine it."

Her Majesty's Government notes that this case involves the potential for conflicts with legal requirements and established policy of the United States. Her Majesty's Government has committed, in the Organization for Economic Cooperation and Development, to the proposition that, in any situation in which an exercise of jurisdiction by one state may conflict with the legal requirements or established policies of another state, both countries should, *inter alia*, take fully into account the sovereignty and legitimate economic, law enforcement and other interests of the other state. We believe that defendants in a case raising such sensitive issues involving a foreign government's laws and policies should be given the fullest opportunity to present their defence at a trial on the merits.

While Her Majesty's Government expresses no view as to the ultimate outcome on the merits, in these unusual circumstances we believe Bankers Trust should be given the opportunity to have a full hearing of its case at the expedited trial set for June 1987. We note that on several occasions the U.S. Government has assisted in obtaining court review of matters of significance to the United Kingdom arising in the context of private litigation. Similarly, Her Majesty's Government has a strong interest in ensuring appropriate review of issues of significance to the United States in the courts of the United Kingdom. [In this respect, we note that the U.S. Government is represented by counsel and we believe he should be heard *amicus curiae*, particularly in light of the fact that this courtesy is extended to Her Majesty's Government by the courts of the United States.]