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CABINET

DEFENCE AND OVERSEA POLICY COMMITTEE

DRUG SMUGGLING IN THE CARIBBEAN:  
CO-OPERATION WITH THE AMERICANS

Memorandum by the Secretary of State for  
Foreign and Commonwealth Affairs

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1. Drug smuggling from South America (particularly Colombia) is a serious and growing problem for the United States. The US coastguard cannot hope to keep the whole of the south eastern coastline under surveillance, and need to intercept the small vessels involved in the channels they use between Caribbean islands far outside US territorial waters. The boats are rarely registered in the United States and the Americans therefore require the co-operation of the flag state before they can board and search a suspect vessel.
2. For some years now we have dealt on an ad hoc basis with requests from the Americans to board and search the occasional British registered vessel which has come under suspicion. This has not proved an entirely satisfactory arrangement; there is for example, scope for misunderstanding when hurried consultations have to take place by telephone and last year a dispute arose over the fate of one particular vessel. We therefore saw advantage in agreeing to an American proposal that we should negotiate a more formal agreement.

3. The text of the attached Exchange of Notes has now been agreed with the Americans. It is proposed that it should be accompanied by a side-letter (which would also be published) clarifying the definition of the British register and responsibility for the protection of crew members who are neither UK nor US nationals. The Americans have also agreed to certain assurances about reciprocity, should we ever need it. The exact text of their letter will remain confidential but the existence of the assurance can be mentioned if necessary.

4. I am advised that the possession of drugs on a British ship on the high seas is not (at present) an offence under British law. Nevertheless, I am sure it is right for us to help the Americans to combat trafficking which we all regard as undesirable and are pledged internationally to control. This is a matter to which the Administration attach great political importance and the then Acting Secretary of State wrote to me in April expressing appreciation for our efforts in overcoming serious legal and political difficulties. There are not many areas where we can gain credit at so little cost.

5. At the same time, I recognise the suspicion in the shipping world, based on hard experience, of the American tendency to go beyond what we would regard as acceptable limits of jurisdiction. Equally the behaviour of the US coastguard may not always be beyond reproach. The exchange has therefore been carefully worded in consultation with officials from the other Whitehall departments to ensure that it applies only in certain defined circumstances and that the scope given to the US authorities is also strictly limited. To allay the worries of certain maritime unions, I propose that it should be made clear in Parliament, as well as in our side-letter, that the Exchange should not be regarded as setting a precedent either for similar agreements with other countries or, more particularly, for

any arrangement with the Americans or anyone else, which would allow British registered vessels to be boarded on the high seas for any other purposes. The maintenance of our rights on the high seas is important. I believe it is right to agree that we should not raise objection to the boarding of British vessels in the special circumstances defined in this Exchange of Notes, but we must make it clear that it is only in such special circumstances that such an agreement is possible.

6. The agreement will give us the right, within defined periods, to object to the seizure of a British vessel found with drugs on board or to the arrest of a UK national. This right to object is unrestricted. In practice we would not consider objecting to the seizure of a vessel unless the owner came forward to claim that he had chartered his boat in good faith and was quite unaware of the purpose for which it had been used. The possible arrest of UK nationals poses rather more difficult problems as they may not have committed an offence under British law. There is a case for raising objection in principle to show the Americans that the agreement means what it says; on the other hand, we must be careful not to make it more attractive for smugglers to employ UK nationals (who at present play very little part in this unsavoury business). Officials are considering further the line we should take when the case first arises.

7. I should add that most of the British vessels so far found in the Caribbean with cargoes of drugs have been registered in ports in the dependent territories or the Channel Islands. We have therefore kept the territories informed of our negotiations and the Home Office have taken similar action with the British islands. I am glad to say that the territories and the British islands support the aims of the Exchange.

8. In general, I believe we have negotiated an agreement which will be helpful to the Americans while at the same time safeguarding our interests. I therefore propose to arrange a date for signature with the US Ambassador unless any objection is raised by 6 November.

9. This memorandum is being sent to the members of the OD Committee and to Sir Robert Armstrong.

Your Excellency,

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I have the honour to refer to the recent discussions between representatives of our two Governments concerning the desire of the authorities of the United States to take more effective measures to suppress the unlawful transportation of cannabis and other narcotic drugs into the United States.

Bearing in mind the special nature of this problem but having regard to the need for international co-operation in suppressing the illicit traffic in narcotic drugs, which is recognised in the Single Convention on Narcotic Drugs of 1953, I have the honour to propose the following:

1. The Government of the United Kingdom of Great Britain and Northern Ireland agree that they will not object to the boarding by the authorities of the United States, outside the limits of the territorial sea and contiguous zone of the United States and

Foreign and Commonwealth Office

26 October 1981

No 1.

DRAFT EXCHANGE OF NOTES BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE SUPPRESSION OF THE UNLAWFUL IMPORTATION OF NARCOTIC DRUGS INTO THE UNITED STATES

The Secretary of State for Foreign and Commonwealth Affairs to the Ambassador of the United States of America.

Foreign and Commonwealth Office,  
London

Your Excellency,

.....1981

I have the honour to refer to the recent discussions between representatives of our two Governments concerning the desire of the authorities of the United States to take more effective measures to suppress the unlawful importation of cannabis and other narcotic drugs into the United States.

Bearing in mind the special nature of this problem and having regard to the need for international co-operation in suppressing the illicit traffic in narcotic drugs, which is recognised in the Single Convention on Narcotic Drugs of 1961, I have the honour to propose the following:

1. The Government of the United Kingdom of Great Britain and Northern Ireland agree that they will not object to the boarding by the authorities of the United States, outside the limits of the territorial sea and contiguous zone of the United States and within the areas described in paragraph 9 below, of private vessels under the British flag in any case in which those authorities reasonably believe that the vessel has on board a cargo of drugs for importation into the United States in violation of the laws of the United States.

2. On boarding the vessel the authorities of the United States may address enquiries to those on board, examine the ship's papers and take such other measures as are necessary to establish the place of registration of the vessel. When these measures suggest that an offence against the laws of the United States relative to the importation of narcotic drugs is being committed, the Government of the United Kingdom agree that they will not object to the authorities of the United States instituting a search of the vessel.

3. If the authorities of the United States then believe that an offence against the laws referred to in paragraph 2 above is being committed, the Government of the United Kingdom agree that they will not object to the vessel being seized and taken into a United States port.

4. The Government of the United Kingdom may, within 14 days of the vessel's entry into port, object to the continued exercise of United States jurisdiction over the vessel for purposes of the laws referred to in paragraph 2 above, and the Government of the United States shall thereupon release the vessel without charge. The Government of the United States shall not institute forfeiture proceedings before the end of the period allowed for objection.

5. The Government of the United Kingdom may, within 30 days of the vessel's entry into port, object to the prosecution of any United Kingdom national found on board the vessel, and the Government of the United States shall thereupon release such person. The Government of the United Kingdom agree that they will not otherwise object to the prosecution of any person found on board the vessel.

6. Any action by the authorities of the United States shall be taken in accordance with this Agreement and United States law.

7. In any case where a vessel under the British flag is boarded the authorities of the United States shall promptly inform the authorities of the United Kingdom of the action taken and shall keep them fully informed of any subsequent developments.

8. If any loss or injury is suffered as a result of any action taken by the United States in contravention of these arrangements, or any improper or unreasonable action taken by the United States pursuant thereto, representatives of the two Governments shall meet at the request of either to decide any question relating to compensation. Representatives of the two Governments shall in any case meet from time to time to review the working of these arrangements.

9. The areas referred to in paragraph 1 above comprise the Gulf of Mexico, the Caribbean Sea, that portion of the Atlantic Ocean West of longitude 55° West and South of latitude 30° North and all other areas within 150 miles of the Atlantic coast of the United States.

10. I have the honour to suggest that if the foregoing proposals are acceptable to the Government of the United States, this Note and Your Excellency's confirmatory reply shall constitute an Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States which shall enter into force on the date of your reply. It may be terminated by either Government on one month's notice but will continue to remain effective in respect of any proceedings based on action taken during its validity.

Accept, Excellency, the renewed assurance of my highest consideration.

No 2.

The Ambassador of the United States of America to the Secretary  
of State for Foreign and Commonwealth Affairs

Embassy of the United States of  
America, London

Your Excellency,

I have the honor to refer to your Note of .....

which reads as follows:

[As No 1]

I have the honor to inform you that the Government of the United States welcomes the co-operation offered by your Government in efforts to suppress the unlawful importation of narcotic drugs into the United States and to confirm that the foregoing proposals are acceptable to the Government of the United States which therefore agrees that your Note and this reply shall constitute an Agreement between the Government of the United States and the Government of the United Kingdom of Great Britain and Northern Ireland which shall enter into force on the date of this reply.

Accept, Excellency, the renewed assurance of my highest consideration.



DRAFT LETTER TO ACCOMPANY THE EXCHANGE OF NOTES

(Introductory sentence)

With regard to the reference in paragraph 1 of the Note to 'Private vessels under the British flag', the Government of the United Kingdom understand that term as referring in this context to private vessels registered in the United Kingdom or in any territory for whose international relations the Government of the United Kingdom are responsible.

With regard to paragraph 5 of the Note, the Government of the United Kingdom consider that all persons on board a British vessel should in principle enjoy equal treatment under the law. In agreeing not to object to prosecution by the United States of anyone other than a United Kingdom national the Government of the United Kingdom act on the understanding that questions relating to the prosecution of the nationals of other States are of primary concern to their State of nationality.

The Government of the United Kingdom do not consider that this Exchange of Notes should be regarded as setting a precedent for the conclusion of any further agreement affecting the freedom of passage of British ships on the high seas.

(Closing sentence).

US SIDE-LETTER ON CONTROL OF DRUG-RUNNING

I would like to express, on behalf of the United States Government, my deep appreciation for the undertakings by the Government of the United Kingdom made in the Agreement signed today and for the attitude of understanding and co-operation shown by your government in addressing the difficult problem of interdiction of narcotics smugglers.

During the discussions leading to conclusion of the Agreement, the question of reciprocity was raised. At the present time there is no practical need for the United States to obligate itself to undertakings similar to those accepted by the United Kingdom in this Agreement. However, a situation could possibly arise in which the United States would be asked not to object to boarding, search and possible seizure of its vessels on the high seas. I would like therefore to express to you the position of the United States Government on this matter.

The United States Government could not allow a situation to occur in which US vessels were being used for narcotics smuggling, and the United States Government was, through application of its laws and policy relating to jurisdiction over vessels, condoning or effectively protecting such activities. Should that situation arise, therefore, the Government of the United Kingdom may be assured that the United States Government will take the measures necessary to stop such trafficking, and that among these might well be measures similar to those accepted by the Government of the United Kingdom in this Agreement.