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Communications on this subject should
be addressed to
THE LEGAL SECRETARY
ATTORNEY GENERAL'S CHAMBERS

ATTORNEY GENERAL'S CHAMBERS,
LAW OFFICERS' DEPARTMENT,
ROYAL COURTS OF JUSTICE,
LONDON, W.C.2.

11 December 1979

T P Lankester Esq
Prime Minister's Office
10 Downing Street
LONDON S W 1

Dear Tim,

— I attach a note of the Attorney General's meeting
— with the US Attorney General today and also a copy of
the document the US Attorney left with us.

I am copying this to Hancock in the Treasury and
Walden in the FCO.

70-5
Bill Beckett

W C BECKETT

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NOTE

The US Attorney General, Mr Civeletti, called to see the Attorney General at noon today. The meeting had been arranged by the US Ambassador last evening, who had asked the Attorney to see Mr Civeletti on his way through London today, following his appearance at the International Court in the Hague.

Mr Civeletti told the Attorney that he thought the American case had gone well in the Hague and that they expected something in their favour quickly from the Court, probably on Friday of this week.

The Attorney General explained briefly to Mr Civeletti the legal difficulties that face the UK both as regards taking any action under the Exchange Control Act 1947 and in making any intervention in the court proceedings here in London (the Citibank case). On the former, the Attorney General explained our views about an economic necessity in order to make any action under the Exchange Control Act *intra vires* and on the second point he explained that, in the absence of any request by the court itself to appear as an *amicus curiae*, he had no right to intervention in proceedings in which the UK was not a party simply to express goodwill and support for the American blocking action. He explained that any such intervention might be harmful to the Americans rather than helpful and that if the contracts were governed by English law it was difficult to see how any judgment could be in favour of the American bank.

On the point about the use of Exchange Control Act powers Mr Civeletti urged that the UK ought to consider that there was some economic necessity and to have regard to what he called a

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collateral economic effect which he thought might provide a sufficient basis for use of powers under the 1947 Act.

On the point about an intervention in the Citibank court proceedings Mr Civeletti urged that at the appropriate time (he was not saying that the present was the appropriate time) the UK Attorney General should intervene in the following way. The dilemma for the US Government was that they had been made a party to the proceedings: whilst they wished to bring arguments to the attention of the English court, at the same time they wanted to plead their sovereign immunity. What Mr Civeletti proposed was that the Attorney General should intervene in the proceedings to put to the court the views of the US Government, making the point that since as a matter of principle the US Government had to stand on their sovereign immunity they were not able to put such views to the court themselves. Mr Civeletti went on to say that ideally the US would like the Attorney not only to put the US views to the court but to go on to say that HMG agreed with them.

The Attorney General explained to Mr Civeletti that such a right of intervention would be a novelty as far as we were aware but it was a new aspect of the request for our intervention and, in principle, he would consider whether it was feasible. The Attorney General asked whether Mr Civeletti had any formulation of the kind of views that the US Government would wish the UK Attorney to put before the Court. Mr Civeletti replied that he had no such precise formulation at the moment but that he did have a document which in outline indicated the points that would be relevant to the English court. These points were framed very much on the basis of their hope that HMG would agree with them. Asking us not to treat the document as anything more than a rough guide to their present thinking, Mr Civeletti left the Attorney General with the attached copy of the document.

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U.S. ACTION CONSISTENT WITH U.K. PUBLIC POLICY

1. This is not a case of U.S. exercise of extraterritorial jurisdiction regarded as improper by HMG. U.K. recognizes basic international law principle that every nation can exercise jurisdiction over its nationals and over its currency. The Iranian deposits at issue are deposits in dollars in branches of U.S. banks. No question of U.S. regulation of U.K. companies arises.

2. It is entirely possible that in all, or in several, of these cases the applicable law of the contract is New York or California law. The facts need to be developed as to the terms of the contracts of deposit and as to other relevant matters such as use of the New York or San Francisco clearing house and the existence of cover accounts in the United States.

3. If it should appear that English law applies to this matter, a strong argument can be made that in the circumstances of this case English law would recognize and give effect to the U.S. blocking regulations.

- Under U.K. law, obligation of repayment of deposits is not absolute; attachments (and setoffs?) are appropriate when there is a claim against the assets.
- U.K. exchange control regulations contemplate the possibility of similar regulation of foreign branches of U.K. banks.
- The contacts with the U.S. in this case (nationality, currency, clearing house, etc.) outweigh the contacts with the U.K. (place of deposit).
- If the interests of the two countries are weighed, vital interests of the United States in the protection of its diplomatic personnel in Teheran and the defense of its currency and the interest of the entire international community in the maintenance of international law and the protection of diplomatic intercourse should be seen to outweigh the U.K. interest in the regulation of dollar transactions by U.S. banks in its territory.

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-- The U.S. blocking action in this case is a moderate response to the extreme provocation by Iran and is entirely consistent with international law as recognized by the United Kingdom and the world community. The U.S. action is also in accordance with the Bretton Woods Agreement to which U.K. is a party. The broad policy of that agreement that treaty partners should cooperate to protect the stability of currency and the international monetary system should also be given proper weight.

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