



10 DOWNING STREET

From the Private Secretary

Prime Minister

Durban Detainees

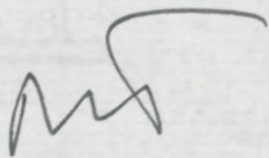
The two letters attached summarize South African manoeuvring over the Detainees. You will see that, in the light of our refusal to hand over the Detainees, the South Africans decline to return to the UK those charged in the Armstrong case. This will reflect badly on them rather than on HRG: and it also probably means that they will feel under less pressure to take action against the Durban consulate. The remarks about the message to you are petulant. We know anyway that it proposed an unacceptable trade off.

/Gordon

Geoffrey Howe will have a meeting on
Sunday to settle replies to the
two aide-memoires. These are likely to
confirm our position.

I will see that you are
informed of any developments over the
week-end.

C.D.P.
21/9.



I wish the legal position about
Conrad's had been put to us clearly
before the letter to Beeth & Kinnaird
was signed. It seems to me that we are
offending against international law, not

SECRET



Foreign and Commonwealth Office

London SW1A 2AH

21 September 1984

Dear Charles,

Situation at the Durban Consulate

The situation has now, as you know, become more difficult. The South African Ambassador called on the PUS yesterday and left an aide memoire, a copy of which I enclose. In brief, the South African Government is requesting us either to hand over the six without delay or to instruct the Consul to allow the South African authorities to enter the Consulate and take them into custody.

Our Legal Advisers do not in general dissent from the legal points made in the aide memoire; nor does the Foreign Secretary think it would be right to do so, given the importance to us of the need to maintain an international consensus in support of the Vienna Convention. On the other hand, the political requirement not to be seen to be handing these people over to the South African authorities and the near certainty of further detention remains as strong as ever.

The Foreign Secretary considers that the least unattractive of the options open to us is to maintain our present position, recognising that the South Africans may seek to resolve the problem either by entering the premises and removing the six or by withdrawing the Consul's exequatur. In either of these eventualities, we would obviously have to react sharply, especially in the case of a forced entry into our premises. But there would at least then be a reasonable chance of emerging from the ensuing confrontation with no more than limited damage to Anglo/South African relations - as opposed to the widespread damage that would clearly follow if we appeared to the wider world to be acquiescing in the six being handed over to the South Africans.

However, the Foreign Secretary does not think that we have yet reached that point. When he sees the South African Ambassador this afternoon, for a meeting originally arranged as his first courtesy call, he will stress that before making any further move in this affair the South

/Africans

SECRET

S E C R E T



Africans should consider carefully the bilateral relationship and the wider implications for them of a serious rift between the two countries. He will also underline the fact that we have often defended South Africa, at some cost, against extreme proposals in international fora. He will make clear our policy on the six and say that it has not changed. Finally he will assure him that the Prime Minister has been following these events very closely. He will explain that although she was not able to receive him herself, she had suggested that he be received by her Private Secretary or the senior FCO Minister available; and that any message from President Botha would of course have been brought immediately to her attention.

The Foreign Secretary hopes, though he is not optimistic, that it might thus be possible to promote some discussion with the South African Government about ways of resolving this crisis. Such discussions will no doubt be very difficult to manage, not least because there is a real danger that the South Africans might act impulsively without consideration for the effects on our bilateral relations which both the Prime Minister and the Foreign Secretary have been trying to strengthen. The discussions with the South African Government will also need careful handling because of the risk that the South African Government might break confidentiality and represent any negotiations as a deal in which we connived at the departure and re-detention of the six. For all these reasons, we must clearly proceed with great caution. It may be worth considering whether at some stage it would be appropriate for the Prime Minister to send a message to President Botha, though again the timing and content would need to be weighed very carefully.

I will write to you again after Dr Worrall's call later today.

Yours we,

Len Appleyard

(L V Appleyard)
Private Secretary

C D Powell Esq
10 Downing Street

S E C R E T



AIDE MEMOIRE

Shortly after the six South African nationals in respect of whom the South African Minister of Law and Order issued detention notices on 8 September had sought "refuge" in the British Consulate in Durban on 13 September, the British Embassy in South Africa informed the South African Government, inter alia, that -

- (a) they had made it clear to the six that the British Government would not act as negotiators or intermediaries over their political demands;
- (b) they were prevailing upon them to leave the Consulate and were expecting early success in this regard; and,
- (c) the six had intimated in principle that they were not unwilling to surrender themselves peacefully to the South African authorities.

The South African Government subsequently publicly expressed appreciation of these assurances and purposely refrained from requesting the British Government to surrender the men to the appropriate South African authorities in order to afford the British Government the opportunity to persuade them to leave the Consular premises.

In accordance with Customary International Law (as codified by Article 31(2) of the Vienna Convention on Consular Relations, 1963) the South African authorities also refrained from entering the Consular premises in order to take the six into custody.

As a result of the failure of the British Government to persuade the men to vacate the Consular premises during what must, under the circumstances and given the initial expectations in this regard, be considered to be a prolonged period of time, it has now become necessary to give effect to the detention notices.

Given the fact that the men may legally be taken into custody if the detention notices can be served on them and since it is considered necessary that they be taken into custody, their presence in the Consulate and the resulting impossibility of serving the notices on them, amounts to an obstruction of law enforcement.

The attention of the British Government is drawn to Article 5(m) of the Vienna Convention on Consular Relations which provides that, apart from its other functions, a consular post's functions consist in performing any functions entrusted to it by the sending state which are not prohibited by the laws and regulations of the receiving state or to which no objection is taken by the receiving state.

In addition, the British Government is referred to Article 55(1) of the said Convention which provides that it is the duty of consular officers to respect the laws and regulations of the receiving state and not to

interfere in the internal affairs of the receiving state, as well as to the provisions of Article 55(2) which determine that Consular premises may not be used in any manner incompatible with the exercise of consular functions.

The provisions referred to accurately reflect customary international law insofar as it relates to consular functions and obligations.

Furthermore, Consular premises may not, as a matter of law, be used as places of asylum for persons fleeing from the judicial and law-enforcement agencies of the receiving state. Considering the fact that the British delegation at the Vienna Convention on consular relations proposed that "Consular premises shall not be used to afford asylum to fugitives from justice" (U.N. Doc. A/CONF.25/C.2/L.29), the British Government would appear to share this view.

In view of these considerations, the British Government is urgently requested to either deliver the South Africans in question to the appropriate South African authorities without delay or, alternatively, to instruct the head of the consular post to allow the South African authorities to enter the Consular premises in order to take them into custody.

LONDON

20 September 1984



Foreign and Commonwealth Office

London SW1A 2AH

21 September 1984

*Dear Charles,*Situation at the Durban Consulate

In my letter earlier today I said that I would write again after the South African Ambassador had called on the Foreign Secretary this afternoon.

When the South African Ambassador called, the Foreign Secretary told him that we were still studying the Aide Memoire. He hoped that Dr Worrall would explain to his Government that we were concerned about the effect of any actions the South Africans might take on our bilateral relations which were of great importance to both countries. Dr Worrall said that he had firm instructions to seek an immediate reply to the Aide Memoire. He asked whether it would be right to assume that our answer, in effect, was that our position had not changed. The Foreign Secretary confirmed this, adding that we would wish to look further at the text of the Aide Memoire before sending a considered reply.

The Foreign Secretary went on to say that, in case of any misunderstanding earlier this week, the Prime Minister was always ready to receive a personal message from President Botha. It could either be delivered to the Foreign Secretary or the most senior FCO Minister available, or to you. Dr Worrall accepted this and merely said that he had had very firm instructions that the message should be delivered to the Prime Minister personally.

An hour after leaving the Secretary of State, Worrall telephoned again and sought a further appointment to enable him to deliver an urgent message from Pretoria. In the absence of Ministers, he was seen by John Johnson. Dr Worrall handed over the attached Aide Memoire informing us of the South African's Government's view that, in the light of our position over the six, it considered itself absolved from its undertaking to return to the UK four South Africans who have been charged with contravening British Customs and Excise legislation (the Armscor case).

/You will



You will note that the Aide Memoire seeks to make much of the fact that the Prime Minister was unable to receive Dr Worrall on 19 September. In discussing this point with Johnson, the Ambassador explained that the South African decision over the Armscor defendants had been provisionally decided upon when it became known that the Prime Minister could not receive him. The final decision had been taken once Dr Worrall had reported to Pretoria that the Foreign Secretary's informal reaction to the Aide Memoire was that our position remained unchanged.

Dr Worrall said that it was not his Government's intention to make this action public. The South Africans intended to say merely that Dr Worrall has reported to his Government and that talks were continuing. It remains to be seen whether they will hold to this undertaking.

John Johnson confined himself to saying that the action of the South Africans was highly regrettable. We had made it clear to the South Africans that the case in question was a matter for HM Customs and Excise and that we could not interfere. He also thought it very regrettable that the Ambassador had not seen fit to rely on our assurance that the Prime Minister had been consulted about Dr Worrall's request for a meeting.

The four South Africans due to stand trial in the Armscor case are not due back in court until 22 October. If they fail to appear then, it will be for the court to decide how to respond. Meanwhile we have agreed with Customs and Excise that if this news leaks we should express sharp disapproval over the unacceptable South African decision but point out that in the first instance the matter will be one for the courts.

The Foreign Secretary will prepare a response to both South African Aide Memoires before he leaves for New York on Sunday. He will also consider contingency plans to cope with the kind of action which the South African Government might go on to take in the future. We are preparing briefing for the Foreign Secretary's meetings at the UN where the matter is likely to be raised by African and other delegations.

Yours ever,

Len Appleyard

(L V Appleyard)
Private Secretary

C D Powell Esq
10 Downing Street



AIDE MEMOIRE

(21/9/84)

The South African Government has taken note of the reaction of the British Government to the South African Government's request to either surrender the six South Africans in the British Consulate in Durban or, alternatively, to allow the South African authorities to enter the Consulate premises in order to take them into custody.

Considering the fact that the British attitude amounts to an obstruction of the enforcement of South African law, the South African Government considers itself absolved from its undertaking to a United Kingdom Court to ensure the return to the United Kingdom of four South Africans who have been charged with contravening British customs and excise legislation.

It should be pointed out that the South African Ambassador to the United Kingdom was instructed on Wednesday 19 September 1984 to personally convey an urgent message from the South African State President to the British Prime Minister. This message was designed to resolve the matters under consideration to the mutual satisfaction of both Governments.

The South African Ambassador was informed by the Foreign and Commonwealth Office in London that his request for an urgent meeting with the British Prime Minister could not be acceded to, and that the South African State President's

message would have to be conveyed to the British Prime Minister via other channels. In view of this response the Ambassador was instructed to withdraw his request to convey to the British Prime Minister the message from the South African State President.

LONDON

21 September 1984