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10 DOWNING STREET

From the Private Secretary

25 September, 1984

THE DURBAN SIX

Thank you for your letter of 24 September reporting the latest developments over the Durban Six and enclosing a copy of the Aide Memoire given to the South African Ambassador.

The Prime Minister has noted this.

The Prime Minister has also read Pretoria telegram number 400 and has commented, in relation to paragraph 5 that we really must do better than this for the Consul. You will no doubt be considering whether life can be made more comfortable for him.

(C.D. Powell)

C. Budd, Esq.,
Foreign and Commonwealth Office.

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Foreign and Commonwealth Office

London SW1A 2AH

Prime Minister

24 September 1984

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Mr

Dear Charles,

The Durban Six

The Foreign Secretary held a meeting with Lady Young and officials on 23 September to discuss the situation at the Durban Consulate and our approach to it.

It was agreed that Lady Young should summon the South African Ambassador at 1530 this afternoon and hand him an Aide Memoire (copy enclosed). This states that the Government's position, namely that the Six will not be required to leave the Consulate against their will and that we hope that the situation can be resolved in a way that will enable them to leave voluntarily, remains unchanged. The Aide Memoire puts the onus on the South African Government to reconsider its position not to honour its commitment to the UK courts to ensure the return to the UK of the four South African nationals charged with arms embargo offences.

We judge that the South African Government will now await the outcome of the present case before the Natal court and possibly an appeal from it to the Supreme Court in Bloemfontein before taking further action. If the stalemate continues they may decide to enter the Consulate by force. The likelihood of their withdrawing or modifying the detention orders seems low. Options for the Six are very limited. We think it unlikely that the court will uphold their appeal or that they will leave the Consulate voluntarily in the near term.

Against this background the Foreign Secretary has considered carefully what our options now are for handling the incident. He has concluded that we should hold to our existing policy of refusing to hand over the Six. But the situation clearly cannot be allowed to continue indefinitely. Accordingly the Foreign Secretary concludes that we shall need to take steps, which will probably have to be phased over a period of several weeks, to demonstrate to the public that we have done everything we reasonably can for the Six and to build up pressure on them to leave.

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I shall of course continue to keep you informed of developments, and will let you have an early note in response to the Prime Minister's concern (your letter of today's date) that we may be in breach of international law.

*Yours ever,
Colin Budd*

(C R Budd)
Private Secretary

C D Powell Esq
10 Downing Street

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A I D E M E M O I R E

Her Majesty's Government refer to the Aide Memoire dated 21 September which was delivered by the South African Ambassador in London to the Foreign and Commonwealth Office. This document purported to describe the British reaction to the South African Government's request in its Aide Memoire of 20 September that Her Majesty's Government should either surrender the six South Africans in the Consulate in Durban, or, alternatively, should allow the South African authorities to enter the Consulate premises in order to take them into custody.

The response of Her Majesty's Government to the Aide Memoire of 20 September was conveyed to the South African Ambassador by the Secretary of State for Foreign and Commonwealth Affairs on 21 September. He made it clear that Her Majesty's Government were still giving careful study to that Aide Memoire. Their position on the substance of the matter remains that the six men should not be required to leave the premises of the Consulate against their will. It remains their hope that the situation can be resolved in a way that will enable the six men to decide to leave the Consulate voluntarily.

Her Majesty's Government are wholly unable to agree that their attitude to the South African Government's request amounts as the Aide Memoire of 21 September states to 'an obstruction

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of the enforcement of South African law'. Furthermore, Her Majesty's Government cannot accept that there can be any justification for linking this matter to the case of four South African nationals charged with contravening United Kingdom Customs and Excise legislation. The clear undertaking of the South African Government to ensure the return to the United Kingdom of the four South African nationals involved in that case was given to a United Kingdom court and is primarily a matter for the courts. It is however the view of Her Majesty's Government that the repudiation by the South African Government of this undertaking is totally unacceptable. They trust that, given the seriousness of a commitment of this nature solemnly entered into by a government, the South African Government will wish to reconsider its position in this regard and honour the undertaking.

Her Majesty's Government would also like to point out in respect of the South African Ambassador's request for an urgent meeting with the Prime Minister that a prompt reply was given and that as the Secretary of State explained to the South African Ambassador on 21 September, the message could and would have been delivered to the Prime Minister forthwith through either the senior Foreign and Commonwealth Minister present or the Prime Minister's Private Secretary and would of course have received her early attention.

Foreign and Commonwealth Office
24 September 1984



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AIDE MEMOIRE

The South African Government has noted the contents of the British Government's Aide Memoire of 24 September 1984.

The South African Government finds it incomprehensible that the British Government can conclude that its refusal to either surrender the six persons in the British Consulate in Durban to the South African authorities or to allow the authorities to enter the Consulate in order to take them into custody, does not amount to an obstruction of the enforcement of law in South Africa. Furthermore, the British Government does not even attempt to justify its position or to address the arguments that have been advanced in the South African Aide Memoire of 20 September to the effect that the attitude of the British Government is clearly in conflict with customary international law as codified by the Vienna Convention on Consular Relations.

The South African Government fails to understand how the British Government can refer to the South African Government's Aide Memoire of 21 September as "purporting" to describe the British Government's position. If the description of the British Government's position is in any way inaccurate it would be reasonable to expect a substantiated statement of the reasons for any implied inaccuracy. The British Government's Aide Memoire contains no such statement.

As regards the South African Government's decision concerning its undertaking that the four South African nationals charged with infringing British Customs and Excise legislation would return to the United Kingdom to stand trial, it should be noted that the British Government's attitude in respect of the South Africans in the British Consulate has forced the South African Government either to enter the Consulate and take the men into custody, or to take action similar to that of the British Government and designed to reflect the South African Government's displeasure with the British Government's actions. The South African Government decided on the latter course.

The South African Government trusts that the British Government will seriously ponder over the consequences which its attitude might have on saboteurs and terrorists who in future might be encouraged to seek refuge from law-enforcement agencies in embassies and consulates around the world.

In the final paragraph of their Aide Memoire, Her Majesty's Government refer to the South African Ambassador's request, on the instruction of the South African State President, for an appointment with the British Prime Minister; and offers the assurance that the relevant message would have been conveyed to the British Prime Minister forthwith had it been delivered to her Private Secretary.

The South African Government does not doubt that the message would have been promptly conveyed, but Her Majesty's Government seem to miss the point. The South African Ambassador had instruction to seek an urgent and personal interview with the British Prime Minister, a meeting which in the opinion of the South African State

President was necessary in view of the urgency and gravity of the matter to be discussed. The nature of these matters, as stressed on two occasions by the Ambassador, was such that elaboration and elucidation would have been required, and the Ambassador would have been in a position to provide this.

The Foreign and Commonwealth Office will know that it is accepted practice in the conduct of international relations for a Head of Government to receive the Ambassador of another country when the assurance is given that the matter to be discussed warrants such a meeting. The South African Government has seldom, if ever, availed itself of this facility, but British Ambassadors to South Africa have often done so. In such circumstances the South African Government has never questioned the British Government's assessment of the urgency or gravity of the matters to be discussed.

In view of these considerations the South African Government considers the contents of the British Government's Aide Memoire of 24 September to be wholly unacceptable.

Regarding the South African Government's undertaking to a court in the United Kingdom, the South African Government wishes it to be known that it was at all times willing to meet its obligations in this respect until the British Government repudiated its own obligations in terms of international law and made it clear that it was not prepared to allow the enforcement in South Africa of legal provisions passed by the South African Parliament.

In any event, out of respect for British justice, the South African Government intends to explain fully to the relevant

court in the United Kingdom why it was compelled to consider itself absolved from its undertaking.

LONDON

24 September 1984