



Prime Minister

FCO are working on a reply. But there is no hurry. The

10 DOWNING STREET

court judgement on the 30 September 1984

From the Private Secretary

ms

Durban Six is due on Wednesday. The view of FCO lawyers & Customs & Excise is that the

Dear Len,

DETAINEES IN DURBAN CONSULATE

I enclose a copy of Mr. Botha's reply to the Prime Minister's message, delivered by the South African Charge d'Affaires to 10 Downing Street tonight.

South African suggestion will not run. C.D.P. 1/x

(C.D. POWELL)

Len Appleyard, Esq.,  
Foreign and Commonwealth Office.



PRIME MINISTER'S  
PERSONAL MESSAGE  
SERIAL No: 166A/84

a MASTER  
ops.

The Rt Honourable Margaret Thatcher, MP  
Prime Minister  
10 Downing Street  
LONDON

30 September 1984

Dear Prime Minister

I have been requested by the State President of South Africa to present his compliments to you and to convey the enclosed Personal and Confidential letter to you.

Might I take this opportunity of assuring you of my highest consideration and personal good wishes.

Yours sincerely

AMBASSADOR

S. A. Relating,  
Pt. 3.

Pa.  
CDP  
3/x.



Union Buildings  
Pretoria

30 September 1984

Dear Prime Minister,

Thank you for your message of 30 September 1984 in reply to my suggestion yesterday through Minister R F Botha and Lady Young for you to receive my Foreign Minister in London. My suggestion for you to meet Mr Botha was prompted by a desire to minimise the harmful effects to our relations inherent in the situation which has developed and to find a way out of the growing dilemma in which we find ourselves.

I share your sentiment that we will have to show great delicacy in the manner in which we handle this matter. I also appreciate the frankness of your message and feel sure that you would want me to be equally candid in my reply.

I have taken note of the fact that you reiterate your Government's point of view that it is for the six South African nationals presently in your Consulate in Durban, to negotiate with my Government and for us to create conditions under which they will feel able to leave the Consulate voluntarily.

In this regard I am constrained to point out that the South African Minister of Law and Order issued detention orders in respect of the six men more than three weeks ago but that the South African Police have been unable to serve these orders because of the fact that the men have found sanctuary in the Consulate.

For this reason the Foreign and Commonwealth Office was informed that your Government's failure to either surrender the men or to allow the appropriate authorities to enter the consular premises and take them into custody amounts to an obstruction of the South African process of law enforcement.

Furthermore, the Foreign and Commonwealth Office was also informed that customary international law prohibits governments from providing sanctuary or asylum in consulates to persons fleeing from the judicial or law enforcement agencies of the receiving state.

Consequently, it is my Government's viewpoint that the refusal of the British Government to accede to the request put forward in the South African Government's Aide Memoire of 20 September 1984 and its failure to either expel or surrender the six South Africans in the British Consulate in Durban of its own accord were unlawful in terms of customary public international law. In this respect it should be noted that you indicated to Mr Neil Kinnock on 19 September 1984 that: "It would not be right for us to intervene in the legal processes of another country, whether or not we agree with them." Yet the British action has had the effect of making the execution of such legal processes impossible.

My Government's subsequent decision not to allow the four South Africans to return to the United Kingdom to stand trial was an act of reprisal. The doctrine of reprisal is well established in customary public international law and it is common cause and trite law that it entails that an act which would normally be unlawful is rendered lawful by a prior unlawful act of the other Government. An act of reprisal need not take the same form as the original unlawful act but must be proportionate to it. The South African Government's act of reprisal meets these requirements.

It follows that the South African Government's decision not to allow the four South Africans to return to the United Kingdom was clearly lawful and I am sure that reputable British authorities on international law share this view.

The case of the four South Africans has been the subject of a number of discussions between your Foreign and Commonwealth Office officers and officers of the South African Department of Foreign Affairs.

During these discussions it was intimated to the Foreign and Commonwealth Office that the South African Government would prevail upon the four men to accept offers to compound proceedings against them and that such offers presented a mutually acceptable legal solution to what my Government perceived as a dilemma involving both Governments.

Although Foreign and Commonwealth Office spokesmen have repeatedly indicated that it is not the kind of case which would lend itself to compounding procedures, I am nevertheless taking the liberty of attaching a memorandum setting out what I believe to be cogent arguments supportive of a compounded settlement.

It may be, Prime Minister, that such a compounded settlement still represents, albeit only in part, a solution to the dilemma in which we find ourselves.

I therefore propose that a legal team representing the four South African nationals and my Government should meet as a matter of urgency with representatives of the Foreign and Commonwealth Office, the Prosecuting Authority as well as

the Director of Public Prosecutions in order to explore this avenue. I believe that such a course of action would not constitute any interference in the due process of law and may provide the key to the resolution of the current impasse.

I wish also to refer to your letter delivered to me on 28 September 1984. The position regarding the Kwa Ngema community remains as set out in the memorandum attached to the South African Chargé d'Affaires in London's letter to you dated 20 June 1984 to which Mr Charles Powell replied on 4 July 1984. I can however, assure you that the South African Government is at all times handling this matter with concern and respect for the feelings and interests of the Kwa Ngema community.

Your remarks on the Nkomati Accord and the British Government's intended significant increase in its level of economic assistance to Mozambique are most encouraging and welcome. It is pleasing to note that Mozambique has now obtained IMF/IBRD membership. The security situation within Mozambique continues to give rise for concern. I can inform you in confidence that Foreign Minister Botha and Defence Minister Malan spent two days and nights at the end of last week in parallel talks with delegations of the Mozambique Government and the Mozambique resistance movement, RENAMO. I am pleased to say that some progress has been made and we are hopeful that an agreement on a cessation of the armed activity and conflict in Mozambique is not excluded.

I thank you for your sentiments regarding the constitutional changes which have taken place in South Africa and the new responsibilities which will rest with me and the Cabinet which I appointed on 15 September 1984.

Yours sincerely,



P W BOTHA  
STATE PRESIDENT OF THE  
REPUBLIC OF SOUTH AFRICA

The Right Honourable Margaret Thatcher, MP  
Prime Minister,  
10 Downing Street,  
LONDON