

CONFIDENTIAL

9009 - 1

DD 101800Z PRETORIA

GRS 1520

CONFIDENTIAL

DESKBY 101800Z

FM FCO 101530Z OCT 84

TO IMMEDIATE PRETORIA

TELEGRAM NUMBER 270 OF 10 OCTOBER

MY TELNO 259: PRIME MINISTER'S REPLY TO PRESIDENT BOTHA'S
LETTER OF 30 SEPTEMBER

1. PLEASE ARRANGE FOR THE FOLLOWING MESSAGE TO BE DELIVERED
IMMEDIATELY TO PRESIDENT BOTHA'S OFFICE:

BEGINS 'DEAR MR PRESIDENT

THANK YOU FOR YOUR LETTE? OF 30 SEPTEMBER IN REPLY TO MINE OF
THE SAME DATE. I SHARE YOUR DESIRE TO MINIMISE THE HARMFUL
EFFECTS TO OUR BILATERAL RELATIONS WHICH THE PRESENT PROBLEMS
ARE CAUSING, AND WE HAVE CONSISTENTLY BORNE THAT ASPECT IN MIND.
NEITHER THE SITUATION IN THE DURBAN CONSULATE, NOR THE CASE OF
THE FOUR SOUTH AFRICANS FACING CHARGES OF VIOLATING CUSTOMS AND
EXCISE LEGISLATION, WERE OF OUR MAKING. IT IS WITHIN THE WIDER
INTEREST OF OUR RELATIONSHIP THAT I HAVE CONSIDERED CAREFULLY
YOUR PROPOSAL FOR A LEGAL TEAM REPRESENTING THE FOUR SOUTH
AFRICAN NATIONALS INVOLVED IN THIS LATTER CASE AND YOUR GOVERNMENT
TO MEET URGENTLY WITH REPRESENTATIVES OF THE FCO, THE CUSTOMS
AND EXCISE, AND THE DIRECTOR OF PUBLIC PROSECUTIONS. I HAVE
ALSO NOTED YOUR BELIEF THAT COMPOUNDING WOULD BE AN APPROPRIATE
WAY TO DEAL WITH THE OFFENCES INVOLVED AND THAT THE GOVERNMENT
SHOULD INTERVENE TO PERSUADE THE COMMISSIONERS FOR CUSTOMS AND
EXCISE TO ADOPT THIS PROCEDURE.

IT IS IMPORTANT TO BE ABSOLUTELY CLEAR ABOUT THE STATUS OF THE
COMMISSIONERS OF CUSTOMS AND EXCISE AND THE NATURE OF THE
PROCEEDINGS AGAINST THE FOUR SOUTH AFRICANS. UNDER THEIR STATUTE,
DECISIONS ON LEGAL PROCEEDINGS ARE ENTIRELY A MATTER FOR THE
COMMISSIONERS. IT IS FOR THEM ALONE TO DETERMINE HOW TO PROCEED
IN EACH CASE, ON ITS MERITS, AND IN ACCORDANCE WITH THEIR
PRACTICE. IT WOULD BE JUST AS UNTHINKABLE, AND INDEFENSIBLE

1

CONFIDENTIAL

CONFIDENTIAL

9009 - 1

HERE, FOR MINISTERS TO SEEK TO INFLUENCE THE COMMISSIONERS OR INTERFERE IN THEIR HANDLING OF THE CASE, AS IT WOULD IF THEY WERE TO ATTEMPT TO INTERVENE IN ANY OTHER QUASI-JUDICIAL FUNCTION, SUCH AS THAT OF THE DIRECTOR OF PUBLIC PROSECUTIONS. IN THIS CASE I UNDERSTAND THAT THE COMMISSIONERS HAVE DECIDED NOT TO COMPOUND. THAT BEING SO, I DO NOT SEE THAT A MEETING BETWEEN LEGAL REPRESENTATIVES COULD ALTER THE SITUATION.

AS FOR THE POINTS YOU MAKE ABOUT OUR HANDLING OF THE SITUATION AT THE CONSULATE, I ATTACH A NOTE WHICH SETS OUT OUR THINKING. IN SHORT, WE DO NOT ACCEPT THAT, BY OUR ATTITUDE TO THE REQUEST PUT FORWARD IN YOUR GOVERNMENT'S AIDE MEMOIRE OF 20 SEPTEMBER AND BY REFRAINING FROM EXPELLING OR SURRENDERING THE SIX (NOW THREE) SOUTH AFRICANS IN THE DURBAN CONSULATE, WE HAVE OBSTRUCTED THE SOUTH AFRICAN PROCESS OF LAW ENFORCEMENT, OR ACTED UNLAWFULLY IN TERMS OF CUSTOMARY INTERNATIONAL LAW. NOR CAN WE ACCEPT THAT THE PRECIPITATE REPUDIATION BY YOUR GOVERNMENT OF ITS UNDERTAKING TO ENSURE THE RETURN OF THE FOUR MEN TO THE UK TO STAND TRIAL CAN BE JUSTIFIED AS A LEGITIMATE ACT OF REPRISAL: OR THAT IT IS LAWFUL ON ANY OTHER BASIS. I THEREFORE URGE YOU MOST SINCERELY TO RECONSIDER YOUR DECISION. I BELIEVE THAT TO HONOUR THIS COMMITMENT WOULD HELP TO REPAIR THE DAMAGE THAT ITS REPUDIATION HAS DONE TO SOUTH AFRICA'S REPUTATION, BOTH HERE AND INTERNATIONALLY.

I CONTINUE TO HOPE THAT THE PROBLEM CREATED BY THE PRESENCE OF THE THREE REMAINING MEN IN OUR CONSULATE IN DURBAN CAN BE RESOLVED SOON, AND IN A MANNER WHICH WILL ENABLE THEM TO LEAVE VOLUNTARILY. WE ARE ADVISING THEM TO DO SO.

FINALLY I WAS MOST ENCOURAGED TO HEAR OF THE DISCUSSION IN PRETORIA WHICH RESULTED IN THE DECLARATION MADE BY YOUR FOREIGN MINISTER ON 3 OCTOBER ABOUT A CESSATION OF HOSTILITIES IN MOZAMBIQUE. I VERY MUCH HOPE THAT THIS CONSTRUCTIVE APPROACH BY THE MOZAMBIQUE GOVERNMENT AND YOUR OWN WILL BRING SUCCESS AND WILU CONTRIBUTE TO GREATER STABILITY FOR THE WHOLE REGION. AS I

2

CONFIDENTIAL

CONFIDENTIAL

9009 - 1

FORESHADOWED IN MY LETTER TO YOU DATED 11 SEPTEMBER WE HAVE RECENTLY ANNOUNCED AN ADDITIONAL POUNDS STERLING 5MILLION OF PROGRAMME AID WHICH WILL HELP MOZAMBIQUE IN ECONOMIC RECONSTRUCTION.
YOURS SINCERELY MARGARET THATCHER

NOTE

IN HIS LETTER OF 30 SEPTEMBER TO THE PRIME MINISTER, PRESIDENT BOTHA EXPRESSED THE VIEW THAT HER MAJESTY'S GOVERNMENT, BY ITS ATTITUDE TO THE REQUEST PUT FORWARD IN THE SOUTH AFRICAN GOVERNMENT'S AIDE MEMOIRE OF 20 SEPTEMBER AND BY FAILING EITHER TO EXPEL OR SURRENDER THE SIX MEN IN THE BRITISH CONSULATE IN DURBAN, HAVE OBSTRUCTED THE SOUTH AFRICAN PROCESS OF LAW ENFORCEMENT AND HAVE ACTED UNLAWFULLY IN TERMS OF CUSTOMARY INTERNATIONAL LAW. WE CANNOT ACCEPT THIS AS CORRECT.

THE SIX MEN DID NOT COME TO THE CONSULATE ASKING FOR ASYLUM AND THERE WAS NOTHING IMPROPER ABOUT THEIR ENTRY. THEIR STAY BEGAN WITHOUT OUR AGREEMENT, BUT IT WAS JUSTIFIABLE, HAVING REGARD TO THE HUMANITARIAN CONSIDERATIONS, FOR US TO REFRAIN FROM FORCIBLY EVICTING THEM. IT IS RELEVANT IN THIS CONNECTION THAT, ONLY TWO WEEKS BEFORE THE INCIDENT, ON 27 AUGUST, THE BRITISH GOVERNMENT HAD EXPRESSED THEIR CONCERN TO THE SOUTH AFRICAN GOVERNMENT ABOUT THOSE THEN DETAINED (WHO INCLUDED FIVE OF THE SIX): AND THAT THEY HAD SUBSCRIBED TO A STATEMENT BY THE TEN EC COUNTRIES ON 11 SEPTEMBER ABOUT RECENT EVENTS IN SOUTH AFRICA. IT IS ALSO RELEVANT THAT, SINCE THE DAY ON WHICH THE MEN ARRIVED IN THE CONSULATE, UNTIL 8 OCTOBER, LEGAL PROCEEDINGS CONCERNING THE VALIDITY OF THE FURTHER ORDERS FOR THEIR DETENTION WITHOUT TRIAL HAVE BEEN IN PROGRESS.

THE SITUATION AS IT HAS DEVELOPED IS, OF COURSE, A COMPLEX ONE BUT IT IS NOT OF OUR MAKING. THE SIX, AND NOW THE THREE, HAVE PERSISTED IN THEIR STAY WITH NO ENCOURAGEMENT FROM US. INDEED, WE HAVE FROM THE OUTSET ADVISED THEM OF THE DIFFICULTIES WHICH THEIR PRESENCE CREATES FOR US. WE HAVE MADE CLEAR TO THEM AND

CONFIDENTIAL

9009 - 1

TO THE SOUTH AFRICAN GOVERNMENT OUR HOPE THAT MATTERS WOULD EVOLVE IN A WAY THAT WILL ENABLE THEM TO LEAVE VOLUNTARILY. WE HAVE THROUGHOUT ADVOCATED THE RESOLUTION OF THE SITUATION IN A SENSIBLE AND PRACTICAL WAY WHICH WOULD AVOID ANY RECOURSE TO FORCIBLE ACTION. WE CLEARLY COULD NOT BE EXPECTED TO BE ANY PART OF THAT: AND, IN THIS REGARD, WE HAVE SAID THAT IN THE CIRCUMSTANCES THE MEN SHOULD NOT BE REQUIRED TO LEAVE THE PREMISES OF THE CONSULATE AGAINST THEIR WILL.

ALL THESE CIRCUMSTANCES FORM THE BACKGROUND TO THE CONTINUED PRESENCE OF THE SIX (NOW THE THREE) MEN IN THE CONSULATE. OUR ATTITUDE OF UNWILLINGNESS TO CONTEMPLATE THEIR FORCIBLE EVICTION, WHILE GIVING THEM NO ENCOURAGEMENT TO STAY AND PLACING NO OBSTACLE IN THE WAY OF, INDEED ENCOURAGING, THEIR DEPARTURE, CANNOT FAIRLY BE DESCRIBED AS ONE OF OBSTRUCTIVENESS ON OUR PART OF THE ENFORCEMENT OF SOUTH AFRICAN LAW, NOR SHOULD IT BE CHARACTERISED AS AMOUNTING TO A BREACH OF INTERNATIONAL LAW.

IN HIS LETTER OF 30 SEPTEMBER PRESIDENT BOTHA ALSO CONTENTED THAT HIS GOVERNMENT'S DECISION NOT TO ALLOW THE 4 MEN CHARGED WITH CONTRAVENING UNITED KINGDOM CUSTOMS AND EXCISE LEGISLATION TO RETURN TO THE UNITED KINGDOM TO STAND TRIAL IS AN ACT OF REPRISAL PERMITTED BY CUSTOMARY INTERNATIONAL LAW. SINCE THE BRITISH GOVERNMENT DO NOT ACCEPT THAT THEIR ATTITUDE HAS AMOUNTED TO A BREACH OF INTERNATIONAL LAW, THEY CLEARLY CANNOT, IF ONLY ON THIS GROUND AND LEAVING ASIDE OTHER CONSIDERATIONS, ACCEPT THAT THE PRECIPITATE REPUDIATION BY THE SOUTH AFRICAN GOVERNMENT OF ITS UNDERTAKING TO ENSURE THE RETURN OF THE 4 MEN TO THE UNITED KINGDOM TO STAND TRIAL CAN BE JUSTIFIED AS A LEGITIMATE ACT OF REPRISAL: NOR CAN WE ACCEPT THAT IT IS LAWFUL ON ANY OTHER BASIS. THE UNDERTAKING TO RETURN THE 4 MEN WAS QUITE SPECIFIC AND WAS SOLEMNLY GIVEN TO A BRITISH COURT: IT IS ENTIRELY UNCONNECTED WITH THE INCIDENT AT OUR CONSULATE IN DURBAN. AS WAS MADE CLEAR IN THE AIDE MEMOIRE GIVEN TO THE SOUTH AFRICAN AMBASSADOR ON 24 SEPTEMBER, THE REPUDIATION OF THIS UNDERTAKING IS IN THE VIEW OF THE BRITISH GOVERNMENT WHOLLY INADMISSABLE.

4

CONFIDENTIAL

CONFIDENTIAL

9009 - 1

PRESIDENT BOTHA'S LETTER OF 30 SEPTEMBER ATTACHED A MEMORANDUM SETTING OUT SOME ARGUMENTS IN SUPPORT OF A PROPOSAL FOR COMPOUNDING THE OFFENCES AGAINST THE 4 MEN. IN THAT MEMORANDUM IT IS SUGGESTED THAT THE FOREIGN AND COMMONWEALTH OFFICE MIGHT PERSUADE THE COMMISSIONERS FOR CUSTOMS AND EXCISE TO EXERCISE THEIR DISCRETION AND COMPOUND THE PROCEEDINGS FOR THE OFFENCES IN THIS CASE. THERE CAN BE NO QUESTION IN THIS CASE OR IN ANY OTHER OF MINISTERS SEEKING TO LAY DOWN POLICY IN A MATTER OF THIS KIND TO THE COMMISSIONERS OF CUSTOMS AND EXCISE. THEIR INDEPENDENT POWERS ARE ESTABLISHED BY STATUTE (CUSTOMS AND EXCISE MANAGEMENT ACT 1979). THEY ARE JEALOUSLY GUARDED AND SCRUPULOUSLY OBSERVED.

POLICY ON COMPOUNDING IS AS EXPRESSED IN THE ANSWER GIVEN BY MR HAYHOE ON 25 APRIL (OFFICIAL REPORT COL 542). THE COMMISSIONER'S DECISION WHETHER OR NOT TO COMPOUND IS TAKEN ON THE MERITS OF EACH CASE. THE GENERAL FACTORS TAKEN INTO CONSIDERATION ARE THE GRAVITY OF THE OFFENCE AND THE BEST INTERESTS OF LAW ENFORCEMENT AND OF THE REVENUE. POLITICS HAVE NO PLACE IN THE DECISION. IT IS FOR THE COMMISSIONERS FOR CUSTOMS AND EXCISE ALONE TO DETERMINE WHAT COURSE TO TAKE.

PRESIDENT BOTHA'S LETTER ALSO REFERS TO THE SUMS INVOLVED IN THE ALLEGED OFFENCES. IT IS NOT FOR US TO COMMENT ON THE SERIOUSNESS OF THE CHARGES BROUGHT. THIS IS FOR THE COMMISSIONERS TO JUDGE IN THE LIGHT OF ALL THE CIRCUMSTANCES. BUT WE UNDERSTAND THAT INVESTIGATIONS ARE CONTINUING AND THE POSSIBILITY OF FURTHER CHARGES CANNOT BE PRECLUDED. ENDS

ORIGINAL FOLLOWS BY BAG LEAVING HERE 12 OCTOBER.

HOWE

[COPIES SENT TO NO 10 DOWNING STREET]

SOUTHERN AFRICA

STANDARD(PALACE)

S AF D

OADS

MCAD

UND

NAD

WED

ECDs Ps

SOVIET D

EED - NEWS DEPT

MR J R J JOHNSON - MR FERGUSON

CABINET OFFICE

PS/PUS

PS/MR REFRIND

PS/LADY YOUNG

MR J FREELAND

ADDITIONAL DISTRIBUTION
SOUTHERN AFRICA

5.
CONFIDENTIAL