CHTB

Prime Minister (2)
Content with these explanations?
AT 22/7

H.STEEL,CMG OBE
LEGAL SECRETARY

LAW OFFICERS' DEPARTMENT
ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

19 July, 1985

A Turnbull Esq
The Prime Minister's Office
10 Downing Street
London SW1

Yes - much clearer now

Dear Andrew,

AIRCRAFT AND SHIPBUILDING NATIONALISATION:
EUROPEAN CONVENTION OF HUMAN RIGHTS

Thank you for your letter of 16 July. I am sorry that it has taken a little while to reply to it but, as you will understand, I wanted to verify my facts, and, so to speak, get chapter and verse, and this required checking with the FCO.

In that connection, I should perhaps explain that it is not the Law Officers but the FCO and the DTI (or DOE in the Duke of Westminster's case) who are in the lead in these proceedings - the FCO in a coordinating role and as the formal Agent of the Government in cases before the Commission and the Court, and the DTI as the Department responsible for policy. Though the Attorney-General has, as I have explained, exercised an active superintendence at all stages over the development of our case and the shaping of our arguments and tactics and has been alert to ensure that, when these might have political implications, they were brought to the attention of the relevant Ministers and carried their approval, he has not himself conducted the case or, to use your own phrase, "deployed arguments in Strasbourg". I think it necessary to make this point because there sometimes seems to be an impression - especially in the press and in Parliament - that he personally has been arguing the case for the Government and, indeed, has not only determined the arguments to be used but has also determined the policy which those arguments have sought to defend. From the Attorney-General's point of view (and I think also from the FCO's point of view) we need to remind ourselves that what the lawyers are defending in this case is essentially a policy which was decided by

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Ministers collectively in 1980 and reaffirmed more than once subsequently, i.e. that no further compensation should now be paid to the applicants; and in so far as the arguments to be used in themselves involved policy considerations, these, too, had the authority of the Ministers concerned.

Turning now to the Prime Minister's question (ie whether at any time the Government has made it clear that it accepts the need for compensation where assets are nationalised or expropriated), the answer is "yes". There was more than one context in which it was thought necessary or helpful for us to address this point but perhaps the clearest expositions of where we stand on it were given in the oral argument which was put before the Commission by Donald Nicholls QC (as he then was) and in the oral argument put before the Court by Robert Alexander QC. The relevant passage from Nicholls's speech read as follows:

> "Mr President, suggestions have been made, both in the written submissions and in these oral pleadings that the Government's reading of Article 1 entails the most dire consequences for the human rights of nationals and that they are left without a remedy for violation of their property rights.
>
> The case is argued as if our claim on the facts was to a nationalisation without compensation, and as if our interpretation will thus open the floodgates to uncompensated takings of nationals' property. This Commission is not conducting an academic seminar. It is conducting legal proceedings which surely must be rooted in the facts of the cases before you.
>
> The Commission is not concerned with hypothetical arguments about what might result if unlikely hypothese are accepted. With respect, it surely is concerned with whether on the facts before you and no other facts, there has been a violation of the Convention. And the facts in the present case do not show any claim to nationalise without compensation - though large parts of the applicants' submissions have been couched in those terms and addressed to that totally imaginary scenario.
>
> It is the normal and, indeed, the unbroken practice in the United Kingdom, as we have stated, to pay compensation for nationalisation. The 1977 Act provided for compensation. It is the compatibility of those provisions with the Convention, and not the compatibility of imaginary and wholly unreal threats, which is the matter before the Commission."

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The relevant passage from Robert Alexander's speech is the following:-

> "I pause there for a moment to speak of how our argument, and the Commission's finding, have been portrayed by the Applicants. They have sought to put about the view that the Government was telling the Commission that it could take property without compensation; and that the Commission had failed, in the Report of March 1984, to harness the European Convention to the task of protection against non-compensated expropriation.
>
> The Applicants' version of the Government's claim, widely canvassed in the British press, was coupled with frequent repetition of the assertion that the Government had not denied the validity of Applicant's own valuation assessments.
>
> The idea was thus put about that the Government accepted that the Applicants' claimed figures represented fair compensation, but insisted that they were entitled to take the property of nationals without any compensation at all if they so chose; and that the Commission had upheld this retrograde position. Whatever political purposes its version of events may have been thought by the Applicants to serve, it is, of course, wholly incorrect.
>
> As we have explained at 2.23 of our Memorial, the position was always otherwise. The Government has never advanced, in the context of these cases, a claim to be entitled to nationalise without compensation, or on the basis of "unfair" compensation. It argued, rather that the international law requirement that compensation be "adequate, prompt and effective" did not apply to the treatment of nationals.
>
> As compensation is nowhere else alluded to, even indirectly, in the text of Article 1, the Government had taken the logical consequence to be that "the question of sufficiency of compensation for nationals is beyond the remit of the organs of the European Convention in their determination of obligations under the Convention" (2.23 UK Memorial). The fact that the Applicants had fought so assiduously to make the international law principles made applicable to nationals would seem to indicate that they thought so too. However, the Commission has held (albeit with qualifications) that there is inherent within Article 1 a right to compensation for the taking of the property of anyone within the jurisdiction (Report, para. 381). After careful consideration, the Government accepted this finding. This finding, after all accorded with the well established practice in our country of ensuring proper compensation for public-purpose takings. More specifically, the Government submits that this particular nationalisation meets the test of inherent right to compensation suggested by the Commission. The Government had doubts as to the jurisdiction of the European organs over this issue. The Government had no such reservations about the conformity of U.K. practice with the requirements of the Convention if the jurisdiction existed."

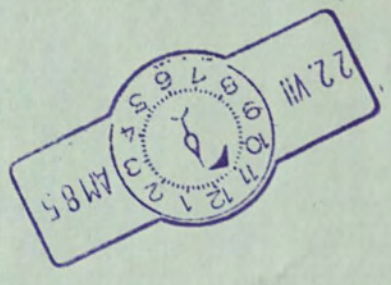
I am copying this letter to John Ballard (DOE), John Mogg (DTI) and Len Appleyard (FCO).

Yours ever,

H STEEL

Human Rights: Europol.

Nov. 1980



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10 DOWNING STREET

24 July 1985

From the Private Secretary

AIRCRAFT AND SHIPBUILDING NATIONALISATION: EUROPEAN CONVENTION OF HUMAN RIGHTS

The Prime Minister has seen your letter to me of 19 July. She was grateful for and content with the further explanations provided.

I am copying this letter to John Ballard (Department of the Environment), John Mogg (Department of Trade and Industry) and Len Appleyard (Foreign and Commonwealth Office).

(Andrew Turnbull)

Henry Steel, Esq., C.M.G., O.B.E.

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