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ZZ PRETORIA

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FM FCO 20 1440Z SEP 1984

TO FLASH PRETORIA

TELEGRAM NUMBER 211 OF 20 SEP 84

MIPT THE TEXT OF SOUTH AFRICAN AIDE MEMOIRE IS AS FOLLOWS
'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.

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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 PROVIDE 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 REGULATION 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 FUNCTION 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' (UN DOC A/CONF.25/C2/L29), 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.

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TO FLASH PRETORIA

TELEGRAM NUMBER 210 OF 20 SEPTEMBER

SOUTH AFRICAN DEMARCHE DURBAN CONSULATE

1 MIFT CONTAINS TEXT OF AIDE MEMOIRE HANDED BY SOUTH AFRICAN AMBASSADOR TO PUS THIS AFTERNOON.

2 IT CALLS ON THE BRITISH GOVERNMENT URGENTLY TO EITHER DELIVER THE SIX TO THE 'APPROPRIATE SOUTH AFRICAN AUTHORITIES' WITHOUT DELAY OR, ALTERNATIVELY, TO INSTRUCT THE HEAD OF CONSULAR POST TO ALLOW THE SOUTH AFRICAN AUTHORITIES TO ENTER THE CONSULATE PREMISES IN ORDER TO TAKE THE SIX INTO CUSTODY.

3 THE PUS TOOK NOTE. HE SAID THAT WE WOULD STUDY THE MEMORANDUM AS QUICKLY AS POSSIBLE. HE WOULD REPORT TO MINISTERS. SPEAKING PERSONALLY, PUS SAID THAT THE SOUTH AFRICAN REQUEST COULD HAVE VERY FAR REACHING IMPLICATIONS FOR OUR RELATIONS. WE AND THEY MUST ACCORDINGLY THINK VERY CAREFULLY ABOUT HOW TO PROCEED. HE HOPED THAT WE WOULD BE GIVEN ENOUGH TIME TO CONSIDER THE POSITION PROPERLY AND WHETHER THERE WERE OTHER WAYS FORWARD. THE PUS STRESSED THAT IN HIS VIEW IT WAS VERY IMPORTANT THAT THE CONTENTS OF THE SOUTH AFRICAN DEMARCHE SHOULD REMAIN CONFIDENTIAL. NOBODY'S INTERESTS WOULD BE SERVED BY ITS BECOMING PUBLIC KNOWLEDGE THAT THE SOUTH AFRICANS HAD PRESENTED US WITH OPTIONS IN THIS WAY.

4 DR WORRALL SAID THAT THERE WAS NO SUGGESTION THAT HIS GOVERNMENT WAS PRESENTING US WITH AN ULTIMATUM. BUT THERE WAS INCREASING PRESSURE IN SOUTH AFRICA FOR THE GOVERNMENT TO TAKE ACTION. ACCORDINGLY TIME WAS OF THE ESSENCE. HE DOUBTED WHETHER TOMORROW'S COURT CASE WOULD HELP. HE BELIEVED IT LIKELY THAT THE COURT WOULD DECLINE TO GIVE A RULING IN THE CASE ON THE GROUNDS THAT THE DETENTION ORDERS HAD NOT BEEN SERVED ON THE SIX. WORRALL SPECULATED THAT THE SOUTH AFRICAN GOVERNMENT MIGHT NOT EXPECT US TO HAND OVER THE SIX TO THEM HAVING MADE A PUBLIC COMMITMENT NOT TO THROW THEM OUT. IT MIGHT BE THAT ALL THEY WANTED WAS A

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RESTATEMENT OF THE BRITISH POSITION THAT WE COULD NOT EJECT THE SIX. THE PUS ASKED WHETHER THE SOUTH AFRICANS WOULD REALLY ACCEPT THIS. THE AMBASSADOR REPLIED THAT HE COULD NOT SPEAK FOR HIS GOVERNMENT ON THIS. HE UNDERTOOK TO RELAY TO THE SOUTH AFRICAN GOVERNMENT OUR CONCERN FOR CONFIDENTIALITY.

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