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CONFIDENTIAL

Foreign and Commonwealth Office

London SW1A 2AH

2 May, 1984

Prime Minister:

This is the response to the questions you asked about the prospects for a review of the Vienna Convention and about the Libyan Peoples Bureau?

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Dear John,

Libyan People's Bureau and the Vienna Convention on Diplomatic Relations

You wrote on 24 April about the Vienna Convention.

As the Foreign Secretary confirmed in the House yesterday, he has already initiated the overall review of the adequacy, operation and enforceability of the Convention announced by the Home Secretary in the Commons on 25 April.

The Prime Minister asked for advice on the prospects for securing international agreement to an amendment of the Convention to deal with gross abuse. Three elements should be considered:

(a) the powers to counter gross abuse which are already contemplated by the Convention;

(b) the legal possibility of taking retaliatory measures against gross abuse, which would involve a departure from the normal obligations of the Convention and the underlying rules of customary international law;

(c) the prospects of securing international agreement to amendment to the Convention to deal with gross abuse.

On existing powers, the Convention already provides sanctions against abuse. An individual who has abused his or her immunity can be declared persona non grata and required to leave. Where a State is held responsible for the abuse, diplomatic relations can be severed and all staff expelled. We had never previously used this ultimate sanction against a State for abuse of immunity and our action in so doing goes beyond the measures taken by some of our allies in recent years. For example, the US, many months after the burning of its Embassy in Tripoli, merely withdrew its diplomatic mission and expelled all Libyan diplomats from Washington, and Germany did not even declare persona non grata diplomats whom it knew were torturing Libyan dissidents on Libyan premises. In a case in Paris a French policeman was murdered by an Iraqi diplomat who immedately took refuge in the Embassy - he was expelled, but relations continued.

On retaliatory action, the 1969 Vienna Convention on the Law of Treaties to which the UK is a party, enables a party affected by a "material breach" of a treaty by another state to invoke it as a ground for suspending the operation of the treaty in whole or in part in its relations with the defaulting State. Ministers were aware of this option at the outset and throughout their considerati n of the Libyan incident. They nevertheless decided to adhere scrupulously to the rules of the Vienna Convention because of possible retaliation against the British community and Embassy staff in Libya. No change in international law is likely to eliminate the danger of the nationals of one country becoming hostages in another if the latter country is insensitive to or unconcerned by international reaction.

As to the prospects for international agreement to amendment of the Vienna Convention, these are not good. There are three main reasons:

a) the inclination of many countries at present is to extend rather than curtail immunity. This tendency is currently being demonstrated in the work in progress in the International Law Commission on the status of the Diplomatic Courier and diplomatic bag;

b) to be effective, any amendment would have, as a matter of law, to be accepted by the States against whose Embassies we should wish to apply it. These are the very States which would be most unlikely to accept any such new rules;

c) if immunity and inviolability could be more easily set aside, there would be a greatly increased risk that the authorities in irresponsible countries - including possibly some Communist States - would fabricate situations to enable them to take advantage of exceptions to immunity. In the context of the US hostages in Iran, the Iranians sought to justify their actions on the grounds that the US had abused immunity and perpetrated "criminal activities" against the Iranian people. The International Court of Justice rejected this defence because "diplomatic law itself provides the necessary means of defence against, and sanction for illicit activities by members of diplomatic or consular missions". If by international agreement immunity was further qualified, this could add to the dangers faced by staff and missions overseas, a risk that many governments may be reluctant to contemplate.

These are initial observations. We shall, in the course of the more considered review of the Convention, look carefully for any improvements which, realistically, may be achieveable.

/The answers

The answers to the questions in the second paragraph of your letter are:

a) it is the sending State which decides, by virtue of the right of free appointment under the Convention, who should be appointed to its Mission in this country. In the case of an Ambassador or High Commissioner, they must first seek our agreement, which we can refuse. Under the Convention, we have no power to refuse to accept other diplomatic or non-diplomatic staff. We can, however, PNG anyone who is unwelcome to us. This may be done prior to his or her arrival if we have advance notification, which is not usual or required. We have, in the past, occasionally asked, informally, for the withdrawal of a nomination (where there were criminal charges pending against the individual) and this request has been met;

Question:

How do we decide who should be accredited and who takes the decision?

b) Article 11 of the Vienna Convention gives us the right to limit the overall size of a Mission, having regard to what is reasonable and normal. In a number of cases, for example, that of the Soviet Embassy, we have exercised this right, usually for security reasons. This may result in the imposition by the other State of a reciprocal limitation, though we ourselves have no general rule of reciprocity between the number of diplomats allowed in London and the number we are allowed in the corresponding foreign capital;

Is there any reciprocity about numbers of diplomats?

c) under the Convention we are obliged to accord inviolability to "premises of the Mission", defined in the Convention as any premises which are "used for the purposes of the Mission". We may refuse to accept any premises which in our judgement are not being so used. Nor are we obliged under the Convention to allow a Mission the us of the premises of their choice. We are, however, circumscribed by our limited powers under domestic legislation to control the acquisition in the free market or theuse of particular premises. In the case of the premises of the Libyan People's Bureau, there was no reason at the time of their acquisition to object to their use for diplomatic purposes

Policy on diplomatic status on premises and why did Libyans have found?

Yours ever,

Peter Ricketts

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Private Secretary

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25 MAY 1984