



QUEEN ANNE'S GATE LONDON SW1H 9AT

14<sup>th</sup> November 1985

CCPC

Dear Geoffrey, B/F / Await FCS reply  
TANZANIAN HIJACKERS  
con.

You will recall the incident in 1982 when five Tanzanians hijacked a Tanzanian Airways aircraft on an internal flight. After refuelling at Nairobi the plane travelled to Jeddah, Greece, Rome and finally arrived at Stansted on 27 April 1982. After negotiations the aircrew and passengers were released the following day and the five men surrendered to the authorities. They were all charged and convicted under the Hijacking Act 1971 and sentenced to terms of imprisonment ranging from three to eight years.

All five men have applied for asylum. Two, Yassin Membar and Tahir Ahmed, completed their sentences last year. Following completion of his sentence Membar was detained under Immigration Act powers, but in November 1984 he was granted bail by the Divisional Court. Both men are now on temporary admission.

The two men indicated when interviewed that they would be prepared to accept resettlement in a third country and after protracted negotiations the United Nations High Commissioner for Refugees secured the agreement of Sierra Leone to accept them for resettlement there. At the end of July this year, however, apparently under the influence of Mr Oscar Kambona, who acted as an intermediary at the time of the hijacking, they refused this offer of resettlement, and we resumed consideration of their asylum applications.

When they were interviewed all five men claimed to be members of the Tanzanian Youth Democratic Movement dedicated to the establishment of a democratic government in Tanzania. Neither we nor, I understand, the FCO, have any information about this organisation. Your Department's assessment has been that, while the hijackers were likely to be questioned and kept under surveillance for a period if returned to Tanzania they would not be subject to further punishment; and the Tanzanian authorities have indicated that they would not encounter any problems on their return to Tanzania. Having considered that, while the men clearly have a fear of return to Tanzania, they do not have a well-founded fear of persecution within the terms of the 1951 Refugee Convention, and I therefore propose to refuse their applications.

If the men's applications for asylum are refused, they will have no other claim to remain here, and in normal circumstances removal to Tanzania would be indicated. (Sierra Leone could not be expected to take them unless they were prepared to go there willingly, which they are not.) To allow convicted hijackers to remain here risks being seen as inconsistent with the firm line that we have taken on terrorism and might well attract public criticism on that score, even though the cases so far have attracted very little publicity.

/But it is not

The Rt Hon Sir Geoffrey Howe, QC, MP

But it is not as simple as that, because of undertakings that were given in the course of the negotiations that led to the men's surrender. Patrick Wall has taken a close interest in the fate of these men from the outset and is of the view that the undertaking precludes our returning them to Tanzania against their will. Tim Raison sent him a letter in April 1982, in which he said "Our records are quite clear in that what was agreed to be put to those men was, if they surrendered, they would be subject to British justice: they would not be at liberty but would not be returned to Tanzania". When David Waddington spoke to Patrick about the case earlier in the week he made it clear that he would react very strongly, including raising the matter on the adjournment, if any attempt were made to send them back. David has consulted Willie Whitelaw who was Home Secretary at the time and who, as Minister in charge of the operation, authorised the undertaking that was given. Willie's view is that it would be most unwise for us to do otherwise than honour the undertaking at its face value.

This is vexing because officials here who were concerned with the Stansted incident are satisfied that the intention, at the time that the undertaking was authorised, was to guarantee not to return the men to Tanzania for trial rather than to let them stay here in perpetuity. Other letters written at the time do convey the undertaking in narrower terms and even the letter to Patrick Wall, when read in its entirety, is somewhat ambiguous. That said, the words in Tim Raison's letter cannot now be unsaid. In addition, there is evidence from the transcripts that during the course of the negotiations at Stansted the men were given promises which they could reasonably have understood as guaranteeing them from forcible return to Tanzania at any time in the future.

In all the circumstances I have concluded that we should not attempt to send the men back to Tanzania and run the risk of being accused of breaking our word. Since we cannot require them to go to a third country against their will, that effectively means that we shall have to let them stay here until and unless they chose to leave.

It appears from David Waddington's discussion with Sir Patrick Wall that those representing the men would not contest a refusal to grant asylum, if they were allowed to remain here on a temporary basis. The understanding would be that they would return to Tanzania in due course if the situation allowed. I propose therefore that they should exceptionally be given leave to remain here for 12 months in the first instance, with the situation being reviewed at the end of that period. Unless there was a sudden change in the situation in Tanzania, the next two men to be released, in March 1986, would be treated in the same way.

I hope that this decision will not create difficulties for you in our bilateral relations with Tanzania. The Tanzanians have not been pressing for the men's return, and it should be helpful in explaining the decision to them to make it clear that we did not regard the asylum applications as well-founded; and that the decision not to return them was taken primarily because of undertakings given at the time of the hijacking and does not reflect a lack of trust on our part in the assurances that the Tanzanians have given that the men would not be punished if returned.

/We are under some

We are under some pressure to announce a decision in this case. An application for judicial review initially lodged on Membar's behalf in November 1984 has now been adjourned twice pending a decision on his and Ahmed's asylum applications, and there has been some criticism by the court of the delay in reaching a decision, which has been largely due to the time taken to try to find an acceptable country of resettlement. A further hearing has now been fixed for next Wednesday, 20 November, and we shall be in some difficulty if we cannot indicate then that a decision has been reached. I should be grateful therefore if you could let me know early next week if you have any comments on the course of action proposed.

I am copying this letter to the Prime Minister and the Lord President.

Yours,

Douglas

