



Foreign and Commonwealth Office

Mr Tom Tugendhat MBE MP
Chair
Foreign Affairs Select Committee
House of Commons

23 April 2020

Dear Mr Tugendhat,

DIPLOMATIC IMMUNITY

During my appearance before the Committee on Tuesday, you raised various questions relating to the operation of diplomatic immunity and the case of Harry Dunn. In order to assist the Committee, and given the interest in these issues, I wanted to ensure my answers on this issue were entirely clear, and to make one factual correction. As regards the specifics of the Dunn case, you will appreciate that there is an ongoing judicial review and the FCO's actions will therefore be examined by a court in due course.

Under the Vienna Convention on Diplomatic Relations (VCDR), a sending State may freely appoint the members of the staff of its mission. This is only subject to approval in certain cases (Art.7). The receiving State has the right to refuse a proposed Head of Mission; approval for Heads of Mission is done by requesting *agrément*. The sending State is under a duty to notify the Ministry of Foreign Affairs of the receiving State of appointments, arrivals and departures (Art. 10). In the UK, FCO Protocol Directorate is notified of the details of members of foreign missions and their families, and their details are entered into a database held by Protocol Directorate and referred to as necessary by the Parliamentary and Diplomatic Protection Branch of the Metropolitan Police Service, on behalf of police forces across the UK. A person has privileges and immunities under the VCDR from the moment they enter the country; they are not "granted" by the FCO (Art. 39).

I also talked about the practice with the police in immunity cases. The FCO and the police work together closely on immunity issues, and, in that context, the police will refer questions about immunity to the FCO as a matter of course. The FCO is responsible for engaging with the sending State and for seeking waivers of immunity where necessary. However, all parties involved in these cases operate within the accepted framework of the operational independence of the police, it being for them

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to determine what steps to take in the investigation of criminal offences. All parties are also aware that while the FCO can provide assistance on questions of immunity, and in particular on relevant questions of fact, questions of law under the VCDR are ultimately for the courts (as indeed are all questions of law).

Finally, in my evidence I stated that in the Dunn case there was a conversation between lawyers in Washington and London on immunity. This is not correct. Legal teams in Washington and London considered the issues separately. There were no conversations at all between the UK and US Government lawyers dealing with this issue during the relevant period. The respective positions of the UK and the US were exchanged through diplomatic correspondence in the ordinary way.

I would be grateful if this letter could be placed on the record.

A handwritten signature in black ink, appearing to read 'Simon McDonald', with a stylized flourish at the end.

Simon McDonald