



Treaty Series No. 43 (1999)

# Agreement

between the Government of the  
United Kingdom of Great Britain and Northern Ireland  
and the Government of the Kingdom of the Netherlands

## concerning a Scottish Trial in the Netherlands

including Annexes  
and Exchange of Notes

The Hague, 18 September 1998

[The Agreement entered into force on 8 January 1999]

*Presented to Parliament  
by the Secretary of State for Foreign and Commonwealth Affairs  
by Command of Her Majesty  
July 1999*

**AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS CONCERNING A SCOTTISH TRIAL IN THE NETHERLANDS**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of the Netherlands;

Recalling that on 21 December 1988 Pan American World Airways flight 103 was bombed over Lockerbie in Scotland and 270 persons died;

Recalling that on 13 November 1991, following the presentation of a petition by the Procurator Fiscal for Dumfries, the Sheriff of South Strathclyde, Dumfries and Galloway in Scotland granted a warrant for the arrest of Abdelbaset Ali Mohamed Al Megrahi and Al Amin Khalifa Fhimah (“the accused”) on charges of conspiracy to murder, murder and contravention of the Aviation Security Act 1982 of the United Kingdom of Great Britain and Northern Ireland;

Recalling that the Security Council of the United Nations, acting under Chapter VII of the United Nations Charter, in its Resolutions 748 (1992) and 883 (1993), demanded *inter alia* that Libya ensure the appearance of the accused for trial before a Scottish court;

Noting the letter of 24 August 1998 from the acting Permanent Representatives of the United Kingdom of Great Britain and Northern Ireland and of the United States of America to the Secretary-General of the United Nations proposing that the accused be tried before a Scottish Court sitting in the Kingdom of the Netherlands in accordance with the arrangements set out in that letter (Annex 1);

Having due regard to the decisions of the Security Council, acting under Chapter VII of the Charter of the United Nations, in its Resolution 1192 (1998) (Annex 2);

Whereas the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of the Netherlands wish to conclude an Agreement regulating the sitting of the Scottish Court in the Netherlands and all matters necessary for the proper functioning of that Scottish Court in the Netherlands for the purpose of the trial of the accused;

Have agreed as follows:

**ARTICLE 1**

**Definitions**

For the purposes of the present Agreement, the following definitions shall apply:

- (a) “the host country” means the Kingdom of the Netherlands;
- (b) “the Government” means the Government of the Kingdom of the Netherlands;
- (c) “the competent authorities” means national, provincial, municipal and other competent authorities under the law of the host country;
- (d) “Vienna Convention” means the Vienna Convention on Diplomatic Relations done at Vienna on 18 April 1961;<sup>1</sup>
- (e) “Procurator Fiscal” means the Procurator Fiscal for Dumfries and any person holding a commission from the Lord Advocate to act as Procurator Fiscal or Procurator Fiscal Depute for the purposes of the trial;
- (f) “Sheriff” means a Sheriff of South Strathclyde, Dumfries and Galloway in Scotland and any officials of that Sheriffdom;

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<sup>1</sup>Treaty Series No. 19 (1965), Cmnd. 2565.

- (g) “the accused” means Abdelbaset Ali Mohmed Al Megrahi and Al Amin Khalifa Fhimah, charged with the offences of conspiracy to murder, murder and contravention of the Aviation Security Act 1982 of the United Kingdom of Great Britain and Northern Ireland (“the offences”) specified in the Procurator Fiscal’s Petition upon which warrant for arrest was issued by the Sheriff of South Strathclyde, Dumfries and Galloway in Scotland on 13 November 1991;
- (h) “Lord Advocate” means the Lord Advocate of Scotland and any officials, Advocate Deputes, Scottish police officers or other persons acting under his directions, or any person directly assisting him;
- (i) “the trial” means the public trial of the accused in respect of the offences and any preliminary proceedings, investigative steps, preparations for the trial, preliminary hearings and appeals following service of the indictment, any determination of law or fact and the imposition of penal sanctions, and any appeal by the accused following conviction, all in accordance with Scots law and practice;
- (j) “solicitors and advocates” means persons, being legally qualified in Scotland, instructed on behalf of the Lord Advocate or on behalf of the accused;
- (k) “witnesses” means persons, including experts, cited to give evidence in the trial of the accused;
- (l) “the Scottish Court” means the High Court of Justiciary (including that Court sitting in an appellate capacity) and the Sheriff Court, sitting in the Netherlands in accordance with the provisions of this Agreement;
- (m) “Registrar” means the person designated as such by the Director of Scottish Courts Administration to act on his behalf;
- (n) “international observers” means persons nominated, by the Secretary-General of the United Nations, to attend the public hearings, pursuant to arrangements between the Secretary-General and the Government of the United Kingdom;
- (o) “the premises of the Scottish Court” means the complex of buildings and land, including installations and facilities, made available by the host country and maintained, occupied and used for the purpose of the trial, including detention of the accused;
- (p) “the Parties” means the Government of the Kingdom of the Netherlands and the Government of the United Kingdom of Great Britain and Northern Ireland.

## ARTICLE 2

### **Purpose and Scope of the Agreement**

This Agreement regulates the sitting of the Scottish Court in the Netherlands and the matters arising out of the trial and the proper functioning of the Scottish Court.

## ARTICLE 3

### **The Scottish Court**

- (1) The Government undertakes to host the Scottish Court for the sole purpose, and for the duration, of the trial in the Netherlands. For this purpose the Government shall make available adequate premises for the trial. Within these premises the Scottish Court shall provide reasonable accommodation for persons with a legitimate interest in attending the public trial, including members of the families of the victims or their representatives.

- (2) The jurisdiction of the Scottish Court is limited to the trial.
- (3) The Government permits the detention of the accused for the purposes of the trial, and, in the event of conviction, pending their transfer to the United Kingdom, within the premises of the Scottish Court in accordance with Scots law and practice. The enforcement of all other sanctions involving the deprivation of liberty of persons within those premises is not permitted, except in so far as the Scottish Court orders:
- (a) the temporary detention of witnesses transferred in custody to the premises of the Scottish Court;
  - (b) the temporary detention of witnesses in the course of their evidence;
  - (c) the temporary detention of persons who may have committed offences within the premises of the Scottish Court, including contempt of court; and
  - (d) the imprisonment of persons found guilty summarily of contempt of court.
- (4) The trial will be deemed to be ended when any of the following events, but not necessarily the same event, has occurred in relation to both accused:
- (a) the accused is acquitted;
  - (b) the trial is discontinued by process of law preventing any further trial under Scots Law; or
  - (c) any judgments of the Scottish Court following conviction have become final and conclusive.

#### ARTICLE 4

##### **Juridical Personality of the Scottish Court**

- (1) The Scottish Court shall possess in the host country full juridical personality. This shall, in particular, include the capacity:
- (a) to contract and to enter into exchanges of letters of understanding with the host country as envisaged in Article 27;
  - (b) to acquire and dispose of movable and immovable property; and
  - (c) to institute legal proceedings.
- (2) For the purpose of this article the Scottish Court shall be represented by the Registrar.

#### ARTICLE 5

##### **Inviolability of the Premises of the Scottish Court**

- (1) The premises of the Scottish Court shall be inviolable. The competent authorities shall take whatever action may be necessary to ensure that the Scottish Court shall not be dispossessed of all or any part of the premises of the Scottish Court without the express consent of the Scottish Court. The property, funds and assets of the Scottish Court, wherever located and by whomsoever held, shall be immune from search, seizure, requisition, confiscation, expropriation or any other form of interference, whether by executive, administrative, judicial or legislative action.
- (2) The competent authorities shall not enter the premises of the Scottish Court to perform any official duty, except with the express consent of, or at the request of, the Registrar or an official designated by him. Judicial actions and the service or execution of legal process, including the seizure of private property, shall not be enforced on the premises of the Scottish Court except with the consent of, and in accordance with conditions approved by, the Registrar.

(3) In case of fire or other emergency requiring prompt protective action, or in the event that the competent authorities have reasonable cause to believe that such an emergency has occurred or is about to occur on the premises of the Scottish Court, the consent of the Registrar, or an official designated by him, to any necessary entry into the premises of the Scottish Court shall be presumed if neither of them can be reached in time.

(4) Subject to paragraphs (1), (2) and (3), the competent authorities shall take the necessary action to protect the premises of the Scottish Court against fire or other emergency.

(5) The Scottish Court may expel or exclude from the premises of the Scottish Court persons whose presence is not considered conducive to the maintenance of order or the conduct of the trial.

## ARTICLE 6

### **Law and Authority on the Premises of the Scottish Court**

(1) The premises of the Scottish Court shall be under the control and authority of the Scottish Court, as provided in this Agreement.

(2) Except as otherwise provided in this Agreement, the laws and regulations of the host country shall apply within the premises of the Scottish Court.

(3) The Scottish Court shall have the power to make regulations operative on the premises of the Scottish Court for the purpose of establishing therein the conditions in all respects necessary for the full execution of its functions. The Scottish Court shall promptly inform the competent authorities of regulations thus made in accordance with this paragraph. No law or regulation of the host country, which is inconsistent with a regulation of the Scottish Court, shall, to the extent of such inconsistency, be applicable within the premises of the Scottish Court.

(4) Any dispute between the Scottish Court and the host country as to whether a regulation of the Scottish Court is authorised by this article, or as to whether a law or regulation of the host country is inconsistent with any regulation of the Scottish Court authorised by this article, shall be promptly settled by the procedure set out in Article 28. Pending such settlement, the regulation of the Scottish Court shall apply and the law or regulation of the host country shall be inapplicable within the premises of the Scottish Court to the extent that the Scottish Court claims it to be inconsistent with its regulation.

## ARTICLE 7

### **Protection of the Premises of the Scottish Court**

(1) The competent authorities shall have full responsibility for the external security of the premises of the Scottish Court. They shall exercise due diligence to ensure the security and protection of the Scottish Court and to ensure that the tranquillity of the Scottish Court is not disturbed by the intrusion of persons or groups of persons from outside the premises of the Scottish Court or by disturbance in their immediate vicinity, and shall provide to the premises of the Scottish Court the appropriate protection as may be required.

(2) If so requested by the Registrar, the competent authorities shall provide adequate police force necessary for the preservation of law and order within the premises of the Scottish Court or in the immediate vicinity thereof, and for the removal of persons therefrom.

## ARTICLE 8

### **Immunity of the Scottish Court**

The Scottish Court, its funds, assets and other property, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process, except insofar as in any particular case the Scottish Court has expressly waived its immunity. It is understood, however, that no waiver of immunity shall extend to any measure of execution.

## ARTICLE 9

### **Inviolability of Archives and all Documents of the Scottish Court**

The archives of the Scottish Court, and in general all documents and materials made available, belonging to or used by it, wherever located in the host country and by whomsoever held, shall be inviolable.

## ARTICLE 10

### **Exemption from Taxes and Duties**

- (1) Within the scope of its official functions, the Scottish Court, its assets, income and other property, shall be exempt from all direct taxes, which include inter alia income tax, capital tax, corporation tax, as well as direct taxes levied by local and provincial authorities.
- (2) The Scottish Court shall:
  - (a) on application be granted exemption from motor vehicle tax in respect of vehicles used for its official activities;
  - (b) be exempt from all import duties and taxes in respect of goods, including publications and motor vehicles, whose import or export by the Scottish Court is necessary for the exercise of its official activities;
  - (c) be exempt from value-added tax paid on any goods, including motor vehicles, or services of substantial value, which are necessary for its official activities. Such claims for exemption shall be made only in respect of goods or services supplied on a recurring basis or involving considerable expenditure;
  - (d) be exempt from excise duty included in the price of alcoholic beverages, tobacco products and hydrocarbons, such as fuel oils and motor fuels, purchased by the Scottish Court and necessary for its official activities;
  - (e) be exempt from the Tax on Private Passenger Vehicles and Motor Cycles (Belasting van personenauto's en motorrijwielen, BPM) with respect to motor vehicles for its official activities.
- (3) The exemptions provided for in paragraph (2)(c) and (d) may be granted by way of a refund. The exemptions referred to in paragraph (2) shall be applied in accordance with the formal requirements of the host country. These requirements, however, shall not affect the general principles laid down in this article.
- (4) The provisions of this article shall not apply to taxes and duties which are considered to be charges for public utility services provided at a fixed rate according to the amount of services rendered and which can be specifically identified, described and itemised.
- (5) Goods acquired or imported under paragraph (2) shall not be sold, given away, or otherwise disposed of, except in accordance with conditions agreed upon with the Government.

## ARTICLE 11

### Communications Facilities

- (1) The Scottish Court shall enjoy, with respect to its official communications, treatment not less favourable than that accorded by the Government to any diplomatic mission in matters of establishment and operation, priorities, tariffs, charges on mail and cablegrams and teleprinter, facsimile, telephone and other communications, as well as rates for information to the press and radio.
- (2) No official correspondence or other communication of the Scottish Court shall be subject to censorship by the Government. Such immunity from censorship shall extend to printed matter, photographic and electronic data communications, and other forms of communications as may be used by the Scottish Court. The Scottish Court shall be entitled to use codes and to dispatch and receive correspondence and other material or communications either by courier or in sealed bags, all of which shall be inviolable and shall have the same privileges and immunities as diplomatic couriers and bags.
- (3) The Scottish Court shall have the right to operate radio and other telecommunications equipment, on frequencies allocated to it by the Government, between the premises of the Scottish Court and means of transport, within and outside the host country.
- (4) For the fulfilment of its purposes, the Scottish Court shall have the right to publish freely and without restrictions within the host country in conformity with this Agreement.
- (5) The provisions of this article shall apply also to the Lord Advocate.

## ARTICLE 12

### Public Services for the Premises of the Scottish Court

- (1) The competent authorities shall secure, on fair conditions and upon the request of the Registrar or made on his behalf, the public services needed for the premises of the Scottish Court such as, but not limited to, postal, telephone and telegraphic services, electricity, water, gas, sewage, collection of waste, fire protection, local transportation and cleaning of public streets.
- (2) In cases where electricity, water, gas or other services referred to in paragraph (1) are made available for the premises of the Scottish Court by the competent authorities, or where the prices thereof are under their control, the rates for such services shall not exceed the lowest comparable rates accorded to essential agencies and organs of the Government.
- (3) In case of *force majeure* resulting in a complete or partial disruption of the aforementioned services, the Scottish Court shall, for the performance of its functions, be accorded the priority given to essential agencies and organs of the Government.
- (4) Upon request of the competent authorities, the Registrar, or an official designated by him, shall make suitable arrangements to enable duly authorised representatives of the appropriate public services to inspect, repair, maintain, reconstruct and relocate utilities, conduits, mains and sewers on the premises of the Scottish Court under conditions which shall not unreasonably disturb the carrying out of the functions of the Scottish Court. Underground constructions may be undertaken by the competent authorities on the premises of the Scottish Court only after consultation with the Registrar, or an official designated by him, and under conditions which shall not disturb the carrying out of the functions of the Scottish Court.

## ARTICLE 13

### **Emblem, Markings and Flag**

The Scottish Court shall be entitled to display its emblem and markings, as well as the appropriate flag, on its premises.

## ARTICLE 14

### **Privileges and Immunities of Judges and Officials**

(1) The judges and officials of the Scottish Court, the Registrar, the Lord Advocate, the Sheriff and the Procurator Fiscal, shall enjoy the privileges, immunities and facilities accorded to diplomatic agents in accordance with the Vienna Convention.

(2) The privileges and immunities are accorded to the judges and officials of the Scottish Court, the Registrar, the Lord Advocate, the Sheriff and the Procurator Fiscal in the interest of the Scottish Court and not for the personal benefit of the persons themselves. The right and duty to waive the immunity in any case where it can be waived without prejudice to the purposes for which it is accorded shall vest in the British Ambassador at The Hague.

## ARTICLE 15

### **Solicitors and Advocates**

(1) The solicitors and advocates of the accused shall not be subjected by the host country to any measure which may affect the free and independent exercise of their functions under Scots law.

(2) In particular, they shall be accorded:

- (a) exemption from immigration restrictions;
- (b) inviolability in respect of all documents relating to the exercise of their functions as solicitor or advocate of the accused;
- (c) immunity from criminal and civil jurisdiction in respect of words spoken or written and acts performed by them in their capacity as solicitor or advocate of the accused. Such immunity shall continue to be accorded to them after termination of their functions as a solicitor or advocate of the accused.

(3) The provisions of paragraphs (2)(a) and (b) shall apply also to persons directly assisting solicitors or advocates of the accused.

(4) This article shall be without prejudice to such disciplinary rules as may be applicable to solicitors and advocates.

## ARTICLE 16

### **The Accused**

(1) At the time of the arrival of the accused in the host country, the Government of the United Kingdom shall, in accordance with the relevant treaties, request the Government to transfer the accused to the premises of the Scottish Court for the purpose of the trial and to detain them pending their transfer, having regard to the requirements of United Nations Security Council Resolutions 1192 (1998).

(2) After their transfer to the premises of the Scottish Court the accused shall not be transferred to the territory of the United Kingdom. However, the Government of the United Kingdom may, after due notification to the Government, transfer the accused from the premises of the Scottish Court directly to the territory of the United Kingdom, but only:



- (a) for the purpose of trial by jury in Scotland, provided that the accused have given their written agreement, and have confirmed that agreement in person to the High Court of Justiciary in the presence of any counsel instructed by them, or
  - (b) for the purpose of serving a custodial sentence imposed by the Scottish Court following the conviction of the accused.
- (3) The host country shall not exercise its criminal jurisdiction over the accused in respect of acts, omissions or convictions prior to their arrival in the host country. The immunity shall cease when the accused, being obliged to leave the territory of the host country, have not done so or, having left it, have returned.
- (4) The accused shall be obliged to leave the host country on:
- (a) the trial being discontinued by process of law preventing any further trial under Scots Law; or
  - (b) their acquittal.

## ARTICLE 17

### Witnesses

- (1) The host country shall permit the entry into the Netherlands of witnesses for the sole purpose of attending the trial.
- (2) Where appropriate, the host country shall permit the transfer of a witness from the border of the host country to the premises of the Scottish Court in accordance with the relevant treaties and its national law.
- (3) For the purpose of paragraph (2), the Scottish Court may make requests for such transfer directly to the Ministry of Justice of the Netherlands.
- (4) Upon request by the Lord Advocate or the Scottish Court, the host country shall provide for protection of a witness, in accordance with its law and practice.
- (5) Subject to paragraph (2), a witness shall not be prosecuted, detained or subjected to any other restriction of his or her personal liberty, by the authorities of the host country in respect of acts or convictions prior to his or her entry into the territory of the host country.
- (6) The immunity provided for in paragraph (5) shall cease on departure of the witness from the territory of the Netherlands, or following the elapse of 15 days from the date when his or her presence at the trial is no longer required and during which he or she has had an opportunity to leave the Netherlands and has not done so or, having left it, has returned, unless such return is required for the purposes of the trial.
- (7) Without prejudice to paragraph (4), a witness shall not be subjected by the host country to any measure which may affect the free and independent exercise of his or her functions.

## ARTICLE 18

### International Observers

The host country shall permit the entry into the territory of the Netherlands of international observers for the sole purpose of attending the trial. They shall not be subjected by the host country to any measure which may affect the free and independent exercise of their functions.

## ARTICLE 19

### **Co-operation with the Competent Authorities**

- (1) Without prejudice to the privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the host country. They also have the duty not to interfere in the internal affairs of the host country.
- (2) The Scottish Court shall co-operate at all times with the competent authorities to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse of the privileges, immunities and facilities accorded under this Agreement.
- (3) The Scottish Court shall observe security directives issued by the host country, as well as directives of the competent authorities responsible for fire prevention regulations.

## ARTICLE 20

### **Notification**

- (1) The Registrar shall notify the Government of the names and status of persons referred to in this Agreement, other than members of the public, and of any change in their status. The provisions of this Agreement shall apply only to those persons who have been so notified.
- (2) The Registrar shall also notify the Government of the name and identity of any personnel entitled to carry firearms within the premises of the Scottish Court, as well as the name, type, calibre and serial number of the arm or arms at his or her disposition. The Registrar shall issue permits to be carried at all times by any personnel entitled to carry firearms within the premises of the Scottish Court.

## ARTICLE 21

### **Entry, Exit and Movement within the Host Country**

All persons notified by the Registrar to the Government in accordance with Article 20(1) shall have the right of unimpeded entry into, exit from and movement within the host country, as necessary for the purposes of the trial. They shall be granted facilities for speedy travel. Visas, entry permits or licences, where required, shall be granted free of charge and as promptly as possible. The same facilities shall be accorded to persons accompanying witnesses, provided that each such person has been notified by the Registrar to the Government.

## ARTICLE 22

### **Identification Cards**

At the request of the Registrar, the Government shall issue identification cards to persons notified by the Registrar in accordance with Article 20(1).

## ARTICLE 23

### **Security, Safety and Protection of Persons referred to in this Agreement**

Without prejudice to Article 17(4), the competent authorities shall, in accordance with the law and practice of the Netherlands, take effective and adequate action which may be required to ensure the appropriate security, safety and protection of persons referred to in this Agreement, indispensable for the proper functioning of the Scottish Court, free from interference of any kind.

## ARTICLE 24

### **Costs**

- (1) All costs:
  - (a) relating to the establishment and sitting of the Scottish Court in the Netherlands, and
  - (b) incurred by the host country relating to the sitting of the Scottish Court in the Netherlands,

shall be borne by the Government of the United Kingdom.

(2) The Government of the United Kingdom shall, in accordance with further arrangements made in an exchange of letters of understanding with the Government of the Netherlands, deposit in a designated account, prior to each quarter, the amount which the Ministry of Justice of the Netherlands estimates will be incurred by it in that quarter.

(3) An accounting shall be supplied by the Government of all sums expended by it every quarter.

(4) On the termination of this Agreement, the Government of the United Kingdom and the Government of the Netherlands shall agree a final accounting with regard to the costs incurred by the latter, and shall make any balancing payment which may be required.

## ARTICLE 25

### **Legal Co-operation**

Nothing in this Agreement shall prejudice the application of treaties on legal co-operation in criminal matters, except in so far as otherwise provided in this Agreement.

## ARTICLE 26

### **Internal Security of the Host Country**

Nothing in this Agreement shall affect the right of the host country to take such measures as it may consider necessary for the purpose of protecting its national security.

## ARTICLE 27

### **Additional Arrangements**

With a view to the practical application of this Agreement, letters of understanding may be exchanged between the Registrar and the designated representative of the Ministry of Justice of the Netherlands.

## ARTICLE 28

### Settlement of Disputes

Any dispute relating to the interpretation or application of this Agreement shall be resolved by consultation and negotiation between the Parties.

## ARTICLE 29

### Final Provisions

- (1) This Agreement shall enter into force on a date to be agreed by the Parties, provided that they may agree in the meantime to apply provisionally any of its provisions.
- (2) Subject to paragraph (3), this Agreement shall remain in force for one year from its entry into force, with the possibility of extending it by mutual agreement.
- (3) This Agreement shall terminate:
  - (a) on the day after the date of the end of the trial (as defined in Article 3(4)), and any person then detained or imprisoned in accordance with Article 3(3)(c) or (d) shall be released on that day, or
  - (b) seven days after the date on which the Parties, after consultations with the Secretary-General of the United Nations, agree in an exchange of notes that there is no reasonable prospect of the trial taking place before the Scottish Court in the Netherlands as envisaged in this Agreement.
- (4) Termination following completion of the trial shall not affect:
  - (a) those provisions of this Agreement which are required for the orderly termination of the operation of the Scottish Court, including the transfer of the accused in accordance with Article 16(2)(b); and
  - (b) the continuation of the immunity from legal process in respect of words spoken or written or acts done in the capacity as solicitor or advocate of the accused.
- (5) This Agreement may be amended by mutual consent at any time at the request of either Party.
- (6) With respect to the Kingdom of the Netherlands, this Agreement shall apply to the part of the Kingdom in Europe only.

IN WITNESS WHEREOF, the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at The Hague on the 18th day of September 1998, in the English language.

For the Government of the United  
Kingdom of Great Britain and  
Northern Ireland:

ROSEMARY SPENCER

For the Government of the Kingdom of  
the Netherlands:

J. J. VAN AARTSEN

**LOCKERBIE: TEXT OF UK/US LETTER TO THE UN SECRETARY GENERAL**

1. The Governments of the United Kingdom of Great Britain and Northern Ireland and the United States of America are gravely concerned that almost ten years after the terrorist bombing of Pan Am flight 103 over Lockerbie, those accused have not yet stood trial. Several years have passed since the Security Council, in resolutions 731 (1992), 748 (1992) and 883 (1993) required the Libyan Arab Jamahiriya to ensure the appearance of the two accused for trial in the appropriate United Kingdom or United States court.
2. Our two Governments consider that it is essential for the promotion of international peace and security that justice is done and is seen to be done before the eyes of the international community in the appropriate Scottish or United States court. Despite the comprehensive assurances given as to the fairness of a trial in these jurisdictions, the report of those independent legal experts appointed by you to look at the Scottish judicial system (S/1997/1991) and the offer made by the Government of the United Kingdom to accommodate international observers at a Scottish trial, Libya has failed to ensure the appearance of the two accused. Our two Governments reiterate their profound concern at this disregard of the Security Council's demands.
3. Nevertheless, in the interest of resolving this situation in a way which will allow justice to be done, our Governments are prepared, as an exceptional measure, to arrange for the two accused to be tried before a Scottish court sitting in the Netherlands. After close consultation with the Government of the Kingdom of the Netherlands, we are pleased to confirm that the Government of the Kingdom of the Netherlands has agreed to facilitate arrangements for such a court. It would be a Scottish court and would follow normal Scots law and procedure in every respect except for the replacement of the jury by a panel of three Scottish High Court judges. The Scottish rules of evidence and procedure, and all the guarantees of fair trial provided by the law of Scotland, would apply. Arrangements would be made for international observers to attend the trial. Attached is the text of the intended Agreement between the Government of the Kingdom of the Netherlands and the Government of the United Kingdom.
4. The two accused will have safe passage from Libya to the Netherlands for the purpose of the trial. While they are in the Netherlands for the purpose of the trial, we shall not seek their transfer to any jurisdiction other than the Scottish court sitting in the Netherlands. If found guilty, the two accused will serve their sentence in the United Kingdom. If acquitted, or in the event of the prosecution being discontinued by any process of law preventing any further trial under Scots law, the two accused will have safe passage back to Libya. Should other offences committed prior to arrival in the Netherlands come to light during the course of the trial, neither of the two accused nor any other person attending the court, including witnesses, will be liable for arrest for such offences while in the Netherlands for the purpose of the trial.
5. The two accused will enjoy the protection afforded by Scottish law. They will be able to choose Scottish solicitors and advocates to represent them at all stages of the proceedings. The proceedings will be interpreted into Arabic in the same way as a trial held in Scotland. The accused will be given proper medical attention. If they wish, they can be visited in custody by the international observers. The trial would of course be held in public, adequate provision being made for the media.
6. Our two Governments are prepared to support a further Security Council resolution for the purposes of the initiative (which would also suspend sanctions upon the appearance of the two accused in the Netherlands for the purpose of trial before the Scottish court) and which would require all states to cooperate to that end. Once that resolution is adopted, the Government of the United Kingdom will legislate to enable a Scottish court to hold a trial in the Netherlands. The necessary United Kingdom legislation has already been prepared and it is attached.

7. This initiative represents a sincere attempt by the Governments of the United Kingdom and the United States to resolve this issue, and is an approach which has recently been endorsed by others, including the Organisation of African Unity, the League of Arab States, the Non-Aligned Movement and the Islamic Conference (S/1994/373, S/1995/834, S/1997/35, S/1997/273, S/1997/406, S/1997/497, S/1997/529). We are only willing to proceed in this exceptional way on the basis of the terms set out in this letter (and its attachments), and provided that Libya cooperates fully by:

- (a) ensuring the timely appearance of the two accused in the Netherlands for trial before the Scottish court;
- (b) ensuring the production of evidence, including the presence of witnesses before the court;
- (c) complying fully with all the requirements of the United Nations Security Council resolutions.

8. We trust that Libya will respond promptly, positively and unequivocally by ensuring the timely appearance of the two accused in the Netherlands for trial before the Scottish court. If it does not do so, our two Governments reserve the right to propose further sanctions at the time of the next Security Council review. They also reserve the right to withdraw this initiative.

9. We have the honour to request that you convey the text of this letter and its enclosures to the Government of the Libyan Arab Jamahiriya. We would be grateful if you would agree to give the Libyan Arab Jamahiriya any assistance it might require with the physical arrangements for the transfer of the two accused directly to the Netherlands.

10. We request that this letter be circulated as a document of the Security Council.

UNITED NATIONS  
Security Council

DOC. AUG 31 1998

Distr.  
GENERAL

**RESOLUTION 1192 (1998)**

S/RES/1192 (1998)  
27 August 1998

**Adopted by the Security Council at its 3920th meeting on 27 August 1998**

The Security Council,

Recalling its resolutions 731 (1992) of 21 January 1992, 748 (1992) of 31 March 1992 and 883 (1993) of 11 November 1993,

Noting the report of the independent experts appointed by the Secretary-General (S/1997/991),

Having regard to the contents of the letter dated 24 August 1998 from the Acting Permanent Representatives of the United Kingdom of Great Britain and Northern Ireland and of the United States of America to the Secretary-General (S/1998/795),

Noting also, in light of the above resolutions, the communications of the Organization of African Unity, the League of Arab States, the Non-Aligned Movement and the Islamic Conference (S/1994/373, S/1995/834, S/1997/35, S/1997/273, S/1997/406, S/1997/497, S/1997/529) as referred to in the letter of 24 August 1998,

Acting under Chapter VII of the Charter of the United Nations,

1. Demands once again that the Libyan Government immediately comply with the above-mentioned resolutions;
2. Welcomes the initiative for the trial of the two persons charged with the bombing of Pan Am flight 103 ("the two accused") before a Scottish court sitting in the Netherlands, as contained in the letter dated 24 August 1998 from the Acting Permanent Representatives of the United Kingdom of Great Britain and Northern Ireland and of the United States of America ("the initiative") and its attachments, and the willingness of the Government of the Netherlands to cooperate in the implementation of the initiative;
3. Calls upon the Government of the Netherlands and the Government of the United Kingdom to take such steps as are necessary to implement the initiative, including the conclusion of arrangements with a view to enabling the court described in paragraph 2 to exercise jurisdiction in the terms of the intended Agreement between the two Governments, attached to the said letter of 24 August 1998;
4. Decides that all States shall cooperate to this end, and in particular that the Libyan Government shall ensure the appearance in the Netherlands of the two accused for the purpose of trial by the court described in paragraph 2, and that the Libyan Government shall ensure that any evidence or witnesses in Libya are, upon the request of the court, promptly made available at the court in the Netherlands for the purpose of the trial;

5. Requests the Secretary-General, after consultation with the Government of the Netherlands, to assist the Libyan Government with the physical arrangements for the safe transfer of the two accused from Libya direct to the Netherlands;
6. Invites the Secretary-General to nominate international observers to attend the trial;
7. Decides further that, on the arrival of the two accused in the Netherlands, the Government of the Netherlands shall detain the two accused pending their transfer for the purpose of trial before the court described in paragraph 2;
8. Reaffirms that the measures set forth in its resolutions 748 (1992) and 883 (1993) remain in effect and binding on all Member States, and in this context reaffirms the provisions of paragraph 16 of resolution 883 (1993), and decides that the aforementioned measures shall be suspended immediately if the Secretary-General reports to the Council that the two accused have arrived in the Netherlands for the purpose of trial before the court described in paragraph 2 or have appeared for trial before an appropriate court in the United Kingdom or the United States, and that the Libyan Government has satisfied the French judicial authorities with regard to the bombing of UTA 772;
9. Expresses its intention to consider additional measures if the two accused have not arrived or appeared for trial promptly in accordance with paragraph 8;
10. Decides to remain seized of the matter.



**EXCHANGE OF NOTES  
BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT  
BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE  
KINGDOM OF THE NETHERLANDS CONCERNING A SCOTTISH TRIAL IN  
THE NETHERLANDS**

No. 1

*Her Majesty's Ambassador at The Hague to the Minister of Foreign Affairs of the Kingdom  
of the Netherlands*

*British Embassy  
The Hague  
18 September 1998*

Your Excellency

I have the honour to refer to the Agreement between the Government of the Kingdom of the Netherlands and the Government of the United Kingdom of Great Britain and Northern Ireland concerning a Scottish trial in the Netherlands, which was signed today.

With respect to that Agreement the Government of the United Kingdom offers the following explanations in relation to the punishment of Contempt of Court.

- (a) The Scottish Court in the Netherlands will only be able to deal with and punish Contempt of Court summarily, that is to say, where, incidentally to the trial of the accused but in the course of the proceedings against them, the Scottish Court finds that a person has by his or her conduct or words acted in Contempt of Court.
- (b) Under Scots Law the Lord Advocate and the accused are entitled to institute proceedings for Contempt of Court against persons before the High Court of Justiciary. Such proceedings are separate from the relevant trial proceedings, but the Scottish Court sitting in the Netherlands will not have jurisdiction to deal with any such proceedings for Contempt of Court.
- (c) The Lord Advocate will be able to institute criminal proceedings in Scotland against any person in respect of any offence alleged to have been committed in the course of, or in relation to, the trial and, where extradition is possible under the relevant treaties, the Government of the United Kingdom may seek extradition from the Netherlands to Scotland.
- (d) Where the Scottish Court in the Netherlands is considering any question of dealing summarily with a person for Contempt of Court, but it is also possible for him or her to be prosecuted in Scotland in respect of the same alleged conduct, words or general behaviour for an offence committed in the course of, or in relation to the trial (such as perjury, subornation of perjury, assault, threats or attempts to pervert the course of justice), the Lord Advocate will consider instituting criminal proceedings in Scotland. Where he considers that the matter would more appropriately be dealt with by criminal proceedings in Scotland, he will inform the Scottish Court of his willingness to institute or give further consideration to instituting criminal proceedings in Scotland and will invite the Scottish Court not to deal with the matter as Contempt of Court. Similarly, if the Lord Advocate has been advised that the matter may competently be dealt with by way of criminal proceedings brought by the authorities of the Netherlands, and he considers that the matter would more appropriately be dealt with by them, he will advise the Scottish Court in the Netherlands accordingly and invite it not to deal with the matter as Contempt of Court.

In Article 16(1) of the Agreement the relevant extradition treaties are the European Convention on Extradition, done in Paris on 13 December 1957,<sup>1</sup> and the European Convention on the Suppression of Terrorism, done in Strasbourg on 27 January 1977.<sup>2</sup>

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<sup>1</sup>Treaty Series No. 97 (1991) Cm. 1762.

<sup>2</sup>Treaty Series No. 93 (1978) Cmnd. 7390.

In Article 25 of the Agreement the relevant treaties for the purpose of transfer of witnesses are the European Convention on Mutual Assistance in Criminal Matters, done in Strasbourg on 20 April 1959,<sup>1</sup> and the European Convention on the Suppression of Terrorism, done in Strasbourg on 27 January 1977. The Government of the United Kingdom understands that, despite the reservation which the United Kingdom made with regard to Article 11(2) of the former Convention, the Government of the Kingdom of the Netherlands accepts that for the purpose of the Agreement the Scottish Court may claim the application of Article 11.

I have the honour to seek confirmation that the foregoing also represents the understanding of the Government of the Netherlands.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

ROSEMARY SPENCER

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<sup>1</sup>Treaty Series No. 24 (1992) Cm. 1928.

No. 2

*The Minister of Foreign Affairs of the Kingdom of the Netherlands to Her Majesty's  
Ambassador at The Hague*

*Ministry of Foreign Affairs  
The Netherlands  
18 September 1998*

Excellency

I have the honour to refer to Your Note of today's date relating to the Agreement between our two countries concerning a Scottish trial in the Netherlands.

I have furthermore the honour to confirm that the contents of that Note also represent the understanding of the Government of the Kingdom of the Netherlands.

J. J. VAN AARTSEN



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