



Security Council

Distr.
GENERAL

S/1998/795
24 August 1998

ORIGINAL: ENGLISH

LETTER DATED 24 AUGUST 1998 FROM THE ACTING PERMANENT REPRESENTATIVES
OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE
UNITED STATES OF AMERICA TO THE UNITED NATIONS ADDRESSED TO THE
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 10 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 the independent legal experts appointed by you to look at the Scottish judicial system (S/1997/991) and the offer made by the Government of the United Kingdom to accommodate international observers at a Scottish trial, the Libyan Arab Jamahiriya 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 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 Netherlands and the Government of the United Kingdom (annex I).



4. The two accused will have safe passage from the Libyan Arab Jamahiriya 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 the Libyan Arab Jamahiriya. 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 is attached (annex II).

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 Organization of African Unity, the League of Arab States, the Movement of Non-Aligned States and the Organization of 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 the present letter (and its annexes), and provided that the Libyan Arab Jamahiriya 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 Security Council resolutions.

8. We trust that the Libyan Arab Jamahiriya 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

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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 the present letter and its annexes 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 the present letter be circulated as a document of the Security Council.

(Signed) S. J. GOMERSALL
Ambassador Extraordinary
and Plenipotentiary
Acting Permanent Representative
of the United Kingdom to the
United Nations

(Signed) A. Peter BURLEIGH
Ambassador Extraordinary
and Plenipotentiary
Acting Permanent Representative
of the United States of America
to the United Nations

Annex I

STATUTORY INSTRUMENTS

1998 No.

UNITED NATIONS

The High Court of Justiciary (Proceedings in the
Netherlands) Order 1998

<i>Made</i> - - - -	1998
<i>Laid before Parliament</i>	1998
<i>Coming into force</i> -	1998

ARRANGEMENT OF ORDER

1. Citation and commencement.
2. Interpretation.
3. Proceedings before High Court of Justiciary in the Netherlands.
4. Initiation of proceedings conducted by virtue of this Order.
5. Constitution of court.
6. Questions arising prior to trial.
7. Additional judge.
8. Constables and officers of law.
9. Execution of warrant.
10. Powers of sheriff.
11. Productions.
12. Witnesses.
13. Offences committed in course of proceedings.
14. Appeals.
15. Place of confinement of accused.
16. Modification of enactments relating to prisons.
17. Powers of Lord Advocate and Secretary of State.

At Balmoral, the day of 1998

Present,

The Queen's Most Excellent Majesty in Council

Whereas under Article 41 of the Charter of the United Nations the Security Council of the United Nations has, by a resolution adopted on [] 1998, called upon Her Majesty's Government in the United Kingdom to take certain actions to facilitate the conducting of criminal proceedings under Scots law in the Netherlands.

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which a court shall have been constituted under article 5 of this Order.

(4) Where the Lord Advocate withdraws a notice under paragraph (1) above by a further notice to the Lord Justice Clerk, the Lord Justice Clerk shall withdraw any direction he has made.

(5) Anything which the Lord Justice General requires, or has power, to do in relation to criminal proceedings shall, in relation to proceedings conducted by virtue of this Order, be done by the Lord Justice Clerk.

Constitution of court.

5.—(1) After he has made a direction under article 4 of this Order, the Lord Justice Clerk shall appoint three Lords Commissioners of Justiciary to constitute a court for the purposes of any trial to be held in the course of proceedings to be conducted by virtue of this Order, and shall nominate one of them to preside.

(2) The determination of any question of law arising in any such trial shall be according to the votes of the majority of the members of the court, including the presiding judge.

(3) The court shall conduct any such trial without a jury.

(4) For the purposes of any such trial, the court shall have all the powers, authorities and jurisdiction which it would have had if it had been sitting with a jury in Scotland, including power to determine any question and to make any finding which would, apart from this article, be required to be determined or made by a jury, and references in any enactment or other rule of law to a jury or the verdict or finding of a jury shall be construed accordingly.

(5) At the conclusion of any such trial, the court shall retire to consider its verdict, which shall be determined by a majority and delivered in open court by the presiding judge.

(6) In the event of a verdict of guilty—

(a) the presiding judge shall pass sentence; and

(b) without prejudice to its power apart from this paragraph to give a judgment, the court shall, at the time of conviction or as soon as practicable thereafter, give a judgment in writing stating the reasons for the conviction.

(7) Any reference in any enactment or other rule of law to—

(a) the commencement of the trial; or

(b) the swearing of the jury,

shall be taken to be a reference to the reading of the indictment to the court by the clerk.

(8) In the application of section 87 of the 1995 Act (non-availability of judge) to such proceedings, any reference to the clerk of court includes a reference to the senior remaining judge.

Questions arising prior to trial.

6.—(1) Questions arising in proceedings conducted by virtue of this Order prior to the reading of the indictment to the court by the clerk shall be dealt with in the ordinary way.

(2) Any such question shall be heard and determined at the premises of the court, unless the accused are not entitled, or have intimated that they do not wish, to be present, when it may be heard and determined at a sitting of the High Court of Justiciary in Edinburgh.

Additional judge.

7.—(1) When he makes appointments under Article 5 of this Order, the Lord Justice Clerk shall also appoint a Lord Commissioner of Justiciary (in this Article referred to as an “additional judge”) to sit with the court.

(2) Subject to paragraph (3) below, the additional judge shall sit with the judges of the court, and shall participate in all their deliberations, but shall not vote in any decision which is required to be taken.

(3) Where one of the judges originally appointed to form part of the court—

(a) has died; or

(b) is absent, and it appears to the senior remaining judge that the absence will be prolonged,

the senior remaining judge shall so certify in writing, and the additional judge shall thereafter sit, and assume the functions of, the deceased or absent judge.

Constables and officers of law.

8. Anything which, under or by virtue of any enactment or other rule of law, requires to be done or may be done by a constable or officer of law in relation to criminal proceedings may, in relation to proceedings conducted by virtue of this Order, be done at the premises of the court.

Execution of warrant.

9. For the purposes of any enactment or other rule of law relating to criminal proceedings in Scotland, the detention of the accused shall not begin prior to the execution of the warrant to arrest them at the premises of the court.

Powers of sheriff.

10. Anything which, under or by virtue of any enactment or other rule of law, requires to be done or may be done by a sheriff in relation to criminal proceedings may, in relation to proceedings conducted by virtue of this Order, be done—

(a) by any sheriff who would have jurisdiction if the proceedings were taking place in Scotland; and

(b) at the premises of the court.

Productions.

11. Productions shall be made available for inspection—

(a) by the accused, at the premises of the court; or

(b) by their representatives, at such address or addresses in the United Kingdom as may be intimated to the accused by the Clerk of Justiciary.

Witnesses.

12.—(1) Witnesses in the United Kingdom who are cited to appear for the purpose of proceedings being conducted by virtue of this Order may be cited to appear at the premises of the court.

(2) Any warrant for the arrest of a witness shall be authority for him to be transferred, under arrangements made in that regard by the Secretary of State, to the premises of the court.

(3) It shall be competent for witnesses who are outwith the United Kingdom to be cited to appear before the High Court of Justiciary sitting in the Netherlands in the

same way as if the court had been sitting in Scotland and, accordingly, at the end of subsection (1) of section 2 of the Criminal Justice (International Co-operation) Act 1990(a) (service of United Kingdom process overseas) there shall be inserted the words “; and, in paragraph (b) above, “United Kingdom” includes the premises of the court within the meaning of the High Court of Justiciary (Proceedings in the Netherlands) Order 1998.”.

Offences committed in course of proceedings.

13.—(1) The High Court of Justiciary shall have jurisdiction in relation to any contempt of court or other offence committed in the course of, or in relation to, proceedings being conducted by virtue of this Order, whether at the premises of the court or elsewhere in the Netherlands.

(2) Where an offence in relation to which the High Court of Justiciary has jurisdiction by virtue of paragraph (1) above is not dealt with summarily by that court sitting in the Netherlands, it may be dealt with at a later date by way of petition and complaint or on indictment at a sitting of the High Court of Justiciary in Scotland.

Appeals.

14.—(1) For the purpose of hearing any appeal (including any application to the *nobile officium*) in relation to any proceedings to which this Order applies, the High Court of Justiciary may sit either at the premises of the court or in Scotland; but where either of the accused is entitled to attend any such appeal and intimates that he wishes to do so, it shall be heard at the premises of the court.

(2) Where the appeal is from a decision of the court constituted under Article 5 of this Order, the quorum of the High Court of Justiciary sitting for the purposes of paragraph (1) above shall be five Lords Commissioners of Justiciary.

(3) The Lords Commissioners of Justiciary who are to constitute the court for the purposes of paragraph (1) above shall be appointed by the Lord Justice Clerk.

Place of confinement of accused.

15.—(1) Where a warrant for the arrest or imprisonment of the accused has been executed, they shall be confined in the premises of the court until the conclusion of proceedings conducted by virtue of this Order.

(2) Any enactment or other rule of law applying to prisons or prisoners in Scotland shall, subject to Article 16 of this Order, apply in relation to the premises of the court and the persons confined there as if, in so far as they are used for that purpose, the premises were a prison in Scotland.

(3) Anything which, under or by virtue of any enactment or other rule of law, requires to be done or may be done by an officer of a prison may be done by such an officer at the premises of the court.

Modification of enactments relating to prisons.

16.—(1) The following provisions of the Prisons (Scotland) Act 1989(b) shall not apply, namely—

- section 3(2) (appointment of chaplains),
- section 7 (powers of inspection of prisons),
- section 8 (visiting committees),
- section 9 (appointment of prison ministers),

(a) 1990 c.5.

(b) 1989 c. 45.

sections 36 to 38 (provisions relating to acquisition and disposal of prisons and land),
sections 40 and 40A (persons unlawfully at large),
section 41 (prohibited articles), and
section 41A (search by authorised employee).

(2) Section 3A of that Act (medical services) shall have effect as if any reference to a registered medical practitioner included a reference to any person in the Netherlands holding any diploma, certificate or other evidence of formal qualification entitled to recognition under Article 2 of Council Directive 93/16 to facilitate the free movement of doctors and the mutual recognition of their diplomas, certificates and other evidence of formal qualifications(a).

(3) Section 34 of that Act (notification of death of prisoner) shall have effect as if—

- (a) the reference to the procurator fiscal were a reference to the Lord Advocate; and
- (b) the reference to the visiting committee were omitted.

(4) The following provisions of the Prisons and Young Offenders Institutions (Scotland) Rules 1994(b) shall not apply, namely—

- (a) rules 36 to 38 (chaplains, visiting ministers and religious services);
- (b) rule 71 (provision of work for remand prisoners);
- (c) rules 104 to 110 (complaints);
- (d) Part 13 (transfer and discharge of prisoners);
- (e) Part 16 (visiting committees),

and, in applying the remainder of the Rules, the Governor may make such adaptations of the prisons regime as appear to him to be necessary, having regard to the circumstances of the premises of the court and of the persons confined there.

(5) Section 10 of the Prisons (Scotland) Act 1989 (place of confinement of prisoners) and Schedule 1 to the Crime (Sentences) Act 1997(c) (transfer of prisoners) shall not apply to the accused while they are confined in the premises of the court for the purpose of proceedings conducted by virtue of this Order.

Powers of Lord Advocate and Secretary of State.

17. Without prejudice to any powers which he may have under any other enactment or other rule of law, the Lord Advocate or the Secretary of State may do anything, whether within or outwith the United Kingdom, which appears to him to be necessary or expedient for the purposes of this Order.

(a) OJ L165, 7.7.1993, p.1.

(b) S.I. 1994/1931, as amended by S.I. 1996/32, 1197/2007 and 1998/1589.

(c) 1997 c. 43.

EXPLANATORY NOTE

(This note is not part of the Order in Council)

This Order in Council provides for criminal proceedings against the two men accused of the destruction of Pan Am 103 over Lockerbie on 21st December 1988, including a trial before the High Court of Justiciary, to be conducted in the Netherlands.

Annex II

**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**

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

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 Mohmed 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 1998 from the 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 (1998) (Annex 2);

Whereas the Government of the Kingdom of the Netherlands and the Government of the United Kingdom of Great Britain and Northern Ireland wish to conclude an Agreement regulating the sitting of the Scottish Court in the Netherlands and all matters necessary for the proper functioning in the Netherlands of that Scottish Court 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;
- (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;
- (g) "the accused" means Abdelbaset Ali Mohamed 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 3 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 Scottish 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 Duties¹

(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

¹ Subject to review by the NL Ministry of Finance

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 paragraph (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 Resolution (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 Kingdom 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 their 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)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.

² Subject to review by HM Treasury and the appropriate authorities of NL.

(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 Cooperation

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, have signed this Agreement.

DONE atonin duplicate, in the English language.

For the Government of the Kingdom of the Netherlands:

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