



Treaty Series No.12 (2005)

Exchange of Notes

between the Government of the United Kingdom of Great Britain
and Northern Ireland and the International Criminal Court concerning the
Relocation of Witnesses

The Hague, 5 November 2004

[The Exchange of Letters entered into force on 5 November 2004]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
April 2005*

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**EXCHANGE OF LETTERS BETWEEN THE GOVERNMENT OF THE
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
AND THE INTERNATIONAL CRIMINAL COURT CONCERNING THE
RELOCATION OF WITNESSES**

No. 1

The Registrar of the International Criminal Court to the British Ambassador at The Hague

The Hague
5 November 2004

Dear Sir,

I have the honour to refer to the discussions held between the International Criminal Court, (hereinafter: “the Court”), and the Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter: “the United Kingdom”), concerning arrangements between the Court and the United Kingdom for the relocation to the territory of the United Kingdom of Witnesses who have appeared, or who will appear, in proceedings before the Court, and, where necessary, their close family relatives.

I have the honour to confirm on behalf of the Court the following agreements:

The United Kingdom agrees, subject to the terms of this Letter and its reply (hereinafter: “this Exchange of Letters”), to accept for Relocation up to four Witnesses, as defined in Part I below, and, where necessary, their close family relatives, each year for the duration of this Exchange of Letters and to provide such persons with Relocation Services, as defined herein. Subject to paragraph (i), the United Kingdom will indicate, in writing, any maximum number of Relocated Witnesses it is prepared to accept per year.

I. For the purposes of this Exchange of Letters:

- (a) “Registrar” means the Registrar of the Court.
- (b) “Relocation” means the relocation to the United Kingdom of Witnesses and, where necessary, their close family relatives.
- (c) “Relocation Services” means the facilities and benefits, described in Part III below, to be provided to Witnesses and, where necessary, their close family relatives, who are subject to the provisions of this Exchange of Letters.

- (d) “Witnesses” means persons who have appeared or who will appear in proceedings before the Court, including but not limited to an appearance either in the course of the prosecution or of the defence of an accused.
- (e) “Close family relatives” means:
 - (1) the spouse of the Witness (“spouse” includes any person who is in a relationship akin to marriage with the Witness);
 - (2) unmarried dependants of the Witness under eighteen years of age; and
 - (3) dependants who reside with the Witness as part of the family unit.

II. Procedure for providing Relocation Services to Witnesses and, where necessary, their close family relatives:

- (f) Where the Registrar considers that a Witness requires Relocation, he may request that the United Kingdom accept such a Witness and, where necessary, their close family relatives (hereinafter “the Subject(s)”). Such requests (hereinafter: “Requests”) must be made in writing and shall normally be made at least two calendar months prior to the expected date of Relocation of the Subject(s). However, where the Registrar considers that circumstances require the Subject(s) to be relocated immediately, the United Kingdom shall, following consultations with the Registrar, consider the Request immediately.
- (g) Requests shall refer to the Subject(s) by the full personal name, which the Registrar has determined to be the official name of the Subject(s). Requests shall be accompanied by full details of the health, education and, where applicable, the criminal record, of the Subject(s), any other names or aliases used by the Subject(s), and any other information which the Registrar considers relevant. This information shall be provided in the form set out in Annex 1 to this Exchange of Letters. The Registrar shall provide any such further information as the United Kingdom may reasonably request, provided the Registrar has access to such information. If there is an impediment to communicating it to the United Kingdom, the Registrar shall tell the United Kingdom that some information is being withheld, the reasons for withholding it, and the general nature of the information and the impediment.
- (h) When the Registrar considers that in addition to the Relocation Services provided herein, protective measures are necessary to ensure the protection of any or all of the Subject(s) (hereinafter: “Protection Requirement”), the relevant Request shall be accompanied by a report on the Protection Requirement. This report shall be provided in the form set out in Annex 2 to this Exchange of Letters.

- (i) Requests shall be considered on an individual basis by the United Kingdom and may be granted in those cases in which it is satisfied of the necessity and suitability of Relocation for the Subject(s). The suitability of the Subject(s) for Relocation shall be determined by the UK taking into account all the available information, including any additional risk assessment carried out by the relevant UK authorities either at the request of the UK or following a Protection Requirement report under paragraph (h) above.
- (j) Relocation is subject to confirmation by the UK that it is prepared to accept the Subject(s). Subject(s) will not be allowed to travel to the UK in advance of a decision on the Registrar's Request.

III. Relocation Services to be provided to Subjects accepted for Relocation by the United Kingdom pursuant to this Exchange of Letters:

- (k) Where the United Kingdom agrees to a Request, with or without a Protection Requirement, the Registrar shall arrange for the transfer of the Subject(s) (hereinafter: "the Relocated Person(s)") to the territory of the United Kingdom subject to the agreement of the designated officials appointed by the United Kingdom. Practical handover arrangements may be jointly determined by the designated officials of each Party.
- (l) The United Kingdom shall provide the Relocated Person(s) with housing and with the facilities, services, benefits and entitlements available to persons who are given leave under the United Kingdom's Discretionary Leave Policy. These include:
 - (i) access to education, including skills and language training where necessary;
 - (ii) access to health and social services; and
 - (iii) access to opportunities to obtain employment.

Where necessary, the United Kingdom shall also provide the Relocated Person(s) with documents to enable them to travel to and from the United Kingdom.

This is without prejudice to any services to which the Relocated Person(s) might be entitled in the UK by virtue of their nationality or other personal circumstances.

- (m) If, pursuant to a request of the kind described in paragraph (h), the United Kingdom agrees that additional protective measures are required, the relevant Chief Officer of police shall take whatever measures he or she deems necessary to protect the Relocated Person(s).

IV. Status of the Relocated Person(s):

- (n) (1) The United Kingdom shall provide the Relocated Person(s) with confirmation of leave to enter the United Kingdom for a period of three years. At the expiry of the initial period of leave, the Relocated Person(s) may apply for leave to remain in the United Kingdom for a further 3 years. On completing 6 years of Discretionary Leave, the Relocated Persons may apply for leave to remain in the United Kingdom indefinitely (hereinafter: “ILR”). If granted ILR, such persons shall continue to be considered to be Relocated Persons and shall continue to be entitled to the services, benefits, protection and entitlements specified in paragraphs (l) and (m).
- (2) Ten calendar months after entry to the United Kingdom, and annually thereafter, the Registrar shall assess whether Relocation Services continue to be necessary with respect to that Relocated Person(s), and shall report his conclusions to the United Kingdom authorities. This obligation shall cease if the Relocated Person(s) leave the United Kingdom or if they are granted indefinite leave to remain in the United Kingdom.
- (3) An extension of stay may be refused, and any existing leave may be curtailed, if information comes to light which suggests that the presence of the Relocated Person(s) in the United Kingdom is not conducive to the public good, for example if the relocated Person(s) have taken part in:
- (a) unacceptable activities, such as the support or encouragement of violence, or the conspiracy to cause violence; or
- (b) any criminal activity;
- whether in the United Kingdom or abroad.
- Paragraph (o) (4) shall apply to such Relocated Person(s).

V. Termination of stay in the United Kingdom: Effect on Relocation Services:

A. Termination where Relocation Services continue to be necessary:

- (o) (1) Where either party to this Exchange of Letters wishes to terminate entitlement to Relocation Services in respect of specific Relocated Person(s), it (hereinafter: “Terminating Party”) shall inform the other party of its intention and shall consult the other party in writing before communicating this intention to the Relocated Person(s) affected by such a termination (hereinafter: “Affected

Relocated Person(s)"). The Affected Relocated Person(s) shall thereafter be informed in writing by the Terminating Party.

- (2) In the event that any Relocation Services are to be terminated in accordance with paragraph (o) (1), the Registrar shall have a period of at least one calendar month in which to obtain the consent of another State to assume the responsibilities of the United Kingdom under the provisions of this Exchange of Letters for the Affected Relocated Person(s).
- (3) Where the Affected Relocated Person(s) is not subject to paragraph (n) (3), if the Registrar is unable to obtain such consent within the period specified in paragraph (o)(2), the United Kingdom may attempt to obtain such consent.
- (4) Where the Affected Relocated Person(s) is subject to paragraph (n) (3), if the Registrar is unable to obtain such consent within the period specified in (o) (2), the United Kingdom shall be free to remove the Affected Relocated Person to any country nominated by the Court so long as they are admissible there or, failing that, and subject to the law of the United Kingdom, to the Affected Relocated Person's country of nationality.
- (5) In the event of an Affected Relocated Person being removed to a country nominated by the Court under paragraph (o) (4), the United Kingdom shall inform the Registrar of the details of the transfer arrangements at least 48 hours in advance.
- (6) In such cases, the Relocation Services shall continue to be provided until such time as the Affected Relocated Person(s) has left the United Kingdom.

B. Where Relocation Services are no longer necessary:

- (p) (1) Where the Registrar concludes that Relocation Services are no longer required with respect to a Relocated Person, the Registrar shall so inform the United Kingdom and the Relocated Person in writing.
- (2) The United Kingdom shall be free to revoke or curtail the Relocated Person's leave and to terminate Relocation Services one calendar month after the date upon which such a notification is received.
- (3) The Relocated Person shall thereafter be subject to the applicable law in the United Kingdom in relation to residence and entitlement to benefits and services.

VI. Costs associated with Relocation:

- (q) (1) The Court shall bear all costs and expenses incurred in connection with the transport of the Relocated Person(s) and their personal effects to the United Kingdom. In the event that Relocated Person(s) are required to testify before the Court, the Court shall bear all costs and expenses associated with this request, and shall be responsible for making the necessary travel arrangements, including arranging for the admission of the relocated person to the Netherlands or any other trial location.
- (2) All the costs and expenses incurred in connection with the provision of Relocation Services pursuant to this Exchange of Letters shall be borne by the United Kingdom.

VII. Duration of this Exchange of Letters:

- (r) (1) The provisions of this Exchange of Letters shall enter into force on the date of the reply of the Government of the United Kingdom confirming its acceptance of the provisions of this Letter.
- (2) This Exchange of Letters shall remain in force until terminated by either Party providing the other with six months' notice of termination in writing. Such termination shall be without prejudice to the position of Relocated Person(s), including Affected Relocated Person(s), already relocated to the United Kingdom.
- (3) If the Parties agree, this Exchange of Letters may be amended by a further Exchange of Letters.

VIII. Dispute resolution:

- (s) Any dispute, controversy, or claim arising out of, or relating to, this Exchange of Letters shall be settled by negotiation or by a mutually agreed mode of settlement.

IX. Representatives of the Parties:

- (t) The Registrar, or his authorised designate, shall represent the Court in all matters relating to this Exchange of Letters.
- (u) Her Majesty's Foreign and Commonwealth Office shall be the channel of communication for the United Kingdom in all matters relating to this Exchange of Letters.

If the foregoing proposal is acceptable to the Government of the United Kingdom, I have the honour to propose that this Letter and your reply to that effect shall constitute an Agreement between the Court and the Government of the United Kingdom.

BRUNO CATHALA

Annex 1

DETAILS OF SUBJECT			
Witness <input type="checkbox"/>	Spouse <input type="checkbox"/>	Dependent <input type="checkbox"/>	Other <input type="checkbox"/>
If not Witness, name of Witness: []			
A. Physical Details			
(a) Name:	[]		
(b) Date of Birth:	[]	-----	
(c) Sex:	Male <input type="checkbox"/>	Female <input type="checkbox"/>	[PHOTOGRAPH]
(d) Ethnicity:	[]		
Citizenship(s):	[]	-----	
Passports:	[]		
(e) Language(s) Spoken	[]		
(f) Physical Characteristics			
(i) Height (cm):	[]		
(ii) Weight (kg):	[]		
(iii) Hair colour:	[]		
(iv) Eye colour:	[]		
(v) Distinguishing scars or birthmarks:			
	[]		
(vi) Physical or mental handicaps (details):			
	[]		

B. Personal Information

- (a) Marital Status: Married De facto
De jure
Never married
Separated
Divorced

- (b) Religious affiliation: []
(c) Names of: Spouse: []
Dependants: []
Non-custodial children: []
- Name(s) []
- Address(es) []
- Guardian []

- (d) Which of the persons listed in(c), if any, are subject to this:
[]

C. Legal Obligations and Financial Records

- (a) Civil proceedings instituted against person:

Yes No
If yes, details: []

- (b) Civil obligations of person:

- (i) Mortgages or pledges of which the person is a principal:

Yes No
If yes, details: []

- (ii) Guarantees etc: Yes No

If yes, details: []

(iii) Maintenance obligations: Yes No
If yes, details: []

(iv) Tax liabilities outstanding: Yes No
If yes, details: []

(v) Trusts of which the person is a trustee or manager:

Yes No
If yes, details: []

(vi) Other civil obligations: Yes No
If yes, details: []

(c) Financial information:

(i) Real and personal property:

Yes No
If yes, details: []

(ii) Bank accounts etc: Yes No
If yes, details: []

(iii) Debts owed to candidate: Yes No
If yes, details: []

(iv) Securities and other bills of exchange, promissory notes,
bonds and superannuation and life policy entitlements of the
candidate: Yes No

If yes, details: []

(v) Monies receivable from any governmental or other public authority
at this time or in the reasonably foreseeable future:

Yes No

If yes, details: []

(vi) Maintenance entitlements: Yes No

If yes, details: []

D. Criminal and Arrest Records

Prior arrest or criminal record or criminal charges outstanding:

Yes No

If yes, details: []

E. Tribunal Proceedings

Detail testimony given or to be given: []

(a) Details of any accused, including information concerning indictment:

[]

(b) Are there any other sources of such evidence:

[]

(c) Relative importance of testimony: []

F. Relocation Assessment

(a) [Factors supporting the provision of Relocation Services]

(b) [Risk and/or threat assessment (as they pertain to relocation)]

(i) [photographs or a description of persons posing danger if possible];

(ii) [criminal record and reputation of persons posing danger if available]

G. Other Material Facts

[]

Annex 2

PROTECTION ASSESSMENT			
Witness <input type="checkbox"/>	Spouse <input type="checkbox"/>	Dependent <input type="checkbox"/>	Other <input type="checkbox"/>
If not Witness, name of Witness: []			
A. Physical Details			
(a) Name:	[]		
(b) Sex:	Male <input type="checkbox"/>	Female <input type="checkbox"/>	-----
[PHOTOGRAPH]			

B. Details of Protection Requirement			
[Report on the existence of a Protection Requirement]			

No. 2

The British Ambassador at The Hague to the Registrar of the International Criminal Court

The Hague
5 November 2004

Dear Sir,

I have the honour to acknowledge receipt of your Letter of 5 November 2004 which reads as follows:

[As in No. 1]

In reply, I have the honour to inform you that the foregoing proposal is acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland, who will regard your Letter and this reply as constituting an Agreement between the International Criminal Court and the Government of the United Kingdom of Great Britain and Northern Ireland, which shall enter into force on today's date.

COLIN BUDD



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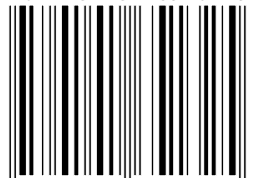
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