

UNITED STATES
OF AMERICA



Treaty Series No. 44 (1988)

Exchange of Letters

constituting a Narcotics Co-operation Agreement
between the Government of the United Kingdom of
Great Britain and Northern Ireland and the
Government of the United States of America with
respect to Montserrat

London, 14 May 1987

[The Agreement entered into force on 1 June 1987]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
July 1988*

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EXCHANGE OF LETTERS
CONSTITUTING A NARCOTICS CO-OPERATION AGREEMENT BETWEEN
THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND
NORTHERN IRELAND AND THE GOVERNMENT OF THE UNITED STATES
OF AMERICA WITH RESPECT TO MONTSERRAT

No. 1

*The Parliamentary Under-Secretary of State for Foreign and Commonwealth Affairs
to the United States Ambassador at London*

*Foreign and Commonwealth Office
London*

14 May 1987

Your Excellency,

I have the honour to refer to the paper delivered on 20 June 1985 by the Minister of the British Embassy in Washington to the Deputy Assistant Secretary of State for Inter-American Affairs at the US Department of State concerning the desire of Her Majesty's Government to conclude drug co-operation agreements with the United States with respect to British dependencies in the Caribbean, namely, Anguilla, the British Virgin Islands, Montserrat, and the Turks and Caicos Islands. In this regard, the Embassy's paper referred to remarks concerning this matter that were expressed on behalf of Her Majesty's Government by former Minister of State, Mr Malcolm Rifkind, at the signing ceremony for the Cayman Narcotics Agreement in July 1984¹.

In view of the decision taken by our Governments to conclude a series of drug co-operation agreements, based upon the 1984 Cayman model, with respect to the United Kingdom dependencies in question and to give effect to the decision with respect to Montserrat the Government of the United Kingdom of Great Britain and Northern Ireland, on behalf of the Government of Montserrat hereby proposes to enter into the following Agreement with the Government of the United States of America:

1. Definitions

For the purpose of this Agreement:

- 1.1 "Assistor" means the person from whom documentary information is sought under the Certificate;
- 1.2 "United Kingdom" means "the United Kingdom of Great Britain and Northern Ireland". "United States" means "the United States of America";
- 1.3 "Certificate" means the document used by the United States Attorney General to request documentary information, the particulars of and form for which are provided in the Annex to this Agreement;
- 1.4 "documentary information" includes, but is not limited to, any document, memorandum, report, record, or data compilation in any form, and any plan, graph, drawing, or photograph, and any disc, tape, or other device for audio reproduction or computer use, and any film, negative, tape or other device for visual image reproduction;
- 1.5 "foundation testimony" means witness testimony solely for the purpose of securing the acceptance as admissible evidence in proceedings in the United States of documentary information as specified in paragraph 3.1; and
- 1.6 "official records" means—
 - (i) publicly available records of the Government of Montserrat its Departments and agencies; and
 - (ii) any record or information in the possession of the Government of Montserrat, its Departments and agencies not publicly available but which the Government of Montserrat may make available subject to such terms and conditions as it may specify.

¹ Treaty Series No. 70 (1984), Cmnd. 9344.

2. Matters Falling Within the Scope of the Agreement

2.1 This Agreement applies to all offences or ancillary civil or administrative proceedings taken by the United States Government or its agencies connected with, arising from, related to, or resulting from any narcotics activity referred to in Article 36 of the Single Convention on Narcotic Drugs, 1961¹, as amended, and falling within the jurisdiction of the United States.

3. Procedure to Secure Documentary Information

3.1 When the Attorney General of the United States has reason to believe that—

- (i) identified persons are involved in a matter falling within the scope of this Agreement; and
- (ii) documentary information relevant to the resolution of that matter is located within Montserrat,

he may issue a Certificate to the Attorney-General of Montserrat requesting that information.

3.2a Upon receipt of a Certificate the Attorney-General of Montserrat will issue to the Assistor a notice requiring the Assistor to produce to the Attorney-General of Montserrat the documentary information requested pursuant to paragraph 3.1 above in the Assistor's possession, custody or control within 14 days of the date of the said notice unless that period is extended for good cause with the concurrence of the United States Attorney General or is shortened with the concurrence of the Attorney-General of Montserrat.

3.2b To ensure production of the documentary information Montserrat will provide that, if the Assistor refuses to produce the documentary information, the Assistor will be liable to a substantial fine and imprisonment, and that Montserrat will seize the documentary information.

3.3 The Attorney-General of Montserrat will not notify the Assistor of the issue of the Certificate prior to the issue of the notice referred to in paragraph 3.2a unless the United States Attorney General or his designee requests or agrees in writing to such notification.

3.4 The Assistor will not be permitted to notify other third persons of the Certificate, the said notice, the documentary information or any communications in connection with the inquiry for a period of 90 days from the date of the Certificate or for a further period of 90 days on request of the United States Attorney General or his designee to the Attorney-General of Montserrat or for such a further period or periods thereafter as may be mutually agreed between the said Attorneys General and communicated to the Assistor.

3.5 The relevant United States Government prosecutor may if necessary liaise with the Assistor to assist in the identification of documentary information subject to the prior written consent of the Attorney-General of Montserrat. The prosecutor may also liaise with the Commissioner of Police of Montserrat if necessary.

3.6 Promptly upon receipt of any documentary information from the Assistor, the Attorney-General of Montserrat will send the same to the United States Attorney General.

4. Authentication of Documentary Information and Foundation Testimony

A. Authentication and Attestation of Official Records

4.A.1 Official records produced in response to the Certificate will be authenticated in Montserrat by the attestation of an authorized person in the manner indicated in Form A attached hereto. The attestation will be signed by, and state the official position of, the

¹ Treaty Series No. 23 (1979), Cmnd. 7466.

attesting person, and the seal of the authority executing the request will be affixed thereto. Authentication of official records will be carried out in Montserrat under the provisions of the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents dated 5 October 1961¹.

B. Authentication and Attestation of Documentary Information other than Official Records

4.B.1 Documentary information other than official records produced by the Assistor in response to the Certificate will be authenticated in Montserrat by the attestation of a person competent to do so in the manner indicated in Form B attached hereto.

C. Foundation Testimony

4.C.1 Foundation testimony, with respect to documents provided under this Agreement, will be by way of affidavit, deposition taken in Montserrat, voluntary appearance by a witness at proceedings specified in paragraph 2.1 above in the United States, or such other procedure as may be mutually agreed upon.

4.C.2 Upon the request of the United States Attorney General or his designee, the Assistor will swear an affidavit in Montserrat containing such recitals as are necessary for foundation testimony.

4.C.3 The United States Attorney General or his designee may request, and the Assistor will provide, foundation testimony at a deposition in Montserrat under rule 15 of the United States Federal Rules of Criminal Procedure.

4.C.4 An Assistor providing foundation testimony under the provisions of paragraph 4.C.2 or 4.C.3 will enjoy the protection of the law of Montserrat as regards immunity, self-incrimination, privilege and incapacity. Montserrat will provide by way of legislation the procedure to be followed when such protection is invoked.

4.C.5 Should it become necessary for the successful conduct of the proceedings in the United States that foundation testimony be obtained, the United States Attorney General or his designee may request the Assistor to attend the relevant court in the United States to provide such testimony.

4.C.6 An Assistor, who provides foundation testimony under any of paragraphs 4.C.2, 4.C.3 or 4.C.5 will enjoy, in accordance with and to the full extent allowed under United States law, the protection of United States law as regards immunity, self-incrimination, privilege and incapacity. This provision is in addition to and not in derogation of the provisions of paragraph 4.C.4.

4.C.7 The United States Attorney General or his designee will advise the Attorney-General of Montserrat in writing prior to any request being made pursuant to paragraphs 4.C.2, 4.C.3 and 4.C.5.

5. Consultation

5.1 The United States Attorney General or his designee and the Attorney-General of Montserrat will consult, as mutually determined by them, to enable the most effective use to be made of this Agreement. Such consultations will include the status and disposition of proceedings utilizing documentary information secured pursuant to this Agreement as may be lawfully disclosed.

5.2 In any case of difficulty either the Government of Montserrat or the United States Government may request the assistance of the United Kingdom Government to resolve the difficulty by way of consultation.

¹ Treaty Series No. 32 (1965), Cmnd. 2617.

6. Exclusivity

6.1 No Federal subpoena (including a Grand Jury subpoena) related to documentary information located in Montserrat in any matter falling within paragraph 2.1 of this Agreement will be enforced in the United States without the prior agreement of either the United Kingdom Government or the Government of Montserrat.

7. Negotiation of a Mutual Legal Assistance Treaty

7.1 The Government of the United Kingdom, including Montserrat, and the Government of the United States agree to enter into negotiations concerning a Treaty between the United States and Montserrat providing for mutual legal assistance in criminal matters.

7.2 If the Government of the United Kingdom, including Montserrat, and the Government of the United States are satisfied that this Agreement is working satisfactorily, representatives of the said Governments will meet nine months after the date this Agreement comes into operation to negotiate the said Treaty.

7.3 The Government of the United Kingdom, including Montserrat, and the Government of the United States will use their best endeavours to conclude a Mutual Legal Assistance Treaty within fifteen months of the date this Agreement comes into operation with the intention to bring such a Treaty into force as soon thereafter as their constitutional procedures will allow.

8. Coming into Operation of the Agreement

8.1 This Agreement will come into operation on the date the United Kingdom Government notifies the United States Government in writing that the legislation of Montserrat implementing this Agreement has come into effect¹.

9. Termination of the Agreement

9.1 The Government of either the United Kingdom, including Montserrat or the United States may terminate this Agreement by giving one calendar month's notice in writing to the other Government at any time after the expiration of two calendar months from the date of its coming into operation. Prior to issuing such notice of termination, the Government doing so will consult with the other Government.

10. Expiration of the Agreement

10.1 This Agreement will expire fifteen calendar months from the date of its coming into operation unless it is extended by the mutual agreement of the Government of the United Kingdom, including Montserrat and the Government of the United States.

~~If~~ If the Government of the United States of America is in agreement with the foregoing, this Letter and your Letter in reply will constitute an Agreement between our two Governments.

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

TIM EGGAR

¹ The Agreement entered into force on 1 June 1987.

ANNEX

THE CERTIFICATE

1. The Certificate will—
 - (i) be signed by the United States Attorney General;
 - (ii) in respect of Grand Jury proceedings identify those proceedings by Grand Jury number and in respect of an indictment identify such indictment by caption and docket number;
 - (iii) certify that the United States Attorney General has reason to believe that a matter falling within the scope of this Agreement has arisen;
 - (iv) request that the Attorney-General of Montserrat secure the documents identified by the United States Attorney General;
 - (v) declare that the information is relevant to the successful resolution of the matter; and
 - (vi) undertake that, save with the consent of the Government of Montserrat, the information will not be used for any purposes other than the resolution of matters encompassed by this Agreement.
2. Only one Certificate will be required to enable the production of the documentary information relating to the matter which is the subject of the Certificate.
3. The Certificate will be drawn in the following manner:

CERTIFICATE

Grand Jury Number:/Indictment Caption and Docket Number:

Having regard to the provisions of the Agreement between the Governments of the United States of America and the United Kingdom of Great Britain and Northern Ireland dated I,, the Attorney General of the United States of America, hereby certify as follows:

1. I have reason to believe that individuals and entities, identified by United States law enforcement officers, are involved in a matter falling within Article 36 of the Single Convention on Narcotic Drugs, 1961, as more fully described in the Agreement.
2. I request that you, the Attorney-General of Montserrat, secure to me, the Attorney General of the United States, that documentary information believed by me to be held by the following [Person] which is described in the schedule and believed by me to be relevant to the resolution of the matter in hand, as well as other documentary information subsequently identified by the United States Attorney General or his designee as being relevant to the resolution of the matter in hand.
3. The said documentary information will not be used or disclosed by the United States Government or its agencies for any purposes other than the resolution of matters encompassed by the said Agreement without the written consent of the Government of Montserrat through the Attorney-General of Montserrat.

SCHEDULE

[Signed]

Attorney General of the United States of America

FORM A

ATTESTATION OF AUTHENTICITY OF OFFICIAL RECORDS

I,, attest that my position with the Government of Montserrat is [Official Title] and that in that position I am authorized by the law of Montserrat/United Kingdom to attest that the documents attached hereto and described below:

- (1) are true copies of original official records which are authorized by the law of Montserrat/United Kingdom to be recorded or filed in [Name of Public Office or Agency] which is a public office or agency;
- (2) set forth matters which are required by the law of Montserrat/United Kingdom to be recorded or filed and reported.

Description of Documents:

.....
 Signature

 Date

FORM B

AFFIDAVIT WITH RESPECT TO DOCUMENTS OF A REGULARLY CONDUCTED BUSINESS ACTIVITY

Note: Affidavit must be executed by Custodian of Records or such other person who can explain the Record Keeping Procedure.

I, (Swear) (Affirm) (On Penalty of Perjury) (On my Oath) as follows:

- (1) I am employed by (Name of business, activity, or person from whom documents are sought).
- (2) (Name of business, activity, or person from whom documents are sought) engages in the regular business of (describe business or activity).
- (3) My official title is
- (4) My duties and responsibilities include: (describe relationship to books and records i.e., custodian of books and records, or supervision over books and records, etc.)
- (5) As a result of my duties and responsibilities I have knowledge of the manner in which the books and records are kept.
- (6) The attached documents are original (or true copies of original) documents which I obtained from the custody and control of (Name of business, activity, or person from whom documents are sought).
- (7) The attached documents are (Description of documents: eg, "Ledger of the checking account of John Doe for the Month of July, 1983").
- (8) It is regular practice of this business to make and keep (description of documents) in the following manner (describe manner in which document or categories of documents are made and kept.)

(9) It is regular practice of the business to base its records upon information transmitted by a person with knowledge of the matters recorded, who was acting in the course of the regularly conducted business activity.

(10) It is the regular practice of the business to check the correctness of documents of the kind attached hereto.

(11) It is the regular practice of the business to rely on records of the kind attached hereto.

(12) The entries on the documents attached hereto were made by persons with knowledge of the matters recorded, or from information transmitted by persons with such knowledge.

(13) The persons making the entries on the documents or transmitting the information for purposes of recording it were acting in the course of the regularly conducted business or activity.

(14) The entries on these documents were made at or near the time of the matters recorded, pursuant to a systematic and routine procedure for the conduct of the business.

(15) The documents attached hereto were kept in the course of the regular activity of this business.

.....
Date

.....
Signature

No. 2

*The United States Ambassador at London to the Parliamentary Under-Secretary of State
for Foreign and Commonwealth Affairs*

*Embassy of the United States of America
London*

May 14, 1987

Dear Mr Eggar:

I have the honor to refer to your letter dated May 14, 1987, in which you propose the conclusion of a narcotics cooperation agreement between the Governments of the United States of America and the United Kingdom of Great Britain and Northern Ireland, with respect to Montserrat, and set forth the terms of such an agreement. I have the pleasure to inform you that the United States of America accepts the terms of the proposed agreement:

The United States agrees that your letter of May 14, 1987 and this reply shall constitute an agreement between our Governments, which shall come into operation in accordance with the terms set forth in paragraph 8 of your letter.

I avail myself of this opportunity to renew to you the assurances of my highest consideration.

Sincerely,

CHARLES H. PRICE, II

[Annexes as in No. 1]





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