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**CABINET SECRETARY'S REVIEW OF  
PAPERS RELATING TO THE RELEASE OF  
ABDELBASET AL-MEGRAHI**

**Monday 7 February 2011**

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# **CABINET SECRETARY'S REVIEW OF PAPERS RELATING TO THE RELEASE OF ABDELBASET AL-MEGRAHI**

## **Issue**

1. On 20 July, the Prime Minister asked me to conduct a review of HMG papers relating to the release of the Lockerbie bomber to see whether more needed to be published to ensure the fullest possible explanation of the circumstances surrounding this decision.
  
2. The review has sought in particular to assess whether there is any new evidence that:
  - i. the UK Government directly or indirectly pressurised or lobbied the Scottish Government for the release of Mr Megrahi (either under the PTA or on compassionate grounds);
  
  - ii. pressure was placed on the Scottish Government by BP for the release of Mr Megrahi (under the Prisoner Transfer Agreement or on compassionate grounds);
  
  - iii. the Libyans were told there were linkages between BP's investment and the release of Mr Megrahi either under the Prisoner Transfer Agreement or on compassionate grounds.
  
3. The review has also considered what information is already in the public domain and what further documents should be released that would add to or clarify the public picture of events surrounding Mr Megrahi's release. The review has also considered which of these documents should be withheld or redacted because of the risk of significant prejudice, for example to international relations, which is not outweighed by any public interest in disclosure. Where material I have reviewed does not relate to these criteria, I have not recommended publication as part of this report.
  
4. The review has been rigorous and comprehensive. All relevant UK<sup>1</sup> Government Departments have participated. No class of information has been excluded from scrutiny, and this information includes Ministerial and official correspondence, both internal and with other bodies, including other governments or

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<sup>1</sup> The review has not considered papers held by the Scottish Government

organisations; advice to Ministers; records of meetings (both official and Ministerial); records of telephone conversation; and internal emails.

5. I set out below the outline of events that the documentation I have reviewed provides.

## **Outline of Events**

### Pre-May 2007

6. On 21 December 1988, Pan Am Flight 103 was blown up over Lockerbie in Scotland, killing all 259 passengers and crew and 11 residents of Lockerbie. In August 1998, the US and UK Governments put forward a detailed joint proposal to the UN Security Council for the trial of the two Libyan suspects accused of the bombing. The joint UK-US letter to the UN of 24 August 1998<sup>2</sup> stated that “If found guilty, the two accused will serve their sentence in the United Kingdom”. Libya agreed to the proposal and the Lockerbie trial began in the Netherlands on 3 May 2000. On 31 January 2001, Mr Megrahi was found guilty and Lamin Fhimah not guilty. Mr Megrahi subsequently appealed against his conviction. His appeal was refused on 14 March 2002. A second appeal was launched in 2008 but ultimately abandoned by Mr Megrahi in August 2009.

7. With the handing over of the two suspects, the UK began a process to normalise relations with Libya. Diplomatic relations were resumed in 1999 after Libyan admission of responsibility for WPC Fletcher’s murder. After nine months of highly secret negotiations with the UK and US, public announcements were made by Libya, the UK and US on 19 December 2003 announcing Libya’s agreement to give up its WMD programmes and limit its ballistic missile programme<sup>3</sup>. As part of this, Libya agreed to immediate international inspections and to be bound by relevant international agreements covering the dismantling of its nuclear, biological, chemical and missile programmes. This resulted in the then Prime Minister Blair’s first visit to Libya in March 2004.

### May 2007- September 2008

8. During his final visit to Libya as Prime Minister on 30 May 2007, Tony Blair signed a Memorandum of Understanding (MoU)<sup>4</sup> with the Libyan Government, which

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<sup>2</sup> In public domain – UN website

<sup>3</sup> In public domain

<sup>4</sup> In public domain – FCO website

included a commitment to negotiate a Prisoner Transfer Agreement<sup>5</sup> (PTA) within 12 months.

9. During the same visit, Tony Blair witnessed the signing of an Exploration and Production Sharing Agreement (EPSA) between BP and the Libyan Government. There were expectations that the Libyan General Peoples Committee would ratify the Agreement by September, but this did not happen. After Gordon Brown acceded the office of Prime Minister in July 2007, he wrote<sup>6</sup> to Colonel Qadhafi expressing his desire to continue an “open and honest dialogue” between the UK and Libya. He made no mention of the PTA negotiations or judicial cooperation, but did emphasise the value in strengthening commercial links.

10. It was clear that the Libyans considered a PTA could open the door to Mr Megrahi’s future transfer to Libya. HMG was also clear in its initial discussions with Libya that any agreement would exclude Mr Megrahi. Following signature of the MoU, the Scottish Government made a number of approaches<sup>7</sup> to HMG setting out their strong opposition to any PTA which did not explicitly exclude anyone convicted of the Lockerbie bombing from its terms. On 22 June 2007 former Lord Chancellor Lord Falconer wrote to Alex Salmond and confirmed that any PTA with Libya would not cover Mr Megrahi<sup>8</sup>. And on 26 July 2007, former Justice Secretary Jack Straw went on to explain in more detail to Scottish Justice Secretary Kenny MacAskill HMG’s preferred option for excluding Mr Megrahi<sup>9</sup>. The Ministry of Justice negotiating team therefore continued negotiations with the Libyans in October 2007 with a clear negotiating mandate from Jack Straw that an exclusion clause for those convicted of the Lockerbie bombing was essential for the UK<sup>10</sup>. Early UK drafts of the PTA presented to the Libyans therefore included such an exclusion clause.

11. In the course of negotiations of the PTA during the second half of 2007, however, the Libyan Government made clear to the UK that this issue was also a red line for them and they would not agree to the terms of the PTA if it contained such an exclusion. Jack Straw had alerted Gordon Brown to this potential risk in a note ahead of negotiations in September 2007<sup>11</sup>. The Libyan view was that because the PTA did not confer on a prisoner an automatic right to transfer, and both States had the right to refuse an individual request, the exclusion clause was not necessary.

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<sup>5</sup> A PTA provides a framework to consider the transfer (not release) of prisoners on a case by case basis. It does not permit transfer when an appeal is outstanding and provides no automatic right to transfer.

<sup>6</sup> Being published alongside this report

<sup>7</sup> In public domain - Alex Salmond wrote on 7, 13, 20, 26 June 2007 – SG website

<sup>8</sup> In Public Domain – MoJ Website

<sup>9</sup> In Public Domain – MoJ Website

<sup>10</sup> This is set out in the MoJ submission to Jack Straw of 19 September 2007 – being published alongside this report

<sup>11</sup> Being published alongside this report

12. It also became clear at this point that the Libyans now explicitly linked removal of Mr Megrahi's exclusion clause in the PTA to their ratification of BP's Exploration and Production Sharing Agreement (EPSA) – and indeed other contracts<sup>12</sup> – a fact since publicly recognised by both BP and HMG. Limited and intermittent contacts therefore took place concurrently between BP and Jack Straw from September 2007 onwards. BP also spoke on at least two occasions in the same period to Simon McDonald, the then Prime Minister's Foreign Policy Advisor<sup>13</sup>. During these and other discussions, the progress of negotiations on the UK-Libya PTA and likely timing of the Agreement being signed were discussed. Furthermore BP was suffering significant financial loss while the EPSA agreement remained unsigned.<sup>14</sup> Gordon Brown wrote to Colonel Qadhafi on 26 September<sup>15</sup> with the intention of reassuring Qadhafi of the UK's high level interest in the bilateral relationship, and taking the opportunity to highlight the BP agreement, but making no mention of Mr Megrahi despite Libyan linkage of the issues. Overall, it is clear that BP was seeking the Government's help to unblock the EPSA agreement. The fact that BP made representations to the UK government on this basis has already been acknowledged publicly<sup>16</sup>.

13. As Libya would not agree to an exclusion clause for Mr Megrahi, the then Government faced a choice: sign a PTA without any exclusions (but knowing Scottish Ministers would still be able to veto the return of Megrahi); or withdraw from PTA negotiations. This choice was set out in a detailed submission to Jack Straw on 7 November 2007<sup>17</sup>. In parallel, Jack Straw made Kenny MacAskill aware of this development in a call on 2 November 2007<sup>18</sup>.

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<sup>12</sup> E.g. Vincent Fean's note to the FCO as negotiations began on 2 October in Tripoli – being published alongside this report.

<sup>13</sup> Government records of the contacts with BP are limited.

<sup>14</sup> This was later acknowledged in a note of a meeting between BP and Simon McDonald - being published alongside this report

<sup>15</sup> Being published alongside this report

<sup>16</sup> The Foreign Secretary's July letter to Senator Kerry stated that "There were discussions between BP and Mr Jack Straw... between October and November 2007... As BP have themselves made clear in their statement of 15 July 2010, BP had been made aware by the Libyans that failure to agree the PTA could have an impact on UK commercial interests, including Libyan ratification of the BP exploratory agreement (EPSA) signed in May 2007, and wished to bring this fact to the attention of the UK Government. This was a perfectly normal and legitimate practice for a British company. It is the sort of exchange which occurs regularly round the world, and one that certainly did occur with a range of companies with interests in Libya and their national governments at this period."

<sup>17</sup> Being published alongside this report

<sup>18</sup> A record of this call is being published alongside this report

14. Subsequently it is clear that HMG's understanding was that a PTA<sup>19</sup> without any exclusions might be acceptable to the Scottish Government if progress could be made with regards to ongoing discussions relating to liabilities for damages under the Scotland Act for breaches of Human Rights (the 'Somerville' judgment), and devolution of firearms legislation. Although Kenny MacAskill restated the Scottish Government's position that any PTA should exclude anyone convicted of the Lockerbie bombing in a letter to Jack Straw on 6 December 2007<sup>20</sup>, Jack Straw and the then Scottish Secretary Des Browne corresponded on the issue between 7 and 19 December<sup>21</sup>. However, UK Ministers decided to keep the matters separate from the PTA discussions. On 19 December 2007 Jack Straw telephoned<sup>22</sup> and wrote<sup>23</sup> to Kenny MacAskill to inform him that he was not able to secure an explicit exclusion for Mr Megrahi, making clear that any application to transfer Mr Megrahi would be a matter for Scottish Ministers. His letter also noted that the view of UK Ministers was that firearms should remain a reserved area. Alex Salmond expressed disappointment that HMG was no longer willing to insist on an exclusion clause, and continued to press HMG to insist on such a clause<sup>24</sup>.

15. The Libyans ratified the EPSA Agreement with BP on 23 December 2007. The Signed Agreement reached BP on 30 January 2008. Thereafter, implementation of the Agreement proceeded normally. Gordon Brown noted the final approval of the BP agreement in a further letter to Colonel Qadhafi on 18 February 2008<sup>25</sup> which covered a range of issues including security, commercial and regional co-operation.

16. There is nothing in the paperwork to indicate any pertinent contacts between BP and HMG after February 2008. The Scottish Government report that there were no direct contacts between BP and the Scottish Government on Mr Megrahi at any point, and there is nothing in the HMG paperwork to suggest otherwise.

17. By September 2008, the UK was in the final stages of negotiating the PTA (now no longer excluding Mr Megrahi) as set out in a submission to Jack Straw on 29 September 2008<sup>26</sup>. At this point the UK was unaware that Mr Megrahi had just been diagnosed with terminal prostate cancer.

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<sup>19</sup> While the PTA provided a framework to consider the transfer of prisoners, it did not permit transfer when an appeal was outstanding and, in line with every other PTA, provided no automatic right of transfer. Scottish Ministers retained an absolute right of veto over any request for prisoner transfer, a veto they used in August 2009 by rejecting his application for transfer. In any case the PTA did not form the basis for the release of Mr Megrahi.

<sup>20</sup> In public domain – SG website

<sup>21</sup> Three letters of 7, 13, and 19 December – being published alongside this report

<sup>22</sup> Being published alongside this report

<sup>23</sup> In public domain – MoJ website

<sup>24</sup> In public domain – Alex Salmond wrote on 29 January and 18 March 2008 – SG website

<sup>25</sup> Being published alongside this report

<sup>26</sup> Being published alongside this report



## October 2008 onwards

18. Following diagnosis, the Libyan Government's top objective in its relations with the UK became securing his return to Libya before he died and the Libyan Government put this point to the then Minister of State in the FCO Bill Rammell on 9 October 2008. Bill Rammell said he understood under Scottish law there were compassionate grounds which applied to prisoners who only had three months left to live. He offered to communicate Libyan interest in the legal process for return on compassionate grounds to the Scottish Government and write with the outcome of discussions, while making clear that this was exclusively a matter for the Scottish Government.

19. This development was also discussed in detail between Jack Straw and Alex Salmond. As set out in the submission to Jack Straw of 10 October 2008<sup>27</sup> and recorded in the note of the subsequent phone call between them of 13 October 2008<sup>28</sup>, HMG and the Scottish Government were in agreement that any decisions on the transfer of Megrahi under a UK-Libya PTA - were it to be agreed – or release on compassionate grounds would be exclusively a matter for Scottish Ministers. Alex Salmond said that if Scottish Ministers were to contemplate release on compassionate grounds they would need to be satisfied that it was appropriate and genuine, and that any release could not be on the basis of fixing any wider UK/Libya relationship issues – it needed to be treated on its own merits. Having consulted the Scottish Government on the text of the letter, Bill Rammell then wrote to the Libyan Government on 17 October with a factual description of the processes<sup>29</sup>. Gordon Brown was updated on developments in a Cabinet Office submission of 21 October 2008<sup>30</sup>. FCO officials shared the text of the Rammell letter in one of the briefing sessions of US officials about the implications for the UK of Mr Megrahi's deteriorating health.

20. Whilst it was clear that the judicial decisions rested with the Scottish Government, the Libyan concerns over Mr Megrahi's deteriorating health posed a number of risks to the UK's bilateral relations both with Libya and the US<sup>31</sup>. At this time, Jack Straw contemplated the merits of offering the Scottish Government a letter in support of a Libyan request, but decided not to do so. In his phone call on 24 October 2008<sup>32</sup>, he assured Alex Salmond that HMG officials had been clear at all times with the Libyans that decisions for release rested with the Scottish Government.

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<sup>27</sup> Being published alongside this report

<sup>28</sup> Being published alongside this report

<sup>29</sup> Previously released under FOI in redacted form – being published in full alongside this report

<sup>30</sup> Being published alongside this report

<sup>31</sup> These risks and the need for carefully considered parameters within which to act were set out in the FCO submission of 3 November to Bill Rammell, being published alongside this report

<sup>32</sup> A record of this call is being published alongside this report

21. The Libyans made clear in a first meeting of 27 October 2008 with Scottish Government officials, attended by FCO officials, that Mr Megrahi's death in custody would be seen as a death sentence without recourse to court and would have very serious implications to UK/Libya relations<sup>33</sup>. As a result, Ministers now agreed that a swift conclusion to the negotiation of the UK-Libya Prisoner Transfer Agreement, which was now ready, was of pressing interest to the UK. Jack Straw called Alex Salmond on 7 November<sup>34</sup> to inform that the PTA would be signed on 17 November 2008.

22. Bill Rammell and Libyan Europe Minister Abdulatti Obidi signed the PTA, along with other judicial co-operation agreements and a double taxation agreement on 17 November 2008<sup>35</sup>. These were then laid before Parliament. Jack Straw wrote again to Alex Salmond on 21 November 2008 confirming that the PTA had been signed and providing further details of the ratification process<sup>36</sup>.

23. In December 2008, the Scottish Government approached HMG to seek advice on the foreign policy implications arising from Mr Megrahi's health. This approach was considered in a 9 December submission to Bill Rammell<sup>37</sup> and consequently the FCO wrote to the Scottish Government on 15 December 2008<sup>38</sup>. Throughout this period, the Libyan Government continued to make clear to the UK that there would be significant consequences if Mr Megrahi were to die in a UK jail<sup>39</sup>.

24. From the point at which HMG became aware that Mr Megrahi had been diagnosed with terminal cancer, HMG judged that UK interests would be damaged if Mr Megrahi were to die in a UK jail<sup>40</sup>. Policy was therefore progressively developed that HMG should do all it could, whilst respecting devolved competences, to facilitate an appeal by the Libyans to the Scottish Government for Mr Megrahi's transfer under

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<sup>33</sup> A note of this meeting is in the public domain – SG website

<sup>34</sup> A record of this call is being published alongside this report

<sup>35</sup> 13 Nov FCO submission being published alongside this report

<sup>36</sup> In public domain – SG website

<sup>37</sup> Being published alongside this report

<sup>38</sup> Being published alongside this report

<sup>39</sup> This position is set out in more detail in the FCO submission of 9 Dec 2008. During his visit to Libya in February 2009 Bill Ramell was told that there would be serious consequences for the bilateral relationship if Mr Megrahi was not returned to Libya to die.

<sup>40</sup> The former Foreign Secretary's statement to Parliament of 12 October made clear that "Notwithstanding that any decision on release was for Scottish Ministers and the Scottish Judicial System, the UK Government had a responsibility to consider the consequences of any Scottish decision. We assessed that although the decision was not one for the UK Government, British interests – including those of UK nationals, British business and possibly security co-operation – would be damaged, perhaps badly, if Megrahi were to die in a Scottish prison rather than in Libya. Given the risk of Libyan adverse reaction, we made it clear to them both that as a matter of law and practice it was not a decision for the UK Government and that as a matter of policy we were not seeking Megrahi's death in Scottish custody." The former Foreign Secretary also said that there was an "entirely legitimate commercial dimension" to the UK's ties with Libya.

the PTA or release on compassionate grounds<sup>41</sup>. Such an approach was understood across all relevant Government Departments<sup>42</sup>.

25. This position was again revisited on 20 April<sup>43</sup> in a submission to the Foreign Secretary ahead of the PTA coming in to force and the assessment of the risks refreshed. It reaffirmed that transfer under the PTA remained the best and most likely outcome for managing the risks faced by the UK. Nonetheless, the former Government continued to maintain that “any decision on release was for Scottish Ministers” and this was the line taken in all contact with the Libyan Government, including at the highest levels. In Gordon Brown’s only meeting with Colonel Qadhafi, on 10 July 2009, he made clear that the decision was solely a matter for Scottish Ministers and HMG could not interfere. Indeed, Bill Rammell had made clear in February to Libyan interlocutors that any pressure from London on the Scottish Government would be inappropriate; could be subject to judicial review; and would probably be counterproductive.

26. The UK-Libya PTA came into force upon the formal exchange of instruments in Tripoli on 29 April 2009<sup>44</sup>. Jack Straw informed Alex Salmond on the eve of ratification of the PTA that this would happen, repeating that the decision on whether to return Mr Megrahi to Libya was a matter for the Scottish Government<sup>45</sup>. The Libyan Government subsequently submitted a formal application to the Scottish Government for Mr Megrahi’s transfer under the Prisoner Transfer Agreement on 5 May 2009<sup>46</sup>.

27. In June 2009, following Libya’s formal application for Mr Megrahi’s transfer under the PTA, the Scottish Government asked the FCO for its assessment of whether the joint UK-US letter to the UN of 24 August 1998 created a commitment in relation to the place of Megrahi’s imprisonment. This request by the Scottish Government was constitutionally appropriate under the Concordat on International Relations and was considered in a detailed submission to David Miliband on 29 June 2009<sup>47</sup>. This submission recognised that the UK Government had given the US a firm political commitment that if convicted the Lockerbie accused would serve out their sentence in Scotland. But the submission argued that the commitment was not absolute because

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<sup>41</sup> The FCO submission to the then Foreign Secretary of 22 January 2009 recaptured the parameters of the earlier 3 November submission and expanded on how they could be taken further. This included: further facilitating Libyan contacts with the Scottish Government; intensifying HMG Ministerial and senior official contact with Libya to reassure of the importance of the bilateral relationship; and pressing the need for Libya not to over-react in the case of an adverse decision by the SG.

<sup>42</sup> A Cabinet Office-chaired cross-Whitehall meeting on 25 February agreed that Mr Megrahi’s return to Libya before death was in HMG’s interests - being published alongside this report.

<sup>43</sup> This and the parallel submission to Bill Rammell on ratification are being published alongside this report

<sup>44</sup> 20 April submission recommended ratification – being published alongside this report

<sup>45</sup> MoJ Submission, speaking note and email record being published alongside this report

<sup>46</sup> In public domain – SG website

<sup>47</sup> Submission and F Sec response being published alongside this report

the Government of the day was not prepared to bind the hands of successor governments, and because it held out the possibility that, although unlikely in 1998, our relations with Libya might change. The FCO replied to this effect in July 2009<sup>48</sup>. The then Minister of State for Foreign and Commonwealth Affairs Ivan Lewis reiterated this advice in a letter to Kenny MacAskill in August 2009<sup>49</sup>, and made clear that the US Government had orally confirmed to HMG their view that neither the UK nor US Governments entered into a legal commitment in 1998-99 that would present a legal bar to transfer under the PTA.

28. In June 2009<sup>50</sup> the FCO also decided *not* to provide the Scottish Government with a further letter, this time from the Foreign Secretary, on the foreign policy implications because of the possibility that it might cause considerable irritation among Scottish Ministers and because it would “simply replicate what Scottish Ministers already know about the foreign policy implications of Mr Megrahi’s death”. Contacts between HMG officials and Scottish Government officials however continued to take place<sup>51</sup> but there is no record of any formal or informal articulation of HMG’s underlying view to Scottish Ministers.

29. On 24 July 2009 the Libyan Government also submitted an application for compassionate release<sup>52</sup>, which ran concurrently with the transfer application.

30. On 12 August 2009, the US Chargé d’Affaires wrote to Alex Salmond setting out the US opposition to Mr Megrahi’s transfer under the PTA. The US was also opposed to Mr Megrahi’s release on compassionate grounds or bail. Nevertheless, if Scottish authorities came to the conclusion that Mr Megrahi must be released from Scottish custody, the US position was that conditional release into Scotland on compassionate grounds would be a far preferable alternative to prisoner transfer<sup>53</sup>.

31. On 19 August 2009 Kenny MacAskill rejected Libya's application for Mr Megrahi’s transfer under the PTA. He refused the PTA application on the grounds that “...the American families and Government had an expectation or were led to believe that there would be no prisoner transfer...”. He noted that the UK Government had declined to offer a full explanation to the Scottish Government on whether Mr Megrahi's transfer under the PTA was contrary to the UK-US agreement in 1998 on Mr Megrahi's location of imprisonment stating “...They simply informed me that they saw no legal barrier to transfer...”<sup>54</sup>.

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<sup>48</sup> In public domain – FCO website

<sup>49</sup> In public domain – FCO website

<sup>50</sup> FCO email dated 24 June 2009 – being published alongside this report.

<sup>51</sup> Reference to “officials continue to work closely” in speaking note for Jack Straw’s conversation with Alex Salmond on 28 April 2009.

<sup>52</sup> In public domain – SG website

<sup>53</sup> In public domain – SG website

<sup>54</sup> In public domain – SG website

32. Immediately after announcing this decision on 19 August 2009 Kenny MacAskill then approved Mr Megrahi's application for compassionate release to Libya<sup>55</sup>. He argued that compassionate release was appropriate in light of the Scottish Prison Service report which concluded from the clinical assessment that a three month prognosis for Mr Megrahi was a reasonable estimate.<sup>56</sup> Mr Megrahi was returned to Libya on 20 August 2009. Despite intensive lobbying by HMG to ensure that a high profile return was avoided, including in a letter from Gordon Brown to Colonel Qadhafi<sup>57</sup>, Mr Megrahi was met at the airport by several hundred people.

33. The release of Mr Megrahi generated intense media and Parliamentary interest in the UK-Libya bilateral relationship. The then Prime Minister made a number of public statements<sup>58</sup> in the weeks that followed. The then Foreign Secretary made an oral statement to the House of Commons on 12 October 2009. The Scottish Parliament Justice Committee published their report in January 2010 after a four month inquiry.

## Conclusions

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<sup>55</sup> In Kenny MacAskill's statement to Scottish Parliament on 2 September 2009 he said "Presiding Officer, it had been suggested that Mr Al-Megrahi could be released from prison to reside elsewhere in Scotland. Clear advice from the Deputy Chief Constable of Strathclyde Police on 14 August was that the security implications of such a move would be severe. A minimum of 48 officers would be required simply to allow Mr Al-Megrahi to live in Scotland. The option of such a large police presence in a residential area, and the need for additional resources to manage hospital visits, rendered it utterly inappropriate, and I ruled it out on that basis. It was not a question of cost or capability. Strathclyde Police, I know, would have risen to the challenge. The idea of an armed camp or international media circus in a residential area, or even worse, in a hospice for the dying, I found grotesque. Accordingly, Mr Al-Megrahi having met the criteria, it was my responsibility to decide whether to release him. Based on the values, beliefs and common humanity that defines us as Scots, I allowed him to return home to die."

<sup>56</sup> In public domain – SG website

<sup>57</sup> This letter is currently in the public domain and the associated submission is being published alongside this report.

<sup>58</sup> E.g. 25 August 2009: "When I met Colonel Qadhafi over the summer I made it absolutely clear to him that we had no role in making the decision about Megrahi's future. Because it was a quasi-judicial matter, because it was a matter legislated for by the Scottish Parliament and not by us, it was a matter over which we could not interfere and had no control over the final outcome. I want to make it absolutely clear, however, that whatever the decision that was made on compassionate grounds by the Scottish Parliament, our resolve to fight terrorism is absolute, our determination to work with other countries to fight and to root out terrorism is total, and we want to work with countries, even countries like Libya, who have renounced nuclear weapons now and want to join the international community, we want to work with them in the fight against terrorism around the world";

2 September 2009: "I made it clear that to us there was never any linkage between any other issue and the Scottish Government's own decision about Megrahi's future. I respect the right of Scottish Ministers to make their own decisions, but on our part there was no cover up, no conspiracy, no double dealing, no attempt to instruct Scottish Ministers, no private assurances between myself and Colonel Qadhafi. We were absolutely clear with the Libyans that this was a decision for the Scottish Government".

34. It is my conclusion that:

- i. none of the materials that I have reviewed contradicts anything in the then Foreign Secretary's statement to the House Of Commons (12 October 2009) or the current Foreign Secretary's letter to Senator Kerry (23 July 2010), or statements made by the former Prime Minister on this matter;
- ii. it is evident from the paperwork, including in documentation already released, that the Libyans made explicit links between progress on UK commercial interests in Libya and removal of any clause in the PTA whose effect would be to exclude Mr Megrahi from the PTA. It is also evident, including in documentation already released, that BP did lobby the former Government to make them aware that failure to agree the PTA could have an impact on UK commercial interests, including Libyan ratification of the BP exploratory agreement (EPSA) signed in May 2007. As is already in the public domain, these commercial considerations played a part in the former UK Government's decision to reverse its position and agree to the removal of this exclusion clause. And once the exclusion clause had been removed from the draft PTA, the former UK Government in turn held up final signature until progress on commercial deals had been achieved. The records show that Cabinet Office and FCO Ministers and officials were mindful of, and pressed Libyan interlocutors for progress on, the major BP deal (alongside other UK deals) in the context of agreeing the PTA. But:
  - a) while the PTA provided a framework to consider the transfer of prisoners, it did not permit transfer when an appeal was outstanding and, critically, in line with every other PTA, provided no automatic right to transfer;
  - b) any decision on an application for transfer of Mr Megrahi under the PTA was for Scottish Ministers alone to make. Scottish Ministers retained an absolute veto over any request for prisoner transfer in the case of Mr Megrahi, a veto they used in August 2009 by rejecting his application for transfer;
  - c) the PTA did not in any case form the basis for the release of Mr Megrahi;

- d) there is no evidence that pressure was placed on the Scottish Government by BP for the transfer or release of Mr Megrahi (either under the Prisoner Transfer Agreement or on compassionate grounds);
  - e) there is nothing in the paperwork to indicate any pertinent contacts between BP and HMG after February 2008;
  - f) the Libyans were not told there were linkages between BP's exploratory agreement and the transfer or release of Mr Megrahi (either under the Prisoner Transfer Agreement or on compassionate grounds).
- iii. it is clear from the paperwork that at all times the former Government was clear that any decision on Mr Megrahi's release or transfer under a PTA was one for the Scottish Government alone to take. The documentation considered by the review demonstrates that they were clear on this in their internal deliberations and, crucially, in their contacts and exchanges with the Libyans, including at the highest levels, and with the Scottish Government. In Gordon Brown's only meeting with Colonel Qadhafi, on 10 July 2009, he made clear that the decision was solely a matter for Scottish Ministers and HMG could not interfere.
- iv. nonetheless, once Mr Megrahi had been diagnosed with terminal cancer in September 2008, HMG policy was based upon an assessment that UK interests would be damaged if Mr Megrahi were to die in a UK jail. The development of this view was prompted, following Mr Megrahi's diagnosis of terminal illness, by the extremely high priority attached to Mr Megrahi's return by the Libyans who had made clear that they would regard his death in Scottish custody as a death sentence and by actual and implicit threats made of severe ramifications for UK interests if Mr Megrahi were to die in prison in Scotland. The policy was primarily motivated by a desire to build on previous success in normalising relations with Libya and to safeguard the substantial gains made in recent years, and specifically to avoid harm to UK nationals, to British commercial interests and to cooperation on security issues. The desire to see such a result developed and intensified over time as Mr Megrahi's health declined and the imminence of his death appeared greater;

- v. Policy was therefore progressively developed that HMG should do all it could, whilst respecting devolved competences, to facilitate an appeal by the Libyans to the Scottish Government for Mr Megrahi's transfer under the PTA or release on compassionate grounds as the best outcome for managing the risks faced by the UK. This action amounted to: proceeding with ratification of the PTA; explaining to Libya in factual terms the process for application for transfer under a PTA or for compassionate release; and informing the Scottish Government that there was no legal barrier to transfer under the PTA;
  
- vi. I have not seen any evidence that HMG pressured or lobbied the Scottish Government for the transfer or release of Mr Megrahi (either under the PTA or on compassionate grounds). Jack Straw stated clearly in his calls with Alex Salmond including on 13 and 24 October 2008 and his meeting on 28 April 2009 that this was a matter for the Scottish Government. Indeed, throughout this period, the former Government took great effort *not* to communicate to the Scottish Government its underlying desire to see Mr Megrahi released before he died. Moreover, it is clear that HMG considered that any attempts to pressurise or lobby the Scottish Government could be counter productive to achieving this outcome. Although it is likely that the Scottish Government was aware of this desire, there is no record that it was communicated or that UK interests played a part in Mr Megrahi's release by the Scottish Government on compassionate grounds. When the matter came to the then Prime Minister in August 2009, he did not seek to exercise any influence on the First Minister or the Scottish Government. Mr Megrahi's release on compassionate grounds was a decision that Scottish Ministers alone could – and did – make;

### **Further publication of material**

35. The Foreign Secretary's letter to Senator Kerry of 23 July 2010 explains the British Government's understanding of the circumstances leading to the Scottish Government's release of Mr Megrahi from prison on compassionate grounds in August 2009. The letter sets out at some length the pertinent points of the previous Government's action and this Government's understanding of the processes preceding Mr Megrahi's release, including the manner of negotiations on the Prisoner Transfer Agreement with Libya.



36. The previous Government and the Scottish Government also released extensive documentation relating to decisions taken on the Megrahi issue. On 1 September 2009, the Foreign and Commonwealth Office, Ministry of Justice and the Scottish Government published key correspondence that set out in more detail the events surrounding Mr Megrahi's release.

37. In addition, both the previous Government and this Government have released extensive documentation under the Freedom of Information Act 2000 (FOIA) to various individuals and organisations.

38. A significant proportion of the documentation within the scope of my review has already been withheld from publication under the Freedom of Information (FOI) Act. There is nonetheless some additional material which I consider should be released, as referenced in the outline of events above.

39. In reaching my view on what material to make public, I have reassessed the balance of public interest in releasing it against the balance of public interest in maintaining its confidentiality. Disclosure of the documents could cause some prejudice to at least one of the following interests:

- International relations or the interests of the UK abroad;
- Relations with the Scottish Government;
- The formulation or development of government policy; or
- The effective conduct of public affairs.

40. In a much smaller number of cases, disclosure would prejudice commercial interests or would contravene data protection principles. Specifically, and on legal advice, I have withheld the personal information relating to Mr Megrahi's physical health, including treatment and medical prognosis.

41. There are sound public interest arguments justifying non-disclosure. Against those arguments, however, although no wrong-doing or impropriety is indicated, there is a public interest in greater knowledge, awareness of and "lesson-learning" from:

- the background to a decision which was extremely controversial within the UK and internationally and which has been categorically described as "wrong" by the current UK Prime Minister and by the US President;
- the actual role played by the UK Government, especially where that went beyond what has so far been placed in the public domain; and

- how the UK Government – focused on both threats and opportunities within Libya – may not have adequately anticipated the nature and extent of hostile public opinion to the release, particularly in the US.

42. Bearing these arguments in mind, I have concluded that further material should be released, including some information that was previously withheld under FOI. This comprises key documentation within a clearly defined set of criteria:

- i. key internal exchanges, submissions and decisions on policy and communication of policy;
- ii. outward correspondence and discussions with BP, Libya and the Scottish Government.

43. The rationale for publishing this information is that it, together with the extensive set of documentation already released, provides as full and public an explanation of the circumstances surrounding the decision by the Scottish Government to release Mr Megrahi as possible and the clearest possible picture of what decision was taken and why, as it demonstrates what position the previous Government was adopting and whether HMG sought to influence decisions that were taken by others.

44. The remaining documents contain background, but also a great deal of repetition and extraneous material. Their disclosure would also cause prejudice to at least one of the interests mentioned above. Taking into account the information which has been, or is now being, placed in the public domain which gives the picture of events and explains the circumstances, there is no overwhelming public interest in their disclosure. A small number of redactions have been made to the documents which are now being published to avoid substantial prejudice, for example to international relations, the ongoing Metropolitan Police Service investigation into the killing of WPC Yvonne Fletcher and commercial interests and to comply with data protection legislation. None of the redacted information alters or contradicts in any way the facts of the matter and the narrative of events outlined above.

45. Under the Convention covering Papers of a Previous Administration (PPA) – including access to papers of a previous Administration and their release – and as the Prime Minister made clear in public on 20 July 2010, I have consulted former Ministers and the former Prime Ministers about publication of additional papers. I have, however, retained ultimate arbitration on all decisions to declassify and to publish papers of the previous administration.

46. I have been assisted in my review by the former Information Commissioner and currently Chairman of the Administrative Justice and Tribunals Council, Richard Thomas, who considered the paperwork and provided advice to me which I have incorporated into this report. He has advised me that this report and the documents now being published are consistent with all the materials he has reviewed and provide a fair and accurate account of events. I am very grateful to him for the time and expertise he gave to this work.

**SIR GUS O'DONNELL**

## **25 July 2007; footnote 6; letter from PM to Col Qadhafi;**

10 DOWNING STREET

THE PRIME MINISTER

25 July 2007

Dear Colonel Qadhafi,

I am delighted to write to you as Prime Minister. I look forward to developing a close and productive relationship with you. The relationship between the UK and Libya is excellent, and continuing to deepen following your historic decision in 2003. I know that your close personal relationship with Tony Blair played a vital role in helping the relationship between our countries develop. I hope that you and I will be able to continue this open and honest dialogue.

I look forward to further developing co-operation with Libya in a wide range of areas. I am grateful for Libya's co-operation in the field of counter terrorism, and for Libyan support for our attempts to deport terrorist suspects. I hope that we can do more together in the area of healthcare, building on the close ties between the medical fraternities in our two countries. I also look forward to further co-operation in the defence field, based on our recent Defence Accord, and to working together to ensure that the conditions are right for British businesses to increase their investment in Libya, for Libya to invest productively through the City of London, and for the companies of both countries to strengthen their commercial links.

I warmly welcome the resolution of the Benghazi HIV/AIDS case. We all need to work together for the health of the children of Benghazi. The UK will play its part to work for a new era of EU/Libya relations.

Finally, I am delighted that Dr Kim Howells, Minister of State at the Foreign and Commonwealth Office, is able to visit Libya for the second time to continue discussions on the many areas in which the UK and Libya are working so productively together.

Yours sincerely

Gordon Brown

Colonel Mu'ammar Qadhafi

## **19 September 2007; footnote 10; Ministry of Justice Submission**

To: Secretary of State for Justice Date: 19 September 2007  
cc: See attached list  
From: Pat Baskerville  
Head of Offender Policy and Rights Unit  
HMPS

**Subject: UK/LIBYA PRISONER TRANSFER AGREEMENT NEGOTIATIONS**

### **Issue**

The UK is negotiating a prisoner transfer agreement (PTA) with Libya. The purpose of this submission is to seek your agreement to the negotiating mandate for a meeting with Libyan officials which is proposed for the week commencing 1 October. It also seeks your agreement to the terms of a letter to the Libyan authorities in advance of this meeting and provides a response for you to send to the Scottish Minister for Justice to his letter dated 7 September.

### **Recommendation**

That you:

- (i) agree the mandate for officials set out in paragraph 14 below
- (ii) note the risks to wider UK/Libya relations associated with the negotiations;
- (iii) write to the Scottish Minister for Justice (Annex A);
- (iv) if necessary, write to the Libyan Minister for Justice (Annex B); and
- (v) write to the Prime Minister alerting him to the risks (Annex C).

### **Timing**

Urgent. A negotiating meeting in Tripoli is planned for the week of the 1 October or shortly thereafter. If it is necessary, your letter to the Libyan Justice Minister needs to be issued no later than Monday 24 September.

### **Argument**

During his visit to Libya in May this year the former Prime Minister signed a Memorandum of Understanding committing the UK to negotiating a number of agreements with the Libyan Government in the field of judicial co-operation. This included agreements on extradition and mutual legal assistance, civil & criminal law and prisoner transfer.

The negotiation of the PTA with Libya is controversial because of the presence in Scotland of Abdelbasset al-Megrahi, the Libyan national convicted of the Lockerbie bombing by a Scottish court sitting in the Netherlands and now serving a sentence of imprisonment in Scotland. The Government has made it clear to the Libyan authorities on several occasions and at a senior level that any PTA between the UK and Libya would not cover al-Megrahi. Nevertheless, recent statements made by senior Libyan officials suggest that the Libyan authorities still believe that the UK Government may consider an agreement that would not

explicitly rule out the possibility of al-Megrahi's return. This is not acceptable to the Scottish Executive, who have been fully consulted, as prisoner transfer from a Scottish prison is a devolved responsibility of the Scottish Ministers.

The Libyans have already provided comments on our model agreement, none of which are particularly controversial; but we now need to introduce our own amendments, including the clause which will explicitly exclude anyone convicted of offences connected with the Lockerbie bombing. It is possible that negotiations could break down either at the point of receipt of the letter or very early on in face-to-face negotiations in Libya when it becomes clear that this is a red line for the UK. Qadhafi is likely to take a personal interest

A breakdown in negotiations could have a serious impact on other parts of the UK/Libyan relationship. While not formally linking the conclusion of a PTA with other interests, the Libyan authorities have indicated their desire to move forward with the PTA in step with other negotiations, such as those concerning confirmation of the BP deal agreed during Tony Blair's visit and contracts for two UK defence exporters totalling £600m, implicitly creating a link.

We have discussed this with the Foreign & Commonwealth Office. Despite the risk, they believe that a failure to take forward the negotiations could have an equally significant impact on the relationship and that demonstrating a commitment to prisoner transfer negotiations could be key to achieving movement in other areas. It is their view that we should therefore move forward as quickly as possible. Our Ambassador is due to meet the acting Foreign Minister today and will again reiterate that the PTA will not cover al-Megrahi but if, in his opinion, there is any doubt that the message has been accepted, we believe that it would be appropriate for you to write to the Libyan Justice Minister forwarding a revised agreement and explaining the position on al Megrahi. A letter from you prior to the negotiations would underpin the position of officials at the talks.

### **Amendments to the text**

Excluding al-Megrahi from the scope of the agreement is not legally necessary to ensure that he is not transferred. Our model agreement, on which our negotiation with Libya is based, provides the absolute right for either Government to refuse a request for the transfer of any individual prisoner. However, the Scottish Executive does not believe that this goes far enough. They consider that the PTA must clearly reflect the position set out in the letter of 24 August 1998 from the UK and US Governments to the UN Secretary-General, which made clear that anyone convicted of the Lockerbie bombing would serve their sentence in the UK. They believe that without such an express provision any decision to refuse a request would be likely to result in a legal challenge that could see the courts overturn a decision not to transfer al-Megrahi. In their response to your letter of 26 July (Annex D), the Scottish Minister for Justice has made it clear that any prisoner transfer agreement with Libya should explicitly exclude anyone involved in the Lockerbie bombing. In order to give effect to that we propose amending the text as follows: "the prisoner has not been convicted of a criminal offence connected with the destruction of Pan American Airways Flight 103 on 21 December 1988".

This has the advantage of not specifically mentioning al-Megrahi, while excluding anyone convicted, now or in the future, of involvement in the bombing of the Pan American flight. Given the views of the Scottish Executive, it would be helpful if you would confirm that the inclusion of this amendment is a red line for the UK and that without it the UK would not be able to conclude an agreement with Libya.

In order to provide some presentational gain for the Libyan authorities we are proposing to offer a review clause, as a 'fall-back' position in negotiations. In reality this does not add anything because it is implicit that countries can seek to renegotiate agreements at anytime; however the inclusion of a review mechanism could provide the Libyan Government with some cover domestically.

The Scottish Executive have asked that a review clause should only be offered if absolutely necessary and that any clause should include reference to consultations with the devolved authorities. While we agree that a review clause should be offered only if absolutely necessary, [REDACTED] the agreement should not make reference to the devolved authorities. The agreement is an international treaty between the Governments of the United Kingdom and Libya and mention of the devolved authorities would not be appropriate. However, in your response to the Scottish Executive you could confirm that, should the review clause be activated, consultation with the devolved authorities will take place on any proposed amendments.

We will also take the opportunity to amend the agreement to bring it into line with UK domestic legislation by removing the requirement for a prisoner to consent to transfer. If agreement is reached this will be our first prisoner transfer agreement that does not require prisoners to consent to transfer. Given the nature of the Libyan regime, this may attract adverse comment. However, Parliament has approved the principle of transfer without consent and we would not be under any obligation to seek or agree to transfer any prisoner to Libya if we have concerns about the conditions or treatment to which a prisoner may be returning. If the removal of prisoner consent is not acceptable to the Libyans, consent will still be required. In your letter to the Scottish authorities we also suggest that you should remind them of their commitment to bring their legislation into line on the issue of consent.

### **Negotiating Mandate**

If you are content with the arguments set out above, officials will operate subject to the following mandate:

- (i) the exclusion of those convicted of the Lockerbie bombing is non-negotiable and officials should not agree any draft that does not explicitly provide for such exclusion;
- (ii) officials should seek to remove the requirement for a prisoner to consent to transfer, but if consent is required by the Libyan authorities and is necessary to reach an agreement, prisoner consent should remain; and
- (iii) officials have freedom to negotiate other amendments subject to final approval of Ministers.

### **Parliamentary Handling**

The negotiation of the prisoner transfer agreement with Libya has no immediate implications for Parliament. However, there is significant Parliamentary interest in foreign national prisoners in general and the Government's plans to remove them in particular. The linkage of the negotiations and the presence of the Lockerbie bomber in Scotland can be expected to heighten Parliamentary interest in the outcome of negotiations, and if the PTA is laid before Parliament under the Ponsonby Rule (if it is subject to ratification).

### **Financial implications**

None at present. The costs involved in prisoner transfers are small. They fall principally on the receiving state in each case, and arise from the responsibility for escorting the prisoner home. There are currently no UK citizens in prison in Libya.

### **Presentation and media handling**

We do not intend to make any public announcement of the negotiations. However, a media strategy will be put in place, in consultation with the Foreign Office, the Cabinet Office and the Scotland Office in the event that negotiations become public. Lines will be cleared in advance with Ministers.

PAT BASKERVILLE

Copy List

PS to David Hansen  
PS to Maria Eagle  
PS to Alex Allan  
Helen Edwards  
Phil Wheatley  
Ian Poree  
Andrew Dodsworth

  
Special Advisers

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Ministerial Confirmation from Darren Tierney to Pat Baskerville

20 September 2007

Libyan PTA

Pat,

JS has seen your submission and has agreed the recommendations and the negotiating position. He has slightly amended the draft letters - attached. There is one DN in the letter to the Libyan Justice Minister - can you complete, liaising with FCO colleagues. Can you also add a short summary in bold to the minute for the PM.

JS would like Des Browne to see the submission and to ensure that he is content with the approach - I have copied to Amy Bishop.

Regards,  
Darren Tierney  
Private Secretary - The Rt Hon Jack Straw MP



**26 September 2007; footnote 15; letter from PM to Col Qadhafi;**  
10 DOWNING STREET

THE PRIME MINISTER

26 September 2007

Dear Colonel Qadhafi

I wanted to write to wish you a belated Ramadan Kareem, and to wish you and your family well in this holy month.

I am pleased that we continue to make progress in many areas of mutual interest. We share your close interest in Africa. Libya's constant concern to resolve the crisis in Darfur is admirable, and I am delighted that the Great Jamahiriya will host the UN/AU mediation meeting in October. I hope that our two countries will be able to work together to help alleviate poverty and disease in Africa. If the UN General Assembly elects Libya as a member of the UN Security Council, we will work in this forum to develop further our International co-operation.

I confirm that the British Government are working to fulfil all the undertakings agreed during Tony Blair's visit in May, in many areas such as counter terrorism, policing, justice, education, English language teaching and health.

I strongly hope that we can make rapid progress to implement the Defence Accord signed in May, when Dr Baghdadi al-Mahmoudi announced publicly that Libya would purchase the MBDA Jernas air defence system from the UK. The Joint Communiqué refers explicitly to the early conclusion of contracts with GD(UK) and MBDA, so we look forward to that. Confirming these two contracts is key to creating a defence industrial partnership, enabling Libya to develop and strengthen its own defence industrial base, with sustained British help where Libya seeks, under our Accord. Both companies have submitted realistic bids and their products are second to none. I understand that you expressed your personal goodwill to the UK with regard to both contracts when you met Tony Blair in Sirte. I hope that these contracts can be concluded soon.

Separately, I know that BP look forward to early Cabinet approval of their agreement with Libya so that they can begin many years of mutually productive investment in the development of the Libyan economy.

The ongoing exchange of senior visits is important, helping us to strengthen our ties together. I am glad that Foreign Office Minister Dr Kim Howells had a constructive visit to Tripoli in July and that Libya sent such a strong team to take part in the successful Wilton Park Conference on Libya/UK relations. His Royal Highness the Duke of York will visit Libya in early November. I hope that you will have the occasion to meet him.

As I said in my introductory letter to you in July, I look forward to developing a close and productive relationship with you personally, and hope that we shall speak soon.

Yours sincerely

Gordon Brown

Colonel Mu'ammarr Qadhafi

## **28 September 2007; footnote 11; Jack Straw to Gordon Brown PTA**

The Rt Hon Jack Straw MP  
Lord Chancellor and  
Secretary of State for Justice

PRIME MINISTER

28 September 2007

### **UK/LIBYA PRISONER TRANSFER AGREEMENT NEGOTIATIONS**

#### **Summary:**

1. The UK is negotiating a prisoner transfer agreement with Libya. It is our intention to exclude from its terms anyone convicted of the Lockerbie bombing. It is possible that this will lead to difficulties in our wider relations with Libya, as we judge their primary interest to be the return of Abdelbasset al-Megrahi, who currently stands convicted of that crime. This note is to alert you to that risk.

2. You will be aware that during his visit to Libya in May this year, Tony Blair committed the UK to negotiating a range of bilateral agreements with Libya in the field of judicial co-operation. This included prisoner transfers. This commitment to negotiating a prisoner transfer agreement led to difficulties with the Scottish Executive who were concerned to ensure that any proposed agreement did not cover Abdelbasset al-Megrahi, the Libyan convicted of the Lockerbie bombing. Consultations with the Scottish Executive have now been satisfactorily resolved and a team of MoJ/FCO officials will travel to Tripoli in early October to commence formal negotiations. I am writing to alert you to that visit and of the possible consequences for other British Interests.

3. You will be aware that we have previously informed the Libyan authorities at the highest level that any prisoner transfer agreement would not cover al-Megrahi. We have received mixed messages in reply. The Libyans have appeared to accept our position on some occasions but not on others. Though they know it is our intention to exclude him, it is likely that the Libyans still harbour hopes that the agreement will enable al-Megrahi to be transferred at sometime in the future. It is possible that when confronted with a written proposal excluding anyone convicted of involvement in the Lockerbie bombing from the scope of the agreement that the Libyans will withdraw from the negotiations. Qadhafi is likely to take a personal interest in the matter [REDACTED].

4. There is a particular risk that a breakdown in negotiations could have a significant impact on the pending BP, MBDA and General Dynamics (UK) contracts. I understand, however, that it is the view of the Foreign Office that failure to engage in formal negotiations on prisoner transfer could be equally damaging and that progress on these contracts is unlikely to be made without at least demonstrating a commitment to take forward PTA negotiations. On balance therefore we take the view that it is worth risking Libyan displeasure and should push ahead with negotiations on a PTA.

5. A media handling strategy will be put in place to deal any potential problems arising from the negotiations and I will discuss with the Foreign Secretary the extent to which we can ameliorate potential difficulties.

6. I am copying this minute to the Foreign Secretary, the Secretary of State for Scotland and to the Secretary of State for DBERR.

JACK STRAW

## 2 October 2007; footnote 12; note from HMA Tripoli to the FCO

From: [REDACTED] On Behalf Of Vincent Fean  
Sent: 02 October 2007 11:23  
To: [REDACTED] (MENAD)  
Cc: [REDACTED] Neil Wigan; [REDACTED]  
Subject: JUSTICE TALKS, MEGRAHI, AND DEFENCE CONTRACTS  
Importance: High

[REDACTED]

I spoke to [REDACTED] last evening about the linkage the Libyan authorities are making between the PTA and the two defence contracts.

They have not made that linkage overtly to us, but as good as: [REDACTED] phone call yesterday to GD(UK)'s chief executive was on [REDACTED] instructions. [REDACTED]

[REDACTED]

We know that the only part of the Justice MoU which interests the Libyans is the possibility (as they see it) of retrieving Megrahi via a PTA. All I have seen tells me that HMG is not going to shift on that; our fall-back position in the Justice negotiations is to introduce a general review clause to the PTA, while retaining our current provision excluding Lockerbie. So the Libyans are asking us for something we cannot give, and holding back the defence contracts as the inducement for us to give.

What to do? Our first opportunity to do something is at 11:00 your time, when the Justice negotiations start. If you agree, I will say early on that we maintain our undertaking to agree four Justice agreements asap and certainly by next May, but that linkages to extraneous issues are unacceptable, and other parts of our positive bilateral agenda should not be held back while we negotiate in good faith on Justice.

### Next Steps

The Libyans, [REDACTED] have made the two UK companies fully aware of the linkage [REDACTED] between the PTA and their contracts. I can try to talk to [REDACTED] (he has declined to see me for over a week - we now know why), and [REDACTED]. We can tell them the truth: that they are holding up promises made to our former PM, while the Megrahi case can only be resolved through the Scottish appeal process which is about to get under way. The Libyan negotiating tactic [REDACTED] won't work. It does risk impairing the good bilateral relationship we have built up together patiently over the last years, evidenced by Mr Brown's 26 September letter.

I would be grateful for a steer on the line you are happy for me to take. We can consider subsequently whether/when to play in Simon McDonald to [REDACTED] and Dr Howells to [REDACTED]

For our own background information, can you ask [REDACTED] when Megrahi's appeal will start, and how long it is likely to take?

Vincent

Vincent Fean  
HM Ambassador  
British Embassy  
Tripoli

## **2 November 2007; footnote 18; record of phone call between Jack Straw and Kenny MacAskill**

Ministry of JUSTICE

Darren Tierney  
Private Secretary to  
The Rt Hon Jack Straw MP



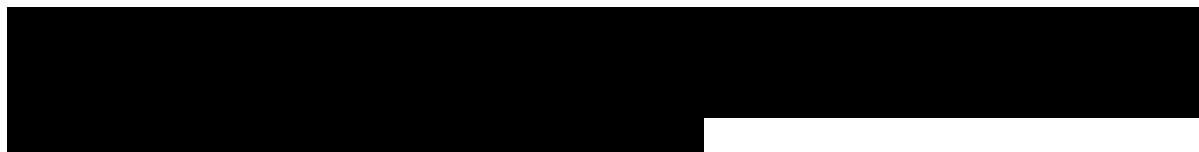
2 November 2007

### **PHONE CALL WITH KENNY MACASKILL**

All,

Not for further circulation. JS spoke to Kenny MacAskill (KMA) this morning. Here is a note for the record.

**JHA**



#### **Libya**

JS underlined the confidential nature of the call, and asked KMA to speak to no one but Alex Salmond (AS) on this issue. I was the only PS on the call. JS explained that the Libyans understand that they will not get al-Magrahi (AM) back to Libya. JS explained that this would be the position under a standard Prisoner Transfer Agreement (PTA) in any event as it allows for either country to exclude a specific prisoner. JS explained that Libya had made it clear that if AM is named specifically on the PTA then the BP contract will not be signed. JS explained he had spoken to Simon McDonald who advised that the Libyans are not bluffing on this. JS said he would provide SE with guarantees that AM will not be repatriated. He said he understood the Scottish position on this, but that the BP deal was significant for both Scottish and wider UK interests.

KMA said that he would like to speak to AS but said that SE should be able to accept the assurances that JS was offering and that had been made in public before.

JS will meet KMA next Thursday for further discussions.

**Darren**

## **7 November 2007; footnote 17; Ministry of Justice Submission on PTA**

To: Secretary of State for Justice                      Date: 7 November 2007

From: Pat Baskerville  
Offender Policy and Rights Unit  
1st Floor Fry  
2 Marsham Street

Tel: [REDACTED]

**Subject: Prisoner Transfer Negotiations with Libya**

### **Issue**

To report on the recent negotiations between UK and Libyan officials on the proposed Prisoner Transfer Agreement (“PTA”) and subsequent discussions.

### **Recommendation**

That you

- (i) note the outcome of the negotiations between Libyan and UK officials held on Tuesday 2 October;
- (ii) agree that officials should invite a Libyan delegation to London in December to continue negotiations on this and the other three agreements covered by the MOU;
- (iii) note the commercial implications of our handling of the current negotiations; and
- (iv) in the light of subsequent meetings at a senior level, explain to Scottish Ministers (Kenny MacAskill MSP, the Scottish Cabinet Secretary for Justice) the need to amend the current exclusion from the terms of the agreement of anyone convicted in relation to the Lockerbie bombing (making it clear this in no way fetters the Scottish Ministers’ right to decide on transfers to and from Scottish prisons).

### **Timing**

Pressing. You are due to meet with Kenny MacAskill on Thursday to explore the scope for the Scottish Executive to change their stance on the PTA.

### **Argument**

My submission of 19 September (copy attached) sought your agreement to a negotiating mandate for discussions to be held in Tripoli on 2 October about the UK/Libya PTA. In summary, the mandate provided for an Agreement based on our model PTA that did not require a prisoner to consent to transfer and excluded from its scope anyone convicted in relation to the Lockerbie bombing. The mandate authorised officials to offer a review mechanism if it proved necessary to secure agreement.



The discussions took place in Tripoli and were conducted in a friendly and open manner with both sides setting out their respective positions. Agreement was reached on most issues, with the Libyan delegation accepting the proposal that the Agreement should not require prisoner consent. This was the first time that we had sought to exclude prisoner consent from such an Agreement and it is encouraging that it met with little resistance, although this could simply reflect the Libyan's eagerness to secure agreement.

As expected the only issue of principle that could not be resolved at the talks was the exclusion from the scope of the Agreement of al-Megrahi. The Libyans did not try to hide the fact that their interest in the Agreement was to secure the possibility that al-Megrahi might be transferred to Libya at some time in the future. Their desire to achieve this was reinforced by a linkage, first made in contacts outside the meeting on the previous day, of the PTA negotiations and UK/Libya defence and commercial interests.

We restated the Government's position that the PTA would not cover al-Megrahi and reminded the Libyan delegation that that our position had been consistent and unchanged since talks on a PTA had begun; indeed we pointed out that it had always been the very clear position of the UK Government that anyone convicted of the Lockerbie bombing must serve his or her sentence in Scotland, a fact internationally recognised in the UN letter of March 1999, prior to the trial of al-Megrahi in the Hague under Scots law. The Libyan delegation appeared to acknowledge this but argued that the exclusion clause was not necessary as both States would have the right to approve or refuse any individual request. They insisted that the PTA was a general agreement that should not include or exclude anyone; indeed they suggested that the proposed exclusion clause would not look good and would "disgrace" the Agreement.

Stressing that the PTA was an agreement for the long term and that the position of the two Governments might change in the future, the Libyans also suggested that the proposal would fetter the UK's ability to react to any change in circumstances. At the time we considered that this could be an indication of their acceptance that in the short term they were unlikely to secure the transfer of al-Megrahi, although it would remain their medium/long term aim. If this were the case, we considered the offer of a review clause might break the log jam. Following discussions with our Ambassador before the meeting, we decided not to offer the review clause at this stage and therefore held it in reserve for the next meeting, provisionally agreed for December. The Libyans would no doubt have been aware that such a review clause would merely restate the existing legal position (namely that the PTA could be amended by agreement between the parties) but we believed that its inclusion might help them presentationally.

At the conclusion of the meeting we restated our position and undertook to take back their views to Ministers here. We did not give any indication that this could or would lead to a change in our position.

### **Commercial Linkage**

There had been clear, but indirect, messages before the meeting from the Libyans that our current commercial interests would be best served if we offered concessions on the PTA.

Such a linkage had been explicitly denied by the Foreign Minister, but informally the Libyans made no secret that everything on the table was part of one single negotiation. The Libyans know that these deals matter to us and have been at the forefront of political lobbying since our respective Prime Ministers met in May and agreed that all three would proceed to completion: two defence contracts worth upwards of ██████ in total and a contract with BP worth initially around ██████ with the potential to rise to ██████

At the meeting between ██████ and Simon McDonald on 25 October, ██████ announced that the contract with GDUK worth ██████ (initially, but with potential extra business from providing other compatible systems) had been won - the final contracts were now being signed. ██████ went on to say that the others – with MBDA (part owned by BAE Systems) for ██████ and with BP could be concluded swiftly if there was movement on the language in the PTA.

### **Next Steps**

We are due to meet with the Libyans again in December. While the PTA is their priority, the Libyans were clear that the commitment to negotiate applied also to the agreements on Civil and Commercial Law, Mutual Legal Assistance, and Extradition, which formed the basis of the Memorandum of Understanding signed by the UK and Libyan Governments in May. We would plan therefore to invite a Libyan delegation to London in early December to discuss all four.

The options on the PTA are to stick with the current negotiating line or to remove the exclusion clause. Both carry significant risks.

### **The Libyan position**

There has been broad agreement that commercial considerations should not dictate sensitive policy decisions such as the PTA. To do so could set an unhelpful precedent for future dealings with the Libyans, as well as raising the spectre of political and media criticism. Nevertheless the importance of the contracts should not be under-estimated and despite our best efforts they are now inextricably linked to the PTA. At the meeting between Simon McDonald and ██████ contended that the language of the exclusion clause was not in the original draft PTA and was unnecessary and dishonourable. Simon McDonald agreed to look again at the issue and work to find a solution.

The language in the PTA *does* differ from that in the Model Agreement which was originally handed to the Libyans by officials in May. They were told then that it was ‘for information’. It is normal practice to start with the current Model Agreement and to tailor it to the particular bilateral relationship during negotiations. This was explained to the Libyan delegation during the negotiations in Tripoli. The UK delegation characterised the exclusion clause as a fair and transparent reflection of the previously stated position, notably by Nigel Sheinwald in a meeting with ██████ on 2<sup>nd</sup> May, that the Agreement ‘would not cover’ al-Megrahi. He is not mentioned by name. Despite the room for possible misunderstanding, it now seems unlikely that further explanation will lead to a change in the Libyan position.

The Libyans are correct in their contention that the exclusion clause is not required to enable the Scottish Executive (who would have devolved authority over the transfer decision) to refuse the transfer of al-Megrahi, if he remains convicted.

### **The Scottish Executive position**

The First Minister has invested considerable personal capital in the dispute with the UK over the origin of these negotiations (his focus has been on the failures of process between the Government and the Scottish Executive, although he has implied – wrongly – that the PTA will in some way allow for al-Megrahi's repatriation) and there has been no indication of any change of heart. There does not seem to be any direct gain to Scotland from the contracts (although BP provides at least 2,000 jobs in Scotland) and a further public disagreement over the terms of the PTA could allow Alex Salmond to take the moral high ground. You are due to meet with Kenny MacAskill on Thursday to discuss this.

In addition to any party political considerations, the starting point for the Scottish Executive is that all decisions in relation to Scottish prisoners are a matter for them. The Scottish Executive have a right to be consulted over the terms of the Agreement, since it touches on devolved matters; and when we did so their requirement was that it exclude the Lockerbie bomber. Options were offered in a letter from you to Kenny MacAskill dated 26 July and the exclusion clause was the outcome of that exchange.

Beyond that principle, Scottish Executive concerns are likely to include:

That if he remains convicted, applies for transfer and is refused, al-Megrahi will be able to seek judicial review with unpredictable consequences;

That Scottish Ministers, during such an application for transfer, will be put under pressure by the Libyans just as the UK Government is now;

The sensitivities of the victims' families to the possibility that al-Megrahi could be transferred and subsequently released;

The potential for undue damaging implications to be drawn as regards the likely future decision of the Scottish courts in al-Megrahi's further appeal.

If you are able to persuade the Scottish Executive to soften their stance and agree to the removal of the exclusion clause – or go ahead without their agreement – there remains a small risk that we could concede on the language and still not secure the outstanding contracts, although it is likely that the BP deal would be delivered, [REDACTED] and the deal is a good one for Libya. However, we would have demonstrated that we are susceptible to commercial pressure, which may be unhelpful in future dealings with Libya and others.

When the outcome of your discussions with the Scottish Executive are known, we recommend that you write to the Prime Minister and to the Secretaries of State for Scotland/Defence, for Business, Enterprise and Regulatory Reform and to the Foreign Secretary, advising them of developments and your recommendation on the Government's position. We understand that you have already had an informal discussion with the Secretary of State of Scotland/Defence and agreed that it is sensible to pursue this point with the Scottish Executive. The Secretary of State for Scotland/Defence has suggested it would be helpful if we could ensure that we publicly restate our clear view that this is a matter for the

Scottish Executive Ministers; that the PTA does not inhibit their decision-making powers in any way; and that we support the Executive's wish for anyone convicted of the Lockerbie bombing to remain in Scotland for the duration of his/her sentence.

## **Background**

In May 2007, the then Prime Minister signed a Memorandum of Understanding with the Libyan Government agreeing to commence negotiation on agreements in four areas of judicial cooperation: prisoner transfers, mutual legal assistance, extradition, and civil and commercial law. The negotiations were to be concluded by May 2008. It was clear from the beginning that the Libyan Government attached particular importance to concluding the PTA in order to provide for the return to Libya of al-Megrahi, the Libyan national convicted of the Lockerbie bombing. However, it has been made clear to the Libyan authorities at a senior level that any PTA would not cover al-Megrahi.

The signing of the MoU in May this year led to the first significant political row between the Government and the Scottish Executive following the SNP victory in the Scottish Parliamentary elections. In subsequent consultations, the Scottish Executive have made it clear that any PTA between the UK and Libya that did not exclude al-Megrahi would be unacceptable to them. Although the negotiation of an international agreement is a matter solely for the UK Government, we have previously accepted their view that al-Megrahi should be excluded.

## **Parliamentary and Media Handling**

At present negotiations are proceeding on a confidential basis and have not attracted any significant Parliamentary interest since the row with the Scottish Executive in May. Whether we proceed as previously planned and as a result we lose the contracts, or alter our position and provoke a row with Scotland, it is likely that Parliamentary and media interest will rise. We will need to prepare a relevant handling strategy.

## **Financial implications**

None directly from the PTA.

## **Devolved Administrations**

We have not had any discussions with Scottish Executive officials on this latest approach since contact is being made at a political level.

Pat Baskerville

Copy List

PS to David Hanson  
PS to Maria Eagle  
PS to Alex Allan  
Helen Edwards

Phil Wheatley  
Ian Poree  
Andrew Dodsworth



Fenella Tayler



Special Advisers

## **19 November 2007; footnote 14; record of Simon McDonald meeting with BP**

SIMON McDONALD

MEETING RECORD: Sir Mark Allen and Dr Michael Daly

You met Mark Allen (BP adviser) and Michael Daly, who runs BP's exploration division. They ask about progress in HMG's support of the BP contract and enquire about the new political context under Gordon Brown and what this means for HMG support to BP.

### **THE BP CONTRACT IN LIBYA**

You explained the current status of HMG support. PTA negotiations were ongoing with movement expected soon. Allen thought Alex Salmond was looking for bilateral relations with the Libyans, and suggested you convey to [REDACTED] that this would jeopardise his own agenda. He emphasised the financial ([REDACTED]) and opportunity costs of delay. You undertook to update them this week on progress (I will get an update from Jack Straw's office). Once there was movement, you could convey this to [The Libyan Government]. You would be seeing [REDACTED] when you travelled to Libya in 2008.

Both Allen and Daly were sceptical this would be the last hurdle. [REDACTED]

### **HMG SUPPORT IN THE FUTURE**

Daly outlined political access as a key issue for BP. Libya was the latest challenge but with similar issues elsewhere he was keen to understand how the new No 10 set-up worked and what this meant for HMG support to BP. Allen stressed the struggle for access to key players overseas, and the importance of top-level HMG support to achieve it.

You explained the shift of No 10 advice in the Cabinet Office, and Gordon Brown's foreign policy priorities.

I am copying this note to Krishna Dhanak (Cabinet Office), Stephen Hickey, David Quarrey (FCO) and Vincent Fean (Tripoli).

[REDACTED]

## **7 – 19 December 2007; footnote 21; correspondence between Jack Straw and Des Browne;**

Ministry of Justice

The Rt Hon Jack Straw MP  
Lord Chancellor and  
Secretary of State for Justice

RESTRICTED - POLICY

The Rt Hon Des Browne MP  
Secretary of State for Scotland

7 December 2007

### SOMERVILLE CASE

As you know the Scottish Justice Minister, Kenny McAskill, wrote to me on 25 October 2007 seeking urgent legislation to reverse the effect of the Somerville judgement on the Scottish Executive's liability for damages under the Scotland Act for breaches of Human Rights.

He has subsequently linked progress on this to agreement to the proposed prisoner transfer agreement with Libya. Be that as it may, we should look at the Somerville arguments on their merits. You and I both have direct interests in that, along with other CN colleagues.

In my view there is a good argument that the time limits applying to damages claims for breaches of human rights should be broadly the same across the UK, whether the breaches are by the Scottish Ministers or another public body. I would be happy to make legislative provision to that effect, which should not affect the basic structure of the *vires* control in the Scotland Act.

I do not think that it would be right to make that fully retrospective, as we would be legislating retrospectively to remove what might be argued to be legitimate expectations that litigants had to compensation. But, subject to the views of the Law Officers, I would be happy that we announce our intention to legislate to make this the position from a given future date, so that the eventual legislation would have that element of retrospection.

I would be prepared to include provision on this in the Constitutional Reform Bill. I doubt that you and colleagues would want to agree to the alternative suggested by Scottish Ministers that we make an Order under the Scotland Act allowing them to make this change at Holyrood.

Kenny McAskill has sought "compensation" if legislative change is not retrospective. This should simply be rejected. Retrospective legislation or "compensation" would simply represent a windfall gain to his Budget.

Very similar schemes of *vires* control are to be found in the parallel legislation in Wales and Northern Ireland. I doubt if in practice the same problems will arise there, because of the tight time limits for judicial review cases, but I would be grateful for the views of Peter and Shaun on whether they would nevertheless want similar changes to be made for them.

I am copying this letter to members of CN, the Advocate General for Scotland, and Sir Gus O'Donnell.

JACK STRAW

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Ministry of Justice

The Rt Hon Jack Straw MP  
Lord Chancellor and  
Secretary of State for Justice

The Rt Hon Des Browne MP  
Secretary of State for Scotland

13 December 2007

#### LIBYA - PRISONER TRANSFER AGREEMENT

We spoke this morning about the Prisoner Transfer Agreement (PTA) that the UK is negotiating with Libya. Neil Davidson was also involved in the discussion. We agreed that there was a significant interest for the whole of the UK in settling the PTA with Libya.

You are reluctant to move at this stage, as is Jacqui Smith, on what the Scottish Executive wants in relation to the Somerville judgment or in relation to devolving firearms legislation. There is therefore no collective agreement on these matters and there is no scope to get this in the time available to agree the PTA.

As we discussed, the Scottish Executive has an absolute right to refuse to transfer any prisoner in *any* event and there is therefore no need to name specific individuals in the PTA. Doing so is a departure from the wording of the standard PTA.

However you will also be aware that in the Summer I gave undertakings – following prior agreement with colleagues - that we would seek an exclusion in respect of Al-Magrahi on the face of the document. Notwithstanding this you, I think, were agreed that given the overriding case in the national interest to agree the PTA with Libya, officials should be instructed to agree the standard PTA with Libya and remove references to Al-Magrahi.



Once we are agreed I will both phone and write to Kenny McAskill to explain that circumstances had changed in relation to negotiating the PTA because of the imperative that the Libyans were now placing on finalising it. And after finalising it I will copy him a side letter, whose terms would be agreed with you, to say that discussions on Somerville and firearms legislation can continue separately from the PTA negotiations.

I am also happy to speak to Wendy Alexander if you think that would be helpful.

I am copying this letter to Simon McDonald.

JACK STRAW

(Agreed by the Justice Secretary and signed in his absence)

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SCOTLAND OFFICE

Rt. Hon. Jack Straw MP  
Lord Chancellor and Secretary of State for Justice

19 December 2007

LIBYA - PRISONER TRANSFER AGREEMENT

Thank you for your letter of 13 December following our discussion in the margins of CN.

I confirm that there is an overriding case in the national interest to agree the PTA with Libya.

We have not yet had the opportunity to have a proper detailed discussion about the other issues which the Scottish Executive has chosen to link to the PTA, on which you wrote to CN on 7 December. In my view, we should separate these from the PTA negotiations and meet in the New Year with Jacqui to discuss these issues in the appropriate depth.

As I have made clear, I am anxious, at all costs, to avoid amending the Scotland Act on a case by case basis. That view influences my attitude to the Somerville case. However, I remain unconvinced by the arguments for limiting the Scottish Executive's exposure to human rights challenges.

I have seen your draft letter to Kenny MacAskill and am content with your proposal in relation to the PTA. However it is important not to raise the Scottish Executive's expectations of a change in relation to Somerville, and so I would prefer that no mention were made of it at this stage.

I am copying this letter to the Home Secretary, the Attorney General and the Advocate General for Scotland.

DES BROWNE

## **19 December 2007; footnote 22; record of phone call between Jack Straw and Kenny MacAskill;**

Ministry of Justice

Darren Tierney  
Private Secretary to  
The Rt Hon Jack Straw MP

Jim Gallagher  
Pat Baskerville

Cc:

Antonia Romeo



Mark Davies

19 December 2007

### **PHONE CALL WITH KENNY MACASKILL**

Jim/Pat,

Not for further circulation. JS spoke to Kenny MacAskill (KMA) today about the Libya Prisoner Transfer Agreement (PTA). Here is a note for the record.

JS began by outlining the state of negotiations with the Libyans on the PTA. He said that the Libyans had made it clear that the wording on preventing specific individuals was preventing them from agreeing the PTA. JS said that he could not proceed with the PTA as currently worded and would revert to the standard PTA text. JS highlighted the fact that the wording had no practical effect in any event as it remained for Scottish Ministers to make the decision about transferring individual prisoners.

On Somerville and firearms legislation, JS said that he had discussed with colleagues and there was no collective agreement on either of the issues. KMA asked if there had been consideration of a trial or pilot for devolving responsibility for air weapons. JS said he had not considered this directly but said it was in any event an issue for the Home Secretary. He asked KMA to send him a note on this specific proposal.

KMA said he would need to speak to the First Minister. He made the point that the SNP would be seen to be rolling back on something 'deep in the Scottish psyche' and taking a political step back without securing a corresponding step forward.

Darren  
20/12

**18 February 2008; footnote 25; letter from Gordon Brown to Col Qadhafi;**

10 DOWNING STREET

THE PRIME MINISTER

18 February 2008

Dear Colonel Qadhafi

May I wish you, and your family, well.

I have asked Simon McDonald to visit Libya on my behalf to discuss how relations between our two countries can continue to develop.

We continue to work successfully together in the field of counter-terrorism. [REDACTED]  
[REDACTED]. I would like us to draw more on your experience of countering radicalisation and do more together in police cooperation.

I look forward to the early conclusion of our four bilateral agreements in the field of Justice, starting with the Prisoner Transfer Agreement, on which I understand that negotiations are now complete.

I am confident that our defence cooperation can grow, building on the Accord signed in Sirt last May. As you know, we seek to complement our constructive co-operation with the swift conclusion of contracts with MBDA and GD(UK), which you discussed with my predecessor. I am grateful for Libyan faith in the ongoing negotiations of these two contracts. I hope that we can conclude the negotiations soon.

The growth of Libyan/UK business ties is encouraging. I am pleased that BP now has final approval to begin its programme of investment. As Libya seeks to diversify its economy, providing new opportunity for your young people, there is more that the UK can offer in partnership with Libya. There is much to do together in areas such as English language teaching, infrastructure, environmental protection, and financial services. The Lord Mayor of London will be in Tripoli next month and will wish to discuss the many potential areas for future cooperation. The city of London is an open, reliable, long-term economic partner for Libya. I therefore hope you and the Libyan investment Authority will decide to choose London as the site to your international investment office.

I share your deep concern to see Africa develop to its full potential. I have long been committed to the welfare of Africa and its people. Like you, I wish to see a strong African Union where dialogue and negotiation in good faith replace conflict in Darfur, Chad, Kenya, Somalia, and on the border between Eritrea and Ethiopia. The UK will support strongly the swift conclusion of an EU/Libya Framework Agreement.

Many of these difficult issues come before us at the United Nations, in our role as Security Council members. I believe that a new, unanimous UN Security Council resolution, to be adopted before the parliamentary elections in Iran next month, will have a positive effect on Iran. We now need to work together to persuade Iran to emulate Libya by renouncing its nuclear weapons development, for the common good.

With best regards,

Gordon Brown

Colonel Mu'ammarr Qadhafi

## **29 September 2008; footnote 26; Ministry of Justice Submission on PTA**

To: The Lord Chancellor and Secretary of State for Justice

Date: 29 September 2008

cc: David Hanson

[REDACTED]

Jim Gallagher

Ian Poree

Andrew Dodsworth

[REDACTED]

[REDACTED]

Mark Davies

From: Pat Baskerville

Safer Custody & Offender Policy Group

1st Floor Fry Building

2 Marsham Street,

**Subject: UK/LIBYA PRISONER TRANSFER AGREEMENT**

### **Issue**

To note progress on the negotiation of the UK/Libya Prisoner Transfer Agreement and a Libyan request for further changes to our model text.

### **Timing**

Routine. However, you are likely to receive a letter from Alex Salmond shortly on this issue.

### **Recommendation**

That you note the content of this submission and the negotiating line we are holding with the Libyans.

### **Argument**

The UK and Libya have been negotiating the terms of a prisoner transfer agreement since May 2007. The negotiations have proved controversial because of the presence in Scotland of Abdelbasset al-Magrahi, the Libyan national convicted of the Lockerbie bombing. Since December 2007, when Ministers agreed that a clause excluding al-Magrahi from applying for transfer should not appear on the face of the agreement, officials have been negotiating the agreement based on our standard model text. This text enables either side to refuse a transfer.

In the case of al-Megrahi he could not be transferred with the consent of Scottish Ministers. This has been made clear to the Libyans during negotiations.

Officials from the UK and Libya met in London on 15<sup>th</sup> September for what was thought to be the final round of negotiations to finalise the Arabic and English texts. No advance notice had been given that the Libyans would seek to amend Article 14.2, which deals with termination of the Agreement. They sought to add wording which would have enabled the Agreement to apply indefinitely to applications that had been submitted before the Agreement was terminated. Although not articulated, it seems clear that the aim of the amendment was to ensure that the UK could not terminate the Agreement simply to frustrate the transfer of al-Magrahi. UK officials rejected the amendment on the grounds that the wording used was standard treaty language and that, while a prisoner could not be transferred once the agreement had been terminated, the six month notice period allowed time to complete outstanding applications. Libyan officials appeared to accept this. It should be noted that the Libyans have not previously objected to or sought to amend this element of the agreement.

We have now been advised that the Libyan Cabinet is not content with the position. We understand that they would prefer the termination clause to be deleted from the text. It appears that they are concerned that we will agree the text, sign the commercial contracts and then terminate the agreement. They have asked that we should not seek Ministerial clearance of the text until the Libyan Cabinet has considered the issue further. There is a religious holiday in Libya this week and we are unlikely to receive their views for at least two weeks.

It has been clear from the start that the Libyan negotiators and Government are pressing for the PTA for one reason only and that is to secure the transfer of al-Megrahi to Libya. The Libyan authorities have been told that this agreement would not cover al-Magrahi including during the course of formal negotiations. They have appeared to accept this on some occasions and not on others. While the removal from the text of the clause excluding anyone connected with the Lockerbie bombing from the PTA has removed the most obvious reminder of our position on this, the Libyans may also believe that we are susceptible to pressure and hence this late attempt to restrict our room for manoeuvre. The Libyans have indicated that they will not enter into an agreement that will be ineffective.

We do not believe that it would be appropriate to accept Libyan changes to the termination clause. They are unnecessary and, insofar as they would introduce a deviation from our standard text, they are likely to cause further handling difficulties with the Scottish Executive. MOJ officials met last week with the British Ambassador to Tripoli and, as part of the ongoing negotiations, we propose to inform the Libyan Government, via the Embassy, that the termination clause should remain. At the same time we intend to reassure them of the Government's good faith in the matter of implementation. A letter to this effect is currently being prepared. Officials will revert to Ministers should the Libyans push back on the clause.

## **Background**

The UK/Libya PTA is one of four agreements in the field of judicial cooperation which the then Prime Minister committed the UK to negotiating during his visit to Libya in May 2007. The agreement is controversial and has led to public rows between the Government and the Scottish Executive over the fate of al-Magrahi. However, while we have conceded on the issue of specifically excluding al-Megrahi, the Government's position has been consistent throughout the negotiations and in its dealings with the Scottish Executive: that the PTA does not provide for the transfer of any individual, it simply puts in place a mechanism by which prisoners may seek transfer; the final decision rests with the two Governments concerned; and, in the case of a prisoner detained in Scotland, transfer cannot take place without the consent of the Scottish Ministers.

### **Handling/presentational issues**

It is unlikely that we will receive a response from the Libyans this week and communication will be conducted in private. If the Libyans push back on this issue it will be necessary to seek agreement with the FCO and other interested departments on the handling. If the Libyans are content, a further submission will be put to you seeking clearance of the text. It will also seek your agreement to a detailed handling plan. Notification of Scottish Ministers of the conclusion of negotiations will be sensitive and could lead to a further public row in the run up to the SNP Conference next month. We also understand that Alex Salmond, Scottish First Minister, is in the process of writing to you to again state his opposition to a PTA that does not specifically exclude al-Megrahi. He may also ask for a response to earlier correspondence on this matter. While the exchanges have, so far, been private, there is also a possibility that on this occasion he may make it public.

We will prepare lines to take for the conference.

PAT BASKERVILLE

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### **Ministerial Response**

6 October 2008

Pa Baskerville,

215348 - 2008-29-09 termination clause - (Sept 08)

JS has seen the submission and comments that he does not want any contact with the SE until there is something to tell them. He goes on: 'I can see the Libyan's concerns. Standard clauses have been subject to deviation in the past I am sure. What is the objection to what they propose on merits, i.e. not just on the basis that we haven't done it before.'

Can you advise further on this point?

Darren Tierney  
Private Secretary to the Rt Hon Jack Straw MP  
Lord Chancellor and Secretary of State for Justice

## 10 October 2008; footnote 27; Ministry of Justice Submission – Call with First Minister

To: Secretary of State for Justice

Date: 10th Oct 2008

cc: SoS Scotland

AG for Scotland

Phil Wheatley  
[REDACTED]

Alison Blackburne Special Advisers – MoJ

Special Advisers - SO  
[REDACTED]

Pat Baskerville  
[REDACTED]

From: Jim Gallagher

Tel: [REDACTED]

**Subject: Call with the First Minister (Megrahi) – Monday 13th October**

### Issue

To provide you with background and speaking note ahead of your conversation with the First Minister of Scotland on Monday 13<sup>th</sup> October. This call will provide the First Minister with a read-out of the FCO-Libyan meeting held on Thursday 9<sup>th</sup> October, and seek his co-operation in preparing a factual letter to the Libyans.

This submission has been prepared jointly by officials in Ministry of Justice, Scotland Office, Cabinet Office and FCO.

### Recommendation

That you:

**Note** the background and wider context

**Agree** the lines to take

### Timing

**Urgent:** the telephone call has been arranged for Monday 13<sup>th</sup> October. Given our commitment to write to the Libyans by close of play Friday 17<sup>th</sup>, early agreement from the Scottish Executive to work together is imperative.

### Background



Megrahi's condition:

On Friday 26<sup>th</sup> September the Libyans contacted FCO to request a meeting with an FCO Minister (at the time Kim Howells now Bill Rammell) to discuss Megrahi's health. It had been reported in the Scottish media on 19<sup>th</sup> September that al-Megrahi was to be taken from Greenock prison to Inverclyde Royal Hospital. It was not confirmed in the media reporting whether this was for treatment or investigation.

FCO agreed to their Minister meeting his Libyan counterpart, [REDACTED] and a meeting was originally arranged for 6<sup>th</sup> October; at the Libyans request, this meeting was delayed until yesterday (9<sup>th</sup> October).

FCO, acting on the advice of the Scotland Office, informed officials in the Scottish Prison Service (SPS) about the Libya-FCO meeting in advance. It was highlighted to officials in SPS that the UK delegation would attend in 'listening mode'. No comment would be made by Government on the matter, other than to repeat that matters relating to any prisoner within the SPS was properly a matter for Scottish Ministers. An undertaking was given for a full report of the meeting to be provided to Scottish Ministers, your telephone call will meet this commitment.

After receiving a commitment to a full read-out from the UK, the Chief Executive of the SPS confirmed in writing that medical tests had revealed al-Megrahi has terminal prostate cancer

[REDACTED]

The Chief Executive also confirmed that Megrahi's fellow prisoners have commented on his significant decline in the past, [REDACTED]

[REDACTED]

FCO-Libyan meeting – Thursday 9<sup>th</sup> October

A read-out of both the meeting between the Foreign Office Minister, Bill Rammell, and his Libyan counterpart, [REDACTED], as well as the meeting between the Prime Minister's Head of Foreign and Defence Policy and the Libyan delegation, is provided at **Annex B**.

The Libyans clearly stressed their desire to ensure Megrahi is able to be with his family, and preferably to be returned to Libya. The risks of Megrahi dying in prison were highlighted. These risks have been stressed further by reports from post. [REDACTED] importance to the return of Megrahi and will want a prompt response to the Libyan request; we have committed to respond by close of play next Friday.

[REDACTED]. UK interest in Libya are wide ranging but most significant is the continuation of our counter-terrorism co-operation. [REDACTED]

There is also a human element.

Libya continue to detain Swiss nationals in response to the recent arrest of Qadhafi's son and has prevented individuals from leaving the country. These wider handling points will not be available to the Scottish Ministers when making their decision in this case, but they are not ones that we can allow to be neglected.

FCO Ministers and Simon MacDonald committed the Government to provide the Libyans with factual answers to their questions in relation to grounds for compassionate release by close of play Friday 17<sup>th</sup> October. Work will begin on a draft response with HMG, however it is our strong preference that the Scottish Executive are involved in the drafting, and agree the terms of the letter. It is hoped that an approach to the First Minister will set the process in place to ensure this co-operation.

#### **The options for Scottish Ministers –**

Scottish Ministers have been informed of Megrahi's condition, although it is not clear when. You received a letter from Alex Salmond dated 29<sup>th</sup> September in which he was chasing for an update on the PTA negotiations and reiterated his continuing belief that an exclusion clause should be provided for the Lockerbie bomber. We strongly believe that this letter was written prior to the First Minister being advised of Megrahi's condition.

At official level our strong indication has been that Scottish Ministers wish to engage constructively with UK Ministers on this issue. The Prisoner Transfer Agreement (PTA) has also been raised in this context. Your telephone call to the First Minister allows the Government to open these discussions with the Scottish Ministers and to ensure that we properly respect their responsibilities in this area. We have no indication of the position Scottish Ministers are likely to take; this is an incredibly challenging issue for them that will require careful handling. It is strongly recommended that your conversation with the First Minister focuses on providing a factual account of the FCO-Libya meeting only, not offer any views or favour options.

There would appear to be three options open to Scottish Ministers:

**Release on Compassionate Grounds** – Scottish Ministers have discretion to release a prisoner on compassionate grounds where the condition of the prisoner is terminal. This is considered to be 3 months left to live. We understand that release would be on licence and on the condition that the prisoner remained within Scotland.

**Return under the PTA** – A Prisoner Transfer Agreement allows the return of a prisoner to serve out his sentence in his home country where both jurisdictions are in agreement. To date Scottish Ministers have been publicly opposed to the conclusion of a PTA that could allow for the transfer of Megrahi. However it would enable them to return Megrahi under custody to the Libyan authorities, rather than releasing him into Scotland.

**Refuse release** – Scottish Ministers could decline requests for compassionate release, or return under any (future) PTA.

### **Prisoner Transfer Agreement**

You are aware of latest developments of the PTA: a revised PTA text, minus an exclusion clause for al-Megrahi, was agreed by UK and Libyan officials at the start of September. It was expected that the agreements would be signed off by the Libyans and the Foreign Secretary on the 9<sup>th</sup> October and arrangements were in hand for the Libyan delegation to come to London. However on 18<sup>th</sup> September, the Libyans announced they were unable to make this date and withdraw their support for the PTA.

The Libyans re-opened negotiations on the PTA, specifically requesting the removal of a termination clause. A termination clause is part of the standard PTA template that MoJ have used for all other PTAs that the UK has entered into; it simply allows either state to end the agreement if they should wish it. The Libyans have expressed concern that the termination clause could be invoked by the UK if a request were put in for the return of Megrahi. The Government has no intention of invoking the termination clause, and has never invoked any termination clause in any existing PTAs. Were a request for Megrahi's return to be received it would be a matter for Scottish Ministers to consider and respond to, not a matter for UK Ministers.

At the Libya-FCO meetings on Thursday 8<sup>th</sup> October, the Libyans confirmed they were content to consider the PTA text agreed, this includes the termination clause. We are awaiting written confirmation from the Libyans of this position. If this is the case, we have an agreed text that could be ready for signature during the course of November. We understand the Libyans are keen to sign this and the other agreements under the 2007 MoU quickly. As highlighted above, the PTA would provide a route by which Megrahi could be returned to Libya, without being granted compassionate release.

### **Wider context: Megrahi re-trial**

As you will be aware the Scottish Criminal Cases Review Commission have given Megrahi permission to bring a further appeal against his conviction. At present the court proceedings are centred around a Public Interest Immunity objection being argued by the Advocate General on behalf of the Foreign Secretary. Megrahi's lawyers have stated that without access to the information covered by the PII certificate they cannot properly mount their defence and that therefore Megrahi is not receiving a fair trial. It will only be once this round of proceedings is concluded that the second appeal will be heard at the Court of Criminal Appeal; this is not expected to begin until well into 2009.

If Scottish Ministers were prepared to consider Megrahi's case under the terms of the current draft PTA, Megrahi would need to drop his appeal in order to fall within scope. Currently the draft PTA states that no prisoner can be transferred unless or until all appeal proceedings have been concluded. This would not necessarily result in an end to proceedings as other individuals with sufficient title and interest could take this case up, after another reference by the SCCRC. If the process remains ongoing and Megrahi were to die during it others could

take the case up. Scottish Ministers could also consider it in the public interest to hold some other form of inquiry in the Lockerbie case and its handling.

**Next steps:**

Following your telephone conversation with the First Minister it is hoped that work can begin between officials in HMG and the Scottish Executive to prepare a response to the Libyans. This response will have to be carefully drafted and will have to respect the position of Scottish Ministers.

**Presentation and media handling**

Your telephone script specifically states that discussion and work between officials should take place in confidence. The Libyans regard Megrahi's condition as a matter of extreme sensitivity and FCO have offered assurances that this matter will not be made public. Media handling and defensive lines to take will be put in place in the event that this information does become public. The Scotland Office will co-ordinate media enquiries.

**Conclusion**

You and other relevant Ministers (Foreign Office, Scotland Office) will receive further updates on progress at official level and in the event of further contact from the Libyans.

## **Annex A – Lines to take**

I understand that you are aware of the meeting that took place on Thursday at the request of the Libyans between their Foreign Minister and our own FCO Minister (Bill Rammell)

A further meeting was held on Thursday afternoon between the Libyan Foreign Minister and Simon MacDonald, the Prime Minister's Head of Foreign and Defence Policy.

FCO agreed with your officials that we would contact you after these discussions to advise you of the outcome of these meetings. My call today is for this purpose.

The Libyans are very concerned about Megrahi's condition. [REDACTED] has visited Megrahi personally. A copy of the medical report completed by the specialist at Inverclyde Hospital was shared with us.

Both Bill Rammell and Simon MacDonald reiterated that any questions relating to any individual in a Scottish prison are a matter for Scottish Ministers. They advised the Libyans that we would pass on their concerns to you.

The [Libyan Government] raised the question of release on compassionate grounds. Again we repeated that this would be a matter for Scottish Ministers, but that we would raise their views in our discussions with you.

The Libyans are keen to receive views from us as soon as possible. They are very concerned that news of Megrahi's condition might leak and that this would cause serious situation in Libya. I am sure you agree with me that our discussions on this matter are confidential and private.

I should also raise in the context of these discussions that the PTA was highlighted by the Libyans.

You wrote to me on the 29<sup>th</sup> September asking for the latest position on negotiations. I can now confirm that the Libyans have approved the text of the PTA. We hope that this and the other three agreements covered by the MoU can be signed [in November/ before the end of the year].

As we have previously discussed, any request for transfer of an individual in a Scottish Prison under an agreed PTA would be a matter for Scottish Ministers.

As you will appreciate we have a strong interest in carefully managing relations with the Libyans. [Relations are delicate and their response to our actions unpredictable. There are a wide range of British interests at stake, particularly on counter-terrorism co-operation, energy and migration.]

We have therefore committed to provide them with a letter outlining the options from a factual and legal point of view that are available in this case by next Friday. In order to effectively manage our relations with the Libyans on this sensitive matter we will ensure we meet this commitment. This letter will not seek to provide views or opinions, simply the factual position in relation to compassionate release. I hope that you will agree to your officials working closely with mine to prepare this letter.

Clearly this is an incredibly sensitive matter for all involved. I appreciate that you will be taking legal advice and considering your position carefully. I would however be grateful if you would be able to agree that we speak again later this week and confirm that you are able to work with us on the letter to the Libyans.

We are keen to assist you where we can and wish to ensure that remain in close contact on this challenging issue. I would welcome your views on how best we can resolve this obviously difficult matter.

**Defensive lines:**

*If the First Minister suggests he should contact the Libyans directly*

We have a strong interest in carefully managing relations with the Libyans. There a wide-range of interests at stake here and it is right for the FCO to continue to manage this relationship.

*You say the Libyans have approved the PTA, does this have an exclusion clause?*

The PTA that the Libyans have indicated they are content to sign is the standard PTA text. As you know, the question of transfer under the PTA is a matter for Scottish Ministers.

## **13 October 2008; footnote 28; Ministry of Justice record Jack Straw call with First Minister**

**From :** Darren Tierney, Private Secretary to The Rt Hon Jack Straw MP

Simon McDonald (Cabinet Office)  
Jim Gallagher  
Pat Baskerville

Cc:

Alison Blackburne

[REDACTED]

Declan McHugh

[REDACTED] (Scotland Office)

[REDACTED] (PPS/Jim Murphy)

13 October 2008

### **JS/ALEX SALMOND CALL**

Simon/Jim/Pat,

JS spoke to Alex Salmond (AS) today about Mr Al-Megrahi (AM) and the UK/Libya PTA. They agreed that the call was on a confidential basis. Here is a note for the record.

JS outlined the fact that Bill Rammell, FCO officials and Simon McDonald had meetings last week with Libyan representatives. JS made the point that at those meetings, it was made clear that it was for Scottish Ministers to make any decisions on release of AM.

JS said that the Libyans asked about release on compassionate grounds. JS outlined where discussions had got to with the PTA, i.e. that the Libyans had now accepted the UK standard text and that it is likely to be signed in November. JS outlined the importance of UK/Libya relations on CT issues, migration and energy –and made the point that all of these affected the whole of the UK.

JS said that FCO had agreed to write to the Libyans by Friday of this week with factual and legal details of the options for release. JS envisaged that the letter would set out the SE position on compassionate release and PTA transfers. JS asked AS for agreement to discuss the terms of the letter.



AS said that he was aware of the developing situation re AM health. He raised the fact that a PTA will not apply if there are ongoing legal proceedings. JS replied that if a request under the PTA is made a key part of any agreement to that is that outstanding legal proceedings are dropped.

AS said that he had asked for a second opinion to be arranged. He said that it is theoretically possible for AM to be released on compassionate grounds and that this happens regularly in the Scottish system – albeit that AM case is particularly sensitive and high-profile. AS also said that he needed to be mindful of the 20<sup>th</sup> anniversary of the Lockerbie bombing.

JS said that he assumed that if there were genuine grounds for compassionate release SE Ministers would release AM rather than see him die in prison. AS said that any application re AM would be treated in the same way as for any other prisoner. He reiterated that he wanted to make any decisions following the second medical opinion.

AS said he was happy to work to agree a form of words for the letter to the Libyans. He outlined his main concerns with the situation:

That SE felt extremely aggrieved at the position on the PTA that had been arrived at.

That SE Ministers can't do or be seen to do something that interferes with an ongoing legal process.

That if SE Ministers contemplate release on compassionate grounds then they need to be satisfied it is appropriate and genuine. AS also said that any such release can't be on the basis of fixing any wider UK/Libya relationship issues – it needed to be treated on its own merits.

AS confirmed that he had asked for advice on what the criteria/guidance is for release on compassionate grounds.

AS agreed to speak to Kenny MacAskill tomorrow at Cabinet at 4pm. JS agreed to try to get them a draft of the letter by that time.

#### Next Steps

JS said that he would ask Simon to liaise with MOJ and FCO officials on a draft text and share with SE as soon as possible and ideally before their Cabinet tomorrow. **Action: Grateful if Simon could take forward with [REDACTED], Pat and Jim.**

**Darren Tierney**  
**13/10**

## **17 October 2008; footnote 29; letter from Bill Rammell to Abdulatti Obidi**

Foreign & Commonwealth Office

17 october 2008

Mr Abdulatti Obidi

Your Excellency,

When we met on Thursday 8<sup>th</sup> October, I committed to write to you with a factual description of the processes that would apply as regards any consideration of transfer or compassionate release on licence of Mr Megrahi given his recent medical diagnosis. This is of course without prejudice to the ultimate decision which may require to be taken on any such matters by the Scottish Government.

As you are aware any matter relating to an individual held within a Scottish Prison, is a matter for the Scottish Government. Following our meeting, the Secretary of State for Justice in the UK Government has spoken personally to the First Minister for Scotland and we have consulted the Scottish Government on the text of this letter.

I am advised that under Section 3 of the Prisoners and Criminal Proceedings (Scotland) Act 1993, Scottish Ministers have power to release prisoners, on licence, on compassionate grounds. Before releasing a life sentence prisoner on licence Scottish Ministers are required to consult the Parole Board for Scotland (unless the circumstances mean this is impracticable).

Under this provision, for an individual to receive consideration for release on licence on compassionate grounds, such a measure would require to be considered justified, taking account of all relevant considerations, by the prison Governor. The ultimate decision on whether a licence for early release on compassionate grounds should be granted is a matter for Scottish Ministers.

The Prisoner Transfer Agreement that is the subject of final negotiations between the UK and Libyan Governments may also be relevant. Such agreements provide that a request can be made for the transfer of a prisoner to serve out his sentence in his home jurisdiction. As you are aware, any request under the Prisoner Transfer Agreement, once concluded and in force, could only take place with the consent of both relevant jurisdictions. In the case of any prisoner serving a sentence in a Scottish prison, this would require the agreement of both the Scottish and the Libyan Government to any request submitted.

As you will also be aware, it is a standard requirement of Prisoner Transfer Agreements such as that which is the subject of discussions between the UK and the Libyan Governments that

the judgment is final and that no criminal proceedings relating to the offence, or any other offence committed by the prisoner, are pending in the transferring State.

I would emphasise that each case is considered on its merits. There has been no application on either of the above grounds (release for compassionate reasons and the proposed Prisoner Transfer Agreement) to the Scottish Government and therefore the Scottish Government has not given any consideration to Mr Megrahi's case on either of the above grounds. Consequently no assumption should be made as to the outcome of any application made to the Scottish Government.

I hope that this letter provides you with the factual information that you sought, please do not hesitate to contact me if I can offer any further assistance or if there are points in this letter that you wish to seek clarification on.

Yours sincerely

Bill Rammell

## **21 October 2008; footnote 30; Cabinet Office Submission to Gordon Brown**

Date: 21 October

PRIME MINISTER

CC: Tom Fletcher; Nick Catsaras; Stewart Wood; Michael Ellam; Tom Hoskins; Simon McDonald; Jon Cunliffe; Margaret Aldred

LIBYA: CONVICTED LOCKERBIE BOMBER TERMINALLY ILL

SUMMARY

The convicted Lockerbie bomber is terminally ill, confirmed by surgeons at Inverclyde Royal Hospital. Government of Libya (GoL) pressing for his return. This is being reported in the media. Options exist for compassionate release under Scottish law or transfer under a Prisoner Transfer Agreement (PTA) that we expect to sign soon. In both cases, Alex Salmond would need to approve release. Releasing Megrahi could attract UK criticism; his death in a Scottish jail could damage bilateral interests, including energy and commercial goals.

DETAIL

Abdelbaset al-Megrahi has cancer. We have not seen a prognosis so do not know how long he may live. Nor do we know if a prognosis exists. GoL has implied he may have a few months only and has pressed Simon McDonald for Megrahi's return to Libya, saying Gadhafi is personally engaged. Jack Straw has briefed Alex Salmond.

There are two options: compassionate release or transfer under a PTA. Compassionate release is not normally granted in Scotland until a prisoner has 3 months or less to live. This is a decision for the Scottish Executive. Release is usually to the UK, though could be to Libya [?].

We and the Libyans are almost ready to sign a PTA. This would allow Megrahi's return to Libya, but would require the consent of the Scottish Executive.

The GoL is pursuing both compassionate release and transfer under a PTA. [The Libyan Government] has written to Alex Salmond to request compassionate release. [The Libyan Government] is seeking an urgent meeting with the First Minister to deliver the letter. GoL has told us it wants to sign a PTA as soon as possible. If we agreed to sign, GoL would undoubtedly request Megrahi's transfer. The PTA could be in force before the end of the year. Jack Straw will speak with Alex Salmond shortly to brief him further, to discuss signing the PTA and to ask if he will meet the Libyans direct.

Alex Salmond has a difficult decision. He is unlikely to want to appear unsympathetic. But Megrahi's release or transfer will be unpopular, not least as it is likely to mean a 'hero's welcome' in Libya. The 20th anniversary of Lockerbie is on 21 December. We understand Alex Salmond is weighing his options and had made no decision.

Disquiet continues over Libya's past support for terrorism, eg, on 22 October Bill Rammell takes an Adjournment Debate on 'UK support for victims of Libyan sponsored terrorism' (tabled by Nigel Dodds, DUP North Belfast, MP). Any release or transfer is likely to pose additional press and parliamentary handling issues, potentially including accusations of placing commercial interests ahead of those of victims of terrorism.

If the Scottish Executive does not agree to the release or transfer, Libya may retaliate on unrelated bilateral issues, as it has done with other countries. Our bilateral interests include:

- [REDACTED]

- [REDACTED]

- [REDACTED]

[REDACTED]

## **24 October 2008; footnote 32; record of phone call between Jack Straw and Alex Salmond**

Ministry of Justice

Darren Tierney  
Private Secretary to  
The Rt Hon Jack Straw MP

Simon McDonald (Cabinet Office)  
Jim Gallagher (MOJ)  
Pat Baskerville (MOJ, NOMS)  
[REDACTED] North Africa Team, FCO)

Cc:

Alison Blackburne (PPS/Justice Secretary)  
Matthew Gould (PPS/Foreign Secretary)  
[REDACTED] (PS/Justice Secretary)  
[REDACTED] (PS/Permsec, MOJ)  
Declan McHugh (SPAD/Justice Secretary)  
[REDACTED] (Scotland Office)  
Jillian Kay (PPS/Jim Murphy)

24 October 2008

### **JACK STRAW/ALEX SALMOND CALL**

Simon/[REDACTED]/Jim/Pat,

1. JS spoke to Alex Salmond (AS) today about Mr AI-Megrahi (AM) and the UK/Libya PTA. They agreed that the call was on a confidential basis. I'd therefore be grateful if recipients did not circulate this note widely.

#### **Contact with the Libyans**

2. JS asked if AS had seen the final version of the letter from Bill Rammell. AS confirmed that he had. JS said that the Libyans were seeking a meeting with Scottish Ministers to discuss options. JS reiterated that FCO officials stand ready to provide advice to the Scottish Executive if SE wanted this. JS said that he would be grateful to be told if SE were going to meet with the Libyans.

3. AS said that he had just received (at close 23 October) a letter from the Libyans confirming they wanted to meet to discuss AM. AS said that he was minded to send a reply along the lines of the letter from Bill Rammell with more details on the options for release. AS said the letter is also likely to say that SE have given no consideration to how these processes would apply to AM because no application has been received by SE.

4. AS said that in the letter to the Libyans he is likely to offer them an official level meeting. AS said that it would be difficult for SE Ministers to meet a Libyan delegation as those same Ministers would be taking the decision on any application for release.

## **AM medical condition**

5. On the prognosis, AS said that the results from the second medical opinion showed that AM [REDACTED]. AS made the point that the guidelines in Scotland are for release on compassionate grounds where a prisoner has 3 months or less to live. He noted this was considerably longer than the equivalent provisions in England and Wales. AS said that without prejudice to any future application to be released on compassionate grounds, that this option did not look promising for the Libyans.

## **Prisoner Transfer Agreement**

6. AS then raised the PTA, and asked for confirmation from JS when it was going to be signed. JS said that it is to be signed before the end of the year and possibly as early as next month. JS confirmed that the PTA was the standard text and made it clear that MOJ and FCO officials have been clear at all times with the Libyans that decisions for release rest with SE.

7. AS said that the PTA is clear that any release under the agreement is contingent on the prisoner finishing all legal proceedings. AS went on to say that his officials advise him that this does not preclude an application. But that for any application to be granted there would need to be confirmation that legal proceedings had been finished. JS said he thought this was the case.

## **Media**

8. AS said that the Libyans had been briefing specific journalists about AM condition and options for release. AS said that the stories being generated will excite interest on the other side of the debate.

9. JS offered to ask FCO to make this point known the Libyans. AS said that the 20th anniversary of the Lockerbie bombing and the energy conference at the same time would be a particularly sensitive period.

## **AM appeal**

10. AS then raised the appeal process, and said that Tam Dalyell and others had been calling for the process to be speeded up. AS said that this was a matter for the Lord President, but even if it could be scheduled earlier it will still take a considerable time to conclude, not least because the Libyan legal team approach is to seek to maximise the number of areas on which to appeal. JS said he would ask FCO to make this point to the Libyans.

[REDACTED]

## **Contact**

11. AS said that if there was any material change to this position he would let JS know early next week.

**Darren Tierney**  
**24/10**

## 3 November 2008; footnote 31; FCO Submission on handling Megrahi's Health

From: [REDACTED]  
North Africa Team  
MENAD  
Date: 03 November 2008

To:	Christian Turner	Agreed. This threatens to get increasingly complex; and while we carry all the risks (to our bilateral relations) we don't hold all the levers (which sit with Scottish Ministers). Signature of the PTA should go some way to reassuring the Libyans that we are doing what we can; the other parameters which [REDACTED] sets out provide a good basis for handling as we go forward.
	PS/Mr Rammell	

Cc: PS  
PS/PUS  
Mark Lyall Grant  
Mariot Leslie  
John Jenkins  
[REDACTED] Legal Advisers  
HMA Tripoli  
[REDACTED] Washington  
Neil Wigan, Cabinet Office  
[REDACTED] Cabinet Office  
[REDACTED] Scotland Office  
[REDACTED] Office of the Solicitor to the Advocate General of Scotland.  
[REDACTED], Press Office

### LOCKERBIE: MEGRAHI'S HEALTH: GAMEPLAN

#### ISSUE

1. How should we handle the context and situation surrounding Libya's request for the compassionate release of Al-Megrahi who has been convicted of the Lockerbie bombing and possible fallout for our relations with Libya, the US and the Scottish Executive?



## TIMING

2. Urgent. Abdulatti Obidi, Libyan Minister for European Affairs has requested that he sign the now-final Prisoner Transfer Agreement (PTA) with the Minister on 17 November; and Megrahi's legal team have also requested the Scottish High Court to grant interim liberation (bail) on health grounds, an application to be heard on 6 November.

## PREFERRED OPTIONS

3. That the Minister:
  - a. Agree the following parameters in which we should operate. That we:
    - i. Continue to stress that decisions on release are exclusively for **Scottish Ministers**;
    - ii. Be supportive in our handling of the Libyans, **facilitating contact** between Libya and the Scottish Executive and responding to Libyan requests where we are in the lead, such as on the PTA.
    - iii. Manage the **US angle carefully**, ensuring that US are clear that transfer or release are Scottish decisions and that they do not perceive HMG to be conniving in Megrahi's unjustified removal from the UK.
    - iv. Undertake full contingency planning to **safeguard UK staff and nationals** in the event of Megrahi's death or deterioration in relations.
  - b. Agree to sign the Prisoner Transfer Agreement and four other agreements with Libyan Europe Minister, Adulatti Obidi on 17 November; and if not that our Ambassador in Tripoli should sign all the agreements.
  - c. Agree that the risks to the UK-Libya relationship (Annex A) are the right ones.
  - d. Note the possible options facing Scottish Ministers and the Scottish Courts, including that transfer under the PTA following termination of the appeal seems the most likely, albeit not straightforward, route to Megrahi's return to Libya.

Note the change in our position to no longer make signature of the four judicial agreements conditional on written commitment from Libya to resume negotiations with MBDA on purchase of the Jernas system. Refusing to sign the PTA holds greater risks for MBDA than the lack of a Libyan commitment at this time to resume negotiations

[REDACTED]

**AGREED BY**

- 4. MENAD, Tripoli, Legal Advisers, Cabinet Office agree. Scotland Office, Home Office and MoJ have also been consulted.

**PARLIAMENTARY AND MEDIA**

- 5. To date there has been little Westminster Parliamentary interest in this issue. Once signed the Prisoner Transfer Agreement will need to be laid before Parliament for 21 sitting days under the Ponsonby Rule. A debate is unusual, but in the circumstances, not impossible.
- 6. There has been widespread domestic and international press interest regarding Megrahi's health and possible return to Libya. Some of the victims groups have supported compassionate transfer but others, in particular US relatives, have been strongly opposed. Many of the families have called for Megrahi's appeal to be sped up and have blamed the Crown and HMG for slow progress. There has also been press interest in Megrahi's bail application. The 20th anniversary of Lockerbie takes place on 21 December this year which means interest around Megrahi is likely to escalate throughout December. If signed on 17 November, the PTA would not be ratified before the New Year, but it would be laid before Parliament and will therefore be in the public domain. We can anticipate this being given a high profile by media around the 20th anniversary. Scotland Office remain HMG's lead in regards to press handling.

**RISKS**

- 7. There are range of risks arising from this complex dossier:
  - a. **UK-Libya relationship.**  
[REDACTED]  
[REDACTED] have warned of dire consequences for the relationship if Megrahi dies in UK custody. [REDACTED] warned on 27 October, that death in custody would be regarded as a 'death sentence'.
  - b. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

- c. There is a significant **US angle**. The families of the Lockerbie victims are an influential group with the US Administration. The US has not yet taken a position, but it is likely that the both the families and the Administration will oppose any release and may lobby the Scottish Executive and HMG.
- d. Signature of the **Prisoner Transfer Agreement** is likely to lead to criticism from Lockerbie victims groups who believe that Megrahi should not be returned to Libya under any circumstances, whether compassionate or otherwise. Past Scottish Executive opposition to the PTA has dropped off since Megrahi's terminal diagnosis. We will be working with Scotland Office and Ministry of Justice to look at ways to get ahead of the press interest.
- e. The PTA is **not a foolproof solution**. Decisions on transfer rest with Scottish Ministers who could decide not to transfer Megrahi. The First Minister himself is unwilling to be drawn on scenarios and is concerned that that any decision on compassionate release or transfer could be judicially reviewed. Additionally, transfer under the PTA could be granted only in the absence of any criminal proceedings. This would require the conclusion or withdrawal of both Megrahi's own appeal and the Crown's cross-appeal against the length of the original sentence.

## ARGUMENT

### Key Developments

- 8. **Libya-Scottish Executive contact:** Following Mr Rammell's letter to Abdulatti Obidi, Libyan Deputy Foreign Minister on 17 October, Obidi sought a meeting with the Scottish First Minister. The First Minister concluded on 25 October (letter at annex B) that it would not be appropriate to meet Minister Obidi to discuss Megrahi's health. Obidi did however meet the Scottish Executive Director General of Justice and Communities (Record attached at C). Obidi handed over a letter from the Libyan PM to the First Minister which argued the case for compassionate release. We have requested a copy of the letter from the Scottish Executive and await a response.
- 9. **US-Scottish Executive contact:** The US and the Scottish Executive have sought contact with each other on this matter. The First Minister spoke to the US Chargé on 26 October to establish a channel of communication. Scottish Executive officials also met with the US Embassy on 27 October to explain the process for an application for compassionate release.
- 10. Press reports have made reference to Megrahi's desire to remain in Scotland rather than return to Libya because it provides better palliative care. This demonstrates a possible **contrast in the objectives of Libya and Megrahi** in relation to his future.

11. Megrahi has made an **application for bail** to the Scottish High Court on the grounds of (a) the slow pace of the appeal and (b) his failing health. This application will be heard on 6 November. If successful, Megrahi will be released on bail to an address in Glasgow owned by his wife. Strathclyde Police are currently carrying out a security assessment which will form part of the court's decision. The key aspect will however be Megrahi's actual prognosis, which we understand to be a 50% chance of surviving a further 18-24 months. HMG has no locus in the bail application, although we understand that it will be contested by the Crown. Our cross-Whitehall press lines reflect the fact that it is a matter for the court (Annex D).

### **Options for Scottish Ministers**

12. There are two possible options for Scottish Ministers:

- a. Release on compassionate grounds: Scottish Ministers have discretion under Section 3 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 to release prisoners on licence, on compassionate grounds. In Al-Megrahi's case this could be on licence in Scotland, or possibly Libya. We understand from Scottish Executive officials that the First Minister is reluctant to apply an exception to the established practice of granting release where the prisoner has a clear prognosis of less than three months to live.
- b. Return under the Prisoner Transfer Agreement. The PTA allows the return of a prisoner to serve out the remainder of his sentence in his home country where both jurisdictions are in agreement. Any application for transfer under the PTA would be a matter for Scottish Ministers to decide. A transfer cannot take place while there are criminal proceedings pending, so Megrahi would need to drop his appeal and the Crown would need to drop their cross-appeal on the length of Megrahi's original sentence in order for this to be an option.

13. Any decision made by Scottish Ministers on release on compassionate grounds or return under the PTA will be made on facts available at the relevant time.

[REDACTED]

[REDACTED]

[REDACTED] and the First Minister remains committed to the three month rule, **the PTA may be Libya's best hope for Megrahi's return**. However, it should be made clear that there is no indication that his application would be successful. Scottish Ministers have not made any decision on either option and HMG will not seek to influence the outcome of any application. Given that the appeal is likely to run well into 2010, any transfer under PTA would entail Megrahi dropping his appeal and the Crown dropping their cross-appeal on the length of Megrahi's original sentence.

### **What does this mean for the UK?**

14. This is a complex and quickly moving dossier. The risks to the UK-Libya relationship are substantial, but we carry none of the tools to resolve the matter. The best strategy we have for insulating the relationship and mitigating those risks is reiterating that all decisions on Megrahi's possible compassionate release or transfer under the PTA are **exclusively for Scottish Ministers**. We need to constantly stress to the Libyans that legal due process needs to be upheld and that HMG cannot influence either a compassionate release application or a request for transfer. By the same token neither we nor Scottish Ministers can influence the bail application.
15. We can however be supportive in our handling of the Libyans, facilitating contact between Libya and the Scottish Executive and responding to Libyan requests where we are in the lead, such as on the **PTA**. Although the PTA does not represent a guaranteed or immediate means of addressing Libyans concerns, signature is the one lever that is in HMG's **gift**. **Deciding now not to sign the PTA** will elicit a very serious reaction from the Libyans directed at HMG. We should also sign quickly as the Libyans have requested. If Mr Rammell is unable to sign in the week beginning 17 November, we should invest powers in our Ambassador in Tripoli to sign.
16. Imminent signature has implications for our position in regards to requiring written confirmation on the resumption of stalled negotiations on a [REDACTED] defence contract with MBDA prior to signature. Written confirmation was assured by [REDACTED] during your meeting on 9 October but this confirmation was never received and it has become clear that maintaining this position holds greater risks for MBDA than the lack of a Libyan commitment to resume negotiations. In fact, prompt signature of the PTA and other judicial agreements may speed up Libyan agreement to the contract.
17. The **US position** is still crystallising, but we will need to ensure that US-UK relations are not damaged by this issue. We will do this by regularly updating the US where possible and ensuring transparency in our approach. As with the Libya track, our best line is to stress that decisions on possible release or transfer are for the Scottish Executive. We should also reiterate that in the context of the ongoing appeal that HMG's principal objective remains to uphold Megrahi's conviction and that if released or transferred that he would be so as a guilty man.
18. It is possible that the **Scottish Executive** might come under pressure from both Libya and the US in relation to Megrahi's possible release, albeit from different angles. Given the equities we have in both relationships and also the fact that any application to release or transfer Al-Megrahi might be judicially reviewed, we should not be seen to block or unreasonably influence who the Scottish Executive speaks to on this matter.
19. The recent Swiss incidents (Annex A) demonstrate [REDACTED]

20. [REDACTED]  
[REDACTED]  
[REDACTED]

**BACKGROUND**

21. My submission of 14 October sets out the background and risks to UK interests. (Annex E).

Libya-Scotland contacts

22. Mr Rammell’s letter of 17 October to Libyan Europe Minister Obidi stressed that all decisions on compassionate release rested exclusively with Scottish Ministers. Obidi subsequently sought a meeting with the Scottish First Minister. The First Minister concluded on 25 October (letter at Annex B) that it would not be appropriate to meet Minister Obidi to discuss Megrahi’s health. Scottish Executive officials have separately confirmed to us that the First Minister is very concerned not to take any step that could be seen, in a subsequent judicial review, to have prejudiced a decision to release or transfer Al-Megrahi.

23. The First Minister did offer a meeting between the Director General of Justice and Communities and [REDACTED] to discuss Al-Megrahi’s condition, which took place on 27 October (record attached at C). [The Libyan Government] handed over a letter from the Libyan [Government] to the First Minister which should be considered as a request for compassionate release. We have requested a copy of the letter from the Scottish Executive and await a response.

HMG and Scottish Executive contact with the U.S.

24. We have maintained close contact with the US on this issue, briefing on Megrahi’s condition before the story broke in the media on 20 October.

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

25. While the US had [REDACTED] discussions have however taken place between Scottish Executive officials and the US Embassy (on 27 October) at the instigation of the Scottish Executive and with our knowledge.

### **Prisoner Transfer Agreement (PTA)**

26. The PTA and four other judicial agreements are ready for signature (a Civil-Commercial Agreement, an Extradition Treaty, a Mutual Legal Assistance Treaty and a Double Taxation Agreement). The Foreign Secretary had agreed to sign the judicial agreements and a provisional date of 9 October had been set but was cancelled by [The Libyan Government]. On 28 October [The Libyan Government] told our Ambassador in Tripoli that Libya would like to sign the PTA along with the rest of the agreements as a matter of urgency. Libya understands that an application for transfer could not be granted while there were criminal proceedings pending but they are keen to pursue all tracks.

### **Megrahi's Bail application**

27. Megrahi's legal team have applied to the Scottish High Court for bail on the grounds of (a) the slow pace of the appeal and (b) his failing health. This application will be heard on 6 November. If successful, Megrahi's release on bail could happen quickly - although the Crown could appeal, blocking immediate release. His release on bail would also potentially complicate and possibly undermine the current request from the Libyans to the Scottish Ministers for compassionate release. If Megrahi were granted bail, he would not be eligible for compassionate release, as he would already be out of prison receiving medical care. Bail would also have ramifications for any PTA application, as a decision under the PTA can only be taken in relation to a prisoner who has a final sentence will all appeal rights fully exhausted or concluded. He would need to do this prior to any final decision being made by Scottish Ministers and without any prior guarantee that they would agree to transfer.

28. Megrahi's legal team have also made an application for disclosure of further documents, which will be considered by the Court at the hearing on 6 November.

[REDACTED]

### **RESOURCE IMPLICATIONS**

29. At this stage no implications beyond a growing amount of staff time.

[REDACTED]  
MENAD

## **Ministerial Confirmation**

Mr Rammell made the following manuscript comments to the submission:

- 1 – I agree to sign PTA – please set up
- 2 – Can I meet this week with officials to discuss this sub + way forward?
  
- 1 – PTA to be signed
- 2 – Game plan should be PTA as vehicle for his transfer in Jan
- 3 – Can I have a diplomatic strategy to reassure Libyans we have are doing everything possible to secure a solution
- 4 – Can I have advice on what to do if it looks like he might die in prison – should we publically make clear our desire for humanitarian transfer?

B.R.



## 7 November 2008; footnote 34; record of phone call between Jack Straw and Alex Salmond

From: Tierney, Darren  
Sent: 07 November 2008 5:50 PM  
To: [REDACTED] Gallagher, Jim  
Cc: [REDACTED]; [REDACTED]; [REDACTED]; Blackburne, Alison; Davies, Mark (Special Advisor Office): [REDACTED];  
[REDACTED]  
Subject: JS/AS Call

Jim/[REDACTED]/[REDACTED],

JS just spoke to Alex Salmond (AS). JS said he was calling as he had promised to keep AS updated on the PTA. JS said that the PTA was due to be signed on 17 November by Bill Rammell along with the other treaties. JS explained that it would then need to be ratified which may take until the New Year. JS promised to give a clearer timetable of ratification.

AS raised the bail hearing. He offered to send JS the Crown Office report AS said that, while he cannot predict what the court would do, he would be surprised if the application was successful. AS also said that the Crown had used in their evidence the fact that Compassionate Release is available (as an argument against the defence's position that AM should be released on bail given his condition), but that AM is yet to meet the criteria of having 3months or less to live. AS expects the court's decision next week.

[REDACTED]

Action: Graham - can you advise further on the ratification timetable.

Darren

Darren Tierney  
Private Secretary to the Rt Hon Jack Straw MP  
Lord Chancellor and Secretary of State for Justice  
Ministry of Justice

## **13 November 2008; footnote 35; FCO Submission on Judicial Agreements**

From: [REDACTED]  
North Africa Team  
MENAD

Date: 13 November 2008

To:	Christian Turner	Agreed in Draft
	PS Rammell	

Cc: PS  
PS/PUS  
Mark Lyall Grant  
John Jenkins  
[REDACTED] Legal  
Advisers  
HMA Tripoli  
[REDACTED] Washington  
Neil Wigan, Cabinet Office  
[REDACTED] Cabinet Office  
[REDACTED] Cabinet Office  
[REDACTED] MOJ  
[REDACTED] Scotland Office  
[REDACTED] Office of the Solicitor to  
the Advocate General of Scotland  
[REDACTED] Press Office

### **ISSUE**

1. Procedures for the signature of the judicial agreements with Libya and their relation to our wider game plan.

### **TIMING**

2. Urgent. Abdulatti Obidi, Libyan Minister for European Affairs will sign the four judicial agreements with you on 17 November.

### **PREFERRED OPTIONS**

3. That the Minister:

- a. Note the procedures for signature including a short speech (attached at A)
- b. Agree to the lines for the bilateral with Obidi (attached at B)
- c. Agree the diplomatic strategy (Annex C) to attempt to mitigate the risks of an adverse reaction from Libya in the event that Megrahi does not return home.
- d. Agree to the press statement (attached at D) which we recommend is released in your name on Monday morning in advance of the signature ceremony.
- e. Note the additional press lines attached at E.

#### **AGREED BY**

4. MENAD, Tripoli, Legal Advisers, Cabinet Office agree. Scotland Office, Home Office and MoJ have also been consulted. Scottish Executive are also aware that we will be signing and are content.

#### **PARLIAMENTARY AND MEDIA**

5. To date there has been little Westminster Parliamentary interest in this issue, but the signing of the Prisoner Transfer Agreement is likely to prompt Parliamentary and media interest, especially in Scotland, centred on the Megrahi issue. Once signed the four judicial agreements including the Prisoner Transfer Agreement will need to be laid before Parliament for 21 sitting days under the Ponsonby Rule. A debate is unusual, but in the circumstances, not impossible.
6. There has been widespread domestic and international press interest regarding Megrahi's health and possible return to Libya. Some of the victims groups have supported compassionate transfer but others, in particular US relatives, have been strongly opposed. The 20th anniversary of Lockerbie takes place on 21 December this year which means interest around Megrahi is likely to escalate throughout December. After signature on 17 November, the PTA will not be ratified before the New Year, but it would be laid before Parliament and will therefore be in the public domain. We can anticipate this being given a high profile by media around the 20th anniversary. A proactive approach in terms of press releases is recommended. Scotland Office remain HMG's lead in regards to press handling.

#### **RISKS**

7. Signature of the agreements on mutual legal assistance in the field of criminal law, mutual legal assistance in civil and commercial law and extradition have no risks attached to them. The **Prisoner Transfer Agreement** however is likely to attract criticism from the press and public. Negotiations on the PTA have been surrounded in controversy particularly in Scotland due to speculation on how the agreement might

apply to Megrahi. Criticism from Lockerbie victims groups who believe that Megrahi should not be returned to Libya under any circumstances, whether compassionate or otherwise is therefore likely. Past Scottish Executive opposition to the PTA has dropped off since Megrahi's terminal diagnosis but it is possible that it may be repeated on signature by SNP party members.

8. While the **diplomatic strategy** provides a future plan of action to mitigate the threat of an adverse reaction from Libya in the event that Megrahi does not return home, the risk to the UK remains significant  
[REDACTED] [LIBYAN GOVERNMENT] have warned of dire consequences for the relationship if Megrahi dies in UK custody. [The Libyan Government] warned on 27 October, that death in custody would be regarded as a 'death sentence'.

## **ARGUMENT**

### The signature ceremony and bilateral

9. The ceremony is due to begin at 11.30am and will be attended by Libyan officials, representatives from the Home Office and Ministry of Justice. Treaty Section officials, an interpreter and North Africa Team representatives from the Foreign Office will also attend. Each signatory will sit in front of their copy of the texts and first sign their own State's copy twice (once in each language) below the signature blocks. The copies are then swapped (by Treaty section) for signature of the other State's copy. This process will be repeated three more times. Once the four Agreements are signed each party will shake hands and at this point it is recommended that you make a short speech (attached at A). As there are full powers then these will be placed near each party's folders. It is usual procedure to swap these full powers so on this occasion you would take the Libya Full Powers and Obidi would take the UK's Full Powers. Treaty Section will be at the ceremony to assist the Minister.
10. The ceremony will then be followed by a 30 minute bilateral meeting during which a range of issues can be discussed. Lines for the bilateral are attached at B.
11. Once the agreements have been signed, the originals (UK copies) will be taken by Treaty section. These will then be published as Command Papers and laid before Parliament (by Treaty Section) for 21 sitting days with an Explanatory Memorandum (EM), as required by the constitutional convention known as the Ponsonby Rule. It will take over a week for the process of publishing the Command Papers to be completed along with Ministerial clearance of EMs by the appropriate Minister responsible for the policy.
12. The agreements will also need to be ratified in Libya by the General People's Congress. Their next meeting takes place towards the end of the year in December so

it is likely that the agreements will be ratified then. If not the next meeting is set for February/March.

How does this fit into the game plan?

13. While any decision on the PTA rests with Scottish Ministers and the PTA does not represent a guaranteed or immediate means of addressing Libyans concerns, signature is the one lever that is in HMG's gift. The signature of the agreements therefore demonstrates our commitment to the bilateral relations we share with Libya.
14. The bilateral discussion which will follow the signing ceremony provides an opportunity to convey four key messages as set out in the diplomatic strategy (attached at C);
  - a. that recourse to extreme measures will be counter-productive, both specifically and more widely to both the UK AND Libya for example through loss of investors
  - b. our bilateral relationship is bigger than the fate of any individual;
  - c. decisions rest with Scottish Ministers or the Courts exclusively;
  - d. we want our relations to move forward; We have demonstrated our commitment to our bilateral relations through the finalisation of the four judicial agreements

Press Handling

15. Given the press interest in the PTA it is important that we adopt a more proactive approach to attempt to mitigate criticism from the press and the release of false stories. In the past we have been in a position where we have been reactive to press coverage rather than proactive and as a consequence our lines have been defensive from the outset. A proactive approach will enable us to release a positive statement regarding the signature.
16. A press statement (attached at D) has therefore been drafted in your name to be released on Monday morning in advance of the signature ceremony, subject to your agreement. Press lines have also been drafted (attached at E).

**BACKGROUND**

17. When Tony Blair visited Libya as Prime Minister in May last year he agreed with Libyan PM Baghdadi that the UK and Libya would aim to conclude agreements in four areas of judicial co-operation within 12 months (extradition, prisoner transfer, criminal law and civil law). The signature on 17 November will fulfil this commitment.

18. The Prisoner Transfer Agreement allows the return of a prisoner to serve out his sentence in his home country where both jurisdictions are in agreement. Prisoners do not have an automatic right to transfer; the consent of the authorities in both states is required before transfer can take place.
19. The Agreement on Mutual Legal Assistance in criminal matters will apply to all crimes that are being investigated or prosecuted in the territory of the requesting state where the evidence required is located in the territory of the requested state. The Agreement also provides for assistance to be given in restraint and confiscation matters.
20. The Agreement on Extradition allows extradition to be requested for any offence which attracts a maximum penalty of at least 12 months in the UK or Libya. The evidential requirements set out in the agreement mean that both the United Kingdom and Libya must provide a prima facie evidential case against any person whom they wish to extradite. Extradition may be refused if it would breach a person's human rights. The treaty also contains a provision which allows for the refusal of an extradition requests on the grounds of nationality. This provision can only be used, however, if the requested state agrees to take over the prosecution of the person for the offences for which their extradition was sought.
21. The Agreement on Civil and Commercial matters aims to facilitate co-operation between the courts of the United Kingdom and of Libya in these matters. The Agreement contains provisions about access to the courts, security for costs and legal aid. These provisions guarantee equal treatment for national of each of the parties when bringing or defending proceedings in the courts of the other party. The Agreement also contains provisions about service (official delivery) of judicial documents (documents used in court process). Judicial documents which are to be served in the territory of the other party may be transmitted to a designated central authority, who will effect service in accordance with its own laws and procedures. Finally, the Agreement contains provisions about the taking of evidence by the courts of each party in support of proceedings in the courts of the other party.
22. Only the PTA has caused any controversy as it presents a potential channel available to Libya in regards to effectuating the return of Mohammed Abdelbasset al-Megrahi, the individual convicted of the Lockerbie bombing in January 2001. Any decision on an application for transfer under the PTA will be made by Scottish Ministers.
23. Megrahi's defence team have sought bail on the grounds of his recent terminal diagnosis and their case was heard in court on 6 November. The Court will make a decision on the application on 14 November at 10.15. The outcome of the bail decision must be watched very closely; it will heighten media attention on the case, just in advance of signature of these agreements and, were it to result in release, greater increase the handling challenges in this case. A review of handling

arrangements and speaking notes provided here will be undertaken post the decision on 14 November.

24. Libya is seeking Megrahi's return on compassionate grounds in light of his recent terminal diagnosis. Scottish Ministers are responsible for taking any decisions on this issue. The outcome of Megrahi's bail hearing will have significance in this respect as under Scottish law a prisoner cannot be considered for release on compassionate grounds while on bail.

## **RESOURCE IMPLICATIONS**

25. None

  
MENAD

## **Annex A Short Speech**

I welcome the signing of these bilateral judicial agreements with my Libyan friend and counterpart, Abdulatti al-Obidi which will strengthen our judicial ties as agreed during Tony Blair's visit to Libya in May last year. I am delighted that we are also able to conclude a Double Taxation Convention which will bring benefits to British business in Libya and Libyan investors in the UK – benefits in terms of certainty, clarity and transparency and reducing a compliance burdens. UK/Libya relations have significantly improved in recent years, following Libya's voluntary renunciation of WMD. Today we are partner in the UN Security Council. We also wish to assist Libya to establish closer relations with the European Union to continue and strengthen the reintegration of Libya within the international community.

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## **Ministerial Confirmation**

The Minister was grateful for the submission and the preparations for signing the PTA.

APS/ Mr Rammell

## 9 December 2008; footnote 37 and 39; FCO Submission – Advice to the SG

From: [REDACTED]  
North Africa Team  
Date: 09 December 2008

To:	Christian Turner	Agreed in draft
	PS/Mr Rammell	

cc: PS  
PS/PUS  
John Jenkins  
Mark Lyall Grant  
Mariott Leslie

[REDACTED]  
[REDACTED] Legal Advisers  
[REDACTED] Legal Advisers  
Neil Wigan, Cabinet Office  
[REDACTED] Cabinet Office  
[REDACTED] Scotland Office (by hand)  
[REDACTED] Research Analysts

### **LOCKERBIE: FOREIGN POLICY ADVICE TO THE SCOTTISH EXECUTIVE**

#### **ISSUE**

The Scottish Executive has requested advice and background on Libya and briefing on the risks arising from Megrahi's deteriorating health. What should we provide?

#### **TIMING**

Priority. Scottish Executive officials are in contact with the Libyan authorities over Megrahi's health and detention. An understanding of Libya and the risks arising from this file would help broaden their understanding.

#### **PREFERRED OPTIONS**

That the Minister agree that we should provide Scottish Executive officials with a standard country brief on Libya, supplemented by analysis on dealing with the Libyan system and the possible risks arising for the UK from the Megrahi health file. I attach a draft at Annex A to be sent at official level.



## **AGREED BY**

MENAD, Press Office, Tripoli and Cabinet Office. Scotland Office have been consulted are content with the course of action.

## **PARLIAMENTARY AND MEDIA**

There is still little Westminster Parliamentary interest in Megrahi's appeal and in Megrahi's health. There is some Parliamentary interest however (two PQs from William Hague) on the signature of the Prisoner Transfer Agreement (PTA) on 17 November. There was also significant national press interest in Megrahi's failed bail application on 14 November.

There is considerable interest in Scotland in Megrahi's health, both in the Scottish Executive and the media. There has been markedly little comment on the signature of the PTA – noteworthy because of Alex Salmond's previous opposition to a PTA that did not exclude Megrahi.

## **RISKS**

The Scottish Executive is concerned that any decision it may have to take on either a future request for compassionate release of Al-Megrahi, or for transfer under the PTA, could be subject to judicial scrutiny. It is possible that any advice that we provide the Scottish Executive could be made public for example: as part of a judicial review. There is also a risk that the advice we provide the Scottish Executive could be misconstrued as an attempt to influence Scottish Executive.

In drafting the annexed country brief, we have been careful to ensure that the brief would not be seen as an FCO attempt to influence Scottish Ministers, and to ensure any future disclosure would not be damaging to the bilateral relationship. We believe that these risks have been managed in the attached draft.

Not providing the requested advice would threaten our improving working relationship with the Scottish Executive on the Megrahi file. The Scottish Executive has little understanding of how Libya works or its priorities. Failing to provide advice to the Scottish Executive risks leaving Scottish Ministers exposed in their contact with Libyan officials and Ministers.

## **ARGUMENT**

Facilitating direct contact between the Libyans and the Scottish Executive is a key part of our game plan on Megrahi (see my submission to Mr Rammell, 13 November Annex B). Alex Salmond has declined to meet Libyan Ministers or officials for fear of prejudicing future decisions on Megrahi. With the agreement of the Scottish Ministers Scottish Executive officials have already met [The Libyan Government] on 27 October and 18 November and will continue to do so. But the Scottish Executive is operating from a low base of knowledge on Libya and the Libyan system and has requested this briefing. FCO officials have already orally briefed Scottish Executive officials on the risks arising from the Megrahi file. Setting

these down on paper along with a country brief would help support their ongoing contact with the Libyans.

While we would not expect Scottish Ministers to take decisions on compassionate release, or a request for transfer under the PTA, on foreign policy grounds (and the First Minister has confirmed that this would not be a factor), it does serve our interests to sensitise Scottish Ministers to the broader bilateral relationship. A carefully-drafted country brief and an assessment of the risks to the UK from the Megrahi file (as attached at Annex A) would meet this requirement without being construed as an attempt to unduly influence future decisions by Scottish Ministers.

Scottish Ministers have considered carefully what they want in terms of advice and have confirmed that they are looking for a brief on Libya and the risks arising from the Megrahi's health. We have also considered this draft carefully both in terms of whether its disclosure would cause embarrassment or be seen as an undue attempt to influence the Scottish Executive. We also warned the Scottish Executive of any risks the brief could carry and have made it clear to the Scottish Executive that the information we are sharing is on a confidential level.

## **BACKGROUND**

On 9 October [THE LIBYAN GOVERNMENT] met Mr Rammell to discuss the terminal health of Abdelbasset Al-Megrahi, the individual convicted of the Lockerbie bombing. Mr Rammell subsequently wrote to him on 17 October setting out the procedures for any application for Megrahi in terms of compassionate release or transfer under the Prisoner Transfer Agreement. On both occasions the Minister stressed that this would be a matter for Scottish Ministers. The Minister requested that we keep him informed of key developments.

Following Mr Rammell's letter [THE LIBYAN GOVERNMENT] sought a meeting with the Scottish First Minister to hand over a personal letter from [THE LIBYAN GOVERNMENT]. The First Minister concluded on 25 October that it would not be appropriate for him to meet [THE LIBYAN GOVERNMENT] to discuss Megrahi's health. Scottish Executive officials have separately confirmed to us that the First Minister is very concerned not to take any step that could be seen, in a subsequent judicial review, to have prejudiced a decision to release or transfer Megrahi.

The First Minister did offer a meeting between the Director General of Justice and Communities and [THE LIBYAN GOVERNMENT] to discuss Megrahi's condition, which took place on 27 October. [THE LIBYAN GOVERNMENT] handed over the letter from the [THE LIBYAN GOVERNMENT] to the First Minister which should be considered as a request for compassionate release. He also noted that Libya was not looking for anything that would not be ordinarily granted under Scots law, but that Megrahi's death in a Scottish prison would be seen in Libya as a death sentence. This would have very serious implications for the UK-Libya relationship. Megrahi was very ill and would need improved medical care. A further meeting between the Director General of Justice and Communities and [THE LIBYAN GOVERNMENT] took place on 18 November.

On 27 October prior to the meeting with [THE LIBYAN GOVERNMENT] the Scottish Executive on their request were orally briefed on the Megrahi issue. Following the meeting the Scottish Executive asked for written advice on Libya, in terms of information on the political picture, doing business in Libya and as far as possible an understanding of the wider issues in play on the Megrahi issue. Scottish Executive officials wanted this information as they were conscious that they were in uncharted territory and that they wanted their Ministers to be aware of as much of the political context as is feasible, including the possible impact on UK staff and nationals of Libyan retaliation. Scottish Ministers would not be taking decisions on this file on the basis of foreign policy concerns, but an understanding would help complete the picture.

### **RESOURCE IMPLICATIONS**

None

  
North Africa Team  
MENAD

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### **Ministerial Confirmation**

Mr Rammell made the following manuscript comments on the Submission:

I agree. We have to ensure the Scottish Executive are in a better position to understand the difficulty/sensitivity of this issue. Can I also have an update note for w/end box on Megrahi's health + estimated life expectancy.

B.R.

## **15 December 2008; footnote 38; FCO letter to SG on foreign policy advice**

Foreign & Commonwealth Office  
King Charles Street  
London  
SW1A 2AH

15 December 2008

Robert Gordon CB  
Director General  
Justice and Communities  
Room 1W11  
St Andrews House  
Edinburgh  
EH1 3DG

Dear Robert,

When we met in late October we discussed UK-Libya relations and the intricacies of doing business with Libyan government officials. I know that since then you have met the [Libyan Government] on at least two occasions.

We agreed when we met to provide you with a political background brief on Libya, and some assessment of the current state of the relationship. I hope that the attached brief is of help in your ongoing contact with Libyan officials. I should underline however that the brief is confidential and I would be very grateful if it could be treated as such by those that see this document.

I would however like to take this chance to thank you for the ongoing informal contact between Scottish Executive officials, and officials here in the Foreign and Commonwealth Office. We greatly appreciate your assistance in explaining the procedures that would need to be followed in event of an application for compassionate release or transfer under the now signed Prisoner Transfer Agreement. I hope that this contact can continue.

Should you have any queries regarding the brief or the wider UK-Libya relationship, please do contact me.

Yours sincerely,

Christian Turner  
Deputy Director  
Middle East and North Africa Directorate

## ANNEX A: BACKGROUND BRIEF ON LIBYA

### **Libyan History / Political Context**

Muammar Al Qadhafi came to power in a coup on 1 September 1969. The ideological basis of Qadhafi's regime is his political philosophy, the 'Third Universal Theory' set out in his 'Green Book'. Drawing heavily on Islam, socialism, and Bedouin tradition the Theory calls for a system of direct rule by the people through a series of committees. It is intended as an alternative to capitalism and communism. In March 1979 Qadhafi renounced most of his positions in government and uses the title "Leader of the Revolution and Supreme Commander of the Armed Forces."

The General People's Congress (GPC) is constitutionally responsible for formulating policy and passing laws in accordance with the decisions of the many local and regional People's Congresses. The GPC Congress meets annually. Representatives from the trade unions and professional organisations also attend. The most recent GPC took place in March 2008.

Most groups opposed to the regime are relatively small and are based outside Libya. The National Front for the Salvation of Libya (NFSL), the Libyan National Army (LNA) and the Libyan Islamic Fighting Group (LIFG) are among the best known. The LIFG has been proscribed in the UK.

### **Foreign Policy**

Africa occupies a central position in Libyan foreign policy. Libya was a vocal supporter of the Organisation for African Unity (OAU) and supports its successor organisation, the African Union. Libya is outspoken on the Middle East advocating a one state solution, but is not very active. It is however a strong opponent of Israel. Relations with neighbours Egypt, Algeria, Morocco and Tunisia have improved in recent years, although the potential for fractious exchanges remains. Economic links with Egypt are particularly important: there are some hundreds of thousands of Egyptian workers in Libya and considerable Libyan investment in Egypt.

The EU lifted its remaining sanctions against Libya, including an arms embargo- in October 2004. This opened the way for further development of EU-Libya relations, including the possibility of Libyan membership of the EuroMed Partnership. As a member of EuroMed, Libya would be eligible to negotiate an Association Agreement and would have access to EU MEDA funding. But it would require Libyan recognition of Israel and this remains unlikely. As a consequence, Libya has refused to participate in Sarkozy's new Union for the Mediterranean although it could benefit from a number of areas of co-operation it promises.

An obstacle to improved EU/Libya relations had been the imprisonment of the Bulgarian and Palestinian medics. However the resolution of this in July 2007 has opened up the possibility of closer ties. In July 2008 the European Council approved a negotiating mandate for a Framework Agreement with Libya which will formalise the EU/Libya relationship and include an EU-Libya Free Trade Agreement. The Framework Agreement should cover a range of political, social, economic, commercial and cultural relations and human rights issues between the EU and Libya. It will provide a platform for dialogue and cooperation on

areas including enhancement of energy security, migration and combating terrorism. The UK has welcomed this development. It provides an opportunity to leverage EU funds and activities in areas that affect the UK e.g. tackling illegal migration.

Relations between the United States and Libya have recently improved following the conclusion in August 2008 of an agreement to provide compensation for victims of incidents including the Lockerbie bombing, attacks on the La Belle disco in 1986 and the UTA flight in 1989 and restore Libya's sovereign immunity. The agreement, passed into the US law in August 2008, provided for the creation of a fund, part of which is to be paid to the US and part to the Qadhafi Foundation. Now that an adequate level of money has been paid into the fund the US Government has issued certification that sufficient compensation money has been received. Libya's sovereign immunity should therefore soon be restored and all cases against Libya arising from terrorism acts which occurred before 30 June 2006 will be dismissed from US courts. Libya will also use its part of the fund to make payments to victims of the 1986 US airstrikes on Tripoli and Benghazi.

Following signature of the agreement, US Secretary of State Condoleezza Rice visited Libya in September. This marked the first visit by US Secretary of State to Libya since John Foster Dulles in 1953. The appointment of a US Ambassador is also expected imminently.

Libya has the potential to be helpful in Darfur, though it has in the past opposed the deployment of an international force. Libya's hosting of a summit at the end of last year was a positive development. Qadhafi has pushed for a continuation of the Chad/Sudan peace process with a concerted African effort to resolve the issues to avoid Western intervention

Libya was elected as a non-permanent member of the UN Security Council on 16 October 2007 and began its two-year term in 2008. We welcomed this further step in Libya's reintegration into the international community. Libya served as Council President in January and made their mark, [REDACTED] in discussions on Middle East Peace Process. They did however support tightening UN sanctions on Iran.

### **UK-Libya Relations**

The UK has worked hard to develop a strong relationship with Libya following the surrender for trial of the two Lockerbie suspects in 1999, its renunciation of terrorism and surrendering of its Weapons of Mass Destruction programmes in 2003. Libya's continued re-integration into the international community is central to many of our security and foreign policy objectives and the UK has been at the forefront of Libya's rapprochement with the international community. Tony Blair personally led this when he was Prime Minister, visiting Libya in March 2004 and in May 2007. As part of the rapprochement with Libya, the UK signed a 'Joint Letter on Peace and Security' which sets out UK assistance (through the UN) in the event of an attack on Libya in which chemical and biological weapons are used. The current Prime Minister has written to Colonel Qadhafi expressing his desire to continue to develop UK-Libya relations.

Tony Blair visited Libya and met with Qadhafi in May 2007. Tony Blair signed a Memorandum of Understanding committing both the UK and Libya to negotiate and

conclude within twelve months a series of legal co-operation agreements, including a Prisoner Transfer Agreement. Libya also undertook to conclude a range of commercial contracts.

Dr Kim Howells, Minister for the Middle East and North Africa, followed this with a visit to Tripoli in July 2007 and met the Prime Minister, Foreign Minister and others. As part of the follow-up to the Jeddah Energy Summit held on 22 June, the Prime Minister invited all heads of states of the countries that participated in the Summit, including Colonel Qadhafi to attend an Energy summit in London on 21 December. This event has now been scaled back to a Ministerial meeting and Libya will be represented by its Energy Minister Shokri Ghanem.

We continue to discuss with Libya ways in which we can broaden our bilateral co-operation in the fields of health, education, science, policing, and economic and financial reform. The latter play an important part in our efforts to secure a more favourable environment for UK businesses in Libya. A UK/Libya Bilateral Steering Committee meets place every six months at senior official level in order to co-ordinate activity across the relationship. The most recent meeting was in Tripoli in April 2008. In May 2008, the UK and Libya agreed a health MoU providing a platform for future health co-operation.

A key part of the UK-Libya relationship is co-operation in the field of counter-terrorism. Libya shares many of our CT objectives: to disrupt the activities of terrorists, to build its capacity to protect itself from attack; to limit the opportunities for extremists to spread their message. We have run a number of CT projects offering assistance

[REDACTED] Thus far, Libya stands out in the North African region as a country which has managed to avoid major terrorist incidents.

[REDACTED] We are currently looking at new opportunities for co-operation on border security.

It is clearly in our interests to help the Libyans build their CT capacity and we seem to be their chosen partner to do so. The Libyans are keen to maintain the relationship with British CT experts, and have recently expressed an interest in receiving advice on PROTECT, PREPARE and PREVENT issues, including border security, protection of critical infrastructure, crisis management and counter-radicalisation. This helps us influence Libyan policy at a high level and we are keen to persuade the Libyans to take a stronger interest in protecting vulnerable landmark sites, including

[REDACTED]

Libya is the third largest oil producer in Africa at 1.7 million barrels per day and in 2007 the UK imported 927 thousand tonnes of oil from Libya at a value of £235 million. Current overall production is targeted to increase to 3 million barrel per day by 2012. Libya's most important contribution to EU energy security is likely to be in the form of gas. Libya is one of the few major energy resource holding states with medium term capacity to bring significantly more energy to world markets, and it has ambitious expansion plans to increase gas exports, via pipeline to Europe and as Liquefied Natural Gas. While we do not import any gas directly from Libya at present, as the UK and EU seeks diversified sources of gas supply, the importance of Libya in this regard will continue to grow. Overall Libyan gas production is targeted to increase from its current 9 billion cubic meters per annum to 16 bcm over the next 10 years, and potentially more if further LNG plants are brought on stream. Libya presents a significant investment opportunity for major UK energy companies. BP, Shell and BG Group play a prominent role in developing the energy sector.

We remain concerned about the human rights situation in Libya, but have welcomed recent improvements. Libya has opened dialogues with Amnesty International (who made their first visit for more than a decade in February 2004) and Human Rights Watch. Areas of concern include restrictions on freedom of expression and assembly, political prisoners, arbitrary detention, and conditions in Libyan prisons (on which we are co-funding a prison management project). The UK welcomes continued domestic discussion on ending use of the death penalty.

### **Dealing with the Past**

Progress in the UK-Libya relationship is inevitably conditioned by progress in dealing with the legacies of a difficult and painful past, notably Lockerbie and the murder of WPC Yvonne Fletcher. Historically, Libyan movement on both, along with renunciation of WMD and support for international terrorism, made the rapprochement with Libya in 2003 possible.

The former Prime Minister specifically raised Lockerbie with Qadhafi when they met in March 2004, noting the importance he attached to Libya's decisions to accept responsibility for the actions of its officials and to pay compensation. Qadhafi confirmed these decisions. The Libyans have committed in the UN to co-operate with any further requests for information in connection with the Lockerbie investigation. In principle the criminal investigation remains open and is a matter for the Scottish prosecution authorities. At present there is insufficient evidence to justify bringing criminal charges against any other named person. The Scottish Criminal Cases Review Commission has reviewed Megrahi's conviction and referred his case to the High Court of Justice, allowing Megrahi his requested second appeal against his conviction. The appeal is ongoing.

The Government was not involved in the detail of the negotiation on compensation. Lawyers for the families agreed a compensation package totalling \$2.7 billion, whereby each of the victims' families could receive a maximum of \$10 million. The first two tranches (total \$8 million to each family) have been paid. Payment of the third tranche (\$2 million per victim's family) was conditional on the US removing Libya from its list of State Sponsors of Terrorism by a specific date. The final tranche will be paid as a result of the August 2008 US-Libya Agreement.



We remain keen to continue the investigation into the murder of WPC Yvonne Fletcher in 1984. Metropolitan Police Service officers have visited Libya to continue discussions with the Libyan authorities to enable further progress in the joint investigation.

### **Doing Business with Libya**

Advancing UK objectives and dealing with the past are difficult in Libya.

[REDACTED]. All decisions are made by or with reference to Qadhafi,

[REDACTED]. Libyans value personal relations highly, but also drive hard bargains in pursuit of their interests. Within this there is a tendency to create artificial linkages across issues if matters are not going their way to achieve their objectives. Libya has also shown a tendency to resort quickly to [REDACTED] tactics when conventional methods of resolving disputes fail, such as threatening to suspend all oil shipments to Switzerland and actually detaining Swiss nationals in response to the brief arrest of Qadhafi's son in Geneva. Libya has also held up the implementation of commercial contracts to create leverage and linkage.

### **Megrahi's Health: Implications**

[REDACTED]

The Libyans have said that they understand UK sensitivities, especially in Scotland, over Megrahi. They do not want a public outcry and have said that they wish to deal with this as a humanitarian matter, quietly and calmly. They know that compassionate release or transfer under the Prisoner Transfer Agreement would be a matter exclusively for Scottish Ministers.

But Libya has made it clear that were Megrahi to die in prison that this would have severe ramifications for the relationship with the UK. [THE] Libyan [GOVERNMENT] told our Ambassador in Tripoli on 21 October that it would be very difficult for both sides if Megrahi were to die in prison. On 27 October, [THE LIBYAN GOVERNMENT] told Scottish Executive and FCO officials that Libya would regard Megrahi's death in custody as 'a death sentence'.

Based upon the above warnings of Libyan Ministers and on Libyan past behaviour it is possible that were Megrahi to die in prison Libya may consider retaliatory action on the UK. While he remains alive, it is also conceivable that Libya might seek to exert pressure on the

UK as an attempt to influence any decisions by Scottish Ministers made in respect of an application for compassionate release or transfer under the PTA.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

## **CHRONOLOGY**

1984: The United Kingdom broke diplomatic relations with Libya following the murder of WPC Yvonne Fletcher.

1988: On 21 December 1988, Pan Am Flight 103 was blown up over Lockerbie in Scotland. All 259 passengers and crew were killed, as were 11 residents of Lockerbie.

1998: The UK and US Government agreed to allow the Lockerbie trial to be held before a Scottish court of three judges and no jury sitting in the Netherlands.

1999: Diplomatic relations were resumed on 7 July 1999 following Libyan acceptance of 'general responsibility' for the shooting of WPC Fletcher and an undertaking to co-operate with the Metropolitan Police investigation into the shooting and two Lockerbie suspects.

2000: The Lockerbie trial began on 3 May 2000. On 31 January 2001 Mr Al-Megrahi was found guilty. His co-defendant Fhimah was found not guilty. Al-Megrahi subsequently appealed against his conviction. His appeal was refused on 14 March 2002.

The first British Ambassador to Tripoli for 15 years arrived in December 1999. A new Libyan Ambassador arrived in London in January 2001.

## **RECENT VISITS**

### **Inward**

Dr Shroki Ghanem, Minister for Energy, 18 – 21 November 2008  
Abdulati Al- Obidi, Minister for Europe, 17 November 2008  
Abdul Rahman Shalgam, Foreign Minister, 7 January 2008  
Dr Shokri Ghanem, Energy Minister, November 2007  
Dr Mustafa Abduljalil, Justice Minister, May 2007  
Dr Ali Erishi, Minister for Migration, 25-30 April 2007  
Dr Mohammed Rashid, Minister for Health, 8-9 February 2007  
Public Security Minister Nasr Mabrouk, Abdullah 24 November 2005  
Minister Ammar al-Mabruk Eltayef, Tourism Minister, 15-17 November 2005  
Dr Elgallali, Minister for Higher Education, 31 October – 5 November  
Major General Ahmed Zwai, 13-17 September 2004  
Abdul Rahman Shalgam, Foreign Minister, 10 February 2004  
Dr Abdulhafid Zlitni, Chairman of the Libyan National Oil Corporation, October 2002  
Delegation led by Suleiman al Shahumi, Secretary for Foreign Affairs at the General People's Congress, June 2002

### **Outward**

Dawn Primarolo, Minister of State for Public Health, 22-24 November 2008  
Alderman David Lewis, Lord Mayor of London, 8-11 March 2008  
Lord Digby Jones, Minister of State jointly with the FCO and BERR, 13 May 2008  
HRH Duke of York, November 2007  
Dr Kim Howells, Minister for State, 25-26 July 2007  
Prime Minister (Blair) met Colonel Qadhafi in Sirte, 29-30 May 2007  
Dr Kim Howells, Minister of State, 25-27 June 2006  
Ian Pearson, Minister of State for Trade, 4-7 March 2006  
Charles Clark, Home Secretary, 22 - 23 February 2006.  
Bill Rammell, Minister for Higher Education 21 - 23 February 2006  
Hilary Benn MP, Secretary of State for International Development, 4 July 2005  
Lord Triesman, Parliamentary Under Secretary of State, 4 July 2005  
Lord Warner of Brockley, Parliamentary Under Secretary of State, Department of Health, 20-23 March 2005  
HRH The Duke of Kent, 8-12 November 2004  
Baroness Symons of Vernham Dean, Minister of State, 12-14 October 2004  
Mike O'Brien MP, Minister for Trade, 19-21 April 2004  
Prime Minister met Colonel Qadhafi in Tripoli, 25 March 2004

## 22 January 2009; footnote 41; FCO Submission – Contingency Planning

From: [REDACTED]  
MENAD  
Date: 22 January 2009

To:	Christian Turner	Megrahi's health remains a key high risk issue. We do not want him to die in a Scottish jail, with the likely negative consequences for our relations with Libya. That he is prepared to abandon his appeal is a significant step – we should now work hard to enable transfer under the Prisoner Transfer Agreement.
	PS/Mr Rammell	
	PS/ Foreign Secretary	

Cc: PS/Foreign Secretary  
PS/PUS  
Mark Lyall Grant  
Mariot Leslie  
Christian Turner  
[REDACTED] Legal Advisers  
[REDACTED] Legal Advisers  
[REDACTED] Legal Advisers  
[REDACTED] Press Office  
[REDACTED] MENAD  
[REDACTED] Consular Directorate  
Simon McDonald, Cabinet Office  
[REDACTED] Cabinet Office  
HMA Tripoli  
[REDACTED] Washington  
[REDACTED] Scotland Office  
Brodie Clark, BIA  
[REDACTED] MOD  
[REDACTED] DECC  
[REDACTED] Office of the Advocate-General for Scotland

**LIBYA: MEGRAHI'S HEALTH: CONTINGENCY PLANNING  
ISSUE**

The Scottish Prison Service Chief Medical Officer has advised that the prognosis for Abdelbasset Al-Megrahi, the man convicted of the Lockerbie bombing, has been reduced to an unspecified matter of months.

Libya has repeated its threats to the relationship and UK commercial interests, and has confirmed to the Scottish Executive Megrahi's intention to drop his appeal to facilitate transfer under the PTA.

Further urgent contingency planning.

## **TIMING**

Priority. [REDACTED]

[REDACTED], but he is not yet eligible for compassionate release. We need to urgently update and act on our diplomatic strategy.

## **PREFERED OPTION**

That the Foreign Secretary:

Take note of the latest reports that Megrahi's treatment [REDACTED]

Take note of the new Libyan threats to the UK-Libya relationship and UK commercial contracts

Take note of the Libya's intention to pursue transfer under the PTA and Megrahi's intention to drop his appeal to facilitate the application.

Agree the revised diplomatic strategy aimed at (i) mitigating the risk of an adverse Libyan reaction to Megrahi's declining health, and (ii) facilitating Megrahi's return to Libya under the PTA (ANNEX A).

## **AGREED**

MENAD, Legal Advisers, Press Office, BE Tripoli, Cabinet Office and Washington agree. Scotland Office has been consulted.

## **PARLIAMENTARY / PRESS**

There has so far been little Westminster Parliamentary interest in this issue. The Prisoner Transfer Agreement will be laid before Parliament on 27 January for 21 sitting days, as required under the Ponsonby Rule. As it will be the first PTA which does not require the prisoner's consent, in addition to laying it before Parliament, it will be necessary to forward it

to the Joint Committee on Human Rights. While the Committee would normally consider the Agreement within the 21 days required under the Ponsonby Rules, the Committee can apply for an extension and could trigger a debate. MOJ would lead on this.

There continues to be widespread domestic and international press interest in Megrahi's health and his possible compassionate release or return to Libya, particularly in Scotland. Latest press coverage in The Herald (15 January) has focused on the signature of the PTA and the implications for Megrahi. The results of the latest medical tests have not yet leaked to the press, but we can expect further coverage when they do. We can also expect further coverage of Megrahi's ongoing appeal against his conviction. We would anticipate significant press interest if Megrahi died in custody or was released. Scotland Office remains HMG's lead, with our input, on press handling. Consolidated press lines are attached (Annex C).

In the event that Megrahi drops his appeal and is successfully transferred back to Libya under the PTA we can anticipate significant press interest, potentially speculative and critical about HMG's role in his transfer. We will be working on a cross-Whitehall press handling strategy.

## **RISKS**

[REDACTED] Libyan officials and Ministers have warned of dire consequences for the UK-Libya relationship and UK commercial operations in Libya in the event of Megrahi's death in custody. [THE LIBYAN [GOVERNMENT] has warned that Libya would regard Megrahi's death in custody as a 'death sentence'. [THE LIBYAN GOVERNMENT [REDACTED] has given specific indications of what this retaliation would mean. We assess this and the risk of Libyan retaliation to be genuine and the implications serious.

There are four key points at which Libya might seek to apply pressure:

As Megrahi's **health continues to decline** leading up to the point where he may become eligible for compassionate release (in the last three months of life). Pressure is likely to be focused on ensuring that Megrahi is moved from HMP Greenock to secure medical facilities.

In the event Megrahi makes a further application to the Scottish High Court for bail.

When **Scottish Ministers are faced with an application for transfer** under the Prisoner Transfer Agreement or for **compassionate release**. Pressure might also be brought to bear to ensure that, if released on compassionate grounds, he could return to Libya. The risks of pressure, or worse, would be greatest if any applications were rejected.

Were Megrahi to eventually die in custody, or even in the UK outside of custody.

We also believe that Libya might seek to ██████████ on the UK in the event of an unsuccessful application to transfer Megrahi under the PTA. The Scottish Prison Service Chief Medical Officer cannot rule out the possibility of a sudden decline in Megrahi's condition, adding further unpredictability.

The Scottish Executive has given no formal indication to either HMG or the Libyans that they would consider a compassionate release application favourably. However based on informal contacts with the Scottish Executive, we believe it **unlikely** that Scottish Ministers would fail to grant compassionate release were Megrahi still in custody in his last three months of life. The Scottish Executive has been at pains to stress to the Libyans that:

It approaches issues of terminal illness among the prison population in a humane and compassionate manner,  
Compassionate release is normal  
Megrahi will continue to be treated as a normal prisoner for these purposes.

The full range of risks to UK interests arising from Megrahi's declining health are set out in detail at Annex B. The principal risks to the UK-Libya relationship are:

██  
██  
██  
██  
██  
██  
██

There are also real risks for the **UK-US relationship**, particularly if the new US Administration were to take a hard line against any possible release or transfer back to Libya. The US Department for Justice is very much opposed to release. State, so far have not given a clear indication of their views. While we have made it clear to the US that we would be willing for them to speak to the Scottish Executive about the processes for possible transfer under the PTA (which they have done), active US lobbying of the Scottish Executive against possible transfer or release would present a real risk. It is not impossible that the Scottish Executive would welcome the opportunity to gain favour with the new US Administration at the UK Government's expense.

There are also real handling risks for the wider devolved relationship between **London and Edinburgh** although we have mitigated this risk so far by building up strong relations with Scottish Executive officials.

In order to manage these risks Mr Rammell agreed that we should seek to operate within four parameters (Annex B), namely that we:

Stress that decisions on release are exclusively for **Scottish Ministers**;

Be supportive in our handling of the Libyans and the Devolved Administration in Scotland, **facilitating contact** between Libya and the Scottish Executive and responding to Libyan requests where we can.

Manage the **US angle carefully**, ensuring that US are clear that transfer or release are Scottish decisions and that they do not perceive HMG to be conniving in Megrahi's unjustified removal from the UK.

Undertake full contingency planning aimed at **safeguarding UK staff and nationals** in the event of Megrahi's death or deterioration in relations.

We now need to go further and work actively, but discreetly, to ensure that Megrahi is transferred back to Libya under the PTA or failing that released on compassionate grounds.

There is a potential risk that any decision made by the Scottish Executive could be judicially reviewed. There has been some press speculation that the government has undertaken a deal with Libya to ensure Megrahi's return. Our own position will therefore be under scrutiny and any documents on this issue could be subject to disclosure.

Megrahi's transfer back to Libya would also present significant presentational risks, particularly to the families of the victims, some of whom argue against any release. It would also add further argument to those already critical of our new relationship with Libya

speculating the UK is prepared to do anything to maintain its commercial and other ties with Libya. We will be working on a cross-Whitehall press handling strategy to counter these charges.

## **ARGUMENT**

Recent medical tests on Megrahi relayed by the Scottish Prison Service (SPS) Chief Medical Officer, Dr Andrew Fraser, have revealed that there are good grounds for now believing that Megrahi may not survive 2009.

. In many ways the exact prognosis is of secondary relevance to our top priority of protecting the bilateral relationship. The key factor is that [THE LIBYAN GOVERNMENT] wants Megrahi to return to Libya at all costs and is willing to inflict considerable damage on the bilateral relationship, if this does not happen.

The revised diplomatic strategy focuses on high level messaging aimed at mitigating the risks of a Libyan overreaction. But risk mitigation will not be sufficient and, while unpredictable,

**Prompt transfer back to Libya under the PTA remains the most desirable outcome**, and it has the advantage of, if successful, ensuring Megrahi's return much sooner than would be



possible with compassionate release. It thus avoids the scenario where Megrahi slowly declines in a UK prison with the attendant risks of a Libyan reaction.

[REDACTED] We anticipate a prompt application for transfer after it comes into force in early March. The strategy sets out what we can do to facilitate a successful application under the PTA.

In terms of contacts, the strategy proposes:

Intensifying Ministerial and senior official contact [REDACTED]

**Maximising the opportunities** presented by Mr Rammell's forthcoming visit to Tripoli, 26 February, and possible trip by the Foreign Secretary to the region in Q2. The latter is more likely to allow direct access to Qadhafi.

Ensuring **well-timed telephone contact between the Prime Minister and Qadhafi** to deliver high level messages on the importance of the bilateral relationship and the need not to over-react.

**Engaging of Musa Kusa**, Head of Libya Intelligence, whom Qadhafi has tasked with securing Megrahi's return.

[REDACTED]

Using other senior and Ministerial contacts with influential Libyans.

## LATEST DEVELOPMENTS

### Megrahi's State of Health

Dr Fraser, the Scottish Prison Service Chief Medical Officer, relayed the results of two sets of medical tests on Megrahi last week.

[REDACTED]

The Scottish Executive has no plans at this stage to move Megrahi from HMP Greenock to secure medical facilities, something that the Libyans have called for. The Scottish Executive argues that the medical facilities at HMP Greenock are more than sufficient and that Megrahi is getting the best care available. The SPS are also reluctant to move Megrahi, and set a precedent for other prisoners. The Scottish Executive has told us informally that at this stage they believe that if Megrahi were sick enough to be moved to another facility, he would probably be eligible for compassionate release.

### **Implications for Megrahi's Detention**

Compassionate release remains a possibility for Megrahi in the last three months of his life. Any decision to release Megrahi on compassionate grounds rests exclusively with Scottish Ministers. The Scottish High Court, when it rejected Megrahi's bail application on 14 November, made it clear that it would be willing to look again at another application if Megrahi's health deteriorated further, potentially before the last three months of life. Megrahi's deteriorating health could therefore prompt a further application for bail. The Scottish Executive has told us privately however that, [REDACTED], they believe that Megrahi is not yet in a position where he would be eligible for compassionate release. They also believe that there is little likelihood of a sudden decline leading to death.

### **Prisoner Transfer Agreement**

Signature of the Prisoner Transfer Agreement (PTA) on 17 November delivered a key lever within HMG's remit, and once ratified, it remains the most likely route for Megrahi's return – subject to agreement of Scottish Ministers. We anticipate that the PTA will be laid before Parliament on 27 January, where it would need to remain for 21 sitting days under the Ponsonby Rule before ratification and entry into force. The agreement will also be forwarded to the Joint Committee on Human Rights who will also want to consider it. During this period if there is a request from a Select Committee for more time to consider the treaty or for a debate this would normally be agreed, under a Government undertaking given in 2000 and could potentially cause delays in ratification. However, such requests are rare, and it would be for MoJ to lead on a debate should one be agreed. Libya has confirmed that its domestic procedures for the judicial agreements including the PTA have now been completed. Once the UK's domestic procedures are also completed, instruments of ratification can be exchanged bringing the PTA into force.

Any decision on Megrahi's possible transfer under the PTA remains exclusively for Scottish Ministers. The biggest legal obstacle to successful transfer under the PTA remains however the requirement in the Agreement that there be no ongoing legal proceedings. In practice, for a transfer application to be successful Megrahi would need to voluntarily withdraw his ongoing appeal. The Crown Office would also need to withdraw its counter-appeal on the length of Megrahi's original sentence. This presents a risk Megrahi: Scottish Ministers cannot, for fear of potential judicial review, indicate in advance whether any application would be likely to succeed. If unsuccessful, and having withdrawn his appeal, Megrahi would remain in prison hoping for possible compassionate release.

It appears however that this is **a risk that Megrahi and Libya are prepared to take**. Abudullati Obidi, Libyan Minister for European Affairs and Musa Kusa, Head of Libyan External Intelligence met Robert Gordon, Director General Justice, Scottish Executive on 22 January. Obidi and Kusa confirmed Libya's intention to pursue an application for transfer under the PTA once it comes into force. They also confirmed that **Megrahi intends to withdraw his appeal** to facilitate an application. In the same meeting Robert Gordon reiterated the First Minister's view that the Scottish Executive could not prejudge the decision by indicating whether it would in principal approve transfer.

### **Megrahi's Appeal**

It is likely that Megrahi will die before the completion of his appeal which on current planning is likely to run well into 2010. Death prior to the completion of the appeal process would not necessarily mean an end to the appeal. Under Scottish law, section 303A of the Criminal Procedure (Scotland) Act 1995 allows for other parties to apply to the Court to maintain the appeal. There have been a number of occasions in which the Court has allowed section 303A to be invoked. All those seen so far to relate to situations where family members have applied to take over an appeal. This scenario does not arise if Megrahi withdraws his appeal.

### **Megrahi's Immigration Status in the UK**

Were Megrahi to be granted bail by the Appeal Court, UKBA would seek to refuse him Leave to Enter in order to retain immigration control over him. Should compassionate release become a real possibility UKBA would need to consult Home Office Ministers on the immigration implications. Neither scenario arises if Megrahi is transfer back to Libya under the PTA.

### **US and Libyan contacts with Scottish Executive**

Following a meeting between US Embassy officials and Scottish Executive on 27 October, the Scottish Executive has provided a dossier to the US Embassy clarifying the processes and procedures for possible compassionate release. To date the US has not lobbied the Scottish Executive on its position on possible compassionate release or transfer under the PTA. Following a request from Libya, representatives from the Scottish Executive are due to meet Minister Obidi on 22 January, the first meeting since 18 November.

### **Security of Staff and British Nationals in Tripoli**

[REDACTED]

[REDACTED]

[REDACTED] North Africa Team, MENAD

## **25 February 2009; footnote 42; Cabinet Office record of Cross Whitehall meeting**

### **CABINET OFFICE**

4 March 2009

**SIMON MCDONALD**

#### **LIBYA: CONTINGENCY PLANNING**

On 25 February 2009 you chaired a meeting on current risks to the UK-Libya bilateral relationship, in particular those arising from the health of Mr Al-Megrahi, the convicted Lockerbie bomber. The meeting was attended by: the Advocate General for Scotland, Lord Davidson; [REDACTED] (OSAG); Christian Turner, [REDACTED] and [REDACTED] (FCO); Jillian Kay (Scotland Office); Pat Baskerville and [REDACTED] (MOJ); [REDACTED] (Home Office); Gordon Summers, Steve Brassington, John Whitbourn (UKBA); George Ballentyne (MOD); Graham White (DECC); and me (Cabinet Office).

#### **Current situation and risks**

You opened the meeting by giving an overview of the events leading up to the current position: Megrahi's conviction; his ongoing appeal against that conviction; his diagnosis with terminal cancer last year; [REDACTED]

[REDACTED] You noted that in recent meetings, [The Libyan Government], had emphasised to you that the return of Megrahi to Libya before his death was a Libyan priority. You observed that all the decisions over Megrahi's potential future transfer or release from prison in Scotland lay entirely with the Scottish Executive. One possible mechanism for Megrahi's transfer back to Libya, the UK-Libya Prisoner Transfer Agreement (PTA), was due to be ratified by HMG shortly. You drew attention to the US interest in decisions on Megrahi's future. The First Minister of Scotland had met the US Secretary of State this week, though you understood the subject of Megrahi had not been discussed.

Christian Turner reiterated that Libya's desired outcome was Megrahi's return to Libya. The threats to the UK should this not happen were real and serious and confirmed by various channels. They were also consistent with the Libyan reprisals against Switzerland when one of Qadhafi's son was arrested briefly in Geneva last year.

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED] We had already seen attempts by Libya to link the signing of contracts to the return of Megrahi. The FCO's strongly believed the return of Megrahi to Libya to be in HMG's interests and that a transfer under the PTA would be the preferred option. The FCO would continue to reassure Libya that HMG took this issue very seriously, but would reiterate that all the decisions lay with the Scottish Executive.

Christian also noted that there were also risks to the US-UK relationship given the number of US victims in the Lockerbie bombing. In recent contact with US counterparts, the FCO had noted in particular the US concern that Megrahi, should he be returned to Libya, would receive a "hero's welcome". A US request to extradite Megrahi to the US seemed unlikely, however, and would anyway be subject to the rules against double jeopardy. The FCO had requested that the US coordinate their policy on this issue with HMG. You said you would raise this issue when you spoke to Jim Jones, the US National Security Adviser.

Pat Baskerville confirmed that the PTA was due to be ratified on 5 March and exchanged shortly thereafter. This timetable would change if the Joint Committee on Human Rights sought further time to examine the Agreement. The JCHR had so far not requested additional time, but this possibility could not be excluded, particularly as this was the first instance of a PTA under which prisoners' consent would not be required.

The Meeting **agreed** that HMG's interest was in the return of Megrahi to Libya before his death using the mechanism of the PTA. Given that Libya appeared to have decided that a transfer under the PTA is its preferred route for seeking Megrahi's return, it could be expected to make an application in the second half of March. This should be directed to Scottish Executive who would have 90 days to respond to the request. You asked whether Libya would be able to substantiate such a request, for example, by reference to Megrahi's medical condition. [REDACTED] confirmed that it could. A request for compassionate release could also be made in parallel should Megrahi's prognosis deteriorate.

### **Scottish Executive processes**

You asked Lord Davidson what process the Scottish Executive would follow in considering an application under the PTA. He said that the Scottish Executive would seek to collect information to form the basis for their deliberations. HMG would be free to submit information on foreign policy implications at this stage. In discussion, participants noted that for handling purposes it would be preferable to await a request by the Scottish Executive before making a submission, but there were not legal reasons for doing so. The fact that HMG was a party to the PTA gave HMG a strong basis for submitting information. The provision of information by HMG would become even more important should it become apparent that the US Government was lobbying the Scottish Executive. You requested that a concise note on foreign policy implications be prepared for submission to the Scottish Executive should they receive a request for Megrahi's transfer under the PTA. The note should be cleared by Ministers but could be passed over to the Scottish Executive by officials

at the appropriate level. (**Action: FCO to prepare a note in consultation with Scotland Office and Ministry of Justice by 18 March**).

Jillian Kay said it was extremely difficult to assess what decision the Scottish Executive would reach on a Libyan application to transfer Megrahi under the PTA: it would be a very difficult political decision. It was likely Scottish Ministers would want to deal with an application as quickly as possible but it was unclear at this stage what their decision would be.

### **Megrahi's Appeal**

██████████ set out the process Megrahi's appeal would follow when it commenced on 29 April. He confirmed, however, that in order for a transfer under the PTA to take place, Megrahi would have to drop his appeal.

### **Immigration implications**

Gordon Summers and Steve Brassington confirmed that, should there be a decision by Scottish Ministers to transfer under the PTA, the transfer would be straightforward from an immigration perspective. John Whitbourn noted that in this event the Home Secretary had the option of applying a deportation order. This would entail consideration of Article 3 of the European Convention on Human Rights. Imposition of a post departure exclusion order was also an option in order to prevent return to the United Kingdom. There might also be a scenario under which the prisoner might be judged too ill to travel. You noted that in this scenario, it would be in HMG's interest that Megrahi did not die in a prison.

I am copying this note to attendees and to Margaret Aldred and Neil Wigan (Cabinet Office), Jim Gallagher (MOJ), Tom Fletcher and Nick Catsaras (No.10).

██████████

## 20 April 2009; footnote 43; FCO Submission – Further Handling on Megrahi

From: [REDACTED]

North Africa Team, MENAD

Date: 20 April 2009

To:	Christian Turner	Seen and content. Handling the Megrahi file continues to be an uncomfortable balance of risks (principally between Libyan actions and US reactions) in which we hold few of the levers. Having re-examined the risks, the Prisoner Transfer Agreement still looks the most likely to avoid serious damage to our interests in Libya. Much will depend on when / how Scottish Ministers take a decision; how the Libyans behave if Megrahi returns; and how the US (Congress and families as well as the Executive) reacts. Christian Turner
	PS/Mr Rammell	
	PS/Foreign Secretary	

Cc: PS  
 PS/PUS  
 Mark Lyall Grant  
 Mariot Leslie  
 John Jenkins  
 John Rankin  
 Daniel Bethlehem  
 Vincent Fean, Tripoli  
 [REDACTED] Washington  
 [REDACTED] Washington  
 [REDACTED] Legal Advisers  
 [REDACTED] Legal Advisers  
 [REDACTED] North America Team  
 [REDACTED] North America Team  
 Neil Wigan, Cabinet Office  
 [REDACTED] Cabinet Office  
 [REDACTED] Scotland Office  
 [REDACTED] Office of the Advocate General for Scotland

LIBYA: MEGRAHI: FURTHER HANDLING



## ISSUE

1. How to handle Libya, the US and the Scottish Executive, as we approach the entry into force of the UK-Libya Prisoner Transfer Agreement (PTA) and a probable Libyan application for Megrahi's transfer.

## TIMING

2. Priority. The UK-Libya Prisoner Transfer Agreement is due for imminent ratification (see [REDACTED] separate parallel submission) and is likely to trigger a prompt Libyan application to the Scottish Executive for Megrahi's transfer. I attach at Annex A a timetable for ratification and key actions.

## PREFERRED OPTIONS

3. That the Foreign Secretary:
  - a. Reconfirms our handling strategy: that Megrahi's transfer under the PTA, albeit not a decision for HMG, remains the best vehicle to manage the potentially [REDACTED] set of risks that we face from a Libyan overreaction in the event of Megrahi's death in the UK;
  - b. Agrees that we should continue to engage both Libya and the US to manage any fallout by:
    - i. Continuing to warn Libya that threats to or retaliation against UK interests will bring adverse consequences for Libya, e.g. in relation to international political and investor confidence;
    - ii. Channelling US concern over Megrahi's possible transfer under the PTA into a joint UK-US effort to secure Libyan agreement to a discreet return to Libya, were the Scottish Executive to approve an application for Megrahi's return, or to manage Libyan reactions in should the Scottish Executive choose not to agree to transfer;
    - iii. Calling both Musa Kusa and Secretary Clinton shortly before the entry into force of the PTA in order to deliver these messages;

[REDACTED] Notes Legal Advisers' confirmation that the UK is under no international legal obligation that precludes Megrahi's transfer back to Libya under the PTA,

## AGREED BY

4. MENAD, North Americas Directorate, Legal Advisers, BE Tripoli, BE Washington. Cabinet Office, Scotland Office and MoJ have been consulted and agree.

## PARLIAMENTARY AND MEDIA

5. With the exception of the Joint Committee on Human Rights there has been little Westminster Parliamentary interest in Al-Megrahi's declining health or Libya's interest in securing his return. Further details of the Parliamentary and media coverage of the ratification process are set out in [REDACTED] parallel submission.
6. There is growing UK-wide, Scottish and US press coverage of Al-Megrahi's health and his possible return to Libya under the Prisoner Transfer Agreement. On 30 March the Daily Mail, Daily Telegraph, Scotsman and The Herald carried reports on meetings between officials from Scottish Executive, FCO officials and Libya on the PTA. The reports quoted a Libyan official claiming that were an application made under the PTA Scottish Ministers would approve Al-Megrahi's transfer. Reporting in The Telegraph claimed that the US was opposed to transfer, although only a former State Department official was quoted. BE Washington believe that US press interest is likely to be high and critical, as will reactions from key and influential Senators (Kennedy, Lautenberg and Menendez - who's offices have already engaged the Embassy and Scottish Executive). We cannot rule out the possibility of the press wanting to emphasis a UK/US split story.
7. Attached at Annex B are our latest press lines. We continue to stress that:
  - a. All decisions relating to Megrahi are a matter exclusively for Scottish Ministers (in relation to transfer under the PTA and compassionate release) or the Scottish High Court (in relation to bail).
  - b. In the event of Megrahi's transfer, we would stress that his terminal illness means that he has effectively served a life sentence for his conviction.

## RISKS

8. In our responding to the declining health of Megrahi we are trying to balance two key sets of risks:

**[REDACTED] Damage to UK-Libya Relationship:** Libyan officials and Ministers have warned of dire consequences for the UK-Libya relationship should Megrahi die in prison in Scotland. We continue to believe that Libyan threats are genuine and their implications serious and assess that the UK is vulnerable to the kind of treatment still being handed out by Libya to Switzerland over a much lesser matter (see my submission to the Foreign Secretary, 22 January, Annex [REDACTED])

i. [REDACTED]  
[REDACTED];

ii. [REDACTED]  
[REDACTED];

iii. [REDACTED]

We believe that the point at which we are potentially most exposed to punitive Libyan action would be following a rejection by Scottish Ministers of Megrahi's application for transfer under the PTA.

- b. **Damage to UK relationship with US Administration and Congress.** There is a significant US angle, with the potential for a bilateral row. The families of the Lockerbie victims are an influential group with the US Administration and they have a number of key allies in the Senate as well as the FBI and Department of Justice who could, if they chose, make life difficult for the Administration. The Foreign Secretary and Secretary of State Clinton discussed Megrahi on 6 and 12 March.

[REDACTED]

This bears out a number of difficult meetings Washington have had with Senate staffers and with the State Department.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] and may lobby the Scottish Executive and HMG to try and prevent transfer. If handled poorly, they may also publicly accuse HMG of renegeing on commitments that (a) Megrahi would serve out his sentence in Scotland and (b) Megrahi would be excluded from the PTA. It is also possible that the US will accuse HMG of bending too readily to Libyan threats. Should Megrahi be returned to Libya, the US' public response is unlikely to be anything other than critical.

- 9. There is also a risk of *domestic UK fallout, particularly in Scotland*. It is possible that Scottish Ministers might seek to make political capital over a Libyan application to transfer Megrahi. The UK Government's agreement in May 2007 to start negotiating a PTA with Libya, and then the decision not to include a provision in the PTA expressly excluding it from covering Megrahi, led to considerable disagreement between London and Edinburgh. It is possible that were Scottish Ministers to agree the transfer of Megrahi that they would lay any reputational fallout at the feet of HMG and may even claim, erroneously that the PTA or HMG tied their hands. At present The Opposition has taken no formal interest in the issue.

## ARGUMENT

### UK Handling Strategy: Transfer under the PTA

#### Working towards the PTA

10. We believe that [THE LIBYAN GOVERNMENT'S] primary concern is to **avoid Megrahi's death in prison** in Scotland and, as set out above, we face a range of very real risks to UK interests if this happens. Following contacts with the Scottish Executive in November and December, Libya has concluded that Megrahi's transfer back to Libya under the PTA, and not compassionate release, is the best way to avoid a Libyan overreaction to Megrahi's death in custody. [THE LIBYAN GOVERNMENT] told the Scottish Executive on 22 January that the PTA was their preferred route and that Megrahi intended to drop his appeal to allow a successful transfer application. Libya continues to push for the speedy ratification of the PTA. Transfer back to Libya has the advantage, for Qadhafi, of securing Megrahi's return from imprisonment in Scotland – something he resisted prior to surrender Megrahi for trial in the Netherlands. In order to manage the very real risks posed by Megrahi's declining health, the Foreign Secretary agreed our handling strategy (my submission, 22 January) aimed at:
- a. delivering high level messages to Libya to head off its threats to the UK
  - b. working discreetly, including with the US, to secure agreement by the Scottish Executive for Megrahi's transfer to Libya under the PTA

11. We cannot however be totally certain of [REDACTED] and how Libya might react at any stage. [REDACTED]

[REDACTED]. But we see merit in continuing to err on the side of caution in our Libya handling. Qadhafi's unpredictable nature, Libya's recent history of punitive action against Switzerland, our assessment of our own exposure, and the importance that Libya has attached to the PTA all suggest that it would be a mistake to assume that Libya's red line or willingness to apply pressure to the UK has diminished.

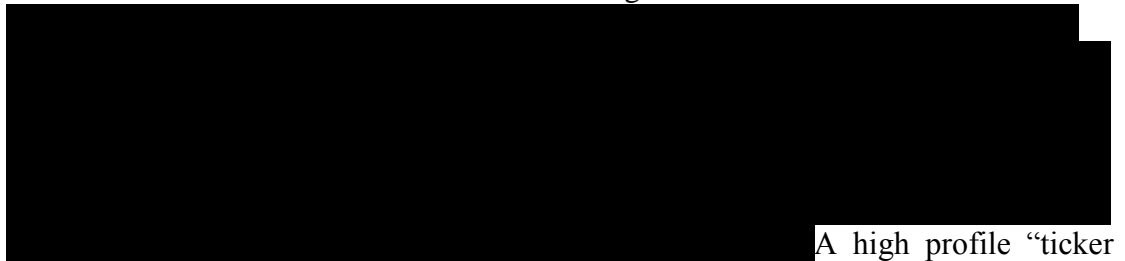
#### Alternatives to the PTA?

12. There are in theory alternatives to the PTA, such as **compassionate release** or **release on bail** which would have the effect of avoiding Megrahi's death in custody. But as with transfer under the PTA, these alternatives are not in HMG's gift and depend instead on Megrahi / Libya's willingness to pursue them and the willingness of the Scottish Executive, or the Scottish High Court (in the case of bail) to approve them. So far Libya has shown limited interest in pursuing any alternative route to the PTA. Compassionate release also has the disadvantage of only being applicable three months prior to Megrahi's predicted death, potentially exposing us to the risk of a Libyan overreaction as Megrahi's health declines further.

13. It is no accident that the PTA is Libya's favoured route for attempting to secure the return of Megrahi. Having agreed in May 2007 to sign a PTA with Libya and then agreed in November 2007 not to seek any exclusion for Megrahi, **HMG now has very little scope for closing down this channel** in favour of e.g. compassionate release. The die is largely already cast. While in theory we could decide now not to proceed with the exchange of instruments of ratification with Libya, this would expose us to significant accusations of bad faith by the Libyans and, given the importance Libya attaches to the PTA, potentially expose us to precisely the risk of a Libyan overreaction that we are seeking to avoid.

### US Opposition



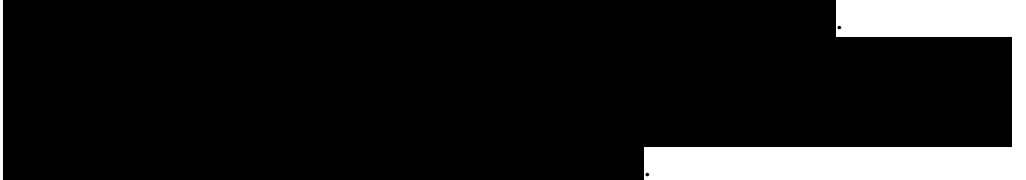
14. Balanced against the risks to the UK-Libya relationship we need to take into account the risks of a bilateral row with the US were Megrahi to be transferred under the PTA.



A high profile "ticker tape" return to Libya for Megrahi would also present HMG with **significant presentational risks**, potentially making further engagement with Libya politically sensitive in the UK for the foreseeable future.

- 15.



- a. The US could yet lobby the Scottish Executive and HMG to try and prevent transfer, although this looks unlikely at this point. 
- b. US families could also consider a judicial review in Scotland to seek to overturn a positive PTA decision by Scottish Ministers 
- c. 
- d. The US may also accuse us of removing an exclusion for Megrahi from the draft PTA as a result of Libya pressure.

16. The current equation places probable strong US criticism of Megrahi's return on one side, against a series of [REDACTED] risks [REDACTED] in the event of a Libyan overreaction to Megrahi's death in custody. Given the [REDACTED] nature of the risks that we face from Libya, and despite US views, **Megrahi's transfer under the PTA remains the best route we have to address those [REDACTED] risks.** In any case, our ability to close down the PTA route or steer events towards an alternative conclusion, such as compassionate release, is at this late stage extremely limited.

#### Handling Libya and the US

17. **Libya:** Ministers have already been heavily engaged in warning the Libyans off an overreaction over Megrahi. Mr Rammell met Libyan Minister for European Affairs, Abdulatti Obidi on 17 November 2008, and repeated these messages to Obidi, Musa Kusa, and Libyan PM Dr al-Baghdadi al-Mahmudi in Tripoli on 26 February. The Foreign Secretary also spoke to then Libyan Foreign Minister Shalgam on 9 February and his successor Musa Kusa on 13 March. While Libyan Ministers understand that all decisions on the PTA are for the Scottish Executive alone, we should continue to look for opportunities to head off Libyan threats.
18. **US:** The Foreign Secretary has spoken to Secretary Clinton on two occasions already about Megrahi and we should continue to handle US concerns carefully by:
- engaging the US at Ministerial and official level ensuring that they understand the risks we face;
  - ensuring that the US understand that all decisions on the PTA are exclusively for Scottish Ministers;
  - seeking to channel US concerns over a possible tickertape return for Megrahi into a discussion with the Libyans on how all of the scenarios are best handled.
  - being transparent with the US over developments in the coming weeks and avoiding any activities (e.g. seeking to influence Scottish decision making) on which we could be accused of duplicity.

I recommend that the **Foreign Secretary call Secretary Clinton shortly** before the PTA enters into force to advise her of the fact and to encourage the US to work jointly with us to manage Libyan reactions.

19. **We should also be prepared to act ourselves to prevent a 'ticker tape' return.** A further **phone call from the Foreign Secretary to Libyan Foreign Minister, Musa Kusa** would be the best channel to stress that, if approved, Megrahi's transfer needs to be handled discreetly. It will also be important to ensure these messages are conveyed to Colonel [REDACTED] Qadhafi directly, [REDACTED]. A call by HMA or Simon McDonald on Colonel Qadhafi may therefore also be necessary. Robust press handling focusing on the certainty of Megrahi's guilt and his proximity to death would also be vital.

#### The Scottish Executive

20. We have no firm evidence to suggest that Scottish Ministers will approve an application under the PTA for Megrahi's transfer. Scottish Ministers have been keen to stress to the Libyans, the US and FCO officials that it is a decision exclusively for Scottish Ministers and that they would consider an application on its merits only when one had been lodged. Officials agreed at a Cabinet Office meeting on 8 April that we should continue to refrain from seeking to influence Scottish Ministers towards approving transfer under the PTA (Minutes at Annex D). We had previously considered whether the Foreign Secretary ought to consider writing to Scottish Ministers setting out the foreign policy context. Following advice from the Scotland Office the Cabinet Office meeting concluded that a letter to Scottish Ministers was more likely to be counter-productive. There is also a strong possibility that the note would become public, posing risks to our relationship with Libya and posing serious reputational risks if the US were to become aware of it (as was likely) and making it more difficult to work collaboratively with US on handling Libyan reactions.
21. The 8 April Cabinet Office meeting did however discuss the possibility of the Justice Secretary calling the Scottish First Minister on the eve of the PTA's entry into force advising him of the fact and the likely imminence of a Libyan application for Megrahi's transfer.
22. Scottish Executive officials have asked FCO officials informally for written advice on the extent to which there are any international legal obligations that would prevent the UK from transferring Megrahi back to Libya under the UK-Libya PTA following a decision to do so by Scottish Ministers. Of key relevance was whether the terms of the August 1998 UK/US/UN agreement dealing with the arrangements for the trial and imprisonment of the Lockerbie accused presented any obstacles under international law to transfer under the PTA. This agreement stipulated that if convicted the accused would serve out their sentence in Scotland, in accordance with Scottish law. Of particular interest were joint UK-US letters deposited with the UN Secretary-General, and the negotiations leading up to them, and UNSCR 1192, which suspended sanctions against Libya in return for the surrender of the suspects for trial. [REDACTED] on the basis of material seen to date that:
- a. HMG is under no international legal obligation by virtue of the arrangements reached with the US and then set out in the form of our joint letters to the UN, or under UNSCR 1192, that would legally preclude Megrahi's transfer back to Libya under the PTA where this is consistent with Scottish Law;
  - b. But the UK did give the US a firm, but not absolute, political undertaking that the convicted would serve out their sentences in the UK;
  - c. However in those political undertakings to the US, HMG did allow for (i) changes in Libya that might lead to a PTA being concluded, (ii) successor British governments potentially taking a different view, albeit at the time this was considered unlikely.

23. We see four options for how to respond to the Scottish Executive request:
- a. That officials write to Scottish Executive colleagues setting out only the fact that there are no international legal obstacles;
  - b. That officials write to Scottish Executive colleagues being clear also about the political undertakings that were given in 1999 to the US;
  - c. That we do not write to the Scottish Executive and simply reconfirm what we have said orally that we believed that there were no international legal obstacles;
  - d. That the Justice Secretary relay the message about the absence of international legal obstacles orally when he speaks to the Scottish First Minister on the eve of ratification.
24. I recommend that in view of the sensitive nature of the undertakings given to the US, and that the US may accuse HMG of having crossed those undertakings, and the difficult history with Edinburgh over the conclusion of a PTA, that the Foreign Secretary approve **option c**: that officials do not write to the Scottish Executive and instead relay orally our assessment of the international legal obstacles to the First Minister orally. Were we to write to the Scottish Executive we could not guarantee that it would not leak, and exposing the Justice Secretary to a potentially difficult conversation carries more risks than a simple restatement by officials of what has already been conveyed.

## **BACKGROUND**

25. The Prisoner Transfer Agreement allows the return of a prisoner to serve out his sentence in his home country where both jurisdictions are in agreement on a particular prisoner. Prisoners do not have an automatic right to transfer; the consent of the relevant authorities in both states is required before transfer can take place.
26. Securing the return of Al-Megrahi, who has been convicted of the Lockerbie bombing, from his prison in Scotland is of the utmost importance to Libya. The PTA presents one potential channel by which his return could be secured. We have made it clear to Libya that any application for the transfer of Al-Megrahi under the PTA would be exclusively a matter for Scottish Ministers.
27. A transfer cannot take place while there are criminal proceedings pending, so in order for any decision to be made by Scottish Ministers under the PTA either all criminal proceedings would have to be concluded or the appeal of Megrahi and the Crown's cross-appeal on the length of Al-Megrahi's original sentence would have to be withdrawn.
28. The negotiation of the PTA has been controversial in Scotland. After the original MOU was signed, Alex Salmond protested publicly about the lack of prior consultation with the Scottish authorities. At Scottish insistence, early drafts of the



PTA included a clause that specifically excluded Al-Megrahi from the agreement's scope. But Libya would not agree to this (PTAs are usually generic, neither excluding nor including any individual). After considering the issue carefully, Jack Straw decided that there was no need for the agreement to exclude al-Megrahi specifically. He informed his Scottish counterpart that we would agree a generic text with Libya. The Scottish authorities expressed "disappointment" at the time but Al-Megrahi's terminal diagnosis last year has prompted dissipation in Scottish Executive opposition to the PTA.

29. If Megrahi were transferred back to Libya under the PTA the US might accuse us going back on the terms of the original August 1998 agreement covering the surrender of the accused, their trial in the Netherlands and where they would be imprisoned if found guilty. This was set out in a joint UK-US letter to UN in 1998. Our legal analysis of the terms of that letter, UNSCR 1192 and the understandings reached between the UK, US, UN and Libya leads us to consider that there is no international legal obligation that prohibits the transfer of Megrahi to serve his sentence outside Scotland where this is provided for by Scottish law,



30. Parliamentary Scrutiny of the PTA has now ended. A separate submission has been sent to the Foreign Secretary requesting ratification of the PTA and three other legal agreements that were signed at the same time as the PTA.

## **RESOURCE IMPLICATIONS**

31. None aside from staff and Ministerial time.



North Africa Team, MENAD

## **21-23 April 2009; footnote 43; FCO Submission – Further Handling on Megrahi – PUS and Ministerial Responses**

**From:** PUS Action/Info

**Sent:** 21 April 2009 09:13

**To:** [REDACTED] PS Rammell - Action

**Cc:** SOSFA Info CONF; Mark Lyall-Grant; [REDACTED] Mariot Leslie; John Jenkins (FCO); John Rankin; Daniel Bethlehem; Vincent Fean; [REDACTED]

[REDACTED] Neil Wigan (Cab Office [REDACTED]) (Cab Office [REDACTED]); Christian Turner; [REDACTED] (Joint)

**Subject:** LIBYA: MEGRAHI: FURTHER HANDLING

From Peter Ricketts:

**I think we've got so far down the Prisoner Transfer Agreement path now that we have to see it through. If Scottish Ministers approve Megrahi's application, a low key return to Libya remains the least bad course, and protects our real interests in Libya.**

**Peter Ricketts**

[REDACTED]  
[REDACTED]

Private Secretary to Peter Ricketts  
Foreign & Commonwealth Office

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PS

Mr Rammell has seen and agreed [REDACTED] submission of 20 April 09.

He commented that "Our aim, although we cannot deliver it, should be to see Megrahi released before he dies. If he dies in prison we will pay a significant price with the Libyans. Please keep me regularly updated.

PS/Mr Rammell [REDACTED]

21/4

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**From:** [REDACTED]

**Sent:** 23 April 2009 15:56

**To:** [REDACTED]

**Cc:** John Jenkins (FCO); Vincent Fean\* Tripoli -Conf; [REDACTED] Tripoli -CONF; [REDACTED] (Cab Office); [REDACTED] Washi -Conf; [REDACTED]

PUS Action/Info; Mark Lyall-Grant; John Rankin; Daniel Bethlehem; [REDACTED] (Joint);  
PS Rammell - Info; Matthew Gould  
**Subject:** CONF: UK/Libya

**\*\* REGISTERED \*\***

[REDACTED]

1. The Foreign Secretary was grateful for your respective submissions of 20 April on the ratification of treaties with Libya and the Megrahi case.

2. The Foreign Secretary:

a) signed the instruments of ratification for the four treaties (grateful if you could pick these up from private office);

b) agreed the handling strategy for the Megrahi case;

c) agreed that we should continue to engage both Libya and the US to manage any fallout by:  
i) warning Libya that threats against the UK will bring adverse consequences; ii) channelling US concern into a joint UK-US effort to secure Libyan agreement to Megrahi's discreet return; iii) calling Musa Kusa this week;

d) does not want to call Clinton before the entry into force of the PTA, so as not to give Clinton the chance to ask him not to sign the instrument of ratification. He does however want us to inform the US when the application for Megrahi's return comes in.

Yours,

[REDACTED]

Private Secretary to the Foreign Secretary  
Foreign and Commonwealth Office

## 20 April 2009; footnote 44; FCO Submission – Ratification of Treaties

From: [REDACTED]  
MENAD

Date: 20 April 2009

To:	Christian Turner	Seen and agreed
	PS/Rammell	
	PS/Foreign Secretary	

Cc: PS/Mr Rammell  
PS/PUS  
Mark Lyall Grant  
John Jenkins, Director MENAD

[REDACTED] Legal Advisors  
[REDACTED] Legal Advisors  
[REDACTED] Press Office  
[REDACTED] CTD  
[REDACTED] Treaty Section

HMA Libya

[REDACTED] Washington  
[REDACTED] Cabinet Office  
[REDACTED] MOJ  
[REDACTED] Home Office

### RATIFICATION OF TREATIES WITH LIBYA

#### ISSUE

Should the Foreign Secretary sign instruments of ratification for four treaties with Libya on Prisoner Transfer, Mutual Legal Assistance in Criminal Matters, Mutual Legal Assistance in Civil and Commercial Law and Extradition. (Annex A). This submission should be read alongside [REDACTED] parallel submission on handling.

#### TIMING

Urgent. Libya is pushing for prompt ratification, in particular of the Prisoner Transfer Agreement and has expressed concern at the delays in ratification.

#### PREFERRED OPTIONS

That the Foreign Secretary signs the attached instruments of ratification. The ratification of the Prisoner Transfer Agreement (PTA) is likely to trigger a prompt Libyan application to the Scottish Executive for the transfer of the Lockerbie bomber Al-Megrahi.

## **AGREED BY**

MENAD, Press Office, Legal Advisers, CTD, Treaty Section, BE Tripoli, Ministry of Justice and Home Office. Scotland Office and Cabinet Office have been consulted. Americas Directorate and BE Washington remain concerned over the likely US reaction to the ratification of the PTA.

## **PARLIAMENTARY AND MEDIA**

To date there has been little Westminster Parliamentary interest in any of the agreements with the exception of the Prisoner Transfer Agreement (PTA). The Joint Committee on Human Rights (JCHR) requested and was granted an extension, until 2 April, of the time allowed under the Ponsonby Rule for further consideration of the UK/Libya Prisoner Transfer Agreement. The JCHR had requested that ratification be delayed until the end of April to allow the Committee to publish a substantive report. The Secretary of State for Justice replied to the JCHR on 12 March to say that ratification could only be delayed until the Easter recess because any further delay beyond early April would likely to lead to serious questions on the part of Libya in regards to HMG's willingness to conclude the agreements.

The Chairman of the JCHR wrote to the Secretary of State for Justice on 17 March outlining the Committee's concerns about the lack of human rights safeguards contained in the PTA, particularly in the light of the assurances arrangements it has been felt necessary to put in place in relation to national security deportations to Libya. The Secretary of State for Justice replied on 27 March making it clear that the UK's obligations under the European Convention on Human Rights and the Human Rights Act would apply in relation to any transfer under this PTA.

The correspondence between the Ministry of Justice and the JCHR was made public by the JCHR on 15 April. As expected, the correspondence highlighted the JCHR Committee's concerns about the lack of human rights safeguards contained in the PTA. The JCHR also expressed regret that it was unable to publish a substantive report on the PTA before Easter and made it clear that when a select committee states that it intends to scrutinise a treaty, ratification should be delayed until the committee's inquiry has concluded.

The PTA has been politically controversial in Scotland because of the PTA's potential application to Al-Megrahi (the Lockerbie bomber) prompting the first public dispute between the Government and the Scottish Executive (post-May 2007 elections). However, past Scottish Executive opposition to the PTA has dropped off since Megrahi's terminal diagnosis. Scottish Ministers' are aware that they may receive an application from the Libyan Government for the transfer of Al-Megrahi.

There is growing UK-wide, Scottish and US press coverage of Al-Megrahi's health and his possible return to Libya under the Prisoner Transfer Agreement. On 30 March the Daily Mail, Daily Telegraph, Scotsman and The Herald carried reports on meetings between officials

from Scottish Executive, FCO officials and Libya on the PTA. The reports quoted a Libyan official claiming that were an application made under the PTA Scottish Ministers would approve Al-Megrahi's transfer. Reporting in The Telegraph claimed that the US was opposed to transfer, although only a former State Department official was quoted. US press interest is nonetheless likely to be high and critical, as will reactions from key and influential Senators. We cannot rule out the possibility of the press wanting to emphasise a UK/US split story.

Attached at Annex B are our latest press lines. The Ministry of Justice remains HMG's lead in regards to press handling for matters relating to the PTA.

There has been no press interest in the other three agreements or the publication of correspondence between the Ministry of Justice and JCHR on the PTA.

## **RISKS**

██████████ parallel handling submission of 20 April sets out in more detail the key risks to UK/Libya and UK/US relations when the decision to ratify, or not to ratify, the PTA is taken.

The ratification of the Prisoner Transfer Agreement is likely to trigger a prompt Libyan application to the Scottish Executive for the transfer of the Lockerbie bomber Al-Megrahi. Ratification of the PTA is a key part of our strategy to mitigate the risks to HMG's relationship with Libya, but against that there are contingent risks to our relationship with the US and the Scottish Executive, as well as the possibility of critical press coverage.

***Damage to UK-Libya Relationship:*** Libyan officials and Ministers have warned of dire consequences for the UK-Libya relationship should Megrahi die in prison in Scotland.

***Damage to UK relationship with US Administration and Congress:*** The US is likely to strongly oppose the return of Megrahi and may feel compelled to express this publically. Secretary of State Clinton has already raised US concerns with the Foreign Secretary. They may also lobby the Scottish Executive and HMG to try and prevent transfer.

A risk of ***domestic UK fallout, particularly in Scotland.*** It is possible that Scottish Ministers might seek to make political capital over a Libyan application to transfer Megrahi. The negotiation of the PTA has been controversial in Scotland. After the original MOU was signed, Alex Salmond protested publicly about the lack of prior consultation with the Scottish authorities. At Scottish insistence, early drafts of the PTA included a clause that specifically excluded Al-Megrahi from the agreement's scope. But Libya would not agree to this given that their objective all along has been to secure Megrahi's release PTAs also are usually generic, neither excluding nor including any individual. After considering the issue carefully, Jack Straw decided that there was no need for the agreement to exclude al-Megrahi specifically. He informed his Scottish counterpart that we would agree a generic text with Libya. The Scottish authorities expressed "disappointment" at the time.

There are no risks arising from any of the other agreements.

## **ARGUMENT/BACKGROUND**

When Tony Blair visited Libya as Prime Minister in May 2007 he signed an MOU on judicial co-operation with Libya. The MOU committed the UK and Libya to negotiate agreements in four areas: Prisoner Transfer, Mutual Legal Assistance in Criminal Matters, Extradition and Civil and Commercial matters. Mr Rammell and Minister Obidi signed the agreements in London on 17 November 2008. A double taxation agreement was also signed, but is not yet ready for ratification.

The Agreements on Mutual Legal Assistance in Criminal Matters, Extradition, and Civil and Commercial matters will attract little attention.

The **Agreement on Mutual Legal Assistance** in criminal matters will apply to all crimes that are being investigated or prosecuted in the territory of the requesting state where the evidence required is located in the territory of the requested state. The Agreement also provides for assistance to be given in restraint and confiscation matters.

The **Agreement on Extradition** allows extradition to be requested for any offence which attracts a maximum penalty of at least 12 months in the UK or Libya.

The **Agreement on Civil and Commercial** matters aims to facilitate co-operation between the courts of the United Kingdom and of Libya in these matters. The Agreement contains provisions about access to the courts, security for costs and legal aid.

The **Prisoner Transfer Agreement** allows the return of a prisoner to serve out his sentence in his home country where both jurisdictions are in agreement. Prisoners do not have an automatic right to transfer; the consent of the relevant authorities in both states is required before transfer can take place.

Securing the return of Al-Megrahi who has been convicted of the Lockerbie bombing, from his prison in Scotland is of the utmost importance to Libya. The PTA presents one potential channel by which his return could be ensured allowing the transfer of a prisoner to serve out the remainder of his sentence in his home country where both jurisdictions are in agreement. We have made it clear to Libya that any application for the transfer of Al-Megrahi under the PTA would be exclusively a matter for Scottish Ministers.

A transfer cannot take place while there are criminal proceedings pending, so in order for any decision to be made by Scottish Ministers under the PTA either all criminal proceedings would have to be concluded or the appeal of Al-Megrahi and the Crown's cross-appeal on the length of Al-Megrahi's original sentence would have to be withdrawn.

Once the instruments of ratification have been completed and signed by the Foreign Secretary, the certificates of exchange will be signed in Libya. The exchange of instruments ceremony will be organised by the British Embassy as soon as possible after the signing of the agreements by the Foreign Secretary. The ceremony is expected to be take place from 29 April onwards.

The agreements will come into force upon exchange of instruments.

## RESOURCE IMPLICATIONS

None



MENAD



**21 April 2009; footnote 44; FCO Submission – Ratification of Treaties – Ministerial Response**

**From:** [REDACTED]  
**Sent:** 21 April 2009 13:24  
**To:** SOSFA Action CONF  
**Cc:** [REDACTED]  
**Subject:** Submission: Ratification of UK/Libya Legal Agreements

\*\* REGISTERED \*\*

Mr Rammell has seen and agreed [REDACTED] submission of 20 April.

He commented that " This is a key element of our Megrahi handling strategy."

The hard copy will be walked to you

[REDACTED]

[REDACTED]

Private Secretary  
Bill Rammell's Office  
Foreign & Commonwealth Office  
King Charles Street  
London  
SW1A 2AH

## **22 April 2009; footnote 45 & 51; Ministry Of Justice Submission – Jack Straw call with First Minister**

To: Secretary of State for Justice and Lord Chancellor  
Alison Blackburne  
Jim Gallagher  
Richard Hutchinson  
Phil Lawley  
Ian Poree  
Debbie Kirby  
Jane Walker  
Pat Baskerville  
Mark Davies

Date: 22 April 2009

From: [REDACTED]  
Foreign National Prisoner Policy & Cross Border Transfers  
Safer Custody & Offender Policy Group  
1<sup>st</sup> Floor, Fry Building, 2 Marsham Street,  
Tel: [REDACTED]

### **Subject: UK/LIBYA PRISONER TRANSFER AGREEMENT**

#### **Issue**

1. When and whether you should telephone Alex Salmond, Scottish First Minister, to inform him of date of ratification of the UK/Libya Prisoner Transfer Agreement (PTA).

#### **Timing**

2. Urgent. The exchange of Instruments of Ratification is due to take place in Tripoli on 29 April. If you agree to speak to the First Minister you will need to place a call to him on Tuesday 28th April.

#### **Recommendation**

3. That you place a telephone call to the First Minister on Tuesday 28<sup>th</sup> of April and inform him of the date that ratification is to take place. A speaking note for the purpose is attached.

#### **Argument**

4. You have previously spoken to Alex Salmond about the proposed prisoner transfer agreement with Libya and you agreed to keep him informed of further developments. Arrangements are now being made for the PTA to be ratified in Tripoli on 29th April. It is the view of the Cabinet Office, the Foreign Office, and the Scotland Office that a further call from you to Mr Salmond would now be appropriate. The purpose of that call would be to inform Mr Salmond that the parliamentary process has now been completed and that instruments of ratification will be exchanged on 29<sup>th</sup>. You are not expected to engage in detailed discussion on other issues surrounding the possibility of the transfer of Al-Megrahi, the Libyan national convicted of the Lockerbie bombing.

5. A speaking note is attached for you to use in your call. The note has been cleared by both the FCO and the Scotland Office. In addition to the issue of the parliamentary process and the date of ratification the note deals briefly with other related issues which Mr Salmond may raise. In particular it refers to whether there are any legal barriers to the transfer of Megrahi under the PTA. The FCO will brief Scottish Executive officials on this issue but there are no international legal barriers to transfer arising from commitments given by the UK and the US to the UN about where Megrahi would serve his sentence. A line has also been provided on the disclosure of correspondence between you and the Scottish Executive. Mr Salmond has previously sought the publication of this correspondence with intention of showing that the Government reneged on its promise to exclude Megrahi from the PTA. The Government had given such an assurance but changed its position when this proved unacceptable to the Libyans. The correspondence between you and the Scottish Executive took place on a confidential basis and it would not be appropriate to disclose letters relating to a sensitive international issue.

### **Background**

6. The prisoner transfer agreement is one of four agreements in the field of judicial cooperation signed by the UK and Libya on 17 November 2008. The other agreements cover extradition, mutual legal assistance in criminal matters, and civil and commercial law. Instruments of Ratification will be exchanged for all four agreements on 29th of April.

7. The PTA is controversial because of the presence in Scotland of Al-Megrahi, the Libyan national convicted of the Lockerbie bombing. Speculation has surrounded the negotiation of the PTA that a deal has been done to transfer Megrahi to a prison in Libya. This is not the case but we do expect the Libyan authorities to submit an application for Megrahi's transfer shortly after ratification takes place. However, Megrahi is currently appealing against his conviction and under the terms of the PTA an application for transfer cannot be determined until all legal proceedings have been completed or halted.

8. Megrahi's appeal against conviction is due to commence on 28th April. The appeal is to be heard in stages. The first stage commences on 28<sup>th</sup> of April and will last four weeks. It will

deal with two specific grounds (sufficiency of evidence and reasonableness of the verdict). A second stage is to be heard later in the year and will last for 12 or more weeks. A date has not been fixed but if it goes ahead it is anticipated to be late summer. That stage will deal with evidence relating to purchase of clothing and identification. Further stages will follow. Although ratification of the PTA will coincide with the start of the appeal it is our view, shared by the Scotland Office, that ratification should take place as scheduled.

### **Handling/presentational issues**

9. Ratification of the UK/Libya Prisoner Transfer Agreement is likely to attract a significant amount of media interest. Ratification will take place the day after commencement of the first stage of Megrahi's appeal and at a time when his case will already be the focus of media attention. We can expect considerable media speculation that a deal has been done to transfer Megrahi to Libya. Lines to take have been prepared for use by the FCO, the Scotland Office and the MoJ.



## **Lines for telephone call between the Justice Secretary and the First Minister for Scotland (28 April 2009)**

- I wanted to let you know that we anticipate the PTA between UK and Libya will be ratified before the end of the month.

- The PTA was considered under the Ponsonby Rules in UK Parliament and the 21 day period lapsed without comment.

- The Joint Committee on Human Rights took interest in the PTA as it is the first to not require the consent of the prisoner in question prior to transfer.

- The Committee issued a short report on 15th April which provided copies of my correspondence with the Committee Chair: these exchanges verified the

Government's commitment to Human Rights and assurance of the steps we have put in place to prevent transfer where it is suspected that there may be risk of torture if an individual were to be returned: none of these issues related specifically or solely to the PTA with Libya.

- As I am sure you are aware from your officials' contacts with the Libyans, it is possible that the Libyan Authorities will put in a transfer request for AI-Megrahi very shortly after ratification.

- Your officials have been, and continue to, work very closely with officials in the Foreign Office: we remain very happy to assist where appropriate and where required.

- As we have reiterated throughout this process, we will continue to make clear publically and to the Libyans that all decisions relating to any prisoner within the Scottish prison estate are, and will remain, a matter exclusively for Scottish Ministers. It would nevertheless be helpful if you would inform me of your decision in relation to Megrahi should a transfer application be received.

- I hope that we can continue to keep this line of communication open and will call you again if there are any further developments.

**If pressed:**

*Are there any international barriers to transfer under the PTA?*

- No.
- I believe this is a point that your officials have raised with FCO officials and that clarification has been provided on this point.

*What does the US think?*

- You will have your own assessment of the US position, and the views of those in the Senate. We understand that these are likely to focus on what happens to Megrahi on his return to Libya, were an application for transfer agreed
- No doubt you will want to ensure that were the Libyans to make an application that they provide all the necessary material on the transfer of a sentence, in accordance with the Agreement.

*Do you give your agreement to publish the exchange of letters between MoJ and SG?*

- My feeling on this is that these letters were written on confidential basis.
  - I do not believe it would be appropriate for either of us to publish our exchanges on this sensitive issue.
- 

**Ministerial Confirmation**

23 April 2009

UK/LIBYA PRISONER TRANSFER AGREEMENT



Thanks for your submission, which the Justice Secretary has seen. He has agreed your recommendation that he should speak to the First Minister on Tuesday 28 April, the day before the expected ratification of the PTA. We will approach the First Minister's office on Tuesday morning to book the call.

Grateful if you could let me know if there is any change in ratification timing in the meantime.

Jim: The Justice Secretary will want to stick to the Libya issue. But it's possible that the First Minister might use the call to raise other issues if there are any on the boil. None spring to my mind. But grateful for advice (and lines if necessary).

Many thanks,

Alison Blackburne

Principal Private Secretary to the Lord Chancellor and Secretary of State for Justice

## 29 April 2009; footnote 45; MoJ Record of Jack Straw call with First Minister

**From:** Blackburne, Alison [REDACTED]  
**Sent:** 29 April 2009 20:51  
**To:** [REDACTED]  
**Cc:** Davies, Mark (Special Advisor Office); [REDACTED]; Baskerville Pat; Gallagher, Jim  
**Subject:** Restricted: RE: UK/LIBYA PTA

[REDACTED]

The Justice Secretary did speak to Alex Salmond in HoC yesterday evening, and reported back to me today.

The Justice Secretary told AS that the PTA was to be ratified today. AS took note and then asked whether HMG had a view on whether Megrahi should be sent back to Libya. The Justice Secretary said that was a matter for the Scottish Executive. AS pressed. JS said he would think about it and get back to him [comment we could wait to see whether AS pursues this. JS would prefer not to give a view, given the potential beartraps]

[REDACTED]  
[REDACTED]  
[REDACTED]

AS stressed he was speaking in confidence, so grateful if this report of the conversation could be handled accordingly.

Alison  
Alison Blackburne  
Principal Private Secretary to the Lord Chancellor and Secretary of State for Justice

---

**From:** [REDACTED]  
**Sent:** 27 April 2009 13:56  
**To:** Blackburne, Alison  
**Cc:** Davies, Mark (Special Advisor Office); [REDACTED]; Baskerville, Pat; Gallagher, Jim  
**Subject:** RE: UK/LIBYA PTA

Alison,

The FCO has confirmed that ratification will now go ahead on 29<sup>th</sup> as planned. I would be grateful if the telephone call with Alex Salmond could take place as planned tomorrow.

██████████

-----Original Message-----

**From:** ██████████

**Sent:** 27 April 2009 1:06 PM

**To:** Blackburne, Alison

**Cc:** Davies, Mark (Special Advisor Office); ██████████; Baskerville Pat; 'Gallagher, Jim'

**Subject:** UK/LIBYA PTA

Alison,

I have attached an amended version of the briefing on the ratification of the UK/Libya PTA for use at the discussion this afternoon between the Justice Secretary of the US Attorney General. I understand that the A-G has indicated his intention to raise the issue with the Home Secretary at their meeting. The Home Secretary will indicate this is a matter for the Justice Secretary.

Ratification of the PTA has been delayed because of a delay in getting the documentation to Tripoli. Ratification is now scheduled for 30<sup>th</sup> of April. I will confirm this as soon as I am able. In the circumstances the Justice Secretary may wish to delay his telephone call to Alex Salmond scheduled for tomorrow.

██████████

████████████████████

Safer Custody & Offender Policy Group

Ministry of Justice



## 24 June 2009; footnote 50; FCO email – Foreign Policy advice to the Scottish Government

**From:** [REDACTED] (Conf)

**Sent:** 24 June 2009 16:04

**To:** [REDACTED] (Cab Office) (Conf); Neil Wigan (Cab Office) (Conf)

**Cc:** [REDACTED]@advocategeneral.gsi.gov.uk; [REDACTED];

[REDACTED]@advocategeneral.gsi.gov.uk; [REDACTED] (Conf); [REDACTED] (Conf);

[REDACTED] (Conf); [REDACTED] (Cab Office)

(Conf); Christian Turner (Conf); [REDACTED]@scotlandoffice.gsi.gov.uk;

[REDACTED]@scotlandoffice.gsi.gov.uk; [REDACTED]; John Jenkins

(MENAD) (Conf); [REDACTED] (Conf); [REDACTED] (Cleared); Vincent Fearn \* (Conf)

**Subject:** Libya/Megrahi: Minute 12 June Whitehall meeting

[REDACTED]

We spoke about the FCO's view of whether we should in fact recommend to the Foreign Secretary that he write to Kenny MacAskill setting out HMG's view on Megrahi's possible transfer to Libya. We had previously argued that the Foreign Secretary ought to write to Mr MacAskill setting out the foreign policy implications of Megrahi's death in custody.

We have considered this further in the light of new soundings that we have taken with the Scottish Executive. We now conclude that we should not recommend that to the Foreign Secretary that he write to Mr MacAskill on the foreign policy implications as to do so would:

- cause considerable irritation among Scottish Ministers potentially impacting on how they consider the Libyan application;
- potentially be ruled extraneous to the grounds that Scottish Ministers have now set as the basis for a decision on the application. Mr MacAskill has decided that political and economic considerations will not be taken into account;
- simply replicate what Scottish Ministers already know about the foreign policy implications of Megrahi's death. Scottish Ministers have already seen the note on this subject we passed to the SE at official level. That caused real irritation and does not need repeating.

You were concerned how this would impact on our risk mitigation with the Libyans. We believe that in the event that we needed Simon McDonald to deliver messages to the Libyans he would be able to point to (i) the fact that this is a Scottish decision, (ii) the efforts we and HMA Tripoli have made to stress to the SE the importance of the UK-Libya relationship (including the previous official's note seen by Scottish Ministers), and (iii) the mutually beneficial nature of the wider relationship.

Overall however we believe that on the balance of risks we should avoid any action that may jeopardise how Scottish Ministers look upon the Libyan application. We will still be submitting to the Foreign Secretary a draft letter from officials to the SE on the legal aspects of the the 1998 UK-US letter, drafts already circulated for comment.

Regards,

██████

████████████████████ North Africa Team | Middle East and North Africa Directorate |  
Foreign & Commonwealth Office |

**29 June 2009; footnote 47; FCO Submission – Legal Advice to Scottish Government**

From: [REDACTED]  
MENAD

Date: 29 June 2009

To:	Christian Turner	Agreed
	PS/Mr Lewis	
	PS/Foreign Secretary	

Cc: PS  
PS/PUS  
Mark Lyall Grant  
Mariot Leslie  
John Jenkins  
John Rankin  
Daniel Bethlehem  
Vincent Fean, Tripoli  
[REDACTED] Washington  
[REDACTED] UKMis New York  
[REDACTED] Legal Advisers  
[REDACTED] Legal Advisers  
[REDACTED] Research Analysts  
[REDACTED] North America Team  
[REDACTED] IOD  
[REDACTED] AD(S)  
[REDACTED] MENAD  
Neil Wigan, Cabinet Office  
[REDACTED] Cabinet Office  
[REDACTED] Scotland Office  
[REDACTED] Office of the Solicitor to the Advocate General for Scotland

**LOCKERBIE / MEGRAHI: LEGAL ADVICE TO SCOTTISH EXECUTIVE**

**ISSUE**

1. How to respond to a Scottish Executive (SE) formal request for advice on whether a 1998 joint UK-US letter to the UN, which set out arrangements for the trial and imprisonment of the Lockerbie accused, created legal or political commitments precluding Megrahi's transfer under the UK-Libya Prisoner Transfer Agreement.

## **TIMING**

2. Priority. We should submit any advice to the Scottish Executive before it takes a decision on the Libyan application for Megrahi's transfer. We believe that Megrahi may withdraw his appeal after 7 July, when a judgment may be handed down on the first portion of the appeal, clearing the way for a decision on the Libyan application.

## **PREFERRED OPTIONS**

3. That the Foreign Secretary agrees that officials should write to SE officials reiterating what we have already told them orally:

a. Any decision on Megrahi is for Scottish Ministers alone;

b. The FCO does not consider that the 1998 letter, UNSCR 1192 or the accompanying discussions about implementation of the trial initiative, present an international legal bar to transfer of Megrahi under the PTA where this is consistent with Scots law.

4. That, in view of (a) the wider questions asked by the SE about our negotiations with the US Government, and (b) material provided to the SE by the US Government, the letter to the SE should explain why we believe that the political undertakings we gave the US in 1998 in respect of the trial and imprisonment of the Lockerbie accused stopped short of a definitive undertaking.

5. I attach a draft letter at **Annex A** for Foreign Secretary's agreement. The letter will be signed by Christian Turner, Deputy Director, MENAD.

## **AGREED BY**

6. MENAD, North Americas Directorate, IOD, AD(S), Legal Advisers, BE Tripoli, BE Washington, Scotland Office, Cabinet Office and the Office of the Solicitor to the Advocate General have been consulted.

## **PARLIAMENTARY AND MEDIA**

7. There is growing media interest in Megrahi's fate particularly in Scotland. Libya's application on 5 May for Megrahi's transfer figured heavily in the UK and Scottish press. Westminster Parliamentary interest remains muted, although the issue figured more heavily in First Minister's questions on 7 May, where the First Minister confirmed that the decision on the Libyan application will be taken by Kenny McAskill MSP, Justice Secretary. Questions to the First Secretary focused on the extent to which the 1998 UK-US letter to the UN formed an obstacle to transfer. The First Minister declined to be drawn.

## **RISKS**

8. My submission of 20 April (Annex D) set out in detail the difficult balance that we are currently trying to strike between a [REDACTED] Libyan reaction if Megrahi were to

die in UK custody, and the probability of US criticism, if Megrahi were transferred to Libya under the PTA.

9. Submitting written advice to the SE carries a number of potential risks in relation to how the SE would use the advice. There is a risk that the SE might attempt to:

a. use any advice to decline the Libyan transfer application arguing (erroneously) that transfer under the PTA would conflict with previous legal or political undertakings given by the UK Government on the imprisonment of Megrahi;

b. make further domestic political capital out of the then Prime Minister's decision in May 2007 to conclude a PTA with Libya without previously consulting the SE;

c. deflect any domestic or international criticism of a decision to transfer Megrahi onto HMG following our advice on the legal background.

10. Weighed against this are the risks associated with not responding to the SE letter, including failure to uphold a constitutional commitment by the FCO to provide the SE with advice on international law issues.

11. There is also a risk that, if not carefully crafted, the US might perceive any advice provided by the UK Government as an attempt to interfere with Scottish Ministers' decision-making. There is an accompanying risk that if the US were to provide the SE with a radically differing interpretation of events the SE might attempt to make capital out of UK-US differences, or that this difference might be played out in public in the event of a judicial challenge. With this in mind we have discussed our position with the US prior to submitting and have shared the draft letter with the US.

#### **KEY FACTS ON THE 1998 UK-US LETTER**

12. The following key facts are central to this question:

a. The SE have asked FCO officials (letter at Annex B) whether we entered into any commitments, including in a 1998 UK-US letter to the UN which might preclude Megrahi's transfer to Libya under the PTA. Under the terms of the devolution settlement **we are committed to providing advice on international developments.**

b. The UK-US letter to the UN of 24 August 1998 (Annex C) refers to an 'initiative' for the trial of the Lockerbie accused before a Scottish court sitting in the Netherlands. It states that "If found guilty, the two accused will serve their sentence in the United Kingdom".

c. This letter was then referred to in UNSCR 1192, (adopted on 27 August 1998) which called upon the UK "*to take such steps as are necessary to implement the initiative*" (i.e. the proposal in the joint letter). UNSCR 1192 was adopted under Chapter VII of the UN Charter, and therefore provisions in mandatory terms are legally binding under international law.

[REDACTED]

13. We have considered carefully the relevant papers that we hold on our files. [REDACTED] neither the joint letter, UNSCR 1192 nor the accompanying UK-US negotiations give rise to a legal obligation that bars Megrahi's transfer to Libya under the PTA, where this is consistent with Scots law.

14. However, the UK Government did give the US **a firm political commitment** that if convicted the Lockerbie accused would serve out their sentence in Scotland. But this commitment was **not absolute**. We resisted robust US attempts to secure a definitive commitment that the accused would never be transferred out of Scotland because we were not prepared to **bind the hands of successor governments**, and because we held out the possibility that, although unlikely in 1998, our **relations with Libya might change**. We believe that we also resisted US attempts to secure itself veto rights over the conclusion of any future UK-Libya Prisoner Transfer Agreement.

15. **The US opposes Megrahi's transfer but US agrees with us** that the 1998 UK-US letter, UNSCR 1192 and the surrounding discussions do not create an international legal bar to Megrahi's transfer under the PTA. They do however **question the political propriety** of our decision in May 2007 to conclude a PTA with Libya, arguing that we gave a firm political undertaking that (i) Megrahi would serve out his sentence in Scotland and (ii) if we were to conclude a PTA with Libya we would first seek US agreement. From an analysis of the files, we believe that both of these claims are overstated and that we resisted unequivocal commitments on both points.

16. The SE has asked us to provide any papers that we might wish to do so in order to support our arguments. Given the sensitivity of these papers and that it is for the FCO and not the SE to interpret the strength of any commitments we may have entered to in the past, we should not share any supporting material with the SE.

[REDACTED]

## ARGUMENT

17. [REDACTED]

[REDACTED]

[REDACTED] Under the Scotland Act, Scottish Ministers are required to act in accordance with the UK's international legal obligations. We also conclude that it is constitutionally appropriate for the FCO to respond, as it is consistent with the approach set

out in the Concordat on International Relations (supplementary to the Memorandum of Understanding regarding devolution) for the FCO to provide its view on this question.

18. With these points in mind, the attached letter therefore reiterates that:

- a. any decision on Megrahi is for Scottish Ministers alone;
- b. the FCO does not consider that the 1998 letter, UNSCR 1192 or the accompanying discussions about the implementation of the trial initiative, present an international legal bar to Megrahi's transfer under the PTA where this is consistent with Scots law.

19. But the letter goes beyond asking whether there are any international legal bars to transfer and asks whether we entered in any other commitment in relation to Megrahi's imprisonment. We need to answer this if the letter is going to carry any weight in the SE's considerations. There is also a US angle. The US has also told us that they intend to share papers with the SE, at the SE's request, in relation to the 1998 UK-US letter and the surrounding discussions. The US has shown us the papers that they intend to share and asked for our agreement to hand over UK papers.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] While we cannot prevent the US handing over its own material to the SE, our assessment is that the material they intend to hand over gives an incomplete account of the UK-US discussions in 1998. Any letter we therefore send to the SE should attempt to provide a counter-balance to the US material and a complete picture of the extent to which we gave political undertakings on Megrahi's future imprisonment.

20. There are however limits to the extent to which we provide a full account of the UK-US negotiations. The attached letter is drafted as to avoid three risks:

- a. unnecessarily exposing the UK Government to the accusation that in concluding a PTA with Libya we have gone back on a firm, but not absolute, political undertaking to the US and the UN that Megrahi would serve out his sentence in Scotland;
- b. potentially risk breaching a number of confidences of those actors (the UN, the US, [REDACTED] involved in the negotiations that brought the Lockerbie accused to trial;
- c. create a perception in the US that we are seeking to influence the position of the SE in respect of the Libyan transfer application.

21. Notwithstanding the differences between ourselves and the US in relation to the extent to which we offered in 1998 firm political undertakings on the future detention Megrahi, we and the US do agree that the 1998 UK-US letter, UNSCR 1192 and the surrounding discussions

do not give rise to any legal bar to transfer under the PTA. Prior to submitting we have shared the draft letter with the US who have not objected to the reference to their views on the legal position of the 1998 letter. We believe that this line will add weight to the letter.

22. The SE's letter also asks for background on the ongoing monitoring by the UN of Megrahi's imprisonment. It is not clear why the SE is asking this. We agreed to periodic UN monitoring as part of the wider agreement on the arrangements for the trial and imprisonment in order to help (a) soften the blow of Libyan handing the accused over for trial and imprisonment in Scotland and (b) in order to allow Qadhafi to climb down from his opposition to imprisonment in Scotland. The attached letter provides background.

## **BACKGROUND**

23. The UK-Libya Prisoner Transfer Agreement came into force upon the formal exchange of instruments in Tripoli on 29 April. The Libyan Government submitted a formal application to the Scottish Executive (SE) on 5 May. The SE has a nominal three months to make a decision, although this could be extended.

24. Securing the return of Megrahi, who has been convicted of the Lockerbie bombing, from his prison in Scotland is of the utmost importance to Libya. The PTA presents one potential channel by which his return could be secured. We have made it clear to Libya that the decision on the application for the transfer of Megrahi under the PTA would be exclusively a matter for Scottish Ministers.

25. A transfer cannot take place while there are criminal proceedings pending, so in order for any decision to be made by Scottish Ministers under the PTA either all criminal proceedings would have to be concluded or the appeal of Megrahi and the Crown's cross-appeal on the length of Megrahi's original sentence would have to be withdrawn. Megrahi has confirmed to the SE that he intends to withdraw his appeal and that he will do when he receives an indication from the SE that they will approve the PTA application if he does so. The SE is unlikely to give that indication.

[REDACTED]

## **RESOURCE IMPLICATIONS**

None

[REDACTED]



██████ North Africa Team  
MENAD

**From:** ██████████ (Conf)

**Sent:** 02 July 2009 11:25

**To:** ██████████ (Conf)

**Cc:** Mark Lyall-Grant (Conf); Mariot Leslie (Conf); John Jenkins (MENAD) (Conf); John Rankin (Conf); Daniel Bethlehem (Conf); Vincent Fean ██████████ (Conf); ██████████ (Conf); ██████████ (Conf); ██████████ (Conf); ██████████ (Conf); ██████████ (Conf); ██████████ (Conf); ██████████ (Conf); ██████████ (Conf); ██████████ (Conf); Neil Wigan (Cab Office) (Conf); ██████████ (Cab Office) (Conf); ██████████ advocategeneral.gsi.gov.uk'; Christian Turner (Conf); ██████████ (Conf); PUS Action/Info (Conf); ██████████ (Conf)

**Subject:** LIBYA: MEGRAHI: LEGAL ADVICE TO SCOTTISH EXECUTIVE

**\*\* REGISTERED \*\***

██████████

1. The Foreign Secretary was grateful for your submission of 29 June on the Megrahi case.
2. He agreed that:
  - a) Officials should write to Scottish Executive officials reiterating what we have already told them orally. He approved the draft letter.
  - b) Any decision on Megrahi is for Scottish Ministers alone;
  - c) We should not consider that the 1998 letter, UNSCR 1192 or the accompanying discussions about implementation of the trial initiative, present an international legal bar to transfer of Megrahi under the PTA where this is consistent with Scots law.

Yours,

██████████

Private Secretary to the Foreign Secretary  
Foreign and Commonwealth Office

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**From:** ██████████

**Sent:** 30 June 2009 10:53

**To:** SOSFA Action CONF ██████████

**Cc:** Mark Lyall-Grant; Mariot Leslie; John Jenkins (FCO); John Rankin; Daniel Bethlehem; Vincent Fean\* Tripoli -Conf; ██████████ Washi -Conf; ██████████ (Conf); ██████████ (Conf); ██████████ (Conf); ██████████ (Conf); ██████████ (Conf); ██████████ (Conf); ██████████ (Cab Office); ██████████ (Cab Office); ██████████ advocategeneral.gsi.gov.uk'; Christian Turner; ██████████ PUS Action/Info

**Subject:** LIBYA: MEGRAHI: LEGAL ADVICE TO SCOTTISH EXECUTIVE

Rob

Mr Lewis was grateful for your submission and has agreed your preferred options.

Hard copy will be walked round to Private Office.

Thanks

██████

██████████

APS/Ivan Lewis  
Foreign & Commonwealth Office  
London SW1A 2AA

**13 August 2009; footnote 57; FCO Submission to No10 –  
Impending Scottish Government Decisions**

Foreign & Commonwealth Office

13 August 2009

From Principal Private Secretary

Dear Nick,

**MEGRAHI, LOCKERBIE: IMPENDING SCOTTISH GOVERNMENT DECISIONS**

The Scottish Cabinet Secretary for Justice, Kenny MacAskill MSP, is due to take a decision shortly on the Libyan application under the UK-Libya Prisoner Transfer Agreement (PTA) for the return of the Lockerbie bomber, Abdelbasset AIMegrahl, to Libya. MacAskill will at the same time take a decision on AI-Megrahl's own application for compassionate release.

News of Megrahi's likely release on compassionate grounds to Libya has been reported widely in the media. The Scottish Government is dismissing this as speculation. So far UK press reaction has been factual, and detailed, accompanied by welcoming comment from victim's families, who believe that Megrahi is innocent. US families' reaction is critical. So far the US Administration has not commented publicly, but Hillary Clinton called MacAskill today to reiterate US opposition to transfer to Libya. The Lord Advocate has also informed us that Megrahi's legal team has been instructed to withdraw his appeal. This may become public on 14 August.

FCO have been providing the Scottish Government with foreign policy and international legal advice at the request of the Scottish Government. We understand that decisions on the PTA request and compassionate release are both likely to be taken formally on 19 August with a public announcement in the afternoon of 20 August. If the decision is to transfer Megrahi, either under the PTA or on compassionate grounds back to Libya, transfer will take place shortly after the public announcement. We anticipate that the Scottish Government will inform both the US Government and ourselves of its decision on 19 August and that it will inform the Libyans on the morning of 20 August.

We have been clear with Libya that this 'decision is exclusively for Scottish Ministers. It is however the UK Government that carries the foreign policy risks in the event of a Libyan backlash to a Scottish Government refusal to return Megrahi to Libya. We

continue to believe that UK Embassy staff, UK nationals In Libya, and UK commercial Interests are exposed to a heavy handed Libyan response. Reciprocally, if Scottish Ministers were to decide to return Megrahi to Libya, under either the PTA or compassionate release, there Is a reputational risk - particularly in the US - for both the Scottish Government and the UK Government if, as is probable, Qadhafi personally receives Megrahi as a hero on return to Libya.

We are planning a series of calls on 19 August to key Libyan Ministers in order to mitigate both sets of risks. The Foreign Secretary will be calling Hillary Clinton following a decision. The FCO is co-ordinating press and I attach our latest lines.

We recommend that the Prime Minister write a personal letter to Col. Qadhafi building on their meeting In L'Aquilla and stressing that whatever the outcome of the Scottish Government's decision, the UK and Libya should continue to build a beneficial relationship including co-operation on trade, energy, Africa and migration. A letter should reiterate that a hero's welcome for Megrahi would severely affect Libya's developing international reputation and its relationship with the UK. The letter should be handed over by HMA Tripoli to Col. Qadhafi in person on 19 August before the decision of Scottish Ministers is known by the Libyans. Were we to delay hand over until after the Libyans have been informed our chances of mitigating the risks described above will diminish. I attach a draft letter.

I am copying this letter for information to PS/Secretary of State of Scotland, PS/Justice Secretary, PS/Home Secretary, PS/Secretary of State for Business and Innovation and PS/Secretary of State for Defence; ps/"C", and Gus O'Donnell.

Yours Ever  
(Matthew Gould)

Nick Catsaras  
No 10

**20 August 2009; footnote 57; letter from PM to Col Qadhafi;**

10 DOWNING STREET

THE PRIME MINISTER

20 August 2009

Dear Muammar

When we met at the G8 Summit in L'Aquila last month, you raised the case of Abdel Basset al-Megrahi. You will be aware that the Scottish Executive's public announcement on Megrahi's future is expected very shortly. I understand that their decision is to transfer Megrahi back to Libya on compassionate grounds.

When we met I stressed that, should the Scottish Executive decide that Megrahi can return to Libya, this should be a purely private, family occasion. A high-profile return would cause further unnecessary pain for the families of the Lockerbie victims. It would also undermine Libya's growing international reputation.

There are significant shared interests at stake in our relationship and I am committed to working with you to achieve them. I look forward to seeing you again at the UN General Assembly in New York on 23 September.

Finally, may I wish you 'Ramadan kareem'.

Yours sincerely

Gordon Brown

Colonel Muammar Qadhafi