

UN 0582

*Terrocrimen (Libya) Mr. Corell (p. 1)*  
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United Nations Nations Unies



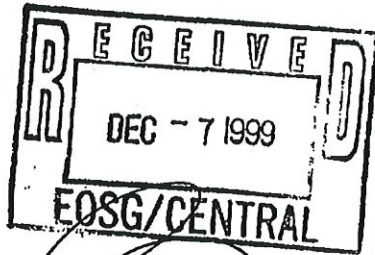
INTEROFFICE MEMORANDUM

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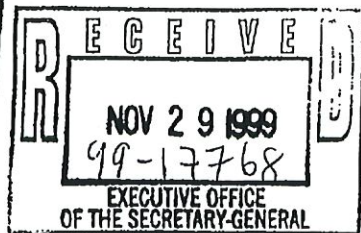
TO: The Secretary-General

DATE: 29 November 1999

THROUGH: Mr. Iqbal Riza  
Chef de Cabinet



FROM: Hans Corell  
Under-Secretary-General  
for Legal Affairs



SUBJECT: Appointment of observers to the Lockerbie trial in The Hague

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*(Options on p. 3)*  
*[unclear]*

The resolution

1. Paragraph 6 of Security Council resolution 1192 (1998) of 27 August 1998 concerning the trial by the Scottish court sitting in the Netherlands of the two Libyan nationals charged with the bombing of Pan Am flight 103 "invites the Secretary-General to nominate international observers to attend the trial".

Background

2. Since the adoption of the resolution, the United Nations Secretariat has received communications from "International Progress Organization", dated 5 October 1998, and from "Arab Lawyers Union", dated 1 July 1999, requesting observer status at the trial. Both organizations claim that they have been actively following the Lockerbie case since the very beginning and have undertaken various activities in this regard. "International Progress Organization", whose members are individuals and organizations located in 70 countries (main office, Vienna, Austria) and which is in consultative status with ECOSOC through the Conference of Non-Governmental Organizations, sent a memorandum to the President of the Security Council on the Lockerbie case in February 1992. "Arab Lawyers Union", whose members are Bar Associations in 15 Arab countries (main office, Cairo, Egypt) and which is in consultative status with ECOSOC, states in its communication that it has held regional and international seminars with the International Union of Lawyers and western legal experts on the Lockerbie issue with a view to finding a legal solution that would ensure a fair trial for the two suspects.

3. When the final arrangements for the transfer of the two accused were discussed with the Libyan authorities at the end of March 1999, the latter on several occasions raised the question of nomination by the Secretary-General of observers to the trial.

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4. In a letter addressed to the Secretary-General on 19 March 1999 (S/1999/311), Mr. Omar Mustafa Muntasser, Secretary of the General People's Committee for Foreign Liaison and International Cooperation, stated that "the Jamahiriya agrees that the two suspects shall appear before the court on 6 April 1999, in accordance with the points agreed on" which inter alia provide that "a Scottish court will be convened in the Netherlands to try the two suspects in accordance with Scottish law, pursuant to the agreement reached by the Legal team, in the presence of international observers appointed by the Secretary-General of the United Nations and in consultation with the Republic of South Africa and the Kingdom of Saudi Arabia" (emphasis added). In a statement made on behalf of the Security Council, the President of the Council welcomed the above letter (A/1999/312). The Secretary-General in his reply to Mr. Muntasser also acknowledged with satisfaction the receipt of that letter.

5. At a meeting in the Legal Office, held on 29 March 1999, Ambassador Dorda of Libya raised the question of observers and expressed the view that due to the special role played in the Lockerbie case by the Governments of Saudi Arabia and South Africa and by the Organization of African Unity, the League of Arab States, and the Non-Aligned Movement, all of them should be invited to designate observers to be nominated by the Secretary-General pursuant to paragraph 6 of Security Council resolution 1192 (1998). In a letter to Ambassador Dorda on the subject, dated 1 April 1999, I informed him that this issue had been discussed with the Secretary-General and that I could confirm on his behalf that, in making his nominations, the Secretary-General would be consulting with the aforementioned governments and organizations.

6. On 4 May 1999, the Legal Advisor of the United Kingdom Mission informally conveyed to the United Nations Office of Legal Affairs some preliminary considerations of his authorities concerning the issue of international observers at the Lockerbie trial, which the United Nations Secretariat may wish to take into account in deciding on the nomination of such observers. In the view of the United Kingdom authorities the international observers should be independent and not employed by the United Nations; they should have experience in criminal trials and should have knowledge of English or Arabic, the languages of the proceedings. As accommodation is scarce, international observers should not be accompanied by assistants. Given the prominent role of South Africa, one of international observers may be from that country.

7. Although the legislative history of Security Council resolution 1192 (1998) does not provide any guidance as to how international observers should be nominated, it appears from the resolution that since the two accused are being tried by a Scottish Court in

accordance with the Scottish law the purpose of the inclusion of paragraph 6 was merely to ensure that interested international observers be provided with an opportunity to attend the trial. Consequently, the resolution does not imply that international observers are nominated to review the trial and report on it to the Secretary-General. It may be assumed that the Secretary-General was entrusted with the responsibility to nominate international observers to ensure, as noted above, the presence of international observers at the trial and, since accommodation is scarce, to guarantee that only those with a long-standing interest in the subject matter be given an opportunity to attend the trial.

### Options

8. It follows from the above that under the circumstances you may consider two options.

9. Under the first option, you may decide, after consultation with the organizations and governments concerned, to select and nominate on your own, particular individuals as international observers. In such a case these observers will have to be provided by the United Nations with financial assistance to allow them to attend the trial, which may be very costly as the trial in all probability will last for more than a year. (There are presently no funds available for this purpose.) This option may also raise the question of the independence of such observers since they will be indirectly employed by the United Nations and therefore may be required to provide some form of a report on their activities to the Secretary-General. (The additional question would then be where these reports should be sent. To the Security Council ?) In addition, this option would not correspond fully to what was suggested by the United Kingdom authorities.

10. The second option could be for you to invite the aforementioned organizations and governments to inform you whether they would be interested in having their representatives attend the trial as international observers on the understanding that the organization and governments concerned would be responsible for their expenses. After reviewing the names of such representatives you will then nominate them as international observers under paragraph 6 of the resolution. The governments and the organizations concerned should be informed that the Secretary-General will retain the right to revoke such nominations if the circumstances so require. Under this option you may in the future nominate additional observers if you are so requested by the organization or governments with a long-standing interest in the Lockerbie case.

**Timing**

11. We have been informed that the trial before the Scottish court sitting in the Netherlands will commence in early February 2000.

12. We look forward to discussing this matter with you before we take any further steps. As soon as you have made your decision, we will, if you so wish, contact the organizations and governments concerned. In order not to lock positions, these contacts should be made by speaking to their representatives here in New York, rather than sending them formal invitations. In particular, if the second option is your preference, all that needs to be done is to ask them if they are interested. If they are, we should ask them to present names as indicated above.

~~SB~~ Mr. Corell favors option 2, as do RK & LS. Mr. Corell sees this as analogous to observers in somewhat similar trials - i.e. not "official". Accordingly he does not favor your nominating a "UN observer."

We should pursue the second option. Should there be a ceiling on the number of observers? RZ/L

  
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