

No. 27033

**UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND
and
UNITED STATES OF AMERICA**

**Exchange of letters constituting a narcotics cooperation
agreement with respect to Montserrat (with annex and
forms). London, 14 May 1987**

Authentic text: English.

*Registered by the United Kingdom of Great Britain and Northern Ireland on
19 January 1990.*

**ROYAUME-UNI DE GRANDE-BRETAGNE
ET D'IRLANDE DU NORD
et
ÉTATS-UNIS D'AMÉRIQUE**

**Échange de lettres constituant un accord de coopération en
matière de stupéfiants à l'égard de Montserrat (avec
annexe et formulaires). Londres, 14 mai 1987**

Texte authentique : anglais.

*Enregistré par le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord
le 19 janvier 1990.*

EXCHANGE OF LETTERS CONSTITUTING A NARCOTICS COOPERATION AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA WITH RESPECT TO MONTSERRAT

I

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

FOREIGN AND COMMONWEALTH OFFICE
LONDON

14 May 1987

Your Excellency,

I have the honour to refer to the paper delivered on 20 June 1985 by the Minister of the British Embassy in Washington to the Deputy Assistant Secretary of State for Inter-American Affairs at the US Department of State concerning the desire of Her Majesty's Government to conclude drug co-operation agreements with the United States with respect to British dependencies in the Caribbean, namely, Anguilla, the British Virgin Islands, Montserrat, and the Turks and Caicos Islands. In this regard, the Embassy's paper referred to remarks concerning this matter that were expressed on behalf of Her Majesty's Government by former Minister of State, Mr. Malcolm Rifkind, at the signing ceremony for the Cayman Narcotics Agreement in July 1984.²

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

1. *Definitions*

For the purpose of this Agreement:

1.1. "Assistor" means the person from whom documentary information is sought under the Certificate;

1.2. "United Kingdom", means "the United Kingdom of Great Britain and Northern Ireland". "United States" means "the United States of America";

1.3. "Certificate" means the document used by the United States Attorney General to request documentary information, the particulars of and form for which are provided in the Annex to this Agreement;

¹ Came into force on 1 June 1987, the date on which the Government of the United Kingdom notified the Government of the United States that the legislation of Montserrat implementing this Agreement had come into effect, in accordance with section 8.

² United Nations, *Treaty Series*, vol. 1416, p. 235.

1.4. "Documentary information" includes, but is not limited to, any document, memorandum, report, record, or data compilation in any form, and any plan, graph, drawing, or photograph, and any disc, tape, or other device for audio reproduction or computer use, and any film, negative, tape or other device for visual image reproduction;

1.5. "Foundation testimony" means witness testimony solely for the purpose of securing the acceptance as admissible evidence in proceedings in the United States of documentary information as specified in paragraph 3.1; and

1.6. "Official records" means:

- (i) Publicly available records of the Government of Montserrat, its Departments and agencies; and
- (ii) Any record or information in the possession of the Government of Montserrat, its Departments and agencies not publicly available but which the Government of Montserrat may make available subject to such terms and conditions as it may specify.

2. *Matters Falling Within the Scope of the Agreement*

2.1. This Agreement applies to all offences or ancilliary civil or administrative proceedings taken by the United States Government or its agencies connected with, arising from, related to, or resulting from any narcotics activity referred to in Article 36 of the Single Convention on Narcotic Drugs, 1961,¹ as amended,² and falling within the jurisdiction of the United States.

3. *Procedure to Secure Documentary Information*

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

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

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

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

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

¹ United Nations, *Treaty Series*, vol. 520, p. 151.

² *Ibid.*, vol. 557, p. 280; vol. 570, p. 346 and vol. 590, p. 325.

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

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

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

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

4. *Authentication of Documentary Information and Foundation Testimony*

A. *Authentication and Attestation of Official Records*

4.A.1. Official records produced in response to the Certificate will be authenticated in Montserrat by the attestation of an authorized person in the manner indicated in Form A attached hereto. The attestation will be signed by, and state the official position of, the attesting person, and the seal of the authority executing the request will be affixed thereto. Authentication of official records will be carried out in Montserrat under the provisions of the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents dated 5 October 1961.¹

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

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

C. *Foundation Testimony*

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

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

¹ United Nations, *Treaty Series*, vol. 527, p. 189.

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

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

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

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

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

5. *Consultation*

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

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

6. *Exclusivity*

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

7. *Negotiation of a Mutual Legal Assistance Treaty*

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

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