



Treaty Series No. 31 (2006)

Exchange of Notes

between the Government of the United Kingdom of Great Britain and Northern Ireland and the United Nations Interim Administration Mission in Kosovo (UNMIK) concerning the Transfer of Mr Luan Goçi to the Jurisdiction of the United Kingdom of Great Britain and Northern Ireland

Kosovo, 25 May 2006 and London, 16 June 2006

[The Exchange of Notes entered into force on 16 June 2006]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
December 2006*

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**EXCHANGE OF NOTES BETWEEN
THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND**

AND

**THE UNITED NATIONS INTERIM ADMINISTRATION MISSION IN KOSOVO
(UNMIK) CONCERNING THE TRANSFER OF MR LUAN GOÇI TO THE
JURISDICTION OF THE UNITED KINGDOM OF GREAT BRITAIN AND
NORTHERN IRELAND**

No. 1

*The Special Representative of the Secretary-General in Kosovo to the Secretary of State
for Foreign and Commonwealth Affairs*

Kosovo
25 May 2006

Dear Ms. Beckett

I refer to the case of Mr. Luan Goçi, a resident of Kosovo wanted in the United Kingdom, pursuant to an arrest warrant issued by the Barking Magistrate's Court on 6 July 2004, for the criminal offence of murder, which allegedly occurred in London on 15 October 2002.

Under Security Council resolution 1244 (1999) of 10 June 1999, the United Nations Interim Administration Mission in Kosovo (UNMIK) was established with a mandate to provide interim administration for Kosovo. The situation of Kosovo under interim administration by UNMIK is *sui generis* and, accordingly, it has been the consistent position of UNMIK that treaties and agreements to which the State Union of Serbia and Montenegro is a party are not automatically binding on UNMIK. In each case, a specific determination as to the applicability of the principles and provisions must be made. Where necessary and appropriate, UNMIK may develop arrangements with relevant States in order to establish a proper legal basis for achieving objectives of mutual interest.

Recognising the importance of establishing a legal basis for co-operation between the Government of the United Kingdom of Great Britain and Northern Ireland on matters related to the transfer of residents to the United Kingdom, I propose that this letter and the Agreement, attached as Annex 1, set out the relevant terms for such co-operation in the case of Mr. Luan Goçi. The Agreement is largely based on the European Convention on Extradition of 13 December 1957¹ but also contains elements of the United Nations Model Treaty on Extradition set out in General Assembly resolution 45/116 of 14 December 1990, the Convention on the Transfer of Sentenced Persons of 21 March 1983²

¹ Treaty Series No. 97 (1991) Cm 1762

² Treaty Series No. 51 (1985) Cm 9617

and the Provisional Criminal Procedure Code of Kosovo. The Formulation of the provisions of the Agreement is explained in Annex 2.

If the proposed terms are acceptable, I have the honour to propose that this letter and Annex 1 and your reply confirming the acceptance of your Government of the contents thereof shall constitute an agreement between UNMIK and the Government of the United Kingdom of Great Britain and Northern Ireland. This agreement as reflected in the exchange of letters shall enter into force on the date of your reply and shall remain in force for the duration of the criminal proceedings by the competent court in the United Kingdom, in relation to the offence which allegedly occurred in London on 15 October 2002, and for such additional period as is necessary for the resolution of any matters arising out of the Agreement.

Please accept, madam, the assurances of my highest consideration.

SØREN JESSEN-PETERSEN

Annex 1

AGREEMENT BETWEEN THE UNITED NATIONS INTERIM ADMINISTRATION MISSION IN KOSOVO (UNMIK)

AND

THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND CONCERNING THE TRANSFER OF MR. LUAN GOÇI TO THE JURISDICTION OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

ARTICLE 1

Definitions

For the purposes of this Agreement:

- (a) “Resident” means a person who is registered, or is eligible to be registered, as a habitual resident of Kosovo with the Central Civil Registry, in accordance with UNMIK Regulation No. 2000/13 of 17 March 2000 on the Central Civil Registry and refers in this present Agreement to Mr. Luan Goçi;

- (b) “Transfer” means the surrender to the United Kingdom of Great Britain and Northern Ireland of the resident against whom the competent authorities in that jurisdiction are proceeding for the criminal offence of murder;
- (c) “Detention on remand” means the deprivation of liberty of the resident by a court decision during the pre-trial proceedings and/or during the course of criminal proceedings before there is a final court judgment;
- (d) “Detention order” means any order involving deprivation of liberty, which has been made by a criminal court in addition to or instead of a prison sentence;
- (e) “Requesting Party” means the Government of the United Kingdom of Great Britain and Northern Ireland;
- (f) “Requested Party” means UNMIK; and
- (g) “Parties” means the requesting Party and the requested Party.

ARTICLE 2

Obligation to transfer

The requested Party agrees to transfer the resident to the requested Party, subject to the provisions and conditions laid down in this Agreement.

ARTICLE 3

Offences allowing transfer

- (1) Transfer shall be granted in respect of offences punishable under the laws of the requesting Party and of the requested Party by deprivation of liberty or by a detention order for more than three months.
- (2) If the request for transfer includes several separate offences each of which is punishable under the laws of the requesting Party and the requested Party by deprivation of liberty or under a detention order, but of which some do not fulfill the condition with regard to the amount of punishment which may be awarded, the requested Party shall also have the right to grant transfer for the latter offences.

ARTICLE 4

Mandatory grounds for refusal

Transfer shall not be granted in any of the following circumstances:

- (a) If the requested Party has substantial grounds for believing that the request for transfer has been made for the purpose of prosecuting or punishing the resident on account of his race, religion, nationality, ethnic origin, political opinions, sex or status, or that his position may be prejudiced for any of those reasons;
- (b) If the offence for which transfer is requested is an offence under military law, which is not also an offence under ordinary criminal law;
- (c) If the resident has, under the law of either Party, become immune from prosecution or punishment for any reason, including lapse of time or amnesty;
- (d) If the resident has been or would be subjected in the requesting Party to torture or cruel, inhuman or degrading treatment or punishment or if the resident has not received or would not receive the minimum guarantees in criminal proceedings, as contained in the International Covenant on Civil and Political Rights³, article 14;
- (e) If the judgment of the requesting Party has been rendered *in absentia*, the resident has not had sufficient notice of the trial or the opportunity to arrange for his defence and he has not had or will not have the opportunity to have the case retried in his presence;
- (f) If the act which prompted the request for the transfer was committed on the territory of Kosovo or against a resident of Kosovo;
- (g) If the resident has been acquitted or convicted by final judgment of a court in Kosovo of the criminal offence for which his transfer is sought;
- (h) If criminal proceedings are being conducted in Kosovo against the resident for a criminal offence set forth in Article 100 of the Provisional Criminal Code of Kosovo;
- (i) If criminal proceedings have been initiated for an act committed against a resident of Kosovo and the property claim of the injured party has not been secured;

³ Treaty Series No. 6 (1977) Cm 6702

- (j) If transfer is sought for a crime for which capital punishment is prescribed and the requesting Party has not provided guarantees that capital punishment shall not be imposed or carried out;
- (k) If the petition for transfer is made in respect of a political act. The criminal offences defined in Articles 116 through 145 of the Provisional Criminal Code of Kosovo shall not be considered political acts;
- (l) If transfer is contrary to international law or international human rights standards for any reason.

ARTICLE 5

Optional grounds for refusal

Transfer may be refused in any of the following circumstances:

- (a) If the competent authorities of the requested Party have decided either not to institute or to terminate proceedings against the resident for the offence in respect of which transfer is requested;
- (b) If a prosecution in respect of the offence for which transfer is requested is pending in the requested Party against the resident;
- (c) If the offence for which transfer is requested has been committed outside the territory of either Party and the law of the requested Party does not provide for jurisdiction over such an offence committed outside its territory in comparable circumstances;
- (d) If the resident has been sentenced or would be liable to be tried or sentenced in the requesting Party by an extraordinary or ad hoc court or tribunal;
- (e) If the requested Party, while also taking into account the nature of the offence and the interests of the requesting Party, considers that, in the circumstances of the case, the transfer of the resident would be incompatible with humanitarian considerations in view of age, health or other personal circumstances of that person.

ARTICLE 6

Request and supporting documents

- (1) The request shall be in writing and shall be communicated through the diplomatic channels.
- (2) The request shall be supported by:
 - (a) The means for identifying the resident (accurate description, photographs, fingerprints and similar);
 - (b) A certificate or other data on the citizenship of the resident and his status as a resident;
 - (c) The indictment, or judgement, or ruling on detention or another equivalent document, in the original or a certified copy. These papers shall contain: the name and surname of the resident and other data necessary to establish his identity, the description of the act, the legal qualification of the offence and the evidence on which the suspicion rests; and
 - (d) An extract from the criminal law of the requesting Party to be applied against the resident in regard to the offence which prompted the petition for transfer.

ARTICLE 7

Supplementary information

If the information communicated by the requesting Party is found to be insufficient to allow the requested Party to make a decision in pursuance of this Agreement, the latter Party shall request the necessary supplementary information and may fix a time limit for the receipt thereof.

ARTICLE 8

Rule of speciality

- (1) The resident shall not be proceeded against or sentenced for any offence committed prior to his surrender other than that for which he was transferred, nor shall he be for any other reason restricted in his personal freedom, nor shall a more severe punishment than the one by which he was punished be imposed upon him, except in the following cases;

- (a) When the requested Party consents. A request for consent shall be submitted, accompanied by the documents mentioned in Article 6 and a legal record of any statement made by the resident in respect of the offence concerned. Consent shall be given when the offence for which it is requested is itself subject to transfer in accordance with the provisions of this Agreement;
 - (b) When the resident, having had an opportunity to leave the territory of the requesting Party, has not done so within 45 days of his final discharge, or has returned to that territory after leaving it.
- (2) The requesting Party may, however, take any measures necessary to remove the resident from its territory, or any measures necessary under its law, including proceedings by default, to prevent any legal effects of lapse of time.
- (3) Upon transfer, if the description of the offence charged is altered in the course of proceedings, the resident shall only be proceeded against or sentenced in so far as the offence under its new description is shown by its constituent elements to be an offence which would allow transfer.

ARTICLE 9

Subsequent transfer to another state

Except as provided for in Article 8, paragraph 1 (b), the requesting Party shall not, without the consent of the requested Party, surrender the resident to another State if he is sought in respect of offences committed before his surrender. The requested Party may request the production of the documents mentioned in Article 6, paragraph 2.

ARTICLE 10

Provisional arrest

- (1) In case of urgency the competent authorities of the requesting Party may request the provisional arrest of the resident. The competent authorities of the requested Party shall decide the matter in accordance with its law.
- (2) The request for provisional arrest should contain necessary data for establishing the identity of the resident, the nature and name of the offence, the number of the decision together with the date, the place and address of the authority which ordered detention on remand and the statement that transfer to the requesting Party shall be requested through the regular channels.

(3) A request for provisional arrest shall be sent to the competent authorities of the requested Party either through the diplomatic channels or direct by post or telegraph or through the International Criminal Police Organisation (Interpol) or by any other means affording evidence in writing or accepted by the requested Party. The requesting authority shall be informed without delay of the result of its request.

(4) Provisional detention of the resident may be terminated if, within a period of 18 days after arrest, the requested Party has not received the request for transfer and its documents mentioned in Article 6. It shall not, in any event, exceed 40 days from the date of such arrest. The possibility of provisional release at any time is not excluded, but the requested Party shall take any measures that it considers necessary to prevent the escape of the resident.

(5) Release shall not prejudice re-arrest and transfer of the resident if a request for transfer is received subsequently.

ARTICLE 11

Conflicting requests

If transfer is requested concurrently by more than one State, either for the same offence or for different offences, the requested Party shall make its decision having regard to all the circumstances and especially the relative seriousness and place of commission of the offences, the respective dates of the requests, any other nationality of the resident and the possibility of subsequent transfer to another State.

ARTICLE 12

Surrender of the resident

(1) The requested Party shall inform the requesting Party through diplomatic channels of its decision with regard to the transfer.

(2) If the request is agreed to, the requesting Party shall be informed of the place and date of surrender and of the length of time for which the resident was detained with a view to surrender.

(3) Subject to the provisions of paragraph 4 of this article, if the resident has not been taken over on the appointed date, he may be released after the expiry of 15 days and shall in any case be released after the expiry of 30 days. The requested Party may refuse to transfer him for the same offence.

(4) If circumstances beyond its control prevent a Party from surrendering or taking over the resident, it shall notify the other Party. The two Parties shall agree a new date for surrender and the provisions of paragraph 3 of this article shall apply.

ARTICLE 13

Postponed or conditional surrender

(1) The requested Party may, after making its decision on the request for transfer, postpone the surrender of the resident in order that he may be proceeded against by that Party or, if he has already been convicted, in order that he may serve his sentence in the territory of that Party for an offence other than that for which is requested.

(2) The requested Party may, instead of postponing surrender, temporarily surrender the resident to the requesting Party in accordance with conditions to be determined by mutual agreement between the Parties.

ARTICLE 14

Handing over of property

(1) The requested Party shall, in so far as its law permits and at the request of the requesting Party, seize and hand over property:

- (a) Which may be required as evidence, or
- (b) Which has been acquired as a result of the offence and which, at the time of the arrest, is found in the possession of the resident or is discovered subsequently.

(2) The property mentioned in paragraph 1 of this article shall be handed over even if transfer, having been agreed to, cannot be carried out owing to the death or escape of the resident.

(3) When the said property is liable to seizure or confiscation in the territory of the requested Party, the latter may, in connection with pending criminal proceedings, temporarily retain it or hand it over on condition that it is returned.

(4) Any rights which the requested Party or third parties may have acquired in the said property shall be preserved. Where these rights exist, that property shall be returned without charge to the requested Party as soon as possible after the trial.

ARTICLE 15

Procedure

Except where this Agreement otherwise provides, the procedure with regard to transfer and provisional arrest shall be governed solely by the law of the requested Party.

ARTICLE 16

Language to be used

The documents to be produced by the requesting Party shall be accompanied by a certified copy of an English translation and either an Albanian or Serbian translation, unless otherwise agreed to by the parties in writing.

ARTICLE 17

Expenses

- (1) Expenses incurred in the territory of the requested Party by reason of transfer shall be borne by that Party, subject to paragraph 2 of this Article. All other expenses shall be borne by the requesting Party.
- (2) Expenses relating to the transportation of the resident shall be borne by the requesting Party.

Annex 2

Explanatory Note

On the Agreement on the Transfer of Mr. Luan Goçi to the United Kingdom

1. The purpose of this Agreement is to assist in the transfer of Mr. Luan Goçi to facilitate criminal proceedings against him in the United Kingdom for the criminal offence of murder, which allegedly occurred in London on 15 October 2002. The following is a brief explanation of the text of the Agreement, which is largely based on the European Convention on Extradition of 13 December 1957 (“the Convention”). Certain provisions also reflect elements of the United Nations Model Treaty on Extradition (“Model Treaty”) set out in General Assembly resolution 45/116 of 14 December 1990, the Convention on the Transfer of Sentenced Persons of 21 March 1983 (“Transfer Convention”) and the Provisional Criminal Procedure Code of Kosovo.

2. Article 1. The sources of the definitions are as follows:
 - The definition of “resident” corresponds to Article 151(19) of the Provisional Criminal Procedure Code.
 - The definition of “transfer” refers to the offences allegedly committed by Mr. Luan Goçi in the United Kingdom;
 - The definition of “definition on remand” corresponds to Article 151(13) of the Provisional Criminal Procedure Code.
 - The definition of “detention order” corresponds to Article 25 of the Convention.
3. Article 2. This article corresponds to Article 1 of the Convention.
4. Article 3. Paragraph 1 corresponds to Article 2(1) of the Convention, modified in the light of Article 525(2) of the Provisional Criminal Procedure Code. Paragraph 2 corresponds to Article 2(2) of the Convention.
5. Article 4. In view of the broader protections afforded by the Model Treaty, this Article is based on Article 3 of the Model Treaty and supplemented by provisions in the criminal procedure law applicable in Kosovo.
6. Paragraphs (a), (b), (c), (d) and (e) correspond to paragraphs (b), (c), (e), (f) and (g) of Article 3 of the Model Treaty. Paragraphs (a) and (d) of Article 3 of the Model Treaty were not incorporated in the Agreement because they overlap with paragraphs 5 and 12 of Article 517 of the Provisional Criminal Procedure Code which have been incorporated as paragraphs (g) and (k), respectively, of Article 4 of the Agreement. Paragraphs (h) and (i) of Article 4 of the Agreement also reflect elements of Article 517(5) of the Provisional Criminal Procedure Code. As for the remainder of Article 4 of the Agreement, paragraphs (f), (j) and (l) correspond to paragraphs (2), (8) and (13), respectively, of Article 517 of the Provisional Criminal Procedure Code.
7. Article 5. Paragraphs (a), (b), (c), (d) and (e) correspond to paragraphs (b), (c), (e), (g) and (h), respectively, of Article 4 of the Model Treaty. Paragraphs of Article 4 of the Model Treaty, which have not been incorporated, are either already incorporated in the previous article or are not relevant to the current issue of transfer.
8. Article 6. This Article is based on Article 518(2) and (3) of the Provisional Criminal Procedure Code, which are substantially similar to Article 12 of the Convention.
9. Article 7. This Article corresponds to Article 13 of the Convention.
10. Article 8. This Article corresponds to Article 14 of the Convention. A prohibition on the imposition of a more severe punishment, based on Article 526(1)(3) of the Provisional Criminal Procedure Code, has been added.
11. Article 9. This Article corresponds to Article 15 of the Convention.

12. Article 10. Paragraphs 1, 3, 4 and 5 correspond to paragraphs 1, 3, 4 and 5, respectively, of Article 16 of the Convention. Paragraph 2 is based on Article 520(1) of the Provisional Criminal Procedure Code.
13. Article 11. This Article corresponds to Article 17 of the Convention.
14. Article 12. This Article corresponds to Article 18 of the Convention. Article 18(2) of the Convention has been omitted because the requested Party should not be required to justify why it has chosen not to transfer one of its own residents.
15. Article 13. This Article corresponds to Article 19 of the Convention.
16. Article 14. This Article corresponds to Article 20 of the Convention.
17. Article 15. This Article corresponds to Article 22 of the Convention.
18. Article 16. This Article reflects UNMIK's requirements with regard to the language of documents that relate to the transfer.
19. Article 17. Paragraph 1 of this Article corresponds to Article 24 of the Convention. Paragraph 2 has been added to make it clear that the requesting Party should bear the expenses of transportation.

No. 2

*Secretary of State for Foreign and Commonwealth Affairs to the Special Representative
of the Secretary-General in Kosovo*

London
16 June 2006

Dear Mr Jessen-Petersen

I have the honour to refer to your Note of 25 May 2006 which reads as follows:

[As in No. 1]

In reply, I have the honour to confirm that the proposal set out in your Note is acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland and that your Note, and this Reply, shall constitute an Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the United Nations Interim Administration in Kosovo (UNMIK) which shall enter into force today.

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

MARGARET BECKETT



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