

ORGANIZATION OF
AFRICAN UNITY



ORGANISATION DE
L'UNITE AFRICAINE

منظمة الوحدة الافريقية

ORGANIZAÇÃO DA
UNIDADE AFRICANA

Addis Ababa - Ethiopia - Box 3243 Tel..517700 Telex 21046 Fax (2511) 513036

REPORT ON THE MISSION TO THE U.K OF THE OAU
COMMITTEE OF FIVE ON THE DISPUTE BETWEEN
THE GREAT LIBYAN ARAB JAMAHIRIYA AND
THE U.S.A AND THE U.K
31 MAY - 2 JUNE, 1998



REPORT OF THE MISSION OF THE OAU COMMITTEE OF FIVE
ON THE DISPUTE BETWEEN LIBYA, USA AND UK
TO THE UNITED KINGDOM

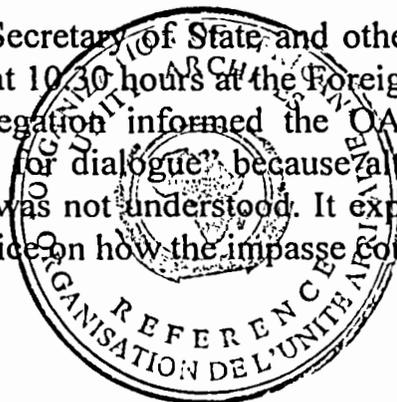
1. At the request of the OAU, the British Government agreed to receive a delegation of the Committee of Five to discuss the dispute between the Great Libyan Arab Jamahiriya and the United States of America and the United Kingdom.
2. The delegation led by Hon. Dr. Stan Mudenge, Foreign Minister of the Republic of Zimbabwe, also included the Foreign Minister of Uganda, the Deputy Foreign Minister of Cameroon, the Secretary of State for African Affairs of Tunisia and the High Commissioner of Ghana to the United Kingdom. It also included Ambassador Daniel Antonio, OAU Assistant Secretary General and Mr. Ben Kioko of the OAU Legal Division.

Preparatory Meeting of the Committee

3. The OAU Committee of Five held a preparatory meeting on Sunday 31 May, 1998 at 4.00 p.m. at the Zimbabwe High Commission. The purpose of the meeting was to enable the committee to outline its mandate and agree on the strategies and approaches for its mission.
4. At the end of the deliberations and after an exhaustive exchange of views, the Committee of Five agreed that its mission was political and that it should not allow itself to be engaged on purely legalistic issues. Thus, the delegation saw its role as that of formally submitting the three options, reiterating the position of the OAU on the dispute and urging for early lifting of the sanctions. The delegation noted that its request for an appointment with the USA Secretary of State had not yet been finalised.

Meeting with the Rt. Hon. Robin Cook, Foreign Secretary, and other British Officials: 1 June 1998, 10.30 a.m.

5. The delegation met the Secretary of State and other British Government officials on 1 June 1998 at 10.30 hours at the Foreign and Commonwealth Office. The British Delegation informed the OAU delegation that its Government was "happy for dialogue" because although it had a strong case, it felt that its case was not understood. It expressed its readiness to accept and welcome advice on how the impasse could be resolved.



6. The OAU delegation proposed that it present its case first. It stated that the OAU had no sympathy for terrorism and in fact had gone on record in condemning all acts of terrorism. The interest of the OAU was to see the trial of the two suspects as soon as possible so that the families who lost their loved ones could know the truth and to facilitate the lifting of sanctions so that the ordinary people of Libya and neighbouring countries do not continue to suffer from the impact of sanctions. It noted that, in that spirit, the OAU and the League of Arab States had jointly offered three options. It stated that the three options had already been brought to the attention of the British Government. It added that the "U.K. Families – Fight 103" had already discussed the option with the OAU with a view to finding a way out.
7. The OAU Delegation further recalled that Libya had expressed its concern that the suspects may not get a fair trial in Scotland, although this was not necessarily the position of the OAU or the delegation. Indeed, some members of the delegation came from countries where the Scottish justice system was well understood and most aspects of it practised as the applicable criminal procedure. However, the perceptions of Libya were important because justice had not only to be done but also seen to be done. The OAU Delegation stated that it was aware of the current British Government support for the International Criminal Court on the basis that there will always be cases requiring international attention. It noted that if the Court had already been established, perhaps the Lockerbie case could have been handled by that Court. It underlined that the OAU had supported the establishment of the International Criminal Court.
8. The OAU delegation concluded by stating that the OAU wished to see movement forward in the dispute to facilitate the early lifting of sanctions.

Response by the British Government Delegation

9. The British Delegation stated that it welcomed the visit of the OAU Delegation. It stated that it wished to see movement in the dispute adding that the Government and the families had nothing to gain from its prolongation. It emphasized that what was at issue was an appalling case of mass murder in which 260 people were killed and emphasized that there was need, as a first step, to condemn the mass murder. It added that it was possible that the two suspects may have a defence, but the proper place to test this was in a trial, which would afford a fair opportunity for the victims' families to learn what had happened to their loved ones. It

lamented that for 10 years Libya had not been cooperative. Although, it regretted the sanctions, the only way to remove them was for Libya to comply with the relevant Security Council resolutions.

10. The Secretary of State, Mr. Robin Cook, went on to say that he was a Scottish member of Parliament, and the Scots were a very proud people, especially about their Scottish Legal system. This was why he had invited observers from the OAU and the League of Arab States to observe the Scottish justice system. He added that the UN report on the matter had concluded that the Scottish justice system was fair and offered sufficient safeguards to accused persons. He stated that his Government was skeptical about the offer of a trial, in a neutral country, under Scottish Law. He expressed his doubt on whether Libya would extradite the suspects, even under that arrangement, since it had only said that it would not prevent their extradition.
11. The British side concluded by stating that the Scottish justice system offered the opportunity of a fair trial and that it was not sure that if it moved toward the option of a trial elsewhere, that the Libyan Government would cooperate.

OAU Delegation

12. The OAU delegation thanked the British Delegation for its presentation. It stated that it had no doubt that Libya would cooperate and not prevaricate in facilitating a fair trial if one of the three options was accepted. It stated that the delegation did not have any doubt on this, otherwise it would not have come to present the three options which had the support of the OAU, the League of Arab States, the Islamic Conference and the Non-Aligned Movement. It pointed out that the delegation at large did not have the slightest doubt in the fairness of Scottish Law and its procedures. It added that there was a different perception and doubt on the part of Libya due, in no small measure, to the wide publicity given to the case in the U.K. Furthermore, Libya also feared that its average citizen was being perceived as a terrorist. The fact was that there were fears on the part of Libya, even if others saw those fears as unjustified.

British Government

13. The British Delegation stated that it did not accept that a trial in Scotland would be unfair. It added that a lot of time had passed since the tragic

incident which happened over 10 years ago. It clarified that the current political pressure on the Government was to ensure a fair trial and as soon as possible. It added that the families were not after revenge but rather to learn the truth about what happened to their loved ones. It added that not all the families of the victims shared the view of Dr. Swire pointing out that Scottish families on the ground and the relatives of victims in the U.S.A were not necessarily supportive of the position of Dr. Swire.

OAU delegation

14. The OAU delegation sought clarification on the issue of sanctions.

British Government

15. The British delegation clarified that an agreement on modalities for holding a trial did not mean that sanctions would necessarily be lifted.

OAU delegation

16. The OAU side stated that the mission of the delegation was to find a solution to the problem. It added that sanctions were harsh to the people of Libya and impacted on neighbouring countries. It pointed out that the larger international community, which included OAU/Arab League/IC and NAM wished to see a solution to the problem so that a trial could take place. Taking into account the position of Libya that it was not allowed by Law to send its citizens for trial abroad, it would not be appropriate to insist on one legal tradition. When looking at a legal solution, there was need to take account of political considerations, in order to achieve a compromise. It suggested that the Security Council could appoint an International Tribunal to try the suspects.

British delegation

17. The British delegation stated that sanctions were imposed when a country defied the International Community. Although there was wide consensus at the time of imposition of sanctions, as time passed, because of sympathy, pressure had built on those imposing sanctions and not those necessitating the sanctions. It added that Libya had exaggerated the impact of the sanctions pointing out that it still had foreign reserves of

over US\$ 10 billion which constituted a healthy economic situation. It added that if it was true that people were suffering in Libya, then this said a lot about the priority of the Libyan Government. It stated that the sanctions must have had some adverse impact, but it was upon Libya to change its position so that sanctions could be lifted.

18. The British delegation once again stated that it was worried that if it agreed to the idea of a "neutral country court", then the Libyan Government may come up with new demands such as wanting to dispense with Scottish procedures in favour of an international panel. Mr. Cook summed up the British response as follows: " I am throwing the problem back to you. I need to be clear".
19. The British delegation stated that it had several concerns and that it was not suggesting that it was moving away from its stated position. It stated that it could not tell the British public that it was moving the trial to another country because Libya had fears. It added that there was a real political issue that needed to be handled carefully. Secondly, it could not see what the Libyan Government was really aiming at and whether the Libyan Leader could be trusted. It went on to say that a trial in a neutral country had no logical justification since such a trial try under Scottish Law and Procedures could not be substantially different from a trial in Scotland. He wondered whether if there was an IRA bomb in Wales, the Government would have to entertain petitions to move the trial elsewhere. It added that the British Government did not see the need for negotiations on procedure. It was, however, willing to continue with dialogue aimed at resolving the impasse.

OAU Delegation

20. The OAU delegation stated that it did not know how the International Court of Justice would decide on the case pending before it. It pointed out that the ICJ could very well decide that the trial be held in Libya. It clarified that the purpose of the visit of the OAU delegation was political. It stated that it would be unfair if it did not draw the attention of the British Government to the recent decision of NAM, to the effect that if there was no movement on the issue of sanctions, during the review by the Security Council in July, it would proceed to decide that it was not bound by the sanctions. The Delegation further stated that it did not know what the forthcoming meeting of the OAU would decide. It expressed the view that it could be a couple of years before the ICJ decides and finally disposes of the matter. The OAU delegation then undertook to consult

further with the Libyan authorities on the modalities of a trial in a third country and Libya's readiness to cooperate in its fruition.

21. The meeting ended at 12.00 noon.

**MEETING OF THE COMMITTEE OF FIVE WITH
DR. JIM SWIRE – 1 June, 1998**

22. The Committee of Five also met with Dr. Jim Swire, the spokesman of the "UK Families – Flight 103" at the Zimbabwe High Commission at 16.00 hours. Dr. Swire was accompanied by his wife. The Swires lost a daughter in flight 103.

OAU Delegation

23. The OAU delegation informed Dr. Swire that the delegation was a committee set up by the OAU. The OAU condemned terrorism of any kind and was distressed by the tragic incident in Scotland. The OAU was anxious to see the early resolution of the impasse. There was need for justice to be seen to be done. The families of the victims would need to know what happened. The ordinary people of Libya were affected by sanctions. The OAU delegation wondered what would happen to the sanctions if the suspects died before their trial. Would the sanctions then be lifted?
24. The OAU Delegation then briefly recalled the discussions the delegation had had with the Secretary of State.

Dr. Jim Swire

25. Dr. Swire informed the committee that he was the spokesman of most of the U.K. Families. He stated that he had recently met the Chief Executives of the Arab League and the OAU as well as Colonel Gaddafi, during which the Libyan authorities had accepted the proposal of a trial by an international panel. He stated that the Libyans had accepted something there were not a hundred per cent happy with. He pointed out that Scottish Law required that a trial be conducted by a jury that had no pre-conceived ideas about the case. He expressed the belief that a jury could not be fair because it was impossible to constitute one that had no pre-

conceived ideas about the case. He believed that there would be no further significant movement on the part of Libya.

26. Dr. Swire recalled that Professor Black, a Professor of Scottish Law, had stated that it was not correct to say that Scottish Law did not allow for trial abroad. Furthermore, if amendments to the Law were considered necessary, this could be done provided that there was political will on the part of U.S.A and U.K. He stated that although the "U.K. families – Flight 103" preferred that the trial be held in Scotland, they had formed the opinion, after assessing the position of Libya, that this may never be possible.
27. In response to a question by Dr. Swire, the Leader of the OAU delegation informed him that OAU decisions were not secret and that the OAU Secretariat could appraise him of decisions that may be taken by it in the forthcoming meetings in Burkina Faso.
28. Responding to a question on the families he represented, Dr. Swire stated that he was a spokesman of all the U.K families except those whose relatives were killed on the ground in Scotland. He stated that there were many other groups in the U.S.A. He recalled that an American Attorney had recently claimed that Dr. Swire's group represented only themselves. He pointed that the Foreign Sovereignty Immunities Act of the USA empowered the prosecution of a foreign country. This Act had been successfully used in the past. He added that the possibility existed that American families may file cases in American Courts at which huge sums of money could be handed down as compensation. The American Lawyers may also encourage this because they stood to gain 30% of the amount of any settlement or judgement. In Britain, the families were not very concerned about monetary compensation, but if cases were instituted in the USA, as he feared, then some of the UK families may apply to be joined as Claimants.
29. Finally, Dr. Swire requested the OAU delegation to ensure that the soon to be established International Criminal Court could deal with cases like that of Lockerbie.
30. In response, the OAU Delegation stated that the Organization and its Member States fully supported the establishment of the proposed International Criminal Court. It stated that the OAU viewed the idea of extra territorial judicial provisions as obnoxious to international law.

31. Dr. Swire concluded by stating that there were reasons why America would not want a public trial. He identified one of the reasons as the activities of Colonel Oliver North and others in the Iran Contra debacle. He added that, in his view, it was unlikely that the evidence would be enough to sustain a conviction. He thought that the UK may not be opposed completely to the idea of a trial in a neutral country but he believed that the Americans would not budge in their opposition to it.

CONCLUSION AND RECOMMENDATIONS

32. The OAU delegation of the Committee of Five wishes to make the following observations and recommendations:
1. The British Government did not rule out the option of a trial in a "neutral country court", but simply insisted on receiving a commitment from Libya that if the U.K moved towards that option, Libya would extradite the two suspects.
 2. The delegation is of the opinion that the USA remains a key player to the resolution of this conflict. Therefore, efforts to arrange a meeting with the USA government should continue.
 3. There is need to pursue dialogue with all the concerned parties. In this connection, it will be necessary to reassure the UK Government of the commitment of Libya to ensuring that the suspects would attend the trial, if the offer of a "neutral country court" is accepted by the UK Government.
 4. The Committee recommends the endorsement of the recently adopted NAM position.
 5. The Committee recommends that on moral and religious grounds, with immediate effect, the OAU and its Member States, will not enforce any sanctions on Libya pertaining to observance of religious obligations, response to humanitarian emergencies or fulfilling OAU statutory obligations.



AFRICAN UNION UNION AFRICAINE

African Union Common Repository

<http://archives.au.int>

Organs

African Union Commission

1998

REPORT ON THE MISSION TO THE
U.K OF THE OAU CO:MMITTEE OF
FIVE ON THE DISPUTE BETWEEN
THE GREAT LffiYAN ARAB
JAMAHIRIYA AND THE U.S.A AND
THE U.K

Organisation of African Unity

Organisation of African Unity

<http://archives.au.int/handle/123456789/2604>

Downloaded from African Union Common Repository