



Libya No. 2 (2009)

Treaty

between the Government of the United Kingdom of Great Britain and
Northern Ireland and the Great Socialist People's Libyan Arab
Jamahiriya on Mutual Legal Assistance in Criminal Matters

London, 17 November 2008

[Instruments of ratification have not been exchanged]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
February 2009*

Cm 7549

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**TREATY
BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF
GREAT BRITAIN AND NORTHERN IRELAND AND THE GREAT
SOCIALIST PEOPLE’S LIBYAN ARAB JAMAHIRIYA ON MUTUAL
LEGAL ASSISTANCE IN CRIMINAL MATTERS**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Great Socialist People's Libyan Arab Jamahiriya (hereinafter referred to as “the Parties”):

CONSIDERING the commitment of the Parties to co-operate on the basis of the United Nations Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances, concluded in 1988¹; the United Nations Convention against Transnational Organised Crime, concluded in 2000², and its Protocols³;

CONSIDERING FURTHER the United Nations Convention against Corruption⁴, opened for signature at Merida in Mexico in December 2003; as well as the relevant recommendations of the Financial Action Task Force;

DESIRING further to improve the effectiveness of the law enforcement authorities of both countries in the investigation and prosecution of crime in a more effective way as a means of protecting their respective democratic societies and common values;

RECOGNISING the particular importance of combating serious criminal activities including corruption, money laundering and the illicit trafficking in firearms, ammunition, explosives, terrorism and the financing of terrorism;

HAVING DUE REGARD for human rights and the rule of law;

MINDFUL of the guarantees under their respective legal systems which provide an accused person with the right to a fair trial, including the right to adjudication by an impartial tribunal established pursuant to law;

DESIRING to conclude an Agreement relating to mutual legal assistance in criminal matters;

HAVE AGREED AS FOLLOWS:

¹ Treaty Series No. 026 (1992) Cm 1927

² Treaty Series No. 012 (2006) Cm 6852

³ Treaty Series No. 017 (2006) Cm 6881, Treaty Series No. 016 (2006) Cm 6880

⁴ Treaty Series No. 014 (2006) Cm 6854

CHAPTER I
GENERAL PROVISIONS

ARTICLE 1

Definitions

1. "Proceedings" means proceedings related to criminal matters and includes any measure or step taken in connection with the investigation or prosecution of criminal offences, including the restraint, seizure or confiscation of proceeds of crime and, in accordance with the domestic law of the Requested Party.
2. "Instrumentalities of crime" means any property which has been, is or is intended to be used in connection with the commission of an offence.
3. "Proceeds of crime" means any assets derived or realised, directly or indirectly, by any person as a result of criminal conduct, or the value of any such assets.
4. "Assets" includes money and all kinds of moveable or immovable and tangible or intangible property, and includes any interest in such property.

ARTICLE 2

Scope of Assistance

1. The Parties shall provide the widest measure of mutual legal assistance, in accordance with the provisions of the Treaty, for the purpose of proceedings, including those for which a legal person may be held liable in the Requesting Party.
2. For the purposes of this Treaty, the authorities who are competent to forward a request for mutual legal assistance either directly or via their Central Authority are those responsible for conducting investigation, prosecution or judicial proceedings, as defined in the domestic law of the Requesting Party.
3. Mutual assistance may also be afforded in proceedings in respect of acts which are punishable under the domestic law of the requesting or the requested Party by virtue of being infringements of the rules of law, where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters.

4. Assistance shall include:
- (a) taking the testimony or statements of persons including by video-conference or television, according to the domestic law of the Requested Party;
 - (b) providing documents, records, and other evidentiary material;
 - (c) serving documents;
 - (d) locating or identifying persons where required as part of a wider request for evidence;
 - (e) transferring persons in custody according to Article 14 of this Treaty;
 - (f) executing requests for search and seizure;
 - (g) identifying, tracing, restraining, seizing, confiscating and disposal of proceeds of crime and assistance in related proceedings;
 - (h) return of assets, in accordance with domestic law;
 - (i) sharing of assets in accordance with Chapter II of this Treaty;
 - (j) such other assistance as may be agreed between the Central Authorities.
5. Assistance shall be provided without regard to whether the conduct that is the subject of the request would be punishable under the legislation in both Parties. Where a request is made for search and seizure of evidence, restraint or confiscation of proceeds of crime, the Requested Party may, at its discretion, render the assistance, in accordance with its domestic law.

ARTICLE 3

Central Authorities

1. Central Authorities shall be established by both Parties as follows:
- (a) For the Great Socialist People's Libyan Arab Jamahiriya, the Central Authority shall be the General People's Committee for Justice.
 - (b) For the United Kingdom, the Central Authorities shall be:
 - (i) the Secretary of State;
 - (ii) the Lord Advocate (for matters pertaining to Scotland).

2. Requests under this Treaty shall be made by the Central Authority of the Requesting Party to the Central Authority of the Requested Party. However the Parties may at any time designate any other authority as a Central Authority for the purposes of this Treaty. Notification of such a designation will take place by exchange of diplomatic notes.

3. Without prejudice to paragraph 2 of this Article and subject to Article 15 of this Treaty, requests may be made directly by prosecuting or judicial authorities of the Requesting Party and transmitted to the relevant Central Authority of the Requested Party. In cases of urgency, requests may be transmitted via the International Criminal Police Organisation (Interpol).

4. The Central Authorities shall communicate directly with one another for the purposes of this Treaty.

ARTICLE 4

Grounds for Refusal of Assistance

1. The Central Authority of the Requested Party may refuse assistance if:

- (a) the execution of the request would prejudice the sovereignty, security, *ordre public* or other essential interests of the Requested Party;
- (b) the request relates to a person who, if proceeded against in the Requested Party for the offence for which assistance is requested, would be entitled to be discharged on the grounds of a previous acquittal or conviction; or
- (c) the request relates to an offence that is regarded by the Requested Party as an offence under military law, which is not also an offence under ordinary criminal law.

2. Before refusing assistance pursuant to this Article, the Central Authority of the Requested Party shall consult with the Central Authority of the Requesting Party to consider whether assistance can be given subject to such conditions as it deems necessary. If the Requesting Party accepts assistance subject to these conditions, it shall comply with the conditions.

3. If the Central Authority of the Requested Party refuses assistance, it shall inform the Central Authority of the Requesting Party of the reasons for refusal.

ARTICLE 5

Form and Contents of Requests

1. A request for assistance shall be in writing. The request shall be in the language of the Requesting Party accompanied by a translation into the language of the Requested Party, unless otherwise agreed.
2. The request shall include the following:
 - (a) the name of the authority conducting the proceedings to which the request relates;
 - (b) the subject matter and nature of the proceedings for the purposes of which the request is made;
 - (c) a summary of the information giving rise to the request;
 - (d) a description of the evidence or other assistance sought; and
 - (e) the purpose for which the evidence or other assistance is sought.
3. To the extent necessary and possible, a request shall also include:
 - (a) the identity, date of birth and location of any person from whom evidence is sought;
 - (b) the identity, date of birth and location of a person to be served, that person's relationship to the proceedings, and the manner in which the service is to be made;
 - (c) available information on the identity and whereabouts of a person to be located;
 - (d) a precise description of the place to be searched and of the articles to be seized;
 - (e) a description of the manner in which any testimony or statement is to be taken and recorded;
 - (f) a list of questions to be asked of a witness or expert;
 - (g) a description of any particular procedures to be followed in executing the request;
 - (h) information as to the allowances and expenses to which a person asked to appear in the territory of the Requesting Party will be entitled;
 - (i) any other information which may be brought to the attention of the Requested Party to facilitate its execution of the request; and
 - (j) requirements for confidentiality.
4. The Requested Party may ask the Requesting Party to provide any further information, which appears to the Requested Party to be necessary for the purpose of executing the request.

ARTICLE 6

Execution of Requests

1. The Central Authority of the Requested Party shall promptly execute the request or, when appropriate, shall transmit it to the officials having authority to do so. The competent officials of the Requested Party shall do everything in their power to execute the request.
2. The Requested Party shall comply with the procedures expressly indicated by the Requesting Party unless otherwise provided for in this Treaty, and provided that such procedures are not contrary to the domestic law of the Requested Party.
3. If the Central Authority of the Requested Party determines that execution of the request would interfere with ongoing proceedings or prejudice the safety of any person in the territory of the Requested Party, the Central Authority of that Party may postpone execution, or make execution subject to conditions determined necessary after consultation with the Central Authorities of the Requesting Party. If the Requesting Party accepts the assistance subject to the conditions, it shall comply with the conditions.
4. The Central Authority of the Requested Party may facilitate the participation in the execution of the request of such persons as are specified in the request.
5. The Central Authority of the Requested Party may ask the Central Authority of the Requesting Party to provide information in such form as may be necessary to enable it to execute the request or to undertake any steps which may be necessary under the laws of the Requested Party in order to give effect to the request received from the Requesting Party.
6. The Central Authority of the Requested Party shall inform the Central Authority of the Requesting Party promptly of any circumstances which make it inappropriate to proceed with the execution of the request or which require modification of the action requested.
7. The Central Authority of the Requested Party shall promptly inform the Central Authority of the Requesting Party of the outcome of the execution of the request.

ARTICLE 7

Spontaneous Information

1. The Central Authority of a Party may, without prior request, forward information to the Central Authority of the other Party, when they consider that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings, or might lead to a request by that Party under this Treaty.
2. The providing Party may, pursuant to its domestic law, impose conditions on the use of such information by the receiving Party. The receiving Party shall be bound by those conditions.

ARTICLE 8

Costs

1. The Requested Party shall pay all costs relating to the execution of the request, except for the following which shall be paid by the Requesting Party:
 - (a) fees of expert witnesses, and the allowances and expenses related to travel of persons pursuant to Articles 10 and 13 of this Treaty;
 - (b) the costs of establishing and operating video-conferencing or television links, and the interpretation of such proceedings;
 - (c) the costs of transferring persons in custody pursuant to Article 14 of this Treaty.

Such fees, costs, allowances, and expenses referred to in (a) to (c) above shall include translation, transcription and interpretation services where these have been requested.

2. If the Central Authority of the Requested Party notifies the Central Authority of the Requesting Party that execution of the request might require costs or other resources of an extraordinary nature, or if it otherwise requests, the Central Authorities shall consult with a view to reaching agreement on the conditions under which the request shall be executed and the manner in which costs shall be allocated.

ARTICLE 9

Confidentiality and Limitations on Use

1. The Requested Party shall, upon request, keep confidential any information which might indicate that a request has been made or responded to. If the request cannot be executed without breaching confidentiality, the Requested Party shall so inform the Requesting Party, which shall then determine the extent to which it wishes the request to be executed.
2. The Requesting Party shall not use or disclose any information or evidence obtained under this Treaty for any purposes other than for the proceedings stated in the request without the prior consent of the Requested Party.
3. Unless otherwise indicated by the Requested Party when executing the request, information or evidence, the contents of which have been disclosed in a public judicial or administrative hearing related to the request, may thereafter be used for any purpose.
4. Nothing in this Article shall preclude the use or disclosure of information to the extent that there is an obligation to do so under the laws of the Requesting Party in criminal proceedings. The Requesting Party shall notify the Requested Party in advance of any such disclosure, wherever possible.

ARTICLE 10

Taking Testimony and Producing Evidence in the Territory of the Requested Party

1. A person in the territory of the Requested Party from whom evidence is requested pursuant to this Treaty may be compelled, if necessary, to appear in order to testify or produce documents, records, or articles of evidence by summons or such other method as may be permitted under the law of the Requested Party.
2. A person requested to testify or to produce documentary information or articles in the territory of the Requested Party may be compelled to do so in accordance with the requirements of the law of the Requested Party. If such a person asserts a claim of immunity, incapacity or privilege under the laws of the Requesting Party, the evidence shall nonetheless be taken and the claim be made known to the Requesting Party for resolution by the authorities of that Party.
3. Upon request, the Central Authority of the Requested Party shall furnish information in advance about the date and place of the taking of the evidence pursuant to this Article.
4. The Requested Party may permit the presence of such persons as specified in the request during the execution of the request, and may allow such persons to present questions to be asked of the person giving the testimony or evidence.

ARTICLE 11

Official Records

1. The Requested Party shall provide the Requesting Party with copies of publicly available records, including documents or information in any form, in the possession of authorities in the Requested Party.
2. The Requested Party may provide copies of any records, including documents or information in any form, that are in the possession of authorities in that Party, but that are not publicly available, to the same extent and under the same conditions as such copies would be available to its own law enforcement or judicial authorities. The Requested Party may in its discretion deny a request pursuant to this paragraph entirely or in part.
3. Official records provided pursuant to this Article shall not require further authentication in order for such records to be admissible in evidence in proceedings in the territory of the Requesting Party.

ARTICLE 12

Exchange of Criminal Records

The Parties may inform each other of all criminal convictions and subsequent measures in respect of nationals of the other Party, entered in the judicial records.

ARTICLE 13

Testimony in the Requesting Party

1. A request under this Treaty may seek assistance in facilitating the appearance of any person in the territory of the other party for the purpose of giving evidence before a court or of being identified in, or otherwise by his presence assisting, any proceedings.
2. The Central Authority of the Requested Party shall:
 - (a) ask a person whose voluntary appearance in the territory of the Requesting Party is desired whether he agrees to appear; and
 - (b) promptly inform the Central Authority of the Requesting Party of his answer.
3. Unless the Central Authority of the Requesting Party indicates otherwise prior to the person's departure from the Requested Party, a person agreeing to appear in the territory of the Requesting Party pursuant to this article shall not be subject to service of process, or be detained or subjected to any restriction of

personal liberty, by reason of any acts or convictions which preceded his departure from the territory of the Requested Party.

4. The immunity provided for by this Article shall cease fifteen days after the Central Authority of the Requesting Party has notified the Central Authority of the Requested Party that the person's presence is no longer required, or if the person has left the territory of the Requesting Party and voluntarily returned to it.

ARTICLE 14

Transfer of Persons in Custody

1. A person in the custody of one Party whose presence in the territory of the other Party is sought for the purpose of providing assistance under this Treaty shall be transferred for that purpose if the person and the Central Authorities of both Parties consent. Such requests for transfer of persons in custody may only be made by the Central Authorities.

2. For the purposes of this Article:

- (a) the Requesting Party shall be responsible for the safety of the person transferred and shall have the authority and the obligation to keep the person transferred in custody unless otherwise authorised by the Requested Party;
- (b) the Requesting Party shall return the person transferred to the custody of the Requested Party as soon as circumstances permit and in any event no later than the date upon which he would have been released from custody in the territory of the Requested Party, unless otherwise agreed by both Central Authorities and the person transferred;
- (c) the Requesting Party shall not require the Requested Party to initiate extradition proceedings for the return of the person transferred;
- (d) the period of custody in the territory of the Requested Party shall be deducted from the period of detention, which the person concerned is or will be obliged to undergo in the territory of the Requesting Party.

ARTICLE 15

Service of Documents

1. The Requested Party shall, as far as possible, effect service of any document relating to or forming part of any request for assistance properly made pursuant to

this Treaty by the Requesting Party, including any summons or other process requiring the appearance of any person before any authority or court in the territory of the Requesting Party.

2. Any person who has failed to answer a summons to appear, service of which has been requested, shall not, even if the summons contains a notice of penalty, be subjected to any punishment or measure of restraint, unless subsequently he voluntarily enters the territory of the Requesting Party and is there again duly summoned.

3. The Central Authority of the Requesting Party shall transmit any request for the service of a document requiring the appearance of a person before an authority or court in the Requesting Party within a reasonable time before the scheduled appearance.

4. The Requested Party shall return a proof of service whenever possible in the manner specified in the request.

ARTICLE 16

Search and Seizure

1. The Requested Party shall execute a request for the search, seizure and delivery of any article to the Requesting Party if the request includes the information justifying such action under the laws of the Requested Party and it is carried out in accordance with the laws of that Party.

2. The Requested Party may refuse a request if it relates to conduct in respect of which powers of search and seizure would not be exercisable in the territory of the Requested Party in similar circumstances.

3. Every official who has custody of a seized article shall certify the continuity of custody, the identity of the article and the integrity of its condition in any form as indicated by the Requesting Party. No further authentication or certification shall be necessary in order to establish these matters in proceedings in the territory of the Requesting Party.

4. The Central Authority of the Requested Party may require that the Requesting Party agrees to terms and conditions which the Requested Party may deem necessary to protect third party interests in the item to be transferred.

ARTICLE 17

Return of Documents and Articles

The Central Authority of the Requesting Party shall return any documents or articles furnished to it in the execution of a request under this Treaty as soon as is practicable unless the Central Authority of the Requested Party waives the return of the documents or articles.

ARTICLE 18

Assistance in Confiscation Proceedings

1. The Parties shall assist each other in proceedings involving the identification, tracing, restraint, seizure and confiscation of the proceeds and instrumentalities of crime in accordance with the domestic law of the Requested Party.

2. In addition to the provisions contained within Article 5 of this Treaty, a request for assistance in restraint or confiscation proceedings shall also include:

- (a) details of the property in relation to which co-operation is sought;
- (b) the location of the property and its connection with the subjects of the request;
- (c) the connection, if any between the property and the offences;
- (d) details of any third party interests in the property;
- (e) a certified true copy of the restraint or confiscation order made by the court and statement of the grounds on the basis of which the order was made, if they are not indicated in the order itself.

3. If the Central Authority of one Party becomes aware that proceeds or instrumentalities of crime are located in the territory of the other Party and may be liable to restraint, seizure or confiscation under the laws of that Party, it may so inform the Central Authority of the other Party. If the Party so notified has jurisdiction, this information may be presented to its authorities for a determination whether any action is appropriate. The said authorities shall issue their decision in accordance with the laws of their country and the Central Authority of that country shall ensure that the other Party is aware of the action taken.

ARTICLE 19

Return of Assets

1. Where an offence has been committed and a conviction has been obtained in the Requesting Party, the assets which have been seized by the Requested Party may be returned to the Requesting Party for the purpose of confiscation, in accordance with the domestic law of the Requested Party.
2. The rights claimed by bona-fide third parties over these assets shall be respected.
3. The return shall occur once a final judgement has been given in the Requesting Party; however the Requested Party may return the assets before the conclusion of the proceedings in accordance with its domestic law.

ARTICLE 20

Return of Embezzled Public Funds

1. When the Requested Party seizes or confiscates assets that constitute public funds, whether or not these have been laundered, and which have been embezzled from the Requesting Party, the Requested Party shall return the seized or confiscated assets, less any costs of realisation, to the Requesting Party.
2. The return shall occur once a final judgement has been given in the Requesting Party; however the Requested Party may return the funds before the conclusion of the proceedings in accordance with its domestic law.

CHAPTER II

SHARING OF CONFISCATED ASSETS OR THEIR EQUIVALENT FUNDS

ARTICLE 21

Circumstances in which Assets may be Shared

In any case in which a Party is in possession of confiscated assets, and it appears to that Party ('the Holding Party') that co-operation has been given by the other Party ('the Co-operating Party'), the Holding Party may, at its discretion and in accordance with domestic laws, share those assets with the Co-operating Party.

ARTICLE 22

Requests for Asset Sharing

1. A Co-operating Party may make a request for asset sharing from the Holding Party in accordance with the provisions of this Treaty when its co-operation has led, or is expected to lead, to confiscation. In any case, a request for asset sharing shall be made within one year from the date of entry of the final order of confiscation, unless otherwise agreed between the Parties in exceptional cases.
2. A request made under paragraph 1 of this Article shall set out the circumstances of the co-operation to which it relates, and shall include sufficient details to enable the Holding Party to identify the case, the assets, and the agency or agencies involved.
3. On receipt of a request for asset sharing made in accordance with the provisions of this Article, the Holding Party shall:
 - (a) consider whether to share assets as set out in Article 21 of this Treaty, and
 - (b) inform the Party making the request of the outcome of that consideration.
4. In appropriate cases where there are identifiable victims, consideration of the rights of victims may take precedence over asset sharing between the Parties.

ARTICLE 23

Sharing of Assets

1. Where the Holding Party proposes to share assets with the Co-operating Party, it shall:
 - (a) determine, at its discretion and in accordance with its domestic law, the proportion of the assets to be shared which, in its view, represents the extent of the co-operation afforded by the Co-operating Party; and
 - (b) transfer a sum equivalent to that proportion to the Co-operating Party in accordance with Article 24 of this Treaty.
2. The Parties agree that it may not be appropriate to share where the value of the realised assets or the assistance rendered by the Co-operating Party is *de minimis*.

ARTICLE 24

Payment of Shared Assets

1. Unless otherwise mutually agreed, any sum transferred pursuant to Article 23(1)(b) of this Treaty shall be paid:
 - (a) in the currency of the Holding Party, and
 - (b) by means of an electronic transfer of funds or cheque.
2. Payment of any such sum shall be made:
 - (a) in any case in which the Great Socialist People's Libyan Arab Jamahiriya is the Co-operating Party, to the pertinent office or account designated by the Central Authority.
 - (b) in any case in which the United Kingdom of Great Britain and Northern Ireland is the Co-operating Party, to the Home Office Accounting Officer, and sent to the Head of the Judicial Co-operation Unit, Home Office.
 - (c) to such other recipient or recipients as the Co-operating Party may from time to time specify by notification for the purposes of this Article.

ARTICLE 25

Imposition of Conditions

Unless otherwise mutually agreed, where the Holding Party transfers any sum pursuant to Article 23(1)(b) of this Treaty, it may not impose on the Co-operating Party any conditions as to the use of that sum, and in particular may not require the Co-operating Party to share the sum with any other State, organisation or individual.

CHAPTER III

FINAL PROVISIONS

ARTICLE 26

Data Protection

1. Personal data transferred from one Party to another as a result of the execution of a request made under the Treaty may be used by the Party to which such data have been transferred, only:

- (a) for the purpose of proceedings to which the Treaty applies;
- (b) for other judicial and administrative proceedings directly related to the proceedings mentioned under (a);
- (c) for preventing an immediate and serious threat to public security.

2. Such data may however be used for any other purpose if prior consent to that effect is given by either the Party from which the data had been transferred, or the data subject.

3. Any Party may refuse to transfer personal data obtained as a result of the execution of a request made under the Treaty where such data is protected under its national legislation

4. Any Party that transfers personal data obtained as a result of the execution of a request made under the Treaty may require the Party to which the data have been transferred to give information on the use made with such data.

ARTICLE 27

Compatibility with other Arrangements

Assistance and procedures set forth in this Treaty shall not prevent either of the Parties from granting assistance to the other Party through the provisions of other international agreements to which it may be a party, or through the provisions of its domestic laws. The Parties may also provide assistance pursuant to any arrangement, agreement or practice which may be applicable between the law enforcement agencies of the Parties.

ARTICLE 28

Consultation

The Central Authorities of the Parties shall consult, at the request of either, concerning the operation of this Treaty either generally or in relation to a particular case. The Central Authorities may also agree on such practical measures as may be necessary to facilitate the implementation of this Treaty.

ARTICLE 29

Territorial Application

This Treaty shall apply to:

- (a) the territory of the Great Socialist People's Libyan Arab Jamahiriya;
- (b) the territory of the United Kingdom, which consists of Great Britain and Northern Ireland;
- (c) any other territory for whose international relations one of the Parties is responsible and to which this Treaty shall have been extended by Exchange of Notes and by agreement of the Parties.

ARTICLE 30

Dispute Settlement

The Parties shall endeavour to settle disputes concerning the interpretation or application of this Treaty through consultation and if necessary via diplomatic channels.

ARTICLE 31

Final Provisions

1. This Treaty shall be subject to ratification in accordance with the applicable procedures in the two states and shall enter into force with effect from the date of receipt of the last notice of ratification, if the ratification documents are not exchanged on the same day.
2. This Treaty will remain in force for an indefinite period unless terminated by either Party submitting a written notice of its wish to terminate to the other Party through diplomatic channels. Such termination will come into effect six months after the date of receipt of the termination notice.

IN WITNESS WHEREOF, the undersigned, being duly authorised, have signed this Treaty.

Done in duplicate at London this seventeenth day of November 2008, in the English and Arabic languages, both texts being equally authoritative.

For the Government of the United
Kingdom of Great Britain and
Northern Ireland:

BILL RAMMELL

For the Great Socialist People's
Libyan Arab Jamahiriya:

ABDULATI I. ALOBIDI



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