

**Exhibit B**  
**to the Memorandum of Points and Authorities**  
**(Part 4 of 4)**

**Exhibit 5**  
**(Declaration of Alistair J. Bonnington)**

**DOCUMENT 2.11**

*The Permanent Mission of the Socialist People's Libyan Arab Jamahiriya to the United Nations issued a Position Paper in December 1997, setting out the Libyan attitude to events since 1991 and its evolving position as to a trial of Megrahi and Fhimah. Libya continued to deny responsibility for the Pan Am 103 bombing (para. 6). It repeated that it considered the matter governed exclusively by the Montreal Convention of 1971 (Document 4.1), with which it had fully complied: "The two suspects were arrested. Two judges were entrusted with investigating the case. They started their investigation and contacted the judicial authorities in the countries concerned. These judicial authorities in the United States and United Kingdom, however, refused to offer any sort of cooperation" (para. 8).*

*The Position Paper asserted that Libya had complied with the requests/demands of Resolution 731 (Document 2.4) by reporting the suspects to its prosecution authorities (para. 10). It stated that Libya had no objections to trial in a Scottish court, though the defense lawyers had warned of the adverse media coverage of the Pan Am tragedy and its aftermath (para. 16). Libya was prepared to accept: "a. The trial of the two suspects in a third country to be designated by the Security Council. b. The trial of the two suspects by Scottish judges at the seat of the International Court of Justice, under Scottish law" (para. 17). All that remained was for the US and UK Governments to agree to a compromise along the same lines—and that is what happened in the joint UK/US letter of 24 August 1998 (Document 2.12).*

**LIBYAN POSITION PAPER (1997)****Introduction:**

1. On 14 November 1991 an indictment was handed down by the United States District Court of the District of Columbia against two Libyan citizens alleging their involvement in the crash of Pan Am flight 103 over the town of Lockerbie, Scotland on 21 December 1988 [Document 1.6].

On the same day, the Lord Advocate of Scotland made an announcement alleging that there was sufficient evidence to justify asking the court for warrants for the arrest of the same two Libyan citizens on charges of conspiracy, murder and contravention of the Aviation Security Act of 1982 [Document 1.5].

2. On 20 December 1991, the Permanent Mission of France circulated as an official document of the General Assembly and the Security Council, a communique from the Presidency of the French Republic and the Ministry of Foreign Affairs with regard to the crash of the UTA flight 722 on 19 September 1989 [Document 2.2], calling on Libya:

- a. To produce all the material evidence in its possession and to facilitate access to all documents that might be useful for establishing the truth.

- b. To facilitate the necessary contacts and meetings, *inter alia*, for the assembly of witnesses.
  - c. To authorize the responsible Libyan officials to respond to any request made by the examining magistrate responsible for judicial investigation.
3. On 27 November 1991, the United States of America and the United Kingdom circulated a joint declaration [Document 2.1] demanding that Libya:
  - a. Surrender for trial all those charged with the crime; and accept responsibility for the actions of Libyan officials;
  - b. Disclose all it knows of this crime, including the names of all those responsible, and allow full access to all witnesses, documents and other material evidence, including all the remaining timers;
  - c. Pay appropriate compensation.
4. On the same day, 27 November 1991, a joint declaration issued by the United States of America, France, and the United Kingdom [Document 2.3] states that, following the investigation carried out into the bombings of Pan Am 103 and UTA 772, the three states have presented specific demands to the Libyan authorities related to the judicial procedures that are under way, and called on Libya's compliance with all these demands, that Libya cease all forms of terrorist action and all assistance to terrorist groups.
5. It did not take very long for the pre-meditated purpose of these countries to become quite clear. These countries sought to get the Security Council to adopt a resolution to pressure Libya into surrendering its citizens and foregoing its rights under international law which are clearly established in the 1971 Montreal Convention. In a few days, these countries submitted to the Security Council a draft resolution, exercised all sorts of pressure, and within a month, the Security Council adopted its resolution 731 (1992) on 21 January 1992. This took place during a period that witnessed the peak of what Secretary-General Kofi Annan has described eloquently and accurately as a "frenzy era" in his report entitled "*Renewal of the United Nations: A Programme of Reform*" (document A/51/950).
6. What is the real truth about Lockerbie? Both the United States and the United Kingdom know, more than anybody else that Libya has nothing to do at all with the tragic accident of Pan Am flight 103. Both the United States and the United Kingdom alleged that two Libyans placed a time bomb in a bag on board a Maltese Airlines flight which took off from Malta, that the bag was unaccompanied baggage, that it was transferred in Frankfurt Airport from the Maltese airliner to an American airliner whose destination was London; and that this same unaccompanied bag was transferred again in a London Airport from the airliner originating in

Frankfurt to Pan Am flight 103, which later took off and exploded over Lockerbie.

7. The Government of Malta investigated the matter and concluded that there were no unaccompanied bags on the said flight. The competent authorities in Germany, in turn, investigated the matter and found nothing to corroborate the story about the bag.

Can anyone imagine, how an unaccompanied bag can move itself from one airliner to another and from one airport to another with utmost precision.

#### **The Legal Aspect:**

8. Right from the start, Libya dealt with the suspicion in two of its citizens, within a framework of the 1971 Montreal Convention for the Suppression on Unlawful Acts against the Safety of Civil Aviation which accords Libya the judicial competence for trying the two suspects. The two suspects were arrested. Two judges were entrusted with investigating the case. They started their investigation and contacted the judicial authorities in the countries concerned. These judicial authorities in the United States and the United Kingdom, however, refused to offer any sort of cooperation. This led the investigation to an impasse and it had to stop.

9. In a letter addressed to the Secretary of State of the United States and the Foreign Minister of the United Kingdom by the Secretary of the People's Committee for Foreign Liaison and International Cooperation, Libya called for the implementation of article (14) of the 1971 Montreal Convention which states that *"any dispute between two or more contracting states, that could not be settled through negotiations, shall be referred to arbitration, at the request of any one of these states. Should the parties to the dispute fail to agree on the arbitration panel within six months of the submission of the request for referring the dispute to arbitration, anyone of the parties may refer to the dispute to the International Court of Justice, by an application, under the statute of the Court."* That is what Libya had to do; namely, to resort to the International Court of Justice, in view of the rejection of the other parties of both negotiations and arbitration. The case is still before the International Court of Justice. Thus, Libya has met all its commitments under applicable international law, in the case of its dispute with the countries concerned (S/23441).

10. Security Council resolution 731 (1992) called on Libya to respond—namely to give an answer—to the requests of the three countries concerned. That is exactly what Libya did when it exercised its judicial competence, in accordance with article (7) of the 1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, and adopted the legal procedures called for under article (6) of the same convention, and called on the countries concerned to cooperate with it in accordance with article (11) of the convention.

11. Security Council resolution 731 (1992) was adopted in contravention of the principles and purposes of the Charter of the United Nations whose article (27) paragraph (3) states that, "*decisions of the Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members*", which did not happen in the case of resolution 731 (1992). Moreover, article (33) paragraph (1) states that, "*the parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice*". Paragraph (2) of the same article states, "*the Security Council shall call upon the parties to settle their dispute by such means*". In addition, article (36) paragraph (3) states that, "*in making recommendations under this article, the Security Council should also take into consideration that legal disputes should, as a general rule, be referred by the parties to the International Court of Justice.*"

12. Notwithstanding the content of the paragraphs above, and the legal nature of the question where the case at issue is a dispute over judicial competence between states parties to the 1971 Montreal Convention, the Security Council adopted its two resolutions 748 (1992) and 883 (1993) [based on resolution 731 (1992)] with all sorts of sanctions against Libya, boycotts and embargoes. These measures have jeopardized the lives of Libyans and non-Libyans. Accounts of the serious impact of the sanctions on the Libyan Arab people periodically reported to the Security Council. The latest of such a report is contained in document S/1997/404. This has been a "collective punishment" that can neither be legally defended nor morally condoned since the two suspects were not investigated, were not tried and they have not been convicted of anything.

#### **The Political Aspect:**

13. Libya has submitted several initiatives aimed at the acceleration of investigating the two suspects, revealing the truth and identifying the real culprit responsible for the tragic incident of Pan Am flight 103 over Lockerbie, Scotland. These initiatives included a call for investigators from the United States and the United Kingdom or representatives of international committee or organizations to be present at the investigation and trial of the two suspects. Libya has also accepted a trial in a neutral country (document S/23416, S/23417).

14. Libya offered to resort to the International Court of Justice to ascertain the veracity of the accusations leveled against the two Libyan suspects. It has also offered to hand over the two suspects to the UNDP office in Tripoli for investigation, and has also proposed that the Secretary-General could establish a legal committee composed of judges known for their fairness and impartiality to investigate the matter, find the facts, and verify the seriousness of the allegations against the two suspects, including conduct-

ing a full investigation. If the Secretary-General would determine that the allegations were serious, then, the Libyan Arab Jamahiriya would not object to surrendering the two suspects, under the personal supervision of the Secretary-General to a third party on condition that they may not be handed over to the United States of America or Scotland (S/23672).

15. Libya did not object to an investigation and trial to be conducted by the Committee of Seven established by the League of Arab States, or through the United Nations before a fair and just court to be agreed upon. It has also declared its readiness to enter into negotiations with the United States and the United Kingdom, under the supervision of the Secretary-General of the United Nations, (for the two countries unilaterally broke diplomatic relations with Libya, and no extradition treaties exists with the two countries) with the aim of reaching an agreement on holding a trial in a neutral country acceptable to the parties to the dispute, and which offer all guarantees for uncovering the truth (document S/26313, S/23918, S/24209, and S/24961).

16. The Libyan Arab Jamahiriya has announced that, as a state, it has no objection to the appearance of the two suspects before the Scottish judiciary. However, the two suspects' defense lawyers, who are British, Scottish, Americans, and other nationalities, warned the two suspects against appearing in a court in any of the two countries because of the prior condemnation by the mass media, as well as by government officials in the two countries (document S/26500, S/26523, S/26629).

17. Libya, out of respect for the regional and international organizations and the role entrusted to them by Chapter VIII of the Charter, accepted the proposals and initiatives submitted by the League of Arab States, the Organization of African Unity, the Organization of the Islamic Conference, and the Non-Aligned Movement, which represent the majority of the international community. These initiatives are:

- a. The trial of the two suspects in a third country to be designated by the Security Council.
- b. The trial of the two suspects by Scottish judges, at the seat of the International Court of Justice, under Scottish law.

The establishment of a special criminal court, at the seat of the International Court of Justice to try the two suspects (document A/52/465, S/1997/497 and S/1997/549).

18. It is also well known that the Security Council has not adopted any provisions that call for the surrender of our citizens to foreign countries. Instead of focusing their efforts on reaching a speedy solution for the dispute, the United States of America and the United Kingdom, on the contrary, have focused all their efforts on imposing, continuing, and tightening of the sanctions against Libya; exploiting the international

circumstances that were prevalent at the start of this dispute; and in a clear violation of the provisions of the United Nations Charter which calls for the settlement of disputes among states by peaceful means (articles 27, 33 and 36).

19. The rejection by the United States of America and the United Kingdom of all the initiatives submitted by Libya or the regional and international organizations for holding the trial of the two suspects in a place that meets the requirements of neutrality and impartiality has unfortunately led to the delay of the trial of the two suspects all this time. This is despite the fact that these two countries afford the accused, amongst their citizens, the opportunity to change the venue of their trial. A case in point is the trial of the defendants in the terrorist act that took place in Oklahoma, where the venue of the trial was changed to Denver, Colorado. Libya believes that the two Libyan suspects in the Lockerbie accident, have also the right to stand before a just court at venue free from the atmosphere of prior condemnation prevalent in the United States and in Scotland, as is the case with their citizens, and as provided for in article 14 of the International Covenant on Civil and Political Rights.

#### **Libya's Response To Security Council Resolutions:**

20. Libya has declared, at all official levels, her unequivocal condemnation of terrorism in all its forms and manifestations. It called upon the United Nations to dispatch whoever it sees suitable to ascertain that Libya has no relation whatsoever with terrorism (documents S/23221, S/23226, S/23396, S/23414, S/23416, S/23641, S/23672, S/23918, S/24961 and S/1995/624, S/1995/633, S/1996/7, S/1997/176, S/1997/218, and S/1997/880).

21. Libya has cooperated fully with the United Kingdom concerning the Irish Republican Army. The United Kingdom expressed her satisfaction with this cooperation in a letter from the Permanent Representative of the United Kingdom to the President of the Security Council (document S/1995/973).

22. France, too, has expressed her appreciation for Libya's full cooperation with the investigating judge of the UTA 772 incident in a letter by the investigating judge to the French Foreign Minister (document S/1997/858).

23. Libya accepted the two Libyan suspects be tried by a just and fair court in a neutral country (document S/2496, S/26313).

24. Libya encouraged the two suspects to accept to appear before the Scottish judiciary in Scotland (document S/26500, S/26523, S/26629).



25. Despite Libya's positive and sincere response to Security Council resolutions and the flexibility she has shown in order to reach a just and peaceful solution to this dispute, the United States and the United Kingdom insist on rejecting all the practical initiatives; be they those presented by Libya or those from regional and international organizations. In addition, the United States continues to prevent the Security Council from implementing paragraph 2 of resolution 748 (1992). This position can only strengthen the already strong suspicions which Libya has about the real political aims of the two countries towards Libya. These suspicions can only be removed by the closing of this file as soon as possible.

**Conclusion:**

26. Ever since the issue was forced upon the Security Council, many statements, both official and unofficial, have been issued, many books and articles have been published, many audio and visual recordings have been presented, and many seminars and conferences were held—all of which concluded that Libya is innocent of the allegations made against her. Eminent people from all over the world have spoken in favor of lifting these sanctions imposed on Libya. Among them, His Holiness Pope John Paul II, who called in unambiguous terms for the lifting of the sanctions on 31 October 1997 (document S/1997/857). Many organizations have adopted resolutions demanding the lifting of the sanctions which have been imposed on Libya.

27. In spite of all this, Libya is still suffering since 1992 from these unjust sanctions imposed on her, in a clear violation of the Charter of the United Nations, specially articles 27(3), 33(1), and 36, in deliberate disregard of the 1971 Montreal Convention.

28. As is stipulated in all laws and legislations, sanctions are imposed as a punishment for the commitment of a crime or of a prohibited act proved as such through an impartial and fully independent investigation, and whose perpetrator has been tried and convicted by a just and fair court. However, the sanctions imposed on Libya took place in the absence of all legal and logical conditions which permit the imposition of such sanctions. The two Libyan citizens are only suspects. They have not appeared before a court, and no conviction has been issued against them. The legal rule is that an accused person is innocent until proven guilty, has been completely ignored. Libya was accused of being responsible for an incident with which it had nothing to do. The Security Council was pushed into the imposing sanctions against Libya. These sanctions are in fact a "collective punishment" against an entire country, state, and people. The United States and Britain assumed by functions

of an arbiter, investigator, and a judge, and issued convictions in advance without any proof or investigation, without a trial or a verdict. They have even asked for compensation. Is there a more serious violation of the rights of individuals and peoples?

29. Libya has fully responded to the demands of Security Council resolutions. The responsibility for the delay in the implementation of the parts of these resolutions that were not implemented falls on the two countries concerned. Libya and its people should not bear the results of that delay.

30. The international community represented by international and regional organizations, such as the League of Arab States, the Organization of African Unity, the Organization of the Islamic Conference, the Non-Aligned Movement, and in addition to several countries which are not members of these organizations, is convinced that Libya has no problem with the Security Council. The problem is between the United States and the United Kingdom on one hand, and Libya on the other, and should be solved by a peaceful means provided for in the Charter of the United Nations for solving disputes among states.

31. The Security Council's review of the sanctions last July 10, Security Council's Ministerial Meeting of 25 September (document S/PV.3819), and the latest review on 7 November 1997 and the debate that took place, are the best proof that the Security Council is cognizant and appreciative of all what Libya has done and offered, and of the flexibility and realism it has shown in dealing with this dispute. It is high time for the other parties to show flexibility and do what is required of them in order to reach a peaceful, fair, and just solution to this dispute.

32. If the two countries really want to reach a solution to this dispute, they can accept one of the three options offered by the African Summit and the League of Arab States referred above.

33. Any other initiatives that fall outside this frame and do not seek to achieve these goals or tend to waste time in order to perpetrate the sanctions imposed on Libya, will only protract the suffering of the families of the victims, who call for expediting the trial to uncover the truth; and support the holding of the trial in The Hague or a third neutral country, and to stop exploiting this tragedy for political ends that will not be realized.

In light of the foregoing, we request that:

1. The sanctions imposed upon Libya in accordance with Security Council resolution 748 (1992) and 883 (1993) be lifted because they represent a collective punishment of an entire people for the mere suspicion of two

- of Libya's citizens, who have not been condemned in accordance with any judicial verdict;
2. The two suspects be tried expeditiously by a just and fair court at a venue where there is no prior condemnation of the two suspects;
  3. That the issue of Libya's alleged relations to terrorism (paragraph 2 of resolution 748 (1992)), be closed. For Libya has condemned terrorism in all its forms and manifestations, and offered to cooperate with the Security Council and the World Community to combat terrorism. However, it is the other party who hinders the closure of this question. Moreover, the world at large knows where the terrorists live and who financed them.
35. Preventing the Security Council from implementing paragraph (2) of resolution 748 (1992) added to Libya's strong suspicions in the true political objectives of the two countries concerned. The only thing that could remove these suspicions is a closure of this file as soon as possible.
36. The Secretary-General has an important role to play in reaching a solution for this problem by exercising his good offices, under the Charter, with the concerned parties, with the aim of bringing all of them to the negotiating table, in order to agree on the procedures for the trial of the two suspects, and its venue in order to put an end to the tragedy of the families of the victims, and lift the sanctions imposed on the Libyan people immediately. If the other two parties to the problem are unwilling to have a face-to-face meetings with Libya, Libya would be ready to start immediately to enter into indirect contacts, through the Secretary-General, in order to achieve the desired aim.

**Exhibit 6**  
**(Declaration of Alistair J. Bonnington)**



## Security Council

Distr.  
GENERALS/1998/795  
24 August 1998

ORIGINAL: ENGLISH

LETTER DATED 24 AUGUST 1998 FROM THE ACTING PERMANENT REPRESENTATIVES  
OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE  
UNITED STATES OF AMERICA TO THE UNITED NATIONS ADDRESSED TO THE  
SECRETARY-GENERAL

1. The Governments of the United Kingdom of Great Britain and Northern Ireland and the United States of America are gravely concerned that, almost 10 years after the terrorist bombing of Pan Am flight 103 over Lockerbie, those accused have not yet stood trial. Several years have passed since the Security Council, in resolutions 731 (1992), 748 (1992) and 883 (1993) required the Libyan Arab Jamahiriya to ensure the appearance of the two accused for trial in the appropriate United Kingdom or United States court.
2. Our two Governments consider that it is essential for the promotion of international peace and security that justice is done and is seen to be done before the eyes of the international community in the appropriate Scottish or United States court. Despite the comprehensive assurances given as to the fairness of a trial in these jurisdictions, the report of the independent legal experts appointed by you to look at the Scottish judicial system (S/1997/991) and the offer made by the Government of the United Kingdom to accommodate international observers at a Scottish trial, the Libyan Arab Jamahiriya has failed to ensure the appearance of the two accused. Our two Governments reiterate their profound concern at this disregard of the Security Council's demands.
3. Nevertheless, in the interest of resolving this situation in a way which will allow justice to be done, our Governments are prepared, as an exceptional measure, to arrange for the two accused to be tried before a Scottish court sitting in the Netherlands. After close consultation with the Government of the Kingdom of the Netherlands, we are pleased to confirm that the Government of the Netherlands has agreed to facilitate arrangements for such a court. It would be a Scottish court and would follow normal Scots law and procedure in every respect, except for the replacement of the jury by a panel of three Scottish High Court judges. The Scottish rules of evidence and procedure, and all the guarantees of fair trial provided by the law of Scotland, would apply. Arrangements would be made for international observers to attend the trial. Attached is the text of the intended agreement between the Government of the Netherlands and the Government of the United Kingdom (annex I).



4. The two accused will have safe passage from the Libyan Arab Jamahiriya to the Netherlands for the purpose of the trial. While they are in the Netherlands for the purpose of the trial, we shall not seek their transfer to any jurisdiction other than the Scottish court sitting in the Netherlands. If found guilty, the two accused will serve their sentence in the United Kingdom. If acquitted, or in the event of the prosecution being discontinued by any process of law preventing any further trial under Scots law, the two accused will have safe passage back to the Libyan Arab Jamahiriya. Should other offences committed prior to arrival in the Netherlands come to light during the course of the trial, neither of the two accused nor any other person attending the court, including witnesses, will be liable for arrest for such offences while in the Netherlands for the purpose of the trial.

5. The two accused will enjoy the protection afforded by Scottish law. They will be able to choose Scottish solicitors and advocates to represent them at all stages of the proceedings. The proceedings will be interpreted into Arabic in the same way as a trial held in Scotland. The accused will be given proper medical attention. If they wish, they can be visited in custody by the international observers. The trial would of course be held in public, adequate provision being made for the media.

6. Our two Governments are prepared to support a further Security Council resolution for the purposes of the initiative (which would also suspend sanctions upon the appearance of the two accused in the Netherlands for the purpose of trial before the Scottish court) and which would require all States to cooperate to that end. Once that resolution is adopted, the Government of the United Kingdom will legislate to enable a Scottish court to hold a trial in the Netherlands. The necessary United Kingdom legislation has already been prepared and is attached (annex II).

7. This initiative represents a sincere attempt by the Governments of the United Kingdom and the United States to resolve this issue, and is an approach which has recently been endorsed by others, including the Organization of African Unity, the League of Arab States, the Movement of Non-Aligned States and the Organization of the Islamic Conference (S/1994/373, S/1995/834, S/1997/35, S/1997/273, S/1997/406, S/1997/497, S/1997/529). We are only willing to proceed in this exceptional way on the basis of the terms set out in the present letter (and its annexes), and provided that the Libyan Arab Jamahiriya cooperates fully by:

(a) Ensuring the timely appearance of the two accused in the Netherlands for trial before the Scottish court;

(b) Ensuring the production of evidence, including the presence of witnesses before the court;

(c) Complying fully with all the requirements of the Security Council resolutions.

8. We trust that the Libyan Arab Jamahiriya will respond promptly, positively and unequivocally by ensuring the timely appearance of the two accused in the Netherlands for trial before the Scottish court. If it does not do so, our two

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Governments reserve the right to propose further sanctions at the time of the next Security Council review. They also reserve the right to withdraw this initiative.

9. We have the honour to request that you convey the text of the present letter and its annexes to the Government of the Libyan Arab Jamahiriya. We would be grateful if you would agree to give the Libyan Arab Jamahiriya any assistance it might require with the physical arrangements for the transfer of the two accused directly to the Netherlands.

10. We request that the present letter be circulated as a document of the Security Council.

(Signed) S. J. GOMERSALL  
Ambassador Extraordinary  
and Plenipotentiary  
Acting Permanent Representative  
of the United Kingdom to the  
United Nations

(Signed) A. Peter BURLEIGH  
Ambassador Extraordinary  
and Plenipotentiary  
Acting Permanent Representative  
of the United States of America  
to the United Nations

**Exhibit 7**  
**(Declaration of Alistair J. Bonnington)**



**DOCUMENT 2.13**

*Following immediately upon the joint UK/US letter of 24 August 1998 (Document 2.12), the Security Council unanimously adopted Resolution 1192 (1998). The resolution welcomed the UK/US "initiative" and the Dutch willingness to cooperate in the proposed arrangements (para. 1); called upon the Dutch and UK Governments to take steps to implement the arrangements for a Scottish Court in the Netherlands (para. 2); and requested that the Secretary-General make arrangements for the transfer of the accused to the Netherlands (para. 6) and invited him to nominate observers for the trial (para. 7). The resolution, adopted under Chapter VII of the UN Charter, was legally binding, and all States, including Libya, were instructed to cooperate in the trial arrangements (para. 4). The Security Council reaffirmed para. 16 of Resolution 883 (1993) (Document 2.7) that the sanctions imposed on Libya by Resolutions 748 (1992) (Document 2.6) and 883 would be suspended immediately on notification from the Secretary-General that the two Libyans had arrived in the Netherlands for trial and that Libya had satisfied the French judicial authorities with respect to the UTA 772 bombing (para. 8).*

*This resolution became the international legal basis for the Lockerbie trial. Under its authority, the Netherlands and the UK finalized their agreement on the arrangements for the sitting of the Scottish Court (Document 2.14); the UK subordinate legislation governing the proceedings at the Scottish Court (Document 2.15) was expressly adopted under Resolution 1192; the Secretary-General made arrangements for the safe transfer of Megrahi and Fhimah to the Netherlands on 5 April 1999 under this resolution; the Secretary-General also appointed trial observers under this resolution; and sanctions were suspended, under para. 8 of the resolution, on the date of the surrender of Megrahi and Fhimah (see Documents 2.16 and 2.17).*

**SECURITY COUNCIL RESOLUTION 1192 (1998)**

Adopted by the Security Council at its 3920th meeting, 27 August 1998

*The Security Council,*

*Recalling its resolutions 731 (1992) of 21 January 1992, 748 (1992) of 31 March 1992 and 883 (1993) of 11 November 1993,*

*Noting the report of the independent experts appointed by the Secretary-General (S/1997/991)*

*Having regard to the contents of the letter dated 24 August 1998 from the Acting Permanent Representatives of the United Kingdom of Great Britain and Northern Ireland and of the United States of America to the Secretary-General [Document 2.12],*

*Noting also, in light of the above resolutions, the communications of the Organization of African Unity, the League of Arab States, the Non-Aligned Movement and the Islamic Conference (8/1994/373, S/1995/834, 8/1997/35, S/1997/273, S/1997/406, S/1997/497, S/1997/529) as referred to in the letter of 24 August 1998,*

*Acting under Chapter VII of the Charter of the United Nations,*

1. *Demands once again* that the Libyan Government immediately comply with the above-mentioned resolutions;
2. *Welcomes* the initiative for the trial of the two persons charged with the bombing of Pan Am flight 103 ("the two accused") before a Scottish court sitting in the Netherlands, as contained in the letter dated 24 August 1998 from the Acting Permanent Representatives of the United Kingdom of Great Britain and Northern Ireland and of the United States of America ("the initiative") and its attachments [Document 2.12], and the willingness of the Government of the Netherlands to cooperate in the implementation of the initiative;
3. *Calls upon* the Government of the Netherlands and the Government of the United Kingdom to take such steps as are necessary to implement the initiative, including the conclusion of arrangements with a view to enabling the court described in paragraph 2 to exercise jurisdiction in the terms of the intended Agreement between the two Governments, attached to the said letter of 24 August 1998;
4. *Decides* that all States shall cooperate to this end, and in particular that the Libyan Government shall ensure the appearance in the Netherlands of the two accused for the purpose of trial by the court described in paragraph 2, and that the Libyan Government shall ensure that any evidence or witnesses in Libya are, upon the request of the court, promptly made available at the court in the Netherlands for the purpose of the trial;
5. *Requests* the Secretary-General, after consultation with the Government of the Netherlands, to assist the Libyan Government with the physical arrangements for the safe transfer of the two accused from Libya direct to the Netherlands;
6. *Invites* the Secretary-General to nominate international observers to attend the trial;
7. *Decides further* that, on the arrival of the two accused in the Netherlands, the Government of the Netherlands shall detain the two accused pending their transfer for the purpose of trial before the court described in paragraph 2;
8. *Reaffirms* that the measures set forth in its resolutions 748 (1992) and 883 (1993) remain in effect and binding on all Member States, and in this context reaffirms the provisions of paragraph 16 of resolution 883 (1993), and *decides* that the aforementioned measures shall be suspended immediately if the Secretary-General reports to the Council that the two accused have arrived in the Netherlands for the purpose of trial before the court described in paragraph 2 or have appeared for trial before an appropriate court in the United Kingdom or the United States, and that the Libyan Government has satisfied the French judicial authorities with regard to the bombing of UTA 772;
9. *Expresses* its intention to consider additional measures if the two accused have not arrived or appeared for trial promptly in accordance with paragraph 8;
10. *Decides* to remain seized of the matter.

**Exhibit 8**  
**(Declaration of Alistair J. Bonnington)**

# Statutory Instrument 1998 No. 2251

## **The High Court of Justiciary (Proceedings in the Netherlands) (United Nations) Order 1998**

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STATUTORY INSTRUMENTS

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**1998 No. 2251****UNITED NATIONS****The High Court of Justiciary (Proceedings in the Netherlands) (United Nations) Order 1998**

<i>Made</i>	<i>16th September 1998</i>
<i>Laid before Parliament</i>	<i>17th September 1998</i>
<i>Coming into force</i>	<i>18th September 1998</i>

At the Court at Heathrow, the 16th day of September 1998

Present,

The Queen's Most Excellent Majesty in Council

Whereas under Article 41 of the Charter of the United Nations the Security Council of the United Nations has, by a resolution adopted on 27th August 1998, called upon Her Majesty's Government in the United Kingdom to take certain actions to facilitate the conducting of criminal proceedings under Scots law in the Netherlands:

Now therefore, Her Majesty, in exercise of the powers conferred on Her by section 1 of the United Nations Act 1946[1], is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered:-

**Citation and commencement**

1. This Order may be cited as the High Court of Justiciary (Proceedings in the Netherlands) (United Nations) Order 1998 and shall come into force on 18th September 1998.

**Interpretation**

2. - (1) In this Order, the following expressions have, except where otherwise expressly provided, the meanings hereby assigned to them, that is to say -

"the 1995 Act" means the Criminal Procedure (Scotland) Act 1995[2];

"Lord Commissioner of Justiciary" includes a person appointed under -

(a) section 22 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985[3] (re-employment of retired judges); or

(b) section 35(3) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990[4] (temporary judges);

"premises of the court" means any premises in the Netherlands made available by the Government of the Netherlands for the purposes of

proceedings conducted by virtue of this Order; and

"proceedings" includes anything which requires to be done or may be done in relation to proceedings by any person at any time.

(2) Expressions used in this Order and the 1995 Act have the meaning assigned to them by that Act.

### **Proceedings before High Court of Justiciary in the Netherlands**

3. - (1) For the purpose of conducting criminal proceedings on indictment against Abdelbaset Ali Mohamed Al Megrahi and Al Amin Khalifa Fhimah (in this Order referred to as "the accused") on the charges of conspiracy to murder, murder and contravention of the Aviation Security Act 1982[5] specified in the petition upon which warrant for arrest was issued by the Sheriff of South Strathclyde, Dumfries and Galloway on 13th November 1991, the High Court of Justiciary may, in accordance with the provisions of this Order, sit in the Netherlands.

(2) Except as provided for in this Order, proceedings before the High Court of Justiciary sitting in the Netherlands shall be conducted in accordance with the law relating to proceedings on indictment before the High Court of Justiciary in Scotland.

### **Initiation of proceedings conducted by virtue of this Order**

4. - (1) The Lord Advocate may give a notice under this article to the Lord Justice Clerk where it appears to him that both of the accused are present in the Netherlands.

(2) On receipt of a notice given by the Lord Advocate under paragraph (1) above the Lord Justice Clerk shall forthwith direct that, in respect of the proceedings against the accused and subject to articles 6 and 14 of this Order, the High Court of Justiciary shall sit in the Netherlands at the premises of the court.

(3) Without prejudice to paragraph (4) below, a notice given or a direction made under this article shall not be called in question otherwise than in the proceedings for which a court shall have been constituted under article 5 of this Order.

(4) Where the Lord Advocate withdraws a notice under paragraph (1) above by a further notice to the Lord Justice Clerk, the Lord Justice Clerk shall withdraw any direction he has made.

(5) Anything which the Lord Justice General requires, or has power, to do in relation to criminal proceedings shall, in relation to proceedings conducted by virtue of this Order, be done by the Lord Justice Clerk.

### **Constitution of court**

5. - (1) After he has made a direction under article 4 of this Order, the Lord Justice Clerk shall appoint three Lords Commissioners of Justiciary to constitute a court for the purposes of any trial to be held in the course of proceedings to be

conducted by virtue of this Order, and shall nominate one of them to preside.

(2) The determination of any question of law arising in any such trial shall be according to the votes of the majority of the members of the court, including the presiding judge.

(3) The court shall conduct any such trial without a jury.

(4) For the purposes of any such trial, the court shall have all the powers, authorities and jurisdiction which it would have had if it had been sitting with a jury in Scotland, including power to determine any question and to make any finding which would, apart from this article, be required to be determined or made by a jury, and references in any enactment or other rule of law to a jury or the verdict or finding of a jury shall be construed accordingly.

(5) At the conclusion of any such trial, the court shall retire to consider its verdict, which shall be determined by a majority and delivered in open court by the presiding judge.

(6) In the event of a verdict of guilty -

(a) the presiding judge shall pass sentence; and

(b) without prejudice to its power apart from this paragraph to give a judgment, the court shall, at the time of conviction or as soon as practicable thereafter, give a judgment in writing stating the reasons for the conviction.

(7) Any reference in any enactment or other rule of law to -

(a) the commencement of the trial; or

(b) the swearing of the jury,

shall be taken to be a reference to the reading of the indictment to the court by the clerk.

(8) In the application of section 87 of the 1995 Act (non-availability of judge) to such proceedings, any reference to the clerk of court includes a reference to the senior remaining judge.

#### **Questions arising prior to trial**

6. - (1) Questions arising in proceedings conducted by virtue of this Order prior to the reading of the indictment to the court by the clerk shall be dealt with in the ordinary way.

(2) Any such question shall be heard and determined at the premises of the court, unless the accused are not entitled, or have intimated that they do not wish, to be present, when it may be heard and determined at a sitting of the High Court of Justiciary in Edinburgh.

**Additional judge**

7. - (1) When he makes appointments under article 5 of this Order, the Lord Justice Clerk shall also appoint a Lord Commissioner of Justiciary (in this Article referred to as an "additional judge") to sit with the court.

(2) Subject to paragraph (3) below, the additional judge shall sit with the judges of the court, and shall participate in all their deliberations, but shall not vote in any decision which is required to be taken.

(3) Where one of the judges originally appointed to form part of the court -

(a) has died; or

(b) is absent, and it appears to the senior remaining judge that the absence will be prolonged,

the senior remaining judge shall so certify in writing, and the additional judge shall thereafter assume the functions of the deceased or absent judge.

**Constables and officers of law**

8. Anything which, under or by virtue of any enactment or other rule of law, requires to be done or may be done by a constable or officer of law in relation to criminal proceedings may, in relation to proceedings conducted by virtue of this Order, be done at the premises of the court.

**Execution of warrant**

9. For the purposes of any enactment or other rule of law relating to criminal proceedings in Scotland, the detention of the accused shall not begin prior to the execution of the warrant to arrest them at the premises of the court.

**Powers of sheriff**

10. Anything which, under or by virtue of any enactment or other rule of law, requires to be done or may be done by a sheriff in relation to criminal proceedings may, in relation to proceedings conducted by virtue of this Order, be done -

(a) by any sheriff who would have jurisdiction if the proceedings were taking place in Scotland; and

(b) at the premises of the court.

**Productions**

11. Productions shall be made available for inspection -

(a) by the accused, at the premises of the court; or

(b) by their representatives, at such address or addresses in the United Kingdom as may be intimated to the accused by the Clerk of Justiciary.

**Witnesses**

12. - (1) Witnesses in the United Kingdom who are cited to appear for the



purpose of proceedings being conducted by virtue of this Order may be cited to appear at the premises of the court.

(2) Any warrant for the arrest of a witness shall be authority for him to be transferred, under arrangements made in that regard by the Secretary of State, to the premises of the court.

(3) It shall be competent for witnesses who are outwith the United Kingdom to be cited to appear before the High Court of Justiciary sitting in the Netherlands in the same way as if the court had been sitting in Scotland and, accordingly, subsection (1)(b) of section 2 of the Criminal Justice (International Co-operation) Act 1990[6] (service of United Kingdom process overseas) shall have effect as if the reference to a court in the United Kingdom included the High Court of Justiciary sitting, by virtue of this Order, in the Netherlands.

#### **Offences committed in course of proceedings**

13. - (1) The High Court of Justiciary shall have jurisdiction in relation to any contempt of court or other offence committed in the course of, or in relation to, proceedings being conducted by virtue of this Order, whether at the premises of the court or elsewhere in the Netherlands.

(2) Where an offence in relation to which the High Court of Justiciary has jurisdiction by virtue of paragraph (1) above is not dealt with summarily by that court sitting in the Netherlands, it may be dealt with at a later date by way of petition and complaint or on indictment at a sitting of the High Court of Justiciary in Scotland.

#### **Appeals**

14. - (1) For the purpose of hearing any appeal (including any application to the *nobile officium*) in relation to any proceedings to which this Order applies, the High Court of Justiciary may sit either at the premises of the court or in Scotland; but where either of the accused is entitled to attend any such appeal and intimates that he wishes to do so, it shall be heard at the premises of the court.

(2) Where the appeal is from a decision of the court constituted under article 5 of this Order, the quorum of the High Court of Justiciary sitting for the purposes of paragraph (1) above shall be five Lords Commissioners of Justiciary.

(3) The Lords Commissioners of Justiciary who are to constitute the court for the purposes of paragraph (1) above shall be appointed by the Lord Justice Clerk.

#### **Place of confinement of accused**

15. - (1) Where a warrant for the arrest or imprisonment of the accused has been executed, they shall be confined in the premises of the court until the conclusion of proceedings conducted by virtue of this Order.

(2) Any enactment or other rule of law applying to prisons or prisoners in Scotland shall, subject to article 16 of this Order, apply in relation to the premises of the court and the persons confined there as if, in so far as they are used for that purpose, the premises were a prison in Scotland.

(3) Anything which, under or by virtue of any enactment or other rule of law, requires to be done or may be done by an officer of a prison may be done by such an officer at the premises of the court.

**Modification of enactments relating to prisons**

16. - (1) The following provisions of the Prisons (Scotland) Act 1989[7] shall not apply, namely -

section 3(2) (appointment of chaplains),

section 7 (powers of inspection of prisons),

section 8 (visiting committees),

section 9 (appointment of prison ministers),

sections 36 to 38 (provisions relating to acquisition and disposal of prisons and land),

sections 40 and 40A (persons unlawfully at large),

section 41 (prohibited articles), and

section 41A (search by authorised employee).

(2) Section 3A of that Act (medical services) shall have effect as if any reference to a registered medical practitioner included a reference to any person in the Netherlands holding any diploma, certificate or other evidence of formal qualification entitled to recognition under Article 2 of Council Directive 93/16 to facilitate the free movement of doctors and the mutual recognition of their diplomas, certificates and other evidence of formal qualifications[8].

(3) Section 34 of that Act (notification of death of prisoner) shall have effect as if -

(a) the reference to the procurator fiscal were a reference to the Lord Advocate; and

(b) the reference to the visiting committee were omitted.

(4) The following provisions of the Prisons and Young Offenders Institutions (Scotland) Rules 1994[9] shall not apply, namely -

(a) rules 36 to 38 (chaplains, visiting ministers and religious services);

(b) rule 71 (provision of work for remand prisoners);

(c) rules 104 to 110 (complaints);

(d) Part 13 (transfer and discharge of prisoners);

(e) Part 16 (visiting committees),

and, in applying the remainder of the Rules, the Governor may make such adaptations of the prisons regime as appear to him to be necessary, having regard to the circumstances of the premises of the court and of the persons confined there.

(5) Section 10 of the Prisons (Scotland) Act 1989 (place of confinement of prisoners) and Schedule 1 to the Crime (Sentences) Act 1997<sup>[10]</sup> (transfer of prisoners) shall not apply to the accused while they are confined in the premises of the court for the purpose of proceedings conducted by virtue of this Order.

#### **Powers of Lord Advocate and Secretary of State**

17. Without prejudice to any powers which he may have under any other enactment or other rule of law, the Lord Advocate or the Secretary of State may do anything, whether within or outwith the United Kingdom, which appears to him to be necessary or expedient for the purposes of this Order.

*N. H. Nicholls*

Clerk of the Privy Council

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#### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order, made under the United Nations Act 1946 pursuant to a resolution of the Security Council of the United Nations, makes provision for criminal proceedings against the two men accused of the destruction of Pan Am 103 over Lockerbie on 21st December 1988, including a trial before the High Court of Justiciary, to be conducted in the Netherlands.

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*Notes:*

[1] 1946 c. 45.[back](#)

[2] 1995 c. 46.[back](#)

[3] 1985 c. 73.[back](#)

[4] 1990 c. 40.[back](#)

[5] 1982 c. 36.[back](#)

[6] 1990 c. 5.[back](#)

[7] 1989 c. 45.[back](#)

[8] OJ L165, 7.7.1993, p. 1.[back](#)

[9] S.I. 1994/1931, as amended by S.I. 1996/32, 1197/2007 and 1998/1589.[back](#)

[10] 1997 c. 43.[back](#)

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*Prepared 30 September  
1998*

**Exhibit 9**  
**(Declaration of Alistair J. Bonnington)**

**DOCUMENT 3.4**

*During closing submissions by the Crown on 11 January 2001, the indictment against Megrahi and Fhimah (Document 1.5) was amended. The amendments abandoned the charge of conspiracy to murder (Charge 1) and the statutory offence under the Aviation Security Act 1982 (Charge 3), leaving murder as the sole charge against both accused; and also deleted any reference to Fhimah's association with the Libyan intelligence service (JSO). It was on the basis of this revised indictment that the Court reached a verdict in respect of both accused on 31 January 2001 (Document 3.4).*

**REVISED INDICTMENT**

ABDELBASET ALI MOHMED AL MEGRAHI, born 1 April 1952 and AL AMIN KHALIFA FHIMAH, born 1956 Prisoners in the Prison of Zeist, Camp Zeist (Kamp van Zeist), The Netherlands

you are Indicted at the instance of The Right Honourable THE LORD HARDIE, to Her Majesty's Advocate, and the charges against you are that

(1) [deleted]

(2) you ABDELBASET ALI MOHMED AL MEGRAHI being a member of the Libyan Intelligence Services, and in particular being the head of security of Libyan Arab Airlines and thereafter Director of the Centre for Strategic Studies, Tripoli, Libya and you AL AMIN KHALIFA FHIMAH being the Station Manager and formerly the Station Manager of Libyan Arab Airlines in Malta and having, while acting in concert with others, formed a criminal purpose to destroy a civil passenger aircraft and murder the occupants in furtherance of the purposes of said Libyan Intelligence Services and having between 1 January 1985 and 21 December 1988, both dates inclusive, within the offices of Libyan Arab Airlines at Luqa Airport, Malta and elsewhere in Malta in your possession and under your control quantities of high performance plastic explosive and airline luggage tags while acting in concert together and with others

(a) [deleted]

(b) you ABDELBASET ALI MOHMED AL MEGRAHI and AL AMIN KHALIFA FHIMAH did between 20 November and 20 December 1988, both dates inclusive, at the premises occupied by the firm of MEBO AG, at the Novapark Hotel, Zurich, Switzerland, at the premises occupied by you ABDELBASET ALI MOHMED AL MEGRAHI and by the said Libyan Intelligence Services, in Tripoli aforesaid, and elsewhere in Switzerland and Libya, through the hands of Ezzadin Hinshiri and Badri Hassan, both also members of the Libyan Intelligence Services order and attempt to obtain delivery from the said firm of MEBO AG of forty timers capable of detonating explosive devices and of a type previously sup-

plied by the said firm of MEBO AG to members of the Libyan Intelligence Services;

(c) you ABDELBASET ALI MOHMED AL MEGRAHI and AL AMIN KHALIFA FHIMAH did between 1 and 21 December 1988, both dates inclusive, at Luqa Airport, Malta without authority remove therefrom airline luggage tags;

(d) you ABDELBASET ALI MOHMED AL MEGRAHI did on 7 December 1988 in the shop premises known as Mary's House at Tower Road, Sliema, Malta purchase a quantity of clothing and an umbrella:

(e) you ABDELBASET ALI MOHMED AL MEGRAHI and AL AMIN KHALIFA FHIMAH did on 20 December 1988 at Luqa Airport, Malta enter Malta while you ABDELBASET ALI MOHMED AL MEGRAHI were using a passport in the false name of Ahmed Khalifa Abdusamad and you ABDELBASET ALI MOHMED AL MEGRAHI and AL AMIN KHALIFA FHIMAH did there and then cause a suitcase to be introduced to Malta;

(f) you ABDELBASET ALI MOHMED AL MEGRAHI did on 20 and 21 December 1988 reside at the Holiday Inn, Tigne Street, Sliema, aforesaid using the false identity of Ahmed Khalifa Abdusamad;

(g) you ABDELBASET ALI MOHMED AL MEGRAHI and AL AMIN KHALIFA FHIMAH did on 21 December 1988 at Luqa Airport, aforesaid place or cause to be placed on board an aircraft of Air Malta flight KM180 to Frankfurt am Main Airport, Federal Republic of Germany said suitcase, or a similar suitcase, containing said clothing and umbrella and an improvised explosive device containing high performance plastic explosive concealed within a Toshiba RT SF 16 "Bombeat" radio cassette recorder and programmed to be detonated by one of said electronic timers, having tagged or caused such suitcase to be tagged so as to be carried by aircraft from Frankfurt am Main Airport aforesaid via London, Heathrow Airport to New York, John F Kennedy Airport, United States of America; and

(h) you ABDELBASET ALI MOHMED AL MEGRAHI did on 21 December 1988 depart from Malta and travel from there to Tripoli, Libya using a passport in the false name of Ahmed Khalifa Abdusamad, while travelling with Mohammed Abouagela Masud, also a member of the Libyan Intelligence Services.

and such suitcase was thus carried to Frankfurt am Main Airport aforesaid and there placed on board an aircraft of Pan American World Airways flight PA103 and carried to London, Heathrow Airport aforesaid and there, in turn, placed board an aircraft of Pan American World Airways flight PA103 to New York, John F Kennedy Airport aforesaid;

and said improvised explosive device detonated and exploded on board said aircraft flight PA103 while in flight near to Lockerbie, Scotland whereby the aircraft was destroyed and the wreckage crashed to the ground and the 259 passengers and crew named in Schedule 1 hereof and the 11 residents of Lockerbie aforesaid named in Schedule 2 hereof were killed and you did murder them:

and it will be shown that between 1 January 1985 and 21 December 1988, both dates inclusive, in Tripoli, Libya, at Dakar Airport, Senegal, in Malta and elsewhere the said Libyan Intelligence Services were in possession of said electronic timers, quantities of high performance plastic explosive, detonators and other components of improvised explosive devices and Toshiba RT SF 16 "Bombeat" radio cassette recorders, all for issue to and use by their members. including Mohammed El Marzouk and Mansour Omran Ammar Saber.

(3) [deleted]



**Exhibit 10**  
**(Declaration of Alistair J. Bonnington)**

## DOCUMENT 3.8

*Following Megrahi's conviction and sentence on 31 January 2001 (Document 3.5), his legal team intimated notice of his intention to appeal on 7 February 2001 (under S. 109(1) of the Criminal Procedure (Scotland) Act 1995). Having six weeks to then lodge his grounds of appeal (S. 110(1)(a) of the 1995 Act), the legal team sought and was granted extensions on 19 March and 2 May 2001 (under S. 111(2) of the 1995 Act). On 8 June 2001, the Note of Appeal, containing the grounds of appeal, was lodged; and on 23 August 2001, leave to appeal under S. 107 of the 1995 Act was granted, the "sifting" judge clearly being satisfied that there were arguable grounds of appeal. In terms of S. 106(3) of the 1995 Act, "... a person may bring under review of the High Court any alleged miscarriage of justice, which may include such a miscarriage based on—(a) . . . , the existence and significance of additional evidence which was not heard at the original proceedings; and (b) the jury's having returned a verdict which no reasonable jury, properly instructed, could have returned." While the term "miscarriage of justice" is nowhere defined in the legislation, it is generally accepted that it includes an error in law, including a misdirection by the judge, and a procedural irregularity at the trial.*

*The grounds of appeal, which have to be read with the Lockerbie Verdict (Document 3.6), focus on misdirection of the fact-finders, particularly in inferences drawn from accepted testimony, and on new evidence. The grounds of appeal and the submissions on behalf of Megrahi at the hearing of the appeal do not rely on the "unsafe verdict" provision of S. 106(3)(b) of the 1995 Act, as is confirmed in the judgment of the Appeal Court (Document 3.10), paras. 5 and 369.*

*The Note of Appeal alleges that the trial court erred in fixing the date of purchase of items of clothing from Mary's House, Sliema, Malta, as 7 December 1988 (Ground A.1) and in its reliance on Tony Gauci's identification evidence (Ground A.2-6); misdirected itself in inferring that an unaccompanied bag was transferred to Pan Am 103A at Frankfurt (Ground B1-11); erred in its inference from Megrahi's association with Edwin Bollier (Ground E); erred in its inference on Mehrahi's use of the "Abdusamad" passport (Ground F); and erred in ignoring an alternative explanation for Megrahi's visit to Malta on 20-21 December 1988 (Ground D).*

## NOTE OF APPEAL

Under the Criminal Procedure (Scotland) Act 1995

To: Clerk of Justiciary

Name of Convicted Person: Abdelbaset Ali Mohamed Al Megrahi

Date of Birth: 1st April 1952

Prisoner in the prison of: Zeist, Camp Zeist (Kamp van Zeist), The Netherlands

Date of final determination of the proceedings: 31st January 2001

Crime or Offence to which the appeal relates: Murder

Court and names of judges: High Court of Justiciary in the Netherlands: Lords Sutherland, Coulsfield and MacLean.

Sentence: Life Imprisonment

The above named convicted person appeals against conviction on the following grounds:

It is contended that there has been a miscarriage of justice for the following reasons:

Al. The court erred in finding that the date of the purchase of the clothes from the shop at Mary's House, 63 Tower Road, Sliema, Malta was 7th December 1988.

a. The court misconstrued the terms of the joint minute read on day 31 as agreeing that "whichever football match or matches Paul Gauci had watched would have been broadcast by Italian Radio Television either on 23 November 1988 or 7 December 1988" (opinion para 64). That Minute only agreed that football was broadcast by Italian Radio Television at certain times on those dates. There was no basis on the evidence for inferring that these were the only matches broadcast on television in Malta between the relevant dates of 18 November and 20 December 1988. There was no evidence from which it could be inferred that Paul Gauci had watched football on television only on one or other of those dates. Paul Gauci (Crown witness number 596) did not give evidence and the only evidence that he may have been watching football on the day of the purchase came as hearsay from his brother Anthony Gauci.

b. There was no proper basis on the evidence for the finding at para 67 of the opinion that the date of purchase of the clothes was either 23 November or 7 December 1988.

c. The court accordingly erred in approaching the question of the date of purchase as a choice between only 23 November and 7 December 1988.

d (i). The court failed to take proper account of the nature of the rainfall about which Major Mifsud gave evidence when he said there was a 10% chance of rain at Sliema between 6.30pm and 7pm on 7th December 1988. Such evidence was inconsistent with Gauci's description of rainfall on the date of purchase which, he said, made the ground damp.

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d (ii). The court failed to have proper regard to the finding that the weather on 23rd November would have been wholly consistent with a light shower between 6.30pm and 7pm.

e. In relying on Gauci's evidence that the purchase was about the time that the Christmas decorations went up in Sliema, the court ignored or failed to have proper regard to the following factors:

i. that Gauci gave conflicting evidence as to whether the decorations were up or being put up at the time of the purchase.

ii. that in statements given to the police in September 1989 and September 1990 he had said that the decorations were not up at the date of purchase.

iii. that there was no evidence apart from a prior statement from Gauci as to when Christmas decorations were put up in Sliema.

iv. the confusion in Gauci's evidence as to whether the Christmas decorations related to the date of purchase or to occasions when he had been interviewed by the police.

f. In narrating the evidence of Gauci in para. 12 the court failed to take account of the fact that the terms of his prior statements demonstrated that he had not told the police in September 1989 that the sale had occurred about a fortnight before Christmas or that the Christmas lights were just being put up.

g. In relying on Gauci's evidence that the purchase was about two weeks before Christmas, the court ignored or failed to have proper regard to the following factors:

i. Gauci's evidence that he had no recollection of the day or date of purchase.

ii. his evidence that his recollection had been better when he had given statements to the police.

iii. the terms of those statements when he said on 1st September 1989 that the purchase had taken place in the winter of 1988 and 10th September 1990 when he said 'at the end of November' 1988.

iv. the evidence of the weather on 23rd November and 7th December 1988 which clearly favoured the former date.

h. The court erred in dismissing a defence submission (at paras 64 and 67) that it should have regard to evidence that Thursday 8th December 1988 was a public holiday when all shops in Sliema would have been closed. That evidence whether viewed in isolation or together with the evidence of Mr. Gauci that the purchase occurred midweek, by which he meant that his shop would have been open

the day after, was available for consideration and should not have been ignored.

i. The court erred in dismissing a defence submission that it should have regard to the fact that eight pairs of pyjamas were ordered by Gauci on 25th November 1988 as raising an inference that the purchase of clothing, including pyjamas, had taken place prior to that date (para 66). That evidence was available for consideration by the court and the ability of the court to draw inferences from it did not depend on Gauci being asked about the sequence of events or the state of his stock on 7th December 1988.

A2. The court concluded that Gauci's evidence of identification by resemblance was reliable "as far as it went" (para 69). In reaching that conclusion the court failed to have proper regard or to give proper weight to the following considerations:

i. the aspects of Gauci's initial description of the purchaser and his identification of a picture of Abo Talb and Mohamed Salem as resembling the purchaser which were inconsistent with the appellant being that person.

ii. the features in Gauci's evidence and previous statements which were consistent with the purchaser being substantially older than the appellant in 1988.

iii. that in picking out a photograph of the appellant in February 1991 (production 436) he was doing so 26 months after the purchase and that he qualified the identification by saying that the man in the photo would have to be ten years or more older to look like the purchaser.

iv. the difference in quality of the photograph of the appellant in production 436 from that of the other photographs.

v. that in picking out the appellant in court no explanation was advanced as to whether Gauci was making any allowance for the passage of 12 years since the purchase of clothes or whether the appellant, then aged 48, resembled the clothes buyer as he was in 1988.

A3. While the court noted at para. 55 the defence submissions on the prejudicial effect of pre-trial publicity, it failed to deal with those submissions and, in particular, failed to indicate whether those considerations affected the value to be attached to the identifications at Identification Parade and in court.

A4. The court failed to advance adequate reasons for preferring Gauci's identification of the appellant by resemblance of a photo, at identification parade and in court to earlier descriptions of the purchaser which did not match the appellant.

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A5. The court failed to deal with and resolve the contradictions and inconsistencies in the evidence of Gauci regarding the date of the purchase and the identity of the purchaser.

A6. The evidence of identification was not of such character, quality or strength to justify a finding that the appellant was the clothes buyer. The court failed properly to take account of the significant body of evidence referred to above which pointed away from 7th December 1988 as the date of purchase. It failed to have proper regard to the factors which undermined evidence consistent with that date. The misinterpretation of the joint minute led the court into error on the issue of identification.

B1. The court misdirected itself as to the accuracy of the records from Frankfurt Airport from which it found that an inference could be drawn that an unaccompanied bag travelled on KM 180 from Luqa airport to Frankfurt and was there loaded onto PA103A.

a. The court misdirected itself as to the application of a presumption of accuracy in respect of records from Frankfurt airport (para 32). No such presumption was applicable in this case. In any event, the daily resetting of the computer clock did not eliminate inaccuracy and the employees filling out the worksheets did not have an interest in accurate time recording.

b. no such presumption could be applied to coders worksheets (production 1061) in circumstances where portions thereof were illegible and where there was evidence that the times shown on those records could have been taken from a variety of sources and the author of the entries of relevance was not called as a witness to explain them or the practice he followed at work. Nor could it be applied to the computer print out (production 1060) since the evidence was that the time shown therein was prone to inaccuracy.

c. any such presumption was in any event rebutted by evidence that the system of compiling records was liable to inaccuracy and that the records were themselves inaccurate in a number of respects.

d. the court misinterpreted, ignored or gave insufficient weight to the evidence undermining the accuracy of records of Frankfurt airport in respect that:

i. the evidence of Koscha did not account for one and a half missing wagons of baggage (para 33). Nor did that evidence explain an absence of any record of the encoding of those wagons.

ii. the court misinterpreted the evidence of Schreiner as to the time of the completion of coding on production 1061 at para 29.

iii. the court failed to have proper regard to the inaccuracy in respect of time of the computer print-out and the inaccuracy of the coders worksheets.

iv. the court misdirected itself in respect of the evidence of Whittaker at para 34 by requiring certainty from that witness that no record was made of the encoding of a suitcase which he had witnessed.

B2. The court erred in concluding in para 35 that none of the defence submissions cast doubt on the inference from the Frankfurt documents and other evidence that an unaccompanied bag was transferred from KM180 to PA103A in respect that:

i. the court failed to have proper regard to the inaccuracy of the computer record production 1060 combined with the potential inaccuracy of the times recorded in the coders worksheets production 1061 (para 32).

ii. the court failed to have proper regard to the evidence of Whittaker who described a single suitcase being encoded without seeing a record being made (para 34).

iii. the court failed to have proper regard to the finding that the evidence seemed to demonstrate that baggage from more than one flight might have been encoded at the same station at the same time (para 33).

iv. the court misinterpreted the evidence of Koscha in concluding that it accounted for the missing one and a half wagons of baggage (para 33).

v. the court failed to take account of the defence submissions (day 81 9715/6 and 9719/20) as to the effect of the evidence of Candar who indicated that he would as a matter of practice be prepared to encode a case for a colleague without knowing where it came from.

B3. The court misinterpreted the evidence of Kasteleiner at para 31 as indicating that it could be taken from the documents that no baggage was left at the gate. The court proceeded erroneously to draw an inference therefrom that all items sent there were loaded onto PA103A.

B4. The documents and other evidence from Frankfurt, properly construed, were not of sufficient strength, quality or character to enable the court to conclude that an unaccompanied bag from KM 180 was transferred to and loaded onto PA103A standing the finding that it was 'extremely difficult' for such a bag to be shipped on a flight from Luqa, the fact that the documentation from KM 180 discounted any unaccompanied bag on that flight and the Crown's failure to advance a method of infiltration of such a bag at Luqa.

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B5. The court erred in para 82 in having regard to collateral issues in concluding that the primary suitcase was dispatched from Malta in respect that it took into account that the purchaser of the clothes was Libyan and that the trigger for the explosion was an MST-13 timer.

B6. In dealing with the x-ray procedure at Frankfurt, the court ignored material parts of the evidence of Maier's previous statements to the effect that he could say that there 'was no explosives in the bags for flight 103'; ignored the evidence of Koch that staff would have been able to recognise a radio cassette going through the x-ray machine; misinterpreted the evidence of FAA investigators when it found that they viewed the standard of training for Alert employees to be poor; and failed to deal with the defence submission that the x-ray procedure would have acted as a deterrent to a terrorist wanting to send a bomb from Malta to London.

B7. The court failed to have proper regard to the evidence of unaccompanied bags. In para 33 the court misunderstood the defence submission regarding baggage carried on PA103A additional to that shown on production 1060. The submission was that 21 online items of baggage from Berlin fell to be added to the total of 111 shown on production 1060 making 132 whereas only 118 items were shown on production 199, the passenger list, which did include the online baggage from Berlin. The explanation for the difference of 14 was that these items were or could be unaccompanied baggage. Further, the court failed to deal with the evidence relating to the unaccompanied bag from Warsaw in para 33. The existence of unaccompanied baggage on PA103A was a material factor of which the court failed properly to take account.

B8. The court failed properly to take account of the defence submissions as to the factors which would have deterred a terrorist from attempting to ingest a bomb bag at Luqa.

B9. The court misdirected itself in para 25 by finding that the suitcase described by Bedford 'might have been placed at some more remote corner of the container'. There was no evidence that more than one case matching the description of the primary suitcase was present in container AVE 4041 or recovered at Lockerbie. The case described by Bedford was one of not more than ten. It was for the Crown to lead evidence to demonstrate the existence of a bag which matched that described by Bedford additional to the primary case. It did not do so. Without such evidence the court were not entitled to speculate. In doing so the court erred in dismissing the significance of the suitcase described by Bedford as being the primary suitcase.

B10. The court failed to take account of the defence submission that the fact that the primary suitcase was located at or near to the optimum posi-



tion to achieve its destructive purpose gave rise to an inference that the device was ingested at Heathrow airport.

B11. There exists significant evidence which was not heard at the trial. Reference is made to the following documents copies of which are appended hereto . . .

Said evidence is significant as it demonstrates that at some time in the 2 hours before 1235 am on 21 December 1988 a padlock had been forced on a secure door giving access to airside in Terminal 3 of Heathrow Airport, near to the area referred to in the trial as 'the baggage build up area'. Had said evidence been available at the trial it would have supported the body of evidence suggestive of the bomb having been infiltrated at Heathrow on which the defence founded.

There is a reasonable explanation as to why said evidence was not heard at the trial. The existence of said witnesses and evidence was unknown to the appellant's advisers who had no reason to think that this evidence might exist.

C. The court erred in failing to deal with defence submissions as to the effect on the Crown case of the Crown's failure to call witnesses Paul Gauci, Koca and Tuzcu (day 81/9725 to 9728 and 9741 and day 82/9893).

D. The court erred in ignoring the explanation advanced for the appellant's visit to Malta on 20th and 21st December 1988 and the evidence of the behaviour of the appellant inconsistent with terrorist activity at that time (para 88). That explanation and evidence was set out in the submissions for the appellant on day 83 pages 10043.21-10061.2.

E. The court erred in treating evidence of association with the witness Bollier and apparent involvement in military procurement as supportive of a finding of guilt (para 88 and 89).

F. In determining in para. 87 in relation to the Abdusamad passport that 'there was no evidence as to why this passport was issued to him' the court failed to take account of the defence submission that there was an inference to be drawn from the evidence of the witness Gharour which offered such an explanation.