What follows is an article on the establishment of the Camp Zeist Trial. It was previously published in a Maltese book edited by Joe Mifsud - *Lockerbie: Qabel il Verdett* (Before the Verdict), released in 2000 (ISBN 99932-612-0-3). It has been only slightly updated.

FROM LOCKERBIE TO ZEIST
(via Tripoli, Tunis and Cairo)

by

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"Call the diet: Her Majesty's Advocate against Abdelbaset Ali Mohmed al-Megrahi and Al Amin Khalifa Fhima."

It was with those words that on Wednesday 3 May 2000 the long-delayed Lockerbie trial opened in the High Court of Justiciary sitting at Kamp van Zeist near Utrecht in the Netherlands. There were those who predicted that this trial would never take place and there were those who worked tirelessly, but ultimately unsuccessfully, to try to ensure that it would not. My purpose in this paper is to give you an account of my part in attempting to secure, over some rather powerful opposition, that there would in fact be a trial.

The Event

On Wednesday, 21 December 1988 at 7:03 pm GMT a Boeing 747 airliner owned and operated by Pan American World Airlines and cruising at 31,000 feet exploded above the small town of Lockerbie. Pan Am Flight 103 had taken off from London Heathrow some 38 minutes before and was en route to JFK Airport in New York. Aboard the aircraft were 243 passengers and a crew of sixteen. None survived. The vast majority of those on board were United States citizens, but other nationalities represented included British, French, Israeli, Hungarian, Canadian, German, Spanish, Belgian and Norwegian. Although the disaster occurred only four days before Christmas

(...) this particular aircraft was more than one-third empty, only 243 out of 412 seats being occupied.

Debris from the explosion completely demolished three houses in Sherwood Crescent, a small street of privately owned detached houses, and eleven townspeople were killed instantly.

The Investigation

Within a week it had become apparent to the joint team of British and American investigators that this had been no accident and that the cause of the destruction of the aircraft had been a bomb. There then followed the most extensive criminal investigation ever conducted in Scotland -- or, it seems probable, anywhere else -- into an act of terrorism. The investigation was under the control of the Dumfries and Galloway police -- the smallest force in Scotland. Also closely involved in the investigation were other United Kingdom police forces and personnel from the British, United States, and west German intelligence services.

Around and to the south of Lockerbie some 845 square miles of land were combed for debris. Over a period of several years more than 15,000 people were questioned; information and evidence were sought in more than 30 different countries. (...)

In mid-1990 it was reported (in the *Washington Post* and the London *Times* among other places) that sources within the US Central Intelligence Agency were indicating that the evidence pointed towards the atrocity's having been committed by Ahmed Jibril's Syrian-backed Popular Front for the Liberation of Palestine-General Command (PFLP-GC). The theory was that this group had been commissioned and paid by Ayatollah Khomeini to destroy an American airliner in revenge for the American warship *Vincennes* shooting

down in the Persian Gulf an Iranian Airbus containing pilgrims to Mecca on 3 July 1988 resulting in the death of all 290 people on board.

Libya Enters the Frame

It will therefore be appreciated that it came a something of a surprise when on 14 November 1991 the prosecution authorities in Scotland and the United States simultaneously announced that they had brought criminal charges against two named Libyan nationals who were alleged to be members, and to have been acting throughout as agents, of the Libyan intelligence service.

According to the Scottish and American prosecutors, what had happened was this. The two Libyans had manufactured a bomb using a Toshiba cassette recorder, Semtex explosive and a digital electric timer (supplied and manufactured by a Swiss company, MeBo AG). The device had been placed in a brown Samsonite suitcase in Malta, along with items of clothing purchased for the purpose from a particular shop (Mary's House) in Sliema. Using stolen Air Malta luggage tags, the Libyans (one of whom had occupied the post of station manager for Libyan Arab Airlines in Malta) introduced the suitcase into Luqa airport's inter-line baggage system as unaccompanied luggage on Air Malta Flight KM 180 from Malta to Frankfurt, with directions for its onward transmission (first) on to a feeder flight (PA 103A) to Heathrow and (second) on to Pan Am Flight 103 from Heathrow to JFK in New York.

On 27 November 1991 the governments of the United Kingdom and the United States each issued a statement calling upon the Libyan government to hand over the two accused to either the Scottish or the American authorities for trial. Requests for their extradition were transmitted to the government of Libya through diplomatic channels. No extradition treaties are in force between Libya on the one hand and United Kingdom and the United States on the other.

Libyan internal law, in common with the laws of many countries in the world, does not permit the extradition of its own nationals for trial overseas. The government of Libya accordingly contended that the affair should be resolved through the application of the provisions of a 1971 civil aviation Convention concluded in Montreal to which all three relevant governments are signatories. That Convention provides that a state in whose territory persons accused of terrorist offences against aircraft are resident has a choice *aut dedere aut judicare*, either to hand over the accused for trial in the courts of the state bringing the accusation or to take the necessary steps to have the accused brought to trial in its own domestic courts. In purported compliance with the second of these options, the Libyan authorities arrested the two accused and appointed a Supreme Court judge as examining magistrate to consider the evidence and prepare the case against them. Not surprisingly, perhaps, the UK and US governments refused to make available to the examining magistrate the evidence that they claimed to have amassed against the accused, who remained under house arrest until they were eventually handed over in April 1999 for trial at Kamp van Zeist.

The United Nations

The United Nations Security Council (of which the UK and the USA are, of course, permanent members) first became involved in the Lockerbie affair on 21 January 1992 when it passed Resolution 731 strongly deploring the government of Libya's lack of co-operation in the matter and urging it to respond to the British and American requests contained in their statements of 27 November 1991. This was followed by Security Council Resolution 748 (31 March 1992) *requiring* Libya to comply with the requests within a stipulated period of time, failing which a list of sanctions specified in the Resolution would be imposed. Compliance was not forthcoming and sanctions (including trade and air transport embargos) duly came into effect in April 1992. The range and application of these sanctions was extended by a further Resolution passed on 11 November 1993. The imposition of

sanctions under these last two Resolutions was justified by the Security Council by reference to Chapter 7 of the Charter of the United Nations on the basis that Libya's failure to extradite the accused constituted a threat to world peace.

An Attempt to Resolve the Impasse

I first became involved in the Lockerbie affair in early 1993. I was approached by representatives of a group of British businessmen whose desire to participate in major engineering works in Libya was being impeded by the UN sanctions. They asked if I would be prepared to provide (on an unpaid basis) independent advice to the government of Libya on matters of Scottish criminal law, procedure and evidence with a view (it was hoped) to persuading them that their two citizens would obtain a fair trial if they were to surrender themselves to the Scottish authorities. This I agreed to do, and submitted material setting out the essentials of Scottish solemn criminal procedure and the various protections embodied in it for accused persons.

In the light of this material, it was indicated to me that the Libyan government was satisfied regarding the fairness of a criminal trial in Scotland but that since Libyan law prevented the extradition of nationals for trial overseas, the ultimate decision on surrender for trial would have to be one taken voluntarily by the accused persons themselves, in consultation with their independent legal advisers. For this purpose a meeting was convened in Tripoli in October 1993 of the international team of lawyers which had already been appointed to represent the accused. This team consisted of lawyers from Scotland, England, Malta, Switzerland and the United States and was chaired by the principal Libyan lawyer for the accused, Dr Ibrahim Legwell. The Libyan government asked me to be present in Tripoli while the team was meeting so that the government itself would have access to independent Scottish legal advice should the need arise. However, the Libyan government expectation was clearly that the

outcome of the meeting of the defence team would be a decision by the two accused voluntarily to agree to stand trial in Scotland.

I am able personally to testify to how much of a surprise and embarrassment it was to the Libyan government when the outcome of the meeting of the defence team was an announcement that the accused were not prepared to surrender themselves for trial in Scotland. In the course of a private meeting that I had a day later with Dr Legwell, he explained to me that the primary reason for the unwillingness of the accused to stand trial in Scotland was their belief that, because of unprecedented pre-trial publicity over the years, a Scottish jury could not possibly bring to their consideration of the evidence in this case the degree of impartiality and open-mindedness that accused persons are entitled to expect and that a fair trial demands. A secondary consideration was the issue of the physical security of the accused if the trial were to be held in Scotland. Not that it was being contended that ravening mobs of enraged Scottish citizens would storm Barlinnie prison, seize the accused and string them up from the nearest lamp posts. Rather, the fear was that they might be snatched by special forces of the United States, removed to America and put on trial there (or, like Lee Harvey Oswald, suffer an unfortunate accident before being put on trial).

The Libyan government attitude remained, as it always had been, that they had no constitutional authority to hand their citizens over to the Scottish authorities for trial. The question of voluntary surrender for trial was one for the accused and their legal advisers, and while the Libyan government would place no obstacles in the path of, and indeed would welcome, such a course of action, there was nothing that it could lawfully do to achieve it.

An Innocent Abroad

My journeys to and from Tripoli in October 1993 were interesting. Because of UN sanctions, air travel to Tripoli was out of the question. The normal procedure at that time was to fly from Europe to the nearest Tunisian airport

on the holiday island of Djerba and then travel by car along the coast road to Tripoli, a frightening five-hour journey at the best of times but especially so when being driven at breakneck speed in a Libyan government black Mercedes whose driver clearly regarded it as the duty of every other road user to get out of the path of his vehicle and refused to concede even the possibility that any road user, Tunisian or Libyan, might fail to do so.

On my return journey I was unable to get a flight from Djerba to any European airport and so took an internal flight from Djerba to Tunis in the naive belief that flights to European destinations would be more frequent from the Tunisian capital. On arrival in Tunis at 5pm I discovered that there were no further flights to any European destination that day. I made a booking for an early flight to London the following morning and proceeded to try to find accommodation for the night. It was only then that I discovered that a meeting of the Council of the PLO was taking place in Tunis and that there was accordingly not a single room to be had in any of the major hotels in the city. Eventually, however, my taxi driver indicated that he had a friend who ran a small hotel and that he was sure that I would be able to find accommodation there. He was indeed correct, though I suspect that I am the only guest in the history of the establishment who has ever paid for a room there other than by the hour.

The Neutral Venue Proposal

Having mulled over the concerns expressed to me by Dr Legwell in October 1993, I returned to Tripoli and on 10 January 1994 presented a letter to him suggesting a means of resolving the impasse created by the insistence of the governments of the United Kingdom and United States that the accused be surrendered for trial in Scotland or America and the adamant refusal of the accused to submit themselves for trial by jury in either of these countries. This was a detailed proposal, but in essence its principal elements were: that a trial be held outside Scotland, ideally in the Netherlands, in which the governing law and procedure would be that followed in Scottish criminal

trials on indictment but with this major alteration, namely that the jury of 15 persons which is a feature of that procedure be replaced by a panel of judges who would have the responsibility of deciding not only questions of law but also the ultimate question of whether the guilt of the accused had been established on the evidence beyond reasonable doubt.

In a letter to me dated 12 January 1994, Dr Legwell stated that he had consulted his clients, that this scheme was wholly acceptable to them and that if it were implemented by the government of the United Kingdom the suspects would voluntarily surrender themselves for trial before a tribunal so constituted. By a letter of the same date the Deputy Foreign Minister of Libya stated that his government approved of the proposal and would place no obstacles in the path of its two citizens should they elect to submit to trial under this scheme.

The UK Government's Initial Attitude

On my return to the United Kingdom I submitted the relevant documents to the Foreign Office in London and the Crown Office (the headquarters of the Scottish prosecution service) in Edinburgh. Their immediate response was that this scheme was impossible, impracticable and inherently undesirable, with the clear implication that Professor Black had taken leave of what few senses nature had endowed him with. That remained the attitude of successive Lord Advocates and Foreign Secretaries for four years and seven months. During this period the British government's stance remained consistent: United Nations Security Council Resolutions placed upon the government of Libya a binding international legal obligation to hand over the accused for trial to the UK or the US authorities. Nothing else would do. If Libyan law did not currently permit the extradition of its own nationals to stand trial overseas, then Libya should simply alter its law (and, if necessary, its Constitution) to enable it to fulfil its international duty.

Over the years British government sources put forward six specific objections to my proposal. There was no merit in any of these objections, as I think I have conclusively demonstrated in an article published in November 1997: see "The Lockerbie Proposal" 1997 Scots Law Times (News) 304.

Delay

For almost five years successive governments of the United Kingdom (of both old Conservative and New Labour political persuasions) consistently and fervently maintained that the "neutral venue" scheme which I had proposed and which had been accepted by the Libyan government and defence lawyers in January 1994, was totally and absolutely unsatisfactory and could provide no resolution to the Lockerbie impasse. For a flavour of the vehemence of government opposition to the scheme, as recently as early 1998, reference may be made to the article by the then Lord Advocate, Lord Hardie "The Lockerbie Trial" 1998 Scots Law Times (News) 9, to the statement made in the UN Security Council on 20 March 1998 by the UK Permanent Representative, Sir John Weston (see www.britain-info.org/bistext/ukmis/speeches/20mar98.stm) and to the statement in the House of Commons on 29 April 1998 by Foreign Office Minister Derek Fatchett (see HC Hansard, 29/04/1998, cols 299-302).

President Nelson Mandela of South Africa expressed his strong support for the proposal during his attendance at the Commonwealth Heads of Government Conference in Edinburgh in October 1997. But that seemed to cut no ice with Robin Cook, the new Foreign Secretary who, admittedly, probably had other more personal matters on his mind at the time.

Not surprisingly, Libyan patience at the refusal of the United Kingdom and the United States even to contemplate the "neutral venue" solution eventually began to wear thin.

In April 1998 Dr Jim Swire (the spokesman for the relatives group *UK Families Flight 103*) and I had a meeting in Cairo with the Secretary-General of the League of Arab Nations, Dr Esmet Abdul Majid, and were informed that in the light of more than four years of British and American intransigence the Libyans were seriously considering announcing withdrawal of their support for the proposal. It was suggested to us by Dr Majid that it might be appropriate for us, if we wished to avoid this outcome, to make yet another trip to Tripoli. This we did, and in a meeting with Dr Ibrahim Legwell were assured that it remained the position of the suspects that they would surrender for trial if such a court were established. It was the Libyan government that was apparently, because of British and American procrastination, having second thoughts about permitting its citizens to leave the country to stand trial voluntarily before such a tribunal.

The Libyan Foreign Ministry committee, with whom all of my previous dealings had been, arranged for Dr Swire and me to have a meeting with Colonel Gaddafi and this took place on 20 April 1998 at his reinforced concrete tent on the outskirts of Tripoli. The meeting was initially a frosty one, with the Colonel refusing to make eye contact but instead staring straight ahead with his arms folded and making lengthy pronouncements about the inflexibility and intransigence over more than four years of the British government. When eventually he interrupted his monologue to take breath, we were able to dive in with comments to the effect that the Labour government had been in office for less than a year, was still finding its feet in foreign affairs and that it was possible to detect some signs that its position over the Lockerbie issue might just be somewhat more flexible than that of its Conservative predecessor. Gaddafi then made a few highly complimentary remarks about Tony Blair, and the remainder of the meeting was held in a much more friendly atmosphere. After about an hour, we departed with the reassurance that the Libyan government's policy in relation to a "neutral venue" trial would remain unchanged for at least a further six months. As we were leaving Gaddafi's compound the then Libyan

Foreign Minister, Omar al-Muntasser, who had been present at the meeting, said to us: "You made the Leader laugh three times! Someone will pay for that!" I think he was joking.

The Volte-face

From about late July 1998, there began to be leaks from UK government sources to the effect that a policy change over Lockerbie was imminent, and on 24 August 1998 the governments of the United Kingdom and United States announced that they had reversed their stance on the matter of a "neutral venue" trial. In a letter of that date to the Secretary-General of the United Nations, Kofi Annan, the British and American Acting Permanent Representatives to the UN stated:

".... 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 Kingdom 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 Scotland, would apply."

The details of the arrangement -- the fine print -- are to be found in two documents: a British Order in Council (SI 1998 No 2251), made on 16 September 1998, conferring the necessary legal authority for Scottish criminal proceedings against the two Libyan suspects to be conducted in the Netherlands, and an international agreement between the Government of the Kingdom of the Netherlands and the Government of the United Kingdom, concluded on 18 September 1998, making the diplomatic arrangements

necessary for the "neutral venue" trial to take place. The scheme set out in these two documents differs in detail from that which I proposed, and to which I had obtained Libyan assent, in January 1994; but the framework is the same.

Pitfalls along the Route

Although the British proposal was announced in late August 1998, it was not until 5 April 1999 that the two suspects actually arrived in the Netherlands for trial before the Scottish court. Why the delay? The answer is that some of the fine print in the two documents was capable of being interpreted, and was in fact interpreted, by the Libyan defence team and the Libyan government as having been deliberately designed to create pitfalls to entrap them. And since the governments of the United Kingdom and United States resolutely refused to have any direct contact with either the Libyan government or the Libyan defence lawyers, these concerns could be dealt with only through an intermediary, namely the Secretary-General of the United Nations.

Between 20 and 22 September 1998, Dr Swire and I were again in Tripoli and were able to provide to the Libyan government and the Libyan defence team a measure of reassurance regarding some of the issues that concerned them. However, it was we who (having received the information hot off the presses from a journalist in The Hague) had to inform the Libyan government that the chosen location in the Netherlands for trial was Kamp van Zeist, a former NATO base to which the air force of the United States still had extant treaty rights of access. I anticipated that this information would cause the Libyans to renounce the "neutral venue" concept in high dudgeon and complain of the lack of good faith demonstrated by Her Majesty's Government in selecting, or agreeing to, such a site. But they did not do so. This, more than anything else, convinced me that the Libyan government and the Libyan defence lawyers genuinely wished a trial to take place and that the concerns they had expressed regarding details of the

scheme now on offer were genuine concerns, not merely a colourable pretext for evading their earlier commitment to such a solution.

On 22 September we had a further meeting with the Leader of the Revolution. On this occasion the meeting took place not in Tripoli but 400 kilometres to the east in a genuine (not reinforced concrete) Bedouin tent in a desert location inland from the town of Sirte. Surrounded by sand dunes and noisily ruminating camels, Colonel Gaddafi, Dr Swire and I discussed the details of the British scheme. He accepted my assurance that at least some of the concerns that Libyan government lawyers had raised were unwarranted and that it would be worthwhile to continue to seek clarifications and reassurances through the office of the Secretary-General of the United Nations regarding the remaining issues.

Incidentally, this meeting with Gaddafi was held on the day that President Clinton's deposition in the Monica Lewinsky case was televised. In the course of the pleasantries that took place before we all got down to business, Gaddafi informed us that he had spent the morning watching the President's performance on CNN television. What most shocked him, he said, was the revelation that on occasions while Miss Lewinsky was dutifully serving her President, the latter was speaking to foreign Heads of State on the telephone. Gaddafi's comment was that he thought that the President should have it cut off.

Conclusion

Although many within the governments of Britain and the United States and within the media were sceptical, the suspects did eventually, on 5 April 1999, surrender themselves for trial before the Scottish court at Kamp van Zeist. That trial, after lengthy delays necessitated by the defence's need for adequate time to prepare, started on Wednesday 3 May 2000.

I feel a distinct measure of pride in the part that I, a Lockerbie boy born and bred, and a simple professor of law, played in bringing it about. I have reason to suspect, however, that my government feels no sense of gratitude towards me. And I feel no pride whatsoever in the outcome of the proceedings. The conviction of Abdelbaset al-Megrahi on the evidence led at the trial constitutes, in my view, a flagrant miscarriage of justice, and one that I hope to live to see rectified.