LOCKERBIE PRE-TRIAL REVIEW NOTES

Updated 25 June, 2007

For Professor Jim Murdoch, University of Glasgow and colleagues.

Prepared by Leslie Wolfson

1. On 21 December, 1988 Pan Am flight 103 exploded over Lockerbie in Scotland killing all 259 people on board and 11 persons on the ground. Two Libyans were accused and the problem of a trial arose.

2. On 21 January, 1992 Nelson Mandela of ANC said "...the trial should be conducted in a neutral country by independent judges..."

3. The Scots Law Times 1997 page 304 reported "THE LOCKERBIE PROPOSAL" by Professor Robert Black, QC, University of Edinburgh.

   Professor Black reported that the legal advisors to the two Libyans announced their clients were not prepared to surrender themselves for trial in either Scotland or the United States. In an attempt to resolve this impasse Professor Black also reported that he had formulated in January 1994 a detailed proposal for the setting up of a court operating under the law and procedure of Scotland but sitting in a neutral venue such as The Hague. According to Professor Black this proposal was accepted in writing by the head of the Libyans defence team and by the Deputy Foreign Minister of Libya on behalf of his government. In the proposal the jury was to be replaced by an international panel of judges presided over and chaired by a Scottish judge.

   Professor Black reported that successive Lords Advocate and Foreign Secretaries rejected this proposal.

4. Professor Black also reported that (a) in a letter to him dated 12 January, 1994 Dr. Ibrahim Legwell, head of the legal team representing the accused stated that they would surrender themselves for trial before such a court and that (b) Col. Gadaffi had confirmed to Nelson Mandela, who was concerned about the effect of sanctions, that the Libyan government would place no obstacle in the path of such surrender.

5. Following a visit to Libya by Paul Hoddinott (to which I was also invited but did not go), then Executive Director of the International Bar Association, the IBA's Human Rights Institute joined with the Section on General Practice and the Arab Lawyers Union to host a one day seminar in London on 9 September, 1996, under the title "Lockerbie: Where Now?" focussing particularly on the stalled trial of the two Libyan suspects.

6. Panelists included experts in the field of International Criminal Law in addition to Libyan and Scottish lawyers representing the two accused. The seminar was co-chaired by Peter-Michael Muller of Germany and Farouk Abu Eissa then Secretary General of the Arab Lawyers Union, Cairo. Among those present were Professor M. Cherif Bassiouni, Professor of Law at DePaul University, Chicago; Dr. Ibrahim Legwell, Libya and Alastair Duff, Scotland (lawyers for the suspects); Abdul Adheem Al Maghribi, Deputy Secretary General of the Arab Lawyers Union, Cairo; Ahmed Ido then President of the Syrian Bar; Professor J. Ross Harper, then IBA President; Paul Hoddinott, then IBA Executive Director; Professor John Murphy of Villanova University, Pennsylvania; Gerard Brown, Council Member of the Law Society of Scotland; Dr. Jim Swire for the families, MPs Jim Sillers and Tam Dalyell; Professor Igor Blischenko of Russia and Kadhim Lami, Liaison Officer between the IBA and the ALU, and myself, former IBA General Practice Section Human Rights Committee chair and former chair of International Twinning in the IBA.

7. As the seminar proceeded I became convinced of the absolute sincerity of the Libyans present in seeking a trial and in their fears for a trial in Scotland. Rationalising on the situation I concluded that if both sides were genuine in seeking a trial there must surely be a formula that would work for both parties. It was obvious that if there was to be a trial it would have to be furth of Scotland. There was little choice. I concluded that Holland was really the only country in the world with a record of international justice – with particular reference to The Hague. I thought it was obvious also that although contrary to Scottish criminal trial tradition of judge and jury, such a trial if it were in fact to be held in Holland, would have to be without a jury as it would not be practicable to ship a jury to Holland for the period of such a trial. Accordingly if this were the case the trial would have to be either before one or possibly before three Scottish judges sitting alone without a jury. This was going to be very innovative but the pressures on the Scottish legal authorities were unique and I calculated they may be forced to agree to such a plan if this were the only way that a trial could be held. Paul Hoddinott has commented: "Even if the practical difficulties of assembling a Scottish jury in Holland had been overcome, the discussions I had with Libyans in Tripoli strongly suggest that the Libyans would never have accepted trial by jury."

8. I realised also that it would simply not be possible for the Scottish legal authorities to make proposals for any modification of the usual provisions for a criminal trial in Scotland before a judge and jury. That would mean an implied admission that Scottish procedures were unfair. That would be unacceptable and accordingly the Scottish legal authorities had to stand firm and await events. Furthermore if they offered to vary the usual rules and this variation were not accepted they might find it difficult to return to the original normal position. That could have had the effect of permanently negating any possibility of a trial.

9. As a consequence of all this it seemed to me that such a proposal would require to come from the Libyans themselves. In addition the Libyans would require to take this decision without outside pressure or influence and free of suspicion. It

was therefore not appropriate for the suggestion to be made publicly at the seminar. Accordingly I prepared a handwritten note which I gave to one of the Libyan lawyers present whom I called over to me suggesting that one possibility might be for a trial before a Scottish judge or judges say in The Hague or in Holland without a jury. I cannot recall exactly what I wrote or whether or not I also added that the two accused may have to be brought to Scotland in the first instance to be charged. The Libyan gentleman to whom I presented the note nodded approvingly after reading it and sped off with it. I cannot recall which Libyan it was. There were several Libyan gentlemen present. I did not make a copy of the note as I did not consider it appropriate to do that and in any event I had no reason to assume that my proposal would be acted upon. Also I wanted the Libyans to be free to do exactly what they wanted with the note as if it contained their own thoughts.

10. I have to say that I had not prepared for the seminar and was unaware at that time of Professor Black's similar proposal for a trial in Holland before an international panel of judges.

11. What in fact happened to my note? That is what now requires clarification. According to Cherif Bassiouni it would have gone with other relevant papers to the Libyan Attorney General. Professor Bassiouni said in a telephone conversation with me that he had no precise information in regard to my note but he knew that a number of ideas which could well have included my note were provided by different sources to a working group, a committee set up by the Libyan leader, consisting of the Prime Minister, the Foreign Minister and the head of intelligence. Their task was to tailor something that might be acceptable to their leader. He said that the bottom line was his assumption that my note together with information would have been distilled by the committee and then presented to the head of state. He said I could safely assume that my actual note would never have gone further than the Attorney General.

12. In the State Department Background Briefing (Washington Transcripts Service) dated August 24, 1998 speakers being James Foley, State Department Deputy Spokesman and Senior State Department Officials one of the officials is reported to have said the following, viz:-

" 'In addition Robin Cook, who spoke a few minutes ago, the British foreign secretary, said in his statement that a gentleman by the name of Omar Montassir, foreign minister of Libya, said in a letter on January 2 of 1998, to the president of the Security Council in Libya, and I quote, 'accepted the proposal of the League of Arab States is that the two suspects should be tried by a court in a neutral country. And there is the League's proposal as endorsed by the Organization of African Unity, the Organization of Islamic Conference and the Movement of Non-Aligned countries, that they should be tried at the Hague by Scottish judges and in accordance with Scottish law.' That's the end of the quotation'. "

13. In the same transcript the official said there is "no derogation, no change, no shift from the use of a Scottish court, a Scottish prosecutor, Scottish Law, Scottish judges, Scottish decisions and Scottish punishment."

14. United Nations Daily Highlights of Thursday 27 August, 1998 includes the following:-

"The Security Council on Thursday evening decided to suspend sanctions against Libya after the Secretary-General reports that Tripoli has handed over two Libyans suspected of involvement in the bombing of Pan Am Flight 103 for trial in the Netherlands by Scottish judges under Scottish law."

"The Council acted unanimously through a resolution adopted under Chapter VII of the United Nations Charter, which allows for enforcement. This marked the first breakthrough in a situation which has been virtually deadlocked since the sanctions were first imposed in 1992."

" 'Libyan Ambassador, Abuzed O. Dorda, told the Council that his Government accepted that the two suspects would be tried in a Scottish court in the Netherlands by Scottish judges under Scottish law. 'This is a serious position; an irreversible position.' he said. 'We hope that the other party will likewise be serious in its position'. "

"Libya's representative welcomed the acceptance of the proposals by the United Kingdom and the United States, noting that they had been put forward by the League of Arab States and the Organization of African Unity (OAU) more than four years ago. He said this acceptance was a positive step likely to result in a satisfactory and just solution to the long-lasting dispute which had caused suffering among both the Libyan people as well as the families of the victims".

15. .The formal proposal for the Lockerbie trial was contained in a letter dated 24 August, 1998 from the acting permanent representatives of the UK and the USA to the UN Secretary General with a request that the text be conveyed to the government of Libya and that the letter be circulated as a document of the Security Council. There was no direct communication between the parties.

16. The letter was signed by S.J. Gomersall and A. Peter Burleigh the Acting Permanent Representatives of the UK and the USA to the UN. The letter stated that the court 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".

17. When the trial was actually announced my first thought was that someone else must have come up with the same idea because it did seem to me that this was the only possibility that existed.

18. It was typical of the straightforward person that he is that Paul Hoddinott at his retiral dinner in London on 8 December, 2000 announced publicly that I had been the author of the proposal for a trial in Holland before Scottish judges and that the Libyans had acknowledged the IBA seminar of 9 September 1996 as the occasion for the breaking of the logjam.

19, In an article in The Scotsman of 31/08/98 Lord Hardie who was to lead the prosecution team is reported as saying that the trial will not be prejudiced by the lack of a jury because the two accused have always opposed being tried by a Scottish jury. He said "It is not a precedent, it is a one-off situation in special circumstances, where you have got mass murder, where the UN Security Council has been involved."

20. Statutory Instrument 1998 No. 2251 made under the United Nations Act 1946 pursuant to a resolution of the Security Council of the UN makes provision for criminal proceedings against the two men accused of the destruction of Pan Am 103 over Lockerbie on 21 December, 1988, including a trial before the High Court of Justiciary, to be conducted in the Netherlands.

21. FCO: Daily Bulletin, Friday 18 September 1998 dealt with the signing of the UK/Dutch agreement regulating the sitting of the Scottish court in the Netherlands and matters arising out of the trial including arrangements for international observers to attend. The proposal was not "open to negotiation", but clarification could be sought through the UN Secretary General.

22. The (University of Glasgow) Lockerbie Trial Website started 24 August, 1998 updated 23 October 1998 reported inter alia that Ibrahim Legwell, leading the defence team, was studying the documents, consulting the suspects and discussing conditions for a fair trial. "We are considering things positively and want to remove any obstacle in front of such a trial" added Legwell talking by telephone from Tripoli.

23. It is reported that the defence team includes lawyers from England, Scotland and the United States. Legwell said he was not talking on behalf of the Libyan authorities.

24. The website in a reference to the Arab League reported that the League was one of the first international organisations to utter their consent with the recent acceptance of a trial in the Netherlands. "The American – British proposal is compatible with the previous Arab suggestions, which Libya has accepted", Esmat Abdel Meguid said after a meeting with British Ambassador, David Blatherwick. Abdel Meguid said Blatherwick briefed him about the proposals, which he later conveyed in a letter to Libyan Foreign Minister Omer al-Muntasser.

25. In a reference to "The Netherlands/Holland" the website also reported that "the Dutch Cabinet Council agreed to allow the Lockerbie trial to be heard in The

Hague, the Ministry of Foreign Affairs said on Monday in a press release". The Dutch Ministry said the trial was expected to take "several years".

26. The website also quoted the Dutch Foreign Office press release referring to SNP justice spokeswoman Roseanna Cunningham arguing that the UK government should be prepared to show flexibility over the nationality of the judges and that the compromise option devised by Professor Robert Black for a trial at The Hague under Scottish legal procedure was the one most likely to lead to a trial "so that at long last the truth can come out".

27. Under SUDAN the website reported the Information Minister, Ghazi Salhuddin saying "this is a great success for Libya that the United States and Britain have yielded to international pressure to accept that solution."

28. Under NEW ZEALAND the website reported that New Zealand welcomed the announcement by Britain and the USA that they will agree to the Lockerbie bombing trial being held in the Netherlands, acting Minister of Foreign Affairs and Trade, Simon Upton, said.

29. On Wednesday August 26,1998 Cairo (AP) reported the Libyan Foreign Ministry released a statement announcing its acceptance of the new position of the UK and the USA.

30. The Libyan announcement was also carried by the official Libyan News Agency JANA.

31. In CNN transcript of full Gaddafi interview on 27/08/98 he is reported saying "Libya has no objection so far as the initiative itself is concerned our objection is in the pitfalls or the tricks that may be attached to any Security Council resolutions".

32. The website reported UK premier Tony Blair saying, while on tour in Scotland, "We took this decision to go for the third country option after a lot of debate and hesitation because we believed it really was the only way of securing a chance of bringing these people to justice."

33. In the LOCKERBIE DISASTER an essay by Robert Black published in EDINBURGH LAW REVIEW, 3 January 1999 (85-95) and previously in Stellenbosch Law Review 207 (1998) Professor Black wrote of a second visit to Tripoli on 10 January 1994 and his letter to Dr. Legwell suggesting a trial outwith Scotland (perhaps in the premises of the International Court of Justice at The Hague) under Scots law and procedure, prosecuted by the Lord Advocate with Scottish Counsel but with the jury replaced by an international panel of 5 judges chaired by a Scottish judge who would direct the panel on Scottish law and procedure with any appeals to go to the High Court of Justiciary in the usual way sitting in Scotland.

34. On 12 January 1994 Dr. Legwell wrote to Professor Black saying the scheme was wholly acceptable.

35. By a letter of the same date the Deputy Foreign Minister of Libya stated his government would place no obstacle in the path of its two citizens should they elect to submit to trial under this scheme.

36. Professor Black stated that for 4 years and 7 months this neutral venue proposal lay on the table and in his essay Professor Black detailed the objections to it.

37. Professor Black reported that on 20 and 22 September, 1998 he had meetings with Libyan government Ministers (including Col. Gaddafi) and with the new team of Libyan lawyers representing the suspects and that subject to clarification the suspects would surrender themselves for trial although there was no communication with the Libyan Government or Defence team. All communications were through the Secretary General of the UN.

38. Professor Black concluded by saying that he considered the ordinary Scottish system was eminently capable of providing a fair trial but the advisers (including Scottish lawyers) thought it not possible to find a jury uninfluenced by the pre-trial publicity. That was why he came up with his second-best alternative.

39. In a postscript Professor Black reported that on 15 December, 1998 (10 days after a Gadaffi/Kofi Annan meeting) the Libyan Peoples' Congress meeting in SIRTE announced approval of the neutral country trial.

40. In the Lockerbie Trial Briefing Handbook Section 6 under "The Compromise" Professor John P. Grant of the University of Glasgow writes.

"From the beginning of 1998, it became clear that there was emerging a change in the strict stance of the UK and the USA that the suspects must stand trial in either Scotland or the U.S. This culminated on 24 August in a letter from the UK and US missions to the UN to the Secretary General offering "as an exceptional measure, to arrange for the trial of the suspects to be held before a Scottish court sitting in the Netherlands."

41. The Security Council adopted Resolution 1192 declaring sanctions regime will be ended as soon as the Secretary General reports that the two accused have surrendered for trial.

42. In the website www.thelockerbietrial.com/from_Lockerbie_to_Zeist.htm under "THE VOLTE-FACE", Professor Black records the letter of 24 August 1998 from the UK and the USA to the UN Secretary General, Kofi Annan and comments that the details of the arrangements are to be found in British Order in Council/SI1998 No 2251 of 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 governments of the Netherlands and the government of the UK 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 (Professor Black writes) and to which I had obtained Libyan assent in January 1994; but the framework is the same."

43. However it was in fact the proposal for Scottish judges only, as opposed to an international panel, that enabled the trial to take place and without that variation the objections would have remained. In addition any reference to the International Court of Justice was dropped.

44. In LOCKERBIE to ZEIST Professor Black reported that on 22 and 23 September 1998 he was again in Tripoli with Dr. Swire when they informed the Libyan government that the chosen location was KAMP VAN ZEIST a former NATO base which information he had obtained from a journalist in The Hague. He was surprised when the Libyans accepted this as a "neutral venue". He reported meeting Col. Gaddafi with Dr. Swire in a Bedouin tent near Sirte.

45. The suspects surrendered themselves for trial at Kamp Van Zeist on 5 April, 1999. The trial started on 3 May, 2000.

46. Adverting to the IBA seminar and my note handed to the Libyans containing what transpired to be "the variation", I am also attaching copies of my letter of 16 May, 2000 to Paul Hoddinott and his response of 8 June, 2000. So far as I am aware the suggested book by Michael Scharf mentioned in Paul Hoddinott's letter was never written and I have been unable to make contact with him.

47. In the Report on and Evaluation of the Lockerbie Trial by Dr. HANS KOCHLER for the UN Secretary General. Dr. Dochler records (para 6) that Dr. Ibrahim Legwell resigned from the defence team when the Libyan government introduced MR. MAGHOUR to the team.

48. On 23 March, 2006 I addressed the following e-mail to Chris WHOMERSLEY, Deputy Legal Advisor FCO

From: Leslie Wolfson [lw@lesliewolfson.co.uk]
Sent: 23 March 2006 11:11
To: 'Chris.Whomersley@fco.gov.uk'
Cc: 'J.L.Murdoch@law.gla.ac.uk'; 'Alistair Bonnington-Private'
Subject: Lockerbie - P2699

Dear Mr. Whomersley

With reference to our telephone conversation on 21 March I am researching the origins of the Lockerbie Trial for a review to be conducted principally by the School of Law, University of Glasgow.

In that the arrangement to have a trial by Scottish judges only (and not an international panel of judges) was announced by Robin Cook, then British Foreign Secretary, on August 24, 1998 it is

presumed that the relevant FCO records will indicate clearly where the proposal for such a trial originated.

If it is possible for you to let me have this information that would be much appreciated. If you require further background please be so very kind as to let me know.

Very many thanks,

Leslie Wolfson

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49. Mr. Whomersley responded thus on 7 April, 2006

From: Chris.Whomersley@fco.gov.uk
Sent: 07 April 2006 17:21
To: lw@lesliewolfson.co.uk
Subject: Lockerbie - P2699

Dear Mr Wolfson,

Thank you for your e-mail below. On 24 August 1998 the UK and US Governments announced an offer that the Lockerbie accused be tried in The Netherlands by Scottish judges in accordance with Scottish law. It had always been the UK Government's position that the trial should take place by Scottish judges in accordance with Scottish law. Prior to the 1998 announcement there had been a number of suggestions regarding the format of the trial from a number of persons or bodies. In particular, the Arab League had adopted a resolution on 27 March 1994 proposing that the accused should be tried at the International Court of Justice in The Hague under Scottish law by a team of Scottish judges. However, the proposal in 1998 was that of the UK Government jointly with the US Government .

Best regards.

Chris Whomersley

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50. Interestingly Mr. Whomersley, Deputy Legal Adviser, FCO makes reference to the Arab League resolution of 27 March 1994 proposing that the accused should be tried at the International Court of Justice in The Hague under Scottish law by a team of Scottish judges. This is very close to the ultimate proposal accepted by

HMG. I surmise that the 1994 proposal was not accepted for the following reasons, viz:-

(1) HMG may not yet have become conditioned to the need to accept a fundamental variation from a conventional trial in Scotland to enable a trial to proceed at all and

(2) the suggestion that the trial should take place at the International Court of Justice if that venue were available for the purpose may have been unacceptable in terms of security and the later proposal of extra territoriality.

The International Court of Justice could hardly have become part of Scotland even for a temporary period. It should be noted also that HMG would not have negotiated and never did negotiate so that HMG would never have proposed an alternative venue. When Kamp Zeist was ultimately proposed it was on a non-negotiable basis.

51. By way of further clarification here follows print of my letter to Professor Black of 25 April, 2006 to which he courteously responded in e-mails of 29 April and 3 May, 2006

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Professor Robert Black
Professor Emeritus of Scots Law
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University of Edinburgh
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South Bridge
Edinburgh EH8 9YL

LW/SW/3P2699 25 April, 2006

Dear Professor Black,

I am a consultant solicitor in Glasgow and former chair of the General Practice Section Human Rights Committee and later of the Twinning Committee of the International Bar Association. I attended the IBA seminar on Lockerbie on 9th September, 1996 in London.

In the course of the seminar I handed a note to one of the Libyan participants suggesting that there might be a possibility of a trial before a Scottish judge or judges furth of Scotland, say in The Hague without a jury. I cannot recall precisely what I wrote but these are the essential features. The Libyan nodded approvingly and sped off with my note to his colleagues.

I heard nothing further until the Lockerbie trial in Holland was announced.

On the 8th day of December, 2000 at his farewell dinner in London, Paul Hoddinott, then Executive Director of the International Bar Association announced publicly his knowledge that the IBA seminar had been instrumental in breaking the log jam surrounding the Lockerbie trial and he ascribed the credit to me. His information apparently was obtained from the then president of the Libyan Bar Association.

This in no way detracts from the vast involvement of your good self in the whole sad Lockerbie affair and in particular your proposal of a framework that was in fact identical to that used other than that the panel be entirely of Scottish judges.

In fact I dismissed the whole thing from my mind and was truthfully quite astonished when it all came to pass. However I am very happy that this was the case and that some peace of mind at least went to the families of the victims.

The problem I have at the moment is that I am in possession of perhaps an important fact relating to the establishment of what was perhaps the most important criminal trial ever held i.e. the note I handed to the Libyan participant at the 1996 seminar. I have difficulty in that I have no copy of my note and do not know exactly what happened to it. I do know that the proposition for the trial actually came from the Arab League which, from the Libyans point of view, was a good way to handle the matter. The question is did the proposal that the panel should be Scottish judges sitting alone derive from my note or from another source? If so what source?

I wondered if I could ask you to be so very kind as to make some observations. Is it at all possible that, with your deep knowledge of all the facts surrounding Lockerbie that you might wish to assist in clarification through your connections in Libya? Would that be the case or do you perhaps have any guidance to offer?

I hope you do not mind my writing you in this way and I look forward to hearing something from you with great interest. If you would permit me to host some lunch any time in Edinburgh or Glasgow I would be very delighted to do that.

All good wishes,

Sincerely yours,

Leslie Wolfson

----- Forwarded message from robert.black@ed.ac.uk -----
Date: Sat, 29 Apr 2006 07:22:19 +0100
From: robert.black@ed.ac.uk
Reply-To: robert.black@ed.ac.uk
Subject: Re: Lockerbie
To: sw@lesliewolfson.co.uk

Dear Dr Wolfson,

Sorry for the deay in replying. I am at present in South Africa, and have been away from my base on a trip to the far north for the past week.

My own proposal was made to the Libyan government and Libyan defence team in January 1996 and accepted by both of them two days later (12 January). It suggested a panel of judges, presided over by a Scot. This was unacceptable to HMG. Indeed, at that time, anything other than a conventional trial in Scotland was unacceptable. My understanding of how the Scottish Court at Zeist came about is that in October 1997, in the course of the Edinburgh CHOGM meeting, Nelson Mandela, after a meeting with interested Lockerbie people (including myself), agreed to advocate a Netherlands non-jury tial (but with Scottish judges, as a sweetener for HMG). I had already checked with my Libyan contacts that a panel of Scottish judges would be acceptable to them. South Africa (and the Non-Aligned Movement) then exerted diplomatic and political pressure on HMG to which, eventually and reluctantly, it succumbed. No pressure was necessary on the Libyan government because by that time it was looking quite desperately for a way out of the impasse. At least fom my perspective, the problem always was the governments of the UK and the USA.

I hope this is some help.

Best wishes.

Robert Black.
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From: robert.black@ed.ac.uk
Sent: 03 May 2006 19:34
To: sw@lesliewolfson.co.uk
Subject: Fwd: Re: Lockerbie

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Dear Dr Wolfson,

The date in the first sentence of the second paragraph of my message should, of course, be January 1994. Apologies for this slip.

Regards.

Robert Black.

52. The principal question for this review is clarification of how the finally acceptable formula for the Lockerbie Trial arose and how it was introduced to the parties. I was informed by Mohammed Ibrahim El Alagy, then president of the Libyan Bar when we met at an IBA seminar in Beirut on 17 April, 2000 that the source for the trial was the IBA seminar in London on 9 September, 1996. As a matter of interest when I spoke to Mr. Hoddinott again in February 2007 he stated that the Libyans were definite that the source of the trial was the IBA seminar in September 1996. Interestingly Professor Black reports that prior to Nelson Mandela at the Edinburgh CHOGM meeting in October 1997 agreeing to advocate a Netherlands non-jury trial (but with Scottish judges, as a sweetener for HMG) he had already checked with his Libyan contacts that a panel of Scottish judges would be acceptable to them. Reasonably one has to assume therefore that the Libyan contacts to whom Professor Black spoke were already in possession of instructions to accept that the panel of judges should be Scottish. It is inconceivable that they could have confirmed that to Professor Black without instructions. Is it possible that these instructions derived from my note? I can see no other way that the IBA seminar of 9 September, 1996 could have broken the log jam.

As a matter of interest also, not once at the entire seminar was the possibility of a trial in Holland before Scottish judges ever mentioned. It is reasonable, therefore, to assume that such a proposition was nowhere on the table at that time. It is suggested that this lends weight to the proposition that, in fact, my note, in Libyan hands, sewed the seed that led to the Lockerbie trial.

I am attaching a photograph of myself with Mr. El Alagy and other Arab bar leaders taken at the Beirut seminar.

53. Paul Hoddinott, on reading these notes, made interesting observations in a letter to me of 12 February, 2007. This letter is annexed. It summarises well the steps that, taken together, led to the breakthrough and, ultimately, to the trial.

I might mention that these notes have been read through by Professor Ross Harper who thought that the information should be made public.

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Mr. Paul Hoddinott
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LW/SW/P1200

16 May, 2000

Dear Paul,

In Beirut we spoke briefly about the Lockerbie trial and the possibility that the seed was sown at the IBA seminar which, as I recall it, was in September 1996. I thought it might be appropriate for me to recall the position as I see it.

As the seminar proceeded it seemed to me that the Libyan lawyers were quite genuine both in their anxiety to have a trial and in their fear that a trial in Scotland might not bring a fair result. It rather surprised me that that latter point was not being disputed at the meeting presumably because of sympathy with the Libyans attitude which, from their standpoint was understood, and I asked the chairman, towards the end of the seminar for permission to say something. This permission was granted and I stated very clearly that I did not think there was any possible chance that the accused persons would be prejudiced in any way by a trial in Scotland. Ross endorsed that view.

It did occur to me, in the course of the seminar, that with such unusual international pressure the Scottish legal authorities might have to agree that a trial be held out of Scotland. However there was absolutely no precedent for this and it seemed to me impossible for the Scottish legal authorities to come up with such a proposal. I reckoned that such a proposal had to come from the Libyans who, in any event, might view with suspicion any suggestion for such a move coming from the prosecution or another source.

It was obvious that there was no possibility of shipping a Scottish jury out of the country and that, if a trial was to take place out of the country it had to be before one or more Scottish judges sitting alone. I did not think that the Scottish legal authorities for a moment would agree to any international forum and accordingly the trial, if one was to proceed, had to be before one or more Scottish judges only.

One of the few countries with a tradition of international justice was Holland and although this was normally in regard to civil matters it did seem to be the only country where a criminal trial of an international character might also take place.

On the basis of the foregoing thinking and fearing that were this suggestion made publicly at the seminar it could die a death before ever seeing the light of day I decided just to present a little note to one of the Libyan lawyers present so that as move number one the Libyan lawyers could decide whether or not the suggestion was of any interest to them. If it were of interest to them it seemed to me that the suggestion might have half a chance.

I wrote out a note (without keeping a copy) suggesting that one possibility to break the deadlock was to have a trial before Scottish judges in Holland. I may also have suggested that the accused could be brought to Scotland in the first instance to be charged and then transferred to Holland. I cannot quite remember whether I said that or not but, in any event I do not think that is relevant.

When I handed the note to the Libyan lawyer, he read it very quickly and nodded vigorously in approval. I heard nothing further after that until it was announced that in fact such a trial was to take place.

You will appreciate that I have absolutely no idea as to whether or not precisely the same suggestion derived from another source. However I am encouraged to think that the IBA seminar (and my note) was the source of this proposal in that Mr. El Alagy, Batonnier of the Libyan Bar in Beirut told me, without prompting, that the IBA seminar was the source of the suggestion to have a trial before Scottish judges in Holland.

I think you should have all this information for the record and if you have any comments perhaps you would care to let me know.

Mr. El Alagy most kindly indicated that he would make some enquiries and possibly put me in contact with a Libyan lawyer who was present at the seminar. I am writing him accordingly.

I am sending you one or two photographs from Beirut which I thought was a very successful occasion.

All good wishes,

Yours sincerely

Leslie Wolfson

8/6/0

International Bar Association

A Federation of National Legal Associations and Individual Lawyers

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Leslie Wolfson
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COPY

8 June, 2000

Dear Leslie,

LOCKERBIE

Thank you for your letter of the 16 May setting out your recollection of informal contacts with the Libyans at IBA's Lockerbie seminar in September 1996. I have placed your letter on file.

As I mentioned, in Beirut, an American academic, Michael Scharf, is writing a book about the whole Lockerbie affair; Michael is the Director, Centre for International Law and Policy at the New England School. Michael has heard that the IBA Seminar in some way started the unblocking of the log-jam that has led to the trial now underway. He intends to delve deeper and write a chapter on how the trial came about and has told me that he will wish to speak with people in IBA.

I will be sure to give your name to Michael as well as that of Ross and Farouk. Cherif Bassiouni, who knows Michael through work to get ILAC started, may have put him onto IBA, but that is speculation on my behalf.

With best wishes,

Yours sincerely,

Heather Law

pp Paul Hoddinott
Executive Director.

NAMAN SH. NAMAN — MOH. IBRAHIM EL ALAGY — ALI ABDULLA ALAYOOBI

BEIRUT 17.4.2000

Pres IRAQ BAR — PRES LIBYA BAR — PRES BAHRAIN BAR

From: Paul Hoddinott

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12 February 2007.

Dear Leslie

Thank you for a look at your notes about the background to the Lockerbie trial which I have now read.

It is clear that a number of solutions to the problem of how to bring the matter to trial on terms that the Libyans felt would be fair to the accused were considered by the Libyans between 1994 and 1998. As I saw from my discussions with senior members of the People's Bureau in December 1995, the Libyans were most anxious to get themselves off the hook of sanctions but were seeking a formula that would be seen in the Arab world as being fair to the accused and would not be seen as having succumbed to pressure from Western governments.

I asked about their objections to a trial in Scotland. The Libyans feared that the accused would be interrogated harshly if released into the hands of authorities in Scotland and they had no confidence in trial by jury. The Libyans could not believe that a Scottish jury would return a verdict other than that which the British government wanted. "Why would a jury go against their Government's wishes?" I was asked. I pointed out that juries in UK had returned a number of verdicts in recent years that had dismayed the government of the day; but the Libyans remained wholly unconvinced that a trial before a Scottish jury would be fair to the accused.

Professor Black's proposal seems to have had the effect of establishing in Libyan minds the thought that a trial on neutral territory before a panel of judges, presided over by a Scottish judge and applying Scottish law would be a reasonable way forward. But an international panel of judges and the use of the International Court of Justice were unacceptable to the UK and US Governments. However it was two small steps for the Libyans to move from Professor Black's formula to your own proposal. Moreover, the British and American Governments came to the view that the Wolfson formula (although neither government could have known its origin) was about as good an arrangement as they were likely to get.

Before I move on to a few specifics, I might mention that I think Ross Harper deserves enormous credit for his role in making the Lockerbie seminar happen. He came under a lot of pressure from our own Government to call off the seminar but stood firm. I was with Ross at the show-down meeting and it cannot have been easy for him. It may not be appropriate to publicise that aspect, certainly you should talk to Ross before doing so, in my view.

Points of detail:
Paragraph 6. Ross Harper was at that time IBA President; you may like to refer to him as "then IBA President", the formula you apply to Ahmed Ido.

Paragraph 7. Even if the practical difficulties of assembling a Scottish jury in Holland had been overcome, the discussions I had with Libyans in Tripoli strongly suggest that the Libyans would never have accepted trial by jury.

Paragraph 11. Colonel Gadaffi is not President – indeed he has no title at all but does have some grandiose honorifics. I notice that news organisations refer to him as "Colonel Gadaffi, the Libyan leader". Libyans, incidentally, refer to him simply as "the Colonel".

Paragraph 19. Lord Hardie was correct – see my comments above.

Paragraph 38. Again, the unacceptability of jury trial to the Libyans is relevant.

Paragraph 49. It is interesting to see that as early as 1994 the Arab league proposed a trial under Scottish law before a panel of Scottish judges sitting at ICJ. But ICJ is not a Scottish Court so that formula was unlikely to be acceptable to HMG. The claim that the proposal in 1998 was that of the UK Government jointly with the US Government does not mean that they thought of it first! On the contrary, it seems to me that the UK and US Governments shifted from a hard-line position (trial to be in Scotland or USA) and seized upon the best deal available.

I hope this all helps a little. Ultimately, all of us can take some satisfaction in knowing that, at least in Libyan eyes, it was the IBA seminar that broke the logjam and enabled the Lockerbie matter to come to trial. The nuances of the written formula that you passed to the Libyans had not been there in their entirety beforehand, so you can take particular satisfaction from what flowed from the IBA's seminar under the title "Lockerbie: where now?"

Yours ever

Paul.