Pan Am 103/Lockerbie: Appeal against guilty verdict thrown out

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Five senior Scottish judges at Camp Zeist, the Netherlands, have thrown out the appeal by Abdelbaset Ali Mohmed al-Megrahi against his conviction, January 2001 for the mass murder of 270 people killed at Lockerbie on December 21, 1988. Al-Megrahi has now been transported to Glasgow's notorious BarLinnie prison, where a special wing has been built for him to serve his 20-year sentence.

Scotland's leading legal officials have fully defended a conviction based on flimsy and contested circumstantial evidence that has been criticised by several observers as a miscarriage of justice. One of five United Nations observers to the Lockerbie trial, Hans Koechler has previously criticised the initial verdict. Having sat through the entire trial and the appeal, he told BBC Radio Scotland, "I am sorry to admit that my impression is that justice was not done and that we are dealing here with a rather spectacular case of a miscarriage of justice... Frankly speaking I am not convinced. I was not convinced when I read the opinion of the court after the trial last year and I was not convinced when I went through the text presented today. I am not convinced at all that the sequence of events that led to this explosion of the plane over Scotland was as described by the court. Everything that is presented is only circumstantial evidence." Koechler said he believed other members of the UN team shared his concerns.

Speaking later, Dr Jim Swires, whose daughter, Flora, was killed in the explosion said, "We think there has been miscarriage of justice. Thank God that Britain does not have the death penalty." Swires reiterated the long-standing call of several relatives of Lockerbie victims for a public inquiry "that has real authority" to be convened.

Professor Robert Black, the lawyer who has worked closely with the relatives for many years and the architect of the trial process itself, also described the trial as a miscarriage of justice. He told the *Scotsman*, "We have not seen the end of this case... There is a hell of lot of more evidence that appeared neither at the trial or the appeal."

In contrast to the alarm felt by close observers of the trial, many of Scotland's leading politicians showed an indecent haste to support an appeal decision they can hardly have had the time to read.

Scottish Justice Minister Jim Wallace claimed, "Everyone will have breathed a collective sigh of relief at the decision of the appeal judges." Scottish National Party justice spokesman Roseanna Cunningham announced, "This unique trial has shown the Scottish justice system to be robust and effective in the eyes of the world—right from the actions of the police officers investigating the immediate aftermath of this terrible crime up to today's verdict."

Based on the evidence presented at the Lockerbie trial and the subsequent appeal, it is impossible to say with certainty which persons, movements or governments were responsible for the destruction of Pan Am flight 103. Libya could have been responsible for the bombing, but a number of alternative scenarios have been presented—from the involvement of Palestinian groups to direct allegations of CIA involvement. What has become clear is that the assertion that al-Megrahi planted the bomb in Luqa airport in Malta that blew up PA103 is based on deeply problematic circumstantial evidence. Moreover, the case against him is contradicted by somewhat stronger circumstantial evidence pointing to the bomb's insertion into the plane at Frankfurt or Heathrow airports.

Despite this, in a 200-page verdict, the five judges, led by Lord Cullen, rejected all but the most minor of the appeal team's questioning of the numerous holes in the prosecution case. Explaining their decision, the appeal judges' claimed they had no right to comment on the initial verdict. Where some comment became unavoidable, they always defended the trial judges' line of reasoning, on the basis it was not for an appeal to re-evaluate the original evidence. In only a small number of instances they accepted there might have been mistakes, but insisted that these errors had no impact on the final outcome.

The appeal court concluded that new evidence, highlighted in the press, that there had been a break-in at Heathrow airport, near the luggage area, the night before PA103 took off for New York, had no bearing on the verdict. While the

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court accepted there had been a break-in, there was a significant degree of confusion over the movement and positioning of cases that answered the description of the Samsonite suitcase supposedly containing the bomb, and that there was evidence suggesting that it had arrived in a luggage container by unknown means, it concluded that this did not constitute circumstantial evidence strong enough to overcome the assertion that the bomb case was loaded at Luqa.

The appeal court accepted that the judges misdirected themselves when they stated that the records showing 13.10 as the time when luggage destined for PA103 (a feeder flight from Frankfurt to London) was processed. The appeal judges agreed that they had no basis to prefer this to the 13.16 suggested as an alternative time by the defence—the record itself is difficult to read. Flights from several aircraft were being processed at Frankfurt at the time, and a six-minute difference significantly increases the window through which luggage from flights other than KM180 from Luqa in Malta could have been processed for transfer to PA103A. The judges found that in the end, nothing could be concluded from this and "the misdirection... had no material consequences to the appellant's interest."

The judges considered the evidence of Maltese shopkeeper Tony Gauci, who provided the only visual identification of al-Megrahi as having been associated with clothes that were found, charred, at the crash site, and were thought to be in the same suitcase as the bomb. Gauci's evidence was upheld despite numerous discrepancies over the date, time, weather, which football matches were on the television and even whether or not Christmas decorations were up. No significance was attached to the fact that Gauci had previously identified a member of a Palestinian group, Abu Talb, currently serving a sentence for bomb attacks for which he does not deny responsibility.

What is undeniable is that there were significant political pressures on the court to uphold the initial trial verdict, whatever evidence was presented in al-Megrahi's defence.

Libya has been the focus of US-inspired sanctions and sustained aggression for 16 years. In 1990, blame for the Lockerbie attack was shifted by the Scottish investigating authorities and the US government to Libya and away from the countries initially targeted for suspicion such as Iran and Syria. At the time, Iranian and Syrian acquiescence in the first US attack on Iraq in 1991 was considered imperative. Indeed, US Secretary of State James Baker had been shuttling around the region prior to the sudden discovery of evidence supposedly linking the attack to Libya.

In the intervening years, Lockerbie has been continually utilised to justify US and UN sanctions against Libyan "state terrorism". As a result successive administrations have invested a great deal of political capital in their insistence that Libya was responsible for the bombing.

However, relations with Libya have improved in recent years as Colonel Gaddaffi has made repeated overtures to the Western powers. In Britain, the election victory of Tony Blair in 1997 was seen as a chance to remove the main political obstacle to renewed friendly relations with a country whose oil reserves its European rivals were exploiting.

A limited trial of the two defendants—al-Megrahi and Al Amin Khalifa Fhimah—was offered, provided that more general attacks on Libya were downplayed. The US government was reluctant to agree to such a compromise, but was eventually persuaded. American business was also anxious to exploit Libyan oil, and was caught in the contradiction created by years of anti-Libya propaganda and the lust for oil profit. There was also concern that some of the secret activities of the CIA and FBI would be exposed to public scrutiny and US intelligence operatives sat on the prosecution benches through much of the trial proceedings in order to offset this danger. Even so, the CIA's "star witness" in the case, Abdul Majid Giacka, was exposed as a fraud and the case against the two accused Libyans suffered repeated setbacks.

The verdict against al-Megrahi—his alleged sole accomplice Al Amin Khalifa Fhimah was acquitted—was the minimum requirement for the US. Libyan guilt and compensation payments to victims, already agreed by Gaddaffi, provided retrospective justification for years of punitive sanctions. At the same time the relatively low-key conclusion—with just one person deemed to be directly responsible—would allow Conoco, Marathon, Amerada Hess, and Occidental to develop a lucrative relationship with the Libyan National Oil Corporation.

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