

should not proceed with Talb's evidence. The court indicated, however, that if any information should come into the hands of the defence arising out of ongoing investigations, a motion for Talb to be recalled would receive sympathetic consideration.

**14.138** At some stage in November 2000 the letter of request was received by the Syrian authorities who thereafter sought clarification as to its terms. On 29 November 2000 (day 75) the trial was adjourned until 5 December in order to allow time for the request to be dealt with. On 5 December (day 76) evidence was led on behalf of the applicant, following which the trial was adjourned again until 8 January 2001 for the same reason. The court made clear that this continuation was the last chance for the original memorandum to be recovered and that it would only be in the most exceptional circumstances that a further adjournment would be contemplated in this connection.

**14.139** On 8 January 2001 (day 77) the Lord Advocate advised the court that Syria had declined to cooperate with the letter of request. The court observed that, as there was no realistic prospect of the document being available within any sort of reasonable timescale, if at all, Mr Taylor should proceed with the defence case.

#### *The Commission's enquiries*

**14.140** As part of its assessment of this ground, the Commission recovered from the defence files a note by the applicant's trial solicitor Alistair Duff dated 7 June 2001 relating to the Goben memorandum (see appendix). According to the note Mr Duff considered the memorandum to be "hearsay, unreliable and provably wrong in a number of respects and therefore of no value."

**14.141** This view was reflected by Mr Beckett at interview with the Commission's enquiry team. According to Mr Beckett, Miroslava Goben had stated that her husband's position was that Khaled Jaafar took the bomb on to the plane as hand luggage. This was inconsistent with what Mr Beckett considered irresistible evidence that the bomb was contained in a luggage container. According to Mr Beckett, this inconsistency could be used to taint anything else in the memorandum.

**14.142** In Mr Beckett's view the memorandum was also contrary to the evidence of the witness Hassan El Salheli (days 65-66) who said he had witnessed Mr Jaafar packing only clothing into his suitcase. In addition while there was evidence that Mr Jaafar had travelled from Beirut to Germany and then on to the flight to the US, there was no evidence to support the suggestion that he had undertaken a trip to Yugoslavia, as the memorandum suggested. The court, Mr Beckett said, had accepted that the bomb was not contained in Mr Jaafar's luggage. According to Mr Beckett, there was evidence that Mr Jaafar had two bags and that two bags were recovered at the crash site. Mr Beckett said that in those respects the memorandum contradicted provable facts.

**14.143** Another difficulty raised by Mr Beckett was that the basis of what Goben purportedly knew was unexplained. Mr Beckett considered it likely that the memorandum was hearsay. He suggested that, if Goben had said in the memorandum that he had made the bomb then it would have been admissible, but otherwise, if it was just based on information from his colleagues in the PFLP-GC, it was not admissible. Mr Beckett stated that it was hoped that if the original document could be recovered from Syria the missing pages might contain something clear and direct in relation to the bombing. That was why the letter of request to Syria was issued.

**14.144** As well as investigating matters with the defence, the Commission also wrote to Crown Office seeking all statements and precognitions obtained by the Crown following its receipt of the information contained in the memorandum, together with any reports or similar relating to [REDACTED]. On 31 December 2004 Crown Office provided 18 documents relating to the memorandum and a further 28 documents concerning [REDACTED] (indexes of these documents are contained in the appendix). The Commission's conclusions following an examination of these materials are set out below.

**14.145** In the letter accompanying these materials, Crown Office advised that [REDACTED]'s name had never been made public during the Lockerbie investigation and asked that the Commission ensure that "his name is not made public as a result of [its] investigations." On three separate occasions the Commission sought to clarify with

Crown Office precisely what was meant by this request, in light of the fact that the Commission does not publish its statements of reasons. No response was received from Crown Office in this connection. However, given that [REDACTED]'s name is clearly known to those currently acting on behalf of the applicant, as well as to Crown Office, the Commission did not consider it necessary to delete references to him in its statement of reasons.

### *Consideration*

**14.146** The Crown's obligations of disclosure under *McLeod v HMA* and the Convention have been set out in section (2) above regarding the CIA cables. In essence the applicant's submission is that the Crown's approach to the Goben memorandum breached those obligations and has resulted in a miscarriage of justice.

**14.147** Although the Goben memorandum was the subject of detailed submissions to the trial court it did not feature in the evidence. As indicated, both the Crown and ultimately the defence were doubtful as to the credibility and reliability of the information contained within the document. Insofar as it is alleged that Mr Jaafar carried the bomb on board PA103A either in his hand luggage or in the baggage he checked in, the Commission shares these doubts. As the trial court recognised, there was acceptable evidence that before travelling to Frankfurt airport Mr Jaafar had two holdalls in his possession. The passenger manifest for flight PA103A indicated that he had checked in two items of luggage both of which had been found close by one another at the crash scene. Neither had suffered any explosion damage. In addition, as Mr Beckett highlighted at interview, any suggestion that Mr Jaafar had carried the device in his hand luggage is countered by undisputed evidence that the bomb was contained in a brown Samsonite suitcase located in luggage container AVE 4041 within the hold of the aircraft. As explained in chapter 13 above the Commission has found no evidence to justify the suspicions that have been raised as to Mr Jaafar's involvement in the bombing.

**14.148** The Commission has examined each of the 18 documents received from Crown Office in connection with the memorandum. It is apparent that most of these items were not disclosed to the defence. The Commission has also examined a

number of papers in relation to the memorandum which were extracted from the defence files (again an index of these materials is contained in the appendix). It is clear from these papers that the defence interviewed all the witnesses referred to in Crown Office's letter of 23 October 2000. Having compared the information in the possession of both parties at the time of trial, the Commission is of the view that the defence had all material information that was available to the Crown in respect of the memorandum.

**14.149** Likewise, the Commission has examined each of the 28 documents received from Crown Office in relation to [REDACTED]. Again, most of these items were not disclosed to the defence. The Commission has also examined a number of defence papers in relation to [REDACTED] (see the index in the appendix). Having compared both sets of information the Commission is of the view that all material information concerning [REDACTED] which was in the hands of the Crown was also available to the defence.

**14.150** The Commission has also examined various items received from Crown Office (see the index in the appendix) and D&G in response to its requests for information regarding Mr Jaafar, as well as the relevant passages from the Crown precognitions and the police report. Again the Commission found nothing material in any of these sources which was not available to the defence at trial.

**14.151** The contents of three letters sent to the defence by Crown Office during the trial are worthy of note as they contain additional information regarding [REDACTED] (see appendix), and are of assistance in addressing the submissions about the FBI's enquiries about him. First, in a letter dated 31 October 2000, Crown Office advised the defence that information had been made available to the Crown by the FBI that on 14 May 1987 [REDACTED] deposited \$5850 in Thomas Cook traveller's cheques in his account with Riggs National Bank. According to the letter a Mr Hafez Hussein purchased the traveller's cheques on 8 May 1987 from the Societe Bancaire Arabe in Cyprus (the Commission notes that Hafez Mohamed Hussein was a name used by Dalkamoni: evidence of Anton Van Treek: 71/8724 and joint minute number 16). Although the information provided by the FBI was that the cheques banked were to the value of \$5850, by the Crown's calculations the cheques totalled \$5000 which

in its view was the correct sum. According to Mr Keen's submissions at the first chambers hearing the FBI was prompted in December 1990 to carry out a comparison of the handwriting on the traveller's cheques and specimens of Dalkamoni's handwriting. The comparison indicated only that the same person *might* have prepared the documents.

**14.152** In a second letter, dated 9 November 2000, Crown Office advised the defence that the Scottish police had interviewed [REDACTED] about the traveller's cheques the previous month, prior to the defence meeting with him. As far as the Crown was aware, this was the first time that [REDACTED] had been asked about this matter. According to the letter, [REDACTED] did not recall depositing this sum. He had explained to the police that when he went home (to Syria) he would get money from his family and that he would not know where this had come from. If he had received \$5,800 it would probably have been from his family. He was in the middle of divorce proceedings at the time and would have asked his family for money to help. He needed money for court as he had to pay his wife money. He did not receive any money directly from a Hafez Hussein, who [REDACTED] said was a well-known person. The letter also said that [REDACTED] had given his explanation regarding the Syrian passport, that he had been asked to make it available if it was located and that his lawyer was aware of the defence interest in the matter.

**14.153** In a third letter, dated 2 November 2000, Crown Office informed the defence that [REDACTED] was seen by the FBI during the period 1988/1989 when he was considered to be someone who might have had information to impart on a number of matters. According to the letter, on 23 January 1989 [REDACTED] denied that he had any information about the Lockerbie bombing or that he knew any of the suspects arrested by the BKA in the Autumn Leaves operation. In the Commission's view, although the purpose of that meeting is unclear, there is no evidence to indicate that the discussions connected [REDACTED] to the bombing of PA103.

**14.154** Although the Commission is not aware of the extent of any information held by the FBI on this matter, these letters tend to confirm that no evidence was made available to the Crown as a result of the FBI's enquiries that would link [REDACTED] to the bombing of PA103.

**14.155** Furthermore, although it came to light at an advanced stage in the trial the Commission finds no substance in the complaint that the Crown's disclosure of the information obtained from the Norwegian authorities was late. The sequence of events at trial indicates that information relating to the memorandum and [REDACTED] was disclosed to the defence once the Crown had investigated the matter. As indicated, the court granted a number of adjournments to the Crown and to the defence to allow them to complete their investigations in this connection.

#### *Conclusion*

**14.156** For the reasons given the Commission does not consider that the Crown's handling of matters concerning the Goben memorandum gave rise to a breach of the Crown's obligations under *McLeod* or the Convention. Accordingly, the Commission does not consider that a miscarriage of justice may have occurred in this connection.

#### **(4) Information relating to the incriminees**

##### *Introduction*

**14.157** At trial each accused lodged a notice of special defence of incrimination in identical terms. The persons incriminated were (1) members of the Palestinian Popular Struggle Front ("PPSF"), said possibly to include Mohamed Abo Talb and a number of other named individuals; (2) members of the Popular Front for the Liberation of Palestine-General Command ("PFLP-GC"); and (3) an individual named Parviz Taheri, although in the event the defence did not insist on this aspect of the incrimination.

**14.158** It is alleged on behalf of the applicant (see chapter 12 of volume A) that the Crown's approach to the disclosure of evidence in respect of the incrimination amounted to a breach of the Crown's duty of disclosure as set out in *McLeod*. It is also alleged that there was a violation of the applicant's right to a fair trial under article 6 of the Convention.

**14.159** This section sets out the Commission's conclusions in respect of the following materials obtained from Crown Office and D&G:

- (1) the interim and final police reports issued to the Crown in May 1989 and November 1991 respectively;
- (2) the Crown precognition volume relating to the incriminees (chapter 15 of the case);
- (3) the contents of various HOLMES statements and other witness accounts relative to the incriminees; and
- (4) the responses issued to the Commission by Crown Office and D&G in respect of various specific requests for information regarding the incriminees.

**14.160** The allegations of non-disclosure in respect of Khaled Jaafar have been addressed in section (3) above regarding the Goban memorandum.

*The applicant's submissions*

**14.161** It is alleged in the submissions that very little of the mass of information available to the Crown in respect of the incriminees was disclosed to the defence. The incriminees, it is submitted, were the main suspects for at least 18 months after the bombing. Reference is made to the minutes of an international Lockerbie conference involving police and prosecutors from various countries which took place on 14 September 1989. According to the submissions the minutes of that conference record that consideration was given by the Crown to bringing charges against the incriminees. The submissions further allege that a draft petition was prepared containing charges against the incriminees. MacKechnie and Associates confirmed by letter dated 12 May 2005 that the latter allegation originated from the Golfer (see chapter 5).

**14.162** The submissions argue that there was an "astonishing" lack of information provided to the defence by both the US and UK authorities given that the

investigation had reached the stage when charges were contemplated. It is claimed that the investigating authorities would have had information showing that the bombing was sponsored by an alliance of Iran and Syria and that the PFLP-GC and its leader Ahmed Jibril carried out the attack. According to the submissions such information was reported widely in the press and was recorded in the cables of the US Defense Intelligence Agency (“DIA”). It is also submitted that the authorities must have had information indicating that there was a coalition between the PFLP-GC and the PPSF. According to the submissions information to this effect was noted in the BKA files (see section (1) above).

**14.163** It is further alleged in the submissions that evidence must have been available to the authorities regarding the activities of the PFLP-GC in Malta, Cyprus and Yugoslavia. Indeed, it is suggested that at trial Det Chief Supt Henry Bell accepted in cross-examination that PFLP-GC personnel in Malta were under surveillance by the US there. The submissions also allege that CIA personnel interviewed in the US declined to provide information on this matter on the basis that it was “irrelevant” and contrary to national security.

**14.164** According to the submissions it was apparent from the international Lockerbie conference minutes that Abu Elias was of great interest to investigators, yet very little information was provided about him.

#### *The events at trial*

**14.165** Evidence in relation to the incrimination featured prominently at trial and was spoken to by a number of witnesses and agreed in several joint minutes. It was also addressed in detail in the closing submissions by the advocate depute (79/9524-9527) and counsel for the applicant (80/9574-9600). It was not an issue on which the applicant sought to rely at appeal.

**14.166** The trial court dealt with the incrimination defence at paragraphs 70-81 of its judgment. Its conclusions were that prior to the Autumn Leaves raid on the PFLP-GC cell in West Germany in October 1988 that cell had both the means and intention to manufacture bombs which could be used to destroy civil aircraft (paragraph 73) but



that there was no evidence that the cell had the materials necessary to manufacture an explosive device of the type that destroyed PA103 (paragraph 74). The court also accepted that there was a great deal of suspicion as to the actions of Talb and his circle, but concluded that there was no evidence to indicate that they had either the means or the intention to destroy a civil aircraft in December 1988 (paragraph 81). At paragraph 82, the court concluded that although there was no doubt that organisations such as the PFLP-GC and the PPSF were also engaged in terrorist activities, there was no evidence from which to infer that those organisations were involved in the bombing of PA103, and the evidence relating to their activities did not create a reasonable doubt about the Libyan origin of this crime.

### *Consideration*

**14.167** Before addressing the submission that there must be information about the incriminees that was not disclosed to the defence, it is worth addressing first the allegation that at one stage the Scottish authorities envisaged charges being brought against them. As indicated, in support of this assertion the submissions rely upon the international Lockerbie conference minutes of 14 September 1989 and an allegation by the Golfer. The relevant passage from the conference minutes states:

*“... With reference to further actions in the international investigation, the Scottish representatives reported on forensic examinations still outstanding, which could lead to new lines of enquiry... According to Scottish law, a charge against certain people is already possible but not envisaged at present”* (underline added).

**14.168** The minutes do not name the individuals in question but given that the minutes refer elsewhere to investigations in respect of Talb and the PFLP-GC it is reasonable to infer that the sentence highlighted above relates to them.

**14.169** However, the minutes for the next international conference, held on 10 January 1990 (see appendix), record a request by the “Scottish Prosecutors” to replace the sentence in question with the following:

*“... According to Scottish law circumstantial evidence could be used to support charges against some people, but in view of the current state of the evidence there was no prospect of bringing charges against any particular group or individual at this stage.”*

**14.170** No objection to the proposed amendment was noted in the January 1990 minutes and the Commission therefore has no reason to doubt that it was accurately recorded. Contrary to the submissions, then, it is clear that the Scottish authorities did not consider the evidence against the incriminees as sufficient to justify charges being brought. It is worth noting that minutes for a number of the international conferences, including the two mentioned here, were referred to in evidence (56/7581, 70/8683-8684 and 71/8729) and during the hearings in chambers (pp 7, 145 and 148 of the transcript). Accordingly, the defence was clearly aware of them at the time of the trial.

**14.171** As regards the allegation attributed to the Golfer that a draft petition was prepared containing charges against the incriminees, the Golfer did not adhere to this claim when interviewed by the Commission’s enquiry team (see statement dated 14 December 2004, p 23, in appendix of Commission’s interviews). He explained, instead, that reports were prepared by the police recommending that arrests be made of the Autumn Leaves suspects (i.e. the PFLP-GC cell in West Germany). According to the Golfer another police officer told him that the reports were submitted personally to the then Lord Advocate at his home. The Golfer said that the news later filtered back that the Crown was not willing to proceed with charges.

**14.172** For the reasons given in chapter 5, the Commission has rejected the Golfer’s accounts. In relation to the present allegation, D&G advised the Commission by letter dated 11 April 2005 (see appendix) that only two reports were submitted by the police to the Crown or procurator fiscal, namely the interim police report (in May 1989) and the final police report (in November 1991). The Commission has examined both reports and neither recommends the bringing of charges against any of the incriminees. The Commission has seen no other evidence supporting the claim that a draft petition was prepared containing charges against the incriminees.

**14.173** The fact that the incriminees were initially the main suspects was abundantly clear at trial, and was spoken to by DCI Gordon Ferrie (3/317-318). DCI Ferrie went on to testify that by June 1990 the direction of the investigation “was changing” (3/330).

**14.174** In the Commission’s view, the crucial question in relation to this ground is whether there was a failure by the Crown to disclose to the defence material evidence in respect of the incriminees. The law concerning the Crown’s obligations in this area is set out in section (2) regarding the CIA cables, above.

**14.175** As part of its assessment of this question the Commission examined in some detail the evidence at trial and the closing submissions of counsel. The Commission also examined the interim and final police reports, as well as various Crown precognitions and HOLMES statements considered relevant to the incrimination. Given the sheer volume of material, it was not possible to review all the information held by D&G and Crown Office. In these circumstances the Commission made a series of specific requests to those agencies for information considered relevant to this ground. The Commission also examined numerous papers that were in the possession of the applicant’s representatives and which were available to the defence at trial. As well as defence precognitions, these included Crown precognitions, Crown productions (both those which were lodged and those which were not) and police statements, all of which had been disclosed to the defence. The papers also included documents which had been contained in the BKA files.

**14.176** Broadly, the approach taken by the Commission was to identify within the materials obtained from the Crown and D&G any information which did not feature in the evidence at trial and which the Commission considered might be material to the incrimination. Where such information was found, the Commission sought to establish whether it was contained in the documentation available to the defence at trial.

**14.177** The results of this exercise are referred to below. In short, the Commission did not come across any information of potential materiality which was not available to the defence at trial.

(1) The police reports

**14.178** Neither of the two reports submitted by the police to the Crown was disclosed to the defence. One chapter of the interim report and a number of sections of the final report contain material information in relation to the incrimination. However, in light of the evidence led at trial and the information in the possession of the defence in the form of Crown and defence precognitions, the Commission considers that all material information in the reports was available to the defence.

**14.179** One section of the final police report concerns Abo Talb and lists over twenty HOLMES documents relating to him and a number of his associates. The Commission obtained prints of all these documents from D&G but does not consider them to contain any material evidence that was not available to the defence. There were no documents listed in the section of the police report dealing with the PFLP-GC.

**14.180** The final police report also contains a section concerning the “Miska Company” in Malta. A specific allegation made about this company in the submissions is addressed below.

(2) The Crown precognition volume

**14.181** As stated in chapter 4 above, the Commission obtained from Crown Office what appears to be the full collection of Crown precognitions relating to the case. This included three volumes in respect of the incriminees (chapter 15 of the precognition volumes), the first two relating to Talb, the third to the PFLP-GC. Many of the precognitions concerning Talb were disclosed to the defence. However, in some cases the versions provided to the Commission by Crown Office contained passages which were not included in the versions disclosed to the defence. Having conducted a comprehensive comparison exercise, the Commission is satisfied that there is no material information in any of the undisclosed passages or in any of the undisclosed precognitions that was not otherwise available to the defence.

### (3) HOLMES statements and other witness accounts

**14.182** As indicated in chapter 4 above, the Commission obtained from Crown Office a database containing over 15,000 HOLMES statements. In the course of its consideration of the submissions on the incrimination and the responses from the Crown and D&G to requests made in this regard, the Commission examined a large number of these statements and is satisfied that none of those reviewed contain material information that was not available to the defence. However, one statement of Talb's wife Jamila Moghrabi dated 7 December 2006 (S5080B, see appendix) refers to a telephone conversation she made to her sister-in-law Wafa Toska in terms that are slightly different to the information that appears to have been available to the defence (see appendix). In the Commission's view, however, the discrepancy between the two sources is not material.

**14.183** The Commission also requested from D&G any other witness statements that were not included within the HOLMES database. In a response dated 7 November 2005 D&G explained that some reports of interviews carried out by and received from agencies in other countries would be treated as HOLMES "documents" rather than as statements. The documents falling into this category were provided to the Commission by D&G and comprised:

- (a) 89 documents in respect of FBI interviews with either passengers on PA103 or Pan Am staff;
- (b) 30 FAA (Federal Aviation Administration) interviews or reports of interviews; and
- (c) 116 documents in respect of German and Swedish enquiries following up on Autumn Leaves and Abo Talb.

**14.184** Having examined these documents, the Commission does not consider any of them to contain material information which was not available to the defence.

(4) The Commission's requests to Crown Office and D&G

**14.185** As explained, the Commission made a number of requests to D&G and Crown Office in respect of issues relevant to disclosure and incrimination. The Commission's findings in respect of several of these requests are set out below.

(a) General request regarding Dalkamoni and others

**14.186** The Commission requested from D&G and Crown Office all statements and precognitions of Haj Hafez Kassem Dalkamoni, Abu Elias, Ahmed Jibril, Marwan Khreesat and Abo Talb, as well as any reports setting out the outcome of investigations into the possible involvement of these individuals in the bombing of PA103.

**14.187** In its various letters dated 15 or 16 November 2005, D&G provided a series of documents relative to each of these individuals. The correspondence from D&G was protectively marked, as were many of the documents provided. In the Commission's view none of these documents contains any information of potential significance. However, the Commission sought D&G's consent to disclose a particular document which contained information relating to Abu Elias. The Commission's request was referred by D&G to the Security Service which ultimately gave consent to disclose only the following passage:

*"Meeting on 21 February 1990*

*DST [France's domestic security service] asked DC Entwistle if he was looking for 'Abu Elias' amongst the names of MAY 15 transferees to PFLP-GC. DST stated that 'Abu Elias' was a central figure in terrorism, that there were numerous people of that name on 'intelligence networks' and that they believed that the PA103 bombing must have had some sort of collaboration at Frankfurt."*

**14.188** The Commission has found no evidence to support the claim that the loading of the bomb onto PA103A was achieved through the assistance of a "collaborator" at

Frankfurt airport. Indeed, the defence investigated claims that a baggage handler at that airport had introduced the bomb onto PA103A but found these to be unsubstantiated (see appendix). In these circumstances the Commission does not consider that any decision not to disclose the information contained in this document suggests that a miscarriage of justice may have occurred.

**14.189** In its letter dated 18 January 2006 Crown Office confirmed that it had no statements or precognitions from anyone identified as Abu Elias and explained that no individual of that name had ever been identified by the Crown or D&G. In addition, the letter advised that Crown Office did not have any statements or precognitions of Ahmed Jibril. Crown Office confirmed that all of the statements and precognitions held by it in respect of Abo Talb had already been made available to the Commission. In a further letter dated 27 April 2007 Crown Office confirmed that all of the statements and precognitions held by it in respect of Dalkamoni had already been made available to the Commission.

**14.190** Crown Office provided a number of documents in connection with Marwan Khreesat. As well as copies of Crown productions 1851-1858 (which relate to Khreesat's FBI interview and various questions the Crown intended to put to him at interview in April 2000) Crown Office provided (1) an additional question put to Khreesat by the Crown along with his answer to this, (2) a statement by DC John Crawford dated 21 April 2000 concerning Khreesat's interview in April 2000, and (3) a statement by Magdy Abbas dated 19 April 2000 concerning the same interview. The Commission does not consider that any of these three documents contains material information that was not available to the defence.

(b) Request regarding RT-SF16 Toshiba radio cassette players

**14.191** The trial court accepted that the explosive device used in the bombing of PA103 was housed in a Toshiba twin-speaker radio cassette player known as an RT-SF16 BomBeat. It was therefore different from the device recovered from the PFLP-GC cell in West Germany in October 1988 and the "fifth device" described by Khreesat at interview with the FBI (see the evidence of Edward Marshman: 76/9301; CP 1851) both of which were contained within single-speaker radio cassette players.

**14.192** The fact that a particular model of Toshiba cassette player was used in the bombing of PA103 appears to have been a factor in the court's rejection of the incrimination defence. In light of this the Commission requested from D&G and Crown Office any information in their possession regarding the possible use by any country, agency or person of RT-SF16 Toshiba BomBeat radio cassette players or other types of twin-speaker radio cassette players to conceal improvised explosive devices. In its response dated 7 November 2005, D&G indicated that research of the matter had failed to detect the use of an RT-SF16 radio cassette player in any other air incidents. D&G also provided a number of documents considered relevant to the request none of which, in the Commission's view, contain material information that was not already available to the defence. Crown Office subsequently informed the Commission that it had nothing to add to D&G's response.

(c) Request regarding the Miska Bakery

**14.193** It is alleged in the submissions that there was a failure to disclose material evidence in respect of surveillance of the PFLP-GC in Malta. Reference is made in this respect to Mr Bell's evidence at trial which according to the submissions was to the effect that PFLP-GC personnel in Malta were under surveillance by the US. In fact Mr Bell gave evidence that the police enquiry was suspended in Malta because of unauthorised telephone tapping, but he did not specify who was responsible for this (32/4887-8). Later in his evidence Mr Bell stated that the incident involved a telephone tap at the Miska Bakery in Malta and that the subject of the surveillance was the owner of the bakery (52/7149).

**14.194** A number of the incriminees were directors of, or otherwise connected to, the Miska Bakery, and there was evidence at trial which, according to the defence, indicated links between those individuals and Abo Talb and the PPSF (see eg joint minute number 11; evidence 40/6043). As indicated, one of the sections in the final police report (section 4.15) concerned "the Miska Company Limited." According to the report the company was of interest to the enquiry because of the associations between some of the participants in the company and Abo Talb. The report names these individuals as: Abd El Salam Arif Abu Nada, Jamal Haidar, Magdy Mousa



Ahmed, Dr Khalid Mohamed Salama El Nahhal, Imad Adel Hazzouri, Ismail Hazzouri, Ala'a El Deen M H Sherrab, Saber Shurrab, Hashem Abu Nada alias Hashem Salem, Abou Feyah Selvana and Mohamed Abdallah Haidar. The report states that from enquiries and accumulated intelligence information, there was evidence indicating that the Miska Company was a “front” for terrorist activity. The report does not provide any further information about this intelligence, although it goes on to say that with the assistance of the Maltese authorities it had been confirmed that the participants named above were involved in, or connected to, the company. The police report refers to statements and documents relating to a number of these individuals, some of whom the police interviewed. The Commission obtained those statements and documents and having examined them is satisfied that none of them contains any undisclosed evidence of any materiality.

**14.195** The relevant section of the report concludes by saying that although there were indications that the Miska Company was not a bona-fide organisation, there was nothing to implicate the company, its directors or its associates including Abo Talb with any involvement in the destruction of PA103. That conclusion accords with Mr Bell’s evidence on the matter (56/7586).

**14.196** The police report provides no information about the surveillance mentioned by Mr Bell in his evidence. By letter dated 25 April 2005 the Commission asked D&G and Crown Office to explain the “accumulated intelligence information” referred to in the relevant section of the report. The Commission also requested information regarding the surveillance in Malta referred to by in Mr Bell in evidence.

**14.197** In its response dated 17 August 2005 D&G advised that the Scottish police were not involved in the surveillance, nor were they aware of who had carried it out or of the results of the operation. In its letter D&G refers to four HOLMES documents with references D6652, D6755, D6756 and D11932. With the exception of document D11932 all of these are protectively marked. D&G provided details of each document in its response but only document D6755 is significant for present purposes. D6755, it was explained, is a confidential note prepared by DCS Henderson explaining that on 12 November 1990 Mr Grech of the Maltese Police had informed Mr Bell that a device with the appearance of a transmitter had been found in a street telephone

junction box. The device, it was said, looked as if it had been attached to a telephone line belonging to a Palestinian resident in Malta who had been interviewed by Scottish police officers. D6755 also pointed out that reports of the intercept had appeared in a Maltese newspaper, *L'Orizzont*, on 6 and 7 November 1990, but that the issue had only been raised with Mr Bell on 12 November. According to the document Mr Grech believed that the Scottish police might have been responsible for the device, an allegation which Mr Bell immediately and strongly denied. D6755 concluded by saying that a letter by the Scottish police formally denying involvement in the episode had been sent to the British High Commission in Malta.

**14.198** In a further response dated 7 November 2005 D&G provided a number of documents relevant to the Commission's request for intelligence information regarding the Miska Bakery. In the Commission's view none of them contains material information that was available to the defence. The Commission also examined a number of other protectively marked documents in connection with its request to D&G. Again, none of these documents contains material evidence that was not available to the defence.

**14.199** In its response dated 18 January 2006 Crown Office advised that they had nothing to add to D&G's responses except to point out that "it was never accepted by any individual or agency that phone tapping had occurred" and that it had no information about the "alleged phone tapping" to which the Commission had referred.

**14.200** Standing these responses, it appears to the Commission that all material information held by Crown Office and D&G relating to the surveillance was heard at trial.

(d) The return portion of Abo Talb's ticket

**14.201** In his closing submissions at the trial, counsel for the applicant referred to joint minute number 11 in which it was agreed that on 26 October 1988 Talb travelled from Malta to Sweden on a return ticket (CP 1277) which was valid until 26 November 1988. According to the submissions it had not been proved that the return portion was not used. The evidence at trial was that the only means of confirming this

was to make enquiries with Scandinavian Airlines (Wilfred Borg at 34/5261). There was no evidence as to whether such enquiries had ever been undertaken.

**14.202** The Commission asked D&G to confirm whether investigations were carried out in this regard. In its response dated 18 October 2005 D&G advised that it had been unable to locate any records confirming that the position was checked with Scandinavian Airlines. At the Commission's request D&G enquired with Scandinavian Airlines whether they held any records which might clarify the position. However, the airline confirmed to D&G that any such records would have been destroyed after 10 years. Thereafter, the Commission requested that D&G ask the police officers involved in enquiries relative to Abo Talb (namely Watson McAteer, John McGowan and Pat Ferguson) whether they had established that the position in respect of the return portion of the ticket. D&G confirmed in a letter dated 19 April 2006 that none of the officers could recall making enquiries in this connection.

**14.203** There is no evidence to suggest that Abo Talb used the return portion of the ticket. Indeed, the indications are that he did not do so. According to D&G's letter to the Commission dated 29 December 2005 the police searched the embarkation cards in Malta for any relating to Abo Talb (or his aliases) but found none which indicated that he had returned there. There were also no marks in Talb's travel document (CP1249) to suggest that he travelled abroad after returning to Sweden from Malta on 26 October 1988. In addition, there was evidence of Talb's presence in Sweden on particular dates in November and December 1988 but no evidence of his presence in Malta in those months apart from Anthony Gauci's account that he resembled the purchaser of the items.

**14.204** In the Commission's view, although it is regrettable that the matter was not checked with Scandinavian Airlines at the time of the police investigation, there was no failure by the Crown to disclose material evidence about the return portion of Talb's flight ticket.

(e) Other matters

**14.205** The Commission also requested information from D&G in respect of a number of other issues relevant to this ground. These included:

- All Commissions Rogatoire relating to Sweden and, in particular, Talb.
- Details regarding a report on the BBC news website on 23 August 2002 concerning Atef Abu Bakr who, according to the report, was a former aide of the Palestinian terrorist, Abu Nidal. The report referred to comments by Bakr that Nidal, who had been found dead in Iraq in the week of the report, was behind the PA103 bombing.
- A copy of production DH/25 - a compilation of transcripts of television interviews given by Ahmed Jibril.
- A request regarding section 33.3 of the police report. This section of the report addressed a number of anonymous claims of responsibility for the bombing of PA103.

**14.206** The responses from D&G in connection with these matters are contained in the appendix. The Commission's enquiries in respect of these matters did not uncover any material information that was not available to the defence.

*Conclusion*

**14.207** For the reasons given, the Commission does not consider that the Crown's approach to the disclosure of evidence in respect of the above matters amounted to a breach either of its duty of disclosure as set out in *McLeod* or the applicant's Convention rights. Accordingly the Commission does not believe that a miscarriage of justice may have occurred in this connection.