

International Justice, Accountability and Reconciliation
Workshop C4: Protection of Victims and Witnesses

Protecting Victims and Witnesses in International Criminal Cases

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This paper addresses, from a practitioner's perspective, particular issues which relate to the protection of the interests and safety of victims and witnesses in international criminal cases -- whether these are tried before domestic courts or international tribunals -- on the basis of the experience of the Lockerbie trial, conducted before a Scottish Court which sat at Camp Zeist in the Netherlands, in 2000 and 2001.¹

The basic interests and needs of victims and witnesses in international criminal cases are essentially the same as those in serious domestic cases. Cases tried before international tribunals can, of course, span a very broad range of criminality, including relatively straightforward cases of murder and rape involving single accused, through to cases of genocide involving vast numbers of incidents and witnesses, with extensive documentation and multiple accused and complex issues of responsibility of commanders and political leaders. But they are essentially about violence; and extreme violence is equally frequently a feature of domestic cases. The core needs of victims and witnesses are thus likely to be broadly the same, although not all necessarily arising in every case. They are **Information, Support and Protection**

(i) Information

The need for **Information** is widely accepted as being key for victims and witnesses: information about the investigation, any question of proceedings, the time-table of proceedings and the timing and nature of key events; and explanation of decisions.

Not all victims are witnesses, especially when in common usage the term "victims" includes families of deceased victims. Non-witness victims will have more narrowly defined needs than those who are also witnesses and have historically often been at worst ignored and at best patronised and excluded. This was by no means universal: in many civilian systems victims had and have legally established rights, in some cases extending to the right to participate in the proceedings.

Historically, witnesses (including victim witnesses) have fared comparatively better, because it has been necessary for investigators to communicate with them, if only to obtain statements and put them on notice about the need to attend court; and similarly – depending on the legal

¹ Reported on appeal: *Megrahi v HM Advocate* 2002 JC 99

system – for the prosecutor or court to communicate with them about the timetable of proceedings.

More recently, many domestic systems (and all international tribunals) have come to recognise the interest of victims in having full and timely information about the case and key events in its progress – and having an effective opportunity to attend and understand the public stages of the proceedings.

(ii) Support

Historically, in domestic cases victims who were not witnesses were often given little or no support; and witnesses were treated not much better.

Witnesses could generally be compelled to attend and courts and prosecutors relied on that compulsion. Only where there was actual or perceived intimidation, or where witnesses were obviously highly vulnerable (for example, very young children or learning disabled), would special measures be taken and even then largely on an ad hoc, unstructured way.

Victims who were not witnesses had less obvious needs and to some extent it took major cases (such as the Oklahoma City Bombing in the United States), where there were large numbers of victims (and therefore a louder voice), to galvanise the relevant authorities into providing a greater measure of support for victims.

(iii) Protection

Witness Protection schemes have come to be a common feature of modern domestic criminal justice systems. There is an established tradition of witnesses in organised crime cases and witnesses who are informants, or at least associates of the accused in more general serious cases, requiring special protective measures, which may include the provision of a new identity, but historically there was often little that courts could do to protect witnesses.

The Scottish background

Prior to the Lockerbie case, the Scottish experience and practice can be said to have been at the least victim-focused end of the spectrum. There were few statutory rights or protections for victims or witnesses, with the exception of children, who may give evidence behind screens or by closed circuit television with the permission of the court. Victims and witnesses were likely to be given basic, but often inadequate, information in serious cases; support was patchy in the extreme, depending on the goodwill of (and appreciation of needs by) individual prosecutors; protection was available in the form of a police witness protection scheme, but although courts occasionally entertained applications for screens and use of pseudonyms by undercover officers, there was little legal protection for witnesses.

Victim support was something which was provided by voluntary organisations who were to a large extent dependent on the goodwill of police, prosecuting authorities and courts.

There were often isolated examples of good practice: high quality Social Work support at some courts and the beginnings of direct witness support attached to courts.

Lockerbie: the background

Lockerbie was and remains the largest homicide case in Scotland with 270 victims. Although the crime took place in December 1988 and the eventual accused were identified and named in November 1991, there was no clear prospect of a criminal trial until 1998. During that intervening period there was contact between investigators – largely police – and victims’ families – partly evidential, but also partly in dealing with requests for information. That contact was, however, largely ad hoc. But it was very international; although the majority of victims were from the United States and the United Kingdom, there were victims from 21 countries. In the early and active stage of the investigation a number of police officers and prosecutors met and established a good rapport with individual and representative family members; but there was no template or guidance for that contact; nor was there such in the United States; and many family members did feel isolated and unsupported.

Lockerbie was in a sense a domestic case, since it was investigated by domestic authorities – albeit jointly between Scotland and the United States – but it was also an international case, for a whole range of reasons: (a) the bomb was routed through a number of countries and no material act by those responsible occurred in the United Kingdom – indeed it was no part of the prosecution case that they were in the United Kingdom at any material time²; (b) the investigation was international and involved the police and judicial or prosecuting authorities of an as then unprecedented number of countries; (c) the victims came from a large number of countries; and (d) the eventual accused were identified as citizens and residents of a country with which the United Kingdom and United States had neither diplomatic nor extradition relations. This last point and the response of the United Kingdom and the United States proved crucial to the international character of the case and the trial: because the two countries took the case and their demand for the surrender of the accused to the United Nations Security Council.

On 27 November 1991 the British and US governments issued a joint statement calling on the Libyan government to surrender the two men for trial in Scotland or the United States, to disclose everything it knew of the crime and to pay appropriate compensation³. The statement underlined the fact that this was a joint international investigation: whichever country secured the accused for trial, the other prosecuting department would lend its full assistance. Since there were no means to secure the arrest of the accused, the two governments concluded that the proper approach was to take the case to the international community through the United Nations Security Council, which adopted three Resolutions, leading to the imposition of mandatory sanctions⁴. These did not, of course, have the desired effect of securing the surrender of the accused for trial before a conventional domestic court. But at various stages Libya had indicated that it would not oppose trial in a third country, even before Scottish judges, and specifically in the Netherlands, the seat of the International Court of Justice, the International Criminal Tribunal for the former Yugoslavia (ICTY) and other international tribunals and legal bodies. As the years passed the prospect for conventional trial was very bleak and it was in that situation that the British and American Governments explored whether it would in fact be possible to mount a “Scottish” trial in a third country.

² *HM Advocate v Megrahi* 2000 JC 555, 560E-F

³ United Nations Documents A/46/826; S/23307, Annex III

⁴ Security Council Resolutions 731 (1992), 748 (1992) and 883 (1993)

In late 1997 and early 1998 I worked closely with UK Foreign and Commonwealth Office and US colleagues in exploring whether such a process was internationally feasible. Once our respective Governments were satisfied that such a trial could in principle be mounted abroad it was, of course, necessary to approach and obtain the approval of a suitable host state. The Netherlands was the obvious location; it had frequently been suggested by the Libyans and would-be intermediaries and was the seat of many international tribunals and legal bodies. The Dutch Government readily agreed to detailed exploratory talks which led swiftly to the drafting of a treaty between the United Kingdom and the Netherlands, drawing, in significant details, on the Agreement with the United Nations for ICTY.

The treaty would agree to a limited United Kingdom, in particular Scottish, jurisdiction in the Netherlands. It would make it clear that there required to be an extradition process for the transfer of the accused from the Netherlands to Scottish custody.

It became clear that the simplest and most effective way of launching such an initiative was with the backing of a Security Council Resolution. That would be consistent with the approach which had been taken throughout the period since 1991. It would also facilitate the passage of the necessary legislation in the Netherlands and the United Kingdom, by obliging these Governments to implement the initiative. It would place obligations on Libya, with regard to surrender of the accused, but also with regard to co-operation with requests by the court for production of evidence or attendance of witnesses.

Accordingly, on 24 August 1998 the UK and US Governments launched the initiative, by formal letter to the UN Secretary General explaining what was intended and annexing the draft treaty and legislation⁵. On 27 August the Security Council adopted Resolution No. 1192 (1998), unanimously and on 16 September 1998 the necessary amendments to Scots Law were enacted by Order in Council. It was possible to use subordinate legislation because of the effect of the Resolution. The Order was made by the Queen in Council, as the Order solemnly states “at the Court at Heathrow” – not perhaps entirely inappropriate.

The upshot was the legal facility for a court of one jurisdiction – Scotland – to sit and exercise jurisdiction in the territory of another jurisdiction; not so much a little part of Scotland as a little part of Scottish jurisdiction – and that for one purpose only: the trial of the two accused. And all of that under the legal authority of the United Nations.

The idea of a court of one country sitting in the territory of another was unheard of (other than in the context of military occupation) and is, admittedly, a model which is unlikely to be used on a regular basis⁶.

But the Scottish Court in the Netherlands, as it came to be known, had many of the attributes of an international tribunal. It was like an ad hoc tribunal in the sense that its jurisdiction was confined to the one case and it had no powers within the territory of the host country, other than within its own site and for purposes directly related to the trial. No witnesses (other than those from the United Kingdom) could be compelled to attend - a feature common not only to international tribunals, but to international cases generally.

⁵ United Nations Document S/1998/795

⁶ although it was adapted for the purpose of the trial of certain Pitcairn Islanders for sexual offences, where it was proposed that a domestic court of Pitcairn Island, a British Dependent Territory, should sit in New Zealand, the Pitcairn Supreme Court ruled that the trial should take place locally

International crime generally gives rise to problems which will affect domestic and international tribunals, often in a similar way: international crimes will invariably require investigation in different countries; and will invariably therefore require liaison with – and generally formal legal requests to – the legal and/or investigative authorities of other countries. International crimes will invariably require, for their proof, the interview and, probably, attendance at trial of witnesses from other countries. Formal legal processes are important in international crime and much has been done post 9/11 to facilitate and simplify those processes – but ultimately much still depends on goodwill and persuasion.

Lockerbie was an extreme example of an international crime; but as already indicated the trial court had many of the features of an international court.

- The basic law and procedure applied was essentially that of Scotland and Scottish domestic courts; but the offences tried included an international offence, arising under the Montreal Convention for the Suppression of Unlawful Act Against the Safety of Civil Aviation, 1971 in charging the destruction of an aircraft in service and commission of acts of violence which endangered the safety of the aircraft under the Aviation Security Act 1982, Section 2.
- The basis upon which the court sat was established under international law: United Nations Security Council Resolution 1192 (1998), adopted under Chapter VII of the Charter of the United Nations, specifically called upon the governments of the Netherlands and the United Kingdom

“to take such steps as are necessary to implement the initiative, including the conclusion of arrangements with a view to enabling the court .. to exercise jurisdiction”⁷.

- The domestic legal basis for the court to sit in the Netherlands was The High Court of Justiciary (Proceedings in the Netherlands) (United Nations) Order 1998 made under statutory powers⁸ allowing the United Kingdom to implement United Nations obligations.

These features went significantly further than giving a legal basis for the holding of the trial: the same Security Council Resolution decided, in paragraph 4

“that all States shall cooperate to this end [ie the implementation of the initiative], and in particular that the Libyan Government shall ensure the appearance in the Netherlands of the two accused for the purpose of trial by the court ... and that the Libyan Government shall ensure that any evidence or witnesses in Libya are, upon the request of the court, promptly made available at the court in the Netherlands for the purpose of the trial”

Resolution 1192 (1998) also invited the Secretary General to nominate international observers to attend the trial⁹.

⁷ paragraph 3

⁸ The United Nations Act 1946

⁹ paragraph 6

In a sense the key provision was paragraph 4 of Resolution 1192 (1998), since, by virtue of its status under Chapter VII of the United Nations Charter, it established an obligation on all member States to cooperate with the court; essentially placing the court, as regards the international community, in the same position as the International Tribunal for the former Yugoslavia (ICTY). It was under this paragraph that Libya surrendered the accused for trial; and in due course produced documentary evidence and made witnesses available. And the same provision enabled the prosecution and court to secure the speedy and full cooperation of many countries in the trial.

The “housekeeping” arrangements for the trial were also underpinned by a Treaty between the United Kingdom and the Netherlands¹⁰; the key Article of the Treaty – Article 3 – provided that the Dutch Government

“shall make available adequate premises for the trial. Within these premises the Scottish Court shall provide reasonable accommodation for persons with a legitimate interest in attending the public trial, including members of the families of the victims or their representatives”.

The legal basis of the trial and its arrangements were therefore firmly rooted in international law and the international legal provisions were relevant to the interests of victims and witnesses because they made it easier for the prosecution to secure the assistance of authorities in other countries in contacting, updating and supporting witnesses and the prosecution; but the key features of the case were the international aspects of the evidence – the vast range of countries in which enquiries were necessary and where witnesses were located – and the practical measures which were put in place to protect the interests of victims and witnesses.

These arrangements extended to **Information, Support and Protection**

(i) Information for witnesses and victims in the Lockerbie trial

Witnesses

All the witnesses who gave evidence at the trial travelled from abroad to the Netherlands. 1160 prosecution witnesses were listed, of whom 227 were called, coming from 15 countries requiring translation facilities for 13 languages. Formal judicial requests to attend the court and accompanying explanatory material required to be translated into the languages of the witnesses; and arrangements were made in countries with significant numbers of witnesses for local liaison by police, prosecution or judicial authorities. In Scottish criminal procedure witness arrangements are substantially the responsibility of the party who calls the witness and, since the vast bulk of witnesses were (as is generally the case) listed and called by the prosecution, it was the prosecution that required to take primary responsibility for communication with witnesses.

In view of the scale of the exercise, representatives of the relevant prosecution and/or police services of all the countries with significant numbers of witnesses were invited to attend a

¹⁰ Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of the Netherlands Concerning a Scottish Trial in The Netherlands

conference at the site of the Scottish Court at Camp Zeist in the Netherlands in advance of the trial chaired by the now Lord Advocate, Colin Boyd QC. There the various representatives were able to familiarise themselves with the intended trial facilities and establish contact with the Scottish prosecution and police team which would be responsible for practical arrangements in the Netherlands and for travel and accommodation. This approach enabled the countries with the largest numbers of witnesses to put in place special liaison arrangements for direct contact with witnesses by their own prosecution or police services, in order to deal with any concerns which witnesses had, communicate inevitable late changes in time-tabling and generally minimise inconvenience to individuals. These liaison officers were crucial to the effective management of the case.

Many of the witnesses were police or other public investigators, but often they were unfamiliar with common law, not to mention Scottish procedure. The Scottish police put together a helpful video tape in cooperation with the prosecution service providing explanatory material for police and investigative witnesses and this was translated for the benefit of German and Maltese officers. There were significant numbers of German and US investigative witnesses and the Scottish prosecution service, with police support, conducted seminars for these witnesses, which enabled their particular concerns to be addressed.

Many of the other witnesses in the case were simply ordinary people who had been going about their ordinary lives when key events occurred back in 1988. For them too the trial involved unfamiliar territory; some were from the United Kingdom, but the very fact of travelling abroad was potentially stressful; one lady, now elderly, had significant and essential evidence to give about finding a fragment of scientifically relevant evidence in her garden, but she had never before left her home county, let alone travelled abroad.

In the case of these “civilian” witnesses, prosecutors or police officers met most of them in the months leading up to the trial, to check their evidence and advise them of trial arrangements; they were provided with written material about the trial arrangements; and their travel arrangements were made by prosecution staff.

Victims

There were no survivors of the Lockerbie disaster, but there were 270 victims and over 1000 family members expressed an interest in the case. Sadly, victimisation on that scale has become more common in the intervening years, but it was without precedent in the United Kingdom in 1988. As already indicated, contact with family members was limited after the initial investigative phase (1988 to 1992) but after the launch of the trial initiative in 1998 the prosecution service decided to contact all known immediate family members in order to establish the extent of their interest in the trial and their particular wishes. With the assistance of the Office for Victims of Crime of the US Department of Justice letters were sent to known family members, asking whether they wished to be kept in touch with the trial arrangements; and asking whether they would be interested in attending or viewing the proceedings remotely. Some made it clear that they did not want to hear about the case; but many did want to know about the case and a number wanted to attend at least part of the trial.

In the lead up to trial face to face briefings were organised for family members in the United Kingdom and the United States and the Lord Advocate and other prosecution team members participated in these briefings. These were an opportunity to advise family members of the

details of procedure and the possible course of the trial, as well as to gain knowledge as to their needs and concerns.

Many family members were now elderly and, of course, a significant number were US residents. For most family members the prospect of attending a trial in a foreign country – even one as friendly as the Netherlands – was daunting and few were able to be so far from home for so long. The United States had the still relatively recent experience of the Oklahoma City Bombing trial. That case had some limited parallels with Lockerbie: a significant number of victims and a remote trial location (albeit within the United States¹¹). Although televising of criminal trials is common in many US jurisdictions, it was not permitted in federal criminal courts and there would have been no opportunity for family members to follow the trial directly without attending in person. Oklahoma City prompted federal legislation to enable closed circuit relay of proceedings in these limited circumstances¹².

The Oklahoma City experience was powerfully relevant to Lockerbie. As in US federal jurisdiction, Scots Law did not permit the live broadcast of first instance criminal proceedings (the appeal was broadcast live); indeed, video recording of proceedings was very seriously constrained. But there was nothing to prohibit controlled transmission under the control of the court. The Office for Victims of Crime (OVC) urged and supported establishment of similar arrangements for the Lockerbie trial and, following application to the court, approval was given for court supervised transmission by encrypted means live to court supervised sites in Dumfries and London and (with a time delay for the time difference) to Washington DC and New York. An application by public broadcasters to televise the trial was refused¹³.

This facility was greatly appreciated by family members, including some who attended part of the trial in the Netherlands. Additionally, the OVC provided an international toll-free information telephone number and supported establishment of a secure internet site for family members, which enabled the court, the prosecution service and the police to communicate information quickly to family members; the website provided background briefing and allowed the posting of transcripts of evidence and daily summaries of evidence. The site was maintained by Syracuse University Law School in New York State.

Syracuse University had a poignant association with Lockerbie, since the largest single group of victims were Syracuse students returning home for the holidays. Law Students from Syracuse received daily transcripts and condensed these into more readable summaries to enable family members more easily to follow the proceedings.

The OVC also financed a private court lounge for family members and the establishment of a family liaison office at the court, staffed by the prosecution, court service and the US Embassy in the Hague. Family Liaison Office staff were able to provide direct information to family members about trial progress and arrangements and to facilitate briefings by the prosecution team. On every day when the court sat members of the prosecution team (sometimes including the Lord Advocate and prosecuting counsel) would visit the family lounge and answer the questions of family members, so far as possible. On several occasions the closed circuit television facilities were used to conduct simultaneous briefings by video

¹¹ the trial had been transferred to Denver, Colorado, because of the prejudice against the accused in Oklahoma

¹² The Anti-Terrorism and Effective Death Penalty Act of 1996, Section 235

¹³ *BBC. Petitioners (No. 2)* 2000 JC 521

conference for family members at the remote sites in the United Kingdom and the United States.

While some of these arrangements were particularly responsive to the distant location of the trial and others were particularly relevant to the need to communicate with a very large number of victim family members, the approach of having dedicated victim information facilities and staff is one which can readily be applied in serious criminal cases generally and informed the development in Scotland of VIA – the prosecution service’s dedicated Victim Information and Advice Service, which exists to provide a “way through” the criminal justice process, by offering explanations of criminal justice procedures, updates on the progress of specific cases and details of relevant support organisations. The experience of the Lockerbie case and the advice of the OVC was critical to the establishment of that service.

But in the context of a major international crime with a significant number of victims it is suggested that the range of measures put in place in the Lockerbie case should be routinely considered and that the use of information technology, as well as personal briefing, is crucial.

(ii) Support for witnesses and victims in the Lockerbie trial

Witnesses

Witnesses were advised in advance of the likely date or approximate date when they would be asked to give evidence and arrangements were made by the prosecution service for their travel. They were normally flown to the Netherlands and arrangements were made for them to be collected from the airport or train stations by prosecution support staff or Scottish police; they were housed in suitable hotel accommodation and ferried to the court. Witnesses were offered a familiarisation visit to the court room if they wished. Where there were delays in hearing evidence of individual witnesses Prosecution staff would issue them with cellular telephones so that they could be “on call” in the vicinity. Wherever possible, arrangements were made for witnesses to get home as soon as they had given evidence.

There is nothing unusual about such arrangements, but they are more difficult to support where foreign travel is essential, as it was in every case in the Lockerbie trial. The court expected to be kept busy and, although it would indulge parties when occasionally for unforeseen reasons it was necessary to adjourn early, it generally expected to have a constant flow of witnesses.

Some witnesses required more intensive support, which is dealt with later under Protection; but as a generality the level of support required for witnesses was significant and personalised.. Individual files were opened for each witness and a special database maintained.

Victims as witnesses

If it had been necessary to prove the identity of the victims, as is routinely the case in Scottish criminal proceedings, a very large number of family members would have been cited as witnesses and subject to the additional stress that would cause. Considerable efforts were therefore made to satisfy the defence as to the identity of the victims. This aspect had been fully covered in the initial investigation and extensive evidence was available. Prosecution team members ensured that the identification was fully established and, in discussion with the

defence team, they agreed not to dispute the fact that the 270 named persons died in the crash.

It was, however, necessary to list a number of family members as witnesses, largely in relation to the identification of baggage and items related to baggage, since the identification of particular baggage to individual passengers was critical to establishing the route of the suitcase which contained the bomb. Prosecution team members laboured hard to reach agreement with the defence not to require the attendance of family members as witnesses, but by the time the trial started a number of family members were still listed and on standby to attend the trial as witnesses. This was clearly distressing in some cases; and that was not helped by the fact that in Scottish criminal procedure witnesses are generally prohibited from entering the court until they have given evidence; similar considerations applied to viewing the trial by live or delayed video link. The court may, however, grant permission for witnesses to be in court before giving evidence – this is most commonly used to allow experts to hear the evidence - and application was made by the prosecution for family members witnesses to attend or view the evidence before giving evidence and granted on the condition that if evidence was taken with regard to an aspect of the case specifically affecting the relevant victim, the family members would be excluded from the court or remote site during that evidence.

Eventually the defence agreed that no family members required to give evidence.

Victims generally

Family members were supported by the Office for Victims of Crime and by the Family Liaison Officers at Camp Zeist. Much of that support has already been described. But the OVC and Family Liaison Officers were able to address the particular needs of particular family members, including medical and counselling support where required.

Family members were of course free to travel to the trial at any time, but they were offered – again through the OVC - the facility of a single expenses paid visit to the court in the Netherlands for one week during the trial and at the time of the verdict. and also during the appeal in 2002.

(iii) Protection of witnesses at the Lockerbie trial

A number of witnesses had special needs; most notably witness number 684 Abdul Majid Abdul Razkaz Abdul-Salam Giaka (known as Majid) who was a former Libyan Intelligence Officer and was under the protection of the United States Federal Witness Protection Programme. He had defected to the CIA in 1988, while serving with Libyan Arab Airlines in Malta, prior to the Lockerbie bombing; he had provided his CIA handlers with information about the activities of various Libyans, including the accused. When he finally came out of Libya in 1991 and was taken to the United States he was given a new identity. He had been the subject of public threats and there was real fear for his life.

His position was quite clear, as a witness in a formal witness protection programme whose life was at risk.

But other witnesses required the protection of the court. Most obviously, perhaps, the very CIA handlers who had dealt with Majid, but also a Maltese woman who had acted as translator for him during his clandestine meetings with the CIA.

Officers of the Swedish Intelligence Service and the British Security Service were also listed and required protection.

Most unusually, perhaps, were five former members of the now defunct Ministry of State Security of the equally defunct German Democratic Republic – the notorious Stasi. The concern of friendly intelligence services to maintain the secrecy of the identity of their members was clear enough, but the Stasi was downright unfriendly; nonetheless these men needed protection, because they had now settled quietly into life in the new Germany and were concerned that, were their true identities to be revealed, they and their families would be ostracised and those in employment would lose their positions. It was considered that, without protection, it was likely that most or all of the former Stasi witnesses would refuse to attend as witnesses.

The Lord Advocate applied to the court in advance of the trial for an order enabling all of these witnesses to give evidence using assumed names, while concealed from the public and the press by means of screens; with voice distortion for the recording and transmission of their voices beyond the well of the court so as to avoid recognition; and a prohibition on their being filmed at any time while they were giving evidence. The public seating in the court was separated from the well by a security glass screen, which facilitated these arrangements including voice distortion – and meant that the public, family members and the press were not excluded – they simply could not see these witnesses.

The court expressed concerns about authorising the use of disguises, while making it clear that it could not and would not restrict the sort of steps – eg use of wigs – which any person was entitled to take; the application was amended to reflect these concerns and the court granted it. This court order was of great value in ensuring the attendance of a number of key and sensitive witnesses.

Other practical arrangements were put in hand to ensure the safe arrival and departure of these witnesses and even if they were shared with the prosecution, it would not be appropriate to describe such arrangements which were undertaken by the Scottish police in conjunction with the Dutch and other authorities, including the US Marshals Service, which had responsibility for protection of Majid and the CIA. But the security arrangements generally were assisted by the fact that the court site – including the prison - was self contained and fenced. There was secure witness accommodation on site which could be and was used when necessary, as well as a secure witness waiting area within the court house. There was also additional and separate prison accommodation which enabled a terrorist serving a life sentence in Sweden (Mohamed Abo Talb) to be transferred to the court to give evidence before his return to Sweden.

The vast majority of witnesses whose attendance was requested agreed to attend the court. There is no doubt that the high level of general security at and around the court and the special arrangements which could be made assisted in gaining their confidence. A small number of essential witnesses refused to attend but gave their evidence by remote television link or on commission before a court in Malta. The legal facility to have such evidence exists

in Scotland and was available also to the court; and the technical facilities were there to enable evidence to be given by live television link.

The technical facilities at the court – in particular screening, soundproofing, CCTV, remote links and voice distortion – were of material assistance in providing a greater measure of security and confidence for witnesses.

Conclusions

The new international tribunals recognise the particular needs of victims and witnesses, but, while the necessary supporting international legal procedures will vary according to the constitution of the court or tribunal and its legal relationship with individual countries or the international community generally, the fundamental needs and principles are broadly identical and are, for most practical purposes, not directly affected by the fact that the court is an international as opposed to domestic tribunal, although the crime and evidence may be international in character.

Satisfaction of the needs of victims and witnesses requires not only appropriate legal structures, but also appropriate planning, direct contact with legal authorities and, wherever possible, support services in the home country of the individuals and a well-organised supportive presence at the seat of the court. The needs of witnesses and victims in cases of mass victimisation require the imaginative use of information technology, but also more conventional technologies, including telephony.

But effective and highly proactive personal liaison between the relevant authorities of key countries will almost always be crucial to the satisfaction of the needs of victims and witnesses and the successful prosecution of the case: at the beginning and end of the day, it's good to talk – indeed, it's vital to talk.