

The BA149 story will feature in the book *Truth-teller: an investigative reporter's journey through the world of truth prevention, fake news and conspiracy theories* by Stephen Davis, to be published next year.

On 6 September 1990, then Prime Minister Margaret Thatcher rose to make a statement to a packed House of Commons. The previous month, Saddam Hussein had invaded Kuwait. The countdown to the first Gulf war had begun.

British concern was focused on the fate of the passengers and crew of a British Airways jet, BA149, that had landed in Kuwait at the start of the invasion. These passengers were taken hostage by the Iraqis and became "human shields".

MPs wanted to know why a civilian flight had been allowed to land in a war zone. Thatcher was very clear: "The British Airways flight landed, its passengers disembarked and the crew handed over to the successive crew, and the crew then went to their hotels. This all took place before the invasion," she said. She emphasised the point: "The invasion was later."

The statement was designed to put an end to questions about the fate of BA 149. But everything she said was wrong or misleading.

The invasion had started when the plane was four hours flying time from Kuwait and it was the only plane to land that night. It delivered the passengers into the hands of Saddam Hussein. They were held hostage for up to four months, often in grim, life threatening conditions.

Many never recovered from the ordeal. The fate of the flight led to a long battle for compensation. Passengers in many countries sued but the scales of justice were unevenly balanced as far as compensation was concerned.

The court cases showed how passengers on the same commercial flight who had suffered the same fate could end up being treated differently according to their nationality. The French and the Americans won financial compensation whereas the British got nothing, despite the Warsaw Convention's supposed uniform rules.

Akhtar Raja of Quist represented some of the passengers in various investigations and legal challenges over the years.

The court battles began with UK passengers pursuing British Airways for compensation, in both the English and Scottish courts. British Airways told lawyers that no copy of the passenger list existed: the one on the plane was 'lost' and the one in their UK computer system 'accidentally deleted'. This was despite the legal requirement to keep a passenger list.

The search for the truth got under way in the US, too. The campaign was spearheaded by Texan Bill Neumann, an expert in compensation cases with a winning track record, with other lawyers in support.

William Neumann took meticulous depositions –these depositions reflected badly on British Airways. The picture that emerged showed what seemed to be a confused response to monitoring a very dangerous and volatile situation, including a lack of communication between departments and minimal efforts to obtain regular up-to-date information.

It was also clear that British Airways had relied heavily on information given to them that day in two crucial meetings with British Embassy staff. At 1800 KLT (Kuwait Local Time) on 1 August, 1990, at the British Embassy, Laurie O'Toole, BA Area Manager for Iraq and Kuwait, met Tony Paice, First Secretary at the embassy and MI6's station chief in Kuwait, for an update on the Iraq situation.

Paice told O'Toole that the invasion would not happen. Later BA were told (incorrectly) that satellite photos showed that the Iraqis were not moving towards the border.

American and French lawyers heard evidence that the plane was allowed to land because there was a secret British intelligence team on board.

Rather than permit potentially embarrassing depositions to be heard before a Texas jury and made public in Europe, British Airways settled in secret and paid substantial sums in excess of six figures to Neumann's clients.

In 1995, a French court ordered British Airways to pay at least £3million in damages to the 61 French BA149 passengers, stating that the airline was 'entirely responsible' for the landing in Kuwait. BA appealed twice but lost both times.

The British passengers were far less fortunate. The House of Lords in 1996 dismissed two appeals by BA149 passengers against BA, upholding previous British court judgements that the airline did not have a case to answer in the courts under the terms of the Warsaw Convention which covers airline passengers. The convention, signed by most countries, was designed to ensure

all passengers on a plane are treated equally in the event of death or injury after an airline accident, regardless of their nationality. It also limits the liability of airlines and specifies where and when a passenger can sue – in what country – and that depends on where they live, where the ticket was bought and the final destination.

In reality, though, the court in the country that hears the case determines what law is to be applied. What is allowable to victims varies greatly from country to country. It is easier to sue in the US than in the UK as was clearly demonstrated by the 1996 House of Lords ruling. The Law Lords decided that appeals by BA149 passengers seeking compensation for physical and psychological injuries could only be pursued under the Convention. But they then concluded that section 17 of the Convention, which says liability is for damages suffered while on board the aircraft or when embarking or disembarking, meant they could not sue under the Convention, after all. So this was a victory for BA on technical grounds and it meant that evidence against BA (and the British government) could not be presented in British courts. The merits of the case were not judged.

Stephen Davis
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