

Witness Name: Sir Clive Loader

Statement No.: 1

Exhibits: None

Dated: 29 April 2010

THE BAHA MOUSA PUBLIC INQUIRY

Witness Statement of SIR CLIVE LOADER

I, Sir Clive Loader, will say as follows: -

1. I make this statement in response to the Inquiry's Rule 9 Request dated 19 February 2010. I have read this Request, and I seek here to cover everything that it raises to the best of my ability and recollection. I have also been shown and read copies of the following documents:
 - a. Telic 1 Command Structure [MOD030335];
 - b. Telic 2 Command Structure [MOD030336];
 - c. MoD 'Chain of Command' @ Telic 1 [MOD044526];
 - d. Sec Iraq – 8 weeks prior to conflict [MOD044527];
 - e. MoD 'Chain of Command' –March 2004 [MOD044527a];
 - f. Iraq: Enemy Prisoners of War – March 2003 [MOD053707];
 - g. Email and enclosures –Op Telic PW Handling Reinforcement for 1 (UK) Armd Div - 10 March 2003 [MOD052878];
 - h. Iraq: Enemy Prisoners of War – March 2003 [MOD053031];
 - i. Iraq: Prisoners of War – 17 March 2003 [MOD054361];
 - j. Joint Commander's Mission Directive to the UK NCC [MOD052847];
 - k. UK NCC Directive – 21 Feb 2003 [MOD043344];
 - l. CJO Directive for Humint Operations – 27 Feb 2003 [MOD049310];
 - m. PJHQ Guidance on PW Handling 2003 - 27 Feb 03 [MOD049314];
 - n. Policy for Interrogation and Related Activities and enclosures – 21 July 1997 [MOD041753];

- o. Supporting brief for the SoS appearance before the House of Commons Defence Committee – 14 May 2003 [MOD052003];
- p. Supporting brief for Maj Gen Brims' appearance before the House of Commons Defence Committee...- 25 June 2003 [MOD052078];
- q. Email correspondence – 2 May 2003 [MOD053216];
- r. Directive on Interrogation by the Armed Forces in Internal Security Operations – 29 June 1972 [CAB001020];
- s. Op Telic: Death of one Detainee while in UK Custody...-16 Sept 2003 [MOD048699];
- t. Op Telic: Death of one Detainee while in UK Custody...-18 Sept 2003 [PIL000922];
- u. Email re Daily Mirror photographs – 4 May 2004 [MOD051126];
- v. Alleged abuse of Iraqi Detainees – investigation – 11 May 2004 [MOD053402];
- w. Iraqi – Hooding of Personnel13 May 2004 [MOD054123];
- x. Iraqi – Hooding of Personnel13 May 2004 [MOD053825];
- y. Iraqi – Hooding of Personnel14 May 2004 [MOD054189];
- z. Iraq – Hooding...14 May 2004 [MOD052631];
- aa. Iraq – UK Forces Use of Hooding – 17 May 2004 [MOD019988];
- bb. UK Forces Use of Hooding – 17 May 2003 [MOD054210];
- cc. UK Forces Use of Hooding -21 May 2004 [MOD054029]; and
- dd. Email re Prisoner of War Issues – 11 August 2004 [MOD050812].

Rank and Role – Sept 2001 – Sept 2002

2. I held the post of Assistant Chief of Staff Operations (ACOS Ops) J3 (in the rank of Air Commodore – i.e. “one-star”) in the Permanent Joint Headquarters (PJHQ) based at Northwood from the period September 2001 until September 2002. During the process of taking over this appointment, the 9/11 attacks occurred and, it is fair to say, the subsequent events dominated my time in this post.

3. The role of the PJHQ is to 'command at the operational level' – i.e. to exercise direct command over UK Forces deployed to a specific theatre of operations. Although at the time I was a Royal Air Force Officer, PJHQ is a Joint Headquarters and as such I was expected to understand the structures, roles, capabilities and needs of all four services (including the Royal Marines). My tasks, after the coordination of the initial force generation for Afghanistan, was very much the day-to-day monitoring, direction and control of those forces as they deployed, prepared and went into battle. In practice, this meant that I, together with others, translated high political aims and end statements into military options, taking account of resources at our disposal and other factors.

4. As J3 (i.e. Joint operations) my remit extended notionally to looking forward six months. Beyond six months fell within the remit of J5 (i.e. Joint plans). In reality however, ACOS J5, Commodore James Fanshawe, and I (ACOS J3) worked very closely together and little was done without the knowledge of the other. This arrangement ensured that operational thinking took into proper account longer term planning considerations (for example, so that we did not deploy all available troops for the initial phase (i.e. war-fighting) without ensuring that we had others to deploy for a latter phase (i.e. reconstruction)). My day-to-day activities revolved primarily around communications with theatre (including reading diplomatic telegrams and operational summaries from commanding officers), taking action where necessary/appropriate, for example if the logistics were not as good as they could have been, or liaising upwards (i.e. to MOD) where decisions/actions lay at that level. Examples of those who I would have liaised with at the MOD included those responsible for the Treasury contingency funds and Ministers if appropriate.

5. During this time, video teleconferencing was the norm both between PJHQ and those in theatre, and also between PJHQ and MOD. I often found myself at the head of the PJHQ table presenting recent events to

the Secretary of State/Chief of Defence Staff/Service Chiefs and others in the MOD. Media operations were also a significant part of PJHQ's portfolio and although direct responsibility for media operations fell to others, I assisted with the fact-gathering stage that informed public announcements (generally I would convey the information I gathered to the J8 branch).

Rank and Role – Sept 2002 – Feb 2004

6. In September 2002 I went, on promotion to Air Vice Marshal (i.e. “two-star”), to take up the appointment of Assistant Chief of Defence Staff (Operations) (ACDS (Ops)) in the MOD. Another Joint appointment, I served there until Feb 2004. I arrived just as the MOD machinery was ‘gearing up’ for a possible war in Iraq. During the pre-war months, as they turned out to be, I worked closely with Director General Operational Policy (“DG Op Pol”), Ian Lee, as part of a two-man team that acted as the interface between the military and political levels.
7. Acting in that manner between the military and political levels, the DG Op Pol and I helped formulate and present options regarding the potential size, shape and the risk (amongst other factors) of any potential UK contribution to any military operation in Iraq. These options were then presented to Chiefs of staff and Ministers’ military assistants. At this stage, I was also involved in the preparation of contingency work where possible, for example, scoping where Urgent Operational Requirements (“UORs”) would have to be undertaken to provide the correct equipment for the heat, dust and so on of that theatre. At this stage of planning, consideration needed to be given to such matters as whether or not there were food, water and power supplies in the areas where UK troops were likely to be engaged, and the question of weapons of mass destruction.

8. DG Op Pol and I were regular attendees at the COBR (Cabinet Office Briefing Room) meetings, chaired initially by Sir David Manning (latterly Sir Nigel Scheinwald), that provided a direct link to No. 10. I was also a regular attendee/contributor at Minister (Defence Procurement) (“Min (DP)”)’s meetings which were scoping the delivery of UORs (as set out in paragraph 7 above), among other things. At this stage, the balance was being struck between ordering the operational requirements early enough to ensure delivery in time for the possible combat operations that might follow but without making any assumptions as to whether or not a decision would be taken committing the UK to a military operation. This balancing act was conducted with a backdrop of the discussions in relation to obtaining a UN security resolution and alike. Once the decision had been taken to go to war, an already busy pace became little short of frenetic.
9. It is fair to say that there was more than a little uncertainty as to exactly how Phase 4 (i.e. the aftermath of war-fighting ops) would look, and exactly how the US (and ourselves) would deal with it. Accordingly, my 3-star (Gen Sir Anthony Piggott) chaired cross-Government meetings (which included the PJHQ, DFID, the FCO and the Treasury etc) to try to get the best possible national ‘granularity’ of knowledge/plans here.

Chain of Command

10. The UK Command structures are well depicted in the documents MOD030335 and MOD030336 although they do not capture, in reality, the relationship and way that the work was done.
11. My area of the MOD is properly depicted at MOD044526 (although my first name is erroneously stated as “Chris”). The Inquiry have requested that I explain how the chain of command changed over the course of Op TELIC 1 and Op TELIC 2 and, as far as I can recall, the change from Op TELIC 1 to Op TELIC 2 was driven by several aspects, most notably the

fact that (given the numerical UK Force draw-downs) we no longer needed an in-theatre 3-star (a role that was occupied by Air Marshal Burridge at the UK National Contingent Command (“NCC”) during Op TELIC 1). When I refer to UK Force draw-downs I am referring to withdrawing people from theatre when there was the change from war fighting to reconstruction. Such major decisions (i.e. force draw-downs) are usually made at the highest levels (i.e. SofS/Cabinet) following advice from/discussions with the CDS, Service Chiefs and CJO (who themselves will have been liaising with key allies – in this case presumably the US); a statement in the House (written or verbal) normally follows. I am sure that this would have been the case for this draw-down decision. Such decisions are generally ‘conditions based’ – i.e. only taken when the situation on the ground allows it (or, if the situation remains unchanged, facilitated by ‘back-filling’ the capability from another agency/nation). In relation to the change over the course of Op TELIC 1 to Op TELIC 2, the decision is likely to have been made by the changed situation on the ground. I am unable to remember any specific decision (or who might have taken it) to draw down the number of RMP troops (such detail is below that at which I routinely operated).

12. Also, given that CENTCOM now had a 3-star CJTF 7 (Gen Ricardo Sanchez – under whom the senior UK officer would serve), it was more appropriate that we had a 2-star in-theatre.

Planning during the campaign preparations

13. I had no specific personal role or responsibility in campaign preparations for Op TELIC 1 regarding Enemy Prisoner of War (“EPW”), detainees or internees.
14. I was, however, aware of documents relating to planning for EPWs, having been copied into them (for information rather than response), including those at MOD052707, MOD052879, MOD053031 and

MOD54361. There is nothing in this documentation that particularly surprises me. These documents were drafted as a result of the discussions that we were having at the time.

15. The discussions in relation to prisoner handling focussed on the logistical problems that the UK might face with taking prisoners and the resources that would be required. For example there was consideration of the need to provide compounds and that barbed wire would be required for this. I do not recall discussing anything beyond what is contained in the documents mentioned in paragraph 15 above. I recall I do not remember these discussions descending to the detail of prisoner handling, for example, how prisoners were to be treated, nor would I have expected them to have done so.
16. The Inquiry has requested that I identify and describe any involvement of any service or civil personnel during the campaign preparations for Op TELIC 1 in the planning for and/or formulation of policy relating to EPWs, detainees and/or internees. Those that I recall were involved in this area were the Sec (Iraq) (David Johnson) who, as I recollect, had the lead task of informing Ministers in this area and who was supported (mostly) by the Director of Military Operations ("DMO"), HQ Land, Col Toomey (i.e. the Army). I recall that the issues covered included, for example, the numbers of EPW guards that would be needed, infrastructure requirements and related such matters.
17. Documentation that I saw at my level (as set out in paragraph 15) made direct and unequivocal reference to the need for all such matters of prisoner handling to be carried out in accordance with International Law and the Geneva Conventions. I certainly had no reason to think that there was any 'structural' reason (i.e. a shortage of resources or lack of understanding of the rules pertaining) why there may be any inappropriateness in the handling of prisoners.

Orders, instructions, doctrine and guidance

18. The orders, instructions, doctrine and guidance that I understood to be of general application to interrogation, tactical questioning and prisoner handling by the armed forces as at March 2003 were international law and the Geneva Conventions.
19. I am not aware of how or to what extent such orders, instructions and doctrine had been supplemented for Op Telic 1.
20. As a member of the Royal Air Force, I participated in the escape and evasion course (also known as Conduct after Capture) in approximately 1993/1994. Before I undertook this course, I was required to sign a medical release and to agree to be treated in a way that was designed to make me tired and vulnerable to the capturing enemy troops so that they could obtain information from me. There was no doubt at all in my mind that the techniques that I was to be subject to would not be legal and that UK forces were not permitted to use these techniques if they captured enemy personnel. These techniques were food, water and sleep deprivation, stress positions, subjection to noise and hooding for the purposes of interrogation. Other than this experience, I have not had any other experience or involvement in training, guidance, orders or instructions for the detention and treatment of prisoners of any category.
21. The Inquiry have asked me who within PJHQ and/or at MOD had a responsibility for ensuring that adequate orders, guidance or instructions in relation to the physical aspects of handling prisoners were provided to the soldiers and officers under my command who deployed in Iraq in 2003. I did not have any soldiers and/or officers under my command that deployed to Iraq in 2003 (as a member of the Air Force), but generally, I would say the responsibility at the very top lay with the Chief of Joint Operations, General Reith, who had operational command over the troops in theatre. In practice, his responsibility would be to ensure

that adequate orders and guidance was given to Air Marshal (“AM”) Burrige, who would in turn give orders to the Contingent Commanders and so on down the chain of command.

22. As stated above, I did not have any responsibilities in relation to prisoner handling in 2003 as my role was one of strategic oversight.
23. The Inquiry has requested that I comment on the CJO directive for HUMINT operations MOD049310 (and its Annex at MOD049314). I was neither aware of these documents nor was I involved in their drafting.
24. I was not aware of any policy that the procedures to be used by UK Interrogators in Iraq should be governed by a detailed directive issued on behalf of the UK Joint Command (MOD041753 refers to at MOD041755).
25. The Inquiry has requested my view of the adequacy of the guidance to be on the procedures to be used by UK Interrogators in Iraq as set out in the 27 Feb 2003 Directive (MOD049310 and its Annex at MOD049314). In my opinion, the guidance contained in the directive is insufficient in at least 2 areas: firstly, it is ‘thin’ in giving no granular guidance regarding EPW treatment – for example, it does not specifically ban the ‘big 5’ (hooding, sleep deprivation, stress positions, restrictive diet, and ‘white’ (or other) noise). Secondly, I take exception to the phrase (at para 7b on page 2) that interrogation etc is to be conducted..... “in line with the Geneva Convention” (my emphasis). In light of the importance of ensuring clarity amongst all those who would be handling EPWs down the chain of command, it would have been better if it had read “in strict accordance with the Geneva Convention”. I consider that as drafted there is some ‘wooliness’ which risked the position being misunderstood as it went down the chain of command.

OP TELIC 1 and 2

26. I did not have any involvement during Op TELIC 1 or 2 in relation to the physical aspects of handling of detainees or prisoners of any category. I do not know which other service or civil post holders at PJHQ and/or MOD may have had such involvement.
27. I did not have any involvement in, or knowledge of, the formulation of any policy, guidance or orders relating to the handling of EPWs, detainees, or internees over the course of Op Telic 1 and 2, nor was I aware of any legal advice received by PJHQ and/or MOD in this regard.
28. I was unaware of any concerns being raised by any Officers from PJHQ, NCC, MND (SE), 1 (UK) Div, 3 (UK) Div, 7 Armd Bde or 19 Mech Bde, in relation to prisoner handling during Op Telic 1 and 2. I was likewise unaware of any concerns being raised by the ICRC during Op Telic 1 and 2 in relation to the treatment of prisoners.
29. I had no knowledge of visit(s) of the International Committee of the Red Cross or discussions with them, of any records made of such visits or discussions, or of any concerns raised by them about physical detainee or prisoner handling matters.
30. I was not aware, other than as explained from my attendance on the conduct after capture course, of any order or guidance from whatever source that prohibited the use of hooding or otherwise covering the face of a person detained, prior to May 2003.
31. I was not aware of any order or instruction to cease hooding in May 2003.
32. The Inquiry has referred me to MOD052044 and MOD052127 in addition to MOD053216. I did not have any involvement or input into the briefing on prisoners of war provided for the Secretary of State and Major

General Brims. I am not aware of who was involved in these briefing notes.

33. I was never aware of either the 'Heath Ruling' or the JIC Paper of 1972 (CAB001020). However, I must state that, although the latter was designed to control 'Internal Security' operations (i.e. Northern Ireland at that time), it does both acknowledge International Law (at para 5) and ban, very specifically, certain techniques (at para 7). I am of the opinion that its core instructions/values should have remained in force and should have been distributed/ acknowledged for Op TELIC. In any case, I am clear that common sense alone should have indicated that such techniques were highly likely to be unlawful under the Geneva Conventions.
34. I had no direct involvement in the immediate aftermath of Baha Mousa's death in Sep 2003, beyond being made aware of its occurrence (I was an information addressee on much of the subsequent correspondence). I do not now recall seeing the documents at MOD048699 and PIL000922 but I accept that I am listed as one of the information addressees and that I would have seen the documents. I do remember being appalled by the death in custody and recalled being in no doubt whatsoever about its likely strategic impact on the operations. By strategic impact on operations I mean that I felt that the death in custody would adversely affect our attempt to win the support of the Iraqi people and thus our operations in Iraq.
35. At no stage was I involved in any subsequent discussions/ decisions after the death of Baha Mousa regarding hooding.

Abuse allegations in 2004

36. I was not involved in dealing with prisoner abuse allegations from May 2004 and beyond. I do not recall seeing the correspondence at

MOD051126, MOD053402, MOD054123, MOD053825, MOD054189, MOD052631, MOD019988, MOD054210, MOD054029 and MOD050812. Nor do I remember attending the meeting (if indeed I did), mentioned at MOD051126. Equally I do not recall being involved in any discussions taking place in relation to the abuse allegations.

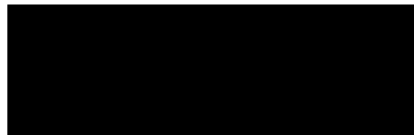
Media accounts

37. I have not given an account of matters relevant to the Inquiry's terms of reference to the press / media.

Statement of Truth

I believe that the facts stated in this witness statement are true.

Signed

A large black rectangular redaction box covering the signature of Sir Clive Loader.

SIR CLIVE LOADER

Dated 29 April 2010