

Witness Name: Brigadier Michael  
Conway

Statement No: 1

Exhibits: None

Dated: 27 April 2010

## THE BAHA MOUSA PUBLIC INQUIRY

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### Witness Statement of Brigadier Michael Conway

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I, **Brigadier Michael Conway** will say as follows: -

1. I make this statement in response to the Inquiry's Rule 9 Request dated 11 February 2010. I seek here to cover everything it raises to the best of my ability and recollection.
2. I have been shown and have read copies of a number of Inquiry documents, upon which I have commented throughout this statement. I confirm that this statement represents the first occasion that I have been asked to recollect the events and circumstances of Op TELIC 1.

#### **Career background**

3. I studied law, including public international law, at King's College London. I qualified as a barrister in 1982. I completed pupillage and practised in London and then I was commissioned in the Army Legal Corps (ALC) (now the Army Legal Services Branch of the Adjutant General's Corps) (ALS)) in 1985. I completed officer training at the

Royal Military Academy Sandhurst in that year having previously attended military law training at the army's Headquarters in Wilton. I have completed a number of courses throughout my army career including regular CPD training and military training courses.

Throughout my career I have trained officers and soldiers in military law including international/operational law. In 1991 I attended the basic training course for US army lawyers at Charlottesville and in 2003 I attended an operational law course at the same place. Since 2003 I have attended a series of ALS conferences on the subject of international/operational law.

4. I have served in a number of operational roles in the army including, between 1997 and 1999, as the Lieutenant Colonel head of the Legal Branch at Headquarters Northern Ireland. I served in Bosnia in 1995/6, where I was the principal legal adviser to the British Headquarters and units during the first NATO deployment there. I served in the UK Headquarters at High Wycombe during Op HAVEN at the end of the 1991 Gulf War. I have never served in Iraq.
5. From April 2001 I spent nine months at "ALS2", the ALS branch at the MOD in London that dealt with international law. My direct superior was Colonel Charles Garraway (since retired from the army). During this time I worked on international issues including weapons review, status of forces agreements and treaty negotiations.
6. In January 2002 I returned to my post at the Army Prosecuting Authority in Uxbridge; in May of that year I moved to an ALS post in MOD dealing with legislation for the army.
7. I discuss my roles in 2003 and 2004 below. I am currently a student at the Royal College of Defence Studies in London.

#### **Rank and day-to-day Role January 2003 and December 2004**

8. In January 2003 (and until April 2003) I was serving as a Lieutenant Colonel at the MOD dealing with domestic legislation. I was not involved in the preparations for Op TELIC 1, or in international/operational law generally at that time.
9. Then, from April 2003, I was Chief Operational Law at the Directorate of the ALS in Upavon. I was one of two Lieutenant Colonels and (I believe) two Majors providing advice on operational law to the army (e.g. training on LOAC at RMA Sandhurst) and providing officers for specific operational roles in the UK. I did not, however, generally provide advice on Op TELIC issues because the chain of command dealing with that operation went from legal officers in Theatre through PJHQ to MOD. At that stage, in early 2003, the operational law branch at Upavon was small and it had limited involvement in operations outside the UK. I recall one matter I advised on when I arrived at Upavon in 2003 was as regards a training film on international humanitarian law (for training army personnel) which had been prepared by Lieutenant Colonel Barnett and others (to replace another film that had been in use for a number of years, and not specifically for Op TELIC).
10. In July 2003, I was promoted to Colonel and became Colonel ALS2 in London, replacing Colonel Garraway. My role as Colonel ALS2 focused on international and operational law and additionally legislation, particularly the work on what was to become the Armed Forces Act 2006 (I replaced another Colonel who had worked full-time on the Act.) In the period between July 2003 and early 2004 I held the Colonel ALS2 post as well as the heading the operational law branch at Upavon (which later moved to Warminster). During this period I spent the majority of my time in London in my ALS2 role and spent much of my time working on the Armed Forces Act 2006.
11. Also as part of my ALS2 role, I recall attending Conferences (I believe in December 2003 and in 2004) at the UN in Geneva as a

member of the FCO-led UK delegations. As Colonel ALS2 I liaised with the FCO on international issues and I provided international law training to civil servants including lawyers as part of an FCO training scheme. I also provided international law training at a British Red Cross Summer School at Cambridge University. In 2003 I also visited the USA with Major General Howell, Director Army Legal Services, to arrange an exchange appointment with the US army (where an ALS officer would work in their operational/international law department and a US legal officer would work as part of ALS in the British army).

12. In late 2003, an Operational Law Branch (OLB) was established at the Land Warfare Centre (LWC) in Warminster. As Chief Operational Law at Upavon, I became Colonel Operational Law and the head of the OLB (as well as having my Colonel ALS2 role). I held these two roles until early 2004, when I handed over my role as Colonel Operational Law to Colonel (now Brigadier) McEvoy. As I was in London for most of the time when I was Colonel Operational Law (with my ALS2 role), the officers in Warminster (two Lieutenant Colonels and two Majors, as far as I recall) dealt with the work there from day to day. ALS was seeking to increase the size of the OLB and to develop its functions in training, doctrine and publications and to provide legal officers for deployments (and it was eventually successful in this), but at the end of 2003/ beginning of 2004 the OLB was limited in numbers as I have described.

13. As Chief Operational Law at Upavon I reported to Colonel Richard Austin (at Upavon), and as Colonel ALS2 I reported directly to Major General Howell (at Upavon). I believe the officers at the OLB at the end of 2003/ beginning of 2004 included Lieutenant Colonels Wakefield and Morrison, Major [REDACTED] (an Australian exchange officer later replaced by another Australian officer) and Major Pegg (ex-ALS).

14. I remained in my post as Colonel ALS2 until the January 2006 when I was posted to the Army Prosecuting Authority at RAF Uxbridge.

Interaction between OLB and other legal and army bodies during Telic 1 and

2

15. I am asked about the interaction between the OLB and the DALs, PJHQ Legal, the MODLA, the NCC, 1 UK Div and 3 UK Div during Op TELIC 1 and 2. In response, the OLB was only created in late 2003 so did not exist during Op TELIC 1 or much of Op TELIC 2. Before its establishment ALS advice on operational law matters generally was provided from officers in Upavon (as set out above).
16. As for myself, in my roles as Chief Operational Law and Colonel ALS2, I do not recall being consulted by anyone at PJHQ, MODLA or the Headquarters in Theatre except in relation to the following:
- a. I believe that in about mid-2003, when I was serving at Upavon, I received a telephone call from Lieutenant Colonel Mercer. He was involved in discussions with PJHQ about how Iraqi prisoners suspected of crimes could be questioned and the possible application of measures based on the Police and Criminal Evidence Act 1984. He did not ask me specifically for advice but he asked whether I had been consulted about this question and I confirmed that I had not.
  - b. Shortly after this, I was also contacted by Lieutenant Colonel (now Colonel) Clapham (an ALS officer at PJHQ) and Lieutenant Colonel (now Colonel) Green RMP on the same subject (I believe they were involved in the discussions with Lieutenant Colonel Mercer).
  - c. When Lieutenant Colonel Barnett and I were in Upavon (between April and July 2003), he mentioned briefly to me the issue of review of prisoner's detention (I believe work may have been in progress on this issue at PJHQ). This is the only issue I recall his mentioning to me at that time. I understand that Lieutenant Colonel Barnett has said in a statement that he discussed

hooding with me; that does not accord with my recollection. I do not recall any discussion with Lieutenant Colonel Barnett in relation to hooding as mentioned by him.

17. As I have indicated, although ALS2 provided advice on international law for the army and could be consulted on operational law issues, it was not part of the formal legal advice chain during operations. During operations the ALS officers in Theatre reported to their higher Headquarters (the Division, NCC and PJHQ). If necessary, lawyers at PJHQ could consult the MOD's civilian lawyers (MODLA).

18. In terms of the Directorate of ALS, when I was at Upavon, I recall Lieutenant Colonel Barnett was preparing for his deployment on Op TELIC 2 and I believe he contacted at least PJHQ to prepare himself for deployment.

19. I also recall a discussion relating to legal issues in Iraq in late 2003 or early 2004. This was at a conference (over more than one day) on 'Legal Lessons Learned' from Op TELIC 1, held at the Joint Doctrine and Concepts Centre (JDCC - now DCDC) in Shrivenham and chaired by Group Captain (now Air Commodore) "Bill" Boothby assisted by Lieutenant Colonel Justin McLelland (since retired). It involved many of the military and civilian lawyers involved in OP TELIC 1 including Lieutenant Colonel Mercer, Rachel Quick (MODLA/PJHQ) and Commodore Brown RN (PJHQ). Lieutenant Colonel Mercer mentioned a number of issues where it was clear that there had been disagreements with other lawyers' views. I do not recall the details of the disagreements mentioned by Lt Col Mercer and I do not recall hooding being mentioned as an issue. I attended part of the conference as an observer. I do not recall seeing a final version of the Report produced by JDCC.

**Training, guidance, orders or instructions regarding prisoner handling**

## LOAC

20. During my army career I have received and given training on the law of armed conflict (now generally referred to as international humanitarian law) and operational law. This included training on prisoners of war. (For example, I included such issues in the training I gave at the FCO and British Red Cross conferences when I gave presentations on 'combatant status'; I discussed the basic rules involving humane treatment of prisoners in accordance with the Geneva Conventions and other international law provisions). Other than this, I do not recall training anyone on how prisoners should be handled.

21. I do not recall receiving training in my military career specifically on the use or prohibition of hoods, blindfolds, stress positions, plasticuffs, discomforting levels of noise or the deprivation of food, sleep or water. I have seen a DVD recording of Corporal Payne's treatment of prisoners in Iraq (for which he was tried) but apart from this I do not recall seeing any of these techniques used on any person, either in training or in Theatre; ( I have never served in Iraq in any event). I have not given any training on any of these matters nor was I consulted by anyone about the legality of such techniques during Op TELIC 1 and 2.

22. I have long been aware of the case of Ireland -v- UK and the Heath ruling, although I am not sure exactly how I became aware of them. I do not recall having seen the Directive JIC(A) (72) 21 (Final) (CAB001020) before it was shown to me in connection with this Inquiry. My understanding is that the ruling banned the use of hoods, wall-standing, use of noise, and deprivation of sleep, food and drink, for the purposes of interrogation.

### Sight deprivation

23. In terms of sight deprivation, I do not recall receiving or giving any training or guidance on the use of these. I recall being made aware

of the ban on hooding by Lt Col Mercer in December 2003 during an ALS Conference, which I refer to below.

24. I remember that Lieutenant Colonel Mercer mentioned hooding as one issue he faced in Iraq, when he spoke at an ALS conference in London (along with Major General Brims) in December 2003. The conference had been organised by me as Colonel ALS2 on the theme of operational law; and some speakers dealt with operational issues other than Iraq. I believe Lieutenant Colonel Mercer may also have mentioned it to me on another occasion at about that time, possibly when discussing what he was to talk about at the conference. I recall him saying that he had arranged for the practice of hooding to stop after briefing General Brims. I recall him mentioning seeing prisoners in the open air wearing hoods and describing his shock at this. I believe he also mentioned at the conference the issues of bypassing areas where there were potential prisoners of war, the use of 'Article 5 Tribunals' (to assess whether captured persons were entitled to PW status), the question of whether the UK would be considered to be in "occupation" of parts of Iraq and his attempts with the Provost Marshal to reconstitute parts of the law and order machinery in Iraq after the war ended. These were all mentioned as part of a general presentation by him and/or a panel discussion on Op TELIC 1.

#### Shock of Capture and conditioning

25. I understand the expression 'shock of capture' to refer to the psychological vulnerability of a person after they have been captured, which may make them more susceptible to questioning. I have not studied this and I have never received training in the shock of capture or in maintaining the shock of capture. This understanding may have come from what I read on the court-martial case of Corporal Payne and others and/or from other reading and it did not come from any specific military training.

26. Similarly, I have never received training on the 'conditioning' of prisoners. My understanding is that this expression covers a range of techniques to make prisoners feel unsettled and disoriented thereby making them more susceptible to questioning. Again I am not sure where this understanding comes from but it did not come from specific military training.

Conduct after Capture training

27. I have not received training on Conduct after Capture (CAC) and I cannot comment on how such training addressed the difference between the techniques and methods applied during CAC training and those that were permitted to be used by UK armed forces. I believe that at some stage work may have been done on CAC by Lieutenant Colonel (now Brigadier) David Yates and Air Commodore Boothby but I do not know the details of this.

28. I have not received training on Tactical Questioning or Interrogation.

**Involvement in/advising on physical aspects of prisoner handling**

29. I have been asked by the Inquiry to account for any legal input I and/or other members of OLB gave, prior to or during Op TELIC 1 and 2, concerning the standards to be applied in respect of prisoner handling. Apart from the matters mentioned above I have no recollection of giving any advice on or relating to prisoner handling. I was not involved in the preparations or planning for Op TELIC and I was not involved in preparing guidance or policy in relation to interrogation or tactical questioning.

30. I was not aware of any specific policy on procedures to be used by UK interrogators in Iraq and I do not recall seeing previously the directive issued on behalf of the UK Joint Command at MOD014753.

31. I do not recall seeing 'CJO Directive to COMBRITFOR for HUMINT

Operations in support of UK Forces deployed on Op Telic - [REDACTED] (MOD049310) or the Annex B (MOD049314), to which I have been referred by the Inquiry. As the documents relate to HUMINT and originate from COMBRITFOR, I would not have expected them to be referred to me when they were made. I do not know who was involved in drafting the documents.

32. I do not recall having any involvement in the formulation of policy relating to Enemy Prisoners of War, Detainees and /or Internees and nor do I recall any other OLB officer's involvement. I believe that at some stage when serving as Colonel ALS2 I was asked to comment on an aide-memoir for soldiers on LOAC produced by JDCC but I do not believe this was specific to Op TELIC. Apart from the matters previously mentioned I do not recall being aware of any concerns relating to these issues and I was not aware of any concerns or advice from other OLB officers.
33. I have been asked to comment on the adequacy of the standards of detention in theatre. I was not involved in advising on this question, I am not aware of the relevant facts and I am not in a position to comment.
34. When serving in ALS2 and at the OLB I do not recall seeing any information about visits by or discussions with the ICRC in Theatre, any records made of such visits or any concerns raised by them about detainee or prisoner handling matters, other than I recall being made aware at some stage that the ICRC had considered the Article 5 Tribunals mentioned by Lieutenant Colonel Mercer (above). I believe that when I was serving as Brigadier Advisory (between July 2006 and December 2009) I was made aware there had been an ICRC Report on Iraq issues but I do not recall seeing it.
35. Apart from the matters mentioned above I do not recall being consulted during OP TELIC 1 or 2 in relation to Tactical Questioning

and Interrogation.

36. I am asked to comment on whether there were sufficient legal advisers available to battle groups and in Theatre generally during Op TELIC 1 and 2. In response, Article 82 of Additional Protocol 1 to the Geneva Conventions provides that legal advisers are to be available to advise military commanders at an appropriate level on the application of the law of armed conflict. Generally, in the UK the appropriate level is taken to mean the Divisional level (according to JSP 383). I do not recall exactly how many legal officers were deployed in Iraq and at PJHQ during Op TELIC 1 and 2 nor how they were positioned in relation to the various Headquarters. During planning for operations PJHQ would have assessed the appropriate level of legal support required. PJHQ (and the operational Headquarters) could request additional legal support and ALS (and the Royal Navy and Royal Air Force, who also provide legal advisers) would provide officers as necessary. If during Op TELIC 1 or 2 it was considered necessary to request additional army lawyers they could have been provided by ALS. I believe that it would be unusual for battlegroups to have a legal officer specifically assigned to them. They would though have access to legal officers at their higher Headquarters (Brigade and/or Division). I am not aware of any suggestion that there were not enough service lawyers available during Op TELIC 1 and 2.

37. I was not involved in any review of the physical aspects of prisoner handling following the death of Mr Mousa. When serving as Brigadier Advisory after leaving ALS2 I provided advice to Brigadier Robert Aitken on his report on abuse in Iraq ('the Aitken Report' published in 2008). In 2006 I served for 6 months at the Army Prosecuting Authority in Uxbridge and during that period I was involved in preparing the case for the prosecution of Lance Corporal Payne and others following the death of Mr Mousa. I later saw reports of some of the evidence from that trial (although it mainly

took place after I had left the APA). In 2006 when serving at the APA I also instructed Counsel for the Crown in the appeal following the "Camp Breadbasket" court-martial.

38. I was not involved in orders requiring the cessation of hooding in October 2003, and have no knowledge about the circumstances in which the decision was made.

#### **Abuse allegations in 2004**

39. I had no involvement in addressing the prisoner abuse allegations made in May 2004. I do not recall being aware of the allegations at that time. It is possible that lawyers at MOD, PJHQ and OLB were involved. I do not know who advised or had responsibility for prisoner handling issues and the standards for treatment of prisoners of any category when prisoner abuse allegations became prominent in May 2004. By that time I was no longer the head of the OLB, Colonel McEvoy having taken over that role.

#### **Subsequent experience**

40. I have not been involved in any further training, operations or exercises since Op TELIC 2 involving prisoner handling. From July 2006 to December 2009 I served as Brigadier Advisory (later retitled Director Legal Advisory) at Upavon. In that post, I made arrangements for ALS Advisory offices to produce relevant documents for the Inquiry's purposes during the discovery process.

#### **Accounts to Press**

41. I have not given an account of matters relevant to the Inquiry to the press or other media.

**Statement of Truth**

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

Signed \_\_\_\_\_

**Brigadier Michael Conway**

Dated \_\_\_\_\_

*27 April 2010*