

The Iraq Fatality Investigations

Inspector: Sir George Newman

Public Statement dated 22 January 2015

My attention has been drawn to an article published in the *Daily Mail* newspaper dated 21st January 2015. The headline for the article states: ‘Cleared UK troops could face a war crimes trial: prosecutors in the Hague refuse to grant soldiers immunity from fresh charges’. The entire basis for the headline and for the content of the article which follows is a letter addressed to me dated 22 December 2014 from the Prosecutor at the International Criminal Court (‘ICC’) in the Hague. A copy of the letter was published in the course of the current investigations on the website of the Iraq Fatality Investigations (<http://www.iraq-judicial-investigations.org>). The proceedings are public and I have stated that they are accessible to the general public and the media. It follows that the media are free to report them. It is axiomatic that the reporting of current proceedings affecting individuals should be responsible and accurate.

The authors’ interpretation and understanding of the letter is so far removed from my own and from what I believe to be the true meaning of the letter that I feel bound to comment.

As the letter records, I had requested what has been termed ‘a non-use undertaking’. The request was granted. The undertaking followed almost exactly the terms of undertakings received from the Attorney General and the Army Prosecution Service (see the undertakings on the website). The current investigations are taking place because there has not been a public investigation into the facts surrounding the two deaths. The United Kingdom has a legal obligation to carry out the investigations and the ICC has a legal obligation to carry out a preliminary examination of claims which have been lodged with the ICC. The United Kingdom’s position and the ICC’s position are, in important respects, complementary.

A proper understanding of the letter requires some knowledge of the Rome Statute and of the legal principles on which the ICC works. A glance at the ICC website will be sufficient to inform a responsible investigator. In short:

(1) The ICC is a court of last resort. It will not act if a case is investigated or prosecuted by a national judicial system unless the national proceedings are not genuine, for example, if formal proceedings were undertaken solely to shield a person from criminal responsibility. The investigations which I am carrying out are intended to be the genuine national proceedings which, if so viewed by the ICC, will make the cases inadmissible.

(2) The ICC only tries those accused of the gravest crimes: genocide, war crimes, and crimes against humanity.

(3) The Office of the Prosecutor (OTP) of the ICC, as a matter of policy, focusses its investigative efforts on those most responsible for the most serious crimes (see the fourth paragraph of the letter).

(4) The two cases currently under investigation by me fall within the scope of the OTP's preliminary examination, but according to article 53(1)(a)-(c) of the Rome Statute, the ICC is required to consider jurisdiction, admissibility and the interests of justice. Even assuming jurisdiction to be established, admissibility requires the ICC to consider 'complementarity' and gravity (see above at (2) and (3)).

The undertaking given by the ICC to the former soldiers is an important acknowledgment of the way in which the principle of 'complementarity' should be worked out at an appropriate stage in the relevant national proceedings. It assists the effectiveness of the national investigative proceedings by providing comfort to those who can provide evidence.

Since the ICC has only recently received the dossier of claims which include the two cases I am investigating, it has a legal and judicial function to perform, and thus it is reasonable and responsible that it should not act to preclude consideration of individual cases before it has had time to consider the details of the dossier.

The headlines in the article not only misrepresent the true position, but they are unhelpful and prejudicial to the discharge of my function as well as misleading the former soldiers who are best protected by an effective investigation being carried out and who have the benefit of an undertaking to encourage their full participation.

It would have been more in the interests of the soldiers, and thus responsible reporting, had the concerns expressed by the authors been raised with me before publication. I would have been happy to convene a public hearing.

SIR GEORGE NEWMAN

22 January 2015