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Friday, 22 January 2016

FIRST STATEMENT IN CONNECTION WITH AN INVESTIGATION INTO THE
DEATH OF AHMED JABBAR KARIM ALI

(12.00 pm)

THE INSPECTOR: This hearing is being transcribed.

A transcript will be posted on the IFI's website. It will be headed "First Statement in Connection with an Investigation into the Death of Ahmed Jabbar Karim Ali."

It may have appeared to some of you that this was to be a form of press conference. It is not. It is an unusual form of statement made in connection with unusual circumstances, so unusual that I have been convinced by the content and extent of media comment that too little is understood about what it is that the IFI, presently myself, has to do.

The first thing I want to emphasise is that the IFI discharges a judicial function. Its processes, including today's hearing, are part of a judicial process which has no exact legal precedent. It was specially sculpted by the divisional court in 2013 to deal with the unprecedented consequences flowing from a change in the law which had taken place through judgments, and ultimately a judgment, in the European Court of Justice at Strasbourg. It is complex

1 jurisprudence and anything I now say must be accepted by
2 you as my endeavour simply to explain the change in the
3 law as it affects what I am doing.

4 The change in the law laid down that a state's
5 military forces, when in effective control of
6 an overseas territory, must accord to foreign civilians
7 in that region in respect of which they are in effective
8 control the protection provided to persons under the
9 European Convention of Human Rights.

10 I gave notice of my wish to explain the role and
11 function of the IFI because media comment led me to fear
12 that the judicial function of the IFI was in danger of
13 being undermined. The comment suggested to me that,
14 because it was not realised that the state, if you like
15 the Government and the Executive, are obliged to comply
16 with an order of the High Court, that comment was
17 misplaced and inaccurate. The IFI was set up so as to
18 comply with the divisional court's order made
19 in October 2013 and the state is under a continuing
20 legal obligation to continue its purpose and function,
21 namely through the IFI, in cases which the court has
22 ruled there should be what is called an Article 2
23 Inquiry to have those inquiries -- they are called
24 Investigations, and I will come back to that rather
25 confusing change in terminology in a minute -- but the

1 state is bound to continue these inquiries and it seemed
2 to me that some of the press comment and media comment
3 suggested that it was open season for, as it were,
4 condemning the processes in one way or another.

5 Contrary to this being something which is part of
6 political purpose or policy, the emotional tenor of some
7 of the comment has also led me to have fears that not
8 only was it legally inaccurate, which is never helpful,
9 but it was also likely to damage the legal process which
10 I am charged to pursue.

11 Please do not think that I don't realise that the
12 subject matter is clearly a matter of public importance
13 and public debate. I have no doubt that that must
14 continue but it should continue respecting the context
15 in which the IFI is operating and its legal purpose and
16 respect, too, the rule of law. By that I mean in the
17 Inquiry/Investigation which I am presently undertaking,
18 the case of the death of Mr Ali, witnesses who I have
19 not yet had the chance to see, take statements from,
20 explain what it is that I am doing and expecting of
21 them, have already been contacted by the media. The
22 nature of the comment which has been taking place is apt
23 in the minds of perhaps some soldiers, who are the
24 necessary witnesses I have to interview, to put them
25 off, to put them in some fear of cooperating with

1 the Inquiry I must pursue.

2 You will understand, therefore, why this is simply
3 not a satisfactory position for me to be in, it is not
4 a satisfactory position for the legal process, which has
5 to be undertaken and interference or undermining the
6 process could have consequences which are quite serious
7 and which I shall briefly mention.

8 Let me now try and put some flesh on what I have
9 just by way of summary said. There are two judgments
10 from the divisional court which were given in 2013.
11 They were given in the case, for those who wish to make
12 a note of its name, R(Ali Zaki Moussa 2) v Secretary of
13 State for Defence. There were a number of legal
14 arguments. I shall concentrate on the one that
15 particularly concerns what I am talking to you about.

16 In particular, the court rejected an application
17 which was made in judicial review proceedings for what
18 was referred to as an "overarching inquiry". It was
19 argued that such an overarching inquiry should be the
20 mechanism whereby numerous allegations against British
21 forces in Iraq occurring in 2003 advanced on behalf of
22 a number of claimants should all be dealt with at one
23 time. The court refused to order an overarching
24 inquiry. It would have been a statutory inquiry. What
25 I do does not amount to a statutory inquiry. It would

1 have had the form of two major inquiries, which were
2 being completed, or one of which had been completed, was
3 a guide, taken a number of years, involved many, many
4 days of oral hearings, of counsel solicitors and,
5 importantly, advocates, I will emphasise, involved, with
6 legal submissions, cross-examination, evidence-in-chief
7 and so on -- the more classic form of a statutory form
8 of inquiry involving contentious issues of fact. Those
9 two inquiries, the Baha Mousa and the Al Sweady
10 Inquiries, as you will all know as well as I, reached
11 figures for costs which, variously, taken together,
12 exceed probably, £50 million.

13 The divisional court was not prepared to go down
14 that route with an overarching statutory inquiry in
15 respect of a great number of cases. So what did it do?

16 Through considerable judicial ingenuity, a way
17 forward was devised. It is a hybrid process and, as
18 I have said, has no exact precedent but the legal
19 character of what the divisional court formulated was
20 that there should be Article 2 -- that is Article 2 of
21 the Convention -- Inquiries, which, as far as you look
22 for legal precedents and guidance, have the attributes
23 and purpose of the coronial jurisdiction, namely
24 carrying out an inquest, which they mixed with aspects
25 of a conventional inquiry process but dispensed under

1 the controlling supervision of a judge similar to that
2 which is adopted in the continental inquisitorial
3 procedures.

4 This hybrid process carries with it a number of
5 particular hallmarks which I believe cover, insofar as
6 I have received questions in advance of today, many of
7 the questions -- do come in and sit down -- many of the
8 questions which have been put to me. (Pause)

9 I shall have to take a little time explaining them
10 because, in explaining them, I shall be able to
11 demonstrate to you how misplaced much of the comment
12 which has taken place happens to be.

13 As I have said, the change in the law which I have
14 reflected in that short summary emerged from the court
15 at Strasbourg in a case called Al-Skeini. Al-Skeini had
16 been on a journey through the English courts before it
17 went to Strasbourg. The result therefore is that, where
18 a civilian death occurs, the jurisdictional reach of
19 a state, being party to the convention, will extend to
20 investigating the civilian death where certain
21 conditions are met and in particular allegations are
22 made about the involvement of British forces in that
23 death.

24 Now, the order which was made by the Secretary of
25 State was unusual in that it laid down parameters for

1 what was to take place. It ordered, and he still is the
2 designated judge, that Mr Justice Leggatt should be
3 appointed to have an overview of the inquiries, to hear
4 applications relating to general issues and to generally
5 supervise the way in which the court's order is carried
6 out. Mr Justice Leggatt has been doing that for
7 a couple of years. He recently had a hearing, and there
8 was a judgment which is pending, in which he dealt with
9 a number of issues and they include the extent to which
10 the Secretary of State is, through the agencies he
11 controls, discharging his obligations under the order
12 and seeing that inquiries are carried out speedily and
13 so forth.

14 Importantly, because some of the questions I have
15 been asked draw attention to the role of IHAT, the Iraq
16 Historic Allegations Team, the court stated that:

17 "In relation to deaths, the Joint Case Review Panel
18 established by IHAT and the Directorate of Service
19 Prosecutions is to advise the Secretary of State as to
20 whether or not there is a realistic case for
21 prosecution. As soon as it is clear that there will be
22 no prosecution, in a case in which the Secretary of
23 State accepts that an Article 2 obligation to hold
24 an inquiry arises, an inquiry should be commenced as
25 soon as possible."

1 Thus the IFI only receives cases through and after
2 IHAT and the Directorate of Service Prosecutions have
3 concluded that there is no realistic case for
4 prosecution. This is an important aspect of what the
5 IFI does. It means that soldiers who are asked to
6 cooperate and to provide evidence to the IFI know that,
7 so far as the Secretary of State is concerned, he has
8 concluded that there is no realistic case for
9 prosecution.

10 I do not underestimate, because the questions have
11 put it before me and because it has been before me since
12 I commenced these inquiries, that to ask soldiers to
13 revisit events such as those one is bound to investigate
14 can be traumatic, can increase stress. Some of them are
15 already suffering from stress as a result of their
16 service in Iraq, but, as I will identify to you in
17 a minute or two, I, through the IFI, have endeavoured to
18 accommodate those conditions and mitigate them. I shall
19 list the steps in mitigation later.

20 The court ordered that inquiries are to be conducted
21 by a suitable person, such as a retired judge or
22 possibly a very experienced practitioner. It provided
23 that it was for the Secretary of State to determine the
24 terms of reference and the detail as to the form of each
25 Inquiry in conjunction with the inspector. That is the

1 title, according to the court, I carry. The court also
2 stated that the inspector must have a power to compel
3 witnesses to attend and to compel the production of
4 documents. It also stated, and this is important in
5 light of so much comment:

6 "The inquiries should be public and be given the
7 necessary support to enable the families of the deceased
8 in Iraq to participate in such a way as to safeguard
9 their legitimate interests."

10 There has been comment, misplaced and unfair, some
11 of it,, it seems, designed to vilify the assistance
12 I have had from a lawyer in Iraq who, because I have had
13 to consider what the support necessary for the families
14 was in the exercise of my discretion, and the exercise
15 of my discretion is set out in detail in the report
16 published in the first two cases I did, making it plain
17 that I considered that, rather than have an English
18 solicitor who didn't speak Arabic, who would have to
19 communicate through interpreters, who was not situated
20 in Iraq, as long as I could find somebody who was
21 familiar with English law procedure, who was in Iraq and
22 in whom I could have confidence, and as it happens
23 I found somebody who had qualified as an English
24 solicitor, had been a partner in a major firm of
25 solicitors here in London, having set up a practice in

1 Basra, was eminently legally qualified, obviously spoke
2 Arabic and English fluently, familiar with the cultural
3 conditions and so forth of Iraq, able to provide
4 assistance on the spot, able to take witness statements
5 from witnesses I need to receive evidence from, it was
6 ideal that that person should receive the authority from
7 me to carry out those tasks and that I should thereafter
8 monitor what she was paid. That is what has taken
9 place.

10 But the function that she performs is quite simply
11 not to, as it has been suggested, question our soldiers.
12 She does not question or cross-examine our soldiers. As
13 I shall draw to your attention in a minute or two, the
14 court specifically ordered that the only person entitled
15 to ask questions of anybody is myself, is the inspector.
16 There is no cross-examination that is taking place. It
17 is part of my information which I give to soldiers when
18 I first contact them, to make it plain to them that
19 there is no cross-examination, they are not going to be
20 confronted by a QC or counsel acting on behalf of the
21 families. They are going to be asked questions by me as
22 I see fit and appropriate to enable me to carry out
23 a proper fearless and full investigation into the facts
24 and circumstances which took place.

25 Thus I do ask, please, do not vilify the lawyer in

1 Iraq. It is not going to help the IFI carry out its
2 inquiries. How else can the IFI obtain statements from
3 witnesses in Iraq? How else can inquiries be made about
4 documents which may be in Iraq, either in police
5 stations where statements were made or in courts in Iraq
6 where there might have been proceedings commenced? How
7 else can somebody who is under the court's order
8 participating in what I am doing, when on the few
9 occasions that I have a form of video-link or other
10 link, who else can be there in Iraq to ensure that the
11 whole proceeding goes in the most sensible and
12 intelligible way than somebody there who understands
13 what the process is about and who has gained the
14 confidence of the families of the deceased?

15 So the fact finding exercise is one which I am
16 obliged to seek to establish by what means and in what
17 circumstances the deceased came about his death. I may
18 have to consider making recommendations where it is
19 appropriate, if facts emerge in relation to what was
20 done by the military which would make recommendations
21 sensible and helpful.

22 There is no Counsel to the Inquiry. That of course
23 is one of the hallmarks of a statutory inquiry. So far
24 as the IFI are concerned, I have the assistance of at
25 least one junior barrister in connection with

1 an inquiry, perhaps two, and I have one paralegal, who
2 has been with the IFI since it commenced, and I am
3 enlarging at least the paralegal side in order to deal
4 with the pressures of work.

5 The next of kin of those whose deaths are the
6 subject of inquiry do have a right to suggest questions
7 and raise lines of inquiry to the extent considered
8 necessary by me. That is in order to enable them to be
9 involved and to play an appropriate role. Thus it is
10 that I receive lines of inquiry, or suggested questions,
11 through the Arab lawyer which are put to me and
12 I consider whether or not they should be put to anybody.

13 The divisional court specifically provided, as you
14 might expect, having ordered this process to take place,
15 that funding will be required for legal assistance to
16 victims and families to the extent necessary to
17 safeguard their legitimate interests.

18 So far as soldiers are concerned, when we make
19 contact with soldiers, we inform them that, if they wish
20 to seek legal advice and assistance, they can do so.
21 Where, as there has been in two cases and in the case of
22 Ali, there have been court-martial proceedings which
23 have run through without convictions of the soldiers,
24 then it is common for the soldiers to ask that they
25 should have the assistance of the solicitors who

1 represented them at the court-martial and counsel, if
2 necessary, who also represented them, not with a view to
3 them performing as advocates but with a view to
4 assisting and advising them, and providing witness
5 statements to me.

6 Then, as I say, the designated judge has to review
7 the position on a regular basis, and that is what he is
8 doing.

9 Since that is what the court has ordered, it
10 follows, and I am sure you will understand it, that the
11 Secretary of State cannot refuse to comply with the
12 court order. Thus, any campaign by way of comment,
13 which seems to be directed towards deflecting what might
14 be thought was a policy, is misplaced. My reason for
15 calling a gathering together today is that all these
16 things just simply give oxygen to the potential for
17 damage to the judicial processes which are underway.

18 The particular position, therefore, of soldiers. As
19 I have told you, it became readily apparent to me that
20 soldiers I was making contact with were often suffering
21 from stress. I, therefore, with the assistance of the
22 MoD, am able to make it plain to them when I first
23 contact them that, if they have not already got medical
24 assistance and support for their stress-related
25 conditions, then it is available and they are encouraged

1 to take it up. They are informed, as I have said, that
2 they are not facing a trial, they are not facing
3 cross-examination in a court. They are being asked to
4 provide witness statements.

5 Those witness statements are taken by me. They are
6 taken by me in the premises available to the IFI at
7 Horse Guards. If they are not taken there, they can be
8 taken by some other form of electronic means -- Skype,
9 FaceTime, and so forth. One of the questions to me was,
10 why, if they make a statement, is it not sufficient if
11 they have made a written statement? The answer to that
12 is it may well be. Not every soldier who makes a
13 written statement is asked by me to attend to give oral
14 evidence in the sense of giving oral evidence at
15 a hearing.

16 The court envisaged, and this is what takes place,
17 that a large bulk of the initial consideration has to be
18 done by reference to such documentation as there is. In
19 respect of court-martial cases where there have been
20 acquittals, there is the court transcript and the court
21 record -- voluminous. In the first two cases, I dealt
22 with, the combined total of all the documents, in
23 connection with the court-martial proceedings exceeded
24 10,000 pages.

25 There is, therefore, a bulky amount of documentary

1 material which has to be considered. Once I have
2 considered that, I then have to make a decision as to
3 which soldier I obtain a statement from and, having
4 obtained it, hold out the possibility that giving oral
5 evidence will not be required but warning that it might
6 be.

7 So far as hearings are concerned, they have taken
8 place either in this court or in a very similar court
9 downstairs with a link through to Basra on a video-link,
10 with a soldier giving evidence here. If the soldier has
11 sought anonymity, then he will normally receive it and
12 he will be given a cypher number. If he doesn't wish
13 his face to be seen, his face is not seen and he gives
14 his evidence here having made a statement to me and in
15 accordance with what questions I believe I need to put
16 in order for those in Basra to understand what it is
17 that he says on essential matters.

18 The statements which the soldiers have given will
19 already have been supplied to the lawyer in Basra in
20 English and she can take what course she will wish to
21 take in respect of understanding what assistance she can
22 provide to them and what lines of inquiry it may be
23 helpful for me to pursue.

24 On one occasion, to assist soldiers, we had a link
25 not only with Basra but another link to a hotel in

1 Liverpool because of the condition of one or two of the
2 soldiers, which did not make it very easy for them to
3 travel to London.

4 Those are the parameters of what goes on in the
5 course of these proceedings and it is very important
6 that you understand that that is what goes on. I do not
7 blame anybody for not having been here. I cannot say
8 that I see very many familiar faces from the hearings
9 that have taken place, but they are in public and you
10 can attend. There are transcripts.

11 So far as the first consolidated report I did into
12 the two cases, there were a total of five days of what
13 one could call video-link hearing with Iraq. In respect
14 of the case in which hearings have been completed and
15 I am at the latter stage of writing the report, namely
16 the case of Mr Salim, there were two days of video-link
17 hearings here.

18 A little bit more on the soldiers' position.
19 Because it seemed to me to be appropriate for all
20 soldiers who give evidence against a background in which
21 allegations are being made about misconduct, and in the
22 course of an investigation which could turn up a variety
23 of facts but which had not been in evidence or recorded,
24 that the soldiers should have not just the comfort of
25 a lawyer, the comfort of any medical support and

1 assistance they need, but they should also have as much
2 legal comfort as could be supplied for them.

3 As a result, for the first two inquiries, and it now
4 prevails for all the inquiries, the soldiers enjoy, and
5 will enjoy, the benefit of a form of assurance given by
6 the Attorney General's office and given after his
7 consultation with the Director of Public Prosecutions
8 and the Director of Service Prosecutions. In short
9 legal parlance, they are assurances that evidence that
10 they give to the investigation will not be relied upon
11 against them in any proceedings which might ensue
12 thereafter. Thus they enjoy a privilege against
13 self-incrimination from anything they say to the IFI.

14 But after the first two cases have been sent to the
15 IFI, the solicitors acting for a large number of
16 claimants in Iraq, Public Interest Lawyers, or PIL,
17 lodged a dossier in the International Criminal Court at
18 the Hague invoking the procedures and jurisdiction of
19 the International Criminal Court. As a result,
20 I approached the Chief Prosecutor at the International
21 Criminal Court and sought her assistance, namely
22 a letter of comfort to be provided to soldiers along the
23 lines, if not identical to or better than, if she could
24 do it, the letter which I had received from the Attorney
25 General here. The existence of that letter is also

1 significant as an important background to what has been
2 the repeated misinformation which is being given about
3 the risks of individual soldiers to being prosecuted by
4 the International Criminal Court.

5 Having said that, do not understand me to be saying
6 that any cast iron guarantees could be given or obtained
7 from anybody in this area, but the latest letter from
8 the Chief Prosecutor in its material part is in these
9 terms:

10 "I am also willing to consider positively future
11 requests with respect to similar cases of alleged
12 participation of UK soldiers in the immediate
13 circumstances leading to the death of Iraqi nationals
14 under investigation by IFI. However, such cases should
15 first be notified to my office, so that I am in
16 a position to consider whether to grant a similar
17 assurance on a case by case basis."

18 The Attorney General has been more ample in his
19 expressions of the assurance and comfort being
20 available, namely that in general terms it is available
21 for all the cases. I sought that from the Prosecutor
22 but, as you have heard, she did not feel able to go as
23 far as that.

24 I think I would like to read in her own words what
25 puts the position of the ICC, the state and these

1 soldiers into a correct legal perspective:

2 "Let me reiterate that the incidents which form the
3 subject of your investigations fall within the scope of
4 my office's preliminary examinations. I am therefore
5 unable to provide an assurance of non-prosecution in
6 relation to those incidents. An assurance not to
7 prosecute particular individuals would not be consistent
8 with my statutory obligations, particularly at the
9 preliminary examination stage, where there are as yet no
10 individual suspects and the contours of my potential
11 cases are only defined in very general terms.
12 Nonetheless, I should recall that my prosecutorial
13 policy, as a general rule, is to investigate and
14 prosecute individuals who bear the greatest
15 responsibility for the most serious crimes, the
16 determination of which is based on the evidence that
17 emerges in the course of an investigations. Thus as
18 a matter of prosecutorial discretion, I would normally
19 select for prosecution those situated at the highest,
20 rather than the lowest, echelons of responsibility."

21 That expression of the nature of the discretion and
22 how it is likely to be exercised is obviously very
23 important in connection with such risk as soldiers
24 giving evidence to the IFI may be exposed to, but
25 I would also like to put a bit of meat on the background

1 to this as well.

2 The ICC is a court of last resort. It will not act,
3 if a case is investigated or prosecuted by a national
4 judicial system, unless the national proceedings are not
5 genuine. For example, if formal proceedings were
6 undertaken solely to shield a person from criminal
7 responsibility.

8 The IFI investigations are intended to be the
9 genuine national proceedings, which, if they are so
10 viewed by the ICC, will make the cases inadmissible.
11 Thus it is that the processes of the IFI and the ICC
12 with regard to investigations is properly described as
13 complementary. In the ICC law it is talked about as
14 a principle of complementarity but, again, it is vital
15 that that be understood: vital it is understood by the
16 soldiers, vital that it is understood by everybody here
17 that, if for any reason the IFI cannot carry out or what
18 the ICC views as a properly undertaken inquiry into all
19 the facts and circumstances complying with Article 2 of
20 the Convention of Human Rights, then one is merely
21 exposing soldiers to the possibility, some possibility,
22 that, instead of the IFI investigating it, someone else
23 will be doing it. I do not think anybody wants that.

24 One or two individual questions which were kindly
25 provided to me, which perhaps I should cover, and they

1 will give you a little bit more of the detail which
2 I have already probably given you, but, for example,
3 I am asked by Jonathan Beale of the BBC: "How many cases
4 have been referred to the IFI so far?" The answer to
5 that is four.

6 "How many have been dealt with?" Two have been
7 dealt with to a final stage. The third, the case of
8 Salim I have mentioned already, it is at a stage where
9 the report which will publish is in its latter stages of
10 preparation.

11 "How much compensation has been handed out to Iraqi
12 citizens as a result of the IFI's investigation?" The
13 short answer to that is that the IFI's inquiry and facts
14 are not designed to determine either criminal or civil
15 culpability but the facts which can be found, and will
16 be found, may be used in order to obtain compensation,
17 because not only are there judicial review proceedings
18 brought by the claimants and families, but there are
19 compensation claims being pursued in the High Court.

20 If asked how much compensation has been handed out,
21 I am not really the person to ask but I am aware, since
22 I read about it, that, in the case of Abdullah, which
23 was one of the first reports I completed, I believe
24 compensation was paid, but I do not know how much and
25 that inquiry would have to be made of the MoD, not only

1 for confirmation that I've got it right but as to what
2 it was.

3 "How long will its work go on for?" asks Mr Beale.
4 Well, the process which IHAT must adopt is a process of
5 investigation which, ultimately, will lead to a decision
6 by the Service Prosecutions Directorate as to whether or
7 not there should be a prosecution. The link between
8 what the IHAT does and what the IFI does is that, once
9 a decision has been made, or at least the view being
10 expressed, that there are no grounds for prosecution,
11 then it is for the Secretary of State to conclude on the
12 basis of that whether or not he is satisfied there is no
13 realistic prospect of a prosecution and, in the case of
14 death cases rather than ill-treatment cases, with which
15 I am not concerned, in death cases, those cases will be
16 referred to the IFI.

17 I ca not answer to the question as to how long the
18 work will go on. You must get a better idea of how long
19 it is going to take, if you wish to try and do so, from
20 those who are doing the work. As and when the cases
21 come off, as it were, the decision table that I have
22 referred to and are placed before the Secretary of
23 State, then he makes his decision and it will then be
24 for the IFI to take them up.

25 The relationship which the IFI have with the IHAT is

1 one in which the IHAT is carrying out its
2 investigations. Its investigations -- so that I can
3 pick up on another question asked of me -- its
4 investigations cannot meet the Article 2 Inquiry
5 obligations because, as the court has ordered, the
6 Article 2 Inquiry must be done by a judge and pursue all
7 those things which I have told you about this morning.
8 The IHAT does what it can do to make investigations. It
9 then is obliged by the order of the court to supply the
10 IFI with the result of its investigations and then the
11 IFI must commence its own search for evidence.

12 What about the costs, then, of the IFI? The best
13 information I can give you is in relation to the
14 estimate which, I think, was given by the Secretary of
15 State to Parliament in respect of the first two cases,
16 that together the two cases cost of the order of
17 £400,000. Thus, if one wants to take a broad stab at
18 the cost of an investigation, £200,000 can be taken as
19 an indicator, but it cannot be any more than
20 an indicator because each case will throw up more
21 expense, perhaps, than another, if there are more
22 witnesses, there may be a need for more video-link
23 hearings, and so forth. Each case in the future, so far
24 as costs are concerned, as I say, will depend upon the
25 range and detail of the investigations which the IFI has

1 to take and the extent to which material is already in
2 existence and supplied to it.

3 So far as soldiers being disciplined or discharged
4 as a result of hearings and investigations carried out
5 by the IFI, I have no doubt that there has been no
6 disciplinary or discharge proceedings as a result of
7 what the investigation by the IFI carried out. That is
8 not, as I have said, the purpose of it. It is not for
9 me to determine culpability in any sense. If the
10 military authorities determine that there is something
11 revealed in the report which calls for some discharge or
12 discipline, then I cannot possibly prophesy as to that
13 but I am confident that nothing to date has occurred in
14 that regard.

15 Indeed, many of the soldiers I interview are no
16 longer in the military. We are dealing with events, as
17 you know, in 2003. One of the more difficult and
18 troublesome aspects for the soldiers who are no longer
19 in the military is that they have made lives -- they
20 were young men in 2003. They have made lives, marrying,
21 having children and doing jobs. It is for that reason
22 that you will find, and I acknowledge it, that many will
23 want, for example, anonymity, so that their current
24 employer will not be aware that they are being asked
25 assist in this sort of investigation.

1 David Willetts of The Sun has asked, "If soldiers
2 are cleared of wrongdoing, why hold another Inquiry?"
3 Well, I hope Mr Willetts has understood enough of what
4 I have said today to realise why the investigation is
5 taking place, how it is that Article 2 of the ECHR has
6 to be met and why it is that the IHAT cannot do it.

7 He asks me "whether I concede" -- I would not use
8 the word concede but I would use the word acknowledge,
9 and I have just done so -- that this sort of scrutiny
10 can be upsetting and distressing.

11 He asks, "Why employ a lawyer in Iraq to aid your
12 work?" I could not, I hope, have made the position more
13 straightforward and sensible. I need to obtain evidence
14 from Iraq. I need witness statements from witnesses who
15 are in Iraq. All claims have to be investigated by me
16 fairly and impartially but I would not dream of
17 expressing an opinion, and I have not got one, as to the
18 veracity of claims made by Iraqi civilians. It is
19 a matter that has to be decided in every case and is
20 decided, as far as necessary, in every case once I have
21 the evidence.

22 Then, lastly I think, Larisa Brown of The Daily
23 Mail, "Why are written statements not enough from
24 soldiers? Why do they need to give evidence in person?"
25 As I have said, sometimes a written statement will be

1 enough. It may not be enough, if I consider that that
2 evidence is so important that it ought to be heard at
3 least in the course of a video-link with the families of
4 the Arab families in Iraq, but the giving of evidence,
5 again, as I have emphasised, does not involve more than
6 the answering of questions, either from me or authorised
7 by me.

8 I have said enough, I think, about finances. "What
9 about a soldier who does not attend?" Well, you have
10 heard what the court says. If a soldier does not
11 attend, does not respond and cooperate with the request
12 I make of him, the court, a High Court, has the power to
13 compel him and, obviously, it would be part of my duty,
14 if I considered his evidence was critical, to seek
15 an order from the High Court which would compel him. To
16 date, I can happily say, that all the soldiers I have
17 asked, both serving and retired from the forces, have
18 given their cooperation, bar one and that is a matter on
19 the record and I do not intend to go over that, but they
20 have given their cooperation, and it is far better that
21 they give their cooperation than that they should be
22 compelled.

23 Well, I am afraid it has been a bit like a dreary
24 legal seminar but there was no scope for it being
25 anything else. I have answered all the questions,

1 I believe, in respect of which I received notice but
2 I am sufficiently flexible to say that, if somebody
3 wants clarification on something which falls within my
4 remit, then by all means ask the question -- and,
5 please, if you could identify who you are.

6 JOSHUA ROZENBERG: Sir George, Joshua Rozenberg. We have
7 met before.

8 What I would like you to specify is the articles
9 that you are complaining about, because I have not
10 written any such articles and unless you specify which
11 they are, I don't know who else in this room is in the
12 frame.

13 I certainly have not vilified your lawyer and
14 I don't except the argument that we have given damage to
15 your Inquiry. As far as I am concerned, it is the job
16 of the media in a free society to hold to account how
17 public money is spent and to investigate and inquire,
18 and if you, sir, say that we have been inaccurate and
19 ignorant, then I have to accept that, although I don't
20 have chapter and verse -- I am sure there is a great
21 deal of ignorance about how this is operated because
22 I think there is a great deal of confusion in the public
23 mind between IHAT and your Inquiries; there is a great
24 deal of confusion in the public mind between the role of
25 lawyers who are seeking compensation and the role of

1 lawyers who are acting for IHAT and investigating the
2 matter and, with the greatest respect, sir, I think that
3 it would have been more useful for you, if you had
4 appointed a press officer, had met us informally to
5 explain a little bit more about how you fit into this
6 whole process, to put right specific wrongs, to deal
7 directly with errors that might have been made, rather
8 than to call us in here and lecture us for more than
9 an hour on what we collectively have done wrong.

10 I suggest that better communications, rather than
11 a lecture, would actually assist your work and assist us
12 to do our job.

13 THE INSPECTOR: Is that a question? What is the question?

14 JOSHUA ROZENBERG: It is a question, specifically, on which
15 of the articles that we are accused of writing are
16 wrong.

17 THE INSPECTOR: The specific question, yesterday,
18 a newspaper published photographs of the Iraqi lawyer.
19 I did not study it in great detail but it was perfectly
20 plain that it was being said, "This is the lawyer who is
21 making thousands of pounds quizzing our boys," or words
22 to that effect. That is the sort of comment that has
23 been in the press. There have been other comments.

24 I don't know why Mr Rozenberg, who, had I believed
25 was in some way party to what has been, said rises as he

1 does. The fact of the matter is that those who have
2 made the comment, and I have alluded to them, know who
3 they are. I don't see that Mr Rozenberg, or indeed
4 anybody else, needs me to identify them. I am not here
5 and I have not spent an hour, contrary to what he has
6 said, I have not spent an hour complaining about what
7 has been done. That in itself, if I may say so, is
8 nothing other than a misunderstanding. I fail to
9 understand how anybody sitting here could have
10 misunderstood what I was saying.

11 I have been endeavouring to explain the legal
12 position of the IFI, its role and its functions, in
13 order to demonstrate how ill-informed or incomplete
14 comment can have the effect of damaging the prospects of
15 the IFI achieving its objects. So I make no apology for
16 having delivered not a lecture, although it might have
17 seemed like one. I have endeavoured to make a statement
18 on the law as it binds the IFI and as it binds
19 everybody.

20 I have endeavoured, and I am not naming, again,
21 I have endeavoured in the past, to make public
22 statements by putting them out on the website and
23 informing particular newspapers of what it is I have to
24 say and asking them, before they say any more, would
25 they please give me notice in advance. I am afraid that

1 just does not happen.

2 I am about to embark on an inquiry where the
3 witnesses have already been seen by a newspaper, and,
4 again, the newspaper will be well aware of what it is
5 I am referring to, and they have interviewed each of
6 those soldiers. It is just not a good thing for that to
7 happen.

8 Mr Rozenberg may not like any form of reprimand.
9 That is not what is intended, but calling together
10 a press conference is not what I see as being my
11 position. I hold a position in which I endeavour to
12 make the legal position clear so that everybody
13 understands what I am doing. The range of questions
14 which have been bombarded to the IFI in the last week or
15 so made it simply impractical to seek to answer by way
16 of email, which is how I have endeavoured to do it in
17 the past, everything which has been asked and the common
18 line or common consequence of replying by email is that
19 it simply produces another question.

20 So far as the IFI are concerned, as I said in the
21 statement announcing this, the resources of the IFI do
22 not extend very far and this, I considered, and in the
23 exercise of my discretion have considered, by far the
24 best way of giving people the information which they can
25 hear and understand and take account of. That is the

1 purpose of today.

2 Any more? Yes.

3 SEAN O'NEILL: Sean O'Neill from The Times.

4 I hear what you say about some comments in the media
5 being misplaced and unhelpful to your Inquiry. The
6 Prime Minister has intervened in this area this morning
7 and said he is concerned about spurious claims and he
8 has put out a statement now saying that he wants to
9 crack down on the industry of spurious claims around
10 what happened in Iraq.

11 Is that also misplaced and unhelpful to your work?

12 THE INSPECTOR: You have not understood what the IFI does,
13 I am afraid, with respect. The Prime Minister is not
14 talking about the IFI or what the IFI does. He is
15 talking about the claims which lawyers are advancing in
16 respect of claimants. That is nothing to do with what
17 I am doing.

18 Do you understand?

19 LARISA BROWN: Larisa Brown from The Mail.

20 Just touching upon the actual soldiers and what they
21 are going through, obviously I have interviewed one of
22 the soldiers who has been through the IFI process and,
23 also, one that is about to be going through the process.

24 The one that is about to be, he was actually
25 informed about the IFI investigating his case by looking

1 at the website and he had not been told about the
2 investigation at all. That was very, very difficult for
3 him to deal with, because he, you know, it was the first
4 time in 12 years he hears in a case that he was charged
5 with manslaughter for, and then acquitted, is then being
6 investigated.

7 So, actually, one thing, I think, that does need to
8 be looked at is the fact that the soldiers aren't being
9 told about this and are only being made aware of it by
10 the IFI website.

11 I am just wondering what the policy is in terms of
12 telling soldiers that the investigations are coming up?

13 THE INSPECTOR: Unfortunately, if it has occurred, it is
14 certainly something which was not envisaged. The
15 processes that, once I have notice from the Secretary of
16 State to carry out a particular Inquiry, then, in order
17 to make that known, the website has posted on it, as it
18 were, the letter or the fact of my appointment.

19 It would not at that stage identify any soldier, it
20 would merely say I have been appointed to carry out
21 an inquiry into the facts and circumstances of, in this
22 case it is Ali, Mr Ali. But it didn't name soldiers.
23 So, obviously, the soldier you referred to was aware
24 that it may be he could provide helpful evidence to the
25 IFI about the circumstances in which Mr Ali died.

1 It is quite difficult to get the timing, other than
2 by the way in which I do it at the moment. I will think
3 about it, but you see I don't always know until I have
4 got information from the MoD who the soldiers are.
5 I get a list of all the chain of command down to the
6 last soldiers involved. So it would mean that the
7 commencement of the investigation would not be in the
8 public domain, if I was to delay -- but I will think
9 about it.

10 I certainly hear what you say and, certainly,
11 I think so far as that particular soldier that you spoke
12 to is concerned, I don't know, I think he has certainly
13 been in contact.

14 LARISA BROWN: He has now because we put him in contact.

15 The Mail did.

16 THE INSPECTOR: Wait a minute, it is coming back to me now.

17 I was told that somebody wanted to make contact.

18 LARISA BROWN: Yes.

19 THE INSPECTOR: As it happened, there was not anybody at the
20 IFI. We came back to you, or my assistant came back to
21 you and we located him. Our problem was at that stage
22 we didn't know where he was.

23 SIMON VIGAR: Simon Vigar, Channel 5 News.

24 The Prime Minister's comment on Legal Aid is
25 relevant here, isn't it? He said today he is going to

1 make sure people cannot claim Legal Aid unless they are
2 resident in the UK. Well, that is relevant to what the
3 IFI is doing, isn't it?

4 THE INSPECTOR: No. I am not dealing with Legal Aid.

5 SIMON VIGAR: Didn't you say that the people in Basra and
6 Baghdad do receive Legal Aid?

7 THE INSPECTOR: No. They receive assistance under the order
8 of the court which must be available to them according
9 to what I determine. It is not a matter that goes
10 through the Legal Aid Authority, as it used to be
11 called, not in the sense the Prime Minister is talking
12 about.

13 Legal Aid is provided to claimants who live overseas
14 in order to take claims in the High Court and other
15 places. It is simply nothing to do with what I am
16 talking about.

17 I have said what must be plain. The court has
18 ordered that assistance must be provided. Assistance is
19 being provided. It is not Legal Aid. It is assistance
20 as I decide it should be provided, which is not
21 Legal Aid but money which comes from the MoD as part of
22 its obligations as a department of state to see that
23 these inquiries are carried out.

24 Do you understand?

25 SIMON VIGAR: I do. I wonder whether it is Legal Aid with

1 capital letters or more generally -- what sort of
2 assistance do they receive?

3 THE INSPECTOR: Well, there is a costs protocol in respect
4 of English lawyers who are assisting me and, so far as
5 the Arab lawyer is concerned, she puts in invoices which
6 I scrutinise and, if necessary, question and she
7 receives such sums as I authorise.

8 LARISA BROWN: Larisa Brown, again.

9 Would it be helpful for you to have an MoD
10 representative or someone that could go to the soldiers
11 first to actually discuss what they were about to be
12 questioned about and what the IFI is about, because the
13 first soldier that I spoke to who had been through the
14 process, actually he had no idea. He did not understand
15 what the IFI was and he had sat in the full hearing.
16 I didn't understand the functions of IHAT and he didn't
17 understand anything about the ICC.

18 Perhaps that has been the problem, that they are not
19 informed themselves by the IFI and by the MoD and would
20 it not be helpful for them to have that advice given to
21 them in the first place?

22 THE INSPECTOR: As I say, let me think about that and
23 perhaps liaise with the MoD.

24 LARISA BROWN: Thank you.

25 THE DEPUTY JUDGE: Any more questions?

1 SEAN O'NEILL: Could I just come back.

2 THE INSPECTOR: Yes, by all means.

3 SEAN O'NEILL: I accept what you say that I am wrong in
4 asking about the vexatious claims issue that the PM has
5 raised, but some of the law firms -- some of the people
6 who may get through to the IFI process may have
7 originated with these law firms seeking clients in Iraq.
8 Is that a possibility? And, if so, then the PM's
9 words could serve to undermine yours.

10 THE INSPECTOR: No, because we are dealing with historical
11 events.

12 Some of the solicitors -- I don't know which
13 solicitors, as a matter of certainty, the PM is
14 referring to but I can make a guess. Obviously, the
15 claims which now are being processed in accordance with
16 the court order to which I have referred were made in
17 proceedings on behalf of claimants who were represented
18 by English solicitors. They were English solicitors who
19 were on the record of the court for the purposes of
20 the judicial review and they are on the record for the
21 purposes of compensation claims. In connection with all
22 of that in the High Court, obviously considerations of
23 Legal Aid could arise, but I make no comment about that,
24 I just point that out.

25 Now, the fact is that the cases with which I am

1 concerned are already the product of the divisional
2 court proceedings and are presently within the framework
3 of divisional court proceedings which are presided over,
4 or monitored, by Mr Justice Leggatt as the designated
5 judge in the Administrative Court responsible for those
6 cases but he is also responsible for what -- he is
7 particularly responsible for what the IFI do but he
8 also, obviously, has to have regard to other matters
9 which I simply have no knowledge of, which deal with the
10 details and steps and procedures which are taking place
11 in relation to those judicial review proceedings.

12 I can't do any more than to explain that to you. It
13 maybe slightly confusing but the line is clear in the
14 sand. English solicitors on the record for the purposes
15 of the English proceedings; so far as Arab claimants,
16 Arab claimants of theirs who are also members of the
17 deceased's family, PIL are not the solicitors.

18 The solicitor, she happens to be, I have asked to
19 assist is in Iraq.

20 SEAN O'NEILL: Just to step out of that very strict legal
21 arena, in the current atmosphere we are in, it surely
22 cannot be helpful for the Prime Minister to have said
23 what he said today?

24 THE INSPECTOR: I simply think you desire to make some point
25 which, if I may say so, and it is not meant any way --

1 is thoroughly bad, but there we are.

2 SEAN O'NEILL: Mischievous, I think.

3 THE INSPECTOR: Maybe mischievous.

4 Any other points? No more thoroughly bad ones?

5 Thank you. Thank you all.

6 (1.30 pm)

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