

Defence Committee

Oral evidence: Statute of limitation—veterans protection, HC 1224

Tuesday 4 September 2018

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Members present: Dr Julian Lewis (Chair); Leo Docherty; Mr Mark Francois; Graham P. Jones; Johnny Mercer; Mrs Madeleine Moon; Gavin Robinson; John Spellar; Phil Wilson.

Questions 1-84

Witnesses

[I](#): Colonel (Rtd) Tim Collins OBE and Colonel (Rtd) Jorge Mendonça DSO MBE.

Examination of witnesses

Witnesses: Colonel Tim Collins and Colonel Jorge Mendonça.

Q1 **Chair:** Good afternoon, and welcome to this sitting of the Defence Committee.

This is the first evidence session of the Committee's inquiry into the question of how former service personnel can be protected from the spectre of investigation and reinvestigation for events that happened many years, and often decades, in the past.

This session will take evidence from Colonel Tim Collins OBE, former commanding officer, 1st Battalion, Royal Irish Regiment, and Colonel Jorge Mendonça MBE, former commanding officer, 1st Battalion, Queen's Lancashire Regiment.

Both men served in frontline roles in Iraq and have themselves been the subject of investigatory processes and exonerated.

Would the witnesses please introduce themselves for the record?

Colonel Jorge Mendonça: I am Jorge Mendonça, former commanding officer, 1st Battalion, Queen's Lancashire Regiment.

Colonel Tim Collins: I am Tim Collins, former commanding officer, 1st Battalion, Royal Irish Regiment.

Chair: We will be, at a certain stage, talking about your individual experiences. However, we will also discuss the broader issues regarding legacy investigations, as well as asking for your ideas as to how veterans and service personnel can be better protected. To kick off our questioning on the broader investigatory landscape, I now hand over to John Spellar.

Q2 **John Spellar:** There are currently legacy investigations taking place into Operation Banner in Northern Ireland, Operation Telic in Iraq and Operation Herrick in Afghanistan. Why do you believe these legacy investigations are taking place?

Colonel Tim Collins: As background, since 2007, I have been chairman of a company called New Century, which was initially set up to serve the US marine corps in Iraq, but we also raised the special branch in Iraq and we are currently working in Afghanistan, where we raised the police special branch. That is relevant because the subject matter experts who work with us from day to day are retired police special branch detectives—most from the Royal Ulster Constabulary, but some from An Garda Síochána—as well as Special Air Service and Special Boat Service individuals, and US marine corps individuals. So I see it from a different point of view, and this is something I talk to my people about every day.

Our view is that the rule of law is on trial in Northern Ireland specifically. We have to set Op Banner aside from everything else. It is specific and it is political and it is shameful. Sectarian murder was pardoned, and the

statistics are shocking. I also believe it is being celebrated, because history is being rewritten.

The outcome of the agreements since Stormont House has been to create an illusion, if not a reality, that sectarian murder has been let off the hook by comfort letters and offers of a royal prerogative of mercy—also known as a pardon. Three hundred and sixty-five pardons were issued between 1979 and 2002. Since 2002, a further 16 pardons have been issued. There are more than 15,000 innocent victims of bombings, who have no champion. They have to grieve in the dark while the sectarian murderers are lionised and the servicemen and women who upheld the rule of law are hunted.

I was invited to look at the human rights proposals that have come along, on which they are taking public consultation at the moment. I think the outcome of that will be that what was a witch hunt becomes a blood sport. That will be facilitated by the new legislation that comes in. It will be a five-year exercise in chasing the police and the Army, as each time a case is closed a reason will be found to reopen it. No doubt that will be funded by legal aid, because I assume that the people who give evidence will be able to avail themselves of legal aid. That will drain money away from hospitals, schools and jobs, and will basically provide lawyers with a licence to print money. It is a disgrace to civilisation, in all reality.

In the midst of the Brexit negotiations and the close scrutiny of European legislation that is going on, one of the things that is being overlooked in Europe—I talked to a German politician about this recently—is that there is one piece of legislation above all else, which is the right to life, yet there is one movement, the republican movement, that maintains a death penalty to this day. Its public face is Sinn Féin. It uses it. The Chief Constable of Northern Ireland said that the murder in Belfast before the 2016 Republic of Ireland election was carried out by the IRA, and of course the IRA answers to Sinn Féin. They have triumphed in that regard.

Anybody who watched last night's film, "Mother's Day," cannot be left in any doubt about the consequences of political murder and sectarian murder—indeed, any murder. The deep, bottomless blackness that is left for the people who are left behind is being hijacked and used for a political purpose—to tug at the heartstrings in order to go after servicemen.

We who served in the military and our colleagues in the police did something about the murderers. We are now hunted beasts, it would seem, and that is a shame. In his piece in the *Telegraph* this morning, Lord Dannatt talks about 2,547 cases having been referred to the Historical Enquiries Team. Only 2,265 of those are related to terrorist killings, with 282 related to the security forces. Why is that a nonsense? Well, the accepted norm is that roughly 60% of killings are attributed to the republican movement and approximately 30% are attributed to the loyalist paramilitaries. It is said that 10% are related to the security forces. That is a charge I totally reject, for the simple reason that the security forces were there legally bearing arms and had every right to do



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so. What's more, when they discharged their weapons, they did so in their self-defence and the protection of those whom it was their duty to protect.

Of all the cases in Northern Ireland, 14 involving security forces personnel have been brought to trial and there have been four convictions. It is more accurate to say that 0.54% of the cases we should be looking at should attract the eye from the security forces' point of view, and 98.5% relate to republican and loyalist paramilitaries—of course, they were all murders, because they had no mandate, no authority and no right to carry out any of those killings. That means the thing is totally skewed. While 282 cases are mentioned, my belief—I am talking to the policemen who work with me—is that the proportion of cases being looked at is closer to 34%. It is a complete outrage that it has been so skewed.

I also want to address—

- Q3 **Chair:** Tim, we need to follow a certain course; we cannot just have a stream of consciousness. I am going to bring in Jorge in a moment. I appreciate you are particularly concerned about the Northern Ireland aspect, which is very much a part of what we are considering, but we would also like insights, at least from one of you, on what is happening in relation to other campaigns, such as Afghanistan and Iraq, because there does seem to be a pattern of prosecutions here. Perhaps you could come in on that, Jorge, and then we will come back to you, Tim.

Colonel Jorge Mendonça: I think the short answer is that we are an easy target. You send soldiers on operations, we go on operations, and we hold ourselves to a very high standard of behaviour. We train, we prepare as best we can and we know our soldiers. When events and incidents happen on the ground and unfold in conditions of uncertainty, where all the facts and information are not available to you and yet a decision still has to be made, errors will be made. The point is that, in my view, the only people who are properly able to judge whether something was an honest mistake or a crime are people who understand the conditions, military law and what operations are all about.

Of course, the fundamental role of the commanding officer in the legal process has been watered down quite badly, so anything really serious is taken out of his hands. We are an easy target. Soldiers going on operations now know that their commanding officer cannot investigate an incident and decide on the ground that that was the right thing to do and that is the end of it. It just unravels after that. Of course, there are all sorts of people who I imagine, as Tim would say, have political reasons for making sure that some justice is seen to be done, whereas actually you can do justice in theatre and after the operational tour. Those people who were on it know what happened, and if evidence is gathered correctly by properly equipped and able service police, you can conduct your justice there as soon after the incident as possible. So I think we are pretty easy to go for.

- Q4 **Chair:** Do you both believe that the motivation behind these legacy prosecutions is primarily political?



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Colonel Tim Collins: I think there is a balance between the two. It is a very lucrative industry, and it has been shown to be an easy source of cash. Indeed, planeloads of Iraqis certainly have been flown here to lie in the dock in order to provide cash to unscrupulous firms. So it's a mixture; it's a perfect storm of availability, political will on one hand and, frankly, moral cowardice, on the other side, to defend. The Army is an easy shot: there are no votes in defence. I know there are defence cuts, and talk is cheap, but that is all that we get from the military leadership, so we leave them out of all this. This has got to be a political issue.

Q5 **Chair:** I know neither of you is here on the basis of being a legal expert, but from what you have seen of the process, do you believe that it would have been possible to wage war on the model of 20th-century combats like the first and second world wars if the sort of legal regimes had been in place on the battlefield then that appear to be in place today?

Colonel Jorge Mendonça: Not if you want to win, no. The master principle is the selection and maintenance of the aim. If you want armed forces, you want them for one principal reason, and that is to defend this country. We should maintain that aim, defend this country, which involves having the most capable armed forces possible, which involves having people who are utterly committed to doing their job correctly. I would not want my two sons to join the Army today, knowing that they would go into battle under those circumstances and have to question everything they were told to do, because it could hang over them for years thereafter and ruin their lives. I wouldn't want that to happen.

Q6 **Chair:** In theory, every time somebody is killed or injured in a battle that could lead to the initiation of a legal case, couldn't it?

Colonel Jorge Mendonça: Indeed.

Colonel Tim Collins: I take a different point of view; that's what we do and why the Americans pay us a great deal of money to do it. We reject the idea that it is a war. The Taliban, the Quetta Shura, Ansar al-Sunna and the Haqqani Network—these people have no authority, no right, no mandate. This is not a legal war; this is crime—what they do is crime—and therefore they have to be pursued in terms of criminality.

I think—as an aside—the world would be a better place had we treated 9/11 as a big crime scene as opposed to going to war. Go to war on a verb, whether it's a war on drugs or a war on terrorism, and you're in trouble. So I reject the idea it is a war. On one hand, I would say that military law as it exists is suitable and necessary to carry out warfare, but when we deal with what is sometimes called asymmetric warfare—but in these cases, these are not state-backed wars; these are criminal enterprises, and they must end with the rule of law. Therefore, our servicemen are there to support the rule of law, in the same way they were in Op Banner, and it makes a much more difficult circumstance. For that reason, we have to look at it in a different sense, and that's what was missed all along the line. The Americans are becoming aware of that, but they are ducking the issue, whereas we can address the issue, and I think



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we should address the issue, because we need security forces to go into the field during this asymmetric warfare in order to support the rule of law.

Q7 **Johnny Mercer:** Tim, can I clarify something? Did I hear you right? You do not think Afghanistan is in a state of war—

Colonel Tim Collins: No, I don't.

Q8 **Johnny Mercer:** You believe it is a breakdown in law and order?

Colonel Tim Collins: I believe that the criminal groups, which to a great extent are proxies of foreign Governments— For instance, we take a view with the people when we are mentoring the police special branch that the police special branch are only allowed to look at people who are local criminals. If we believe they are foreign assets, whether they are from the Pakistani ISI, the Iranian IRGC or whatever, they are not the business of the police.

Q9 **Johnny Mercer:** When you say “we”, who are you talking on behalf of?

Colonel Tim Collins: The police—the special branch—that we mentor. So in Afghanistan—

Q10 **Johnny Mercer:** When you say “we mentor”—

Colonel Tim Collins: My company mentors the police special branch in Afghanistan, and the doctrine that we provide them with is based on British legislation—RIPA, the Regulation of Investigatory Powers Act 2000. It is very clear within that that people who are foreign military assets—that is, even though they are criminals, they are actually assets of a foreign Government—are in one bracket, but that is not who we are fighting, by and large; we're fighting local, self-motivated criminals.

Q11 **Leo Docherty:** But for the rifleman, guardsman or private soldier on the ground, the experience is one of—

Colonel Tim Collins: Without a doubt, but it's—

Q12 **Leo Docherty:** I think that's the point—

Colonel Tim Collins: Well, no, the reason we are sitting here today is that there is an important difference, and that's where the clever lawyers are jumping in and saying, “My client was harmed,” when of course his client was an active combatant, although a criminal, 10 minutes before and had dropped his rifle, and is now claiming not to be.

Leo Docherty: And that's because of human rights law.

Q13 **Chair:** But surely, Tim, if you take the view that these should be treated as countering criminal uprisings and insurgencies rather than actual warfare, aren't you immediately entangling yourself in a load of human rights legislation and civil protections, which would not apply in the formal combat ruled by the law of armed conflict?

Colonel Tim Collins: You absolutely do.



Q14 Chair: So you are actually making your situation more vulnerable?

Colonel Tim Collins: The military is simply there to do its job. That is the reality of the situation on the ground. We had a briefing recently during his visit here to the UK from President Santos of Colombia. That is the reality they are looking at. FARC have twigged on to this and they are saying, "Of course it was not a state of war; it was criminality and we now accept that." But they are now saying, "Where is the proportionality when you bombed our camps with fighter jets?", because they are looking for exactly this in the future. They are looking to go after the police and military in Colombia. It is an international problem.

Colonel Jorge Mendonça: If I understood your question correctly, it is what it feels like to be the soldier on the ground in a circumstance. Whether or not Tim or anyone else considers it a police action or a war is irrelevant. If the soldier is having bullets fired at him, he is in a combat situation and needs to act in accordance with his training and the orders properly given to him by his leaders. From that point of view, I think we are in a worse place than we were prior to 2003 when the commanding officer lost his summary powers.

Q15 Leo Docherty: Have veterans that you know been in touch with you to discuss these sorts of legacy investigation? If so, what are their main concerns and can you give us a feel for the scale and tone of their feelings about this?

Colonel Jorge Mendonça: Unfortunately, I am a victim, like many others, of Facebook. My regiment has hundreds and hundreds of soldiers who are similar victims, and they share their views without any restraint on this subject, which is utterly unfair and unbelievable. In the soldiers' vernacular, they do not spare it: this is typical of what you have come to expect of political leadership; they are being thrown to the wolves and hung out to dry. All the usual sorts of comments you would expect, and from their perspective they do not understand it. Many of the old and bold of my regiment have served right back to the early days of Northern Ireland. They went out there, and, in the early days of Northern Ireland, like in 2003 in Basra, it was a little wild west and they did what they did.

Q16 Leo Docherty: For those currently serving who will deploy in the future, what is their perspective on all this?

Colonel Jorge Mendonça: I have to say I am not in touch with many people who are currently serving. I think they are, as are all the soldiers currently serving, putting on a very brave face on what they have to cope with.

Colonel Tim Collins: I have a Facebook account that I rarely look at. On the other hand, I do, on a daily basis, talk to my colleagues about Afghanistan, and Iraq less so. We are currently working with the Government of Iraq. Northern Ireland is a big concern, clearly, because of the background of many of either special forces people or special branch. They believe it is a political blood sport and it is costing the nation a lot of money. My son serves as a captain in the Queen's Gurkha Engineers. That



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is his choice. But I will say, "If you are given an order, first check it is legal. Secondly, make sure, if possible, you get it in writing and record everything you do."

- Q17 **Leo Docherty:** That is not necessarily possible in an operational environment.

Colonel Tim Collins: No, it's not, but you might need to require that, and of course that is what our doctrine says. That is what the police reactive teams in Kabul today and their surveillance teams that are active today are told to do.

- Q18 **Leo Docherty:** What impact do you think that has on our operational effectiveness? If we were, let us say, in another situation like Iraq or Afghanistan, what impact would that have on our capacity to inflict violence and wage war?

Colonel Tim Collins: There are two different things. If it is a symmetric war against an enemy state, it is different circumstances because the intensity is much higher. If it is against criminal organisations, you have to take into account that you are there to support the police force, even though in Helmand there are no policemen to be seen. Although there are policemen there, they are rarely out on the ground. You are ultimately there to support the rule of law and the local governor. You have to make sure that that is what you do and also keep a weather eye out to make sure that they adhere to the rule of law, because there have been occasions—certainly large files have been passed that I have seen on police chiefs in Sangin, for instance, which are that thick.

Colonel Jorge Mendonça: I think there is a simple answer to that—it is going to slow things up. It has got to slow things up. To come back to my point about what the point of your Army is, which is to win, you need to be faster and fleeter, to make quicker decisions, to act more decisively and to get the job done. That is what taxpayers should expect for their tax money—an Army that works really well, and doesn't question, doesn't seek things in writing, doesn't look over their shoulder and doesn't act knowing that 10, 20 or 30 years later their families' lives will be decimated by an investigation that is, or might be, motivated by all the wrong reasons.

- Q19 **Mrs Moon:** To follow on from Leo's questions, sometimes we have a very narrow perspective. Is this something that only British personnel are experiencing? What about the other forces that we fought alongside? Is this something that is happening to the Estonians, the Germans or the French? Are others having the same problems, or is it our particular rule of law in this country that makes us vulnerable? Will you clarify that for us?

Colonel Jorge Mendonça: I can't clarify that for you, but I can give you an opinion. I think this wonderful democracy that we have and the standards we hold ourselves to lay us open to doing this as properly as we can in all respects, be it with a civilian or a military approach to it. So I imagine that we are holding that up and doing this very precisely and



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carefully in all respects. Other countries, in my experience of dealing with them, will take a different view—but the short answer is that I do not know.

Colonel Tim Collins: I can assure you that everyone is in the same boat. There have been a couple of famous films in Danish about these exact issues. Germans do not have the same problems. They go into the camp at night, at 6 o'clock strictly, so they are not out on the ground. The Taliban leave them alone and they leave the Taliban alone. The Australians are going through a pretty ugly experience at the moment, involving their special forces. The US has had a number of cases, but they deal with them in a totally different way. So put the UK, the Australians and to a lesser extent the Danes in one group—and the Canadians—and put the Americans in another group, and assume that everyone else does not really leave their camp.

Q20 **John Spellar:** What about the French?

Colonel Tim Collins: The French had a pretty ugly experience up in Urozgan in 2012, and they drew their necks in considerably, but they then found themselves in a situation in Mali, alongside the Swedes. The French certainly leave their camp in Mali—others do not—but they have got to be very careful on the ground.

Q21 **Mrs Moon:** May I take you back? When you were sent out, how aware were you and your personnel of the legal framework in which you were expected to operate and of the rules that you had to abide by? Was there training? Was there in-depth preparation for the rules that you had to follow? Give us a sense of the preparation that you and your personnel were given?

Colonel Jorge Mendonça: We, like many units, were subjected to political delay on warning. Tim's crew went out to fight the war, and anyone with half a brain knew that another group of people would need to follow them—because it would not be sorted inside the timeframe of Tim being out there—but for political reasons no one could tell us that until quite late in the day, which means that we did not get the resources of the training team coming to us to help us to prepare. We knew it was going to happen and we got on with it, so the first part of that was self-help. When eventually someone kindly signed the order to warn us formally of deployment, in June 2003, some resources then came our way to help us with such training.

To answer your question about the rule of law. This was all through the rules-of-engagement training—the brigade lawyer provided us with a draft—and so we trained our soldiers on the rules of engagement, which in soldier-speak is when you can open fire and when you cannot open fire. That is really what it boils down to. I would say that we did not have long enough—soldiers never have long enough—but I think, when we were held back to fight fires in Liverpool instead of training for a very demanding operation, with hindsight one might feel a bit aggrieved, but at the time as



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a soldier you get on with it and you train to the best of your ability in the time available.

Q22 **Mrs Moon:** Not long enough—how long was it?

Colonel Jorge Mendonça: I think the formal warning did not come through until beginning of May.

Q23 **Mrs Moon:** And you went when?

Colonel Jorge Mendonça: In the first or second week of June, but we were preparing before that. It was one of those unspoken secrets.

Q24 **Mrs Moon:** But in that unspoken-secret time there was no preparation in terms of the legal framework and the rules that you would have to abide by?

Colonel Jorge Mendonça: I am sorry; you are testing my memory a little—2003. I don't remember exactly when the brigade headquarters will have given us formal instruction on that. We had plenty to be getting on with anyway. I think it is probably after we were formally warned that we actually got the detail.

Q25 **Mrs Moon:** And are we talking about an hour's session—a day, two days, a week? What are we talking about, around the legal framework?

Colonel Jorge Mendonça: The legal framework will have featured in—well, did feature in—our training to soldiers, and was repeated. So it would have been an hour's lesson. It would have been an hour's lesson that was repeated several times and it would then have been tested with scenarios. We continued doing that when we arrived in theatre, and after a preparation phase to take over from the Black Watch.

Q26 **Mr Francois:** Was there anything comparable to the yellow card that troops used to have to carry in Northern Ireland?

Colonel Jorge Mendonça: There was. I think we did reduce it to something like that, yes.

Q27 **Mr Francois:** So each soldier would have carried some kind of aide memoire, as it were, that boiled down the rules of engagement?

Colonel Jorge Mendonça: I don't think we—I am trying to remember. I don't remember carrying a card in my pocket, and if I had it would have been mush after five minutes, because it is 58°C.

Colonel Tim Collins: You would not have, because you came in shortly after the war had changed its nature. They would not have been issued. We certainly were not issued, because we went to war on the Geneva convention, and for a conventional battle, although there were very few people killed, because—I was lucky in that I was about to surround myself with senior Ba'ath party people early on, and so we were able to negotiate with the Iraqi military, and they surrendered pretty quickly, with the odd exception where there was ambiguity about the odd tank moving about. Those were then engaged and people were killed and then at some point—



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and no one actually mentioned at what point—it didn't during my time become an insurgency, partly because an attempt to raise an insurgency and murder all of my advisers was dealt with pretty quickly and that became a war crime; but nobody was killed. I think just one guy got a cut on the head, but nevertheless they didn't kill anybody and 147 weapons were recovered; but we could see which way it was going.

Q28 **Mrs Moon:** Can I ask, was the advice that you were given accurate, and was it clear?

Colonel Jorge Mendonça: I am sorry to ask for clarification: what advice do you mean?

Q29 **Mrs Moon:** The legal advice, and the rules that you were given, and you were told, "This how you are going to fight; these are the rules that you ought to follow—the rules of engagement." Were they accurate and were they clear?

Colonel Jorge Mendonça: I remember them being clear. They did change; Tim is right. They changed so that if someone had a weapon that was obviously not—it was not lawful to open fire. They had to be engaging you at the time. So yes, I think they were; the rules that we operated to were clear.

Q30 **Mrs Moon:** And did they cover the European convention on human rights?

Colonel Jorge Mendonça: Not that I recall.

Q31 **Mrs Moon:** Thank you. Can I ask you, Colonel Collins, what guidance was provided when you were on duty in Northern Ireland?

Colonel Tim Collins: Well, extensive advice, because we had a thing called Northern Ireland reinforcement training, so you would go through an intensive period of training and you would carry a number not just of cards for opening fire—cards for opening fire with baton rounds, cards for if you strayed into the Irish Republic. It was a whole aide memoire, and so the training was comprehensive.

Q32 **Mrs Moon:** So very comprehensive training for Northern Ireland. Not the same amount of training for Iraq?

Colonel Tim Collins: Well, remember that we went to Iraq to defeat Saddam's army in a conventional war, and it collapsed pretty quickly. And then, we will not get into the politics of how it happened, but probably you could say by August to September of that year, an insurgency was manifesting itself.

Q33 **Mrs Moon:** So when the insurgency manifested itself, were you told that the rules had changed?

Colonel Tim Collins: We were not there by that stage.

Colonel Jorge Mendonça: We were.

Q34 **Mrs Moon:** You were, and you were told the rules had changed?



Colonel Jorge Mendonça: The rules changed when we took over from the Black Watch. The war was over. We were into a different phase.

- Q35 **Gavin Robinson:** This question is to both colonels, I guess, because both of you served in Northern Ireland, and I think your reflections on this would be useful. There was a change to the yellow card in 1980. Prior to 1980—I assume that was before your time of service—there were 21 aspects of the advice and legal instruction offered to serving personnel. In 1980 it was revised and condensed into six key components on the yellow card, to make it more intelligible; to make it easier to understand when out on active service.

An analysis of Operation Banner was carried out in 2006, and in 2006 the Standing Advisory Committee on Human Rights said that the yellow card may be what it was, but it could in no way subvert what was required by law. In that sense, it wasn't the comfort that serving personnel thought it was. Has that registered at all? Is it appreciated? We hear continually from veterans from Northern Ireland, who served operating under the guidance of the yellow card, yet in 2006 it was said that it in no way dealt with the particular, the specific or the complex nature of legal guidance when engaged in—

Colonel Tim Collins: Actually, I served as a schoolboy by day and a soldier in the home service by night from 1977. At that stage it was a shooting war. Yes, there was the yellow card, but it was something that was reflected on in training. It was not something you read in bed at night; it was something you were aware of.

The nature of the conflict in Northern Ireland changed considerably over the period. I am looking over my shoulder at some of my colleagues who served with me. Post the hunger strikes, it got pretty hot again, and then from about the mid-'80s—say, 1987 to about 1994—it was a war of two parts. You had the population, and you were trained and required to treat them as United Kingdom citizens, or indeed as citizens of the Irish Republic, if that's where they were from—where possible, be polite to them, but also be aware that there was a severe threat.

The reason that was happening is that we understood from our training in what they called NITAT—the Northern Ireland Training and Advisory Team—that the republican movement itself, and its military wing, was losing the confidence of its people. What they were keen to do was not to have any British soldier do anything that might force people back into the arms of militant republicanism. It was to draw them into the centre political ground. It was very much softly, softly—soft hats—from that period on.

Notwithstanding that, there was an undercurrent that I saw from both sides—both as commanding officer in what we would call a green unit on a number of tours in Belfast south and east Tyrone, and as a Special Air Service officer—when there were very specific things going on. We didn't actually know a great deal. We knew the suspects, but we didn't know a great deal about the operations per se until a reactive operation was mounted. Even then, you wouldn't know that much. You would probably



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know more about what had happened from the papers after it had happened than you would know leading up to it.

- Q36 **Gavin Robinson:** I guess the reason for the question is to consider the changing advice available from the Ministry of Defence in this assessment. The Ministry of Defence said, "If you act in accordance with the yellow card, you are deemed to have acted within the law." The Standing Advisory Committee on Human Rights said, "That's wrong." I am asking how you feel, as former serving soldiers and senior officers, having served in that theatre and having overlooked, supported and protected those under your command, about the fact that such advice and guidance could change so quickly. The intention of that advice and guidance doesn't exist.

Colonel Jorge Mendonça: I can't help but be disappointed to hear that. Soldiers come in all shapes and sizes, but the general rule of thumb is that keeping things simple works and helps. The yellow card was intended to keep things as simple as they could be in circumstances that would be complex and sometimes confusing. If all of us served thinking that the yellow card was pretty clear guidance on how to behave, it is a shame that it wasn't. Maybe that's just hindsight on someone's part.

Colonel Tim Collins: I think you couldn't go far wrong if you stuck close to it. As a rough edge of the road, that was understood. I did a tour of duty in 1987, and things had changed radically. From '87 onwards, I can't remember being more than about 25 feet from a policeman any time you were on the ground. That was your guiding light, by and large.

- Q37 **Chair:** Thank you very much. We have now come to the point where we would like to learn from your individual experiences. I must stress that it isn't the purpose of this Committee to go into or reinvestigate individual cases. What we want to do is learn from how you suffered with your own respective high-profile cases what wider lessons there are. In order to do that, we ask you to tell us, obviously in condensed form, a bit about the investigatory processes that arose from your respective tours of duty in Iraq.

Perhaps I could start with you, Jorge. I would like you to tell us how you would describe these investigations; how they unfolded; what support, if any, was provided to you from the MoD while you were going through this; what happened after you were exonerated; and what post-investigatory support was offered. Then I will come to you, Tim, in the same vein. If you want me to repeat any of those at some stage, feel free to ask.

Colonel Jorge Mendonça: We returned from Iraq towards the end of November 2003. During that time an Iraqi civilian was shamefully beaten to death in the cells in one of my camps. We knew that something had gone very badly wrong. An investigation was carried out and identified some soldiers, and then it seemed to be paused for some time. At the same time there was an incident in a different regiment—the Royal Anglian, I think—where some soldiers had abused some Iraqis, and they were put on trial and punished. There was an outcry about why no officers



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were on trial. I think I am right in saying that the then Attorney General, Lord Goldsmith, wrote to the Ministry of Defence saying that he did not want to see that happen again—forgive me, I don't want to quote him; I'm just saying that was the sense of what he said. The next thing I knew I was being interviewed under caution, I think in March 2005, and then I did not hear very much until I was formally charged in May 2005 and then came to trial in September 2006.

At the time I was a full colonel and I was running all the UK operations in the Middle East, including Iraq, from the permanent joint headquarters in Northwood. The Army's response—I don't want to do them a disservice—was to remove me and place me in some sort of limbo where I could shuffle paperclips somewhere. Thankfully, there was a Royal Air Force officer running the permanent joint headquarters and he said, "No, Jorge is doing a decent job and he is to stay here and do it, please." Otherwise I think I would have gone mad, so I was very grateful to him.

I went on trial in September. My wife had a seizure in January 2007, which caused a lot of stress. *[Interruption.]* No, I want to finish this. I am sorry. This is ridiculous; it was years ago.

It was a very difficult time. I was on trial, and that is not a good place to be when you think you have done a decent job, and everyone else seems to think you have done a decent job, but you find yourself on trial. It is a very uncomfortable place to be, and you hold it together because you are a soldier, and then your wife spansks in, and that really, really hurts and it makes you very cross.

Then you are acquitted in February—hurrah. And then you are sent to the Royal College of Defence Studies to lick your wounds and see what the Army's got in store for you next. While you are there you read in the newspapers, and then it is confirmed by the Ministry of Defence, that you are going to be investigated again because there is some procedure that requires them to look over the evidence that came out in the six months of the trial to see if there is anything else that they might wish to pick you up on. At that point I concluded that I couldn't put my family through any more of that and decided to leave.

I am sorry for it all flooding back rather horribly, but it is a measure of how it felt to be put in that position in the first place.

Q38 **Chair:** Can I ask you, just to sequence with that, what was happening in relation to the trial and punishment of the soldiers who had actually killed this person in custody?

Colonel Jorge Mendonça: I beg your pardon; yes, of course. The soldiers were on trial. There were seven of us on trial: private soldiers and a corporal who was a regimental policeman.

Q39 **Chair:** So you were all on trial together?

Colonel Jorge Mendonça: We were all on trial together, and when the prosecution completed its case in December, there were submissions of



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“no case to answer” by probably all of us. The judge heard those submissions and continued the trial against, I think, three, one of whom was convicted and sentenced. That was the regimental police corporal who was running the facility.

Q40 **Mr Francois:** Was that a civil trial or a court martial?

Colonel Jorge Mendonça: It was a court martial with a civilian High Court judge, and because I was the most senior officer there, there was a military panel of colonels with a general as the president.

Q41 **Johnny Mercer:** And he admitted it, didn't he?

Colonel Jorge Mendonça: The corporal?

Johnny Mercer: Yes, Corporal Payne came forward and—

Q42 **Chair:** Sorry, I didn't catch that. Can you explain?

Colonel Jorge Mendonça: Corporal Payne was the regimental police corporal, and I think I am right in saying that he admitted he had been at the centre of that.

Q43 **Chair:** Yes. At any time was it suggested that you had known anything about this brutality until after the event?

Colonel Jorge Mendonça: Well, I think I was charged with 11 or 17 charges of negligence—I don't know; I lost count—in that I negligently performed my duty as a commanding officer, and I think there were suggestions that I must have known that this was going on, which clearly was not true.

What I found difficult about the first stage of the investigation, I suppose, was that it was quite clear that the investigation was done with a view to seeing me go to trial, as opposed to investigating the full facts of the case and actually looking at what else I might have been doing while commanding 620 soldiers in a very difficult circumstance. Had a full and proper investigation taken place, the Service Prosecuting Authority—the Army prosecuting authority—might have concluded that actually this was not a case worth pursuing. The civilian barrister who was leading the prosecution decided that the case was done by Christmas, but the Army prosecuting authority thought they'd wait until the judge threw it out because they didn't want to lose face, hence my wife's suffering.

Q44 **Johnny Mercer:** Jorge, thanks so much for relaying your story. I mean, it's so important; the knock-on effect just does not get mentioned in this at all. Just for my enlightenment—and obviously, I've tried to take this on over the last couple of years with the Committee and so on—within the MoD, if I were your brigadier or I were Chief of the General Staff and someone were putting one of my men through the wringer like that and essentially saying they were guilty before they actually were, and then they leave afterwards and say, “Oh, this is a terrible process and it should never happen,” where is the disconnect that is going on?

How is this process so unstoppable by the men and women who do have



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a moral compass and know what is right and wrong in that Department? How does it become the corporate error that it has become, clearly in your case—you were found not guilty—but also in the vast majority of the IHAT investigations? I have no doubt that we will see it again in Northern Ireland. Who is the individual who grips this? Ultimately, while we hear these stories, which are awful—they are completely wrong, and this Committee has made that clear from the start—how do we stop this?

Colonel Jorge Mendonça: I have obviously flip-flopped through a lot of emotions over those years. I completely accept that allegations must be investigated properly and that people must be held to account. I understand all of that; of course I do. I think your question is about how this happens. It happens, and is okay, because the Army is blessed with some really talented people, and if one falls by the wayside and leaves in the middle of 2007, there are plenty of people willing to take up his place, command brigades and go on to become generals. It is fine.

But the issue is about having generals who have served in operations, who understand what really happens when the bullets fly, and they ought to be standing up to people like Attorneys General who will seek to take away commanding officers' powers because it is unfair for a commanding officer to dismiss a charge of manslaughter, for example. They ought to be standing up to them and saying, "I am sorry, but you are about to damage the Army by doing this, so don't do it." I think it is impossible for a Chief of the General Staff to say of a particular case, "You need to stop that."

Q45 **Johnny Mercer:** Clearly, no one would ask for that, but if you see a case load of 3,500 allegations, which would mean a persistent and deliberate breakdown of law and order in the British Army in Iraq in 2003, you know something is not right there.

Colonel Jorge Mendonça: Absolutely.

Q46 **Johnny Mercer:** Who is the individual and why did that not happen? How do we make sure it does not happen?

Colonel Jorge Mendonça: At the risk of being rude about senior officers, which I am not prepared to, I do not know the answer.

Q47 **Leo Docherty:** Who do you hold accountable? It is not about being rude. What names and positions?

Colonel Jorge Mendonça: The Chief of the General Staff and the Chief of the Defence Staff need to understand that they are responsible for military capability and, in the case of the Chief of the General Staff, the performance of the Army in the defence of this country.

Q48 **Leo Docherty:** And you are saying that he and they failed to do that in 2007?

Colonel Jorge Mendonça: Returning to Mr Mercer's point about standing back and looking at what is going on and the magnitude, it clearly was not the case that every unit that went on operations did terrible things, it was mayhem and no one gave a toss. That clearly was not the case, yet



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suddenly you have all these allegations being made in great number. Someone should have gone, "Hang on a second."

Q49 **Leo Docherty:** So that is a leadership failure of the Chiefs of the Defence Staff?

Colonel Jorge Mendonça: I mean, who else?

Q50 **Mr Francois:** Colonel, thank you for coming and giving evidence today. We appreciate that it is not easy, but your testimony is valuable to us. While you were going through this process, did the system do anything to support you? Were you given any aid with your defence? Did you feel that anyone was on your side? Or did you rather feel that you had been hung out to dry for other reasons?

Colonel Jorge Mendonça: I think it is a pretty mixed picture. I knew the then Chief of the Defence Staff; he invited me to lunch, not to talk about the case but just to see how I was. Then, he phoned me up the day before the lunch to say, "A nasty lawyer man has advised me this is not a good idea." I rest my case. When lawyers tell very senior officers what the right thing to do is, we have lost our way. The Chief of the Defence Staff could quite easily have taken me out for lunch and said, "How are you, Jorge?" I would have said, "I'm fine thanks, sir." We would not have discussed the facts of the case. But a nasty lawyer man told him it was not in his interests, so he decided against it.

I am not answering your question, but I will answer it as best I can. It was a mixed picture. I was very grateful to be allowed to stay in my job, running those operations from the permanent joint headquarters. I was grateful that the Army sent me on a higher command and staff course, which is a career course that happened to be while I was waiting to come to trial. I was very grateful for the hundreds of letters I received from various people around the Army, none of whom were in the chain of command, of course, because they could not give me comfort in that regard.

Did I feel hung out to dry? I thought the whole process hung me out to dry, in the sense that you go and do this job. I hate shouting and I am not really a boastful person, but the DSO is not a usual reward. Someone thought I did a good job, yet somehow I found myself on trial because something went badly wrong. I understand that, but who judged that? My brigade commander could have looked at that and said, "Yeah, it's terrible. I know Jorge did his job properly, so I am not holding him to account on the basis of the evidence investigated." But that is not what happened.

Q51 **Mr Francois:** Did anyone on your legal team, any officer defending you or anyone within the MoD attempt to help you with your defence? Or was it a very lonely process?

Colonel Jorge Mendonça: It was a lonely process until I got an excellent legal team, which was selected by me and paid for by the Ministry of Defence, so I must be grateful that I did not have to fund that out of my own pocket, because I could not have afforded to.



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Q52 **Chair:** Under which body of law were you prosecuted the first time? You say they were starting to reinvestigate all over again after you had been exonerated the first time?

Colonel Jorge Mendonça: I think this was some sort of procedure associated with courts martial, whereby had some evidence come out about a crime, such as that a commanding officer had seen shoplifting, which was not germane to a negligence charge, in theory I could have been charged with shoplifting at some later stage. What no one would do was say to me, "Jorge, this is just routine procedure. Don't worry about it. You know that you have done nothing wrong. It just happens." It was the fact that the Ministry of Defence and the Chief of the General Staff were unable to just sit me down and say, "Jorge, don't worry about this. You've been acquitted, this is just a procedure we have to go through and there isn't an attempt to get you in some way, shape or form."

Q53 **Chair:** Do you know who were the people taking the decisions, first, to prosecute you initially and, secondly, to reinvestigate you the second time, which was when you decided enough was enough? I take it that that reinvestigation was then dropped after you left—is that right?

Colonel Jorge Mendonça: I think reinvestigation is probably too strong a term for it, given that it is a review of the evidence. I think it was the Army Prosecuting Authority who were doing that, and I think the Army Prosecuting Authority were working—I suspect—to make sure that they were whiter than white in the eyes of the Attorney General when they prosecuted me in the first place, because the higher issue was the future of service discipline.

Q54 **Chair:** Forgive my ignorance: is the Army Prosecuting Authority responsible to the Attorney General in some way, as far as you know?

Colonel Jorge Mendonça: As far as I know, there is some oversight. The Army Prosecuting Authority was part of the Army; it is now the Service Prosecuting Authority. But I think there is some oversight.

Q55 **Chair:** Tim, would you like to give us a similar potted history of what happened to you?

Colonel Jorge Mendonça: Try not to cry.

Colonel Tim Collins: Jorge, we can't overlook the fact that you had a DSO, which was one side of the road, and it ended up being negative. In my particular case, it was a question of sticking my head above the parapet and suffering the consequences. I spent my life in the shadows as a Special Air Service officer, and then I was issued with a journalist, and some foolish speech that I made hit the headlines and I was marked from then on.

We had a pretty successful tour after that, I thought, because even my divisional commander came and asked us what exactly we were doing and how we were getting it right and what the rough exchange rate was for the Iraqi dinar to the dollar. So that was all going well until I was told in theatre that I was being investigated by this Special Investigation Branch



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and there were people there to investigate me. Shortly after that I went back to the UK. The one thing I was not able to do at any stage was find out what I was actually being investigated for. The only contact I had from the MoD was from the Army PR office, inasmuch as they said, "You're not allowed to speak to journalists." I adhered to that pretty much, but the problem I had was that anyone I phoned, called or even saw in public either hung up or ran away. Nobody would tell me what was going on.

So eventually, I did phone a journalist and say, "Can you find out what it is I'm being charged with?" and they were able to tell me in detail. I had even asked my MP, Sir Julian Brazier, and he wasn't able to find out, but the journalist could tell me in detail what I was being charged with. The journalist also told me to be very careful what I said on my phone, because John Kay from *The Sun* had transcripts from my mobile phone in his safe. That was odd, because three people had my telephone number: my mother, who at that time would have been in her mid-80s, my wife and the Army press office. We know now that there was an informant inside the Army PR office, and she is serving time for that, but they were mainlining anything private from me. *The Sun* knew more about my case than anybody, but certainly no one in the military was prepared to tell me what it was.

Q56 **Chair:** What legal representation, if any, had you been allocated at that time?

Colonel Tim Collins: None whatsoever.

Q57 **Chair:** So you were completely on your own at this stage, because you hadn't been charged?

Colonel Tim Collins: I wasn't, because I had friends in the Royal Ulster Constabulary and a friend who I had served with in Northern Ireland who was then a solicitor, and he said he would take my case up. I said, "I haven't any money," and he said, "I'll look after you, and one day, maybe, if you earn some money you'll be able to pay me back." So he looked after me. The Army saw that one coming, so they then launched—and again, I didn't find out except from reading *The Sun*—an investigation into my style of command. Again, I asked my brigade commander and others what that was about and what was going on, and they initially denied it and then just hung up the phone.

I understand it was an investigation; there was a finding. I have asked people what the findings were. No one has ever had the courage to tell me, and if you can find out I would love to know. *[Laughter.]* Seriously, if anyone can find out—there were a number of people interviewed, and I was interviewed on a number of occasions for that, but no one has ever had the courage to tell me what the outcome from that was.

It was all done in public, through the newspapers, and we communicated through the newspapers by and large, inasmuch as I would find out from the newspapers, and then they would ask people close to me how I was thinking, and I would think, "I am not thinking this is very good at all." Then I got a phone call when I was on holiday in Germany from my



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brigade commander, David Santa-Olalla, who was the guy reviewing it, to say, "There's nothing there." I said, "Is that it?" and he said, "Well, that is more or less it." I said, "More or less it?" and he said, "Well, that's it."

What wasn't it was, of course, that I had been sort of hung out to dry. In fairness, I had bollocksed things up personally, in that I complained to the Army that, while I had been promoted and was due to be made full colonel on 30 June, I was told by the Army records office that my circumstances had changed and that wasn't the case. I made the mistake of phoning somebody and saying, "I don't think that is right." I was then told the next day, "We've changed our mind and you will be a colonel tomorrow." Lewis Cherry, my solicitor, said, "That just cost you a lot of money, buddy," because I could have sued through European legislation.

Notwithstanding that, it went away inasmuch as the Army thought it had gone away. It hadn't gone away from me, because I was accused by two newspapers, the *Sunday Mirror* and the *Sunday Express*, of murder, and my soldiers were accused of murder, so I was going after them for that, with a team, again from Northern Ireland.

The Army and the *Express* and the *Mirror* laughed at the legal team until they realised that they were going to come badly unstuck, because we were going to sue them in four jurisdictions—finishing in the Irish Republic, where we were going after €800,000 in punitive damages. To cut a long story short, they then said, "Okay, we will give you a quarter of a million pounds to go away."

Our plan was—they thought it was funny to start with—to put me in front of a jury in Belfast. Ernie Telford, who is my lawyer and also a TA Irish Ranger officer, said, "Unless it is a loyalist paramilitary or a republican dissident, no one is ever going to find against you in Belfast." Once we got that, we were then going to go to Scotland with the case and then take it for the finals, they thought, in the High Court here in London. What they didn't know and later discovered was that—because Ernie Telford had been golfing in Donegal the day that it broke in the *Sunday Mirror*, which was my daughter's fifth birthday, and he nipped out and bought a copy of each paper—we were going to go after punitive damages in the Irish Republic.

Q58 Chair: Did you find the source of these allegations? Is it the case that you are saying that no proceedings were ever taken against you, although you were investigated, but you counter-sued in the civil courts against the defamatory stories in the press? Do I understand that correctly?

Colonel Tim Collins: Correct. So the Army went after me and went after war crimes allegations, which were frankly laughable. Then they went after the independent style of command. I genuinely don't know what they found. I don't, but it went away with a whimper and no one had the courage to look me in the eye and tell me what happened.

Q59 Chair: The source of the war crimes allegations was what?

Colonel Tim Collins: The source of the war crimes allegation was an American soldier who had come into a town that we had recently liberated



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from the Iraqi Ba'ath party, and had been lining the children up, posing them for photographs on vehicles and giving them sweets for trophy photographs, and I told him to stop it. When he wouldn't stop it, I then arrested him and made him stand outside my office, and then I told him I wanted him out of my town and out of my sight. I had my marine corps major stood beside me. My brigade commander stood outside the office as well. He was terrified throughout. I don't know what he said.

What happened was that two nights later, two of those on the council of Iraqis that I had to run the gas/oil separation plants—it was the second largest oil reserve in the world—and who advised me every day came to me and said, "We are to be murdered tonight." I said, "Oh, really? Who is going to murder you?" and one told me the names of the people who were going to murder them. So I thought I would pay them a visit that night and we did. We visited the people and I required them to hand over the pistol. One of them invited me to sign a receipt for the pistol and I signed Gerry Adams.

Everything was going well until we visited the last chappie, who said he knew nothing about it. I was ready to take his word for it until my RSM said, "I think he is definitely the guy." I went back in at that stage and I took him into the kitchen for a quiet chat and I fired a shot into the ground between his feet and I said, "The next one is going through your head. Where are the guns and where are the people who are going to be murdered?" He said, "You've got to give me until tomorrow morning, and I promise you nobody will be murdered." I let him go at that stage. The next morning he handed in 147 weapons and nobody died.

Q60 **Mrs Moon:** Where was the war crime?

Colonel Tim Collins: That was the war crime. That was in Iraq—

Q61 **Mrs Moon:** Shooting between his feet?

Colonel Tim Collins: Well, no, there were various things. There were all sorts. I genuinely don't know. To this day, I have never actually been told what was going on.

Q62 **Mrs Moon:** So you don't know whether it was the American soldier or the investigation to find the weapons?

Colonel Tim Collins: Do you know, I think they just lost their way. They just wanted something—anything. There were people in my battalion who were prepared to testify. One of them they admitted they couldn't understand. Again, they thought that one of my officers was a liar. A senior NCO just said, "He's changed his story so often, we just don't believe him." I went to see the RMP and they read the reports out to me. I did not say a word. My solicitor responded to that. The next thing I heard was when I was in Germany, and I was told that the case had been thrown out; there was nothing there.

Q63 **Mr Francois:** But throughout all this, you were never charged with anything?



Colonel Tim Collins: No.

Q64 **Chair:** What then happened in terms of your military career?

Colonel Tim Collins: I suppose the other amusing thing was that the day I was to turn up in Belfast, I got a call from the Chief of the General Staff, saying, "Tim, what's all this about? I thought this was all over." I said, "This is nothing to do with your Mickey Mouse allegations. This is a libel trial and an accusation of murder." He said, "Well, that's not I have been told." I said, "Well, maybe they have got it wrong in Belfast magistrates court. Maybe you should phone them and tell them that is not what they are trying tomorrow." But that was what they were looking at. The system hadn't a clue and did not care. They just wanted some sort of blood.

I had been promoted to full colonel and there was nothing they could do about me. The only one thing they could do about me was completely shunt me to one side. So, for the remainder of my Army service, a little over a year—I think I resigned at that. You get on in the Army by being reported on—you have an OJAR—but I was not reported on in any way, shape or form. It was basically, "You can stay as long as you like, but that's it." I had a family of five children and a wife. I realised that, first, I needed to get the hell out of the British Army, because we had fallen out badly, and, secondly, I needed to get £1 million together that year, because I did not have a house. So I focused on getting a million quid together. I wrote a book, I sued two newspapers and made a number of—but I got a £1 million together. So as far as I was concerned, goodbye.

Q65 **Chair:** So, in both your cases, the effect of allegations that turned out to be groundless was to bring your military careers, which until that point had been quite outstanding, to an end?

Colonel Jorge Mendonça: That is the case. That is true for me.

Colonel Tim Collins: It did me a big favour, when I look back on it. I have been lucky enough to fall in the right place, and we have saved hundreds of lives and recovered tons of heroin and explosives. A number of high-value targets are no longer with us thanks to the people and company I work with. And it has also made me a great deal of money, so I am in a happy place. I know that we have done good things that would not have happened had I not been basically kicked out of the British Army.

Q66 **Mr Francois:** With everything you have been through, how vulnerable do you believe the investigatory process is to false allegations?

Colonel Tim Collins: The problem is—I have said this publicly—when it comes down to the seriousness of things happening in Afghanistan and Iraq, it should not be the military police investigating. These things are far too serious for people who really ought to be controlling traffic. This should be civil police, because these are serious criminal allegations. On the other hand, you have people going round listening to any old NAAFI story and trying to drum that up into something. It is too serious to be handled by amateurs—far too serious.



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Colonel Jorge Mendonça: I take a slightly different view. The service police ought to be competent—in fact it is essential that they are competent—to go on operations and put themselves into places where civilian police frankly should not be and conduct a proper investigation. To answer your question, I think we are inevitably more vulnerable to mischievous allegations because we hold ourselves to a higher standard and someone is going to want to know that we did things properly. That is why we need service police, and we need to recover the position—I am sorry to bang on about it—of the commanding officer.

A commanding officer is selected to go to Sandhurst and is trained. In my 26 years I did four years in total of educational courses. You are trained, selected, educated and appraised every year continuously. The best of a generation get to be a commanding officer. Why? Because they have got judgment and a brain, and they know the job. Those are the people who should be turning these things off or sending them for trial. That is what should happen. It either looks fishy, and the commanding officer knows it is fishy and sends it for trial—let's have it properly sorted—or, do you know what, that is just mischievous and I know exactly what was going through that soldier's mind when that thing happened, so, no, move on. That is the way it should be.

Q67 **Mr Francois:** You both served in Iraq. Johnny is the expert on this, but the Iraq Historic Allegations Team became an industry. Law firms were out recruiting people in theatre who had grievances. As we now know from the experience of Phil Shiner and so-called Public Interest Lawyers Ltd, people were actively encouraged to simply make stories up because the lawyers thought that they could make work out of it. We almost saw an industry there. Do you think changes can be made to the system to try to protect service personnel against anybody wanting to do that in the future, bearing in mind that we cannot change the past?

Colonel Jorge Mendonça: It is very difficult, but we ought to be good at getting quickly to the operational report—to the log sheet of the day that it was supposed to have happened—and then switching it off. There is a radio log in every company of every transmission that took place in that 110-soldier unit. Similarly, there is one at battalion level and so on. They are either there and something happened, in which case it will be written down in a logbook, or it did not. It will be written down in the logbook. If something has happened and someone has gone on the radio and said that they are in trouble and something is going on, there is either an incident there or there was not. We should be very quick at turning these things off, and we are not.

Colonel Tim Collins: If the Army was a battalion, anyone who snuck in and started snooping around would bump into the commanding officer pretty quickly. He would say, "You bring your grievances to me and I will look at them," whereas in the Army you can knock yourself out, wander about and do what you like. It is like a Swiss cheese.

It comes back to this: there is a military organisation in this country. It has a covenant—its people are looked after—and politicians adhere to its



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covenant. I think we would like the same; the Provisional IRA is well looked after. That is why I published a letter in *The Daily Telegraph*. I say to all servicemen and anybody serving in Northern Ireland to get the template and to fill it in. All you have to do is put your details there. It will go to the Chief Constable, to Karen Bradley, the Secretary of State, and Sajid Javid, the Home Secretary. For policemen, it will go to Michael Maguire, the Police Ombudsman.

You also have to write it to your own MP. My MP acknowledged my letter; she wrote to my son to say she had received it. I have had a letter back from the PSNI to say that they are investigating, but that it is all going a bit slowly. When they get 200,000 of these across their desks, this thing will collapse.

Q68 Chair: For the sake of clarity, what are the contents of the letter?

Colonel Tim Collins: You put your name and it says: "I"—Tim Collins, in my case—"served honourably in Northern Ireland in defence of my country and upholding the rule of law during the periods"—and I inserted the dates I had served. The question is, "Am I under investigation by the PSNI/Police Ombudsman of Northern Ireland? And if so, please inform me of the details of the place and the alleged offences for which I am under investigation. Respectfully yours." Once they get 200,000 of those, there will be a problem.

It is as simple as that. The intention is that because it is aimed at local MPs, every servicemen in Scotland, Wales and Northern Ireland will have to ask their MP, "Where is my letter?" Whereas this has been shunted to a local Assembly, it will actually be brought here to Parliament and discussed properly here; it can't be hidden in Northern Ireland in a non-existent Assembly. In that case, we will see it for what it is: a complete sham and a rewriting of history.

However, it is not just in Northern Ireland; it is happening elsewhere. People are trying to interpret—I have heard people talking on TV shows about half a million people who died in Iraq, mostly down to British and American forces. That's a nonsense figure. That's more people than were killed in action for the British Empire during the whole of the first world war. Where is the first day of Passchendaele? Where is Gallipoli in that? It is false news, and it is being allowed to be created. The butt—the people who suffer and who get it in the neck all along the line—are servicemen, because nobody protects them.

Q69 Mr Francois: With respect, I hope that we have managed to persuade you this afternoon that the last thing that we are trying to do is to hide or conceal anything. The whole point of this inquiry is to try to get to the truth of what has really gone on, which, bluntly, gentlemen, is why you are here in front of us this afternoon. May I ask one more question before I hand back to the Chair? Bearing in mind that we have seen lawyers, for various different reasons—some of which are political, some financial, some a mixture of both or other factors—try to produce an industrial way of attacking former service personnel, can you think of one specific



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change that you would want to make, if you were king for a day, to try to prevent that from happening in the future?

Colonel Jorge Mendonça: I think the idea of a time limit is a good one, providing that there is no startling new evidence that stands up. There ought to be some sort of time limit on this thing. It appears to me to be ridiculous that you can try to get everyone to dredge their memories back from 10 or 15 years ago and work out what actually happened. Unless there is new evidence on something that is not known about, there should be some limit.

Q70 **Mr Francois:** In fact, the Government propose going back to 1968, so we would go back 50 years.

Colonel Tim Collins: It is a bit like the Scottish independence referendum or the Brexit vote, but with soldiers. You keep asking until you get something, even if you are found not guilty, as happened in the case of Joe McCann, which was thrown out by a judge. To remind you, three paratroopers and two soldiers fired at Joe McCann in 1972 in Belfast and he died. We will never know the name of the two police—that is clear. There were three paratroopers, one of whom is dead, but one paratrooper has been charged. I can't see how he could even admit to it after 46 years—in the dark, over 25 metres. But still that case is going ahead. They just keep going until they get something. The point is that there will never be a prosecution. In Northern Ireland, it is certainly not about a prosecution. There is no realistic expectation of a prosecution. It is political. It is there to blacken the name of the British Army and rewrite the narrative. It shouldn't be allowed. That is why it needs to be elevated to this House and taken on by this House. Those who would wish to rewrite the narrative should simply be told, "No." Once things have been investigated, that's it. Labour changed the law in 2005 for the double jeopardy rule. That is now being used robustly to constantly go back. These inquiries are not looking for evidence. They are looking for loopholes for the double jeopardy, to reopen cases for political reasons. That's a shame; that's a disgrace.

Q71 **Gavin Robinson:** I agree entirely that it is a disgrace. As you know, this Committee published a report 18 months ago outlining one way in which we could bring closure to the prosecutions, the accusations and the continual, cyclical process of turmoil individuals are put through is a statute of limitations. You know that there are political ramifications around that. I want to ask both of you what you think this Parliament should do that would provide adequate protection, practically, to those who serve this country.

Colonel Tim Collins: I am against the statute of limitations, because I believe in the rule of law. I believe that the armed forces hold themselves, and we hold each other, to the highest standards. Having been the SAS special forces officer who ran worldwide operations, as well as Ops officer 2 to SAS, I see all the secrets and at the end of two years I hand over to somebody else—so Princess Diana was not murdered by the SAS, I can assure you. The point is that conspiracy theories fall down, because we



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are honest people and when we see something wrong we blow the whistle. Most of the cases that go to ambulance-chasing lawyers are whistle-blowers within the military. We don't tolerate bad behaviour and I think we should continue to do that. I am horrified by what Marine A did in Afghanistan. He broke the rules. We all know the rules very clearly and he broke the rules. I can have no pity for him, because he broke the rules. I am against the statute of limitations.

- Q72 **Gavin Robinson:** Just before you conclude your observations, can I make two points on the statute of limitations? First, this Parliament sets the rule of law in this country and we should be proud of the rule of law that we have. Secondly, the proposal that is out there, that is being consulted upon and is there for everyone to scrutinise, is not to subvert the rule of law, but can only apply where the state has discharged its legal duty by adhering to ECHR article 2, so there has to have been an article 2-compliant investigation. If you could do it in a way that satisfied the current rule of law and the rule of law that this Parliament sets, would that be something you would consider?

Colonel Tim Collins: It would be, absolutely. Again, I am lucky to be surrounded by very capable people. My very senior policemen say that there is such a thing as article 6 of the Human Rights Act, which is the right to a free and fair trial. It does not mean that you can keep trying them until you find them guilty, because that's what is happening.

- Q73 **Gavin Robinson:** That is the point. How do you stop it?

Colonel Tim Collins: Parliament has to look at legislation and see where it is being abused. I am not a lawyer, but we need to find ways in which we can see where people are cynically exploiting and abusing article 6 of the Human Rights Act constantly to nail a serviceman for purely political reasons. As I say, in all these cases, there is no prospect of—we have even seen recently, in a southern Irish leak that has come out of the Maze prison, Brian Arthurs is talking to people on the outside about fabricating evidence towards the Loughgall inquiry. Why is that not dead and gone?

- Q74 **Gavin Robinson:** I do want to come to you, Colonel, but to follow that through, I ask for your reflections on this. After IHAT, with the Iraq Fatality Investigations, when that investigation is closed, in any individual circumstance or subsequent prosecution, there is almost an inquest-type system which is there to get additional information. As part of that, anyone engaged in that process signs a disclaimer to say that any information they give will not lead to any further or subsequent prosecution. That arises in the theatre outside this jurisdiction. Is that something that could be usefully adopted in the circumstances that have arisen in Northern Ireland?

Colonel Tim Collins: We should do what the Shinnars do. Once you have a letter—get one of those. Once you have one of those, you are in the clear.

Gavin Robinson: Until the Hallett review, of course.



Colonel Jorge Mendonça: If there has been a proper investigation, that is it—and that should be it. It is as simple as that. If new evidence comes to light, then maybe—it should be dealt with properly. I would come back to valuing the Queen's commission as something more than a piece of paper you get at Sandhurst after a year's training, and recognising that the Queen's commission, added to 15 years of selection, training, education, assessment, promotion and experience, is more valuable than a lawyer sat in an air-conditioned office picking over stuff he cannot possibly understand. I come back to my point about the commanding officer's role in all this, and reinforcing that, to make sure that soldiers can go on operations knowing that they will be judged correctly, and judged once.

- Q75 **Chair:** On that point, before Gavin continues, in the case of what happened to both of you, obviously the role of the commanding officers was very relevant because you were still serving, but of course we are also considering the question of the pursuit of people long after they have left the armed forces, when the commanding officers would be out of the picture, other than perhaps as potential witnesses. There, the question is whether a time has come where you say, "We cannot allow this process to be renewed every few years, unless there is compelling new evidence." I wonder why it is that you, Tim, in particular, find that objectionable, if there is a legal way of enacting that in our law.

Colonel Tim Collins: Because our enemies will use it to say—let us be clear. The whole reason that we have had many of these investigations is that this Parliament fears being investigated by the international court of human rights. That is why we have set these up; we are trying to keep that at bay. The Americans just opted out of it. I do not think that is the right answer, but the bottom line is, once we have investigated, that should be a closed book. We have to look again at the legislation that is being used to reopen until they get the result they want. That is the loophole—that is the one that needs to be closed.

I do not think we should run away or hide. We should not give succour to our enemies who say that we are covering anything up. The fact of the matter is that when wrong is done, it has to be robustly investigated. We are the good guys, and we have to show that we are the good guys, because we hold ourselves to very high standards. If we have a statute of limitations, we will be accused of hiding things, and it might even be that the United Kingdom attracts an investigation by the international court of human rights.

- Q76 **Mr Francois:** But are we not being accused of hiding things all the time anyway?

Colonel Tim Collins: Yeah, but the point is that we are proving—on the one hand, we are trying our best to prove, and on the other hand, we have a political industry trying to be fully co-operative. Remember, if this goes ahead, and we get decent lawyers to defend servicemen across the country, it will be outside of Parliament. This will be private money hiring good briefs to defend our people. Parliament and the country will be funding the Shinnars—Sinn Féin—who are actually going after people. That



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is going to be the oddest battle ever, but that is the battle that will be fought.

- Q77 **Gavin Robinson:** That is the battle today as well, and the turmoil that individual former service personnel face. They live in turmoil with no prospect of any relief, or no prospect at this stage until we can get something that is agreed in protection from parliamentarians—

Colonel Tim Collins: But you have to have your brief. You have to have money. Luckily mine was doing it for free.

- Q78 **Gavin Robinson:** The party of government's manifesto last year proposed that we would remove legal aid in all these circumstances for those who pursue cases of this nature against former service personnel. Is that something that—

Colonel Tim Collins: Absolutely, because if there is no money, they will not go after it, quite simply.

Gavin Robinson: The proposal was there as part of the Government's manifesto, and it needs to be acted upon.

Colonel Tim Collins: Very sensible.

- Q79 **Phil Wilson:** A straightforward question: what impact do you believe these investigations are having on morale in the armed forces and on recruitment? Is this having a major impact, do you think?

Colonel Jorge Mendonça: The short answer is that I don't know, because I left the Army in 2007. I imagine that there are still, thankfully, lots of people who are willing to serve their country, and want to join up with enthusiasm, not thinking too much about this. I think the majority probably do not think at all about this whole issue, but they will think about it quite carefully when they go on operations.

Then what you will get is the brighter and sharper people not joining, because that is a sensible person. I am talking about the officers now particularly. Why would a very bright, very capable young person who thinks about serving their country want to put themselves in that sort of position? Go and do something else for the country, but don't leave yourself open to that. I think that is damaging to our operational effectiveness, and we should take steps to make sure that it is not the case.

Colonel Tim Collins: I think people generally believe that. People do join, and will continue to join if they are allowed to. That is a whole different matter. I think that there are many things that sap morale. The drive to reflect society in the people we recruit as opposed to allowing the people who want to be the Army to join is what is affecting it. We have a right-on, sort of modern Beatles leadership getting it badly wrong. That is a different story. This does not help in any way, shape or form.

I have regularly been to speak to officers' messes. I am going tomorrow night to speak to the Swedish young officers' academy at Carlsbad. These



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stories are constantly recounted. We recount them in the belief that it should not happen again, but it does keep happening again, so somebody is liable.

- Q80 **Johnny Mercer:** Can I just clarify a couple of things? You make the point, Jorge, that people do not think about it until they go on operations. There are British servicemen and women who will conduct operations tonight. By extension of what you are saying, this country is less safe because of this process and the way it has inhibited our ability to conduct operations. Is that fair?

Colonel Jorge Mendonça: I believe that to be the case—I absolutely do.

- Q81 **Johnny Mercer:** One on who the Service Prosecuting Authority reports to—it might be one for us, Chair. It reports to DJEP—the director of judicial engagement policy, who we had in. He embarrassed himself in front of the Iraq historical allegations team, and he has overseen this process for years now, and has been responsible for that.

I am sorry that I have to go, but can I just ask you something? When I came back from Afghanistan in 2010, just before Remembrance Sunday, I felt I could not really go to Remembrance Sunday, because of the way I felt about it. I tried to watch it on television. I saw the Prime Minister there, and I could not watch it. I had to go out and go for a walk. How do you feel when you see the Prime Minister, Theresa May, stand on conference platforms and, to cheers to the rafters, say, “We are going to stop ambulance-chasing lawyers harassing our veterans,” yet you see it persistently going on? You recount your personal experience and the effect it had on your wife. How does this make you feel as an individual who served his country?

Colonel Jorge Mendonça: I hope the Prime Minister delivers on that promise, then. That is all I can say. What else can I say? I want this country to be protected by the best Army with the best people doing the job that we require of them, and I want them to be as unfettered as they can be within the rules that we place upon ourselves. When I hear politicians talking about stuff it largely bounces off me. What they do matters, and I want to see something done, rather than—

- Q82 **Johnny Mercer:** Has anyone done anything since your experience in 2007?

Colonel Jorge Mendonça: Not that I can see, no. I echo Tim’s point: what do we want our Army for? Do we want it to reflect society? Do we want it to shift with the modern views of our society? Of course, to some extent we have to reflect the society that we serve, but what is the fundamental job? It is to beat the Queen’s enemies and to keep this country safe. That requires us to make choices that are unfashionable. That takes courage, and that is what I do not see.

Colonel Tim Collins: That will become even more important. The current Chief of the Defence Staff, when he was Chief of the General Staff, asked me to come along to his conference in January. I didn’t have the opportunity to meet him there, but the temperature I got from the

commanding officers and the general staff was that there was disquiet across the board.

The article I had written in *The Telegraph* that sparked that invitation I stand by today. The point was simply that there are people experimenting with all sorts of things and that's wonderful, and they're getting on the front page of *Stonewall's* magazine and that's wonderful, but the bottom line is if we go to war—and it's often been said, "The way the British do it is that they go to war, they get it wrong, they reorganise and then they win the next one with our volunteers." That is what happened in the first world war and the second world war.

The thing is that if you have a son who is one of the first through the door and is going to be killed, you don't want them killed; you want them going out there with the best chance they can have. You don't want them going out there as part of a social experiment in the face of the enemy. That is what I reject and what I object to.

The responsibility, from the point of view of a commanding officer of the whole armed forces, is this: both CDS and CGS have to look down and say, "We've got to give these boys and girls the best chance of survival while they are trying to achieve the aim and do the job, and we're not going to encumber them with stuff because it's fashionable." That is unacceptable, so I think we need to see somebody senior stepping up to the plate and saying, "Enough. It's my Army. I'm going to look after it."

Johnny Mercer: To be fair to him, the Chief of the Defence Staff has done that, hasn't he? He has said, "This will not carry on on my watch." The trouble is that it comes down to the Prime Minister and the Secretary of State for Defence, and in my view she doesn't get it.

Chair: Well, let's see whether we can help people to get it. Leo.

Q83 **Leo Docherty:** On that note—this is the final question—the Defence Secretary has set up a team in the MoD to look at these issues, so what practical action would you like to see from the Secretary of State for Defence and the Prime Minister?

Colonel Jorge Mendonça: The question is about?

Leo Docherty: Preventing the legal pursuit of veterans and currently serving soldiers who will deploy on operations and are currently engaged in operations.

Colonel Tim Collins: We've got to look at legislation; Parliament has got to look at the legislation. We've got to pay for lawyers who actually read the documents. I don't believe, with respect to Gavin's party, when the DUP did this HIU thing, I don't think anybody actually read the bloody thing, because it's a troublesome document, so you need to pay big—

Gavin Robinson: We don't need to get into a discussion about that now—there is a time and a place—but I can assure you it has been read. There's a consultation out there; it's not our document.



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Colonel Tim Collins: The bottom line is that it begins with a lack of leadership and it ends on a legal point of law, and it's got to be stopped, as Jorge said, at the point where— If there is something to be investigated, the commanding officer will be the first to say, "This has got to be looked at, and I take my hands away from it." They don't want to be infected with that. But once that has been judged, that has got to be an end to it. What you can't do is just keep throwing darts at the dartboard until you get a bull's-eye: "Investigate this, investigate that, find out what he does at home. Are you still beating your wife, Tim?" You know?

Q84 **Mr Francois:** Colonel, you mentioned earlier in your evidence the International Criminal Court, which, as you know, we have signed up to. As you will also know, one of the reasons very specifically why the Americans—this was before Trump—refused to sign up to the ICC was exactly this issue and then the whole issue of combat immunity. Do you think that at the end of the day we may have to in some way change our relationship with the International Criminal Court if we are going to address this problem?

Colonel Tim Collins: Well, remember who set it up in the first place, so that Nazism couldn't happen. We set it up but we lost control. We the UK, this Parliament, set it up; the quality thinking came from here. And it's the same for the European Court of Human Rights. It has lost its way. For that reason, what we have to decide is this: they either reach out to us, as one of the few nations that can deploy a military, and they start listening to us, or we will have to say, "We can't be part of that club any more," and it would be a shameful thing for them to see those who instituted the club in the first place having to walk away because there is injustice. That is the case, and that's the final thing I would say: none of these cases is ever about justice. They are about politics and they are about money, but not justice. And justice—the rule of law—should be the thing it's always about.

Chair: Gentlemen, I would like to thank you both very much indeed. I will say for the record, if I remember correctly from our earlier hearing, that in the case of Northern Ireland, the ICC does not come into it, because the ICC was set up after the troubles in Northern Ireland and it can't look into things retrospectively, but the ECHR can, and of course there is the question of derogations and whether one can choose, before a conflict, to have a derogation from the applicability of some of these legal regimes. That is not a matter, perhaps, for you to opine on, but it is certainly something we will be exploring with other witnesses, who are specialists in the legal field.

In the meantime, I thank you both most sincerely, from all of us, for sharing these somewhat traumatic experiences that you underwent. I hope you feel that you had a good opportunity to explain what was wrong in the system as far as it affected both of you during your distinguished Army careers.

Colonel Jorge Mendonça: Thank you very much.

Colonel Tim Collins: Thank you very much.