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Dear Madam Prosecutor,

On 21 January 2021, I wrote to clarify references to the Overseas Operations (Service Personnel and Veterans) Bill in the final Report on your Preliminary Examination into the alleged misconduct of UK forces in Iraq. I have read your reply of 3 March, and your comments have been considered in our preparations for the progress of the Bill through Parliament.

Since I wrote to you, a separate matter has arisen. The Ministry of Defence has been contacted by solicitors acting for Mr Robert Campbell, a former Major in the UK Army. Mr Campbell is not specifically named in your report, but he was the subject of allegations in relation to the death of Sayeed Shabram, who drowned in the Shatt al-Arab river near Basra on 23 May 2003.

Following criminal investigations and prosecutorial decisions by independent bodies, no prosecution was brought in respect of Mr Shabram's death. Later, in line with procedures set up by UK High Court order, a further, independent, Iraq Fatality Investigation (IFI) was conducted by a distinguished former Court of Appeal judge, Baroness Hallett.

The ICC Report sets out in detail Baroness Hallett's findings and conclusions, which show that after comprehensive investigation of the allegations made against Mr Campbell and the other soldiers, the IFI found no reliable evidence that any British soldier pushed or forced the Iraqi individuals into the water.

Significantly, the ICC Report contains no new evidence relating to the death of Mr Shabram.

Turning now to the purpose of the ICC, my understanding is that the ICC does not seek to replace national criminal justice systems; rather, it complements them.

Ms Fatou Bensouda
ICC Prosecutor
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In support of this, paragraph 9 of the Report states:

It [the ICC] is tasked with determining whether it should exercise its own competence in a criminal case, in place of the primary duty which belongs to a State. To do so, the Court must be satisfied that no relevant proceedings have been undertaken, or if they have, that those proceedings were not genuine, either because the State is unable to undertake genuine proceedings, or because the State is unwilling to do so in the sense that it has taken steps to shield perpetrators from criminal justice.

and, paragraph 152 of the Report states:

The Office [of the Prosecutor] underscores that an admissibility assessment under article 17(2) [of the Rome Statute] requires a determination that the domestic proceedings were conducted for the purpose of shielding the perpetrators from criminal responsibility, or that they were inconsistent with an intent of bringing the person to justice, thereby rendering those potential cases admissible before the Court. *It is irrelevant that the Prosecutor would have taken different steps or would have assessed the evidence differently [my emphasis].*

In accordance with those considerations, the Report concludes that the UK met the required tests and that it would not be appropriate to seek authorisation to open an investigation. In my opinion, the Report confirms that the UK is not unwilling and is able to investigate and prosecute claims of wrongdoing by our Armed Forces personnel.

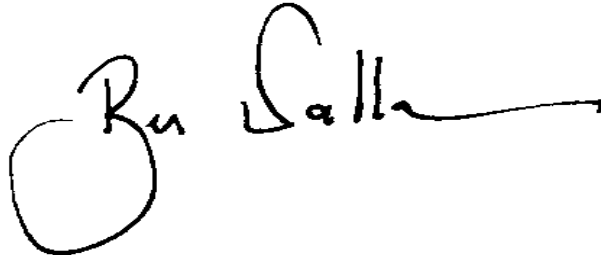
I am therefore very disappointed that, despite the findings of Baroness Hallett, the Report includes the Shatt al-Arab incident amongst those considered to provide a reasonable basis for concluding that British forces committed the war crime of wilful killing/murder. This inaccurately links Mr Campbell with a war crime, which is why Mr Campbell's solicitors have written to express Mr Campbell's concerns. In my view, they are entirely right to do so.

Moreover, Her Majesty's Government sees no reason to dispute Baroness Hallett's investigation, or the primacy of the UK processes in this case, and while we acknowledge that war crimes were committed by UK Forces in Iraq, we are equally clear that this does not include Mr Shabram's death. The UK will, therefore, continue to use the IFI findings as the definitive outcome on this matter.

I recognise that the Report closes the Preliminary Examination and that there is no formal right of reply from a member State, but - and in light of the concerns from Mr Campbell's solicitors - I want the UK's position on this specific issue to be on record, and **I ask that the ICC formally acknowledges the thoroughness of Baroness Hallett's investigation, and corrects its assertion that the death of Mr Shabram constituted a war crime on the part of UK Service personnel.**

The UK has always been, and remains, absolutely committed to promoting international criminal justice and the rule of law in our international relations, including through the International Criminal Court. We also believe that an important aspect of a credible justice system is the ability to correct injustices.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Ben Wallace". The signature is written in a cursive style with a large, circular initial "B" and a long, horizontal flourish extending to the right.

THE RT HON BEN WALLACE MP