

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN  
IRELAND CONTINGENT OF MULTINATIONAL FORCES-IRAQ  
AND  
THE MINISTRIES OF JUSTICE AND INTERIOR OF IRAQ**

**(together hereinafter referred to as the Participants)**

**REGARDING**

**CRIMINAL SUSPECTS**

Whereas the mandate for the Multinational Force -Iraq (MNF-I) set out in United Nations Security Council Resolution 1546 (2004) authorises MNF-I to take all necessary measures to provide security in Iraq,

Whereas in accordance with that mandate, the UK national contingent of the MNF-I is authorised to intern persons for imperative reasons of security ("security internees"),

Whereas in accordance with Coalition Provisional Authority Memorandum Number 3 (Revised), the national contingents of MNF-I may apprehend persons who are suspected of committing criminal acts,

Whereas although Iraq is developing its custodial capacity with the aim of being able to confine all criminal suspects in its own facilities, it may, in the mean time, request the MNF-I to confine persons who are suspected of having committed criminal acts in safe and secure detention facilities, subject to security and capacity considerations,

Now, therefore, the Participants have decided to apply the following arrangements:

**Section 1**

**Purpose and Scope**

This Memorandum of Understanding (MOU) sets out the authorities and responsibilities in relation to criminal suspects. For the purpose of this MOU, "criminal suspects" are:

(a) individuals who are apprehended by the UK contingent of the MNF-I ("UK MNF-I") and who are suspected of having committed criminal acts;

(b) security internees who are in the physical custody of the UK MNF-I and who are also suspected of having committed criminal acts for which they may be tried in an Iraqi court of competent jurisdiction; and

(c) individuals who are suspected of having committed criminal acts who are held at the request of the Iraqi authorities.

## Section 2

### Authorities and Responsibilities Generally

1. The Interim Iraqi Government (and any successor) has legal authority over all criminal suspects who have been ordered to stand trial and who are awaiting trial in the physical custody of UK MNF-I in accordance with the terms of this Memorandum of Understanding (MOU).

2. The UK MNF-I has a discretion whether to accept any particular criminal suspect into its physical custody and whether to continue to provide custody for a suspect who is in its custody at the time this MOU comes into operation or who, at any time in the future, comes into its custody.

3. The Ministry of Justice of Iraq ("MOJ"), and where appropriate the Ministry of Interior (MOI), will:

(a) inform UK MNF-I of any support requirements under Iraqi law or which it believes are appropriate for UK MNF-I to provide in respect of criminal suspects;

(b) provide a liaison officer to UK MNF-I to ensure continuous co-ordination on any issues concerning criminal suspects;

(c) ensure that investigations of criminal suspects and any criminal proceedings commenced against criminal suspects progress without undue delay; and

(d) provide the guards, escorts, security and transportation that UK MNF-I requests within its means and capabilities.

## Section 3

### Authorities and Responsibilities in relation to individual criminal suspects

1. In relation to any criminal suspect being held in the physical custody of the UK MNF-I, the MOJ will:

(a) provide UK MNF-I with a written request for his delivery up to attend a court appearance or for any other purpose connected with the criminal process and give as much advance notice of the proposed date when the presence of the suspect is required as is practicable;

(a) inform UK MNF-I before releasing any individual and will comply with any request by UK MNF-I that UK MNF-I should reassume custody if,

(i) the individual is wanted for prosecution by any state that has contributed forces to the MNF for breaches of the laws and customs of war, or

(ii) the internment of the individual is necessary for imperative reasons of security,

in which case UK MNF-I will assume custody of that individual after consultation between the Participants to reach an agreed solution;

(b) provide facilities, if requested, for a member or representative of UK MNF-I to accompany any suspect during his court appearance, or during any questioning by Iraqi authorities or during any other time when he is outside the UK MNF-I detention facility; and

(c) provide an assurance that during any temporary periods when a suspect is in the hands of the Iraqi authorities whether at the UK MNF-I's detention facility or elsewhere and at any time following the transfer of a suspect to Iraqi facilities,

(i) the suspect will be treated humanely and will not be subject to torture or to cruel, inhuman or degrading treatment or punishment; and

(ii) the requirements of CPA Orders with respect to co-operation with and reasonable access to be provided to the Iraqi Ombudsman for Penal and Detention Matters and the International Committee of the Red Cross will be adhered to.

5. If UK MNF-I decides that it is no longer prepared to provide custody facilities for a particular suspect, it shall give notice of this decision to the MOJ as soon as possible to enable the MOJ to make other arrangements for the custody of that suspect if it so wishes. The MOJ will then notify the UK MNF-I of the arrangements it has made or alternatively will indicate that the suspect should be released. UK MNF-I will then use its best endeavours to enable any such alternative arrangements to be put in place.

#### **Section Four**

##### **Disputes**

Any difference in the interpretation or execution of this MOU will be resolved exclusively by negotiation between the Participants.

#### **Section Five**

##### **Amendment and Effective Period**

1. This MOU may be amended at any time with the written consent of the Participants.

- (b) ensure that all documents requested by UK MNF-I relating to the suspect, such as a valid warrant by a competent judicial authority, are provided as soon as practicable;
- (c) advise UK MNF-I of any court orders relating to the suspect and give UK MNF-I prompt notice of any change in his status; and
- (d) ensure that any criminal proceedings commenced against a criminal suspect progress without undue delay.

2. In relation to any criminal suspect being held in the physical custody of UK MNF-I, the UK MNF-I:

- (a) will provide humane treatment and will not subject any criminal suspect to torture or to cruel, inhuman or degrading treatment or punishment;
- (b) will provide custodial support for the suspect, including but not limited to housing, feeding clothing guarding and health care;
- (c) will take appropriate steps to ensure the conditions of custody meet the standards set out in CPA Memoranda Nos 2 and 3;
- (d) will adhere to the requirements of CPA Orders with respect to co-operation with, and the reasonable access to be provided to, the Iraqi Ombudsman for Penal and Detention Matters and the International Committee of the Red Cross;
- (e) will have exclusive discretion regarding all matters of security and force protection for all criminal suspects in its custody;
- (f) will take appropriate steps to ensure that criminal suspects who have invoked their right to counsel are not questioned without their counsel being present;
- (g) will take appropriate steps to ensure that criminal suspects are able to meet with their counsel, with court investigators and the investigative judge as needed, subject to the notice requirements of sub-section 1(a) above.

3. In relation to any criminal suspect apprehended by the UK MNF-I and handed over to the Iraqi authorities as soon as reasonably practicable, in accordance with section 5 of Coalition Provisional Authority Memorandum Number 3 (Revised), the MOJ and the MOI, as the case may be:

- (a) will provide humane treatment and will not subject any criminal suspect to torture or to cruel, inhuman or degrading treatment or punishment; and
- (b) hold the criminal suspect in accordance with Iraqi law.

4. In relation to any criminal suspect transferred to the MOI or the MOJ by UK MNF-I from its detention facilities, the MOJ and the MOI, as the case may be, will:

2. This MOU will come into effect on the signature of the Participants and will remain in effect until terminated by any of the Participants giving a month's written notice to the other Participants.

Signed in duplicate, in the English and Arabic languages, both texts having equal validity on the 25<sup>th</sup> day of the month of Ramadan for the Hira Year 1424, corresponding to the 8<sup>th</sup> day of the month of November for the Calendar Year 2004.

Ben Clarke ..... Hon Ambassador, Baghdad 8/11/04  
For the United Kingdom of Great Britain and Northern Ireland contingent of  
Multinational Forces - Iraq

.....  
For the Ministry of Justice of Iraq

Mr. Malik Dahlan el-HASSAN  
.....  
Mr. Malik Dahlan el-HASSAN

Alastair .....  
For the Ministry of Interior of Iraq

Salih al-nekib min of. inter

