



The Iraq Fatality Investigations

Inspector: Sir George Newman

REPORT

into the death of AHMED JABBAR KAREEM ALI

Presented to Parliament by the Secretary of State for Defence
by Command of Her Majesty

September 2016



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GLOSSARY OF TERMS

1 (UK) Armd Div	1st United Kingdom Armoured Division
7 Armd Bde	7th Armoured Brigade
2ic	Second-in-command
2Lt	Second Lieutenant
7 Pl	7 Platoon
8 Pl	8 Platoon
Al Skeini Litigation	Litigation comprising the following four judgments: [2005] 2 WLR 1401; [2007] QB 140; [2008] 1 AC 153; (2011) 53 E.H.R.R 18
AO	Area of Operations
AOR	Area of Responsibility
APA	Army Prosecuting Authority
Bde	Brigade
Bde AO	Brigade Area of Operations
BGH	Basra General Hospital
BG	Battle Group
BGHQ	Battle Group Headquarters
BG net	Brigade radio network
Brig	Brigadier
BW	Black Watch (Battlegroup)
BRITFOR/BF	British Forces
Card Alpha	Also known as 'the White Card'. A card outlining the Rules of Engagement and dictating in what circumstances a soldier may open fire
CF	Coalition Forces
CHARLIE	Time zone 3 hours ahead of Greenwich Mean Time
Comd	Commander

COMD Legal	Commander Legal Services
Cpl	Corporal
Coy	Company
Coy net	Company radio network
C Coy	C Company
CO	Commanding Officer
CPERS	Captured Person
CS	Call-sign
CSM	Company Sergeant Major
CQMS	Company Quartermaster Sergeant
DCOS	Deputy Chief of Staff
Dismount	Member of the Warrior crew who typically travels in the rear of the vehicle
Div HQ	Divisional Headquarters
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
FRAGO	Fragmentation Order
Gdsm/Gdsn	Guardsmen – rank within the Irish Guards equivalent to a Private
GOC	General Officer Commanding
GR	Grid Reference
HQ	Headquarters
ICC	International Criminal Court
IFI	Iraq Fatality Investigations
IG	Irish Guards
IHAT	Iraq Historic Allegations Team
INTREP	Intelligence Report
INTSUM	Intelligence Summary

ITD	Individual Training Directive
JAG	Judge Advocate General
LCpl	Lance Corporal
LOAC	The Law of Armed Conflict
Lt	Lieutenant
Lt Col	Lieutenant Colonel
Maj	Major
MND (SE)	Multi National Division (South East)
MPS	Military Provost Staff
MSR	Main Supply Route
NI	Northern Ireland
OC	Officer Commanding
OFF	Oil-for-Food Programme
O Gp Meetings	Orders Group meetings
Ops	Operations
OP TELIC 1	Codename for operation to invade Iraq in 2003.
OP TELIC 2	Codename for the second phase of operations in Iraq.
OPTAG	Operational Training and Advisory Group
Orbat	Battalion Orders
Pl	Platoon
Pl Comd	Platoon Commander
PoW/PW	Prisoner of War
PTSD	Post-traumatic stress disorder
QRF	Quick Reaction Force
Regt	Regiment
RHQ	Regimental Headquarters
RMP	Royal Military Police

RoE	Rules of Engagement
ROTI	Record of Taped Interview
RQMS	Regimental Quartermaster Sergeant
RSM	Regimental Sergeant Major
Sect Comd	Section Commander
SIB	Special Investigation Branch of the RMP
SITREP	Situation Report
Snatch	Snatch Land Rover vehicle
Veh Comd	Vehicle Commander
Warrior	Fully Tracked Armoured vehicle. Also known as Armoured Personnel Carrier (APC) and Infantry Fighting Vehicle (IFV).

GUIDE TO THE REPORT

1. There is a chronology at Appendix 7 to this Report. The body of the report is designed to be a self-standing account. Full information is to be found on the IFI website.
2. Some findings are made throughout the review of evidence. This allows for a progressive approach to the section headed 'Findings and Conclusions'.
3. A list of persons named in this report can be found at Appendix 6.
4. Maps and photographs of locations, items of relevance to the detailed events, and other documents are to be found in the remaining Appendices.
5. The Investigation into the circumstances surrounding the death of Mr Ahmed Jabbar Kareem Ali ('Mr Ali') has involved considering the response of four soldiers to an incident of looting in Basra in May 2003. It has also involved investigating the origins and context of their response and the extent to which it had its origins in a generally accepted approach to the measures which should be taken against looters, including partial or total immersion in water in order to deter and punish looters. I have completed my investigation into the conduct of the soldiers and have received sufficient evidence to place it in a wider context of events in Basra at that date. That being the case, in order to avoid delay, I have published these findings and conclusions as Part 1. But my Terms of Reference, in particular paragraphs 2, 3, 4, 5 and 6 impose other areas for my investigation, which I have commenced, but will require more time to complete. (See section 2 below)
6. Further and importantly, there may have been other cases involving similar behaviour, which have yet to be investigated and processed, and thus findings and conclusions at this stage in accordance with all of my Terms of Reference could be incomplete and premature.

SECTION 1: INTRODUCTORY OBSERVATIONS AND CONSIDERATIONS

- 1.1** This report records the outcome of the fourth Investigation into a civilian death referred to the Iraq Fatality Investigations ('IFI') by the Secretary of State for Defence. The origin and purposes of the IFI, sometimes referred to as the Iraq Judicial Investigations, appear from the reports, rulings and public statements published on the website at www.Iraq-Judicial-Investigations.org. The website carries an extensive documentary record from which the legal background, objectives, procedures and the course of each of the investigations can be seen. The need for this Investigation was confirmed in the *Al Skeini* Litigation.¹
- 1.2** The material on the website in connection with the death of Mr Ali should be regarded as supplementary to the material in this report and treated as part of the report. It has not proved possible to avoid material being published both in the report and on the website, but unnecessary duplication has, in general, been avoided. The report will appear on the website after the hard copy edition has been published.
- 1.3** The course of the Investigation has been assisted by co-operation from the soldiers involved and many witnesses from the military high command. There has been satisfactory disclosure from all those requested to make disclosure and invaluable assistance from QC Law in Basra. Public Interest Lawyers (PIL) have co-operated with the Investigation and have made disclosure of documents in its possession and control. Disclosure has also been made by Leigh Day (solicitors) and The Guardian News and Media Limited.
- 1.4** The remit of the IFI has arisen from various judgments of the European Court of Human Rights (ECtHR) at Strasbourg. A succinct survey can be seen from the judgment of the Divisional Court, the judgment of the Grand Chamber of the Strasbourg Court in *Al Skeini and Others v United Kingdom*,² and more recently judgments from Leggatt J in the Administrative Court in *Al Sadoon and Others v Secretary of State for Defence*.³
- 1.5** There has not been an extensive need for contact with persons in Iraq. Only one Iraqi witness to the incident has been traced. Mohammed Jabbar Kareem Ali represents the family of the deceased. A video link with them and QC law was arranged for the 18th of May 2016. I questioned the four soldiers involved. Unfortunately, we were unable to establish a video link. All efforts to achieve audio contact failed. I concluded that it was essential, nonetheless, for the hearing to take place and a full transcript was made available to QC Law. The transcript is on the IFI website.

¹[2004] EWHC 2911 (Admin); [2005] EWCA Civ 1609; [2007] UKHL 26; [2011] 53 E.H.R.R 18

²[2012] 53 EHRR 18

³[2015] EWHC 715 (Admin); [2016] EWHC 773 (Admin)

- 1.6** Evidence concerning the circumstances which led to the death of Mr Ali was gathered from, in the first instance, Mr Ayad Salim Hanoon (Mr Hanoon), followed by evidence from the four soldiers involved in the incident: SO15, SO16, SO17 and SO18. They had made statements and had been interviewed in connection with their court martial trial for manslaughter, at which they were all acquitted. Later, they provided evidence to me, making written witness statements and by attending a hearing to be questioned by me on 18th May 2016. The request of each of the four soldiers for legal assistance and anonymity was granted. Evidence was also obtained by me from officers in the military chain of command.
- 1.7** A summary of the statements / interviews of SO15, SO16, SO17 and SO18 made in the course of the RMP investigation is at Appendix 1 to this report. A summary of the course of the court martial proceedings is at Appendix 2 to this report.

Ayad Salim Hanoon

- 1.8** Mr Hanoon was in company with Mr Ali on 8th May 2003 in the area of the 'Baghdad Garage'. With others, they were engaged in looting. Mr Hanoon is the only available Iraqi witness to the events which occurred leading up to and including the drowning at the canal. He gave a statement to the police in Basra on 10th May 2003, a second witness statement on 23rd July 2003 and a third on 15th April 2006. He gave evidence at the court martial trial. His evidence has been subject to extensive criticism. His statement dated 21st April 2016⁴ was taken at my request by QC Law. It acknowledges "*mistakes or misunderstandings*" or problems with translation.
- 1.9** I concluded that it was in the interests of the Investigation that I should proceed upon the basis of his current recollection of events, which could be taken and recorded under the guidance of QC Law, and then considered by me in the light of his previous evidence and the other evidence in the case. Having given the statement dated 21st April 2016 full consideration, I have concluded that I should treat it as sufficiently reliable to be taken into account where its contents are supported by other evidence in the case, or could be supported by reasonable inferences drawn from other evidence in the case. His detailed allegations of specific ill treatment alleged to have been inflicted upon him by soldiers have caused me concern, but maltreatment of him, if it occurred, is not within my remit. That said, I have felt able to reach conclusions on the likely degree of general manhandling and assault experienced by the four looters.
- 1.10** The evidence of the BF witnesses calls for no particular comment at this introductory stage of the report.

⁴ Hanoon MOD-08-0000321-Z

SECTION 2: THE ORIGIN AND REACH OF THE INVESTIGATIONS AND THE FORMAT AND PROCEDURES ADOPTED

- 2.1** The detailed legal background to the IFI is set out in full in the consolidated report into the death of Nadeem Abdullah and Hassan Abbas Said, published in March 2015. It is sufficient to record that the specific obligations which govern the reach and purpose of this Investigation are set out in two judgments of the Divisional Court in the action of *R (Ali Zaki Mousa and others) v the Secretary of State for Defence (No. 2)*.⁵ By an order of the Divisional Court dated 31st October 2013, the Secretary of State for Defence was ordered to hold inquiries into civilian deaths in Iraq in any cases where he accepted that an Article 2 ECHR obligation to hold an inquiry existed and where it was clear that there would be no prosecution of any British soldiers alleged to have been involved in the deaths.
- 2.2** On 23rd December 2015 I was appointed to conduct an inquiry into the death of the deceased, Mr Ali. My appointment is subject to the Terms of Reference set out below:

ANNEX A: TERMS OF REFERENCE

The Scope of the Investigation

1. The investigation into the death of Ahmed Jabbar Kareem Ali on 8 May 2003 ('the death') is to be conducted to establish the relevant facts and accountability for the death, thereby discharging the positive obligations of the State pursuant to Article 2 of the European Convention on Human Rights.
2. The investigation must be accessible to the family of the deceased and to the public, thereby bringing the facts to public scrutiny.
3. The investigation should look into and consider the immediate and surrounding circumstances in which the death occurred.
4. The investigation should encompass the wider circumstances of the death, including the instructions, training, and supervision given to the soldiers involved.
5. Where facts are found in connection with the instructions, training and supervision given to the soldiers, consideration should be given to whether it is proportionate or necessary to make recommendations on the issues raised taking into account the extent to which the issues raised have already been considered by the Ministry of Defence or other inquiries.

⁵ [2013] EWHC 1412 (Admin) and [2013] EWHC 2941 (Admin) respectively.

6. The investigation is to be conducted so as to bring to light all the facts, including failures on the part of the State and facts from which such failures could be properly inferred.

The Conduct of the Investigation

7. The procedure and the conduct of the investigation are to be such as the Inspector may direct so as to achieve the aims and purposes set out above and to comply with the terms of the Court's judgements, Orders and directions.
8. The Inspector will draw up and publish the procedures which are to be followed to progress the investigation, and so far as appropriate conduct the investigation in accordance with the published procedures established in previous investigations. In this regard he will follow the guidance given by the Court about the extent to which legal representation will be necessary, the questioning of witnesses and the opportunity to be given to the next of kin to raise lines of inquiry.
9. The Inspector will from time to time consider and keep under review the need for procedures to be made public in connection with any of the aims and purposes of the investigation.
10. The Inspector has the power to require any person or organization to provide evidence in writing, to produce relevant material in their possession or control and to attend a public hearing to give oral evidence.
11. The Inspector is to commence his investigation by considering all the relevant documentation in the possession of the Ministry of Defence and any relevant information emanating from the Iraq Historic Allegations Team (IHAT) and Service Prosecution Authority.
12. Having considered all the documents which are to be supplied to him and any further documents or information which he may have requested the Inspector will decide what needs to be disclosed to interested persons, the next of kin of the deceased or the public to enable the investigations to be accessible and subject to public scrutiny.
13. Where the Ministry of Defence considers publication or disclosure would be damaging to national security, international relations of the State, or the safety of an individual it shall bring its considerations to the notice of the Inspector who, having heard such representations from the Ministry as may be necessary, will determine the extent to which publication or disclosure is required in order to achieve the aims and purpose of the investigations.

14. At the conclusion of an investigation the Inspector will produce a written report which sets out:

- (a) A narrative account of the circumstances in which the death occurred; and
- (b) Any recommendations he has decided to make.

15. The report will not be concerned to determine or address any person's criminal or civil liability. But the investigations are not to be inhibited by the likelihood of liability being inferred from the facts found or recommendations made.

2.3 I have followed the procedures and format adopted in previous reports. The details appear from the sections of those reports entitled: 'The Procedures and Format of the Investigations.'

2.4 By the time it had become necessary to hold a public hearing and to question the four soldiers involved, I had concluded that fairness to the soldiers and the family of the deceased required that my findings in connection with the drowning should not be held up by a need for me to investigate the detail of the wider circumstances that may have existed into which the conduct of the soldiers could be understood, including policy considerations and attention given by the military chain of command to the measures being adopted by BF when dealing with looting.

2.5 As a result, I made public my decision⁶ to deliver my report on the circumstances surrounding the death of Mr Ali without expressing any detailed conclusions about the wider circumstances, until more information and evidence had become available.

2.6 I received non-use assurances from the Attorney General's Office on 19th February 2016, and from Fatou Bensouda of the International Criminal Court on 18th March 2016 (see the website for further details). I made public statements on 22nd January 2016 and at the public hearing of the four soldiers' evidence on the 18th of May 2016. Further statements dated 27th June 2016 and 1st July 2016 are on the website.

⁶ IFI 18/05/16, page 4, lines 7-14

SECTION 3: A BRIEF SUMMARY OUTLINE TO THE INCIDENT AT SHATT AL BASRA CANAL AND THE EVENTS LEADING UP TO THE INCIDENT

- 3.1** The following version of events appears in the summary of the RMP evidence, the evidence at court martial (summarised in Appendices 1 and 2) and from the statements and oral evidence in this Investigation (summarised in section 6 below).
- 3.2** At about 09:30 on 8th May 2003, soldiers from No.1 Company ('No.1 Coy') 1 Irish Guards ('1 IG') were on static guard duty at Basra General Hospital ('BGH') approximately 2km west from the City Centre. The duty entailed a Warrior Armoured Personnel Carrier ('Warrior'), Call-sign ('CS') One-Two, with a three-man crew, being positioned in a visible location at the front of BGH to deter looters. The three-man crew of the Warrior remained with the vehicle, and the six-man dismount sections were located in a rest room in BGH.
- 3.3** In the morning, some Iraqi Auxiliary Policemen alerted the CS to suspected looters within a derelict industrial compound in an area near Sa'ad Square, to the rear of BGH. The dismount section, led by SO19, accompanied them to the scene and discovered 20-30 people. After a chase, four Iraqi nationals, including Mr Ali aged about 15, and Mr Hanoon, aged 22, and two others who have never been identified, were detained by Iraqi policemen and members of the dismount section.
- 3.4** They were taken to a pool area about 15 x 15 m in size,⁷ and the policemen forcibly removed their clothing and made them enter and roll in a stagnant pool of water. While they were in the stagnant water, police officers and others and, (according to Mr Hanoon, soldiers⁸) threw "bricks" at them.⁹ After this treatment, the soldiers took the four looters to the front of BGH where the Warrior was stationed.
- 3.5** They were subsequently taken in the Warrior from BGH to the Al-Zubair bridge ('Bridge 4') on the Shatt Al Basra canal by SO15, SO16, SO17 and SO18, which was about 8 km from BGH. SO15 was the Commander of the Warrior ('Veh Comd'). SO16 was the driver, SO17, the gunner. SO17 travelled inside the Warrior along with SO18, a dismount.¹⁰

⁷ See Appendix 16

⁸ Hanoon MOD-08-0000321-Z, paragraph 10

⁹ SO18 IFI 18/05/16, page 49, line 6 – page 50, line 24

¹⁰ Ibid, page 51, lines 8-14

- 3.6** At the canal, all four detainees entered the water. SO16, SO17 and SO18 untied the four detainees. SO17 and SO18 walked two of them to the water's edge. SO16 then directed the remaining two detainees to the water's edge.
- 3.7** At times it has been suggested by the soldiers that the four detainees, without being directed to do so, simply entered the water. Mr Hanoon said they were forced to enter the water at gunpoint.¹¹ Whether literally "*at gunpoint*"¹² or not, I have no doubt that they were compelled to enter the water. Detainees 1 and 2 swam to one of the pillars of the bridge and escaped. Mr Hanoon was able to stand or tread water until the soldiers departed, and he then took a taxi back home. He also gave evidence that the soldiers threw stones to force them into deeper water. I am unable to reach a conclusion on this specific evidence, however, whether true or not, it adds little to my core finding that they were forced into the water. Mr Hanoon witnessed Mr Ali floundering and submerging.¹³
- 3.8** There is evidence that he submerged for a second time, and that SO15 told SO16 that if he came up again he (SO16) would have to go in and get him.¹⁴ He did not resurface. The soldiers then left without any attempt to rescue him. I shall return to these matters when dealing with the soldiers' evidence.
- 3.9** The authority to travel to Bridge 4 and the reason for doing so has been considered by me, given the long distance the Warrior travelled, and because the question of whether it was a planned journey for the purpose of putting the looters into the canal has been a central consideration, both at court martial and in this Investigation.
- 3.10** Later on 8th May, Mr Ali's father, Mr Jabbar Kareem Ali ('the deceased's father'), went in search of him after he had failed to return home. Local people informed him that British soldiers had arrested his son. When he went to the police station, he was told to return the following morning, and in the course of the morning he was informed of the drowning.
- 3.11** On 10th May 2003, Mr Hanoon reported to the Royal Military Police ('RMP') that on the 8th of May, while in the custody of the UK Armed Forces, Mr Ali had drowned. At 2:30 pm on 10th May, Mr Ali's father recovered his son's body, which had emerged close to Bridge 4 and was brought ashore. The body was then taken to the Iraqi police station and he reported the death. He also reported the drowning to the RMP. The body was then taken to a local hospital where Dr Nadeem Raheem Shea'a examined him and gave the cause of death as

¹¹ Hanoon MOD-08-0000321-Z, paragraph 16

¹² Ibid

¹³ Ibid, paragraph 17

¹⁴ SO16 MOD-83-0000301, paragraph 31

drowning.¹⁵ A post mortem was not carried out before he was buried in accordance with religious practices. Mr Ali was buried in the early hours of the following morning at An Najaf cemetery.

3.12 Mr Ali's body was exhumed and examined on 21st June 2003 by a pathologist, but due to the advanced state of putrefaction the cause of death could not be determined. It was some months before the soldiers were spoken to by the RMP Special Investigation Branch ('SIB'). The delay was exacerbated by the fact that statements were initially obtained before the witnesses were questioned under caution.

¹⁵ See death certificate at Appendix 23

SECTION 4: THE INVESTIGATION INTO THE DEATH OF MR AHMED JABBAR KAREEM ALI

STATEMENT OF PRELIMINARY CONCLUSIONS DATED 18TH MAY 2016

- 4.1** On the 18th of May, the IFI held an oral hearing, attended by SO15, SO16, SO17 and SO18. On that occasion I introduced the background and the key issues related to the incident from the evidence I had already received:¹⁶

“Looting commenced within hours of the British Forces occupying the city. In days, an explosion of serious, widespread and comprehensive looting occurred. The buildings, the infrastructure, contents of buildings, in particular public offices, were stripped, contents taken out. The buildings were taken apart by hundreds, if not thousands, of looters.

There had been no preparation or planning for looting on this scale. Little or no instruction or training was given to soldiers. In any event, it would appear, the scale was well beyond the ability of the British Forces' capacity to bring under control.

It was directed that specific buildings and assets had to be given some form of 24-hour protective guard. Basra General Hospital was one such building and facility. Platoons of the Irish Guards provided protection on a rotational basis by positioning a Warrior at the front of the building, with dismounts present in the Basra General Hospital and available to patrol outside.

An initial instruction that looters were to be detained and processed through the chain of command proved largely unworkable because of the numbers involved and the absence of facilities and soldiers to handle the process.

What then happened or was happening at a policy level and in high command is likely to require more investigation by me, perhaps in the context of other similar occurrences. But for the moment I can record that it seems likely that the need to do something about looting fell into a procedurally formless vacuum and rested within the discretion of company and section commanders.

¹⁶ Following passage taken from the transcript and corrected.

In that vacuum, and in the exercise of that discretion, it would seem that various homemade processes and procedures were devised and, probably by gossip rather than instruction, spread to different companies and platoons. It seems likely that some platoons took the view there was no point in trying to stop, deter or apprehend looters. Others – reasonably, as I would be likely to conclude – took the view that something had to be done.

As I have said, the detail and significance of the absence of instruction are for more investigation by me and they will be considered. But I need not and do not want the matters which I have to examine in what could be termed the wider background circumstances affecting the chain of command to hold up what I see as the high priority for everybody, in particular the soldiers here today and the family in Iraq, to get on with the focused part of my investigation, which centres on what happened at the canal.

The only need for me by way of record is to state that among the homemade procedures to which I have referred, two of them have a relevance in this case: first, the taking of looters and depositing them a distance away from the looting; and secondly, making looters wet, not as might conventionally be a method to break up rioting, namely using fire hoses or water cannon, but by detaining one or more of them and then seeing that they were made wet by a measure of immersion in any water which might be available, either nearby or at hand or at some distance.

It is well known that the four soldiers who have attended today in response to my request – and for their attendance I express my appreciation – were prosecuted in court-martial proceedings for manslaughter and they were acquitted.

For reasons connected with the pursuit of that prosecution, a considerable degree of attention was paid to the military considerations and orderliness of a Warrior departing from the static position, leaving any dismounts who were there at the Basra General Hospital, and then travelling a distance from the secure operation in which it was actually involved. That is not a matter upon which I wish to spend a great deal of time today.

Further, for the convenience of the trial, the exposures of looters to being made wet was referred to by counsel as "the practice of wetting". That phrase, it seems, has achieved as a result a form of recognised status which in my judgment may well not be merited. Insofar as it could be regarded as a practice, it remains something I will look into after today and perhaps, as I say, in the context of any other similar case.

Further, a section of the evidence centred at the court-martial upon allegations of specific acts taken by the soldiers to force the looters into the canal. I want to emphasise to them today that I am much more concerned for them to grasp and recognise the undeniable fact that four looters entered the water of the canal up to their waists; as I would, applying common sense, be minded to conclude, obviously not because they wanted to spend time splashing about in the shallows of the canal before walking home. One of them floundered and was seen to go under, but he was not rescued and he drowned.

These are, as I see it, from all the evidence I have heard or gathered, undeniable facts. I want the soldiers today to grapple and grasp those facts and for us to move the investigation on from those undeniable facts so that we have as thorough an understanding of what happened at the canal as I can achieve.

The soldiers have made statements for the purposes of this investigation, and I am grateful to them. They are on the website. They have had the benefit of legal advice and assistance in that process, and they still have the benefit of legal advice and guidance. I am grateful to their solicitors for the work that has been done. But as I have already said, the purpose of today and my investigation at the moment is to take matters beyond the level of clarity achieved at the court-martial, beyond the level of clarity which I have endeavoured to emphasise today.

I have already explained that I am not here to determine culpability but to find the facts. I have explained to them – and they must well know, but if they are in doubt, they must ask me and tell me – that in giving their accounts, they should not be inhibited by fears that they may incriminate themselves. They have the benefit of assurances from the Attorney General and from the International Criminal Court in connection with their own evidence. They have protection under the general law, which militates against being prosecuted again.

Now is the time for each of them to give me the details so that I can report fully and adequately, and put an end to investigations into what they did on 8 May 2003. What was done or known about on a wider front may have to wait.

I cannot overemphasise how important it is that each of the soldiers realises the framework of today. By giving me an account which is candid and full and honest, each has protection. Unevenness between accounts as given might have the effect of leaving a particular member of that group exposed, not in a way which I can be sure, but exposed to the appearance, in any event, that he has been less than candid.

It is in the interests of each one of you to put an end to this investigation and enable me to leave no matters open. Putting an end to it is in everybody's interests, your interests, so many years after the event. Like the family of the deceased, you, I know, have suffered, some perhaps more than others. But the remedy lies in what we do between now and about 1 o'clock.

Before asking you to come forward, let me explain the impact of what has already been said to me.

On the evidence I have received so far, I am far from satisfied by a suggestion which has been put forward that the Warrior travelled 8 kilometres, to within a few metres of the edge of the water in the canal, simply to deposit the four looters away from the looting site and because, additionally and incidentally, it was a convenient point to turn the Warrior around; and yet further, incidentally, four looters entered the water. That does not have, to me, any ring of a reality about it, and I want realism.

On the evidence I have received so far, I am not impressed by a suggestion that the four looters voluntarily walked into the canal. Again I ask for common sense. They were in the presence of four fully armed soldiers and had been detained and conveyed in close quarters, cuffed by rags, it would seem, to each other, or in pairs, inside an armoured vehicle. On any basis, people subjected in that position and detained would have been terrified of the whole experience, and when they arrived at Bridge Four and the edge of the canal could not be regarded, it seems to me, by someone exercising common sense, as people who had exercised a choice to go into the canal.

While some of the soldiers speak of the looters in the water, I am not presently impressed by the suggestion that not all of the soldiers were sufficiently proximate to know and see what happened.¹⁷

- 4.2** The contents of my statement, set out above, stand as part of this report and comprise my conclusions to date on the existence of a wider context in which the conduct of the soldiers occurred.

¹⁷ IFI 18/05/2016, Page 3, line 7 - page 10 line 6

SECTION 5: SUMMARY OF THE WITNESS EVIDENCE

Michael Lawrence Riddell-Webster¹⁸

- 5.1** Lieutenant Colonel ('Lt Col') Michael Riddell-Webster was the Commanding Officer ('CO') of the Black Watch ('BW') battlegroup ('BG'). He explained that, initially, the BW BG did not include the IG. No 1 and No 2 Coys 1 IG came under his subordination on 11th April 2003. On 9th May 2003 No 1 Coy 1 IG was recovered to Germany. Orders came down from Maj Gen Robin Brimms, the Divisional Comd. The mission was to take Basra, and it was known that they would probably be involved in maintaining order.¹⁹
- 5.2** As soon as the troops entered Basra, they encountered wide-scale looting. People were carrying things off with their hands, on donkey carts, or on the roofs of their cars, even though there was not much to loot. The BW BG had some experience of maintaining law and order as they had been to Kosovo in 2001, which helped during the advance planning prior to the invasion of Iraq. However, at that time BW had not included anyone from the IG. Some thought had been given to looting, but the scale of it took everyone by surprise and the limited manpower available meant that there was little that could be done. Lt Col Riddell-Webster explained that he made a decision to focus on priority tasks, such as protecting electric sub-stations, water pumps and hospitals. Looters were much lower down the list of priorities and he accepted there was little that could be done about it.²⁰
- 5.3** Lt Col Riddell-Webster described some of the principal sites where looting took place. Initially, it was centred on the "*oil-for-food*" warehouse.²¹ Later, the principal sites were the Southern Oil Company depot and a depot on the southern edge of Basra, not far from BGH where there was a dump of concrete reinforcement bars.²²
- 5.4** Every afternoon Lt Col Riddell-Webster held his BG Orders meeting and later in the evening he took part in a Brigade conference call. About 20 people would attend a BG Orders meeting, including BG HQ staff and all sub-unit Comds. BG Orders meetings lasted about 45 minutes to an hour. They began with Lt Col Riddell-Webster passing on news from 7 Armd Bde, followed by reports from those present on what was happening on the ground.²³

¹⁸ Riddell-Webster MOD-08-0000327-Z

¹⁹ Ibid, paragraphs 2-3

²⁰ Ibid, paragraphs 3-9

²¹ Ibid, paragraph 8

²² Ibid, paragraph 16

²³ Ibid, paragraphs 10-11

- 5.5** There would have been lots of separate conversations amongst individuals as the meeting broke up, but Lt Col Riddell-Webster did not recall hearing anyone talking about throwing people into water. If he had heard of the practice he would have told people that it was not acceptable and would have stopped it. Similarly, he would have regarded hosing down as unacceptable.
- 5.6** Lt Col Riddell-Webster stated that initially he would have told people not to do anything about the looting, but by late April 2003 priorities had shifted and they tried to do more about it. By this time looting had died down considerably because there was nothing left to loot. There had been a debate at Bde or BG HQ level regarding whether looters could be shot or whether shots could be fired into the air, and it was decided that neither were permissible. Lt Col Riddell-Webster described that the direction he gave was that looters should be arrested and sent down the PoW chain. Looters who were caught would be held in Coy bases for a couple of hours under armed guard. Initially they were hooded but this stopped after a detainee who had been hooded died in custody.²⁴ Lt Col Riddell-Webster would not be surprised if not all looters were being taken back to bases, given the lack of facilities and means to deal with them. Neither he nor Coy Comds would expect to be informed whenever looters were picked up, but Pl Comds would know what was going on.
- 5.7** Lt Col Riddell-Webster stated that he was not aware of anyone thinking it was appropriate to drive over a cart filled with loot in a Warrior, and it should not have been happening. However, he was not surprised that Pl Comds were adopting their own home-grown methods to deal with and deter looting. He could believe that people were being picked up and dropped off elsewhere, and he would have regarded that treatment as acceptable. He stated that troops had not been trained on how to deal with looting.
- 5.8** In Lt Col Riddell-Webster's view the BG was ill-equipped to impose peace in Basra because there were not enough troops and they were not suitably equipped. The only way to prevent the looting and the problems which ensued would have been to have had many more dismounted troops and a police force.²⁵

Peter Charles Alfred MacMullen²⁶

- 5.9** Maj Peter MacMullen was the Coy Comd of No 1 Coy, 1 IG. On 9th April 2003 No 1 and No 2 Coys, 1 IG, moved from the Scots Guards to the Black Watch ('BW') Battle Group ('BG'), which was commanded by Lt Col Riddell-Webster. BW BG commanded the part of Basra from the Shat Al Arab river to the main part of town. This area was divided into four blocks

²⁴ Ibid, paragraph 15

²⁵ Ibid, paragraph 29

²⁶ MacMullen MOD-83-0000338

under the command of four Coys; A Coy, B Coy, No 1 Coy and No 2 Coy. In No 1 Coy there were 160 people, who were responsible for security provision of tens to hundreds of thousands of people within an AOR, which lay about 5-6km into Basra along Route Red and about 5-6km to the east.²⁷ The HQ of No 1 Coy was in an old gymnasium.²⁸ The responsibilities of No 1 Coy were to provide a PI on guard, on rest, on statics and on patrols. *“Statics and patrols were required to prevent general disorder including looting and damage to persons and property.”*²⁹

5.10 Maj MacMullen stated that although his Coy received some training on the Geneva Convention in the Individual Training Directive (‘ITD’) package regarding the Laws of Armed Conflict (‘LOAC’), they did not receive any training regarding the Rules of Engagement (‘ROE’), nor were they issued with cards setting out the ROE.³⁰ Any notification that there had been a change in the ROE would have come from Division to Brigade to BG Comd 7 Brigade (‘Comd 7 Bde’), who was Brigadier Graham Binns. However, Maj MacMullen did not recall receiving any formal notification at any point that there had been a change in the ROE. He did, however, recall feeling that there was a natural change in the phase of operations on about the 6th or the 7th of April 2003.³¹

5.11 Around March to April 2003 there were a lot of raids and attacks taking place. However, there was little direction from higher in the chain of command regarding how to deal with the situation. Maj MacMullen recalled feeling that Lt Col Riddell-Webster was keen for things to transition from the war fighting to peacekeeping phase, but it all happened very quickly, with no training on how to handle civilians.³²

5.12 BG Orders Meetings were held at HQ 1 BW on a daily basis. There were about 20 – 30 people present at BG Orders Meetings: the most senior person was Lt Col Riddell-Webster, followed by his 2iC, Maj Nick Channer.³³ There would have been between four to six Coy Comdrs as well as Signals Officers, the Regimental Sergeant Major (‘RSM’) and the PI Comdrs. Lt Col Riddell-Webster would give his orders and would then receive a SITREP from the Coy Comdrs. Maj MacMullen described discussions at BG Orders Meetings between Coy Comdrs regarding how other Coys were dealing with looters. He had heard that 2 Coy and A Coy, which faced the Shatt Al-Arab river, had put looters into the river and made them swim back.³⁴ He did not think this served any practical purpose but was more a means of

²⁷ See map PCAM/1 at Appendix 15

²⁸ Ibid, paragraphs 2-5

²⁹ Ibid, paragraph 10

³⁰ Ibid, paragraphs 6-7

³¹ Ibid, paragraph 8

³² Ibid, paragraph 9

³³ Ibid, paragraph 11

³⁴ Ibid, paragraph 18

punishment.³⁵ He also recalled a practice of driving looters to another location and dropping them off.³⁶

5.13 Maj MacMullen held his Coy Orders ('O Gp Meetings') within the Coy each evening.³⁷ Those present at O Gp Meetings would have included Lt Daniel O'Connell (as No 1 PI Comd), Coy 2iC Niall Brennan and Coy Sgt Maj SO20.³⁸

5.14 Around the time that No 1 Coy 1 IG moved to the BW BG, looting was rife. Anything that had been part of the establishment was seen as fair game: incidents included ripping out air-conditioning units and windows from police stations, incubators from the maternity ward of a hospital and looting of banks. He described the lawlessness as like the Wild West.³⁹ Initially, soldiers arrested people suspected of being a PoW. Maj MacMullen had written an entry in his notebook, which said "*bag and tag*",⁴⁰ which he presumed referred to what he felt they were permitted to do with PoWs. After being captured, PoWs were bagged and cuffed, taken to camp to the RSM and then to the PoW cage in Um Qasar.⁴¹ He recalled a practice of driving looters to another location and dropping them off.⁴² His diary entry from 10th April 2003 records orders from Lt Col Riddell-Webster to "*stop looting, guard and control, and stop the stealing of cars*", but there were no specific directions on how to stop the looting.⁴³ One way in which some soldiers punished looters was by writing "*Ali Baba*" on their foreheads in permanent marker.⁴⁴ Maj MacMullen recalled being told at a BG Orders Meeting not to arrest looters anymore as there was nowhere for them to go.⁴⁵ He did not see FRAGO 091, which included the 'Commanders Guide to Looting'⁴⁶ dated 9th April 2003.⁴⁷

5.15 Maj MacMullen recalled a specific incident where he stopped and reprimanded a looter who was carrying a fridge on a donkey and cart, with crowds all around who were shouting at him to punish the looter. The situation was incredibly fraught.⁴⁸

5.16 Maj MacMullen would have expected Comds to report to Coy HQ with a verbal report regarding where they had encountered looters and what they had done with them,⁴⁹ but

³⁵ Ibid, paragraph 20

³⁶ Ibid, paragraph 18

³⁷ Ibid, paragraph 11

³⁸ Ibid, paragraph 29

³⁹ Ibid, paragraph 12

⁴⁰ Ibid, paragraph 17

⁴¹ Ibid, paragraph 17

⁴² Ibid, paragraph 18

⁴³ Ibid, paragraph 15

⁴⁴ Ibid, paragraph 13

⁴⁵ Ibid, paragraph 17

⁴⁶ MOD-08-0000324, page 11

⁴⁷ MacMullen MOD-83-0000338, paragraph 16

⁴⁸ Ibid, paragraph 13

⁴⁹ Ibid, paragraph 23

decisions in individual cases were left to Comds to deal with in their discretion, *“without crossing the decency threshold”*.⁵⁰ He was adamant that the idea of putting looters in water to get them wet was discussed in the forum of BG Orders Meetings, and at no point did Lt Col Riddell-Webster say that it had to stop. Maj MacMullen would have thought of throwing someone in the river as a pragmatic solution, *“as it didn’t on the face of it seem to be hurting anyone.”*⁵¹ However, he would not have recommended it to his own Coy, as their AOR did not have a river frontage, and he would have deemed the risk involved in driving to the canal at the other end of their AOR as unacceptable.⁵² He did not think he had personally seen anyone thrown or forced into rivers.⁵³ Maj MacMullen *“did not know that people were being put into muddy puddles by the Iraqi police.”*⁵⁴

5.17 On the night before No 1 Coy left Basra, Maj MacMullen recalled telling his Coy *“Don’t do anything. Just be there at points guarding”, “don’t move from your location”, “don’t go and do anything with the locals”*⁵⁵ as he did not want anybody to take any undue risks in the final 24 hours.

5.18 Maj MacMullen would *“categorically”* not have expected the Warrior to leave its position on guard duty at BGH.⁵⁶ If anyone had radioed through to ask what to do with looters on the 8th of May 2003, he would have expected the response to be to let them go, even if there were a crowd of baying Iraqis present. He did not think the looters would have been killed if they had been released into the crowd.⁵⁷ The thought of the Warrior going as far as Bridge 4 made him *“feel uncomfortable, especially as there had previously been heavy fighting in the area.”*⁵⁸

Niall Patrick Brennan⁵⁹

5.19 Capt Niall Brennan was the 2iC of No 1 Coy, 1 IG. He was responsible for the day-to-day running of the Coy including the establishment and running of the Coy Ops Room, which was located within the gymnasium complex.⁶⁰

5.20 Capt Brennan was employed within the Ops Room for up to 20 hours a day and would have been present in the Ops Room on most if not all days.⁶¹ There were never fewer than three

⁵⁰ Ibid, paragraph 24

⁵¹ Ibid, paragraph 38

⁵² Ibid, paragraph 25

⁵³ Ibid, paragraph 36

⁵⁴ Ibid, paragraph 28

⁵⁵ Ibid, paragraph 22

⁵⁶ Ibid, paragraph 33

⁵⁷ Ibid, paragraph 35

⁵⁸ Ibid, paragraph 37

⁵⁹ Brennan MOD-83-0000317-Z

⁶⁰ Ibid, paragraph 3

⁶¹ Ibid, paragraph 4

people employed in the Ops Room at any one time, but in total there could be up to 10 individuals conducting tasks such as booking out or preparing briefs.⁶² Ordinarily, the Watchkeeper and Signaller would be manning the BG and Coy nets respectively and were responsible for sending and receiving radio messages and maintaining entries within the Radio Operator's Logs.⁶³ However, due to the volume of radio traffic on both nets it was impossible to keep a contemporaneous record of all messages received, and it became acceptable practice to record only radio traffic considered 'critical'. This meant information relating to contacts on the ground would always be recorded, but traffic regarded as routine, such as CSs assuming duty or returning to locations, may not always have been recorded.⁶⁴

5.21 He remembered there being fighting at the university on the 3rd of April 2003, which he recalled as being the last day of combat Ops. On that day two soldiers were killed. The next day, the fighting had stopped and suddenly troops were acting as policemen in charge of a city, but with no idea what to do. They were completely unprepared.⁶⁵

5.22 Once No 1 Coy moved to peace enforcement the main concern was looters. There were around 200 men in control of the whole southern part of Basra.⁶⁶ In some situations two to three soldiers were attempting to control thousands of looters.⁶⁷ Civilians were stealing everything: he recalled stopping an old man who was stealing a lamppost from a motorway. Civilians would also turn up to watch the army fight against the Fedayeen.⁶⁸ Capt Brennan did not recall asking whether they were allowed to shoot looters, as it was obvious to him that they could not shoot someone just for stealing but, under the ROE, they were allowed to shoot somebody if they posed a threat (i.e. were holding a weapon). However, looters were generally not armed and would not have posed a threat.⁶⁹ If Capt Brennan had seen an individual with a weapon he would have felt that he could shoot.⁷⁰

5.23 During the peacekeeping phase there were regular attacks on the gym and a constant threat from shelling and mortaring. Only around 50 looters were ever brought back to the gym. Capt Brennan recalled on one occasion seeing a guardsman guarding around 10 looters who were in plasticuffs with sandbags on their heads. He immediately decided that they could not do that.⁷¹

⁶² Ibid, paragraph 5

⁶³ Ibid, paragraphs 7-8

⁶⁴ Ibid, paragraph 9

⁶⁵ Ibid, paragraph 13

⁶⁶ Ibid, paragraph 10

⁶⁷ Ibid, paragraph 15

⁶⁸ Ibid, paragraph 11

⁶⁹ Ibid, paragraph 13

⁷⁰ Ibid, paragraph 14

⁷¹ Ibid, paragraph 17

- 5.24** Capt Brennan was aware that one of the methods for dealing with looters was throwing them into one of the waterways. He recalled seeing soldiers from No 2 Coy, whose AOR included a body of water, throwing people off a pier. No 1 Coy's AOR did not include a body of water, but if water had been readily accessible then No 1 Coy would also routinely have used this method of punishment.⁷² Lt Col Riddell-Webster would have been aware of the practice, and Capt Brennan thought he recalled personally discussing it with Lt Col Riddell-Webster at a BG Orders Meeting.⁷³
- 5.25** The purpose in throwing looters into water was that if they had to walk home dripping wet then it would be shameful for them. Although it was potentially dangerous if people could not swim, Capt Brennan did not think they considered that someone might drown as a result. The presence of sharp objects in the water was a bigger danger. If it was clear that someone was in difficulty he would have expected a soldier to go in and help them.⁷⁴
- 5.26** SO15 was not required to ask for permission for everything he did. Whether or not the Warrior should leave the dismounts at BGH was a decision for him to take as the Veh Comd. Ordinarily, had SO15 radioed in and asked for permission to leave BGH then Capt Brennan would have given it. However, if he had been asked on 8th May 2003 then he would have refused permission because they were leaving the next day.⁷⁵ What concerned Capt Brennan about SO15 driving to Bridge 4 was that it was outside his AOR, but if SO15 had told Capt Brennan that he had done so, in circumstances in which Mr Ali hadn't drowned, then he would not have told SO15 not to do it again.⁷⁶

SO20⁷⁷

- 5.27** SO20 was Coy Sgt Maj ('CSM') of No 1 Coy, 1 IG.⁷⁸ His responsibilities as CSM included the security of the base (the gym), the administration of the base and its personnel, and the receipt and control of prisoners brought back to the gym by unit personnel.⁷⁹ He was mainly concerned with administration, including which Pls were on rest and which were on security at any given time. He would not have briefed CS Comds: this would have been done by the Coy Comd.⁸⁰

⁷² Ibid, paragraph 19

⁷³ Ibid, paragraph 22

⁷⁴ Ibid, paragraphs 27-28

⁷⁵ Ibid, paragraphs 24-25

⁷⁶ Ibid, paragraph 31

⁷⁷ SO20 MOD-83-0000330

⁷⁸ Ibid, paragraph 1

⁷⁹ Ibid, paragraph 3

⁸⁰ Ibid, paragraph 21

- 5.28** He described how looting was happening on a vast scale from shortly after No 1 Coy captured the College of Literature in Basra City on 6th or 7th April 2003.⁸¹ He recalled that Maj MacMullen had relayed an order from Divisional HQ that the looting had to stop, but there was no direction given as to how to achieve that. They were just told to arrest looters and to pass them up the chain of command to Bde HQ (which was in the Basra place) or to BG HQ.⁸²
- 5.29** SO20 did not recall seeing any legal instructions produced and filtering down to Comds. He did not recall giving specific orders to use "*minimum force*" on looters or being briefed about "*temporary detention*";⁸³ as appears in FRAGO 91.⁸⁴ He stated that, unlike his experiences in Northern Ireland and the Balkans, soldiers did not receive any training for peacekeeping in Basra. The situation was different to Northern Ireland, where the majority of looters were controlled by the police. SO20 did not recall there being any police in Basra at the relevant time.⁸⁵
- 5.30** SO20 recalled that at one stage around 20-30 looters were being brought into the gym each day, but there was insufficient space to deal with or to hold them all. He told soldiers that if people were not posing a threat they should let them go.⁸⁶ He recalled that at some point he became aware that looters were not being brought back to the gym but were being driven off and dumped somewhere else, but he did not know how far they were being taken.⁸⁷ Bridge 4 was not in No 1 Coy's AOR, but it was a location well known to the soldiers, including CS One-Two, as on the south side of the Bridge there was a bus depot, which No 1 Coy had occupied for four days to launch attacks into Basra.⁸⁸
- 5.31** Regarding the circumstances of the incident on 8th May 2003, SO20 stated that the patrol outside the BGH was a standing patrol and so, depending on its mission, the CS should not have left the location at all. It should not have moved from its position unless directed by the Ops room, and he would only have expected the Ops officer to give permission for standing patrol to leave the BGH if the CS had come under attack, there was a change of mission, or someone was taken ill. He would not have expected permission to have been given to leave BGH and drive that distance in order to deal with looters. However, he did not recall ever hearing that soldiers were taking looters to put them into water.⁸⁹

⁸¹ Ibid, paragraph 4

⁸² Ibid, paragraphs 8-10

⁸³ Ibid, paragraph 29

⁸⁴ MOD-08-0000324

⁸⁵ SO20 MOD-83-0000330, paragraph 31

⁸⁶ Ibid, paragraph 13

⁸⁷ Ibid, paragraph 27

⁸⁸ Ibid, paragraph 26

⁸⁹ Ibid, paragraph 24

5.32 SO20 stated that the driver of the Warrior is under total control of the Veh Comd, and does not make any decisions. There should be two people in the turret of the Warrior at all times: the gunner, who engages, and the Veh Comd. As well as questioning why the BGH was left unprotected, he questioned why there was only one person in the turret on 8th May 2003, as there would have been no one to operate the weapons systems in the event of an ambush.⁹⁰ He stated that even if a Veh Comd were allowed to make decisions such as to drive looters 8km away, he should have known that he had to inform the Ops room of that decision.⁹¹

Daniel Charles Morgan O'Connell⁹²

5.33 Lt Daniel O'Connell was No 1 PI Comd, No 1 Coy, 1 IG.⁹³ He explained that No 1 Coy was split into four PIs, each having 4 Warriors and in excess of 30 members.⁹⁴ The only other IG Coy within the BW BG was No 2 Coy, which was based in the old palace.⁹⁵

5.34 Lt O'Connell recalled the looting being at its worst when No 1 Coy first arrived in Basra.⁹⁶ There was not a plan for any of the tasks that the troops were asked to deal with, which included looting, rubbish clearance and the provision of water and electricity.⁹⁷ He described the streets of Basra as "*chaos*".⁹⁸

5.35 When land rovers went out on patrol they would encounter thousands of looters stealing things like metal and air con units. Troops would try to move looters off the premises that they were looting at the time, but this was futile as when the troops returned the looters would be back again.⁹⁹ If there had been more manpower on the ground it might have been possible to arrest looters and take them to a holding centre, but he did not know what could have been done with the looters once they had been taken there. He did not think the gym could have taken in any more looters, but he did not specifically recall SO20 instructing them not to bring looters into the gym anymore.¹⁰⁰

5.36 There were no coherent instructions from Bde about how to deal with looters.¹⁰¹ Lt O'Connell attended O Gp meetings each night. At O Gp meetings MacMullen would pass on the instructions he had received at BG Orders Meetings, and in turn Lt O'Connell and other

⁹⁰ Ibid, paragraph 33

⁹¹ Ibid, paragraph 34

⁹² O'Connell MOD-83-0000339

⁹³ Ibid, paragraph 1

⁹⁴ Ibid, paragraph 4

⁹⁵ Ibid, paragraph 24

⁹⁶ Ibid, paragraph 5

⁹⁷ Ibid, paragraph 7

⁹⁸ Ibid, paragraph 13

⁹⁹ Ibid, paragraph 5

¹⁰⁰ Ibid, paragraphs 10-11

¹⁰¹ Ibid, paragraph 20

PI Comds would pass the orders on to those under their command.¹⁰² He did not recall having seen FRAGO 091.¹⁰³ He would have expected a document like that to have been disseminated at O Gp meetings if it was distributed at all.¹⁰⁴

5.37 Lt O'Connell was aware that people were putting looters into water, although he could not recall when it was discussed or if this was at O Gp meetings. Most roads in Basra had an irrigation ditch next to them which was about 2m wide and full of disgusting water. The idea behind putting looters into the water was that they would have to go home and get changed, but there was also an element of humiliation. Lt O'Connell saw it as a common sense solution, akin to using water cannons on looters to deter them. However, he did not recall hearing anyone refer to seeing looters being thrown off piers or being thrown into a river. He never saw anyone being put into the Shatt Al-Basra canal.¹⁰⁵

5.38 The four Pls which made up No 1 Coy worked on a four-day shift change, consisting of a rest day, camp security (guarding the gymnasium), patrol tasks and static tasks (which was either at BGH, or at one other location). He would not have expected any of his Sect Comds to give him a detailed account of what they were doing, however he would not have expected the Warrior to have moved off from its position guarding BGH unless it was given a command to do so. The role of the Warrior was to stay and guard BGH, however Lt O'Connell would not necessarily have found out if it had moved.¹⁰⁶

5.39 If SO15 had asked Lt O'Connell over the radio what to do with a group of looters who had been caught, subjected to maltreatment by Iraqi police, pulled through a pool of water and then handcuffed and brought to BGH, he would have told SO15 to ensure they left the area. However, there were alternatives to taking looters away in the Warrior: either in a Landrover (of which there were a couple but not many), or by foot.¹⁰⁷ He was surprised that the Warrior had on this occasion been taken 8km from BGH to Bridge 4 as that was a "long way" from BGH. Lt O'Connell would not personally have wanted to go into the river at Bridge 4: it was a big river, which if you threw someone into, you would be "asking for trouble".¹⁰⁸

5.40 Lt O'Connell recalled Maj MacMullen giving an instruction at the O Gp meeting on the evening of 7th May 2003 to "keep everything tight", as the next day was the final day before

¹⁰² Ibid, paragraph 34

¹⁰³ MOD-08-0000324

¹⁰⁴ O'Connell MOD-83-0000339, paragraph 22

¹⁰⁵ Ibid, paragraphs 23-27

¹⁰⁶ Ibid, paragraphs 16-17

¹⁰⁷ Ibid, paragraph 19

¹⁰⁸ Ibid, paragraphs 30-31

pulling out. Lt O’Connell passed this on and he was aware that there was a message going round the troops that they were about to leave.¹⁰⁹

5.41 Two individuals from No 1 PI died, but they were from the Drums and Pipes units, and not from CS One-Two. Lt O’Connell did not think their deaths would have had a direct impact on the behaviour of SO15 or other members of CS One-Two.¹¹⁰

5.42 In Lt O’Connell’s view different troops could have been sent in after the combat phase as the transition to a peacekeeping role was tough and many of the soldiers had been affected by the fighting they had experienced.¹¹¹

SO21¹¹²

5.43 SO21 was No 2 PI Comd, No 1 Coy, 1 IG.¹¹³ There were about 164 men in the Coy. He described the “*huge scale*” of looting, which commenced within hours of moving into Basra, and which was primarily directed at state institutions such as universities and hospitals, or corporations such as banks, petrol stations, engineering and fabrication yards. Within the first 24 hours of entering Basra, No 1 Coy established static guards on three locations within their AOR to deter looters: BGH, the Rasheed Bank Seef 60 and a petrol station.¹¹⁴

5.44 There was an instruction from Bde level to deter looting, but no specific instructions on how to do so.¹¹⁵ They were instructed that arresting was not a general option for looting, but there was limited direction on the actions to take in place of arrest.¹¹⁶

5.45 Different PIs developed their own methods of delivering “*on-the-spot justice*”. SO21 described how his own policy was to take the loot off looters and to destroy their means of looting,¹¹⁷ for example by driving over a cart if it was being used for looting. If he had seen anyone walking around the streets with a weapon he would likely also have driven over the weapon.¹¹⁸ He was aware that No 3 PI had, on occasion, taken looters away from the scene of the looting in the back of a Warrior and dropped them off somewhere else on their patrol route so that they had a long walk home.¹¹⁹ He had heard of people using water as a deterrent and was aware that ‘wetting’ had occurred but he had not seen it himself or heard

¹⁰⁹ Ibid, paragraph 34

¹¹⁰ Ibid, paragraph 12

¹¹¹ Ibid, paragraph 33

¹¹² SO21 MOD-83-0000329

¹¹³ Ibid, paragraph 2

¹¹⁴ Ibid, paragraph 3

¹¹⁵ Ibid, paragraph 19

¹¹⁶ Ibid, paragraphs 5-6

¹¹⁷ Ibid, paragraph 13

¹¹⁸ Ibid, paragraph 5

¹¹⁹ Ibid, paragraph 12

of anyone being taken to the Shatt Al-Basra canal. He would have been surprised if that were a practice as it involved going all the way to the edge of the Coy's boundary, and would have presented a security risk.¹²⁰

- 5.46** SO21 stated that his PI were familiar with the ROE, and would have received legal instruction on the ROE prior to deployment. He would be surprised if they had not each been given cards to carry with the ROE on them, as this had certainly occurred on his tours in Kosovo and Northern Ireland.¹²¹ He recalled some discussions regarding changes to the ROE "*at some point*".¹²²
- 5.47** SO21 recalled that the term 'Ali Baba' was used to describe a thief, and one method of deterrence used was to write 'Ali Baba' on looters' foreheads with a marker pen. He recalled this practice being discouraged, but this may have been later, around 2007.¹²³ He also had a recollection of seeing people sandbagged. He did not remember any specific instances when his PI had sandbagged detainees, but accepted that they probably had done so, especially in circumstances where an interpreter was nervous of being recognised by a detainee or they were unsure of the security risk posed by a detainee.¹²⁴
- 5.48** SO21 recalled that some looters were detained and taken back to the gymnasium to be processed and then either sent up to HQ or released. That would have been for the more extreme cases, as there were so many looters that it was impractical to arrest people solely for looting.¹²⁵ If looters were arrested they would have been brought to the gym in the back of a Warrior and then handed on.¹²⁶ He did not recall whether there came a time that the gym was such an inadequate place to take detainees that they were taken direct elsewhere.¹²⁷
- 5.49** SO21 stated that the Warrior should only have left its static guard position at BGH if it was coming back to base, and only then if there was another Warrior on hand to relieve it. He stated that a Warrior had one section, which included six or seven dismounts, and there would have been a couple of vehicles on Quick Reaction Force ('QRF') back at the gym.¹²⁸

¹²⁰ Ibid, paragraphs 23-26

¹²¹ Ibid, paragraph 20

¹²² Ibid, paragraph 19

¹²³ Ibid, paragraph 28

¹²⁴ Ibid, paragraph 10

¹²⁵ Ibid, paragraphs 3 and 9

¹²⁶ Ibid, paragraph 9

¹²⁷ Ibid, paragraph 11

¹²⁸ Ibid, paragraph 29

SO19¹²⁹

- 5.50** Lance Corporal (LCpl) SO19 was the Section Commander ('Sect Comd') of CS One-Two, No 1 Pl, No 1 Coy, 1 IG. He was in charge of the dismount section, which consisted of Guardsmen SO27, SO18, SO24 and SO22.¹³⁰
- 5.51** SO19 recalled that looting was rife. Soldiers were required to go from war fighting to peacekeeping "*at the flick of a coin*",¹³¹ with very little, if any, training in peacekeeping. Although some of the men had been in Kosovo or Northern Ireland, most of the soldiers in Basra in 2003 were young men for whom this was their first experience of war.¹³² He did not remember being given any precise orders on how to deal with looters: in both the war fighting and peacekeeping phase the only thing they were told to do with people they captured was to send them up the chain of command. He did not recall being given any briefings on applicable legal principles such as LOAC.¹³³
- 5.52** Because SO19 was in charge of dismounts, it would have been him or possibly SO15 who would have made decisions regarding who to stop and search, as and when the situation arose. He did not think there was a standard protocol.¹³⁴
- 5.53** SO19 described how duties at BGH rotated between QRF, guarding BGH, and doing weapons, cleaning or washing. Sleep times were staggered; depending on which rotation they were on. SO19's section, which consisted of LCpl S026, and Gdsms SO22, SO24, SO18 and SO27, would always be required for QRF.¹³⁵ The purpose of dismounts being at BGH was to protect BGH by carrying out foot patrols in pairs around the perimeter wall. Whilst men were on patrol, others waited inside BGH.¹³⁶
- 5.54** SO19 described how he instructed the men on foot patrol to inform him on the radio if they encountered any difficulties such as looting. He recalled on one occasion going out to assist when looters had been encountered on the other side of the perimeter wall by the swamps. He described how they had gone out, detained the looters, brought them back through BGH and handed them over to SO15 to take to the chain of command. He stated that in that instance, SO15 would take the looters back to the gym or another designated area, and would have to leave the BGH site and travel a few miles in the Warrior. Although the Warrior was generally stationed at BGH, it was a regular occurrence for it to leave BGH, sometimes

¹²⁹ SO19 MOD-83-0000319

¹³⁰ Ibid, paragraph 2

¹³¹ Ibid, paragraphs 5-6

¹³² Ibid, paragraph 23

¹³³ Ibid, paragraph 11

¹³⁴ Ibid, paragraph 12

¹³⁵ Ibid, paragraph 3

¹³⁶ Ibid, paragraph 18

for hours, in order to take the looters back to the chain of command. At those times, the chain of command must have known that the dismounts who had been left at BGH were unprotected.¹³⁷

5.55 SO19 was present at daily Coy Orders meetings held by Maj MacMullen. He did not recall reporting anything to do with looters at those meetings, as it was *“too much of a routine occurrence”*.¹³⁸ He did not remember any message filtering down not to bring looters back to the gym because there was no room for them,¹³⁹ nor did he remember Maj MacMullen giving any particular briefing not to do anything with looters on the 8th of May 2003 because they were pulling out of Basra the next day.¹⁴⁰

5.56 SO19 recalled that on the 8th of May 2003, he was called out to the perimeter wall with one or two others in order to deal with looters. He did not now recall who went with him, but it could have been SO22 and SO24. He remembered there being three looters there, as well as Iraqi policemen, and a crowd that had gathered. The looters were fully clothed, but he did not know if they were wet or not. SO19 described how he and the men he was with took the looters back to BGH through a hole in the perimeter wall and handed them over to SO15 to take them in the Warrior back to the chain of command, as *“that was the routine.”* It was for SO15 to decide what to do with the looters. SO19 was aware that SO15 had taken the looters away in the Warrior with a couple of soldiers in the back, as the looters would not have been able to be in the back of the Warrior on their own. He sent one of his men, Gdsm SO18, to assist, and had no objection to doing so.¹⁴¹

5.57 SO19 did not remember being present in the restroom when SO18 returned or recall a conversation in which SO18 said that he had been down to Bridge 4.¹⁴²

5.58 SO19 reported that on odd occasions, looters had tried to jump into water in order to swim away and escape from being caught and detained. On one occasion he had to tell two people *“to come back out of the water,”* however he had not gone into the water himself.¹⁴³

¹³⁷ Ibid, paragraphs 19-20

¹³⁸ Ibid, paragraph 25

¹³⁹ Ibid, paragraph 32

¹⁴⁰ Ibid, paragraph 26

¹⁴¹ Ibid, paragraphs 27-31

¹⁴² Ibid, paragraph 33

¹⁴³ Ibid, paragraph 28

SECTION 6: FINDINGS AND CONCLUSIONS

- 6.1** Mr Ali, aged about 15 years, having being detained by members of the BF in Iraq for looting, and while still in their custody, drowned in the Shatt Al Basra canal on the 8th of May 2003. The circumstances in which he died should never have occurred.
- 6.2** The immediate circumstances which caused his death are clear: the soldiers, having detained him for looting, forced him to enter the canal and left him floundering. He should not have been detained and held in armed and confined custody in a Warrior, he should not have been transported in the Warrior to the canal, he should not have been forced to enter the canal, let alone left there to flounder and drown. The soldiers' actions give rise to grave concerns about their ability to cope with the responsibilities imposed upon them, as well as grave concerns about the adequacy of the resources available to the BF, and grave concerns about their training and the ability of the occupying force to take on the burden "*to act as both policemen and combatants simultaneously*"¹⁴⁴ (FRAGO 100). Basra had descended into a state of chaos. Iraqi police could provide no assistance, and no legal processes for dealing with looters existed or could be devised.
- 6.3** He was taken by four soldiers in a Warrior to the Shatt-Al Basra canal and was forced by the soldiers to enter the canal. He was one of four looters detained in the vicinity of the BGH, (initially by Iraqi police), who were then detained and taken on a journey of some 8 km to the canal.
- 6.4** His detention at the scene by the BF as a looter or suspected looter may have been lawful (see FRAGO 091¹⁴⁵), but his continued detention and removal from the BGH were outside the terms of FRAGO 091. He was aggressively manhandled and assaulted. He was forced to travel in the Warrior by armed soldiers and was cuffed and tied to another looter. His death ensued because he was forced by the soldiers to enter the canal, where, in the presence of the soldiers, he was seen to be in difficulty, and to go under the water. Notwithstanding the unlawful treatment involved in getting him into the water, his death could have been avoided because he could and should have been rescued after it became clear that he was floundering. The plain and certain cause of death of this young man was that after forcing him into the water, the soldiers' failed to go to his assistance when he floundered.
- 6.5** The Investigation has necessarily involved inquiries and evidence going beyond the immediate events that occurred at the edge of the canal. These inquiries have shed light on

¹⁴⁴ MOD-08-0000325, paragraph 13

¹⁴⁵ MOD-08-0000324

his initial detention and provide some insight into the reasons why the soldiers, having detained him, transported him to the canal. There is clear evidence that preparatory moves to rescue him were taken, but they stopped when the order to leave the scene was given and obeyed.

- 6.6** It is necessary to remember that the conduct of soldiers in the course of ground operations is governed by a military framework comprising orders and instructions drawn up by the military chain of command which are to be obeyed. According to FRAGO 079,¹⁴⁶ these soldiers were directed by the military chain of command to detain a looter for no longer than six hours and then only with a view to handing the looter over to the RMP.¹⁴⁷ They were certainly not instructed to force them into water. How then could this situation have arisen?
- 6.7** The soldiers were tried for manslaughter, namely causing death by a dangerous and unlawful act. They were all acquitted. The prosecution's case involved an allegation that the soldiers had acted together and were jointly participating in a dangerous enterprise, which was unlawful, which involved maltreatment of all four of the looters, who were all forced into the shallow water of the canal and then forced to go out into deeper water. The conduct relied upon included allegations that the soldiers had, by pointing their weapon at the looters, forced them into the water and had then thrown stones to deter them from getting out. The case for the prosecution depended solely on the evidence of one of the looters, Mr Hanoon. The board were advised by the judge: *"if you're not sure of his account at the canal site, at the Shatt al-Arab site, then the case against them must fail."*
- 6.8** I have not seen sufficient evidence to conclude that what occurred was the result of any prior agreement or arrangement between the soldiers. It is clear to me that the looters were placed in the Warrior and taken to the canal under the direction and command of SO15, the Veh Comd. That much he accepted. I have no doubt that the deceased and the three men were compelled to enter the water of the canal. Three of the soldiers accepted that the circumstances had given rise to compulsion. The evidence was compelling. The four men were being held as looters. They had been transported in a Warrior, cuffed together or in pairs, in the custody of fully armed soldiers, and then, the Warrior having stopped and while still in custody, they were taken from the Warrior, and were led and directed to the water's edge where they entered the shallow water up to their waists. I reject suggestions that the four men simply ended up in the water of the canal. None of them was given an option other than to go into the water. Having come out of the Warrior, they were not released from their cuffs so that they could go off as they wished. They had been compelled to get into the Warrior by fully armed soldiers. They must have been terrified. They probably had no

¹⁴⁶ MOD-83-0000323, paragraph 10

¹⁴⁷ FRAGO 079 paragraph 10

knowledge or understanding of what was going to happen. They are likely to have feared for their lives. None of the soldiers gave a satisfactory explanation for their actions in directing the looters into the canal. SO15 denied knowing that it was happening. The others did not suggest that there was an order from SO15 that they should be directed into the water. The effect of their evidence was that it just happened as though preordained or seen by the looters to be what was expected of them.

6.9 It is clear from the evidence I have received that it was not an uncommon practice for some soldiers, in their endeavours to control or reduce looting, to mete out “*on-the-spot justice*”¹⁴⁸ by, for example, transporting looters from where the looting occurred to a point where the looters were released and left to make their own way home. SO15 has resolutely maintained that the Warrior was taken to the canal for that purpose. I do not accept this explanation. SO15 ordered the Warrior to be driven to the canal because he intended to see that the looters were forced to enter the canal. I am satisfied he knew or heard that looters were being subjected to similar treatment by other soldiers. My reasons for this conclusion appear later. A firm conclusion about the state of knowledge of the other three soldiers about similar incidents has not been possible on the evidence. That said, the improbability that the looters’ entry into the water was a robotic process and that SO16, SO17 and SO18 were wholly unfamiliar with what was happening, leads me to draw a clear inference that the soldiers had a good idea why they had ended up at the canal.

6.10 The criminal prosecution of the soldiers required a sufficient degree of certainty in connection with a number of issues. First, that the use of the Warrior to remove looters, which involved its static guard position at the BGH, was an unauthorised procedure, and, by inference, that it was deliberately undertaken to enable the looters to be forced into deep water where they would be at risk of harm. Secondly, that immersing looters in water or ‘wetting’, so as to give rise to serious harm, was not authorised and was outside the range of any treatment considered acceptable and appropriate for looters. The defence case did not involve an assertion that immersing looters into the canal was authorised. It was denied that they had forced them into the water. Nor did they assert that they knew that other soldiers were doing so as a matter of practice, but there was some evidence given to the court martial that it might have been done by others. I have received sufficient evidence to enable me to conclude that some soldiers thought that soaking looters with water acted as a deterrent. I have also had evidence which suggests that it is likely a whole range of matters received fairly wide dissemination among groups of soldiers, and it is likely instances of ‘wetting’ would have been included in discussion.

¹⁴⁸ SO21 MOD-83-0000329, paragraph 13

6.11 I have concluded that once a Warrior was on static guard, it was not invariably seen as necessary for specific authorisation for its movement to be obtained. The overwhelming weight of the evidence points to the adoption of pragmatic flexibility in an attempt to reduce the extensive degree of chaos with only limited resources. Warrior movements were at the command of the Veh Comd's discretion with radio contact to "ops" as he chose to make them. The communication was likely to be discursive and the response informal. The Warrior moved off at the command of SO15, SO16 obeyed and he stopped when he was told to do so by SO15.

THE EXTENT OF THE LOOTING WHICH OCCURRED AFTER THE BF TOOK CONTROL OF BASRA

6.12 The war-fighting phase in Iraq was between the 19th of March and the 1st of May 2003. Mr Ali drowned on the 8th of May 2003. The soldiers who detained him were combat soldiers who had been involved in armed conflict throughout April. Fierce fighting on the BF's approach to Basra had taken place at Bridge 4 where he drowned.

6.13 The invasion and occupation of Basra led to the overthrow of both the civil and military sections of the regime of Saddam Hussein. Looting began within hours of the collapse of the Iraqi army. My findings, regarding the looting situation, announced as preliminary findings on the 18th of May 2016, appear in paragraph 5.1 above.

THE EXTENT TO WHICH THE SOLDIERS IN NO 1 COY WERE TRAINED OR WERE INFORMED ABOUT THEIR ROLE IN CONNECTION WITH LOOTING

6.14 The extent of the looting was beyond the capability of the BF to prevent or reduce. The limited availability of resources, combined with a lack of detailed preparation for looting, meant that legal guidelines were issued in connection with looters which lacked specific guidance on the conduct to be adopted and the process to be applied to looters. They outlined a process of short detention leading to looters being handed over to the RMP or up to the higher chain of command. The instructions were totally unrealistic and impractical having regard to the scale of the problem.

6.15 The soldiers of No 1 Coy were required to act so as to prevent looting,¹⁴⁹ as best they could, with the use of minimum force. There seems little doubt that detention with the use of minimum force could usually be achieved, but normally procedures of arrest and detention are directed to some end, commonly entry or progress into another lawful process, where

¹⁴⁹ See Annex B to FRAGO 091 (MOD-83-0000324)

any criminal conduct can be met by appropriate punishment. In May 2003, in Basra, no official process for dealing with criminals was available. It is not difficult to see how the means which were adopted to prevent looting, which arose out of the discretion left to individual soldiers, took on the character of meting out *“on-the-spot justice.”*¹⁵⁰ It is also clear that the level of punishment could differ according to the temperament and inclination of the soldier in command. Significant differences in the response to humanitarian challenges are likely to appear where matters are left to individual discretion. There will be those, perhaps the majority, who can be trusted to resist taking an excessive or vindictive response to intractable criminal conduct. There will be others who are so affected by tension and stress that they will depart from appropriate levels of humanitarian response. There was a range of different responses to dealing with looters, who presented a threat to good order and security, as well as placing the BF’s own security and order in the balance. According to the evidence I have received, some members of the BF took the view that they would do nothing, some that to do nothing was not an option, some considered that deterrence, which carried an element of punishment, such as leaving them out of town was appropriate, others that short term detention could be used, others that depriving them of the loot was appropriate, others that some form of inconvenience and possible humiliation by making them wet was appropriate, others that immersion in water was an effective deterrent. These choices were the inevitable product of matters being left to a high degree of unfettered discretion. As far as looters were concerned, what happened was down to chance. I have said enough to set the scene for the actions of the four soldiers and others to be examined.

THE FOUR SOLDIERS

- 6.16** The evidence points to the principal approved use of the Warrior being its deployment as a vehicle carrier for soldiers on patrol, and, where static security was in place, its use to deter by its presence. It operated with its dedicated driver, gunner and Comd. When dismounts were in the Warrior, they were under the command of the Veh Comd, but when dismounted and on patrol they were under the command of the PI Comd, and the Warrior was normally to be within distance to provide them with cover. But there is evidence showing that, even when on static duty, it moved away from being able to give close protection to dismounts on patrol.
- 6.17** On the 8th of May 2003, after Iraqi police had forced the four looters into a stagnant pond, they were taken by dismounts, including SO17 and SO19, to the stationary Warrior outside the front entrance of BGH. SO15, the Veh Comd, was with the Warrior in company with SO16, the driver and SO17, the gunner. There were other dismounts there.

¹⁵⁰ SO21 MOD-83-0000329, paragraph 13

6.18 Two of the four looters have never been identified and no line of inquiry has enabled them to be identified. The only looter who has been able to give evidence is Mr Hanoon, and I obtained a statement from him, with the assistance of QC Law. It is on the website. He gave evidence at the court martial, and his reliability was brought into question. I have stated my conclusions on the proper approach to his evidence.

THE REASON FOR THE JOURNEY FROM BGH TO THE CANAL

6.19 I see the force of the contention that in departing from BGH, leaving dismounts unprotected, SO15 acted so as to create a risk, but even so it does not add much to a consideration of the circumstances which caused the deceased to drown. There is evidence that from time to time a Warrior was moved while on static duty at BGH. SO19 was at BGH on the 8th of May, and he knew the Warrior had left.¹⁵¹ It is likely to have happened on occasions for the purpose of taking looters to be processed back at base (in the short period that occurred), or later for looters to be taken away from the looting site. As much was admitted in the evidence of SO19.¹⁵² That said, the journey of 8km to Bridge 4 was probably exceptional. At court martial, much was made of the absence of permission for such a movement, the lack of communication with operations by radio and if communication was made, the absence of any record. SO15 and SO16 both maintained that a radio link message about the detention of the looters was made before departure. For my purposes detailed investigation by me on these matters appeared unnecessary. There was evidence that not every communication was logged. More than that, on the 8th of May the base was locking up, to be ready to leave the next day. Again, these factors add little to my investigation of the death. I take them as illustrating a general lack of strict control being maintained over the activities of those on patrol, and the fragility and the chaos of the conditions, which made strict standards of communication and control difficult to maintain.

6.20 I have not seen evidence that leads me to conclude that any meaningful discussion took place, before the Warrior moved off from BGH, about where the looters were being taken. As SO15 has confirmed, he knew from the outset that he was going to travel to Bridge 4 and the canal.

6.21 I reject the suggestion made by SO18 and, to a lesser extent, SO15, that a pressing need arose to take the looters from the scene because they were in danger of being attacked by Iraqis. I doubt that the hostility would have extended to death or really serious injury as SO18 suggested. To conclude otherwise would be to deny that the Warrior and armed soldiers were capable of controlling the situation. I am prepared to accept that looters could be

¹⁵¹ SO19 MOD-83-0000319-Z, paragraph 31

¹⁵² Ibid, paragraph 20

subject to attack from fellow Iraqis, but not to the extent that once the looters were in the protection of soldiers and faced a Warrior, Iraqis would put themselves at risk of an armed response from the soldiers.

6.22 SO18 was, as I shall explain later, an unsatisfactory witness. On this topic he exaggerated and suggested that in the course of the looters being brought back from the stagnant pool:

“..what we thought was: let’s get them back through the BGH and away from them, because there possibly... there wouldn’t have just been one fatal, there would have been four, because they would have just all been bricked to death... because there was loads of people gathering.”¹⁵³

This ability to have a vivid recollection of an early stage of events departed him when he gave evidence about events at the canal.

6.23 The looters were taken to the canal because SO15, the Veh Comd, decided that they should be punished for looting. They had already been forced into stagnant water in the pond, but it is likely that, with his knowledge of the area at Bridge 4, he thought that in addition to removing them from where they had been looting, there would be an opportunity for them to be forced into water and then left to go home.

THE EVIDENCE OF SO15, SO16, SO17 and SO18

6.24 I accept that SO15’s decision to move the Warrior from its static location at BGH was not an unusual action on his part. The overall effect of the evidence from all the witnesses presents a picture of confusion, which appears to stem from differences between expectations on the part of some officers in the chain of command. Some believed that the manner in which operations were being performed was, broadly, following the exercise of restrained sound discretionary judgment, but others were aware or believed that the discretion conferred on Comds had, under the pressures of the situation, generated the adoption of a variety of unusual and unregulated measures which, had more consideration been given to the detail of them, it is likely some would have been expressly forbidden.

6.25 SO15 was an experienced soldier. He was accustomed to taking important operational decisions. He was expected to do so, but he had no experience or training in making policing decisions. I am satisfied from all of the evidence that he was not inclined to give much explanation to or enter into any discussion with his crew, and that he expected his orders to be obeyed without question or delay. Some of his crew were young and relatively

¹⁵³ IFI SO18 18/05/16, page 50, lines 18-24

inexperienced (SO16 was aged 18, SO17 aged 19 and SO18 aged 21). In contrast, SO15 was aged 32 and had been in the army for 15 years.

- 6.26** I accept SO15's evidence that it was not unusual for the Warrior to leave the dismounts at BGH, in order for the Warrior to attend to "*specific tasking*".¹⁵⁴ By the 8th of May 2003, as he records, it is likely the security operations were "*generally more relaxed than during the fighting phase.*"¹⁵⁵ SO19, who was aware that the Warrior left BGH on the 8th of May 2003, also stated that it was not unusual for it to do so.¹⁵⁶
- 6.27** I am prepared to accept that SO15 made some contact with the operations room, but in doing so, he was giving information rather than seeking authorisation. The record keeping for tasking movements of vehicles had for some time been largely abandoned because of the unmanageable number of communications.
- 6.28** Both SO15 and SO18 have consistently attempted to suggest that the looters were at such risk of injury from fellow Iraqis that removing them from BGH was essential for their safety. The suggestion is not borne out by other evidence, and for the reasons I have already given at paragraph 7.21, I am unable to accept it. The looters could have been safely confined in the Warrior for their own protection and not moved. The question that arises is: why were they moved?
- 6.29** I found SO15's evidence to me on this issue wholly unconvincing. Had he wanted simply to take them away from BGH he could have travelled for less than 8km. His witness statement¹⁵⁷ suggests that his counsel's response at the trial addressed this point. Counsel said no more than: "*on that particular occasion that is the way the vehicle was driven.*"¹⁵⁸
- 6.30** SO15 chose to travel to Bridge 4, and he had been there a number of times.¹⁵⁹ He agreed he could have left the looters on the bridge,¹⁶⁰ but did not do so. In answer to the question: "*why did you decide to dump them under the bridge and within a few meters of the water?*" He replied: "*Because there was a slip road there that took us off the road!*"¹⁶¹ He then agreed that he had no need to use a slip road.¹⁶²

¹⁵⁴ SO15 MOD-83-0000315, paragraph 37

¹⁵⁵ Ibid, paragraph 39

¹⁵⁶ SO19 MOD-83-0000319, paragraph 20

¹⁵⁷ SO15 MOD-83-0000315

¹⁵⁸ Ibid, paragraph 57

¹⁵⁹ Ibid, paragraphs 55 and 56, IFI SO15 18/05/16, page 64

¹⁶⁰ IFI SO15 18/05/16, page 68

¹⁶¹ Ibid, page 68, line 21-24

¹⁶² Ibid, page 68 line 19- page 69, line 2

- 6.31** I have reached the clear conclusion that SO15 took the looters to Bridge 4 so that they could be forced into the canal and given a soaking. The evidence points to SO15 having no clear idea about the method which was to be employed to give them a soaking.
- 6.32** His evidence to me on whether he gave instructions to his crew when they arrived was unimpressive. First he said: *"I gave them no instructions."*¹⁶³ Next that he ordered the crew to open the back door *"so the dismounts can get out with the looters"*.¹⁶⁴ He could not explain why it was necessary for the dismounts to get out of the Warrior with the looters.¹⁶⁵ He maintained that he gave no orders to the dismounts and simply *"turned the vehicle around."*¹⁶⁶ This was a contrived excuse, which enabled him to say that having done so, the looters were already in the water. Thus, on his account the looters could be seen in the water, without orders from him, without direction from him and without any participation by him.
- 6.33** I accept that SO17 did not know the destination to which the Warrior was driven, but he knew Bridge 4. His evidence about why and how the looters went into the water was vague. I accept that the event did not take more than a few minutes, but his explanation that it all happened when he went to the Warrior to look for something to cut the cuffs failed to satisfy me. That said, SO17 gave a clear account of what happened to the looters while they were in the water, and importantly he spoke of SO16 beginning to take off his combat shirt to go into the water to rescue Mr Ali, who had bobbed up and down *"a couple of times"*.¹⁶⁷ Mr Hanoon recollected a soldier starting to take off his clothes. SO16 had an imperfect recollection of his own actions, but confirmed that he certainly had given thought to the need to rescue Mr Ali.
- 6.34** I accept that the whole episode lasted for about a few minutes. It was a clumsy, ill directed and bullying piece of conduct, engaged in without consideration of the risk of harm to which it could give rise and, in the event which occurred, there was a manifest failure to take action to save the life of Mr Ali.
- 6.35** SO16 and SO17 acknowledged to me that wrong had been done. Both stated that they left because SO15 had ordered them to do so. SO16, when asked why he had left, stated: *"By*

¹⁶³ Ibid, page 70, line 4

¹⁶⁴ Ibid, page 71, line 6

¹⁶⁵ Ibid, page 71, lines 7-18

¹⁶⁶ Ibid, page 71, line 23

¹⁶⁷ Ibid, page 42, line 6

command that's given. We don't operate independently it's not how it works."¹⁶⁸ SO17 stated: *"I did not go into the river to help... because I was not told to do so."*¹⁶⁹

6.36 SO18 was a less than straightforward witness. He attempted to lay the ground for the journey being a form of mercy mission to avoid four looters *"being bricked to death."*¹⁷⁰ He was prepared to suggest that SO15 may not have been at the canal side: *"I don't remember SO15 being at the side, to be honest, but... possibly could have been four of us at the side."*¹⁷¹ He recollected a signal, possibly a signal to *"mount up"*¹⁷² and added: *"So for all I know, something was happening back at the BGH, through radio comms."*¹⁷³ The common feature of the points is that they echoed SO15's evidence. He gave an unconvincing account of how the looters came to enter the water: his suggestion was that they probably felt in fear of their lives and thought entering the water was their best option.

6.37 He recalled two or three of them swimming off, but as for Mr Ali he described a person waist high in water and obviously in fear for his life when he (SO18) *"turned around"* and saw the signal to mount up.¹⁷⁴ He had to be pressed to disclose more. Under pressure he *"vaguely"* remembered SO16 taking his top off, remembered Mr Ali, not bobbing up and down, but looking panicked, and possibly going under the water. After this he saw the signal to mount up and he left.¹⁷⁵ Eventually, like SO16 and SO17, when pressed about leaving he replied:

"I think it was wrong what happened to the lad, yes. But no, I don't think that I was wrong that I left, no. I was just obeying -- I was just doing an order, like I'm taught and trained to do."¹⁷⁶ I am not going to then turn round and say.... "No, I'll tell you what, I'm not mounting up"¹⁷⁷ ... if I get an order, I'll do it."¹⁷⁸

6.38 My conclusions can be summarised as follows:

1. SO15 took command of the crew and left BGH intending to take the looters to the canal at Bridge 4 where they could be soaked in water.
2. It is more likely than not that SO16, SO17 and SO18 had no idea where the journey was to end.

¹⁶⁸ IFI SO16 18/05/16, page 28 line 25- page 29, line 1

¹⁶⁹ SO17 MOD-83-0000318, paragraph 38, IFI SO17 18/05/16 page 44, lines 19-20

¹⁷⁰ IFI SO18 18/05/16 page 50, line 22

¹⁷¹ Ibid, page 56, lines 19-22

¹⁷² Ibid, page 58, lines 20-23

¹⁷³ Ibid, page 58, lines 23-24

¹⁷⁴ Ibid, page 58, lines 11-21

¹⁷⁵ Ibid, page 59, line 23 to page 60, line 23

¹⁷⁶ Ibid, page 61, lines 9-12

¹⁷⁷ Ibid, page 60, lines 15-17

¹⁷⁸ Ibid, page 61, lines 9-22

3. I am unable to conclude whether, apart from knowing that they were engaged in dealing with looters who had to be dealt with in some way or another, the crew knew what was planned for the looters. I have little doubt that they knew the looters were terrified for their lives and in all probability they had contributed to that fear by aggressive manhandling and coercive pushing and assaults. I doubt that they thought much about it, but firm aggressive handling of looters, who were seen as and treated as criminals, was probably not unusual.
4. I am able to conclude, by inference from the evidence about the various ways in which the BF were dealing with looting, that whether or not the crew had been involved before in soaking looters in water, it was appreciated by the crew and the soldiers, once the Warrior had arrived at the canal, that the looters were to be soaked. I doubt that they had any clear plan as to how that was to be achieved.
5. The treatment or punishment by soaking involved no technique and was haphazardly executed, exemplified by two looters swimming off, the third, Mr Hanoon, remaining in waist high water and probably immersing himself and Mr Ali, being a non-swimmer, panicking, probably losing his balance, floundering and going under.
6. The order to mount up which was promptly obeyed was probably issued out of panic at what had happened, but nonetheless it involved a manifest disregard for the risk to Mr Ali's life.

SECTION 7: PART II

Section 1 – Introduction

- 7.1** I have found the facts and circumstances surrounding Mr. Ali's death and, as a result, I have completed my investigation under paragraph 3 of my Terms of Reference.
- 7.2** Paragraph 4 of the Terms of Reference requires an investigation to be made into the wider circumstances of the death, including the instructions, training, and supervision given to the soldiers involved. I have reached conclusions on this aspect of paragraph 4 (see in particular paragraph 7.14 and paragraph 7.15 of Part 1 above). Shortly stated my conclusion is that soldiers were not trained in policing methods to enable them to deal with looters and were not informed, except in the most general terms, what they were meant to do with looters. No ROE dealing with looting were drawn up. However, the evidence points to the existence of other wider circumstances. There are reasons to believe that the drowning of Mr Ali could have occurred and had its origin in a wider context of events, namely instances of other looters being soaked in water by soldiers in attempts to punish and thereby deter them from looting.
- 7.3** If other instances did occur prior to 8th May 2003 they would give rise to issues as to the extent of the knowledge of such instances within the chain of military command in Iraq and questions about the adequacy of their response to the instances, including the tenor of their communications with London. Such considerations, in turn, engage paragraph 5 of my Terms of Reference, in particular "...bring[ing] to light all the facts, including failures on the part of the state and facts from which such failures could be properly inferred."
- 7.4** Paragraph 5 is already engaged by my conclusion that the soldiers were not trained in policing methods, had no adequate instructions, no ROE nor any adequate instructions to guide them in dealing with looters.
- 7.5** My anticipation that I was likely to reach this position led to my announcement that the Investigation would be divided into two parts and to a realisation on my part that there was a need to review the process of publishing statements on the website in advance of publishing my findings in the report. The need was underlined by an approach made to a witness to answer questions about his statement.
- 7.6** It will be readily seen from what I have outlined above that there is no dichotomy between paragraphs 3, 4, 5 and 6 of the Terms of Reference. They are progressive in character, are capable of overlapping and can be seen to complement each other. Such considerations caused me to become concerned about what I called "*piecemeal publication*" of evidence.

- 7.7** I am satisfied that the position has changed. Having reached my conclusions on issues now forming Part 1 I have concluded, that on balance, it is in the interests of public accessibility that I should publish all the statements of witnesses on the website notwithstanding that some of the content of some of the statements is clearly relevant to Part 2 issues. The countervailing consideration in this balancing exercise has been the need to protect witnesses from harassment and to safeguard the integrity of the Investigation. I am confident that both can be achieved by understanding and cooperation.
- 7.8** There is a continuing need for the witnesses and the investigation of Part 2 issues to be safeguarded. My previous guidance is on the website. Witnesses who have made statements should not be approached and asked questions, nor should witnesses who are mentioned be approached to answer questions. Witnesses who believe they can provide evidence should approach the IFI. Lines of inquiry and questions for the Investigation should be provided to the IFI.

The Chilcot Report

- 7.9** The direction in which Part 2 should travel has been significantly assisted by the publication of the Chilcot Report.¹⁷⁹ The conclusions on the post-conflict period are contained in section 9.8 (Volume 8 page 469 onwards). On page 473, under the heading “Looting in Basra”, the following appears:

“15. Before the invasion, the Joint Intelligence Committee (JIC) and the Defence Intelligence Staff had each identified that there was a risk of lawlessness breaking out in Iraq, and that it would be important to deal with it swiftly. Others, including Mr Blair, Sir Kevin Tebbit (the MOD Permanent Under Secretary) and the Iraq Policy Unit had recognised the seriousness of that risk.

16. However, the formal authorisation for action in Iraq issued by Admiral Sir Michael Boyce, Chief of the Defence Staff, on 18 March contained no instruction on how to establish a safe and secure environment if lawlessness broke out as anticipated. Although it was known that Phase IV (the military term for post-conflict operations) would begin quickly, no Rules of Engagement for that phase, including for dealing with lawlessness, were created and promulgated before UK troops entered the country.

¹⁷⁹ The Report of the Iraq Inquiry, HC 264

17. Both before and during the invasion Lieutenant General John Reith, the Chief of Joint Operations, made the absence of instructions to UK forces covering what to do if faced with lawless behaviour by the Iraqi population in Basra explicit to the Chiefs of Staff.

18. Faced with widespread looting after the invasion, and without instructions, UK commanders had to make their own judgements about what to do. Brigadier Graham Binns, commanding 7 Armoured Brigade which had taken Basra City, told the Inquiry that he had concluded that “the best way to stop looting was just to get to a point where there was nothing left to loot.”

19. Although the implementation of tactical plans to deal with lawlessness was properly the responsibility of in-theatre commanders, it was the responsibility of the Chief of the Defence Staff and the Chief of Joint Operations to ensure that appropriate Rules of Engagement were set, and preparations made, to equip commanders on the ground to deal with it effectively. They should have ensured that those steps were taken.”

7.10 It is not presently clear to what extent details of the state of affairs up to the 8th of May 2003 were communicated to London. This in turn raises questions about the extent of the knowledge of the chain of military command in Iraq as to what was happening on the ground.

The Timeline for Part 2

7.11 The future course of Part 2 will involve evidential investigations along the lines set out above. The relevance of other instances of looters being soaked in water will need to be considered and the time at which those considerations can take place will be dependent upon decisions being made in connection with those other instances.

7.12 I will give regular updates on the progress of Part 2 on the website.

Appendix 1: Summary of Statements/Interviews made in the Course of the RMP Investigation

SO17

1. SO17 was a member of the Warrior crew of CS One-Two. He was initially interviewed as a witness and made two witness statements, the first dated 11th February 2014 and the second, 19th April 2014.
2. In his first statement, SO17 confirmed he was the gunner of CS One-Two, and that between March 2003 and May 2003 he was deployed on Op TELIC, with No 1 Coy 1 IG.
3. He was unable to recall the precise movements of his CS on the 8th of May 2003. He said that during their last days in Basra he had not been involved in, or made aware of any incidents involving local civilians looting or the detention of looters by members of the British Army. He said that to the best of his knowledge no civilians were ever detained in his CS Warrior, and he was not aware of any incidents where any local civilians were forced into the water in the area of Bridge 4.
4. In his second statement, SO17 said he was now able to recall that four Iraqi looters were carried in his CS Warrior on 8th May 2003. He had been on duty at BGH, and was in the rest room when a radio message was received requiring him return to the CS's Warrior. The Warrior was parked near the main front gate to BGH. He said he saw a group of Iraqi men standing in the area at the rear of the Warrior along with SO18 and another Gdsm. He was told to get in the Warrior by SO15.
5. Once he was inside the Warrior, he put his crew headset on and spoke to SO16. He was seated in the gunner's seat, and SO15 positioned himself in the Comd's seat. They left BGH. He did not know whether there were any people in the rear of the Warrior. He did not know where they were going or what the purpose of the journey was.
6. They travelled for about 10 to 15 minutes before the Warrior stopped. He did not know where they were since he did not look out of the turret. He said they stopped for a "*brief moment*" before turning around, and setting off again. He and SO15 remained in the Warrior throughout.
7. When they arrived back at BGH, and on parking up, he said he saw SO18 and another Gdsm walking away from the Warrior. No one else was with them.
8. Later that same night he spoke with SO18. He told him that he had been in the Warrior during the journey and had been involved in escorting Iraqi looters in the rear of the Warrior

who had been dropped off at Bridge 4. He did not give details about what happened, or say anything about the Iraqi men being in the water.

9. SO17 said SO15 spoke to him when they returned to Münster, Germany. SIB had interviewed SO15 about that day. He told SO17 not to say anything about that day or what he knew about it.
10. Following his arrest, SO17 was interviewed under caution on the 14th of May 2004 and the 29th of September 2004. He responded with a “*no comment*” to all questions about his training, deployment on Op TELIC and the incident on the 8th of May 2003.

SO15

11. SO15 made a witness statement dated the 31st March 2004. Following his arrest, he was interviewed under caution on the 14th of May 2004, and again on the 29th of September 2004. At the second interview, SO15 did not add anything significant to his account and all references below are to his statement dated the 31st of March 2004 and interview on the 14th of May 2004.
12. In his statement, SO15 confirmed that he was the Comd of CS One-Two within 1 PI of No 1 Coy, 1 IG, and that he was deployed on Op TELIC between approximately the 28th of February 2003 and the 9th of May 2003. He said that for the final couple of weeks of their tour, No 1 Coy had been based in a gymnasium in Basra engaging in a four-shift cycle of duties including rest, static guard at BGH, mobile patrols and internal security.
13. He explained that following the war-fighting role; one of the main objectives was to maintain security at key installations such as BGH. The largest threat to security came from looters and criminal gangs. In the final weeks of the tour he said that his CS must have been involved in detaining, on average, up to 20 looters every day. When looters were apprehended it was routine to report events on the Coy net and seek guidance on their disposal. He recalled that generally looters would be driven from the scene of arrest and dropped off at various sites on the outskirts of the city. This, he commented, was a short-term solution in the absence of any formal policy or system for looter handling.
14. At interview he gave a more detailed account of how looters were dealt with. He said that they were initially instructed to bring looters into the camps, but after a week it got to a stage where they would take looters to the Coy camp, the looters would be taken to BW, but BW would turn them away. They then started taking looters to the edge of the city, or any area where there was a long walk back, and dropping them off there. They would sometimes be expressly instructed to do this by the Coy Ops room, and other times the Ops room would simply authorise it.

15. SO15 said he had never dropped off looters at Bridge 4 before 8th May 2003. He said it was usually left up to the Veh Comd where to drop off the looters.
16. SO15 confirmed in his statement that on the 8th of May 2003 his CS was on static guard at BGH. He explained that although known as 'static guard', this did not mean that the Warrior deployed at BGH had to remain there. He said he would regularly respond from BGH and attend security incidents in the surrounding area and similar sites. He gave examples. Notably, all these examples involved attending sites "*within close proximity*". He said it was fairly common for the Warrior to be away from BGH for anything up to an hour.
17. He said that on occasions when his CS was deployed to BGH, he, along with SO17 and S016, would remain with the Warrior and took it in turns to maintain security at the BGH entrance. SO19, SO26 and the four dismounts would base themselves in a small room within BGH. At SO19's discretion, four-man foot patrols would maintain security around the site.
18. On the 8th of May 2003, he recalled that CS One-Two assumed position at BGH shortly after breakfast. At some point in the morning, SO19 arrived at the rear of the Warrior with 3-5 looters. They were dressed only in underpants and were wet. At the time, he said he concluded from their overall appearance that they had clearly suffered a rough time physically. He said that a number of Iraqi policemen, holding truncheons, were present, and he remembered one of the looters being jabbed with a truncheon. A "*baying crowd*" of around 20-30 had gathered in the vicinity, showing signs of hostility towards the detainees. He recalled the looters were being "*man-handled*" and held physically by the dismount section personnel, but he did not see them being assaulted by them. In his statement he said he could not remember which dismounts were present.
19. Within minutes of the looters arriving, SO15 said he took the decision to have the looters placed inside the Warrior, as he was concerned about the hostile nature of the crowd, and also the conduct of the Iraqi police. He instructed his crew to prepare to move so that they could extract the looters from BGH and drop them off on the outskirts of town. Having assumed position in the Comd's turret, he did not see which dismounts got into the rear of the Warrior.
20. As they departed, he said he distinctly recalled reporting to the Ops room on the Coy net his intention to leave BGH for Bridge 4, where he intended to leave the looters to walk back to Basra. The journey, he said, was authorised by some at the Ops room, but he could not remember whom. He maintained that had the journey not been authorised, he would not have gone.
21. Upon approaching Bridge 4, S016 pulled off the main carriageway just before Bridge 4 and drove down towards the river. Once the Warrior stopped, and the rear doors opened, he saw SO18 alight the rear of the Warrior with the looters. When they were clear of the Warrior,

- SO15 said he focused his attention on supervising the turning of the Warrior in preparation for departure.
22. SO15 gave slightly differing accounts in his statement and at interview about what happened next.
 23. In his statement, he said that he recalled briefly looking over towards the river bank during the turning process and seeing SO18 and another close to the river bank and at least two of the looters in the water at the edge of the river with water at waist height. One other looter was on the riverbank. Once the Warrior was turned, he said he alighted and walked over towards SO18, shouting words to the effect *"come on"*. He was sure he saw looters in the water, but did not recall seeing anyone struggling in the water.
 24. At interview, SO15 said by the time they had turned the Warrior around, SO18 and another were at the water's edge, with the looters in the water and one at the riverbank. He saw SO18 and another laughing at the looters in the water. He said he did not see them do anything else, but he was, it seems, under the impression that the looters were being made to go into the river. He made clear that he did not see them being forced in, or anything being thrown at them, and he did not see anybody in any difficulty in the water. He alighted the Warrior, walked down 5-10m and said words to the effect *"come on, that's it, enough's enough, we're going, let's go."* He saw that the looter that had been on the bank was making his way into the water.
 25. As far as he could remember, SO16 and SO17 did not get out of the Warrior. He returned to the Warrior and they left.
 26. In his statement, SO15 made clear that at no point did he sanction or instruct any personnel to force or otherwise make the detainees enter the river. This was never his intention. The sole purpose was to leave the looters to make their own way back to Basra under their own steam, which would take time and thereby disrupt their looting activities. Moreover, he did not see any of his CS physically assault the looters, nor did he see soldiers throw stones at the looters or point their weapons at them in a bid to force them into the river. He did not speak to SO18 about the events afterwards.

SO18

27. SO18 was interviewed on the 27th of April 2004 and the 20th of September 2004.
28. He accepted he had been involved in the capture of the looters (including Mr Ali) on the 8th of May 2003, and in escorting the looters back to BGH where his CS was on duty. He was also in the back of the Warrior with the looters when they were taken to Bridge 4.

29. As to the capture of the looters, he said he had been in the rest room at BGH, when an Iraqi police officer came and alerted them to looters on waste ground just outside the confines of BGH. The entire dismount section went to assist.
30. Four looters were caught. He said one of the looters was dark skinned and had distinctive hair (he described it as an *"afro"*). At the second interview SO18 was shown a photograph of Mr Ali and confirmed that the boy in the photograph was the looter he had described as having an *"afro"*.
31. It was the Iraqi police that caught the looters and members of the dismount section only provided cover. They did however help escort the looters back to BGH, and had personally escorted Mr Ali. He maintained that they did not do anything to physically hurt the looters.
32. On the way to BGH, he described how the looters were made to go into a shallow murky pool of water. They removed their clothes before they went in but SO18 could not say whether this was on the instruction of the Iraqi police. He said that a crowd of people had gathered, and were showing hostility towards the looters and throwing objects at them. He told them to stop fearing that the situation might escalate, and to show some authority.
33. After the men came out of the pool of water, they escorted them back to BGH. He said there was already a crowd of people in the vicinity of the Warrior when they arrived at BGH. He said SO15 told them to put the looters into the back of the Warrior and that SO17 and himself got into the back of the Warrior with them. SO15 was in the Comd's seat but there was no-one in the gunner's seat.
34. SO18 said he had no idea where they were going. He said he knew it was something out of the ordinary when they had been driving for 10 minutes. He gathered they were dropping them off somewhere and making them walk back.
35. He said that during the journey one of the looters was in hysterics, jumping off his seat. He firmly pushed him back onto the seat. He denied otherwise using any force and maintained that they did not beat the looters in the back of the Warrior during the journey.
36. SO18 said he was the first man out when the Warrior stopped. Two of the looters bolted for the river and went straight in. He could not remember whether they were tied or untying them when they got out of the Warrior (he accepted they may have been). Mr Ali stayed with him, and was in a bit of a panic. The other looter was struggling to get out of the Warrior, and when he managed to do so he also ran off in the same direction as the other two. Mr Ali also started going towards the river.
37. SO18 said he was in a state of confusion about what was going on. He was not sure what to do. When he turned around he saw SO17 had returned to the Warrior and assumed position in the gunner's seat.

38. He said that the two looters that had run for the river had swum to, and were holding onto what he described as the “post” of Bridge 4. He had lost track of the third. He said he followed Mr Ali down to the water’s edge. Mr Ali was hysterical. At the first interview he gave the following account:

“...this other one was shouting and shouting and shouting, roaring like I remember roaring like, but directing at the two men and the other two men were roaring, waving at me, get over like, you know, I didn’t understand what was going on and he went in, into the river like...”

“...every time I got closer to this young lad with the afro, every time I get closer to him to say you know, ‘It’s okay, like, ‘Stop there, stop’, the further he was going, the more he was going away from me... so like the closer I got to him the more he was going in and then went in knee deep, well I’d say knee deep, he went chest deep or something like.”

39. SO18 described how he had tried to calm Mr Ali down and take control of the situation. He said Mr Ali was hysterical, grabbing him, pushing him. He said he had raised his hands and tried to grab hold of Mr Ali (to calm him down), but Mr Ali went into the river. He went in about 8m and was in chest deep. He said he could see Mr Ali was “panicking” (he did not elaborate, nor was he asked to). He turned around to look for guidance.

40. SO15 was in the Comd’s turret, shouting and gesturing “mount up”. He saw SO16 undressing and shouting something, but SO16 then got back into the Warrior. SO18 initially suggested that this was because SO15 was telling them to get back into the Warrior, but when asked whether SO15 had told SO16 to get back in the Warrior, he said he had not heard SO15 say this. Indeed at the second interview, SO18 said that when he heard SO15’s orders to “mount up” he himself had said to SO16: “Come on we’ve got to mount up.”

41. SO18 said that when he turned back (it is not clear whether he did so before or after seeing SO16 undressing), Mr Ali was gone. He did not see Mr Ali re-emerge. SO18 followed orders and mounted up. He thought (and convinced himself) that Mr Ali might have swum away under the water.

42. SO18 denied forcing the looters into the river. He denied pointing his weapon at them, throwing stones at them or pushing them into the river. He maintained that they had run off and went into the river of their own accord.

43. He said when they arrived back at BGH he spoke to SO16 who had said to him: “Well you only seen what I saw, he went under and didn’t come back up”. SO16 and SO15 had both agreed with him that the boy had probably gone under and swum away. At the second

interview he admitted that SO15 had told him not to mention the incident to anyone. But he said he thought SO15 had meant going to Bridge 4, rather than the drowning.

SO16

44. SO16 was interviewed on the 27th of April 2004, and again on the 28th of November 2004.
45. He was the driver of CS One-Two, and served with No 1 Coy, 1G on OP Telic between the 28th of February 2003 and May 2003.
46. He said that on the 8th May 2003 he was on duty with his CS at BGH. He was standing at the rear of the Warrior when an Iraqi male alerted them to looters at the rear of BGH. Having gone to the rest room and informed the section, he returned to the Warrior where SO17 and SO15 were also present.
47. About half an hour to an hour later, the other crew members (SO19 and SO18 were there, but he could not remember who else) returned with four Iraqi males, who he said looked dishevelled and were wearing "*raggy clothes*." He remembers seeing one of them with a cut on his face. They were being jeered at and spat on by a group of Iraqis.
48. SO16 was on radio stag at the time. At SO15's request he said he radioed through to report that they had got some looters but could not remember whether this was on the Coy or BG net or who he spoke to. The response he received was to "*throw them off the top deck*", which he took to mean just get rid of them, take them down to Bridge 4. He was not able to explain how/why he made the connection with Bridge 4. He accepted that it was possible they meant throw them in the river, but that did not occur to him at the time. He said he told SO15 that the message he had received was "*throw them off the top deck*".
49. The four Iraqis were placed in the back of the Warrior. SO17 and SO18 got in with them. SO15 was in the Comd's hatch, but there was no gunner. SO16 said he was wearing a headset, but could not recall discussing with SO15 where they were going or what they were going to do when they got there.
50. When they arrived at Bridge 4, he parked the Warrior about 10-20m from the water's edge. He got out and went to the rear of the Warrior where he saw SO17 and SO18 trying to untie the four looters (they were tied wrist to wrist, in pairs). SO16 assisted. He said one of the looters was clinging on to him and so he hit him twice to get him off.
51. After untying them, SO17, SO18 and SO16 took them to the riverbank. SO17 and SO18 had one looter each, and SO16 had two. They were a couple of metres from the river's edge when they pushed the looters onto the muddy embankment. He said that SO17 and SO18 shouted at them to get in the river (they were gesturing towards the river at the same time). He said he thought SO17 and SO18 pushed theirs first, and about 20 seconds later, he

pushed his too. The looters stumbled/trotted down and walked into the water (about waist high). He described how, once in the water, they turned around and just stood there staring at them.

52. No-one threw stones and he did not remember seeing anyone cock their weapons. He said that SO15 had not told them to push the looters in the river, nor was it something they discussed or agreed between themselves. It just happened.
53. He described how one of the looters then suddenly went under. He came back up a few seconds later, and then went under again. He was not splashing, shouting or showing any sign of panic. SO15 said to SO16: *"if he comes up again, I think you'll have to jump in and get him"*. SO16 said he started removing his clothes but candidly admitted he was not keen about going in. The boy did not come up again. SO16 did not jump in, nor did any of the other soldiers. They mounted the Warrior and left.

Maj Peter MacMullen

54. Major Peter MacMullen, the Comd of No 1 Coy 1G, made a witness statement dated the 19th of April 2004.
55. He confirmed that he was deployed with his unit on Op TELIC between the 8th of March 2003 and the 8th of May 2003. Between the 9th of April 2003 and the 8th of May 2003, No 1 Coy occupied a small gym complex in Basra, which became Coy HQ, under the command and control of 1 BW. Once established in the gym complex, he changed Coy Orbats to reflect their responsibilities of providing a PI on guard, rest, static and patrols. Static locations included BGH. The statics and patrols were required to prevent general disorder, including looting.
56. Orders for the BG were held daily at 1 BW HQ, and he held his orders within the Coy each evening. He received no clear direction on handling of Iraqi civilians involved in general disorder at BG orders. In an effort to deal with the thousands looting, some were arrested and returned to Coy location (a gymnasium complex in Basra) where they were temporarily held in a secure barbed compound, *"told off"* and then released. Others were removed from the area where they were apprehended and conveyed a short distance for their own safety, *"told off"* and released. The decision on the detention of looters, or whether it was necessary to extract them from the area for their own safety, was the responsibility of the Comd on the ground. Since the capture of looters was so commonplace, it was not necessary for Comds on the ground to report to Coy HQ their apprehension or subsequent dealings with looters.

Capt Niall Brennan

57. Capt Niall Brennan made a statement dated 17th June 2004.
58. He was the 2iC of No 1 Coy, and responsible for the day-to-day running of the Coy led by Maj MacMullen. Capt Brennan was ultimately responsible for the Coy Ops room. The Coy Ops room provided an infrastructure, primarily of command and communications, to allow the Coy to perform the objectives of the Coy Comd. It was located in a gymnasium complex in Basra, where No 1 Coy was based from the 7th/8th of April 2003 to the 9th of May 2003.
59. He described the set up in the Coy Ops room. The Coy and Battalion radio nets were monitored at one end of the room. Wired to each radio was a speaker, which was permanently on, enabling all staff on duty in the Ops room to be able to hear net traffic. He explained who the Ops room personnel were. LCpl Danny Burton was the Coy Signaller. There were also Watchkeeper teams, who would maintain a listen watch on the radio. There would be a minimum of three people employed at any one time. Generally speaking, the Watchkeeper and Signaller would be manning the BG and Coy nets, respectively. Each was responsible for sending and receiving radio messages and for maintaining entries within the Coy and BG radio logs, which were located at the table where nets were monitored.
60. He clarified that the Coy net would be used by Coy CSs on the ground, and the BG net was predominantly used at Coy command level.
61. He explained that due to the volume of traffic on both nets, it became impossible to maintain a contemporaneous record of all messages received and transmitted. The practice was to record only traffic, which was considered to be 'critical', or messages worthy of note.
62. As to how the Ops room dealt with the looter situation on the ground, he explained that from the start no real policy, procedures or orders were in place detailing what should happen when Iraqi civilians were detained by personnel on the ground. A 'system' did evolve. This system, initially directed by BG, involved looters being detained and brought back to the gymnasium complex for processing and onward transportation to the BG location in Basra. Within a short space of time this system became ineffective for handling the vast numbers of looters.
63. Other solutions were adopted, including the practice of looters being driven out of the locality, dropped off and being forced to make their way back under their own steam. He said that this did not in fact happen very often, since it was rare to actually catch looters in the first place.
64. Capt Brennan said that he was not aware of looters ever being dropped off at Bridge 4, given it was such a long way out of town.

65. On the 8th of May 2003, Capt Brennan had been employed in the Ops room earlier that day. Having looked at the logs for that day, he could see that he made no entries in either the Coy or BG radio logs. He said that CSgt Watkins assumed responsibility for maintaining the BG log on the morning of the 8th of May 2003, and Sgt Todd took over at 1000hrs. He was unable to see who had responsibility for recording entries on the Coy log that morning.
66. He said he had no idea CS One-Two had visited Bridge 4 on the 8th of May 2003, or that it had requested to move from its static location at BGH. He said he had no recollection of a CS ever being tasked away from BGH to respond to incidents outside the same locality. If necessary, the patrols and the QRF CSs would be deployed to respond to an incident.
67. He confirmed that while serving in Basra, SO15 had at no time reported to him any concerns about the rough handling of Iraqi looters by Coy personnel. He said he himself had no such concerns and, as far as he was aware, the soldiers were dealing with looters firmly but fairly and in a professional manner.
68. He had never heard the phrase 'off the top deck'.

Sgt Maj SO20

69. SO20 made witness statements dated the 17th of June 2004 and the 7th of October 2004.
70. He was the Sergeant Major of No 1 Coy. He was responsible, among other things, for the receipt and control of prisoners brought to the Coy location (a gymnasium complex in Basra) by Coy personnel on the ground.
71. He said that looters were brought in on an irregular basis. He was initially receiving up to 20 a day, but this petered off to 4-5 a day as time went on.
72. He confirmed that no orders existed – whether at Coy or BG level – providing direction on the handling of looters.
73. He said that towards the end of the tour – say between the 1st and the 9th of May 2003 – he briefed the troops in the Coy that he did not want to continue to receive vast numbers of looters at the Coy location since there was no system in place capable of handling the volume of looters. He could not remember whether this policy came from him or Maj MacMullen.
74. By this time he says he was aware that CSs had taken to removing looters from the place where they were arrested and conveying them out of town to be dropped off. This was a short-term solution to a problem that there was no other practical way of dealing with.

75. Although he knew looters were being driven out of town to be dropped off, he did not know Bridge 4 was being used as a drop off location. He certainly never directed anyone to use a specific drop off location such as Bridge 4.
76. In conveying looters out of town, the idea was to disrupt their activities and not to punish them. He said that troops were constantly reminded that it was essential to treat detained looters fairly and with respect. He had no reason to believe there were any problems with the way in which personnel were dealing with looters.

Appendix 2: The Course of the Court Martial Proceedings

1. SO15, SO16, SO17 and SO18 were charged with the unlawful act of manslaughter. The prosecution's case was that the death of Mr Ali was caused by the unlawful and dangerous activities of the four defendants, acting together as part of a joint enterprise, to assault the four looters.
2. Court martial proceedings commenced on 24th April 2006 with a voir dire addressing, first, an application made on behalf of the defendants to stay the proceedings on the ground that the evidence forming part of the prosecution's case when taken at its highest was not strong enough for any reasonable jury, properly directed, to convict; and second, the admissibility of witness statements and interviews given by SO15 and SO17, without a caution having been administered, and a statement by SO16 amounting to a confession.
3. The first application was refused. In relation to the second, the Judge Advocate ruled that SO15's statement of the 31st of March 2004 was inadmissible, as was all material relating to it in his subsequent interviews; the Judge Advocate considered that the statements and interviews of SO16 and SO17 were on the other hand admissible.

Mr Ayad Salim Hanoon

4. Mr Ayad Salim Hanoon was the main prosecution witness. Giving evidence through an interpreter, he accepted that on the morning of the 8th of May 2003 he, and the other three men captured (including Mr Ali), had been looting in the vicinity of BGH. He was caught by a British soldier, hit on the face and dragged on the floor by his arm. The four of them were escorted to BGH by Iraqi policemen and around four British soldiers. On the way there they were stripped and forced into a pool of water. He said they were beaten on the way to BGH and after they arrived. At BGH they were put into the rear of the Warrior and driven for a period of around 20 minutes. There were four soldiers in the Warrior: two in the back with the detainees, one in the turret and the driver. The two soldiers in the back had been among the soldiers who had escorted them to BGH. He said that they were beaten by these soldiers in the course of the journey. When the Warrior stopped all four soldiers had got out. After they were untied, Mr Hanoon said they told us "*come on, swim*" and cocked their weapons. They were also pushed. Initially, he clarified that only one of the soldiers was responsible (the larger of the two soldiers who had been in the back of the Warrior with them), but in cross-examination he said that two soldiers were responsible. He explained that they went into the river, as they had no other choice. He described how when they were near the water, the soldiers who had been in the back of the Warrior with him kept on throwing bricks / stones, so they went further and eventually ended up in the river. The other two soldiers were just

standing looking at them. When he was in the water, he described Mr Ali going under the water. He said Mr Ali raised his hands and went under; he came back up and then he vanished. Mr Hanoon said he saw one of the soldiers start to undress as if to jump in but the others did not let him. The soldiers got back into the Warrior and left. After they left he waited for some time for Mr Ali, but Mr Ali did not appear and he eventually went home.

5. Mr Hanoon was cross-examined at length by counsel for all four defendants. He maintained that at the river both the driver and the soldier in the turret came out of the Warrior. He agreed that the driver had not beaten him or played any part in forcing him to go into the river. He agreed that Mr Ali had not shouted for help. Mr Hanoon did not, however, waiver in his insistence that they were made to go into the river, that they had no choice. When asked in re-examination why they did not just stay at the water's edge, where it was shallow, Mr Hanoon responded with: "*they were throwing bricks at us, we were scared.*"
6. Mr Hanoon was cross examined in relation to previous inconsistent statements contained in a statement recorded by the military police on the 10th May 2003 when he first reported the incident (a statement Mr Hanoon said had not been read back to him), in an interview conducted with Mr Hanoon on the 13th of April 2006 and in a witness statement made by Mr Hanoon on the 15th of April 2006. The defence suggested that Mr Hanoon was not a credible or reliable witness.

Other witness evidence

7. Other witnesses called by the prosecution included Mr Ali's father, other crewmembers of CS One-Two (SO19, SO26, SO22 and another), a number of Coy Ops room personnel, and the No 1 Coy, 1 IG chain of command (Capt Brennan, SO20, Maj MacMullen, Lt O'Connell and SO25).
8. The No 1 Coy chain of command gave evidence about policy and practices for dealing with looters following the war-fighting phase. They all said that they had heard of the practice of putting looters into water, and some had even witnessed it (the phrase 'wetting' was coined in the court martial proceedings to describe this practice). Maj MacMullen said that at BG meetings there had been discussions about looters and what other companies were doing to deal with them. He had heard that in other Coys people were put into water so that they would get wet, cold and miserable and have to go home (he did not ever witness such an incident). This was a measure being used throughout the BG, but not necessarily in No 1 Coy as they did not have the same access to water. He said he would have relayed to his Coy that other Coys were dealing with looters in this way, but he could not say that he gave an order for it to happen or even presented it as an option. In cross examination, he agreed that it would not be a surprise to him if soldiers in his Coy thought that putting looters into flowing water was an approved method of dealing with the looter problem. Lt O'Connell gave

evidence that he had heard at Coy O Group meetings presided by Maj MacMullen that there was a practice of making looters wet to deter them from looting. Lt O'Connell said he had himself witnessed a 'wetting' incident in a small dyke, where the depth of water was around midriff height but could not recall whether the looters had been forced in at gunpoint. SO20 said that he had heard rumours about other units throwing prisoners into the river, but had not heard of looters being put into dykes. Capt Brennan said he had seen others throwing looters into the Shat Al-Arab Canal. He said he never told anyone in his company to throw people into canals, but it was discussed. As far as he was aware this did not happen in No 1 Coy as geographically they weren't near water (the nearest was Bridge 4 which, from the 7th of May 2003, became part of No 1 Coy's tactical area of responsibility).

9. After the close of the prosecution case, a submission of no case to answer was made on behalf of all four defendants. Only SO16's submission was successful. He was acquitted. The case against the other three defendants proceeded and none of them chose to give evidence.

Verdict

10. The charge being unlawful act manslaughter, the prosecution was required to prove that each defendant had committed, alone or in concert with others, some act which was, firstly, unlawful, and secondly, dangerous (dangerous to the extent that any sober, reasonable and ordinary bystander present would be aware that there was an obvious risk of some bodily harm resulting from it), and thirdly that the death of Mr Ali occurred as a direct result of that act. In closing the prosecution accepted that the mere forcing of looters into water was not in itself dangerous; what made the act dangerous was the use of weapons, the cocking of the guns and the throwing of the stones. The JAG duly directed the Board that the dangerous act being alleged was that the detainees were driven out into deeper water, and not mere 'wetting'. The Board was directed to consider the following questions: did Mr Ali drown in the Shatt Al-Basra canal on the 8th of May 2003, and was his death caused by him being forced into deeper water, from the edge of the canal, and being prevented from leaving the water, as a result of stones being thrown and/or a gun being pointed at him.
11. Whether there was, at the time, a policy of 'wetting', or whether 'wetting' was fully sanctioned by the chain of command was nothing to the point.
12. As to the case against each defendant, it was the prosecution's case that SO17 and SO18 were the principals. It was alleged that they had cocked their weapons, pushed the detainees and told them to get into the water; it was they who had thrown the bricks. The case against SO15 was that he was a secondary party. He had not pushed nor thrown bricks at the looters, but was somebody who had encouraged the unlawful and dangerous acts being committed. The JAG directed that to find SO15 guilty, the Board had to be

satisfied that he was not only aware of what was taking place, but, at the time that he became aware, was also in a position to put an immediate stop to the unlawful and dangerous act, and chose not to do so.

13. The Board returned a verdict of not guilty in respect of all three defendants.

Appendix 3: Confirmation of Appointment and Terms of Reference



From: Bcn Sanders, DJEP Assistant Head (Public Inquiries & Judicial Reviews Strategy)
MINISTRY OF DEFENCE
1st Floor, Zone M, Main Building, Whitehall, London, SW1A 2HB
Email: DJEP-PublicInquiriesAsstHd3@mod.uk Telephone 020 721 81101

Sir George Newman
Room C3/4
Headquarters London District
Horse Guards, London
SW1A 2AX

Our Ref: DJEP/GLOBAL ISSUES/QUASI-INQUESTS

Date: 23 December 2015

Dear Sir George,

CONFIRMATION OF APPOINTMENT

On 27 January 2014 the Secretary of State for Defence wrote to appoint you to conduct such fatality investigations as the Ministry of Defence assigns to you from time to time with your agreement.

In accordance with the Secretary of State's decision that the establishment of such fatality investigations should be delegated to the Directorate of Judicial Engagement Policy, I am writing to confirm your appointment as Inspector in a fourth fatality investigation. This relates to the death of Ahmed Jabbar Kareem Ali. The terms of reference are annexed to this letter.

It was alleged that on 8 May 2003, Ahmed Ali was arrested together with other Iraqis by UK Forces, that he was beaten and forced to swim a river, that he was unable to swim due to his injuries, and was dead when he was pulled from the river. Four soldiers were charged with his manslaughter, and were acquitted at a Court Martial. The case was referred to the European Court of Human Rights, which concluded that the initial Service Police investigation and Court Martial proceedings did not discharge the procedural requirements of an investigation under Article 2 of the European Convention on Human Rights.

The Iraq Historic Allegations Team (IHAT) has conducted an investigation into this incident but was unable to find new and compelling evidence. In the absence of such evidence, the first limb of the test for ordering a retrial under Article 10 of the Armed Forces (Retrial for Serious Offences) Order 2013 is not met. Consequently, there is no realistic prospect of a fresh prosecution in this case.

As the Divisional Court emphasised, your investigation should be conducted expeditiously, proportionately, and economically. You are to produce and publish a report of your findings.

You will be paid a daily rate (or part thereof) equivalent to the scale of remuneration currently payable to a High Court Judge.

I am most grateful to you for accepting this responsibility.

Yours sincerely,

Bcn Sanders

ANNEX A: TERMS OF REFERENCE

The Scope of the Investigation.

1. The investigation into the death of Ahmed Jabbar Kareem Ali on 8 May 2003 ('the death') is to be conducted to establish the relevant facts and accountability for the death, thereby discharging the positive obligations of the State pursuant to Article 2 of the European Convention on Human Rights.
2. The investigation must be accessible to the family of the deceased and to the public, thereby bringing the facts to public scrutiny.
3. The investigation should look into and consider the immediate and surrounding circumstances in which the death occurred.
4. The investigation should encompass the wider circumstances of the death, including the instructions, training, and supervision given to the soldiers involved.
5. Where facts are found in connection with the instructions, training and supervision given to the soldiers, consideration should be given to whether it is proportionate or necessary to make recommendations on the issues raised taking into account the extent to which the issues raised have already been considered by the Ministry of Defence or other inquiries.
6. The investigation is to be conducted so as to bring to light all the facts, including failures on the part of the State and facts from which such failures could be properly inferred.

The Conduct of the Investigation.

7. The procedure and the conduct of the investigation are to be such as the Inspector may direct so as to achieve the aims and purposes set out above and to comply with the terms of the Court's judgements, Orders and directions.
8. The Inspector will draw up and publish the procedures which are to be followed to progress the investigation, and so far as appropriate conduct the investigation in accordance with the published procedures established in previous investigations. In this regard he will follow the guidance given by the Court about the extent to which legal representation will be necessary, the questioning of witnesses and the opportunity to be given to the next of kin to raise lines of inquiry.
9. The Inspector will from time to time consider and keep under review the need for procedures to be made public in connection with any of the aims and purposes of the investigation.
10. The Inspector has the power to require any person or organization to provide evidence in writing, to produce relevant material in their possession or control and to attend a public hearing to give oral evidence.
11. The Inspector is to commence his investigation by considering all the relevant documentation in the possession of the Ministry of Defence and any relevant

information emanating from the Iraq Historic Allegations Team (IHAT) and Service Prosecution Authority.

12. Having considered all the documents which are to be supplied to him and any further documents or information which he may have requested the Inspector will decide what needs to be disclosed to interested persons, the next of kin of the deceased or the public to enable the investigations to be accessible and subject to public scrutiny.
13. Where the Ministry of Defence considers publication or disclosure would be damaging to national security, international relations of the State, or the safety of any individual it shall bring its considerations to the notice of the Inspector who, having heard such representations from the Ministry as may be necessary, will determine the extent to which publication or disclosure is required in order to achieve the aims and purpose of the investigations.
14. At the conclusion of an investigation the Inspector will produce a written report which sets out:
 - a) a narrative account of the circumstances in which the death occurred; and
 - b) any recommendations he has decided to make.
15. The report will not be concerned to determine or address any person's criminal or civil liability. But the investigations are not to be inhibited by the likelihood of liability being inferred from the facts found or recommendations made.

Appendix 4: The undertaking provided by the Prosecutor of the International Criminal Court



Le Bureau du Procureur
The Office of the Prosecutor



Sir George Newman
Inspector
The Iraq Fatality Investigations
HQ London District
Horse Guards
London SW1A 2AX
United Kingdom

Ref.: 2016/007/FB/JCCD/er

Date: 18 March 2016

Dear Sir Newman,

I write in response to your letter dated 7 January 2016, requesting a non-use undertaking in relation to evidence given in your investigation by the soldiers alleged to have participated in the immediate circumstances leading to the death of an Iraqi national, Ahmed Jabbar Kareem Ali.

I recall that in the past you have requested a similar assurance in relation to evidence given to your investigation by the soldiers alleged to have participated in the immediate circumstances leading to the deaths of Iraqi nationals.¹ Following a careful legal consideration of your initial request, I concluded that such an undertaking would not violate any of my obligations under the Rome Statute, as explained in my previous correspondence, in particular my replies of 2 December 2014 and 8 December 2015. I determined that in the particular circumstances of the Iraq Fatality Investigations ("IFI"), such an assurance of non-use of self-incriminating evidence would be in accordance with the object and purpose of the Rules of Procedure and Evidence of the International Criminal Court ("ICC"), in particular Rule 74.

Likewise, with reference to your request of 7 January 2016, I can provide a similar assurance that any self-incriminating evidence provided to the IFI by any of the soldiers alleged to have participated in the immediate circumstances leading to the death of Ahmed Jabbar Kareem Ali in May 2003 will not be used by my Office either directly or indirectly as incriminating evidence in any possible subsequent prosecution before the ICC of any soldier that provided that evidence.

¹ Your letters dated 6 October 2014 and 14 October 2015.

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

As with previous cases, I hope that this letter will facilitate your efforts to investigate and establish the circumstances that led to the death of Ahmed Jabbar Kareem Ali, and that this assurance will help to provide the soldiers you wish to interview with additional clarity and assuage their concerns regarding prospects of being prosecuted before the ICC on the basis of any evidence they give before the IFI.

Yours sincerely,



Fatou Bensouda
Prosecutor

² See ICC Office of the Prosecutor, "Strategic Plan June 2012-2015," 11 October 2013, at http://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/reports%20and%20statements/statement/Documents/OTP%20Strategic%20Plan.pdf, pp. 13-14; and "OTP Strategic Plan 2016-2018", 16 November 2015, pp.15-16 at https://www.icc-cpi.int/iccdocs/otp/070715-OTP_Strategic_Plan_2016-2018.pdf.

Appendix 5: The undertaking provided by the Attorney General's Office

13/06/2016

123-reg Webmail - FW_ Undertaking Request - IFI investigation into the death of Mr Ahmed Jabbar Kareem Ali Printout

John Grealis

19/2/2016 11:24

FW: Undertaking Request - IFI investigation into the death of Mr Ahmed Jabbar Kareem Ali

To: ben.dustin [redacted] Copy
James Jenkins [redacted]

Dear Ben,

Thank you for the request for the terms of Kevin McGinty's letter dated 4th August 2014 to be brought to the attention of soldiers giving evidence before him in the investigation into the death of Mr Jabbar Ahmed Kareem Ali contained on the list annexed to the letter.

Having consulted the Director of Public Prosecutions and the Director of Service Prosecutions, the Attorney General has agreed with this request.

Regards,



John Grealis
Head of Superintendence
Criminal Law & Policy Team
[redacted] 020 7271 2403
20 Victoria Street, London SW1H 0NF

From: ben.dustin [redacted]
Sent: 28 January 2016 16:52
To: James Jenkins
Subject: RE: Undertaking Request - IFI investigation into the death of Mr Ahmed Jabbar Kareem Ali

Thank you James.

Regards,

Ben

On 28 January 2016 at 08:25 James Jenkins <[redacted]> wrote:

Good morning Ben

Apologies for the delay in responding but I have spoken to John Grealis who is considering the matter and will respond shortly.

Regards,

James



James Jenkins
Legal Adviser, Criminal Law & Policy Team
E: James.Jenkins [redacted] T: 020 7271 2458
20 Victoria Street, London SW1H 0NF

From: ben.dustin [redacted]
Sent: 21 January 2016 15:20
To: James Jenkins
Subject: Fwd: Undertaking Request - IFI investigation into the death of Mr Ahmed Jabbar Kareem Ali

Dear Mr Jenkins,

Please find attached the documents referred to in Sir George's letter dated 5th January 2016. The terms of Kevin McGinty's letter dated 4th August 2014 are broad enough to extend the benefit of the undertaking contained in the letter to any person who provides evidence before the IFI. Sir George's specific purpose is to obtain the Attorney General's confirmation that that letter can be drawn to the attention of soldiers giving evidence before him in the current investigation into the death of Mr Jabbar Ahmed Kareem Ali.

Kind regards,

Ben

----- Original Message -----

From: "ben.dustin" [redacted]

13/06/2016

123-reg Webmail - FW_ Undertaking Request - IFI investigation into the death of Mr Ahmed Jabbar Kareem Ali Printout

To: John Grealis [REDACTED]
Date: 05 January 2016 at 11:10
Subject: Undertaking Request - IFI investigation into the death of Mr Ahmed Jabbar Kareem Ali

Dear John,

Please find attached letter and enclosures referred to therein. I should be grateful if you would acknowledge receipt.

Kind regards,

Ben Dustin

Assistant to the Inspector | Iraq Judicial Investigations
HQ London District, Horse Guards, Whitehall, London, SW1A 2AX
Telephone: +44 (0)207 414 2091

Ben Dustin

Assistant to the Inspector | Iraq Judicial Investigations
HQ London District, Horse Guards, Whitehall, London, SW1A 2AX
Telephone: +44 (0)207 414 2091

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Ben Dustin

Assistant to the Inspector | Iraq Judicial Investigations
HQ London District, Horse Guards, Whitehall, London, SW1A 2AX
Telephone: +44 (0)207 414 2091

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- image003.png (248 Byte)
- image002.png (4 KB)
- image004.png (178 Byte)

Appendix 6: List of persons named in the Investigation

Military/ex-military personnel¹

Capt Niall Brennan	Capt Brennan was second-in-command of No 1 Coy, 1 IG to Maj MacMullen.
Maj Gen Robin Brimms	Divisional Commander of 7 Armd Bde.
Maj Nick Channer	Maj Channer was 2iC of the BG to General Riddell-Webster.
2 nd Lt Alexander Durdin-Robertson	2 Lt Durdin-Robertson was the Comd of 4 PI 1 IG.
Maj Peter MacMullen	In May 2003 Maj MacMullen was the Coy Comd of No 1 Coy, 1 IG.
Lt Daniel O'Connell	Lt O'Connell was PI Comd of 1 PI, 1 IG
Lt Col Michael Riddell-Webster	Lt Col Riddell-Webster was the CO of the BW BG, who in May 2003 also commanded No 1 and No 2 Coys of the IG when they moved from the Scots Guards to the BW.

Soldiers

SO15	SO15 held the rank of Sgt in May 2003, and was the Veh Comd of the warrior mounted CS 12.
SO16	SO16 was a gdsm in CS 12 in May 2003 and was the driver of the Warrior on 8 th May which took the looters to Bridge 4.

¹ Ranks indicated are those in May 2003 and not the individual's current rank.

- SO17 was a gdsman in CS 12 in May 2003 whose position in the warrior crew was gunner. On the 8th May SO17 travelled inside the Warrior with SO18 and the looters to Bridge 4.
- SO18 was a gdsman in the dismount section of CS 12 and on the 8th May 2003 was involved in the capture and escorting of the looters back to the BGH, as well as travelling with them in the Warrior to Bridge 4.
- SO19 held the rank of LCpl in May 2003 and was the Sect Comd of CS 12, No 1 Coy, 1 IG, and was in charge of the dismount section which consisted of SO18, SO22, SO24, and SO27. SO19 was at the BGH on 8th May 2003 and was one of the soldiers called out to the perimeter wall to deal with the looters.
- SO20 held the rank of WO2 in May 2003, and served as the CSM of No 1 Coy, 1 IG.
- In May 2003 SO21 held the rank of Captain and was No 2 PI Comd, No 2 Coy, 1 IG.
- SO22 was a gdsman in May 2003 and part of the dismount section of CS 12 who were stationed at the BGH on the morning of the 8th May. SO22 was one of the soldiers who escorted the looters back from where they had been detained to the Hospital.
- In May 2003 SO23 held the rank of Captain and was No 3 PI Comd, No 1 Coy, 1 IG.
- SO24 was a gdsman in May 2003 and part of the dismount section of CS 12 who were stationed at the BGH on the morning of the 8th May and escorted one of the looters back to the hospital.

SO25	SO25 was a Sgt in May 2003 and was the Sect Comd of CS 10 No, 1 Coy, 1 IG.
SO26	SO26 was a LCpl and 2IC of the dismount section of CS 12.
SO27	SO27 was a gdsm in May 2003 and part of the dismount section of callsign 12 who were stationed at the BGH on the morning of the 8 th May and was involved in the detention of the looters.

Iraqi witnesses²

Ayad Salim Hanoon	Iraqi male who on the 8 th May 2003 was caught looting with the deceased and was arrested and taken to Bridge 4.
Jabbar Kareem Ali	Father of the deceased.
Mohammed Jabbar Kareem Ali	Brother of the deceased.

² The last name of Iraqi witnesses is often a tribal name and may not have been used in the text of the Report. Variations in spelling of surnames occur as a result of different translations from Arabic.

Appendix 7: Chronology

Date	Event	Reference
2003		
February		
	No 1 Coy, Irish Guards (IG) deploys to Kuwait	SO18 MOD-83-0000294-Z paragraph 8
April		
Night of 6 th /7 th April	UK forces enter Basra City	
7 th /8 th April	No 1 Coy bases itself at the Gymnasium	Brennan MOD-83-0000317-Z paragraph 2
11 th April	No 1 Coy IG subordinated to the Black Watch (BW) Battlegroup and comes under the command of Lt Col Riddell-Webster	Riddell-Webster MOD-83-0000327-Z paragraph 2
May		
1 st May	Major combat ops cease	
8th May		
Morning	Call sign 12 goes down to Basrah General Hospital (BGH) and to their room in the building for static guard duty.	IFI SO16 18/05/16 page 13 lines 9-12
c. 8am	Ayad Hanoon goes to area located behind Baghdad Garage and enters a store in the garage area ('Jamloun') where he finds Mr Ali and other looters.	Hanoon MOD-08-0000321-Z, paragraphs 4-5
	Four looters apprehended, detained and taken back to the hospital and handed over to SO15.	SO19 MOD-83-0000319-Z paragraph 27
	SO15, SO16, SO17 and SO18 take the looters in the Warrior from the BGH to Bridge 4.	SO16 MOD-83-0000301, paragraphs 20-24
	15-20 minutes after leaving the BGH the Warrior stops under Bridge 4.	SO17 MOD-83-0000318-A paragraph 31

	All 4 looters enter the water. Mr Ali struggles to stay afloat.	Oral evidence of SO16, SO17 and SO18 (see transcript of the hearing on 18 th May 2016, available from the 'Oral Hearings' page within the 'Ahmed Ali' section of the IFI website)
	SO15, SO16, SO17 and SO18 leave Bridge 4 in the Warrior and return to the BGH.	Witness statements of SO16 and SO17 (see the 'Evidence' page within the 'Ahmed Ali' section of the IFI website)
	Three remaining looters get out of the river.	Hanoon MOD-08-0000321-Z, paragraph 18
9th May	No 1 Coy IG leave Basrah and recovered to Germany.	SO16 MOD-83-0000301-Z paragraph 36;
2006		
24 th April	Court Martial begins	
25 th May	SO16 found not guilty	
6 th June	SO15, SO17 and SO18 found not guilty	
2015		
23 rd December	Sir George Newman appointed as Inspector with conduct of the Investigation into the death of Mr Ali and provided with Terms of Reference.	Letter from Ben Sanders at MoD. (Appendix 3)
2016		
22 nd January	The Inspector holds a public hearing concerning the role and function of the IFI and other questions of public interest in connection with its work.	The transcript of the hearing is available from the 'Public Statements' page of the IFI website.
18 th May	Hearing in London at which oral evidence of the following witnesses is heard: SO15 SO16 SO17 SO18	See transcript of the hearing on 18 th May 2016, available on the IFI website.

Appendix 8: FRAGO 079

... KASH, IRAQ

NJ4/2.

TO: G3 Plans Standard Distribution List

INTERNAL: 1 copy for each working file and email for all on LAN with O Drive address.

PRECEDENCE: ROUTINE

DTG: 031800ZAPR03

FRAGO 079 - 1 (UK) ARMD DIV DAILY MISCELLANEOUS FRAGO

3 April
RMP mki
6 hoo
TIF in 24h

Ref:

A. HQ 1 (UK) ARMD DIV OpO 001/03, Edn 3 DTG 152300MAR03

Time Zone Used Throughout the Order: ZULU.

NO 110216
RDU MAIN OPS
SER NO 50

G3

1. Boundary Changes.

a. 16 Air Asslt Bde AOR. The following amendment to the AO given over to 'TF Yankee' by 16 Air Asslt Bde should now follow the following grids: 38RPU435970 - PU660970 - PU660773 - PU440773.

b. 7 Armd Bde / 3 Cdo Bde. The following amendment to the inter Bde boundary will come into effect as at 032359ZAPR 03. The complete boundary is as follows: 38RQU613560 - QU689629 - QU673673 - QU717701 - QU716737 - QU719741 (NW-SE running road exclusive to 3 Cdo Bde) - QU704753 - QU723774 - QU737785 (Bridge 5 incl to 7 Armd Bde).

Legal

2. Law & Order. See Annex A. Attached is a guide for Brigades on their legal powers in enforcing law and order in their Brigade AOs for Phases 3B and 4. This direction will evolve to meet requirements and changing circumstances, and any questions should be directed to the Legal Branch at Div Main.

Ack:

B D C RYAN
SO3 G3 Plans (A)
HQ 1 (UK) Armd Div

Auth:

J C W MACIEJEWSKI
SO2 G3 Ops
HQ 1 (UK) Armd Div

Annexes:

Annex A: Law & Order.

SECRET (UK) EYES ONLY

OP TELIC PHASE 3B/4 – “Public Order and Safety”

INTRODUCTION

1. Phase 3B/4 of OP TELIC has already commenced in some parts of the UK AO in S IRAQ, and UK and Coalition Forces are now clearly in occupation or transitioning to this state of some parts of the country.
2. Once UK or Coalition Forces are in occupation of either the whole or parts of Iraq then, as the Occupying Power, they assume responsibility for “public order and safety” (Hague Regulations IV Article 43).
3. The purpose of this paper is to provide guidance as to how the UK, as an Occupying Power, will discharge its responsibility for “public order and safety” in its AO.
4. The procedure is designed to be simple and easily understood so that it can be implemented without confusion. It will also evolve as circumstances change on the ground. At the current time it is assessed that such powers may be appropriate, in particular, in Umm Qasr, Safwan and Az Zubayr

A. BRIGADE POWERS

STOP/SEARCH/TEMPORARILY DETAIN

5. The powers to stop search and temporarily detain are the principle powers which will be required by the Brigades in the discharge of their responsibilities for “public order and safety”.
6. Under the ROE, all soldiers have the power to stop, search and temporarily detain.

680 BRAVO (ONE). Permits the temporary detention of persons posing a threat to Coalition forces or elements under UK protection or otherwise interfering with or threatening the Coalition mission.



7. It should be noted that the power to stop search and temporarily detain can be used either if a person is a threat to force security or where someone has committed a criminal offences. Both are regarded as “interfering with or threatening the Coalition mission”.

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8. Reasonable force may be used to effect a search. However, male personnel are not to physically search any females or children under the age of 14 unless an immediate search is imperative for reasons of force security, in which case, authority should be obtained from an officer of at least field rank.

9. All searches are to be properly recorded and search proformas are to be completed once a search has taken place. The search proformas will be provided by the RMP.

10. Once, a person has been temporarily detained, he should either be released or handed over to the Royal Military Police (or equivalent) as soon as practicable and, in any event, within six hours. The detainee should **always** be handed over to the Royal Military Police where threat to force security or where has committed a specified arrestable offence (see schedule 2).

RIOT CONTROL

11. As well as the power to stop, search and temporarily detain Brigades may also deal with law and order through the use of riot control equipment. Under the ROE,

500 CHARLIE Service personnel may be deployed to use public order control Iraqi non-combatants. Batons, riot control clothing and baton rounds may be employed.

12. Reasonable force may be used in riot control and further powers of riot control are expected.

ENTRY AND SEARCH OF PREMISES

12. The current ROE do not include powers to enter and search premises. However the power to enter and search premises is permitted under the Law of Armed Conflict and, at the present time, it should be assumed that this power is extant. (This has been raised with the NCC)

13. Again, where a search is effected, a record of search should be made on proformas provided by the RMP (or equivalent).

DOGS

14. There is no specific power to use dogs under the ROE but the use of Dogs would be permitted under the Law of Armed Conflict. Dogs may therefore be used and card D does not apply as there is still a threat to force security. (This has been raised with the NCC)

RMP (or equivalent) POWERS

15. Once the Royal Military Police have attended the scene and the temporary detainee has been handed over or delivered to a Police Station then the Military Police may arrest the temporary detainee

ARREST

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RESTRICTED

14. On arrest, the arrested person should be informed that he is under arrest and the grounds for the arrest. The person should be given the following caution:

“You do not have to say anything, but anything you do say may be given in evidence.”

15. The Military Policemen making the arrest shall relay the circumstances of the arrest to the custody officer as soon as practicable and the custody officer shall begin a written custody record in relation to that person. The custody officer shall:

- a. Search the arrested person in accordance with the ROE . Where practicable, servicewomen should search female detainees and servicemen should search male detainees.
- b. Seize and record items of an evidential value recovered from the arrested person.
- c. Retain all items of personal property, other than clothing, from the arrested person. These items should be returned to the arrested person upon release. Details of any items seized should be recorded in the custody record and countersigned by the arrested person if practicable.
- d. Inform the arrested person’s NOK of his arrest and place of detention via CMOC unless to do so is likely to hinder the administration of justice or adversely affect force security.
- e. Pass the arrested person’s details to I (UK) Armd Div G2 and G2X.
- f. Obtain the arrested person’s photographs and fingerprints.

16. After making the arrest and completing the written custody record, any person arrested for a specified arrestable offence or for reasons of Force Security shall be transferred to the Theatre Internment Centre (TIC) within 24 hours. When an arrested person is transferred to TIC, the GOC, SO2 G1 and the Detention and Internment Management Unit (DIMU) shall be informed.

17. If the person who has been arrested does not fall into the categories listed in paragraph 16 above then they shall be released as soon as possible and his property returned accordingly. However, such persons should be advised that persistent offending may amount to a threat to Force Security for which they might later be interned.

C. DETENTION AND INTERNEE MANAGEMENT UNIT (DIMU)

18. Although the physical detention of the detainee is the responsibility of the TIC the legal review of the detention will be the responsibility of the Detention and Internee Management Unit (DIMU) (see schedule 3). (For the avoidance of doubt, a person detained for Force Security is an internee and a person detained for a specified arrestable offence is a detainee. Collectively they are referred to as detainees).

19. Within 48 hours of arrest, the GOC or his representative will decide whether to continue to detain the detainee. The GOC will decide whether there is a "prima facie" case in relation to a person detained for having committed a specified arrestable offence or whether he is satisfied that the detainee is a threat to Force Security and his internment is absolutely necessary. Advice will be provided to the GOC or his representative by the Prosecuting Officer and a certificate will be issued accordingly if continued detention is necessary.
20. Once the certificate has been issued, the Prosecuting Officer will inform the detainee and his designated Defending Officer of the reasons for the continued detention within 72 hours and the detainee can then make written submissions to the Reviewing Authority within 21 days.
21. Within 28 days the Reviewing Authority, based on the written submissions made by both the Prosecuting and Defending Officer, will decide either:
- a. In the case of internees, whether there is a reliable and consistent body of material which supports the decision by the GOC to intern in the interests of Force Security; or
 - b. In the case of detainees, there is a reliable and consistent body of material that tends to show that the detainee may have committed a specified arrestable offence, and
 - c. assess whether continued detention is necessary to ensure that the detainee appears at a subsequent hearing, prevent injury to or intimidation of a victim or witness, or destruction of evidence, or to be otherwise necessary for the conduct of the investigation.
22. On consideration of the written submission, the Reviewing Authority will be permitted to:
- a. order that a detainee be released with or without conditions;
 - b. order that a detainee be held in detention pending trial by a competent court or other tribunal; or
 - c. order that a detainee be held in detention pending trial by a competent court or other tribunal or for a fixed period of time, which ever would occur first.
23. If the Reviewing Authority is satisfied that grounds exist for continued detention/internment, he can extend the period of detention in 30 day periods for a period not exceeding 120 days and order a further review accordingly.
24. If the above grounds do not exist, then the Reviewing Authority can order the release of the detainee either conditionally or unconditionally.

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D. GENERAL

LAW OF ARMED CONFLICT

25. Even though the Occupying Power is responsible for “public order and safety”, at the same time, the Law of Armed Conflict still applies and, under the ROE, positively identified Iraqi Forces may be attacked.

E. CONCLUSION

26. The guidance provided above will evolve and further clarification will be provided and in due course. However, the powers set out above are considered sufficient for both Phase 3B/4 but clearly it is impossible to anticipate all scenarios. In the meantime, any comments in respect of this policy should be forwarded, in the first instance, to Legal Branch, HQ 1 (UK) Armd Div.

N J Mercer
Lt Col
Comd Legal

Schedules:

1. Commanders Guide
2. Specified Arrestable Offences.
3. DIMU

COMMANDERS GUIDE

LAW AND ORDER/PHASE 3B/4

Introduction

At the current time, UK Forces are involved in both war fighting and restoring law and order as UK Forces begin to transition to Phase IV. Under the Law of Armed Conflict there is an obligation to restore law and order once fighting is over and when we are in occupation. The purpose of this guide is to make sure Commanders are aware of their various powers in restoring law and order and yet balancing this with the possible continued need for offensive military action.

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1. Stop/Search/Temporary Detention

Soldiers are permitted under the ROE to stop, search and temporarily detain civilians.

680 B (ONE) Temporary detention of persons posing a threat to coalition forces or elements under UK protection or otherwise interfering with Coalition Mission is permitted without consent.

690 C (ONE) Searching of persons and their vehicles temporarily detained under rule Six Eighty Bravo (One) and their vehicles is permitted without consent.

The search is to be recorded on a search proforma which will be provided by the RMP.

Search of premises is permitted under the Law of Armed Conflict but should only be conducted where necessary.

2. Riot control

Riot control measures are permitted under the ROE

500 C (ONE) Service personnel may be deployed and use public order control to control non -Iraqi combatants. Baton, riot control clothing and baton rounds may be employed.

Reasonable force may used in riot control.

3. Dogs

In addition, there is no prohibition on the use of dogs under the Law of Armed Conflict and they may be employed on or off the leash so long as the force is reasonable.

4. Arrest

There is now power of arrest under the ROE and soldiers can only temporarily detain civilians. However, where a civilian is a threat to Force Security or has committed a specified arrestable offence (see schedule 2), the Royal Military Police should be called to the scene or the civilian taken to the Police Station. This should be done as soon as practicable.

5. Intervention

Under the ROE, a soldier can act in self-defence of himself, his unit and Coalition Forces. In addition he can defend Iraqi civilians who fall under UK protection and this includes Iraqi civilians in occupied territory. You can therefore intervene to protect Iraqi civilians.

6. Iraqi Forces/PW's

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It should be remembered that the Law of Armed Conflict continues during occupation and therefore, at the same time as enforcing law and order, positively identified Iraqi Forces may be attacked. If combatants are captured (this includes RGFC, Special RGFC, DGS, SSO, DMI, Fidayin Saddam, Al Quds, MEK, IIS, DGI and Ba'ath Party). In addition, if there is a doubt whether a person is a combatant they should be passed to the PWHO.

Conclusion

The transition to Phase 4 requires a balance to be struck between war fighting and law and order tasks. This requires considerable skill to be exercised by the Commander but it should be remembered that Force Security remains paramount and that Commanders should not be afraid of robust military action. Further ROE for Phase 4 are anticipated.

SPECIFIED ARRESTABLE OFFENCES

1. Murder
2. Manslaughter
3. Rape
4. Serious Assault
5. Kidnapping
6. False Imprisonment
7. Riot
8. Violent Disorder
9. Possession of explosives
10. Smuggling
11. Arson
12. Serious Criminal Damage

Attempting to commit any of the above

DETAINEE AND INTERNEE MANAGEMENT UNIT (DIMU)

1. OC DIMU
2. Reviewing Authority
3. Prosecutor
4. Defending Officer
5. 2 x Visiting Officer
6. Police expert

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Appendix 9: FRAGO 091

FROM: MAIN HQ 1 (UK) Armd Div, AL MUTHASH. IRAQ

TO: G3 Plans Standard Distribution List

INTERNAL: 1 copy for each working file and email for all on LAN with O Drive address.

PRECEDENCE: ROUTINE

DTG: 091800ZAPR03

FRAGO 091 - 1 (UK) ARMD DIV DAILY MISCELLANEOUS FRAGO

Ref:

- A. HQ 1 (UK) ARMD DIV FRAGO 062 DTG 261500Z MAR03.
- B. HQ 1 (UK) ARMD DIV FRAGO 068 DTG 301800Z MAR03.
- C. HQ 1 (UK) ARMD DIV FRAGO 086 DTG 081900Z APR03.

Time Zone Used Throughout the Order: ZULU.

G3

1. Linkup Point between 16 Air Asslt Bde and TF TARAWA Group. TF TARAWA is currently moving S and will leave a small representative group at the Coord Pt (38RQV2554180459). The remainder of TF TARAWA is moving back to the area of AL KUT. 16 Air Asslt Bde is BPT to link up with this group by 121000ZAPR03 on its advance into MAYASAN Province.

a. Bdrys for 16 Air Asslt Bde on Adv N. S of EUPHRATES no change to bdrys detailed in FRAGO 086. N of EUPHRATES will be the bdrys of MAYSAN Province and International Border with IRAN (be advised movt within 5 KM of border must be cleared through G3 Ops this HQ). N bdry is currently PL VIRGINIA.

b. Movt of 16 Air Asslt Bde N. Move of 16 Air Asslt Bde N of current LOE is on Os. No move before 110600ZAPR03. Optimum window for X PL GEORGIA is 120300ZAPR03. 16 Air Asslt Bde to co-ordinate move of 2 RTR BG and book required HETs and LETs through Log Sp Ops, HQ DSG. 16 Air Asslt Bde also responsible for escorts. It is anticipated that the move of 2 RTR BG up to AL AMARAH will be done in two loops.

c. PUMA a/c TACON 3 Cdo Bde for W AO. Ref A specified that the 2 x PUMA a/c that are currently TACON to 16 Air Asslt Bde for W AO tasks would become TACON 3 Cdo Bde. This was incorrect, the SH for this task is to be drawn from the CHF. The 2 x PUMA a/c currently TACON 16 AA Bde will return to the JHF wef 111000Z. CASEVAC cover for 16 AA Bde is TBD.

d. On Os Bdry Change Between 3 Cdo Bde and 7 Armd Bde. On Os the bdry between 3 Cdo Bde and 7 Armd Bde will be adjusted to place the suburbs of AL BASRAH in 7 Armd Bdes AO. Bdry will run from Bridge 5 (remains inclusive to 3 Cdo Bde) following current bdry to 38RQU680678, then follows pylon line NE to 38RQU775704. Then follows road to 38RQU800713 (road inclusive to 7 Armd Bde). Then follows road NE and continues in a straight line to the SHATT AL ARAB (38RQU812741). This bdry will be activated on Os from G3 Ops, not before 12 Apr 03.

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RDC MAIN OPS
SER NO 117

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2. Procedures for Handling Material Suspected of Having a CBRN Hazard. Annex A to Ref A covered the procedures for document exploitation, which remain extant. It covered the requirement to where practicable, get documents checked by local assets. Annex B covered the threat of deliberate contamination of documentation and the role of the Jt NBC Regt in advising and checking such documents. Based upon current assessments the assumption is that we are not expecting to encounter contamination, however there may be times or circumstances where troops have reason to feel that there is sufficient concern to contact the Jt NBC Regt.

3. Jt NBC Regt Tasking. The Jt NBC Regt has the capability to check most items of concern to Bdes, however the procedure for the handling and passage of them needs to be tied down. There are two channels through which material has been passing and should continue to do so.

a. Sites of Interest. BGs have passed to their Bdes sites (usually buildings) that are deemed of potential interest. In some cases Bdes have approached the Jt NBC Regt Sqns supporting them direct to investigate them. Such sites are best exploited by the SIT, which will be tasked by Div following prioritisation. To this end Bdes are to highlight sites to Div G3 Ops and assets will be tasked as appropriate, be they SIT, EOD or Jt NBC Regt.

b. Items of Interest. Individual items (generally documents) of interest or concern have found their way to both the Jt NBC Regt and a number of HQ locations by a number of routes. To ensure items are moved as safely as possible some control is required. Items of interest should be bagged and tagged with information regarding the time and location of the find together with the details of the individual submitting the find. In all instances to minimise the hands through which such items of interest pass the Jt NBC Regt has designated 4 RVs which wef 092359ZAPR03 are the only place material is to be delivered to for safe testing / exploitation away from other personnel. Units are required to notify both Bdes and the comd at the RV of their submission. RVs, each of which is a Jt NBC Regt PBDS site, are as follows:

- (1) QU 786290.
- (2) QU 598486.
- (3) QU 525704.
- (4) QU 220852.

If the material in question of particular CBRN concern then the guidance is to leave it in location and adopt the procedures in para a.

c. Below are some guidance points for units for the handling of items suspected of having been contaminated by CBRN.

- (1) Wear gloves when handling / reading documents.
- (2) Take care not to rub your eyes, nose or face when handling documents.
- (3) Remove gloves after handling documents and wash hands with soap & water.
- (4) Be aware of the condition of the documents being examined.
- (5) How dusty are they in relation to other objects in room.
- (6) Colour of dust – white/cream coloured dust is of more significance.

d. If there are documents with unusual amounts or distribution of dust the following actions are to be taken:

- (1) STOP exploitation of the document.

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- (2) LEAVE the room and restrict access to it.
- (3) REMOVE gloves.
- (4) WASH hands.
- (5) INFORM the chain of command who may request a specialist testing or sampling team to attend.

4. OP TELIC Battlefield Souvenirs / Memorabilia. All troops are to be clear that the collection of small arms and ammunition poses a danger to themselves and others. The holding of non-issue weapons and ammunition breaks military regulations and the subsequent import of such items without authority or licence is illegal (both in UK and Germany). The collection of official souvenirs for units must be cleared through G3 Ops at HQ 1(UK) Armd Div. Disciplinary action will be taken against offenders.

5. Boundary change. 102 Log Bde will expand its AO to include an extra industrial facility, to be effective from 100500Z APR 03. Therefore the whole boundary should run along the following grids: QU729320 – QU723333 – QU732340 – QU738337 – QU760350 – QU797363 – then follow along West side of KAZ to PL FLORIDA.

LEGAL

6. Legal / 102 Log Bde. 102 Log Bde is to provide a six man RMP team, under SIB direction, to draw together evidence in relation to UK PW's.

a. The purpose of this team is to provide evidence for the Article 5 Tribunals to determine status of PWs and/or determination as to whether the PW will subsequently be interned. This team needs to be operational as soon as possible given the delay that has already occurred in drawing together this evidence.

b. Additionally, 102 Log Bde is to scope the Theatre Internment Centre (TIC) to find out if they will be detaining PWs, Detainees, Internees and voluntary detainees at the same time. If they are unable to detain any of the above categories, 102 Log Bde needs to find alternative facilities bearing in mind the requirements under International Law for the detention of internees (ie. not less than the standard required for PWs).

7. Looting. A guide for commanders concerning looting is attached at Annex B.

G2

8. HQ 1(UK) Armd Div (Theatre) Fd Sy Coy. Further to Ref A, the mission of the Fd Sy Coy is: to provide timely and cost effective operational Fd Sy and Counter Intelligence support to 1 (UK) Armd Div and JFLogC, as directed and prioritised by the G2 staff, in order to contribute to Force Protection and the production of Security Intelligence in line with the Commanders' risk management policy. Sect missions and tasks are as follows:

- a. 1 Fd Sy Sect TACOM 23 Pnr Regt responsible for support to units in the UMM QASR AO. Will switch to TACOM JFLogC on its relocation from Arifjan.
- b. 2 Fd Sy Sect TACOM 16 AA Bde responsible for support to units in the Bde AO.
- c. 3 Fd Sy Sect TACOM 7 Armd Bde responsible for support to units in the Bde AO.

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- d. 4 Fd Sy Sect TACOM JFLogC responsible for support to units in Ku. Sect personnel will redeploy to original units following JFLogC relocation to UMM QASR.
- e. 5 Fd Sy Coy TACOM DSG responsible for DIV MAIN and support to units in the Di Rear Area.
- f. Under current planning Fd Sy Dets to 3 Cdo Bde, 17 Armd Bde and 16 AA Bde will remain embedded with Bde HQ MI Sects. This will be reviewed once Phase 4 planning matures.

OPS SP

- 9. G5 / CIMIC. Annex A should be read in conjunction with Ref C.

Ack:

B D C RYAN
SO3 G3 Plans (A)
HQ 1 (UK) Armd Div

Auth:

J C W MACIEJEWSKI
SO2 G3 Ops
HQ 1 (UK) Armd Div

Annexes:

- A. G5 / CIMIC – Activities for 16 Air Asslt Bde expansion North.
- B. Legal policy on looting. (At rear)

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ANNEX A TO
1 DIV FRAGO 091
DATED 091800ZAPR03

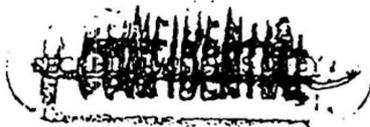
G5/CIMIC

Refs:

- a. 1(UK) Armd Div FRAGO 86 dated 081900ZAPR03
- b. 1(UK) Armd Div FRAGO 72 dated 31 Mar 03.

1. SITUATION. See Ref A. The aim of this Annex is to confirm the G5 activities to be conducted during the expansion north and establish revised reporting procedures.
2. MISSION. No change.
3. EXECUTION.
 - a. Intent. The intent is to ensure that emergency relief can be supplied to maintain the stability, development and confidence of the population throughout the Div AO in order to facilitate the involvement of IO/NGO/OGAs and a return to normal life for the Iraqi people.
 - b. Scheme of Manoeuvre(see Appendix 1). Stocks of HA have been forward loaded into 7 Armd Bde's AO and prepositioned to sp any HA emergency in BASRAH as quickly as possible. The provision of HA will be line with G3 priorities in order to prevent an HA crisis across the Div AO. Concurrently, IO/NGO/OGAs are being engaged to take on full responsibility for all HA activities. G5 Ops will be focussed as follows:
 - (1) Removal of Regime Control.
 - (a) Securing of key infrastructure to reduce dependence upon the Regime for essential services.
 - (b) The provision of timely emergency HA into expanding lodgements to increase confidence in the Coalition.
 - (2) Consolidate Gains.
 - (a) The continued use of civ/mil assessments to identify areas of concern and those for development.
 - (b) The facilitation of IO/NGO/OGA involvement in semi permissive/permissive environments.
 - (c) The identification of QIPs and the promotion of long term infrastructure projects.

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c. ME. Initially, the ME is 7 Armd Bde but will switch to 16 AA Bde for the expansion north.

d. Task Org. CATs will remain with the Bdes to which they have been allocated(see Ref B) and should hand over responsibilities for CIMIC Houses and QIPs to the incoming Bde. An additional US CAT has been allocated each to 102 Log Bde and 7 Armd Bde.

e. Additional Tasks

(1) 3 Cdo Bde.

- (a) Continue to develop transition to Ph IV in AL FAW and AZ ZUBAYR.
- (b) Hand over UMM QASR CIMIC House to 102 Log Bde.
- (c) Identify and manage QIPs across the Bde AO.
- (d) Facilitate IO/NGO/OGA assessments and involvement ASAP.

(2) 7 Armd Bde.

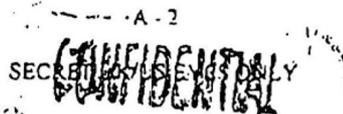
- (a) Conduct stability ops in BASRAH and the remaining AO.
- (b) Incorporate an additional US CAT into the Bde.
- (c) Handover AZ ZUBAYR CIMIC House to 3 Cdo Bde.
- (d) Facilitate IO/NGO/OGA assessments and involvement ASAP.

(3) 16 AA Bde.

- (a) Continue to develop transition to Ph IV in RUMALYAH and Bde AO.
- (b) Identify and manage QIPs across the Bde AO.
- (c) Facilitate IO/NGO/OGA assessments and involvement ASAP.

(4) 102 Log Bde.

- (a) Continue to provide HA sp across Div AO.



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- (b) Continue to develop transition to Ph IV in UMM QASR and Bde AO.
 - (c) Incorporate an additional US CAT into the Bde.
 - (d) Identify and manage QIPs across the Bde AO.
 - (e) Facilitate IO/NGO/OGA assessments and involvement ASAP.
- (5) Div Rear Ops.
- (a) Continue to develop transition to Ph IV in SAFWAN and remainder of AO.
 - (b) Identify and manage QIPs across the Bde AO.
 - (c) Facilitate IO/NGO/OGA assessments and involvement ASAP.

4. COORDINATING INSTRUCTIONS

a. Command and Signals

(1) R2.

(a) The revised CMO Daily SITREP(at Appendix 2) should be sent to Div Main by 1600Z daily. A system of parallel reporting will apply. This will require the following to be sent through daily reports to G5 Ops main and copied to all other G5 clients. (These are CMOC, DSG, 7 Armd Bde, 16 AA Bde, 3 Cdo Bde, 102 LogBde, Rear Area, HACC LO and HOC LO.) The complete report will be compiled by G5 Ops Main and redistributed to all G5 addressees.

- (b) The revised SITREP involves the following Annexes:
- (i) Annex A - C2PC Threat Assessment(published by G3 Ops).
 - (ii) Annex B- C2PC Control Assessment (published by G3 Ops).
 - (iii) Annex C - Log ASSESSREP (published by DSG G5 Log).
 - (iv) Annex D - Stock Totals(published by DSG G5 Log).

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(v) Annex E - Methods of Effectiveness(M of E) records.

(vi) Annex F - RFIs at Appendix 3(published by G5 Main).

(2) Synch Matrix. The synch matrix at Appendix 1 will be updated regularly and re-issued with the daily sitrep.

(3) RFIs. RFIs for G5 Main should be sent with the daily sitrep on the form at Appendix 3 and will be collated and forwarded to G2 daily.

(4) M of E. Appendix 4 is the method of effectiveness database which CATs should begin to utilise ASAP in order to build up a picture of the AO and track improvements and highlight problem areas. Records should be sent electronically to CMOC and G5 Main for further analysis.

(5) Comms Matrix. The comms matrix for specified G5 addressees is at Appendix 5.

(6) G5 Conference Call. The G5 conference will be held at 1800Z daily.

Appendices:

1. HA Synchronisation Matrix.
2. CMO Daily SITREP.
3. RFI Form.
4. M of E - Data Collection Form.
5. Comms Matrix.

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ANNX 8 TO
HQ 1 (UK) ARMD DIV FRAGO 091
DTG 091800Z APR03

LOOTING
GUIDE FOR COMMANDERS

INTRODUCTION

1. The recent occupation of various towns in S. Iraq by UK Forces has been accompanied by acts of looting. The cause of this looting is not known and may range from venting anger at remnants of the Ba'ath Party to common criminality.
2. However, in the absence of Iraqi police, the duty of preventing such looting falls to UK Forces who are now in Occupation. Under the law of Occupation, the Occupying Power (UK Forces) is responsible for law and order and must seek to prevent a breakdown of that order.
3. However, as UK forces, in the absence of Iraqi Police, are effectively acting as the police force, the powers available to UK Forces are different from the powers available to them in war fighting. This is because we are now acting against civilians. UK Forces are used to this situation in Northern Ireland and the Balkans and the principle of minimum force applies.
4. It is a matter for Commanders to decide how to deal with such a problem and the nature and gravity will vary from situation to situation. However, although not prescriptive, various powers to Commanders are set out below.

INTERVENTION

6. It is permitted for UK Forces to intervene to prevent a crime taking place and may use reasonable force in so doing. Commanders may therefore intervene in such circumstances.

INCREASED PATROLLING

7. An increase in patrolling may be sufficient to deter looters.

RIOT CONTROL MEASURES

8. Under ROE 500 (C)

"Service personnel may be deployed and use public order control equipment to control (civilians). Batons, riot control clothing and baton rounds may be employed"

Commanders are clearly able to take riot control measures and can use necessary force to control the riot situation

TEMPORARY DETENTION

9. Under ROE 680 B (I)

"Temporary detention of persons posing a threat to Coalition Forces or elements under UK protection or otherwise interfering with or threatening the Coalition mission is permitted"

Looting would fall within the definition of "threatening the Coalition mission"

10. Once detained, the looter should be handed over to the RMP who will remove the suspect to a Police Station and take all the suspects details. At the present time, it is unclear whether there is power to lock up such persons. If they can be handed over to the Iraqi authorities by the RMP then the Iraqi authorities may detain. The UK does not have the power to detain permanently at the present time but this matter is being addressed.

WARNING SHOTS

11. Under ROE 660 F (I) warning shots may be fired.

MILITARY POLICE

12. The Military Police may be tasked to the scene and anyone who is temporarily detained by UK Forces should be handed over to them.

SELF DEFENCE

13. At all times, UK Forces have the right of defence of themselves, their unit and Coalition Forces. If during the maintenance of law and order the life of a UK soldier, his colleague or his unit are threatened then lethal force may be used if reasonable in the circumstances.

LAW OF ARMED CONFLICT

14. It should be remembered that the Law of Armed Conflict still applies whilst hostilities are continuing. Nothing mentioned above affects the right to attack positively identified Iraqi military Forces.

CONCLUSION

15. The current situation means that the Law of Armed Conflict exists alongside our duties in restoring law and order. The essential difference in dealing with law and order is that it involves civilians and not combatants and therefore the force used has to be reasonable in the circumstances. The process of establishing law and order will be evolutionary and the powers to deal with such situations will increase as the Occupation continues.

N J Mercer
Lt Col
Comd Legal

Appendix 10: FRAGO 100

CPO, HQ SIB UK RMP

Fax: 943213619

4 Oct 2005 10:15

P. 01/23

FROM: MAIN HQ 1 (UK) Armd Div, BASRAH International Airport, IRAQ

TO: G3 Plans Standard Distribution List

INTERNAL: 1 copy for each working file and email for all on LAN with O Drive address.

PRECEDENCE: ROUTINE

DTG: ■1800DAPR03

law md add

FRAGO 100 – 1 (UK) ARMD DIV DAILY MISCELLANEOUS FRAGO

Time Zone Used Throughout the Order: DELTA.

G3

1. Joint Military Committee.

a. JOINT MILITARY COMMISSION (JMC). GOC HQ 1 (UK) Armd Div has recently created the JMC. Though its terms of reference and mission are still being defined by both the operational chain of comd and the NCC, likely tasks may incl:

- (1) Assess extent of surviving military infrastructure and develop basing plan for INDF.
- (2) Collect/salvage heavy weapons and other military equipment from former IZ military to contribute to re-equipping the INDF.
- (3) Develop proposal for structure and Military Table of Equipment (MTOE) of INDF.
- (4) Develop personnel strategy including, career and manning (recruitment/retention/reserves), conditions of service, rates of pay that are coherent across country and other employment sectors and mechanism for paying military.
- (5) Identify doctrine for INDF.
- (6) Develop training plan including individual, collective, branch and leadership Programs of Instruction (POIs), training locations and rotation.
- (7) Develop logistic support plan based on depot policy and including necessary industrial base.

b. The Div team will consist of the fol team members:

- (1) OC – Maj Scott (PARA).
- (2) G2 – Maj Morrell (Int Corps).
- (3) Armour – Capt Davies (QRL).
- (4) Three more staff officers to cover Inf, Engr and ES are being sourced by G3 O&D.

2. 3 Cdo Bde, 7 Armd Bde, 16 AA Bde, 102 Log Bde and DSG are to identify a JMC rep and this should filter down to BG level. Once identified details of the reps are to be passed to the Div JMC cell on Ptarmigan 3201345.

3. The Div JMC team will visit each formation within the next few days to brief the formation Staff and nominated Offr with current information.

LEGAL

4. In order to further assist the Brigades, a further guide to Law and Order is attached (Annx A) together with a Commanders' Aide-Memoire on 'Property in Occupation' (Annx B) and a guide to the structure of the Courts in the Provinces of BASRAH and MAYSAN (Annx C).

Ack:

B D C RYAN
SO3 G3 Plans (A)
HQ 1 (UK) Armd Div

Auth:

J C W MACIEJEWSKI
SO2 G3 Ops
HQ 1 (UK) Armd Div

Annexes:

- A. Law & Order.**
- B. Property.**
- C. Court Structure.**

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ANNEX A TO
HQ 1 (UK) ARMD DIV FRAGO 100
DTG 141800Z APR 03

LAW AND ORDER

INTRODUCTION

1. Guidance has already been provided on law and order to the Brigades in FRAGOs 079 and 091. This outlined the Brigade Powers in respect of law and order generally (FRAGO 079) and also gave specific guidance in relation to looting (FRAGO091).
2. Obviously, the restoration of Law and Order is an evolutionary process and unanticipated questions arise as events unfold. Advice can be obtained from Div Main at any time and further direction will be provided whenever required. In addition, 7 Armd Bde and 16 Air Asslt Bde now have lawyers attached to answer immediate questions.
3. However, in the meantime, I have attempted to answer a number of questions that have been raised in the past week.

A. CIVIL POLICE

ARMING OF CIVIL POLICE

4. This is permitted. However, the intention is that the Iraqi civil Police eventually should just carry side arms

ROE FOR CIVIL POLICE

5. The civil police should adopt the same ROE as UK Forces in relation to the maintenance of law and order. This means that minimum force should be used in maintaining law and order and lethal force is only justified in self-defence (however see intervention below). Self-defence includes defence of colleagues. It is important that the Iraqi civil police operate on the same ROE not only to prevent confusion on patrol but also to prevent UK Forces from potentially having to take action against Iraqi Forces for the unlawful use of force.

B. LAW AND ORDER

INTERVENTION TO PREVENT A CRIME

6. Under UK law and the ROE it is permitted to intervene to prevent a crime from taking place. The minimum necessary force required is permitted but this could include

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lethal force if absolutely necessary in the circumstances (in reality a warning shot would probably suffice). This also applies to the Iraqi civil police.

CAR THEFT

7. It has been reported by one unit that they suspect that a number of cars have been stolen and guidance has been sought on what to do if such cars are stopped at a VCP. Under the ROE there is the power to temporarily detain a person if they are a threatening the Coalition mission and this would include theft as this, and other crimes, leads generally to a breakdown in law and order. In such circumstances, if the suspect cannot verify ownership, the suspect should be temporarily detained and the RMP called to the scene. The RMP can then attempt to resolve the matter and take the appropriate action. However, RMP resources are not infinite and the matter should be resolved at the scene if possible.

CARRIAGE OF WEAPONS

8. A Theatre policy on the carriage of weapons has not yet been issued. This will have to be co-ordinated across the UK AO. In the meantime, no action should be taken against someone for simply carrying a weapon unless a crime is being committed. (However, see combatants below)

C. COMBATANTS

9. The Law of Armed Conflict still applies even though we are in Phase 4. The Law of Armed Conflict co-exists alongside our responsibility, as the Occupying Power, to restore law and order. However, whereas the maintenance of law and order means working from the principle of minimum force upwards, the Law of Armed Conflict works the other way around (although acknowledging the need for proportionality) and it means that combatants can still be attacked and captured at will. (note)

10. Under the ROE, combatants are defined as Iraqi Regular Armed Forces, RGFC, Special RGFC, DGS, SSO, DMI, Fidayin Saddam, Al Quds and MEK. In addition, members of the IIS, DGI and Ba'ath party are combatants if and for such time as they take part in hostilities. Therefore, if any Brigades come across any of these persons they may be captured (or engaged if necessary) and should then be handed over to the PWHO

11. In addition, if there is any doubt as to the status of such persons when captured then, under International law, they are to be treated as PWs until such time as a competent tribunal determines otherwise. Where there is no doubt as to the status of a civilian they should be handed over to the RMP if they have committed a crime.

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D. GUARDING OF RESTRICTED AREAS/DESIGNATED PROPERTY

12. If you are guarding a restricted area and/or designated property then the use of force is permitted to protect such area or property. Designated property includes structures essential for the maintenance of public order (police stations/prisons), health and hygiene, electricity generation and distribution, oil infrastructure and port facilities. Other mission essential structures may be designated but the use of minimum force is permitted in the guarding of such facilities. This may include lethal force if necessary in the circumstances and the right of self-defence would apply.

CONCLUSION

13. The obligation upon the Occupying Power to restore public order and safety imposes a peculiar burden upon UK Forces to act as both policemen and combatants simultaneously. However, as long as it is remembered that the restoration of law and order requires soldiers to react using the minimum force necessary but that the Law of Armed Conflict exists simultaneously then soldiers are unlikely to go wrong. Further ROE for Phase IV will be issued in due course.

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Lt Col
Comd Legal

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ANNEX B TO
HO 1 (UK) ARMD DIV FRAGO 100
DTG 141800Z APR 03

COMMANDERS AIDE MEMOIRE

PROPERTY

1. Now we are in Phase 4 of OP TELIC and UK Forces are in Occupation of parts of BASRAH and MAYSAN Provinces there will clearly be need to use property other than property belonging to UK Forces.

2. Under the Law of Armed Conflict, there are rules which apply to the use and seizure of property which need to be understood by Brigades. This will enable the Brigades to take advantage of certain property and, at the same time, ensure that they remain within the Law of Armed Conflict and do not attract undue criticism.

PROPERTY IN OCCUPATION

3. **Whilst in Occupation**

- a. **Private Property must not be confiscated**
- b. **State Property including cash, realisable securities, arms, transport, stores, supplies, fuel stores and any moveable property that is useable for military purposes can be seized without compensation.**
- c. **State Buildings cannot be taken but may be occupied**
- d. **Private Property may be requisitioned but the following conditions apply;**
 - (1) **Only where the requisition is required for the needs of the UK Forces**
 - (2) **Any requisition must be in proportion to the resources available (i.e. the needs of the civilian or the wider civilian community must be considered)**
 - (3) **Any requisition must be authorised by the Occupying Commander (Bde Commander).**
 - (4) **Any requisition must be paid for in cash – if this is not possible then arrangements must be made for the payment to be made as soon as practicable.**

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(5) Civil Defence assets, necessary for the defence of the civilian population may not be requisitioned.

(6) Special rules apply for medical property apply (see below)

e. Private Transport may be seized, provided

(1) It is necessary for military reasons

(2) It is not available from State property

(3) Compensation is to be paid in cash at the time of the requisition but if this is not possible appropriate compensation is to be paid to the owner after hostilities have ceased.

MEDICAL PROPERTY

f. Medical Property

(1) No requisition of civilian medical units, material, equipment and services if those resources are necessary for the provision of adequate medical services to the civilian population.

(2) If requisition is permitted then the following conditions apply

(i) The requisition is necessary for the adequate and immediate treatment of wounded and sick forces or EPW's.

(ii) The requisition continues for only as long as absolutely necessary

(iii) Alternative arrangements are immediately made to ensure the continued treatment of the civilian population

(3) The buildings, material and stores of fixed medical establishments shall not be diverted from that purpose provided there is an ongoing need for the care of the wounded and sick.

(4) Hospitals can be requisitioned temporarily for urgent and necessary care of the military wounded only if suitable arrangements are made to ensure the continued care and accommodation of the patients

(5) Any application of medical material must be on the basis of clinical priority only and there must be no discrimination.

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LOOTING

g. Under Section 30 Army Act 1955, looting is an offence under military law. Looting includes;

(1) Stealing from anyone killed, wounded or captured in the course of warlike operations

(2) Stealing any property which has been left exposed or unprotected in consequence of warlike operations

(3) Taking, otherwise than for the public service, any vehicle, equipment or stores abandoned by the enemy

Looting can only be tried by Court -Martial in relation to (1) and (2) above.

**N J Mercer
Lt Col
Comd Legal**

**RESTRICTED
B - 3**

CPO, HQ SIB UK RMP

Fax: 943213619

4 Oct 2005 10:18

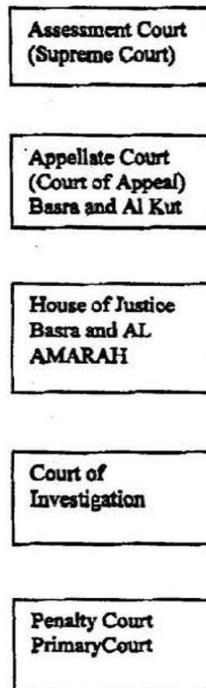
P. 09/23

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ANNEX C TO
HQ 1 (UK) ARMD DIV FRAGO 100
DTG 141800Z APR 03

COURT STRUCTURE IN BASRAH AND MAYSAN PROVINCES

1. As a result of a meeting with an Iraqi lawyer who is now an Iraqi freedom fighter, I have managed to obtain very useful information with regard to the criminal and civil courts in the Provinces of BASRAH and MAYSAN.
2. The criminal and civil courts have a very similar structure and the two systems fuse at certain levels. The structure is depicted below



CIVIL CASES

3. All cases start at the penalty or primary courts and sometimes the two courts are fused. Civil claims are dealt with at the primary courts and small civil claims can be settled at the primary court. Larger civil claims go to the House of Justice which in BASRAH Province is in BASRAH, and in MAYSAN is in AL AMARAH. Appeals

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thereafter go to the Appellate Court which is again in BASRAH or AL KUT if the claim started in MAYSAN. The Supreme Court is in BAGHDAD.

CRIMINAL CASES

4. Criminal Cases start in the Penalty Courts or the Court of Investigation in BASRAH (for cases in BASRAH Province). The penalty court acts as an examining magistrate and can either deal with cases themselves (in the case of minor offences) or refer the case to the House of Justice in cases where the sentence is five years imprisonment or above. There is also a Court of Investigation in Basra to which cases can be referred in the first instance. As with civil cases, appeals go to the Appellate court and thereafter to the Assessment Court in BAGHDAD.

YOUTH COURTS

5. In addition to the Penalty Court and the House of Justice, there is also a youth court (A'Dath) for juveniles under the age of sixteen.

SOUTHERN POLICE COURT

6. I was also advised that there was a Southern Police Court which deals solely with police corruption in BASRAH and MAYSAN.

LOCATION OF COURTS

7. In the Province of BASRAH there are investigation/ penalty courts in UMM QASR, AL FAW, AL SHAT ARAB, AZ ZUBAYR, AL MEDAYNA and AL QURNAH, ABU AL KASEEB together with two in BASRAH. There is also a Law School in BASRAH (useful for research).

8. In the Province of MAYSAN there are investigation / penalty courts in AL AMARAH, AL MAJARR, AL KABIR, MAYMURHAH, KUMAYT, and ALI AL GHARBI.

JUDGES

9. According to the Iraqi lawyer, although judges have to belong to the Ba'ath party, in most cases this is only a superficial allegiance. The reason given was that judges not only have to undergo many years in practise but also have to complete a three year doctorate prior to taking up their appointment. This apparently makes it much harder to corrupt the process as it would mean corrupting the academic process at the same time.

LAW AND ORDER

10. I briefly discussed law and order and was advised that the police responsible for general law and order should be distinguished from the security police. I was advised that

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the ordinary police would be likely to return if they were paid. I also discussed the duties of the Occupying Powers in relation to keeping law and order and the evidential that might arise. I was advised that it would be sensible to talk direct with the judges to find a workable solution in the gathering of evidence and the handing over of suspects to the Iraqi criminal justice system. The Iraqi criminal code also allows for pre trial custody and bail.

CRIMINAL CODE

11. A copy of the Iraqi Criminal Code is available in English and a copy will be available next week. In addition, I am advised there is a proposed amended transitional justice system which has been worked on with the US State Department and a copy will also be made available.

CONCLUSION

12. Although I have not had a chance to verify the information it appears to be authentic and is an optimistic picture. There is clearly a sophisticated criminal and civil justice system and it would greatly assist UK Forces if the Iraqi court system could be used for criminal offences rather than the Court Martial process which is prescribed in International Law. It also appears that dialogue between the judges and UK Forces could further progress and that the restoration of the civil police could be achieved if payment was secured. In the meantime, no attempt should be made to create alternative court structures

N J MERCER
Lt Col
Comd Legal

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Appendix 11: Extract from No 1 Coy Radio Log

Date 02/10/03 Own Call Sign TJ/2010 Frequency 90.575MHz

Time	To	Call From	N.R. No.	Text	Date/Time Group	Sig. Strength
15.30	↓	X40		WAIT -1-		
15.31	∅	X40		WE NEED A PRIORITY REPORT		
15.32	J21	↓		RMP NEED A PRIORITY REPORT ON LAZ		
	↓	J21		LOWER NO BODY HAS PASSED AN OCEAN; DEGREE HEAD		
15.53	X40	∅		NOBODY HAS THE QUALIFICATION TO ASSESS THE PRIORITY REPORT THE WILL HAVE TO GO DOWN TO THE HOSPITAL AND FIND OUT THEM SELFS		
15.54	∅	B4C		VCP NOW CLOSED DOWN		
1800	INFO			LCpl PAMMENT T/O FROM LCpl MAJOR RUM.		
1820	∅	J22		BACK IN		
1850	∅	J43		RC-OK NOW ON TASKING		
1925	∅	X40		RC-OK COMMMS NOT SO GOOD		
1943	∅	J43		oil refinery camp - now moving Blue 21		
2000	∅	J22		Now ON TASKING		
2000	∅	J43		Now Back in		
2100	∅	J14A		Now ON TASK		
2115	∅	FG		RC-OK		

50

Date 31/05/03 Own Call Sign Ø JOC Frequency 40.325

Time	To	Call From	N.R. No.	Text	Date/Time Group	Sig. Strength
2125	Ø	X4Ø		RC-OK, RMP AWAITING THEIR O/A, HE MAY REQUEST A C/S FOR ASSISTANCE IN RECOVERING A KIDNAPPED PERSON, TIMINGS + DETAILS TO FOLLOW.		
2133	Ø	G00		RC-OK		
2145	Ø	J13		Now ON TASK		
2203	Ø	D10A		Back in		
2215	Ø	311		Leaving this location		
2225	Ø	X40		Require x2 QRF vehicles for tracking abuse.		
2230	X140	Ø INFO		1 x Warrior dispatched		
2235	Ø	9523		Leaving on task.		
2300	Ø	512		Leaving on task		
2303	Ø	J11		Back in		
		FG	Shore	2 high velocity rounds fired in area of the bank.		
2350	Ø	J23		Back in		
2353	Ø	G00		P/C OK		
1205	Ø	D12		Back in		
1235	Ø	X140		P/C OK		
		INFO		U/Over Gdsm Smithson		
				T/Over Gdsm Smithson		
0225	Ø	90711		30 later rounds area orange		

Date 080503 Own Call Sign ~~Ø~~ ~~Ø~~ Frequency 40.325

Time	To	Call From	N.R. No.	Text	Date/Time Group	Sig. Strength
0943	Ø	Ø22		Ø22 OK R		
		Ø		OK -		
1120	Ø	Ø21X		Ø21X NOW ON TASK		
1125	Ø	Ø12		mail sup for hospital being dropped off by an aid agency		
1131	Ø	Ø11A		BACK IN		
1144	Ø	ØA		Ref: RMP. hold him & get intouch on THESE means		
1219	Ø	Ø21		now leaving for Apod		
1219	Ø	Ø21A		ELYSIUM with ØA		
1240	Ø	Ø2		passing through Blue 21 heard two shots but no living point identified		
1250	Ø	Ø42		now back in your loc		
1305	Ø	Ø42		Now ON TASK BW		
1318	Ø	Ø4A		BACK IN		
1400	Ø	Ø09		R/OK OK.		
1415	Ø	Ø40		confirm Ø09 has morning sufficient coverage of his task before we pull out		
1500	Ø	Ø43		R/OK OK		
1530	Ø	Ø11		R/OK OK		
1600	Ø	ØG		R/OK OK		
1620	Ø	ØG	Shot rep	400 W of this location Single shot x 10		
1650		Ø1A		Leaving this location		
1653		ØSC		R/OK OK		
1700		ØSC		Now south of Blue 21		

Date _____ Own Call Sign 12 Frequency _____

Time	To	Call From	N.R. No.	Text	Date/Time Group	Sig. Strength
17:05	0	X20		Can you find out if an exercise was conducted by our C/O after the exercise		
17:25	0	Q13		Leaving this location -		
17:32	0	Q11A		Back in		
17:45	0	Q22		OK OK -		
		Q20		now searched designation can you cancel call n's		
19:07	0	Q10		now in position but 11A is not		
20:25	0	Q12		2 slots blue 19 2 more single slots blue 19		
21:32	0	Q12		1 shot in hotel 2		
21:37	0	Q12		6 slots in blue 19 all single		
22:15	0	Good		1x Shot 22:15 around blue 5		
22:17		* INFO *		MR DR used C Ward on net		
22:20	0	Q11		1x Shot area of H2		
22:30	0	Q11		7x Single shots in red 7 areas		
22:32	0	FG		2 Tracer B2		
22:35	0	Q13		10-20 shots near to Hos Red 7		
22:57	0	Good		Repeated High Velocity rounds in area of Rashid bank		
23:10	0	Q14		1x Shot 200m East of my location		
23:20	0	Q15		Permanence to your loc		

Appendix 12: Extract from Battle Group Radio Log

NPB/E

Date 07/05/03 Own Call Sign A10 Frequency _____

Time	To	Call	From	N.R. No.	Text	Date/Time Group	Sig. Strength
0112	Ø		A10	SHOTREP	3 SHOTS @ HOSP S OF R7 C/S ON GROUND INVESTIGATING C112 WS		
0132	Ø		A10	SHOTREP	BURST AUTOMATIC, 0130WS B21 PATROL GOING TO H&G		
0200	INFO	ONLY			SET TODD NOW WATCHKEEPER		
0330	Ø		A10		SHOTREP - 1 SINGLE SHOT - AREA OF RED 8		
0600	INFO				C/Sgt WATKINS NOW WATCHKEEPER		
					reach information		
					C/Sgt Edwards takeover Watch		
1012	A10		A11A		now at your location		
1025	A10		Ø		Ref int sum dated 24 Apr interim N Para 13 Para 30 (Inventory) what equipment from that house search is still in this location (must speak to Capt Magan)		
1044	Ø		A10		A14 now in this location		
1127	A10		Ø		CCI Hijacking. a. white pickup URN 2098 b. driver assaulted by 8 to 10 men. c. if stopped be cautious. could be armed. (CCI on car means!)		
1130	A10		Ø		Ref house search on 24 th inventory - still awaiting confirmation for 332 e 2A wait out.		

Date 080503 Own Call Sign A1φ/D1φ Frequency 71550

Time	To	Call	From	N.R. No.	Text	Date/Time Group	Sig. Strength
1234	CC1	φ			the pontoon bridge will be closed from 1300 - 1600hrs to allow river traffic to pass it.		
1300h	CC1	φ			Duds (20 ^{cartridges} successful demonstration about 1500hrs (successful)		
1400	φ		A1φ		CCN C/S 31 23A 23B A1φ - 7/28 DLP 1400 back 1800		
					Boundary change from C7200 G27761 → Red 6 → Red 5 → Red 4 Red 2 → Bridge 4 Red mark inclusive to A1φ		
2303	φ		A1φ		SHOTREP - 2 H/V ROUNDS - AREA OF RED 8		
0015	φ		D1φ		SHOTREP - 60-90 RDS AUTOMATIC BURSTS - APPROX GD 715780 (M3)		
0227	φ		D10		SHOTREP - 30 TRACE AUTOMATIC BURSTS FROM ORANGE 715785.		
0510	D10		D4φC		FROM HIS 22H THEY WILL BE AT 1001 TO MEET U4 AS ARRANGED @ 0600hrs. REF HANDOVER.		
0600	Info				C/Sgt Watkins now watchkeeper.		
0940	D1φ		φ	^	DID WE HAVE A C/S AT THE IMPROVED AREA AT 2551 HRS C705 04 - 7/28 C/S U2 - L.A. INSTALLED TO CASH 5100 (C01)		

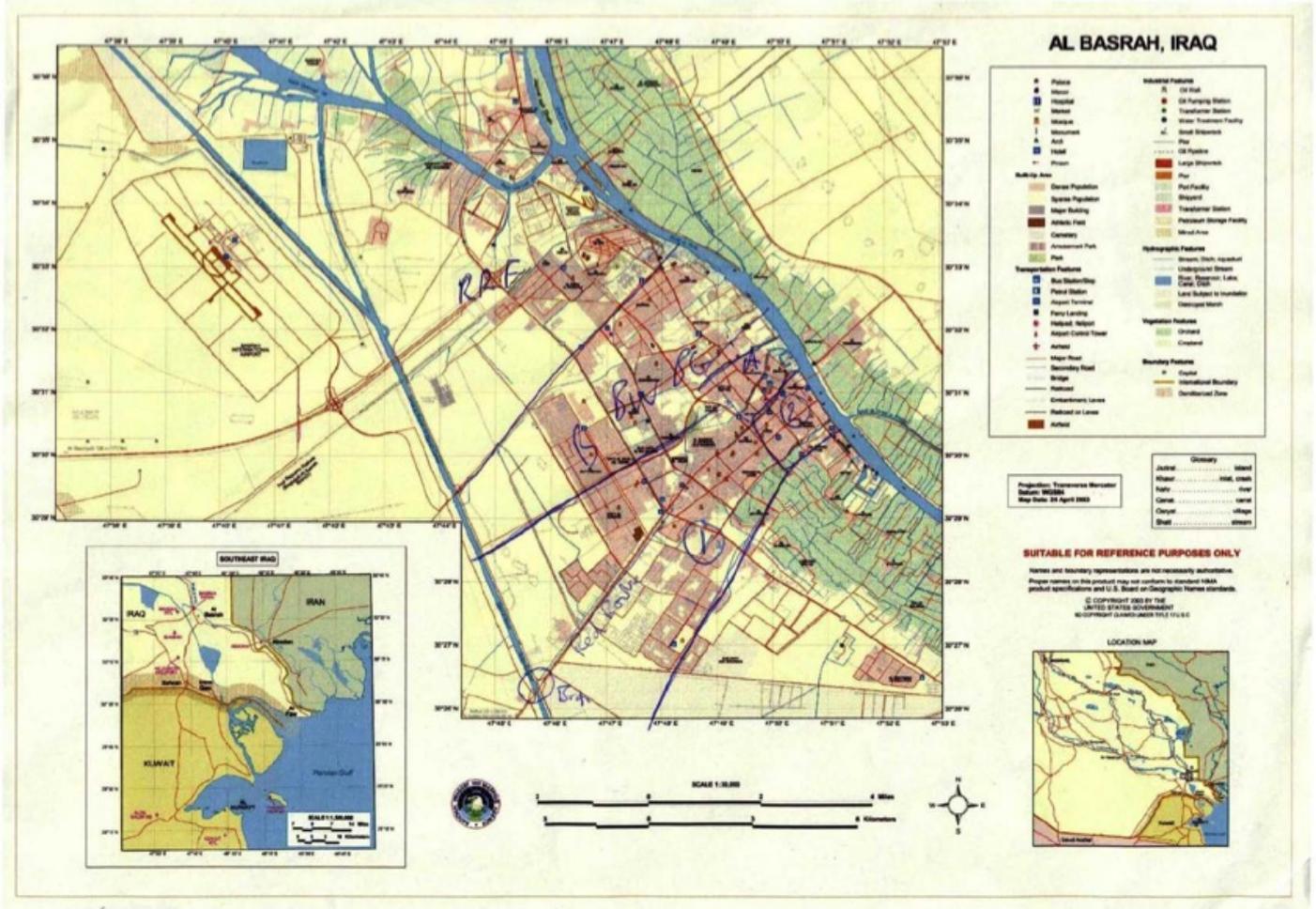
Date 08 05 05 Own Call Sign D14 Frequency 71.550

Time	To	Call From	N.R. No.	Text	Date/Time Group	Sig. Strength
0948	D14	D24		REPORTED THAT 3 (ALARMED) GUNMEN 300M SOUTH OF BLUE 5, CAN THREE C/S INVESTIGATE, YES. D24 TO KEEP US INFORMED.		
1000	INFO	ONLY		SGT TODD NOW WATCHKEEPER		
1005	D14	D24		HAD A GOOD LOOK ROUND THAT AREA. NO GUNMEN SEEN. RETURNING TO MY LOCATION		
1025	φ	D14		REQUIRE CONTROL N° FOR 3 X WR'S C/S'S 20, 21 + 22. LEAVING THIS LOCN AT 1200 OVER BRIDGE 4 AND ONTO SHIBA RETURNING AT 1600HRS C/N° 7/39		
1035	D14, D34	D42A		DUE TO A BLOCKAGE, THE HONEY SUCKER WILL BE DELAYED BUT WILL ARRIVE TODAY		
1155	φ	D14		REQUIRE CONTROL N° FOR 23A + 23E MOVING TO SHIBA VIA BRIDGE 4. LEAVING 1215 RETURNING 1600 C/N° 7/41		
1245	φ	D14		2 M/V SHOTS HEARD IN THE AREA OF BLUE 21		
1330	CC3	φ		CHECK YOUR PETROL STATIONS. REPORT IF ON FIRE.		
1400	D42A	D14		ANY DETAILS YET WITH REFERENCE TO OUR INTERPRETERS AND KITCHEN STAFF'S PAY, PAID TOMORROW,		

Date		Own Call Sign		Frequency		Date/Time Group	Sig. Strength
Time	To	Call From	N.R. No.	Text			
1507	Ø	L10		is there an Ø group 10 aircraft			
1507	D10	Ø		That is correct.			
1530	Ø	D10		Control number: 1. 23a/23b 2. here to Apod. 3. From 1530 - 1900 hrs 4. South West on Red Route. CN ^o = 7/62			
1540	Ø	D10		Control number 1. 33-e 2. here to Apod 3. From 1600 - no return. 4. Via bridge 3. CN ^o = 7/63			
1600	Ø	D10		Cont No 7/34 now back in this location.			
1614	Ø	D10		1619 Shot rep 400m west of this location 2-10 single shots			
1644	D10	Ø		a shooting may have took place in a small cemetery (Grid 711775) at midday Can you investigate.			
1715	D10	Ø		Control number 1. 20, 21, 22 2. leaving 1800 hrs, no return 3. Shaber airfield. via bridge 3. Cont CN ^o = 7/64.			

Date	Own Call Sign	Frequency				
Time	To	Call From	N.R. No.	Text	Date/Time Group	Sig. Strength
1807	Ø	D10		Control number: 1. C/S 24A/B 10WING 23 OC LR 11A 245 2. Airfield 3. Leavenworth 1815 hrs control number =		
1810	info			C/Spt Working now w/oldkeeper		
2026	Ø	D1Ø		7 shots in area of Blue 19.		
2030	Ø	D1Ø		6th of last shot rep 701766		
2035	Ø	D1Ø		4 shots in area of Blue 19, 45 1st tasked to area.		
2137	Ø	D1Ø		6 shots fired in area of Blue 19 6th 701766 Single shot high vel		
2157	D1Ø	DØ21		PRESS MAN BEING PICKED UP AT 0645 hrs 090503.		
2216	Ø	D10		SHOT HEARD HEARD AROUND "B5" @ 2215		
221Ø	Ø	D30		1x HUMAN WITH AK47 ON ROOF, RETURNED 3 BOUNDS. 1 ENEMY CASUALTY. 2 COMBAT REFUG		
2236	Ø	D10		SEVEN SINGLE SHOTS AT REF 7		
2237	Ø	D10		2 TRAPED HUNG @ B2		
2238	Ø	D10		10-20 SHOTS @ REF 7 AREA. Q13 AREF INVESTIGATION-		
2238	Ø	D10		2 SHOTS. REF 7		
2246	Ø	D30		6324 6337. COMBAT REFUGT. 1x AK47 C/S 21. INSULTED HUMAN AREF (140) TASKED. AS AT 2205 CASUALTY-7 CZELI HOSPITAL/2217 2 ND COMBAT AT		

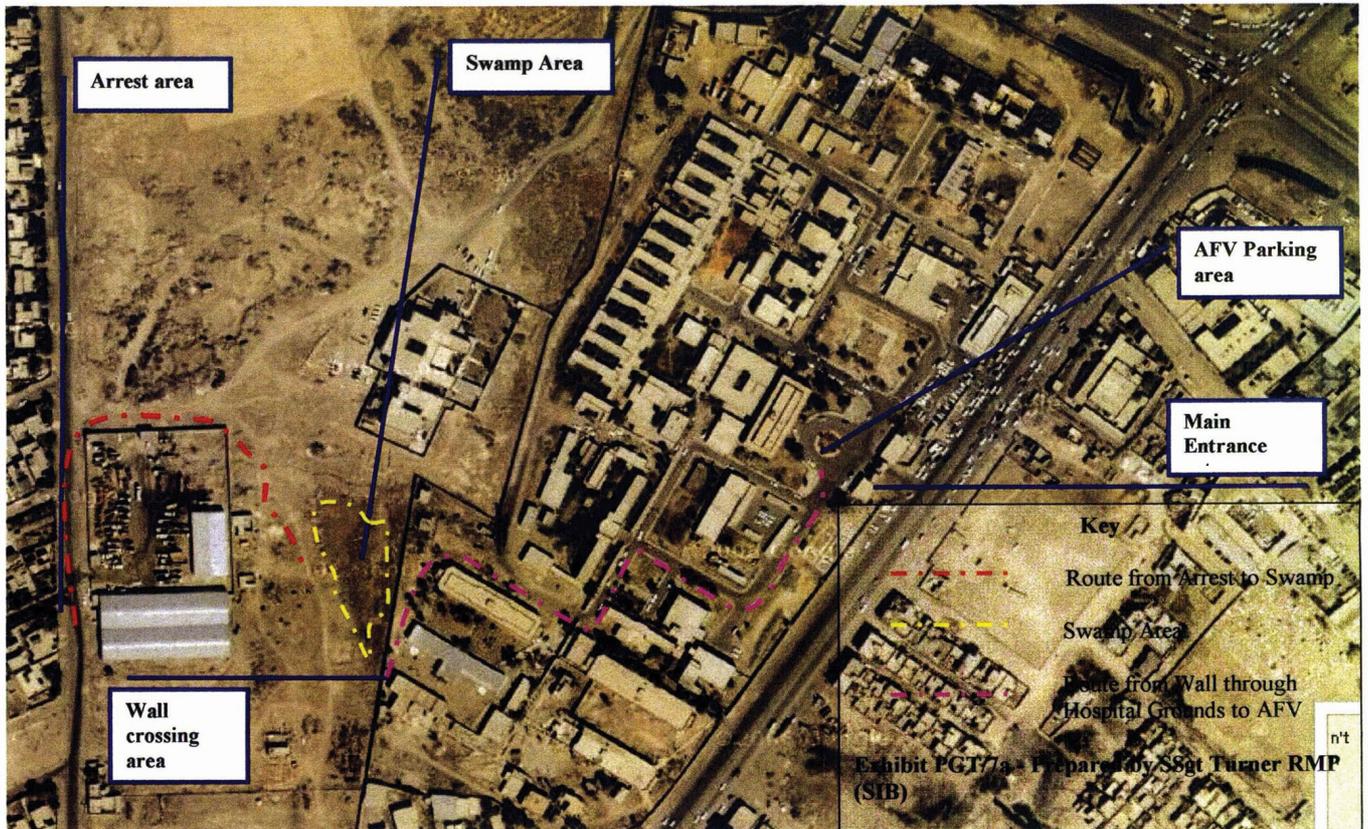
Appendix 13: Map of Basra [PCAM/1]



Appendix 14: Photographs of 'Baghdad Garage'



Appendix 15: Map showing route from arrest to Basra General Hospital



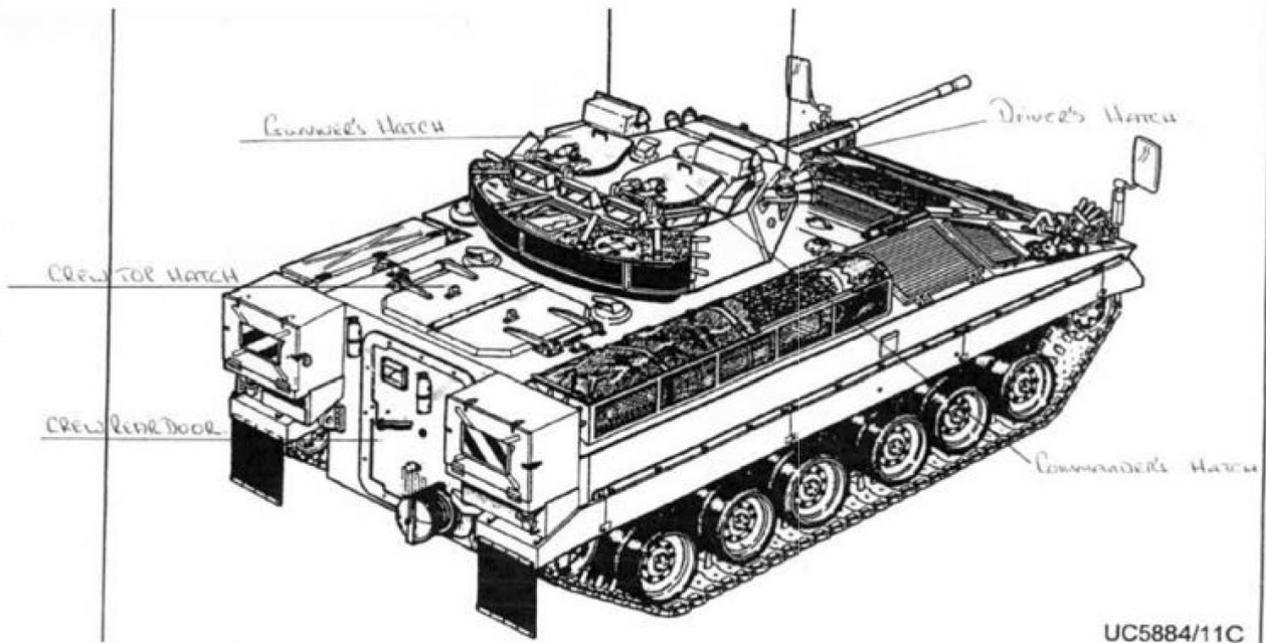
Appendix 16: Photograph of the area of dirty water



Appendix 17: Photograph showing the perimeter wall



Appendix 18: Plan views of a Warrior with its crewing positions



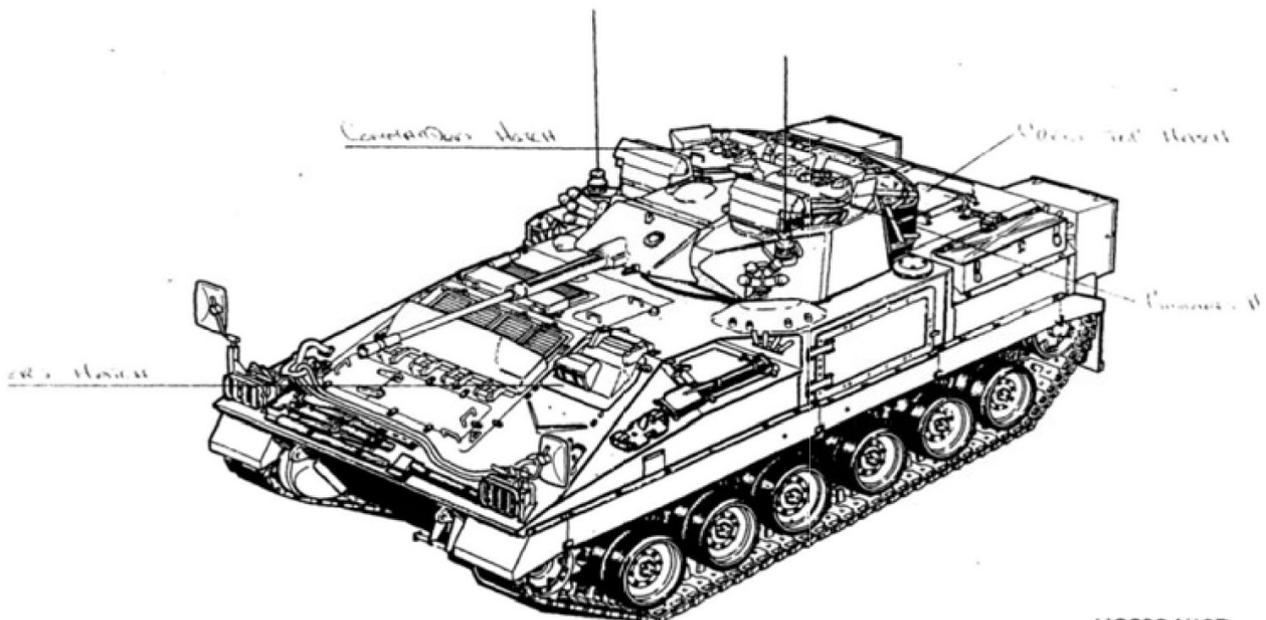
UC5884/11C

Basic vehicle - three-quarter view (rear right)

ARMY EQUIPMENT
SUPPORT PUBLICATION

UK RESTRICTED

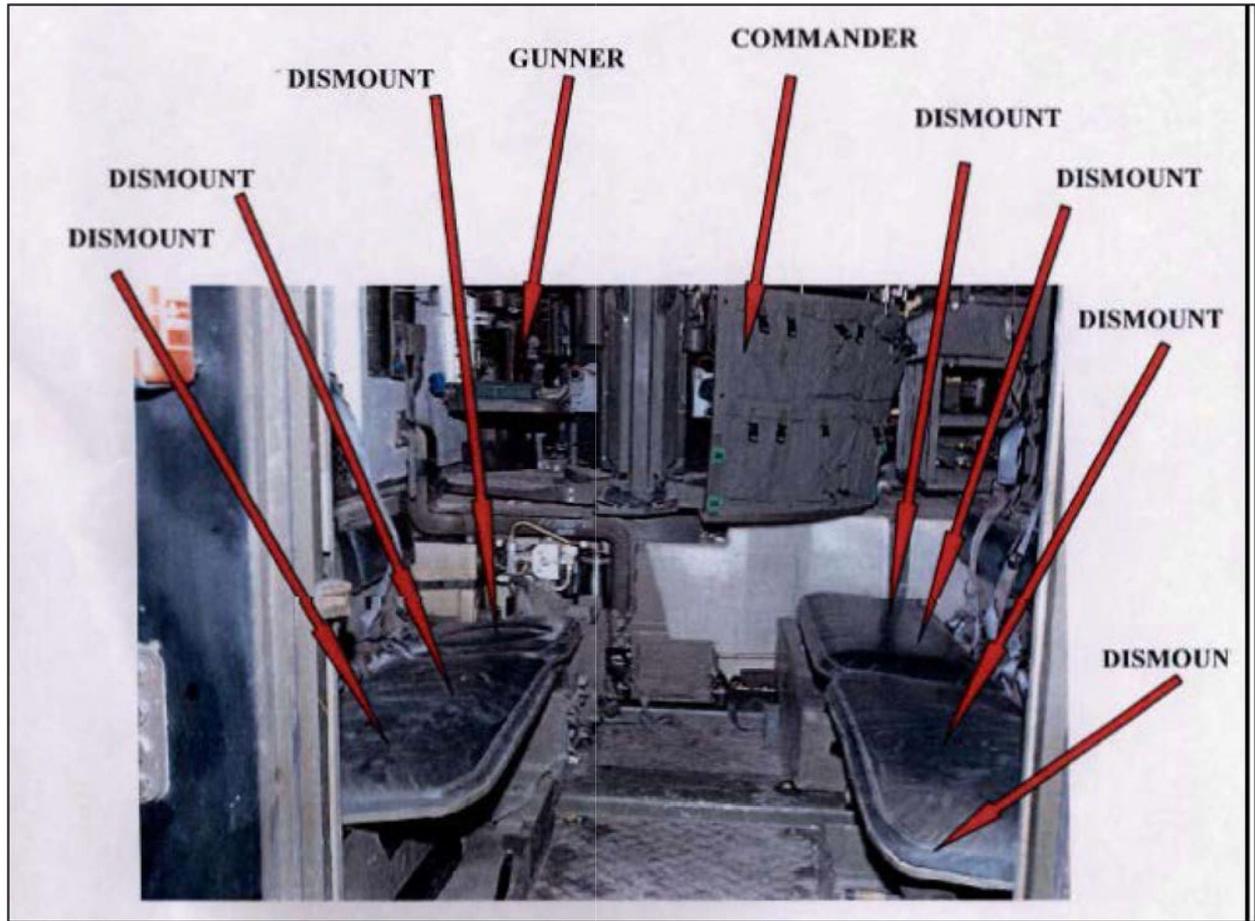
2350-T-200-201



UC5884/10B

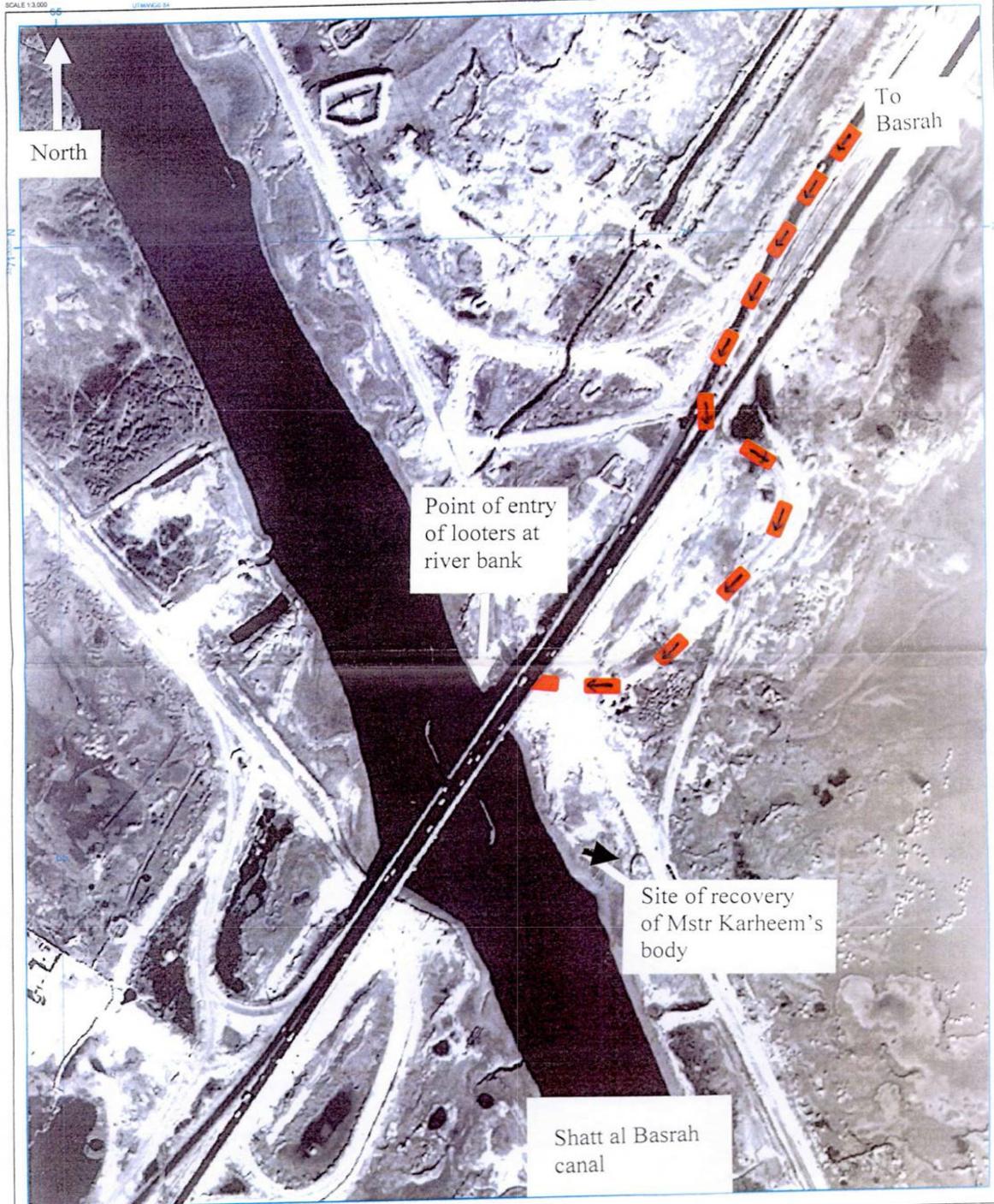
Basic vehicle - three-quarter view (front, left)

Appendix 19: Photograph showing the inside of a Warrior



Appendix 20: Satellite image depicting Bridge 4

EXHIBIT CEF/1st - SATELLITE IMAGE DEPICTING BRIDGE 4, BASRAH. 64654/03



Produced by Geographic Support Group, HQ MND (SE).
Maps produced for and behalf of the Chief Geographic Officer, HQ MND (SE)
are not to be taken as necessarily representing the views of the UK Government
on the boundaries or political status.
Users holding errors are to mark them hereon and forward to the Chief Geographic
Officer, MND (SE).
Base image derived from Quickbird imagery.

SCALE 1:3,000
70 35 0 70 140 210 280 Metres

- ASSUMED ROUTE OF CALL SIGN '12'

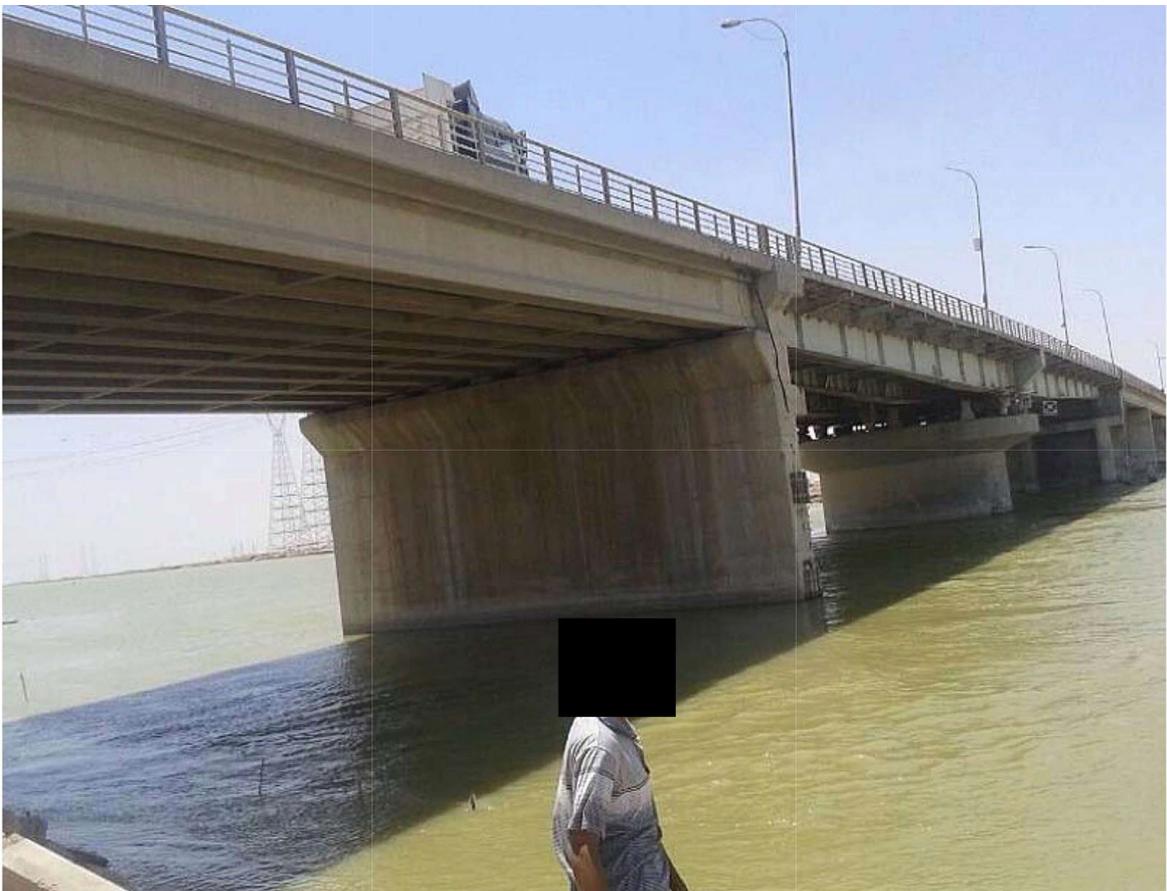
GU

CEP/1A

Appendix 21: Photographs of Bridge 4







Appendix 22: Single image of bank under Bridge 4



Appendix 23: Death certificate of Ahmed Jabbar Kareem Ali

Republic of Iraq
Ministry of Health; Health and Life Statistics Section; Death Certificate;
Certificate NO. 210782
Date of issue: 10/5/2003

Number of ration card
6216

1. Name and surname of the deceased: Ahmad Al-Muhammadawi
2. Gender: Male
3. Nationality: Iraqi
4. Religion: Muslim
5. Occupation: Freelance worker

6. Marital status: xxx
7. Date of birth: 5/6/1987
8. Place of birth: (illegible) town, Governorate of Basra
9. Permanent domicile: Alhussain (sic) neighbourhood, (illegible) town, Governorate of Basra
10. Place of death: xxx
11. Date of death: xxx

12. Name of father of the deceased: [REDACTED]
13. Name of mother of the deceased: [REDACTED]
14. Name of informant of the death: [REDACTED]
15. Relationship to the deceased: uncle of the deceased
16. Address: [REDACTED]

17. Medical death certificate
 - (1) Disease or state immediately leading to the death, the ailments (if any) leading to the above cause, stating the original cause in the end.
 - (A) drowning incident (caused by or resulting in its aftermath)
 - (B) Death Certificate organised due to forensic medicine not available
 - (C) to forensic medicine not available
 - (2) Other significant conditions that also caused death to happen that is not linked to disease or the condition that caused the death.....

If the deceased woman was in a fertility age (15-46), one of the following boxes must be marked:
The death occurred: during pregnancy; while giving birth; post-birth period
18. The death took place at home; the hospital; other place X
19. I certify that the death took place as a result of the reasons mentioned above.
Name of physician: Nadeem Raheem (signature)
Place where the doctor works: Basra General Hospital

20. Forensic medicine certificate (to be filled and signed by the forensic physician. I, the signee hereunder, doctor physician at (crossed) have performed a biopsy on the body of the deceased (crossed), sent to us by (crossed) in accordance with the attached form (crossed) dated on (crossed), at (crossed) and found that the cause of death (crossed), signature of the physician (crossed) stamp of the forensic clinic (crossed)

21. Information restricted to the department of Nationality and Civil Status (to be obtained from the identification card);
registry number: 1401, page number 52; governorate: Basra;
identification card number 925567 to be attached to the certificate

Note: The mark (x) is to appear at (illegible)

1. Copy to Civil Status Department
2. Copy to related persons
3. Copy of the certificate organiser

Appendix 24: Extract from the Chilcot Report

9.8 | Conclusions: The post-conflict period

12. In each phase, the UK had dual responsibilities in Iraq: it contributed to the overall direction of the Coalition's strategy and to those activities which took place at a national level, and also led the international effort in MND(SE), comprising the provinces of Basra, Dhi Qar, Maysan and Muthanna. From the outset, the UK placed particular emphasis on Basra province, and its capital – Iraq's second city.

13. This Section considers the UK's dual responsibilities in each phase.

Occupation

Looting in Basra

14. As described in Section 8, UK forces entered Basra City on the night of 6/7 April 2003 and rapidly gained control, meeting less resistance than anticipated. Once the city was under its control, the UK was responsible, as the Occupying Power, for maintenance of law and order. Within its predominantly Shia Area of Operations, the UK assumed that risks to Coalition Forces would be lower than in the so-called "Sunni triangle" controlled by the US.

15. Before the invasion, the Joint Intelligence Committee (JIC) and the Defence Intelligence Staff had each identified that there was a risk of lawlessness breaking out in Iraq, and that it would be important to deal with it swiftly. Others, including Mr Blair, Sir Kevin Tebbit (the MOD Permanent Under Secretary) and the Iraq Policy Unit had recognised the seriousness of that risk.

16. However, the formal authorisation for action in Iraq issued by Admiral Sir Michael Boyce, Chief of the Defence Staff, on 18 March contained no instruction on how to establish a safe and secure environment if lawlessness broke out as anticipated. Although it was known that Phase IV (the military term for post-conflict operations) would begin quickly, no Rules of Engagement for that phase, including for dealing with lawlessness, were created and promulgated before UK troops entered the country.

17. Both before and during the invasion Lieutenant General John Reith, the Chief of Joint Operations, made the absence of instructions to UK forces covering what to do if faced with lawless behaviour by the Iraqi population in Basra explicit to the Chiefs of Staff.

18. Faced with widespread looting after the invasion, and without instructions, UK commanders had to make their own judgements about what to do. Brigadier Graham Binns, commanding 7 Armoured Brigade which had taken Basra City, told the Inquiry that he had concluded that "the best way to stop looting was just to get to a point where there was nothing left to loot".⁴

⁴ Private hearing, 2 June 2010, page 11.

The Report of the Iraq Inquiry

19. Although the implementation of tactical plans to deal with lawlessness was properly the responsibility of in-theatre commanders, it was the responsibility of the Chief of the Defence Staff and the Chief of Joint Operations to ensure that appropriate Rules of Engagement were set, and preparations made, to equip commanders on the ground to deal with it effectively. They should have ensured that those steps were taken.

20. The impact of looting was felt primarily by the Iraqi population rather than by Coalition Forces. The latter initially experienced a “honeymoon period”,⁵ although the situation was far from stabilised.

21. Lt Gen Reith anticipated that UK forces could be reduced to a medium scale effort by the autumn, when he expected the campaign to have reached “some form of ‘steady-state’”.⁶

22. The JIC correctly judged on 16 April that the local population had high hopes that the Coalition would rapidly improve their lives and that “resentment of the Coalition ... could grow quickly if it is seen to be ineffective, either politically or militarily. Such resentment could lead to violence.”⁷

23. By the end of April, Mr Geoff Hoon, the Defence Secretary, had announced that UK troop levels would fall to between 25,000 and 30,000 by the middle of May, from an initial peak of around 46,000.

24. Consequently, by the start of May there was a clearly articulated expectation of a rapid drawdown of UK forces by the autumn despite the identified risk that the consent of the local population was built on potentially vulnerable foundations, which could be undermined rapidly and with serious consequences.

Looting in Baghdad

25. In the absence of a functioning Iraqi police force and criminal justice system, and without a clear Coalition Phase IV plan, looting and score-settling became a serious problem in Baghdad soon after the regime fell. The looting of ministry buildings and damage to state-owned infrastructure in particular added to the challenges of the Occupation.

26. Reflecting in June 2004, Mr David Richmond, the Prime Minister’s Special Representative on Iraq from March to June 2004, judged that the failure to crack down on looting in Baghdad in April 2003 released “a crime wave which the Coalition has never been able to bring fully under control”.⁸

⁵ Public hearing Walker, 1 February 2010, page 16.

⁶ Minute Reith to SECCOS, 14 April 2003, ‘Phase 4: Roulement/Recovery of UK Forces’ attaching Paper CJO, 14 April 2003, ‘Phase 4 – Roulement/Recovery of UK Land Forces’.

⁷ JIC Assessment, 16 April 2003, ‘Iraq: The Initial Landscape Post-Saddam’.

⁸ Telegram 359 IraqRep to FCO London, 28 June 2004, ‘Iraq: Valedictory: The End of Occupation’.