



The Iraq Fatality Investigations

Inspector: Sir George Newman

REPORT

into the death of CAPTAIN ABDUL HUSSAN TALEB HASSAN

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

March 2017



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GLOSSARY OF TERMS

1 (UK) Armd Div	1st United Kingdom Armoured Division
2iC	Second-in-command
2Lt	Second Lieutenant
40 Cdo RM	40 Commando Royal Marines
Adjnt	Adjutant
Al Skeini Litigation	Litigation comprising the following four judgments: [2005] 2 WLR 1401; [2007] QB 140; [2008] 1 AC 153; (2011) 53 EHRR 18
Al Saadoon Litigation	Litigation comprising the following two judgments: [2015] EWHC 715 (Admin) and [2016] EWHC 773 (Admin)
AO	Area of Operations
AOR	Area of Responsibility
Armd Bde	Armoured Brigade
AZP	Az Zubayr Port
BAS	Basra Air Station
Bde	Brigade
Bde AO	Brigade Area of Operations
BFBS	British Forces Broadcasting Services
BG	Battle Group
BG net	Battle Group radio network
BGH	Basra General Hospital
Brig	Brigadier
BRITFOR/BF	British Forces
CA	Court of Appeal
Capt	Captain
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
CO	Commanding Officer
Comd	Commander
COMD Legal	Commander Legal Services
Cpl	Corporal
Coy	Company
Coy net	Company radio network
CPA	Coalition Provisional Authority
C/S	Call-sign
CSM	Company Sergeant Major
CQMS	Company Quartermaster Sergeant
DCOS	Deputy Chief of Staff
Div HQ	Divisional Headquarters
DPP	Director of Public Prosecutions
DSP	Director of Service Prosecutions
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
G3	Army staff branch responsible for operations ('Ops')
GOC	General Officer Commanding
GR	Grid Reference
HQ	Headquarters
ICC	International Criminal Court
IED	Improvised Explosive Device
IFI	Iraq Fatality Investigations
IHAT	Iraq Historic Allegations Team
INTREP	Intelligence Report

INTSUM	Intelligence Summary
IO	Intelligence Officer
ISF	Iraqi Security Forces
IPS	Iraqi Police Service
JSP	Joint Service Publication
LCpl	Lance Corporal
Lt	Lieutenant
Lt Col	Lieutenant Colonel
Maj	Major
Maj Gen	Major General
MI SECT	Military Intelligence section
Minimi	A type of light machine gun
Mne	Marine
MND (SE)	Multi-National Division (South East)
MNF	Multi-National Forces
MNF-I	Multi-National Forces – Iraq
MoD	Ministry of Defence
OC	Officer Commanding
O Gp Meetings	Orders Group meetings
Ops	Operations
OP TELIC 5	Codename for the fifth phase of operations in Iraq
PIL	Public Interest Lawyers
Pinzgauer	All terrain 4-wheel and 6-wheel drive military vehicle
PI	Platoon
PI Comd	Platoon Commander
PRR	Personal Role Radio
PTSD	Post-traumatic stress disorder

QRF	Quick Reaction Force
Regt	Regiment
RHQ	Regimental Headquarters
RMP	Royal Military Police
RoE	Rules of Engagement
RQMS	Regimental Quartermaster Sergeant
RSM	Regimental Sergeant Major
RSOI	Reception, Staging and Onward Integration
SA80	Designation for family of assault weapons firing 5.56 × 45mm rounds
Sect Comd	Section Commander
SIB	Special Investigation Branch of the RMP
SINCREP	Serious Incident Report
SIR	Shooting Incident Review/Report
SITREP	Situation Report
SLB	Shaibah Logistics Base
SOP	Standard Operating Procedure
SPA	Service Prosecuting Authority
SVBIED	Suicide Vehicle-borne Improvised Explosive Device. Sometimes also refers to a Suspected Vehicle-borne Improvised Explosive Device.
UNSCR	United Nations Security Council Resolution
UKM	Unknown male
VBIED	Vehicle-borne Improvised Explosive Device
VCP	Vehicle checkpoint
Veh Comd	Vehicle Commander
VRN	Vehicle Registration Number

GUIDE TO THE REPORT

1. There is a chronology at Appendix 2 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 1.
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 has involved considering the statements of several soldiers from 40 Commando Royal Marines ('40 Cdo'); a British Forces Broadcasting Services ('BFBS') radio presenter; and two Iraqi witnesses relating to an incident which occurred at approximately 1800 hours on 17th December 2004. It has also involved considering the soldiers' prior training and experience, intelligence regarding threats to British Forces from explosive devices and the guidance provided in this regard, and the quality of the relevant soldiers' response to the perceived threat from Captain Hassan's vehicle.

SECTION 1: INTRODUCTORY OBSERVATIONS AND CONSIDERATIONS

- 1.1** The Investigation into the death of Captain Abdul Hussan Taleb Hassan ('Captain Hassan') centres on an incident on 17th December 2004 in which British soldiers fatally shot Captain Hassan, an off-duty Iraqi policeman, whilst he was driving his personal vehicle.
- 1.2** This report records the outcome of the fifth 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 detailed legal background to the IFI is summarised in Section 2 below, but the requirement for this particular investigation arises as a result of the judgment of Leggatt J in *Al Saadoon (No. 2)*.¹
- 1.3** The material on the website in connection with the death of Captain Hassan should be regarded as supplementary to the material in this report and treated as part of the report. The report will appear on the website after the hard copy edition has been published.
- 1.4** The course of the Investigation has been assisted by co-operation from several of the soldiers involved as well as Captain Hassan's widow (Basima Abdul Hassan Khazaal, referred to within this report as 'Mrs Hassan') and Captain's Hassan's brother, Mr Abdul Majeed Talab Hassan ('Mr Abdul Majeed'). There has been satisfactory disclosure from all those requested to make disclosure and invaluable assistance from QC Law in Basra. Both Public Interest Lawyers ('PIL')² and Bindmans LLP have co-operated with the Investigation and have made disclosure of documents in their respective possession and control.
- 1.5** Evidence concerning the circumstances which led to the death of Captain Hassan was gathered by the Royal Military Police ('RMP') from, in the first instance, the soldiers involved in the incident, namely, SO28, SO29, SO30, SO31, SO32, SO33, SO34, and SO35; as well as from a civilian, Mr Nicholas Steele; the unit Intelligence Officer, SO36; and the Adjt of 40 Cdo, SO37. The RMP then collected evidence from Mrs Hassan; Mr Hareth Al-Tamimi, a passer-by who took Captain Hassan and his family to hospital; and Dr Ahmed Abdul-Hadi Sufar, a doctor who attempted to treat Captain Hassan.

¹ [2016] EWHC 773 (Admin)

² Prior to ceasing trading on 31 August 2016.

Basima Abdul Hassan Khazaal (Mrs Hassan)

- 1.6** There has not been an extensive need for contact with persons in Iraq as there was only one adult eyewitness to the events leading up to and including the shooting of Captain Hassan: his wife, Mrs Hassan.
- 1.7** On 17th December 2004, Mrs Hassan was with Captain Hassan in the car he was driving when the shooting incident occurred. At the time, Mrs Hassan was travelling in the front passenger seat with their 3 year old daughter on her lap. Following Captain Hassan's death, Mrs Hassan gave a statement to the RMP on 27th December 2004.
- 1.8** I concluded that it was in the interests of the Investigation that I should proceed upon the basis of Mrs Hassan's 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 her previous evidence and the other evidence in the case. Accordingly, QC Law assisted in the production of a further statement from Mrs Hassan dated 25th September 2016 which provided comment on each of the soldiers' RMP statements previously disclosed to her.
- 1.9** Her evidence, which was repeated during an interview with me via Skype on 27th September 2016, is that her husband was driving normally and at a moderate speed, doing nothing which would give the convoy cause for alarm. She is adamant that Captain Hassan did not fire a weapon and had no reason to do so.³

The evidence of the British soldiers

- 1.10** The Investigation endeavoured to make contact with the former soldiers, and where successful, those soldiers were sent written questions relating to their previous evidence to the RMP. The answers to those questions formed the basis of their witness statements to this Investigation. All requests from soldiers for legal assistance were granted.
- 1.11** I have received and considered witness statements to this Investigation from the following soldiers: SO30; SO29; SO37; and SO34. One soldier, SO32, confirmed to us that he did not wish to add anything further to his previous RMP statement. Of the remaining soldiers, three could not be located or did not respond; another was unable to assist due to his personal circumstances; and another was unable to assist due to his deployment abroad.
- 1.12** Rather than incur further delay in attempting to obtain further evidence from these soldiers, I have taken the decision to proceed upon the basis of the content of their statements as originally taken by the RMP. I note the guidance of Leggatt J in *Al Saadoon (No. 2)* that, when assessing what steps it is reasonable to take in investigating an allegation,

³ Khazaal MOD-83-0000385, paras 16 and 25. The transcript of Mrs Hassan's Skype interview is available on the IFI website and referred to throughout this report as 'IFI Khazaal 27/09/16'.

it is necessary to consider what potential lines of enquiry exist and what prospect there is that pursuing those lines of enquiry will yield evidence capable of establishing the truth (or falsity) of the allegation. Factors relevant in making the assessment must, in my view, include: (i) the strength of the existing evidence; (ii) the gravity of the allegation; and (iii) the likely difficulty and cost of the possible investigative steps weighed against the likelihood that they will yield further significant evidence and the potential value of that evidence.⁴

- 1.13** As regards factors (i) and (iii), I note that the RMP took the statements from the soldiers mere hours after the shooting incident occurred. The event would have been very fresh in the minds of the soldiers, and the detail in the RMP statements reflects this. Such contact as I have had with the soldiers 12 years on has not led me to conclude that any improvement can be obtained on the quality of the evidence to the RMP.

Evidence from the Iraqi Police Service ('IPS')

- 1.14** I have had disclosed to me several IPS documents, which I have considered in translation. The IPS attended the scene of the shooting shortly after Captain Hassan was shot, but only after he was taken to Basra General Hospital ('BGH'). The IPS also visited Captain Hassan's body in BGH; took statements from Mrs Hassan and Captain Hassan's brother, Mr Abdul Majeed; and carried out forensic tests in relation to the shooting. I will refer to the relevant documents later on in this report.
- 1.15** I have also viewed a video, disclosed to this Investigation by QC Law, in which an IPS policeman claims to be standing at the scene of the shooting the day after it occurred. He displays some bullet casings on the ground, which he suggests show that Captain Hassan was shot by the MNF. As the audio quality in this video is very poor, much of the dialogue, which I have read in translation, is unintelligible.
- 1.16** Finally, I have had disclosed to me an IPS case file dated June 2009 on the shooting of Captain Hassan. In 2009, on the order of an Iraqi investigative judge, the IPS examined both the scene of the shooting incident and Captain Hassan's car, which was being held at the Al Arab Police Station. The case file contains a sketch diagram purporting to show the location of the shooting and the events leading up to it; a detailed diagram and description of the damage sustained to Captain Hassan's car; and several photographs of the damage to the car. It is unclear to me from what evidence the sketch plan of the shooting location is derived. Major Haydar of the IPS concludes in the case file that Captain Hassan was shot by the British Forces and died as a result.⁵

⁴ [2016] EWHC 773 (Admin) at [198]

⁵ The translation of the relevant pages of this case file are available on the IFI website. (MOD-83-0000433)

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

The legal background

- 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 here 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)*.⁶ 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** As regards the ECHR itself, a succinct survey of relevant judgments of the European Court of Human Rights (ECtHR) at Strasbourg can be seen from the judgment of the Grand Chamber of the Strasbourg Court in *Al Skeini and Others v United Kingdom*,⁷ and more recently the judgments of the Court of Appeal and of Leggatt J in the Administrative Court in *the Al Saadoon litigation*.⁸
- 2.3** As regards the background to this specific case, Captain Hassan's family had brought a claim for damages against the Ministry of Defence ('MoD') alleging that British troops had unlawfully shot and killed Captain Hassan on 17th December 2004. The claim alleged that, as Captain Hassan's vehicle approached a crossroads after dark, a spotlight was shone directly onto the car, and either simultaneously or shortly thereafter shots were fired repeatedly at the front of Captain Hassan's vehicle, which resulted in Captain Hassan's death. It was alleged that no warning or no adequate warning was given before direct shots were fired.
- 2.4** The MoD initially declined to establish a further investigation into the death of Captain Hassan on the basis that it did not accept that his death had occurred within the UK's jurisdiction under the ECHR. PIL, the solicitors then acting on behalf of Captain Hassan's family, judicially reviewed this decision, alleging that the failure to hold an Article 2 compliant investigation into Captain Hassan's death was unlawful.

⁶ [2013] EWHC 1412 (Admin) and [2013] EWHC 2941 (Admin) respectively.

⁷ [2012] 53 EHRR 18

⁸ [2016] EWCA Civ 811; [2015] EWHC 715 (Admin); [2016] EWHC 773 (Admin)

- 2.5** The case of Captain Hassan was one of the test cases in the *Al Saadoon* litigation, in which the High Court examined the issue of whether, and if so when, the ECHR applied to the use of force against Iraqi civilians who were not in the custody of British Forces.
- 2.6** In the *Al Saadoon (No.1)* judgment dated 26th June 2015 ('AS1'), Leggatt J concluded on the assumed facts of Captain Hassan's death that, following the ECtHR's approach in *Al Skeini*, the necessary jurisdictional link did exist between Captain Hassan and the United Kingdom for the purposes of Article 1 ECHR.⁹
- 2.7** The Secretary of State for Defence appealed the AS1 judgment to the Court of Appeal ('CA') and did not refer any of the test cases, including that of Captain Hassan, to the IFI whilst that appeal was pending.¹⁰ This decision was judicially reviewed by PIL. In the resultant *Al Saadoon (No. 2)* judgment handed down on 7th April 2016 ('AS2'), Leggatt J held that the criteria for establishing an investigation into the death of Captain Hassan were met. He also held that further delay in establishing an inquiry would only increase the evidential difficulties that existed in conducting such an inquiry, as well as make more difficult the task of any Inspector, and reduce the potential benefits to be gained. Accordingly, it was ordered that '*an inquisitorial inquiry into the death of Captain Taleb Hassan must be established without any further delay*'.¹¹
- 2.8** It should be noted that the case of Captain Hassan was referred to the IFI following a pre-investigation assessment carried out by the IHAT. Following that assessment and the consideration of legal advice provided to the IHAT by the Director of Service Prosecutions ('DSP'), the IHAT had concluded that the case failed the 'evidential sufficiency test' on the basis that the soldiers involved held the honest and reasonable belief that their lives were in danger. The DSP endorsed the IHAT's recommendation that its investigations be discontinued.
- 2.9** On 6th June 2016 I was appointed to conduct an inquiry into the death of the deceased, Captain Hassan. 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 Captain Abdul Hussan Taleb Hassan on 17 December 2004 ('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.

⁹ [2015] EWHC 715 (Admin) at [87]-[88]

¹⁰ The judgment in AS1 has since been upheld by the CA, although on more limited grounds, in *Al-Saadoon and others v Secretary of State for Defence* [2016] EWCA Civ 811. In particular, see paras [79]-[81].

¹¹ [2016] EWHC 773 (Admin) at [30]; [33]; [41]

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.

Protection and medical support for soldiers

- 2.10** As I have mentioned in previous reports, it is essential that soldiers should be encouraged to be full and frank in giving their evidence, and to that end they should have such protection as might be available to them from the Attorney General, the Director of Public Prosecutions ('DPP') and the DSP.
- 2.11** On 8th October 2015 I received an email from the Attorney General's Office confirming that, after consulting with the DPP, the undertaking that had been given in respect of the Investigations into the death of Mr Abdullah and Mr Said, to the effect that no evidence given before the IFI would be used in evidence against that person in any subsequent criminal proceedings, also applied to soldiers giving evidence to the IFI in the enquiry into the death of Captain Hassan.¹² I also sought an undertaking from the International Criminal Court at the Hague ('ICC') regarding the non-use of self-incriminating evidence given by soldiers to the IFI. An assurance was given by the Chief Prosecutor at the ICC by letter dated 2nd November 2016.

¹² See the 'Key Documents' section of the 'Captain Hassan' page on the IFI website.

- 2.12** I am aware that some soldiers who are asked to assist the IFI may find the process of giving evidence distressing. They may also be suffering from PTSD and psychological trauma dating back to their service in Iraq. Accordingly, from the first point of contact, the IFI has made soldiers aware of the availability of mental health support in addition to the availability of legal advice and assistance.
- 2.13** On 4th October 2016, I made a General Ruling on Anonymity which was uploaded to the IFI website.¹³ This ruling reiterated that, as a general principle, anonymity will be available where appropriate to soldiers to allow them to give their evidence, both written and oral, anonymously. The General Ruling sets out the reasons for and against granting anonymity which I have considered in relation to each request for anonymity that I have received.
- 2.14** In addition to the General Ruling on Anonymity, I have also made individual rulings on anonymity which set out the cipher to be used for particular individuals. These rulings are available on the IFI website.¹⁴

¹³ See the 'Press and Media' page of the IFI website.

¹⁴ Ibid

SECTION 3: A BRIEF SUMMARY OUTLINE OF THE INCIDENT AND THE CONTEXT IN WHICH IT TOOK PLACE

3.1 It is not in dispute that Captain Hassan died on 17th December 2004 in Basra Province as a result of being fatally shot by British soldiers from the Armed Escort Service of 40 Commando Royal Marines ('40 Cdo').

General background

3.2 On 28th June 2004, the Coalition Provisional Authority ('CPA') handed formal sovereignty over to an interim Iraqi government. The CPA was disbanded and the UK ceased to be an Occupying Power in Iraq. However, British Forces remained deployed in Iraq as part of the Multi-National Force - Iraq ('MNF-I').¹⁵

3.3 MNF-I's presence and purpose in Iraq was mandated by the UN under UNSCR 1546. This stated specifically that MNF-I was in Iraq at the request of the incoming interim Government of Iraq and had the authority to '*contribute to the maintenance of security and stability... so that... the UN can fulfil its role in assisting the Iraqi people [to hold elections, develop the political process and begin reconstruction]*...'¹⁶

3.4 MNF-I's stated mission was that

in partnership with the Iraqi government, MNF-I conducts full spectrum counter-insurgency operations to isolate and neutralize former regime extremists and foreign terrorists, and organizes, trains and equips Iraqi security forces, in order to create a security environment that permits the completion of the UNSCR 1546 process on schedule.¹⁷

3.5 On 24th September 2004, Lt Gen John McColl, the deputy commander of MNF-I and the Senior British Military Representative in Iraq, wrote a paper describing the general security situation in the country. In McColl's view, MNF-I's continued presence in Iraq was the '*single most important catalyst*' for the emergence of a violent and increasingly capable Iraqi

¹⁵ Chilcot report Section 9.2 p.393, accessed at http://www.iraqinquiry.org.uk/media/247918/the-report-of-the-iraq-inquiry_section-92.pdf; Chilcot executive summary pp.97-99, accessed at http://www.iraqinquiry.org.uk/media/247921/the-report-of-the-iraq-inquiry_executive-summary.pdf

¹⁶ UNSCR 1546 para 10, accessed at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N04/381/16/PDF/N0438116.pdf>

¹⁷ Accessed at <http://www.iraqinquiry.org.uk/media/243216/2004-09-23-minute-mccoll-to-dc-ds-c-iraq-up-to-and-beyond-january-2006-defining-a-uk-position.pdf> p.3

insurgency. The insurgency was inflicting steady losses on MNF-I and Iraqi Security Forces ('ISF'):

Since 29 June 2004, an average of 13 Coalition soldiers have been killed each week in Iraq, and 130 wounded; and the trend is increasing. Put simply, the enemy is getting better. During the week ending 17 Sept 04, MNF-I casualties were 19 killed in action and 151 wounded; ISF casualties were 36 and 103 respectively. Further spikes in violence are anticipated over Ramadan [i.e. mid-October to mid-November 2004] and in the build-up to the January elections.¹⁸

3.6 It is thus clear that the handover of sovereign power to the interim Iraqi government had little material impact on British soldiers deployed on Op TELIC. British Forces continued to be responsible for the increasingly dangerous task of maintaining law and order in their Area of Operations ('AO').

40 Commando Royal Marines ('40 Cdo')

3.7 The following version of events appears from the statements taken by the RMP and the statements and evidence in this Investigation.

3.8 By December 2004, 40 Cdo was deployed in Basra Province on Op TELIC 5. Since taking over the HQ at Az Zubayr Port ('AZP') in the south of Basra Province, the 40 Cdo Armed Escort Service had been tasked on a regular basis to conduct administrative movements across the AO, such as the collection of mail and the movement of personnel from one location to another.¹⁹

3.9 In the period leading up to Captain Hassan's death, the soldiers of 40 Cdo were operating under the very real threat of attack from suicide/suspected vehicle-borne improvised explosive devices ('SVBIEDs'). On 4th November 2004 a SVBIED was detonated at a MNF-I vehicle checkpoint ('VCP') in Babil Governorate, central Iraq, causing several British casualties. On 12th November 2004 a suspected vehicle-borne improvised explosive device ('VBIED') in Basra City was taken away by the Iraqi Police Service ('IPS'). On 2nd December 2004, 4 Armd Bde reported a large explosion in Az Zubayr caused by a VBIED.²⁰

3.10 On the 6th December 2004, only 11 days before the shooting incident in which Captain Hassan was killed, there were two separate reports of suspected VBIEDs in the Basra City area. One report was of a suspect Toyota car in Basra City itself. The second report was of a suspected VBIED, a black GMC vehicle, at a power station near a roundabout known as the

¹⁸ Ibid p.5

¹⁹ See Shooting Incident Review (MOD-83-0000387), p.2

²⁰ See 'VBIEDs in MND(SE) AOR 1 Jul 04 to 21 Jan 05'

'Two Mosques Roundabout'. This roundabout appears to have been approximately 1 km from the location where Captain Hassan was shot.²¹

The incident on 17th December 2004

3.11 On 17th December 2004 at 1700 hrs, 8 members of 40 Cdo were tasked with escorting Mr Nicholas Steele, a civilian, from AZP to Shaibah Logistics Base ('SLB'). Mr Steele was a disc jockey with the British Forces Broadcasting Service. The tasking was to begin at approximately 1730 hrs and the journey was expected to take approximately one hour to complete. The patrol was allocated the call-sign ('C/S') of 'PE10B' and consisted of two vehicles, a Pinzgauer and a Land Rover Wolf.²²

3.12 The lead vehicle in the convoy was the Pinzgauer. Travelling in this vehicle were:

- (a) Sgt SO29, the C/S Comd;
- (b) Mne SO34, the driver;
- (c) Mne SO28, a lookout ('top cover') armed with a Minimi machine gun;
- (d) Mne SO32, top cover armed with a SA80 rifle;
- (e) Mr Steele.

3.13 Following the Pinzgauer was the Land Rover. Travelling in this vehicle were:

- (a) Cpl SO30, the C/S 2iC;
- (b) Mne SO35, the driver;
- (c) Mne SO33, top cover armed with a Minimi;
- (d) Mne SO31, top cover armed with a SA80.²³

3.14 Prior to setting out from AZP, the C/S had received an intelligence briefing from the Intelligence Officer ('IO') for 40 Cdo, Capt SO36. In this briefing, SO36 had informed the soldiers that the threat from SVBIED was high and had shown them photographs of the type of vehicle that might be used as a SVBIED.²⁴ The soldiers then received a further briefing from the C/S Comd, Sgt SO29, which covered a number of areas including the steps to be

²¹ Ibid, p.2; see maps and satellite image at Appendices 5-7. See para 4.25 onwards regarding the location of the shooting and the maps I have considered.

²² SO29 MOD-83-0000360 p.1; SO31 MOD-83-0000358 p.2; SO32 MOD-83-0000357 p.3; see also Appendices 9 and 10 for photographs of the two vehicles.

²³ SO29 MOD-83-0000360 p.2

²⁴ SO36 MOD-83-0000353 p.1

taken if the soldiers encountered a possible SVBIED. The content of these two briefings will be examined in detail in Section 4 below.

- 3.15** The journey from AZP to SLB was a routine journey for the soldiers involved.²⁵ The C/S travelled in convoy as it left AZP with Mr Steele and joined Route MAUI towards Az Zubayr.²⁶ It was a clear, dark night and conditions were dry.²⁷ The convoy continued along Route MAUI to a roundabout known as the 'Two Mosques Roundabout' and then along Route TOPEKA, a dual carriageway with a central reservation consisting of a sand bank.²⁸
- 3.16** Having passed the turning for SLB on the other side of the road on Route TOPEKA, the convoy performed a U-turn across the central reservation in order to take a right turn off onto Route HEART, which led to SLB. The shooting incident occurred very shortly after the convoy completed this U-turn manoeuvre.²⁹ It should be noted that all witnesses agree that conditions were very dark and this stretch of the carriageway was unlit.
- 3.17** At this point, Captain Hassan was driving towards the convoy in a white Daewoo Prince car. His wife, Mrs Hassan, was sitting in the front passenger seat with their 3 year old daughter on her lap. Mrs Hassan was 5 months pregnant at the time. The family were driving home to Az Zubayr after visiting a doctor in Basra City.³⁰
- 3.18** As Captain Hassan's vehicle approached the rear of the convoy, the two soldiers acting as top cover in the rear Land Rover fired on his vehicle. According to these two soldiers, SO31 and SO33, Captain Hassan's vehicle was speeding towards the rear of the convoy faster than other traffic on the road. The soldiers maintain that they opened fire only when the vehicle failed to respond to, firstly, the hand signals they used at the outset to communicate that his vehicle must stay back from the convoy, and secondly, the warning shot that SO30 aimed at the bonnet of Captain Hassan's vehicle. Both SO31 and SO33 believed that the failure of the vehicle to respond to their actions indicated that it was a SVBIED, and both soldiers maintain that at least one shot was fired from Captain Hassan's vehicle.³¹
- 3.19** The top covers in the lead Pinzgauer, SO28 and SO32, also fired on Captain Hassan's vehicle, which they state was at that point in the process of overtaking the Land Rover. According to SO32's account, he saw muzzle flashes from Captain Hassan's vehicle and

²⁵ SO29 MOD-83-0000430 para.10

²⁶ SO29 MOD-83-0000360 p.2; SO35 MOD-83-0000362 p.2

²⁷ SO31 MOD-83-0000358 p.2

²⁸ SO33 MOD-83-0000366 p.2

²⁹ For example, SO35 MOD-83-0000362 p.2

³⁰ Khazaal MOD-83-0000364 p.1; Khazaal MOD-83-0000385 p.2; IFI Khazaal 27/09/16 p.14 line 23 to p.15 line 25

³¹ SO33 MOD-83-0000366 p.3; SO31 MOD-83-0000358 p.3

SECTION 3: A BRIEF SUMMARY OUTLINE OF THE INCIDENT AND THE
CONTEXT IN WHICH IT TOOK PLACE

heard the sound of gunfire being fired in the direction of the Pinzgauer. SO28 also states that he saw muzzle flashes from Captain Hassan's vehicle.³²

3.20 Having come under fire from the C/S, Captain Hassan's vehicle spun out of control and veered into the central reservation, where it stopped.³³ The convoy continued on to SLB via Route HEART without stopping. After arriving at SLB, Sgt SO29 gave a full SITREP to the Ops Room and a SINCREP was sent to MND(SE).

3.21 The 40 Cdo radio log sheet states as follows:³⁴

Time	Call to	Call from	Text
17.57	PO	PE10B	Contact – 2 mosque roundabout, automatic fire. 1 x civi vehicle, returned fire to 1 st location, vehicle hit, no casualties. Grid 648 682.
18.03	PO	PE10B	Sit rep of contact. - 1 x civi vehicle contact PE10B with automatic fire - Vehicle hit, but no casualties - Returned fire - Grid of contact 648 682
18.20	PO	PE10B	Sit rep of contact - New grid ref 638 683 Civi vehicle hit, skidded to halt, poss civ casualties -Vehicle was heading south out of Basra main road. Veh. des. White 4 door saloon, similar as one 10 briefed on but white.

3.22 In addition, the 40 Cdo Watchkeeper's log specifically refers to the convoy being hit by automatic fire:³⁵

Time	Call to	Call from	Text
18.15	PO	PE10B	Sitrep – At 1757 at QU638683 C/S contacted by automatic fire from white 4 door saloon heading south, both top cover returned fire and hit the veh. The veh skidded to a halt. C/S now at SLB.
18.32	PO	PE10B	Sitrep – veh had approached C/S from rear at speed. C/S signalled for veh to back off. Veh failed to comply and warning shot was fired, veh backed off, but approached again at speed and fired an automatic weapon at PE10B. Top cover returned with a heavy rate of fire. The veh was hit and skidded off the road.

³² SO32 MOD-83-0000357 p.3; SO28 MOD-83-0000352 p.2

³³ SO31 MOD-83-0000358 p.4

³⁴ MOD-83-0000395

³⁵ MOD-83-0000396

- 3.23** At about 1900 hrs the same day, the C/S were tasked to return to the scene of the shooting in company with a Quick Reaction Force ('QRF') from SLB. Several IPS policemen were already present, but there was no driver or any passengers in the bullet-ridden vehicle. The C/S remained at the scene until the RMP (SIB) arrived to conduct an investigation.³⁶
- 3.24** Mrs Hassan provides a different account from those of the four C/S top covers. In summary, she maintains that her husband had not been speeding and, whilst he did have a pistol with him at the time of the incident, he did not remove it from his clothing at any time. Mrs Hassan recalls suddenly seeing bright lights up ahead, immediately followed by the sound of gunshots fired in the direction of their vehicle, which then swerved and came to a standstill. It was only at this point that she realised her husband had been shot.³⁷ A passing taxi driver, Mr Hareth Al-Tamimi, stopped at the scene and took Mrs Hassan, her daughter and Captain Hassan to Basra General Hospital ('BGH').³⁸
- 3.25** Upon arrival at the hospital, Captain Hassan was immediately examined by Dr Ahmed Abdul-Hadi Sufar, a doctor in the BGH Casualty Department. According to Dr Sufar, Captain Hassan had no pulse and was not breathing. There was extensive damage to Captain Hassan's throat which appeared to have been caused by a gunshot at close range and which had resulted in a great loss of blood. Dr Sufar attempted to resuscitate Captain Hassan but was unsuccessful. Captain Hassan was declared dead on the evening of 17th December 2004.³⁹
- 3.26** Captain Hassan's death certificate states only that the cause of the death was due to 'gunshots'.⁴⁰ In accordance with the request of Captain Hassan's brother, Mr Abdul Majeed, the body was released from BGH to the family for burial without an autopsy.⁴¹

The RMP investigation and Shooting Incident Review ('SIR')

- 3.27** At the request of 4 Armd Bde, RMP (SIB) launched an investigation into the shooting on the day of the incident itself and conducted interviews of all the soldiers involved that same evening.⁴²
- 3.28** As well as the SIB investigation, a separate Shooting Incident Review ('SIR') was carried out by Maj SO37 RM, the Adjnt of 40 Cdo, in line with Op TELIC policy.⁴³ The SIR considered the

³⁶ SO29 MOD-83-0000360 p.4; MOD-83-0000373

³⁷ Khazaal MOD-83-0000364 pp.1-2; Khazaal MOD-83-0000385 p.3

³⁸ MOD-83-0000365 pp.1-2

³⁹ Sufar MOD-83-0000337 pp.1-2

⁴⁰ MOD-83-0000377

⁴¹ MOD-83-0000445

⁴² MOD-83-0000386 p.1; MOD-83-0000387 p.3

⁴³ See 'Policy for the reporting, recording, review and investigation of shooting incidents' dated 8 Nov 04 (MOD-83-0000446)

SIB interviews with the 40 Cdo soldiers; the relevant radio and Watchkeeper log sheets; the 40 Cdo Booking Out sheet for 17th December 2004; and the SINCREP of the incident itself. It concluded that *'all 40 Cdo ranks involved in this shooting incident conducted themselves in accordance with the current ROE [i.e. Rules of Engagement], JSP398 (2004 Edition) Card A'*.⁴⁴ The SIR was signed by the CO of 40 Cdo, Lt Col David King, and was dated 19th December 2004, just two days after the shooting incident itself.

3.29 However, the SIB investigation continued to collect evidence, including statements from Iraqi witnesses as well as forensic evidence from Captain Hassan's car and from the soldiers' weapons and convoy vehicles. The SIB enquiries were declared largely completed on 10th March 2005, at which point the SIB Investigation Summary and evidence were sent to Comd Legal, HQ MND(SE), for a decision as to whether the actions of C/S PE10B were *'reasonable, proportionate, necessary and in accordance with the Rules of Engagement'*.⁴⁵

3.30 In a letter dated 24th April 2005, Col P D McEvoy of Comd Legal recommended to the CO of 40 Cdo that

In all the circumstances, the actions of those Mnes who opened fire were in my view necessary, and proportionate to the threat they perceived at the time, whether that threat was from a SVBIED or small arms fire or both. A total of 42 rounds were fired by the 4 Mnes, two of whom were armed with Minimi. This cannot reasonably be considered excessive in the circumstances. There were also obvious efforts made to avoid injury to persons other than the driver of the white car, as is borne out by the photographs of the white car after the incident. Accordingly, I am satisfied those members of the convoy who opened fire did so in accordance within the guidance set out in Card A, notwithstanding that Capt Hassan was killed as a result.⁴⁶

The IPS investigation

3.31 As noted above, the IPS attended the scene of the shooting shortly after it took place, but they arrived there after Captain Hassan had been taken to hospital. A document dated 17th December 2004 and titled 'Examination of the site of the incident' states that blood stains were found in a white Daewoo Prince vehicle and that 9 bullet cases belonging to an unknown type of rifle were also found at the scene.⁴⁷

⁴⁴ MOD-83-0000387 p.5; MOD-83-0000379

⁴⁵ MOD-83-0000386 p.6

⁴⁶ MOD-83-0000439

⁴⁷ MOD-83-0000417

- 3.32** These 9 rifle casings were sent by the IPS for forensic examination, as was a Glock pistol, serial no. FXB907. The provenance of this Glock pistol cannot be ascertained from the IPS documents.
- 3.33** An IPS investigating officer viewed Captain Hassan's body in hospital on 17th December 2004 before it was released to his family. He noted that there was '*thick blood*' on the body, which was lying in the BGH Emergency Unit, and he also commented on evidence of gunshots to the upper side of the chest.⁴⁸
- 3.34** A document dated 19th December 2004 from the Office of Forensic Evidence Investigation in Basra concludes that the 9 casings sent to it by the IPS at Az Zubayr were of 5.56mm calibre and were fired from an English 5.56mm rifle.⁴⁹ The Office of Forensic Evidence Investigation was unable to confirm when the Glock pistol was fired because the barrel was clean.⁵⁰

⁴⁸ MOD-83-0000443

⁴⁹ MOD-83-0000440

⁵⁰ MOD-83-0000416

SECTION 4: SUMMARY OF THE WITNESS EVIDENCE

The threat from SVBIEDs

4.1 Prior to their deployment on the escort tasking, the soldiers of C/S PE10B had received two briefings which focused on the threat from SVBIEDs. Firstly, they had an intelligence briefing from the unit Intelligence Officer ('IO'), Capt SO36. They were then briefed by the C/S Comd, Sgt SO29. The content of these two briefings would have informed the mindset, and thus the actions, of the soldiers when faced with an oncoming suspect vehicle.

The pre-tasking intelligence briefing

4.2 In terms of how intelligence was disseminated, documents known as 'Threat Warnings' were produced by 12 MI SECT, 4 Armd Bde, and sent via a system known as 'I-Net' to G3 Ops for further dissemination to units who needed to be aware of the specific threat.⁵¹

4.3 As the unit IO, Capt SO36 compiled a daily intelligence summary called an 'INTSUM'. This contained information in relation to incidents within the Division AOR together with information detailing the threat to Coalition Forces ('CF') on the ground. Information from the INTSUM was briefed to every patrol prior to them commencing their patrols. As incidents occurred throughout the day, SO36 recorded them on the INTSUM.⁵²

4.4 According to SO36, the perceived threat from SVBIEDs at the time of the incident was deemed to be *'moderate to high and there [had] been a number of reports in the area of vehicles driving aggressively towards CF'*.⁵³ SO36 states that he had received reports that *'certain personalities were migrating from the north of Iraq into our AOR and bringing tactics with them, which included VBIEDs'*.⁵⁴ More specifically, he had received 3 particular threats of SVBIED rated 'Moderate/High' prior to the incident, the last of which was issued by Division on the day of the incident itself.⁵⁵

4.5 SO36's account of the high threat level from SVBIEDs is supported by the contemporaneous evidence. The latest Threat Warning before the shooting incident was created by 12 MI SECT at 1030 hrs on 17th December 2004.⁵⁶ Whilst it included the comment that the intelligence was uncorroborated, the threat was nevertheless rated 'Moderate'. Specifically,

⁵¹ Banyard MOD-83-0000390

⁵² SO36 MOD-83-0000363 p.1; MOD-83-0000374

⁵³ SO36 MOD-83-0000363 p.1

⁵⁴ SO36 MOD-83-0000353 p.2

⁵⁵ SO36 MOD-83-0000354

⁵⁶ MOD-83-0000376; Banyard MOD-83-0000390

the Threat Warning gave details of an insurgent group with plans to carry out an attack in Basra with a VBIED within *'the next few days'*:

The attack was to utilise 50kg of TNT packed inside a dark red 'Dauphin' automobile. The vehicle was being kept in the Hamdan district of Basra⁵⁷ and frequently moved around to different locations in the area. The License tag (VRN) of the vehicle was also frequently changed to avoid detection.

The author of the Threat Warning also commented more generally on *'a large volume of reporting detailing the presence of VBIEDs in the 4 Armd Bde AO'*.⁵⁸

4.6 On 17th December 2004, SO36 gave C/S PE10B an intelligence briefing prior to their deployment at 1730 hrs. SO36 is unable to recall the details of the specific briefing that he gave the C/S on the day of the incident. However, he does recall that at that time there was a generic threat from VBIEDs, and two or three of those had been specific threats. He cannot remember the make, model, colour, VRN or other details of these threats, but he would have passed this information immediately to any patrols about to deploy.

4.7 Furthermore, SO36 states that he would have used photographs to give the C/S members

an idea of what 'kind' of vehicles were being used. These photos were not of the specific vehicles suspected of being the VBIED but of a vehicle which was the same colour, make or model of the suspect VBIED, so that the patrol would have an idea of what to look for. They were also advised to study documentation, which was printed from the I-Net, detailing vehicle descriptions, year of manufacture, etc. This documentation was held in the briefing room and was readily available to all patrol members.⁵⁹

4.8 He can recall briefing that any patrol should be suspicious of vehicles *'approaching at speed from behind and trying to penetrate the convoy prior to detonation'*.⁶⁰ He did not brief any patrol on the specific actions they were to take in any situation, but he did occasionally remind them that ultimately all actions had to be in accordance with the ROE.⁶¹

4.9 SO36's evidence is that the 'Two Mosques Roundabout' area where the shooting incident occurred was in any case

a high risk area due to IEDs previously being found and detonated at the side of the road. In fact this area had been placed out of bounds due to this fact

⁵⁷ According to SO36, the Hamdan district was approximately 16km from the area of the shooting incident. (MOD-83-0000354)

⁵⁸ MOD-83-0000376

⁵⁹ SO36 MOD-83-0000353

⁶⁰ Ibid

⁶¹ SO36 MOD-83-0000363 p.2

and at the time of the incident had only recently been brought back in bounds.⁶²

- 4.10** SO36's account of his intelligence briefing is supported by the statements of the patrol members. The C/S Comd, Sgt SO29, states that the IO informed them during the brief that

the threat from SVBIED was high and that there was particular intelligence to suggest that a particular make and model of car was to be used as a SVBIED.

We were briefed that the type of vehicle that may be used was a 4 door saloon type vehicle.⁶³

- 4.11** SO31 recalls the IO giving an intelligence briefing prior to their deployment on the tasking:

I recall he told us about our 'action on' in the event of a contact and how we should escape from the killing zone as soon as possible if attacked. He stressed there was a high risk of a Vehicle Borne IED attack on our C/S as many were believed to be operating in the area of Basra. He stated we should try and keep vehicles at least 2 metres from our vehicles when on patrol and he then showed us photographs of suspected suicide bomber's [sic] vehicles.

I was very aware that there was a real threat of vehicle borne IEDs in the area. I can't now recall exactly what the suspect vehicle photographs looked like, only one was a maroon car.⁶⁴

- 4.12** SO28 also remembers being briefed that the latest threat was of VBIEDs and that they were to 'watch out for a maroon coloured car due to a specific threat assessment'.⁶⁵ Similarly, Cpl SO30 recalls that the IO told them to be aware of a 'maroon coloured sedan car' as well as to be wary of VBIEDs.⁶⁶

- 4.13** In a second statement given to the RMP a number of months after his first, SO33 recalls being briefed at some stage that a 'red or maroon "Dolphin" type car' might be used for a SVBIED, as well as a 'silver type saloon car of American make'. However, he cannot remember whether or not SVBIEDs were specifically mentioned in the brief on 17th December 2004. He does recall that they had

...definitely been briefed about them on previous patrol briefings. We had been told and shown how they would be used. The first method was parked up and as the patrol passed, the vehicle would be detonated by command wire. The

⁶² SO36 MOD-83-0000353 p.2

⁶³ SO29 MOD-83-0000360 p.1

⁶⁴ SO31 MOD-83-0000358 p.2

⁶⁵ SO28 MOD-83-0000352 p.1

⁶⁶ SO30 MOD-83-0000355 p.1

second method was when the vehicle would drive up past the rear the vehicle, pull into the middle of the two vehicles and then detonate by suicide bomber in the car itself.⁶⁷

- 4.14** The two methods were explained by projection and by a diagram on the wall. According to SO33, the IO had emphasised that SVBIEDs were a high threat, especially in Basra. The soldiers were always told of potential vehicles that may be used, including the make and model and *'if we were lucky, the registration number of the vehicle'*. SO33 could not recall Captain Hassan's vehicle being mentioned in a brief.⁶⁸
- 4.15** SO32 recalls being briefed that the current threat was of VBIEDs and that there was intelligence which stated that there was *'a saloon driving around the AOR which possibly had a VBIED in it'*, but he did not recall the make or colour of the vehicle.⁶⁹
- 4.16** SO35 recalls being briefed by the unit's Ops Officer but does not mention any particular intelligence being passed on, and nor does he mention any threat from VBIEDs/SVBIEDs. He states only that the subjects covered by the Ops Officer and SO29 at the briefing included *'instructions not to let vehicles close on the C/S because they may be hostile'*.⁷⁰ Similarly, SO34 does not recall being briefed regarding suicide attacks, but states that they were given details of *'various threats including a warning of both a red and blue vehicle, which were believed to be involved in IEDs'*.⁷¹

The guidance provided to the patrol regarding suspected SVBIEDs

- 4.17** Immediately following the intelligence briefing, SO29 briefed his C/S. According to SO29;

The brief that I gave to the patrol prior to deploying on the tasking, should they encounter a vehicle they believe to be a SVBIED was as follows:

The vehicle should be warned by the use of a hand signal to get it to slow down or stop. If this fails the vehicle is then given the opportunity to cross over and pass on the other side of the road. If this fails and the patrol member(s) feel that lives are in danger then weapons can be raised and pointed at the vehicle in question following which if the vehicle still poses a threat, a single warning shot may be fired into bonnet of the vehicle.

⁶⁷ SO33 MOD-0000356 p.1

⁶⁸ Ibid

⁶⁹ SO32 MOD-83-0000357 p.2

⁷⁰ SO35 MOD-83-0000362 p.1

⁷¹ SO34 MOD-83-0000359 p.2

If this fails to stop the vehicle and it is still believed to be a threat to life then further aimed shots may be fired into the bonnet of the vehicle in order to immobilize the vehicle. If this fails then aimed shots may be fired at the driver of the vehicle in order to incapacitate the driver.⁷²

SO29 states that he has no specific recollection of having previously seen the Standard Operating Procedure ('SOP') document entitled 'Guidance for Use of Warning Shots' produced for 40 Cdo RM on 8th December 2004 by its Adjutant, Maj SO37⁷³ but points out in his statement to the Inspector that paragraphs 3-5 accord with his recollection at the time.⁷⁴

4.18 In his witness statement for this Investigation, SO29 confirmed that the brief he gave to the patrol on 17th December 2004 was the standard briefing he would give on how to deal with a suspected VBIED. Such briefings took place in the unit Ops Room where all members of the patrol would be present. The briefing would have included looking at the route for the tasking on the wall-map and outlining any relevant intelligence briefing that could impact on the task.⁷⁵

4.19 The background to the SOP document can be seen in the exchange of emails between Capt H R B Mynors and Maj SO37 in November 2004.⁷⁶ The SOP document was produced for the Cdo on 8th December 2004 by its adjutant Maj SO37. Maj SO37 had noted that, due to the frequency of VBIEDs in Baghdad, 40 Cdo soldiers there were using warning shots as a de facto policy. More specifically, soldiers on patrol were finding that verbal warnings were ineffective at keeping suspicious vehicles from moving too close, and as a last resort were shooting aimed warning shots into the vehicle bonnet. This was considered necessary "*In order to move safely along Route IRISH, a more aggressive stance is required in order to deter VBIEDs*".⁷⁷ Maj SO37 believed that further guidance was deemed necessary in order to support and protect 40 Cdo ranks on patrol by ensuring that the use of warning shots would be appropriate and in accordance with UK law. The resultant guidance document was intended for adoption by all of 40 Cdo.⁷⁸

⁷² SO29 MOD-83-0000360 p.2

⁷³ MOD-83-0000381

⁷⁴ SO29 MOD-83-0000431 para. 8

⁷⁵ SO29 MOD-83-0000430 paras 6 and 9

⁷⁶ MOD-83-0000432

⁷⁷ Ibid

⁷⁸ SO37 MOD-83-0000384

4.20 The relevant parts of the SOP state as follows:

3. Warning shots may be used where necessary, after weighing the risk of collateral damage against the extent of the threat in the particular circumstances and after considering whether to fire may escalate the situation.

4. The risk of collateral damage is increased in crowded urban areas and all appropriate measures must be taken to ensure that friendly forces and innocent civilians are not wounded or killed by warning shots. Only aimed shots are to be fired, and no more rounds are to be used than are absolutely necessary. Firearms are only to be used as a last resort in order to protect human life and the firer is responsible for justifying his actions in response to the threat.⁷⁹

4.21 In his evidence to this Investigation, SO29 had no specific recollection of having previously seen this SOP. However, he confirmed to me that *'the content of paragraphs 3 to 5 of that [SOP] guidance accords with my understanding at the time regarding the requirement to use warning shots unless the resultant delay would increase the risk of death or grave injury to myself and/or friendly forces'*.⁸⁰

4.22 Five of the 7 members of the SO29's patrol confirm that he briefed them prior to deployment. SO32 confirms that the patrol received a full brief from SO29, who went through all actions that were required on the ground during the escort mission and also went through what to do if they came *'under contact'* (although SO32 does not specify what that was).⁸¹ SO28 is slightly more specific, stating that SO29 briefed them *'not to let any vehicles pass us due to the latest threat'*, while SO35 recalls only that they were told not to let vehicles close in on the convoy.⁸²

4.23 More details of SO29's brief are provided by his 2iC, Cpl SO30. He states that the brief comprised

our 'actions on' for all situations, which included any contacts (we were reminded about the ROE), vehicle breakdown and the procedure for civilian cars getting in between our 2 vehicles.

Our procedure is not to let any cars come from behind unless they prove that they are not a threat or it is an emergency vehicle and it is clearly marked as such.⁸³

⁷⁹ MOD-83-0000381

⁸⁰ SO29 MOD-83-0000430 para. 8

⁸¹ SO32 MOD-83-0000357 p.2

⁸² SO28 MOD-83-0000352 p.2; SO35 MOD-83-0000362 at p.1

⁸³ SO30 MOD-83-0000355

4.24 SO31 and SO33 do not mention any brief given by SO29. Nevertheless, in their respective accounts of their actions, they both appear to have acted in accordance with SO29's briefing.

The location and conditions at the time of the incident

4.25 I have been provided with a map ('the Annotated Map') of the Az Zubayr area which shows the location of the shooting incident and Routes TOPEKA, MAUI and HEART, as well as the location of the Two Mosques Roundabout mentioned in several of the soldiers' witness statements.⁸⁴ According to the key on this Annotated Map, the black arrows show the direction of travel of the convoy as described in SO34's witness statement to the RMP.

4.26 The scale on this Annotated Map is unclear. However, I am able to ascertain the approximate distances involved by comparing it to an aerial photograph and another map of the location of the incident, both of which are to scale and were produced by the RMP.⁸⁵ The black arrows thus indicate that the convoy travelled along Route MAUI, turned onto Route TOPEKA, travelled just over 4 km along Route TOPEKA in a northerly direction before reaching the Two Mosques Roundabout, then continued to travel approximately 2 km in a northerly direction before making a U-turn. The convoy then drove 1 km in a southerly direction before reaching the junction of Route TOPEKA and Route HEART, where the shooting incident occurred.

4.27 The aerial photograph of the shooting location shows that Route TOPEKA at that point consisted of a southbound carriageway and a northbound carriageway which were separated by a central reservation.⁸⁶ The unannotated map states that, immediately to the south and north of the shooting incident location, Route TOPEKA was '*4 lanes divided*'.⁸⁷

4.28 The following SIB Investigation Summary provides a helpful description of the incident scene:

The incident occurred on the south bound carriageway of Route TOPEKA in a rural area near the junction with Route HEART, South of Al Basra Province... At the location of the shooting incident Route TOPEKA is a dual carriageway, running north to south, with each carriageway separated by a wide central reservation of soft sand. Although there are no road markings on the tarmac road surface to indicate that each carriageway has two lanes, the road is sufficiently wide enough for two lanes of traffic. In the vicinity of the junction with Route HEART the soft sand on the central reservation has been compacted where vehicles cross from one carriageway to the other creating

⁸⁴ Appendix 5

⁸⁵ Appendices 6 and 7

⁸⁶ Appendix 6

⁸⁷ Appendix 7

visible tracks across the central reservation. There is no street lighting in the area.⁸⁸

- 4.29** All the witnesses agree that it was dark at the relevant time. However, there is disagreement as to whether there was much traffic on the dual carriageway immediately prior to the incident.
- 4.30** According to SO31, as the convoy carried out the necessary U-turn, *'the roads were quite quiet with only a few vehicles on either carriageway'*.⁸⁹ This agrees with SO32's recollection that there was *'not much traffic on the road at all'*.⁹⁰
- 4.31** In contrast to those accounts, Sgt SO29 states that once they had passed the Two Mosques Roundabout, the traffic was *'reasonably busy'*.⁹¹ That the roads were not quiet is further suggested by SO33, according to whom the volume of traffic was such that *'the lights of other road users were lighting our vehicle significantly'*.⁹²
- 4.32** The two drivers, SO34 and SO35, do not mention traffic conditions at all.
- 4.33** Mrs Hassan's account is that the traffic was *'heavy'* as Captain Hassan's car reached the junction where the shooting incident took place.⁹³

The positioning and speed of the C/S vehicles

- 4.34** In his evidence to this Investigation, Sgt SO29 explained the normal positioning of the C/S vehicles when travelling in convoy. The leading and following vehicle comprising the patrol would each *'straddle the road so as to dominate it and block any vehicles approaching from behind getting alongside either vehicle'*. To achieve this, the second vehicle would generally try to maintain a position not more than 50m behind the first. However, the actual distance at any one time could vary considerably depending on considerations such as traffic conditions, the light level and any vulnerable points such as a tight corner or likely trouble spots.⁹⁴
- 4.35** This account is largely supported by the evidence of Cpl SO30 to this Investigation. He states that, as a general rule, the soldiers would try to maintain a distance of not more than two or three vehicle lengths between the two vehicles comprising the convoy *'in order to*

⁸⁸ MOD-83-0000386 p.1

⁸⁹ SO31 MOD-83-0000358 p.2

⁹⁰ SO32 MOD-83-0000357 p.3

⁹¹ SO29 MOD-83-0000360 p.2

⁹² SO33 MOD-83-0000366 p.3

⁹³ Khazaal MOD-83-0000364 p.1

⁹⁴ SO29 MOD-83-0000430 para. 11

achieve our objective of dominating the road' by travelling in off-set formation and thus preventing vehicles approaching from behind coming alongside their vehicles.⁹⁵

- 4.36** All the soldiers agree that the patrol vehicles had completed a U-turn very shortly before the incident occurred.⁹⁶ The Annotated Map combined with the scale on the aerial photograph suggests that the convoy had travelled approximately 1 km from the point at which the U-turn was carried out before the shooting incident occurred.⁹⁷ With the exception of SO33, there is also consensus that the lead vehicle in the convoy was either immediately approaching or was in fact in the process of turning right off the dual carriageway onto a road towards SLB when the first shot was fired.
- 4.37** The two drivers of the patrol vehicles, SO35 and SO34, agree that the lead vehicle (the Pinzgauer) had already started to turn right off the dual carriageway when they first became aware of gunfire.
- 4.38** SO34 was the driver of the lead vehicle (the Pinzgauer). He states that they had driven along Route TOPEKA (i.e. the dual carriageway) and across the central reservation, completing a U-turn in order to be able turn off onto the usual route to SLB: *'About 300 yds later we turned right onto another road, towards SLB. I do not know the name of this road. Immediately after taking this turning, I heard a burst of automatic fire, which lasted about 2 to 3 seconds.'* He does not describe the speed at which his vehicle was travelling at this point.⁹⁸
- 4.39** SO35 was the driver of the rear vehicle (the Land Rover). He states that as the convoy was completing the U-turn, he saw *'a pair of headlights, which I presumed to be a car, speeding towards the C/S, overtaking other cars'*. He estimates that the vehicle was over 100m away, but he lost sight of it as they completed the U-turn. Approximately 100m later, the lead vehicle (the Pinzgauer) started to turn right onto the road to SLB. He then heard his two top covers, SO31 and SO33, shouting for a vehicle to stop, after which he heard gunfire.⁹⁹
- 4.40** These accounts of the drivers are largely supported by both Sgt SO29 and SO28, who were travelling in the lead Pinzgauer. SO28 states that they were only about 50m from the junction where they were to turn right to SLB when they carried out the U-turn, and it was *'at this point'* that he heard a single shot being fired.¹⁰⁰ Similarly, SO29 recalls that they were *'just about to take the right fork off towards Shaibah'* when he first heard a shot being fired. The

⁹⁵ SO30 MOD-83-0000431 para. 13

⁹⁶ For example, SO28 MOD-83-0000352 p.2; SO31 MOD-83-0000358 p.2

⁹⁷ It should be borne in mind that the arrows on the Annotated Map are based on SO34's account; see above at para 4.25.

⁹⁸ SO34 MOD-83-0000359 p.2

⁹⁹ SO35 MOD-83-0000362 p.2

¹⁰⁰ SO28 MOD-83-0000352 p.2

Pinzgauer continued to move forward and did in fact take the fork off to the right whilst gunfire was continuing.¹⁰¹

4.41 Cpl SO30 was travelling in the rear vehicle but agrees that it was as they were approaching the junction to turn right that he became aware of his two top covers shouting for a car to stay back.¹⁰²

4.42 SO31 was one of the top covers of the rear vehicle. He states that the U-turn had been completed and his vehicle was accelerating up the road when he became aware of Captain Hassan's car travelling towards them. He is unable to estimate the speed at which the convoy was travelling at the time.¹⁰³

4.43 The second top cover of the rear vehicle, SO33, provides a slightly different account to those of the other soldiers. Whilst he agrees that the U-turn had been completed by the patrol vehicles by the time Captain Hassan's car approached, SO33 states that the patrol had already been travelling down the road for 5 minutes before he noticed Captain Hassan's car. However, he does state that by the time Captain Hassan's car went out of control and into the central reservation, the convoy had reached the right turn that led to SLB.¹⁰⁴

4.44 SO33 is also the only soldier who provides the only estimate of the convoy's speed at the point at which Captain Hassan's car approached. He states that the convoy was travelling at approximately 60-80km/h, with the front vehicle (the Pinzgauer) travelling in the left lane towards the middle of the road, while his vehicle (the Land Rover) was on the right side of the road.¹⁰⁵

4.45 I here note the evidence of Mrs Hassan that she remembers seeing 'bright lights' immediately before shots were fired at Captain Hassan's vehicle.¹⁰⁶ None of the soldiers in their RMP evidence mention any bright lights mounted on their vehicles. In their evidence to this Investigation, neither Sgt SO29 nor Cpl SO30 was aware of any such light on their respective vehicles.¹⁰⁷

The positioning and speed of Captain Hassan's vehicle

4.46 There are only 3 witnesses in respect of Captain Hassan's driving prior to any shots being fired:

- i. SO31 - top cover (armed with a SA80 rifle) in the Land Rover at the rear of the convoy;

¹⁰¹ SO29 MOD-83-0000360 p.3

¹⁰² SO30 MOD-83-0000355 p.2

¹⁰³ SO31 MOD-83-0000358 p.2

¹⁰⁴ SO33 MOD-83-0000366 pp.3-4

¹⁰⁵ Ibid p.3

¹⁰⁶ Khazaal MOD-83-0000364 p.1; also IFI Khazaal 27/09/16 p.6

¹⁰⁷ SO29 MOD-83-0000430; SO30 MOD-83-0000431

- ii. SO33 - top cover (armed with a Minimi) in the same vehicle; and
- iii. Basima Abdul Hassan Khazaal ('Mrs Hassan'), Captain Hassan's wife.

4.47 According to SO33, prior to his noticing Captain Hassan's car, there were 2 or 3 vehicles behind his Land Rover vehicle and they were all maintaining a distance of about 60m.¹⁰⁸ This largely accords with the account of the other top cover on the Land Rover, SO31, who states that *'a few cars were travelling in our direction but had stayed back 100 metres or so from the rear of my vehicle'*.¹⁰⁹

4.48 Both SO33 and SO31 insist that they then became aware of Captain Hassan's vehicle travelling very fast towards their Land Rover. SO31 states that he was *'aware of a white car travelling at great speed through the traffic on our carriageway towards the rear of my vehicle'*.¹¹⁰ SO33 says he saw in the distance

a car travelling faster than the other traffic towards our multiple. I wasn't overly bothered because Iraqi people drive erratically so I just kept an eye on it.

His speed increased and he was closing on us quite quickly. I became concerned...¹¹¹

4.49 By contrast, Mrs Hassan states as follows:

As the street was busy, we were travelling at moderate speed. We were not speeding. We were travelling at the same speed as the other cars on the road. We were talking as usual and my husband was in good spirits...¹¹²

4.50 Mrs Hassan insists that there were a number of reasons why her husband did not and would not have driven at great speed. Mrs Hassan, who was then 5 months pregnant, was scared of speeding, and she also had her 3 year old daughter sitting on her lap at the time.¹¹³ In her Skype interview with the Inspector, Mrs Hassan clarified that Captain Hassan was simply driving his family home after having taken their daughter to see a doctor about her chest infection.¹¹⁴

4.51 In her supplementary statement to the Investigation, Mrs Hassan corrected her previous contention that the dual carriageway had only one lane, clarifying that although the dual carriageway had no lane markings, it was wide enough for more than one car.¹¹⁵

¹⁰⁸ SO33 MOD-83-0000366 p.3

¹⁰⁹ SO31 MOD-83-0000358 p.2

¹¹⁰ Ibid

¹¹¹ SO33 MOD-83-0000366 p.3

¹¹² Khazaal MOD-83-0000364 p.1

¹¹³ Khazaal MOD-83-0000385 p.2

¹¹⁴ IFI Khazaal 27/09/16 p.15

¹¹⁵ Khazaal MOD-83-0000385 p.4

Nevertheless, Mrs Hassan maintains that her husband was not overtaking any vehicles prior to the incident. She states that their vehicle remained in line with the other vehicles on the road.¹¹⁶

4.52 Importantly, however, Mrs Hassan also admits that *'it was dark and I wasn't paying much attention'*. She did not see any military vehicles on the road.¹¹⁷

4.53 Finally, it should be noted that there is no evidence that Captain Hassan was driving in any way erratically as he approached the convoy.

The quality of the soldiers' response

4.54 Four members of the C/S – that is, all 4 top covers – opened fire on Captain Hassan's vehicle. In order, these were:

- i. SO31 (top cover of the rear Land Rover – SA80 rifle);
- ii. SO33 (top cover of the rear Land Rover – Minimi); and
- iii. Seemingly simultaneously, SO32 (top cover of the front Pinzgauer – SA80 rifle) and SO28 (top cover of the same – Minimi).

The soldiers' experience and training

4.55 The 4 soldiers involved in the shooting had arrived in theatre on 30th November 2004, just over a fortnight before the shooting incident. All 4 were new to the unit, having first arrived from base training at CTC RM Lympstone.

4.56 Prior to deploying in Iraq, all 4 soldiers completed limited mandatory pre-deployment training with the rear party at Norton Manor Camp. This training lasted for approximately one week. Upon arrival in Iraq, all 4 soldiers attended an in-unit, 2-day Reception, Staging and Onward Integration ('RSOI') package held at AZP between 1st and 2nd December 2004. During this package they were instructed on ROE and issued with Card A. According to the RMP statement of the 40 Cdo Adjutant, Maj SO37, the 4 soldiers would also have been familiarised with the 40 Cdo 'Guidance for the Use of Warning Shots' document (on which see above at paragraph 4.19).¹¹⁸

4.57 However, as that document was only produced on 8th December 2004, this could not have been possible.¹¹⁹ SO37 has clarified in his evidence to me that, whilst the soldiers in question may not have seen this particular guidance document, *'to the best of my knowledge,*

¹¹⁶ Khazaal MOD-83-0000364 p.2

¹¹⁷ Ibid

¹¹⁸ SO37 MOD-83-0000383

¹¹⁹ MOD-83-0000381

*comprehensive guidance and training on the use of warning shots were routinely covered within all RSOI packages, including the one held 1-2 Dec 04; this reinforced pre-deployment training on the same subject.*¹²⁰

SO31's evidence¹²¹

- 4.58** SO31 thought that the shape of Captain Hassan's car was similar to that shown in the earlier IO briefing and thus immediately suspected it to be a SVBIED. He accordingly gestured with his palms to the vehicle to make it stop, but this had no effect. When the vehicle was within 15m of his vehicle, he feared for his safety and fired one round at the bonnet of the car.¹²²
- 4.59** However, the vehicle continued to approach. SO31 describes how, when it reached 10m away, he fired 2 more aimed shots at the vehicle *'to try and make him stop'*, but SO31 does not clarify where at the vehicle he aimed.¹²³
- 4.60** As he fired these 2 rounds, the vehicle moved closer to the Land Rover but slightly towards the central reservation. This took it out of SO31's arc of fire and into that of SO33. Furthermore, SO31 states:

*As the vehicle moved I saw a distinctive flash from a muzzle in the area of the white vehicle's driver's door window. I also heard what I believed to be 2 shots fired from the car. I did not see a weapon or any person in the car but I was sure our vehicle was now being shot at by a person in this car.*¹²⁴

- 4.61** At this point, SO31 heard SO33 fire a burst of rounds from his Minimi, some of which he saw hit the windscreen of the white vehicle. SO31 believes that the top cover from the Pinzgauer may also have fired at that same moment. The white vehicle immediately turned to the left, veered onto the central reservation, spun 300 degrees and skidded to a halt. No further rounds were fired at the vehicle.
- 4.62** According to SO31, the entire incident lasted no more than 10 seconds. In total, he fired 3 rounds at the vehicle.¹²⁵

¹²⁰ SO37 MOD-83-0000397 para 6

¹²¹ SO31 MOD-83-0000358

¹²² Ibid p.2

¹²³ Ibid

¹²⁴ Ibid

¹²⁵ Ibid

SO33's evidence¹²⁶

- 4.63** SO33 describes how he and SO31 gestured for the approaching white vehicle to slow down and stay back. They did this by giving warning signals, holding their hands out with palms flat and facing the driver. SO33 notes that successful hand gestures had kept the 2 or 3 other vehicles behind the Land Rover at a distance of about 60m.¹²⁷
- 4.64** However, the vehicle continued towards the Land Rover and was now 50m behind it. At this point SO33 and SO31 were both pointing their weapons at the car but it still continued towards the convoy. SO33 was *'absolutely sure he could see us even though it was dark because his lights and the lights of other road users were lighting our vehicle significantly.'*¹²⁸
- 4.65** By this stage, SO33 suspected that the vehicle was a SVBIED. However, he was not completely sure of this and did not want to open fire with the Minimi, which is a burst fire weapon and unsuitable for firing aimed shots. SO33 states that he and SO31 agreed that SO31 would fire a warning shot into the vehicle's bonnet. SO31 fired a shot but it had no effect and SO33 did not see whether it struck the car.
- 4.66** SO31 therefore fired 2 more shots towards the car, but SO31 again did not see whether the rounds hit the mark. At this stage, the car was around 10m away from the Land Rover, on the left side of the road and in SO33's arc of fire.
- 4.67** SO33 was now convinced that the car was a SVBIED:
- The car continued and I am sure I heard a shot being fired from the car. Although I heard a shot being fired, I could not tell whether it was a high or low velocity shot. I did not see a flash nor did I see a weapon being pointed from the car. When I heard the shot, I opened fire into the driver's side of the windscreen which by now was 6m away from me.¹²⁹
- 4.68** SO33 fired 2 quick bursts of rounds into the windscreen. The white car went out of control, moving into the central reservation and into the Pinzgauer's arcs of fire.
- 4.69** According to SO33, the whole incident lasted for about one minute, from the first hand signal to the right turn to SLB. In total, he fired 9 rounds.¹³⁰

¹²⁶ SO33 MOD-83-0000366

¹²⁷ Ibid p.3

¹²⁸ Ibid

¹²⁹ Ibid

¹³⁰ Ibid p.4

SO32's evidence¹³¹

4.70 SO32 initially heard a burst of small arms fire behind him to his left side. As he turned around, he saw a vehicle which was travelling behind the Pinzgauer but was only about 10-15m away. It had its headlights on and he estimated that it was only about 5m away from the Land Rover.

4.71 According to SO32,

I could see more muzzle flashes and heard the sound of gunfire being fired in the direction of our vehicle.

It was then that I felt immediate danger and I fired one round at the vehicle which I recall was a white car. I could not see any of the person(s) that were inside it and I aimed at the bonnet of the car. I hoped that by me firing the round it would stop, but it seemed to speed up and was now ahead of the Land Rover. I recall that I shouted 'contact' and saw that the vehicle swerved left then right and it began to drive straight for the side of our vehicle.¹³²

4.72 SO32 says that at this point he saw more *'more firing coming from the left side of the car as I was looking at it'*, and he therefore fired more rounds at the vehicle. SO28 was also firing at the vehicle. Only then did SO32 see the white vehicle slow down, at which point he remembers SO29 shouting *'stop'*.

4.73 In total, SO32 had fired 10 rounds at the vehicle.¹³³

SO28's evidence¹³⁴

4.74 SO28 first heard a single shot being fired and heard someone say *'contact left'* over the PRR. He turned to see a white saloon car in line with the Land Rover and possibly just in front of it. It was about 20m behind the Pinzgauer and *'travelling at speed'*.

4.75 SO28 describes seeing one of the top covers from the second vehicle fire at the white vehicle and *'could see a weapon of some sort being fired from the white car. I could tell this as I could clearly see muzzle flashes'*.¹³⁵

4.76 At this point, the white vehicle was no more than 10m from the Land Rover and SO28 believed that its occupant was firing at it. He therefore turned and fired a single burst at the

¹³¹ SO32 MOD-83-0000357

¹³² Ibid p.3

¹³³ Ibid p.4

¹³⁴ SO28 MOD-83-0000352

¹³⁵ Ibid p.2

white vehicle, which then veered off to the left into the central reservation. The Pinzgauer then turned right onto the road to SLB.

4.77 However, according to SO28:

The white car then turned sharply right and began to drive straight towards the left side of my vehicle. It appeared to be driving fast and was about 30 metres away from us. I believed that it was going to ram our vehicle and I honestly believed that the vehicle may have been a VBIED and therefore I believed our lives were in danger and I therefore fired 2 bursts (about 4 to 6 rounds).

As I finished shooting the white car turned to the left and stopped and was in the central reservation. At this point I heard SO30 say over the PRR 'stop, stop, stop, cease firing'.¹³⁶

4.78 SO28 believes that the incident lasted for about 40 seconds. In total, he fired 20 rounds at the white vehicle.¹³⁷

Whether Captain Hassan fired a weapon

The soldiers' evidence

4.79 Much of the relevant evidence has already been dealt with above, but some of the other soldiers' accounts can be usefully summarised:

- (a) At the time, SO29 did not know who was firing. He describes how everything happened '*really quickly*'.¹³⁸
- (b) SO35, the driver of the Land Rover, was unsure if the white vehicle fired or not. However, he does state that, as he saw the vehicle pass him, '*I do recall seeing 2 bright flashes, which I believed were muzzle flashes. These originated from the window area of the front left (driver's) door window of the car and coincided with 2 loud bangs, I believed were single gunshots*'.¹³⁹
- (c) SO30 told his driver (SO35) to pull over to the right during the gunfire. When the vehicle pulled right, he heard '*a loud burst of rounds, which I didn't recognise as one of our weapons. The top covers shouted that he was firing*'.¹⁴⁰

¹³⁶ Ibid

¹³⁷ Ibid p.3

¹³⁸ SO29 MOD-83-0000360 p.3

¹³⁹ SO35 MOD-83-0000362 p.2

¹⁴⁰ SO30 MOD-83-0000355 p.2

- (d) SO34, the driver of the Pinzgauer, states that he heard an initial burst of automatic gunfire which he is certain was not from an SA80 or Minimi. He suggests that it was an AK-47.¹⁴¹ However, the use of an AK-47 is not supported by any other evidence at all.
- (e) Nicholas Steele describes hearing different types of sound of gunfire, including a higher pitched '*popping*' sound which he believed was coming from another car.¹⁴² However, Mr Steele is not an expert on such matters.

Mrs Hassan's evidence

4.80 At the time of the incident, Mrs Hassan was seated in the front passenger seat with her 3 year old daughter in her lap.

4.81 She recalls that her husband, an Iraqi policeman, was carrying a pistol at the time. She describes this pistol as his '*personal weapon*',¹⁴³ which he had tucked into the left side of his trousers whilst driving. However, she is adamant that

at no time did I see my husband move or remove his weapon from his trousers. My husband did not fire his weapon at any time. Everything happened very quickly and that is why my husband did not have the time to get his weapon out and return the firing directed at our vehicle. That is why I can state that my husband has not fired his weapon.¹⁴⁴

4.82 Mrs Hassan also states that the bystanders who witnessed Mr Al-Tamimi move her husband into his car informed her that Captain Hassan's pistol was still tucked into his trousers when he was being removed from the car.¹⁴⁵

The forensic evidence

4.83 None of the forensic evidence indicates that Captain Hassan fired a weapon during the incident.

4.84 As noted above, forensic tests were carried out by the IPS on the 9 shell casings taken from the scene of the shooting. The Basra Forensic Evidence Office concluded that the 9 casings sent to it by the IPS at Az Zubayr were of 5.56mm calibre and were fired by '*English rifles*'.¹⁴⁶

¹⁴¹ SO34 MOD-83-0000359 p.2

¹⁴² Steele MOD-83-0000361 p.3

¹⁴³ Khazaal MOD-83-0000364 p.1

¹⁴⁴ Ibid p.2

¹⁴⁵ Ibid pp.1-2

¹⁴⁶ MOD-83-0000415

4.85 Of the 3 bullet fragments that the RMP recovered from Captain Hassan's vehicle, forensic tests carried out on behalf of the RMP found that they were of '*correct type, calibre, configuration as that currently issued to British Military Forces*'. A further forensic test was able to conclude that 2 out of the 3 bullets were fired from SO31's rifle.¹⁴⁷

4.86 The RMP also submitted 4 swabs taken from Hassan's vehicle (from the steering wheel; dashboard; roof above the driver's seat and the driver's door panel) and also Hassan's clothes for gunshot residue tests. The forensic report was inconclusive:

Whilst no **unique** gunshot residue particles were found, numerous particles **indicative** of gunshot residue were located on swabs from the vehicle and the clothing. These particles could have arisen as the result of bullet fragmentation or from a non-firearms related source.¹⁴⁸ [Original emphases]

4.87 A Glock pistol serial no. FXB907, which was handed over to the RMP by the IPS as being Captain Hassan's pistol, was also examined. The report found that there was apparent dried blood on the exterior surface and on the interior of the barrel breech block and interior of handgrips. However, it could only conclude that '*the presence of blood in the fouled barrel of the pistol item PR/1 shows that it had not been discharged since the blood was deposited*'.¹⁴⁹ The Basra Forensic Evidence Office had examined a Glock pistol no. 'FXB-907' on 26th December 2004. Its forensic examiners were unable to conclude when the pistol was last fired. The inspection report does not mention the presence of any blood on or in the pistol, but I note that the forensic examiners were only requested to ascertain the date the pistol was last fired and the type of gunpowder used.¹⁵⁰

4.88 Further, there are inconsistencies in the evidence surrounding the recovery of the Glock pistol. Mrs Hassan's understanding is that her husband's pistol fell out of his trousers and into some mud whilst Mr Al Tamimi was pulling him out of his car, and that other passersby then handed the pistol into a police checkpoint.¹⁵¹ This was also the account given to the Inspector in a Skype interview on 27th September 2016 by Captain Hassan's brother, Mr Abdul Majeed.¹⁵² However, neither Mr Abdul Majeed nor Mrs Hassan themselves witnessed those events. In any case, there is no evidence to show that the Glock pistol which was analysed forensically was in fact the pistol which Captain Hassan was carrying during the incident.

¹⁴⁷ MOD-83-0000391; Park MOD-83-0000392

¹⁴⁸ Park MOD-83-0000392

¹⁴⁹ Park MOD-83-0000391

¹⁵⁰ MOD-83-0000441

¹⁵¹ Khazaal MOD-83-0000385 p.5

¹⁵² IFI Khazaal 27/09/16pp.17-18

4.89 Finally, it should be noted that the RMP examined the Land Rover and Pinzgauer for any sign of damage consistent with being struck by any missile, shot or projectile, but found no such damage.¹⁵³

¹⁵³ See witness statement of Philip Neville (MOD-83-0000393) although this states that the examination took place on 27 *October* 2004, which must be incorrect. The Scenes of Crime Examiner's Report itself states that the examination took place on 27 January 2005 (MOD-83-0000380).

SECTION 5: FINDINGS AND CONCLUSIONS

- 5.1** At the time of the shooting, the safe movement of BF convoys was threatened by a high risk of ambush from suspected VBIED attacks. Incidents to date had shown that the threat could come from a parked vehicle being detonated as a convoy passed or by the convoy being overtaken, followed by detonation close to the convoy.
- 5.2** The nature of these threats gave rise to a real need for a convoy to prevent a vehicle travelling close to the convoy and overtaking it. A view had been expressed within 40 Cdo that the situation required '*a more aggressive stance...in order to deter VBIEDs*'.¹⁵⁴ I have given specific consideration to the terms in which guidance was given to the soldiers of 40 Cdo regarding the use of warning shots. The guidance confirmed that warning shots could be used in a suspected VBIED situation, but only after the soldier concerned had weighed the risk of collateral damage against the risk of the VBIED threat materialising. Only aimed shots were to be fired, and no more rounds were to be used than absolutely necessary.
- 5.3** On the night in question, the 8 soldiers of C/S PE10B, 40 Cdo, had been briefed that there was a particular risk of attack prevailing in the area of their travel. There was some information that a 4 door saloon vehicle might be operating as a SVBIED. Although the briefing included some specific vehicle descriptions, the generic source of particular threat was from a saloon car. Thus any saloon car which appeared to be intent on travelling close to the convoy or attempting to overtake the convoy would be seen as a potential risk to life. Inevitably, there would be little time for an assessment to be made and split second judgments would be involved.
- 5.4** It is possible that some road users might have had an instinctive reluctance or sense of caution about approaching a convoy in the circumstances which prevailed in Iraq at the time in question and may have held back from appearing to do anything which might be seen as a challenge to the movement of a convoy. Those who did not show caution were to be given a warning to keep back. It is close to speculation to surmise that Captain Hassan, being a senior police officer, could have been less inhibited by uncertainty on his approach to the convoy, but it is clear that he must have come very close and been well ahead of the following vehicles, none of which were involved in a collision or loss of control. I am satisfied that, had he seen a hand signal to warn him to stay back, he would have obeyed it. That said, I have no reason to conclude that there was a failure to give a hand signal. The conditions and the pace of events are likely to have made the measure ineffective.
- 5.5** The instructions to the soldiers from their C/S Cmdr, Sgt SO29, were clear. If a hand signal directed at an approaching vehicle was ineffective, a warning shot in to the bonnet of the car

¹⁵⁴ MOD-83-0000432

was to be used. If the warning shot appeared to have no effect on the driver, then further aimed shots were to be fired into the bonnet in order to immobilise the vehicle. If this failed, only then were aimed shots to be fired at the driver in order to incapacitate him. If the need to fire a warning shot arose at night, there would be some difficulty in assessing the impact of the shot. Whether day or night, the configuration of moving vehicles and the passage of seconds leaves no time for reflective assessments.

- 5.6** I note the observation of SO29 in his witness evidence to this Investigation regarding the bullet entry points on Captain Hassan's car, as evidenced by the IPS sketch and photographs. SO29's evidence to me was that the damage sustained by the vehicle is consistent with what he would expect from the escalation of action in the event of a suspected VBIED failing to respond to hand signals to slow down or stop. He states that the 5 spaced bullet entry points to the bonnet suggests a sequence of single aimed shots intended to immobilise the vehicle, whilst what he terms the '*beaten zone*' of 6 bullet entries to the left-hand of the windscreen suggests a '*very short burst of automatic machine-gun fire intended by that stage to incapacitate the driver*'.¹⁵⁵
- 5.7** The evidence, in particular the position of his vehicle after the shooting, overwhelmingly points to the conclusion that Captain Hassan's vehicle approached the rear of the convoy at a greater speed than the other vehicles on the road. There is no possible basis for criticizing Captain Hassan for gaining ground on the convoy. I conclude that he did not see a hand signal or have any reason to moderate his driving so as to avoid overtaking the convoy, which he is likely to have assessed was in the process of turning right off his carriageway. As a responsible senior police officer, I have no doubt that had he seen any warning or thought he should slow down, he would have done so.
- 5.8** I recognize the extent of the risk to life under which the soldiers were operating that night and the constant imminence of threat under which the operations were carried out. The circumstances gave little or no chance for deliberation. The decisions which had to be made were dependent on split second perceptions which gave little or no time between non-aggressive and aggressive reactions. The evidence clearly shows the depth of the turbulence and insecurity in Iraq at this time.
- 5.9** The investigations which were promptly carried out have provided a number of written accounts which in their substance do not differ one from the other. Such differences of detail as have appeared are consistent with the witnesses giving their own recollection of events.
- 5.10** I have no doubt that Captain Hassan did not take out his pistol. It is impossible to see how in the time that elapsed he would have been able to do so. On this, I have no reason to doubt that the evidence of his widow has been reliable. The perception by some soldiers that he

¹⁵⁵ SO29 MOD-83-0000430 paras 19-20

was holding a gun could have arisen from any number of factors, including flashes of light and the deep sense of threat under which they believed they were operating.

5.11 I have concluded that the response of the soldiers on the night in question to what they perceived to be an imminent threat to their lives was reasonable and in accordance with the Rules of Engagement. Whilst it is possible to conclude that a sequence of warning shots to the bonnet were fired, it is impossible to determine what the sequence of shots thereafter produced other than the tragic death of Captain Hassan and the loss of all control over his vehicle.

POSTSCRIPT

5.12 Mrs Hassan has regrettably not received any pension payments as a widow owing to her inability to hand over Captain Hassan's pistol to the Iraqi authorities. After our Skype interview, we were able to follow lines of enquiry with the police in the UK and pistol has been located. All steps are being taken to ensure the return of the pistol in order that she will receive her entitlement from the Iraqi authorities.

Appendix 1: List of Persons Named in the Investigation

Military/ex-military personnel¹

Maj SO37
In December 2004 Maj SO37 was the Adjutant of 40 Cdo RM who authored the document 'Guidance for the Use of Warning Shots on Op TELIC V'.

Soldiers

SO28
SO28 was a Marine (Mne) in 40 Cdo RM and part of callsign PE10B whose position in the convoy on the 17th December 2004 was top-cover in the Pinzgauer.

SO29
On the 17th December 2004 SO29 held the rank of Sgt, and on that day he and 7 members of his unit were tasked with escorting Nicholas Steele, a British Forces Broadcasting Services (BFBS) radio presenter, from Az-Zubayr Port (AZP) to Shaibah Logistics Base (SLB) on the 17th December 2004. His position on the day was Comd of the Pinzgauer.

SO30
SO30 was a Cpl in 40 Cdo RM in December 2004, whose position in the convoy on the 17th December was Comd of the Land Rover.

SO31
SO31 was a Mne in 40 Cdo RM in December 2004, whose position in the convoy on the 17th December was top cover in the Land Rover.

¹ Ranks indicated are those in December 2004 and not the individual's current rank if still serving.

SO32	SO32 was a Mne in 40 Cdo RM in December 2004, whose position in the convoy on the 17 th December was top cover in the Pinzgauer.
SO33	SO33 was a Mne in 40 Cdo RM in December 2004, whose position in the convoy on the 17 th December was top cover in the Land Rover.
SO34	SO34 was a Mne in 40 Cdo RM in December 2004, whose position in the convoy on the 17 th December was driver of the Pinzgauer.
SO35	SO35 was a Mne in 40 Cdo RM in December 2004, whose position in the convoy on the 17 th December was driver of the Land Rover.
SO36	SO36 was a Capt in December 2004, deployed with 40 Cdo RM as the Intelligence Officer. SO36 compiled the INTSUM on the 17 th December 2004 which was briefed to the callsign PE10B before their tasking.

Iraqi witnesses²

Basima Abdul Hassan Khazaal	Basima Khazaal is the widow of Captain Hassan and was travelling with him in the car during the incident on the 17 th December 2004.
Hareth Habeeb Othman Thiab Al-Tamimi	Hareth Al-Tamimi was a taxi driver working on the 17 th December 2004 who stopped at the scene after the incident and transported Captain Hassan and Basima Khazaal to the Basrah General Hospital (BGH).
Dr Ahmed Abdul-Hadi Sufar	Dr Sufar was the casualty surgeon who treated Captain Hassan's body on the 17 th December 2004.

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.

Civilians

Nicholas Steele

Nicholas Steele, a BFBS radio presenter, was being escorted by the military convoy to SLB on 17th December 2004.

Appendix 2: Chronology

Date	Event	Reference
2004		
17 th December		
08.30	INTSUM compiled by Capt SO36 is briefed to CO of 40 Cdo RM	SO36 MOD-83-0000363
c.Midday	Capt SO36 receives report from I-Net of 'dark red Dauphin' VBIED in Basra's Hamdan District and adds this report to the INTSUM	SO36 MOD-83-0000363; MOD-83-0000374
14.00	Nicholas Steele travels to AZP	Steele MOD-83-0000361
	Capt SO36 briefs Call Sign ('C/S') PE10B	SO36 MOD-83-0000354
	Sgt SO29 briefs C/S PE10B	SO29 MOD-83-0000360 p. 2
c.17.20	C/S PE10B leaves AZP escorting Nicholas Steele to SLB	SO28 MOD-83-0000354 p.1
17.57	PE10B report 'contact' with a civilian vehicle, later identified as Captain Hassan's vehicle; 'vehicle hit' by gunfire from PE10B	Radio Log MOD-83-0000395
c.18.05	Convoy arrives at SLB	SO29 MOD-83-0000360
	Sgt SO29 sends SITREP to Ops Room	SO29 MOD-83-0000360 p. 4; Radio Log MOD-83-0000395
c.18.20	Sgt SO29 and other soldiers from PE10B re-tasked to attend scene of the shooting incident to await RMP	SO29 MOD-83-0000360 p. 4
c.18.30	Captain Hassan, Basima Khazaal and her daughter taken to the Basra Jomhoury Public Hospital by Hareth Al-Tamimi	Khazaal MOD-83-0000364 p. 3
c. 19.00	Sgt SO29 and other soldiers from PE10B arrive back at scene of shooting incident	SO29 MOD-83-0000360 p. 4

20.45	Captain Hassan's body released by the hospital to his family	Khazaal MOD-83-0000364 p.3
23.10	RMP arrive at scene of shooting incident and take Captain Hassan's vehicle to Basra Air Station	MOD-83-0000413
18 th December	RMP conduct Scene of Crime examination of Captain Hassan's vehicle at Basra Air Station	MOD-83-0000413
2005		
27 th January	RMP conduct Scene of Crime examination on PE10B's Pinzgauer and Land Rover Wolf	MOD-83-0000380-Z
22 nd August	Captain Hassan's family write to the SoS requesting that an Article 2 ECHR compliant investigation be carried out into the shooting incident. The MoD responds denying any legal obligation to investigate further	
2013		
18 th February	Captain Hassan's brother, Mr Abdul Majeed, makes a witness statement in relation to a civil claim brought by PIL on behalf of the family for compensation from the MoD for Captain Hassan's death	
2015		
17 th March	In his AS1 judgment, Leggatt J holds that the ECHR applies to individuals shot by British soldiers in Iraq even if they were not in the custody of British forces at the time of the shooting. Captain Hassan's case is one of the test cases Leggatt J considers and, on the assumed facts, he concludes that Captain Hassan fell within Article 1 ECHR jurisdiction of the UK	[2015] EWHC 715 (Admin)
10 th August	Leggatt J grants Captain Hassan's family permission to proceed with a judicial review of the SoS's decision not to hold an Article 2 ECHR compliant investigation into Captain Hassan's death.	
3 rd -6 th November	Judicial review hearing regarding Captain Hassan's case and four other test cases.	

The Iraq Fatality Investigations

2016		
7 th April	In his AS2 judgment, Leggatt J holds that the criteria for establishing an inquiry into the death of Captain Hassan have been met. He orders an inquisitorial inquiry to be established without delay.	[2016] EWHC 773 (Admin)
6th June	Sir George Newman appointed as Inspector with conduct of the Investigation into the death of Captain Hassan and provided with Terms of Reference	http://www.iraq-judicial-investigations.org/linkedfiles/latest/20160606-letterofappointment_captainhassan.pdf
9 th September	Court of Appeal upholds Leggatt J's finding in AS1 (albeit on more limited grounds) that on the assumed facts of the case, Captain Hassan fell within the jurisdiction of the UK for the purposes of Article 1 ECHR.	[2016] EWCA Civ 811

Appendix 3: Card Alpha - Guidance for Opening Fire for Service Personnel Authorised to Carry Arms and Ammunition on Duty

RESTRICTED

CARD A

GUIDANCE FOR OPENING FIRE FOR SERVICE PERSONNEL AUTHORISED TO CARRY ARMS AND AMMUNITION ON DUTY

GENERAL GUIDANCE

1. This guidance does not affect your inherent right to self - defence.
However, in all situations you are to use no more force than absolutely necessary

FIREARMS MUST ONLY BE USED AS A LAST RESORT

PROTECTION OF HUMAN LIFE

2. You may only open fire against a person if he/she is committing or about to commit an act likely to endanger human life and there is no other way to prevent the danger.
3. When guarding property, you must not use lethal force other than for the *protection of human life*.

CHALLENGING

4. A challenge **MUST** be given before opening fire unless:
 - a. To do this would increase the risk of death or grave injury to you or any other persons other than the attacker(s);
OR
 - b. You or others in the immediate vicinity are under armed attack.
5. You are to challenge by shouting:
**"NAVY, ARMY, AIR FORCE,
STOP OR I FIRE."** Or words to that effect.

OPENING FIRE

6. If you have to open fire you are to:
 - a. Fire only aimed shots;
AND
 - b. Fire no more rounds than are necessary;
AND
 - c. Take all reasonable precautions not to injure anyone other than your target.

JSP 398 (2004 Edition)

RESTRICTED

Appendix 4: Guidance for the Use of Warning Shots on Op Telic V

RESTRICTED

Adjutant
40 Commando Royal Marines
Az Zubayr Port
Op TELIC V
BFPO 643



UK Military Network (Synergy Red): 926091 964 3102

All 40 Cdo RM Op TELIC V locations

8 Dec 04

GUIDANCE FOR THE USE OF WARNING SHOTS ON OP TELIC V

Reference:

A. JSP398, Card A (Guidance for opening fire for service personnel authorised to carry arms and ammunition on duty) 2004 Edition.

INTRODUCTION

1. A number of incidents involving 40 Cdo ranks during Op TELIC V have resulted in a necessity to use warning shots, in addition to the challenges detailed at Reference A. In order to ensure compliance within UK law, the following guidelines are to be followed by all 40 Cdo ranks currently deployed in Iraq.

CARD A

2. The contents of Reference A must be fully understood by all ranks deployed on Op TELIC.V. Training will be conducted during the RSOI package and a copy of Card A must be carried by all individuals whilst using weapons and live ammunition.

USE OF WARNING SHOTS

3. Warning shots may be used where necessary, after weighing the risk of collateral damage against the extent of the threat in the particular circumstances and after considering whether to fire may escalate the situation.

4. The risk of collateral damage is increased in crowded urban areas and all appropriate measures must be taken to ensure that friendly forces and innocent civilians are not wounded or killed by warning shots. Only aimed shots are to be fired, and no more rounds are to be used than are absolutely necessary. Firearms are only to be used as a last resort in order to protect human life and the firer is responsible for justifying his actions in response to the threat.

5. Warning shots should not be used if the resultant delay would increase the risk of death or grave injury to you or any other friendly forces. Lethal force is to be used under those circumstances as detailed in Reference A.

[Redacted]

SO37
Maj RM
Adjt

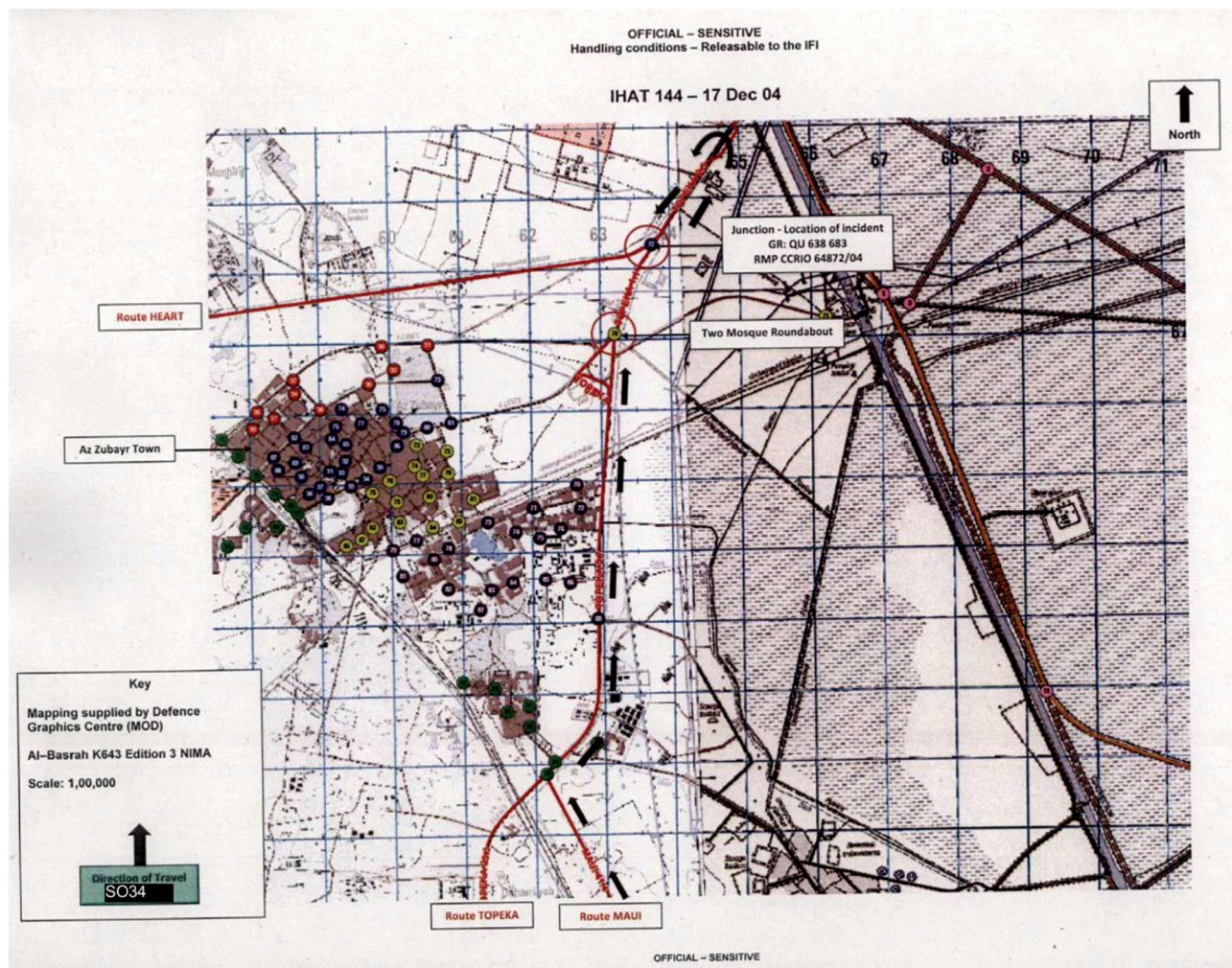
ADJUTANT
Certified true copy
24 DEC 2004
40 COMMANDO
ROYAL MARINES

[Redacted]

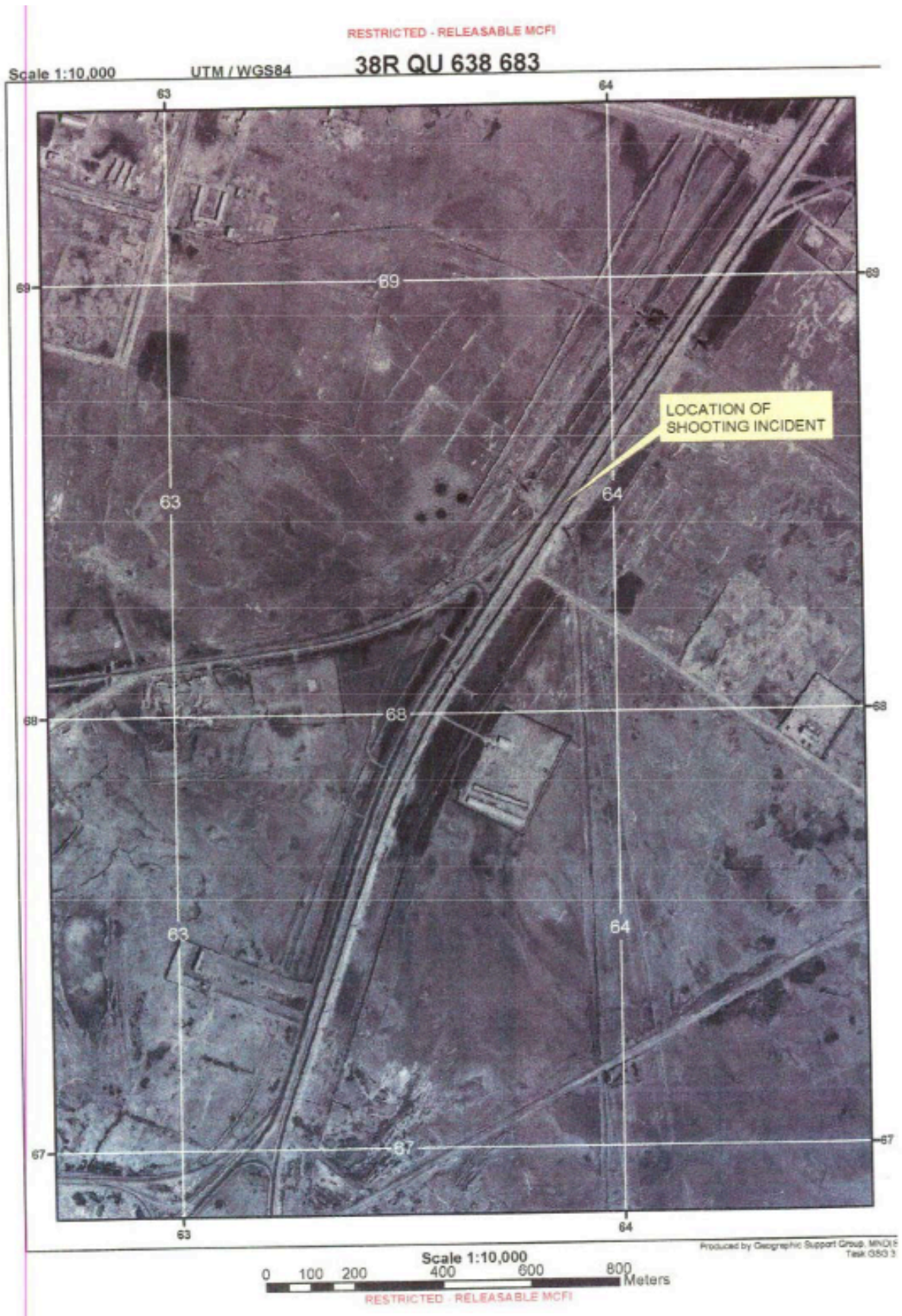
RESTRICTED

F4 9.1

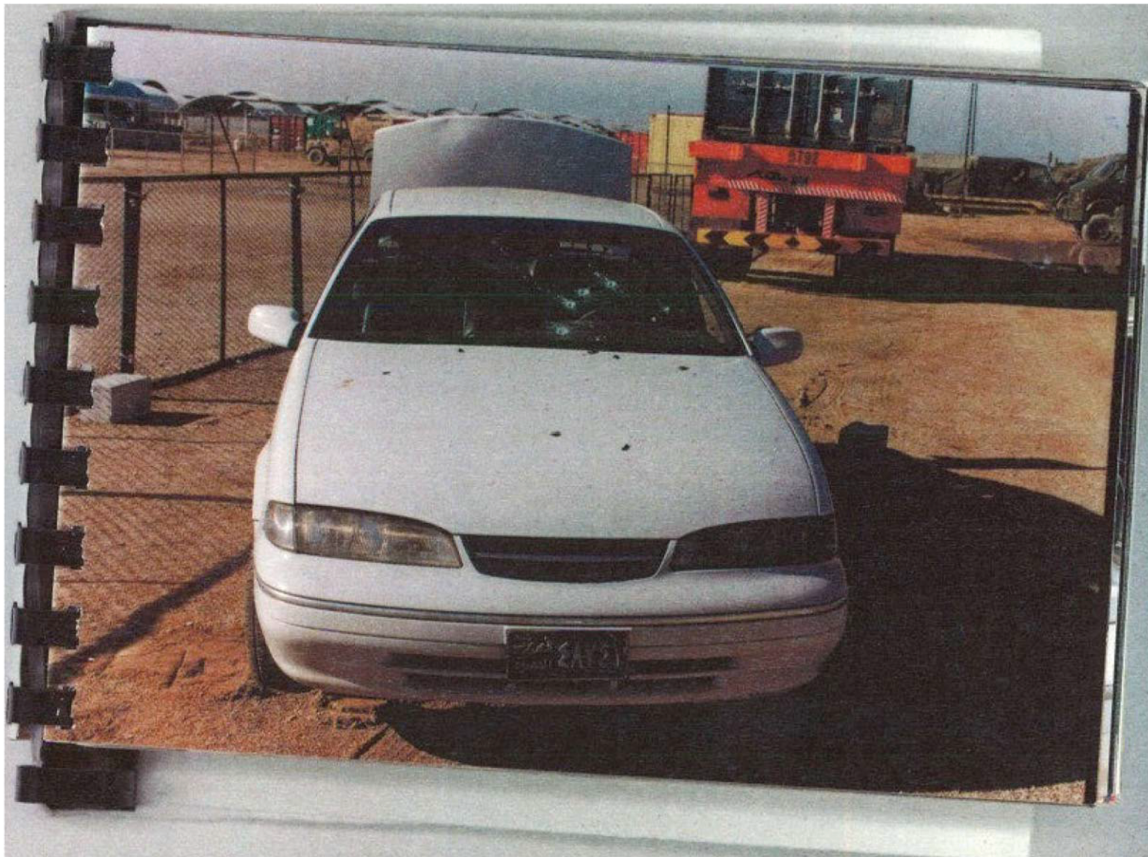
Appendix 5: Annotated Map



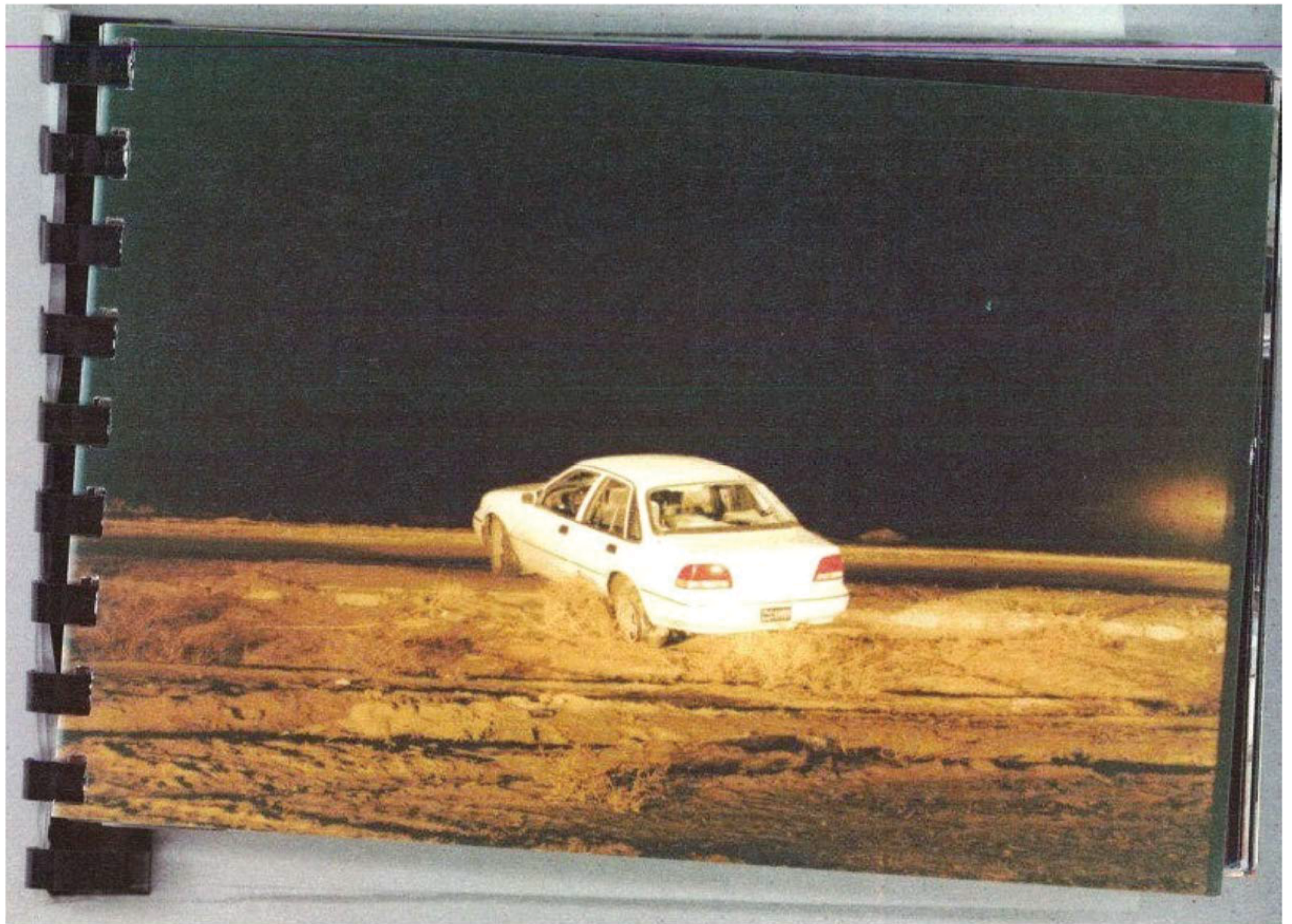
Appendix 6: Aerial Photograph of the Location of the Incident



Appendix 8: Photographs of Captain Hassan's Vehicle







Appendix 9: Photographs of Pinzgauer



Appendix 10: Photograph of Landrover



Appendix 11: Death Certificate of Captain Abdul Hussan Taleb Hassan

Filled (illegible) on 18/12/2004

Signed
Mahdi Saleh (sic)

Stamp
Najaf Municipality Directorate
Office of (illegible)

Sayyed Abd Ali (illegible)
18/12/2004

Basra Affairs
Deaths (illegible) 12/2004

Letter 18/16/01/2005

Death Certificate (circled)

Death Certificate

**Republic of Iraq
Ministry of Health
Health and Life Statistics Section**

NO. 614963

Death Certificate

**Certificate No 179537
Date of issue 17/12/2004**

To (illegible)

We hereby inform you that the death detailed hereunder has been registered with us in the Deaths' Register under (illegible) 7596 year 2004

Name of (illegible): (illegible) Alhussain
Gender: Female (sic)
Nationality: Iraqi
Religion: Muslim

Name of (illegible): Talab Hassan
Name of mother: [REDACTED]
Date of the death: 17/12/2004
In writing: The seventeenth of December of the year (illegible)
Place of the death: Al Zubair

Cause of the death: Gunshot. Body handed over without autopsy according to the judge's decision.

Name of the person who informed about the death:

Source of issue: General (illegible)

Name of the issuer: signed

Name of the doctor: Husaam Na(illegible)
Signed

Stamp of the organisation: Basra Health Department
Governorate Sector
Births and deaths (illegible)

Date: 2/2/2995

Death Certificate

Republic of Iraq

certificate number 0179537

Ministry of Health
Health and Life Statistics Section

Death Certificate

Date of issue: 17/12/2004

1. Name and surname of the deceased: (illegible)
2. Gender: (illegible)
3. Nationality: (illegible)
4. Religion:
5. Occupation: police officer (illegible)

6. Marital status:
7. Date of birth: (illegible)
8. Place of birth:
9. Permanent domicile:
10. Place of death: Basra
11. Date of death: (illegible)

12. Name of father of the deceased: (illegible)
13. Name of mother of the deceased: (illegible)

14. Name of informant of the death: (illegible)
15. Relationship to the deceased:
16. Address:

17. Medical death certificate
 - (1) Disease or state immediately leading to the death, the disease (if any) that led to the above cause stating the original cause at the end:

 - (A) Gunshot (caused by or resulting from what followed)
 - (B) The body was handed over without autopsy in accordance with the decision of the judge
 - (C) (illegible)

 - (2) Other significant conditions that contributed to the cause of death and is not linked to the disease or the condition that caused the death (illegible).
(illegible)

17/12/2004

If the deceased was a woman in fertility age (15-49), one of the following boxes must be ticked:

The death occurred during pregnancy; while giving birth; after giving birth

18. The death took place at home; the hospital; another place:

19. I hereby certify that the death took place as a result of the reasons mentioned above.

Name of physician: (illegible) (signed)

Place where the doctor works: Basra General Hospital

20. Forensic medicine certificate (to be filled and signed by the forensic physician).

21. Information restricted to the department of Nationality and Civil Status (to be obtained from the identification card); registry number; page number; governorate; identification card number 17017 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 to the certificate organiser

Registered with the health authority in (illegible)
under serial number 7596
year 22/12/2004

Stamp (illegible)