



The Iraq Fatality Investigations

Inspector: Sir George Newman

CONSOLIDATED REPORT

into the death of Tariq Sabri Mahmud

Presented to Parliament by the Secretary of State for
Defence

by Command of Her Majesty

March 2019



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The Iraq Fatality Investigations Team

Julia Lowis, Assistant to the Inspector

Julia Lowis was called to the Bar in 2013 and has a broad public, civil and commercial practice, with a focus on international human rights law at 3 Hare Court, Temple.

Natasha Jackson, Assistant to the Inspector

Natasha Jackson was called to the Bar in 2015 and has a public, commercial and civil practice, focused on human rights law, at 3 Hare Court, Temple.

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GLOSSARY OF TERMS

2IC	Second-in-command
	II Sqn RAF Regt / II Sqn 2 nd Squadron RAF Regiment
AAF	Australian Forces
ARF	Airborne Reaction Force
BF	British Forces
CDS	Chief of the Defence Staff
CENTCOM	US Central Command
CF	Coalition Forces
CJO	Chief of Joint Operations
CJSO-W	Combined Force of USAF, AAF and BF
Comd	Commander
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
Flt	Flight
FOB	Forward Operating Base
H1	Disused airfield used as a FOB by USAF and BF
HQ	Headquarters
ICC	International Criminal Court
ICRC	International Committee of the

	Red Cross
IFI	Iraq Fatality Investigations
IHAT	Iraq Historic Allegations Team
IHL	International Humanitarian Law
JAG	Judge Advocate General
JWP	Joint Warfare Publication
JFHQ	Joint Forces Headquarters
LO	Liaison Officer
Lt Col	Lieutenant Colonel
MOD	Ministry of Defence
NCC	National Contingent Command
NCHQ	National Contingent Headquarters
OC	Officer Commanding
Op	Operation
Ops	Operations
Op RAKER	Investigation undertaken by the RAF P&SS between 9 June 2003 and 22 June 2004
Op SPELT	Second investigation undertaken by by the RAF P&SS between 2012 and 2014
Op TELIC	Codename for operation to invade Iraq in 2003
PJHQ	Permanent Joint Headquarters

The Iraq Fatality Investigations

Plt Off	Pilot Officer
PW/PoW/EPW	Prisoner of War
PTSD	Post-traumatic stress disorder
PUP	Pick-up point
RAF	Royal Air Force
RAFPA	Royal Air Force Police Association
Regt	Regiment
RoE	Rules of Engagement
Sgt	Sergeant
SITREP	Situation Report
SJA	Staff Judge Advocate
SMU	Specialist Military Unit
TOR	Terms of Reference
USIO	US Inspecting Officer
USAF	US Forces
VCP	Vehicle checkpoint
ZAQ	Ms Zainab al Qurnawi of QC Law

GUIDE TO THE REPORT

1. The body of the report is designed to be a self-standing account. Where further information is desired it is to be found on the Iraq Fatality Investigations website. Additional source material and evidence has been published on the website.
2. There are findings made throughout the review where consideration has been given to certain areas of the evidence. This has been done to allow for a progressive approach to the findings, leading to the central findings in sections 10 to 13. Section 14 contains my concluding comments and recommendations.
3. Photographs, plans, items of relevance to the detailed events and key documents relating to the legal framework are to be found in Annexes A to F of the Report. These Annexes have been used so as to reduce citation of material.

SECTION 1: INTRODUCTORY OBSERVATIONS AND CONSIDERATIONS

1.1 This report records the outcome of the seventh Investigation referred to the Iraq Fatality Investigations ('IFI'). Unlike the previous Investigations, each of which concerned the death of a civilian in Iraq after the end of the combat phase of the war, this Investigation concerns the death of a prisoner of war ('PW')¹ in the early stages of the combat period of the war. The Ministry of Defence ('MOD') has, at various times, given considerable attention to the preparation of instructions for the proper handling of PW emphasising the priority which should be attached to the instructions being followed. The Preface to the March 2001 Edition of the Joint Warfare Publication 1-10 ('JWP 1-10'),² being the JWP current at the time of these events, explains the approach of the Ministry:

“Given the sensitivity and the potential serious political implications should an error occur

¹ I have decided to adopt this abbreviation, which is in line with that used in NATO STANAG 2044 “Procedures for Dealing with Prisoners of War (PW)” and STANAG 2074 “Treatment of Exercise Prisoners of War During NATO Exercises”. In doing so, I note that ‘EPW’ and ‘PoW’ have been used in material relating to this Investigation to denote the same.

² Joint Warfare Publication 1-10, March 2001. Relevant extracts are at Annex F.

SECTION 1: INTRODUCTORY OBSERVATIONS AND CONSIDERATIONS

when handling Prisoners of War, it is intended to produce an all embracing, definitive document that should require few additional supporting publications”.

JWP 1-10 will be referred to below as it forms part of the legal framework for the Investigation.

1.2 My remit is grounded in my Terms of Reference (‘TOR’). In turn they are grounded in Article 2 ECHR and related principles which have been developed by the courts. Fundamentally I am charged to investigate all the circumstances surrounding the death of the deceased. The appropriate starting point, which has driven the lines of inquiry, has been the status of the deceased as a PW. I have examined all the evidence which has become available to me in order to see whether an error occurred in the course of the handling of him which caused or contributed to his death. If it did, the political implications of its occurrence are not a relevant concern for me, but the circumstances of its occurrence constitute the heart of the Investigation. Equally I have examined and considered whether an error occurred in the investigative process following his death. The due process of law in connection with the death of PW includes a requirement for an investigation to take place so as

to reinforce the rights conferred on PW and to underpin the rights of the next of kin.³

1.3 A number of shortcomings in the process adopted following the death of Mr. Mahmud have given rise to suggestions his death was covered up. The approach of the military high command, in particular its immediate response to reports coming out of theatre and whether it paid due regard to the legal framework governing its obligations, as well as its response to the P&SS investigation subsequently ordered and completed in 2004, have been the subject of public comment and have given rise to allegations of a cover-up. I shall set out the legal framework which governed the operation and return to consider my remit in connection with these allegations. I have devoted considerable time to questioning all the relevant witnesses and have analysed all the evidence in order to ascertain whether any grounds exist for a conclusion that there has been a cover-up. This process has added enormously to the length of the Investigation.

Guarding and Escorting PW

1.4 The Rules of Engagement ('RoE') in force and which had been issued to every RAF Regt Gunner stated:

“UK Forces assigned to the escort or guarding of IZ PWs (Iraqi Prisoners of War), may use

³ See section 9, “The Legal Framework”.

SECTION 1: INTRODUCTORY OBSERVATIONS AND CONSIDERATIONS

minimum force, up to and including lethal force, to control the movement, or prevent escape of PWs.”⁴

The role of an escort is defined in JWP 1-10, Annex 3B1, as a role “...*both to protect and prevent able-bodied PW from escaping or being liberated.*”⁵ It is recognized that inherent tension will exist where soldiers are guarding and escorting PW and that the use of force required to fulfil the role could match the treatment to be levelled at a combatant. It follows that in very material respects the role of guarding and escorting a PW differs from the role to be performed when handling civilians in the course of maintaining law and order in a post-combat situation.

1.5 Further, it has to be noted that the PW being handled on the night in question were categorised in the briefing for the mission given to the soldiers as, “*high-value assets*”, “*dangerous men*”, and “*Fedayeen*”, likely to be armed or include a suicide bomber.⁶ A principal purpose for the briefing was to convey the need for an orderly, controlled, tight and secure transfer in the difficult and cramped

⁴ ‘OP ROW / OP TELIC – ROE’.

⁵ JWP 1-10 Annex 3B1, Annex F

⁶ See section 6 “Pre-mission Preparation and Instructions” at sections 6.7 – 6.22

conditions of two aircraft. The ratio of soldiers to each PW was two to one with the movement of PW in accordance with a rehearsed plan. The time constraint for the mission was set by the need for it to be completed in the hours of darkness.⁷

The Circumstances of the Handling

1.6 The man who died and who has been referred to as Mr. Tariq Sabri Mahmud was captured in company with 62 other PW in the course of a specialist mission carried out by the coalition forces ('CF') of Australian, British and US military, during the combat phase of the Iraq war on the night of 11 / 12 April 2003. The mission involved the transportation by the British Forces ('BF') of 63 PW to a US-controlled holding facility in the Western Ramadi desert, adjacent to the BF base. Two chinook aircraft travelled to a pick-up point ('PUP') in the desert, where the PW had been captured by Australian Forces ('AAF'), containing one embedded member of the US Forces ('USAF').

⁷ Ibid.

Burial and Identification

1.7 The deceased was buried in the early hours of the 12 April by the US medical team. The evidence regarding the process adopted by the USAF to establish his identity has not persuaded me that I can accept the reliability of the conclusion.⁸ Despite further inquiries conducted by me it has not proved possible to ascertain the identity of the deceased according to any satisfactory standard of proof. The inquiries I pursued and my findings in this regard are set out later in this report.⁹ I considered whether exhumation to establish his identity as well as the cause of death should take place but concluded that the chances of obtaining valuable evidence were so slight that the process was overwhelmingly outweighed by the expense which would be involved and the problems connected with obtaining valid consent.¹⁰ I have chosen to refer to the deceased as ‘Mr. Mahmud’ throughout this report so as to maintain consistency with my TOR and previous investigations. My choice should not be taken to indicate any conclusion with regard to the identity of the deceased.

⁸ See sections 10.3 – 10.6

⁹ See Section 10, “Issue 1: Identification of the Deceased and Participation of the Family”.

¹⁰ See sections 10.14 – 10.15

1.8 I should record that I have received invaluable assistance in my attempts to identify the deceased from QC Law in Basra, to which I refer in section 10.¹¹

Availability of Contemporary Records

1.9 The Investigation has been complex. It has involved assistance from many witnesses and detailed consideration of sensitive material. I have been greatly assisted throughout by co-operation from a number of soldiers who were involved in the actual transportation of Mr. Mahmud and a number of witnesses from the military high command who were involved in the aftermath and the reporting of the incident. I can record willingness and consequent effort to fulfil my requests for disclosure, but it is noteworthy that documents and records which I, in company with the witnesses, believe would have been made at the time, have not been found. The absence of documents and records, which it is reasonable to believe once existed, inevitably generates suspicion on the part of an investigative fact finder. Their absence has caused me to devote longer to the process of questioning than should have been necessary. Despite the gaps in disclosure, I have not concluded that documents were deliberately destroyed or withheld so as to avoid them having to be disclosed. The administrative framework through which

¹¹ See sections 10.11 – 10.12

SECTION 1: INTRODUCTORY OBSERVATIONS AND CONSIDERATIONS

communications have passed and the prevailing urgency under which things were done were not conducive to the tidy creation and preservation of records.

1.10 That said, the lack of contemporary documents has proved to be troublesome, time consuming and unsatisfactory. I understand that measures to improve the electronic archiving of documents, in particular those created in the course of military operations, have improved. I have not taken detailed evidence on the systems which have now been established but I have taken statements from witnesses who carried out repeated searches at my request who have been able to provide information on the current processes.¹² I have little doubt that it has been recognised that there is a necessity for the conduct of military operations and affairs to be recorded so that the demands of public accountability and the public interest can be met through satisfactory and speedy disclosure. Later I shall identify and comment on the specific gaps in disclosure which I have encountered.¹³

1.11 A considerable volume of material has been published on the website in connection with the death of Mr. Mahmud. This material should be regarded as a supplementary part of this report. The material includes transcripts from public hearings

¹² SO65 IFI MOD-83-0000583-A

¹³ See sections 7.4 – 7.7, 7.21 and 11.10

held between 15 to 17 May 2018. It has been done in an endeavour to avoid lengthy citation in the body of the report and unnecessary duplication. The report will appear on the website after the hard copy has been published.

Some Particular Considerations to be taken into Account when Assessing the Evidence

1.12 When assessing the evidence from those in theatre the following should be taken into account:

1. A specialist operation entails limitations on imparting information which call for particular attention when assessing the evidence. In the normal course knowledge in connection with the event will, at least to some degree, be imparted to colleagues. If the evidence shows that it was not, the reliability of witnesses can come into question and it can give rise to a suspicion that the true facts have been withheld by witnesses getting together to give an agreed account or cover up the details. I have given attention to the specialist character of this operation;
2. The environment prevailing on this mission would not have been conducive to prompt exchanges of information;

SECTION 1: INTRODUCTORY OBSERVATIONS AND CONSIDERATIONS

3. A decision-making structure appropriate to the conduct of a war, comprising layers of authority and responsibility, will operate to limit exchanges. It will give rise to repeated chain reporting and the risk of unreliable and misunderstood messages;
4. A heightened sense of danger and urgency, which is bound to be present in a theatre of war, narrows the concentration of those involved to the area of their responsibility and acts so as to exclude their awareness of wider events.

SECTION 2: THE ORIGIN AND REACH OF THE INVESTIGATIONS

- 2.1 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 <https://www.gov.uk/government/collections/iraq-fatality-investigations>. 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.
- 2.2 The jurisdictional remit of the IFI has its origins in various judgments of the European Court of Human Rights (ECtHR) at Strasbourg. A succinct survey can be seen from the judgment of the Divisional Court, the judgment of the Grand Chamber of the Strasbourg Court in Al Skeini and Others v United Kingdom,¹⁴ and more recently judgments from Leggatt J in the Administrative Court in Al Sadoon and Others v Secretary of State for Defence.¹⁵
- 2.3 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,

¹⁴ [2011] 53 E.H.R.R 18

¹⁵ [2015] EWHC 715 (Admin)

SECTION 2: THE ORIGIN AND REACH OF THE INVESTIGATIONS

published in March 2015.¹⁶ It is sufficient to record that the specific obligations which govern the reach and purpose of this Investigation are set out in two judgments of the Divisional Court in the action of R (Ali Zaki Mousa and others) v the Secretary of State for Defence (No. 2).¹⁷ By an order of the Divisional Court dated 31 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 there existed an Article 2 ECHR obligation to hold an inquiry and where it was clear that there would be no prosecution of any British soldiers alleged to have been involved in the deaths.

¹⁶ Iraq Fatality Investigations, “Consolidated Report into the death of Nadheem Abdullah and the death of Hassan Abbas Said” (March 2015)

¹⁷ [2013] EWHC 1412 (Admin) and [2013] EWHC 2941 (Admin) respectively.

SECTION 3: THE TERMS OF REFERENCE AND PROTECTIVE PROCEDURES FOR THE INVESTIGATION

Terms of Reference

3.1 On 25 May 2017 I was appointed to conduct an inquiry into the death of Mr. Mahmud. My appointment is subject to the Terms of Reference ('TOR') set out below:

"TERMS OF REFERENCE

The Scope of the Investigations.

1. *The investigation into the death of Tanik Sabri Mahmud on 11 April 2003 ('the death') is to be conducted to establish the relevant facts and accountability for the death, thereby discharging the positive obligations of the State pursuant to Article 2 of the European Convention on Human Rights.*
2. *The investigation must be accessible to the family of the deceased and to the public, thereby bringing the facts to public scrutiny.*
3. *The investigation should look into and consider the immediate and surrounding circumstances in which the death occurred.*

SECTION 3: THE TERMS OF REFERENCE AND PROTECTIVE PROCEDURES FOR THE INVESTIGATION

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 Service Policy and Service Prosecution Authority.*

SECTION 3: THE TERMS OF REFERENCE AND PROTECTIVE PROCEDURES FOR THE INVESTIGATION

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.”

SECTION 3: THE TERMS OF REFERENCE AND PROTECTIVE PROCEDURES FOR THE INVESTIGATION

Protection against Self-Incrimination, Medical Support and Anonymity for Soldiers

- 3.2 Soldiers should be encouraged to be full and frank in giving their evidence. The burden and uncertainty to which historic investigations can give rise should not be underestimated. For that reason and to that end such protection as might be available to them from the Attorney General, the Director of Public Prosecutions and the Director of Service Prosecutions has been provided.
- 3.3 On 29 August 2017 I received an email from the Attorney General's Office confirming that the undertaking given to me by letter dated 4 August 2014, 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 course of the enquiry into the death of Mr. Mahmud.¹⁸
- 3.4 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 Fatou Bensouda, the Chief Prosecutor at the ICC, by letter dated 4 August 2017.¹⁹

¹⁸ MOD-83-0000469-A Email from the Attorney-General's Office dated 29 August 2017

¹⁹Letter from Ms Bensouda dated 4 August 2017.

3.5 Some soldiers asked to assist the IFI find the process of giving evidence distressing. They may also be suffering from PTSD and psychological trauma dating back to their service in Iraq and elsewhere. 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. It may be helpful to emphasise that the legal assistance is not intended to cover a lawyer fulfilling the role of an advocate having a right of audience to cross-examine and make representations on the facts and law. Each case will give rise to different considerations but there are no parties to the process and the principal aim is that witnesses should understand the procedure and have the benefit of legal advice and support to enable them to co-operate. It is within the discretion of the Inspector to adopt whatever measures are likely to assist justice. Further whilst the process of these Investigations has obvious similarities to the purpose and procedure adopted in statutory and other inquiries, it is a unique process modelled on the judgment of the Divisional Court in the case of Ali Zaki Mousa.²⁰

3.6 On 4 October 2016 I made a Ruling providing guidance on the circumstances in which anonymity

²⁰ [2013] EWHC 2941 (Admin)

SECTION 3: THE TERMS OF REFERENCE AND PROTECTIVE PROCEDURES FOR THE INVESTIGATION

was likely to be available in the context of the IFI. The Ruling is available on the IFI website.²¹ It stated the general principle, namely where the criteria set out in the guidance were met and it was also otherwise appropriate, anonymity would be available, to allow soldiers to give their evidence, both written and oral, anonymously. The Ruling sets out some of the reasons which are likely to be present and taken into account in deciding whether anonymity should be granted or refused. Nonetheless, each request has to be considered on its merits.

²¹ General Ruling on Anonymity 4 October 2016

- 3.7 Where an application for anonymity has been granted the cipher to be used for the particular individual will be available in the Report and on the website. The archive of the Report will carry a record which will enable an individual to be identified if and only if the public interest requires it.
- 3.8 There are special circumstances surrounding the death of Mr. Mahmud which have led me to grant anonymity and to permit the use of ciphers by the majority of witnesses. The special circumstances include the security sensitivities involved in a specialist mission to detain PW behind enemy lines in the course of a war. Such covert operations are for recognised and established reasons treated as sensitive. The involvement of BF, acting in concert with other CF to conduct a specialist mission of this nature, gives rise to wide ranging sensitivities and has the potential to be of enduring interest to a variety of observers both in the UK and overseas. Whilst it occurred a number of years ago, it seems to me to be too early to assume that its occurrence will not be acutely relevant to a variety of persons and groups. Because the mission took place as an organised aspect of the conduct of the war, there was significant involvement on the part of the BF high command and CF in its implementation and in the immediate inquiries carried out in its aftermath. The publication of the identity of those involved would have added nothing to the search for facts but could, at a time when the global distribution of

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information is routine and prevalent, create undue risks to those involved in a potentially contentious event.

SECTION 4: THE MILITARY FRAMEWORK

4.1 The actions of the members of the armed forces in the course of war are dictated and occur in accordance with the established military framework for the war.

“Throughout the history of warfare, the capture and treatment of prisoners has been an emotive subject”.²²

Responsibility for PW rests with the commander: *“He must know exactly what his responsibilities for PW and their handling are”*. His main responsibilities in this respect include ensuring that the individual members of his force comply with the provisions of the Geneva Conventions and that PW captured by his force are treated in accordance with the Law of Armed Conflict.²³

A Specialist Mission

4.2 The mission was ordered at short notice during the combat phase, at the height of hostilities, behind enemy lines and deep in enemy territory. It was a specialist mission in connection with the capture of persons believed to be significant hostile members or supporters of the enemy forces. The mission involved specialist units of each the CF. For the majority of those involved, the handling of PW was

²² JWP 1-10, paragraph 101.

²³ Ibid, paragraphs 204-205.

outside their experience. It had been the subject of normal RAF Regt. PW handling training and, as the evidence shows, additional mission-specific training in theatre was given.²⁴ However there were three layers of command in the aircraft alone. Firstly, a Specialist Military Unit ('SMU') liaison officer (SO53), on this occasion a non-commissioned officer, who was in charge of seeing that the mission was completed and reporting to his headquarters during and after its completion. Secondly, the pilot and the aircrew who were responsible for the safety and completion of the flight and who reported to their command HQ. Thirdly, the RAF soldiers were a unit under a commissioned officer (SO55) who was the Airborne Reaction Force ('ARF') Commander, but on this mission were under the command of SO53 (being the SMU liaison officer). The officer commanding II Squadron of the RAF (SO47) was not in command of the seconded RAF soldiers for the duration of the tasking, but he was to play a significant role in the aftermath.²⁵

The Military Framework

4.3 Between 20 March and 1 May 2003, BF were deployed under Operation ('Op') TELIC as part of the American-led coalition invasion of Iraq. As Op TELIC was a coalition operation, the UK national and operational headquarters were integrated within

²⁴ See sections 6.1 – 6.3

²⁵ SO47 IFI MOD-083-000580-A, paragraphs 15 – 19; 40 – 68

the coalition command structure in preparation for the invasion.

PJHQ

- 4.4** The Permanent Joint Headquarters ('PJHQ') command structure was based at Northwood and headed by the Chief of Joint Operations ('CJO'). The CJO reported to the Chief of the Defence Staff ('CDS'), who was based at the MOD Main Building in Whitehall. During Op TELIC, PJHQ commanded operations in Afghanistan, Bosnia, Kosovo, Sierra Leone and the UK, as well as the UK's contributions to UN operations in addition to those taking place in Iraq.
- 4.5** The CJO's staff consisted of two deputies and six Assistant Chiefs of Staff, who were in turn responsible for the nine branches of responsibility referred to as 'J-Functions' that were staffed at Northwood. Also based at Northwood was the Joint Forces Headquarters ('JFHQ'), a rapidly deployable component to provide operational command and control to the BF on joint or combined operations.

Integration within the Coalition Command

- 4.6** The integration of UK national headquarters within the coalition command structure was effected at PJHQ level by co-location alongside the headquarters of US Central Command ('CENTCOM') at an overseas location which I will refer to as HQ2 Middle East, and by the embedding of UK staff officers in functional posts within coalition headquarters. In January 2003, JFHQ was deployed to HQ2 Middle East to set up the National

Contingent Command ('NCC') for the purposes of the war fighting phase. National Contingent Headquarters ('NCHQ') was headed by an Air Chief Marshal who had a full staff at HQ2 Middle East, and came under the command of the CJO. There were three UK Contingent Commands which came under the NCC's operational control.

Specialist Military Unit

- 4.7 The UK directorate for Specialist Military Units ('SMU') was based within a London HQ, under the command of a Director, a Brigadier who reported to the CDS. A small SMU Cell reporting to the Director, headed by SO64 as SMU Liaison, was based alongside PJHQ in Northwood ('the PJHQ SMU Cell') to facilitate co-ordination with the CJO.
- 4.8 To ensure clean liaisons with coalition forces during the Op TELIC war phase, an SMU Cell was established at HQ2 Middle East ('the HQ2 Middle East SMU Cell') with SO61 as Component Commander. The SMU Cell was co-located with the NCC and CF, but operated under a separate chain of command. The HQ2 Middle East SMU Cell took on a primarily co-ordinating function, with operational command devolved to the Commanding Officers of the SMUs.
- 4.9 In preparation for the invasion, the American Forces also established a Combined Task Force ('CJO-W'), comprising American, Australian and British Forces and based at an overseas location I

SECTION 4: THE MILITARY FRAMEWORK

will refer to as HQ1 Middle East. HQ1 Middle East was established as the British element of this task force, and an SMU Operational HQ operated from HQ1 Middle East under the command of a Lt Col.

4.10 At the commencement of Op TELIC, BF were deployed forwards from HQ1 Middle East into Iraq. An airfield ('H1') was identified and designated as one of several joint American and British Forward Operating Bases ('FOB'). Operational command of BF deployed there was held by a SMU FOB Commander reporting directly into HQ1 Middle East.²⁶

Legal Chain of Command

4.11 The legal chain of command for Op TELIC came within the MOD, headed by the Director General Legal Services and a Director of Legal Services and ultimately reporting to the Attorney General and the Solicitor General.

4.12 There was a designated PJHQ legal cell based at Northwood under the direction of the MOD. The PJHQ Legal Cell was headed by a Legal Advisor, CO1, who was responsible for advising the CJO and who reported into the Director of Legal Services.

4.13 Upon the establishment of NCHQ, an MOD Legal Advisor, who was a Commander posted to the JFHQ, was deployed to advise the Air Chief Marshal. He was subsequently joined by a further two PJHQ Legal Advisors at HQ2 Middle East. The three UK Contingent Commands sitting below the

²⁶ I have not been able to establish the identity of the SMU FOB Commander at the material time.

NCC each were staffed with service lawyers, who reported up the legal chain of command into the Commander at NCHQ. He in turn reported into the PJHQ Legal Cell.

4.14 It is particularly relevant to note that at the time material to this Investigation, the SMU did not have designated legal advisors based at the SMU London HQ or at the deployed HQs. The official legal chain of command was through the MOD, however legal advice was informally taken by the SMU Cells at PJHQ Northwood and at HQ2 Middle East from the PJHQ legal advisors posted at those bases.

II Sqn RAF Regt

4.15 II Sqn RAF Regt ('II Sqn') was based at RAF Honnington. In October 2002, II Sqn was assigned to HQ1 Middle East, tasked with defending HQ1 Middle East's aircraft, air operating bases and supporting equipment.

4.16 At the commencement of Op TELIC, the majority of II Sqn, including the Officer Commanding ('OC') II Sqn (SO47), were deployed forwards to H1 and tasked with defending the airbase.²⁷ At some point, either prior to leaving HQ1 Middle East or upon arrival at H1, members of II Sqn were re-rolled to form an ARF. Command authority for the ARF

²⁷ SO47 MOD-083-000580-A paragraphs 15; 19

was transferred from SO47 to the FOB Commander for the duration of this tasking.²⁸

4.17 SO55, a Plt Off, was the OC the Flt assigned to form the ARF and SO39, a Sgt was his second-in-command ('2IC').²⁹ I have taken evidence from SO38, SO40, SO41, SO42, SO44, SO45, SO50, SO56, SO57, SO58 and SO66, who were all members of the ARF and were among the crew members on board the aircraft that carried Mr. Mahmud.³⁰

Chinook Sqn RAF Regt

4.18 Chinook Sqn RAF Regt ('Chinook Sqn') formed part of the SMU Air Wing and was based at RAF Odiham. Chinook Sqn were deployed to HQ1 Middle East in preparation for Op TELIC to provide support helicopters and came under the command of HQ1 Middle East. Chinook Sqn supplied the Air Crew for the mission that resulted in Mr. Mahmud's death.

²⁸ Ibid.

²⁹ SO55 IFI MOD-83-0000584-A, paragraph 8

³⁰ There were other members of the ARF from whom I did not take evidence for the Investigation.

SECTION 5: AN OUTLINE OF THE MISSION³¹

- 5.1 At around 13.00 on 11 April 2003, a convoy of 63 PW were captured and detained by AAF at a vehicle checkpoint ('VCP') in the Ramadi Desert. That afternoon, the SMU Liaison Officer, SO53, at H1 received a mission tasking for the ARF to transport the PW by Chinook aircraft from the VCP to the US facility at H1.
- 5.2 The LO briefed the ARF Commander, SO55, who issued a warning order to the ARF. SO39, who was SO55's 2IC and the Chalk Commander of Lifter 2, took charge of the preparation of the ARF members who were to support the mission. At around 18.30, SO55 and the LO briefed the ARF on the task and rehearsals were conducted, principally by SO39. During the mission preparation stages, SO53 emphasised that the PW being transported were highly dangerous individuals. The PW were to be placed on the metal floor of the aircraft, head to toe to prevent communication, hooded and cuffed (at this date hooding was being practised).
- 5.3 At 19.15, the two Lifters left H1 and arrived at the VCP PUP at around 19.50. An eight to seven split had been planned, but in error five PW were loaded on to Lifter 1 and ten PW were loaded into Lifter 2. The distribution resulted in troublesome

³¹ See sections 6 and 7 for a summary of the evidence

overcrowding and loading difficulties on Lifter 2 and contributed to the unrest which took place on this aircraft.³²

5.4 Towards the end of the loading process, one of the PW being boarded onto Lifter 2 resisted being laid on the floor and was able to free his hands from the plasticuff restraints. The PW was subdued and put to the floor by SO38, with assistance from members of the ARF crew. The evidence is that significant force was required to control the PW. Shortly after this another PW attempted to stand up. This was probably after the loading process and in the early stages of the flight. He was also forcibly subdued by SO38. On arrival at H1, both PW were unresponsive. One proved to be dead and the other, after an interval, recovered. Which acts of restraint could have caused injury and death to one of the two restrained PW is not clear.³³

5.5 Upon arrival back at H1, the responsive PW were taken off the aircraft and the unresponsive PW were removed from the aircraft by members of the ARF crew and loaded into the back of an American Humvee vehicle. No medical care or attention was given by British Forces prior to the hand-over to the USAF. None was available. A third PW on board Lifter 2 had prosthetic legs that had become

³² See section 11.20

³³ See section 6, in particular 6.32 – 6.86, and sections 11.21 – 11.30

detached during the course of the lift. It was necessary for him to be carried from the aircraft. He had caused a disturbance in the course of the flight and his prosthetic legs were examined for explosives.³⁴

5.6 Once 15 PW had been delivered to the US facility both aircraft returned to the PUP to continue the operation. At some point prior to the conclusion of the mission, SO53 and SO55 were separately informed by the USAF Commander receiving the PW at H1 that one of the two PW placed on the Humvee after the first lift had been confirmed dead.³⁵ The operation was completed at around 03.00 on 12 April 2003.

Investigations between June 2003 and my Appointment

5.7 No formal investigation was ordered into the death of Mr. Mahmud, by referral to the Provost Marshal or otherwise, until an anonymous call was made on 2 June 2003 to RAF Markham. The caller, who remains unidentified, alleged that a PW had been “*continually beaten*” to death by three soldiers.³⁶ It was also alleged that the facts had been covered up. The allegations were reported to at least one newspaper.

³⁴ See sections 6.58 – 6.86

³⁵ See sections 11.8, 11.19, 12.3

³⁶ See sections 6.95 – 6.97

5.8 In response to this call, an RAF P&SS investigation, Operation RAKER, was commenced on 9 June 2003. In the course of its progress some of those involved in carrying out the investigation believed there may have been a cover-up. The belief was, in part, fuelled by a stated unwillingness at the outset of the investigation to hand over material in connection with a specialist mission which, it was claimed, was privileged. Differences were resolved and Operation RAKER was concluded on 22 June 2004, following which the RAFPA took the decision not to prosecute.

5.9 The Op RAKER investigation was reviewed by the Iraq Historic Allegations Team ('IHAT') between 14 January 2011 and 29 February 2012. The IHAT review concluded with a recommendation that further investigation was required.

5.10 A second RAF investigation, Operation SPELT, was commenced thereafter. A decision was taken not to prosecute by the Director of Service Prosecutions on 16 December 2015.

Issues for the Investigation

5.11 Issues arising for this Investigation are as follows:

1. The identity of the deceased.
2. Whether there was an "error" in the handling of the PW which caused or contributed to his death.

SECTION 5: AN OUTLINE OF THE MISSION

3. Whether the response of those in theatre to the events as they occurred was prompt, effective and in accordance with what was required.
4. Whether the response of the high command to the reports it received was prompt, effective and in accordance with what was required.

SECTION 6: EVIDENCE RECEIVED BY THE INVESTIGATION REGARDING THE CIRCUMSTANCES OF THE DEATH

II Sqn Training in PW Handling

- 6.1** There was some evidence about training. The evidence of SO39 was that few, if any, members of II Sqn would have had specific PW handling training prior to deployment to H1, let alone hands on experience.³⁷ II Sqn had done some PW handling while based at HQ1 Middle East. He was one of the few members of II Sqn with any experience in PW handling, due to specialist training he had conducted a number of years earlier in 1983/84 when serving in the Parachute Regiment and Hunter Forces.³⁸ He considered that the lack of prisoner handling training was apparent during the mission.
- 6.2** SO55's evidence was that prisoner handling training was not new to the Gunners, who would all have had a level of experience in this field due to the fact that PW handling is covered on the Basic RAF Regt Gunners Course and is practised on almost all exercises.³⁹

³⁷ SO39 IFI, 16/5/18 pp.61-62; 63-64

³⁸ SO39, 9 July 2013

³⁹ SO55, 20 Aug 2003

SECTION 6: EVIDENCE RECEIVED BY THE INVESTIGATION REGARDING THE CIRCUMSTANCES OF THE DEATH

6.3 SO41's evidence was that he had undertaken some PW handling training on the basic Gunners course some six and a half years earlier, some pre-deployment training, and some training at HQ1 Middle East.⁴⁰ He also recalls that there was a II Sqn brief on prisoner handling, but that this was in the context of a capitulating force.

Tasking of the Mission

6.4 A request would have been made by the AAF for support with transportation for the mission, which would have gone through the USAF headquartered at HQ1 Middle East.⁴¹ It is likely that the USAF would have referred this request to the BF to authorise BF assets to perform the lift. This would have been a fairly automatic request that would not necessarily have been formally briefed.⁴²

6.5 The mission itself was a relatively standard operation that RAF people are trained to do and the SMUs had a relatively peripheral role, but the LO (SO53) was in overall charge and had the responsibility to report back to HQ at all stages of the mission.⁴³

⁴⁰ SO41, 21 July 2012; see also: SO44, 23 July 2012

⁴¹ SO61 IFI MOD-83-0000585-A

⁴² Ibid.

⁴³ Ibid

6.6 It is not clear to me that there had been any training for or notice of the conditions to be encountered on the aircraft. Such conditions being extreme heat, noise, darkness, fear and overcrowding.

Pre-mission Preparation and Instructions

SO53

6.7 SO53 received a tasking from HQ1 Middle East to use the ARF crew to collect PW to take them to H1.⁴⁴ As this was a SMU operation, he was the commander on the ground for the mission.⁴⁵

6.8 He was told that the PW were potentially high threat, quite dangerous and that they were not to get out of control at the back of the aircraft. He also recalled that they were to be hooded and plasticuffed so they could not cause a disturbance, and briefed the ARF crew on this potential danger.⁴⁶ He informed the men that the PWs were “*potentially dangerous and hard-core*”.⁴⁷

6.9 He considered the intended mission to have been an operation that was familiar to him, although he had not himself been involved in transporting PW prior to this operation.⁴⁸

⁴⁴ SO53 IFI 15/5/18 p.28

⁴⁵ SO53 IFI MOD-83-0000586-A, paragraph 3

⁴⁶ SO53 IFI 15/5/18 pp.28-29

⁴⁷ Ibid, p.30

⁴⁸ Ibid, p.30

SECTION 6: EVIDENCE RECEIVED BY THE INVESTIGATION REGARDING THE CIRCUMSTANCES OF THE DEATH

6.10 SO53 was unable to recall, when asked, about the details of how the operation would have been conducted, but gave the view that the crew would have carried plasticuffs and sandbags with them on the aircraft to hood and cuff the prisoners if needed.⁴⁹

SO55

6.11 SO55 was notified by the LO that the mission was to take place, and subsequently issued a warning order to the Flt to prep for the mission. He went to the US Forces Prisoner Handling Facility at H1 to liaise with the USAF and spoke to the Prisoner Handling Cell and Infantry Support element.⁵⁰

6.12 SO55 held an “O-Group” briefing in the tent at around 18:30hrs local time, which he conducted with input from the LO.⁵¹ SO53 stressed during the course of this briefing that the prisoners were suspected Fedayeen suicide-bombers and very dangerous men.⁵²

6.13 The briefing covered ‘Actions On’, that included the possibility of prisoners trying to escape.

⁴⁹ Ibid, p.33

⁵⁰ SO55, IFI 17/5/18 p.4

⁵¹ SO55, 20 Aug 2003

⁵² SO55, IFI 17/5/18 pp.6-7

The men were reminded that the RoE applied in this event and to use ‘minimum force’. If any PW was uncooperative they were to be forced to the ground and the men were to keep their weight on the PW’s back if he remained uncooperative.⁵³

6.14 The lead in the prisoner handling instructions was taken by SO39, who would have used both the Tactical Aide Memoire and the Prisoner Handling Pamphlet⁵⁴ in giving these instructions.⁵⁵

SO39

6.15 SO39’s evidence was that there was around 40 minutes from the mission being briefed to lift off. After a quick brief by SO53 and limited input from SO55, he took the lead in giving the “*Actions On*”, including prisoner handling instructions, and drilling the men ahead of the mission.⁵⁶ It seems to have been generally accepted that SO39 had had more experience than the others, which was why he took the lead during the briefing.

6.16 His evidence was that his instructions emphasised the use of minimum force and maintaining the shock of capture. He instructed the

⁵³ SO55, IFI 17/518 p.8-11; SO55, 20 Aug 2003

⁵⁴ The ‘Prisoners of War Handling Aide Memoire’ appears at Annex 3A, JWP 1-10, see Annex F.

⁵⁵ SO55, IFI 17/518 pp.5; SO55, 20 Aug 2003

⁵⁶ SO39, IFI 16/5/18 pp.63-64

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men to give reassuring pats to compliant prisoners, or to use chopping motions to the shoulder, arm (bicep) or fleshy part of the leg (thigh) if a PW was non-compliant.⁵⁷ If the PW did not comply or move on the first chop, then two or three chops should be used to demonstrate that the handler wanted a command carried out. Upon compliance, a reassurance pat would be used.⁵⁸ Part of the drill included two men armed with pistols on each aircraft tasked as a point of last defence should any PW get loose and approach the cockpit.⁵⁹ Dialogue with PW was, as a matter of practice (and aside from the difficulties with language) to be avoided.⁶⁰

6.17 He instructed the men to use sand bags as hoods, but that they should just be placed over the head and not affixed.⁶¹ He told the men to bring extra bags and ties in case the AAF had not properly prepared the PW. There were relatively large holes in the sandbags, such that there was no doubt that PW could breathe through them while hooded. As it turned out the PW had not been hooded by the AAF.⁶²

⁵⁷ Ibid p.65

⁵⁸ Ibid pp.66-67

⁵⁹ Ibid p.69

⁶⁰ Ibid p.81

⁶¹ Ibid pp.67-68

⁶² Ibid

6.18 SO39's evidence emphasised that the mission was conducted by very young men who were apprehensive about the operation, and that SO53 had "*got them up for the job to an extent I wasn't happy with*", by stressing the dangerousness of the men and the potential chance of suicide bombers being on the aircraft.⁶³ He attempted to control the emotion, fear and pressure through a formalised and professional drill.

⁶³ Ibid p.67

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SO38

6.19 SO38's evidence, given to the Op RAKER investigators under caution and confirmed to this Investigation, echoed that of SO39 in that he states that the ARF crew were instructed to use minimum force and to maintain the shock of capture.⁶⁴ The PW were to be "*bagged and tagged*", and the instructions were to tape the sandbag hoods in place but not too tightly.⁶⁵ He recalled that the men were briefed that if they couldn't handle a person, they should "*get him to the floor and if necessary sit on him and wait until someone like [SO38] came or the link man came who could go and get [SO38]*".⁶⁶

6.20 As part of the pre-mission preparation, it was emphasised to the men before the mission that there were time-pressures and that the PW were potentially dangerous. He states:

"... at the start of this job it was overemphasised, in my opinion, of the dangers that we were facing. In fact I think some of the people were whipping the younger gunners into a part of a frenzy as in you've got very inexperienced soldiers, but

⁶⁴ SO38, 20 Aug 2003 pp.209-211

⁶⁵ Ibid, pp.209-211

⁶⁶ Ibid, p.211

this is the first time they've gone into a proper operation and that was actually trying to be dulled down so we could keep that throughout the mission".⁶⁷

6.21 SO38 gave evidence that there was no interpreter free to go with the ARF crew on the mission. It would now be Standard Operating Procedure to have an interpreter present, but it was not at the time. The language barrier was significant.⁶⁸

Other accounts

6.22 There is no notable conflict in the evidence with the accounts summarised above. The evidence that it was emphasised to the men that the PW might be extremely dangerous individuals is supported by various members of the ARF Crew.

Arrival at the PUP and Receiving the PW by AAF

SO39

6.23 On arrival at the PUP, SO39 and his linkman (SO38) from Lifter 2 and SO53, SO55 and his linkman from Lifter 1, went over to where the AAF

⁶⁷ SO38, IFI 17/5/18 p.68

⁶⁸ Ibid p.65

SECTION 6: EVIDENCE RECEIVED BY THE INVESTIGATION REGARDING THE CIRCUMSTANCES OF THE DEATH

were with the PW – a distance of about 150m to 200m. The PWs were standing in a line.⁶⁹

6.24 SO39's priority was that the PW were searched. On arrival, they found that the PW were not bagged, so the Flt used their own bags to bag them. Further, their hands were only tied by a thumb wrap to the front, but due to time pressures he briefed the linkmen to "*leave the thumb ties, bag and search*", before kneeling the PW back down when they were ready.⁷⁰ The two linkmen prepared the PW as instructed, starting one from each end of the line and moving from the outside inwards. He recalls that his linkman did find some weapons and some documentation, which was handed to SO53, during the conduct of the search.⁷¹

6.25 He was not aware of whether the AAF had taken steps to identify the PW, or whether they would have had time to do so. Under the circumstances, given the time-pressure, language barrier and noise, he and the Flt were not in a position to be able to make these inquiries at the

⁶⁹ SO39, IFI 16/5/08 p.74

⁷⁰ Ibid, pp.75-76

⁷¹ Ibid, p.78

PUP, and he automatically thought that the ‘tagging’ process would be done at handover to the USAF.⁷²

6.26 Following the initial rendezvous with the AAF, SO39 called his men forwards through hand signals, and they approached in herringbone formation and awaited the preparation of the PW by the linkmen before being passed PWs to move back to the ac.⁷³

6.27 SO39 was aware of a holdall bag being passed over by the Australians, but he was on the periphery as he had not been briefed on it and it was within the domain of Lifter 1. He was aware that some weapons were found by his linkman, SO38, and documentation that may have been identity documents.⁷⁴

6.28 The Australians became involved in the loading process, and as a result the PWs ended up in the wrong place.⁷⁵ The plan had been to load eight PW in one aircraft and seven in the other, all laid down top to toe.⁷⁶ He was aware that extra men had been loaded onto Lifter 2, which he presumed was by the AAF.⁷⁷ He was positioned near the front of the aircraft by this time when this started, and the

⁷² Ibid, p.78

⁷³ Ibid, p.75; see also SO55, 20 Aug 2003.

⁷⁴ Ibid, p.77

⁷⁵ Ibid, pp.79-80

⁷⁶ Ibid, p.70

⁷⁷ Ibid, p.80

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extra men had already been loaded on by the time he got to the rear. PWs had to be shifted up in order to close the ramp, and they were moved by the ARF members getting hold of them on the back with two hands and being pulled up.⁷⁸

SO38

6.29 SO38 stated that the plasticuffs applied by the Australians were put around the PW's thumbs and were not tight enough. The decision was made at the PUP not to re-plasticuff everyone.⁷⁹

6.30 He was given a bag by an American call sign, containing intelligence, which he took and handed over to SO53 at the end of the mission after the third lift. He was aware that there were four bags initially when he crossed the line to where the PW were at the PUP.⁸⁰

6.31 When searched by the BF, the PW were found to have weapons and identifications on them, which had not been found by the Australians.

⁷⁸ Ibid, p.80

⁷⁹ SO38, IFI 17/5/18 p.64

⁸⁰ Ibid, pp.64-65

Non-compliant PW⁸¹

6.32 The PW were initially boarded onto Lifter 2 in pairs, with one crew member acting as the PW handler and the second acting as cover guard. Later PW were boarded by one guard only, without a cover guard.⁸²

SO44

6.33 SO44 escorted a PW to the aircraft, who became non-compliant. His evidence was as follows:

“On the night in question ... it was kinetic and very fast, we had a lot of time constraint. So the set procedures for a two-man op on a POW initially happened and then because of how fast it was – basically it was one guy per POW. The prisoner that I had, as we got close to the aircraft, the back of the aircraft, he started to flail his arms around because his hands were free ... I held him by the back of the sandbag and by the scruff of his jacket ... And I had my rifle pointed and escorted him on to the aircraft ...

... initially he was compliant. You know, he was doing everything that you would expect the POW to do. And then when his hands got

⁸¹ A diagram of the positioning of the BF and PW on board Lifter 2, based on the available evidence, is at Annex B.

⁸² SO39, IFI 16/5/18 p.72

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*free – and it was actually when we got close to the down wash and the heat of the aircraft, he hands came free. So I know he had a short distance to get him to the aircraft. At that point I slung my rifle behind me and got another hand on him, and tried to push him on to the aircraft, you know. So we're basically breaking into a jog and I used my body momentum and my weight to get him on to the aircraft. Once inside the aircraft the nearest colleague to me at the time was SO38. So I give him – I say in my statement I shouted. I may have shouted, but it's all eye signals and hand signals just to give him the nod. He comes over straight away. I give this guy a gentle kick to the back of the legs to get him to the floor ... It's just following that momentum. You Know, we've got him on the aircraft. We're still moving forward. I've given SO38 the nod that there's a drama, we need to get this drama squared away. So as I turn the POW to lay him down, just gently kick the back of his legs, buckles his knees, and then SO38 assists me by making sure that he's laid on the floor appropriately.'*⁸³

6.34 When he and SO38 had succeeded in getting the PW down on the floor, he continued resisting.

⁸³ SO44, IFI 16/5/18 pp.85-88

SO44 was trying to restrain the PW and SO38 assisted by trying to re-cuff the PW behind his back. The PW was still bagged at the time.⁸⁴

6.35 After a short period of time, the PW tried to get up again by arching his back and pushing upwards. SO38 used his weight to push the PW back down to the ground and finished securing the plasticuffs.⁸⁵

6.36 When the PW was back under control, SO58 took over guarding him from SO44. SO44 is clear that the PW was still moving at this point, although he was not struggling as energetically as before. SO44 remained right next to the PW for the return journey in his role as cover man. During the return journey, the PW remained compliant, meaning that there was “*no more drama*”.⁸⁶

6.37 He was not able to recall whether this PW was the last one on the ramp, however his evidence supports that he was one of the last.⁸⁷

SO38

6.38 SO38 gave evidence that the PW SO44 brought onto the aircraft was causing trouble on the ramp.⁸⁸ He described the PW as a stocky man, and

⁸⁴ Ibid, p.89

⁸⁵ SO44 IFI MOD-83-0000553-A, paragraph 19

⁸⁶ SO44 IFI 16/5/18 p.91

⁸⁷ Ibid, pp.88-89

⁸⁸ SO38 IFI, 17/5/18 p.54

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SO44 was not able to control him alone. The PW's arms had come free and he was flailing them around. His hood was hanging off the back of his head and had come free, and he was kicking and punching out. SO38 considered him to be a threat to the aircraft.⁸⁹ He stated:

"I swept his feet from underneath him. I grabbed him by the back of the neck and the middle of the back ... it was a dishdash they were wearing. So I had hold of his material, the back of the neck and I put him to the floor ... the counterbalance was already going forward and I had come from the position of behind.

...

*And when I got him to the floor, sir, and put him in an arm lock, which is a goose neck ... and kept him there until we tried to put the handcuffs on him. He landed on his side. I rolled him on to his front and then I put his arm up the middle of his back and held him in a goose neck while I tried to get assistance to put the plasticuffs on."*⁹⁰

6.39 He recalled that the AAF had brought two PW to the aircraft and left them there on their own.

⁸⁹ Ibid p.55

⁹⁰ Ibid p.56

Thereupon an incident developed with another PW being escorted by SO44 who had to be restrained, but it was all happening in difficult conditions and very fast. He managed to get SO66 to guard the two PW he had escorted onto the aircraft and turned his attention to the PW who was causing trouble.⁹¹ He clarified that he did not call for assistance, but that people came and assisted him and that he got the PW to the floor of the aircraft.⁹² SO38 did not at that point place handcuffs on the PW, but he was under control and SO38 was able to put SO58 with the PW. SO58 sat on the PW to keep him under control, although SO38 was not able to recall precisely on what part of the PW's body he was sitting.⁹³ At this point, the PW continued to move in a manner that demonstrated some resistance. SO38 stated:

*"I put them both down robustly because I needed to ... for the safety of the chopper ... I didn't actually think before I got hold of the person: what force am I going to use? ... I thought: you are stopping what you are doing and you are not going any further, and that person was put under control, both people were put under control."*⁹⁴

⁹¹ Ibid p.53

⁹² Ibid p.53

⁹³ Ibid pp.61-62

⁹⁴ Ibid p.72

SECTION 6: EVIDENCE RECEIVED BY THE INVESTIGATION REGARDING THE CIRCUMSTANCES OF THE DEATH

SO38 continued to check on this PW in-flight, and found him to be still moving around but compliant.⁹⁵

6.40 SO38 also gave evidence as to another PW who got “*loose, stood up and was put back on to the ground*” after take-off.⁹⁶ Somebody put a bag back on one of the two PW who had been non-compliant, but this was not taped and was just a bag placed over the head.⁹⁷

SO43

6.41 SO43 was a member of the aircrew and was the Loadmaster on Lifter 2, tasked with controlling the loading ramp at the rear of the aircraft. His evidence was that, during the process of loading the PW, there was a PW who caused a problem but that he was suppressed without the use of violence:

“... one of the prisoners as he got to the aircraft ... started to become uncooperative and I believe he may have flailed his arms around and had got out. There was a small I would call it scuffle where people were trying to control the individual, the two guards who were with him. And at that point he was firmly

⁹⁵ Ibid p.62

⁹⁶ Ibid p.63

⁹⁷ Ibid p.73

gripped by two of the individuals and with – as I described, with enough force to make sure he was taken off his feet and put on the floor. But again in my statement I say that having had experience of this before, prisoner handling fights, I did not terms that as a violent action. There was intent but not violence.

That prisoner then laid down and I cannot remember how he was controlled, but he then became slightly compliant.”⁹⁸

6.42 Following this, the loading process continued for approximately 10 to 15 minutes. When all the PW had been put onto the aircraft, SO43 noticed that one of the prisoners’ legs was near the ramp and that he was at risk of injury if the ramp was brought up. He caused the PW to be physically moved by the ARF members out of the way.⁹⁹ He was sure that he witnessed nothing he considered to be violence, and that he would have intervened had he seen what he considered to be excessive force.¹⁰⁰

6.43 SO57’s evidence was that the second time he was handling a PW up the ramp to the aircraft he saw something out of the corner of his eye:

⁹⁸ SO43 IFI 17/5/18 p.114

⁹⁹ Ibid pp.114-115

¹⁰⁰ Ibid p.114

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“... it was for no more than one second, two second ... a kerfuffle – but a commotion at the ramp and it was obviously a struggle of some kind on the right-hand side. And literally it was a second, two seconds, no more, and then obviously carried on moving the prisoner forward into the aircraft.

...

... I didn't obviously see any of the events that led up to it ... I think obviously what was happening they were trying to restrain him and I did see – I think I put in my statement that punches. But they weren't punches, they were sort of slaps ... It wouldn't be a punch as in, no, a boxer would do. It was a slap ... that would fit in with trying to sort of grab belts or something to pull someone down.”¹⁰¹

6.44 When asked about the area of the PW's body to which force was applied, he answered that it was to the back, lower down.¹⁰²

SO58

6.45 SO58 was tasked to guard a PW that had been subdued by another member of the ARF.¹⁰³

¹⁰¹ SO57 IFI 17/5/18 p.99

¹⁰² Ibid p.100

¹⁰³ SO58 IFI 16/5/18 p.112

He was aware of something going on with one of the PWs during loading and that one of the PWs needed to be subdued, but he did not remember who it was that subdued him. He stated to me:

*“... it would have just been tasked to look after that individual ... I didn’t sit on that individual ... I knelt beside him, to the rear of him, having my hands on the back of his legs. My left knee and my right knee were either side of his legs with his legs in between. So I wasn’t actually sat on that individual. I was basically astrided over the top of him”.*¹⁰⁴

6.46 His evidence was that the PW:

*“was wriggling aggressively to start off with, I’d say within the first couple of minutes. I gave him one chop. He still carried on wriggling. So I gave him two chops as detailed. So one still not compliant, then two. And then he stopped wriggling. So I just tapped him on the back of the leg.”*¹⁰⁵

SO58 clarified that he chopped the PW on the calf. The PW settled approximately half way into the journey.

6.47 His oral evidence continued:

¹⁰⁴ Ibid pp.112-113

¹⁰⁵ Ibid p.112

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“I’ve got hold of his feet/calf. I’m lent over him beside, my legs left and right. So I’m basically leaning down to his feet/top lower part of his calfs and he’s still trying to kick out at that point. But that was possibly within the first sort of minute or two of actually being in control of that individual.”¹⁰⁶

6.48 His evidence was that the PW was hooded and cuffed when he was guarding him.¹⁰⁷

PW with Prosthetic Limbs

6.49 The evidence of SO40 is that the PW he was guarding had prosthetic limbs that came off during the course of the flight. Not long after taking off, the PW was wriggling and tried to get out of his plasticuffs. SO40 moved to sit on him, and noticed his legs had come off. SO40 then moved the PW’s legs out of the way. He recalls attempting to re-cuff the PW with the assistance of SO56, but is unable to remember whether he succeeded.¹⁰⁸

6.50 SO56’s evidence was that the he and SO40 were struggling to get the PW to lie flat, but eventually did by just pulling his legs. At that point,

¹⁰⁶ Ibid p.113

¹⁰⁷ Ibid p.113

¹⁰⁸ SO40 IFI 16/5/18 pp.18-19

the PW's legs were removed from his torso as a result of this struggle and it became apparent that they were prosthetics. The legs were put to one side.¹⁰⁹

6.51 Various witnesses recall a moment of black humour at the point that the PW's legs came off. SO43 confirmed that there was moment of amusement when this took place, and that he was made aware of the incident via intercom from the Aircrewman stationed at the front of the ac.¹¹⁰ SO40 also gave evidence of a moment of comedy, although confirmed in his evidence to me that this may have been more of a laugh to himself.¹¹¹

Unresponsive PW during the Landing Process

6.52 SO58's evidence was that he noticed the PW he was guarding stopped moving and that he wasn't able to feel a pulse about two minutes prior to landing. He noticed that the PW's wrists were quite puffed up and that the plasticuffs were tight.¹¹²

6.53 SO58 clearly recalls checking the PW's wrists for a pulse, but got no reading. However, since the PW was wearing plasticuffs, SO58 was unsure whether this was just do to the restriction of the

¹⁰⁹ SO56 IFI 17/5/18 p.91

¹¹⁰ SO43 30 July 2003; SO43 IFI 17/5/18 p.116

¹¹¹ SO40 IFI 16/5/19 pp.26-27

¹¹² SO58 IFI 16/5/19 pp.117 – 118

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plasticuffs. He tried a couple of times to find a pulse, but due to the motion of the Chinook it was easy to mistakenly find the pulse in his thumb. He is unsure whether it was himself or SO44 who checked the carotid artery, but thinks that he put his hand underneath the sandbag to try and locate a carotid pulse.¹¹³

6.54 His evidence was that he was about to alert SO39 and that he tried to shout out to him, but they were told to prep for landing so he told the gunner to his right who he believed to be either SO44 or SO66. He was just about to start first aid, but at that point the wheels came down ready for landing rendering conditions inappropriate for first aid. He knew they would be landing in an area with a first aid post, and he considered that handing over to forces on the ground would be more appropriate. He confirmed that he did not go into CPR.¹¹⁴

6.55 SO58 clarified in his oral evidence that he was only a basic first aider, and that he had not done a combat first aid medic course at the time of the mission.¹¹⁵ SO44 gave evidence that both

¹¹³ Ibid p.118

¹¹⁴ Ibid p.118

¹¹⁵ Ibid p.117

himself and SO58 were combat medics at the time, and that training involved a week-long course.¹¹⁶

6.56 Although he was unable to recall the matters stated during the course of oral evidence, SO44 confirmed his earlier evidence regarding a conversation with SO58 as follows:

“... It was a thought that the PoW could have suffered a heart attack or shock ... We were considering also the fact that most of the PoWs were moving to get comfy all the time but this guy had only moved about two or three times since he had been subdued. We wondered if his pulse was racing or weak; racing, shock, weak being a heart attack. SO58 felt for the pulse in his wrist but he couldn’t find one. He tried two or three times but to no avail. I then tried once at the carotid artery pressure point but none was detected.”¹¹⁷

6.57 When asked about whether he thought the PW was dead, SO58’s evidence was that this was the worst-case outcome that was at the back of his head, but that this was not 100 per cent guaranteed. He thought it more likely that the PW was unconscious.¹¹⁸

¹¹⁶ SO44 IFI 16/5/18 p.94

¹¹⁷ Ibid p.96; SO44 IFI MOD-83-0000553-A, paragraph 22

¹¹⁸ Ibid p.121

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Arrival at H1 and Unloading PW

- 6.58 Upon landing at H1, the PW were to be unloaded from the aircraft by the gunners who had been guarding them during the flight. During this unloading process, three PW could not be walked off the aircraft. Among them was the PW who had lost his prosthetic limbs during the flight.
- 6.59 There are differing accounts of removing the PW from the aircraft that cannot be easily reconciled. Variations in the evidence emerge as to the number and positioning of unconscious / unresponsive PWs, who removed them and how. SO58, SO50, SO40, SO56, SO57 and SO41 are among the witnesses who claim to have removed an unresponsive PW from the aircraft upon arrival at H1.

SO39

- 6.60 On landing back at H1, the SMU LO radioed SO39 and told him to quickly offload the PW and move to a refuel point. SO39 was the first to disembark the aircraft, but was concerned about leaving the PW unattended on the airfield so went to speak to SO55 and the LO at the rear of Lifter 1.¹¹⁹ As he did so, he saw the USAF approaching the

¹¹⁹ SO39 IFI 16/5/18 p.131

aircraft and ordered his men via PRR to begin unloading.¹²⁰

6.61 He first became aware via PRR that two PWs were unresponsive as he was returning to Lifter 2, and clarified that unresponsive meant that they weren't moving. SO39 gave orders to the effect of "*get anybody who is walking off for a handover and then straight back for anybody who is unresponsive*". He did not know if they were unresponsive or uncooperative, and could not recall whether he was told that no pulse could be found on the prisoner.

6.62 His evidence was that he then met with an American captain and gave him an overview of what he believed to be going on. He told him he had 10 PWs, that he had been told two were unresponsive. He said he didn't know what was wrong and why, and "*at that point I think I threw in the 'heart attack' words. I said, 'I don't know whether they've had a heart attack or what'*". Nobody had suggested to him that this had happened, but he thought "*I don't know what's wrong. We haven't got time to do first aid but they may have had a heart attack.*" In response, the American Captain said "*Do not worry about that, man ... You've got to get back out of here. Just hand them over to me*".¹²¹ Later, the

¹²⁰ Ibid p.132

¹²¹ Ibid p.132-133

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American Captain confirmed that the two PW should be put in the back of a Humvee.¹²²

6.63 SO39 realised there would be an issue of man-power given that more men would be needed to remove these PW from the ac. One of the men had taken it upon himself to start dragging the PWs closer to the vehicles, and SO39 thinks that two men he galvanised to help took over from him.¹²³

6.64 After these PWs were removed, the PW with no legs was taken off the aircraft. SO39 recalls him being the last off the aircraft as he was not a priority.¹²⁴

SO53

6.65 SO53's evidence was that, upon landing back at H1, he exited Lifter 1 to liaise with the American Commander to organise the offload. At this point, he handed over the property he had been given by the AAF at the PUP, and was given a written receipt for the property by the American Commander:

“There was an altercation of some kind going on at the back of Heli 2. There didn’t seem to be any movement at the back of Heli 2 and I was trying to find out what was going on. I

¹²² Ibid p.133

¹²³ Ibid p.133

¹²⁴ Ibid p.134

was told that they thought someone had died. I recall saying 'he's either dead or not dead', and I wanted to find out which it was as if he was dead then we needed to move him across to the Americans, who were only about 50 or 60m away. Someone told me that he was dead and that he had possibly had a heart attack. All I was interested in was getting a group of men moved from one point to another, and I wanted a straight answer as to whether we had to move a dead body over to the Americans.

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*I cannot now recall who it was who told me that the individual was dead, but I am almost certain that it was not the ARF Flight Commander who was on Heli 1. I recall that it was an ARF guy. I know that it was someone on Heli 2, but I cannot recall whether it was the ARF Sgt, who was in charge of Heli 2, or someone else who had been on board Heli 2.*¹²⁵

6.66 SO53 recalls saying to the ARF Flight Commander, who he confirmed was SO39, “*What’s going on? What’s the delay? We need to get going*” and being informed there had been a drama. He was told that someone’s legs had fallen off, and informed about another prisoner “*we think he’s dead*”. His evidence was that “*I remember saying, well, you know, “Is he dead or is he alive” ... I’m pretty sure ... it was at the rear of the ... helicopter*”. The answer he received was “*He’s dead*” or “*we think he’s dead*”.¹²⁶

6.67 Upon being informed this, SO53 went to the American Commander and asked for a vehicle to go and collect a PW who’s legs had fallen off and a

¹²⁵ SO53 IFI 15/5/18 pp.47 – 54; SO53 IFI MOD-83-0000586-A, paragraph 9

¹²⁶ Ibid p.50

potentially deceased prisoner.¹²⁷ He was “pretty sure” he would have informed the American Commander that someone was dead.¹²⁸

6.68 No other witnesses gave evidence that they were asked about whether a PW was dead or not by SO53, or informing SO53 that the PW was dead.

6.69 SO53’s evidence continues:

“I was making split second decisions and here I had a situation where someone had died, there was a dead body that had to be moved from the back of Heli 2 with the remaining PWs and we also had to deal with the remaining PWs. I asked for a vehicle to be sent across to pick up the dead man and transport him about 50m-60m to where the Americans were.”¹²⁹

6.70 SO53 was not aware that there were two motionless PW handed over to the Americans. He had only been aware of the dead man.

SO58

6.71 The evidence of SO58 is that he first took one PW over to the holding area, and then returned to the aircraft. He and SO41 then carried an

¹²⁷ Ibid p.53

¹²⁸ Ibid p.54

¹²⁹ MOD-83-0000586-A SO53 IFI paragraph 13

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unresponsive PW who was the third person in from the ramp off the aircraft and took him to hand him over to the ground forces.¹³⁰ He describes taking control of his legs and recalls tripping as he left the aircraft and momentarily dropping the PW.¹³¹ SO58 believed the PW was loaded into a Humvee, but no longer recalls whether this was the case or whether others assisted with the loading. His evidence was that: *“it was a quick turnaround. So it was get this person off, get back on, making sure that no one was left on the ground, ready to do the second collection of the PWs”*.¹³²

SO41

6.72 SO41 became aware of two unconscious PW lying on the deck upon landing at H1. He was told a vehicle was coming, and he may have been informed that this was a medical support vehicle.¹³³ When asked about what he believed the problem to be with the motionless PW, SO41 stated that he believed they were faking in order to be obstructive.¹³⁴ He was tasked with helping to move one of the PW from the aircraft to a Humvee when it

¹³⁰ SO58 IFI 16/5/18 p.120

¹³¹ SO58 18 Aug 03

¹³² Ibid p.122

¹³³ SO41 8 Dec 2003

¹³⁴ SO41 IFI 17/5/18 p.133. See also p.135

arrived. His evidence was that he went up to the American at the vehicle and asked: “*Where do you want him?*”, to which he replied: “*put him in the back of a Humvee*”. To SO41’s mind, the PW was now the USAF’s responsibility.¹³⁵

SO40

6.73 SO40’s evidence was that, upon landing back at H1, he initially removed the PW from the aircraft who had lost his artificial legs before returning to the aircraft.¹³⁶ On return to the aircraft, SO39 motioned him to him to go the rear of the aircraft where there was a motionless PW and tasked him to remove the PW from the aircraft.¹³⁷ The PW was lying on the port-side of the aircraft, positioned longitudinally. The PW didn’t respond to speaking or shaking stimuli, or to being moved to the edge of the ramp.¹³⁸

6.74 SO40’s evidence on moving the PW of the aircraft is as follows:

“I think I may have moved him initially by pulling him by the hands to get him into a position where I could pick him up from the floor of the aircraft but was unable to do so ... It being clear to me that I couldn’t lift the

¹³⁵ Ibid pp.133-134

¹³⁶ SO40 IFI 16/5/18 p.23

¹³⁷ SO40 IFI MOD-83-0000564-A, paragraphs 30-31

¹³⁸ Ibid 30-31. See also: SO40 IFI 16/5/18 pp.23-26; p.31

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unresponsive PW and carry him off the aircraft as I did ... with the limbless PW, I decided to drag him towards the end of the loading ramp ... I hoped that if I could get the PW to there and into a sitting position I would be in a better position to get a good hold on him.

...

I was just about to carry him 20 meters or so until clear of the rotor area where I put him down beside an American Humvee vehicle that was parked there. Somebody else, possibly [SO57] took over at that point.”¹³⁹

6.75 SO40 elaborated in his oral evidence that he initially dragged the PW by his hands to get him into a better position, before dragging him by his feet or lower legs. As the ramp was down on the Chinook, there was a bit of a slope so he could get better leverage to pick the PW onto his shoulders and move him to a safer area. SO40 moved the PW alone, without assistance.¹⁴⁰ His evidence changed in that his oral account recalled taking the PW out of the rotor risk area, where the PW was taken off him by two other people.¹⁴¹ He confirmed that the PW was unresponsive when he picked him up, and that

¹³⁹ SO40 IFI MOD-83-0000564-A, paragraphs 24 – 27

¹⁴⁰ SO40 IFI 16/5/18 p.31-39

¹⁴¹ Ibid p.38

he did not examine the PW as this was not the environment to do so.

SO50

- 6.76 SO50's evidence was that he was tasked to remove at least one PW from the aircraft by either SO39 or SO55, and load him into an American Humvee.¹⁴² He believed he did so with the assistance of at least one other gunner, although he can no longer recall who it was. No assistance was given by an American soldier, who opened the boot of the Humvee so the PW could be loaded.¹⁴³
- 6.77 The first PW loaded took considerable effort to get over the tail gate. SO50 and the others helping him laid the PW's body inside the vehicle width-ways, such that his lower legs and upper body were outside the vehicle. The second PW was smaller and easier to move. They lifted him so he sat at the edge of the tail gate, and he fell backwards over the first PW. He corroborated the description of SO40 that there was a bang while loading this second PW into the vehicle, that he presumed was the PW's head striking some part of the vehicle.¹⁴⁴

¹⁴² See also SO50 IFI 17/5/18 pp.138-143

¹⁴³ SO50 18 Aug 2003

¹⁴⁴ Ibid p.139; SO50 IFI MOD-83-0000566-A, paragraph 21

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6.78 Although SO50 disliked having to load the two PW into what he considered to be a “*patently unsuitable form of transport*”, he had no real choice in the matter having been given his orders.¹⁴⁵

SO57

6.79 SO57 recalls initially unloading his PW from the aircraft upon landing at H1, and having to manoeuvre this prisoner around a PW slumped on the floor under SO39’s direction. He recalled that two PW were lying curled up on the port side of the aircraft near the tail end of the fuselage.¹⁴⁶

6.80 He recalled seeing SO50 carrying one of the PW, who had prosthetic limbs, off the aircraft with the assistance of SO56. As he returned to the aircraft, SO39 handed him the PW’s prosthetic legs and he ran back to deliver them.¹⁴⁷

6.81 SO57 was subsequently tasked to load two unresponsive PWs into an American Humvee vehicle, in company with SO50.¹⁴⁸ His evidence was that he never checked any vital signs to see if the PWs were totally unresponsive. One of these two PW was a very heavy man, and one or two of the

¹⁴⁵ Ibid. paragraph 19

¹⁴⁶ SO57 IFI 17/5/18 pp. 103-104

¹⁴⁷ Ibid p.104

¹⁴⁸ Ibid p.104

Americans had to help lift him into the vehicle. His evidence was as follows:

*“He wasn’t dropped in but – I mean, again, you have to understand where we were. The tailgate probably comes up to near enough your chest. So trying to lift someone heavy with, you know, a degree of delicacy is very difficult. So we just tried to do the best we could to try and, you know, pop him in. But I think he did slip a little bit. But he certainly wasn’t dropped in.”*¹⁴⁹

6.82 SO57 confirmed that the PW did hit his head a little bit as he went in. When asked whether this caused him to wince, SO57 confirmed that it did. The second PW loaded into the aircraft was easier, as he was lighter.¹⁵⁰ In SO57’s view, the Humvee was not the most ideal transportation for the job. The Gunners just tried the best they could to lift the PW in.¹⁵¹

SO56

6.83 SO56 recalled seeing an unresponsive PW towards the rear of the tailgate while leaving the aircraft with a PW, and that other gunners were

¹⁴⁹ Ibid pp.104-106; see also SO50 IFI MOD-83-0000566-A, paragraph 23

¹⁵⁰ Ibid p.106

¹⁵¹ Ibid p.105

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around him although he is no longer able to remember who.¹⁵² His evidence recalls SO39 and SO40 being in the vicinity at the back of the tailgate and dragging a PW face-down by the arms off the aircraft.¹⁵³ The PW looked floppy and unresponsive as he was being dragged.¹⁵⁴

SO43

6.84 SO43 was not himself involved in the unloading of PW from the aircraft, but as the loadmaster he was well-positioned to witness events.¹⁵⁵ His evidence was that the first two prisoners closest to the ramp were led off the aircraft, but the third along was not moving. A small amount of cajoling was used to try and pick him up, but he would not move so was left. The next prisoner along also would not get up, but from there on the other PWs were cooperative and got up.¹⁵⁶

6.85 As the PW were being unloaded, SO43 and two other individuals, one of whom was SO40, were left on the aircraft with a PW who appeared to be unresponsive. SO43 shone his torch on the PW, who seemed unresponsive. Initially, SO43

¹⁵² SO56 IFI 17/5/18 p.85; 90

¹⁵³ Ibid pp.93-94

¹⁵⁴ SO56 24 June 2003

¹⁵⁵ SO43 IFI 17/5/18 p.110

¹⁵⁶ Ibid p.118

considered that the PW may be trying passive resistance, and at no point did he make an assumption that the individual was dead. But equally, there was a range of medical problems that the PW could have had. SO43's evidence was that he could not recall anyone doing CPR or formal first aid.¹⁵⁷

¹⁵⁷ Ibid p.119

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6.86 It was decided that the limbless PW ought to be moved from the aircraft and was piggybacked off by SO40.¹⁵⁸ Several gunners were involved in picking up one of the unresponsive PW, who was a larger individual, and taking him out to the Humvee. To get him in the vehicle, they had to lift him onto the tailgate.¹⁵⁹

End of Mission

6.87 After the PW were unloaded at H1, the chinooks returned to the PUP to conduct two further lifts. These were conducted without incident and went more smoothly than the first lift.

6.88 Upon return to H1 following the third and final lift, there was a hot debrief before the men went to bed. Accounts as to what was discussed in this debrief, and if and the extent to which the unresponsive PWs were discussed, are inconsistent.

6.89 SO39's evidence was that the debrief was held by SO53 in a tented area on the base at H1, and that he and SO55 would have contributed.¹⁶⁰ His recollection is that he was made aware during this hot debrief that SO38 had assisted in regaining

¹⁵⁸ Ibid p.120

¹⁵⁹ Ibid pp.120-122

¹⁶⁰ SO39 IFI 16/5/18 p.135

control of the PW, although he was not at the debrief made aware that the PW had died.¹⁶¹

6.90 This is echoed by SO38, who gave evidence that the men were congratulated for doing a good job during the hot debrief, and it was only the following morning that he learned that there had been a death when he visited the American facility at around 6am with SO55 and others.¹⁶²

6.91 The evidence of SO53 diverges from this. He recalls the debrief included the following: “I learned that the dead PW had managed to get to his feet and had been thrashing around, during which the man had been put down in a controlled fashion and secured. It was also mentioned that there was apparently a pool of urine around this [PW]”.¹⁶³ His evidence to the Investigation is as follows:

“I heard that there’d been a bit of a scuffle in Heli 2 and that the dead man had been thrashing around. I didn’t hear any allegation that he’d been beaten to death: I put it down to fear ... Essentially, I accepted that he’d been frightened to death.”¹⁶⁴

¹⁶¹ SO39 9 July 2013

¹⁶² SO38 IFI 17/5/18 p.75; SO38 IFI MOD-83-0000568-A, paragraph 26

¹⁶³ SO53 18 Nov 2003 p.3

¹⁶⁴ SO53 IFI MOD-83-0000586-A, paragraph 11

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6.92 I take his use of the words “*dead PW*” to be descriptive and not evidence that the death of the PW was referred to at the debrief.

Other Accounts of Violence

Account of violence from Lifter 1 aircrew

6.93 Evidence was taken by Op RAKER from the aircrew and ARF members aboard Lifter 1, that included suggestions of excessive treatment of PW. This included evidence that PWs were kicked and were handled in a manner that was “*not professional*”.

6.94 I have reviewed this evidence. I do not consider that it points towards a finding of systemic violence and therefore I do not consider it assists my investigation into the circumstances of the death of a PW aboard Lifter 2.

Anonymous phone call

6.95 As noted earlier in this report, the RAF P&SS Investigation into the death of Mr. Mahmud was triggered by an anonymous phone call received into RAF Marham on 2 June 2003. The caller alleged that three named members of II Sqn had unlawfully killed a PW being transported by Chinook and that the incident was subsequently covered up. The note taken of the phone call records that:

“... On the way back one of the prisoners tried to escape and a scuffle broke out. Once the prisoner was back under control he was continually beaten and ended up dead. During the assault those carrying it out were laughing ... The dead POW was buried in the desert and the incident covered up by saying that he had choked on the sandbag. There was no Post Mortem.”

6.96 Attempts to ascertain the identity of the caller have failed.

6.97 There is little evidence about any injury sustained by the deceased. He is reported to have had a bloody nose and the photo of the upper part of his body¹⁶⁵ clearly shows that to be the case.¹⁶⁶ However in the absence of a thorough examination of him for injury there is no evidence indicating he had been subject to a sustained beating. A brief medical examination of his upper torso did not disclose any bodily injury. In the circumstances there is nothing which can be taken to corroborate allegations of serious external injury.¹⁶⁷ The fact that the call was made cannot be totally ignored. It points to at least one person, who had accurate information about aspects of the mission, being concerned about the degree of forceful restraint

¹⁶⁵ Taken by the USAF, Annex A

¹⁶⁶ American Soldier E, 14 April 2003

¹⁶⁷ American Soldier F, 13 April 2003

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which was employed. It points to the incident as having given rise to a substantial disturbance and to the witness holding an expectation that it was sufficiently serious to need investigation. Thus the belief that it had been 'covered up'. Whoever made the call acted responsibly. But for the call having been made it can be assumed these matters would not have been investigated. That said, I have not been able to treat the broad allegations as providing direct admissible evidence as to the cause of death.

Evidence about a conversation in 'Bar 3'

6.98 Operation RAKER took the evidence of an RAF Officer who responded to a 'Defensive News Brief' circulated on 24 February 2004 requesting information relating to the incident. The Officer was prompted by this circulation to report an incident he recalled took place at Bar 3 in Bury St Edmunds about 3 months after the incident, on 19 July 2003. The Officer impressed me as a reliable witness. He was able, to my satisfaction, to identify SO38. His account was that he had been in the bar with some other officers, who also gave evidence to Op RAKER, at the same time as some members of II Sqn, including SO38. SO38 appeared drunk and told a story of how he had intervened in a scuffle with a PW on board a flight and broke his neck. I consider it likely that SO38 did speak out in the terms reported to me and that he was drunk. I put

the occasion to SO38 but he denied it had occurred.¹⁶⁸

6.99 The officer acted correctly and responsibly in coming forward to report what he had heard and the evidence could have advanced the inquiry had it not been open to many possible interpretations affecting its reliability. Had there been evidence that the deceased had sustained a broken neck it might have carried some weight. It might also have been the case that there was something which pointed to the possibility of a broken neck. A broken neck might have been observed by someone handling him or carrying out even a cursory examination of him or by the USAF soldier who removed the deceased's hood. No such pointers have emerged. The utterance has the ring of an extravagant boast. SO38 did play the leading role in restraining the PW and he considered he had fulfilled an important role in protecting his colleagues. He told me he had hopes of being commended for his action but the death of the PW had ensued to put an end to that hope.¹⁶⁹ The incident had probably caused him stress and tension and I have concluded that he was likely to have been engaging in drunken bar room exaggeration. When considering the option of exhumation I paid some regard to whether traumatic

¹⁶⁸ SO38 IFI 17/5/18 pp.78-81

¹⁶⁹ Ibid, p.77

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damage to the neck might be revealed but, as I have pointed out elsewhere, there were many reasons why exhumation was not an appropriate course.¹⁷⁰

¹⁷⁰ See sections 10.14 – 10.15

SECTION 7: EVIDENCE IN CONNECTION WITH THE REPORTING OF THE DEATH AND THE COURSE OF THE DECISION-MAKING THEREAFTER

7.1 The reporting trail is in part reflected in the contemporaneous documents received by the Investigation. Those documents (as relevant) are as follows:¹⁷¹

- a. Radio Log 21.10 (local time)
- b. 'Incident Report' 121645Z Apr 03
- c. SITREP 122300Z Apr 03
- d. 'SO47 Report', 12 Apr 03
- e. 'SO52 Report', 14 Apr 03
- f. Letter enclosing SO52 Report, 15 Apr 03 ("SO61 Letter")

Communications during the Mission

7.2 The two chinooks left H1 to commence the lift mission at around 19.00hrs local time. The journey time to the PUP took at least 20 minutes.

7.3 The evidence of SO52 is that communications from the Lifters during the mission would have come into the Ops Room and would have blared out of the

¹⁷¹ These documents are exhibited at Annex C

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speakers. These communications would be recorded in written Radio Logs.¹⁷² SO59 gave further detail as to the procedure followed in the Ops Room for logging messages received. There would be a Watchkeeper, responsible for monitoring the operation and making a note of transmissions in the log, and a Radio Log Operator. All communications would be recorded in the Radio Logs, and those messages that merited more attention or further action would be transposed with greater detail into the “Ops Log” by the Watchkeeper or the Ops Warrant Officer based on verbal conversations. There was a further network system throughout the headquarters. Nearly all communications, with the exception of written SITREPs, were verbal.¹⁷³

7.4 The Ops Logs for the relevant period have not been located,¹⁷⁴ and unfortunately the recollection of witnesses has faded. The HQ1 Middle East Radio Log for the time-period covering the mission contains multiple entries relating to the lift mission, but only one entry recorded at 21.10 references the PW incident.¹⁷⁵ The entry appears to be a report sent on return to H1 after the first lift, and reads:

¹⁷² SO52 IFI MOD-83-0000587-A, paragraph 13

¹⁷³ SO59 IFI MOD-83-0000582-A, paragraphs 6 – 8

¹⁷⁴ SO61 IFI MOD-83-0000585-A

¹⁷⁵ Although not stated, this appears to be local time.

“C/S at H1, 15 POW DROPPED, 1 EN POW HEART ATTACK, C/S refuel for next lift RECIPTTE chase once fuelled.”

- 7.5 There is no recorded communication back from HQ1 Middle East in the Radio Log that concerns the heart attack referenced in this report. The US military certified death 16 minutes later than this transmission at 21.26hrs.
- 7.6 SO53's evidence was that he notified HQ1 Middle East after the American Commander receiving the PWs at H1 confirmed to him between the second and third lifts that one of the PW from the first lift was dead. He recalls doing so during the return flight to the PUP for the third lift through one of the two signallers on Lifter 1. His account is that the information that a PW was dead was important enough for him to report it up the chain of command straight away, but he carried on with the task at hand and it did not stop the mission. There is no record of any transmission during the mission reporting that a PW had died.
- 7.7 It can be observed that there is a recorded stream of communications covering the period up to the commencement of the third and final lift at 00:04 on 12 April 2003, however the Logs record no communications after 00:24 (until 09:00am later that day). There is no recorded entry covering the conclusion of the final lift and the return to H1. The evidence of SO59 was that he was not surprised

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that the end of the mission was not recorded given the context of the operation, as there was a lot going on at the time including quite complex ground operations with air support.¹⁷⁶

Post-mission Reports from H1 to HQ1 Middle East

7.8 A de-brief was conducted by SO53 and the ARF members on conclusion of the mission.

7.9 SO53's evidence was that he subsequently contacted HQ1 Middle East by radio to "*report on the overall end state of the mission ... and the issue of the dead PW*".¹⁷⁷ SO55's evidence to Op RAKER, confirmed to me, was that he "*... went to the FOB Command Post and reported my patrol in, but the prisoner who was suspected to have been dead on arrival was not mentioned*".¹⁷⁸ No record of an end of mission report has been located.

7.10 SO53 stated that "*later in the day*" (on 12 Apr 03), he received a request from HQ1 Middle East to "*provide a written report on the mission.*"¹⁷⁹ His evidence was that this initial report was responded

¹⁷⁶ SO59 IFI MOD-83-0000582-A paragraph 9

¹⁷⁷ SO53 24 July 2003

¹⁷⁸ SO55, 20 August 2003

¹⁷⁹ SO53 24 July 2003

to by a request for further details, following which he submitted the Incident Report 1645Z.¹⁸⁰

7.11 The evidence of SO55 was that, on the morning of 12 April 2003, he visited the USAF facility at H1 and was asked during this visit for “*statements from everyone who had been on the operation*” by the US Investigating Officer. He states that, on return: “*I spoke to [SO53] about this and I believe the FOB Commander was also present. Somebody spoke to [HQ1 Middle East]. In response I was told (I believe by the FOB Cdr) that the US officer was to be told that a report would be written about the incident and that they should request a copy through the chain of command ... [SO53] was tasked to write a report of the incident*”.¹⁸¹

7.12 The Incident Report is expressed as a witness statement from SO53 and signed by SO55.¹⁸² It states that, on returning to H1, “*I ... was informed that 1x PW had potentially had a heart attack, I asked how did he know this and his reply was he was not moving on the a/c and would request veh PV*”. It continues: “*At the point [the US Cmdr] was aware of the two immovable pax*” – the other being the PW with no limbs. Curiously, this report also states that “*No med was called at H2 ... I did not witness any medical vehs or personnel at the H1*

¹⁸⁰ Ibid.

¹⁸¹ SO55, 20 August 2003

¹⁸² Annex C(ii)

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HLS”. I am bound to say that the report lacks detail and has all the appearances of being written in haste. It could not have met the tenor of the request of the USAF for information. That was provided by a subsequent report from SO47.

SO47 Report

7.13 SO47’s evidence was that he was requested to compile a report at around 20.00hrs on 12 Apr 03.¹⁸³ There is evidence, reflected in the SO47 Report, that SO47 and SO52 spoke by satellite phone on at least one occasion in the afternoon of 12 Apr prior to this Report being submitted. The SO47 report opens:

“Thank you for taking the time to talk to me on this PM and alleviate my fears that resulted from the apparent ‘Salami Slicing’ of information you required. You are now aware that I would not wish, as discussed, for this document to be used as a legal statement. If formal Statements are required I would wish, as a prudent precaution, to have legal representation present with my men. Therefore, as discussed, I would appreciate it if you would refrain from forwarding this

¹⁸³ SO47 12 April 2003; SO47 MOD-083-000580-A IFI paragraph 48

document to higher formations without that understanding".¹⁸⁴

7.14 In his evidence, SO47 confirms that he cannot recall who he spoke to at HQ1 Middle East prior to drafting and submitting this report, but it would have been either SO52 or one of his deputies.¹⁸⁵ He does not recall any specific direction from HQ1 Middle East that witness statements from those involved be taken or remember any discussion regarding the legal status of the report he was asked to submit.¹⁸⁶ He does not recall having concluded that it was necessary for him to seek legal representation for his men, nor does he remember any request being made to further distribute his report.¹⁸⁷ He believes that he was being asked to provide a factual record of the incident based on information obtained from those involved, so as to provide HQ1 Middle East with a more complete understanding of the incident.¹⁸⁸

7.15 The evidence of SO59 is that it is normal practice and standard military procedure for a commander to take statements, and for a report to be made that summarises those accounts to

¹⁸⁴ Annex C(iv)

¹⁸⁵ SO47 IFI MOD-083-000580-A paragraphs 48 – 49; MOD-083-000574-A paragraph 3.1

¹⁸⁶ Ibid, paragraph 3.2

¹⁸⁷ Ibid, paragraphs 3.2 – 3.3

¹⁸⁸ Ibid, paragraph 3.4

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present to their boss. Soldiers would not write statements and give them straight to the CO. Any request for statements from SO47 would have been made by SO52. There would have been a conversation between SO59 and SO47 in which SO59 would have suggested a course of action, which SO59 would have reported to SO52, and a subsequent conversation between SO52 and SO47 in which they came to agreement on the course of action to be followed.¹⁸⁹

7.16 SO52 recalled that his direction to SO47 was *“to take statements from those involved to ascertain, as best he could, what had occurred. He reported this back to me in the [SO47 Report]...”*¹⁹⁰

7.17 SO55 also refers to a communication from HQ1 Middle East, although he does not specify who at HQ1 Middle East sent the request:

“At around 2000 hours (Local) I received a request from [HQ1 Middle East] to clarify some details required that were not included in the initial report. In the absence of the LO who had been re-tasked, I cleared the tent I was in and together with [SO47] [SO39] and [SO38] I compiled a response to answer the remaining questions raised by the HQ. I

¹⁸⁹ SO59 IFI MOD-83-0000582-A, paragraphs 14-15

¹⁹⁰ SO52 IFI MOD-83-0000581-A, Q8

received the request for further details via the TACSAT. [SO47] completed typing the reply at around 0100/0200 hours in the morning and it was sent to the duty Ops Officer at [HQ1 Middle East] (SO59). He reassured me that there was no witch-hunt going on but that the legal team were trying to cover all bases by having all the information at their disposal.”¹⁹¹

7.18 Although SO47 was not able to recall what was meant by the term “*witch-hunt*”, he may have reassured SO55 about potential concerns he may have had about being made a scape-goat for the incident. He would have wanted to make clear that SO55 was on operation, and needed to focus on the task in hand.¹⁹² SO55 confirmed in his evidence to me that he understood the term “*witch-hunt*” to mean a “*malicious and prejudiced investigation, with the intent of apportioning blame.*”¹⁹³

7.19 SO47’s evidence was that the Report was submitted via HPW laptop at around 01.00-02.00hrs local time on 13 Apr 03.¹⁹⁴ The Report, which appears at Annex C(iv) included the following information (emphasis added):

¹⁹¹ SO55, 20 Aug 2003

¹⁹² MOD-083-000574-A paragraph 3.6 – 3.8

¹⁹³ SO55 IFI MOD-83-0000584-A, para 5a

¹⁹⁴ SO47 IFI MOD-083-000580-A, paragraph 52

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“In a/c PW handled to the floor by applying pressure and weight. Handler then knelt beside / on top of the PW ... the second to last PW refused to adopt the required position despite two ARF personnel attempting to control him. The linkman observed the situation and took control of the PW. He was forced to the floor of the ac. A member of the ARF was then instructed to lean on the subject PWs’ back to subdue him. The ARF then attempted to move all PWs’ forward to facilitate the closing of the ac ramp ... the subject PW became violent and as he was moved freed himself from the plasticuffs and stood up, flailing his arms, striking out at ARF personnel and attempting to move forward in the ac ... the linkman swept the subject PWs’ legs away with his own foot, holding the PW and lowered him to the floor. He then knelt on the subject PWs’ back and re-cuffed him ... at an unspecified time, the linkman observed a large wet patch, which he assumed to be urine around the subject PW ... On arrival at H1 ... PWs 2 (subject PW) and 3 were not compliant ... These men were found to be unresponsive... The Chalk Comd of Heli 2 then informed the Chalk Comd of Heli 1 and the ARF Comd that he suspected that PWs 2&3 were unconscious and may have potentially suffered a heart attack ... The ARF

Personnel guarding PW 2 & 3 placed them on the US HUMVEE as directed by the US Senior passenger and those ARF personnel on Heli 2 quickly reboarded in order to complete the mission” (emphasis added)

7.20 It is not stated that a PW died (either during the lift or upon handover), although for reasons that are set out below, it is clear from the evidence that this fact would have been known by the Chain of Command by this time. SO55 stated that he had been informed that one of the PW was dead on arrival by the American Commander at the end of the mission, and both he and SO38 had had the death confirmed to them that morning when they attended the USAF base.¹⁹⁵

Reports up the Chain of Command

7.21 There is very little documentation reflecting notification to the chain of command during the course of the mission or in its aftermath. However, the evidence available supports that information was being relayed during this period.

SITREP 122300Z

7.22 The only contemporaneous record of any instructions issued by the chain of command is

¹⁹⁵ SO55 IFI MOD-83-0000584-A, paragraphs 29 – 30

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reflected in the SITREP 122300Z.¹⁹⁶ This SITREP was sent from SO52 at HQ1 Middle East to HQ2 Middle East on 12 April at 23.00 Zulu time.¹⁹⁷ The incident with the PW is referred to briefly, as follows:

“Last night [redacted] moved a selection of PWs from [redacted] to H1. During the move of PWs died. [HQ2 Middle East] has requested statements from all concerned iot submit a report of the death to [USF]”.

7.23 It is not clear from the evidence when this request for statements and a report was made by HQ2 Middle East (although it must have been before 23.00 (Zulu time) on 12 April) and whether this instruction was received by HQ1 Middle East before or after SO47 was asked to provide a report.

SO52 Report

7.24 The SO52 Report dated 14 Apr 03,¹⁹⁸ was sent from SO52 to HQ2 Middle East. The Report broadly repeats the details provided in the SO47 Report, but the conclusion of the report goes further than the SO47 Report in stating:

“It was later confirmed by [USAF] that one of the two unconscious PWs had recovered and

¹⁹⁶ Annex C(iii).

¹⁹⁷ Zulu time is the same as GMT.

¹⁹⁸ Annex c(iv).

that one had died. Comment was also passed on that the dead PW had a long scar from abdomen to throat from what was presumed to be previous surgery. It was suggested that the PW may have died of a heart attack. [USAF] procedures post PW transfer including details of certification and recorded time of death are not known”.

7.25 There has been no evidence suggesting that anyone at HQ2 Middle East reverted to SO52 seeking further information or any clarification relating to the incident.¹⁹⁹

7.26 It is known that the SO52 Report was sent to PJHQ, SMU HQ London and the MOD from HQ2 Middle East on 15 Apr 03 under the cover of a letter signed by SO61.²⁰⁰ Paragraph 2 of this letter reads:

“There was no requirement formally to inform PJHQ of the circumstances surrounding the death, or the promulgation of a PW CASREP, nor has an entry been made on F/PW/128. This is because the PW was not certified dead until he had been handed over the US facilities. However, I have decided to inform the chain of command to ensure that if there are future investigations, we have the facts,

¹⁹⁹ SO52 IFI MOD-83-0000587-A, paragraph 24

²⁰⁰ Annex C(vi).

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as witnessed by those UK personnel involved, which can be used as best evidence. I have therefore enclosed the report from COS [HQ1 Middle East] which provides a full and frank summary of the events.”

7.27 There is no evidence that any action was taken based on the SO52 Report by the chain of command. Paragraph 3 of the SO61 Letter specifically requests that “*the addressees seek my approval before promulgating further*”, and it would appear that no such approval was sought. There is no evidence that any action was taken at PJHQ, SMU HQ London or the MOD until the anonymous telephone call in June 2003 that triggered the Op RAKER RAF Police Investigation. SO52’s account is that he would have actioned any direction to support a UK investigation had he been directed to do so, but he did not receive any directions for further action.²⁰¹

7.28 The evidence of SO52 is that he would have known that the USAF chain of command were investigating the incident and that the BF fully supported that investigation by providing consolidated statements and their most detailed understanding in the form of the SO47 Report. He was prepared to provide further assistance to that

²⁰¹ SO52 IFI MOD-83-0000587-A, paragraph 24. See also: SO52 IFI MOD-83-0000581-A

investigation had it been requested, but he was not aware of receiving any subsequent requests for information.

Witness Evidence Relating to Communication up the Chain of Command

SO61

7.29 SO61, a Colonel, was Component Commander at HQ2 Middle East. His evidence was that he was informed that the incident had occurred at his morning briefing on 12 April 2003:

“I do recall being briefed on the mission to collect the PWs from Australian forces and transfer them to the Americans at H1. I cannot recall whether this briefing took place before, during or after the lift took place, but it would likely have been at the morning briefing on 12 April 2003. This was a briefing between the Americans, Australians and ourselves, at which all the operations that had taken place the previous night would have been briefed ... I clearly recall the Australians briefing that they had intercepted a convoy, had recovered a large amount of money, and that one of the PWs had a prosthetic limb. I also recall being briefed that one of the PWs was a high-value target at this time.”²⁰²

²⁰² SO61 IFI MOD-83-0000585-A, paragraph 11

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7.30 His evidence to Op RAKER was that he “caused one of my staff” – understood to be SO62 – “to liaise with the PJHQ Legal Branch, via the PJHQ [SMU] cell, and obtain legal advice to ensure that they could address any potential legal issues arising from the incident.”²⁰³ Details regarding there being two unconscious prisoners and the USAF approach to the incident may not have been received by the PJHQ SMU Cell.

7.31 His evidence was that he would have seen the SITREP 122300Z, which would have gone to his J3 Ops based in HQ2 Middle East. The J3 Ops would have gone through the SITREP and would have compiled a briefing for him in the morning. He would then have compiled and sent a separate SITREP to the SMU Cell at PJHQ in London. The Investigation has not been able to trace this document.²⁰⁴ SO54 was in post as J3 Ops at the time but has no recollection of events.

7.32 The tasking recorded in the SITREP is in part reflected in SO61’s evidence:

²⁰³ SO61 15 Aug 2003

²⁰⁴ See section 1.10

“I was made aware during the course of the [12 Apr 03]²⁰⁵ that PJHQ had advised the relevant Force Commander to compile a written contemporaneous report on the issue, a copy of which was forwarded to my HQ...”²⁰⁶

7.33 As noted above, the SO52 Report was sent up the chain of command under the cover of a letter signed by SO61 dated 15 April 2003. SO61’s evidence was that he cannot recall drafting the letter or seeing the enclosed report, but would have seen both. The contents of the letter, and the second paragraph in particular, would have been based on legal advice and not his own opinion. The language was certainly not something he would have written himself. The letter would have been something he drafted, or someone like SO62 drafted for him, that had been dictated by lawyers. He is unsure what was anticipated by way of *“future investigations”*, but was not anticipating the investigations that have followed. It is very possible he would have caused SO62 to pass information to PJHQ or that he would have spoken to legal people in the NCC in HQ2 Middle East.²⁰⁷

²⁰⁵ This date is an inference based on the context of the witness statement

²⁰⁶ SO61 15 Aug 2003

²⁰⁷ SO61 IFI MOD-83-0000585-A, paragraphs 14 – 15

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7.34 SO61 accepted that it was easy to say in hindsight that an investigation should have been ordered at the time, but that in the context in which they were operating he was confident that whatever was done to investigate was based on legal advice received.²⁰⁸ His evidence was that: “*There would have been no attempt to hide or cover the fact that the incident took place.*”²⁰⁹

SO62

7.35 SO62’s evidence was that he was tasked by SO61 to contact PJHQ to request legal advice from PJHQ Legal Branch following a report of the incident being received into HQ2 Middle East.²¹⁰ He supported the account of SO61, and stated that he telephoned the SMU Cell at PJHQ on SO61’s instructions and spoke to SO63. He outlined the information given to him by SO61 and asked that he seek legal advice on the situation.²¹¹

7.36 He had not seen the SO47 Report prior to being shown it by the Investigation, and did not recall sending this report to the SMU Cell at PJHQ.²¹² He also considered it unlikely that anyone

²⁰⁸ Ibid. paragraph 14

²⁰⁹ Ibid. paragraph 16

²¹⁰ Ibid. paragraph 11 – 12

²¹¹ Ibid. paragraph 13

²¹² Ibid, paragraph 8(c)

else at HQ2 Middle East would have emailed the SO47 Report to SO63.

7.37 SO62's evidence supports that the gist of what was relayed back to him by SO63 was that he had "*seen legal and the advice from PJHQ was to assume ops normal and to carry on with taskings*", as stated by SO63 in his evidence to the Op RAKER investigation.²¹³ This summary of advice was, in SO62's view, standard military jargon that he understood to mean that there was nothing about the circumstances of the incident that required at that time that those concerned should be taken off their normal duties, as would have been the case if a full-blown police investigation into the incident was launched.²¹⁴

7.38 SO62's understanding of what a contemporaneous note or contemporaneous report would require is that this would be a narrative, created in a timely fashion, setting out all the relevant circumstances so that there would be a record of the incident in the event that further information about it were later to be required by the USAF. He imagined this would be expected to be compiled on the basis of accounts obtained from those who had been involved in the incident, and that this would be a full and frank summary of

²¹³ Ibid paragraph 16

²¹⁴ Ibid paragraphs 16 – 17

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events.²¹⁵ He would not expect any “statements” required, as referred to in the SITREP, to be anything more than individual accounts from those involved in the incident, and would not expect these to have a degree of formality.²¹⁶

7.39 He believed that he would have seen the 122300Z SITREP when it came in, although could no longer recall doing so, and that his understanding of the relevant section of the SITREP is that the SO52 Report would have been the report referred to in the final sentence.²¹⁷

7.40 The covering letter dated 15 April 2003 (the SO61 Letter), enclosing the SO52 Report, was drafted by SO62. He believed that he was drawing on information beyond that contained in the SO52 Report when drafting the letter, as it included details that went beyond the contents of that Report. This included the nationality of four of the PW and information that the PW had not been certified dead until after he had been handed over to members of the US Forces. He clearly recollected asking PJHQ for a form of words setting out the advice that he had asked to be sought from the legal advisor to ensure he drafted the letter for SO61 accurately. He is sure that the wording of the second paragraph of

²¹⁵ MOD-083-000570-A paragraph 3(b)

²¹⁶ Ibid paragraph 8(d)

²¹⁷ MOD-083-000577-A paragraphs 8(b) and 20

that letter was substantially based on the requested form of words. The wording in that paragraph was, in SO62's view, clearly legal and references procedures he believed he was unfamiliar with at the time. The decision to nevertheless inform the chain of command of the facts reflected a "*safety-first*" approach that a lawyer would take.²¹⁸ His view was that the wording of the cover letter closely corresponded to CO1's evidence as to the advice she gave SO67 at the time.²¹⁹

SO63²²⁰

7.41 SO63 gave evidence to Op RAKER to the effect that he received a phone call from SO62 during the war phase of Op TELIC alerting him to an incident that had recently occurred involving Iraqi PWs in transit in the back of a British Chinook. He was subsequently emailed a copy of a report that he believed to be written by OC II Sqn RAF Reg ('the SO47 Report'), the contents of which he discussed with his legal advisor at PJHQ. He subsequently called SO62 late in the evening and told him that the legal advice was to "*assume ops normal and to carry on/proceed with their taskings*".²²¹

²¹⁸ SO62 IFI MOD-083-000577-A, paragraphs 21 – 24

²¹⁹ Ibid paragraph 25. CO1's evidence is at section 7.50-7.51

²²⁰ I interviewed SO63 but decided not to take a witness statement from him.

²²¹ SO63 12 Nov 2003

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7.42 It should be noted that I accept that the SO47 Report was not completed and submitted until the early hours of 13 April 2003, which calls into question the chronology advanced by SO63. Further, as supported by SO67's evidence, it would have been unlikely for the HQ1 Middle East to liaise directly with PJHQ on such matters.²²² There is no other evidence to support that the SO47 Report was received into PJHQ.

²²² SO64 IFI MOD-083-000578-A, paragraph 19

SO64

- 7.43 SO64's evidence was that he recalls being made aware by SO63, his deputy, that he had received a phone call from HQ2 Middle East during the night shift on 11/12 April 2003 regarding operations being conducted out of HQ1 Middle East that concerned an individual PW becoming unconscious during transit by BF in the western desert, who subsequently died in USAF custody.²²³ This information would likely have been supplied by HQ1 Middle East to HQ2 Middle East as a "*one-liner*" in a SITREP.²²⁴ This SITREP contained no suggestion that the PW's death was due to mistreatment, and the only issue apparent at the time was that the cause of death was unknown.²²⁵
- 7.44 It would have been usual practice for his team to have seen "*legal*" in relation to such issues, and there was a night lawyer service available at PJHQ. However SO64 had no direct recollection of whether legal advisors were consulted by SO63 on this occasion.²²⁶
- 7.45 His evidence was that around 08.00hrs (BST), he sought the advice of the senior lawyer at PJHQ, CO1, based on the limited information he was then aware of. This advice was sought informally, in a

²²³ SO64 IFI MOD-083-000578-A, paragraph 16

²²⁴ Ibid, paragraph 17

²²⁵ Ibid, paragraph 17

²²⁶ Ibid, paragraph 18

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one-to-one conversation that took place outside the morning briefing at PJHQ. His first instinct in seeking this advice was to “*determine that any necessary procedures arising ... from the PW’s unconsciousness that apparently occurred during the course of a transit on a British forces helicopter and his subsequent death in US custody, were followed rather than any legalities to which the situation might give rise.*” He was reasonably confident that the multi-national nature of the incident was conveyed to CO1. He continued: “*I was also clear at this stage, based on the limited information provided, that I did not consider there was anything suspicious about the incident to report.*”²²⁷

7.46 SO64’s evidence was that CO1 gave advice for “*contemporaneous notes and statements to be taken from those involved*”. He supported the account given by CO1 of the legal advice given at this time and believed that, insofar as there was variation between her account and his own, it was not significant.²²⁸

7.47 He was unsure how this advice was conveyed back to HQ2 Middle East. In light of that legal advice, his responsibility, as he saw it at the time, was to ensure that a report of the circumstances

²²⁷ Ibid, paragraphs 20 – 21

²²⁸ Ibid, paragraph 22

was collated and considered by the relevant authority in the chain of command which, in the first instance, would have been HQ2 Middle East.²²⁹ Had the incident been reported in the terms in which it was subsequently alleged in the anonymous telephone call, he would have accorded the incident greater priority.²³⁰

7.48 SO64 did not recall this incident being discussed in subsequent briefings, however he believed that there would have been subsequent briefings about the matter.²³¹

7.49 SO64 accepted that the SO52 Report would have been received into the SMU Cell at PJHQ under SO61's letter. Although he did not recall seeing this Report, his evidence was that he believed he would have done so and would have been satisfied upon reading its contents that the legal advice provided had been followed. He could no longer recall whether this letter was shared more widely within PJHQ or if a digest was briefed to the Chain of Command.²³²

CO1

7.50 CO1 was a senior legal advisor at PJHQ. She stated that SO64 sought her advice about a

²²⁹ Ibid, paragraphs 23; 28

²³⁰ Ibid, paragraph 35

²³¹ MOD-083-000571-A, paragraph 1.3

²³² MOD-083-000578-A, paragraph 27

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prisoner who became unconscious during the course of the ARF Flight. Although she was no longer able to recall whether she was told at that time that the prisoner had subsequently been declared dead by a US medic, she did ask whether the Component Command reported anything suspicious about the death of the prisoner, to which SO64 replied “no”. As such, her advice was to keep a “*contemporaneous note*” to be held on the file in the event that there was an investigation into the cause of death of the prisoner”. She emphasised that she was only told about one unconscious prisoner at this time.²³³

7.51 CO1 was clear in her account that she advised only to keep a “*contemporaneous note*”. She did not advise that statements be taken. Her explanation for this was that “*she was not the SMU adviser*”.²³⁴ She also had no part in drafting the cover letter from SO61 and did not provide any further advice in relation to the matter until the commencement of Op RAKER.²³⁵

7.52 I took evidence from another military legal advisor stationed at PJHQ in Northwood at the time of the incident. She worked on the floor of the

²³³ CO1 MOD-83-0000589-A; CO1 IFI MOD-83-0000588-A, paragraphs 8 – 9

²³⁴ CO1 MOD-83-0000589-A

²³⁵ RQ IFI MOD-83-0000588-A, paragraph 10

Operations Control Room ('Ops Room'), rather than in the legal office. At a morning briefing, which would have involved all desks based in the Ops Room, she recalled someone (not SO64, but she could no longer remember who) briefing about a mission that involved a PW with a missing prosthetic limb. She recalled people looking up during the briefing, as this information was unusual.²³⁶

Although she could not be certain, she did not recall it being mentioned in the briefing that another PW was unconscious or dead.²³⁷

Context at Time of Mission

7.53 Various witnesses to the Investigation have emphasised the context in which the BF were operating at the time of the mission. The BF were working in coalition with multi-national forces, and the operation took place at a high-tempo period of the fighting phase of Op TELIC.

7.54 The evidence of SO52 emphasises that this was an intense period of operations, with forces in regular contact with hostile forces, complex and dangerous air and aviation operations being planned and conducted on a daily and nightly basis deep in enemy territory, influenced through multiple levels of command with complex multi-national co-operation and co-ordination. All headquarters had

²³⁶ MOD-083-000575-A, paragraphs 12 – 13

²³⁷ Ibid, paragraph 14

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been running 24 hours a day for weeks, and staff were fatigued and working to their own individual and organisational capacities. His evidence was that the short-notice “*emergency*” support to the AAF in this mission should be seen in this context, and not as a “*routine*” move.²³⁸

7.55 CO1 reiterated that this period, in which British and coalition forces became an occupying force, was frenetically busy and the burden on PJHQ staff was exceptional.²³⁹

Communication Channels

7.56 The Investigation has taken evidence about the methods of communication between the various bases and headquarters. This has assisted in efforts to find records of communications that may have been made at the time, and has provided important context to understanding the response to the incident by the chain of command.

7.57 The evidence of S052 outlines the multiple channels of communication by which information could come into HQ1 Middle East. He states the following:

“The nature of multiple lines of communications, divulging information at

²³⁸ S052 IFI MOD-83-0000581-A

²³⁹ CO1 IFI MOD-83-0000588-A, paragraph 6

different rates, from different individuals, with different viewpoints, all with different commands (and accuracy) of the English language and different levels of fatigue, inevitably leads to inconsistencies in reporting and a lack of clarity ('the Fog of War'). Looking at the operational reporting in hindsight, including my own, it appears to contain errors, inconsistencies and inadequacies. This was in no way deliberate, quite the opposite, this was the very best that we could do at the time".²⁴⁰

²⁴⁰ SO52 IFI MOD-83-0000581-A

SECTION 8: USAF FIELD INVESTIGATION AND ART.121 GC III REPORT

- 8.1 The USAF HQ at HQ1 Middle East were notified of the death of Mr. Mahmud on 12 April 2003 and commenced an investigation in accordance with their obligations as the Detaining Power under Art 121 of GC III.²⁴¹ I have obtained and reviewed evidence relating to this Field Investigation and concerning the involvement of BF in assisting investigations that took place.
- 8.2 I have been provided with the certificate of death for the PW identified by the USAF as “Tanik Sabri Mahmud”, which records a time of death of 21.16 and the cause of death unknown.²⁴² The death was certified by the USAF doctor, identified in the Op RAKER investigation as US Soldier B.
- 8.3 The USAF took statements from USAF soldiers who had contact with the PW, and I have seen this evidence. I particularly note that a US soldier identified as “US Soldier A” gave evidence on the state of the PW prior to the certification of his death as follows:

“Only wounds noted were a bloody nose... due to recent bowl [sic] release and warm body temperature, I determined the detainee

²⁴¹ These obligations are set out further in section 9.

²⁴² Annex D

*was deceased and awaited arrival of [the US Forces] Doctor, [redacted] to make the official pronouncement for a 112126Z April 03 time of death.*²⁴³

8.4 The doctor who certified the death looked for signs of life from Mr. Mahmud. He found no heartbeat or sign of myocardial infarction, nor did he find indications of cranial fracture or head or nose trauma.²⁴⁴ Although the doctor was a licenced medical doctor, he was not a pathologist and was unqualified to perform a post-mortem. No post-mortem was performed prior to the burial of Mr. Mahmud, which was done in accordance with Muslim traditions on 12 April 2003.²⁴⁵

8.5 I have seen evidence that the USAF appointed an Inspecting Officer ('USIO') on the day following the PW's death to investigate the death.²⁴⁶ A Judge Advocate General ('JAG') Legal Advisor was also appointed to provide legal advice to the USIO. It fell to the Staff Judge Advocate ('SJA') based at the American HQ at HQ1 Middle East, who held the authority to convene a court martial, to consider and advise on the prosecutorial obligations arising out of the USIO's findings.

²⁴³ US Soldier A, 11 April 2003

²⁴⁴ US Soldier B, 16 April 2003

²⁴⁵ See further sections 9.8, 9.11, 10.3, 12.12 and 13.4

²⁴⁶ US Memorandum, 'Investigation of detainee death', 15 Apr 03

8.6 The evidence supports that members of the ARF crew, including SO55, SO38 and a Warrant Officer who arrived at H1 on the day of the 12 April 2003, visited the US facility at H1 during the day of 12 April 2003. SO55's account to Op RAKER was as follows:

“Later that day (12 Apr 03 as the mission had taken place until the small hours) I visited the US sector with a bag full of personal papers etc that had been recovered from the aircraft by the troops. I spoke to the Colonel in charge of the facility and he confirmed to me that one of the PWs from the mission had been dead on arrival. He added that the collection of prisoners included some high value targets for the coalition. He told me that the body of the dead prisoner had been buried at H1 and I would be surprised if the grave is not marked. He told me that the body had been buried first thing that morning. I also had a conversation with one of the US interrogators who had been part of the reception party the night before. He said that the guy pulled off the aircraft (the dead PW) had been prepared for a suicide mission, clarifying this by saying that he had a shaved chest. He also stated that the body had a scar on his chest that may have been indicative of cardiac surgery. Furthermore he mentioned that this person was also linked in some way to the individual

with no legs and that documents were found offering \$5000 for the head of any US Serviceman. The interrogator also stated that a good proportion of the PWs were Fedajeen, but some were students. I was told that the ground forces had stopped a car travelling behind the coach but that the driver was discovered to have been simply a businessman from Baghdad who was soon to be released. I also saw a female US JAG officer who was apparently investigating the whole incident. She had dark curly hair was short and slim and wore a desert DPM uniform. Also present was a young male US Lieutenant who had just arrived in theatre who said he was the investigating officer. He asked for statements from everyone who had been on the operation. I returned from the American facility and spoke to the [SMU LO] about this and I believe the FOB Commander was also present. Somebody spoke to TGHQ. In response I was told (I believe by the FOB Cdr) that the US officer was to be told that a report would be written about the incident. The Lieutenant seemed content with this.”²⁴⁷

8.7 At 13.04 on 12 April 2003, an email was sent from the USAF SJA to the British and Australian Liaisons at HQ1 Middle East regarding the report of the

²⁴⁷ SO55 20 Aug 2003

death. By this time, the BF at HQ1 Middle East must have been aware of the death. The email requests the provision of “*copies of all message traffic, reports and docs relating to the PW capture and transport*” to ensure compliance with the requirements of Art.120 of the Geneva Convention relating to the documentation of PW deaths. This was forwarded to SMU HQ Command, J3 Ops and Admin at SMU HQ at 18.10.

8.8 In the days that followed, the USIO collected evidence including statements from those US Soldiers who had contact with the PW and from other PW who had been transported during the mission. This evidence has been seen by me and considered where relevant to the scope of my Investigation.

8.9 An email was sent at 10.50 on 15 April 2003 between US Forces at HQ1 Middle East, addressed to the SJA, stating that the only requirement needed to complete their investigation into the “DOA” is a statement from the British SMU Forces at SMU HQ, HQ1 Middle East. It notes that the BF need an official request from the American central command, CENTCOM, to render this statement. This email supposed that the BF “*will do a legal review as well*”.

8.10 The SJA produced a seven-page Memorandum on the incident and the state of the investigation, dated 28 April 2003.²⁴⁸ This Memorandum includes a summary of the evidence received at that point in time. This was followed with further inquiries into how tight the sandbag was fixed to the PW. A final Memorandum, signed off by the US Army Commander, was circulated on 17 May 2003.²⁴⁹ It concludes:

“Coalition personnel used appropriate tactics, techniques, and procedures in handling the PW, and no unlawful act or omission caused

²⁴⁸ Memorandum for Cdr, APO AE 09367 “Subject: Official Enquiry into the Death of Tanik S. Mahmud, a Prisoner of War”, 28 April 2003, SJA MOD-83-0000590-A

²⁴⁹ Memorandum for Cdr, Soccent, Macdill AFB, FL “Subject: Official Enquiry into the Death of Tanik S Mahmud, a Prisoner of War”, 17 May 2003 MOD-83-0000591-A

the death or seriously endangered the health of the PW.”

8.11 The 17 May 2003 Memorandum notes that a notification of a PW death under unknown circumstances will be provided to the ICRC and a graves registration file will be forwarded to the Theatre Enemy PW Camp.

8.12 It has not been possible to identify when this Memorandum was provided to the British Forces. It was likely provided to British Forces at HQ1 Middle East at or around the time it was circulated.

SECTION 9: THE LEGAL FRAMEWORK

9.1 I have been required to investigate two distinct areas of fact. Firstly the circumstances surrounding the death of Mr. Mahmud and secondly the adequacy of the investigative actions taken by the military command in the aftermath of his death. My TOR expressly contemplate the former. The latter is, in all cases, a consequential and necessary aspect of the former. However, in a case involving a PW, the body of law comprising the framework expressly provides for and requires investigative action. A failure to carry out a prompt and adequate investigation can adversely affect the state's compliance with the obligation to carry out an Article 2 ECHR investigation (where such obligation arises). It will be necessary to consider the extent to which the quality of the evidence now available has been prejudiced by any of the failings which have occurred. Both the areas of fact to which I refer and the issues to which they give rise must be resolved by reference to the legal framework governing both aspects.

International Humanitarian Law and JWP 1-10

9.2 The treatment of PW is governed by Geneva Convention III Relative to the Treatment of Prisoners of War of 12 August 1949 ('GC III') as well as by any applicable legislation, agreement or policy (see in particular JWP 1-10). It is not clear to me when or by whom or on what basis it was determined that Mr.

Mahmud or any of the captured personnel had the status of being PW within the meaning of GC III. The information supplied from the coalition command indicates that they were regarded as “*dangerous*”. Among the items recovered from them was a document offering \$5000 for every dead US soldier.²⁵⁰ According to material disclosed by and in the public domain through the Australian authorities, 59 of the detained were suspected of being “*Fedayeen*”, four were said to be Iranians.²⁵¹ The group was believed to include three persons identified as being Ba’ath Party officials. The suspects were driving a bus and two cars when they were stopped by AAF with one embedded US member of the USAF.

9.3 Art.4 of GC III lists the following categories of persons as PW:

- (1) Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces.*
- (2) Members of other militias and members of other volunteer corps, including those of organised resistance movements, belonging to a Party to the conflict and operating in or*

²⁵⁰ See section 8.6

²⁵¹ See Public Interest Advocacy Centre (‘PIAC’) material, available online at: <https://www.piac.asn.au/projects/international-projects/story-1-australias-detention-custody-and-transfer-policy-in-afghanistan-and-iraq/>

outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions:

- (a) That of being commanded by a person responsible for his subordinates;*
 - (b) That of having a fixed distinctive sign recognisable at a distance;*
 - (c) That of carrying arms openly;*
 - (d) That of conducting their operations in accordance with the laws and customs of war.*
- (3) Members of regular armed forces who profess allegiance to a government or an authority not recognised by the Detaining Power.*
- (4) Persons who accompany the armed forces without actually being members thereof [...];*
- (5) Members of crews...of the merchant marine and the crews of civil aircraft of the Parties to the conflict [...];*
- (6) Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms*

openly and respect the laws and customs of war [...]

9.4 There is no evidence which sheds light on Mr. Mahmud's position in respect of the categories listed above. However, Art.5 GC III provides that,

“should any doubt arise as to whether persons having committed a belligerent act and having fallen into the hands of the enemy belong to any of the categories enumerated in Article 4, such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal.”

As far as I am aware, Mr. Mahmud's status was never determined, by a competent tribunal or otherwise. As a result, I have proceeded upon the basis, which seems to have been assumed by those involved at the time, that he was entitled to the protective benefits of GC III.

9.5 Although I have drawn attention to the complexities and impact on the course of events to which the involvement of three coalition forces gave rise, I do not consider it to be part of my remit to attempt to interpret and rule upon any questions of law under GC III as it applied to each of the coalition forces. That said, it is impossible to consider the core issues, in particular the consequences which flowed from the legal advice which was tendered to the

military command and acted upon, without paying close attention to the legal framework.

9.6 In March 2003 the coalition entered into a tripartite agreement ('the Tripartite Agreement') in connection with the procedures to be adopted for the transfer of PW (and others).²⁵² This did not depart from the basic provision under Art.12 GC III, which provides: "*Prisoners of war are in the hands of the enemy Power, but not of the individuals or military units who have captured them. Irrespective of the individual responsibilities that may exist, the Detaining Power is responsible for the treatment given them...*"²⁵³ 'Detaining power' is not defined in GC III. The available evidence was that Mr. Mahmud was captured by AAF acting with an embedded member of the USAF. It is unnecessary for me to enter into the controversy which has appeared in the public domain in Australia, in connection with this mission and the death of Mr. Mahmud, and to express my view as to which of the two forces, USAF or AAF, was the Detaining Power. The range of the dispute is set out in the PIAC report and makes for illuminating reading on the complexities which can arise in the implementation of coalition operations.²⁵⁴ Whichever of the forces should have acted and carried out an identification process after capture of the PW it

²⁵² Annex E

²⁵³ GC III art.12

²⁵⁴ PIAC, "Military Detention: uncovering the truth", 1 July 2011

remains the case that I have had to proceed on the basis that none was carried out. Similarly, as we shall see later, whichever of the two forces (BF or USAF) should have carried out a post-mortem, none was carried out nor was there any medical examination carried out (as opposed to a brief unqualified look at the deceased's chest and lower torso) which has revealed a possible cause of death.²⁵⁵ The examination of the upper torso nevertheless provides some evidence (and there is no other) that he had not sustained any obvious recent physical injury.²⁵⁶

9.7 There is no suggestion that any member of the USAF or AAF were “*embedded*” within the BF. It seems to me to follow that the EPW were, as a result, transferred to the BF for the period of the transit to the holding facility of the USAF. Under paragraphs 2 and 3 of Art.12 GC III “... *When prisoners of war are transferred under such circumstances, [i.e. transferred between parties to the Convention], responsibility for the application of the Convention rests on the Power accepting them while they are in its custody.*” The Tripartite Agreement provided that:

“US, UK and Australian forces will as mutually determined, accept (as Accepting Powers) prisoners of war, civilian internees, and civilian detainees who have fallen into the power of any of the other parties (the

²⁵⁵ See sections 8.4, 12.10 and 13.4

²⁵⁶ See section 6.97

*Detaining Power) and will be responsible for maintaining and safeguarding all such individuals whose custody has been transferred to them...*²⁵⁷

It follows that it is safe to conclude the BF had an obligation to ensure all the guarantees under GC III to Mr. Mahmud whilst he was in the BF's custody (as an "Accepting Power").

9.8 Although published after the material time under consideration, this analysis is also supported by the MOD's Manual of the Law of Armed Conflict, which explains that, in respect of responsibility for PW under Art.12 GC III, "[PW] may be transferred by the capturing power to another state which is a party to [GC III], provided that the capturing power is satisfied that the other state is able and willing to apply that Convention."²⁵⁸ If (as an analysis of GC III, the Tripartite Agreement, and the MOD's Manual would suggest) the BF acquired full responsibility for guaranteeing the rights of Mr. Mahmud whilst he was in their custody, it would have included the obligations set out in Arts.120-121 of GC III with regard to "...a medical examination of the body with a view to confirming death and enabling a report to be made and where necessary establishing identity."²⁵⁹ That

²⁵⁷ Tripartite Agreement para 2, Annex E

²⁵⁸ See JSP 383 (JDCC), 2004 Edition, paragraphs 8.26 – 8.27 "Responsibility for Prisoners of War".

²⁵⁹ GC III, Art.120

said, it seems clear enough that the provisions principally focus on the context of detention in custody rather than death in the course of transfer where there are no medical facilities available. In addition, it is provided that:

“The detaining authorities shall ensure that prisoners of war who have died in captivity are honourably buried, if possible according to the rites of the religion to which they belonged, and that their graves are respected, suitably maintained and marked so as to be found at any time.”²⁶⁰

On the evidence I have, the deceased was “*honourably buried*” according to Muslim rites and his grave was marked.

9.9 Art.121 provides:

“Every death or serious injury of a prisoner of war caused or suspected to have been caused by a sentry, another prisoner of war, or any other person, as well as any death the cause of which is unknown, shall be immediately followed by an official enquiry by the Detaining Power... Statements shall be taken from witnesses, especially those who are prisoners of war, and a report including

²⁶⁰ GC III Art.120

such statements shall be forwarded to the Protecting Power.”

It is clear that the US regarded itself as the Detaining Power and it commenced an Art.121 inquiry. The report, dated 28 April 2003, was completed by the USAF Staff Judge Advocate.²⁶¹

What should the Enquiry Consist of?

International Humanitarian Law (‘IHL’)

9.10 Art.121 GC III does not state that a post-mortem need be carried out. It is clear that no post-mortem was carried out either by the BF or USAF and there was no medical examination to determine the cause of death. The ICRC Commentary of 1960 on GC III provides:

“An enquiry will also be opened in any case of death from unknown causes. This may refer to illness as well as to violent death.... What should the enquiry comprise? Its object is to establish the circumstances of death and discover who was responsible. The victim must therefore be thoroughly examined, if necessary by an expert in forensic medicine and all witnesses must be heard as well as the person who made the attack, if any. The enquiry will generally be conducted by the camp authorities. The term “official enquiry

²⁶¹ MOD-83-0000590-A

*may, however, also refer to action by a superior authority with specialised responsibilities, that is to say the military judicial authorities, who will institute an investigation similar to that which is customary in cases occurring in the national armed forces...*²⁶²

JWP 1-10

9.11 8.173.1 of the MOD Manual provides that, in case of the death of a PW in United Kingdom hands, the procedure laid down in Prisoner of War Handling 3F is to be followed.²⁶³ The relevant provisions are as follows:

“3F83 **Applicability of this instruction.** The instructions set out in this section cover the death of PW at any time in the period of their captivity from the moment of their capture to their eventual release or repatriation....

3F84 **Notification and Registration of Death.** Immediately following the death of a PW as

²⁶² ICRC Commentary of 1960 on the Geneva Convention (III) relative to the Treatment of Prisoners of War, pp.570-571.

²⁶³ “8.173.1 In case of the death of a prisoner of war in United Kingdom hands, the procedure laid down in Prisoners of War Handling (JWP 1-10) 3F84 is to be followed.” See also: Section 9 TO Theatre Reference Document D/PJHQ/5/8135/12/1, ‘Personnel and Administration’, 10 March 2003 paras 30-31 and PJHQ Deployed Ops Instruction Prisoner of War (PW) Handling (DOI 005) 27 January 2003.

report is to be made to JR at JTFHQ and the PWIB using the PW NOTICAS. The format of this report is set out in Annex 3D. Following this report, and after burial and any subsequent investigation, a formal Notification of Death in the format set out for a Death Certificate in Annex 3D to this publication, is to be sent as soon as possible to J1 at JTFHQ and the PWIB. In the event of the un-natural death of a PW, an additional copy of the Notification of Death is to be forwarded for onward transmission to the Protecting Power...

3F85 Investigation into the Circumstances of Death or Injury. *An investigation is to be held into every death (or serious injury) of a PW which is suspected to have been caused by a guard or escort, another PW or any other person as well as any other death the cause of which is not known. Depending upon the circumstances surrounding the death, J1 at JTFHQ will direct how the investigation is to be conducted. This may take the form of the convening of an appropriate form of formal inquiry in conjunction with inquiries conducted by the provost services. The findings of the inquiry, together with statements taken from witnesses, are to be forwarded to the Protecting Power. In the event that an inquiry indicates that a person or persons is guilty of causing the death (or serious injury), GC III requires the Detaining Power to take all*

possible measures for the prosecution of the [sic] those responsible...”

3F86. This section provides for the procedure in connection with burial and cremation. Of particular relevance, it provides that **“Examination of the Body.** *Before burial or cremation takes place, there is to be a medical examination of the body in order to confirm death and, where necessary, to identify the remains. It will be normal practice for an RMP SIB Investigator to be present during this post mortem investigation.”* It stipulates that, if possible, the burial of PW is to take place *“according to the rites of the religion to which they belonged.”*²⁶⁴

9.12 In the course of the Op RAKER inquiry, the view was expressed that an offence or offences may have been committed under Section 65 of the International Criminal Court Act 2001. The section relates to the criminal liability of commanders or other superiors for failure to control the actions of forces under their effective control or command. It is a measure of the complexity to which the law can give rise in this area that it was raised. I understand why the issues arose and I have noted the circumstances from which it emanated but it is not a matter for me to

²⁶⁴ JWP 1-10, Annex 3F Section X1V, Annex F

rule upon and further comment from me is neither appropriate nor necessary.

SECTION 10: IDENTITY OF THE DECEASED AND PARTICIPATION OF THE FAMILY

10.1 The evidence is sketchy and imprecise. It is possible that a small number of identity documents were recovered from the PW by the AAF, but they did not complete individual detainee identity cards.²⁶⁵ The property which had been recovered from the PW (including the identity cards) was handed over by the AAF to the BF. SO53 recollected that during the handover phase, the Australian Commander “*provided him with an in-brief and at the end of this briefing he handed over a list of the individuals recovered together with bags of property relating to the PWs, for transit.*”²⁶⁶

10.2 I note however that the evidence of SO53 in this regard is not consistent with the evidence of the Australian soldier witnesses who gave evidence to Op RAKER. The AAF did not carry out an initial documentation process at the point of capture. There is evidence that the USAF completed a list after receipt of the PW and after certification of the death of the deceased, but there is no evidence which discloses the basis upon which the list was drawn up.

²⁶⁵ Australian Soldier A, 4 November 2003

²⁶⁶ SO53 18 November 2003

Identification by the USAF

10.3 The PW each had sandbags over their heads when they were handed over to USAF.²⁶⁷ Mr. Mahmud's sandbag was cut off by a member of the USAF as he was being examined for signs of life by a USAF doctor.²⁶⁸ The doctor was unable to find any signs of life and certified Mr. Mahmud as dead at 21.26 on 11 April 2003.²⁶⁹ The body was then relinquished to medical personnel for burial, and he was buried by the USAF at H1 in a ceremony according with Muslim traditions within 24 hours of his death.²⁷⁰

10.4 A death certificate was completed by US Soldier B, the doctor who had examined Mr. Mahmud, giving the date of burial as 12 April 2003 and the identity of the deceased as "*Tarik S Mahmud*", "*presumed*".²⁷¹ A USAF field investigation was immediately commenced into the death, part of the remit of which was to establish the deceased's identity.²⁷² The witness statements provided as part of that investigation reveal that the identity was

²⁶⁷ US Soldier G, 15 April 2003; US Soldier A, 15 April 2003; US Soldier D, 16 April 2003

²⁶⁸ US Soldier D, 16 April 2003. The camp doctor was US Soldier B

²⁶⁹ US Soldier A, 15 April 2003; US Soldier B, 16 April 2003

²⁷⁰ US Soldier A, 15 April 2003; US Soldier E, 14 April 2003

²⁷¹ Annex D

²⁷² US Memorandum (undated), Subject: "Appointment as Investigating Officer"

SECTION 10: IDENTITY OF THE DECEASED AND PARTICIPATION OF THE FAMILY

established after burial, by comparison of a passport which had been found in one of the bags of property belonging to the PW against photos of Mr. Mahmud taken after his death.²⁷³

²⁷³ MOD-83-0000590-A, para 20; Memorandum 15 April 2003 'Investigation of detainee death'; US Soldier G, 15 April 2003; US Soldier E, 14 April 2003

10.5 Attempts were made by the USAF field investigation to ascertain the identity of the deceased from the other PW. All but two of the PW were transported for onward movement within days and there is no available record as to where they were transported. The remaining two PW were questioned and were unable to give any information about the identity of the deceased.²⁷⁴

10.6 On conclusion of the USAF field investigation, it was recommended that notification of Mr. Mahmud's death should be provided to the ICRC in accordance with Art.121 of GC III.²⁷⁵ There are no available papers however indicating whether or not this recommendation was carried out.

The Guardian Article

10.7 In an article dated 7 February 2012,²⁷⁶ The Guardian newspaper reported that the passport attributed to the deceased in fact gave his name as "*Tariq Sabri al-Fahdawi*" and not "*Tanik Mahmud*". I contacted the author of the article regarding the source of this information, however he was unable to assist. There is no other evidence I have seen supporting the assertion.

²⁷⁴ US civilian witness B, 18 April 2003; US civilian witness C, 13 April 2003

²⁷⁵ MOD-83-0000590-A

²⁷⁶ <https://www.theguardian.com/world/2012/feb/07/iraq-death-secret-detention-camp>

SECTION 10: IDENTITY OF THE DECEASED AND PARTICIPATION OF THE FAMILY

10.8 According to paras 1 and 2 of my TOR, my Investigation must discharge “*the positive obligations of the State pursuant to Article 2 of the ECHR*” and “*must be accessible to the family of the deceased*”. A preliminary part of my Investigation therefore concerned efforts to identify and locate the family of Mr. Mahmud, as well as, insofar as possible, to determine whether the correct identity had in fact been attributed to Mr. Mahmud by the USAF.

10.9 I have been provided with copies of the photographs taken by the USAF, as well as copies of the passport of Mr. Mahmud. Those copies are grainy, and it is not possible for me to determine whether the photographs of the deceased are the same individual as appears in the passport. I have also been provided with copies of pages from an address book, also attributed to Mr. Mahmud, which contains some names and telephone numbers. I do not know how the address book came to be attributed to Mr. Mahmud.

10.10 I requested disclosure from the ICRC of any information held by them relating to the death of Mr Mahmud in an attempt to establish whether Mr. Mahmud’s death had been reported to the ICRC, and, if so, whether the ICRC had had any contact with anyone claiming to be the family of Mr. Mahmud. I received a response from the ICRC that the ICRC enjoys a privilege of non-disclosure of confidential communications received in the context

of the fulfilment of the ICRC's humanitarian mandate under the 1949 Geneva Conventions and the 1977 Additional Protocols thereto.²⁷⁷ I am satisfied that this privilege is an established principle of customary international law which applies to the United Kingdom as a party to the Geneva Conventions and their Protocols.²⁷⁸ Accordingly, I have not been able to confirm whether or not the death of Mr. Mahmud was reported to the ICRC and / or whether contact was made by the ICRC with any relatives of Mr. Mahmud.

10.11 I enlisted the assistance of Ms Zainab Al Qurnawi ('ZAQ') of QC Law, to make enquiries on my behalf in Iraq in an effort to trace the family of 'Tariq Sabri Mahmud', alternatively 'Tariq Sabri al-Fahdawi'. In respect of the passport, ZAQ was able to confirm that the name of the holder was Tariq Sabri Mahmud, date of birth 1966, resident in Baghdad, profession 'businessman'; it had an expiry date of 24 October 2001;²⁷⁹ it did not contain the

²⁷⁷ Letter from the ICRC to the IFI dated 24 July 2017 and memorandum outlining the legal and policy bases of ICRC confidentiality.

²⁷⁸ See ICTY, Prosecutor v Simic, Case No. IT-95-9, Decision on the Prosecution Motion Under Rule 73 for a Ruling Concerning the Testimony of a Witness, 27 July 1999; ICTY, Prosecutor v Brdjanin, Appeals Chamber, Case No. IT-99-36, Decision on Interlocutory Appeal, 11 December 2002; ICC Rules of Procedure and Evidence, Rule 73.

²⁷⁹ Email from ZAQ to IFI dated 24 February 2018.

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particulars of any family members; and it contained a residency permit for Libya issued on 22 May 1999 and valid until 30 April 2000.²⁸⁰ After conducting extensive inquiries, ZAQ was able to trace just one individual with the name ‘Tariq Sabri Mahmud’ in Iraq. However, after contacting this individual ZAQ was satisfied (as am I) that he is not linked to the deceased who is the subject of my Investigation. ZAQ also contacted the Iraqi Passport Office, who were unable to assist as all records or passports issued prior to 2003 had been destroyed in the 2003 invasion.²⁸¹

10.12 ZAQ was also able to confirm that the address book did not contain the name of the holder; and that all but one of the telephone numbers in the address book are now disconnected, with the final number belonging to an individual who now has no memory. As such, it did not provide any assistance in confirming the identity of Mr. Mahmud, or of locating and contacting his family members.

10.13 As a final line of inquiry, I contacted the Libyan Ambassador in order to request whether the Libyan Government still held a record of Mr. Mahmud’s application for a Libyan residency permit

²⁸⁰ Email from ZAQ to IFI dated 24 February 2018.

²⁸¹ Email from ZAQ to IFI dated 21 January 2018.

issued in 1999, which might have assisted in identifying details of Mr. Mahmud's family.²⁸² I have not received a response to that request.

10.14 I excluded the possibility of exhuming the body of Mr. Mahmud in order to assist identification and contact of any family members. I am guided by the order of Silber J in R(Ali Zaki Mousa) v Secretary of State for Defence (No 2),²⁸³ according to which my Investigation must be conducted in a timely, proportionate and cost effective manner, compliant with the common law and Article 2 ECHR,²⁸⁴ and the touchstone by which the procedure of my Investigation must be governed is its "*effectiveness in determining the issues and compliance with Article 2 so that there is participation by those interested to the extent necessary to protect their legitimate interests.*"²⁸⁵

10.15 With these considerations in mind, I conclude that exhumation of the body in an attempt to identify the deceased and his family members would not be a proportionate or effective step in determining the issues which are within my TOR, nor to enable participation by those interested to the extent required by Article 2. In particular, I consider that in

²⁸² Letter from Sir George Newman to the Libyan Ambassador sent on 30 April 2018.

²⁸³ [2013] EWHC 2941(Admin).

²⁸⁴ [2013] EWHC 2941(Admin) at [1].

²⁸⁵ [2013] EWHC 2941(Admin) at [24].

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the absence of any identified potential family members, it would not be possible to conduct a DNA familial comparison in order to confirm the identity of the deceased, nor, importantly, would it be possible to obtain the consent of Mr. Mahmud's family members to exhumation. It is therefore difficult to see how exhumation, in any event, would assist with this particular line of inquiry.²⁸⁶

10.16 I have also excluded the possibility of tracing any of the other detained PW in order to question them regarding the identity of Mr. Mahmud. The USAF field investigation states that the other PW were questioned regarding the identity of Mr. Mahmud, and none were able to provide any significant information.²⁸⁷ I have no reason to doubt that conclusion. Further, it records that they were transported for onward movement from H1 within days, with no record of where they were transported to. In the premises, I do not consider that attempting to trace and locate other PW, in order to question them on the identity of Mr. Mahmud would be proportionate, in light of the cost and time which such steps would entail, and the very limited prospects that they would yield results of any evidential value to my Investigation.

²⁸⁶ I have separately considered and excluded the possibility of exhumation for the purposes of determining the cause of death. See section 11.22

²⁸⁷ MOD-83-0000590-A

Conclusions on Identity

10.17 Following the investigatory steps which I have taken and the considerations set out above, there remain two possibilities regarding the deceased's identity. Firstly, that the USAF did attribute the correct passport to the deceased (Tariq Sabri Mahmud), however it remains unclear to me whether his family have ever been informed of his death, and I have been unable to locate any family members of this individual. Secondly, that the USAF attributed the incorrect passport to the deceased. Again, it has not been possible to locate any family members of the deceased individual if he is not Tariq Sabri Mahmud.

10.18 In light of the difficulties identified, and the fact that none of my inquiries have resulted in a satisfactory conclusion, I have concluded that it is not possible to determine, on the balance of probabilities, either the identity of the deceased, or whether he has any surviving family members who would be interested persons in respect of my Investigation.

10.19 Ordinarily, in order to satisfy the requirements of Article 2 ECHR, the investigation must be accessible to and involve the family of the deceased.²⁸⁸ Further, pursuant to my TOR, an opportunity should be given to the next of kin to

²⁸⁸ See JL v Secretary of State for Justice [2009] 1 AC 588.

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raise lines of inquiry. In the premises, in order to discharge this obligation in the absence of identified family members, and in accordance with the order of Silber J in R(Ali Zaki Mousa) v Secretary of State for Defence (No 2)²⁸⁹ I requested ZAQ to suggest such lines of inquiry as Mr. Mahmud's next of kin may otherwise have wished to propose.²⁹⁰ ZAQ fulfilled this request.²⁹¹

²⁸⁹ [2013] EWHC 2941(Admin) at [5] – [7].

²⁹⁰ Letter from the IFI to QC Law sent by email 4 May 2018.

²⁹¹ Letter from QC Law to the IFI dated 10 May 2018.

SECTION 11: WAS THERE ERROR IN THE HANDLING OF THE PW WHICH CAUSED OR CONTRIBUTED TO HIS DEATH?

11.1 I have concluded that it is more likely than not that death occurred whilst Mr. Mahmud was on the aircraft, and before transfer to the USAF. I have been concerned from the outset of this Investigation about the settled conclusion reached by the chain of command that Mr. Mahmud was unconscious, not dead, at the time he was handed over to the USAF. This conclusion was treated as providing the appropriate factual basis for assessing what was required by way of inquiry or taking action in connection with the events which had occurred. The soundness of this factual starting point was not tested or questioned. It should have been. It should not have carried the weight which was attributed to it. Had this conclusion been properly considered as an issue, it would inevitably have given rise to the conclusion that the death required Investigation. Even if the deceased was not dead on arrival it was only a matter of minutes before the USAF declared him dead. Plainly something had happened in the course of the handling of him to require investigation. Since I have come to the firm conclusion that there should have been a prompt response from the chain of command which required a probing investigation and the taking of witness statements, I might be regarded as being at

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the limits of my remit. That said I have not felt able to ignore all indications as to how the failure to direct a proper investigation came about.

11.2 The failure to give proper consideration to the issue carried potentially very deep consequences. The evidence of SO53, from the outset of inquiries has been that he had reported the death of Mr. Mahmud to HQ.²⁹² If his account, after scrutiny in this investigation, was found to be true and accurate it would give rise to serious consequences for the decisions reached at the highest level. The evidence of SO53 to Op RAKER contradicted the case for the soundness of the conclusion reached by PJHQ and it fuelled a strong suspicion that there may have been a cover-up. It follows that I have examined the evidence of SO53 in some detail.²⁹³

11.3 I accept that when the aircraft landed after the first lift, SO53 went to the American receiving Commander to discuss how to effect the handover. His recollection is that he recorded the name and details of the commander in a written report which, at a later time, he drew up. The report has not been traced. He recalled that he conducted a handover of the property comprising two holdalls containing \$635,000, which he had obtained from the AAF. For

²⁹² See section 6.91

²⁹³ See sections 6.65 – 6.70 and 6.91

these he obtained a receipt, of which I have seen a copy.

11.4 The handover to the USAF was to be effected by all the PW being in one line, but, I find that, after a short time, SO53 became aware that the offloading from Lifter 2 was slow and he went to check on the progress. At some point he approached the rear of Lifter 2 and spoke to a member of the ARF who told him there had been a “*drama*”. The prosthetic limbs of one PW had come off and another was “*possibly dead*”. The evidence discloses there was another PW who was unresponsive and subsequently turned out to have been unconscious lying at the back of the aircraft, but SO53’s account in the 1645Z Report does not record that he was told this.

11.5 I accept that SO53 went to the ramp and spoke to an ARF member who stated that one PW had possibly had a heart attack and was possibly dead. It is possible the LO asked directly: “*Is he dead or not?*” and that the response was that he was dead. It is likely the ARF member was either SO44 (a combat medic) or SO58 (untrained beyond first aid training) who were on Lifter 2.²⁹⁴ Clearly no examination had been carried out by a doctor. Equally it has to be said that the response of SO53 to what might have occurred was very low key. His evidence to me points to him having no particular

²⁹⁴ See section 6.55

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interest in the suggestion someone had died. He told me:

“All I was interested in was getting a group of men moved from one point to another and I wanted a straight answer as to whether we had to move a dead body over to the Americans

...

*I was making split second decisions”.*²⁹⁵

11.6 No attempt was made to resuscitate the PW by CPR. SO53's actions were, as I find, marked throughout, by a high degree of pragmatism and having a dead body of a PW was no more significant than the logistical problem it posed to the mission.

11.7 He returned to the US Commander to ask for a vehicle to transport the PW. I am not persuaded he informed the commander there was a dead PW. I asked SO53 about this at the public hearing, however his recollection that he told the US commander is not supported by any other evidence.²⁹⁶

11.8 When asked by me whether the death of the PW gave rise to any need on his part to do anything

²⁹⁵ SO53 MOD-83-0000586-A paragraphs 9; 13. See section 6.69

²⁹⁶ SO53 IFI 15/5/18 pp.53 – 54

further than requesting transport from the USAF, it is clear that he held the view that since the PW was to be handed over to allies, who had the infrastructure to deal with the situation, including medical facilities, his task was to hand them over and get on with the mission.²⁹⁷ He informed me that it would have made no difference to him if the PW had been reported to him as being unconscious, he would have got on with the mission and left the situation to the USAF. It follows that, in the absence of a duly qualified member of the team, he felt there was nothing which could be done. Certainly, as it seems likely that he was told there was an unconscious PW as well, he deliberately left the condition of that PW to be handled by the Americans. I can understand the adoption of a practical approach to what had occurred. It was but a short distance to the US hand over point and he had reason to believe there were medical facilities available there. I can see no ground for criticism of the decision to continue with the handover where a split-second decision was required. However, his response to the death does call for attention, in particular whether he reported the death in the manner he described to me.

11.9 He stated that he reported the death “*up the chain of command*”.²⁹⁸ However, the first written

²⁹⁷ Ibid, pp.54 – 55

²⁹⁸ Ibid p.55; see also SO53 IFI MOD-83-0000586-A

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evidence of a report from him, available as a radio log, timed at 21.10, did not state that the PW was “dead”. It referred to “1PW HEART ATTACK”, reflecting only part of the information he now recalls having received at the rear of the aircraft.²⁹⁹

11.10 Radio communications from SO53 in theatre were made to HQ1 Middle East. The procedure was for messages received in the Ops Room to be logged in the radio log.³⁰⁰ Where the message merited more attention, a gist would also be recorded in the “ops” log. Despite many requests and searches, no part of the “Ops Log” and potentially not all of the radio log have been traced and disclosed.³⁰¹ After 15 years, the recollection of the witnesses who may have been able to give evidence as to what would have been recorded has faded.

11.11 It appears likely, having regard to the terms of the Radio Log, that at the time this 21.10 message was sent, refuelling was taking place. 16 minutes later, at 21.26, the US military certified death. It is possible that the PW died in the delay between the time the aircraft put down and the certification, but I consider it more likely that he was dead on the

²⁹⁹ Annex C(i)

³⁰⁰ SO59 IFI MOD-83-0000582-A; section 7.4

³⁰¹ See section 7.4

aircraft when it landed, having died in the course of the journey.

11.12 SO53 learned of the certification between the second and third lifts and recollects passing on the information to HQ1 Middle East. He recalled doing so on the flight to pick up the last remaining PW, but I have real doubts that he did report that the death had occurred during the course of the mission.³⁰² I have seen no record of such a communication. The radio log timed at 21.10 on the 11 April records 15 PW as having been dropped, it refers to the process of refuelling which was taking place in preparation for the next lift. It is therefore a record of a report sent or compiled around the time SO53 has maintained he sent a report but it does not state that the PW was dead, merely that he had had a heart attack. He may have thought it had been a fatal heart attack, or that by reporting a heart attack he had said enough to report a death, but I have no doubt more was required than an ambiguous message. The recipient of the message would have had no reason to know how serious it had been.

11.13 After the completion of the mission, SO53 held a “*hot debrief*”. He confirmed in his evidence to me that he learned that an unconscious PW had been able to walk when he arrived at the US handover, that in the course of the flight the PW, who had subsequently died, managed to get to his

³⁰² See section 7.6

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feet, that he had been thrashing around with his arms and had been put down in a controlled fashion and made secure.³⁰³ But more importantly, his evidence was that the fact that someone had died was mentioned at the debrief. This is not supported by the evidence of others at the debrief.

11.14 He told me that he reported these matters to HQ1 Middle East, in particular the information in relation to the certification of a dead PW.³⁰⁴ I pressed him to say whether he was sure he had done that and he replied that he was sure. I accept that it was reported that death had been certified even though there is no record available of such a report, because there is other evidence which points to the fact that by about 08.00hrs GMT, information had been received in PJHQ via HQ2 Middle East that one PW had been unconscious when delivered to the USAF and had been certified as dead.³⁰⁵ But I am unable to accept as accurate that he told his HQ that there had been a disturbance on the aircraft which had required the PW to be “*put down*”. He could have included this in his 1645Z Incident

³⁰³ See section 7.8; SO53 IFI 15/5/18 p.64

³⁰⁴ Ibid, p.65

³⁰⁵ See section 11.15

Report, but he did not do so. This information was given later in the report sent by SO47.³⁰⁶

11.15 His recollection is that he received a request from HQ1 Middle East “*to provide a written report on the mission*” and that “*he compiled a written overview transmitted by written means*”.³⁰⁷ The only available statement is headed as a statement of SO53, timed at 16.45 12 April. But it was not signed by SO53 but was “*witnessed*” by the ARF Commander and CO of II Sqn (SO55). As I have observed, there must have been an earlier communication, before 16.45, because PJHQ and HQ1 Middle East had received a report of an unconscious PW who had subsequently been certified as dead. This information was discussed both in London and in HQ1 Middle East around 08.00 GMT in the morning.³⁰⁸

11.16 The 1645Z Incident Report is a confusing document. Notably it makes no reference to the PW being dead or being certified as dead by USAF but refers to the possibility or potentiality that a PW had had a heart attack. It makes no reference to the disturbance which had required him to be “*put down*”. It reflects no part of the information which SO53 recollected being given at the debrief. Its contents are broadly consistent with the effect of the

³⁰⁶ See sections 7.13 – 7.20

³⁰⁷ SO53 IFI 15/518 p.65

³⁰⁸ See sections 7.45 and 7.50 – 7.51

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evidence given to me by the ARF commander, SO55, who witnessed it.

11.17 Whether the PW was dead on the aircraft or died within the minutes up to the moment of handover or in the minutes up to the certification of his death should have been of no great moment and should not have affected the decision making at PJHQ. In all probability he must have been so close to death while in the hands of BF that a firm and final conclusion was not required. But it is clear that the decisions of the military high command were driven by reliance on the information that he had been unconscious when handed over and had been subsequently certified as dead by the USAF. No time frame was given at any material stage to inform HQ as to how long after handover to the USAF the certification took place. I am satisfied that legal advice was given at PJHQ in the morning of 12 April on the basis that he had died in the custody of the USAF and that no circumstances existed giving rise to suspicion in connection with his death. Had it been concluded he had died or could have died whilst in the custody of BF, I believe the advice may have been different.

11.18 Unless the evidence of SO53 can be treated as reliable, the quality and intent of the reporting fell short of conveying the conclusion that a PW had died. I have doubts about the accuracy of his evidence that he pressed for an answer and was

told by an ARF member that the PW was dead. He did not report this to the ARF commander (SO55). There is a lack of evidence that he communicated this to anyone. It is possible that because he saw no particular significance in whether he was dead or unconscious he took the decision not to commit himself to any conclusion other than the speculative suggestion that the PW had suffered a heart attack. This reinforces my real doubt as to whether he reported that the PW was dead on arrival via radio. I am satisfied that he would have continued with the mission and handed him over to the USAF even if he had thought he was simply unconscious. He had no reason for not reporting the death or not communicating it to the ARF Commander if that is what was clearly in his mind at the time. No-one else suggests that it was mentioned at the “*hot debrief*” and the contemporaneous written record does not corroborate his recollection nor support a finding that he accepted the opinion which had been given to him that the PW was dead.

11.19 It is possible that one or more of the ARF members thought he might be dead, but they did not consider themselves qualified to reach a firm conclusion on a medical issue.³⁰⁹ They did not seem to place great weight upon the possibility of death or injury nor address the consequences. In the circumstances of this hasty and tense operation in

³⁰⁹ SO40 IFI 16/5/18 p.46

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difficult conditions probably they were more intent on completing the tasks assigned to them. In the result it seems more likely than not that the information reported to London was to the effect that a PW had arrived unconscious and had subsequently been certified dead by the US military. It follows that cause for deep concern for serious consequences to flow from SO53's evidence and a deliberate failure to act on a reported death of a PW at PJHQ do not arise. However, I must at a later stage consider whether too much weight was attached in the decision-making process to the information that he was unconscious at handover.³¹⁰

The Handling by the ARF on Lifter 2

11.20 I am satisfied that the confusion over the numbers to be loaded and where they were to be loaded caused a breakdown in the security being exercised over the PW. One member of the ARF was left to control a large, strong PW who succeeded in breaking free of his cuffs and taking off his hood. He had to be restrained and put to the floor of the aircraft.³¹¹ His conduct probably did not call for lethal force to be used but I am satisfied that he presented a real threat to the safety of the men and the aircraft. I am satisfied that there was little or no time to make an assessment of the degree of

³¹⁰ See section 12

³¹¹ See sections 6.32 – 6.48

force which was required for him to be put to the floor. SO38 candidly accepted that before he got hold of the person he did not think “*what force am I to use?*”. I cannot rule out that less force could have been used but he was resistant and impact with the hard metal floor or vehicle rail was capable of causing some significant injury.³¹² On the evidence I am satisfied that there were two PW who presented a threat to the safety of the aircraft and the men.

11.21 It follows that I find it more likely than not that the handling of the PW, in the manner I have endeavoured to describe, did cause his death. It seems likely that the action would itself have caused noise, raised voices and violent physical struggling, but having regard to the noise from the aircraft, the very limited visibility within the aircraft and the need for the ARF members to look to the security of their own PW, I am not surprised that there are no other accounts available to me of the detail of what happened. The evidence has not enabled me to establish the cause of death. The dark and onerous circumstances on the aircraft were not conducive to the ARF being able to provide clear evidence as to what they saw and heard. As a result, I have not been able to establish how the deceased met his death beyond my conclusion that it resulted from his handling. In the absence of a post-mortem or

³¹² See Annex B

SECTION 11: WAS THERE ERROR IN THE HANDLING OF THE PW WHICH CAUSED OR CONTRIBUTED TO HIS DEATH?

thorough medical examination of the deceased, I have no evidence of the cause of his death.

11.22 I considered exhuming the body for the purposes of examining the cause of death and determined that there is no realistic possibility at this stage of being able establish the cause of death given the passage of time, and that exhumation would not be reasonable and proportionate, even if possible.³¹³ In reaching this view I considered the inquiries made by Op RAKER into the logistical obstacles and cost of exhumation and the likelihood of establishing the cause of death, which informed the decision not to pursue this course of action.³¹⁴ Whether exhumation ought to be pursued was re-considered by Op SPELT between 2012 and 2014. Advice was sought from Forensic Pathologists at the Centre for Anatomy and Human Identification at the University of Dundee, who produced a Report for the investigation concerning the forensic value of

³¹³ For consideration of exhumation for the purposes of establishing the identity of the deceased, see sections 10.14 – 10.15. In R (Al-Sadoon & Ors) v SSHD (No. 2) [2016] 1 WLR 3625, Leggatt J considered the extent of the investigatory requirements under Article 2 in cases investigated by the IHAT and where exhumation had not been performed. He affirmed at [110] – [116] that the IHAT had sufficiently discharged the state's duty under, *inter alia*, Article 2 without taking this step.

³¹⁴ 26 March 2004, Decision Log 13

photographs of the deceased, the condition of the remains given the period since burial, and the possibility of evidence retrieval should exhumation be performed.³¹⁵ The report concludes that: the poor-quality images available provided no evidence to support the suggestion that the PW's neck had been broken, although this could not be excluded as a possibility;³¹⁶ the prospects of ascertaining cause of death would depend upon the state of the body, which is likely to be fully skeletonised (although this will depend on environmental conditions);³¹⁷ it is possible that investigations may assist enquiries into whether asphyxiation from ligature occurred or whether there was damage to the vertebral column.³¹⁸

11.23 I made enquiries with the British Embassy in Baghdad regarding the feasibility of exhumation in the region. The British Embassy confirmed that this may be possible, however the most important consideration would be the family's wishes.³¹⁹ I am satisfied that doing so would be difficult and

³¹⁵ Report dated 27 August 2014. I have not sought further pathology advice, taking the view that this would be disproportionate under the circumstances set out in this paragraph

³¹⁶ Ibid, p.10

³¹⁷ Ibid, p.10-11

³¹⁸ Ibid, p.11

³¹⁹ Email dated 31 December 2017 from Brig Rob Jefferies, Defence Attaché, British Embassy Baghdad

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costly.³²⁰ While I have seen co-ordinates and a sketch map indicating the burial site of Mr. Mahmud, there would be difficulties in locating the body which are compounded by my understanding that there may be at least one other body buried at H1. Without having been able to identify the family of the deceased, I am unable to take their views into account.

11.24 I find it more likely than not that Mr Mahmud died whilst on the aircraft which carried him from the PUP to the airfield adjacent to the USAF holding facility.

11.25 I find that he was one of two PW who strongly resisted being captured and being placed on the Chinook aircraft (Lifter 2).

11.26 I find that each of the PW who resisted were forcibly restrained and placed on the floor of the aircraft. They were bound at the wrists in plasticuffs and were hooded.

11.27 I find that one of the two non-compliant PW resisted and was forcibly restrained before the aircraft left the PUP and that the other non-

³²⁰ Although I have not quantified the costs involved, it is reasonable to assume that significant costs would be incurred:

R (Keyu) v SSHD [2015] UKSC 69 at [130]

compliant PW had to be restrained shortly after take-off. Both were motionless on arrival.

11.28 Two motionless PW were conveyed by a Humvee vehicle to the US facility but only one of them was dead on arrival. The other was able to walk after arrival at the facility.

11.29 I find that conduct amounting to strong resistance to capture, for example by becoming free from plasticuffs and a hood and the flailing of arms, in the confines of the crowded aircraft would have presented a risk and threat to the safety of the members of the ARF who had to guard the PW and a threat to the safety of the aircraft and the whole crew.

11.30 I have no evidence which has enabled me to connect the forcible restraint which was applied to the two PW to be the cause of the death of one of them although, as a matter of inference it is more likely than not that it did. I reject the suggestion that the PW died of a heart attack because there is no basis for concluding that he did. The evidence I have is that it was a single speculative suggestion made by one of the ARF as a possible explanation for two motionless PW on the aircraft and a passing observation, in bad light, made by a USAF soldier that the deceased's chest had been shaved.

11.31 The clear inference of a connection between the death of the PW and forcible restraint by a member of the ARF provides no basis for reaching a

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conclusion on the cause of death. I am unable to conclude whether the force used caused injury or whether injury was caused by forcible contact with the floor of the aircraft or whether it was a combination of both. It would be entering into the realm of pure speculation to suggest other causes such as being suffocated, either from the hood, or him being sat upon. It seems likely that the actions caused a degree of commotion in the confined space of the aircraft, accompanied no doubt by shouts and raised voices and sustained forceful action.

SECTION 12: ISSUE 3: WAS THERE AN ADEQUATE RESPONSE TO THE TWO MOTIONLESS PW?

12.1 I have concluded that the lines of responsibility for handling the PW who had been forcibly restrained were not clear and that much of the explanation for this is that it was a specialist mission where reporting up the chain of command rests with the Liaison Officer and the working convention is that there is a minimum of open discussion. A proper response to the two motionless PW required more than their removal to the US facility. There should have been some basic and immediate inquiry in to what had occurred.

12.2 SO53 showed some curiosity in their condition but little or no interest in what had happened. I do not believe he saw it as a priority and he said nothing to SO55. I believe this stemmed from his training and the nature of the role he was performing. As a trained and experienced LO, he knew that he had responsibility for ensuring that the mission was completed. He realised that he had to report that something had occurred and in haste alighted upon the suggestion that the PW had suffered a heart attack. I do not believe when handing over the PW to the USAF that he emphasised that there was a need for them to carry out a careful medical examination of the PW. He may have assumed that they would do so, but I do

SECTION 12: ISSUE 3: WAS THERE AN ADEQUATE RESPONSE TO THE TWO MOTIONLESS PW?

not believe that he realised the BF needed a report in order to fulfil their responsibility to the PW. In this respect, I take note that the MOD's publication in 2014, reporting upon systemic issues in the reporting of death and mistreatment of detainees, identifies the requirement that a report should be made within four hours of an incident occurring.³²¹

This should lead to the training of all those in command of missions being aware that prompt and immediate steps must be taken to gather reliable information for the use of the chain of command.

12.3 SO55 was not kept adequately informed. He recalls that after all the PW had been delivered to the USAF, it was the US commander who informed him: *"That guy from lift one was DOA"*.³²² He did not recall SO53 informing him during the mission that a PW had been dead on arrival, but felt this was unlikely as he was surprised to learn this at the end of the mission.³²³ This exchange took place before the *"hot debrief"* but nothing was said at the debrief by him or SO53 about the dead PW.³²⁴ I consider the absence of any comment at the debrief about the dead and the unconscious PW to be a strong

³²¹ 'Systemic Issues Identified from Investigations into Military Operations Overseas: July 2014', section D-17. See further SOI J3-9, MOD-46-0000029-A and 'Joint Doctrine Publication 1-10 Captured Persons (CPERS)' (3rd Ed.) January 2015.

³²² SO55 20 Aug 2003, p.7

³²³ SO55 IFI MOD-83-0000584-A, paragraphs 29 – 30

³²⁴ Ibid, paragraph 32

indicator that the importance of what had occurred had not been registered. There had been insufficient training about the need for immediate reporting in connection with any possible mistreatment of PW. There was likely to have been a reluctance to engage in discussion which would give oxygen to the rumours which were likely to flow from the incident. At least one witness recalls SO53 discouraging discussion. Nothing was said about a death by SO55 when he reported to the Command Post shortly after the debrief.³²⁵ These events happened in the course of the night or the early hours of the 12 April, but SO55 visited the US sector later in the day. Upon this visit, the US Colonel confirmed the death and informed him that the deceased had been buried first thing that morning. He also mentioned that there were some high-value targets for the coalition in the collection of PW and that the deceased appeared to have been prepared for a suicide mission, because he had a shaved chest and further that he had a scar which could indicate he had had cardiac surgery. He thought the deceased may have been connected to the PW with no legs and mentioned documents which had been found offering \$5000 for the head of any US serviceman. SO55 next met with two US investigating officers who asked for statements from all those on the mission. He returned to the BF base

³²⁵ Ibid, p.8 Q1

SECTION 12: ISSUE 3: WAS THERE AN ADEQUATE RESPONSE TO THE TWO MOTIONLESS PW?

and reported on this request to SO53 and the commander of II Squadron.³²⁶

12.4 The Warrant Officer for the BF also visited the USAF on the morning of the 12 April to ascertain whether accusations were being levelled at BF personnel and left with the overall impression that there were no issues to address.

12.5 It seems likely that it was around this time that the 1645Z Incident Report, to which I have already referred as a confusing document, was drawn up. SO55 recollects the departure of SO53 at or about this time.³²⁷ It is generally agreed he left the base for another mission. It is likely the document was created to meet the demand from HQ for more details. It plainly failed to give details of what was then known to those in theatre. I have considered whether the contents were drafted with deliberate vagueness but have concluded otherwise. I see the document as consistent with my firm conclusion that there was a lack of understanding about the need for immediate, reliable and thorough reporting in connection with the possible mistreatment of PW and a belief that perfunctory attention could be paid to the request.

³²⁶ SO55 20 Aug 2003

³²⁷ SO55 20 Aug 2003

12.6 Following the request for further information, SO55 recalls that at about 20.00 on the 12 April he sat down with SO47, SO38 and SO39 to compile a more detailed report.³²⁸ SO47 took the lead in drafting this report but regrettably the PW had already been buried and no adequate medical examination had been carried out.

SO47's Written Report

12.7 The facts recorded in SO47's report commencing on page 2 have remained unchanged to this date. After the passage of 15 years, I have no reason to doubt the essence of the account the men have consistently given since I have not been able to test their accounts by reference to any probative objective evidence, such as a post-mortem or medical evidence.³²⁹ It is significant that the report appears to me to have recognised that there could be a need for "statements" to be taken and emphasised that the process would require the men to have the protection of legal representation. I have no doubt that SO47 realised that to have delivered two unconscious PW to the USAF after a short journey in a crowded aircraft raised questions about the way in which they had been handled. For reasons which I understand, principally that it was for PJHQ to decide what to do, he was not prepared to carry out the forensic questioning himself. He

³²⁸ SO55 20 Aug 2003

³²⁹ See sections 11.30-11.31

SECTION 12: ISSUE 3: WAS THERE AN ADEQUATE RESPONSE TO THE TWO MOTIONLESS PW?

wished to accord proper protection to his men. But he did nothing to prevent that course being adopted.³³⁰ It was for PJHQ to consider the position and to decide what further action was necessary.

12.8 Although the report makes no mention of one of the PW being certified dead shortly after being handed over to the USAF, it seems to me that this was not because it was not known at the time of the report that this was the case. Nor does the report refer to the fact that he had been buried in the early hours of 12 April. I am satisfied, having seen the SITREP from HQ2 Middle East to PJHQ timed at 23.00 hours on 12 April, that this information was communicated up the chain of command and that it was known that the USAF had requested a detailed report and or statements.

12.9 It is clear to me that there should have been a medical examination of the deceased to determine the cause of death and to report on whether he had sustained any recent injury.

12.10 It is clear to me that medical expertise and facilities for carrying out an examination were known to be available at the US military facility, within a short distance of the aircraft upon which the deceased arrived, whereas none were available on the aircraft.

³³⁰ SO47 IFI MOD-083-000580-A, paragraphs 56–61; SO47 IFI MOD-083-000574-A paragraphs, 3.3; 3.5

12.11 I find that little or no information was provided at the time of handover to the US military by the BF. It is possible that this was due to a state of confusion on the part of the BF, a lack of communication between the members of the ARF who had some knowledge of the circumstances of what had occurred combined with the dominating sense of urgency that existed to continue with and finish the mission.

12.12 The UAF, having certified the deceased as dead and given notification to the American Department of Defence, commenced an investigation under Art.121 of GC III.³³¹ They did not carry out a medical examination of the deceased in order to determine the cause of death because there was no qualified pathologist available at that time who could carry out a post-mortem.³³² Earlier an assessment was made by a US soldier that he could not find “signs of trauma or mortal wounds” and the only wound which was noted, was a bloody nose.³³³ In the result it was certified that the cause of death was unknown and in the early hours of the 12 April the deceased was buried. That said, it is clear to me that had the USAF been requested to exhume the body in order that a medical examination could be carried out, steps could have

³³¹ See sections 8 and 9.7

³³² See section 8.4

³³³ See section 8.2

SECTION 12: ISSUE 3: WAS THERE AN ADEQUATE RESPONSE TO THE TWO MOTIONLESS PW?

been taken to conduct a proper post-mortem, and it is unlikely that the request would have given rise to difficulties. Even though the USAF had not carried out a medical examination to determine the cause of death, the fact that he had been buried would not have prevented one being carried out.

SECTION 13: ISSUE 4: WHETHER THE RESPONSES OF THE HIGH COMMAND TO THE REPORTS IT RECEIVED WERE PROMPT, EFFECTIVE AND IN ACORDANCE WITH WHAT WERE REQUIRED?

13.1 PJHQ had the authority to order an immediate investigation into the circumstances surrounding the death of the deceased. It should have done so. Had the 2012 SOI J3-9 been in force, a “First Impressions Report” would have been submitted to the Force Provost Marshal within 4 hours of the incident.³³⁴ PJHQ would have been informed. If necessary, exhumation followed by a post mortem could have taken place. It seems to me that the prospect of an Art.121 investigation being carried out by the USAF may have led to too little attention being given to the obligations which the BF should have assumed. It could have given rise to the comfortable perception that it could be left to the USAF, although this approach was inconsistent with a stated reluctance to allow the USAF to have access to the ARF members and without that access the USAF were to receive only the report from SO52 which had been drawn up on the basis of the report from SO47. Thus the request from the US military for statements was declined and a copy of the report was sent to them. The report of the

³³⁴ Section 16, SOI J3-9, MOD-46-0000029-A

SECTION 13: ISSUE 4: WHETHER THE RESPONSES OF THE HIGH COMMAND TO THE REPORTS IT RECEIVED WERE PROMPT, EFFECTIVE AND IN ACORDANCE WITH WHAT WERE REQUIRED?

Staff Judge Advocate concluded with a number of recommendations including the following:

*“Recommend that this matter be forwarded through the chain of command to the liaison officers responsible for the implementation of the tripartite agreement to mutually arrange or determine which party is the Detaining Power for the purpose of taking other appropriate action”.*³³⁵

13.2 I have seen no evidence that this line of inquiry was followed up. I have no evidence that the lawyers in London addressed this issue. I do not believe that my TOR extend to the enquiry to which this could give rise nor do I consider that my TOR extend beyond reaching a conclusion that the most likely fundamental reason why no investigation was ordered stemmed from the legal advice which was given.

13.3 I am satisfied that a decision was reached by the high command, after legal advice had been received, that because the PW was not certified dead until he had been handed over to the US facilities, no formal request of PJHQ, nor any decision by PJHQ for action to be taken was required. As a result, no investigation was ordered,

³³⁵ MOD-83-0000590-A

no post-mortem or autopsy was ordered and no investigation by the P&SS took place. I have not been able within the scope of my inquiry to embark upon a consequential search for the author or authors of the legal advice. I can say that I am satisfied, having received evidence from her, that it was not advice given by the PJHQ Legal Advisor, CO1.³³⁶ It was, I am satisfied, legal advice from PJHQ which determined the core of SO61's decision to record that no further steps were necessary.³³⁷ It is a matter for others to decide whether my conclusion requires any action to be taken.

13.4 The absence of a medical examination of the deceased taking place, the absence of a post mortem being carried out and the availability only of the results of a limited medical perusal of the upper part of the deceased's body by a doctor has given rise to serious and sustained consequences for a period of fifteen years.

13.5 The report from the commanding officer, SO47, disclosed circumstances which should have been investigated. The Assistant Chief of Staff responsible for J1 (Personnel) and J4 (Logistics) at PJHQ in 2003 (SO67) accepted in his evidence to me that the need for an investigation seemed to

³³⁶ See sections 7.50-7.52

³³⁷ See sections 7.29-7.34

SECTION 13: ISSUE 4: WHETHER THE RESPONSES OF THE HIGH COMMAND TO THE REPORTS IT RECEIVED WERE PROMPT, EFFECTIVE AND IN ACORDANCE WITH WHAT WERE REQUIRED?

have fallen “*through the cracks*”.³³⁸ His evidence, which I accept, was that a decision that there was to be no investigation into the death would ultimately have been a Full Command responsibility to take the decision as to whether there should be an investigation, and that he was authorised to take such a decision on behalf of the CJO.³³⁹ The matter should have been investigated in accordance with JWP 1-10 but wasn’t, and as a result there is no evidence about how the PW died.³⁴⁰ The matter fell through the cracks unintentionally, and the involvement of SMUs in particular “*muddied the waters in relaying information back across the chain of command*”.³⁴¹

13.6 The PJHQ Legal Advisor, CO1, who was but briefly engaged to help, did not see SO47’s report at any material time but accepts that had she done so she would have advised of the need for an investigation to be ordered.³⁴² I agree with her view. SO47’s report detailed events which took place on the aircraft which pointed to the likely conclusion the deceased had died on the aircraft. Further and in

³³⁸ SO67 IFI MOD-83-0000579-A, paragraph 13

³³⁹ Ibid, paragraph 7. Full Command resided with the Commanders in Chief for Fleet, the Army and RAF

³⁴⁰ Ibid, paragraph 12

³⁴¹ Ibid, paragraph 13

³⁴² CO1 MOD-83-0000589-A, paragraph 10

any event, it contained facts which merited prompt investigation in order to determine whether the actions of the members of the ARF caused or contributed to the death of the deceased. The report gave rise to a reasonable conclusion, which may or may not have been borne out by the taking of statements, that the body should be promptly exhumed for a thorough medical examination to be carried out.

13.7 In the absence of these steps being taken, allegations of a cover-up have been advanced, lengthy investigations and reviews have taken place and the members of the ARF who had the deceased under their control have lived with years of stressful uncertainty.

SECTION 14: CONCLUDING COMMENTS AND RECOMMENDATIONS

14.1 The margin of difference between the outcome of this mission and the aspirational instructions set out in JPW 1-10, formulated on the basis of a clear recognition of the historical perspective that surrounds the treatment of PW, has already given rise to concern within the MOD.³⁴³ The contents of the 2014 Systemic Issues report draw upon the IHAT review into the death in this case.³⁴⁴

14.2 The layers of authority involved in the framework for a chain of command can give rise to two particular mischiefs. Firstly, that it is very difficult after the event to determine at what stage a decision was reached and who was party to it. Secondly, that if it becomes necessary to identify who knew what at any particular moment, “*the fog of war*”, as SO52 so vividly described it, is likely to make this a very elusive goal.³⁴⁵

14.3 I believe that the requirement for reporting to take place within four hours of an incident occurring³⁴⁶ is an essential first step in providing a

³⁴³ ‘Systemic Issues Identified from Investigations into Military Operations Overseas: July 2014’

³⁴⁴ Ibid. p.3

³⁴⁵ SO52 IFI MOD-83-0000587-A

³⁴⁶ SOI J3-9

practical foundation for ensuring that the “*benchmark*” for the preservation of “*culture and humanity*” is met.³⁴⁷ I suggest that a need exists for the person having the duty to report to be unambiguously identified and where CF are involved, to liaise, inform and co-operate with the other forces.

14.4 SMU should have ready access to legal advice. Should sensitivity require it, their own legal advisers. Where specialist units are involved in a mission with support from other military units, it should be clearly understood by all involved that where reporting is required there must be an adequate degree of communication and discussion to enable the reporting to be of value.

³⁴⁷ JWP 1-10, para 103

ANNEX A:

Image of deceased



The diagram illustrates the Starboard side of a ship, showing the movement of EPW 8 during flight. The central area is labeled "Starboard side roaming up and down A/C". The diagram includes a central area labeled "Starboard side roaming up and down A/C" and a "PORT" side. Various personnel are shown, including EPW 1 through EPW 10, and SOX 1 through SOX 10. A dashed line indicates the movement of EPW 8 from the Starboard side to the PORT side. A box labeled "ERT" is also present.

ANNEX C:

- (i) Extracts of Radio Log, HQ1 Middle East,
11 Apr 2003

Date		Own Call Sign		Frequency	
Time	Call To	From	N.R. No.	Text	Date/Time Group
1443					
1512					
1542					
1551					
1600					
1610					
1612					
1620					
1630					
1640					
1650					
1651					
1656					
1703					

The Iraq Fatality Investigations

Date		Own Call Sign		Frequency	
Time	Call To	From	N.R. No.	Text	Date/Time Group
7043					
7072					
7049					
7053					
7100					
7105	FID	664		20002102	
2118	FID	664		200021102	
	FID	67L		C/S AT HI, 15 POW	ERRAND
				DROPPED, 1 POW POW	
				HEART ATTACK C/S REFUEL	
				FOR NEXT LIFT, RE-LIFT	
				HAVE CHIEF FIVE	
7115					
7114					
2135					
2137					

(ii) "Incident Report" 121645Z Apr 03

OFFICIAL - SENSITIVE PERSONAL

EPW INCIDENT - WITNESS STATEMENT - SSF

FOLIO

1. I was the ARF Comd on the night of the incident 110403. On arriving at H1 from collection of a group of prisoners. I walked with 2 others to the US reception party. I spoke with the Comd of the US grouping then informed the UK FIC Comd of [REDACTED] 1 to bring the EPWs to the reception point. I then moved to [REDACTED] 2 to RV with the Chalk Comd and, instructed him to bring the EPWs to the reception point. At this time I walked to the rear of [REDACTED] 2 and was informed that 1 x EPW had potentially had a heart attack. I asked how did he know this and his reply was he was not moving on the a/c and would request veh PV. I also discovered at this point 1 x EPW was immovable due to him having no legs, they were artificial and had come off in transit to H1. I then moved back to the reception RV and told the US C/S to move a vehicle to the CH47 with the potential heart attack and informed him that 1 x EPW had no lower limbs.
2. The Comd of the reception party was asked more than once to get a vehicle to the 2 x immovable pax ASAP. This did happen.
3. The Comd was then asked if he was in agreement that he had 15 EPW in his control to which the answer was yes.
4. At this point he was aware of the two immovable pax and I informed him that I would return in approx 1 hour to deliver further EPWs.
5. The receiving Comd was called [REDACTED]. The handover procedure was verbal if so I did ask if there was paperwork to be filled in, for him to have ready on my return journey. The paperwork did not appear and I was not asked to fill any in. This was agreed again verbally on subsequent trips.
6. No med was called at H1. The EPW was put onto a Humvee and moved to the reception location.
7. I did not witness any medical vehs or personnel at the H1 HLS.

Witnessed By

(Original Signed)

S055

11 Sqn RAF Regt
121645Z Apr 03

1 of 1

USO Operations File [REDACTED] JICOMUS EPW INCIDENT - ARF at H1 [REDACTED] EPW INCIDENT STATEMENT - SSF [REDACTED] doc

OFFICIAL - SENSITIVE PERSONAL

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The Iraq Fatality Investigations

(iii) SITREP 122300Z Apr 03

OFFICIAL SECRETARY PERSONAL
UK EYES ONLY

PRIORITY

DTG 122300Z APR 03

FM [REDACTED] MAIN
TO [REDACTED] J3 OPS
[REDACTED] J3 WATCHKEEPER
[REDACTED] J3 REGISTRY
[REDACTED] OPS OFFR
[REDACTED] OPS WO
[REDACTED] OPS REGISTRY SSGT

ENCLOSURE
10

SECRET UK EYES ONLY
SIC IAG

OP [REDACTED] OPERATIONAL SITREP DTG 122300Z APR 03

1. Overviews

a. CO Overview

[REDACTED]

[REDACTED]

[REDACTED]

1 of 7
OFFICIAL SECRETARY PERSONAL
UK EYES ONLY

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(5) The new currency is clean drinking water. The people are increasingly desperate for it, gesturing pathetically as one drives past.

b. COS Overview.

c. Enemy Engagements. Nil.

d. Casualties. Nil.

2. Operational Status.

a. [REDACTED]

(1) Locstat. [REDACTED] complete [REDACTED]

(2) Last 24 hrs.

(a) The meeting between Tribal/District leaders is ongoing, to continue tomorrow, facilitated by the OGA force commander, and monitored by Sqn C/S. Report to follow.

OFFICIAL SENSITIVE PERSONAL
2 of 7

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C:\DOCUME~1\m\LOCAL~1\Temp\Temporary Directory (1) for 381300C-IMPEX-30193_0\40405300\Operational Status 122300Z Apr 95.doc

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VE PERSONAL

- (3) Intent next 24 hrs.

- C

- 3 of 7

PERSONA

PHOTOGRAPH BY JIMMYE L. HARRIS FOR THE U.S. AIR FORCE

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(c) Intent next 24 hrs. Awaiting decision on movements.

(2) Section (att)

(a) Locstat

(b) Last 12 hrs. Assisted with negotiations in
All is going well and the locals are happy to work with the coalition.

(c) Intent next 24 hrs. Awaiting OC intent.

d. Air.

(1) Last 24 hrs. Two left the FMB to carry out a resupply for
 and at H1. The 2 carrying the above resupply then loaded
elements of and moved forward to . A further 2 departed
the FMB with the and a resupply for once complete they
moved back to H1 with the to load elements of and return to
 . All 4 moved back to H1 loaded the remainder of and
returned to to unload. Two moved direct to the FMB, one went
via to collect the LO and the fourth went via H1 to collect the
 Tp and return to the FMB.

(2) Intent next 24 hrs. Two will move from the FMB to with
5 vehicles and . These Ac will bring out 2 vehicles and return to the
FMB. A 3rd will either at H1.

TYPE	TAIL NO	AIRCRAFT STATE	CREW STATE	ROLE	BFT CODES	LOCATION	REMARKS

e. Avn.

(1) Last 24 hrs. NSTR.

(2) Intent next 24 hrs. Possible crew rotation between the FMB and H1
crews.

TYPE	TAIL NO	AIRCRAFT STATE	CREW STATE	ROLE	BFT CODES	LOCATION	REMARKS

- 4 of 7 -

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CONFIDENTIAL - Restricted to UK Eyes Only - Temporary Release (1) for UK Eyes Only - Restricted to UK Eyes Only - Confidential - Restricted to UK Eyes Only

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2. HI FOR

- (3) Perspec.

ARMY			RAF			NAVY/RM			
OFFR	SNR	JNR	OFFR	SNR	JNR	OFFR	SNR	JNR	TOTAL

(3) Inter next 24 hrs. 6 personnel fm CME Tp are deploying to [REDACTED] 12 APR 03. 1/4 Tp (CME) at [REDACTED] planning/preparing for possible operation i/v [REDACTED] on 14 Apr 03.

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i. NBC

- (1) Locstat. 2x SMT pers at H1.
- (2) Last 12 hrs. NBC threat state [REDACTED] MED declared for IZ above the 31st parallel.
- (3) Intent next 12 hrs. NSTR.

j. W Coy, 45 CDO RM

- (1) Locstat. OC Gp [REDACTED] 2IC Gp [REDACTED]
- (2) Last 24 hrs. Conducting Ops in Sp of CME Tp ivc [REDACTED] followed by VCP tasks on [REDACTED] and [REDACTED] in 1/2 Coy groupings.
- (3) Intent next 24 hrs. Continue to conduct VCP task on MSR [REDACTED] and [REDACTED] 2IC Gp to H1 to collect veh spares and backload pers.

k. II Sqn RAF Regt

- (1) Sqn Main / A Flt / C Flt & SW Flt
 - (a) Locstat. H1.
 - (b) Last 24 hrs. FP of H1 and ARF. Mor CP & 2 x Mor dets detached to [REDACTED]
 - (c) Intent next 24 hrs. FP of H1 and ARF.
- (2) B Flt (section)
 - (a) Locstat. [REDACTED]
 - (b) Last 24 hrs. FP [REDACTED]
 - (c) Intent next 24 hrs. FP [REDACTED]
- (3) B Flt (-) / D Flt [REDACTED]
 - (a) Locstat. FMB.
 - (b) Last 24 hrs. FP of FMB.
 - (c) Intent next 24 hrs. FP of FMB and other tasks as detailed.

3. J2. See J2 Intsum.

4. J4. NSTR.

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UK EYES ONLY

CRISP/COME - Products/PLACALS - 12/04/01 Frequency Standing 11 for 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OFFICIAL [REDACTED] UK EYES ONLY PERSONAL

5. 16.

- a. All radio and CIS has remained operational.
- b. 4 x [REDACTED] and frt inserted to [REDACTED]
- c. ECM Advisor and one [REDACTED] deployed to [REDACTED]

6. 17. NSTR.

7. Future Intentions.

- Continue negotiations to the compliance of [REDACTED]
- LOC interdiction.
- Operations in [REDACTED]

8. COS Comments.

- Last night [REDACTED] moved a selection of EPW's from [REDACTED] to H1. During the move of EPW's died. TFHQ has requested statements from all concerned to submit a report of the death to [REDACTED]

Signed on e-mail.

[REDACTED]
Maj
Ops Offr

OFFICIAL [REDACTED] UK EYES ONLY PERSONAL

7 of 7

[REDACTED] UK EYES ONLY

DISCLOSURE: This document contains information that is exempt from public release under the Freedom of Information Act 2000. It is to be controlled and handled in accordance with the provisions of the Act.

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(iv) 'SO47 Report', "EPW Incident ARF – Fri 11 APR 03", 12 April 2003

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H1/IIS/Ops

12 Apr 03

ENCLOSURE 5 TO
33154/2003
DATED 22 JUN 04

XXXXXXXXXX

Copy to:

II Sqn RAF Regt - 2IC

EPW INCIDENT ARF - FRI 11 APR 03

1. Thank you for taking the time to talk to me on this PM and alleviate my fears that resulted from the apparent 'Salami Slicing' of information you required. You are now aware that I would not wish, as discussed, for this document to be used as a legal statement. **If formal Statements are required I would wish, as a prudent precaution, to have a legal representation present with my men.** Therefore, as discussed, I would appreciate it if you would refrain from forwarding this document to higher formations without that understanding. I also feel an overview of the ARF SOP for EPW handling would be worthwhile at this point:

a. The CH47 (Heli 2) concerned has 14 pax from the ARF:

- 1 x chalk commander / positioned outside a/c in overall control
- 2 x pax at front of a/c as internal over watch
- 1 x tie and bag man (linkman) positioned as ho/to man between the two forces
- 10 x pax in pairs for reception and processing of EPW onto a/c (the second pair on board included the chalk 2 i/c who once on board would control the ac if chalk commander not available) one man to handle and one man to cover:

-- EPW handled from the rear one hand on collar and one hand on the small of back.

-- EPW cover from one metre to the left/right and be prepared to handle if EPW became difficult.

- In a/c EPW handled to the floor by applying pressure and weight. Handler then kneeled beside / on top of the EPW, cover man remaining standing until required. All EPW placed nose to tail with one man kneeling next to him and one standing and covering. However, due to increased number of EPW the ARF/EPW ratios were slightly reduced.

2. Overview

a. For the first transit Heli 1 (chalk commander SO55 [REDACTED] accompanied by OC ARF, the LO was due to take 7 EPW's and Heli 2 (chalk commander SO39 [REDACTED] was due to take 8 EPW's'. Due to the Australians taking 2 EPW's' to the wrong ac, Heli 1 eventually took 5 EPW's' and Heli 2 took 10 EPW's'. On arrival at the pick up all the ARF were concerned by the poor preparation of the EPW's' who were poorly cuffed (by the thumbs only with small tie wraps to the front of their bodies) and bagged (none of the EPW's' had bags on their heads, this remained the case for transit 2 and 3 despite sufficient bags and cuffs being left for the Australians by the ARF). The Australians appeared to unnecessarily rush the EPW's' onto the ac which culminated with 2 EPW's' being placed,

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unaccompanied by the ARF, onto the wrong ac. It was to one of these two EPWs' that the incident concerns. A detailed chronological description is outlined below. The whole evolution is set against a time pressure environment induced by the increased number of EPW (40-50 EPWs' initially briefed, actually 63 EPWs' were taken), ac refuelling requirement and light levels.

b. Sequence of events 11 APR 03 at the PUP:

(1) At the PUP each EPW was accompanied by 2 ARF personnel. They were plasticcuffed to the front of the body by the Australians and hooded by sandbags by the ARF. 2 ARF personnel escorted each EPW to the CH47s. During the loading procedure, each EPW was forced to the floor face down into a posture that allowed positive control by ARF control. 10 EPW were loaded onto Heli 2. The last two EPW were loaded onto Heli 2 by the Australian personnel, unsighted by SMUCO and Heli 2 chalk Comd. The second to last EPW refused to adopt the required position despite two ARF personnel attempting to control him. The linkman observed the situation and took control of the EPW. He was forced to the floor of the ac. A member of the ARF was then instructed to kneel on the subject EPWs' back to subdue him. The ARF then attempted to move all EPWs' forward to facilitate the closing of the ac ramp as directed by the Air Load Master. At this time, the subject EPW became violent and as he was moved freed himself from the plasticcuffs and stood up, flailing his arms, striking out at ARF personnel and attempting to move forward in the ac. Seeing this development the linkman swept the subject EPWs' legs away with his own foot, holding the EPW and lowered him to the floor. He then knelt on the subject EPWs' back and re-cuffed him. He also ensured the hood was secure. This subdued the subject EPW and a ARF member was detailed to stand guard, kneeling on the subjects EPWs' back. The ac then lifted and all EPWs' were acting in the correct manner. Each EPW was assured throughout the flight by gently patting them on the head and shoulder with accordance with ARF orders. After an unspecified time, the linkman observed a large wet patch, which he assumed to be urine around the subject EPW. The linkman was initially concerned and shook the EPW by the leg, telling his guard to monitor him.

(2) At this time, there was some commotion at the front of the ac due to one of the EPWs' losing his artificial legs. This then drew the attention of the linkman away from the subject EPW. On refocusing on the subject EPW the linkman was content that he was passive and compliant. The aircraft then arrived at H1, and all Heli 2 EPWs remained on the ac until ordered to move by the ARF commander.

(3) On arrival at H1 Heli 2 Chalk Comd immediately left the ac to speak with ARF Comd. The Linkman was left at the ac and posted himself at the ramp. He was in this position when the ARF Comd and Sigs arrived at heli 2 with the Chalk Comd. The linkman was then despatched to the rear of the ac by the Chalk Comd to receive the EPWs. EPW No 1 (nearest the ramp) was moved off the ac by 2 x ARF pers. EPWs 2 (subject EPW) and 3 were not compliant and the Chalk Comd made the decision to leave them on the ac under guard and move the remaining EPWs off. This was completed and then an ARF escort party ordered to move EPWs 2 & 3 off the ac. These men were found to be unresponsive and at this point the Chalk Comd became concerned about the health of EPWs 2 & 3. The Chalk Comd of Heli 2 then informed the Chalk Comd of Heli 1 and the ARF Comd that he suspected that EPWs 2 & 3 were unconscious and may have potentially suffered a heart attack. The Chalk Comd of Heli 2 requested MT CASEVAC from the US Callsign Comd

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through Heli 1 Chalk Comd and also informed him and the [SMULO] of the Limbless EPW. Heli 1 Chalk Comd tasked the US Callsign to provide MT for the CASEVAC and this was repeated by the [SMULO]. The US MT arrived and was directed to Heli 2 to collect EPW 2 & 3. The ARF Personnel guarding EPW 2 & 3 placed them on the US HUMVEE as directed by the US Senior passenger and those ARF personnel on Heli 2 quickly reboarded in order to complete the mission. The EPW HO/TO process was then completed by the [SMULO] to the satisfaction of the US Callsign Comd. All remaining ARF Pers then reboarded Heli 1 and the 2 CH47 moved to another location.

3. Wrt your points on medical care you will be aware that all members of the MSU have been tasked to another unit & W Coy as part of their enduring op. This left the ARF with no specialist intrinsic medical cover other than that available at the H1 FST.

4. Finally to put this all in to context the EF para given by the [SMULO] highlighted that these EPW were potential members of AQ, Fedadyeen and suicide bombers. Detailed orders and rehearsals were conducted by SO55 [SMULO] who emphasised the use of minimum force and appropriate behaviour when handling EPWs.

S047

Sqn Ldr

OC II Sqn RAF Regt

The Iraq Fatality Investigations

(v) 'SO52 Report' "EPW Incident ARF – Fri 11 APR 03", 14 April 2003

14 Apr 03

~~SECRET~~
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WITHOUT PREJUDICE

ENCLOSURE
12

MOD F 102 28
SERIAL No. 210

Copy to:
CO [redacted]
[redacted]

INCIDENT REPORT ON EPW DEATH – FRI 11 APR 03

1. On the night of 11 Apr 03 [redacted] were tasked to move a selection of EPWs from a [redacted] ground CS to the [redacted] EPW holding facility at H1. The [redacted] ARF facilitated this move. On arrival at H1 two EPWs were found to be unconscious. One of which subsequently died. This report has been compiled to record the details of the incident.

2. Sequence of Events

a. On the afternoon of Friday 11 Apr [redacted] were tasked to recover a number of EPWs from a [redacted] HLS to H1. The EPWs were [redacted] and were to be considered potentially dangerous. Detailed orders and rehearsals were conducted at H1 by the ARF Comd who emphasised the use of minimum necessary force and proper behaviour when handling EPWs. Two CH47s each with 14 ARF personnel departed H1 at 1925Z for the HLS. The transit to the HLS was uneventful and the 2 aircraft landed 25 mins later at 1950Z. The aircraft were on the HLS for approximately 15 mins whilst the ARF conducted liaison with the [redacted] EPW holding team and loaded the first load of EPWs.

b. On arrival at the pick up all the ARF were concerned by the poor preparation of the EPWs who were poorly cuffed and bagged. They were cuffed by the thumbs only with small tie wraps to the front of their bodies. None of the EPWs had bags on their heads. This remained the case for transit 2 and 3 despite sufficient bags and cuffs being left for [redacted] by the [redacted] ARF. [redacted] appeared to rush the EPWs onto the ac which culminated with 2 EPWs being placed, unaccompanied by [redacted] ARF, onto the wrong aircraft [redacted] 1 (with OC ARF and the [redacted]) was due to take 7 EPWs and [redacted] 2 was due to take 8 EPWs. [redacted] took 2 EPWs to the wrong ac so [redacted] eventually took 5 EPWs and [redacted] 2 took 10 EPWs. It was to one of these two EPWs that the incident relates.

c. After being plasticcuffed to the front of the body by [redacted] and hooded by sandbags by [redacted] 2 [redacted] ARF personnel escorted each EPW to the CH47s. During the loading procedure, each EPW was forced to the floor face down into a posture that allowed positive ARF control. When the last two EPW were loaded onto

1 of 3
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11/04/03 Operations Prod [redacted] 11/04/03 Incident - ARF at H1 [redacted] REPORT ON EPW DEATH 11 APR 03.doc

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2 by [redacted] personnel, unaided by [redacted] and [redacted] Chalk Comd, the second to last EPW refused to adopt the required position despite two ARF personnel attempting to control him. The linkman observed the situation and took control of the EPW. He was forced to the floor of the aircraft. A member of the ARF was then instructed to kneel on the subject EPW's back to subdue him. The ARF then attempted to move all EPW's forward to facilitate the closing of the ac ramp as directed by the Air Load Master. At this time, the subject EPW became violent and as he was moved, freed himself from the plasticuffs and stood up, flailing his arms, striking out at ARF personnel and attempting to move forward in the ac. Seeing this development the linkman swept the subject EPW's legs away with his own feet, holding the EPW and lowered him to the floor. He then knelt on the subject EPW's back and re-cuffed him. He also ensured the hood was secure. This subdued the subject EPW and a ARF member was detailed to stand guard, kneeling on the subject EPW's back. When the ac lifted all EPWs were acting in the correct manner. Each EPW was assured throughout the flight by gently patting them on the head and shoulder with accordance with ARF orders. After an unspecified time, the linkman observed a large wet patch, which he assumed to be urine around the subject EPW. The linkman was initially concerned and shook the EPW by the leg, telling his guard to monitor him.

d. At this time, there was some commotion at the front of the aircraft due to one of the EPW's losing his artificial legs. This drew the attention of the linkman away from the subject EPW. On refocusing on the subject EPW the link man was content that he was passive and compliant. The aircraft then arrived at H1, and all [redacted] EPWs remained on the aircraft until ordered to move by the ARF commander.

e. On arrival at H1 [redacted] 2 Chalk Comd immediately left the aircraft to speak with the ARF Comd (travelling on [redacted] 1). The Linkman was left at the aircraft and posted himself at the ramp. He was in this position when the ARF Comd and [redacted] 51g's arrived at [redacted] 2 with the Chalk Comd. The linkman was then despatched to the rear of the aircraft by the Chalk Comd to receive the EPWs. EPW No1 (nearest the ramp) was moved off the ac by 2 x ARF pers. EPWs 2 (subject EPW) and 3 would not move and the Chalk Comd made the decision to leave them on the aircraft under guard and move the remaining EPWs off. When this was completed the ARF escort party was ordered to move EPWs 2 & 3 off the aircraft. These two men were found to be unresponsive and at this point the Chalk Comd became concerned about the health of EPWs 2 & 3. The Chalk Comd of [redacted] 2 then informed the Chalk Comd of [redacted] 1 and the ARF Comd that he suspected that EPWs 2 & 3 were unconscious. The Chalk Comd of [redacted] 2 requested MT CASEVAC from the US Callsign Comd through [redacted] 1 Chalk Comd and also informed him and the [redacted] of the Limbless EPW. [redacted] 1 Chalk Comd tasked the US Callsign to provide MT for the CASEVAC and this was repeated by the [redacted]. The US MT arrived and were directed to [redacted] 2 to collect EPWs 2 & 3. The ARF personnel guarding EPWs 2 & 3 placed them on the US HUMVEE as directed by the US Senior passenger and those ARF

2 of 3

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USOpeOperations File [redacted] ITCasevacs EPW INCIDENT - ARF at H1 [redacted] REPORT ON EPW DEATH 11 APR 93.doc

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personnel on [REDACTED] quickly reboarded in order to complete the mission. The EPW HO/TO process was then completed by the [REDACTED] to the satisfaction of the US Callaghan Comd. All remaining ARF personnel then reboarded [REDACTED] and the 2 CH47 moved the FARP in preparation for the second lift. It should be noted that this whole evolution occurred under some time pressure induced by the increased number of EPW (40-50 EPWs initially briefed, actually 63 EPWs were taken), aircraft refuelling timings and the requirement to complete all moves during the remaining hours of darkness.

2. It was later confirmed by [REDACTED] that one of the two unconscious EPWs had recovered and that one had died. Comment was also passed on that the dead EPW had a long scar from abdomen to throat from what was presumed to be previous surgery. It was suggested that the EPW may have died of a heart attack. [REDACTED] procedures post EPW transfer including the details of certification and recorded time of death are not known.

Signed on original

SO52

COS [REDACTED]

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L:\Op&Operations Prod [REDACTED] IF Callaghan EPW INCIDENT - ARF in [REDACTED] REPORT ON EPW DEATH 11 APR 83.doc

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(vi) 'SO61 Letter', "EPW INCIDENT –
11 APR 03", 15 April 2003

OFFICIAL [REDACTED] PERSONAL [REDACTED]
UK EYES ONLY

7

HEADQUARTERS

See Distribution

Your Reference:

Our Reference: [REDACTED]

Date: 15 Apr 03

EPW INCIDENT – 11 APR 03

References:

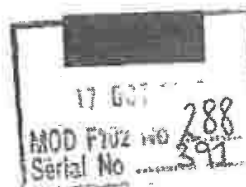
- A. Op TELIC Reference Document dated Feb 2003.
B. [REDACTED] Loose Minute [REDACTED] 346/310 dated 14 Apr 03.

BACKGROUND

- On 11 Apr 03, [REDACTED] detained 59 Fedayeen and 4 Iranian irregulars who were then subsequently transported to the H1 EPW facility by UK CH47s belonging to [REDACTED]. During the conduct of the move, two of the EPWs became unconscious, of whom one subsequently died.
- There was no requirement to formally inform PJHQ of the circumstances surrounding the death, or the promulgation of a PW CASREP, nor has an entry been made in on F/PW/128. This is because the PW was not certified dead until he had been handed over the US facilities. However, I have decided to inform the chain of command to ensure that if there are future investigations, we have the facts, as witnessed by those UK personnel involved, which can be used as best evidence. I have therefore enclosed the report from COS [REDACTED] which provides a full and frank summary of the events.
- I would ask that this document is held on file until further notice, and that addressees seek my approval before promulgating further.

Signed on original

SO61



OFFICIAL [REDACTED] PERSONAL [REDACTED]
UK EYES ONLY

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ANNEX D:

Certificate of Death for Mahmud, Tarik S (presumed), 11 April 2003

COPY OF ORIGINAL HANDWRITTEN CERT

CERTIFICATE OF DEATH			
For use of this form, see AR 193-8, the proponent agency is DC SPER			Not Assigned
FROM: TF 20 Forward Operating Base (H1 Walld Pumping Station and Airfield), Iraq *Prepared under provision of AR 190-8, Enemy Prisoner of War..., para 3-10			
TO: THRU Operation Iraqi Freedom Theatre EPW Cage, Umm Qasr (Army) Branch Prisoner of War Identification Center FOR National Prisoner of War Identification Center			
NAME (Last, First, MI) Mahmud, Tarik S (presumed)		GRADE UNKNOWN	SERVICE NUMBER UNKNOWN
NATIONALITY Iraqi (Presumed)	POWER SERVED UNKNOWN	PLACE OF CAPTURE/INTERMENT AND DATE Iraq, H1 Walld Pumping Station/Airfield	
PLACE OF BIRTH Baghdad (Presumed)		DATE OF BIRTH 1966 (Presumed)	
NAME, ADDRESS, AND RELATIONSHIP OF NEXT OF KIN UNKNOWN		FIRST NAME OF FATHER UNKNOWN	
PLACE OF DEATH H1 Airfield flight line	DATE OF DEATH 11 Apr 2003	CAUSE OF DEATH UNKNOWN	
PLACE OF BURIAL Vicinity H1 walld pumping station, Iraq: 700m out front gate to first culvert, 191 degrees for 50m		DATE OF BURIAL 12 April 2003	
IDENTIFICATION OF GRAVE (See attached DA form 2823) Next to grave with stacked stones in same location			
PERSONAL EFFECTS (To be filled in by Office of Deputy Chief of Staff for Personnel)			
RETAINED BY DETAINING POWER		<input checked="" type="checkbox"/> FORWARDED WITH DEATH CERTIFICATE TO (Specify)	
		FORWARDED SEPARATELY TO (Specify)	
BRIEF DETAILS OF DEATH/BURIAL BY PERSON WHO CARED FOR THE DECEASED DURING ILLNESS OR DURING LAST MOMENTS (Doctor, Nurse, Minister of Religion, Fellow Prisoner). IF CREMATED, GIVE REASON. (If more space required, continue on reverse side). Arrived by Humvee, was alerted by Driver that he had possible DOA. Was immediately examined by the undersigned and found to have no pulse carotid or radial-bilateral no heartbeats (unknown) on auscultation on breath on exam, non reactive pupils (B), cyanosis in nail beds. Pronounced dead seen five minutes later by Dr Wenzel and he agreed with death pronouncement.			
DO NOT WRITE IN THIS SPACE CERTIFIED A TRUE COPY		REDACTED DATE 11 Apr 03	
		SIGNATURE OF MEDICAL OFFICER CPT, MC JS TF Samarra Surgeon	
		SIGNATURE OF CONDUCTING OFFICER REDACTED IN TOTAL	
		WITNESSES REDACTED	
		SIGNATURE ADDRESS REDACTED 96 th CAB Ft Bragg, NC 28310	
SIGNATURE		ADDRESS	

COPY OF ORIGINAL, HANDWRITTEN CERTIFICATE

ANNEX E:

'Tripartite Agreement'

**AN ARRANGEMENT FOR THE TRANSFER OF PRISONERS OF WAR,
CIVILIAN INTERNEES, AND CIVILIAN DETAINEES BETWEEN THE
FORCES OF THE UNITED STATES OF AMERICA, THE UNITED
KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, AND
AUSTRALIA.**

This arrangement establishes procedures in the event of the transfer from the custody of either the US, UK, or Australian forces to the custody of any of the other parties, any Prisoners of War, Civilian Internees, and Civilian Detainees taken during operations against Iraq. The Parties undertake as follows:

1. This arrangement will be implemented in accordance with the Geneva Convention Relative to the Treatment of Prisoners of War and the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, as well as customary international law.
2. US, UK, and Australian forces will, as mutually determined, accept (as Accepting Powers) prisoners of war, civilian internees, and civilian detainees who have fallen into the power of any of the other parties (the Detaining Power), and will be responsible for maintaining and safeguarding all such individuals whose custody has been transferred to them. Transfers of prisoners of war, civilian internees, and civilian detainees between Accepting Powers may take place as mutually determined by both the Accepting Power and the Detaining Power.
3. Arrangements to transfer prisoners of war, civilian internees, and civilian detainees who are casualties will be expedited, in order that they may be treated according to their medical priority. All such transfers will be administered and recorded within the systems established under this arrangement for the transfer of prisoners of war, civilian internees, and civilian detainees.
4. Any prisoners of war, civilian internees, and civilian detainees transferred by a Detaining Power will be returned by the Accepting Power to the Detaining Power without delay upon request by the Detaining Power.
5. The release or repatriation or removal to territories outside Iraq of transferred prisoners of war, civilian internees, and civilian detainees will only be made upon the mutual arrangement of the Detaining Power and the Accepting Power.
6. The Detaining Power will retain full rights of access to any prisoners of war, civilian internees, and civilian detainees transferred from Detaining Power custody while such persons are in the custody of the Accepting Power.
7. The Accepting Power will be responsible for the accurate accountability of all prisoners of war, civilian internees, and civilian detainees transferred to it. Such records will be available for inspection by the Detaining Power upon request. If prisoners of war, civilian internees, or civilian detainees are

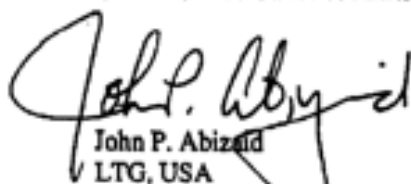
The Iraq Fatality Investigations

returned to the Detaining Power, the records (or a true copy of the same) relating to those prisoners of war, civilian internees, and civilian detainees will also be handed over.

8. The Detaining Powers will assign liaison officers to Accepting Powers in order to facilitate the implementation of this arrangement.
9. The Detaining Power will be solely responsible for the classification under Articles 4 and 5 of the Geneva Convention Relative to the Treatment of Prisoners of War of potential prisoners of war captured by its forces. Prior to such a determination being made, such detainees will be treated as prisoners of war and afforded all the rights and protections of the Convention even if transferred to the custody of an Accepting Power.
10. Where there is doubt as to which party is the Detaining Power, all Parties will be jointly responsible for and have full access to all persons detained (and any records concerning their treatment) until the Detaining Power has by mutual arrangement been determined.
11. To the extent that jurisdiction may be exercised for criminal offenses, to include pre-capture offenses, allegedly committed by prisoners of war, civilian internees, and civilian detainees prior to a transfer to an Accepting Power, primary jurisdiction will initially rest with the Detaining Power. Detaining Powers will give favorable consideration to any request by an Accepting Power to waive jurisdiction.
12. Primary jurisdiction over breaches of disciplinary regulations and judicial offenses allegedly committed by prisoners of war, civilian internees, and civilian detainees after transfer to an Accepting Power will rest with the Accepting Power.
13. The Detaining Power will reimburse the Accepting Power for the costs involved in maintaining prisoners of war, civilian internees, and civilian detainees transferred pursuant to this arrangement.
14. At the request of one of the Parties, the Parties will consult on the implementation of this arrangement.

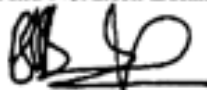
Done at Camp As Sayliyah, Doha, Qatar on this 25 day of March 2003.

For the United States of America



John P. Abizaid
LTG, USA
Deputy Commander Forward
United States Central Command

For the United Kingdom of Great Britain
And Northern Ireland



B.K. Burridge
Air Marshal
United Kingdom National Contingent
Commander

For and on behalf of Australia

A handwritten signature in black ink, appearing to read 'M. R. McNam', with a stylized flourish at the end.

M. R. McNam

Brigadier

Commander Australian National Headquarters

ANNEX F:

Extracts from Annex 3A, and Appendix 3B1 and 3F to Joint Warfare Publication 1-10, March 2001

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ANNEX 3A - PRISONERS OF WAR HANDLING AIDE MEMOIRE

COMBAT TROOPS	
WHO IS A PRISONER OF WAR?	<ul style="list-style-type: none">• Enemy personnel in or out of uniform who carry arms openly.• Civilians who accompany the Armed Forces of the enemy e.g war correspondents, supply contractors, civilian members of aircraft crews.• Crews of merchant ships and civil aircraft belonging to the enemy. <p>IF IN DOUBT - TREAT AS PW</p>
ACTION ON CAPTURE	<ul style="list-style-type: none">• Disarm - Search - Administer First Aid (if required)• Segregate Officers, NCOs, Other Ranks, Females from Males, and Juveniles (under 15) from both.• Escort to Unit or Sub-Unit HQ as directed.
ACTION AT UNIT OR SUB-UNIT HQ	<ul style="list-style-type: none">• Tag or Label PW.• Remove and Tag or Label:<ul style="list-style-type: none">▪ Weapons.▪ Documents or equipment captured with the PW.• Do not Remove:<ul style="list-style-type: none">▪ Clothing.▪ Protective Equipment.▪ Personal effects.▪ ID discs or documents.▪ Any medication.▪ Medical or religious accoutrements from Retained Personnel• Safe Custody: Treat humanely.<ul style="list-style-type: none">▪ Shelter PW from enemy fire and the elements.▪ Provide food, water, and protective clothing.▪ Move PW out of the combat zone as soon as possible.• Do not fraternize with PW.• Carry out Tactical Questioning.• Escort PW to Collecting Point.
MINIMUM INFORMATION	<p>Do NOT use force to gain information from a PW. When questioned, a PW is required only to give:</p> <ul style="list-style-type: none">▪ Name - Rank - Number - Date of Birth

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THE STAFF	
RESPONSIBILITIES	<p>J1</p> <ul style="list-style-type: none"> • PW Policy. • All aspects of safe custody and evacuation of PW. • Determination of PW status. • Transfer of PW between nations. <p>J2/J3</p> <ul style="list-style-type: none"> • Estimating PW numbers. • Organising Tactical Questioning and Interrogation of PW. • Establishing and manning the PW Handling Organisation. • Locating PW facilities. • Ordering the construction of PW facilities. <p>J4</p> <ul style="list-style-type: none"> • Provision of medical support. • Provision of construction materials for PW facilities. • Administering PW (feeding, clothing, moving and accommodating).
THE COMMANDER	
INTELLIGENCE	As part of Intelligence Preparation of the Battlefield, J2 staff make assessment of likelihood of significant numbers of PW being captured in the course of the operation.
THE ESTIMATE	J3 staff make provision for impact of significant PW capture in considering 'Other Relevant factors' as part of the Estimate Process.
THE PLAN	J3 staff make provision for Handling PW in Plan.
COMMANDER'S RESPONSIBILITIES	<p>Commander's responsibilities for PW are summarised as ensuring that:</p> <ul style="list-style-type: none"> • Individuals under his command comply with the four 1949 Geneva Conventions and Additional Protocol I. • PW captured by forces under his command are treated in accordance with the Laws of Armed Conflict. • An appropriate PW Handling Organisation is in place within his formation. • PW are evacuated as soon as possible and are not needlessly exposed to danger.

APPENDIX 3B1 -- GUIDANCE FOR ESCORTING AND GUARDING PRISONERS OF WAR

1. This Appendix sets out the principles for the escorting and guarding of PW. It deals only with the escorting and guarding of able bodied PW. Escort and Guard arrangements for wounded and sick PW are to be conducted in accordance with medical advice. Many of the principles set out for able-bodied PW will also apply to wounded and sick PW.

The Escort

2. **Role of the Escort.** The role of the Escort is both to protect and prevent able-bodied PW from escaping or being liberated in the course of a move from one PW facility to another. The responsibility of an escort for the PW in its charge begins at the despatching facility where the escort accepts custody of the PW and ends when they are handed over to the staff of the destination facility.

3. **The Size of Escorts.** The basic principle of Escorting is that the Escort is to consist of a formed body of troops. The guidelines for the movement of PW and requirement for escorts are outlined in Appendix 3B3. Each situation will be different and local factors will determine the final decision on the number of escorts required. Ultimately there must be sufficient escorts to deter PW from escaping.

4. **Planning the Move.** In order to plan the move, there are certain basic pieces of information which must be known:

a. **The Number of Prisoners of War to be Escorted.** This will determine the size of the Escort.

b. **The Condition and Morale of the Prisoners of War.** Tired and co-operative captives do not need as many escorts as those who are fresher and better motivated.

c. **The Method of Movement.** Movement on foot offers more opportunities for escape than vehicle movement. Certain types of movement such as movement by truck, train and air require specific precautions to be taken by the escort.

d. **The Terrain.** The terrain across which the PW are to be moved will influence the numbers in the escort and the method of escorting the PW. Close terrain will require more escorts than desert.

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e. **Enemy Activity.** Any likelihood of enemy interference with the move will require an escort capable of taking offensive action to protect itself and maintain the PW it is escorting in captivity.

f. **The Location of Other Units on the Route.** Before departure, the Escort should familiarise itself with the location of units on its planned route in order to be able to seek assistance or make rest stops in the course of the journey.

g. **The Communication Plan.** The Escort is to be in communication at all times with the headquarters of the formation through whose AO it is moving.

5. **Prisoners of War Transport.** It is unlikely that there will be dedicated transport for the evacuation of PW. Their movement will be based on the return journeys of vehicles and aircraft delivering combat supplies forward to the general area from which the PW are to be moved. Transport arrangements will be co-ordinated by the J1 and J4 staffs at the formation headquarters concerned. The movement of PW on foot will only be carried out where there is no transport available and immediate evacuation is essential for operational reasons.

6. **Briefing of Prisoners of War.** PW are to be briefed, through an interpreter where necessary, before the move takes place. The briefing is to include:

- a. The meaning of the word 'Halt'.
- b. The Escort's Orders for Opening Fire.
- c. That the 'Silence Rule' applies at all times throughout the move (ie no talking to the Escort, no talking to each other).
- d. The actions which PW are to take in the case of an emergency.

7. **Briefing of the Escort.** Before the move takes place the Escort is to be briefed. This briefing is to include:

- a. The destination, method of movement and route for the evacuation.
- b. The understanding by the Escort of its responsibility for the PW and the need to safeguard them.
- c. The requirement for PW to follow orders and instructions.
- d. The need for all members of the Escort to be aware of potential opportunities for the PW to escape in the course of the move and of measures to prevent this happening.

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- e. The understanding that PW are only to be spoken to when it is necessary to give orders and maintain control.
- f. What the appropriate actions are in the event of an enemy attack or other emergency.
- g. What actions are to be taken to foil escape attempts.
- h. ROE.

8. **Prisoners of War Documentation.** The Escort Commander is to ensure that on accepting custody of the PW, he is provided with:

- a. A nominal roll of the PW who are to be escorted.
- b. The appropriate PW documentation (eg F/PW 778 Part B for PW moving from Collecting Point to PWRU and F/PW 128 and associated documents for PW moving from PW Holding Area to another Holding Area or PW Camp).

The Guard

9. **Role.** The role of the Guard is both to protect and to prevent the escape of PW from a PW facility, such as a PW Holding Area or PW Camp and to maintain discipline within such facilities. Guards will also have a subsidiary role in the day to day administration of the facility. The MPS will normally provide custodial staff to assist the Guard Force and also provide an interface between the PW and the internal Guard Force.

10. **Provision of the Guard Force.** The Guard Force at a PW Holding Area or PW Camp is to be found from all or part of a formed unit or units, designated at the outset of operations by J3 at JTFHQ and placed under command of the PWHQ. The designated unit or units should have no other task apart from the provision of guards for PW facilities.

11. **The Size of the Guard Force.** The ratio of Guards to PW is to be 1 x Company sized Sub-Unit to each 500 PW Compound. This provides for 1 x Platoon sized Guard Force to be on duty at any one time.

12. **Organisation of the Guard Force.** The Guard Force is to be composed of four elements:

- a. **External Guards.** External guards secure the perimeter of the facility by manning guard towers and gate posts. Their main role is to ensure that PW remain confined inside the facility but they also have the subsidiary role of

3B1-3

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protecting the facility against attack or attempts to infiltrate the area from outside.

b. **Internal Guards.** Internal guards maintain segregation and order within the facility and restrict access to areas where the possibility of escape may exist such as buildings sited close to the perimeter of the compound.

c. **Roving Sentries.** Roving sentries operating in pairs carry out random patrols within the perimeter of the compound.

d. **The Quick Reaction Force.** The Quick Reaction Force (QRF) is the reserve force for the facility and will normally be found from off duty members of the Guard Force. The roles of the QRF will include:

- (1) Reinforcing the external and internal guards where necessary.
- (2) Defending the perimeter against outside attack.
- (3) Pursuing and re-capturing escaped PW in the immediate area of the facility.
- (4) Resolving any internal breakdown of PW discipline.

13. **Dogs.** Wherever possible, the Guard Force is to be augmented with dogs and handlers. The dogs should include at least one tracker dog in their number. The deployment and use of dogs is to be at the discretion of the Camp Commander bearing in mind both the threat posed by the PW and the impact of the use of dogs on some religious and cultural groupings.

Conclusion

14. The efficient escorting and guarding of PW is the key to the conduct of an effective and humane PW internment system. Whilst the tasks involved may not be as glamorous as those carried out by personnel engaged in operations, they are of considerable importance in contributing to the success of operations. They achieve this by reducing the number of enemy forces available for combat and at the same time contributing to the intelligence collection effort.

15. The guidelines set out in this Appendix will enable those involved in the escorting and guarding of PW to make a quantifiable contribution to the successful conduct of operations.

JWP 1-10

of PW on work projects fulfils part of this remit but there are other requirements placed on the detaining power as a result of Chapter V of Section II.

3F78. Religious Activity. PW are to be permitted to practice their religion or exercise their beliefs provided that this is carried out within the rules of camp discipline. A place of worship is to be provided where this is possible. Chaplains and other spiritual leaders are to be allowed to minister to PWs of the same religion or belief and where there is no minister or religious leader, a lay PW may be appointed by the Camp Commander to lead worship.³⁹

3F79. Intellectual and Physical Activities. Intellectual, educational and recreational activities, including sports and games, are to be encouraged among PW. In order to allow these activities to take place, suitable facilities and equipment are to be provided by the Detaining Power.⁴⁰ PW are to be provided with suitable out of doors areas in which to take exercise and these are included in the layouts for camps and compounds set out at Annex 3E.

SECTION XIV - CIVIL LEGAL MATTERS

3F80. Civil Legal Status of Prisoners of War. PW retain their legal status as citizens of their country. The Detaining Power may not restrict this status except where it is an inevitable consequence of the PW being in captivity. The PW retains the right to exercise his legal rights in his own country in such matters as disposing of property, making wills, giving consent to marriage or to voting.⁴¹ This will normally be conducted by using a lawyer or a proxy.

3F81. Legal Documents. The Detaining Power must give PW facilities for the preparation and execution of legal documents, especially powers of attorney and wills and for the sending of these to the PW's parent nation through the Protecting Power or the ICRC. PW are entitled to seek legal advice to assist them in the drafting, execution and authentication of legal documents.

SECTION XV - DEATH AND BURIAL OF PRISONERS OF WAR

3F82. The death of PW in captivity is an emotive event capable of misinterpretation and exploitation for propaganda purposes by the enemy. It is therefore particularly important that the circumstances surrounding the death of a PW are scrupulously investigated by RMP SIB and recorded and that the subsequent disposal of the remains is undertaken with the maximum dignity possible in the circumstances.

³⁹ GC III: 34-37.

⁴⁰ GC III: 38.

⁴¹ GC III: 77.

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3F83. Applicability of this instruction. The instructions set out in this section cover the death of PW at any time in the period of their captivity from the moment of their capture to their eventual release or repatriation. These instructions do not apply to enemy found dead on the battlefield.

3F84. Notification and Registration of Death. Immediately following the death of a PW a report is to be made to J1 at JTFHQ and the PWIB using the PW NOTICAS. The format of this report is set out in Annex 3D. Following this report, and after burial and any subsequent investigation, a formal Notification of Death in the format set out for a Death Certificate in Annex 3D to this publication, is to be sent as soon as possible to J1 at JTFHQ and the PWIB. In the event of the un-natural death of a PW, an additional copy of the Notification of Death is to be forwarded for onward transmission to the Protecting Power. The death of a PW taking place in the UK is additionally to be notified to the appropriate Registrar of Births and Deaths for the area in which death occurred.⁴²

3F85. Investigation into the Circumstances of Death or Injury. An investigation is to be held into every death (or serious injury) of a PW which is suspected to have been caused by a guard or escort, another PW or any other person as well as any other death the cause of which is not known. Depending upon the circumstances surrounding the death, J1 at JTFHQ will direct how the investigation is to be conducted. This may take the form of the convening of an appropriate form of formal inquiry in conjunction with inquiries conducted by the provost services. The findings of the inquiry, together with statements taken from witnesses, are to be forwarded to the Protecting Power. In the event that an inquiry indicates that a person or persons is guilty of causing the death (or serious injury), GC III requires the Detaining Power to take all possible measures for the prosecution of the those responsible.⁴³

3F86. Burial and Cremation. As a general principle, subject to any religious or ethnic variations, the funeral arrangements for a PW are to be the same as those which would be made for a British serviceman dying in the JOA. In particular, the disposal of the remains of a deceased PW are to be carried out in accordance with the following instructions:

- a. **Examination of the Body.** Before burial or cremation takes place, there is to be a medical examination of the body in order to confirm death and, where necessary, to identify the remains. It will be normal practice for an RMP SIB Investigator to be present during this post mortem investigation.
- b. **Cremation.** PW may only be cremated for imperative reasons of hygiene, on account of the religion of the PW or in accordance with a written

⁴² GC III: 121.

⁴³ GC III: 120.

request by the PW or by the Prisoners' Representative on the PW's behalf. The fact that cremation has taken place and the reason for this action is to be stated in the Death Certificate.

c. **Burial.** GC III places a duty on the detaining authorities to ensure that:

- (1) PW who have died in captivity are honourably buried, if possible according to the rites of the religion to which they belonged.
- (2) Their graves are respected, suitably maintained and marked so that they may be found at any time.
- (3) Wherever possible, deceased PW who depended on the same Power are buried in the same location.
- (4) Unless circumstances necessitate the use of collective graves, deceased PW are to be buried in individual graves.
- (5) Details of all burials and graves are recorded with the Graves Registration Service and ashes of cremated PW are to be retained by the Graves Registration Service until they can be disposed of in accordance with the wishes of the Power on whom they depended.

3F87. **Death at Sea.** In general, many of the same instructions applying to the disposal of the remains of a PW who dies on land will apply in cases where PW die at sea. In particular, if burial at sea has to take place, the same procedure prescribed for the burial of a British serviceman at sea is to be followed.

3F88. **Prisoners of War Wills.** After the death of a PW, any will held by the PWHO with the PW's documents is to be forwarded, together with a certified copy, to J1 at JTFHQ for onward transmission to the PWIB. The original will then be passed to the Protecting Power and a certified copy to the Central PW Information Bureau.