

COURT OF INQUIRY

assembled by

Major General A.D. Gawn, MBE, Commander Joint Forces New Zealand

into

the circumstances in which elements of TU 653.1.1 (OP CRIB) came into contact with insurgents in the vicinity of DO ABE, Bamyan province, Afghanistan, while providing *in extremis* support to the NDS on 4 August 2012 and the circumstances in which the remains of three soldiers were returned to New Zealand following a separate IED attack on 19 August 2012

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Witness Statements (65 and Two Additional) Total of 443 pages. [Not included in Redacted version]	
Exhibits – 148 exhibits over two folders [Not included in Redacted version] :	
Folder 1 – Volume 2 of COI Records: A – MMM	
Folder 2 – Volume 3 of COI Records: NNN – ADN/ADN1	

ORDER FOR THE ASSEMBLY OF A COURT OF INQUIRY

1. Original MD634.
2. Amendment 1 which revoked original MD634 Term of Reference and replaced them with alternative Term of Reference, and removed **(Redacted)** from the Court.
3. Amendment 2 which amended the Term of Reference by the inclusion of an additional Term of Reference (5A) pertaining to the processing of remains of the deceased soldiers from the 19 Aug 12 IED attack for return to New Zealand.
3. Amendment 3 was issued on 7 Mar 13 which transferred responsibility of Assembling Authority from Commander Joint Forces (NZ) to remain as MAJ GEN GAWN, Chief of Army, the original Assembling Authority when Commander Joint Forces (NZ).
4. Amendment 4 was issued 2 May 13. It required the Court to reopen to look into additional information around **possible** further friendly fire incidences.

Attached:

- 3A – 3C: Original MD634 16 Aug 12
- 3D – 3E: Amendment No 1 22 Aug 12
- 3F: Amendment No 2 24 Aug 12
- 3G: Amendment No 3 7 Mar 13
- 3H: Amendment No 4 2 May 13

STATEMENT UNDER AFDA s 200G

The Court was unable to assemble on 20 August 2012 at 0900 hours in accordance with the original Assembling Authority Order due to logistical and operational limitations.

The Court assembled on 22 August 2012 at 0900 hours in Kiwi Base, Bamyan Province and proceeded in accordance with the amended Terms of Reference issued on 22 August 2012.

The order to assemble the Court of Inquiry stated that the Final Report was due to the Assembling Authority on 17 September 2012. Due to a number of reasons, including the scale of the Inquiry, the locations required to be visited, and the need to invoke 200N rights, this date was not achieved. The Court produced an Interim Report on 30 August 2012, and a First Draft of the Final Report on 21 September 2012 and a further Draft Final Report on 4 December 2012. The Final Report was completed and handed to the Assembling Authority on 30 January 2013.

Amendment No 4 ordered that the Court of Inquiry be reopened and further required the Court to report back NLT 6 May 13, on its findings in relation to further allegations of **possible** friendly fire incidences. This was not achievable due to access to the necessary witnesses along with a desire to not impede the ongoing Military Police investigation into the same allegations. The Court was able to produce its Addendum in answer to the requirements of Amendment No 4 on 21 May 13.

STATEMENT OF COMPLIANCE WITH AFDA s 200N

The Court took the following steps to comply with AFDA s 200N in respect of the persons named below:

(ALL 200N REDACTED)

[Redacted Page]

RECLASSIFICATION / RE-GRADING OF EXHIBITS

IAW DFO51(1), Chapter 6, Para 6.6, 7.88 – 7.92, the Court of Inquiry sought approval from CO CRIB 21 (as the successor to CO CRIB 20 IAW Para 7.90(a)) to downgrade the following Exhibits from **SECRET** / REL ISAF NATO to **RESTRICTED** / REL ISAF NATO:

1. EXHIBIT G
2. EXHIBIT H
3. EXHIBIT EEE
4. EXHIBIT NNN
5. EXHIBIT OOO

Reference: Email from CO CRIB 21 – **(Redacted)**
supporting comment from **SOLDIER A**, CO CRIB 20.

dated 7/11/12 with

(Redacted)
COL
COI President

REPORT OF THE COURT OF INQUIRY

1. The Court of Inquiry was carried out over the period 22 August 2012 to 30 January 2013. Evidence from 65 witnesses was considered and 146 exhibits were produced. In addition following the reopening of the inquiry, a further two exhibits were entered into evidence and evidence from two further witnesses as well as additional statements from five previously interviewed witnesses was considered.
2. The majority of the Court of Inquiry was completed in an operational theatre and received significant assistance from the NZPRT that ensured the Court could complete its task in an efficient manner. The Court conducted the inquiry under significant limitations given the restrictions of movement around the Area of Operations (AO) and the conduct of ongoing operations.

REPORT CAVEATS

3. The following caveats need to be acknowledged when reading and considering this report:
 - a. The Court of Inquiry team was not able to visit the site of either the BAGHAK contact of 4 August 2012 or the IED incident of 19 August 2012. This was due to operational limitations and security concerns. The Court did however conduct a fly over of the scene of the 4 August incident aboard a US Army UH-60. Also, to provide context, the Court has sourced video footage¹ of a portion of the actual contact and created a simulated fly-through².
 - b. Many of the personal accounts that were prepared by personnel present at BAGHAK on 4 August, and were presented as Exhibits, were prepared anywhere up to 10 days post the activity.
 - c. The Court of Inquiry's conclusions are drawn from interviews and/or exhibits produced. Where necessary, comments based on the opinion of the Court have been clearly stated.
 - d. All recommendations called for as per the Terms of Reference are made based on a balance of evidence and the opinions of the Court of Inquiry team.
 - e. In some cases, it is impossible for the Court to categorically state where shots came from that caused some of the fatal and non-fatal injuries on 4 August 2012. Where able, the Court has indicated the **most likely** direction that these shots came from. However, due to many variables and the unknown number of insurgents (INS) involved, these conclusions cannot be taken as absolute. Also, in some cases, it is impossible for the Court to differentiate between direct gunshot and/or shrapnel wounds.
 - f. The Court was unable to directly interview any ANSF personnel involved in the BAGHAK incident.

¹ Exhibit DDD1.

² Exhibit SSS.

TERM OF REFERENCE 1:

What were the circumstances leading up to and surrounding the contact, including the death of the deceased soldiers and the wounding of the casualties?³

4. **4 AUG 12:** At approximately 0800 hours, KIWI COMPANY (KIWI COY) elements were made aware by National Directorate of Security (NDS) personnel that a Significant Activity (SIGACT) had occurred in the vicinity of DAHANE BAGHAK in the SHIKARI VALLEY in the morning of 4 Aug 12. The NDS had undertaken a search and seize operation in the early morning, an operation that went badly. **SOLDIER B**, the Officer Commanding (OC) and **SOLDIER A**, the Commanding Officer (CO) decided to deploy KT4 (3 x HMMWV) to the scene to render *in extremis* support to the NDS. Subsequently KT2 and KT1, both LAV based elements, deployed in support of KT4. When KT4 arrived on scene at 0946 hours, they found 1x NDS Killed in Action (KIA) and 6 x NDS Wounded In Action (WIA) (1 x WIA subsequently became a KIA). They assisted with the evacuation of the NDS casualties and then commenced a dismounted clearance operation of a compound and the high ground surrounding the contact site in concert with the NDS. KT2 was on scene providing over-watch with KT4 vehicles while a 14 man dismounted patrol conducted the clearance operation. At the same time, but further to the North, NDS were in the low ground as they commenced their own clearance of the high ground. At approximately 1227 hours, shortly after the OC, **SOLDIER B** had arrived on site with KT3, the contact started. All of the eight NZPRT casualties (1 x KIA and 7 WIA (1 x WIA –would become KIA), including the OC occurred in the space of approximately 12 minutes somewhere between 1227 and 1239. The 2 x KIA (LCPL MALONE and DURRER) and 4 (**SOLDIER B**, **SOLDIER C**, **SOLDIER D** and **SOLDIER E**) of the WIA can be directly attributed to INS fire, while the remaining 2 x WIA (**SOLDIER F** and **SOLDIER G**) were in all probability, wounded by friendly fire, although INS action cannot be totally ruled out. A further 4 x NDS (1 x KIA and 3 x WIA) became casualties during this time. Further engagement occurred throughout the afternoon as the NZPRT elements coordinated medical treatment and evacuation for its casualties. The bulk of the NZ casualties (1 x KIA (MALONE) and 5 x WIA) were evacuated by US Army Aero-medical Evacuation (AME) from a Casualty Collection Post (CCP) 600m South of the contact site at 1426 hours while the last two remaining casualties were winched off the high ground at 1558 hours. All NZ casualties were evacuated to medical facilities in Regional Command (North) (RC(N)). Unfortunately, LCPL DURRER died in the AME aircraft. At 1605 hours, a (**redacted**) reported seeing a group of 16 INS moving East away from the contact site carrying dead and wounded. Throughout the afternoon, the NDS suffered a further 1 x KIA and 1 x WIA along with 1 x ANP WIA and 1 x Local National (LN). The KIWI COY elements consolidated all elements at the CCP by 1930 hours and then commenced the deliberate move back to Forward Patrol Base (FPB) DO ABE (now FPB MALONE – DURRER) and Company Out Post (COP) ROMERO. This move was complete at 0430 hours, 5 Aug 12. The BAGHAK contact was supported by significant coalition air support including (**Redacted**) Unmanned Aerial Vehicle (UAV), Emergency Close Air Support (ECAS) and AME.

³ For all referencing of the facts in these summaries, refer to the Storylines at Annex A and C to this report from which these summaries are drawn.

5. **19 AUG 12:** At approximately 0900 hours, a 4 x HMMWV KT4 patrol departed FPB MALONE – DURRER to transport a patrol member to the COP ROMERO for medical treatment. At 0921 hours, the last vehicle in the convoy was destroyed by a very large (Pressure Plate) Improvised Explosive Device (IED). The vehicle crew was: Vehicle Commander – CPL TAMATEA, Driver – LCPL BAKER and Vehicle Gunner – PTE HARRIS. All three were killed instantly (**Redacted**). The HUMMWV was totally destroyed and was spread over a 300m area. The remainder of KT4 returned to secure the scene while KT2 deployed from COP ROMERO to assist and secure the area for Tactical Site Exploitation (TSE) by the recently deployed Explosive Hazards Clearance Team (EHCT). The TSE concluded in a finding that the IED was Pressure Plate rather than a Command Detonated IED (CDIED). Elements of this team along with the Company Sergeant Major (CSM) of KIWI COY and medical personnel did the battlefield clearance of the bodies and remains. The bodies were flown by US Army AME to BAGRAM where they were processed by both NZ Police and NZPRT National Support Element (NSE) Personnel. The US Army Mortuary Affairs Section also conducted their processing of the bodies. The deceased were then transported home, firstly to DUBAI by RAAF C-130, then ADF Charter A340 to SYDNEY and then RNZAF C-130 to CHRISTCHURCH. As the remains were being processed by the Pathologist at CHRISTCHURCH Hospital, 2 x 9mm rounds and a HE Hand Grenade were discovered (**Redacted**).

Provide a storyboard/sequence of events that chronologically details the actions taken from initiation through to reconstitution of the patrols in FOBs.

6. See the Incident Storyline for the 4 Aug 12 SIGACT at Annex A. The Storyboard at Annex B also includes a diagram relating to the IED incident on 19 Aug 12. The Incident Storyline supporting Term of Reference 5A is at Annex C.

TERM OF REFERENCE 2:

What was the nature and extent of the injuries sustained by the deceased and the casualties? [Refer to Annex A and B for more Detail]

7. In respect of those killed in action on 4 Aug 12:

a. **MALONE – [Redacted]**

Redacted. This shot was medically considered almost instantly fatal.⁴ The calibre of the projectiles that struck both his arm and left flank are reported as being of medium calibre, displaying high energy.⁵ It is the courts assessment that these were both likely to be 7.62mm in calibre.

⁴ Witness Fifty-Two.

⁵ Exhibit ZZ.

b. **DURRER** – Killed by a single gunshot [Redacted]

[Redacted]. The trajectory is on a slight downward angle.⁶ The calibre of the projectile cannot be determined; however it is reported as being of a small calibre nature, displaying high energy velocity.⁷

8. In respect of those wounded in action on 4 Aug 12:

a. **SOLDIER D** – Sustained a single gunshot wound [Redacted]

[Redacted] He also sustained a single shrapnel wound [Redacted Redacted].⁸

b. **SOLDIER F** – Was likely hit by a ricocheting small arms projectile, causing a gunshot wound [Redacted Redacted].⁹ The calibre of this projectile cannot be determined. He also sustained superficial fragmentation injuries [Redacted] likely to have been caused when NZLAV 25mm HEI-T impacted in and around his location.¹⁰

c. **SOLDIER E** – Was likely hit by a ricocheting small arms projectile, [Redacted Redacted].¹¹ The calibre of the project cannot be determined.

d. **SOLDIER C** – Sustained a gunshot wound [Redacted]

[Redacted].¹² Initially it was reported that he sustained two gunshot wounds [Redacted Redacted].¹³ It is assessed that these initial reports are incorrect.

e. **SOLDIER B** – Sustained a gunshot wound [Redacted]

[Redacted].¹⁴ The trajectory was relatively flat as it passed through. The calibre of the projectile cannot be determined; however it is suggested in one case as likely to have been of a small calibre nature,

⁶ Exhibit ADD, Witness Fifty-Two.

⁷ Exhibit AAA.

⁸ Exhibit YY, Witness Fifty-Six.

⁹ Exhibit TT, Witness Fifty-Six.

¹⁰ Witness Forty-Nine.

¹¹ Exhibit UU, Witness Fifty-Six and Witness Fifty-Eight.

¹² Witness Fifty-Six, Witness Fifty.

¹³ Exhibit VV, Witness Nineteen.

¹⁴ Exhibit XX, Witness Fifty-Six.

displaying high energy velocity.¹⁵ He also sustained injuries **[Redacted Redacted]** consistent with a strike on the body armour.¹⁶

- f. **SOLDIER G** – Sustained superficial fragmentation / shrapnel wounds **[Redacted]**¹⁷. These injuries are likely to have been caused when NZLAV 25mm HEI-T impacted in and around his location.¹⁸
9. In respect of those killed in action on 19 August 2012, the nature of the injuries were **[Redacted]** blast injuries to all three personnel resulting in instant death.¹⁹
10. Due to lack of access to NDS sources, and the subsequent death of LCPL BAKER on 19 Aug 12, the Court has not been able to confirm specific details of the nature of injuries relating to the NDS casualties sustained on 4 Aug 12. There were 4 x KIA, 9 x WIA and 1 x ANP WIA²⁰.

What was or were the cause(s) of those injuries? [Refer to Annex A and B for more Detail]

11. In respect of those killed in action on 4 August 2012, based on the evidence presented to the court:
- a. **DURRER** – It is the opinion of the court that the cause was due to a gunshot by INS
- b. **MALONE** – It is the opinion of the court that the cause was due to gunshots by INS.
12. In respect of those wounded in action on 4 Aug 12:
- a. **SOLDIER D** – It is the opinion of the Court that the cause was a gunshot wound (GSW) by INS and fragmentation from gunshots by INS.
- b. **SOLDIER F** – It is the opinion of the Court that the cause was fragmentation from a likely gunshot and fragmentation from 25mm fired by K1B. It is possible that he was shot by INS Small Arms Fire (SAF) (possibly 5.45mm) from either the West or North /North East, or by 5.56mm friendly fire most likely from elements of K1.
- c. **SOLDIER E** – It is the opinion of the Court that the cause was fragmentation from a GSW from INS. It is difficult to determine the direction of the round/s that created the shrapnel resulting in this fragmentation injury.
- d. **SOLDIER C** – It is the opinion of the Court that the cause was a GSW by INS.
- e. **SOLDIER B** – It is the opinion of the Court that the cause GSW by INS.

¹⁵ Exhibit, F, G, and H

¹⁶ Witness Fifty-Six.

¹⁷ Exhibit WW, Witness Nineteen and Witness Fifty-Six.

¹⁸ Insert WITANGA as witness.

¹⁹ Exhibit ACV, Exhibit ACW and Exhibit ACX, Witness Fifty-Two.

²⁰ Witness One.

- f. **SOLDIER G** – It is the opinion of the Court that the cause was fragmentation from 25mm fired by K1B.
13. In respect of those killed in action on 19 August 2012 it evident that the cause of death for TAMATEA, BAKER and HARRIS was due to a significant explosion as a result of an IED.
14. It is assessed that the NDS casualties were as a result of INS activity. It has not been possible for the Court to investigate in any detail the cause of injuries to the NDS/ANP. It is known that at least one of the NDS KIA was caused by a blast injury. The remainder of the NDS KIA were due to GSW²¹.

TERM OF REFERENCE 3:

What actions were taken to treat the injuries sustained by the casualties?

15. In respect of those killed in action on 4 August 2012:
- a. **DURRER** – Treated in the troop compartment of K2B NZLAV by **SOLDIER O** who applied a bandage to the wound.²² At the CCP the Nursing Officer, **SOLDIER P**, attempted to insert an IV, however this was unsuccessful.²³ **SOLDIER P** determined injuries as non-survivable.²⁴ DURRER died en route to hospital in US Army AME.
- b. **MALONE** –The first injury to his right leg was reported²⁵ but was not treated. He died almost immediately after being shot the second time(**Redacted**) . He was not treated either on the move to or at the Casualty Collection Point (CCP).²⁶
16. In respect of those wounded in action on 4 August 2012:
- a. **SOLDIER D** – Treated on scene, buddy aid was provided in back of K1A NZLAV where a tourniquet and Israeli bandage were applied to the wound.²⁷ Subsequently evacuated to CCP where he received pain relief.²⁸ Evacuated by US Army AME to RC(N) hospital.
- b. **SOLDIER F** – Treated on scene where **[Redacted]** was packed and bandaged and a tourniquet applied. Evacuated by winch to helicopter and then transferred to RC(N) hospital by US Army AME.²⁹

²¹ Witness One.

²² Exhibit UUU.

²³ Exhibit UUU, Witness Eight.

²⁴ Witness One.

²⁵ Witness Sixteen and Witness Thirty.

²⁶ Witness One, Witness Sixteen, Witness Forty-Seven.

²⁷ Witness Fifty Three.

²⁸ Witness Fifty Three. Exhibit YY.

²⁹ Witness Nineteen. Exhibit TT.

- c. **SOLDIER E** – Treated on scene, dressing applied, and pain relief given. Walked to US Army AME. Was evacuated to RC(N) hospital.³⁰
 - d. **SOLDIER C** – Treated on scene, buddy aid was provided in back of K1B NZLAV to control bleeding, and pain relief given.³¹ Evacuated to CCP where Nursing Officer treated, with subsequent monitoring conducted by members of KT1. Evacuated by US Army AME to RC(N). **MEDICAL OFFICER AA** feels that in his opinion, the level of care given to **SOLDIER C** reduced a real risk of death³².
 - e. **SOLDIER B** – Treated on scene. Three Israeli bandages applied. Taken to CCP for further treatment by Nursing Officer, which included applying a Tourniquet³³, inserting IV and giving pain relief.³⁴ Evacuated by US Army AME to RC(N) hospital. **MEDICAL OFFICER AA** feels that in his opinion, the level of care given to **SOLDIER B** reduced a real risk of death³⁵.
 - f. **SOLDIER G** – Self-treated on scene. Evacuated by winch to helicopter and then transferred to RC(N) hospital by US Army AME.³⁶
17. **NDS** – Treated on scene, majority evacuated to DO ABE for further treatment by LCPL BAKER prior to AME via US Army to BAF. Two NDS were evacuated to CCP for further treatment and US Army AME to RC(N) hospitals and subsequently to BAF.³⁷

TERM OF REFERENCE 4:

Were these actions in accordance with Tactical Combat Casualty Care?

18. Tactical Combat Casualty Care (TCCC) had not been formally taught as part of the CRIB 20 Pre-Deployment Training (PDT).³⁸ During medical specialist training prior to PDT, a high standard of training was delivered and the patrol medics were assessed to be at a good standard.³⁹ The Combat Life Savers were assessed on PDT as having very limited experience⁴⁰. In the opinion of the Court much of the first aid applied on scene and at the CCP was generally in accordance with the TCCC guidelines, in particular MARCHH. Some areas of improvement were noted but nothing that would have affected the eventual outcomes. In general the standard of 'buddy aid' and the first line medical care provided by the Nursing Officer and Combat Life Savers was of a high standard, and in all probability, resulted in the lives of **SOLDIER B** and **SOLDIER C** being saved.⁴¹ The medical support provided

³⁰ Witness Nineteen. Exhibit UU.

³¹ Witness One. Exhibit VV.

³² Witness Fifty-Six. Exhibit VV.

³³ Witness Forty-Eight. Exhibit XX.

³⁴ Witness One. Exhibit XX.

³⁵ Witness Fifty-Six. Exhibit XX.

³⁶ Witness Nineteen. Exhibit WW.

³⁷ Witness Nineteen.

³⁸ Exhibit ADC

³⁹ Exhibit ADB and Witness Nineteen.

⁴⁰ Witness Nineteen.

⁴¹ Witness Nineteen.

to **SOLDIER F** by Combat Life Savers without Patrol Medic oversight was, in the opinion of the court, of a high standard.

TERM OF REFERENCE 5:

Were the personnel involved in the incident, including the deceased and the casualties, qualified and sufficiently trained to perform their duties?

19. Most of CRIB 20 personnel had met the individual deployment criteria and the Position Description requirements for this mission.⁴² Those that had not met these requirements were given waivers from Headquarters Joint Forces (NZ) prior to their deployment.⁴³ The contingent as a whole had 'passed' Pre Deployment Training (PDT) training and CTC had assessed the CRIB 20 contingent as ready for deployment less some training gaps that were to be completed during In Theatre Training.⁴⁴
20. It is recognised that training on HMMWV could not be conducted during PDT and was subsequently conducted in theatre⁴⁵.
21. There was some concern about the level of trained state on the conclusion of PDT due to the limited timeframe in which PDT was conducted and the nature of the training. This was aimed at the collective training in respect to the lack of realistic scenarios⁴⁶ which has been the focus of the After Action Review Team. Basically, it was felt that PDT focused too much on individual teams as opposed to a scenario which required the bulk of the Company to respond⁴⁷. Accordingly, CO TU CRIB 20 had arranged for additional training to ensure that the appropriate skill-sets were obtained based on his extensive previous experience.⁴⁸
22. Prior to CRIB 20 PDT, a three day refresher on Mortuary Affairs (MA) was conducted for the Supply Technicians that deployed. Two of the personnel had previously done the 21 Supply Company Mortuary Affairs Course. It is unlikely that the wider contingent was exposed to any formal training.⁴⁹ Strong comments were made to the Court that suggests that the training given to NZDF personnel in MA does not adequately prepare them for their operational roles⁵⁰. It was suggested that RNZALR look into developing a more operationally focused MA Course for Supply Technicians⁵¹.

TERM OF REFERENCE 5A:

⁴² Exhibit ADG.

⁴³ Exhibit ADH.

⁴⁴ Exhibit ADB.

⁴⁵ Exhibit ADB and Witness Three.

⁴⁶ Witness Three.

⁴⁷ Witness Three.

⁴⁸ Witness Three.

⁴⁹ Witness Two.

⁵⁰ Witness Two and Witness Twenty-Nine.

⁵¹ Witness Twenty-Nine.

What precautions were taken, in preparing the remains of the soldiers killed in the IED attack on 19 August 2012 for repatriation, to ensure that no hazardous substances were present?

23. The Court has determined the following in relation to the processing of the three victims of the IED attack on 19 Aug 12:
- a. The nature of the injuries to all three was severe traumatic blast injuries
[Redacted]

Redacted].^{52, 53}
 - b. The site was considered as being at risk of further INS action so the Battlefield Clearance was conducted under these conditions and in an ever present possible threat⁵⁴.
 - c. The focus of the Battlefield Clearance Phase (on site) was the security **[Redacted Redacted]**, the 'de-bombing' of the RBAV/Webbing as much as possible without compromising the integrity of the remains, and then the evacuation of the bodies to BAGRAM for more thorough clearance and processing. The CSM of KIWI COY felt that they had done as thorough clearance as possible **[Redacted]** and the tactical situation⁵⁵.
 - d. Upon arrival at BAGRAM, the bodies were processed by a combined team of 4 x NZ Police Officers and up to 4 x NSE personnel at the US Mortuary Facility.⁵⁶ They worked as a team on each discrete body. After a live 5.56mm round was found in **SOLDIER AB's** body bag, the team leader of the US Mortuary Affairs Section was advised. He stated that he would normally call EOD but this did not occur however he did produce a body scanner to allow more extensive clearances to be done.⁵⁷ The bodies were not X-Rayed at all. They were then prepared for transporting to NZ via AI MINHAD Air Base (AMAB) and AUSTRALIA. The facilities that were used (US Army Mortuary Hanger) were described as simply a body receipt and storage resource where tentative examination can be conducted.⁵⁸ The facilities lacked sufficient tables or gurneys for the unloading of bodies and remains.⁵⁹ There was an X-Ray machine in location, however it was not considered suitable for checking a body.⁶⁰
 - e. The only process undertaken in the AMAB Theatre Mortuary Evacuation Point (TMEP) was to check the integrity of the caskets containing the Human

⁵² Exhibit ABD, Exhibit ABE, Exhibit ACV, Exhibit ACW and Exhibit ACX.

⁵³ Exhibit ABD and Exhibit ABE.

⁵⁴ Exhibit ABC, ABD and Witness Thirty-Six and Thirty-Seven.

⁵⁵ Exhibit ABD and Witness Thirty-Seven.

⁵⁶ Exhibit ABF, Witness Thirty-Nine and Witness Forty-Four.

⁵⁷ Exhibit ABF, Witness Thirty-Nine and Witness Forty-Six.

⁵⁸ Exhibit ABF.

⁵⁹ Exhibit ABF and Witness Forty-Four.

⁶⁰ Witness Thirty Nine and Witness Forty-Six.

Remains bags, removal of ice and water from the caskets, storage of the bodies in the TMEP refrigerated storage container and then re-packing in ice for the journey to NZ.⁶¹

- f. It is assessed that the reason that the 2 x 9mm rounds and hand grenade being missed in the pre-RTNZ processing was that they were either in a part of **SOLDIER H's RBAV [Redacted]**

Redacted]⁶². A lack of tables at the US Mortuary Facility did not allow for the remains to be removed and therefore taken out of the body bags, further restricting a detailed check⁶³. The only way that the rounds could have been located was either through **[Redacted]**, by X-Ray, or by thorough examination using more advanced EOD equipment. This type of process is simply not possible on the tactical battlefield and therefore, in this case, is better suited to the BAGRAM environment. It is however felt given the training provided, the facilities and equipment available, and the nature of the injuries, the NZ Police/NSE team fulfilled their duties to the best of their ability. It is also the opinion of the Court that the NZ Police and NSE teams worked well together, despite not possessing a comprehensive set of guidelines.

- g. The 2 x 9mm fell out of the helmet of **SOLDIER H** on to the table in the Christchurch Hospital Mortuary while being removed by **POLICE OFFICER AC** who was part of the equipment removal detail of OPERATION IONA⁶⁴. He further states that while patting down the vest after having slowly removed it from the remains of **SOLDIER H**, he noticed a hard object in one of the pouches. This was immediately identified as a Grenade. **POLICE OFFICER AC** further states that it would have been difficult to observe the pouch containing the grenade and that it needed to be exposed to be seen and then removed⁶⁵.
- h. The current policy of returning the bodies of deceased servicemen and women in as close to the state they were retrieved from the field is understood,⁶⁶ but it is the opinion of the Court that this influenced the degree of searching that was conducted in this situation and that it directly resulted in the return of an HE Grenade in the remains of **SOLDIER H**.

How, if at all, could such processes be improved?

24. The recommended improvements are:

⁶¹ Exhibit ABJ.

⁶² Exhibit ABF and Witness Thirty-Nine.

⁶³ Exhibit ABF and Witness Thirty-Nine.

⁶⁴ Witness Sixty-Two. **[Redacted]**

⁶⁵ Witness Sixty-Two.

⁶⁶ Exhibit ACR.

- a. Clearly defined parameters for the Battlefield Clearance of bodies and remains prior to backloading including the clearance and removal of ammunition within the constraints of the tactical situation and the possible threat. It is not at this level that thorough clearance and body/remains checking should be carried out unless tactically possible.
- b. Use is made of X-Ray and/or Advanced EOD equipment to scan all bodies/remains for a similar scenario at the first suitable opportunity. Bodies/Remains should not leave a theatre of operations prior to receiving an X-Ray or Advanced EOD clearance.
- c. A formal arrangement needs to be established between NZ Police and NZDF which clearly articulates the duties and responsibilities of each party should they be operating side by side in a similar situation.
- d. There are a number of sets of SOPs that govern the processing and repatriation of NZDF deceased in relation to CRIB. Within these SOPs, there are some gaps in the guidelines and there are inconsistencies which need to be addressed⁶⁷. It is the opinion of the Court that the Army/NZDF needs to look at standardising SOPs for the processing and repatriation of deceased (and wounded for that matter) that provide the framework for all operational deployments. Theatre specific Appendices can then be developed.
- e. The NZDF needs to establish the ability to manage Mortuary Affairs (MA) without assistance of NZ Police if necessary. This requires more detailed training in MA in combat and in operational environments rather than simply in a peacetime scenario. The NZDF should look to coalition partners for training opportunities for this to occur and ensure that it is targeted at the right people/trade. It is the Court's opinion that this should be SUPTECH personnel and that all such personnel receive a generic level of training and that more focused and relevant training is conducted for specific contingent personnel relevant to their theatre of operations.
- f. A balance needs to be struck between the need to preserve the body in its relevant state and the need to complete thorough bodies and remains searches. The NZDF needs to enter into discussions with the NZ Pathology Service to determine a workable balance to ensure that there is the possibility of a thorough body/remains search without jeopardising the integrity of the body/remains prior to it reaching an NZ based Pathologist. It may, for example, be pertinent to that in certain cases, the processing of a body may require it to be done to at least skin contact clothing⁶⁸.
- g. Consideration needs to be made in terms of the timing of memorial services/funerals with regard to allowing time for the appropriate and necessary pathology and coronial activities to be conducted. The NZDF needs to be seen to be ensuring that these agencies have the necessary time to fulfil their duties without undue pressure. In the case of the return of TAMATEA, BAKER and HARRIS, the process was under significant time pressure and it was only due to

⁶⁷ Witness Twenty-Nine, Witness Forty-Two, Witness Forty-Three and Witness Forty-Seven.

⁶⁸ Witness Fifty-Two.

a combined, concerted and coordinated approach that the bodies were released in time for the memorial service⁶⁹. This needs to be the exception rather than the norm.

TERM OF REFERENCE 6:

How effective was the *in extremis* support provided to the NDS?

25. There is no reference to *in extremis* support in the HQJFNZ Operations Instruction for CRIB 20.⁷⁰ The Court has sourced two ISAF Standard Operating Procedures (SOP). ISAF SOP HQ-00322 relates to provision of *in extremis* support to the international community, and describes *in extremis* support as **[Redaction Redaction]**.⁷¹ ISAF SOP HQ-00351 relates to provision of ISAF support to Government of the Islamic Republic of Afghanistan (GIROA) requests for assistance.⁷² Both documents are operational level documents. It appears that there is no definitive CRIB Standard Operating Procedure (SOP) for the provision of *in extremis* support to ANSF within the BAMYAN AOR. CO TU CRIB 20 is aware of some form of 'guidance' from RC(E) on this aspect of the overall 'Transition Plan' but it is not specific in the nature of support and/or the decision support criteria.⁷³ CO TU CRIB is working with RC(E) to clarify this and to establish clear guidelines. This will be particularly relevant for future requests from ANSF for *in extremis* support with all of the NZPRT security elements being based in KIWI BASE/BAMYAN.
26. It is the opinion of the Court that the situation that resulted in the deployment of NZPRT assets to support the NDS was entirely appropriate and it fits within the definition of *in extremis* support as articulated above. The provision of this support was assessed as being very effective considering all NDS casualties were evacuated as quickly as possible using coalition resources that were available through the NZPRT elements. It is apparent that the NDS had suffered significant casualties as a result of INS activity in the morning and the fate of a number of the wounded rested in the hands of the NZPRT personnel.⁷⁴
27. It could be argued that once the known NDS casualties were evacuated, the NZPRT elements could have withdrawn from the area. Indications had been given by the NDS of further possible NDS casualties as well as INS dead in the vicinity of BAGHAK, which led the KIWI COY elements to conduct a clearance operation as part of a wider TSE⁷⁵. This act is consistent with **SOLDIER B's** intent to physically disrupt insurgent operations, in part through gaining intelligence where possible.⁷⁶ The TSE is therefore considered part of the COY Scheme of Manoeuvre to disrupt the INS which is quite separate to the provision of *in extremis* support to the NDS. It

⁶⁹ Witness Fifty-Two.

⁷⁰ Exhibit ADF and Witness Fifty-Nine.

⁷¹ Exhibit ACT.

⁷² Exhibit ACU.

⁷³ Witness Two.

⁷⁴ Witness One and Witness Nineteen.

⁷⁵ Exhibits FF and TTT and Witness Fourteen and Witness Thirty.

⁷⁶ Witness Forty-Eight.

was in the act of doing this (along with the NDS) that possibly triggered an INS response from those insurgents that had remained in location.

28. Another aspect which the COI considers is related to the provision of *in extremis* support is that at 1249 hours on 4 August 12, RC(E) directed that the NZPRT elements were to disengage once casualties were evacuated.⁷⁷ CO TU CRIB 20 discussed this direction with RC(E) and stated that he felt he could not undertake this direction due to the NDS casualties and the dismounted patrols to the high ground. RC(E) reason for this direction was that as the NZPRT was into Phase 2 of 'Transition', therefore continued involvement was not justified.⁷⁸ After further discussion with CO TU CRIB 20, RC(E) acquiesced to TU CRIB continuing their operations.
29. It has been corroborated that between three and five INS were killed by NZPRT elements during the provision of support⁷⁹. Unfortunately a full TSE was not possible and as such, therefore these were unable to be definitively confirmed.

TERM OF REFERENCE 7:

What coalition support did TU 653.1.1 draw on during this incident?

30. As listed below. The timings are as accurate as possible (approximate variation +/- 10min)⁸⁰:
- a. **(Redacted)**
 - b. **(Redacted)**
 - c. **(Redacted)**
 - d. **(Redacted)**
 - e. **(Redacted)**
 - f. **(Redacted)**
 - g. **(Redacted)**
 - h. **(Redacted)**
 - i. **(Redacted)**
 - j. **(Redacted)**
 - k. **(Redacted)**

⁷⁷ Exhibit I, Witness Two.

⁷⁸ Witness Two.

⁷⁹ Exhibits AA, CC, JJ, III, ACC and ACJ, Witness Eleven, Witness Twelve, Witness Twenty-Four and Witness Forty-Eight.

⁸⁰ Exhibit H.

I. AME:

(1) (Redacted)

(2) (Redacted)

(3) (Redacted)

(4) (Redacted)

How effective was this support in neutralising insurgent action?

31. Evidence suggests that the use of the fast air to drop flares as a show of force may have assisted the insurgents in obtaining cover⁸¹. It is also worth noting that the INS did not wish to engage while the ECAS was evident on station. They waited until it had appeared to have departed⁸². It is also noted that bombers were unable to release ordnance due to close proximity to friendly personnel, the need for positive identification and the requirement for COMISAF authorisation to release⁸³. Finally, it is the opinion of the Court that the presence of coalition air support may have forced the INS to remain in location to avoid detection and targeting.
32. The Court was unable to source and therefore review Mission Reports from the coalition air assets so was therefore unable to consider all aspects of the support provided. It is possible that these reports may have provided good information on how to improve the control and application of such support for future NZPRT operations.
33. (Redacted)

TERM OF REFERENCE 8:**Comment on any other matters the Court considers relevant to the purpose of the Inquiry.**

34. The following are areas that the Court considers relevant to the purposes of the Inquiry:
- a. **The Context – The Security Environment.** In order to provide context, it is necessary to highlight the changes to the security environment that occurred over the period of the CRIB 20 deployment. Up until July 2012, the security

⁸¹ Exhibit TTT, Witness Thirty and Witness Forty-Eight.

⁸² Exhibit TTT, Witness Thirty and Witness Forty-Eight.

⁸³ Witness Three.

environment was largely consistent to that of CRIB 19⁸⁴. In early July, there were two SIGACTs that were targeted at the ANP which resulted in significant casualties. These were on 3 and 8 July 2012 and were in the North Eastern area of the AO and involved increased use of large IEDs. It showed a clear increase in INS activity targeted at both the ANSF and NZPRT elements, an intent that was confirmed by intelligence sources.⁸⁵ It also highlighted that the INS were employing the tactic of 'come-on' activities to lure ANSF and NZPRT elements into subsequent engagements as a result of the initial engagement⁸⁶. This saw an increased need for the NZPRT to conduct activities to further disrupt and neutralise this heightened threat⁸⁷. It is within this context that the Court feels that any judgment of certain actions of individuals needs to be considered. It is also the opinion of the Court that this justified the decision to conduct operations on 4 August 2012 that transitioned from *in extremis* support to disruption operations.

- b. **The Context – Fog of War or Confusion of Battle.** The Court feels that there is a need to explain the 'fog of war' that was present on 4 August 2012 in order to understand the context. There are four patrols on the ground at the time the contact occurs (with elements either in vicinity of their vehicles or conducting a dismounted patrol on the high ground to the East), all with differing levels of situational awareness. There are numerous NDS and ANP along with LN in the area⁸⁸. The NDS have just had a significant engagement with an INS group and suffered casualties. The NDS are wearing local civilian clothing in the main⁸⁹. The OC has just arrived and was trying to get a feel of the situation in order to establish better command and control over the entire situation⁹⁰. At the time the contact occurred and during it, communications were problematic and at times, chaotic. Communications were achieved through a combination of **(Redacted)**

none of which provided a single source of common information⁹¹. The INS group was placed so that it could effect fire in almost 180 degrees⁹². In the initial engagement, the OC was shot and **SOLDIER I**, the one commander with the majority of the situational awareness, become committed to the preservation of life and evacuation of **SOLDIER B**, and in effect was removed from the field for a period of time⁹³. There were a total of six HMMWV and six LAV operating on a very narrow road. Additionally, there were a total of eight casualties sustained in a very short space of time. Through the contact and into the

⁸⁴ Exhibit TTT, Witness Three and Witness Forty-Eight

⁸⁵ Exhibit EEE.

⁸⁶ Exhibit EEE, Witness Twenty One.

⁸⁷ Witness Three, Witness Forty-Eight

⁸⁸ Exhibit DDD1 (Video Footage) and Exhibit MMM1.

⁸⁹ Exhibit DDD1 and MMM1 and TTT, Witness Thirty and Witness Forty-Eight.

⁹⁰ Exhibit TTT, Witness Thirty and Witness Forty-Eight.

⁹¹ Exhibit TTT, Witness Three, Witness Four and Witness Thirty.

⁹² Exhibit K.

⁹³ Witness Thirty.

afternoon, NDS and ANP involvement continued and even increased with the arrival of the ANP QRF from BAMIAN⁹⁴. Also, HQ PRT and HQ KIWI COY were often starved of information due to poor communications⁹⁵. This is but a small representation of the complex environment that surrounded the contact at BAGHAK on 4 August 2012. Whilst this may look chaotic, it is the opinion of the Court that this is not unusual in an intense combat situation. It is the opinion of the Court that it is this type of situation that contributes to, what is commonly referred to as the, 'fog of war'. It is also the recommendation of the Court that this needs to be acknowledged when considering individual actions taken and decisions that were made within this context.

- c. **Insurgent Group / Tactics.** The Court has not been able to answer conclusively is why the INS were in the location in the first place and why they remained in location after they had engaged the NDS earlier in the day. However, witness Twenty-One provides some possible explanations in his statement⁹⁶. It is the opinion of the Court that the INS group were likely of a mixed make up, from hard-liner to tribesman, and were aware of the NDS operation and positioned themselves to ambush them and as the activity unfolded in the morning; they were able to draw the NDS into the ambush area to the South of the original target house⁹⁷. It is also the opinion of the Court that this was not a new INS group but rather a grouping that came together over the course of the activity from the original base grouping that was the target of the NDS operation⁹⁸. This grouping either decided to stay and take advantage of a developing situation with the arrival of the PRT elements or was forced to stay due to both ISAF ground and air assets being present in the area. It is the opinion of the Court that it is probably the latter reason and this is supported by witnesses present on the day.⁹⁹
- d. **Insurgent Weapons.** Much speculation was made of the wounds to DURRER and **SOLDIER F** in particular, in that they appeared to have been caused by small calibre rounds. While the AK47 is the most common weapon used by the INS it is not the only one available to them. In this situation, it is highly likely that the INS were carrying a mix of AK47, AK74 and hunting rifles¹⁰⁰. It is also possible that they may have even had access to 5.56mm weapons (M4)¹⁰¹. Witness Fifty-Six states that, in his opinion, a number of the wounds were consistent with high velocity rounds.¹⁰²
- e. **Situational Awareness.** One of the biggest contributing factors to the Blue-on-Blue was the lack of situational awareness across all the KIWI TEAMS of what each other was doing and their location immediately prior to the contact commencing. The single most significant gap was K1's apparent lack of knowledge of the dismounted patrols on the high ground to the East prior to and

⁹⁴ Exhibit I.

⁹⁵ Exhibit TTT, Witness Three, Witness Four, Witness Thirty and Witness Forty-Eight.

⁹⁶ Witness Twenty-One.

⁹⁷ Exhibit EEE, Witness Twenty-One.

⁹⁸ Exhibit EEE, Witness Twenty-One.

⁹⁹ Exhibit TTT, Exhibit FF. Witness Fourteen and Witness Thirty.

¹⁰⁰ Exhibit EEE, Witness Twenty-One.

¹⁰¹ Exhibit EEE, Witness Twenty-One.

¹⁰² Witness Fifty-Eight.

on entering the contact area¹⁰³. It was the stated intent of the OC to get situational awareness and to then give tasks to each patrol¹⁰⁴. There does not appear to have been a detailed brief given to KT1 Commander about all the other element's locations and intentions nor does it appear that the KT1 Commander gave a detailed briefing to his call sign at all prior to entry into the contact area. This brief could have then been passed on to his Patrol members. Had the Commanders of KT2 and KT1 conducted this situational update, it is the opinion of the Court that the Blue-on-Blue engagement may not have happened.

- f. **KT1 Entry into the Contact Area.** KT1 mounted up and entered the contact area almost immediately upon hearing the firing start to their North. It does not appear that any of the other Commanders in the contact area knew of their intentions given that **SOLDIER B** had been shot and **SOLDIER I** was involved with his care¹⁰⁵. It is the opinion of the Court that a more deliberate move into the contact area based on a 'call forward' command would have reduced the confusion and complexity of the contact at that time.
- g. **Command and Control.** The command and control of the entire contact on 4 August 2012 was problematic due to the scale of the contact, the involvement of the ANSF, the terrain and the communication systems available. It is important to note that the intent of the OC upon his arrival was to establish clearer and more effective command and control¹⁰⁶. It is the opinion of the Court that certain aspects of the contact were managed effectively by separate commanders. **SOLDIER I** took on the role of managing the incident upon his arrival, including the dismounted patrols operating to the East. He also managed the application of coalition air support that was provided. **SOLDIER AD** and then later **SOLDIER AE** managed the operations at the CCP. **SOLDIER X** commanded the dismounted patrols during the clearance operation and the subsequent movements on the high ground to the South – East of the contact site. There are also examples of effective small team command, for example the K4B and K2D dismounted patrols. Finally, there may be value in the NEA project team being given access to aspects of this COI in order to analyse the various Command and Control systems that were in play on 4 August 2012. This may well prove useful in informing this project in terms of Blue Force Tracking and network management.
- h. **Application of the Rules of Engagement.** During PDT there was an instance where the application of ROE by a patrol, in particular the use of deadly force, was incorrectly applied.¹⁰⁷ There was also a concern raised early in the CRIB 20 deployment about **SOLDIER B**'s interpretation of the ROE¹⁰⁸. This was brought to the attention of LCC but no further action was deemed necessary and other information from in theatre suggested that **SOLDIER B** understood his ROE and was applying them appropriately¹⁰⁹. It is the opinion of the Court

¹⁰³ Witness Five, Witness Six and Witness Fifty-Three.

¹⁰⁴ Witness Forty-Eight

¹⁰⁵ Exhibit FF, TTT, Witness Fourteen, Witness Thirty.

¹⁰⁶ Witness Forty-Eight.

¹⁰⁷ Exhibit ADB and Exhibit ADI, Witness Sixty-One.

¹⁰⁸ Exhibit ADJ, Witness Sixty-One.

¹⁰⁹ Witness Sixty-One and Additional Witness – (Redacted).

that the overall application of the approved CRIB ROE and LOAC by the NZPRT elements during the contact at BAGHAK on 4 August 2012 was appropriate. In summary, the application of lethal force was justified under the ROE criteria of responding to a demonstration of Hostile Intent and responding to Hostile Acts. There are numerous instances¹¹⁰ where both suppressing¹¹¹ and speculative fire¹¹² was applied, both prior to and throughout the engagement. There is evidence that elements of KT1 were firing on the move into the engagement area however this evidence also states that this fire was being applied into areas that was already being engaged by elements of KT2 and KT4¹¹³. Given this, the information received from ANSF about the likely insurgent locations based on the earlier incident, the overall remoteness of the location where the incident took place, and the subsequently positively identified insurgent locations, it is the opinion of the Court that, in this particular incident, the use of suppressing and speculative fire was reasonable. The NDS for example were adamant that the INS were in locations to the North and North East of where KT2 and KT4 were located¹¹⁴. A specific location was passed onto **SOLDIER B** by the NDS Commander which proved accurate as three INS exposed themselves shortly after the low show of force (**Redacted**) .

- i. **ROE Training.** One of the areas that **SOLDIER B** had concerns about was the way in which we train soldiers in the application of ROE for operational deployments¹¹⁵. It is his view, and that of the Court, that we need deliver ROE training in a way that ensures soldiers are comfortable and confident with the ROE and their application¹¹⁶. Although ROE training has evolved over the course of CRIB deployments, it is the opinion of the Court that soldiers need to be trained on ROE in a manner that accurately reflects the reality of the specific deployment. ROE training both on PDT and as part of ongoing general training needs to reflect this.
- j. **Blue on Blue [K1B on K2D]** – While a Blue-on-Blue is not considered acceptable, the Court does consider, given the overall situation as described above, that it is understandable, in particular the varying degrees of situational awareness held by KT1 and specifically the fact that K1B were not aware of the dismounts on the high ground.¹¹⁷ The location of the INS¹¹⁸, which in some cases created potential cross-fire scenarios, contributed to this as did some of the dismounted patrol's actions in relation to the INS to the West of KT4¹¹⁹. It is

¹¹⁰ There are multiple references made in statements from the majority of the crew members and crew commanders of all four patrols (KT1, KT2, KT3 and KT4) that during the engagements, they applied both suppressing and speculative fire from vehicle mounted systems with the fire being aimed at areas where incoming fire had been received from and also on to possible insurgent firing points.

¹¹¹ **Suppressing** fire is that fire that is applied to known or suspected enemy positions with the desired effect being to suppress the enemy's ability to apply effective fire.

¹¹² **Speculative** fire is that fire that is applied to possible enemy positions or positions that if occupied by enemy could provide the enemy the opportunity to engage with effective fire. This fire has the effect of suppressing any enemy that may be in location.

¹¹³ Witness Five to Ten and Witness Fifty-Three.

¹¹⁴ Exhibit FF, TTT, Witness Fourteen, Witness Thirty and Witness Forty-Eight.

¹¹⁵ Witness Forty-Eight.

¹¹⁶ Witness Forty-Eight.

¹¹⁷ Witness Six

¹¹⁸ Exhibit K.

¹¹⁹ Exhibit JJ.

the opinion of the Court better situational awareness and more realistic training on how to positively identify targets in a fast-moving, complex operational situation, would have reduced the risk of the Blue-on-Blue.

- k. **NDS / ANSF.** The Court acknowledges the difficulty that NZ PRT elements had when the bulk of the NDS were dressed in local clothing (plain clothes) and could have well been mistaken for INS. Also, the sheer number of ANSF elements that gathered at the site throughout the day created significant command and control issues and added to the complexity of the situation¹²⁰.
- l. **(Redacted).**

- m. **Lack of Tactical Site Exploitation (TSE).** While the court accepts that CO CRIB 20 has his reasons¹²¹ for not remaining in the BAGHAK area or returning to the area in order to conduct a full TSE, it is the opinion of the court that this was a lost opportunity to gain valuable intelligence. It would have also provided an excellent opportunity to gain a better picture of the engagement, insurgent locations and firing points, routes used, numbers involved and also to better analyse how the NZPRT soldiers were killed or wounded and from where. The net effect being that the report on the BAGHAK engagement would have been far more accurate and the PRT would have gained more intelligence to assist their future operations. It is therefore the opinion of the court that wherever possible, areas where engagements or incidents have occurred should be secured and held until a full TSE can be completed. It is worth noting that a thorough TSE was conducted at the site of the 19 August IED attack and valuable intelligence was gained.¹²²

¹²⁰ Exhibit DDD1 and MMM1 and TTT, Witness Thirty and Witness Forty-Eight.

¹²¹ Witness Three. [Damaged vehicles, troop welfare, security concerns and pressure from RC East to withdraw, lack of Information Requirements.]

¹²² Exhibit Seventy.

35. The following comments are made by the Court without specific reference to witnesses or exhibits as these comments relate to procedural matters as opposed to conclusions drawn from the evidence collected.
- a. **After Action Reviews (AAR) / Courts of Inquiry (COI) / MP Investigations.** It is the opinion of the Court that an AAR team should be deployed as soon as possible to analyse actions of this scale and as a matter of course. This should be lessons focused and in the Army and land based context, it should be the role of TRADOC, in support of HQJFNZ / NZDF outputs, to mount such a task. Commander TRADOC will produce an outline SOP for LCC / COMJFNZ to consider in terms of support to possible further AAR requirements. In terms of Courts of Inquiry, these should be situation based and in this case, it was considered relevant and necessary given the information available at the time of the AAR Team's deployment. It is felt by the Court that an MP Investigation team should be placed on a degree of notice to deploy and its deployment should be triggered by evidence uncovered by a Court of Inquiry. It proved difficult for the NZPRT to manage what was essentially three 'investigatory' teams simultaneously operating in KIWI BASE, and caused pressure on the contingent and more importantly, on the individual soldiers and officers having to be interviewed by three teams on essentially the same subject. It also proved somewhat problematic to ensure one investigation did not compromise the others. In summary, an AAR can trigger a COI which in turn triggers an MP investigation as necessary. It is however acknowledged that if determined soon enough, an AAR and concurrent COI could be conducted effectively with clear linkages in terms of management and within clear guidelines. It is also acknowledged that there may be instances where the factual situation gives rise to a scenario where an MP investigation should be undertaken immediately. Again, like the AAR and COI, this will be dependent on the circumstances.
 - b. **Incident Analysis and Future Learning.** The 4 August 2012 incident has provided an excellent opportunity to leverage simulation tools (Virtual Battlespace - VBS) to replicate, model and depict aspects of the contact. This will not only enhance incident analysis but will also provide the basis for future development of the scenario to be used in future learning. It is the intent of Commander TRADOC to pursue the development of a 'pure' virtual model based on the BAGHAK incident that can then be used to enhance training and learning up to and including Company level. This scenario will also be used to build the new HQ TRADOC Adaptive War fighting Cell concept in regards to the fusion of Lessons, Doctrine and Simulation.
 - c. **Recognition.** Although not included in the terms of reference, in the course of its inquiry, the Court has identified that the following individuals should be considered for further recognition:
 - i. **(Redacted)**
 - ii. **(Redacted)**
 - iii. **(Redacted)**
 - iv. **(Redacted)**
 - v. **(Redacted)**
 - vi. **(Redacted)**
 - vii. **(Redacted)**

CONCLUSIONS

36. The following are the key conclusions of this court of inquiry (**Note** - Referencing for these conclusions are contained in the body of the report):
- a. LCPL MALONE and LCPL DURRER were killed by INS fire.
 - b. **SOLDIER B, SOLDIER D, SOLDIER E, and SOLDIER C** were wounded by INS fire / shrapnel.
 - c. **SOLDIER F** and **SOLDIER G** were **most likely** wounded by LAV 25mm shrapnel.
 - d. CPL TAMATEA, LCPL BAKER and PTE HARRIS were killed by a victim initiated IED.
 - e. The NDS suffered 4 x KIA (1 x Blast, 3 x GSW), 9 x WIA (9 x GSW) and 1 x ANP (1 x GSW) WIA all **most likely** caused by INS. 1 x Local National was also wounded.
 - f. It is concluded that the buddy aid and battlefield medical care (by the NO and CLS) given to **SOLDIER B** and **SOLDIER C** significantly reduced the risk of death for both of these casualties.
 - g. While TCCC was not formally taught on CRIB 20's PDT, they had received in theatre training in MARCHH and TCCC and this was evident and was practiced on 4 Aug 12 when treating the wounded. It proved very effective, particularly that given to **SOLDIER F** in an isolated position for a significant period of time.
 - h. The CRIB 20 contingent was adequately prepared and trained and that there is no evidence to indicate that any gaps in training contributed to any of the injuries sustained.
 - i. The level of training given to the CRIB 20 contingent on PDT was adequate but lacked realism and complexity and certainly did not reflect the level of complexity encountered on 4 Aug 12. It is understood that this has been expanded upon by the After Review Team.
 - j. There are real gaps in the level and quality of the NZ Army's mortuary affairs training. While this did not directly result in the incident where a grenade returned to NZ in the remains of one of the deceased, the lack of training did expose those personnel involved to a situation for which they had not been adequately trained.
 - k. The three soldiers killed in the IED attack on 19 Aug 12 were processed as best they could be given the tactical situation, the resources available and the state of the remains. The NSE and NZ Police teams worked well together. The HE Grenade that was located after the remains had returned to NZ could only have been picked up had the body been X-Rayed or had it been completely stripped. Completely stripping the bodies is not current practice due to perceived NZ

Pathology Services requirements which currently limit what can be done in theatre.

- l. The pouch that the grenade was located in was not visible **[Redacted Redacted]**.
- m. In regards to the processing and repatriation of deceased soldiers, there are gaps in certain SOPs and contradictions in others that need to be standardised.
- n. The *in extremis* support provided to the NDS in the morning of 4 Aug 12 was effective and the casualty evacuation and treatment of NDS casualties saved lives. There is however a lack of clear guidance to command on the provision of *in extremis* support in terms of decisions points, levels of support and when to withdraw from providing such support. At the time of 4 Aug 12, many, if not all of these decisions rested with the TU CRIB commander.
- o. Following the completion of *in extremis* support, the Kiwi Company elements 'transitioned' into a TSE operation with NDS support. This was consistent with the OC of Kiwi Company's intent to "disrupt" INS operations. It is likely that this operation triggered, or at least contributed to the INS response.
- p. At least between three to five insurgents were killed by NZPRT elements. It is possible that the figure was higher than this. It is however impossible to be conclusive given that no full TSE was conducted.
- q. Significant coalition air support was provided to the NZPRT on both 4 Aug and 19 Aug 12. While this support was appreciated on 4 Aug 12, **[Redacted Redacted]**. Also, the provision of support over head appears to have reduced the INS willingness to move or to engage. It is also possible that the persistent presence of air support forced the INS to remain in location
- r. The incidents of 4 Aug 12 and 19 Aug 12 marked an increase in targeting of NZPRT elements. They were consistent with the increased targeting of ANSF elements that occurred in Jul 12. This increased threat posture contributed to the clear intent of CRIB 20 to disrupt and neutralise and therefore justified the actions of the elements gathered at BAGHAK on 4 Aug 12.
- s. BAGHAK was a complex activity which is illustrative of the 'fog of war' effect, in particular, the chaotic 12 min period between 1227 hours and 1239 hours.
- t. The INS group that was on the field on 4 Aug 12 was a mix of hard-line INS and tribesmen who appear to have been positioned to ambush the NDS patrol that they had warning of. Why they remained in place and subsequently engaged the NZPRT is unclear, however it could have been because they chose to, or were forced to by both NZPRT actions and coalition air support.
- u. It is highly likely that there were a number of different types and calibres of weapons being carried by the INS. The fact that DURRER and **SOLDIER F may have** been shot by a smaller calibre weapon is likely to be due to the presence of AK74 (5.45mm) weapons. It is the Court's opinion that it would

- have been impossible for DURRER to have been shot by a NZPRT 5.56mm weapon in the hands of a NZ Army soldier.
- v. The Blue-on-Blue which resulted in the wounding of **SOLDIER F** and **SOLDIER G** was avoidable and was in part, due to inadequate situational awareness, in particular, the lack of awareness that KT1 had of the dismounted patrols. The Court feels that had KT1's entry into the contact been more deliberate and had its situational awareness been better, it is highly likely that the Blue-on-Blue would not have happened.
 - w. Command and control of the actual fire-fight was problematic, particularly with the loss of **SOLDIER B** and **SOLDIER I** early in the fight. Not one commander had the whole picture. Despite this, there were good examples of small team leadership throughout the engagement and the subsequent actions.
 - x. The NZPRT elements acted appropriately on 4 Aug 12 given the context and circumstances and in accordance with the ROE. The uses of speculative and suppressing fire were considered reasonable and the application of lethal force was justified under the hostile intent/hostile act criteria.
 - y. While no evidence of Blue-on-Green was produced to the Court, the fact that the NDS dress in very similar clothing to that worn by the INS makes this a very real risk.
 - z. **(Redacted)**
- aa. It is likely that a full TSE of the BAGHAK site would have provided valuable intelligence and a more accurate picture of how the engagement unfolded. This would have proved useful for future operations, both in terms of PRT actions and when considering insurgent tactics and intentions.

RECOMMENDATIONS

37. The following are the key recommendations made as a result of this Court of Inquiry. It needs to be noted that a number of recommendations were also made in the After Action Review Report:
- a. Tactical Combat Casualty Care (TCCC) needs to be introduced across Army/NZDF as the basis of 'buddy aid'. It is understood that this is already being implemented.
 - b. PDT Scenarios need to be developed that work up to the high end of possible situations in terms of complexity that may be encountered in any specific theatre. The adage "train high, operate low" is a useful guide.
 - c. The Army / NZDF needs to review how and where it trains those that are responsible for Mortuary Affairs. Any training needs to be more relevant to the possible operational environment.
 - d. The NZDF needs to develop a standard SOP for the processing and repatriation of deceased personnel and that this is used to guide the training of all those that will have a role to play in this process.
 - e. NZDF and the Pathology Service hold discussions to determine what state bodies are actually required to be returned to NZ in. This will then determine the level of search and equipment removal that can be done in theatre.
 - f. Wherever possible, bodies and remains are X-Rayed before they leave theatre.
 - g. The NZDF and NZ Police should look at developing a formal arrangement in terms of duties and responsibilities for the processing of deceased personnel when they are likely to be operating side by side.
 - h. The timing of memorial services needs to allow sufficient time for the appropriate post mortem and coronial activities to be undertaken.
 - i. HQJFNZ needs to develop clear criteria and guidelines governing the provision of *in extremis* support when this is a mission requirement.
 - j. The delivery of ROE training needs to be conducted in a way that allows soldiers to become comfortable with ROE and their application. The focus should be on ROE as an ordinary but important part of the requirements for any deployment. It is understood that improvements have been made in PDT scenario based training and it is recommended that this continues to evolve with the nature and scope of NZDF deployments and as part of general ongoing training.
 - k. **(Redacted)**

- i. Wherever possible, areas where engagements or incidents have occurred should be secured and held until a full TSE can be completed.
- m. The Network Enabled Army (NEA) Project team are given access to appropriate content within this report as pertaining to issues around command and control, in particular net management and blue force tracking.

Dated at Linton on the 30th of January 2013.

E.G. WILLIAMS
Colonel
President

G.L.KING
Lieutenant Colonel
Member

ADDENDUM TO THE REPORT OF THE COURT OF INQUIRY

1. In accordance with Amendment Number 4 to the Order for the Assembly of a Court of Inquiry, specifically being that the Assembling Authority received new information on 30 April 2013 from **SOLDIER F** to RNZMP, not previously put before the Court of Inquiry, alleging further circumstances of “friendly fire”, this Court of Inquiry was re opened on 03 May 2013.

2. The Court of Inquiry interviewed **SOLDIER AN** at which time he submitted a statement by **SOLDIER F**¹²³ and a furtherance to that statement that alleges the following:

- a. The possibility that K2D was fired on by more than one element of KT1, being K1A, during the initial engagement,
- b. The possibility that there was another incident of friendly fire, in particular, fire from KT3 being directed close to the position of one of the dismounted patrols (K2D) during the second contact that occurred at approximately 1500 hrs, 4 Aug 12; and
- c. The possibility of NZPRT elements firing on members of the NDS / ANSF and/or causing some of the deaths / injuries that the NDS / ANSF sustained.

3. The Court of Inquiry specifically reviewed Term of Reference 8 of its report, to determine whether this new information challenged the conclusions of the court, specifically being:

- a. Para 34, sub – para e, **Situational Awareness** – specifically in relation to the possibility of a second Blue on Blue between elements of K3 and K2D.
- b. Para 34, sub – para j, **Blue on Blue** – specifically in relation to allegations that **SOLDIER D** was the one who engaged K2D, resulting in the injuries to **SOLDIER F** and **SOLDIER G**.
- c. Para 34, sub – para k, **NDS/ANSF** – specifically in relation to allegations of a Blue on Green by elements of K4 and **SOLDIER B**.

4. Having reviewed the statement and furtherance by **SOLDIER F**, the Court of Inquiry then interviewed a total of seven military personnel, being the following:

- a. **SOLDIER F**
- b. **SOLDIER AI**
- c. **SOLDIER U**
- d. **SOLDIER X**
- e. **SOLDIER AM**
- f. **SOLDIER D**
- g. **SOLDIER I**

5. Of these personnel, five had been interviewed previously by the Court of Inquiry, with two being interviewed for the first time, being **SOLDIER U** and **SOLDIER AM**. Both

¹²³ Exhibit ADM

SOLDIER U and **SOLDIER AM** had previously provided personal accounts that are included as exhibits to the Court of Inquiry.

REPORT CAVEATS

6. The Court of Inquiry interviewed **SOLDIER F**, **SOLDIER AI**, **SOLDIER U**, **SOLDIER X**, **SOLDIER AM** and **SOLDIER D** via Video Teleconference. This was necessary as both the President and Member was required in Linton for the period, with interviewees being in BURNHAM and WAIOURU.

KEY FINDINGS

7. The following are the key findings of this Court of Inquiry in relation to the allegations made by **SOLDIER F**:
- a. Para 34, sub – para e, **Situational Awareness**. Statement from **SOLDIER AI** disputes any claim that K2D was engaged by friendly fire, other than the initial engagement that resulted in the injuries to **SOLDIER F**. **SOLDIER AI** confirmed that KT3 did engage a position approximately 150 – 200 metres from his and **SOLDIER F**'s location, having previously made the location of K2D known to **SOLDIER I** and **SOLDIER AM**¹²⁴. **SOLDIER U**¹²⁵ and **SOLDIER AM**¹²⁶ state that elements of KT3 did not engage K2D at any time, as the location of K2D was known to the members of KT3 at the time the alleged second Blue on Blue occurred (approx three hours after **SOLDIER F** was wounded). **SOLDIER X** cannot recall at any time that elements of K4B or K2D were engaged by elements of KT3¹²⁷. **SOLDIER I**, who by this time was coordinating K2D, KT3, KT4 and K4B activities, states with confidence that the dismounted patrols were never engaged¹²⁸. Other than the statement from **SOLDIER F**, there is no evidence that there was a second Blue on Blue incident, and it is the opinion of the Court of Inquiry that elements from KT3 did not engage K2D or close to its proximity.
 - b. Para 34, sub – para j, **Blue on Blue**. **SOLDIER D**'s second statement to the Court of Inquiry is consistent with his original statement dated 21 September 2012, in that he engaged one or two individuals dressed in local afghan clothing and carrying a weapon, who were located in a NE direction to his location¹²⁹. **SOLDIER D** states that he engaged with his NZLAV cannon (25mm HE – I) of approximately 30 rounds¹³⁰ and then with the flex mounted machine gun (7.62mm). All witness accounts from K2D, including **SOLDIER F**¹³¹, suggests that approximately nine rounds of 25mm only were fired that resulted in the injuries to **SOLDIER F** and **SOLDIER G**. None of the statements suggests any more 25mm rounds or small arms were fired into the location of K2D, which would confirm that **SOLDIER D** either engaged a

¹²⁴ Witness Thirty Two – Second Statement

¹²⁵ Witness Sixty Four

¹²⁶ Witness Sixty Five

¹²⁷ Witness Fourteen – Second Statement

¹²⁸ Witness Thirteen – Second Statement

¹²⁹ Witness Fifty Three – First and Second Statements

¹³⁰ Witness Fifty Three – First Statement

¹³¹ Witness Forty Nine – First and Exhibit ADM

separate location altogether or fired nine rounds into K2D's area before engaging a separate location with suppressive fire. Other than the statement from **SOLDIER F**, there is no evidence that there was a second Blue on Blue incident, and it is the opinion of the Court of Inquiry that **SOLDIER D** did not engage K2D with 25mm or other weapon systems, and that the original conclusion that K2D was fired on by K1B with 9 rounds of 25mm remains extant.

- c. Para 34, sub – para k, **NDS/ANSF. SOLDIER F** states that he observed NDS personnel who were situated in a grassy plain on the eastern side of the river being engaged from the direction of KT4. He based this on the direction of the splash, being in a North – North East direction and weight of fire¹³². **SOLDIER F** stated that he could observe KT2 Vehicles that had their weapon systems oriented away from the NDS personnel, but he could not observe the KT4 vehicles themselves¹³³. **SOLDIER X** states that he did not observe anything to suggest elements of KT4 engaged NDS personnel¹³⁴. **SOLDIER C** states that a member of the NDS who he had recognised earlier and had crossed the river did fire at **SOLDIER B** and LCPL MALONE from the Eastern side of the river¹³⁵. His statement does not suggest in any way that **SOLDIER B** or LCPL MALONE fired back at this individual. Evidence presented to the Court of Inquiry confirms that there were up to three threat elements located to the high ground West of KT4, which engaged the KT4 and KT1 patrols with small arms. It is therefore possible that the NDS observed by both **SOLDIER F** and **SOLDIER C** were engaged by these threat elements also. This explains the splash oriented to the North – North East direction as observed by **SOLDIER F**, and a member of the NDS returning fire in what appears to be the direction of **SOLDIER B** and LCPL MALONE, as observed by **SOLDIER C. SOLDIER I** states that **SOLDIER B** did not initiate the contact by firing his personal weapon at an individual, and that they reacted to incoming small arms fire¹³⁶. This is in stark contrast to **SOLDIER B's** statement where he states that he fired first at three individuals¹³⁷. Regardless of who fired first, **SOLDIER B** states that he was certain that the ones he fired at were Insurgents. This was based on the fact that the NDS Commander had told him he had no NDS in that area and that the area was that as indicated by the NDS Commander as being a location of possible Insurgents¹³⁸. The NDS statement does not refer to any casualties being sustained as a result of the engagement at approx 1227 hrs¹³⁹. In his own statements **SOLDIER F** did not see elements of KT4 engage the NDS; he believed the fire came from the direction of KT4¹⁴⁰. The Court Of Inquiry has seen no evidence that there was a Blue on Green, and the possibility of NZPRT elements firing on members of the NDS / ANSF and/or causing some of the deaths / injuries that the NDS / ANSF is unlikely.

¹³² Exhibit ADM.

¹³³ Exhibit ADM

¹³⁴ Witness Fourteen – Second Statement

¹³⁵ Witness Fifty

¹³⁶ Witness Thirteen – Second Statement

¹³⁷ Witness Forty Eight

¹³⁸ Witness Forty Eight

¹³⁹ Exhibit CCC

¹⁴⁰ Exhibit ADM and Witness Forty Nine – Second Statement

Therefore the original conclusion remains extant. This allegation remains subject to an ongoing Military Police investigation. Further, as to who fired first, the Court has assessed that the majority of witnesses report that the fire was incoming first and the NZPRT elements then responded to this fire. Also, the Court has weighted quite heavily, the evidence of **SOLDIER I** as he was the most aware of the three (MALONE, **SOLDIER B** and **SOLDIER I**) that were engaged in the initial fire-fight.

CONCLUSION

8. The Court of Inquiry does not dispute the integrity of **SOLDIER F** in making the additional allegations or doubt his subjective recollection of events; the Court does however have to determine its findings and conclusions based on all witness accounts.

9. The Court of Inquiry determines that the conclusions made in its first report dated 30 January 2013 remain extant.

Dated at Linton on the of May 2013.

E.G. WILLIAMS
Colonel
President

G.L.KING
Lieutenant Colonel
Member

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COMMENTS BY ASSEMBLING AUTHORITY

General comments

1. The Court has completed as comprehensive an investigation of the incident as the evidence allows. The time taken to complete the Inquiry is indicative of the thoroughness and detail of the Inquiry, the requirement to complete the majority of the Inquiry in an operational theatre, the stressful nature of investigations into the death of multiple service members across two distinct incidents, and the need to obtain evidence from individuals outside the NZDF. The Court conducted the inquiry under significant limitations given the restrictions of movement around the Area of Operations (AO) and the conduct of ongoing operations. Given the Report of the Court was completed on 30 January 2013, just over five months after the incidents, I am entirely satisfied that the Court has been concluded as expeditiously as possible.
2. The Report lists six caveats that I acknowledge having considered in drafting my comments. I particularly acknowledge that the Court was unable to visit the site of either the BAGHAK contact of 4 August 2012 or the IED incident of 19 August 2012, due to operational limitations and security concerns. However, even given this inability to visit the sites, I am wholly satisfied that the terms of reference have been answered in a comprehensive and accurate manner.
3. From para 7 to para 16 the Court comprehensively details the cause, nature and extent of the injuries suffered by the two deceased and six wounded from the 4 August 2012 incident, as well as the three deceased on 19 August 2012. This detail was necessary in order to adequately answer the terms of reference. In accordance with Rule 11 of the Health Information Privacy Code 1994, the health information details relating to these individuals will be treated with appropriate levels of privacy if a decision is taken to publicly release this COI.
4. I note para 18 which indicates that the first aid applied on the scene, and at the CCP was generally in accordance with Tactical Combat Casualty Care guidelines, in particular MARCHH. Given the complex situation, and sheer number of casualties, this is pleasing. I further note that the high standard of medical care provided to two of the wounded NZDF soldiers, in all probability, resulted in their lives being saved.
5. Para 19 notes that most CRIB 20 personnel had met the individual deployment criteria for their role, and that those who did not meet individual criteria, were given waivers from HQJFNZ prior to the deployment. The contingent as a whole had 'passed' PDT and NZCTC had assessed the CRIB 20 contingent as ready for deployment less some training gaps that were to be completed during in theatre training.
6. I also note the findings of the Court at para 21 that there was some concern about the level of trained state at the conclusion of PDT due to the limited timeframe in which PDT was conducted and the nature of the training. This lack of realistic training scenarios has been the focus of the After Action Review. The witnesses have generally highlighted that PDT focussed too much on individual teams as opposed to a scenario which required the bulk of the company to respond. However, I am satisfied that, once additional in theatre training had been conducted, CRIB 20 was ready to carry out all of its required

functions. I note that CO TU CRIB 20 had arranged for additional training to ensure that the appropriate skill-sets were obtained based on his extensive previous experience.

7. I have considered the processes for repatriation detailed at para 23 which resulted in an HE Grenade being returned to New Zealand in the remains of **SOLDIER H** after the 19 August incident. I agree with the Court's findings at para 23(h) that the current policy of returning the bodies of deceased servicemen and woman in as close to the state they were retrieved from the field is understood. However, I agree with the Court that a balance must be struck between repatriating the remains with minimal disturbance to the integrity of the body, and ensuring that remains are cleared of hazardous substances before being returned. In line with this, I agree that remains should not leave a theatre of operations prior to receiving an X-Ray or Advanced EOD clearance. The subject matter experts in this area are the NZ Pathology Service, and I will be directing that they are consulted by NZDF to ensure that an adequate policy is developed to achieve the required balance.

8. I share the Court's view at para 26 that the situation that resulted in the deployment of NZPRT assets to support the NDS was entirely appropriate and fits within the definition of *in extremis* support. It is apparent that the NDS had suffered significant casualties as a result of INS activity on the morning of 4 August, and the fate of a number of wounded rested in the hands of the NZPRT personnel who came to their aid.

9. At para 30 the Court details the extensive list of coalition support that was provided to the NZPRT during the 4 August incident. I note the inadvertent consequences that the air support may have had on insurgent action, namely in assisting them in obtaining cover, and forcing them to remain in location. It is important that NZDF captures the lessons that can be learnt in this respect.

10. Para 34 details 13 further matters that the Court considers relevant to the purpose of the Inquiry. Given the significance of each, I will deal with them individually:

- a. The context – the security environment: All matters should appropriately be considered in the context in which they occur. I note the Court's comments at para 34(a) around the clear increase in insurgent activity targeted at both ANSF and NZPRT elements that was occurring prior to the 4 August incident. I agree with the Court that this led to an increased need for the NZPRT to conduct activities to further disrupt and neutralise this heightened threat. I note that the CRIB 20 command considered that they transitioned from *in extremis* support to disruption operations on 4 August. Although I understand why they have stated this, I do not agree that this is what actually occurred. I consider that the entire contact on 4 August, including the tactical site exploitation was part of an *in extremis* support operation and I will expand on this later in my comments. I note the clear insurgent tactic of using 'come on' activities to lure ANSF and NZPRT elements into subsequent engagements as a result of the initial engagement.
- b. The context – fog of war or confusion of battle: As outlined in para 34(b) the complex environment that surrounded the contact at Baghak on 4 August, directly contributed to what is commonly referred to as the 'fog of war'. There were numerous NDS, ANP and local nationals in area, with the NDS wearing civilian clothing. Communications were problematic and at times, chaotic. The insurgent group was placed so it could affect fire in almost 180 degrees. The OC was shot in the initial engagement, and **SOLDIER I** became committed to

his preservation of life for a notable period of time. I note the other factors that are mentioned by the Court and consider that the extremely complex situation, although not unusual in combat situations, must be given due acknowledgment when considering individual and collective actions.

- c. Insurgent tactics: I agree with the conclusions of the Court about the make up of the insurgent group and their tactics. The identified lessons must be captured around the insurgents likely being forced to stay and fight due to both ISAF ground and air assets being present in the area.
- d. Insurgent Weapons: I agree with the well reasoned conclusions of the Court at para 34(d) that the insurgents had access to a range of weapons, including some with a smaller calibre than the standard AK 47.
- e. Situational awareness: I have no doubt that a lack of situational awareness caused the Blue-on-Blue which likely led to the injuries to **SOLDIER F** and **SOLDIER G**. This lack of situational awareness can be directly attributed to the OC being shot in the initial stages of the engagement, and the KT1 and KT2 Commanders not receiving briefs on locations and intentions of other patrols, nor providing such briefs to their troops prior to entering the battle. This is an important lesson that must be captured for future learning.
- f. KT1 entry into the contact area: I note that KT1, entered into the contact area without the requisite situational awareness and without communicating their intentions to the other commanders in the contact area. These actions by KT1 were unfortunate, and can be directly attributed to the injuries sustained by **SOLDIER F** and **SOLDIER G**. This is being considered by the MP investigation.
- g. Command and Control: I agree with the conclusion of the Court that command and control of the entire contact on 4 August 2012 was problematic due to the scale of the contact, the involvement of the ANSF, the terrain, and the communication systems available. In line with the recommendation of the Court I will be directing that the NEA project team be given access to aspects of the COI to enable them to analyse the various command and control systems that were utilised on 4 August 2012.
- h. Application of the Rules of Engagement: Putting aside the concerns raised about **SOLDIER B's** interpretation of the ROE prior to and during the deployment, as well as the information from theatre that indicated he understood the ROE, the central issue is whether the NZPRT correctly applied the ROE on 4 August 2012. I agree with the opinion of the Court that overall, the application of the ROE by the NZPRT on 4 August 2012 was appropriate. I am satisfied that, given the context, the use of suppressing fire was reasonable. However, there is a critical difference between suppressing fire and speculative fire which leads me to view them in a distinctly separate way. Speculative fire is that fire applied to possible enemy locations, whereas suppressing fire is that fire applied to known or suspected enemy positions. There is always a risk when speculative fire is used in a highly complex situation such as this, that civilian or friendly force casualties could possibly result. When fire is directed at "possible" enemy locations, the risks of collateral damage increases. Although I am willing to accept that speculative fire was understandable in the context, I

do not share the view of the Court that it was necessarily reasonable in the circumstances. I also question the understanding some witnesses had of what constitutes speculative fire and what constitutes suppressing fire. I am of the view that there were very few occasions on 4 August when speculative fire was used, the majority of what has been called speculative fire, was, in my view, suppressing fire.

- i. ROE Training: Although I note that ROE training has evolved over the course of CRIB mission, I share the Courts opinion that soldiers need to be trained on ROE in a manner that accurately reflects the reality of the specific deployment. I am of the view that overall the level of ROE training provided by NZDF is very good, as it was for this specific mission. Legal officer's provided extensive ROE training on the PDT and there was a deployed legal officer in Bamyam who continued to provide ROE training in theatre to deployed soldiers. That being said there is always a need for regular review and continuous improvement of all training, including ROE training.
- j. Blue on Blue [K1B and K2D]: I agree with the Court that Blue-on-Blue incidents are never acceptable. However, given the overall context, lack of situational awareness on the part of KT1, the location of INS which created crossfire scenarios, and the actions of some of the dismounts who fired at insurgents West of KT4, I accept that the Blue-on-Blue incident was understandable. It is important that NZDF learn from this incident. NZDF must continue to focus aspects of training on the importance of situational awareness, and on positively identifying targets in a fast-moving, complex operational situation.
- k. [Redacted Paragraph]

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- i. Lack of Tactical Site Exploitation: I agree with the Court that, wherever possible, areas where engagements or incidents have occurred should be secured and held until a full TSE can be completed. I note that a TSE on the 19 August IED incident led to valuable intelligence being gained.

Conclusions of the Court

11. I accept the following conclusions reached by the Court in its Report:

- a. LCPL MALONE and LCPL DURRER were killed by INS fire.
- b. **SOLDIER B, SOLDIER D, SOLDIER E, and SOLDIER C** were wounded by INS fire / shrapnel.
- c. **SOLDIER F and SOLDIER G** were **most likely** wounded by LAV 25mm shrapnel.

- d. CPL TAMATEA, LCPL BAKER and PTE HARRIS were killed by **(Redacted)** IED.
- e. The NDS suffered 4 x KIA (1 x Blast, 3 x GSW), 9 x WIA (9 x GSW) and 1 x ANP (1 x GSW) WIA all **most likely** caused by INS. 1 x Local National was also wounded.
- f. It is concluded that the buddy aid and battlefield medical care (by the NO and CLS) given to **SOLDIER B** and **SOLDIER C** significantly reduced the risk of death for both of these casualties.
- g. While TCCC was not formally taught on CRIB 20's PDT, they had received in theatre training in MARCHH and TCCC and this was evident and was practiced on 4 Aug 12 when treating the wounded. It proved very effective, particularly that given to **SOLDIER F** in an isolated position for a significant period of time.
- h. The CRIB 20 contingent was adequately prepared and trained and that there is no evidence to indicate that any gaps in training contributed to any of the injuries sustained.
- i. There are real gaps in the level and quality of the NZ Army's mortuary affairs training. While this did not directly result in the incident where a grenade returned to NZ in the remains of one of the deceased, the lack of training did expose those personnel involved to a situation for which they had not been adequately trained.
- j. The three soldiers killed in the IED attack on 19 Aug 12 were processed as best they could be given the tactical situation, the resources available and the state of the remains. The NSE and NZ Police teams worked well together. The HE Grenade that was located after the remains had returned to NZ could only have been picked up had the body been X-Rayed or had it been completely stripped. Completely stripping the bodies is not current practice due to perceived NZ Pathology Services requirements which currently limit what can be done in theatre.
- k. The pouch that the grenade was located in was not visible and had to be extracted from the remains prior to the grenade being discovered.
- l. Following the completion of *in extremis* support, the Kiwi Company elements 'transitioned' into a TSE operation with NDS support. This was consistent with the OC of Kiwi Company's intent to "disrupt" INS operations. It is likely that this operation triggered, or at least contributed to the INS response.
- m. At least between three to five insurgents were killed by NZPRT elements. It is possible that the figure was higher than this. It is however impossible to be conclusive given that no full TSE was conducted.
- n. Significant coalition air support was provided to the NZPRT on both 4 Aug and 19 Aug 12. While this support was appreciated on 4 Aug 12, **[Redacted]**

- . **Redacted]**. Also, the provision of support over head appears to have reduced the INS willingness to move or to engage. It is also possible that the persistent presence of air support forced the INS to remain in location.
- o. The incidents of 4 Aug 12 and 19 Aug 12 marked an increase in targeting of NZPRT elements. They were consistent with the increased targeting of ANSF elements that occurred in Jul 12. This increased threat posture contributed to the clear intent of CRIB 20 to disrupt and neutralise and therefore justified the actions of the elements gathered at BAGHAK on 4 Aug 12.
 - p. BAGHAK was a complex activity which is illustrative of the 'fog of war' effect, in particular, the chaotic 12 min period between 1227 hours and 1239 hours.
 - q. The INS group that was on the field on 4 Aug 12 was a mix of hard-line INS and tribesmen who appear to have been positioned to ambush the NDS patrol that they had warning of. Why they remained in place and subsequently engaged the NZPRT is unclear, however it could have been because they chose to, or were forced to by both NZPRT actions and coalition air support.
 - r. The Blue-on-Blue which resulted in the wounding of **SOLDIER F** and **SOLDIER G** was avoidable and was in part, due to inadequate situational awareness, in particular, the lack of awareness that KT1 had of the dismounted patrols. The Court feels that had KT1's entry into the contact been more deliberate and had its situational awareness been better, it is highly likely that the Blue-on-Blue would not have happened.
 - s. Command and control of the actual fire-fight was problematic, particularly with the loss of **SOLDIER B** and **SOLDIER I** early in the fight. Not one commander had the whole picture. Despite this, there were good examples of small team leadership throughout the engagement and the subsequent actions.
 - t. While no evidence of Blue-on-Green was produced to the Court, the fact that the NDS dress in very similar clothing to that worn by the INS makes this a very real risk.
 - u. **[Redacted Paragraph**

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12. The Court also made the following conclusions with which I have reservations:

- a. It is highly likely that there were a number of different types and calibres of weapons being carried by the INS. The fact that DURRER and **SOLDIER F may have** been shot by a smaller calibre weapon is likely to be due to the presence of AK74 (5.45mm) weapons. It is the Court's opinion that it would have been impossible for DURRER to have been shot by a NZPRT 5.56mm weapon in the hands of a NZ Army soldier;

Comment: I accept the conclusion of the Court that it is highly likely that DURRER was shot by a smaller Calibre weapon, such as an AK74 carried by insurgents. I also accept the Court's conclusion that it would have been impossible for DURRER to have been shot by a NZPRT 5.56mm weapon in the hands of a NZ Army soldier.

With respect to **SOLDIER F** however, based on the evidence, I cannot accept that the small calibre injury to **SOLDIER F** is likely to be due to the presence of AK74 (5.45mm) weapons. It is possible, but not likely. **SOLDIER F** came under fire from KT1 LAV 25mm HE in the form of a Blue-on-Blue, and it is also possible that his small calibre injury was due to a round from a 5.56mm weapon carried by a member of KT1 who were also firing up into that area.

- b. The NZPRT elements acted appropriately on 4 Aug 12 given the context and circumstances and in accordance with the ROE. The uses of speculative and suppressing fire were considered reasonable and the application of lethal force was justified under the hostile intent/hostile act criteria.

Comment: I agree with the Court's conclusion that the NZPRT elements acted in accordance with the ROE on 4 August 2012. I also accept that all use of lethal force was justified under the hostile intent/hostile act criteria. Furthermore, I accept that the use of suppressing fire was reasonable in the circumstances. However, I have reservations about the reasonableness of employing speculative fire in the circumstances. In my view, in a complex combat environment, when the 'fog of war' sets in, and the risk of collateral damage increases, it becomes even more important to positively identify the enemy. I also question the understanding some witnesses had of what constitutes speculative fire and what constitutes suppressing fire. I am of the view that there were very few occasions on 4 August when speculative fire was used, the majority of what has been called speculative fire, was, in my view, suppressing fire.

- c. The level of training given to the CRIB 20 contingent on PDT was adequate but lacked realism and complexity and certainly did not reflect the level of complexity encountered on 4 Aug 12. It is understood that this has been expanded upon by the After Action Review Team. In regards to the processing and repatriation of deceased soldiers, there are gaps in certain SOPs and contradictions in others that need to be standardised.

Comment: I accept the Court's conclusion that although it was adequate, the training given to the CRIB 20 contingent on PDT did not reflect the level of complexity encountered on 4 August 2012. However, I must add that it would be extremely difficult to recreate a training scenario that reflected the level of complexity encountered on that day. The 4 August 2012 contact was by far the most complex situation encountered by OP CRIB in the decade since operations commenced in Bamyán in 2003, given its scale and duration. As with any PDT, the training scenarios on the CRIB 20 PDT balanced the most likely situations that soldiers might encounter in Bamyán, against what the most dangerous situations might

be. As always, NZDF strives to achieve this balance in the delivery of all training.

I note the Court's conclusion that, in regards to processing and repatriation of deceased soldiers', there are gaps in certain SOPs and contradictions in others that need to be standardised. This conclusion is not specific enough to be of significant use to me as it does not clearly identify any gaps and contradictions for me. I am not entirely satisfied that it wasn't simply a case of the HQ JFNZ SOP's being followed that being said, I will ensure that J4 leads a working group that seeks to rectify any quantifiable deficiencies that can be identified.

- d. The *in extremis* support provided to the NDS in the morning of 4 Aug 12 was effective and the casualty evacuation and treatment of NDS casualties saved lives. There is however a lack of clear guidance to command on the provision of *in extremis* support in terms of decisions points, levels of support and when to withdraw from providing such support. At the time of 4 Aug 12, many, if not all of these decisions rested with the TU CRIB commander.

Comment: I share the Court's conclusion that the *in extremis* support provided to the NDS in the morning of 4 August 2012 was effective and the casualty evacuation and treatment of NDS casualties saved lives. This is a very important point to consider. I note that the Court concluded that there was a lack of clear guidance to command on the provision of *in extremis* support in terms of decision points, levels of support and when to withdraw from providing such support. The Court correctly identifies that at the time of 4 August 2012, many, if not all of these decisions rested with the TU CRIB commander. In my view, this is exactly where these decisions should have rested. It is not practical to exhaustively dictate which situations require an *in extremis* response and which situations do not. Given his tactical appreciation and situational awareness, I am of the view that TU CRIB commander was exactly the right person to make the decision of whether to respond or not on 4 August 2012.

Implementation of Recommendations

13. I agree with all but one of the well-considered and thorough recommendations of the Court in its Report, as outlined below in Annex A. I have assigned an action addressee to each of the recommendations and outlined what action is to be taken, and or indicated where action has already been taken.

14. I do not accept the following recommendation of the Court.

- a. HQJFNZ needs to develop clear criteria and guidelines governing the provision of *in extremis* support when this is a mission requirement.

15. I do not share the Court's view that clear criteria and guidelines for *in extremis* support need to be developed as this runs contrary to the concept of mission command, and empowering senior tactical commanders to make these decisions given their heightened situational awareness. As COMJFNZ I expressed my intent to CO TU CRIB in my orders and instructions to him. I expected him to be empowered to make the decision

on whether a situation justified *in extremis* support after having consideration to my intent, not to be unnecessarily limited and restricted by prescriptive criteria.

16. J08 is to monitor the implementation of all recommendations and report to me on the progress of such implementation NLT 31 May 2013.

Other matters

17. I note the comment by the Court at para 35(a) regarding the relevance and necessity for conducting Courts of Inquiry, After Action Reviews and MP Investigations. I understand the challenges faced in this situation where there were essentially three 'investigatory' teams simultaneously operating in KIWI BASE. I will continue to seek legal advice as to the appropriate form of investigation for any given situation.

18. The report of this COI is to be made available to all personnel who were offered their rights in accordance with AFDA s. 200N. Furthermore, the findings of the COI as outlined in the report are to be briefed to the families of the deceased soldiers of both 4 and 19 August, the wounded soldiers from 4 August and their families, and all other personnel involved in the 4 August incident.

19. The Court recommends that several individuals receive further recognition as a result of their involvement in the incident of 4 August. It is pleasing to see that so many individuals displayed our core values of courage, comradeship, commitment and integrity in what was such a complex and trying situation. I am considering the merits of these recommendations individually, and will take the requisite action through the appropriate channels in due course.

COI re-opened

20. On 29 April 2013 I received information of new allegations made by **SOLDIER F**; specifically with respect to 'friendly fire' that had not previously been put before the Court of Inquiry. I ordered that the Court of Inquiry be re-opened to investigate and, if necessary, report on these allegations in accordance with the original terms of reference. In particular:

- a. The possibility that KD2 was fired on by more than one element of KT1, being KT1A. during the initial engagement;
- b. The possibility that there was another incident of friendly fire, in particular, fire from KT3 being directed close to the position of one of the dismounted patrols (K2D) during the second contact that occurred at approximately 1500hrs, 4 Aug 12; and
- c. The possibility of NZPRT elements firing on members of NDS/ANSF and/or causing some of the deaths/injuries that the NDS/ANSF sustained.

21. The Court presented the findings of their investigation as an addendum to the original report.

22. Having reviewed the Court's "Addendum to the Report of the Court of Inquiry" and all additional statements made by the seven witnesses interviewed, I accept the Court's

conclusions that based on the weight of evidence presented, the conclusions made in its first report dated 30 January 2013 remain extant.

Dated at Wellington this day of May 2013.

A.D. GAWN, MBE
Major General

Annex:

A. Direction for implementation of recommendations from the Court of Inquiry into the Battle of Baghak on 4 Aug 12 and the 19 Aug IED attack.

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