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;	Exhibits (para 3-16, AR 15-6)				
	Are all items offered (whether or not received) or considered as evidence individually numbered or lettered as     exhibits and attached to this report?	Y	ES N	Ol N	(2:4
	The same of the sa		<		-
	b. Is an index of all exhibits offered to or considered by investigating officer or board attached before the first exhibit?      c. Has the testimony/statement of each witness been recorded verbasium or been reduced to written form and attached as		< <del> </del>		
	an exhibit?  d. Are copies, descriptions, or denictions life subgridual for mall and analysis of denictions and subgridual for mall and analysis.			×	
	d. Are copies, descriptions, or depictions (if substituted for real or documentary evidence) properly authenticated and is the location of the original evidence indicated?  c. Are descriptions or discovery included.	>			
	e. Are descriptions or diagrams included of locations visited by the investigating officer or board (para 3-65, AR 15-6)?  [6] Is each written stronger tracked as on white the control of		······································	$\pm \times$	,
(7E)	f. Is each written stipulation attached as an exhibit and is each oral stipulation other reduced to writing and made an				~1
	g. If official parice of any marrier was salent was the parity of the pa			X	
	g. If official notice of any matter was taken over the objection of a respondent or counsel, is a statement of the matter of which official notice was taken attached as an exhibit 'para 3-16a', 4R 15-6)?				-1
3	Was a quorum present when the board voted on findings and recommendations (paras 4-1 and 5-2b, AR 15-6)?  COMPLETE ONLY NEON DODGE AND THE PROPERTY TO SERVE AND THE PROPERTY	-	- 1	$\times$	Į
3	COMPLETE ONLY FOR FORMAL POARS PROGRAMS AND PROGRAMS AND PROGRAMS 4-1 and 5-2b, AR 15-5)?			X	
4	COMPLETE ONLY FOR FORMAL BOARD PROCEEDINGS (Chapter 5, AR 15-6)	<del></del>	T.	一个	1
3	At the initial session, did the recorder read, or determine that all participants had read, the letter of appointment (para 5.8b, AR 15-6)?  Was a quorum present at every session of the board (para 5.2b; AR 15-6)?		<u></u>		1
5.	Was each absence of any member properly excused (para 5-2a, AR 15-6)?				
7	Were members, witnesses, reponer, and interpreter sworn, if required spara 3-1, AR 15-6;	****	1		4
	11 day included who when on the party of the commentarian		-	<del></del>	-
	does the inclosure describe how they familiarized themselves with that evidence (para 5-2d, AR 15-6)?	-	<u> </u>	1	1
C	COMPLETE ONLY IF RESPONDENT WAS DESIGNATED (Section II, Chapter 5, AR 15-6)		1	ļ	-
9	Notice to respondents (paga 5-5, AR 15-6):	T	1		and in
- Antoirpho	a. is the method and date of delivery to the respondent indicated on each letter of nonfication?		7		
	b. Was the date of delivery at least five working days prior to the first session of the board?		***************************************	1	Ť
	c. Does each letter of nonlication indicate.			- Friends	Ĭ
	(i) the date, hour, and place of the first session of the heard equicerning that respondent?		:		1
	(2) the matter to be investigated, including specific allegations against the respondent if any?			-	1
	(3) the respondent's rights with regard to counsel?		·		
	(4) the name and address of each witness expected to be called by the recorder?		·	1	
	(5) the respondent's rights to be present, present evidence, and call witnesses?		1	1 7	
	d. Was the respondent provided a copy of all unclassified documents in the case file?		+	+***	
	e. I there were relevant classified materials those the			1 3	
10	e. If there were relevant classified materials, were the respondent and his counsel given access and an opportunity to examine them?  If any respondent was designated after the proceedings began for otherwise was obsern during part of the proceedings).		<del> </del>	الشنداء الماس	r
		1.1.1	1	17	
17	b. Was record of proceedings and evidence received in his absence made available for examination by him and his counsel (para 5-6, AR 15-6)?  Counsel (para 5-6, AR 15-6):				
*4			<u> </u>		
	a. Was each respondent represented by cornsel?  Name and business address of counsel:	<u> </u>	1	1-1	
	name and obstress educes of course;		<del> </del>	-	
	To Aprend Line A State of the S		-3.5		
	if counsel is a lawyer, check nere	4	2		
	b. Was respondent's counsel present at all open sessions of the board relating to that respondent?	150,000	1 Strate	de la second	
	c. If military counsel was requested but not made available, is a copy (or, if orai, a summary) of the request and the action taken on it included in the report (para 5-6b, AR 15-6)?				
12	If the respondent challenged the legal advisor or any voting member for lack of impartiality para 5-7, AR 15-0):				
	THE STATE OF THE S				
	6. Did each member successfully challenged cease to participate in the proceedings?		West 6111 manage		
13	was the respondent given an opportunity to trace the AR 15.65.		Projections - basis		
	a. Be present with his counsel at all open sessions of the board which duel with				
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	The control of witnesses and cross-examine witnesses other than his	-			
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a notice and a	e. Testify as a witness?	<u> </u>			****
	f. Make or have his counsel make a final statement or argument (para 5-9, AR 15-6)?	<u> </u>	]	i	
T5	in requested, and the recorder assist the respondent in objecting girdones is	l I		9:11 T	
	Pro				
15	Are all of the respondent's requests and objections which were denied indicated in the report of proceedings or in an inclosure or exhibit to it (para 5-11, AR 15-6)?		· 		
	TNOTES: \ Explain all regarding respect of the state of t				
	2 Use of the N/A column constitutes a positive representation that the discumstances described in the question did not occur in this investigation.			1	

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## DEPARTMENT OF THE ARMY HEADQUARTERS AND HEADQUARTER COMPANY 3RD BRISADE, 1ST ARMOR DIVISION CAMP RAG APO AE 09378

REPLY TO ATTENTION OF:

AFZN-BB-S2

10 November 2005

MEMORANDUM FOR Commander, 3RD Brigade, 1ST Armor Division, Camp Traq, APO AE 09378

SUBJECT: Investigation of Escalation of Force Incident Occurring in the Market Area on 2 November 2005

1. I have conducted an investigation into the escalation of force incident involving A/1-320 FA that resulted in the shooting death of one local national. While conducting the investigation, I focused on the sequence of events that lead to the use of deadly force, at the connected measures used by the patrol leader, first Through investigation, I have determined that there was a reasonable certainty on behalf of the unit that the oncoming local national vehicle was indeed a military target. Escalation of force procedures were as graduated as the situation could allow, and the local national was given the opportunity to realize his mistake and show to the patrol that he was not a hostile element. Unfortunately, the local national reacted to escalation of force procedures in such a way that he presented himself to be hostile. The string of actions taken by the local national, though most likely not hostile, did portray an instant and increasing threat.

## 2. Specific Areas

A) Sequence of events A patrol of M1114s from 1/A/1-320 had turned west onto RTE south running road. The intersection was at the far west edge of market. The lead vehicle had made the turn and was heading west when the vehicle in question, a black sedan with a single occupant, was first seen heading east in the middle of the road. The vehicle showed no signs of slowing and witness statements indicate that its speed was 40-50 miles per hour. Upon visual acquisition of the fast approaching vehicle the TC, 1LT ordered that patrol to stop in order to increase and maintain stand off distance while allowing more time for positive identification of the threat. The lead gunner, SPC , began to use graduated measures of force beginning with waving his arms and shouting at the vehicle. The vehicle had not acknowledged the presence of the CF at this point, and continued its path without slowing. As the vehicle continued its approach, the likelihood that it had not identified the coalition patrol decreased, while the chance that it was suicide VBIED consistently increased. SPC VBIED consistently increased. SPC fired one warning shot into the should of the road in front of the oncoming vehicle when it was approximately 40m away. fired one warning shot into the shoulder This warning shot did obtain the attention of the local national driver, as he slammed on his brakes and deaccelerated to approximately 5mph behind. When the vehicle braked after the warning shot, it lost traction and skid from the middle of the two lane road to the east bound shoulder. At this point the vehicle had passed the lead vehicle and was oriented toward the second vehicle. 1LT vehicle to establish eye contact and attempted to clearly PID the driver of the vehicle as a hostile or non-hostile. 1LT should should in English along with his limited

B) Command and control measures 300 20 had clear command of his patrol throughout the event. By ordering his lead vehicle, and subsequently the entire patrol, to stop, he both created the extra stand off distance that would aid in positive identification, and focused his soldiers' attention on the oncoming vehicle and growing threat. The first warning shot was fired by SPC and caused the local national driver to acknowledge the patrol and slow down. 1LT further gained control of the situation by dismounting his vehicle and attempting to make verbal and visual contact water LN driver. As the LN driver continued movement and was moving lowards the second vehicle, 1LT then issued the order to engage the vehicle to PFC (second vehicle gunner). By maintain control of the situation, 1LT clearly showed his soldiers that the vehicle approaching the patrol could reasonably be considered a threat. The presence of a leader who visually and audibly is doing all he can to have the local national stop his car and dismount aided his soldiers in recognizing the sequence of events that contributed to the threat posed by this vehicle.

C) Rules of engagement (ROE) compliance ROE 1b dictates that individuals may be engaged if they are exhibiting hostile intent to Coalition Forces (CF). The time of the incident falls in line with peak suicide VBIED attack hours throughout MND-B, and this specific area of Taji Market was the site of a suicide VBIED attack on 18 September 2005, not two months prior. With the unwavering speed of the vehicle, the drivers lack of reaction to hand and arm, other visual signals, and his driving pattern of using the middle of the road rather than his own fane all contributed to the reasonable certainty that the vehicle was a VBIED. When the vehicle slowed after the initial warning shot, it was unclear to the patrol what the driver was thinking. This is when 1LT attempted to have the driver to stop his vehicle and dismount. In hindsight, it may seem obvious that the LN driver felt that after he slowed reacting to the initial warning shot, he would then be permitted to continue moving. As Iraq has been a a nation iving with Coalition patrols on their roads for near three years, nearly the entire population is familiar with how to behave in a vehicle around a coalition forces. Sadly, this driver did not seem to be aware that any moving vehicle (especially one that had already demonstrated itself to be a threat) would be considered an immediate threat. Under the current rules of engagement, deadly force was authorized as the vehicle displayed the indications of being a VBIED including: 1) a single male driver 2) speeding upon a coalition patrol at a chokepoint (the intersection would, and did, delay visual acquisition time for the patrol) 3) erratic driving 4) non-dompliance with commands.

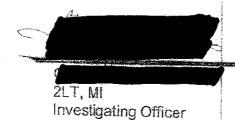
### D.) Lessons Learned

- 1. De-escalation of force is an important aspect to identifying neutral and enemy elements on the Iraqi battlefield. The issue of dealing with oncoming threat vehicles is especially difficult to handle because of how rapidly a decision must be made as to how and when to escalate force. Once force is escalated, the reactions of the element in question must be instantly reassessed by all coalition forces involved, but the ultimate estimation lies on the leader. It a neutral element reads appropriately to force escalation and changes its behavior so as to CLEARLY remove hostile intent from the perception of the coalition, than all is well. However, the local national element does not react in a way that completely erases doubt, than it continues to be a threat. At this point, every action taken by the local national will be perceived as a part of a hostile plan. Once the initial warning shot was fired in this case, the local national vehicle almost removed doubt. The driver immediately slammed on the brakes. However, he never came to a stop. When reacting to the second warning shots by aggressively accelerating, he displayed a clear hostile intent in the minds of the soldiers who had already designated him as a potential VBIED. Soldiers must be prepared to de-escalate force as quickly as they are trained to escalate. This constant reassessing and reevaluation of the ation lies at the leader level so that setions can are the the leader level so that setions. cause to their actions
  - 2. VBIEDs are one of the most dangerous methods of attack that the enemy can employ in this theater. When recognizing a vehicle as a possible VBIED, soldiers need to take care to ensure that they do not put themselves at unnecessary risk. 1LT actions by dismounting produced positive results in that his soldiers could clearly see their leader's involvements and understand his order, but could have been disastrous would this vehicle have actually been a VBIED. M1114 gunners are the primary escalators of force, based on their command guidance. They must be the experts in recognizing a threat, knowing when to escalate, and knowing when to de-escalate. A leader that has faith in his gunner's reactions will gain the greater safety of his patrol, as well as bringing greater safety to the locals.

E.) Conclusion

it is my finding that there is no fault or violations on the part of the soldiers involved in the incident. The vehicle clearly exhibited signs of a possible VBJED by approaching at location (intersection while the patrol was executing a turn) where the patrol was vulnerable, and by not reacting appropriately to escalation of force procedures. While the driver's braking of his vehicle after the first warning shot is a sign that he understood what danger he was in, it could also have been construed as a suicide driver avoiding lethal shots before he could reach his target. This unit and all units need to ensure that all leaders and soldiers understand how to escalate force and what factors to take into consideration for de-escalating force.

4. POC is the undersigned at VOIP 1



Investigation into the shooting death of a local national

Table of Contents

Appointment order DA Form 1574

Exhibit A: Serious Incident Report provided by 1-320FA

Exhibit B: Sworn Statements

1. 1LT (Patrol leader)
2. SSG (Platoon Sergeant)
3. PFC (2<sup>nd</sup> vehicle gunner)
4. SPC (Lead vehicle gunner)

4. SPC

Exhibit C: Site sketch

Exhibit D: MNC-I rules of engagement



# DEPARTMENT OF THE ARMY HEADQUARTERS, 3RD BRIGADE, 1ST ARMOR DIVISION CAMP IRAQ APO AE 09378

AFZN-BB-CO

2 November 2005

MEMORANDUM FOR 1LT

s; HHC, 3d Bde, 1st AD, APO AE 09378

SUBJECT: Appointment as Investigating Officer

- 1. Pursuant to AR 15-6, paragraph 2-1, you are hereby appointed as an investigating officer to investigate the shooting death of a Local National by elements of 1/320 FA in Market on 2 November 2005.
- 2. In your investigation, use procedures under AR 15-6, Chapter 4, for an informal board of officers. All witness statements will be sworn, and you will follow the procedures in AR 15-6, paragraph 3-7e for Privacy Act statements. If the person you are interviewing states that he/she does not know anything about the allegations, prepare a sworn statement to that affect for the witness to sign. If, in the course of your investigation, you suspect a soldier has committed an offense under the UCMJ, you must advise and read him/her their rights under the UCMJ, Article 31, or the Fifth Amendment, as appropriate, prior to conducting any interview.
- 3. In your investigation, you need to answer the following questions:
  - a. What was the sequence of events that led up to the incident?
  - b. Did the soldiers involved properly escalate the use of force?
  - c. Did the patrol have Positive Identification (were they reasonable certain that the local national was a legitimate military target) before engaging?
  - d. Was deadly force authorized?
  - e. Were there any Law of War violations?
  - f. Are there any operational lessons that should be captured and disseminated?
  - g. Were there any other contributing factors that, if changed, could have altered
- 4. If it becomes evident that there is possible misconduct outside the scope of your investigation, notify the appointing authority immediately. If during your investigation

AFZN-BB-CO

SUBJECT: Appointment as Investigating Officer

you become aware of information that needs command attention, immediately notify the appointing authority for guidance.

- 5. Contact the Command Judge Advocate, CPT spin located in Bldg 72 and his phone number is VOIP:
- 6. Submit your findings and recommendations on DA Form 1574 to CPT for legal review no later than 10 November 2005.

COL, AR Commanding Appendix 1 (CIR BLUE REPORT) to Annex C to FRAGO 40 to OPORD 05-007 (RSOI)

## COMMANDER'S INCIDENT REPORT:

LINE 1: Unit reporting: A/1-320 FAR

LINE 2: Incident: Warning Shot/Escalation of Force/Death of LN

LINE 3: Date/time group (DTG) incident occurred: 020730NOV05

LINE 4: Location of incident: MC 2910 0800

Name	Rank	Unit	SSN	Sex	Age	Race
<u> </u>	CEC	A/1-320 FA		M	27	CAUC
	SSG PFC	A/1-320 FA	4	M	26	BL
-	900	A/1-320 FA	<u> </u>	M	21	CAUC
	JOEG	1-8/15020 FA_I		M	25	HISD

LINE 6: SUMMARY: A 1/A/1-320 FAR Patrol was moving West on RTE identified a Black sedan traveling East on RTE toward them. The black sedan did not pull off to the side of the road or stop. The Gunner in the lead vehicle, SRC and waved his red STOP paddle at the on coming vehicle. The vehicle continued to travel toward the patrol at a high rate of speed. The gunner identified the driver as the only occupant and reported him as military age and clean-shaven and unresponsive to his commands. The gunner continued to wave his arms and the STOP sign at the vehicle. The vehicle did not stop or pull over and the gunner in the lead vehicle raised his M-4 and pointed and jabbed it at the on coming vehicle. The on coming vehicle closed to approximately 50 meters of the patrol and the gunner fired a warning shot off to his left front into the ground. The lead vehicle of the patrol stopped and the on coming vehicle deliberately drove around the lead vehicle to the left nearly hitting the front of the lead vehicle. The lead vehicle TC, 1LT and rear TC side passenger, SSG dismounted and approached the oncoming vehicle which had slowed down as it went around. 1LT ran to the on coming vehicle driver and gestured and yelled for the vehicle to stop. The on coming vehicle accelerated back onto the road oriented directly to the second vehicle in the patrol. The two dismounts, 1LT from the lead vehicle each fired 3 rounds from their M-4s to stop the vehicle. The vehicle increased speed and SPC who had dismounted from the second vehicle, fired at the on coming vehicle with his M-4 and the vehicle stopped. The patrol believed the vehicle to be a possible VBIED and requested EOD. EOD arrived and inspected the disabled vehicle. EOD reported wires in the driver compartment of the vehicle and informed the pairol not to attempt to remove the driver, who appeared to be deceased at this time. EQD executed a small Shoot charge on the frunk IOT inspect the trank for explosives. When this charge detonated it ignited the car's fuel tank and caused it to burn. 4-1 FA then took control of the scene. An AR 15-6 investigating officer has been appointed by the 3/1 AD Commander. The 3/1 AD Commander has also directed that a condolence payment be made to the family at 030930NOV05 by the 4-1 FA Commander, who is responsible for this AO.

LINE 7: Injuries or damage to government and/or civilian property: The on-coming vehicle was destroyed and the driver was killed.

LINE 8: Commander Reporting:

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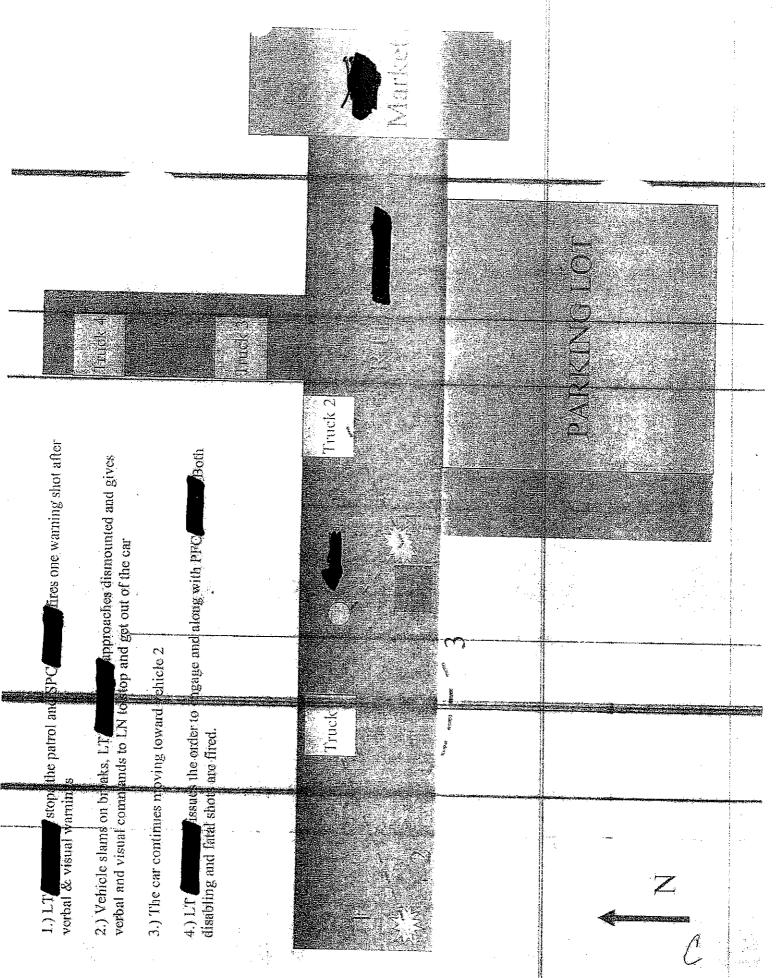
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	AUTHORITY: Title 10 USC Section 301; Title 5 USC Section 2951; E.O. 9397 dated November 22, 1943 (SSN).  ROUTINE USE: To provide commanders and law enforcement officials with manners by the commanders and law enforcement officials with manners by the commanders and law enforcement officials with manners by the commanders and law enforcement officials with manners by the commanders and law enforcement officials with manners by the commanders and law enforcement officials with manners by the commanders and law enforcement officials with manners by the commanders and law enforcement officials with manners by the commanders and law enforcement officials with manners by the commanders and law enforcement officials with manners by the commanders and law enforcement officials with manners by the commanders and law enforcement officials with manners by the commanders and law enforcement officials with manners by the commanders and law enforcement officials with manners by the commanders and law enforcement officials with manners by the commanders and law enforcement officials with manners by the commanders and law enforcement officials with manners by the commanders and law enforcement officials with manners by the commanders and law enforcement of the commanders and law en	activities (constant
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### MNC-I ROE CARD

NOTHING ON THIS CARD PREVENTS YOU FROM USING NECESSARY AND PROPORTIONAL FORCETO DEFEND YOURSELF

You may engage the following individuals based on their induct:

- a. Persons who are committing hostile acts against CF.
- b. Persons who are exhibiting hostile intent towards CF.

These persons may be engaged subject to the following structions:

- ID is a reasonable certainty that the proposed target is a legitimate liltary target. If no PID, contact your next higher commander for soision.
- b. Use Graduated Measures of Force. When time and roumstance permit, use the following degrees of graduated force hen responding to hostile act/intent: (1) shout verbal warnings to halt: (1) show your weapon and demonstrate intent to use it, (3) block coss or detain; (4) fire a warning shot; (5) shoot to eliminate threat.

  c. Do not target or strike anyone who has surrendered or is out of
- ombat due to sickness or wounds.

  d. Do not target or strike hospitals, mosques, churches, shrines,
- d. Do not target or strike hospitals, mosques, churches, shrines, shoots, museums, national menuments, and any other historical and altural sites, civilian populated areas or buildings <u>UNLESS</u> the enemy using them for military purposes or fracessary for your self-defense.
- e. Do not target or strike Iraqi Infrastructure (public works, ommercial communication facilities, dams), Lines of Communication roads, highways, tunnels, bridges, railways, and Economic Objects commercial storage facilities, pipelines) UNI ESS nacessary for self-efense or if ordered by your commander. If you must fire on these bjects, fire to disable and disrupt rather than destroy.
- f. <u>ALWAYS</u> minimize incidental injury, loss of life, and collateral amage.

#### MNC TROE CARD

- 3. The use of force, including deadly force, is authorized to protect the following:
  - Yourself, your unit, and other friendly forces
  - Detainees
  - Civilians from crimes that are likely to cause death or serious bodily harm, such as murder or rape
  - Personnel or property designated by the OSC when such actions are necessary to restore order and security
- In general, Warning SHCTS are aumonzed ONLY when the use deadly force would be authorized in that particular situation.
- 5. Treat all civilians and their property with respect and dignity. Do not seize civilian property, including vehicles, unless the property presents a security threat. When possible, give a receipt to the property's owner.
- 6. You may DETAIN civilians based upon a reasonable belief that the person: (1) must be detained for purposes of self-defense; (2) is interfering with CF mission accomplishment; (3) is on a list of persons wanted for questioning, arrest or detention; (4) is or was engaged in criminal activity; or (5) must be detained for imperative reasons of security. Anyone you detain MUST be protected. Force, up to and including deadly force, is authorized to protect detainees in your custody. You MUST fill out a detainee apprehension card for EVERY person you detain.
- 7. MNC-I General Order No. 1 is in effect. Cooling and the taking of war trophics are perhibited.
- 8. ALL personnel MUST report any suspected violations of the Law of War committed by any US, friendly or enemy force. Notiny your chain of command, Judge Advocate, IG, Chaplain, or appropriate service-related investigative branch (e.g. CID, NCIS).

THESE ROE IN EFFECT AS OF 22 MAY 05



