



Australian Government

Defence Honours and Awards Appeals Tribunal

Ball and the Department of Defence [2021] DHAAT 7 (27 May 2022)

File Number(s)	2021/007
Re	Colonel Maxwell Ball (Retd) Applicant
And	The Department of Defence Respondent
Tribunal	Mr Stephen Skehill (Presiding Member) Major General Mark Kelly AO, DSC (Retd) Ms Anne Trengove
Hearing Date	4 April 2022
Appearances	Colonel Maxwell Ball (Retd) – applicant Brigadier Mark Bornholt (Retd) Army Historical Honours and Awards Reviewing Officer Ms Catherine Morris Assistant Director, Current Recognition Directorate of Honours and Awards, Department of Defence

DECISION

On 27 May 2022 the Tribunal decided:

- (a) pursuant to section 110VB(2)(b) of the *Defence Act* 1903, to set aside the decision under review and to substitute therefor a recommendation that all units and elements of the 1st Australian Task Force – Vietnam be awarded the Republic of Vietnam Cross of Gallantry with Palm Unit Citation; and
- (b) pursuant to section 110VB(3) of that Act, and consistent with the rationale of the above decision, to recommend to the Minister that the Department of Defence be directed to consider whether there are any other units of the Australian Defence Force that should similarly be recommended to be awarded the Republic of Vietnam Cross of Gallantry with Palm Unit Citation.

CATCHWORDS

FOREIGN AWARD – Republic of Vietnam Cross of Gallantry with Palm Unit Citation – 1974 Citation to US Military Assistance Command and subordinate units – Guidelines for the acceptance and wearing of foreign awards – Battles of Fire Support Bases Coral and Balmoral

LEGISLATION

Defence Act 1903 - ss 110T, 110V(1), 110VB(2), 110VB(3).

Introduction

1. The applicant, Colonel Maxwell Ball (Retd), National President of the Vietnam Veterans' Association of Australia, seeks the award of the Republic of Vietnam Cross of Gallantry with Palm Unit Citation (the RVCGWPU) to himself and other members of the Australian Army who were part of the 1st Australian Task Force (Forward) and associated units that served in May 1968 during the Battles of Fire Support Bases Coral and Balmoral.¹

Background

2. On 18 September 2018, Colonel Ball made application to the Directorate of Honours and Awards in the Department of Defence (the Directorate), seeking the award of the RVCGWPU for himself and 'all of those members of the Australian Army who were part of the 1st Australian Task Force (Forward) and associated units and served in May 1968 during the Battles of Fire Support Bases Coral and Balmoral.'²

3. Some two years later, on 25 August 2020, Major General Anthony Rawlins DSC AM wrote to Colonel Ball advising him that 'under the honours and awards system in place at the time of the Vietnam War, for a foreign award to be accepted it was a requirement for the award to be offered to, and accepted by, the Australian Government and approved by the Sovereign'. Major General Rawlins went on to advise that the Citation had been awarded to three Australian units 'in theatre', but there were 'no formal offerings or documentary evidence to suggest that the Citation was intended to be awarded to all units and elements of 1st Australian Task Force Vietnam'.

4. Among other things, Major General Rawlins further advised that while the Republic of Vietnam had offered the Citation to the United States Military Assistance Command Vietnam, which was then 'endorsed' by the United States Department of the Army General Order Number 8 of 1974, that General Order relates to US personnel and is not an authority for Australian Army personnel. Major General Rawlins stated that Army had reviewed the issue and that its position was that the Citation would not be extended to any additional Army units. He stated that this position had been endorsed by the Chief of the Defence Force.³

5. On 4 June 2021, Colonel Ball made application to the Tribunal, seeking review of the above decision.⁴

¹ Application for Review of Decision, Colonel Maxwell Ball (Retd), 4 June 2021.

² Letter, M J Ball to the Directorate, dated 18 September 2018.

³ Letter, Major General A J Rawlins DSC AM to Colonel Ball, 25 August 2020.

⁴ Application for Review of Decision, Colonel Maxwell Ball (Retd), 4 June 2021.

Tribunal jurisdiction

6. Pursuant to s110VB(2) of *the Defence Act 1903* (the Act) the Tribunal must review a reviewable decision if an application is properly made to the Tribunal. The term *reviewable decision* is defined in s110V and includes a decision made by a person within the Defence Force to *refuse to recommend* a person for a *foreign award* in response to an application. Section 110T defines a *foreign award* as an honour or award given by a government of a foreign country, or by an international organisation.

Conduct of the Review

7. In accordance with the Tribunal's Procedural Rules, upon receipt of Colonel Ball's application for review, the Tribunal sought a report from the Department of Defence in relation to the decision under review. Upon receipt of the Defence Report, this was provided to Colonel Ball to afford him an opportunity to comment on it.

8. A hearing was then scheduled, and this was attended by Colonel Ball (via Skype) and representatives of Defence (in person).

9. Also in attendance at the hearing, at the request of the Tribunal, were Brigadier Ernest Chamberlain CSC (Retd) (by Skype) (who the Defence report noted had provided the Department with apparently relevant documentation) and Mr Ashley Ekins, former head of the Military History section at the Australian War Memorial and co-author of the Vietnam War's official histories. The Tribunal wishes to record its appreciation of the considerable assistance which Brigadier Chamberlain and Mr Ekins provided to the Tribunal in the course of the hearing, as discussed further below.

10. Following the hearing, the Tribunal provided to Colonel Ball copies of documents referred to by Brigadier Chamberlain at the hearing which were not otherwise included in the hearing pack, and extended to him an opportunity to offer comment on those documents. Colonel Ball's comments did not directly address the documents in question, but rather reiterated but did not add to various points that had been discussed at the hearing.

11. After the hearing, the Tribunal also requested that Defence confirm the Tribunal's understanding that various previous conferrals of the RVCWPUC referred to below had been made in reliance on the text of a Citation by the Government of the Republic of Vietnam set out in US Department of the Army General Order 8 of 1974. In providing that confirmation, the Department repeated the argument advanced at the hearing (and discussed further below) that that order is not an authority for Australian Army personnel.

The Republic of Vietnam Cross of Gallantry with Palm Unit Citation

12. The Republic of Vietnam Cross of Gallantry was an award conferred by the Government of the Republic of Vietnam with various classes: Palm, Gold Star, Silver Star or Bronze Star. The class of the award reflected the level within the South Vietnamese military hierarchy at which the award was made - Palm being for citation at the Armed Forces level, Gold Star for Corps level, Silver Star for Division level and Bronze Star for Regiment or Brigade level.

13. The Cross of Gallantry could be awarded to individuals, or collectively to units in the form of a unit citation. Notwithstanding the fall of the Republic of Vietnam in 1975, Australia, through the Department of Defence, continues to assess applications for this award including through determination of eligibility under historic unit citations made by the Government of the Republic of Vietnam.

14. In a 1969 booklet published by the Government of the Republic of Vietnam describing all of the medals and decorations of the Republic of Vietnam Armed Forces, the Cross of Gallantry is described as being '*awarded or posthumously awarded to military personnel, civilians, and Armed Forces units and organisations which have accomplished deeds of valor or displayed heroic conduct while fighting the enemy...*'⁵

15. In considering the claim made by Colonel Ball, it is appropriate to recount the circumstances in which the Republic of Vietnam Cross of Gallantry with Palm Unit Citation has been conferred upon other units of the Australian Defence Force.

In-theatre conferral of the RVCGWPU on Australian units

16. During the Vietnam War, three Australian units were approved to be eligible for the award the Republic of Vietnam Cross of Gallantry with Palm Unit Citation as follows:

- a. Australian Army Training Team Vietnam, for operations from 1 July 1962 to 31 October 1971;
- b. 8th Battalion, Royal Australian Regiment, (8 RAR) for operations from 28 November 1969 to 24 October 1970; and
- c. No 2 Squadron, RAAF, for operations from 19 April 1967 to 15 July 1971.⁶

17. In the first two of these cases, the Government of the Republic of Vietnam issued a citation that specifically named the Australian unit. In the third, there was a citation that referred to the Australian unit not by name but by necessary implication as it was the only unit operating the Canberra aircraft referred to therein.

⁵ Booklet, *Huy Chuong an Thuong Trong Quan-Luc Viet-nam Cong Hoa*, Government of the Republic of Vietnam, January 1969.

⁶ No 2 Squadron RAAF was awarded the citation as it was a part of the US 35th Tactical Fighter Wing, which was the unit cited by the Government of the Republic of Vietnam.

18. There is no citation by the Government of the Republic of Vietnam of which the Tribunal is aware that specifically or by such precise necessary implication applied to the unit(s) for which Colonel Ball now seeks conferral and thus these cases provide no precedent on which to found the claim he makes.

19. It is apparent that the Government of the Republic of Vietnam became increasingly liberal in granting the award as a unit citation over the course of the Vietnam War. This was reflected in the 1974 citation of the United States Military Assistance Command Vietnam (MACV) and its “subordinate units” by the Government of the Republic of Vietnam. The asserted text of this citation (the DAGO 8 text) is set out in US Department of the Army General Order 8 of 1974 (DAGO 8). Under the terms of this citation, all US military personnel posted to a unit in Vietnam are considered by the US to be eligible for the award. We consider later whether the “subordinate units” scope of the citation would extend to the claim now made by Colonel Ball.

Post war conferral of the RVCGWPUC on Australian units

20. In 2008, eligibility for the unit citation was approved by the Governor-General for the strength of D Company, 6th Battalion, Royal Australian Regiment, for operations on 18 August 1966 (the Battle of Long Tan). Although no discrete citation exists for D Company, and the award was not approved because of any relationship with MACV or otherwise under the terms of the DAGO 8 text, this award was approved on the recommendation of the then Parliamentary Secretary for Defence Support, Dr Mike Kelly, after the identification of what he believed was compelling evidence of an intention by the Government of the Republic of Vietnam to offer the award to D Company for its service at Long Tan. This recommendation was made against the advice of an independent review panel (the Abigail review⁷ into service at Long Tan). Neither the Department of Defence nor the Tribunal is aware of the “compelling evidence” to which Dr Kelly referred and thus the Tribunal considers that this award also provides no precedent on which the claim made by Colonel Ball can be based.

21. In 2014, following the Larsen review⁸ in the Tribunal, eligibility for the award was approved for elements of the 1st Battalion, Royal Australian Regiment battle group that served in Vietnam under command of the United States 173rd Airborne Brigade. This approval was based on an award that was made by the Government of the Republic of Vietnam to the United States 173rd Airborne Brigade (as set out in US-DAGO 51 of 1971, a discrete citation made prior to the 1974 MACV citation). It included the following Australian subordinate units of that Brigade:

- a. 1st Battalion, the Royal Australian Regiment from 25 May 1965 to 31 May 1966;

⁷ Report, *Review of Recognition for the Battle of Long Tan - March 2008*, Department of the Prime Minister and Cabinet, 2008.

⁸ *Larsen and the Department of Defence [2014] DHAAT 26 (4 July 2014)*.

- b. 1 Armoured Personnel Carrier Troop Royal Australian Armoured Corps from 15 June 1965 to 31 March 1966;
- c. 105th Field Battery, Royal Australian Artillery, from 14 September 1965 to 31 May 1966;
- d. 3 Field Troop, Royal Australian Engineers, from 14 September 1965 to 31 March 1966;
- e. 161 Reconnaissance Flight, Australian Army Aviation, from 14 September 1965 to 31 May 1966;
- f. 1st Australian Logistic Support Company from 25 May 1965 to 31 March 1966; and
- g. Battery Section, 4 Field Regiment Light Aid Detachment Royal Australian Electrical and Mechanical Engineers from 14 September 1965 to 31 March 1966.

22. Again, because of the specific terms of the citation issued by the Government of the Republic of Vietnam, these conferrals on Australian units do not form a precedent on which the claim made by Colonel Ball can be based.

23. Subsequently, an application was made to the Tribunal by the Vietnam Veterans' Branch of the RAAF Association which sought award of the citation to members of No. 35 Squadron. At the hearing of that review, Defence advised the Tribunal that it would reconsider the eligibility of No. 35 Squadron and other Defence units for the citation and the Tribunal proceedings were adjourned to allow Defence to do so. Eligibility was considered by each service headquarters and as a result the following RAN and RAAF units were viewed as eligible:

- a. RAN Helicopter Flight Vietnam from 16 October 1967 to 8 June 1971;
- b. RAN Clearance Diving Team Three for operations from 5 February 1967 to 5 May 1971;
- c. No. 9 Squadron, RAAF, for operations from June 1966 to December 1971; and
- d. RAAF Transport Flight Vietnam/No. 35 Squadron from August 1964 to February 1972.

24. No Army units were considered by the Army at that time to be eligible on that basis.

25. These awards were made on the basis that each of these units was a "subordinate unit" under the operational control of MACV and thus within the scope of the DAGO 8 text. As these awards satisfied the application made by the RAAF Association, it was unnecessary for the Tribunal to proceed to make a decision in relation to the application then before it.

26. If the unit for which Colonel Ball seeks the award was a "subordinate unit" under the operational control of MACV then these awards could provide precedents on which the claim he makes might be based.

27. Some time later an application was made to the Tribunal by Major Philip Rutherford (Retd) Ph.D. seeking the award to 547 Signal Troop. Prior to the hearing of that application, on 20 June 2018 the Minister for Defence Personnel recommended acceptance of the Republic of Vietnam Cross of Gallantry with Palm Unit Citation for operations by 547 Signal Troop from 13 June 1966 to 23 December 1971. That eligibility was advised by Defence as 547 Signal Troop operated under the control of the United States 303rd Radio Research Battalion, which was under the operational control of MACV and was thereby covered by the DAGO 8 text.

28. Similarly, if the unit for which Colonel Ball seeks the award was a “subordinate unit” under the operational control of MACV, then this award could provide a precedent on which the claim he makes might be based. Again, because this decision satisfied the application made by Major Rutherford, it was unnecessary for the Tribunal to proceed to make a decision in relation to the application then before it.

29. According to a decision brief to the Chief of the Defence Force, on 20 January 2020 the Chief of Air Force endorsed a proposal that Air Force Base Support Flight Vietnam and Number 1 Operational Support Unit were eligible for the award because ‘maladministration was identified in its administration process’.⁹ These awards were approved on 28 September 2020, again in reference to the DAGO 8 text. In this decision brief, on 11 August 2020, it was stated that the CDF nonetheless ‘supported’ that *‘the Citation eligibility will not be extended to any further Navy or Army units (sic)’*.¹⁰

30. Once again, if the unit for which Colonel Ball seeks the award was a “subordinate unit” under the operational control of MACV, then these awards could provide precedents on which the claim he makes might be based.

31. In 2019, Lieutenant Colonel Bruce Cameron MC (Retd) made application to the Tribunal for a review of the eligibility of a number of units for the RVCGWPU, under the citation awarded to 8 RAR in 1971. Colonel Cameron based his application on certain specific arguments, each of which was rejected by the Tribunal. While the Tribunal observed that the citation of MACV and its subordinate units by the Republic of Vietnam Government arguably sought to make all units that served in Vietnam eligible for the award, Colonel Cameron asked that the Tribunal not further consider that question and, respecting his wishes, the Tribunal made no subsequent recommendation to Government regarding the award of the RVCGWPU based on the criteria set out in DAGO 8 text.

32. Accordingly, the present application represents the first occasion on which the Tribunal is required to consider the scope of the citation to MACV and its subordinate units as set out in the DAGO 8 text.

⁹ CDF Decision Brief, Republic of Vietnam Cross of Gallantry with Palm Unit Citation, 7 August 2020.

¹⁰ Ibid.

Relevant Republic of Vietnam Citations

33. The relevant passage of DAGO 8 which records the asserted text of the 1974 Citation by the Government of the Republic of Vietnam is as follows:

“REPUBLIC OF VIETNAM GALLANTRY CROSS UNIT CITATION.

1. The award of the Gallantry Cross Unit Citation by the Republic of Vietnam to the units listed below is confirmed.

2. With Palm for service in Vietnam from 8 February 1962 to 28 March 1973 HEADQUARTERS, UNITED STATES MILITARY ASSISTANCE COMMAND and its subordinate units.

Citation reads as follows:

HEADQUARTERS, UNITED STATES MILITARY ASSISTANCE COMMAND and its subordinate units performed splendidly in the Republic of Vietnam from 8 February 1962 to 28 March 1973. It advised and supported the Vietnamese Army, Navy and Air Force while enhancing their combat capabilities, allowing for the successful completion of important and continuing search and destroy military operations. These actions resulted in the annihilation or routing of regular, large size North Vietnamese Army units by Republic of Vietnam troops. Aside from its combat-related support role, the UNITED STATES MILITARY ASSISTANCE COMMAND contributed toward the establishment and modernization of critical military bases, assuring that the varied and many construction programs were being accomplished. Additionally, this American force greatly assisted the South Vietnamese people in the realization of a higher standard of living through its medical and civic action programs for war victims, refugees, troops, orphans, and widows. Most noteworthy was the monumental efforts put forth by the UNITED STATES MILITARY ASSISTANCE COMMAND in the Vietnamization Program, resulting in a smooth and efficient transfer of military bases and equipment to the Republic of Vietnam Armed Forces. The result of such laudable actions by this group of dedicated individuals has been the installation of a proud and confident spirit in the Republic of Vietnam Armed Forces which will allow for the continuation of a determined effort to hold back the Communist aggressor and assuring that this Southeast Asian country survives in a free and democratic atmosphere. The remarkable proficiency and devotion to duty displayed by members of the UNITED STATES MILITARY ASSISTANCE COMMAND were in keeping with the highest traditions of the Armed Forces of the United States.”

34. While DAGO 8 clearly asserts that this is the text of a citation by the Government of the Republic of Vietnam, it does not attach the original instrument issued by that Government. In 2012, during the Larsen review, the Tribunal engaged a US researcher to attempt to locate the original of the Vietnamese citation in the archives of the US National Archives and Records Administration in Washington DC, but this search was ultimately fruitless.

35. Subsequently to the awards mentioned above made on the basis of the DAGO 8 text, however, Brigadier Ernest Chamberlain (Retd), a former member of 547 Signal Troop, provided Defence with a copy of Vietnamese Order No. 034/TTM/CL/NQ (Order 34) dated 5 April 1973 which was apparently authorised by General Cao Van Vien, Chief of the General Staff of the Republic of Vietnam Armed Forces but promulgated by a subordinate Lieutenant General. This contains a citation at the Armed Forces level for "Headquarters, United States Military Assistance Command and its subordinate units". However, the narrative of this citation is very different from the one set out above. It is as follows, with text replicated as per the original:

CITATION AT THE ARMED FORCES LEVEL

- Headquarters, United States Military Assistance Command Vietnam and its subordinate units

An outstanding unit with brave soldiers who are rich in specialized capabilities and experiences, always displayed devoted spirit of co-operation.

Assuming activities in Vietnam since 8-02-1962 to 28-03-1973, the Headquarters, United States Military Assistance Command Vietnam beside its mission on supervision, planning, and coordination of all US forces in Vietnam, effectively combined activities of its personnel of all ranks in helping the Republic of Vietnam Armed Forces to improve and develop their organization in all aspects specially in the following missions:

- Advised and assisted the realization of plans for the increase of strength, training and equipment in order to improve the combat efficiency of RVNAF.

- Closely cooperated with the RVNAF command in planning for operations, logistic support as well as to maneuver US units to support the Republic of Vietnam Armed Forces in their operations organized on all over the country as well as on the outskirt battlefields, to defeat the North VN troops and destroy their fortified hideout or capture their armament storage and war materiel to bring peace to the people.

- Supported the establishing, equipping and renovation of key installations of the Republic of Vietnam Armed Forces.

- Supported the "Phoenix" campagne to destroy the infrastructure of the Communist.

- Supported the realization of major construction programs including construction of airport, seaports, highways, bridges or sewage systems etc... to actually contribute to the economic development of the nation.

- Supported the Rural Pacification and Development Program to improve the standard of living of the local people by the realization of medical and civic action program to help the war victims, refugees and war widows and orphans.

Particularly, in the realization of the Vietnamization of the Vietnam war, the Headquarters, United States Military Assistance Command, Vietnam has utilized all means and urged the US advisory groups in coordinating with US Navy and Air Force to transfer to the Republic of Vietnam Armed Forces many military installations, air bases, seaports with thousands of aircraft, war ships fully equipped with modern war materials such as M48 Tank, 155mm and 175mm canons, TOW rockets, construction and communications equipment etc... Therefore, the Republic of Vietnam Armed Forces are enable to replace the whole Allied Forces in the war against the aggressive Communists.

With the noteworthy achievements along with the noble sacrifices of thousands of heros (sic) on the battlefields, the Headquarters, United States Military Assistance Command, Vietnam and its subordinate units have contributed a great deal in the fighting for the defense of Freedom, Peace and Independence of the people of South Vietnam, at the same time fostered the good friendship between the two peoples of the United States and Vietnam.”

36. The Tribunal thus sought evidence from Brigadier Chamberlain about the provenance of this document and its possible relationship to the DAGO 8 text. In late 1970, during his second tour, Brigadier Chamberlain was detached from the Australian Embassy in Saigon to serve on a three-star Vietnamese headquarters. One of his responsibilities was to assist with awards to ‘foreign forces’ – including to the AATTV and to 8 RAR.

37. Brigadier Chamberlain advised that he had “serendipitously” located Order 34 while searching for other material in the Texas Tech University’s online Vietnam War archive. He informed the Tribunal that, based on that experience, he believed this document to be a genuine Government of Vietnam instrument notwithstanding that it is unsigned and not in the Vietnamese language.

38. Brigadier Chamberlain informed the Tribunal that he believes that Order 34 came about after American authorities in Vietnam approached the Government of the Republic of Vietnam requesting that an award of the RVCGWPUC be made to MACV and its subordinate units. He said that, in doing so, the Americans provided a draft to the Vietnamese which was in the following terms:

“Since its inception on 8 February 1962, the United States Military Assistance Command Vietnam has provided significant assistance to the Government of Vietnam in its continuing fight to defeat externally-directed and supported Communist subversion and aggression in order to attain an environment which will allow the people of the Republic of Vietnam to determine their own future without outside interference. In the early stages of its existence, MACV provided advisory assistance and material support to RVNAF, which was confronted by enemy units, reinforced by North Vietnamese Cadre, who were beginning to stage small unit attacks on strategic hamlets and lightly defended villages. MACV advisors assisted in programs to provide security to the rural populace and participated in expanding self defense units. In late 1964, faced with the additional threat of regular units of the North Vietnamese Army, MACV initiated programs to improve our RVNAF leadership at all levels, to train small

infantry units and to provide them with adequate weapons and equipment, the advisory effort was expanded down to sector and subsector levels then as the massive build up of US units progressed MACV took control and guided the conduct of the US combat effort. Coordination and cooperation between MACV advisory elements and their counterparts increased as combined air, ground, and sea operations were planned and conducted. Great efforts were made to expand and train RVNAF so it could achieve a self-sufficient posture as soon as possible. This included assistance in the expansion of training facilities and creation of division training centres. Advisors also provided expertise to their counterparts in such areas as tactics and use of newly introduced US weapons. As it became clear that the combat aspect and the pacification effort were inseparable, MACV assisted the RVNAF units in the mission of dealing with the local populace and pacifying the countryside. In 1967, a joint program was developed and initiated to improve the state of training and combat readiness of the RVNAF through the expansion of military schools and establishment of a more effective manpower management system. Concurrently, the US advisory effort was expanded to furnish tactical and technical assistance to regional and popular force units which were essential in providing local security necessary for the revolutionary development program. The success of the advisory and pacification effort was clearly demonstrated during the 1968 Tet offensive as the RVNAF inflicted decisive defeat on the enemy throughout Vietnam and the population failed to rally to the VC and NVA even after their initial victories. After the defeat of the enemy, MACV turned its major efforts towards the improvement and modernisation of the RVNAF, while further emphasising pacification. These efforts enabled RVNAF to assume progressively more of the ground combat role and resulted in the withdrawal of all US ground combat units. During this period, however, the flow of advice and assistance continued and significant progress in achieving self-sufficiency was witnessed. Large quantities of equipment were turned over to RVNAF units, which then received training in how to use it properly. The Republic of Vietnam gained a new posture of pride each day as better trained and better equipped units showed their strength against enemy forces. Perhaps the greatest monument to the success of the advisory effort took place during the enemy offensive in 1972. Although the NVA launched their greatest offences of the entire war, the RVNAF counterattacked and decisively defeated the enemy. This proved beyond doubt that the years of dedicated service by MACV personnel had born fruit and that RVNAF had developed into a modern efficient fighting force. The combined US-Vietnamese pacification program was also an overwhelming success as evidenced by the massive rejection of the North Vietnamese invaders by the people of Royal Vietnam. Other MACV achievements include:

- Assisting in the upgrading of security at all key RVNAF logistical installations, thereby protecting critical equipment and supplies.*
- Assisting in improvement of the personnel procurement program, replacement system and personnel management techniques which resulted in increased “foxhole” strength and more effective combat units.*
- Encouraging a new approach to training which placed more emphasis on the chain of command’s responsibility for training.*
- Aiding the Phung Hoang program in becoming an integral part of the GVN’s effort to eliminate an influence of the Viet Cong in the country.*

– *Assisting in the coordination of implementation of refugee and war victims programs which contributed immeasurably to the health and welfare of vast numbers of displaced Vietnamese people.*

– *Contributing sound advice relative to urban planning which has resulted in improved conditions for the people living in urban areas and almost total elimination of unrest and demonstration of unrest and demonstrations by students and other special interest groups.*

– *Guiding the development of management information systems for use by Vietnamese commanders and supervisors. They systems became highly effective in monitoring the progress of pacification, combat effectiveness of territorial force units, and police operations. One of the most complex and important systems is the Hamlet Evaluation System.*

– *Aiding in the development of a concept for more efficient employment of territorial forces through judicious redeployment, reallocation, and redistribution of assets. This concept provided the impetus for the expansion of territorial security and has increased the protection afforded the people in Hamlet villages throughout Vietnam.*

– *Delivery, through Project Enhance and Enhance Plus of massive amounts of military equipment which increased the combat ability of RVNAF in an astonishingly short period of time.*

During its eleven years of existence, MACV has provide timely and wise advice to counterparts at all levels within RVNAF, modern equipment to outfit its personnel and moral support and encouragement to continue to fight. It has assisted Republic of Vietnam comrades in arms in building in military force capable of defending its country for external aggression, giving people the opportunity to choose their own political destiny. It has been a major factor in the achievement of self-defense, self-government and self-development.”

39. A handwritten note on a document bearing typewritten text in these terms indicates that it was provided to the Chief of the General Staff of the Republic of Vietnam Armed Forces on or around 15 March 1973.

40. Brigadier Chamberlain was of the view that Order 34 represented a Vietnamese redrafting of the suggested American text.

41. Defence asserted in the Defence Report that Order 34 was “redacted to a shorter version” because of sensitivities surrounding certain operations referred to in it - presumably the Phoenix program which was co-ordinated by the US Central Intelligence Agency and which remains a sensitive issue to this day – and that the redacted version of Order 34 is the DAGO 8 text. However, it appears that this was speculation on the part of Defence and it offered no evidence to support that proposition.

42. The Tribunal thus faces a situation where conceivably:

- There may be two relevant extant Republic of Vietnam citations that can operate together – Order 34 and the DAGO 8 text; or
- Order 34 may have been repealed and replaced by the DAGO 8 text which is the only relevant extant Republic of Vietnam order; or
- Because neither Order 34 nor the DAGO 8 text is an original signed document of the Republic of Vietnam in the Vietnamese language, neither document should be regarded as an authority for the award of the RVCGWPU.

43. The Tribunal is prepared to dismiss the third option. In doing so, it relies on Brigadier Chamberlain's evidence that, based on his experience, Order 34 bears the hallmarks of a genuine Republic of Vietnam document of this type. And, so far as the DAGO 8 text is concerned, the Tribunal notes that it is set out in a contemporaneous document of the American Army that should have been in a position to know the facts and should be trustworthy to have accurately recorded them.

44. As between the first and second options, the Tribunal is unable to make a definitive choice. However, this appears to be of no consequence because, for the reasons set out below, the Tribunal considers that the same answer to Colonel Ball's application is arrived at whether or not Order 34 or the DAGO 8 text is applicable.

45. Before proceeding further, however, the Tribunal notes that various assertions have been made that there is at least one further order of the Republic of Vietnam which is both relevant and, if it existed, could provide a clearer answer to Colonel Ball's application.

46. In a 2014 submission to the Tribunal in relation to its *inquiry into the refusal to issue entitlements to, withholding and forfeiture of defence honours and awards*, the RAAF Association, Vietnam Veterans Branch asserted that:

"In April 1975 President Thieu and the Congress of the Republic of Vietnam reauthorized new Orders clarifying the May 1974 approval of the VCOG Unit Award, to an individual Award. This approval applied to all U.S. Service personnel, and personnel from every nation allied with the United States, who served in country with Units subordinate to the U.S. Army Vietnam, and Military Assistance Command Vietnam."

47. And, in a Wikipedia entry it is asserted, without any authority being cited, that:

"The former South Vietnamese military awarded the Gallantry Cross to specific military units that distinguished themselves to the same level as would be required for

the individual award. Regulations for the issuance of the Vietnam Gallantry Cross permit the wearing of both the individual and unit award simultaneously since both are considered separate awards. The Gallantry Cross was awarded to every Allied nation which provided support to South Vietnam. The Gallantry Cross became the most commonly awarded Vietnamese decoration to foreigners, second only to the Republic of Vietnam Campaign Medal.”¹¹

48. Moreover, on the website of the American War Library a link to “Issue Regulations” for the RVCGWPUC leads to a further page which asserts that the Vietnam Cross of Gallantry had been:

“Authorized by the Government of (South) Vietnam (Republic of Vietnam) in May, 1974 to all foreign military personnel and units for valorous achievement/participation during the Vietnam conflict, March 1, 1961 through March 28, 1973, and re-instituted for the final years to 30 April 1975.”¹²

49. And in a further link, the American War Library asserts that:

“The VCOG with Palm Device award consists of four variations: 1) the full-size medal. 2) a miniature version of the full-size medal. 3) the unit (gold-color framed) ribbon (or “colorbar”). And 4) the individual frameless ribbon (colorbar). All four variations are authorized to ALL military persons of any Nation who served under Military Assistance Command, Vietnam.”¹³

50. All of these assertions about an extension by the Government of the Republic of Vietnam of eligibility for the Republic of Vietnam Cross of Gallantry with Palm Unit Citation, or the individual award, to military members from all nations are made by non-government entities. The Tribunal has thus sought to contact those entities to see if they are able to provide any official document from any government source in support of the claims they have made. None have been able to do so. Accordingly, the Tribunal is unwilling to rely on any of these uncorroborated assertions and considers that its consideration of Colonel Ball’s application must be confined to the terms of Order 34 and the DAGO 8 text.

¹¹ Website, Wikipedia, Gallantry Cross (South Vietnam) [https://en.wikipedia.org/wiki/Gallantry_Cross_\(South_Vietnam\)](https://en.wikipedia.org/wiki/Gallantry_Cross_(South_Vietnam)), accessed 11 May 2022.

¹² Website, Issue Regulations, Vietnam Gallantry Cross with Palm, www.amervets.com/replacement/vcog.htm#isr, accessed 11 May 2022.

¹³ Website, Common Myths About The Vietnam Cross of Gallantry, www.americanwarlibrary.com/thecross.htm, accessed 11 May 2022.

Defence arguments against Colonel Ball's application

51. At the hearing, Brigadier Bornholt stated that Defence opposed Colonel Ball's application for the reasons set out in paragraph 5 of the Defence Report. That paragraph is as follows:

"5. COL Ball's submission is not supported by Defence due to the following considerations:

- a. COL Ball does not meet the eligibility criteria for the Citation as he was not part of a unit that was formally offered the Citation, nor a part of a unit that has since been given approval to wear the Citation;*
- b. Headquarters (HQ) 1 ATF was not a subordinate unit of Military Assistant Command Vietnam (MACV). HQ 1 ATF was the HQ of the Australian Task Group which consisted of numerous units and the HQ 1 ATF was under operational command to United States II Field Force Vietnam (II FFV).*
- c. HQ 1 ATF is not a unit.*
- d. The citation was never formally offered to 1 ATF. As the Government of Vietnam no longer exists, retrospective offers cannot be made or assumed."*

52. While Brigadier Bornholt did not seek to expressly rely on it at the hearing, the Defence Report also sets another reason for opposing Colonel Ball's application which the Tribunal believes it is bound to consider:

"DAGO 8 has been confirmed by the United States that it relates to US Service personnel and is not an authority for Australian Army personnel"

53. While Brigadier Bornholt expressed unqualified opposition to Colonel Ball's application, the Tribunal notes that attachments to the Defence Report are not so unrelenting. Sometime between 9 March 2020 and 19 April 2020, the Deputy Chief of Army wrote to the Chief of Army:

"Sir

I can see both sides of this argument. I think it incongruous that every US serviceman is recognised and some Australians based on interpretations of C2 and service interpretation. I do not normally support retrospective applications, but in this case the perennial inconsistency and perceived injustice based upon mass incongruency, and that these veterans suffered at the hands of the nation on RTA, I think it little risk at this

point in time. It can be differentiated from other retrospective applications so as not to represent precedent.”¹⁴

54. And, on 19 April 2020 the Chief of Army wrote:

“This is an extremely complex issue, not helped by the inconsistency in the policy interpretations across the services. I support maintaining the Army position. It is consistent. I do accept that an independent review that has a holistic perspective across the services might conclude that extending the award further is appropriate.”

55. The Tribunal further notes that while Brigadier Bornholt (in line with the statement by the Chief of Army that the Army position has been “consistent”) asserted that the Army has consistently refused to extend the RVCGWPU to Army units, that assertion is undermined by the fact that the RVCGWPU has been issued to its 547 Signal Troop in reliance on the DAGO 8 text.

56. When pressed by the Tribunal, Brigadier Bornholt conceded that the inevitable consequence of the arguments he advanced, if accepted, would be that each of the previous awards of the RVCGWPU referred to above that was made in reliance on the DAGO 8 text was incorrect and would not be made today. When further pressed by the Tribunal, however, he initially stated that those previous awards would not be withdrawn in that event, although he subsequently stated instead that he could not say whether or not those awards would be withdrawn. In the Tribunal’s view, to leave extant awards that are later recognised to have been wrongly conferred would risk undermining the integrity of the defence honours and awards system.

Tribunal consideration of the Defence arguments

57. However it is unnecessary to give further consideration to the question of withdrawal because the Tribunal is not persuaded by any of the arguments advanced on behalf of Defence for the following reasons:

a) The fact that Colonel Ball was “not part of a unit that was formally offered the Citation” is irrelevant if he was part of a unit that was, albeit without express mention, within the scope of a citation by the Government of the Republic of Vietnam that has been accepted by the Government of Australia.

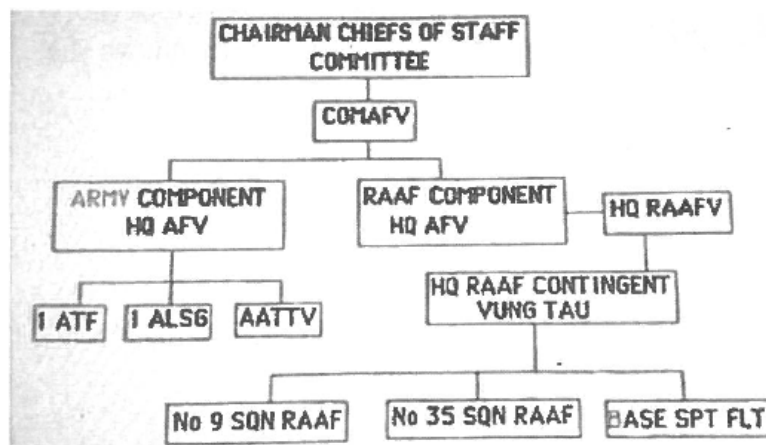
b) The fact that Colonel Ball was not “a part of a unit that has since been given approval to wear the Citation” is similarly irrelevant in the context of these proceedings. The aim of the present proceedings is to determine whether he was part of a unit that

¹⁴ Decision Brief, *Situation and Decision Brief for CA (through DGAPC and DCA) – Documentation the (sic) Army position on the Republic of Vietnam Gallagnry (sic) Cross with Palm Unit Citation and the eligibility (sic) of Army units in Vietnam*, BQ10631195, 25 February 2020.

was within the scope of a citation by the Government of the Republic of Vietnam that has been accepted by the Government of Australia and should thus now be given approval to wear the RVCWPUC.

c) The fact that HQ 1 ATF was under the operational control of United States II Field Force Vietnam (II FFV) does not mean that it was not a subordinate unit of MACV. The DAGO 8 text does not refer to units that were “directly” subordinate to MACV. The clear fact is that United States II Field Force Vietnam (II FFV) was subordinate to MACV and HQ 1 ATF being subordinate to United States II Field Force Vietnam (II FFV) meant that it was necessarily, albeit indirectly, subordinate to MACV. That HQ 1 ATF was a subordinate unit of MACV was confirmed at the hearing by Mr Ashley Ekins, former head of the Military History section at the Australian War Memorial, and co-author of the Vietnam War’s official histories, who attended at the request of the Tribunal. The below diagrams taken from Professor David Horner’s post-war study into Australian command and control arrangements in Vietnam¹⁵ depict the Australian National Chain of Command and the Chain of Command for Operational Control,¹⁶ and were part of the AAHU report into the Rutherford review.¹⁷

Australian National Chain of Command:

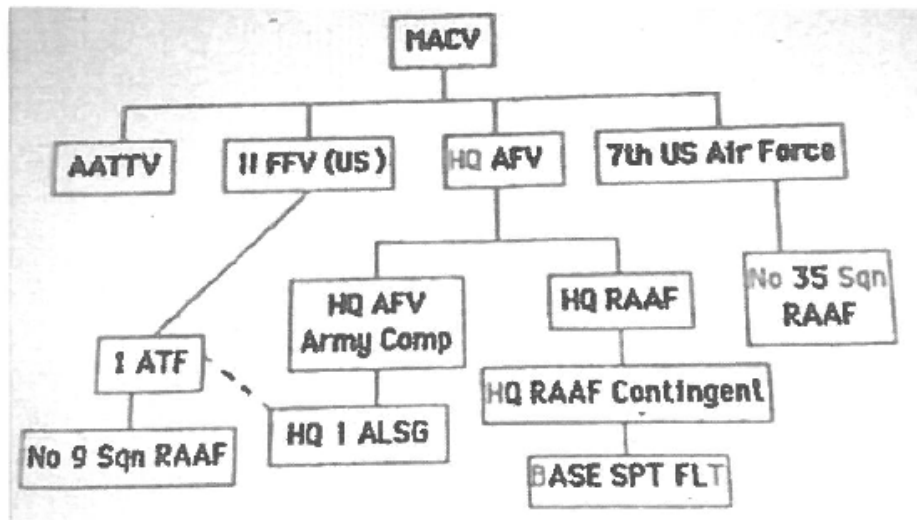


¹⁵ David Horner, *Australian Higher Command in the Vietnam War*, op. cit., p.18.

¹⁶ Ibid, pp.17-18.

¹⁷ Dr Michael Tyquin, *Rutherford: Claim for Republic of Vietnam Cross of Gallantry with Palm Unit Citation*, Australian Army History Unit, Canberra, December 2017.

Chain of command for Operational Control:



These arrangements were formalised in a series of Military Working Arrangements between the Commander, US Military Assistance Command, Vietnam and the Chief of the Australian General Staff, and later the Chairman of the Chiefs of Staff Committee. Among other things, the 1966 arrangement stated:

"The overall command of all units and/or personnel of the Australian Army and the Royal Australian Air Force (RAAF) will be vested in an Australian officer, nominated as Commander Australian Force, Vietnam (COMAFV). COMAFV will be responsive to, and under the operational control of COMUSVMACV.

The Australian Task Force will be placed under the operational control of an appropriate US field force commander, initially, the Commanding General, II Field Force, Vietnam."¹⁸

The 1967 arrangement stated:

"2. COMMAND RELATIONSHIPS:

The Australian Task Force is placed under the operational control of the United States II Field Force Commander."

...

3. TASKS

a. The Australian Task Force is located in the Ba Ria area, Phuoc Tuy Province, and can be assigned any of the following tasks by the United States II Field Force Commander:

¹⁸ Ian McNeill, *To Long Tan, The Australian Army and the Vietnam War 1950-1966, The Official History of Australia's involvement in Southeast Asian conflicts 1948-1975*. Allen & Unwin, Canberra, pp. 464-466.

- 1) *To secure and dominate the assigned Tactical Area of Responsibility in Phuoc Tuy Province.*
- 2) *To conduct other operations in Phuoc Tuy Province, as required.*
- 3) *As agreed by COMAFV and COMUSMACV to conduct operations anywhere in the ARVN III Corps Tactical Zone (CTZ) outside and in the area of the adjacent province on Binh Thuan in the ARVN II CTZ.*"¹⁹

d) The assertion that "HQ 1 ATF is not a unit" is belied by the Official History which clearly lists "Headquarters 1 Australian Task Force" as a task force unit.²⁰

e) The fact that "the Government of Vietnam no longer exists" and "retrospective offers cannot be made or assumed" is irrelevant if there already exists an accepted citation of the Republic of Vietnam the coverage of which extends to those to whom Colonel Ball's application relates.

f) And while it may be readily conceded that "DAGO 8 ... relates to US Service personnel and is not an authority for Australian Army personnel", that too is irrelevant. Reliance is placed on DAGO 8 not as an order binding on Australian Army personnel, but simply as a contemporaneous document recording the text of a citation issued by the Government of the Republic of Vietnam.

58. Accordingly, there is nothing in the arguments put to us by Defence that would lead us to the view that the decision under review should be affirmed.

Brigadier Chamberlain's objection to Colonel Ball's Application

59. However, a more cogent argument against Colonel Ball's application was pressed on the Tribunal by Brigadier Chamberlain.

60. He noted that the text of the narration in Order 34 made reference to MACV's mission of supervision, planning, and coordination of "all US forces in Vietnam", to the manoeuvring of "US units" to support the Republic of Vietnam Armed Forces, to the "US advisory groups" and to the fostering of "good friendship between the two peoples of the United States and Vietnam" (emphasis added).

61. He further noted that the DAGO 8 text stated that "this American force" greatly assisted the South Vietnamese people and that the proficiency and devotion to duty displayed by members of MACV "were in keeping with the highest traditions of the Armed Forces of the United States" (emphasis added).

¹⁹ Horner, *Australian Higher Command in the Vietnam War*, pp. 95-95.

²⁰ Ashley Ekins with Ian McNeill, *Fighting to the Finish, The Australian Army and the Vietnam War 1968-1975*, Allen & Unwin, Canberra, 2012, p.776.

62. Brigadier Chamberlain argued that these words and phrases meant that the reference to “subordinate units” of MACV must be read as confined to US units and not those of any other country, such as Australia. He said that reading Order 34 and the DAGO 8 text in this way would be consistent with his claim that recognition of MACV and its constituent units was initiated by the Americans for the benefit of Americans and at a time when Australian forces were far less active in the war than they had been earlier.

Tribunal Consideration

63. This line of argument has some strength and it cannot be said to be without merit. The Tribunal accepts that the texts of Order 34 and DAGO 8 are apparently “US centric” in their wording.

64. However, there is an alternative argument which is as follows:

- a) Each of Order 34 and the DAGO 8 text comprise two elements – an operative clause, and a narration.
- b) In each case, the operative clause refers to “Headquarters, United States Military Assistance Command and its subordinate units”.
- c) The phrase “subordinate units” is unqualified by any words such as “American” or “US”.
- d) Because Australian units such as those already awarded the RVCWPUC in reliance on the DAGO 8 text and the 1st Australian Task Force to which the decision review relates were under the operational control of MACV, they were all “subordinate units” of MACV and thus within the terms of the operative clause.
- e) While the narratives in each do not mention units of Australia or of any other country, such units operated subject to the same control as American units and were operationally a part of the US Force.
- f) As the narratives were not the operative clauses of either Order 34 or the DAGO 8 text, they should not be construed to limit the unambiguous terminology of the operative clauses.
- g) It is also notable, as discussed in the Defence Report, that there was Vietnamese consideration of a possible Vietnamese unit citation to 1 ATF during 1970/71, which General Tran, the ARVN commander of 3 Corps, was said to be anxious to award, but which did not proceed because Australian authorities at the time were of the view that 1 ATF was not considered to be a unit (which, as already noted, conflicts with the Official History). It should also be borne in mind that an Australian unit citation has since been awarded to units that comprised 1 ATF (Forward), including HQ 1 ATF (Forward).

65. While the matter is not free from doubt, the Tribunal is not persuaded that Brigadier Chamberlain's argument is to be preferred to this alternative argument. The Tribunal considers that the better view is that Order 34 and the DAGO 8 text, in their references to "subordinate units", extend to Australian units that were directly or indirectly subordinate to MACV.

66. For the reasons give above, the Tribunal has thus concluded that the decision under review should be set aside.

Tribunal recommendation

67. While Colonel Ball's application to the Directorate only sought the award of the RVCGWPUC for himself and "other members of the Australian Army who were part of the 1st Australian Task Force (Forward) and associated units that served in May 1968 during the Battles of Fire Support Bases Coral and Balmoral", the decision of Major General Rawlins denying his application was not so limited but instead extended to "all units and elements of 1st Australian Task Force – Vietnam". The Tribunal considers that its recommendation should thus be for grant of the RVCGWPUC to "all units and elements of 1st Australian Task Force – Vietnam".

68. At the same time, however, it appears to the Tribunal that the reasoning underlying this decision would relate equally to any other Australian unit that was a subordinate unit of MACV but not a "unit or element of 1st Australian Task Force – Vietnam". In these circumstances, the Tribunal considers it appropriate to exercise its power under section 110VB(3) of the Act to recommend to the Minister that the Department of Defence should consider whether there are any other units that were subordinate to MACV that have not been already awarded the RVCGWPUC and are not covered by the recommendation now being made for award to "all units and elements of 1st Australian Task Force – Vietnam" but which should be so recommended.

Tribunal Decision

69. In light of all the above, the Tribunal has decided:

- (a) pursuant to section 110VB(2)(b) of the *Defence Act* 1903, to set aside the decision under review and to substitute therefor a recommendation that all units and elements of the 1st Australian Task Force – Vietnam be awarded the Republic of Vietnam Cross of Gallantry with Palm Unit Citation; and
- (b) pursuant to section 110VB(3) of that Act, and consistent with the rationale of the above decision, to recommend to the Minister that the Department of Defence be directed to consider whether there are any other units of the Australian Defence Force that should similarly be recommended to be awarded the Republic of Vietnam Cross of Gallantry with Palm Unit Citation.