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Submission to Inquiry - Lieutenant Colonel Edward Albert Chitham

Part 1 – Name of Inquiry

Name of Inquiry *

Medallic recognition for service with Rifle Company Butterworth.

Part 2 – About the Submitter

Title or Rank *

Lieutenant Colonel

Surname *

Chitham

Given Names *

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[REDACTED]

Email Address: *

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Primary Contact Number *

[REDACTED]

Secondary Contact Number

[REDACTED]

Is the Submission on behalf of an organisation? If yes, please provide details:

Part 3 – Desired outcome

Provide a summary of your submission:

Recognition that RCB Service in the period 1970-1989 is warlike because it meets the criteria of Government Legislation, Cabinet policy and the military criteria for warlike service existing at that time as confirmed by Justice Mohr and Justice Clarke.

Part 4 - Your submission and Supporting Documentation

File Attached: 20220621-TC-RCB-SUBMISSION-TO-DHAAT.pdf

Part 5 – Consent and declaration

✓ I consent to the Defence Honours and Awards Appeals Tribunal making my submission publicly available.

✓ I also consent to the Defence Honours and Awards Appeals Tribunal:

- using information contained in my submission to conduct research;

- providing a copy of my submission to a person or organisation considered by the Tribunal to be appropriate; and
- providing a copy of my submission to a person or organisation the subject of adverse comment in the submission;
- using content in my submission in its report to Government.

The Tribunal will decide which person or organisation is appropriate, and this may include:

1. persons or organisations required to assist with the inquiry; and
2. persons or organisations with an interest in the inquiry.

✓ I declare that the information I have provided is correct.

Name

Edward Albert Chitham

Date

21/06/2022 /

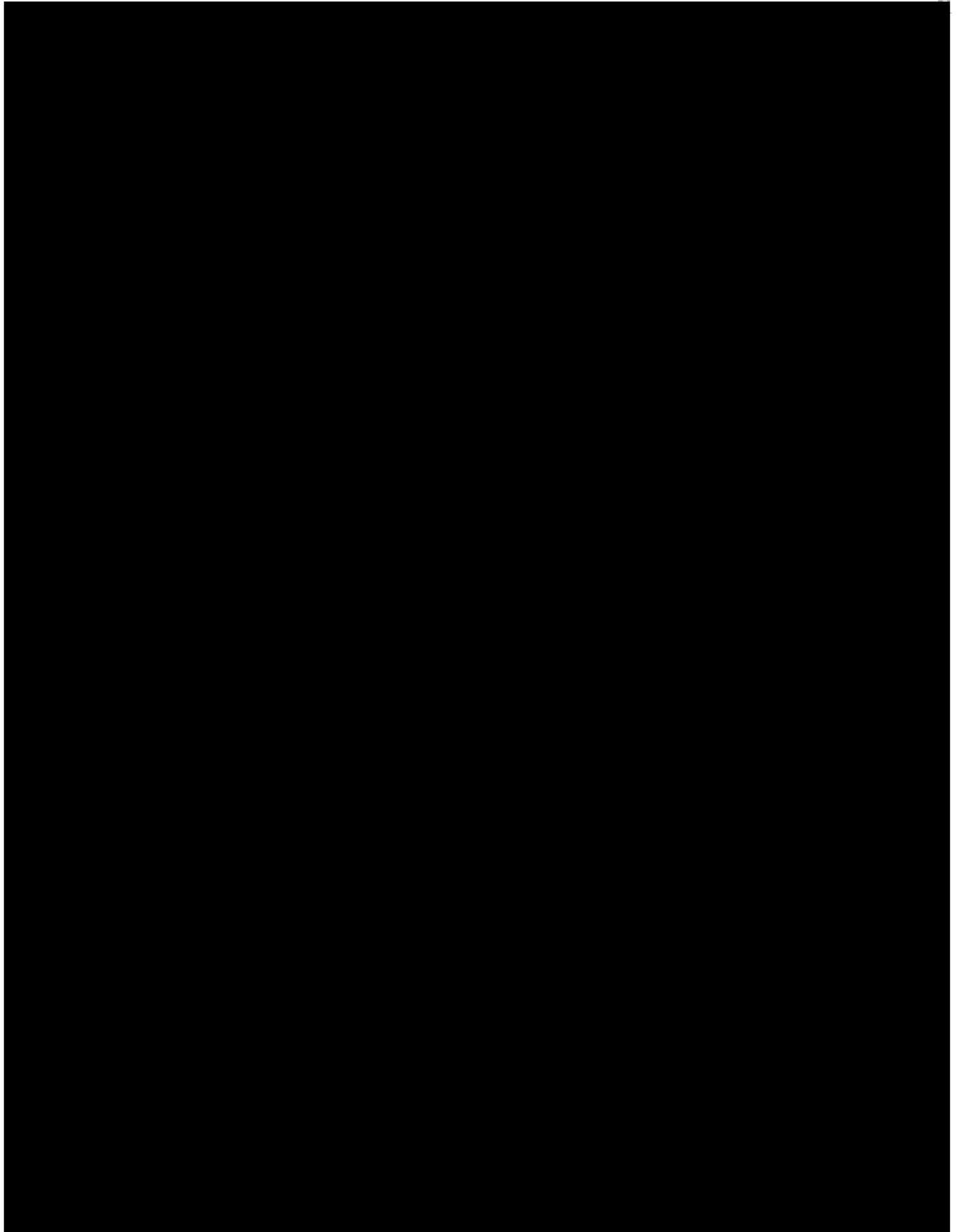
*Edward Albert
Chitham*

Signed by Lieutenant Colonel Edward Albert
Chitham

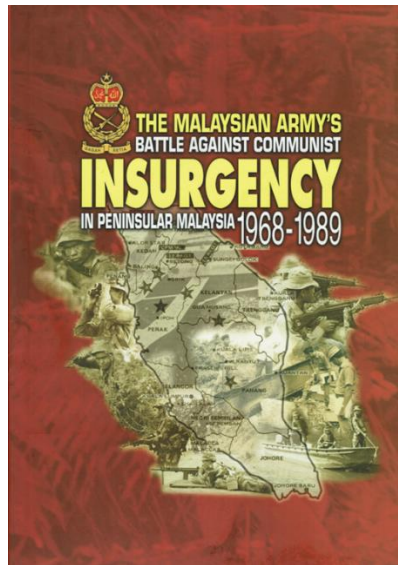
Signed on: 21 June, 2022

Signature Certificate

Document name: Submission to Inquiry - Lieutenant Colonel Edward Albert Chitham



SUBMISSION TO THE DHAAT INQUIRY INTO MEDALLIC RECOGNITION FOR SERVICE WITH RIFLE COMPANY BUTTERWORTH



For over 16 years the RCB Review Group (RCBRG) has challenged Defence's decision that RCB service is peacetime and not warlike. That challenge has been supported with evidence discovered under FOI from the Australian Government's own documents including declassified 211 past secret and 18 past top secret documents and international sources.

My submission is based NOT on having served at Air Base Butterworth (ABB) Malaysia but on my personal knowledge of the RCB deployment and my military experience as:

- The Commanding Officer 8/9 RAR in 1974-1976 during which the Battalion deployed three RCB companies to Air Base Butterworth (ABB) – one in 1974/5 and two in 1976;
- An Infantry Platoon Commander with 1 RAR 1960 -1961 during the [Malayan Emergency](#) and with 2 RAR in Malaya until June 1962;
- The Infantry Instructor and a member of the Tactics Instruction Wing at the Royal Military College, Duntroon in 1967;
- The Officer Commanding B Company 9 RAR 1968-1969 in Vietnam;
- An Instructor in Tactics at the Jungle Training Centre 1971-1973, specialising in Counter Communist Revolutionary (Insurgency) Warfare;
- A current researcher/analyst of documents related to the Australia's strategic deployment of military troops to South East Asia and specifically the RAAF's role and Australia's Infantry Battalions role during the Malayan Emergency and later the deployment, role and operations of RCB at ABB (1970-1989) during Malaysia's Communist Insurgency (1968-1989), and

- A current advocacy researcher/analyst for the [Royal Australian Regiment Corporation](#) (2005-) and [The Alliance of Defence Services Organisation](#) (2010-)

The RCBRG maintains that RCB service (1970-1989) is warlike because it meets the legislative requirement, the Cabinet's policy and the criteria for warlike service as correctly stated by the Defence Nature of Service Branch, *"All nature of service reviews are considered in the context of the legislation and policies at the time of the activity or operation under review."*¹

I endorse the RCBRG's submission dated 20220615 from its Chairman Ray Fulcher which provides the detailed evidence to justify RCB's service reclassification as warlike service. My submission is an adjunct to it.

My submission outlines:

1. the reasons for Australia's strategic and military presence in Malaya post World War 2 through to the RCB's operational deployment role in Malaysia (1970-1989);
2. RCB's primary military role in defence as a Quick Reaction Force, and
3. why RCB's service (1970-1989) meets the legislative requirement, Cabinet's policy and the established criteria for warlike service existing at that time.

Strategic Background

RCB's deployment must be considered within the context and perspective of strategic events within the South East Asian (SEA) regional area, the existing security threats and consequent political and policy decisions made by the Australian Government. See Annex A.

Primary Role

The RCB deployment was **a specific military conventional defensive combat operation** whose military role (objective) was the security (defence) of the RAAF assets at ABB against the communist insurgent threat.

One needs to understand that Defence is a phase of war in which a military force is deployed for a specific defensive/protective/security role and that its defence force comprises two essential combat elements:

1. **The 'Front-Line' Force** that is the first line defenders. At ABB this was the Malaysian troops as sentries and, with the RAAF, patrols in their dedicated areas; and
2. **The Reserve Force** that is held back from the front line for counter penetration and counter attack roles to stop enemy penetration into the defended area and to counter attack to repel, kill and/or capture the enemy. At ABB this was the **RCB's specific role - a Quick Reaction Force (QRF): it was NOT a front-line deployment for sentry duties.**

¹ NOSB, *Background Paper Parliamentary Petition Dated 3 March 2014 Rifle Company Butterworth 1970-1989*, 28 April 2014, para 108.

The 1967 British decision to withdraw its troops from the Far East by 1971 saw those units who were relevant to ABB's Defence Operation Plans and essential to its protection depart:

1. 1967 - The Gurkha Battalion from Minden Barracks Penang.
2. 31 March 1970 - The RAF Regiment at ABB at the British handover of the Base ownership to the Malaysian Armed Forces (MAF). The Regiment's role was in-depth defence to prevent a successful enemy attack.

Those withdrawals weakened ABB's security and led to the Australian Government's decision to deploy the first Australian RCB company in November 1970 from our RAR Battalion (with the ANZUK Brigade in Singapore) to ABB with a similar role: the security (defence) of the ABB against the communist insurgent threat.

Recognising the ongoing communist insurgent threat in the general Butterworth area and West Malaysia, defensive contingency plans were implemented as detailed in RAAF Butterworth Operation Order No 1/71 (Op Order), Shared Defence of Air Base Butterworth, of 8 Sep 71." ²

With the impending withdrawal of the Australian Infantry Battalion from Singapore to Australia the Defence Committee at its 11 January 1973 meeting, proposed:

"When the Australian Battalion is withdrawn from Singapore the requirement for a company for security duties at Butterworth will be met by providing the unit on a rotational basis from Australia. This could be presented publicly as being for training purposes" ³

Subsequent discovered documents (detailed in the RCBRG's submission) reveal the extent and implementation of this camouflage.

The Criteria for Warlike Service

The relevant legislation was the *Repatriation (Special Overseas Service) Act 1962* (SOS Act).

The relevant government policy was Cabinet Directive 1048 of 7 July 1965 which clarified how the SOS Act was to be implemented:

"...that the Services be directed that allotment for "special duty" should only be made at a time when the personnel are exposed to potential risk by reason of the fact that there is a continuing danger from activities of hostile forces or dissident elements (The Governing principle) ; in the present circumstances, allotment should therefore be confined to personnel specifically allotted for duty in relation to Indonesian infiltrators or communist terrorists in circumstances where there has been a specific request for the assistance of Australian forces and where the task has been clearly defined (The subordinate clause)..." ⁴

² NOSB, Background Brief – Rifle Company Butterworth, 25 July 2011, para 45.

³ Defence Committee Minute, *Five Power and ANZUK Arrangements and Withdrawal of Australian Battalion and Battery*, Minute No. 2/1973, 11 January 1973.

⁴ Cabinet Minute, Decision No, 1048, Submission No. 834, *Principles on which Eligibility for War Service Homes Loans is determined and the Consequences of their continued application on the Demand for Loans – Examination and Report by Inter-departmental Committee*, Melbourne, 7 July 1965, Recommendation 1.

The position taken by Defence was to elevate the subordinate clause, dealing with a particular situation (*"in the present circumstances"* being the Indonesian Confrontation which occurred well before the 1970 RCB deployments), above the directive governing principle on how *"allotment for 'special duty' should ... be made"* under the Act. This raises the subordinate clause to the level of the governing principle of when allotment can be made. This was clearly not the intent of the Cabinet. Nor was it the view of Clarke J, who said in his report⁵ :

13.9. *"The type of service required for allotment is explained in a 1965 Cabinet decision, which stated:*

That the Services be directed that allotment for "special duty" should only be made at a time when the personnel are exposed to potential risk by reason of the fact that there is a continuing danger from activities of hostile forces or dissident elements...

Thus, Clarke J correctly identified the core principle for applying the SOS Act and does not mention the subordinate clause.

The principle identified by Clarke J was essentially a re-statement of the 'incurred danger' test as reported in Justice Mohr's Report (2000)⁶

"In essence, Section 7A of the VEA 1986 requires that a veteran must have 'incurred danger from hostile forces of an enemy' before such service becomes 'qualifying service' for the 'service pension'.

On the assumption that we are dealing with rational people in a disciplined armed service (i.e., both the person perceiving danger and those in authority at the time), then if a serviceman is told there is an enemy and that he will be in danger, then that member will not only perceive danger, but to him or her it will be an objective danger on rational and reasonable grounds. If called upon, the member will face that objective danger. The member's experience of the objective danger at the time will not be removed by 'hindsight' showing that no actual enemy operations eventuated".

RCB incurred danger from hostile forces

The law is well established and does not require a high level of threat, or for an attack to occur, or even be imminent, for the threat to meet the threshold. As the Defence Honours and Awards Appeals Tribunal (DHAAT) has previously summarised:

"Both the Clarke Review and repatriation law provide ample interpretation of the notion of incurred danger. Various courts and tribunals have ruled that no attempt is made to indicate how much, how close, how long or how intense the incurred danger must be before it meets the requirements of the legislation or relevant policy. Indeed, it is strongly arguable that the belief of authorities that an enemy poses a significant threat to a particular part of Australia (leading, for example, to the Government sending forces to defend that area, or to conduct operations in that area) provides strong evidence that the forces sent in response to that

⁵ Clarke J, Report of the Review of Veterans' Entitlements, 2003, Chapter 13, paras 13.9-13.10.

⁶ Review of Service Entitlement Anomalies in Respect of South-East Asian Service 1955-75. February 2000. Chapter 2. 'Incurred Danger', 'Perceived Danger' and 'Objective Danger'.

threat have been sent into harm's way and therefore have incurred danger. In fact, the danger need only be possible, not probable, nor does it have to eventuate.”⁷

The Criteria for Warlike Service – The Clarke Report at Ch 14

Any examination of the evidence provided by the RCBRG from multiple sources when considered against these criteria would also support RCB's claim. Here's why.

14.7 “In determining the nature of service for an approved operation, the Department of Defence uses three primary factors: the mission, the rules of engagement and the threat to ADF personnel.”

Defence's definitions for the nature of service classifications expresses the extent to which ADF personnel deployed on an ADF operation, or on a third country deployment, in a specified area and within a specified timeframe, are exposed to the risk of harm from hostile forces as a consequence of executing the approved mission and tasks.

A warlike operation is an Australian Government authorised military operation where ADF personnel are exposed to the risk of harm from hostile forces that have been assessed by Defence as having the capability and an identified intent to directly target ADF personnel. ADF personnel are authorised to use force to pursue specific military objectives and there is an expectation of ADF casualties as a result.

The Mission

14.8 “The mission describes the task and provides guidance on the likely nature of action required. Warlike operations are those military activities where the application of force is required to pursue specific military objectives, such as a declared war, conventional combat operations against an armed adversary and peace enforcement operations in support of diplomatic efforts to restore peace between belligerents...”

In May 2001 the Minister for Defence had approved the award of the Australian Service Medal (ASM) 1954-75/ASM with Clasp SE ASIA for service in South-East Asia from 31 Oct 71 to 31 Dec 89. This decision arose from the implementation of the recommendations of the Mohr Report that a separate submission be completed addressing service in Singapore/Butterworth following the cessation of FESR on 30 Oct 71. A relevant finding of that submission was:

“In 1970, the Rifle Company Butterworth (RCB) was raised to provide a quick reaction force (QRF) to meet the communist terrorist threat and provide internal security and protection for Australian assets within the perimeter of Royal Malaysian Air Force (RMAF) Base Butterworth.”

The RCB deployment was a conventional combat operation: the defence of the RAAF assets in a Shared Defence Plan with the RMAF within ABB. Specifically, RCB's primary role, was a Quick Reaction Force to defend against an insurgent attack. Inherent in the

⁷ DHAAT, *Inquiry into Recognition of Australian Defence Force Service for Special Air Service Counter Terrorist and Special Recovery Duties*, 22 December 2009, para 81.

RCB's mission was to maintain an Australian presence in Malaysia for sensitive strategic and diplomatic reasons and with its combat sized force to be a deterrent to the insurgent action.

The Rules of Engagement

14.9 "The Rules of Engagement authorise the application of, and limitations on, the use of lethal force to achieve an assigned mission. In warlike operations, the application of lethal force is authorised, within defined parameters, to achieve the mission. In non-warlike operations, the application of force is limited to self-defence".

Defence has ignored the fact that the RCB troops were not sentries but a QRF specifically deployed for offensive reaction to an insurgent attack. At ABB the Shared Defence Plan had the MAF providing for perimeter defence with sentries and both the MAF and the RAAF providing patrols inside their own dedicated areas within the Base.

The QRF would be deployed to action as ordered by the Ground Defence Operations Centre as necessary to achieve its role: to stop penetration into the Base area and to counter attack to repel, kill and/or capture the insurgents. At that time the QRF's ROE/OFOF become lethal. The RCBRG submission provides the details.



The Threat to ADF Personnel

14.10 "The level of threat is implicit in the definitions of warlike and non-warlike service. In warlike operations there is an expectation of casualties, whereas in non-warlike operations casualties could occur but are not expected".

Again, in May 2001 the Minister for Defence had approved the award of the Australian Service Medal (ASM) 1954-75/ASM with Clasp SE ASIA for service in South-East Asia from 31 Oct 71 to 31 Dec 89. This decision arose from the implementation of the recommendations of the Mohr Report that a separate submission be completed addressing service in Singapore/Butterworth following the cessation of FESR on 30 Oct 71. A relevant finding of that submission was:

"The communist terrorist threat was proven to be real with recorded clashes on a number of occasions within its borders until Chin Peng the Communist Leader, signed a peace accord in Dec 89".

The threat from communist insurgents' actions were as reported in various intelligence reports from various sources such as:

- Secret: The Australian JIO Secret Report No 13/75 dated 1 October 1975 – The Security of Air Base Butterworth;
- Secret: Butterworth Security Report to the Minister from AVM N.P. McNamara Deputy Chief of Air Staff dated 14 October 1975; and,
- Those detailed in the RCBRG's submission.

There are numerous references to the insurgent threat regarding who, how many, where, their capacity, tactics, attack routes, external arms support, their weaponry (direct and indirect weapons, mines etc), confirmed attacks and other activities that constituted a warlike threat to ABB. It should be noted that an attack did occur on the Royal Malaysian Air Force (RMAF) Base at Sungai Besi (Kuala Lumpur) on 31 Mar 74.

in Australia pre-deployment, the RCB troops were fully briefed by Army Intelligence Officers on their combat role, the enemy threat and the expectation of combat casualties. All troops were required to be DP1 status (ready for war combat): the same requirement as for service in Vietnam.

As detailed in the RCBRG's submission, there were a number of real 'Amber' (defence situation imminent) alerts activating the Ground Defence Operations Centre to deploy the RCB's QRF.

Conclusions

RCB service met the criteria for warlike service that existed at the time of its deployment (1970-1989) and the principles of 'incurred danger', 'perceived danger' and 'objective danger' as espoused by both MAJGEN Mohr and Justice Clarke.

Mission accomplished. RCB's role as a Quick Reaction Force (QRF) and its military objective the security of AAB against communist insurgent attacks was a successful deterrent against insurgent attack.

RCB service should be recognised as warlike.

Ted Chitham

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21st June 2022
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Annexures

Appendix A: RCB BRIEF - HISTORICAL STRATEGIC DEPLOYMENT BACKGROUND



20220318 RCB BRIEF
Attachment 1 - Histor

