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21 June, 2022

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Submission to Inquiry - Mr Kenneth Neville Marsh

Part 1 – Name of Inquiry

Name of Inquiry *

Inquiry into medallic recognition for service with Rifle Company Butterworth

Part 2 – About the Submitter

Title or Rank *

Mr

Surname *

Marsh

Given Names *

Kenneth Neville

Postal Address *

[REDACTED]

Email Address: *

[REDACTED]

Primary Contact Number *

[REDACTED]

Secondary Contact Number

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

Personal

Part 3 – Desired outcome

Provide a summary of your submission:

I served as an Engine Fitter with 75 Sqn at Butterworth between Sept 1971-Mar 74 and Jul 77-Jan 80. I recall from early on arrival in 1971 warnings about booby traps and being told "the Malaysians are dropping bombs on Chin Peng out there in the jungle somewhere." I also recall on my second posting roadblocks in Butterworth town with barbed wire and police with military style weapons. A significant change when I returned in 1977 were the revetments on the Mirage flight line. From time-to-time articles appeared in local newspapers regarding communist activities or security force action against them. I was not involved in security related duties but I do know that patrolling with live ammunition does not happen in a peacetime setting. I request that ABB service be recognised as active, or warlike and that veterans be eligible for the Australian Active Service Medal 1945-75 or the Australian Active Service Medal along with the Returned from Active Service Badge. It is also requested that veterans with service up to 1975 be awarded the General Service Medal 1962 If requested I can provide copies of all documents referenced in the submission other than books

Part 4 - Your submission and Supporting Documentation

File Attached: 20220621-Submission-DHAAT-combined.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

Kenneth Neville Marsh

Date

21/06/2022 /

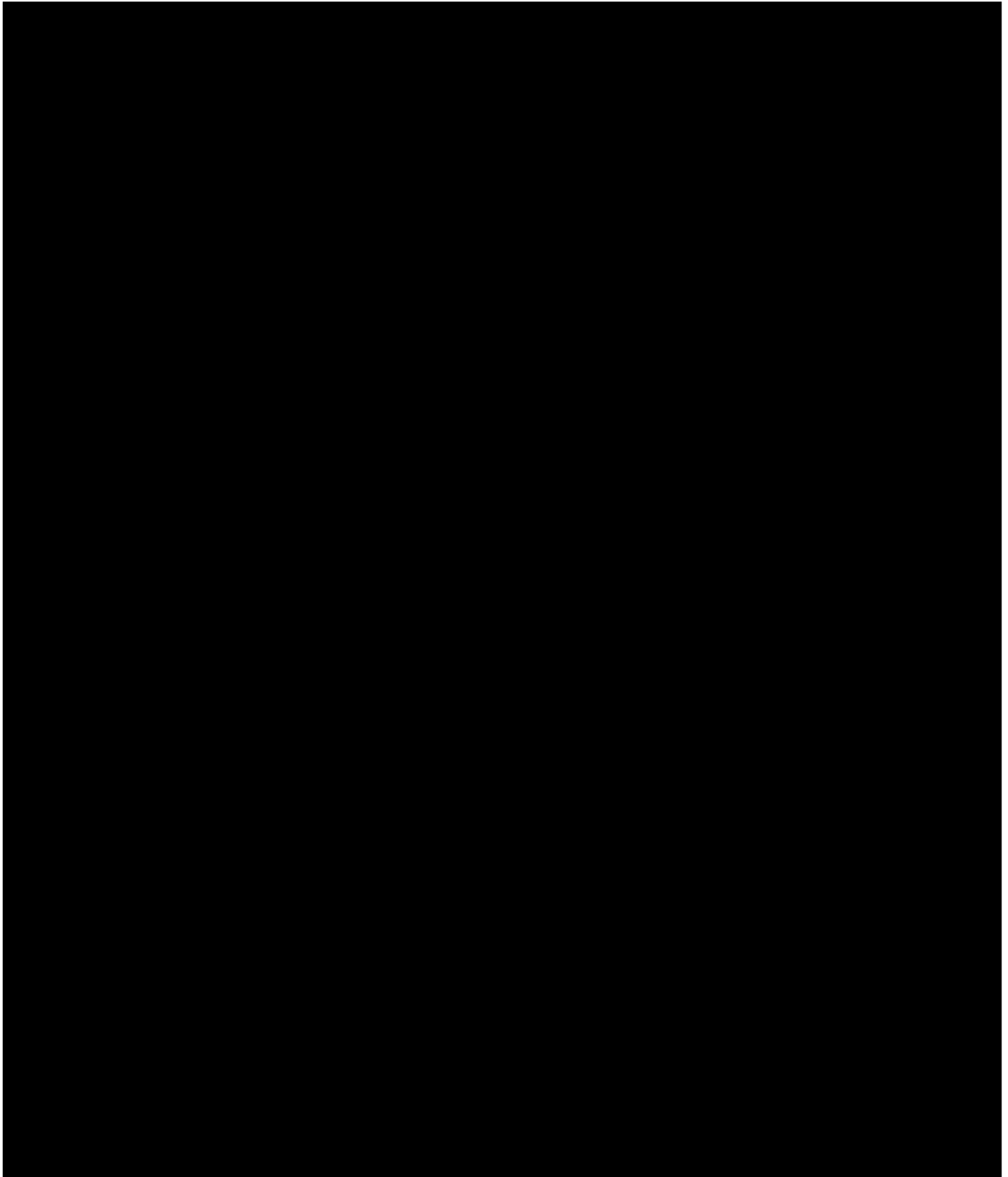
A handwritten signature in black ink, appearing to read 'K. N. Marsh'.

Signed by Mr Kenneth Neville Marsh

Signed on: 21 June, 2022

Signature Certificate

Document name: Submission to Inquiry - Mr Kenneth Neville Marsh



Submission to the Defence Honours and Awards Tribunal
Inquiry into Medallic Recognition for Service with Rifle Company Butterworth
1970-1989

Kenneth N Marsh

INTRODUCTION

This submission supports the Rifle Company Butterworth's (RCB) claim for warlike service at Air Base Butterworth (ABB) during Malaysia's 1968-1989 Communist Insurgency War.

Section 1 addresses the Terms of Reference. It agrees with the recent New Zealand decision that service at Air Base Butterworth (ABB) meets the essential requirements of operational service, not peacetime as claimed by Australia's Department of Defence. It argues that ABB service be recognised in a manner consistent with "the long established principles that underpin the eligibility for medal and repatriation benefits"¹ and the Australian ideals of "fairness, equity and compassion ..."²

Section 2 establishes the operational context within which Australian military members served at ABB. Communal relations between Malaysia's two largest ethnic groups were inherently unstable. This factor was considered to play into the hands of the predominantly Chinese led armed insurgency against Malaysia launched in 1968. Malaysia's commitment to its independent foreign policy made it sensitive to the presence of foreign forces on its soil but it recognised it needed Australian support to provide air defence as a deterrent to foreign powers.

Malaysia was subjected to a continuous state of emergency for the entire period of the insurgency. ABB was the largest air base in the country and the closest to the communist strongholds. The Malaysian Air Force conducted operations against the communists from ABB. Although Malaysia remained responsible for base security under normal day-to-day conditions, Australia knew they could not be relied on in an emergency situation and, in fact, the Malaysian security contingent could be withdrawn at any time.

A shared defence plan under command of the Australian RAAF Officer Commanding (OC) committed Australian and Malaysian forces to cooperate in the event of an imminent military threat. To counter the uncertainty of the presence of the Malaysian security contingent an infantry company, first deployed from the ANZUK forces in Singapore and later from Australia, was permanently retained at ABB as a ready-reaction, or quick reaction force. Owing to political sensitivities its presence was publicly promoted "ostensibly for training, flag-showing and a change of scene."³

¹ Bruce Scott MP. Minister for Veterans' Affairs and Minister Assisting the Minister for Defence. 5 October 1999.

² *ibid*

³ Tange, A.H (for), Secretary, Department of Defence, Security of Butterworth, 71/316e, 2 March 1972.

Section 3 discusses the “the long established principles” underpinning Australia’s repatriation system and its associated system of medallic recognition. It demonstrates that the approach taken by Mohr and Clarke is consistent not only with the current warlike service criteria, but also the legislative framework existing at the time of ABB service. It also shows that during the post 1965 period service chiefs failed to allot personnel for overseas service as directed by Cabinet to the detriment of veterans. Defence has relied on this failed system as part of their argument for denying ABB veterans their lawful entitlements.

Section 4 presents evidence showing the facts on which decisions were made and instructions given regarding ABB during the Insurgency War. These demonstrate conclusively Australian Intelligence agencies and service chiefs considered ABB was vulnerable to attacks by the communist forces, the presence of an armed enemy, and that the troops on the ground were briefed on this threat. Consistent with the conclusions of Justices Mohr and Clarke (see Section 3) ABB “veterans incurred danger” from hostile forces and qualify for active, or qualifying, service recognition.

Sections 1 to 4 present sufficient evidence to prove the case for warlike service recognition at ABB. The case for warlike service and the award of Australian Active Service medal at ABB is established.

Section 5 discusses claims made by Defence to justify its position that service at ABB is properly recognised as peacetime. Evidence is presented showing these claims are unsustainable. If the Tribunal is satisfied the case is established by sections 1 to 4, section 5 is immaterial.

Section 1

TERMS OF REFERENCE

This submission responds to the Tribunal’s Terms of Reference by addressing:

- the New Zealand Government’s decision to extend eligibility for the New Zealand Operational Service Medal to New Zealand’s Butterworth veterans, and the implication to members of the Rifle Company Butterworth (RCB); and
- the requirement to give regards to the integrity of the Australian honours system and identify any consequential impact upon that system.⁴

⁴ Defence Honours and Awards Appeals Tribunal. Inquiry into Medallic Recognition for Service with Rifle Company Butterworth. Terms of Reference.

2021 New Zealand Review of South- East Asian Service

In 2014 the Australian Department of Defence's Nature of Service Branch (NOSB) used the New Zealand Government Working Groups 2011 Review of Military Service in South-East Asia as evidence to support its claim that ABB service is properly classified as peacetime.⁵ The recent New Zealand decision recognising service by its veterans at Butterworth during the 1971-1973 as operational was based in part on Australian sources.⁶ This included the Defence Honours and Awards Appeals Tribunal (DHAAT) decision in *Fulcher and the Department of Defence [2020] DHAAT 08 (14 May 2020)*.⁷ The New Zealand finding was overturned in 2021 by *The Medallic Recognition Joint Working Group on New Zealand Military Service in South East Asia 1955 to 1989* which acknowledged "a stream of declassified material which ... is painting a different picture than that considered by the MRJWG". Much of this material was sourced from formerly classified intelligence and military files held by the National Australian Archives.⁹

The 2021 review cited the 2020 article "Military and Political Risk in South-East Asia 1971-1989 Australia's Commitment to the Five Power Defence Arrangements and the Integrated Air Defence System".¹⁰ To quote the New Zealand report:

Marsh notes that in the March/April 1971 period there were a number of reports highlighting the vulnerability of Butterworth, particularly with the discovery of a communist terrorist camp some 20 km from Butterworth. The Australian High Commission considered Butterworth could become an attractive future target, while several Australian newspapers highlighted the vulnerability of Butterworth to attack. An official report on Butterworth security in April 1971 stated that while considering the likelihood of Butterworth being targeted was low, they noted "the possibility of attacks cannot be ignored". The potential consequences of any attack were viewed as being severe, both in direct effects (civilian and military personnel casualties, damage to aircraft or facilities) and in the wider strategic consequences for Australia. It proposed the deployment of a rifle company from Singapore.¹¹

The New Zealand report noted the Australian Service Medal (ASM) and Australian Active Service Medal (AASM) "contain components of" New Zealand's Operational and Special Operational Service Medals.¹² It commented on the Australian decision to recognise service with the Far East Strategic Reserve (FESR) up to 1971 with the ASM after the Committee of Inquiry into Defence Awards (CIDA)

⁵ Report on Medallic Recognition of New Zealand Military Service in South-East Asia 1950-1975 by Peter Cooke, Independent Historian, 1 July 2011. Cited in Background Paper Parliamentary Petition Dated 3 March 2014 Rifle Company Butterworth 1970-1989. Nature of Service Branch. 28 April 2014. Paras 104-107.

⁶ Reassessment of the Recommendations of The Medallic Recognition Joint Working Group on New Zealand Military Service in South East Asia 1955 to 1989. March 2021.

⁷ *Fulcher and the Department of Defence [2020] DHAAT 08 (14 May 2020)*

⁹ Reassessment of the Recommendations of The Medallic Recognition Joint Working Group on New Zealand Military Service in South East Asia 1955 to 1989. March 2021.

¹⁰ Ken Marsh. "Military and Political Risk in South-East Asia 1971-1989 Australia's Commitment to the Five Power Defence Arrangements and the Integrated Air Defence System", *Sabretache* vol. LXI, no.3 – September 2020.

<https://recognitionofrcbservice.com/wp-content/uploads/2020/09/Military-and-Political-Risk-in-South-East-Asia-1971-1989.pdf>. Cited in "Reassessment of the Recommendations of The Medallic Recognition Joint Working Group on New Zealand Military Service in South East Asia 1955 to 1989. March 2021."

¹¹ Reassessment of the Recommendations of The Medallic Recognition Joint Working Group on New Zealand Military Service in South East Asia 1955 to 1989. March 2021. Para 109.

¹² *Ibid.* Para 55.

had considered South-east Asian service post 1966 did not meet the award's requirement.¹³ This had "created what became a cascading series of anomalies where Army and Air Force personnel and those with service post 1971 did not receive similar medallic recognition."¹⁴ This contravened CIDA principle 3, "care must be taken that in recognising the service of some, the comparable service of others is not overlooked or degraded."¹⁵ CIDA Principle 3 is discussed in Section 3.

The New Zealand Review faced the difficulty of reviewing service retrospectively. It recognised the problems with incomplete and fragmented records, and that the situation on the ground at the time may not align with official records. It turned to "One of the principal lenses" used by Australia, that established by Major General Mohr in 2000:

If ADF personnel are placed in circumstances where they may be used to react to an assessed threat made by Australian Government intelligence agencies, it has to be considered operational service. This is regardless of whether the threat is realised or not.¹⁶

This principle is discussed in more detail in Section 3.

The Australian Honours System and the Ideals of Fairness, Equity and Compassion

In 1993 the Government established the Committee of Inquiry into Defence Awards (CIDA). Its Terms of Reference (TOR) included the examination of claims for "recognition of categories of service", and consideration of new "awards to recognise service in past defence-related activities of either a warlike or non-warlike nature". The CIDA recommended the establishment of the Australian Service Medal 1945/75 to recognise equivalent service to that of the Australian Service Medal. Consistent with its Principle 1, that a period of operational service should be recognised by a single medal, and that General Service Medals recognised equivalent service to that of the Australian AASM 1975, it made no recommendation for an AASM 1945/75.¹⁷

CIDA developed ten principles to guide its deliberations, shaped by Australian ideals of "fairness, equity and compassion ..."¹⁸ This submission believes four of these principles are related to the Tribunals TOR "to have regard to the integrity of the Australian honours system ... and ... any consequential impact ... upon that system". These are:

- Principle 3. "To maintain the inherent fairness and integrity of the Australian system of honours and awards care must be taken that, in recognising service by some, the comparable service of others is not overlooked or degraded."
- Principle 8. "Recognising that its work requires viewing past service through the eyes of 1994, the Committee believes that an appropriate benchmark in considering hitherto unrecognised service between 1945 and 1975 is the terms and conditions that are currently

¹³ *Ibid.* Para 56.

¹⁴ *Ibid.* Para 57.

¹⁵ *Ibid* Para 58.

¹⁶ *ibid* Para 66-70.

¹⁷ Committee of Inquiry into Defence Awards. 1994.

¹⁸ *ibid*

attached to an award of the Australian Active Service and Australian Service Medals. Service rendered during this period which generally meets those terms and conditions should receive retrospective and comparable recognition.”

- Principle 9. CIDA did “not consider itself constrained” by previous decisions regarding awards, taking “into account any new or additional information ... made available to it’, applying “the normal standards of fairness.”
- Principle 10. “Matters relating to honours and awards should be considered on their merits ... and ... not influenced by the possible impact, real or perceived, on veterans’ entitlements.”

The *Review of Service Entitlement Anomalies in Respect of South-East Asian Service 1955-75*, chaired by Justice Mohr (Mohr) was established “to review possible anomalies in service entitlements affecting those members of the Australian Defence Force who served in South-East Asia during the period 1955 to 1975”.¹⁹ On 5 October 1999, the Minister for Veterans’ Affairs informed Mohr the review was to apply “the long established principles that underpin the eligibility for medal and repatriation benefits” to perceived anomalies.²⁰ The Terms of Reference for the *Review of Veterans’ Entitlements* (the Clarke Review) affirmed the Government’s commitment “to providing fair, consistent and appropriate benefits to Australia’s veterans”.²¹ Clearly the Government’s intention at the time was consistent with CIDA Principle 3.

Mohr described his methodology in Chapter 2. He approached his task as if he were making a prospective declaration of warlike or non-warlike service.²² Likewise, Clarke needed

... a means of assessing the nature of service for the particular circumstances that was prospective, consistent and equitable. It was also desirable that such assessment be at least the equal of current best practice and hence in accord with the criteria used today by the Commonwealth Government in determining the nature of service for deployment of the Australian Defence Force (ADF) on military operations.²³

Clarke settled on the warlike and non-warlike nature of service classification system.²⁴ Mohr and Clarke applied the same methodology as enunciated on CIDA Principle 8. They based their recommendations on the expectations, that which was known, and directions given at the time the troops were deployed, rejecting any information that may have been discovered later such as the intentions and location of the enemy.

¹⁹ Review of Service Entitlement Anomalies in Respect of South-East Asian Service 1955-75. (Mohr) Terms of Reference. February 2000.

²⁰ Bruce Scott MP. Minister for Veterans’ Affairs and Minister Assisting the Minister for Defence. 5 October 1999.

²¹ Report of the Review of Veterans’ Entitlements. January 2003. (Clarke) TOR

²² Mohr Chapter 2

²³ Clarke, 14.4

²⁴ *Ibid*, 14.13-14.16.

Section 1 Summary

The New Zealand decision to recognise military service at ABB in the 1971-73 period as operational drew in part on Australian sources. While it recognised operational service at ABB the nature of service classification is based on New Zealand's criteria which differs to Australia's.²⁵

The Tribunal's Terms of Reference require it to "have regard to the integrity of the Australian honours system and identify any consequential impact upon that system." The CIDA, Mohr and Clarke reviews adopted the prospective methodology required by the current warlike and non-warlike service classifications to make their determinations. This submission maintains this is the only methodology that will maintain the "integrity of the Australian honours system". Assessment against different criteria will almost certainly lead to an anomaly.

Before discussing the objective danger test fundamental to Australian nature of service determinations in section 3, section 2 reviews the operational context of ABB in the 1968-1989 period.

SECTION 2 - OPERATIONAL CONTEXT

Following the British decision to withdraw its forces from South-east Asia, Australia agreed to maintain two Mirage fighter squadrons at Butterworth to deter external aggression against Malaysia and Singapore. Malaysia recognised it needed Australian assistance with air defence but owing to its commitment to a non-aligned foreign policy, it was sensitive to the permanent presence of foreign military forces within its borders. The agreement to allow Australia to remain at Butterworth did not include a permanent army presence. This came later.

Relationships between Malaysia's two largest communities, the Malays and Chinese, were fragile with outbreaks of communal violence. There was concern this could feed into the predominantly Chinese led resurgent communist insurgency launched in 1968. Under Malaysia's Internal Security Legislation, emergency declarations made in 1964, 1966 and 1969 remained in effect, with the country being under a constant state of emergency.

The RAAF OC ABB had overall responsibility for the internal defence of the Base under a shared defence plan that committed Malaysian and Australian forces to cooperate in Base defence. With the agreement of Malaysia, the Rifle Company Butterworth (RCB) had a lead role in Base defence by providing a Quick Reaction Force (QRF) to respond to imminent threats.

²⁵ Reassessment of the Recommendations of The Medallion Recognition Joint Working Group on New Zealand Military Service in South East Asia 1955 to 1989. March 2021.

Unstable Communal Relations

The Five Power Defence Arrangements (FPDA) that replaced the Anglo-Malaysia Defence Agreement in October 1971²⁶ were agreed to against a background of racial tension between Malaysia's Malay and Chinese communities. Penang state, in which Butterworth is located, experienced two months of bloody racial riots in 1967 during which 24-hour curfews were imposed.²⁷ Eighteen months after the outbreak of the Hartal riots, a nation-wide state of emergency was declared in response to an outbreak of racial rioting in Kuala Lumpur associated with the national election of May 10.²⁸ The 1975 Strategic Basis of Australian Defence Policy observed:

Communal relations in Malaysia are essentially fragile. There is a long-established Insurgency in Malaysia which is based on the Thai-Malaysian border to which arms could be supplied. There is potential for large-scale instability in Malaysia if there were to be widespread disaffection in the Chinese population and if dissidents were to receive arms and other support.²⁹

The earlier 1968 Strategic Basis of Australian Defence Policy saw the threat to Australia from the "prospect of a breakdown of communal relations and the resumption of the Chinese Communist challenge on a large scale." It considered if this happened it was "beyond the competence of the Malays, despite their superior military capacity" to manage.³⁰

Senior lecturer at the School for History, Politics and Strategic Studies at the University of Kebangsaan, Malaysia, Dr Rizal Yaakop writes "Since ... independence in 1957 until the collapse of communism in 1989, the need to protect the state from the communist insurgencies and subversive elements has generated emergency law as a form of extra legal responses towards and acts with were considered prejudicial to national security."³¹ The Parliament has the authority "to make laws against subversion irrespective of whether or not an emergency had been proclaimed."³² At 21 October 2010 four emergencies declared since Malayan Independence in 1964, 1966, 1969 and 1977 had not been lifted.³³ "For the major part of its life, therefore, Malaysia has existed under a continuous state of Emergency or more accurately under overlapping proclamations of Emergency."³⁴

²⁶ Carlyle A. Thayer, 'The Five Power Defence Arrangements: The Quiet Achiever', *Security Challenges*, 3, (2007). p.p. 79-81

²⁷ Koay Su Lyn. Penang's Forgotten Protest – The 1967 Halal. Penang Monthly. January 2016. Accessed at <https://penangmonthly.com/article/4381/penangs-forgotten-protest-the-1967-hartal-1>. 17 May 2022

The Canberra Times. Malaysia was Poised on the Razor's Edge. Kuala Lumpur Correspondent. Page 26. 7 December 1967.

²⁸ <https://www.malaysianbar.org.my/article/news/legal-and-general-news/general-news/the-tragedy-of-may-13-1969>

²⁹ Strategic Basis of Australian Defence Policy. October 1975. Para 89.

³⁰ Strategic Basis of Australian Defence Policy August 1968. Endorsed by the Defence Committee 19 Aug 1968. Paras 80-82.

³¹ Dr Rizal Yaakop. "The Emergency Law in Malaysia – Political Security or Liability." 21 October 2010. Posted at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1695727 24 October 2010. Accessed 17 May 2022. P.1.

³² *Ibid*, p.3

³³ *Ibid*, p.7

³⁴ *Ibid*, p.10

Five Power Defence Arrangements, the Integrated Air Defence System, Malaysia's Non-aligned Foreign Policy, and the Permanent Army Presence at Butterworth

The Five Power Defence Arrangements (FPDA), which became effective on 1 October 1971, with the formal agreement being signed on 1 December, replaced the former Anglo-Malaysian Defence Agreement. Under the FPDA Australia committed two Mirage squadrons to Butterworth as the backbone of the Integrated Air Defence System (IADS) for Malaysia and Singapore.³⁵ Despite Malaysia pursuing a non-aligned foreign policy at the time³⁶ it acknowledged that "air defence was the one, and really the only, area where Malaysia's defence forces needed supplementing by visiting forces."³⁷ This was reflected in the Malaysian/Australian agreement of 1 December:

The Government of Malaysia agrees that the Australian force stationed at Butterworth, composed of two squadrons of fighter aircraft and their supporting units and from time to time an infantry company, may continue to be stationed there, so long as that is mutually agreed, in accordance with the purposes expressed in the Five-Power Communiqué of the 16th of April, 1971. With the object of securing mutual agreement, the Government of Australia and the Government of Malaysia will consult together over any proposal to alter the size or character of that force.³⁸

Two reports dated April³⁹ and May⁴⁰ 1971 give the background to the permanent presence of an army company at Butterworth. One concern highlighted was the unsatisfactory situation regarding the Malaysian Military Police (MMP) responsible for 'entry control and part of the normal base patrol measures', could not be relied on.⁴¹ The Malaysian Ministry of Defence had advised the MMP could be 'withdrawn by a higher authority in part or in toto in an internal security situation', something the authors saw as 'a most unsatisfactory situation for the base commander'. The authors recommended that an Australian or ANZUK army company be "available to the OC Butterworth at all times he considered it necessary, or" alternatively, two flights of RAAF Airfield Defence guards be permanently deployed to the base.⁴²

On 2 March 1972 the Secretary, Department of Defence wrote to the Secretary, Department of Air, seeking clarification regarding security at ABB. He noted:

In addition, Malaysian reluctance having been overcome, the ANZUK force will now provide one infantry company on rotation through Butterworth on a full-time basis, ostensibly for training, flag-showing and a change of scene. The presence of this company will provide the

³⁵ Carlyle A. Thayer, 'The Five Power Defence Arrangements: The Quiet Achiever', *Security Challenges*, 3, (2007): p.p. 79-81

³⁶ A.D. Campbell, Australian Deputy High Commissioner, Kuala Lumpur, Record of Conversation with Ench Zain Azraai bin Zainal Abidin, Under Secretary, Ministry of Foreign Affairs, 17 December 1970.

³⁷ A.D. Campbell, Australian Deputy High Commissioner, Kuala Lumpur, Record of Conversation with Ench Zain Azraai bin Zainal Abidin, Under Secretary, Ministry of Foreign Affairs, 17 December 1970.

³⁸ Five Power Defence Arrangements, Exchange of Notes between Australia and Malaysia, Signed on behalf of both Governments by Y.B Tengku Ahmad Rithauddeen Al - Haj bin Tengku Ismail, P.M.K. (Tengku Sri Mara Raja), Deputy Minister of Defence, Malaysia, and H.E. Mr. J.R. Rowland, High Commissioner for Australia, 1 December 1971, NAA: A6534, 1971/21.

³⁹ Security of Australian Personnel and Assets - Air Base Butterworth, 564/8/28, 6/10/1PM Pt1 (53), 27 April 71, NAA A703, 564/8/28 Pt 3.

⁴⁰ Report of Visit by SR(GD) and PM to Headquarters Air Base Butterworth 4th to 12th May 1971, 564/8/28, 25 May 1971, NAA A703, 564/8/28 Pt 3.

⁴¹ Security of Australian Personnel and Assets, NAA A703, 564/8/28 Pt 3.

⁴² Report of Visit by SR(GD) and PM to Headquarters Air Base Butterworth 4th to 12th May 1971, NAA A703, 564/8/28 Pt 3.

Commander with a ready-reaction force which he can use inter alia to supplement the elements available to him under the joint Malaysian-RAAF Plan, but short of an actual overt breach of security the Commander cannot use these troops for other security duties.⁴³

This marked a significant change to the agreement signed three months previously allowing the presence of an army company “from time to time”⁴⁴ for one purpose only, that being to “provide the Commander with a ready-reaction force”.⁴⁵

The RCB role as a ready reaction force is confirmed by the minutes of the Australian Defence Committee on 11 January 1973. It discussed the FPDA and the withdrawal of the Australian Battalion and Battery from Singapore and the implications for ABB. It noted

... it has been the practice to rotate one company at a time from the Australian, UK and NZ battalions in the ANZUK force to Butterworth for security duties. We should inform the UK and NZ governments that, when the Australian battalion is withdrawn this task will be carried out by an Australian Company with the rotation being mounted directly from Australia.⁴⁶

Communist Insurgency War

On 17 June 1968 the Malayan Communist Party launched its armed insurgency (also known as the Second Malaysian Emergency, or SME) against Malaysia with an ambush of a Malaysian Security Force convoy near the Thailand border.⁴⁷ More than 21 years later a peace accord was signed with the Malaysian Government.⁴⁸ Singaporean academic Ong Weichong divides the SME into three distinct phases: 1968-1973; 1974; and 1975-1989.⁴⁹ The Malaysian Army describes the period to 1974 as “the early stages of the CPM’s so-called “Armed Struggle”. During the 1975-1980 period the enemy’s uniformed and underground “groups intensified their activities” with frequent clashes between the Security Forces and the enemy. By the 1980s the army had attained the strength and capability to deal effectively with the threat.⁵⁰

⁴³ Tange, A.H (for), Secretary, Department of Defence, Security of Butterworth, 71/316e, 2 March 1972. NAA A703, 566/2/148 Pt 5.

⁴⁴ Five Power Defence Arrangements, Exchange of Notes between Australia and Malaysia, Signed on behalf of both Governments by Y.B Tengku Ahmad Rithauddeen Al - Haj bin Tengku Ismail, P.M.K. (Tengku Sri Mara Raja), Deputy Minister of Defence, Malaysia, and H.E. Mr. J.R. Rowland, High Commissioner for Australia, 1 December 1971, NAA: A6534, 1971/21.

⁴⁵ Tange, A.H (for), Secretary, Department of Defence, Security of Butterworth, 71/316e, 2 March 1972. NAA A703, 566/2/148 Pt 5.

⁴⁶ Department of Defence. Defence Committee. Minute of Meeting Held on 11 January, 1973. Agendum No. 1/1973. Minute No. 2/1973. Five Power and ANZUK Arrangements and Withdrawal of Australian Battalion and Battery. Para. 22.

⁴⁷ Sharon Bin Hashim (ed.), Mohamed Ghazemy Mahmud (Translator), *The Malaysian Army’s Battle Against Communist Insurgency 1968-1989*, Army Headquarters, Ministry of Defence, Wisma Pertahanan, Jalan Padang Tembak, 50634 Kuala Lumpur, First Printing and originally published in 2001 in the Malay language as ‘Tentera Darat Menentang Insurgensi Komunis 1968-1989, p p.6

⁴⁸ *Ibid* p.185

⁴⁹ Ong Weichong. *Malaysia’s Defeat of Armed Communism, The Second Emergency, 1968-89*. Routledge, London and New York. 2015. p.51

⁵⁰ Sharon Bin Hashim (ed), p.p.156, 158

Defence Arrangements at Air Base Butterworth

ABB, located 60 kilometres from the Malaysia/Thai border,⁵¹ was a Malaysian base shared with the RAAF.⁵² It was Malaysia's largest air base and the closest to Communist strongholds,⁵³ with a major Communist Terrorist Organisation (CTO), the 8th Assault Unit, about 25 kilometres away in the Kulim area to the east of the Base.⁵⁴ Its use by Malaysia against the insurgents was a factor considered to increase the risk of attack.⁵⁵

Day-to-day security was the responsibility of the Malaysian Special Security Police (SSP). Their role was security only. They had no defensive role, were not under the command of the Malaysian Officer Commanding,⁵⁶ and, as mentioned above, could be withdrawn at any time.⁵⁷ External security was the responsibility of the 6th Malaysian Infantry Brigade (6MIB) but their availability to defend ABB was uncertain owing to the size of their area of operations.⁵⁸ 6MIB was headquartered at Sungai Patani, approximately 35 km north-east of ABB. The Brigade was:

responsible for and continuously committed to the conduct of operations and the preservation of public order in the States of Perlis, Kedah, Province Wellesley and Penang covering an approximate area of 80 square miles⁵⁹ [207 square kilometres].

As Air Vice Marshall N.P. McNamara, Deputy Chief of Air Staff, advised the DJS on 14 October 1975:

... we continue to be concerned about the lack of any Malaysian Army units around Butterworth to at least deter the CTO. We also recognize that as Armies and Air Forces have different primary roles, the Air Force commander responsible for the ground defence and security of an Air Base, can never be guaranteed the continuance of an Army presence if other priorities influence the local Army Commander.⁶⁰

The RAAF OC was responsible for internal defence under the Shared Defence Plan. This acknowledged "a threat to the security of the air base ... from ... a resurgence of militant communist activity both overt and covert".⁶¹ Malaysian and Australian forces were "jointly responsible for the protection of all operational assets, personnel and property within the perimeter of the air base" under the Shared Defence Plan.⁶² Security code Green (Cautionary) signified "the possibility of civil

⁵¹ Reassessment of the Recommendations of The Medallic Recognition Joint Working Group on New Zealand Military Service in South East Asia 1955 to 1989. March 2021. Para 102.

⁵² Joint Intelligence Organization, Department of Defence, Canberra. *The Security of Air Base Butterworth*. JIO Study 13/75. Issued Oct. 1975. Para 49

⁵³ *The RAAF Presence at Butterworth*, Para 21, attached to Hamilton R.N, A/First Assistant Secretary Strategic and International Policy Division, Review of Butterworth Deployment, 22 October 1976, Reference: DEF 270/1/4.

⁵⁴ JIO Study No. 13/75. *The Security of Air Base Butterworth*. Joint Intelligence Organisation Department of Defence, Canberra, ACT. Issued Oct. 1975. Para. 33

⁵⁵ DAFI Minute INT 8/10/3(150) Security Situation – Air Base Butterworth Report No 34 dated 4 August 1975.

⁵⁶ JIO Study No. 13/75. *The Security of Air Base Butterworth*. Joint Intelligence Organisation Department of Defence, Canberra, ACT. Issued Oct. 1975. Para 9.

⁵⁷ Report of Visit by SR(GD) and PM to Headquarters Air Base Butterworth 4th to 12th May 1971.

⁵⁸ JIO Study No. 13/75. Para 12.

⁵⁹ *Security of Butterworth*. J.A. Rowland. AIR MSHL. CAS. 554/9/33(87) 7 Oct 75.

⁶⁰ *Butterworth Security*. N.P. McNamara, AVM, DCAS. 564/8/28. 14 October 1975.

⁶¹ HQ RAAF Air Base Butterworth Operation Order No 1/1971 dated 8 September 1971

⁶² *ibid*

unrest or other trouble which may threaten the security of the air base.”⁶³ The Ground Defence Operation Centre (GDOC) required a skeleton staff but was not activated and Malaysian SSP remained responsible for Base security. Code Amber (Alert) meant an imminent defence threat and the GDOC was to be fully staffed. Both the SSP and RAAF Police became jointly “responsible for entry control and the security of vital points (VPs).”⁶⁴ RAAF and RMAF mobile reserves were to be “activated under the command of the GDOC and commence operations as directed”.⁶⁵

Commanding Officer Base Squadron reports for the period January 1977 to September 1978 show the GDOC was activated owing to possible ground threats. For example:

Defence Section and A Coy 3RARCOYGP manned GDOC 26 September 1977 (Possible ground threat to Air Base Butterworth).⁶⁶

The 1975 Joint Intelligence Organisation’s security assessment of ABB provides additional evidence of the shared defence arrangements and the QRF role of the RCB:

The RAAF co-operates with OC RMAF for the on-base defence of property and assets and joint operations for the safe-guarding of personnel and dependents off-base... On-base security arrangements to protect against sabotage or react quickly to any attempted incursions by CT groups are satisfactory. An ARA Company on three monthly rotation provides a quick reaction force against attacks on the base, but are currently prevented from operations off base.⁶⁷

Australia made a significant contribution to Malaysia’s war effort as noted in a 1976 review of its presence:

It [RAAF] assists the RMAF in running the largest of the four RMAF bases in West Malaysia ... Because of its location and size Butterworth is very important to Malaysia and its efforts to contain the CPM force, and the withdrawal of the RAAF, or any significant reduction in its size, would markedly reduce the effectiveness of the base and/or require large diversions of RMAF effort to Butterworth from other bases. The general level of achievement of the RMAF would drop if there was any large reduction in RAAF strength at Butterworth.⁶⁸

In 2020 General Tan Sri Dato Sri Hj Affendi Bin Buang RMAF, Chief of the Malaysia Defence Force acknowledged the role played by the RCB in Base security:

Your presence and sacrifice here in Malaysian soil in protecting the RMAF Butterworth base during the resurgence of the communist insurgency in 1970-1989 was a remarkable contribution and had always been the highlight of your presence here in Malaysia.⁶⁹

⁶³ *ibid*

⁶⁴ *ibid*

⁶⁵ HQ RAAF Air Base Butterworth Operation Order No 1/71 dated 8 September 1971.

⁶⁶ Commanding Officers’ reports – Monthly reports unit history sheets (A50) – Base Squadron Butterworth, 1944 to 1988.

⁶⁷ Joint Intelligence Organization, Department of Defence, Canberra, ACT. JIO Study No, 13/75. The Security of Air Base Butterworth. Issued Oct. 1975.

⁶⁸ ‘Review of RAAF Presence at Butterworth’, 10 Sept 1976.

⁶⁹ 50th Anniversary Rifle Company Butterworth. Angkatan Tentera Malaysia. 21 November 2020. At https://www.facebook.com/permalink.php?story_fbid=4703891869682138&id=468681313203236

Neither this acknowledgement nor the role of RCB in Base defence has been recognised by Australia.

Section 2 Summary

The Australian presence at ABB during the 1968 – 1989 period was against a background of fragile communal relations and the Communist Insurgency war of the same time. With the withdrawal of British forces Australia agreed to provide two fighter squadrons to ABB to provide air defence for Malaysia and Singapore under the FPDA. The agreement to provide a Rifle Company, first from the ANZUK forces in Singapore and then from Australia was agreed to later in response to Australian concerns over base security. The RCB provided a ready-reaction, or quick response force to respond to and repel terrorist incursions into ABB.

Section 3 addresses the incurred danger test historically used to qualify veterans for active, or warlike service, while section 4 examines specific evidence of an objective danger to ABB.

SECTION 3 - AN OBJECTIVE TEST

The Mohr Review was established to address anomalies in repatriation and medallic entitlement in South-east Asia in the period 1955-1975. Clarke was charged with ensuring a fair and consistent approach regarding Australian veterans (see section 1). This section examines his approach and draws attention to Clarke's finding that if:

the military authorities consider that a particular area is vulnerable to attack and dispatch armed forces there, they are sending forces into harm's way, or danger. This is the second point made by Mohr – that veterans ordered to proceed to an area where they are endangered by the enemy will not only perceive danger, but to them the danger will be an objective one based on rational and reasonable grounds. In these circumstances, what the historian says he or she has learned since the war about the actual intention of the enemy is hardly relevant.⁷⁰

Incurred Danger

In chapter 11 of his report, "Qualifying Service – World War II Historical Perspective", commencing at 11.40, Clarke discusses eligibility for the service pension – "qualifying service" – and the "incurred danger" test. Clarke considered the finding in the case of *Repatriation Commission v Walter Harold Thompson (G205 of 1998)*:

The words 'incurred danger' therefore provide an objective, not a subjective, test. A serviceman incurs danger when he encounters danger, is in danger or is endangered. He incurs danger from hostile forces when he is at risk or in peril of harm from hostile forces. A serviceman does not incur danger by merely perceiving or fearing that he may be in danger. The words 'incurred danger' do not encompass a situation where there is a mere liability to danger, that is to say, that there is a mere risk of danger. Danger is not incurred unless the serviceman is exposed, at risk of, or in peril of harm or injury.⁷¹

⁷⁰ Clarke. 11.59, 11.60

⁷¹ *ibid* 11.47

At 11.57 Clarke quoted Mohr ⁷² who is now discussed. Mohr noted Section 7A of the 1986 Veterans' Entitlements Act required, in essence, a veteran to have incurred danger from an enemy.⁷³ He found the Thompson decision, while being "clear on the facts provided", failed to address what established an "objective danger". He acknowledged the difficulty in deciding the difference between objective and perceived danger. In any prospective declaration of a warlike operation, he said:

... the authorities would know that some personnel within the deployment would not, on examination, incur danger from hostile forces of the enemy and therefore, technically, would not have 'qualifying service' for the service pension. Yet all personnel who form part of the deployment are covered automatically by the prospective declaration that service is 'warlike'.⁷⁴

Mohr understood this to be the case with the two world wars. Some would be less likely to face danger than others, while others would be so far removed from the action there was little, if any, risk of them coming under fire. Yet all contributed to the operation's success and were equally rewarded. Applying a different standard post WW2, he argued, was "indefensible" and contrary to the beneficial nature of the Veterans' Entitlements Act. As these vagaries could not be avoided when making prospective assessments, he concluded, retrospective assessments should make these same allowances. In his view the question:

... must always be, did an objective danger exist? That question must be determined as an objective fact, existing at the relevant time, bearing in mind both the real state of affairs on the ground, and the warnings given by those in authority when the task was assigned to the persons involved.⁷⁵

Mohr understood that troops incurred an "objective danger" if it is proven an armed enemy was present, or they were told they were in danger from an armed enemy.⁷⁶ This position is supported by Justice Clarke:

Because the term 'danger' connotes risk, or possibility, of harm or injury there is necessarily an element of subjective belief involved. In a declared war, no one would doubt that to carry out operations against the enemy at a place under risk of attack exposes those in the operations to danger. Yet who at the time would actually know, rather than perceive, that the place is at risk? The enemy might have no intention of attacking there, but assessments have to be made, or beliefs formed, by military authorities as to whether the place is at risk and needs defence by armed forces.

If then, the military authorities consider that a particular area is vulnerable to attack and dispatch armed forces there, they are sending forces into harm's way, or danger. This is the second point made by Mohr – that veterans ordered to proceed to an area where they are endangered by the enemy will not only perceive danger, but to them the danger will be an objective one based on rational and reasonable grounds. In these circumstances, what the historian says he or she has learned since the war about the actual intention of the enemy is hardly relevant.⁷⁷

⁷² *ibid*, 11.57

⁷³ Mohr, Chapter 2. 'Incurred Danger', 'Perceived Danger' and 'Objective Danger'.

⁷⁴ *ibid*

⁷⁵ *ibid*

⁷⁶ *ibid*

⁷⁷ Clarke, 11.59, 11.60

For this reason, both reviewers adopted a prospective approach to their reviews of past service. (See section 1)

In chapter 13, “Post-World War II Service – Historical Perspective” Clarke reviewed the evolution of Australia’s repatriation system from 1945 to 1993. The changing nature of overseas deployments in this era had resulted in inconsistencies in the ways veterans were compensated. Cabinet addressed this with the introduction of the “warlike” and “non-warlike” nature of service classification system in 1993 to ensure veterans were treated equitably.⁷⁸ Since 1993 nature of service determinations based on the warlike and non-warlike criteria are determined prior to deployment.⁷⁹ Warlike service was not a new term. It appears in the *Repatriation (Special Overseas Service) Act 1962* without definition.⁸⁰ Prior to 1993 “Instruments of Allotment ... [were] usually prepared at the completion of a deployment ...”⁸¹

Significant to the ongoing development of the repatriation system post 1945, and ABB in particular, is the 7 July 1965 Cabinet directive. This “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 ...”⁸²

Clarke, having noted the above, saw the second reading speech by Senator McKellar, the Minister for Repatriation of the 1968 SOS Bill as a better attempt “to adopt a principle consistent with that which applied in World Wars I and II.” To quote:

The second amendment that the Bill proposes is to extend eligibility for service pensions to those who have served on special service under the *Repatriation (Special Overseas Service) Act*. The government believes that the nature of special service which is similar to theatre of war service in earlier wars, justifies the recognition of its intangible effects in future.⁸³

Defence have relied on the 1965 directive in part to deny warlike service at ABB. As seen in McKellar’s speech, the emphasis is on “service ... similar to theatre of war service ...”.

The Comparison

A comparison of the 1965 directive, warlike service criterion, and the conclusions of Mohr and Clarke shows all are essentially in agreement.

⁷⁸ *Ibid*, Ch 13.

⁷⁹ *ibid*, 13.38

⁸⁰ *Repatriation (Special Overseas Service) Act 1962*, No. 89 of 1962, Section 4

⁸¹ Brief for Vice Chief of the Defence Force, Instruments of Allotment. L.C. Roberts. GPCPT. Acting Director General, Personnel Policy and Employment Conditions. 22 December 2000. Defence FOI 037/20/21. Document 1.

⁸² Clarke 13.9

⁸³ *ibid* 13.12

Cabinet Directive July 1965

“... 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 ...”⁸⁴ The direction required allotment at a time of “potential risk”, not actual or realised.

Warlike Service

Warlike service “refers to those military activities where the application of force is authorised to pursue specific military objectives and there is an expectation of casualties.” An example of warlike service is “conventional combat operations against an armed adversary.”⁸⁵

Mohr and Clarke

If then, the military authorities consider that a particular area is vulnerable to attack and dispatch armed forces there, they are sending forces into harm’s way, or danger. This is the second point made by Mohr – that veterans ordered to proceed to an area where they are endangered by the enemy will not only perceive danger, but to them the danger will be an objective one based on rational and reasonable grounds. In these circumstances, what the historian says he or she has learned since the war about the actual intention of the enemy is hardly relevant.⁸⁶

Comment

The common element is a potential threat from an armed enemy. This is an objective danger. Of particular interest is the 1965 directive that allotment “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.” This is present, not past, tense. While the directive required allotment “at a time when the personnel are exposed to potential risk”, it remained the practice of service chiefs to make allotments after the fact.⁸⁷ Mohr was critical of the reality that “so many” veterans within the scope of his review had been disadvantaged “because those who ordered them to do their duty ... took no steps to ensure that the required allotment procedures were attended to when quite clearly they should have been”.⁸⁸

Section 3 Summary

Clarke at chapter 11 discusses the application of the incurred danger test as the sole determinant of qualifying, or warlike, service. In chapter 13 he traces the evolution of the post WW II repatriation system in the lead up to the 1993 adoption of the warlike and non-warlike nature of service

⁸⁴ *Ibid*, 13.10

⁸⁵ *Ibid*, 10.9

⁸⁶ *Ibid*, 11.59, 11.60

⁸⁷ Defence Personnel Executive Minute. Allotment of Veterans as a Result of the Review of Service Entitlement Anomalies in Respect of South East Asian Service 1955-75 9 (the Mohr Review). DGPPEC 559/00. 22 December 2000. Enclosure 2 – Brief for VCDF – the Mohr Review.

⁸⁸ Mohr. Chapter 2, Allotment

classification system. In chapter 11 he agrees with Mohr's understanding on the interpretation of "objective danger" when determining if a veteran has "incurred danger". Despite a cabinet decision directing service chiefs to allot forces at the time they faced potential risk they failed to do this to the disadvantage of veterans.

Section 4 provides evidence from formerly classified security documents demonstrating forces at ABB "incurred danger" from hostile forces and therefore qualify for the Australian Active Service Medal and associated repatriation benefits.

SECTION 4 - THE THREAT TO BUTTERWORTH

The evidence provided below presents the facts as they were known at the time. It proves that Butterworth was considered vulnerable to attack, an armed enemy was operating close to the Base, and that members of the Australian Army Company present at the time were aware of the threat.

- **8 November 1971.** A Joint Intelligence Organisation (JIO) report prepared for the Assistant Services Advisor reported on a briefing by Lt.Col. Ahmad of the Malaysian Ministry of Defence. Although Ahmad discounted a military threat to Butterworth in the near future he considered "the likelihood of sabotage ... was highly likely and could occur at any time" owing to the presence of a communist underground movement of "considerable strength on Penang, in Butterworth and to the north of Butterworth". The report accepted Ahmad's position, noting "However, we are of the opinion that should a soft target be presented then the likelihood of the CTO [Communist Terrorist Organisation] conducting sabotage activities against Air Base Butterworth is highly probable."⁸⁹ A security briefing dated 4 November 1971 considered "there is always the possibility that trained saboteurs may carry out acts of sabotage if our security is lacking ... threats by way of sabotage, and booby traps ... by CTO underground operatives within and around this area remain perpetual ..."⁹⁰
- **November 1971.** In 1971 the ANZUK (Australian, New Zealand and United Kingdom) Intelligence Group noted multiple insurgent activities close to ABB. ANZUK assessed there was a definite risk of small scale, isolated attacks designed to damage vital points and injure personnel at ABB at any time without warning.⁹¹
- **July 1974.** The Army Company understood its primary task to be the security of Australian assets, property, and persons. For political reasons this could not be stated in low security classification documents. A minimum of two platoons were always at Butterworth.⁹²

⁸⁹ JIO Briefing for Assistant Services Adviser. 207/2/26. Def.382. 8 Nov 1971.

⁹⁰ Minutes of a Conference Held at Air Base Butterworth on 4th November 1971 to Discuss the Shared Defence of Air Base Butterworth. 1/7/Air (48). Annex A Security Briefing on the Arm Threat at RAAF Butterworth 04 Nov 71.

⁹¹ ANZUK Intelligence Group (Singapore). Note No. 1/1971. The Threat to Air Base Butterworth up to the End of 1972. Singapore. 30 November, 1971.

⁹² ARA Infantry Coy at But. Minute. SRGD (Senior RAAF Ground Defence)) 11 Oct 1974.

- **August 1974.** DAFI advised SR(GD):

Continued use of Butterworth as a base for ground-attack against the CT can only increase its attractiveness as a target ... From this point of view, the threat to Air Base Butterworth must be considered to be slowly increasing.⁹³

- **April 1975.** OC Butterworth advised that rocket attacks had taken place at RMAF Base Sempang (Kuala Lumpur) on 31 March and a military installation on Penang on 1 April. The RMAF had advised of possible threats to Butterworth. The period of tension was expected to last till at least 22 April and possibly for a further month.⁹⁴
- **May 1975.** A minute to the DJS from the Strategic and International Policy Division addressed Malaysian Ministry of Defence concerns regarding “the possibility of rocket attacks on Butterworth”. The writer drew attention to a small but active urban CTO cell in Penang that had the capability of launching such attacks on ABB. The significance of any such attack “on RAAF aircraft would obviously have significance going beyond the actual damage sustained, bringing into question fundamental political aspects of Australian policy. Risk to aircraft thus means risk for that policy and political difficulty for the Government in the handling of policy, both substantively and presentationally (e.g. in the Parliament).⁹⁵
- **August 1975.** Following communist activity close to the Base the Air Office was advised of “Increased security consisting of 5 standing patrols of half section strength deployed during hours of darkness, one section picket on aircraft lines and AIRMOV (Air Movements) area and normal ready reaction section will continue until at least 8 August 75”.⁹⁶
- **October 1975.** The Chief of Air Staff (CAS), Air Marshall J.A. Rowland, expressed concern to the Minister regarding the lack of security in the area surrounding ABB in the light of “recent intelligence information concerning possible CTO intentions to launch rocket attacks on bases in Malaysia ...” and the “possibility that the CTs have or are able to obtain 81/82mm mortars to supplement their known supplies of 3.5 inch rockets.”⁹⁷

“On-base security arrangements to protect against sabotage or to react quickly to any attempted incursions by CT [Communist Terrorist] groups are satisfactory. An ARA Company on three monthly rotation provides a quick reaction force against attacks on the base ...”⁹⁸

⁹³ DAFI Minute INT 8/10/03(150) Security Situation – Air Base Butterworth Report No 34 dated August 1975

⁹⁴ Butterworth Base Security. 418/4/12. J.A. Rowland. AM. CAS. 3 Apr 1975

⁹⁵ Strategic and International Policy Division Minute D58/4/1(176) RAAF Mirage Squadron at Butterworth. 27 May 1975.

⁹⁶ HQBUT, Siterep Butterworth and North Peninsular Malaysia, DCR 005/05, 7 August 75.

⁹⁷ Security of Butterworth. J.A. Rowland. AIR MSHL. CAS. 554/9/33(87) 7 Oct 75.

⁹⁸ *Ibid.*

- **October 1975.** Australia's JIO threat assessment, "The Security of Air Base Butterworth, listed around 120 known incidents involving insurgents in the area surrounding the base between July 1974 to August 1975. JIO believed there was a "distinct threat" to Australian service personnel and their dependents from booby traps and minor terrorist acts. JIO considered it possible that married quarters adjacent to the base could be targeted by the insurgents. The possibility of insurgents kidnapping or murdering foreign nationals, including Australian personnel and their dependents, was also considered. It was believed these tactics could be readily adopted by the terrorists. While JIO did not see Australian aircraft being deliberately targeted, "unless the Australian presence became a political issue", it considered it "unlikely that the CTO would try to discriminate between RAAF and RMAF targets, and Australian personnel and equipment would be endangered. The destruction of RMAF aircraft would be attractive propaganda".⁹⁹
- **November 1975.** The Australian Infantry Company was responsible for the emergency protection of RAAF assets with at least two platoons on call. It would be assisted in a first stage response by a flight (platoon) from the RAAF Base Squadron and in the second stage by flights from the RAAF's 3, 75 and 478 squadrons.¹⁰⁰
- **October 1976.** The draft 'RAAF Presence at Butterworth' noted: "Action has recently been taken to construct revetments to give some protection to the Australian aircraft at Butterworth against attack".¹⁰¹
- **December 1978.** An Australian Field Force Headquarters directive of 22 Dec 1978, "Preparation Training for Security Duties at the Australian Rifle Company Butterworth Air Base" addressed training requirements for the Army Company before embarking to Butterworth. It acknowledged "Some instruction and familiarization will still need to be done at Butterworth", including "appreciation of the enemy threat and likely approaches".¹⁰²

Section 4 Summary

The above evidence proves ABB was exposed to an "objective danger" presented by the communist insurgents. Possible threats included small scale attacks, sabotage, rocket and mortar attacks. As noted in November 1971, these attacks could come "at any time without warning". In light of this threat The Secretary, Department of Defence in March 1972,¹⁰³ the Australian Defence Committee in

⁹⁹ Joint Intelligence Organization, Department of Defence, Canberra, ACT. JIO Study No, 13/75. The Security of Air Base Butterworth. Issued Oct. 1975.

¹⁰⁰ Minute. Butterworth Brief for Ministerial Visit Dec 74. J.I. Brough. Wing Commander, SRGD. 3 Dec 74

¹⁰¹ Attached to: AUSTEO *The RAAF Presence at Butterworth*, Para 21, attached to Hamilton R.N, A/First Assistant Secretary Strategic and International Policy Division, Review of Butterworth Deployment, 22 October 1976.

¹⁰² Preparation Training for security Duties as the Australian Rifle Company Air Base Butterworth. From P.S.N. James, Major, OC AS Rifle Coy, Butterworth. To HQ FF Comd. R798-1-1. 22 Dec 78.

¹⁰³ Tange, A.H (for), Secretary, Department of Defence, Security of Butterworth, 71/316e, 2 March 1972.

January 1973,¹⁰⁴ and the Chiefs of Staff Committee in October 1973,¹⁰⁵ all clearly understood the RCB's role was primarily the security of ABB.

To quote Justice Clarke:

If then, the military authorities consider that a particular area is vulnerable to attack and dispatch armed forces there, they are sending forces into harm's way, or danger. This is the second point made by Mohr – that veterans ordered to proceed to an area where they are endangered by the enemy will not only perceive danger, but to them the danger will be an objective one based on rational and reasonable grounds. In these circumstances, what the historian says he or she has learned since the war about the actual intention of the enemy is hardly relevant.¹⁰⁶

Summary Sections 1 - 4

The Tribunal is required to consider the medallic entitlements of RCB veterans who served at ABB during the 1970-1989 period. It is also required to consider the implications of its finding in "regard to the integrity of the Australian honours system and identify any consequential impact or make any finding or recommendation upon that system."¹⁰⁷

While the New Zealand system of medallic recognition differs to Australia's its 2021 review of medallic entitlement at ABB was cognisant of the approach taken by Mohr and relied to a large degree on Australian sources.

Three reviews conducted in the period 1993 to 2003, CIDA, Mohr and Clarke, applied prospective methodology when reviewing past service with the aim of ensuring all veterans were treated equitably in line with Government policy. Regarding ABB Defence has rejected this approach, reverting to a failed process that Mohr concluded disadvantaged many veterans from the era covered by his review.

Formerly classified security documents from the time show conclusively the presence of an armed enemy, that veterans were informed of this threat, and authorities believed ABB to be vulnerable to attack. The matter rests on these facts. That ABB veterans incurred danger from hostile forces and therefore are eligible for qualifying service and the associated repatriation and medallic entitlements is beyond dispute.

¹⁰⁴ Department of Defence. Defence Committee. Minute of Meeting Held on 11 January, 1973. Agendum No. 1/1973. Minute No. 2/1973. Five Power and ANZUK Arrangements and Withdrawal of Australian Battalion and Battery. Para. 22.

¹⁰⁵ Department of Defence. Chiefs of Staff Committee. Agendum No 47/1973. Supplement No 1. Minute No 67/1973. Minute of Meeting Held on 17 October 1973. 22 October 1973. Australian Company at Butterworth.

¹⁰⁶ Report of the Review of Veterans' Entitlements. January 2003. 11.59, 11.60

¹⁰⁷ Defence Honours and Awards Appeals Tribunal. Inquiry into Medallic Recognition for Service with Rifle Company Butterworth. Terms of Reference.

Section 5 addresses previous reasons used by Defence to support its contention of peacetime service at ABB. If the Tribunal considers that matter is conclusively proven above, Section 5 need not be considered.

SECTION 5 - OBJECTIONS

Defence have presented various reasons to deny ABB veterans warlike service recognition. This section lists some of these and presents evidence showing they are not supported by the facts.

Objection 1 – Nature of Service Reviews are Conducted Within the Context of the Legislation and Policies in Place at the Time

“Nature of service reviews are considered in the context of the legislation and policies that applied at the time of the activity or operation under review. The applicable legislation is the *Repatriation (Special Overseas Service) Act 1962* (Act) and the *Veterans’ Entitlements Act 1986* (VEA). The SOS Act required troops be allotted for special duty in a prescribed area to qualify for what, in effect, is warlike service.”¹⁰⁸

Under a Cabinet Decision of 7 July 1965, the Services were “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 ...”¹⁰⁹

Response

CDF Objects to the Prospective Approach

After the Government had accepted the recommendations of the Mohr and Clarke reviews the Chiefs of Service Committee (COSC) objected to the approach whereby those reviews interpreted the terms warlike and non-warlike and applied those to operations conducted before the “terms were defined and introduced into legislation and policy.” They argued this “was tantamount to applying today’s standards and policies to events of the past”. Consequently the CDF directed that past anomalies ‘be reviewed against the legislation and policy that was extant at the time of the conduct of the operation.’¹¹⁰ Evidence that this change in policy was approved by the Government has not been found.

This has been discussed to some extent in Section 3. Section 1 discusses the Government’s commitment at the time of the Mohr and Clarke reviews to equitable treatment of veterans

¹⁰⁸ Background Paper Parliamentary Petition Dated 3 March 2014 Rifle Company Butterworth 1970-1989. Nature of Service Branch 28 April 2014. Para. 108

¹⁰⁹ *ibid* Para. 111

¹¹⁰ Request for Nature of Service Review of Rifle Company Butterworth (RCB) Service 1970 to 1989, Attachment A, Background to Review of Rifle Company Butterworth Nature of Service, Gillespie, K,J, Lt Gen, VCDF, 28 Aug 07, paras. 5,6.

regardless of when and where they served. Mohr and Clarke, the CIDA before them, adopted a prospective approach to their decision making by examining the understandings behind the decisions made at the time of deployment.

Mohr, Clarke and the 1965 Cabinet Directive

In May 1965, more than two months before the Cabinet directive, the Minister for Defence advised the Minister for Repatriation all Malaysia had “been declared a security area” under the country’s Internal Security Act. Given its “inability to predict in what areas infiltrators would operate” and their ongoing activities in the area, it believed the Malaysian Peninsular and Singapore should be declared “a special area for the purposes of eligibility for repatriation benefits”.¹¹¹ Despite this declaration Army and RAAF personnel were not allotted for duty in this “special area” until this failure was identified by Mohr.^{112, 113} This is particularly relevant to this submission as the RAAF had an uninterrupted presence at ABB from the time of the Malayan Emergency until the end of the Communist Insurgency in 1989. If service chiefs failed to allot personnel to ABB and the rest of Malaya/Malaysia throughout the 1950s and 1960s how likely is it that they would have acted differently in the 1970s and 1980s?

Compare the above May 1965 directive to the Deputy Chief of Air Staff’s response to DJS of October 1975.

CT operations are particularly insidious from a defensive viewpoint. The terrorist has freedom of movement in the civil community, a reasonably wide choice in the selection of targets and types of weapons or nefarious explosive devices which can be used to attack or sabotage personnel, assets and facilities. The defensive penalty in the face of these kinds of threats is the diversion of large numbers of security force personnel to counter possibility of CT attacks. To ignore the threat of attack is to risk an extremely high loss in terms of assets with attendant military ignominy and in terms of political, psychological gains for the CTO.¹¹⁴

This time the enemy was the CTO rather than Indonesian infiltrators, but the same inability to tell when and where the enemy would strike next existed.

This is the type of situation considered by Mohr and Clarke:

Because the term ‘danger’ connotes risk, or possibility, of harm or injury there is necessarily an element of subjective belief involved. In a declared war, no one would doubt that to carry out operations against the enemy at a place under risk of attack exposes those in the operations to danger. Yet who at the time would actually know, rather than perceive, that the place is at risk? The

¹¹¹ Mohr. Chapter 5. Service on the Malay Peninsular including Singapore. Background.

¹¹² *Ibid.* Chapter 5. Service on the Malay Peninsular including Singapore.

¹¹³ Defence Personnel Executive Minute. Allotment of Veterans as a Result of the Review of Service Entitlement Anomalies in Respect of South East Asian Service 1955-75 9 (the Mohr Review). DGPPEC 559/00. 22 December 2000. Enclosure 3 – Instruments of Allotment. Defence FOI 037/20/21. Document 1.

¹¹⁴ Butterworth Security. N.P. McNamara, AVM, DCAS. 564/8/28. 14 October 1975.

enemy might have no intention of attacking there, but assessments have to be made, or beliefs formed, by military authorities as to whether the place is at risk and needs defence by armed forces.

If then, the military authorities consider that a particular area is vulnerable to attack and dispatch armed forces there, they are sending forces into harm's way, or danger. This is the second point made by Mohr – that veterans ordered to proceed to an area where they are endangered by the enemy will not only perceive danger, but to them the danger will be an objective one based on rational and reasonable grounds. In these circumstances, what the historian says he or she has learned since the war about the actual intention of the enemy is hardly relevant.¹¹⁵

As shown in Section 2 “Unstable Communal Relations”, the security declaration referred to by the Minister in 1965, along with those made in 1966 and 1969, remained in place during the 1968-1989 Communist Insurgency War.¹¹⁶ Section 3 shows the failure of the allotment process then in place had disadvantaged veterans.¹¹⁷ Conditions at ABB during the 1970s and 1980s mirror those of the 1950s and 1960s. The same failure to allot continues to disadvantage ABB veterans of the 1968-89 Insurgency War.

Comment

The Minister for Defence in 1965 and the Deputy Chief of Air Staff in 1975 were both aware of enemy action in Peninsular Malaysia when they made their comments. Neither could say if, when or where the enemy might strike next. The Australian ideals of “fairness, equity and compassion ...”¹¹⁸ underpinning Australia's honours and awards system requires “that, in recognising service by some, the comparable service of others is not overlooked or degraded.”¹¹⁹

By rejecting the approach taken by Mohr and Clarke, Defence applied a different standard to that required by the Government of the day, thus creating the type of anomaly that the Mohr and Clarke reviews were established to identify and correct.

Objection 2 – General from 2018

The following claims were made in a brief to the Minister for Defence Personnel (MINDP) in 2018 regarding service at ABB.

- Warlike operations are those military activities where the application of force is authorised to pursue specific military objectives and there is an expectation of casualties.

¹¹⁵ Report of the Review of Veterans' Entitlements. January 2003. 11.59, 11.60

¹¹⁶ Dr Rizal Yaakop. “The Emergency Law in Malaysia – Political Security or Liability.” 21 October 2010. Posted at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1695727 24 October 2010. Accessed 17 May 2022.

¹¹⁷ Mohr. Chapter 2, Allotment

¹¹⁸ *ibid*

¹¹⁹ CIDA

- There is no evidence that Australian Defence Force (ADF) members in Malaysia after 14 September 1966 were authorised to use force to pursue any specific military objectives.
- There is no evidence of any request to the Australian Government, or agreement of the Malaysian Government, to the ADF engaging the use of force.
- There is no evidence that RCB were issued with “... specified (but hidden) military objectives” as claimed.
- A military objective is defined as “Any object which by its nature, location, purpose or use makes an effective contribution to military action and whose total or partial destruction, capture or neutralisation, in the circumstances ruling at the time, offers a definite military advantage”¹²⁰

Response

Butterworth was a Malaysian owned operational air base¹²¹ used by the Malaysian Air Force to conduct operations against Malaysia’s enemy, the Malayan Communist Party, and its affiliates.¹²² Any attack could result in “total or partial destruction ... or neutralisation” of key points, such as fuel installations, the control tower, ordinance stores, communication facilities, power, electricity, the IADS headquarters, and other infrastructure and Malaysian aircraft. Destruction, in whole or in part, of any of these would give the enemy “a definite military advantage”.

ABB was located within the area of Operation Sedar,¹²³ (Attachment 1) one of the seven main Malaysian operational areas¹²⁴ (Attachment 2). ABB was also located within the operational area of the communist’s 8th Assault Unit which was based in the Kulim area,¹²⁵ approximately 25 kilometres from ABB¹²⁶ (Attachment 3).

The bi-lateral agreement between Malaysia and Australia regarding the RAAF presence at Butterworth gave Australia authority to “take such measures within their installations as they deem necessary to ensure the security of the installations and of the equipment, property, records and official information of an Australian force.” The agreement also required Malaysia to cooperate with

¹²⁰ Rifle Company Butterworth Review Group Brief and Addendum to MINDP Defence Comments. Attachment C to MB18-001788. Defence FOI 453 1819_Schedule Item 1_4.

¹²¹ Joint Intelligence Organization, Department of Defence, Canberra. *The Security of Air Base Butterworth*. JIO Study 13/75. Issued Oct. 1975.

¹²² DAFI Minute INT 8/10/3(150) Security Situation – Air Base Butterworth Report No 34 dated 4 August 1975.

¹²³ Sharon Bin Hashim (ed.), Mohamed Ghazemy Mahmud (Translator), *The Malaysian Army’s Battle Against Communist Insurgency 1968-1989*, Army Headquarters, Ministry of Defence, Wisma Pertahanan, Jalan Padang Tembak, 50634 Kuala Lumpur, First Printing and originally published in 2001 in the Malay language as ‘Tentera Darat Menentang Insurgensi Komunis 1968-1989, p. 150.

¹²⁴ *ibid*, p. 113.

¹²⁵ *Ibid* p.41

¹²⁶ JIO Study No. 13/75. *The Security of Air Base Butterworth*. Joint Intelligence Organisation Department of Defence, Canberra, ACT. Issued Oct. 1975. Para. 33

Australia on the security of Australian assets and permitted Australian forces to carry arms when authorised to do so by their orders.¹²⁷

Under the Shared Defence Plan the internal security and defence of the Base was under the control of the Australian Officer Commanding. RAAF and RMAF were “jointly responsible for the protection of all operational assets, personnel and property within the perimeter of the air base.”¹²⁸ It was believed that the risk to Butterworth was increasing because Malaysian forces were conducting operations from it against the enemy¹²⁹ and it was considered unlikely any attack on the Base would discriminate between RMAF and RAAF targets,¹³⁰ meaning both were equally exposed to the threat.

Comment

ABB was in a Malaysian Army operational area. The Malaysian air force was flying operational sorties against communist forces from ABB. The shared defence plan required Malaysian and Australian forces, under the command of the Australian Officer Commanding (OC), to cooperate when it came to base defence. It was considered unlikely the enemy would discriminate between Malaysian and Australian targets in any attack. Therefore, Malaysian and Australian personnel were exposed to the same objective danger.

How then can it be construed that the RAAF OC would discriminate between Australian and Malaysian personnel regarding peacetime of warlike service? Clearly, if a key point, such as the control tower, was attacked by the enemy, the OC required the flexibility to respond appropriately without having to consider what forces to utilise.

Objection – Rules of Engagement and Live Ammunition

“RCB ROE required that a verbal challenge precede the use of minimum force necessary in the protection of ADF assets and personnel.”¹³¹

“Live ammunitions, for other than authorised range practices, was issued under strict control to only specified people as required, depending upon the nature of the duty being performed or the activity being undertaken; for example, for Quick Reaction Force (QRF) and pay escort duties.”¹³²

¹²⁷ Five Power Defence Arrangements, Exchange of Notes between Australia and Malaysia, Signed on behalf of both Governments by Y.B Tengku Ahmad Rithauddeen Al - Haj bin Tengku Ismail, P.M.K. (Tengku Sri Mara Raja), Deputy Minister of Defence, Malaysia, and H.E. Mr. J.R. Rowland, High Commissioner for Australia, 1 December 1971, NAA: A6534, 1971/21.

¹²⁸ HQ RAAF Air Base Butterworth Operation Order No 1/71 dated 8 September 1971

¹²⁹ DAFI Minute INT 8/10/03(150) Security Situation – Air Base Butterworth Report No 34 dated 4 August 1975

¹³⁰ Joint Intelligence Organization, Department of Defence, Canberra, ACT. JIO Study No, 13/75. The Security of Air Base Butterworth. Issued Oct. 1975.

¹³¹ Rifle Company Butterworth Review Group Brief and Addendum to MINDP Defence Comments. Attachment C to MB18-001788. Defence FOI 453 1819_Schedule Item 1_4.

¹³² *Ibid.*

“Rules of Engagement (ROE) and Orders for Opening Fire for the company and also for all RAAF who had primary responsibility for internal base security were defensive in nature and to be applied within the air base only.”¹³³

Response

The “minimum force” doctrine applies to the use of force generally in military operations.

Rules of engagement authorised the use of lethal force appropriate to the level of threat. The use of effective rules of engagement were essential for the operation of the shared defence plan. The “Stop or I shoot” rule was essential to protect against the accidental shooting of Malaysian and Australian defence force members and civilians legally on the base. Within the operational context of ABB as outlined in Section 2 above, the ROE demonstrate the seriousness of the armed threat posed by the CTO.

RCB duties are demonstrated in its Unit Standing Orders. The following comments reflect those of 12 December 1978. The Quick Reaction Force (QRF) stood to at 0800 hours daily for a 24-hour tour of duty. The QRF Commander was responsible for drawing, checking and distributing “ready reserve ammunition and pyrotechnics from the company duty room and issuing it to QRF members.”¹³⁴ When training outside the company area within the perimeter of ABB live QRF ammunition was to be secured in ammunition boxes and carried in the QRF truck ready for issue prior to deployment to a key point if reacted.¹³⁵

In 2014 NOSB quoted 6RAR Routine orders of 19 August 1971. Companies were “to carry ball ammo for protection against wild animals ... CSMs and PI Sgts are the only members authorised to carry magazines loaded with live rounds ... the mouth of the magazine is to be adequately taped to prevent the magazine feeding rounds if inadvertently placed in a weapon at night ...”¹³⁶ Of interest, Field Force Command Staff Instruction No 2/79 authorised ball (live) ammunition in case of “encounters with wild animals or belligerents ...” Wild animals would not have been encountered at ABB. This instruction applied to “field training activities”, not training on the Base.¹³⁷ Therefore, it is legitimate to ask what was omitted in the NOSB’s quoted “wild animals ... CSMs”.

ROE went beyond what one would expect for pure defence. Regarding “Sentries on Protected Places’, Unit Standing Orders were quite explicit:

¹³³ Background Paper Parliamentary Petition Dated 3 March 2014 Rifle Company Butterworth 1970-1989. Nature of Service Branch. 28 April 2014. Para. 54

¹³⁴ Orders - Quick Reaction Force (QRF) Commander. Annex B to AS Rifle Coy Unit Standing Orders Dated 12 Dec 78.

¹³⁵ Orders - Quick Reaction Force. Annex C to AS Rifle Coy Unit Standing Orders Dated 12 Dec 78.

¹³⁶ Background Paper Parliamentary Petition Dated 3 March 2014 Rifle Company Butterworth 1970-1989. Nature of Service Branch 28 April 2014. Para. 78.

¹³⁷ Field Force Command. Staff Instruction No 2/79. General Instructions for the Australian Rifle Company at Air Base Butterworth. Para. 22. 6 Jul 79.

9. If you are posted as a sentry of a Protected Place, the provisions of paragraph 3 [‘IF IN DOUBT DO NOT SHOOT’] apply. However, if any person enters the Protected Place and whilst within the boundaries of the Protected Place fails to halt when challenged with the words ‘HALT OR I FIRE – BERHENTI ATAU SAYA TEMBAK’ repeated three times you may fire at him provided you are unable to stop him by any other means.

10. Similarly, should a person whom you have arrested within a Protected Place attempt to escape, you may shoot them subject to:

- a. Your having challenged them correcting in accordance with the procedure given in paragraph 5 [no other means of restraint]; and
- b. There is no other means of affecting their rearrest.¹³⁸

A person running away from a sentry is unlikely to be a threat to that sentry. ROE went beyond the purely defensive.

Comment

The requirement to carry live ammunition at all times makes no sense in a peacetime setting. Responding to a simulated threat on an operational air base in a training situation would not be condoned by any sane commander. Increasing the risk by telling the troops they were responding to a real enemy threat, more so at night, in the case of Butterworth, carried a real risk of creating an international incident.

The ever-present threat of communist terrorists required the QRF to be prepared to respond to and repel incursions into ABB by terrorists at any time. There can be no other reason that required it to always carry live ammunition.

Objection – RCB’s Primary Role was Training.

RCB “conducted its own training program and participated in training with the Malaysian Army.”¹³⁹

“In practice, the infantry company was most notably involved in independent training activities, and the quick-reaction and ground defence tasks were secondary ... there is no formal documented evidence which could be found which confirmed that the infantry company was ever required in an emergency ground defence capacity, other than for exercise purposes.”¹⁴⁰

¹³⁸ Appendix 3 to Annex C to AS Rifle Coy Unit Standing Orders Dated 12 Dec 78.

¹³⁹ Background Paper Parliamentary Petition Dated 3 March 2014 Rifle Company Butterworth 1970-1989. Nature of Service Branch. 28 April 2014. Para. 72

¹⁴⁰ *ibid.* Para. 150

Response

- Threat assessments prove ABB was vulnerable to attack. This is independent to the presence of the RCB. Therefore, Australian forces at ABB incurred an “objective danger”. See Section 4.
- Plan Asbestos placed the RCB under the operational command of the OC RAAF Butterworth. Transport and off-base movement were under his control.¹⁴¹
- RCB was required to meet the “training standards ... required by OC RAAF Butterworth in matters associated with the security duties of the company.”¹⁴²
- Plan Asbestos stipulated, “Subject to agreement by OC Butterworth, such training is to be undertaken as the opportunity occurs and in areas mutually agreed by the Malaysian Ministry of Defence and the Australian Services Adviser, Kuala Lumpur. These areas are to be well clear of any in which counter-insurgency operations are being carried out.”¹⁴³
- On 17 October 1973 the Chiefs of Staff Committee considered “two progress reports from the Services Adviser Kuala Lumpur on the negotiations for suitable training areas for combined exercises with the Malaysian Army for” RCB. During the meeting the Chief of Air Staff (CAS) expressed “disappointment at what was being achieved ...” If “more realistic training ... he would like to have re-considered the question of RAAF guards taking over responsibility for the security of Butterworth. He supported CNS’s [Chief of Naval Staff] comment that in moving away from Butterworth for the training, the Committee was losing sight of the primary role of the company.”¹⁴⁴

The OC RAAF Butterworth had operational control of RCB and it could not leave ABB without his authority. This fact enabled the OC to prioritise security over training. The phrase “... such training is to be undertaken as the opportunity occurs” is an admission that training could not always be arranged. The plan confirms the fact of the insurgency war. The Chiefs of Staff in 1973 clearly understood that the RCB’s prime role was security.

Regardless of the RCB role the fact of the “objective danger” incurred by forces at ABB is not changed. That danger is clearly demonstrated in Section 4 of this submission.

Objection – No Enemy

“While acknowledging Communist Terrorist activity, there was no identified enemy designated by the Australian Government with respect to the ADF in Malaysia ... The Australian infantry company was not in Malaysia to engage with any designated enemy.”¹⁴⁵

¹⁴¹ Plan Asbestos, para. 16

¹⁴² *ibid* para. 12.

¹⁴³ *ibid* para 20, AL1, 16 Nov 73.

¹⁴⁴ Department of Defence. Chiefs of Staff Committee. Agendum No 47/1973. Supplement No 1. Minute No 67/1973. Minute of Meeting Held on 17 October 1973. 22 October 1973. Australian Company at Butterworth.

¹⁴⁵ Rifle Company Butterworth Review Group Brief and Addendum to MINDP Defence Comments. Attachment C to MB18-001788. Defence FOI 453 1819_Schedule Item 1_4.

Response

Security documents from the time, classified “Secret”, identify the potential and definite threats from the terrorist arm of the Malayan Communist Party or its affiliates. The Base was considered a potential target. The Australian Rifle Company at Butterworth was deployed as a quick reaction force to repel incursions into ABB by terrorist groups. These were an identified enemy. See section 4.

In December 1978 the Officer Commanding RCB Butterworth forwarded to Field Force Headquarters for consideration a training syllabus for completion before subsequent companies deployed to Butterworth. He acknowledged “Some instruction and familiarization will still need to be done at Butterworth”, including “appreciation of the enemy threat and likely approaches”.¹⁴⁶

Comment

Security documents identified an enemy and ADF personnel were briefed on that threat. ***To suggest there was no enemy threat denies the clear, objective facts.***

Objection – No Expectation of Casualties

“There is no evidence that there was an expectation of casualties.”¹⁴⁷

Response

The identified threats to the Base, including rocket, mortar and small arms attack plus sabotage and the use of booby-traps imply the potential for casualties.

In 1971 ANZUK assessed there was a definite risk of small scale, isolated attacks designed to damage vital points and injure personnel at any time without warning.¹⁴⁸

Comment

The expectation that possible attacks could be made against ABB must include the expectation that casualties could occur. It is illogical to suggest otherwise.

¹⁴⁶ Preparation Training for security Duties as the Australian Rifle Company Air Base Butterworth. From P.S.N. James, Major, OC AS Rifle Coy, Butterworth. To HQ FF Comd. R798-1-1. 22 Dec 78.

¹⁴⁷ Rifle Company Butterworth Review Group Brief and Addendum to MINDP Defence Comments. Attachment C to MB18-001788. Defence FOI 453 1819_Schedule Item 1_4.

¹⁴⁸ ANZUK Intelligence Group (Singapore). Note No. 1/1971. The Threat to Air Base Butterworth up to the End of 1972. Singapore. 30 November 1971.

Objection – Previous Reviews

The CIDA, Mohr and Clarke reviews concluded that service at ABB after the end of the Indonesian Confrontation was properly classified as peacetime.¹⁴⁹

Response

These reviews could only examine the evidence presented to them. That evidence has not been provided to Butterworth veterans.

The CIDA recommended the Australian Service Medal for service in the Thai/Malaysia border area in the 1962 and 1963.¹⁵⁰ Mohr recommended this be changed to the AASM.¹⁵¹ Likewise, CIDA recommended service at Ubon be recognised with the ASM.¹⁵² Mohr later recommended the ASM be upgraded to AASM for the later period of this service.¹⁵³ This was consistent with CIDA's principle 9, where it did "not consider itself constrained" by previous decisions regarding awards, taking "into account any new or additional information ... made available to it", applying "the normal standards of fairness".

Defence applied this principle when Air Commodore R.K. McLennan of the Defence Personnel Executive Career Policy Management Branch, advised the Chief of Defence Force in a letter dated 28 March 2001 the recommendation to award the ASM for service at Butterworth to the end of 1989 was "consistent with CIDA Principle No 3 which states, inter alia, *care must be taken that in recognising the service by some, the comparable service of others is not overlooked or degraded.*" [italics in original]¹⁵⁴

Comment

Decisions of past reviews are only as good as the evidence they considered. Any evidence uncovered since those reviews must be considered. Since the Clarke review new evidence has included books, such as:

- *Malaysia's Defeat of Armed Communism, The Second Emergency, 1968-89*. Ong Weichong. Routledge, London and New York. 2015.
- *The Malaysian Army's Battle Against Communist Insurgency 1968-1989*, Sharon Bin Hashim (ed.), Mohamed Ghazemy Mahmud (Translator), Army Headquarters, Ministry of Defence, Wisma Pertahanan, Jalan Padang Tembak, 50634 Kuala Lumpur, First Printing and originally

¹⁴⁹ Background Paper Parliamentary Petition Dated 3 March 2014 Rifle Company Butterworth 1970-1989. Nature of Service Branch. 28 April 2014. Paras 83-103

¹⁵⁰ Committee of Inquiry into Defence Awards. 1994. P 42

¹⁵¹ Review of Service Entitlement Anomalies in Respect of South-East Asian Service 1955-75. February 2000. Chapter 5

¹⁵² Committee of Inquiry into Defence Awards. 1994. P.46

¹⁵³ Review of Service Entitlement Anomalies in Respect of South-East Asian Service 1955-75. February 2000. Chapter 6

¹⁵⁴ Defence Personnel Executive Career Management Policy Branch Minute. Review of Service Entitlement in Respect of the Royal Australian Air Force and Army Rifle Company Butterworth Service 1971-1981. 2000-34836 Pt 1. CMP/FB/07/01. R.K. McLennan. AIRCDR. DGCMP. 28 Mar 01.

published in 2001 in the Malay language as 'Tentera Darat Manentang Insurgensi Komunis 1968-1989.

- *Waging an Unwinnable War, The Communist Insurgency in Malaysia (1948 – 1989)*. Lim Cheng Leng KMN, AMN, and Khor Eng Lee. Xlibris. Revised 10/21/2016. ISBN 978-1-5245-1862-2
- *Conflict and Violence in Singapore and Malaysia 1945 – 1983*. Richard Clutterbuck. Routledge, London and New York. First published 1985 by Westview Press. 2018.

Objection – Justice Mohr Made No Comment Regarding ABB.

“The TOR were sufficiently broad to include consideration of all ADF forces at RAAF Butterworth during the period 1955-1975 ...”¹⁵⁵

“Despite noting that service at RAAF Butterworth in Malaysia was one of the specific areas of ADF service the Review was asked to advise on, Justice Mohr did not make specific reference or recommendations regarding service by the infantry rifle company or any other ADF elements serving at Butterworth after 1966.”¹⁵⁶

Response

To quote Mohr:

Most, if not all, of the submissions received from personnel stationed at RAAF Base Butterworth concerned either their involvement in operations on the Thai/Malay border region or their non-allotment during the period of the Indonesian Confrontation.¹⁵⁷

These comments were made in Chapter 3 which specifically addressed service with the Far East Strategic Reserve that was disbanded on 30 October 1971.¹⁵⁸

In a submission to the 2010 DHAAT *Inquiry into the Recognition of Members of Rifle Company Butterworth for Service in Malaysia between 1970 and 1989* the Vice Chief of the Defence Force, advised the DHAAT Mohr “examined service at Butterworth within the context of service in the 1960s, at the same time commenting on the anomaly created by the award of the clasp FESR to the ASM for service with the FESR until it was disbanded.”¹⁵⁹ This view is corroborated by advice provided to the Chief of Defence Force by Air Commodore McLennan in 2001:

... the Mohr review attempted as much as possible to stay within their TOR, which was to review service in SE Asia between 1955-75. Part of the TOR included a review of service in SE Asia in relation to the geo-political

¹⁵⁵ Background Paper Parliamentary Petition Dated 3 March 2014 Rifle Company Butterworth 1970-1989. Nature of Service Branch. 28 April 2014. Para. 88

¹⁵⁶ *ibid* Para 94.

¹⁵⁷ Mohr. Chapter 3, FESR

¹⁵⁸ Vice Chief of the Defence Force. Submission to the Defence Honours and Awards Tribunal. Inquiry into the Recognition of Members of Rifle Company Butterworth for Service in Malaysia between 1970 and 1989. VCDF/OUT/2010/492. 23rd June 2010. Para 15.

¹⁵⁹ *ibid*. Para. 14.

context of FESR, which concluded on 31 Oct 71. *Consequently, service at Butterworth between 1971 and 1989 was not considered.* [italics supplied] ¹⁶⁰

That this was Defence's understanding in the period immediately following the tabling of Mohr's report is further corroborated in a minute to the Minister Assisting the Minister for Defence from the acting Chief of the Defence Force of 19 July 2001. Lieutenant General Mueller advised the Minister that the recommendation for the approval of the ASM for service at Butterworth to 1975 was a follow-up that consideration should be given to Butterworth service to the end of 1989. ¹⁶¹

Comment

Defence's claim that Mohr considered Butterworth up to 1975 is not supported by the evidence from the time of his review.

Objection – Comparison with other Operations

The following is quoted from *Fulcher and the Department of Defence* [2020] DHAAT 08 (14 May 2020).

While judgements as to awards are inherently subjective because of the differences between one set of operational conditions and another, implicit in them is the maintenance of standards which preserve the integrity of the system of Defence Awards and the distinctions inherent in the different awards of the Active Service Medal and the Service Medal.¹⁶²

Similar comparisons were made in the advice to Defence Minister Bilson in 2007 when service at Butterworth was compared with Vietnam. Defence argued "It is inappropriate to award the same level of benefit to RCB as applied to" Vietnam, ignoring the fact Vietnam service is recognised with a specific campaign medal, not a general service medal such as the General Service Medal 1962 awarded for service in the Indonesian Confrontation. The Paper argued a case for "a hazardous service classification can be sustained for the RCB" when its service conditions were compared to later hazardous operations such as 'Operation BELISI in Bougainville in 2000' and 'Operation AZURE in Sudan in 2006'. In both these cases personnel were not armed.¹⁶³

¹⁶⁰ Defence Personnel Executive Career Management Policy Branch Minute. Review of Service Entitlement in Respect of the Royal Australian Air Force and Army Rifle Company Butterworth Service 1971-1981. 2000-34836 Pt 1. CMP/FB/01. R.K. McLennan. AIRCDR. DGCMP. 5 Apr 01.

¹⁶¹ Australian Defence Headquarters Minute. Implementation of the Recommendations of the Review of Service Entitlement Anomalies in Respect of South East Asian Service 1955-75. PE2000-7307. CDF 440/2000. D. Mueller. Lt/Gen A/CDF. 19 Jul 2000.

¹⁶² *Fulcher and the Department of Defence* [2020] DHAAT 08 (14 May 2020). Para. 32

¹⁶³ Request for Nature of Service Review of Rifle Company Butterworth (RCB) Service 1970 to 1989, Ref: B660823. Attachment A, Background to Review of Rifle Company Butterworth Nature of Service, Gillespie, K,J, Lt Gen, VCDF, 28 Aug 07. Paras 27,32.

Response

Regarding RCB Defence stated in 2018, “Each operation or conflict is considered independently and comparisons cannot be drawn between determinations for operations nor are nature of service determinations influence by precedent.”¹⁶⁴ The statement “While judgements as to awards are inherently subjective because of the differences between one set of operational conditions and another ...” reflects a misunderstanding of the objective facts on which nature or service determinations must be made as explained following.

The “Rehabilitation and Advocates Handbook” at A.3 quotes from the Full Federal Court case of ***Repatriation Commission v Walter Harold Thompson (G205 of 1998)***:

The words ‘incurred danger’ therefore provide an objective, not a subjective, test. A serviceman incurs danger when he encounters danger, is in danger or is endangered. He incurs danger from hostile forces when he is at risk or in peril of harm from hostile forces. A serviceman does not incur danger by merely perceiving or fearing that he may be in danger. The words ‘incurred danger’ do not encompass a situation where there is a mere liability to danger, that is to say, that there is a mere risk of danger. Danger is not incurred unless the serviceman is exposed, at risk of, or in peril of harm or injury.¹⁶⁵

This case was discussed by both Mohr and Clarke – see above. Both agreed the determination must be made on the facts that were known at the time rather than what may be determined by the hindsight of history. If troops were sent to a place where an armed enemy was known to be present, if they were told they may be called on to face an armed enemy, or there was at the time an expectation by those that sent them that they could come under attack, an objective danger was incurred. Both Mohr and Clarke considered the facts as they were known at the time, taking a prospective rather than retrospective approach.

Comment

Evidence presented in this submission demonstrates the presence of an armed enemy, the expectation at the time of attack, and that troops were briefed on the likelihood of attack. Forces at ABB, Australian and Malaysian, incurred the same “objective danger” from the common enemy. (See Section 4).

Objection - Level of Risk

It is assessed that the operational risks associated with ADF service at Butterworth from 1970 to 1989 do not meet the level of risk required for reclassification as *non-warlike* service.¹⁶⁶

¹⁶⁴ Rifle Company Butterworth Review Group Brief and Addendum to MINDP Defence Comments. Attachment C to MB18-001788. Defence FOI 453 1819_Schedule Item 1_4.

¹⁶⁵ Rehabilitation and Compensation Advocate’s Handbook. Advocacy Development and Training Program. Department of Veterans’ Affairs. As amended in June 2021. A3. P.142

¹⁶⁶ Background Paper Parliamentary Petition Dated 3 March 2014 Rifle Company Butterworth 1970-1989. Nature of Service Branch. 28 April 2014. Para 129.

Response

Clarke addressed the problem of attempts to qualify the level of danger to which a veteran was exposed with the use of terms such as “imminent” or “immediate”, recognising these subjective judgments:

has led to inconsistency between decisions and reliance on fine points of distinction to justify decisions in cases where the factual circumstances are almost identical to those in an earlier case but the result is different.¹⁶⁷

The phrase “do not meet the level of risk required” is a subjective statement. Clarke also noted that some reviews that applied a subjective criteria also relied to some extent on a retrospective assessment. To quote:

In the opinion of the Committee, the approach taken in many of these cases (which no doubt reflect the arguments presented) fail to perceive the full significance of the concept of an exposure to peril that is not limited to ‘imminent’ or ‘immediate’ peril. Some of the cases also appear to depend, to some degree, on the evidence of a historian about the locations of enemy aircraft, submarines, raiders or mines, and about what, in fact happened many years before the case was heard. Not only is this evidence an expression of hindsight, but it, presumably accurately, reveals what was most certainly not known at the time to senior Defence authorities ...¹⁶⁸

Compare Clarke to this statement from Defence in 2014:

While the GDOC was exercised on a regular basis, especially during air defence exercises, simulation of a declared emergency or in the movement of highly inflammable material, no security emergency was ever declared at RAAF Base Butterworth.¹⁶⁹

This statement ignores the fact that the GDOC was fully manned at different times to respond to imminent defence threats, as reported in Section 2, Operational Context, Defence Arrangements at Air Base Butterworth, above. This statement by Defence was made twenty-five years or more after the fact. To quote Mohr, the question:

... must always be, did an objective danger exist? That question must be determined as an objective fact, existing at the relevant time, bearing in mind both the real state of affairs on the ground, and the warnings given by those in authority when the task was assigned to the persons involved.¹⁷⁰

Evidence in Section 4 of this submission provides a small example of the “objective danger” that was faced at the time.

¹⁶⁷ Clarke 11.52

¹⁶⁸ *ibid* 11.53

¹⁶⁹ Background Paper Parliamentary Petition Dated 3 March 2014 Rifle Company Butterworth 1970-1989. Nature of Service Branch. 28 April 2014. Para. 46

¹⁷⁰ Mohr, Chapter 2

Section 5 Summary

The above is representative of the claims made by Defence to deny warlike service at ABB during the 1968-89 Communist Insurgency War. These have either ignored relevant data or have relied on “what the historian says he or she has learned since the war.”¹⁷¹ To quote Clarke, this “is hardly relevant.”¹⁷² As Mohr said, the question

... must always be, did an objective danger exist? That question must be determined as an objective fact, existing at the relevant time, bearing in mind both the real state of affairs on the ground, and the warnings given by those in authority when the task was assigned to the persons involved.¹⁷³

Section 4 presents objective facts from the period proving ADF personnel at ABB faced a real threat of attack from an armed enemy which may well have resulted in the destruction of military objectives and caused casualties to RAAF and Army members.

Summary and Conclusion

Sections 1-4 have demonstrated the warlike service conditions existing at ABB during the 1968-1989 Communist Insurgency War. Malaysia’s use of the base to fly operational sorties against the enemy was a factor that increased the likelihood of attack and it was considered unlikely any attack on the base would discriminate against Malaysian and Australian targets. Section 5 has demonstrated the fallacy of Defence’s arguments to deny ABB veterans proper service recognition.

Australia’s presence at ABB made a valuable contribution to Malaysia’s war effort. The shared defence plan put Malaysian and Australian forces under the command of the Australian OC RAAF Butterworth. The RCB was deployed as a Quick Reaction Force to respond to and repel and communist incursions to ABB with ROE authorising shoot to kill. Identified vital points, such as the control tower, fuel farm and water supply, were equally important to both nations.

The test is an objective one. Again, Justice Clarke is quoted:

If then, the military authorities consider that a particular area is vulnerable to attack and dispatch armed forces there, they are sending forces into harm’s way, or danger. This is the second point made by Mohr – that veterans ordered to proceed to an area where they are endangered by the enemy will not only perceive danger, but to them the danger will be an objective one based on rational and reasonable grounds. In these circumstances, what the historian says he or she has learned since the war about the actual intention of the enemy is hardly relevant.¹⁷⁴

Evidence from the time proves authorities considered ABB vulnerable to attack. Until service at ABB during the Insurgency War the integrity of Australia’s Honours and Awards system remains compromised.

¹⁷¹ Clarke. 11.59, 11.60

¹⁷² *ibid*

¹⁷³ Mohr. Chapter 2

¹⁷⁴ Clarke. 11.59, 11.60

This submission requests the Tribunal to recommend ABB service be recognised as active, or warlike and that veterans are eligible for the Australian Active Service Medal 1945-75 or the Australian Active Service Medal along with the Returned from Active Service Badge. It is also requested that veterans with service up to 1975 be awarded the General Service Medal 1962

ATTACHMENTS

1. Operation Sedar
2. 8th Assault Unit
3. Operational Areas

Kenneth N. Marsh

21 June 2022



■ Figure 4.36: Areas covered under Operation SEDAR in Kedah.



■ Female CTs.

Operation SEDAR

Despite all the action taking place in the jungles of the Main Range which straddles the spine of the Peninsula, the northern state of Kedah was also not exempted from the threat of CT activities, particularly from the 8th Assault Unit, which was active in Kulim, Mahang, Selama, Karangan, the Gunung Bintang Complex, Gunung Bongsu and Gunung Inas (Figure 4.36). Before Operation SEDAR was launched, the 6th Infantry Brigade Headquarters had launched a special operation codenamed Operation RADAK in the area of Bukit Besar, Kulim, Kedah against the 8th Assault Unit. SF have been hot on the trail of this group for several years without any success.

The break came in May 1971. Intelligence provided by the SB of the Royal Malaysia Police and information received from the public stated that a band of about seven CTs would meet at Bukit Besar, Kulim, Kedah on May 14, 1971, and set up camp in the area. The 3rd Battalion Ranger Regiment based in Taiping, Perak, was directed to mount this special operation.

The operation was carried out in several phases, the first being to insert a reconnaissance patrol into the jungle to find suitable routes into the operational area by members of the intelligence team. The second phase would be the entry of the encircling team comprising B Company, C Company, D Company and the Headquarters Company from the 3rd Battalion Ranger Regiment. Assisting them would be the A Company from the 9th Battalion RMR and C Company from the 10th Battalion RMR. The third phase would be the entry of A Company, acting as the search-and-destroy group. The fourth phase would be the sweep operation and the fifth and final phase would be the assault on the CT camp.



File photograph of Lai Muk San @ Siew Chong

8th Assault Unit

The 8th Assault Unit began infiltrating into the area south of Kedah in early 1969 to gain support of the local population and expand its operational area up to Sumpitan, Lenggong, Sauk, Kati, Batu Kurau and Ijok in Perak.

Communist veteran Lai Muk San @ Siew Chong, who had been with the CPM for 20 years, led this unit. This unit had a strength of between 60 and 70 CTs, some of them were from south Kedah. In 1978, the SF killed many members of this unit in jungle battles and ambushes, forcing it to withdraw from the Kulim/Selama area of Kedah to south Thailand where it restructured its organisation and re-built its strength.

This unit re-infiltrated Peninsular Malaysia in 1981/82. This time, it did not infiltrate south Kedah but instead the Kuala Kangsar district and areas around the Sauk Complex, Leman Kati and Lenggong in Perak. However, the SF detected its presence and the intense operations mounted against it forced it into isolation and engage only in low level activities. Due to the pressure from the SF, it was forced to retreat to south Thailand where it merged with the main force, the MNLA 12th Regiment.

AREA OF OPERATION - 8TH ASSAULT UNIT





Figure 4.2: Major operations conducted by the Army in Peninsular Malaysia.

ARMY OPERATIONS IN PENINSULAR MALAYSIA

The army had mounted many operations and campaigns to counter the threat of communist insurgency over a period of 21 years. This book, however, documents only several major operations and conflicts as well as certain incidents and activities that could be made public. The main operations listed are the Operation KOTA, Operation SETIA, Operation INDERA, Operation TUAH, Operation SABRE, Operation SEDAR and Operation GALAS (Figure 4.2).

These operations were carried out continuously by the various army divisional and brigade commands even though the commanders and forces involved were replaced from time to time. At the same time, the formation commands also launched special operations in certain areas other than the normal operations.