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Submission to Inquiry - MR KEVIN MARY O'HALLORAN

Part 1 – Name of Inquiry

Name of Inquiry *

Medallic Recognition for Service with Rifle Company Butterworth.

Part 2 – About the Submitter

Title or Rank *

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O'HALLORAN

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

Warlike vs Non-Warlike Service Operational service in the ADF, whether it is classed as warlike or non-warlike operations is a confusing world. Working for the ADF can be even more complex given the level of training required for those challenging conditions. This training includes Laws of Armed Conflict (LOAC); Orders For Opening Fire (OFOF); Rules of Engagement (ROE); Use of Force; and Australian Government Mandates that Rifle Company Butterworth (RCB) presented to us as soldiers, RCB was considered by soldiers, whom I was deployed with anyway, as warlike operational service. That is because we were warned out for 'Active service'. This was in contrast to what I considered as warlike service later on, commensurate with my deployments to Rwanda in 1995 and East Timor in 2001. Given Rwanda was originally considered as a non-warlike operation, the application of force was limited to self-defence. Casualties could occur but were not expected. This was under the UN charter whilst in Rwanda. 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. Warlike operations can include service in a declared war; service in conventional combat operations against an armed adversary; and peace enforcement operations. The Rwandan mission was regarded as non-warlike, and it took veterans over 10 years of lobbying the Australian government to have this type of service reclassified to warlike. And now that due recognition has been fully given to that mission, I believe those soldiers who deployed to RCB, who are in need of physiological and physical assistance should be able to obtain that assistance. Australian Government Mandates influence the nature of ADF operations. They provide specified and implied tasks, determine the circumstances in which force can be used and contribute to the development of mission-specific conditions soldiers have to apply. This includes LOAC; ROE; OFOF; and Use

of Force. Laws of Armed Conflict (LOAC) LOAC is a means by which one country wages armed conflict against another and LOAC state clearly it is law. The Australian Government has said we will abide by these laws. It has enacted legislation by which Australian courts can prosecute grave breaches. As soldiers we are required to receive LOAC training. This training makes us aware of our rights and responsibilities. We are required to obey only the lawful commands of our superior officers. However, obedience of orders is no defence to a war crime offence. This knowledge of LOAC helped keep us out of trouble, and also helps us when making operational and tactical decisions. Generally, where a military force enters the territory of another state other than during an armed conflict, it will be subject to that state's law and jurisdiction. Consequently, members of the ADF participating in RCB operations could be brought before the courts of another state in relation to civil matters or for alleged criminal offences. The application of host nation law however, was modified by way of the Five Power Defence Arrangement (FPDA) commonly known as the 'agreement'. Among other matters, the FPDA may also address rights of entry and exit; freedom of movement in the host nation; the right to carry weapons on host nation territory; the right to administer the Defence Force Discipline Act 1982 (DFDA) in relation to members of the deployed force; and the allocation of liability for damages caused by members of the force deployed. Australian operations in Cambodia, Somalia, Rwanda, and East Timor were all enforcement actions authorised by Australian Government Agreements as was RCB. The confusing nature of the mandates, i.e. Rules of Engagement, Orders for Opening Fire, and the myriad of other rules is not lost on the soldier. On RCB operations the soldiers were the 'enforcers' of those rules and would abide by them regardless of how much legal jargon was used or how confusing they may have been. Rules of Engagement (ROE) ROE are the lawful military orders endorsed by the Australian government and issued by commanders. They delineate the circumstances and limitations within which 'armed force' may be applied to achieve the aim of the mission or military objectives. In this case for RCB we protected the national assets at that time, being the F1-11C RAAF Aircraft. This included the Malaysian Armed Forces (MAF) Air Base Butterworth, in furtherance of Australian national policy. The ROE, for those of us who were at the Kibeho massacre in Rwanda, we could have fired our weapons under the Crimes Against Humanity laws. That said, I think we wisely held our fire given the fact that we only had light weapons and were vastly out-gunned by the Rwandan Patriotic Army (RPA). We had no high explosive natures or heavy support weapons, not even hand grenades. We had a cups canteen and a bayonet. Something for those who do not support the RCB upgrade of the deployment to warlike status to consider. We did not deploy to Rwanda with the equipment to conduct effective offensive ops, as it was not in our mission statement. However, the aim of our mission in RCB was to protect Australian National Assets (F1-11C) aircraft; the Air Base Butterworth (ABB); and all Australian personnel stationed there. We had all the weapon systems required for that and more including the F1-11C Mirages at our disposal. The RCB deployments were issued with provisional guidelines for the development of a non-warlike operation. However, these guidelines contained basic training doctrine on the drafting and use of ROE/OFOF/LOAC and language responses (Use of Force) to a threat 'Berhenti atua saya tembak' 'Stop or I will shoot'. These rules for RCB personnel during a non-warlike operation were influenced by factors similar to those that shaped the ROE for more traditional military operations, like Cambodia, Somalia, Rwanda, and East Timor all of which have been awarded the AASM. In relation to warlike operations, the mandate of the Australian Government would be the most influential factor in determining the circumstances. In which Australian troops can use force and consequently contribute considerably to the development of mission-specific ROE. This is particularly the case where the operation involves a 'hazardous conditions' element that has to be combined with more traditional military tasks. As non-warlike operations will generally involve two or more nations in coalition, the ROE must satisfy the political and legal requirements of all participants. Consideration must also be given to the need for each individual participating state to approve and issue ROE in accordance with its own domestic practice. In light of this, the practice developed for participating states to draft and implement national ROE that took into account unique legal and political requirements. But in RCB there was no restriction, and the ROE was issued by the 'Butterworth Force Commander' only for the application to all national contingencies. Use of Force 'Use of force' is commonly divided between that used for self-defence and that employed for mission accomplishment. Members of the ADF will always have the right of individual and unit self- defence. This right will apply whenever ADF members are deployed overseas. Actions taken in self-defence must be necessary and proportionate to the threat faced. Use of force for mission accomplishment will depend on the nature of the operation and the then Five Power Defence Arrangements (FPDA). Which was a series of bilateral defence relationships established by a series of multi-lateral agreements between Australia, Malaysia, New Zealand, Singapore, and the United Kingdom – all Commonwealth members, all once belonging to the British Empire. An FPDA applicable to ADF forces may be concluded between the Australian and the host nation, in this case Malaysia. Establishing the correct legal basis in international law which is fundamental to the planning and

subsequent execution of all types of operations. The legal basis for the operation, often referred to as the 'agreement', will influence the nature of the operation and determine the scope of authority to act towards mission accomplishment. As RCB operations generally involve an attempt to reduce tension, the use of lethal force will typically only be authorised in self-defence. This will ordinarily be the case in a traditional RCB operation. There may however be circumstances, typically in enforcement operations, where lethal force is authorised for mission accomplishment. Although uncommon, this may also be accompanied by a declaration of certain forces as 'hostile' (Communist Terrorists or CTs) thereby authorising engagement of these forces. Further, the legal basis for the operation assisted in determining specified and implied tasks, and in the resolution of many legal issues that arise during the conduct of the operation. Such as the status of the participating military forces - Malaysian Armed Forces (MAF) and the missions ROE. Notwithstanding that the legal basis will be determined and articulated at the strategic level, understanding the legal basis for an RCB operation is fundamental to planning at the 'operational and tactical levels.' As RCB operations inevitably attracted considerable public attention, ensuring that the military component did not exceed the limits of its mandate, it becomes an issue of enormous importance, particularly in relation to the use of force. The use of unnecessary force is unlawful and tends to undermine the moral authority of the operation, which would inevitably compromise the achievement of mission objectives. The use of non-lethal force, while an ostensibly less volatile issue, tends to be similarly complicated. Non-lethal force may be required for example: to restore law and order; to protect certain classes of civilians; the supervision of elections; power to search and arrest; and the restriction of movement or the placement of barricades. All of these examples have been conducted on RCB commensurate with other warlike operations. Orders For Opening Fire (OFOF) In Rwanda our guidance came from the Orders for Opening Fire (OFOF) cards (pronounced OFFOFF). There was a red card for opposed deployment overseas and a yellow card for unopposed. When deployed on RCB neither card existed. RCB was simply, protect the Australian National Assets. In Rwanda we were not even allowed to use minimum force to apprehend a suspect. On RCB we could, even though we were bound by law. The OFOF helped us on RCB as there were no constraints placed on us if we were put under undue risk. Why? Because the natural response to being attacked — especially for an infantry soldier — is to fight back. The scales of operational deployments are a variety of actions in which a military force can be engaged. This can range from general war to some peacetime national tasks. These can be divided into two broad categories, based on the level and types of threat faced. RCB does not specifically provide for peacekeeping and, in fact, makes no mention of the word. Peacekeeping is a non-coercive instrument of diplomacy where a legitimate international civil or military coalition is employed with the consent of the belligerent parties. This is done in an impartial, non-combatant manner, to implement conflict resolution arrangements or assist humanitarian aid operations.

Part 3 – Desired outcome

Provide a summary of your submission:

In short, political imperatives dictated the passive posture Australian soldiers had to adopt on previous UN mission based operations. However, on RCB Australian soldiers deployed to Butterworth were 'Australia's Walls' and would hand situations over to the MAF or base police, only after they were negated and perceived as no longer a threat. The downside of not employing those Rules of Engagement almost guaranteed that if a confrontation went wrong an Australian soldier would be the first casualty. So from my experiences of 30+ years in the ADF and on a tri-service warlike operational tour of duty. The ADF is commanded by the Chief of the Defence Force and consists of three services: the Navy, the Army, and the Air Force. The three services have historically operated independently, and cooperatively, with different rank titles, job roles, enlistment, and training requirements for operational roles. However, Operational service refers to a deployment to a warlike conflict zone. Non-warlike peace keeping missions. Overseas areas for border protection activities. Humanitarian aid, or domestic services in providing aid to the civilian community during emergency situations. Now these are all recognised as operations with qualifying service. Why? Because ADF personnel who are deployed to a conflict zone are likely to have the highest level of job-specific capability. Their physical fitness and psychological resilience, benefits the strong institutional team supports. However, the nature of those deployments place personnel in situations where they are likely to be exposed to potentially traumatic events that may result in physical and psychological injury. These injuries are recognised as risk factors for mental health conditions, including substance misuse, post-traumatic stress disorder (PTSD), chronic depression and suicide. The nature of contemporary deployments to conflict zones—with multiple and shorter deployments of smaller contingents, engaged in urban environments, and often with civilian involvement—may weaken the protective structures and supports, and increase those potentially adverse effects of deployment. In other

words. Operational service may, therefore, be protective at first and decrease as the latent effects of trauma experiences arise after discharge. As not all deployments are to conflict zones, Afghanistan being a perfect example of this type of operational service. I was deployed to RCB in 1983 and 1989. I believe an appropriate medallic recognition be implemented commensurate with the threat level at the time. The CTs signed the peace agreement in 1989 so the argument for non-warlike service would be a disservice to all. Alternatively, a compromise of sorts: e.g, 1970-197? AASM with campaign clasp; 197? -198? The AOSM with clasp; and 198? -1989 ASM with clasp SE ASIA.

Part 4 - Your submission and Supporting Documentation

File Attached:

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

KEVIN O'HALLORAN

Date

18/08/2022 /

MR KEVIN MARY
O'HALLORAN

Signed by MR KEVIN MARY O'HALLORAN

Signed on: 18 August, 2022

Signature Certificate

Document name: Submission to Inquiry - MR KEVIN MARY O'HALLORAN



