



SERVICE POLICE REPORT

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| | | |
|--|---|--|
| Offence / Occurrence: Fail to Comply/Falsification of A Service Document | Investigator: EM INVST TEAM | Originating Unit: HQ 5 MP COY (SIB) 10 Whyalla St FYSHWICK ACT |
| Reference No: HQ 5 MP/10/02 | Type of Report: Final | Tel: 02 62 661715 |

Reference:

A. DCA Minute dated 24 Sep 2000

Background

1. On 24 September 2000 IAW reference A, enquiries commenced into a series of allegations surrounding the conduct of AS personnel deployed to East Timor (EM) as part of INTERFET. The International Force – East Timor (INTERFET) deployed to EM on 20 Sep 99. INTERFET was a multinational force mandated by the UN and included Special Forces (SF) elements from AS, NZ and UK who formed the INTERFET Response Force (RESPFOR).

Allegations

2. During the course of the investigation information was received where it was alleged that on 20 October 1999 in the vicinity of the village of WATABE EM, AS troops had:

- a. breached the INTERFET Rules of Engagement (ROE), and
- b. the subsequent Patrol Report was later intentionally falsified by failing to state that patrol weapons had been fired at unknown indigenous people..

Circumstances surrounding the alleged breach of the ROE

3. Circumstances surrounding this allegation are that on or about 14 Oct 99, 15 AS elements of the RESPFOR were tasked with a 20 day patrol in the area surrounding the township of SALELE, in the COVA LIMA District of EM. This Patrol was a combination of two AS Patrols and under command of the Patrol Commander (PTLCOMD) an AS CAPT. The COVA LIMA area includes the east/west border on the south coast of EM. The Patrol Area of Operational Responsibility (AOR) incorporated the one major road that runs east to west along the coast to the East/West Timor border.

4. Between days One and approximately Six of the Patrol, a motorcycle was observed to be crossing into EM from the west most mornings and returning to the west either later the same day or the following day. In

s47E(d)

(Printed Name)

MAJ

(Rank / Appt)

15 November 2002

(Date)

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HQ 5 MP COY (Original)

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addition this motorcycle appeared to be connected to a substantial militia movement across the border into EM. The militia involved in this movement were assessed at the time to be armed and adopting a more aggressive posture than those militia elements previously encountered by RESPFOR elements in the COVA LIMA District.

5. On or about Day Six of the Patrol, being on or about 20 Oct 99, sometime in the late morning or early afternoon an Observation Post (OP) established by the RESPFOR Patrol in the vicinity of the main east/west road was compromised. The situation was assessed by patrol members as a "soft compromise". A female, who was understood to be part of a group of people seen to cross from west to east that day, was observed to be foraging for food or material. This person approached to within 20 to 30 metres of the OP. The OP withdrew to the main patrol harbour and as a result of the "soft compromise" a decision was made by the PTLCOMD to withdraw the Patrol back from the road in a northwesterly direction for a distance of approximately 400 to 500 metres. A short time later two or three vehicles carrying suspected militia, who were armed with small arms weapons and in an aggressive posture, approached the previous harbour and OP location from the west. Approximately 50 metres from this position the vehicles turned around and proceeded back towards the west. From the disposition, posture and types of weapons carried the PTL COMD, in conjunction with members of the Patrol determined that the vehicles contained members of the EM militia whom had been previously expelled from EM, IAW the INTERFET mandate. Furthermore it was determined that the Patrol had been fully compromised by the previous "soft compromise".

6. After assessing the situation the PTLCOMD contacted HQ RESPFOR vide radio and requested that the RESPFOR Quick Reaction Force (QRF) that was stationed at the Dili Heliport be reacted. The QRF consists of three SF patrols, comprising of a patrol from each of the AS, UK and NZ SF elements. This request was approved. In addition the PTLCOMD requested that, with the exception of the deployment of the QRF, all air activity within the immediate air space surrounding the Patrol's AOR cease. The PTLCOMD's intent, at this time, was to deploy the QRF to the east with the Patrol moving to the west to an undetermined position ahead of the three vehicles containing the suspected militia elements. The aim of this was to establish road blocks to the immediate east and west of the suspected militia vehicles, thus causing these vehicles to be halted and the occupants then assessed and detained if the circumstances required.

7. Immediately after the request for the deployment of the QRF was made, one possibly two Iroquois helicopters flew over the area. The suspected militia vehicles were then observed to detain an unknown number of IDPs, placing them in a vehicle. Where this vehicle was acquired from was unknown. This vehicle was then placed as the lead vehicle in the suspected militia convoy. From this the PTLCOMD has formed the opinion that the vehicle containing the IDPs is a "buffer vehicle" and likely to be used as a form of protection and/or moral blackmail should the suspected militia vehicles be stopped by INTERFET troops. The suspected militia vehicles were then seen by the RESPFOR Patrol to continue west, increasing speed and cross over the border into West Timor.

8. At this time the QRF was already in the air and inbound to the RESPFOR Patrol's area. On seeing the suspect vehicles cross the east/west border the PTLCOMD has redirected the QRF to land and deploy to the west of their current position, with the intent that the QRF may provide a cut off for further vehicle movement to the west. Concurrently the RESPFOR Patrol moved southwest to the main east/west road in the vicinity of the village of WATABE, located approximately two to three kilometers from the point where the main east/west road enters West Timor. The Patrol deployed along the road and some distance back from the actual road, with one patrol of approximately five personnel covering to the east, a further patrol covering to

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the west of the road. The command group was located in the centre. The Patrol then commenced to observe along the road in both an easterly and westerly direction. A sketch diagram showing the disposition of the Patrol at this time is at Annex A.

9. A short time after the Patrol deployed along the road a motorcycle was heard approaching the position, travelling east to west along the road. A member of the Patrol who was positioned at the far east of the Patrol's formation then stepped onto the road. At this time the Patrol member identified that the motorcycle:

- a. was a small, dark coloured motorcycle, the same or very similar to that one observed over the previous days moving to and from EM,
- b. has been identified as a suspected militia vehicle, and
- c. was carrying a rider and pillion passenger with the pillion passenger carrying a satchel or bag similar to that which was previously recovered from deceased suspected militia and which contained a quantity of hand grenades.

10. The Patrol member then attempted to stop the motorcycle through the use of:

- a. verbal command to stop in both English and Indonesian/Tetum, and
- b. placing his hand in the internationally recognised symbol to stop that is, with the arm extended to the front of the body with the palm of the hand facing outwards at a right angle to the wrist.

11. The motorcyclist did not stop. The Patrol member then observed that:

- a. the rider of the motorcycle looked surprised,
- b. the feet of the rider came off the feet rests or pegs of the motorcycle,
- c. the engine was starting to accelerate, and
- d. the motorcycle was starting to weave left and right of the road.

12. The motorcycle failed to stop and accelerated past the Patrol member at a speed estimated to be in the vicinity of 50 kph. Another member of the RESPFOR was located approximately 30 metres to the west of this Patrol member. This person stepped onto the road about the same time as the previously mentioned Patrol member. Verbal and hand signals, similar to those indicated above to stop were directed at the rider of the motorcycle. The motorcycle appeared to be moving directly towards the remainder of the Patrol to the west of this Patrol member, continuing to accelerate and failed to stop. A further number of attempts were made to stop the motorcycle by the remainder of the patrol, who were located on the northern side of the road and to the east of the command group. The motorcycle failed to stop and continued to accelerate.

13. The PTLCOMD then formed the opinion, based on his current and previous observations and intelligence information that:

- a. the motorcycle rider had ignored and passed three to five members of the patrol located to the east of the command group,

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- b. the motorcycle rider had no intention of complying with the directions of his soldiers despite all attempts,
- c. the motorcycle was similar to one he previously observed with a strong militia nexus,
- d. the motorcyclist was possibly a scout or similar for the suspected militia vehicles that had previously compromised the Patrol, and
- e. it constituted a direct physical threat to the members of his patrol who were attempting to stop it.

14. The PTLCOMD then directed that the motorcycle be stopped. On this direction a senior member of the Patrol fired a short burst of 5.56-mm rounds at the front tyre of the motorcycle. From the information available the number of rounds fired varies in quantity from three to approximately 10. The motorcycle has veered off the road to the left or south, hit a low man made wooden structure, possibly a fence and come to a halt. The rider and pillion passenger were seen to be thrown over the handlebars of the motorcycle and in one movement roll and get to their feet. Both the rider and pillion passenger have decamped the area in a southwesterly direction on foot and at a speed that was faster than that which any patrol member could catch them. The last time either the rider or pillion passenger was seen was as they entered a track through dense vegetation that was over 1.5 metres in height. Neither the rider nor pillion passenger appeared to be seriously injured when last observed by the Patrol.

15. Those members of the patrol not directly tasked with force security then crossed the road and inspected the motorcycle. The consolidated observations from the those Patrol members available for interview indicate that the:

- a. motorcycle was lying on its side on the southern side of the road some five to ten metres from the bitumen
- b. the front wheel of the motorcycle was buckled,
- c. bullet holes were seen to be in the front wheel and possibly in the fuel tank,
- d. no other objects or equipment were found within the vicinity of the bike, and
- e. a small quantity of blood was seen to be either in the vicinity of the bike or some metres away on the track where the rider and passenger pillion had been last seen.

16. Prior to the motorcycle being heard travelling along the road the QRF, under command of a senior UK member, deployed approximately one to two kilometres from the west of the RESPFOR Patrol position on the east/west road. On landing, the QRF deployed north/south across the main east/west road with two patrols forward and one back and commenced to move towards the RESPFOR Patrol position. Shortly after the deployment of the QRF a motorcycle was heard to be travelling west to east and approached the QRF from their rear. This motorcycle was stopped and a machete and air rifle or similar weapon confiscated. The motorcycle and passengers were then directed to return from whence they had come and were not seen again.

17. A short while after the QRF had stopped the west/east travelling motorcycle members of the QRF heard a short series of shots to their immediate front. The QRF then adopted a defensive posture and continued to

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move in an easterly direction using the road as their axis of advance. Some but not all members of the QRF can then recall seeing two figures moving north to south through thick vegetation to their immediate front.

18. From the information available it would appear that the QRF have rendezvoused with the RESPOR Patrol very shortly after the motorcycle has run off the road and the rider and pillion passenger have cleared the area. Elements of the QRF have moved forward to where the RESPFOR Patrol command group was located and from their observations have seen a number of AS soldiers congregating in the vicinity of a motorcycle. Elements of the QRF who observed the AS soldiers have indicated that the demeanor of the AS Patrol was ranging from extreme agitation and being "hyped up" to calmness. Those elements of the QRF who were present and viewed the motorcycle have advised that the motorcycle did have bullet holes in the area of the fuel tank and other damage that would have fully disabled the motorcycle. In addition, the majority can recall that there was a small pool of blood in the immediate vicinity of the motorcycle with a blood trail leading southwest to a track through thick, tall vegetation. Of those members of the QRF spoken with in the course of this investigation none have a clear recollection of the content of any conversation between the Patrol and themselves. The QRF commander could not recall any detail of the information passed to him from the Patrol Commander at this time.

19. The QRF then provided two specialist personnel who, with a protection party provided by the RESPFOR Patrol, made an attempt to follow what was believed to be a blood trail left by either, or both the rider or pillion passenger of the disabled motorcycle. This activity was unsuccessful and the tracking team returned to the motorcycle as dusk was falling.

20. The QRF and RESPFOR Patrol were extracted by air to Suai that night. The QRF subsequently returned to Dili whilst the RESPFOR Patrol remained in Suai for a period of approximately five days prior to their return to Dili and subsequent retasking.

Assessment

21. The enquiries conducted to date with the members of the RESPFOR Patrol involved with this incident at WATABE have confirmed that the Patrol members:

- a. were not equipped in any manner in which to conduct a Vehicle Check Point (VCP) including the provision of equipment with which to improvise an ad hoc physical barrier with which to stop suspected militia vehicles;
- b. the actions of the rider when requested to stop gave all indication that he had no intent of complying with the directions given by the RESPFOR Patrol;
- c. it was reasonable to form the opinion that the rider and the pillion passenger had a strong potential militia nexus; and
- d. the actions of the Patrol were within the continuum of force guideline and ROE issued for INTERFET.

22. From the evidence available it is apparent that the PTLCOMD was working within the guidelines and parameters of the ROE extant for INTERFET at the time of this incident. It is, therefore apparent that the

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RESPFOR Patrol in this circumstance committed no disciplinary or criminal offence however a number of "Lessons Learned" has come to light.

Lessons Learned

23. The lessons learned centre on the establishment of the VCP and the adequacy of the training and equipping of the RESPFOR Patrol for this task. From the information available it would appear that:

- a. few, if any of the Patrol were aware of any SF SOP in regard to the establishment of a VCP,
- b. the Patrol was not equipped to establish a VCP,
- c. the Patrol members did not appear to consider improvising a physical barrier when establishing the VCP, and
- d. the Patrol members, unlike traditional/conventional Infantry forces do not appear to have received ongoing training and practice in the conduct and establishment of VCPs.

24. The above is not critical of the SASR, however it does highlight that had the Patrol and the PTLCOMD been more experienced in the establishment of VCPs and equipped to do so the requirement to open fire on the motorcycle may not have arisen. It should be noted that this does not reflect any fault in the judgement exercised by the PTLCOMD at the time based on the information available to him at the time but is rather a generic reflection with the benefit of hindsight.

Circumstances surrounding the alleged falsification of documents

25. On arrival in Suai the RESPFOR patrol was debriefed by the SF Liaison Officer located at HQ SECTOR WEST. The debriefing was undertaken as a "one on one" activity with the LO and PTLCOMD and the information provided subsequently passed verbally to RESPFOR HQ through the LO. It would appear from the information available at the time of writing this report, that no written records of this debrief were maintained. The recollections of the personnel involved in this activity varies from the senior personnel who did not believe that the process was in any manner out of the ordinary to more junior personnel who believed that the debrief had not been conducted in a manner to which they were accustomed. The point of apparent contention is that whilst the less experienced personnel were accustomed to a debrief that was a joint activity involving all patrol members more senior personnel were quite content with a staggered debriefing process. The staggered debriefing involves the senior persons of the "sub-patrol units" debriefing their individual members. The senior member of the sub unit was then debriefed by the PTLCOMD who in turn was debriefed by the SF LO.

26. The written reports that related to the incident at WATABE appear to have been drafted and released by members of the RESPFOR SQN OPS Cell from the verbal information provided by the HQ SECTOR WEST SFLO.

27. When the matter of the content of the report was raised with the PTLCOMD on 13 Nov 02 he stated that:

- a. he was unaware of the content of the reports until his return to Dili some five days after the verbal debrief at Suai;

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- b. he did not see or have the opportunity to view or vet the content of report prior to its release by HQ RESPFOR;
- c. he was unaware that any person had made a complaint about the accuracy of the content of the report;
- d. if the content of the report was inaccurate in any relevant area he would have taken steps to rectify that information;
- e. on return to Dili the Patrol was retasked and given a Warning Order (WNGO) for a task that was to commence some 24 to 48 hours after his return. As a result his focus was towards his immediate operational requirements and not towards the activity that he had verbally reported some five days previously; and
- f. as the commander on the ground he did not consider that utilising small arms fire at the front wheel of the motorcycle so as to cause the rider to stop was relevant as this practice had been previously utilised during the "cordon and search" operation of Suai launched on 6 Oct 99.

Assessment

28. The enquiries conducted to date with the members of the RESPFOR Patrol involved with this allegation arising from the incident at WATABE have confirmed that the:

- a. PTLCOMD did not have a direct input into the content of the Patrol report,
- b. Content of the report was transmitted through at least two, possibly more, personnel from the time the information was passed by the PTLCOMD at Suai to when the information was formulated into the report;
- c. PTLCOMD had no opportunity to vet the report for accuracy prior to its release; and
- d. PTLCOMD was not aware of any challenge to the accuracy of the content until 13 Nov 02.

29. There is no available evidence to suggest that there was any intent on the part of any person to mislead or otherwise fail to report the full details of the activity of the RESPFOR Patrol including the use of small arms fire with which to cause the suspect motorcycle to stop.

Conclusion

30. Enquiries into this matter are now completed. All statements and supporting documents in relation to this matter are held at HQ 5 MP COY (SIB) and may be made available if required and subject to the s47E(d)


s47E(d)

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s47E(d)



s22



s47E(d)

MAJ
OIC EM INVST TEAM

Annex:

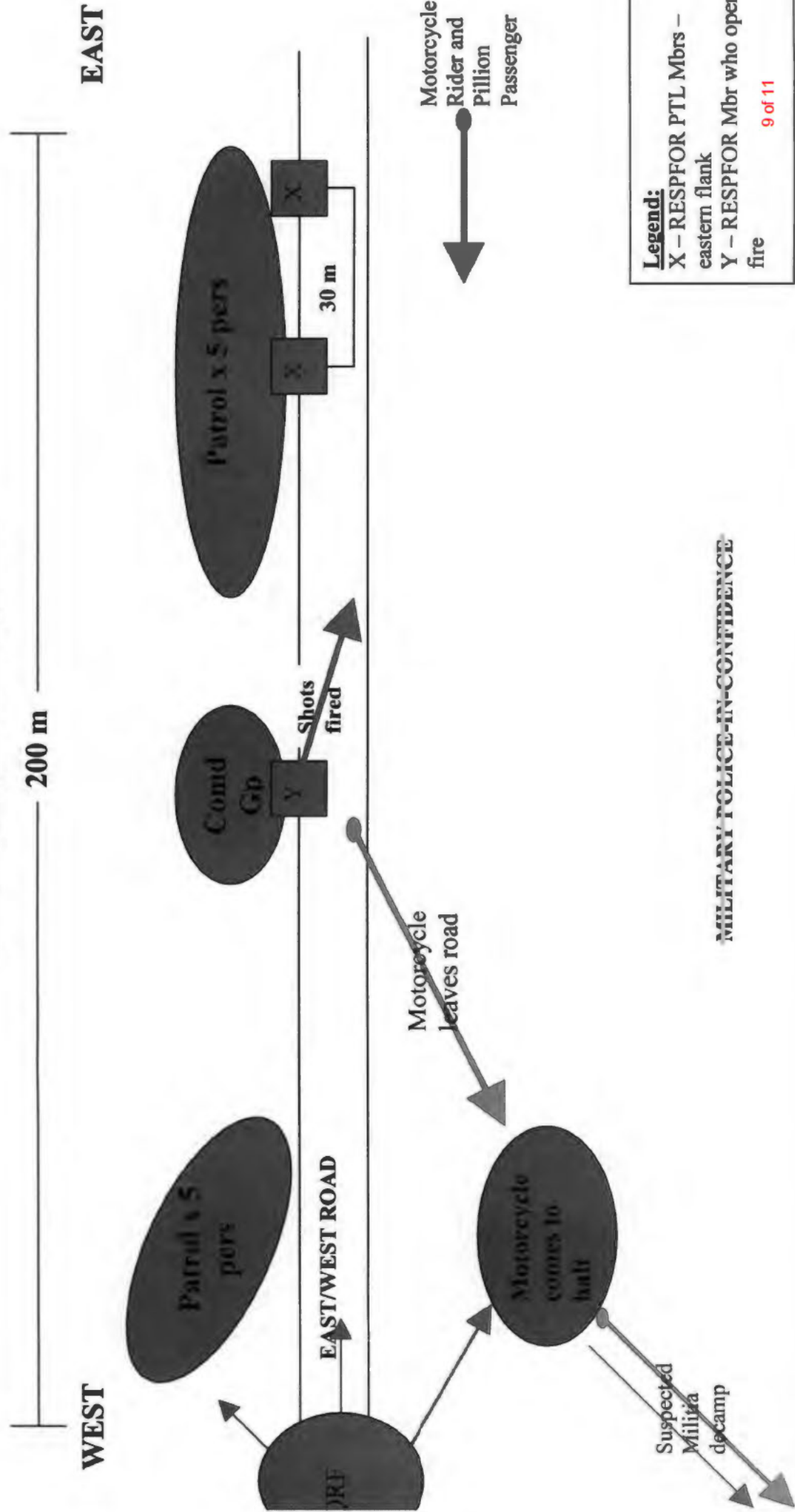
A. Watabe RESPFOR Patrol Dispositions

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ANNEX A
SERVICE POLICE REPORT
DATED 15 NOV 02

WATABE - RESPFOR PTL DISPOSITION



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ALLEGATION - Table of Contents
1 OF

| <i>Name Initials</i> | <i>Service no.</i> | <i>Rank</i> | <i>Statement/ROC</i> |
|----------------------|--------------------|-------------|----------------------|
| SOLDIER 'A' | | | STATEMENT |
| SOLDIER 'C' | | | STATEMENT |
| SOLDIER 'D' | | | STATEMENT |
| SOLDIER 'E' | | | STATEMENT |
| SOLDIER 'F' | | | STATEMENT |
| SOLDIER 'H' | | | STATEMENT |
| SOLDIER 'I' | | | STATEMENT |
| SOLDIER 'J' | | | STATEMENT |
| SOLDIER 'K' | | | STATEMENT |
| SOLDIER 'L' | | | STATEMENT |
| SOLDIER 'Q' | | | STATEMENT |
| SOLDIER 'R' | | | STATEMENT |
| SOLDIER 'S' | | | STATEMENT |
| SOLDIER 'T' | | | STATEMENT |
| SOLDIER 'U' | | | STATEMENT |
| SOLDIER 'W' | | | STATEMENT |

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TO: MPCRO
TEL: (02) 93393072
FAX: (02) 93392671

FROM HQ 5 MP COY (SIB)
TEL: (02) 62661759
FAX:

(TO BE TRANSMITTED TO MPCRO WITHIN 24 HOURS OF RECEIVING COMPLAINT)

INFORMATION FOR MP GAZETTE

| INVST NO | COMPLAINANTS UNIT | INVST |
|-----------------|-------------------|---------|
| HQ5MP /10/ 2001 | AHQ | s47E(d) |

| OFFENCE | LOCATION WHERE OFFENCE COMMITTED |
|-----------------|----------------------------------|
| Special Enquiry | Watabe, EM |

| DATE/TIME OFFENCE COMMITTED | DATE/TIME REPORTED TO RACMP |
|-----------------------------|-----------------------------|
| Oct 99 | May 01 |

| COMMAND CODE | | OWNERSHIP | STOLEN | DAMAGE |
|--------------|--|-----------|--------|--------|
| LAND | <input checked="" type="checkbox"/> AHQ <input type="checkbox"/> | SVC | | |
| SC(A)-A | DCS/DPE <input type="checkbox"/> | | | |
| TRG | <input type="checkbox"/> Other <input type="checkbox"/> | PERS | | |

| DESCRIPTION OF PROPERTY | PROPERTY TAKEN FROM |
|-------------------------|---------------------|
| | |

| PARTICULARS OF OFFENCE |
|---------------------------|
| EM investigation. s47E(d) |

| SUSPECT/OFFENDERS | | | | | | | |
|-------------------|------|---------|-------|------|-----|-----|----------|
| SVC NO | RANK | SURNAME | INITI | UNIT | DOB | DOE | ARA/GRES |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

| MPCRO USE ONLY | | |
|----------------|-------------------|------------------|
| GAZETTE NO | DATA BASE | SENSITIVE |
| CRIME CODE s22 | DATE ENTERED | SEX |
| CHECKED BY: | OPERATOR INITIALS | ARMS/AMMO |
| SM INVST | INFO PASSED TO | DATE/TIME PASSED |

22/11

s22

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BRIEF FOR COMD SO COMD

STATUS OF EM SPECIAL INVESTIGATION

Purpose

- The purpose of this brief is to inform you of the status of the EM Special Investigation.

Investigation

- s22 [REDACTED]

b. final report on allegation of breach of ROE at Watabe by RESFOR troops; and

s22 [REDACTED]

Legal Advice

s42 [REDACTED]

s22 [REDACTED]

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Watabe Incident

- The incident involves a potential breach to the ROE by firing on a motorcycle at Watabe on 19 Oct 99 by s47E(d) s47E(d)¹ and s47E(d).
- An impromptu roadblock was established to intercept militia members. A motor cycle approached the roadblock travelling from E to W. Two RESFOR troopers attempted to stop the MC by gesturing and yelling. It did not stop.
- s47E(d) ordered s47E(d) to stop the MC. s47E(d) aimed low and fired on the MC and hit the front tire. s47E(d) also fired. Bike crashed and the two passengers ran away.
- NZ SAS witnesses believed that the firing was automatic and possibly Minimi. They were tasked to follow up blood trails heading off into the bush.
- s47E(d) reported all detail on the radio and believed that since he reported all details, it was not necessary to provide these details on the patrol report.

s42



¹ s47E(d) has not provided a statement.

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Prepared by: s47E(d)

DPERSOPS-A

s47E(d)

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OPINION - THE WATABE ALLEGATIONS

s42



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AUSTRALIAN ARMY
SPECIAL OPERATIONS HEADQUARTERS

Building 130 Garden Island SYDNEY NSW 2000

SO506-1-1
HQSOC 10131/2003

Lieutenant General P.F. Leahy, AO
Chief of Army
R1-4-024
Russell Offices
CANBERRA ACT 2600

INVESTIGATION INTO MOTORCYCLE INCIDENT AT WATABE - EAST TIMOR

I have had the incident with the motorcycle at Watabe investigated with a view to bringing closure. I have read the Investigating Officer's Report (IOR) and noted his conclusions and recommendations.


s42

in light of the operational conditions and experience of the patrol members involved in the days and hours leading up to the incident. s47E(d) stated that he thought the pillion passenger had a "...rifle or similar weapon, later identified as a long black machete..." The pillion passenger is recorded as carrying a bag the same as one previously found to contain grenades. All those at the site appear to agree that there was a strong nexus between the motorcycle and the militia. Furthermore, in accordance with the "Rules of Arrest, Disarm and Detention" I am of the view that the use of graduated force and escalated warning has been properly applied up to and including the application of aimed shots to disable the motorcycle.

With respect to the shortcomings in patrol reporting I am of the view that there is a clear failure in staff procedures. There is no evidence to conclude that any member attempted to deceive or cover any action by not including this contact in the written report. Therefore, I do not believe administrative action can or should be taken against any individual, nevertheless, the reports were clearly inadequate. The Commanding Officer of the Special Air Service Regiment will be instructed to adjust relevant courses to ensure better levels of operational patrol reporting in the future.

It is my view that the matter of the motorcycle incident has been thoroughly investigated and a full range of witnesses canvassed. Accordingly, I believe the patrol acted within the limits of the standing arrangements governing the use of force in that circumstance and no further action should be taken against any member. SASR will be directed to adjust the training packages on operational patrol reporting to ensure a more complete product.

It is my view that the members of the patrol generally acted commendably throughout this operation and I acknowledge their achievements. Furthermore, individuals have been the subjects of an extended and long drawn out investigation I acknowledge their anxiety and commend their patience.

Yours sincerely,
s22 

D.E. LEWIS DSC CSC
Major General
Special Operations Commander

Tel: s47E(d)  Fax: s47E(d) 

19 March 2003