



**The Australian Peacekeeper & Peacemaker Veterans' Association
(Incorporated in Victoria),
National Executive**

**Ministerial Submission
For the Reclassification of OPERATION ASTUTE – JTF 631,
TIMOR LESTE,
From Non-warlike to Warlike Service.**

1. Introduction.

1.1 The Australian Peacekeeper & Peacemaker Veterans' Association Incorporated (APPVA), is a not for profit Ex-Service Organisation (ESO), providing welfare, entitlement assistance, peer support, caring for the wellbeing and advocacy of Younger Veterans Post 1975, inclusive of current and ex-serving members of the Australian Defence Force (ADF)

1.2 The APPVA also represents matters of our constituency and membership to the highest levels of Government. The APPVA has been successful in the Reclassification of service in Rwanda to Warlike Service (February 2006) and reclassification of Peacetime Service of the Australian Training Support Team in East Timor (17 October 2007).

1.3 The APPVA has had a number of other successful representations and remains in a consultative manner and open dialogue with the Department of Veterans' Affairs, Ministers, Senators and the Chief of the Australian Defence Force.

2. Background.

2.1 Classification of OPERATION ASTUTE – TIMOR LESTE JOINT TASK FORCE 631 (JTF 631), commencing 12 May 2006. Current serving members who have served in both INTERFET, and/or The United Nations Transitional Authority in East Timor (UNTAET) have commented that OP ASTUTE, as been more dangerous than that of service during INTERFET and UNTAET. Both INTERFET and UNTAET were classified as WLS. OP ASTUTE was classified as NWLS, with the Minister for Defence, Dr Brendan Nelson, visiting troops shortly after their insertion to announce the unwanted news of the classification of OP ASTUTE being NWLS. This had considerable effect

toward the morale of the Soldiers and continues as a matter of concern for those who have served on JTF 631.

2.2 The general comments by these current serving members was that they strongly believed that they were entitled to Warlike service, as the situation in Timor Leste was significantly more dangerous in comparison to their warlike service with INTERFET, and/or UNTAET and/or UNMISSET.

2.3 Further discussions with recently returned members and those who were in the preceding deployments confirm that the operational environment posed Incurred Danger, during the deployments. These dangers will be further explained in this paper.

2.4 Mr Downer, describing the situation for Australian troops to an interviewer on May 25, 2006, said, "It is quite dangerous. I wouldn't want to underestimate that. It is quite dangerous. There were 1,400 people in their defence force, and they [the East Timorese Government] sacked 595 of them, and there is a small number of police and perhaps some military personnel who have gone over to support those people. So you probably have somewhere around 650-700 personnel who could be categorised as falling into the camp of the rebels. So it's a lot of people. Some of them have weapons - not all of them - but it is a dangerous environment."¹

2.5 According to Mr Downer the personnel went on strike because of a dispute over pay and promotion and other issues. When this dispute was not resolved the soldiers and some police were then sacked as a result of going on strike for insubordination. He described the situation as much more of an insurrection and more of a breakdown of law and order "than an environment which you could describe as a civil war."²

2.6 Former Shadow Minister for Defence, Robert McClelland released a transcript on 8 June, 2006 of an ABC Radio interview with Madonna King, condemning the Howard Government's non-warlike classification of OP ASTUTE.³

2.7 Mr McClelland was publicly critical of the fact the operation was determined to be non-warlike – stating in his ABC interview in June 2006, "... if anyone tells me what they doing is not active service then they would have a lot of explaining to do...."

2.8 Former Prime Minister, John Howard, told media that Australian troops may have casualties in Timor-Leste:

"This is a dangerous mission and a dangerous situation and we must not walk away from the possibility that casualties could be suffered by the forces that go to Timor-Leste," he said to CNN and other Asian based media.

¹ UN welcomes intervention in East Timor - Friday 26 May 2006, UN Media Centre.

² *Ibid.*

³ Australian Labor Party: transcript ABC 612 Brisbane interview with Robert McClelland MP Shadow Minister for Defence 8 June 2006

*"Nobody should assume that it's just a simple walk-in-the-park military operation."*⁴

3. First Deployment to JTF 631.

3.1 The Australian deployment to Timor Leste followed the receipt of a formal request for military assistance to the Australian Government on Wednesday evening 24th May 2006. On the 26th of May 2006, the ADF deployed Joint Task Force 631 to Timor Leste. JTF 631, was commanded by BRIG Mick Slater, who was the Brigade Commander of 3 Brigade based in Townsville. A number of ADF assets were initially deployed:

- 3.1.1 Ground forces in Timor Leste numbered around 450 and included a Commando Company from the Sydney-based 4th Battalion, Royal Australian Regiment and a Rifle Company Group from the Sydney-based 3rd Battalion, Royal Australian Regiment. They have secured Comoro Airport at Dili as a point of entry for follow-on ADF forces. Ground Forces then increased to 1300 on 28 May 06, with a total of 3,000 deployed ADF members in support of JTF631
- 3.1.2 Four Black Hawk helicopters from the Army's Townsville-based 5th Aviation Regiment have also arrived in Dili and provided air support to the ground forces in location.
- 3.1.3 Follow-on forces from the Sydney-based 3rd Battalion, Royal Australian Regiment, were sent en-route to Timor Leste by air and sea.
- 3.1.4 The Guided Missile Frigate HMAS Adelaide remained on station in Dili Harbour and is prepared to support ground operations.
- 3.1.5 The Amphibious Landing Ship HMAS Kanimbla was positioned off the south coast of Timor Leste and provided medical, communication, accommodation and various support facilities as required.
- 3.1.6 The Heavy Landing Ship HMAS Tobruk steamed to Dili and arrived early on 29 May.
- 3.1.7 The Amphibious Landing Ship HMAS Manoora sailed to Dili and arrived on the afternoon of 27 May.

⁴ E. Timor "no walk in the park" CNN 28 May 2006

3.1.8 The Auxiliary Oiler HMAS Success was positioned in the Timor Sea providing support to the deployed RAN fleet units.

3.1.9 The Landing Craft Heavy ships HMAS Balikpapan and HMAS Tarakan also supported the deployment.⁵

3.2 Upon deployment of the ADF assets, the situation was described as lawless, violent, and the country deteriorating into chaos. Ground forces were actively engaged in security operations in Dili, including acting against outbreaks of communal and gang violence.

3.3 As well as securing key areas in Dili, the Australian forces have continued to facilitate the evacuation of Australian and other approved foreign nationals. To date Australian forces have assisted in the repatriation of 491 Australians and other foreign nationals, while simultaneously continuing to provide a vital air bridge between Darwin and Timor Leste.

3.4 The ADF successfully secured priority areas that included the Comorro Airport, the UN Headquarters and the Police Headquarters. ADF forces have also been deployed to the Presidential Palace and Parliamentary Complex to counter localised violence.

3.5 The Dili wharf precinct was secured and under ADF control. In securing the port a number of weapons from gangs in the area were confiscated. The weapons included hand-made knives, swords and small arms. Disembarkation of follow-on forces and equipment arriving by sea continued within the wharf precinct. As well as direct military action, ADF personnel visited churches and other areas where displaced Timorese citizens have gathered for safety, and informed them of ADF intentions.⁶

3.6 The situation on the ground in Dili remained dangerous. Armed groups are continuing to destroy property and threaten people. Australian, along with New Zealand and Malaysian troops were responding with appropriate force.

3.7 The Australian Task Force continued to expand its area of influence and control, and disarmed and countered attempts to delay or obstruct the re-establishment of law and order for the people of Timor Leste.⁷

3.8 Ground forces remained actively engaged in security operations in the Timor Leste capital, which included the suppression of communal and criminal gang violence. Patrols confiscated in excess of 200 weapons as of 29 May 06. The ADF was confronted with a new paradigm. That was crowd control and riot control, of which the soldiers

⁵ Defence Media Mail List CPA 099/06 Friday, 26 May 2006 CURRENT ADF COMMITMENT TO OPERATION ASTUTE.

⁶ Defence Media Mail CPA 102/06, Sunday, 28 May 2006, UPDATE - ADF CONTRIBUTION TO OP ASTUTE.

⁷ Defence Media Mail CPA 105/06, Monday, 29 May 2006, ADF OPERATIONAL UPDATE - OP ASTUTE

were inadequately trained and equipped to adequately suppress and control these situations. It became evident that a closer relationship with the deployed Police was required.

3.9 The “incurred danger” toward ADF members was most evident, in particular the first 5 weeks of the lodgement and active engagement with rebels, rioters and disarmament. During this period was also the threat of the Rebels under the control of “Major” Alfredo Reinaldo, who later escaped custody on 7 September 2006.

4. The United Nations Security Council Resolution SC8817 UNMIT 26 August 2006.

4.1 Expressing its concern over the still fragile security, political and humanitarian situation in Timor-Leste, the Security Council established a new, expanded operation to take over from the then current United Nations Office in Timor-Leste (UNOTL), the mandate of which was to on the day of the United Nations Security Council Resolution (UNSCR) for the UN Integrated Mission in Timor-Leste (UNMIT).

4.2 In light of the threat posed by weapons unaccounted for and the significant number of internally displaced persons, the Council, by unanimously adopting resolution 1704 (2006), decided to establish the United Nations Integrated Mission in Timor-Leste (UNMIT) for an initial period of six months, with the intention to renew. The Mission would consist of an appropriate civilian component, including up to 1,608 police personnel, and an initial component of up to 34 military liaison and staff officers.

4.3 In its resolution, the Council called upon the international security forces (from Australia, Malaysia, New Zealand and Portugal, sent to Timor Leste after the April and May violence) to fully cooperate with and provide assistance to UNMIT for the implementation of its mandate.

4.4 The UNMIT Mandate required the International Security Force (ISF) to ensure, within its capability and areas of deployment, and in coordination with the international security forces, the security and freedom of movement of United Nations and associated personnel, and protect United Nations personnel, facilities, installations and equipment and humanitarian assets associated with the operation.

4.5 Within the UNMIT Mandate,

item 5: “*Calls upon* the international security forces to fully cooperate with and provide assistance to UNMIT for the implementation of the mandate”; and

item 6: “*Requests* that the Secretary-General and the Government of the Democratic Republic of Timor-Leste conclude a status-of-forces agreement within 30 days of adoption of this resolution, taking into consideration General Assembly resolution 60/123 on the safety and security of humanitarian personnel and protection of United Nations personnel, and *decides* that pending conclusion of such agreement, the agreement between the Government of the Democratic

Republic of Timor-Leste and the United Nations Concerning the Status of the United Nations Mission of Support in East Timor (UNMISET) dated 20 May 2002 shall apply provisionally, mutatis mutandis, in respect of UNMIT.”⁸

4.6 Within the UNSCR SC 8817 (UNMIT 26 Aug 06), the Secretary General of the UN also noted: “..the existence of challenges to the short- and long-term security and stability of an independent Timor-Leste, and determining that preserving the country’s stability is necessary for the maintenance of peace and security in the region.”

4.7 With the UNMIT Mandate, it was widely acknowledged that Timor Leste was in a continual problematic situation, particularly toward security and protection of personnel, humanitarian workers within the UNMIT Mission. This responsibility was placed on the ISF.

4.8 Whilst the Rules of Engagement (ROE) and the Orders for Opening Fire (OFOF) were restricted, the ROE provided the ISF the ability to self-protect, along with further engagement of rebels and other belligerents, in a number of cases ending in the deaths of these belligerents in attempts to attack ADF members of ISF.

5. Views of JTF 631 inaugural Commander – BRIG Mick Slater DSC, CSC.

5.1 It is quoted by the original Commander of JTF 631 Brigadier Mick Slater DSC, CSC, who was formally the Commanding Officer of the 2nd Battalion Royal Australian Regiment (2RAR), during INTERFET, stated that in comparison to his tour in September 1999 that *“I believe that the situation that was faced in the first 5 days here this time was, in some significant ways, more complex and uncertain than the situation we faced in 1999. It needs to be remembered that we essentially conducted a permissive entry in 1999, and while there was a degree of uncertainty, the vital cooperation of TNI ensured that we were able to achieve a rapid build-up of forces without serious incident.”*

5.2 Brigadier Slater continues: *“This time there was no cohesive force on the ground that could guarantee security while we attempted to get a firm foot in place, and there was far more actual violence within Dili. In other words, we had to assume that our lodgement could be contested and our plan reflected that.”*

*”Secondly, the range of actors with arms of varying types – from military assault weapons through to melee weapons such as swords, machetes, and even darts fired from slingshots was quite bewildering. It was a very demanding environment, and the complexity was increased because many of the instruments of the state had collapsed. We had few reliable, legitimate sources of information about the range of actors rampaging through Dili when we arrived.”*⁹

⁸ UNSCR SC8817 UNMIT 26 Aug 06.

⁹ *“Point Blank”* An Interview with Brigadier Mick Slater, Commander JTF 631, Australian Army Journal, Volume III, Number 2, Winter 2006.

5.3 Consistent with Brigadier Slater's comments, is justification for further investigation and consideration that the service with OPERATION ASTUTE should be reclassified as Warlike Service. This has been pertinent with the recent attacks against Australians by youths with steel arrows and the cordon and search operations tracking the Rebel Leader "Major" Alfredo Reinado.

6. The Rebel Group.

6.1 The rebel group were a formed trained body, with access to military weapons and explosives such as grenades and were engaged in the unrest from April 2006. Despite the Presidential decree allowing Reinado and his group freedom of movement and freedom from arrest during the dialogue period, there remained a real threat to ISF which was highlighted in a number of incidents through 2007 and early 2008.

6.2 The gang violence and civil unrest in the suburbs and IDP camps formed an additional layer in the continual deterioration in the wider security environment.

7. Drawdown of the Force 3 August 2006.

7.1 Australian forces had been working closely with the Timorese Government, and forces from Malaysia, New Zealand and Portugal to stabilise the security situation and facilitate the separation of the various conflicting groups back into safe and secure locations. In the two months since they deployed, the streets of Dili had been transformed from chaos to relative calm with business beginning to return to normal. This situation allowed Timorese leaders to begin to work through a range of complex issues.

7.2 Although some personnel and equipment returned to Australia, a robust Australian military force was to remain in Timor-Leste. Australia was committed to providing a stable environment to enable the people of Timor-Leste to resolve the issues that have caused recent tensions peacefully.

7.3 Naval assets involved in the sustainment of the initial deployment including HMAS Kanimbla and three Army Blackhawk helicopters returned to Australia. Over the next few weeks it was planned that an infantry company, about 23 Armoured Personnel Carriers (APC) and crews, and some logistic and headquarters staff will also return.

7.4 These reductions left a capable Australian force of around 2000 in Timor-Leste based on a reduced infantry battalion group, with APC and helicopter support.¹⁰

8. Increase of the Force 7th September 2006.

8.1 The ADF deployed an additional 120 strong infantry company group to Dili to address current uncertainty and prevent deterioration in the general security situation in Timor-Leste following the escape of Alfredo Reinado on 30 August.

¹⁰ Defence Media Mail, Thursday, 3 August 2006, 116/2006.

8.2 The soldiers from 1 RAR, reinforced the ADF and New Zealand military personnel currently supporting the International Police. The International police, supported by the multi-national force (ISF), did everything in their power to recapture Reinado and the other prisoners as quickly as possible.

8.3 The escape of Alfredo Reinado and 56 other prisoners from Becora prison added an unpredictable element to the situation in Timor-Leste. The ADF deployed additional personnel to provide greater flexibility in responding to potential security threats.¹¹

8.4 Therefore, just after a month of the draw-down of troops in Timor Leste in early August 2006, the security situation dramatically changed, of which reinforcements were required to supplement the security force on the ground. The threat added another dimension to the incurred danger of ADF members, by having an armed adversary operating with the aim to destabilize the country.

9. Continual Engagement.

9.1 The ADF maintained its presence in Timor Leste, as the situation was relatively unstable. The ISF, which included Australian, Malaysian, New Zealand and Portuguese troops. The ISF, was the continual engagement of JTF 631 OP ASTUTE.

9.2 An interesting development, which was also used in the Regional Assistance Mission in the Solomon Islands (RAMSI), was the involvement of the ADF working alongside the Australian Federal Police (AFP) International Deployment Group (IDG). The Police conducted their duties, of which the army provided protection to the Police Officers. This was an advantage, particularly during riots, of which the initial force that was lodged in May 2006, were simply not trained or equipped to quell riots, which occurred regularly.

9.3 While responding to a disturbance at the Dili Airport Internally Displaced Persons (IDP) Camp at approximately 8.50am on 23 February 2007, ADF soldiers were attacked with steel arrows, which are potentially lethal weapons. On two occasions during the incident, ADF soldiers were required to defend themselves by firing at the attackers.

9.4 ADF personnel in Timor-Leste operated under strict rules of engagement. These rules allowed ADF soldiers to defend themselves, and other persons whom they are assigned to protect.¹²

9.5 Timor erupted into violence on the 5th of March 2007, as Alfredo Reinado flees a raid by ADF soldiers. Security forces in East Timor were bracing for escalating violence

¹¹ Defence Media Mail, CPA 234/06, Thursday, 7 September 2006, DEPLOYMENT OF TROOPS TO TIMOR LESTE

¹² Defence Media Mail, CPA 043/07, Saturday, 24 February 2007, SHOOTING INCIDENT AT DILI AIRPORT UPDATE

after Australian soldiers killed four Timorese men in a raid to capture the rebel leader Alfredo Reinado.

9.6 After Reinado was said to have humiliated the Australians during this raid, the Minister for Foreign Affairs, Alexander Downer, who was in Indonesia, warned that the soldiers would capture the rebel dead or alive. "Every effort will be made to capture him alive, but I think the best advice I can give Major Reinado is to surrender. He can hide in the jungle for only so long," he said.

9.7 The United Nations on 4th March 2007, ordered police in East Timor's provincial towns to the capital, Dili, to reinforce the more than 1000 UN police already deployed there. Reinado's supporters gathered across the city, after riots earlier in the day. People enraged by the raid had also rioted in the towns of Gleno and Ermera.

9.8 Reinado and some of his men escaped from a hilltop base during a 90-minute gun battle. Australian personnel were last night hunting Reinado on foot in East Timor's rugged central mountains. He fled the base in the town of Same as dozens of soldiers, backed by two Black Hawk helicopters and three armoured personnel carriers, launched an attack in darkness early on the 4th March.

9.9 But the Australian-trained rebel knew they were coming and had sent at least six phone messages to journalists and diplomats. "We are on alert to take any kind of attack," he said shortly before the assault. Reinado and an unknown number of his men managed to escape even though the Australians were more heavily armed, had the benefit of night-vision equipment and had blockaded the base for six days.

9.10 Gastao Salsinha, the commander of 700 soldiers sacked from East Timor's army last year, told the Herald from a village where he was hiding that after his escape he and his men had now "dedicated our lives" to fight for the rights of East Timor's 1 million people. "How can the Australians come here and create instability?" he asked.

9.11 Salsinha said he escaped with two bodyguards and seven youths as the Australians stormed the base firing automatic weapons, but did not say how. He said he did not know what had happened to Reinado, but would not be surprised if he had been wounded in the fierce battle. The rebel leader's escape emboldened his supporters, who chanted "long live Reinado" as they fought running battles with UN police on the streets of Dili.

9.12 Rioters trashed cars and two government buildings in Dili and Gleno, a small town in East Timor's coffee-growing western mountains where Reinado grew up. His escape will also boost the popularity of the former head of East Timor's military police, already a cult-hero figure throughout the country. Banners and placards declaring him a hero were put up in many of Dili's suburbs.

9.13 The Howard Government, fearing widespread violence, possibly even civil war, flew a 100-strong contingent of SAS troops to East Timor less than 24 hours before the

attack, which had the approval of the Timorese Government.

9.14 Australia already had 800 soldiers in the country, serving with 120 New Zealanders within the ISF. The force's commander, Mal Rerden, said in Dili that soldiers killed the four Timorese men because they were armed and "posed an unpredictable threat."¹³

9.15 "We don't have him," a grim Brigadier Rerden told journalists, referring to Reinado. "We are continuing the operation to capture him." Brigadier Rerden said his troops had cleared Reinado's base and captured some prisoners.

9.16 In telephone conversations with the Herald, Reinado repeatedly warned that East Timor would plunge into civil war if the Australian troops attacked him. He told the Timorese Prosecutor-General, Longuinhos Monteiro that he would surrender on the condition that he would be able to take care of his own security in Dili while waiting to testify at a specially convened tribunal about his role in violent upheaval in 2006, prior to the arrival of the ADF troops in May 2006.

9.17 The government in Dili rejected the condition. Wanted on charges of murder and rebellion, Reinado was on the run since he led a mass escape from Dili's main gaol early September gaol in 2006. Only hours after the attack, East Timor's President, Xanana Gusmao, appealed for calm in a televised address to the nation, saying "the interests of the state are bigger than any one person or group".

9.18 Mr Gusmao asked Brigadier Rerden to mount an operation to capture Reinado after he had led a raid on police border posts last weekend and seized 25 high-powered weapons and other military equipment. He promised Reinado that if he and his men surrendered "the state will look after their dignity".

9.19 "But there is no other way. The only way is to hand over their weapons and surrender." Brigadier Rerden also made a new appeal for Reinado to hand over his weapons and surrender. He said if Reinado did not surrender the consequences would be his responsibility.

9.20 Mr Downer denied the failure to capture Reinado and increased unrest on the streets of Dili threatened plans to hold elections next month for a new Timorese president. "You can't have a situation in the face of the strongly expressed preference of the Prime Minister, President and president of the parliament, where a renegade former military officer is able to raid police stations, take weapons from police stations, which they have done, and basically build an armed compound," Mr Downer said.

9.21 Speaking on his arrival in Indonesia on the 4th March 2007 for a counter-terrorism summit, Mr Downer said a written request for Australian troops to apprehend Reinado had come signed by Mr Gusmao and the Timorese Prime Minister, Jose Ramos-Horta.

¹³ "Sleepless in Dili – an expat's account p.10, 5th March 2007.

9.22 Following the failed apprehension attempts at Same and in an effort to avoid further bloodshed, President Horta, following his election in May 2007, issued a decree of 19 June 2007 guaranteeing freedom of movement and freedom from arrest of Reinado and his group for the duration of the dialogue.

9.23 President Horta issued another decree on 19 October 2007, again emphasising to the ISF and UNPOL Reinado's freedom of movement during the negotiation period.

10. Ongoing Belligerent Activities and Confrontation.

10.1 The period of 19 June 2007 to 6 February 2008 could be viewed as one of relative calm in comparison to the previous twelve months. Negotiations, involving Swiss based Centre for Humanitarian Dialogue (HD Centre), took place between President Horta and Reinado at points around the country, including a crucial initial meeting on 19 August 2007.¹⁴

10.2 However, the election period, which also saw Xanana Gusmao installed as Prime Minister, was marked by ongoing violence between rival political supporters in 9 of the 13 Districts with a quarter of the total incidents recorded in Baucau.¹⁵

10.3 This violence, which was responded to by the ISF in support of UNPOL and the PNTL, included the burning of houses and government buildings, the vandalizing of schools, the stoning of cars, civilian injuries and deaths. The ongoing gang violence was also constant over this period and intertwined with post election violence.

10.4 Despite the agreement with UNMIT for the ISF to be the third tier response, providing support to the PNTL and UNPOL, quite often the ISF found itself as the primary response by virtue of being on location at the time of the incident.

10.5 The period of 19 June 2007 – 6 February 2008 was marked by a number of events brought about by Reinado and his group failing to remain in cantonment in the Ermera District.

10.6 During this period, Australian forces had a number of non-intentional confrontations with Reinado and the rebel group while on designated patrol routes. A number of these contacts resulted in weapons being raised at the Australian patrols, who withdrew to avoid any potential escalation.

10.7 It appeared that some of these contacts were deliberately caused by Reinado approaching with weapons postured in order to generate a hostile reaction from the Australian forces.

¹⁴ Timor Leste – activities – www.hdcentre.org

¹⁵ Monitoring Election Violence in East Timor – ACE – The Electoral Knowledge Network – www.aceproject.org

10.8 An UNMIT report on Human Rights Developments in Timor Leste 1 September 2007 – 30 June 2008¹⁵ states that during late 2007 and early 2008 the overall security situation in the country, particularly in Dili, had improved significantly.

10.9 This assessment relates to a decrease in such incidents as rock throwing and general gang violence, not the increasing issues with the rebels.

10.10 At this point, the ISF disposition at the end of 2007 and into 2008 was five rifle company strength under Timor Leste Battle Group 3, four armoured personnel carriers and combat support. The Timor Leste Aviation Group assets consisted of two RNZAF Iroquois, two Australian Army Black Hawks and two Heavy-lift Hueys under PDL Toll. These assets were under the command of HQ JTF 631.

10.11 On the night of 5 October, 2007, a hand grenade was thrown over the wall into the Defence Cooperation Program compound near the Australian Embassy – with nil injuries and only minor damage.

11. Escalation of Belligerent Activity.

11.1 Escalation of tensions with the rebel group led to an incident at the village of LuaLa on 6 February, 2008, where the rebel group fired shots towards an Australian patrol. In the group was Alfredo Reinado, members of the HD Centre and three politicians from the National Parliament.

11.2 This was a situation that could have easily degenerated into open conflict with casualties. It was only due to the restraint shown by the ADF that wounds or fatalities were avoided.

11.3 In this timeframe, Prime Minister Xanana Gusmao had arranged for the remaining petitioners to come into Dili for negotiations with the Government. This also served to increase tensions with the rebel group, with Reinado wanting to be seen as the lead negotiator with the Government on their behalf.

11.4 The petitioner camp at Artak Laran was attacked with an explosive device on the night of 7 February, followed by another grenade attack the next night on Camp Phoenix – the ISF headquarters at Caicoli, Dili. This attack again caused nil casualties and minor damage to nearby vehicles.

11.5 The events of February 11 with the attacks on President Horta and Prime Minister Gusmao are well documented. Immediately following the attacks, the ISF conducted offensive operations in Dili and around the village of Dare over the 13 – 15 February 2008.

¹⁵ UNMIT: Report on human rights developments in Timor Leste: the security sector and access to justice 1 September 2007 – 30 June 2008.

11.6 It was also on 13 February 2008, Prime Minister Gusmao wrote to COMD JTF 631 with a formal request under the Status of Forces Agreement seeking assistance in “locating and apprehending persons suspected of involvement in the attempted murder of the President and Prime Minister of Timor Leste and associates of the now deceased Major Alfredo Reinado who represent a continuing threat to the security and stability in Timor Leste.”

12. A State of Siege.

12.1 Additional support was sent into Timor in the form of an additional rifle company from 3RAR, HMAS Perth and SASR – the second required surge due to continually changing security environment in Timor Leste in two years. An AFP IDG contingent with crowd control capability was also sent to Timor during the same time frame.

12.2 While Timor Leste didn’t descend back into the chaos of 2006 following the February 11 attacks, the ISF conducted offensive operations across a number of Districts in liaison with the joint PNTL and F-FDTL Operation Halibur in an effort to apprehend Gastao Salsinha.

12.3 A State of Siege was declared by the Timor Leste Government, which involved restriction of movement and curfews for the public. The dates of the State of Siege (SoS) were as follows:

11 Feb 08: SoS declared for 48 hrs;
 13 Feb 08: extended for 10 days;
 23 Feb 08: extended for 30 days;
 23 Mar 08: extended for 30 days in seven western districts;
 23 Apr 08: extended for 30 days for Ermera district only; and
 SoS expired 22 May 08

12.4 The States of Siege were enforced by the PNTL, F-FDTL, UNPOL and the ISF.

12.5 The operations to apprehend the remaining rebels has been described as counter-insurgency security operation and arguably, the situation could be described as a "three block war" (minus conventional war), with peacekeeping and humanitarian assistance side by side with an insurgency, a broken down civil situation and a high violent crime situation.

12.6 The incurred danger to ADF Troops remained for some time after the raid on Reinaldo’s base.

13. Incurred Danger Test.

13.1 The test for “danger” is objective, rather than subjective. On appeal to the *Repatriation Commission v Thompson* (1988), the Full Federal Court stated what has become the most cited test for “incurred danger”:

The words “incurred danger” therefore provide an objective, not a subjective, test. A serviceman (or woman) 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 (at 9 AAR 203).¹⁶

13.2 The Actual or potential danger has been tested with the case of the *Repatriation Commission v Thompson* (1988); the Full Federal Court held that there must be actual danger. The Full Federal Court referred to the word “danger” and “substantial”. But the word “danger” stands for itself. If a serviceman incurs danger from hostile enemy forces, that circumstance is sufficient to satisfy the statutory requirement (at 355).¹⁷

13.3 Following from the definition of Incurred Danger, the Court commented:

Danger is not incurred unless the serviceman is exposed, at risk of or in peril of harm or injury. (at 356).

13.4 And further, the Court commented “[*Danger*] must arise as a direct result of the activities of hostile forces of the enemy..... There must be established an actual risk of physical or mental harm” (at 356-57)¹⁸

13.5 The **Length of time** danger is incurred has been interpreted in the case of *Crawford and Repatriation Commission* (1987), The Tribunal noted that the Act did not state, nor was it necessary to determine, whether danger needed to be measured in minutes, hours, days or even longer. That view would be preferable to the view *Re Howlett and Repatriation Commission* (1987) in which the Tribunal found that danger must be faced during a substantial (or, at the very least, a not insignificant) period of time.

14. The Decision of the Conditions of Service of Non-warlike Service.

14.1 It is felt that the decision made by Dr Brendan Nelson, the then Minister for Defence, and announced it to the troops in East Timor was premature in relation to the nature of service, in comparison to the evidence provided within this paper.

14.2 It is abundantly clear that the previous Federal Government had made the wrong classification of service for OP ASTUTE, without consideration toward the incurred danger test and potential belligerent activities and confrontation.

14.3 The testimonials from the former Foreign Minister, Alexander Downer and the

¹⁶ *Veterans’ Entitlement Law*, Creyke, Sutherland and Ridge, The Federation Press and Softlaw Community Projects, 2000, p124.

¹⁷ *Veterans’ Entitlement Law*, Creyke, Sutherland and Ridge, The Federation Press and Softlaw Community Projects, 2000, p125.

¹⁸ *Ibid* p125.

JTF 631 Commander, indicate the degree of danger, insecurity, instability and threat toward ADF members serving with Ground forces.

14.4 It has also been disclosed that the Returned & Services League (RSL) supported the Howard Government decision at the time of Minister Nelson's visit to Dili.¹⁹ This organisation (APPVA) believes that there has been inadequate consideration toward the dangers of the service on OP ASTUTE, particularly in a range of periods of significance, that presented high risk and danger to the ADF ground Forces.

14.5 A final consideration is toward the classification of service for those Australian Federal Police (AFP), International Deployment Group (IDG) members who were serving alongside the ADF members during the periods of crisis and the State of Siege.

14.6 It has been noted that service beyond 12 May 2006 has not included the AFP IDG Contingent, particularly toward the ISF, which is integrated with the military and Civilian Police forces, providing a combined force for the restoration of peace to Timor Leste.

14.7 Along with the intentions of this submission is the classification that is required for AFP IDG members to be also given the same classification and recognition as those ADF members they served alongside during OP ASTUTE and later under UNMIT. It is endeavoured to seek warlike service for both the ADF and AFP IDG members, who served during the periods of heightened security, with the retrospective reclassification and subsequent recognition of this service.

15. Conclusion.

15.1 It is evident that the service of OP ASTUTE has had its peaks and troughs during the period of deployment since 15 May 2006. Notwithstanding, the Incurred Danger Test must be applied in this manner, in order to provide the necessary Legislative coverage of warlike service to those who served during the periods of heightened security operations.

15.2 A reclassification of service to warlike will assist the members of the AFP IDG who deployed in 2006 and again in 2008 to gain veteran entitlement coverage and medallic recognition – which so far has not been forthcoming in any form. This is despite the AFP members, who were mostly State Police on short-term secondments to the International Deployment Group, serving initially under OP ASTUTE and later under UNMIT.

15.3 The dates sought for reclassification from non-warlike service to warlike service are:

15.3.1 **12 May 2006 to 22 May 2008.** The latter being the cessation of the State of Siege declared by the Timor Leste Government.

15.4 As provided within this submission, it was an area of concern by both the Prime

¹⁹ RSL National Conference Item 8.1.1 Reclassification of OP ASTUTE was Withdrawn.

Minister (John Howard) and the Foreign Minister (Alexander Downer), that there was a significant threat to Australian Forces deployed to Timor Leste during OP ASTUTE, particularly in 2006-2007.

15.5 Whilst UNMIT recorded a decline in violence from July 2007 to June 2008, this did not include the activities of the Rebels, which were the greatest threat to the stability of Timor Leste. ADF forces were engaged with the Rebels in a number of instances and this included confrontational situations.

15.6 As is highlighted in this paper, the ongoing operations of the Rebels had great cause of concern to all contributing nations, including the UN. The introduction of the UNMIT Mandate, which also called for the Provisions under which the UN Mission in Support of East Timor (UNMISSET), to be used within the Mandate is also of significance toward this case.

15.7 UNMISSET was the ADF contribution called OPERATION CITADEL, which is classified by the ADF as warlike service under INST146 for the period 20 May 2002 to 17 August 2003.²⁰

15.8 It has been demonstrated in this paper that it is more than evident that there was the dangers incurred and exposed to ADF and AFP IDG members during the nominated period. With politicians acknowledging the threat and including the then opposition spokesman for Defence making public comment that the operation should be classified to warlike service – it is strongly evident that the case for retrospective reclassification for OP ASTUTE for the nominated dates is a necessity in order to provide a fair and equitable outcome toward those men and women that enforced and restored peace to Timor Leste.

16. Recommendations.

16. That the ADF and AFP IDG that served on OP ASTUTE during the period **12 May 2006 to 22 May 2008** are retrospectively reclassified to warlike service and that the subsequent recognition is also provided for such warlike service to both forces.

²⁰ VEA Service Eligibility Assistant – East Timor, Warlike Service OP CITADEL, Consolidated Library of Information and Knowledge – Legislative Library, by DVA May 2008.