

SUMMARY
NZ ARMY COURT OF INQUIRY
BAGHAK CONTACT, BAMİYAN PROVINCE 4 AUGUST 2012
AND
IMPROVISED EXPLOSIVE DEVICE ATTACK, BAMİYAN PROVINCE 19 AUGUST 2012
(AFGHAN COURT OF INQUIRY)

Overview.

1. The Court of Inquiry was assembled in August 2012 to investigate the BAGHAK Contact that occurred on 4 August 2012 which resulted in the death of two NZ Army soldiers and the injury of six others; as well as the Improvised Explosive Device attack that occurred on 19 August 2012 which killed a further three NZ Army soldiers.
2. The Court assembled at KIWI BASE, BAMİYAN on 22 August 2012.

BAGHAK – 4 AUG 13 OVERVIEW

At approximately 0800 hours on the morning of 4 August 2012, KIWI COMPANY elements were informed by National Directorate of Security (NDS) personnel that the NDS had undertaken an operation early in the morning to detain suspected insurgents. This operation occurred in the vicinity of DAHANE BAGHAK in the SHIKARI VALLEY. KIWI COMPANY elements were informed by the NDS that the operation had resulted in a number of NDS casualties.

SOLDIER A, the Commanding Officer (CO) approved a request by **SOLDIER B**, the Officer Commanding (OC), to deploy a three vehicle HUM-V patrol (KT4) to the scene to render *in extremis* support to the NDS. Subsequently, KT2 and KT1, both three vehicle light armoured vehicle (LAV) based elements, deployed in support of KT4.

When KT4 arrived on scene at 0946 hours, they found that one NDS member had been killed and six NDS personnel had been wounded. One of the wounded NDS members subsequently died. Members of KIWI COMPANY assisted with the evacuation of the NDS casualties and then commenced a dismounted clearance operation of a compound and the high ground surrounding the contact site in concert with the NDS.

KT2 was on scene providing over-watch with KT4 vehicles, while a 14 man dismounted patrol conducted the clearance operation. KT1 were

providing a firm base at the DAHANE BAGHAK Truckstop 500 metres to the south.

At the same time, but further to the north, NDS were in the low ground as they commenced their own clearance of the high ground.

At approximately 1227 hours, shortly after the OC, **SOLDIER B**, had arrived on site with KT3, the insurgent contact with the New Zealand patrols started.

All of the eight NZPRT casualties, those killed and those wounded, including the OC, occurred in the space of approximately 12 minutes somewhere between 1227 and 1239.

It is the conclusion of the Court that the two deceased service members (LCPL DURRER and LCPL MALONE) and four of the wounded (**SOLDIER B**, **SOLDIER C**, **SOLDIER D** and **SOLDIER E**) can be directly attributed to insurgent fire.

It is a further conclusion of this Court that the remaining two wounded personnel (**SOLDIER F** and **SOLDIER G**) were in all probability wounded by shrapnel from New Zealand fire. This is likely to have come from a LAV in the valley below, with the LAV patrol members believing that the vicinity of **SOLDIER F** and **SOLDIER G**'s dismounted patrol in the high ground above was being used by insurgents. The COI could not rule out that insurgent action was the cause of the two wounded New Zealanders injuries, however, this seemed less likely.

A further four NDS, including one who was killed, became casualties during this time and all of these casualties were attributed to insurgent fire.

Further engagement occurred throughout the afternoon as the NZPRT elements coordinated medical treatment and evacuation for its casualties.

The bulk of the New Zealand casualties were evacuated by US Army Aero-medical Evacuation (AME) from a Casualty Collection Post established 600m South of the contact site at 1426 hours. The last two remaining casualties were winched off the high ground at 1558 hours.

All New Zealand casualties were evacuated to medical facilities in Regional Command (North) (RC(N)).

At 1605 hours, a USAF F-18 reported seeing a group of 16 insurgents moving East away from the contact site carrying dead and wounded.

Throughout the afternoon, the NDS suffered further casualties, one wounded and one killed, alongside one Afghan National Police officer and

one Afghan civilian who were also wounded. All of these casualties were attributed to insurgent fire.

The KIWI COMPANY elements consolidated all elements at the Casualty Collection Post by 1930 hours and then commenced the deliberate move back to Forward Patrol Base (FPB) DO ABE (now named FPB MALONE – DURRER) and Company Out Post (COP) ROMERO. This move was complete at 0430 hours, 5 Aug 12.

The BAGHAK contact was supported by significant coalition air support including Emergency Close Air Support (ECAS) and Aeromedical Evacuation.

Caveats

2. Below are the list of Caveats that need to be considered in relation to this action:
 - a. The Court of Inquiry team was not able to visit the site of the BAGHAK contact of 4 August 2012. This was due to operational limitations and security concerns. The Court did however conduct a fly over of the scene of the 4 August incident aboard a US Army UH-60 Helicopter.
 - b. Many of the personal accounts that were prepared by personnel present at BAGHAK on 4 August, (and were presented as Exhibits of the Court), were prepared anywhere up to 10 days post the activity.
 - c. The Court of Inquiry's conclusions are drawn from these interviews and exhibits produced. Where necessary, comments based on the opinion of the Court have been clearly stated.
 - d. All recommendations called for as per the Terms of Reference are made based on a balance of evidence and the opinions of the Court of Inquiry team.
 - e. In some cases, it is impossible for the Court to categorically state where shots came from with regard to our killed and wounded. Where able, the Court has indicated the most likely direction that shots came from. However, due to many variables and the unknown number of insurgents involved, these conclusions cannot be taken as absolute. Also, in some cases, it is impossible from the evidence available for the Court to differentiate between direct gunshot and/or shrapnel wounds.
 - f. The Court was unable to directly interview any ANSF personnel involved in the BAGHAK incident. A request was made but was declined.

Conclusions – BAGHAK.

3. Below are the Conclusions made by the Court of Inquiry in relation to this action:
 - a. LCPL MALONE and LCPL DURRER were killed by Insurgent fire.

- b. **SOLDIER B, SOLDIER D, SOLDIER E, and SOLDIER C** were wounded by Insurgent fire / shrapnel.
- c. **SOLDIER F** and **SOLDIER G** were **most likely** wounded by LAV 25mm shrapnel from **one** KT1 LAV.
- d. The NDS suffered four killed (one Blast and three Gun Shot Wounds), nine gun shot wounds, one ANP Officer gun shot wound. All **most likely** caused by insurgent fire. One local national was also wounded, also caused by insurgent fire.
- e. It is concluded that the buddy aid and battlefield medical care given to **SOLDIER B** and **SOLDIER C** significantly reduced the risk of death for both of these casualties.
- f. Tactical Combat Casualty Care was not formally taught on CRIB 20 PDT as it had not been formally introduced. Notwithstanding, they had received in theatre training and this was evident and was practiced on 4 Aug 2012 when treating the wounded. It proved very effective, particularly that given to **SOLDIER F** in an isolated position for a significant period of time.
- g. The CRIB 20 contingent was adequately prepared and trained and there is no evidence to indicate that any gaps in training contributed to any of the injuries sustained.
- h. The level of training given to the CRIB 20 contingent on Pre-deployment Training was adequate but lacked realism and complexity when compared with the level of complexity encountered on 4 Aug 12.
- i. The *in extremis* support provided to the NDS in the morning of 4 Aug 12 was effective and the casualty evacuation and treatment of NDS casualties saved lives. There is however a lack of clear guidance to command on the provision of *in extremis* support in terms of decision points, levels of support and when to withdraw from providing such support. At the time of 4 Aug 12, many, if not all of these decisions rested with the TU CRIB commander.
- j. Following the completion of *in extremis* support, the Kiwi Company elements 'transitioned' into a Tactical Site Exploitation (TSE) operation with NDS support. This was consistent with the Officer Commanding Kiwi Company's intent to "disrupt" insurgent operations. It is likely that this operation triggered, or at least contributed to the insurgent response.
- k. Significant coalition air support was provided to the NZPRT on both 4 Aug and 19 Aug 12.
- l. The provision of support over head appears to have reduced the Insurgent's willingness to move or to engage. It is also possible that the persistent presence of air support forced the Insurgent to remain in location.
- m. The incidents of 4 Aug 12 and 19 Aug 12 marked an increase in targeting of NZPRT elements. They were consistent with the increased targeting of ANSF

elements that occurred in Jul 12. This increased threat posture contributed to the clear intent of CRIB 20 to disrupt and neutralise insurgents in their area of operations and therefore justified the actions of the elements gathered at BAGHAK on 4 Aug 12.

- n. The insurgent group that was on the field on 4 Aug 12 was likely a mix of hard-line insurgents and tribesmen who appear to have been positioned to ambush the NDS patrol. Why they remained in place and subsequently engaged the NZPRT is unclear, however it could have been because they chose to, or were forced to by both NZPRT actions and coalition air support.
- o. It is highly likely that there were a number of different types and calibres of weapons being carried by the insurgents. The fact that DURRER and **SOLDIER F** may have been shot by a smaller calibre weapon is likely to be due to the presence of AK74 (5.45mm) weapons. It is the Court's opinion that it would have been impossible for DURRER to have been shot by a NZPRT 5.56mm weapon in the hands of a NZ Army soldier. The Court reached this conclusion based on the known location of NZPRT members at that time, in relation to the location of DURRER'S vehicle, and the direction of the shot which wounded DURRER.
- p. MALONE's fatal wound was caused by a 7.62mm calibre round, a round most commonly used by insurgents (AK47).
- q. The Friendly Fire incident which resulted in the wounding of **SOLDIER F** and **SOLDIER G** was avoidable in so far as it was due to inadequate situational awareness, in particular, the lack of awareness that KT1 had of the dismounted patrols. The Court feels that had KT1's entry into the contact been more deliberate and had its situational awareness been better, it is highly likely that the Friendly Fire incident would not have happened. There is no evidence of any other friendly fire incident.
- r. Command and control of the actual fire-fight was problematic due to the loss of **SOLDIER B** and **SOLDIER I** early in the fight. No one commander had the whole picture. Despite this, there were good examples of small team leadership throughout the engagement and the subsequent actions.
- s. The NZPRT elements acted appropriately on 4 Aug 12 given the context and circumstances and acted in accordance with the Rules of Engagement. The uses of speculative and suppressing fire were considered reasonable and the application of lethal force was justified under the hostile intent/hostile act criteria.
- t. While no evidence was produced to the Court of NZPRT personnel killing or wounding ANSF personnel, the fact that the NDS dress in very similar clothing to that worn by the insurgents makes this a very real risk.
- u. It is likely that a full TSE of the BAGHAK site would have provided valuable intelligence and a more accurate picture of how the engagement unfolded. This would have proved useful for future operations, both in terms of PRT actions and when considering insurgent tactics and intentions.

Summary

a. **BAGHAK Contact:**

- 1) The BAGHAK action was an example of effective *in extremis support*.
- 2) This was a complex military action.
- 3) The insurgents were most likely a mix of 'hardened' insurgents and local tribesman. They carried a mix of medium and small calibre weapons. There was at least one sniper/marksman.
- 4) The NZ Army soldiers performed well.
- 5) There were numerous examples of where the key weapon systems (LAV, Grenade Machine Gun, Designated Marksman Weapon) worked well and reduced the effects of the insurgents action.
- 6) It is highly likely the NDS would have suffered significantly more casualties than it did, if not for New Zealand's intervention.
- 7) DURRER and MALONE were killed by insurgent fire.
- 8) MALONE was killed almost instantly.
- 9) DURRER'S injuries were non-survivable.
- 10) **SOLDIER B, SOLDIER C, SOLDIER D, SOLDIER E** were wounded by insurgent fire.
- 11) **SOLDIER F** and **SOLDIER G** were most likely wounded by shrapnel from "friendly fire". It is likely that was caused by the engagement from **one** of the KT1 LAV's.
- 12) The "friendly fire" came about because of diminished situational awareness due to key commanders being wounded or attending those that had been wounded.
- 13) While "friendly fire" incidents are unacceptable, that is, the Court does not accept that they are inevitable, in combat (and in particular in the intense nature of this contact) it is understandable. There was only **one** incident of friendly fire, that which occurred in the initial engagement involving KT1.

- 14) The analysis of this battle will be useful in informing the military education of future commanders.
- 15) Evidence received by the Court of Inquiry established that Rules of Engagement were applied appropriately.
- 16) The standard of combat first aid contributed directly to the possible saving of the lives of **SOLDIER B** and **SOLDIER C**.
- 17) The standard of combat first aid given to **SOLDIER F** was of a high standard considering he was isolated from any formally qualified medical care.
- 18) The NZPRT was adequately prepared for its mission.
- 19) While there were gaps in the Contingent's Pre-deployment Training when it left New Zealand, these were addressed with further training in theatre before the deployment became operational. This training is not possible on PDT in New Zealand due to the unavailability of certain equipment for example, equipment which is specific to the Afghan deployment (HUM-V, some of the weapons etc).
- 20) The NZPRT had been on operations for four months at the time of the BAGHAK incident. They were fully acclimatised, and operated as a cohesive unit.
- 21) Coalition Air Support played a significant role in both supporting the combat action on the ground, as well as in the evacuation of both NZ and NDS casualties.
- 22) No direct evidence was produced that could support a conclusion that NZPRT elements directly, or indirectly caused any of the deaths or injuries to the NDS / ANSF personnel.
- 23) LCPL BAKER performed extremely well in a sole capacity medical role in treating the six NDS casualties and ensuring that they survived their wounds.

IED Attack – 19 AUG 13 OVERVIEW

At approximately 0900 hours, a 4 x HUM-V KT4 patrol departed Forward Patrol Base MALONE – DURRER to transport a patrol member to the Company Out Post ROMERO for medical treatment.

At 0921 hours, the last vehicle in the convoy was destroyed by a very large (pressure plate) Improvised Explosive Device.

The vehicle crew were: Vehicle Commander – CPL TAMATEA, Driver – LCPL BAKER, and Vehicle Gunner – PTE HARRIS. All three were killed instantly.

The HUM-V was totally destroyed. The remainder of KT4 secured the scene, while KT2 deployed from Company Out Post ROMERO to assist and secure the area for Tactical Site Exploitation (TSE) by the recently deployed Explosive Hazards Clearance Team (EHCT).

The TSE concluded in a finding that the IED was victim initiated by means of a pressure plate.

Elements of this team, along with the Company Sergeant Major (CSM) of KIWI COMPANY, and medical personnel did the battlefield clearance of the bodies and remains. The bodies were flown by US Army AME to BAGRAM where they were processed by the NZPRT National Support Element (NSE) with significant assistance from the NZ Police and the US Army Mortuary Affairs Section.

The US Army Mortuary Affairs Section also conducted their own processing of the bodies.

The deceased were then transported home, firstly to DUBAI by RAAF C-130, then by Australian Defence Force Charter A340 to SYDNEY, and RNZAF C-130 to CHRISTCHURCH.

As the remains were being processed by the Pathologist at CHRISTCHURCH Hospital, two 9mm rounds and one High Explosive Hand Grenade were discovered.

It is the conclusion of this Court that it would have been desirable to X Ray the remains before they left theatre. However, in the absence of suitable X-Ray equipment a physical search would have been required. This runs against current SOP which seeks not to disturb remains before they are examined as part of a post mortem. It is the recommendation of this Court that NZDF review its SOPs in consultation with appropriate agencies such as the Pathology Service.

Caveats

4. In addition to the Caveats outlined in the BAGHAK section of this report, the Court of Inquiry was unable to visit the site of the IED attack due to security concerns. Also, the Court's 'Terms of Reference' in relation to this incident was limited to inquiring into how a High Explosive Grenade was located in the remains of one of the deceased during the post mortem in Christchurch, New Zealand. This, coupled with

the fact that the death of these three soldiers was a result of a clear cut combat action involving an IED device, explains why the Court did not investigate this incident beyond those issues mandated by its Terms of Reference.

Conclusions – IED ATTACK

5. Below are the Conclusions made by the Court of Inquiry in relation to this incident:
- a. CPL TAMATEA, LCPL BAKER and PTE HARRIS were killed instantly as a result of a pressure pad initiated Improvised Explosive Device which destroyed the HUM-V they were travelling in.
 - b. There are real gaps in the level and quality of the NZ Army's mortuary affairs training. While this did not directly result in the incident where a grenade returned to NZ in the remains of one of the deceased, the lack of training did expose those personnel involved to a situation for which they had not been adequately trained.
 - c. The three soldiers killed in the IED attack on 19 Aug 12 were processed as best they could be given the tactical situation, the resources available and the state of the remains.
 - d. The National Support Element and NZ Police teams worked well together.
 - e. The High Explosive Grenade that was located after the remains had returned to NZ could only have been picked up had the body been X-Rayed or had it been completely stripped. Completely stripping the bodies is not current practice due to perceived NZ Pathology Services requirements which currently limit what can be done in theatre.
 - f. The pouch that the grenade was located in was not visible.
 - e. In regards to the processing and repatriation of deceased soldiers, there are gaps in certain Standard Operating Procedures and contradictions in others that need to be standardised.

Summary:

IED Attack:

- 1) TAMATEA, BAKER and HARRIS were killed instantly in a large Improvised Explosive Device that destroyed their HUM-V.
- 2) It was a Pressure Plate initiated device.
- 3) The NZPRT patrols had developed effective tactics and techniques to reduce the risk of travelling on the roads within the province.

- 4) While the processing of the deceased from the IED Attack was done by NZ Police with NZ Army assistance, it was done in the facilities of the US Army Mortuary Affairs Section at BAGRAM. They also did their own processing as they are required to do.
- 5) A live High Explosive Grenade was subsequently located during the Post Mortem of one soldier's remains.
- 6) No appropriate X-Ray was available at the US Mortuary Facility and it was standard procedure to leave the remains undisturbed prior to a post mortem.
- 7) This, coupled with other factors surrounding the remains, is why the grenade was missed during processing at BAGRAM.
- 8) The NZDF will work with pathologists, the NZ Police, and the Coroner to review its SOPs with regard to mortuary procedures, to reduce the risk of any repeat of this situation.

OVERALL COURT OF INQUIRY RECOMMENDATIONS

6. Below are the recommendations that were made by the Court of Inquiry in relation to both incidents:

a. **BAGHAK Contact:**

- 1) Tactical Combat Casualty Care (TCCC) needs to be introduced across Army/NZDF as the basis of 'buddy aid'. This is already being implemented.
- 2) Pre-deployment Training scenarios need to be developed that work up to the high end of possible situations in terms of complexity that may be encountered in any specific theatre. The adage "train high, operate low" is a useful guide.
- 3) HQJFNZ needs to develop clear criteria and guidelines governing the provision of *in extremis* support when this is a mission requirement.
- 4) The delivery of Rules of Engagement (ROE) training needs to be conducted in a way that allows soldiers to become comfortable with ROE and their application. The focus should be on ROE as an ordinary but important part of the requirements for any deployment. Improvements were made in Pre Deployment Training scenario based training and it is recommended that this continues to evolve with the nature and scope of NZDF deployments and as part of general ongoing training.

- 5) The Network Enabled Army (NEA) Project team are given access to appropriate content within this report as pertaining to issues around command and control, to assist in situational awareness.

b. IED Attack:

- 1) The Army / NZDF needs to review how and where it trains those that are responsible for Mortuary Affairs. Any training needs to be more relevant to the possible operational environment.
- 2) The NZDF needs to develop a standard SOP for the processing and repatriation of deceased personnel and that this is used to guide the training of all those that will have a role to play in this process.
- 3) NZDF and the Pathology Service hold discussions to determine what state bodies are actually required to be returned to New Zealand in. This will then determine the level of search and equipment removal that can be done in theatre.
- 4) Wherever possible, bodies and remains are X-Rayed before they leave theatre.
- 5) The NZDF and NZ Police should look at developing a formal arrangement in terms of duties and responsibilities for the processing of deceased personnel when they are likely to be operating side by side.

c. Common recommendations:

- 1) Wherever possible, areas where engagements or incidents have occurred should be secured and held until a full TSE can be completed.
- 2) The timing of memorial services needs to allow sufficient time for the appropriate post mortem and coronial activities to be undertaken.

Summary

c. Overall:

- 1) The incidents of 4 and 19 August 2012 marked an increase in the targeting of NZPRT elements.
- 2) The CRIB 20 contingent was aware of this and had adjusted their operations accordingly. Unfortunately, so had the insurgents.
- 3) With the benefit of hindsight this COI lays out a neat and systematic sequence of events. However, in the few minutes of the contact for those involved, this was an intense and particularly chaotic firefight.

- 4) The early loss of senior patrol commanders further diminished the New Zealanders situational awareness and this contributed to the situation where New Zealand fire was the likely cause of shrapnel wounds to two New Zealand soldiers as LAV gunners in the valley below were unaware of the New Zealand dismounted patrols high above them.
- 5) Combat situations are highly dynamic. With adversaries actively seeking to end your life, these situations have few parallels in the civilian world. Expert military literature is rich in its discussion of concepts like 'friction' and the 'fog of war' – which seek to describe how these quintessential elements of battle in themselves impact task completion. Against this backdrop it is not accepted that friendly fire incidents are inevitable, but they are understandable.
- 6) It must be noted that the response and actions of those involved on the day, under such intense insurgent fire, nonetheless overall demonstrated the finest qualities of soldiering.