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Australian Government
**Australian Customs and
Border Protection Service**
Department of Defence

Joint Review of Operation Sovereign Borders Vessel Positioning

December 2013 – January 2014



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Executive Summary

The Task

1. This report responds to direction from the Chief Executive Officer (CEO) of Australian Customs and Border Protection Service (ACBPS) and the Acting Chief of the Defence Force (A/CDF) that a joint review (the Review) be conducted "into the actions of the ADF and ACBPS, including Border Protection Command (BPC) during December 2013 and January 2014 in relation to the entry of Australian vessels into Indonesian territorial waters".
2. The scope of the Review was to independently investigate the facts and circumstances surrounding the entry of Australian vessels into Indonesian waters in connection with Operation Sovereign Borders (OSB) during the period 1 December 2013 to 20 January 2014.
3. The Review has been supported by officials from the Department of Defence and ACBPS and advice from the Attorney Generals Department and the Department of Foreign Affairs and Trade.
4. In summary, the work of the review team involved analysis of; all patrols conducted during the relevant period to identify those patrols that resulted in incursions into Indonesian waters by Australian vessels; the patrols, orders, instructions and reporting arrangements associated with these incursions; planning of the patrols and the preparation of each vessel for these patrols; training provided to key personnel within the crew of each vessel; and, the reporting of each incursion once discovered.
5. The review team was directed to refer matters relating to professional conduct to ACBPS and the ADF for separate consideration.
6. The Terms of Reference stated a final report should be provided on or before Monday 10 February 2014. The Terms of Reference appear at Enclosure 1.

Review of Policies, Instructions, Reports and Conduct

7. The Review received in excess of 2200 documents and related media from relevant agencies. This material was used to generate a narrative of events together with a review of operational instructions and details of training, support and guidance provided to units involved.
8. The review team used two approaches in undertaking the assessment of the relevant incidents. The first was an audit like assessment of each relevant incident to establish the details of any incursions by an Australian vessel into Indonesian waters. The activities in which Australian vessels were engaged at the time of each incursion are considered to be beyond the Terms of Reference for this Review.
9. The second and more substantial approach entailed a broader review of orders instructions and reports to explore the key issues arising from each incident. These were distilled into findings and recommendations of the review team, summarised at pages 4 and 5, respectively.

The Narrative

10. In summary, the Review found that RAN and ACBPS vessels inadvertently entered Indonesian waters on a number of occasions between 1 December 2013 and 20 January 2014 in contravention of Australian Government policy and operational instructions in relation to Operation Sovereign Borders. On each occasion the incursion was inadvertent, in that each arose from incorrect calculation of the boundaries of Indonesian waters rather than as a deliberate action or navigational error. The intent for each patrol was advised to operational headquarters in advance of each mission and was approved by Operational Commanders.
11. Australian Government policy relating to Operation Sovereign Borders is described in the Coalition's Policy on Regional Deterrence Framework to Combat People Smuggling of August 2013. This policy covers a spectrum of response options available under the Operation that were translated into operational instructions to both Commander Border Protection Command (COMBPC) and assigned ADF and ACBPS units. Two key policy constraints were articulated in these instructions:
 - a. Activities are only to be conducted when deemed safe to do so by the Commanding Officer of the assigned BPC vessels, and
 - b. Activities are only to be conducted outside 12 nautical miles from Indonesia's archipelagic baseline.
12. Both constraints were recognised in planning conducted by operational headquarters staff and were clearly articulated in mission instructions. Directions issued to the operational headquarters and assigned units were clear that OSB patrols were not to enter Indonesian waters. It is clear in the documentation examined by the Review, that planning conducted by the operational headquarters concluded that OSB patrols could be achieved consistent with these constraints.
13. The headquarters identified the requirement to obtain authoritative information on Indonesian maritime boundaries to inform the safe and proper conduct of the patrols. Despite recognising the importance of this information, headquarters staff supervising OSB tactical missions, effectively devolved the obligation to remain outside Indonesian waters to vessel Commanders. Headquarters staff accepted, without proper review, that the proposed patrol plans would result in vessels remaining outside Indonesian waters. The implementation of appropriate control measures would have reduced the risk of the inadvertent entry of vessels into Indonesian waters.
14. Had headquarters staff implemented appropriate control measures, informed by authoritative information on Indonesian maritime boundaries, the normal post activity reporting and checks would have detected the incursions as they occurred. This did not occur. The appropriate controls were not put in place by the relevant headquarters.
15. Notwithstanding this, RAN Commanding Officers had received professional training to understand the provisions of United Nations Convention on the Law of the Sea (UNCLOS) in the context of the direction to conduct operations outside Indonesian waters. Their ACBPS counterparts, who are trained for operations inside the Australian Exclusive Economic Zone (EEZ), had not received this training as it applied to the Indonesian archipelago.

16. The incursions were discovered on 15 January when planning staff realised that the details of some post patrol reporting did not correlate with the generic planning for the OSB patrols on which the operational instructions were predicated. Once identified, Commander BPC immediately directed an initial assessment of OSB operations between 1 December 2013 and 20 January 2014. The incursions identified in that assessment were promptly and candidly advised to senior Australian Officials, Government Ministers and in turn the Indonesian Government.
17. Subsequent to discovery of the incursions, COMBPC promulgated supplementary instructions detailing the boundaries of Indonesian waters, together with specific instructions requiring increased headquarters scrutiny and approval of patrol intentions in order to prevent further incursions.

Acknowledgement

18. The review team would like to acknowledge the Operation Sovereign Borders Joint Agency Task Force (JATF), Border Protection Command Headquarters (HQ BPC), including the Australian Maritime Security Operations Centre (AMSOC) and Headquarters Joint Task Force 639 (HQJTF639), the Department of Defence (Defence), the Australian Customs and Border Protection Service, the Office of International Law in the Attorney General's Department (AGD) the Department of Foreign Affairs and Trade (DFAT), and the ACBPS Incident Coordination Team for their significant contribution to this Review.

Summary of Findings

Findings

1. The Review found that a number of incursions by Australian vessels into Indonesian waters occurred during the period December 2013 – January 2014 in the course of undertaking Operation Sovereign Borders.
2. The Review found that each incursion was inadvertent and occurred as a result of miscalculation of Indonesian Maritime Boundaries by Australian Crews. Crews intended to remain outside Indonesian waters.
3. The Review found that Government policy regarding Operation Sovereign Borders was correctly articulated in instructions to Commanders. Specifically, that two primary considerations should be taken into account when planning activities under Operation Sovereign Borders:
 - a. Activities are only to be conducted when deemed safe to do so by the Commanding Officer of the assigned BPC vessels, and
 - b. Activities are only to be conducted outside 12 nautical miles from Indonesia's archipelagic baseline.
4. The Review found that the focus of mission preparation, planning, execution and oversight was on the safe conduct of operations. Despite clear guidance to operational headquarters and assigned units, the imperative to remain outside Indonesian waters did not receive adequate attention during mission execution or oversight.
5. The Review found that Indonesian Maritime Boundaries constituted important operational information that should have been provided by the headquarters to the Commanders of vessels assigned to Operation Sovereign Borders. This information should also have been available in the shore headquarters and used as a reference for task oversight and approval recommendations.
6. The Review found that RAN Commanding Officers had received the requisite professional training and experience to be aware of the operational implications of UNCLOS archipelagic baseline provisions in the calculation of Indonesian Maritime Boundaries.
7. The Review found that while ACBPS Enforcement Commanders and contracted vessel Masters are appropriately trained on the application of UNCLOS for operations inside the Australian Exclusive Economic Zone, they did not have the requisite professional training to be aware of the operational implications of UNCLOS archipelagic baseline provisions in the calculation of Indonesian Maritime Boundaries.
8. The Review found that the initial identification of the incursions was the result of an ad hoc intervention by planning staff.
9. The Review found that, once identified, the incursions were advised to senior Australian Officials, Government Ministers and subsequently to the Indonesian Government in a timely manner.
10. The Review found that the instructions issued by operational commanders subsequent to the incursions have effectively remediated lapses in planning of patrols.

Summary of Recommendations

Recommendation 1

It is recommended that the Chief of Joint Operations and the Deputy Chief Executive Officer (Border Enforcement) ACBPS consider the review and monitoring processes undertaken by HQJTF639 and the AMSOC for any individual lapses in professional conduct that contributed to incursions by Australian vessels into Indonesian waters.

Recommendation 2

It is recommended that the Chief of Navy consider each incursion by RAN vessels into Indonesian waters during Operation Sovereign Borders, with regard to any individual lapses in professional conduct.

Recommendation 3

It is recommended that Force Preparation training for Australian vessels designated to be assigned to Operation Sovereign Borders should be amended to ensure crews are prepared to conduct operations while remaining outside Indonesian waters.

Recommendation 4

It is recommended that a range of policies procedures and operational documents be reviewed as a result of the incursions by Australian vessels into Indonesian waters.

Recommendation 5

It is recommended that Border Force Capability Division review operational training provided to ACBPS Commanding Officers and Enforcement Commanders to ensure a tactical appreciation of UNCLOS.

CHAPTER 1: Introduction

Terms of Reference

19. On 15 January 2014, HQ BPC identified that, in carrying out assigned operations between 1 December 2013 and 20 January 2014, assigned RAN and Australian Customs and Border Protection Service vessels (ACV's) entered Indonesian waters.
20. On 21 January 2014, the CEO ACBPS, Mr Michael Pezzullo and A/CDF Air Marshal Mark Binskin AO, directed "a joint review into the actions of the ADF and ACBPS, including BPC during December 2013 and January 2014 in relation to the entry of Australian vessels into Indonesian territorial waters".
21. The scope of the Review was specified as the facts and circumstances surrounding the entry of Australian vessels into Indonesian waters in connection with Operation Sovereign Borders between 1 December 2013 and 20 January 2014. The team was directed to focus on the operational, organisational and systemic matters arising out of "instances of entry of Australian vessels into Indonesian waters, examine the sequence of events and cause, examine the post incident response and identify any potential weaknesses or deficiencies associated with preparation and training, planning and execution of activities, governance documents and post-incident response".
22. The Review is not intended to be a substitute for a detailed external investigation or inquiry, nor does it encompass a review of any other aspects of Operation Sovereign Borders. Further, the review team was advised that matters relating to professional conduct should be dealt with separately by the ACBPS and ADF respectively, noting that recommendations by the team in this respect were permitted under the Joint Directive.
23. The Terms of Reference stated a final report should be provided on or before Friday 10 February 2014. The Joint Directive, including the Terms of Reference, is included at Enclosure 1.

Constraints and Limitations

24. This examination of the incursion by Australian vessels into Indonesian waters has been conducted, in a short timeframe, as a review rather than an in-depth inquiry. By examining the facts and circumstances surrounding each incident, it is intended to articulate a narrative of operations conducted in association with OSB, during which Australian vessels entered Indonesian waters in breach of Australian Government policy.
25. The Review draws from verified documentary material made available by all Commonwealth Government sources, namely ACBPS, BPC, Defence and other relevant Federal Government agencies with any relevant material, appropriately verified by relevant senior officials. The review team relied on the documentary material and answers provided by agencies in response to specific questions raised. The narrative drafted for this Review outlines those events that are relevant to the Review, which can be drawn from key documentary material. This was considered sufficient for the purposes of this Review.
26. The Review took into account the potential for further inquiry in relation to these events and therefore makes no findings about the conduct of individuals. The Review identifies only issues surrounding the specified incidents that have been identified from the material provided.

Methodology

27. Given the constraints and limitations described previously, the following approach was taken to report against the Terms of Reference.
28. A review team comprising two ACBPS officers and three ADF officers was established on Wednesday 23 January 2014 and commenced work immediately. The review team was supported by an ACBPS administrative team to receive and collate material provided by relevant Commonwealth Agencies.
29. The first step for the Review was to collect all of the relevant documents and related media for each incident. An initial request was sent to JATF, ADF Joint Operations Command (JOC), BPC, the ACBPS Border Force Capability Division, RAN Fleet Headquarters and RAN Commander Training. A copy of that request is at Enclosure 2. In response the Review received in excess of 2200 documents and related media. All documents received by the Review were registered, allocated a reference number and stored in a secure location in Customs and Border Protection offices.
30. The Review was organised to explore five interrelated lines of inquiry as follows:
 - a. Task conduct: analysis of Operation Sovereign Borders tasks assigned to Australian vessels from 1 December to 20 January to identify which tasks resulted in an incursion by an Australian vessel into Indonesian waters, and develop a key events chronology for each incident.
 - b. Task direction: analysis of the instructions issued in relation to assigned operations, generally and for each incident identified above, as well as the reporting of task progress and completion.
 - c. Force assignment: analysis of advice and direction issued to the ACBPS and RAN concerning the nature of the task constraints, limitations and supporting information to facilitate preparation and mission training of assigned units for assigned operations.
 - d. Training: analysis of training provided to key unit staff in relation to the Law of the Sea and national maritime boundaries as they relate to the conduct of operations.
 - e. Incident response: analysis of reporting of task progress and completion, the identification of incursions into territorial waters and advice of each incursion.
31. A chronology was developed following a review of the key events identified within each line of inquiry. Development of the narrative drew upon the chronology as supported by the source documents from each agency.

Key Source Documents

32. The relevant policies, processes and procedures applicable to each incident were provided to the review team by the JATF, ADF and ACBPS, including BPC. These documents were registered, allocated a reference number and stored in a secure location in Customs and Border Protection offices.

33. The review team considered each of the identified documents and determined a prioritisation based on applicability to the Review. An assessment was then made as to whether application of the document would make a material difference in the lines of inquiry. Compliance with documents identified as Critical was assessed on a clause by clause basis, with a reducing scale of scrutiny for High, Medium and Low priorities. The purpose of this activity was to ascertain whether these policies and procedures had been applied and taking in to consideration their effectiveness to identify opportunities for improvement.

Consultation

34. Advice was sought from relevant agencies, specifically the Office of International Law in AGD, and DFAT regarding the application of UNCLOS, specifically in relation to recognition of Indonesian claims of archipelagic status as they apply to baselines and territorial waters.
35. Senior officers from relevant agencies provided assistance in the development of the key events chronology and incident narratives. The narrative for each incursion appears in Annex A to Chapter 2 of this report. The chronology for patrols by Australian vessels under Operation Sovereign Borders (the chronology) between 1 December 2013 and 20 January 2014 appears at Appendix 1 to Annex A, of Chapter 2 of this Report.
36. Senior ADF and ACBPS officers were provided with the opportunity to comment on the findings and recommendations made in this report as agreed by the appointing authorities. The consulted officers expressed broad agreement with the findings and recommendations.

Timings

37. All time references are to Australian Eastern Daylight Savings Time (AEDST i.e. Coordinated Universal Time +11 hours), which is 4 hours ahead of local Christmas Island Time and local Jakarta Time (Coordinated Universal Time +7) and 3 hours ahead of local time at Roti Island (Coordinated Universal Time +8). Many of the events, notifications and communications referred to in the narrative of events are based on more than one source record. For the purposes of developing the narrative of events, a single indicative time has been specified for each event to best reflect the overall sequence of events.

Organisational Arrangements - Roles, Responsibilities and Relationships

38. To provide context to the involvement of various agencies, an understanding of the role and functions of key agencies and organisational elements, and the relationships between those agencies and elements, is necessary.

Department of Defence

39. The primary role of Defence is to defend Australia against armed attack. Australia's defence policy is founded on the principle of self-reliance in the direct defence of Australia, but with a capacity to do more, where there are shared interests with partners and allies.

Joint Operations Command

40. The Chief of Joint Operations (CJOPS) plans, controls and conducts campaigns, operations, joint exercises, and other activities on behalf of the CDF. Joint Operations Command includes Headquarters Northern Command, along with the Joint Task Forces that are raised for operations, including JTF639 (which is responsible for tactical planning and execution of designated ADF operations in support of whole of government border protection and maritime security operations, led by COMBPC).

The Australian Customs and Border Protection Service

41. ACBPS is charged with protecting Australia's borders and fostering lawful trade and travel. In achieving that vision, the Service defines its role as:
- Facilitating legitimate trade and travel;
 - Delivering Australia's trade and industry policy;
 - Preventing deterring and detecting the illegal movement of people across Australia's border;
 - Preventing, deterring and detecting the unlawful movement of prohibited, restricted, or regulated goods into Australia;
 - Investigating suspected breaches of a range of border controls;
 - Countering civil maritime security threats in Australian waters through Border Protection Command; and
 - Collecting border-related revenue and statistics.
42. The Service works closely with other government and international agencies, specifically the Australian Federal Police, the Australian Quarantine and Inspection Service, the Department of Immigration and Citizenship and the Department of Defence, to achieve its mission in relation to the illegal movement of people across the border.

Operation Sovereign Borders

The Minister for Immigration and Border Protection

43. The Minister for Immigration and Border Protection has portfolio responsibility, to the Prime Minister, for the implementation of Operation Sovereign Borders.

Headquarters Operation Sovereign Borders Joint Agency Task Force (HQOSBJATF)

44. HQOSBJATF commanded by a Lieutenant General seconded from Defence, is responsible for the development, implementation and coordination of policies and initiatives to counter illegal maritime entry into Australia. The JATF coordinates the efforts of three task groups in order to undertake Operation Sovereign Borders:
- a. The Disruption and Deterrence Task Group (DDTG) led by Border Protection Command (BPC);
 - b. The Detection, Interception and Transfer Task Group (DITTG) led by the Australian Federal Police (AFP); and
 - c. The Offshore Detention and Returns Task Group (ODRTG) led by the Department of Immigration and Border Protection (DIBP).
45. The HQOSBJATF is collocated with BPC in Canberra.

Border Protection Command

46. BPC coordinates national awareness and response efforts to protect Australia's interests in the Australian Maritime Domain (AMD). BPC is a multi-agency taskforce which utilises assets assigned from both ACBPS and Defence to conduct civil maritime operations. BPC is the primary government law enforcement organisation in the AMD. The AMD includes predominantly the offshore areas within Australia's EEZ but extends to the area bounded by Australia's Security Forces Authority (SFA) zone.
47. BPC is a maritime law enforcement agency which in concert with other government agencies and stakeholders, protects Australia's national interest by generating awareness of illegal activity in Australia's civil maritime domain across government and responding to mitigate, or eliminate, the risk posed by security threats. Assets assigned to BPC conduct law enforcement activities on behalf of other Australian Government agencies exercising powers under the Customs Act, Migration Act, and Fisheries Management Act.
48. BPC is commanded by a Rear Admiral seconded from Defence who, as COMBPC and as CJTF639, has operational control of both ADF and ACBPS assets assigned to civil maritime security operations. He exercises this command through deputies located in two headquarters – BPC Headquarters in Canberra, which coordinates ACBPS assets via the AMSOC, and through HQJTF639 in Darwin, which coordinates the ADF assigned assets.

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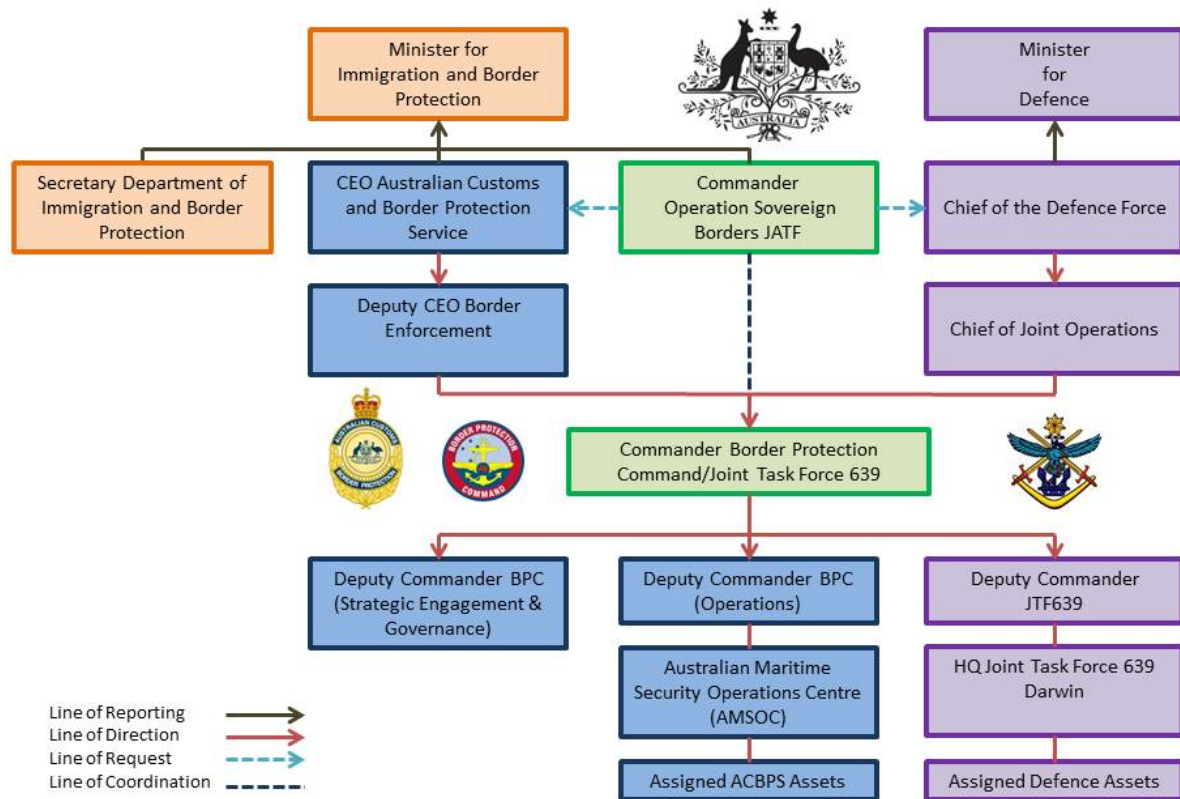


Figure 1.1: Roles and Responsibilities for Operation Sovereign Borders

Australian Maritime Security Operations Centre (AMSOC)

49. The AMSOC is located within BPC Headquarters in Canberra and coordinates the planning and delivery of current operational activity for all ACBPS assets assigned to BPC. This includes deploying aerial surveillance and surface response assets, in collaboration with HQJTF639, to respond to maritime security threats.

Headquarters Joint Task Force 639 (HQJTF639)

50. COMBPC is the Commander Joint Task Force 639. Under his command, HQJTF639 coordinates Operation RESOLUTE, which is the Australian Defence Force contribution to the whole of government approach to protect Australia's borders and offshore maritime interests.
51. The Deputy Commander JTF639, based in HQJTF639 in Darwin, is responsible for routine day to day operations, command and control of JTF639 on behalf of COMBPC. This includes synchronising Operation RESOLUTE assets with ACBPS assets to meet BPC's operational requirements. As such HQJTF639 conducts operational planning activities and issues tactical level operational, administrative orders and instructions as required.

CHAPTER 2: Evaluation

Findings

1. The Review found that Australian vessels breached Indonesian waters on six occasions during the period December 2013 – January 2014 whilst undertaking Operation Sovereign Borders patrols.
2. The Review found that each incursion occurred as a result of miscalculation of Indonesian maritime boundaries.
3. The Review found that Government policy regarding Operation Sovereign Borders was correctly articulated in instructions to Commanders. Specifically, that two primary considerations should be taken into account when planning activities under Operation Sovereign Borders:
 - a. Activities are only to be conducted when deemed safe to do so by the Commanding Officer of the assigned BPC vessels, and
 - b. Activities are only to be conducted outside 12 nautical miles from Indonesia's archipelagic baseline.
4. The Review found that the focus of mission preparation, planning, execution and oversight was on the safe conduct of operations. Despite clear guidance to operational headquarters and assigned units, the imperative to remain outside Indonesian waters did not receive adequate attention during mission execution or oversight.
5. The Review found that Indonesian Maritime Boundaries constituted important operational information that should have been provided by the headquarters to the Commanders of vessels assigned to Operation Sovereign Borders. This information should also have been available in the shore headquarters and used as a reference for task oversight and approval recommendations.
6. The Review found that RAN Commanding Officers had received the requisite professional training and experience to be aware of the operational implications of UNCLOS archipelagic baseline provisions in the calculation of Indonesian Maritime Boundaries.
7. The Review found that while ACBPS Enforcement Commanders and contracted vessel Masters are appropriately trained on the application of UNCLOS for operations inside the Australian Economic Exclusion Zone, they did not have the requisite professional training to be aware of the operational implications of UNCLOS archipelagic baseline provisions in the calculation of Indonesian Maritime Boundaries.
8. The Review found that patrol intentions for each group of vessels were provided to the AMSOC or HQJTF639 in advance of the activity and execution of the patrol was approved by COMBPC.
9. The Review found that the initial identification of the incursions was the result of an ad hoc intervention by BPC planning staff rather than as a result of task oversight by BPC or a subordinate headquarters.
10. The Review found that, once identified, the incursions were advised to senior Australian Officials, Government Ministers and subsequently to the Indonesian Government in a timely manner.
11. The Review found that the instructions issued by COMBPC subsequent to the incursions have effectively remediated lapses in planning of patrols.

Background

52. Australian Government policy relating to Operation Sovereign Borders is described in the Coalition's Policy on Regional Deterrence Framework to Combat People Smuggling of August 2013.
53. Vessels assigned to OSB patrol the designated Area of Operations under the operational direction of HQBPC and the tactical direction of HQJTF639 (for RAN vessels) and the AMSOC (for ACBPS vessels) vide COMBPC Operation Order 01/2011 dated 1 November 2011 and supporting instructions subsequently issued to meet the additional tasks required to meet Australian Government policy.

s33(a)(i),
s47E(d)

Application of the United Nations Convention on the Law of the Sea (UNCLOS)

54. The limits of national waters are generally described in the UNCLOS. Coastal states have sovereignty over their **territorial sea**. The breadth of the territorial sea must not exceed 12 nautical miles, measured from baselines determined in accordance with UNCLOS. The convention provides for three types of territorial sea baselines from which the territorial sea and other maritime zones are measured: **normal**, **straight** and **archipelagic**:
 - a. The normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast and is usually coupled with straight lines closing bays and river mouths. In the case of bays the lines can be no longer than 24 nautical miles.
 - b. UNCLOS allows for the establishment of straight baselines in circumstances where the coastline is deeply indented, or there is a fringe of islands along the coast and in its immediate vicinity. The end points of a straight baseline are calculated from the low-water mark of the relevant linked land features. The drawing of straight baselines must not depart to any appreciable extent from the general direction of the coast. Waters that are internal to a State by reason of being enclosed by a straight baseline are subject to the right of innocent passage.

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- c. Under UNCLOS, an archipelagic state is defined as a State constituted wholly by one or more archipelagos, and may include other islands. The archipelagic baselines may join the outermost points of the outermost islands and drying reefs of the archipelago, provided that the main islands of the archipelago are included within such baselines, and the ratio of the area of water to the area of land is within certain specified limits. Archipelagic baselines must not depart, to any appreciable extent, from the general configuration of the archipelago. Where in place, the archipelagic baseline becomes the baseline from which the territorial sea and other maritime zones are measured. The sovereignty of an archipelagic State extends to the 'archipelagic waters' enclosed by archipelagic baselines subject to a number of limitations set out in Part IV of UNCLOS including the right of innocent passage. The term 'archipelago' is defined in a manner which clearly includes Indonesia.

55. In practical terms, the effect of straight baselines and archipelagic baselines is that the outer limit of the territorial sea may extend beyond 12 nautical miles from the nearest low-water mark on the land. This may have the effect in certain areas where the territorial seas claimed under archipelagic baselines encompass a larger sea area than would be the case if a normal baseline calculation was applied. Figure 1 depicts how this might theoretically be the case.

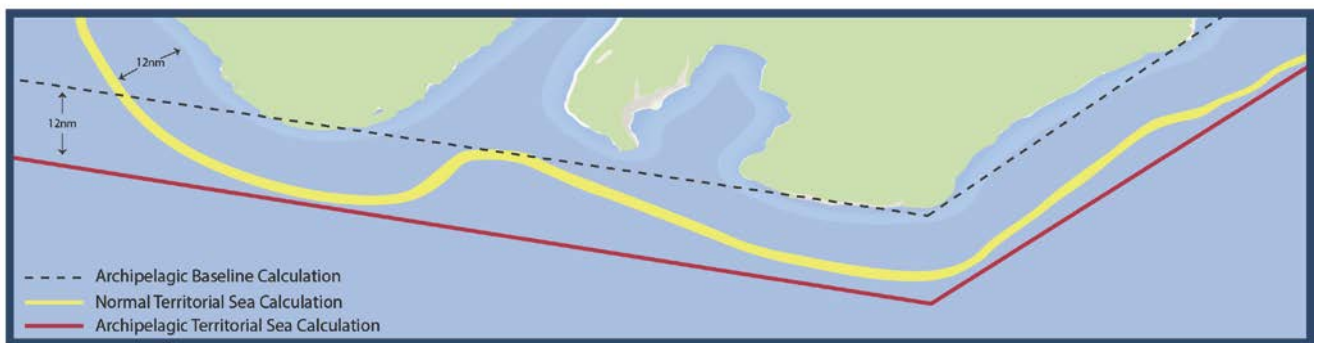


Figure 1. Difference between Normal and Archipelagic Baseline Calculations

Innocent Passage

56. Under UNCLOS, foreign vessels, including warships and government owned ships operated for non-commercial purposes, are allowed "innocent passage" through the territorial sea, archipelagic waters and waters enclosed by the straight baselines of a coastal State, provided that they comply with Article 19 of Part II. Article 19 sets out a range of activities which might be considered prejudicial to the peace, good order or security of a coastal State.
57. The **relevant zones** declared by Indonesia are based on UNCLOS and established under a web of Indonesian laws and regulations. Indonesia has a comprehensive set of archipelagic baselines which thus form the baseline from which much of the outer limit of Indonesia's 12 nautical mile territorial sea is measured. Indonesia has declared sovereignty over its internal waters, archipelagic waters and territorial waters and provides for 'peaceful crossing rights' (innocent passage).

Incidents

58. Between 1 December 2013 and 20 January 2014 the following Australian vessels entered Indonesian waters in the course of their assigned duties but in contravention of relevant orders and instructions:

s33(a)(i), s47E(d)

59. s33(a)(iii), s42

60. Entry to Indonesian waters was inadvertent, arising from miscalculation of the maritime boundaries, in that the calculation did not take into account archipelagic baselines claimed by Indonesia in March 2009. In the absence of authoritative information provided by HQBPC, the Commander of each vessel calculated the boundaries only on the basis of the normal specification that boundaries may extend up to 12 nautical miles (nm) from a nation's coast (measured from the low water mark). s47E(d)

61. Classified details concerning these incidents are included at Annex A to this Chapter.

Task Oversight

62. The tasks assigned to the vessels identified above required their operation proximal to Indonesian waters. The task instructions however, specifically precluded entry to Indonesian waters s42, s47E(d)

63. s33(a)(i), s47E(d)

his is considered to be a contributory factor in these occurrences in that the requirement to balance the safety imperative and the direction to remain outside Indonesian waters created a tactical planning challenge. Documentation dealing with operational planning indicated that this challenge could be managed.

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64. s33(a)(i), s47E(d) [REDACTED]
65. In each case the OSC received approval for their patrol proposals (CONOPS) from the appropriate HQ (the AMSOC or HQJTF639). These proposals included details of intended movements that would result in incursions into Indonesian waters. The miscalculation of Indonesian territorial sea boundaries was not noticed in the course of approval consideration or post activity reporting by the HQ. The incursions were only discovered on 15 January after a review instigated on the initiative of a senior HQBPC planning staff member who realised that the details of the post patrol report (from the sixth incursion) did not correlate with the generic planning evaluation for OSB patrols on which the operational instructions were predicated.
66. Following discovery of the incursion on 15 January 2014, COMBPC promptly advised CEO ACBPS, CDF, CJATF and the Australian Government on that day. A preliminary assessment of operations across the period was instigated. Chief of Navy advised his Indonesian counterpart on 16 January and the Australian Government notified the Indonesian Government of the incursions on 17 January 2014. These incursions were promptly and correctly advised to senior Australian Officials, Government Ministers and in turn the Indonesian Government based on the conclusions reached by the preliminary assessment. This internal review of the incidents and circumstances was ordered by the A/CDF and CEO ACBPS on 21 January 2014.
67. On 16 and 23 January 2014, COMBPC promulgated supplementary instructions detailing the boundaries of Indonesian waters, together with specific instructions requiring increased scrutiny and approval of patrol intentions in order to prevent further incursions. This instruction did not specifically reinforce the obligation of the AMSOC and HQJTF639 to monitor execution of patrols for compliance with critical instructions (such as for units to remain outside Indonesian waters).
68. Classified details concerning Task Oversight are included at Annex B to this chapter.

Force Assignment and Preparation

69. RAN and ACBPS vessels are assigned to COMBPC for duties under OSB under a formal Command and Control handover process. Further, the nature of operations often requires augmentation of standard crews with specialist team members or with additional equipment. RAN and ACBPS vessels receive mission specific training to supplement general skills prior to force assignment. HQJTF639 and the AMSOC advice is that comprehensive INCHOP briefings are provided to all assigned units. Assigned units were not provided relevant operational information to inform compliance with the requirement to remain outside Indonesian waters.

70. Sea boundaries of foreign nations are generally not depicted on nautical charts for legal reasons and this information is normally provided in supplementary operational documentation. Notwithstanding this practice, RAN Commanders are trained to be cognisant of the boundaries of foreign waters and the means by which these are calculated. Their ACBPS counterparts are not mariners by profession, but law enforcement specialists who would not therefore have the requisite experience or training to reasonably expect that they would have a clear understanding of the differences in the way that territorial waters may be calculated in an archipelago. This training was not provided as a precursor to deployment in OSB, nor was the information provided that might have alleviated the need for that training.
71. While the information upon which to base calculations of maritime boundaries is readily available from unclassified sources, authoritative data should have been provided to the Commanders of Australian vessels and their ACBPS counterparts by BPC. s33(a)(i), s47E(d)
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED] Noting the specific direction to conduct operations outside Indonesian waters, the gap in the operational information should have been recognised by unit Commanders and BPC planning and operations staff as critical to the operation and interim authoritative advice should have been promulgated as a reference by Headquarters staff and assigned units. This would have led to more effective monitoring and detection of errors in patrol intentions as well as the prompt identification of incursions in post activity reporting.
72. Classified details concerning Force Assignment and Preparation are included at Annex C to this chapter.

Recommendation 1

It is recommended that CJOPS and DCEO (BE) consider review and monitoring processes undertaken by HQJTF639 and the AMSOC for any individual lapses in professional conduct that contributed to incursions by Australian vessels into Indonesian waters.

Recommendation 2

It is recommended that the Chief of Navy consider each incursion by RAN vessels into Indonesian waters during Operation Sovereign Borders, with regard to any individual lapses in professional conduct.

Recommendation 3

It is recommended that Force Preparation training for Australian vessels designated to be assigned to Operation Sovereign Borders should be amended to ensure crews are prepared to conduct operations while remaining outside Indonesian waters.

Recommendation 4

It is recommended that Rules of Engagement for ADF and ACBPS forces assigned to Operation Sovereign Borders be reviewed and harmonised as far as is considered appropriate.

Recommendation 5

It is recommended that BPC review operational policy documents to direct that the AMSOC and HQJTF639 monitor compliance with patrol instructions.

Recommendation 6

It is recommended that a documented approval process for unit CONOPS be implemented to complement extant direction regarding approval of release points issued by COMBPC on 23 January 2014.

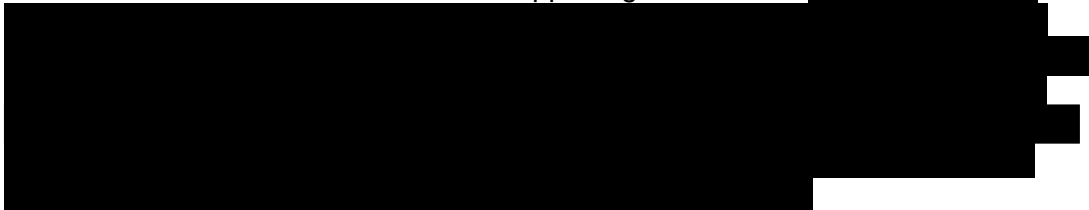
Recommendation 7

It is recommended that Border Force Capability Division review operational training provided to ACBPS Commanding Officers and Enforcement Commanders to ensure a tactical appreciation of UNCLOS.

ANNEX A: Incident Narrative

Background Information

73. Vessels assigned to OSB patrol the designated Area of Operations under the operational direction of HQBPC and the tactical direction of CJTF639 (for RAN vessels) and the AMSOC (for ACBPS vessels) vide COMBPC Operation Order 01/2011 dated 1 November 2011 and supporting instructions. s33(a)(i), s47E(d)



74. The limits of national waters are generally described in the United Nations Convention for the Law of the Sea (UNCLOS). Coastal States have sovereignty over their **territorial sea**. The breadth of the territorial sea must not exceed 12 nautical miles, measured from baselines determined in accordance with UNCLOS. The convention provides for three types of territorial sea baselines from which the territorial sea and other maritime zones are measured: **normal**, **straight** and **archipelagic**. The application of archipelagic baselines is most relevant to this review.

Innocent Passage

75. Under UNCLOS, foreign vessels, including warships and government owned ships operated for non-commercial purposes, are allowed "innocent passage" through the territorial sea, archipelagic waters and waters enclosed by the straight baselines of a Coastal State, provided that they comply with Article 19 of Part II. Article 19 sets out a range of activities which are considered prejudicial to the peace, good order or security of a Coastal State, relevantly including where a vessel engages in:
- a. The loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal state;
 - b. Any other activity not having a direct bearing on passage.


(UNCLOS Part II, Article 19)

76. Passage is no longer considered innocent if a vessel engages in one of the activities listed in Article 19. Consistent with UNCLOS, a Coastal State may take the necessary steps in its territorial sea to prevent passage which is not innocent.

Contiguous Zone

77. The contiguous zone is an area beyond the territorial sea with an outer limit of 24 nautical miles measured from the territorial sea baseline. In that area a Coastal State is entitled to prevent infringements of customs, fiscal, immigration and sanitary laws or punish infringements that have already taken place within its territory or territorial sea. Contiguous zone powers may be exercised by a Coastal State even in the absence of the formal declaration of such a zone. Indonesia has not declared a contiguous zone.

Relevant Indonesian Zones

78. The relevant zones declared by Indonesia are based on UNCLOS and established under Indonesian law and regulations. Indonesia has a comprehensive set of archipelagic baselines which form the baseline from which much of the outer limit of Indonesia's 12 nautical mile territorial sea is measured. On 11 March 2009, Indonesia deposited a list of geographical coordinates for its archipelagic baselines with the Secretary-General of the United Nations. There is no formal process under UNCLOS for states to formally accept archipelagic baselines as lodged with the Secretary-General. The archipelagic baselines as lodged by Indonesia are generally recognised as being consistent with UNCLOS and Indonesia has declared its sovereignty over its internal waters, archipelagic waters and territorial waters and provides for 'peaceful crossing rights' (innocent passage). Indonesia has not declared a contiguous zone.
79. s33(a)(iii), s42

80. For the purposes of this Review, and the direction issued by Commander Joint Operations Australia at Task Order 64 dated 16 January 2014, the term Indonesian waters correlates with that declared by Indonesia. Territorial seas declared by foreign nations are generally not depicted on Australian Hydrographic Charts in order to avoid de facto recognition by Australia of foreign claims, prior to formal recognition by the Australian Government. This information is provided on request to RAN units as operational supplementary information. The ADF Operational Command (HQJOC) notified the RAN Hydrographic Office of the requirement for provision of this information on 26 November 2013.

Relevant Incidents

81. There were 13 SIEV arrivals between 1 December 2013 and 20 January 2014. Six of these were returned to Indonesia during which Australian vessels entered Indonesian waters. A narrative for each of these is described in this Chapter. The positions referred to in this narrative are related to the World Geodetic System (WGS) 1984 Datum.

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[illegible]

105. Australian Government policy relating to Operation Sovereign Borders is described in the Coalition's Policy on Regional Deterrence Framework to Combat People Smuggling of August 2013. Amongst the various responses detailed in this policy is inclusion of an expression of strategic intent to turn back boats where it is safe to do so. The direction to undertake turn back operations when it is safe to do is further reflected in correspondence from the Minister for Immigration and Border Protection (MIBP) to CJATF, dated 18 November 2013, at which time MIBP authorised CJATF to commence turn back operations.

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107. §33(a)(i), s47E(d)

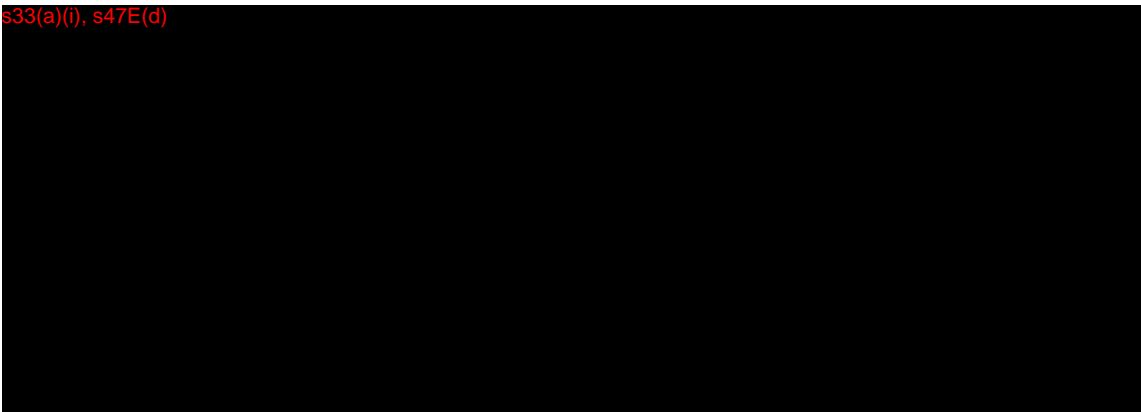
- a. Activities are only to be conducted when deemed safe to do so by the Commanding Officer of the assigned BPC vessels, and
- b. Activities are only to be conducted outside 12 NM from Indonesia's archipelagic baseline.

§33(a)(i), s47E(d)

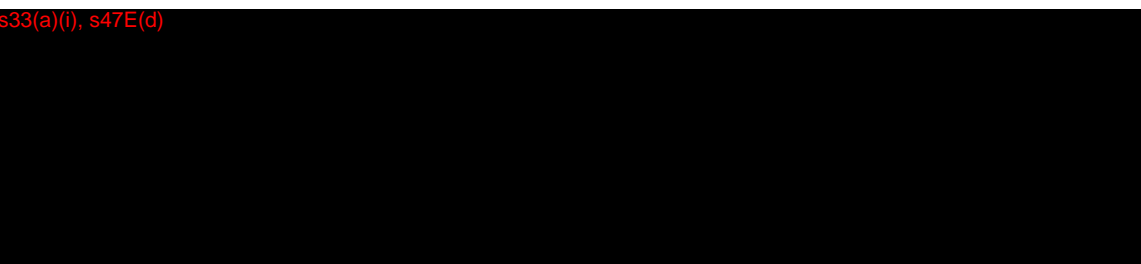
108. §47E(d) BPC coordinates awareness, response, mitigation and elimination activities against risks posed by maritime security threats. BPC is also the lead for the Detect, Intercept and Transfer Task Group (DDITG) of the Operation Sovereign Borders JATF. §33(a)(i), s47E(d)

109. §33(a)(i), s47E(d)


110. s33(a)(i), s47E(d)



111. s33(a)(i), s47E(d)



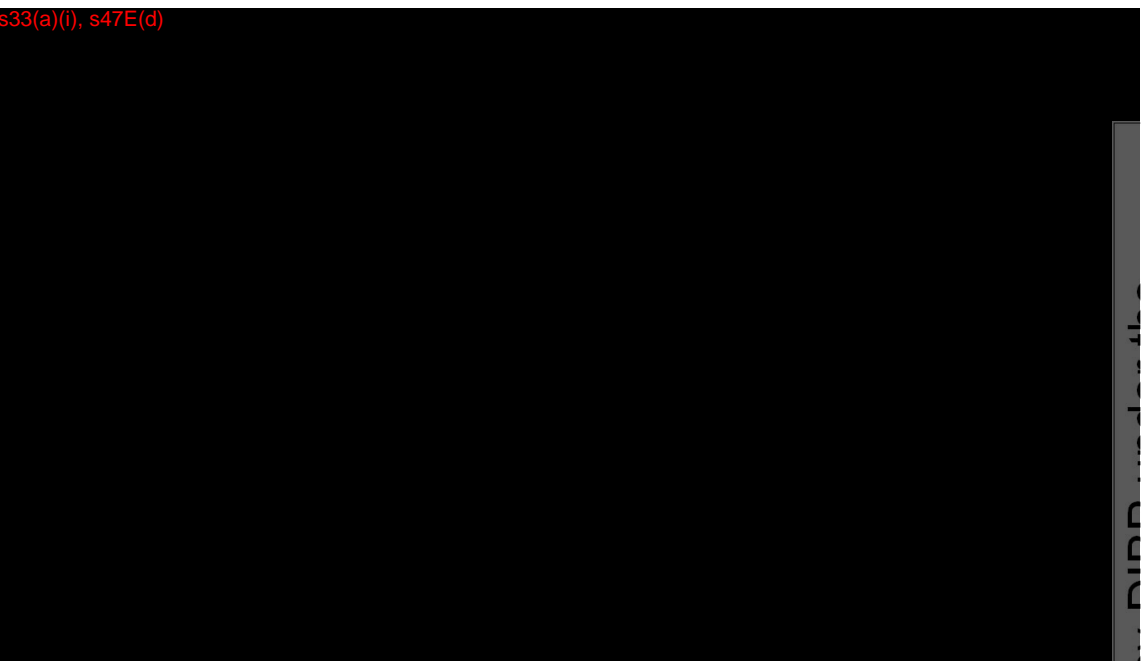
112. s33(a)(i), s47E(d)



Task Supervision

113. COMBPC exercises command of assigned ADF and ACBPS units through HQJTF639 and the AMSOC respectively.


114. s33(a)(i), s47E(d)



115.

116.

s33(a)(i), s47E(d)

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117.

118.

s33(a)(i), s47E(d)

119.

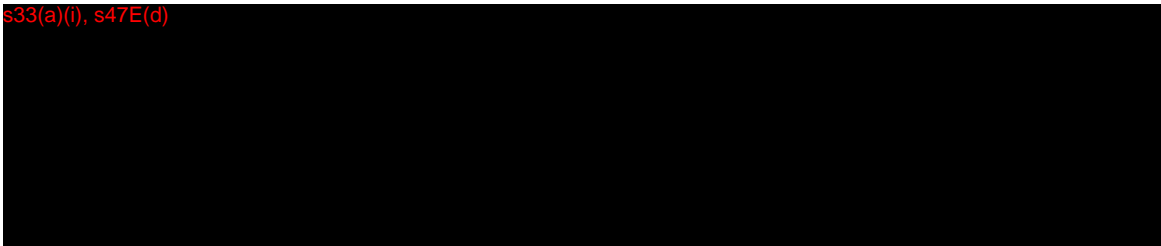
s33(a)(i), s47E(d)

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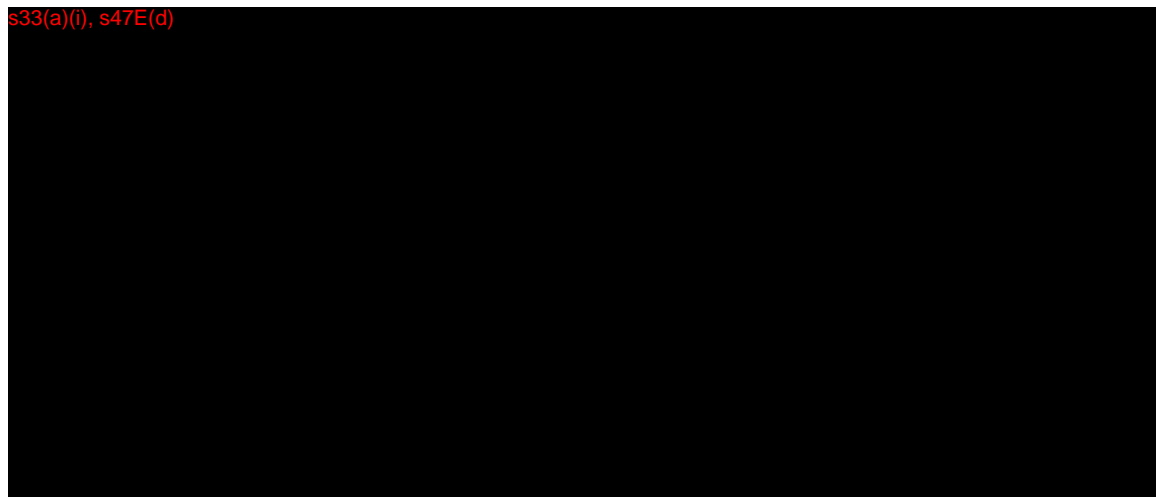
121.

s33(a)(i), s47E(d)

122. s33(a)(i), s47E(d)

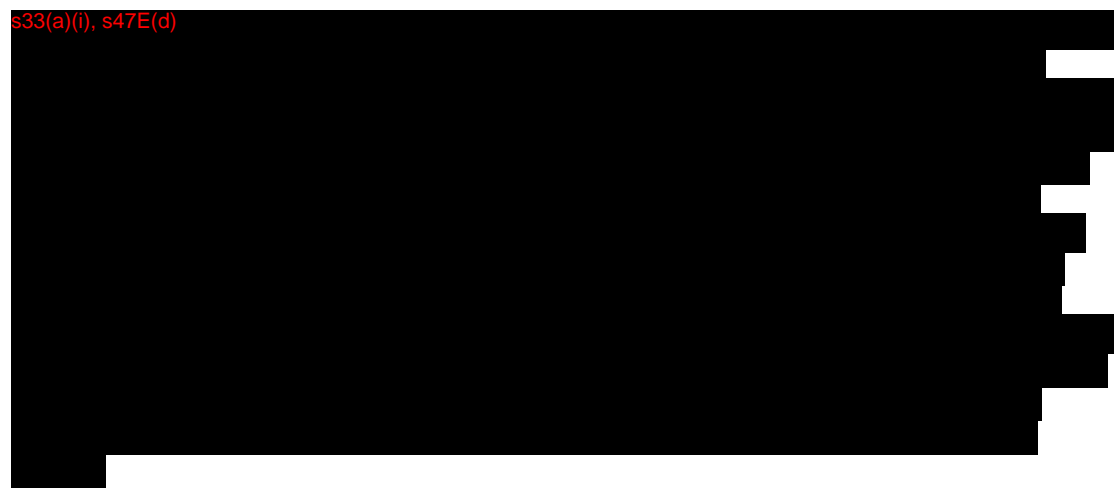


123. s33(a)(i), s47E(d)



124. Following the discovery of the miscalculation on 15 January 2014, COMBPC, directed an initial review of the circumstances leading to incursions by Australian vessels into Indonesian waters. This action resulted in the promulgation of reference information for Indonesian archipelagic baselines to all assigned BPC units on 16 January 2014. All BPC assigned air and surface units were directed to immediately plot and maintain Indonesia's claimed archipelagic baseline and territorial sea limits on all relevant charts and electronic navigation systems. COMBPC was to be advised by each assigned BPC unit upon completion of this action. This action clarifies the delineation of Indonesian waters boundaries for attention by assigned units and HQ staff.

125. s33(a)(i), s47E(d)



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s33(a)(i), s47E(d)

126. s33(a)(i), s47E(d)

127.

128.

129. s33(a)(i), s33(a)(iii), s47E(d)

s33(a)(i), s47E(d)

Additional training may have mitigated incidence of incursions into Indonesian waters.

s33(a)(i), s47E(d)

130. The ADF and ACBPS provide suitably trained personnel and units to Commander Border Protection Command for employment in Operation Sovereign Borders. The ADF Services and Border Force Capability Division are responsible for raising, training and sustaining forces for assignment to BPC. This includes certification that forces are mission ready to ensure people, platforms, equipment and support systems are qualified, governed and supported so as to conduct safe and effective BPC operations.¹
131. Chief of Navy is responsible as the Mounting Authority to ensure RAN Force Elements are able to meet the operational commanders' intent. Director General Maritime Operations issues Warning Orders for units assigned to or likely to be assigned to an operation as detailed in the Navy's Force Generation Plan. Maritime Operations Branch conducts Operational Planning Groups to frame the mission, the expected conduct of operations, Commanders' intent and tasks RAN Force Elements may be expected to undertake. From this a Mission Directive is generated and for each Force Element or unit: this specifies requisite levels of capability that the assigned units require.²
132. s33(a)(i), s47E(d) was responsible to s33(a)(i), s47E(d) for the generation of capability to meet the Mounting Directive. s33(a)(i), s47E(d) undertook a mission analysis on receipt of each Mounting Directive and issued Mounting Instructions. Due to the enduring nature of Operation Resolute, s33(a)(i), s47E(d) were used as a start point. These were augmented by a specific mounting instruction for each Force Element based on their unique capabilities and or training requirements.

¹ Operation MARITIME PROTECTOR Operations Order

² Australian Fleet Memorandum 28/2011 – RAN BATTLEWORTHINESS PROCESS

133. The Mounting Instructions articulated the requirements for material, manpower and training to [REDACTED] as appropriate. [REDACTED] was responsible for the training and assessment of the Force Element or unit to safely and efficiently operate and sustain their platform in accordance with RAN tactics, policies and procedures. Units assigned to operations also required training and assessment against the operational instructions for the mission that they were assigned to. Unit level training is developed by the Force Element in consultation with [REDACTED] and assessed against specified competencies.
134. For Force Elements or units that require mission readiness training and assessment, this should be done by [REDACTED] using in force operational documentation and procedures [REDACTED]
135. On completion of training and assessment Commodore Warfare would chair a Battleworthiness Board to certify each Force Element as mission ready against the requirements of the Mounting Directive. RAN Force Elements and units were then assigned to operations under the control of CJOPS through the issuing of an Execution Order.⁴
136. Within the ACBPS the Border Force Capability Division was responsible for the identification, evaluation, acquisition and delivery of ACBPS capability, operational infrastructure and appropriately skilled people.⁵
137. The National Director Border Force Capability Division exercises Full Command on behalf of the CEO. The National Director Border Force Capability Division owns (in the commercial sense), directs, coordinates and controls the Marine Unit i.e. all marine personnel, assets and resources on behalf of the CEO. This includes all raise, train and sustain aspects of the Marine Unit to enable it to operate safely at all times to achieve the rates of effort required to be delivered to BPC.⁶
138. Unlike ADF Force Elements that may be assigned to different missions, Operation Sovereign Borders is the only operation to which ACV's are routinely assigned.⁷
139. The National Director of Border Force Capability Division authorises the transfer of control of ACBPS assets from one authority to another (i.e. ACBPS to COMBPC) through a Change of Operational Control procedure (CHOP). Prior to this an advance intention to reassign forces is provided. This may be advised as part of an operational order, another operational directive or by means of electronic communication. The advance notice of CHOP specifies any operational limitations of the BPC asset.⁸

³ Australian Fleet Memorandum 28/2011 – RAN BATTLEWORTHINESS PROCESS

⁴ Australian Fleet Memorandum 28/2011 – RAN BATTLEWORTHINESS PROCESS

⁵ SAFETY MANAGEMENT SYSTEM FOR AUSTRALIAN CUSTOMS AND BORDER PROTECTION SERVICE SHIPS AND SMALL VESSELS

⁶ SAFETY MANAGEMENT SYSTEM FOR AUSTRALIAN CUSTOMS AND BORDER PROTECTION SERVICE SHIPS AND SMALL VESSELS

⁷ Observation by Review Team

⁸ AUSTRALIAN CUSTOMS AND BORDER PROTECTION SERVICE PRACTICE STATEMENT

140. When control of an ACBPS asset is transferred from one authority to another the CHOP reaffirms any operational limitations on the asset and any potential limitations that may be identified in the future. This allows the ACBPS asset to be employed in accordance with its capability statement.⁹ Whilst ACV's are under BPC Operational Control (OPCON) they are employed in accordance with AMSOC Instructions and guidance¹⁰ and operate as prescribed in their Patrol Orders. §47E(d)
141. For ACBPS assets assigned to BPC, day to day control and any operational limitations are routinely updated via the daily maritime capability summary¹² and the daily maritime operations briefing to ensure BPC can employ the asset within the limits of its capability.
142. In support of OSB, Chief of Navy directed §47E(d) Major Fleet Units (MFU) be assigned to Operation RESOLUTE and the provision of additional personnel for Transit Security Elements.¹³ Each MFU was also to embark a Medical, Nursing and Legal Officer.
§47E(d)

Force Preparation

143. §47E(d) conducted mission rehearsal training culminating in a mission readiness evaluation on the §47E(d) was §47E(d) Assigned to Operation RESOLUTE for the period §47E(d)
144. §47E(d) conducted mission rehearsal training culminating in a mission readiness evaluation on §47E(d) §47E(d) proceeded on deployment from the Australian Station. §47E(d) was §47E(d) Assigned to Operation RESOLUTE for the period §47E(d)
145. §47E(d) conducted mission rehearsal training culminating in a mission readiness evaluation on §47E(d) §47E(d) was §47E(d) Assigned to Operation RESOLUTE for the period §47E(d)
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⁹ Australian Customs and Border Protection Capability Statement

¹⁰ BPC Planning and Operational Responsibilities while an ACV is under HQBPC OPCON

§47E(d)

¹² Example Maritime Operational Capability Daily Capability Summary Report

§47E(d)

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148. §47E(d) conducted mission rehearsal training culminating in a mission readiness evaluation on §47E(d) §47E(d) was §47E(d) Assigned to Operation RESOLUTE §47E(d)
149. §47E(d) conducted mission rehearsal training culminating in a mission readiness evaluation on §47E(d) §47E(d) was §47E(d) Assigned to Operation RESOLUTE for the period §47E(d)
150. ACBPS asset capabilities and limitations are specified in the ACV capability statements. This is combined with the daily maritime capability summary to contextualise capabilities and limitations of the assigned ACBPS asset against the assigned mission and tasks.
151. ACV's *Triton* and *Ocean Protector* are contracted to ACBPS to provide near continuous support to operation MARITIME PROTECTOR.²² ACBPS assign a number of Marine Unit Enforcement Officers under the direction of an Enforcement Commander.²³ §47E(d) Prior to embarking §33(a)(i), §47E(d) ACBPS Marine Unit Enforcement Officers received training in Public Order Management to ensure they were prepared for non-compliant behaviour.²⁵ §33(a)(i), §47E(d)
152. §33(a)(i), §47E(d)
153. As the scope of OSB evolved with the implementation of Australian Government Policy, the preparation of Force Elements and personnel has also evolved to meet changing requirements. So as to ensure BPC units remained able to execute relevant Standard Operating Procedures (SOP's) and Training Tactics and Procedures (TTP's) periodic review of the standing and unit specific mounting instructions and the amendment of the operation §47E(d) have occurred.

¹⁹ §47E(d)

²⁰

²¹

²² Customs Contractor Operating Instructions

²³ Australian Customs and Border Protection Service Boarding Operations Manual

²⁴ §47E(d)

²⁵ Submission to Joint Review in response to RFI 14/2014

²⁶ §47E(d)

²⁷

²⁸

154. s33(a)(i), s47E(d)

155.

156.

157.

s33(a)(i), s33(a)(iii), s47E(d)

158. s33(a)(i), s33(a)(iii), s47E(d)

29 s33(a)(i), s47E(d)

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39 s33(a)(i), s33(a)(iii)

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HQJTF/AMSOC Planning

159. s47E(d) [REDACTED]

160. s33(a)(i), s47E(d) [REDACTED]

Provision of Operational information

161. s47E(d) [REDACTED] the AMSOC and HQJTF639 is responsible for the provision of all information required to plan and execute tasks assigned to subordinate units.^S This is achieved through the application of a planning process and the production and provision of documents to units to allow for assigned units to plan and execute their operations. Headquarters also have a responsibility to support assigned units where they lack the expertise or ability to plan and execute assigned tasks.^S The capabilities and limitations of each unit are critical to the planning process.

162. s47E(d), s33(a)(i) [REDACTED]

41 s47E(d) [REDACTED]
42 [REDACTED]
43 [REDACTED]
44 [REDACTED]
45 [REDACTED]
46 [REDACTED]
47 [REDACTED]
48 [REDACTED]
49 [REDACTED]
50 [REDACTED]
51 [REDACTED]
52 [REDACTED]

163. s33(a)(i), s47E(d)

164.

Training

165. All RAN Officers are educated on the UNCLOS during initial training.⁵⁷ This is refreshed at all levels of progression for Maritime Warfare Officers and on occasion for other officers⁵⁸. Additionally Specialist Legal Officers and officers holding Navigation and Sea Command qualifications receive additional training at every level of progression. For example the Lieutenant Commander's Promotion Course includes UNCLOS and Operational Law specifically with regard to Australian Border Protection.⁵⁹

166. Legal Officers assigned to s47E(d) conducted face to face and telephone briefings with HQJOC J06 and JTF639 legal staff prior to embarking. This Force Preparation included specific discussion on ADF ROE applicable to OSB and on the Operation s47E(d). This built upon training that they had undergone within their graduate studies, General Naval Officer Training, Legal Officer Specialist Officer Career Structure Legal Training Modules and other post graduate and professional advancement courses including Joint Operation Legal Training Course which assessed their ability to provide complex operational legal advice.⁶⁰

167. All Commanding Officers and Legal Officers embarked in RAN vessels had successfully completed requisite navigational or legal training required to execute their duties and in some cases held advanced qualifications.⁶¹

⁵³ s33(a)(i), s47E(d)

⁵⁴ Maritime Boundaries Chart Task. Relevant Task and Email Correspondence

⁵⁵ ArcGIS Shape files for use with C2PC

⁵⁶ Maritime Boundaries Chart Task. Relevant Task and Email Correspondence

⁵⁷ New Officers Entry Course ITLM_I009 Legal Studies Module 9, Naval Officers Leadership Continuum Defence Strategic Studies 1, Naval Officers Leadership Continuum Defence Strategic Studies 2

⁵⁸ s47E(d)

⁵⁹

⁶⁰ Submission to Joint Review Board in response to RFI 15/2014

⁶¹ Review Team Observation

168. ACBPS contract ACV *Ocean Protector* and ACV *Triton* to conduct ACBPS tasks for a prescribed number of days each year. The vessels are operated under contract with an Enforcement Commander commanding ACBPS personnel in the conduct of operations as directed by BPC or another Controlling Agency.⁶² The Masters of ACVs *Triton* and *Ocean Protector* hold Unrestricted Masters qualifications (formally Masters Class 1).⁶³
169. The Masters of vessels contracted by ACBPS do not receive specific training in UNCLOS.⁶⁴ ACBPS personnel have a basic understanding of UNCLOS and Australia's Maritime Zones, with little focus on its operational application outside the Australian Maritime Domain.⁶⁵ The ACBPS Legislation for Customs Marine Unit Officers Learning guide provides information on Maritime zones and the applicable powers of Marine Unit Enforcement Officers have in each zone; however this is purely from an Australian domestic perspective. It does not mention archipelagic states or baseline calculation methods⁶⁶. The ACBPS Boarding Operations Manual makes reference to Maritime Boundaries but only to say that information pertaining to Maritime Boundaries can be found on the ComLaw website.⁶⁷
170. The Master of any vessel is responsible for safety on board and the safe navigation of their vessel. Where vessels are contracted for use by the Australian Government specifically in this case the ACBPS has a duty of care to ensure that they have the requisite knowledge to conduct contracted services.
171. The Masters of ACBPS assets and the embarked Enforcement Commanders are not appropriately trained to make an assessment as to the veracity of a position with respect to international Maritime Boundaries.⁶⁸ Mission Specific training and/or support from higher headquarters should have been provided for this.⁶⁹
172. Within the two Headquarters there are varying levels of qualification and experience.
173. ACBPS personnel employed within the AMSOC conduct a three week AMSOC Border Protection Command AMSOC Operations course⁷⁰. This gives ACBPS personnel employed within the AMSOC a basic understanding of the roles and responsibilities of the AMSOC and personnel within as well as an understanding of how operations are conducted.⁷¹
174. ADF personnel assigned to HQJTF639 generally have a greater understanding of tactical operational issues and may have completed a number of operations planning courses throughout their military training. This may include: Introduction to Joint Operations, Joint Operations Planning Course, Amphibious Operations Planning Course and various modules of their respective progression training.⁷²

⁶² Australian Customs and Border Protection Service Boarding Operations Manual

⁶³ Marine Order 3, Customs Contractor Operating Instructions

⁶⁴ Submission to Joint Review Board in response to RFI 14/2014

⁶⁵ ACBPS Welcome and Introduction course module

⁶⁶ Legislation for Customs Marine Unit Officers – A Learners Guide

⁶⁷ Australian Customs and Border Protection Service Boarding Operations Manual

⁶⁸ Review Team Observation

⁶⁹ Review Team Observation

⁷⁰ BPC Operations Course Modules and Outcomes

⁷¹ BPC Operations Course Modules and Outcomes

⁷² Review Team Observation



Australian Government
Australian Customs and
Border Protection Service

CHIEF EXECUTIVE OFFICER



★★★★
Chief of the Defence Force

MINUTE PAPER - DIRECTIVE

To: Customs Officer S47F
Commodore [REDACTED], RAN

Copy: Commander Joint Agency Task Force, Operation Sovereign Borders
Deputy Chief Executive Officer (Border Enforcement)
Chief of Navy
Chief of Joint Operations
Commander Border Protection Command

Joint Review relating to Operation Sovereign Borders
Entry of Australian Vessels into Indonesian waters December 2013 – January 2014

Preamble

Operation Sovereign Borders is a military led, border security operation assisted by a number of Commonwealth agencies including ACBPS and Defence. The Operation Sovereign Borders Joint Agency Taskforce (JATF) was established to ensure a whole of government effort to combat people smuggling and protect Australian borders.

As reported by the Minister for Immigration and Border Protection and the Commander Joint Agency Taskforce (CJATF) on 17 January 2014, during operations conducted in association with Operation Sovereign Borders (OSB), Australian vessels entered Indonesian waters in breach of Australian Government policy.

The Minister for Immigration and Border Protection and the Commander JATF announced a joint review by the Australian Defence Force (ADF) and the Australian Customs and Border Protection Service (ACBPS).

This directive is made jointly by CDF and the CEO of ACBPS and insofar as the activity is relevant to an officer or member, binds that officer or member to the terms of this direction.

Direction

You are directed to conduct a joint review into the actions of the ADF and the ACBPS, including Border Protection Command (BPC) during December 2013 and

January 2014 in relation to the entry of Australian vessels into Indonesian waters. You are appointed as co-chairs of the review.

The primary purpose of the joint review is to identify the facts and circumstances surrounding the entry of Australian vessels into Indonesian waters in connection with Operation Sovereign Borders. This joint review is to identify instances of entry of Australian vessels into Indonesian waters, examine the sequence of events and cause, examine the post incident response and identify any potential weaknesses or deficiencies associated with preparation and training, planning and execution of activities, governance documents and post-incident response.

Your review is to focus on operational, organisational and systemic matters arising out of the activities. Matters relating to professional conduct can be dealt with separately by ACBPS and the ADF respectively. You may make recommendations, if appropriate, that ACBPS and ADF should conduct further inquiry into these aspects.

The full Terms of Reference for your review are **attached**. You will receive an initial verbal briefing from BPC on operational activity under OSB.

You are to provide a report to Chief Executive Officer ACBPS and the Chief of the Defence Force, via the Deputy Chief Executive Officer (Border Enforcement) and Head Military Strategic Commitments, on or before 10 February 2014 and include a copy of this Directive within your report.

However, if in the course of the review you form the view that meeting this timeframe would be inimical to the integrity of your report, you are to seek advice from us about an appropriate amendment to the timeframe.

To assist you in the conduct of the joint review, administrative and other support arrangements have been established.

Appropriate measures should also be taken to ensure that any privileged or confidential material (including national security or intelligence material) is appropriately handled. This may include, where possible, and whilst still achieving the tasks and objectives of the review, the preparation of a report with unclassified content and confidential or classified annexures (if necessary).

Michael Pezzullo
Chief Executive Officer
Australian Customs and Border
Protection Service

Air Marshal M.D. Binskin AO
Acting Chief of Defence Force

21 January 2014

January 2014

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REVIEW OF OPERATION SOVEREIGN BORDERS VESSEL POSITIONING DECEMBER 2013 – JANUARY 2014

TERMS OF REFERENCE

Introduction

1. As reported by the Minister for Immigration and Border Protection and the Commander Joint Agency Taskforce (JATF) on 17 January 2014, during operations conducted in association with Operation Sovereign Borders (OSB), Australian vessels entered Indonesian waters in breach of Australian Government policy.
2. The Minister for Immigration and Border Protection and the Commander Joint Agency Taskforce announced a joint review would be conducted into these incidents by the Australian Defence Force (ADF) and the Australian Customs and Border Protection Service (ACBPS).

Direction

3. You are to conduct a joint internal review into the actions of the ADF and ACBPS including Border Protection Command (BPC) surrounding the entry of Australian vessels into Indonesian waters. You are to identify the facts and circumstances and any potential operational or procedural weaknesses or deficiencies, with a view to recommending any remedial actions that need to be made to current operating policy, process or procedures.
4. You are to establish a suitable team from within the ADF and ACBPS supported where necessary by suitable available external personnel.
5. ACBPS personnel and members of the ADF are directed to use their best endeavours to assist you in the conduct of your review, including answering questions and producing documents.

Review Task

6. You are to independently investigate the facts and circumstances surrounding the entry of Australian vessels into Indonesian waters in connection with OSB during the period 1 December 2013 to 20 January 2014 ('the period').
7. In relation to the review, you are to:
 - a. Identify the instances of entry of Australian vessels into Indonesian waters: Identify the positioning of Australian vessels in connection with OSB that occurred during the period, and determine which instances could be considered to be in breach of Australian Government policy, insofar as Australian vessels entered Indonesian waters.

- b. Sequence of events and cause: Collect relevant evidence and report on the sequence of events relating to all instances of entry of Australian vessels into Indonesian waters ('entry') during the period as identified and determined at paragraph 7.a. including:
- (1) the planning conducted prior to each operational activity which led to entry into Indonesian waters (particularly planning concerning the identification and selection of locations for OSB activities), including planning by the ADF units and ACBPS vessels and relevant planning conducted at any higher headquarters;
 - (2) the tasking of the units and Australian vessels conducting each of the activities, including identities of the units and Australian vessels involved and the authority and relevant processes for approving the missions and activities;
 - (3) the execution of the activities, including the time, date and actual location of the activities and an assessment on whether the activities were executed within Indonesian waters;
 - (4) identification of applicable plans, orders (including, but not limited to, the rules of engagement (ROE) and operations orders (OPORDs)), instructions, charts, operating procedures, operating policies, briefings, and/or practices relevant to the activities; and
 - (5) assessment of the degree to which the planning and execution of each of the activities during the period conformed with requirements of the documents referred to in the above subparagraph, and assess the manner and extent to which any identified failures to conform with these requirements may have contributed to entry.
- c. Post-incident response: Collect relevant evidence and report on how instances of entry were identified and reported, and assess the adequacy of these actions.
- d. Potential procedural weaknesses or deficiencies: Ascertain, analyse and determine relevant circumstances surrounding the instances of entry for the purpose of identifying any weaknesses or deficiencies (isolated or systemic) which exist in:
- (1) the preparation and training of personnel involved in planning and executing activities;
 - (2) the planning of the activities, including physical and electronic charts and databases relied upon in planning the activities;
 - (3) the execution of the activities, including physical and electronic charts and databases relied upon in executing the activities;
 - (4) any applicable orders (including, but not limited to the ROE and OPORD), instructions, operating procedures, operating policies, briefings, and/or practices relevant to the activities; and
 - (5) the post-incident response to the activities;
8. The following agencies and departments may be involved as key stakeholders: Department of Defence, including the ADF, ACBPS, OSB JATF, Department

of Foreign Affairs and Trade, Attorney-General's Department and Department of Prime Minister & Cabinet. However, during your review you may determine that consultation with other agencies is required. You are authorised to seek information from and consult with key stakeholders and other agencies as required.

9. Your review is to focus on operational, organisational and systemic matters arising out of the activities. Matters relating to professional conduct can be dealt with separately by ACBPS and the ADF respectively. You may make recommendations, if appropriate, that ACBPS and ADF should conduct further inquiry into these aspects.

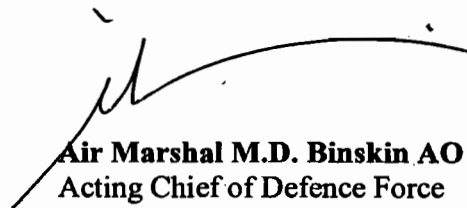
Report

10. The due date for report is 10 February 2014. The following documents are to accompany your final report:

- a. a list of all relevant documents used to compile the narrative and a detailed chronology of events; and
 - b. a list of relevant operating policies, processes and procedures applicable to the relevant instances of entry during the period.
11. If in the course of the review you form the view that meeting this timeframe would be inimical to the integrity of your report, you are to seek advice from us about an appropriate amendment to the timeframe.
 12. Appropriate measures are to be taken to ensure that any privileged or confidential material, including national security or intelligence material, is appropriately handled. This may include, where possible, and while still achieving the tasks and objectives of the review, the preparation of a report with unclassified content and confidential or classified annexures (if necessary).



Michael Pezzullo
Chief Executive Officer
Australian Customs and Border
Protection Service



Air Marshal M.D. Binskin AO
Acting Chief of Defence Force

21 January 2014

24 January 2014



Australian Government

Australian Customs and
Border Protection Service

Department of Defence

MINUTE

File No: 2014/002992-01

Commander JATF (OSB)
COMAUSFLT
ND Border Force Capability Division
COMBPC
COMTRAIN
DGMAROPS
J3 HQ JOC

REQUEST FOR ASSISTANCE: REVIEW OF OPERATION SOVEREIGN BORDERS VESSEL POSITIONING DECEMBER 2013 – JANUARY 2014

1. We have been directed by the Chief Executive Officer (CEO) of the Australian Customs and Border Protection Service and Chief of the Defence Force (CDF) to co-chair a Joint Review regarding the entry of Australian vessels associated with Operation Sovereign Borders (OSB) into Indonesian sovereign waters between December 2013 and January 2014. A copy of the Terms of Reference for the review is attached at Enclosure 1. We are required to provide a full report to the CEO and CDF by 10 February 2014.
2. In order to address the Terms of Reference, we are seeking your assistance with the provision of information relating to all aspects of the review, namely:
 - a. All operational policy, procedures, instructions and orders including logs of any electronic correspondence between vessels and the respective headquarters that relate to [REDACTED] operations during the conduct of OSB;
 - b. [REDACTED]
 - c. Any Warning Orders and Force Assignment Orders issued to vessels assigned to Operation Sovereign Borders during the subject period;
 - d. All planning documents used by ADF and ACBPS vessels [REDACTED] including navigational records, charts, briefings and Ship's Logs used [REDACTED] including a reconstructed track verified by the unit Commanding Officer/Enforcement Commander, [REDACTED]
 - e. Any documentation or information related to the provision of training and certification for ACBPS and ADF Officers deployed to OSB, regarding the application of the *United Nations Convention on Law Of the Sea, 1982* (UNCLOS) to archipelagic baselines and territorial seas;
 - f. Any documents or correspondence that relate to the identification or notification of instances where unauthorised entry of Australian vessels into Indonesian territorial waters occurred; and

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g. All policy or procedural documents that pertain to the dissemination of information following the identification of an operational or tactical planning error, in order to correct that error and prevent its reoccurrence.

3. As you are aware there is significant interest in the outcomes of this review and the timeliness and completeness of the report will attract significant scrutiny. To that end, we request you nominate a POC within your respective headquarters that can act as a point of coordination for this and any further requests for information and assistance that may arise throughout the review.

4. Our point of contact within the Joint Review for collating and cataloguing information and documentation is s47F [REDACTED] [REDACTED]

5. Your ongoing assistance in this matter is appreciated.

s47F [REDACTED]

[REDACTED]
CDRE, RAN
Defence Co-Chair

s47F [REDACTED]

23 January 2014

Enclosure:

1. Review of Operation Sovereign Borders Vessel Entry into Indonesian Waters December 2013 – January 2014: Terms of Reference dated 21 January 2014.

AUTHOR:	s47F [REDACTED]
POSITION:	ACBPS Co-Chair, Review of Operation Sovereign Borders Vessel Positioning
DOC DATE:	23 January 2014

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