

18 February 2002

The Leader of the Federal Opposition Mr Simon Crean
The Senate Leader of the Federal Opposition Sen. John Faulkner
Democrats Leader Sen. Natasha Scott-Despoja
Democrats Senate Leader Sen. Andrew Bartlett
Greens Senate Leader Sen. Bob Brown
The Clerk of the Senate.

Dear Sir/Madam,

A REQUEST THAT THE SENATE URGENTLY INVESTIGATE, IN THE CONTEXT OF ITS CURRENT ENQUIRIES INTO NAVAL ENCOUNTERS WITH VESSELS CARRYING ASYLUM-SEEKERS, A SURVIVOR'S ACCOUNT THAT AUSTRALIAN NAVAL PATROL SHIPS WITNESSED A SINKING REFUGEE VESSEL ON 19 OCTOBER 2001 IN THE SUNDA STRAIT, BUT DID NOT TRY TO RESCUE SURVIVORS

I wish to bring a serious matter to the Senate's attention. On 21 December 2001, "The Australian" carried a story on page 2 by Vanessa Walker (transcript is attached), "Boat tragedy survivor granted asylum". The story, concerning the October 2001 asylum-seeker boat tragedy, contained these sentences:

"The survivors say two boats, which their rescuers told them were Australian border patrol vessels, shone floodlights on them but did not help.

A spokesman for the Defence Department said the closest ship was the HMAS Arunta, which was 230 nautical miles south of the spot."

Around 10/11 February 2002 I telephoned Vanessa Walker at "The Australian" to ask if she had any further background on this disturbing report. She suggested I contact Keysar Trad, Vice President of the Lebanese Muslims' Association in NSW, who had given her English-language transcripts from a video of 22 survivors' oral testimony on the boat sinking. She gave me his telephone number, 0410 336 922. I telephoned Mr Trad on 12 February and on the same day he emailed to me the full English transcript of the survivors' accounts.

Survivor No. 17's account (this man's full transcript is attached) contained the following words, on which Ms Walker had based her story:

"The people on the top deck of the boat, as it was rocking before capsizing saw 2 large ships, they thought that they would be

rescued, none of them came to the rescue, when night came, the two ships turned flood lights and projectors on the people, one felt as if the light was so close that it was next to him (when the night came), we were very close to Australian waters.

On the second day, the Indonesian, fishing boats came, I asked them how they knew that we were here, they said that they had seen our luggage and this is why they came looking for survivors. They also told us that they never go this far to fish because of the sharks and whales in this area.

We asked them about the ships that we saw the day before, they told us that they were Australian border protection ships (navy ships) (cries of support of this statement were heard from other survivors on the video). These Australian navy ships, has the Australian government given orders not to rescue us? Not even the children?”

Notwithstanding Vanessa Walker’s reported statement by a Defence Department spokesman that the nearest Australian vessel was HMAS Arunta which was 230 miles south of the spot, I believe that the Senate should now seek formal public confirmation under oath, from appropriate defence force officers, that the allegation that Australian naval patrol ships may have witnessed the sinking and done nothing to help survivors has no foundation. If they are able to give such assurances under oath and on the public record, that will be a reassuring end to the matter raised herein.

But if RAN witnesses are for any reason unable to give such assurances, eg if they invoke national security considerations, or Ministerial instructions, not to answer questions on this subject, then I believe there would be an important allegation left hanging. It would therefore be in the public interest for the Senate to continue to pursue the matter most vigorously.

BACKGROUND

Around 2/3 September 2001, immediately following the ‘Tampa’ crisis, a number of newspaper articles (noted below, texts attached) reported that the Prime Minister had authorised stepped-up surveillance of the international waters off Indonesia. He said the move would give “saturation surveillance” in the area between Australia and Indonesia, but nothing further should be inferred. “We don’t, in this nation, sink boats”. He said “Don’t think for a moment that we are talking about acts of belligerence. But we’re certainly talking about acts which are designed to deter and encourage deterrence and also to enhance the fact that we are quite properly endeavouring to discourage people from setting out in the first place.” (Brendan Nicholson, The Age, “More patrols to deter smugglers”, 2 September 2001).

A similar report by Mark Metherell, “Warships sent to boost refugees patrol”, SMH 3 September, said the Prime Minister was refusing to say how he will deal with defiant vessels carrying boat people. “Yesterday he maintained his

refusal to answer the crucial question of what the Navy would do once it had stopped a suspect boat, refusing to be drawn on the rules of engagement covering a confrontation with a suspect vessel. “They will act both lawfully and decently. But as to the rest of it, I’m not going to go into that”, he said.”

Megan Saunders, “Patrols to begin their hunt off Java”, *The Australian*, 3 September, added more to the story, reporting that the navy and airforce will patrol waters close to the Indonesian coastline in an effort to deter asylum-seeker boats – “as close as 30 nautical miles off Java.” Philip Ruddock said “We intend to ensure every boat is approached”. Mr Ruddock said: “You might well find people who are concerned that when they are still very close to home, they might be more willing to turn back”. The article continued: “Australian authorities frequently used their power to warn off vessels, but it remains unclear whether, as part of the heightened effort, they will go beyond that. The Coalition is seeking advice, but a government spokesman said the new campaign would not involve shooting at or ramming illegal vessels.” A spokesman for Mr Ruddock said the deployment of extra resources is intended to act as a strong psychological deterrent for people smugglers. “They will probably be a lot more assertive and maybe the show of force out there might make people think twice”, the immigration spokesman said. “To see a frigate bearing down on you and suggesting that maybe you might like to turn around does have a certain psychological effect”.

A fourth article, “Enhanced surveillance ‘puzzling’”, by Brendan Pearson and Paul Cleary, *The Australian*, 3 September, noted that it was not clear what the Government’s enhanced surveillance patrol and response operation announced by the Prime Minister would achieve. Already, 98.5% of asylum-seeker vessels were being detected before they reached Australian waters. Warnings to them not to proceed had not acted as a deterrent. The article asked, “What will change as a result under the enhanced surveillance? Does the answer lie in changes to the application of the Border Protection Act 1999, which lays down the “rules of engagement” for Australian authorities? Government sources were not responding on that point”.

By this time, given the post-Tampa tightening of rules against defence personnel giving out any public information on their activities, it was impossible to know beyond the limited information in the above-mentioned reports what the new rules of engagement might be. HMAS Adelaide’s extended confrontation with a refugee boat around October 6 (the boat that was involved in the children-throwing allegations) suggests that they were “robust” rules. After this incident, and in the final month of the Australian election campaign, reports began to appear in the media that boats were for the first time being turned back. It began to be claimed that the government’s policy of robust deterrence was working.

The most detailed Australian media account of the sinking on around 19 October was “Overload kills on voyage of doom”, by Don Greenlees. Jakarta correspondent, “*The Australian*” 24 October. The following is drawn from this account.

The leaky wooden boat set sail from a port in south Sumatra early on Thursday 18 October, bound for Christmas Island. It put into an island in the Sunda Strait on Thursday night. 24 passengers refused to continue and disembarked. The remaining 397 people decided to continue the journey to Christmas Island early on Friday 19 October. About 80 km from land, at 2 pm Friday 19 October, the boat began to take heavy water. It listed violently to the side, capsized and sank within the hour. There were only 44 survivors – people who clung to the wreckage or one of the vessel's 70 lifevests for 19 hours, until they were rescued by Indonesian fishing boats around noon on Saturday 20 October. Reports of the sinking only emerged on Tuesday 23 October, when UN officials learned of the survivors' existence.

Greenlees' story concludes: "Australian authorities had been monitoring the departure of the boatpeople from Indonesia. Unaware of the tragedy at sea on Saturday, search and rescue officials in Australia issued an overdue notice on Monday morning," (22 October).

On 7 November, a senior Navy consultant psychiatrist, Dr Duncan Wallace, who had just returned from 30 days' service on HMAS Arunta (the boat which a navy spokesman had said was the closest to the sinking, 230 nautical miles south) issued a prepared public statement complaining that what was happening in seas north of Australia at the hands of the Australian defence force was "morally wrong and despicable". He added, "Nearly everyone I spoke to that was involved in these operations knew that what they were doing was wrong. He said "I participated in the boarding, attempted removal and actual forced removal of suspected illegal immigrant vessels to Indonesia". ("RAN doctor condemns policy on boatpeople", Paul Toohey, The Australian, 7 November 2001). Subsequently, he did not elaborate further on his statement.

QUESTIONS THAT EMERGE FROM THE ABOVE PUBLIC RECORD, WHEN COMPARED WITH THE SURVIVOR STATEMENT

We know that since 3 September, RAN ships were giving "saturation surveillance" (Howard) in waters as close as 30 nautical miles from the Indonesian coast. We know from public sources that almost all boat departures, including the unsafe boat that left south Sumatra on 18 October, would have been known to the Navy (through aerial surveillance and Australian intelligence/police liaison assets in Indonesia). According to the Greenlees article, this particular boat departure was known to the Australian authorities – they issued an overdue notice on the Monday (22 October). We know that Navy instructions were to intercept every boat as close as possible to Indonesia and pressure them to turn back (see Ruddock quotes, above). We know that the Australian Government was anxious to demonstrate, with the election just three weeks way, that its new robust deterrence policy was working, and would have therefore been keen for the Navy to intercept and turn this boat back, as soon as possible after it had left Indonesia.

Given the strict secrecy rules in force for Defence personnel, it is reasonable to suppose that the details of any particular interception would not be made public, except insofar as the Defence Minister wanted them made public.

Here I enter an area of worst-case hypothesis. Suppose survivor no. 17's account is true, what considerations might explain the alleged failure to help survivors, by an Australian naval vessel that arrived on the scene just as the boat was sinking, 80 kilometres from Indonesia? Perhaps a fear that the Australian government might be blamed for the sinking, as being the suspected result of an aggressive RAN interception? Perhaps a concern that to take many desperate survivors on board might endanger the safety of the RAN vessel and crew? Perhaps a concern that to have to bring many survivors back to Australia or Australian island territories (because Indonesia would not have taken them) might be seen, in the final three weeks of the election campaign, as electorally damaging evidence that robust deterrence was not working? Perhaps it might have been thought that, as Australia had not been involved in the sinking of the vessel, it was not morally responsible – and that news of the sinking and loss of life might act as a powerful deterrent to further attempted voyages? Perhaps it might have been assumed that there would be no survivors, as Indonesian ships did not normally go into the area?

These are not accusations or allegations, but simply worst-case scenarios to try to provide a hypothetical logical basis which might explain the survivor's statement – if it were true - that he had seen floodlights from two large ships, and that he was later told by Indonesian fishing boat crews that these must have been Australian border protection ships.

Such an extreme hypothesis would normally be unthinkable in Australia. But the last three weeks of the election campaign (following the “Tampa” and HMAS Adelaide's encounter) were highly abnormal times.

If such a failure to assist had taken place, it would have been in violation of Australia's obligations under Article 98 of the Law of the Sea to try to save the lives of any passengers still alive at the time the sinking vessel was encountered.

Let me be clear: I hope none of the above disturbing hypotheses turn out to be true. But I believe in the circumstances I have outlined and the background information I have here assembled, the Senate in the public interest ought to lay these legitimate concerns to rest as quickly as possible, by questioning under oath of appropriate defence force witnesses, in the context of the present Senate enquiry or enquiries.

This submission and attachments sets out all that I know on this matter, and is based entirely on public-domain sources. I have not spoken to any naval personnel or defence officials on this matter.

Yours sincerely,

Tony Kevin