

# SUBMISSION TO SELECT COMMITTEE INTO A CERTAIN MARITIME INCIDENT

BY ANTHONY KEVIN, 4 MARCH 2002

## SUMMARY

1. Information on the public record suggests a possible causative link between the course of events in HMAS Adelaide's interception within Australian waters of an Indonesian vessel (hereinafter referred to by the RAN term of identification as SIEV 4) on 6-8 October, and the subsequent sinking on 19 October with the reported loss of 353 lives of another Indonesian vessel bound for Christmas Island.

2. I submit that there is a circumstantial (i.e. in the Oxford Dictionary definition: "tending to establish a conclusion by inference from known facts hard to explain otherwise") case to be investigated: did any Australian agency or agent act in such a way as to bring about or make more probable the sinking of the boat on 19 October? If so, was the motive to send a strong deterrent signal against further attempted asylum-seeker boat voyages to Australia in the pre-election period, after Adelaide's forceful interception of SIEV 4 on 6-8 October had failed to achieve the objective of turning back that vessel?

3. If a causative link can be established to exist between these two events during October 2001 in the seas between Indonesia and Christmas Island, both involving boats carrying asylum-seekers seeking to reach Australia, serious breaches of ethical governance and Australian law would be at issue.

4. The issues raised herein are potentially so important as to merit this Select Committee using its powers to call official witnesses under oath and under protection of Senate privilege, in order publicly to establish the facts of this matter beyond reasonable doubt. Considerations of protecting intelligence should not be allowed to block access to the truth on so serious a matter. The Select Committee may think it appropriate to hold *in camera* hearings on this submission. I am prepared to testify in public or in *in camera* sessions.

## FULL SUBMISSION

I herewith make a written submission to this Select Committee and I will be pleased to appear before the Committee, if the Committee so desires, to answer further questions from Senators on any of the matters raised in this submission.

My name is Anthony Charles Kevin (otherwise known as Tony Kevin). I live at 13 Dampier Crescent Forrest ACT 2603. My phone number is 02 62956588 or mobile 0414 822 171. I am 59 years of age and in good health. I retired from the Commonwealth Public Service in good standing four years ago on 1 March 1998, after 30 years service, mostly as an officer of the Department of Foreign Affairs. My last assignments were as Ambassador to Poland (1991-94) and to Cambodia (1994-97). Since 1998 I have been a Visiting Fellow in the Research School of Pacific and Asian Studies at the Australian National University, Canberra. My main research interest is Cambodia. I also write occasional commentaries and analyses for the media on subjects mostly relating to Australian foreign policy and migration/refugee policy.

My reason for making this submission is to urge that this Select Committee examine the context of events and policies in which took place HMAS Adelaide's failed attempt between 6 and 8 October to turn back to Indonesia a vessel carrying suspected illegal entrants to Australia, which I will hereinafter refer to as SIEV 4 using the official Navy nomenclature.

I believe serious questions arise about the Australian Government's actions in respect of border protection during the period between the MV Tampa affair (28 August- 3 September), and the Australian federal election on 10 November at which the Government was returned. Adelaide's interception of SIEV 4 took place in the middle of this politically stormy period, and was a defining event in it – as was the sinking of the unnamed vessel 12 days later.

My analysis is drawn entirely from a study of the public record, and not from any ADF sources. This analysis of public data gives rise to questions of moral and lawful conduct on the part of Australian agencies involved in the application of the Government's border protection policies in the waters between Australia and Indonesia, and within Indonesia.

Some of these questions directly concern Adelaide's interception of SIEV 4, and its failure to enforce SIEV 4's return to Indonesia. Relevant and related questions are raised by reports and allegations relating to the sinking in waters near Indonesia on 19 October of a grossly overloaded vessel bound for Christmas Island carrying a reported 397 passengers, of whom a reported 353 drowned and only 44 survived.

The key events and dates referred to in this submission are :

MV Tampa affair: 28 August – 3 September. ADF secrecy rules were further tightened around this time, effectively to prohibit any ADF personnel from having contact with media.

New tougher rules of engagement for interception of SIEVs were publicly canvassed in the media by Ministers and Ministerial spokesmen: around 2/3 September (see four articles attached)

Border Protection Legislation was passed: 27 September

Adelaide intercepts SIEV 4: 6-8 October

A grossly overloaded ship carrying 397 passengers bound for Australia sinks with 353 drowned (44 survivors) off Indonesia on 19 October. News of this tragedy becomes public on 23 October.

Australian federal election was held on 10 November.

Public disclosures regarding activities of Kevin John Ennis, an Australian people smuggler and paid AFP informant – see Channel 9 Sunday Programs, February 17 and 24 February 2002. Questions in Parliament about Ennis were asked on 18 February 2002 (H of R Hansard p 223-5). The Legal and Constitutional Legislation Committee questioned Australian Federal Police Commissioner Mick Keelty on 19 February (see especially Hansard L&C p 137-8). See also SMH March 4 media article by Lindsay Murdoch, attached at Attachment 9.

## THE POLICY CONTEXT IN OCTOBER 2001

The MV Tampa affair left the Australian Government determined to find ways to stop unauthorised asylum-seekers reaching Australian territory by boat, and thereby being able to make onshore asylum claims requiring consideration on Australian territory under the Refugee Convention and protocols to which Australia has adhered.

To achieve this objective, the Government during September launched three complementary new strategies:

1. To instruct the ADF to operate under much more forceful new rules of engagement for RAN interception of SIEVs, aimed at turning back SIEVs to Indonesia instead of (as in the past) simply impounding and escorting or towing intercepted SIEVs to Australian ports.
2. To legally exclude Australian island territories closest to Indonesia and therefore most easily accessible to SIEVs (Christmas and Cocos Islands, and Ashmore Reef), from the possibility of making onshore refugee claims.
3. To negotiate offshore processing locations outside Australia (the “Pacific solution”) for asylum-seekers who managed to reach these Australian island territories.

Under the first of these strategies, the RAN Rules of Engagement (ROE) for intercepted SIEVs were strengthened in ways that have not been formally made public. Ministers at the time said they refused to go into details on the new interception strategies, and service personnel were (and are still) not authorised to disclose them. But four newspaper articles on 2/3 September based on briefings by Ministers and Ministerial spokesmen (see Attachments 1-4), provided a fair amount of guidance on what the new ROE set out to achieve and how it was hoped this might be done. It seems from a reading of these four articles that the government planned that under the new ROE, SIEVs would be intercepted much closer to the Indonesian coast than previously, and frightened into turning back by determined displays of RAN force. Such use of force would stop short, the Prime Minister stated, of sinking boats (Attachments 1 and 2). But the inference that can reasonably be drawn from the above-mentioned media articles is that the Government wanted SIEV passengers to be given reason to fear the possibility of such an outcome, and thereby be frightened into turning back to Indonesia.

## THE ADELAIDE/SIEV 4 ENCOUNTER ON OCTOBER 6-8 2001

The Adelaide's forceful interception of SIEV 4 on 6-8 October was the first major test of these new ROE. The interception involved such measures as bearing down on SIEV 4 at speed, repeated rounds of warning cannon and machine gun fire across its bows, blocking its way and presumably creating heavy wash around it, the taking control of SIEV 4 by armed boarding parties, repairing its damaged engine and steering gear, and forcibly steering it back to the boundary of the Australian exclusion zone. I presume that all those measures were authorised under the new ROE.

From the RAN's cabled chronology, I extract the following information to illustrate the nature of the encounter as the asylum-seekers would have experienced it (all times are shown in local time, as taken from the HMAS Adelaide cable of October 10 which was tabled in Parliament on 21 February (See Attachment 5) :

6 October:

1813 (AEST 2113) First warning given to master of vessel.

7 October:

0153 (AEST 0453) Second warning issued.

216 Boarding party ordered by Commanding Officer to prepare to board SIEV 4 when vessel enters Christmas Island Contiguous Zone.

258 Adelaide made close pass down SIEV4 starboard side.

335 Adelaide directed by CJTF to conduct a positive and assertive boarding .

402 Warning 5.56 mm (cannon) shots fired 50 feet in front of vessel.

405 Warning 5.56 mm shots fired 75 feet in front of SIEV4.

409 Warning 556 mm shots fired 50-100 feet in front of SIEV 4.

414 Boarding party advised by CO that if 50 cal machine gun warning shots do not stop vessel, boarding party is to aggressively board SIEV 4.

418-420 Twenty-three rounds of 50 cal (20 rounds of automatic fire) fired in front of SIEV 4 .

430 Close quarters manoeuvring by Adelaide, SIEV passed close astern to Adelaide port quarter and reduced speed/took way off momentarily.

432 Boarding party issued final warning (to SIEV) indicating that if they did not allow boarding party to board, Adelaide would not let them enter Australian waters.

442 Boarding party effected a conducted non-compliant boarding of SIEV4.

445 Boarding party in control of SIEV 4.

Questions arise from this record that are relevant to the Select Committee's consideration:

1. How far in front of SIEV 4 were the 23 rounds of machine gun fire (20 rounds automatic) at 0418-0420? Were they close enough to SIEV 4 for its passengers to reasonably think they might be under fire? Were all rounds of fire controlled? Was there risk of casualty to persons aboard SIEV 4 from these shots?

2. What was meant by the quoted "final warning" to SIEV given at 0432? Could it have been reasonably understood by the people on the SIEV as a threat to sink SIEV 4 if the boarding party were not allowed to board SIEV 4? Was it the Adelaide's intention to convey such a warning? Did the ROE require such a warning to be given to SIEV 4?

3. Is it reasonable to conclude that as a result of the rapid sequence of forceful interception actions by Adelaide between the first warning shots at 0402 and the taking control of SIEV 4 by armed boarding party at 0445 i.e. 43 minutes later, all in darkness, the people on board SIEV 4 (especially the women and children) would have been highly distressed and frightened?

I ask these questions of the Committee because they go to the state of mind of the people on board SIEV 4 during the interception, and what they might have been led to fear could be their fate at the hands of Adelaide.

After the boarding, there appear to have been attempts to disable the engine and steering. These were repaired by the Adelaide's crew. SIEV 4 was then steered and escorted back by Adelaide to a point north of the Australian contiguous zone. At 1030 on 7 October, SIEV 4 was handed back to the control of the English speaking doctor on board, and warned not to re-enter the Australian contiguous zone. That afternoon, Adelaide responded to a distress signal and took SIEV 4 into tow. The next day, 8 October, SIEV 4 sank and Adelaide rescued the passengers from the water - fortunately, with no reported loss of life.

In the end, the new tougher ROE failed to turn back SIEV 4. Its final disabling just outside the exclusion zone obliged the Adelaide under normal rescue at sea obligations (as also encoded in the Law of the Sea) to rescue the passengers and take responsibility for them.

Australian Ministers reacted angrily to this policy failure. On ABC Lateline on 9 October. Mr Howard said “The Navy has behaved impeccably. These young men and women are being subjected to the most appalling provocation.” On the same program, Mr Downer said “They will not be welcome on the mainland of Australia – they will not be integrated into our community.”

Actually, the SIEV 4 passengers had at no time threatened RAN crew with any violence: their “threats” were of suicide or self-harm through damaging their own boat. They showed great bravery, after repeated cannon and machine gunfire and armed boarding, in finally placing their faith in the Adelaide crew being willing to rescue them when their boat was finally disabled just outside the Australian zone. The Adelaide’s previous forceful actions towards them would have given them no certainty that this would be the case.

I believe that Ministers’ anger reflected their intense disappointment that what was intended to be – and clearly was - a very forceful and frightening interception under the new ROE, finally failed to deter the passengers of this SIEV. This was because the people on SIEV 4 trusted that in the end, the Australian navy would not sail away from their disabled or sinking boat and leave its passengers to die.

I believe this conclusion is of direct relevance to the subsequent event of 19 October addressed in this submission.

I do not believe, subject to any evidence that might emerge to the contrary, that Adelaide either exceeded or failed fully to implement its ROE. I believe that the Commander and crew of Adelaide acted properly and ethically, in accordance with their ROE and orders at the time, and with their Law of the Sea rescue obligations. My concern here is to urge that the Select Committee bring more clearly into public focus an accurate understanding of the nature of the whole Adelaide/SIEV 4 encounter and its broader policy consequence, which have not so far emerged in parliamentary debate or the media.

## THE SINKING ON 19 OCTOBER

Just twelve days later, on 19 October, the sinking of a grossly overloaded boat carrying asylum-seekers bound for Australia took place in Indonesian waters between Indonesia and Christmas Island. The most detailed Australian media account of the sinking was “Overload kills on voyage of doom”, by Don Greenlees, Jakarta correspondent, “The Australian” 24 October (at Attachment 6). The following is a summary of this account.

The leaky wooden boat set sail from a port in south Sumatra early on Thursday 18 October, bound for Christmas Island. *It was grossly overloaded with more than four times the number of passengers it could safely carry. Almost from the start of the voyage, passengers were forced to bail water flowing in through a long crack in the hull* (My italics). In rough seas, 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, 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 life vests 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. Survivors interviewed on 23 October said that they had told Australian officials that the main people-smuggler behind the operation was a man identifying himself as an Egyptian citizen, Abu Quessai.

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).

An article by Greenlees the next day (Australian, 25 October 2001 “Forced on to death boat”) reports survivors’ accounts that Indonesian security personnel forced passengers at gunpoint to remain on board the vessel when passengers, fearing its overloaded condition, tried to get off (presumably, at the port of embarkation). Greenlees writes that survivors interviewed by “The Australian” also said “the captain of the ship had his own misgivings about the capacity to put to sea with 421 people. Authorities say the 19 m vessel could safely carry fewer than 100”. I would add my own observation that most asylum-seeker boats that have reached the Australian maritime zone or Australian island territories have been



similar-sized fishing boats that have carried around 120-220 people; never passenger loads in the range of 350-400 people.

On 27 October, (“The Australian”), Greenlees reports that two Indonesian policemen in Riau, Sumatra, were detained for questioning over these allegations. No serious action is reported to have been taken by Indonesian authorities against the alleged organiser, Quessai.

At the time, I did not conceive of any possible Australian involvement in this tragedy. My first inkling of this came in early February when I read more closely Vanessa Walker’s article in “The Australian” of 21 December 2001: “Boat Tragedy survivor granted asylum”. (Text at Attachment 8).

Following the tragedy, 22 survivors gave oral videoed accounts which were later translated and transcribed by Keysar Trad, Vice President of the Lebanese Muslims’ Association of NSW (Full transcript of these accounts is attached at Attachment 7, being Mr Trad’s email to me of 11 February 2002). One survivor’s account, by survivor number 17 (his name is not stated), reads as follows:

“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? ....”

On the basis of this account, “The Australian” on 21 December 2001, carried a page 2 story by Vanessa Walker, “Boat tragedy survivor granted asylum” (at Attachment 8). The story contained these two 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.”*

Puzzled by these sentences, around 10/11 February 2002 I telephoned Vanessa Walker at “The Australian” to ask if she had any further background. She then put me in touch with Keysar Trad (see above), from whom I obtained the survivor transcripts at Attachment 7.

Survivor No 17’s story may or may not be true. In his grief, fear and exhaustion, this survivor and other survivors may have imagined the presence of an Australian ship or ships. It may be difficult or impossible at this point to obtain untainted corroborating testimony from any survivor.

If an Australian patrol ship were in the vicinity but did not go to survivors’ help, this would be a most serious matter. I would hope that the Select Committee could establish beyond doubt, through questioning of appropriate RAN witnesses, that no RAN ship witnessed the sinking or was in the proximate vicinity of the sinking from where it might have had a lawful duty to try to help survivors.

I am also concerned at Vanessa Walker’s reported statement by a Defence Department spokesman that the nearest Australian vessel was HMAS Arunta, 230 nautical miles south of the spot. If the sinking did take place some 80 km south of the Indonesian coast as Greenlees reports, this would put the location some 250 km north of Christmas Island – well outside the Australian declared contiguous zone. And it would put HMAS Arunta close to Christmas Island, and well inside the Australian declared zone.

There is a disturbing inconsistency here. We know from public sources that almost all boat departures would have been known to the ADF, through aerial surveillance and through Australian intelligence/police liaison assets in Indonesia. According to the Greenlees article, this particular boat departure was definitely known

to the Australian authorities – Greenlees writes that they issued an overdue notice on the Monday (22 October).

We know that under the new ROE of around 2/3 September, instructions to the RAN were to intercept every boat as close as possible to Indonesia and to put maximum pressure on them to turn back (see Ruddock quotes in Saunders article, at Attachment 3). We know also that under these new ROE, RAN ships were under orders to give “saturation surveillance” (see Nicholson, at Attachment 1) and to patrol in waters as close as 30 nautical miles from the Indonesian coast (see Saunders, Attachment 3).

We know that the Australian Government would have been anxious to demonstrate, with the election just three weeks away, that it could prevent a boat carrying so many SIE’s from reaching and penetrating Australia’s contiguous zone, as SIEV 4 had done 11 days earlier.

Why, then, was there no Australian naval boat steaming at full speed to intercept the vessel that was known to have left Indonesia on 18 October? Why were no such orders given to the RAN ships in the exclusion zone? Why was the nearest RAN boat 230 nautical miles south of the spot where the Indonesian boat sank?

#### RELEVANT RECENT DISCLOSURES REGARDING THE ACTIVITIES IN INDONESIA OF PEOPLE SMUGGLER AND AUSTRALIAN POLICE INFORMANT, KEVIN JOHN ENNIS

Two recent Channel Nine “Sunday” programs (17 and 24 February) reported on the activities of Kevin John Ennis, a confirmed informant to the Australian Federal Police on people smuggling activities in Indonesia, and (by his own admission, confirmed by AFP Commissioner Mick Keelty in Senate Estimates Committee on 19 February 2002) a significant senior figure in the people smuggling trade in Indonesia. An Indonesian police document displayed and cited on the 17 February “Sunday” program stated: “Ennis is the Australian citizen who is the mastermind of the illegal immigrant smuggling from the Middle East to Australia”. In a subsequent report by Lindsay Murdoch in the Sydney Morning Herald on March 4 (“I’m just a good spy, says our man in Timor”) (see Attachment 9), Ennis says:

“How could people think I was anything else? (than a people smuggler). This is what I did for a living. It was my job to know

everything that was happening in people smuggling: when the boats were going, who arranged them, who was on them.”

The Murdoch article reports the history of Ennis’ involvement in the people-smuggling business as follows. Two Adelaide-based former business partners had lent him large sums of money to start a fishing venture in Indonesia. They had business disagreements with him in 1998 and subsequently denounced him to Indonesian authorities who arrested him in June 1999 on charges of fraud and stealing. Released from jail in December 1999, he moved into the people-smuggling trade, at the same time providing information for payment to Jakarta-based Australian police. These activities came to an end in September 2001, after a Kupang (West Timor) newspaper published claims that Ennis was a people-smuggler. This led to Ennis being forced to leave Kupang (though not Indonesia), and to the “Sunday” program investigations.

In the 17 February program, Ennis claimed that as a major informant for AFP, he told Australia where to look to catch the illegal boats.

AFP Commissioner Keelty confirmed in Senate Legal and Constitutional Committee estimates hearings on 19 February that AFP knew Ennis was engaged in people-smuggling, because he was telling them what was going on (Hansard L&C p 137). Keelty indicated that Ennis had provided useful information to AFP that had helped AFP prevent numbers of asylum-seekers setting out on voyages to Australia, and that Ennis was not the only such informant the AFP had operating in Indonesia. Keelty declined to say how many others informants AFP had operating in Indonesia (p 138).

A conclusion that can reasonably be drawn from this public record in relation to Ennis is that Australian police and intelligence assets had by October 2001 successfully penetrated people smuggling operations in Indonesia at senior organisational levels. It can reasonably be assumed that during October 2001, other AFP informants – if not Ennis himself – were closely involved in the people-moving trade and in a position to pass on to Australian authorities information on “when the boats were going, who arranged them, and who was on them”. (Murdoch, Attachment 9).

This is only logical, because it would be highly desirable for efficient interception of asylum-seeker boats, allocating Australia’s limited naval patrol boat resources, for Australian authorities to have

detailed information on when boats sail, from where, and with approximately how many passengers.

## A DISTURBING HYPOTHESIS

Disturbing questions arise from the Greenlees reports in “The Australian” on 24 and 25 October 2001 about the boat that sank on October 19. Why was this boat allowed to put to sea in such an obviously unseaworthy (note Greenlees’ report that almost from the start of the voyage, passengers were forced to bail water flowing in though a long crack in the hull) and grossly overloaded condition? Why were fearful passengers forced to remain on board at gunpoint by policemen associated with the smuggling operation ?

Further questions arise from the survivor accounts. Why did the engine fail soon after departure, leaving the boat rocking and unstable? Why did the boat sink in not particularly heavy seas: there is mention by two survivors of heavy rain, but not of wind or storms or waves.

What could be the commercial interest of a people smuggler who wanted to sustain his business into the future, to allow a boat to set sail that was so obviously likely to sink when it reached the normal swell of the open sea? Did a person or persons strategically placed in the people smuggling industry in Indonesia arrange for this boat to sail in a highly unseaworthy condition, with the anticipation that it would sink soon into the voyage?

Here I note a very disturbing hypothesis. Might an Australian agency or paid agent in Indonesia have organised matters to make it likely that this boat sank in Indonesian waters soon after leaving its embarkation port in Indonesia?

There was certainly a strong motive at the time for such an action. As noted above, Adelaide’s forceful interception on 6-8 October had failed to turn SIEV 4 back. Australian authorities would have correctly concluded that the new ROE would not in themselves succeed in turning back further asylum-seeker boats. The border protection regime on which Mr Howard had staked his election claim was collapsing. Continued arrivals of SIEVs in the weeks leading up the 10 November election would embarrass the government and would overtax the Pacific solution. But it was

inconceivable that the RAN could be instructed to sail away from disabled or sinking boats, leaving passengers to their likely deaths.

The fact is that the sinking on 19 October of an overloaded boat off Indonesia's coast in Indonesian waters, with major loss of life, deeply shocked the international community. For several days it was headline world news. Apart from the one survivor's account reported in December 2001 by Vanessa Walker (Attachment 8), there was no trace of any possible Australian involvement.

After this sinking, there were no further asylum-seeker boats until the election on November 10 and the onset of the cyclone season; and there have been none since. Mr Downer expressed confidence on 3 March 2002 that there was every chance that the flow of asylum-seekers to Australia had been stopped. He said that last week's regional meeting in Bali had sent a strong signal about the region's resolve to block asylum-seekers.

I believe the totality of public information summarised above suggests that the real signal that halted the flow of boats was the sinking in Indonesian waters, in very suspect circumstances, of the unseaworthy and overloaded boat on 19 October 2001. It sent a very powerful deterrent message to people smugglers and passengers alike: that there is a capability operating in Indonesia that is powerful and ruthless enough to force overloaded and unseaworthy boats to sea, drowning large numbers of people as a result.

The Ennis disclosures, taken together with the other matters referred to above that are already on public record, suggest that the possibility cannot be excluded that Australian agencies or agents may have been involved in the sinking on October 19. According to the above analysis, there was both a strong Australian motive and an available Australian capability.

If there was in fact such an unlawful operation involving Australian agencies or agents, it would have fully met its objectives. There were no significant people-smuggler boats that departed from Indonesia after this event. The last boat reported to arrive in Australia was at Ashmore Reef on 25 October. The credibility of the Howard Government's border protection regime was sustained in the final weeks of the election campaign. The tragedy also, through the international attention it focussed on the problem of people

smuggling, gave a strong impetus to the holding of the Bali conference that has just taken place.

With this potentially very disturbing hypothesis already in the public arena, Australia's good name is at stake - as well as the right of the survivors of the 19 October tragedy to accountability and justice.

I respectfully suggest that the Select Committee seek answers from expert witnesses to questions such as the following:

What was the nature and extent of Australian police informers and/or intelligence agencies' involvement in the people moving trade in Indonesia around 18 October? Did Australia have access to any information about a boat preparing to embark from South Sumatra?

What reports were made to authorities in Australia about the departure on 18 October from South Sumatra of the vessel that sank the next day? What Australian agencies, if any, were advised of the unseaworthy and grossly overloaded condition of the boat and of an expectation that it would sink soon after getting into open seas? To what other areas of the Australian Government was such advice reported?

What decisions were made by Australian authorities about the attempted interception, or non-interception, of this boat? On what basis were such decisions made, and by whom?

What do Australian authorities know, and when and how did they find out, about the 19 October sinking, and about the subsequent rescue of 44 survivors by Indonesian fishing vessels?

Did Australian agencies or agents in Indonesian authorities help direct Indonesian fishing vessels, directly or indirectly, to the general area of the sinking – an area where, according to survivor no 19's account, Indonesian fishing boats would not normally go?

Did any Australian intelligence or police assets in Indonesia have any involvement in the departure, reportedly at gunpoint, of this unsafe and grossly overloaded vessel?

Yours faithfully,

A.C. Kevin

LIST OF ATTACHMENTS (To follow with hard copy of this submission) :

Attachment 1: “More patrols to deter smugglers”, Brendan Nicholson, Sunday Age, 2 September 2001

Attachment 2: “Warships sent to boost refugees patrol”, Mark Metherell, Sydney Morning Herald, 3 September 2001

Attachment 3: “Patrols to begin the hunt off Java”, Megan Saunders, The Australian, 3 September 2001

Attachment 4: “Enhanced surveillance ‘puzzling’”, Brendan Pearson and Paul Cleary, Australian Financial Review, 3 September 2001

Attachment 5: HMAS Adelaide cable of October 10 2001 which was tabled in Parliament on 21 February 2002.

Attachment 6: “Overload kills on voyage of doom”, Don Greenlees, Jakarta correspondent, “The Australian” 24 October 2001

Attachment 7: Email to me dated 11 February 2002 from Keysar Trad, Vice President of the Lebanese Muslims’ Association of NSW, containing his transcript in English of videotaped survivor accounts.

Attachment 8: “”Boat tragedy survivor granted asylum”, Vanessa Walker, The Australian, 21 December 2001.

Attachment 9: “I’m just a good spy, says our man in Timor”, Lindsay Murdoch, Sydney Morning Herald, March 4, 2002.



The Age, Opinion page (p.15) , 25 March 2002

# Who'll rescue the truth of 353 lives lost at sea?

Tony Kevin  
March 25 2002

Reviewing the public record of the sinking on October 19 last year of an unauthorised asylum-seeker vessel bound for Christmas Island, in which 353 people were drowned, throws up disquieting questions.

The first is why a Defence Department spokesman later said the closest Australian ship at the time was HMAS Arunta, which was 230 nautical miles (426 kilometres) south of where the boat sank, which was 80 kilometres south of Java. It had earlier been reported that Australian authorities had been monitoring the departure of the boat from Indonesia on October 18, and that Australian search-and-rescue authorities had put out a "boat overdue" notice on October 22.

Why, under new rules of RAN engagement requiring total maritime surveillance and total interception of unauthorised boats as close as 30 nautical miles from the Indonesian coast, was Arunta conspicuously so far away from the scene at the time of the sinking?

The reported circumstances of the departure from a small port in southern Sumatra are also disturbing. Indonesian security personnel reportedly crammed passengers at gunpoint into the boat. Passengers were lied to that it was a transit vessel from which they would transfer to a larger boat for the voyage to Christmas Island.

From the time of its departure, it has been reported, "passengers were forced to bail water flowing in through a long crack in the hull". When the vessel reached the open sea on Friday, October 19, one of its two engines failed. The stricken boat began to rock in the ocean swell, taking more and more water. Within a few minutes it capsized. The boat completely broke up soon after capsizing - which, taken together with the gross passenger overloading under armed duress, the reported damage to the hull, and the engine failure at sea, suggests sabotage. It was carrying only 70 life-vests.

The story became world news on Tuesday, October 23 - the day after the Australian authorities' "vessel overdue" notice was issued. An Egyptian people-smuggler, Abu Qessai, was held responsible for the voyage and arrested, but no manslaughter charges were laid.

It seems implausible that a commercial people-smuggler would have set out to sabotage his own operation. Might Qessai's venture have been taken over by more powerful armed elements in Indonesia, with the capacity to render it likely that this boat would sink early in the voyage? If so, with what possible motive?

It is hard to think such a ruthless action, if it took place, could have been officially sanctioned at Indonesian Government level. Before this event, the Indonesian Government had been manifestly unresponsive to Australia's expressed concerns about unauthorised asylum-seeker voyages from Indonesia to Australia.

This disaster proved a key circuit-breaker. Indonesia quickly agreed to co-host with Australia a conference on people-smuggling. Apart from one boat arrival on Ashmore Reef soon afterwards, there were no more people-smuggling voyages before the onset of the cyclone season (which this year came late, in December). The threatened overhang of 2500 people in Indonesia waiting to come to Australia never arrived.

This must have been a relief to Australian Government ministers and officials, who a few days earlier were worrying about more boats coming, after HMAS Adelaide's unsuccessful effort on October 6-8 to turn back SIEV 4 (the "children overboard" vessel). Manifestly, Adelaide's robust deterrence had failed because SIEV 4's passengers had correctly judged that the RAN would not leave them to drown. The courage of SIEV 4's passengers and Adelaide's adherence to its rescue-at-sea obligations had exposed the inherent weakness in the government's interception policy.

From recent disclosures by Kevin Ennis and Australian Federal Police Commissioner Mick Keelty, we know that Australian police informants have deeply penetrated people-smuggling networks in Indonesia. It was the job of people such as Ennis (and Keelty confirmed in Senate Estimates on February 19 that the AFP employs other such informants) "to know everything that was happening in people smuggling: when the boats were going, who arranged them, who was on them" (The Sydney Morning Herald, March 4).

If it's true Australian authorities had monitored the departure of this vessel from Indonesia on October 18, how much, if anything, might they also have known about its departure being under armed duress, grossly overloaded and manifestly unseaworthy? Who, if anyone, might have received such information in Australia?

If Australian authorities knew this boat had left on October 18, why had the RAN apparently not been instructed to intercept it soon after its departure? Why was the nearest RAN ship 230 nautical miles to the south - far south of the boundary of Australia's declared maritime exclusion zone?

Such discrepancies in this haunting story of 353 innocent people drowned at sea remain to be explained. Such questions should be vigorously explored - if only to prove that there may be legitimate explanations.

We owe this to the dead and their grieving families.

*Former Australian diplomat Tony Kevin is a visiting fellow in the Research School of Pacific and Asian Studies at Australian National University.*





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# Who'll rescue the truth of 353 lives lost at sea?

Tony Kevin  
March 25 2002

Reviewing the public record of the sinking on October 19 last year of an unauthorised asylum-seeker vessel bound for Christmas Island, in which 353 people were drowned, throws up disquieting questions.

The first is why a Defence Department spokesman later said the closest Australian ship at the time was HMAS Arunta, which was 230 nautical miles (426 kilometres) south of where the boat sank, which was 80 kilometres south of Java. It had earlier been reported that Australian authorities had been monitoring the departure of the boat from Indonesia on October 18, and that Australian search-and-rescue authorities had put out a "boat overdue" notice on October 22.

Why, under new rules of RAN engagement requiring total maritime surveillance and total interception of unauthorised boats as close as 30 nautical miles from the Indonesian coast, was Arunta conspicuously so far away from the scene at the time of the sinking?

The reported circumstances of the departure from a small port in southern Sumatra are also disturbing. Indonesian security personnel reportedly crammed passengers at gunpoint into the boat. Passengers were lied to that it was a transit vessel from which they would transfer to a larger boat for the voyage to Christmas Island.

From the time of its departure, it has been reported, "passengers were forced to bail water flowing in through a long crack in the hull". When the vessel reached the open sea on Friday, October 19, one of its two engines failed. The stricken boat began to rock in the ocean swell, taking more and more water. Within a few minutes it capsized. The boat completely broke up soon after capsizing - which, taken together with the gross passenger overloading under armed duress, the reported damage to the hull, and the engine failure at sea, suggests sabotage. It was carrying only 70 life-vests.

The story became world news on Tuesday, October 23 - the day after the Australian authorities' "vessel overdue" notice was issued. An Egyptian people-smuggler, Abu Qessai, was held responsible for the voyage and arrested, but no manslaughter charges were laid.

It seems implausible that a commercial people-smuggler would have set out to sabotage his own operation. Might Qessai's venture have been taken over by more powerful armed elements in Indonesia, with the capacity to render it likely that this boat would sink early in the voyage? If so, with what possible motive?

It is hard to think such a ruthless action, if it took place, could have been officially sanctioned at Indonesian Government level. Before this event, the Indonesian Government had been manifestly unresponsive to Australia's expressed concerns about unauthorised asylum-seeker voyages from Indonesia to Australia.

This disaster proved a key circuit-breaker. Indonesia quickly agreed to co-host with Australia a conference on people-smuggling. Apart from one boat arrival on Ashmore Reef soon afterwards, there were no more people-smuggling voyages before the onset of the cyclone season (which this year came late, in December). The threatened overhang of 2500 people in Indonesia waiting to come to Australia never arrived.

This must have been a relief to Australian Government ministers and officials, who a few days earlier were worrying about more boats coming, after HMAS Adelaide's unsuccessful effort on October 6-8 to turn back SIEV 4 (the "children overboard" vessel). Manifestly, Adelaide's robust deterrence had failed because SIEV 4's passengers had correctly judged that the RAN would not leave them to drown. The courage of SIEV 4's passengers and Adelaide's adherence to its rescue-at-sea obligations had exposed the inherent weakness in the government's interception policy.

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