

Chapter 1

Border Protection: A New Regime

Introduction

1.1 On Sunday 26 August 2001, a 20-metre wooden Indonesian fishing boat with 433 Afghan asylum seekers on board was in distress in the Indian Ocean 140 kilometres north of Christmas Island.¹ The boat was within the Indonesian search and rescue zone, but it was a routine surveillance flight by Coastwatch which spotted the vessel and so it was the Australian Search and Rescue (AusSAR) which broadcast a call to ships in the vicinity to render it assistance. A Norwegian container ship, the MV *Tampa*, with a crew of 27 and licensed to carry no more than 50 persons, responded to the call.

1.2 Guided by Coastwatch, the *Tampa's* captain, Arne Rinnan, reached the stricken boat, the *Palapa*. He took on board the *Palapa's* passengers and crew and began to head for Indonesia. A number of those rescued, however, objected to being returned to Indonesia and threatened to commit suicide if the captain did not take them to Australia. Captain Rinnan accordingly changed his course for Christmas Island.

1.3 As the *Tampa* approached Christmas Island on 27 August, however, Australian authorities directed the captain to keep out of Australian territorial waters and to take his rescued passengers back to Indonesia. The Prime Minister, Mr Howard, insisted that: 'I believe that it is in Australia's national interest that we draw a line on what is increasingly becoming an uncontrollable number of illegal arrivals in this country', and stated that those rescued by the *Tampa* would not be allowed to land in Australia.²

1.4 What followed was to become known as 'the *Tampa* crisis'. It was in essence a five day 'stand off' between the Australian government and the captain of the *Tampa* over where the rescued Afghans were to be taken. The crisis proved to be the catalyst for a new so-called 'border protection' regime in Australia.

1.5 This chapter outlines the response to the *Tampa* crisis, out of which grew a new legislative framework for handling unauthorised boat arrivals, the so-called Pacific Solution, a new framework for whole-of-government coordination of these issues, and operational strategies of disruption, interception and deterrence. This regime forms the background to the events and policies which are the subjects of the Committee's inquiry.

1 Victorian Council for Civil Liberties Incorporated v Minister for Immigration & Multicultural Affairs (& summary) [2001] FCA 1297 (11 September 2001).

2 Transcript of the Prime Minister, the Hon. John Howard, interview on Radio 3AW, Melbourne, 31 August 2001.

The Resolution of the *Tampa* Crisis

1.6 From 27 August 2001, Captain Rinnan began to express concern about the medical condition of some of the asylum seekers on board his vessel.³ Intensive communication on this and other issues ensued over the next two days between the *Tampa*, Coastwatch, the Rescue Coordination Centre (RCC) at AusSAR, the Australian Federal Police (AFP) on Christmas Island, the Department of Foreign Affairs and Trade (DFAT), the Department of Defence (particularly Maritime Headquarters), the Royal Flying Doctor Service, the Indonesian search and rescue authority, the Australian Embassy in Jakarta, the Departments of Transport and Regional Services (DTRS), the Prime Minister and Cabinet (PM & C), and Immigration and Multicultural Affairs (DIMA), and the Joint Rescue Coordination Centre Stavanger in Norway.⁴

1.7 At 11.15pm on Tuesday 28 August, the Royal Flying Doctor Service sent a fax to the AusSAR's Rescue Coordination Centre after having just spoken to the master and first officer of the *Tampa*. These officers had advised that there were 438 people on board of whom 15 were unconscious. Further, there was one sick child, one person with a broken leg, and a large number of people with open sores and skin infections. The adults had begun a hunger strike and were suffering abdominal pains and diarrhoea. The Royal Flying Doctor Service assessed that there was a 'mass situation medical crisis and that medical attention was urgently required'.⁵

1.8 Overnight and in the early hours of 29 August, the *Tampa* sent increasingly insistent calls for medical assistance. Australian authorities indicated that they were working urgently on the matter, but they continued to forbid the *Tampa* to enter Australian waters.⁶ At 11.26am, Captain Rinnan sent a message to the RCC, saying that he had tried to accommodate the wishes of the Australian authorities, but that the situation was deteriorating rapidly and getting out of hand. He advised his intention of proceeding to the nearest shore immediately.⁷

1.9 At 11.39am on 29 August 2001, the *Tampa* entered Australian waters. The RCC sent a message advising the master that such action was 'a flagrant breach of Australian law', and that the Australian Government was initiating 'necessary actions to board the vessel under appropriate legal powers'.⁸ Shortly after 12.35pm, the *Tampa* was boarded by 45 Australian SAS members. On the same day, the Prime Minister tabled the Border Protection Bill 2001. Essentially the Bill sought to put beyond doubt the domestic legal basis for actions taken in relation to foreign ships

3 Answers to Questions on Notice, Australian Maritime Safety Authority (AMSA), 5 July 2002, *Timeline for Tampa Incident*, p.5.

4 Answers to Questions on Notice, AMSA, 5 July 2002, *Timeline for Tampa Incident*, pp. 4-9.

5 Answers to Questions on Notice, AMSA, 5 July 2002, *Timeline for Tampa Incident*, p.9.

6 Answers to Questions on Notice, AMSA, 5 July 2002, *Timeline for Tampa Incident*, p.10.

7 Answers to Questions on Notice, AMSA, 5 July 2002, *Timeline for Tampa Incident*, p.10.

8 Answers to Questions on Notice, AMSA, 5 July 2002, *Timeline for Tampa Incident*, p.11.

within the territorial sea of Australia, to have retrospective effect from the morning of 29 August 2001. The Bill also sought to confine judicial review of the direction or enforcement action taken in relation to such vessels.⁹

1.10 In the early hours of 30 August, however, the Senate rejected the Bill, with the Opposition criticising the width of the proposed powers, and contending that it would not necessarily resolve the legal issues surrounding the *Tampa*.¹⁰

1.11 The crisis, generated by the Government's rhetorically charged insistence that no asylum seeker aboard the *Tampa* was to set foot on Australian soil, was finally resolved through the assistance of neighbouring countries. On 1 September 2001, the Prime Minister announced that agreements had been reached with the governments of New Zealand and Nauru for the people rescued by the *Tampa* to be conveyed to, and their claims to asylum assessed in, those two countries. On 2 September, an agreement with Papua New Guinea was announced, allowing for the transshipment of people from the *Tampa* through Port Moresby, on the Australian troopship HMAS *Manoora*.¹¹

1.12 Having achieved an 'ad hoc' solution to the *Tampa* crisis, the government moved to institute a comprehensive new border protection regime.

A New Regime

1.13 The post-*Tampa* regime for handling 'unauthorised boat arrivals' (UBAs) was developed quickly and 'on the run'. This was because even before the fate of those on board the *Tampa* had been resolved, the government knew of three more boats carrying up to 900 people that were due in Australian waters at any time.¹²

1.14 In general terms, the central aim of the government's new regime was identical to the stand taken by the Prime Minister during the *Tampa* crisis, that '[w]e will not allow these people to land in Australia'.¹³ In other words, the government's new policy was that it would not allow 'unauthorised arrivals' to land on Australian territory, in a manner uncontrolled by the Australian government, for the purpose of claiming refugee status. Individuals seeking asylum must be processed 'off-shore', and then decisions about whether to accept them as refugees to Australia made in the same way as decisions are made in relation to the claims of those assessed as refugees in camps elsewhere in the world.

9 Nathan Hancock, *Refugee Law – Recent Legislative Developments*, Current Issues Brief No.5 2001-02, Department of the Parliamentary Library, p.4.

10 Nathan Hancock, *Refugee Law – Recent Legislative Developments*, p.4.

11 Victorian Council for Civil Liberties Incorporated v Minister for Immigration & Multicultural Affairs.

12 PST Notes, High Level Group - 28 August 2001.

13 Transcript of the Prime Minister, the Hon. John Howard MP, Doorstop Interview, Melbourne, 31 August 2001.

1.15 The difficulty for the government in implementing this policy, however, is that, under the *1951 Convention Relating to the Status of Refugees*, Australia's protection obligations are engaged when asylum seekers enter Australia's jurisdiction by entering its territorial seas.¹⁴ The *Migration Act 1958*, and access to administrative and judicial review opportunities, apply to reception and processing within Australia's migration zone.

1.16 If the government wished to ensure that it controlled exactly who it would accept as refugees and when it would accept them, it needed to make sure that individuals without proper authorisation could no longer reach Australia's migration zone, but without breaching its protection responsibilities under the Convention.

1.17 In order to prevent 'unauthorised arrivals' from landing on Australian territory, then, the government implemented a multi-faceted strategy. One facet of the strategy involved legislation which excised certain islands to the north of Australia from the ordinary visa application and processing regime under the *Migration Act 1958*. This meant that, for example, even if asylum seekers landed on an Australian territory such as Christmas Island or Ashmore Reef, they did not have the same access to visas as people landing on the mainland.

1.18 A second facet of the strategy involved establishing agreements with certain Pacific countries so that 'offshore entry persons' could be transferred to those countries and have their claims to asylum processed there. This part of the new regime is known as the 'Pacific Solution'. Plans were also subsequently announced for a new processing centre on Christmas Island, one of the new 'excised offshore places'.

1.19 The new regime also required much greater interagency coordination between the relevant government bodies, and for this reason an interdepartmental committee (IDC) known as the People Smuggling Taskforce (PST) was established to coordinate the activities of different agencies and to provide whole-of-government advice to ministers.

1.20 Finally, in an attempt immediately to reduce the numbers of people travelling to Australia by boat, strategies for both preventing asylum seekers from leaving Indonesia and strategies for intercepting them at sea before they reached landfall in Australian territory were implemented.

1.21 In the remainder of this chapter, the Committee will provide a brief outline of each of these facets of the new border protection regime. They constitute the framework within which specific issues, such as SIEV 4 and 'children overboard', the sinking of SIEV X and the Pacific Solution, must be considered.

14 Submission 44, Senate Foreign Affairs, Defence and Trade Inquiry into Australia's Relationship with Papua New Guinea and Other Pacific Island Countries, p.34.

Legislation

1.22 On 26 September, the second last sitting day of 2001, the Senate passed the following bills relating to border protection:

- *Migration Amendment (Excision from Migration Zone) Act No.127 2001;*
- *Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Act No.128 2001;*
- *Migration Legislation Amendment (Judicial Review) Act No.134 2001;*
- *Migration Legislation Amendment Act (No. 1) No.129 2001;*
- *Migration Legislation Amendment Act (No. 6) No.206 2001;* and
- *Border Protection (Validation and Enforcement Powers) Act No.126 2001.*

1.23 The Australian National Audit Office, as part of its report on the *Management Framework for Preventing Unlawful Entry into Australian Territory*, has summarised the major features of the changes to the legislative framework surrounding the management of migration and refugee issues since September 2001. They include:

- measures to strengthen the deterrence of unauthorised arrivals. These include a new tiered visa regime for refugees engaged in ‘secondary movement’, or movement from a country in which they have or can access protection, but who choose to travel to Australia nevertheless for reasons which are not ‘Refugees Convention related’. They also include minimum prison terms for people convicted of people smuggling;
- the exclusion of certain territories from Australia’s migration zone, including Christmas Island, Ashmore and Cartier Islands, and the Cocos (Keeling) Islands. This means that unauthorised arrivals to these territories cannot apply for a visa, except by ministerial discretion;
- the possible detention and removal from those territories of unauthorised arrivals to ‘declared countries’ where they have access to refugee assessment processes modelled on those of the United Nations Commissioner for Refugees (UNHCR);
- a clarification of the circumstances in which Australia owes a person protection under the Refugees Convention, including addressing key concepts in the definition of a refugee;
- a limit to the grounds for judicial review;
- prohibition of class actions in migration litigation; and
- the possibility that adverse inferences may be drawn when visa applicants fail to provide supporting information, including documentation, without reasonable explanation.¹⁵

15 Australian National Audit Office (ANAO), *Management Framework for Preventing Unlawful Entry into Australian Territory*, Audit Report No. 57, 2001-2002, p.80.

1.24 The Senate referred a further related Bill, the Migration Legislation Amendment (Further Border Protection Measures) Bill 2002, to the Senate Legal and Constitutional Affairs References Committee on 25 June 2002. The Bill has the effect of expanding the definition of ‘excised offshore place’ to include the Coral Seas Territory and certain islands that form part of Western Australia, Queensland and the Northern Territory.

1.25 Aspects of the legislative framework for the new border protection regime are discussed in more detail in the context of the so-called ‘Pacific Solution’, in Chapter 11.

Pacific Solution

1.26 Both Nauru and Papua New Guinea are declared countries under the newly inserted s198A of the *Migration Act 1958*,¹⁶ providing the legislative framework for the establishment of offshore processing centres in those countries. The agreements reached with Nauru and Papua New Guinea mark a substantial shift in Australia’s treatment of asylum seekers. Both countries are hosting processing centres paid for and operated by Australia, and Nauru is receiving \$26.5 million in additional aid monies to do so.

1.27 Since the establishment of the offshore processing centres 1515 people have been transferred to Nauru or PNG. A breakdown of these numbers by nationality, and an outline of the agreements reached with Nauru and PNG, is provided in Chapter 10. As of 1 October 2002, 960 persons remained on Nauru, and 102 on Manus.¹⁷

1.28 Asylum seekers processed on Nauru and Manus do not have access to the refugee status determination procedures applied on the Australian mainland. Refugee claims on Nauru may be processed by either the United Nations High Commissioner for Refugees (UNHCR), or by Australian immigration officials applying processes stated to be in accordance with those of the UNHCR. All refugee determinations on Manus are undertaken by Australian officials. The centres are managed by the International Organisation for Migration (IOM) under a service agreement with Australia. The cost of these arrangements is considered in Chapter 11.

1.29 As of 17 September 2002, protection claims for all 1,495 people who had sought a refugee status determination on Manus and Nauru had received an initial decision.¹⁸ Of this number 520 people were approved as meeting criteria for refugee status, and 975 had been refused. Four hundred and thirty two of the successful

16 Submission 44, Senate Foreign Affairs, Defence and Trade Inquiry into Australia’s Relationship with Papua New Guinea and Other Pacific Island Countries, p.34.

17 *Refugees Arrive in Australia from Manus*, Media Release 77/2002, DIMIA, 1 October 2002.

18 *Outcome of Processing of Offshore Entry Persons*, DIMIA, Response to Question 6, Senate Inquiry into Migration Amendment (Further Border Protection Measures) Bill 2002, Tabled 17 September 2002. *Outcome of Processing of Offshore Entry Persons*

claimants were Iraqis, 59 Afghans, and 29 of other nationalities.¹⁹ Initial decisions for Iraqi claimants were successful in 67% of cases, compared to just over 7% for Afghan claimants.

1.30 The only avenue of appeal against an adverse refugee status determination is to a review of the decision by a higher level official. As of 17 September 2002, a further 181 people had been found to meet refugee criteria on review of their previously negative decisions, bringing the total number of people found to be refugees to 701, including 524 Iraqis, 133 Afghans, and 44 people of other nationalities. Eighty one review decisions are still pending.²⁰

1.31 Resettlement of asylum seekers who are found to meet refugee status criteria is reliant upon a place being found for them in Australia or another country.

1.32 As of October 2002, 200 people processed on Nauru or Manus had been allowed into Australia, most on three or five year temporary protection visas. The majority were women or children with family in Australia. A further 194 people from Nauru and Manus had been accepted by New Zealand, and eight refugees had been resettled in Sweden.²¹

Whole-of-government coordination

1.33 The central body established to coordinate the government's post-*Tampa* border protection regime was an interdepartmental committee (IDC) known as the People Smuggling Taskforce (PST).

1.34 The PST held its first meeting on Monday 27 August 2001, while the *Tampa* crisis was yet to be resolved. Between 27 August and 9 November 2001, the PST met at least 53 times, sometimes two or three times in a single day.²²

1.35 Over that period, the PST was chaired by Ms Jane Halton, then Deputy Secretary, Social Policy Division, PM & C and its membership consisted of (usually) high level representatives from the following agencies:

- Australian Federal Police (AFP);
- Attorney-General's Department;
- Australian Maritime Safety Authority (AMSA);
- Australian Protective Services (APS);
- Australian Quarantine and Inspection Service (AQIS);

19 *Asylum Review Decisions on Nauru and Manus*, Media Release DPS 72/2002, DIMIA, 18 September 2002.

20 *Asylum Review Decisions on Nauru and Manus*.

21 *Outcome of Processing of Offshore Entry Persons*.

22 See PST Notes, High Level Group.

- Coastwatch;
- Australian Customs Service (ACS);
- Department of Defence and the Australian Defence Force (ADF);
- Department of Foreign Affairs and Trade (DFAT);
- Department of Immigration and Multicultural Affairs (DIMA);²³
- Department of Transport and Regional Services (DTRS); and
- Department of the Prime Minister and Cabinet (PM & C).

1.36 According to evidence provided to the Committee by the PST Chair, the primary role of the body was to provide a forum for information sharing and coordination of activities among the agencies involved in various facets of the government's border protection strategy. The Taskforce also provided advice and policy options for government.

1.37 Matters discussed at PST meetings included the logistics of accommodating and catering for the humanitarian needs of asylum seekers in both offshore processing centres and on Christmas, Ashmore and Cocos Islands; the logistics of transporting intercepted asylum seekers to Nauru, Manus and elsewhere; the time at which new arrivals were anticipated; and the success of 'disruption' and 'deterrence' strategies in slowing the rate of new arrivals.²⁴

1.38 The Committee discusses the role and activities of the PST in more detail in Chapter 7.

Disruption and deterrence activities

1.39 Finally, at the operational or 'sharp end' of the new border strategy, a twin pronged approach was adopted. One prong of the strategy is a 'disruption' campaign aimed at pre-empting people smugglers and asylum seekers *before* they could organise to leave Indonesia.

1.40 Prior to the Committee's inquiry, little was known on the public record of the nature, scope and workings of the disruption strategy. Members of the Committee questioned a number of agencies, particularly the AFP and DIMIA, on how the strategy is directed and operates.

1.41 The AFP Commissioner, Mr Mick Keelty, defined the nature and scope of the disruption strategy in the following terms:

By disruption, we mean the use of the Indonesian national police to divert potential passengers to the International Organisation for Migration or the

23 Note that after the Federal Election on 10 November 2001, the Department of Immigration and Multicultural Affairs (DIMA) became the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA).

24 See PST Notes, High Level Group.

interception by the Indonesian national police of passengers prior to boarding vessels. What would happen ... is that potential passengers are gathered sometimes in a number of locations and at the last moment they are provided with details or transport to an embarkation point and they are placed on the vessels at the embarkation point. Often a disruption activity would be to prevent the passengers from getting to the point of embarkation or, if we knew who the people smuggler was, to have the Indonesian national police arrest the organiser, or in other ways to disrupt the gathering of the people prior to the vessel departing.²⁵

1.42 Additional activities under the strategy include:

- collecting intelligence to assist both the disruption campaign within Indonesia and the naval interception of SIEVs transiting to Australian territory;²⁶
- targeting key figures in the people smuggling pipeline with the aim of dismantling the syndicates organising smuggling activities;²⁷
- information campaigns inside Indonesia, particularly amongst fishing crews and port areas, warning that people smuggling is a criminal activity and of the legal penalties in Australia;²⁸ and
- Indonesian authorities apprehending vessels attempting to depart illegally from Indonesian ports.²⁹

1.43 The organisational framework involves the AFP and the Indonesian National Police (INP) as the lead agencies in each country. On the Australian side, DIMIA, DFAT and AusAID also support the AFP. Disruption activities were also canvassed at meetings of the People Smuggling Taskforce during the September to November 2001 period.³⁰

1.44 In addition to the INP, Indonesian defence and immigration agencies are also involved in disruption actions on the ground in Indonesia.

1.45 At the bilateral level, the disruption strategy comes under the auspices of a specific protocol between the AFP and INP to target people smuggling syndicates operating out of Indonesia. The Protocol was established on 15 September 2000 and is part of a broader Memorandum of Understanding (MOU) between the AFP and INP

25 *Transcript of Evidence*, CMI [Certain Maritime Incident] 1930. See also *Transcript of Evidence*, CMI 1995.

26 *Transcript of Evidence*, CMI 1925 and 1934. See also section on intelligence in Chapter 2.

27 *Transcript of Evidence*, CMI 1933.

28 *Transcript of Evidence*, CMI 1999.

29 *Transcript of Evidence*, CMI 2001.

30 See Notes, High Level Group (PST).

to cooperate on investigations into transnational crime. That MOU was originally agreed on 27 October 1995 and renewed on 13 June 2002.³¹

1.46 According to the AFP:

The Protocol allowed for the AFP and INP to provide advice regarding target selection, technical and management support of operations, informant management, information facilitation and assistance in financial reporting.³²

1.47 Under the provisions of the Protocol, the INP established five Special Intelligence Units dedicated to people smuggling operations. AFP instructors have trained these units in such matters as investigation and surveillance techniques. The AFP has also provided almost A\$100,000 to the INP units to defray operational costs such as the INP informant network, IT and communications equipment, transport, travel and meals. This was funded from the Law Enforcement Cooperation Program.³³

1.48 The principal point of contact between the AFP and INP is the AFP Liaison Officers based in Jakarta, who have the discretion to deal with their Indonesian counterparts on operational matters. Commissioner Keelty emphasised to the Committee that the AFP neither directs nor dictates the INP's operations against people smuggling. It is only in a position to seek the cooperation of the Indonesian authorities and to provide advice and assistance.³⁴

1.49 In terms of outcomes, Commissioner Keelty informed the Committee that 'since February 2000, the Indonesian authorities have diverted over 3,000 people suspected of intending to enter Australia illegally into legitimate migration processes under the auspices of the United Nations conventions'.³⁵

1.50 Members of the Committee questioned the AFP about the Indonesian response to the disruption campaign. Commissioner Keelty advised the Committee that in September 2001 the Indonesian government suspended the people smuggling protocol, which was not re-adopted formally until renewal of the MOU in June 2002.³⁶

1.51 When pressed by Committee members about the reasons for the suspension, the Commissioner appeared uncertain, indicating that the Indonesian foreign ministry had concerns that the disruption activities should come under a 'more formal

31 *Transcript of Evidence*, CMI 1924.

32 Answers to Questions on Notice, AFP, 30 July 2002, p.1.

33 Answers to Questions on Notice, AFP, 30 July 2002, passim.

34 *Transcript of Evidence*, CMI 1934

35 *Transcript of Evidence*, CMI 1925. Note that later written answers to question on notice received from the AFP puts the number of unauthorised arrivals prevented from departing for Australia at 4,000.

36 *Transcript of Evidence*, CMI 1938-39.

government-to-government' agreement.³⁷ The Commissioner also noted that his counterparts in Indonesia had informed him of tensions within the INP over resourcing disparities and the extra funding provided to the Special Intelligence Units, but he stated that these factors did not, in his opinion, cause the suspension.³⁸

1.52 The Commissioner further advised the Committee that despite visiting his counterpart in the INP to discuss this matter, he was unable to shed any more light on the decisions behind the Indonesian action.³⁹ The Commissioner argued that it was a matter for DFAT to take up with the Indonesian foreign ministry, and that if the AFP had decided to pursue the issue it would have gone through DFAT channels, not the AFP-INP connection. The AFP did not pursue the matter further, even though the Commissioner conceded that 'we were taken by surprise a bit, because things were working so well'.⁴⁰

1.53 Following the suspension of the protocol, the AFP experienced a reduction in the level of cooperation from the INP, with responses to requests for support being dealt with on a case by case basis and more slowly than previously. The five INP Special Intelligence Units continued operations but were not dedicated solely to people smuggling, instead focusing on broader transnational crime issues.⁴¹ However, the AFP maintained that the spirit of cooperation between both parties continued. In particular, the AFP pointed to the arrest of an 'allegedly significant' people smuggler in Australia on 5 October 2001 as a notable outcome of the ongoing cooperation between both police forces.⁴²

1.54 Members of the Committee were also concerned to ascertain if the Australian Government had sought legal advice about the nature of the activities and methods employed under the disruption strategy. Witnesses from the AFP and DIMIA,⁴³ as well as the former Chair of the PST, Ms Jane Halton,⁴⁴ stated that no such advice had been sought or received. In response to a question about whether legal advice had been sought, Commissioner Keelty said:

No, there is no reason to. Nothing untoward came to our attention. As far as we are aware and can possibly be aware, the Indonesians were acting lawfully in Indonesia and we were acting lawfully in Australia.⁴⁵

37 *Transcript of Evidence*, CMI 1938-39.

38 *Transcript of Evidence*, CMI 1969-70.

39 *Transcript of Evidence*, CMI 1953.

40 *Transcript of Evidence*, CMI 1955.

41 *Transcript of Evidence*, CMI 1944; Answers to Questions on Notice, AFP, 30 July 2002, p.5.

42 Answers to Questions on Notice, AFP, 30 July 2002, p.5. See also *Transcript of Evidence*, CMI p.1941.

43 DIMIA, *Transcript of Evidence*, CMI 2002-3.

44 Ms Halton. *Transcript of Evidence*, CMI 2008.

45 *Transcript of Evidence*, CMI 1943.

1.55 The Committee notes that it has not been able to gather more detailed information on the exact nature of the disruption measures employed in Indonesia. Further, it is concerned about the general lack of transparency surrounding elements of the strategy itself. In particular, the inability of the AFP to provide clear and precise information about the factors behind the Indonesian Government suspending the protocol governing the disruption effort compounds the sense of concern that a key diplomatic partner had cause to abrogate an element of the bilateral relationship. The Committee finds it perplexing that neither the AFP nor any other Australian agency took action to get to the bottom of this matter. The Committee considers that this matter warrants further investigation and reporting back to the Parliament.

1.56 Furthermore, the Committee notes that since the close of its hearings on the inquiry, more information has emerged on the public record about the nature of the disruption activity that occurred in Indonesia. The gravity of that information has raised more questions about the methods and tactics employed under the auspices of the disruption campaign. The Committee therefore believes that a full independent inquiry into what disruption actions did occur prior to refugee vessels departing Indonesia is required. The focus of such an inquiry should be on the activity that Australia initiated or was instrumental in setting in motion through both its partners in the Indonesian government and its own network of informants.

Recommendation

1.57 The Committee recommends that a full independent inquiry into the disruption activity that occurred prior to the departure from Indonesia of refugee vessels be undertaken, with particular attention to the activity that Australia initiated or was instrumental in setting in motion through both its partners in the Indonesian government and its own network of informants.

1.58 The second prong of the new border strategy is a deterrence strategy, implemented by the Navy under the auspices of Operation Relex. In the next chapter the Committee considers the detail of Operation Relex.