

Chapter 9

The Response to SIEV X

Relevant signals, so clearly audible after the event, [were] partially obscured before the event by surrounding noise.¹

Introduction

9.1 From 17 to 23 October, the critical ‘time window’ surrounding SIEV X, neither the ADF nor any other Australian agency took decisive action directly in relation to SIEV X. As seen in the previous chapter, maritime surveillance for Operation Relex continued as scheduled (except on 19 October when an extra flight occurred because of an unserviceable helicopter). The surveillance led to the interception of SIEV 6 on 19 October and SIEV 7 on 22 October. On 22 October the Rescue Coordination Centre at AusSAR issued an overdue notice in response to Coastwatch and AFP advice, but no special flights or steps were taken beyond this stage. Neither SIEV X nor any survivors were detected.

9.2 The lack of any direct action in response to the intelligence reporting on SIEV X has raised concerns that these reports were disregarded when more ought to have been done to look specifically for SIEV X either to prevent it sinking or to save more survivors.

9.3 In this chapter the Committee analyses whether Australian agencies responded appropriately to the incoming information on SIEV X. In making an assessment it is necessary to examine three factors relating to the SIEV X incident:

- the operational climate at the time;
- the relationship between intelligence and operational decisions on surveillance and deployment during Operation Relex; and
- the quality of intelligence on boat arrivals generally.

9.4 The first three sections of the chapter look at these issues in turn.

9.5 In the second half of the chapter the Committee discusses the response of Australian agencies to the intelligence on SIEV X and the reasons for that response. It then makes an assessment about whether the Australian response to SIEV X was adequate.

1 Roberta Wohlstetter, *Pearl Harbour: Warning and Decision*, Stanford University Press, California, 1962, p.397.

The Operational Climate

9.6 The operational climate is one of the three factors that shaped the way SIEV X intelligence was handled, interpreted and acted upon. It had possibly the least impact in determining the response to SIEV X, but it still indicates the level of activity, particularly in the intelligence traffic on possible boat arrivals, facing decision makers at the time.

9.7 As discussed in chapter 2, Operation Relex involved the ADF in a demanding law enforcement exercise that had an ‘abnormally high’ operational intensity over an extended time.² Defence was also gearing itself for the war on terror (Operation Slipper), in addition to maintaining numerous other international operations.³

9.8 For the Australian Theatre Joint Intelligence Centre (ASTJIC), with its role to provide intelligence for all Australian operations, Operation Relex coincided with an increasingly heavy workload.⁴ The SIEV X episode occurred during a period when the rising ‘tempo of activity’, among other things, led eventually to the role of intelligence support for Operation Relex shifting from ASTJIC to NORCOM.⁵

9.9 At the same time, reports were coming into the intelligence system from Indonesia indicating a ‘surge’ in possible arrivals in the people smuggling pipeline. Mr Killesteyn told the Committee that ‘we were looking at around that time, in October, where there was clear evidence that there was a build-up potentially of quite a considerable number of vessels’.⁶ Both Coastwatch and DIMIA believed that up to six organisers⁷ were preparing up to possibly six boats⁸ for departure shortly to Australian waters.

9.10 The DIMA Intelligence Note of 18 October provides more colour on the situation in Indonesia at the time. After noting that ‘the need to get people (and boats)

2 *Transcript of Evidence*, CMI 449.

3 See Admiral Barrie, *Transcript of Evidence*, CMI 741.

4 Colonel Gallagher stated: ‘During October 2001, in addition to providing intelligence in support of Operation Relex, the ASTJIC provided high levels of support to actual or potential ADF operations in the Middle East, Central Asia, the Arabian Gulf, East Timor, Bougainville, the Solomon Islands and the Southern Ocean. During the same period, the ASTJIC was also monitoring the security of ADF deployments to Bosnia and Kosovo, Israel and Lebanon, the Sinai, Sierra Leone, Eritrea and Ethiopia, and Mozambique. It was clearly a busy time for the ASTJIC and the Australian Theatre as a whole.’ *Transcript of Evidence*, CMI 1884.

5 The change over occurred on 1 November 2001. *Transcript of Evidence*, CMI 1888-1889.

6 *Transcript of Evidence*, CMI 1995, 2007, 2028.

7 *Transcript of Evidence*, CMI 1630.

8 *Transcript of Evidence*, CMI 2013. The DIMA Intelligence Notes, however, talk of only five boats. See DIMA Intelligence Note 79/2001, 17 October 2001, p.1.

away has built to such a point that all the major organisers and their clients are ready to move, no matter what the consequences’,⁹ the intelligence assessment concluded:

There can be little doubt that the anticipated surge has begun. The impetus was probably the most recent arrivals at Christmas Island and Ashmore Reef, combined with pressure from the reportedly large pool of clients assembled in Indonesia and the impending monsoon season. All current major organisers in Indonesia reportedly have clients and boats and are ready to move to alleviate both their financial difficulties and the management problems of keeping large pools of clients in Indonesia for extended periods of time.¹⁰

9.11 The build-up prompted an extension in disruption activity in Indonesia to pre-empt the boats departing.¹¹ It would also have translated into increased intelligence traffic on potential boat and people arrivals. For intelligence officers, this would have led to a corresponding increase in the burden of sifting through the traffic and seeking to corroborate the more probable reported departures.

9.12 This is reflected in the notes of the People Smuggling Taskforce meetings in mid-October. On 18 October, for instance, the notes mention ‘intelligence re 2 boats with total 600 PUAs expected at Christmas, with one possibly arriving today, a further 3 boats with total 600 expected at Ashmore, with earliest arriving Monday’.¹² The prospect of people arrivals potentially in excess of 1000 also engendered concerns among the People Smuggling Taskforce about logistics and the already stretched state of accommodation on Christmas Island.¹³ In Ms Halton’s view:

... this particular period was unusual because ... there seemed to be more boats in the ether and with a significant number of people. The task force was very focused on the accommodation issues and in particular how, if that number of people turned up, they would actually be accommodated.¹⁴

9.13 In his explanation of the SIEV X episode, Rear Admiral Smith also pointed to the level of Operation Relex activity over the period of the vessel’s reported departure. He noted:

During the period 17-22 October 2001, Maritime Headquarters and the Navy was [sic] busy responding to two SIEVs in the Ashmore Island area

9 DIMA Intelligence Note 80/2001, 18 October 2001, p.2.

10 DIMA Intelligence Note 80/2001, 18 October 2001, p.3.

11 *Transcript of Evidence*, CMI 1995. PST Notes, ‘High Level Group – 12 October 2001’.

12 PST Notes, ‘People Smuggling Taskforce – High Level SubGroup, Thursday 18 October 2001’. Cited also in *Transcript of Evidence*, CMI 2014.

13 See Ms Halton, *Transcript of Evidence*, CMI 2100; PST Notes for 19 and 20 October especially.

14 *Transcript of Evidence*, CMI 2100; see also *Transcript of Evidence*, CMI 2097.

and one in the Christmas Island area in accordance with Government direction.¹⁵

9.14 The SIEVs referred to were SIEVs 6 and 7.

9.15 On the face of it, the upsurge in people smuggling activity and the prospect of six or so boat arrivals might arguably have inclined intelligence staff and other decision makers to upgrade their assessments of intelligence indicating the Qussey vessel had departed. This perspective has to be tempered, however, in light of the accuracy of the intelligence on boat arrivals in general and the reliability of the reports on SIEV X in particular.

Intelligence and Operational Decision Making

9.16 The second key to understanding the ADF response to the reports of SIEV X's possible arrival is the link between intelligence and the decisions taken by operational commanders.

9.17 The Committee heard that intelligence and surveillance are, to a large extent, normally interactive.¹⁶ In the case of Operation Relex, however, intelligence played a limited role in both the general deployment of units and in daily decision making. This reflected two factors: the limitations of the intelligence itself and a preset surveillance and patrol strategy for the operation.

9.18 ADF witnesses explained that the surveillance and interception strategy for Operation Relex was built on the assumption that intelligence could not be counted on to provide detailed warning of SIEV departures and arrivals. Rear Admiral Smith told the Committee that, in the operational design, ADF commanders had 'planned on not knowing' precisely when or from where the SIEVs would depart.¹⁷ He also outlined the limits and gaps in information provided to commanders by intelligence reports, saying:

if we had information that a vessel was being prepared, we would probably have a rough idea of the sorts of *numbers* that might possibly be embarked. We never really had a strong idea of *when* things would sail, but our operation and the disposition of the forces available to us would take into account that we might *not* have any warning at all, and therefore we would be prepared in any eventuality.¹⁸ [emphasis added]

9.19 As mentioned in the previous chapter, the architects of Operation Relex identified two primary routes through which SIEVs had to transit to reach Australian territorial waters. These routes were either the axis from Sunda Strait to Christmas

15 See also Rear Admiral Smith, 'Clarification of Evidence', letter to CMI, 22 May 2002, p.3.

16 *Transcript of Evidence*, CMI 1894.

17 *Transcript of Evidence*, CMI 455.

18 *Transcript of Evidence*, CMI 461.

Island or the axis from Roti to Ashmore Reef. ADF surveillance and naval assets were deployed across these two thoroughfares. Colonel Gallagher described to the Committee how the preset plan for surveillance and interception was designed to overcome intelligence shortcomings on SIEVs:

the intelligence relating to these vessels was of insufficient fidelity to allow precise targeting of surveillance assets. My understanding of the approach that was being taken [with Operation Relex] was by a process of logic to work out the tracks that these vessels were likely to take, and to concentrate appropriate resources along those tracks.¹⁹

9.20 As noted elsewhere in the report, the surveillance and patrolling worked in concentric rings or a 'layered surveillance' with RAAF P3s flying close to Indonesia while Navy ships waited in focal areas close to Christmas Island and Ashmore Reef. The Navy avoided deploying ships too far out (or 'up threat') of the intercept line because of the time it would have involved shadowing SIEVs back towards Christmas Island and the risk that other boats could sneak in through the resultant gap.²⁰

9.21 Within this framework, intelligence on boat arrivals was considered an indicator of the possible timing of a boat arriving, rather than an alert or trigger to divert assets to search particular spots.²¹ Rear Admiral Bonser told the Committee that Coastwatch used intelligence reports as 'a guide for informing surveillance activities rather than the foundation on which these activities are programmed'.²² Rear Admiral Smith also stated:

The intelligence reporting from Coastwatch was used as indicators of a possible SIEV arrival in an area within a probable time window [original emphasis].

9.22 The Commander of the Joint Task Force and NORCOM, Brigadier Silverstone, elaborated on the extent to which intelligence interacted with operational planning, particularly surveillance patterns. He stated:

As the quality of the information concerning impending SIEV arrivals constrained NORCOM's confidence in the overall intelligence picture, NORCOM sought to maintain a continuous maritime presence, which usually had the capacity to conduct surface and helicopter surveillance, in close proximity to both Christmas and Ashmore Islands. During periods of assessed low probability of a SIEV arrival [ie, less than 50 per cent], NORCOM would permit greater freedom of movement in the general area of those locations. As assessments of the probability of an arrival rose

19 *Transcript of Evidence*, CMI 1894.

20 *Transcript of Evidence*, CMI 462.

21 Rear Admiral Ritchie, *Transcript of Evidence*, Estimates, Senate Foreign Affairs, Defence and Trade Legislation Committee, 4 June 2002, p.154.

22 *Transcript of Evidence*, CMI 1630. See also Rear Admiral Smith, 'Clarification of Evidence', letter to CMI, 22 May 2002, p.1.

through a medium [50-75 per cent] to a high level [more than 75 per cent], NORCOM would direct its maritime assets to patrol more closely the outer edge of the associated contiguous zones. In conjunction with this, the broader approaches to Australian territory were patrolled from the air on a daily basis.²³

9.23 Where intelligence on boats did play a role, it was limited to ensuring that surveillance assets were operating within the pre-designated areas of operations during indicated 'time windows' and crews were alerted to watch out for possible SIEVs.²⁴ Rear Admiral Ritchie said:

We may alter the pattern of attendance in those areas if we think we have particularly good intelligence about a vessel, but the basic, ongoing surveillance of given, predetermined areas is not based at all on evidence or intelligence of one or more departures.²⁵

9.24 Air Commodore Byrne, Commander of the Maritime Patrol Group (MPG), echoed Admiral Ritchie's point that at times intelligence provided a basis for targeting or assigning priority to certain search zones. As to how much MPG aircrews relied on intelligence reports, the Air Commodore said:

It depends. They are important if they lead us to search an area in a particular way. In the absence of the reports, we will still search the area as best we can. However, if we have queuing information that might lead us to search in one particular area first, then they might become important.²⁶

9.25 Air Commodore Byrne also indicated that intelligence which indicated possible boat arrivals tended to make aircrews more alert to the possibility of sighting vessels while on patrol.²⁷

9.26 When asked if the surveillance area was ever changed to search for a SIEV, Rear Admiral Ritchie replied:

No. We very cunningly put the search areas in the right places in the first instance so that we knew people who were going to get to those destinations would come through them. That is the thrust of my concern with all this [controversy over SIEV X]. There was never, ever any reason, even if we had known there had been 10 SIEV Xs, for us to change the pattern of searching. For those 10 SIEV Xs to get to Christmas Island, they had to

23 Answers to Questions on Notice, Defence, 20 September 2002, W69.

24 *Transcript of Evidence*, CMI 454.

25 Rear Admiral Ritchie, *Transcript of Evidence*, Estimates, Senate Foreign Affairs, Defence and Trade Legislation Committee, 4 June 2002, p.155.

26 *Transcript of Evidence*, CMI 2161.

27 *Transcript of Evidence*, CMI 2161.

come through the area that we were surveilling. The one SIEV X that we know about never did.²⁸

9.27 As shown in chapter 8, the ADF conducted aerial surveillance of the Sunda Strait to Christmas Island area of operations – Area Charlie – as scheduled on 18-20 October, with an additional afternoon/evening flight flown on the 19th to compensate for *Arunta*'s helicopter being unserviceable. Neither SIEV X, nor any sign of flotsam or survivors, was sighted.

9.28 The evidence of the ongoing scheduled flights in Area Charlie during this period, coupled with knowledge of the pre-designated deployment areas for Relex, refutes the speculation by some that ADF assets were redeployed or withdrawn deliberately from this area to avoid stumbling upon SIEV X.

9.29 In the next section, the Committee considers the quality of intelligence on boat arrivals in general, before going on to analyse whether the intelligence on SIEV X could have provided adequate guidance for a successful search and rescue mission if the ADF had chosen to depart from its usual surveillance pattern.

The Intelligence Puzzle

9.30 In its declassified version of the review into the intelligence on SIEV X, the ADF made the following observation:

Some public comment has inaccurately suggested that information on SIEV X ... was precise. This situation has led to people drawing precise conclusions based on imprecise information.²⁹

9.31 The 'imprecise' nature of the intelligence on not only SIEV X but also forecast boat arrivals in general was a recurring theme in the evidence to the Committee. It was a refrain that came from those engaged at every stage in the intelligence cycle – from collection through analysis to operational command and high level decision making.³⁰

9.32 The limitations of the Operation Relex intelligence provides an important background to understanding the lens through which information on SIEV X was assessed. In the section that follows, the Committee examines the accuracy of the Operation Relex intelligence and how it influenced the perceptions of those handling it.

28 Rear Admiral Ritchie, *Transcript of Evidence*, Estimates, Senate Foreign Affairs, Defence and Trade Legislation Committee, 4 June 2002, p.162.

29 SIEV 'X', Attachment A in the declassified summary of the Defence review of SIEV X intelligence, Minister of Defence to CMI, undated, received 4 July 2002, p.1.

30 *Transcript of Evidence*, CMI 1630, 1912, 1925, 2028.

Intelligence accuracy on SIEVs

9.33 Despite the sizeable intelligence capability at the disposal of Operation Relex, much of the raw intelligence reporting was neither precise nor conclusive nor, for that matter, reliable. Instead, it appears often to have been hazy, contradictory and complex. Sometimes it was wrong. Occasionally it was deliberately false.

9.34 In general, the value of the intelligence to those using it appears to have been hampered by at least four shortcomings:

- sources that were hard to confirm;
- uneven quality due to gaps and duplication;
- difficulties in tracking boat movements; and
- consequently, a high level of caution placed on intelligence assessments.

Difficulty with corroborating sources

9.35 Representing one of the primary collection agencies, the AFP Commissioner, Mr Mick Keelty, encapsulated the problems that this raw intelligence or ‘collateral information’ on boat and people arrivals posed for analysts, operational commanders and decision makers:

Information we received about SIEVs often contained conflicting dates regarding their departure, deliberate misinformation regarding departure locations, and ambiguity into the transport and staging areas for passengers in Indonesia.³¹

9.36 Commissioner Keelty went on to illuminate of the roots of the problem:

Information was often second-hand and difficult to attribute to specific vessels. As a police organisation, we have extensive experience in addressing the value of information from human sources. We know that it is an imprecise science and it is dangerous to make decisions based on uncorroborated single source information in people-smuggling matters or indeed any criminal matters. We have learnt through experience that the reliability of information, which is sometimes provided anonymously, may be questionable and that the motivation for passing information is usually for self-gain. There are often other motives for passing on information such as deliberate misinformation to divert police attention or to harm a criminal competitor. The methods used by these sources to collect information may result in an incomplete picture and these sources may not have access to first-hand information. ... As a consequence, there is often a need to

31 *Transcript of Evidence*, CMI 1925. HQNORCOM echoed these concerns about the reliability of sources and misinformation encountered with the intelligence. See Answers to Questions on Notice, Defence, 20 September 2002, W68.

conduct additional inquiries to corroborate information from human sources.³²

9.37 In contrast to single source reports, intelligence staff told the Committee that information that could be backed up by reporting from additional sources was viewed as more reliable. Ms Siegmund, the Assistant Secretary in charge of DIMIA's Intelligence Analysis Section, stated:

In general terms, you either get single or you get multisource – obviously. But we would expect multisource information to corroborate. If there was a difference, we would probably report it as such – that one source said this and another source said that – because that is also part of our assessment process that we need to go through with the intelligence.³³

9.38 However, the Committee heard that the AFP was unable during any stage of Operation Relex to corroborate any of the intelligence leads it had on potential boat and people arrivals. Commissioner Keelty emphasised that:

Between August and November 2001, the AFP received an amount of information pertaining to all vessels that were identified during this operation. Additionally, the AFP received numerous pieces of single source information about potential SIEVs. The AFP was *not able to corroborate* [emphasis added] any of those alleged movements until after the vessels were intercepted.³⁴

Uneven quality

9.39 While the quantity of intelligence on SIEVs was large, the quality was uneven. Decision makers faced the problem of dealing with a large stream of individual reports, many of which turned out to be duplicates of the same vessel, leaving other vessels for which there was no forewarning. Rear Admiral Smith told the Committee:

The intelligence reports often appeared duplicative, with the associated difficulty of determining whether the numerous reports referred to a single vessel or multiple vessels. Thus on occasion forecast vessel departures did not eventuate leading to often erroneous or inconclusive assessments that could not be relied upon as the sole source to determine the areas for air surveillance or stationing of ships.³⁵

9.40 Rear Admiral Bonser illustrated the nature of this problem. Pointing to gaps in the intelligence, he said that, 'of the last 15 SIEVs, Coastwatch had prior information of a possible departure date that was within seven days of the vessel's arrival in

32 *Transcript of Evidence*, CMI 1925. See also Ms Siegmund, DIMIA, on intelligence forecasting being 'not an exact science', *Transcript of Evidence*, CMI 2018.

33 *Transcript of Evidence*, CMI 2020.

34 *Transcript of Evidence*, CMI 1925.

35 Rear Admiral Smith, 'Clarification of Evidence', letter to CMI, 22 May 2002, p.3.

Australian waters in relation to only eight of the vessels'. But on the other hand, Rear Admiral Bonser noted that 'there were in fact 29 departure dates provided for these eight vessels and in excess of 30 assessments as to the possible additional departures from Indonesia that did not culminate in an arrival. These figures do not include indicators in relation to SIEV X.'³⁶

9.41 Overall, it appears that the intelligence tended to inflate the numbers of *potential* boats compared with the number of *actual* arrivals. Colonel Gallagher, Commander ASTJIC, provided the Committee with the following assessment of the accuracy of the intelligence for Operation Relex:

None of the intelligence that we were receiving regarding any of the SIEVs was definitive. I had a discussion recently with one of my colleagues at Headquarters Northern Command. We came to the view that about 40 per cent of what we received related actually to vessels that turned up or materialised. In the broad scheme of things this is a very imprecise area.³⁷

9.42 HQNORCOM concurred with Colonel Gallagher's assessment of the overall accuracy of the intelligence on boat arrivals.³⁸ Likewise, Ms Halton, the Chair of the PST, also pointed to the contrast in the numbers of boats reported compared to those that eventuated. In seeking to correct the 'misapprehension abroad about the state of our knowledge about vessels leaving' Indonesia,³⁹ Ms Halton commented on the intelligence before the PST:

What we had was often a statement that a source had said that a vessel might leave. For every source that had said a vessel might leave to a vessel that actually turned up, we probably had a hit rate of one to four.⁴⁰

9.43 Similar difficulties were experienced in estimating the number of potential arrivals. Ms Siegmund, head of DIMIA intelligence, observed in relation to SIEV X and other vessels in general:

We did not know exactly how many we were going to get onboard the vessel; we never do. We can only go on the reports that get given to us. Sometimes they are roughly accurate; sometimes they are way off, because you never quite know, at the time that they are boarding the vessel, how many will get on and how many will not.⁴¹

36 *Transcript of Evidence*, CMI 1630.

37 *Transcript of Evidence*, CMI 1891. Rear Admiral Ritchie also observed that: 'I would say to you that there were many more boats mentioned in the intelligence that we actually ever saw'. *Transcript of Evidence*, CMI 153.

38 *Answers to Questions on Notice*, Defence, 20 September 2002, W68.

39 *Transcript of Evidence*, CMI 947.

40 *Transcript of Evidence*, CMI 948.

41 *Transcript of Evidence*, CMI 2017.

Tracking boat movements

9.44 A third problem for those handling the intelligence related to the difficulty in interpreting the movements of SIEVs, particularly while they were still in Indonesian waters. The Committee was told that it was common for vessels to be reported as departing Indonesia, only for it to emerge later that the vessels had moved to another port or turned back due to weather conditions, mechanical failure or other reasons. HQNORCOM stated that, '[i]n the majority of cases, these [departure] dates were ambitious and vessels often were late departing or did not depart at all'.⁴²

9.45 Mr Vince McMahon, one of the DIMIA representatives on the PST, observed to the Committee that:

With a departure, as has happened, we often find that they have returned to port or they have stopped a couple of hundred metres up the road. Certainly, from my perspective ... it simply meant that we had no confirmation of where the boat might be.⁴³

9.46 The Committee was also told that often the intelligence on a boat exhibited a 'stop start' pattern in the vessel's movements.⁴⁴ Commissioner Keelty spoke of how this pattern of movement made it difficult to confirm whether a vessel had departed or not:

we have lots of that sort of information and you would get stop start, stop start, yes no and no yes. Finally, a vessel might depart. But the only time you would confirm that a vessel had departed would be when it was intercepted.⁴⁵

9.47 Rear Admiral Ritchie provided a graphic illustration of the ambiguity that this zigzag pattern created in the intelligence and the quandary it posed for senior commanders. In describing the intelligence on boat departures, he said:

The point is that none of that intelligence is definite; none of it, in general, is specific; and much of it is continually countermanded. For example, it may be reported that a boat possibly sailed from the south coast of Sumatra on this date with this many people; the next day it might be reported that it did not sail from the south coast of Sumatra, it probably sailed from somewhere east of Jakarta and it might be going in the other direction. That was the sort of thing that was happening. So Operation Relex had to consider how best to deal with intelligence as imprecise as that. Do you look, if you could, in every nook and cranny: in every creek and every port in the archipelago? Of

42 Answers to Questions on Notice, Defence, 20 September 2002, W68.

43 *Transcript of Evidence*, CMI 2028.

44 *Transcript of Evidence*, CMI 2013.

45 *Transcript of Evidence*, CMI 1959.

course you do not; you cannot do that because we have no right to take Operation Relex into Indonesian waters.⁴⁶

Circumspect assessments

9.48 The uncertainty surrounding sources of information, the complexity in sifting through the reported numbers of boats and their points of departure and the difficulty in tracking their movements – all three factors engendered a degree of circumspection in the way the intelligence was handled. The problems with corroborating intelligence from ‘human sources’ or informants, for instance, made those handling it wary of leaping to conclusions. Commissioner Keelty stated: ‘As police, knowing these things instils in us a level of caution against making decisions based solely on such information’.⁴⁷

9.49 The Committee heard that intelligence assessments tended to be provisional, their judgements hedged in cautious language. When questioned on the terminology used in DIMA Intelligence Notes, Ms Siegmund emphasised the point that:

We did not want to give the impression that what we were putting out in these intelligence notices was fact – that it was definite. It was very important, given that these notices went out to a very wide range of agencies. So we were very careful about how we worded it. But what you then get is something that says ‘probably’ and ‘possibly’. We have to use that kind of terminology.⁴⁸

9.50 The cautious, hedged tone of the intelligence reports had a flow-on effect for those using them. Brigadier Silverstone, Commander NORCOM, in particular noted that ‘the information that directly related to preparations, departures and arrivals of SIEVs was limited and contradictory. This constrained NORCOM’s capacity to make confident assessments.’⁴⁹

9.51 This is particularly evident in the relationship between the intelligence and operational decisions on aerial surveillance and ship deployment that was discussed in the previous section. It is also important for understanding some of the assessments on SIEV X, particularly over the issue of whether its departure was confirmed or not. In the next section, the Committee revisits the intelligence on SIEV X and examines those assessments.

46 *Transcript of Evidence*, Estimates, Senate Foreign Affairs, Defence and Trade Legislation Committee, 4 June 2002, p.153.

47 *Transcript of Evidence*, CMI 1925. See also Ms Siegmund, DIMIA, on intelligence forecasting being ‘not an exact science’, *Transcript of Evidence*, CMI 2018.

48 *Transcript of Evidence*, CMI 2020-2021. For example, Air Commodore Byrne also said of the boat intelligence, ‘The reports, on a daily basis, were providing indications of possible departures’. *Transcript of Evidence*, CMI 2159.

49 Answers to Questions on Notice, Defence, 20 September 2002, W68.

SIEV X Intelligence – ‘Through a Glass Darkly’?

9.52 In the light of this intelligence background, the Committee now turns to consider the specific intelligence on SIEV X itself and its handling by Australian agencies.

9.53 The Committee notes that, in many ways, the information on SIEV X mirrored the general pattern of the intelligence in this area in that it was indefinite and in a state of flux.

9.54 This is evident from the early reports in July of Abu Qussey preparing two boats (not one) for Christmas Island but becomes particularly apparent in the period 17-20 October, where news on the boat changed rapidly.

9.55 On 17 October, for instance, two reports were received. The first indicated that SIEV X was moving from port to port, a development that the Committee heard was not unusual for these vessels.⁵⁰ The second report later that day, however, suggested (mistakenly) that SIEV X had departed Java the previous day bound for Christmas Island. Both of these reports were superseded on 20 October with AFP advice that SIEV X had left on 19 October.

9.56 Similarly, the intelligence kept shifting on where in Indonesia SIEV X had departed and the number of passengers it was carrying. The reports on 17 and 20 October pointed to two different ports of departure in Java, which were far apart (and would therefore have significantly altered calculations of likely transit and arrival times).⁵¹ Rear Admiral Ritchie described the intelligence on Abu Qussey after 5 September as:

Nothing much more was heard of him [after 5 September] until you get into October and there were various reports that he had one boat, he had two boats, that had sailed from here, that had gone back, that had sailed from somewhere else.⁵²

9.57 As for the passenger numbers, these varied from initially 150 to 250 until the AFP reports on 20 and 22 October that revealed 400 people had embarked on SIEV X.

9.58 The reports from 17 to 20 October of SIEV X's movements, coming after similar signals in July to September, paralleled the 'stop start' pattern seen with other boats. Ms Siegmund said:

We had varying reports that the boat had left and from where it left, which were then rescinded. We later found out that it had not sailed. That unfortunate pattern basically started occurring from about September

50 *Transcript of Evidence*, CMI 1894.

51 *Transcript of Evidence*, CMI 1912-1913.

52 Rear Admiral Ritchie, *Transcript of Evidence*, Estimates, Senate Foreign Affairs, Defence and Trade Legislation Committee, 4 June 2002, p.152.

onwards, where there were stop-starts in terms of reporting that the boat was leaving and then not.⁵³

9.59 Rear Admiral Bonser also drew a comparison between the patterns usually seen in the intelligence on possible boat arrivals and those displayed in the SIEV X signals:

We had similar detail on previous occasions. There is this great history of boats that depart, divert, go to other ports, do different things, perhaps break down – there is no real confirmation of the boat actually departing or the fact that it ha[d] left the archipelago.⁵⁴

9.60 In addition to these mixed signals about SIEV X's movements, it should be remembered that at the time reports were circulating that as many as six people smugglers were organising up to six boats to depart.⁵⁵ For those handling the intelligence, it appears to have been a challenging period, particularly given the difficulty in fathoming the intentions of the various boats and their organisers. Ms Siegmund told the Committee that: 'It is one of the frustrations we had at the time too, trying to keep track of numbers of boats where and when. It is a complex issue'.⁵⁶

9.61 However, it also appears that in some ways the intelligence on SIEV X conveyed details that might arguably have alerted the authorities to the fact that there were different features to this boat, which might require a more decisive or different response. Rear Admiral Bonser himself stated:

The information is remarkably similar about all of the vessels, in particular the on again off again nature of the departures. The only thing that was different about this vessel was that we had information at the last report of the possible departure that it was small and overcrowded.⁵⁷

9.62 It is that seemingly more specific information which has led a witness to the inquiry, Mr Tony Kevin, as well as some in the media to argue that more should have been done by Australian authorities to search specifically for the vessel.⁵⁸

9.63 The Committee considers that for there to have been warrant for undertaking specific searches for SIEV X, knowledge of the following three pieces of information would have been essential:

- confirmation that the vessel *had* departed Indonesia and *when* it departed;
- confirmation of *whence* it had departed; and

53 *Transcript of Evidence*, CMI 2013.

54 *Transcript of Evidence*, CMI 1653.

55 *Transcript of Evidence*, CMI 2013.

56 *Transcript of Evidence*, CMI 2016.

57 *Transcript of Evidence*, CMI 1665.

58 *Transcript of Evidence*, CMI 1325. Submission No. 2A.

- a threshold level of *concern* for its safety.

9.64 In the sections that follow, the Committee examines whether any of this information was possessed by the relevant authorities at the relevant times. At the same time, it considers whether more could have been done by those authorities to gain such information. In the light of that analysis, the Committee then assesses the adequacy of the response of Australian authorities to the intelligence on SIEV X.

Confirmation of Departure and Departure Time

9.65 In his account of the intelligence on SIEV X, Rear Admiral Smith informed the Committee that:

While the intelligence reports regarding the Abu Qussey vessel were from Coastwatch assessments and normally reliable sources, they provided only an assessment of ‘alleged’ departures and ‘possible’ arrival windows. No specific confirmation of departure was ever received.⁵⁹

9.66 The Committee questioned several witnesses at length on this matter. Rear Admiral Bonser was asked why, in the face of several intelligence reports suggesting SIEV X had departed, more was not done to search for the vessel.

9.67 Rear Admiral Bonser told the Committee that up until 22 October (the time of the second AFP report) SIEV X ‘did not meet the threshold of being a confirmed departure or, indeed, being overdue’.⁶⁰ As for the number of signals on SIEV X, the Admiral argued the reports were ‘varied and often contained changing indicators of that particular vessel’s departure, but it was never sighted or detected’.⁶¹ He put the AFP report of 20 October into perspective by comparing it to the background on SIEV X:

It goes back to the fact that this was the fifth report about a departure in that month, plus a range of previous ones in months prior to that, and the history of these boats being recorded as possibly departing and then having no arrivals.⁶²

9.68 Colonel Gallagher also told the Committee that even though ASTJIC saw the 20 October AFP report on SIEV X as ‘corroborating’ earlier intelligence on its departure, in the resultant ASTJIC report that day

... it would not have been treated as confirmed. I do not believe that word would have been used. It would have been along the lines of, ‘It is assessed

59 Rear Admiral Smith, ‘Clarification of Evidence’, letter to CMI, 22 May 2002, p.3.

60 *Transcript of Evidence*, CMI 1641.

61 *Transcript of Evidence*, CMI 1639.

62 *Transcript of Evidence*, CMI 1654.

that a vessel has departed from a certain location at a certain time', which was based on AFP information.⁶³

9.69 As cited in chapter 8, the ASTJIC intelligence report for 20 October bears out Colonel Gallagher's point to a large extent. It was issued under the heading, 'Possible boat departure for CI', and said that AFP information 'indicates', rather than 'confirms', that a Qussey vessel had departed the west coast of Java.⁶⁴

9.70 The highest level of confidence placed on the various reports about SIEV X is found in the INTSUM issued by HQNORCOM on 20 October. Although NORCOM was mainly sceptical about the overall credibility of the AFP intelligence that day, it considered the departure date as 'probably being correct' and assessed SIEV X arriving at Christmas Island as a 'high probability', ie. a more than 75 per cent chance of it occurring.⁶⁵ Despite attaching the top level of probability to SIEV X arriving on 20 October, at no stage did HQNORCOM consider SIEV X to be a confirmed departure.⁶⁶

9.71 The Committee also asked witnesses from DIMIA if the new information that came in during the weekend of 20-21 October corroborated SIEV X's departure. Ms Siegmund said it did not.⁶⁷

9.72 In addition, the Committee questioned DIMIA about the PST minutes for 18 October that attributed the 'intelligence re 2 vessels' (one of which was SIEV X) to 'multisource information with high confidence level'.⁶⁸ Although Mr Killesteyn confirmed that multisource intelligence is normally seen as more reliable than single source, he stated:

... but there is never any definitive advice about the departure of a vessel. We have seen time and time again that information that says the vessel has departed turns out to be incorrect.⁶⁹

9.73 Subsequent to appearing before the Committee, DIMIA advised that the 18 October intelligence on SIEV X was *single* source, not multisource.⁷⁰ Furthermore,

63 *Transcript of Evidence*, CMI 1910.

64 Answers to Questions on Notice, Defence, 20 September 2002, Attachment B.

65 Answers to Questions on Notice, Defence, 20 September 2002, W75.

66 Answers to Questions on Notice, Defence, 20 September 2002, W73.

67 *Transcript of Evidence*, CMI 2022.

68 PST Notes, 'People Smuggling Taskforce – High Level SubGroup, Thursday 18 October 2001'. Cited also in *Transcript of Evidence*, CMI 2014.

69 *Transcript of Evidence*, CMI 2013.

70 Answers to Questions on Notice, DIMIA, 20 September 2002.

the information received on 18 October proved to be wrong on two counts: SIEV X did *not* depart from south west Java, *nor* did it depart on 17 October.⁷¹

9.74 It was not until the ADF advice on 22 October arrived that, in some quarters, SIEV X was assessed as having departed Indonesia. Rear Admiral Bonser told the Committee that, as the report on the 22nd ‘corroborated’ the AFP advice on 20 October, in Coastwatch’s eyes it ‘confirmed for us that this vessel had most probably departed’.⁷² Coastwatch assessed that the information had reached the ‘threshold’ such ‘that we had a confirmed departure and that, indeed, the vessel was now overdue’.⁷³

9.75 Colonel Gallagher, likewise, said that ‘it was not until 22 October that Defence agreed that it was a confirmed departure’.⁷⁴ However, it is clear that this assessment of the vessel’s departure was not shared universally, particularly within the senior operational command in the ADF and the intelligence agencies handling the SIEV X material. Neither Admiral Ritchie nor Admiral Smith believed that SIEV X’s departure was confirmed at any stage during the intelligence traffic on the vessel.

9.76 There is also evidence that Coastwatch was initially more equivocal about the vessel’s status on 22 October than Rear Admiral Bonser’s testimony suggests. As detailed in chapter 8, at the PST meeting on 22 October, Coastwatch appeared to have been undecided initially about the veracity of the latest signals on SIEV X. According to Ms Katrina Edwards’s (First Assistant Secretary, PM & C) recollection of the meeting:

Coastwatch seemed to be trying to get a sense of how strong a report it really was and whether at this point it was appropriate, based on the weight of the report, to report onwards to AusSAR that the boat was overdue.⁷⁵

9.77 Ms Edwards’s testimony on this event gives a strong sense of the uncertainty still in people’s minds about SIEV X as late as 22 October, even though the intelligence was seen as relatively reliable. It also conveys the way in which the updates on SIEV X appeared to conform to the experience with earlier reported boat arrivals that failed to transpire. Ms Edwards said:

As others have testified, it was not unusual for multiple departure dates to be reported for the same boat, for boats to divert en route or to otherwise be delayed. The meeting was told that the boat had not been spotted and that there had been no calls from relatives, who are often well briefed on when to expect an arrival. On the other hand, the original report had seemed firmer than some. As I recall, on balance, the conclusion was drawn that the assessment was not sufficiently firm as to warrant passing the information to

71 As explained in chapter 8.

72 *Transcript of Evidence*, CMI 1643.

73 *Transcript of Evidence*, CMI 1643.

74 *Transcript of Evidence*, 1910.

75 *Transcript of Evidence*, CMI 1727.

AusSAR at that point. The Coastwatch subsequently advised that it had in fact passed the information that the boat was overdue to AusSAR that day and, indeed, while the meeting was in progress.⁷⁶

9.78 Ms Edwards's recall of the meeting, particularly the doubt lingering over SIEV X's departure, was corroborated by two other witnesses present at the PST meeting of 22 October – namely, Mr McMahon, First Assistant Secretary, DIMIA, and Ms Halton, chair of the Taskforce. Members of the Committee questioned Mr McMahon about the passage in the PST notes for that day which recorded the discussion on SIEV X as: 'Not spotted yet, missing, grossly overloaded, no jetsam spotted, no reports from relatives'.⁷⁷ Mr McMahon replied:

I read those now as saying that there was a report, but nothing happened following that report. In other words, there was no information saying that it had left, nothing had been sighted – no flotsam had been sighted – and it was missing. We could have expected, the next day, to find that it had returned to port or that it had not actually left. The state of the intelligence at that stage was such that you would often get quite conflicting information, and in that discussion, as I recall, it simply said that we had no more information on the boat. There are different things you can look for to verify whether or not a boat is on the way, but none of those particular leads had given fruit.⁷⁸

9.79 The Committee notes Mr McMahon's final point that none of the normal 'leads' or avenues for confirming or corroborating a boat's departure had yielded information that was sufficiently sound to confirm that SIEV X had departed. The evidence from Ms Halton, who chaired the meeting of 20 October, supported Mr McMahon on this point. Ms Halton told the Committee:

I actively recall this issue about no calls from relatives as being the kind of thing that they [DIMIA] would use to assess whether in fact the vessel had foundered.⁷⁹

9.80 Ms Halton elaborated on the significance DIMIA attached to relatives contacting government agencies when it was feared that vessels might be overdue or in trouble. She said:

I remember the conversation because it was about the advice from DIMIA that people tended to let their relatives in Australia know as they were

76 *Transcript of Evidence*, CMI 1706. In fact, the PST meeting started at 3.15pm, half an hour after Coastwatch had telephoned and faxed through the overdue notice to AusSAR. According to Ms Halton's evidence, during the meeting the Coastwatch representative contacted AMSA/AusSAR and reported back to the meeting, 'They have already issued an alert'. *Transcript of Evidence*, CMI 2141.

77 PST Notes, 'People Smuggling Taskforce – High Level Group Meeting 22 October 2001'.

78 *Transcript of Evidence*, CMI 2028.

79 *Transcript of Evidence*, CMI 2098.

leaving Indonesia on a vessel. DIMIA's experience had been ... that in the event that a vessel was missing they tended to know about it. I think the comment was that they tended to know about it very quickly because the relatives knew exactly when that vessel was anticipated to arrive at Ashmore, Christmas Island or wherever.⁸⁰

9.81 As discussed in chapter 8, Ms Halton's recollection of the meeting also illustrated the extent to which those handling the intelligence on SIEV X had begun to question whether the boat had left Indonesia or indeed existed at all. Ms Halton told the Committee that at the meeting:

... there was a conversation between a couple of the agencies, principally DIMIA and Coastwatch, and it was about whether this vessel was genuinely there: whether it was on the water and whether it existed. There was a question about whether it was real.⁸¹

9.82 Ms Halton's evidence reveals not only the uncertainty surrounding SIEV X at this stage but also the wider problem agencies faced in evaluating the accuracy of the intelligence on, and thus assessing the probability of, reported boat arrivals.

9.83 The Committee considers that the mixed signals received on SIEV X, mirroring as they did the stop-start movements experienced with other boats, instilled a significant degree of doubt in the minds of those handling the information. Those doubts remained strong, even in the face of new information on 20 and 22 October that, when considered by itself, appeared to corroborate earlier reports of the vessel's departure.

9.84 The absence of other important indicators to verify the whereabouts of SIEV X, or the situation it might be in, appears to have outweighed the importance that the AFP reports have assumed with the benefit of hindsight. On balance, the Committee considers that, based on the range of evidence available to it, there were reasonable grounds at the time for Australian decision makers to have doubted the intelligence that SIEV X had departed Indonesia or remained in transit on 20 and 22 October.

Confirmation of Whence It Had Departed

9.85 In evidence to the Committee, Mr Tony Kevin indicated an area in international waters, where he estimated SIEV X is likely to have sunk. Mr Kevin's calculations were based on, among other things, the fact that the vessel had departed Bandar Lampung early on 19 October, that it had stopped at an island mid-passage where some passengers disembarked and that it had steamed at five knots per hour, the usual speed of these vessels.⁸²

80 *Transcript of Evidence*, CMI 2123.

81 *Transcript of Evidence*, CMI 2123.

82 *Transcript of Evidence*, CMI 343-344.

9.86 On the basis of these calculations, Mr Kevin argued that it should have been possible for the Australian navy, if not to prevent the boat from sinking, at least to have located and rescued more of the survivors.

9.87 Evidence to the Committee, however, suggests that there are two problems with Mr Kevin's argument on this point. One is that calculations of the vessel's transit relative to the impact of tides, currents, weather and its seaworthiness are more haphazard than he suggests.⁸³

9.88 The more significant problem appears to be the knowledge possessed by authorities at the relevant time about the vessel's departure point.

9.89 Mr Kevin based his estimate on the location of boat's sinking on survivor testimony that revealed Bandar Lampung in Sumatra as the place from where SIEV X departed. The Committee notes, however, that this information about SIEV X's actual point of departure was *not* known by Australian agencies until 23 October, that is, three days after the survivors were rescued.

9.90 Prior to this stage, the intelligence suggested that SIEV X had departed from two different locations in *Java*, not Sumatra. Nothing in the intelligence reports indicated the correct departure location. In other words, if an Australian search and rescue operation had been ordered it would have been working off the wrong coordinates.⁸⁴

9.91 When questioned if the 20 October AFP advice contained detailed positional information, Rear Admiral Ritchie said:

... there is no such thing as location attached to that particular report. In fact, that particular report was made available the day after that particular vessel was subsequently known to have sunk. It includes a change in port of embarkation for these people, from one part of the archipelago to a significantly quite distant other part of the archipelago. It did say that it was probably a small vessel and that it had probably 400 people on it. That is all good information, but it is not going to help you find it.⁸⁵

9.92 Air Commodore Byrne made the same point to the Committee. When asked if the Maritime Patrol Group had received any 'special tasking' instructions in light of the information that SIEV X had sunk, the Air Commodore replied: 'No. We did not know where it was, for a start'.⁸⁶

83 See Attachment A, 'SIEV X', Defence review of SIEV X intelligence, pp.2-3.

84 See Colonel Gallagher on the impact of different points of departure on transit calculations, *Transcript of Evidence*, CMI 1912-1913.

85 Rear Admiral Ritchie, *Transcript of Evidence*, Estimates, Senate Foreign Affairs, Defence and Trade Legislation Committee, 4 June 2002, p.156.

86 *Transcript of Evidence*, CMI 2177.

9.93 Air Commodore Byrne also informed the Committee that the method of surveillance required for a SOLAS incident, ‘if it is for somebody in the water who does not have a beacon, ... would be a visual search and it would be restricted to, one hopes, *an accurate datum of the last known position* [emphasis added] and it would have very close track spacing’.⁸⁷

9.94 There has been no evidence presented to the Committee which indicates that Australian authorities knew, *prior* to the testimony of survivors, where the boat had departed from in Indonesia.

9.95 On the other hand, it could be argued that, on the basis of the ADF’s own argument that there was only one corridor or funnel through which all SIEVs bound for Christmas Island must transit, the point of departure was not as critical to a search as has been suggested. The logical area in which to commence a search mission for the vessel was the area of operations – ie. Area Charlie – in which surveillance was ongoing.

9.96 A search and rescue or SOLAS mission would have required not only intensified patrolling in the area (subject to the availability of assets and aircrew) but also specific tasking instructions to look for a foundered vessel and people in the water.⁸⁸ For such a mission to have been authorised, the information in the hands of the Operation Relex authorities and the supporting intelligence agencies would have had to have reached a threshold level of concern for the vessel’s safety. It is to that issue that the Committee now turns.

A Threshold Level of Concern for its Safety

9.97 The key difference between the SIEV X intelligence and intelligence on other boats was, according to Rear Admiral Bonser, the reports that the vessel was small and overcrowded.⁸⁹ These reports came from an AFP source on 20 and 22 October.

9.98 It should be noted, however, that before 20 October it was already known to Australian intelligence that Abu Qussey’s boats tended to be smaller than other people smuggling vessels. The DIMA Intelligence Note of 19 October, for instance, mentioned this characteristic as one of the reasons that Qussey’s boats took longer to complete the journey to Christmas Island and thus as a possible explanation for why SIEV X had not yet been sighted.⁹⁰

9.99 Furthermore, that SIEV X was small and overcrowded was not seen as exceptional by all of those involved in the intelligence cycle. For Air Commodore Byrne, an ‘end user’ of such intelligence, these features were common to most of the SIEVs. Air Commodore Byrne told the Committee:

87 *Transcript of Evidence*, CMI 2165.

88 *Transcript of Evidence*, CMI 2165.

89 *Transcript of Evidence*, CMI 1665.

90 DIMA Intelligence Note 81/2001, 19 October 2001, p.2.

All of the vessels are small and all of those vessels had been overcrowded at some point – it is just that there are varying levels of being overcrowded.⁹¹

9.100 In Air Commodore Byrne's terms, the degree to which SIEV X was overcrowded, such that it might have alerted those handling the intelligence on it, is hard to determine. On the one hand, the report of 400 on board far exceeded the numbers on any of the other SIEVs. At the time of these reports, the numbers on board intercepted vessels ranged from 129 (SIEV 3) to 238 (SIEV 5), the latter being the most populous of SIEVs 1-12.⁹² The only vessel to have carried more asylum seekers was the *Palapa*, with 433 passengers and five crew. It too foundered, but was rescued by the *MV Tampa*.

9.101 On the other hand, intelligence at the time was also indicating another organiser preparing a boat with 500 passengers expected to be on board. It is possible that this larger number of passengers obscured the significance of the report of 400 passengers on SIEV X.

9.102 Nevertheless, the Committee considers that the real significance of the reported 400 passengers on SIEV X lies, not so much in the number itself, but in the fact that it was known to Australian agencies that Qussey's boats tended to be smaller than those of other organisers.⁹³

9.103 The Committee also notes that the AFP report of 20 October, according to the Coastwatch OPSUM, mentioned '400 passengers onboard, with some passengers not embarking because the vessel was overcrowded'.⁹⁴ Again, it is difficult to gauge the degree to which this report might have been seen as a warning signal of the vessel's unseaworthy state. The report that passengers had not embarked because of overcrowding could have been a pointer to its poor condition; it might also have been construed as relieving some of the weight on board.

9.104 In any event, the opinion within Australian intelligence circles was that the AFP intelligence of 20 and 22 October was not entirely reliable. Since it was 'single-source AFP information received third-hand', intelligence analysts at HQNORCOM, the principal operational user of such information, considered the AFP intelligence to be of 'low credibility' requiring corroboration of the details about passenger numbers and overcrowding.⁹⁵

9.105 The other key item of intelligence about SIEV X was the 'personal opinion' of AFP analyst Ms Kylie Pratt, that (in the words of Coastwatch) the 'vessel may be

91 *Transcript of Evidence*, CMI 2180.

92 Matrix of SIEV incidents, tabled by Rear Admiral Smith, 5 April 2002.

93 As revealed in DIMA Intelligence Note 81/2001, 19 October 2001, p.2.

94 Rear Admiral Smith, 'Clarification of Evidence', letter to CMI, 22 May 2002, p.2.

95 Answers to Questions on Notice, Defence, 20 September 2002, W72 and W75.

subject to increased risk due to the numbers on board'.⁹⁶ It is now known that this advice was not passed onto the Operation Relex high command.⁹⁷ To assess the impact of this breakdown in the intelligence cycle, the Committee has attempted to gauge the significance of Ms Pratt's personal risk assessment against other information available to decision makers at the time.

9.106 Judged in hindsight, the AFP officer's warning was obviously prescient. However, it needs to be judged, not with the benefit of hindsight, but rather in terms of the information available to intelligence staff and decision makers at the time the report was received. Three important points should be noted in this respect.

9.107 First, Colonel Gallagher of ASTJIC indicated that most of the SIEVs tended to be in a poor sea state. When asked about the PST notes mentioning 'some risk of vessels in poor condition and rescue at sea',⁹⁸ Colonel Gallagher told the Committee 'that a number of these vessels – even the ones that arrived and were interdicted – were unseaworthy, so it was not an uncommon sort of observation to make about a SIEV'.⁹⁹

9.108 Second, the pre-arrival intelligence on SIEV 6 forewarned that there might 'the requirement for a rescue at sea', but this did not eventuate.¹⁰⁰ It might be that the successful transit of SIEV 6, despite its organiser's reputation for using boats in 'very poor condition', inclined those handling reports on SIEV X to conclude that, on balance, there was no cause for immediate alarm.

9.109 The third point goes back to the general quality of the intelligence on boat arrivals. When asked if safety of life at sea concerns figured in intelligence reports, HQNORCOM informed the Committee that it rarely found such information to be 'consistent and credible data', but when it did so it was included in relevant reporting.¹⁰¹ Given the 'low credibility' attached to the 'single source AFP information received third-hand' on which AFP officer Pratt's opinion was based, it seems unlikely that the operational response would have been any different if Coastwatch had passed this advice onto Defence.

96 Attachment A, Answers to Questions on Notice, Coastwatch, 17 June 2002.

97 Answers to Questions on Notice, Defence, 20 September 2002, W75. See the discussion of this in chapter 8.

98 PST Notes, 'People Smuggling Taskforce – High Level SubGroup, Thursday 18 October 2001'. Cited also in *Transcript of Evidence*, CMI 1844.

99 *Transcript of Evidence*, CMI 1903.

100 DIMA Intelligence Note 81/2001, 19 October 2001, p.2.

101 Answers to Questions on Notice, Defence, 20 September 2002, W67.

Should a SOLAS alert have been raised?

9.110 A central question that the Committee explored addressed whether any of the intelligence on SIEV X met the criteria that would warrant a Safety of Life at Sea (SOLAS) alert to be raised.

9.111 Air Commodore Byrne informed the Committee that the following would, in his view as Commander Maritime Patrol Group, constitute a SOLAS situation:

A report from AusSAR or the Australian Maritime Safety Authority or anything that we receive from any other party which would indicate that there was a safety of life at sea situation and anything that we would have picked up airborne. I cannot think of anything else.¹⁰²

9.112 The Committee asked Mr Clive Davidson, the head of the Australian Maritime Safety Authority, about the threshold of information required to trigger a SOLAS or search and rescue mission by Australian Search and Rescue (AusSAR). Mr Davidson indicated that AusSAR would not normally broadcast to shipping an overdue notice unless a distress alert (eg. an SOS, emergency beacon signal and so on) had been received.¹⁰³ He observed that overdue vessels are a daily occurrence.¹⁰⁴

9.113 In the case of SIEV X, the Coastwatch fax to AusSAR on 22 October was considered ‘pre-alert’ information that reached the ‘uncertainty phase’ in search and rescue planning. Mr Davidson defined the uncertainty phase as a stage where ‘there is insufficient information, a concern has been expressed and then people search for collateral or confirming information that warrants some action being taken’.¹⁰⁵

9.114 When asked why AusSAR did not search for ‘collateral or confirming information’, Mr Davidson said to the Committee:

... the nature of the information from Coastwatch was hardly alarmist and hardly raised a high degree of concern. That was confirmed in a conversation with the Headquarters Australian Theatre ... that they were out there looking for it, so if there was a situation they had the assets on the ground [sic] and in the air.¹⁰⁶

9.115 However, the Committee notes that, as discussed in chapter 8, Coastwatch sent only *some* of the information contained in the AFP reports of 20 and 22 October – a general point of departure (South West Java) and that the vessel was considered overdue – but *not* the arguably more crucial detail – that the vessel was overcrowded and a concern for its safety had been expressed.

102 *Transcript of Evidence*, CMI 2178.

103 *Transcript of Evidence*, CMI 1372.

104 *Transcript of Evidence*, CMI 1879.

105 *Transcript of Evidence*, CMI 1879.

106 *Transcript of Evidence*, CMI 1880.

9.116 Members of the Committee asked several witnesses whether, in their opinion, reports indicating a small, heavily overcrowded vessel, which some passengers did not embark upon because of overcrowding, would meet the criteria to warrant a SOLAS or some other form of heightened surveillance operation. Some witnesses thought it would, others did not.

9.117 Both AFP Commissioner Keelty¹⁰⁷ and Ms Halton¹⁰⁸ thought that such information would warrant a SOLAS situation. In the case of Ms Halton, the Committee notes that the critical AFP intelligence report of 20 October was not raised at the PST meeting on that day. The same report was also not provided to DIMIA until sometime after 20 October. It is arguable that had the intelligence on the boat's overcrowded state and the concerns for its increased risk at sea been aired at the meeting, the PST might have concluded that a search and rescue mission should be launched to look for SIEV X.

9.118 The Committee notes, however, a significant factor that counts against this scenario. As Ms Halton reiterated strenuously to the Committee, the PST did not direct line agencies nor insert itself into the chain of command with the Operation Relex authorities. She said in relation to whether the PST should have been responsible for raising a SOLAS alert:

... we did not interfere in the decisions that the relevant line agencies took. As far as I understood it, the declaring of a safety of life at sea issue was a matter, rightly, for the appropriate authority. So Mr Davidson would have alerted his Indonesian colleagues...¹⁰⁹

9.119 Further, at the time of the meeting on 20 October the latest DIMA Intelligence Note had mentioned that boats belonging to Abu Qussey often took longer to complete the journey to Christmas Island.¹¹⁰ SIEV 6, which intelligence suggested might pose the risk of a rescue at sea, had turned up on 19 October.

9.120 Another factor counting against the likelihood of the PST meeting of 20 October concluding that a SOLAS incident had arisen can be inferred from the discussion around SIEV X at the PST meeting of 22 October. As discussed in chapter 8, the usual indicator of a vessel overdue – telephone calls from relatives of those on board – had not been received. Nor had any distress signals been detected.

9.121 Given the absence of additional warning signals, and given other information counting against any cause for alarm, it seems reasonable to conclude that the PST meeting of 20 October would have reacted similarly to the meeting of 22 October, even if the AFP intelligence had been made known at the time.

107 *Transcript of Evidence*, CMI 1973.

108 *Transcript of Evidence*, CMI 2115.

109 See in particular, *Transcript of Evidence*, CMI 2116.

110 DIMA Intelligence Note 81/2001, 19 October 2001, p.2.

9.122 The Committee also put to Air Commodore Byrne the question of whether any of the intelligence on SIEV X met the criteria to satisfy a SOLAS operation for the Maritime Patrol Group. The Air Commodore said that, 'We received no information of an AFP report indicating SOLAS information'.¹¹¹ He also made the observation that:

Really, my judgment is that a report of a small and overcrowded vessel does not, of itself, indicate a safety of life at sea situation.¹¹²

9.123 The Committee considers that, as a highly experienced officer with SOLAS expertise, Air Commodore Byrne's view is authoritative. The additional element in the AFP intelligence, that people had refused to embark on SIEV X due to the overcrowding, is inconclusive as evidence of the boat's seaworthiness (at this stage it was not known that passengers were forced, allegedly at gun point, to board the vessel). The credibility of this information, as with that concerning SIEV X's overcrowded state, was also questioned, at least by HQNORCOM whose analysts had discussed the AFP intelligence with their counterparts in Coastwatch.¹¹³

9.124 Amidst a climate of mounting doubt about whether SIEV X was in transit to Christmas Island, none of the intelligence in the hands of Australian authorities appears to have been of enough concern or credibility to have warranted the raising of a SOLAS alert.

9.125 The Committee also notes that, shortly after AusSAR sent out the overdue notice about SIEV X on the afternoon of 22 October, HQ Australian Theatre contacted AusSAR to clarify if any new information on the vessel lay behind the phrase 'concerns have been expressed for its safety'.¹¹⁴ Rather than displaying indifference to SIEV X, the Headquarters Australian Theatre was clearly checking to make sure that no new information indicating a vessel potentially in distress lay behind the RCC overdue notice.

9.126 The question that remains in the Committee's mind is whether other arms of the government should have also sought to investigate further the situation regarding SIEV X. In raising this point, the Committee is mindful of the climate of doubt surrounding SIEV X by 22 October. This doubt reflected a range of factors (the multiple ambiguous reports, the absence of the usual signs of a vessel in distress and so on), not least the scepticism about the credibility of the AFP intelligence.

9.127 Nevertheless, the door remained open for the reports on SIEV X to be followed up. As mentioned above, AusSAR considered the situation with SIEV X to be at the uncertainty phase in the search and rescue context, a phase warranting the

111 *Transcript of Evidence*, CMI 2173.

112 *Transcript of Evidence*, CMI 2180.

113 Answers to Questions on Notice, Defence, 20 September 2002, W72.

114 *Transcript of Evidence*, CMI 1872-1873; RCC file [no detail], Answers to Questions on Notice, AMSA, 5 July 2002.

search for ‘collateral or confirming information’. In its assessment of the AFP intelligence, HQNORCOM also considered there to be a ‘requirement for confirmation of the remaining details’ about the vessel’s seaworthiness.¹¹⁵ By this, HQNORCOM meant that it would not lend much credence to the report of overcrowding unless corroboration of higher credibility was received. Apart from discussing on 20 October with Coastwatch the probability of SIEV X arriving, it is unclear whether HQNORCOM requested Coastwatch to seek additional information on the question of the vessel’s seaworthiness.

9.128 While it might be that Australian Theatre was merely clarifying that the unconfirmed status attached to SIEV X was unchanged, its action does point to an apparent willingness on the part of the rest of the intelligence system to accept the ambivalent nature of the information without probing more deeply into the reports on SIEV X.

9.129 There were obvious limits on the extent to which agencies could delve into the basis of reports, particularly those from sources operated by other agencies. Apart from anything else, the logistics involved in running informants and delays in receiving intelligence would have hampered the checking of reports. It is possible that the long chain of intelligence reporting, from its source in Indonesia to its end users at Maritime HQ and NORCOM, constrained the ability of officers to obtain ‘collateral or confirming information’ when required.

9.130 Another possible explanation for the apparent passivity on following up ambiguous intelligence could be the seeming tendency of agencies and analysts to rely upon patterns established in the past to guide their assessment of new reports.

9.131 For example, when asked if the intelligence on the boat’s condition and numbers on board might have prompted a change in the surveillance schedule, Rear Admiral Bonser of Coastwatch replied:

In this case, with, as I have said, the imprecise information about departures – the departure after departure that does not eventuate, the comprehensive surveillance that was in place out there and the fact that we did not have a confirmation of the departure and that the vessel was not yet overdue – no.¹¹⁶

9.132 The Committee is not suggesting that intelligence assessments should have discounted the past patterns in the general boat intelligence when analysing the SIEV X reports. Clearly this was an important means of assembling a profile on the tactics and movements of these vessels, upon which analysts could determine the probability of a boat arriving.¹¹⁷

115 Answers to Questions on Notice, Defence, 20 September 2002, W75.

116 *Transcript of Evidence*, CMI 1661.

117 *Transcript of Evidence*, CMI 1892.

9.133 The Committee does wonder, though, if there are not dangers inherent in an embedded analytical focus that struggles to accommodate diverging items of information that do not fit the pattern. There is an element in the handling of the 20 and 22 October AFP reports of the shadow of past patterns (rather than any ‘surrounding noise’) obscuring the potential significance of the new features that emerged in those reports.

Intelligence Handling – Systemic Problems?

9.134 In chapter 8, the Committee identified several instances where the chain of reporting of intelligence broke down or was dysfunctional. Three instances relate to the AFP intelligence of 20 October:

- The failure to provide DIMIA with that intelligence on the same day as it was received and expedited to Defence;
- The failure to raise the substance of that intelligence at the daily meeting of the PST on 20 October, even though it was of direct bearing to the meeting’s discussion of the impact of expected arrivals on facilities at Christmas Island; and
- Coastwatch’s omission of the personal assessment of an AFP officer that overcrowding placed SIEV X at increased risk.

9.135 The fourth instance of questionable handling of intelligence occurred on 22 October when Coastwatch, in forwarding on to AusSAR a sanitised version of an AFP report that SIEV X was overdue, omitted the earlier intelligence that the vessel was overcrowded and had up to 400 passengers on board.

9.136 In this chapter, the Committee has found that intelligence breakdowns occurred. However, the Committee cannot conclude whether intelligence reporting reached a state whereby Australia’s response could reasonably be expected to have been different.

9.137 Having said that, the Committee is concerned at what appear to be systemic problems in the intelligence system with the border protection strategy. As an element of the whole of government approach to illegal immigration, the intelligence system was extensive and involved many links in the chain of communications. In view of the breakdowns with handling intelligence identified in this report, it appears that the extended lines of communication have posed problems with the coordination and sharing of operational intelligence across multiple agencies.

9.138 These problems possibly reflect the administrative weaknesses in the whole of government approach to managing border protection intelligence that the Australian National Audit Office (ANAO) identified in a recent review.¹¹⁸ The Committee notes

118 ANAO, *Management Framework for Preventing Unlawful Entry into Australian Territory: Department of Immigration and Multicultural and Indigenous Affairs*, Audit Report No.57 2001-2002, pp.45-46, 50-57.

the ANAO proposal that DIMIA and its partner agencies identify ‘better practice offshore coordination processes and reporting arrangements and adopting this across all missions’.¹¹⁹ In the Committee’s view, similar reforms may be required at the cross agency level with the *onshore* coordination and sharing of intelligence.

Conclusion

9.139 In summing up the SIEV X episode, the Committee is faced with one critical question: was there enough information available to warrant someone acting to rearrange the maritime surveillance pattern and perhaps deployment of RAN vessels, with a view to reaching the vessel before it sank or saving more survivors while they were in the water?

9.140 The argument that they should have so acted rests on the intelligence that came to light in the AFP report of the morning of 20 October (that is, after SIEV X had sunk). This report indicated that SIEV X was small and overcrowded, with up to 400 passengers on board. However, this report was not passed onto two key bodies (DIMIA and the daily PST meeting), while other elements contained in the AFP intelligence – that some passengers had disembarked because of overcrowding and that the vessel might be at increased risk at sea – did not reach Defence.

9.141 Against this, however, sits the evidence that at the time there remained strong doubts that the vessel had departed (doubts that were well founded in past experience); that there had been no report that the vessel was overdue; that there had been no distress alert issued; that none of the usual indicators that might warn of a vessel in trouble had been received; and that there were no specific coordinates about its likely location available. The intelligence report that the vessel was small and overcrowded was not exceptional. Nor was the source of the report seen as credible, at least by HQNORCOM. Another vessel, SIEV 6, had transited successfully to Christmas Island despite intelligence warning that the vessel might be in risk. A further reason counting against the case for altering the search pattern was that a comprehensive surveillance operation was in place.

9.142 On 20 October, intelligence did suggest that the vessel had left a location in South West Java and, if concerns had triggered a response, it is possible that a search could have been mounted based on these coordinates. As it turned out, that information was incorrect, so that a search may not have found the vessel.

9.143 On the basis of the above, the Committee cannot find grounds for believing that negligence or dereliction of duty was committed in relation to SIEV X.

9.144 Nonetheless, the Committee is disturbed that no review of the SIEV X episode was conducted by any agency in the aftermath of the tragedy. No such review

119 ANAO, *Management Framework for Preventing Unlawful Entry into Australian Territory*, p.52.

occurred until after the Committee's inquiry had started and public controversy developed over the Australian response to SIEV X.

9.145 While there were reasonable grounds to explain the Australian response to SIEV X, the Committee finds it extraordinary that a major human disaster could occur in the vicinity of a theatre of intensive Australian operations and remain undetected until three days after the event, without any concern being raised within intelligence and decision making circles. It is particularly unusual that neither of the interdepartmental oversight bodies, the Illegal Immigration Information Oversight Committee and Operational Coordination Committee, took action to check whether the event revealed systemic problems in the intelligence and operational relationship.

9.146 Rather than adopting a business as usual approach following the disaster, a review of intelligence and operational processes should have been carried out promptly, particularly in light of the breakdowns in the intelligence chain that have emerged during the inquiry. The Committee considers that the episode points to two issues that the relevant agencies or IDCs ought to consider with a view to enhancing the intelligence process in cross-agency operations:

- The extended chain of intelligence reporting in whole of government approaches to managing border protection and its impact on the effectiveness of intelligence, particularly the assessments function, in informing operational decisions; and
- The capacity of intelligence analysis and assessments to recognise new information that does not fit established patterns, to interrogate it in a manner that is attuned to alternative implications and to probe more deeply when information of concern emerges.

9.147 At the general operational level, the Committee also considers that more should be done to embed SOLAS obligations in the planning, orders and directives of ADF operations. The Committee has noted elsewhere in the report that international and legal obligations to protect safety of lives at sea constrained Operation Relex's mission of 'detecting, deterring and returning SIEVs', and that the Committee is impressed at the RAN's serious commitment to this imperative.¹²⁰ Nonetheless, the Committee has a degree of concern about the extent to which this imperative figured in the mission tasking of other arms of the government architecture supporting Operation Relex.

9.148 For instance, HQNORCOM informed the Committee that 'the priority intelligence focus within HQNORCOM was, and continues to be, the determination of when and where SIEVs will arrive in Australia's contiguous zone'.¹²¹ Although HQNORCOM also indicated that SOLAS-related information was incorporated in intelligence reports where relevant,¹²² a question remains in the Committee's mind

120 See chapter 2.

121 Answers to Questions on Notice, ADF, 20 September 2002, W66.

122 Answers to Questions on Notice, ADF, 20 September 2002, W67.

over the *degree* of priority intelligence officers and other decision makers attached to these considerations in relation to the primary focus of detection and deterrence.

9.149 In view of the whole-of-government context in which Operation Relex fitted, the Committee is also concerned that the paramountcy of SOLAS imperatives may not be as well recognised or imbued among non-military personnel as they are among the ADF. One example illustrates the basis for the Committee's concern. As noted elsewhere, an unusual feature of the SIEV 4 crisis was the intervention by Mr Moore-Wilton, the Secretary of PM & C, in the Navy's handling of boat's rescued passengers. According to Admiral Barrie, Mr Moore-Wilton attempted to direct the Navy to keep all those rescued on board the HMAS *Adelaide*. In Admiral Barrie's words:

On the night of Monday, 8 October COMAST telephoned me to advise that SIEV4 was sinking, life rafts from HMAS *Adelaide* were in the water and there was an operational emergency. Over 200 people would need to be rescued from the water. I was also advised that the Commanding Officer of *Adelaide* had called for urgent assistance from Christmas Island. Shortly thereafter I had a telephone conversation with Mr Max Moore-Wilton, secretary to the Department of Prime Minister and Cabinet. He told me to make sure that everyone rescued went on board HMAS *Adelaide*. I said to him that we could not guarantee that and safety of life was to be the paramount consideration. In this emergency, if people had to be rescued and landed at Christmas Island that would have to happen.¹²³

9.150 Admiral Barrie informed the Committee that the exchange between he and Mr Moore-Wilton was 'heated', indicating the degree of tension in not only the discussion between the two but also between the SOLAS commitment of the Navy and the apparent expedience of Mr Moore-Wilton's demand.

9.151 In the Committee's view, this case is disturbing not only as an example of a high-ranking bureaucrat attempting to encroach on the chain of command during an operation, but also because it highlights the risk of SOLAS considerations being subverted by external agendas in joint civilian-military operations.

9.152 The Committee believes that international and legal safety obligations should be given prominence in all mission tasking orders for ADF operations. Obligations such as those of a SOLAS nature are especially important in law enforcement operations involving non-combatants. The Committee notes the forecast of Admiral Barrie that the ADF will be increasingly asked to execute this style of essentially civilian operation in concert with civilian agencies.¹²⁴ It is crucial that civilian and uniformed personnel engaged in such operations are reminded of the safety of life obligations that all Australian government agencies and personnel are required to fulfil. To promote awareness of these obligations, operational orders should refer to

123 *Transcript of Evidence*, CMI 741.

124 *Transcript of Evidence*, CMI 747.

them explicitly in writing and accord them the priority required under international and domestic law.

9.153 It is accepted that senior commanders have good reason to assume that amongst their personnel SOLAS obligations can be taken as read. However, the Committee considers it to be prudent that such obligations are codified in operational concepts and orders.

Recommendation

9.154 The Committee recommends that operational orders and mission tasking statements for all ADF operations, including those involving whole of government approaches, explicitly incorporate relevant international and domestic obligations.