

The four lost SIEVs

By Tony Kevin

Recent weeks have seen rhetoric from both sides of politics citing high and unsubstantiated figures about deaths of asylum-seekers on suspected irregular entry vessels (SIEVs) seeking to reach Australia, in order to bolster their rival cases for offshore processing in either Malaysia or Nauru. Politicians have publicly advanced figures as high as 900 deaths, or alternatively death rates up to 4% of asylum-seeker embarkations¹. Both parties claimed, in effect, that Australia must send those who arrive by boat to offshore processing countries in order to deter other asylum-seekers from embarking on risky voyages to Australia, and thereby to save lives. Now that overseas processing has been politically ruled out, politicians stand ready to blame the other side of politics for any future SIEV deaths at sea.

This paper contains new research on two questions: what are the ascertainable facts on SIEV deaths at sea? And what can be deduced from public sources as to the role of the Australian border protection system in seeking to prevent such deaths?

1. Seeking truth about numbers of claimed SIEV Deaths at Sea

It is lacking in respect for relatives and friends of the deceased for Ministers and other politicians to bandy about figures on asylum-seeker deaths at sea in slipshod, unverified ways. If such figures are to be quoted publicly, their authenticity should be carefully verified and the basis of their calculation clearly stated. On this, see Marg Hutton's referenced table 'Drownings on the public record of people attempting to enter Australia irregularly by boat between 1998 and 2011', recently published on her website www.sievx.com².

This table categorises reported SIEV deaths at four levels of veracity – confirmed, probable, doubtful and disproven. Hutton's definitions of these terms follow the table. She calculated approximately 456 'confirmed', approximately 207-217 'probable', approximately 380 'doubtful' and 183 'disproven' drownings in 1998-2001.

Her 'confirmed' death toll of 456 was dominated by two large officially acknowledged sinking events: 353 deaths from the SIEV X sinking on 19 October 2001, and around 50 deaths from the SIEV 221 shipwreck at Christmas Island on 15 December 2010.

Hutton's 'probable' death toll of 207-217 is dominated by two boats that, it now seems highly probable or probable, were lost at sea without trace on their way from Indonesia to Christmas Island in October 2009 and November 2010. Anxious relatives in Australia identified that the first boat in 2009 was carrying approximately 105 Afghan Hazara people. The existence of this lost boat has been reluctantly officially acknowledged by the Australian Customs and Border Protection Service (ACBPS – hereinafter referred to as 'Customs') in parliamentary committee responses. The second boat in 2010, again reported by relatives, was carrying

approximately 97 Iranian and Iraqi people. Customs has said it knows nothing of this venture.

Hutton's 380 'doubtful' deaths all originated in three alleged boat sinkings announced to media by the Minister for Immigration Phillip Ruddock during 2000. But there were never any media reports about relatives expressing concern about any of the claimed 380 persons drowned in these three alleged sinkings; which suggests that these three claimed sinkings are of doubtful veracity. 380 people do not simply disappear without families making public enquiries.

Her 163 'disproven' sinkings were of two boats alleged by Ruddock to have sunk in December 2000, drowning 83 and 80 people. Both boats later were officially announced to have arrived safely.

Ghassan Nakhoul³ has suggested that the above five sinkings reported in 2000 were products of a 'wishful sinking fantasy' on the part of Phillip Ruddock.

In summary (my additions across columns), Hutton found 663-673 confirmed or probable deaths at sea of asylum seekers in the 13 years 1998-2011, of which about 378 were under the Howard Government to 2007, and about 285-295 were under Labor governments since 2007.

These totals were numerically dominated by four major confirmed or probable SIEV sinking events: the SIEV X sinking in 2001, the Christmas Island shipwreck in 2010, and the two lost boats in 2009 and 2010.

Parliamentary researchers Janet Phillips and Harriet Spinks recently estimated that in these same 13 years (1998-2011) 24,184 boat people arrived in Australian territories⁴. This works out at a death rate of persons who embarked on SIEVs of 2.7%; well under the 4% recently claimed by politicians (4% of 24,184 would be 968). To put this figure in reverse, 97.3% of embarking asylum-seekers arrived safely.

Looking at the Phillips and Spinks (op.cit) figures of numbers of boats that arrived in these thirteen years, the result is even more striking. Three undetected boats did not arrive, and one was wrecked after arriving undetected at Christmas Island, compared with their estimated total of around 520 listed boat arrivals. The loss ratio here is even smaller – less than 0.8%. Thus, 99.2% of embarking SIEVs arrived safely.

It is proper here to salute the significant contribution of Australia's Border Protection Command (BPC) in detecting and assisting SIEVs lost or in trouble at sea in achieving these generally good outcomes. Without BPC's many efficient detections and rescues at sea, the death toll since 2001 could have been considerably higher.

2. Issues of Australian accountability for SIEV deaths at sea

In putting forward evidence suggesting that 2.7% rather than 4% of boat people asylum-seekers have drowned at sea, i.e., around 660 rather than 800 or 968 victims,

and primarily in four large sinking events, I do not claim that these four maritime tragedies should be seen as an acceptable rate of mortality. For me, four sunk or lost SIEV boats in 13 years is four boats too many. As in the case of the road accident toll, Australia should aim for a zero death rate here.

The normal official response when pressed in such cases is to blame the people smugglers who send people out in leaky unsafe boats. But I do not find this a logically sufficient response, when 99.2% of these boats and 97.3% of the people who boarded them have arrived safely. The question – why did 4 out of 524 sent boats not make it – is not a question about people smugglers sending leaky unsafe boats. It is a question about why an Australian border protection system for intercepting SIEVs that normally works safely should occasionally fail.

This essay breaks new ground in looking for better explanations for these four tragedies, in the area of possible system failures within the intelligence-based Australian border protection system of detection and interception of SIEVs. My method is to look carefully at what is publicly known about each of the four sinkings, to research what features they might operationally have in common.

Strikingly, one thing that they all have in common, as we shall see in the case studies, is that these four boats were all claimed to be undetected by the Australian border protection detection and interception system. This point is so obvious and trite that it is easy to overlook its importance. Yet it is central to the analysis of this paper.

I begin with a general descriptive analysis of the Border Protection Command (BPC) SIEV detection and interception system. This analysis draws on official information provided by Customs to the recent Joint Parliamentary Select Committee Inquiry into the Christmas Island tragedy⁵, and on my own research. I ask readers to bear with the organisational detail and acronyms: it may seem arcane, but it is crucial to a real understanding of the issues.

3. Australia's intelligence-based SIEV detection and interception system

Australia's whole-of-government border protection system comprises elements from the Australian Defence force (ADF), Customs, Australian Federal Police (AFP), Immigration, and intelligence agencies, working together in a complex, mostly secret, multi-layered daily process of intelligence data collection and assessment, and operational tasking of detections and interceptions of SIEVs.

A well-informed defence studies 'insider', Derek Woolner⁶, recently suggested that recurring crises in the border protection system reflect unclear responsibilities under present co-operative arrangements. Woolner offered the striking judgement⁷ that deaths in the SIEV 221 sinking at Christmas Island were the collateral damage of present procedures.

The Customs submission to the Joint Select Committee on the Christmas Island Tragedy⁸ states that Border Protection Command (BPC) is the operational authority

which responds to security threats in Australia's maritime domain. BPC is responsible for detecting SIEVs at sea, and intercepting them when they approach or enter Australian territorial or contiguous waters. Although BPC is not a Search and Rescue organisation, it may be responsible for rescuing them in adjacent international waters in cases of known or suspected Safety of Life at Sea (SOLAS) emergencies, as required by international law.

BPC is administered under Customs but is commanded by a Rear Admiral seconded from Defence. He has operational control of both ADF and Customs aerial surveillance aircraft and surface response vessels in the Australian maritime domain. This domain is the area bounded by Australia's Search and Rescue (SAR) zone.

The BPC Commander exercises his command through deputies located in two headquarters. BPC Headquarters in Canberra coordinates operational activities of Customs ships and aircraft. Joint Task Force 639 (JTF639) in Darwin coordinates and deploys ADF assets, comprising Armidale Class Patrol Boats and AP-3C aircraft.

BPC does not have the responsibility for collating and assessing the underlying sources of intelligence that inform its operations. This is the responsibility of a highly classified separate agency, the People Smuggling Intelligence Analysis Team (PSIAT) in Canberra. We know little about PSIAT, beyond that it coordinates the whole-of-government process that assesses daily the maritime people smuggling threat picture to Australia, based on all available sources of intelligence on SIEVs. The PSIAT considers actions occurring both within and beyond Australia.

Individual ventures are assigned a threat status – with 'high' threats equating to imminent departures, where both passengers and the vessel are ready and when the venture is believed to be within 72 hours of departure (or has already departed).

PSIAT disseminates a classified daily assessment to a broad audience including the Prime Minister's Office, designated Ministers' Offices, heads of relevant agencies, the Customs executive, and designated overseas diplomatic posts.

I surmise here – we are not told - that PSIAT's most important sources of intelligence would be human intelligence collected by Australian police and intelligence agency operations in Indonesia; intercepted signals intelligence of radio messages or satellite phone calls from people embarking on SIEVs or from SIEVs in transit; Jindalee Operational Radar Network (JORN) broad-area long-distance radar data collection and interpretation from reading strips of 'tiles' along likely SIEV routes; any reports of sightings from commercial shipping or aircraft in the area; and any data collected by BPC routine surveillance flights.

The relevance of JORN to the detection of small wooden SIEVs at sea is a controversial subject. I have found a wealth of published, officially sourced material describing JORN's capabilities in defence journals and ministerial media releases since around 2000. I submitted such material to both the Parliamentary and WA Coroner's enquiries into the SIEV 221 disaster⁹. These sources indicate firmly that this \$1800

million national broad-area radar system is an important tripwire technology in the initial detection of incoming SIEVs at sea.

Yet sworn evidence presented by many officials to SIEV 221 inquiries, and responses to FOI inquiries by Natalie O'Brien, was to the effect that JORN played no role in the detection of SIEV 221, is not normally used by BPC to detect SIEVs, and cannot reliably detect any vessel at sea smaller than an Armidale class steel frigate 54 metres long. There is a real contradiction in evidence to be addressed here.

I believe that JORN is a relevant part of the PSIAT armoury of intelligence assets. I surmise that the border protection system as a whole wishes to conceal the significant role played in its intelligence gathering by JORN. It achieves this result both through the layering of intelligence product in the PSIAT/BPC system, under which BPC need not know how low-veracity JORN data may be used by PSIAT to cross-check other sources of data available to PSIAT on possible incoming SIEVs; and, perhaps, through the use of semantic concealment enabled by the way on which BPC operationally defines 'detection' – see below.

In cases of legal inquiries into shipwrecked or lost boats, low-veracity JORN data towards the tails of the bell-shaped probability curve - data that, while not certain, might have suggested to the system a need to investigate a particular area (or 'tile') of ocean more closely – can be denied afterwards as not having been actionable, operational detection data.

Perhaps those from outside the border security system who investigate SIEV disasters may need to refine their understanding of the nature of scientific probability curves, which do not always admit of simple Yes/No answers in the case of radar-derived data.

The Customs submission states that the PSIAT daily intelligence product is drawn upon to develop a separate daily intelligence product for BPC, which specifically relates to those aspects directly relevant to BPC's operations in Australia's maritime approaches. BPC's separate operational intelligence product allows it to position its ships and aircraft most efficiently in order to detect and intercept an anticipated incoming SIEV.

I surmise that this BPC product might contain simplified advice on lines of 'We suspect a SIEV may be coming in towards Christmas Island on this day on this bearing with around this number of people on board'.

BPC would not need to know how such information was developed from the intelligence available from various sources to PSIAT. Much of the intelligence that PSIAT would see and assess in compiling its daily product might never reach BPC, because it might not be considered relevant to the needs of the intercepting agency BPC.

This PSIAT system guards as national security secrets its methods and products. Largely secret also are BPC's operational procedures for detecting at sea incoming

SIEVs, for intercepting them when they arrive in Australian waters, and for dealing with suspected Safety of Life at Sea (SOLAS) emergencies in international waters.

Such information may be provided on a classified need-to-know basis to parliamentary and coronial enquiries into disasters. But the public at large has no access to it and no way of testing the quality of the classified information provided. As things stand, the public has no way to evaluate obscure official statements like this one in the Customs submission to the Parliamentary enquiry into the SIEV 221 disaster:

'While there was some general knowledge of possible SIEV activity from Indonesia, including information about possible activities which later (after their arrival) was attributed to SIEVs 220 and 227, there was no intelligence to indicate that SIEV 221 had departed Indonesia or was likely to arrive at Christmas Island and the information was not sufficient to enable effective cueing of aerial surveillance for 15 December 2010.'¹⁰

SIEV researcher Marg Hutton has analysed the content of Customs media releases covering approximately 80% of SIEV interceptions between 2008 and 2011. Her work collated officially sourced public information in such categories as: date of interception, name of boat (in the numbered SIEV series), destination, how detected, where detected, how intercepted, where intercepted, other information, number on board, origin of the vessel. Cross-comparing her information with my own work, one may glean a few insights into a largely secret system.¹¹

Most SIEVs head from Indonesia for the nearest Australian island territories where BPC ships intercept them and take them into custody. SIEVs usually approach either Christmas Island from the Sunda Strait/Panaitan area, or Ashmore Reef from the Kupang/Roti area. Both are fairly short straight-line journeys of around 2 to 4 days.

A far smaller number of SIEVs make directly for the Australian mainland, a much longer journey. A few of these have come from Sri Lanka. These boats are harder to find. They tend to be intercepted in the Cocos Island or Scott Reef areas, both lying within the Australian Search and Rescue (SAR) zone.

SIEVs are typically old, small wooden fishing boats. They have simple GPS-aided navigational capacity and sufficiently sound hulls and engines to usually complete their one-way journeys to their destinations, where they are routinely sunk by BPC.

A majority of SIEVs headed for Christmas Island or Ashmore Reef safely reach their destination areas under their own power and navigation.

Australian authorities normally prefer for legal and safety reasons to intercept SIEVs when they enter Australian territorial waters (to 12 nautical miles out from land) or contiguous zones (12 to 24 NM out from land).

The international waters outside these Australian SAR zones are in the Indonesian SAR zone. SIEVs cannot legally be boarded by BPC vessels out there, unless they are in evident SOLAS distress or have signalled that they are in SOLAS distress.

Some SIEVs get lost in the Ashmore Reef or Christmas Island area. These are detected and intercepted by BPC assets outside Australian waters. Some of these interceptions at sea are listed as boats that had contacted the Australian Maritime Safety Authority reporting distress at sea: often, it is understood, by making satellite telephone calls direct to AMSA. Others are listed as SIEVs that BPC vessels had approached under the SOLAS Convention: i.e., that BPC had reason to believe these SIEVs might be in distress.

However, I question whether all the claimed cases of apparent SOLAS distress in the official Customs media releases are 'real'. If an unattended SIEV boat is sinking or has experienced genuine irreparable engine failure, this is 'real' SOLAS distress; so is getting lost at sea. But I believe there would be more than a few cases where a seaworthy and navigable boat that had made the journey safely to the Christmas Island or Ashmore Reef area might have quickly rendered itself not seaworthy or navigable as a BPC vessel approached, as insurance against being ordered to turn back to Indonesia. It is not difficult quickly to wreck an engine or steering gear or to pull out pre-inserted bungs in a SIEV's hull. This would be rational and defensible conduct, given the history of periods of harsh Australian towback border policies and of sudden policy changes without notice.

Something less than half of the SIEVs are listed as detected by BPC surveillance aircraft. Where the detection method is not listed, I would assume it was either by airborne or shipborne BPC visual sightings or radar.

Over the 10 years since the sinking of SIEV X in 2001 (the anniversary is on 19 October 2011), despite official secrecy, the body of public knowledge on these matters of legitimate public interest is gradually expanding, as a result of public parliamentary and coronial enquiries into SIEV disasters¹², media enquiries into lost SIEVs, and published investigative work by independent scholars David Marr, Marian Wilkinson, Marg Hutton, Sue Hoffman and myself¹³. Parliamentarians Peter Cook, John Faulkner, Andrew Bartlett, Jacinta Collins, Christine Milne, Sarah Hanson-Young and Michael Ronaldson have played important roles in pressing government ministers and agencies for truth about sunk or lost SIEVs¹⁴. Investigative journalists Geoff Parish and Ghassan Nakhoul (SBS), Margo Kingston (Fairfax) and Ross Coulthart (Channel 7) have all made important contributions to widening public knowledge of events in 2001¹⁵. Natalie O'Brien (Fairfax) has made a similarly important contribution to research on the two lost SIEV boats in 2009 and 2010, and SIEV 221.

Here is a summary of what I know or can reasonably deduce from public-source information.

Border Protection Command (BPC), currently headed by Rear-Admiral Tim Barrett, is at the operational sharp end of the system. As a SIEV nears an Australian island destination, BPC makes a confirmed detection by visual or radar surveillance from its ships or aircraft on station. Surveillance then continues until BPC's physical

interception, usually after the detected SIEV has entered Australian territorial or contiguous waters.

When BPC has access to any intelligence suggesting that a SIEV may be experiencing a SOLAS emergency in international waters, a BPC ship may go out and try to rescue this SIEV. But because these international waters all fall within the internationally designated Indonesian Search and Rescue Zone, the Australian SOLAS response may occasionally (and quite legally) be instead to inform international shipping and/or the Indonesian search and rescue organisation BASARNAS of the possible SOLAS emergency. Examples were Palapa in 2001 (the boat rescued at sea by Tampa) and the lost SIEV in 2009 (see below).

From my study of what official testimonies say and do not say, I put forward for consideration what I believe are new insights into this largely secret system.

The central point is this: *Intelligence of a suspected incoming SIEV precedes and informs the detection, surveillance and interception of that SIEV.*

Surveillance deals in certainties – it proceeds from a clear visual sighting or a clear airborne or ship-borne radar detection of a SIEV.

In contrast, intelligence deals in possibilities that might or might not be an incoming SIEV. Until BPC assets – ships or aircraft on station – physically detect a SIEV and commence their surveillance of it, the venture is regarded by BPC as no more than an intelligence-based possibility that may or may not materialise. What might be a SIEV might arrive; or it might have sunk at sea; or it might have returned to Indonesia; or it might never have left Indonesia at all.

Yet we know that BPC does not send its sea or air surveillance assets out looking for SIEVs aimlessly at random. We know that BPC receives from the Australian government a classified daily operational, or actionable, intelligence product. Using this product, it deploys or postures its assets of surveillance aircraft and ships on surveillance stations or routes across known ‘threat axes’, in order to maximise its chances of detecting and intercepting SIEV boats as they come in¹⁶.

BPC would not regard PSIAT intelligence product (which in any case, BPC may not get to see) as proof of an incoming SIEV, until that SIEV had been detected by a BPC asset on station. Such detections would retrospectively validate the intelligence that was available to PSIAT that a particular SIEV might be on its way. But until BPC detection, all prior intelligence, whether contained in PSIAT or BPC daily intelligence products, is regarded as conditional and uncertain.

In a nutshell, a SIEV is normally not officially confirmed as existing until and unless it has been detected and intercepted by a BPC asset or assets; even if the intelligence-based parts of the border protection system have known or suspected for some time that this boat may be on its way to Australian territory.

It should now be clear how it could be possible, with judicious use of language in written official reports or sworn testimony, to claim that neither BPC, ADF nor Customs had operational knowledge of a SIEV boat that had gone missing or had arrived unexpectedly – without any official from these agencies actually having to lie under oath. The system layers its knowledge, in such ways that the underlying intelligence-based knowledge stays well hidden from any occasional public scrutiny of BPC operations.

I now look at the four individual case histories.

4. SIEV X and associated events in 2001

The sinking of SIEV X on 19 October 2001, in the Indonesian SAR zone in international waters between Indonesia and Christmas Island, was in my view a landmark ethical failure of the Australian border protection system¹⁷. 353 people drowned on SIEV X, mostly women and children.

The Australian border protection system claimed not to have detected the boat.

There has been no process of establishing accountability for SIEV X since the Senate Select Committee into a Certain Maritime Incident, a quickly forgotten highwater mark. To this day, serious questions put by Senator John Faulkner in the CMI Committee and Senate remain unanswered. These questions concern what the system knew about SIEV X, when it knew it, and what it did or did not do with that knowledge. National security still hides the truth. The full-powers independent judicial inquiry which Faulkner called for into the operations of the Australian Federal Police's people smuggling disruption program in Indonesia and into the sinking of SIEV X is to this day an unfulfilled Labor pledge¹⁸.

The case studies of Palapa (the boat whose passengers were rescued by MV Tampa), SIEV 4 (the 'children overboard' boat) and SIEV X in 2001, offer sober warnings of what may happen in the future if boat people numbers should rise now that offshore processing has been set aside, and if embattled Ministers should decide not to look too closely into what official agencies might be tempted to do in their efforts to deter and disrupt such voyages.

In 2002, former Admiral Chris Barrie, then CDF, commented in the Senate Committee into a Certain Maritime Incident (CMI) enquiry that he worried that if the ADF was kept in SIEV interception operations for too long, 'compassion starts to disappear or they become hard-nosed'¹⁹. This is why I believe it essential to strive now for a transparent, explicitly human rights-based system of border protection.

From 1999 to August 2001, the period of Nakhoul's 'wishful sinking fantasy', the Howard government tried without success to deter voyages by disseminating doubtful stories of asylum seeker boats and lives lost at sea, Responsible journalists – e.g., Brendan Nicholson, Tony Wright – at least initially accepted as fact information from the Minister for Immigration about five claimed boat sinkings subsequently found to be doubtful or disproven. The currency of official information about deaths on SIEVs was thereby debased.

In August 2001 came the Tampa affair. The true story of Palapa's ordeal, as exposed by Marr and Wilkinson's book 'Dark Victory', was deeply shocking. Australian border protection surveillance aircraft overflew twice, but left unaided for over 24 hours, this drifting boat with irreparable engine failure that was obviously in SOLAS distress, located about 65 miles from Christmas Island - outside Australian territorial waters and in the Indonesian SAR zone. Palapa nearly sank in an overnight storm between these two daytime sightings.

When the system finally responded, its response was callously minimal²⁰. The Australian Maritime Safety Authority sent a signal to BASARNAS, its Indonesian counterpart, which did nothing. Eighteen hours later, AMSA informed international shipping. Fortunately the captain of Tampa responded, saving over 300 lives. Operation Relex and the Pacific solution followed.

SIEV 4 on 6-8 October 2001 offered another dramatic case study of an inhumane, life-threatening response by the border protection system to obvious SOLAS emergencies. After HMAS Adelaide intercepted SIEV 4 at sea not far from Christmas Island, Adelaide first tried unsuccessfully to send SIEV 4 back to Indonesia, despite its broken compass and steering gear. There followed an internationally unlawful order from Canberra to the Commander of HMAS Adelaide to keep over 200 passengers on board the almost foundering SIEV 4 under Adelaide's circular tow for 22 hours, up until the very moment when it sank. The instruction then was - it is hard to believe the contempt and malice of this - that people had to jump in the water before they could be rescued. It is a miracle nobody drowned in that very dangerous, needlessly delayed transfer of people from the sinking SIEV 4 to Adelaide.²¹

We can thank Senators Bartlett and Collins for exposing these abuses in the Senate CMI, and for getting firm language on the border protection system's SOLAS and human rights obligations into this Committee's report and recommendations.²² It is an interesting question whether BPC now is honouring the spirit, as well as the letter, of the CMI's recommendations here:

'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'.

I won't go into the substance of the SIEV X case here. It has been studied in detail elsewhere²³.

These three events in 2001 were the lowest points of the Howard Government's SOLAS record in border protection operations. There were other harsh incidents in 2001, not addressed here.

With the change of government in 2007, I hoped that such negative values and high-risk practices were things of the past. But after the SIEV 221 shipwreck and the two lost boats in 2009 and 2010, I am no longer as sure of this.

At the level of language and government investigative process, it is clear that the hate-filled invective towards asylum seekers of the Howard years has been left behind. The public on-record language of border protection system officials is now carefully neutral and certainly more civil towards asylum seekers than in 2002. Yet one now encounters an almost equally strident rhetoric at political, official and popular media levels against people smugglers, who have become a politically correct proxy target. Our border protection culture seems to need to have a target to hate.

5. The lost SIEV boats in 2009 and 2010

The cases of the two lost SIEVs in 2009 and 2010 - both listed by Hutton as probable sinkings - are deeply disturbing, because here the Australian border protection system does not accept that it has any accountability responsibility for either of these lost boats. Hence there can be no parliamentary or coronial enquiry into these cases. I believe this is quite wrong.

Over the last two years, pressure on governments from many anxious and grieving relatives led finally in September 2011 to a reluctant quasi-admission by the Customs and Border Protection Service that a SIEV boat which left Indonesia on 2 October 2009 with 105 Afghan Hazara asylum seekers on board was probably lost at sea the next day while in transit to Christmas Island. This boat was never found.

After initial equivocation in a Senate Committee in May 2010, Customs and Border Protection Service officials finally admitted in a written response to Senator Michael Ronaldson in September 2011 that they had received information from an unstated source about a boat in distress on 3 October 2009, that included 'possible vessel coordinates' of the boat. They have not revealed to the public these coordinates, but say they passed them to the Indonesian National Search and Rescue Agency because the boat was in the Indonesian search and rescue zone. It appears they took no other SOLAS action, apart from maintaining their normal border security-based aerial surveillance of approach routes to Christmas Island. They did not detect the boat. None of the people known from their pre-departure phone calls to relatives in Australia to have boarded this boat have been traced in intense official investigations since the time of the incident. It took nearly two years for Senators Hanson-Young and Ronaldson to extract this much information from a reticent Customs and Border Protection Service²⁴.

Customs now admits this boat might have sunk. They claimed in May 2010 that it might have returned to Indonesia; though Customs admitted then that none of the reported passengers have been heard from since.

Now to the 2010 lost boat. According to relatives in Australia, a boat left Indonesia on 13 November 2010 headed for Christmas Island with a reported 97 asylum seekers from Iraq and Iran on board. None have been heard from since, despite exhaustive enquiries by relatives of many of those who boarded the vessel and research by Fairfax investigative journalist Natalie O'Brien²⁵.

The Minister for Customs wrote to the relatives' lawyer George Newhouse in May 2011 that neither Border Protection Command nor the Australian Maritime Safety Authority had any information relating to 'a venture that matches the details' of this reported boat.

There the matter so far rests officially. But the history of this 2010 lost boat looks disturbingly like the boat that went missing in 2009. For so many relatives to remain deeply concerned today about the fate of 97 people who went missing in a SIEV boat nearly a year ago strongly suggests that this boat too was lost at sea.

These two cases raise the question, what was the nature and extent of intelligence-based information available to PSIAT on each of these two lost boats? Customs has already admitted that it had some information - 'possible vessel coordinates' - on the 2009 boat. In contrast, Customs claims it has no knowledge of the 2010 venture.

Yet I would expect that both ventures would have been targets for AFP or ASIS intelligence-gathering activity in Indonesia; that in both cases, telephone calls at time of embarkation from passengers to family members in Australia would have been picked up by signals intelligence; that there might have been JORN data collected on each voyage.

We have no way of knowing how much intelligence PSIAT might have collected on each of these lost boats, nor how much if any of this information might have been passed to BPC, ADF or Customs in their detection and interception daily operational intelligence product.

Over 200 people with families in Australia have gone missing, presumed drowned at sea, in these two lost boats that tried to reach Christmas Island in 2009 and 2010. And the border protection system says it did not detect either boat. We know no more than the scanty information reported above. This is truly appalling.

6. The shipwreck of SIEV 221 at Christmas Island on 15 December 2010

SIEV 221 is still the subject of an ongoing coronial inquiry by the WA Coroner. I rely on media reports of those incomplete proceedings, and also on the published submissions and Hansard testimonies in the completed Joint Select Committee (JSC) parliamentary inquiry, for what follows.

SIEV 221 is unique in my list of four major SIEV drowning events, because it is the only case in which a boat sank in distress at sea, within the Australian search and rescue and interception zone, and in full view of horrified Australian citizens watching from shore.

Yet, SIEV 221 is testified by BPC officials to have arrived undetected at Christmas Island. According to testimonies, SIEV 221 arrived undetected by Australian authorities just 500 to 600 metres off the cliffs of Christmas Island early in the

morning of 15 December, dangerously far within the surrounding 12 mile Australian territorial waters zone. BPC officials testified they had no prior actionable intelligence of its impending arrival.

SIEV 221 might have been safely intercepted at sea by the Australian operational response vessel (ORV) HMAS Pirie, if that vessel had been able to return to its designated surveillance station on an east-west path 4 miles north of the island on the evening of 14 December, soon after it had intercepted SIEV 220 on that day – again, at a dangerously close location just north of those same cliffs. The Commander of HMAS Pirie has testified that had his ship been able to return to its station that night, those 50-odd deaths might have been avoided.

The public record so far gives rise to questions. BPC officials testified firmly in both enquiries that BPC assets are not deployed on the basis of a search and rescue mandate, but rather to meet the requirements of a civil maritime security law enforcement mandate; but that BPC will properly meet international maritime search and rescue obligations that arise in the course of its detection and interception work.

BPC officials have testified that given its limited resources, ‘continuous surveillance of the Australian maritime domain is neither expected nor required from BPC’²⁶. In responding to the report of the JSC, the government has endorsed this view, saying: ‘The sheer size of Australia’s maritime domain does not allow for the persistent surveillance of all areas and threat axes at all times’²⁷.

In general, it seems from official statements, keeping a detection and interception vessel on station seems to be a matter of operational choice for the BPC system. It is desirable in itself, but other tasks or operational constraints may at a particular time be judged to have operational priority over it: such things as resting tired crews, conserving fuel, checking an engineering problem, sheltering a vessel and crew from uncomfortable weather from the north-west, offloading people safely onshore from a previously arrived SIEV, or avoiding risks of pollution if the hulk of a preceding SIEV were accidentally to sink close to shore.

A series of such operational decisions, all entirely reasonable in themselves, might have fatally compromised HMAS Pirie’s ability to safely intercept SIEV 221 at sea at dawn on 15 December and bring all of its 95-odd passengers to safety on Christmas Island²⁸. We will have to await the Coroner’s findings on the SIEV 221 tragedy.

The other disturbing aspect of this case is – why was BPC not aware of any intelligence on the incoming SIEV 221? Or, for that matter, of SIEV 220, the boat that HMAS Pirie intercepted near the same cliffs – narrowly avoiding a similar tragedy – in equally rough weather the day before?

Here an impenetrable cloak of secrecy hides the pertinent official evidence. I would want to ask: What was the nature and extent of AFP or intelligence agency reporting on the people smugglers who sent SIEV 220 and SIEV 221? Did AFP have any knowledge of the departure of these two boats? What phone calls if any were intercepted by Australian signals intelligence? Were there any JORN tile data along

the routes of these two SIEVs, however indistinct? In sum, what intelligence might there have been on these two boats, albeit below the level of BPC actionable operational intelligence?

Whatever BPC or other parts of the border protection system (in particular, PSIAT) may have known in advance about the possible impending arrivals of SIEV 220 and SIEV 221 would have been presented in closed written statements and oral testimony, both in the parliamentary enquiry and in the Coroner's enquiry.

We will just have to await the Coroner's judgement as to whether he finds this part of the official evidence satisfactory. We, the public including the families in Australia of those who died on SIEV 221, will have no way of testing its accountability. Should this be regarded as acceptable?

7. Conclusions - Why greater transparency about border protection processes and outcomes does matter

Drawing on what we now know about these four events, it is possible to peer through the smokescreens that continue to be put up by Ministers and border protection officials, in order to develop a slightly clearer picture of how Australia's intelligence-based SIEV detection, surveillance and interception system has normally worked efficiently and safely over the past 13 years – with an over 97% success rate in terms of people arrivals and over 99% success rate in terms of boat arrivals - but has very occasionally gone tragically wrong.

It is only through determined and rigorous public analysis of the few cases where the system has broken down, leading to major loss of asylum seeker lives at sea, that we may hope for a better understanding of problems in the system that are normally disguised by generally successful interception outcomes.

There are similarities between what the Australian authorities are saying publicly now about SIEV 221 and the two lost SIEVs in 2009 and 2010, and their reluctant disclosures in 2002 about their SOLAS responses to Palapa, SIEV 4, and SIEV X in 2001. Palapa and SIEV 4 could both have caused major losses of life, but fortunately did not. SIEV X cost 353 lives.

I return to emphasise what SIEV X, the two lost boats in 2009 and 2010, and SIEV 221 all have in common: *it is that they all went undetected by BPC.*

This is why it is crucial for the reader to absorb the arcane organisational discussion of how BPC and PSIAT share out their tasks (see Section 3 of this paper). It explains why, when the secret system very occasionally gets its intelligence and assessment processes wrong, it can hide behind a BPC which is structured not to know what went wrong.

The system when challenged by the, thankfully very rare, sinkings and disappearances of four SIEV boats at sea still succeeds in hiding, blurring and downplaying the intelligence technologies and information available to it.

It seems the official border protection system still calls the shots, and Ministers of either party fall into line with its advice. I see little sign of changed culture or practice since 2001.

The system is complacent and resistant to reform. There is no sign that it is learning from its mistakes. Each time that BPC has failed to detect a boat and we later learn or suspect that the boat has sunk, as in the case of SIEV X and the 2009 and 2010 boats – all of which preceded SIEV 221 - there is no sign that BPC and PSIAT are working to try to improve the safety of their system

The JPC report into SIEV 221 pretty much endorsed the present system of intelligence-based detection and interception; it saw SIEV 221 as a series of unfortunate events leading to an unavoidable tragedy, not as a systemic failure. And both major parties then endorsed that report.²⁹

However, a minority report by Greens Senator Sarah Hanson-Young recommended that as matter of urgency an independent review into Australia's border protection surveillance be established. I support this Greens proposal. As the known history of around 600 lives lost on SIEV X, SIEV 221 and the two lost boats suggests³⁰, there are important unresolved ethical issues at stake here.

Now as in 2001, similar issues of accountability for saving human life at sea still confront Australia's border protection system.

Former diplomat Tony Kevin wrote the prize-winning investigative book A Certain Maritime Incident: the Sinking of SIEV X (Scribe, 2004, 2006, 2007). He is a Visiting Fellow in the Research School of Pacific and Asian Studies at the Australian National University, Canberra.

ENDNOTES

¹ In September 2011, Immigration Minister Chris Bowen told a Labor caucus meeting that 4% of asylum seekers who attempt the sea journey to Australia die. Attorney-General Robert McClelland said on ABC Radio on 19 September, 'If we let these people-smugglers control the agenda then you're seeing about four in every 100 people who get on a boat drown'. Bill Shorten suggested in October that 'the agencies who deal with these matters tell us that 40 in every thousand will drown'. Craig Emerson suggested that the best estimate is that 800 asylum-seekers have lost their lives since and including SIEV X in 2001. Andrew Leigh spoke in Parliament on 22 September of 414 confirmed deaths and over 500 unconfirmed deaths over the past decade or so. Coalition Senator Cory Bernardi said on 16 September, 'What has come to light is that an estimated four per cent of the people who undertake this journey die in the process'. Andrew Bolt estimated 440 asylum seeker deaths at sea under Labor since 2007. Labor has not taken public issue with his estimate.

² <http://sievx.com/articles/background/DrowningsTable.pdf>

³ *Overboard*, Ghassan Nakhoul 2011, ISBN 9780646556154, page 120

⁴ Janet Phillips and Harriet Spinks, 'Boat arrivals in Australia since 1976', Parliamentary Library, 15 July 2011, Appendix A 'Boat arrivals by financial year since 1989'. My summations of their cited annual figures.

⁵ Australian Customs and Border Protection Service (ACBPS) (Customs) submission to the Parliamentary Joint Select Committee on the Christmas Island Tragedy (SIEV 221), submission no 8 (PDF file), Part 2 Internal Review public version, paragraphs 45-49 and 61-63.

⁶ Derek Woolner, 'The Governance of Security in Australia's Maritime Domain', *Security Challenges*, Vol 7 no 2 (Winter 2011) [article not online].

⁷ Woolner op.cit, page 74

⁸ The Customs submission to the Joint Select Committee on the Christmas Island Tragedy, SIEV 221 Internal review (see endnote 5) is the frankest public exposition to date of the respective intelligence and operational mandates of BPC and PSIAT.

⁹ http://www.aph.gov.au/Senate/committee/christmas_island_ctte/christmas_island/submissions.htm, Submission 2 and Attachment by Tony Kevin

¹⁰ http://www.aph.gov.au/Senate/committee/christmas_island_ctte/christmas_island/submissions.htm, Customs Submission, No 8 (PDF file), Overview, paragraph 47.

¹¹ Collated Customs media release data was provided to me by Marg Hutton. Any inferences from this data are my responsibility.

¹² There have been two parliamentary inquiries: in 2002, a Senate Select Committee into a Certain Maritime Incident which enquired into the Children Overboard incident (SIEV 4) and the sinking of SIEV X in 2001, and in 2011, a Joint Select Committee enquiry into the SIEV 221 Christmas Island shipwreck on 15 December 2010. There was a completed

coroner's inquiry into the explosion and sinking of SIEV 36 in 2009. There is an ongoing coronial inquiry into SIEV 221.

¹³ Marg Hutton, www.sievx.com.

Sue Hoffman, 'Fear, insecurity and risk : refugee journeys from Iraq to Australia'. Murdoch University PhD thesis 2010

<http://researchrepository.murdoch.edu.au/4459/>

Tony Kevin, 'A Certain Maritime Incident: the sinking of SIEV X', Scribe, 2004, 2006, 2008.

David Marr and Marian Wilkinson, 'Dark Victory', Allen and Unwin 2003, 2004.

¹⁴ The late Senator Peter Cook chaired the six-month Senate Select Committee into a Certain Maritime Incident in 2002. Other members were George Brandis (Deputy Chair), Andrew Bartlett, Jacinta Collins, John Faulkner, Alan Ferguson and Brett Mason. Since the change of government in 2007, enquiries over SIEV sinkings and missing persons have been pursued by Senators Sarah Hanson-Young, Christine Milne and Michael Ronaldson in particular.

¹⁵ Details of broadcasts from author on request.

¹⁶ Customs Submission op.cit, Part 1 Overview paragraph 40.

¹⁷ See also Marg Hutton, 'Ten Years on, the Questions Remain', 12 October 2011, <http://sievx.com/>

¹⁸ Senator Faulkner made substantial statements on these matters in the Senate on 23-26 September 2002: see Senate Hansard pages 4690-92, 4781-83, 4918-20, and in an adjournment debate pages 4998 – 5015. He publicly re-stated his commitment to a judicial enquiry in 2003 and 2004.

¹⁹ CMI Committee Hansard page 804; cited in Kevin op.cit, page 118.

²⁰ Marr and Wilkinson op.cit, pp 10-13.

²¹ Kevin, op.cit, pages 120-22.

²² The Senate CMI Report stated on pages xlii –xliii:

'The Committee also considers that more should be done to embed SOLAS obligations in the planning, orders and directives of ADF operations, especially when these are undertaken in a whole-of-government context. 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. Nonetheless, the Committee has a degree of concern about the extent to which this imperative was understood by and figured in the mission tasking of other arms of the government architecture involved in Operation Relex'.

'Recommendation 13A. 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'.

²³ Kevin, op.cit; and www.sievx.com

²⁴ Senator Hanson-Young questioned senior Customs officials closely in Senate L&C Estimates committee, 25 May 2010, Hansard pages 28-32. See also Reply to QON86 by Senator Ronaldson to Customs, Senate L&C Committee, question dated 26 May 2011 and reply provided in September 2011.

See also Natalie O'Brien,

'National pressure mounts over ghost boats', SMH 11 Sept 2011

<http://www.smh.com.au/national/pressure-mounts-over-ghost-boats-20110910-1k30r.html>

'Customs under pressure over missing boat', SMH 18 Sept 2011]

<http://m.smh.com.au/national/customs-under-pressure-over-missing-boat-20110917-1key6.html>

²⁵ Articles by Natalie O'Brien on the 2010 lost boat are:

'Lost for 42 days; another tragedy on the horizon', 26 Dec 2010

<http://www.smh.com.au/national/lost-for-42-days-another-tragedy-on-the-horizon-20101225-197fh.html>

'Missing, no action', Age 8 May 2011

http://newsstore.smh.com.au/apps/viewDocument.ac;jsessionid=77A939BA7B07492B5940025420BAABF0?sy=afr&pb=all_ffx&dt=selectRange&dr=1month&so=relevance&sf=text&sf=headline&rc=10&rm=200&sp=brs&csl=456&cslPage=1&docID=SAG110508125BU6PJ27H

'The 97 who vanished', SMH May 8, 2011

<http://www.smh.com.au/national/the-97-who-vanished-20110507-1ed75.html>

'Suspect linked to lost boat', SMH 15 May 2011

<http://www.smh.com.au/national/suspect-linked-to-lost-boat-20110514-1en8a.html>

'National pressure mounts over ghost boats', SMH 11 Sept 2011

<http://www.smh.com.au/national/pressure-mounts-over-ghost-boats-20110910-1k30r.html>

²⁶ Customs Submission op.cit, Part 1 Overview paragraphs 20-24.

²⁷ Kirsty Needham, 'Emergency Upgrade for Christmas Island'. SMH 13 October 2011

<http://www.smh.com.au/national/emergency-upgrade-for-christmas-island-20111012-1ll41.html>

²⁸ There is an informative map of Christmas Island and ship locations at Attachment 1 to the Customs submission to the JSC, at

www.apf.gov.au/Senate/committee/christmas_island_ctte/christmas_island/report/e03.pdf

²⁹ Needham, op.cit.

³⁰ <http://sievx.com/articles/background/DrowningsTable.pdf>

SIEV X 353 approx, SIEV221 50 approx, 2009 lost boat 105 approx, 2010 lost boat 97 approx – total 605 persons.