

REVIEW OF OPERATION SOVEREIGN BORDERS VESSEL POSITIONING DECEMBER 2013 – JANUARY 2014

TERMS OF REFERENCE

Introduction

1. As reported by the Minister for Immigration and Border Protection and the Commander Joint Agency Taskforce (JATF) on 17 January 2014, during operations conducted in association with Operation Sovereign Borders (OSB), Australian vessels entered Indonesian waters in breach of Australian Government policy.
2. The Minister for Immigration and Border Protection and the Commander Joint Agency Taskforce announced a joint review would be conducted into these incidents by the Australian Defence Force (ADF) and the Australian Customs and Border Protection Service (ACBPS).

Direction

3. You are to conduct a joint internal review into the actions of the ADF and ACBPS including Border Protection Command (BPC) surrounding the entry of Australian vessels into Indonesian waters. You are to identify the facts and circumstances and any potential operational or procedural weaknesses or deficiencies, with a view to recommending any remedial actions that need to be made to current operating policy, process or procedures.
4. You are to establish a suitable team from within the ADF and ACBPS supported where necessary by suitable available external personnel.
5. ACBPS personnel and members of the ADF are directed to use their best endeavours to assist you in the conduct of your review, including answering questions and producing documents.

Review Task

6. You are to independently investigate the facts and circumstances surrounding the entry of Australian vessels into Indonesian waters in connection with OSB during the period 1 December 2013 to 20 January 2014 ('the period').
7. In relation to the review, you are to:
 - a. Identify the instances of entry of Australian vessels into Indonesian waters: Identify the positioning of Australian vessels in connection with OSB that occurred during the period, and determine which instances could be considered to be in breach of Australian Government policy, insofar as Australian vessels entered Indonesian waters.

- b. Sequence of events and cause: Collect relevant evidence and report on the sequence of events relating to all instances of entry of Australian vessels into Indonesian waters ('entry') during the period as identified and determined at paragraph 7.a. including:
- (1) the planning conducted prior to each operational activity which led to entry into Indonesian waters (particularly planning concerning the identification and selection of locations for OSB activities), including planning by the ADF units and ACBPS vessels and relevant planning conducted at any higher headquarters;
 - (2) the tasking of the units and Australian vessels conducting each of the activities, including identities of the units and Australian vessels involved and the authority and relevant processes for approving the missions and activities;
 - (3) the execution of the activities, including the time, date and actual location of the activities and an assessment on whether the activities were executed within Indonesian waters;
 - (4) identification of applicable plans, orders (including, but not limited to, the rules of engagement (ROE) and operations orders (OPORDs)), instructions, charts, operating procedures, operating policies, briefings, and/or practices relevant to the activities; and
 - (5) assessment of the degree to which the planning and execution of each of the activities during the period conformed with requirements of the documents referred to in the above subparagraph, and assess the manner and extent to which any identified failures to conform with these requirements may have contributed to entry.
- c. Post-incident response: Collect relevant evidence and report on how instances of entry were identified and reported, and assess the adequacy of these actions.
- d. Potential procedural weaknesses or deficiencies: Ascertain, analyse and determine relevant circumstances surrounding the instances of entry for the purpose of identifying any weaknesses or deficiencies (isolated or systemic) which exist in:
- (1) the preparation and training of personnel involved in planning and executing activities;
 - (2) the planning of the activities, including physical and electronic charts and databases relied upon in planning the activities;
 - (3) the execution of the activities, including physical and electronic charts and databases relied upon in executing the activities;
 - (4) any applicable orders (including, but not limited to the ROE and OPORD), instructions, operating procedures, operating policies, briefings, and/or practices relevant to the activities; and
 - (5) the post-incident response to the activities;
8. The following agencies and departments may be involved as key stakeholders: Department of Defence, including the ADF, ACBPS, OSB JATF, Department

of Foreign Affairs and Trade, Attorney-General's Department and Department of Prime Minister & Cabinet. However, during your review you may determine that consultation with other agencies is required. You are authorised to seek information from and consult with key stakeholders and other agencies as required.

9. Your review is to focus on operational, organisational and systemic matters arising out of the activities. Matters relating to professional conduct can be dealt with separately by ACBPS and the ADF respectively. You may make recommendations, if appropriate, that ACBPS and ADF should conduct further inquiry into these aspects.

Report

10. The due date for report is 10 February 2014. The following documents are to accompany your final report:

- a. a list of all relevant documents used to compile the narrative and a detailed chronology of events; and
 - b. a list of relevant operating policies, processes and procedures applicable to the relevant instances of entry during the period.
11. If in the course of the review you form the view that meeting this timeframe would be inimical to the integrity of your report, you are to seek advice from us about an appropriate amendment to the timeframe.
 12. Appropriate measures are to be taken to ensure that any privileged or confidential material, including national security or intelligence material, is appropriately handled. This may include, where possible, and while still achieving the tasks and objectives of the review, the preparation of a report with unclassified content and confidential or classified annexures (if necessary).

Michael Pezzullo
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Australian Customs and Border
Protection Service

Air Marshal M.D. Binskin AO
Acting Chief of Defence Force

21 January 2014

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