Chapter 2

Operation Relex

'The safety of ADF personnel and the wellbeing of the unauthorised boat arrivals and the Indonesian crew members is to be held paramount'. That is an extant direction that overrides everything. We are talking about people coming to Australia illegally. It is not World War III.[1]

'Was this a new style of operation for the Navy?' the answer is yes. We had not done this style of operation before.[2]

Introduction

2.1   With the Government's adoption of a more assertive posture towards preventing both asylum seekers and people smugglers from entering Australian waters, came a new role for the Australian Defence Force.

2.2   Since 1988, the ADF has supported the activities of Coastwatch and the Department of Immigration and Multicultural and Indigenous Affairs in 'national surveillance'.[3] This work, according to Maritime Commander, Rear Admiral Geoffrey Smith, has been carried out under the auspices of Operation Cranberry and, in relation to matters such as illegal fishing and other Customs support, continues still.[4]

2.3   Since 3 September 2001, however, in the area of unauthorised boat arrivals the ADF has become the 'lead' rather than a supporting agency. It has designated its corresponding operation, Operation Relex.[5]

2.4   This chapter provides an outline of Operation Relex: its aim, operational arrangements, and an overview of its interception activities from the arrival of Suspected Illegal Entry Vessel (SIEV) 1 on 7 September 2001 to the arrival of the last illegal entry vessel, SIEV 12, on 16 December 2001.

Aim

2.5   Operation Relex's strategic aim was an extension of the Government's new border protection policy: to *prevent*, in the first instance, the incursion of unauthorised

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1   Rear Admiral Chris Ritchie, *Transcript of Evidence*, CMI 405.

2   Vice Admiral David Shackleton, *Transcript of Evidence*, CMI 60.

3   Additional Information, Department of Defence, Talking points for Senate Legislation Committee Additional Estimates Hearing, February 2002.

4   *Transcript of Evidence*, CMI 472.

5   *Transcript of Evidence*, CMI 472.

vessels into Australian waters such that, ultimately, people smugglers and asylum seekers would be *deterred* from attempting to use Australia as a destination.[6]

2.6   Rear Admiral Chris Ritchie, Commander Australian Theatre (COMAST), described the nature and scope of Operation Relex as follows:

> The mission statement, for example, was to conduct surveillance and response operations in order to deter unauthorised boat arrivals from entering Australian territorial waters within the designated area of operations. The area of operations was quite expansive – it encompassed Christmas Island at the one end and Ashmore at the other.[7]

2.7   As an operation aimed at preventing unauthorised vessels from crossing into Australia's so-called 'contiguous zone', Relex was fundamentally a forward deterrence strategy. This marked a shift in border protection strategy and the nature of previous operations, away from the more reactive posture associated with Operation Cranberry that sought to detect and intercept unauthorised boats *inside* Australian waters and escort them to Australian ports.[8]

2.8   The 'primary mission' of deterrence was constrained, in operational terms, by the overriding obligation to ensure the safety of all persons that became involved in Royal Australian Navy (RAN) encounters with SIEVs. Both Rear Admirals Ritchie and Smith emphasised this aspect of Relex operations to the Committee. Rear Admiral Smith indicated that ensuring the personal safety of all involved was inherent in his operational orders:

> My orders and instructions stressed the overarching requirement for commanding officers of RAN ships to take every reasonable means to achieve the mission without needlessly risking the safety and wellbeing of their ships' companies, their vessels and the lives of the unauthorised arrivals on board the SIEVs.[9]

2.9   Similarly, Rear Admiral Ritchie cited a relevant part of the Chief of Defence Force (CDF) directive to him on Operation Relex:

> In the notion of returning the vessels to Indonesia or the place whence they came, the uppermost issue was always:
>
> > The safety of ADF personnel and the wellbeing of the unauthorised boat arrivals and Indonesian crew members is to be held paramount.

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6   Additional Information, Department of Defence, Talking points for Senate Legislation Committee Additional Estimates Hearing, February 2002.

7   *Transcript of Evidence*, CMI 404.

8   *Transcript of Evidence*, CMI 448 and 490.

9   *Transcript of Evidence*, CMI 448 and 460.

That is an extant direction that overrides everything. [10]

2.10   As an 'extant direction', the directive to ensure safety of life at sea is contained in the Maritime Commander's Orders that cover all RAN commanding officers.[11] These orders reflect relevant provisions in both international agreements and Australian law. Two international covenants – the *1974 International Convention for the Safety of Life at Sea* and the *1982 Law of the Sea Convention* – impose obligations on 'mariners to assist other mariners in distress'.[12] The Commonwealth *Navigation Act 1912* contains the provisions of both these international agreements.

2.11   The Committee is satisfied that, in fact, the Royal Australian Navy's commitment to meeting the humanitarian needs of those on board the intercepted vessels went well beyond the fulfilment of safety of life at sea obligations. Rear Admiral Smith advised the Committee that:

> Standard practice throughout the operation was to provide a safe, clean and secure environment, sufficient food, water, personal items, bedding and shelter and, where possible, alleviate the cramped and overcrowded conditions that prevailed.

> Deployed medical and dental staff provided a range of ongoing health services during Operation Relex, including emergency assessments, treatment, health screening and clinics during the boarding, containment and transportation operations. For example, during transportation of unauthorised arrivals on board *Manoora* and *Tobruk* the ships' companies went to great lengths, despite the difficult and trying circumstances, to provide fresh clothing and laundering services, toiletries, toys, videos and games, and to prepare halal meals and national dishes. Saltwater showers were rigged along with squatting stands in toilets to accommodate cultural differences. Whenever the ship's program allowed, exercise periods on the upper decks were scheduled.[13]

2.12   Where necessary, the RAN was also equipped to supply things such as nappies, babies' bottles and formula.[14]

2.13   In addition to its provision of material assistance, the Committee learnt that the RAN was clearly committed to ensuring that the attitude of its personnel towards the unauthorised arrivals was professional and humane. Testifying to the attitude of

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10   *Transcript of Evidence*, CMI 404-5. The Chair of the PST, Ms Halton, also emphasised the primacy given to safety of life at sea when operational matters were being considered, such as whether SIEVs could be safely towed back to international waters. See *Transcript of Evidence*, CMI 945.

11   *Transcript of Evidence*, CMI 470.

12   *Transcript of Evidence*, CMI 470. See also Answers to Questions on Notice, Department of Defence, Question 8.

13   *Transcript of Evidence*, CMI 449.

14   *Transcript of Evidence*, CMI 167.

his crew during the rescue of passengers from the sinking SIEV 4, for example, Commander Norman Banks said that:

> I was particularly proud of … the ship's company when this situation developed into a humanitarian assistance task - of how they performed a miracle and they went about their business in a very humane and compassionate way and everyone chipped in and lent a helping hand, beyond their specialisation and their training and their category, and just got on with the job. It was some time later, when it had all stablised, that we noted that nobody had whinged about the fact that they had not had a meal - this is the ship's company - that they had not had a break. They had just got on with it.[15]

2.14   The Committee was both impressed and heartened by the seriousness with which the officers and sailors of the Royal Australian Navy treated the humanitarian and personal needs of those they encountered on the vessels entering Australia illegally, under what were, for all concerned, very difficult circumstances.

Establishment and Operational Arrangements

2.15   As noted earlier, Relex formed the operational component or 'working end' of the new whole-of-government response to the issue of unauthorised boat arrivals post-*Tampa*. As such, the basis for Relex lay in the raft of legislative and policy changes and measures that the Government enacted in late August and September 2001.

2.16   The shape of the operation itself was developed within the Australian Defence Force, following a 'CDF warning order' dated 28 August 2001.[16] Thus the original military order to start planning Relex arose immediately around the time of the *Tampa* crisis which started on 26 August.

2.17   The warning order directed the ADF to 'provide a maritime patrol and response option to detect, intercept and warn vessels carrying unauthorised arrivals for the purpose of deterring SIEVs from entering Australian territorial waters'.[17]

2.18   The CDF's order went to Rear Admiral Ritchie, who as Commander Australian Theatre had responsibility for the 'planning and conduct' of all ADF operations. Under Rear Admiral Ritchie's command, Australian Theatre Headquarters developed the 'broad concept' for the operation – 'the way in which we would do this particular business'[18] – and the Naval Component Commander, Rear Admiral Smith, started the detailed planning for the operation in 'late August/early September'.[19]

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15   *Transcript of Evidence*, CMI 166.

16   *Transcript of Evidence*, CMI 451.

17   *Transcript of Evidence*, CMI 451.

18   *Transcript of Evidence*, CMI 403.

19   *Transcript of Evidence*, CMI 451.

2.19   Since Relex involved mainly naval forces, Rear Admiral Smith (who was also Maritime Commander) was assigned direct command of the operation.

2.20   The development of the operational concept and strategy also required a new set of rules of engagement (ROE) to be tailored to fit the requirements of the enhanced border protection policy and anticipated behaviour of those on the SIEVs. These rules concerned the 'specific levels of force that you can use'[20] in this type of operation, that is, the degree of non-lethal force permitted for different levels of confrontation.

2.21   On 1 September 2001, the Minister for Defence, Mr Reith, approved the ROE for the Operation, and the Prime Minister's 'concurrence' was sought on 2 September.[21] Operation Relex started at midnight 3 September 2001.[22]

2.22   In what follows, the Committee briefly outlines the structural and operational framework within which individual interceptions under Operation Relex were effected and managed. That framework includes:

- command structure;
- force deployment and intelligence;
- public affairs plan; and
- standard operating procedures.

Command structure – the chain of command

2.23   Command and control of Operation Relex was based on the established chain of command within the ADF. The Chief of Defence Force, Admiral Barrie, sat at the top of this structure and delegated command for the operation down through the ADF hierarchy.

2.24   The chain of command for Operation Relex was explained to the Committee by the Chief of Navy (CN), Vice Admiral Shackleton:

> For Operation Relex, Brigadier Silverstone [Commander Northern Command] was also designated as the Commander of Joint Task Force 639 (CJTF 639). In this role, he had tactical command of units assigned to him and he was responsible to the Naval Component Commander, Rear Admiral Smith, who himself had been designated as the lead component commander for this operation. In turn, he was responsible to COMAST [Commander Australian Theatre] and thence to CDF. At the time of the SIEV4 incident, *Adelaide* was under the tactical command of CJTF 639.[23]

2.25   Vice Admiral Shackleton summarised these arrangements thus:

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20   *Transcript of Evidence*, CMI 403.

21   Answers to Questions on Notice, Ms Jane Halton, 14 May 2002, p.2.

22   *Transcript of Evidence*, CMI 451.

23   *Transcript of Evidence*, CMI 56.

> In summary, the operational chain of command for *Adelaide* for Operation Relex was to CJTF 639, to the Naval Component Commander, to COMAST and to CDF. Or put alternatively, it was Banks to Silverstone to Smith to Ritchie and then to Barrie. This system is flexible and it works.[24]

2.26   While the chain of the command is the traditional framework for ADF operations, the arrangements for Operation Relex also involved two important features.

2.27   The first was placing 'tactical control of the operation' in the hands of Commander Northern Command (NORCOM), Brigadier Silverstone, who as a result became Commander Joint Taskforce 639. This represented a 'new operational concept', according to Brigadier Silverstone, who also noted that Operation Relex was the first time that the Maritime Commander had put a major fleet unit such as a frigate under NORCOM's control.[25]

2.28   Between them, Rear Admiral Smith and Brigadier Silverstone (that is, the Naval Component Commander and the Joint Taskforce Commander) made the daily operational decisions. Together they would review the current situation, agree upon 'where the priority of effort would be' and then Brigadier Silverstone would relay orders to the unit commanders.[26] Brigadier Silverstone would issue updated orders during the day if new information was received, such as the sighting of a SIEV, whereupon a unit would be ordered to intercept or sail to the zone where the vessel was expected.[27]

2.29   The second noteworthy element of Operation Relex was the ongoing flow of directives from the Government on operational decisions. While the ADF's basic mission for Relex was set, a number of decisions were made as the operation unfolded and the Government decided on the course of action to be taken at certain points.

2.30   Some of these were about relatively minor issues such as the warnings that the Navy should issue to SIEVs to get them to turn away from entering Australian waters. More important matters included the Government's directive on 12 October authorising the Navy to escort or 'tow-back' SIEVs from the Australian contiguous zone to the edge of Indonesian waters.[28]

2.31   This 'micro-management' from Canberra reflected, as Brigadier Silverstone observed, the fact that Operation Relex was 'occurring in a very fluid policy environment',[29] with 'a very high degree of interagency coordination'.[30]

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24   *Transcript of Evidence*, CMI 56.

25   Enclosure 1 to the Powell Report, Statement by Brigadier Silverstone, pp.2, 5.

26   *Transcript of Evidence*, CMI 454.

27   *Transcript of Evidence*, CMI 324.

28   See the discussion on tow-back in *Transcript of Evidence*, CMI 508, 876, 915-17, 945.

29   *Transcript of Evidence*, CMI 350.

Force deployment and intelligence

2.32   Operation Relex involved a significant increase in not only the scope but also the scale of Australian border protection operations and particularly the nature of the assets deployed. As Rear Admiral Smith stated to the Committee:

> Operation Relex required the establishment of an enhanced and continuous presence and response capability by the Australian Defence Force deep offshore to in effect establish a barrier between Christmas Island and Ashmore Island. Larger and more capable surface combatant vessels were therefore required in order to effectively intercept, warn and, if necessary, board in an attempt to turn away the SIEVs to a position just outside the Australian contiguous zone.[31]

2.33   The Director General, Coastwatch, Rear Admiral Mark Bonser, informed the Committee that prior to Operation Relex, RAN Fremantle class patrol boats and Royal Australian Airforce (RAAF) PC-3 Orion aircraft had supported vessels from Coastwatch and the Customs National Marine Unit in undertaking 'civil maritime surveillance and response'.[32]

2.34   Under Relex, the RAN's major fleet units – frigates, amphibious ships and auxiliaries – played a lead role in interception and boarding operations. The Committee was advised by Defence that a total of 25 RAN vessels have been involved in Operations Relex and Cranberry since August 2001, in addition to Customs and Coastwatch craft.[33]

2.35   In addition, three Transit Security Elements (TSEs), each comprising 52 Army soldiers, were deployed to assist RAN personnel. The role of the TSE was to maintain security on vessels, once a SIEV was boarded by naval personnel or when asylum seekers and SIEV crews were transferred to Navy ships.[34] Each ship involved in the Operation also had at least one medical officer embarked upon it. Rear Admiral Smith noted that these extra medical personnel were drawn largely from the naval reserve.[35]

2.36   As the lead agency, the ADF assumed responsibility for patrolling the major area of operations. This area stretches east-west from Gove to Christmas Island and south to Port Hedland. Coastwatch redeployed its patrol craft from Christmas Island to

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30   *Transcript of Evidence*, CMI 365.

31   *Transcript of Evidence*, CMI 448.

32   *Transcript of Evidence*, CMI 1628.

33   Department of Defence, Questions on Notice, Question W59.

34   Rear Admiral Ritchie, *Transcript of Evidence*, Estimates, Senate Foreign Affairs, Defence and Trade Legislation Committee, 4 June 2002, p.135. See also Department of Defence, Questions on Notice, Question W59.

35   *Transcript of Evidence*, CMI 453.

concentrate on supporting Defence in the Timor and Arafura Sea approaches to Australian waters.[36]

2.37   A 'layered surveillance' operation supported the Navy's interdiction effort. This involved two RAAF P-3 Orions flying out of bases in Darwin and Learmonth in Western Australia, Navy helicopters based on RAN vessels and Coastwatch aircraft. The surveillance effort was 'layered' in that the P-3s provided long-range coverage close to Indonesia while the Navy's ships were stationed closer to Christmas Island and Ashmore Reef 'where', according to Rear Admiral Smith, 'we felt them best positioned to maximise our chances of interception'.[37]

2.38   Aerial surveillance extended to 24 nautical miles out from the territorial 'baseline' for the Indonesian archipelago. A 12 nautical mile buffer zone outside the Indonesian boundary was maintained to limit the risk of RAAF planes straying inadvertently into Indonesian airspace.[38]

Intelligence

2.39   'Sitting behind' both operations and surveillance was an extensive inter-agency intelligence capability. Reflecting the whole-of-government nature of the border protection strategy, the agencies involved in the gathering, analysis and distribution included:

- DIMIA as the lead coordinating agency;[39]

- Australian Federal Police (AFP);

- Australian Customs Service and Coastwatch;

- Defence;

- Department of Foreign Affairs and Trade;

- Australian Security and Intelligence Organisation (ASIO);

- Office of National Assessments (ONA); and

- Office of Strategic Crime Assessments (OSCA).[40]

2.40   Prior to Operation Relex, a number of inter-departmental committees and other joint agency bodies had been established to help coordinate the intelligence effort on unauthorised arrivals. These included the:

- Illegal Immigration Information Oversight Committee (IOC), chaired by ONA;

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36   RADM Bonser, *Transcript of Evidence*, CMI 1629.

37   *Transcript of Evidence*, CMI 488.

38   Attachment A, Minister for Defence to CMI, (undated, received 4 July 2002), pp.1-2.

39   *Transcript of Evidence*, CMI 1826-8.

40   ANAO, *Management Framework for Preventing Unlawful Entry into Australian Territory*, Audit Report No. 57 2001-2002, p.51.

- Operational Coordination Committee, chaired by DIMIA; and

- the Joint AFP-DIMIA People Smuggling Strike Team.[41]

2.41   The intelligence used in Relex came from a wide range of both onshore and offshore sources (ie. Australian and overseas). Called 'all source' intelligence, it included both open source material (ie. publicly available information) and official information sourced from the agencies listed above.[42] It also involved 'collateral information' collected overseas, particularly in Indonesia, by Australian agencies, their overseas partners and 'human sources'.[43]

2.42   Operational intelligence, from surveillance flights or boarding parties, was also fed back into the intelligence system. Signals intelligence contributed only rarely.[44]

2.43   Within the ADF, the many streams of intelligence were channelled through the Australian Theatre Joint Intelligence Centre (ASTJIC). ASTJIC's role is to provide operational level information to ADF operations. For Relex, it coordinated incoming intelligence from other government agencies and passed it to Rear Admiral Smith and Brigadier Silverstone, in addition to other regular 'customers'.[45] A 'small analytical team' of between two and four analysts was established specifically to support Relex operations.[46] It worked seven days a week on extended hours, from 0500 hours to 2100 hours and occasionally later. ASTJIC also had an intelligence watch system running 24 hours a day to pass on critical intelligence directly to operational commanders when required.[47]

2.44   During the course of the operation, responsibility for analysing intelligence shifted from ASTJIC to NORCOM, which proved to have greater familiarity with people smuggling and illegal immigration issues than other areas in Defence.[48]

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41   ANAO, *Management Framework for Preventing Unlawful Entry into Australian Territory*, pp.38-39, 46 and 51-52. See also *Transcript of Evidence*, CMI 859, 1997-98.

42   *Transcript of Evidence*, CMI 1884-1885, 1996.

43   *Transcript of Evidence*, CMI 1925.

44   *Transcript of Evidence*, CMI 1780. Colonel Gallagher told the Committee that Defence Signals Directorate (DSD) material went to both the ADF and DIMIA (CMI 1733). The limited use of signals intelligence might reflect the fact that many of the SIEVs were not equipped with radio or telecommunications. Air Commodore Byrne, Commander of the RAAF Maritime Patrol Group, told the Committee that, in his knowledge, 'no intelligence from a radio beacon has been pertinent to Operation Relex over the last 11 months', *Transcript of Evidence*, CMI 2162.

45   *Transcript of Evidence*, CMI 1892-3.

46   *Transcript of Evidence*, CMI 1895.

47   *Transcript of Evidence*, CMI 1895.

48   Rear Admiral Ritchie, *Transcript of Evidence*, Estimates, Senate Foreign Affairs, Defence and Trade Legislation Committee, 4 June 2002, p.161. See also Colonel Gallagher, *Transcript of Evidence*, CMI 1888-89.

2.45   The intelligence arrangements between Defence and other agencies for Operation Relex are discussed further in Chapter 8, which deals with SIEV X.

Public affairs plan

2.46   The architecture surrounding Operation Relex included a public affairs plan, which established both what images could be collected and who could provide public information on Operation Relex activities. The plan was unusual in that, according to Mr Brian Humphreys, Director-General, Defence Communication Strategies, it was inconsistent with the overarching Defence Organisational Communication Strategy.[49]

2.47   The Committee heard evidence from a number of witnesses indicating that the general Defence instructions in relation to public affairs were considerably more restrictive under Minister Reith than they had been previously.[50] In particular, the general instructions required that the facts, policy and content of draft media releases be cleared at one star level or equivalent in Defence,[51] with a subsequent clearance by officers from the Public Affairs and Corporate Communication (PACC) area on the 'public affairs considerations'.[52]

2.48   Where matters fell into the category of 'topical issues' that might attract media interest, the instructions required Defence personnel likely to speak on them in public forums to notify PACC in advance. In turn, PACC was required to report to the Minister's office on any contact with Defence by the media on 'sensitive issues'.[53]

2.49   The public affairs plan for Operation Relex was more restrictive again than these general instructions.

2.50   Mr Humphreys told the Committee that he and his staff had drafted a proposed public affairs plan for Relex, which provided for Ministers and the Prime Minister to make 'strategic level announcements',[54] with the 'release of operational detail' to come 'from a military or uniformed officer'.[55] The draft plan proposed that there be daily media briefings on the operation by both government and Defence officials.[56]

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49   *Transcript of Evidence*, CMI 1149.

50   The relevant instruction was Defence Instruction (General) (DIG 08-1) of August 2001. For comment on the instruction, see *Submission No. 13*.

51   The ranks of Brigadier (Army), Commodore (RAN) and Air Commodore (RAAF) are at the one star level.

52   Answers to Questions on Notice, Department of Defence, Question 25.

53   Answers to Questions on Notice, Department of Defence, Questions 25 and 26.

54   *Transcript of Evidence*, CMI 1143.

55   *Transcript of Evidence*, CMI 1144.

56   *Transcript of Evidence*, CMI 1143.

2.51   This plan, however, was rejected by the staff of the Minister for Defence, in favour of one proposed by the Minister's media adviser, Mr Ross Hampton.[57] The essential feature of that plan was that all information about Operation Relex, whether strategic or operational, was to be released by the Minister's media adviser. Paragraph 14 of the plan states:

> Teams will be resourced with digital imagery capability to allow for send-back. It is imperative that all imagery, both digital video and digital stills, is transmitted or relayed to the Directorate of Digital Media at PACC for clearances. No imagery is to be released outside this system. All comment and media response/inquiries is to be referred to MINDEF [Defence Minister] Media Advisor, Mr Ross Hampton.[58]

2.52   Questioned about his understanding of the reasons for that approach to public affairs in the case of Operation Relex, Mr Humphreys offered two explanations:

- first, he thought that 'the guiding motivation of Mr Hampton was to ensure that the minister's office could see the information before it was released and had an opportunity to decide which information was released';[59]

- second and relatedly, Mr Hampton wished to be the 'only point of information coming out from Defence' because of his responsibility for coordinating the release of information from Defence with that released by ministerial staff from other portfolio areas.[60]

2.53   The Committee notes that the strictly centralised control of information through the Minister's office during Operation Relex meant that Defence was unable to put out even factual material without transgressing the public affairs plan.

2.54   Significantly, the instruction that no information concerning Operation Relex was to be released to the media by Defence personnel was explicitly reinforced on the day after Minister Reith had been told by Air Marshal Houston that no children were thrown overboard from SIEV 4.[61] As Mr Humphreys said, no public correction to information could be made unless the minister agreed to those misrepresentations being corrected.[62]

2.55   The Director of Media Liaison, Mr Tim Bloomfield, further informed the Committee that, not only was no information to be released by Defence unless through

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57   *Transcript of Evidence*, CMI 1148. The Ministerial staff involved in the discussions were Mr Ross Hampton, media adviser, Mr Mike Scrafton, military adviser, and Mr Peter Hendy, chief of staff.

58   Answers to Questions on Notice, Department of Defence, Question 31.

59   *Transcript of Evidence*, CMI 1150.

60   *Transcript of Evidence*, CMI 1150.

61   Enclosure 1 to Powell Report, Statement by Rear Admiral Adams, Deputy Chief of Navy.

62   *Transcript of Evidence*, CMI 1156.

the Minister's office, but that no imagery was to be collected by the Public Affairs area. He said:

> We were given direction that we were not to deploy … photographers or public affairs officers to Operation Relex to the point where at the very beginning we had sent a military public affairs officer to Christmas Island for the *Tampa* and we were directed to return her immediately back to Australia - and we did.[63]

2.56   The imagery that was collected was taken by ADF personnel participating in the Operation. Mr Humphreys told the Committee that Mr Hampton gave directions about what was to be collected by these personnel in the following terms:

> Essentially, we were told to concentrate on the ADF activities at the time - so the work of ADF personnel in relation to Operation Relex, first of all, as targets of opportunity for photographers. We were then given instructions in regard to photographing SUNCs [suspected unauthorised non-citizens] - or whatever the latest term is. We were certainly aware that Immigration had concerns about identifying potential asylum seekers, so we got some guidance on ensuring that there were no personalising or humanising images taken of SUNCs.[64]

2.57   Although Mr Humphreys said that this direction was given in the context of not *identifying* the asylum seekers, he confirmed that the words 'personalise' and 'humanise' were both used.[65] Pressed on the point, he agreed with the proposition that 'what we have is the Minister for Defence saying in the immediate post-*Tampa* environment, 'Don't humanise the refugees'.[66] The basic instruction, Mr Humphreys said, was that no photographs of asylum seekers were to be taken at all.[67] He noted that Mr Hampton informed him that he was in daily discussion with ministerial officers from Immigration, Foreign Affairs, and Attorney-General's, and with the Prime Minister's office concerning public affairs handling of Operation Relex.[68]

2.58   The Committee notes that their refusal to give evidence to the inquiry meant that it was unable question either Mr Hampton or Mr Reith or the Prime Minister's Office about the basis for the instruction that refugees were not to be 'humanised'.

2.59   On the evidence available, however, it seems to the Committee that the public affairs plan for Operation Relex imposed upon the Department of Defence by the Minister's Office had two clear objectives. The first was to ensure that the Minister

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63   *Transcript of Evidence*, CMI 1179.

64   *Transcript of Evidence*, CMI 1151.

65   *Transcript of Evidence*, CMI 1152.

66   *Transcript of Evidence*, CMI 1152.

67   *Transcript of Evidence*, CMI 1152, 1161.

68   *Transcript of Evidence*, CMI 1154; Correspondence from Mr Brian Humphreys, dated 29 April 2002.

retained absolute control over the facts which could and could not become public during the Operation. The second was to ensure that no imagery that could conceivably garner sympathy or cause misgivings about the aggressive new border protection regime would find its way into the public domain.

2.60   Even before the 'children overboard' story broke, then, the facts show there was a determination on the part of the Minister and his office to manipulate information and imagery in support of the government's electoral objectives. Such preparedness to manipulate the factual record would be abhorrent and inimical to good governance at any time. That it occurred during the caretaker period of an election campaign, in which issues relating to 'border protection' were extremely significant, is inexcusable.

Standard operating procedures

2.61   Rear Admiral Smith explained to the Committee that standard operating procedures were developed for the Operation, but that these evolved both in response to policy changes from government and in response to the reactions of the passengers and crew of the incoming boats.

2.62   The first stage involved the detection and interception of the illegal entry vessels, through a combination of air and sea surveillance.[69] The Navy had no authority to board these vessels in international waters. In the first instance, then, warning messages were delivered to the masters of the boats, advising them that 'they were suspected of having illegal people on board and that they should not take the people to Australia because they were not welcome'.[70]

2.63   According to testimony received by the Committee, one of the tactics adopted by the 'people smugglers' and their passengers was to generate 'safety of life at sea' or SOLAS situations by sabotaging their boats or jumping overboard. In such a manner, they hoped to compel the Navy to rescue them and take them to Australia.

2.64   In order to counter such tactics, the Navy's standard procedure was to keep their large frigates 'over the horizon' and out of sight, and send forward the 'fast RHIBs [rigid hulled inflatable boats] - what we call a long range insertion'.[71] The RHIBs carried the warning messages, which included notification of the penalties under Australian law for people smuggling, and which were provided in English and Bahasa.[72]

2.65   As Rear Admiral Smith noted, however, these messages were ignored '[a]lmost without exception',[73] calling forth the next phase of the interception

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69   *Transcript of Evidence*, CMI 502.

70   *Transcript of Evidence*, CMI 502.

71   *Transcript of Evidence*, CMI 502.

72   *Transcript of Evidence*, CMI 503.

73   *Transcript of Evidence*, CMI 502.

procedure once the vessel entered Australia's contiguous zone, 24 nautical miles out from Christmas Island.[74]

2.66   In the early stages of Operation Relex, the Rear Admiral said, as the vessels approached the contiguous zone, the Navy sought permission to board them 'from Canberra through the IDC process'. From that point:

> Our policy then was to reinforce the warning and turn the vessel around and either steam it out of our contiguous zone ourselves under its own power or - as had happened on a number of occasions - if the engine had been sabotaged in our process or boarding, we would then tow the vessel outside our contiguous zone into international waters. At that point, our boarding party withdrew as we had no jurisdiction in international waters. Our initial policy was to do that up to three times and, after having done it the third time, to seek further advice from government with the view to those vessels then being taken to Ashmore Island or to Christmas Island. But that was a government decision through the IDC process.[75]

2.67   Rear Admiral Smith noted that the requirement for government approval to board vessels was 'relaxed as the operation unfolded'. Nevertheless:

> once we had intercepted, everything that occurred after that in terms of major decisions - such as boarding, removal of people or whatever it happened to be - actually came from Canberra.[76]

2.68   The Committee asked Rear Admiral Smith whether the government's instructions to the Navy in relation to the interception of vessels contained provisions for handling any claims made by those on board to refugee status. He replied:

> It had no relevance for us. Our mission was clear - that is, to intercept and then to carry out whatever direction we were given subsequent to that. The status of these people was irrelevant to us … Claims from the UAs [unauthorised arrivals] were not factors to be taken into account in terms of how we conducted that mission.[77]

2.69   Following the RAN's experience with SIEVs 1-4, their instructions were altered. Rear Admiral Smith stated:

> From the commencement of Operation Relex on 3 September, the initial policy that we were given to implement was to intercept, board and hold the UAs [unauthorised arrivals] for shipment in sea transport - or air transport, but primarily sea transport - to a country to be designated. With SIEV 5, we

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74   *Transcript of Evidence*, CMI 462.

75   *Transcript of Evidence*, CMI 504.

76   *Transcript of Evidence*, CMI 457.

77   *Transcript of Evidence*, CMI 661.

received new instructions which were to, where possible, intercept, board and return the vessel to Indonesia.[78]

2.70   As part of that new policy, the requirement to issue a warning to vessels in international waters was cancelled. This allowed 'surface units to remain out of visual range of the SIEV … to give unauthorised arrivals and SIEV crews minimal time to sabotage their vessels' and thus minimise the chances of a safety of life at sea incident.[79]

2.71   With the removal of the requirement to issue warnings in international waters, ADF personnel needed to board each vessel only once, when the SIEV had entered the Australian contiguous zone.[80]

2.72   The Committee notes, finally, that it followed from the Government's directive to Navy about preventing asylum seekers from entering Australian territory, that they could not be embarked upon Australian naval vessels unless absolutely necessary. In terms of standard operating procedures, this requirement meant that the unauthorised arrivals were to be kept aboard their own vessels as long as they were even 'marginally seaworthy'.[81] In the next chapter, the Committee will discuss the extent to which this requirement may have unnecessarily endangered the lives of the passengers on SIEV 4, and may have involved naval personnel in a game of brinkmanship over the imminence of a safety of life at sea situation.

Overview of Operation Relex Activities

2.73   In total, twelve Suspected Illegal Entry Vessels were intercepted by the RAN under the auspices of Operation Relex.[82] As noted earlier, SIEV 1 arrived on 7 September 2001 and the last illegal entry vessel, SIEV 12, arrived on 16 December 2001.

2.74   SIEVs 5, 7, 11 and 12 were escorted back to Indonesia. SIEVs 4, 6 and 10 sank at some point during the interception or tow-back process. Their passengers were rescued, with the loss of two lives on SIEV 10, and transported in the first instance to Christmas Island. The passengers from SIEV 4 were eventually taken to Manus for processing, and the passengers from SIEVs 6 and 10 to Nauru. The remaining vessels

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78   *Transcript of Evidence*, CMI 508.

79   Answers to Questions on Notice, Department of Defence, Question 11.

80   Answers to Questions on Notice, Department of Defence, Question 11.

81   See,for example, *Transcript of Evidence*, CMI 296.

82   In addition to the twelve numbered SIEVs, a small number of boats have attempted to land outside the designated area of Relex's operation in the period since 3 September 2001. See Additional Information, Department of Defence, Talking points for Senate Legislation Committee Additional Estimates Hearing, February 2002.

were intercepted, their passengers held in custody and then transported for processing.[83]

2.75   Naval officers emphasised in their testimony that Operation Relex was a new and difficult type of operation, which was undertaken with minimum time for preparation and training. Rear Admiral Smith told the Committee that:

> When Relex was commenced, the ships that were initially committed to Operation Relex were in fact in South-East Asia participating in a number of activities in that area. They were brought back and thrown straight into the patrol line. We were expecting that there could be activity that would not be the sorts of things that our boarding parties would be used to encountering, so we developed quickly a training package. A number of members of what we call our 'sea training group', which is a group that works for me that does all our operational training, were deployed to the ships where they were in theatre. They conducted training on the spot to try to prepare the boarding parties for what could eventuate out of this particular activity. We have been able to do subsequent rotations of vessels into Operation Relex in a more considered way and have prepared them before they have deployed by providing them appropriate training.[84]

2.76   A particularly difficult feature of the Operation for both unauthorised arrivals and naval personnel, it seemed to the Committee, was the length of time that some of the SIEVs and their passengers were detained in custody while decisions were being made about where to take them, or while appropriate transport arrangements were made.

2.77   For example, SIEV 3 was intercepted on 12 September near Ashmore Island with 129 people on board. They included 54 children and a heavily pregnant woman, who subsequently gave birth while being transported to Nauru by HMAS *Tobruk*.[85] These people were held in custody on their crowded vessel in Ashmore Lagoon for ten days, until 22 September before being transferred to the *Tobruk*.[86] Rear Admiral Smith told the Committee that:

> That was a constraint under which we operated: that there was a requirement for them to remain in location there for that period of time. We were very conscious of our responsibilities to these people in providing them with humanitarian assistance and we did everything within our power to be able to make life as comfortable for them as was possible.[87]

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83   Matrix, tabled by Rear Admiral Smith, 5 April 2002.

84   *Transcript of Evidence*, CMI 452.

85   Matrix, tabled by Rear Admiral Smith, 5 April 2002; *Transcript of Evidence*, CMI 506.

86   *Transcript of Evidence*, CMI 507.

87   *Transcript of Evidence*, CMI 507.

2.78   This assistance, the Committee learnt, included logistical feats such as preparing meals on naval vessels for up to 200 people and then ferrying them across to the detained SIEVs using the RHIBs.[88]

2.79   Operation Relex, however, was not only new in the sense that the actual tasks and logistics involved were different to those required under Operation Cranberry. It was new also in the sense that it helped to create a very different environment in which those tasks had to be performed.

2.80   In other words, as Rear Admiral Smith put it, previously the Navy's role had been to escort unauthorised arrivals to an Australian port for reception and processing by relevant agencies. Under these circumstances, the individuals 'were invariably cooperative and compliant, with Navy boarding parties able to operate in a relatively benign environment'.[89] When under Operation Relex, however, 'their apparent aim of being taken to Australia was frustrated by the Navy's intervention', then '[n]umerous instances of threatened or actual violent actions against Australian Defence Force personnel occurred, as well as various acts of threatened or actual self harm and the inciting of violence'.[90] The Rear Admiral commented:

> Australian Defence Force personnel had not previously encountered these circumstances during non-warlike operations. They were extremely hazardous and volatile situations. What was a law enforcement activity had real potential to rapidly escalate into a violent situation or just as quickly deteriorate into a major safety or preservation of life situation or, worse, both.[91]

2.81   Rear Admiral Smith drew a clear link between the changed behaviour exhibited by the unauthorised arrivals and the change in the Australian government policy. He said:

> It is certainly fair to say that the change in the behaviour pattern of these people is directly linked to the change in the attitude of the Navy, generated by the policy that was implemented.[92]

2.82   Vice Admiral Shackleton, Chief of Navy, noted that the unauthorised arrivals 'were learning from each event that they interacted or experienced with us and … they were starting to understand our approach to how we operated'.[93] This 'learning',

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88   *Transcript of Evidence*, CMI 512.

89   *Transcript of Evidence*, CMI 448.

90   *Transcript of Evidence*, CMI 448.

91   *Transcript of Evidence*, CMI 448.

92   *Transcript of Evidence*, CMI 490.

93   *Transcript of Evidence*, CMI 62.

according to naval witnesses, meant that those aboard later boats seemed more prepared to counter the Navy's tactics, and more aggressive than earlier arrivals.[94]

2.83   Officers spoke of a 'pattern' of behaviour exhibited by the asylum seekers over the period, which involved acts and threats of self-harm and aggression, including threats to children, sabotage of vessels and of equipment, jumping overboard and attempts to create safety of life at sea situations.[95]

2.84   The Chief of Navy summed up the experience of Operation Relex thus:

> This has been very hard work, and the sailors have acquitted themselves in a way in which I think most Australians would be very proud of. In my own sense, I cannot be any more proud of them than I am. The point is that this has been very difficult. The people who are engaged in the SIEV - that is, the people themselves - are in difficult circumstances. The point is that they are trying to get to Australia. It has been the Navy's task to stop them doing that.[96]

2.85   In the next chapter, the Committee considers in detail events which occurred on one SIEV which was intercepted during Operation Relex, and which became notorious as the so-called 'children overboard' incident.

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94   *Transcript of Evidence*, CMI 62.

95   *Transcript of Evidence*, CMI 68ff and passim.

96   *Transcript of Evidence*, CMI 68.