

Word attachment to email to christmasisland@aph.gov.au:

Joint Select Committee on the Christmas Island tragedy -

Submission by Anthony (Tony) Kevin

26 April 2011

I make this written submission to the Joint Select Committee (JSC) on the Christmas Island tragedy, in which an irregular entry vessel (officially designated by Border Protection Command (BPC) as SIEV 221) foundered in stormy seas on rocks at Rocky Point in the early hours of 15 December 2010, in full view of horrified Christmas Island residents, leading to the deaths of some 50 persons out of the approximately 100 persons on board. I am ready to testify in person on matters discussed in this submission if the Committee wishes me to do so.

I am a retired former Australian public servant and foreign service officer. From 1968 to 1998, I served at senior levels in the Departments of Foreign Affairs and Trade and in the Prime Minister's Department. My last posts were as Ambassador to Poland and finally to Cambodia. During my public service career I had high-level national security clearances. Since my retirement at age 55 in 1998, I have taken an informed citizen interest in national matters of public concern. I have always relied entirely on publicly available information sources in anything that I have written or said on any of these matters. I have university degrees in Engineering (University of Sydney) and in Economics and Political Science (Dublin University). I am the author of three published books: "A Certain Maritime Incident: The Sinking of SIEV X" (Scribe, 2004), "Walking the Camino" (Scribe, 2007), and "Crunch Time" (Scribe, 2009).

My submission addresses the JSC term of reference (a), namely "operational responses of all Commonwealth agencies involved in the response, relevant agency procedures, and inter-agency coordination". My time frame is the duration of the boat's voyage at sea from Indonesia up until the time when it was observed by Christmas Island residents drifting onto the rocks at Rocky Point, its engine having apparently failed as it tried to round this point in its efforts to reach Flying Fish Cove in bad weather. There is one report that this boat had already been waiting in

the vicinity just north of Christmas Island for several hours overnight, hoping it would be seen and picked up.

I set out herein important public questions that I submit will need to be searchingly explored by members of the JSC, as to why Australian BPC's normally highly efficient and continuously functioning long-distance radar JORN-based detection, tracking and interception system did not detect, track and safely intercept this boat, SIEV 221 (Suspected Irregular Entry Vessel number 221), during its long voyage from its Indonesian embarkation point to Christmas Island. Such voyages normally take between 24 and 36 hours, depending on many variables such as port of embarkation, size and engine power of vessel, whether delays were experienced due to engine breakdowns at sea, state of loading, and weather conditions encountered on route.

I describe below what is accessible public knowledge about the capabilities and operational uses of JORN – the Jindalee Operational Radar Network, Australia's \$1800 million long-range broad-area maritime and aerial radar system operating from three landbased stations in Laverton (WA), Jindalee (near Alice Springs, NT) and Longreach (Qld). This system has been in continuous operational development over the past 30-odd years and it is a key element in the defence of Australia's northern maritime approaches against any threat.

Everything I know about JORN comes from government announcements and well-based published articles citing statements from government sources. Attachment A to this submission is a bibliography and digest of key references from this information, legally assembled by me from the Internet. I refer in the text below to named sources cited in that Attachment.

In the days soon after the tragedy, I and others raised public questions in the media, asking why SIEV 221 had not been detected by radar during its maritime journey and safely intercepted by an Australian Border Protection Command vessel, as its 220 officially documented SIEV predecessor boats had been so detected and intercepted over the ten years since the SIEV numbered series began in September 2001.

Most of these boats would have been of similar size, construction, and state of repair as SIEV 221. Most were Indonesian fishing boats at the end of their working lives due to the economic collapse of the local Indonesian commercial small-boat deepwater fishing industry. They are mostly of wooden construction, generally about 19 or more metres long,

and have metal engines and propeller shafts etc which makes them more readily detectable by radar than e.g. an all-wooden sailing boat. These SIEV boats would have come to their Australian destinations in a variety of seasons and weather conditions, as a one-way trip.

To my knowledge, almost all of the 220 listed SIEV boats before SIEV 221 were efficiently and safely detected and intercepted at sea in the 12-24 mile contiguous maritime zones surrounding Australian territorial waters at Christmas Island or Ashmore Reef, these being the two preferred arrival points for SIEV boats as the nearest parts of Australian land territory to Indonesia. A few of these SIEV boats apparently arrived at the Flying Fish Cove (Christmas Island) jetty or entered the Ashmore Reef lagoon territorial zone under their own steam, a few hours before official BPC interception and detention of persons on board.

I do not know of any case where a SIEV boat arrived in Australian territorial waters whose arrival was not already expected. I surmise that from time to time BPC may have made operational decisions to allow SIEV boats to anchor under their own steam in safe weather conditions, to be taken into custody later, if BPC interception ships were busy elsewhere. Australia has limited numbers of BPC ships, aircraft and crews to provide border protection in the vast areas of ocean here. Obviously they cannot be everywhere at once.

This is the second known SIEV sinking tragedy in the waters between Indonesia and Christmas Island. The first was the still unexplained sinking of the unnamed vessel which I named SIEV X on 19 October 2001, in international waters some 60 miles south of Sunda Strait, waters that were being intensively monitored and surveilled at the time by Operation Relex, a stepped-up Australian border protection operation. 353 people, mostly women and children, lost their lives in the foundering of this vessel that Australian authorities initially claimed to know nothing about. It later emerged in the course of an exhaustive six-month 2002 Senate Select Committee inquiry, in which I testified, that Australian authorities had known quite a lot about this vessel. This information, originally withheld from the Senate Committee, emerged reluctantly and bit by bit, under intensive examination of agency witnesses and submitted agency documentary evidence by Senators Peter Cook (Chair), John Faulkner, Jacinta Collins and Andrew Bartlett. To the end, large areas of information were withheld from the Committee - with large parts of documents blacked out on claimed national security grounds.

My book '*A Certain Maritime Incident*' records the course of that brave, persistent but ultimately unsuccessful Senate inquiry. Senator Cook spoke poignantly in the Senate on 5 February 2003 (Senate Hansard 2003 page 8585-8587) about his disappointment at how this Committee had been misled by public servants who gave sworn evidence during the enquiry that later proved to be false.

We still do not know for sure whether SIEV X was being tracked by Australian border protection authorities, and we do not know for sure why no Australian search or rescue attempts were ever made. We know that at a crucial stage in the chain of command, NORCOM command in Darwin decided that SIEV X had not been a confirmed departure from Indonesia, and that if it had so departed, it had probably decided to return to Indonesia because the weather was bad, and because the crew would not risk a passage if the vessel was insufficiently seaworthy in the prevailing weather conditions. So no human-eyes aerial search for SIEV X was ever ordered, even though RAAF routine surveillance flights several times flew blind routes over the area where it sank, while the boat was sinking and afterwards.

Now, nine years later, I am concerned that the SIEV X history of an apparent official determination not to establish accountability for a tragic border protection systemic failure that resulted in large numbers of human deaths at sea, should not be repeated in the tragedy of SIEV 221 now under parliamentary and coronial inquiry.

I observe that, again as in 2002, agencies responsible for the detection and safe interception of suspected irregular entry vessels have already shown signs of being less than frank about their operational capacities and normal procedures for the detection and safe interception of SIEV boats. According to media reports, requested BPC agency appearances in the WA Coroner's Court inquest have been subject to long delays, and large areas of blacked-out documents have been provided to the WA Coroner, with claims that the blacked-out material is extremely sensitive. All this is familiar from the SIEV X Senate inquiry.

I am in this submission setting out in necessary detail the factual basis of my concerns about SIEV 221. There are disturbing inconsistencies between known publicly accessible facts about Australia's border protection system and what we have so far been asked by government border protection spokespersons to believe, on the matter of why SIEV 221 was not detected by long-distance radar, tracked, and safely

intercepted by BPC at sea, before it crashed onto the cliffs at Christmas Island.

If members of the Joint Parliamentary Committee do not searchingly examine all sworn official testimony and documentary evidence on these matters, if they do not ask the difficult questions that they may well be officially discouraged from asking on claimed national security grounds, it is very possible that they will be misled.

If they allow themselves to be so misled, they would not be honouring the professional expertise and integrity of the many men and women who serve in the various agencies that comprise Australia's Border Protection Command. If an operational failure or faulty decision-making action leading to loss of many lives, somewhere in the BPC information processing and chain of command system, is allowed to go unexplained and unaccounted for, this would devalue the integrity and professionalism of everyone involved in border protection operations.

I believe that all conscientious persons professionally involved in Australian border protection operations, whether from ADF, AFP or Customs, would agree that Australian maritime detection and interception operations must always be carried out in ways that are consistent with the fundamental maritime law and custom obligation to protect human life at risk at sea, no matter whose lives are at risk, or how much operational inconvenience might be involved in checking out uncertain signals.

It follows from this principle that any radar signal or intelligence of any incoming vessel, no matter how indistinct or unclear, and especially in dangerous weather seasons as in December, should be followed up assiduously by BPC to ascertain whether human lives at sea might be at risk, and if so, to take necessary steps to help protect those lives. It should never be a professional option in border protection operations to look the other way, or to assume without having certainty that a boat has turned back, when the technical means exist to make sure of what the facts are.

Australia owns and operates a very powerful, world –renowned broad-area long-distance radar system JORN (acronym for Jindalee Operational Radar Network) [ref Sinclair-Jones 2000] . From three widely dispersed landbased JORN stations in Laverton (WA), Jindalee-Alice Springs (NT) and Longreach (Qld), raw long-distance radar data is continuously collected in automatic computer software programs. The consolidation, processing and interpretation of this data at various RAAF-operated

facilities provides data that enables Australia's border protection authorities to initially detect and then track the route and speed of approaching vessels passing through Australia's northern maritime approach waters, to a distance out to approximately 2000 km from continental Australia.

JORN forms a key part of Australia's national security infrastructure, because it was designed to monitor any kind of sea or air intrusion, whether this be for reasons of invasion, clandestine terrorist entry, drugs or people smuggling, fisheries or quarantine violations of Australian sovereignty and laws. At a cost to the Australian taxpayer of \$1800 million, the JORN system has to be and is cost-efficient. It is not a fair-weather or 'back-up' system. It is the generally reliable trip-wire for the subsequent efficient deployment of Australia's limited number of physical border protection assets and crews (BPC ships and surveillance aircraft) in order to confirm detections and to intercept boats at safe, operationally convenient locations and times.

JORN data is processed by a RAAF high-frequency surveillance command headquarters, the No 1 Radar Surveillance unit at the Edinburg RAAF base near Adelaide [ref Sinclair-Jones 2000] . A New Zealand-sourced unofficial comment [ref Walters 2007, internet comment by 'Barnsey] says that 'the radar output is fed primarily to East Regional Ops Centre at RAAF Williamtown [ed - near Newcastle, NSW] where there's a 24-hour surveillance watch manned by the air defence officers'.

Here is a selection of statements I have compiled (all drawn from sources in attachment A) on the operational reliability and power of the JORN-based system.

"JORN is designed to monitor air and sea movements across 37,000km of largely unprotected coastline and 9 million square kilometres of ocean. It is being used to cast a security shield across Australia's remote northern approaches without the high cost of maintaining constant maritime and air patrols". [ref Sinclair-Jones 2000].

"The new radar has also been used to track illegal immigrants approaching Australia by boat through the region's largely unguarded northern waters. Although designed primarily for air detection, JORN was reconfigured last year [ed- 1999] at Australian Government request to scan for marine intruders. More than 500 illegal immigrants have been arrested and detained in recent weeks, largely as a result of JORN

intelligence passed to civilian customs authorities.’ [ref Sinclair-Jones 2000].

“RAAF Group Captain Greg Hockings, who heads the new Jindalee Operational Radar Network, describes Jindalee as a "tripwire" in Australia's northern surveillance system”. [ref Sinclair-Jones 2000]

“Signals are aimed at the ionosphere, where the beam is reflected over the horizon to targets up to 3000km away. A weak return signal from over the horizon is captured by a highly sensitive receiver that uses advanced software to separate background ‘clutter’ from selected targets”. [ref Sinclair-Jones 2000].

“The whole network is linked to a test command centre in Melbourne and, via a duplicate link, to the RAAF's high frequency surveillance command headquarters at Edinburg base, near Adelaide”. [ref Sinclair-Jones 2000].

“Defence Minister Robert Hill announces a \$48 million upgrade to its Jindalee Operational Radar Network (JORN). Hill says: ‘After the enhancement program, the radars will have a greater range and will be able to detect even smaller aircraft and ships’.” [Ref *Defence Daily International*, 2004].

“Wood is not very conductive, so boats made from timber remain less ‘visible’ [ed – i.e., to the JORN system], and WGCDR Gray says the minimum size of a target is classified information. However, in the next 10 to 15 years, and in part with the recent \$62m boost for radar sites, he says scientists are confident Jindalee's performance will increase up to 100 fold.”

[Ref “*Nowhere to Hide when Alice's radar zeroes in*”, Erwin Chlanda, *Alice Springs News* 2004. This quote from Wing Commander Stephen "Zane" Gray, commanding officer of the No 1 Radar Surveillance Unit in Adelaide].

“WGCDR Gray says there has been progress in the last 30 years with hardware and software, refining the capability of detecting targets. But significantly, more powerful computers make better sense of what the myriad of planes and boats to Australia's north are up to. At the heart of the evaluation of the signals is No. 41 Wing based at Williamstown near Newcastle. It merges the Jindalee information with data from civilian and military ground based radar, and information about known traffic, such as scheduled airliners and ships. The results go to the Australian

Federal Police, Coast Watch and Australian Defence Force Agencies, says WGCDR Gray. They check anything suspicious and act accordingly. While the computers do a good deal of the work, human intuition hasn't been retired yet from the process. A radar operator saying "that looks odd" has often been the trigger for fruitful action. How many baddies has it caught so far? "The exact number is classified information, but the Jindalee information is providing our enforcement agencies valuable intelligence against illegal immigrant vessels seeking to enter Australian skies and waters," says WGCDR Gray". [Ref Chlanda op.cit.]

"Jindalee Operational Radar Network, or JORN, conducts 24-hour all weather detection of north and northwest air and surface approaches up to 2000 kilometres away from Australia's coastline. JORN is an early warning trip-wire in the defence and protection of Australia and our national interests, able to detect surface vessels and low-flying aircraft. JORN also assists Coastwatch, Customs and Immigration in the detection and prevention of illegal entry, smuggling and unlicensed fishing as well as helping with search and rescue efforts and early storm warnings. The radar network can also detect stealth bombers and has taken more than 30 years to complete at a cost of \$A1.8 billion." [Ref *"Federal government boosts defence radar capability. Network is the biggest software development project in the southern hemisphere."* Sandra Rossi, *Computerworld*, 2007]

The authoritative nature of this reference material which I have assembled here, taken as a whole, is reinforced by the historical record of generally successful SIEV interceptions by BPC ships and aircraft. Over the past 10 years we are aware of only two SIEV sinkings – SIEV X in 2001, and now SIEV 221 nine years later in 2010.

Over the past ten years, well over 200 SIEV boats have been safely detected and intercepted. This represents a success rate of over 99%. In an isolated case like SIEV 221 where a normally highly efficient system of SIEV detection has obviously broken down, resulting in major loss of human life, searching questions must be asked as to where and how in the information and command chain the breakdown happened .

I am concerned at the factual accuracy of various statements by officials and as reported in the media on why radar might not have detected SIEV 221, so that it could be safely intercepted at sea by a BPC vessel. There

has so far been a puzzling reluctance by officials to admit to the major role JORN plays in the normal processes of Australian border protection.

Also, there seems to have been a conscious official effort since SIEV 221 to minimise or cast public doubt on JORN's reliability and effectiveness.

If what has been reported to have been officially said about JORN since the sinking of SIEV 221 were true, it is simply not possible that well over 200 similar SIEV boats could have been routinely detected and safely intercepted, travelling at different times of year and in different weathers over the past 10 years. There would have been many more such tragedies. There have not been.

It was publicly suggested by official or quasi-official sources, as reported in the media, in the weeks after the SIEV 221 tragedy that JORN has difficulty in detecting small wooden boats in stormy weather; or at dawn or dusk; or when waves are large; or when boats travel slowly; or when boats travel on courses that are side-on to Australia. None of these claimed problems were mentioned in any of the JORN sources I assembled at Attachment A, except one reference to a greater difficulty in detecting wooden boats [ref Chlanda], . If these are real problems, they would seem to have been routinely overcome in normal JORN data interpretation and processing over the past 10 years.

On 30 March, as reported by media, the head of Border Protection Command made a number of statements in the WA Coroner's Court inquest into the deaths on SIEV 221, statements which are puzzling in the light of my above research into JORN. He is reported to have told the Court:

That JORN was 'not operational', or was 'not operating', at the time SIEV 221 crashed into the rocks. This meant there was 'no effective surveillance' at the time of the incident.

That JORN is Border Protection Command's 'fallback option' if they cannot use their patrol vessel radar to detect boats.

That he 'did not know why JORN was not operating at the time, because it was a resource he used but was not responsible for'.

That 'when the patrol boat [radar] could not be used, Border Protection Command headquarters in Darwin make an operational judgement

whether to make alternative surveillance arrangements based on the expected threat’.

This leaves a number of questions to be answered.

What does it mean that JORN was said to be not operating? For how long had it been not operating, and why? Had the normal processes of JORN data collection and RAAF interpretation in Australia been interrupted, for what reason and for how long? Was any data about SIEV 221 passed by any RAAF radar data processing station to BPC at any stage of SIEV 221’s voyage from Indonesia? For how long was SIEV 221 at sea? Were any operational decisions made at BPC headquarters in Darwin about SIEV 221 during this period? Why wasn’t HMAS Pirie or another vessel ordered out on station to safely intercept the possible arrival of SIEV 221 in stormy weather at Christmas Island, if there was any indication that SIEV 221 might possibly be coming?

Finally, could BPC provide tabulated information on the role played by JORN in BPC’s initial detection of all listed SIEV boats over the ten years 2001-2011? Is JORN an ‘early warning trip-wire’, or a ‘fall-back option’ if patrol boat radars are not working?

If BPC should claim that to answer such questions raises matters too sensitive to be addressed in public session, I believe there is a strong case for these matters to be thoroughly addressed by the JSC in closed session, with JSC deciding subsequently how much of this evidence can properly be made public.

The JSC’s decision yardstick in what evidence to make public, I submit, should be the same as in cases like the Beaconsfield mine disaster, the Wivenhoe Dam flood disaster or the Victorian bushfires disaster. The accountability obligation on responsible public agencies after any major loss of human life due to a systems breakdown is the same.

The obligation to try to protect human life at sea is absolute, irrespective of who those people were or why they were in these Australian waters.

Yours faithfully,

Anthony (Tony) Kevin
26 April 2011

Attachments: Attachment A, by separate email, “A bibliography of publicly accessible internet references to JORN”