

Joint Review of Positioning of Vessels Engaged in Operation Sovereign Borders - Executive Summary

The Task

1. This report responds to direction from the Chief Executive Officer (CEO) of Australian Customs and Border Protection Service (ACBPS) and the Acting Chief of the Defence Force (A/CDF) that a joint review (the Review) be conducted “into the actions of the ADF and ACBPS, including Border Protection Command (BPC) during December 2013 and January 2014 in relation to the entry of Australian vessels into Indonesian territorial waters”.
2. The scope of the Review was to independently investigate the facts and circumstances surrounding the entry of Australian vessels into Indonesian waters in connection with Operation Sovereign Borders (OSB) during the period 1 December 2013 to 20 January 2014.
3. The Review has been supported by officials from the Department of Defence and ACBPS and advice from the Attorney General's Department and the Department of Foreign Affairs and Trade.
4. In summary, the work of the review team involved analysis of; all patrols conducted during the relevant period to identify those patrols that resulted in incursions into Indonesian waters by Australian vessels; the patrols, orders, instructions and reporting arrangements associated with these incursions; planning of the patrols and the preparation of each vessel for these patrols; training provided to key personnel within the crew of each vessel; and, the reporting of each incursion once discovered.
5. The review team was directed to refer matters relating to professional conduct to ACBPS and the ADF for separate consideration.
6. The Terms of Reference stated a final report should be provided on or before Monday 10 February 2014.

Review of Policies, Instructions, Reports and Conduct

7. The Review received in excess of 2200 documents and related media from relevant agencies. This material was used to generate a narrative of events together with a review of operational instructions and details of training, support and guidance provided to units involved.
8. The review team used two approaches in undertaking the assessment of the relevant incidents. The first was an audit like assessment of each relevant incident to establish the details of any incursions by an Australian vessel into Indonesian waters. The activities in which Australian vessels were engaged at the time of each incursion are considered to be beyond the Terms of Reference for this Review.
9. The second and more substantial approach entailed a broader review of orders instructions and reports to explore the key issues arising from each incident. These were distilled into the findings and recommendations of the review team.

The Narrative

10. In summary, the Review found that RAN and ACBPS vessels inadvertently entered Indonesian waters on a number of occasions [six occasions] between 1 December 2013 and 20 January 2014 in contravention of Australian Government policy and operational instructions in relation to Operation Sovereign Borders. On each occasion the incursion was inadvertent, in that each arose from incorrect calculation of the boundaries of Indonesian waters rather than as a deliberate action or navigational error. The intent for each patrol was advised to operational headquarters in advance of each mission and was approved by Operational Commanders.
11. Australian Government policy relating to Operation Sovereign Borders is described in the Coalition's Policy on Regional Deterrence Framework to Combat People Smuggling of August 2013. This policy covers a spectrum of response options available under the Operation that were translated into operational instructions to both Commander Border Protection Command (COMBPC) and assigned ADF and ACBPS units. Two key policy constraints were articulated in these instructions:
 - a. Activities are only to be conducted when deemed safe to do so by the Commanding Officer of the assigned BPC vessels, and
 - b. Activities are only to be conducted outside 12 nautical miles from Indonesia's archipelagic baseline.
12. Both constraints were recognised in planning conducted by operational headquarters staff and were clearly articulated in mission instructions. Directions issued to the operational headquarters and assigned units were clear that OSB patrols were not to enter Indonesian waters. It is clear in the documentation examined by the Review, that planning conducted by the operational headquarters concluded that OSB patrols could be achieved consistent with these constraints.
13. The headquarters identified the requirement to obtain authoritative information on Indonesian maritime boundaries to inform the safe and proper conduct of the patrols. Despite recognising the importance of this information, headquarters staff supervising OSB tactical missions, effectively devolved the obligation to remain outside Indonesian waters to vessel Commanders. Headquarters staff accepted, without proper review, that the proposed patrol plans would result in vessels remaining outside Indonesian waters. The implementation of appropriate control measures would have reduced the risk of the inadvertent entry of vessels into Indonesian waters.
14. Had headquarters staff implemented appropriate control measures, informed by authoritative information on Indonesian maritime boundaries, the normal post activity reporting and checks would have detected the incursions as they occurred. This did not occur. The appropriate controls were not put in place by the relevant headquarters.
15. Notwithstanding this, RAN Commanding Officers had received professional training to understand the provisions of United Nations Convention on the Law of the Sea (UNCLOS) in the context of the direction to conduct operations outside Indonesian waters. Their ACBPS counterparts, who are trained for operations inside the Australian Exclusive Economic Zone (EEZ), had not received this training as it applied to the Indonesian archipelago.

16. The incursions were discovered on 15 January when planning staff realised that the details of some post patrol reporting did not correlate with the generic planning for the OSB patrols on which the operational instructions were predicated. Once identified, Commander BPC immediately directed an initial assessment of OSB operations between 1 December 2013 and 20 January 2014. The incursions identified in that assessment were promptly and candidly advised to senior Australian Officials, Government Ministers and in turn the Indonesian Government.
17. Subsequent to discovery of the incursions, COMBPC promulgated supplementary instructions detailing the boundaries of Indonesian waters, together with specific instructions requiring increased headquarters scrutiny and approval of patrol intentions in order to prevent further incursions.

Summary of Findings

1. The Review found that a number of incursions [six occasions] by Australian vessels into Indonesian waters occurred during the period December 2013 – January 2014 in the course of undertaking Operation Sovereign Borders.
2. The Review found that each incursion was inadvertent and occurred as a result of miscalculation of Indonesian Maritime Boundaries by Australian Crews. Crews intended to remain outside Indonesian waters.
3. The Review found that Government policy regarding Operation Sovereign Borders was correctly articulated in instructions to Commanders. Specifically, that two primary considerations should be taken into account when planning activities under Operation Sovereign Borders:
 - a. Activities are only to be conducted when deemed safe to do so by the Commanding Officer of the assigned BPC vessels, and
 - b. Activities are only to be conducted outside 12 nautical miles from Indonesia's archipelagic baseline.
4. The Review found that the focus of mission preparation, planning, execution and oversight was on the safe conduct of operations. Despite clear guidance to operational headquarters and assigned units, the imperative to remain outside Indonesian waters did not receive adequate attention during mission execution or oversight.
5. The Review found that Indonesian Maritime Boundaries constituted important operational information that should have been provided by the headquarters to the Commanders of vessels assigned to Operation Sovereign Borders. This information should also have been available in the shore headquarters and used as a reference for task oversight and approval recommendations.
6. The Review found that RAN Commanding Officers had received the requisite professional training and experience to be aware of the operational implications of UNCLOS archipelagic baseline provisions in the calculation of Indonesian Maritime Boundaries.
7. The Review found that while ACBPS Enforcement Commanders and contracted vessel Masters are appropriately trained on the application of UNCLOS for operations inside the Australian Exclusive Economic Zone, they did not have the requisite professional training to be aware of the operational implications of UNCLOS archipelagic baseline provisions in the calculation of Indonesian Maritime Boundaries.
8. The Review found that the initial identification of the incursions was the result of an ad hoc intervention by planning staff.
9. The Review found that, once identified, the incursions were advised to senior Australian Officials, Government Ministers and subsequently to the Indonesian Government in a timely manner.
10. The Review found that the instructions issued by operational commanders subsequent to the incursions have effectively remediated lapses in planning of patrols.

Summary of Recommendations

Recommendation 1

It is recommended that the Chief of Joint Operations and the Deputy Chief Executive Officer (Border Enforcement) ACBPS consider the review and monitoring processes undertaken by Headquarters Joint Task Force 639 and the Australian Maritime Security Operations Centre for any individual lapses in professional conduct that contributed to incursions by Australian vessels into Indonesian waters.

Recommendation 2

It is recommended that the Chief of Navy consider each incursion by RAN vessels into Indonesian waters during Operation Sovereign Borders, with regard to any individual lapses in professional conduct.

Recommendation 3

It is recommended that Force Preparation training for Australian vessels designated to be assigned to Operation Sovereign Borders should be amended to ensure crews are prepared to conduct operations while remaining outside Indonesian waters.

Recommendation 4

It is recommended that a range of policies procedures and operational documents be reviewed as a result of the incursions by Australian vessels into Indonesian waters.

Recommendation 5

It is recommended that Border Force Capability Division review operational training provided to ACBPS Commanding Officers and Enforcement Commanders to ensure a tactical appreciation of UNCLOS.

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