



Australian Government

Australian Government response to the Foreign Affairs, Defence and Trade References Committee report:

Breach of Indonesian Territorial Waters

June 2014

Contents

Introduction and Background - 3 -

Addressing the Recommendations of the Committee - 5 -

 Recommendation One - 5 -

 Recommendation Two - 6 -

 Recommendation Three - 7 -

 Recommendation Four - 8 -

 Recommendation Five - 9 -

 Recommendation Six - 10 -

 Recommendation Seven - 11 -

Dissenting Report – Coalition Senators - 12 -

Additional Comments – Australian Greens Senators..... - 13 -

 Australian Greens Senators Recommendation One - 13 -

 Australian Greens Senators Recommendation Two - 13 -

Introduction and Background

The Government welcomes the opportunity to respond to the Foreign Affairs, Defence and Trade References Committee's (the Committee) recommendations from the report investigating the Breach of Indonesian Territorial Waters.

As reported by the Minister for Immigration and Border Protection and the Commander Joint Agency Task Force (JATF) on 17 January 2014; during operations conducted in association with Operation Sovereign Borders, Australian vessels entered Indonesian waters in breach of Australian Government policy.

On 17 January 2014, the Minister for Immigration and Border Protection and the Commander JATF also announced a joint review would be undertaken by the Australian Defence Force (ADF) and the Australian Customs and Border Protection Service (ACBPS). On 21 January 2014, the Chief Executive Officer (CEO), ACBPS and the Acting Chief of the ADF initiated the internal review into the actions of the ADF and ACBPS, including identifying facts and circumstances and any operational or procedural weaknesses, with a view to recommending necessary remedial actions.

The Review, entitled the *Joint Review of Operation Sovereign Borders Vessel Positioning: December 2013 – January 2014* (the Review), was completed on 10 February 2014, with an executive summary including findings and recommendations made publicly available on 19 February 2014. A redacted version of the Review was also later made publicly available.

The Review made five recommendations, all of which have either been implemented or are in the process of being implemented.

The Government has full confidence that no such breach will occur in future.

The Government has accepted, partially accepted or noted six of the seven Committee report recommendations.

The Government's response to the recommendations made by the Committee follows.

UNCLASSIFIED

Summary of Government Response to Recommendations		Government response	Page
1	The committee recommends that the government consider the apparent conflict between its key policy constraints, especially in light of the difficult decisions that Navy and Customs captains are required to make as part of OSB.	Not accepted	5
2	The Committee recommends that the government review the evidence provided to the committee in relation to Australia's obligations under international law, including the encoding of UNCLOS in Australian domestic law.	Noted	6
3	That the committee recommends that public interest immunity claim relating to activities that lead to the breach of Indonesian territorial waters be referred to the Minister of Immigration and Border Protection for justification.	Noted	7
4	The committee recommends that the Minister for Immigration table, as soon as possible, a redacted copy of the joint review report outlined in his letter of 20 March 2014.	Accepted (and implemented)	8
5	In the interests of accountability and transparency of Operation Sovereign Borders, the committee recommends that the Minister for Immigration table, as soon as possible after April 2014, a report regarding the implementation of recommendation four of the joint review report.	Partially accepted	9
6	In the interests of accountability and transparency of Operation Sovereign Borders, the committee recommends that the Minister for Immigration table, as soon as possible after June 2014, a report regarding the implementation of the revised force preparation training and the revised UNCLOS training.	Partially accepted	10
7	The committee recommends that such a review be undertaken and that the Minister for Immigration table a report with the review findings by September 2014.	Noted	11

Recommendations by the Australian Greens Senators		Government response	Page
1	That the government end its current policy of turning back boats to avoid further maritime breaches and ensure the safety of Australia's Customs and Navy personnel and asylum seekers are not further endangered.	Not accepted	13
2	That Australia act at all times within the law.	Accepted	13

Addressing the Recommendations of the Committee

Recommendation One

The committee recommends that the government consider the apparent conflict between its key policy constraints, especially in light of the difficult decisions that Navy and Customs captains are required to make as part of OSB.

Not Accepted

The Government does not accept the premise that there is a conflict between the policy constraints.

The Review found the incursions occurred as a consequence of the incorrect calculation of the archipelagic baselines.

Relevant and experienced operational authorities have determined that Operation Sovereign Borders activities can be achieved consistent with Government policy. This is consistent with the findings of the Review.

Recommendation Two

The Committee recommends that the government review the evidence provided to the committee in relation to Australia's obligations under international law, including the encoding of UNCLOS in Australian domestic law.

Noted

The Australian Government takes seriously its international legal obligations, including those under United Nations Convention on the Law of the Sea (UNCLOS). Relevant obligations are implemented in a variety of ways. Operation Sovereign Borders Joint Agency Task Force (JATF) has sought and continues to seek legal advice on an ongoing basis from the Australian Government Solicitor and the Attorney-General's Department on matters relating to the implementation and execution of Operation Sovereign Borders. Consistent with the past practice of all Governments in relation to legal advice, it would not be appropriate to reveal the content of this advice.

Recommendation Three

That the committee recommends that public interest immunity claim relating to activities that led to the breach of Indonesian territorial waters be referred to the Minister of Immigration and Border Protection for justification.

Noted

The Minister and Assistant Minister for Immigration and Border Protection have made public interest immunity claims in relation to on-water and operational activities relating to Operation Sovereign Borders.

On 20 March 2014, the Minister for Immigration and Border Protection wrote to the Committee outlining the reasons for which the public interest immunity claim was made. In the letter, the Minister states:

I remain of the view that the disclosure of information pertaining to on-water activities and certain other operational matters would not be in the public interest where such disclosures:

- *could reasonably be expected to cause damage to national security, defence, or international relations;*
- *would, or could reasonably be expected to:*
 - i. *Prejudice the investigation of a possible breach of the law or the enforcement of the law in a particular instance;*
 - ii. *Disclose, or enable a person to ascertain the existence or identity of a confidential source or information, in relation to the enforcement or administration of the law;*
 - iii. *Endanger the life or physical safety of any person;*
 - iv. *Prejudice the fair trial of a person or the impartial adjudication of a particular case;*
 - v. *Disclose lawful methods or procedures for preventing, detecting, investigation, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or*
 - vi. *Prejudice the maintenance or enforcement of lawful methods for the protection of public safety.*
- *disclose privileged legal advice.*

Recommendation Four

The committee recommends that the Minister for Immigration table, as soon as possible, a redacted copy of the joint review report outlined in his letter of 20 March 2014.

Accepted

The redacted copy of the Review report was publically released under Freedom of Information on 4 April 2014. A copy was also tabled in the Senate on 21 May 2014 in response to Question on Notice AE14-312 received from Senator Conroy during the 2013/14 Additional Budget Estimates.

A copy of the redacted Review report is also attached to this response.

Recommendation Five

In the interests of accountability and transparency of Operation Sovereign Borders, the committee recommends that the Minister for Immigration table, as soon as possible after April 2014, a report regarding the implementation of recommendation four of the joint review report.

Partially accepted

Recommendation Four of the Review states:

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.

This recommendation has been finalised, with all relevant operational documents reviewed by Border Protection Command in consultation with the Department of Defence and where appropriate, amended to include additional advice regarding the conduct of operations and the application of internal control measures.

The principal changes that have been made to the policies, procedures and operational documents are:

- Updating all relevant navigational charts and systems to include additional operational information;
- Enhancing the guidance in relation to the Indonesian maritime boundaries within all operational policy and planning documents; and
- Implementation of a new procedure for the approval and oversight of operational activities specific to Operation Sovereign Borders.

The Government does not intend to table a further report.

Recommendation Six

In the interests of accountability and transparency of Operation Sovereign Borders, the committee recommends that the Minister for Immigration table, as soon as possible after June 2014, a report regarding the implementation of the revised force preparation training and the revised UNCLOS training.

Partially accepted

Recommendation Five of the Review states:

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.

A comprehensive review of operational training has been initiated. Remedial training for Commanding Officers and Enforcement Commanders has been implemented as an interim measure. Permanent measures will be in place by the end of June 2014. Restrictions on entering foreign territorial waters are articulated in current operational documents and will be re-iterated in future operational documents. Commanding Officers and Enforcement Commanders have also been appropriately briefed.

The Government does not intend to table a further report.

Recommendation Seven

The committee recommends that such a review be undertaken and that the Minister for Immigration table a report with the review findings by September 2014.

Noted

The Review did not find that issues in the chain of command contributed to the incursions into Indonesian waters and accordingly an additional review is not warranted.

The ADF and ACBPS have completed administrative inquiries into the conduct of headquarters personnel assigned to Joint Task Force 639, Border Protection Command, the Australian Maritime Security Operations Centre and Headquarters Joint Operations Command.

The former Chief of Joint Operations, Lieutenant General Ash Power, and Deputy CEO Border Enforcement, Roman Quaadvlieg accepted the findings of professional conduct inquiries that none of the headquarters officers involved deliberately contravened orders not to enter Indonesian waters. However, both authorities determined that there were individual lapses in professional conduct that warranted further action.

As a result of the inquiries, administrative action has been implemented against three Defence and one ACBPS personnel attached to headquarter elements. Relevant administrative action includes administrative sanctions and formal counselling.

The Chief of Navy also concluded his inquiries into individual lapses in professional conduct and in addition to his action against seven Commanding Officers in April 2014, has completed administrative action which has resulted in informal counselling of a further six officers in non-command roles.

During the course of administrative inquiries into the actions of headquarters personnel it became evident that the conduct of ACBPS officers serving on Australian Customs Vessels also required further investigation.

Further investigation revealed that during the course of Operation Sovereign Borders, a member of the crew serving on board an Australian Customs and Border Protection Vessel identified potential issues with the methodology being used to calculate the Indonesian archipelagic baseline which might lead to the vessel entering Indonesian waters. Although this was brought to the attention of the ACBPS officer in charge of the vessel, he failed to adequately report and escalate this information to his chain of command and continued with the operation, resulting in a breach of Indonesian waters. Code of conduct action has been initiated in relation to this officer and is yet to be finalised.

All professional conduct inquiries conducted by the ADF and ACBPS have yielded findings consistent with those of the Review. That is, that the incursions were inadvertent, and occurred as a consequence of incorrect calculations of Indonesian Maritime Boundaries by Australian crews.

Additional Comments – Australian Greens Senators

Australian Greens Senators Recommendation One

That the government end its current policy of turning back boats to avoid further maritime breaches and ensure the safety of Australia's Customs and Navy personnel and asylum seekers are not further endangered.

Not Accepted

The Government's policy is that any persons who seek to travel by boat to Australia without a visa will be turned back where safe to do so.

Safety of life at sea is, and will remain, the first priority of the Government.

The Government is confident in the measures put in place to prevent further breaches.

Australian Greens Senators Recommendation Two

That Australia act at all times within the law.

Accepted

The Government is confident there is a sound legal basis for the conduct of Operation Sovereign Borders.

Attachment: Joint Review of Operational Sovereign Borders Vessel Positioning: December 2013 – January 2014: Redacted Version

[Redacted]

[Redacted]

[Redacted]

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Australian Government
**Australian Customs and
Border Protection Service**
Department of Defence

Joint Review of Operation Sovereign Borders Vessel Positioning

December 2013 – January 2014



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Contents

Executive Summary	1
Chapter 1: Introduction.....	6
Chapter 2: Evaluation.....	13
Annex A: Incident Narrative.....	20
Annex B: Task Direction, Supervision and Reporting	32
Annex C: Force Assignment and Preparation	38
Enclosure 1: Joint Directive.....	46
Enclosure 2: Terms of Reference.....	48
Enclosure 3: Joint Request for Assistance	51

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. The Terms of Reference appear at Enclosure 1.

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 findings and recommendations of the review team, summarised at pages 4 and 5, respectively.

The Narrative

10. In summary, the Review found that RAN and ACBPS vessels inadvertently entered Indonesian waters on a number of 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.

Acknowledgement

18. The review team would like to acknowledge the Operation Sovereign Borders Joint Agency Task Force (JATF), Border Protection Command Headquarters (HQ BPC), including the Australian Maritime Security Operations Centre (AMSOC) and Headquarters Joint Task Force 639 (HQJTF639), the Department of Defence (Defence), the Australian Customs and Border Protection Service, the Office of International Law in the Attorney General's Department (AGD) the Department of Foreign Affairs and Trade (DFAT), and the ACBPS Incident Coordination Team for their significant contribution to this Review.

Summary of Findings

Findings

1. The Review found that a number of incursions 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 HQJTF639 and the AMSOC 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.

CHAPTER 1: Introduction

Terms of Reference

19. On 15 January 2014, HQ BPC identified that, in carrying out assigned operations between 1 December 2013 and 20 January 2014, assigned RAN and Australian Customs and Border Protection Service vessels (ACV's) entered Indonesian waters.
20. On 21 January 2014, the CEO ACBPS, Mr Michael Pezzullo and A/CDF Air Marshal Mark Binskin AO, directed "a joint review into the actions of the ADF and ACBPS, including BPC during December 2013 and January 2014 in relation to the entry of Australian vessels into Indonesian territorial waters".
21. The scope of the Review was specified as the facts and circumstances surrounding the entry of Australian vessels into Indonesian waters in connection with Operation Sovereign Borders between 1 December 2013 and 20 January 2014. The team was directed to focus on the operational, organisational and systemic matters arising out of "instances of entry of Australian vessels into Indonesian waters, examine the sequence of events and cause, examine the post incident response and identify any potential weaknesses or deficiencies associated with preparation and training, planning and execution of activities, governance documents and post-incident response".
22. The Review is not intended to be a substitute for a detailed external investigation or inquiry, nor does it encompass a review of any other aspects of Operation Sovereign Borders. Further, the review team was advised that matters relating to professional conduct should be dealt with separately by the ACBPS and ADF respectively, noting that recommendations by the team in this respect were permitted under the Joint Directive.
23. The Terms of Reference stated a final report should be provided on or before Friday 10 February 2014. The Joint Directive, including the Terms of Reference, is included at Enclosure 1.

Constraints and Limitations

24. This examination of the incursion by Australian vessels into Indonesian waters has been conducted, in a short timeframe, as a review rather than an in-depth inquiry. By examining the facts and circumstances surrounding each incident, it is intended to articulate a narrative of operations conducted in association with OSB, during which Australian vessels entered Indonesian waters in breach of Australian Government policy.
25. The Review draws from verified documentary material made available by all Commonwealth Government sources, namely ACBPS, BPC, Defence and other relevant Federal Government agencies with any relevant material, appropriately verified by relevant senior officials. The review team relied on the documentary material and answers provided by agencies in response to specific questions raised. The narrative drafted for this Review outlines those events that are relevant to the Review, which can be drawn from key documentary material. This was considered sufficient for the purposes of this Review.
26. The Review took into account the potential for further inquiry in relation to these events and therefore makes no findings about the conduct of individuals. The Review identifies only issues surrounding the specified incidents that have been identified from the material provided.

Methodology

27. Given the constraints and limitations described previously, the following approach was taken to report against the Terms of Reference.
28. A review team comprising two ACBPS officers and three ADF officers was established on Wednesday 23 January 2014 and commenced work immediately. The review team was supported by an ACBPS administrative team to receive and collate material provided by relevant Commonwealth Agencies.
29. The first step for the Review was to collect all of the relevant documents and related media for each incident. An initial request was sent to JATF, ADF Joint Operations Command (JOC), BPC, the ACBPS Border Force Capability Division, RAN Fleet Headquarters and RAN Commander Training. A copy of that request is at Enclosure 2. In response the Review received in excess of 2200 documents and related media. All documents received by the Review were registered, allocated a reference number and stored in a secure location in Customs and Border Protection offices.
30. The Review was organised to explore five interrelated lines of inquiry as follows:
 - a. Task conduct: analysis of Operation Sovereign Borders tasks assigned to Australian vessels from 1 December to 20 January to identify which tasks resulted in an incursion by an Australian vessel into Indonesian waters, and develop a key events chronology for each incident.
 - b. Task direction: analysis of the instructions issued in relation to assigned operations, generally and for each incident identified above, as well as the reporting of task progress and completion.
 - c. Force assignment: analysis of advice and direction issued to the ACBPS and RAN concerning the nature of the task constraints, limitations and supporting information to facilitate preparation and mission training of assigned units for assigned operations.
 - d. Training: analysis of training provided to key unit staff in relation to the Law of the Sea and national maritime boundaries as they relate to the conduct of operations.
 - e. Incident response: analysis of reporting of task progress and completion, the identification of incursions into territorial waters and advice of each incursion.
31. A chronology was developed following a review of the key events identified within each line of inquiry. Development of the narrative drew upon the chronology as supported by the source documents from each agency.

Key Source Documents

32. The relevant policies, processes and procedures applicable to each incident were provided to the review team by the JATF, ADF and ACBPS, including BPC. These documents were registered, allocated a reference number and stored in a secure location in Customs and Border Protection offices.

33. The review team considered each of the identified documents and determined a prioritisation based on applicability to the Review. An assessment was then made as to whether application of the document would make a material difference in the lines of inquiry. Compliance with documents identified as Critical was assessed on a clause by clause basis, with a reducing scale of scrutiny for High, Medium and Low priorities. The purpose of this activity was to ascertain whether these policies and procedures had been applied and taking in to consideration their effectiveness to identify opportunities for improvement.

Consultation

34. Advice was sought from relevant agencies, specifically the Office of International Law in AGD, and DFAT ^{s.33(a)(iii)} [REDACTED]
35. Senior officers from relevant agencies provided assistance in the development of the key events chronology and incident narratives. The narrative for each incursion appears in Annex A to Chapter 2 of this report. The chronology for patrols by Australian vessels under Operation Sovereign Borders (the chronology) between 1 December 2013 and 20 January 2014 appears at Appendix 1 to Annex A, of Chapter 2 of this Report.
36. Senior ADF and ACBPS officers were provided with the opportunity to comment on the findings and recommendations made in this report as agreed by the appointing authorities. The consulted officers expressed broad agreement with the findings and recommendations.

Timings

37. All time references are to Australian Eastern Daylight Savings Time (AEDST i.e. Coordinated Universal Time +11 hours), which is 4 hours ahead of local Christmas Island Time and local Jakarta Time (Coordinated Universal Time +7) and ^{s.17E(4)} [REDACTED]. Many of the events, notifications and communications referred to in the narrative of events are based on more than one source record. For the purposes of developing the narrative of events, a single indicative time has been specified for each event to best reflect the overall sequence of events.

Organisational Arrangements - Roles, Responsibilities and Relationships

38. To provide context to the involvement of various agencies, an understanding of the role and functions of key agencies and organisational elements, and the relationships between those agencies and elements, is necessary.

Department of Defence

39. The primary role of Defence is to defend Australia against armed attack. Australia's defence policy is founded on the principle of self-reliance in the direct defence of Australia, but with a capacity to do more, where there are shared interests with partners and allies.

Joint Operations Command

40. The Chief of Joint Operations (CJOPS) plans, controls and conducts campaigns, operations, joint exercises, and other activities on behalf of the CDF. Joint Operations Command includes Headquarters Northern Command, along with the Joint Task Forces that are raised for operations, including JTF639 (which is responsible for tactical planning and execution of designated ADF operations in support of whole of government border protection and maritime security operations, led by COMBPC).

The Australian Customs and Border Protection Service

41. ACBPS is charged with protecting Australia's borders and fostering lawful trade and travel. In achieving that vision, the Service defines its role as:
- a. Facilitating legitimate trade and travel;
 - b. Delivering Australia's trade and industry policy;
 - c. Preventing deterring and detecting the illegal movement of people across Australia's border;
 - d. Preventing, deterring and detecting the unlawful movement of prohibited, restricted, or regulated goods into Australia;
 - e. Investigating suspected breaches of a range of border controls;
 - f. Countering civil maritime security threats in Australian waters through Border Protection Command; and
 - g. Collecting border-related revenue and statistics.
42. The Service works closely with other government and international agencies, specifically the Australian Federal Police, the Australian Quarantine and Inspection Service, the Department of Immigration and Citizenship and the Department of Defence, to achieve its mission in relation to the illegal movement of people across the border.

Operation Sovereign Borders

The Minister for Immigration and Border Protection

43. The Minister for Immigration and Border Protection has portfolio responsibility, to the Prime Minister, for the implementation of Operation Sovereign Borders.

Headquarters Operation Sovereign Borders Joint Agency Task Force (HQOSBJATF)

44. HQOSBJATF commanded by a Lieutenant General seconded from Defence, is responsible for the development, implementation and coordination of policies and initiatives to counter illegal maritime entry into Australia. The JATF coordinates the efforts of three task groups in order to undertake Operation Sovereign Borders:
 - a. The Disruption and Deterrence Task Group (DDTG) led by Border Protection Command (BPC);
 - b. The Detection, Interception and Transfer Task Group (DITTG) led by the Australian Federal Police (AFP); and
 - c. The Offshore Detention and Returns Task Group (ODRTG) led by the Department of Immigration and Border Protection (DIBP).
45. The HQOSBJATF is collocated with BPC in Canberra.

Border Protection Command

46. BPC coordinates national awareness and response efforts to protect Australia's interests in the Australian Maritime Domain (AMD). BPC is a multi-agency taskforce which utilises assets assigned from both ACBPS and Defence to conduct civil maritime operations. BPC is the primary government law enforcement organisation in the AMD. The AMD includes predominantly the offshore areas within Australia's EEZ but extends to the area bounded by Australia's Security Forces Authority (SFA) zone.
47. BPC is a maritime law enforcement agency which in concert with other government agencies and stakeholders, protects Australia's national interest by generating awareness of illegal activity in Australia's civil maritime domain across government and responding to mitigate, or eliminate, the risk posed by security threats. Assets assigned to BPC conduct law enforcement activities on behalf of other Australian Government agencies exercising powers under the Customs Act, Migration Act, and Fisheries Management Act.
48. BPC is commanded by a Rear Admiral seconded from Defence who, as COMBPC and as CJTF639, has operational control of both ADF and ACBPS assets assigned to civil maritime security operations. He exercises this command through deputies located in two headquarters – BPC Headquarters in Canberra, which coordinates ACBPS assets via the AMSOC, and through HQJTF639 in Darwin, which coordinates the ADF assigned assets.

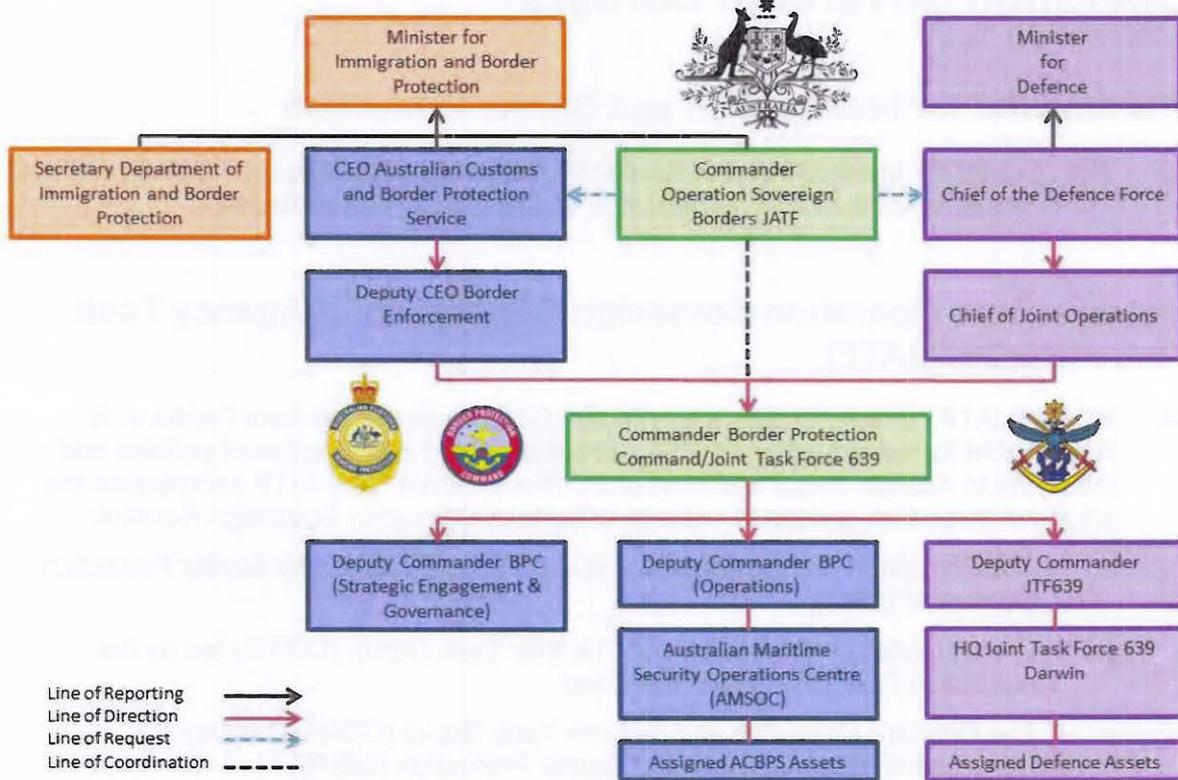


Figure 1.1: Roles and Responsibilities for Operation Sovereign Borders

Australian Maritime Security Operations Centre (AMSOC)

49. The AMSOC is located within BPC Headquarters in Canberra and coordinates the planning and delivery of current operational activity for all ACBPS assets assigned to BPC. This includes deploying aerial surveillance and surface response assets, in collaboration with HQJTF639, to respond to maritime security threats.

Headquarters Joint Task Force 639 (HQJTF639)

50. COMBPC is the Commander Joint Task Force 639. Under his command, HQJTF639 coordinates Operation RESOLUTE, which is the Australian Defence Force contribution to the whole of government approach to protect Australia's borders and offshore maritime interests.

51. The Deputy Commander JTF639, based in HQJTF639 in Darwin, is responsible for routine day to day operations, command and control of JTF639 on behalf of COMBPC. This includes synchronising Operation RESOLUTE assets with ACBPS assets to meet BPC's operational requirements. As such HQJTF639 conducts operational planning activities and issues tactical level operational, administrative orders and instructions as required.

CHAPTER 2: Evaluation

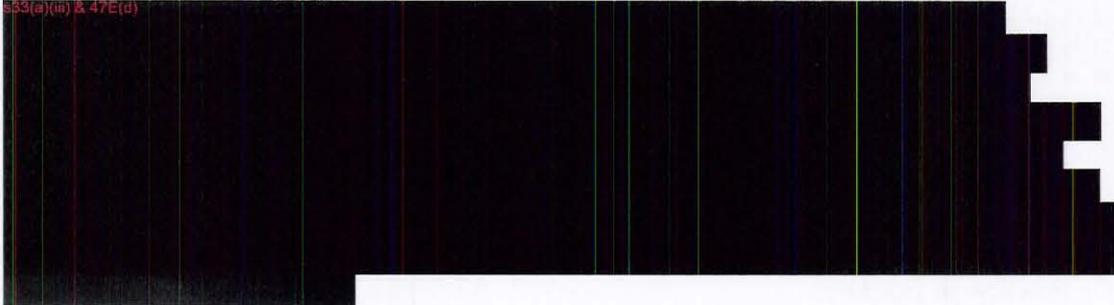
Findings

1. The Review found that Australian vessels breached Indonesian waters on six occasions during the period December 2013 – January 2014 whilst undertaking Operation Sovereign Borders patrols.
2. The Review found that each incursion occurred as a result of miscalculation of Indonesian maritime boundaries.
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 Economic Exclusion 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. s37(1)(a), 47E(c)&(d) [REDACTED]
9. The Review found that the initial identification of the incursions was the result of an ad hoc intervention by BPC planning staff s37(1)(a), 47E(c)&(d) [REDACTED].
10. 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.
11. The Review found that the instructions issued by s37(1)(a), 47E(c)&(d) [REDACTED] subsequent to the incursions have effectively remediated lapses in planning of patrols.

Background

52. 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.

53.



Application of the United Nations Convention on the Law of the Sea (UNCLOS)

54. The limits of national waters are generally described in the UNCLOS. Coastal states have sovereignty over their **territorial sea**. The breadth of the territorial sea must not exceed 12 nautical miles, measured from baselines determined in accordance with UNCLOS. The convention provides for three types of territorial sea baselines from which the territorial sea and other maritime zones are measured: **normal, straight and archipelagic**:

- a. The normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast and is usually coupled with straight lines closing bays and river mouths. In the case of bays the lines can be no longer than 24 nautical miles.
- b. UNCLOS allows for the establishment of straight baselines in circumstances where the coastline is deeply indented, or there is a fringe of islands along the coast and in its immediate vicinity. The end points of a straight baseline are calculated from the low-water mark of the relevant linked land features. The drawing of straight baselines must not depart to any appreciable extent from the general direction of the coast. Waters that are internal to a State by reason of being enclosed by a straight baseline are subject to the right of innocent passage.

- c. Under UNCLOS, an archipelagic state is defined as a State constituted wholly by one or more archipelagos, and may include other islands. The archipelagic baselines may join the outermost points of the outermost islands and drying reefs of the archipelago, provided that the main islands of the archipelago are included within such baselines, and the ratio of the area of water to the area of land is within certain specified limits. Archipelagic baselines must not depart, to any appreciable extent, from the general configuration of the archipelago. Where in place, the archipelagic baseline becomes the baseline from which the territorial sea and other maritime zones are measured. The sovereignty of an archipelagic State extends to the 'archipelagic waters' enclosed by archipelagic baselines subject to a number of limitations set out in Part IV of UNCLOS including the right of innocent passage. The term 'archipelago' is defined in a manner which clearly includes Indonesia.
55. In practical terms, the effect of straight baselines and archipelagic baselines is that the outer limit of the territorial sea may extend beyond 12 nautical miles from the nearest low-water mark on the land. This may have the effect in certain areas where the territorial seas claimed under archipelagic baselines encompass a larger sea area than would be the case if a normal baseline calculation was applied. Figure 1 depicts how this might theoretically be the case.

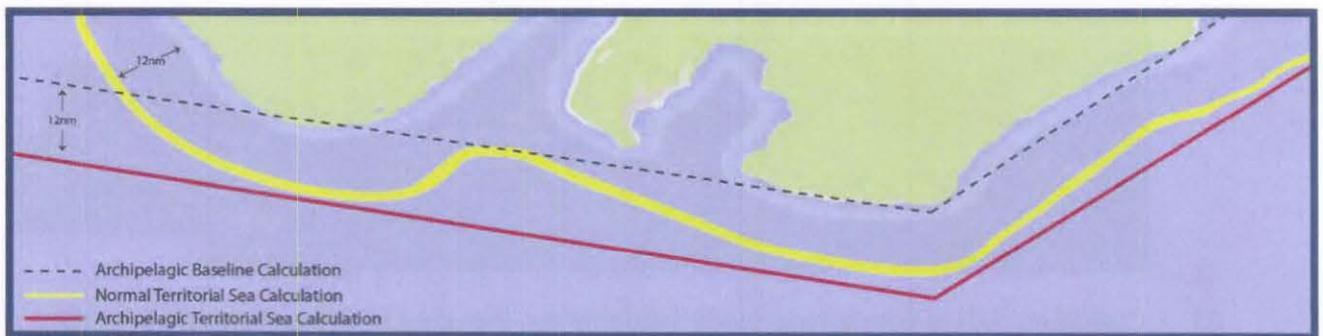


Figure 1. Difference between Normal and Archipelagic Baseline Calculations

Innocent Passage

56. Under UNCLOS, foreign vessels, including warships and government owned ships operated for non-commercial purposes, are allowed "innocent passage" through the territorial sea, archipelagic waters and waters enclosed by the straight baselines of a coastal State, provided that they comply with Article 19 of Part II. Article 19 sets out a range of activities which might be considered prejudicial to the peace, good order or security of a coastal State.
57. The **relevant zones** declared by Indonesia are based on UNCLOS and established under a web of Indonesian laws and regulations. Indonesia has a comprehensive set of archipelagic baselines which thus form the baseline from which much of the outer limit of Indonesia's 12 nautical mile territorial sea is measured. Indonesia has declared sovereignty over its internal waters, archipelagic waters and territorial waters and provides for 'peaceful crossing rights' (innocent passage).

Incidents

58. Between 1 December 2013 and 20 January 2014 the following Australian vessels entered Indonesian waters

[REDACTED]

59. [REDACTED]

60. Entry to Indonesian waters was inadvertent, arising from miscalculation of the maritime boundaries, in that the calculation did not take into account archipelagic baselines

[REDACTED]

61. Classified details concerning these incidents are included at Annex A to this Chapter.

Task Oversight

62. The tasks assigned to the vessels identified above required their operation proximal to Indonesian waters. The task instructions however, specifically precluded entry to Indonesian waters

[REDACTED]

63. [REDACTED]

64. [REDACTED]

65. [REDACTED] The incursions were only discovered on 15 January after a review [REDACTED] planning staff [REDACTED] who realised that the details of the post patrol report [REDACTED] did not correlate with the generic planning evaluation for OSB patrols on which the operational instructions were predicated.

66. Following discovery of the incursion on 15 January 2014, COMBPC promptly advised CEO ACBPS, CDF, CJATF and the Australian Government on that day. A preliminary assessment of operations across the period was instigated. [REDACTED] Australian Government notified the Indonesian Government of the incursions on 17 January 2014. These incursions were promptly and correctly advised to senior Australian Officials, Government Ministers and in turn the Indonesian Government based on the conclusions reached by the preliminary assessment. This internal review of the incidents and circumstances was ordered by the A/CDF and CEO ACBPS on 21 January 2014.

67. [REDACTED]

68. Classified details concerning Task Oversight are included at Annex B to this chapter.

Force Assignment and Preparation

69. RAN and ACBPS vessels are assigned to COMBPC for duties under OSB under a formal Command and Control handover process. Further, the nature of operations often requires augmentation of standard crews with specialist team members or with additional equipment. RAN and ACBPS vessels receive mission specific training to supplement general skills prior to force assignment. HQJTF639 and the AMSOC advice is that comprehensive INCHOP briefings are provided to all assigned units.

[REDACTED]

70. ^{s33(a)(iii)} [REDACTED] RAN Commanders are trained to be cognisant of the boundaries of foreign waters and the means by which these are calculated. Their ACBPS counterparts are not mariners by profession, but law enforcement specialists who would not therefore have the requisite experience or training to reasonably expect that they would have a clear understanding of the differences in the way that territorial waters may be calculated in an archipelago. [REDACTED]

^{s37(1)(a), s47E(c)&(d), 47E(d)} [REDACTED]

71. While the information upon which to base calculations of maritime boundaries is readily available from unclassified sources, ^{s37(1)(a), s47E(c)&(d), 47E(d)} [REDACTED]

[REDACTED]

72. Classified details concerning Force Assignment and Preparation are included at Annex C to this chapter.

Recommendation 1

It is recommended that CJOPS and DCEO (BE) consider review and monitoring processes undertaken by HQJTF639 and the AMSOC 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

§ 47E(d)
[Redacted]

Recommendation 5

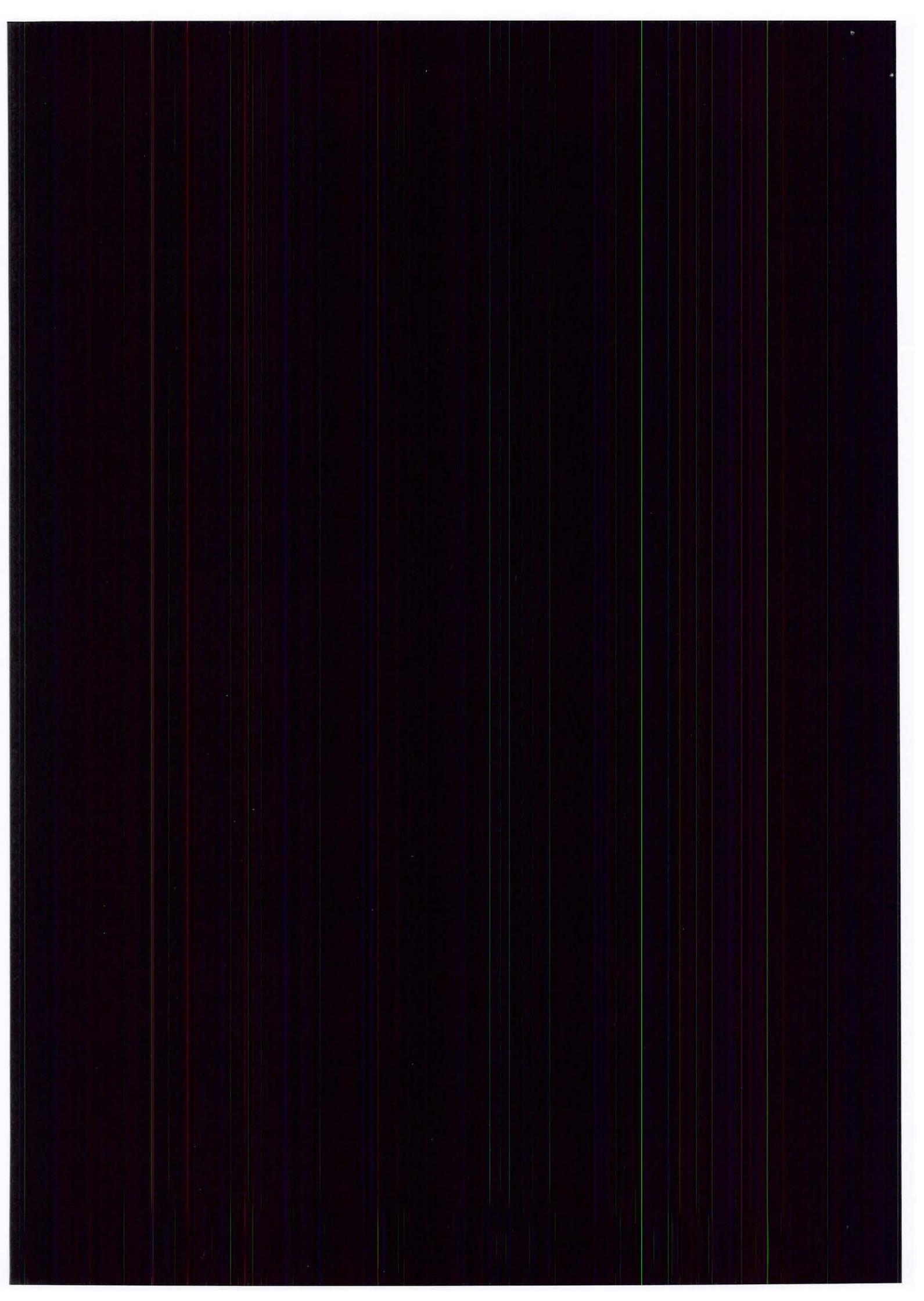
§ 37(1)(a), § 47E(c)&(d)
[Redacted]

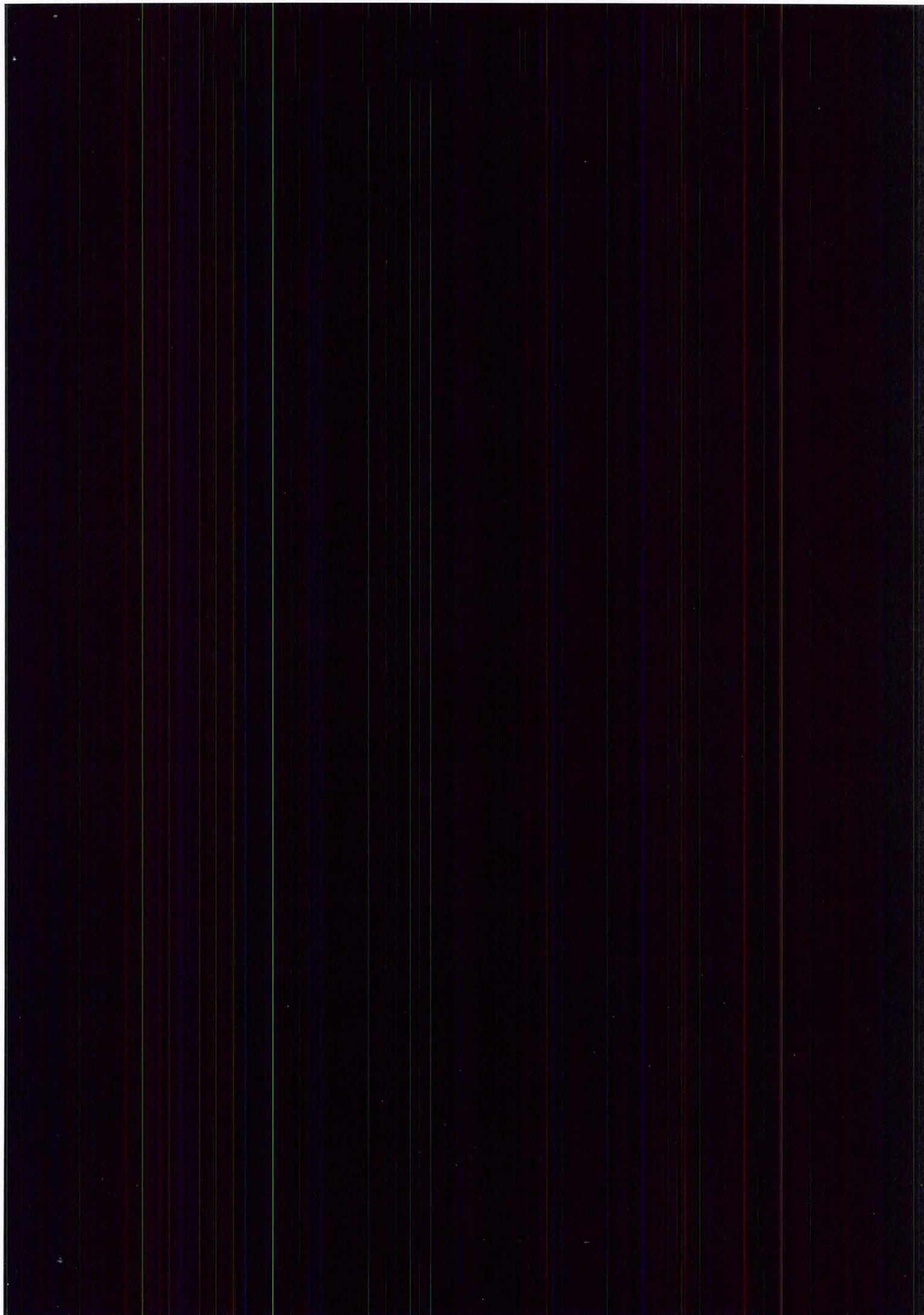
Recommendation 6

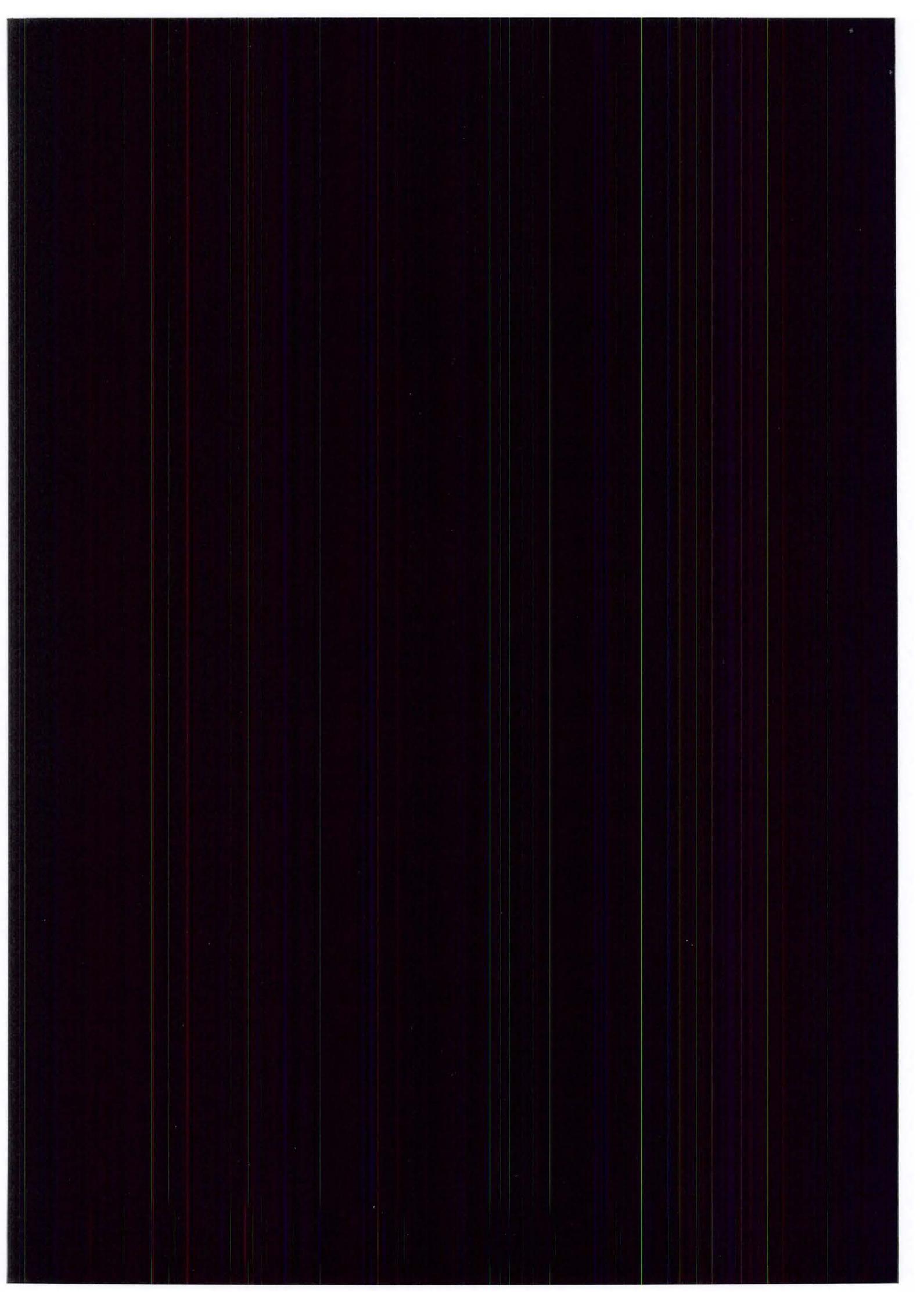
§ 47E(d)
[Redacted]

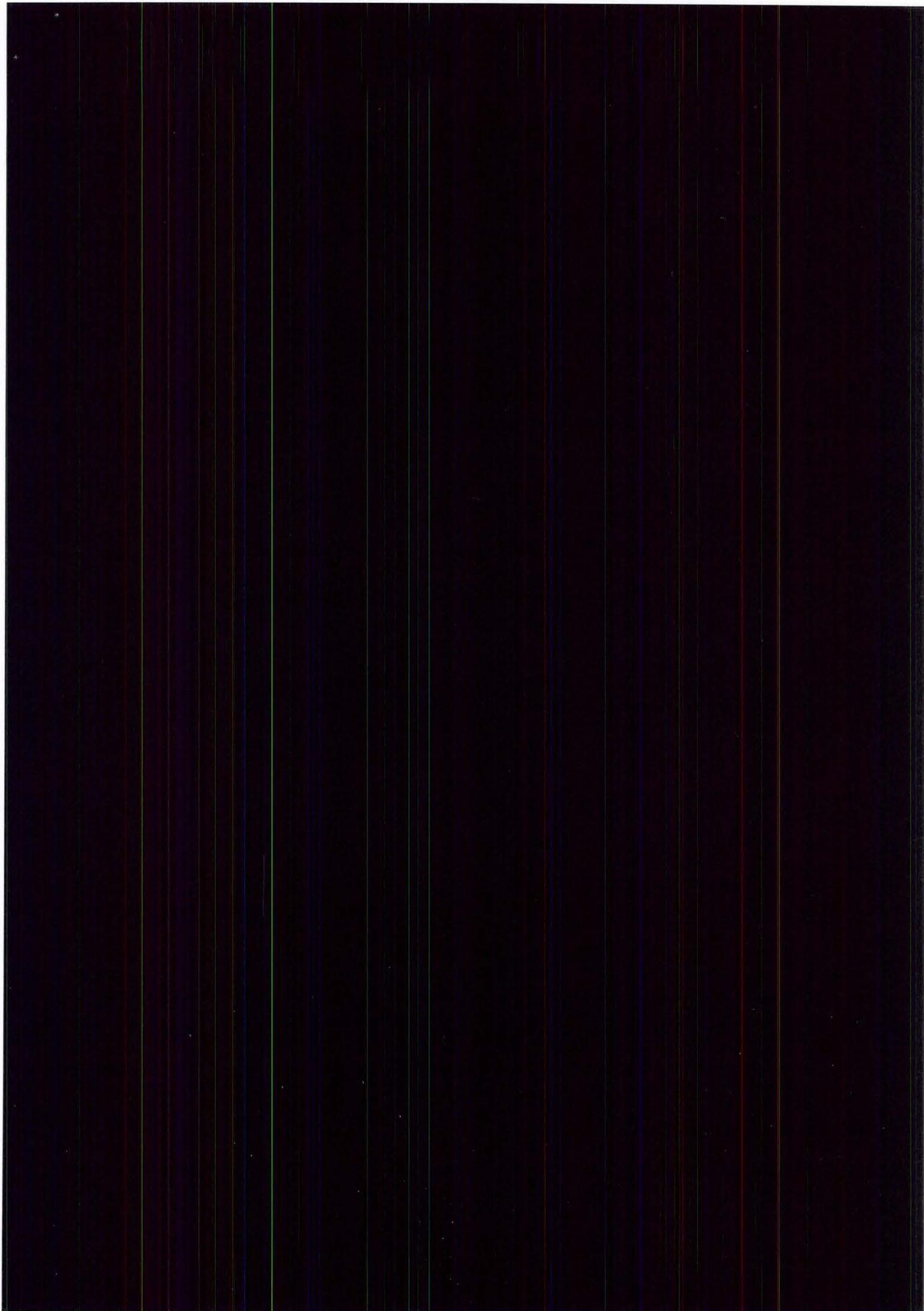
Recommendation 7

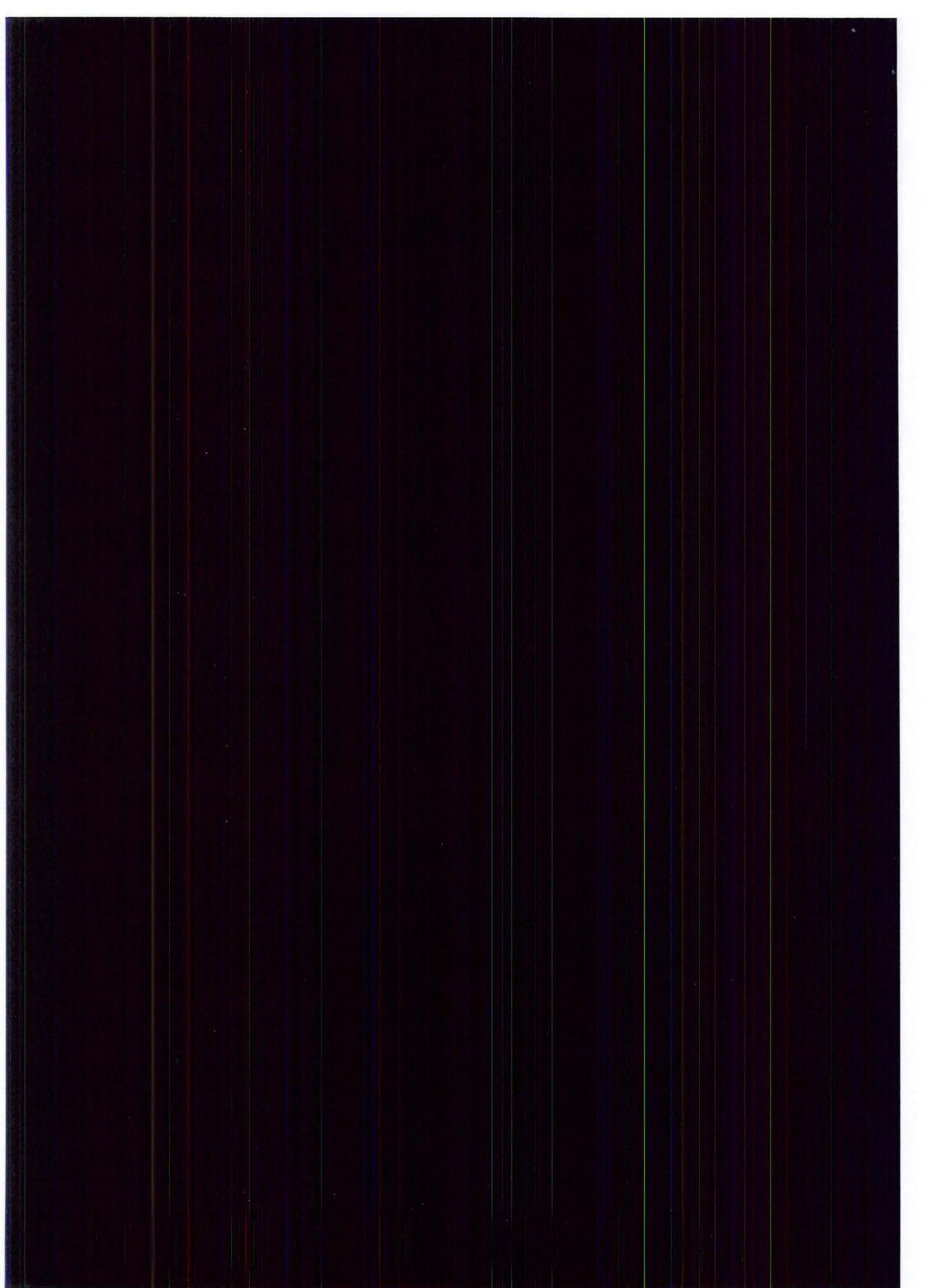
It is recommended that Border Force Capability Division review operational training provided to ACBPS Commanding Officers and Enforcement Commanders to ensure a tactical appreciation of UNCLOS.

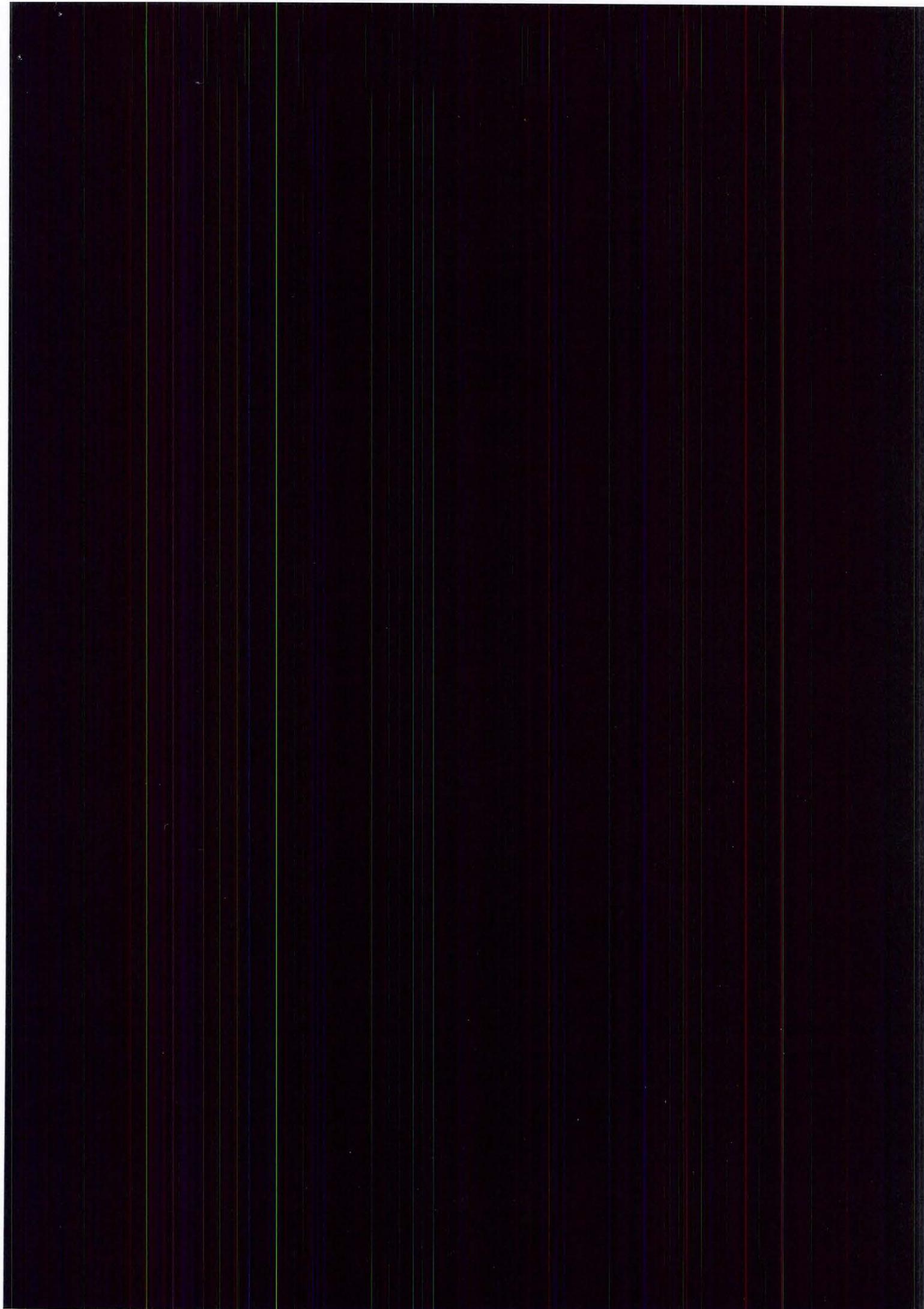


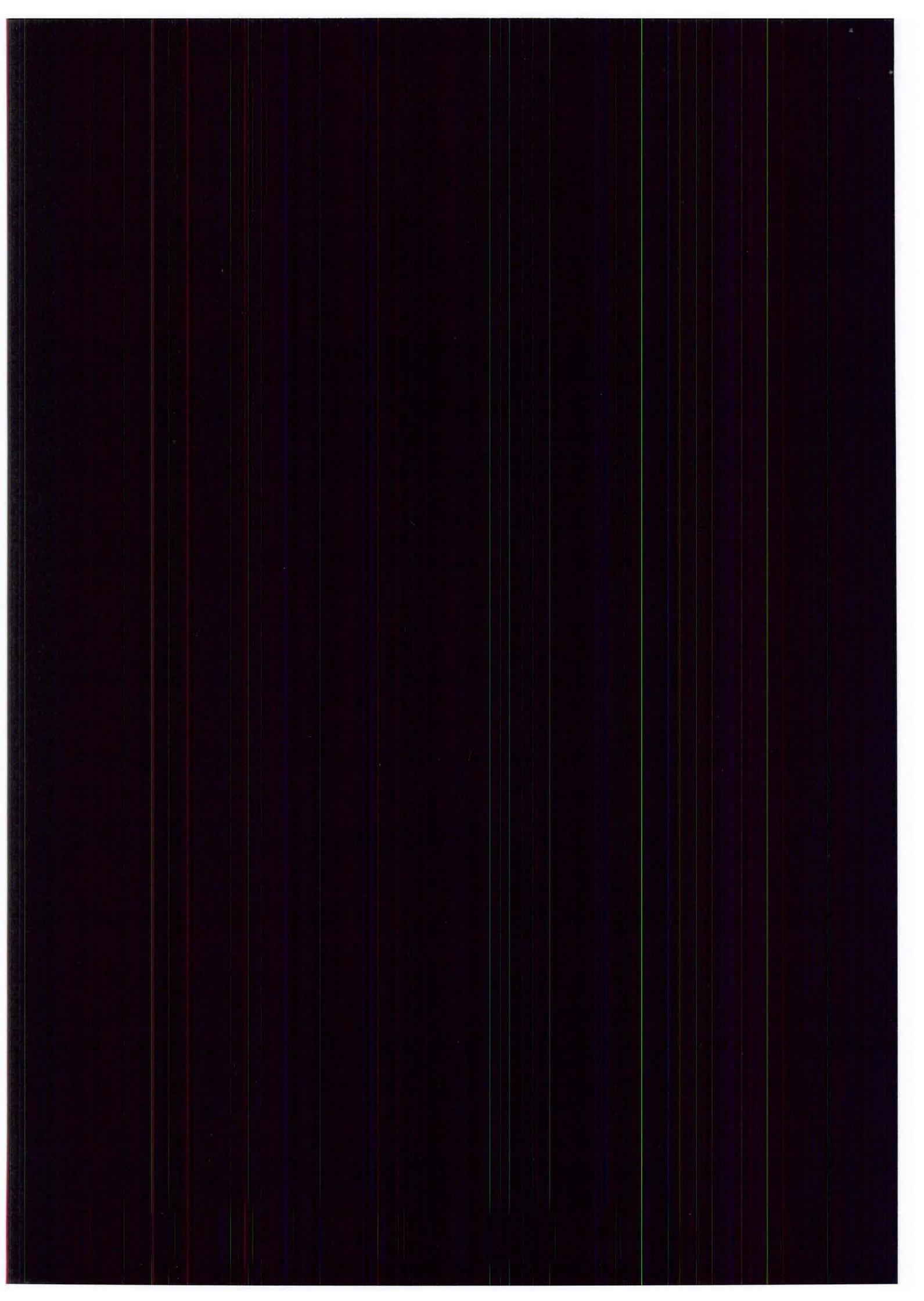


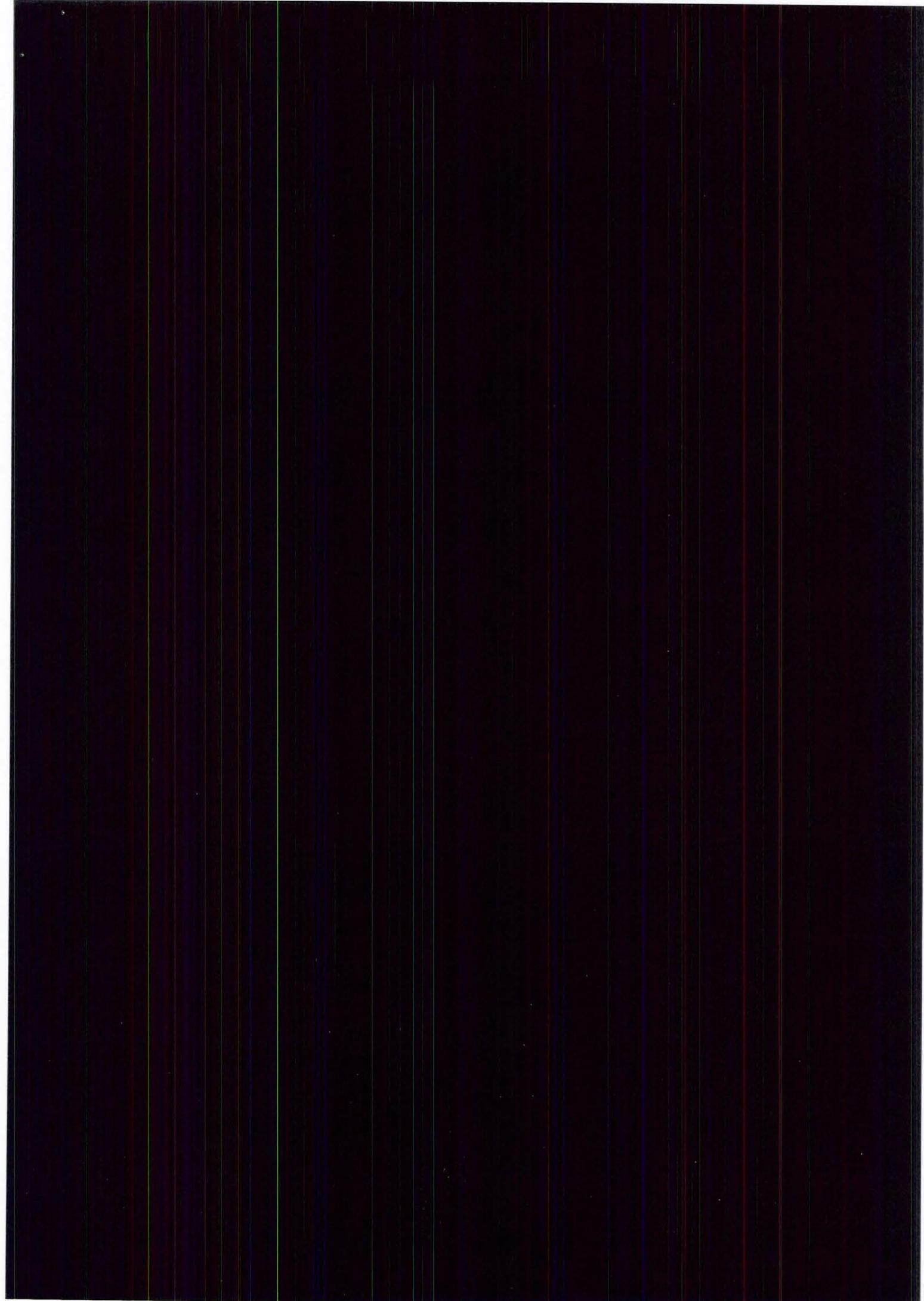


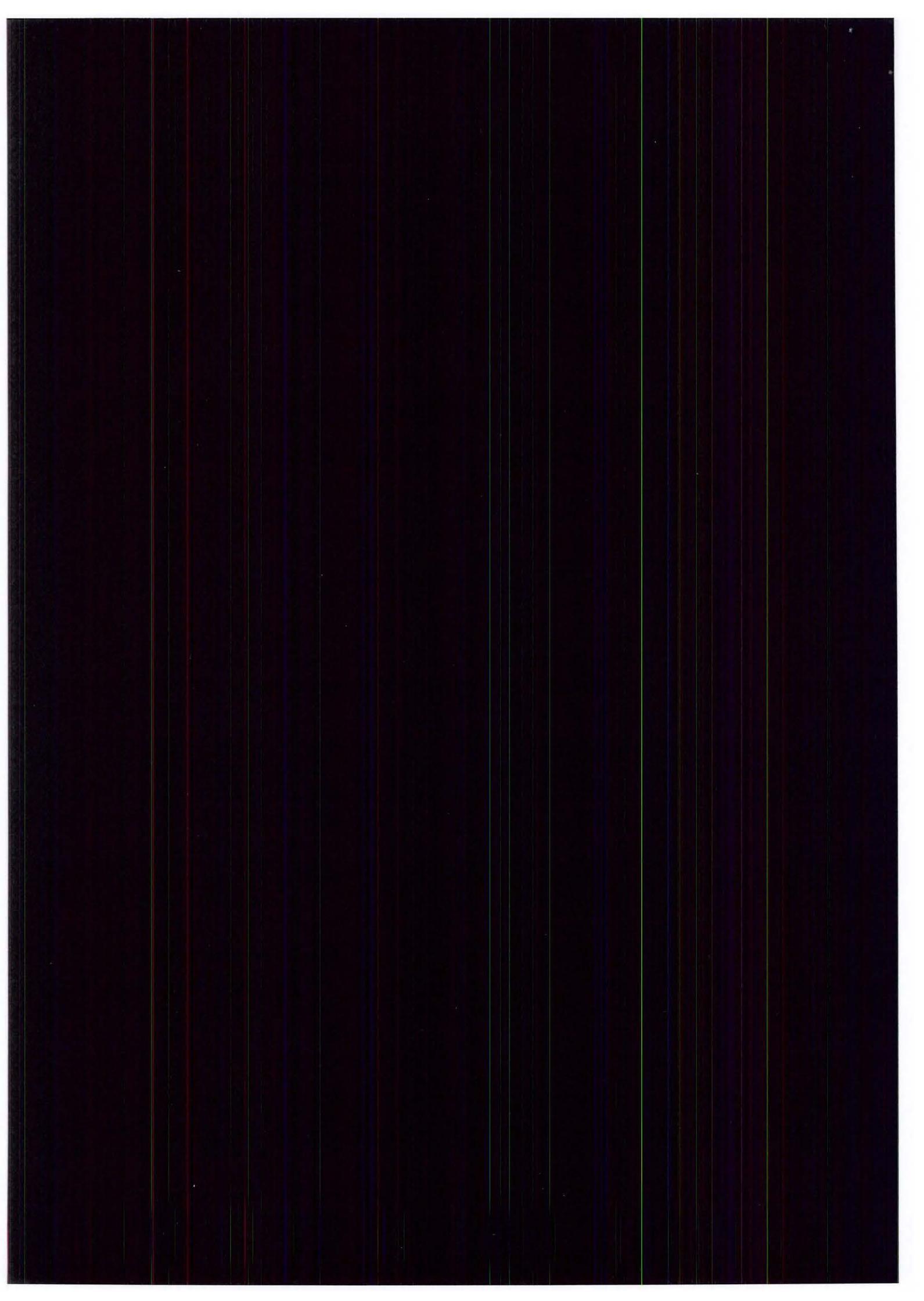


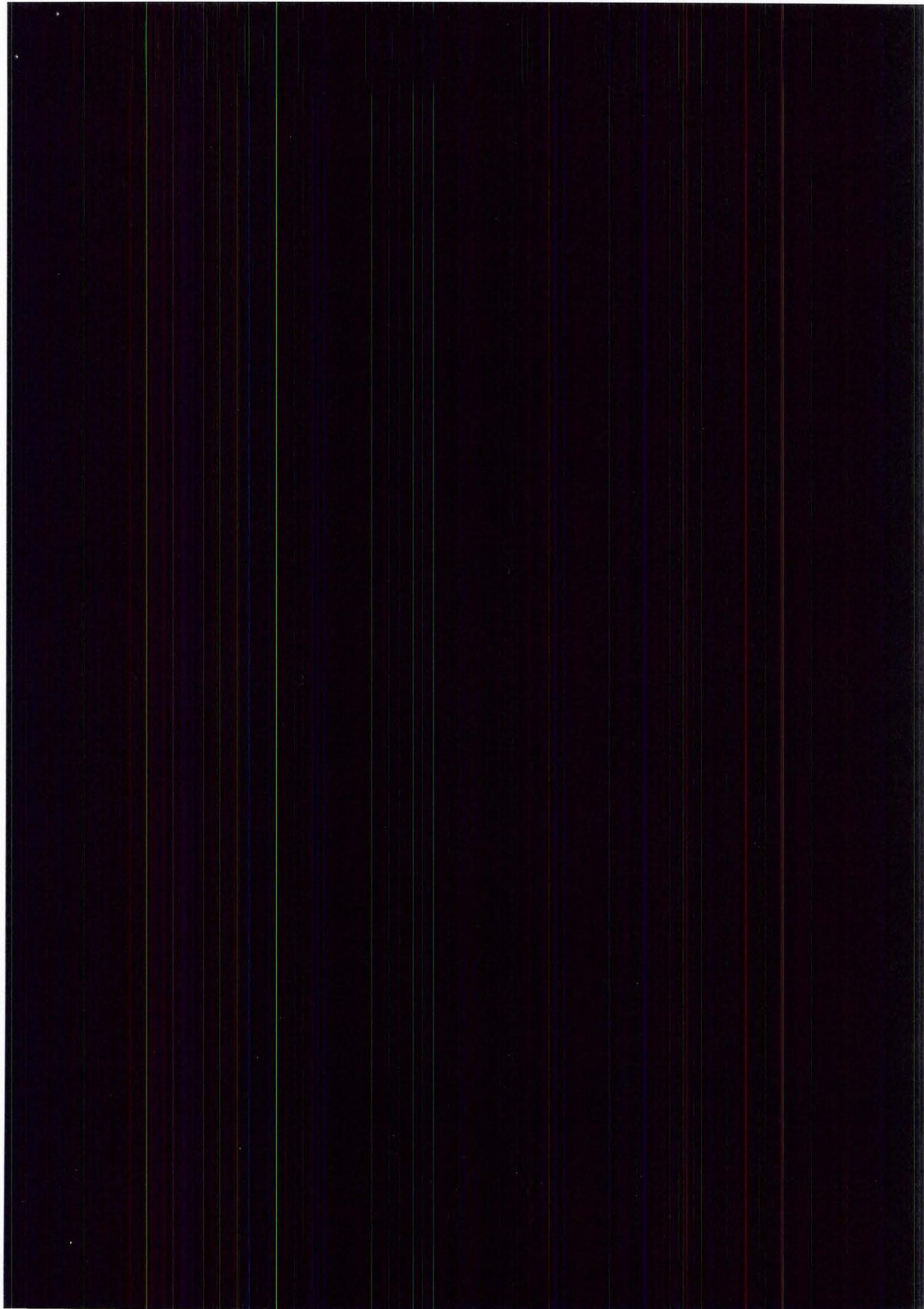




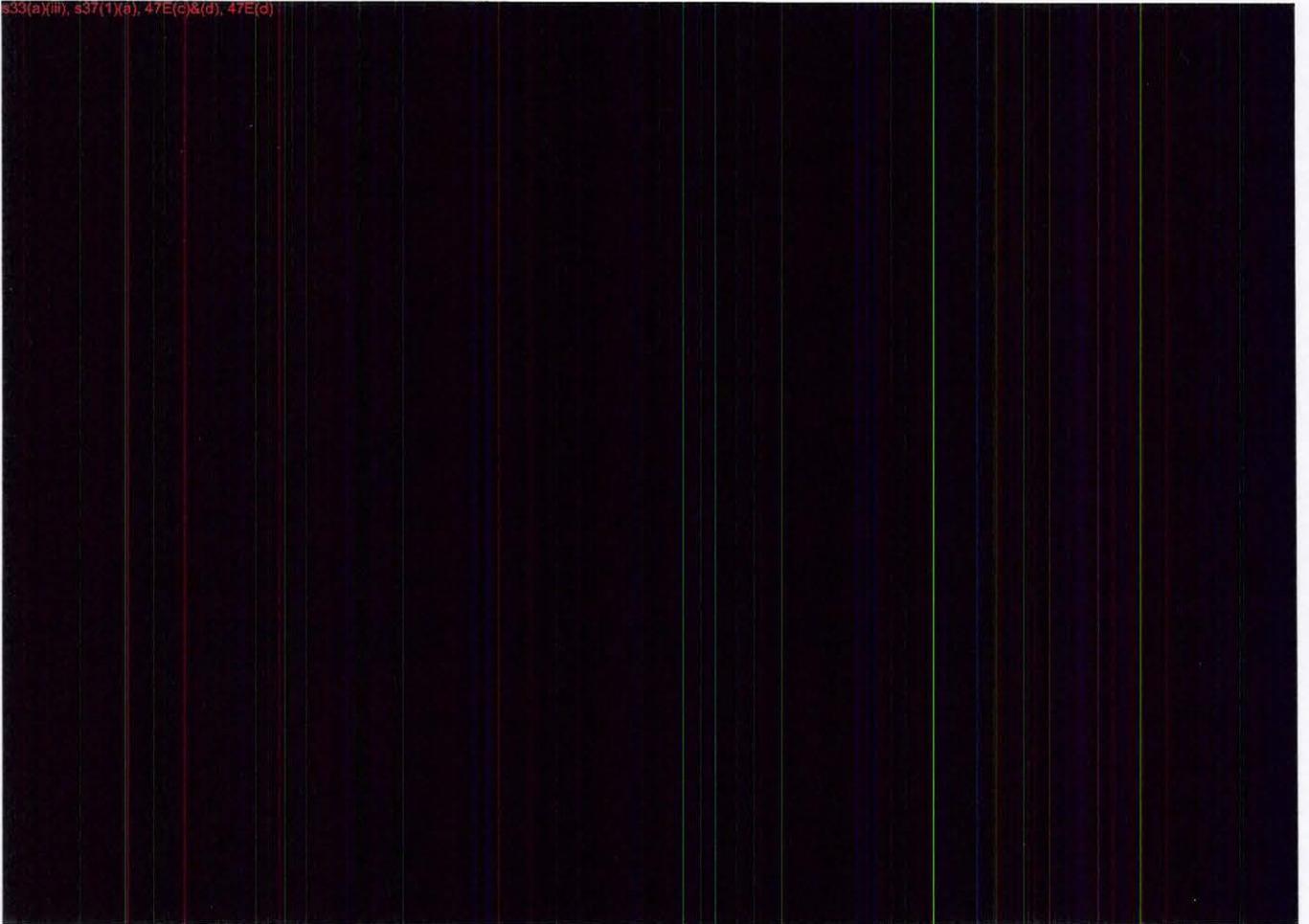








s33(a)(iii), s37(1)(a), 47E(c)&(d), 47E(d)

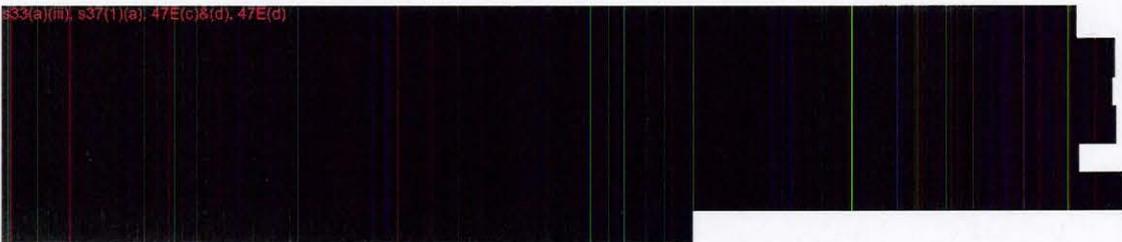


105. Australian Government policy relating to Operation Sovereign Borders is described in the Coalition's Policy on Regional Deterrence Framework to Combat People Smuggling of August 2013.

s33(a)(iii), s37(1)(a), 47E(c)&(d), 47E(d)



106. s33(a)(iii), s37(1)(a), 47E(c)&(d), 47E(d)



107.

s33(a)(iii), s37(1)(a), 47E(c)&(d), 47E(d)
[Redacted]

- 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 NM from Indonesia's archipelagic baseline.

s33(a)(iii), s37(1)(a), 47E(c)&(d), 47E(d)
[Redacted]

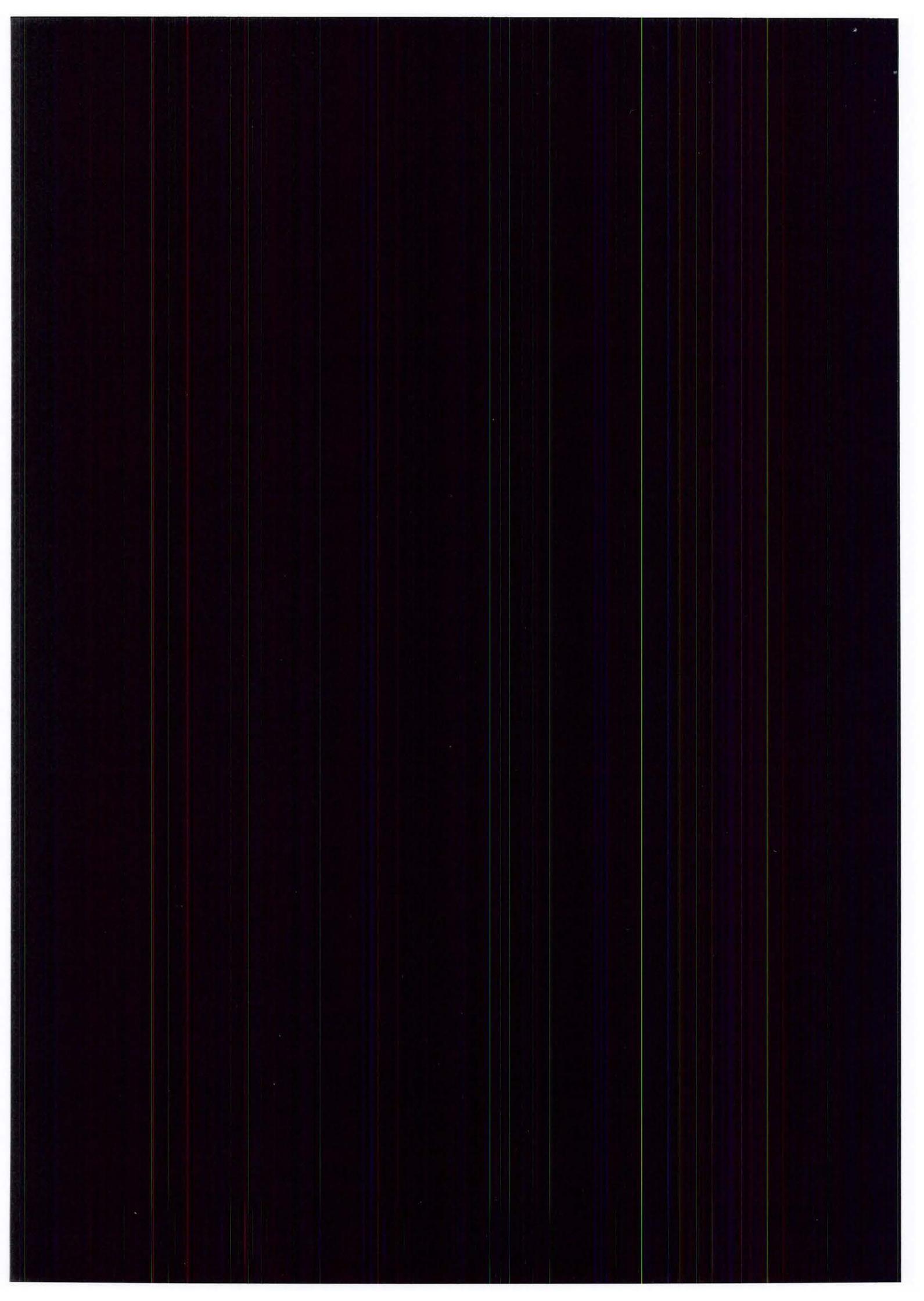
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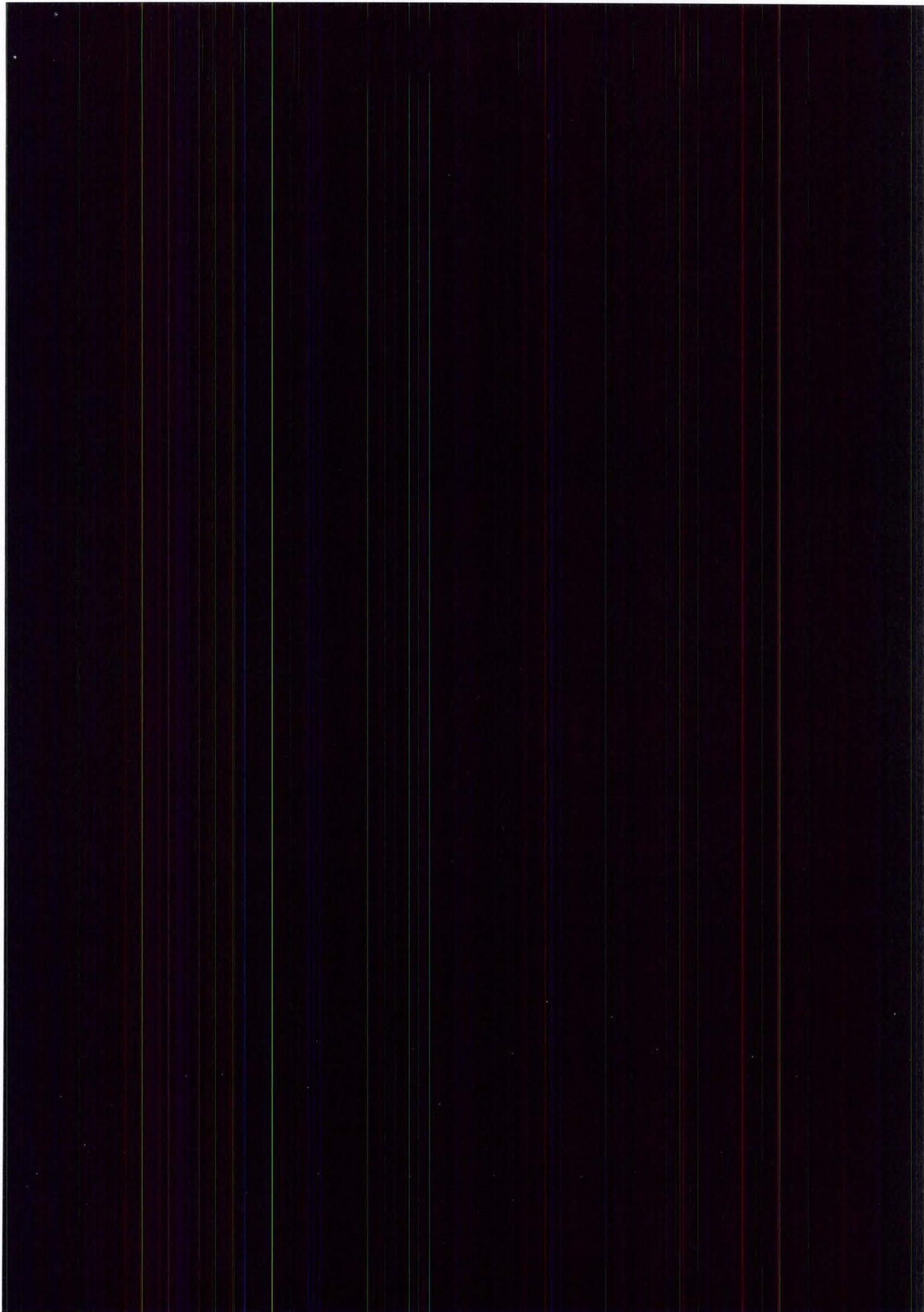
s37(1)(a), 47E(c)&(d), 47E(d) [Redacted], BPC coordinates awareness, response, mitigation and elimination activities against risks posed by maritime security threats. BPC is also the lead for the Detect, Intercept and Transfer Task Group (DDITG) of the Operation Sovereign Borders JATF. s33(a)(iii), s37(1)(a), 47E(c)&(d), 47E(d)

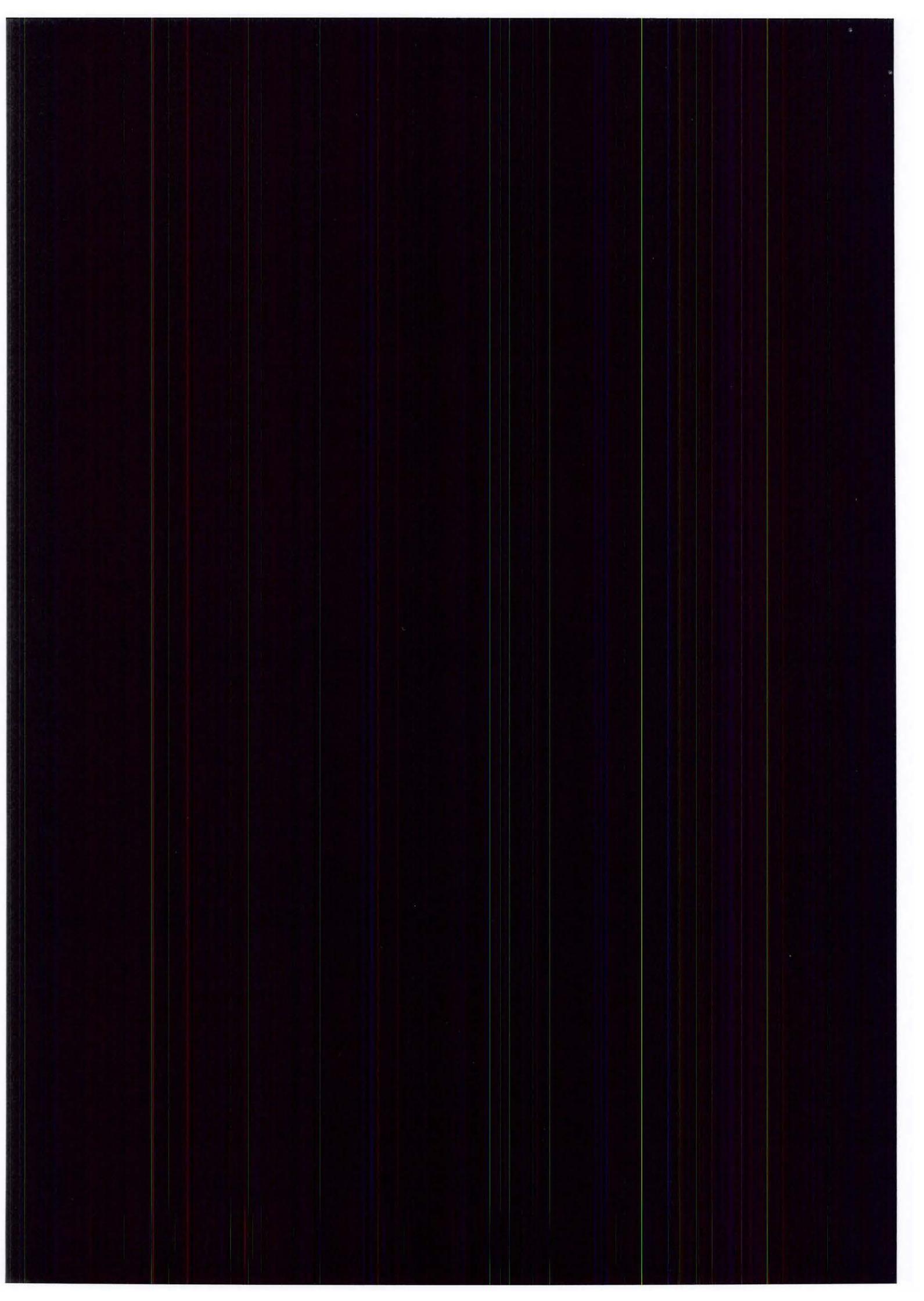
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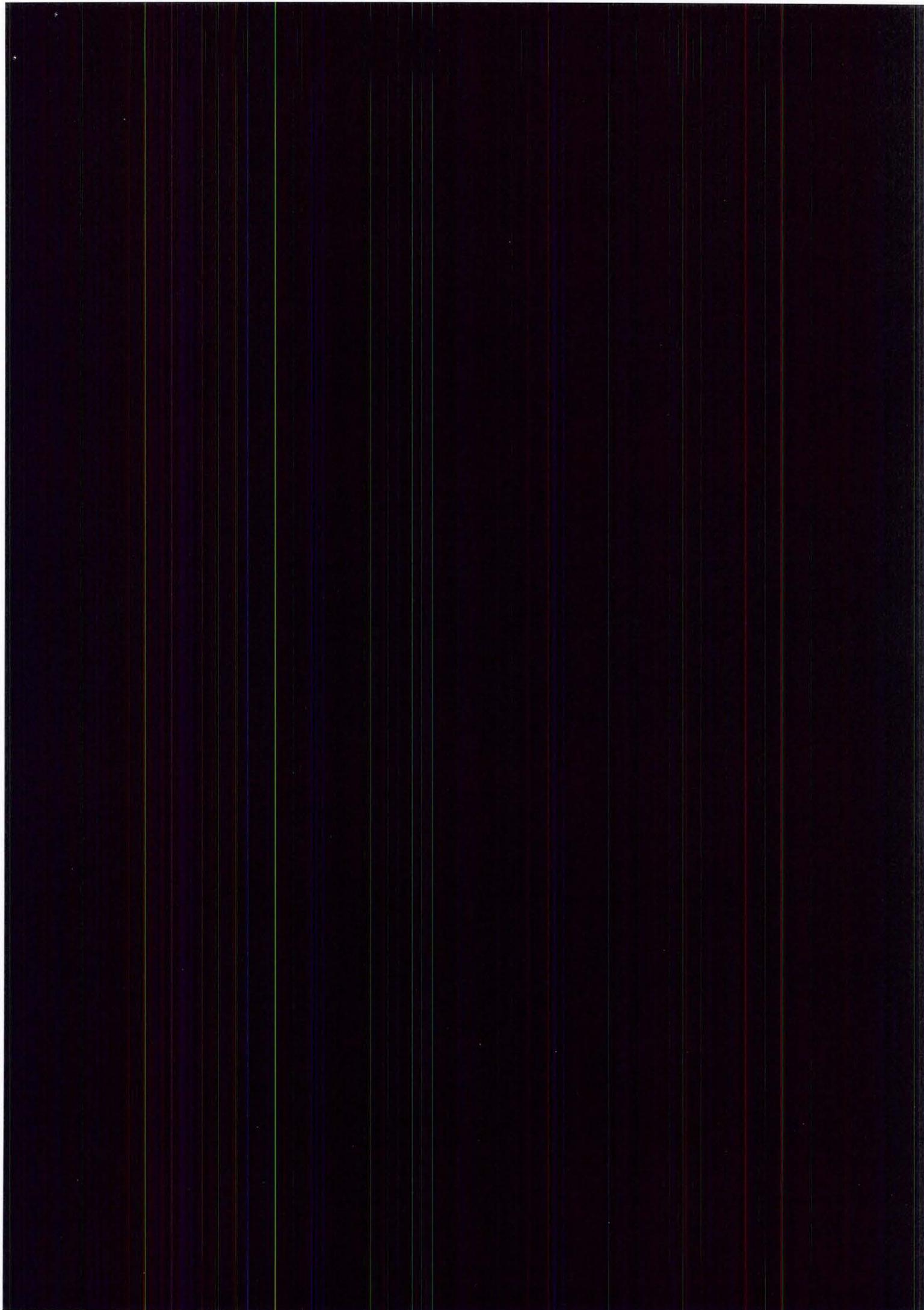
109.

s33(a)(iii), s37(1)(a), 47E(c)&(d), 47E(d)
[Redacted]

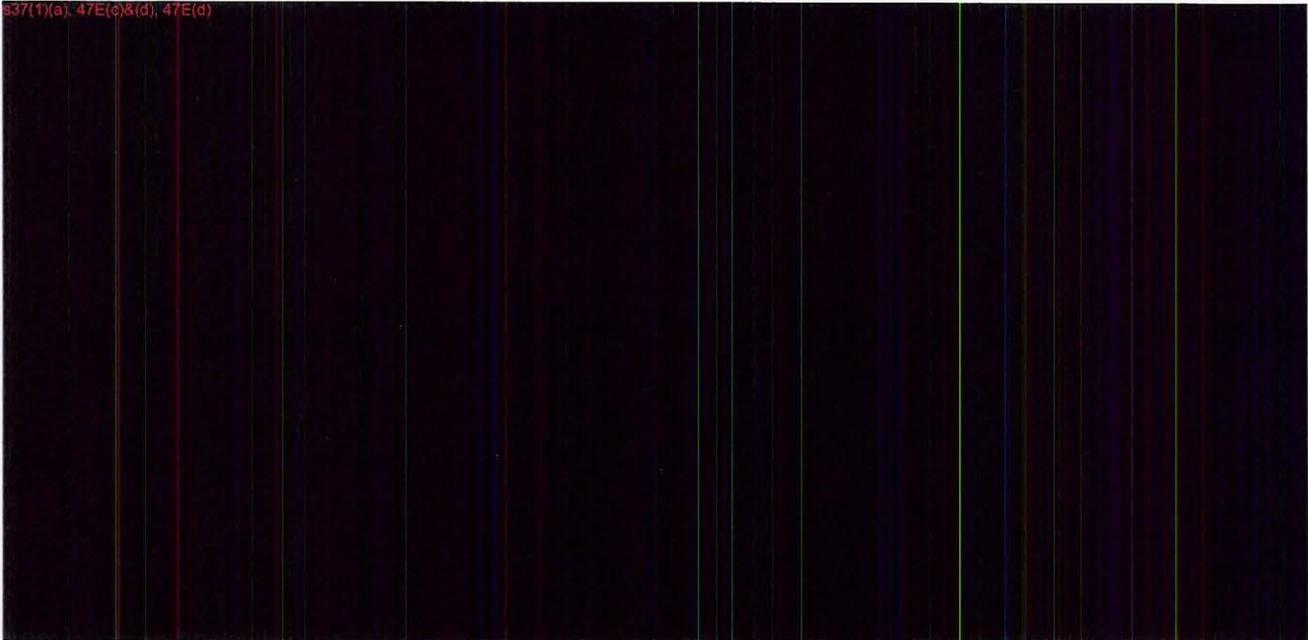








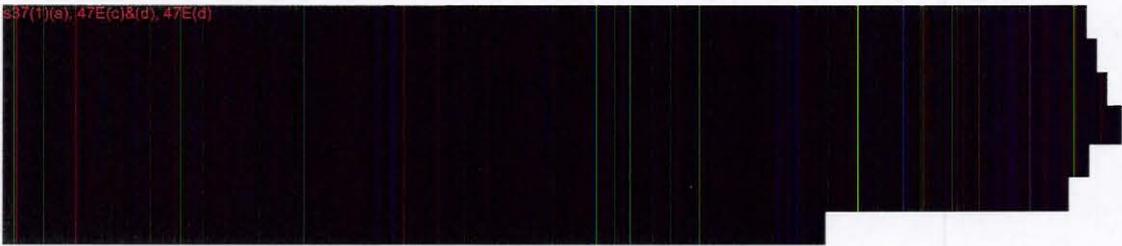
837(1)(a), 47E(c)&(d), 47E(d)



130. The ADF and ACBPS provide suitably trained personnel and units to Commander Border Protection Command for employment in Operation Sovereign Borders. The ADF Services and Border Force Capability Division are responsible for raising, training and sustaining forces for assignment to BPC. This includes certification that forces are mission ready to ensure people, platforms, equipment and support systems are qualified, governed and supported so as to conduct safe and effective BPC operations.¹

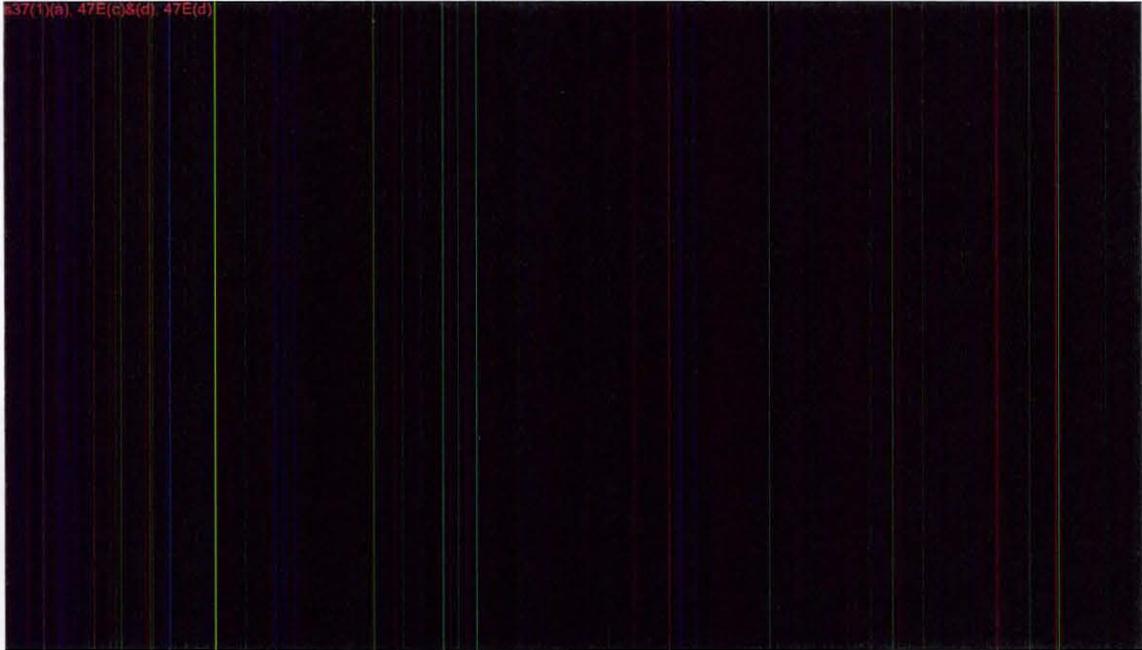
131. Chief of Navy is responsible as the Mounting Authority to ensure RAN Force Elements are able to meet the operational commanders' intent. Director General Maritime Operations issues Warning Orders for units assigned to or likely to be assigned to an operation as detailed in the Navy's Force Generation Plan. Maritime Operations Branch conducts Operational Planning Groups to frame the mission, the expected conduct of operations, Commanders' intent and tasks RAN Force Elements may be expected to undertake. From this a Mission Directive is generated and for each Force Element or unit: this specifies requisite levels of capability that the assigned units require.²

132.



¹ Operation MARITIME PROTECTOR Operations Order
² Australian Fleet Memorandum 28/2011 – RAN BATTLEWORTHYNESS PROCESS

133.



134.

135.

136. Within the ACBPS the Border Force Capability Division was responsible for the identification, evaluation, acquisition and delivery of ACBPS capability, operational infrastructure and appropriately skilled people.⁵

137. The National Director Border Force Capability Division exercises Full Command on behalf of the CEO. The National Director Border Force Capability Division owns (in the commercial sense), directs, coordinates and controls the Marine Unit i.e. all marine personnel, assets and resources on behalf of the CEO. This includes all raise, train and sustain aspects of the Marine Unit to enable it to operate safely at all times to achieve the rates of effort required to be delivered to BPC.⁶

138. Unlike ADF Force Elements that may be assigned to different missions, Operation Sovereign Borders is the only operation to which ACV's are routinely assigned.⁷

139. The National Director of Border Force Capability Division authorises the transfer of control of ACBPS assets from one authority to another (i.e. ACBPS to COMBPC) through a Change of Operational Control procedure (CHOP). Prior to this an advance intention to reassign forces is provided. This may be advised as part of an operational order, another operational directive or by means of electronic communication. The advance notice of CHOP specifies any operational limitations of the BPC asset.⁸

s37(1)(a), 47E(c)&(d), 47E(d)

⁵ SAFETY MANAGEMENT SYSTEM FOR AUSTRALIAN CUSTOMS AND BORDER PROTECTION SERVICE SHIPS AND SMALL VESSELS

⁶ SAFETY MANAGEMENT SYSTEM FOR AUSTRALIAN CUSTOMS AND BORDER PROTECTION SERVICE SHIPS AND SMALL VESSELS

⁷ Observation by Review Team

⁸ AUSTRALIAN CUSTOMS AND BORDER PROTECTION SERVICE PRACTICE STATEMENT

140. When control of an ACBPS asset is transferred from one authority to another the CHOP reaffirms any operational limitations on the asset and any potential limitations that may be identified in the future. This allows the ACBPS asset to be employed in accordance with its capability statement.⁹ §37(1)(a), 47E(c)&(d), 47E(d)

[Redacted]

141. For ACBPS assets assigned to BPC, day to day control and any operational limitations are routinely updated via the daily maritime capability summary¹² and the daily maritime operations briefing to ensure BPC can employ the asset within the limits of its capability.

142. §37(1)(a), 47E(c)&(d), 47E(d)

[Redacted]

143.

144.

145.

146.

147.

⁹ Australian Customs and Border Protection Capability Statement

¹⁰ §37(1)(a), 47E(c)&(d), 47E(d)

¹² Example Maritime Operational Capability Daily Capability Summary Report

¹³ §37(1)(a), 47E(c)&(d), 47E(d)

[Redacted]

148. ¹⁹ s37(1)(a), 47E(c)&(d), 47E(d)

149.

150.

151. ACV's *Triton* and *Ocean Protector* are contracted to ACBPS to provide near continuous support to operation MARITIME PROTECTOR.²² ACBPS assign a number of Marine Unit Enforcement Officers under the direction of an Enforcement Commander.²³ ²³ s37(1)(a), 47E(c)&(d), 47E(d)

[Redacted]

152. ¹⁹ s37(1)(a), 47E(c)&(d), 47E(d)

153.

¹⁹ s33(a)(ii), s37(1)(a), 47E(c)&(d), 47E(d)

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²² Customs Contractor Operating Instructions

²³ Australian Customs and Border Protection Service Boarding Operations Manual

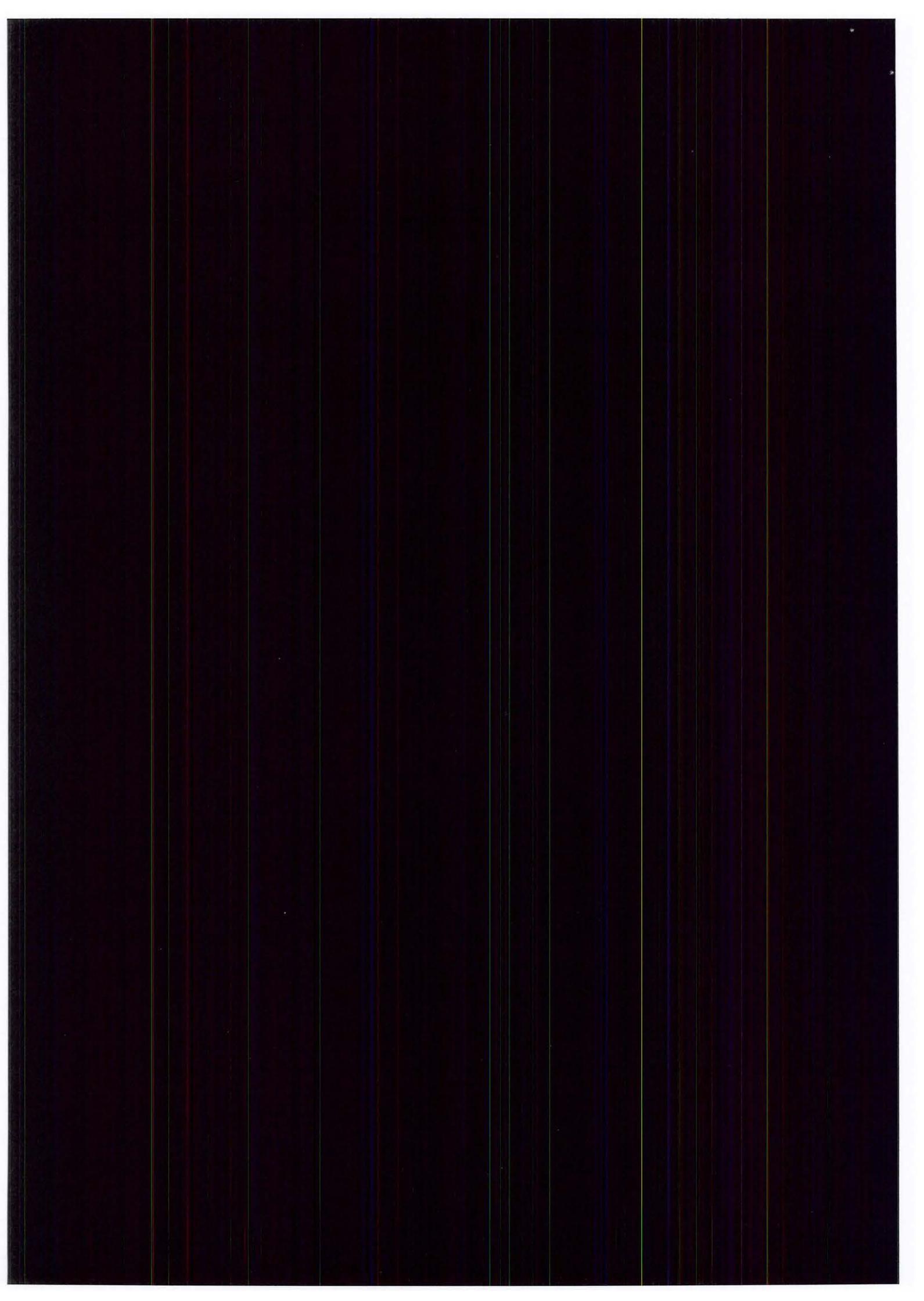
²⁴ s33(a)(ii), s37(1)(a), 47E(c)&(d), 47E(d)

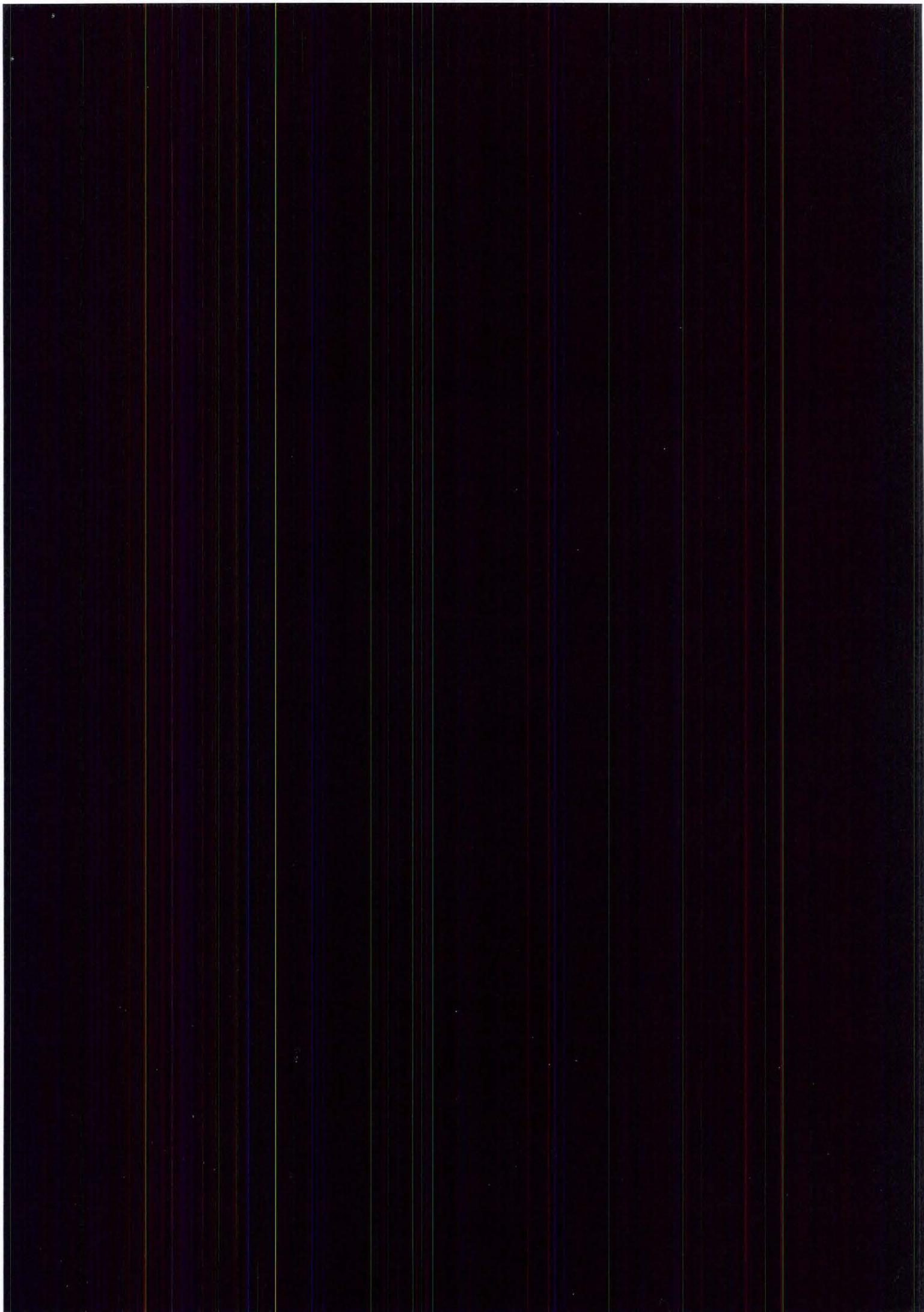
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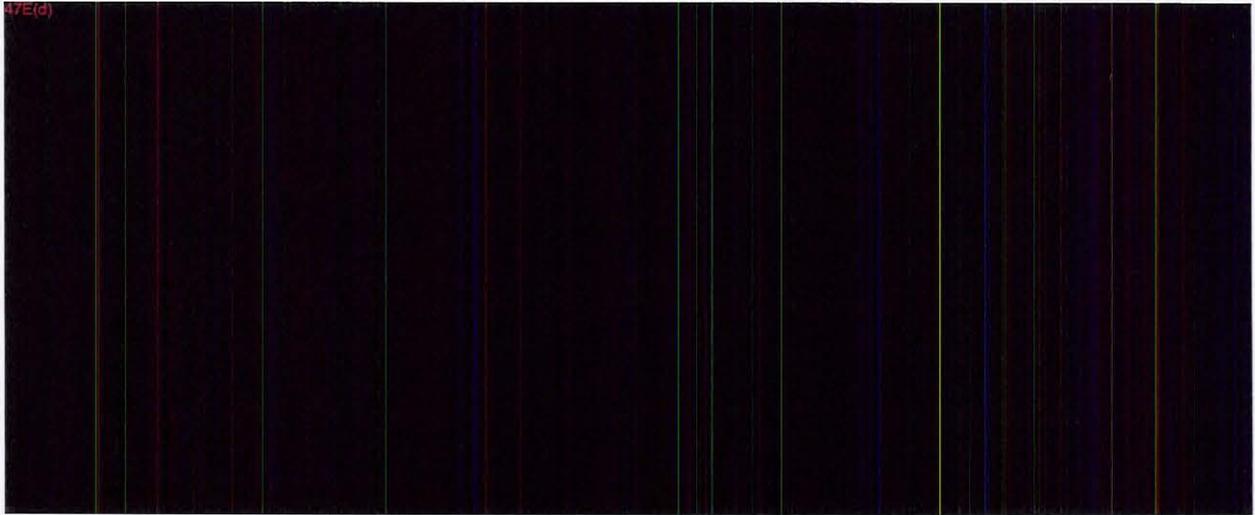
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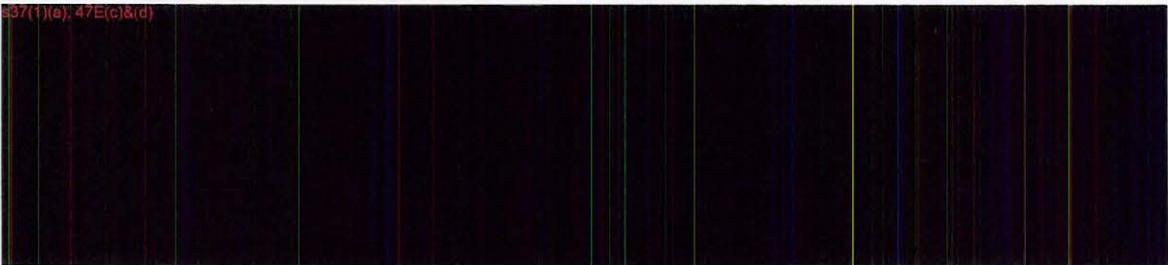
47E(d)



Training

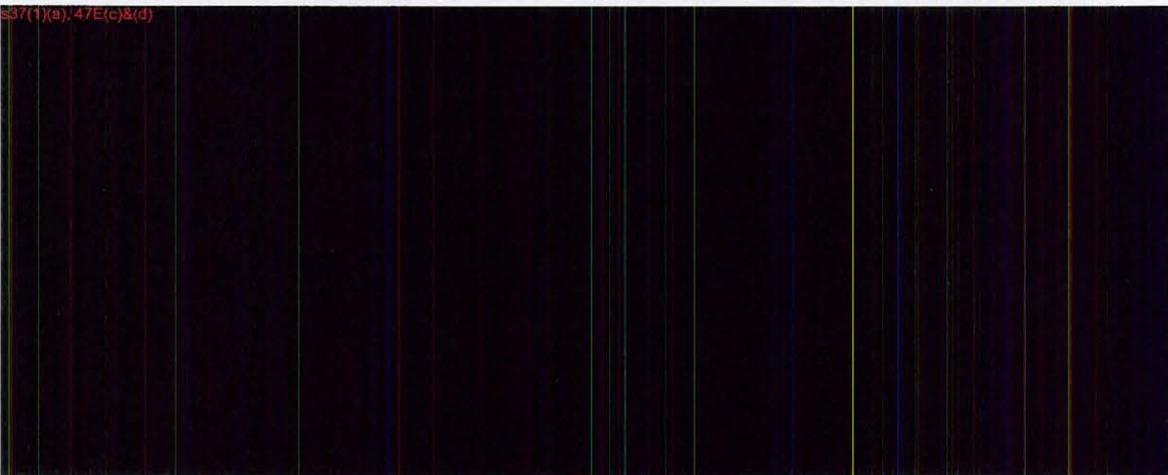
165.

b37(1)(a), 47E(c)&(d)



166.

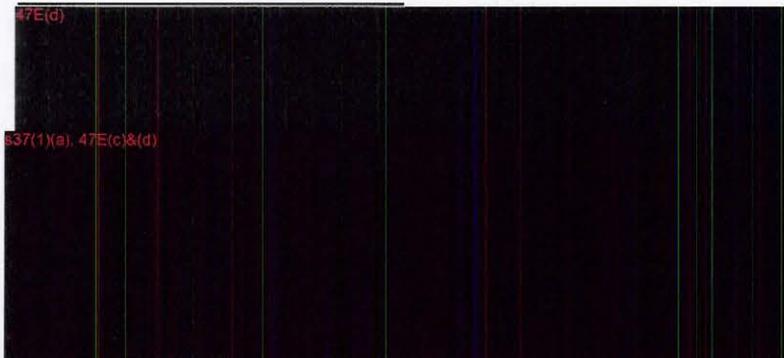
b37(1)(a), 47E(c)&(d)



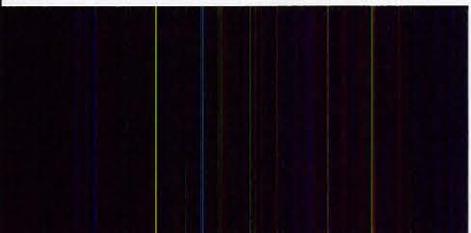
167.



47E(d)



b37(1)(a), 47E(c)&(d)



168. ACBPS contract ACV *Ocean Protector* and ACV *Triton* to conduct ACBPS tasks for a prescribed number of days each year. The vessels are operated under contract with an Enforcement Commander commanding ACBPS personnel in the conduct of operations as directed by BPC or another Controlling Agency.⁶² The Masters of ACVs *Triton* and *Ocean Protector* hold Unrestricted Masters qualifications (formally Masters Class 1).⁶³
169. The Masters of vessels contracted by ACBPS do not receive specific training in UNCLOS.⁶⁴ ACBPS personnel have a basic understanding of UNCLOS and Australia's Maritime Zones, with little focus on its operational application outside the Australian Maritime Domain.⁶⁵ The ACBPS Legislation for Customs Marine Unit Officers Learning guide provides information on Maritime zones and the applicable powers of Marine Unit Enforcement Officers have in each zone; however this is purely from an Australian domestic perspective. It does not mention archipelagic states or baseline calculation methods⁶⁶. The ACBPS Boarding Operations Manual makes reference to Maritime Boundaries but only to say that information pertaining to Maritime Boundaries can be found on the ComLaw website.⁶⁷
170. The Master of any vessel is responsible for safety on board and the safe navigation of their vessel. Where vessels are contracted for use by the Australian Government specifically in this case the ACBPS has a duty of care to ensure that they have the requisite knowledge to conduct contracted services.
171. The Masters of ACBPS assets and the embarked Enforcement Commanders are not appropriately trained to make an assessment as to the veracity of a position with respect to international Maritime Boundaries.⁶⁸ §37(1)(g), 47E(c)&(d)
172. Within the two Headquarters there are varying levels of qualification and experience.
173. ACBPS personnel employed within the AMSOC conduct a three week AMSOC Border Protection Command AMSOC Operations course⁷⁰. This gives ACBPS personnel employed within the AMSOC a basic understanding of the roles and responsibilities of the AMSOC and personnel within as well as an understanding of how operations are conducted.⁷¹
174. ADF personnel assigned to HQJTF639 generally have a greater understanding of tactical operational issues and may have completed a number of operations planning courses throughout their military training. This may include: Introduction to Joint Operations, Joint Operations Planning Course, Amphibious Operations Planning Course and various modules of their respective progression training.⁷²

⁶² Australian Customs and Border Protection Service Boarding Operations Manual

⁶³ Marine Order 3, Customs Contractor Operating Instructions

⁶⁴ Submission to Joint Review Board in response to RFI 14/2014

⁶⁵ ACBPS Welcome and Introduction course module

⁶⁶ Legislation for Customs Marine Unit Officers – A Learners Guide

⁶⁷ Australian Customs and Border Protection Service Boarding Operations Manual

⁶⁸ Review Team Observation

⁶⁹ §37(1)(g), 47E(c)&(d)

⁷⁰ BPC Operations Course Modules and Outcomes

⁷¹ BPC Operations Course Modules and Outcomes

⁷² Review Team Observation



Australian Government
Australian Customs and
Border Protection Service
CHIEF EXECUTIVE OFFICER



☆☆☆☆
Chief of the Defence Force

MINUTE PAPER - DIRECTIVE

To:



Copy: Commander Joint Agency Task Force, Operation Sovereign Borders
Deputy Chief Executive Officer (Border Enforcement)
Chief of Navy
Chief of Joint Operations
Commander Border Protection Command

Joint Review relating to Operation Sovereign Borders
Entry of Australian Vessels into Indonesian waters December 2013 – January 2014

Preamble

Operation Sovereign Borders is a military led, border security operation assisted by a number of Commonwealth agencies including ACBPS and Defence. The Operation Sovereign Borders Joint Agency Taskforce (JATF) was established to ensure a whole of government effort to combat people smuggling and protect Australian borders.

As reported by the Minister for Immigration and Border Protection and the Commander Joint Agency Taskforce (CJATF) 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.

The Minister for Immigration and Border Protection and the Commander JATF announced a joint review by the Australian Defence Force (ADF) and the Australian Customs and Border Protection Service (ACBPS).

This directive is made jointly by CDF and the CEO of ACBPS and insofar as the activity is relevant to an officer or member, binds that officer or member to the terms of this direction.

Direction

You are directed to conduct a joint review into the actions of the ADF and the ACBPS, including Border Protection Command (BPC) during December 2013 and

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January 2014 in relation to the entry of Australian vessels into Indonesian waters. You are appointed as co-chairs of the review.

The primary purpose of the joint review is to identify the facts and circumstances surrounding the entry of Australian vessels into Indonesian waters in connection with Operation Sovereign Borders. This joint review is to identify instances of entry of Australian vessels into Indonesian waters, examine the sequence of events and cause, examine the post incident response and identify any potential weaknesses or deficiencies associated with preparation and training, planning and execution of activities, governance documents and post-incident response.

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.

The full Terms of Reference for your review are **attached**. You will receive an initial verbal briefing from BPC on operational activity under OSB.

You are to provide a report to Chief Executive Officer ACBPS and the Chief of the Defence Force, via the Deputy Chief Executive Officer (Border Enforcement) and Head Military Strategic Commitments, on or before 10 February 2014 and include a copy of this Directive within your report.

However, 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.

To assist you in the conduct of the joint review, administrative and other support arrangements have been established.

Appropriate measures should also 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 whilst 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 Perzullo
Chief Executive Officer
Australian Customs and Border
Protection Service

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

21 January 2014

January 2014

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

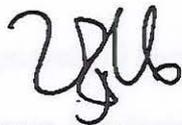
of Foreign Affairs and Trade, Attorney-General's Department and Department of Prime Minister & Cabinet. However, during your review you may determine that consultation with other agencies is required. You are authorised to seek information from and consult with key stakeholders and other agencies as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

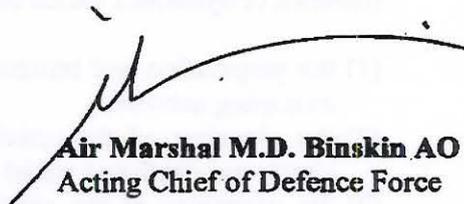
Report

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
Chief Executive Officer
Australian Customs and Border
Protection Service



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

21 January 2014

21 January 2014



Australian Government

**Australian Customs and
Border Protection Service**

Department of Defence

MINUTE

File No: 2014/002992-01

**Commander JATF (OSB)
COMAUSFLT
ND Border Force Capability Division
COMBPC
COMTRAIN
DGMAROPS
J3 HQ JOC**

**REQUEST FOR ASSISTANCE: REVIEW OF OPERATION SOVEREIGN BORDERS
VESSEL POSITIONING DECEMBER 2013 – JANUARY 2014**

1. We have been directed by the Chief Executive Officer (CEO) of the Australian Customs and Border Protection Service and Chief of the Defence Force (CDF) to co-chair a Joint Review regarding the entry of Australian vessels associated with Operation Sovereign Borders (OSB) into Indonesian sovereign waters between December 2013 and January 2014. A copy of the Terms of Reference for the review is attached at Enclosure 1. We are required to provide a full report to the CEO and CDF by 10 February 2014.

2. In order to address the Terms of Reference, we are seeking your assistance with the provision of information relating to all aspects of the review, namely:

a. All operational policy, procedures, instructions and orders including logs of any electronic correspondence between vessels and the respective headquarters that relate to ^{47E(d)} [REDACTED] operations during the conduct of OSB;

b. ^{47E(d)} [REDACTED]

c. Any Warning Orders and Force Assignment Orders issued to vessels assigned to Operation Sovereign Borders during the subject period;

d. All planning documents used by ADF and ACBPS vessels ^{47E(d)} [REDACTED] including navigational records, charts, briefings and Ship's Logs used ^{47E(d)} [REDACTED] including a reconstructed track verified by the unit Commanding Officer/Enforcement Commander, ^{47E(d)} [REDACTED];

e. Any documentation or information related to the provision of training and certification for ACBPS and ADF Officers deployed to OSB, regarding the application of the *United Nations Convention on Law Of the Sea, 1982* (UNCLOS) to archipelagic baselines and territorial seas;

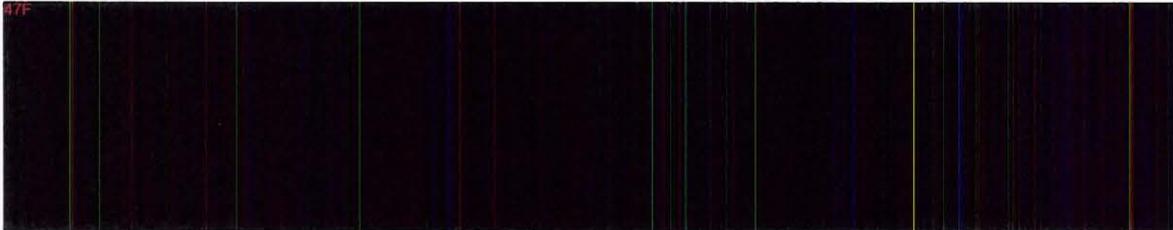
f. Any documents or correspondence that relate to the identification or notification of instances where unauthorised entry of Australian vessels into Indonesian territorial waters occurred; and

g. All policy or procedural documents that pertain to the dissemination of information following the identification of an operational or tactical planning error, in order to correct that error and prevent its reoccurrence.

3. As you are aware there is significant interest in the outcomes of this review and the timeliness and completeness of the report will attract significant scrutiny. To that end, we request you nominate a POC within your respective headquarters that can act as a point of coordination for this and any further requests for information and assistance that may arise throughout the review.

4. Our point of contact within the Joint Review for collating and cataloguing information and documentation is ^{47F} [REDACTED]

5. Your ongoing assistance in this matter is appreciated.



Defence Co-Chair

ACBPS Co-Chair

23 January 2014

Enclosure:

1. Review of Operation Sovereign Borders Vessel Entry into Indonesian Waters December 2013 – January 2014: Terms of Reference dated 21 January 2014.

AUTHOR:	^{47F} [REDACTED]
POSITION:	ACBPS Co-Chair, Review of Operation Sovereign Borders Vessel Positioning
DOC DATE:	23 January 2014

