

Senate Select Committee into a Certain Maritime Incident,
Parliament House,
Canberra

11 April 2002

Dear Sir,

SUPPLEMENTARY SUBMISSION – TONY KEVIN

Since my submission to the Select Committee on 4 March 2002, I have continued to research questions relating to the 19 October asylum-seeker boat sinking. I have also followed the proceedings of the Committee, up to and including its meeting on 5 April.

As to what knowledge Australian authorities might have had of this voyage, I note Rear Admiral Smith's testimony on 5 April (Hansard CMI 488):

“ At no time under the auspices of Operation Relex were we aware of the sailing of that vessel until we were told that it had in fact foundered”.

I also note Rear Admiral Smith's earlier testimony on 4 April (CMI 461):

“ As to why we were not there in that particular case: if my memory serves me right, we had some information that a boat might have been being prepared in the vicinity of Sunda Strait but we had no real fixed information as to when it was going to sail. Indeed, the first time that the Navy knew that this vessel had sailed was when we were advised through the search and rescue organisation in Canberra that this vessel may have foundered in the vicinity of Sunda Strait. At that time our nearest ship was about 150 miles away.’

This testimony leaves many unanswered questions about what various Australian authorities may have known about this boat's voyage, and when they may have known it. This submission explores in detail such questions.

SOURCES OF AUSTRALIAN INTELLIGENCE AND ITS HANDLING

To answer these questions would take the Committee into the area of Australian police and/or intelligence reports on asylum-seeker boat departures from Indonesia. I note that Committee witnesses to date have declined to comment in detail on this.

However the issue is about the death at sea of 353 asylum-seekers bound for Australia, as a result of what may have been acts of sabotage carried out at their port of embarkation. Such a serious matter comes under Committee reference (c). I believe therefore that the questions hereunder should be thoroughly explored, if necessary in part in closed session.

According to Greenlees, “The Australian”, 24 October:

“Australian authorities had been monitoring the departure of the boatpeople from Indonesia. Unaware of the tragedy at sea on Saturday (22 October), search

and rescue officials in Australia issued an overdue notice on Monday morning (24 October).”

I refer to Rear Admiral Smith’s general testimony (CMI 461). Asked whether, once it was clear that a SIEV was on its way, there would be information on how many people were on board, Smith replied that this would vary from case to case. He said:

“Again, this would be information drawn from intelligence that we would be provided with. I would like to leave that alone if I could until I have clearance to talk about it.”

When then asked whether it would be normal practice, once it was known a vessel was on its way, to start moving an Australian ship in their direction, Smith replied:

“Yes, if we had information that a vessel was being prepared, we would probably have a rough idea of the sorts of numbers that might possibly be embarked. We never really had a strong idea of when things would sail, but our operation and the disposition of the forces available to us would take into account that we might not have any warning at all, and therefore we would be prepared in any eventuality.”

If I could try to summarise the parts of Rear Admiral Smith’s testimony on pages CMI 454-457 that are relevant to my concerns about the sunken vessel, he testified that “intelligence sits behind” all such monitoring and interception operations (CMI 454). On the basis of some of that information, assessments could be made “on windows when these vessels might appear. We were then able to adjust our patrols and so forth to make those intercepts.” (CMI 455). Smith summed up (in relation to the 12 listed SIEV events) “We certainly had some information that boats might be being prepared in different parts of the archipelago ... we pretty much knew where things were going”. (Smith cites one exception to this, a boat that ran aground on Ashmore Reef) .

Smith confirmed that, if reports were received of a SIEV making its way to Australia, the interdepartmental committee (presumably the “Halton committee”) would probably be made aware of this pretty promptly; but it would be left to the Navy to make detailed decisions as to interception or moving to intercept (CMI 455-456).

In his introductory statement, Smith paid tribute (CMI 449) to the valuable contributions made by, among others, “the airmen undertaking surveillance duties and supporting Australian Customs and Coastwatch personnel”, in ensuring that Australia’s national interests were protected (by the Navy) while meeting its obligations in ensuring the safety of life at sea.(CMI 449).

Later in his evidence, Smith said (CMI 487-488) that his commands with Operation Relex included the Orion aircraft as well as the Navy vessels. He agreed that he would be aware of the Orion aircraft movements and what they see. He said “there were RAAF P3s (Orions) and there were also Coastwatch aircraft working to us for this operation”.

UNCERTAINTIES AND INCONSISTENCIES REGARDING THE PUBLIC RECORD ABOUT THE SINKING OF THIS BOAT

Against the background of Rear Admiral Smith's evidence as to general Australian procedures for SIEV detection and interception, a number of uncertainties and inconsistencies present themselves in the case of this sinking.

The time reference points, as known or estimated from the media record (Don Greenlees, "Australian", 24 October, and various ABC reports) and from survivor accounts, are as follows. The boat left Bandar Lampung, a port in southern Sumatra, in the early hours of Thursday morning 18 October, bound for Christmas Island. 24 passengers got off the boat at an island in the Sunda Strait on Thursday night. The boat continued its journey the next morning, Friday 19 October. It sank at around 2 pm-3 pm on that day (one survivor reports it sank at 3.10 pm) . 44 survivors were picked up by an Indonesian fishing boat on Saturday morning 20 October (one survivor reports at 11 am – so they were 20-21 hours in the water) and returned to Jakarta, arriving there on Monday 22 October.

Several survivors firmly believe that they saw one or two large boats with searchlights that observed the people in the water during the night 19/20 October. We know now (from Rear Admiral Smith's testimony) that such a boat or boats, if survivors indeed saw this, could not have been RAN. The possibility remains that an Indonesia-based boat or boats might have inspected the scene and reported the sinking.

We know that Australian search and rescue authorities knew that the asylum-seeker boat was coming, from Greenlees' 24 October report and from Smith's testimony (above). According to Smith, "the first time that the Navy knew that this vessel had sailed was when we were advised through the search and rescue organisation in Canberra that this vessel may have foundered in the vicinity of Sunda Strait" (CMI 461). Yet according to Greenlees, Australian search and rescue authorities issued an overdue notice on Monday morning (22 October).

This seems odd. When the search and rescue authorities issued this overdue notice on 22 October, did they already know that this vessel had foundered on 19 October?

If so, why did they issue this notice?

When were the Australian search and rescue authorities informed that the boat had foundered? From what source had they been so informed - intelligence reports, aerial surveillance, or a combination of the two?

When did Rear Admiral Smith, and when did Operation Relex, learn that the boat had foundered?

It seems improbable that the Australian search and rescue authorities did not learn of the sinking until the survivors reached Jakarta on Monday 22 October. By this date, Australian authorities would have presumably been officially

advised by the Indonesian Government and by the involved UN agencies, IOM and UNHCR.

It is clear (see towards final part of this submission) that Indonesian authorities had known that the survivors were on their way to Jakarta – because Indonesian police were waiting at the pier to meet the fishing boat carrying them on its arrival.

In order to be able to put out a boat overdue notice on 22 October, the Australian search and rescue authorities must have had some previous information that this boat had set out for Christmas Island, when it had set out, and from where. Making conservative assumptions about the overloaded boat's low speed and the distance from Bandar Lampung to Christmas Island, the issuance of the overdue notice on 22 October suggests that Australian authorities might have expected it to arrive at the Christmas Island contiguous zone by 21 or 22 October, on the basis of a presumed knowledge that it had set out from Bandar Lampung on around 18 or 19 October.

From where did Australian search and rescue authorities obtain such information, and when did they receive it?

I have not been able to obtain any information about the Australian search and rescue authorities' overdue notice regarding the sunken boat from AUSSAR, the Australian Search and Rescue authority, which comes under AMSA, the Australian Maritime Safety Authority. This surprised me, because I had assumed that all boat overdue notices are public information and not Defence-classified information, in that they would have to be sent to all shipping, including foreign shipping, to look out for any missing boat. When I queried this to the public information officer at AMSA/AUSSAR, he replied that all requests for information regarding asylum-seeker vessels had to be "processed up the line". I was told several hours later that no information could be provided to me by AMSA/AUSSAR on these matters.

It seems to me desirable that the Senate Committee try to obtain from AMSA/AUSSAR a precise account of their organisation's record of knowledge and activity in this matter, given AMSA/AUSSAR's importance to establishing the full facts of what Australian authorities knew and when did they know it about the sinking of this boat.

WHAT POLICE OR INTELLIGENCE REPORT WAS SENT TO AUSTRALIA, AND WHEN WAS IT SENT?

Pending presentation of any evidence to the contrary, it seems reasonable to assume, on the basis of Rear Admiral Smith's general testimony and other indications (eg reports and evidence concerning the activities of Kevin Ennis, detailed in my submission of 4 March), that at some time soon after the boat's departure in the early morning of 18 October, a police or intelligence report would have been sent to Australia that this boat had left from Bandar Lampung, bound for Christmas Island. Such a report might also have contained information about the number of passengers, the conditions of armed duress that

forced them to remain on board, and the boat's grossly overloaded and unsafe (i.e. the reported long crack in the hull) condition.

It seems important for the Committee to establish the full timing and content of such a report, if it were sent.

Some 30 hours after embarkation, the boat sank. It seems to me improbable that a police or intelligence report would not have been sent during this long period of time: unless a deliberate decision had been made to delay its despatch to Australia, or to delay its onforwarding by the initial recipient within Australia to other authorities e.g., AMSA/AUSSAR, Operation Relex.

It would seem important to establish the facts on when such a police or intelligence report concerning the departure of this boat may have reached the various relevant Australian authorities.

I am assuming that there would have to have been such a police or intelligence report, for the Australian authorities to have issued the overdue notice on Monday 22 October, and for the Australian search and rescue authorities to have informed Rear Admiral Smith and Operation Relex that the boat had foundered (see quotes above)

MIGHT THERE HAVE BEEN AUSTRALIAN AIR SURVEILLANCE?

My next set of questions concerns the possibility that Australian Orion and/or Coastwatch aircraft may have tracked the movement of this boat at any time before it sank, may have observed its disappearance from its observed course, or may have observed wreckage and survivors.

I do not know whether a police or intelligence report would have reached relevant operational authorities in Australia in time to mount such aerial surveillance. I do know that from the time such a report was received, it could have been quickly acted upon. Surveillance aircraft could have been sent out to monitor a relatively narrow strip of sea along the boat's reported course from Bandar Lampung towards Christmas Island, based on its known departure time and a range of assumptions of how far it might have got at its estimated speed.

Surveillance aircraft would not necessarily be obliged to provide the RAN and/or Operation Relex with all information obtained. They could have been tasked by other Australian official clients to observe this boat, and it would be for those clients to decide what to do with any resulting observations. Unless Operation Relex had been given a task to do, it would not necessarily know about such a report to another Australian client of RAAF or Coastwatch aircraft.

I think it would be desirable for the Committee to try to establish clearly whether any Australian (RAAF or Coastwatch) surveillance aircraft made any observations of this boat before its sinking, or of its disappearance from its observed course, or of any sightings of wreckage or survivors in the water. If so, to what recipients were such reports sent? How were they actioned thereafter?

The issue here goes to when relevant Australian authorities (not only Operation Relex or the RAN) might have first known, or suspected the possibility of, a SOLAS situation involving this boat in which Australia might have been able to assist the people on board the boat before it sank, or survivors in the water after it sank.

Given that survivors were in the water for between 20 and 22 hours (22 hours was the estimate of the survivor who reported seeing two boats with searchlights), and given Rear Admiral Smith's testimony that the nearest RAN ship was about 150 miles away at the time of sinking, a question presents itself.

If Operation Relex had known immediately at the time the boat sunk (eg if the sinking had been observed from the air), there would have been time for a RAN ship to steam to the scene in about 6 to 8 hours (at an estimated 20 - 25 knots), and try to rescue survivors. Many more lives might have been saved. Depending on how many hours after the sinking the boat's disappearance might have been first detected by any Australian aerial monitoring, this same question would apply.

If Operation Relex did not know about the sinking until more than (say) 14 hours after it had happened – too late for RAN ships to reach the scene to do anything to try to rescue survivors – did any other parts of the Australian system know, and if so did they delay passing on this information to Operation Relex and the RAN? If so, for what reason?

ALTERNATIVE POSSIBILITIES

I now examine two alternative possibilities – either that a police or intelligence report did not reach Australian authorities in time for aerial surveillance to be mounted, or that the content of the report (as to the boat's unseaworthy and possibly sabotaged state) was such that it was deemed unnecessary to mount aerial surveillance operations out to send out the RAN on any SOLAS mission, it having been presumed from the report that the boat would sink very quickly, most probably while still in Indonesian territorial waters.

This would take possible Australian aerial surveillance operations out of contention, but it would re-focus my concerns on questions (see above) regarding the despatch, content and handling of Australian intelligence reports on this matter.

Assuming there was no aerial surveillance that would have allowed Australian authorities to have sent a message to Indonesian authorities giving map coordinates where the sinking took place or where wreckage might be found, it would still have been possible for an Indonesian authority or agency to have independently, i.e. without Australian assistance, tracked the asylumseeker boat from behind.

An Indonesian ship could have followed the boat's course using out-of-visual-sight observation technology (as the Adelaide used with SIEV 4). Or the asylum-seeker boat, or a crew member, might have carried a tracking device.

So it is quite plausible that an Indonesian ship may have relatively easily found and inspected the scene of the sinking, during the night of 19/20 October, without assistance or briefing from Australian authorities. Having observed wreckage and survivors in the water, such an Indonesian ship might have sent back messages that might have been received or intercepted by Australian signals intelligence.

Such an intercept might have been the basis for the first Australian information that the asylumseeker boat had sunk.

It seems important for the Committee to try to find out (probably in a closed session) if such an intercept was made, when it was made, what information it may have contained about survivors, and whether there would have been time to send any RAN ship to help them had the RAN been so tasked. Again, this goes to Australia's SOLAS responsibilities.

Alternatively, assuming there was no signals intelligence on this, or additionally to any signals intelligence, Indonesian authorities might have decided to inform Australian authorities about the sinking. It would be desirable to establish if any such report was conveyed, when it was conveyed, from which Indonesian agency or person, and to which Australian agency or person; and what was done with the information thereafter.

CONCLUSION

I believe that, to establish the full facts of what happened, questions on the above matters could be addressed as appropriate to Rear Admiral Ritchie, Rear Admiral Smith, and to other witnesses yet to appear including Air Vice Marshal Titheridge (eg in respect of the RAAF). AMSA/AUSSAR, Customs Coastwatch, Australian Federal Police, and possibly Australian intelligence agencies, would appear to be possible sources of further relevant information.

NEW INFORMATION REGARDING THE RESCUE AND RETURN TO JAKARTA OF THE KNOWN 44 SURVIVORS

I wish also to bring to the Committee's attention additional information that I have obtained regarding what happened to survivors between the time of their rescue from the water on 20 October, and their first meetings with the international media on 23 October. This additional information adds weight to a hypothesis that the sinking of this boat may have been a deliberately managed rather than an accidental event.

My previous submission set out the circumstances of the boat's departure that give rise to concerns that the boat may have been sabotaged. In brief, I noted reports of a gross overloading under duress of armed uniformed personnel; of passengers being afraid at how low the boat was in the water and how grossly

overcrowded it was; of passengers being lied to that this boat was to meet a larger boat for the sea voyage to Christmas Island; of 10 passengers paying bribes to be allowed to get off; of a long crack in the hull, requiring bailing almost from the start of the voyage; of 24 frightened passengers getting off at an island in the Sunda Strait, leaving 397 on board; of an engine failing, and of passengers trying unsuccessfully to fix it; of the overturned boat breaking up into planks almost immediately after it foundered, suggesting that the hull may have been weakened.

I now want to add to that list of adverse factors (that I do not think could plausibly all be attributed to coincidence), an account of what happened thereafter. This account is drawn from further questions put to survivors through Mr Keysar Trad, and discussions with two international journalists and IOM and UNHCR officials in Jakarta, and with two readers of the Indonesian language press.

I have referred already to survivors' reports of a large ship or ships with searchlights during the night of 19/20 October.

The next day around 11 am, an Indonesian fishing boat arrived to rescue survivors. The crew told a survivor that they had seen luggage floating in the water in towards their fishing area and had come out to look, beyond their normal fishing area.

This seems improbable. The over 400 passengers on the 19 metre boat would have had no room for luggage; and any floating objects would not have floated far away from the survivors and the planks they clung to.

It seems more plausible that the fishing boat was instructed where to look, and perhaps paid to do so (perhaps by the reported ship that witnessed the scene overnight?).

All 44 asylumseeker survivors were picked up by one fishing boat. No crew member was among them. The survivors did not see any crew member again – they presumed the crew members had drowned.

However the Greenlees 24 October report states: “ Another fishing boat reportedly pulled four bodies and one survivor out of the water.” Two survivors refer to “the fishing boats” I have seen no further references to a second boat or to the survivor Greenless reports that it rescued. Might this have been a crew member? (Surviving crew members might have swum away from the refugee survivors in the water).

The rescue boat that picked up the 44 survivors was a fishing boat whose home port was Jakarta, some 300 km away from the reported scene of the sinking. It had not yet begun to fish. It immediately set course back to its home port Jakarta (300 km). This seems remarkable altruism: it could have kept the survivors on board till it had caught a load of fish and was ready to go back to Jakarta, or it could take taken them to a much closer landfall (the south coast of Java was

only 80 km away, or if it had a radio it could have sent a message to the Navy or police to ask them to come and pick up the survivors. It did none of these things.

One and a half days later, (which would seem to make it on Sunday afternoon) the fishing boat met another fishing boat returning to Jakarta with a full catch. The survivors were transferred to this second vessel and taken on to Jakarta.

This second fishing boat was met at the Tanjung Priok port in Jakarta on Monday 22 October by Indonesian immigration police, who obviously knew that rescued non-Indonesian survivors were coming. The survivors – recalling their previous encounter with armed uniformed personnel while embarking at Bandar Lampung – refused to get off the boat until an international representative was present. An International Organisation for Migration representative came to the port, escorted the survivors ashore, and bussed them to accommodation at Bogor.

The survivors met the media the next day 23 October. Stories were filed and carried around the world as front-page news on 23 and 24 October.

The Indonesian press did not cover the story in much detail. Basically they relied on reproducing foreign newsagency reports. There were no photographs or interviews in the Indonesian press with the captains or crews of the two fishing boats – the one that rescued them, or the one that brought them to Jakarta. There was no information in the Indonesian press about the names of these boats, or of their captains, or of their parent companies. These boats are now unknown and would be difficult to trace.

This seems strange, after such a major loss of life and dramatic rescue. I am told that the Indonesian press seemed reluctant to get into detailed reporting of this event. Possibly they recognised that it was a sensitive matter involving police and that it was not wise for the local media to delve too deeply.

There does not seem to have been any serious Indonesian investigation of the sinking. The people smuggler Abu Quessai was arrested on grounds of documents fraud and is still understood to be in prison. Two police brigadiers were arrested in Riau (up near Singapore/Malaysia – perhaps they were running away) for taking part in the armed duress at the embarkation in Bandar Lampung. No more is known about what happened thereafter or if there was any further official investigation of the circumstances of the boat's departure, sinking, or rescue of survivors.

Summary: I believe that these additional circumstances of rescue and retrieval to Jakarta add weight to my hypothesis that the boat may have been intended to sink, thereby creating a major loss of life and a major deterrent signal against people-smuggling from Indonesia to Australia. For that to work, it was necessary not simply that the boat disappear without trace – leaving a mystery - but that some survivors be found and transferred to Jakarta where they would be accessible to international media, so that a major “concrete” international news story would be generated.

I do not believe that the long list of inexplicable circumstances of the survivors' discovery, rescue and transfer to Jakarta can plausibly be attributed to coincidence. The more economical hypothesis is that this was a managed event.

The day after the news broke on 23 October, the Indonesian Foreign Minister Mr Hassan Wirayuda issued a statement. He said that Indonesia was very concerned over the sinking of this boat and the very heavy casualties. He promised temporary shelter in Indonesia for the survivors, in consultation with UNHCR. He said that he had discussed the tragedy with Mr Alexander Downer, and had asked Downer for suggestions as to what kinds of measures could be taken to prevent further such tragedies.

A few days later, it was announced that Australia and Indonesia would co-host an international conference on people-smuggling. This was an initiative that Australia had long been pressing but Indonesia had been resisting, because it considered that people-smuggling in these waters was an Australian and not an Indonesian problem.

I believe that this major human tragedy in waters near Indonesia, which came under the spotlight of world media attention, forced Indonesia's hand, by making people-smuggling in these waters an Indonesian problem also.

Finally, I wish to recall for the Committee how Australian government perceptions of the people-smuggling problem changed over the two months from 9 September to 10 November 2001.

On 9 September (ABC TV "Insiders" program), "Downer admits limited success in people smuggling talks", Mr Downer said: "We are looking at enhancing collaboration between our police forces and security agencies generally"... "What the Indonesians have started to do now is tighten up their barrier control" ... "To be fair to them, this will all constitute a significant change of policy." ..."The point is, it is not far to go from Java to Christmas Island or from Eastern Indonesia to Ashmore Reef. The simple proposition put by the people traffickers to these people who buy these passages from them is that they can get them pretty easily by boat from different parts of Indonesia to these two parts of Australia. *It is pretty hazard-free ...*". (My italics) .

A Department of Prime Minister and Cabinet minute of an interdepartmental meeting on October 7 2001, "Options for handling unauthorised arrivals: Christmas Island boat" (a whited-out version of which was tabled in Parliament on February 19 2002) said:

"A strong signal that the people smugglers have succeeded in transporting a group to the mainland (Australia) *could have disastrous consequences*. There are in the order of 2500 PUA's (potential unauthorised arrivals) in the pipeline in Indonesia awaiting transport, therefore *this should be avoided at all costs*." (my italics)

On 10 November 2001, in Mr Howard's post-election ABC TV interview with Kerry O'Brien, the following exchange took place:

O'Brien: On your border protection policies ...when do you expect the flow of boat people to slow?

Howard: Well, the pipeline, that is people leaving countries and going to Indonesia and Malaysia, our advice is that it has already slowed.

We had advice last week to the effect that the flow of people to Malaysia has virtually stopped, and *specifically attributable to the action we took in relation to the "Tampa"*.

O'Brien: So you would expect in the near future to see the number of boats actually coming into our waters to diminish significantly?

Howard: Well, I'm choosing my words carefully, because I want to state accurately what advice I have.

The advice is that the flow of people into the pipeline has slowed.

It's a bit hard to know how quickly the people who have accumulated in Indonesia are going to try and come here.

Obviously the more difficult we make it, the less likely they are to come, in the near future, particularly as the weather changes over the days and weeks ahead." (My italics).

Since that time, I am not aware of any boats that have come (though I have yet to check the full lists of SIEV interceptions, some previously not made public, but now tabled in the Committee)

Yours sincerely,

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