
Drowned by Politics: Australia's Challenges in Managing its Maritime Domain

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The idea of maritime border protection has been prominent in recent Australian political discourse because of its coincidence with asylum seekers arriving at Australian territories by boat. Yet this construct is misleading. There is no maritime "border" and asylum boats, although the current challenge are not necessarily the most difficult problem faced in managing Australia's maritime domain. This task is shaped by the geographic, legislative and administrative environment, which governs how this management occurs and how emerging challenges are tackled. The resulting arrangements have benefits but also inherent weaknesses at the points of intersection in a system of co-operation and coordination. The influx of asylum boats into Australia's north western waters since 2009 has greatly stressed these arrangements and may have brought them close to breaking point.

Over the past five years a bitter political debate has raged in Australia over the continuing arrival of boats with people claiming refugee status. As the tempo of boat arrivals increased over 2013 the tone of the debate hardened until, towards the end of July, the leader of the Federal Opposition declared that Australia had a "national emergency on our borders".¹ Whether or not this event constitutes an emergency, the concept of boats arriving at a "border" highlights a broad lack of understanding of the nature of Australia's controls over various parts of the waters surrounding the continent and Australia's island possessions.

The term "maritime border protection" or its oft-used simile "maritime border security", is a misnomer supporting a confused understanding of the rights and responsibilities of sovereign nations to manage the waters that start at their coastlines. There is no maritime border in the sense of the definite delineation of national sovereignty at a land border but, instead, a series of gradations of national power across zones that constitute Australia's maritime domain² and in total cover an area greater than that of continental Australia. Across this area Australia might have the right to apply the full power of its sovereignty or, with claims over areas of the continental shelf, be able to act against a vessel only with the permission of the relevant government. Therefore, in policing the application Australian laws and

¹ L. Metherell, 'Coalition Unveils Military-led Response to "National Emergency"', *PM*, Australian Broadcasting Corporation, 25 July 2013, <<http://www.abc.net.au/pm/content/2013/s3811131.htm>> [Accessed 25 July 2013].

² Nevertheless, this article will use the standard nomenclature in places: after all, the body charged with managing the maritime domain is called Border Protection Command (BPC).

regulations in the maritime domain, it is never enough to know what a particular vessel is doing when it crosses a certain geographical point; it is what it may be doing in designated areas that is important.

For Australia this reality is particularly difficult. The management of Australia's maritime domain is continually challenged by the problem of size. Australia's exclusive economic zone (EEZ) is the third largest in the world and Australia is the only country that claims an EEZ based on the Antarctic coastline. The EEZ is an area of diverse economic activity, varied ecology of often global significance and the medium over which most nation's commerce passes. A large body of legislation and regulations, administered by agencies both Commonwealth and State, and frequently involving international entities is required to manage this activity. By its nature this has produced a system for managing the maritime domain that is inherently complex, sometimes cumbersome and carries the risk of breakdown at its many points of intersection.

From its beginnings Australia's attempts to construct the means to meet the challenges of its maritime domain have been hesitant and grudging, with most attempts to enhance the system coming only after the perception of a crisis had forced governments to refocus.³ As Peter Nixon said when announcing the formation of Coastwatch, the genesis of Australia's system of maritime border protection, "the measures adopted at this stage have been designed to provide a high degree of flexibility without commitments to capital expenditure".⁴ Over the last five years the organisation into which Coastwatch has evolved has been severely tested by an influx of asylum boats. Seen as an instrument to deter the approach of these vessels, forces under the control of what is now Border Protection Command appeared to have come close to exhaustion in an operation that has largely consumed the focus of management of the maritime domain, to the sometime severe detriment of other tasks.

Problems of Size I: Australia's Maritime Domain

The Australian coastline stretches for 37,000 kilometres. There are 12,000 land features lying within Australian waters and their shores extend the coastline to 60,000 kilometres.⁵ Australia's maritime domain stretches out to sea in an Exclusive Economic Zone (EEZ) from the continental and island shores to a distance of 200 nautical miles. Resource zones extend beyond the EEZ to reserve Australia's rights over resources on and under the seabed of the continental shelf. Australia claims more than 40 per cent of the Antarctic mainland, making it the major claimant to Antarctic territory and

³ I provide a history of these developments in: D. Woolner, 'The Governance of Security in Australia's Maritime Domain', *Strategic Challenges*, vol. 7, no. 2 (Winter 2011), pp. 61-9.

⁴ P. Nixon, Minister for Transport, 'Australian Civil Coastal Surveillance', *Press Statement*, Canberra, 9 July 1978.

⁵ B. O'Connor MP, Minister for Home Affairs, 'Speech to the Pacific 2010 International Maritime Museum Exposition', 28 January 2010, p. 2.

on this basis has established a Southern Ocean EEZ, although it is one not recognised by the international community.

Australia's EEZ covers 8.2 million square kilometres, larger than the 7.7 million square kilometres of the Australian land mass.⁶ This is the world's third largest, roughly twice the size of, for comparisons sake, that of Indonesia. The EEZ extending from Australia's Antarctic Territories adds 2.2 million square kilometres. In addition, Australia has international obligations for managing search and rescue operations under the Convention for the Safety of Life at Sea (SOLAS) over an area around 12 per cent of the earth's surface. In this area the International Maritime Organisation allocates to Australia, as the security forces authority, the responsibility to react to maritime security incidents.

The size of the domain hints at the vast distances it encompasses. Australian islands extend the nation's maritime jurisdiction deep into the Pacific, Indian and Southern Oceans and the Tasman, Coral, Timor and Arafura seas. Christmas Island is 1500 nautical miles west of Darwin and the Ashmore and Cartier reefs are around 450 nautical miles west of Darwin. Both lie only 200 nautical miles from the nearest Indonesian territory but to the east Indonesian is closer, with the border of Papua only 100 nautical miles from the Torres Strait island of Boigu. The sub-Antarctic island territories (Australian possessions and not dependant on Australia's Antarctic EEZ claim) are yet more distant than the Indian Ocean territories. The Heard and McDonald Islands, for instance, lie 2200 nautical miles south-west of Perth.

The geographic enormity of Australia's maritime domain covers virtually all of the range of maritime environmental conditions. These include the dangerously stormy, ice prone waters off Antarctica to calmer tropical waters that nonetheless experience seasonal cyclones and may be subject to enormous tidal ranges. These conditions have significant implications for the type of operations conducted by, and the nature of the equipment of, the agencies concerned with Australia's maritime domain.

A CONSTRAINT ON KNOWLEDGE

The most significant consequence of the vastness of Australia's maritime domain is that it renders impossible a perfect knowledge of what occurs there. Even in more confined areas of specific interest, full awareness is an illusive goal. The north and north-west approaches to the continent, that are the focus of surveillance for asylum seeker boats, cover around 2.85 million km². A sortie by one of the DASH 8 surveillance aircraft contracted to the

⁶ Vice Admiral R. Griggs, Chief of Navy, Keynote Address to Border Security Conference—The Royal Australian Navy and Border Security, 21 May 2012, <<http://www.navy.gov.au/sites/default/files/documents/CN%20Border%20Security%20Conference%20Speech%20-%2021May2012.pdf>> [Accessed 30 May 2012], p. 8.

Australian Customs and Border Protection Service (ACBPS) will observe around 75,000 km²,⁷ 2.6 per cent of the northern approaches. In the professional opinion of the Chief of Navy, technology will not overcome the sheer size of the task and its inherent practical problems, particularly not any

God-like eye in the sky which has perfect vision and perfect knowledge.
There isn't and I do not think that there ever will be.⁸

The Auditor General in 2000 calculated one aspect of the practical difficulty imposed by this geographic reality; the aerial surveillance assets available to Coastwatch (the predecessor of Border Protection Command) were adequate to overpass any fixed spot on the mainland shoreline or the EEZ only once in every twelve days.⁹ Many craft typical of the region to Australia's north could cross the EEZ in less than a day. The hours flown on surveillance and the effectiveness of the systems utilised has increased over the last thirteen years but only enough to marginally alter the equation. The only way to manage security risks in the maritime domain remains the evaluation of intelligence to concentrate resources in areas assessed according to risk of the breaching of Australian law or the compromising of Australian interests.

THE DEMANDS OF ACTIVITIES WITHIN AUSTRALIA'S MARITIME DOMAIN

Australia's interests in its maritime domain range through strategic, political, economic and environmental issues¹⁰ and their management must interface with a wide range of commercial and traditional activities. All of these factors can often attach to a single interest. The UN Convention on the Law of the Sea (UNCLOS) does not merely define ocean boundaries. It creates a legal regime whereby a claimant nation can control its domain, such as in directing mineral resource activities on the seabed. However, it also places obligations on claimant nations for managing their claims, including safeguarding the marine environment.

The management of commercial fisheries is a prime example of the maritime domain carrying both responsibility and benefit. The Australian Fishing Zone is coextensive with the EEZ and is the world's third largest such zone. Fisheries activity within the zone is regulated by the Australian Fisheries Management Authority (AFMA) with responsibility for setting and regulating

⁷ Ibid., p. 9.

⁸ Ibid.

⁹ The Auditor General, *Coastwatch Australian Customs Service*, Audit Report No. 38 1999-2000, Australian National Audit Office, April 2000, <<http://www.anao.gov.au/Publications/Audit-Reports/1999-2000/Coastwatch>> [Accessed 30 May 2013], p. 79.

¹⁰ S. Bateman and A. Bergin, *Sea Change: Advancing Australia's Ocean Interests* (Canberra: Australian Strategic Policy Institute, 2009), p. 26. This paper in the ASPI 'Strategy' series remains the most recent review of the nature of Australia's maritime domain and the issues that are important in its management. It identifies areas where underperformance against policy goals has become significant and contains comprehensive recommendations for an improved management regime to overcome these problems.

catch limits. In 2010-11 the gross value of Australian fisheries was \$2.23 billion and they were estimated to employ over 100,000 people, directly and in activities such as processing, transport, wholesale and retail, and restaurants.¹¹ Australia's Antarctic EEZ contains fisheries of commercial value and, in common with the continental EEZ has been declared a sanctuary for the protection of whales and dolphins under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.¹²

Shipping movements are extensive throughout Australia's maritime domain. Torres Strait is one of the world's major shipping transit points and large numbers of recreational craft navigate the coastline. In 2010-11 Australian ports handled 1077 million tonnes of cargo worth \$383.5 billion, carried in 4315 cargo vessels. Shipping carries some 99 per cent of Australia's international trade, an activity that grew by an annual average of 6.2 per cent over the five years to June 2011. Importantly, exports represented 81.8 per cent of the total, with their value growing at an annual average of 10.7 per cent over the five year period, effectively a rate twice the corresponding increase in the value of imports.¹³ The mechanisms of Australia's increasing wealth can be seen in the merchant vessels transiting the country's maritime domain.

The offshore oil and gas industry, based around some seventy platforms located at sites in Bass Strait and off the north-west coast, provides an example of the complexity of the security issues that can be associated with activities in the maritime domain. The industry exported \$25.3 billion worth of product in 2010-11 and supported around 20,000 jobs.¹⁴ The type of LNG (liquid natural gas) projects currently being developed on the north-west

¹¹ Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES), *Australian Fisheries Statistics 2011*, December 2012, <http://adl.brs.gov.au/data/warehouse/9aam/afstad9aamd003/2011/AustFishStats_2011_v1.1.0.pdf> [Accessed 14 January 2013], pp. 1, 2, 39; The Auditor-General, *Administration of the Domestic Fishing Compliance Program*, Audit Report No. 20 2012-13, Australian National Audit Office, Canberra, 5 February 2013, <<http://www.anao.gov.au/Publications/Audit-Reports/2012-2013/Administration-of-the-Domestic-Fishing-Compliance-Program>> [Accessed 2 June 2013], p. 14.

¹² Department of the Environment, Water, Heritage and the Arts, 'How is Australia Protecting Whales', <<http://www.environment.gov.au/coasts/species/cetaceans/conservation/index.html>> [Accessed 7 September 2013].

¹³ Bureau of Infrastructure, Transport and Regional Economics, *Statistical Report Australian Sea Freight 2010-11* (Canberra: Department of Infrastructure and Transport, October 2012), <http://www.bitre.gov.au/publications/2012/files/asf_2010_11.pdf> [Accessed 2 June 2013] pp. V-VI.

¹⁴ Office of the Inspector of Transport Security, *Offshore Oil and Gas Resources Sector Security Inquiry* (Canberra: Commonwealth of Australia, June 2012), <http://www.infrastructure.gov.au/transport/security/oits/files/Offshore_Oil_and_Gas_Resources_Sector_Security_Inquiry.pdf> [Accessed 30 May 2013], p. 61.

shelf are expected to pay \$40 billion in tax and royalties over their life,¹⁵ with Australia likely to become one of the world's two largest producers by 2018.

Yet the blowout of the Montara drilling platform in the Timor Sea in August 2009 demonstrated the environmental and safety risks of these activities. The leak continued for seventy-four days generating a 170 km oil slick that eventually covered 11,000 km². Some of the spill drifted into Indonesian waters, raising complaints from local fishermen. In fact, management of international issues is a standing component of the industry in the Joint Petroleum Development Area, where a complex demarcation agreement with East Timor governs hydrocarbon exploration and extraction in the Timor Sea.

Such potential wealth, often involving floating liquid natural gas processing plants and often closer to coastlines other than those of Australia, not only involves such international agreements but has often invoked security concerns. Indeed, one of the changes in the governance of maritime border protection, which saw the Joint Offshore Protection Command established in March 2005, was prompted by a concern that security against terrorist threats to the offshore oil and gas industry should be paid more attention.¹⁶

Whatever the probability of such threats, the safety of navigation through areas of marine petroleum activity has long been an issue. Nearly forty years ago the Royal Australian Navy (RAN) began routine surveillance in Bass Strait to ensure commercial shipping remained clear of the safety zones of the rigs. The RAN commenced a similar regular patrolling presence around the commercial petroleum fields of the north west in 2010.¹⁷

That presence will have to be sustained and expanded as resources activity on and off Australia's western coast increases. The number of LNG vessels transiting Australian waters will probably quadruple under current projections. Once investment projects enter production phase iron ore transport, together with LNG, should triple total shipping traffic on the North West Shelf and Timor Sea. Total exports of around 1 billion tonnes from Western Australian iron-ore ports and the expansion of general shipping to support the growth of the west's resources industries will add to this increase in shipping transiting near offshore oil and gas infrastructure.¹⁸

¹⁵ *Ibid.*, p. 63.

¹⁶ Woolner, 'The Governance of Security in Australia's Maritime Domain', p. 66.

¹⁷ Griggs, Keynote Address to Border Security Conference—The Royal Australian Navy and Border Security, p. 11.

¹⁸ Office of the Inspector of Transport Security, *Offshore Oil and Gas Resources Sector Security Inquiry*, p. 64.

Problems of Size II: Legal and Administrative Complexity

Management of activities in Australia's maritime domain is as much dominated by the complexity of the legislative and administrative arrangements that confer authority over, as it is by the physical geography of, the domain. International recognition of Australian authority derives from the provisions of the UN Convention on the Law of the Sea (UNCLOS), signed by Australia in 1982 and ratified in 1994. UNCLOS prescribes a regime where a nation has differing powers within five defined zones that are positioned in reference to a baseline, which is normally the coastal low water mark.

In its territorial sea (12 nautical miles seaward from the baseline) a nation has full sovereignty but foreign vessels still have the right of innocent passage. The contiguous zone extends a further 12 nautical miles and here a nation may enforce its legislation covering customs, immigration, financial and environmental matters. Within the 200 nautical mile EEZ a state has power over all natural resources, living or otherwise and, for the purpose of regulating fisheries, the EEZ becomes the Australian Fishing Zone (AFZ). Under UNCLOS the definition of the continental shelf is complex and claims to rights in this zone must be submitted to a commission. If these claims are recognised, the claimant nation has control over resources on or beneath the seabed. Nothing above the seabed is under the claimant nation's control. Remaining (and now a circumscribed area following the spread of the UNCLOS regime) is the high seas, where a nation generally has power over only its own citizens, vessels and aircraft.¹⁹

Australia's executive and enforcement powers over its maritime domain have been incorporated in a wide range of legislation, sometimes in concurrence with international agreements. Commonwealth powers have rested on around thirty-five separate Acts, not all entirely compatible. Within the territorial sea, legislation includes that of the States and Northern Territory, as these jurisdictions have rights to sea and seabed resources in an area up to three nautical miles from the baseline. Altogether, oversight and enforcement of laws and regulations in the maritime domain can involve a wide range of local, national and international agencies.

As an example, concern in the early years of the twenty first century over the widening reach of trans-national terrorism led to agreement in the International Maritime Organisation (IMO) on the International Ship and Port Facility Security Code (ISPS) that was then attached as an amendment to the SOLAS Convention. Matters related to the IMO are the concern of the Department of Infrastructure and Transport (DIT), which thereby gained

¹⁹ *Ibid.*, p. 23ff provides a thorough but not too legalistic summation of the legal framework of Australian maritime border protection.

responsibility for administering the *Maritime Transport Security Act 2003*, focused primarily on shipping and ports.

In 2005, as part of the focus on terrorism that led to the naming of the Joint Offshore Protection Command, the legislation became the *Maritime Transport and Offshore Facilities Security Act 2003*, providing the authority for security planning for offshore oil and gas facilities. Nonetheless, aspects of the security of offshore petroleum operations are sufficiently dispersed for the Office of the Inspector of Transport Security to consult seven Commonwealth agencies and State and Territory police forces²⁰ in preparing the *Offshore Oil and Gas Resources Sector Security Inquiry*.

In 2009 the Attorney General's Department began work on a recommendation of the Review of Homeland and Border Security, that the legal framework for maritime enforcement be streamlined. The Maritime Powers Bill was introduced in 2012 consolidating, in conjunction with a consequential amendments bill, the provisions of five Commonwealth Acts with regard to offshore powers.²¹ The bill became law in March 2013.

OF ACRONYMS AND COORDINATION

Yet it is not the diffusion of responsibilities for offshore security that most compromises the role of DIT. Despite its legislative authority the Department has no capacity for any role other than policy development and administration. This is not unusual; indeed, the administration of legislation in the maritime domain is usually not associated with the capacity to enforce it. This necessarily falls to the four Commonwealth agencies with marine capability, the Australian Fisheries Management Authority (AFMA) and the Australian Quarantine and Inspection Service (AQIS)—which have operational personnel—and the Australian Customs and Border Protection Service (ACBPS) and the Australian Defence Force (ADF), which have equipment to deploy upon and over the high seas.

Consequently, security operations within the maritime domain are built around consultation, cooperation, coordination and integrated planning between the enforcement authorities and the others, generally referred to as “client” agencies.

In December 2009 Border Protection Command produced a guide to “provide a common reference point on the arrangements to enhance the management of security in Australia’s maritime domain”.²² This, the

²⁰ *Ibid.*, pp. 67-71.

²¹ Australian Parliamentary Library, ‘Maritime Powers Bill 2012’, *Bills Digest*, May 2012, <<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillsdgs%2F1738460%22>> [Accessed 12 April 2013].

²² Border Protection Command, *Guide to Australian Maritime Security Arrangements* (Canberra: Commonwealth of Australia, 2009), <<http://www.bpc.gov.au/webdata/resources/files/GAMSAGuide.pdf>> [Accessed 18 June 2013], p. 3.

“GAMSA”, lists twenty-eight Commonwealth agencies²³ and six generic types of State body²⁴ that have a role in management or policing of the domain.²⁵ In addition there are what it terms commercial and non-commercial “stakeholders” whose activities on Australian waters requires that their interests be considered.

To further complicate matters, operational responsibility in the domain may reside with coordinating agencies whose response itself is to coordinate a response. The Australian Maritime Safety Authority (AMSA) is responsible for search and rescue over a large area of the Indian, Pacific and Southern Oceans but has no equipment. Instead it coordinates responses to emergencies through its Rescue Coordination Centre—Australia, directing ADF, ACBPS or commercial vessels to the location of a maritime emergency. AMSA is also responsible for marine environmental protection, developing and managing a national plan to combat maritime pollution. This is itself a cooperative arrangement between AMSA, the States, the Northern Territory and the petroleum, chemical and shipping industries.²⁶

This regime of coordination is officially referred to as a “whole-of-government” approach to maritime border protection. On occasions of particular threat to the border this approach has manifested in packages of multi-agency, multi-million dollar responses intended to address the problems comprehensively. In 2005-06 broadly based initiatives costing \$145 million (and \$389 million the following year) were funded to counter an upturn in illegal fishing in the north west sector of the AFZ.²⁷ Measures ranged from burning confiscated fishing boats at sea under quarantine regulations to AusAid programs to support income diversification amongst Indonesian fishing communities. Joint Australian-Indonesian patrols along the edge of the AFZ began in October 2007 and foreign fishing activity returned to normal levels during 2007-08.²⁸

This approach looked so promising that it was structurally developed in the Review of Homeland and Border Security in 2008, which rebadged Customs as the Australian Customs and Border Protection Service (ACBPS).²⁹ ACBPS was nominated the single point of accountability for the

²³ Ibid., pp. 15-9.

²⁴ Ibid., pp. 19-20. The formal names of these agencies and their designated responsibilities vary from State to State.

²⁵ A list of the more important government agencies is given at Ibid., Appendix 1.

²⁶ Australian Maritime Safety Authority, ‘About the Australian Maritime Safety Authority’, 2012, <www.amsa.gov.au/about_amsa/index.asp> [Accessed 5 September 2013].

²⁷ Woolner, ‘The Governance of Security in Australia’s Maritime Domain’, p. 66.

²⁸ D. Woolner, *Policing Our Ocean Domain: Establishing an Australian Coastguard* (Canberra: Australian Strategic Policy Institute, 2008), p. 14.

²⁹ R. Smith, ‘Summary and Conclusions’, *Report of the Review of Homeland and Border Security* (declassified version), Canberra, December 2008, p. 6.

Commonwealth's activities to combat people smuggling³⁰ including coordinating Department of Immigration and Citizenship and Australian Federal Police personnel posted inside source and transit countries of irregular migration.

When the numbers of boats carrying asylum seekers into the immigration zone³¹ of the Australian EEZ began to increase in 2009 the practiced whole-of-government response was reactivated. The May 2009 Budget provided \$654 million for a coordinated multi-agency program with most of the operational initiatives focused on activities in source and transit countries.³² However, the increase in boat numbers over the succeeding four years demonstrated that the whole-of-government coordinated initiative is not the answer to all challenges to maritime border security.

WHEN COORDINATION FAILS

At the fundamental level of operations in the maritime domain, coordination is not only a management issue but one with demonstrable life and death outcomes. When SIEV 221 was shipwrecked on Christmas Island in December 2010 both HMAS *Pirie* and ACV *Triton* reached the site and dispatched tenders to pull victims from the water. Unfortunately, the tenders were forced back to the parent vessels for repairs as their propulsion systems became fouled amongst the debris, thus "introduc[ing] delays to recovering survivors from the water".³³

This was a failure of neither crew nor equipment. The tenders were operating beyond their design limitations in the cyclonic conditions and the rescue was dependent on the courage and skill of their crews. The ACBPS review of the incident conceded the tenders' propulsion systems were not ideal for the conditions but observed that they would not have been selected for that purpose since Search and Rescue (SAR) operations in elevated sea states was not a primary function of the RAN or ACBPS.³⁴ The problem is that SAR is the responsibility of AMSA, which has no seagoing capacity of its own, whilst the RAN and ACBPS, which have the seagoing capacity, are under no obligation to ensure that they acquire equipment needed for SAR in difficult conditions.

This revolving conundrum was not unforeseen. The Smith review of homeland and border security identified three areas of maritime border

³⁰ K. Rudd MP, *The First National Security Statement to the Australian Parliament*, 4 December 2008, p. 12.

³¹ The Immigration Zone is the application of Australian immigration law in the Contiguous Zone.

³² Woolner, 'The Governance of Security in Australia's Maritime Domain', p. 68.

³³ Australian Customs and Border Protection Service, *SIEV 221 Internal Review* (Canberra: Commonwealth of Australia, January 2011), <<http://www.customs.gov.au/webdata/resources/files/110124CustomsInternalReview.pdf>> [Accessed 8 February 2011], p. 41.

³⁴ *Ibid.*

security that could be improved, with one of them being the better integration of SAR and other operational functions.³⁵

At about the same time, the ability to sustain coordination of the Commonwealth's interests in the maritime domain came under question. In late 2005, the Department of Prime Minister and Cabinet (PM&C) concluded that the then existing arrangements did not fully meet the requirements for managing the maritime domain.³⁶ Coordination was sometimes inadequate and, to overcome this limitation, PM&C established the Strategic Maritime Management Committee (SMMC) to assess developments in the domain and recommend options to government.³⁷ The success of the policies deployed against illegal fishing owed much to the role of the SMMC.

However, in March 2009 the SMMC was charged with an altered role³⁸ following an internal PM&C restructure. Although the SMMC was still the body nominated for coordination and evaluation of the fisheries package the revised committee was removed from its management³⁹ leaving the individual participating agencies to continue with their components. It took the intervention of the Office of the Auditor General to reveal that some \$500 million was being spent without Ministerial responsibility or overall program leadership to manage and evaluate the package's outcomes.

It is at the points of coordination that Australia's system of maritime border protection is at its most vulnerable, a point that appears to have been accepted by the Coalition parties in the 2013 Federal election.⁴⁰ The risk of poor coordination or loss of oversight remains a constant in such an organisational concept and the management structures responsible for the regimes of coordination have to be sufficiently robust to translate coordination into the tangible actions that maritime border protection requires. Otherwise, the risk is that acronyms like AMSA, GAMSA and the rest become the essence of Australia's management of its maritime domain.

Problems of Size III: The Australian Customs and Border Protection Service

Control of the operational aspects of Australian maritime border protection has been a responsibility of the Australian Customs Service since 1988. At

³⁵ Smith, 'Summary and Conclusions', p. 6. The other areas needing attention were streamlining the legal framework for maritime enforcement and improving budget information. As discussed above, the former has now been addressed but ACBPS' Portfolio Budget Statements remain elusively opaque.

³⁶ Australian National Audit Office, *Illegal Foreign Fishing in Australia's Northern Waters*, Audit Report No. 23 2009-10, Canberra, February 2010. <http://www.anao.gov.au/uploads/documents/2009-10_Audit_Report_No.23.pdf> [Accessed 22 March 2010], p. 48.

³⁷ *Ibid.*, p. 30.

³⁸ Border Protection Command, *Guide to Australian Maritime Security Arrangements*, p. 3, fn.

³⁹ *Ibid.*, pp. 46-7.

⁴⁰ See below, p. 84.

that time the organisation charged with managing surveillance of, and enforcing legislation within, the maritime domain was known as Coastwatch. After several evolutions of policy Coastwatch has become Border Protection Command (BPC), and the Customs Service renamed the Australian Customs and Border Protection Service. Although pre-existing arrangements for maritime operations continued following this change of nomenclature, the ACBPS became one of the national intelligence agencies and its Minister, the Minister for Justice, became a member of the National Security Committee of Cabinet.

BPC retains responsibility for managing surveillance of, and legislative enforcement in, the maritime domain. BPC amalgamates and analyses intelligence, undertakes planning for surface, aerial and space-borne surveillance and commands surface operations to intervene in the maritime domain.⁴¹ Client agencies identify the threats and provide the risk assessments that form the basis of BPC planning and operations. A standardised format for risk assessment reporting is used to ensure operational priorities can be determined on agreed evaluations of the consequences of likely risk outcomes. BPC's actions are aimed at countering eight specific security threats to the maritime domain.⁴² Listed as headings for Chapters 4 to 11 in the GAMSAs, these are illegal activity, illegal exploitation of natural resources, marine pollution, prohibited imports or exports, irregular maritime arrivals, compromised biosecurity, crime at sea, and maritime terrorism.

The BPC has no equipment of its own and calls on assets controlled by the ADF, ACBPS and occasionally other agencies, for surveillance and response capacity. The Chief of Navy force assigns RAN vessels through the Head Quarters Joint Operational Command (HQJOC) to the operational control of the Commander BPC, as Commander Joint Task Force 639. The RAN has allocated 1800 patrol boat days per annum since the beginning of the maritime surveillance program.⁴³ In general terms the current commitment translates to the allocation of seven Armidale class patrol boats with another two on short notice to assist.⁴⁴ In addition, BPC calls on surveillance from three RAAF AP-3C Orion maritime patrol aircraft, usually

⁴¹ Woolner, *Policing Our Ocean Domain*, pp. 8-12. These pages describe the development of the current arrangements for policing the maritime domain and the assets available for the role. The report goes on to discuss the higher level organisation of the maritime policing function and to recommend a revised structure and executive authority for the BPC.

⁴² Border Protection Command, *Guide to Australian Maritime Security Arrangements*, p. 13.

⁴³ This corresponds to roughly half the Armidale patrol boat fleet being assigned to BPC. The allocation of other assets has occurred in response to specific peaks in workload associated with increased people smuggling around 2000 and unlawful foreign fishing around 2005. Woolner, *Policing Our Ocean Domain*, p. 10.

⁴⁴ Attorney General's Department, 'Australian Customs and Border Protection Service, Section 1: Agency overview and resource', *Budget 2013-14*, <<http://www.ag.gov.au/Publications/Budgets/Budget2013-14/Documents/PBS%202013-14%20ACBPS.PDF>> [Accessed 8 July 2013], p. 120, footnote 6.

based in Darwin, for a total of 2200 flying hours per annum⁴⁵ and on whatever RAN vessels are passing through an area of interest to BPC.

The Commander BPC also directs ACBPS Marine Unit craft, primarily the eight *Bay Class* Australian Customs Vessels (ACV) that provide a total of 2400 sea days per annum. A single dedicated craft provides a year-round presence at the Ashmore Shoals. These are assets of ACBPS Maritime Operations Support Branch, which also manages commercial contracts for vessels to perform specific operational roles, the largest of which are the ACV *Ocean Protector* and ACV *Triton*. They carry Customs officers (and officials of other client agencies) but are crewed by contractor staff and commercially maintained and supported.

The Branch also manages the contract for aerial surveillance, provided by Surveillance Australia Pty Ltd (SAPL) through a \$1 billion contract that was signed in 2005 and extended in 2012 to run until 2021. Under this contract, SAPL provide, operate and crew ten Bombardier Dash 8 aircraft fitted for surveillance operations with a basic contracted performance target of 2500 missions, equating to 15,000 hours surveillance, per annum.⁴⁶ The Division also manages contracts for two smaller Reims F406 aircraft based at Cairns and Horn Island for 2000 flying hours and support of two helicopters for up to 1250 hours from Horn Island.⁴⁷

A TINY PART OF A MEGA DEPARTMENT

Whilst the activities of BPC are essential for maintaining Australian jurisdiction over the maritime domain they form only a tiny component of the responsibilities of its parent department. By far the major activity of ACBPS by volume and value is the entry and exit of goods, services and people at the more formal points of entry to Australia, such as harbours and airports. In 2012, 30 million people passed through Australian airports, 2.2 million freight containers arrived at Australian ports and 11 million freight consignments arrived by air.⁴⁸ In addition, ACBPS retains responsibility for financially oriented and trade management legislation such as tariffs and anti-dumping measures. Despite decades of economic reform focused on opening the Australian economy to competition by reducing tariff barriers,

⁴⁵ The Senate, Senate Standing Committee on Legal and Constitutional Affairs Australian Customs and Border Protection Service, Question No. 140, <http://www.aphref.aph.gov.au-senate-committee-legcon_ctte-estimates-sup_1213-ag-qon_140_customs_sbe_2012.pdf> [Accessed 10 July 2013].

⁴⁶ J. Slocombe, 'Protecting Australia's Maritime Borders', *Asia-Pacific Defence Reporter*, vol. 39, no. 2 (March 2013), pp. 16-7.

⁴⁷ The Senate, Senate Standing Committee on Legal and Constitutional Affairs Australian Customs and Border Protection Service, Question No. 140.

⁴⁸ M. Pezzullo, CEO Speech to the 11th Annual National Security Australia Conference, 25 February 2013, <http://www.customs.gov.au/site/130301transcript_NationalSecurityAustraliaConference.asp> [Accessed 9 July 2013], pp. 2-3.

ACBPS is still responsible for collecting over \$7 billion in customs duties each year.⁴⁹

The demands of managing any of these areas can monopolise the attention of senior management. In December 2012 Jason Clare, the Minister for Home Affairs and Justice, demanded root and branch reform of the Service. This remains an ongoing exercise,⁵⁰ complicated by media revelations of the corruption of some staff in barrier functions, including smuggling of substances such as narcotics and consequent links with organised crime. It is not surprising, therefore, that the CEO of ACBPS has not mentioned, in any more than passing, the security of the maritime domain or the functions of BPC in any public speech since his appointment.⁵¹

Nor are the pressures of ACBPS' responsibilities about to ease. Within seven years international air passenger numbers are expected to reach 40 million, freight containers to more than double to 5 million and air consignments to reach 22 million.⁵² Travel and trade will become more complex. Trade will increasingly embrace transfer of intellectual property such as, for instance, the delivery of product in-country through 3-D printing. With total staffing having fallen in recent years, ACBPS will have little chance of significantly increasing its 5000 strong numbers to respond to this upsurge, yet cannot afford a drop in performance levels lest the Service be criticised for hampering Australia's economic performance.

In June 2013, the ACBPS published its response to the likely pressures of the future in its *Blueprint for Reform 2013-2018*. Amongst considerable changes, headed by the creation of a Strategic Border Command to control all barrier functions, Border Protection Command is excepted and its role and structure remain unchanged.⁵³ The only apparent impact of the planned changes on the management of Australia's maritime domain is the grouping of all ACBPS frontline staff working at air and sea ports, and on the maritime domain, into a body named Border Force. As presented, it is not clear whether all Border Force staff will be trained to perform maritime functions or

⁴⁹ Australian Customs and Border Protection Service, *Annual Report 2011-12* (Canberra: Commonwealth of Australia, 2012), <<http://www.customs.gov.au/site/page4283.asp>> [Accessed 18 July 2013], p. 193.

⁵⁰ Australian Customs and Border Protection Service, 'Response to ACLEI Interim Report into Operation Heritage: Integrity and Culture within Customs and Border Protection', Media Statement, 22 June 2013, <http://www.customs.gov.au/site/130622mediastatement_response-ACLEI-interim-report.asp> [Accessed 9 July 2013].

⁵¹ Access to the speeches of ACBPS Chief Executive Officer, M. Pezzullo, can be gained at <<http://www.customs.gov.au/site/page5659.asp>>. Before 2013 Pezzullo was Chief Operating Officer of the ACBPS.

⁵² Pezzullo, CEO Speech to the 11th Annual National Security Australia Conference, p. 3.

⁵³ Australian Customs and Border Protection Service, *Blueprint for Reform 2013-2018* (Canberra: Australian Customs and Border Protection Service, June 2013), <<http://www.customs.gov.au/webdata/resources/files/ACBPS-Blueprint-for-Reform-2013-2018.pdf>> [Accessed 7 July 2013], p. 27.

whether, as seems implied, ACBPS sea going personnel will remain as a specialised subgroup within the overall force.⁵⁴

The nomination of ACBPS in 2008 as the single point of accountability for the Commonwealth's activities to combat people smuggling may have created the impression that enforcement of Australian legislation in its maritime domain was a central role in the reorientation of the Service. In fact, in both structure and demand on resources, the maritime domain is a minor focus of the Service. Border Protection Command sits as one of four divisions within ACBPS Border Enforcement program, on an equal footing with Maritime Operations Support Branch. Barrier operations are contained within the Border Management program.⁵⁵

Of ACBPS' 5000 odd staff, approximately 100 are deployed in the headquarters of Border Protection Command, less than the 110 provided by the Defence Forces and department.⁵⁶ Including the probably less than 300 ACBPS personnel who are involved in operating the Australian Customs Vessels and providing central office support⁵⁷ brings the total involved in managing the maritime domain to less than 7 per cent of ACBPS staffing.

Similarly, the \$342.2 million provided for civil maritime surveillance and response in the ACBPS 2013-14 Budget amounts to little more than 21 per cent of the \$1604.7 million in agency net resourcing to the Service.⁵⁸ As with personnel, ACBPS splits the funding resources for maritime operations with the ADF and Defence, although what these total is now difficult to determine.

The Defence Budget regularly incorporates \$10 million as the additional cost of *Operation Resolute*, the arrangement under which the ADF supports maritime border protection. However, this is not the financial value of Defence activities in this area. In the 2008-09 financial year Defence

⁵⁴ Ibid., p. 32.

⁵⁵ The ACBPS organisational chart as at 1 July 2013 can be viewed at <<http://www.customs.gov.au/webdata/resources/files/ACBPSOrgchart1July2013.pdf>> [Accessed in July 2013].

⁵⁶ The Senate, Senate Standing Committee on Legal and Constitutional Affairs Australian Customs and Border Protection Service, Question No. 105, hearing of 24 May 2012, <http://www.aphref.aph.gov.au-senate-committee-legcon_ctte-estimates-bud_1213-ag-qon_105-customs.pdf> [Accessed 11 July 2013], Table 1.1: Agency resource statement-Budget estimates for 2013-14 as at Budget May 2013, p. 101 and Table 2.1: Budgeted expenses for Outcome 1, p. 106.

⁵⁷ Detailed breakdowns of staffing figures for ACBPS are difficult to find. The figure used here is a very rough approximation based on data in a 2004 report by the Auditor General. This gave figures for NMU staffing of 36—Central office, 2—regional liaison, 198—seagoing crew. In 2005 an additional 36 officers were added to support the operation of machine guns that had been mounted on the ACVs. The Auditor General, Audit Report No. 37 2003-04, National Marine Unit Australian Customs Service, Canberra, 30 March 2004, p. 35.

⁵⁸ Commonwealth of Australia, Portfolio Budget Statements 2013-14, Attorney General's Department, Australian Customs and Border Protection Service, <<http://www.ag.gov.au/Publications/Budgets/Budget2013-14/Documents/PBS%202013-14%20ACBPS.PDF>> [Accessed 11 July 2013], p. 101.

contributed services costing \$225.1 million to the maritime operations but ACBPS thereafter stopped reporting this figure.⁵⁹ James Brown, of the Lowy Institute, has calculated that a conservative estimate of the cost of this activity to Defence might now be about \$262 million.⁶⁰ Yet the actual cost is probably greater. In 2008-09 the cost of maritime operations to ACBPS was only slightly greater than that to Defence, at \$235.8 million. Given both organisations appear to have borne equally the increasing costs that have accompanied asylum boat activity since 2008-09, it seems a reasonable assumption that they are today more or less equal contributors to the cost of offshore border protection.

EYES OFF THE BALL

A consequence of being a small unit within a larger entity is that important requirements of the smaller can be overlooked while the larger goes about its core business. That experience has been repeated since responsibility for maritime border security passed to the Australian Customs Service in 1988. As part of that arrangement, the Director General of (the then) Coastwatch reported directly to the CEO of Customs as head of a semi-autonomous agency within the ACS. This relationship ceased a decade later when Customs sought budgetary savings by abolishing senior positions in Coastwatch. Throughout this decade the effectiveness of Coastwatch aerial surveillance was limited by a long-recognised failure to fit radios that could operate reliably in the tropics.

This neglect ended only when external circumstances prevailed against ACS priorities. In March 1999 landings of Chinese irregular immigrants at Cairns, and more at Nambucca Heads in April forced the establishment of a Prime Minister's Coastal Surveillance Task Force. This recognised that planning of aerial surveillance had moved from standing patrols to intelligence directed operations, yet the available technology was antiquated and intelligence was poor. An earlier report prepared by retired Air Vice Marshall Alan Heggen had found some problems in the way the coastal surveillance arrangements were implemented.⁶¹

The task force targeted better management of intelligence by recommending establishment of the previously delayed National Surveillance Centre, directed appropriations for improved communications equipment and

⁵⁹ Commonwealth of Australia, Portfolio Budget Statements 2009-10, Attorney General's Department, Australian Customs and Border Protection Service, 'Table 2.1: Budgeted expenses and resources for Outcome 1', Notes #, <http://www.ag.gov.au/Publications/Budgets/Budget2009-10/Documents/02_07%20PBS%2009_10%20Customs_web%20Final.pdf> [Accessed 30 August 2013], p. 120.

⁶⁰ J. Brown, 'Asylum Seekers: The Cost to Defence', *The Interpreter*, 30 July 2013, <<http://www.lowyinterpreter.org/author/James%20Brown.aspx>> [Accessed 30 August 2012].

⁶¹ A. Heggen, AVM, RAAF (Ret.), *Independent Inquiry into Circumstances Surrounding the Arrival of suspected Illegal Entry Vessels Near Cairns, North Queensland and Nambucca Heads, New South Wales March/April 1999*, Canberra, 30 April 1999.

restored Coastwatch's standing within Customs through a restructure that stands till today, the designation of the position of Director General of Coastwatch (now Border Protection Command) being for an ADF officer with rank equivalent to Rear Admiral.⁶²

The practice of ACBPS deferring action on maritime border priorities persists. A feature of the 2005 revision of the aerial surveillance contract was that Surveillance Australia PL would supply a new integrated data system for its DASH 8 aircraft. This, the Surveillance Information Management (SIM) system was installed in late 2008 and provides a capability that cannot be matched by the RAAF's AP-3C maritime patrol aircraft. The SIM integrates surveillance and communications data and provides a direct digital feed to the National Surveillance Centre via satellite. It incorporates a data recording system developed specifically to maintain the evidentiary trail to support legal proceedings against breaches of Australian law in the maritime domain.⁶³

Yet, whilst RAN patrol boats can access the data feed from the SIM, none of the Australian Customs Vessels can do so. The Bay class ACVs considerably pre-date the SIM and ACBPS did not refit for the required equipment. In most circumstances the ACVs will have been operating in environments with alternative communications and may have been controlled effectively with instructions passed from the National Surveillance Centre. However, direct reception of SIM data would most probably have assisted in the seven deployments that single ACVs have now made to the Cocos (Keeling) Islands during the non-monsoon season,⁶⁴ where many of the refugee boats have sailed to from Sri Lanka, beyond the scope of most of Australia's deployments.

This deficiency will be corrected with the acquisition of the new Cape class ACV, which is fitted with electronic systems capable of accessing the SIM data feeds.⁶⁵ The first of class was officially delivered in April 2013, with the last of the eight to enter service in August 2015. That will be the seventh year that the ACPBS will have been paying for a system it can only partially access. I have argued elsewhere that a loss of focus, such as in these instances, is a structural weakness of the current "whole-of-government" coordination model of maritime border protection.⁶⁶ The system has

⁶² The Prime Minister's Coastal Surveillance Task Force (PMTF), *Report*, Canberra, June 1999, pp. 1-10.

⁶³ Woolner, *Policing Our Ocean Domain*, p. 12.

⁶⁴ The Senate, Senate Standing Committee on Legal and Constitutional Affairs Australian Customs and Border Protection Service, Question No. 23, hearing of 16 October 2012, <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Committees?url=legcon_ctte/estimates/sup_1213/ag/index.htm> [Accessed 19 July 2013].

⁶⁵ Austal, 'First Cape Class Patrol Boat Officially Named', Austal News, 15 March 2013, <<http://www.austal.com/en/media/media-releases/13-03-15/First-Cape-Class-Patrol-Boat-officially-named.aspx>> [Accessed 20 May 2013], p. 12.

⁶⁶ Woolner, 'The Governance of Security in Australia's Maritime Domain', p. 72.

procedures adequate to manage a compelling crisis but little to assess the overriding requirements of managing the maritime domain and insuring that optimum solutions are, at the least, given consideration. This has led to arrangements and planning oversights that appear minor but have, in real operational crises, contributed to loss of lives.⁶⁷

And Then: The Problems of Insufficient Resources

The current focus of the leadership of ACBPS on mainstream customs functions is understandable. Yet the constant political focus of the last four years has been on irregular maritime arrivals and the main policy objective driving the morphing of Customs into ACBPS in 2008 was to make the organisation the focus of activities to combat people smuggling.⁶⁸ ACBPS might have a legislative responsibility to view the maritime border comprehensively and, as outlined in the first two parts of this article, Australia's interests in its maritime domain might be great in breadth and of concern to a great number of entities. Nonetheless, in terms of political debate and a large stretch of public awareness, maritime border protection has come to be synonymous only with the north-western approaches to the Australian continent and the number of asylum boats traversing them.

The current ACBPS CEO commented at the creation of ACBPS that the new arrangements reflected, "a much more sophisticated understanding of the border", in which the new entity was "no longer simply responsible for on-water interceptions".⁶⁹ He was referring to the role of his organisation in coordinating offshore activities to gather intelligence on, and pre-emptively disrupt the implementation of, threats to the integrity of Australia's borders. Yet, in truth, the integrity of those borders is under little threat from asylum boats, nearly all of which sail with the intention of being found, detained and escorted to Australian territory. To facilitate this, nearly all asylum boats sail to the offshore territories of Christmas Island, the Cocos (Keeling) Islands and the Ashmore Shoals. In some areas there was so little necessity in finding these boats that, for instance until the shipwreck of SIEV 221 in December 2010, there was no regular aerial surveillance to the north and north west of Christmas Island.

Nonetheless, whatever sophistication the new arrangements may have had, they have failed to prevent movements of irregular maritime arrivals that have made "on-water interceptions" an overwhelming focus of current maritime border protection. From 2009 to the end of 2012, 541 boats arrived in Australia's maritime immigration zone carrying 31,048 irregular maritime

⁶⁷ See above, p. 8.

⁶⁸ Australian Customs and Border Protection Service, *Annual Report 2008-09*, p. 60.

⁶⁹ M. Pezullo, 'The Role of the Australian Customs and Border Protection Service in Securing Australia's Borders: Working with Partners across Traditional Boundaries on Border Risks', Australian Financial Review Defence Conference 2009, 23 September 2009, p. 3.

arrivals.⁷⁰ More than half of these (17,202) arrived during 2012 alone⁷¹ and, by 26 July the arrivals for 2013 already had reached 17,075.⁷²

One of the consequences of this large but basically unsophisticated challenge to Australia's management of its maritime domain has been the loss of any meaningful ability to operate in the Southern Ocean and in the waters around its Antarctic Territories. When it was first purchased, ACV *Ocean Protector* was contracted to provide 220 patrol days in the Southern Ocean and Antarctic and eighty in northern waters. On a patrol in the Southern Ocean in January 2012 *Ocean Protector* was diverted to receive three Australian anti-whaling activists following government-to-government negotiations. The three were transferred from a Japanese fishing agency vessel to Albany, Western Australia. ACBPS commented that it was one of the few Commonwealth agencies able to conduct operations in the demanding environment of the Southern Ocean.⁷³

Yet, as the numbers of asylum boat arrivals increased *Ocean Protector* was diverted to the north to transport irregular maritime arrivals.⁷⁴ February 2012 was the last time that Australia had a patrol vessel in the Southern Ocean or Australia's Antarctic EEZ. Since then, Australia's supervision of its southern maritime domain has been limited to data provided by commercial satellite coverage and the reports of a few Australian personnel carried on French Navy patrols.⁷⁵ Over the 2012-13 summer, when the largest number of vessels ever assembled by the Sea Shepherd activist group harassed Japanese whalers, Australia had no options for intervention should it become necessary. Neither was there capacity to gather evidence that might have been material in the case against Japanese whaling that Australia was due to bring in the International Court of Justice in the Hague in mid-2013.

The capacity to maintain aerial surveillance of some areas of the maritime domain has also suffered as a result of the pressure arising from the escalating numbers of asylum boat arrivals. Some Dash-8 aircraft under contract to ACBPS were repositioned from Australia's east coast to allow

⁷⁰ J. Phillips and H. Spinks, *Boat Arrivals in Australia since 1976*, Appendix A: 'Boat arrivals since 1976 by calendar year' (Canberra: Parliamentary Library Parliament of Australia, 2013), <http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2012-2013/BoatArrivals> [Accessed 22 July 2013], p. 24. This Parliamentary reference paper is updated on a regular basis, the latest revision being January 2013.

⁷¹ *Ibid.*

⁷² M. Baker, 'Snags Hit Manus Building Deadline', *The Canberra Times*, 27 July 2013.

⁷³ Australian Customs and Border Protection Service, *Annual Report 2011-12*, p. 74.

⁷⁴ *Ibid.*, p. 63.

⁷⁵ The Senate, Legal and Constitutional Affairs Legislation Committee, Estimates—Attorney General Portfolio, Australian Customs and Border Protection Service, 12 February 2013, <<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=COMMITTEES;id=committees%2Festimate%2Fdca139da-f442-48cb-974a-3b95c2e4a42c%2F0002;query=id%3A%22committees%2Festimate%2Fdca139da-f442-48cb-974a-3b95c2e4a42c%2F0001%22>> [Accessed 20 July 2013], p. 19.

surveillance of the maritime approaches to the continent's north and north west.⁷⁶ Operating Dash-8 surveillance aircraft from Christmas Island during the monsoon season resulted in a period of four months where aerial surveillance in other areas was restricted.⁷⁷

A STRUGGLE FOR POLICY DOMINANCE

To the oft-expressed distress of the Australian polity, around 1000 people have died in the sinking of asylum boats since 2009. Since the deaths of fifty people⁷⁸ when SIEV 221 was shipwrecked on the cliffs of Christmas Island in December 2010, protecting the lives of asylum seekers by discouraging them from a risky boat passage to Australian waters has become the justification of the evolving policy stances of both major parties.

Despite their rhetorical variations, these policies largely have been based on deterring the movement of boats into Australian waters, usually through the threat of relocating asylum seekers away from Australia. The first Rudd Government attempted to confine the problem to the Indonesian archipelago in an approach that was ironically dubbed "Rudd's Indonesian solution"⁷⁹ but collapsed following the *Oceanic Viking* incident.⁸⁰ The Gillard Government sought to introduce, first, a processing centre in East Timor, then, a swap of boat people for refugees in Malaysia who were awaiting relocation. Neither could be implemented and, instead, processing centres at Nauru and Manus Island were re-established following the Report of the Expert Panel on Asylum Seekers.⁸¹

Throughout the period, the Opposition has continued to advocate a policy of deterrence through revising the elements of the Howard Government's "Pacific Solution". With the Gillard Government coming to adopt most elements of that policy, by 2013 the only significant area of policy difference was the Opposition's commitment to forcing asylum boats to return to Indonesia.

As the number of arrivals increased and the issue of asylum boats remained one of the principle contentions on the eve of an approaching 2013 general

⁷⁶ Australian Customs and Border Protection Service, *Annual Report 2011-12*, p. 63.

⁷⁷ *Ibid.*, p. 69.

⁷⁸ *Ibid.*, 'Table 15: Detections of suspected irregular entry vessels and potential irregular immigrants, 2009-10 to 2011-12', note (c), p. 68.

⁷⁹ Woolner, 'The Governance of Security in Australia's Maritime Domain', p. 68.

⁸⁰ This incident is one of the better examples of policy derailing the conduct of operations in the maritime domain. The *Oceanic Viking*, under contract to ACBPS, rescued seventy-eight Sri Lankans whom the government insisted be landed in Indonesia. However, the Sri Lankans refused to cooperate and the ship lay in an Indonesian port for over a month until the Australian Government capitulated to the passengers' demands. Woolner, 'The Governance of Security in Australia's Maritime Domain', pp. 68-9.

⁸¹ Expert Panel on Asylum Seekers, *Report of the Expert Panel on Asylum Seekers* (Canberra: Australian Government, August 2012), <<http://expertpanelonasylumseekers.dpmc.gov.au/report>> [Accessed 28 July 2013].

election, the second Rudd Government implemented a “PNG solution”. All asylum seekers arriving by boat would have their claims processed in Papua New Guinea (PNG), Prime Minister Rudd announced on 19 July, where they would be resettled if their claims for refugee protection were validated.⁸² None were to be resettled in Australia. In one of the few gestures in the current debate towards a broader agenda, the government reaffirmed its commitment to a general refugee intake of 20,000 per annum with consideration of an increase to 27,000.

The Opposition responded with more of a plan to implement policy than a development of policy. If elected, the Opposition would establish a task force as *Operation Sovereign Borders*, under the control of a three-star level military commander to coordinate the implementation of Opposition policy,⁸³ at the centre of which remains forcing boats to return to Indonesia. The plan, which the Opposition costed at \$10 million, did include a new element in the charter of vessels to transfer irregular maritime arrivals from intercepting vessels to shore, although they later announced the cost of this component of the policy as \$40 million.⁸⁴

The functions proposed to be under military coordination in *Operation Sovereign Borders* are already part of the whole-of-government response to people smuggling and are supposed to be coordinated by ACBPS. Perhaps this shows the Opposition views the massive coordination process that is the essence of Australia's management of its maritime domain, and ACBPS' role in it, as less than successful. Such a conclusion would be supported by the arguments raised earlier in this article,⁸⁵ which transcend the single issue of asylum boats. If an incoming Coalition government rearranges the management of offshore border protection it will create an opportunity to evaluate the efficacy of an ongoing three-star level military command of an independent Border Protection Command.

THE CONSEQUENCES OF CONSTANT ASYLUM BOAT ARRIVALS

As the figures attest, none of the policies so far implemented have reduced the flow of asylum boats. Neither have these policy positions changed the nature of operations at Australia's maritime borders. Over the last five years this has involved intercepting asylum boats inside the immigration zones around Christmas Island, the Cocos (Keeling) Islands and the Ashmore

⁸² K. Rudd MP, Prime Minister of Australia, Transcript of Joint Press Conference, Press Office, 19 July 2013, <<http://www.pm.gov.au/press-office/transcript-joint-press-conference-2>> [Accessed 20 July 2013].

⁸³ B. Loughnane, *The Coalition's Operation Sovereign Borders Policy* (Barton, ACT: B. Loughnane, July 2013), <http://paweb-static.s3.amazonaws.com/Policies/OperationSovereignBorders_Policy.pdf> [Accessed 26 July 2013].

⁸⁴ I. Mcphedran and G. Jones, 'Government Asks Navy to Send Troopship to Manus Island to House Staff, Builders', *News Limited Network*, 25 July 2013, <<http://www.news.com.au/national-news/government-asks-navy-to-send-troopship-to-manus-island-to-house-staff-builders/story-fncynjr2-1226685234197#ixzz2aXCZERpm>> [Accessed 30 July 2013].

⁸⁵ See especially, pp. 72-3.

Shoals and ensuring that the arrivals are transported for processing, mainly to the detention centre on Christmas Island. Many of these voyages are over considerable distances. In the 2011-12 financial year there were twenty-nine voyages of 500 nautical miles or more to transfer more than 1500 irregular maritime arrivals to the nearest landfall.⁸⁶

Aerial surveillance has been conducted with rather more attention to covering the north-west coast and maritime approaches, to prevent landings of asylum boats on the Australian mainland.⁸⁷ This was because the maritime territories had been excised from the application of Australia's immigration law, denying asylum seekers the ability to apply for a visa, and hence appeal to Australian courts, and allowing their claim to be processed offshore. With the excising of the Australian mainland itself in May 2013, such an operational priority seems no longer required. This will be of benefit since, following the shipwreck of SIEV 221, SAPL's Dash-8 aircraft have been conducting surveillance operations from Christmas Island during the monsoon season, a task that ACBPS notes was challenging because of the difficulty of ensuring aircrew availability.⁸⁸

While officials continue to affirm that the system is meeting the demands placed upon it, the narrative emerging from operations to intercept asylum boats suggests that it is only just managing to do so. It is not surprising that, as the number of arrivals has accelerated during 2013, extra capacity has had to be provided in the form of an RAN frigate and a minehunter.⁸⁹

Competent military forces develop procedures to ensure that their equipment is not used beyond the specified design limits. For the RAN to suffer damage to, or limited availability of, equipment is a sign of demand in excess of normal operations sustained for longer than expected. The entire Armidale patrol boat fleet has been placed under a continuing program that required an additional 330 days assigned to maintenance in 2012,⁹⁰ whilst the RAN remained committed to providing agreed levels of support for

⁸⁶ Australian Customs and Border Protection Service, *Annual Report 2011-12*, 'Table 15: Detections of suspected irregular entry vessels and potential irregular immigrants, 2009-10 to 2011-12', p. 68.

⁸⁷ Australian Customs and Border Protection Service, *SIEV 221 Internal Review*, January 2011, <http://www.customs.gov.au/webdata/resources/files/110124_CustomsInternalReview.pdf> [Accessed 9 July 2013], p. 29.

⁸⁸ Australian Customs and Border Protection Service, *Annual Report 2011-12*, p. 69.

⁸⁹ C. Stewart and P. Taylor, 'Border Patrols at Breaking Point Over Asylum Boats', *The Australian*, 18 July 2013.

⁹⁰ R. Griggs, Chief of Navy Speech to the Australian Strategic Policy Institute—Lockheed Martin White Ensign Dinner, 9 May 2013, <http://www.navy.gov.au/sites/default/files/documents/CN_ASPI_Lockheed_Martin_White_Ensign_Dinner_09May2013.pdf> [Accessed 26 May 2013], p. 10.

maritime border protection. Consequently, by year's end some 200 urgent defects were still being recorded across the patrol boat fleet.⁹¹

The hulls of three boats have cracked, another has suffered leaks due to corrosion⁹² and davits have caused difficulties as a result of launching the vessels' tenders in sea states beyond that for which they were designed.⁹³ It was envisaged in the 2009 Defence White Paper that the RAN would move away from patrol boats into a class of multipurpose offshore patrol vessels. However, "to ensure that Defence can continue to provide a patrol capability"⁹⁴ the government has decided that it will bring forward the replacement of the Armidale class, preferably utilising a proven design.⁹⁵ This extraordinarily early replacement program (HMAS *Armidale*, the first of class, was commissioned in 2005) suggests how heavy has been the use of the RAN patrol boats deployed to intercept asylum boats.

The requirement that all irregular maritime arrivals be shipped to Christmas Island for processing is one factor that has contributed to the workload of vessels involved in intercepting asylum boats. The two large ACBPS ships *Triton* and *Ocean Protector*, the latter having a capacity for around 120 passengers, are meant to receive and transport irregular maritime arrivals taken off asylum boats. This is not always possible, especially as the increasing use of the Cocos (Keeling) Islands as a landfall has led to ACV *Triton* being stationed there during the monsoon season. Consequently, patrol craft often carry dangerously large numbers of passengers. On one occasion in December 2012, two ACBPS Bay class patrol boats intercepted an asylum boat that subsequently sank. The patrol boats, which have a rated capacity for sixteen passengers in addition to crew, then had to carry 110 irregular maritime arrivals between them for some 200 to 300 nautical miles to reach Darwin.⁹⁶

⁹¹ C. Stewart, 'Patrol Boats Can't Stay Shipshape', *The Australian*, 9 November 2012.

⁹² Royal Australian Navy, *On The Record: Response of 31 August 2012 provided to Cameron Stewart at The Australian to questions asked on 29 August 2012*, <<http://www.navy.gov.au/press-release/record-response-31-august-2012-provided-cameron-stewart-australian-questions-asked-29>> [Accessed 26 July 2013].

⁹³ Australian Customs and Border Protection Service, *SIEV 221 Internal Review*, p. 41.

⁹⁴ Commonwealth of Australia, *Defence White Paper 2013* (Canberra: Department of Defence, 2013), p. 84.

⁹⁵ S. Smith, MP, Minister for Defence, *2013 Defence White Paper: Capability Overview*, Prime Minister and Minister for Defence, Joint Media Release, 3 May 2013,

<<http://www.minister.defence.gov.au/2013/05/03/prime-minister-and-minister-for-defence-joint-media-release-2013-defence-white-paper-capability-overview/>> [Accessed 26 May 2013].

⁹⁶ The Senate, Legal and Constitutional Affairs Legislation Committee, Estimates—Attorney General Portfolio, Australian Customs and Border Protection Service, 12 February 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=COMMITTEES;id=committee_s%2Festimate%2Fdca139da-f442-48cb-974a-3b95c2e4a42c%2F0002;query=id%3A%22committees%2Festimate%2Fdca139da-f442-48cb-974a-3b95c2e4a42c%2F0001%22> [Accessed 20 July 2013], pp. 2-4.

The Armidale class patrol boats were designed with a passenger space to accommodate up to twenty, under security if necessary. However, its use for accommodation has been prohibited since an incident when poisonous gases were vented into the space. Nonetheless, the Armidale class has likewise been used to transport dangerously large numbers of passengers over long distances. An even less desirable form of transport that has been emerging with the increasing death of asylum seekers at sea has been the recovery of corpses. The patrol craft used for border protection have not been designed to isolate the often already putrefying corpses, severely testing crews on the voyage back to land and recently causing the Navy to acquire specialist body recovery systems.⁹⁷

Given all of the above circumstances, it is not surprising that the personnel of the RAN and ACBPS are themselves under considerable stress. As the tempo of arrivals built to around 700 to 800 irregular maritime arrivals a week during June and July, the workload for the comparatively small crew of the Armidale class patrol boats became intense. During a ten day period in early July HMAS *Bathurst* rescued six boats carrying 709 people. The crew of the patrol boat fleet are spending up to 25 per cent above the recommended level for time at sea because of the persistence of high levels of boat arrivals.⁹⁸ Exhaustion, together with the emotional distress of rescue at sea, have been reported as increasing the potential for post-traumatic stress amongst crews.⁹⁹ The risk of poor morale and health amongst the crew of vessels represents a problem as serious as the state of equipment, given that the ACBPS has reported difficulties in maintaining crew availability on its Bay class vessels.¹⁰⁰

THE SCREWS WORKING LOOSE?

It seems that the weight of numbers of asylum boats might be approaching a level that reduces the sustainability of this maritime border protection operation. Just how tightly stretched are Australia resources was indicated on 10 June, when ACBPS had to publicly defend its inability to recover bodies from a foundered asylum boat, because of “a range of high priority operations”.¹⁰¹ Of more concern is that the loss of all on board in this particular sinking could have been avoided had AMSA’s Rescue Coordination Centre (RCC) not delayed authorising a search and rescue operation for a vessel that had been sighted only 28 nautical miles from

⁹⁷ C. Stewart, ‘Body-recovery Equipment “Will Spare Sailors”’, *The Australian*, 10 August 2013.

⁹⁸ C. Stewart, ‘Sailors Forced To Spend Too Much Time at Sea’, *The Australian*, 31 July 2013.

⁹⁹ C. Stewart and P. Taylor, ‘Border Patrols at Breaking Point Over Asylum Boats’, *The Australian*, 18 July 2013.

¹⁰⁰ Australian Customs and Border Protection Service, *Annual Report 2011-12*, p. 69.

¹⁰¹ Australian Customs and Border Protection Service, ‘Search and Rescue Operation West of Christmas Island: Final Update’, Media Statement, 10 June 2013, <http://www.customs.gov.au/site/130610mediarelease_searchandrescue.asp> [Accessed 29 July 2013].

Christmas Island.¹⁰² This performance appears to be part of an emerging pattern.

SIEV 358 sank in mid-2012 with the loss of 104 men after a tardy search and rescue operation, despite some sixteen 'phone calls from the sinking vessel. The West Australian coroner concluded that the lives could have been saved with earlier intervention.¹⁰³ AMSA and ACBPS found themselves in an identical situation following another sinking on 12 July, where a baby boy and eight others drowned. Both agencies again denied that there was any difference in their response to SOLAS emergencies involving asylum boats following claims that it was regularly taking up to 24 hours to assist asylum boats in distress.¹⁰⁴ In clear contradiction, shortly afterwards *Fairfax* media obtained documentation under Freedom of Information regulations that confirmed emergencies involving asylum boats were treated with less urgency than other incidents.¹⁰⁵ The pressures created by asylum boats must be extreme if Australia is not fully meeting its responsibilities under the SOLAS Convention.

Over the last twelve years Australian governments have acted with what seems a belief that there is little more to policing Australia's maritime domain than launching a windup rubber ducky. Operation Relex, launched after the *Tampa* incident 2001, set the pattern of calling on naval forces to overcome irregular maritime arrivals. The reflex continues, visible in HMAS *Choules* (an amphibious transport recently purchased from Great Britain for \$100 million) being diverted from its naval duties to lie off Manus Island and assist with expansion of facilities to detain asylum seekers.¹⁰⁶

In reality, pushing naval equipment too far can contribute to tragedy, when mechanical failure compounds the dangers of difficult circumstances. In April 2009 two Armidale class patrol boats intercepted SIEV 36 but were forced to hold her with a boarding party for fifty hours, whilst faults to the amphibious transport HMAS *Tobruk* were repaired. The situation onboard the asylum boat deteriorated during the delay, with one of the passengers causing an explosion by lighting petrol. Five of his fellows were killed.¹⁰⁷

¹⁰² J. Jarvis, 'Search for 55 Asylum Seekers Abandoned', *AM*, Australian Broadcasting Corporation, 10 June 2013.

¹⁰³ N. O'Brien, 'Agency Waited for Boat Debris Before Search', *The Canberra Times*, 28 July 2013.

¹⁰⁴ R. Browne, 'Rescue Services Deny Delay in Boat Aid', *The Canberra Times*, 15 July 2013. The claims were made by P. Curr, campaign coordinator for the Asylum Seeker Resource Centre.

¹⁰⁵ O'Brien, 'Agency Waited for Boat Debris Before Search'.

¹⁰⁶ McPhedran and Jones, 'Government Asks Navy to Send Troopship to Manus Island to House Staff, Builders'.

¹⁰⁷ For a more detailed discussion of this event see: Woolner, 'The Governance of Security in Australia's Maritime Domain', pp. 77-8.

The deaths of around fifty asylum seekers in the shipwreck of SIEV 221 were, likewise, compounded by mechanical failure. When, after considerable confusion, Adelaide class patrol boat HMAS *Pirie* was finally alerted to the pending disaster, she was halted by engine failure. ACV *Triton*, which was more distant, had to stand in but did not arrive at the scene until the asylum boat had been shipwrecked. The mechanical problems with the propulsion units of both vessels' tenders that further complicated efforts to save lives, was a factor that could have been avoided if *Pirie* had not broken down and had arrived in time to shepherd SIEV 221 to safety.¹⁰⁸

Conclusion: “You Ain’t Heard Nothin’ Yet”¹⁰⁹ (?)

Having stated in mid-July their ultimate policies to deter asylum boats, both major political parties have continued with adjustments in an attempt to maximise their political advantage.¹¹⁰ In largely similar ways, both have been seeking an “ultimate solution” to the asylum boat question, a means of stopping asylum boats from attempting to enter Australia’s immigration zone and returning the situation to “normal”.

Yet it is not certain that the threat to domicile proven refugees in PNG will deter others from sailing for Australian waters, even after those first assessed to have genuine claims to refugee protection enter the PNG community. Circumstances will change and, given the effervescence of PNG politics, a future government might be determined to expel refugees settled in PNG. While asylum seekers may give little thought to events in PNG, they may be more seized by the eventual settlement in Australia of those who had spent years in the Pacific island processing camps.¹¹¹ If the hope of one day entering Australia from PNG outweighs the discomfort of remaining in Indonesia, there seems little reason why a substantial number of asylum boats will not continue to sail for Australian waters.

Similarly, it seems equally uncertain that an operation to force asylum boats back to Indonesia when “it was safe to do so”, even if directed by a senior ADF officer, would succeed when there are many tactics to ensure that it would seldom be “safe to do so”. In the period following the *Tampa* incident the Howard Government attempted to force eight asylum boats to return to Indonesia. Four did return but the others succeeded in thwarting the

¹⁰⁸ *Ibid.*, pp. 74-5.

¹⁰⁹ Al Jolson, in *The Jazz Singer*, introducing a new era with the birth of talking pictures.

¹¹⁰ See, for instance, E. Griffiths, ‘Government Slams Opposition over “Childish” Nauru Tent City Announcement’, *ABC News*, Australian Broadcasting Corporation, 30 July 2013, <<http://www.abc.net.au/news/2013-07-30/coalition-plans-to-establish-nauru-tent-city-for-asylum-seekers/4851960>> [Accessed 30 July 2013].

¹¹¹ Of those irregular maritime rivals whose claims for asylum were processed on Nauru and Manus Islands under the Howard Government’s Pacific solution 70 per cent were found to be refugees and of these 61 per cent came to Australia. Phillips and Spinks, *Boat Arrivals in Australia since 1976*, Appendix A, p. 17.

government's intent.¹¹² A more vigorous prosecution of the policy might be attempted but that would seem to increase the risk of an incident threatening the welfare or lives of asylum seekers. Not only would this be politically dangerous for the government but, more importantly, might raise questions of the culpability of Australian personnel implementing the policy.

Nor is there any reason to think that the smugglers running a lucrative business in asylum boats would doggedly stick to their current mode of operation. At some extra cost in preparing boats they could exploit the vast stretches to the south and east of their current operating area, as did one boat in May this year. This craft was detected but made landfall in Arnhem Land before it could be intercepted, requiring an operation to track, locate and reposition the irregular maritime arrivals.¹¹³ Such tactics would significantly complicate Australia's task in managing the arrival of asylum boats and the orderly processing of their passengers.

Whatever the strengths of the policies now favoured by Government and Opposition, it seems apparent that they must lead to a significant reduction of arrivals if the current presumption, that Australia can unilaterally deter the boat traffic, is to be sustained. If anything like the rate of arrivals being registered in the middle of 2013 continues, significant reinforcement of maritime capabilities will be required—and in more active roles than the ferries envisaged in the Opposition's *Operation Sovereign Borders*. While it might seem possible to acquire additional vessels over the medium term, supplementing, or in many cases, replacing personnel will be far more difficult.

Even should one or a combination of the current policies succeed in reducing boat numbers in the near future, it seems likely that the problem will return. The political stability and public safety of Afghanistan remains to be tested after NATO's International Security Assistance Force is fully withdrawn in 2014, with a disintegration of the situation likely to produce another wave of refugees. A little further into the future lies the possibility of the emergence of ecological refugees, initially as agriculture becomes unsustainable with rising salt water levels in parts of the Pacific Islands and Bangladesh.

Those responsible for the management of the maritime domain will have to decide whether the current model, that of the crisis management of the largest problem manifesting, is to continue. Further, they will need to decide whether the concentration of resources this requires should continue to be to the detriment or, as has happened with Australia's interests in the Southern Ocean, complete abandonment, of other responsibilities. Again, if a special, centralised organisation is deemed necessary to improve the coordination of

¹¹² Expert Panel on Asylum Seekers, *Report of the Expert Panel on Asylum Seekers*, p. 125.

¹¹³ 'Asylum Seekers Go Bush in Arnhem Land', *Sydney Morning Herald*, 14 May 2013.

agencies to the level needed to deal with the problem of asylum boats, should not structural reform of a system that is always dependant on complex coordination also come under consideration? More fundamentally, governments will have to decide whether it is best policy to use unilateral force to control a long-term problem or whether to put considerably more effort into developing alternatives based on coordinated international action.

Within the span of a decade-and-a-half Australia has experienced extreme challenges to the management of its maritime domain in firstly, the arrival of asylum seekers around the turn of the millennium, secondly a mid-decade expansion of illegal fishing and now thirdly, another and greater tide of asylum boats. If “an emergency” on the maritime border proves to be not a single incident but a recurring normality, it would seem to demand that Australia abandon the original parsimonious ethic that began the processes of managing the maritime domain and allocate considerably more effort and resources. Perhaps the ACBPS is showing the requirements of the future in the acquisition of its new Cape class patrol boats. Although virtually the same length as the Armidale class, on which they are based, they have 30 per cent more internal volume and 33 per cent more range. If current policies fail, there will be little option but to attempt to install additional capacity within an existing system.

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