

Australian government's culpability in refugee boat disaster—Part 1

By Patrick O'Connor
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Below is the first part of a two-part article. The second part will be published tomorrow.

On June 3, the Sydney *Sun-Herald* newspaper reported that on October 3, 2009 an Australian Federal Police (AFP) spy working with so-called refugee people smugglers in Indonesia tipped them off that a refugee boat with 108 people on board was sinking. The story follows revelations earlier this year that the Australian Customs and Border Protection Service waited nearly four hours after receiving this intelligence before it alerted rescue authorities. All those on board—three Indonesian crew and 105 Hazara Afghans, including several children—are missing, presumed drowned.

Documents detailing what happened in October 2009, released through Senate estimates hearings and freedom of information requests, have slowly accumulated in the past two and a half years. The evidence points to a deliberate Labor government cover up, designed to conceal the actions of AFP and Customs and Border Protection officials. There are striking parallels between the affair and the 2001 SIEV X disaster, when 353 refugees, mainly women and children, drowned at sea as a direct result of the actions of the former Howard government.

In October and November 2009, representatives of the Afghan Hazara community in Australia began raising questions about a missing refugee boat. Several relatives and friends of those on board knew there had been a failed voyage because they had received mobile phone calls from the terrified passengers as the vessel sank.

Many of these people, however, were reportedly reluctant to come forward because they feared being prosecuted as accessories to “people smuggling.” The Labor government has made this “crime” subject to a minimum mandatory sentence of five years imprisonment. In fact, under international law it is not merely legal but obligatory to provide refuge to people fleeing persecution. Some of those convicted of “people smuggling” have been those formally accepted as refugees, who had no other way of helping their family members overseas join them in Australia. Prime Minister Kevin Rudd was ramping up Labor’s rhetoric against so-called smugglers just as questions were first being raised about the fate of the missing refugee boat. On October 14, 2009 he declared that “people smugglers” “represent the vilest form of people on the planet.”

After the refugee boat disappeared on October 3, 2009, the Labor government initially denied any knowledge of what had

happened. Only after the first newspaper reports about the concerns of the Australian Hazara community were published in mid-January 2010 did Customs and Border Protection review its files and brief Brendan O’Connor, Labor’s then home affairs minister. Customs provided O’Connor with a detailed chronology of the events leading up to the boat’s sinking, as well as the Australian and Indonesian response. The department confirmed that it had received intelligence on October 3, 2009 about a refugee vessel that had departed Indonesia a day earlier but then “experienced some difficulties.” Customs’ chronology also detailed the near four-hour delay in alerting maritime authorities.

The minister, however, kept this delay a secret, informing neither the public nor the families of those lost at sea. O’Connor issued a statement acknowledging in the vaguest terms that intelligence had been received of a boat experiencing “difficulties,” but he emphasised that there was “subsequent credible information received later that day indicated that these difficulties had been resolved.”

Customs officials have since explained that this “credible information” came from the same AFP spy who provided the initial tip off. It remains unknown how the assessment was made that the boat’s mechanical problems had been resolved, and whether this assessment was accurate. One possibility is that the boat’s mechanical difficulties were temporarily fixed, and it made further progress toward Australia before finally sinking. This may explain why the Indonesian rescue authorities found no trace of the vessel or those on board in the area identified by the AFP and Customs as the boat’s location. But this has not been investigated.

The Labor government seized on the contradictory intelligence reports to insist that the fate of the vessel could not be determined. O’Connor suggested that it might have returned to Indonesia, and even sought to cast doubt on the boat’s existence. No effort has ever been made by any government agency to collate the testimony of the many people in Australia and other countries, including the US, who had received phone calls from those on board. A government spokesman told ABC Radio in February 2010 that “it’s only speculation that a vessel sank.” In May 2010, O’Connor issued a media statement that referred to an “alleged vessel.”

On May 25, 2010, Customs and Border Protection Service chief executive officer Michael Carmody gave testimony before Senate estimates hearings. “I cannot be sure what happened,” he insisted. “The venture might have turned back to Indonesian waters. People

might have got off and we did not hear from them again. It might have sunk. I do not know... The fact that we get some intelligence that a vessel may have departed for Australia and it does not come does not mean that it has necessarily been a loss at sea.”

Neither Carmody nor the Labor government made any effort to explain why they thought it was a serious possibility that 105 passengers had safely “got off” the boat somewhere, only to never again make any phone contact with their family and friends. The government’s response demonstrated its utter contempt for refugees and asylum seekers—as far it was concerned, the boat disappeared and that was the end of the story. One can imagine the markedly different response had 105 people disappeared in the waters between Indonesia and Australia in a plane crash, or if only a small number of people went missing in a luxury yacht in the same area.

Misleading information

Like the Labor government, Customs and Border Protection did not divulge the four-hour delay. In 2010 and 2011, several of the department’s officials provided false or misleading statements to Senate estimates hearings. They repeatedly insisted that the intelligence about the refugee vessel in distress was immediately passed on to the Australian Maritime Safety Authority (AMSA), which operates the Rescue Coordination Centre that is responsible for leading search and rescue operations.

On October 18, 2011, for example, the deputy chief executive officer of Customs’ Border Management division, Marion Grant, stated that when intelligence is received “our intel part of the business will inform the operations floor so they can *immediately* pass that information to AMSA” [emphasis added]. She further claimed that the “usual procedure” is to relay intelligence “as soon as it comes to hand that there is possibly a vessel in distress, which is what occurred on the day that we are referring to here [October 3, 2009].”

Grant also stated that there were “established protocols with AMSA for relaying this information.”

The opposition Liberal Party pursued the matter in the Senate for its own ends. It wanted to establish that another refugee vessel had been lost at sea to bolster its attack on the Labor government for “watering down” the former Howard government’s refugee policies and supposedly encouraging greater numbers of asylum seekers to make the dangerous voyage from Indonesia. Shadow attorney general George Brandis attempted to nail down Customs’ officials on their knowledge of the boat in October 2009; in doing so he inadvertently exposed the four-hour delay cover up.

On October 18, 2011, Senator Brandis issued a question on notice to Customs’ officials, requesting the precise chronology of events two years earlier, when the refugee vessel went missing. This compelled Customs’ Marion Grant to write a letter to the Senate on February 10, 2012 “clarifying” her previous evidence. In putting together the chronology, she claimed, “we were able to clarify some further facts that did not come to light [earlier].”

Grant added that her previous testimony about “established protocols” for relaying intelligence had referred to those now in place, not the protocols that existed in 2009. She stated that the problem in October 2009 was that “AMSA did not have

arrangements in place for us to be able to convey classified information.” It took nearly four hours, she wrote, before Customs and the AFP agreed to a suitable “form of words” that could alert rescue authorities about the stricken vessel while not revealing the source of their intelligence.

Grant stated that she wished to “apologise to the [Senate] Committee for inadvertently providing incorrect information”—but did not explain why this “incorrect information” was given.

This itself is extraordinary—providing misleading or false testimony in estimates hearings is a serious matter. Individuals can be referred for investigation to a Senate committee, then found in contempt of parliament and imprisoned for up to six months. Prior to Senate estimates hearings, government officials are extensively briefed by advisers in their departments and the relevant documents are collated.

Customs and Border Protection knew of the four-hour delay—it was documented in the January 2010 chronology provided to home affairs minister Brendan O’Connor—yet in several hearings in 2010 and 2011, Customs’ officials categorically maintained that the intelligence had been immediately passed on to AMSA. In the October 18, 2011 Senate estimates hearing, just before Brandis requested the chronology, the Liberal senator had an extended exchange with Customs and Border Protection’s chief operating officer Michael Puzzullo, putting to him that a report of a distressed vessel is an “intrinsically urgent situation,” given that “it could sink in a matter of hours or potentially minutes.” Puzzullo agreed and declared, “I was on duty that night, so I have a fair recall of it.”

The least likely explanation for the mass of false and contradictory testimony is that it was due to departmental oversights and individual memory lapses. A more plausible explanation is that an attempted cover up was orchestrated.

To be continued

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