2013

Should operations to turn the boats around be kept secret?

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Publication Details
Bateman, S. (2013). Should operations to turn the boats around be kept secret?. The Conversation, (27 September)
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Abstract
Acting opposition leader Chris Bowen said in a doorstop interview earlier this week that:

There is absolutely no operational reason for the new minister of immigration not to be up front with the Australian people when a boat arrives and when a turn-back is attempted.

Unfortunately, this statement is not correct. Operation Sovereign Borders, a key plank of the Abbott government’s policy to stop asylum seeker arrivals by boat, is a military-led activity and there are operational reasons for information related to stopping the boats not being made public.

These relate to the modus operandi of the Special Forces (SF) in boarding refugee boats and using force as necessary to turn them around. However, these operational reasons are outweighed by other considerations.

Keywords
kept, be, secret, around, should, boats, turn, operations

Disciplines
Arts and Humanities | Law

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This journal article is available at Research Online: http://ro.uow.edu.au/lhapapers/1567
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Disclosure Statement

Sam Bateman does not work for, consult to, own shares in or receive funding from any company or organisation that would benefit from this article, and has no relevant affiliations.

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Provides funding as a Member of The Conversation.

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There are operational naval reasons behind Scott Morrison’s decision to put asylum seeker arrivals and ‘turn backs’ behind a shroud of secrecy. AAP/Scott Fisher

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Unfortunately, this statement is not correct. Operation Sovereign Borders, a key plank of the Abbott government’s policy to stop asylum seeker arrivals by boat, is a military-led activity and there are operational reasons for information related to stopping the boats not being made public.

These relate to the modus operandi of the Special Forces (SF) in boarding refugee boats and using force as necessary to turn them around. However, these operational reasons are outweighed by other considerations.

**Australian Defence Force doctrine**

The SF is the element of the Australian Defence Force (ADF) that will be used in enforcing a strong “turn around” policy. The crews of naval patrol boats are trained to board and search suspicious vessels but not to seize a vessel against possible violent resistance.
Under current ADF doctrine that’s a job for the SF. This is the probable reason why a senior army officer - Lieutenant-General Angus Campbell - with considerable experience in SF operations has been placed in command of Operation Sovereign Borders.

SF operations are highly classified and SF personnel are never identified by name. This is the principle that will be applied with their employment in stopping the boats. It provides some operational reasons for not releasing details of the operations associated with turning back a refugee boat.

However, this is not to say that maintaining secrecy on these operations is either justified or achievable.

**Reasons for secrecy**

The government’s policy in maintaining secrecy on stopping the boats is likely to be motivated by the desire to avoid a reaction from the Australian public - particularly the asylum seeker lobby - and from other interested parties, notably Indonesia and the International Maritime Organization (IMO). Undoubtedly, Indonesia will be watching Australia’s operations closely for any impact on its sovereignty.

Operations to turn back the boats will also be subject to wider international scrutiny, particularly with regard to Australia’s obligations to ensure the safety of life at sea. The Howard government’s handling of the Tampa affair in 2001 and its attempts to “stop the boats” were strongly criticised at the IMO, the UN organisation with oversight of maritime safety and security.

These criticisms led to amendments to the International Safety of Life at Sea (SOLAS) and the Maritime Search and Rescue (SAR) Conventions, and to the promulgation of guidelines on the treatment of persons rescued at sea.

These amendments and guidelines reinforced existing obligations for ship masters and countries to provide assistance to any person in distress at sea, regardless of the nationality or status of that person. There are high risks that Australia’s operations to stop the boats may run counter to these instruments, particularly in the likely circumstances that robust action to turn back the boats could lead to the disabling or sinking of a vessel, thereby threatening safety of life at sea.

It is also likely that the reasons for not releasing information on the operations are overshadowed by the deterrent value of the tactics being known. The people smugglers and asylum seekers may well be deterred by any publicity confirming a strong Australian response.

**Will secrecy be achievable?**

It is most unlikely that the policy of suppressing information will work. The refugees have mobile phones and will try to tell their version of operations before their phones are seized by SF personnel on boarding a vessel. The residents of Christmas Island will also have a fair idea of what is happening.
When the leaks about actual operations occur, the rumours may do more harm to Australia’s international image than the actual facts.

Lastly, there is the issue of possible legal action resulting from an incident at sea. This was the case after the Tampa affair and some of the subsequent incidents that involved loss of life. Ultimately, Australia’s actions in stopping the boats must be legally defensible and in accordance with both national and international law. This will be extremely difficult to achieve. Jurisdiction at sea is notoriously complex.

The ADF doctrinal publication dealing with maritime jurisdiction notes that the lesson for the ADF following the Tampa affair is:

…the need for scrupulous attention to legality in planning and execution of operations to enforce the Migration Act.

**Final thoughts**

Chris Bowen may have been wrong in claiming that there is absolutely no operational reason for suppressing information on turning back the boats. However, he is well justified in questioning the legitimacy and validity of the new government’s policy of secrecy, as revealed by immigration minister Scott Morrison.

Recent press reports suggest that after several “loose cannon” statements by government ministers, prime minister Tony Abbott is tightening up on the freedom of his ministers to make public statements. Morrison’s statement has been quoted as an example of a statement causing prime ministerial concern.

Given the obvious problems with the secrecy policy, this is not surprising.