Conclusion: Maritime border protection after the Tampa and 9/11

Anthony Bergin
ADSC

Ben M. Tsamenyi
University of Wollongong, tsamenyi@uow.edu.au

Christopher Rahman
University of Wollongong, crahman@uow.edu.au

Publication Details

Research Online is the open access institutional repository for the University of Wollongong. For further information contact the UOW Library: research-pubs@uow.edu.au
Conclusion: Maritime border protection after the Tampa and 9/11

Abstract
The objective of these proceedings has been to review current arrangements for national maritime border protection and to canvass some fresh approaches. The book (and preceding conference) have been designed to avoid getting bogged down in any great detail on sectoral issues, instead taking a more holistic view of the overall maritime border protection regime. The issue is timely in view of the public and political interest in developments regarding maritime security and border protection following the controversy surrounding the MV Tampa incident of August 2001 and the September 11 attacks on the World Trade Center and the Pentagon.

On 25 October 2001 the government released a major statement on border protection as part of its efforts to reassure voters that Australia’s security was in the hands of "highly trained professionals within the ADF, the AFP and agencies such as Customs and AQIS." The extra $175.5 million promised was to be focused on the "crucial areas" of maritime surveillance, enhancing radar and communications capacity (including further High Frequency Surface Wave Radar tests) and detecting illegal material being smuggled into Australian ports.

Keywords
9, conclusion, tampa, after, border, maritime, 11, protection

Disciplines
Arts and Humanities | Law

Publication Details

This book chapter is available at Research Online: http://ro.uow.edu.au/lhapapers/198
8 Conclusion: Maritime Border Protection after the 
*Tampa* and 9/11

Anthony Bergin, Martin Tsamenyi and Chris Rahman

The objective of these proceedings has been to review current arrangements for national maritime border protection and to canvass some fresh approaches. The book (and preceding conference) have been designed to avoid getting bogged down in any great detail on sectoral issues, instead taking a more holistic view of the overall maritime border protection regime. The issue is timely in view of the public and political interest in developments regarding maritime security and border protection following the controversy surrounding the MV *Tampa* incident of August 2001 and the September 11 attacks on the World Trade Center and the Pentagon.

On 25 October 2001 the government released a major statement on border protection as part of its efforts to reassure voters that Australia’s security was in the hands of “highly trained professionals within the ADF, the AFP and agencies such as Customs and AQIS.” The extra $175.5 million promised was to be focused on the “crucial areas” of maritime surveillance, enhancing radar and communications capacity (including further High Frequency Surface Wave Radar tests) and detecting illegal material being smuggled into Australian ports.

The issue of maritime border protection is, of course, only one aspect of the broader debate about how Australia best prepares for homeland security. The tragic events of September 11 have generated renewed interest in Australia on how to design an organisational structure to coordinate all those agencies that will ensure the security – including the maritime security – of the Australian homeland. In the maritime area, this is a difficult intellectual task and it calls for many hard choices, since there are many Federal and State government departments and agencies that are involved in Australia’s maritime border protection arrangements.
Conclusion

Change Drivers

A number of the chapters pick up the key drivers that are shaping the task of protecting Australia's maritime borders. In the area of legal developments, several contributors to this volume note that not only does Australia claim one of the largest exclusive economic zones in the world, but that we also claim an exclusive economic zone off the Australian Antarctic Territory. Australia will also be submitting its extended continental shelf claim to the Commission on the Limits of the Continental Shelf in the near future. Australia has now ratified the UN Fish Stocks Agreement that grants new powers of fisheries enforcement on the high seas. This legal development will generate extra surveillance and enforcement responsibilities for Australia.

Changes to immigration law immediately following the Tampa incident have greatly complicated operations in Australia's maritime zones. As Derek Woolner observes in his thoughtful chapter, the excising of certain island territories from the migration zone can only work if boat people detained on those territories can be transported somewhere else. Because of the distances involved, and without funding for some alternative solution, that can only be achieved by using one of the Royal Australian Navy's amphibious transports. The Navy has only three amphibious ships and two are alternatively involved in supporting the campaign against terrorism in the Persian Gulf.

As far as maritime capabilities are concerned, the Royal Australian Navy (RAN) is planning to replace its Fremantle-class patrol boats - Project Sea 1444. The Defence Department confirmed on 10 December 2001 that it had received 15 bids for the project from a total of nine prime contractors, with that list shortened to three companies in mid 2002. The purchase budget is reported to be capped at $428 million.

Defence is allocating $275 million to significantly enhance Australia's Jindalee over-the-horizon radar capability. The Australian Defence Force (ADF) is to acquire four B737 Airborne Early Warning and Control (AEW&C) aircraft. The government also announced in 2001 that it was investing $160 million in the development and future purchase of the Global Hawk long-range, high-endurance unmanned aerial vehicle (UAV) for wide-area surveillance. The ADF is keen to build on the work it has already undertaken on Global Hawk for use in the maritime surveillance role. The delivery to the Royal Australian Air Force (RAAF) of modernised AP-3C Orion aircraft is finally under way after a delay of over three years. This $880 million project will greatly enhance the aircraft's surface surveillance capabilities and should allow it 15 years of extended airframe life. What does not seem to be on the agenda, however, because of the high costs to the nation, is a dedicated Australian satellite surveillance network.

The conundrum of unregulated population movements will not likely disappear as the pressures creating the problem are too great. Ethnic conflicts will persist and continue to generate asylum seekers; criminals will continue to be involved in people smuggling; governments in some cases will continue to manipulate refugee flows; and more environmental refugees can be expected as East Asia's physical environment deteriorates. And, as Stuart Kaye's chapter notes, Australia will continue to be required to manage some of the tensions between its refugee and law of the sea obligations as far as asylum seekers are concerned, an area of considerable legal complexity. A proper concern with border security will need to be balanced with our humanitarian obligations.

The pressures of illegal fishing are also likely to grow. Over half the world's fish catch is taken in Asian waters, and five of the top ten fishing nations are in East Asia. State subsidies, flag-of-convenience operations and the expansion of fishing fleets are exacerbating global and regional fish shortages. Of particular concern to Australia is illegal fishing in the Southern Ocean around our sub-Antarctic islands. Southern Ocean surveillance and enforcement pose enormous fiscal and logistical challenges, however, with the considerable effort and cost required to combat illegal fishing far outweighing the benefits, if viewed in purely economic terms. The pursuit of the South Tomy is indicative of the potential costs involved, with the Southern Supporter forced to follow the offending fishing boat from the Heard and McDonald Island area, across the Indian Ocean, until it was able to be boarded off the coast of South Africa. The operation required the mobilisation of significant ADF (including SAS) and South African naval assets, while the value of the Patagonian Toothfish seized from the operation was only around $1.5

---

1 The U.S. Coast Guard is also developing a maritime surveillance version of Global Hawk for its Deepwater modernisation programme. See Norman Friedman, "World Naval Developments," U.S. Naval Institute Proceedings, August 2002, p. 6.
million. Yet, despite the expense, Australia has reportedly increased its efforts to combat poaching of the Patagonian Toothfish, with three trawlers captured in the Australian Antarctic EEZ in the year 2002 to September, including one, the Russian-flagged Volga, detained by helicopter “Australian commandos.”

Clive Williams’s chapter points out that major drug imports are made by sea into Australia and that “mother-ships” are being used in these operations. He also notes that while we have focused since September 11 on aviation security — the government intends to implement a policy of randomly placing modest numbers of armed security officers on domestic and international flights as well as introducing more stringent baggage security measures — we should not discount possible incidents of maritime terrorism. Shipping traffic in the Asia-Pacific region continues to grow, particularly the carriage of potentially hazardous and dangerous cargoes, such as crude oil, LNG/LPG, chemicals and nuclear waste. The potential for terrorist hijacking of such vessels has increased since 11 September 2001.

Currently, the threat of maritime terrorism in the region seems to be restricted to Southeast Asian straits and ports (such threats posed by Islamic extremists are now taken very seriously in the region), rather than to Australia directly. However, Australia should probably not assume that it can stay immune to the threat in the future, particularly as Canberra remains firmly involved in the global war against terror, and as some militant groups may wish to oppose Australian involvement in the region and its support for current regimes. In particular, the protection of vulnerable (and valuable) offshore oil and gas facilities in Australia’s northern seas, and potentially also the shipping that carries the gas to Northeast Asia through Indonesian chokepoints, will necessarily become of greater concern for Australian authorities and the ADF, as will the security of submarine cables.

What all of the above problems mean, and as several contributors to this volume point out, the policing tasks for navies and coast guards are increasing in Australia’s region. The RAN, in particular, is stretched to the limits and is busier now than at any time since World War II. The strength of the RAN’s surface fleet has dwindled over the last 15 years from twelve to just nine major surface combatants. Particularly since the renewed focus on boat people, the RAN has little capacity to spare for conventional naval activities, including programmed exercises with other ADF elements and allies. This situation has not been helped by the need for an RAN frigate to venture once again to sub-Antarctic waters for fisheries protection duties.

It can be argued that the actual “threat” posed to Australia by illegal activities in our offshore zones, whether illegal fishing, people smuggling or illegal drugs smuggling, is somewhat minimal. To be sure, there are costs to be borne as a consequence of such activities: in the case of illegal fishing, fisheries may become depleted, in turn damaging Australia’s own fishing industry; with illegal drugs, there are the social costs of drug abuse and the consequent taxpayer burden for drug-related health care and policing; and, in the case of illegal migration, the taxpayer must shoulder the costs of detention facilities. Such largely fiscal burdens, however onerous, can hardly be described as being particularly threatening to the nation.

If the economic case for maritime border protection is dubious, however, the broader principle of sovereignty protection is not. Indeed, even accepting the positive electoral consequences for the Federal Government of operations against seaborne asylum seekers and that illegal fishing does not, at this stage, have the same electoral appeal as does stopping asylum seekers, a more concerted effort to police Australia’s sub-Antarctic waters seems to be under way. If such operations garner few (if any) electoral benefits, and the costs outweigh the value of the fish retrieved from poachers (and perhaps even of protecting the species itself), the overarching political value of sovereignty protection and assertion justifiably seems to be driving the Government to undertake costly enforcement measures. After all, sovereignty that is not enforced over a period of time ultimately may diminish or perish altogether. Such efforts will continue to be constrained by the lack of dedicated enforcement assets, however, as well as the high cost of sending frigates

---

3 For a first-hand account of the operation to catch the South Tomi, see Lieutenant Commander Trevor Gibson, RAN, “The One That Didn’t Get Away,” Journal of the Australian Naval Institute, Vol. 27, No. 1, Autumn-Winter 2001.
5 Such fears are leading to new cooperative efforts by Singapore, Malaysia and Indonesia to combat the potential threat. See, for example, “Southeast Asia Eyes Antiterror Effort in Malacca Strait,” Reuters, 19 September 2002, available at http://sg.news.yahoo.com/reuters/asia-126049.html.
to the Southern Ocean and the high (probably unsustainable) operational tempo of the RAN in the current international political environment.

Of all the undesirable offshore activity, perhaps the most problematic is the environmental dangers posed by polluting vessels, whether by accident, illegal dumping or marine pests introduced from ballast water. Such activities do pose a genuine threat to many of Australia’s fragile marine ecosystems, such as the Great Barrier Reef, and introduced pests also pose quarantine concerns for the protection of Australia’s own economically exploitable marine species.

Furthermore, Australia will need to come to some arrangement to protect offshore oil and gas installations in the Timor Gap area with a newly independent East Timor. The surveillance and enforcement burden would almost certainly fall on Australia. The project is vital for the East Timorese; it is expected to give East Timor $6 billion over 17 years. Greater thought thus needs to be given to the types of arrangements that Australia can make with East Timor to enhance maritime security in the Timor Sea. The alternative would likely be greater levels of illegal activity at sea in the area, both undermining East Timor’s credibility as an independent entity and creating a new source of illicit behaviour targeting Australia’s shores.

**Current Arrangements**

A number of contributors have highlighted some of the present and potential problems in current maritime border policing. There is broad agreement that a single-issue approach to driving policy has for too long dominated the problem. Illegal fishing was the main concern in the late 1960s, which was joined by the quarantine issue in the early 1970s, but the focus shifted to illegal migration with Vietnamese boat people in the mid and late 1970s, and then to drug smuggling in the 1980s. It returned to boat people in the late 1990s.

The single-issue policy focus, ignoring impacts on fisheries, drug interdiction, environmental protection and general sovereignty assertion has been a long-term weakness in Australia’s approach to protecting its maritime borders. As Derek Woolner points out, the main problem with the current approach is that no single agency “owns” the problem. The existing arrangements are structured around the notion that there is partnership between a multitude of relevant agencies, and that all cooperate to achieve maritime policing and enforcement outcomes.

Individual agencies are responsible for the assessment of risks to the achievement of their objectives and for translating them into risk assessments from which Coastwatch can plan aerial surveillance taskings and other operations. Some recent cases have highlighted the problems of coordination of the information and intelligence efforts. As Woolner points out, the net effect is that no single agency has the lead role for maritime border policing. Coordination is effected through committees where agencies are concerned to protect their own interests. No single department has oversight of cooperation with neighbouring countries on intelligence related to maritime border security.

There also appear to be some capability gaps, despite the fact that, as noted above, there are a number of defence capability enhancement initiatives under way. The most obvious gap is in our maritime patrol and enforcement capability between frigates on the one hand, and existing RAN and customs patrol vessels on the other, for both northern and southern ocean patrol. The frigates are an overkill in cost and warfighting capabilities when used extensively for enforcement purposes, while the patrol vessels are limited by range, endurance and sea-keeping capabilities.

A civil vessel, the *Southern Supporter*, has been hired for Southern Ocean patrol but it has no armaments and its crew have no boarding powers; and the lease expires in 2003. The Navy reportedly does not want the task. To achieve the desired endurance of 9,000 nautical miles, a vessel no smaller than 80 metres and around 1,700-tonnes displacement is needed. It should have an organic helicopter capability and appropriately trained personnel to secure another vessel by force without having to rely upon calling in the “cavalry” – in recent experience comprising SAS forces. It arguably whether it is appropriate to use the SAS for maritime enforcement duties in peacetime and, in times of conflict, when the SAS are deployed in Afghanistan (and probably elsewhere), it would certainly not seem to be a sustainable practice.

A number of conference participants and contributors to this volume have highlighted the need for regional cooperation in protecting maritime borders, specifically noting the benefits of engaging Indonesia to assist operations against illegal fishing and boat people, New Zealand with

---

respect to Southern Ocean patrols and East Timor in the Timor and Arafura Seas. With respect to Patagonian Toothfish poaching, Australia has also shared intelligence with the U.S. Department of Commerce and Customs Service (resulting in the seizure by U.S. authorities of four illegal Toothfish shipments), and there would seem to be similar cooperation with South African and French authorities. Australia’s Oceans Policy explicitly acknowledges the need for such cooperation to achieve successful oceans management in Australia’s offshore areas, and there seems to be greater scope to promote not only cooperative intelligence-sharing and surveillance, but also enforcement activities. In the South Tomi incident, for example, South Africa provided naval vessels and personnel.

Beyond Tampa and 9/11

The task of policing Australia’s maritime borders is becoming both more complex and more demanding. Michael O’Connor’s chapter argues that now is the time to streamline the current multi-agency approach and move to a coast guard organisation, a trend already apparent in many regional countries. This is now also the official policy of the Labor Party. It has been suggested that, with the replacement for the Fremantles in Navy’s hands, the coast guard option is, in effect, dead. But a number of the tender bids received to date include the option of a private financing initiative, so that, were Labor to win office, the boats could be leased back to a future coast guard. An important issue requiring greater analysis with respect to the coast guard option is the manpower implications. The RAN is now hampered by significant shortages in personnel. Those interested in a seagoing career may prefer to join a civil coast guard, thus leaving the Navy even worse-off.

While a coast guard represents the “big bang” approach, more modest suggestions for developing a better integrated system have been proposed by Derek Woonhe. His chapter argues that there could be a legislative basis for the role of Coastwatch, which could give it the authority to sustain the operation of the overall system. Were Coastwatch to become a statutory government authority reporting directly to a Minister, a mechanism would be created for coordinating policy and sponsoring legislation covering the whole of the maritime border protection regime.

The tensions between civil and military sectors and roles will not easily be resolved, however. It is not clear whether any new organisation or organisational arrangement could overcome the divide. Perhaps it simply asking too much for the normal processes of bureaucratic and organisational politics to be overcome. Nevertheless, what is clear is that a significant share of the total surveillance picture is contributed by the ADF; this will only grow as new capabilities come on stream – such as Jindalee, the AEW&C aircraft and the Global Hawk UAVs. This fact leads logically to the idea, championed in Bruce McLennan’s chapter, that only the ADF will be able to effectively coordinate a comprehensive surveillance picture of Australia’s offshore estate. Indeed, the technical obstacles to integrating the surveillance output of all of those disparate ADF assets into a single tactical picture of Australia’s maritime zones will be challenging even for the Defence Force.

At this stage, however, it appears unlikely that the government would direct Defence to take on this role. Rather, it is more likely to be added to Coastwatch’s responsibility. Defence is currently giving close consideration as to how space-based surveillance systems should support other national agencies concerned with maritime border security. The most obvious way forward here is for Defence to share data from the military satellites of other states or to contract a full commercial service. As has already been noted, under current cost structures it is beyond Australia’s means to develop its own stand-alone satellite network.

Pressures for change will not stop. Australia’s sea frontiers are coming under more severe pressure as maritime traffic of many kinds, legal and illegal, seeks transit though our coastal and offshore waters. But it would appear, unfortunately, that short-term “band aids” and muddling through on the basis of the next border crisis will continue to guide the development of Australia’s maritime border protection regime.

---

9 Gibson, “The One That Didn’t Get Away,” p. 23.