

Australian government's policy sparked fatal refugee boat fire

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23 April 2010

A coroner's report into the explosion that led to the deaths of five refugees aboard a boat off Australia last April has concluded that none of the passengers deliberately blew up the vessel. Instead, the blast occurred as the unintended result of a plan to cripple the boat, which was triggered when the 47 passengers were issued with an official Warning Notice that put them in immediate fear of being forcibly turned back to Indonesia.

In the early morning of April 16, 2009, five Afghan men—Mohammed Hassan Ayubi, 45, Mohammed Amen Zamen, 38, Muzafar Ali Sefarali, 45, Awar Nader, 50, and Baquer Husani, 26—died after their boat, called the SIEV 36 (Suspected Illegal Entry Vehicle 36) exploded near the Australian territory of Ashmore Reef, a rocky outcrop about 400 kilometres off the Western Australian coast.

The Northern Territory coroner Greg Cavanagh concluded that the blast was caused by the ignition of petrol vapour that had accumulated under the deck of SIEV 36 during a period of about 20 minutes, from 7.25 a.m. to 7.45 a.m., on that day. The coroner also determined that it was not the blast itself that killed the men. The first three men drowned, and the latter two most likely drowned, although their bodies have not been recovered.

When Cavanagh released his report on March 17, media commentators and politicians seized upon his conclusion that “crimes may have been committed in connection with the explosion”. This finding, taken out of context, became grist for the mill of efforts to stir anti-refugee sentiment. In parliament, Liberal Party opposition leader Tony Abbott demanded that Prime Minister Kevin Rudd immediately cancel the refugee protection visas of three men named by the coroner. Rudd, who last year vowed to revoke the visas of anyone found guilty of a criminal offence, said the government would await the outcome of a police investigation—effectively leaving the threat of deportation hanging over the refugees.

The coroner found that the original intention of the refugee boat's crew had been to beach the vessel on Ashmore Reef. SIEV 36 was on a collision course with the reef when first intercepted by HMAS Albany, a patrol boat, on April 15. Cavanagh noted that the passengers' cigarette lighters and matches were not confiscated because the “crew and passengers were compliant”. In other

words, naval personnel had judged the asylum seekers to be cooperative.

The anxieties of the passengers were inflamed before dawn the next morning, at 6.15 a.m., when three officers from the HMAS Childers, another patrol boat, joined the six naval personnel already on board. “Darkness may have suggested an element of stealth to the passengers and contributed to their fears,” Cavanagh concluded.

Shortly afterwards, the tow from the HMAS Albany was slipped, Indonesian crew were woken up, the bilge was pumped, the crew were directed to start one engine, and the Warning Notice was read. It stated: “The Government of Australia is determined to stop illegal migration to its Territory.... You should now consider immediately returning to Indonesia with your passengers and not enter Australian Territory.”

Cavanagh said the explosion would “probably not have occurred” if the Warning Notice had not been served. This was “the catalyst for the unrest” and “it was apparently these fears that sparked a plan to burn the vessel to prevent its return to Indonesia”. When the notice was read out, the passengers became “noisy and agitated”. By 7.20 a.m., “the passengers were saying ‘No Indonesia, no Indonesia.’ They were crowding towards the cabin area and were making cut throat gestures.”

The coroner ruled that the blast was accidental. “I accept that whoever started the fire did not expect that an explosion would occur. What was intended was that a fire be started so that the boat would be crippled and they would be taken off the vessel and taken to Australia.”

In sum, the original intention of the asylum seekers was to exercise their basic right, recognised by the international Refugee Convention, to seek refuge from persecution, by beaching their boat on Ashmore Reef. When intercepted, they were compliant. It was the actions of naval commanders, enforcing the Rudd government's so-called “border protection” policy, that triggered an agitated confrontation that led to an unintended explosion of accumulated petrol vapour.

The fears of those aboard SIEV 36 of the consequences of being

forced back to Indonesia were fully justified. Their rickety and over-crowded boat could have sunk on the return journey, as at least one boat did in 2001. Moreover, Afghan Hazara refugees sent back to Indonesia are in grave danger of being deported to Afghanistan, where they face targeted killings. Indonesia, unlike Australia, is not a signatory to the Refugee Convention, which prohibits removal (refoulement) to a country where persecution is likely.

The chain of events makes clear the direct political responsibility of the Labor government. While it has discontinued the previous Howard government's discredited "Pacific Solution" of sending asylum seekers to the remote Pacific Ocean island of Nauru, it has maintained the naval blockade to intercept refugee vessels on the high seas, along with mandatory detention of all refugee boat arrivals on Christmas Island, a tiny Australian territory in the Indian Ocean. The island has been "excised" from the country's migration zone, with the intended effect of denying asylum seekers all rights under Australian law.

The coroner said three men were "part of a plan to cripple the boat" and it was "likely" that one of them, or a person in his vicinity, ignited the vapour. Cavanagh cautioned: "I note that I only have a belief about a crime being committed and that the question of whether or not there is a sufficient basis for further investigation and prosecution is a matter for them [the Northern Territory police commissioner and Director of Public Prosecutions]."

Aspects of the coroner's report are questionable. He said there were disparities between the navy's video recordings of the immediate events leading up to the explosion—which have not been released to the public—and the statements that refugees gave to the inquest. "I can only conclude that they have not told the truth," he stated, "and decided as a group to lie to this Inquest".

Not all the passengers involved were called to give oral evidence, however, preventing them from challenging the coroner's accusation. In one instance, Cavanagh relied upon the testimony of a child passenger, whose name was suppressed, who claimed to have heard one man say: "They spilled petrol to burn the ship." Such hearsay evidence would be inadmissible in a criminal trial.

Cavanagh rejected the suggestion, submitted at the opening of the three-week hearing by the counsel assisting the inquest Stephen Walsh, QC, that some of the victims died because Australian Defence Force (ADF) Standing Orders insisted that military personnel be saved before civilians. During the inquest, one medic testified that another member of the boarding party had kicked at a refugee to keep him off a rescue craft. Yet the coroner simply endorsed the policy, declaring it had saved lives on the day.

Cavanagh played down concerns that the navy had failed to give life vests to the refugees, most of whom probably could not swim. He said sufficient vests had been transferred to SIEV 36, but these

were tied in a doona bag on top of the boat's coach house, and passengers were not shown how to use them. Nevertheless, he ruled that it was "not reasonable to require passengers to wear life vests".

The coroner reached this conclusion despite noting that when SIEV 36 was intercepted there was to be up to a 50-hour delay before the passengers could be transferred to a naval ship, the HMAS Tobruk, to be transported the more than 2,000 kilometres to Christmas Island. The Tobruk was delayed due to repairs being completed in Darwin. In the meantime, SIEV 36 was being towed around in circles, an obviously hazardous operation in open waters.

Cavanagh said he was satisfied that an ADF Inquiry Officer's Report—which also has been withheld from the public—had recommended 58 changes to military rules, procedures and training. As a result, "an incident such as occurred on SIEV 36 is unlikely to occur again". Given the secrecy surrounding every aspect of the military's conduct, this assurance is empty. Under the Rudd's government's increasingly harsh policy of mobilising the navy to confront and board boats on the high seas, more catastrophes will inevitably eventuate.

Until all the naval video footage is released, the truth about what really happened aboard SIEV 36 will not be known. There are parallels to the October 2001 "children overboard" affair, when the Howard government falsely accused a boatload of 223 asylum seekers of throwing their children overboard to force the navy to rescue them. Much later, well after the 2001 election campaign was over, it was revealed that the official photos of children in the water were taken after the wooden hulled vessel had already sunk following its forcible turning back to Indonesia by the navy.

In 2010, as in 2001, innocent refugees are being demonised, and voices raised for even more draconian measures against them. The arrival of a relatively small number of desperate people—up to several thousand in a year—is being used to distract and divert popular discontent over worsening living standards, declining social services and widening inequality from being directed at the real culprits—the Labor government, its political apologists and corporate backers.



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