



Australian Government
Border Protection Command

Commander Border Protection Command
Customs House
5 Constitution Avenue
CANBERRA ACT 2600
AUSTRALIA

File Reference: 2012/021361-01

Chair
Joint Standing Committee on Treaties

Treaties Tabled on 21 August – Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP)

In connection with the witness appearance before the Joint Standing Committee on Treaties at its recent public hearing into **Treaties tabled on 21 August**, I am providing a written response to supplementary questions; and identified corrections to the transcript.

Supplementary questions

Following on from our testimony, the Committee had two further questions:

1. Should a death occur during an anti-piracy operation conducted by Australian armed forces or Australian border protection agencies, what mechanisms/international law exists to ensure that Australian personnel are not tried in a foreign court?

Response:

Accession to ReCAAP does not affect the potential or actual liability of ADF members or Australian Government personnel undertaking anti-piracy operations.

The national jurisdiction that will apply to a given incident, and whether there may be competing claims to jurisdiction, will depend on the circumstances of the incident, including the location of the vessel(s) at the time of the incident, who was on which vessel when the incident occurred (ie victim(s) and alleged offender(s)), the nationality of the victim(s) and alleged offender(s), the nationality of the vessel (i.e. the flag State of the vessel) and whether States with a possible claim to jurisdiction seek to exercise that jurisdiction.

Where there are competing claims to jurisdiction, these issues may be resolved through diplomatic avenues. If a foreign state sought to exercise jurisdiction over someone in Australia or in Australian custody, issues of extradition and mutual assistance in criminal matters would be considered by the Attorney-General.

The principle of sovereign immunity applies to Australian Government and military vessels. Therefore foreign law enforcement authorities cannot undertake law enforcement action on board such vessels. As such, Australian personnel on board those vessels cannot be arrested by foreign authorities without the consent of Australia.

Where relevant Australian domestic criminal law has extra-territorial application, Australia may give consideration to domestic prosecution of the alleged offender.

2. Can you provide the Committee with a map which shows Australia's area of responsibility under ReCAAP, and the other signatory countries' area of responsibility under ReCAAP?

Response:

ReCAAP does not define the jurisdictional or geographic area in which it operates. In terms of responding to piracy incidents, each member of ReCAAP operates within their respective jurisdictional area in accordance with their national laws, regulations and applicable rules of international law.

Australia's Security Forces Authority (SFFA) is defined by the same maritime boundary as Australia's Maritime Search and Rescue Region (MSRR). Australia (Border Protection Command) would take the lead coordination role for incidents that occur within the SFAA. Refer attachment A.

Transcript

After review of the transcript, I seek corrections be made in accordance with conditions laid down in connection with witnesses' corrections. Alterations have been made in the handwriting of a witness on pages 5, 6 and 7. Refer attachment B.

Should further information or assistance be required I can be contacted on 02 6229 3871 or by email andrew.hudson@customs.gov.au.

Andrew Hudson

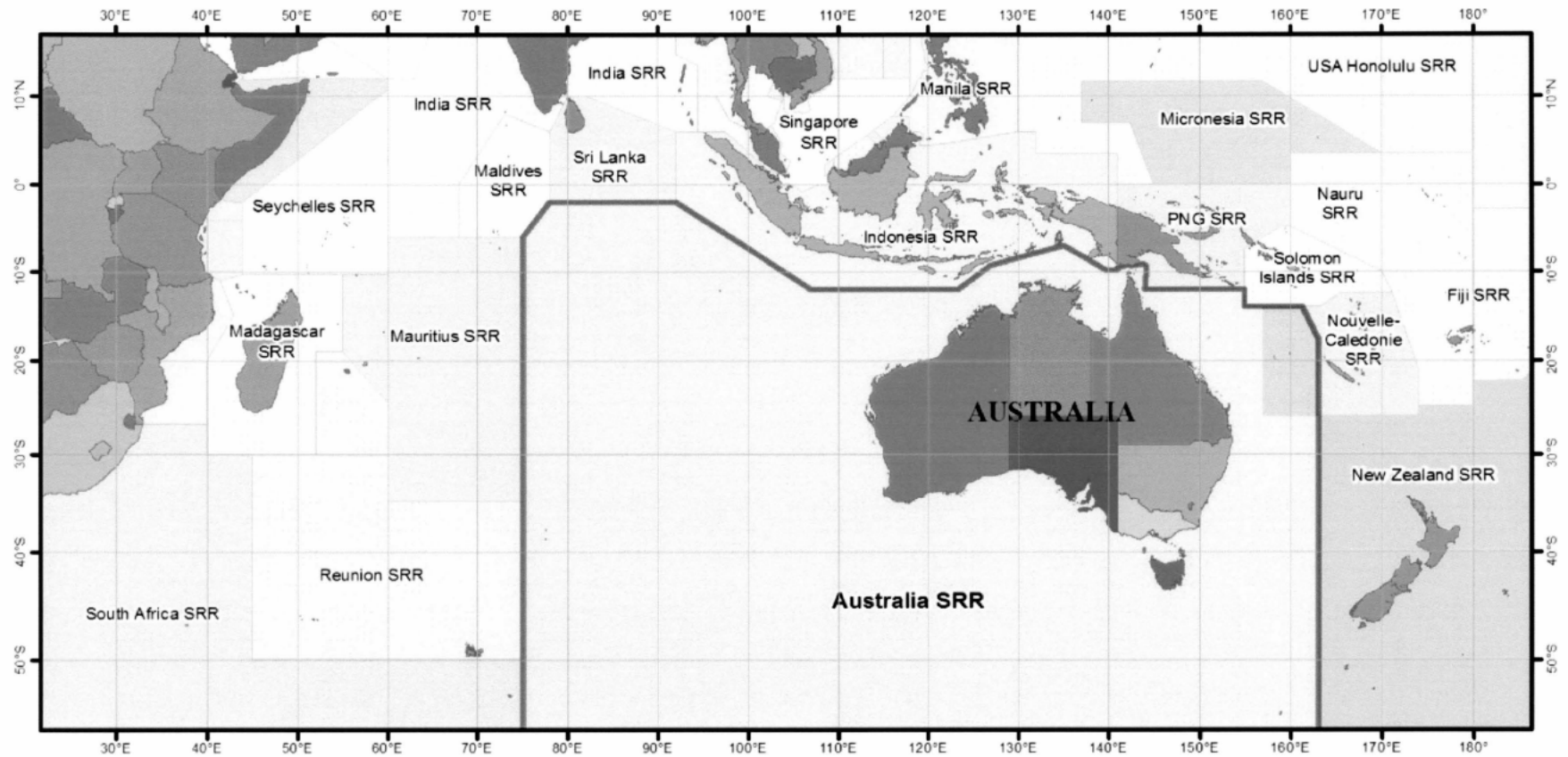
Manager International Engagement
Border Protection Command

7 November 2012

Attachments:

- A - Map which shows Australia's area of responsibility.
- B – Requested alterations to the transcript.

ATTACHMENT A



Explanatory notes:

1. SRR (Search and Rescue Region).
2. Australia's Security Forces Authority Area (SFAA) is defined by the same maritime boundary as Australia's Search and Rescue Region (SRR).