

(四)執行情形之一：我方赴菲取證

5 月 27 日

5 月 27 日上午，由我方林彥良主任檢察官、駐處政治組林東亨組長等赴為菲國國家調查局(NBI)與副局長 Virgilio L. Mendez 開會討論，並完成合作調查行程表。本署曾士哲檢察官、劉嘉凱檢察官、刑事警察局外事科李佳進組長、林故廷技正、李經緯技正陸續抵菲會合。

下午即由我方刑事警察局鑑識技正李經緯進行槍枝鑑定，並開始移交部分證人及犯罪嫌疑人筆錄及部分書證。

5 月 27 日晚間，調查團全體成員作內部事務分工，經 TECO 官員之協助，就菲律賓 NBI 所交付之嫌疑人與證人筆錄，現譯所有英語及菲語筆錄，以供檢察官訊問菲方人員之用。

5 月 28 日

5 月 28 日上午，小組赴菲律賓 NBI 馬尼拉大樓，與 NBI 共同檢視菲國海巡官員攝錄之事發過程錄影檔。

下午刑事警察局外事科李佳進組長、林故廷技正、李經緯技正赴菲律賓公務船艦 MCS-3001 停靠之港邊，勘驗本案菲國艦艇上面之槍枝以及船身。

5 月 29 日-30 日

5 月 29 日至 30 日，訊問菲國漁業署官員(BFAR)及海巡官員，訊問地

點為菲國國家調查局。

訊問方式，係在菲國國家調查局官員在場下，由我國檢察官以中文及英文直接訊問被告及證人，並由 TECO 官員充任通譯。菲國之被告均有律師陪同，雖多人以不識中文為由，不願在中文之具結結文及筆錄上簽名；惟證述、供述及翻譯過程，均全程錄影音，以確保證據能力及證明力。

本日訊問至 30 日晚間 10 時許結束，結束前由 NBI 召開國際記者會，由 NBI 局長、MECO 主任秘書以及我方刑事司法互助協定窗口負責人楊婉莉主任以及 TECO 組長林東亨出席。

5 月 31 日上午，搭機返國¹³。

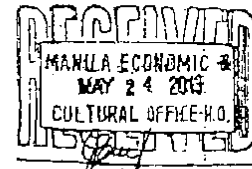
¹³ 我方調查團曾先後 3 次赴菲，第 1 次無功而返，第 2 次圓滿達成任務，第 3 次為交換彼止調查心證，曾士哲檢察官就此 3 次赴菲經過情形撰有精彩心得報告，可參閱本章節末之「心得檢討」。



Republika ng Pilipinas
KAGAWARAN NG KATARUNGAN
Department of Justice
Manila

Urgent and
Confidential
24 May 2013

Chairman and Executive Officer
AMADEO R. PEREZ, JR.
Manila Economic and Cultural Office
7/E, Trafalgar Plaza
105 H.V. de la Costa Street
Salcedo Village, Makati City 1200



Dear **Chairman and Executive Officer Perez**:

We refer to your letter dated 23 May 2013 transmitting to our Office the letter dated 22 May 2013 of Director Chen, Wen-Chi, Department of International and Cross-Strait Legal Affairs, Ministry of Justice of Taiwan, presenting the following additional requests for assistance in connection with the investigation of the Pingtung District Prosecutor's Office on the shooting incident involving the Taiwanese vessel, *Kuang Ta Hsing No. 28*:

- "1. Opportunity to interrogate all the suspects aboard Philippine Coast Guard (PCG) vessel with the present of Filipino investigators. Interpreters for English/local dialect/Mandarin are needed.
- "2. Opportunity to interrogate relevant witnesses.
- "3. To examine all firearms and ammunitions used in the incident, including the chance to shoot live round in order to acquire the bullets for forensic science laboratory examination.
- "4. To examine the Philippine Coast Guard vessel involved in the incident.
- "5. To examine the uniform/clothe worn during the incident.
- "6. To examine VDR record, sailing log and communication record of satellite phone of the Philippine Coast Guard vessel.
- "7. The prescriptions confine law enforcement on sea (rules of engagement).
- "8. Video records when incident happened.
- "9. The act which claims the baseline of seashore of the Philippines.
- "10. Basic specifications (ex. weight, speed, maximum horse power, etc.) of the Philippine Coast Guard vessel."

We express our thanks to the Ministry of Justice of Taiwan for approving our request that investigators from the National Bureau of Investigation (NBI) be allowed to travel to Taiwan for the purpose of their own investigation of the incident. However, we note that the letter of

Director Chen dated 22 May 2013 failed to respond to the other requests for assistance of the NBI, as contained in our letter dated 20 May 2013. We, therefore, reiterate herein our request for the other items mentioned in the aforesaid letter.

As regards the above-mentioned requests of Taiwan, please be advised that we have already agreed to the requests under items 3 and 4. As we have stated in our letter dated 20 May 2013, "the Taiwanese investigators may inspect the Philippine vessel involved in the incident and examine the firearms and ammunitions used by the personnel of the Philippine Coast Guard". We are also amenable to allowing them to have the opportunity to shoot live rounds in order to have the bullets fired subjected to forensic examination.

On items 1 and 2 of the request, we will endeavor to provide that opportunity by arranging a session where the PCG personnel and relevant witnesses, if any, will be requested to attend and respond to any questions that may be posed to them by the Taiwanese investigators. However, the presence of the PCG personnel and relevant witnesses, if any, in the session and the giving of statement of those who will decide to attend the session will be on a voluntary basis and they cannot, accordingly, be compelled to respond to any questions of the Taiwanese investigators.

The PCG personnel in particular, being under investigation for the subject incident, may invoke their right to remain silent and to have a counsel of their own choice.¹ Thus, the PCG personnel who will decide to be present in the session may be accompanied by their own counsel. The witnesses, if any, may also opt to be accompanied by their own counsel when they attend the session.

The other items mentioned in the letter of Director Chen dated 22 May 2013 will be made available to the Taiwanese investigators while they are in the country for the purpose of their own investigation of the incident. These items include the video record of the incident and a copy of the Philippine Baselines Law, which was clarified in a meeting to be the document referred to in item 9 of Director Chen's letter. Arrangements will also be made for the Taiwanese investigators to examine the VDR record, sailing log and communications record of satellite phone of the PCG vessel.

We count on the assurances made by Director Chen in her letter dated 22 May 2013 that all the evidence gathered in the investigation and the respective findings of the investigations of both parties will not be

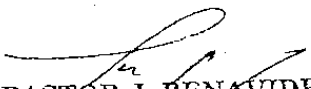
¹ Section 12(1), Article III, 1987 Philippine Constitution

prematurely disclosed prior to the release of the official report of said investigations. However, either party should be considered free to release its official report at any time they deem appropriate to do so. As a matter of courtesy, either party may explain to the other party the findings of its own investigation.

With the approval by the Ministry of Justice of Taiwan of our request for NHI investigators to travel to Taiwan for the above-stated purpose, it is hoped that immediate arrangements can be made for their travel to Taiwan so they can expeditiously complete their own investigation of the incident.

Thank you.

Very truly yours,


PASTOR J. BENAVIDEZ
Assistant Chief State Counsel



Republika ng Pilipinas
KAGAWARAN NG KATARUNGAN
Department of Justice
Manila

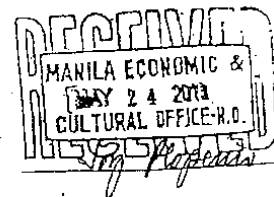
***Urgent and
Confidential***
24 May 2013

Chairman and Executive Officer Amadeo R. Perez, Jr.
Manila Economic and Cultural Office
7/F, Trafalgar Plaza
105 H.V. de la Costa Street
Salcedo Village, Makati City 1200

Dear Chairman and Executive Officer Perez:

With reference to your letter dated 24 May 2013 informing our Office of the request of the Taiwanese delegation, coursed through the Taiwan Economic and Cultural Office, for their itinerary in the country in connection with their own investigation of the shooting incident involving the Taiwanese vessel, *Kuang Ta Hsing No. 28*, we are presenting to your Office the following itinerary prepared by the National Bureau of Investigation (NBI):

1. Observe/Assist in the conduct of ballistic examinations of the firearms and ammunition turned by the Philippine Coast Guard (PCG) at the NBI Main Office;
2. Escort the inspection of the PCG vessel MCS 3001 upon proper coordination with the PCG and NBI National Capital Region investigators;
3. Furnish the Taiwanese delegates official copies of the pertinent records gathered in the course of the investigation;
4. Arrange for the conference with concerned officials/personnel of the Bureau of Fisheries and Aquatic Resources (BFAR) who were on board MCS 3001 at the time of the incident at the Office of the Deputy Director for Regional Operations Service (ODDROS), NBI Main Office;
5. Accommodate, during the conference mentioned above, the presentation of the video footages of the incident by the PCG at the NBI Conference Room in the presence of the Taiwanese delegates, PCG personnel on board MCS 3001 together with their respective counsels (which could serve as an avenue by which Taiwanese investigators may interview PCG personnel in the presence of their respective counsels); and
6. Make available to the Taiwanese delegation the copy of the PCG video footages of the incident.



漁船事件獲共識

台菲合作調查 我8人小組赴菲

【記者徐尉庭／台北報導】台菲雙方共同調查「廣大興廿八號」事件終於取得共識，今天上午將互派調查小組釐清案發始末與真相。法務部昨晚指出，台菲雙方各提出十項、十一項協助請求，並達成合作調查的共識。

菲方已同意我方調查小組登船勘驗、驗屍比對彈道、檢視錄影資料、協助訪問涉案人員、檢視筆錄及航程紀錄。菲方提出的要求中，除相驗死者與我國法制不符，且死者家屬反對，我方未同意外，將在五天內安排菲方調查小組到法務部法醫研究所、屏東地檢署檢視證據，並隨我方人員登船檢驗，也會安排到成功大學瞭解漁船航行軌跡、到刑事警察局做彈道檢驗。

法務部強調，台菲雙方將在符合司法互助「互惠平等」精神的前提下，進行合作調查，以究責賠償，還給死者公道。法務部指出，此次我方派出八人調查團隊，由屏東地檢署主任檢察官林彥良、率有優異外語能力的屏檢檢察官劉嘉凱、曾士哲及書記官張宏瑞及四名刑事局鑑識專家共赴菲律賓調查。

廣大興廿八號漁船遭槍擊事件本月九日發生，法務部在十六日派出十七人調查團赴菲，因雙方對調查細節未形成共識，我調查團先返國，再派員與菲方加強溝通協調。菲方同月廿日向我國提出司法互助請求書，事後也多次來函，法務部研究後，雙方取得共識，合作調查。

相關新聞見 A4



漁船事件

菲律賓調查小組 今抵台

【記者徐尉庭／台北報導】廣大興廿八號漁船事件菲律賓八人調查小組今天抵台，由菲國家調查局外事處長領隊，團員分別來自鑑識、槍械、彈道、法醫學等部門，預計周五返菲；為了確保菲方調查小組安全，法務部要求屏東地檢署人員做好維安工作。

菲方調查小組今天將先到法務部與我方人員會議，隨即到法醫研究所看相驗錄影資料；第二天到屏東地檢署，了解相關證據；第三天，台菲雙方人員登上漁船檢驗，並到成功大學瞭解船跡紀錄。第四天到刑事警察局做子彈彈道比對鑑識，第五天完成調查返菲。

菲方原要求相驗漁船死者洪石成，但法務部認為，國外法醫沒有鑑識行使權，且死者家屬也不同意，所以沒有同意，菲方也諒解。法務部政務次長陳明堂表示，歡迎菲律賓的媒體及國際媒體來採訪，看真相為何。



我方調查團第二次訪菲時，進入菲國國家調查局大會議室，討論取證行程，圖中為該單位局徽



本案之菲律賓海巡艦艇 MCS-3001 號仍停泊於馬尼拉附近港口處等待調查

121P 102	315H	SE	2 NM SE OF PAN DE AZUCAR
	340H	SE	2.2 SE OF PAN DE AZUCAR
NM of 400H		LAT	19° 29.89' N
		LONG	122° 11.03' E
to Anchorage		VICINITY	11.5 NM SE of Babuyan Isl
1	000H	SPEED	7.5 kts (100 rpm)
	00H	COURSE	080° T
	00H		18.5 NM E of Babuyan Isl
	00H	INC	SPD to 1000 RPM CHANGE COURSE TO 060°
to ISL		PREPARED / SIT	NET
CALAYAN		LAT	19° 04' 44" N
		LONG	122° 42' 02" E
		RPM	1050
	00H	SILHETTED TARGET /	GENERAL QUARTERS
		LECI	19° 04' 44" N 122° 42' 02" E
	00H	HST	PURSUANT w/ CPDSD
Calayan	00H	END OF HST PURSUIT	
0-3 kts	00H	POST NET / SIT	NET
CALAYAN		LAT	19° 05' 11" N
		LONG	122° 54' 40" E
STALAN	00H	37.0 NM EAST OF BALINTAG ISLAND	
	00H	CALAYAN COAST	TO 210° T
	00H	INCREASED SPEED	TO 2
	00H	37 NM ESE OF BALINTAG ISLAND	
	00H	35 NM ENE OF BALINTAG ISLAND	
	00H	27 NM ESE OF BABUYAN ISLAND	
	00H	26 NM NE OF CAMACHO ISLAND	
	00H	15 NM E OF CAMACHO ISLAND	
	00H	POST NET / SIT	NET
		LAT	19° 04' 44" N
		LONG	122° 18' 18" E
	00H	19 NM E of Camachuan Isl	
	00H	change course to	210° T
	00H	13.5 NM NE of Light House	for Helmanus Isl
	00H	change course to	175° T
	00H	change course to	158° T

我方調查團取得之菲律賓海巡艦艇 MCS-3001 號航海日誌

as a guide

ROE) in th

IVED

Environment

Department of Transportation and Communications
PUNONGHIMLAN TANOD BAYBAYIN NG PILIPINAS
(HEADQUARTERS PHILIPPINE COAST GUARD)
139 25th Street, Port Area
Manila

20 January 2012

HPCG/CG3
HPCG Circular)
Number 01-12)

RULES OF ENGAGEMENT (ROE) IN THE CONDUCT OF MARITIME LAW ENFORCEMENT (MARLEN) OPERATIONS

I. AUTHORITY:
Republic Act 9993 (PCG Law of 2009)

II. REFERENCES:

- HPCG SOP Nr 001-88: Guidelines and Procedures in Maritime Law Enforcement dated 22 Aug 1988
- HPCG SOP Nr 03 on Rules on Engagement, 2002
- HPCG Standing Operating Procedure Number 02-11 dated 15 Mar 2011
- PCG Handbook on Maritime Law Enforcement and Counteraction Operations, 2001
- UN Convention on the Law of the Sea (UNCLOS) 1982
- USCG Boarding Officer's Manual

III. PURPOSE:
This circular delineates the limitations and circumstances under which PCG personnel aboard PCG vessels and crafts will initiate and prosecute engagement through the use of well defined appropriate force over vessels and/or their crewmembers during the conduct of Maritime Law Enforcement (MARLEN) operations.

IV. APPLICABILITY:
The ROE shall apply to all PCG personnel aboard PCG commissioned vessels, PCG manned ships and small crafts performing MARLEN operation on waters subject to the maritime jurisdiction of the Republic of the Philippines. These include vessels and crafts loaned by the PCG personnel for the purpose of the conduct of MARLEN operations.

菲律賓海巡隊之接戰守則 (Rules of Engagement)



取得涉案槍枝，進行取彈程序並紀錄






30 機槍及子彈

[illegible]

於菲律賓試射涉案槍枝後，支付子彈費用之單據



Philippine Coast Guard
Coast Guard Fleet
Coast Guard Ready Force
DA-BFAR MCS-3001
Port Irene, Casambalangan, Sta Ana
Cagayan

11 May 2013

MONTHLY GUNNERY REPORT

Ship Unit and /or Station: DA-BFAR MCS-3001, CG, READY FORCE FIRE ARMS

1. Ship or Unit Gunnery Officer shall inspect all fire arms and submit report to the Commanding Officer before the first working day of the next month.
2. All fire arms carried in the periodic inventory report must be covered in this inspection except those Loaned from other unit.
3. Place serial numbers in the appropriate blocks. For longer listing, attach additional sheet if necessary.
4. The Gunnery Officer shall include in this report recommended action and/or measures to be taken to correct defects noted.
5. The following small arms were inspected and were found clean and free from rust and dirt.

BROWNING 30 CALIBER MACHINE GUN

1. SN 489066

M-16 RIFFLE CAL. 5.56 MM

1) SN 194339
4) SN 018778

2) SN 204217 (Unserviceable)
5) SN 015637

3) SN 128640
6) SN 217716

M-14 RIFFLE CAL. 7.62 MM

1) SN 7790186
4) SN 1372316

2) SN 608863
5) SN 1362663

3) SN 5006
6) SN 1037894

STATUS OF AMMUNITION

KINDS

Ctgs Ball 30 Caliber

Ctgs Ball 5.56 MM

Ctgs Ball 7.62 MM

01 May '13

RDS

245

260

303

As of 09 May '13

155

254

291

11 May '13

Fired During the Operation

90 Rds

6 Rds

12 Rds

MAGAZINE

CAL. 5.56 MM M-16 (Short)

CAL. 5.56 MM M-16 (Long)

CAL. 7.62 MM M-14 Mag

6 Pcs

6 Pcs

10 Pcs

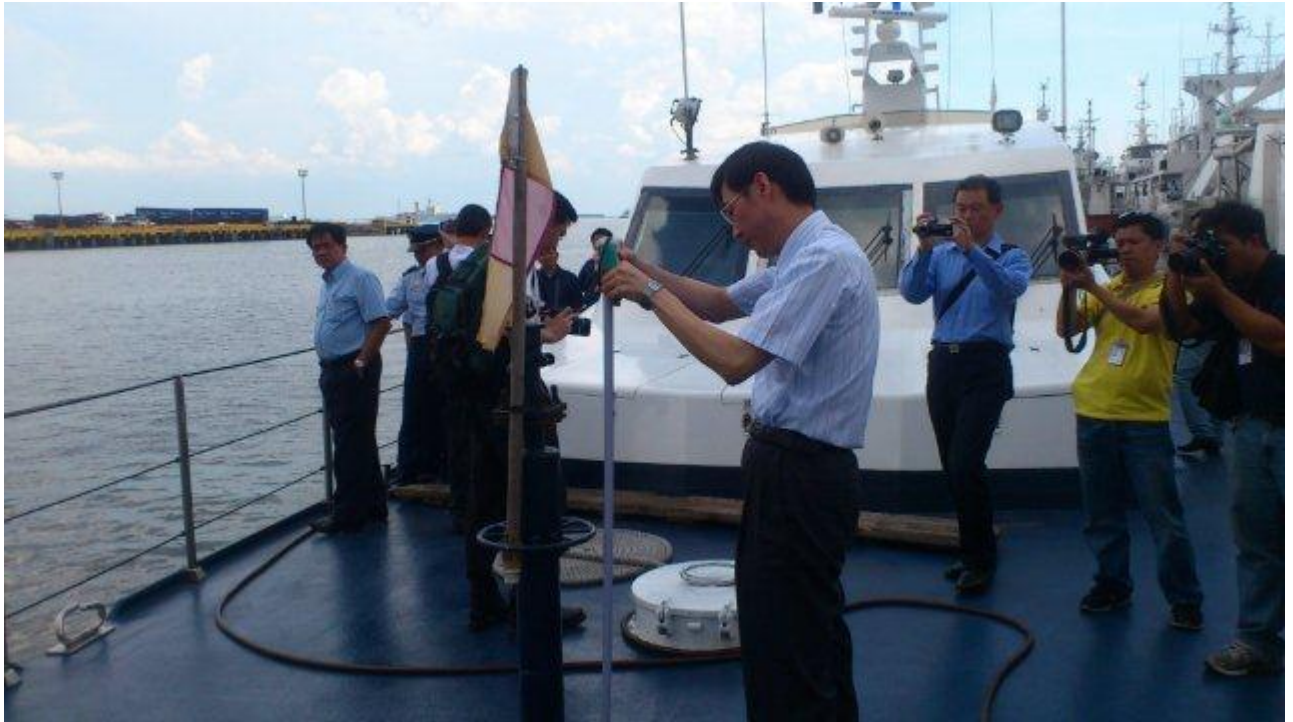
Prepared by: W. B. Bendo II

SN1 Mhelvin A Bendo II PCG
Gunnernate, MCS-3001

Noted by: ORNOLD E DELA CRUZ

Officer In-Charge, MCS-3001

菲律賓海巡艦艇之彈藥消耗清單



我方調查團第二次訪菲順利登上涉案海巡艇勘驗，圖為刑事局鑑識科人員於艇首丈量 30 口徑機槍架高度（照片中帶眼鏡者為刑事局測謊專家林故廷，其左方為旗幟遮擋者為該局彈道鑑識專家李經緯技正）



我方調查團刑事局鑑識科人員於涉案海巡艇艇首丈量 30 口徑機槍架高度（圖中右手持伸縮皮尺者為刑事局彈道鑑識專家李經緯技正）



我方調查團刑事局鑑識科人員搭乘小艇環繞涉案海巡艇船身，採集可疑之碰撞痕跡



我方調查團刑事局鑑識科人員搭乘小艇環繞涉案海巡艇船身，採集可疑之碰撞痕跡（艇上人員分別為：圖中央身著藍色襯衫之刑事局李佳進組長，其左手邊為刑事局駐菲聯絡官，李組長左下方彎腰者為林故廷，手持相機仰望者為李經緯）



我方調查團於菲律賓國家調查局與菲方人員舉行訊問前會議



MCS-3001 號船艦上船員暨律師團
(其中前排中間男性為船長 Arnold Dela Cruz)



漁民被殺 片長40分鐘藏真相

台調查團勘驗菲影帶

台灣調查團調查進度

資料來源：〈蘋果〉採訪整理

調查項目	調查進度
兇槍鑑識	菲國提供15把涉案槍枝(8把M16突擊步槍、6把M14步槍及1把30機槍)鑑驗，並逐一擊發試射，比對涉案槍枝彈道、型號及口徑
提供涉案被告、證人筆錄等書證	滿夜開會消化相關書證
觀看菲國公務船案發時錄影帶	觀看歷時30-40分鐘影片內容，有助釐清案情
菲國公務船勘驗	勘驗身錄影勘驗，登船釐清機槍位置等
菲國漁業報告及	將與菲國調查團專家小組合作勘驗

【王昭濱、潘豐毅／菲律賓實公務船】船員洪石成遭菲律賓實公務船一船員開槍擊斃，昨我方調查團展開調查，昨我方調查團並勘驗涉案的公務船錄影帶，並勘驗船身是否有彈痕，釐清機槍位置，今天將與菲國調查團專家探樣，今天將與菲國調查團專家探樣，今天將與菲國調查團專家探樣。

五台菲衝突

月廿八日「廣大興二十八號」案發，菲律賓海岸防衛隊一直接稱事發地點為菲律賓海域，而台灣則聲稱在菲非重疊的經濟海域，菲律賓海岸防衛發言人巴里拉(Barilara)昨表示，事件發生地點是在菲國海域內有爭議，就讓菲律賓國家調查局來判定，而內部調查結果也很快出來。

拒透露影片內容

台灣調查團昨上午與馬尼拉經濟文化辦事處處理主任席瑞茲(Ricardo Sison)見面，並在培培與菲國調查局長等官員陪同下，觀看菲方提供的影片過程錄影帶。瑞茲表示，影片長度約二十分鐘至四十分鐘，但不願透露影片內容。

至於看過影片後兩邊的船隻是否有碰撞，席瑞茲也稱在檢察官林產民強調事件有公明、公正、不偏不倚，並稱事件有公明、公正、不偏不倚，並稱事件有公明、公正、不偏不倚。

他們接，待公務船，試跑，判斷，機槍，照了，才轉，船身，五關，記者，菲律，中。方答。

廣大興案 菲8人開槍

菲國3證人：廣大興未衝撞 戳破菲官方說法

【特派記者黃立翔／馬尼拉報導】屏東廣大興廿八號漁船遭菲律賓公務船開槍擊斃一案，我調查團昨與菲調查團會談，發現當時菲國船上曾為是否開槍有殺傷起見，八名菲國證人指出，當時菲國船長下令八名官兵開槍射擊，指菲國船長下令八名官兵開槍射擊，指菲國船長下令八名官兵開槍射擊。

廣大興廿八號事件 菲官方說法與事實對照表

菲官方說法	菲公務船上證人體證詞及事證
有：廣大興衝撞？	證人說沒有
有：菲方鳴笛？	證人說沒聽到
在菲國海域開槍位置？	證人說在菲國海域
要打廣船引擎？	錄影帶顯示菲船指揮官只說SHOOT
射擊理由？	

據了解，前次調查團觀看事發影片時，發現有一個不願意開槍的海防隊員，當船隻另外七名海防隊員都對廣大興追擊開槍時，他放下槍不願開槍。無辜，船長(該公務船指揮官)不僅質問他：「你為何不開槍？」還要他交出槍，自己已過槍邊對準廣大興開槍。SHOOT、SHOOT！

據了解，一名海防隊員被調查團列為重要證人，他供稱案發時在菲國海域，有聽到槍聲及要求「一點停船」，並至少發射三發子彈。當時「廣大興」並沒有衝撞公務船，此說法等於戳破菲方「巴拿」對我方指稱有利。

開槍前鳴笛？證人說沒聽到

此外，菲國官方表示，開槍前公務船對「廣大興」船鳴笛，但菲調查團則說，沒有聽到鳴笛聲。

我國調查團詢問廿八人，其中除一名漁業局官員外，有十九人案發時在船上，包括十七名海防官兵及兩名漁業局官員。

我昨問完十九人，今天調查團團員調查對象，就是這十九人的指揮官及七名海防隊員，菲方則指稱不願開槍的企圖由該船長指稱不願開槍的結果被檢方石成，今天調查團將對這九名對象，對菲案水落石出有決定性影響。

案發時在船上的十九人，昨也首度現身菲國國家調查局(NBI)接受調查，包括下開的指揮官：接受調查，調查團在菲案地勘驗，昨九點起至晚上十點，分成兩組，昨九點起至晚上十點，分成兩組，昨九點起至晚上十點，分成兩組，昨九點起至晚上十點，分成兩組。

據了解，調查團昨與菲調查團會談，發現當時菲國船上曾為是否開槍有殺傷起見，八名菲國證人指出，當時菲國船長下令八名官兵開槍射擊，指菲國船長下令八名官兵開槍射擊。

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台灣赴菲調查團昨天對菲國肇事公務船上的漁業局官員及海防隊員進行隔離偵訊。昨天訊問對象都是被列為證人的當事人，未開槍人員。圖為昨天晚間3名菲國海防隊員接受訊問後，步出訊問地點。

製表：記者黃立翔



本署林彥良主任檢察官於菲律賓馬尼拉 NBI 受訪之畫面(左一為菲律賓 NBI 副局長)



刑事警察局派遣之國際科長李佳進、測謊專家林故廷與槍枝鑑定專家李經緯