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## DARK VICTORY OR CIRCUIT BREAKER: AUSTRALIA AND THE INTERNATIONAL REFUGEE SYSTEM POST TAMPA

### Adrienne Millbank

*Australia's Tampa and post-Tampa initiatives, Operation Relex and the Pacific Solution, have been described as representing a national moral crisis. Alternatively, they can be seen as symptoms of a crisis in an increasingly dysfunctional international asylum system. Critics in Australia have deplored the Government's tough actions as racist, opportunistic and inhumane. However some overseas observers have applauded Australia's new policy directions for decoupling immigration aspirations from refugee protection. Should this decoupling succeed, it could allow the international community to help larger numbers of refugees more effectively.*

*A range of initiatives are now being taken by other governments and organisations, including the UNHCR, to implement policies similar to Australia's.*

The Australian Government drew a very public — and electorally popular — line in the sand on 27 August 2001 when it refused entry into Australian waters of the Norwegian freighter the *Tampa*, with its cargo of 438 rescued boat people intent on lodging applications for asylum in Australia. The Tampa boat people, together with some other later arrivals, were transferred onto Nauru and Manus (PNG) Islands, for offshore processing, under what has become known as the 'Pacific Solution'.

The later arrivals in this group were from boats that could not be kept afloat. Post-Tampa the navy has patrolled Australia's northern waters under the system termed Operation Relex and boats heading towards Australia that could be kept afloat have been intercepted and returned to Indonesian waters. Outlying territory that had been customary landing spots, Christmas and Cocos Islands and Ashmore Reef, has been excised from Australia's migration zone. Boat people who reach these places will not be able to apply for any sort of migration visa; they are therefore unable to apply for refugee status in Australia. They are processed in accordance with United Nations High Commissioner for Refugees (UNHCR)

practice, a system that the Government deems to be more efficient. Those found not to be in need of protection are left to languish until they agree — under the possibility of eventual use of force — to be returned to the country they came from. Those determined to be refugees join the queue of offshore refugees waiting for a 'durable solution'.

No boats have reached the Australian mainland since August 2001 or Australian territory since December 2001, and the number of boat people remaining in 'offshore processing places' had declined to about 400 by the end of April 2003. Operation Relex continues.

The Tampa and post-Tampa measures have been deeply divisive, with the extent of public support for the Government's tough actions matched by the intensity of criticism and moral outrage which continues to be expressed by refugee and human rights activists and high profile commentators. The Government's success in stopping the flow of boat people through its Tampa stand-off and Pacific Solution, and its subsequent re-election, has been described in a book by David Marr and Marian Wilkinson as a 'dark victory', a victory of political leaders who are 'not good' men.<sup>1</sup> Others have

described it as a victory of men who 'played the race card' and tapped into the base instincts of an insular and xenophobic nation. They did this for short-term electoral gain and thus exposed Australia to shame on the international stage.<sup>2</sup>

That politicians will milk situations and events for electoral advantage is hardly a revelation. It is obvious. For some people the Tampa represents a moral crisis in Australia's population and its elected representatives. However, it may also constitute a symptom of a crisis in a dysfunctional and corrupted international asylum system. This article argues that racism is inadequate as an explanation for public support of the Government's tough actions. Australia is a successful immigrant and refugee settlement country and it is because of this success that Australia has had a low threshold of tolerance for the stresses and challenges that are being thrown up by the international asylum system. Moreover, if Australia's policies are compared with those of other governments, the Tampa and the Pacific Solution have not been a 'ridiculous' over-reaction. They certainly have not stripped Australia of credibility or influence internationally on refugee issues.<sup>3</sup> Rather, by breaking the nexus between migration and asylum that has rendered the asylum system unworkable, Australia's Tampa and Pacific Solution have provided a direction-setting circuit breaker in the evolution towards a more rational and equitable international refugee system.

#### **AUSTRALIA'S MORAL CRISIS?**

The images of asylum seeker's fragile boats being intercepted by the Australian navy, and of pre-Tampa boat people in mainland detention, have provided emotive material for journalists and human rights lawyers and activists. They have

provoked a simple moral response. Individuals with high profiles have been moved to proclaim their shame at being Australian.<sup>4</sup> But other commentators have pointed out that the explanation often provided for Australia's response, viz a national moral crisis arising from core contamination from last century's white Australia policy, and fear of 'the Other', is inadequate.<sup>5</sup> The racism explanation does not compute in a nation running a sizeable immigration program, one that offered 110,000 places in 2002-03, and which has been non-discriminatory in terms of race and ethnicity for over 30 years. It certainly does not compute in a nation running an additional refugee and humanitarian resettlement program of 12,000 places, in which 85 per cent of offshore places in 2002-03 will go to people from Africa, the Middle East and South-West Asia. The racism explanation also ignores the reality of today's well travelled, educated and ethnically diverse population,<sup>6</sup> and the fact that research and polling do not reveal Australia to be a particularly racist country.<sup>7</sup>

Adequate analysis of Australia's Tampa and Pacific Solution needs to take into account the broader dramas unfolding in an international asylum system that is so flawed that a number of commentators describe it as near the point of moral incoherence and collapse.<sup>8</sup> It also needs to acknowledge that Australia is different. Australia was always going to take a position based on its own interests, and these interests are guided by a set of convictions that have developed over 50 years and have been held by successive governments. These convictions are that:

- Running a significant immigration program is in the national interest.
- Managing the entry of people according to clearly set down criteria

and quotas is central to the very notion of managed migration, and managing migration is essential to maintaining public acceptance of substantial annual intakes.

- Managed migration and a coherent refugee policy are incompatible with irregular asylum-driven migration.
- The needs-based rather than contribution-based welfare and minimum wage structures that have evolved as part of the Australian ethos are also incompatible with unregulated asylum-driven immigration.
- Funding a range of services to assist new arrivals to integrate quickly, targeting especially humanitarian entrants, is necessary to assist integration and maintain community relations.
- As a country of immigration with highly developed settlement services, Australia's most useful contribution to the international refugee effort is through offering annual offshore quotas under the UNHCR's refugee resettlement program and, in cases of mass outflows, assisting through the provision of temporary havens.
- Setting numerical limits for components of the annual migration intake, like the humanitarian program that involve substantial costs, is also essential to maintaining public acceptance of immigration.

#### **THE TAMPA AS PROVOCATION**

Being seen to be in control of entry has been a political imperative in Australia. While the heightened political sensitivities of a pre-election environment may have precipitated the Tampa, it is possible that an Australian government of either persuasion would have taken a stand at this stage. At a time of heightened public awareness and tension, the Tampa constituted a direct provocation

through its public display of the determination of a large number of boat people to force their way illegally into the country. Unprecedented numbers — for Australia — of boat people were arriving: 4175 in 1999-2000, and 4137 in 2000-01. In the first three weeks of August 2001, 1212 arrived. From the pipeline of people waiting in Indonesia, 8000 were projected to arrive in 2001-02, and 12,000 were projected to arrive in 2002-03.<sup>9</sup> The processing system was under stress. Iraqi and Afghan boat people were being in effect fast-tracked through the determination system, with in global terms very high acceptance rates of over 90 per cent (albeit for temporary protection rather than permanent resident visas). Despite the fast-track determination procedures the record numbers arriving were putting detention centres and the detention system under stress. Mandatory detention, part of Australia's regulated law-based system of entry and stay, was not designed to cope with numbers of this magnitude.

The Tampa revealed the limits of Australia's tolerance for boat people, viz 10,000 in a program year is too many. However the incident represents more than just a preparedness of government in Australia to take unusually tough measures, sufficient to stop a flow of boat people. It represents a shift in the way that a Western country with hitherto highly praised refugee credentials is prepared to interpret its obligations under the 1951 refugee convention, at least insofar as boat people are concerned. The incident was a confronting example of intended illegal entry. But besides this the Tampa also constituted a confronting example of the sort of secondary destination-shopping migratory movement that has, in the eyes of governments, and the UNHCR, eroded and corrupted the international protection system.<sup>10</sup>

Most of the Tampa boat people were what is termed 'secondary movers'. They were Afghans or Iraqis who had moved from first countries of asylum (for example, Pakistan, Iran, Syria, Jordan), or they were people pretending to be Afghans or Iraqis. They had moved long distances, half way around the world, across and through countries with little interest in persecuting them, in order to settle in an affluent and stable Western country. They had often destroyed their identity and travel documents, or perhaps passed them on for use by others. This makes the determination of identities and the verification of stories of persecution — and return to countries of residence or origin — time consuming and difficult. They were clients of a lucrative people smuggling industry (estimated to be worth \$US12-30 billion a year),<sup>11</sup> which is based on delivering a migration outcome in the Western country of the client's or the people smuggler's choice. All this was to happen by using the 1951 refugee convention.

#### **THE TAMPA AS A SYMPTOM OF THE CRISIS IN THE INTERNATIONAL ASYLUM SYSTEM**

The refugee convention defines as a refugee a person:

who owing to (a) well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.

The core obligation of a signatory country is that of 'non-refoulement', that is not sending someone back into a situation of possible persecution. Article 33 states that:

No Contracting State shall expel or return a refugee in any manner

whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, nationality, political opinion or membership of a particular social group.

However unarguable and enduring this principle, the problem is that it appears to have become impossible to implement it in a morally coherent way. At least, it is impossible to implement it in the way that the convention and its primary obligation have traditionally been implemented by Western countries, that is through granting people within their borders who successfully apply for refugee status a right of residence — a migration outcome.

The essence of the crisis in the asylum system is numbers and the fact that governments have simply been unable to reconcile immigration control objectives with their refugee convention obligations. In 2002, 587,400 asylum claims were lodged in industrialized countries, most of them (425,500) in Western Europe. This is fewer than in 1992, when Germany alone received 438,000, but the numbers are still of concern because they have risen since the late 1990s. A range of entry controls and deterrent measures were introduced at great expense in the early to mid 1990s, firstly in Western Europe and then in all industrialised countries. Rather than keeping numbers down to a manageable level they appear to have succeeded only in spawning a lucrative and successful international people smuggling industry. Until recently asylum seekers in Western Europe were linked in the public mind with immigration (asylum seekers, together with family reunion migrants, have constituted the bulk of migration into European countries over the last 15 years); now they have become linked in the public mind with illegal — and unwanted — immigration.

The international asylum system is

dysfunctional because governments do their best to keep potential claimants out, regardless of whether or not the people trying to get in need protection from persecution. It is dysfunctional because it is impossible to process claims for refugee status within Western countries efficiently enough to stop the asylum system being used as a migration channel. It is dysfunctional because it has proved impossible for liberal democracies to effect a sufficient number of departures of failed asylum-seekers to prevent their whole elaborate processing apparatuses from being somewhat pointless. (Australia, with its lower numbers and mandatory detention, has been an exception.) And it is dysfunctional because it represents a gross distortion of the international refugee effort.

The trend towards more restrictive interpretation of the refugee convention has meant that only a small percentage of applicants (five per cent in Germany and ten per cent in the UK) are now accorded refugee status. More, up to 25 per cent, have been given some sort of temporary, subsidiary status in recent years (although countries like the UK and Denmark are now moving to reduce or entirely abolish this subsidiary status). Governments therefore argue that 70-80 per cent of asylum seekers in their countries do not need any sort of protection, and that the majority are economic migrants. An EU Presidency paper in 1998 bluntly acknowledged that decade-long objectives of 'tightening up' and 'speeding up' procedures sufficiently to prevent asylum systems being an attraction for migrants have never been managed anywhere in Europe.<sup>12</sup> Experience in the UK reinforces the point. White Papers published by the Home Office in 1997 and 2002 promised 'Fairer, Faster, Firmer' processing of

asylum claims, and to deliver 'Secure Borders, Safe Haven'. They set out long lists of measures designed to make processing faster, to deter bogus claims, to effect more removals and above all to reduce the number of asylum claims.<sup>13</sup> In 2002 a record 110,700 asylum claims were lodged in the UK. Ten per cent were accorded refugee status, and 24 per cent were granted temporary humanitarian stay ('exceptional leave to remain'). Sixty six per cent were refused. The 'exceptional leave to remain' category was to be abolished from 1 April 2003, in favour of a 'narrower category of humanitarian protection'. But whatever status they are accorded or not accorded, UK Home Secretary David Blunkett has acknowledged that 90 per cent of asylum seekers who lodge claims in the UK stay regardless.

It is easy to see why the UK press describes the asylum system in that country as in 'chaos' or 'crisis'.<sup>14</sup> A parliamentary inquiry recently found that 'it is self-evident that the efficient removal of asylum seekers whose claims have failed is a precondition for the credibility of the entire asylum process'. It also deprecated 'the setting of wholly unrealistic (removal) targets, which serve only to arouse false expectations and which can only prove demoralising for all concerned', stating that '[W]e are at a loss to understand the basis for the belief that a target of 30,000 removals a year was achievable...'<sup>15</sup>

Public debate in Australia and Western Europe is currently focussed on the costs of the asylum system and its politics. Governments do not reveal the costs of processing and supporting asylum seekers in their budgets; this would be politically unpalatable. A recent conservative estimate in *The Economist* put the combined cost for Western countries

at \$US 12 billion a year.<sup>16</sup> This expenditure is morally questionable because it is not spent on helping refugees; it is spent on elaborate processing bureaucracies and lawyers, and on welfare support for asylum seekers, the vast majority of whom will be found not to be refugees. The UK Government has acknowledged that in 2002 it spent nearly GBP two billion on processing and supporting asylum seekers, three times the UNHCR budget for supporting and finding 'durable solutions' for 12 million 'mandated' refugees in camps. This sum is also five times the total allocation for all of the migration, refugee, citizenship and multicultural functions and programs administered through Australia's Immigration, Multicultural and Indigenous Affairs portfolio.

But the feeling of political emergency surrounding the asylum system is more compelling for politicians than its financial cost. In a number of Western European countries rising voter resentment at governments' seeming inability to deal with asylum-seekers has built up to a sense of crisis.<sup>17</sup> The rise of right-wing anti-immigration parties has seen tougher restrictions introduced in a number of countries,<sup>18</sup> and has brought asylum to the top of the EU political agenda. Political strategists advised UK Prime Minister Tony Blair in September 2002 that 'the [Labour] party will only avoid the fate of its European counterparts if it adopts tough policies on immigration'.<sup>19</sup>

Getting the numbers of asylum seekers down by whatever means has arguably become the primary goal of Western European governments, not helping refugees. The extent to which any public policy 'morality' still adheres to the refugee convention-based asylum system, and the extent to which it has

become dysfunctional, can be gleaned from recent public statements by political leaders in countries with quite different migration and refugee traditions and cultures. Australia's Immigration Minister Philip Ruddock on 5 March 2003 proudly announced a 'success' that the Australian Government had achieved: halving the number of asylum seekers. (The Minister stated that this allowed more places for offshore resettlement of people from refugee camps.)<sup>20</sup> On 8 February 2003 the Prime Minister of the UK, Tony Blair, announced his determination and commitment to 'halve' the number of asylum seekers lodging claims in his country by September this year (from 9000 to 4500 per month).<sup>21</sup> Opposing parties may be wedged into even more morally incoherent postures: Australia's Labor Party has promised a coastguard which will intercept boat people and forcibly turn them back out of Australian waters.<sup>22</sup> Those who somehow manage to break through this 'border protection' and reach the mainland will be accommodated with more 'compassion', with shorter and more congenial detention and permanent rather than temporary visas for those whose claims are recognised.

Several commentators have pointed out that the only 'crime' committed, even by those asylum seekers who might not meet political refugee criteria, is to pursue the only avenue open to them to seek better life opportunities for themselves and their families. Such asylum-seekers deserve empathy or admiration for their enterprise and a proper policy response to their situation; they should not be judged or abused as 'queue jumpers' or 'bogus refugees'. Few however could argue that the international asylum system as it currently works is delivering to Western countries those refugees most

in need of sanctuary.<sup>23</sup> Few could argue that the system represents an equitable or coherent response to the international refugee situation, or that it does not represent a serious distortion of the refugee effort. And few could argue that the system has not come to constitute an intolerable challenge to governments.

There is a moral absurdity in the sort of haggling that occurs in academic law journals over the interpretation of definitions and criteria in the refugee convention (for example over such issues as whether the internal relocation option is 'reasonable' if this inconveniences asylum seekers' family members). Paris Aristotle<sup>24</sup> argues that this sort of focus in Western countries diverts attention from the immensity of the global refugee crisis and the fact that the issue of burden sharing has yet to be addressed. He points to the hypocrisy of a global community 'prepared to spend \$22,000 per head preventing the flow of asylum seekers while spending approximately \$45 per day to enable the UNHCR to care for and provide durable solutions for the world's refugees'. He writes that the nexus between immigration and refugee protection is emerging 'as one of the pre-eminent public policy issues of our time'.<sup>25</sup>

#### **REINTERPRETING THE REFUGEE CONVENTION**

As noted, the core, indeed the only real obligation under the refugee convention, is not to 'refoule' anyone, that is not to send someone who seeks asylum and who has a credible fear of persecution on a convention ground, back into that situation of possible persecution. The way the convention has been understood and implemented, through right of residence and eventual citizenship in the country in which claims are lodged, is a product of

the history both of the refugee convention and of the Western European countries that have received the bulk of asylum flows. The 1951 refugee convention was drafted during the Cold War, when few refugees were able to leave their 'iron curtain' countries, when return was unthinkable, when international travel was accessible to few and when migration channels were relatively open. Unlike in Australia, the provision of political asylum has a very long pre-Cold War tradition and importance in countries like Germany and the UK. These countries have no traditions of migration but have seen the granting of asylum as integral to their development and identity as liberal democracies. After World War II the provision of asylum assumed heightened moral importance, particularly in Western European countries and most particularly in West Germany.

One of the many problems with the refugee convention 50 years on<sup>26</sup> is that it imposes no obligation on signatory countries to help refugees unless and until they are in a signatory country. Hence, when the numbers became perceived to be too many, the closing of borders, the resort by asylum seekers to illegal entry and the loss of credibility of the system in the public mind. And hence, when measures to reduce the numbers are ineffective, the resort to offshore solutions.

It is important to note that, while states have the right to grant asylum to people who apply within their borders, the convention imposes no obligation on them to do so. There is, in effect, nothing in the convention that entitles asylum seekers to relocate themselves and their families to the Western country of their choice. The core non-refoulement obligation can be met, as through Australia's Pacific Solution, by transferring asylum seekers to



another place and arranging for their claims to be processed. If these claims are successful, the core obligation can be met by supporting these asylum seekers while they await an offer of a resettlement place or until conditions at home have improved and they can safely return.

Refugee advocates argue that such a legalistic and technical interpretation is against the spirit of the convention. They might argue further that asylum seekers have a democratic right to choose their country of asylum and that Western countries have a moral obligation to interpret their obligations generously, given that the bulk of the burden of supporting the world's refugees is borne by poorer countries.<sup>27</sup> Other commentators have pointed out that, from a moral perspective, refugees are entitled to safety and basic provisions for their well being, not a choice of where these needs will be met,<sup>28</sup> and that the astonishing amounts of money spent processing and supporting asylum seekers would be better directed to supporting people in countries of first asylum.

One refugee expert, Alexander Casella,<sup>29</sup> has argued further that Western countries themselves are responsible for corrupting the very institution of asylum. They have done this through their elaborate and over generous determination systems that have acted as a beacon for aspirational migrants from poorer and unstable countries. The refugee convention was never intended to be a means of escaping poverty or instability, and the system is collapsing under the weight of numbers: asylum in places other than the country of first asylum should be restricted to those who cannot be helped in other ways. Casella has praised Australia's Tampa and Pacific Solution for decoupling migration aspirations from refugee protection, and thus assisting to

preserve the principle of asylum.<sup>30</sup> Another refugee expert, James Hathaway,<sup>31</sup> has argued that the present arrangements unfairly privilege those refugees who are able to reach Western states in order to claim asylum.<sup>32</sup> Others have pointed out that the determination of refugees' needs and 'durable solutions' are most effectively done within the refugee-producing region.

#### **REFUGEE POLICY: WORLD'S BEST AND WORST PRACTICE**

The reactive and defensive measures adopted by governments to keep asylum seekers at bay, or to make them feel unwelcome if they do manage to break through visa and border controls, are rarely described as refugee policy. Commentators and academics in the UK, the Western European country currently under the greatest asylum seeker pressure, have identified the elements of what would make an ideal or even workable refugee policy, that is a refugee policy which would do most for refugees while being supported by the general public.<sup>33</sup> These are:

- Development aid and targeted support would be directed to refugee producing countries and countries of first asylum.
- The international community might be encouraged to adopt a humanitarian principle to justify military intervention in seriously refugee producing countries.
- There would be public consultation to establish the principles and criteria that should apply for refugee entry to the UK.
- While the objectives would be humanitarian, the national interest would be kept in mind: reasonable numerical limits or quotas would be established. Capacity to cope with life in the UK might need to be considered.

- Comprehensive programs and services including English language teaching, whether publicly or privately funded, would be developed to assist the integration of refugees and migrants.
- More migration channels would be opened up, in recognition of the economic and cultural diversity benefits migrants bring, and also so that people who want to live in the UK do not have to use international treaty obligations.

A community relations and public opinion adviser to the UK Cabinet Office, Shamit Saggat, has suggested that the racism explanation for voter backlash and resentment of asylum seekers may be equally simplistic and inadequate in his country. His surveys and polling show that attitudes in Britain have changed since the 1950s and 1960s; 'self-conscious' racial prejudice has declined. Young people in particular are not anti immigration, indeed they appreciate the cosmopolitan nature of their cities. Their hard-line opinion is directed more against a perceived lack of government control.<sup>34</sup>

Claims that Australia is overreacting to a 'minuscule' number of boat people compared with annual inflows of over 400,000 that are 'accepted' into Western European countries misread what is happening. The inflows into these countries are unwanted.<sup>35</sup> Few Western European countries offer resettlement places; for those that do, mainly the Scandinavian countries, the numbers are small. At least two thirds of asylum seekers, more in most countries, are refused either refugee status or any sort of temporary humanitarian status. The Australian public is hostile to boat arrivals but it is supportive of an annual offshore humanitarian intake of 12,000, though it is probably under no illusion that the humanitarian migration category is not a cost to taxpayers.<sup>36</sup> In terms of numbers accepted (asylum

seekers granted refugee status or some sort of temporary humanitarian status, and refugees and humanitarian migrants accepted from overseas), and in terms of the sort of welcome and settlement support that they receive, Australia is way more generous than the high asylum countries of Germany or the UK or the EU as a whole. Per 100,000 head of population, Australia accepts about 63 refugee and humanitarian entrants. Figures for other areas are: the EU as a whole 22, Germany 16 and the UK 54.<sup>37</sup>

#### THE TAMPA AS CATALYST

It is not surprising that UK officials and academics such as John Salt are looking to Australia for what might usefully be applied to the development of immigrant and refugee resettlement programs in the UK.<sup>38</sup> It is also not surprising that governments in Western European countries and the UK in particular are looking at Australia's Operation Relex and Pacific Solution as a model for how to deal with their much larger asylum seeker inflows.<sup>39</sup>

But the support that is being provided by the UNHCR consistent with the new policy directions set by Australia is perhaps surprising. The UNHCR would appear to have at least expanded on its pre-Tampa lecturing and exhortatory role regarding the 'enduring' nature of states' refugee convention obligations. Soon after Tampa (but following years of effort by the Australian and other governments) the UNHCR has acknowledged that the problems that the refugee convention-based asylum system is creating for governments have to be addressed. It has also acknowledged that these problems are going to be addressed through new ways of implementing the convention.<sup>40</sup> As noted by Fred Brenchley in a feature article in *The Bulletin*, while domestic considerations may have been foremost,

the biggest dividend for Australia from the Tampa and the Pacific Solution may be 'a looming sea change in global handling of illegal asylum seekers, partly due to Australia's hard line'.<sup>41</sup>

On the 27 August 2001 the Australian Government directed the Captain of the Tampa not to bring the boat people he had rescued into Australian waters. Operation Relex and the Pacific Solution were launched on 3 September 2001. These actions, and the ideas supporting them (for example, the preference for offshore-managed refugee quotas) have subsequently been echoed by the UNHCR and a number of European Governments and organisations. The more significant initiatives are listed chronologically below.

In May 2002 the UNHCR circulated to Australia and other governments in the Asia-Pacific region a proposed initiative on 'secondary movers'. (Secondary movers are refugees who flee to a nation of first haven and then move through transit countries to more attractive destinations such as Australia, the US, or Europe, where they seek asylum.) The UNHCR paper, titled 'A Comprehensive Approach to Secondary Movement in the Asia-Pacific Region' is not publicly available but appears to have been fairly widely circulated. Brenchley describes the UNHCR initiative as 'an acknowledgment that the recent mixing of illegal refugees many of whom pay smugglers to move to desired locations with the rising tide of real refugees from the combination of wars and hardship, has radically altered the global refugee debate'. The UNHCR proposes an Asia Pacific initiative that could be repeated around the world. The initiative suggests the following policies:

- The issue of secondary movers would be addressed in the first country of asylum, through registration, financial

support, and repatriation assistance.

- More resettlement places would be made available.
- Secondary movers who move on to claim asylum in Western countries would be returned to the first country of asylum.

Brenchley puts forward several reasons for the initiative and its timing. First, there is the impact of Australia's stand on boat people and concern at the decline in resettlement places. (The number of protection visas granted to onshore refugee claimants in Australia is subtracted from the overseas resettlement quota. Australia has long been one of the most important of resettlement countries; the most important, in terms of sheer numbers, the USA, has cut its numbers drastically since September 11 2001.) Second, there is the fact that the UNHCR undertook global consultations to shore up support for the refugee convention in 2001. These brought home to it the extent of public anger and growing government intolerance with the asylum system.

On the 24 May 2002 the UK Prime Minister, Tony Blair, was reported as considering proposals to mobilise Royal Navy warships to intercept people smugglers and their boat people clients in the Mediterranean.<sup>42</sup>

On the 1 January 2003 a 'pioneering joint maritime surveillance action' called 'Operation Ulysses', part of long proposed EU joint border patrols, was launched. It involved boats from five EU member states (Britain, France, Portugal, Italy and Spain) patrolling the Mediterranean. From April 2003 surveillance was to be extended to Atlantic waters.<sup>43</sup>

On the 9 March 2003 the policy of the UK Conservative Party was clarified:

- The UK would accept an offshore quota of 20,000 refugees a year.
- Asylum seekers who arrive in the UK

would be sent to new 'safe havens' abroad.

In a BBC interview Conservative Party leader Iain Duncan stated, re asylum seekers who arrive 'spontaneously' in the UK, '[W]e will follow Australia's example and give them a choice of returning to their country of origin immediately or going to an offshore haven to have their claim processed. ... This option would not be attractive to economic migrants but agreeable to people genuinely fleeing persecution'.<sup>44</sup>

On the 26 March 2003 the European commission confirmed that it was looking into the feasibility of 'protected entry procedures, to complement the treatment of spontaneous arrivals by asylum seekers in Europe'. It noted that the 'external processing' of asylum claims 'would constitute the most adequate response to the challenge of reconciling control objectives with the obligation of protecting refugees'.<sup>45</sup>

On the 27 March 2003 the UK Home Secretary David Blunkett issued a press release titled 'Statement on zones of protection',<sup>46</sup> which elaborated on UK proposals to be presented at EU forums and further discussed with the UNHCR.

- 'Regional protection zones' would be established near areas of conflict, building on UNHCR efforts to provide effective protection and to help refugees 'resettle in their home regions at the appropriate time'.
- 'Transit zones' would be established in cooperation with the UNHCR which would process asylum claims 'without people travelling to the countries in which they want to seek asylum'. Proposed countries have not been officially announced; according to media reports possibilities include Albania, Romania, Bulgaria and Croatia.

Asylum seekers who arrive 'spontane-

ously' in the UK or in an EU country would be returned to a transit or regional zone for processing.

The aim of the proposals is summarised as 'better management of the asylum process globally, reducing unfounded applications and providing more equitable protection for genuine refugees'. On March 28 a further press release reported 'substantial support' from EU partners and the European Commission for the proposals.<sup>47</sup>

On the 27 March 2003 the UNHCR released its own strategy to 'boost refugee responses in regions of origin' and to 'address the issue of secondary movement of refugees and asylum seekers towards Europe'.

- 'Caseloads composed primarily of economic migrants' would be held in 'closed' reception, that is in detention centres, within the EU but in the new border countries, where the asylum seekers' status would be determined quickly, in accordance with more efficient UNHCR procedures. (EU teams would conduct initial assessments, with applicants limited to only one appeal and the EU teams would have UNHCR assistance.) Those in need of protection would be allocated to an EU country on the basis of criteria such as skills, family connections or language. 'Collective EU action' would be taken to enforce the return to their country of origin of those who do not require protection.
- National asylum systems would continue to process claims of asylum seekers from refugee producing countries. (Countries that would have qualified, but no longer qualify, as refugee producing are Afghanistan and Iraq.)

In expanding on his proposals in public forums Commissioner Ruud Lubbers has acknowledged the need to address

effectively 'both the phenomenon of irregular movements of asylum seekers to Europe and the phenomenon of economic migrants clogging up its asylum systems'.<sup>48</sup>

On 2 April 2003 Australia's Immigration Minister Philip Ruddock issued a media release noting that 'the proposal by Britain to set up transit processing centres for asylum seekers arriving in the UK and other European Union countries bears a remarkable similarity to Australia's offshore processing on Nauru and PNG'. He 'warmly welcomed the proposal to improve regional management and deal with protection problems at the source, rather than allowing people smugglers to dictate who benefits from asylum systems'. He also noted that it was 'encouraging to see Britain advocating that European countries play a greater role in resettlement programs'.<sup>49</sup>

On 22 April 2003 the British think tank, Demos, published a report titled 'People Flows: Managing Migration in a New European Commonwealth'.<sup>50</sup> This backed the UK Government's proposal for stationing asylum processing centres outside EU borders. It advocated new ways of interpreting and implementing refugee convention obligations and noted that European governments have come to fear asylum seekers as a source of social instability and voter anger. It also pointed to the failure of past initiatives to control inflows and put forward its own proposals.

- Asylum seekers and other migrants 'who do not fit clear categories' (bona fide visitors, workers with job offers, residents sponsored by citizens) would be sent to an 'international transit centre' outside Europe, where they would be given shelter while their applications to enter the EU were

processed.

- All people at the centres would pay, through loans or payment in kind if necessary, for their upkeep there.
- Asylum applicants recognised as refugees (following 'swift and consistent' processing) would get passports and EU citizenship; those rejected would be given assistance to return home.

Demos describes its model as based on the reality and inevitability of global mobility and the need to acknowledge the complexity of reasons for migration, as well as the unsustainability of the current asylum system.

#### **FUTURE DIRECTIONS**

The idea for out-of-country processing of asylum seekers has not suddenly come from Australia. European and other commentators have been proposing this option for years. As we have seen, as early as 1991 James Hathaway proposed the processing of asylum seekers in their regions of origin as an equity measure and in order to break the nexus between migration and asylum. In June 2000 UK Home Secretary Jack Straw proposed an EU-wide system based on processing applications in refugee camps near trouble spots, and on resettling successful applicants according to pre-established quotas.<sup>51</sup>

There are, however, clear signs of renewed vigour and determination following the success of Tampa and the Pacific Solution, and there are indications, made more clear by the involvement of the UNHCR, of the directions that the refugee convention is going to evolve in. Whatever the moral arguments, the reality is that governments have come to view the system as unsustainable. 'Non-refoulement' obligations are likely to be increasingly fulfilled in future through the offshore processing of asylum seekers

and through expanded refugee resettlement quotas.

Australia has taken a hard line through the Tampa and its Pacific Solution, tougher than countries that have had to cope with much larger inflows of asylum seekers. However, as is recognised by other governments and more informed commentators, Australia has not fallen into a moral crisis. If it has acted out of self interest, it has also acted in accordance with long-established principles. As a country of immigration which has invested massively in its managed immigration and refugee policies and programs, it has too much to lose to acquiesce to a corrupted and dysfunctional asylum system which is often described as being in a state of 'collapse'. Indeed it could be argued that it has been easier for Australia to take a strong stand *because* of its migration and refugee credentials. (As well as because of its geography as an island nation.)

European states face more obstacles,

including the need to move cooperatively. For example, countries that have invested heavily in getting numbers down may not feel the urgency to reinvest in offshore processing and resettlement that the UK is experiencing. They also face the need to comply with a raft of EU treaty obligations.

If change appears to be inevitable, progress is likely to be slow, and outcomes unclear. In commenting on Australia's response to the Tampa and its subsequent policies the United States Committee for Refugees noted:

Australia may indeed be the first 'western' nation to put such broad and significant legal effort behind the rhetoric of discouraging the 'spontaneous' arrival of asylum seekers in favour of the more orderly, predictable, discretionary, and political system of selecting refugees for resettlement from overseas. However the full implications of this new system for refugee protection are yet to be felt.<sup>52</sup>

## References

- <sup>1</sup> D. Marr and M. Wilkinson, *Dark Victory*, Allen & Unwin, Sydney, 2003. See also interview with Daniella Wood, 'Tampa's secrets exposed', *The Mercury*, 22 March 2003
- <sup>2</sup> See for example J. Hewson 'Prejudice is alive and well', *Australian Financial Review*, 28 March 2003; H. Mackay, 'Blame PM for our new shame', *The West Australian*, 3 August 2002; Interview with Alastair Davidson, *Swinke*, vol. 7, April 2003 <[www.swinke.com/](http://www.swinke.com/)>.
- <sup>3</sup> James Jupp has argued that, '[T]he demonisation of boat people helps to discredit the entire humanitarian program. Nor, with asylum seeker numbers running far below those experienced in Europe, is Australia likely to have much credibility in international attempts to control people smuggling and to reform humanitarian policies'. J. Jupp, 'Australia's refugee and humanitarian policies', in *Keynotes*, vol. 2, February 2002
- <sup>4</sup> See for example A. Summers, 'Australia humiliated', *The Age*, 3 September 2001
- <sup>5</sup> O. Harries, 'Hearts, minds and immigration', *Quadrant*, October 2002; J. Hirst, 'PM saved our sovereignty', *The Australian*, 15 July 2002; M. Baume, 'Howard gives Iraqi refugees a fair deal' *Financial Review*, 24 March 2003
- <sup>6</sup> Twenty three per cent of the Australian population was born overseas and over 40 per cent have at least one parent born overseas.
- <sup>7</sup> See research summarised in Parliamentary Library Current Issues Brief no. 20, 1997-98, *An Anti-Racism Campaign: Who Needs It?*
- <sup>8</sup> For example Christine Boswell argues that a fundamental shortcoming of the 1951 refugee convention is its emphasis on movement as a precondition for international protection. The problem with this 50 years on, 'is that many of those most in need of protection are unable to leave, while many of those able to seek asylum in Europe are not genuine refugees'. In 'Total Failure', *The World Today*, August/September 2000
- <sup>9</sup> Hon Philip Ruddock MP, Ministerial Statement, House Hansard, 3 December 2002

- <sup>10</sup> In a statement to an informal meeting of the European Union Justice and Home Affairs Council, Veria, 28 March 2003, High Commissioner Ruud Lubbers advised that 'Europe has no choice but to work on both fronts [burden sharing and responsibility sharing] if it is to effectively address both the phenomenon of irregular movements of asylum seekers to Europe and the phenomenon of economic migrants abusing and clogging up its asylum systems'. He also acknowledged that '[N]ew approaches are also needed to address secondary movements of refugees and asylum seekers from their regions of origin to Europe. The key issue here is to strengthen protection capacities in first countries of asylum and to ensure greater access to durable solutions in regions of origin'. UNHCR, High Commissioner's Statements, 28 March 2003. The UNHCR proposal to work with Australian and other governments to address secondary movements in the Asia-Pacific region is described as 'designed to tackle the growing dilemma of "secondary movement" amid fears it is bringing the system to the brink of collapse', Megan Saunders, 'UN plans refugee system overhaul', *The Australian*, 6 September 2002
- <sup>11</sup> S. Hall, 'Talks can turn the refugee tide', *Australian Financial Review*, 10 December 2001
- <sup>12</sup> EU Presidency, *Strategy Paper on Immigration and Asylum*, Brussels, 1 July 1998
- <sup>13</sup> The 1997 White Paper set out proposals inter-alia for the regional dispersal of asylum seekers, support through a supermarket voucher system rather than cash payments, and increased detention places. The 2002 White Paper proposed lists of safe countries, revised appeal procedures, and further restrictions on welfare benefits.
- <sup>14</sup> See for example P. Johnson, 'The asylum system is in a state of chaos. So why can't the Government do more?', *The Daily Telegraph*, 24 January 2003
- <sup>15</sup> House of Commons Home Affairs Committee, *Asylum Removals*, 8 May 2003, p. 41 and p. 38
- <sup>16</sup> Special Report, 'Asylum, a strange sort of sanctuary', *The Economist*, 15 March 2003
- <sup>17</sup> For example a Mori poll in the UK in February 2003 found that 85 per cent of people questioned believed that the Government had failed to bring the asylum crisis under control. Reported in David Leppard, '85 per cent think asylum is out of control', *The Sunday Times*, 9 February 2003
- <sup>18</sup> In Denmark full welfare benefits have been denied to refugees during their first seven years of residence, sponsorship of spouses denied for those under 24, and procedures and criteria were to be tightened up so that Denmark will 'only accept those refugees it is bound to by refugee law'. Summarised in A. Osborn, 'Danes justify harshest asylum laws in Europe', *The Guardian*, 29 June 2002
- <sup>19</sup> A. Perkins 'New Labour gurus warn Blair to get tough on immigration', *The Guardian*, 13 September 2002
- <sup>20</sup> House of Representatives Hansard, Question without Notice, 5 March 2003
- <sup>21</sup> Reported in 'Refugees Targeted', *Sunday Telegraph*, 9 February 2003
- <sup>22</sup> Simon Crean, interviewed by Neil Mitchell, Radio 3 AW, 23 April 2003
- <sup>23</sup> A number of commentators have pointed out that asylum seekers are mostly male, young and from relatively well-off families, while more vulnerable women and children form the bulk of the population in refugee camps. See for example Harriet Sergeant, *Welcome to the Asylum: Migration and Asylum in the UK*, Centre for Policy Studies, London, 2001
- <sup>24</sup> Paris Aristotle is Director of the Victorian Foundation for survivors of Torture.
- <sup>25</sup> P. Aristotle, 'The international refugee protection system in crisis', *Impact*, December 2001
- <sup>26</sup> For a description of the range of problems that have been identified with the refugee convention, see Parliamentary Library Research Paper no. 5 2000-01, *The Problem with the Refugee Convention*.
- <sup>27</sup> See for example B. O'Neill, 'Fencing off debate', *Spiked Politic* <www.spiked-online.com>, 1 May 2003
- <sup>28</sup> J. Carens, 'The philosopher and the policy maker: two perspectives on the ethics of immigration with special attention to the problem of restricting Asylum', in K. Hailbronner and D. Martin (Eds), *Immigration Admissions: The Search for Workable Policies in Germany and the USA*, Hiroshi Motomura, Berghahn Books, Providence, USA, 1997
- <sup>29</sup> Alexander Casella is Geneva representative, International Centre for Migration Policy Development, and former UNHCR regional director.
- <sup>30</sup> A. Casella, speaking at *Migration: Benefiting Australia* conference, Sydney, 7-8 May 2001. See also M. Saunders 'Refugee policy a "dream" scheme', *The Australian*, 7 May 2002, and A. Casella, 'Right to reject boat people,' *The Courier Mail*, 3 October 2001
- <sup>31</sup> James Hathaway is Professor of Law and Director, Program in Refugee Law, Uni. of Michigan.
- <sup>32</sup> J. Hathaway, 'Reconceiving Refugee Law as Human Rights Protection', *Journal of Refugee Studies*, 4, no. 2, 1991
- <sup>33</sup> See Sergeant, op. cit., and A. Bernstein and M. Weiner (Eds), *Migration and Refugee Policies: An Overview*, Continuum, London, 1999
- <sup>34</sup> S. Sagar, 'Immigration politics and the politics of public opinion', address at 'The Challenges of Immigration and Integration in the EU and Australia' Conference, University of Sydney, 18-20 February 2003

- <sup>35</sup> For example a recent (12 February 2003) Populus poll for *The Times* (UK), found that nearly nine out of 10 voters believe that the number of asylum-seekers in Britain is a serious problem, and nearly four out of 10 regard the number of asylum-seekers as 'the most serious problem in Britain at present'.
- <sup>36</sup> See 1996 AGB McNair poll 14-16 June 1996, on attitudes to different migration program components. Of those polled 55 per cent said numbers in the planned humanitarian component were 'about right' or 'too few'. In the same poll 61 per cent said the numbers in the family reunion component were 'too high', and 72 per cent said numbers with 'work skills' were 'about right' or 'too few'. See also National Multicultural Advisory Council May 1999 Report, Statistical Appendix Part 2, 'Migrant numbers, Asian Immigration and Multiculturalism: Trends in the Polls 1943-1998'; K. Betts, 'Boatpeople and public opinion in Australia', *People and Place*, vol. 9, no 4, 2001; and J. Gordon, 'Wide support for immigration', *The Age*, 21 September 2002.
- <sup>37</sup> Calculations are based on UNHCR 2000 statistics.
- <sup>38</sup> J. Salt, London School of Economics, speaking at *Migration: Benefiting Australia* conference, Sydney, 7-8 May 2001
- <sup>39</sup> In describing the offshore processing proposals currently under consideration in the UK, *The Economist* stated 'Australia is the model for the scheme', 'The Atlantic solution', *The Economist*, 15 March 2003
- <sup>40</sup> UNHCR, op. cit., and UNHCR press release, *Lubbers offers new approaches on asylum-migration issue*, 28 March 2003
- <sup>41</sup> F. Brenchley, 'When the boat comes in', *The Bulletin*, 4 September 2002
- <sup>42</sup> 'British PM may enlist navy in crackdown on asylum seekers', *Sydney Morning Herald*, 24 May 2002
- <sup>43</sup> Described in E. Nash, 'This Europe: Europe's first migrant patrol founders on the rocks of incomprehension', *Independent News, Independent Digital* (UK), 11 March 2003
- <sup>44</sup> Interview with Iain Duncan, 'Tories propose refugee limit', *BBC News*, 20 March 2003
- <sup>45</sup> European Commission, *Communication*, 26 March 2003
- <sup>46</sup> UK Home Office press release, *Home Secretary statement on zones of protection*, Reference: Stat 010/2003, 27 March 2003
- <sup>47</sup> UK Home Office press release, *Home Secretary statement on zones of protection*, Reference: Stat 011/2003, 28 March 2003
- <sup>48</sup> UNHCR press release, op. cit., 2003
- <sup>49</sup> Hon Philip Ruddock MP, *UK asylum proposals worth consideration*, MPS 21/2003, 3 April 2003
- <sup>50</sup> <<http://www.demos.co.uk/>>
- <sup>51</sup> Hon. Jack Straw, address to European Conference, Lisbon, June 2000
- <sup>52</sup> United States Committee for Refugees, *Sea Change: Australia's New Approach to Asylum Seekers*, USCR, February 2002