

## THE ELEPHANT ON THE BOAT: THE PROBLEM THAT IS THE REFUGEE CONVENTION

### ■ Adrienne Millbank

*The 1951 United Nations convention on refugees was written for a different world. Today it causes far more harm than good. It is largely blind to the millions of refugees mired in poverty and forgotten in camps overseas. At the same time it tempts tens of thousands of people in poor countries, who have some money, to pay smugglers to get them across the borders of Western countries that have signed the convention. This leads to voter resentment and ever-increasing efforts on the part of signatory countries to prevent asylum seekers from taking that final step across their borders. A deadly game of cat and mouse is in play but asylum seekers who do manage, as it were, to touch home base usually feel it was worth the risk. Others, however, die in the attempt.*

*The Australian Labor government has introduced a cruel twist; it has made touching base more attractive while, at the same time, putting more resources into border control.*

*The structure underpinning this miserable farce is the 1951 convention: it is time that Australia and other signatory countries renounced it and committed themselves to a genuinely humanitarian refugee policy.*

### THE PUBLIC DEBATE

On the 15 December 2010 a boat carrying up to 100 asylum seekers, men, women and children, was smashed against the cliffs in heavy seas at Christmas island and up to 50 were drowned. Horrified islanders tried to help, and one or two filmed the catastrophe. Consequently the dangers and potential misery of the current asylum system were brought home to Australia and the world. The tragedy further inflamed a public debate about boat people and Australia's reaction to asylum seekers, a debate that was already running hot. By mid December, a record yearly number (6232) had already arrived in 2010. Nearly 200 boats containing 10,000 asylum seekers had arrived since the Rudd Labor Government was elected in October 2007, and softened asylum policies in August 2008. This followed a five-year period of no or few boat arrivals under the Howard Government.

Thanks to the efforts of Amnesty International and other advocacy groups, the Australian public is now better informed about the international asylum system and the 1951 United Nations Convention on the Status of Refugees, which legitimises the irregular movement of boat people.<sup>1</sup>

Asylum advocates see the provision of better information about the refugee convention, and the right it confers on people to claim refugee status regardless of how they arrive, as a way to counter the xenophobia and fear which they see as driving public hostility to boat people.<sup>2</sup>

Julia Gillard, formerly deputy Prime Minister, succeeded Kevin Rudd as Prime Minister in June 2010. The Rudd/Gillard Government appears to have wedged itself into an electorally damaging position. It rejected the Howard Government's deterrent measures, especially temporary protection visas and the Pacific Solution, as inhumane and internationally shaming. Having failed to prevent the subsequent inflow through increased investment in border control, it has tried to minimise its significance by denying that Australia should be seen as any different from countries that have received larger numbers of asylum seekers. There is however little sign of the public accepting the government's advice that inflows of asylum seekers without visas and/or identity documents are the result of push factors beyond government control, and that such an inflow is 'normal' for western countries, and hence, presumably, inevitable in Australia.

Polling has consistently shown that most Australian residents see the ‘irregular’ arrival of asylum seekers by boat as a problem that the government should fix quickly. The Christmas Island disaster will have only added outrage and urgency to this view. The devastating floods in January 2011 will increase anger that money is being squandered on a failed asylum-seeker policy.

In policy circles, in comments on news stories, on editorial pages and on blogs, more people are questioning, why, if a 60-year-old UN treaty is the root of the boat people problem and the cause of so much grief, doesn’t Australia just opt out? Why can’t this treaty be revisited? Why should Australia stay hostage? It is so obvious that we are being taken for a ride, it is so cruel, so arbitrary, so absurd, and so unfair. Australia has an orderly refugee resettlement program which is being undermined—why don’t we only accept refugees from the camps?

### **Scott Morrison’s proposal**

Shadow immigration minister Scott Morrison injected a blast of oxygen into the debate when, in an address to the Lowy Institute on 30 November 2010, he called for an Australia-led reinterpretation of the 1951 refugee convention.<sup>3</sup> (See more details on this below.) Morrison’s speech was greeted as a well overdue act of political leadership which, in the words of Paul Kelly, cut through ‘the fog of denial, confusion and policy failure’ that has dogged this area.<sup>4</sup> On the other hand, Khalid Koser, in a paper released 13 December, was quick to pose the question:

Does Australia really want to renegotiate its commitment to the 1951 Convention, as proposed by Scott Morrison at the Lowy Institute, and lose its reputation as a standard-bearer for refugee rights? And all because of a few thousand boat arrivals from a war-torn country?<sup>5</sup>

Koser was being rhetorical and manipulative. The popular answer to his question is likely to be a resounding yes—because the majority of Australians don’t accept its premise. Australia’s refugee reputation has never rested on its treatment of asylum seekers. Australia’s relationship with the refugee convention has been wary and reluctant. Australia has not been reluctant to accept refugees, so long as these refugee intakes were managed by the Australian government. Australia has run a sizeable, population-building annual migration program (including refugee resettlement) for 60 years. About 700,000 refugees have come to live in Australia under this program, which has little to do with the refugee convention. Over 160,000 displaced persons seeking refuge from a war-ravaged Europe were selected to settle in Australia over the period 1947–51, before the refugee convention was signed.

Australia has highly developed visa controls and tightly controlled entry systems. Unlike the European countries with which Koser is more familiar, Australia has controlled and can control who enters. Australian governments have, in the past, stopped each new wave of boat people, every time, no matter how small. The quality of debate in Europe is different: there, asylum seeking and immigration have fused in the public mind.<sup>6</sup> Asylum-seeker inflows might be more established in European countries, but they are unwanted.<sup>7</sup> Asylum seeking has long been at the top of the political agenda in European countries, despite the vast resources devoted to try to stop it.<sup>8</sup>

Australia’s refugee reputation rests on its tradition as a country of successful refugee resettlement. The government was quick to describe Morrison’s proposal as lacking detail. It will however resonate with Australian residents who are likely to see in it a defence of Australia’s migration and refugee policies and values.

## Public opinion

Polls and surveys confirm that the weight of public opinion, while accepting of the offshore refugee (humanitarian) migration program, has remained consistently hostile to boat arrivals. They also consistently show that the public expect government to control illegal entry. They show a strong preference for Australian selection of refugees, with or without the UN, and a rejection of spontaneous arrivals under the refugee convention-based asylum system.

An analysis of polling by Pollytics published 9 November 2009 found results consistent across Newspoll, Nielson and Essential Report polling, with 'a large plurality of the population believing that the Rudd Government's asylum seeker policies are too soft'.<sup>9</sup> It found a small uncommitted result for each pollster, suggesting that 'people have long made their minds up on this'. A Morgan Poll conducted 16–17 March 2010 found a clear majority, 64 per cent, of Australians wanted asylum seekers arriving by boat to be returned and told to apply through normal refugee channels. Broken down by political affiliation, 62 per cent of Australian Labor Party voters, 77 of Coalition voters and 27 per cent of Green voters agreed with this proposition.<sup>10</sup>

Andrew Markus, through a series of surveys conducted from May 2009 to July 2010, for the Scanlon Foundation, found 'public opinion supports by a large margin limiting the rights of asylum seekers arriving by boat, with a clear preference for the policies of the Liberal Party'.<sup>11</sup> He found 'consistent and strong negative views towards asylum seekers arriving by boat'. He concluded that there was very little prospect of a publicity or re-education campaign shifting attitudes.

In his final June/July 2010 survey Markus found a 60 to 70 per cent negative sentiment, consistent with media-commissioned polls. He reported that 'a majority of respondents considered asylum seekers

arriving by boat are attracted by the prospect of a better life in Australia and are succeeding in avoiding immigration controls'. He found 'a strong positive sentiment' towards the Government's humanitarian resettlement program: 67 per cent supported 'the entry of refugees assessed overseas and found to be in need of help'. He concluded that Australian public attitudes were positively disposed to refugees, where people are positively assessed overseas, while negatively disposed to boat people.<sup>12</sup>

## Questioning the convention

The problems with the refugee convention, and the particular problems it causes for Australia, are described in an earlier article for this journal.<sup>13</sup> In essence, the assumptions underlying the convention no longer make sense. It is based on the notion of exile; the principle of non-return is at its core, not an obligation to protect refugees and help them to return home as soon as possible. It was designed in and for a different (Cold War) era. Its basic principle, that no-one should be forced back into a situation of persecution, is unarguable, but its obligations, in a very different world, have proved unworkable. It preceded the age of mass migration and it has become discredited both by the large numbers of people from poor and unstable countries using it to move to wealthier western countries, and by the governments of these countries, driven by rising public anger, introducing ever tougher measures to keep them out. Once asylum seekers succeed in entering a country that has signed the convention they can access its provisions. Consequently most signatory countries spend large sums attempting to prevent them from doing so, and even larger sums processing their claims when these attempts fail. (Australia will spend over \$1 billion in 2010–11 on deterring, processing and detaining its boat people.)

There is a reason for public antipathy towards boat arrivals that is more obvi-

ous than the explanations of deep-centred racism, xenophobia and 'fear of the other' proffered by the advocate commentators. That is, that the international asylum system, in the way it currently operates, is so obviously dysfunctional that it cannot bear public scrutiny.

Refugee camps are full of people, commonly women and children, who don't have money to buy food, let alone \$20,000 to purchase entry into Australia. People see that the system is unfair. Boat people are coming halfway around the world, passing through or by countries with little interest in persecuting them, some with similar culture and religion, some signatory to the refugee convention, to lodge claims for asylum in an affluent western country. They dispose of identity and travel documents before entering Australia. They are not the most deserving or needy of refugees.

Decisions regarding the genuineness of a claim for asylum are subjective, made on a credibility-of-story and benefit-of-the-doubt basis. Vast discrepancies between different countries and adjudicators make a mockery of government claims to administer rigorous, consistent and fair processing. Europe is supposed to have harmonised its asylum processes. In 2009, the recognition rate of Somali asylum applicants in EU states varied between four per cent and 93 per cent.<sup>14</sup> Afghanistan was the major source country of asylum seekers in 2009. Acceptance rates varied from 100 per cent in Australia, to 20 per cent in Germany, 13 per cent in Sweden, three per cent in the Netherlands, and zero per cent in Greece. Following a six-month suspension in processing, but no change in conditions in Afghanistan, Australia's recognition rate fell by more than 50 per cent. Asylum seekers in the USA are more than three times as likely to be successful if they are helped by a lawyer.<sup>15</sup> The grant rates of highly paid adjudicators in Canada, for the same sorts of asylum seekers, vary from virtually all to virtually none.<sup>16</sup> The system

is absurd and arbitrary, as well as unfair.

Between May and August 2010, the United Nations High Commission for Refugees (UNHCR) organised the return of 100,000 Afghan refugees from Pakistan. Life expectancy in Afghanistan is 44 years; the average monthly wage is US\$40. A country guide on Afghanistan, prepared by the immigration department to help asylum adjudicators in Australia, describes all manner of misery and persecution and suffering.<sup>17</sup> It does this not so that officials can work out how to help, or who is most in need of protection, or who might most benefit through resettlement in a country like Australia. Its purpose is to help decision-makers ask themselves: will the persecution claimed by this individual, should he or she be returned home, be inflicted for a convention reason, that is does he or she face persecution on one of the five grounds named in the convention?<sup>18</sup> It is a vaguely repellent document. The convention is out of date.

The expenditure on efforts to keep asylum seekers out, on processing asylum seekers, and on housing and caring for them, is vast. It raises the question: wouldn't this money be better spent helping homeless people, or on a refugee policy that voters can support? A selection-by-obstacle-course system, which says, if you make it past our \$746 million border protection we will look after you, seems farcical and cruel, as well as wasteful.<sup>19</sup>

For the more cynical, the whole processing exercise is somewhat pointless, since most asylum seekers will stay, regardless. In European countries, an estimated 80 to 90 per cent of failed asylum seekers never leave.<sup>20</sup> (About 25 per cent of asylum seekers are either recognised as refugees or granted some sort of temporary humanitarian stay.) Of the over 10,000 asylum seekers who have reached Australia by boat since late 2008, 181 have returned home. Out of the 4,500 from Afghanistan, two have returned.

## **FUTURE DIRECTIONS FOR REFUGEE POLICY**

### **Overseas**

Besides increasing efforts to close their borders to asylum seekers, the high-asylum countries of Europe are: directing aid to refugee-producing countries to prevent outflows and enable returns; shoring up countries of first asylum; building capacity and protection areas in refugee-producing regions; and moving to more orderly and managed intakes of refugees.<sup>21</sup>

The UNHCR has supported these directions through its Convention Plus initiatives, the aims of which include: to strengthen capacity in first countries of asylum; improve registration and 'self-reliance' activities among displaced populations; and better manage the durable solutions of repatriation, integration in the region, and resettlement abroad.<sup>22</sup> Refugee resettlement quotas in high-asylum European countries are still small, and the UNHCR insists that these should be seen as 'complementary' to asylum channels. (In 2009, over 244,000 asylum claims were lodged in EU countries, and EU countries took in a total of 10,000 refugees under managed resettlement programs.)<sup>23</sup> Nevertheless, an international refugee regime that does not depend on the refugee convention is taking shape. It has the potential to help many more refugees, and should suit all countries much better. Especially Australia, with its history of managed migration.

There are 43 million forcibly displaced people in the world. The vast majority will return home, possibly with assistance, or will remain in neighbouring countries of first asylum, possibly with assistance. Resettlement in a third country is promoted by the UNHCR only when other durable solutions—repatriation or local integration—are not available.<sup>24</sup> The UNHCR identifies those most in need of the sort of protection and safety that is provided through resettlement.<sup>25</sup> In 2009 it identified

128,500 such refugees; 85,000 departed during the year for resettlement countries. The major countries of resettlement were the USA (62,011), Australia (6,720) and Canada (6582). As noted above, in 2009 the EU took in 10,000, in its largest resettlement intake ever. The UNHCR has estimated global resettlement needs at about 750,000, over several years.<sup>26</sup>

### **In Australia**

#### *The government*

The Rudd/Gillard Government appears to have wedged itself into contradictory policies, and a refugee crisis that a lot of voters perceive to be of its own making. The focus of its refugee policy-making when the Rudd Government first came to office was to ostentatiously change the onshore asylum system so as to make it appear more respectful towards the UN and the refugee convention, and more compassionate and welcoming towards those asylum seekers who manage to reach our shores. To the approval of asylum advocates, it unwound deterrent measures that had been built up since 1992.<sup>27</sup> To the extent that this is different from the reform direction being pursued by other countries, the position that the government has wedged itself into is a backwards-looking one.

The government may have intended its honouring of the refugee convention to be largely symbolic. At the time when it changed the system there were no asylum seekers arriving by boat. In the hope of keeping it that way, the government directed 'more assets than ever before' to border protection. It allocated \$654 million in the 2009–10 budget to prevent boat people embarking from Indonesia and reaching Australia.<sup>28</sup> Prior to the July 2010 election, with record boat arrivals and anticipating a voter backlash, the Gillard government said it would stop the boats by establishing an offshore processing centre in East Timor.

The government says its proposed

centre will: operate within a 'regional protection framework'; be in a country signatory to the refugee convention; be under the auspices of the UNHCR and in tune with 'UNHCR principles'; bring more 'fairness'; remove the incentive to come to Australia by boat; be a cooperative endeavour like the Comprehensive Plan of Action (CPA); and built on the Bali Process.

The Bali Process, however, appears to be slow and bureaucratic, involving over 50 countries and 'numerous international agencies'.<sup>29</sup> It was established in 2002 to tackle people smuggling, not to help refugees: neither of its two main regional players, Indonesia and Malaysia, are signatories to the refugee convention. The CPA, which ran from the late 1970s to the mid 1990s, was for a very different situation. Then, there was a catastrophic outpouring of refugees following the end of the Vietnam War. The USA, with the UN, led an international response under which a number of countries, including the USA, France and Canada, as well as Australia, resettled large numbers of refugees. Now, there is no region-wide refugee crisis: asylum seekers transiting the region are seen by regional countries and other potential resettlement countries as Australia's responsibility.

Rather than with the CPA, the government's policy has more in common with the Transit Processing Centres (TPCs) proposed by the UK, Netherlands, Denmark, Germany and Italy in 2003 and 2004, inspired by Australia's Pacific Solution.<sup>30</sup> Asylum seekers would have been taken to Libya, Morocco or Tunisia, for processing. The TPCs never materialised because the obstacles proved too great. These included: the human rights problem of barbed wire and other draconian measures (to keep asylum seekers in and poorer locals out); the question of state responsibility; the logistics of potentially huge numbers; and the problem of likely indefinite detention when settlement quotas were filled.<sup>31</sup>

The Australian government has acknowledged that its regional protection framework is a long-term project. Some advocates are supportive, on the grounds of avoiding deaths at sea, so long as asylum seekers found to be refugees are quickly brought to Australia. Critics are concerned about the destabilising effects of a processing centre on a poor country like East Timor. Others, including some in government in the region, warn that the centre will create a magnet for people from South East Asia and outside the region wanting to migrate to Australia. There would be a strong expectation from the Bali Process nations that Australia would take those declared to be refugees.

Little progress appears to have been made, and commentators in the media and diplomatic circles in Australia as well as in the region have responded with scepticism. The Gillard Government has created the impression that it is being driven by domestic politics, rather than policy conviction, in this area. Its motives are transparent: it needs to be seen to be doing something to stop the boats, while not wanting to be seen to resume the Howard Government policies that actually did stop the boats.

### *The Coalition*

The Liberal and National Party opposition has an advantage in terms of policy coherence; it is less encumbered by a need to accommodate the concerns of asylum advocates. In the short-term, the Coalition has indicated that it would: restore offshore processing in Nauru; bring back five-year temporary protection visas for illegal entrants, with reduced entitlements and no family reunion; introduce a presumption against refugee status for asylum seekers who discard identity documents; and give priority in the grant of visas to offshore refugees. Asylum seekers arriving by boat would remain in detention until they had found a resettlement place elsewhere,

voluntarily returned home, or been given permission to make an application for an Australian visa.

These proposals have been criticised as harsh and punitive. Their efficacy and practicality can also be debated: the Nauru deterrent may not work so well ten years on and holding large numbers of asylum seekers in indefinite detention may not be feasible or publicly acceptable. The message the Coalition is sending through these proposals, however, is cutting through: it has stopped the boats before and it will do it again. And stopping the boats means that Australia can have a refugee policy that better helps refugees, and that the majority of residents can support.

At the international level, while seeking a reinterpretation of the refugee convention, the Coalition would argue for a redirection of focus and resources in wealthy western countries away from processing asylum seekers to shoring up protection in countries of origin and neighbouring countries of first asylum. It would argue that refugees to be resettled in countries like Australia should be selected on the basis of their need for such resettlement, not on the basis of the narrow criteria in an outdated treaty.

These are aspirational goals and the government has criticised them as lacking detail. The Coalition's longer-term policy goals are however also cutting through, and they are not contradictory. They would shore up the primacy of our offshore resettlement program as Australia's contribution to the international refugee effort, not our adherence to the refugee convention.

### **CONFRONTING THE ELEPHANT**

It appears that many Australians have had a gutful of being portrayed as the problem. Rather than accepting government advice that the issue is 'complex', an increasing number of residents are seeing it as straightforward: the refugee convention is no longer, as they would say in the UK,

'fit for purpose'.<sup>32</sup> It needs to be revised, or Australia needs to withdraw from it.

In reality, both major political parties are aware of the problems that an outdated refugee convention poses for Australia, and for their policy credibility. It is obviously hypocritical to say you support the refugee convention, while seeking to stop asylum seekers from arriving in the country. It is obvious that the international asylum system is dysfunctional: vast amounts of money are spent by western countries on processing asylum seekers, while most refugees receive minimal assistance in their regions of origin. Both parties would agree that it is better to provide refugee protection closer to home, and that it is better for Australia if the government decides, after taking advice from the UN and other refugee agencies, how many, and which, refugees it will accept for resettlement.

Scott Morrison observed, in his address at the Lowy Institute, that the 1951 UN Convention Relating to the Status of Refugees no longer provides a morally acceptable basis for refugee selection. He suggested a strategic swap, along the lines of a 'two for one' proposal that has been circulating the blogosphere: Australia will return asylum seekers to a safe place in their country of origin or a nearby country, where their needs can be assessed. In return, it will select as many or more refugees on the basis of their need for resettlement. The proposal is simple; the government was quick to dismiss it as a simplistic 'thought bubble'.

But it is elegant and eloquent. It speaks volumes and it speaks a message that will resonate with Australian voters. Australia has no desire to shirk its share of the refugee burden; as a country of migration with well developed settlement services Australia is a more than willing contributor to the international refugee effort. Australia is not particularly afflicted by bigotry or 'fear of the other'. Australia does not have a problem with refugees, Australia has a problem

with boat people and the refugee convention that legitimises their irregular arrival. If the convention is revised or sidelined and Australia, along with other countries, can

focus its resources on a refugee policy to suit the times we live in, a serious political problem will be relieved and more refugees will receive better protection.

## References

- <sup>1</sup> The 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'. Obligations come into effect after an asylum seeker has entered a signatory country, the core being that of 'non-refoulement', not sending someone back into a situation of possible persecution.
- <sup>2</sup> Amnesty International Australia's campaign seeking to change the asylum seeker debate is at <[www.amnesty.org.au/refugees/comments/24221/](http://www.amnesty.org.au/refugees/comments/24221/)>.
- <sup>3</sup> See S. Morrison, *A real solution: an international, regional and domestic approach to asylum policy* (speech to the Lowy Institute, 30 November 2010) <[www.scottmorrison.com.au/info/speech.aspx?id=179&page=-1](http://www.scottmorrison.com.au/info/speech.aspx?id=179&page=-1)>
- <sup>4</sup> P. Kelly, 'Morrison wants refugee convention overhauled', *The Australian*, 1 December 2010, p. 16. See also M. Bagaric, 'Need must define who qualifies as a refugee', *The Sydney Morning Herald*, 3 December 2010.
- <sup>5</sup> K. Koser, *Responding to boat arrivals in Australia: time for a reality check*, Lowy Institute, Sydney, 2010, online at <[www.lowyinstitute.org/Publication.asp?pid=1477](http://www.lowyinstitute.org/Publication.asp?pid=1477)>
- <sup>6</sup> The conflation of asylum and immigration issues in Europe is described, for example, in a Euromove expert briefing, at <[www.euromove.org.uk/index.php?id=6511](http://www.euromove.org.uk/index.php?id=6511)>
- <sup>7</sup> See for example V. Walt, 'Sending Europe's asylum seekers home', *Time.com*, 23 October 2009, at <[www.time.com/time/world/article/0,8599,1931717,00.html](http://www.time.com/time/world/article/0,8599,1931717,00.html)>.
- <sup>8</sup> Discussed in A. Millbank, 'World's worst or world's best practice? European reactions to Australia's refugee policy', *People and Place*, vol. 12, no. 4, 2004, pp. 28–37.
- <sup>9</sup> Possum Comitatus, 'Asylum seeking polling: three pollsters', *Pollytics*, 9 November 2009 <<http://blogs.crikey.com.au/pollytics/2009/11/09/asylum-seeker-polling-%E2%80%93three-pollsters/>>
- <sup>10</sup> Roy Morgan Poll <[www.roymorgan.com/news/polls/2010/4482/](http://www.roymorgan.com/news/polls/2010/4482/)>
- <sup>11</sup> A. Markus, *Mapping social cohesion: the Scanlon foundation surveys summary report 2010*, Monash University <[www.scanlonfoundation.org.au/mappingofsocialcohesion2010.html](http://www.scanlonfoundation.org.au/mappingofsocialcohesion2010.html)>
- <sup>12</sup> *ibid.*
- <sup>13</sup> A. Millbank, 'Australia and the 1951 refugee convention', *People and Place*, vol. 9 no. 2, 2001, pp. 1–13. See also, A. Millbank, *The problem with the 1951 refugee convention*, Department of the Parliamentary Library, Canberra, 2000 <[www.aph.gov.au/library/pubs/tp/2000-01/01RP05.htm](http://www.aph.gov.au/library/pubs/tp/2000-01/01RP05.htm)>.
- <sup>14</sup> Asylum and refugee statistics are from the UNHCR website <[www.unhcr.org/pages/49c3646c4d6.html](http://www.unhcr.org/pages/49c3646c4d6.html)>.
- <sup>15</sup> J. Ramji-Nogales et al., *Refugee Roulette: Disparities in Asylum Adjudication and Proposals for Reform*, NYU Press, New York, 2009
- <sup>16</sup> S. Rehaag, 'Troubling patterns in Canadian refugee adjudication', *Osgood Law Review*, vol. 39 no. 2, 2008
- <sup>17</sup> Country Guidance Unit, *Country Guidance Note: Afghanistan*, November 2010, Department of Immigration and Citizenship <[www.immi.gov.au/media/publications/pdf/cgn-afghanistan-november-2010.pdf](http://www.immi.gov.au/media/publications/pdf/cgn-afghanistan-november-2010.pdf)>
- <sup>18</sup> See note 1.
- <sup>19</sup> The government allocated \$654 million in 2009–2010 to combat people smuggling and address the problem of unauthorised arrivals. An extra \$92 million specifically for these measures was announced in the 2010–2011 budget. The total allocation for 'border security' in the 2010–11 budget was \$1.2 billion. Detailed in minister's media release at <<http://www.minister.immi.gov.au/media/media-releases/2010/ce02-budget-10.htm>>.
- <sup>20</sup> See for example T. Whitehead, 'Failed asylum seekers "can face one in 10 chance of removal from UK"', *The Telegraph*, 23 January 2009 <[www.telegraph.co.uk/news/4316312/Failed-asylum-seekers-can-face-one-in-10-chance-of-removal-from-UK.html](http://www.telegraph.co.uk/news/4316312/Failed-asylum-seekers-can-face-one-in-10-chance-of-removal-from-UK.html)>.
- <sup>21</sup> These directions were set out in 2003 by the UK government in an internal report, *New Visions for Refugees* <[www.proasyl.de/texte/europe/union/2003/UK\\_NewVision.pdf](http://www.proasyl.de/texte/europe/union/2003/UK_NewVision.pdf)>.
- <sup>22</sup> The UNHCR's Convention Plus website is at <[www.unhcr.org/pages/4a2792106.html](http://www.unhcr.org/pages/4a2792106.html)>.
- <sup>23</sup> See note 14.
- <sup>24</sup> Information about resettlement is on the UNHCR website at <<http://www.unhcr.org/pages/4a16b1676.html>>.
- <sup>25</sup> Criteria used by the UNHCR are: legal and physical protection needs, lack of local integration prospects, survi-



vors of violence or torture, women-at-risk, medical needs, family reunion, children and adolescents, and older refugees.

<sup>26</sup> UNHCR executive committee progress report on resettlement, 31 May 2010, at <<http://www.unhcr.org/4c0526409.html>>

<sup>27</sup> These are described in full in A. Millbank, 'Kind or cruel: Labor's boat people policies', *People and Place*, vol. 17 no. 4, 2009, pp. 8–17.

<sup>28</sup> See note 19.

<sup>29</sup> The Bali Process countries are listed, and its work described, on its website at <[www.baliprocess.net/](http://www.baliprocess.net/)>.

<sup>30</sup> First proposed by the UK Prime Minister Tony Blair, in a letter to the EU Presidency, 10 March 2003 <[www.proasyl.de/texte/europe/union/2003/UK\\_NewVision.pdf](http://www.proasyl.de/texte/europe/union/2003/UK_NewVision.pdf)>.

<sup>31</sup> Described in G. Noll, 'Visions of the exceptional: legal and theoretical issues raised by transit processing centres and protection zones', *European Journal of Migration and Law*, vol. 5, 2003, pp. 303–341 <[www.fr.refugeelawreader.org/index.php?option=com\\_docman&task=cat\\_view&gid=36&Itemid=](http://www.fr.refugeelawreader.org/index.php?option=com_docman&task=cat_view&gid=36&Itemid=)>.

<sup>32</sup> E. West, 'It's not the Home Office's fault—the UN Convention on Refugees is not fit for purpose', *The Telegraph*, 11 January 2011 <<http://blogs.telegraph.co.uk/news/edwest/100071316/its-not-the-home-offices-fault-%E2%80%93-the-un-convention-on-refugees-is-not-fit-for-purpose/>>