



CATHOLIC COMMISSION FOR  
**JUSTICE,  
DEVELOPMENT  
& PEACE**  
MELBOURNE

**Protecting Sovereignty or Scare  
Mongering:  
The Rise of the Border Control Threat**

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## Acronyms

<b>ACFOA</b>	Australian Council for Overseas Aid
<b>AFP</b>	Australian Federal Police
<b>ASIS</b>	Australian Security Intelligence Service
<b>ANU</b>	Australian National University
<b>CCJDP</b>	Catholic Commission for Justice, Development & Peace, Melbourne
<b>DFAT</b>	Department of Foreign Affairs and Trade
<b>DIMIA</b>	Department of Immigration and Multiculturalism and Indigenous Affairs
<b>EU</b>	European Union
<b>GNP</b>	Gross National Product
<b>OECD</b>	Organisation of Economic Development
<b>ODA</b>	Official Development Assistance
<b>PRC</b>	People's Republic of China
<b>SAS</b>	Special Air Service
<b>TPV</b>	Temporary Protection Visas
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UN</b>	United Nations
<b>UNDP</b>	United Nations Development Program
<b>UNHCR</b>	United Nations High Commissioner for Refugees

## **Introduction**

The Catholic Commission for Justice Development and Peace Melbourne (CCJDP) welcomes the Senate Legal and Constitutional Affairs References Committee's Inquiry into Migration Zone Excision (hereon referred to as 'the Inquiry'). The CCJDP's submission will address the following terms of reference of the Inquiry in the general discussion below (*identifying letters refer to the Inquiry's terms of reference*):

- a) the implication of excision for border security;
- b) the effects of excision on affected communities, including indigenous communities;
- c) the financial impact on the Commonwealth;
- d) the nature of consultation with affected communities in relation to the Government's excision proposals;
- e) whether the legislation is consistent with Australia's international obligations.

To examine these questions, the CCJDP would like to focus on the concept of 'border security' in relation to people seeking asylum who arrive by boat, and other measures to tackle people smuggling. When viewed through the larger lens of policy and practice, as well as political imperatives over time, we can place the current Bill in context and draw some conclusions as to its effectiveness and the need for such measures. Firstly, however, we will examine briefly how Catholic social teaching views the movements of people, human rights and state responses to people seeking asylum.

## **Catholic Social Teaching**

The CCJDP aims to help educate and give leadership to the Catholic and wider community in the gospel message of justice and in the social teachings of the Church. The Commission's Charter requires it to work for justice in public, local and national structures. It seeks to achieve these ends through research, analysis, working with parish networks, public forums, in schools and in the media. It actively seeks to explore ways that social justice can be improved in society and in the performance of mechanisms that have a role in public life. The CCJDP has raised the issue of violations of human rights of asylum seekers in a variety of fora including the media, the lobbying of parliamentarians and producing documents. The CCJDP monitors developments regarding the human rights of asylum seekers via the

Australian Human Rights Register. The Register records entries from non-governmental organisations and the media about development on human rights. The CCJDP published a special Refugee Edition of the Register in December 2001, which documented entries from Non-government Organisations around Australia, as well as from media reports.

In addition to the promotion of and respect for universal human rights and standards that will be referred to throughout this submission, the CCJDP uses the principles of Catholic social teaching to test the justness of public policy.<sup>1</sup> Pope John Paul II has voiced his concern about States having “contempt for the fundamental human rights of so many people, especially children...”<sup>2</sup>

Additionally, the Church has clear positions on the rights of asylum seekers. Pope John Paul II points out that refugees, however they might arrive in a country – illegally or not - still have their human rights:

*His irregular legal status cannot allow the migrant to lose his dignity, since he is endowed with inalienable rights, which cannot be violated nor ignored.*<sup>3</sup>

Moreover, the Catholic Church does not endorse sweeping State powers to detain all asylum seekers. The ‘Pontifical Council for Pastoral Care of Migrants and Itinerant People’ warned that:

*A person applying for asylum should not be interned unless it can be demonstrated that he or she represents a real danger, or there are compelling reasons to think that he or she will not report to the competent authorities for due examination of his or her case. Moreover such people should be helped with access to work and to a just and rapid legal procedure.*<sup>4</sup>

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<sup>1</sup> For example Catholic social teaching is concerned that public policy does not undermine the primacy of the family: “[T]he individual, the family and society are prior to the State, and...the State exists in order to protect their rights and not stifle them.” Catholic Social Welfare, Australian Catholic Social Welfare Commission, Vol.1, No.1, July 1992.

<sup>2</sup> John Paul II Novo Millennio Ineunte: At the Beginning of the New Millennium, Strathfield, 2001, p.68.

<sup>3</sup> John Paul II, Message for World Migration Day 1995-6, Undocumented Migrants, 25 July 1995 p.2.

<sup>4</sup> ‘Cor Unum’: Refugees: A Challenge to Solidarity, 1992, 11.

In its Statement of March 22, 2002, the Australian Catholic Bishops' Conference expressed concern about the detention of asylum seekers and minors by the Australian Government:

*Mandatory detention is itself a matter for concern: alone among the nations, Australia excludes any discretion being exercised as to whether, in particular cases, detention may be inappropriate or should be abbreviated.... Many asylum seekers, including whole families, have been detained for more than a year. The Church's pastoral care of asylum seekers convinces us that detention, beyond the minimum time necessary for carrying out security and health checks, identity checks and the lodgment for Protection Visas, is deeply destructive of human dignity. This is particularly true of children.* <sup>5</sup>

Having outlined this ethical framework, let us briefly examine the Excision Bill in the light of Australia's human rights obligations.

### **Conflict between state sovereignty and Human Rights obligations**

The alleged erosion of state sovereignty is well-documented in political literature and theory.<sup>6</sup> Sovereignty has been allegedly challenged by rapid improvements in communications and transportation as well as transnational alliances that cut across territorial borders. Globalisation has posed a challenge to realist theories of world politics,<sup>7</sup> due to the growing interdependence of states<sup>8</sup> and the increasing influence of international norms. This has led, it is asserted, to a distinct depletion of state control but the control of immigration entry has become one of the few domains in which states can still be strong.<sup>9</sup> In this sense, large-scale people movement can be seen to have driven a wedge between the principle of Australia's obligations under the 1951 Refugee Convention and popular sovereignty.

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<sup>5</sup> Australian Catholic Bishops' Conference, 'Refugees and Asylum Seekers', March 22, 2002.

This in turn is based upon the Pontifical Council for Pastoral Care of Migrants and Itinerant people warning that:

A person applying for asylum should not be interned unless it can be demonstrated that he or she represents a real danger, or there are compelling reasons to think that he or she will not report to the competent authorities for due examination of his or her case. Moreover such people should be helped with access to work and to a just and rapid legal procedure. ['Cor Unum': Refugees: A Challenge to Solidarity, 1992, 11.]

<sup>6</sup> See Opello and Rosow (1999), Zakaria (1999)

<sup>7</sup> Realist theories are largely based on the premise that world politics is a struggle among self-interested states for power and position, with each competing state pursuing its own national interest.

<sup>8</sup> See Keohane and Nye (1989)

<sup>9</sup> See Sassen, Sakia (1996) Losing Control? New York: Colombia University Press

An Australian Parliamentary Library paper has been one source of criticism of the 1951 Convention.<sup>10</sup> Millbank has asserted that it is unlikely that many governments would sign up to the Convention today. She explains that the use by boat people of people smugglers to circumvent visa and other controls has prompted Australia to join some other countries in openly questioning the operation and continuing viability of the Convention itself. There are a number of specific problems in its implementation today as compared to 50 years ago, she argues:

- The Convention definition of a refugee is outdated, as is its notion of exile as a solution to refugee problems;
- It imposes no requirement for burden sharing between states;
- The Convention takes no account of the political, social or financial impact of large numbers of asylum seekers on receiving countries; and
- Asylum claims are allegedly an avenue for irregular migration.<sup>11</sup>

Despite the ideological appeal to rewrite or dismantle the Refugee Convention described by Millbank and others, there are several reasons why it is dangerous to embark upon such a path. An analogous call might be to rewrite the Australian Constitution as an obsolete document reflecting 19<sup>th</sup> century colonial concerns, yet there are few parliamentarians brave enough to make such a call today. Such frameworks – whether domestic constitutions, or conventions, are the result of collective aspirations, work and agreement between nation states, recognising fundamental principles – which despite some language which may have dated – remain enduring and relevant.

The Refugee Convention is based on an extraordinary document, the Universal Declaration of Human Rights (UDHR) – notable for its embodiment of highest principles of protecting our common humanity. The UDHR is unique because it was created in the shadow of the Holocaust which created an all too brief international political environment where *real politik* and expediency was suspended to develop benchmark principles of understanding what it is to be human. The UDHR, while not a binding convention, is an elaboration of principles which nations are expected to adhere to when they become members of the United Nations by signing the UN Charter, in particular Article 1. 'Purposes and Principles' which states:

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<sup>10</sup> Millbank, A, The Problem with the 1951 Refugee Convention, Social Policy Group, Department of the Parliamentary Library, Canberra, 2000.

<sup>11</sup> E. Feller, Department of International Protection, UNHCR Asylum and Protection, "The Convention Under Siege", Speech at the European Commission Conference on Asylum, Lisbon, 15-16 June, 2000.

*(3) To achieve international cooperation in solving international problems of economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms without distinction as to race, sex, language, or religion;*

Respect for human rights then, is a fundamental obligation of being a member nation state. Article 14 of the UDHR states:

*(1) Everyone has the right to seek and enjoy in other countries asylum from persecution.*

This human right is further elaborated in the 1951 Convention that the Government of Robert Menzies signed in 1954. Goodwin-Gil argues that this perception to see the Convention as a “relic of a bygone era” is myopic and argues that it was no failure in 1951 not to have known precisely how the world would evolve. In fact, the concept of a well-founded fear of persecution, he says, is enduring.<sup>12</sup> The asylum seekers who come to Australia in 2002 are human beings experiencing the same persecution as those who have had their human rights violated through the centuries. A humane response from nations is vital if we are to maintain a civilised world.

Human Rights are universal, inalienable and indivisible and cannot be applied selectively, or respected in one area but not another. Australia agreed to this principle in 1945 when it became a member of the UN. The Government's Bill proposes cutting out various islands from the sphere of respect for the human right to asylum respected elsewhere in Australia. The right to asylum is implicit in the Migration Act (1958). The proposal to have some aspects of the Migration Act operating in some parts of Australia and not in others is a dubious one and hostile to human rights standards which Australia agrees to respect as part of the UN and being a civilised nation.

Eroding human rights inevitably leads to becoming less civilised, more ignorant and less humane. There are many historical examples of countries that have embarked upon such a descent into brutality – especially on the justifications of protecting

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<sup>12</sup> G.S.Goodwin-Gil, (Editor in Chief ), ‘Asylum 2001-A Convention and A Purpose’, Presidential Lecture given at the Annual Conference of the Refugee Legal Centre, London, 2001.

'national sovereignty'. Weimar and Nazi Germany were premised on spurious notions of national sovereignty and a disregard for human rights. In fact assertions about the primacy of national sovereignty before human rights have the flavour of fascism and the attendant dangers of that ideology. The political philosopher Hannah Arendt described this trend in detail in her 1948 classic, The Origins of Totalitarianism, which analysed the plight of 'stateless' people and refugees prior to the Second World War.<sup>13</sup> She explains:

*Theoretically, in the sphere of international law, it had always been true that sovereignty is nowhere more absolute than in matters of "emigration, naturalisation, nationality, and expulsion"; the point however, is that practical consideration and the silent acknowledgement of common interests restrained national sovereignty until the rise of totalitarian regimes...there was hardly a country left on the continent that did not pass between the two wars some new legislation which, even if it did not use this right extensively, was always phrased to allow for getting rid of a great number of its inhabitants [refugees] at any opportune moment.*

Nationalism should never be placed before universal human rights standards as it embodies narrow, selfish sentiments that shut our minds and hearts to our common humanity. Parliamentarians would do well to remember this when asserting the primacy of our 'borders'. It is not just dictators who become obsessed with the sanctity of national sovereignty, border 'control' and 'threat' from without. Arendt records that the post World War One 'Minority treaties', which were disregarded by the political leaders of the League of Nations in the twenties and thirties, meant:

*The transformation of the state from an instrument of the law into an instrument of the nation had been completed; the nation had conquered the state, national interest had priority over law long before Hitler could pronounce "the right is what is good for the German people." Here again the language of the mob was the only language of public opinion cleansed of hypocrisy and restraint.<sup>14</sup>*

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<sup>13</sup> Hannah Arendt, The Origins of Totalitarianism, (Harcourt Brace) New York, 1976, pp.278-9.

<sup>14</sup> Arendt, *ibid*, p.275.

To claim our borders are 'threatened' by refugees is morally unjustifiable no matter how popular one becomes in opinion polls as a result. It is a cause for shame and will be recorded by posterity as such. Already one historian, ANU Emeritus Professor John Maloney has commented on these trends thus:

*...how can we justify our protests against the violation of inalienable rights in other parts of the human community when we imprison families and children who, in almost every case, have fled here to escape monstrous injustices in their own countries?*

*We do these things, as we are constantly reminded by those responsible, to protect our borders and to prevent the entry of terrorists or of unspecified diseases into our society. Have you ever seen the proof of there being a terrorist or of an incurable and uncontrollable disease among the asylum seekers? What indeed is meant by our borders, except lines on a map which the government itself seems to be free to redefine at will? When did our borders become so sacrosanct? From 1788 our ancestors saw no problem crossing them and our leaders are not prepared to even apologize for their having done so. We put totally innocent children behind razor wire for doing so today.<sup>15</sup>*

The Government should not be seeking to abolish human rights standards being applied in different parts of Australian territory. Such a move goes against our obligations under the UN Refugee Convention to assess refugee claims made on Australian territory. It is a dangerous precedent too. Having started to cut out bits of Australia with the excision of Christmas Island and Ashmore Reef in September 2001, the new Bill proposes further cuts and draws lines marking where we won't countenance refugee claims. Where will it end? Sydney's CBD or a resurrected Brisbane line? There is a real danger in the precedent of removing some of parts of Australia, or some groups from the purview of internationally agreed human rights standards. Policy makers might be tempted to do the same in other areas.

Arendt again comments on the dangers of such decisions:

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<sup>15</sup> Maloney Op cit.

*...the nation state cannot exist once its principle of equality before the law has broken down. Without this legal equality, which originally was destined to replace the older laws and orders of feudal society, the nation dissolves into an anarchic mass of over-and-under-privileged individuals. Laws that are not equal for all revert to rights and privileges, something contradictory to the very nature of the nation states.<sup>16</sup>*

Let the Australian parliament of 2002 correct this injustice and appeal to ignorance.

### **People Smuggling in Context**

According to some estimates, traffickers and smugglers move about 4 million people each year, collectively earning somewhere in the vicinity of US \$7 billion.<sup>17</sup> It has been acknowledged that the vast majority of asylum seekers arriving in Europe use the help of smugglers.<sup>18</sup> On a global level, the degree of criminal involvement varies, from loose amateur groups, through to transnational crime groups specialising in trafficking migrants for subsequent exploitation by the group.<sup>19</sup> For the purposes of this report, references to people smuggling will subscribe to the most recent international definition,<sup>20</sup> which defines people smuggling as:

*The procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident. (Article 3)*

Parallel with this concern about people smuggling has been a rising concern about the mixed flows of people globally and how to distinguish asylum seekers within these movements of people. Joly has observed that the question of asylum, which in the past was hardly raised at intergovernmental and international meetings, has grown to be one of the central issues deserving special declarations, resolutions and policy formulations.<sup>21</sup>

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<sup>16</sup> Arendt, op cit., p.290.

<sup>17</sup> International Organisation on Migration. Trafficking in migrants: IOM policies and activities. Geneva 1997,1

<sup>18</sup> J.Morrison and B.Crossland, The Trafficking and Smuggling of Refugees: the Endgame in European Asylum Policy? 2001.Working Paper No.39 UNHCR

<sup>19</sup> R. Tailby, Organised Crime and People Smuggling/Trafficking to Australia, Australian Institute of Criminology, May 2001.

<sup>20</sup> As it appears in the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations' Convention Against Transnational Organised Crime.

<sup>21</sup> See: D. Joly, Haven or Hell? Asylum Policies and Refugees in Europe, London 1996.

## The Culture of Control

Until 1990, Australia was an immigration control 'success story', not least because of visa requirements for all non-Australians, and carrier sanctions had been employed as far back as 1855.<sup>22</sup> Adding to this is our geographical isolation, which makes Australia a country of final destination rather than transit. Up until 1990, boat arrivals numbered no more than 500 per year.<sup>23</sup> The Indo-Chinese asylum seekers of the late 1970s and early 1980s weren't incarcerated but welcomed, and housed in migrant hostels. The 1992 detention policy was partially designed to deter unauthorised arrivals despite the lack of evidence that it does that. Asylum seekers are generally unaware of our policy. Increased unauthorised arrivals by boat and plane represent the only uncontrolled section of the immigration program. Such unauthorised arrivals may be a very visible threat to what Cronin has called the Department of Immigration's 'Culture of Control'. She describes the department as possessing a "bulging armoury of migration control devices" and notes that Australia's immigration mythology is "redolent with fear about the size, the composition and the profile of the immigration program."<sup>24</sup>

In the past, Australia has processed people coming as refugees in ways which respected human rights. The Vietnamese refugees were treated hospitably and not interned, despite alarm being expressed in some parts of the community similar to that being expressed now. The most recent boat people to arrive in Australia represent a new phase in Australia's asylum history. The majority of them are fleeing from Iraq and Afghanistan, two countries controlled by highly oppressive regimes. Malaysia has been a natural gateway for them because it allows visa-free access for people of the Islamic faith. About 80% of all asylum seekers from Iraq and Afghanistan pass through Malaysia en route to Australia. Many are then smuggled into Indonesia where they either fly directly to Australia or go to ground in small fishing villages and ports while they await passage by boat.<sup>25</sup>

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<sup>22</sup> See K.Cronin, 'A Culture of Control: An Overview of Immigration Policy Making' in J.Jupp, and M.Kabala, The Politics of Australian Immigration, Australian Government Publishing Service, 1993, p.85.

<sup>23</sup> Joint Standing Committee on Migration Regulations August 1992 Australia's Refugee and Humanitarian System: Achieving a Balance between Refugee and Control. Australian Government Publishing Service Canberra. p2 (1.9)

<sup>24</sup> Cronin, op cit.

<sup>25</sup> See A. Dupont, 'Refugees and illegal migrants in the Asia-Pacific region' in W. Maley et al, Refugees and the Myth of a Borderless World, Department of International Relations, RSPAS, ANU, Canberra, 2001.

The Government's focus has been almost exclusively on those who arrive by boat. However, according to the 1999 assessment of the Prime Minister's Coastal Surveillance Task Force:

*Illegal boat arrivals are only one aspect of illegal migration to Australia, and indeed not the most significant one. The majority of illegal arrivals come by air (last year 10 times more than by sea...) and some illegal boat arrivals begin their journey with a plane flight...*<sup>26</sup>

Between July 1999 and June 2001, there were 8,316 unauthorised boat arrivals, compared with 4,114 in the period from 1989-99.<sup>27</sup> Total asylum applications for the year 2001 amounted to 12,366. This would indicate a substantial increase compared to 1999, in which total asylum applications were 9,450.<sup>28</sup>

Their circumstances have meant that, unlike in the past, when many more people have failed in their refugee claims than have succeeded, those from Afghanistan and Iraq have had high success rates.<sup>29</sup> Between July 1999-June 2001, 80% of all unauthorised boat arrivals in Australia made protection visa applications, compared with just 46% for 1998-99. Such people are more likely to be refugees. According to the Minister for Immigration, Mr Ruddock, 90 % of the persons who had arrived by boat and had their cases finalised were granted refugee status.<sup>30</sup> The bulk of these new asylum seekers undeniably conform to a strict interpretation of the 1951 Convention. For the remaining, who are unsuccessful and cannot be repatriated voluntarily, their fate is uncertain. Australia as yet has no return agreements for involuntary repatriation of unsuccessful claimants with source countries such as Iran and Afghanistan, and return is impossible for Iraqis given Australia's participation in UN sanctions on the regime of Saddam Hussein.<sup>31</sup>

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<sup>26</sup> Report of the Prime Minister's Coastal Surveillance Task Force 'Action in Source and Transit Countries', June 1999. <http://www.dpmc.gov.au/docs/report.cfm>

<sup>27</sup> Phillip Ruddock MP 'Background Paper on Unauthorised Arrivals Strategy' [www.minister.immi.gov.au/media01/ro1131\\_bgpaper.htm](http://www.minister.immi.gov.au/media01/ro1131_bgpaper.htm) accessed 18/3/02

<sup>28</sup> See UNHCR 'Asylum applications lodged in 29 industrialised countries, 1999-2001' <[www.unhcr.org](http://www.unhcr.org)>

<sup>29</sup> M. Crock and B.Saul, *Future Seekers: Refugees and the Law in Australia*, Federation Press, 2002, pp. 28-33.

<sup>30</sup> Hansard 1 November, 2000, p.19462

<sup>31</sup> See A. Millbank, Op. cit.

### **Watery images: 'trickles and floods'**

Maley suggests that in policy-making circles, there is a tendency to anticipate imminent floods when faced with large percentage increases in the number of asylum seekers. This was certainly a factor when on-shore applications for asylum increased from 3,370 in 1989/90 to 13,954 in 1990/91.<sup>32</sup> This increase, however, was largely the result of PRC nationals applying to remain in Australia after Bob Hawke's emotional reaction to the Tienanman Square massacre in June 1989, which resulted in a pledge to allow all Chinese students already in Australia to stay on. Misleading publicity, which implied that after July 1<sup>st</sup> 1991 it would not be possible to apply for refugee status, provoked a large number of applications at once.<sup>33</sup>

Despite these circumstances, the clear 'crisis of numbers' resulted in a major re-evaluation of policy approach. Recent increases in overall numbers have prompted Mr. Ruddock's warnings about a 'pipeline' of 10,000 asylum seekers waiting to travel on to Australia.<sup>34</sup> The Excision Bill was introduced to parliament with the justification that people smugglers were preparing to move thousands more people, based on the authority of Indonesian newspaper clippings gathered by Australian Intelligence. While not wanting to dispute the accuracy of the Indonesian media nor the absence of the reported boat that the Minister warned was coming, the constant repetition of alarming assertions about tens of thousands of people waiting to flood Australia has been a characteristic of this public debate. While not disputing that people smugglers do operate and people do arrive in Australia without visas and claim asylum, it is important to note that the hysteria surrounding this moderate immigration management problem is far more strident than rhetoric surrounding the 60,000 visa overstayers Australian has each year. The public discussion about this problem is resonant of the 'Red Menace' threat and domino theory of the 1950s and 1960s, where politicians displayed maps of Australia beset by hostile red arrows menacing the sanctity of our borders.

However, compared to the numbers confronting other liberal democracies the flow to Australia is actually quite small. In 2000, the following number of asylum applications were made: Australia (9,496); Czech republic (8,549); Austria (20,096); Belgium (35,778); Canada (29,393); France (30,907); Germany (138,319); Hungary (11,499);

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<sup>32</sup> DILGEA Determination of Refugee Status (DORS) Statistical Report July 1992

<sup>33</sup> Joint Standing Committee on Migration Regulations August 1992 Op. cit. Statistics show that applications from PRC nationals constituted 72.3% of the existing backlog.

<sup>34</sup> M. MacCallum, 'Girt by Sea: Refugees and the Politics of Fear' *Quarterly Essay*, Issue 5, 2002

Ireland (11,094); Italy (33,364); Netherlands (42,733); Norway (10,160); Switzerland (58,261); United Kingdom (71,145); United States (81,643).

Many of these countries, such as Belgium and the Netherlands, have populations smaller than Australia's.<sup>35</sup> Asia and Oceania only attracted 6% of asylum seekers in 2000.<sup>36</sup> From this perspective, it is difficult to see such a hard-line response to be a result of numbers alone.

### **The curious rise of the People Smuggling 'threat'**

The Australian Federal Police (AFP) has noted that until fairly recently, AFP investigations of people smuggling were uncommon. Until new offence provisions came into operation on July 22 1999, the maximum penalty for people smuggling was 2 years imprisonment.<sup>37</sup> Interestingly, even in the mid-1990s, 'illegal immigration' and 'people smuggling' were not even mentioned in two major textbooks on organised crime.<sup>38</sup> A logical conclusion to make is that it was not the nature of people smuggling which was a concern when increasing penalties, but rather the challenge it presented to immigration control.

Despite 'smuggling' and 'trafficking' being similar concepts, within Australian law enforcement agencies, they are largely treated separately, with little recognition of the latter. If the government's commitment to fighting transnational organised crime and people smuggling is real, it comes well short of fighting the crime of people trafficking, which has no federal police unit investigating it.<sup>39</sup> Consequently, the extent of trafficking to Australia is largely unknown, and since Sex Slavery legislation was introduced in 1999, there have yet to be any prosecutions.<sup>40</sup> This is a clear inconsistency considering the number of people charged with people smuggling offences since July 1999 is 427.<sup>41</sup>

The nature of trafficking, which involves the forced prostitution of women and children could arguably be described as more insidious than that of people smuggling, but

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<sup>35</sup> Belgium has a population of 10.2 million and The Netherlands has 15.7 (see European Commission A Community of Fifteen: Key Figures edition 2000 Eurostat).

<sup>36</sup> See Geneva: UNHCR 2000 Global Refugee Trends: Analysis of the 2000 Provisional UNHCR Population May 2001.

<sup>37</sup> AFP 'People Smuggling' [www.afp.gov/raw/Publications/Platypus/oct99/people.htm](http://www.afp.gov/raw/Publications/Platypus/oct99/people.htm) accessed 15/5/02

<sup>38</sup> H. Abadansky, *Organised Crime* Chicago: Nelson Hall Publishers, 1994. P. Ryan, *Organised Crime* ABC-CLIO Santa Barbara, California, 1995.

<sup>39</sup> Address by the Honorable Philip Ruddock to the Anglican Synod. Op. Cit.

<sup>40</sup> See R. Taliby, Op. cit.

<sup>41</sup> DIMIA Fact Sheet 73. People Smuggling

has received nothing near the whole-of-government approach that has been accorded to the latter. In addition, attempts to link smuggling to drug-related crime are compromised by an AFP statement, “While there has been much speculation, there is no hard evidence that people smugglers are bringing narcotics and people to Australia concurrently.”<sup>42</sup> Despite the AFP's statement, any links between people smuggling with organised crime, the Minister has asserted that they are limited to drug smuggling and money laundering.<sup>43</sup>

People smugglers have sophisticated networks stretching from Pakistan to Indonesia, but are not necessarily a Mafia or Triad type organisation. They operate more loosely than these, with bosses in Indonesia and subordinates in other countries. They are not always connected to trafficking or drug running. They are not breaking Indonesian laws, as there are none on people smuggling.<sup>44</sup> A possibility is that with increased policing and criminal sanctions in the region will drive people smuggling towards the hard-end of the criminal community in those countries. Another twist, is the naval blockade of Australia by the Navy after *The Tampa* incident. This led experienced people smugglers to hold off on their activities leaving the market open for new operators – with tragic results. The naval blockade contributed to the drowning of the asylum seekers who boarded and crowded the tragic vessel *Siev X* according to AFP Commissioner, Mick Keelty, who told a Senate Inquiry on the ‘Children Overboard’ affair that:

*Once publicity was given to Operation Relex (the naval blockade) those who would otherwise have accessed the more experienced people smugglers went to a person who I would describe as a less experienced people smuggler.*

*And I suspect that might be what created such a large number of people ending up on Siev X.*<sup>45</sup>

In recent years, the Minister for Immigration, Phillip Ruddock, has condemned people smuggling, branding it a “terrible trade in human beings” and has expressed concern

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<sup>42</sup> AFP ‘People Smuggling’ Op. cit.

<sup>43</sup> See for example Address by the Honorable Philip Ruddock to the Australian Anglican Synod.

‘Ensuring A Fair Go For Those Most in Need: Australia and the Refugees’ 27<sup>th</sup> July 2001 DIMA

<sup>44</sup> DFAT Meeting, Peter Doyle, Director, People-Smuggling, Refugees and Transnational Crime, Department of Foreign Affairs Defence and Trade. 19 June 2002.

<sup>45</sup> *The Australian*, 12/7/02.

that unless a united stand is taken, “countries and individuals everywhere are at the mercy of the criminals who smuggle people.”<sup>46</sup> In one such conference in 2000, Minister Ruddock went so far as to describe people smuggling as “a major threat to national sovereignty and political stability (which) causes significant fiscal and social costs and can threaten lives.”<sup>47</sup>

In the space of a few short years, the issue of people smuggling has been transformed from a matter of international cooperation on policing, to a threat to the national body politic.<sup>48</sup> While this trade is problematic and there ought to be regional policing and diplomatic efforts made (and the Government's efforts are welcome in this area), to claim that Australian sovereignty is threatened by this illicit business is hyperbole. Attack and invasion by the armed forces of hostile nations constitute a threat to sovereignty, not a dozen shady businessmen in Indonesia trying to circumvent Australian immigration controls. The Government would do well not to describe asylum seekers, victims of some of the most repressive regimes in the world, who have used people smugglers to reach Australia, as a ‘threat’ – the claim does the Government no credit and is simply scare mongering which is unbelievable, and will be recorded by historians as such.

In regards to policy and the practice of people smuggling, the Government has employed a ‘whole of government approach’ which is welcome. It includes the Australian Security Intelligence Service (ASIS), Australian Federal Police (AFP), Department of Foreign Affairs and Trade (DFAT) (for key posts such as Indonesia), the Department of Immigration and Indigenous and Multicultural Affairs (DIMIA) and the Prime Minister’s Coastal Surveillance Task Force and later, People Smuggling Taskforce. The Government's commitment would appear more balanced – and less open to the charge of being politically motivated - if it were to include people trafficking in its concerns and approach too.

Australia’s involvement in numerous international fora on the issue reflects its newfound concern. There are two ad hoc expert groups in the region - New Zealand leads a group that is working on setting up international mechanisms on people movements while Thailand convenes the second group, which looks at intelligence and law enforcement. Another body, the Asia-Pacific Consultation on Migration is the

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<sup>46</sup> DIMIA Media Release ‘Minister begins five-nation anti-people smuggling tour’ 9/7/00

<sup>47</sup> Phillip Ruddock MP: Speech, European Union International Meeting , Paris, 20 July 2000  
[www.immi.gov.au/t.pts/transcripts00/euro\\_200700.htm](http://www.immi.gov.au/t.pts/transcripts00/euro_200700.htm) accessed May 4 2002

<sup>48</sup> Geostrategic issues of national and international security that often pertain to war and peace

brainchild of DIMIA and has a broad membership. In May 2002, DIMIA and the Australian Federal Police (AFP) commenced training courses for Pacific Islands immigration officers in Suva, Fiji.<sup>49</sup>

Since the Indonesian/Australian-convened Bali conference on people smuggling in February 2002, there has been a 'high' commitment to tackling the problem on a regional basis.<sup>50</sup> Malaysia, for example, is tightening up visas as part of its broader security policy. However, It is not an offence to people-smuggle in Indonesia. Australia can't prosecute or extradite people smugglers. The people-smuggler who organised the doomed *Siev X* boat, has been held on charges of passport and identity fraud, which are not a serious offences in Indonesia.

No other country in the world has gone as far as Australia, with its creation of a high profile diplomatic post: the ambassador for people smuggling. Importantly, DFAT's latest ambassadorial appointment role does not focus on the problem of trafficking. What was once an obscure area of regional diplomacy and second-line police intelligence sharing in the region, has become, in the space of a few years, a shining star of the Government's rhetoric and policy. Whether this post is mere diplomatic posturing, and what it will deliver within the region, which in general does not share Australia's preoccupation with keeping out the victims of Saddam Hussein and others, remains to be seen.

Finally, despite the Government's professed concerns, as of mid-June 2002, no universities or other research bodies are undertaking Government commissioned research on people movement/smuggling in the region.<sup>51</sup> No doubt the Government will commission research once this omission is revealed at the Inquiry.

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<sup>49</sup> Australian Federal Police and Department of Immigration and Multicultural and Indigenous Affairs (DIMIA): "Australia's Law Enforcement Cooperation Program brings border control training to Pacific Nations", joint media release, 20 May 2002. The issues of people smuggling and asylum seekers will be discussed at the regional Pacific Islands Forum, to be held in Fiji in August 2002, and the annual PIDC meeting, which will be held in Niue in September 2002.

<sup>50</sup> Head of DIMIA's Border Control and Compliance Division, Mr John Moorhouse, asserted: *In recent times there has been escalation in the transit of illegal immigrants through the region. In addition there has been an identified need to provide local barrier control personnel with enhanced skills to more easily detect and deter illegal immigrants and the criminal element associated with their movement through the region. Pacific Island countries have resolved to remain vigilant in protecting the region's security and stability where the existence of many small countries across a large area invites the attention of lawbreakers and potential lawbreakers.*

<sup>51</sup> DFAT meeting, op cit.

The comment of Pope John Paul II in his message for World Migration Day 2000, is insightful when considering Australia's responses:

*States with a relative abundance tend to tighten their borders under pressure from public opinion disturbed by the inconveniences that accompany the phenomenon of immigration. Society finds itself having to deal with the 'clandestine' men and women in illegal situations, without rights in a country that refuses to welcome them, victims of organized crime or of unscrupulous entrepreneurs.*

### **People Smuggling and the Public Purse**

The Bill's financial impact statement assures the public that the measure will have a "minimal financial impact." However, as the Minister has stated that the Bill is "the latest of an integrated set of legislative and administrative measures" aimed at people smugglers – and implicitly their clients, the poor and the persecuted - it is relevant to examine how much the Government's preoccupation with people smuggling is costing the tax payer.

In the 2002-03 budget,<sup>52</sup> Treasurer Peter Costello announced that \$2.8 billion would be devoted to "border protection" and refugee issues (an increase of \$1.2 billion over current spending).<sup>53</sup> The budget outlined a series of measures to thwart asylum seekers from being able to lodge an application for refugee status within Australia's migration zone, including:

- \$219 million for the construction of a detention facility on Christmas Island;
- \$430 million over 4 years for offshore processing in Pacific island countries and a further \$455 over 4 years for offshore processing in Australian offshore locations (such as Christmas Island and Cocos Island);
- \$75 million to assist transit countries to detect and intercept asylum seekers on route to Australia;
- \$14.4 million to assist international agencies detain, process and subsequently return asylum seekers.

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52. This section is cited directly from Oxfam Community Aid Abroad Draft paper 'Still Drifting: Australia's Pacific Solution becomes a "Pacific Nightmare"', June 2002.

53 Budget papers 2002-03, Part C: Agency Budget Statements - DIMIA, see especially pp14, 47-51 and 65-73.

Detaining asylum seekers on Nauru and Papua New Guinea’s Manus Island is expected to cost taxpayers more than \$140 million in 2001-02, according to data given by the Immigration Department to a Senate select committee in early April. This comprises \$72 million spent on establishing and running the two detention centres on Nauru, and \$42.5 million for the camp on Manus Island. Beyond this, \$26.5 million has been pledged to Nauru for 2001-03 for hosting the asylum seekers.

The budget papers also reveal that the Australian government has estimated the costs of processing asylum seekers offshore in Pacific countries over the next four years, even though Government ministers have repeatedly stated that the so-called ‘Pacific solution’ is a short-term measure. In the 2002-03 Federal budget, the government has included budget estimates for the “reception and processing of asylum seekers at offshore locations (third countries)”, amounting to nearly \$431 million. This money is separate from costs for the Australian territories of Christmas Island and Cocos Island in the Indian Ocean, where a further \$455 million is included in budget estimates over the next four years.

**Budget estimates for offshore processing of asylum seekers in third countries**

Year	2002-03	2003-04	2004-05	2005-06	TOTAL
<b>Estimates (In A\$ million)</b>	129,280	99,340	100,500	101,680	430.8

Source: “Reception and processing of asylum seekers at offshore locations (third countries)”, *Budget papers 2002-03*, Part C Agency Budget Statements - DIMIA, pp68-71.

The Government has acknowledged the range of costs, but believes that they will be offset by a long-term reduction in detention and processing costs.<sup>54</sup>

The ANU Emeritus Professor of Australian History, John Moloney, has commented recently:

<sup>54</sup> The Parliament of the Commonwealth of Australia, House of Representatives Border Protection (Validation and Enforcement Powers) Bill 2001: Explanatory Memorandum Outline (section 12)

*The budget allocated \$1.24 billion to the mindless 'Pacific solution' for boat people of whom 3648 have arrived in the past year. Meanwhile, there are 60,000 people at large in our community who never joined a queue to come here but remained when legally obliged to depart. Nothing is allotted to round them up but unlike the boat people you cannot demonize them because they are mostly white, English speakers from countries we respect. Where is the 'fair go' in all this?*<sup>55</sup>

Given this extraordinary budgetary commitment of deploying the Australian navy, it is a salutary reminder that in June 1999, the Prime Minister's Coastal Surveillance Task Force warned against increased expenditure: <sup>56</sup>

*The Task Force does not consider that the threats involved justify the considerable additional expenditure of establishing a coast guard, nor would a coast guard in itself solve the problem of effective coordination. The US Coast Guard with an annual budget of around US\$4billion still finds it necessary to operate in tandem with other agencies. Coastwatch, with its links to Customs, Defence and other assets already provides an adequate structure to conduct the coastal surveillance function. The measures and additional resources recommended in this report will improve Coastwatch's ability to perform that function without the need for large-scale structural and administrative change.*

What changed in 18 months since the Taskforce reported, one wonders?

## **Politics and Public Perception**

The increase to 4000, of people arriving to claim asylum in 1999-2000 has created great public alarm. Why? A survey in 1988 revealed that the average respondent mistakenly believed that 70 times more boat people came to Australia each year than actually did.<sup>57</sup> In September 2001 Oxfam Community Aid Abroad commissioned independent qualitative research entitled "Exploring Community Attitudes and Beliefs

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<sup>55</sup> The 'Ozanam Lecture' is held in celebration of the founder of the St Vincent de Paul Society, Blessed Frederic Ozanam. The fifth annual Ozanam Lecture was delivered by Emeritus Professor of Australian History John Moloney. 9 July 2002. <http://www.vinnies.org.au/VIC/Publications.cfm>

<sup>56</sup> Report of the Prime Minister's Coastal Surveillance Task Force, Ibid.

<sup>57</sup> Cited in Christine Bacon, unpublished paper, "Mission Impossible? Zero Boat Arrivals: understanding the Government's approach to people smuggling", June 2002.

in Respect of Asylum Seekers".<sup>58</sup> This type of research is of the kind so favoured by political parties.

The research found generally negative attitudes amongst parts of the Australian community. The research found that people claiming asylum have become a focus for people's fears. The negative attitudes apply mainly to people from the Middle East – particularly Afghani and Iraqi people claiming asylum. Fears are:

- Vast numbers of asylum seekers are potentially waiting to arrive on our shores;
- *Queue jumping* is evidence not just of desperation but also of singling out Australia as a particularly desirable ultimate destination;
- Asylum seekers may include terrorists;
- Asylum seekers are culturally different to Australians and will change the face of Australian society; and
- Asylum seekers will take resources that should otherwise be going to other sectors of the community.

These attitudes in the Australian community play themselves out on a deeper national level – a profound sense of insecurity about life. Australians are feeling anxious about the dramatic social and economic changes of the past twenty years. Faith in many aspects of their lives, such as job security and a sense of peace and hope for the future, is fragile. This was true well before the collapse of Ansett and the atrocity of September 11, 2001. Many feel that Government has lost control over global economic processes and now fails to provide employment and an equitable wealth distribution. Such changes have caused widespread social dislocation in areas such as the job market and generated a sense of loss of control over people's lives. These findings about an anxious society correspond with the conclusions of other recent in-depth studies by social researchers.<sup>59</sup>

The interviews show that with many people feeling that things are apparently out of control, it becomes paramount to *keep* control over whatever we can. This is why appeals to policing our borders have had such resonance since 1998. The use of the

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<sup>58</sup> Community Aid Abroad, 'Exploring Community Attitudes and Beliefs in Respect of Asylum Seekers', October 2001.

<sup>59</sup> a) Robert Manne, The Barren Years: John Howard and the Politics of Leadership, Melbourne, 2001, pp.79-81; pp.122-3.

b) Donald Horne, Looking for Leadership: Australia in the Howard Years, Ringwood, 2001, pp.234-5.

Special Air Service (SAS) against defenseless refugees on the *Tampa* or the navy firing shots near refugee boats are seen not as matters for national alarm, but as taking a firm stand. The fact that Australia is currently imprisoning children seeking asylum is no longer a cause of shame. In fact, border control, people smuggling and the alleged negative traits of asylum seekers, become a very useful distraction and way of deflecting anger about other worries over the nature of the economy, survival and the future.

Our fears and anxieties are being projected onto refugees. In terms of the national psyche, our desire to dispel our anxieties and regain control over an uncertain future is being played out in a tragic drama on our northern coastline where we are repulsing the unwanted outsider. Refugees have become a scapegoat for the insecurity of the nation. Against such emotional and irrational fears, facts have little chance of making headway. Politicians are, arguably, merely articulating and amplifying our fears and prejudices. This is fertile ground for xenophobia.

As a consequence we have politicians focusing on the supposed negative qualities of refugee behaviour, culture and being. Take these comments as examples:

*These people have behaved abominably right from the start. The disgraceful way they treat their own children. Any civilised person would never dream of treating their children in that way...[they are]...not welcome in our country.*<sup>60</sup>

Or -

*...These uninvited and repulsive people only serve to harden the resolve of decent balanced Australians. Add to that sordid list of behaviour, the scuttling of the Indonesian fishing boats that carried these pathetic cargoes and one wonders where these wretched people would be acceptable.*<sup>61</sup>

Senator Lightfoot's vilification of these persecuted people has grim historical antecedents. The Bulletin, stated in 1938 of the Jewish refugees,

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c) Andrew Markus, *Race: John Howard and the Remaking of Australia*, Crows Nest, 2001, p.105.

<sup>60</sup> Foreign Minister Alexander Downer, 10 October 2001.

<sup>61</sup> Senator Ross Lightfoot, 11 October 2001.

*There must be something about them, which makes it difficult for people like them. They should look to themselves and not go around the world exhibiting their self-pity and asking for sympathy.*

The Bulletin's stance lent weight to the argument put forward by the SS newspaper *Schwarze Korps* which stated in 1938 that if the world was not yet convinced that the Jews were the scum of the earth, it soon would be when unidentifiable beggars, without nationality, without money, and without passports crossed their frontiers.<sup>62</sup>

Such negative labelling can fuel fear of foreigners by playing up differences and suggesting that the differences between nationalities and cultures are greater than our common humanity which unites us. Pope John Paul II has warned against closing our hearts and minds to the stranger arriving and seeking aid in our land. It is beholden upon us to try and imagine why refugees flee. The Pope stated in 1995, that:

*it is necessary to guard against the rise of new forms of racism and xenophobic behaviour, which attempts to make these brothers and sisters of ours scapegoats for what may be difficult local situations.*<sup>63</sup>

As former Prime Minister Malcolm Fraser has written:

*We are witnessing a revival of the politics of White Australia, reinforcing a sense of insecurity, following on from September 11, with unrealistic appeals to a return to 'Fortress Australia'.*<sup>64</sup>

Such xenophobia is present in the wider community; arson attacks on mosques in Brisbane, Adelaide, and Sydney and racist graffiti scrawled on mosques in Melbourne are current examples of racial violence and intolerance in our society. The Equal Opportunity Commissions in several capital cities have recorded an increase in racially motivated incidents since September 11, 2001.

There have been fundamental shifts in the Australian community since One Nation won one million votes in 1998. Some media analysts have suggested that the

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<sup>62</sup> Cited in Arendt, op cit. p.269.

<sup>63</sup> John Paul II, Message for World Migration Day 1995-6, 'Undocumented Migrants', 25 July 1995 p.4.

<sup>64</sup> Draft letter to editor by Malcolm Fraser sent to the CCJDP.

Coalition's policy stance on refugees has shifted to attract and absorb the One Nation vote by reflecting and amplifying the views of that part of the Australian community. Taking a tough stance on the *Tampa* issue resulted in very favourable opinion polls for the Prime Minister and was arguably a key factor allowing the political survival of the Liberal/ National Coalition whose chances of winning the November 2001 Federal election appeared thin earlier in 2001.<sup>65</sup>

When the government implemented a coherent refugee policy in May 1977, one of the four guiding principles on which government approach was based, was: "The decision as to who will be accepted is the prerogative of the government alone."<sup>66</sup> This policy reappeared as rhetoric during the 2001 election in the Coalition's advertising with an image of John Howard next to the slogan –"We decide who comes into the country". As a statement of the obvious the slogan was reminding people of over a century of immigration policy and practice. The Government's hard stance has resonated strongly with sections of the community. The issue was not one of this principle being compromised, but of how Australia chose to respond to a humanitarian crisis. In 1977 the argument was put that Indo-Chinese refugees were arriving illegally, but the then Immigration Minister, Michael McKeller, stated unequivocally that "Australia will continue to accept Indo Chinese Refugees."<sup>67</sup> Why the different response in 2001?

Similarly, the ALP's policy on respecting the human rights of asylum seekers was ditched in pursuit of electoral survival as it sought to echo the Coalition's stance and appeal. Bipartisanship in immigration matters has allowed legislation to be quickly and easily implemented and has also meant that each successive government has honoured the sometimes substantial changes made by its predecessor.<sup>68</sup>

In March 1998, the Opposition signalled its intention to block a series of government initiatives in the migration area, prompting speculation about the prospect of a double dissolution of parliament. Later it did an about-face and passed the Government's Bills for reasons of political expediency in the lead-up to the 2001 election.<sup>69</sup> Most

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<sup>65</sup> 7:30 Report ABC online, Transcript 'Tampa issue improves coalition election prospects' 4/9/01 [www.abc.net.au/7.30/s357998.htm](http://www.abc.net.au/7.30/s357998.htm) accessed 2/6/02

<sup>66</sup> See D. Cox, 'Australia's Immigration Policy and Refugees' in R. Birrell et al (eds) *Refugees, Resource, Reunion: Australia's Immigration Dilemmas*, VCTA Publishing: Melbourne, 1979.

<sup>67</sup> Gerard Henderson, 'Correspondence – 'Girt by Sea'', in *Quarterly Essay*, Issue 6, 2002, p.86.

<sup>68</sup> An example of bipartisan consensus is mandatory detention for all those arriving without valid visas, since 1992. See I. MacAllister, 'Immigration, bipartisanship and public opinion' in J. Jupp, M. Kabala Op. cit.

<sup>69</sup> See Crock, M (1998) *Immigration and Refugee Law in Australia* Federation Press pp.4

recently, the *Tampa* debate has resulted in politicians from both sides of federal and state politics being prohibited by party hierarchies from speaking their conscience on refugee issues.<sup>70</sup> In February 2002 the party disendorsed a Liberal Party candidate in Tasmania who consistently objected to the federal Government's treatment of asylum seekers.<sup>71</sup>

### **"Those who forget history...."**

The rise of populist parties with anti-immigrant messages and the increasing influence of the far right in Europe are worrying trends with a historical antecedent in the fascism of the first half of the 20<sup>th</sup> Century.<sup>72</sup>

Hannah Arendt has meticulously analysed the plight of stateless peoples and refugees in the 1920s and 1930s. She describes statelessness as the "newest phenomenon in contemporary history".<sup>73</sup> Nation states were faced by the tens of millions of refugees moving around the Europe at that time, Arendt notes that the failure of nation states to effectively address this problem saw the situation deteriorate. There were numerous dire consequences of this global situation in the '20s and '30s. The long-held right to asylum was eroded. The numbers of people seeking asylum were too great to be handled by what was, at that time, an unofficial tradition of respect for asylum. Moreover, she observes, the majority of people could hardly qualify for the right of asylum, which was granted on exceptional political or religious grounds that were respected in the country of asylum.<sup>74</sup> Arendt noted:

*The new refugees were persecuted not because of what they had done or thought, but because of what they unchangeably were – born into the wrong kind of race, or wrong kind of class or drafted by the wrong kind of government.*

We might consider this quote in the light of the asylum seekers of our own times - the wrong kind of race: Middle Eastern Muslims; the wrong kind of class: the poor of the

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<sup>70</sup> Higley et al (1979) have proposed that one reason for enduring bipartisanship is that since political elites have the overarching concern for maintaining political stability, they will place on the political agenda only those things that will not threaten 'the basic rules of the game'. Higley et al (eds) (1979) *Elites in Australia* Routledge and Kegan Paul: London

<sup>71</sup> Crock, M and Saul, B (2002) Op. cit. p.40

<sup>72</sup> See Barnaby Mason, BBC Diplomatic Correspondent 'The Rise of the European Right' BBC News online 22<sup>nd</sup> April 2002

<sup>73</sup> Arendt, op cit. p.277.

<sup>74</sup> Ibid, p.294.

under-developed world; or drafted by the wrong kind of Government: those men who escaped the draft from Iraq, Sri Lanka or Afghanistan.

The solution seemed to be deportation; and the refugee – a person without a state - became an “anomaly for which there is no appropriate niche in the framework of general law” an outlaw by definition – he was completely at the mercy of the police. Arendt notes – and Australian parliamentarians should take note – that “...the state, insisting on its sovereign right of expulsion, was forced by the illegal nature of statelessness into admittedly illegal acts. It smuggled its expelled stateless into the neighboring countries, with the result that the latter retaliated in kind”<sup>75</sup>

Another problem emerged: repatriation measures began to fail when there was no country of origin to repatriate to, nor any other which agreed to accept stateless people. Australia was one of those unhelpful countries, telling the 1938 Evian conference on refugees, that it preferred British settlers “as we have no real racial problem of our own, we are not desirous of importing one.”<sup>76</sup>

This dilemma for states led to the rise of detention centres. Arendt recounts:

*All discussions about the refugees' problems revolved around this one question: How can the refugee be made deportable again? The second World War and the DP [displaced persons] camps were not necessary to show that the only practicable substitute for a non-existent homeland was an internment camp. Indeed, as early as the thirties this was the only "country" the world had to offer the stateless.*<sup>77</sup>

It is impossible to remove Australia's approach from an international context in which a generally negative attitude shift has emerged towards asylum seekers in the last 10-15 years. In almost all liberal democracies the emphasis is now on combating criminal activities at the expense of providing some means of migration for those who have no choice but to flee. European integration and the desire to create a border-free Europe have put increasing pressure on European immigration. In Britain, Prime Minister Blair has proposed mobilising Royal Navy warships to intercept people traffickers in the Mediterranean and carry out bulk deportations in RAF transport

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<sup>75</sup> Ibid. p.284.

<sup>76</sup> M. Rubenstein, Chosen: The Jews in Australia, North Sydney, 1987. p.170.

<sup>77</sup> Ibid, p.284.

planes. Another controversial proposal is to tie bilateral and EU development aid to countries such as Somalia, Sri Lanka, Turkey and other asylum producing countries to commitments to take back failed asylum seekers.<sup>78</sup>

The effect of these worldwide trends have possibly enabled the Australian government to regard the people smuggling trade as a potential threat of large proportions, regardless of the numbers it deals with now. The rights of refugees, already under attack prior to September 11, 2001, have been curtailed further in light of the attacks. Human Rights Watch claims that 'The War on Terror' has given rise to a new rhetoric in which unauthorised arrivals have become a threat to national security.<sup>79</sup> Myths of absolute sovereignty and border impenetrability have been revived with adverse affects on asylum seekers and refugees.<sup>80</sup>

In Australia, sympathy for the *Tampa* asylum seekers hardened as pictures of the devastation in New York were played and replayed on Australian television. The Prime Minister has equated unauthorised arrivals with the 'War on Terror' by stating, "Australia has no way to be sure that terrorists are not amongst asylum seekers trying to enter Australia by boat from Indonesia."<sup>81</sup> Defence Minister Peter Reith also managed to directly link asylum seekers with the terrorist attacks by saying, "You've got to be able to control that [the right to refuse entry to boat people], otherwise it can be a pipeline for terrorists to come in and use your country as a staging post for terrorist activities."<sup>82</sup> This labelling of asylum seekers post-September 11, 2001 has been described by the UN Secretary-General Kofi Annan as "a gross calumny."<sup>83</sup>

The Church challenges such an approach:

*Working for the unity of the human family means being committed to the rejection of all discrimination based on race, culture or religion as contrary to God's plan. It means bearing witness to a fraternal life based on the Gospel, which represents cultural difference and is open to sincere and trustful dialogue. It includes the advancement of everyone's rights to be able to live peacefully in their own country, as well as attentive concern that in every*

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<sup>78</sup> S. Milne, 'Declaration of War on Asylum' *The Guardian* 23/5/02.

<sup>79</sup> Human Rights Watch 'The Aftermath of September 11-the Tightening of Immigration Policies' [www.hrw.org/press/2002/04/valenciaspeech0413.html](http://www.hrw.org/press/2002/04/valenciaspeech0413.html)

<sup>80</sup> Wilkinson, R 'After the terror-the fallout' *Refugees* Vol.4 No.125 UNHCR 2001

<sup>81</sup> D. Aitkins, 'PM vows to shut door on terror', *Courier Mail* 7/11/01

<sup>82</sup> Quoted in Wilkinson, R Op. cit.

*State, immigration laws be based on recognition of fundamental human rights.*<sup>84</sup>

## **Australia and Asylum Seekers**

The Minister for Immigration, Mr Ruddock, asserted in his second reading speech on the Excision Bill that:

*All the measures outlined in this bill and that have been initiated by this Government over the past three years to combat people smuggling are done so that we can most effectively resettle those persons seeking refuge who are most in need and most at risk.*

Let us examine why this assertion is doubtful.

Australia has a proud tradition of assisting migrants: six million have come since the end of the Second World War and 600,000 have been refugees. Since the late 1940s, this tradition ran concurrently and then has prevailed over an earlier tradition, which maintained that Australia should be white, and which was fearful about invasion from other parts of the world. Australia's humanitarian refugee program is made up of two parts: our obligation under the UN Refugee Convention to hear claims for asylum from refugees who seek asylum in Australia; and a non-obligatory resettlement program of refugees in UN camps.

Australia is still one of only ten countries of all the 185 member states of the UN that provides an offshore resettlement program as well as accepting onshore refugees. There has been a noticeable breakdown of protection for refugees in countries of first asylum in recent years. 82,000 Afghans were forcibly evicted from Iran in the first six months of 2001.<sup>85</sup> Maley<sup>86</sup> has proposed that the people smugglers have actually done a better job than the Australian government in assisting asylum seekers.<sup>87</sup> It has been observed that when selecting refugees for resettlement in Australia, the

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<sup>83</sup> Secretary-General, Kofi Annan; Address to Ministerial Conference in Geneva as part of UNHCR's 'Global Consultations' 13<sup>th</sup> December 2001

<sup>84</sup> John Paul II, Message for World Migration Day, November 1999.

<sup>85</sup> Crock, M and Saul, B (2002) op. cit p.47

<sup>86</sup> W. Maley, Security, People Smuggling and Australia's New Afghan Refugees. Australian Defence Studies Centre, Canberra, 2001.

<sup>87</sup> see H. Mershed, Paper presented in a Public Forum on Asylum Seekers in Australia, 13<sup>th</sup> September 2001, RMIT Melbourne.

degree of need is conspicuous in its absence.<sup>88</sup> The Refugee and Humanitarian Program is still based on selection criteria and “resettlement potential.” Jupp notes that, in general, Australia has not touched the huge refugee encampments of Africa or the Middle East and favours young, healthy and skilled applicants.<sup>89</sup> Australia routinely ‘cherry-picks’ the most desirable applicants from United Nations High Commission for Refugees’ (UNHCR) camps. The anecdote recounted by former Secretary of DIMA, John Menadue is instructive: a immigration official from the Australian Embassy at Nairobi went to a refugee camp and asked the UNHCR officer if he had any engineers or doctors and people of that sort. The UNHCR officer replied somewhat ironically, that he was very sorry but he only had women who had been raped and children who were the victims of war.

### **The Queue**

Australia's best interests are served when justice is implicit in public policy. For this to occur in refugee policy and quotas, we need to dispense with the ‘queue’ myth, which obscures facts, inflames emotion and militates against sensible policy-making. Introduced to the public by DIMIA and politicians as a concept in 1996, the ‘queue’ has been a successful piece of spin doctoring. It is premised on Australians' sense of fairness, and belief that there ought to be a proper process. Many now believe the fallacy that there are legitimate refugees that play by fictional rules and who wait to be resettled; and refugees who come directly to claim asylum and are rule breakers. But has this always been the case?

The pejorative branding of refugees as ‘queue jumpers’ did not occur with refugees who arrived by boat - without visas - from Indo-China in the 1980s. It has always been Australia's responsibility (and properly recognised international process) since we signed the Convention Relating to the Status of Refugees in 1954, that we would assist refugees claiming asylum (i.e. those arriving without visas) by hearing their claims. The ‘queue jumper’ is a more recent invention.

The resettlement program has been dubbed ‘the queue’ since 1996 in ministerial press releases and comments and it embodies the preference of the Government for refugees to use ‘proper channels’ and coming through the ‘front door’. The Minister for Immigration, Mr. Ruddock, and various other politicians and officials have

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<sup>88</sup> Comment of former Secretary of DIMA, John Menadue, 11/7/02. See D. Cox) ‘Australia’s Immigration Policy and Refugees’ in R. Birrell Op. cit.

forcefully asserted that persons who allegedly have more money than others, and so can arrange unauthorised entry into Australia, are not persons in need of Australia's protection. According to this view, attempts made by unauthorised arrivals to invoke Australia's protection are simply dishonest attempts to circumvent Australia's immigration processes. Travelling in unsafe boats and selling everything they own for the journey, Mr. Ruddock asserts, "is not a measure of their desperation, but more likely of being misled and exploited by smugglers."<sup>90</sup>

Consistent concern has been expressed in ministerial press releases about people "languishing in intolerable conditions" who "have no option but resettlement."<sup>91</sup> However, because of the diminishing numbers of resettlement places available to the UNHCR, its focus has been shifting to repatriation. The smaller number of UNHCR places occur because new countries are not going to take refugees and countries like Australia have kept their quota of 4000 places (out of an overall humanitarian program of 12,000) static for twelve years since 1990.

The 'queue' gives a false portrayal of an orderly process. There are 21 million refugees but only 90,000 places were offered by western countries for resettlement through the UNHCR in 2000. Australia offered to take 4000 of this 90,000.

Australia's humanitarian refugee program is made up of two parts: our obligation under the UN Refugee Convention to hear claims for asylum from refugees who seek asylum in Australia; and a non-obligatory resettlement program of refugees in UN camps.

The 12,000 places in Australia's humanitarian program are made up of three categories:

1. Approximately 4000 places are for refugees making asylum claims (which are assessed under the Refugee Convention criteria by the Australian Government).
2. 4000 are for resettlement of refugees from UN refugee camps (and are assessed by the UNHCR under the UN Refugee Convention criteria and then are selected by the Australian Government).

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<sup>89</sup> J. Jupp, 'Australia's refugee and humanitarian policies' in W.Maley et al, Refugees and the myth of Borderless World, Department of International Relations RSPAS ANU Canberra, 2002.

<sup>90</sup> Ibid.

<sup>91</sup> Phillip Ruddock MP, Address, Foreign Correspondents Association, 5 December 2001 'Australia's international image and Government's policy towards asylum seekers.'

3. A Special Humanitarian Program of 4000 places which allows organisations and individuals in the Australian community to sponsor people they know but who have to be considered at serious risk in their home country. The local sponsor in the Australian community has to be prepared to pay any airfare and administration costs<sup>92</sup>).

Refugees can wait an average of three years to be processed and accepted for resettlement. Refugees struggle to survive for years as though taking part in a lottery, waiting to be accepted and for an offer to resettle. In Islamabad, 75% of cases under the Special Humanitarian Program take 149 weeks while in Teheran it is 148 weeks.<sup>93</sup> Under the Resettlement Program (since 1996 often dubbed the 'queue') the average wait for processing at Islamabad is 119 weeks.

Just how farcical this situation is, becomes apparent when considering the numbers of Afghanis in Pakistan. Over a million refugees have been in UN camps for years - some for a decade or more. According to the UN (quoted in The Age 30/8/01), the official number of refugees resettled via refugee camps saw 21 Afghani refugees resettled to Australia in 2000. Many of these were not processed via UNHCR, but came under the Special Humanitarian Program where the Afghani community sponsored people and paid for their airfares.

Overall, when adding Afghanis resettled to the number of asylum seekers assessed in Australia in the year 2000, only 124 were granted permanent protection in 2000 [there were an estimated 2,562,000 Afghani refugees]. There has been civil war in Afghanistan since 1979. Australia granted asylum to 1,765 Afghanis between 1990-2001.

Similarly, Australia has maintained economic sanctions on Iraq since 1990. Australia has granted refugee status to 2,394 Iraqis in the decade 1990-2000. There are 572,500 Iraqi refugees but Australia gave permanent protection to only 384 of them in 2000.

The 'queue' obscures urgent needs in different parts of the world at certain times. Given that 45.6% of refugees coming to Australia came from Europe and only 6.4%

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<sup>92</sup> Administration fees are charged by the International Organisation for Migration (IOM) for booking tickets and arranging visas.

<sup>93</sup> The Australian, 1/5/02.

from South-west Asia in 2000, an adjustment in the number of people we receive from South-west Asia (Afghanistan and Iraq) is urgently required. The responsibility is greater too, since we are involved in a war in Afghanistan.

Finally, of the total 8000 places available in the resettlement and the Special Humanitarian Program, 1680 were not filled in 2000; so just 6320 people made up Australia's official 'queue'.

Since 1996, numbers for the offshore program (which involves resettlement and sponsorship) and the onshore program (which allows asylum claims) have been linked and set at 12,000 places. This means an increase in numbers in one category will be offset by a decrease in another. This linking has been highly divisive within ethnic communities, pitting one ethnic group who seek to sponsor persecuted relatives via the special humanitarian program, against another who claim asylum. The Minister has played on these tensions in community consultations about the Humanitarian quota, asserting that because of increased arrivals claiming asylum, communities will have to wait longer on sponsorships. This is shameful manipulation and runs against the professed aim of his Department to promote multicultural harmony. A separation of the onshore and offshore quotas – as Canada's refugee program operates - would quickly alleviate this community tension.

The grossly inadequate number of places available internationally and via Australia's Humanitarian Program fuels people smuggling.

Common sense would indicate that an important way to undercut demand for the people smugglers is to work for a global increase in the number of places for resettlement. Similarly, it is unrealistic to argue that refugees should halt in Indonesia (a poor country with one million internally displaced people) and apply for asylum there. Recognition as a refugee by the UNHCR does not mean automatic safety and resettlement in a country like Australia. Thirty refugees, recognised by UNHCR in Jakarta, were amongst the 350 who drowned recently, showing that the international program for resettlement failed them because countries like Australia refused to take extra people waiting in the 'queue'.

Temporary protection visas (TPVs) prohibit families reuniting for over three years and compel fathers to send for their wives and children via people smugglers (a new variation on this visa prohibits some refugees ever being able to reunite with

families). This is why children ended up in a situation where they drowned and we had the images of grief stricken parents – refugees on temporary protection visas, crying in Sydney – their lives torn asunder.

### **What is to be done?**

What could be done that is currently not being done to reduce the numbers of people seeking asylum from buying into the people smuggling market?

Australia has maintained a Humanitarian quota of 12,000 since 1991. It has sat, static, and inflexible to the growing number of refugees globally, and has been particularly useless in regards to the main refugee source countries in the Middle East. The quota has remained at that level firstly, because of the recession of the early 1990s and secondly, arguably, because the advent of One Nation in the middle nineteen-nineties made it more difficult for the Government and the Opposition to talk about population increases.

In the past, our refugee quota was higher: 16,000 in 1989 and 20,000 in 1980; and there is no reason why it could not be so again. (Budgetary objections against increases should be viewed in the light of the hundreds of millions spent on the *Tampa* incident). An incremental increase, phased in over two to three years to reach a quota of 25,000 per annum, would go a long way to solving the current crisis. The Heads of Churches – including Archbishop Frank Carroll, President of the Catholic Bishops' Conference called (in November 2001) for an increase in the quota to 25,000 in the next financial year. The increase needs to be incremental to allow for a corresponding expansion and planning of settlement services. The Minister of Immigration, Mr Ruddock, has reportedly taken proposals to Cabinet for an increase in the Humanitarian program quota at least once in the last few years – but the Prime Minister reportedly opposed the increase. As long as this opposition to a sensible increase to a decade-old quota remains, assertions that Australia helps the most needy refugees in camps will remain hollow. Moreover, the Australian Government is fueling people smuggling by failing to have an effective resettlement program for refugees in camps in non- European parts of the world. The Inquiry can draw its own conclusions as to why that bias exists.

The current offshore program of resettlement should be de-linked from the onshore program that handles asylum claims. This linkage has only been in place since 1996. The result of de-linking the two programs would be that an increase in the use of

onshore places through successful asylum claims would not be offset by a decrease in places in the resettlement program, as is currently the case. There would be more places for resettlement, which would reduce the incentive for refugees to take the people smuggling option. An immediate option is to increase the resettlement program to encompass all of the current 12,000 places providing an extra 4,000, and then a notional allocation of an extra 3,500 places for onshore asylum claims.

Long term, an international agreement for assessment and resettlement needs to be made. Australia was a key player in the international Comprehensive Plan of Action, which oversaw resettlement of tens of thousands of Indo-Chinese refugees in different countries the 1980s. Humane policy responses to refugee flight – such as building a new international program of resettlement - have not yet begun to be explored. To aid refugees seeking asylum is affirming all that Australia has sought to stand for internationally - and domestically - for the past fifty years: championing the underdog, promoting human rights and a unparalleled record in welcoming newcomers.

The Government's 1997 White Paper drew the linkage between poverty and instability in the world and the effects this can have on regional stability and national security.<sup>94</sup>

Australia's Official Development Assistance as measured against internationally agreed benchmarks has been in decline for nearly 30 years. According to the Australian Council for Overseas Aid (ACFOA), since 1995/96.<sup>95</sup>

- Aid as a proportion of GNP has dropped from 0.32 to 0.25%
- The total aid budget has increased in real terms by 1.7%, however the AusAID managed aid program (excluding other government department costs such as Australian Defence Force and the Department of Immigration Multicultural and indigenous Affairs) has decreased by 6.3% in real terms.
- Aid to South Asia has been maintained at the same level in real terms.
- Aid to East Asia has declined by 12.2% in real terms.
- Aid to Africa has halved in real terms.
- Funds to UN agencies have decreased by 42% in real terms
- Commitments to the UN Children's Fund and Population Activities remain the same while funding to the World Food Program has decreased by \$3.7m and

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<sup>94</sup> Op. cit, p. 3.

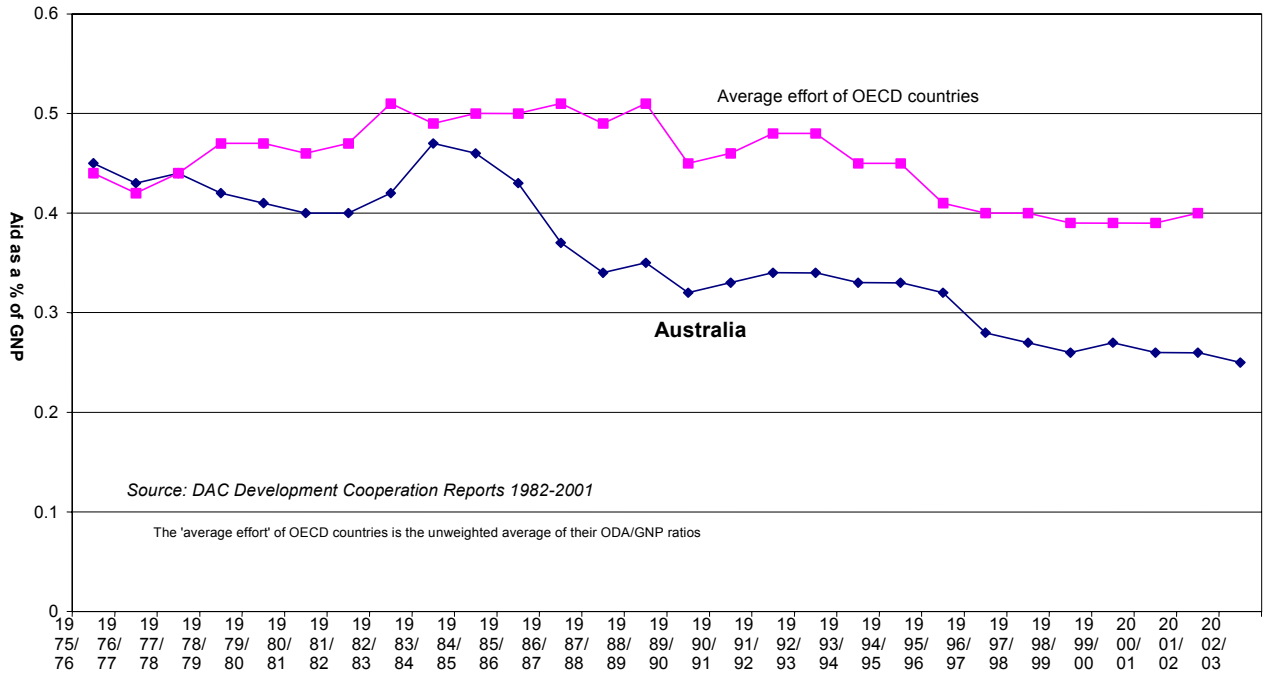
<sup>95</sup> All data comes from 2002-3 ACFOA Aid Budget Analysis.

funding to the UN Development Program by \$0.5m comparing budgeted figures for this financial year with those for 2002-03

### Australia's falling commitment to the world's poor

**Table 1. Australia's falling commitment to the world's**

Australian aid levels compared with the average effort of OECD countries



According to projections prepared by ACFOA, unless action is taken to reverse the trend Australia will fall from its current position of 14<sup>th</sup> out of 22 donors to near the bottom of the OECD aid donor list by 2006.

Australia has moved far from the goal of the UN Target (0.7% of GNP being allocated as a direct resource allocation from rich to poorer countries) enunciated in the Strategy for the Second Development Decade and adopted in 1970. In doing so, Australia mirrors other OECD countries where conventional bilateral aid flows are on a long-term downward trend.<sup>96</sup>

<sup>96</sup> There are many reasons why ODA has declined internationally. A series of new demands has emerged drawing long term ODA to short term ends:

- new countries in transition are now applicants for aid - 22 countries in Central and Eastern Europe and the former USSR (population 395 million) whose receipts of ODA and Official Aid (OA) combined were US\$ 6.6 billion in 1993 and US\$ 5.5 in 1997, that is, 12.5 per cent of combined ODA and OA in 1993, and 10 per cent in 1997. Australia's commitment to East Timor is an example.rebuilding of war-torn societies - Mozambique, Nicaragua or Cambodia, Bouganville and the Solomons closer to home - requires massive investment;financing UN peacekeeping operations has increased - Rwanda, East Timor, Bosnia.(1993, 43% of UN's peacekeeping was in arrears);

The Australian Government and public, like other western liberal Governments, will continue to reap the harvest of regional and global instability as long as the Government and Parliament maintain a parsimonious attitude to the world's poor: profound global poverty, vast inequity in global distribution in resources and mixed flows of the poor and the persecuted. The Australian Government has an opportunity to educate Australians on the importance of building effective international programs of global wealth redistribution along the scale of the post-war Marshall Plan. Anything less will not suffice given the scale of the problem to be tackled in a vastly unjust and insecure world.

Lest anyone doubt this prognosis, the tragedy of September 11, 2001 serves as a grim reminder of this possible future. Parochial cant that we should look to solving problems at home first might go down well with voters who are unaware of the interdependence with the wider human population, but will do nothing to resolve the real nature of global poverty. Nor should Australia, faced with the difficult problems of global poverty, persecution and movement of poor people, withdraw its head into a tortoise shell armoured with propaganda and inhumane policies for 'border control', 'threats' to 'national sovereignty'; and complain about how several thousand persecuted people have violated our body politic. Australia and Australians are bigger than that.

In 1949 Sir Robert Menzies led the opposition in parliament to the Wartime Refugees Removal Bill. Menzies argued that policy in this area

*must be applied by sensible administration, neither rigid nor peremptory but wise, exercising judgement on individual cases, always remembering the basic principle but always understanding that harsh administration never yet improved any law but only impaired it, and that notoriously harsh administration raises up to any law hostilities that may some day destroy*

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- disaster relief has increased (in 1997, OECD bilateral emergency relief totaled US\$ 2.2 billion).
  - support for refugees is decreasing (UNHCR has suffered budget cuts);
  - combating AIDS; and
  - an enlarged environmental agenda to tackle environmental degradation.
  - tight budgetary situation that many industrialized countries began experiencing in the early 1980s. Governments reduced both public expenditures and domestic taxes;
  - widespread perception that foreign assistance had yielded poor results and, in some instances, buttressed disreputable regimes in the developing countries while creating expensive aid bureaucracies in the donor countries;

*it.*<sup>97</sup>

The proposed excision Bill belongs to the class of harsh administration by which injustice can flourish, and should be rejected.

**Recommendations:**

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Rise of the new ideology of neo-liberalism.

<sup>97</sup> House of Representatives Hansard 9 February 1949 p68

***The Inquiry should recommend to the Government that:***

- 1. The Excision of Australian territory should be rejected as in opposition to Australia's voluntary obligations to respect internationally agreed human rights.***
- 2. That a phased increase be implemented, of the overall numbers of our Humanitarian Program aiming for 25,000 in several years.***
- 3. The Government de-link the onshore and offshore program by increasing the offshore resettlement quota from 8000 to 12,000 in 2003-4 and on-shore asylum claims to be a flexible quota sitting separately from re-settlement programs.***
- 4. A corresponding increase in funding to settlement services should be phased in to allow for the increased numbers.***
- 5. Increase the proportion of resettlement numbers from SW Asia, Africa and areas of greatest need.***
- 6. Stop demonising those who do come and claim asylum and an immediate cessation in the use of spurious concepts such as the 'queue' and 'illegals' in regard to asylum seekers.***
- 7. The Government gives equal weight in its efforts to prevent people trafficking internationally as it does to the prevention of people smuggling.***
- 8. The use of the navy and other military forces against innocent victims of persecution is never again contemplated.***
- 9. The Government should work with other countries to seriously begin to lift levels of development assistance and develop comprehensive programs of economic development in impoverished regions of the world. A tax on international financial transactions as a means of revenue raising for ODA should be explored.***
- 10. The Government should work with other developed countries that resettle refugees to lobby as a group to increase the overall number of nations resettling refugees.***

