Refugees and the Myth of the Borderless World

WILLIAM MALEY

ALAN DUPONT

JEAN-PIERRE FONTEYNE

GREG FRY

JAMES JUPP

THUY DO

Table of Contents

Preface

CHRISTIAN REUS-SMIT

When governments suffer crises of legitimacy, politics becomes desperate and truth is often a casualty. For more than a decade the Australian public has been losing faith with politicians, political parties and governments. As Coalition and Labor governments have radically restructured Australian society to accommodate the forces of economic globalisation, their promises of the good life have clashed with widespread perceptions of social breakdown. The message that Australians must endure short-term pain to reap long-term gain has worn thin, and the idea that governments are serving the people has been undermined by the perceived neglect of rural communities, the crises of the national health and educations systems, the national drug problem, urban crime, and more. As trust in the two major parties has declined, support for minor parties has grown, particularly on the right.

For much of its second term the Howard government fought what appeared to be a losing battle against this crisis of legitimacy. No amount of appealing to its 'strong record of economic governance' was sufficient; the Labor Party, with the aid of anticipated preferences from minor parties, looked set to reclaim national office. For governments confronting such crises, however, one powerful, if dangerous, strategy remains—to cultivate fears of an external threat, and to stand as the guardian of the nation. The *MV Tampa's* request in late August 2001 to berth at Christmas Island with more than 400 asylum seekers rescued from a sinking boat gave the government a chance to make its stand, reinforced by general fears produced by the terrorist attacks of 11 September. Seizing this opportunity, the government successfully posed as a party of strength, protecting a generous nation besieged by 'illegal' asylum seekers, portrayed as 'queue jumpers' of dubious motives and morals. Thoroughly outflanked by this strategy, the Labor Party took the losing path of vying for precisely the same crown.

In the midst of the fevered election campaign, truth about the global 'refugee problem', the plight of those fleeing their homelands for Australia, and the nature of Australia's contribution was lost in a fog of misinformation. This *Keynote* is designed to help reduce this fog, to provide background information by leading Australian experts on refugees as a contribution to more reasoned public debate. The essays move from the general to the particular. William Maley sets the scene by explaining the nature and scale of the global 'refugee problem', arguing that the crisis stems not from the number of the world's refugees but from the failure of states to protect and shelter the world's most vulnerable. Alan Dupont then explains the phenomenon of refugees in the Asia–Pacific region, dispelling a number of myths about the

challenges facing regional governments and addressing key issues, such as people smuggling. Jean-Pierre Fonteyne takes up the issue of 'illegality', showing how the term is more appropriately applied to Australian government policy than to those traveling on rickety boats to our shores. Greg Fry critically examines the government's 'Pacific solution', and James Jupp considers the domestic politics of refugees in Australia. The *Keynote* concludes with a number of statistical tables compiled by Thuy Do, tables which show that Australia's contribution to alleviating the global refugee problem is more average than exemplary.

A global refugee crisis?

WILLIAM MALEY

Refugees are quintessentially victims of the states system. If the moral justification of the territorial state is to provide an authority accountable for the well-being of a designated citizenry, then the failure of individual states to discharge this task creates a responsibility on those who otherwise benefit from the system of states to aid those who suffer persecution in the territories in which they are nominally owed a primary duty of care. The number of refugees and other displaced persons in the world is extremely small—roughly 0.3 per cent of the world's population—but each is a precious being, and the way they are treated is a measure not of their worth, but of the moral capacity of those who are in a position to come to their assistance. Life chances in the present world order are to a significant degree arbitrarily determined by the accident of birthplace. Afghans and Iraqis, strongly represented in the world's present refugee population, are not refugees as punishment for their own failings. And ministers and bureaucrats in Western countries, typically enjoying lives of considerable luxury, are rarely well-off in recognition of their outstanding moral virtues; many simply had the good luck to be born in the right countries. If there is a global refugee crisis, it is not in terms of the number of refugees, but in terms of the willingness of wealthy and prosperous peoples to reach out to them. In the following paragraphs, I shall do three things. First, I offer brief overviews of the meaning of 'refugee' and of the current state of the world's refugees. Second, I outline the framework of institutions and measures which has evolved for the management of refugee protection and refugee needs. In conclusion, I offer some observations on the challenges which the refugee regime faces, and on the steps which need to be taken to improve the refugees' positions.

THE PRESENT SITUATION

The meaning of 'refugee' as a matter of international law is basically defined in the 1951 Convention Relating to the Status of Refugees (hereafter Refugee Convention), as augmented by a 1967 Protocol. Article 1A(2) of the Convention provides that the term 'refugee' shall apply to any person who, 'owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular 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; or who, not having a nationality and being outside the country of his former habitual residence … is unable or, owing to such fear, is unwilling to return to it'. Several aspects of the definition are noteworthy. First, nothing turns on the use

of gendered language; a substantial proportion of the world's refugees are women. Second, the Refugee Convention does not explicitly require that persecution be at the hands of the state or its agents; the use of the passive voice ('being persecuted') opens the way to refugee status for those who are persecuted by non-state actors. Third, the definition contained in the Refugee Convention is actually quite narrow, since it arguably excludes those who suffer human rights violations falling short of persecution, and those who suffer persecution for a 'non-Convention' reason. Fourth, under the Refugee Convention a person becomes a refugee not through a formal determination by a party to the Convention, but simply by meeting the conditions set down in Article 1A(2).[1] The 1951 Refugee Convention definition is by no means the only one available. The 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa provides in Article I (2) that the term 'refugee', in addition to embracing those persons covered by the 1951 Refugee Convention, 'shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either the part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality'. Here one finds a generosity of spirit which countries outside Africa—one of the world's poorest continents—might well consider emulating.

Some basic statistics from the Office of the United Nations High Commissioner for Refugees (UNHCR) convey the scale of the refugee problem. At the end of 1951, the total number of refugees was 2,116,200. A quarter of a century later, at the end of 1976, the total was 3,757,700. The next 15 years witnessed a sharp increase in the number of refugees: at the end of 1981, the total was 10,194,900; at the end of 1986, it was 12,589,200; and at the end of 1991 it was 17,022,000. However, from that point the number began to fall, and by the end of 2000, the total number of refugees was 12,148,000. It should be noted that this figure excludes around 3.5 million Palestinians who are the responsibility of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).

The world's refugee population at the beginning of the new millennium was not evenly distributed between states. Of the 12,148,000 refugees, 31.9 per cent were to be found in just two countries—Pakistan and the Islamic Republic of Iran. (Australia contained just 0.5 per cent of these refugees, and ranked 32nd out of 40 in the list of the top 40 countries containing refugees.) Twenty-nine point four per cent of the 12,148,000 consisted of Afghans, vastly exceeding the next largest

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[1] Guy Goodwin-Gill, *The refugee in international law* (Oxford: Oxford University Press, 1996) p. 141.

group, namely nationals of Burundi, who made up 4.7 per cent of the total. The greatest concentration of these refugees was in Asia (44.3 per cent), followed by Africa (29.7 per cent) and Europe (19.9 per cent). Fifty-six point seven per cent were receiving assistance from UNHCR. UNHCR also identifies other 'persons of concern'. In 2000, in addition to the 12,148,000 persons recognised as refugees, UNHCR took an interest in 896,600 asylum seekers, 793,110 returned refugees, 5,265,300 internally-displaced persons (IDPs), 369,100 returned IDPs, and 1,653,900 others—giving a grand total of 21,126,010 'refugees and others of concern'. Given recent fears in Australia, it is worth noting that Asia and Oceania attracted only 6 per cent of asylum seekers in 2000: North America received 46.5 per cent and Europe 37.1 per cent.[2]

MANAGING REFUGEES

The 1951 Refugee Convention provides the basic framework for refugee protection, something reaffirmed at a major ministerial conference in Geneva on 12–13 December 2001 as part of the UNHCR's extensive 'Global Consultations'. The Conference hailed the Refugee Convention as one of 'relevance and resilience', and of 'enduring importance'. UN Secretary-General Kofi Annan in his statement to the Conference fired a shot at those states that might have been inclined to devalue the Convention: 'I regret to say that today there is a tendency, in some quarters, to suggest that the Convention is somehow out of date or no longer valid. In the minds of many, refugees are equated at best with economic migrants, and at worst with cheats, criminals or even terrorists. We must refute this gross calumny'. The Refugee Convention, he went on 'provides a perfectly good basis for separating those who genuinely need international protection from those who do not'. He was backed up by the High Commissioner for Refugees, Ruud Lubbers.

Augmenting the Refugee Convention are a range of institutions which provide assistance to refugees in various forms. Principal amongst these are UNHCR, founded in 1951, and UNRWA, but others also have a significant role to play, such as the International Organization for Migration (IOM), the United Nations Development Program (UNDP), the World Food Program (WFP), the International Committee of the Red Cross (ICRC), and a wide range of non-governmental organisations (NGOs). UNHCR has had a chequered history, with the skills and personality of the High Commissioner a particularly

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[2] For figures prior to 2000, see UNHCR, *The state of the world's refugees: Fifty years of humanitarian action* (Oxford: Oxford University Press, 2000) p. 310. For figures for 2000, see *2000 global refugee trends: Analysis of the 2000 provisional UNHCR population statistics* (Geneva: UNHCR, May 2001). Australia's ranking as 32nd is based on updated figures from Population Data Unit, UNHCR, Geneva, 7 February 2002. See Table 3, p. 44 of this *Keynote*.

important factor shaping the organisation's performance.[3] While UNHCR is formally authorised to act by resolution of the UN General Assembly, it is now to all intents and purposes a distinct actor in the international system. UNHCR's original role was *protection*, involving defence of the core obligation upon states not to return refugees to territories where they are likely to face persecution (*non-refoulement*). More recently, it has been charged with the responsibility of delivering humanitarian relief to large populations of displaced persons, a responsibility of considerable logistical complexity which it can be quite expensive to perform.

Durable solutions to refugee crises are typically defined in terms of three options: voluntary *repatriation*, *integration* in a country of asylum, or *resettlement* to some third country. Safe repatriation tends to be the heartfelt desire of most refugees, and it is widely accepted as the optimal outcome. However, that the vast bulk of a refugee population may be able to return to their country of origin does not mean that all can. Integration also has its problems: countries of first asylum are often poor, and may run the risk of internal breakdown if the integration of a large refugee population causes shifts in internal ethnic or cultural balances. For this reason, resettlement may be the best way of dealing with particular repressed groups, or of bringing a refugee crisis to a close. It is worth noting also that refugees are often resourceful people, who tire of waiting for Western bureaucracies to notice their plight. Increasingly, refugees will make their way to the borders of developed countries which like to trumpet their humanitarian credentials, and will challenge them to prove whether their rhetoric has any real substance.

Here is part of the context of the global refugee 'crisis'. Increasingly, Western rhetoric paints refugees not as victims of oppression, but in the very terms which the UN Secretary-General deplores. Western bureaucrats who, in the guise of helping the 'neediest', have contentedly sifted through refugee populations looking for English-speaking professionals (preferably with relatives in the resettlement state to pay their bills), deride as 'queue jumpers' real refugees who reach their shores—neglecting the fact that there is no 'queue' in the international refugee system to jump. The obligations imposed on a state by the 1951 Refugee Convention relate to persons who are within its territory, irrespective of whether they arrived with visas or not. The notion of a 'queue' is unrelated to refugee protection: instead, it reflects the wish of governments to be able to 'pick and choose' which refugees to help (the educated rather than the unskilled, the healthy rather than the disabled, the quiescent rather than the 'troublesome'). The 1951 Refugee

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[3] See Gil Loescher, *Beyond charity: International cooperation and the global refugee crisis* (New York: Oxford University Press, 1993), Gil Loescher, *The UNHCR and world politics: A perilous path* (Oxford: Oxford University Press, 2001).

Convention is drafted as it is precisely to *prevent* such unscrupulous discrimination. As John Menadue, former Secretary of the Australian Department of Immigration and Ethnic Affairs recently observed, the idea of the queue 'was invented by bureaucrats in Canberra'.[4]

This rhetoric is augmented by vocabulary which depicts refugees as potential terrorists. Such terminology is politically potent in the aftermath of the events of 11 September 2001, even though those implicated in the attacks of that day had typically entered the United States with visas. Allied with this vocabulary is an assault on 'people smuggling', which ministers and officials describe as 'insidious' or 'heinous'. The hypocrisy of politicians' attacks on people smuggling is breathtaking: as Sir Michael Dummett puts it, 'the blame for the existence of these reviled traffickers in human beings lies largely with the governments that have erected the barriers the traffickers are helping frightened people to circumvent'.[5] Some even claim that state security and the very sovereignty of the state are under mortal threat.[6] The atmosphere has become superheated.

Is the system breaking down? Some Western politicians would claim so, asserting that too many resources go to determining the exact status of a small number of asylum seekers who reach developed countries, while more should instead flow to displaced persons in countries of first asylum. The obvious reply to this is that the rule of law, a key feature of liberal democracies worthy of the name, is inherently costly, and that as long as bureaucrats are obliged to reach decisions on refugee status applications *in accordance with law*, then those bureaucrats must be open to correction by an independent judiciary if they err. To argue otherwise would be to confine the fate of refugees to the whim of officials, who might easily be swayed by snarling public opinion. In a climate of political hostility to refugees, it is naive to expect bureaucrats and ministerial appointees in increasingly-politicised agencies and tribunals to be able to displace such influences from their minds: here, there is no substitute for independent judges. A cynic might also add that savings from denying asylum seekers the protection of the judiciary in developed countries are more likely to fund tax cuts for voters than to find their way to indigent refugees in countries of first asylum.

The claim that the Refugee Convention is not working as it was intended in 1951 is spurious. Unquestionably, more *people* now fall

4   Tony Stephens, 'Menadue slams Coalition for demonising asylum seekers', *Sydney Morning Herald*, 8 February 2002.

5   Michael Dummett, *On immigration and refugees* (London: Routledge, 2001) p. 44.

6   See William Maley, 'Refugees and forced migration as a security problem', in William T. Tow, Ramesh Thakur and In-Taek Hyun (eds), *Asia's emerging regional order: Reconciling traditional and human security* (Tokyo: United Nations University Press, 2000) pp. 142–56, William Maley, 'Security, people-smuggling, and Australia's new Afghan refugees', *Australian Journal of International Affairs*, 55(3) November 2001: 351–70.

within the definition of refugee in the Convention than its originators expected. But this does not point to a failing of the Refugee Convention: it would be absurd to suggest that somehow there is a fixed absolute number of victims of oppression in the world, so that if more than that number appear to fall within the definition of refugee, the definition should be narrowed. The refugee crisis is actually a crisis of moral failure as states seek to shed obligations which they freely entered.

CHALLENGES

This withering of compassion is a fundamental challenge to the present refugee regime. But it reflects a number of deep and ineradicable tensions in the system of states. The first tension is between a conception of the state as an actor in the international system, bound by commitments pursuant to the *pacta sunt servanda* norm; and a conception of the state as a mirror of the minds of those who dwell within its borders and claim the benefits of citizenship. While anti-refugee sentiments are as likely to be fuelled by politicians as to emerge spontaneously,[7] they provide a source of legitimacy-claims for those who wish to avoid international obligations. In the long run such deference to rabid domestic opinion is likely to be costly for middle powers, which depend upon reciprocal compliance with voluntarily-assumed international obligations in ways that great powers do not. At a more mundane level, states are all too likely to seek to 'assist refugees' in ways which are in the *state*'s interest. For example, Australia, before agreeing to resettle specific refugees, subjects them to medical tests to permit the exclusion of those with medical conditions which might be expensive to manage.[8] States may also resettle 'refugees' in order to further bilateral relations with another state: the resettlement from Israel (a party to the 1951 Refugee Convention) of members of a pro-Israeli Lebanese militia with an atrocious human rights record comes to mind.

The second tension is between conceptions of security focused on the state, and evolving conceptions of human security. Political realism classically addresses security threats to the territorial state, its survival, its integrity, and its alleged interests. Realism of a fundamentalist variety allows even a few asylum seekers to be depicted as a threat to security, since it equates security with the day-to-day exercise of state control. In certain circumstances—most notably where a state is already deeply fractured and impoverished—a sudden, massive flow of refugees may indeed put its stability at risk. However, this argument is of

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7   See Ruud Lubbers, 'Don't kick refugees just to score points: Politicians who demonise asylum seekers are playing with people's lives', *Australian*, 20 June 2001.

8   William Maley, 'Multiculturalism, refugees, and duties beyond borders', in Chandran Kukathas (ed.), *Multicultural citizens: The philosophy and politics of identity* (Sydney: Centre for Independent Studies, 1993) p. 185.

little merit when the asylum seekers' destination is a prosperous, highly-institutionalised liberal democracy. Here, there is a case for more attention to human security, based on the well-being of individuals. A policy designed to make individuals suffer as a way of deterring others from following in their footsteps degrades human security: this needs to be factored into any consideration of the contribution of public policy to 'security' as a whole.

The third tension, somewhat more indirect than the first two, is between the obligation of UNHCR to protect refugees in developed states, and UNHCR's dependence on those very states to fund its expensive humanitarian relief operations. UNHCR depends on voluntary contributions by states to fund its activities: it is part of the essential architecture of the states system, but it lacks the autonomy to be able always to discharge its functions in a fearless fashion. States exploit this peculiarity in order to foist their own agendas on an agency which ideally should be defending the weak and the vulnerable. As B.S. Chimni has observed, while 'the major donor states have always exercised "undue influence" on the organization … UNHCR's financial dependence is today being used to preempt it from protesting too hard the erosion of basic protection principles'.[9] Of course, not all states are equally influential. The United States provides around a quarter of UNHCR's approved budget; Australia, by contrast, contributes a much smaller sum per head of population than do the Scandinavian countries. This is one reason why Australia is ultimately a minor player in international refugee politics.

Yet the greatest challenge of all is to recover the true meaning of compassion. This is at the heart of meaningful liberalism. Mathew Gibney has plausibly argued that there is a 'duty incumbent upon each and every individual to assist those in great distress or suffering when the costs of doing so are low'.[10] And it is not simply individuals who bear this responsibility; as Stanley Hoffmann has written, 'it remains the duty of each country to open its own borders as widely as possible, without looking for excuses or waiting for others to act'.[11] This is not an abstract requirement, but a desperately practical one. In October 2001, a smuggler's boat heading for Australia foundered off the coast of Indonesia, drowning three little girls—Eman, Fatima and Zhra al-Zalime—whose father was a refugee in Australia, but with a 'Temporary Protection Visa' which denied him the right to sponsor his

[9] B.S. Chimni, 'Globalization, humanitarianism and the erosion of refugee protection', *Journal of Refugee Studies*, 13(3) September 2000: 243–63 at p. 256.

[10] Mathew J. Gibney, 'Liberal democratic states and responsibilities to refugees', *American Political Science Review*, 93(1) March 1999: 169–81 at p. 178.

[11] Stanley Hoffmann, *Duties beyond borders: On the limits and possibilities of ethical international politics* (Syracuse: Syracuse University Press, 1981) pp. 224–5.

wife and daughters to join him.[12] Mindless public policy had driven these girls straight into the arms of people smugglers. While the Australian Prime Minister later stated that he felt 'compassion' for Mr al-Zalime, this 'compassion' did not extend to waiving another condition on his visa, a condition that meant that if he visited his distraught wife in Indonesia, he would be blocked from re-entering Australia.[13] Compassion, it seems, means different things to different people.

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[12] Don Greenlees and Vanessa Walker, 'Photo all that remains of little girls', *Australian*, 25 October 2001.

[13] Neville Roach, 'Leadership minus compassion is tearing us apart', *Sydney Morning Herald*, 25 January 2002.

Refugees and illegal migrants in the Asia–Pacific region

Alan Dupont

The unregulated movement of people has become a defining political, social and security issue for Australia's Asia–Pacific neighbourhood, challenging the authority of governments, widening internal political and social divides, imposing heavy economic burdens on poor receiving states and accentuating the permeability of borders. Ironically, in light of their current concerns about border security, Western governments have traditionally considered unregulated population movements (UPMs) to be a matter of 'low politics' (pertaining to the wealth and welfare of the citizens of the state) rather than 'high politics' (associated with security and the continued existence of the state). Asians, on the other hand, have been more sensitive to the national security implications of refugee movements and illegal migration for historical and cultural reasons—multiethnic Southeast Asia particularly so, because of endemic racial and religious tensions and the preoccupation of political elites with nation building and regime maintenance.

COMMON MISCONCEPTIONS

The wave of new restrictions on migrants in Europe has yet to be emulated in Asia and the Pacific largely because many regional states already have strict citizenship requirements and adhere to narrowly defined refugee criteria. Only China, Japan, South Korea, Cambodia and the Philippines have signed the 1951 United Nations (UN) Convention Relating to the Status of Refugees (hereafter Refugee Convention) or its 1967 Protocol. Contrary to popular belief, asylum seekers and those defined as refugees under the restricted definition used by the UN constitute less than half the unsanctioned (by governments) movement of people in the region. Many more are internally displaced within the borders of their own country as a result of persecution, civil war, environmental degradation and government fiat or indifference. Most contemporary UPMs are the result of intra-regional economic and social disparities. Countries in the middle-range of development are responsible for the recent surge in illegal migration because it is their upwardly mobile citizens who are motivated to seek out greener economic pastures. In developing Asia an estimated two billion people are fast approaching this middle-range.

Although it is commonly assumed that asylum seekers and illegal migrants are overwhelmingly from the Middle East, and that Australia bears a disproportionate share of the burden, in reality the great majority are from the region. Asia, as a whole, hosts more refugees and internally displaced people than any other region of the globe—8.4 million out of

a total of 22 million by the UN's reckoning. Troubled Afghanistan accounts for 3.6 million refugees and at least one million internally displaced people, but even in relatively prosperous and stable East Asia there are between two and three million refugees and internally displaced people as well as four–five million undocumented labour migrants. These are substantial increases on the figures of 20 years ago. As a result, receiving countries are now more inclined to regard UPMs as a politico-security issue rather than a humanitarian or social concern—hence the inclusion of UPMs on national security agendas and the propensity to use military assets and coercive measures to stem the flow of asylum seekers and illegal migrants.

Growing acceptance of the link between UPMs and regional security masks sharp differences of view over whose security is being threatened—those of the refugees, displaced people and undocumented migrants or the receiving countries who host, care and provide for them. Receiving governments tend to regard UPMs as a potential security threat because of their capacity to foment conflict with neighbours or intensify internal ethnic and social divisions. Human rights activists and non-governmental organisations are more likely to see these uprooted people as the innocent victims of state policy, persecution or economic inequality for whom flight is the ultimate survival strategy.

THE HISTORICAL RECORD

UPMs first began to intrude onto the regional security agenda at the end of the Vietnam War when nearly one million Vietnamese citizens sought haven or a better life in other parts of Asia. Paralleling this exodus was a less visible but equally significant outflow of people from China in the wake of the 1979 economic reforms initiated by China's patriarch, Deng Xiaoping. Hundreds of thousands of Chinese have been smuggled by boat, plane and land to destinations in Asia and the West over the past two decades. There is a high probability that more and more undocumented Chinese migrants will seek employment opportunities closer to home in Asia. If so, migration-induced tensions between China and the rest of the region could reawaken latent historical animosities and fuel anxieties about China's ability to promote its political and strategic influence through its expanding diaspora.

Uncontrolled migration from China, both actual and potential, is not the only migration issue of concern to its neighbours. No Asia–Pacific state has been able to immunise itself from the explosion in UPMs that has taken place in recent decades. Thailand, for example, provides sanctuary to between 500,000 and 700,000 refugees and undocumented labour migrants from Burma, while worsening civil strife in Indonesia has forced many ethnic Chinese to flee and caused large-scale population displacements in Kalimantan, the Moluccas and Sulawesi. There are around half a million undocumented Indonesian workers in

Malaysia, one million Vietnamese working illegally in Cambodia and hundreds of thousands of illegal migrants in Japan and Taiwan from other parts of the region and the Middle East. South Korean officials who once made much of the threat posed by a hostile, nuclear capable North Korea now worry more about a flood of refugees from across the border should the Kim Jong-il regime collapse.

UPMS: CAUSES AND CONSEQUENCES

It is important to understand that there is no single or simple explanation for the rapid increase in UPMs that has occurred since the mid-1970s, a trend which shows every sign of continuing. While migration has been an enduring feature of the region's political and social development, enriching societies as well as destroying them, today's UPMs are far more numerous, of a qualitatively different order and the product of multiple and diverse drivers. Ethno-nationalist conflicts, identity struggles and repression are the main catalysts of refugee flows and internally displaced persons. But demographic, environmental and economic forces are playing an increasingly influential role and are primarily responsible for the rise in undocumented labour migrants who are being moved and exploited by mainly Asian people smugglers.

Ethno-religious conflict

Although the level and frequency of ethnic and religious warfare globally has subsided after peaking in the mid-1990s, in Asia ethno-religious rebellions have spread and intensified in the wake of the economic crisis and a resurgence of political Islam. These conflicts have created large numbers of internally displaced people, but they have also spilled over borders and affected relations between neighbouring states. Vietnam's border dispute with Cambodia, for example, has been complicated by ethnic tensions and the trans-border movement of minority groups. Serious outbreaks of fighting and blood-letting in Indonesia illustrate how ethnic rivalries, in concert with religious differences and misplaced government policies, can inflame inter-communal tensions leading to violent conflict and internal displacement, sometimes on a large scale.

Ethnic minorities, forced to become refugees in neighbouring states because of political persecution, commonly prosecute wars and political violence against their former governments fuelling tensions between their home and host states. Ethnic and religious violence in China's remote but strategically important western province of Xinjiang has compelled many indigenous ethnic Uighurs, the oldest Turkic people in the world, to flee into neighbouring Kazakhstan, Kyrgyzstan and Tajikistan. The root of the problem is the Uighur belief that China is deliberately encouraging Han migration to the resource rich province in order to disempower and isolate the Muslim Uighurs who are already a minority in Xinjiang.

Government policies

Government policies have a large bearing on population flows, and national decisions to control entry and egress are influenced as much by political and security considerations as economic logic or humanitarian concerns. The generally unsympathetic response by Southeast Asian governments to the unremitting stream of boat people exiting Vietnam in the two decades after 1975, reflected fears that providing a permanent home for the Vietnamese could generate ethnic and political conflict in their own countries. While states worry about population movements that are outside their control, governments themselves frequently determine their scale, direction and composition. Sometimes this is a function of government weakness rather than deliberate policy. UPMs are commonly associated with politically weak or disrupted states; even relatively strong central governments may be incapable of controlling outlying regions where borders are either contested, porous or too long to effectively police.

Refugees and displaced communities are also manipulated and exploited by states to further foreign policy or strategic interests. Increasingly, the rights, welfare and security of refugees and illegal migrants are being ignored or subordinated to the perceived interests of the state. Ordinary people are commonly the targets and victims of state-sanctioned population displacements. In multicultural states like Indonesia and Burma, politically dominant ethnic groups have persecuted minorities in the name of national security, creating the very insecurity they seek to guard against and stimulating waves of internal migration. It is not uncommon for governments to forcibly uproot their people for economic reasons, to relieve population pressures or as a means of social control. In 1997, Laos initiated a plan to relocate 300,000 families, representing nearly one-third of the country's total population. The government in Vientiane justified this massive displacement by arguing that it would reduce or eliminate unproductive agricultural practices and allow the construction of dams and infrastructure deemed critical to economic development. In some instances, entire classes of people whose existence is considered to be inimical to the interests of the ruling elite have been relocated, expelled and eliminated.

People smuggling

People smuggling by transnational criminal organisations (TCOs) has become a major political and security issue for the region. This reality was dramatically and tragically underscored by the deaths of 54 Chinese illegal migrants who suffocated in the back of a truck while being smuggled to the UK in June 2000. Globally, more than four million people are being smuggled or trafficked across international borders every year—mostly from Asia and the Middle East—earning TCOs an estimated US$7–$12 billion annually and rivalling the

profitability of the drug trade. TCOs have capitalised on burgeoning intra-regional trade and travel to target Asia–Pacific states as end destinations for illegal migrants from China as well as using them as staging posts for onward destination to the West. Cambodia and Thailand are central to the trade, with a steady stream of Chinese illegal migrants entering by land, air and water, including along the Mekong River, assisted by a variety of trafficking and smuggling organisations.

Asian TCOs engaged in people smuggling range from small-time, local 'entrepreneurs' geared to making a quick dollar, to sophisticated international crime syndicates such as the Japanese *yakuza* and Chinese triads. Thriving in the comparatively freewheeling political and economic milieu of contemporary China, Chinese criminal gangs regard people smuggling as core business and a lucrative complement to other forms of criminal enterprise. They have established elaborate global networks to facilitate the movement of illegal migrants which are also used for smuggling drugs and other illicit contraband. In recent years, political turmoil has stimulated a rise in undocumented migrants and asylum seekers from Afghanistan and the Middle East. Malaysia is a natural gateway because it allows visa-free access for people of the Islamic faith. About 80 per cent of all asylum seekers from Iraq and Afghanistan pass through Malaysia en route to Australia. Many are then smuggled to Indonesia from where they either fly directly to Australia or go to ground in small fishing villages and ports while they await passage by boat.

Undocumented labour migrants

Undocumented labour migrants form a growing proportion of UPMs in Asia and the Pacific, and they exceed the number of refugees and internally displaced people. The steady growth of intra-regional labour migration has been a mixed blessing. Uncontrolled labour migration can upset the precarious social and ethnic balance of multicultural states and be a source of political tension between sending and receiving states. But intra-regional labour migration is inextricably linked with economic development, bringing tangible benefits for both receiving and sending states. The growth prospects of the more developed regional economies like Japan, Taiwan, South Korea, Singapore and Malaysia are already dependent, to varying degrees, on the availability of cheap foreign labour, because of structural imbalances in their own labour sectors and declining birth rates. Their reliance on foreign labour is set to increase as their economies mature and diversify.

Environmental refugees

East Asia's deteriorating environment is a relatively new contributor to the sustained rise in regional UPMs. Environmental change in the form of naturally occurring droughts, floods and pestilence has been a significant factor in forcing people to migrate since the beginning of

recorded history. So has war-related environmental destruction. However, demographic pressures, modern development practices and the rapid pace of social and economic change are giving rise to concerns that a new class of displaced people, or 'environmental refugees', is being created. Although Asia and the Pacific has been less affected than other regions, continuing population growth, high rates of urbanisation, pollution and climate change are likely to increase the overall numbers of environmental refugees.

DILEMMAS AND RESPONSES

It is clear from this analysis that the unregulated movement of people has become a leading source of domestic instability and interstate tension and poses major social and humanitarian challenges for the region. However, people forced to flee as a result of war or persecution are also victims, as are those exploited by criminal gangs capitalising on the expanding trade in undocumented foreign workers. How to reconcile the needs of these itinerants with the obligation and right of governments to protect their territory, institutions and citizens poses moral and practical dilemmas not easily resolved.

Unlike past UPMs, which were episodic and driven by seminal events such as major war between states, those of the post-Cold War period have been sustained over longer periods of time and are being stimulated by economic opportunism and environmental decline as well as rising levels of intra-state violence. Transnational criminal organisations offer a ready and affordable means of escape from the drudgery and hardship of life at home. The new breed of economic migrants do not see migration merely as a desirable option but one of the few available courses of action to escape the consequences of overpopulation and diminishing employment opportunities. The future level of undocumented labour migration from China, rather than the Middle East, is the wild card in the regional migration pack. China's middle class is leaving in record numbers seeking economic opportunity in more affluent parts of the globe. As incomes increase, emigration will become more affordable and living overseas a viable and much sought after option.

Asia–Pacific governments need to cooperate more closely in finding solutions to the influx of refugees, displaced persons and illegal migrants that is straining the coping capacity of many states. To date, multilateral responses have been weak and ineffective. Aside from cursory consideration in the ASEAN Regional Forum, the region's premier security body, there has been little attempt to develop an overarching framework or to allocate the necessary resources for dealing with UPMs.

The Ministerial Meeting on People Smuggling, Trafficking in Persons and Related Transnational Crime in Bali (27–28 February 2002) is a rare opportunity to fill this lacuna by establishing a regime

for monitoring, processing and resettling those with genuine claims to refugee status in a more equitable and humane manner. A public declaration by ministers that the unregulated movement of people has become a first order political, security and humanitarian issue for the region would be a helpful first step and a distinction should be made between genuine refugees fleeing war and persecution and those who are merely seeking a better life. There is also a clear need for tighter visa restrictions, tougher penalties for people smugglers, improved cooperation between regional law enforcement, customs and intelligence agencies and the commitment of more human and financial resources. A regional surveillance centre to track and provide information on UPMs to participating governments could provide early warning of potentially destabilising mass migrations and assist police to identify and apprehend criminal groups engaged in people smuggling. Information relevant to specific movements, especially numbers, intended destinations and current locations should be part of the centre's mandate.

Even if these measures are fully implemented it is unlikely that regional unregulated population movements can be completely stemmed given the conflicts that currently afflict the region and the powerful economic and environmental drivers at work. However, in the absence of serious and sustained regional cooperation directed at the root causes of UPMs, the human and security costs will almost certainly increase to the detriment of all concerned.

'Illegal refugees' or illegal policy?

JEAN-PIERRE FONTEYNE

On 26 August 2001, a Norwegian container vessel, the *MV Tampa*, rescued more than 400 asylum seekers at sea from a sinking Indonesian vessel near Australian territorial waters. The ship's captain's request for permission to dock at Christmas Island was denied by the Australian government who demanded that the asylum seekers be taken to Indonesia instead. When *Tampa* entered Australian waters and headed towards Christmas Island despite the Australian government's instructions, the Australian Special Air Service troops, the SAS, boarded and took control of the ship. Adamant that the *Tampa* would not be allowed to dock at Christmas Island, the asylum seekers were transferred from the *Tampa* to a navy transport ship, the *HMAS Manoora*, and ultimately taken to the tiny Pacific Island of Nauru for processing.

The events surrounding the arrest of the Norwegian vessel *Tampa* have once again thrown into sharp relief the liberties which the present Australian government is prepared to take with international legality where it comes to the treatment of refugees and asylum seekers arriving on its shores. The recent announcement that regulations are being drafted requiring all vessels in Australian waters to obtain the permission of Australian authorities before providing assistance to a ship in distress, is but the latest illustration of this flagrant disregard for international rules and practices, going back, in this case, hundreds of years and codified in a whole series of international conventions to which Australia is a party.

Australia's obligations in respect of asylum seekers are principally contained in the 1951 United Nations (UN) Convention Relating to the Status of Refugees (hereafter Refugee Convention). The Refugee Convention defines refugees as people who are outside of their country of origin as a result of a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion. This fear, which renders them either unable or unwilling to return, can be based either on persecution which they have themselves been the victim of, or which appears likely in light of the experience of people in similar circumstances in their country. Excluded from the Refugee Convention's protections are serious common criminals and individuals guilty of war crimes, crimes against humanity and similar violations of UN principles.

Further protection principles and obligations in relation to refugees, arguably of a less clear-cut nature, can be found in a variety of other international instruments, including such human rights treaties as the UN International Covenant on Civil and Political Rights, the

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and so on, as well as in various 'soft law' sources as for example the 1967 UN General Assembly Declaration on Territorial Asylum. In addition, where asylum seekers arrive by sea (as is the case with many 'direct arrivals' in Australia), provisions of the 1982 UN Convention on the Law of the Sea and of various more specialised maritime conventions (including those on rescue at sea) may have a direct bearing on the legality of Australian actions in respect of so-called boat people.

OBLIGATIONS

From a law of the sea perspective, therefore, the obligations of the captain of the *Tampa* were clear: inasmuch as the Indonesian fishing vessel transporting the asylum seekers he rescued was indeed sinking, he had no legal alternative but to rescue them—the maritime conventions referred to above and 300 years of solid international practice on the subject put this beyond any doubt. Which particular nation then inherited eventual responsibility for the rescued asylum seekers is unfortunately far from clear. Prior practice, where rescue generally involved passengers and/or crew of sinking vessels, generally consisted of disembarkation at the next convenient port of call, be it the rescuing vessel's next scheduled stop, or some other sufficiently close-by port, so as to minimise further disruption to the vessel's voyage. Such disembarkation usually caused no difficulty as it represented but a stopover for those rescued on their way back to their country of origin. When, on the other hand, large numbers of rescues at sea started to occur in the late 1970s in the course of the second big wave of Vietnamese boat people, Southeast Asian governments began to raise questions concerning their obligation to allow local disembarkation of those rescued, arguing that they had become the responsibility of the flagstate of the rescuing vessel. The problem soon achieved such a magnitude that the United Nations felt it necessary to hold consultations on the issue, resulting in the commissioning of a study by a Group of Experts. The findings of this Group, and subsequent discussions in the United Nations High Commissioner for Refugees (UNHCR) Executive Committee, indicated that, despite the late 1970s questioning, disembarkation at the next *convenient* port of call (in the judgement of the captain in light of the circumstances) had been a well-established practice, and that, specifically, rescue of people in peril at sea did *not* thereby result in the *flagstate* becoming responsible for the long-term fate of those rescued. In order to bolster this practice, in fact, the UNHCR proceeded to put into operation several schemes involving resettlement pledges by both flagstates and third states, intended to facilitate compliance by port states with their presumed obligation to allow disembarkation of those rescued. It is by the way to be noted that

Australia was at the time one of the states who were most insistent on the continuation of the practice to allow such disembarkation.

It would therefore appear that the weight of authority in respect of this particular issue points in the direction of the existence of an obligation upon Australia, in law of the sea terms, to allow the *Tampa* to enter Australian waters around Christmas Island to disembark those rescued. Given, furthermore, the cardinal obligation of *non-refoulement* (non-rejection) in Article 33 of the Refugee Convention, this conclusion is strengthened inasmuch as those rescued were seeking to advance a claim to refugee status, and barring them from entry into territorial waters and disembarkation was tantamount to rejection at the frontier. In addition, once the refuge seekers had been taken on board the *Tampa*, that vessel itself was effectively in distress, being a container transport certified by the Norwegian authorities to carry only a small number of passengers—only a fraction in fact of the hundreds that had been rescued. The *Tampa* was accordingly from then on unseaworthy (as eventually formally declared by the Norwegian Maritime Safety Board). Australia's obligations at that stage were thus beyond doubt under the various applicable law of the sea and maritime conventions: it was to render assistance to the *Tampa* and its passengers—a purpose best achieved, in good faith, by allowing them to disembark on Christmas Island.

In any case, once the *Tampa* actually entered Australian territorial waters—whether legally *or* illegally—Australia's obligation, under the terms of the Refugee Convention, to accept submission of, and to process, the passengers' refugee claims could no longer be doubted. This processing obligation is a direct result of the obligation, already referred to above, of *non-refoulement* (non-rejection) under Article 33 of the Refugee Convention, and vested as a matter of international law at the latest as soon as the vessel carrying the refuge seekers entered Australian territorial waters. This is so despite the purported exclusion, under Australian statute law as it stood at the time, of territorial waters from the domestically created 'migration zone'. For a state's obligations, whether customary or treaty-based, apply to its entire territory, as determined by international law, and the 1982 UN Convention on the Law of the Sea confirms that territorial waters are an integral part of a state's territory. A state, furthermore, cannot escape its treaty obligations by the mere expedient of passing incompatible legislation (Vienna Convention on the Law of Treaties). Australia's obligations at that stage, both under various law of the sea instruments and under the Refugee Convention, were therefore clear: the rescued asylum seekers needed to be disembarked at once and their refugee claims processed in accordance with the normal mechanisms set up by the Migration Act and associated regulations.

AUSTRALIA'S ACTIONS

Instead the Australian government first sought to pressure the captain of the *Tampa* into setting sail illegally with a vessel officially declared unseaworthy, so as to take his unwelcome cargo somewhere else. Having failed in this attempt, the government, in an internationally unprecedented move, then chose to use military force to take over control of the vessel and proceeded to remove the rescued asylum seekers, transferring them to a naval vessel that ultimately took them to Nauru where they were finally disembarked, some in fact forcibly. In one fell swoop Australia created a new international 'practice': the export of a refugee problem from one area to another, thereby creating, in a callous display of neo-colonialist guile, a refugee problem in an area where there previously was none. In the process, Australia not only failed to comply with its obligation to process asylum seekers present in its territory (territorial waters), it also potentially violated its obligation of *non-refoulement* by sending them on to a state that was not even a party to the Refugee Convention—and therefore arguably under no international compulsion not to return the refuge seekers to their countries of origin, and possible death or persecution. It also artificially set the scene for the description of the problem by the Australian government as a 'regional' one requiring, according to the rather shameless Australian argument now being used, a 'regional' solution based on regional 'burdensharing'.

Still in the same vein, the Australian authorities subsequently proceeded to arrest several other boatloads of refuge seekers in or around Australian territorial waters, some in circumstances of dubious legality (for example, where vessels were seemingly intercepted outside of Australian territorial waters and, in at least one case, possibly even beyond Australia's contiguous zone), and then similarly proceeded to send them on to Nauru or Papua New Guinea. Despite serious misgivings (particularly the fear that its involvement might be misinterpreted or misrepresented as an endorsement of the legitimacy of Australia's actions), the UNHCR has ultimately consented to take charge of the status determination process for the asylum seekers Australia forcibly relocated to these third countries. Not content with the (internationally invalid) exclusion of Australian territorial waters from the geographical scope of application of its obligations under the Refugee Convention, however, Australia has since extended this approach by further 'excising' Cocos (Keeling) Islands, Christmas Island and Ashmore and Cartier Islands from the Australian 'migration zone' as well—thereby purporting to reject responsibility for asylum seekers who might succeed in landing in these parts of Australia's territory. For the reasons indicated above, these measures are devoid of international effect and thus incapable of shielding Australia from the applicability of its treaty obligations in these areas.

Other legislation adopted over the same period *inter alia* introduced further discriminatory measures differentiating between the status of refugee applicants depending on their manner of arrival, and in particular 'disenfranchised' some categories by preventing their *ever* achieving permanent residence in Australia, despite an eventual positive finding in respect of their refugee claims. In introducing these measures, Australia is thus extending even further the discriminatory dimension of its refugee policy (see below by reference to the mandatory detention policy)—measures hard to reconcile both with the spirit of Article 3 of the Refugee Convention and with the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination and other human rights instruments to which Australia is a party.

MANDATORY DETENTION POLICY

These developments, however, are only the latest expressions of a now well-established policy in relation to refugees that can hardly be described as inspired by considerations of humanity. What is more, the policy that has been followed by successive Australian governments over the past decade and a half is one that in all likelihood violates a number of obligations under the 1951 Refugee Convention. Prime amongst these is the policy of mandatory detention of boat people. Not only does the policy in effect violate the non-discrimination standard mandated by Article 3 of the Refugee Convention (as only boat people, and not *other* onshore refugee applicants are routinely detained, and boat people in reality predominantly come from particular geographic regions), it also seems irreconcilable with at least the spirit of the ban on punishment for illegal entry or presence contained in Article 31 of the Refugee Convention. Technicalities in Paragraph 1 of the Article (that is, the requirements that refugees come 'directly from a territory where their life or freedom was threatened', that they 'present themselves without delay to the authorities', and that they 'show good cause for their illegal entry or presence') may in particular instances provide a legalistic basis to circumvent the ban on the imposition of penalties. The spirit of the provision (that refuge seekers as a general rule not be punished solely for the illegal way in which they sought access to the territory) is however clear, and would appear totally irreconcilable with a policy requiring *every* asylum seeker who arrives by boat in Australia to be mandatorily incarcerated, irrespective of the specific circumstances of the person's arrival. While Paragraph 2 of Article 31 does make room for restrictions on movement that are 'necessary', neither verification of identity, nor medical quarantine considerations justify detention practices that routinely run into two, three or even five years duration. The only possible other justification—preventing asylum seekers from absconding while their claims are being assessed—is not a sufficient excuse: *no other country incarcerates asylum seekers automatically*, irrespective of individual circumstances; in fact, only a

handful of countries detain at all. One is therefore left with the only possible conclusion: Australia follows its detention policy solely or primarily as a deterrent measure to future potential claimants—a purpose not countenanced by the terms of Article 31.

Inasmuch as the mandatory detention policy frequently extends into years (and is statutorily of potential indefinite duration), it furthermore also violates a number of other human rights obligations as well, including obligations under the UN Covenant on Civil and Political Rights. Not surprisingly, it has been the subject of strong adverse comments by the UN Human Rights Commission. Where it involves children, furthermore (whether as unaccompanied applicants or as dependants from other asylum seekers) it would also seem to be irreconcilable with some of Australia's obligations under the Convention on the Rights of the Child.

WORRYING TRENDS?

The legislative and administrative policies adopted by Australia over the last decade and a half, and especially those introduced over the last couple of years, lead to only one possible conclusion. The country and/or its leaders have conclusively turned their backs on the oft-repeated tradition of supposed 'generosity' for people in need of safe havens—the 'proud record' Australian ministers and diplomats so regularly trudge out in public fora, but a record that is wearing increasingly thin as time passes and the memory of the large intakes of refugees by Australia in the immediate post-World War II era wanes, and the impact of 50-year old statistics diminishes. Probably of greatest concern is that these policies are being introduced and implemented in an environment that clearly does not require it. For better or for worse, Australia's geographical location has so far succeeded in largely insulating it from the massive influxes other countries have had to cope with. The numbers of direct arrivals Australia has seen (in the order of only a few thousands per year) pale into insignificance when compared with those faced by European countries with much smaller populations and much higher population densities than Australia's, where such figures not infrequently apply to *weekly* arrivals—yet none of these countries have found it necessary to introduce measures as draconian and inhumane as those Australia has now implemented. What is more, the numbers Australia has to cope with represent but a minute proportion of the country's migratory intake (less than 0.7 per cent over the last decade), and are thus statistically irrelevant. They also represent a minute proportion of those whose presence in Australia is illegal, as current statistics put the figure of 'illegal overstayers' in Australia at well over 50,000.

That these policies have now effectively been put beyond the reach of judicial review (other than through direct appeals to the High Court)

as a result of amendments to the Migration Act is possibly the most worrisome aspect of these developments. For it exposes a callous disregard for the rule of law, and a determination, at least in this particular area, for executive and administrative decision-making to be exempted from further scrutiny. The enactments adopted in the wake of the *Tampa* 'crisis', providing for an unqualified indemnity for government officials in their dealings with boat people, are but the most obvious expression of this alarming trend. Today asylum seekers; tomorrow other segments of Australian society that are somehow out of favour?

The 'Pacific solution'?

GREG FRY

On 1 September 2001 the Australian Prime Minister John Howard announced a 'truly Pacific solution' to the self-imposed dilemma before him: how to deliver on his very public promise that no asylum seeker aboard the *MV Tampa*, then in Australian waters off Christmas Island, would be allowed to step onto Australian territory. The 'Pacific solution' to which he referred was the agreement of New Zealand's Prime Minister Helen Clark and Nauru's President Rene Harris to an Australian request to allow the 433 Afghan and Iraqi asylum seekers aboard the Norwegian freighter to be transferred to holding camps in their countries while their claims to refugee status were processed.

With asylum seekers on the open deck of the vessel, media attention focused upon the ship and the health of its passengers and international criticism mounting, the 'Pacific solution' was the Howard government's last resort. In the previous 48 hours the government's threat to the *Tampa's* captain, Arne Rinnan, to charge him under the Migration Act, had failed to deter him from entering Australian waters. It then ordered SAS forces to seize the vessel, in 'Operation Reflex', as a first step in a plan to sail the ship back into international waters. But the next step in this plan, new 'border protection' legislation to guarantee that Australian officials would not be liable for their actions, failed to gain sufficient support in a rushed session of the Australian Parliament. The plan was therefore abandoned. A third approach, that of returning the passengers to Indonesia, was refused by the Indonesian authorities (following what was seen as Australia's 'megaphone diplomacy'). Then in an extraordinary move, clearly demonstrating the level of desperation felt in the government camp, the Australian Foreign Minister Alexander Downer approached the UN Administrator in Timor, Sergio Vieira de Mello, with a request that the *Tampa* passengers be transferred to a camp in Timor. This request, made on the day of Timor's first election, was refused, reportedly in disbelief, by the UN Administrator and by the UN Secretary-General, Kofi Annan, whom Prime Minister Howard had approached separately.[1]

THE EXPANDING 'SOLUTION'

But the 'Pacific solution' was not just about providing an answer to the difficult and urgent problem of delivering on the Prime Minister's uncompromising stance on the *Tampa*. It also quickly became a way out

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[1] Marion Wilkinson and David Marr, 'The Pacific solution', *Sydney Morning Herald*, 22 October 2001, p. 15.

of a much more significant problem for the government: how to honour the Prime Minister's broader promise to the Australian people that, from the *Tampa* on, no asylum seeker coming by *any* boat into Australian waters would be allowed to land on Australian territory. This expanded position, which came to be known as the 'border protection' policy, required an expanded 'Pacific solution' to be credible. Henceforth such asylum seekers were to be apprehended and taken to detention camps in Pacific Island countries where their claims would be processed. Reflecting this new commitment, the government sought to widen and deepen the 'Pacific solution'. It gained Papua New Guinea's agreement to set up a new detention camp at Lombrum Naval Base on Manus Island (initially to take 216 Iraqi asylum seekers); it approached Nauru to take more asylum seekers in the Topside camp (to a maximum of 1,200) in return for a further A\$10 million in economic assistance in addition to the initial A\$20 million; and it approached the governments of Fiji, Tuvalu, Palau and Kiribati about the possibility of setting up new detention camps.

The immediate popularity of the 'border protection' policy within Australia meant that the 'Pacific solution' also became the answer to a third problem of the highest significance to the Australian government. With the opinion polls prior to the *Tampa* crisis showing declining support for the Howard government and possible defeat at the upcoming elections, the popularity of the government's strong stand on asylum seekers provided the answer to the pressing political dilemma of how to recapture the support of the Australian electorate. The 'Pacific solution' made that stand credible. In the event, the 'defence of the borders' policy, aimed at denying entry to anyone seeking asylum from political persecution, dominated the election campaign and helped ensure the return of the Howard government at the November poll.

The centrality of the border protection policy in the electoral success of the Howard government meant that the new government now had to turn a policy developed on the run just before an election campaign into a more permanent arrangement. Although even the Minister for Immigration Philip Ruddock was now admitting that the 'Pacific solution' might be difficult to sustain[2] (apart from anything else the costs were by now substantial), the government had little choice but to go further down this path if its credibility was not to be seriously in question. With Fiji and Kiribati now out of the running for inclusion in the 'Pacific solution' (Fiji having rejected the offer and Kiribati's Kanton Island having been rejected for logistical reasons), and Nauru at full capacity (by then asylum seekers constituted around an eighth of its total population), the government turned to Papua New Guinea with a

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[2]   'Refugee plan may backfire, says Ruddock', *Sydney Morning Herald*, 6 December 2001, p. 1.

request to increase the numbers in the Lombrum Naval Base camp by 784, to a total of 1,000. By the end of January 2002, Australia had diverted or was about to divert 2,350 asylum seekers from Australian waters to Pacific detention camps. There were 1,118 in Nauru, and plans to lift the numbers from 216 to 1,000 in Papua New Guinea. Palau still remained as a possible third site. By then, New Zealand had processed the 150 *Tampa* people it had received in September and decided to accept nearly all of them as citizens after they were found to be *bona fide* refugees.

ETHICAL QUESTIONS

Now that the 'Pacific solution' has become an ongoing arrangement for Australia's 'border protection' rather than a short-term political expedient for re-election, it is important to examine the ethics of the 'Pacific solution' more closely. The issues may be usefully considered under three headings: Australia's denial of responsibility and the attempt to transfer responsibility to Pacific societies; the denial of rights for asylum seekers; and the way in which the Howard government has represented the 'Pacific solution' to Pacific governments, on the one hand, and the Australian public, on the other.

Transferring responsibility

The ethical issues involved in the Australian government denying responsibility for asylum seekers who arrive in its waters are compounded by the issues attending the attempt to transfer that responsibility to others. If Australia's approach to Timor was greeted with disbelief, the approach to Nauru the following day seemed to confirm that the Australian government was fixated on solving its own problem without any regard for the vulnerable societies to which it was seeking to transfer it. It was impossible to disguise the obvious. Here was one of the world's richest and most politically stable countries seeking to offload a 'problem', which it had sold to its own public as beyond the capacity of Australia to deal with, to a bankrupt country which is among the smallest island countries in population (8,000) and size (20 square kilometres in circumference). Although not as vulnerable or as desperate as Timor and Nauru, the other Pacific countries that the Australian government has approached all have little capacity to deal with such an influx. In Fiji's national debate on the Australian proposal, concerns were voiced about local capacity given other urgent priorities in the fragile post-coup environment. The leader of the Soqosoqo ni Vakavulewa ni Taukei Party, Filipe Bole, argued that 'Fiji had its own internal refugee problem that had to be sorted out before it could accommodate refugee-processing centres for other countries'.[3]

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[3] 'No to Afghan asylum seekers, Fiji government warned', *The Sun* (Suva), 20 October 2001.

Kiribati, Tuvalu and Palau each have small populations and few resources, including very limited water supplies. Papua New Guinea, although very rich in resources and with a much larger population (around five million), also lacks the administrative capacity to deal with this issue and has other urgent and fundamental priorities, especially public order and internal security.

The vulnerable and small societies of the Pacific did not just *happen* to be approached by Australia; they were approached *because* they were vulnerable and dependent on Australia. It is no coincidence that Nauru was approached first. President Harris had serious cash flow problems and his government was under threat of a no-confidence motion. The Howard government knew he would be amenable to an Australian approach to take on its problem. The abuse of power involved in this attempt to exploit a region of small states which it saw as susceptible to its will was compounded by another aspect of the transfer of responsibility: the offer of economic assistance in return for taking in asylum seekers. Fiji's Labour Party leader, Mahendra Chaudry, has described the offer of money to the Fiji government in return for a detention centre as 'a shameful display of cheque book diplomacy' and as 'tantamount to offering a bribe'.[4] Australia's approach to several Pacific countries, together with the known offers of economic assistance, prompted the Director-General of the Pacific Forum Secretariat, Noel Levi, to warn that Australia was creating a 'market in refugees',[5] and the Pacific Conference of Churches and other regional non-governmental organisations to issue a 'joint statement' in which among other things they expressed their concern that 'accepting the Australian aid deals will make Pacific Island Governments part of the process that solicits money/profits out of trade in human trafficking'.[6] For Nauruan Member of Parliament, Anthony Audoa, it was encouraging the Pacific Islands to act like prostitutes:

> I don't know what is behind the mentality of the Australian leaders but I don't think it is right. A country that is desperate with its economy, and you try to dangle a carrot in front of them, of course, just like a prostitute, if you dangle money in front of her, you think she will not accept it? Of course she will, because she's desperate.[7]

4   *Fiji's Daily Post*, 27 October 2001.
5   Mark Forbes, 'Pacific refugee plan under fire', *The Age*, 30 October 2001.
6   'Refugees in the Pacific', Joint Statement by the Pacific Conference of Churches, Pacific Desk of the World Council of Churches, Pacific Islands Association of Non-Governmental Organisations, Pacific Concerns Resources Centre, Pacific Theological College, Pacific Foundation for the Advancement of Women, Foundation for the Peoples of the South Pacific, Ecumenical Centre for Research and Advocacy, South Pacific Association of Theological Schools, Suva, 26 October 2001.
7   'Nauru MP Audoa likens asylum seeker deal to prostitution', Radio Australia, 12 December 2001.

The government's ethical defence of its actions in transferring responsibility for its problem to the small Pacific states is that the Pacific leaders had given their consent. Leaving aside the question already considered of whether that consent was given in a context of vulnerability, there are serious problems with the Australian government's approach to gaining consent. In the case of the two countries that have actually become part of the 'Pacific solution' there was almost no time given for the leaders to consult their colleagues, their parliaments or their societies on such a major issue. Driven by domestic political motives, Australia was asking for an immediate decision from President Harris on an issue that had massive implications for his small island. The fact that the Nauruan population heard about the decision on the BBC and not from its own government was a source of considerable dissension in Nauru.[8]

In the case of Papua New Guinea the haste associated with the deal for domestic consumption in Australia meant that the announcement of the arrangement was made in Canberra by the Australian Prime Minister before it was made in Port Moresby. This prompted Sir Michael Somare to describe Australia's approach as 'neo-colonialism'. The Foreign Minister, John Pundari, after being sacked by the Prime Minister for sending a letter to the Australian High Commissioner rejecting a request to increase the number of asylum seekers coming to PNG, stated that the Prime Minister had 'treated him with contempt' by not consulting him when making the initial commitment to Australia.[9] At the provincial level too there has been considerable concern about having the detention centre foisted on Manus without debate about the implications of such matters as the security of the local people.

Nor was the issue discussed at the regional level, an oversight of particular concern to the Director-General of the Pacific Forum Secretariat. The Australian government had created an appearance of Pacific-wide policy and Pacific-wide consent in its very use of the term 'Pacific solution'. And yet there has been no attempt to consult the regional forums where the officials and leaders of the islands confer on issues of mutual concern.

There are also ethical issues involved in the way in which in attempting the urgent transfer of responsibility at any cost, the Australian government was willing to go against its own established principles in its approach to Pacific policy. In particular, it was willing to forego its support for good governance, democracy and sustainable development, the cornerstone of its economic assistance policies. The most obvious

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[8]   Claire Miller, 'Paradise lost? Nauruans begin to question deal', *The Age*, 19 October 2001.
[9]   'Former Foreign Affairs Minister Pundari accuses PNG PM Morauta of double standards', *The National*, 5 November 2001.

case is Nauru. There has been concern among those critical of the Harris government's mismanagement that Australia's bailing out of the government meant that it did not have to face up to its political consequences.[10] In relation to Fiji, too, some were critical of Australia lifting post-coup sanctions just days before seeking Fiji's assistance with its asylum seeker problem. Some saw this as foregoing the 'good governance' principles that Australia had earlier espoused. In her letter to Prime Minister Howard, Beatrice Dindillo, National Secretary of the Papua New Guinea Timber and Construction Workers Union argued that:

> We are supposed to see the processing of human beings as some kind of industry assistance for PNG … It is clear that the Australian Government has now forfeited the moral high ground it cultivated in the past few decades … A new set of rules now applies that tie aid to the domestic issue of the day in Australia. It is a very clear message for PNG.[11]

Denying rights
The Australian government's attempt to transfer responsibility has also had implications for the rights of the asylum seekers transported to the Pacific detention camps on Australian naval ships. The right of the asylum seekers to enter Australia and have their claims investigated have been denied. They have then been transported to camps thousands of kilometres away. In the case of Nauru they have been transported to a country which is not a signatory to the 1951 Convention Relating to the Status of Refugees, a move that denies them the protection of the Convention. Papua New Guinea, although a signatory, has placed reservations on important provisions in the Convention which affect the rights of the detainees.[12] There were also accusations of forced removal of the *Tampa* asylum seekers from *HMAS Manoora* in Nauru. The Nauruan hosts called for a halt to unloading until Australia honoured its agreement that Nauruan observers could be on board as asylum seekers were asked to leave the *Manoora* to ensure that force was not used. In response to criticisms the Australian Defence Minister Peter Reith was reported as saying that he did not 'have a problem about using force if absolutely necessary'. Nauru's Secretary to Government, Mathew Batsiua, in referring to the issue, reportedly said 'that Nauru had been able to reinforce its opposition to forced disembarkations'. Prime Minister Howard said that Australia 'was respectful to Nauru's sensitivities … but there is no way these people are coming to

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[10] Miller, 'Paradise lost?'.

[11] 'Pacific solution shows who runs PNG: Union', *The National*, 13 December 2001.

[12] Oxfam Community Aid Abroad, *Adrift in the Pacific: The implications of Australia's Pacific refugee solution* (Fitzroy, VIC: Oxfam Community Aid Abroad, February 2002), p. 6.

Australia'.[13] Furthermore, there are important ethical issues concerning the rights of asylum seekers involved in the Howard government exporting its mandatory detention camps (unique among Western states) to the Pacific.[14]

The Australian government also affected the rights of the asylum seekers in the way it represented them to the Pacific governments as they negotiated their transfer. Pacific leaders were also aware of how these 'boat people' had been represented by the government in the Australian debate. These representations demonised the asylum seekers, making them out to be a security threat. This needlessly alarmed Pacific populations including the people on Manus Island and Nauru, in particular, and meant that the rights of the asylum seekers to be seen as victims of political persecution requiring humanitarian assistance, rather than as criminals, were denied.

Double dealing

Finally, there is a set of issues that arise concerning the way in which the 'Pacific solution' was represented to Pacific leaders, on the one hand, and the Australian public, on the other. The government's message to the Australian people was that this policy would provide an absolute guarantee that the *Tampa* asylum seekers, and other 'boat people', would not come to Australian territory. But its message to Pacific governments was very different. There, it was represented as a short-term measure. Under the agreements signed and verbal assurances given to Pacific leaders, the Australian government was to pick up the responsibility for the asylum seekers after processing. Australia guaranteed to the Papua New Guinea and Nauru governments that no-one would remain in their countries after they had been processed. That is, whether or not they were judged to be *bona fide* refugees, Australia guaranteed that 'no-one would be left behind'.

While some commentators pointed out the incompatibility of these contradictory messages before the November election the duplicity involved did not become fully clear until the processing of the *Tampa* asylum seekers neared completion on Nauru in January 2002. The Nauru government made it clear that it expected the Australian government to honour its agreement and take the processed people to Australia. For the Australian audience, Prime Minister Howard first tried the line of argument that some refugees 'could well remain in those countries'.[15] This was quickly dropped, however, once this new

[13] Craig Skehan et al., 'Tempers flare in scorching stalemate', *Sydney Morning Herald*, 4 October 2001, p. 3.

[14] Oxfam Community Aid Abroad, *Adrift in the Pacific*, p. 6.

[15] Craig Skehan, 'Nauru, we seem to have a problem', *Sydney Morning Herald*, 13 November 2001, p. 6.

message, which was in direct contravention of the agreement with the Pacific partners, filtered through to the Pacific. The Australian High Commissioner in Port Moresby had to assure a Papua New Guinea audience that (contrary to the Prime Minister's pronouncement) Australia would honour its agreement.[16]

The Australian Minister for Immigration then tried a different tack. In January 2002 when it was suggested by the United Nations High Commissioner for Refugees that Australia had a 'special responsibility' to take the refugees because it had taken the refugees to Nauru against their will, the Minister responded that Australia would only do its 'fair share', and that it had no special responsibility. He said that refugees could stay on in Nauru until other members of the international community could be persuaded to take them. Nauru's President Harris saw this pronouncement as contradicting his government's agreement with Australia. With the international community unsympathetic to Australia's position on the *Tampa* and the 'Pacific solution', this effectively meant that refugees would wait a long time on Nauru and it said nothing about those found not to be genuine refugees. Either way it meant that Australia had broken its agreement. Politically the Howard government cannot afford to now bring the *Tampa* people to Australia and yet it had guaranteed that 'no-one would be left behind' in order to achieve the agreement of the Pacific states. This double dealing, along with the excessive costs involved, is likely to ultimately see the undoing of the 'Pacific solution'.

CONCLUSION

For Australians used to hearing the Pacific described as a problem, whether as 'arc of crisis', a region of 'failed states' or as an area of corrupt mismanaged economies, the idea that the Pacific could provide a solution to an Australian problem is a novel one. The image of a protective shield of islands defending Australia from a security threat to its borders is however reminiscent of a much earlier depiction—that of H.V. Evatt's characterisation of the Pacific Islands at the end of the Pacific War as a 'defence shield' for Australia. Although Evatt's depiction was referring to possible military threat, and the 'Pacific solution' to asylum seekers, the rhetoric surrounding the imagery is very similar. The asylum seeker problem is presented as a security threat and the 'Pacific solution' as part of 'border protection'.

Behind this rhetoric of 'solution', 'protection' and 'security' however is a policy that has been developed without regard for the problems it imposes on other societies. In its exploitative use of the power relations

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[16] 'Australia assures PNG, Nauru it will honour refugees pact', *Post-Courier*, 15 November 2001.

between Australia and the Pacific Islands the policy is already being compared with the French, American and British use of the island territories for the testing of nuclear weapons. Like these earlier interventions, the Howard government has given no thought to the impact of 'dumping' its 'problem' on small, vulnerable and resource-less societies. The deception and manipulation of power relations involved in creating the 'Pacific solution' has also undercut the standing of the ethical principles that Australian governments have long espoused as the desirable normative order in the Pacific Islands region—a respect for human rights, good governance and democracy. The 'Pacific solution' is built on a denial of the protection and security due to asylum seekers who have come to Australia's shores. It has also involved the propping up of 'bad governance' in return for accepting asylum seekers. And in the way in which the Australian government negotiated to transfer its ethical responsibility to Pacific societies, it showed a contempt for processes aimed at gaining consent, not least in deceiving Pacific leaders about whether that transfer would be temporary or permanent.

Australia's refugee and humanitarian policies

JAMES JUPP

Over 600,000 refugees and humanitarian entrants have entered Australia since World War II as permanent settlers with a right to citizenship after a period of residence. With their locally born children they constitute about five per cent of the population, taking deaths and departures into account.

The term 'refugee' was first coined to describe those escaping from the French Revolution, but had no relevance for Australia until the rise of Nazism in the 1930s. The Evian conference in France in 1938 was attended by Australia among others and agreement was reached to assist those escaping from Nazism in Germany, Austria and Czechoslovakia. It was tacitly recognised that most of these people would be Jews. Australian officials registered scepticism on the grounds that they did not want a 'racial problem' introduced into their homogeneous British society. However a relatively generous quota was permitted and about 7,000 people arrived before the outbreak of war made movement impossible. It was agreed that the small Australian Jewish community would support them financially and the Australian Jewish Welfare Society was created for that purpose. There was considerable media and public criticism of 'reffos', much of it overtly anti-semitic. Even after the war was over, in 1947, a large majority in opinion polls rejected Jewish immigration, with many more favouring Germans.

The pre-war Jewish refugees were often very successful in business and the professions. Further migration came after the war as part of the displaced persons (DPs) program begun by the Chifley Labor government in 1947. The majority of DPs were not, however, Jewish, the largest numbers being Polish, Croatian, Hungarian, from the Baltic States and Ukrainians. The total brought in between 1947 and 1953 was 171,000. This was the first time that the Commonwealth had provided free and assisted passages for non-British immigrants. It began the process which eventually created a multicultural society. Further refugee intakes were organised in 1956 from Hungary and in 1968 from Czechoslovakia. All the post-war refugees were Europeans, as the White Australia policy still operated. Indeed, the Wartime Refugees Removal Act of 1949 was passed by the Labor government specifically to send back to Asia refugees from the Japanese war who were still living in Australia.

Policy so far had reacted to particular crises—the rise of Nazism, World War II, the Soviet conquest of eastern Europe and the reaction against this. Despite considerable prejudice against 'reffos' and 'Balts', government undertook to defend and justify these large intakes. This

was assisted by public opposition to communism and the bipartisan support exemplified in the close cooperation of Arthur Calwell, the first Minister for Immigration, with his Liberal successor Harold Holt. As immigration policy moved towards assisting non-refugee Europeans, the refugee program tended to merge into the overall strategy of increasing the labour force. While the DPs had been housed in camps and obliged to work at Commonwealth direction, this policy was relaxed for further intakes and was not applied either to British or to European immigrants.

Refugee policy was not controversial during the 1960s as it brought in escapees from European communism. Russian Christian refugees from China were also assisted by the Australian Council of Churches. There was full employment and refugees fitted into the economy as easily as other Europeans. Despite some serious psychological problems in the post-war intake, their main problem was seen as inadequate English. Another issue was the failure to recognise professional and skilled qualifications from non-British sources, but this too was common to many non-refugee immigrants. Much welfare work was undertaken by Christian and Jewish organisations with slowly increasing support from public funds. Refugees were often housed in reception centres and several of these were custom built to replace the former army huts used for the DPs. Those admitted to Australia were eligible for permanent residence and eventual citizenship, which refugees took up as quickly as possible.

Refugee policy began to change, and to become more controversial, with the victory of communism in Indochina, the ending of the White Australia policy and the collapse into dictatorship and civil war of several societies in the Middle East and Latin America, notably Lebanon and Chile. At the same time Australia ceased to be a full employment economy. In 1973 Australia ratified the 1967 Protocol to the United Nations (UN) Convention Relating to the Status of Refugees of 1951 (hereafter Refugee Convention), extending the scope of refugee assistance to cover recent events and the world outside Europe. Malcolm Fraser's Coalition government (1975–83) gave generous support both through the refugee program and through relaxed visa conditions. Between 1976 and 1986 the Vietnam-born population of Australia rose from 2,400 to 83,000; the Lebanon-born from 33,000 to 56,000; while the Chilean-born more than doubled to 19,000. This rapid increase from Asia, the Middle East and Latin America made a noticeable impact, especially in Sydney, and sparked off the controversies which were so significant from the early 1980s.

PUBLIC POLICY

Australian public policy towards refugees has been influenced by public opinion at home and events overseas. Until the 1980s there was a

bipartisan consensus that Australia, as an adherent to the 1951 Refugee Convention and 1967 Protocol, had a duty to admit a planned quota of refugees as part of its overall immigration program. Since 1973 intake has been universalised at the same time as refugee pressures internationally have shifted towards Asia, Africa and the Middle East. However, intake has not been exclusively or predominantly from those areas. The breakup of the Soviet bloc and especially of Yugoslavia in the 1990s, shifted the emphasis back to Europe. Between 1987 and 2000 Australia admitted 136,000 permanent settlers under its humanitarian programs. Of these, 34 per cent were from Europe, 31 per cent from Asia and 20 per cent from the Middle East. This mainly reflects the collapse of Yugoslavia. It is also attributable to the preference given to those who already have an Australian connection or sponsor and the absence of Australian migration posts in much of Africa or in Afghanistan, the two largest reservoirs of refugees in the world of the 1990s. Nevertheless some new sources were opened up in this period, notably from the Horn of Africa.

In the past, humanitarian programs largely responded to particular crises and opportunities, such as the reservoir of healthy young Europeans in the post-war camps of Europe, the Hungarian and Czech uprisings, the liberalisation of Soviet policy towards Jewish emigration, the Vietnam war and civil disorder in East Timor or Latin America. Eventually the program was rationalised to acknowledge that refugee situations were not likely to be transitory or to disappear. The humanitarian program has had four aspects since it became formalised in the 1970s. These are the refugee program, which has run at about 4,000 per annum for the past ten years; the special humanitarian program which was introduced in 1981 for those with a sponsor in Australia; the special assistance category which lasted from 1991 to 1999 for those with close family sponsors in Australia; and onshore protection visas for those already in Australia and eligible for refugee status under the Refugee Convention and Protocol. Numbers in these categories vary but overall Australia has maintained its humanitarian program level at 12,000 per annum over the past decade regardless of events elsewhere or resulting pressures.

Refugee program
The refugee category consists of those living outside their homeland, often in camps administered by the United Nations High Commissioner for Refugees (UNHCR). These are passed on by the UNHCR to Australian migration posts as part of an overall UN program for permanent resettlement of about 100,000 a year, of whom the great majority go to the United States. Only ten states are part of this program. Most other signatory states to the Refugee Convention receive refugees and asylum seekers on an ad hoc basis, often in much greater numbers than come to Australia. This planned program allows Australia

to choose who it will accept and to have a sound legal basis for doing so. In general Australia has not touched the huge refugee encampments of Africa or the Middle East and favours young, healthy and skilled applicants.

Special humanitarian program
The special humanitarian category also allows for a degree of selection and control, as it requires Australian sponsorship and financial support. It was especially useful to Christian and Jewish organisations seeking to bring in their coreligionists and also to those seeking family reunion from disturbed situations. Those coming to Australia are entitled to the same services as refugees but must finance their own travel, often with assistance from their sponsors. They do not, therefore, place a major burden on Australian taxpayers.

Special assistance category
The special assistance category was introduced by Bob Hawke's Labor government in 1991 mainly to deal with the post-communist crisis in Europe. It was predominantly used by families from the former Yugoslavia. The Liberal Opposition criticised the program as too gene-rous and abolished it on becoming the government in 1996 except for admissions already in the pipeline. A major beneficiary were Bosnians, who increased their numbers in Australia by about 15,000 during the 1990s.

Onshore protection
The fourth category, onshore protection, is at the core of current controversy. It applies to those already in Australia but seeking to change their status or to be given asylum. In effect there are two different classes involved—those who have entered on another visa, such as students or tourists, and those who arrive without a visa. The first arrive by air, the second by boat. They are treated quite differently. As it is impossible to get an airline ticket to Australia without a visa (other than for New Zealand citizens) those coming by air are 'lawful' as long as their visa is valid. If they apply for refugee status they are usually granted a bridging visa which allows them to remain in the community until their case is determined. Those arriving without a visa—usually by boat—are interned and do not enjoy freedom until their case is determined in their favour. Both categories are 'asylum seekers' within the terms of the 1951 Refugee Convention. Neither is 'illegal' but the arrivals without visas are 'unlawful'—a distinction which evades the media and most politicians. There is no such thing as an 'illegal refugee'.

The largest group to be granted onshore protection in recent years were the Chinese students present in Australia at the time of the Tien-an-men Square repression of June 1989. Some 20,000 people were

given protection after this was publicly promised by Prime Minister Bob Hawke. In an atmosphere of panic, various devices were adopted to limit the rights of the Chinese students, including temporary protection instead of permanent residence, which was later abandoned. Most remained in Australia and many have been successful in business and skilled jobs.

CHANGING POLICY AFTER 1996

During the Labor government (1983–96) immigration levels remained relatively high, with the family reunion component being the largest. Refugee and humanitarian intakes responded to various crises but remained below the 20,000 per annum briefly reached following the Vietnam war. The major review of policy—the FitzGerald report[1] of 1988—recommended a total intake level of 150,000 per annum with an emphasis on skilled qualifications. It also suggested that Australia might reduce its humanitarian commitment in the light of peace in Indochina and stabilisation of the Asia–Pacific region. Both objectives were over-optimistic—the increased level was never reached and the refugee situation in other parts of the world became much worse.

Changes in policy were influenced by several factors even before the change of government. One was the breakdown of consensus on multiculturalism, Asian migration and the size and components of the immigration program. The Fraser Coalition government had carried out policies which Labor broadly accepted, especially in institutionalising multiculturalism and developing a generous and planned humanitarian program. This inheritance was challenged from outside the party system by zero population advocates in the Australian Democrats and the 'green' movement. More significantly it was also challenged by economic rationalists and social conservatives within the Liberal and National parties, most notably by the party leader John Howard. A strong backlash against multiculturalism developed which influenced some politicians in the Labor Party and became almost conventional among Liberals associated with Howard, rejecting the Fraser inheritance of multiculturalism and a generous humanitarian program.

Over the next few years a broad attack developed—multiculturalism was divisive; immigration levels were too high; too many immigrants were 'non-traditional'; family reunion should be reduced as it was not economically productive; services to immigrants should be on a 'user pays' basis with full cost recovery; humanitarian programs should be limited to 'genuine refugees'. Some of these arguments were adopted by Labor ministers especially after Hawke was replaced by Paul

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[1] *Immigration: A commitment to Australia*, Report of the Committee to Advise on Australia's Immigration Policies (Canberra: AGPS, 1988).

Keating in 1991. A shift in public opinion and within the Department of Immigration began which was less sympathetic to mass migration. Eventually, in the general election of 1996, Pauline Hanson was elected on an extreme version of these critical positions and went on to form the One Nation Party which secured one million votes in 1998.

In some respects there was policy continuity after the change of government in 1996. The 'user pays' principle had been extended to language and other settlement services by Labor. One difference was that under the Coalition government the waiting period for entitlements to general social services was extended from six months to two years. None of this applied to humanitarian entrants. The practice of mandatory detention for 'boat people' was introduced by Labor's Minister for Immigration Gerry Hand in 1991. It was substantially extended under the new government but on the same principle that asylum seekers without visas should not remain free in the community. The principle enshrined in the 1951 Refugee Convention—that asylum seekers should not be imprisoned or punished for entering a signatory state without a visa—was breached in practice despite successive ministerial claims that detention camps were not prisons. It was, however, a crime to resist internment or to escape. Camps at Port Hedland and Derby in Western Australia, and Woomera in South Australia, were so remote that escape was highly improbable and legal and media access difficult and expensive. A major problem has been the detention for long periods of time of those not deemed to be refugees but unable to be deported.

Labor introduced the principle of mandatory detention and has limited its criticism to its administration by a private security and prison company, a Coalition government innovation. Australia is unique in enforcing mandatory detention for the entire period between arrival and eventual determination of asylum claims. It is arguably in breach of other conventions by its detention of children, including unaccompanied minors. Growing criticism of detention from 1999 has also increased the extent to which ministers have demonised the inmates as a means of diverting media attention and public concern. By mid-2001 this had become a major political issue. While majority opinion undoubtedly favoured detaining 'illegal' migrants, much informed opinion had become very uneasy. Currently critics have included the Catholic Bishops, the UN High Commissioner for Refugees, much of the 'broadsheet' print media, the Democrats and Greens, the Refugee Council of Australia and a broad range of migrant welfare groups.

Other innovations by the Coalition have included a marked shift from granting permanent residence over to temporary protection. This echoed the policy position of One Nation, although they wanted all refugees to be returned home 'when conditions improve'. Bosnians were granted permanent residence under Labor. Kosovars were only

granted short-term protection visas after the Prime Minister had over-ruled the total prohibition urged by Immigration Minister Philip Ruddock. Public opinion had been sympathetic to the Kosovars. In the subsequent crisis surrounding Iraqi and Afghan 'boat people' this was not the case. The Kosovar example has been used as a precedent for limiting visas for 'unlawful' asylum seekers to three years of temporary protection, even when refugee status has been granted. This is different treatment than for others in the humanitarian categories.

THE *TAMPA* CRISIS AND THE NOVEMBER 2001 ELECTION

The size of the overall humanitarian intake remained at about 90 per cent of that under Labor, but the number of onshore refugee visas issued to asylum seekers began to rise in line with increased arrivals by boat from Iraq and Afghanistan. Arrival by air from unstable situations was inhibited by the 'country at risk' principle which made it very hard to get a visa from sources thought likely to produce over-stayers or asylum seekers. Organised people smuggling through Indonesia raised boat people arrivals (mainly to Ashmore Reef) from an average of 1,500 in 1998 to a peak of 4,000 by 2001. These were all interned, making it necessary to open a new camp at Woomera and extend the existing camps at Port Hedland and Derby. As the 2001 election drew nearer government ministers began to express concern about rising numbers. This was taken up by sections of the media. One problem was that even those not granted refugee status from Iraq or Afghanistan could not be returned to those states, which were under United Nations sanctions. Another problem, experienced elsewhere, was that the right to appeal brought cases into the courts with consequent delay and expense but without securing the release of those interned until all avenues were explored.

The rescue in late August 2001 by the Norwegian vessel *Tampa* of 433 shipwrecked asylum seekers, and the refusal of the Australian government to allow them to land at Christmas Island, created a crisis with major repercussions on refugee policy and on Australia's reputation as a 'good world citizen'. Essentially the crisis was manufactured with an eye to the approaching election. The *Tampa* was seaworthy (although legally unseaworthy) and forcible transfer was possible without loss of life, though with considerable indignation from Norway and much adverse media comment around the world. A hastily assembled set of 'border protection' measures followed, with changes to the status of asylum seekers and the emergence of the 'Pacific solution' of removing them to the independent states of Papua New Guinea and Nauru, where they were interned pending processing.

Ashmore Reef, Christmas Island and Cocos (Keeling) Islands were removed from Australia's 'migration zone' so that boats landing there were deemed not to have entered Australia, rendering their passengers

ineligible for Australian asylum. The principle of 'border protection' was at variance with the Refugee Convention requirement to accept asylum seekers however they arrived. Those who nevertheless entered Australia 'unlawfully' were denied the right to permanent residence which had been extended to previous refugees and the right of access to settlement services or family reunion.

These dramatic changes had the desired effect of winning the 10 November 2001 election for Howard's Coalition government. It is not currently clear whether the organised flow through Indonesia has been stemmed as no international agreements have been achieved and the monsoon season has prevented further arrivals. Other small and poor Pacific nations have not been tempted with financial support to take asylum seekers for processing from the region's largest, richest and emptiest state. The UNHCR has criticised these arrangements as most unusual. Australia seeks to prevent any 'unlawful' asylum seekers from landing on Australian soil. Nor is it yet clear whether it will accept those judged to be 'genuine' refugees, nor what will happen to those not so judged. One hope held out by Minister Ruddock as the Taliban control of Afghanistan collapsed, was that refugee applications could now be rejected. His suspension of visa processing for Afghans was a major factor in riots at Woomera in December 2001 and January 2002. Another possibility, canvassed by Prime Minister Howard, was that Afghans could be returned and resettled at Australian expense. The costs of this operation greatly exceed what would have been spent under the existing mandatory detention system on Australian soil. These innovative policies are certainly not 'economically rational'. Nor are they notably humane.

Australia remains an adherent to the 1951 Refugee Convention and 1967 Protocol. Minister Ruddock has foreshadowed the 'collapse' of the system and its replacement by a more rigorous regime, a position originally raised in Europe by Austria under rightwing pressure. Australia's contribution to the world refugee crisis has become increasingly negative, with additional aid to UNHCR for Pakistan camps being less than five per cent of the cost of the post-*Tampa* operation so far. The consistent demonisation of the 'boat people'—including lies, innuendoes and evasions—helps to discredit the entire humanitarian program and to increase public hostility. Nor, with asylum seeker numbers running far below those experienced in Europe, is Australia likely to have much credibility in international attempts to control people smuggling and to reform humanitarian policy. These issues only came into the parliamentary arena in February 2002 and have already caused a shift in Labor policy on some points.

Statistics: Refugees and Australia's contribution

THUY DO[*]

The Australian government has consistently maintained that it accepts the second largest number of refugees per capita after Canada. At a public policy launch in November 2001, Prime Minister John Howard empathetically stated that Australia will 'retain a generous approach' to its refugee intake by continuing 'on a per capita basis to take more refugees than any country in the world except Canada'.[1] This claim is exclusively and selectively based upon the proposition that Australia is ranked second (in reality, third) among the ten countries that have formal refugee resettlement programs for which they set an annual refugee quota. In reality, however, a much larger number of countries accept refugees and asylum seekers but do not specify a yearly quota. When compared to these countries, Australia's fixed annual refugee and humanitarian intake of 12,000 is not as generous as the Australian government portrays. As the following tables indicate, in 2000, Australia ranked 32 in the world in the number of refugees it hosts. The top three were Pakistan, the Islamic Republic of Iran and Germany. On a per capita basis, Australia fared even worse, coming in at number 39, accepting three refugees for every 1,000 persons in the country. The refugee 'burden' clearly rests upon countries such as Armenia with 74.1 refugees for every 1,000 people of their own population, followed by Guinea with 52.4, and the Federal Republic of Yugoslavia with 45.9. Finally, when compared to 31 other industrialised countries, Australia was eighth, while Sweden came first, followed by Denmark, and then Germany. Not only is Australia's performance more average than generous, Australia is the only country in the world that has a policy of mandatory detention for all those arriving 'illegally'. This includes the detention of women and children while they await assessment of their refugee claims.

[1] 'Transcript of the Prime Minister, the Hon. John Howard MP, Superannuation and Savings Policy Launch, Sheraton Hotel, Brisbane', 5 November 2001, p. 3, <http://www.pm.gov.au/news/speeches/2001/speech1322.htm>.

Table 1: Actual annual number of refugees accepted by the ten countries that offer UNHCR a quota for resettlement by rank

Country/Territory of Asylum	1995	1996	1997	1998	1999	2000
USA	111,940	89,210	80,220	86,490	98,230	89,190
Canada	26,091	25,601	24,130	22,700	24,367	30,033
Australia*	**15,050**	**11,900**	**12,060**	**11,360**	**9,960**	**13,733**
Sweden	5,642	4,832	9,596	8,193	5,597	10,546
Norway	…	…	2,589	3,306	12,752	6,453
Denmark	19,931	6,387	4,940	4,442	4,305	4,388
Netherlands	7,980	8,806	6,630	2,356	1,507	1,808
New Zealand	900	870	630	920	1,500	1,023
Finland	473	571	790	619	496	467
Japan	90	…	…	10	158	140

Notes

(...) indicates that the figures for those years are unavailable, while (*) indicates that all or some of the number of refugees are in fiscal years.

1. United States: Numbers taken from *Refugees and others of concern to UNHCR: 1999 statistical overview* (Geneva: UNHCR, July 2000) (hereafter *1999 statistical overview*), Table V.20 and include family reunification plus recognised refugees under the 1951 Convention Relating to the Status of Refugees (hereafter Refugee Convention), (Table V.4). 2000 figure taken from *Refugees by numbers* (Geneva: UNHCR, 2001) and UNHCR, Geneva.

2. Canada: Numbers include government assisted refugees, privately sponsored refugees, refugees landed in Canada, and dependants of a refugee landed in Canada who live abroad. 1995 and 1996 figures given by UNHCR, Geneva. 1997–99 figures taken from *Facts and figures 1999 immigration review*, <http://www.cic.gc.ca/english/pub/facts99/4ref-01.html>. 2000 figure taken from *Facts and figures 2000 immigration review*, <http://www.cic.gc.ca/english/pub/facts2000/6ref-01.html>.

3. Australia: Numbers are in fiscal years (for example, 1995 is really July 1995–June 1996) and include refugee status, special humanitarian program, special assistance category, onshore humanitarian, and onshore refugees, <http://www.immi.gov.au/statistics/ refugee.htm>.

4. Sweden: Numbers taken from Table 3, 'Residence permits 1980–2000 to convention refugees, de facto refugees, in need of protection and refugees by humanitarian grounds', <http://www.migrationsverket.se/english/edetta/pdffiler/estatistik/tabe3.pdf>.

5. Norway: Numbers include residence permits granted to asylum seekers and resettlement refugees from the UNHCR. 1999 figure also includes refugees from Kosovo who were officially considered to be resettlement refugees, <http://www.udi.no/zengelsk/>.

6. Denmark: Numbers include those under its refugee status (A) category: Geneva Convention, de facto status, quota refugees, and refugee status granted on the basis of asylum applications lodged abroad, <http://www.udlst.dk/sjle6/nogle99/key29.htm>.

7. Netherlands: Numbers are representative of those asylum seekers recognised and admitted as refugees (A-status) and permitted to settle in the country, <http://www.immigratiedienst.nl/historie_asiel_verblijfsvergunningen>.

8. New Zealand: Data includes resettlement refugees plus recognised refugees under the 1951 Refugee Convention. See *1999 statistical overview*, Table V.20 and Table V.4. 2000 figure given by Population Data Unit, UNHCR, Geneva.

9. Finland: 1995–98 numbers include asylum/convention status and residence permits granted to asylum seekers (that is, those in need of protection, for humanitarian and other reasons) <http://www.uvi.fi/ruotsi/doc/taulukot/turvhake.html>, and family reunification for refugees in Finland, <http://www.uvi.fi/ruotsi/doc/taulukot/perhyhd2.html>. 1999 and 2000 numbers do not include family reunification, <http://www.uvi.fi/englanti/ajankoht.html>.

10. Japan: Numbers are taken from *1999 statistical overview*, Table V.20. 1999 figure provided by Population Data Unit, UNHCR, Geneva. Because Japan accepts such a small number of refugees, annual numbers are not always available. From 1978 to January 2001, Japan accepted a total of 10,666 refugees for resettlement and 265 people were granted refugee status (by applying in Japan) between January 1982 to January 2000. See Japan's Ministry of Justice at <http://www.mofa.go.jp/policy/un/pamph2000/refugee.html>.

Table 2: Actual annual number of refugees in 2000 accepted by the ten countries that offer UNHCR a quota for resettlement ranked on a per capita basis

Country/Territory of Asylum	Number of Refugees Actually Accepted in 2000*	2000 National Population (X 1,000)**	Refugees per 1,000 Inhabitants
Norway	6,453	4,469.0	1.44
Sweden	10,546	8,842.1	1.19
Canada	30,033	30,756.7	0.98
Denmark	4,388	5,320.1	0.82
Australia	**13,733**	**19,137.6**	**0.72**
USA	89,190	278,357.0	0.32
New Zealand	1,023	3,862.0	0.26
Netherlands	1,808	15,863.7	0.11
Finland	467	5,176.0	0.09
Japan	140	126,714.0	0.00

Notes

* Refugee numbers taken from government sources. Note, however, that the refugee figures given for both USA and New Zealand have been taken from *Refugees and others of concern to UNHCR: 1999 statistical overview* (Geneva: UNHCR, July 2000), Tables V.4 and V.20.

** Norway, Sweden, Canada, Denmark, Australia and Netherlands: Revised national population figures given by UNHCR, Geneva, which were taken from *World population prospects: The 2000 revision* (New York: Population Division, UN, 2001).

National population of other countries taken from *World statistics pocketbook* (New York: UN, 2001), Series V No. 21.

Data as at November 2000.

Australia: Refugee number in fiscal year 2000/2001.

Table 3: Total number of refugees in the top 40 asylum states, 1999 and 2000

Country/Territory of Asylum	Total Refugee Population (Est.)		Rank	
	end-1999*	end-2000**	end-1999	end-2000
Pakistan	1,202,000	2,001,466	2	1
Islamic Rep. of Iran	1,835,700	1,868,000	1	2
Germany	975,500	906,000	3	3
United Rep. of Tanzania	622,200	680,862	4	4
United States+	521,300	508,222	5	5
Yugoslavia, FR	501,300	484,391	7	6
Guinea	501,600	427,206	6	7
Sudan	391,000	414,928	8	8
Democractic Rep. of the Congo	285,600	332,509	11	9
China	293,300	294,110	10	10
Armenia	296,200	280,591	9	11
Zambia	206,400	250,940	16	12
Uganda	218,200	236,622	15	13
Kenya	223,700	206,106	13	14
Ethiopia	257,700	197,959	12	15
India	180,000	170,941	17	16
Algeria	165,300	169,656	18	17
United Kingdom++	129,300	169,354	24	18
Sweden++	159,500	157,217	20	19
Netherlands++	138,700	146,324	21	20
Nepal	127,900	129,237	26	21
Iraq	128,900	127,787	25	22
Canada+	123,300	124,732	27	23
Congo	39,900	123,190	41	24
Indonesia	162,500	122,618	19	25
Cote d'Ivoire	138,400	120,691	22	26
Thailand	100,100	104,965	28	27
France	129,700	102,508	23	28
Denmark++	69,000	71,035	33	29
Liberia	96,300	69,315	29	30
Yemen	60,500	60,545	35	31
Australia+	**59,200**	**57,658**	**36**	**32**
Switzerland	82,300	57,653	31	33
Central African Rep.	49,300	55,661	38	34
Malaysia	50,500	50,487	37	35
Norway++	47,900	47,693	40	36
Cameroon	49,200	43,680	39	37
Uzbekistan	1,000	38,350	100	38
Bosnia and Herzegovina	65,600	38,152	34	39
Rwanda	34,400	28,398	42	40

Notes

*Source: 1999 figures taken from 'Table 3. Top-40 asylum countries: Total refugee population, 1999 and 2000', *2000 global refugee trends: Analysis of the 2000 provisional UNHCR population statistics* (Geneva: UNHCR, May 2001).

**Source: 2000 numbers provided by the Population Data Unit, UNHCR, Geneva, 7 February 2002. The figures have not been rounded off to the nearest 100.

(+) indicates those countries UNHCR estimated number of refugees based on five years of refugee arrival/asylum seeker recognition.

(++) indicates those countries whose refugee population are based on ten years of refugee arrival/asylum seeker recognition.

1. Total refugee population: Includes persons recognised as refugees under the 1951 Convention Relating to the Status of Refugees, the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, the Statute of the Office of the United Nations High Commissioner for Refugees, and those granted humanitarian status and temporary protection.

2. Switzerland: Numbers include recognised refugees, persons accepted on a provisional basis and humanitarian cases.

3. The Federal Republic of Yugoslavia is composed of the Republic of Serbia and the Republic of Montenegro, and contains the provinces of Vojvodina, Kosovo and Metohija.

Table 4: Number of refugees per capita, 2000: Top 40 states by rank

Country/Territory of Asylum	Refugee Population end-2000*	2000 National Population (x 1,000)**	Refugees per 1,000 Inhabitants
Armenia	280,600	3,787.0	74.1
Guinea	427,200	8,154.3	52.4
Yugoslavia, FR	484,400	10,552.4	45.9
Congo	123,200	3,018.4	40.8
Djibouti	23,200	632.1	36.7
Islamic Rep. of Iran	1,868,000	70,330.1	26.6
Zambia	250,900	10,421.3	24.1
Liberia	69,300	2,913.1	23.8
United Rep. of Tanzania	680,900	35,119.3	19.4
Sweden++	157,200	8,842.1	17.8
Namibia	27,300	1,756.6	15.5
Central African Rep.	`	3,717.3	15
Gabon	18,000	1,230.1	14.6
Pakistan	2,001,500	141,256.2	14.2
Denmark++	71,000	5,320.1	13.3
Sudan	414,900	31,095.2	13.3
Germany	906,000	82,016.8	11
Norway++	47,700	4,469.0	10.7
Uganda	236,600	23,300.2	10.2
Bosnia and Herzegovina	38,200	3,977.1	9.6
Netherlands++	146,300	15,863.7	9.2
Gambia	12,000	1,302.7	9.2
Switzerland	57,700	7,170.4	8
Cote d'Ivoire	120,700	16,013.1	7.5
Kenya	206,100	30,668.7	6.7
Democratic Rep. of Congo	332,500	50,948.2	6.5
Guinea-Bissau	7,600	1,199.2	6.3
Nepal	129,200	23,042.7	5.6
Algeria	169,700	30,291.3	5.6
Iraq	127,800	22,946.2	5.6
Belize	1,300	226.3	5.7
Croatia	22,400	4,653.7	4.8
FYR Macedonia	9,100	2,034.0	4.5
Burundi	27,100	6,356.3	4.3
Canada+	124,700	30,756.7	4.1
Rwanda	28,400	7,608.9	3.7
Yemen	60,500	18,348.7	3.3
Ethiopia	198,000	62,907.8	3.1
Australia+	**57,700**	**19,137.6**	**3**
Turkmenistan	14,200	4,737.3	3

Notes

*Source: Population Data Unit, UNHCR, Geneva, January 2002. Data has been rounded off to the nearest 100.

**Source: *World population prospects: The 2000 revision* (New York: Population Division, UN, 2001).

(+)   indicates those countries whose refugee statistics are based on five years of refugee arrival/asylum seeker recognition.

(++) indicates those countries whose refugee statistics are based on ten years of refugee arrival/asylum seeker recognition.

1.   The Federal Republic of Yugoslavia is composed of the Republic of Serbia and the Republic of Montenegro, and contains the provinces of Vojvodina, Kosovo and Metohija.

Table 5: Number of refugees per capita, 2000: 31 industralised countries by rank

Country/Territory of Asylum	Total Refugee Population end-2000*	2000 National Population (x1,000)**	Refugees per 1,000 Inhabitants
Sweden++	157,200	8,842.1	17.8
Denmark++	71,000	5,320.1	13.3
Germany	906,000	82,016.8	11.0
Norway++	47,700	4,469.0	10.7
Netherlands++	146,300	15,863.7	9.2
Switzerland	57,700	7,170.4	8.0
Canada+	124,700	30,756.7	4.1
Australia+	**57,700**	**19,137.6**	**3.0**
United Kingdom++	169,400	58,830.0	2.9
Finland++	13,300	5,176.0	2.6
Austria++	17,100	8,211.0	2.1
Luxembourg	800	431.0	1.9
Belgium++	18,800	10,161.0	1.9
United States+	508,200	278,357.0	1.8
France	102,500	59,080.0	1.7
Slovenia	2,800	1,986.0	1.4
New Zealand+	4,900	3,862.0	1.3
Iceland++	200	281.0	0.7
Ireland++	2,500	3,730.0	0.7
Greece	6,700	10,645.0	0.6
Hungary	5,100	10,036.0	0.5
Italy	22,900	57,298.0	0.4
South Africa	15,100	40,377.0	0.4
Bulgaria	1,500	8,225.0	0.2
Spain++	6,700	39,630.0	0.2
Czech Rep.	1,200	10,244.0	0.1
Slovakia	500	5,387.0	0.1
Romania	1,700	22,327.0	0.1
Portugal	400	9,875.0	0.0
Japan	3,800	126,714.0	0.0
Poland	1,000	38,765.0	0.0

Notes

*Source: Population Data Unit, UNHCR, Geneva, 7 February 2002. Numbers have been rounded off to the nearest 100. Italy and Portugal: end of 1999 figures.

**Source: Sweden, Denmark, Germany, Norway, Netherlands, Switzerland, Canada and Australia: National population figures given by UNHCR, Geneva, which were taken from *World population prospects: The 2000 revision* (New York: Population Division, UN, 2001). Population data for other countries are taken from *World statistics pocketbook* (New York: UN, 2001), Series V No. 21. Population projections for 2000 were prepared by the Population Division of the United Nations Secretariat. Data as at 30 November 2000.

(+) indicates those countries whose refugee population has been estimated by the UNHCR on the basis of five years of refugee arrival/asylum seeker recognition.

(++) indicates those countries whose refugee population are based on ten years of refugee arrival/asylum seeker recognition.

Contributors

Thuy Do is a doctoral candidate in the Department of International Relations, Research School of Pacific and Asian Studies, Australian National University, Canberra. Her doctoral thesis explores the changing nature of refugee policy in Australia and Canada.

Alan Dupont is the Director of the Asia–Pacific Security Program, Strategic and Defence Studies Centre, Research School of Pacific and Asian Studies, Australian National University, Canberra. His most recent book is *East Asia imperilled: Transnational challenges to security* (Cambridge: Cambridge University Press, 2001).

Jean-Pierre Fonteyne is Senior Lecturer in the Centre for International and Public Law, Faculty of Law, Australian National University, Canberra. His area of speciality includes public international law, law of the sea and international refugee law.

Greg Fry is the Hedley Bull Fellow in the Department of International Relations, Research School of Pacific and Asian Studies, Australian National University, Canberra. His area of expertise focuses on the international politics of the South Pacific region.

James Jupp is the Director of the Centre for Immigration and Multicultural Studies, Research School of Social Sciences, Australian National University, Canberra. Dr Jupp is the General Editor of *The Australian people: An encyclopedia of the nation, its people and their origins* (Cambridge: Cambridge University Press, 2001).

William Maley is Associate Professor in the School of Politics, University of New South Wales, at the Australian Defence Force Academy, Canberra. Dr Maley is also a member of the Executive Board of the Refugee Council of Australia.