



Original Article

Controlling Irregular Migration in the Asia-Pacific: Is Australia Acting against its Own Interests?

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Abstract

Australia invests heavily throughout the Asia-Pacific region in mechanisms to control irregular people movements. Information has been leaked about conditions in the notorious detention centres on Nauru and Manus Island, and aspects of the Bali Process are well known and publicised, but the nature and extent of much of Australia's investment have not been widely aired or scrutinised. This article canvasses the range of Australia's engagement in irregular migration controls and discusses how policies initiated by it have influenced policies developed by other countries. The article considers the implications of Australia's irregular migration control efforts in the context of other forms of regional engagement. It points to inconsistency between Australia's irregular migration regime and other law and justice programs. It also considers the impact of the irregular migration regime on regional relationships and stability, and for the rule of law.

Key words: irregular migration control, Asia-Pacific, Australian policy, regional relationships, rule of law

1. Introduction

Maritime migration in the Asia-Pacific region, which is studded with islands and interlaced with customary sea routes, is an ancient tradition (Newland 2015: 2).¹ Nevertheless, maritime as well as overland migration flows are growing, and since 2012, the number of people entering countries in the region without legal permission to do so has increased (UNHCR 2015: 124–5). This reflects a range of factors. International labour migration, including irregular migration, is an increasingly important source of economic development (IOM 2012a: 4). The region also hosts many displaced or stateless individuals of concern to the UN High Commissioner for Refugees ('UNHCR')—7.7 million people in 2015.

Of the region's 52 countries, only 20 are parties to the UN Convention Relating to the Status of Refugees ('Refugees Convention') (UNHCR 2015: 122), and few have adopted legal and administrative frameworks for determining refugee status or providing protection (RCOA 2015: 1). Examples of countries that are major source, transit or destination countries for asylum seekers—and sometimes a mix of all three—that have not acceded to the Convention are India, Nepal, Sri Lanka, Bangladesh, Brunei,

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1. I am following Savitri Taylor (2015) in adopting UNHCR's operational definition of Asia and the Pacific. This includes Central Asia, East Asia and the Pacific, South Asia, Southeast Asia and Southwest Asia (UNHCR 2015: 125).

Myanmar, Indonesia, Malaysia, Thailand and Vietnam.

In the next section, I detail how Australia has responded to this regional context, reviewing the nature and extent of its offshore investment in irregular migration controls since 2001. In the following section, I discuss its influence in the region. I note the financial significance of its investment in detention centres on Nauru and in Papua New Guinea (PNG) for these countries, and the extent of its involvement in broader governance activities on Nauru. I also describe its support for regional law and justice programs. I argue that Australia has contributed to strong norm convergence in the region around treating irregular people movements as a security and policing issue, with the result that refugee protection norms have been sidelined or ignored. I then discuss opposition to irregular migration controls in the region and argue that the impact of Australian engagement has been to undermine regional stability and the rule of law.

2. The Nature and Extent of Australia's Investment in Regional Irregular Migration Controls

Although media coverage in Australia implies the country is the primary destination for all irregular migrants in the region, this is not the case, with labour migration in particular following diverse pathways. As a wealthy developed state and a party to the Refugees Convention, however, Australia does appear an attractive destination for asylum seekers and other irregular migrants. As a counterweight to this, it has invested heavily in mechanisms to reduce irregular migration throughout the entire region, with the primary goal of preventing irregular migrants from making their way to its shores. Its regional engagement to prevent irregular migration is long standing² but expanded rapidly after 2001 (Hugo et al. 2014). Conservative estimates indicate that in monetary terms alone, Australia spent over A\$2 billion in 2012–2013, over A\$3 billion in 2013–2014 and at least A\$1.2 billion in 2014–2015 (Spinks et al. 2013:

6–8).³ The Government's 2014–2015 budget papers project a gradual decline in costs associated with border protection, but it still envisages spending more than A\$1 billion in 2015–2016, and over A\$0.5 billion in 2016–2017 and 2017–2018. An UNICEF report suggests that the current policy model will in fact cost \$5.7 billion over the next 4 years (Davidson 2016). This is in the context of a decline in Australia's foreign aid spending to its lowest level on record (Tomar 2015).

Prior to Australia's heightened investment in irregular migration controls, many countries in the Pacific had few if any border controls. Even large Southeast Asian countries such as Indonesia, Thailand and Malaysia had highly permeable borders subject to variable and at times minimal regulation. That has been changing since 2001, partly reflecting global trends, but also in part a result of Australia's push for tougher border management. This push has had two main elements. The first is an offshore detention, processing and resettlement regime branded the 'Pacific Solution' that was inaugurated in 2001, terminated in 2008 and revived in 2012. It is based on bilateral agreements with individual countries. The second element is a cooperative agenda to reduce regional irregular migration instigated in 2002 through the Bali Process: a forum of 45 member countries, 17 observer countries and numerous international organisations, including UNHCR and the International Organisation for Migration (IOM).⁴

2.1. The Pacific Solution

The Pacific Solution involves intercepting people who attempt to reach Australia by boat without prior authorisation and turning their

2. Wesley (2007: 194) points out that Canberra and Jakarta, for example, have 'a long history of cooperation on irregular migration, dating back to the flows of Vietnamese refugees in the late 1970s'.

3. These figures do not include the 'on-shore' costs of detention within Australia and other domestic aspects of Australia's immigration control regime.

4. Figures are accurate as of November 2016 (www.baliprocess.net).

boats back or towing them into international waters. People may also be taken into custody on Australian naval or border protection vessels and may be transported to another country (Aston 2015; Kevin 2015). Those who do manage to land on Australian territory are transferred to the Pacific Island state of Nauru or—until recently—to Manus Island in PNG. By agreement with the governments of Nauru and PNG, asylum seekers and other irregular migrants have been detained in camps funded by Australia. Initially, these camps were managed by IOM, and refugee protection claims were assessed in some cases by UNHCR and in others by officials from Australia's Department of Immigration (Phillips 2012: 3; Taylor 2010: 76). A total of 1,637 people were detained offshore during the period 2001–2008. Of these, 1,153 were eventually resettled in Australia or another country, although only after many months and often years of trauma in the camps (Phillips 2012: 3–4, 6, 16).

Two years after closing the camps, the Australian Government began exploring the option of establishing a regional refugee 'processing centre'. It raised the possibility with numerous countries in the region and ultimately signed an asylum seeker transfer agreement with Malaysia and a new Memorandum of Understanding (MOU) with PNG (Phillips 2014: 4). After the Australian High Court found the agreement with Malaysia was unlawful,⁵ the Government signed an MOU with Nauru and a revised MOU with PNG allowing for the detention and processing of irregular migrants and the resettlement of refugees in these countries (Phillips 2014: 4–5). The arrangements

with Nauru continue, but PNG's Supreme Court ruled in April 2016 that the detention of asylum seekers on Manus was in breach of the PNG Constitution.⁶ While strongly emphasising the importance under PNG's Constitution of respect for individual liberty and other rights, the decision leaves open the possibility that PNG's Parliament could validly legislate to restrict these rights in the future.⁷ The Australian Government is currently funding construction of a new detention facility in PNG to house asylum seekers whose refugee claims have been rejected and who are to be deported (Tlozek 2016). Australia also has an MOU with Cambodia to allow for the resettlement there of refugees who have been detained on Nauru or Manus Island, but only five people have been resettled under this agreement. In November 2016, the Australian Government announced a 'one-off' agreement with the United States allowing for the resettlement of some refugees living on Manus Island. Earlier, in 2013, the Government had declared that no asylum seekers coming to Australia by boat would ever be settled in the country (Dastyari 2015: 670 and see 671). When it announced the US deal, it said it would legislate to ensure that such people would never be allowed to come to Australia, even as visitors after having been resettled elsewhere. This will have particularly significant implications for refugees with family living in Australia. Although it refuses to reveal details, the Australian Government is pursuing resettlement arrangements with other countries in the region (Bourke & Murdoch 2015).

Australia's bilateral arrangements with regional countries concerning irregular migrants are primarily focused on detention, processing and resettlement, but it has also entered into a wide range of border and customs management agreements with individual countries. I discuss these further later, after considering its involvement in the multilateral Bali Process.

5. At the time, Australia's migration legislation required that for the designation of another country as a regional processing country to be valid, that country had to have a legal framework for effectively assessing asylum seekers' protection needs and ensuring these needs would be met (*Plaintiff M70/2011 v Minister for Immigration and Citizenship* (2011) 244 CLR 144). After this decision, the legislation was amended to allow the Minister for Immigration to designate a country as a regional processing country on the basis of the national interest. Consideration of the national interest should include having regard to whether the country in question has provided assurances, which need not be legally binding, that it will consider whether a person transferred to the country is a refugee under the UN Refugees Convention and will refrain from *refoulement* (*Migration Act 1958* (Cth) s.198AB).

6. *Namah v Pato*. 2016. PGSC 13; SC 1497. Supreme Court of Papua New Guinea, 26 April 2016.

7. *Namah v Pato*, paras 41–55 (per Kandakasi J).

2.2. *The Bali Process*

The Bali Process was established to combat people smuggling, trafficking in persons and irregular people movements. It was an Australian initiative for which the country sought support among regional heavyweights such as Thailand and Indonesia (Wesley 2007: 192–5). As a result of strong diplomatic lobbying, Indonesia agreed to co-chair the Process and to host the first ministerial conference in Bali, but the agenda for that and other meetings during the first few years of the Process were carefully orchestrated by Australia (Wesley 2007: 194–9).⁸ In Wesley's (2007:199) view, the Process allowed Australia to 'multilateralise' its policy goals, 'in effect convert[ing] Australia's policy on irregular migration into regional best practice guidelines'. This has been achieved by enrolling individual countries in particular initiatives, and then jointly promoting them, as occurred with the inauguration of the Process itself, and also with model people smuggling legislation that Australia developed initially with China and that has been taken up—although not uniformly implemented—throughout the region (Wesley 2007: 199, & Taylor 2008: 67). The Process was bolstered in 2011 by a Regional Cooperation Framework and the establishment of a Regional Support Office in Bangkok the following year (Bali Process website: www.baliprocess.net). While these are managed by Australia and Indonesia and funded mainly by Australia (Petcharamesree 2016: 186), Kent (2012: 13) suggests that the Bali Process has become more genuinely multilateral and collaborative over time.

2.3. *Fortifying Borders*

Australia's attempts to reduce irregular migration in the region include securing national

borders and controlling people movements through technological innovations, intelligence and policing collaborations, and legislative and policy development; and elaborate arrangements for managing irregular migrants within particular countries. Through foreign aid and via IOM, it has funded reviews of border management systems in Fiji, Indonesia, Laos, Malaysia, Pakistan and PNG (Taylor 2008: 68). It has provided funding and infrastructure to implement more effective border management, and legal and policy personnel to draft new laws and policy frameworks throughout the region (IOM 2012b; Nethery et al. 2013: 95; Spinks et al. 2013: 23; Taylor 2008: 65–71). One result has been that standards for refugee assessment procedures promoted by Australia have been adopted in preference to higher standards formerly promoted by the UNHCR (Glazebrook 2014: 5; Taylor 2008: 65–7).⁹

Members of the Australian Federal Police (AFP), defence force personnel and personnel employed by the Department of Immigration and Border Protection collaborate closely with their regional counterparts, often working in-country in their counterpart offices (Barker 2014; Taylor 2008: 70; 2010: 79). The AFP maintains an investigation unit in Indonesia targeting people smuggling and has liaison officers based in Sri Lanka, Pakistan, Indonesia, Malaysia and Thailand (Spinks et al. 2013: 23). Significant numbers of AFP officers are deployed in Nauru and PNG, and Nauru's Police Commissioners have often been seconded from the AFP (Johnson 2015; Maclellan 2013: 9). Officers from Australia's Department of Immigration provide 'intelligence and compliance support' throughout the region and beyond, including in Jakarta, Hanoi, Colombo, Kuala Lumpur and Dubai (Spinks et al. 2013: 25–6). Customs and diplomatic posts have been created to focus on people smuggling issues in key countries, including Indonesia, Nauru and Sri Lanka (Spinks et al. 2013: 23–6; SSC 2002: para 11.74–5). Australia

8. See also Kneebone's (2014: 3, 4 and generally) account of the Bali Process and Australia's 'dominant influence' in it, as well as her claim that 'the Bali Process is intrinsically linked to Australian national policy on asylum seekers'. While emphasising the influence of Australia, Kneebone characterises the Bali Process as having 'hybrid origins', including in 'Regional Cooperation Processes' (5).

9. Although as noted earlier, many countries have still not developed formal processes for assessing refugee protection claims.

funds a regional Special Envoy to promote its border protection program, and it spends millions of dollars on what it describes as 'community engagement' campaigns aimed at deterring people from coming to the country irregularly. These campaigns include advertisements that highlight the dangers of the trip, as well as the miserable life that awaits irregular migrants in offshore detention camps (Barker 2014; Fletcher 2014). The Australian Secret Intelligence Service is also engaged in preventing maritime people smuggling in the region (Spinks et al. 2013: 24).

As well as the detention centres on Nauru and in PNG, Australia funds detention centres in Indonesia that are jointly run by Indonesia and the IOM (Nethery et al. 2013). Although the degree of control Australia exercises over the day-to-day management of these centres is less than on Nauru and Manus Island, the funding arrangements require the IOM to report regularly to Australia's Department of Immigration (Nethery et al. 2013: 96). Australia also funds the IOM and UNHCR to process and support irregular migrants and refugees living in the community in Indonesia, Nauru, PNG and Cambodia (Taylor 2008: 72–4; 2010a: 80–1; Kneebone 2014: 6; Nethery et al. 2013: 95).

3. Australia's Regional Influence

For Nauru and PNG, payments made by Australia to support the maintenance of their detention centres, as well as associated revenue from customs duties and visa fees, represent major revenue streams. In Nauru's case, this is the country's single largest source of income (DFAT 2014b). Linked aid contributions also make these countries highly reliant on supporting Australia's irregular migration control regime. Throughout the region, Australia's investment in border-related people controls is positioned within a much broader network of engagement. Much of this is directly tied to its border policies. Funding for public infrastructure projects or other forms of aid is often provided under or in association with an agreement for the establishment of a refugee detention centre or resettlement program. In its

2014 MOU with Cambodia, Australia agreed to bear all the costs associated with the resettlement of refugees. At the same time as the MOU was signed, it committed to providing an additional A\$40 million in development assistance to Cambodia over 4 years (Whyte 2015). In a 2013 MOU providing for the resettlement in PNG of asylum seekers found to be refugees, Australia agreed to cover all resettlement costs, and also to provide an additional A\$26 million in aid funding for Manus province on top of the A\$14 million already promised for the years 2012–2015 (Glazebrook 2014: 7), bringing Australia's total aid to PNG to around A\$0.5 billion (ToKunai 2013).¹⁰ Early MOUs for the establishment and running of the detention centre on Nauru included substantial aid commitments, representing at times almost half of Nauru's gross domestic product (Connell 2006: 58; Hamilton 2015; Maclellan 2013: 10). These MOUs also tied the provision of aid to the privatisation of state-owned enterprises and reduction in the size of Nauru's public service (Maclellan 2013: 6–7). The earliest 'Administrative Arrangement' with Nauru committed Australia to paying more than A\$1 million in outstanding hospital accounts owed in Australia by individuals from Nauru (Maley 2015: para. 2.2). Australian aid contributions continue to represent a sizeable proportion of Nauru's gross domestic product: almost 20 per cent in 2013–2014, with the total contribution increased in 2014–2015 (Robertson 2015).

Other activities commonly funded by Australia but not directly linked to controlling irregular migration relate to policing and the maintenance of public order, and to public sector management. Australia funds advisors to Pacific Island Nations under the Pacific Technical Assistance Mechanism. These advisors have been particularly active on Nauru, assisting with the creation of the country's first tax system as well as customs legislation (DFAT 2014a: 1–2). Between 2004 and

10. See also Sparrow (2016), citing a Human Rights Watch report that claimed Australia provided 'an estimated US\$460 m in development assistance [to PNG] for 2013–2014 ... [and] an additional \$556.7 m ... to support the Manus Island detention centre.'

2010, Australian Treasury staff managed all Nauru government expenditure (Maclellan 2013: 8). Following the resumption of the Pacific Solution in 2012, key roles within Nauru's Ministry of Finance were again funded by Australia and filled by Australians, including Deputy Secretaries for Revenue, Customs and Treasury (DFAT 2014a: 2). Until 2014, the most senior judicial officer in Nauru, as well as its Magistrate, were Australians. Although there was a period in 2013 during which Nauru's newly elected government was committed to filling senior public service roles with local staff, Australia's Department of Foreign Affairs and Trade expressed its confidence that this situation would be short lived and that 'donor-funded expertise' would again replace local staff (DFAT 2014a: 2¹¹). In 2014, Australian-funded Pacific Technical Assistance Mechanism advisers once again filled the roles of Deputy Secretaries for Revenue, Customs and Treasury, as well as Chief Accountant and Human Resources adviser (DFAT 2014a: 4). Australia funded the CEO and Operations Managers for power and water services of the Nauru Utilities Corporation (DFAT 2014a: 7), as well as a full-time fisheries advisor (DFAT 2014a: 8).¹² Australian personnel also assisted Nauru to revise its Crimes Act to include a chapter on domestic violence (DFAT 2014a: 8). Australia funds a Country Focal Officer within Nauru's justice sector to support efforts targeting domestic violence and it has committed \$5 million to support women's empowerment on Nauru through the program, 'Pacific Women Shaping Pacific Development' (DFAT 2014a: 8).

The AFP runs a Pacific Police Development Program, providing training in 'public order management' (DFAT 2014a: 9). In 2013–2014, Australia hosted a 'regional command control and coordination course' under the program (DFAT 2014a: 9). The Nauru Police

Force Police Capacity Program is a bilateral component of the Pacific Police Development Program and has involved training the Force in the use of an electronic case management system and providing 'mentoring' to police investigating the circumstances of a July 2013 riot at the immigration detention centre in order to determine the criminal liability of individual detainees (DFAT 2014a 9). Around 60 officers received training in the 2013–14 financial year (DFAT 2014a: 9).

Australia provides aid funding to the Pacific Association of Supreme Audit Institutions and the Pacific Islands Centre for Public Administration (DFAT 2014a: 5). It contributes funding to the Asia Pacific Forum to support National Human Rights Institutions in the region (HRC 2011). For many years, it has also provided support to Indonesia's law and justice sector. The Indonesia Australia Legal Development Facility ran for more than a decade, ending in December 2009. This was followed by the Australia Indonesia Partnership for Justice (DFAT 2010: 51). In PNG, Australia has committed funding up to A\$90 million for the 'Justice Services and Stability for Development' program, to run from 2016–2019 (DFAT 2015: 1). This builds on earlier law and justice programs involving a commitment since 2009 of more than A\$150 million (Australian High Commission 2014). All of these programs focus heavily on supporting the infrastructure for courts and justice processes generally, on judicial training and on strengthening judicial independence and the rule of law. A focus on violence within families and violence against women is also a priority area for the law and justice programs in Nauru and PNG.

3.1. Policing Rather than Protection

The initiatives outlined earlier take place against the backdrop of other regional and state-based mechanisms that regulate people movements. Responses to measures pushed by Australia have varied among different countries, among different actors within countries, and over time, as well as differing according to the particular policy initiative pursued.

11. See also 3, 'Progress towards objectives', and 4, 'Public Sector Management'.

12. Other than payment for running the immigration detention centre, selling international fishing licences is one of Nauru's limited sources of income, along with remnant phosphate mining and the aid monies it receives (DFAT 2014b).

There have also been regional policy initiatives in which Australia's involvement has been invited but has only been peripheral. In 2013, Indonesia convened a Special Conference on Irregular Movement of People, leading to the Jakarta Declaration on Addressing Irregular Movement of People (Kneebone 2014: 4). The Declaration was adopted by Ministers from 13 countries in the region, including Australia, and focuses primarily on border control (Taylor 2015: 9). In May 2015, the regional response to the stranding of thousands of Rohingya asylum seekers from Myanmar and Burma in the Bay of Bengal and Andaman Sea was led by Indonesia, Malaysia and Thailand—countries that initially refused the boats permission to land—with the result that at least 1,000 people died at sea (Newland 2015: 5, citing IOM figures). As Kneebone (2014: 3) argues, there is now a strong convergence in the region on treating irregular migration as a security issue, with a focus on policing rather than protection.

Dupont (2002: 9 & Kneebone 2014: 4–5) suggests that Southeast Asian countries traditionally viewed irregular people movements through a national security lens. This was reflected in the response of many countries to Indochinese refugees in the 1970s. Indonesian armed forces engaged in joint operations with Malaysia and Singapore to prevent refugees arriving in their territories (Missbach 2015: 34–5), and conditions for refugees in transit camps in Southeast Asian countries were often harsh.¹³ As indicated earlier, however, border control regimes in the wider region were fairly lax—where they existed at all—until 2001. The heightened focus on policing borders since then reflects global trends as well as internal politics, but a significant part of the impetus, and a considerable proportion of the personnel and finances to support it, has come from Australia. There has also been a notable increase in the regional use of immigration

detention. The UNHCR (2015: 122 and 124) points out that '[d]etention practices and other forms of restrictive asylum policies continue to spread [in the region], limiting refugees' access to basic services and socio-economic rights'. Although immigration detention was not unheard of, regional countries were not in the habit of routinely detaining irregular migrants until detention was pushed by Australia, with the support of international allies such as the United States and Canada, and international organisations including IOM (Wilsher 2012, xii; Missbach 2015: 75; Nethery et al. 2013, 96). By February 2013, 1,926 people were being held in Indonesia's 13 immigration detention centres, many directly financed by Australia (Missbach 2014). The UNHCR estimates that in 2015, there were over 7,000 people of concern to it in detention facilities in Southeast Asia and the Pacific (UNHCR 2015: 124). Thus, the increasing multilateralism that Kent identifies in the Bali Process buttresses its focus on securing borders and preventing irregular migration. At the same time, and despite the cooperative rhetoric favoured in Bali Process Statements, there is a heavy reliance on 'responsibility-shifting rather than burden-sharing' among member states (Kneebone 2014: 2 & 11; Schloenhardt & Craig 2015: 562).

Australia's contribution to the regional perception of irregular migration as a national security problem was evident at the announcement of an Australian-funded IOM program to review PNG's immigration laws in 2012, when PNG's Minister for Immigration described such laws as 'play[ing] a vital security role in ensuring well managed borders' (IOM 2012b). More strikingly, the fact that Indonesia, Malaysia and Thailand all initially refused to allow asylum seeker boats to land in May 2015 and, in Indonesia's case, actually towed boats out to international waters (Murdoch 2015), was clearly linked to the Australian example. Had Australia's policy been otherwise, and had travel onward from Southeast Asia been feasible for the asylum seekers, there would have been less incentive for Indonesia, Malaysia and Thailand to themselves adopt the turn-back policies.¹⁴ The

13. In relation to the main camp in Indonesia, see Missbach 2015: 34–5 and 41. Missbach also notes that in the late 1980s, Malaysia began 'pushing boat people back to sea', and Indonesian forces were reported to have 'fired on a refugee boat' (35 and 36).

'Special Meeting on Irregular Migration' convened later that month by the three countries recommended 'strengthening national law enforcement to combat people smuggling and human trafficking' (MFA Thailand, 2015: para 10(j)). It suggested greater coordination between law enforcement officers of different countries and the nomination of national contact points 'to enable early detection and alert as well as to facilitate prompt response and effective action against transnational smuggling and trafficking syndicates', and also the strengthening of existing regulatory mechanisms, including under the Bali Process (MFA Thailand, 2015: paras 10(j) and (k)). The rhetoric included reference to more constructive solutions as well, but these were lacking in detail, and no specific implementation plan was discussed. The Bali Process's 'Bali Declaration' (2016) is similarly focused on strengthening the capacity of countries to detect and prevent irregular immigration, despite also rather weakly 'encourag[ing]' member states to 'provide safety and protection to migrants' including asylum seekers and refugees (Bali Process 2016, para 3).¹⁵

3.2. *Opposition to Irregular Migration Controls and Unrest within the Region*

Throughout the region, communities and rights activists have expressed concern over the trend towards border fortification and punishment of those who breach the borders. Opposition to Australian initiatives dates from the inauguration of the Pacific Solution. When Australian officials first approached countries including New Zealand, East Timor, Nauru, PNG, Kiribati, Fiji, Palau, Tuvalu, Tonga and

France (in relation to French Polynesia) to ask them to participate in the 'Solution', reactions were mixed (SSC: paras 10.12–15). While Governments in some states, such as Kiribati, Nauru and PNG, responded positively, others were critical, and concerns were expressed by opposition politicians, NGOs, members of civil society and individuals (SSC: paras 10.12–23). Indonesia's President Megawati refused at that time to accept asylum seekers transferred from Australian custody and even to take phone calls from the Australian Prime Minister (Maley 2013; Wesley 2015). Fiji's Labour Party leader, Mahendra Chaudry, described Australia's offer of money in exchange for hosting a detention centre as 'a shameful display of cheque book diplomacy' and 'tantamount to offering a bribe' (SSC: para 10.21).

The construction and maintenance of detention centres on Nauru and Manus Island have been a particular focus of opposition from civil society, politicians and the courts in these countries. This opposition has become more entrenched and also more divisive as the impacts of the centres on the communities around them have increased. Although the Australian, PNG and Nauruan Governments argue the camps are a boon for local economies, the economic benefits have been unevenly distributed within PNG and Nauru, and a large proportion has flowed to overseas contractors and transnational corporations (Armbruster 2015; Callinan 2013; Callinan & Snow 2013; Maclellan 2013: 11). At the same time, the camps have caused inflation and food shortages (Armbruster 2015; Maclellan 2013: 7), and water shortages on Nauru (Maclellan 2013: 7). They have had negative effects on the environment. On Manus Island, waste from the detention centre and associated construction activities attracted infestations of black fly that damaged sago palms—a staple food for locals (Glazebrook 2014: 9). Protests against the camps have been staged by the communities where they are located. Customary landowners on Manus protested the construction of the centre there by obstructing access to dumps and gravel pits, and threatening to turn off water supplies (Glazebrook 2014: 9). Wage disparities between local and expatriate staff employed in

14. This was also true of the response of Southeast Asian countries to Indochinese refugees in the 1970s and 1980s.

15. This 'encouragement' may be seen to be qualified by the phrase at the end of paragraph 3: 'taking into account prevailing national laws and circumstances.' The 'need to grant protection for those entitled to it' and to 'strictly' respect the principle of *non-refoulement* (para 5) is affirmed but not supported by tangible commitments. Instead, member states are 'encourage[d]' 'to explore potential *temporary* protection and local stay arrangements for asylum seekers and refugees, *subject to domestic laws and policies*' (para 6, my emphasis).

the camps have fostered dissatisfaction and social unrest (Armbruster 2015; Callinan & Snow 2013). The centres themselves have been sites of distress and volatility (AHRC 2014, 2–4; Moss 2015; Phillips 2012: 5–6). There have been violent attacks on detainees, as well as on refugees living in the community on Nauru and in a transit centre on Manus Island. Locals, expatriate detention staff and police have all been implicated in these attacks (HRLC 2015: 3; Larking 2014: 1, 123; Maley 2015: para 2.3; Moss 2015; SBS News 2015c). Another source of unrest is the fact that while locals implicated in attacks on Manus Island have been arrested, expatriate staff have been flown out of PNG to avoid questioning (Hasham 2015; SBS News 2015b). PNG political commentator, Deni ToKunai, suggests that '[t]he predominant view in PNG is that Australia is conveniently shirking its responsibilities under international law at the expense of PNG and its people'. He continues:

Many Papua New Guineans cannot comprehend why people seeking refuge in Australia are being dumped in PNG. It's breeding a boiling resentment against Australia and the Australian people never before seen by this generation (ToKunai 2013).

When former PNG Opposition Leader, Beldan Namah, challenged the constitutionality of the Manus Island detention centre, Australia funded the PNG Government's defence (Whyte 2014). As noted earlier, the PNG Supreme Court has now ruled the detention centre unconstitutional, and Australia has announced an agreement with the Obama administration to settle some refugees in the United States, but the details are unclear, and it is not known whether the agreement will be honoured by the Trump administration. Negotiations between Australia and PNG to resettle refugees detained at the centre in other parts of the country met strident opposition within PNG. A number of refugees already resettled in the city of Lae have been assaulted and robbed, and one man is reported to be living on the streets (Doherty 2016). A challenge to the constitutionality of immigration detention in Nauru was rejected by its courts in 2013 (Dastyari

2015, 682–3), but community dissatisfaction with the detention arrangements and with resettlement of refugees on Nauru remains high.

3.3. *Undermining Regional Stability and the Rule of Law*

The breadth and depth of Australia's regional involvement in securing borders and reducing irregular migration are not widely publicised, and many of its activities are either secret or extremely difficult to access on the public record.¹⁶ The Department of Immigration and Border Protection refuses to disclose details of boat interceptions or even the fact that a boat has been intercepted (Schloenhardt & Craig 2015: 537, 544, 548, 556). Naval and border protection personnel face criminal charges and imprisonment if they reveal information about their work. People who work in or have access to Australian and regional detention centres are also prevented from speaking about conditions in the centres. Under the Australian *Border Force Act 2015* (Cth), anyone other than a health practitioner who discloses information obtained as a result of doing work for or providing services to the Border Force can be imprisoned for 2 years.¹⁷ This applies to contractors, sub-contractors, and officers or employees of foreign governments or public international organisations, and the Act specifies that it has extraterritorial application. In 2015, the UN Special Rapporteur on the Human Rights of Migrants, Francois Crépeau, cancelled a planned visit to Australia because the Government refused to guarantee that individuals who provided information to him about detention centres would be immune from prosecution under the Border Force Act. It also

16. In relation to the difficulty of obtaining clear financial costings, see Spinks et al. (2013: 1 and 21). Maclellan (2013, 10) points out that Australian budget papers in 2006–2007 and 2007–2008 'did not even reveal the amount of additional aid allocated for Nauru, stating that the figure [was] "not for publication"'.
17. The exemption for health practitioners was created on 30 September 2016 in response to a High Court challenge initiated by the advocacy group 'Doctors for Refugees' (Booth, 2016).

refused to facilitate access for Mr Crépeau to the Nauru and Manus Island camps (OHCHR 2015). Journalists and the Australian Human Rights Commission have been denied access to the camps (Larking 2014, 122). Statistics regarding the length of time that asylum seekers spend in detention are not provided by the Australian, Nauruan or PNG Governments, and it is difficult to uncover precise information concerning periods spent in detention (Dastyari 2015, 685). As Glyn points out, there is no plausible justification for the secrecy surrounding what happens in detention centres other than to protect the governments, employees and contractors involved from criticism or liability for how people there are treated (Glyn 2015; & Eames 2015, 7).

Secrecy also characterises the negotiations that the Australian Government has conducted with other countries for the establishment of detention centres and the resettlement of refugees. The Nauruan population was first informed of its Government's 2001 agreement to host a detention centre by hearing about the decision on the BBC, causing 'considerable dissension in Nauru' (Fry 2002, 27 & Maley 2015: para 2.1). On Manus Island, locals expressed dissatisfaction with the failure to consult them about the construction of the detention centre (Callinan 2013). When Australian and Cambodian officials met in Nauru in 2015 to discuss the deal to resettle refugees in Cambodia, Australia's Immigration Minister refused to provide any information to the Australian public or even to confirm that the meeting was taking place (Whyte 2015).

The secrecy that surrounds Australia's irregular migration controls conceals the exercise of extraordinary executive powers. For example, the *Maritime Powers Act 2013* (Cth) licences authorised personnel who are implementing Australian laws—including laws relating to customs, fishing and migration—to intercept, board and search boats in international waters and to arrest, detain and move those on board. The exercise of these powers is not limited by the principle of *non-refoulement* or other international laws, the rules of natural justice, or the laws or international obligations of another country (HRLC 2014, 2–6).¹⁸ An investigation

by Amnesty International suggests that 65 asylum seekers intercepted in 2015 en route from Indonesia to New Zealand were held for almost a week on an Australian Border Force vessel before being transferred onto two ill-equipped boats and directed to Rote Island in Indonesia. It is alleged that Australian personnel paid crew members US\$32,000 to take the asylum seekers to Rote Island (AI 2015: 4; LCARC 2015). These allegations, which implicate Australia in the commission of people smuggling offences, were the subject of an inquiry in the Australian Senate (LCARC 2015). The inquiry report has not yet been released, and the Government refuses to answer questions about the matter (Innis 2015).

Australia denies responsibility for what happens in detention centres in the region that it funds and manages. The people detained are denied access to Australian law. The Governments of Nauru and PNG have also denied responsibility on the basis that the Australian Government pays for and manages their camps. As noted already, the PNG Government's defence in the case challenging the constitutionality of the detention centre on Manus was funded by the Australian Government. When Australia's Human Rights Law Centre attempted to provide assistance to detainees in a separate case in PNG's National Court, arguing that the conditions of their detention were inhumane, it was denied access to the detention centre (HRLC 2015, 2).¹⁹ Meanwhile, an Australian barrister acting on behalf of detainees on Nauru in a case arguing that they are being detained unlawfully has been refused a visa to enter the country, even though he is admitted to practise in the Supreme Court of Nauru (Eames 2015, 7).

In its arrangements with Nauru, PNG, Cambodia and Sri Lanka, Australia has aligned itself with authoritarian regimes accused of corruption and serious human rights abuses. The funding it provides in exchange for

18. The amending legislation that was the subject of the HRLC's submission has now been enacted.

19. Regarding the denial of access to lawyers in the detention centre more generally, see *Namah v Pato*, above n.6, para 24, per Kandakasi J.

support on irregular migration is a source of strength for these regimes.²⁰ Australia's support for anti-people smuggling initiatives has included the supply of equipment and funding to Sri Lanka's police department, and not only to divisions dealing directly with people smuggling but also to the Criminal Investigation Department, which has been implicated within Sri Lanka in kidnappings, disappearances and torture (ABC 7.30 2015). Australia has also transferred Sri Lankan asylum seekers intercepted at sea to the Sri Lankan navy. It is alleged the asylum seekers were delivered by the navy into the hands of the Criminal Investigation Department (Scholtenhardt & Craig 2015: 555). As well as the provision of funding and the in-kind support discussed earlier, Australia has signed MOUs for the return of asylum seekers to other countries where individual freedoms are limited and minorities persecuted, including Afghanistan, Iran and Vietnam.

By encouraging constitutionally dubious behaviour that also breaches international law, Australia undermines respect for law and constitutionality. These are principles Australia frequently claims to be promoting in the region.²¹ The corrosive impact of Australia's irregular migration control regime on respect for the rule of law in the region appears to be accelerating. Nauru is a case in point. Its Government frequently relies on emergency powers (Saul 2014) and has ousted public service personnel seconded from Australia, members of the judiciary and its political opponents in parliament. In 2013, it sacked the Commissioner of Police, seconded from the AFP (Eames 2015, 8). In 2014, it revoked the visa of the country's Chief Justice, Geoffrey Eames, an Australian appointed by Nauru's former President. Prevented from travelling to Nauru, the Chief Justice was forced to resign (Eames 2015, 1). Prior to this, the Government deported the country's Resident Magistrate and Registrar of the Supreme Court, also an

Australian (Eames 2015, 1). While these measures might be characterised as a reasonable rejection of overweening neo-colonial power, they are widely regarded as also entrenching an unrepresentative and autocratic political elite in Nauru (Johnson 2015; Maley 2015, para. 3.3; Robertson 2015; Saul 2014; Sparrow 2016).

The Chief Justices of 11 Pacific jurisdictions issued a statement saying they had 'serious concerns about judicial independence and the operation of the rule of law in Nauru' (Eames 2015, 4). When Opposition MPs in Nauru expressed their concerns in the international media, they were accused of treason, expelled from parliament and arrested (Eames 2015, 5; SBS NEWS 2015a). Access to the Internet has now been restricted on Nauru (Eames 2015, 8; Johnson 2015). While New Zealand's Government suspended its funding for Nauru's justice sector because of concerns about 'democratic rights and the rule of law' (Anderson 2015), the Australian Government initially failed to respond at all. Australia's Foreign Minister eventually spoke with Nauru's President and reported to the Australian press her 'understanding' that 'the legal processes involving Opposition MPs in Nauru are progressing and judicial processes are being followed.' She added that she had 'received assurances ... that the rule of law will be upheld' and said that 'Australia's development assistance to Nauru ... is not under review' (Bishop in Anderson 2015). The response of the Pacific Islands Forum to the situation in Nauru was also muted. Although Forum foreign ministers met in Sydney in July 2015 when two of Nauru's Opposition MPs remained in custody, the issue was not on the agenda for discussion (ABC Pacific Beat 2015). Johnson (2015) argues that the failure to sanction Nauru represents a weakening of the Forum's founding commitments, including to strengthen the accountability of regional governments to their citizens.

Papua New Guinea is another example of a country in which respect for the rule of law has deteriorated, despite the independence shown by its Supreme Court. PNG's Government initially responded to Beldan Namah's

20. In relation to Nauru, see Maclellan 2013, 5–6, and in relation to both Nauru and PNG, see Sparrow 2014 and 2016.

21. For example, in sponsoring resolutions on National Human Rights Institutions at the UN, see HRC (2011).

legal challenge to its detention centre by legislating to limit constitutional protections of individual freedom. In doing so, it acted in a manner that typifies the Australian Government's behaviour, replicating its willingness to pre-empt court challenges by introducing new laws—including for the expansion of executive powers—with little time for public debate or parliamentary scrutiny.²² The implications for Australia, PNG and the region are troubling. One aspect of this was the perception in PNG that its Government was 'bending over backwards to accept Australia's asylum seekers at the expense of our Mama Lo – the Constitution' (ToKunai 2013). The wider implications of a governance culture based on executive power and secrecy, and in which the Australian Government is prepared to ignore wrongdoing—or to engage in it itself—in order to ensure that agreements to run detention centres are not jeopardised, were revealed in reports in 2015 of major corruption scandals in PNG. Garnaut (2015 & Sparrow 2016) points out that many of the scandals were 'closely connected with Australia, which has been accused of sheltering corrupt officials and turning a blind eye to laundered funds.'

It is inevitable, given the character of the border fortification regime that Australia is promoting, that it will have negative effects on the rule of law in countries in the Asia-Pacific region. Its approach to irregular migration is also undermining trust in Australia and the stability of regional relationships,²³ and is at odds with Australia's concomitant funding commitments to law and justice programs. How Australia's irregular immigration policies

interact with other forms of regional policy engagement has not been publicly explained or defended, but the former are inconsistent with other goals pursued in the region, including advancing the rule of law. There is considerable irony in Australia directing aid to law and justice programs, including to reduce violence in the family and against women, at the same time as it funds detention camps in which violence is rife, and that are designed to evade judicial scrutiny and to operate outside the purview of the law. Furthermore, although Australia has continued to spend money on law and justice programs, its spending on border fortification and detention centres has come at the cost of more constructive social enterprises. For example, Maclellan (2013, 11) points out that A \$375 million was redirected in 2012 from the aid budget to the cost of running Australia's detention centres:

The cuts hit core areas of economic and social development for the poorest communities across the islands region. Kiribati saw deferral of programs in water and sanitation and in school infrastructure; Samoa had deferrals in the health, education and governance programs; Solomon Islands had cuts to education and gender-equality projects and delays in rural education programs; Tonga had cuts to a climate change program.

4. Conclusion

Australia's approach to preventing irregular migration resembles that of other countries such as Canada, which has also funded anti-people smuggling initiatives in the Asia-Pacific, including 'Multiagency Port Intelligence Units' and training courses on people smuggling under the auspices of the UN Office on Drugs and Crime (UNODC 2012). The United States has adopted similar tactics in its region, financing Mexico to conduct deportations and to strengthen its southern borders so that it is now almost as difficult for irregular migrants from Central America to enter Mexico as it is for them to cross the Mexico–US border (Tuckman 2015). The EU and the United States also fund immigration detention centres in other countries (Nethery et al. 2013: 89). Regional convergence in Asia and

22. 'Government rushes new laws in response to High Court case', *Rights Agenda*, Human Rights Law Centre Bulletin, Edition 108, July 2015, p. 5. Reference is to the Migration Amendment Regional Processing Arrangement Bill (Medhora 2015). Regarding PNG, see *Namah v Pato*, above n.6, paras 22 and 53 (laws rushed through Parliament) and 41 (discretionary power of Minister for Immigration).

23. Speaking from a more general perspective, Davies (2015) argues that the 'absence of a meaningful regional policy means the issue of migration, whether by economic migrants or refugees, remains a source of continual tension between states'.

the Pacific around prohibition and policing at the cost of protection thus reflects broader trends based on treating irregular migration as a national security issue. As Heyman (2009, 44) describes it,

[s]ecuritization takes major public issues [such as immigration] from the ordinary world of political debate and shifts them to a framework [in which they are considered ...] fundamental threats to the continued existence of the very government and people themselves.

Heyman suggests that ‘securitisation’ ‘strengthens the central government, adding to its manpower, technologies of detection and force, and its impunity from public scrutiny and control; when we securitize a place or issue, we put it on a war footing.’ (45). While participating in global trends, Australia has gone further than other countries in its war against irregular migrants, demanding absolute impenetrability of its borders, and pushing the strengthening of border controls throughout the Asia-Pacific. This has had the effect of diverting much irregular migration to countries that were once primarily transit rather than destination countries, and also of containing people within their own countries, such as Myanmar, where they face violence and repression. It has also fostered a trend towards detaining irregular migrants, often in centres or camps where the conditions are physically and psychologically abusive.

These developments are at odds with Australia’s stated commitment to the rule of law within its own borders and in the region. They are also inconsistent with the country’s long-term interests in developing robust, trusting relationships with its regional neighbours. In its aggressive pursuit of a border control regime that prevents irregular migrants from ever arriving on its shores, it risks being perceived in the region as a neo-colonial bully (Sparrow 2014). At the very least, its response—as the UN High Commissioner for Human Rights has noted—‘has set a poor benchmark for its regional neighbours ... [Its] policies should not be considered a model by any country.’ (Ra’ad Al Hussein, 2015).

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References

- ABC 7.30 (Australian Broadcasting Corporation) (2015) ‘This is the evidence of Australia’s role in a regime of torture’. 3 August. Available at <<http://www.abc.net.au/7.30/content/2015/s4286235.htm>> (accessed 22 November 2016).
- ABC Pacific Beat (Australian Broadcasting Corporation) (2015) ‘Nauru concerns raised at Pacific Island Forum Foreign Ministers Meeting’. 10 July. Available at <<http://www.abc.net.au/news/2015-07-10/nauru-concerns-raised-at-pacific-islands-forum/6611370>> (accessed 22 November 2016).
- AHRC (Australian Human Rights Commission) (2014) *The Forgotten Children: National Inquiry into Children in Immigration Detention*, Australian Human Rights Commission, Australia.
- AI (Amnesty International) (2015) *By Hook or by Crook: Australia’s Abuse of Asylum-seekers at Sea*, Amnesty International, UK.
- Anderson S (2015) ‘Australia urged to follow suit as New Zealand suspends Nauru funds’. SBS News, 3 September. Available at <<http://www.sbs.com.au/news/article/2015/09/03/australia-urged-follow-suit-new-zealand-suspends-nauru-funds>> (accessed 22 November 2016).
- Armbruster S (2015) ‘Manus “failed” by detention centre economic benefits’. SBS News, 23 September. Available at <<http://www.sbs.com.au/news/article/2015/09/23/>>

- manus-failed-detention-centre-economic-benefits> (accessed 22 November 2016).
- Aston H (2015) 'Abbott government under fire for secret bid to hand back asylum seekers to Vietnam', *The Sydney Morning Herald*, 17 April. Available at <<http://www.smh.com.au/federal-politics/political-news/abbott-government-under-fire-for-secret-bid-to-hand-back-asylum-seekers-to-vietnam-201504-17-1mnlpb.html>> (accessed 22 November 2016).
- Australian High Commission - Papua New Guinea (2014) 'Information Sheet: Australia's Support to Law and Justice in Papua New Guinea as at 20 August 2014', Available at <<http://png.embassy.gov.au/pmsb/299.html>> (accessed 22 November 2016).
- Bali Process (2016) 'Bali declaration on people smuggling, trafficking in persons and related transnational crime', Attachment A to 'Co-Chair's Statement', Sixth Ministerial Conference of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, Bali, Indonesia, 23 March.
- Barker C (2014) 'Counter-people smuggling measures', in *Budget Review 2014-15*. Parliamentary Library of Australia, Research Paper Series 2013-14, May.
- Booth A (2016) 'Health workers exempt from immigration detention secrecy provisions', SBS news, 20 October. Available at <<http://www.sbs.com.au/news/article/2016/10/20/government-lifts-gag-doctors-over-speaking-out-asylum-seeker-treatment>> (accessed 22 November 2016).
- Bourke L, Murdoch L (2015) 'Coalition government in talks to resettle refugees in the Philippines'. *The Sydney Morning Herald*, 9 October. Available at <<http://www.smh.com.au/federal-politics/political-news/coalition-government-in-talks-to-resettle-refugees-in-the-philippines-20151008-gk4u5m.html>> (accessed 22 November 2016).
- Callinan R (2013) 'Divisions flare on island over detention centre', *The Age*, 30 July, p.6. Available at <http://newsstore.smh.com.au/apps/viewDocument.ac?sessionId=96CAB4E6418D18EA695B140D8DB8047B?sy=afr&pb=all_ffx&dt=selectRange&dr=1month&so=relevance&sf=text&sf=headline&rc=10&rm=200&sp=brs&cls=183&clsPage=1&docID=AGE130730P656K2FCTNL> (accessed 22 November 2016).
- Callinan R, Snow D (2013) 'Their island home: refugees may not find safe haven on Manus', *Sydney Morning Herald*, 27 July, p.5. Available at <<http://www.smh.com.au/federal-politics/political-news/their-island-home-refugees-may-not-find-safe-haven-on-manus-20130726-2qppb.html>> (accessed 22 November 2016).
- Connell J (2006) Nauru: the first failed Pacific State? *The Round Table: The Commonwealth Journal of International Affairs* 95(383), 47–63.
- Dastyari A (2015) Detention of Australia's asylum seekers in Nauru: is deprivation of liberty by any other name just as unlawful? *UNSW Law Journal* 38(2), 669–94.
- Davidson H (2016) 'Australia has spent \$9.6bn on asylum seeker policy in four years, says report', *The Guardian Australia edition*, 13 September. Available at <<https://www.theguardian.com/australia-news/2016/sep/13/australia-has-spent-96bn-on-asylum-seeker-policy-in-four-years-says-report>> (accessed 22 November 2016).
- Davies M (2015) 'Rohingya crisis: our selfish response isn't helping anyone, not even us', ABC, The Drum, 1 June. Available at <<http://www.abc.net.au/news/2015-06-01/davies--our-selfish-response-isn't-helping-anyone,-not-even-us/6510998>> (accessed 22 November 2016).
- DFAT (Commonwealth of Australia, Department of Foreign Affairs and Trade) (2014a) 'Aid Program Performance Report 2013–14: Nauru'.
- DFAT (Commonwealth of Australia, Department of Foreign Affairs and Trade) (2014b) Nauru Country Brief, 28 March. Available at <<http://dfat.gov.au/geo/nauru/pages/nauru-country-brief.aspx>> (accessed 22 November 2016).
- DFAT (Commonwealth of Australia, Department of Foreign Affairs and Trade) (2015) 'An Australian Investment to Support Law

- and Justice in Papua New Guinea: Justice Services and Stability for Development Investment Design'. January. Available at <<http://dfat.gov.au/about-us/publications/Pages/png-law-and-justice-jss4d-design.aspx>> (accessed 22 November 2016).
- DFAT (Commonwealth of Australia, Department of Foreign Affairs and Trade) (2010) 'Australia Indonesia partnership for justice: design document'. Attachment 1 to the Request for Tender. 31 July. Available at <<https://dfat.gov.au/about-us/publications/Documents/aipj-english.pdf>> (accessed 22 November 2016).
- Doherty B (2016) "No future for you here": Australia and PNG push to clear out Manus detainees', *The Guardian Australia edition*, 27 September. Available at <<https://www.theguardian.com/australia-news/2016/sep/27/no-future-for-you-here-australia-and-png-push-to-clear-out-manus-detainees>> (accessed 30 September 2016).
- Dupont A (2002) Refugees and illegal migrants in the Asia-Pacific region. In: Maley W, Dupont A, Fonteyne J-P, Fry G, Jupp J (eds) *Refugees and the Myth of the Borderless World*. 'Keynotes' (2): 9-15. Department of International Relations, Research School of Pacific and Asian Studies, Australian National University, Canberra.
- Eames GM (2015) 'Nauru and the rule of law'. Submission to the Select Committee on the Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru, Parliament of Australia, Submission 70. Available at <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regional_processing_Nauru/Regional_processing_Nauru/Submissions> (accessed 22 November 2016).
- Fletcher M (2014) 'I'm a conservative, but this asylum seekers comic is disgusting', *The Guardian Australia edition*, Opinion, 13 February. Available at <<http://www.theguardian.com/commentisfree/2014/feb/13/asylum-seekers-graphic-campaign>> (accessed 22 November 2016).
- Fry G (2002) The "Pacific Solution"? In: Maley W, Dupont A, Fonteyne JP, Fry G, Jupp J (eds) *Refugees and the Myth of the Borderless World*, pp. 23-31. 'Keynotes' no.2, Department of International Relations, Research School of Pacific and Asian Studies, Australian National University, Canberra.
- Garnaut J (2015) 'Papua New Guinea, hurt by commodities drop, on brink of Greek-style crisis'. *Sydney Morning Herald*, 6 August. Available at <<http://www.smh.com.au/world/papua-new-guinea-hurt-by-commodities-drop-on-brink-of-greekstyle-crisis-20150805-gis0dr.html#ixzz3hyv0RLx1>> (accessed 22 November 2016).
- Glazebrook D (2014) Papua New Guinea's refugee track record and its obligations under the 2013 Regional Resettlement Arrangement with Australia. In: *State Society and Governance in Melanesia (SSGM) Discussion Paper 2014/3*. Australian National University, Canberra.
- Glyn J (2015) 'Could immigration "secrecy" act trump mandatory reporting of abuse?' *Eureka Street* 25(11), 8 June. Available at <<http://www.eurekastreet.com.au/article.aspx?aid=45045#.V159XXmhdU>> (accessed 22 November 2016).
- Hamilton A (2015) 'Australia's "Stop the Boats" policy as iconic', *Eureka Street* 25(9). Available at <<http://www.eureka-street.com.au/article.aspx?aid=43742#.VmDkfHmhdU>> (accessed 22 November 2016).
- Hasham N (2015) 'PNG Prime Minister Peter O'Neill cracks down on Manus detention centre's Australian staff'. *The Sydney Morning Herald*, 5 August. Available at <<http://www.smh.com.au/federal-politics/political-news/png-prime-minister-peter-on-eill-cracks-down-on-manus-detention-centres-australian-staff-20150805-gis2nc.html>> (accessed 22 November 2016).
- Heyman JMC (2009) Ports of entry in the "Homeland Security" era. In: Martínez S (ed) *International Migration and Human Rights: The Global Repercussions of U.S. Policy*, pp. 44-59. University of California Press, Berkeley and Los Angeles, California.
- HRC (Human Rights Council) (2011) 'Resolution on national institutions for the

- promotion and protection of human rights: introduction by Australia', 17th sess, UN Doc A/HRC/17/L.18, 16 June.
- HRLC (Human Rights Law Centre) (2015) 'Manus Island PNG—the pacific non-solution'. *Rights Agenda*, Monthly Bulletin of the Human Rights Law Centre (108) Melbourne, Australia, July.
- HRLC (Human Rights Law Centre) (2014) 'Increasing power and decreasing accountability: submission to the Senate Legal and Constitutional Affairs Legislation Committee review of the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Seeker Legacy Caseload) Bill 2014* (Cth)', 31 October. Available at <<http://hrlc.org.au/new-migration-bill-would-allow-government-to-breach-international-law-and-side-line-the-courts-say-leading-human-rights-organisations/>> (accessed 22 November 2016).
- Hugo G, Tan G, Napitupulu CJ (2014) 'Indonesia as a transit country in irregular migration to Australia', Australian Government, Department of Immigration and Border Protection, Irregular Migration Research Programme, Occasional Paper Series 08/2014.
- Innis M (2015) 'Australia's policy on migrants questioned after smuggler says he was bribed to turn back', *The New York Times*, 21 June. Available at <http://www.nytimes.com/2015/06/22/world/asia/australias-policy-on-migrants-questioned-after-smuggler-says-he-was-bribed-to-turn-back.html?_r=0> (accessed 22 November 2016).
- IOM (International Organization for Migration) (2012a) *Regional Strategy for Asia and the Pacific 2012–2015*, Thailand: IOM Regional Office for Asia and the Pacific. Available at <<https://www.iom.int/sites/default/files/country/docs/AUP00548-RO-Bangkok-Regional-Strategy.pdf>> (accessed 22 November 2016).
- IOM (International Organization for Migration) (2012b) 'Papua New Guinea migration law to be reviewed'. Press Release, 9 November. Available at <<https://www.iom.int/news/papua-new-guinea-migration-law-be-reviewed>> (accessed 22 November 2016).
- Johnson G (2015) 'Nauru must be held to account for its human rights abuses'. *The Drum*, ABC Opinion, 30 June. Available at <<http://www.abc.net.au/news/2015-06-30/johnson-nauru-must-be-held-to-account/6580944>> (accessed 22 November 2016).
- Kent J (2012) 'The global governance of migration: contesting authority'. Draft paper prepared by the 2012 Cadieux-Léger fellow for the Department of Foreign Affairs, Trade & Development, Canada. Available at <https://www.academia.edu/2610792/The_Global_Governance_of_Migration> (accessed 22 November 2016).
- Kevin T (2015) 'Australia crosses another red line in Vietnam refolement', *Eureka Street* 25(7), 21 April. Available at <<http://www.eurekastreet.com.au/article.aspx?aid=43838#.VmDuZXmhcdU>> (accessed 22 November 2016).
- Kneebone S (2014) The Bali process and global refugee policy in the Asia-Pacific region. *Journal of Refugee Studies* 27(4), 1–23.
- Larking E (2014) *Refugees and the Myth of Human Rights: Life Outside the Pale of the Law*. Ashgate, UK.
- LCARC (Legal and Constitutional Affairs References Committee) (2015) 'Inquiry into the payment of cash or other inducements by the Commonwealth of Australia in exchange for the turn back of asylum seeker boats'. Parliament of Australia. Inquiry homepage <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Payments_for_turn_backs> (accessed 22 November 2016).
- MacLellan N (2013) What has Australia done to Nauru? *Overland* 212(03), 4–11.
- Maley W (2015) Submission to the select committee on the recent allegations relating to conditions and circumstances at the regional processing centre in Nauru. Parliament of Australia, Submission 10. Available at <http://www.aph.gov.au/Parliamentary_Business/Committees/>

- Senate/Regional_processing_Nauru/Regional_processing_Nauru/Submissions> (accessed 22 November 2016).
- Maley W (2013) 'Surrealist approaches to refugee policy', *Sydney Morning Herald*, 'Opinion', 4 July. Available at <<http://www.smh.com.au/federal-politics/political-opinion/surrealist-approaches-to-refugee-policy-20130703-2pc7s.html>> (accessed 22 November 2016).
- Medhora S (2015) 'Labor supports asylum bill but lambasts Coalition's partisan record on issue'. *The Guardian Australia edition*, 24 June. Available at <<http://www.theguardian.com/australia-news/2015-jun/24/labor-criticises-coalition-but-votes-in-favour-of-offshore-detention>> (accessed 22 November 2016).
- MFA Thailand (Ministry of Foreign Affairs of the Kingdom of Thailand) (2015) *Summary: Special Meeting on Irregular Migration in the Indian Ocean*. Bangkok, Thailand, 29 May. Available at <<http://www.mfa.go.th/main/en/media-center/14/56880-Summary-Special-Meeting-on-Irregular-Migration-in.html>> (accessed 22 November 2016).
- Missbach A (2015) *Troubled Transit: Asylum Seekers Stuck in Indonesia*. ISEAS Publishing, Singapore.
- Missbach A (2014) 'Refugees lost in transit in Indonesia', *newmatilda.com*, 7 April. Available at <<https://newmatilda.com/2014/04/07/refugees-lost-transit-indonesia/>> (accessed 22 November 2016).
- Moss P (2015) *Review into Recent Allegations Relating to Conditions and Circumstances at the Regional Processing Centre in Nauru*. Australian Department of Immigration and Border Protection. 6 February, Canberra.
- Murdoch L (2015) "'Some are already dead": Rohingya Muslims stranded at sea by Indonesia and Malaysia', *Sydney Morning Herald*, 13 May. Available at <<http://www.smh.com.au/world/some-are-already-dead-rohingya-muslims-stranded-at-sea-by-indonesia-and-malaysia-20150513-gh0f8j.html>> (accessed 22 November 2016).
- Nethery A, Rafferty-Brown B, Taylor S (2013) Exporting detention: Australian-funded immigration detention in Indonesia. *Journal of Refugee Studies* 26, 88–109.
- Newland K (2015) 'Irregular maritime migration in the bay of Bengal: the challenges of protection, management and cooperation'. International Organization for Migration & Migration Policy Institute, *Issue in Brief Series*, July.
- OHCHR (Office of the High Commissioner for Human Rights) (2015). 'Official visit to Australia postponed due to protection concerns', 25 September. Available at <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16503&LangID=E>> (accessed 22 November 2016).
- Petcharamesree S (2016) ASEAN and its approach to forced migration issues. *The International Journal of Human Rights* 20(2), 173–90.
- Phillips J (2014) 'A comparison of Coalition and Labor government asylum policies in Australia since 2001', Parliamentary Library Research Paper, Parliament of Australia: 2013-14, 28 February.
- Phillips J (2012) 'The "Pacific Solution" revisited: a statistical guide to the asylum seeker caseloads on Nauru and Manus Island', Parliamentary Library Background Note, Parliament of Australia: 4 September.
- Ra'ad Al Hussein Z (2015) 'Statement by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein at the interactive dialogue on the human rights of migrants'. Human Rights Council, 15 June, 29th session. Available at <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16076&LangID=E>> (accessed 22 November 2016).
- RCOA (Refugee Council of Australia) (2015). 'Improving refugee protection in Asia-Pacific: how Australia can make a practical difference', Sydney & Melbourne, Australia, July. Available at <http://www.refugeecouncil.org.au/wp-content/uploads/2014/08/Improving-Refugee-Protection-in-Asia-Pacific_20_Jul_2015.pdf> (accessed 22 November 2016).
- Robertson T (2015) 'Why we aren't more shocked by Nauru revelations'. *Eureka Street* 25(15), 4 August. Available at

- <<http://eurekastreet.com.au/article.aspx?acid=45266#.VI08VnmhcdU>> (accessed 22 November 2016).
- Saul B (2014) 'Constitutional crisis: Australia's dirty fingerprints all over Nauru's system'. *The Guardian*, Australia edition, 21 January. Available at <<http://www.theguardian.com/commentisfree/2014/jan/21/constitutional-crisis-australias-dirty-fingerprints-are-all-over-naurus-system>> (accessed 22 November 2016).
- SBS NEWS (2015a) 'Pacific will get climate cash: Bishop/Pacific Island Forum: NZ and Nauru set for a showdown'. 10 July. Available at <<http://www.sbs.com.au/news/article/2015/07/09/pacific-will-get-climate-cash-bishop>> (accessed 22 November 2016).
- SBS NEWS (2015b) 'PNG police may arrest Manus managers'. 29 July. Available at <<http://www.sbs.com.au/news/article/2015/07/29/png-police-may-arrest-manus-managers>> (accessed 22 November 2016).
- SBS NEWS (2015c) 'Rape allegations show Nauru too dangerous: refugee advocates'. 29 September. Available at <<http://www.sbs.com.au/news/article/2015/09/29/rape-allegations-show-nauru-too-dangerous-refugee-advocates>> (accessed 22 November 2016).
- Schloenhardt A, Craig C (2015) "Turning Back the Boats": Australia's interdiction of irregular migrants at sea. *International Journal of Refugee Law* 27(4), 536–72.
- Sparrow J (2014) 'Australia, the steroid-soaked neighbourhood bully of the Pacific', *The Guardian*, 27 January. Available at <<https://www.theguardian.com/commentisfree/2014/jan/27/australia-the-steroid-soaked-neighbourhood-bully-of-the-pacific>> (accessed 22 November 2016).
- Sparrow J (2016) 'In PNG and Nauru, Australia's immigration policy comes at the expense of democracy', *The Guardian*, 15 June. Available at <<https://www.theguardian.com/commentisfree/2016/jun/15/in-png-and-nauru-australias-immigration-policy-comes-at-the-expense-of-democracy>> (accessed 22 November 2016).
- Spinks H, Barker C and Watt D (2013) 'Australian government spending on irregular maritime arrivals and counter-people smuggling activity', Parliamentary Library of Australia, Research Paper Series 2013-14, updated September 2013.
- SSC (Commonwealth of Australia, Senate Select Committee on a Certain Maritime Incident) (2002) *Report of the Senate Select Committee on a Certain Maritime Incident*. 23 October. Available at <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Former_Committees/maritimeincident/index> (accessed 22 November 2016).
- Taylor S (2015) 'Refugee protection in the Asia Pacific Region', International Refugee Rights Initiative: Rights in Exile Programme. Available at <<http://www.refugeelegalaidinformation.org/refugee-protection-asia-pacific-region>> (accessed 22 November 2016).
- Taylor S (2010) The impact of Australia-PNG border management cooperation on refugee protection. *Local-Global: Identity, Security, Community* 8, 76–99.
- Taylor S (2008) Australia's border control and refugee protection capacity-building activities in the Asia-Pacific region. In: Babacan A, Briskman L (eds) *Asylum Seekers: International Perspectives on Interdiction and Deterrence*, pp. 63–81. Cambridge Scholars Publishing, UK.
- Tlozek E (2016) 'New transfer centre for detained asylum seekers set for construction, PNG Government says', ABC news, 18 October. Available at <<http://www.abc.net.au/news/2016-10-18/new-detention-centre-set-for-construction-says-png-government/7943842>> (accessed 22 November 2016).
- Tokunai D (2013) 'Asylum deal a nightmare for PNG and Australia'. *The Interpreter*, Lowy Institute Blog. Available at <<https://www.loyyinstitute.org/the-interpreter/asylum-deal-nightmare-png-and-australia>> (accessed 22 November 2016).
- Tomar R (2015) 'The ever-shrinking aid budget'. In *Budget Review 2015-16*, Parliamentary Library of Australia, Research Paper Series 2014-15, May 2015.

- Tuckman J (2015) 'Mexico emulates US policy on deporting refugees'. *The Guardian Weekly*, 23 October, p.12.
- UNHCR (UN High Commissioner for Refugees – Office of the) (2015). 'UNHCR Global Appeal 2015 Update'. Available at <<http://www.unhcr.org/5461e5f7a.html>> (accessed 22 November 2016).
- UNODC (UN Office on Drugs and Crime, Southeast Asia and Pacific) (2012) '*UNODC Migrant Smuggling Training Prepares Police for ASEAN 2015's Open Borders*', Bangkok: Media Release. Available at <<http://www.unodc.org/southeastasiaand-pacific/en/2012/12/som-aec/story.html>> (accessed 22 November 2016).
- Wesley M (2015) 'Australia must swallow its anger with Indonesia', *The Guardian Weekly*, 15 May, p.18.
- Wesley M (2007) *The Howard Paradox: Australian Diplomacy in Asia 1996–2006*. ABC Books, NSW, Australia.
- Whyte S (2015) 'Australia and Cambodia delegation make secret Nauru visit', *Sydney Morning Herald*, 13 January. Available at <<http://www.smh.com.au/federal-politics/political-news/australia-and-cambodia-delegations-make-secret-nauru-visit-20150113-12n37h.html>> (accessed 22 November 2016).
- Whyte S (2014) 'Manus Island: PNG court to decide whether detention centre inquiry can continue'. *Sydney Morning Herald*, 19 September. Available at <<http://www.smh.com.au/federal-politics/political-news/manus-island-png-court-to-decide-whether-detention-centre-inquiry-can-continue-20140919-10j4fi.html>> (accessed 22 November 2016).
- Wilsher D (2012) *Immigration Detention: Law, History, Politics*. Cambridge University Press, USA.