Who Gets To Stay?

Refugees, Asylum Seekers and Unauthorised Arrivals in Australia

Tess Rod &
Ron Brunton

Who Gets To Stay?

Refugees, Asylum Seekers and Unauthorised Arrivals in Australia

Tess Rod &
Ron Brunton

Current Issues
January 2002
Published by the Institute of Public Affairs

©2002 by the Institute of Public Affairs Limited. All rights reserved.

First published 2002 by the
Institute of Public Affairs Limited
(Incorporated in the ACT) A.C.N. 008 627 727

Head Office:
Level 2, 410 Collins Street,
Melbourne, Victoria 3000, Australia

Phone: (03) 9600 4744
Fax: (03) 9602 4989
Email: ipa@ipa.org.au
Website: www.ipa.org.au

National Library Cataloguing-in-Publication data:

Rod, Tess, 1948– .

Who gets to stay? : refugees, asylum seekers
and unauthorised arrivals

ISBN 0 909536 65 1

1. Refugees—Australia. 2. Refugees—Government policy—
Australia. 3. Asylum, Right of—Australia. 4. Illegal aliens—
Australia. 5. Emigration and immigration law—Australia.
6. Australia—Emigration and immigration—Government policy.
I. Brunton, Ron (Ronald), 1945– . II. Institute of Public Affairs (Australia).
III. Title. (Series : Current issues (Institute of Public Affairs (Australia))).

362.870994

Opinions expressed by the authors are not necessarily endorsed
by the Institute of Public Affairs.

Printed by ***Print Hotline***, 47 Milligan Street, Perth, WA 6000

Contents

About the Authors/Acknowledgements *iv*

Executive Summary *v*

Preface
Mike Nahan *ix*

Introduction 1

1. What Is the Current Situation? 3

2. What Are the Implications of Current Criticisms? 13

3. Why Does Australia Have a Refugee Program? 19

4. What Is Australia's Record? 31

5. What Has Changed? 41

6. Are Other Countries Doing it Better? 59

7. Whose Rights? 67

8. Should Illegal Entry Be an Obstacle to Legal Residency? 71

9. What Should Australia's Refugee Policy Be? 77

(Note: Endnotes appear at the end of each chapter)

About the Authors

Tess Rod has degrees in anthropology and economics and is currently a researcher with Encompass Research Pty Ltd. She previously held research or project management positions at the Bureau of Immigration, Multicultural and Population Research, the Bureau of Transport and Communications Economics, the Department of Social Security and the Special Broadcasting Service. She also taught anthropology at Macquarie University for a number of years. She is joint or sole author of a number of reports and papers on immigration, trade and communications, including ***Immigration and Trade with East Asia in the Food Industry*** and ***Immigrant Transfers and Remittances***.

Ron Brunton is an anthropologist who has worked in academia, politics, private industry and government. He lives on Queensland's Sunshine Coast, and runs his own company, Encompass Research Pty Ltd. He has written many articles on anthropological, environmental and social topics, and two books: ***The Abandoned Narcotic: Kava and Cultural Instability in Melanesia*** (Cambridge University Press, 1989) and ***Black Suffering, White Guilt?: Aboriginal Disadvantage and the Royal Commission into Aboriginal Deaths in Custody*** (Institute of Public Affairs, 1993). He also writes a fortnightly column for the Brisbane ***Courier-Mail***.

Acknowledgements

The authors are very grateful to officials from the Department of Immigration and Multicultural Affairs and Citizenship and Immigration Canada for providing all requested information and patiently answering questions. They also wish to thank Bob Birrell, John Hyde, Gary Johns, Mike Nahan, Owen Powell, Chandran Kukathas and others who commented on various drafts of this paper.

Executive Summary

Debate in Australia about the appropriate response to the increasing number of unauthorised arrivals has become bitterly polarised. The government and administrative agencies responsible for border control and processing of onshore asylum claims are under attack from various advocacy groups and media commentators for treating these people unjustly and violating their human rights. These critics claim that the unauthorised arrivals are not illegal immigrants—they are refugees deserving Australia's protection.

This discussion paper considers the dilemmas facing the Australian authorities, as well as the contradictions and inconsistencies in the arguments raised in the public debate, through examining published material and reportage on the issue. It must be made clear at the outset that both authors support a strong immigration program, with a robust humanitarian stream and acceptance of genuine onshore claims for asylum. Clearly, however, it is in the interests of the country as a whole that vigilant border controls be maintained against the entry of plant, animal and human diseases, illegal substances and armaments, and the expansion of criminal networks.

Australia is one of only 10 countries offering permanent resettlement for refugees on an annual basis. It has the third highest annual intake of refugees from overseas after the United States and Canada, and currently ranks second to Canada in terms of the proportion resettled relative to population. It has a good record of successful resettlement of immigrants and refugees, with most adjusting well to their new country and apparently well-satisfied with their decision to relocate here.

Australia is a signatory of the ***1951 Convention relating to the Status of Refugees***, but it is now widely recognised that the fifty-year-old Convention is no longer working effectively in the face of mass movements of people from the Third World. People-smuggling has grown in recent years to become a $10 billion a year industry. Western countries are currently expending a similar amount in attempts to deter these racketeers and to process claims for asylum from their clients who have been apprehended by authorities. Not only does this compromise the original intention of the Refugee Convention, but it also, unfortunately, diverts funding and

resources for assisting refugees in overseas camps as countries cope with domestic problems caused by inflows of illegal immigrants.

Australia's geographical location means that it is rarely a country of first asylum. The vast majority of those who enter our borders without authorisation have travelled through a number of other countries where they could have made a claim for protection. The arguments for and against government initiatives to control and deter the entry of these people can be summarised under four main issues: national sovereignty, the rule of law, administrative accountability, and procedural fairness.

- **National sovereignty—**In Australia, mandatory detention of unauthorised arrivals is questioned as contravening the right to personal freedom. Under the Refugee Convention, however, people crossing international borders without authorisation can be held in detention until their ***bona fides*** have been checked. If they claim asylum, refugee-receiving nations like Australia have developed their own refugee determination process to examine whether the individual has met Convention criteria, and have the right to exclude those who fail to meet the criteria. Critics of Australia's policy have suggested that Australia adopt a more 'humane' system, like the 'Swedish Model'. They fail to note, however, that Sweden does not have an immigration program, it uses a national identity card system to keep track of asylum seekers in the community, and the majority of claimants fail in their bids and are removed from the country. Furthermore, in Australia, most applicants for asylum who have compelling claims for protection spend less than two months in detention.

- **Rule of law—**Unauthorised arrivals tend to come from countries where the rule of law is less effective than in a country such as Australia where there is a general respect for the law. It is imperative, therefore, that Australia reinforce this respect for the rule of law by not rewarding illegal entry, especially where there is no genuine claim for protection, or detainees behave unlawfully. And the same principle should operate in judicial decisions when claimants are appealing against adverse findings—interpreting Convention criteria to cover an ever-widening array of personal circumstances also jeopardises community respect for the law.

- **Administrative accountability—**The authorities administering Australia's border controls and immigration procedures are castigated by critics for making decisions based on the credibility of claimants for

asylum. However, United Nations guidelines on refugee determination procedures stress that the onus of proof of a claim for protection rests with the claimant. And in cases where appropriate documentation is lacking (some applicants may genuinely lack such papers, but others are known to have deliberately destroyed them in an attempt to aid their claims) refugee decisions are heavily dependent on an assessment of the claimants' credibility. In addition, the authorities are accountable for their actions and their decisions before the law—refugee advocates and media commentators who criticise them are not. Unsuccessful refugee claimants can seek an independent review of an adverse decision. Unfortunately, Australia's multi-tiered system of review is being abused by some, in an effort to prolong their stay and make it more difficult to force them to leave. Most of the long-term detainees have exhausted their appeals but either refuse to co-operate with the authorities to facilitate their removal, or the countries of origin or previous residence refuse to take them back.

- **Procedural fairness—**In a country such as Australia, with proactive immigration and humanitarian programs, unauthorised entrants pose a double dilemma in that they attempt to circumvent both. And this raises issues of fairness in relation to those who are seeking legal entry into the country. Some critics deny that unauthorised entrants are 'queue jumpers', claiming that there is no 'queue' in overseas refugee camps. While there may be serious difficulties in establishing appropriate procedures in the chaotic conditions of some refugee camps, there is no shortage of candidates for resettlement.

Preface

Refugee policy has become one of the most contentious social and political issues in Australia.

It dominates talk-back radio, features heavily in the opinion pages and was a central issue during the 2001 Federal Election.

The debate is also highly polarised. If we look at the opinion polls, the general public strongly favours tight controls over our refugee intake—in particular to prevent 'queue jumping'. For them, the issue appears to be one of fairness and application of the rule of law. Our 'élites', on the other hand—journalists, academics, lawyers, authors and artists—demand fewer controls, more lenient treatment and greater numbers of refugees. For them, the issue is also one of fairness and of good international citizenship.

The refugee debate is not only driving a wedge between the masses and the élites—something which augurs poorly for the quality of democracy and debate—but has descended into an exercise in name-calling and posturing.

That this has come to pass is strange. First, by any measure, Australia has a first-rate record on refugees, whether it is in terms of intake, treatment, provision of opportunity or integration. This is not surprising given that Australia is a nation of immigrants, with 23 per cent of the population being foreign-born (in the next most immigrant-intensive country, Canada, the foreign-born make up only 16 per cent of the population). Second, the current policy stance has been developed in a bipartisan manner over the last few decades and, aside from sporadic complaints from a few refugee advocacy groups, has until recently been relatively non-controversial.

The situation demands a rigorous investigation. Aside from government publications, most of the received work on refugee policy starts from the entrenched perspective of the élites, namely, that the current policy stance on refugees is unfair, harsh and breaks the spirit, if not the letter, of the law.

Accordingly, in December 2000, I asked Dr Ron Brunton and Ms Tess Rod to address the issue. Specifically, their brief was to outline Australia's refugee policy, to evaluate it in terms of international treaty requirements and the received criticism of the policy (particularly with respect to its fairness and its accordance with the rule of law), and to compare it to the policies of other countries.

Dr Brunton is an accomplished social researcher and, at the time this book was written, was a Senior Fellow with the Institute. He has written on a wide range of issues including indigenous, population and environmental

policy. Ms Rod was formerly a senior researcher with the Commonwealth's Bureau of Immigration, Multicultural and Population Research and has written a number of reports on immigration issues.

Both Ron and Tess came to the subject with pro-immigration stances and in favour of an active refugee programme. Tess is herself an immigrant, and Ron is a child of refugees from Hitler. They have concluded that our immigration and refugee programme is, on balance, beneficial both to Australia and to new entrants.

But the task proved much more difficult than first anticipated. First, as the research unfolded, it became apparent that the task required a book rather than a briefing paper as first envisaged. Second, data, particularly data on the policies and programmes of other countries, was limited. Indeed, there were quite large gaps between what many countries did and what they said on refugees. Third, the debate locally and the policy stance overseas was highly fluid requiring numerous updates and revisions.

Finally, there was strong disagreement within the Institute's own research committee about refugee policy in general and the conclusions of this study in particular. In short, the disagreement among the committee to a great degree mirrored that among the public. While consensus among the committee is usually required for publication, consensus was not possible in the case of this research.

Nonetheless, given the importance of the subject, the quality of the research, the need for a more balanced debate, the one-sided perspective of the existing 'intellectual' research, and the fact that the external referee commended the work, the Institute decided to publish.

This book is designed for a wide audience. It provides the lay person with an overview of the current state of play concerning refugee policy—both here and abroad—and addresses the most frequently asked questions. It tackles the main intellectual and moral criticisms of the received policy and it highlights areas for future research.

Refugee policy will undoubtedly remain a contentious and dominant issue in Australia and overseas. There are now over 20 million refugees around the world, with the demand for refugee places greatly outstripping the capacity of all recipient nations. The people-smuggling industry is a highly sophisticated industry which, when combined with the huge economic attraction of living in Australia and other western countries, will ensure a continuing flow of people to our door.

Coming to grips with this requires a well-informed debate, based on fact and rational analysis, as provided by the authors of this study.

Dr Mike Nahan
Executive Director, IPA

Introduction

Over the past two years, large numbers of people have entered Australia without authorisation, most making claims for refugee status when apprehended. Despite attempts to deter this flow, many are still making the journey. These unauthorised arrivals have triggered much debate, which, like other issues surrounding questions of human rights and responsibilities, often involves a combination of moral posturing and inconsistency as well as genuine issues of principle.

In this discussion paper, we consider the dilemmas posed by these people, and the measures that Australian authorities have taken to control and deter their entry into the country. We examine material from government documents, recent research, and news stories to highlight the contradictions on both sides of the argument, in the hope of clarifying some of the issues and promoting a more reasoned and informed approach to this difficult problem. It should be noted that our focus is on the public debate. Thus, we concentrate on published information and reportage, rather than undertaking any original research ourselves. This has been done by others, whose work provides background material for this paper.

Given the tendency for debate about unauthorised arrivals to degenerate into a supposed battle between good and evil, we should make our own sympathies clear at the outset. We both come from a non-Anglo-Celtic background. One of us migrated to Australia as a teenager, the other was born here of parents who were refugees. We both support a strong immigration program, which includes a reasonable number of places for refugees. On the other hand, we are sympathetic to the Government in as much as we believe that the problem it faces is an inescapable one. We believe that decisive steps to deter unauthorised arrivals are warranted, and that the continuation of the perception that the Government is unable to control the choice of immigrants will only serve to strengthen the forces in Australia that are opposed to immigration.

1. What Is the Current Situation?

Refugees have benefited Australia greatly. Many Australians who have become prominent in business, industry, science and academia arrived immediately before, during or after the Second World War as refugees or displaced persons—or are the children of these people. Although they encountered some initial hostility (the term 'refo' was sometimes used against them), most integrated rapidly into Australian life. Of course, these refugees were mainly European. Yet many originated from Eastern Europe and did not share the Anglo-Saxon or Celtic heritage of the majority of Australian residents at that time. Their entry brought about a great change in the ethnic composition of the Australian population, a change that continued to accelerate in later decades, particularly after the White Australia policy was modified—and later completely abandoned—in the late 1960s. More recent refugees have had cultural backgrounds less similar to those of most Australians, but they too have blended satisfactorily with a slowly changing Australian mainstream.

In the past 50 years, almost 5.7 million people came to Australia as new settlers, with more than 590,000 entering under humanitarian programs.[1] During the 1960s, like other countries with a long-established involvement in accepting permanent immigrants, such as the US, Canada and New Zealand, Australia gradually moved away from its stated preference for migrants of European descent, finally formalising a non-discriminatory immigration policy in 1973. Since that time the annual migrant intake has varied considerably depending on demand, political attitudes and economic conditions. The refugee intake, however, with a few exceptions, fluctuated much less.

For example, in the last decade, the migration intake varied from a high of 112,200 in 1990–91 to a low of 70,200 in 1999–2000.[2] But the annual humanitarian intake remained steady at between 11,000 and 13,000 (excluding Kosovars and East Timorese offered temporary safe haven). There was only a small jump to just over 15,000 in 1995–96, when 2,000 places were brought forward from the 1996–97 program following an urgent request from the United Nations High Commissioner for Refugees for resettlement assistance to people from

the former Yugoslavia.[3] Ever since the immediate post-War years, there have been intense debates about the size and composition of the migrant intake. Academics, professional groups, trade unions, and environmentalists have questioned the wisdom of large migrant intakes, particularly the numbers entering under certain visa categories which have an increased likelihood of longer term unemployment and welfare dependency for new arrivals (family reunion, for example). Recently, Pauline Hanson's One Nation Party revisited the Asian migration issue hotly contested in the mid-1980s.

Yet during this sometimes acrimonious debate, Australia's humanitarian program, particularly its offshore program, was rarely questioned, despite the humanitarian entrants placing a greater burden on the public purse. Their initial settlement costs are higher; they tend to be on welfare longer than other new settlers; they often arrive from countries with vastly different cultures, languages and values; and they frequently suffer from past traumatic experiences. All these mean that they require considerable resources in terms of psychological counselling, cultural familiarisation, and job- and language-training. It would seem that the majority of Australians felt that these costs were justified for compassionate reasons.

But while the immigration debate has subsided, refugees now receive most attention, especially those who have entered this country without authorisation.

These people usually claim asylum when apprehended, and are accommodated in detention centres while their claims and credentials are investigated. This has led to claims from advocacy groups and media commentators that Australian authorities are treating asylum seekers ungenerously and/or violating their human rights. They also claim that even the language used to describe them is unjustifiably negative—terms like 'illegal' or 'unlawful' entry suggest criminal behaviour requiring punishment.[4] But the United Nations 1951 *Convention relating to the Status of Refugees* uses the term 'illegal' in describing the entry of persons into another country without authorisation, and a more recent UN document uses the terms 'illegal' and 'unlawful' interchangeably.[5] Critics of the Government demand that these people, no matter how they enter Australia, should be invited to apply for asylum (whether they had intended to do so or not) and be treated as genuine refugees by being allowed the freedom of the country while their claims are being processed.

A recent publication entitled *Asylum Seekers: Australia's Response to Refugees* attempts to provide scholarly credibility to these kinds of

views.[6] The first chapter sets up the main thesis—that Australia has twin obsessions affecting its attitude to refugees. These are supposedly that:

1. *Australians fear the 'significant other'*. This is a group or race perceived as the most important threat to national identity; and,
2. *Australians fear invasion by the hordes of the north*. This is posited as a uniquely Australian fear of the 'yellow peril', reflected in the former policy of 'White Australia'.[7]

The author, Don McMaster, argues that the (alleged) harsh treatment currently meted out to refugees is a reflection of their origin (Asia) and method of arrival (landing by boat, sometimes clandestinely, in the north), rather than on the strength of their claims for refugee status.[8] He passionately asserts that these arrivals should be given the benefit of the doubt, be treated as refugees until determined otherwise, and not be subjected to 'draconian' mandatory detention. In his analysis, Australia emerges as a serious failure in the human rights arena.

Other commentators make similar remarks about Australia with reference to the history of the White Australia policy. For instance, Helen Irving claims that Australia is, 'still built on notions of exclusion and birthright that are not dissimilar to those of the past'.[9] She concedes that few Australians are racists today—but apparently, despite nearly a quarter of Australia's population being overseas-born and a far greater proportion being the offspring of people who arrived in this country since the Second World War, she believes that we are still tainted. Yet over the last century, in spite of substantial ethnic minorities, we have never experienced the race riots that flare up periodically in many other countries, both in the West and in the Third World.

Another recent publication on asylum seekers by journalist Peter Mares, titled *Borderline*, takes the same stance against mandatory detention, although he acknowledges that refugee resettlement countries such as Australia face a real dilemma.[10] The numbers of refugees selected annually for resettlement in Western countries can only ever be a tiny fraction (less than one per cent) of the more than 22.3 million identified by the UN as at 1 January 2001 as refugees or 'people of concern'.[11] As well, there are an estimated 100 million people seeking to move to another country.

Mares draws attention to a number of apparent inconsistencies in Australia's current policy and practice relating to onshore claims for asylum. For example, he states that asylum seekers who enter Australia lawfully—and who are therefore not detained while their claims are considered—do not qualify for any welfare assistance except in

exceptional circumstances, although they do have the right to work. On the other hand, those who enter unlawfully are given temporary protection visas that give them the right to claim special welfare benefits as well as the right to work once they are released from detention.[12] This seeming anomaly is, however, based on an inappropriate comparison.

Lawful entrants who claim asylum are assumed to have demonstrated that they have sufficient means to meet their needs while in Australia. They are given a bridging visa that may allow them to work while awaiting the outcome of their claim. In exceptional circumstances, they can seek financial assistance through the Asylum Seeker Assistance Scheme administered by the Department of Immigration and Multicultural Affairs (DIMA) through contractual arrangements with the Australian Red Cross.[13] Once granted a permanent protection visa, however, they have access to the full range of benefits available to other refugees. Unlawful entrants, however, are detained until offered three-year temporary protection visas that confer limited benefits.[14]

Mares pours scorn on the government's distinction between lawful and unlawful entry, claiming that it is arbitrary and meaningless and that asylum seekers who enter unlawfully are more deserving of our sympathy and generosity because their situation is often more desperate.[15] He offers no evidence for the assertion that they are more desperate. And since those who entered without proper authorisation had the resources to buy passage to Australia, their situation would appear to be less desperate than those living in overseas refugee camps without access to such financial resources. The distinction is neither arbitrary nor meaningless where there is a policy to limit the numbers of new settlers and to select those who may come. Perhaps this policy itself could be challenged, but critics of Australia's treatment of asylum seekers do not seem interested in doing so.

Mares also claims that unauthorised arrivals who are 'screened out' at the preliminary compliance interview (conducted by immigration officers shortly after arrival), because they did not mention the words 'refugee' or 'asylum' or indicate they had any serious fears of returning to their homeland, are being treated unfairly and denied their human rights by not being regarded as asylum seekers. Many refugee advocates believe that all unauthorised arrivals should be immediately invited to apply for asylum.[16] Yet people who are motivated enough to find their way to this country are surely able to answer the simple question, 'Why did you come to Australia?' Those with compelling protection needs should have no difficulty making this abundantly clear, even through

an interpreter. A few refugee-receiving countries, Sweden for instance, do extend an invitation to apply for asylum. Canada used to do so, but abandoned this practice in 1989. Now it is left up to the individual to indicate if they are making a claim, a policy that has been upheld by the Canadian courts.[17]

Mares also criticises DIMA for investigating the claims made by prospective asylum seekers, and for taking steps to separate new arrivals from other detainees to avoid collusion or coaching of the new arrivals in the stories they tell immigration officials.[18] But many of these people present few, if any, documents and so the only way for immigration officials to find out whether individuals are who they claim to be is by careful questioning of their background knowledge and experience of their country of origin. It is very difficult to prove the identity and claims for protection of unauthorised arrivals without extensive questioning and testing—and even then, some have managed to maintain false identities.[19] For instance, local Afghan communities have found that some asylum seekers who claimed to be Afghans and were granted three-year temporary protection visas were actually Pakistanis, with no legitimate claims to international protection.[20]

Immigration authorities are aware that some unauthorised arrivals may lack appropriate documentation because of the precipitate and illegal nature of their departure from their home, and that others may have been forced to use fraudulent documentation to escape persecution. In such cases, the individuals concerned tend to be given the benefit of the doubt, provided that their accounts appear credible and stand up under scrutiny. Most unauthorised arrivals, however, traversed several countries *en route* to Australia, and would have needed travel documents to be allowed entry to those countries. A number jettison their documents before arrival to disguise their origins, and in some cases, their identities, apparently in the belief that this will aid their refugee claim. The capture of a people-smuggling vessel carrying over 240 passengers of Middle Eastern origin by Cambodian authorities in July this year revealed that almost all the passengers still carried their legal documents, and that these showed that they had left countries where they had long-standing residency arrangements.[21] Not unreasonably, the Government is considering introducing preferential treatment for asylum seekers who arrive with adequate documentation by fast-tracking the settlement of their claims within four weeks, as an incentive to retain possession of their documents.[22]

Some asylum seekers complain about Australian officials doubting their credibility—a sentiment shared by a number of refugee advocates.

The general legal principle of the refugee determination process, however, is that 'the burden of proof lies on the person submitting a claim'.[23] The process requires an assessment of whether the claimant's fear of persecution is well-founded. This assessment has an objective element relating to the evaluation of what might happen were he or she to go back, as well as an important subjective element relating to the individual's state of mind.[24] An assessment of the personal credibility of claimants for refugee status is crucial in this process. United Nations High Commission for Refugees (UNHCR) guidelines for refugee determination state that 'an assessment of *credibility* [our italics] is indispensable where the case is not sufficiently clear from the facts on record'.[25] Assessing someone's credibility is, of course, a matter of judgement. It is recognised that, just because some asylum seekers may embellish their stories or even lie about some of the details, this does not necessarily mean that they do not have genuine claims for protection. The refugee determination process is complex and often open to interpretation, which is why countries such as Australia offer asylum seekers the opportunity of an independent review should the initial assessment go against them.

Criticism of detention centres as being prison camps also seems over the top. Conditions at the centres were stretched by the sudden surge in numbers of illegal arrivals in the late 1990s. DIMA was forced to open two new detention centres in disused army facilities. It now operates six centres—three in Western Australia, one in Woomera in South Australia, one in Villawood, Sydney and one in Maribyrnong in Melbourne—and is planning to open three more in disused defence facilities. In 1997, DIMA contracted the day-to-day management of these facilities to a private firm, Australasian Correctional Services Pty Ltd (ACM). The service provider has been heavily criticised for failing to report an alleged incident of child abuse at one of the detention centres last year and numerous other allegations of malpractice. In fact, a review of detention procedures commissioned by the Government following these allegations found that, with the exception of this one child-abuse case, the service provider had handled another 34 similar cases appropriately.[26] Many critics acknowledge that conditions in these centres have improved considerably in the past couple of years, with greater availability of information, education, recreation, medical and other facilities and services.[27]

The Minister for Immigration and Multicultural Affairs, Philip Ruddock, stated that much of the unrest at detention centres is being perpetrated by small bands of individuals whose refugee claims have

been rejected or whose appeals have been denied.[28] He also asserted that some are misbehaving in the mistaken belief that their violent behaviour will speed up their release.[29] The increase in violent unrest, and self-mutilation is leading to claims that this is due to institutionalised ill-treatment of detainees.[30] Individual detainees who go on hunger strikes, who mutilate themselves, attempt suicide or threaten mass suicide of their family are portrayed as victims of heartless Australian policy and practice—a cause for national shame.[31]

Violence, threats of violence and self-mutilation are great media attention-grabbers, but these asylum seekers (and some of their supporters) fail to understand that, in Australia, the rule of law and not television coverage will determine their status. This is not surprising. Most asylum seekers come from countries where the rule of law is less effective either because it allows authorities wide discretion, or because the law is compromised by bribery, nepotism and other courses of action. In Australia there are many legal avenues to lobby officials and elected government representatives to effect changes in policy but not to influence the administration of the law. Many of these avenues are used effectively by refugee support groups to bring anomalies, injustices and poor administrative practice in relation to refugees and asylum seekers to the attention of the authorities. Interest groups operating as community 'watchdogs' play a crucial role ensuring a fair go for all.

There is no doubt that the pressure-cooker conditions in the centres are encouraging stress reactions among detainees facing long-term detention. They also frustrate the detention centre's staff, leading to a few justifiable claims of ill treatment of detainees.[32] The process could be streamlined and improved—something the Howard Government appears to be actively attempting to achieve.

Endnotes

1 DIMA, 2000, Fact Sheet 2, *Key Facts in Migration*, 7 August, http://www.immi.gov.au/facts/.

2 DIMA, 2001, *Population Flows: Immigration Aspects*, December 2000; DIMA, Fact Sheet 2, *Key Facts in Migration,* 7 August.

3 *Loc. cit*.

4 For example, Quine, Dhana 2001, 'The human pipeline', *The Age*, 28 January; McMaster, Don 2001, *Asylum Seekers: Australia's Response to Refugees,* Melbourne University Press, Melbourne, page 190; Morrison, John 2000, *The trafficking and smuggling of refugees: the end game in European*

policy?, Report commissioned by UNHCR Policy Research Unit, pre-publication manuscript, July, page 93.

5 See Article 31 in the UN *Convention relating to the Status of Refugees of 28 July 1951;* Paragraph 61 in UNHCR 1992, *Handbook on Procedures and Criteria for Determining Refugee Status*, Geneva.

6 McMaster, Don 2001, *Asylum Seekers: Australia's Response to Refugees,* Melbourne University Press, Melbourne.

7 *Ibid.,* pages 3–4.

8 *Ibid.,* page 77.

9 Irving, Helen 2001, 'New standards hide old fears', *The Australian*, 5 June.

10 Mares, Peter 2001, *Borderline: Australia's treatment of refugees and asylum seekers,* University of New South Wales Press, Sydney.

11 Millbank, Adrienne 2001, 'Australia and the 1951 Refugee Convention', *People and Place*, vol. 9, no. 2, page 2; DIMA 2001, *Refugee and Humanitarian Issues: Australia's Response*, Chapter 1, 12 May, http://www.immi.gov.au/test/publications/issues/chapter1c.htm.

12 Mares, Peter 2001, *op. cit.*, pages 93–5.

13 DIMA 2000, Fact sheet 42, *Assistance to Asylum Seekers in Australia*, 26 October, http://www.immi.gov.au/facts.

14 DIMA 2000, Fact Sheet 63, Temporary Protection Visas, 15 December, http://www.immi.gov.au/facts.

15 Mares, Peter 2001, *op. cit.*, page 64.

16 See Detention Working Group n.d., *Immigration Detention Standards Fundamental Principles: NGO Perspective*, http://www.refugeecouncil.org.au/alternative.htm, page 2.

17 Personal communication from a senior Citizenship and Immigration Canada official.

18 Mares, *op. cit.*, pages 49, 95.

19 Heinrichs, Paul 2001, 'Language tests face questions', *The Age*, 24 June.

20 Clennell, Andrew 2001, 'Fraud claims put Afghan refugees on Ruddock hit list', *Sydney Morning Herald*, 8 August.

21 Minister for Immigration and Multicultural Affairs 2001, 'Cambodia Seizes People Smuggling Vessel Bound for Australia', *Media Release* 92, 6 July; 'Approval Rate for Boat Asylum Seekers Falls, *Media Release* 112, 7 August http://www.immi.gov.au.; Anonymous 2001, 'Arrests signal slowing in migrant tide', *The Courier-Mail*, 1 August.

22 Glendinning, Lee 2001, 'Refugees with papers may move to the head of the queue', *The Sydney Morning Herald*, 19 July.

23 UNHCR 1992, *Handbook on Procedures and Criteria for Determining Refugee Status*, Geneva, para. 196, http://www.unhcr.ch/refworld/legal/handbook/handeng/hbtoc.htm.

24 *Ibid.*, paras. 38–42.

25 *Ibid.*, para. 41.

26 Minister for Immigration and Multicultural Affairs 2001, 'Immigration Minister Tables Flood Report', *Media Release* 23, 27 February, http://www.immi.gov.au.

27 Stephens, Tony 2001, 'Cries for help from behind barbed wire', *The Age*, 11 June.

28 For example, Taylor, Kerry and Baker, Richard 2001, 'Protests naive, says Ruddock', *The Age*, 4 June.

29 Anonymous 2001, 'Ruddock sees violence ahead', *The Sydney Morning Herald*, 14 May.

30 Goodsir, Darren 2001, 'Centres a national disgrace, protesters told', *The Sydney Morning Herald*, 4 June.

31 Mares, Peter 2001, 'Seeking shelter in an inhospitable land', Review in *The Australian Financial Review*, 8 June.

32 For example, O'Brien, Natalie 2001, 'Let's not add trauma to refugees' tribulations', *The Australian*, 29 May.

2. What Are the Implications of Current Criticisms?

Australia enjoys many advantages in being an island continent. Natural barriers to entry allow us more readily to control unauthorised entrants than can most countries. It is legitimate that Australia should use this advantage, as it does with customs and quarantine measures. But how can the integrity of customs control and the immigration system be maintained if unauthorised entrants are accorded automatic right of entry and are allowed to mingle unrestricted with the rest of the Australian population?

If those who paid people smugglers thousands of dollars for their passage to Australia are to be rewarded with an open door into the country, why have government proposals to fast track immigration for *legal* applicants who can pay a premium for the privilege been so strongly opposed? Why are legal payments to government authorities considered so reprehensible compared with payments made to criminal racketeers? In effect, we are being urged to reward people who break Australian immigration laws. It is an attitude to the structuring of incentives that the same critics would be unlikely to suggest in regard to laws applying to, say, the environment or tax evasion.

If these asylum seekers are to live within the Australian community, find their own food and lodging, learn English, find a job, educate their children while their refugee status is sorted out, should they be supported on an equal basis as other Australian welfare recipients? If not, are trade unions and other professional associations willing to allow flexibility in the job market to ensure that these claimants can find work of some kind to support themselves and their families?

The Victorian Trades Hall Council has been quoted as condemning the detention of unauthorised arrivals,[33] implying that these individuals should be allowed free and equal access to all the benefits offered the rest of the community. Yet at various times in the past, trade unions have expressed concern about immigration schemes such as the Working Holiday Makers, which allow non-residents limited work rights in Australia.[34] And if the trade union movement is supporting

the *individual* rights of these unauthorised arrivals, why then did the ACTU representative to this year's World Economic Forum in Davos tell the conference that the ACTU will use all its resources to counter de-unionisation by tarnishing the international reputation of Australian companies that offer their workers *individual* contracts?[35]

Should illegal arrivals with the monetary capacity to pay people smugglers be given an advantage over refugees who have no money and are waiting for resettlement in overcrowded overseas camps? Of course, whether or not a person has money, or access to money, does not in itself affect their claims for protection. Claims for refugee status do not depend on an individual's financial circumstances. But having access to financial resources does give these individuals more options to cope advantageously with their situation than is possible for their poorer counterparts.

The Government's view—that illegal arrivals are 'queue jumpers' taking the place of refugees waiting patiently and hopelessly for resettlement in camps throughout the Third World—is greeted with derision. It is argued that there is no 'queue', with the selection of refugees from overseas camps being more of a lottery than an orderly process based on priority of need.[36] This is true—the numbers in overseas camps are overwhelming and can fluctuate, and not all have ready access to UNHCR officials or other refugee workers to argue the merits of their case. But the millions in overseas camps are not necessarily all candidates for resettlement in a third country. According to the UNHCR's framework for durable solutions, most are identified as being suitable for return to their own country in safety and dignity, or are considered safe in the country where they are now living. While the formation of a single 'queue' for those requiring resettlement is virtually impossible, there is still a very long waiting list for resettlement to a third country. And the clients of people smugglers are not necessarily the same people that the UNHCR has identified as candidates for resettlement. In fact, a number of these people have left host countries where they had been living in safety, but once they leave they are no longer welcomed back. So they are taking resettlement places that have already been reserved for others, and thus are, in effect, 'queue jumpers'.

Some critics go further, claiming that illegal entrants are as deserving—if not more so—than those in the camps.[37] While it is often very difficult to distinguish between a genuine refugee and an economic migrant, the claims for refugee status by unauthorised arrivals are often far from compelling.[38] Immigrating in search of higher wages and a

more comfortable life is undeniably legitimate and even admirable, but the 1951 Refugee Convention was not designed for that purpose.

Another argument advanced by some critics of the current policy is that the numbers of unauthorised entrants to Australia are quite low when compared with the numbers entering the US, Europe or Canada—just over 10,000 entered Australia in the last five years compared with the more than 70,000 entering Britain each year—and that these numbers hardly warrant the 'punitive' measures taken against them.[39] While it is true that the numbers to date are comparatively low, up until a few years ago so were Britain's. Australia is in the unique position to be able to put into place policies to control such entry and to prevent it from escalating to unmanageable levels—an advantage which other countries with similar problems, but on a much larger scale, do not have. Provided the controls are tempered by compassion and helpfulness towards genuine asylum seekers, and operate in conjunction with generous and well-targeted immigration and humanitarian programs, Australia's policy cannot justly be labelled 'punitive'.

The logical end point of what many of the critics of Australia's current policy are advocating is an open-door immigration policy—although this is never spelled out. Certainly, there are some commentators—and the IPA's John Hyde is one—who are willing to propose a much more liberal refugee policy and set out arguments in favour of such a policy. (Although Hyde accepts that as long as the Government maintains any policy more restrictive than an 'open door', it has no option but to police it.)

If an open-door policy is what is being advocated, such a proposal should be candidly and rigorously discussed, with all the pros and cons presented and due consideration given to public opinion. If those who have taken the lead in attacking Australia's current policy on refugees want to introduce such policy, they should be honest enough to say so. And if they do not, they should be required to explain the difference between an open-door policy and the logical implications of their own demands.

The charge that the Government's management of the asylum seekers is racist requires rebuttal. It is an epithet that is far too freely thrown about and *ad hominem* attacks do nothing to resolve the impasse. Many illegal entrants come from countries where tolerance of racial and ethnic diversity is very much lower than in Australia. They choose to come to a place like Australia because of its reputation for fair and equitable treatment, as well as its prosperity. Vessels entering Australian territorial waters are intercepted and escorted into safe harbour. Their

passengers receive free board and lodging, medical attention, and access to other assistance. Yet the very individuals and organisations who are amongst the most energetic defenders of these uninvited arrivals delight in accusing their fellow Australians, who may not agree with their views, of being racists—and accuse the Government and administrators of implementing a 'racist policy'.[40] It is one thing to argue that the Government is failing to find a fair and reasonable outcome to the current dilemma, but unfair to impugn its motives.

A court action from the late 1990s illustrates this point. Government agencies take advice from the UNHCR on the main source countries for refugees and people in need of protection. Yet detainees who do not meet the UNHCR criteria defining who is and is not a refugee have taken class action, with the full support of certain members of the refugee lobby, against the Australian Government for having a racially discriminatory refugee policy.[41]

All claimants for asylum in Australia have the right to appeal against an adverse protection visa determination made by DIMA. The appeals process may involve the Refugee Review Tribunal (or Administrative Appeals Tribunal in certain instances), the Federal Court, and the High Court. The protracted appeals process has been used by unauthorised entrants to delay their deportation. Not only has this increased the overall cost of their entry to the Australian public, it has also prolonged the time that claimants remain in detention—leading to even more angry, and sometimes violent, protests by inmates. There is pressure, both in Australia and from overseas, for courts to extend the definition of 'refugee' to include categories well outside previously internationally accepted limits and to tailor the definition to cover an ever-widening range of individual circumstances.[42] Proposed legislation by the Howard Government to curtail some of these trends was greeted with great suspicion and strong criticism. For example, legislation to restrict access to the Federal Court was blocked in Parliament by the opposition parties for nearly two years before finally being passed in September 2001, just before the Federal Election.[43] And legislation to force judges to be stricter when deciding whether or not an asylum seeker is a refugee was immediately attacked by Amnesty International and the Australian Democrats when it was first mooted.[44]

Ultimately, a protest strategy that goes beyond civil argument can be dangerous because it is widely resented and could undermine Australians' willingness to accept as many humanitarian obligations as we currently do. The current debate is about the status and treatment of *unauthorised* entrants. If, however, the debate is hijacked, then genuine

refugees who deserve our compassion and support will probably suffer from the resulting fallout. While many refugee advocates might argue that public opinion is irrelevant, and that humanitarian obligations to asylum seekers have to be met regardless, this would only occur at the cost of worsened political and social tensions.

Endnotes

33 Quinn, Dhana, 2001, 'A hellhole in our back yard', *The Age*, 28 January.

34 Murphy, Jill 1995, *The Labour Market Effects of Working Holiday Makers*, Bureau of Immigration, Multicultural and Population Research, Canberra, pages 10–11.

35 Taylor, Leonore, 2001, 'Globalisation backlash gains voice inside Davos', *Australian Financial Review*, 29 January.

36 Mares, Peter 2001, *Borderline: Australia's treatment of refugees and asylum seekers*, University of New South Wales Press, Sydney, page19.

37 For example, Manne, Robert 2001, 'What if the refugees were a bit more like us?', *The Sydney Morning Herald*, 7 May.

38 Klintworth, Gary 2001, 'Woomera: Hell-holes and mandatory detention of illegal immigrants', *People and Place*, vol. 9, no. 1, page 20.

39 Summers, Anne 2001, 'Boat people bringing out the worst in us', *The Sydney Morning Herald*, 20 August.

40 For example, McMaster, Don 2001, *Asylum Seekers: Australia's Response to Refugees,* Melbourne University Press, Melbourne, page 191.

41 Coorey, Madeleine, 1998, 'Migrant class action attacks Ruddock for 'racist' refugee law, *The Australian*, 20 March 1998.

42 See a discussion of the US situation in Mark Krikorian 1996, 'Who deserves asylum?', *Commentary*, June.

43 It is unconstitutional to limit access to the High Court on matters pertaining to its original jurisdiction.

44 Gray, Darren 2001, 'Amnesty slams refugee court crackdown', *The Age*, 8 May.

3. Why Does Australia Have a Refugee Program?

'Open door' policies presented nations with fewer dilemmas, especially in previous centuries when transport over long distances was less readily available. Early in the twentieth century, however, countries such as the US and Australia imposed immigration restrictions, and the newly formed League of Nations took over responsibility for refugees. Despite the League's rather *ad hoc* approach to specific refugee situations, the humanitarian concern expressed then became the foundation for all future international action. The refugee problem in the aftermath of the Second World War and the Communist takeover of several nations indicated the need for a more general agreement on who should be considered a refugee and what the legal status of such people should be. A Conference of Plenipotentiaries of the United Nations met in 1951 to adopt the *Convention relating to the Status of Refugees*. This limited the definition of 'refugees' to persons who had become refugees by events occurring in Europe before 1 January 1951. This restriction was lifted by the 1967 Protocol. Both are independent legal instruments and are still in force. The United Nations High Commission for Refugees (UNHCR) was established in 1951 to provide international protection, under the auspices of the United Nations, for refugees as defined by the Convention.

Australia is a signatory of the 1951 Convention, which defines a refugee as being a person who

> … owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.[45]

The key factors defining a refugee are: well-founded fear of persecution for reasons of race, religion, nationality, membership of a

particular social group or political opinion and being outside the country of nationality and being unable or unwilling, because of the fear, to return. For 50 years, the debate focused on the interpretation of 'persecution' and 'fear of return'. One of the concerns, for instance, has been that the Convention definition ignores refugees fleeing the breakdown in law and order and general mayhem in their countries, or who are seeking safe refuge from natural disasters. Some regional agreements (like the Cartagena Declaration in Latin America) make provision for such situations.

The Convention defines the rights and obligations of refugees and the countries in which they take refuge—although most of the articles deal with the *obligations* of the 'Contracting States' as the Convention calls signatories. Basically, Contracting States must apply all the provisions without discrimination. They must accord refugees the same treatment as accorded aliens generally (except where the Convention contains *more favourable* provisions). All rights of personal status (e.g. marriage), acquisition of movable and immovable property, legal contracts, intellectual property, and association with non-political and non-profit making organisations and trade unions must be respected.

Refugees must be accorded the same access as aliens residing lawfully in the country to wage-earning employment or self-employment, as well as certain other areas. However, in matters relating to access to the courts of law and provision of legal assistance, elementary education, conditions of employment, and welfare payments, refugees must be accorded the same treatment *as citizens* of that State. In other words, *once accorded* refugee status, these individuals have all the rights of legally resident foreigners plus some accorded only to citizens in some States—significant incentives for asylum seekers to obtain a favourable refugee outcome.

Refugees can only be expelled from the country of lawful refuge on the grounds of national security or public order. And this can only occur after the due process of law and the provision of a reasonable length of time for them to seek legal admission into another country (although during this period the State can take such internal measures as deemed necessary—for example, detention). No Contracting State should expel or return a refugee 'in any manner whatsoever to the frontiers or territories where his life or freedom would be threatened'.[46] It is this principle of *non refoulement* that is used extensively by asylum seekers to argue against their forcible return to their original domicile.

Article 31 adjures Contracting States not to penalise refugees for their illegal entry or illegal presence in their territory. There are, however,

conditions on such illegal entry. The refugees must have come *directly* from the country they are fleeing, they must present themselves *without delay* to the authorities, and *show good cause* for their illegal entry or presence. If they meet these conditions, then they must not be returned by the host State. They should be given sufficient time to regularise their status in the country of refuge or to obtain admission into another country. Contracting States are also expected to assist refugees with obtaining documentation or certificates from their national authorities or other sources, and to issue relevant identity papers or travel papers where necessary.

In contrast to the extensive list of obligations on the part of Contracting States, the one explicitly stated obligation of refugees in the Convention is to conform to the laws and regulations of the State where they have received refuge. And, of course, if they have entered illegally, but directly, from the country from which they are escaping persecution, they must present themselves immediately to the authorities and show 'good cause' for their illegal presence. There is one other obligation on the part of refugees implicit in Article 34 of the Convention. This article obliges Contracting States to 'as far as possible facilitate the assimilation and naturalization of refugees', including expediting proceedings and reducing the costs involved. The onus is then on refugees who are offered this opportunity to assimilate to the host country that has granted them permanent protective residence.

The UNHCR takes the view that anyone who meets the criteria set out in the 1951 Convention is a refugee. Host countries, however, have the right to establish eligibility to refugee status within their own legal framework in order to determine a person's residency status and rights to other benefits. Determination of refugee status becomes a critical issue for the host country in one of two situations, both of which are becoming increasingly common. One is where people already legally residing in the host country claim asylum because of certain political events in their home country (such as occurred among Chinese students in Australia following the Tiananmen Square massacre in 1989)—they become what are known as refugees *sur place*. The other is where those entering the host country without authorisation claim asylum in order to be able to stay (such as is the case with the recent inflows of boat people). The granting of asylum is not specifically dealt with in the 1951 Convention or the 1967 Protocol, but the UNHCR has always pleaded for a generous asylum policy in the spirit of the Universal Declaration of Human Rights of 1948 and the Declaration on Territorial Asylum of 1967.[47] There is, however, considerable variation between

countries in the interpretation of what is meant by 'well-founded fear', and what constitutes 'persecution' in the Convention definition, allowing asylum seekers to exploit such anomalies.

Contracting States are also adjured to have regard for the individual's motivations for fleeing, recognising that circumstances found tolerable by some may be considered absolutely intolerable by others. In other words, knowledge of the conditions in the home country is important, but not as important as the individual's reaction to them[48]—creating even more scope for opportunistic interpretations of the words 'well-founded fear' and 'persecution'.

The 1951 Convention specifically excludes certain categories of persons from refugee status. Persons with two or more nationalities who can avail themselves of protection of at least one country are excluded (Article 1A), as are persons already receiving UN protection or assistance (Article 1D). There are persons who are considered not to be in need of international protection because they have already been received in a country where they have been granted most of the rights normally enjoyed by citizens, even if they have not been granted formal citizenship (Article 1E). And then there are those who are considered undeserving of international protection—war criminals, people who have committed crimes against humanity and those who have committed serious common crime (Article 1F).

Detention of asylum seekers pending refugee determination was not specifically covered in the Convention, except indirectly in Article 6 where it is acknowledged that nothing in the Convention can prevent Contracting States from taking provisional measures considered to be essential to national security. The UNHCR's 1999 'Revised Guidelines on the Detention of Asylum Seekers', however, states that asylum seekers should not be detained other than under exceptional circumstances. The exceptional circumstances are: to verify identity; to determine claim for refugee status; in cases where travel documents have been destroyed or falsified; and, to protect national security.[49] But UN guidelines do not consider the risk of absconding. Two bipartisan Australian Parliamentary inquiries in 1994 and 2000 confirmed this to be a serious risk justifying mandatory detention.[50] Contrary to widespread belief, most detainees in Australia are held in detention for less than two months,[51] and those in detention for longer than average periods are there because they are appealing against an adverse decision, or are about to be deported.

This raises the question about the desirable outcome for refugee situations. Ideally, refugee status should be merely transitory, until a

durable resolution to the problem can be found. The issue is covered only in a negative sense in the 1951 Convention in what are known as the 'cessation clauses', which spell out the conditions under which a refugee ceases to be one.[52] These are: the voluntary return to the country from which they fled; voluntary acceptance of the protection of their country of nationality; re-acquisition of their former nationality if it had previously been lost; voluntary acquisition of a new nationality; or, changing circumstances in the country from which they fled, negating the need for international protection.

The first four conditions depend on actions taken by individual refugees themselves. The other is outside their control. Yet relying solely on these conditions to resolve many of the large-scale refugee situations that keep recurring around the world is quite unrealistic. Faced with the reality of such situations and their intractability, the international community has developed a protection framework that is now widely accepted. This international protection framework takes into consideration the sharing of the protection burden between nations and the orderly resolution of refugee problems.

The key elements of the framework are first and foremost the *prevention* of refugee situations by reducing the factors causing such flows through economic assistance, international aid, high-level negotiations, etc. Where refugee flows across the borders to nearby countries do occur, *temporary protection* is granted by these countries of first asylum, with financial and other assistance provided by the international community. Ideally, refugees should be *repatriated* to their country of origin as soon as possible, with the international community assisting again as necessary with reconstruction and reintegration to promote a durable repatriation. However, if repatriation is not feasible within a reasonable time (though no time limit has been set), then *local integration* in the country of first asylum should be considered in the first instance. *Resettlement* in a third country is considered where neither repatriation nor local integration is feasible, and is usually regarded as the 'last resort' solution.[53] Where large numbers are involved, it can even play into the hands of persecutory regimes by removing dissenters, as well as weaken the intellectual, cultural, political and economic capacity of these countries to improve their human rights record and quality of life.[54]

There are a number of ways in which countries of first asylum attempt to circumvent their often impractical and sometimes too onerous obligations. Australia is rarely a country of first asylum—most refugees have passed through a number of countries to arrive on our

shores (although some boat people from the southern provinces of China have attempted a direct journey to Australia). Most unauthorised arrivals claiming asylum in Australia have passed through at least one country where they could have contacted the appropriate authorities and sought protection, and many have lived outside their homeland for many years in safety.[55] Sweden, for example, returns all asylum seekers who arrive via another country (such as Denmark) to that country, arguing that they should have sought asylum there first.[56] The boat people who have been arriving illegally in Australia over the past two years entered Indonesia before coming here, sometimes legally. It is not difficult to gain lawful entry to Indonesia from another Islamic country, although the Indonesian authorities have been getting more serious about checking such entrants since the current heavy flows began. Another legal entry point is Malaysia, which also offers visa-free entry from other Islamic countries. From there, potential illegal immigrants to Australia can take a ferry across to Indonesia with very little difficulty.

But returning these people to the country they last visited depends on the willingness of those countries to receive them back. Sweden is fortunate to have such an agreement with Denmark. Last year, Australia renewed its Memorandum of Understanding with China to return Sino-Vietnamese refugees settled there, who subsequently arrived unlawfully in Australia.[57] To date, this is Australia's only bilateral agreement in relation to unauthorised arrivals, although it is seeking to negotiate a comprehensive web of interlocking readmission agreements as part of a broad program to address people-smuggling and forum-shopping activities.[58]

Some first asylum countries and other countries traversed by refugees permit the entry of refugees provided they are in transit to another destination. These unwanted guests are then encouraged to move on as quickly as possible to minimise their host's share of the burden—the game of 'pass the parcel' on an international scale. Britain, for example, has long complained that France is 'nodding through' would-be asylum seekers trying to get to Britain by train.[59] Britain and France have now signed an agreement to tighten border controls at railway stations, focusing particularly on the Channel ports. This has not, however, stopped the flow of illegal immigrants, who continue to take even greater risks to try to smuggle themselves on board vehicles and trains entering the Channel tunnel.[60] But France has rejected a British proposal that all illegal immigrants entering Britain through France should be sent back there.[61]

Asylum seekers themselves use the system to find the best outcome for themselves. There is a new type called 'forum shoppers' who may have a genuine need for protection, but have a particular goal in mind and will shop around from country to country until they achieve it. Some may have two or three nationalities from which to avail themselves of protection, but have a preference for settling in another country—frequently one in the West. Others may have been offered asylum in one country but continue to seek a better outcome for themselves and keep moving until they find it. Some asylum seekers entering Britain have applied for asylum in several other European countries—one Romanian national had claimed asylum in ten other countries in the European Union (EU) before arriving in Britain.[62] 'Forum shoppers' also have an incentive to disguise their identity and falsify their travel documents in the hope that their true status will not be revealed by any cross-matching with UNHCR or other databases.

The size and scale of the illegal migration and the wide interpretation of the 1951 Convention, with several countries often assessing the same claims, are prompting calls for a re-examination of its operation and reform of the international asylum system.[63] Many countries, including Australia, have introduced legislation better to define their protection obligations and to overcome loop-holes in existing policy. In Australia, amendments to the *1958 Migration Act* in 1994 and 1999 have codified the concept of 'safe third country' to restrict applications for asylum where applicants have already sought, or can seek, protection in another country, usually in a country where they have previously resided. A 'safe third country' is one where the applicant has the right to reside in, enter and re-enter, where he or she is free from the threat of persecution and where there is no risk of their being returned to the country where they claim to fear persecution. It need not be one that is a signatory to the 1951 Convention or the 1967 Protocol. Such a 'safe third country' provides 'effective protection', allowing asylum seekers to be safely returned there.[64] Thus, in 1999, the Full Federal Court upheld a decision by the Refugee Review Tribunal not to grant a Bedoon, born in Kuwait, protection in Australia, because he had enjoyed effective protection in Jordan, where he had resided before coming to Australia.[65] While Jordan is not a signatory of the 1951 Convention, it provides residency rights with no risk of *refoulement* to Kuwait.

In the 1999 amendments, asylum seekers who have resided for seven days or more in a country which they have the right to re-enter, cannot apply for protection in Australia. This may include short transit stops on the way to Australia. The wording of this legislative amendment in

s91N does not mention 'safe third country', but the implication is similar. The legislation allows the Minister, following the advice of the UNHCR, to declare certain countries as providing effective protection and thus safe for the return of asylum seekers barred from making a protection claim in Australia. To date, the Minister has made no such declarations, but some analysts are concerned that the introduction of *country* assessments is contrary to opinion expressed in Australian case law, which stresses the assessment of *individual* circumstances; furthermore, the availability of Ministerial discretion to lift this bar in special circumstances raises legitimate concerns about the exercise of such discretionary powers.[66]

However, despite the lack of 'declared' countries, asylum seekers can still be excluded from protection in Australia under s36(3) of the legislation (though not barred from making an application as is the case with s91N) if they have not taken all possible steps to avail themselves of a right to enter and reside in any other countries, including countries of nationality. Despite legislation to facilitate the removal of unsuccessful asylum seekers, their return to a country where they have residency rights and would be safe from persecution involves two factors generally outside the control of the host country. First, it requires the cooperation of these asylum seekers, and second, the receiving country has to be willing to accept them. Long-term detainees in Australia (and elsewhere, for that matter) comprise a growing population of unsuccessful asylum applicants who are either unwilling to cooperate with authorities to resolve their situation or whose return to the country where they have residency rights is being held up by that country's unwillingness to accept them. For example, a number of unsuccessful asylum seekers in Australia cannot be sent back to Pakistan, where they are believed to have legal residency, because they destroyed their papers in an effort to bolster their claims of being from Afghanistan, and Pakistan is unwilling to accept the return of anyone without proof of Pakistani identity.[67]

Ideally a third country for resettlement should have a similar culture and language to that of the refugees to minimise the disruption and make the adjustment easier. These criteria can be difficult to achieve, especially when other countries in the region from where the refugees come are either unable or unwilling to offer long-term residency. The ten countries offering permanent resettlement are all Western,[68] and while the languages differ, English is spoken in all and is the national language in the three major resettlement countries (US, Canada and Australia). Some additional countries offer resettlement places from

time to time, but these are also mainly Western. The numbers living in Third World refugee camps and longing to get out are sadly far greater than the number of places available for permanent resettlement.

Convention signatories such as Australia actively participate in the UNHCR's work, contributing funds and advising its Executive Committee on the development of international refugee policy and practice.[69] Australia participates in a number of international fora to help resolve refugee situations. Foreign aid, annual monetary contributions to the UNHCR (over US$12 million a year), offers of temporary safe haven, and annual quotas of humanitarian entrants for resettlement in this country are other ways in which Australia contributes to the international effort. But what seemed to have worked reasonably well twenty years ago is becoming increasingly strained in the face of overwhelming changes in the international situation.

The cost of controlling illegal migration and assessing the claims of an estimated 500,000 asylum seekers worldwide by developed countries is now around US$10 billion a year, compared with the UNHCR's annual budget of just over US$1 billion to look after the needs of nearly 23 million refugees and people of concern.[70] The UNHCR has been under considerable financial strain for several years to meet its commitments, but now faces further budget cuts as some Western donor countries, notably in the EU, drastically reduce their annual donations.[71] This means that conditions in refugee camps in countries of first asylum are likely to worsen, placing greater pressure on avenues for illegal migration. The Australian Government appears to recognise the need to deal decisively with the current impasse. The Minister for Immigration indicating that he would be engaging in extensive consultations with like-minded countries and UN organisations 'to ensure there is a concerted and consistent approach to improving the functioning of the international protection system'.[72]

Endnotes

45 UNHCR 1954, *Convention relating to the Status of Refugees of 28 July 1951*, http://www.unhcr.ch.

46 *Ibid.*, Article 33.

47 UNHCR 1992, *Handbook on Criteria and Procedures for Determining Refugee Status*, http://www.unhcr.ch/refworld/legal/handbook/handeng/hbtoc.htm, para. 25.

48 *Ibid.*, para. 40

49 Cited in Kenneth Rivett 2001, 'Is there an alternative to mandatory detention?', *People and Place*, Vol. 9, No. 1, pages 9–13, page 9.

50 *Ibid.*, pages 9–10.

51 Klintworth, Gary 2001, 'Woomera: Hell-holes and mandatory detention for illegal immigrants', *People and Place*, Vol. 9, No. 1, page 21.

52 Article 1 C (1–6) of the 1951 Convention.

53 DIMA 2001, Fact Sheet 46, *Australia's International Protection Obligations*, 23 May, http://www.immi.gov.au/facts/

54 Illingworth, Robert 2000, *Finding Durable Solutions—the Refugee, the International Protection System and Australia*, Speech to Refugee Council of Western Australia, November, http://www.immi.gov.au/test/publications/.

55 *Loc. cit*.

56 UNHCR 2000, *Reception Standards for Asylum Seekers in the European Union*, Geneva, July 2000, http://www.unhcr.ch./issues/aylum/estandards0007/toc.htm, page 157.

57 Minister for Immigration and Multicultural Affairs 2000, 'Australia Renews Agreement with People's Republic of China on Returning Illegal Arrivals', *Media Release* 51, 15 May, http://www.immi.gov.au.

58 DIMA 2001, *Refugee and Humanitarian Program—Policy: Irregular Migration and People Smuggling*, 12 May, http://www.immi.gov.au/test/policy/icb.htm.

59 Womack, Sarah and Bishop, Patrick 2001, 'Summit deal to fight asylum crisis', *Daily Telegraph*, 10 February 2001, http://www.telegraph.co.uk.

60 Daley, Suzanne 2001, 'Chunnel's Human Traffic Has a Dream', *The New York Times*, 15 March.

61 Womack, Sarah and Bishop, Patrick 2001, *op. cit.*

62 Johnston, Philip 2000, 'Migrants "shop around" Europe for best deal', *Daily Telegraph*, 11 April, http://www.telegraph.co.uk.

63 One of these is Jack Straw, Britain's Home Secretary—see Philip Johnston 2001, 'Straw seeks to stem flow of refugees', *Daily Telegraph*, 7 February, http://www.telegraph.co.uk.

64 For an excellent account of Australian case law and legislative amendments on this issue, see Joanne Kinslor 2000, 'Sending asylum seekers elsewhere: Recent developments in Australian "safe third country" law', *People and Place*, vol. 8, no. 2, pages 53–68.

65 Cited in *ibid*., pages 57–58. The Bedoon of Kuwait form part of the small number of 'stateless' asylum seekers in Australia, although Kuwait is apparently in the process of changing its policy, and is now offering the Bedoon the opportunity to apply for Kuwaiti citizenship.

66 See, for example, *ibid*., pages 58, 62.

67 Heinrichs, Paul 2001, 'Language tests face questions', *The Age*, 24 June.

68 These are: USA, Canada, Australia, New Zealand, Norway, Finland, Sweden, Denmark, Switzerland and the Netherlands. UNHCR, nd, *Who is a Refugee?*, http://www.unhcr.ch.

69 DIMA 2001, Fact Sheet 46, *Australia's International Protection Obligations*, 23 May, http://www.immi.gov.au/facts/

70 Clennell, Andrew 2001, 'Ruddock finds his Straw in the wind', *The Sydney Morning Herald*, 10 February.

71 Crossette, Barbara 2001, 'For Lack of Support, U.N. Agency Shrinks Aid to Refugees', *The New York Times*, 29 April.

72 Minister for Immigration and Multicultural Affairs 2000, 'Minister Pursues Reform in UN Refugee Arrangements', *Media Release* 100, 30 September, http://www.immi.gov.au.

4. What Is Australia's Record?

Offshore refugee intake

As noted above, Australia is one of the only ten countries that accept an annual quota of refugees from overseas for resettlement in their territories. Australia has the third highest annual intake of refugees from overseas after the United States and Canada, and in some recent years has ranked first in terms of its annual refugee resettlement rate (that is, number of refugees per 10,000 of population—currently, Canada ranks first).

Australia's humanitarian program is administered by DIMA and is divided into three components. The *refugee* category is for people outside their home country who are subject to persecution and have been identified in conjunction with the UNHCR as in need of resettlement. In most cases, the Australian Government pays the costs of medical examination and travel to Australia and provides settlement services and welfare payments to ease their adjustment to this country.

Then there is the *Special Humanitarian Program* for people outside their home country who suffer discrimination amounting to gross violation of human rights, and who have strong support from an Australian citizen or resident or a community group in Australia. The role of the supporters may include assisting these entrants with medical costs, air fares and finding accommodation in Australia. The program allows relatives and others with existing ties in Australia to join their family or community in this country, fostering the development of a viable local community that can ease the adjustment to the new country.

From 2000–2001, the third component is the *Onshore Protection Visa Grants,* for refugees granted protection visas in Australia.[73] The claims of all onshore asylum seekers are determined against the criteria in the 1951 Refugee Convention. In the past, all humanitarian entrants, whether they entered Australia lawfully or unlawfully, could apply for a permanent protection visa. This entitled them to welfare benefits, Medicare and the right to work in Australia, similar to all other

permanent residents. This was, however, changed on 20 October 1999, when two types of protection visas were introduced. Now only those who enter Australia lawfully are offered a Permanent Protection Visa. Unauthorised arrivals can only be offered a three-year Temporary Protection Visa (TPV). TPV holders cannot apply for a permanent visa until they have held the temporary one for at least 30 months, and they have no access to family reunion while here temporarily. They have work rights and can gain access to Medicare, and may be eligible for a special benefit if needed.[74]

The rationale for this change is to prevent the misuse of Australia's onshore protection arrangements, and to discourage non-refugees from using asylum provisions as a means of immigrating through the backdoor. It is also possible that, in the intervening three-year period, conditions in the countries of origin will have changed, allowing a number of such visa holders to return to their own countries. The Government claims that the tougher measures are working to deter asylum seekers with marginal claims. In the past year, about 5,000 TPVs have been issued, and 47 of the recipients have since left Australia.[75]

There are, however, potential problems with these visas. The claims of holders of TPVs will have to be re-examined when they apply for their permanent visas, and this has the potential to create considerable double-handling for DIMA and associated review mechanisms. Furthermore, if the TPV holders' applications for permanent protection fail, repatriation will be more difficult to effect—moral arguments about the strong emotional attachments they may have developed during their three-year residence in this country will be hard to resist.

While all humanitarian entrants have to meet stringent medical and character tests to be allowed to settle in Australia, clearly not all have to be 'refugees' as defined by the UN's 1951 Convention. There is considerable leeway in the Humanitarian program to allow entry of others 'in special need'. Therefore it is not surprising that many onshore asylum seekers have expectations of achieving permanent residency within Australia, especially if they can show they have family or close community ties here already.

In 2000–2001, 12,000 places were allocated for humanitarian entrants, with a notional division of 4,000 for refugees, 3,100 for Special Humanitarian, 4,000 for Onshore Protection, and 900 for those still awaiting entry in the soon-to-be-phased-out Special Assistance categories.[76] The cost of the Humanitarian Program is appreciable, over a quarter of a billion dollars each year. There is considerable management flexibility, such that unused places can be rolled over into

the following year, or there can be a trade-off between onshore and offshore programs.

One of the criticisms of the Government by refugee lobbyists is that the onshore protection component is included in the annual quota for the Humanitarian Program. The Executive Director of the Refugee Council, Margaret Piper, argued that the onshore component should be treated separately, as it has been done in the past, and that there should be no trade-off between the onshore and offshore intake, which usually means a reduction in the offshore program to accommodate an increase in onshore protection applications. In her view, the Government should simply accept that refugee numbers rise and fall in response to international circumstances, and deal with the situation accordingly.[77]

During the interview for his book, Mares put this argument directly to Philip Ruddock.[78] Ruddock responded by asking Mares to suggest an appropriate number that Australia could accommodate, given limitations to budget appropriations, administrative capacity, and political acceptability. While Mares acknowledged that these were valid reasons for limiting the overall intake, he suggested that the numbers of onshore asylum seekers in Australia were still relatively small, obviating the need to set a quota at all. Common sense, as well as experience from other countries suggests, however, that numbers rise markedly where countries get a reputation as 'soft targets' for illegal immigrants. The Federal Government could also argue that the Australian public expects to be advised on the projected annual intake of new settlers and the estimated cost. The numbers are set every year after an examination of foreseen demand, together with extensive consultations with relevant international agencies and community groups throughout Australia. In addition, management flexibility allows for a quick response to sudden unforeseen need.

In the last three decades, there have been two refugee crises before this most recent one. And like the current one, both cases were triggered by onshore claims for protection. In the aftermath of the Indo-Chinese war in the late 1970s, the Fraser Government allowed the entry of thousands of illegal Vietnamese boat people, as well as other Indo-Chinese selected from South East Asian refugee camps—over 10,000 arrived in Australia in 1978 alone.[79] The previous Whitlam Government, despite sweeping away the last remnants of the White Australia policy, had strongly opposed the entry of Vietnamese boat people, nor did it support their inclusion in Australia's offshore quotas. Whitlam objected to them because their strong anti-Communism could possibly translate

into hatred of his government, although centre and right-wing elements of the Labor Party favoured a more liberal entry policy.[80]

The other crisis occurred after the June 1989 Tiananmen Square massacre, when Prime Minister Bob Hawke made an emotional promise to the 20,000 Chinese students in Australia at that time that all those who had entered the country before 20 June 1989 would be allowed to stay, and that no-one would be sent home against their will. His promise pre-empted any decision by Cabinet and he was also sharply criticised by some ethnic groups for giving privileged treatment to the Chinese. In the end, his promise was translated into the offer of a four-year temporary entry permit, but many Chinese ended up settling permanently in Australia because of his public assurance that no-one would be forcibly repatriated.[81] Yet when several hundred Cambodian boat people arrived on Australian shores between 1989–91, Hawke took the same line as Whitlam had earlier, declaring that they were economic refugees and queue jumpers, and should not be allowed to settle here.[82]

Although the number of unauthorised boat people arriving in Australia at the beginning of the 1990s was very small compared with the accelerating worldwide trend of illegal flows, the then Labor Government took a hard line with all illegal arrivals. The entrepreneurs who were making money out of this illegal traffic were roundly condemned. Airlines were made responsible for the entry of people without appropriate documentation or fraudulent papers, and these illegal arrivals were usually promptly deported.

Onshore asylum seekers and overstayers

Attempts to stay in Australia permanently by claiming asylum are not new. Most onshore asylum claims are made by people who have entered this country legally.[83] In recent years, an average of around 8,000 people a year have applied for an onshore protection visa—a drop of nearly half from a high of over 16,000 in 1990–91 following Tiananmen Square—although since 1999 this has again increased significantly.[84]

Some visitors to Australia do not leave when their visas expire, make no claims for asylum, and simply disappear into the general population. Australia has always had a fairly substantial stock of people who overstay their visitor and temporary resident visas and continue to live in the country illegally. On 30 June 2000, there were an estimated 58,748 overstayers in Australia.[85] Yet, they accounted for only 0.2 per cent of the total number of visitors to this country with a 'lawful until' date between 1 July 1999 and 30 June 2000.[86] Many such people simply extend

their stay by a few days or a few weeks and leave of their own accord within a short time. But others deliberately disappear, melting into the community to find jobs and take up a new life in Australia without ever regularising their residency status. DIMA estimates that around 28 per cent have resided unlawfully in Australia for nine years or more.[87]

In 1999–2000, DIMA located 14,369 overstayers, the majority of whom left the country voluntarily at their own expense after their apprehension.[88] Critics of Australia's mandatory detention policy argue that overstayers are treated much more leniently than unlawful arrivals. McMaster, for example, argues that, unlike unlawful arrivals, overstayers are not detained because the majority are British or Americans who therefore pose no threat to Australia because they are not perceived as the sinister 'other'.[89] While it is true that the largest group of overstayers are British or American (who together account for around 18 per cent of all overstayers at 30 June 2000), this figure reflects, to a certain extent, the fact that these countries are also the source of the largest numbers of visitors and temporary entrants. The overstay rate for people on temporary visas from the United Kingdom and the United States was around 0.2 per cent at 30 June 2000.[90] In contrast, the highest rate of visitor overstaying occurred among visitors from Vietnam (3 per cent of 5,016 visitors), Philippines (2.1 per cent of 33,472 visitors), and Samoa (2.1 per cent of 2,592 visitors).[91]

In fact, despite McMaster's claims, there is a much less sinister explanation of the approach DIMA takes to overstayers. It does not treat overstayers lightly, but it does seek to minimise the cost to the public purse by assessing the risk of non-compliance based on past experience. Thus, overstayers who present themselves to the authorities and are prepared to leave voluntarily are offered a bridging visa until they can arrange their own departure. This is termed a 'monitored departure'. Overstayers who are located by departmental officers, but who are prepared to leave at their own expense are also granted a bridging visa, but are taken to the airport under supervision to ensure that they depart. Those who are unwilling or unable to depart are detained and then removed from the country at departmental expense, although the individual is given notice that the debt must be repaid.[92] All overstayers, including those who leave voluntarily, are penalised by the imposition of an exclusion period, whereby they are not permitted to return to Australia for up to three years. Comparing overstayers who have entered lawfully with unlawful arrivals is not really a comparison of like with like, and overstayers who decline to leave are removed by the authorities.

Locating overstayers is costly, difficult and not entirely successful, given the lack of a national system of personal identification. Undoubtedly many thousands go undetected. It is because of this experience with overstayers that the Howard Government has continued the policy of previous ones in taking a firm line with illegal immigrants. Were they to be released into the general population immediately after arrival, they would be as difficult to locate later, and more so if their asylum claims are weak and they believed that they would be denied a protection visa.

A national identity card carried by all adults would certainly make the task of keeping track of such individuals much easier, and would also permit a more moderate approach to the detention of illegal immigrants. But the strong public reaction against Labor's 1987 proposal to legislate for the introduction of an 'Australia Card' forced this issue off the agenda. Australian advocates for the adoption of the 'Swedish model' for dealing with asylum seekers should take into account the presence of this national identity card in Sweden and its role in permitting the operation of a less stringent detention system. Asylum seekers who are permitted to stay in Sweden while their claims are processed are issued a temporary identity card and are also expected to report regularly to the authorities.[93]

Tellingly, after years of silence on the 'Australia Card' issue, it is the illegal immigration debate that prompted *The Weekend Australian* to publish an editorial suggesting that now might be a good time to reconsider the proposal.[94] The editorial argues that a transparent national identity card with clearly defined accountability procedures has the potential for providing a host of benefits both to individuals and to the nation as a whole. Were this proposal to be taken up, it would certainly make it easier to track down overstayers and permit a more lenient approach to asylum seekers who arrive in the country unlawfully.

But resistance to this proposal appears still strong enough for some Australians to take seriously a suggestion by the Anglican primate, Peter Carnley, to have all illegal immigrants fitted with an electronic tracking device, which will allow asylum seekers to live in the community while their protection visa applications are being processed.[95] If mandatory detention is considered by some to be 'draconian', forcing these people to wear an electronic bracelet may meet similar opposition. An identity card carried by everyone in the community is a much less obtrusive and less discriminatory alternative.

Resettlement of migrants and refugees

Australia has a good record for resettlement of new immigrants. Generally, migrants have adjusted well to their new country and appear to be well satisfied with their decision to migrate to Australia.[96]

Assisted passages for migrants ended in 1981 (except for refugees) and the rules on settlement services (such as free English-language teaching) and welfare payments have been progressively tightened to discourage opportunistic exploitation of Australia's welfare system. At the same time, the Migration (Non-Humanitarian) Program was reconfigured to put more emphasis on skilled and business entrants, especially those with English-language ability, and to reduce numbers in family categories where welfare dependency was most likely—thereby creating a more balanced program.

There have been many studies assessing aspects influencing successful resettlement, including visa category, English-language ability, and job skills and labour market experience. A recent study has shown that migrants generally access welfare less than other Australian-born residents, but welfare use increases if they are aged 45 years or older on arrival in Australia, and if they come from countries where it is less likely that they arrive in Australia speaking English well.[97] Other studies analyse data obtained from the Longitudinal Study of Immigrants to Australia (LSIA), which followed a cohort of immigrants who arrived in the country between September 1993 and August 1995 for three-and-a-half years after their arrival. Not surprisingly, the ability to speak English, having post-secondary qualifications and entering the country on the basis of job-related or business skills make it much more likely that immigrants will find a job quickly, frequently at the level of their skill or qualifications.[98]

The most disadvantaged immigrants are the Humanitarian entrants. According to the LSIA results, after three years in this country, a third were still unemployed and receiving welfare benefits (although humanitarian entrants also expressed a high level of satisfaction with life in Australia). The relatively high rates of welfare use among humanitarian entrants and the often long-term nature of this dependency are common knowledge. A study by ACIL Consulting on the impact of migrants on the Commonwealth Budget found that outlays on the humanitarian stream are significantly greater than on any other categories of migrants, and although these fall rapidly in later years, tax receipts never reach more than half those from the other categories.[99] What is often ignored, however, is that some refugee groups appear to

take longer to adjust to Australia than others. A study of immigrant welfare recipients published in 1991, showed that Lebanese-born and Vietnamese-born people of working age (both being refugee groups who were then in Australia for around ten years) had the highest percentages of people receiving unemployment benefits, although the rate among the Vietnamese-born was already declining rapidly.[100]

In the past, non-English speaking migrants were able to find unskilled jobs where they could learn English and adjust to their new environment with minimal call on external sources for assistance. Changing economic conditions have reduced the availability of factory work and other similar low-skilled jobs, where English-speaking ability is not an essential requirement. This change places greater strain on public resources in the resettlement of humanitarian entrants. The services offered to offshore refugees include on-arrival accommodation and settlement assistance (arranging schooling, English classes, accessing welfare payments and other community services, etc) through a network of government and volunteer agencies. As noted earlier, considerable assistance is also offered to onshore asylum seekers and those on TPVs who meet the required eligibility criteria.

Endnotes

73 Previously, the third component was the *Special Assistance Categories* for people in vulnerable situations with close family or community links to Australia, but who do not meet the criteria for the other two categories. It was introduced in 1992 to facilitate the entry of ethnic minorities of the former USSR, citizens of the former Yugoslavia and others who did not meet the criteria for the other two components, but who already had relatives in Australia. It rapidly became the largest single component in the Humanitarian Program. In 1995–96, almost 7,000 Special Assistance visas were issued, making up nearly half of all humanitarian visas. There has been some criticism that these visas, issued mainly to people of European origin, could be regarded as discriminatory.

74 DIMA 2000, Fact Sheet 41, *Seeking Asylum within Australia,* 14 December 2000, http://www.immi.gov.au/facts/.

75 Saunders, Megan 2001, 'Detainee crackdown is working, Ruddock says', *The Australian*, 13 August.

76 DIMA 2000, Fact Sheet 40, *Australia's Refugee and Humanitarian Program*, 2 November, http://www:immi.gov.au.

77 Barker, Geoffrey 2001, 'The great unwanted', *Australian Financial Review*, 10–11 February 2001.

78 Mares, *op. cit.*, pages 150–1.

79 Rubenstein, Colin 1993, 'Immigration and the Liberal Party of Australia' in J. Jupp and M. Kabala (eds), *The Politics of Australian Immigration*, AGPS, Canberra, page 149.

80 Grattan, Michelle 1993, 'Immigration and the Australian Labor Party', in J. Jupp and M. Kabala (eds), *op. cit.*, page 130.

81 *Ibid.*, page 135.

82 *Ibid*. pages 135–36.

83 DIMA 2000, *Population Flows: Immigration Aspects,* December, Canberra, page 27.

84 *Loc. cit.*

85 *Ibid.*, page 56.

86 *Loc. cit.*

87 *Loc. cit.*

88 DIMA 2001, *Protecting the Border: Immigration Compliance,* 2000 edition, Canberra, page 55; DIMA 2000, Fact Sheet 80, *Locating Overstayers in Australia,* 31 May, http://www.immi.gov.au/facts.

89 McMaster 2001, *op. cit.*, page 69.

90 DIMA 2001, *Population Flows: Immigration Aspects*, December, Canberra, pages 56, 107.

91 *Ibid.*, page 56.

92 DIMA 2000, Fact Sheet 80, *op. cit.*

93 UNHCR 2000, *Reception Standards for Asylum Seekers in the European Union: Sweden*, July, Geneva, page 156, http://www.unhcr.ch.

94 Anonymous 2001, 'Immigration and the unmentionable', *The Weekend Australian*, 16–17 June.

95 Douez, Sophie 2001, 'Push to allow detainees into the community', *The Age*, 24 July.

96 VandenHeuvel, Adriana and Wooden, Mark 1999, *New Settlers Have Their Say—How immigrants fare over the early years of settlement*, Executive Summary, http://www.immi.gov.au/research/publications.

97 Birrell, Bob and Jupp, James 2000, 'Welfare Recipient Patterns Among Migrants', DIMA, Canberra.

98 *Ibid.*

99 ACIL Consulting 1999, *Impact of Migrants on the Commonwealth Budget*, http://www.immi.gov.au/population/acil/acil2.htm

100 Whiteford, Peter 1991, *Immigrants and the Social Security System*, AGPS, Canberra, pages 67–68.

5. What Has Changed?

At the beginning of the last decade, the Australian Government's negative stance against illegal immigrants came under public scrutiny when the detention provision in the *1958 Migration Act* was first invoked after the arrival of several boatloads of Chinese, Vietnamese and Cambodian illegal immigrants in 1989. In 1992, mandatory detention for all unlawful arrivals became the standard practice, with bipartisan approval. Australia complied with its international obligations by processing any legitimate claims for asylum, but the view that most illegal entrants were trying to jump Australia's migration queue, seemed to be generally accepted and coloured administrative practice.

Yet by the end of the decade, attitudes have changed sufficiently for there to be a barrage of criticism in the media about measures taken by the Federal Government to cope with would-be asylum seekers. Some groups, such as Pauline Hanson's One Nation Party, are calling for all illegal immigrants to be deported forthwith and, despite that policy's impracticability, it has considerable public support. In contrast, others, for example the Refugee Council, argue that these people should only be detained for as long as it takes to establish their identity, nationality and carry out appropriate health checks. Just why has this reversal occurred? There are many reasons. A few are related to local conditions, but most relate to global developments.

The Government

Instead of the Labor administration of the early 1990s, a conservative coalition is currently in power, and rightly or wrongly, many opinion makers seem to perceive conservative governments as being less interested in humanitarian and social justice issues than Labor. Although the Howard Government's approach to dealing with unauthorised arrivals is not so different from that of its Labor predecessors, it has been subject to strong and unrelenting criticism in much of the 'quality' media.

Thus, there are numerous media accounts of the suffering of detained asylum seekers.[101] The stories stress the decency of the people involved and the unfairness of their current treatment as 'criminals'. The stories

appear to be accepted at face-value with little attempt to check the facts. A recent ABC *Four Corners* program (aired on 13 August 2001) is a good example. It ostensibly broke the news of an Iranian family whose son, Shayan, was allegedly badly traumatised by the violence he had witnessed during the family's lengthy period in detention. The program highlighted the distress the family was experiencing because of their imminent deportation, but did not reveal that the father's claim for refugee status had been denied unequivocally by the RRT and the Federal Court, with the Court endorsing the RRT's findings that his claims of persecution were untrue. Nor did it explain that the family's detention had been prolonged because of the father's refusal to sign the required travel papers. Furthermore, the father's statement that his wife is Shayan's mother is also untrue and it is not clear what happened to the boy's natural mother—adding further complexities to the circumstances of the boy's physical and mental problems that were not raised in the ABC program.[102]

Not even release into the community on TPVs is considered adequate compensation for the suffering experienced by asylum seekers who entered the country illegally. Temporary visas are said to create 'second-class refugees', leave the holders in limbo, strand them with inadequate support, and create a massive burden for charity groups dedicated to helping them.[103] A recent document on TPV holders in Queensland prepared for the Multicultural Affairs Unit of the Queensland Department of Premier and Cabinet offers a typical example.[104] It uses 'action research methodology' based on four in-depth interviews and three focus groups of twenty TPV holders, as well as twelve in-depth interviews and one focus group of nineteen service providers. Yet it provides no statistics on the total numbers of TPV holders in Queensland at the time or any supporting evidence for assertions about their impact on services providers in the State.[105]

Non-Government Organisations

Much of the criticism of the Government's policies is spearheaded by spokespeople from Non-Government Organisations (NGOs) such as refugee organisations, major charitable groups and the churches. Some of these groups are in partnership with the DIMA in providing settlement assistance to humanitarian entrants, receiving government funding to carry out their work. They can thus be expected to be sympathetic to the plight of their charges and understand some of their problems. However, as Gary Johns has argued in his IPA Backgrounder,

'NGO Way to Go', by linking themselves with these NGOs in the provision of services and by furnishing them with the necessary resources, 'governments lend NGOs an authority beyond their actual legitimate claim'.[106]

There is a worldwide trend for NGOs to wrest more and more authority from democratically elected representatives by claiming that they alone represent civil society. They invoke international legitimacy through the parliament-like structures established overseas to represent their interests. In this respect, NGOs have set themselves up in opposition to such governments (regarded by some of their members as the tyranny of the majority), arguing that they are the true representatives of minorities and victim groups. And a cynical view of the NGOs' interests would suggest that they are always motivated to portray as bleak a picture as can credibly be presented in order to preserve their *raison d'être*, maintain their funding, and promote the moral superiority of their members and officials. Thus, as Johns suggests, NGO participation in the provision of government services only serves to 'make life harder for governments because of the constant articulation of dissatisfaction'.[107]

Human rights and victimhood

The rise in power and influence of NGOs is a reflection of a worldwide, thoroughly desirable concern for human rights and the identification of groups who are victims of human rights abuses. Groups that can identify themselves as having victim status argue that they require special privileges, supposedly to help them overcome their disadvantage. While some of the policies to eradicate the discrimination and other problems suffered by individuals in these groups were warranted and have been successful, some individuals find that there are too many perks associated with victimhood to allow it to be readily set aside.

This can have serious unintended and long-term consequences. The most damaging is the loss of a sense of personal responsibility. From an individual's point of view this means that all life's difficulties can be blamed on external forces. A society that encourages a sense of victimhood will have to put up with growing numbers of people who have surrendered control over their own lives, who need continual financial and other support, and who are likely to transmit a culture of victim-induced dependency to their own children.[108]

Tribalism vs multiculturalism

Thus, the kind of successful integration of refugees into host countries that occurred in the immediate post-War era is made more difficult in the future. Not only do the perceived advantages associated with victimhood make it harder for groups like refugees to give up their privileges, the growing celebration of ethnic difference also works against a willing identification with the host nation.

Instead of finding common ground to meet common objectives, as is the practice in most pluralistic nation states, advocates of this new 'tribalism' proceed on the assumption that minority cultures not only merit the same consideration as all others, but are somehow superior to the majority cultures of Western liberal democracies.[109] Thus, in countries like Australia with a long history of migration and a genuine willingness to accept newcomers as citizens in every sense, 'tribalism' amongst many of the new kind of asylum seekers is set to upset the rather complaisant and *laisser-faire* ethos of multiculturalism. Multiculturalism accepts that migrants may wish to retain many of their traditional customs, but that in their desire to do well in their new country, they will also interact with their hosts and adapt themselves to their ways.[110] Yet, instead of being willing to adapt to and identify with Australia, many of the new kind of immigrants, including asylum seekers, are encouraged to define themselves as separate and different.

An example of what can happen under these circumstances can be found in Denmark, long lauded for having a very open and humane refugee policy. But now that country is finding increasing problems with the integration of asylum seekers. The Danes have come to realise with dismay that their open refugee policy allowed the entry of organised crime syndicates, who had no hope, nor any real desire of becoming Danish, and only came to prey on the local population. As for the genuine asylum seekers, various Danish governments assumed that, after a generation, 'the newcomers would assimilate, marry Danish girls, and become jolly Danes themselves'.[111] Instead, rather than marrying locally, many still import a wife from the old country, even in the third generation, feeling an obligation to help cousins in their ancestral village to come to Denmark through arranged marriages. This chain migration means that the process of integration, acculturation, language teaching, etc., has to be endlessly repeated in the same families, with a consequent persistence of high unemployment among refugee groups.

But what has really upset the Danes is the call by some militant Muslims, among the mainly Turkish, Pakistani, Palestinian, and other

Middle Eastern immigrant groups residing there, for key elements of Islamic law to be introduced as part of Danish law, including mutilation for theft and the death penalty. So, not only do Danes have to put up with rising crime, ghettoisation in their major cities, and an enormous strain on the welfare system because of this failure of integration, but aspects of their own cultural and political heritage are now under increasing pressure. One third of Danes who voted 'no' in the September 2000 referendum on whether to join the 'Euro zone' stated they did so because they were concerned about preserving 'Danish identity'. This did not sit well with the rest of Europe, coming as it did not long after Austria was condemned for its seeming alignment with ultra right-wing politics. So, whereas Danes had previously been praised for their generosity to foreigners and the largesse of their international aid, they now find themselves being criticised in the international press for being timid, small-minded, and, of course, 'racist'.[112] Yet most Danes resist the introduction of the kind of multiculturalism that treats all cultures as 'separate and equal', if it means countenancing what they regard as 'barbaric' behaviour.

This raises the question of the kind of *quid pro quo* that should legitimately be expected of asylum seekers. As much as this may distress cultural relativists, the very fact that large numbers of people from countries not subject to invasion from an enemy wish to seek asylum elsewhere would seem to point to serious failings in the political cultures of those countries. It is not unreasonable, therefore, to expect these people to make every effort to accommodate to values and standards of their host country and contribute to preserving those aspects of national life that made that country such a desirable destination for them.

New information networks

The Internet has opened a whole new avenue for the dissemination of information and misinformation. Government Websites of refugee-receiving countries, as well as the UNHCR site, post a wide range of relevant information that allows would-be asylum seekers and people smugglers to shop around for the best prospect for themselves and their clients. For instance, the DIMA Website carries considerable data on the outcomes of refugee determination procedures and appeals, allowing a fair assessment of possible chances of success. Internet sites also carry offers of help from various refugee groups and advertisements from professional migration agents.

Sometimes, however, the information that would-be asylum seekers and illegal immigrants get about conditions in their target country can be dangerously misleading. At the Red Cross shelter in Sangatte near Calais in France, for example, a number of hopefuls said they chose England as their destination because they had heard that they would get free housing and an allowance as soon as they arrived—both untrue. A recent incident in Western Australia, where a group of 24 Sri Lankans was found wandering along a bush track, showed how vulnerable some asylum seekers were to being duped.[113] They had been dropped off at an isolated beach in the north of the State and told that they would be met by a bus and taken to Sydney. Instead, the well-dressed young men wandered around carrying their suitcases, lost for several days in a deserted stretch of country.

Nevertheless, news about possible new 'soft targets' spreads quickly throughout the world by way of official and unofficial communication channels. For instance, when Germany and France started to restrict entry, Britain became increasingly attractive, especially given the relative ease of entry available from France and the promise of favourable treatment once they arrived. Also, Britain is the only EU country that does not issue its residents identity papers, making it easier for illegal entrants to move around and work illegally. Now there is a 'refugee crisis' in Britain. Sympathy, openness and generosity are exploited by people wanting to better their lives.

The business of people smuggling

People-smuggling is not a new phenomenon, but the scale of the operations is new. It has become an estimated US$10 billion a year industry worldwide.[114] Not only is it becoming more lucrative with a seemingly limitless client-base, the risks are also much lower than for other illegal trafficking—when the goods smuggled are people, they are the ones who usually suffer the consequences when apprehended by the authorities, not the smugglers. Furthermore, the last link in the chain to Australia is often effected by Indonesian fishermen who might regard two years in an Australian prison a modest cost for the money they have left behind with their families.

The methods of travel depend on the fees—wealthy clients can obtain appropriate travel documents quickly and have a trouble-free flight to their destination. There are, for example, 'travel agents' catering to wealthy Sri Lankan Tamils wanting to migrate to the UK or to Canada (their preferred destinations).[115] Other Sri Lankans with less money

and no influential contacts make do with a flight to a nearby Third World country and an uncomfortable overland trip to a European destination. The dangers of abandonment, exploitation, and extortion are high—those who have been stranded are vulnerable to exploitation as prostitutes or forced labourers, others have been robbed, and left for dead. There is also the added risk of death in the holds of leaking vessels or sealed shipping containers. People smugglers are not known for their concern for their 'cargo'.

Although, as noted previously, the number of onshore asylum claims per year in Australia is moderately low compared to some other Western countries, when viewed as a proportion of the total population, our situation is not so different.[116] And Australia's share of the illegal trade has shown a marked increase since the mid-1990s. Australia has a lot to offer people who are willing to take the risk of getting here. These risks appear to be lessening, as smugglers gain valuable knowledge and experience from successful ventures.

Table 1: Onshore Protection Applications and Unauthorised Arrivals, 1995–2000

	1995–96	1996–97	1997–98	1998–99	1999–00
Authorised arrivals	8 005	11 072	8 051	8 092	8 754
Unauthorised arrivals [1]	89	75	84	306	3 968
Total	**8 094**	**11 147**	**8 135**	**8 398**	**12 722**
Total no. of unauthorised arrivals by entry method [2]:					
by air	663	1 350	1 550	2 106	1 695
by boat	589	365	157	921	4 175
Total	**1 252**	**1 715**	**1 707**	**3 027**	**5 870**

Notes:
1. Number of unauthorised arrivals making protection applications.
2. These figures for unauthorised arrivals differ from those above because they include people who did *not* make a protection application.

Sources: DIMA 2000, Population Flows: Immigration Aspects, DIMA, Canberra, page 27; DIMA 2001, Protecting the Border: Immigration Compliance, 2000 edition, DIMA, Canberra, page 93.

As is apparent from Table 1 above, the largest number of onshore asylum claims are made by people who have entered Australia legally, even though it is the unauthorised arrivals who receive most public

attention. And although the current focus is on unauthorised boat arrivals, in most years the largest number and the steadiest increases have been among unauthorised air arrivals. Smuggling enterprises using airport entry have operated for some time in this country, arranging for their clients to enter Australia on legal (though sometimes fraudulently obtained) temporary visas. In 1995–96, 663 people attempted to enter Australia through major airports, either carrying no documentation (documents used to check-in overseas were either left behind for the smugglers to collect or abandoned before arrival) or with fraudulent travel papers. By the end of the decade, the numbers of illegal air arrivals had trebled—2,106 in 1998–99, with a reduction to 1,695 in 1999–00.[117] Not many of these remained in Australia for long—in 1999–2000, almost 80 per cent were removed from this country within 72 hours.[118]

In contrast, illegal boat arrivals surged suddenly in 1998–99, during which 921 arrived in 42 vessels compared to a total of 157 boat people in the previous year. In 1999–2000, there was an even bigger increase, with the landing of 75 unauthorised boats carrying 4,175 people, far outstripping the number of illegal air arrivals that year.[119] Since 1989 to June 2001 nearly 12,000 boat people have landed in Australia.[120] The boats are impounded, but are often barely seaworthy and in some cases are destroyed by the authorities for quarantine reasons. The passengers and crew (if still on board—crews sometimes abandon their charges before entering Australian waters) are thus forced to remain in Australia until their identities have been established and their situation can be resolved. Most of the recent boat arrivals have been from Iraq and Afghanistan, using various staging points in the Indonesian archipelago to sail to the northwest coast of Australia.

The Government, together with DIMA and the Federal Police, initiated a number of programs to reduce the flow of illegal entrants to this country. These include diplomatic negotiations and cooperative policing efforts with Indonesian, Thai and other regional authorities to reduce people-smuggling at source, and to tighten compliance procedures and policing at overseas airports, as well as to increase domestic penalties for people-smuggling. While they have experienced some success in uncovering some people-smuggling rackets, the illegal traffic shows no sign of abating. As routes are uncovered and blocked, alternatives open up.

The toughening up of entry in one country simply moves the problem to another. The 58 Chinese illegal immigrants found suffocated in a lorry container at Dover were apparently first apprehended in

Belgium but were simply escorted to the border by authorities there.[121] Between 100 and 150 a night are stopped at Calais from attempting to cross to Britain through the Channel tunnel, and are sent to a Red Cross holding centre nearby from where they try again another night.[122] At least 400 a month are successful, arriving at Waterloo Station to claim asylum.[123] And despite considerable national agitation and international negotiations to stem this flow into Britain, Britain's reputation as a safe haven for illegal migrants seems well deserved. Relatively few who fail in the their asylum bid end up leaving the country. Government record-keeping is lax, there is little follow-up on those who stay on illegally, and fewer than 10 per cent of those who are rejected are forced to leave. Britain now has an estimated 200,000 failed asylum seekers still in the country, and more asylum seekers in total than any other European country,[124] although recent tougher measures appear to be finally making a dent in the flow.[125] Without compulsory identity cards of the sort that enable French and German police to check for illegal immigrants, British authorities acknowledge that it will be difficult to track down those who slip through, or to check their entitlements for a whole range of benefits. It is unlikely that most Australians would welcome the development of a similar situation here.

Expansion of refugee criteria though litigation

Being allowed to stay becomes the main preoccupation once asylum seekers arrive at their final destination. It is also one of the main concerns of the NGOs, and other community and legal agencies who intervene on their behalf. In Australia, asylum seekers are assisted at every stage of the process of establishing their claims. This can take several weeks while Australian authorities try to establish their *bona fides.*

In 1998–99, only 13.5 per cent of the 7,274 asylum applications processed by DIMA were granted protection visas.[126] To argue that this low success rate was largely due to ignorance or hard-heartedness on the part of departmental officers does not appear warranted, with one former Refugee Review Tribunal (RRT) member saying that DIMA staff 'lean over backwards and, where appropriate, give most applicants the benefit of the doubt'.[127] In the substantial majority of unsuccessful cases reviewed by the RRT, the Tribunal upholds the initial departmental decision.[128] In 1998–99 and 1999–2000, around 20 per cent of the total number of applications lodged each year were granted protection visas, when combining the numbers at both the primary decision-making and review stages.[129] The same former member of the RRT commented that, in his experience, genuine refugees invariably stand out and are granted

refugee status fairly quickly, but the majority submit claims that are simply not believable and tell stories that do not stand up to scrutiny.[130] More recently, however, the number remitted to the Department for further consideration after being heard by the RRT appears to be increasing. During 1999–2000, the RRT completed 7,058 cases, and found in favour of the applicant in 11 per cent of them, whereas in 1998–99 it had been less than 8 per cent.[131]

Since July 2000, there has been a dramatic increase in the number of illegal arrivals granted TPVs, especially among certain groups such as Iraqis and Afghans.[132] More than 90 per cent of Iraqi and Afghan asylum seekers have received TPVs, a figure reflecting the cumulative success rate at both primary decision-making and review stages.[133] Since most are processed in less than two months, those remaining in detention are those whose claims were rejected and who have exhausted all avenues of appeal, but ostensibly have no country willing to take them back. Many, however, could be released from detention, if they would only assist Australian officials with preparing their travel documents to facilitate their safe repatriation. Detention is not like jail—detainees can leave the country at any time, if they are prepared to cooperate. Officials need detainees' cooperation to prepare this documentation, but detainees sometimes refuse to do so in the belief that they will eventually be allowed to stay.[134]

Refugee advocates, such as Amnesty International, welcome this high success rate as proof that most boat people are genuine refugees and that mandatory detention is unnecessary.[135] Since most people who experience long-term detention are those who are not seen as genuine refugees, their conclusion is a *non-sequitur*. This rate of acceptance of refugee claims is far greater than UNHCR's decisions about similar groups of people in overseas refugee camps.[136] Only 10–15 per cent of claims from Iraqis in refugee camps in the Middle East are assessed as legitimate by the UNHCR, compared to the current 90–95 per cent from Iraqi boat people in Australia. While the groups are not necessarily the same, it would seem reasonable to interpret the large difference in acceptance levels as circumstantial evidence that Australia's standards are generous. Government officials attribute the rising success rate to Australian judicial precedents over the years, resulting in far more generous interpretation of UN Convention criteria for refugee status.[137]

Currently, asylum seekers have the right to appeal the merits of the decision before an external review tribunal like the RRT. Until recently, if this failed, they could appeal to the Federal Court. And if that did not grant them success, they could seek leave to appeal to the High Court.

All this takes much time, but in the meantime their legal, and often their living, expenses are met out of public funds. In the last few years, the number of unsuccessful applications referred to the Federal Court has increased markedly. Table 2 indicates that from 1993–94 to 2000–01, the proportion of judicial review applications has grown from 3 per cent to over 16 per cent of RRT decisions. The number of applications granted special leave to appeal to the High Court has doubled between 1998–99 and 1999–00.[138]

Table 2: New Applications for Judicial Review, 1993–2001

	93-94	94-95	95-96	96-97	97-98	98-99	99-00	00-01	Total
RRT Decision made	1 734	2 962	3 380	4 246	6 504	6 527	6 193	5 649	37195
Judicial Review applications filed	52	205	289	419	484	673	667	926	3 715
As % of RRT decision made	3.00	6.92	8.55	9.87	7.44	10.31	10.77	16.39	9.99

Source: Refugee Review Tribunal 2001, *Monthly Statistics, June 2001*, http:///www.rrt.gov.au/fullstats.pdf.

The role of the Courts is limited to a finding of legal error in the original decision or review, and the finding must be referred back to the original decision-maker. But the boundary between judicial implementation of the law and judicial activism in interpreting the law is becoming increasingly blurred. For instance, in an article examining Federal Court decisions on refugee matters, Paul Kelly states that the Federal Court's 'performance raises serious questions about its attitude and the zeal with which judges believe they have a self-interpreted duty to protect human rights.'[139] He refers to an analysis by John McMillan, Professor of Administrative Law at the Australian National University, which shows that judicial review of refugee decisions has strayed into considerations of merit and policy that are beyond the Federal Court's jurisdiction.

Refugee advocates have had increased success in their campaign to stretch the definition of 'refugee' to cover cases not previously included. More departmental decisions were being challenged as internationally accepted rules determining refugee status were extended to

accommodate an ever-widening range of individual circumstances. There has also been a dramatic increase in the number of applicants joining class actions, with some involving well over 4,000 applicants. The relentless demand for review of unfavourable decisions prolongs the limbo-state of many asylum seekers. If the current high rates of success for certain groups continue, it is likely to raise significantly the overall rate of protection visa grants and cut heavily into the number of refugees accepted from overseas refugee camps. One newspaper report has claimed that over 85 per cent of detained asylum seekers are now being granted TPVs.[140] This seems to be going against the trend in other countries, and we are in danger of being seen as a very soft target for people smugglers.

Therefore, it is not surprising that in September 2001, following the *Tampa* crisis, the Howard Government passed a series of new laws designed to reduce the incentives for boat people to attempt unauthorised entry into Australian territories. Amongst other measures, these include restricting access to judicial review in migration matters, prohibiting class actions in migration litigation, and imposing greater consistency in refugee decision-making.[141]

Other countries, such as Sweden and Canada, have tightened or are in the process of tightening their onshore refugee determination procedures, as is discussed in more detail below. Yet in Australia, the chance of success for many applicants for protection visas is rising. It is yet to be seen if any TPV holders will fail in their bid for permanent protection and are subsequently removed from Australia. If few are deported, even greater numbers could be expected to arrive illegally once this becomes more widely known.

Show me the money

The UNHCR acknowledges that the majority of asylum seekers are simply fleeing poverty and unemployment in their own countries to seek a better way of life in Western countries.[142] Those who emigrate tend not to be those living in abject poverty, but often come from countries whose economies are improving, allowing them to acquire the financial means to move.[143] Many of these are determined to work hard in their adopted country to bring their dreams to reality. They are potentially excellent citizens and their dreams are not just focused on self-improvement. Many of them send regular payments back to their families, making it possible for more of them to emigrate. These remittances are a very important form of economic assistance to the

relatively poor domestic economies—a type of international aid that some economists claim is better than using tax dollars, even when the immigrants entered the host country illegally.[144] While there are no official data on the flow of remittances from Australia, a study of immigrants who had been in the country only two to seven months found that eight per cent had already sent money to relatives overseas.[145]

Certainly, these hard-working individuals can be commended for their initiative and enterprise. In times of economic prosperity and buoyant employment prospects, such immigrants are usually quickly absorbed and readily accepted, even if they have come into the country illegally. This has been the experience of many illegal immigrants to the US, for instance. However, a country with a generous welfare system can attract people emigrating not to better themselves by working hard and thereby contributing to the prosperity of their host country, but to take entrepreneurial advantage of welfare benefits. Much of the welfare assistance for refugees and asylum seekers is doubtless directed at worthy recipients. But a system that worked well in the past may not be as effective in the current environment. More so-called asylum seekers are finding their way to 'soft' target countries where entry is relatively easy, and tapping into their welfare system. Their quest is being aided and abetted by NGOs and other welfare lobbyists who operate on the principle of 'show me the money', as Don Barnett found in the US.[146]

In 1998, Barnett attended the largest annual conference ever held by the US Federal Office of Refugee Resettlement in Washington DC. Around 1,200 private charity staffers, lawyers, lobbyists and state and federal officials participated in three days of workshops, all of which, to a greater of lesser extent, were about money. Attendees were advised how to wring the most money out the government, while at the same time minimising the impact of any eligibility requirements for refugee welfare recipients. Not surprisingly, whereas in the past a considerable portion of refugee resettlement in the US was sponsored by private charities, increased public funding for refugees since 1980 has driven out private sponsorship. Now private charities spend their time lobbying for more government support for refugees. In fact, as Barnett observes, 'Judging from this conference, their main function is to get refugees on federal welfare programs as soon as possible'.[147] He goes on to suggest that this change in funding arrangements has had an adverse impact on refugee resettlement. The usual incentives for refugees to integrate as soon as possible into the language, economy

and social fabric of the host community are attenuated when cash, food, housing and medical care are available upon arrival. This encourages the development of enclaves of those who cannot or will not adapt to their new home. One of the other important themes at the conference was advice to attendees on 'controlling the agenda' and how to win public opinion.

The Australian experience is not unlike that of America. Asylum seekers are becoming more vocal in their demands for assistance, and private charities involved in supporting them are crying poor—although there appears to be some justification for the latter, at least in relation to the provision of clothing for those in detention centres. ACM's contract with the Commonwealth requires the company to provide detainees with adequate clothing for the climate. To cut costs, ACM sought to source this clothing from charitable institutions at heavily discounted rates, and in one case apparently even expected to be offered the material free of charge.[148] Such requests place these charities in an ethical dilemma—they have an obligation to meet the obvious needs of detainees without, however, receiving adequate recompense from ACM to meet the ongoing needs of their other charitable responsibilities. The inequity of such transactions by a commercial enterprise like ACM warrants criticism. But agitation in the media about unfair treatment and inadequate funding provided to those asylum seekers who have been granted TPVs, is another matter.

The new visa was introduced to discourage the misuse of Australia's onshore protection arrangements, and therefore it carries a number of specific restrictions. These restrictions may impose hardship on some TPV holders and lead to more demands on private charities and the goodwill of others in the community (especially the relevant ethnic communities) to provide emergency help with settlement. The Queensland study, for example, argued that the lack of access to English-language tuition meant that the TPV holders' job prospects would remain poor, prompting the Queensland Government to provide fully-funded TAFE courses.[149] Yet the Federal Government's argument for withholding these benefits is not unreasonable—TPV holders have the financial ability to pay people smugglers to bring them to Australia, so could be expected also to have the financial resources to pay for English classes—or anything else they might require.

The Government is considering including TPV holders who receive the special benefit in the mutual obligations programs (that is, 'work-for-the-dole' programs) in which other Australians in similar circumstances are obliged to participate. Again this seems reasonable,

and would have the added advantage of giving asylum seekers valuable experience in the Australian workforce. Nevertheless, some refugee lobby groups condemn the move, claiming it would be another punitive measure against asylum seekers.[150] Yet at the same time these critics acknowledge that many asylum seekers are 'going crazy' sitting around doing nothing and want to work.[151]

The indignation about the 'plight' of these TPV holders is curious. If refugee advocates and their supporters in the ethnic communities are keen to have these people stay in Australia, then why should they resent having to help them out until they find their feet in their new country? One television current affairs program showed a member of Australia's Afghan community helping out some of his compatriots, who had just been released on TPVs, in setting up their new home. The man's care for these families was laudable, and he was obviously being assisted with donations and support from others in the community. The reporter, however, was not there to applaud community involvement in the care of refugees. His agenda was to elicit criticism about Government policy. After several leading questions, the reporter finally got the comment he was waiting for—the complaint that private citizens should not have to do what is primarily the Government's responsibility. Undoubtedly, there are many in the mainstream Australian community willing to help by donating money and supplies.

Endnotes

101 For example, Murphy, Padraic 2001, 'Voices behind the wire', *The Age*, 28 January; Zable, Arnold 2001, 'Diary of despair', *The Age*, 31 January.

102 Sheehan, Paul 2001, 'Heart-rending tale of refugee family short on the facts', *The Sydney Morning Herald*, 22 August.

103 For example, Saltau, Chloe 2001, 'Temporary protection visas leave "second class" refugees in limbo', *The Age*, 12 February; Laurie, Victoria 2001, 'Visas to limbo', *The Australian Magazine*, 17–18 February.

104 Multicultural Affairs Queensland 2001, *Temporary Protection Visa Holders in Queensland*: A research report by Renae Mann on the impact of visa 785, Department of Premier and Cabinet, June, Brisbane.

105 *Ibid.,* page 5.

106 Johns, Gary 2000, 'NGO Way to Go', *IPA Backgrounder,* Vol. 12/3, November, page 3.

107 *Ibid.,* page 9.

108 See, for example, Sykes, Charles 1993, *A Nation of Victims: The Decay of the American Character*, St Martins Press, New York.

109 See, for example, Sandall, Roger 2001, *The Culture Cult: Designer Tribalism and other Essays*, Westview Press, Boulder.

110 See, for example, John Hirst 2001, 'How core beliefs shape a culture', *The Age,* 14 February.

111 Bering, Hendrik 2001, 'Denmark, the Euro and Fear of the Foreign', *Policy Review*, no. 104, December 2000–January 2001, http://www.heritage.org.

112 *Ibid.*

113 Gray, Darren 2001, 'Arrivals form the sea make land, detention', *The Age*, 20 April.

114 This estimate from the International Organisation for Migration is cited in DIMA 2001, Fact Sheet 83, *People Smuggling*, 3 January 2001, http://www.immi.gov.au/facts.

115 Morrison, John 2000, *The trafficking and smuggling of refugees: the end game in European policy?*, Report commissioned by UNHCR Policy Research Unit, pre-publication manuscript, July, page 56.

116 Mares, Peter 2001*, op. cit*., page 189.

117 DIMA 2001, Fact Sheet 81, *Unauthorised Arrivals by Air and Sea,* 3 January, http://www.immi.gov.au/facts.

118 DIMA 2001, *Protecting the Border: Immigration Compliance*, 2000 edition, Canberra, page 37.

119 *Ibid*., page 93.

120 McKinnon, Michael 2001, 'Why the fences won't come down', *The Courier Mail*, 23 June.

121 Anonymous 2000, 'EU crime summit on migrant trafficking', *Daily Telegraph*, 26 June, http://www.telegraph.co.uk.

122 Pook, Sally 2001, 'Help us stop flood of illegal migrants, pleads Eurotunnel', *Daily Telegraph*, 20 February, http://www.telegraph.co.uk.

123 Womack, Sarah and Bishop, Patrick 2001, 'Summit deal to fight asylum crisis', *Daily Telegraph*, 10 February, http://www.telegraph.co.uk.

124 Johnston, Philip 2001, '200,000 people refused asylum "still in country"', *Daily Telegraph*, 1 February, http://www.telegraph.co.uk.

125 Cracknell, David 2001, 'Labour plans to set limit for numbers of asylum-seekers', *Daily Telegraph*, 20 May, http://www.telegraph.co.uk.

126 DIMA 1999, Fact Sheet 41, *Seeking Asylum within Australia,* 12 November, http://www.immi.gov.au/facts.

127 Klintworth, Gary 2001, 'Woomera: Hell-holes and mandatory detention of illegal immigrants', *People And Place*, vol. 9, no. 1, page 20—a comment confirmed by personal communication from former DIMA staff.

128 Over 80 per cent in 1999–2000, see DIMA 2000, Fact Sheet 41, *Seeking Asylum within Australia,* 14 December, http://www.immi.gov.au/facts.

129 See DIMA 1999, *Population Flows: Immigration Aspects*, Canberra, page 4 and DIMA 2000, *Population Flows: Immigration Aspects*, Canberra, page 27. Note: Processing of applications and subsequent review of adverse decisions can take several months, so successful applications in any one year were not necessarily lodged in the same year in which they were granted.

130 Horin, Adele 2001, 'Claims by most people seeking refugee status "collapse under scrutiny"', *Sydney Morning Herald*, 2 April.

131 DIMA 2000, Fact Sheet 41, *Seeking Asylum within Australia,* 14 December, http://www.immi.gov.au/facts.

132 See RRT statistics presented at http://www.rrt.gov.au/fullstats.pdf.

133 Horin, Adele 2001, 'Most Iraqis, Afghans win right to stay', *The Sydney Morning Herald*, 18 April.

134 Personal communication from a senior DIMA official.

135 Horin, Adele 2001, 'Most Iraqis, Afghans win right to stay', *The Sydney Morning Herald*, 18 April.

136 Saunders, Megan 2001, 'Courts too generous to refugees: Ruddock', *The Australian*, 26 April; Gray, Darren 2001, 'Amnesty slams refugee court crackdown', *The Age*, 8 May.

137 Gray, Darren 2001, 'Amnesty slams refugee court crackdown', *The Age*, 8 May.

138 DIMA 2000, Fact Sheet 86, *Litigation Involving Migration Decisions*, 16 August, http://www.immi.gov.au/facts.

139 Kelly, Paul 2001, 'Defiant court provoking political wrath', *The Australian*, 5 September.

140 Clennell, Andrew 2001, 'Most detainees clearing the visa hurdle', *The Sydney Morning Herald*, 3 August.

141 DIMA 2001, Fact Sheet 90, *New Measures to Strengthen Border Control*, 28 September, http://www.immi.gov.au/facts.

142 Cited in Gary Klintworth 2001, 'Woomera: Hell-holes and mandatory detention of illegal immigrants', *People and Place*, Vol. 9, No.1, page 19.

143 Anonymous 2001, 'Economic Focus: On the move', *The Economist*, 12 May, page 78.

144 Anonymous 2001, 'The uses of strangers', *The Economist*, 31 May, page 31.

145 Rod, Tess and Murphy, Jill 1997, 'Remittances among recently arrived immigrants', *People and Place*, Vol. 5, no. 2, page 78.

146 Barnett, Don 1999, *Show Me the Money: How Government Funding Has Corrupted Refugee Resettlement*, Backgrounder, April, Center for Immigration Studies, Washington DC, http://www.cis.org.

147 *Ibid*.

148 Mares, Peter 2001, *Borderline: Australia's treatment of refugees and asylum seekers*, University of New South Wales Press, Sydney, pages 74–5.

149 Multicultural Affairs Queensland 2001, *op. cit*. page 23.

150 Crawford, Barclay 2001, 'Work-for-the-dole refugees', *The Australian*, 18 June.

151 *Loc. cit*.

6. Are Other Countries Doing it Better?

Australia's policies are sometimes compared unfavourably with countries such as Canada and Sweden. In 1999, about 44 per cent of refugee claims made in Canada that year were determined to be Convention refugees.[152] Most asylum seekers are allowed to live in the community while their claims are processed. However, this gives many whose claims are less than compelling or who have failed in their bid to attain refugee status the opportunity to vanish and become part of a growing a pool of illegal immigrants[153]—reportedly, 65 per cent of asylum applicants are never heard from again.[154]

Since 1999, however, Canada has acted to tighten its refugee determination process, consolidate the many layers of the protection decision-making process, restrict the access of asylum seekers to judicial appeal mechanisms, and increase the overall security of entry. It has also made legislative changes to strengthen its approach to the detention of people who arrive as part of organised smuggling operations.[155] The new *Immigration and Refugee Protection Act* passed in the Canadian Parliament is to be implemented in the autumn of 2002. Its purpose, according to the Canadian Minister of Citizenship and Immigration, Elinor Caplan, is to strengthen the integrity of the refugee determination system and safeguard society from criminal racketeers—'By saying 'No' more quickly to people who would abuse our rules, we are able to say 'Yes' more often to the immigrants and refugees Canada will need to grow and prosper in the years ahead'.[156]

Sweden receives as many claims for asylum per year as does Australia, although the relative proportion to population is twice as high. Nevertheless, Swedish policy and practices are little different from Australia's, and in some aspects harsher. All asylum seekers entering Sweden are held in an investigation centre for a few weeks while their *bona fides* are checked. Those who stopped in another safe country on their way to Sweden are immediately returned to that country, with no entitlement to legal appeal. Any whose claims appear to have some grounds for success are released to a residence centre while awaiting the final determination of their claim. They are permitted to travel throughout Sweden or even live outside the centre, though they may

be required to report to the police once or twice a week.[157] As indicated earlier, their release into the community is possible because they are all issued with a temporary identity card (although even then there are some absconders).[158] Those who are unable to furnish appropriate identification are held in detention indefinitely. Most are held in purpose-built detention centres run by civil servants, but some are held in regular prisons, remand centres or police cells. And detention in such circumstances can be up to one year or more. Any whose claims are rejected, but who cannot be returned to their country of origin because of conditions in that country, also face lengthy detention.[159]

In Australia, however, the only immigrants and asylum seekers kept in prison are those who have committed crimes. As is also the case in Canada and Sweden, a number of immigrants (both legal and illegal entrants) may be held in jails in Australia for longer than their custodial sentence because their deportation order has been delayed. Delays can be caused by the individual taking action to delay their deportation. In one extreme case, an Iranian, who was jailed in Australia for breaking into a woman's home and threatening to kill her, has taken his case to the United Nations Human Rights Committee.[161] A strong legal and moral argument used in such instances is that the deportees are likely to face persecution in their country of origin, contrary to the principle of *non-refoulement*. More commonly, others delay their deportation and prolong their incarceration by failing to cooperate with authorities in signing their travel documents. Still others cannot be deported because their country of origin refuses to accept them back.

Unlike Australia, asylum seekers in Sweden have only one avenue of appeal against an adverse decision and that is to the Aliens Appeal Board, comprising a Chairperson, Alternate Chairperson and lay persons appointed by the Swedish Parliament.[162] The Chairperson and Alternate Chairperson must be judges. The decision of the Board is final. The majority of asylum seekers fail in their bid for protection, and are subsequently removed from the country.[163] Mares points out that this high rate of rejection elicits little protest because each asylum seeker has been assigned their own case-worker who assists them throughout the process and has been trained to diffuse any conflict.[164]

Both the Canadian and Swedish systems include provisions for detention of asylum seekers where there are problems in establishing identity, there is a risk that the person will flee or possible danger to the community. But in both countries, there are strict time limits, after which continued detention requires periodic review (see Table 3). In Sweden it is two weeks, after which it is expected that the *bona fides* of

Table 3: International Comparison of Treatment of Asylum Seekers

	Australia	Canada	Sweden
Migration program?[160]	Yes, and humanitarian.	Yes, and humanitarian.	No, only humanitarian.
Main avenues of entry for asylum seekers?	Majority enter Australia legally; unauthorised arrivals by boat or by air.	Majority are inland claimants (mostly visitors, but includes some who entered by improper means); others arrive across US border or by air. (Only 3 boat landings in 1999 and one in 2001.)	Most seem to arrive at official border posts; majority (70 per cent) arrive without travel documents or with forged papers.
Invited to apply for asylum at border?	No	No	Yes
In custody during preliminary investigation?	Yes—if entry without authorisation	Yes, under new legislation if failure to establish identity (includes inland claimants).	Yes, if identity is unclear or if likely to go into hiding or commit crime.
National identification card?	No	No	Yes
In detention until refugee status determined?	Yes—if unauthorised arrival	Yes, under new legislation if uncooperative in establishing identity, flight risk, or danger to the public.	Yes, if likely to be refused entry or about to be expelled and there is reason to believe will go into hiding or commit crime.
Detention provisions for other purposes?	Yes, if to be officially removed or deported.	Yes, under new legislation can arrest without warrant for all types of inadmissibility, including working illegally, overstaying, being a security threat and being subject to a removal order.	Yes, as above.
Time limit for detention?	No	Yes, under new legislation to be reviewed by Immigration Review Board within 48 hours, then in following 7 days, and at least once every 30 days thereafter.	Yes, two weeks, unless Immigration Board decides risk necessitates continued detention. This can be appealed to the County Administrative Court.
Limited access to judicial process to appeal adverse refugee determination?	Yes, new legislation passed in September 2001 restricts access to judicial review,	Yes, under new legislation no appeal rights for serious criminals, security risks, etc., and introduction of leave requirement for judicial review.	Yes, appeal of adverse decisions only to Aliens Appeals Board (which has judicial representation), whose decision is final.

Sources: DIMA, various publications already cited; *Citizenship and Immigration Canada 2001*, Bill C-11: *Immigration and Refugee Protection Act*, 14 March, http://www.cic.gc.ca/ english/ about/policy/c11-issues.html; Immigration Sweden 1997, For persons applying for asylum in Sweden, http://www.immi.se/asyl/asyleng.htm; Mares, Peter 2001, *op. cit*. p. 195;

most asylum seekers, except for the problem cases, will have been established and each will have been issued with their temporary identification card. In Canada, under new regulations, detention decisions have to be reviewed after 48 hours, then after 7 days and subsequently every 30 days.[165] The system is bureaucratic, time-consuming, and expensive, but since the Canadians, unlike the Swedes, allow most asylum seekers into the mainstream community almost immediately, the cost is probably manageable—but it will do little to discourage the large numbers who take the opportunity to vanish into the population.

Australia has set no such time limits to its mandatory detention provisions, an omission that some refugee groups want to rectify. A group of Australian NGOs, including the Refugee Council of Australia, formed a Detention Working Group and produced a proposal for an 'Alternative Detention Model' to address the problem of lengthy detention.[166] This proposal acknowledges that there must be a period of closed detention to establish the claimants' *bona fides*. However, it proposes that this should not last longer than 90 days. If the claim for asylum has not been processed in that time, it suggests that the claimants should be released on bridging visas into one of two more liberal detention schemes. 'Open detention' for those not considered suitable for community release, would require detainees to be housed in government-run hostels, but allowed out between 7:00am and 7:00pm each day while remaining under close supervision. The other option, 'community release', would make the detainee the responsibility either of family members or of a community organisation, and require him to reside at a designated address and to report to the authorities periodically.

Like the Canadian system, this proposal adds another layer of bureaucratic responsibility and expense in keeping track of the individuals involved. It is also questionable whether it is necessary. The 90-day time limit is now well within the current time frame for processing the most compelling claims. Those cases that do not meet this time limit are the ones whose claims are more questionable or whose *bona fides* are more difficult to check and require further investigation. Releasing these into the community prematurely, no matter how well supervised, is inviting them to abscond.

Another serious problem is that imposing time limits on detention provides an incentive for some not to cooperate with authorities in establishing their identity, in the expectation that they will have to be released within a fixed time. There must be safeguards to ensure that

those who genuinely cannot establish their identity for reasons beyond their control are not penalised, but at the same time there should be adequate incentives to encourage cooperation with the authorities.[167] Most countries have introduced procedures to reduce the incentives for asylum seekers to disguise their identity or to get rid of identity documents in an attempt to force authorities to give them the benefit of the doubt when considering their claims. And, in order to weed out 'forum shoppers' and others using false identifications or swapping identification documents to achieve their preferred migration outcome, refugee-receiving countries have introduced stricter procedures to establish identity. These include fingerprinting, and other biometric tests such as DNA-testing, face, palm and retinal recognition and voice-testing to help establish the true identity of claimants for asylum.[168]

Certainly, the Swedish system, where detention is usually of short duration, allowing a more rapid throughput in smaller detention centres, and a refugee determination and appeal process that is straightforward and easy to understand, while maintaining a tough stand on the criteria for asylum, has commendable features. That it is accompanied by so little conflict and violent protest can only be envied. However, as Paul Kelly argues, the consequences for Australia of adopting one of the overseas systems need to be carefully considered, since asylum systems do not operate in a vacuum, but within existing cultural and legal systems—and geography.[169] As Kelly points out, in Sweden, as in other European nations, asylum seekers make up almost the entire immigration program, and while its system encourages more than twice the number of asylum seekers than Australia in per capita terms, Sweden rejects most of the applicants. As noted earlier, its national identity card helps to ensure that the unsuccessful can be readily found and removed.

The one issue where local lobbyists have had some success in convincing the Government to act has been the continued detention of women and children. After a visit to Sweden last year, Philip Ruddock examined ways that women and children could be released into communities close to detention centres where the men would continue to be held, as is Sweden's practice. But in Sweden children under the age of 18 are prohibited by law from being detained for more than three days, leading to the forcible separation of mothers and their children from husbands and fathers.[170] Australian authorities have no intention of emulating this aspect of the 'Swedish model'. So in a trial for the release of women and children from Woomera Detention Centre to the nearby community, DIMA has been very careful to stress that

participation is strictly voluntary. Even so, some less truthful critics have branded the Australian Government's initiative as constituting 'forcible separation'.[171]

Canada, like Australia, but unlike Sweden, has a strongly proactive immigration policy. In 2000, it achieved the highest intake level for seven years, landing 226,500 immigrants and refugees.[172] Again like Australia, Canada screens all entrants to weed out those with infectious and contagious diseases, and those with criminal records or other unsatisfactory character references. Yet despite the largesse of its migration program, the Canadian Government has been criticised for being too bureaucratic in its guidelines on how to prove the identity of refugees who enter Canada without documents, while at the same time being castigated for allowing the entry of a man carrying drug-resistant tuberculosis.[173] This is a classic 'Catch 22' situation, which reflects the impossibility that any government's actions in relation to asylum seekers will be accepted as being morally responsible. Interestingly, in introducing the revised and more restrictive *Immigration and Refugee Protection Act* this year, the Canadian Government unabashedly promoted the 'maintaining of a safe society' as one of its important goals.[174]

Endnotes

152 Stephens, Barbara n.d., 'Canada's Refugee Determination Process', Asylum Division—Refugee Branch, Citizenship and Immigration Canada, Ottawa.

153 Klintworth, Gary 2001, 'Woomera: Hell-holes and mandatory detention of illegal immigrants', *People and Place*, vol. 9, no. 1, page 22.

154 Cited in Sheehan, Paul 2001, 'Heart-rending tale of refugee family short on the facts', *The Sydney Morning Herald*, 22 August.

155 DIMA 2000, Fact Sheet 88, *Processing Unlawful Boat Arrivals*, 26 June, http://www.immi.gov.au/facts/.

156 Citizenship and Immigration Canada 2001, *Immigration and Refugee Protection Act Introduced*, News Release 3, 21 February, Ottawa.

157 UNHCR 2000, *Reception Standards for Asylum Seekers in the European Union: Sweden*, Geneva, July, http://www.unhcr.ch/issues/asylum/eustandards0007/toc.htm, page 162.

158 *Ibid.* and Mares, Peter 2001, *op. cit.*, page 199. Mares (pages 195–202) compares Australia unfavourably with Sweden but never mentions the identity card.

159 Mares, Peter 2001, *op. cit.*, page 199.

160 A migration program sets annual numerical targets or 'planning levels' for people (other than refugees or other humanitarian entrants) to migrate under various visa categories that offer permanent residency and the opportunity eventually to become citizens. Only a few countries have such *programs*.

161 Myer, Rod 2001, 'Migrants face a life spent in jail', *The Age*, 19 March.

162 UNHCR 2000, *op. cit.*, pages 157–8.

163 Cited in Mares, Peter 2001, *op. cit.*, page 199.

164 Mares, Peter 2001, *op. cit.*, page 200.

165 Citizenship and Immigration Canada 2001, Backgrounder # 4, *Detention Provisions Clarified*, http://www.cic.gc.ca/

166 Detention Working Group n.d., *The Alternative Detention Model*, http://www.refugeecouncil.org.au/alternative.htm.

167 For example, discussion of identity in Citizenship and Immigration Canada 2001, *Immigration and Refugee Protection Act: Issue Papers*, http://www.cic.gc.ca/english/about/policy/c11-issues.htm.

168 For example, DIMA 2001, *Protecting the Border: Immigration Compliance*, Canberra, page 30.

169 Kelly, Paul 2001, 'Refugees subject to immigration laws', *The Australian*, 25 July.

170 Crabb, Annabel 2001, 'Ruddock may set young detainees free', *The Age*, 23 January.

171 Taylor, Kerry 2001, 'Detainees reluctant about release trial: Ruddock', *The Age*, 22 March; Taylor, Kerry and Baker, Richard 2001, 'Protests naïve, says Ruddock', *The Age*, 4 June.

172 Anonymous 2001, 'Canada exceeds target immigration levels in 2000, highest in seven years', *National Post On-line*, 19 January 2001.

173 *Ibid*.

174 Citizenship and Immigration Canada 2001, *Immigration and Refugee Protection: Reformed Policies and a Revised Bill—Presentation*, 21 February, http://www.cic.gc.ca/english/about/policy/deck/indx.htm.

7. Whose Rights?

The French *Declaration of the Rights of Man and the Citizen* of 1789 provided the basic framework for the future codification of universal human rights in Western democracies, as well as the UN's *Universal Declaration of Human Rights*. The rights can be broadly summarised as encompassing freedom of person, thought, speech, religion, association and property within the bounds determined by the law established by the proper authority of a sovereign nation.[175] In Australia, the detention of unauthorised entrants is questioned as contravening the right to personal freedom. However, it can be countered that the confinement of detainees is in accordance with pre-existing law and is enforced by due process—and the detainees are free to leave the country at their own volition.

Western countries face severe international condemnation if they appear to breach basic human rights. This has become a powerful moral weapon, used extensively by NGOs and the UN. Yet, such rights are afforded to all citizens and lawful residents in democratic countries as a matter of course, and are afforded to everybody including those who enter unlawfully. However, there are many voices clamouring for *special* privileges for them.

Lobby groups are also concerned that negative publicity about people-smuggling may damage the cause of asylum seekers, and are thus trying to redefine the situation. There is widespread agreement that the distinction between *trafficking* (the exploitation of people who are misled or forcibly abducted for prostitution or forced labour to other countries) and *people-smuggling* (where customers voluntarily pay for illegal entry into another country) is becoming increasingly obscured in practice. Often the same criminal elements involved in people-smuggling are also associated with drug trafficking and the exploitation of women and children. But in a paper commissioned by the UNHCR's Policy Research Unit, the author, John Morrison, takes the argument even further.[176] He suggests that it is misleading to call the customers of these traffickers/smugglers 'illegal migrants' or 'illegal aliens' and that the term 'refugee needing international protection' would be more appropriate in many cases.[177]

There is no doubt that many genuine asylum seekers are exploited by traffickers/people smugglers in their desperation to get out of their country. But no amount of rephrasing can change the fact that the people to whom Morrison is referring have entered illegally, usually with the long-term goal of living and working in these countries—they are not just seeking temporary protection. He briefly acknowledges that all countries have the right to sovereignty, to enforce their own borders, and to maintain their own national security interests. But his more overriding concern is to enshrine certain human rights as core values in migration policy. These include the right to asylum; the principle of *non-refoulement* as an absolute; full recognition of the economic, social and cultural rights of refugees; and the duty not to portray refugees who used illegal means of entry as being in any way criminal.[178]

UNHCR publications reiterate these principles to ensure the broadest possible application of refugee status. In their publication, *Who is a Refugee?*, the UNHCR points out that draft evaders and criminals should *not necessarily* be excluded from refugee status, as they may also be persecuted for political and other reasons.[179] This document stresses that a refugee is a civilian, so that a person who 'pursues armed action against his or her country of origin from the country of asylum cannot be considered a refugee'. Nor can a war criminal or a person who has violated international humanitarian and human rights law (including the crime of genocide) be offered the protection of refugee status. However, the UNHCR acknowledges that in large refugee encampments it may be impossible to identify such persons, and, anyway, 'UNHCR is neither judge nor police force'[180]—absolving it of responsibility if some undesirables take advantage of refugee protection.

Nevertheless, other recommendations in Morrison's paper, though specifically aimed at Europe, highlight the inconsistency of countries' attempting to control illegal entry in the absence of an effective migration policy. He points out that there are few legal means for refugees to enter Europe because the European Union is keen to control irregular migration. But unlike the US, Canada, Australia and New Zealand, the EU has no regular migration policy. This forces prospective migrants to use clandestine methods. Morrison quite rightly challenges the EU to implement a migration policy, one that accommodates the motivations driving current illegal movements. This is a much more sensible approach than that proposed by some American commentators who argue that legal immigration should be tightened and numbers reduced to avoid encouraging further illegal flows arising from previous waves of legal immigration.[181] Cutting *legal* immigration would appear

to be utterly self-defeating. Such a policy would exacerbate current frustrated demand and escalate illegal immigration.

People who enter unlawfully, however, including those coming to Australia, could be said to show remarkable fortitude and initiative. They are highly motivated to start a new life in a Western country, as demonstrated by the large payments they make to smugglers, and by enduring the hardships of the journey. Therefore, some might argue that all these qualities would stand them in good stead as they make a new life in Australia. Does this mean we should not be concerned about illegal arrivals?

Endnotes

175 See *Declaration of the Rights of Man and the Citizen*, adopted by the National Assembly of the French Revolution on August 26, 1789, cited in the Encyclopedia Britannica, 1994–2000.

176 Morrison, John 2000, *The trafficking and smuggling of refugees: the end game in European asylum policy?* Pre-publication manuscript, July 2000, UNHCR, Geneva.

177 *Ibid.*, pages 25–26.

178 *Ibid.*, pages 83, 97–99.

179 See for example, UNHCR, nd, *Who is a Refugee?*, http://www.unhcr.ch.

180 *Ibid.*

181 For example, Krikorian, Mark 1997, 'The link: legal and illegal immigration', *New York Post*, 16 February, http://www.cis.org.

8. Should Illegal Entry Be an Obstacle to Legal Residency?

Illegal entry can be converted into legal residency through two mechanisms—the calling of a general amnesty to allow illegal residents to regularise their status or by a successful application for refugee status.

In the US, there were an estimated 5 million undocumented immigrants in 1996, with the numbers growing by around 275,000 a year.[182] Most of these people come across land borders undetected and simply disappear into the population, with a smaller proportion (often arrivals by air) claiming asylum to gain entry. A more recent estimate indicated 6 million undocumented immigrants, but a huge discrepancy found in the 2000 Census seems to suggest that the number could be even higher, possibly ranging from 9 million to 11 million.[183] If, after further tests on the data, the discrepancy can be attributed to a higher than expected number of *illegal* immigrants, this might spark considerable debate on their role in the economy. The presence of such a huge population of illegal residents may help to answer questions like: Why did the fall of unemployment slow in the US in the 1990s, despite the growing number of jobs? And, why didn't wages rise faster as the unemployment rate fell?[184]

The impact of large numbers of undocumented residents in the US is prompting a rethink about the economic effects of large-scale immigration. Economists have tended to regard immigration as providing more economic benefits than costs to the host country as a whole, but the benefits tend not to be shared equally, with the well-off gaining at the expense of poorer and less skilled residents. Undocumented residents tend to be mainly low-skilled and they compete for the same jobs as poorer Americans, driving down wages for these jobs and invoking the ire of American labour movement, while benefiting employers and consumers.[185] Furthermore, new immigrants are more likely to receive welfare assistance than was the case in earlier waves, and also more likely to do so than the native-born population.[186] On top of that, there is increasing concern that lax border controls and immigration procedures have helped conceal the entry of criminals and international terrorists.[187]

Although the US has strengthened its border patrol in recent years, the flow of illegal immigrants has continued to rise. Mark Krikorian argues that that there are two reasons for this, both attributable to inconsistencies in government action. The first is a typically parochial one. While one arm of the government is cracking down on illegal entry, another (dominated by members of Congress from southern agricultural states), continues to encourage the flow of cheap unskilled labour for local farmers by ensuring that there is insufficient funding for worksite inspections.[188]

The other reason is that illegal entry is perceived as no barrier to eventual legal residency. The US has a history of offering large-scale amnesties to illegal immigrants, allowing them to take up legal permanent residency after a number of years' illegal residency. Now even the American unions are supporting amnesty for illegal Mexican immigrants, having come to the conclusion that the best way of preventing them from the undercutting the wages of American workers is to grant them legal residency and then unionise them.[189] The applicants have to be sponsored by an employer or a close family member. But these well-meant initiatives to regularise the residency of illegal immigrants seem only to encourage more of them to come to the US. For example, the 1986 general amnesty in which 2.7 million illegal aliens received their green cards led to a surge in illegal migration as family members of the newly legalised residents took the opportunity to join their relatives.[190] And amnesties offered to illegal immigrants are squeezing out legal migration, since offshore immigration quotas are reduced to accommodate successful onshore adjustments of status applications. In 1998, the US admitted 660,477 persons to legal permanent residence. Only 54 per cent of these, however, were selected offshore. The balance included undocumented immigrants, refugees and asylum seekers living in the US for an average of three years who adjusted their status with the INS.[191]

While Australia's immigration system has not had to cope with such large numbers of (often unskilled) illegal entrants, the US example does offer some timely lessons. Illegal migration is the flip side of legal migration, with earlier waves of legal migration prompting further migration (sometimes illegal), and claims for asylum being one of the strategies used for achieving permanent residency. Furthermore, any arbitrariness in interpreting the law sends contradictory signals, which may encourage others to attempt to circumvent the legal migration process.

In Australia, there appears to be a certain inconsistency entering into migration and asylum decisions, with the Convention refugee criteria receiving expansive interpretation by the courts. There is also fairly lavish use by the Minister of his discretionary powers. Under the *1958 Migration Act,* the Minister for Immigration can overturn an unfavourable immigration decision 'in the public interest'—and has to account for these interventions twice a year to the Australian Parliament. The interventions are supposed to be for exceptional circumstances not covered by the law. Mr Ruddock has come under strong criticism for using his discretionary powers more frequently than any of his predecessors. He reportedly defended his actions by saying that migration decisions should not be the outcome of rigid assessments of the law[192]—yet he attacked the judiciary for interpreting the Refugee Convention far too generously.[193] Moreover, as commentators have pointed out, discretionary powers should not be used to remedy apparent structural defects in the law, and doing so will only risk accusations of partiality and unfairness.[194] Yet in fairness to Mr Ruddock, he appears to have taken action mainly for compassionate reasons, and no evidence has been presented to prove specific charges of partiality. So on one front the government is accused of heartlessly prolonging the agonising wait of asylum seekers for a decision, and on another it is accused of unfair intervention.

Nevertheless, no matter how valid the Minister's intervention, it will invariably give rise to suspicions of corruption and political payback, particularly in an area as sensitive as immigration. Furthermore, the generosity of such actions will become a rod for the Minister's own back by encouraging others to lobby him, or his colleagues, for interventions on their, or their relatives', behalf—and then to complain if that favour is not forthcoming. *Ad hoc* ministerial intervention, like judicial activism, makes the law too flexible and easy to circumvent.

The vast majority of those who enter Australia illegally have not only contravened Australian migration laws, they also do not meet the 1951 Convention refugee criterion of having entered Australia *directly* from the country where they allegedly faced persecution. If we want to maintain a society that respects the rule of law, those who break the law should not be rewarded for their unlawful behaviour. And, more importantly, rewards should not appear to come from official sources.

The reality is that regardless of the strength of their claims for protection, the majority of asylum seekers who come here illegally end up staying in Australia. The same situation is occurring in many other

Western countries. For example, in Britain, only 10 per cent of asylum claims are granted (although a further 17 per cent are granted 'exceptional leave to remain'), the number of appeals have soared, but relatively few are actually removed.[195] Since many unauthorised arrivals can be expected to become Australian citizens, it is doubly important that they be treated with dignity and respect throughout the refugee determination process so as not to alienate them and discourage them from fully embracing their new country. This raises a related issue about how able and willing these people will be in becoming fully integrated into Australian society.

We have referred to Denmark's problems in integrating its refugees under the new political and cultural climate. One could argue that Denmark is a small country with little experience of diversity and only a short history of immigration, so perhaps their expectations were too ambitious. Yet the same concern is being expressed in the US, with over 50 times as many people and a long and successful history of migration from many different countries. Like Denmark, the general expectation in the US is that all migrants will eventually become naturalised as fully-fledged American citizens. But this expectation is being shaken by the large inflow of Spanish-speaking migrants in the past two decades, especially to California and other Southwestern states. The Hispanic populations in these areas have sufficient coherence and are rapidly reaching a critical mass to enable them to preserve their culture indefinitely.[196] Will they all become 'Americans', as previously understood? The evidence suggests possibly not—but they will certainly demand the same rights and even special privileges to overcome their alleged disadvantages.

Endnotes

182 Immigration and Naturalization Service 2000, *Statistics Illegal Alien Resident Population*, US Department of Justice, Washington DC, http://www.ins.usdoj.gov.

183 Cohn, D'Vera 2001, 'Illegal Residents Exceed Estimate', *Washington Post*, 18 March.

184 *Ibid.*

185 Borjas, George 1996, 'The New Economics of Immigration', *The Atlantic Monthly*, November, page 76.

186 *Ibid.*

187 Krikorian, Mark 1996, 'Who deserves asylum?', *Commentary*, June.

188 Krikorian, Mark 1999, 'Lured by jobs, illegal immigrants risk death at border crossings', *Santa Barbara News-Press*, 25 April, http://www.cis.org.

189 Greenhouse, Steven 2001, 'In U.S. Unions, Mexico Finds Unlikely Ally on Immigration', *The New York Times*, 19 July.

190 Krikorian, Mark 2000, 'Amnesties Beget More Illegal Immigration: Will somebody tell Congress?', Guest Comment, *Center for Immigration Studies*, Washington DC, 16 October, http://www.cis.org.

191 Immigration and Naturalization Service (INS) 1999, 'Immigrants, Fiscal Year 1998', *1998 Statistical Yearbook of the Immigration and Naturalization Service*, US Department of Justice, Washington DC, http://www.ins.usdoj.gov.

192 Clennell, Andrew 2001, 'Merciful Ruddock gives more rejected migrants a lifeline', *The Sydney Morning Herald*, 31 January.

193 Saunders, Megan 2001, 'Courts too generous to refugees: Ruddock', *The Australian*, 26 April.

194 Clennell, Andrew 2001, 'Merciful Ruddock gives more rejected migrants a lifeline', *The Sydney Morning Herald*, 31 January; Harris, Tony 2001, 'Public interest, or private', *Australian Financial Review*, 6 February.

195 Anonymous 2001, 'Bedlam', *The Economist*, 18 August.

196 Kennedy, David 1996, 'Can We Still Afford to Be a Nation of Immigrants?', *The Atlantic Monthly*, November, pages 52–68.

9. What Should Australia's Refugee Policy Be?

It has become fashionable to demand 'holistic' thinking on a whole range of social and environmental issues, with adherents arguing, quite rightly, that actions involve interdependent elements where a change in one can have repercussions (often unintended or unforeseen) on many others. Yet many of the very individuals and groups who warn of the supposedly baleful environmental impacts of Australian population growth criticise current policies on illegal immigrants. It is time for them to follow their own advice and take a holistic approach to the issue.

The reality of the suffering experienced by so many living under repressive and poverty-stricken regimes throughout the world is distressing, and countries like Australia should do everything possible to help ameliorate these conditions. The tragedy of an imperfect world, however, is that it is impossible to operate on moral absolutes. Governments are always forced into compromises.

In seeking to accommodate the demands of asylum seekers and their supporters, we are in danger of undermining the whole refugee determination process and our immigration system. Critics would then be entirely justified in questioning why we are expending so much money and effort in maintaining our system of border control. In other words, Australia might as well abandon the pretence and introduce something akin to an open border policy. But this would most certainly spark outrage from large numbers of those now occupying the moral high ground on refugees, who could then focus on the supposed environmental costs of such a policy. In effect, the combination of immigration, asylum seekers and the environment offers critics a perpetual grievance machine. It does not matter what a government does, they will still have ample grounds for outrage.

Furthermore, the constant barrage of grievance from refugee lobbyists and their clientele, seems to be turning many open-hearted Australians, who do support genuine refugees, deaf to the needs of these people and even actively hostile, if talk-back radio comments and

other anecdotal evidence offer any indication. Australia's record of successfully incorporating large numbers of migrants over the past half century shows that most Australians are not threatened by 'the other', as many members of our intellectual elites so patronisingly claim. But they have a low tolerance of humbug. Is it wise to court a possible back flip on the resettlement of refugees?

While detention for illegal arrivals has been mandatory for many years, it only became a controversial political issue when the numbers of boat people started to rise noticeably and the overflow had to be accommodated in hurriedly prepared disused or de-commissioned army barracks in remote parts of the country. Detention was originally introduced as a measure to deter illegal entry, but the Howard Government does not regard deterrence as its primary function—although, without it, the numbers of illegal entrants would very likely be much higher.[197] Like Sweden, Australia regards detention as essential for the initial checking of the health and character of such arrivals before any kind of visa can be issued. Without such a policy, for instance, many people with communicable diseases or criminal records would be allowed out in the general community, as has occurred in Canada.[198] There have been calls to introduce detention in Britain, although the numbers of illegal arrivals are too large to make such a policy economically viable. Mandatory detention is only economically and politically realistic where the numbers are small or the throughput is rapid.

Operation of the detention system in Australia is expensive, with costs growing to over $200 million a year.[199] However, Australia's throughput is improving rapidly, with most asylum seekers released from detention on TPVs in less than two months. But this too may have a perverse consequence, as it probably only encourages people smugglers to target Australia. So even without a national identification card like that issued in Sweden, Australia is managing to streamline its system to reduce the overall inconvenience of detention for many illegal arrivals with relatively strong claims to protection. The real problem is what to do with those who remain in detention for longer periods because their claims have been rejected. Without their cooperation, and the cooperation of the countries of origin, it is difficult to return them, and many are using the Australian legal system to prolong their stay by demanding *non refoulement* for a variety of reasons.

Certainly, we should *not* be giving these individuals every opportunity to use the legal system to stretch the refugee entry criteria to suit their particular circumstances. There are many weakness in the

1951 Refugee Convention, widely recognised as being out of date and ineffective in the current global environment.[200] Some have argued that Australia should withdraw from the Convention as that could enable the Government to develop responses that are more appropriate to situations as they arise and also allow resources to be redirected from onshore refugee determination to assisting refugees overseas. [201] Such a move, however, is likely to be strongly opposed by refugee lobby groups. Furthermore, Australia would still need to cooperate with the United Nations and its agencies and these will continue to operate under the terms of the Convention. International efforts to review the 1951 Convention should be encouraged, but in the meantime the original purpose of the Convention should not be compromised.

Refugee status offers safety—it should not be misused to achieve a preferred migration outcome, to escape economic deprivation, or to overcome a sense of unhappiness with the political and social conditions in the country of origin. Allowing asylum seekers with dubious claims for protection to take advantage of the charity extended by Western countries is like giving bogus charity collectors free rein to fleece the unwary. It is immaterial if those who end up being duped by fraudulent claims are wealthy and can afford the loss—the question of intent remains.

Like the Canadians, we should be restricting asylum seekers' access to legal avenues for appealing adverse decisions. A single-tier appeal system like the Swedish Aliens Appeal Board with judicial representation would be preferable to the lengthy and expensive multi-tiered system we are currently operating. Such a system would be more expeditious, fair and consistent in its judgements, be less confusing and intimidating to asylum seekers, and also be much less expensive to operate.

One of the cornerstones of the Swedish asylum system is the assignment of a case-worker to each asylum seeker to help them with lodging their claim and keeping them informed about the progress of their case. The Swedish authorities credit the relatively conflict-free operation of their tough asylum system to the presence of these case-workers in the detention centres and their availability to their clients whenever needed.[202] The introduction of such a scheme into the Australian system should be considered to help overcome the impersonal nature of the process, improve morale, and reduce disturbances in the detention centres. The cost of employing case-workers would probably be offset by a reduction in expenses flowing from trauma, violence and destruction of property. Like the Swedish

system, they should be engaged as public servants in the same way as other immigration staff. The case-workers could probably operate effectively alongside detention staff in Australia's privatised detention centres, although this may require very careful delineation of responsibilities so as not to encourage asylum seekers to play one side off against the other to achieve their own ends. However, the remoteness of some of the detention centres may make it more difficult to find appropriate people to take these positions.

The introduction of TPVs has helped to reduce the time in detention for unauthorised arrivals with relatively strong claims for protection. Whether the restrictions on these visas act as a deterrent to further illegal entrants, as the Government intended, is open to question—especially if the rate of approvals continues to rise under pressure from refugee advocates. It would certainly be more efficient and less costly in financial and human terms, if there is only one determination process and one final outcome, like that operating in Sweden. The other problem with TPVs is that the term 'temporary' is probably a misnomer, with most of them ending up as permanent residents in Australia. Although the granting of a TPV gives the authorities a breathing space, three-year temporary residence is long enough for individuals to put down roots in this country. It is highly unlikely that deportation orders following rejected permanent protection applications will actually be carried out. Too many moral arguments can be brought to bear on such a decision. The permanent protection application seems to be merely a formality, a rubber-stamp that would only be withheld if the individual had committed a serious offence in the intervening period. Instead of being viewed as tough but fair, like Sweden's system, ours will be regarded like a barbecued marshmallow—unappealing on the outside, but with a pleasing soft mushiness on the inside—and certainly not a deterrent to people-smuggling. So we may have to reconsider the use of TPVs.

One of the most vexing problems posed by unauthorised entrants is separating those who have a genuine need for protection from others who are using the asylum system for their own economic advantage, and distinguishing between them in a fair and accurate way. Unfortunately, the boundary between the two is not always clear-cut. But since the majority of those coming to Australia are paying people smugglers to get here, one could argue that one way of doing away with the need to make such a difficult and sometimes distressing distinction is to devise some scheme to undercut the racketeers. The economist Irwin Stelzer recently suggested that in the current climate of mass migration there should be much greater reliance on the use of market principles to

allocate scare resources like residency visas to individuals or employers who can afford them.[203] He acknowledges that use of market principles is not popular because of the notion that some things should not be for sale, but argues that provided the system is 'leavened' by humanitarian considerations, it remains the best way to allocate scarce resources.[204]

So perhaps Australian immigration officers could visit locations where the clientele of people smugglers gather and offer legitimate immigration places to people who pass the necessary health and character tests, have the appropriate skills and financial resources to facilitate their resettlement, and who can pay a premium for their visas. Such a scheme would ensure that the refugee category is reserved exclusively for those who have a compelling need for protection. It would reduce onshore asylum claims from unauthorised arrivals, and obviate the need for a trade-off between onshore and offshore claims for protection. Onshore asylum claims could revert back to being made on an 'as needed' basis, in the way desired by refugee advocates.

We fully realise that there would be all sorts of problems in implementing such a scheme and are certainly not advocating the overturning of Australia's current immigration system. The introduction of market principles for non-business visas, however, would simply acknowledge the reality that these principles are already operating in a *de facto* basis by clients of people-smuggling operations. Yet this fact seems to go unrecognised in the repeated rejections of proposals for reserving migration places for people who can pay a premium for their visas or who can offer financial guarantees not to become a welfare burden. Those who argue against these proposals are undoubtedly sincere in their concerns about social justice. But their unwillingness to think holistically about the dilemmas posed by illegal entrants only plays into the hands of the criminal gangs involved in people-smuggling.

Endnotes

197 Greenlees, Don 2001, 'People who move people', *The Weekend Australian*, 23–24 June; personal communication from a senior DIMA official.

198 McKinnon, Michael 2001, 'Typhoid found in refugee centres', *The Courier Mail*, 23 June; McKinnon, Michael 2001, 'Why the fences won't come down', *The Courier Mail*, 23 June.

199 McKinnon, Michael 2001, 'Why the fences won't come down', *The Courier Mail*, 23 June; Madigan, Michael 2001, 'Thousands more boat people on way', *The Courier Mail*, 24 August.

200 The weaknesses of the 1951 Convention are discussed in detail in a recent article by Adrienne Millbank 2001, 'Australia and the 1951 Refugee Convention', *People and Place*, vol. 9, no. 2. The British Home Secretary, Jack Straw, has called for its operation to be reviewed by signatories, see Philip Johnston 2001, 'Straw seeks to stem inflow of refugees', *The Daily Telegraph*, 7 February, http://www.ttelegraph.co.uk.

201 Millbank, Adrienne 2001, 'Australia and the 1951 Refugee Convention', *People and Place*, vol. 9, no. 2, page 11.

202 Mares, *op. cit.*, page 200.

203 Stelzer, Irwin M. 2001, *Immigration Policy for an Age of Mass Movement*, Paper presented at the Institute of Economic Affairs, London, 19 March.

204 *Ibid.*, page 35.