8 Abrogating human rights responsibilities

Australia's asylum-seeker policy at home and abroad

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Introduction

Australia's approach to asylum seekers is a contested area of public policy and has been subjected to ongoing critique by human rights bodies, non-governmental organisations (NGOs) and refugee advocates both at home and abroad. In 2012, after two decades of mandatory immigration detention, Australia remained far from addressing criticism and presenting alternative policy formulations that adhere to its obligations as a signatory to the Refugee Convention of 1951 and other international instruments. Developing a regional approach is a concept that is gaining traction among academics, NGOs and other actors. Despite some incremental advancement, the Regional Cooperation Framework (RCF) is currently a work-in-progress, as will be outlined later in this chapter. Furthermore, the continuation of harsh domestic policies towards asylum seekers, the reconstruction of offshore processing through bilateral arrangements and the ideologies that allow such measures to be in place need resolution if the RCF is to be a credible policy initiative.

To set the context for the discussion in this chapter, we first examine the restrictive asylum policies in Australia – particularly mandatory detention – and argue that the policies have been maintained and extended through the construction of a 'politics of fear' based on racism. We then explore the political questions of how border security is prioritised over human security, including the 'stop the boats' discourse and the 'war' on people smugglers. We also engage in some discussion of how 'pull' factors are emphasised in populist representations with little emphasis on 'push' factors, that is, the factors that precipitate people movements. Finally, we present an outline of the RCF, contextualised by a discussion on how it is one of Australia's emerging policy initiatives and one that will require a move away from what has been a preference for bilateral arrangements.

Asylum-seeker policy framework: The entrenchment of mandatory detention

A raft of measures enshrines Australia's approach to asylum seekers, with mandatory detention at its centre. Yet not only does mandatory detention deny the most basic of human rights – liberty – for people who exercise their lawful right to seek asylum, but long-term detention, abusive practices within detention facilities and mental health outcomes – including suicides and acts of self-harm – also substantiate the malevolence of this policy. Despite the evidence before it, successive governments have been unwilling to repeal the mandatory detention provision.

Australia is not the only country to incarcerate asylum seekers; many countries detain them, with the practice appearing in different guises around the globe. Australia, in its quest for orderly migration, is particularly harsh, especially given that the numbers fleeing to its shores are relatively low. The practices of detention express unfettered sovereign power, and Australia makes the claim of absolute sovereignty over its borders through its mandatory detention policies and the location of detention centres in remote and hostile sites (Weber & Pickering 2011).

As it is in many Western nations that are signatory to the 1951 Refugee Convention, asylum seeking is a contested political issue in Australia, triggering strong opinions both in support of and against asylum-seeker entry. In Australia, the mandatory detention policy has bipartisan support, which means there is little leverage at the formal political level. Over the past 20 years, successive Australian governments have taken increasingly regressive steps in an effort to deter asylum seekers. Following a sharp increase in arrivals from an average of 312 people per year between 1989 and 1998 to 3,721 in 1999 (Phillips & Spinks 2012), the Coalition government introduced Temporary Protection Visas (TPVs) in September 1999. TPVs limited the rights of asylum seekers, most significantly by prohibiting family reunion. This effectively ensured that families had no opportunity for lawful reunion and resulted in a significant increase in the numbers of women and children making the dangerous journey by boat in order to reunite with husbands and fathers who had come earlier. The SIEV X tragedy (SIEV = Suspected Illegal Entry Vessel) of 2001 in which 353 people (142 of them women and 146 children) drowned while attempting to reach Australia brought the human cost of the TPV into sharp focus.

The mandatory detention regime that could cope with a few hundred boat arrivals was unable to manage increased numbers. In 2000, when there were 2,937 boat arrivals, both sides of the political spectrum presented

this as a national emergency and media coverage surged dramatically (Marr &Wilkinson 2004: 56). The growth in detention numbers did not halt the inflow of boats. With both detention and TPVs failing to operate as deterrents, and with increasing pressure on immigration facilities, where there are frequent acts of self-harm, attempted suicides, hunger strikes and protests, the government desperately needed another deterrent. The opportunity to introduce more aggressive policy measures arose with the *Tampa* event in 2001, which is covered below, as *Tampa* proved to be pivotal in bringing about a trajectory of policy processes that came to characterise the Australian approach towards the deterrence of asylum seekers.

A turning point: *Tampa*

On 26 August 2001, the Norwegian freighter MV *Tampa* rescued 438 mainly Afghan asylum seekers from a sinking boat, the *Palapa*, between Indonesia and Christmas Island, an Australian territory in the Indian Ocean. Notwithstanding the desperate situation of the human cargo on board and despite *Tampa*'s captain Arne Rinnan's pleas to be allowed to land, the Australian government not only refused his request but deployed military measures to keep the vessel from docking. The incident raised major concerns in relation to Australia's international obligations not just to asylum seekers but to international norms relating to rescue at sea. What happened next was critical in reshaping and hardening Australia's policies.

In a reactive tactic that caught many unaware, the prime minister at the time, John Howard, struck a deal with the government of Nauru which meant that, apart from 150 accepted by New Zealand, the rest of the asylum seekers aboard the *Tampa* were transported to a detention site on Nauru, a practice that was heavily criticised by NGOs and human rights bodies (see, for example, Bem et al. 2007; Amnesty International 2007). Nauru was the start of the Pacific Solution and was joined soon after by Papua New Guinea, which opened a detention facility on Manus Island. In the same year, legislation was formulated that officially removed some Australian islands from Australia's migration zone to prevent people arriving at those islands from applying for visas unless permitted by the immigration minister. In 2005, thousands more islands were excluded from the migration zone.

The way the government handled the *Tampa* incident was supported by many Australians who were duped into believing that *Tampa* illustrated that Australia's borders were in need of protection. The incident helped Prime Minister Howard to reverse his flagging popularity to win an elec-

tion in November 2001, sometimes referred to as the '*Tampa* election'. The 9/11 attacks in the United States one month following *Tampa* galvanised increased support for border protection. The *Tampa* event clearly illustrates the country's attempts to define itself as a sovereign nation that unilaterally determines who can enter. It also marked the beginning of offshore bilateral arrangements that diminished Australia's responsibility for providing safe haven and ran counter to the idea of regional cooperation.

An extensive asylum-seeker 'industry' has taken hold in Australia, with a network of detention facilities operating throughout the country. One only had to set foot on Christmas Island during the peak of asylum seeker detention on that island in 2010 and 2011 to be confronted by the presence of immigration officials, corporatised detention services, fly-in/fly-out operatives and military and police personnel. The largest vested interest is the security company that runs immigration detention centres in Australia, Serco, which took over from two previous private detention providers. Given the profit motive and the drive to expand nationally and internationally, it is in the interests of multinational security entities that the policies are perpetuated and not challenged. The presence of the companies serves the interest of governments to demonstrate to voters that they are enforcing tough immigration laws (Bernstein 2011). Despite the well-documented harms arising from detention (Briskman, Latham & Goddard 2008) and despite the evidence of poor practices within detention facilities, their operation by private companies continues unabated.

How did Australia reach a state of affairs in which its policies and practices have been antithetical to human rights? Questions of race and fear offer an explanation.

Interrogating race and fear

The fear of 'The Boat' that has taken hold in Australia conjures up societal anxiety about Islam, terror and the undermining of the dominant way of life (Briskman 2012). The government and an insatiable media have driven this fear. In 2001, former Defence Minister Peter Reith spoke on commercial radio soon after 9/11 advocating the need to control people who come into the country. 'Otherwise', he argued, 'it can be a pipeline for terrorists to come in and use your country as a staging post for terrorist activities … if you can't control who comes into your country then it is a security issue' (Reith 2001). Such statements reinforce community apprehension so that governments can manipulate the fear of terrorism for political aims

(Aly 2011), in this case justifying stringent border security measures and immigration detention.

Underlying the complexities is, arguably, the issue of racism. Would Australia treat Western nation-states and nationals from Western countries in the way it deals with those designated as the racialised 'Other'? Racialised approaches are not surprising given the building of the nation and national identity on the destruction of Aboriginal society and through the White Australia Policy.[1] Nation-building on a singular notion of identity has led to a belief that cultural norms are at risk from immigrants. It has particularly played itself out with Muslim asylum seekers who have been homogenised, demonised and labelled as fundamentalists and would-be terrorists (Poynting & Mason 2006, 2007, 2008). The ideological racial underpinnings of the nation shift over time but the undercurrents remain substantially the same, formulated around an entrenched belief in the incapacity of those assigned to the Other to be absorbed into Western societies, as their value base is seen to be at odds with the value systems in these countries (Kundnani 2007).

Australia has been enacting its own brand of border protection since the British colonial presence, which had been premised on racialised exclusions (Tascon 2010). Two factors are influential in Australia's positioning: its location among largely Asian nations and its own epistemological origins, which are in a direct line from the European Enlightenment (Tascon 2010; Poynting & Mason 2007). A problem in Australia throughout the history of White Australia that is relevant to the current issue of asylum seekers is, according to Anthony Burke, that the 'imagined community' is one that is 'bounded by a power which seeks to enforce sameness, repress diversity and diminish the rights … of those who are thrust outside its protective embrace' (2001: xxiv).

Grewcock (2009) speaks of a manufactured crisis that has made border protection a defining concept invoking fears of a foreign invasion, with an emphasis on how 'illegal' refugee entry threatens both the integrity of the state's refugee programme and national security. A 'politics of fear' has taken hold, which morphs into what Burke describes as 'invasion anxiety' (2001). It is in 'anxious times' that sovereignty is jealously guarded by the wielding of an iron fist against those who cross borders uninvited (Zagor 2007). The distortion of the events of 9/11 by Australia is puzzling, given that it has not directly experienced terrorist attacks. The hostility and threat

1 One of the first Acts of Parliament passed after the Federation of Australia was the Immigration Restriction Act (1901), better known as the White Australia Policy, which allowed only Europeans to enter Australia.

scenario generated in Australia following 9/11 was an imagined threat, and the intense reaction became linked with the anxiety that had already taken hold, namely unauthorised asylum seekers arriving by boat (Tascon 2010).

A convenient connection was made by the Australian government between asylum seekers and terrorists in public discourse, with Muslim asylum seekers portrayed as a group to be feared and not deserving of assistance from Australia (Babacan & Gopalkrishnan 2008; Poynting & Mason 2006). Globally, immigrant groups have been targeted in times of national security crisis. The 9/11 attacks, the 2004 Madrid bombings and the 2005 London transit attacks inflamed the view of Islam as the 'enemy', with the 9/11 attacks in particular demonstrating the tensions between security, immigration and the rights of minorities (Monshipouri 2010; Poynting & Mason 2006). Ghassan Hage argues that 9/11 'sealed the position of the Muslim as the unquestionable Other in Australia today' (2003: 67). The 'Middle Eastern Muslim Asylum Seeker' has entered the Australian lexicon as derogatory terminology.

In its denunciation of Islam, Australia is somewhat polarised between two competing ideologies: the importance of maintaining the dominant Christian identity, and a vision of a secular society. Almost half of the world's sixteen million refugees come from Muslim countries, and some are now resident in Australia. Yet, even though Muslims are less than two percent of the Australian population and come from diverse countries and cultural backgrounds, as Poynting & Noble (2004) point out, being Muslim is seen as a singular category by the mainstream.

Although Australia does not have the same right-wing political movements as other Western countries, particularly in Europe, this status was seriously challenged in 1997 when Pauline Hanson launched her One Nation Party and conducted strident and ill-informed attacks on Aboriginal peoples, Asian migration and multicultural policy (Stratton 1998: 9). Although Hanson and her party are no longer influential, there is little doubt that key elements of her platform have been seized by mainstream politics and incorporated into racially constructed policies that present a disjuncture with an espoused commitment to multiculturalism. As Marr (2011: 441) observes, 'panic forbids retreat', adding that 'If there had been a political contest about the boats, measures that were merely punitive and doing nothing to stem the flow might have been done away with'. Given the above factors, it is not surprising that border security has become a national priority in Australia.

State border security versus human security

Although some commentators have forecast the dawning of a borderless world, the borders of nation-states are very much alive (Weber & Pickering 2011). Australia's strident emphasis on border security as opposed to human security in its refugee and asylum-seeker policy is part of a broader problematic paradigm reinforcing 'the assumption that state sovereignty as we know it … is part of a natural or necessary order of things' and that displacement is 'an anomaly in the life of an otherwise "whole," stable, sedentary society' (Malkki 1992: 33). In this state-centred approach, refugees – and particularly asylum seekers who utilise irregular migration – are seen as a 'threat' to the 'natural' order (Malkki 1995: 508). The blame for, and threat posed by, their displacement is then internalised within the refugee (Malkki 1992; Arendt 1973). As Malkki suggests, rather than focusing on the 'processes that produce massive territorial displacements of people', the threat is framed as being 'within the bodies and minds (and even souls) of people categorized as refugees'. As a result, the refugee becomes pathologised and criminalised, and refugees are regarded as 'no longer trustworthy as "honest citizens"'. They are regarded as 'carriers of conflict', 'suspected of political irresponsibility that endangers national security', deemed to be prone to 'sink into the underworld of terrorism and political crime'; and 'basically amoral … dangerous characters' (Malkki 1992: 32; Peteet 2007; Mason 2011). Once asylum seekers are pathologised and criminalised in this way, this then 'naturalizes and renders reasonable the sealing of borders against applications for asylum' (Malkki 1995: 508).

A key part of this demonisation and marginalisation of asylum seekers has been the utilisation of the discourse of 'hospitality' to justify the rejection of irregular migrants in need of sanctuary (Mason 2011). Scholars such as Gibson have explored the link between hospitality and nationalism, whereby 'the metaphors of generosity or hospitality enable the reassertion of the sovereignty of the nation-state' (Gibson 2007: 163). In such metaphors, the refugee or immigrant is 'imagined as "the guest"' and 'the "host nation" maintains its historical position of power and privilege in determining who is or is not welcome to enter the country, but also under what conditions of entry' (Germann Molz & Gibson 2007: 8-9). Thus, while the 'host' state often 'imagines itself narcissistically as being hospitable', the reality is that 'hospitality' becomes a means of controlling and excluding (Germann Molz & Gibson 2007; Mason 2011).

In this vein, Australia presents itself as being 'hospitable' to migrants and refugees who go through formal migration channels and frames the

asylum seeker as the 'uninvited' intruder who is seeking to take advantage of Australia's 'generosity'. This approach fails to critique the deeply flawed notion that an orderly global 'queue' exists through which refugees can seek sanctuary and enables Australia to present itself as the victim of the dangerous and 'parasitical' asylum seeker who arrives through irregular means (Laachir 2007; Germann Molz & Gibson 2007; Mason 2011).

This political discourse has resulted in asylum-seeker policies and practices in Australia focusing on militarisation and deterrence rather than on humanitarian considerations. This was particularly evident from late 2001 until 2006 when Operation Relex was introduced and implemented by the Coalition government. Relex was a strategy involving a range of government authorities to actively prevent boat arrivals from reaching Australia (Chambers 2010). Boat arrivals diminished during this period, but the number of boats that were intercepted and turned back under this interdiction policy is not known. Furthermore, 1,600 asylum seekers who attempted to come were diverted to Manus Island or Nauru during this period; they were attempting to come to Australia (Rintoul 2011). The decline in the number of asylum seekers that did occur can be explained by 'push' factors, as globally the number of Afghan asylum seekers declined from 2001. Australia's stringent measures defies the geographic locality of the nation, for, in reality:

> no country in the world has greater control over its borders than Australia … While most countries share at least one border with another country and usually many more, Australia is an island continent with vast surrounding seas and these natural barriers make irregular migration extremely difficult. (ASRC 2011)

The investment of funds in border protection agencies and in remote immigration detention facilities illustrates the priority that Australia places on protecting its borders from those seeking safe haven. The conflation of asylum-seeking with terrorism opens the way for the development of zones of exclusion and the differential treatment of those assigned the label of 'non-citizen'. Border Protection Command, entrusted with the security of Australia's offshore maritime areas, specifies that Australia's national interests are threatened by any unauthorised arrival of people (BPC undated).

The costs of implementing border control appear to be of scant concern. In its 2010-2011 Budget on Border Protection and Detention, the government announced that, in addition to its previous allocation of AUD 654 million to

border security and the prevention of people smuggling, a further AUD 1.2 billion was to be allocated 'to bolster Australia's border security'. In so doing, the federal government stated that it had 'been under increasing pressure to further address people smuggling issues due to a significant rise in the number of unauthorized boat arrivals' (Phillips & Karlsen 2010). Similarly, money appears to be of no concern in maintaining the network of detention facilities in Australia. Bernard Keane (2011) suggests that 'Australia's fixation with asylum seekers arriving by boat has cost taxpayers nearly $2.4 billion since 2000', not including the cost of Nauru or the border security measures themselves. The cost of constructing and upgrading the Christmas Island facility was more than AUD 300 million (Keane 2011). Furthermore, the remoteness of the Christmas Island detention facility means that it relies on a fly-in/fly-out workforce, resulting in high expenses for flights, accommodation and food. Other remote centres such as the Curtin facility in the far north of Western Australia also require substantial expenditure in the quest to keep asylum seekers away from populated mainland cities.

Alongside government strategies affecting asylum seekers are policies against people smuggling that illustrate the lengths the government will go to operationalise the 'stop the boats' refrain that has taken hold (see chapter 10 in this volume). The emphasis on stopping people-smuggling ventures has been cast in binary terms – by government as an evil trade that exploits vulnerable people and by some advocates as a necessary industry that provides opportunities for the pursuit of a life free from persecution.

Unlike people smugglers who rescued people at risk of death during the Nazi Holocaust, smugglers assisting asylum seekers in their journey to Australia are given pejorative descriptions (see chapter 7 in this volume). Although the demonisation of the smuggler has been consistently present in government discourse, it became starker after the Labor Party took over government in 2007 when the language towards asylum seekers softened and the criminalisation of their agents became more apparent. The get-tough approach is codified in the punishment regime of Australian law, not just for journey organisers but also for the boat crew (see chapter 10 in this volume). The mandatory five-year prison sentences result in the incarceration of Indonesian nationals in Australian prisons. Most of the crew are unaware of the nature of their undertaking and are lured by small amounts of money. They are usually recruited from impoverished Indonesian fishing villages and are paid little by the organisers (Smit 2011).

The prioritising of border security minimises the paradigm of human security. Lester (2010) advocates the people-centred approach of human security, which locates the human being, rather than the state, at the

centre of its concern. She states that the traditional debate on national or international security fails to take into account the threats to the protection and security of the individual human being. The lack of emphasis in the public domain on factors that create people movements generates the false belief that it is Australia that is the lure for such movements, resulting in a tension between factors of 'push' and 'pull'.

Push and pull

The movements of people seeking asylum are often referred to in terms of 'push' and 'pull' factors. According to Flitton (2012), the so-called 'push factors' that drive people to make the harrowing choice to abandon their home are generally swamped by allegations about the 'pull factors' – of Australia as a holiday-like destination, with smugglers as malevolent travel agents. In the contemporary political discourse, the emphasis is almost solely on 'pull' factors, particularly with conservative Coalition parties arguing that the Labor government's 'soft' approaches encouraged the arrival of boats in Australian waters. The reality is that the deterrence measures that have infused Australia's approach have failed to achieve their objectives, as desperate people will continue to seek ways of securing a safe life for themselves and their families.

A cursory examination of Iraqis and Afghans, whose applications for asylum in Australia in the last decade have been prominent in media reports of irregular migration, demonstrates the importance of 'push' rather than 'pull' factors in the rationale of people deciding to make the perilous journey by sea to seek refuge in Australia.

As a result of the intense violence of the 2003 US-led occupation of Iraq and the subsequent insurgency and humanitarian crisis, around 4.7 million Iraqis have been displaced. Around 2.7 million have been internally displaced within Iraq, of whom an estimated one million remain displaced. Another two million have fled to neighbouring Arab states to seek refuge; it is estimated that since 2003, Syria has hosted around 450,000 to 1.4 million Iraqi refugees; Jordan 500,000 to 700,000; Egypt 30,000 to 70,000; and Lebanon 20,000 to 40,000 (UNHCR 2012e, 2010; Amnesty International 2008; Human Rights Watch 2006).

The situation for Iraqis within Iraq remains highly problematic. While violence has decreased from previous peaks in recent years, Iraqis still endure high levels of violence, including daily bomb attacks and the targeting of particular groups such as minorities and professionals (*BBC News*

26 April 2012; Tripp 2012; Jakes 2012). A lack of basic services, the widespread destruction of infrastructure and high unemployment have also made everyday life very difficult for many Iraqis (UNHCR 2012e; Al Tikriti 2010). According to the United Nations High Commissioner for Refugees, of the one million Iraqis who remain internally displaced, 'hundreds of thousands live in dire conditions. Most are unable to return to their areas of origin because of the volatile security situation, the destruction of their homes, or lack of access to services' (UNHCR 2012e). Thus, although Western media coverage of the situation in Iraq may have subsided, Iraq is not yet stable or safe.

The Iraqis who fled and sought sanctuary outside Iraq also continue to face precarious situations. Most of the neighbouring states that have hosted displaced Iraqis are not signatories to the Refugee Convention; the exception is Egypt, which is a signatory but with significant reservations. As a result, most Iraqi refugees have entered these neighbouring states as temporary 'visitors', which means their legal status is precarious and their security, long-term protection and access to services are severely limited (Mason 2011). Although many of these Iraqis have now been in these host states for a number of years, they are not able to legally work and have used up any savings they may have had. Their only option is to work illegally in the informal economy, leaving them open to exploitation and possible deportation. Iraqi refugees have also encountered struggles accessing core amenities and services, including schooling for children and healthcare (Mason 2011). Living in such a tenuous situation has exacerbated the intense psychosocial problems experienced by many Iraqi refugees, as described in a report by the International Organization of Migration (IOM):

> For those who had experienced direct violent attacks – 21 percent of the refugee sample in Jordan and 34 percent in Lebanon – including witnessing assassinations of relatives and friends, torture, rape or kidnappings, psychological distress was overwhelming. The insecurity of their refugee life, a lack of employment and the de-professionalization of Iraqis whose qualifications are unrecognized, poor living conditions and access to health and social services, including education, have further aggravated the situation, particularly among Iraqis who have been displaced for two years or longer. (2008a)

In the wake of the global financial crisis, Iraqi refugees have become scapegoats for spiraling economic (and thus social and political) problems in the states that have hosted them, and there has been increasing pressure for them to return to Iraq. Iraqis have, moreover, been affected by the recent

violence in Syria, with a number of Iraqis fleeing the situation there, and more seeking refuge in Jordan, even though Jordan has enforced tough visa procedures since 2006 (UNHCR 2012e; Mason 2011).

While the Iraqi government has attempted to encourage refugees to return to their homeland at various stages, large-scale repatriation has yet to occur because of the continuing instability and violence. Furthermore, many refugees have lost most, if not all, of what they owned in Iraq, which, in combination with the lack of basic services and the widespread destruction of infrastructure in Iraq, means they have very little to return to (UNHCR 2012e; Amnesty International 2008; International Crisis Group 2008). Indeed, as the UNHCR notes, the conditions in Iraq 'have not only restricted the level of voluntary returns, but have triggered continued outflows to neighbouring States' (2012e). Consequently, Iraqi refugees in neighbouring states have been left in an abyss of sorts, where their future is extremely uncertain. As they cannot remain in their host countries for the long term and cannot return to Iraq, many see third-country resettlement as their only option. Yet, there have been few opportunities for third-country resettlement through formal channels, including in those countries which arguably have a moral imperative to assist displaced Iraqis because of their role in the invasion of Iraq – the United States, the United Kingdom and Australia (Human Rights Watch 2006; Amnesty International 2008). The desperate situation this has placed many Iraqis in is a key reason why so many have been forced to resort to irregular means of getting their families to safety.

Afghans have also been prominently reported on in media coverage of asylum seekers in Australia, particularly in the last ten years. Afghanistan has suffered from decades of conflict, particularly as a result of the 1979 Soviet occupation, Taliban rule and the 2001 US-led war and subsequent occupation. Millions of Afghans have been displaced, meaning that Afghanistan continues to be a major source country for refugees (UNHCR 2012b).The situation in Afghanistan today remains highly volatile. While the Taliban were formally ousted from power in 2001, the Afghan government has achieved only variable levels of control outside the major urban centres, and according to the International Crisis Group the Taliban and a range of warlords have been steadily reasserting their influence (2012):

> The insurgency in Afghanistan has expanded far beyond its stronghold in the south east. Transcending its traditional Pashtun base, the Taliban is bolstering its influence in the central-eastern provinces by installing shadow governments and tapping into the vulnerabilities of a central government crippled by corruption and deeply dependent on a corrosive

> war economy. Collusion between insurgents and corrupt government officials in Kabul and the nearby provinces has increased, leading to a profusion of criminal networks in the Afghan heartland. Despite efforts to combat the insurgency in the south, stability in the centre has steadily eroded … A little more than a year after the transfer of additional U.S. troops was completed, violence increased across the country, hitting new peaks in May 2011 as the Taliban launched their spring offensive, which resulted in the highest recorded number of civilian casualties incurred in a single month since the U.S. engagement in Afghanistan began in 2001. It is unlikely that this trend will be reversed anytime soon. (2011)

This reality, plus the ongoing foreign occupation, has resulted in continuing high levels of violence, insecurity, and political, social and economic turmoil, including high levels of poverty and unemployment (Refugees International 2012). This has resulted in the ongoing displacement of Afghans, with 2011 alone seeing 'a rapid increase in conflict-induced internal displacement in Afghanistan, creating nearly 100,000 new IDPs [internally displaced persons]' (UNHCR 2012a). Overall, the UNHCR estimated that in 2012 around 1.3 million Afghans within the country were asylum seekers, refugees, returning refugees and internally displaced persons (UNHCR 2012a).

Despite the ongoing violence, it is estimated that approximately 5.7 million refugees have returned to their homeland since 2002. Those returning have often experienced very difficult conditions. Studies of refugees who repatriated to Afghanistan (Saito & Kantor 2010: Kamal 2010) have found that many have been deeply affected by the ongoing violence and instability in Afghanistan and have faced serious socioeconomic challenges. Moreover, they often experience discrimination by Afghans who remained in the homeland. The refugees are deeply concerned by the more religiously fundamentalist environment in Afghanistan The UNHCR notes that 'more than 40 percent of returnees have not reintegrated into their home communities … Specific areas needing improvement include land tenure and housing, livelihood opportunities, and access to public services and water' (2012a). Saito and Kantor also describe the immense adversities specifically facing women returnees, highlighting issues such as:

> an unfavourable environment with decreased mobility because of security issues (for example harassment and kidnapping), more restrictive social norms, and unavailability of facilities (for example, lack of secure public transportation). For economically vulnerable female returnees …

> few acceptable work options existed … A few female respondents reported experiencing brutal domestic violence … this led them to perceive deficiencies in the Afghan legal system compared to Pakistan or Iran. (2010: 138; see also Kamal 2010)

As a result of the tenuous situation in Afghanistan, repatriations have slowed since 2007, and many Afghans have once again fled the violence and instability of their homeland. Some 2.7 million Afghan refugees remain displaced in the region, with 1.7 million in Pakistan and one million in Iran (UNHCR 2012a). Although both Pakistan and Iran have a history of hosting Afghan refugees that goes back over thirty years, during which they have had very little international support, Afghans live in both countries with varying and often precarious degrees of legal status and rights (Saito & Kantor 2010; Kamal 2010).

Pakistan is not a signatory to the Refugee Convention and, while Afghan refugees have been able to access strong Afghan support networks in areas of Pakistan such as Quetta in Baluchistan, refugees in general 'have difficulty in accessing basic facilities and essential services including education, health care and work' (UNHCR 2012c; Monsutti 2010: 57). Since the fall of the Taliban, Pakistan has undertaken a range of measures that prepare the way for the large-scale repatriation of Afghan refugees.

Although Iran has also hosted a substantial refugee population for decades, the Islamic Republic signed an agreement with the Afghan government and the UNHCR in 2003 to facilitate the voluntary repatriation of Afghans. At the same time, Iran passed legislation that 'outlawed employment, administrative services, banking, participation in civil society, and accommodation for Afghans without valid residence permits' in order to 'encourage' repatriation (Kamal 2010: 150). Thus Afghans in Pakistan and Iran face a situation that is similar to that of Iraqis hosted by neighbouring Arab states: they cannot remain in their host states for the long term and it is not safe for them to return to their homeland. The fact that opportunities for third-country resettlement of Afghans have contracted considerably following the 2001 war further limits their options.

Understanding the 'push' factors, particularly in terms of the levels of violence and insecurity in their home and host countries, is thus essential in the consideration of why Afghans and Iraqis feel they have no other option but to undertake the treacherous journey to seek asylum in Australia. As Table 8.1 indicates, the peaks and troughs in the number of Iraqis and Afghans seeking asylum in Australia strongly correlate with shifts in their respective security situations.

Table 8.1 Asylum applications in Australia from Iraqis and Afghans

	2003	2004	2005	2006	2007	2008	2009	2010	2011
Iraq	1,433	231	221	380	216	193	303	379	491
Afghanistan	2,359	757	928	699	20	52	936	1,262	1,721

Source: UNHCR (2005a, 2006, 2007a, 2008, 2009, 2011a, 2012b)

Research conducted on asylum seekers' destination preferences (Richardson 2008; Gradstein 2006) has revealed that asylum seekers have not chosen Australia specifically and that most had little knowledge of Australia's policies before arrival. People smugglers were found to be the most influential factor in the selection of destination. Taylor makes a salient point about the search for safe haven based on research she conducted with Sandra Gifford between 2007 and 2009:

> We discovered that asylum seekers and refugees don't necessarily want to make Australia their home. They just want to have a home – a place where they can live in safety, support themselves with dignity, give their children a future through education, and belong. The knowledge that they had a realistic prospect of being resettled in a country that could fulfil these needs would have been enough to enable them to bear short-term insecurity. In fact, if these basic human needs could be fulfilled in Indonesia, they would have been happy to settle there. Unfortunately, neither a home in its true meaning nor the hope of one in the future can be found in Indonesia, or in most other countries in our region. Australia is one of the few exceptions to that rule. (2011b)

Similarly, Amnesty International reported that in Malaysia, a key transit country for people arriving in Australia through irregular means:

> [refugees have] no formal legal status or right to work … They face the daily prospect of being arrested, detained in squalid conditions, and tortured and otherwise ill-treated, including by caning. They face the constant fear of being forced to return to a country where they may be stripped of their rights or even killed. (Amnesty International 2010: 3; see also chapter 9 in this volume)

These conditions also give people little option but to continue on to Australia to seek asylum.

It is clear that the majority of such people who seek asylum in Australia are found to be legitimate refugees. According to 2011 figures collected by the Australian department of immigration and citizenship, for example, 'during the Rudd Government approximately 90-95 percent of assessments completed on Christmas Island resulted in protection visas being granted' (Phillips 2011: 8). Thus a focus on such 'push' factors in the political and media discourse could go some way towards providing government leaders with the courage to initiate policy developments that adhere to international human rights obligations. As noted by Edwards and Ferstman (2010), a focus on security language labels the subjects of the security discourse as threats to security rather than victims of insecurity. Such a securitised approach prevents the broader Australian public from identifying with the plight of asylum seekers. The impact of public identification and sympathy with the humanity of particular refugees is illustrated starkly by the popular public campaign in 1999 that resulted in Australia offering temporary safe haven to 4,000 Kosovars displaced in the break-up of the former Yugoslavia.

New directions

Up until the middle of 2012, there were signs of new directions being set, both preceding and coinciding with the increased focus on a RCF, and particularly following the new Labor government taking office in November 2007. In 2008, TPVs were abolished, the Pacific Solution abandoned, and the new Labor government introduced its Key Immigration Detention Values. The changes were not enshrined in legislation, however, resulting in accusations that Labor was not adhering to its own values as it continued to detain children, for example. Moreover, in the first plank of the 'values', mandatory detention is embedded as a fundamental component of border control, reinforcing the bipartisan approach to this provision.

Because boat arrival numbers remained low as they did in the final years of the previous Coalition government, the Labor government appeared to have modified its stance. When numbers of arrivals in Australian waters began to increase, the political hyperbole resulted in the opening of the Christmas Island maximum-security detention centre in 2008, which had been built by the Coalition government; the new Labor government, therefore, reneged on its promise in opposition that it would not allow the detention centre to be opened. The expansion of detention on Christmas Island was followed by a succession of new or re-opened detention centres in other parts of Australia.

From late 2011, when it became clear that the detention facilities on Christmas Island were becoming overcrowded, that mental health issues and protests were increasing in severity, and that Christmas Islanders were becoming increasingly vocal in their opposition to the detention industry on their island, particularly following fires and escapes, the federal government looked for new measures. One positive measure that emerged was the release of people from detention in a timely manner so that they could live in the community, either in community detention or on bridging visas, until the outcome of their claims was finalised. Not only is this more humane, it is also financially more viable. However, the manner of implementation has been slow and somewhat chaotic, with an array of sub-contracting arrangements with the non-governmental sector for housing, services and income support, and difficulties in attracting staff to deal with vulnerable people. Alongside changes to domestic policy and practice, a broader policy paradigm is working, albeit slowly, towards regional cooperation. However, its progress was set back in August 2012 when legislation was introduced to allow newly arriving asylum seekers to be sent to Nauru and to Manus Island in Papua New Guinea (see chapter 9 in this volume). Before discussing the prospects for a regional framework, we discuss Australia's preference for bilateral approaches, past and present, which will need to be rethought if regional cooperation is to take effect.

Bilateral offshore negotiations

Wealthy Western nations that are signatories to the Refugee Convention extend immigration detention beyond their borders in order to restrict entry by asylum seekers into their own territories (Nethery, Rafferty-Brown & Taylor 2013), and this has been a focal point of Australian policies intended to deter asylum seekers. The Pacific Solution of the recent past, which involved detention in Papua New Guinea and Nauru, was not an equal partnership with those two countries. Rather, it repositioned Australia in a neo-colonial relationship in which it exercised power through a distortion of foreign aid agendas over Pacific nations considered ripe for exploitation. In creating the Pacific Solution and excising so many islands from its territory, Australia engaged in a process described by Alison Mountz as pushing further away and nearly erasing borders (2010). When these processes are combined with detention in remote parts of the sovereign territory, a powerful geography of exclusion is created. The colonial project, in many and varying guises, represents a range of means for the exploitation of less

powerful and more vulnerable nations and the economic, governance and imposition of Western worldviews. The location of detention facilities in economically poorer countries is further evidence of colonial entrenchment in dictating 'development': Australia was offering economic rewards in exchange for the location of detention facilities in countries bankrupted through colonialism and its aftermath (Fiske & Briskman 2009).

Although the Australian Labor government committed itself to ending offshore detention when it came to power in late 2007, once the boats started arriving again, hasty moves were made to revert to offshore options, with the government and the opposition vying to devise offshore alternatives. In response to a rash of alarmist headlines concerning the increase in numbers of boats arriving and the political capital the opposition Coalition parties made of the headlines, Australia tried unsuccessfully in 2011 to convince other countries, such as East Timor and Papua New Guinea, to establish regional assessment centres. Either of these would have served Australia's political objective of finding places outside Australia to send people arriving by sea (Taylor 2011a). Later, the 'remedies' proposed by both major parties centred on shifting asylum seekers away from Australia: the Labor government proposed a people swap with Malaysia, and the Coalition opposition proposed a processing centre on Nauru. In August 2012, bipartisan agreement resulted in Nauru and Papua New Guinea as the chosen locations for processing centres.

Australia still has an agreement with Indonesia to fund immigration detention centres in that country (see chapter 7 in this volume). Policies that essentially exported domestic policy were formulated with Indonesia, which resulted in the detention of asylum seekers in Indonesia from 2000, the introduction of detention policy in 2007 and tougher Indonesian laws in 2011 (Nethery et al. 2013). In the interests of maintaining a good bilateral relationship, Indonesia has assisted Australia in its policy objective of preventing asylum seekers coming to its shores (Nethery et al. 2013). Australian-funded detention centres in Indonesia have been subject to substantial criticism because of their sub-standard conditions.

The Malaysia 'Solution' was controversially formulated in 2011, when the Australian government proposed to send 800 people who arrived in Australia by boat to Malaysia in exchange for taking 4,000 UNHCR refugees from that country. The people removed from Australia would not be permitted to lodge asylum claims in Australia but would be permitted to apply to the UNHCR from Malaysia, which is not a signatory to the Refugee Convention and has been heavily criticised for its treatment of refugees. The Australian prime minister declared that the 800 people

sent back to Malaysia would 'go to the back of the queue' to apply to enter Australia. The High Court of Australia ruled that the immigration minister could not make a valid declaration in relation to Malaysia as it was not a signatory to the Refugee Convention and that the arrangement between the two governments was not binding (Brennan 2012). Although the Malaysian arrangement was portrayed as a practical implementation of the RCF, the plan disregarded the protection principles of the Framework and therefore did not offer any hope that it would lead to improved refugee protection in the region (Taylor 2011b). Father Frank Brennan, lawyer and academic, pointed out the folly of the policy, which was likely to include children:

> If you send a child to the end of a queue which is 100,000 long in Malaysia, the solution is immoral. If you leave the child in Australia, you send a signal to people smugglers that children are exempt from the Malaysian solution and thus you set up a magnet inviting other unaccompanied children to risk the dangerous voyage from Indonesia. The Malaysia Solution then becomes unworkable. (Brennan 2012)

The immigration minister claimed the Malaysia Solution would have prevented deaths at sea. When up to 50 arriving asylum seekers drowned at Christmas Island in December 2010, opportunistic politicians purported that it was necessary to get tougher to avoid such tragedies. Their assertive opportunism increased following the deaths of at least seven people in Indonesian waters on their way to Australia. Minister Bowen stated that 'the type of arrangement we negotiated with Malaysia is an effective deterrent' which could prevent 'tragic deaths at sea' (Plea to Liberals 2011). The arrangement failed to acknowledge, however, what would happen to people unable to flee situations of persecution and, once again, put the importance of 'pull' factors rather than 'push' factors at the forefront. A more humane approach to stopping the boats would have been to take more asylum seekers from Indonesia and Malaysia, many who have been in a state of limbo for years (see chapter 7 in this volume). This would be a more effective way of saving lives, as there would be incentives not to attempt the dangerous boat journey to Australia.

On 13 August 2012, the ground again shifted when the prime minister's Expert Panel on Asylum Seekers released its report, having held community consultations over six weeks to provide the federal government with policy options to prevent asylum seekers 'risking their lives on dangerous boat journeys to Australia' (2012: 9). Although the panel

made 22 recommendations, some of which were intended to advance a regional framework, the government seized upon two recommendations for offshore processing on Nauru and Papua New Guinea, described as a 'circuit breaker'. A controversial 'no advantage' principle was applied whereby asylum seekers would gain no benefit from seeking protection other than through established mechanisms. The Refugee Council of Australia added its voice to the criticisms, arguing that offshore processing could have a damaging impact on prospects for enhanced regional cooperation on refugee protection (2012).

The quest for regional cooperation

Menadue, Keski-Nummiand and Gauthier present compelling arguments for the establishment of a regional framework (2011: 21). In looking at the region closest to Australia, they point out that in Malaysia there are 212,856 people of concern to the UNHCR, including an estimated 81,516 refugees and people in refugee-like situations; in Thailand, there are 649,430 people of concern to the UNHCR, including 147,019 Burmese in camps along the Thai Burma border; and in Bangladesh, there are 229,253 people of concern to the UNHCR, including some 29,000 Burmese Rohingya registered with the UNHCR and a further 200,000 unregistered people living in the country. In presenting these figures, they argue that no single country can be reasonably expected to manage population movements. They point out that a cooperative approach is not new, referring to the 1989 Comprehensive Plan of Action which addressed the question of Indo-Chinese refugees. Now, however, it is countries such as Malaysia, Thailand and Indonesia who are hosting the bulk of new asylum populations.

Through the RCF, Australia is now looking more outwardly to the region to see how the perceived problem of asylum-seeker flows can be managed holistically. Previously, as we have seen, Australia has put considerably more effort into border control cooperation than refugee protection cooperation (Taylor 2008). In 2002, the Bali Process was established which, although initially mainly concerned with people smuggling and trafficking, has begun to recognise the humanitarian aspects of the movement of people. In March 2011, at the fourth Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime, it was agreed that 'an inclusive but non-binding Regional Cooperation Framework (RCF) would provide a more effective way for interested parties to cooper-

ate to reduce irregular movement through the region'. The following core principles underpin the RCF:

1 Irregular movement facilitated by people smuggling syndicates should be eliminated, and states should promote and support opportunities for orderly migration;
2 Where appropriate and possible, asylum seekers should have access to consistent assessment processes and assessment arrangements, which might include a centre or centres, taking into account any existing sub-regional arrangements;
3 Persons found to be refugees under those assessment processes should be provided with a durable solution, including voluntary repatriation, settlement within and outside the region and, where appropriate, possible 'in-country solutions';
4 Persons found not to be in need of protection should be returned, preferably on a voluntary basis, to their countries of origin, in safety and dignity. Returns should be sustainable, and states should look to maximise opportunities for greater cooperation; and
5 People smuggling enterprises should be targeted through border security arrangements, law enforcement activities and disincentives for human trafficking and smuggling. (Bali Process 2011)

In advocating an RCF, the Australian immigration minister used similar arguments about deaths at sea that were used for promoting the Malaysian plan:

> Australia, like many other countries, continues to receive large numbers of irregular arrivals. Many of these people are risking their lives and those of their families by using the services of people smugglers. The dangerous nature of maritime people smuggling ventures was again tragically apparent last December when, in heavy seas, a boat was lost against the rocks at Christmas Island resulting in at least 30 people losing their lives. (Bowen 2011)

Like national attempts at stemming asylum-seeker flows, the Bali process is precarious unless it is a truly regional process with protection at its heart rather than the focus on the smuggling trade. Menadue et al. insist that regional approaches to protection must be backed up by concrete action, particularly by Australia, 'which is often viewed as a fair-weather friend; quick to ask but slow to give' (2011: 22). Taylor sees a positive move forward in the creation of a Regional Support Office to develop the RCF, together with

the recommendation for a working group (2011b). Although initial project proposals from Australia have had little to do with refugee protection, if the UNHCR can 'nudge the Regional Support Office towards projects designed to put the refugee protection elements of the RCF into operation, then the region may yet start moving in the right direction' (Taylor 2011b).

Although the Expert Panel's recommendations on a regional framework have not yet been acted on by the government, it did suggest a suite of measures to enhance its formation, including: consolidation of the RCF agreed to through the Bali Process; engagement with governments, NGOs and civil society groups on capacity building; increased funding for the UNHCR for the management and processing of asylum seekers across the region; and the introduction of effective mechanisms for oversight and monitoring of regional processes (Expert Panel on Asylum Seekers 2012). Among concerns raised in response to the Panel's report are the lack of progress on the implementation of the RCF, the lack of detail on regional processing arrangements and inadequate consideration of international obligations (Refugee Council of Australia 2012).

Conclusion

Australia, despite being a signatory to the Refugee Convention and a well-resourced Western nation, clearly abrogates its human rights obligations. Its obsession with its borders is puzzling, given that the flow of asylum-seeking boat people to Australia is, comparatively speaking, minimal. The fallout is that Australia's reputation as a nation that respects human rights and as a good neighbor is nullified because it places its own national interests above a moral imperative to create a just approach towards asylum seekers and an equitable relationship with nations in the region. Given Australia's wealth, space and commitment to refugee protection through UN instruments, it has the potential to become a role model for countries that do not at this stage integrate refugees into their own populations. Although Nauru and Papua New Guinea have signed up to new bilateral agreements, there is evidence of wariness, with both countries insisting that asylum seekers remain on the islands for as short a time as possible before they are resettled or repatriated (Callick 2012).

If Australia was to assume a leadership role in taking on the responsibility of protecting asylum seekers, it could sustain the RCF project, which is likely to take a number of years to become operational, if it is not set back by the recent offshore developments. In reality, no matter how tough Australia

is about its borders and how many nations Australia persuades to take on a responsibility that it should own, asylum seekers will continue to take risks in their quest for safety and protection. As we complete our chapter in September 2013, a conservative Coalition government has just taken power and has signaled even tougher approaches to asylum seeker boat arrivals than the previous Labor government. The Coalition's stance on an RCF has not yet been announced.