

Mixed Migration in the Asia Pacific – A Practitioner’s Perspective

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Australia’s refugee policy developed as a subset of post-war immigration and as such was influenced by the country’s need to increase its population and at the same time to broaden its industrial base, for reasons of security and economics. It also assumed that Australia’s geographical isolation would enable control of movement across its borders. Such economic and political drivers continue to influence policy, meshing humanitarian objectives with immigration outcomes. At the same time changes in the nature of causes of forced displacement in the East Asian region have given rise to large urban-based groups of undocumented people lacking access to status-determination processes and the protection accorded to ‘status refugees’. Policy development in nations such as Australia has largely ignored this new vulnerable group but continues to rely on encampment strategies, and at the same time publicly promoting a stereotype of the refugee as victim. There is urgently needed the re-imagining of the term ‘refugee’ and the adoption of strategies of complementary protection to reflect these changes.

Introduction

On 17 April 2007 the then Australian Minister for Immigration and Citizenship, Senator Kevin Andrews, announced that agreement had been reached whereby Australia would exchange resettlement places with the United States for people assessed as refugees under the offshore system of both countries. Up to two hundred people each year would be “swapped” under the scheme (Hart 2007). Practically, this meant that eighty-three Sri Lankans and a small number of Burmese presently detained on Nauru would, if assessed as refugees, likely travel to the United States while a similar number of Cubans detained at Guantanamo Bay would end up in Australia. The United States historically encouraged Cubans fleeing Castro’s regime to access asylum as a way of weakening the regime and to score some ideological points against Castro’s communism. By the 1970s, however, Castro looked less vulnerable. The United States gradually closed the door to Cubans attempting to travel there by bringing their refugee policy under more direct political control. Since then, there has been an active policy of interdiction and offshore processing not dissimilar to that of Australia.

The then Australian Prime Minister, John Howard, characterised the refugee “swap” as “part of our policy to reinforce the message to those who would engage in people smuggling that this country has a very tough border protection policy” (AAP 2007).” In other words, it is part of a deterrent mechanism to prevent Australia from becoming a country of asylum.

Australia has found it difficult to get other countries to take their unwanted refugees from Nauru. Previously, it had found only five countries willing to cooperate. Of the refugees resettled in this manner, 94 per cent have ended up in Australia or New Zealand (Crock *et al.* 2006). Notwithstanding its political appeal, this refugee “swap” looked a desperate policy measure of a government out of options.

How did Australia get to this place, where it stands accused of people trading for the symbolic value of being seen to be tough on border crossers? Where does it go, in terms of policy, from here, especially in view of the limited number of resettlement places on offer? What are the policy options available to the government? There have since been some hints of new directions. Announcements of increased funding to UNHCR to help Indonesia develop its Refugee Status Determination Processes, a

bilateral agreement with Malaysia concerning irregular people movements and the strengthening of the existing bilateral arrangements with Indonesia indicate, if not a new policy direction, then a new level in refugee policy in this country. While there are some hopeful signs, a number of questions must first be answered to assess whether these directions could be said to be meeting the needs of the region and the changing nature of its people movements.

This paper describes some of the changes that have occurred in the nature and causes of people movements in the East Asian region over the last twenty years and the changes Jesuit Refugee Service has made in its work in the region as a result. It then uses this experience to critique this new policy direction. The paper is divided into three parts. The first part assesses Australia's recent history in refugee policy against the context of post-war immigration and, more latterly, the developments in policy responding to mass displacement from Vietnam and Cambodia in the aftermath of the Indo-Chinese wars. The second part details some of the changes in the causes and processes of displacement in the Asia Pacific region over the last twenty years. This analysis is taken from the perspective of an international non-government organization presently working in eight of the countries of the East Asian region within a human rights framework. Jesuit Refugee Service's response to these changes is described with particular reference to its work with Burmese migrants and refugees in Thailand. Significant here has been the adoption of a wider conceptual framework in defining "refugee" as reflected in the Catholic Church's Committee for the Pastoral Care of Migrants and Refugees' statement of 1992 (Pontifical Council Cor Unum 1992). While this is primarily a "working" definition, its legal and policy equivalents, some of which are described under the term "complementary protection", need to be taken with greater seriousness in the development of policy.

The third part of the paper takes up this issue of a wider definition and applies it to contemporary developments in refugee policy. The definition of "refugee" enshrined in the 1951 Convention Relating to the Status of Refugees remains the basic conceptual and legal tool in dealing with forced displacement internationally (UNHCR 1951). However, emerging kinds of displacement force the need for serious consideration of complementary protection at earlier stages of the refugee assessment process in Australia. The present policy climate, which I characterise as the post Pacific solution era, is analysed in the context of what is, I suggest, a crucial policy failure. It is important to state at the outset that this paper is not the result of any deliberate academic study. My perspective is that of a practitioner working for the past three years with Jesuit Refugee Service in Australia and participating in a range of reflection and review processes that are part of this agency's ongoing development in the Asia Pacific Region. The following is necessarily broad brush in its approach and practical in its orientation. My hope is that its conclusions are indicative in nature, pointing to areas in need of closer analysis by those better qualified and appropriately specialised.

The Development of Australian Refugee Policy 1989 to the present

A. Background

Refugee policy in Australia, during the post-war period, developed as part of wider immigration policy. As Matthew Gibney puts it, refugees were "the fortunate beneficiaries of a general program of immigration that was motivated by the security and economic needs of the state" (Gibney 2004, 168; Neumann 2004, 27-51). The motto, "populate or perish" encapsulated the need for a population large enough to ensure the nation's military security and economic development. The anxiety generated by the movement of the Japanese south during World War Two highlighted a more vicarious reality in Australia's psyche – security anxiety due to the presence of large populations immediately to the north. This was compounded by the realisation that Australia's economy was vulnerable to fluctuations in international commodity prices. The country's natural geographic isolation, which served as a natural deterrent to spontaneous population movements across its borders, became less significant in the face of these factors. As a result of post-war immigration, Australia's population doubled in the space of thirty years, while its manufacturing base widened significantly taking advantage of government-controlled labour schemes for new migrants.

Acceptance of this mass migration rested on a strict control of the numbers and nature of the people who came. Favoured were the young with European origins. At the same time, governments sponsored various campaigns to integrate the new settlers into a mainstream, essentially British, society (Gibney 2004, 171-4).

About ten per cent, or 350,000, of the people entering Australia in this post war period were refugees. This figure must be seen, however, in the context of the pre-screening of refugee applicants, and their entry as part of wider resettlement schemes, which the government operated under its own discretion (Gibney 2004, 177; Neumann 2004, 51). Particularly the old and infirm, as well as non-Europeans, were screened out as officials were careful to retain the components which made the overall scheme acceptable to the population at large.

B. Changes 1976-1990s

This scenario began to change in 1976 with the arrival of the first boatload of Vietnamese refugees fleeing their country in the aftermath of the Indo-Chinese war. The Fraser Government faced a dilemma. At a time when the rationale for post-war immigration was beginning to unravel, large numbers of refugees were making the journey to Australia's northern shores. This was certain to renew concerns in the electorate about security issues. The government decided on a pragmatic and pro-active strategy and initiated discussions with East Asian governments. After 1981, the Vietnamese Government instituted an orderly departure program. At the same time Indonesia cooperated with Australian requests to "hold" boat arrivals for eventual transfer to camps. In return a generous quota of Australian and other western settlement places was allocated for those from the camps in the region. In the eight years to 1989, these strategies combined to all but halt the arrival of refugee boats on the Australian coastline.

It has been argued that, from an humanitarian point of view also, these strategies were welcome:

the government made a broadly humanitarian decision on the basis of the Refugee Convention. Effectively almost none of these people could go home, so as a group they were seen to have satisfied the definitions of refugee. This decision made their processing quick and sure (Vivani 1996, 11-12).

What is just as remarkable was that the humanitarian objectives coincided with the political objectives of stemming anxiety caused by spontaneous arrivals. Such cooperation between East Asian nations and Australia saw the overall resettlement of about a million people from Vietnam, of which Australia took around 130,000.

There were, however, a new set of reasons that compelled Australia to take such big numbers of refugees: the rise of East Asia as an economic and political force coincided with the weakening influence of the United States in the aftermath of the Indo-Chinese war, and the entry of the United Kingdom into the European Common Market. This meant that Australia's strategic interests were beginning to place greater reliance on interaction with its near neighbours.

Especially significant was the need for Australia to be seen by Asia and others as accepting of people from other races and cultures:

The need to overcome long established mutual suspicions and cultural differences made it crucial that Australia show that it had left behind the racism that had tarred its immigration policies historically and that it was willing to share some of the region's burdens as well as its benefits. Here the resettlement of Vietnamese refugees took on great significance. For Australia's inclusive response had the advantage of challenging the country's image as racist while simultaneously illustrating to powerful Association of South East Asian Nations (ASEAN) members (like Thailand Malaysia and

Indonesia) that the country was willing to cooperate to resolve the region's problems (Gibney 2004, 183; see also Viviani 1996, 11-14).

The fact that these objectives were largely achieved with the support of the Australian populace is testament to the political skills of the governments involved. More importantly still it demonstrated that humanitarian objectives can be combined with, and perhaps even disentangled from, national interest criteria when it comes to refugees (Gibney 2004, 183).

C. Tampa and the deterrence of on shore arrivals

This positive story seems to come to an abrupt halt with the infamous *Tampa* incident of August 2001, when the Australian government ordered its troops to prevent the Norwegian container ship *M V Tampa*, which was carrying 438 asylum seekers it had rescued at sea at the request of Australian authorities, from landing on Australian soil. Soon after, in what became known as *The Children Overboard Affair*, the Prime Minister characterised photos of asylum seekers on board a stricken vessel holding their children out for rescuers as people willing to sacrifice those children's lives in order to enter Australia to claim asylum. In the space of twelve years the "remarkable feat" of separating refugee policy from its immigration origins had been replaced by accusations from the region that Australia was once again if not racist then certainly isolationist. It is a mistake, however, to associate the policy shift with the Howard government alone. Indeed its origins can be traced to several developments that occurred in the latter years of the Hawke government, one of which was an act of benevolence towards a group of potential refugees from China.

The late eighties saw a sharp increase in claimants seeking Australia's protection as a result principally of the one-off offer to consider for refugee status Chinese students living in Australia in the aftermath of the massacre at Tiananmen Square in 1989 (Viviani 1996, 21). This coincided with the arrival of the Cambodian boat people the same year. Their situation was perceived as slightly different from that of the Vietnamese: repatriation seemed possible. Prime Minister Hawke contrasted the Cambodians with the Chinese who were fleeing the Tiananmen Square protests, saying the former were "just economic refugees" (Gibney 2004, 185).

The shift in attitude was reflected in a number of policies put in place by the Hawke government. In 1992 the government created a new detention facility at Port Hedland in Western Australia and passed the 1992 Migration Amendment Act requiring that "any person who arrived by boat in Australia after 19 November 1989 be kept in custody until he or she left Australia or was given an entry permit" (Gibney 2004, 185). Individual Refugee Status Determination replaced the group assessments of the Vietnam era. Further, the right of courts to release detainees was forbidden at the same time as rights of appeal were considerably limited (Viviani 1996, 22-3).

Resettlement continued but increasingly served as an excuse to criticise asylum seekers as "queue jumpers", pushing their way past other refugees waiting to enter Australia legitimately. For the first time in ten years the number of refugee resettlement entries was reduced.

The Howard Government, when it came to power in 1996, continued this policy trajectory; however, the deterrent measures of the Hawke-Keating years, namely mandatory detention and limited rights of appeal, were proving inadequate in the days of "jet age" asylum seekers. In a succession of legislative moves, the emphasis shifted to direct prevention of arrivals through measures such as naval interdiction, the deployment of overseas compliance and airline liaison officers, the excision of island territories from the migration zone and, finally, offshore processing on Manus Island and Nauru.

These strategies went further than those of any previous government, both in terms of their emphasis and the manner in which they were used to gain the government electoral advantage. Each of the arguments put by the Howard government to exclude asylum seekers in this time is readily refuted. How could there be queue jumpers when there was no queue to jump? The existence of people smugglers and traffickers is real; however, the argument promoting interdiction is weakened when it is

realised that countries like Indonesia and Malaysia are not signatories of the 1951 Refugee Convention. Even the security argument at its most basic, that asylum seekers pose a security risk, pales in the face of the policy of mandatory detention that gives ample opportunity for entrants to be screened (Gibney 2004, 191).

The small numbers of asylum seekers reaching the Australia, even at the height of the recent crisis in 1999-2000 when there were 4,175 boat arrivals, belies the argument that our country was being inundated (Fiske 2006, 219-29).

The last common justification for deterrent measures against the asylum seeker is that Australia has a generous offshore humanitarian program that brings in about 13,000 people a year. Such bare statistics, however, hide some important facts about the program. The first is that only about half the number are refugees; the remaining people come under other humanitarian categories (Crock *et al.* 2006, 17). More disturbing though is the nature and conduct of the program itself: “officials use characteristics in addition to need to choose entrants (preference goes to ‘the educated rather than the skilled, the healthy rather than the disabled, the quiescent rather than the troublesome’)” (Gibney 2004, 191). The resettlement system operated by Australia recalls the spectre of state control, and as a result one cannot call it a proper substitute for claiming asylum in-country (Gibney 2004, 191).

The refugee policy of the Howard Government in these years clearly had negative and, for some, long lasting humanitarian outcomes. It also clearly resonated with large pockets of the electorate. Political and humanitarian objectives had once again parted company.

Responding to change – the development of Jesuit Refugee Service in the Asia Pacific

Jesuit Refugee Service began its work in East Asia and internationally dealing with the same situation that had elicited the mass resettlement program of the Fraser and Hawke governments, namely that of Vietnamese and Cambodian people fleeing their homelands in the aftermath of the Indo-Chinese conflict (Valcárcel 2006, 17ff). The two interrelated political developments generating displacement, namely the takeover of Southern Vietnam by the Communist North and the rise to power of the regime of Pol Pot in Cambodia, generated what was clearly seen as a persuasive case for humanitarian intervention. As mentioned, this resulted in Indo-Chinese refugees arriving in Australia being recognised as Convention refugees normally classified (until 1992) on a *prima facie* basis.

The cooperation between governments of the time was predicated almost entirely on the assumption that refugees were encamped. Likewise, Jesuit Refugee Service’s early work was nearly all camp based. Its first program, in 1980, brought together a medical team to work in the Phanat Nikhom camp east of Bangkok (Valcárcel 2006, 20ff). The work soon spread to Cambodia (temporarily) and then the Thai Cambodian border, to Ban Vanai camp in north-east Thailand among the Hmong people from Laos, and to Pulau Bidong camp in Malaysia, where the first formal education program of the agency was begun. There was a large legal program in the camps of Hong Kong taking up the mostly Vietnamese casework there. Soon Jesuit Refugee Service had programs in every significant refugee camp in South East Asia. Many of these programs were scaled down when the *Comprehensive Plan of Action* came into effect after June 1989, leading to resettlement or repatriation, and the eventual closure of the camps. But hitherto the majority of refugees were situated in the camps and the responses of government and non-government actors alike took this for granted.

It was perhaps surprising that, in the absence of any major armed conflict, new needs quickly arose, in the mid 1990s, firstly along the Thailand/Burma border, then in Papua New Guinea and Indonesia and, towards the end of the decade, in East Timor, Malaysia and, once again, in Cambodia. These situations were varied in their nature and causes. What they held in common was their complexity. No longer were refugee movements necessarily the result of a single conflict and instance of regime change. The causal factors of displacement also became more varied, with often multiple factors acting in a single group scenario. In this context, governments like Australia’s no longer saw the necessity for mass resettlement strategies of the kind enacted during the Indo-Chinese crisis.

Rather they continued the policy of taking a relatively small number of applicants from a variety of refugee-producing situations. At the same time they could publicly justify the need for deterrence against spontaneous arrivals at their borders.

The other characteristic common to these situations was their intractable nature: rarely was there clear prospect for a political, or other, resolution of the factors causing displacement, while resettlement became less an option in the face of Western countries' reticence to accept candidates in sufficient numbers. Indeed, in the cases of Thailand, Malaysia and Papua New Guinea, populations effectively live in ongoing exile to this day.

The situation of the ethnic minorities from Burma in Thailand, Malaysia and elsewhere exemplifies this newer pattern of displacement. In Burma, protracted low-level conflict has combined with human rights abuses and persecution of ethnic minorities to produce large internal and cross-border displacements in the last decade (UNHCR 2006, 14, 25). The same low-level conflict undermines local economies, impelling people to flee in order to find a sustainable living and working environment.

There are currently about 143,000 refugees living in the nine refugee camps along the border of Thailand and Burma (den Otter 1996, 28-30). Thailand has acceded neither to the 1951 Convention on the Status of Refugees nor to the 1967 Protocol. These people are not permitted to leave camp, are prohibited from working, and consequently depend on the support and protection from UNHCR, Thai authorities and the non-government sector (den Otter 1996, 28). The camps are overcrowded, lack electricity and clean water supplies. Most of their inhabitants are from the Karen and Karenni ethnic minorities who have lived there for between ten and twenty years (den Otter 1996, 28).

The remainder of the Burmese in Thailand, estimated at up to two million people, live along the border and in the larger urban centres. It is here that the distinction between refugee and migrant worker, between forced migration and "voluntary" migration for economic reasons, becomes tenuous. This blurring is reflected in the physical dwellings and spatial distribution of the Burmese:

In Ranong district, for example, the Burmese migrant population officially makes up a fourth of the whole population. In reality they account for almost half of the population as the majority of them are not registered. In Ranong, the majority of migrant workers work in fisheries, rubber plantations and construction. In other places along the border many work in textile factories and agriculture. Living and working conditions are generally bad. Often the poorest families live in huts at the outskirts of town. Some of them have to move regularly as the police will come from time to time and chases [sic] them away. Others live in overcrowded areas, prone to flooding (den Otter 1996, 28).

The Office of the United Nations High Commissioner for Refugees (UNHCR) has documented some of these "urban refugees" as Persons of Concern. Their situation changed in January 2004 when UNHCR suspended the refugee status determination of all new Burmese asylum seekers. Later, UNHCR commenced registration, but neither interviews nor gives refugee status determination. In October 2005 this registration phase was also stopped while UNHCR-recognised refugees living in the community were required to report to border camps in order to retain their Person-of-Concern and/or refugee status and thus their rights to eventual resettlement. UNHCR no longer supports people living outside camp settings on a regular basis, unlike urban refugees of other nationalities in the country which it continues to help. Lastly, unlike the Karen and Karenni, the Shan ethnic minority lack recognition by the Thai authorities and, as a result, access to any kind of refugee status determination by UNHCR and encampment, and thus to the possibility of resettlement or durable solution of any kind.

Burmese refugees living outside camps are in limbo, with most having no legal rights and nowhere to go. Most of these Burmese remain in the community as (often illegal) migrant labourers or in hiding. Some of these have built businesses in the informal economy: lacking any documentation,

they remain highly vulnerable, living in entrenched poverty, and in constant fear of being returned to their own country (UNHCR 2006, 25).

The Royal Thai Government has recently recognised the human right of any child living in Thailand, regardless of their legal status, to attend school under the Ministry of Education in Thailand up to university level. In some, often more rural, areas or smaller towns, Burmese children are now going to Thai schools in increasing numbers. In urban areas though, having “illegal” status makes it harder to go to school, and Burmese children generally do not attend school at all.

The challenge for the non-government sector is to frame a response that caters to the needs of this increasingly diffuse group of people, often against the tide of public opinion, which in many cases remains based on the stereotype of the encamped refugee. Jesuit Refugee Service has begun an urban program providing counselling, legal assistance, and limited financial and medical assistance to urban-based Burmese asylum seekers in the Mae Sot area of Tak Province. There is also a need for accurate information to help new arrivals and deportees from other areas make decisions regarding their immediate futures. Jesuit Refugee Service is one of a handful of organizations attempting to provide this.

This style of program is very different from the other Jesuit Refugee Service program along the same border at the Ban Mai Nai Soi “temporary shelter” (as border camps are officially referred to). This program was established in 1997 with the aim of enabling the Karenni to develop and independently manage a sustainable education system. It includes teacher training, training in financial management, curriculum development and monitoring of the existing schools and teaching personnel. The challenges here are very different from those in Mae Sot: the order of the camp environment and the longevity of the program has enabled a capacity-development ethos to be firmly embedded.

Anticipated third country resettlement from this camp has produced changes in the program, however, as a significant number of both teachers and managers participating in the program have applied for resettlement places in the United States. It is apparent that the refugee population of the camp regard those with better education and better English skills as possessing better prospects for successful resettlement. The program design has had to be adjusted as it is realised that capacity development and support will be necessary for longer than originally planned.

In both programs it is clear the participants at different times exhibit features of both economic migration and of forced displacement. It can be difficult to identify which is the predominate factor, especially as economic deprivation can be the principle “push” factor forcing people to leave their homeland. As was the case in regard to the forced movement of the Vietnamese in the late 1970s and early 1980s, there seems little chance of repatriation in the near future. It is perhaps better to describe the movement of these Burmese asylum seekers as a mixed migration flow. It is evident that the urban based group remains especially vulnerable and in need of various protection mechanisms of the kind available to Convention refugees. In the absence of clear processes for status determination their chances of resettlement likewise are negligible.

One helpful tool in addressing the dilemma posed by these mixed migration flows is the adoption of a definition of refugee that addresses both internal displacement and the phenomenon of urban based refugees. In dealing with the Burmese and also elsewhere, Jesuit Refugee Service has found the Catholic Church’s notion of refugee, enunciated firstly in 1992, helpful. Jesuit Refugee Service firstly sought to include internally displaced people and acknowledged that the strict criteria for persecution under the 1951 Convention no longer satisfactorily accounted for current scenarios.¹ Specifically included was the term *de facto refugee*, defined as:

any person persecuted because of his [sic] race, religion, membership of a particular social or political group, any victim of armed conflicts, flawed economic policies or natural disasters, and for humanitarian reasons, any internally displaced person, in other words, any civilian uprooted from his home by force due to the same violence that affects

refugees but who has not crossed any international frontiers (quoted in Marginå 2006, 11).

It is evident that non-government organisations, which carry a broad humanitarian mandate, must work with such groups even in the absence of clear categorisation regarding their status. This definition provides a broader conceptual framework to facilitate such work, based on the forced nature of the people-movement and the present vulnerability and need of those involved.

Ways forward – Post “Pacific Solution”

Jesuit Refugee Service and other non-government actors have had to change their *modus operandi* to deal with this remarkably different kind of picture of the contemporary person or group of people “on the move”. As seen, it has adopted a wider concept of the term “refugee” and is adapting its programs accordingly. Is this greater flexibility available to governments though and, if so, what might it look like? Is the refugee swap with the United States the last word in asylum and refugee policy in this country?

In the 2007 federal budget and in a number of related developments in recent months we have entered what may well be the next stage of refugee policy, the “Post Pacific Solution” in Australia. This is characterised by new and strengthened bilateral arrangements between Australia and Malaysia, and Australia and Indonesia, in order to strengthen border control and the treatment of irregular or illegal migration. There is new funding for the operation of airline liaison officers and more funding for the International Organisation for Migration’s operations in Indonesia particularly, presumably to look after people who have tried to reach Australia and been turned around. There is also new funding to UNHCR to help Indonesia develop a better Refugee Status Determination process. The detention centre on Nauru is being reserved as the default option but the emphasis is on developing the capacities of other countries to deal with people movements long before they reach Australia’s shores.

There is no doubt that political imperatives are driving at least part of this – the Pacific Solution is now a liability for the government. Nevertheless it remains politically essential for the government to be seen to be in control of Australia’s borders and migration program.

What is one to make of these developments? There are potentially some positives here: at best it can be seen to be building on the policy legacy of the 1980s in that it aims to prevent people from making the hazardous journey from overseas, by cooperation with the countries of the region. But while the harsh regime of excision and offshore processing remains in place it is hard to see this as a truly humanitarian policy stance. The question might therefore be asked: What are the ethical criteria needed for this policy to be acceptable on humanitarian terms?

Firstly the policy relies on the assertion that the countries such as Malaysia and Indonesia, neither of which have acceded to the 1951 Convention, provide effective protection to refugees. The UNHCR has questioned this (UNHCR [Regional Office, Australia and New Zealand] 2004). Clearly Australia’s efforts to build capacity in these countries are laudable but these efforts cannot form the basis for a policy of returning refugees to these countries or preventing them from accessing Australia for purposes of claiming asylum, even when Australia foots the bill. The issue is how far Australia’s obligations stretch and whether we are deemed to be still responsible when “farming out” our responsibilities for refugee processing. One can also ask a related question: Is our aid to these countries being used merely to further Australia’s strategic advantage? The danger is that we create economic and social pressures, which may lead to eventual repression of refugees living in other countries and non-admittance of asylum seekers.

In these contexts the policies associated with what is called a “layered border management system” also come into question. The use of interdiction on the seas and the maintenance and strengthening of the regime of airline liaison officers at overseas airports pose several ethical difficulties, the major one of which is the question of whether they are preventing some people from

exercising their right to claim asylum in Australia (Corlett 2007, 16-17). The risk is two fold: in turning people around who may have genuine claims we may be *refouling* them, sending them back to the situation of danger from which they originally fled or, alternatively, be placing responsibility for their care on a third country which may have less resources available to take up that responsibility.

Further, the system, as it is developing, addresses neither the scenario of mass cross-border movements, which in turn generates demand for the people-smuggling the government so badly wants to eradicate, nor the situation and needs of the asylum seekers living marginally on the urban fringe. In the former case, a better way to address this problem is to stem the demand for such services by proactively instituting a policy of resettlement, on a *prima facie* basis and in cooperation with other governments, from those countries generating mass movements. Thus refugees from Iraq at present in Syria or Jordan, some two million in number, and those from the civil war in Sri Lanka, which number potentially some 120,000, should be considered as constituting extraordinary cases with appropriate measures taken for their protection and, if necessary, resettlement to third countries. The situations in Thailand and Somalia may also need to be considered in this context.

The case of asylum seekers living marginally in urban environments also needs inclusion in humanitarian resettlement policies of third countries. While the 1951 Convention, does not always adequately cater for the needs of these people in need of protection, Guy Goodwin-Gill argues persuasively that the Convention and related Instruments continue to establish a rights based framework for international protection which forms the basis for approaches to this problem (Goodwin-Gill 2006). The implication is that there is needed in our own country the re-imagination of those termed refugee, asylum seeker and forcibly displaced person. Minority ethnic groups from Sri Lanka, Nepal and Burma, as well as minorities fleeing the Iraqi war are particularly vulnerable to being screened out in Convention-based determination processes. All such groups can be readily and misleadingly characterised as economic migrants capable of claiming asylum in countries other than Australia. There is rather a pragmatic and humanitarian imperative to make available the resources of protection when, for whatever reason, a country cannot, or is unable to, provide adequate protection for its citizens. As Australia learnt in the post Indo-Chinese conflict era, this can have the positive effect of decreasing pressure on would-be spontaneous arrivals. Complementary protection provides an established and systematic legal and policy framework for processing this group of asylum seekers.ⁱⁱ Australia is “one of the only western States not to have a system of codified complimentary protection”, arguing instead that existing refugee determination process, as well as the flexibility to create special “Temporary Safe Haven” and other visas to respond to the needs of particular caseloads, are adequate (McAdam 2005, 5, 7-8). The example of the Burmese in Thailand, described briefly above, suggests otherwise.

This brings me to the last major point. The present intake of approximately 7,000 new refugees a year, while generous in the government’s eyes, pales somewhat when taken in the light of tendencies to weed out the disabled and infirm, and the harsh regime for asylum seekers who do make the trip here. The overall migrant intake of approximately 150,000 leads one to think that Australia could be far more generous than we are at present in accepting humanitarian claimants in overall number terms. We have both our own historical precedent, our ability as a country to absorb and integrate large numbers of people, and our overall healthy, but still commodity-based, economy as political positives that could be used to mount a persuasive case for what is, essentially, a humanitarian argument. Australia could do well to learn from recent non-government sector experience. The adoption by Jesuit Refugee Service of broader operational definitions of refugee challenges policy makers to rethink the definitions they work with. These are challenges that are unavoidable in the present climate of forced migration.

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ⁱ The Convention defines the term “refugee” as “any person...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 residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.” See UNHCR *Convention and Protocol*. Article 1, A (2), 16. Potentially excluded are victims of war or long term civil conflict who cannot prove membership of a particular persecuted group but who nevertheless are unable to sustain a living and are forced to move as a result.

ⁱⁱ Complementary protection “describes protection granted by States on the basis of international protection need outside the 1951 Refugee Convention framework. Such protection may be based on a human rights treaty, such as the ICCPR, the Convention against Torture or the Convention on the

Rights of the Child, or on more general humanitarian principles, such as providing assistance to persons fleeing from generalised violence. Its chief function is to provide an alternative basis for eligibility for protection. Understood in this way it does not mandate a lesser duration or quality of status, but simply assesses international protection needs on a wider basis than the 1951 Convention.” Jane McAdam, “Complementary protection: A Comparative Perspective” in United Nations High Commissioner for Refugees Regional Office for Australia, New Zealand, Papua New Guinea and the South Pacific, *Discussion Paper No 2*, 2005. 5-6.. In the same discussion paper the then Department of Immigration Multicultural and Indigenous Affairs (DIMIA) argues that “there is no indication that there are significant numbers of persons entitled to CAT, ICCPR or CROC protection against return who do not also meet the Refugees Convention definition of a refugee.” Department of Immigration Multicultural and Indigenous Affairs (DIMIA), “Complementary Protection” *Ibid.*, 7-8.