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22 May 2006

Committee Secretary
Senate Legal and Constitutional Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Madam/Sir,

Please accept the enclosed submission to assist the Inquiry into the Provisions of the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006.

If you would like me to elaborate or clarify any point, please do not hesitate to contact me.

Yours sincerely,

Klaus Neumann

National dignity as well as humanity should put our attitude beyond doubt. We are not such an inconsiderable country that we have to worry about pressure from Djakarta; we are not so poor in resources that the problem of providing for a few hapless people should worry us; we are not, one hopes, so gullible as to believe that we risk giving harbour to dangerous agitators. (Editorial in the Sydney Morning Herald, 8 January 1970)

The legislation currently before Parliament would arguably have three negative effects: It would, first, weaken the protection mechanisms for asylum seekers reaching the Australian mainland; second, prevent Australia from meeting its international obligations under the 1951 Convention Relating to the Status of Refugee and its 1967 Protocol; and, third, encourage other countries to follow Australia's lead and close their doors to asylum seekers. While I comment briefly on the third issue, this submission is mainly concerned with the past, rather than with the future. I believe it is crucially important to understand the origins of the proposed legislation within the context of the bilateral relations between Australia and Indonesia, and, more specifically, Australia's approach to West Papuan refugees. In the following, I provide some contextual information to assist the Committee in its deliberations.

In doing so, I wish to draw the Committee's attention to Australia's responsibility in the region (in particular, towards Papua New Guinea), and towards West Papuan refugees. I argue that in comparison with other countries in the region and with previous occasions when it had to respond to West Papuan refugees crossing into Australian territory, Australia is now well equipped to deal with spontaneous arrivals seeking its protection. If the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006 were passed, Australia would needlessly succumb to Indonesian pressure, abrogate its responsibilities and set a dangerous precedent.

In my view, the legislation has not been drafted with the primary aim of either deliberately weakening the protection available to those trying to engage Australia's obligations under the 1951 Convention, or opting out of Australia's obligations as a signatory to international legal instruments. Instead, as the Minister for Immigration has

said, the legislation aims to prevent asylum seekers from using Australia as a ‘staging post’ to agitate for change in their country of origin.¹

The term ‘staging post’, when used in relation to asylum seekers, has an unfortunate history. In 2001, the then defence minister, Peter Reith, warned that the unauthorised arrival of boats carrying asylum seekers ‘can be a pipeline for terrorists to come in and use your country as a staging post for terrorist activities.’² But I believe the current immigration minister, when repeatedly referring to Australia as a potential ‘staging post’, has not so much been intent on scaring the Australian public, but instead has responded to, and endorsed, concerns voiced by the Indonesian government.

Rather than aiming to diminish the rights of asylum seekers generally, the legislation aims to placate the Indonesian government. The introduction of the legislation has been prompted by the arrival of 43 West Papuan asylum seekers, the subsequent granting of temporary protection visas to 42 of them, and the impact this decision has had on Australia’s relations with Indonesia. The legislation is to prevent West Papuan refugees from using Australia as a safe base from which to criticise the government of Indonesia and, more generally, it is to discourage West Papuans from seeking asylum in Australia in the first place. But in doing so, it would effectively weaken the protection available to all asylum seekers seeking refuge in Australia.

The debate about Australia’s refugee and asylum seeker policy is rarely informed by a historical perspective. In the following I will make four critical observations to draw the wider context of the proposed legislation, including its historical context, to the Committee’s attention. Given the short time available to respond to the Committee’s invitation to make a submission, the following is necessarily brief.³

¹ Amanda Vanstone on ABC FM, 13 April 2006, <http://www.abc.net.au/pm/content/2006/s1616160.htm>, sighted 22 May 2006.

² Quoted in Peter Mares, ‘Reporting Australia’s asylum seeker “crisis”’, *Australian Policy Online* (5 July 2002), http://www.apo.org.au/webboard/results.shtml?filename_num=12748, sighted 16 May 2006.

³ Over the past few years I have tried to provide a historical perspective that could inform the public debate about Australia’s response to asylum seekers and refugees. Some of my writings have been on Australia’s response to West Papuan asylum seekers, as I believe this to be a crucially important aspect of the historical development of Australia’s refugee policies. See, for example, my recent article ‘Hush-hushing the whole

Observation 1: The proposed legislation would prevent Australia from meeting its responsibilities in the region.

Human rights violations in the Indonesian province of Papua have been well documented.⁴ The Australian government has acknowledged that they have been a persistent problem. In a recent interview on the ABC's Lateline programme, for example, Foreign Minister Alexander Downer said: 'It's true, as President Yudhoyono himself has admitted, there have been human rights abuses in Papua. It's a point we've often made to the Indonesians that from their point of view, the sooner they can move towards this special autonomy for West Papua and ensure human rights are upheld there, the better.'⁵ Given the current situation in Papua, it does not come as a surprise that many West Papuans have felt compelled to seek the protection of other countries. Unless that situation improved substantially, it would be reasonable to expect more West Papuans trying to flee Indonesia in months to come.

In light of the significant fall-out from Australia's decision to grant temporary protection visas to a mere 42 West Papuans, it is instructive to consider (a) how the number of Indonesians accorded refuge by Australia compares with the number of Indonesian refugees hosted by other countries; and (b) how Australia's overall contribution to easing the world's refugee crisis compares with the contribution of the country that has accommodated the largest number of West Papuan refugees.

matter: The UNHCR, Australia, and West Papuan refugees' in the Canadian journal *Refuge* (vol. 23, no. 1, 2006), http://www.apo.org.au/linkboard/results.shtml?filename_num=77076.

⁴ See, for example, the relevant 2005 Country Report on Human Rights Practices prepared by the U.S. State Department's Bureau of Democracy, Human Rights, and Labor: <http://www.state.gov/g/drl/rls/hrrpt/2005/61609.htm> (sighted 16 May 2006); see also the section concerning Papua in Human Rights Watch, *World Report 2006* (January 2006), <http://www.unhcr.org/cgi-bin/texis/vtx/rsd/rsddocview.html?tbl=RSDCOI&id=43cfaea111&count=1> (sighted 22 May 2006).

⁵ Alexander Downer, transcript of interview with Tony Jones, ABC Lateline, 24 April 2006, http://www.foreignminister.gov.au/transcripts/2006/060424_lateline.html, sighted 16 May 2006.

Most Indonesian refugees are hosted by two of its immediate neighbours: Malaysia and Papua New Guinea. According to the 2005 edition of the *World Refugee Survey* published by the United States Committee for Refugees and Immigrants, at the latest count 10,000 refugees from Indonesia were living in Malaysia. Most of these were Acehnese.⁶ Papua New Guinea hosts a slightly smaller number of (mainly West Papuan) refugees from Indonesia. According to the Pacific Affairs expert Nic Maclellan:

The Port Moresby office of the United Nations High Commissioner for Refugees, the UNHCR, is monitoring a 'population of concern' of over 8000 people in Papua New Guinea. On the latest available figures, this includes 7627 refugees and another 198 asylum seekers whose cases are being processed. Half of this refugee group are children under the age of 18. According to UNHCR, by early 2005 there were 2677 West Papuans at the East Awin camp in Western Province, 138 'stateless persons' in Daru, Western Province, another 5400 people dispersed in five unofficial camps along the border, and a handful of refugees in other urban centres.⁷

In 2004-05, only 27 of 922 persons granted protection visas by Australia that year had Indonesian citizenship.⁸ The previous two years, Indonesia was not among the nine countries of origin whose citizens were granted the largest number of the 788 (2003-04) and 866 (2002-03) protection visas issued by Australia.⁹ While these figures are not

⁶ It should be kept in mind that Malaysia is not a signatory to the 1951 Refugees Convention, that it has no domestic refugee law and that it regularly refoules refugees to Indonesia (Country Update Malaysia, in U.S. Committee for Refugees and Immigrants, *World Refugee Survey 2005*, http://www.refugees.org/uploadedFiles/Investigate/Publications_&Archives/WRS_Archives/2005/guinea_sudan.pdf, sighted 16 May 2006).

⁷ Nic Maclellan, 'West Papua's forgotten asylum seekers', *Australian Policy Online* (13 April 2006), http://www.apo.org.au/webboard/results.chtml?filename_num=73553, accessed 16 May 2006.

⁸ Economic and Demographic Analysis Section, Migration Branch, Department of Immigration and Multicultural and Indigenous Affairs, *Population Flows: Immigration Aspects*, Canberra: Department of Immigration and Multicultural Affairs (January 2006), p. 35, http://www.immi.gov.au/statistics/publications/popflows2004_5/ch2pt4.pdf, accessed 16 May 2006.

⁹ Economic and Demographic Analysis Section, Migration Branch, Department of Immigration and Multicultural and Indigenous Affairs, *Population Flows: Immigration Aspects*, Canberra: Department of Immigration and Multicultural and Indigenous Affairs (March 2004), p. 33, http://www.immi.gov.au/statistics/publications/popflows2002_3/ch2_pt4.pdf, accessed 16 May 2006; Economic and Demographic Analysis Section, Migration Branch, Department of Immigration and Multicultural and Indigenous Affairs, *Population Flows: Immigration Aspects*, Canberra: Department of Immigration and Multicultural and Indigenous Affairs (January 2005), p. 34, http://www.immi.gov.au/statistics/publications/popflows2003_4/ch2_pt4.pdf, accessed 16 May 2006;

strictly comparable with those cited above for Malaysia and Papua New Guinea, they illustrate the fact that Australia has had to deal with comparatively few refugees from Indonesia, that in recent years Malaysia and Papua New Guinea have accommodated a far greater number of Indonesian refugees than Australia, and that the overwhelming majority of West Papuan refugees has been granted refuge in Papua New Guinea.

According to the *2005 World Refugee Survey*, less than 10 per cent of the refugees living in Malaysia are from Indonesia. But Papua New Guinea, unlike Malaysia and Australia, does not host refugees in significant numbers other than those from the Indonesian province of Papua. How then does the overall burden Australia is bearing compare with that borne by Papua New Guinea? According to the latest published figures, in 2003 the combined refugee and asylum seeker population in Australia was 59,279. This figure is a UNHCR estimate and includes all refugee arrivals of the previous five years, including refugees resettled in Australia. Also for 2003, the UNHCR recorded a total of 8,227 refugees for Papua New Guinea. When those numbers are compared to the figures for the total overall population, Australia hosted a larger number of refugees both in absolute and in relative terms, namely 2.9 refugees per 1000 inhabitants as compared to 1.3 refugees per 1000 inhabitants for Papua New Guinea. But as the UNHCR notes in its *Statistical Yearbook*, such comparisons are not necessarily very instructive, for 'resource-rich countries are more able to host refugees than those which have fewer resources'.¹⁰ The UNHCR therefore compares also the refugee population with the gross domestic product (GDP) per capita to ascertain the 'relative burden of providing protection'.¹¹ According to these figures, in 2003 Papua New Guinea's refugee load was more than five times as heavy as Australia's.¹²

¹⁰ 2003 UNHCR *Statistical Yearbook*, p. 62, <http://www.unhcr.org/cgi-bin/texis/vtx/home/opendoc.pdf?id=%2042b018d64&tbl=STATISTICS>, sighted 16 May 2006.

¹¹ Ibid.

¹² 2003 UNHCR *Statistical Yearbook*, appendix: country data sheets, pp. 62-63 and 276-77, <http://www.unhcr.org/cgi-bin/texis/vtx/statistics/opendoc.pdf>, sighted 16 May 2006.

Being a comparatively poor, small and politically volatile developing country¹³ that shares a land border with Indonesia, Papua New Guinea is in a much weaker position vis-à-vis Indonesia than Australia. One would therefore expect the Papua New Guinean government to be much more susceptible to diplomatic pressure regarding its response to West Papuan refugees than its Australian counterpart. The Australian government's swift decision to introduce substantial amendments to its migration laws in response to Indonesian pressure appears to belie such an obvious conclusion. But due to intense Indonesian pressure, Papua New Guinea signed up to the 1951 Refugees Convention only in 1986 (11 years after Independence) and made significant reservations to key provisions when doing so (see below). As a result both of Papua New Guinea's economic situation and of its government's concessions to Indonesia, the situation of most West Papuan refugees living in Papua New Guinea is precarious.

Australia needs to acknowledge its responsibilities as a neighbour of Indonesia and, more importantly still, as a neighbour of Papua New Guinea, for, as Minister Downer put it: Australia is 'a big country and frankly Australia is an enormously successful country and a very rich country. Those privileges – if I could call them that – bring with them very great responsibilities and we do have responsibilities to the countries of the Pacific.'¹⁴

Observation 2: Australia has a historical responsibility towards West Papuans fleeing Indonesian persecution.

Throughout the 1950s, the Australian government supported the status quo with regard to West New Guinea, namely that the Western half of the island of New Guinea remain under Dutch control. This was despite strong Australian support for Indonesian independence in the immediate postwar years. In late 1961, the Australian position

¹³ Papua New Guinea ranks 137 (out of 177) on the United Nations Development Program's human development index, and 78 (out of 103) on its poverty index (by comparison, Australia ranks 3 on the human development index) (<http://hdr.undp.org/statistics/data/indicators.cfm?x=17&y=1&z=1>, sighted 22 May 2006).

¹⁴ Alexander Downer, doorstep interview, 10 May 2006, http://www.foreignminister.gov.au/transcripts/2006/060510_ds.html, sighted 16 May 2006.

changed. Historians have debated the reasons for this change. One view is that the Australian government realised that the Indonesian take-over of the Dutch colony was inevitable, given that the Indonesian position was supported by the US government which feared that Indonesia would become part of the communist bloc if alienated by the West's refusal to acknowledge the legitimacy of its claims regarding West New Guinea.¹⁵ An alternative view is that Garfield Barwick (who in December 1961 replaced Robert Menzies as Minister for External Affairs) was intent on establishing a good relationship with Indonesia.

Irrespective of this dispute over the historical reasons for the change in Australian foreign policy, it is clear from the archival record that once Australia decided to support the Indonesian rather than the Dutch position, it did not waiver in its support for the Indonesian government's claim that West Irian (or Irian Jaya or Papua, as it later became variously known) was part of the Republic of Indonesia. In 1971, for example, a Foreign Affairs document stated: 'As the status of West Irian has been settled and accepted internationally, we must be careful not to take any action which could be regarded as an infringement of Indonesia's sovereign rights. This includes, of course, any action which could be interpreted as support or encouragement for dissident elements.'¹⁶ Alexander Downer's most recent commitment to recognise Indonesia's sovereignty over Papua is merely the logical continuation of a consistent Australian policy reaching back to December 1961.¹⁷

In the early 1960s, at the time of the Dutch withdrawal and eventual Indonesian take-over (after a short interim period in which West New Guinea was formally administered by the United Nations), the Australian government may not have been able to anticipate the extent to which those supporting a continuation of Dutch rule or independence would be persecuted by the Indonesian authorities. But within a very short time, intelligence

¹⁵ See Stuart Doran, 'Toeing the line: Australia's abandonment of "traditional" West New Guinea policy', *Journal of Pacific History*, vol. 36, no. 1 (2001), pp. 5-18.

¹⁶ 'West Irian / Papua New Guinea border area: Department of Foreign Affairs interest', paper left with PNGIC by M.G.M. Bouchier on 2 September 1971, National Archives of Australia: A1838, 3036/10/6/4 part 1.

¹⁷ Samantha Maiden, 'Downer accepts Papua is Jakarta's', *Australian*, 22 May 2006, p. 6.

gathered by Australian government officials from refugees in Australian Papua and New Guinea amply demonstrated the fact that the Indonesian army was routinely perpetrating human rights violations in West Irian.¹⁸

Since it became aware of such human rights violations, the Australian government has consistently played down its knowledge of them (vis-à-vis the public in both Australia and in Papua and New Guinea). On 18 May 1965, for example, the Minister for Territories responded to the suggestion that returned refugees were being ill-treated in West Irian by declaring in parliament: 'I say very definitely that there is no evidence of this whatsoever',¹⁹ while at the same time evidence of precisely such ill-treatment was mounting and made available to the government through the monthly reports of the Local Intelligence Committee (T.P.N.G.).²⁰

Australia's support for the Indonesian position was most crucial in 1969, when the Indonesian government called upon the people of West Irian to take part in the so-called Act of Free Choice. Its outcome, which could only be described as a foregone conclusion, sealed the formal incorporation of West Irian into Indonesia. The Act of Free Choice has been widely discredited as a bogus exercise which did not allow the majority of the West Papuan population to express their preference about the future destiny of the former Dutch colony.

By condoning and thus helping to legitimise significant aspects of the policies adopted by the Indonesian government with respect to West Irian / Irian Jaya / Papua, Australia has a moral responsibility to ameliorate the consequences of some of those policies and therefore to accommodate its fair share of those fleeing Papua in fear of their lives.

¹⁸ Until 1971, all West Papuan border crossers apprehended by the Australians were closely questioned about the situation in West Irian / Irian Jaya. In 1971, the Department of Foreign Affairs asked for this practice to be discontinued because it believed its benefits would no longer 'counterbalance the harm that collection of such material from these sources, if known, might well do to our relations with Indonesia' (H.D. Anderson to Secretary, Department of External Territories, 10 September 1971, National Archives of Australia: A452, 1971/4187).

¹⁹ *Commonwealth Parliamentary Debates*, Representatives, vol. 46, 18 May 1965, p. 1553.

²⁰ See also Klaus Neumann, 'Asylum seekers and "non-political native refugees" in Papua and New Guinea', *Australian Historical Studies*, vol. 33, no. 120 (2002), pp. 366-68.

Oberservation 3: The proposed amendments would effectively return Australia to a situation where its asylum seeker policy is largely shaped by foreign policy considerations rather than by its adherence to international standards irrespective of the asylum seeker's country of origin.

On 2 December 1973, Australia became a signatory to the 1967 Protocol Relating to the Status of Refugees. Australia had been one of the first countries to accede to the 1951 Refugees Convention, and had resettled a comparatively large number of refugees in the 1950s and 1960s. Why then had it taken Australia six years to sign the 1967 Protocol, which removed the time and geographical limitations of the Convention? In order to be able to answer this question, one needs to take note of another significant development that occurred one day before Australia signed the Protocol: On 1 December 1973, Papua New Guinea became self-governing. While the granting of self-government was still one important step removed from the granting of independence (which occurred in September 1975), in December 1973, with Australia's transfer of responsibility for Papua New Guinea's internal affairs to the government of Papua New Guinea, it became the responsibility of the latter to deal with West Papuan refugees – both those already in the country (some of whom were living in impromptu camps close to the border) and those trying to cross the border into Papua New Guinea's Sepik and Western districts. It was only now – at a time when Australia was no longer responsible for these refugees – that Australia committed itself to universally applying the 1951 Convention to all those seeking its protection.

Between 1962 and 1973, Australia had refused to commit itself to the provisions of the 1951 Convention with respect to *all* refugees, regardless of where they came from, largely because it did not want its response to people fleeing Indonesian-controlled Western New Guinea to be governed by international conventions and because it did not want the UNHCR to become involved in the refugee determination process in Papua and

New Guinea. If the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006 were passed, Australia would once again sidestep the provisions of the 1951 Convention, and once again it would do so because of concerns over one specific group of refugees, namely West Papuans.

Given the analogies, it is interesting to consider closely (a) how Australia dealt with West Papuan refugees in the past, and (b) to what extent its response was previously influenced by Indonesian concerns. I quote from my 2004 book, *Refuge Australia: Australia's Humanitarian Record*:

In the first two years after the Dutch left West New Guinea, Australia only accepted West Papuan refugees who were sponsored by the Dutch. These were usually people who had worked for the Dutch colonial authorities and were known for their anti-Indonesian sentiments. Some of them went into exile in Holland, others were allowed to remain in the Australian Territory but were financially supported by the Dutch government. This latter group became known as the 'Dutch pensioners'. With the exception of an ethnic Chinese family who fled West New Guinea in April 1963, all others who crossed the border into Papua and New Guinea in 1963 and the first half of 1964 were sent back by Australian government officials. In the first year after the Indonesians took control of West New Guinea from the United Nations, from June 1963 to May 1964, 377 'non-political native refugees' crossed the border without a valid visa. According to the Department of Territories, they left West New Guinea mainly for one of two reasons: 'general dislike of [the] Indonesian administration', or 'avoidance of conscription'.

In March 1964, the Department of Territories drafted a policy statement which was subsequently approved by its Minister, Charles Edward ('Ceb') Barnes. It drew a clear distinction between 'political' and 'non-political' refugees: the former being 'persons who engaged in political activities before the Dutch withdrawal of a kind which the Dutch considered would place these people in jeopardy', the latter being West Papuans who crossed the border merely to live under Australian rather than Indonesian rule. 'Non-political refugees' – who, according to the Minister's understanding, included persons

engaged in political activities *after* the Indonesian take-over – were to be returned to West Irian.²¹

After December 1964, refugees were usually allowed to remain in Papua and New Guinea if they were able to convince the Australian authorities that they had been politically active in West Irian and had been persecuted by the Indonesians on account of such political activity. By 1969, 75 West Papuans and their families had been allowed to stay in Papua New Guinea on five-year permissive residence visas. By December 1973, about 500 West Papuan permissive residents were living in Papua New Guinea.

Many more, however, were returned to the Indonesian-controlled half of New Guinea. Those who were allowed to stay on permissive residence visas could do so only after they had signed an undertaking not to engage in anti-Indonesian political activity during their stay in Papua and New Guinea. Permissive residence visas did not entitle their holders to travel to Australia. They were also barred from settling in the border region and, in some cases, directed where to live: In 1968, the Territory's administration established a camp for West Papuan refugees on Manus Island. West Papuan permissive residents were not recognised as refugees under the 1951 Convention, nor granted asylum under Australia's 1956 political asylum policy. They could never be sure that their temporary visas would be extended, and that they would not one day be returned to Indonesia.

When formulating and administering Australia's policy regarding West Papuan refugees, the Australian authorities liaised closely with the Indonesian government. The Indonesian government received very detailed briefings about Australia's relevant negotiations with the High Commissioner for refugees and also about the cases of individual refugees. Australia even exchanged intelligence with the Indonesians about West Papuan insurgents.²² In contrast, the Australian government kept information about the process

²¹ Klaus Neumann, *Refuge Australia: Australia's Humanitarian Record*, Sydney: UNSW Press (2004), pp. 67-68.

²² In 1972, the Secretary of the Department of Foreign Affairs wrote to the Secretary of the Department of External Territories: 'Present policy of our two Departments is that intelligence on rebel activities should not be exchanged with the Indonesians. We understand that Administration [of Papua New Guinea] officials disregarded this directive, but it is not clear that they are as helpful to the Indonesians as they

the authorities used to distinguish between 'political' and 'non-political' refugees, about the precise number of refugees crossing into Papua and New Guinea, and about the conditions in West Irian / Irian Jaya, which compelled West Papuans to flee, from the Australian public as much as that was possible.

While the Australian authorities were willing to accommodate West Papuan refugees in Papua and New Guinea, they were unwilling to countenance the presence of West Papuan refugees in Australia. But those 43 refugees who reached the Australian mainland recently were not the first West Papuan refugees to land in Australia without first stopping over in Papua New Guinea.

On 17 February 1969, a raft with eight West Papuans arrived at Badu Island in the Torres Strait. The West Papuans said that they belonged to the West Papuan independence movement and that they had left Merauke five weeks earlier. A ninth member of the party had died during that journey. They spoke of Indonesian atrocities, including the bombing of villages. One of them said that he witnessed two of his companions being beaten to death by Indonesian soldiers. Although the West Papuans left no doubt about their intention of reaching, and seeking asylum in, Australia, an immigration officer threatened them with their deportation to West Irian unless they agreed to have their cases determined in Papua and New Guinea, rather than in Australia. When their asylum claims were investigated in Papua and New Guinea, the Territory's Administrator recommended against the granting of temporary permissive residence with the argument that 'it is only because of their continued anti-Indonesian attitudes, unwillingness to adapt to the regime there, that their future may be compromised'.²³ On 19 May 1969, the responsible minister approved of the recommendation that 'The group be returned to West Irian if no arrangements are made for their transfer to the Netherlands within one month' and that

could be. Clearly we have a considerable long term interest in helping the Indonesians eradicate the rebels, who are the main source of problems on the border, and exchange of information would assist them.' (Keith Waller to D.O. Hay, 10 July 1972, attachment, National Archives of Australia: A452, 1972/2447)

²³ D.O. Hay to Secretary, Department of External Territories, 17 April 1969, National Archives of Australia: A452, 1969/1177.

‘the Indonesian Government be informed by the Embassy in Djakarta of the decision prior to their return to West Irian’.²⁴

For two reasons, it is important to take note of the history of Australia’s response to West Papuan refugees: because in many respects the past can be compared to the present, and because of the differences between the past and the present. The benefit of hindsight makes it possible to review an approach that may have seemed perfectly reasonable at the time (such as the ‘Pacific Solution’ found for those eight West Papuan asylum seekers landing on Badu Island in 1969). Such a review could add an important perspective on the present.

But in the case of Australia’s response to West Papuan refugees it is also important to be aware of historical precedents because of the fundamental differences between the situation facing successive Australian governments in the 1960s and 1970s, and that facing the Australian government now. Several factors explain Australia’s response to West Papuan refugees between 1962 and 1973. Then as now, the Australian government did not want to offend its Indonesian counterpart. But in the 1960s and early 1970s, other factors also played an important role. In the very early days of Indonesian rule, Australia did not have reliable information about the full extent of the atrocities committed by the Indonesian security forces in the former Dutch colony. The closer Papua New Guinea moved towards independence, the more concerned the Australian government became about the prospect that a future independent Papua New Guinea might be handicapped in its own relations with Indonesia by a large West Papuan refugee population. The Australian government ruled out the option of solving that problem by resettling West Papuan refugees in Australia rather than in Papua New Guinea not least because of its commitment to upholding the White Australia policy. By accommodating West Papuan refugees in Papua and New Guinea, however, the Australian government ran the risk of enabling West Papuan nationalists to use the Australian territory as a ‘staging post’ – not just for criticising the Indonesian government but also for carrying out raids against

²⁴ A. Besley, confidential minute, ‘Applications for permissive residence in T.P.N.G. eight West Irianese’, 19 May 1969, National Archives of Australia: A452, 1969/1177.

Indonesian army posts and government installations from safe bases on the Australian side of the border.

With the benefit of hindsight, one could be highly critical of Australia's response to West Papuan refugees between 1962 and 1973, and fault Australian governments of the time for privileging foreign policy over the human rights of West Papuans. Notwithstanding such criticism, during the 1960s and early 1970s, Australia had more and arguably better reasons not to accept West Papuan refugees than it does now. Yet despite its refusal to sign the 1967 Protocol and notwithstanding the huge problems associated with Australia's response to West Papuan refugees at the time, Australia issued a sizeable number of West Papuans with temporary permissive residence permits and tolerated others who were living in camps on the Australian side of the border. It is therefore the more surprising that in the past two months Australia has let itself be bullied into introducing far-reaching changes to its asylum seeker policy over the arrival of a mere 43 West Papuans in Australia.

Observation 4: The proposed legislation would encourage other countries in the region to follow Australia's example, thereby potentially closing all escape routes open to refugees from Papua.

As mentioned above (p. 5, n. 6), Malaysia, which hosts many refugees from Indonesia, does not guarantee their safety; in fact, refugees living in Malaysia are often treated no different from illegal immigrants. Papua New Guinea, the only other country hosting a large number of refugees from Indonesia, has, unlike Malaysia, acceded to the 1951 Convention and the 1967 Protocol. But the government of Papua New Guinea has already made numerous significant reservations to the provisions of the Convention (articles 17(1), 21, 22, 26, 31, 32 and 34).²⁵ There is a real danger the government in Port Moresby could argue that given Australia's claim not to be able to accommodate West Papuan

²⁵ UNHCR, *Country Operations Plan: Overview – Country: Papua New Guinea – Planning Year: 2006*, January 2005, <http://www.unhcr.org/cgi-bin/texis/vtx/rsd/rsddocview.pdf?tbl=RSDCOI&id=4337c6a32>, sighted 16 May 2006.

refugees, Papua New Guinea, too, being in a much weaker position than Australia, ought to be unavailable as a host country for refugees from Indonesia and therefore ought to refoule West Papuan refugees already in the country.

When introducing the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006, the government has mistakenly presumed that the refugee and asylum seeker policies of other countries in the region would remain unaffected by legislative changes in Australia. The draft legislation is also built on the unrealistic assumption that other countries would resettle refugees who reached Australia, who were then taken to another country (such as Nauru) and whose claims for refugee status were recognised.²⁶ Historically, New Zealand's generous response in 2001, when the New Zealand government offered to take refugees from the *Tampa*, has been the exception. There are many historical precedents – the most notable being the international response to refugees from Hitler's Germany in the 1930s – that strongly suggest that other countries, particularly those in the region that are faced with similar refugee movements, will follow the Australian lead.

In the long term, a durable solution to the quandary presented by the spontaneous arrival of West Papuan asylum seekers in Australia and in Papua New Guinea can only be provided by the Indonesian government. Australia should stress this point in its negotiations with Indonesia and offer whatever assistance it could provide to effect a durable solution in Papua. In the meantime, Australia would be well advised to work closely with Papua New Guinea and the UNHCR in easing the already considerable burden borne by Papua New Guinea as a country of first asylum for many West Papuan refugees, and to encourage the Papua New Guinean government to withdraw its reservations to key provisions of the 1951 Refugees Convention.

²⁶ According to Pamela Curr, of the 1509 people taken to offshore detention in 2001, 586 were resettled by Australia, 360 by New Zealand, and only 29 by other countries (Pamela Curr, 'Pacific Solution Mark 1: where did they go?', 15 May 2006, Project SafeCom News and Updates of 18 May 2006).