Submission to the Senate Legal and Constitutional Committee's Inquiry Migration Amendment (Designated Unauthorized Arrivals) Bill 2006

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The main change effected to Australia's refugee status determination through the Bill is that boat people will be sent offshore. There are several legal objections to the Bill.

The first is that, as with the so-called "Pacific Solution", Australia is using the concept of a safe third country or "protection elsewhere" – a concept which does not have a particularly firm footing in the Refugee Convention – in a way that departs from usual practices to the detriment of refugees. The aim appears to be to diminish the protection available to a certain category of asylum-seekers, contrary to the object and purpose of the Refugee Convention. Moreover, if, as is likely, there are no countries coming forward to accept refugees for resettlement, the so-called safe third country is really a fiction, and all that Australia has achieved is the deferral of its ultimate obligations at the expense of refugees' well-being.

The second legal objection is that asylum-seekers may be detained in the "offshore processing centres" without the benefit of recent legislative changes to the detention regime in Australia. If the arrangements for the processing are similar to those prevailing under the "Pacific Solution", Australia will retain responsibility for violations of the right to liberty as a matter of international law, despite the fact that detention occurs in another sovereign country.

The third legal objection is that boat people are subjected to invidious discrimination and punishment simply for their mode of arrival in Australia.

In addition, there are three related policy objections.

First, it is unclear how this Bill will work if enacted. The explanatory memorandum advises that one of the sites in Nauru will be used to "accommodate" the asylum-seekers. However, while Nauru agreed to "accept" asylum-seekers (for "processing" only) pursuant to the Pacific Solution, it is unclear whether it is agreeable to taking further asylum-seekers.[1] Without a firm destination for asylum-seekers it is unclear how this Bill will work. The lack of clarity as to the visas that will be available to the asylum-seekers compounds this problem.

Second, there is the expense of detention offshore.

Third, the government is allowing its domestic policy concerning asylum-seekers to be governed by a foreign government's concerns rather than the requirements of international legal standards to which Australia has freely consented.

[1] Reportedly, Nauru's President has indicated that Nauru might accept asylum-seekers for processing: "If no other country is willing to take them, we will take them for processing because these people are displaced and it is the humanitarian thing to do." Rhianna King, "Nauru opts out of new asylum policy", *West Australian* 22 April 2006, p. 4.

Each of these six points is dealt with below. However, prior to commencing a more detailed analysis of each of my key points I wish to note one last concern, namely that the other "options" suggested in relation to Papuan asylum-seekers may still be on the table. In particular, it should be noted that as a result of the amendments underpinning the Pacific Solution,[2] it is already legally possible for the government to use the navy to intercept boats. In the case of the Papuans, interdiction might result in direct *refoulement* or return to a place of persecution. These powers of interdiction should be deleted from the Migration Act. Further, although I think this is less likely to be adopted, as there are no real details as to what the offshore refugee status determination system is going to look like, I remain concerned that a "national interest" test might be introduced, contrary to the definition of a refugee contained in Article 1A(2) of the Refugee Convention (as amended by the 1967 Protocol Relating to the Status of Refugees).

1. Use of the "safe third country" concept to diminish the protection of refugees

As with the "Pacific Solution", the current bill seeks to rely on the so-called "safe third country" concept i.e. the idea that asylum-seekers have protection elsewhere.

The concept of a "safe third country" does not have a firm footing in the terms of the Refugee Convention. The only references to the idea that refugees may be required to seek admission to other countries are contained in Article 31 (which deals with unlawful arrivals) and Article 32 (which deals with the expulsion of dangerous refugees).

The government undoubtedly seeks to rely on the fact that the Refugee Convention, while it forbids return to a place of persecution, contains no explicit guarantee of entry to state territory. In addition, the government may be seeking to rely on the terms of Article 31 of the Refugee Convention, which contemplate the possibility that an unlawful arrival may be required to seek admission to another country.

> ***Article 31. - Refugees unlawfully in the country of refuge***
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> 1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.
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> 2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. *The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.*[3]

Article 31 speaks of two alternatives – regularization of status (a term that clearly encompasses the granting a visa pursuant to refugee status determination) or

[2] See s 245F(8) and s 7A Migration Act.
[3] Emphasis added.

admission elsewhere. In the situation where an asylum-seeker remains on state territory, it is not permissible for a country simply to avoid regularizing status and the regime of rights that then opens up to the refugee.[4] By moving asylum-seekers offshore, this is what the Australian government "achieves".

As experience with the "Pacific Solution" has demonstrated, there is generally no prospect of admission to another country, and many of the asylum-seekers detained on Nauru and in Papua New Guinea ended up in Australia on some kind of visa. In other words, the "Pacific Solution" (and the current bill) proceeded on the basis of a fiction – a non-existent safe third country to which asylum-seekers may be sent. The most that Australia achieved in most cases pursuant to the "Pacific Solution" was the deferral of its ultimate obligations. Meanwhile, the Pacific Solution resulted in the offshore detention of asylum-seekers – detention for which Australia retains some responsibility as a matter of international law (see point 2, below). The subjection to different standards of protection also resulted in the illegal penalisation of and invidious discrimination against a certain group of asylum-seekers, as well as subjecting them to denial of other fundamental human rights (see point 3, below.)

The interim "protection" accorded to asylum-seekers in "declared countries"[5] also failed to conform to accepted international standards. While it seems that the framers of the Refugee Convention contemplated situations in which asylum-seekers might not be admitted, but required to seek admission to another country, one needs to consider the assumptions upon which the framers were operating. If there was to be "burden-sharing" of refugees, the framers would have expected it to take place amongst the parties to the Refugee Convention given that other states would not have accepted the fundamental obligation of *non-refoulement* or non-return to a place of persecution. Professor Jim Hathaway's reading of the *travaux préparatoires* to the Convention confirms that this was indeed the assumption of the framers.[6]

There is increasing concern that the apparent loop-hole created by the absence of an explicit right of entry in the Convention is being exploited by governments in order to unravel the Convention regime of protection – to *diminish* rather than to *extend* the protection granted to refugees. Accordingly, there are now concerted efforts to define a notion of "effective protection" in order to guide decisions by governments to rely on protection offered by other countries.[7] Suffice it to say that these discussions have not concerned the kind of offshore processing contemplated by the present bill, but rather meaningful attempts to secure protection, including durable solutions such as local integration or resettlement, and that arbitrary detention has been specifically rejected as a component of "effective protection".

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[4] Atle Grahl-Madsen, *The Status of Refugees in International Law*, Vol II 436-37 (1972).
[5] Section 198A(3) Migration Act.
[6] James C. Hathaway, *The Rights of Refugees Under International Law* (Cambridge, 2005), at 328.
[7] A recent example is the Lisbon Expert Roundtable's "Summary Conclusions on the Concept of "Effective Protection" in the Context of Secondary Movements of Refugees and Asylum-Seekers". (This round table was organised by UNHCR in the context of the "Global Consultations" in connection with the 50th anniversary of the Refugee Convention.)

Professor Jim Hathaway, a leading expert on refugee law who is critical of the "Pacific Solution" in his latest book, has said that what is necessary is "an authentic understanding of the duty of *non-refoulement*".[8]

> "Specifically, while the drafters did not conceive Art. 33 as tantamount to a duty to grant asylum, they did opt to extend the personal scope of Art. 33 to include refugees not pre-authorized to come to their territory and more generally to grant a number of basic Convention rights even before an individual is admitted to a refugee status determination procedure. Perhaps most fundamentally, the Refugee Convention is not simply a treaty by which states obligate themselves to avoid *refoulement*: its scope is much broader than that, in line with the purpose set out in its Preamble of "revis[ing] and consolodat[ing] previous international agreements relating to the status of refugees and to extend the scope of and the protection accorded by such instruments by means of a new agreement" in order to "assure refugees the widest possible exercise of [their] fundamental rights and freedoms." Could an interpretation of Art. 33 which effectively nullifies the ability of refugees to claim all but one of their Convention rights [the right not to be returned to a place of persecution][9] possibly be consistent with these clear intentions?
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> On balance, it is suggested here that a fair interpretation of Art. 33 would condition the rights of states to remove refugees on a determination that "effective protection" worthy of the name is in fact available in the destination country. Ideally, this would mean that the refugee is being sent to a state that is a party to the Refugee Convention or Protocol, and which would in fact assess his or her status and honor all relevant Convention and other rights. But not even a carefully contextualised reading of the Convention can honestly be said to require this much. On the other hand, it seems reasonable to insist that, at a minimum, a country be deemed a "safe third country" only if it will respect in practice whatever Convention rights the refugee has already acquired by virtue of having come under the jurisdiction or entered the territory of a state party to the Refugee Convention, as well as any other international legal rights thereby acquired; and further that there be a judicial or comparable mechanism in place to enable the refugee to insist upon real accountability by the host state to implement those rights.
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> Under such an understanding of the "safe third country" principle, states would continue to enjoy the freedom to share out responsibility for refugee protection, including with countries that are not yet formally bound by refugee law. But they would not be able to do so in ways that are less a sharing of the responsibility to protect than an effort to deter the search for the protection to which refugees are entitled." [10]

As detailed below under points 2 and 3, Australia has detained and penalised asylum-seekers under the "Pacific Solution", contrary to what Hathaway has suggested is an "authentic" understanding of the obligation of *non-refoulement*.

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[8] James C. Hathaway, *The Rights of Refugees Under International Law* (Cambridge, 2005), at 332. For similar arguments, see P. Mathew, "Legal Issues Concerning Interception", 17 *Georgetown Immigration Law Journal*221 (2003).

[9] Clarification added.

[10] James C. Hathaway, *The Rights of Refugees Under International Law* (Cambridge, 2005), at 332.

2. Detention for which Australia remains responsible and which avoids recent legislative amendments

Parliament is entitled to know whether asylum-seekers will be detained in "offshore processing centres." The Human Rights Committee has found Australia to be in violation of the prohibition on arbitrary detention contained in Article 9 of the ICCPR on numerous occasions.[11] Parliament has recently tried to alleviate the situation through the enactment of a number of new measures.

If asylum-seekers are detained in offshore processing centres, Australia will bear at least some responsibility for this ill-treatment, subjecting Australia to criticism at the international level. I will briefly outline why Australia remains responsible, despite past efforts to shift responsibility to countries participating in the "Pacific Solution".

The "Pacific Solution" attempted to create the illusion that Australia was not responsible for asylum-seekers sent to Nauru or PNG by setting up a complex set of arrangements where different actors were responsible for particular elements. To begin with, the camps were "managed" by the International Organisation of Migration, apparently under a contract for services with Australia. Without access to this contract, it is difficult to assess exactly what IOM did. That contract might indicate that Australia bears some responsibility for the detention. Although international organisations have separate legal personality and bear responsibility for their activities as a matter of international law, neither Nauru nor Australia can contract out of their human rights obligations by authorising an international organisation to violate rights on their behalf.[12]

The important issue of security was apparently left to the Nauruan Police Force. Although some members of the Australian Protective Service were stationed in Nauru in order to assist with the provision of security at the centres, they were appointed as reserve officers of the Nauruan Police Force.[13] The International Law Commission's Articles on State Responsibility provide that:

> [t]he conduct of an organ placed at the disposal of a State by another State shall be considered an act of the former State under international law if the organ is acting in the exercise of elements of the governmental authority of the State at whose disposal it is placed.[14]

Prima facie, then, these Australian officials were on loan to Nauru and carrying out functions for Nauru (although, as suggested below, the true situation is rather different.)

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[11] See the relevant "views" of the Committee in *A v Australia*, *Baban v Australia*, *C v Australia and Bakhtiyari v Australia*.

[12] The basic obligation with respect to human rights treaties is that states parties must "respect and ensure" rights of persons within their territory and jurisdiction: see, for example, Article 2 International Covenant on Civil and Political Rights.

[13] *Ruhani v Director of Police* [No. 2] [2005] HCA 43 (31 August 2005).

[14] Article 6 ILC Articles on State Responsibility. See U.N.G.A. Res 56/83 "Responsibility of States for internationally wrongful acts".

Australian immigration officials were also responsible for carrying out refugee status determination in one of the sites on Nauru. However, this was not the case for the other site, and it is possible that the processing would be treated as something separate to the detention of asylum-seekers.

Thus it is apparent that Australia attempted to shield itself from responsibility for the asylum-seekers.

Clearly, Nauru *does* bear responsibility under international law for violating applicable human rights standards given that the asylum-seekers were within its jurisdiction. The special purpose visas issued to asylum-seekers required that they remain in detention and the Supreme Court of Nauru has confirmed that asylum-seekers were detained in Nauru.[15] Although Nauru is not party to many human rights instruments, it is party to the Convention on the Rights of the Child which prohibits detention of children unless it is a "last resort" (Article 37 (b)). Nauru is also bound by customary international law. The Human Rights Committee which supervises the International Covenant on Civil and Political Rights has opined that the prohibition on arbitrary detention as it appears in Article 9 of the ICCPR is part of customary international law,[16] and even more conservative commentators accept that prolonged arbitrary detention of numbers of people constitutes a violation of customary international law.[17]

However, Australia also bears at least some responsibility. There may be various ways in which Australia is held accountable under international law. The Human Rights Committee has accepted that when a State exercises jurisdiction in the sense of effective control over persons outside its state territory, it will be held responsible.[18] Given that Nauru and Australia are effectively participating in a joint activity, it is possible that Australia should be viewed as being in "effective control" over the asylum-seekers along with Nauru. However, even if one were to accept the view that the asylum-seekers are within Nauru's "effective control", Australia is unable to avoid responsibility. As the International Law Commission has said, "[a] State should not be able to do through another what it could not do itself."[19]

As the asylum-seekers would not be in countries participating in the "Pacific Solution" in the absence of Memoranda of Understanding with Australia, and Australia funds the detention centres, Australia would be liable, at the very least, for effectively aiding and abetting the detention. For example, under Article 16 of the International Law Commission's Articles on State Responsibility, a State may be responsible in part for an unlawful act where it aids and assists the unlawful act, so long as both States are bound by the same obligation (in the case of Nauru, the obligations are those under the Convention on the Rights of the Child and the customary international legal obligations with respect to the right to liberty); the aiding/assisting state is aware of the circumstances that make the conduct wrongful; the aid or assistance is given with a

[15] See the passages quoted from the Supreme Court's reasons in *Ruhani v Director of Police* [No. 2] [2005] HCA 43 (31 August 2005).
[16] Human Rights Committee, General Comment 24, at para 8.
[17] Restatement (Third) of Foreign Relations Law of the United States § 702 cmt. H (1987).
[18] Human Rights Committee, General Comment no 31, at para 10.
[19] See *The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries* 149, 154 (James Crawford ed., 2002). The quoted language refers to Article 17, but similar language is used in relation to Article 16 at p. 149.

view to facilitating the wrongful act and actually does assist the wrongful act; and the act would have been wrongful had it been committed by the aiding/assisting State itself.[20]

I cannot, in the time and space allotted, attempt to outline all possible bases for viewing Australia as responsible for the detention that occurred under the "Pacific Solution". However, I think that whatever framework for analysis is adopted, Australia retains liability for the treatment of the asylum-seekers as a matter of international law.

The fact that detention has occurred under the "Pacific Solution" highlights the undesirability of the new bill, as well as the inadequacy of current supervisory arrangements for offshore detainees under the Migration Act. Under s 198A of the Migration Act, the Minister must declare that countries to which asylum-seekers are sent provide access to refugee determination procedures, provide protection for asylum-seekers, and meet relevant human rights standards. Yet it is clear that the countries participating in the Pacific Solution do not provide "protection" for refugees in the full sense required by the 1951 Convention Relating to the Status of Refugees (see analysis under point one, above). This is hardly a surprise in Nauru's case, given that it is not party to the Refugee Convention. Nor is it clear what the Minister deems to be "relevant" human rights standards, given that the asylum-seekers were subjected to arbitrary detention. Section 198A does not provide an adequate guarantee to parliament that offshore "processing" arrangements will comply with relevant international law standards. Nor do the Memoranda of Understanding that have been negotiated with Nauru and PNG in the past. To begin with, as these instruments are not treaties, it does not appear that they have been made available on the treaties database so that Australians may know what commitments have been entered into on their behalf. Moreover, it may be questionable whether these instruments are legally binding, in any event. Australia's practice is to use an "MOU" when it wishes to *avoid* legal obligations.

3. Punishment of and invidious discrimination against boat people, and denial of other fundamental human rights

In addition to raising the possibility of arbitrary detention, it is apparent that the Bill discriminates between unauthorized asylum-seekers who arrive by sea and those who arrive by air, with the minor exception of asylum-seekers who commenced their journey by sea but completed it by air. The refusal to permit boat people to enter the refugee status determination system in Australia means that this category of asylum-seekers will not benefit from the recent changes that seek to ensure that children are not detained, or from bridging visas, including the pending removal bridging visa for persons who cannot be removed in the reasonably foreseeable future. It also means that they will have fewer appeal rights.

Unlike the raft of legislation underpinning the "Pacific Solution", this Bill does not clarify what kind of visas would be applicable to "designated unauthorized arrivals." The explanatory memorandum merely notes that there will be some need for changes

[20] *Ibid*, at 149.

to the regulations. Without clarification, I would suggest that it is unwise to pass the bill.

Such caution is especially warranted if the only cooperation extended by other countries is reception of asylum-seekers for the purpose of "processing" claims rather than for the purpose of permanent resettlement (as was the case with both Nauru and Papua New Guinea under the "Pacific Solution"). Any country cooperating with Australia on that basis would want to know that the asylum-seekers would be eligible for *some* kind of Australian visa in order to ensure that the asylum-seekers were able to leave their territory at some point.

As the category of "offshore entry person" would no longer exist, it is assumed that the category of visas available to offshore entry persons (visa subclass 447) would cease to exist. Is the intention to make the refugee visa subclass 200, the global special humanitarian visa subclass 202 and the woman-at-risk visa subclass 204 available, at least in the case of those asylum-seekers who have not transited another country for at least 7 days? If this was the case, it should be noted that there is no *guarantee* that asylum-seekers will be permitted to travel to Australia on one of these visas. This is presumably the point of attempting to treat all arrivals by sea as offshore applicants.

It should be noted that if the intention is to make available the Secondary Movement Relocation (Temporary) visa subclass 451 or a new visa category similar to it (perhaps an amended version of visa subclass 447), there is no *obligation* on Australia to grant one of these visas, and, moreover, there are a number of serious limitations to visa subclass 451 as compared with the three major offshore visa categories and with comparable onshore visa categories.

Visa sub class 451 only permits *one* entry to Australia and, by virtue of its temporary nature (it lasts for five years), this visa prohibits family reunion for five years. Visa subclass 447 is even worse, being a rolling three year temporary visa that precludes family reunion so long as the refugee remains in Australia. As explained by the Minister for Immigration at the time, Mr Ruddock, these visa categories were deliberately designed to give less protection to asylum-seekers who were perceived to have moved from "protection elsewhere."[21] As such the constituted a form of penalty as a result of illegal entry and the travel route taken to reach Australia.

Penalties for unlawful entry are prohibited by the Refugee Convention.

Article 31 Refugee Convention

Article 31. - Refugees unlawfully in the country of refuge

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their

[21] Statement by the Hon Philip Ruddock in interview with Damien Carrick on The Law Report, ABC radio, Tuesday 2 October 2001.

territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

The term "penalty" is broad enough to encompass any disadvantage imposed because of unlawful arrival.[22] When implementing the "Pacific Solution" it was clear that the government was concerned to penalise people who it perceived as moving on from "protection elsewhere" and it no doubt sought to rely on the words "coming directly" in Article 31 of the Refugee Convention as justification for imposing this penalty.

The boat-load of refugees who triggered the bill came directly to Australia from West Papua. In such cases, Article 31 provides absolutely no justification for denying access to normal refugee status determination procedures and the immediate (as opposed to discretionary) prospect of settlement in Australia.

Article 31 is also of limited relevance in relation to many other arrivals caught by the bill, if enacted. Seven days transit does not take asylum-seekers outside the ambit of the words "coming directly" for the purposes of Article 31.[23] Furthermore, asylum-seekers will not generally be given the opportunity to show "good cause" as to the reasons for their illegal entry or their reasons for moving from another country. They will simply be taken offshore, and, presumably, accepted back into Australia on some kind of visa in any event.

In addition to constituting an unlawful penalty by virtue of Article 31, different levels of protection for persons with the same protection needs also results in invidious discrimination among different classes of asylum-seekers which may contravene Article 26 of the International Covenant on Civil and Political Rights. Furthermore, limitations of the kind imposed on visa sub classes 447 and 451 mean that Australia effectively limits asylum-seekers' freedom to leave Australia, thus violating Article 12 of the International Covenant on Civil and Political Rights; it subjects them to the risk of *refoulement* if they do leave, contrary to Article 33 of the Refugee Convention; and it may constitute unwarranted interference in family life, potentially contravening Articles 17 and 23 of the Covenant on Civil and Political Rights.[24]

4. Unworkability due to lack of clarity concerning the countries that have agreed to accept them and the class of visa that would be available to designated unauthorized arrivals

Without a firm destination for the asylum-seekers, it is unclear how the Bill will work. Australia could be left in a position where there will be an automatic bar on visa applications by unauthorized sea arrivals,[25] but no other country will take them. Presumably, the fate of the asylum-seekers would then be governed by Ministerial

[22] See Guy S. Goodwin-Gill, "Article 31 of the 1951 Convention Relating to the Status of Refugees: non-penalization, detention, and protection", in Feller, Türk and Nicholson, *Refugee Protection in International Law* (Cambridge, 2003), 185, at 189.
[23] Goodwin-Gill, *ibid* , at 194.
[24] For detailed analysis of these points, see P. Mathew, "Australian Refugee Protection in the Wake of the *Tampa*", 96 *American Journal of International Law* 661 (2002).
[25] See item 10 of the bill, replacing the term "offshore entry person" with "designated unauthorized arrival".

discretion to permit applications for some category of visa.[26] This is undesirable as it is inefficient and not subjected to sufficient independent scrutiny.

The lack of clarity concerning the visa category is a related concern. The explanatory memorandum merely notes that changes will be made to the Migration Regulations concerning the humanitarian visa categories. Again, parliament should be loath to enact the bill without a clear picture as to the changes to the visa regime. As pointed out earlier, it is unlikely that Nauru or any other candidate to accommodate asylum-seekers while their claims are being determined will receive asylum-seekers without knowing that successful applicants are eligible for some form of Australian visa.

5. Expense

The explanatory memorandum states that "there are no direct financial implications from the Bill as it simply provides the flexibility to the Government to move a wider group of people to offshore processing centres". It is clear that detention abroad is costly.[27] It is difficult to see how "reoperationalising" one of the sites on Nauru will not cost more money. Presumably an unused site is costing Australia nothing, unless there is maintenance required. Presumably extra costs will be incurred once personnel are running the site. One also presumes that asylum-seekers will be guaranteed the necessities of life. This too will cost money. Parliament is entitled to see a proper costing of the offshore detention arrangements.

It has been pointed out many times by refugee advocates that detention within Australia is also costly and that alternatives should be pursued. Australia's refugee policies should enable refugees to get on with their lives first and foremost because refugees are human beings whose rights should be respected. However, it is worth remembering that refugees have made enormous contributions – economic and otherwise – to this country. They often do so despite their ill-treatment at the hands of government, the internment of and subsequent contribution made by the arrivals on the "Dunera" being perhaps the most famous example.

6. Ceding our sovereignty instead of adhering to agreed values

In the election campaign that followed the *Tampa* incident, Prime Minister John Howard stated "we decide who comes to this country, and the means by which they come." As others have noted,[28] it appears that Indonesia now makes these decisions. Australia should be making its decisions in a principled way, consistently with the international legal obligations to which it has freely consented. These obligations reflect values fundamental to Australian society. Australia was the sixth country to ratify the Refugee Convention. It was this ratification that brought the treaty into

[26] See item 11 of the bill, replacing the term "offshore entry person" with "designated unauthorized arrival".
[27] See Andra Jackson, "Manus Island's $1m man", *The Age*, February 11, 2004: http://www.theage.com.au/articles/2004/02/10/1076388366014.html
[28] Don Rothwell, op-ed *The Australian* 11 April 2006, available at http://www.onlineopinion.com.au/view.asp?article=4381

force. The object and purpose of the treaty is "to revise and consolidate previous international agreements relating to the status of refugees and to extend the scope of and the protection accorded by such instruments by means of a new agreement."[29] Rather than returning refugees to places of persecution, the parties to the Refugee Convention have agreed to provide them with protection of their fundamental human rights. To do otherwise is to become complicit with the persecutory regimes from which refugees have fled. Regrettably, in the case of West Papua, there are many reliable sources indicating that there are ongoing human rights abuses occurring in the territory.

[29] Paragraph 3, preamble of the Refugee Convention.