

THE PACIFIC SOLUTION AS AUSTRALIA'S POLICY TOWARDS ASYLUM SEEKER AND IRREGULAR MARITIME ARRIVALS (IMAS) IN THE JOHN HOWARD ERA

Hardi Alunaza SD¹, Ireng Maulana² and Adityo Darmawan Sudagung³

¹Faculty of Social and Political Sciences, Universitas Tanjungpura
Email: hardialunaza@gmail.com

²Political Sciences Iowa State University
Email: maulanaireng81@gmail.com

³International Relations Department Universitas Tanjungpura
Email: soedagoeng32@gmail.com

ABSTRACT

This research is attempted to answer the question of why John Howard used the Pacific Solution as Australian policy towards Asylum Seekers and Irregular Maritime Arrivals (IMAS). By using the descriptive method with a qualitative approach, the researchers took a specific interest in decision-making theory and sovereignty concept to analyze the phenomena. The policy governing the authority of the Australian Government in the face of the Asylum Seeker by applying multiple strategies to suppress and deter IMAs. The results of this research indicate that John Howard used Pacific Solution with emphasis on three important aspects. First, eliminating migration zone in Australia. Second, building cooperation with third countries in the South Pacific, namely Nauru and Papua New Guinea in shaping the center of IMAs defense. On the other hand, Howard also made some amendments to the Migration Act by reducing the rights of refugees. Immigrants who are seen as a factor of progress and development of the State Australia turned into a new dimension that threatens economic development, security, and socio-cultural.

Keywords: Pacific Solution; asylum seeker; Irregular Maritime Arrivals

ABSTRAK

Tulisan ini disajikan untuk menjawab pertanyaan mengapa John Howard menggunakan The Pacific Solution sebagai kebijakan Australia terhadap Asylum Seeker dan Irregular Maritime Arrivals (IMAs). Melalui pendekatan kualitatif dengan sumber data dari studi pustaka, penulis mencoba menggunakan konsep kebijakan pertahanan dan Forward Defense dalam menjelaskan fenomena terkait. Kebijakan tersebut mengatur mengenai otoritas Pemerintah Australia dalam menghadapi Asylum Seeker dengan menerapkan beberapa kebijakan guna menekan dan menghalangi IMAs. Hasil dari penelitian ini menunjukkan bahwa John Howard menggunakan Pacific Solution dengan menekankan pada tiga aspek penting. Pertama, menghilangkan zona migrasi di wilayah Australia. Kedua, menggunakan perangkat militer untuk menghadang kedatangan IMAs. Serta, membangun kerja sama dengan Negara dunia ketiga di Pasifik Selatan, yakni Nauru dan Papua New Guinea dalam membentuk pusat pertahanan. Di sisi lain, Howard juga melakukan beberapa amandemen terhadap Migration Act dengan mengurangi hak-hak pengungsi. Imigran yang dipandang sebagai salah satu faktor kemajuan dan perkembangan Negara Australia berubah menjadi dimensi baru yang mengancam perkembangan ekonomi, keamanan, dan sosial budaya. Howard memandang bahwa banyaknya imigran yang masuk ke Australia justru menambah jumlah anggaran pengeluaran Negara sehingga berdampak pada berkurangnya anggaran pelayanan masyarakat domestik.

Kata Kunci: Pacific Solution; asylum seeker; Irregular Maritime Arrivals

Introduction, Research Objective and Significance of Study

Characterized by the cultural diversity of its people, Australia is a country where officially migrants have enriched almost every aspect of contemporary society. In fact, since the rejection of the White Australia policy in 1973, successive Australian governments have endeavored to foster, both domestically and internationally, an image of a cohesive, egalitarian and multicultural nation.¹ However, despite efforts to distance contemporary Australia from its racially exclusionist past, unauthorized non-white immigration continues to pose problems for the Australian state. Australia's economic success, social welfare, domestic political stability makes it as a country of interest by foreign immigrants from various countries. Australia is also noted as a country which has been the main target to asylum seeker that comes with the aim to obtain the asylum in Australia. The status of Australia as a developed country and member country of Geneva Convention year 1951 on refugee status and the New York 1967 Protocol, which has an obligation to provide international refugee protection, makes Australia as paradise for the asylum seekers.² As a country which ratified the Geneva Convention 1951, Australia should be obliged to grant asylum and refugee status to asylum seekers who enter the territory of the country. However, in its application, the Australian government makes policies that are contrary to the committee as a signatory to the convention, in acceptance asylum seekers which is known as Pacific Solution policy.

Australia tends to choose an increasingly restrictive policy towards asylum seekers with the justification for safeguarding its national interest, namely national security.

¹ Dawn Bolger, *Race Politics: Australian Government Responses to Asylum Seekers and Refugees from White Australia to Tampa* (pp. 12). Australia: University of Western Sydney. 2016

² Bette Wrighte, *Asylum Seeker and Australian Politics 1996-2007* (pp. 47). Australia: University of Adelaide.

When viewed from the implementation of the policy of Pacific Solution that is intended to respond and stem the tide of asylum seekers entering the territory of Australia.³ The Department of Immigration and Citizenship (DIAC) as an institution responsible for immigration issues in Australia decided that the presence of asylum seekers who come by using the boat is considered as the illegal immigrant or the famous Irregular Maritime Arrivals (IMAs). However, it is not these officially sanctioned entrants, but the Irregular Maritime Arrivals (IMAs) often referred to as boat people, that have captured the public imagination and have come to stand for asylum seekers in general.⁴ For Howard to win the election, he had to reclaim a majority of the close to a million votes that had left the Coalition for One Nation.⁵ He duly did so with his handling of the Tampa Incident of August 2001 and the resultant policies that still shape Australia's asylum seeker response today. With that victory, Australia's response to asylum seekers became an issue that could decide the course of an election, thereby completing its politicization and turning it from a humanitarian issue to one of border protection. The immigrants who were originally regarded as one of the factors of progress and development as the Australian state were then seen as something that could threaten the state through economic, security, and socio-cultural.⁶ This article also sees that Pacific Solution applied during the leadership of John Howard as an Australian Government policy formulation of

³ Katrina Stats, *We Will Decide: Refugee and Asylum Seeker Policy during the Howard Era before Tampa* (pp. 16). Australia: University of Adelaide. 2015

⁴ Anne McNevin, *Beyond Border Control: Rethinking Asylum and Refugee Protection in Australia and the Region. Local Global Studies in Community Sustainability 8, No. 4*. 2010. Accessed October 15, 2013.

⁵ J. Jupp, *From White Australia to Woomera: The Story of Australian Immigration* (pp. 134). Cambridge University Press. 2002

⁶ Anonymous. *Asylum Seekers and the Legacy of the White Australia Policy*.

Asylum Seeker and IMAs. This will be further explained as the dynamics of politics, especially security policies and issues, as well as John Howard's focus on maintaining domestic security stability when he becomes the leader in Australia.

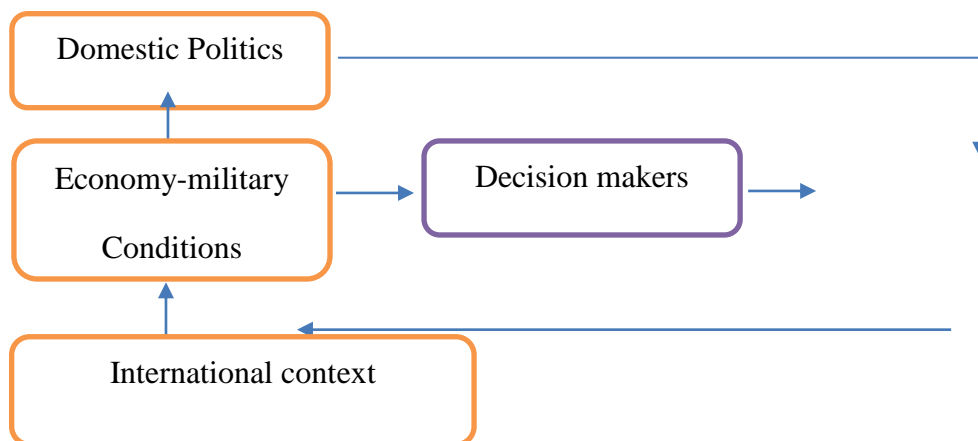
This article is divided into three important points in explaining the Pacific Solution as Australia's policy towards Asylum Seeker. First, eliminate the migration zone in Australia. Second, use the military devices to

block the arrival of IMAs. And build cooperation with third world countries in the South Pacific, namely Nauru and Papua New Guinea in forming a center of defense. Howard also made several amendments to the Migration Act by reducing the right of refugees. Immigrants considered as one of the factors of the progress and development of Australia state are transformed into new dimensions that threaten economic, security and socio-cultural development.

Theoretical Framework

Decision-Making Theory

Figure 1: Foreign Policy Decision-making Process William D. Coplin.



To more easily understand the interaction of factors that influence the foreign policy decision-making process, the writer tries to describe it into an illustration of figure form as above:

There are three considerations that can be explained. First, domestic politics includes conditions and circumstances of the justified state who will decide, namely political of the state related to decision, including the cultural factor underlying man's behavior. Second, military and economic capability is the

situation of military and economic of the state, including geographical factors which always become a consideration of security defense.⁷

Third, international context is a result of foreign politics of all countries in the past, nowadays, and a future which are probably anticipated. In other words, it is a related to the condition of a state which become foreign politic purpose and influence of the other state which are relevant towards the face problem.

⁷ M. F. Keling, The Malaysian Government's Efforts in Managing Military and Defence Development. *International Journal of Business and Social Science* 2, No. 12, 2. 2011.

The Howard government foreign policy, in this case, is based on Australia's system.

Sovereignty Concept

In today's world, not only are there complex issues presented by transnational activities but also with voluntary in involuntary movement of large number of people crossing national borders. In case of refugees and the phenomenon of forced migration present a basic upon which to access the effectiveness of sovereignty, nation states and territorial boundaries, also the impact these can produce. Carl Schmitt defined sovereignty as who decides on the state of exception. This concept of sovereignty exception creates for itself a rule legitimizing the authority of the state, guaranteeing the condition of sovereignty, and perpetuating its legitimacy.⁸

In his concept, Carl puts forward a concept of political realism to explain the emergence of the sovereignty state its power. Using this approach, an enemy must be established, for without perceived threat there is no rationale for a political entity to exist. Therefore, a division of the world into separate political territories is a necessity, for where there is one state there must be others, and where there is another state there must be an enemy. Hence, sovereignty and the state represent power and independence within the global system, with aspirations of a strong national territory and identity.

Anything outside the sovereign state poses a potential risk and is therefore an enemy of the state. In doing so, the deviant refugee becomes a misfit and possible threat to perpetuating the shaping and reinventing process of the imagined nation state and its citizens, undermining the security and coherence of the sovereignty project.⁹ To protect the nation state,

strategies must be devised to keep under control the movement of such people. The sovereignty defines both what is inside and outside its space, creating the situation whereby its validity is determined. As previously noted that anyone outside may be a potential risk and threat to the sovereignty state.¹⁰

Any group or individual, therefore who transgresses by crossing state boundaries and moving into another territory, clearly upsets the distinction between the internal and the external. They represent the aberrant members of society, belonging no longer to the state of origin, and infringing the laws of sovereignty in the new host community as non-members.¹¹ According to the Haddad, the concepts of sovereignty and separate states within the international system illustrate that as a state grew increasingly nationalized, the more important it was to build a strong state to nation bond. However, as individual or a group, the refugee forces the world to recognize a spatial distinction between here and there. The refugee represents a threat to the nation state and its desire to build a robust, balanced society by introducing potential insecurities, racial and cultural tensions, as well as logistic and economic challenges. Robert Jackson noted that:

“Sovereignty is an idea of authority embodied in those bordered territorial organizations we refer to as states or nations and expressed in their various relations and activities, both domestic and foreign. Sovereignty is at the centre of the political arrangements and legal practices of the modern world.

⁸ Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (pp. 13). Cambridge: MIT Press. 1988

⁹ Barry Buzan and Lene Hansen, *The Evolution of International Security Studies* (pp. 16). New York: Cambridge University Press. 2009

¹⁰ Ian McAllister, Border Protection, the 2001 Australian Election and the Coalition Victory. *Australian Journal of Political Science* 38, No. 3, 9. 2003. doi: 10.1080/1036114032000133985

¹¹ Banyu Perwita and Yani Mohammad, *Pengantar Ilmu Hubungan Internasional* (pp. 131) Bandung: Rosdakarya. 2006

*State sovereignty is a fundamental idea of authority of the modern era, arguably the most fundamental.*¹²

Sovereignty is essential to economic growth and social prosperity. The fundamental of sovereignty are protection and empowerment. While traditional concepts of sovereignty focus on the territorial sovereignty of the state and its vital national interests, sovereignty recognizes that the state has not always been able to assure the protection of its citizens. The adoption and implementation of sovereignty by the Australian Government would assist in fulfilling the responsibility of states to protect their own citizens, and in strengthening the rule of law in states emerging from complex emergencies.¹³

In the case study of Asylum Seeker in Australia, sovereignty here means justice and emancipation while connected between domestic policy and international environment because of the idea of human security is facing two component state and human sovereignty.¹⁴ On the other hand, sovereignty is trying to elaborate the domination of state to human and individual security including problem of social welfare, protection of economic and politics dimension. The Pacific Solution created by John Howard is trying to protect the economic and also the dynamic of social and politics in domestic level and also for international.

Methodology

This research is used the descriptive by qualitative approach to find the answer of the research question. It takes secondary data as resources of this research with data collection technique consisting of books, journals, and including data from reliable website which is supporting the explanation of this research.

¹² Mark Beeson, *Sovereignty under Siege: Globalization and the State in Southeast Asia* (pp. 6). Hongkong: Southeast Asia Research Centre. 2002

¹³ Richard Mansbach, *Introduction to Global Politics*. London and New York: Routledge. 2008

¹⁴ Anak Agung Banyu Perwita P., *The Management of National Border and Indonesia's Security Problem*. 2007

According to Miles Huberman, classic research methods, the fundamentals of research design and data management are followed by three ways consisting, collective data, display data and conclusion drawing or verification.¹⁵

The Pacific Solution as Australia's Policy towards Asylum Seeker and IMAs

Before the Tampa reached the island, however Australian authorities ordered it to remain at least twelve miles offshore, outside territorial waters.¹⁶ The Australian government, alarmed by the growing number of boat people arriving (more than 8,300 in the two previous years) saw the ship as the most blatant assault yet on Australian sovereignty by the people-smuggling industry. The cabinet thus decided on the morning of August 27 to deny disembarkation rights, and Prime Minister John Howard argued that the Tampa, under international law, should return to Indonesia. The cabinet was infuriated that the Afghans, rescued by a Norwegian Vessel and in the process of being returned to Indonesia, were now intimidating their way to Australia. If they succeeded, the Tampa would signal his government's inability to control the borders, an issue that had been receiving growing attention in Australia. As Howard explained, "We simply cannot allow a situation to develop where Australia is seen around the world as a country of easy destination." As a result, the Tampa would not be given permission to land in Australia or any Australian territories.

To contextualize the People Swap response, we can trace four waves of boat people or irregular maritime arrivals as it was formally known. The first wave of arrivals in 1976-1981, was a relatively small cohort of 2,059 individuals who came mainly from Vietnam on 60 boats. In general, this first wave was received by the Australian public with

¹⁵ Sugiyono, *Metode Penelitian Kuantitatif Kualitatif dan R & B* (pp. 246) Bandung: Alfabeta. 2011

¹⁶ Ben Saul, *Inquiry into Indian and Australia's Foreign, Trade and Defense Policy* (pp. 12). Australia: Centre for International Law. 2012

empathy and genuine concern for their integration into the Australian society at large.¹⁷

As the number of arrivals increased from 1989 to 1998, to the tune of 3,030 arrivals on 82 boats in sum, the rise of boat people in the second wave was accompanied by a greater frequency of detention over longer periods. While the majority of arrivals in the second wave were sent back to their home nation, the issue of boat arrivals became prominent again in the third wave (1999-2001) as 3,721 arrivals on 86 boats in 1999 alone, followed by 2,939 arrivals on 51 boats in 2000, and 5,515 arrivals on 43 boats in 2001 necessitated a stronger response, characterized by the *Tampa* Affair and the subsequent, Pacific Solution.¹⁸

The *Tampa* Affair unfolded in August 2001 when John Howard's government refused the Norwegian shipping boat, the *MV Tampa*, permission to dock on the Australian territory of Christmas Island after rescuing a sinking boat of asylum seekers on Australia's request. What ensued over the following days was a standoff, until Howard's Liberal government implemented the poorly-termed policy, the Pacific Solution.¹⁹

The Pacific Solution encompassed three key features. Firstly, certain territories notably Christmas Island, Cocos Island and Ashmore Reef were excised from Australia's migration zone, meaning that when landing on these islands, asylum seekers could not apply to Australia for refugee status. Secondly, the government was granted powers that allowed the Navy to interdict asylum seekers heading to Australia by boat. Finally, arrangements were

made with Nauru and Papua New Guinea to establish detention centers for the processing of asylum seekers, thus establishing Australia's system of offshore processing. After 2001, the number of asylum seekers arriving by boat dropped dramatically, with one person arriving in 2002, and an average of 57 people each subsequent year until Kevin Rudd's Labor government was elected in 2007.

Based on the historical aspect of Australia's IMA policy, the arrival of the migration wave has taken place since the 1940s. However, in 1999 Australian political conditions began to be affected by the turmoil of the IMA issue due to the coming wave of migration by asylum seekers from the Middle East. The *Tampa* incident in 2001 was the turning point for the implementation of a series of restrictive policies on the IMA under the reign of John Howard. The main problem with this incident was the Australian government's refusal of the placement of 433 asylum seekers (mostly from Afghanistan) who were rescued by Norwegian freighter carriers on the high seas.

The Howard Government implements a Pacific Solution policy that includes the detention of boats carrying asylum seekers before they enter the Australian migration zone and resettlement for those who have been confirmed as refugees. This policy is the pioneer of an offshore processing center, a detention center for asylum seekers in Australia's offshore areas as well as in other countries to secure Australia's border area from asylum-seekers arriving. This policy complements Temporary Protection Visa (TPV) for asylum seekers whose arrival is unlawful to Australia but is subsequently designated as a refugee.²⁰

Howard made a policy called as Pacific Solution that is the displacement of the asylum seeker to detention centers spread across archipelagic countries in the Pacific Ocean. One of the policy application strategies is Relax

¹⁷ Reza Hasmath, *Deterring the Boat People: Explaining the Australian Government's People Swap Response to Asylum Seeker* (pp. 3). Working Paper No. 103 Center of Migration, Policy, and Society. University of Oxford. 2013.

¹⁸ Ichila Eyalama, *Australia's Asylum Seeker Policy 2007-2015* (pp. 22). RMIT University: School of Global Urban and Social Studies. 2015

¹⁹ Savitri Taylor, *The Pacific Solution or a Pacific Nightmare? The Difference Between Burden Shifting and Responsibility Sharing* (pp. 13)

²⁰ Rizka Prabaningtyas, Dampak Kebijakan IMA Australia terhadap Hubungan Australia-Indonesia Kontemporer. *Jurnal Penelitian Politik* 12, No. 1. 2015.

Operation, which is an Australian border protection strategy on the high seas by intercepting, detaining, and preventing ships from carrying people who want to enter Australia without a visa. Although the policy was ever dismissed at the turn of leadership during the reign of Kevin Rudd (Labor Party) year 2007, in the end, the same policy in Howard's period was reinstated during the reign of Tony Abbott with a framework of police Operation Sovereign Border.

In a radio interview in 2002, the Prime Minister John Howard spoke of the success of the Pacific Solution in deterring asylum-seekers, stating: far from being a failure, the Pacific Solution has made some contribution towards the slowing down in the number of people who are coming to this country.²¹ In the long run, of course, the answer is to get a situation where people don't endeavor to come here illegally in the first place. Mandatory detention and the Pacific Solution's policy have received much domestic and international criticism. Dissatisfaction with the government's policies regarding asylum-seekers can also be found within Prime Minister John Howard's own Liberal Party.

Recently, rebel members of the Liberal Party are unhappy with the Prime Minister's policies on mandatory detention which introduced two private members' bills into the House of Representatives. If passed, these bills would have brought Australian law into conformity with the UNHCR guidelines by permitting the detention of asylum-seekers only when necessary, for example, to verify a person's identity. Wishing to retain mandatory detention, Prime Minister John Howard negotiated a compromise with the rebel Liberal Party members culminating in the Migration Amendment (Detention Arrangements) Act 2005 (Detention Act).

²¹ Emily Flahive, *National Identity Crisis: The Politics of Constructing National Identity and Mandatory Detention of Asylum Seeker in Australia and Japan*.

In section 4AA of the Detention Act the government affirms the general principle that a minor shall only be detained as a measure of last resort. In addition, the Act grants the Immigration Minister the discretion to make a determination that a detainee is to reside at a place other than a detention center, if it is considered in the public interest to do so. In its Explanatory Memorandum, the government indicated that it would only use this power when families are involved and would impose unspecified, unlimited conditions upon release. Although under the Detention Act more people have been released from detention, many have criticized the practical effect of the Detention Act as it appears that it contains no extra compulsion or mechanisms to force the government to do anything they don't want to do. Indeed, Prime Minister John Howard acknowledges that these changes are merely mandatory detention system with a softer edge. In effect, the Australian Government is still aiming to deter people.

Despite dismantling many of these initiatives when it came to power in 2007, the Labor government gradually started reintroducing them.²² At first, it seemed to do so with a humanitarian agenda, shifting the rhetoric from stopping the boats to saving lives at sea. In the end, though, it adopted many of the same draconian policies as the Howard government, despite promises that it would never replicate them because of their inhumanity, illegality and ineffectiveness.

It will rarely be safe, or legal, to turn back boats. This is because of the immediate risk posed to the lives of those on board these typically unseaworthy vessels, as well as the danger that refugees may be returned to persecution or other forms of serious harm. Past experience shows that a policy of turning back boats is fraught with significant risks. Under the Howard government, seventeen boats were intercepted but only five were turned around.

²² Jane McAdam, *Australia and Asylum Seekers. International Journal of Refugee Law 25, No. 3. 2013.*

The Australian Navy had to deal with threats and acts of self-harm, aggression towards members of the boarding party, and acts of sabotage to the boats.

Consistency in Australian policy on the issue of boat arrivals has been evasive since 2001. The last four Australian federal elections have led to reformulations of the country's asylum and border policies. John Howard, Kevin Rudd, Julia Gillard, and now Tony Abbott have each deployed a different asylum and border policy from their predecessor. The task of developing a long-term policy on the matter is certainly daunting. One would be hard-pressed to identify an issue more closely identified with the intersection of human rights and state sovereignty than mixed or irregular migration

Recent years have seen numerous changes to Australia's refugee and asylum seeker policies, largely as a political response to an increase in the number of asylum seekers arriving in Australia by boat recorded about 51,637 arrivals in the five years to December 2013 and a consequent increase in deaths at sea between Indonesia and Australia at least 862 deaths recorded over the same period.²³ Both of Australia's major political parties have attempted to address this issue through deterrence-based policies which blocks access to protection in Australia and impose penalties on people who arrive by boat.

This case study linkage with the Abbott government's Operation Sovereign Borders policy appears to have stopped irregular maritime arrivals to Australia. In the first six months of 2013, 13,108 individuals arrived by boat, while during the first half of 2014 under the Abbott Coalition Government there were no boat arrivals.²⁴ The Government justifies its

tough border policy using the humane and noble logic that it prevents people from dying at sea and puts an end to the exploitation of desperate souls by people smugglers. It is far more difficult to estimate the number of individuals who no longer have a viable pathway to a 'durable solution' now that Australia has shut the door. Though the current policy meets its most practical objective of 'stopping the boats', it is neither a stable nor a viable long-term policy regarding Asylum Seekers in Australia.

Asylum policy in Australia has now come full circle with the Abbott Government's reintroduction of off-shore detention and other deterrence policies reminiscent of the Howard era. The tension between the sustainability of a humane policy and the legitimacy of a unilateral deterrence regime remains, however. In the worst-case scenario, Australia will repeat the policy cycle of the last 15 years, with slight variations. There are already signs of this. The current policy has succeeded in 'stopping the boats' and removing the issue from mainstream politics, but it is running into serious legitimacy concerns.²⁵ While the numbers of asylum seekers arriving to Australia by boat have increased over the last year and do present challenges, one should not lose sight of the reality that such challenges are modest by international standards that Australia is more than sufficiently placed to manage such increases in accordance with legal obligations it has voluntarily assumed. Moreover, it must be recognized that rights afforded to refugees under the Refugee Convention and other key treaties are not abstract humanitarian concepts for Government's to cherry pick at their pleasure. As recognized by the High Court in M70, they are tangible legal rights which must inform the ambit and scope of statutory powers exercised

²³ Asylum Reports, *Recent Changes in Australian Refugee Policy*, Australia: Refugee Council of Australia. 2017.

²⁴ Jonathan Kent. (2014). *The Politics of Australian Asylum and Border Policy: Escaping the Duelling Paradigm*, accessed March 2, 2018. <http://asiapacific.anu.edu.au/regarding->

[rights/2014/10/15/the-politics-of-australian-asylum-and-border-policy-escaping-the-duelling-paradigms/](http://asiapacific.anu.edu.au/regarding-rights/2014/10/15/the-politics-of-australian-asylum-and-border-policy-escaping-the-duelling-paradigms/)
²⁵ *Ibid.*

by the Government with respect to asylum seekers.²⁶

Thus, if Australia is to engage in offshore processing under section 198AB of the Migration Act, it is clear that such an arrangement must accord with Australia's international obligations. In particular, for the Minister's declaration under section 198AB designating Nauru and PNG as regional processing countries to be valid, his belief that such designation is in the national interest must be made in good faith as part of a legitimate burden sharing arrangement to more fairly distribute responsibilities rather than deflect them. Unfortunately, for all concerned, current arrangements in Nauru and those proposed for PNG fall short of the requisite minimum conditions for such declaration to be valid. The New Strategy does not in fact provide a solution to irregular migration within the Asia-Pacific Region beyond addressing Australia's own political concerns.²⁷ As recent figures strongly suggest, deterrence policies are incapable of preventing people fleeing persecution from embarking on dangerous journeys to Australia to secure protection for themselves and their families. To suggest otherwise is to misunderstand the causes of refugee flight at its highest, all that offshore processing is Offshore Processing and Australia's International Law Obligations.²⁸

Likely to achieve is a redirection of irregular migration to Australia's neighbors who bear the responsibility for a disproportionately high number of irregular migrants.²⁹ While such an outcome might be welcomed by some, it is important to bear in mind that Australia does not exist within a political vacuum. Its treatment of asylum seekers and any deflection of

responsibility to its neighbors will affect its international reputation and political relationships with key regional nations as it has done in the past.

Moreover, coupled with the New Strategy's overt failure to provide asylum seekers with effective protection in order to deter them arriving on our shores, its policy of no advantage is incapable of satisfying the minimum legal conditions required for offshore processing to be lawful. In the circumstances, the New Strategy cannot be said to have been made in good faith or in Australia's national interest. As recent trends in international and domestic jurisprudence demonstrate, if the Government does wish to lawfully engage in offshore processing, such strategy would need to be conducted in accordance with Australia's international obligations. The legal framework outlined above sets out in precise terms what would practically need to be satisfied for that to occur. Whilst these conditions may appear onerous, their satisfaction will far outweigh the legal and political ramifications which are likely to be suffered if this Government or the next fails to act in accordance with the rule of law.

Building Cooperation with Asia Pacific Countries and Amendments to the Migration Act

Australia will not be able to execute its own IMA policy without attempting to map out and see the influence of the existence of the countries around it. Australia is concerned to establish good relations with its Asia Pacific neighbors in transit for IMA so that the country has a justification for raising the urgency of the IMA issue at the regional level. This is actually a very important thing for Australia to realize Australia's security interests in the handling of IMA. The initial effort initiated by Australia to work with Indonesia on IMA's handling is the Bali Process on People Smuggling, the Bali Process. The domestic political context of Australia at the time this policy was initiated was a major concern due to the increasing number of IMAs working towards Australia.

²⁶ Riona Moedley, *The Revival of The Pacific Solution; An Analysis of The Legal Parameters of Offshore Processing in Australia* (pp. 28).

²⁷ *Ibid.*

²⁸ Kazimierz, et al., *A Price too High; The Cost of Australia's Approach to Asylum Seekers* (pp. 8-12). Australia: Oxfam. 2007.

²⁹ *Ibid.*

The IMA is feared to be a threat to Australia's national security because it has the potential to pave the way for people smuggling and the entry of terrorism.

The Bali Process became Australia's first road to raise the issue of asylum seekers to the regional level, while strengthening its network of cooperation with Indonesia. This is because, as expressed by Joseph H. Douglas and Andreas Schloenhardt, there is a tendency for countries in Southeast Asia and the Pacific to have no urgency similar to Australia to take action to combat people smuggling.³⁰ Indonesia is a very crucial country for Australia because Indonesia's geographical position is often used by IMA actors to transit before reaching Australia. It appears that from the beginning of Australia at that time led by John Howard (Coalition Party) to build a regional framework with the aim of assisting his country in solving the IMA problem aligned and identified with security threats such as smuggling and trafficking. It is clear that the foundation for the establishment of the Bali Process is for Australia to prevent IMA upgrading at that time. Not surprisingly, if the dimensions of protection and humanitarian consideration of asylum seekers coming from the new sea lanes are seen implicitly in the initiation of the Bali Process.

In addition, Australia also provides funding support channeled through the International Organization for Migration (IOM). This fund is provided to support the implementation of the Regional Cooperation Arrangement (2001) and the Management and Care of Irregular Immigrants Project (2007) programs. The main objective of this policy program is to reduce the number of people reaching Australian territory. The enactment of this policy has consequences for Indonesia, namely the necessity to arrest people who are considered illegally intending to travel to Australia and then refer it to IOM Indonesia for processing in Indonesia.

Cooperation with post-conflict Indonesia due to IMA case in 2001 was able to reduce post Tampa conflict. It also shows that in Australia's security and defense strategy, Indonesia is not just a neighboring country, but a strategic partner. Australia's success in lobbying with the Indonesian government to increase its awareness of irregular migration is at least accomplished through an Indonesian initiative supported by some sending countries at the multilateral level through the Jakarta Declaration in the Special Conference on Irregular Movement of Persons in Jakarta on 20 August 2013. When viewed from Indonesia's perspective, the Declaration became an important step forward for the handling of asylum seekers as it successfully formulated several collective agreements to address the conditions that led to the human smuggling and human trafficking.

If followed up quickly and accurately, the Jakarta Declaration can be an important step for Indonesia's leading role in the region in anticipation of the rapid flow of IMA in the future. However, it is important to note that the Jakarta Declaration is full of Australian interests. Increasing urgency and attention to human smuggling cases in the region does not necessarily arise due to the problems caused by IMA in Indonesia, but on the interest of Australia to make Indonesia a buffer country. So even if Australia is in a position to support the Indonesian-initiated Declaration, there is an indication that the Declaration demonstrates Australia's success in inserting its national security agenda into the interests of Indonesia which are then appointed to the regional level.³¹ The Migration Act now allows for offshore entry persons to be taken to declared countries. However, after procuring the insertion of the declared country provisions into the Migration Act, the government was still faced with the task of finding countries willing to become declared

³⁰ Ossie Carr, *Australia as a Middle Power in the Asia Pacific* (pp. 142). Australia: University of Canberra. 2012.

³¹ Richard, Tanter, *Shared Problems, Shared Interest*, 2012, accessed March 2, 2018. http://nautilus.org/wp-content/uploads/2012/10/Tanter_Reframing-revised-22-Feb-2012_final.pdf

countries. Unsuccessful approaches were made to Fiji, French Polynesia, Palau, Tonga, and Tuvalu throughout September and October 2001.³² Fortunately for the government; it had enough success to prevent its Pacific Solution from immediately collapsing.

In 1992 Parliament enshrined Australia's policy of mandatory detention in the Migration Reform Act 1992 which amended the Migration Act 1958 (Migration Act).³³ Under sections 189 and 196 of the Migration Act, immigration officials must detain all non-citizens who are unlawfully in Australia until they either deport the unlawful entrants or grant them permission to remain in Australia.³⁴ In 2001, the Australian government passed amendments to the Migration Act to enact its 'Pacific Solution' policy.³⁵ These amendments prohibit asylum-seekers who arrive in prescribed parts of off-shore Australian territory from making applications for Australian visas. Instead, the government takes asylum-seekers to either Nauru or Papua New Guinea to detain them whilst authorities assess their claims for asylum. On September 10, 2001, Nauru signed a Statement of Principles and First Administrative Agreement (FAA) with Australia agreeing not only to host 283 of the Tampa asylum seekers, and 237 other asylum seekers intercepted by the Australian Navy, but also to consider Australian requests to host further groups of asylum seekers. On October 11, 2001, Australia and Papua New Guinea signed a Memorandum of Understanding (MoU) pursuant to which Papua New Guinea agreed to host an identified group of 225 asylum seekers and to consider hosting further groups of asylum seekers.³⁶

At about the same time Australia was also pressuring Nauru to host yet more asylum seekers. On December 2001, Australia and Nauru signed a MoU which replaced the previous agreements between the two countries and pursuant to which Nauru agreed to host up to 1,200 asylum seekers at a time. One last success allowed Australia finally to call off its search for asylum seeker accommodation options. In January 2002, it procured an agreement with Papua New Guinea to host up to 1,000 asylum seekers. Because of their agreements with Australia, Nauru and Papua New Guinea are now declared countries.

The transformation in Australian policy is the most dramatic by a democracy to combat the ever-increasing flow of asylum-seekers that began a decade ago. As right-wing anti-immigration sentiment gains influence across Europe, and the United States moves towards tougher policies against asylum-seekers and illegal immigrants as part of its new war against terrorism, the Australian experience offers a template of how intricate new forces may well play out. There is an urgent conclusion drawn: democracies need a deeper, more informed public debate to balance border protection with human rights. The refugee issue is here for the long haul – asylum-seekers are driven by ongoing disintegration of dozens of impoverished states and the quest for a better life in the developed world. The Howard government's re-election offers convincing evidence that, for a compassionate refugee policy to work, it must be sustained by a national interest rationale and that press advocacy for these policies based solely on humanitarian grounds will not prevail. This project argues further that the lesson from the Australian experience is that the international press needs to help re-frame the global refugee issue, not solely as a contest between tolerance and intolerance, but as a serious 21st century challenge to the liberal democratic state between competing ideas of universal human rights and the expression of voters' demands that governments tighten borders in the name of sovereignty. Australian politics is conspicuous

³² Savitri Taylor, *The Pacific Solution or a Pacific Nightmare?* 2004.

³³ Peter Billings, Whither Indefinite Immigration Detention in Australia, *Law Journal* 38 (4), 2.

³⁴ Peter Prince, *The Detention of Cornelia Rau: Legal Issues* (pp. 8). Australia: Parliament of Australia. 2005

³⁵ Flahive, *op. cit.* 24

³⁶ Rachel Carter, *For Those Who Have Come Across the Seas* (pp. 5-6). New Zealand: University of Otago. 2016

for its structural stability, with the long-standing party contest between the conservative Liberal and National Coalition in opposition to the liberal Australian Labor Party. In March 1996, the Liberal government was returned to power under the leadership of John Winston Howard, an under-estimated mixture of economic liberal, social conservative and calculating populist.

Border protection, however, constitutes a more enduring element of Australian nationalism – the idea of the continent as the nation. It is also an appeal to national security because the seas that surround the continent can be monitored and unwanted arrivals detected in a way that is impossible for most nations with land borders. Border protection thus remains integral to how Australia relates to the world and that worldview, as argued previously, is embedded in the post-war immigration program.³⁷

First, the government reached agreements with several South Pacific nations to accept for processing the Tampa boat people as well as any future boat people who arrived on Australian territory. While New Zealand as a close neighbor took a number of the Tampa asylum-seekers, Australia used financial incentives to persuade weak states such as Nauru and Papua New Guinea to cooperate with its so-called Pacific Solution.³⁸ The Pacific Solution meant that asylum-seekers who landed on the Australian territories henceforth would be immediately consigned offshore to these islands for processing. As the first step, the people on board the Tampa were transferred at sea to Australian naval vessels and then transported to various South Pacific destinations enabling Howard to keep his original pledge that the

Tampa people would never set foot on Australia or its territories.³⁹

Second, a new refugee jurisdiction was created. This new regime applied henceforth to all people arriving at the “offshore territories” (Christmas Island, Ashmore Reef and the Cocos or Keeling Islands), which effectively meant all the boat people. They would be labeled an “offshore entry person” and would in effect be excluded from Australia’s obligations under international refugee law. Such people even after processing in South Pacific islands would thus never be eligible for permanent residence in Australia, regardless of their refugee status.⁴⁰ Instead, they would only be entitled to a temporary protection visa limited to between three and five years. After that, their ability to return to their homeland would be re-assessed. Their families would never in any case be able to join them in Australia. This was a regime calculated to dissuade asylum-seekers arriving by boat but happened to be a definition of border protection manifestly in conflict with Australia’s international obligations under the 1951 Convention.

Third, people smugglers involved in the trade to Australia would face harsher penalties: a minimum of five years in prison and up to 20 years for a first offense, with harsher provisions for a second offense. Fourth, people arriving by boat with no documents despite having traveled through several countries en route – would have adverse conclusions drawn against them, thereby making refugee status much harder to obtain.⁴¹

Fifth, any judicial efforts to expand the definition of the term refugee as well as the right of Federal Court and the High Court to review refugee determination decisions at the

³⁷ Kelly Paul, *The Race Issue in Australia’s 2001 Election: A creation of Politicians or Press*. Harvard College. 2002

³⁸ Rahma Wulandari, Bantuan Luar Negeri Australia dalam Mengatasi Krisis Ekonomi Nauru 2001-2007. *Jurnal Analisis Hubungan Internasional* 5, No 3. 2016.

³⁹ Anonymous. *Australia Pacific Offending human dignity the Pacific Solution*.

⁴⁰ Lorraine Elliott et al., *Australian Foreign Policy Futures: Making Middle Power and Leadership Work*. Canberra: ANU Press. 2008

⁴¹ James Cotton and John Ravenhill, *Middle Power Dreaming: Australian Foreign Policy during the Rudd and Gillard Government*.

administrative level were restricted; and, class action suits against unfavorable decisions were prohibited. These measures reflected the executive's hostility towards judicial interpretation that it saw as frustrating government policy by permitting asylum-seekers a de facto permanent status via protracted legal appeals.

The sixth arm of Howard's new policy, however, quickly became the most visible to the Australian people – the deployment of the Australian military to intercept boats carrying potential asylum-seekers. This operation would cause intense dispute within the military forces and guarantee a media watch for new boats during the election campaign. In contrast, while the Labor party externally painted itself as the more centrist and compassionate party, any actual foreign policy changes on these issues were minimal. On the surface Labor ended the Pacific Solution and abolished temporary protection visas, but in practice it retained the Migration Zone set up by the Howard government, which included the mandatory detention of all people entering illegally by sea.⁴² Furthermore, despite the fanfare surrounding the end of the Pacific Solution, Labor moved to setup a 'regional processing center' first in Timor and then again in Malaysia, both of which had many similarities with the Howard policies. In short, rhetoric was the main difference, with each party appeasing a certain domestic bloc and framing their policies to suit. This analysis also shows that the government and the press framed the issue in crucially-different ways. For the government, the boat people were a threat to Australian sovereignty, its border security and the democratic right of its people to determine who came to their country. The boat people posed a humanitarian challenge that needed to be met within the terms of Australia's traditional refugee policy in a way

that was humane, consistent with Australia's legal obligations and moral responsibility. The press was concerned that Howard's real goal was to engineer his re-election. The government and the quality press, in short, were talking past each other to different constituencies.

Conclusion

The issues of border security, domestic political conditions, and international response that threatened Australia since the Tampa tragedy convinced Howard to issue a policy of Pacific Solution in order to maintain political stability related to election also to save state budget expenditure. This Pacific Solution policy is deemed capable of reducing the right of refugees by not allowing applying for visas, including asylum applications.

Pacific Solution is the transfer of asylum seekers to detention centers spread across the island countries in the Pacific Ocean. One of the policy application strategies is Open Relax which is the strategy of border protection of Australian territory on the high seas by intercepting, detaining, and preventing ships carrying people who want to enter Australia. A large number of immigrants entering Australia by boat are considered to be able to increase the amount of State expenditure budgets thus impacting the lack of budgets for community service.

Pacific Solution applied during the leadership of John Howard as an Australian Government policy formulation of Asylum Seeker and IMAs. This will be further explained as the dynamics of politics, especially security policies and issues, as well as John Howard's focus on maintaining domestic security stability when he becomes a leader in Australia. This paper wants to emphasize that Pacific Solution applied during the leadership of John Howard as an Australian Government is a policy to formulation the number of Asylum Seeker and IMAs. Results explanation of the policy and decision-making process in this article may experience a difference if written by other researchers which notice from a different perspective.

⁴² Wayne McLean, *Power and Ideas in Australian Foreign Policy*. Australia: University of Tasmania. 2012

Recommendation

After completing the research paper about Howard foreign policy towards Asylum seeker, we think that Australia should move immediately to establish facilities in Nauru and Papua New Guinea for the processing of protection claims by IMAs to Australia. In addition there are a range of conditions that need to be fulfilled for the safe and lawful turn back of boats carrying Asylum Seeker. This engagement needs to embrace more comprehensive and cooperative arrangement in

relation policy development processes and implementation of policy decisions. The government needs to re-establish facilities in the Pacific once the details are negotiated and agreed to by the government of the Nauru and Papua New Guinea. Australia is need to improving oversight, along with some involvement of non-government organization in the monitoring of the implementation in Nauru and the ability to bring people who are suffering particular vulnerabilities to Australia.

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