What is the Howard Government Up to with the Pacific Solution Mark 2?

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Address to Refugee Support Groups
Adelaide Hills

Verdun Uniting Church
6 May 2006

Op Ed from SMH and The Age, 17 April 2006

The Howard government wants to avoid a repetition of the 42 Papuan asylum seekers arriving on the Australian mainland, claiming to be refugees, and being granted temporary protection visas. The government would like to stop all asylum seekers reaching landfall in Australia unless they come with visas. Only a nation which is an island continent could entertain such a hope.

The government would prefer that such cases did not need to be decided by our public servants or were not decided in the same way. It has not suggested that public servants made the wrong decision in any of these 42 cases. It has floated two new policy ideas. Both are unprincipled. The first is unworkable and the second could not deliver what the government hopes.

The first idea is that the Australian public servants determining asylum claims by persons pleading persecution by a foreign government would check with that government whether any persecution was occurring. Imagine back in 2001 asking the Taliban if they were persecuting Hazaras in Afghanistan. In every instance, the Australian public servants would either receive an AWB-like assurance that no persecution was occurring, or they would have to scrutinise closely the claims of non-persecution by the foreign government. If the public servants then decided that a person was a refugee, there would be a risk of our public servants being seen to impugn the integrity of a foreign government. Jakarta would end up being more upset, not less.

The second idea is that the government move the claims process offshore, extending the Pacific solution to all asylum seekers arriving in Australia without a visa. The Minster Amanda Vanstone says, “Unauthorised boat arrivals and their asylum claims will be treated in the same way whether they land on offshore excised islands or the mainland. That will in fact introduce some more equity into the situation.” A little history is in order before we go down the slippery slope of offshore equity for all asylum seekers.

Australia is a signatory to the 1951 Convention Relating to Refugees. Under recent Labor and Coalition governments, asylum seekers arriving on boats without visas were held in detention while their claims for refugee status were processed.
Government justified such long term detention, not just for health and security checks, on the basis that these people spent time in other countries en route where they could have obtained asylum. The government also wanted to send a signal to people smugglers and those who would employ them.

When thousands of Iraqis and Afghans were landing on our doorstep five years ago, the government set up the Pacific solution, excising offshore islands, and granting only temporary (rather than permanent) protection visas. These policy changes, together with the mandatory detention of all unauthorised arrivals, were justified on the basis that these people engaged in secondary movement, seeking a migration outcome. They were not directly fleeing persecution.

Under the Howard government’s Easter 2006 proposal, a Papuan reaching the Australian mainland, directly fleeing persecution without the use of people smugglers, would be moved to Nauru or Manus Island for processing. If we presume upon the integrity of the public servants and the decision making process, the same decision would ultimately be made and Australia would recognise the Papuan to be a refugee. Under the Refugee Convention, we could not send the Papuan back to Indonesia. No other country would have a higher duty than us to receive that person for resettlement, given that she fled directly to our shores. Just as the 42 Papuans have now settled in Melbourne after being processed on Christmas Island, so too the future Papuan asylum seeker would have to be settled in Australia.

The second idea gets Australia out of its bind with Indonesia only if the Papuan is denied asylum in Australia. Perhaps the government thinks that by moving the decision making process offshore, the process can be tampered with. Some, or all, of the 42 could be found not to be refugees if processed in Nauru or Manus Island. If those found to be refugees are to be resettled in third countries (other than Australia to which they fled directly), our government will need to offer financial incentives to poorer countries to receive them. This is people trafficking. Why else would other countries receive a handful of refugees who have directly fled to Australia seeking asylum?

History has already demonstrated that even many refugees classed as secondary movers, having engaged people smugglers, will end up being resettled in Australia once their claims have been successfully processed in Nauru or Manus Island. An extended Pacific solution is no solution at all.

Now that the government controls the Senate, we will once again have to rely on some considerate backbenchers pointing out to their colleagues on the ministerial benches, “If every country signed the Refugee Convention and adopted this policy, persons directly fleeing persecution would have nowhere to land. The Convention would be dead in the water.” Even putting principle aside, these are two bad ideas.
What is the policy objective of the Howard government in extending the Pacific Solution to all unvisaed asylum seekers arriving on Australian territory by boat?

After the Tampa wave of boatpeople from Afghanistan and Iraq had stopped, the Australian government still renewed the contracts for the maintenance of the immigration processing centres on Nauru and Manus Island, while at the same time proceeding with the construction of a new centre on Christmas Island.

The boats had stopped coming in part because there was no longer a ready market for the people smugglers in Iraq and Afghanistan, and in part because the Indonesian government had put in place measures funded by the Australian government to stop asylum seekers making secondary movements from Indonesia to Australia. The justification for the long term detention of unvisaed asylum seekers on the Australian mainland and in the Pacific centres was the need to deter people from engaging people smugglers in their desire to seek a migration outcome by means of secondary movement once they had fled their country of persecution.

In the absence of any new wave of secondary movers from Indonesia, the Australian government decided to take the arrival of one boatload of Papuans in direct flight from Papua to Australia without the use of people smugglers as the trigger for extending the Pacific solution to all unvisaed boat arrivals on Australian territory.

Phillip Ruddock is still a heavy hitter when it comes to setting Australia’s migration and border security policies. Though no longer Minister for Immigration, he sits on the Cabinet’s National Security Committee and speaks for the portfolio whenever the minister Amanda Vanstone is indisposed. It fell to Ruddock to defend the proposed extension of the Pacific solution in the wake of criticism by the UNHCR. Ruddock claims that in its implementation of the Pacific Solution Mark 2, the Australian government “will meet its international refugee protection obligations.” UNHCR Geneva has said that the Australian policy “would be an unfortunate precedent, being for the first time, to our knowledge, that a country with a fully functioning and credible asylum system, in the absence of anything approximating a mass influx, decides to transfer elsewhere the responsibility to handle claims made actually on the territory of the state.”

When Minister for Immigration, Ruddock often emphasised that the international system was not working efficiently, that it had in fact broken down, with first world countries spending inordinate amounts of money on border protection and next to nothing on supporting UNHCR and host governments in the neediest refugee camps. He thought that regional holding and processing centres could help streamline and economise the national border issues, freeing funds for channelling to the neediest refugees. UNHCR did not have the political muscle to lead co-operative international experiments so it was only appropriate that Australia experiment with its own unique problems and possibilities. At first, Ruddock sounded out Indonesia for the lease of an Indonesian island or two for the location of regional holding and processing centres.
The Indonesians were not much interested in surrendering their real estate for such purposes.

The next idea was the Pacific solution – using someone else’s islands once the asylum seekers had reached Australian territory. If the Pacific solution could be made to work without the need for refoulement, this could provide a model for other countries. All you needed was a compliant, indigent island neighbour.

It is implicitly admitted by government that the Pacific solution is premised on smoke and mirrors given that 95% of the recognised refugees have eventually ended up in Australia or New Zealand. Of the 905 recognised as refugees by August 2004, 60% of them were settled in Australia. While 531 were resettled in Australia and 335 in New Zealand, only 40 were resettled in other countries. By November 2004 when the remaining Iraqi caseload was reprocessed, all newly recognised refugees were settled in Australia. Phillip Ruddock and his fellow members of John Howard’s National Security Committee know that there are no other third countries which will take our small caseload of any Papuans who are likely to flee directly to Australia. If the international community other than New Zealand took only 40 when we had thousands of secondary movers, they will not take any when we have only a handful of direct fleers. And neither will New Zealand. Nor should they.

So what is the Howard government hoping to achieve? In relation to Papua, the government has a compound fear: the haemorrhaging of Papua with many boatloads descending on Australia, with the successful refugees then using Australia as a political base for their independence activities, thereby setting up a magnet for further Papuan flight to Australia. If there were a haemorrhage, the Pacific solution Mark 2 would be a very ineffective bandaid. The prospect of long term processing in the Pacific may put a brake on the exodus, reduce the prospect of Papuans boarding boats in the immediate expectation of making it to Australia to further their political campaign. They may think it better on balance to stay at home or simply to flee across the PNG border which they can do less perilously and more successfully if Australia increases its naval patrols. The Papuans and the Australian public have been left in the dark about how the naval patrols will conduct themselves when intercepting asylum seekers in direct flight rather than secondary movers. During Operation Relex, the justification for our navy shooting across the bows of overloaded fishing boats was that the secondary movers on board could return to Indonesia where they could get protection. This is not a possibility for Papuans fleeing Indonesian persecution.

In PNG, Papuan refugees would more readily find protection from persecution but they would not have the opportunity to use their flight as the focus for international political separatist activity. So our government thinks the long planned extension of the Pacific solution is worth a try now, accepting that any Papuans who do come our way and get processed in the Pacific will still end up in Australia. In the meantime, most Papuan asylum seekers, as previously, will decide not to come our way but will go to PNG instead. The government thinks it has nothing to lose in giving the extended Pacific solution a try now, given that they were poised to extend it once a new wave of secondary movers came from Indonesia anyway. With control of the Senate the government can legislate the extension at its whim.
In relation to any future wave of secondary movers from Indonesia, Ruddock and his colleagues know that they will ultimately have to accept any proven refugees, seeking once again the co-operation of New Zealand with the resettlement. In the meantime, they hope that a comprehensive Pacific solution will, with smoke and mirrors, help deter secondary movement and people smuggling. It will be a minor deterrent when compared with the measures and changed situations at source which have dried up the people smuggling market, as well as the well financed disruption activities and protocols now in place in Indonesia, and the comprehensive naval patrols on the high seas. Bill Farmer who had been Ruddock’s departmental head is now our ambassador in Jakarta. He is well placed to supervise the protocols in Java precluding secondary movement.

The extended Pacific solution does not provide a workable or principled alternative for many other governments whose publics more readily appreciate mutual international obligations. If every country signed the Refugee Convention and then adopted the Pacific Solution Mark 2, there would be nowhere in the world for asylum seekers to land. The Convention would be dead in the water. Ruddock has now lost sight of providing workable models for other countries. Australia is to go it alone – with smoke and mirrors. If UNHCR maintains its criticisms, it is unlikely to receive any additional funds from the government which set out to reform the international system for the processing of asylum claims so that all refugees might be given a fair go.

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