

Admiral Chris Barrie

Launching “*Refugees: Why Seeking Asylum is Legal and Australia’s Policies are Not*” by Jane McAdam and Fiona Chong

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It was a few weeks ago when I was reading my email traffic a little more carefully that I realised what looked like an occasional email from Jane McAdam was actually an invitation to launch a new book on Australian refugee issues.

Thus, today I welcome the opportunity to launch a new publication on refugee issues written by Professor Jane McAdam, Scientia Professor of Law and Director of the Andrew and Renata Kaldor Centre for International Refugee Law at UNSW, and Fiona Chong, a recent law and economics graduate of UNSW.

Professor McAdam has published many books and articles on international law and forced migration, and also is joint Editor-in-Chief of the International Journal of Refugee law.

It was almost three years ago today that I launched a book here in Sydney on a similar theme, and written by Ghassan Nakhoul from SBS radio. He, with his family, had been an escapee under artillery fire during Lebanon’s civil war in 1989. That book was titled “*Overboard: You Would Not Believe What Really Triggered Australia’s Controversial Policy On Boat People*”¹.

It drew the bulk of its material from experiences of many people who have made perilous boat trips to Australia in order to tell their stories. And, it was focussed on the circumstances of late 2001. As Nakhoul explains, “As a boat person who has been through his own baptism of fire, I can understand what it means to tango with death on the edge of nowhere”.

In his book, Nakhoul tells us that it was an interview with a people smuggler that played a key role in putting an end to boat people arrivals. The interviewer was, of course, himself. In the expose we are told that a people smuggler actually said: “If Australia doesn’t really want them, it should return the boats, just once. If they send back one boat, no one would be coming anymore. Right?”²

That same people smuggler claimed that he was doing a humanitarian thing because of the number of illegal migrants arriving in Indonesia at the time.

¹ Ghassan Nakhoul, *Overboard: You Would Not Believe What really Triggered Australia’s Controversial Policy On Boat People*, Dar Meera, Merrylands NSW, 2011

² Ibid p108

Concurrently, as I am sure many of you will know, I was the Chief of the Defence Force and thus in command of the Australian military involvement in Operation RELEX: an operation which was launched specifically to deal with an estimated several thousand people who might be on their way to Australia this way.

Moreover, to really help things along the people smugglers insisted that the asylum seekers should destroy all papers they carried to put the onus on Australian authorities to sort out their claims for protection and it is on the record I believe that some of these people claimed to be from places they had never lived in.

Operation RELEX was based on a number of important principles, which might be a surprise given the context of the day, notably the immediate aftermath of 9/11 and our initial commitment to limited military operations in Afghanistan. These were:

- First, a fundamental rule of engagement issued to all ADF forces involved was that no person should lose their life in carrying out this particular operation. This rule attached to our people, as much as it did to the people seeking asylum and even people smugglers.
- Second, there was an expectation that the launch of Operation RELEX would provide for a greater level of safety for those found at sea than had prevailed up to that time. Many of the boats that were being used for this one-way trip were in very poor condition, and invariably overcrowded. In short, the launch of a focussed surveillance operation to try and detect these boats could reduce significantly the risk of drowning at sea.
- Third, it was vital that ADF forces involved did not see asylum seekers as the enemy. Our instructions were clear. People coming to Australia in this way to seek asylum must be treated with compassion and dignity whilst we were trying to carry out the elements of Australian government policy.

After launching Nakhoul's book, I met a woman who told me she was the manager of an Arabic speaking radio station in western Sydney. She had been trying to get somebody from our Navy to go to the radio station to do some work on air to persuade young people in these newly arrived families to join the RAN. She explained that through all of the vicissitudes of getting to this country through people smuggling networks and beyond there was one organisation that stood out for the way they treated asylum seekers with dignity and compassion: these were our Navy people in the boats carrying out Operation RELEX.

Let me turn now to the themes of the book to be launched today, called *"Refugees: Why Seeking Asylum is Legal and Australia's Policies are Not"*.

The book that Jane and Fiona have written is very readable. It covers just about every kind of issue concerning asylum seeking I can imagine. And, it is plain speaking on the truth of the situation and on the treatment of asylum seekers.

It should be widely distributed. Let's say it could be distributed as an insert in our weekend newspapers, or put in the back pocket of the seats in all commercial aircraft flying on the Australian domestic network. It is a very good read, and I hope it will gain a wide readership.

As it traverses all the issues associated with Australian government policy on asylum seeking and how we treat people who seek our protection and points out the relevance of various aspects of the law to the current situation I believe very many people would be surprised at where we have come.

So, what are my major impressions from reading this book?

First, we are in a mess. The situation reflects badly on all of us; remembering that most of us at one time were brought to Australia by sea either forcibly, or voluntarily. Indigenous Australians of course often remind us that our arrival in Australia has not been a good outcome for them.

Two days ago I saw in the media a story that tells us how this is so³. It referred to the Immigration Minister's written briefing to the Parliament: we are told that the Abbott government has sent one asylum seeker back to Syria and several others back to Iraq through voluntary return packages last month while at the same time setting aside 4400 resettlement places under its current humanitarian program for Iraqis and Syrians affected by the current crisis.

Altogether last month 412 asylum seekers from Australian detention centres and the offshore detention centres on Manus Island and Nauru had been returned, including one asylum seeker from Syria, six Iraqis and 48 Iranians. Yet on Sunday, Mr Morrison warned of the dangers in both Syria and Iraq when discussing Australia's role in fighting increasingly real terrorist threats and the risk about what is happening in Iraq, in Syria (and what it means for Australia).

We are advised that the Immigration Department has been offering voluntary returns to Syrian refugees since February. Earlier this year monetary offerings were increased to remove any "barriers" from asylum seekers going back to their country of origin. Right now there are 2393 asylum seekers who are being held in Manus Island and Nauru.

Second, it seems to me on reading this book that we are doing our utmost to extinguish HOPE! HOPE – that most powerful of all human emotions. Yet here, we are all of us in a country of so-called fair minded people - yet it seems we don't want to hear, or see what we are doing in our name in the context of asylum seekers, or have we so demonised these people that we think of them as sub-human? Just as we demonised the enemy in Vietnam

³ <http://www.smh.com.au/federal-politics/political-news/syrian-asylum-seeker-sent-back-under-governments-voluntary-program-20140901-10ayt2.html#ixzz3CDqNiZkX>

so many years ago (so we could pretend that what we did to some of these people did not matter), here we may be doing the same thing inside our very own communities.

As I was looking for a barometer on this question I found an emotional, and disturbing, essay written by Chris Tsiolkis, author of *"The Slap"*, in *"The Monthly"* last year entitled "Why Australia Hates Asylum Seekers". In it he sets out a range of concerns covering these kinds of matters, and accuses us of racism⁴. I do not have time to go through all of his article though I commend it if you have not read it. This extract will suffice:

"Our governments and press have demonised boat people for 15 years...We have failed. You can't rewrite this recent history, centred on the abandonment of a bipartisan agreement on immigration policy and multiculturalism, a reactionary moment that stretches from One Nation to *Tampa* to the "Stop the Boats" sloganeering to the PNG solution.

"We haven't had the discussion about challenging racism in this country."

There can be no doubt that the very great majority of people who come to Australia using people smugglers are leaving desperate situations behind them by choice under trying conditions and seeking hope for themselves: or more especially their children. So it is disturbing to read in this book for today how the current methods for dealing with these people will lead to a situation in which they can be incarcerated forever, without any hope of a fair trial or treatment that we would accord even to violent criminals in our jails.

Third, the words mandatory detention, which have been a characteristic of Australia's treatment of asylum seekers since the Keating government introduced it in 1992, is a euphemism for some of the worst jails we can think of. I'm not sure that we should continue to use the term "mandatory detention" when we actually mean "jail". At least in Australian jails the incarcerated have rights of access to legal support and representation. In these "jails" no such rights exist.

Much of the current accepted treatment of asylum seekers stems from the way we have politicised the issues; our political parties have used them in point scoring exercises from one government to another. Tsiolkis has a deal to say about this aspect. Of course, none of these people can be represented and thus prevent what I now describe as the demonising of these people by this process.

Finally, under current circumstances I see no exit strategy from any of the processes we currently use that will take the monkey off our back in terms of cost to the taxpayer, nor assure Australians of a good outcome in terms of future economic prospects, and indeed beavering helping to balance the budget books. The current operation "sovereign borders" and associated mechanisms for managing asylum seekers and processing people to find new

⁴ Tsiolkis, Chris. "Why Australia Hates Asylum Seekers". *The Monthly*, September 2013

homes does seem to me to be outrageously expensive for a country that was built on immigration.

Looking to the future I ask myself these questions. Will this problem disappear and at what point would we be able to stop conducting operation sovereign borders? Well just look at the facts:

- Few countries in our region are signatories of the Refugee Convention and the Protocol; Australia and PNG being notable exceptions. Interestingly, on the index of world corruption Australia ranks at ninth in the world and PNG about 144/175 which means that much of our money to support the Manus Island detention centre may end up fostering personal bank accounts in PNG. And Cambodia is even more corrupt ranking 160/175.
- Costs are enormous. According to the National Commission of Audit in 2014 the government spent \$3.3Bn on the current system of detention and processing asylum seekers – the fastest growing government program on the books with projections over forward estimates amounting to more than \$10Bn.
- The numbers of people seeking asylum in Australia will become more and more staggering. In today's world UNHCR's 2013 report estimated there to be at least 1.067 million asylum seekers globally, representing an increase of 15% over the 2012 report. Germany is the country with the highest number of claims at 109,600 and also the largest increase at 70%. Let us now imagine in a world of nearly 10 billion people, with an increasing numbers of people displaced by natural disasters and the impacts of climate change as well, and an ongoing global security problem, how many people do we think will want to come to Australia? In my view not just one or two...

My point is that we will be under a lot of pressure into the foreseeable future to find satisfactory answers for this problem, and we should be working on it right now. It is a leadership question for Australia.

We must continue to work on making better countries for people to live in for their protection. But a read of any newspaper today cannot give any confidence that we any viable solutions for solving this problem.

We often need to remind ourselves about just how hard it is for people to leave their country of birth and seek protection and hope in another country. A tough choice by any standard.

Finally, let me tell you a story of a young man I met during a meeting with Prime Minister Gillard's expert panel. He was an Hazara from Afghanistan. During the panel meeting he told us how the Taliban had made it known that he would become one of them, or be shot. In response he was able to flee Afghanistan and make a journey to Australia in a people

smuggling operation. He told us about his experience of the journey; the security of the operations was impressive showing that people smugglers are not amateurs.

I asked him how he came to know who to talk to enter a people smuggling operation. His answer was that he had no knowledge of how to get in touch with people smugglers, it was in fact his parents who put him into the queue, and paid the money for him. He also said that his younger brother, in turn, had received a similar threat from the Taliban, and his brother had been smuggled into Iran. This story demonstrates some of the complexities in trying to deal with this issue. None of us who are parents would doubt for one minute the motivations of that young man's parents. But there are not many choices when push becomes shove!

I presume many of you here are associated in the work of trying to secure a better deal for asylum seekers who seek protection in Australia. I commend you all for doing the kind of work Australians ought to be proud of. I am also sure that the work can be rewarding when you see lives successfully transformed by the HOPE generated by the opportunity to have a fair go!

Now it gives me a great deal of pleasure to launch the book *"Refugees: Why Seeking Asylum is Legal and Australia's Policies are Not"*. And, may I take this opportunity to applaud the work of Professor Jane McAdam and all the staff at the Andrew and Renata Kaldor Centre for International Refugee Law at the University of New South Wales as well as Andrew and Renata Kaldor themselves for a fine philanthropic gift to the nation.

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