

REPELLING THE TAMPA – A DEBACLE FOR AUSTRALIA

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Any foreigner who has a well founded fear of persecution in his or her own country for any reason to do with race, religion, political opinion or membership of a particular social group is entitled by international law to which Australia is a signatory, and by Australian domestic law, to a protection visa. These rights are a world standard which govern the conduct of all civilised nations and is a standard by which the world measures their moral standing.

The bungling by the Federal Government of the handling of the arrival of the MV Tampa and the repelling of its Afghan asylum seekers has been a debacle for Australia. This sorry and expensive saga has seen sky rocketing costs to the taxpayer, a distraction of our armed forces from their proper function, serious damage to our international reputation and a betrayal of important legal principles and parliamentary conventions.

Because the Tampa saga represents a departure from that morality, the damage to Australia has been immense. People in Australia and other civilised countries can easily see behind the deceptive, shallow and unsustainable rhetoric which falsely categorised the Tampa asylum seekers as queue jumpers displacing the positions in the queue of needy refugees.

The justification for the extraordinary military operations and the raft of retrospective laws is hollow and false.

The suggestion implicit in Mr Howard's rhetoric that the Afghans should leave their country and walk across Pakistan to Islamabad and apply at the Australian Embassy similarly obfuscates the truth. Even for those who make it there have been reports of complaints of Pakistani staff asking for bribes. The Immigration Office in Pakistan has been so under resourced that in 1999 it appealed for refugees not to approach it for resettlement as such applications clogged the other work it did. As for the



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notion of there being orderly queues for orderly overseas acceptance, it is to be observed that there are no queues in Afghanistan and Iraq for people to jump.

So the precious offshore application system insisted upon by the Federal Government doesn't necessarily help the neediest at all. Those who flee in leaking boats are not taking away places from needier people. Like we saw in Darwin with Cambodian refugees, many of whom eventually returned to Cambodia to occupy senior positions in the new democratic Cambodian government, the queues exist only in the minds of Canberra bureaucrats and cheap divisive political slogans.

At a cost of over \$20 million per week, the Federal Government has repelled 450 odd asylum seekers who are in fact the human faces of misery fleeing the persecutory Taliban regime. These are the people opposed to, and rejected by, the Taliban. They are the intellectuals, the middle class, the women who want their daughters to read. These people given asylum now, are likely to form part of the new society we all hope will be created in a new Afghanistan. The supreme irony is that if, in an effort to assist the war against terrorism, US

President George Bush requested it, Australia would not hesitate to accept thousands of the same type of Afghan refugees.

And at what cost?

- Damage to our international reputation as a fair and humanitarian country. The reaction to the Tampa incident has been widespread and damaging for Australia as a world player and its long term interests.
- Damage to our relationship with Indonesia and in the region. Without Indonesian and regional cooperation in addressing causes of why people flee Australia is effectively impotent to stem the flow.
- Costly distraction of Australia's military forces from their designated strategic and military functions to what should be civil and police functions.
- Damage to fundamental legal principles – mandatory sentencing at a Federal level for the first time with hardly any debate. Mandatory sentencing was a practical failure in the Northern Territory and will inevitably fail in migration law – the

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increase in penalties from two to 10 to 20 years maximum penalty has not deterred the people smugglers but is putting increasing numbers of gullible, poor and unsophisticated Indonesian fishermen in Territory goals. Mandatory sentencing of people smugglers is not going to make one iota of difference. The big fish do not get on the boats and are thereby effectively immune from what is urgently needed is international cooperation in making people smuggling an international crime.

- Australia has unilaterally restricted the internationally accepted definition of who is a “refugee”. Inevitably, fewer genuine refugees can be accepted by Australia as a result. No longer can Australia’s international undertakings be taken seriously if it unilaterally restricts its international convention obligations.
- Access and review by the courts has been almost eliminated, save for the constitutionally enshrined jurisdiction given to the High Court of Australia. Judicial review acts as an independent source of scrutiny for all Australians. This is a potentially dangerous precedent. Today’s restriction of judicial review in migration could be tomorrow’s restriction in other areas of the law which affects citizens’ daily lives.
- The Howard government has rammed through Parliament, seven pieces of hastily conceived retrospective legislation which deem executive power to extend beyond anything Parliament enacts when it comes to the removal from Australia of persons for border protection purposes. So much for international law and human rights. Just as “Canberra bashing” has been a rich source of the politics of divisiveness, so now is “world bashing” going to be Mr Howard’s equivalent. It is a sad commentary on Territory affairs that “Canberra bashing” may yet be remembered as the Territory’s most infamous export.

- Worst of all, Federal Parliament itself has shown its impotence as a forum for debate. The seven hastily cobbled together legislative amendments, by-passed Parliamentary committee and any effective scrutiny in the national interest. Retrospective legislation, long frowned on as undemocratic and unfair by Australian standards has been accepted as being OK. A worrying precedent is now set. Accepted norms of decent behaviour have been overrun. These norms work for all Australians. They should not have been sacrificed for a small number of boat people.

All the evidence points to a tragic knee jerk reaction which again simply attacks the symptoms of and not the causes of why people flee oppressive and extremist regimes.

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Important lessons have not been learnt. The trickle of Cambodians who arrived in Darwin in 1990 - 1992 and who fled the return of Pol Pot and his track record of genocide was a valuable lesson in how to stop asylum seekers arriving on our shores. What saw the end of the Cambodian boat people risking their lives on voyages on leaking and unseaworthy boats for asylum in Australia was not military style interceptions at sea but, the Australian and Indonesian led regional response to rebuilding Cambodian society and addressing the source of the problem. When the regional community helped make Cambodia safe, the refugees stopped.

The problems of the global movement



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of people are complex, but are invariably sourced to the breakdown or the collapse of particular societies. We have seen it in Bosnia, Rwanda, Tibet, Iraq, Afghanistan and East Timor.

The unrequited right to self determination has been productive of great cruelty and exodus despite all the heroic efforts of the United Nations and individual countries like Australia to lighten the load of human misery. The Afghans are victims of monstrous cruelty and persecution. We need to revisit international law principles and remedies to deny recognition of states which act grossly in contravention of international human rights standards and in extreme cases, as with Afghanistan, to remove the regimes responsible.

But, of course, there is an election coming up. Sadly for Australia, principle so often gets trashed to advance the interests of power. The Federal Government will end up rueing the day it betrayed so many principles so fundamentally for no gain, because to some, maintaining electoral power is a means to an end. What is bad in principle ends up being bad politics.

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