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Intercepting boat arrivals: What the Australian policy model means for Canadian asylum policy

By Heather L. Johnson

The arrival of Sri Lankan asylum seekers on the *MV Sun Sea* has prompted intense debate about the effectiveness and appropriateness of Canada's asylum seeker determination system. In drawing parallels with the Australian experience, Canadian policymakers have been eyeing its evolving migration and border control policies as a possible model for Canada. But is it the right model? Johnson contends that Australia's pursuit of offshore processing and interception has undermined the international refugee regime and may not be the best model for Canada after all.

The *MV Sun Sea* arrived in Canadian territorial waters off the coast of British Columbia on August 13, 2010. It was boarded by the RCMP and the Canadian navy and escorted to CSB Equimalt near Victoria, where the ship and its 'human cargo' of 490 Tamil asylum seekers ended a gruelling, months-long journey from Sri Lanka and sparked a fierce debate about the effectiveness, and appropriateness, of Canadian refugee policy.

As characterized by Raveena Aulakh in the *Toronto Star* on August 16,

Angry people from across the country have accused the asylum seekers of jumping the immigration queue, being associated with Tamil Tigers – an organization banned by many countries, including Canada – and of being a burden to Canadian taxpayers.¹

The arrival of 'boat people' on Canadian shores is not a reg-

ular occurrence, but when they do arrive, they ignite a public outcry. Similar reactions were evident after the arrival of 174 Sikhs in Nova Scotia in 1987, of 600 Chinese in Victoria in 1999, and of 76 Tamils on the *Ocean Lady* in Vancouver in October 2009, less than a year before the arrival of the *Sun Sea*. A shift has occurred since the 1970s, during which the original "boat people", Vietnamese refugees, were officially welcomed by the Canadian government and met a much more positive reception from the Canadian public. We are not unique in this shift; similar anger, fear and panic is now evident in public debate in European Mediterranean states such as Spain, Greece and Italy, in the United States and, perhaps most notably, in Australia.

Comparisons with Australia were almost immediate after the arrival of the *Sun Sea*, as both commentators and public officials asked whether Canada should look towards Australia as a policy model. "Canada could become the next Australia."



About The Author

Heather Johnson is in the final stages of her doctoral work in Political Science at McMaster University. Her dissertation, entitled *Borders, Asylum, Agency: Re-Imagining Global Non-Citizenship* investigates the politics of political agency and non-citizenship for refugees and asylum seekers as they encounter border control regimes in Tanzania, Spain, Morocco and Australia. Heather teaches at McMaster University, the University of Guelph and Trent University, and is an external researcher with the York Centre for International Security Studies (YCISS). She also sits on the executive for the Canadian Association for Refugee and Forced Migration Studies (CARFMS).



lia,” suggested Martin Collacott, the former High Commissioner to Sri Lanka, in an August 12 National Post commentary. In the same piece, author Kevin Libin argued:

Like Australia, which faced increasing waves of human-cargo ships in the 1990s until harder-nosed, but divisive policies were adopted, Canada is gradually confronting the difficult challenge of how to maintain a coastal haven for the world’s truly desperate while keeping its immigration and refugee system from being overwhelmed by those who would exploit it for profit or worse.²



The MV Sun Sea arriving to Canadian shores in August 2010 with asylum seekers from Sri Lanka. (Credit: MCpl Angela Abbey, Canadian Forces Combat Camera, 2010 DND-MDN Canada)

Collacott made a similar suggestion on CBC’s “The Current”: that Canada look to Australia as a policy model in examining options for the offshore processing of asylum seekers and the development of regional partnerships in migration control.³ Further suggestions have been made, in the media and in government circles, that Canada and Australia should investigate a bilateral partnership in migration control in the Pacific. Others include a more regional approach, possibly through Canada’s ‘dialogue partner’ status in the ASEAN fora or through more significant participation in the Bali Process, a multilateral initiative co-chaired by Australia and Indonesia designed to combat people smuggling in East Asia.

While Canadian policymakers have been examining Australia as a model for Canada’s asylum seeker determination system, I argue that Australia’s pursuit of offshore processing and interception, facilitated by both bilateral and regional relationships, has undermined the international refugee regime. The leadership role that Australia has taken in the Asia-Pacific region towards regulating migration focuses

upon the criminalization of human smuggling and emphasizes border control and security over humanitarian considerations. The consequence is criminalization of the migrants themselves, with their asylum claims delegitimized based on their mode of travel rather than by the substantive facts of their case, as is required by international refugee law. Moreover, it has delegitimized the humanitarian and rights discourse of protection and marginalized the voices and experiences of migrants themselves.

AUSTRALIA’S MIGRATION AND BORDER CONTROL POLICY

Boat Arrival Numbers in Australia (1989-Present)		
Year	No. of Boats	No. of People (excludes crew)
1989	1	26
1990	2	198
1991	6	214
1992	6	216
1993	3	81
1994	18	953
1995	7	237
1996	19	660
1997	11	339
1998	17	200
1999	86	3721
2000	51	2939
2001	43	5516
2002	1	1
2003	1	53
2004	1	15
2005	4	11
2006	6	60
2007	5	148
2008	7	161
Year	No. of Boats	No. of people (includes crew)
2009	61	2849*
2010 (20 Sept 2010)	96	4822

Notes:
 Data from 2001–02 onwards includes arrivals at both excised and non-excised places.
 *Includes the 5 people killed following an explosion on board a boat on 16 April 2009, but does not include the 2 men found drifting in an esky in the Torres Strait on 17 January 2009, or the 4 people found on Deliverance Island with no sign of a boat on 29 April 2009. 2009–10 figures include the 12 people who died when a boat sank on 1 November 2009, but do not include the 78 asylum seekers on board the Oceanic Viking intercepted in Indonesian waters in October 2009 or the 5 who reportedly drowned before a boat was rescued and towed to Cocos Islands in May 2010.

Source:
 Janet Phillips and Harriet Spinks, “Number of Boat arrivals in Australia since 1976” Background Note, Parliament of Australia Parliamentary Library, 23 Sept 2010. www.aph.gov.au/library/pubs/bn/sp/boatarrivals.htm#_Toc233686295



Australia has been a leader in migration and border control policy since the early 1990s, taking innovative and restrictive approaches to migration control that have set the trend for policy-making in many Western countries, particularly within the emerging asylum framework of the European Union and the development of “Fortress Europe.”⁴ Framed by the 1958 Migration Act, Australia’s policies and practices been conditioned by its geographical reality. As an island, Australia is insulated from overland migratory flows, which facilitates strong border control possibilities and produces an emphasis on offshore practices. Australia’s proximity to Asia and isolation from Europe, meanwhile, has also conditioned its policy response, generating a popular and political fear of “invasion” from its neighbours. This fear formed the basis of the “White Australia” immigration policy, in place from 1901 to the late 1960s. Although this policy was replaced by a points-based system similar to Canada’s, this vulnerability to unwelcome migration continues to shape Australia’s policy identity. Migration control is the overwhelming objective of Australian policy, and while neighbouring states are no longer the explicit ‘problem’, they are expected to cooperate as active partners in preventing unauthorized migration.

wards the quota (which is a maximum, not a minimum and is not met each year) and are not an accurate measure of the number of boat arrivals, or of their acceptance. Thus, for every onshore applicant who receives asylum, one fewer refugee from abroad is resettled in Australia. This tends to give political credence to the notion of “queue jumping” – that onshore asylum seekers are somehow abusing the system and not waiting for “their turn” in the protection regime.⁶ These claims are echoed in the recent Canadian public discourse, and underscore the reaction to the arrival of the Sun Sea.

The theme of control has dominated Australian policy development. Australia’s external policies took shape under the regime of Prime Minister Howard (in office from 1996-2007). Its driving focus is summed up by Howard’s 2001 election slogan: “We will decide who comes to this country and the circumstances in which they come here.”⁶

AUSTRALIA’S “PACIFIC SOLUTION”

It was in this context that the August 2001 arrival of the *MV Tampa*, carrying 433 rescued asylum seekers, was dubbed the “Tampa Crisis.” Shortly after, the Howard government

New Asylum Applications Lodged in Selected Industrialized Countries, 2010

Country of Asylum	Jan-Oct 2010	Total 2009**
Canada	17 150	33 251
USA (DHS)	30 500	35 725
United Kingdom	16 325	29 840
Sweden	22 584	24 194
France	33 928	41 981
Germany	31 723	26 836
Greece	8 965	15 928
Italy	1 517	2 689
Australia	7 009	6 174
New Zealand	267	336
Spain	2 000	2 999
Japan	471	1 384
Rep. of Korea	264	324

Source: Field Information and Coordination Support Section/UNHCR Geneva, November 30, 2010

**Total is based on monthly data. May differ from final annual figures published by States due to retroactive changes.

Australian academic William Maley characterizes the Australian position as “a bizarre panic” over boat arrivals.⁵ While the Australian refugee resettlement program is relatively generous, with an annual quota that has remained around 12,000 for the past decade, it is married to a restrictive border regime designed to deter asylum seekers (or ‘onshore claimants’). However, the refugee and humanitarian quota program makes no distinction between onshore applicants and resettled refugees from their countries or regions of origin or asylum. As a result, measurements of asylum in Australia reflect a flat and then upward trend to-

instituted what came to be known as the “Pacific Solution.” Australia’s outlying islands were excised from the “migration zone.”⁷ This move prevented those who arrived on excised territories from making an asylum claim in Australia. Instead, asylum seekers were relocated to offshore detention and processing centres in so-called “declared countries.” A series of bilateral arrangements were made with countries such as Papua New Guinea and Nauru to facilitate Australia’s newly tightened border control. In exchange for development assistance, these countries agreed to host asylum seekers, at Australia’s expense and with the International

Organization for Migration (IOM) managing the centres, until their claims were assessed by the UNHCR and they could be either deported or resettled.

Complementing the Pacific Solution, and making a significant contribution to a decrease in boat arrivals, was Australia's 'special relationship' with Indonesia, which unlike Papua New Guinea and Nauru who accepted asylum seekers after they migrated to Australia, has taken responsibility for preventing migration in the first instance. In 2001 the Australian Defence Force was given direction from the Federal Cabinet, initially to only "detect, intercept and warn vessels carrying unauthorized arrivals for the purpose of deterring SIEVs (Suspected Illegal Entry Vessels) from entering Australian territorial waters" but subsequently to also tow SIEVs back to Indonesian territorial waters.⁸ The Australian government claims that Indonesia is the first country of asylum

to any undocumented migrant seeking protection, thereby deflecting any responsibility.

This claim reflects a regional cooperation agreement signed in 2000 between Indonesia, Australia and the International Organization for Migration (IOM) under which asylum seekers are to be prevented from leaving Indonesia, but are provided with food, accommodation and emergency care by the IOM at Australia's expense. The 2000 agreement does not provide for migrants who have successfully left Indonesia and who are then returned; indeed, Indonesia views this "push-back" as a violation of Australia's regional obligations. Indonesia has frequently expressed frustration and anger at being treated as a "trash bin" for Australia's asylum seekers, threatening at times to deport returned migrants back to their country of origin regardless of what danger may exist.⁹ To date, these threats have not been carried out, although

Timeline: Evolving Australian Policy Toward Asylum Seekers and Refugees

1901	<ul style="list-style-type: none"> Immigration Restriction Act constructs "White Australia" policy
1958	<ul style="list-style-type: none"> Migration Act drafted; visa required for all foreigners
1972	<ul style="list-style-type: none"> End of "White Australia" policy; introduction of an immigration point-system
1979	<ul style="list-style-type: none"> Orderly Departures Program established with Thailand and Malaysia to prevent unauthorized migration of Vietnamese boat people
1982	<ul style="list-style-type: none"> Only 520 onshore applications made between 1982 and 1984
1989	<ul style="list-style-type: none"> Boat arrivals increase. By 1991 over 27,000 asylum seekers (particularly from Cambodia) arrive by boat
1991	<ul style="list-style-type: none"> Detention centre established in Port Hedland
1992	<ul style="list-style-type: none"> Migration Amendment Act establishes mandatory detention for unauthorized arrivals
1999	<ul style="list-style-type: none"> Migration Act amended to establish Temporary Protection Visa (TPV) for unauthorized arrivals Border Protection Amendment Act establishes the "safe third country" rule; enables rejection of asylum claims based on prior migration through countries deemed "safe"
2000	<ul style="list-style-type: none"> Regional Cooperation Agreement signed with Indonesia, giving the responsibility of prevention to Indonesia
2001	<ul style="list-style-type: none"> Navy instructed to escort SIEVs (Suspected Illegal Entry Vessel) back to Indonesian waters "Children Overboard Affair"; asylum seekers accused of throwing children overboard from undocumented boats SIEV-X (Suspected Illegal Entry Vessel #10) sinks, killing 353 asylum seekers onboard and leaving only 45 survivors. Australia and Indonesia dispute responsibility. Pacific Solution launched, framed by agreements with Papua New Guinea and Nauru Amendments to the Migration Act excise outlying islands from the "migration zone" Bali Process launched Only two boats and 57 asylum seekers successfully reach territory not excised from the "migration zone" between 2001 and 2007
2007	<ul style="list-style-type: none"> Pacific Solution cancelled
2008	<ul style="list-style-type: none"> Temporary Protection Visa regime cancelled
2010	<ul style="list-style-type: none"> Prime Minister Julia Gillard announces plan to revitalize elements of the Pacific Solution in wake of new boat arrivals

public denunciations of Australian policy as in violation of international treaties persist.

The Pacific Solution and bilateral relationships cultivated by Australia reflect an unbalanced relationship, characterized by Australia's provision of needed assistance in exchange for containment and interception of undocumented migrants. The Rudd Labour government cancelled the Pacific Solution in 2007, but increased boat arrivals in the winter of 2010 has led Rudd's successor, Julia Gillard, to announce that she will be revitalizing certain (as yet undefined) aspects of the policy.

The ideas that underscored the Pacific Solution – control, deterrence, and an emphasis on security – have not only de-emphasized, but also delegitimized humanitarian concerns in regional border policy. The Australian response to regional migration patterns and to boat arrivals has not been to enter discussions about humanitarian obligations, but is instead framed in terms of security, threat and criminality. Humanitarian concerns are presented as undermining security considerations; recognizing the human rights of migrants, for example, is understood to increase the attractiveness of undocumented migration, eliminating deterrence. Further, by crossing borders without permission, undocumented migrants are seen to be evading the 'legal' selection processes established by the state and are therefore cast as potential terrorist or criminal threats.¹⁰

REGIONAL EFFORTS IN MIGRATION CONTROL

To date, multilateral efforts to cope with the challenges of irregular and asylum migration within East Asia have achieved little beyond enhanced information sharing. The regional context of unauthorized migration (and Australia's understanding of it) is driven by concerns over "transit migration" – migration undertaken by asylum seekers, usually from other regions of origin, through East Asian states to reach a final destination in Australia, New Zealand or, sometimes, North America. The Pacific Islands in particular are seen as transit countries for this kind of irregular migration. While the Pacific Islands Forum is formally responsible for addressing transit migration, its efforts are hampered by a lack of technology and related infrastructure to effectively police borders, reducing the PIF to an information sharing role. In 2001 the Expert Group Meeting of the ASEAN Regional Forum (ARF) identified undocumented migration as a matter of common concern with "serious economic, social and security implications to the Asia-Pacific region." However, this, too, has been limited to information sharing efforts. As a result of the difficulties regional institutionalized responses face, both Australia and New Zealand have been engaged in capacity building partnerships with regional states, providing funds and technology to strengthen border controls in other countries as part of their own national security policies.

The series of boat arrivals in Australia that originated in In-

donesia, led to the establishment of the "Bali Process", co-chaired by Australia and Indonesia. The Bali Process differs from the efforts of other regional initiatives because it is not an institutional response to human trafficking, but rather a trans-regional coordination of policy focused upon more effective policing of smuggling and trafficking, and greater border control. The result of this focus is that the way people migrate and cross borders, and not their protection needs, has become the object of policy coordination. By characterizing the 'problem' as one of human smuggling, the migrants themselves have been criminalized. This results in an almost a priori delegitimation of their asylum claims, and fundamentally robs them of political voice, without which they cannot challenge the discourse or norms of the regime.

The Australian Pacific Solution exists in the context of the Bali Process. This connection is often unremarked, as on the surface they seem to relate to two separate issues: the Pacific Solution was designed around the processing of asylum seekers, and the Bali Process and its associated working groups focus on human smuggling and trafficking. However, it must be recognized that the asylum seekers caught within the framework of the Pacific Solution were characterized as "unauthorized arrivals" to Australian territory, and often their arrival had been facilitated through smuggling networks. In this, they became the objects of Bali Process initiatives. The two issues are in fact two sides of the same coin.

IMPLICATIONS FOR CANADIAN POLICY

This shift towards an evasion of responsibility and an emphasis on control evident in Australia's policies is becoming more present in the Canadian discourse which views Australia as a policy model. Discourse referring to the fear, threat and perceived need to "stop" migrants present in Australia has begun to emerge in Canadian public debate in recent months. More important, however, are the emerging policy parallels.

Bill C-49: Preventing Human Smugglers from Abusing Canada's Immigration System Act parallels many Australian policy initiatives designed to emphasize deterrence and prevention. Introduced on October 21 2010, the Bill allows the Minister to designate as "irregular" the arrival of a group of persons, who would then be subject to special rules. Of particular note is the mandatory detention of designated persons without review by the Immigration Review Board for twelve months. Rights to appeal and review are extremely limited, and individuals cannot make an application to either permanent residence or to a humanitarian and compassionate visa for five years. These measures parallel the strict provisions within Australian policy, and criminalize and punish the migrants themselves. The Canadian Council for Refugees, Amnesty International and other agencies have all expressed deep concern that the new legislation punishes refugees and unconstitutionally limits access to Canada's asylum system.

The Australian model has also come to shape policy cooperation between Canada and its Asian partners. Quiet discussions of offshore processing and interception measures are reported to have been opened. Jason Kenney, Canada's Immigration Minister, stated that "Canada has significantly increased its co-operation with authorities in southeast Asia in an attempt to pre-empt human smuggling to Canada." This cooperation has allegedly resulted in the arrest of more than 150 Tamil migrants in Thailand who were allegedly en route to Canada. In what is a possible contravention of international law if verified, Canadian authorities reportedly cooperated with Thai authorities in the arrests and upcoming deportations. Refugee advocates argue that Canada is evading its international legal obligations under refugee law by potentially returning asylum seekers and migrants to a situation of persecution in Sri Lanka. What these arrests would also represent, however, is an increasing partnership with Southeast Asian states in Canadian border security initiatives.

Both here in Canada and in Australia, much of the rhetoric that surrounds restrictive "anti-smuggling" measures is justified in terms of "protecting" the asylum seeker from exploitation by smuggling. This discourse allows border security to find apparent justification in humanitarian considerations. However, it fails entirely to recognize that tightened border security, and the resulting diminishing access to asylum procedures, is often what compels migrants to turn to smuggling in the first place. These policies represent what legal scholar Savitri Taylor characterizes as the "problematic objective of not providing protection to any asylum seeker except when no other alternative exists." This fundamentally undermines the provisions of international refugee law, casting asylum seekers as criminals and prioritizing border security over protection obligations. Framing the debate as we have been tends to mask the erosion of humanitarian law and responsibility in the name of a vaguely determined threat. Human smuggling is dangerous and exploitative, and is frequently driven by organized crime. Seeking asylum, regardless of the mode of entry or travel, is not.

¹ Raveena Aulakh, "Tamil asylum-seekers spark Canadian vitriol, anger." *Toronto Star*, August 16 2010.

² Kevin Libin, "What Australia can teach us about the Tamil asylum seekers." *National Post*, Aug 12 2010.

³ CBC Radio 1, "The Current" August 20 2010.

⁴ For further reading, see: Alexseev, Mikhail A.. (2006) *Immigration Phobia and the Security Dilemma*. Cambridge: Cambridge University Press.; Geddes, Andrew. (2003) *The Politics of Migration and Immigration in Europe*. London: SAGE Publications.; Schuster, Liza. (2005) "A Sledgehammer to Crack a Nut: Deportation, Detention and Dispersal in Europe" *Social Policy and Administration* 39:6.; Lavenex, Sandra. (2006) "Shifting up and out: The foreign policy of European immigration control" *West European Politics*, 29:2.

⁵ William Maley, "A new Tower of Babel? Reappraising the architecture of refugee protection." In Newman, Edward and Joanne van Selms. *Refugees and Forced Displacement: International Security, Human Vulnerability, and the State*. New York: United Nations University Press, 2003. p. 314.

⁶ Matthew Gibney, *The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees*. Cambridge: Cambridge University Press, 2004. p. 185.

⁷ This redefinition of the migration zone was part of the Border Protection Act 2001. It is important to note that this was not, in practice, an abdication of sovereignty over these territories but rather a re-bordering practice undertaken by the Australian government. Asylum seekers who landed on Australian territory outside of the 'migration zone' were denied access to the Australian mainland until after their status had been determined (if then). They were, instead, redirected to a designated country for offshore processing.

⁸ Savitri Taylor, "Protection Elsewhere/Nowhere." *International Journal of Refugee Law* 18:3 (June 2006). p. 294.

⁹ Taylor 2006, p. 294-296.

¹⁰ See: Michael Humphrey, "Refugees: An endangered species?" *Journal of Sociology* 39:1 (2003).

¹¹ Ralph Emmers, Beth Greener-Barcham and Nicholas Thomas, 'Institutional Arrangements to Counter Human Trafficking in the Asia-Pacific' *Contemporary Southeast Asia* 28,3 (2006) p. 502.

¹² A Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime was convened in February of 2001, bringing together thirty-eight countries from the Asia-Pacific, North America, and Europe as well as several agencies (including the IOM and the UNHCR) and NGOs.

¹³ Ralph Emmers, Beth Greener-Barcham and Nicholas Thomas, p. 503.

¹⁴ A workshop addressing protection and asylum issues for the first time was convened in June 2010 in Indonesia. The findings of the workshop suggested a need for greater regional consistency in order to counter irregular migration. Again, the issue and discussion is framed in terms of control and security, and not protection. ("Workshop on Protection, Resettlement and Repatriation" The Bali Process. Bali, Indonesia. 7-8 June 2010. <http://www.baliprocess.net>.)

¹⁵ See: Canadian Council for Refugees, "C-49 – anti-smuggling or anti-refugee?" <<<http://ccrweb.ca/en/c49>>>; Amnesty International, "Anti-Smuggling Legislation Violates Refugee Rights - Media release" 22 October 2010.

<<http://www.amnesty.ca/resource_centre/news/view.php?load=arcview&article=5662&c=Resource+Centre+News>>

¹⁶ CBC News, "Tamil migrant arrests hailed by Kenney" Oct. 29 2010. <<<http://www.cbc.ca/canada/british-columbia/story/2010/10/29/thailand-tamil-arrests.html#ixzz17M8uY2nD>>>

¹⁷ Freeze, Colin. "Canada aids in Thai arrest of Tamil migrants" *The Globe and Mail*, October 11 2010.

¹⁸ Freeze 2010.

¹⁹ Taylor, 2006. p. 300.

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