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AUSTRALIA AND ASIA—REFUGEE PRACTICES AND POLICIES

Jo Coghlan and Robyn Iredale

The demise of the old European empires and the rise of the modern nation state meant that masses of people were displaced by the new boundaries and new principles of the nation state. Mass migration, forced or voluntary—a consequence of the nationalist or ethnic makeup of many new states—created the modern refugee. Refugees are people who have been forced to leave their homelands because of a well-founded fear of persecution or a threat to their survival or that of their immediate families. International laws were developed to protect those not protected by their own governments or who came under threat because of the actions and policies of their own governments. The conviction that the international community has a duty to protect refugees was recognised by the League of Nations. When the United Nations replaced the League in 1945 it accepted the collective obligation of states to take responsibility for those fleeing persecution or danger. Accordingly, the UN General Assembly in 1946 adopted a resolution that laid the foundations for international refugee protection laws.

International refugee protection law developed its judicial frameworks primarily in response to the tragedy in Europe following the Second World War, and in response to a Europe divided by the Iron Curtain. The International Refugee Organisation emerged with a commitment to assist the 20 million European refugees displaced because of the war. Its initial objective was repatriation, but its focus quickly shifted to resettlement—particularly of those who had a valid objection to being returned home. The organisation was replaced by United Nations High Commission for Refugees (UNHCR) in 1951. In 2000 UNHCR High Commissioner Sadako Ogata looked back at its foundation: The body of international law built half a century ago to protect what, with a contemporary term, we could call ‘human security’, was a wise combination of universal values and operational tools. This has allowed the humanitarian agencies of the United Nations, the Red Cross movement and NGOs to work effectively on behalf of disadvantaged people.¹

This internationalisation of ‘human security’ was originally mandated to the High Commissioner of the UNHCR for a three year period. This reflected the view that refugee movements were a ‘transitory phenomena

1 Speech at a meeting hosted by the National Human Rights Commission of India and the Indian Council of Social Science Research, New Delhi, 5 May 2000, available on UNHCR website, <http://www.unhcr.ch>, accessed 9/12/02

of crisis and disorder'.² Most refugees at the time were fleeing totalitarian regimes in Eastern Europe. Viewed as victims of persecution, they were readily accepted and integrated into Western democracies. This convergence of humanitarian traditions with political objectives eased the UNHCR's task of developing adequate legal structures for protection and integration of refugees in countries of asylum. By 1998 however, the world had perhaps not made as much progress as the opportunity offered—as testified by Mary Robinson, 'Count up the results of fifty years of human rights mechanisms, thirty years of multibillion dollar development programmes and endless high-level rhetoric and the general impact is quite underwhelming...this is a failure of implementation on a scale that shames us all.'³

The impact of World War II and the Cold War had a particular effect on international refugee laws. In the late 1930s and the 1940s, the international community found itself responding to two key groups: the Jews escaping fascism and political dissidents fleeing the USSR and its empire. The special reception of these two groups underlines the UNHCR's shift from 'permanent' refugee solutions to 'durable' refugee solutions. The Jews and dissidents from Communist states were often accepted as refugees by Western countries for political or propaganda purposes and a 'permanent solution' was found for their settlement. For other refugees, particularly those from outside Europe or the communist world, the typical response was 'voluntary repatriation as the most desirable solution, followed by integration in the country of first origin, with resettlement and naturalisation in a third, usually Western country, being the least durable, open normally only to a selected few.'⁴

Australia's Participation in Early Refugee Measures

In 1938 Australia joined thirty-one other countries at a conference in Evian-les-Bains, France, to discuss the urgent Jewish refugee situation arising from worsening conditions in Germany and from Hitler's occupation of Austria. The Conference, convened by the United States, establishes an Inter-governmental Committee for Refugees. Australia's representative asserted that, while Australia sympathised with the persecuted Jews and had admitted approximately 700 since 1934, it did not want to import a 'racial problem'. Later that year, after German occupation of the Sudeten area of Czechoslovakia, Australia agreed to receive 15 000 Jewish refugees over a three year period.⁵ Seven thousand were admitted before the intake was halted by war in Europe.

2 B. E. Harrell-Bond and E. Voutira 'Anthropology and study of refugees', *Anthropology Today*, vol. 8, no. 4, August, 1992, p. 6

3 M. Robinson quoted in G. Robertson, *Crimes Against Humanity—The Struggle For Global Justice*, Penguin, Melbourne, 1999, p. 35

4 *Ibid*

5 P. Bartrop (ed.), *False Havens: the British Empire and the Holocaust*, University Press of America, New York, 1995, pp. 64–65, pp. 130–145

Australia's first Department of Immigration was established on 13 July 1945 with Arthur Calwell its Minister in the Chifley Labor Government. An unprecedented ambitious mass immigration program was initiated, fuelled by a post-war economic boom and the need for unskilled labour. The Commonwealth Government was committed to increasing Australia's population by two per cent per annum, one per cent resulting from immigration.⁶

In December 1946 Australia abstained from the United Nations General Assembly vote to establish the International Refugee Organisation. Prime Minister Chifley was not opposed in principle but did not want Australia to incur moral responsibility for the financial support of refugees.⁷ Seven years after the end of war, Australia selected and admitted 170,700 displaced persons from war-torn Europe. The main groups were Poles (63,394), Yugoslavs (23,543), Latvians (19,421), Ukrainians (14,464), Hungarians (11,919), Lithuanians (9,906), Czechs (9,142) and Estonians (5,329). They were required to work for a period of two years as directed by the Government. For the first time, the Australian Government took responsibility for post-disembarkation settlement services, such as accommodation and basic English classes.⁸

In July 1949 the Chifley government passed the *War-time Refugees Removal Act*, with a view to forcibly repatriating approximately 900 non-Europeans who had been admitted temporarily during the war and had declined to be repatriated, wishing instead to settle in Australia.⁹ In 1957, the year the UN established the UNHCR, the Department of Immigration cost the Commonwealth Government £20,137,281, a three-fold increase on 1948–49.¹⁰ In 1952 the Australian Government established the Inter-governmental Committee for European Migration (ICEM), partly in response to UN unwillingness to involve the UNHCR in costly resettlement operations. Australia joined ICEM in 1953 but, in 1973, withdrew because the Whitlam Labor Government regarded it as too influenced by United States policy. During its twenty year association with ICEM, Australia admitted 628,000 people, of whom 199 000 were refugees.¹¹ Australia rejoined ICEM in 1985. The international conventions and protocols to which Australia is a signatory oblige it to provide protection for asylum seekers. The 1951 Refugee Convention, and its 1967 Protocol, require signatory states to grant entry and provide at least temporary protection.

6 E. Kunz, *Displaced Persons: Calwell's New Australians*, ANU Press, Canberra, 1988, p. 43

7 National Population Council, *Refugee Review*, AGPS, Canberra, 1991, p. 63

8 *Year Book of the Commonwealth of Australia*, Canberra, 1953, p. 567

9 A. C. Palfreeman, *The Administration of the White Australia Policy*, Melbourne University Press, Melbourne, 1967, pp. 81–85

10 Commonwealth of Australia: *The Budget 1952–1953*, Commonwealth Government Printer, Canberra, 1952, pp. 10, 45, 59, 71

11 *Year Book of Australia, 1977–78*, ABS, Canberra, 1979, p. 125

Changing Global Conditions

By the early 1960s, refugee movements had changed in nature. The prevailing pattern started to be large scale exodus as the process of decolonisation took its human toll, mainly in Africa and Asia. With the fall of Saigon in 1975, Western ascendancy in the region collapsed allowing old nationalism and new ideologies to assert themselves. The exodus of 'boat people' from Indo-China in the 1970s 'revived painful memories of the Jewish exodus from Germany' wrote Bruce Grant.

When international pressure was applied to stop the flow in 1979, polemicists used the Jewish refugee of the 1930s as an archetypal figure with which to attack Hanoi for expelling ethnic Chinese from Vietnam...the same kinds of objections were made to accepting both groups. It was said that the Jews/ethnic Chinese would provoke anti-semitism/anti-Chinese sentiment; that the spies planted among them by Nazis/Vietnamese; that they were technically German/Vietnamese nationals and therefore the responsibility of the German/Vietnamese government.¹²

In 1977, the Australian Government responded to the new regional pattern with a new policy covering procedures for designating refugee situations, assessment of Australia's capacity to accept refugees, encouragement of voluntary agencies to participate in refugee resettlement, and the strengthening of the Department of Immigration and Ethnic Affairs' Refugee Unit.¹³

As refugee numbers grew, increasing unease about the process resulted in an international conference being hosted by the UN in 1979. An agreement, usually referred to as the Moratorium, was reached between the USA, the UNHCR and the Socialist Republic of Vietnam, whereby guarantees of resettlement were given in return for commitments to contain the outflow of refugees and provide aid to countries of first asylum.

The outflow of refugees from Indo-China led to an effort by UNHCR to establish a coordinated resettlement program for people living in refugee camps. A system of refugee selection was instigated and overseas posts were responsible for identifying those people considered to be most suitable for resettlement. 1979 also saw the negotiation of an Orderly Departure Program between the UNHCR and the Socialist Republic of Vietnam to promote the departure of migrants to countries of resettlement without the necessity of fleeing by boat. Australia expected that, if it received refugees from camps in Thailand and Malaysia, then those countries would not send refugees on to Australia in boats.¹⁴

12 B. Grant, *The Boat People*, Penguin, Melbourne, 1979, p. 5

13 P. H. Bailey, 'Proposals for Change in the Administration and Delivery of Programs and Services, First Report of the Task Force on Coordination in Welfare and Health', 7, 1977/Canberra, AGPS, cited by Eileen Pittaway, Director, Centre for Refugee Research, University of New South Wales, Sydney, May 2002 available at www.crr.unsw.edu.au, accessed 4/1/04

14 E. Pittaway, Director, Centre for Refugee Research University of New South Wales, Sydney, May 2002 available at www.crr.unsw.edu.au, accessed 4/1/04

Australia, with other resettlement countries, introduced a system of refugee selection in 1979. Australian officials visited refugee camps and centres, and along with officials from UNHCR, selected people who were welcome to come to Australia. Government officials were urged to select those most likely to resettle successfully in Australia. These were the young, the healthy, the well educated, and people with a family support system already established. An active policy prevented selection of those with an obvious disability and those likely to require substantial social support.¹⁵

The situation worsened dramatically in the following two decades as Cold War rivalries were transmitted into a polarised and heavily armed Third World, leading to regional or internal conflicts. These produced displacement on an unprecedented scale in Africa, Indo-China, Central America and Afghanistan. The refugee population that was around eight million at the end of the 1970s reached seventeen million by 1991.

By the late twentieth century most of the world's refugees were not fleeing political persecution so much as violence, conflict and insecurity, fuelled by political repression, poverty, recurrent famine and environmental degradation. Poverty, under-development and unemployment were contributing to population movements in search of improved economic opportunities.

For Human Rights Watch, the International Catholic Migration Committee and the World Council of Churches, the problem is that 'over the past decades the nature and context of migration have changed [because of] changes in geo-political alliances in the context of the post-Cold War era, globalisation [and] increasing access to global communication and travel. While the cornerstone of globalisation has been the increased international flow of trade, capital, information, and services, the right to freedom of movement for many people—especially poor migrants, refugees and asylum seekers—has been severely curtailed.'¹⁶

Population flows are therefore becoming increasingly complex. Some people are migrating for economic reasons; others are fleeing conflict and persecution. Managing mixed migrations poses serious challenges, if the rights of asylum seekers and refugees are to be safeguarded. The contemporary political reasons for the mixed nature of population flows have been seized upon by some politicians, who claim that many asylum seekers are actually economic migrants who cannot establish the minimum earning capacity of \$23,400 required for eligibility to migrate to Australia.

Australia annually accepts 68,000 to 80,000 migrants who meet economic eligibility criteria, mostly from New Zealand, Britain and China.

15 Ibid

16 NGO background paper, 'Refugee and Migration Interface', co-authored by Human Rights Watch, International Catholic Migration Committee, and the World Council of Churches. Presented to the UNHCR Global Consultations on International Protection, Geneva, 28–29 June 2001, available at www.hrw.org/campaigns/refugees/ngo-document/ accessed 23/6/03

Claims that those not prepared to enter this migration program are abusing the asylum process have been used to justify restrictive measures, such as the recently introduced *Australian Border Protection Act (2001)*.

Experiences of violent dislocation, uncertain transit and hostile arrival alienate refugees legally and economically from conventional notions of citizenship. Encoded in such stark alienation are politically created images of dependency, leaving refugees in contemporary Australia to be constructed as sub-humans.

The outflow of the 'boat people' in the 1970s was seen in the countries affected as a politically destabilising factor. Urgent humanitarian needs had to be balanced against national and regional security concerns. Balancing the rights of refugees and the legitimate interests of states posed vital challenges, and in many cases the rights of refugees were negated.

Seeking a solution, the first International Conference on Indo-Chinese Refugees in 1979 recognised that the international principles of admission and refuge be applied to refugees in the Asia-Pacific region. Temporary asylum then was linked with a commitment by the international community to facilitate a long term solution, through the resettlement of refugees in third countries. As a concept of 'burden sharing' refugees would be allowed admission and refuge within the region until a third country could be found to provide long term asylum. Some orderly departure programs were eventually put in place in the early 1980s, after a significant number of boat arrivals. This unique arrangement of international burden sharing was to last for a decade until 1989 when the majority of people quitting Indo-China were classified as economic migrants rather than refugees.

Subsequently, after the internationally negotiated Comprehensive Plan of Action was put in place in 1989, 110,000 Indo-Chinese were repatriated.¹⁷ Some who refuse to go home are still languishing in refugee camps in Japan and elsewhere.

In the wake of such events as the Tampa incident¹⁸, the attacks in the United States on 11 September 2001 and the Bali bombing of 12 October 2002, there has been a greater emphasis in public discourse that refugees are essentially economic migrants. Xenophobic attitudes, which in earlier decades targeted Jewish and Vietnamese refugees, were directed at Muslims by the late twentieth century. There has also been a shift in the UNHCR's emphasis. Protection of refugees is now primarily seen as security of refugees and refugee operations rather than in terms of a legal asylum process. Issues of asylum and refugee policy are now generally framed in discourses of national security rather than of humanitarianism.

Current Refugee Populations

17 UNHCR, available at www.un.vn/unag/unhcr1/unhcr.htm accessed 23/6/03

18 A Norwegian freighter that rescued asylum seekers in August 2001 and was refused entry to Australian waters by the Federal government. See D. Marr and M. Wilkinson, *Dark Victory*, Allen and Unwin, Sydney, 2003

At the end of 2000, 8.4 million refugees were in Asia—38.8 per cent of the global refugee population of 21.8 million. As table 1 shows, Asia's share of the total has grown from 32.8 per cent in 1999. While the total number of refugees decreased from 1995 to 2000, refugee numbers in Asia increased.

The rise in the number of refugees in Asia indicates more people facing asylum or settlement in countries that are not well set up to assess and settle refugees. Many Asian countries are already coping with large and often relatively poor populations and large numbers of internally displaced people. Influxes of refugees and asylum seekers place additional demands on services that are already inadequate.

Examining the situation in China, India, Japan, South Korea and Indonesia highlights the plight of Asian refugees, who face inconsistent, racist and politicised refugee laws, or lack any refugee protection at all. It puts into context the Australian response to a humanitarian and political crisis that has been historically and politically ignored by the Howard government.

Table 1: Indicative numbers of refugees and others of concern to UNHCR by region, 1995, 1999 and 2000 (millions)¹⁹

Region of asylum	Refugees*	Asylum seeker#	Returned refugees	Others+	Total	Total %
1995						
Asia	5.02	.15	.83	1.76	8.07	28.7
Europe	1.87	.13	-	4.63	6.65	23.6
Total	14.49	.49	3.98	8.95	28.16	100.0
1999						
Asia	4.80	.02	.62	1.88	7.31	32.8
Europe	2.61	.47	.95	3.25	7.29	32.7
Total	11.68	1.18	2.51	6.89	22.26	100.0
2000						
Asia	5.38	.05	.35	2.67	8.45	38.8
Europe	2.31	.38	.16	2.73	5.58	25.6
Total	12.06	.85	.77	8.02	21.80	100.0

*Persons recognised as refugees under the 1951 Convention/1967 Protocol, and the 1969 OAU (African) Convention, in accordance with the UNHCR Statute, persons granted a humanitarian or comparable status and those granted temporary protection.

Persons whose application for refugee status is pending in the asylum procedure or who are otherwise registered as asylum seekers in countries with various stages in the asylum procedure.

+ Includes internally displaced and returned internally displaced persons.

19 UNHCR, *The State of the World's Refugees 1995*, Oxford University Press, Oxford, 1995 and UNHCR, *UNHCR Global Report 2000*, <http://unhcr.org.au>, accessed 9/10/02

Table 2: Indicative numbers of refugees and others of concern in selected Asian countries, 2000²⁰

Country of asylum	Refugees	Asylum seekers	Returned refugees	Others	Total
China	294,110	12	1	0	294,123
India	170,941	59	23	0	171,023
Indonesia	122,618	373	803	1	123,795
Japan	3,752	277	0	0	4,029
South Korea	6	46	0	0	52
Thailand	104,965	361	3	7	105,336
Total of Six	696,392	1,129	830	8	698,359

China

China both hosts refugees and asylum seekers and is the source of significant numbers seeking asylum in other countries. Most incoming refugees and asylum seekers originate in North Korea, Vietnam and Burma. Those fleeing China are a wide variety of people with multiple destinations. Tibetans have fled to many countries nearby and around the world, while following the Tiananmen Square incident in 1989 many Chinese students were permitted to remain in their host countries. The Hawke Labor government in Australia recognised the Chinese students and activists as refugees. A more recent refugee group in Australia is members of the Falun Gong.

Many years of severe food shortages, due to agricultural mismanagement and natural disasters, have caused devastating famine in North Korea. Three million have died and a 1998 study by international aid organisations reported that 62 per cent of children under seven suffer from stunted growth.²¹ North Korean asylum seekers usually enter China across the Tumen River trying to reach a Southeast Asian country, to seek refuge at a South Korean embassy. Many take this route because South Korean embassies and consulates in Thailand and Vietnam appear willing to offer help.²² Their problem is that it necessitates crossing 3,000 miles of China.

Defecting from North Korea is a capital offence and refugee organisations regularly report that North Korean officials beat returnees, intern them in labour camps or execute them. China has been a dangerous route for North Koreans fleeing their country. In a strategy that mirrors the attempts of the East German refugees who flooded West German embassies shortly before the Berlin Wall came down, North Koreans attempt to enter foreign embassies. In 2001–02, these attempts increased. Seven North Koreans entered a United Nations office in 2001 and refused to leave until they

20 Ibid

21 Ko, Sung Ho and Oh, Yoo-Seok, North Korean Defector; their Life and Well-Being after Defection', Report to the Ford Foundation, available on Asia Pacific Migration Research Network website, <http://www.capstrans.edu.au/apmrn> accessed 9/10/02

22 Ibid.

were granted asylum. Others have entered German, Japanese and Spanish embassies and a German school.

Recent attempts to stop such actions were reported in the international media and have increased tensions between China and North Korea. Chinese police breached the Japanese embassy in May 2002 while apprehending a North Korean national inside the compound. Television crews filmed Chinese police bloodying diplomats and dragging a North Korean from inside the South Korean embassy in Beijing. American Deputy Secretary of State, Richard Armitage, was reported to have said on South Korean television that America was appalled at the apparent contravention of diplomatic etiquette.²³

International aid groups estimate that 150,000 to 300,000 North Korean refugees are hiding in northeast China and Mongolia. Amnesty International states that thousands of North Koreans were arrested, forcibly repatriated and denied access to any refugee determination processes in 2001–02.²⁴ This clearly breaches the 1951 United Nations Convention to which China is a party. It contravenes the explicit prohibition against refoulement, deportation of refugees to countries where their lives would be threatened.

The UNHCR recognises North Koreans fleeing the country in recent years as refugees fleeing persecution under the 1951 Convention on Refugees. China acceded to the Convention and Protocol in 1982 but continues to insist that North Korean defectors are economic migrants, who have to be deported under treaty arrangements with North Korea. The Institute for International Economics argues that 'it is hard to separate how much of the motivation of people fleeing North Korea is purely economic and how much of it is the unparalleled degree of political repression that exists in that country.'²⁵

Until 1999, China informally tolerated North Koreans but increasing numbers of North Korean asylum seekers during 1999 and 2000 saw China launch its 'Strike Hard' campaign. This campaign included searches of Chinese homes, questioning of workers, roadblocks, penalties for harbouring North Koreans and financial rewards for Chinese who reported North Koreans. Since 1999 the UNHCR has been denied permission to travel to border areas and *Medicins Sans Frontieres* was refused permission to aid North Korean refugees. In some cases Chinese authorities even allowed North Korean authorities to enter China and seize North Koreans from Chinese prisons.

In June 2001, Chinese foreign ministry spokesperson, Zhang Qiyue, repeated China's denial that the North Koreans were refugees and according

23 ABC News 2002, 'Desperate Times—North Korean Refugees Are Storming China's Embassies to Get Passage to South Korea', 6 July 2002, www.abcnews.com, accessed 15/11/02

24 Amnesty International Report 2002, <http://amnesty.org/web/ar2002.nsf>, accessed 15/12/04

25 ABC News, op. cit.

to Amnesty International, China again cracked down in August and began returning more North Korean asylum seekers. It remains unclear whether Beijing accords the UNHCR office the diplomatic immunity that foreign missions have. Foreign missions have also had confronting incidents where Chinese police have arrested North Koreans in their entrances and on their steps. Those refugees with UNHCR approval who are recognised by China are treated as temporary and not permitted to work there.²⁶

Apart from the North Koreans, China hosted more than 345,000 other refugees and asylum seekers in 2001. The majority were located in Hong Kong. Most were ethnic Chinese from Vietnam, others Kachin refugees from Burma. Most of China's refugees are UNHCR-determined refugees and there are very few asylum seekers, although the UNHCR reports an increase in claims pending in Hong Kong.²⁷

In 1949 China invaded and occupied Tibet. In 1959, the political and spiritual leader of Tibet, the Dalai Lama, was forced into exile and since then more than 100,000 Tibetans have fled, seeking asylum elsewhere, mostly in India. The occupation of Tibet was described by the Chinese Government as 'liberation' (from the Buddhist theocracy). Policies and programs have been put in place in the last 40 years to open Tibet up to the outside world and incorporate it into the drive towards a market economy that started in 1978. Many Tibetans have not welcomed this process and Tibetans continue to flee into Nepal and elsewhere.

In 1999, 2,272 Tibetan refugees arrived in Nepal, were assessed and transferred to a transit centre in Kathmandu and then issued with travel documents before onward movement to third countries. Tibetans continue to cross the China-Nepal border but since December 1999 there has been tighter border control by the Chinese authorities. Tibetans who are caught are often arrested and deported and the UNHCR is now unable to conduct border-monitoring missions without authorisation from the Nepalese authorities. As a result of the crackdown a smaller number, 1,381 Tibetans, fled to Nepal in 2001.²⁸ Nepal is not a signatory to the UNHCR Convention and Protocol.

The number of internally displaced people within China is unknown. Internal conditions such as labour protests and imprisonment for trade union organisation coupled with repression of spiritual and religious groups, the imprisonment of dissidents and human rights advocates, media and internet restrictions, continued administrative detention and unfair trials, and extensive and arbitrary use of the death penalty all contribute to human rights abuses in China. Some people are forced to flee to evade unfair trials and punishment.

26 'East Asia: China Forcibly Returns North Korean Refugees to Death, Torture and Imprisonment', available at www.refugees.org/news/press_release/2002 accessed 15/12/02

27 'Refugees, Asylum Seekers and other Persons of Concern—Trends in Displacement, Protection and Solutions', UNHCR, October 2002

28 'Worldwide Refugee Information—Country Report' available at www.refugees.org/world/countryrpt/asia_pacific/china.htm accessed 15/12/02

The Uyghurs, mostly located in the Xinjiang Uyghur Autonomous Region in the northwest, are one of the most persecuted ethnic groups and some have fled China or Xinjiang to escape capture. Chinese officials meet their demands for more autonomy with tough resistance. China's policy on minorities, according to D. Gladney 'involves official recognition, limited autonomy, and unofficial efforts at control'.²⁹ Uyghurs involved in political activity have been subjected to arbitrary executions, torture and detention after unfair political trials. Thousands are jailed in the region.

China has not adhered to international human rights standards and to conventions which it has signed.

India

At the end of 2001 at least 345,000 refugees were living in India: 144,000 were from Sri Lanka, 110,000 from China and Tibet and 52,000 came from Burma. Some had been there for over forty years, especially Tibetans, and many Sri Lankans have been in India more than seventeen years. Refugees from Bangladesh and Afghanistan also flow into India. While India considers Tibetans and Sri Lankans to be political refugees, most other ethnic groups are considered to be economic refugees. This distinction means that they are not considered to be 'real' refugees.

The countries of South Asia, including India have not signed the UN Refugee Convention, the 1951 Convention or the 1967 Protocol. India has no laws to determine refugee status or protect the rights of migrants. People are handled *ad hoc* depending upon the political circumstances of the moment. An office of the UNHCR is present in India but the Government only allows it to assist in urban centres and does not recognise UNHCR-determined refugees. In some cases, Afghans and Burmese are provided with limited residential permits. Some fears exist that the granting of asylum could be seen as an unfriendly act to neighbours.³⁰

Tibetans form the largest refugee group in South Asia. Their claims for asylum are based on religious persecution, political repression, obstruction of endogamous marriages by Chinese government officials and the desire to follow their exiled political and spiritual leader. Tibetan refugees are often granted asylum by the Indian government, which adheres to the principle of non-refoulement. Children born to Tibetan refugees are granted Indian citizenship under section 3 of the *Indian Citizenship Act 1955*. Tibetan refugees are given identity documents and allowed to work and travel internally and internationally. Others however, are not granted the same level of political and government assistance.

Since the events of September 11, there have been several initiatives

29 in R. Iredale, N. Bilik and F. Guo (eds), *China's Minorities on the Move: Selected Case Studies*, Ardmunk, New York, 2003

30 C.R. Abrar, 'Proceedings of the Consultation on the Need for a National Law on Refugees', Dhaka, 28 August 1999, in C. R. Abrar and Shahdeen Malik (eds), *Towards National Refugee Laws in South Asia*, Refugee and Migratory Movements Research Unit, University of Dhaka, Dhaka, pp. 49–82

by the Indian government to tighten security, border and migration legislation. *The Prevention of Terrorism Ordinance* was legislated in October 2001—allowing widespread arrests, detention and imprisonment without trial.³¹ Groups most affected include the millions of recently arrived Bengali Hindus and Muslims from Bangladesh and Pakistan.

Internal displacement is of particular concern in northeast India. An estimated 157,000 people have been displaced. According to the 'World Refugee Survey' for 2001, population growth has led to competition for land and employment and added to ethnic tensions in the state.³² Civilian populations have been caught in political and military insurgencies that follow. Ethnic conflicts in Assam state have seen at least 5,000 killed since 1978. More than 31,000 Reangs remained displaced in six refugee camps in northern Tripura. At least 350,000 Kashmiris, mostly Hindu Pandits, have been displaced since 1990 because of the conflict in Kashmir. Some 250 000 displaced Kashmiris are living in camps near New Delhi. While the Indian Government provides some financial assistance to the displaced Pandits, the survey points out that other internally displaced people and refugees receive no official government assistance.

Japan

Japan acceded to the UNHCR Convention in 1981 and the Protocol in 1982. Until recently, refugee policy has been concerned only with Indo-Chinese refugees. In 2001 there were 6,400 refugees and asylum seekers, including 5,900 Vietnamese and Cambodian refugees admitted in 2000, who remain with temporary status. In 2001, 26 asylum seekers were granted refugee status and another 187 applications are pending. A further 196 rejected asylum seekers were granted special residence permits on humanitarian grounds.³³

Japan has been forced to become much more involved in refugee issues since 2002. On 8 May 2002 Japanese Consulate General staff in Shenyang, China allowed Chinese police to arrest and detain North Koreans who had sought asylum in the consulate. Soon afterwards chief cabinet secretary, Yasuo Fukuda, expressed concern about Japan accepting asylum seekers and allowing in more refugees. 'More people will seek asylum if we accept asylum seekers and refugees, and it is doubtful that acceptance will contribute to settlement of the issue. The fundamental problem lies in countries and governments that have produced refugees, and I believe we should first set them straight.'³⁴

But Japan was severely criticised by international human rights groups

for its treatment of the North Koreans.³⁵ On 7 August 2002, the first meeting of the Government's Refugee Policy Council was held. The Government quickly approved an expansion of Japan's refugee settlement policy. Language and vocational training are to be extended to people accepted under the *Immigration Control and Refugee Resettlement Act* while they await the outcomes of their applications. New guidelines on dealing with North Korean defectors were also drawn up.

On 12 October 2002, about 100 protesters demanded the temporary release and better treatment of those detained at a newly created facility in Osaka. The facility was established to house asylum seekers, instead of them living with members of non-government organisations. The protestors argued that the people being detained were being held without being charged with any crime while the government argued that the reason for their detention was to stop them working illegally.

Subsequently, suicides have occurred or been attempted among detainees. Amnesty International reported that Aziz, an Afghani man, who had been granted refugee status, attempted suicide while in the Osaka facility.

Aziz was recognized as a refugee by the Hiroshima High Court...However, the Justice Ministry earlier rejected his refugee application and he was indicted on a charge of violating the immigration law. The ministry has not overturned its earlier decision and continued to detain him. Aziz is also an ethnic Hazara and a member of the Hezb-e Wahdat party, a Muslim Shiite group supporting the minority. He fought the majority Pashtuns in a civil war before fleeing Afghanistan. Aziz then decided to seek asylum in Japan, where he had been earlier, after learning that the Taliban were pursuing him, according to the supporters. He entered Japan at Fukuoka airport, Fukuoka Prefecture, in June last year, using a forged passport and made a living procuring parts for used cars.³⁶

Because Japan's migration policies have focused on Indo-Chinese asylum seekers only 3,029 people of other origins have been accepted since 1992.³⁷ For them, formal procedural requests for asylum must be lodged within sixty days of arrival or sixty days after the need for protection arose, although exceptions are sometimes made. The sixty days rule has been criticised by the UNHCR as being the reason almost half of all claims for asylum were rejected. Special residence permits may be granted on humanitarian grounds, such as a civil war in the home country of the asylum seeker. These are valid for one to three years and are renewable, but they offer no guarantee of permanent residency.

The number of visas issued to refugees and asylum seekers has

31 *Amnesty International Report 2002*, available at www.amnesty.org/web/ar2002.nsf/asa/india accessed 15/12/04

32 'World Refugee Survey 2002', <http://refugees.org.world> accessed 15/12/04

33 'Refugees, Asylum-seekers and other Persons of Concern—Trends in Displacement, Protection and Solutions', UNHCR Statistical Yearbook, 2001

34 'Japan: Fukuda Cautious about Accepting Refugees, Asylum Seekers', *Kyodo News International*, 13 May 2002, <http://unhcr.ch/cgi-bin/texis/vtx/home>, accessed 18/10/02

35 'World Refugee Survey 2002' available at www.refugees.org/world/articles/wra02_wasia1.cfm#china accessed 15/12/02

36 'Japan: Protesters Demand Improvements at Immigrant Detention Facility', *Kyodo News*, 12 October 2002, <http://unhcr.ch/cgi-bin/texis/vtx/home>, accessed 18/10/02

37 'Refugees, Asylum Seekers and other Persons of Concern—Trends in Displacement, Protection and Solutions', UNHCR, October 2002

decreased. In 1999, Japan provided 1,118 visas to Afghans. In 2000, the figure dropped to 584 and only 24 visas were issued in the first ten months of 2001.³⁸ Refugee boats are forcibly removed from Japanese territorial waters and all people who arrive without documentation are now detained. Given the low numbers of arrivals, the numbers of those detained remains low. Just how many and the length of their detention are unknown but the numbers are significantly lower than Australia's and most are released within months or a year. The policy of detention was challenged in the Japanese High Court, but was upheld.

Amnesty International reported nine Afghani men were held in prolonged detention in an immigration detention centre while their requests were being considered. A Sudanese national was alleged in the same report to have been denied adequate access to medical facilities and an Iranian man was detained at the Tokyo Immigration Detention Centre for nineteen months. His application was rejected by the Ministry of Justice but he was granted provisional release. Other claims include the mistreatment of asylum seekers by private security staff at the Landing Prevention Facility at Narita International Airport. Asylum seekers claim that they were refused access to lawyers and information about the determination process. Others claim they were held incommunicado and in windowless rooms.³⁹

The introduction of the detention centre model and the reduction in successful applications by asylum seekers indicate that Japan is adopting a more inhumane and undesirable model in its approaches to asylum laws. Regional instability means that Japan will not remain isolated from increasing population flows yet a more open model for asylum seekers seems unlikely in the face of its desire to maintain its ethnic homogeneity. These issues are discussed in greater detail in Morris-Suzuki's chapter.

South Korea

The South Korean refugee and asylum seeker processes are a little more developed than the Japanese. The division of the Peninsula after the mid-1950s Korean War resulted in families being split and efforts to enable North Koreans to enter the south. South Korea is in an extremely difficult situation in relation to North Koreans but provides a sympathetic reception. However, this cannot be said of its treatment of asylum seekers from other countries.

Events in Chinese embassies have forced South Korea to face increasing demands for asylum. North Korean asylum seekers apply to the South Korean embassy in China; at least an estimated 30,000 North Koreans living in northeast Asia have indicated their desire to resettle in South

38 Ibid

39 Amnesty International Report 2002, <http://amnesty.org/web/ar2002.nsf> accessed 15/12/02

Korea, and numbers of North Koreans being smuggled into South Korea by family members already resident in the South are increasing. South Korea has been forced to review its asylum policies.⁴⁰

Domestic politics have limited the South Korean responses; laws remain weak and it is trying not to upset its northern neighbour. 'Defectors' (as they are named in both North and South) are often re-united with extended family members and not detained. One 'defector' working as a cook in downtown Seoul states that North Koreans are subject to the stress of separation and fears about their families back in North Korea. In the North defectors are labelled 'national traitors who deserted the care of their great master and betrayed the motherland'.⁴¹

South Korea acceded to the UNHCR Convention and Protocol in 1992. Since then only 104 people have applied for refugee status. In February 2001, 26 year-old Tadasse Deresse Degu, from Ethiopia, became the first person to be granted government-approved refugee status. Amnesty International is concerned that the refugee recognition process is not transparent and that the risk of refoulement remains high.⁴²

During 2001, South Korea hosted 650 refugees and asylum seekers: 583 were North Koreans.⁴³ While there remains extreme political sensitivity regarding 'defectors', South Korean law allows North Korean asylum seekers to enter the South and they are automatically entitled to citizenship. The problem is that technically North and South Korea are still at war and their border is closed. This forces many North Koreans to travel through China, usually on to Thailand or Burma, or recently, Mongolia.

In May 2001, 11.8 million South Koreans, about one-third of the adult population, signed a petition calling on the United Nations to provide protection for North Koreans in China. Despite the apparent welcoming of North Korean asylum seekers, the Southern government has been accused of regularly interrogating North Koreans that it suspects of spying.⁴⁴ While some members of the administration and military continue such practices, other members of the national assembly have attempted to enact laws calling on the government to increase diplomatic efforts and humanitarian assistance programs for North Korea. At the same time, they have called for legislation to formalise the rights of North Koreans seeking refuge. The National Assembly has also urged other nations to which the North Koreans have fled to shelter them as refugees.

40 Ko, Sung Ho and Oh, Yoo-Seok, 'North Korean Defector; their Life and Well-Being after Defection', Report to the Ford Foundation, available on Asia Pacific Migration Research Network website, <http://www.capstrans.edu.au/apmrn> accessed 9/10/02

41 Ibid

42 Amnesty International Report 2002, available at <http://amnesty.org/web/ar2002.nsf> accessed 15/12/02

43 Ibid

44 World Refugee Survey 2002 available at www.refugees.org/WRS2002.cfm#countryreports accessed 15/12/04

South Korea's efforts at aiding North Korean refugees have not been extended to other nationalities. Except the Ethiopian who received a one-year residency permit that included work authorisation and travel documents, but no health or welfare entitlements, all other asylum seekers have been denied government-approved refugee status. Following the events of September 11, there were reports that all Arab and Central Asian asylum seekers in South Korea were questioned, and many were detained for minor violations of immigration law.⁴⁵ Detention laws are incoherent and arbitrary. Asylum seekers are not provided with interpreters and are located in facilities which lack adequate heating. There is no policy of independent review, either judicial or administrative, but the UNHCR is given access to all detainees.

Indonesia and Timor

Communal and sectarian conflict, particularly since the fall of Soeharto's regime in May 1998, have resulted in massive increases in the numbers of displaced people in Indonesia. Many are former internal migrants who have been relocated under government transmigration schemes. Indonesia has an estimated 1.3 million internally displaced people of whom 750,000 are under the age of 18. Apart from the impact of the 1997–98 Asian financial crisis, the causes of internal displacement are ethnic, religious and separatist violence. Most displaced people are from regions in conflict. 400,000 were displaced because of the Muslim-Christian conflict in the Malukas. 60,000 Mandures fled West Kalimantan and many others have fled Sumatra, Sulawesi and East Timor. Large numbers of East Timorese await repatriation in refugee camps in West Timor.⁴⁶

Most internally displaced people live in refugee camps or private homes. The government and international aid agencies provide food and shelter but education and health care provisions are almost non-existent. Unemployment for internally displaced people is very high as local communities are reluctant to integrate them and many of them would prefer to return to their original communities.

Government response has been slow but a three option policy was introduced in 2001. The first option was to repatriate internally displaced people to their places of origin. Continued conflict means that this option is unworkable in many cases. It is also unacceptable to the displaced people and to international aid agencies. The second option was to improve conditions at the present locations of the internally displaced people, most notably the refugee camps, encouraging them to stay permanently. Host communities have seemed reluctant to encourage permanent relocation and have raised objections. Third, a process of relocation was implemented. With a one billion rupiah budget and a target of full relocation between

45 *Amnesty International Report 2002*, available at <http://amnesty.org/web/ar2002.nsf> accessed 15/12/02

46 *Ibid*

December 2001 and December 2002, the plan has been criticised as too ambitious and unsustainable.⁴⁷

There appears to be a lack of transparency in the allocation of funds and government policies to date have been found wanting. The absence of humanitarian refugee policies in Malaysia means that many Achinese fleeing Indonesia to Malaysia from a bloody civil war are unprotected and face the risk of deportation if found working. As the Indonesian economy remains unstable the prospect of increasing numbers of internally displaced people is worrying. A national and regional response is required.

In September 1999, East Timor voted for independence from Indonesia, following a decree by former Indonesian president B.J. Habibie. Prior to and following the vote, anti-independence militia destroyed most of East Timor's infrastructure, and thousands were killed. An estimated 250,000 East Timorese fled to the Indonesian territory of West Timor.⁴⁸ In October 1999, the UN Security Council approved the UN Transitional Authority in East Timor. The Authority operated as an administrative, legal and judicial body until full independence was proclaimed in May 2002, following the democratic elections of the first East Timorese parliament.

From October 1999 to the end of 2001, almost 193,000 East Timorese returned home.⁴⁹ The majority went with the assistance of the UNHCR and the International Organisation for Migration. The UNHCR closed its offices in West Timor in September 2000 following the murder of three UNHCR staff in Atambua.⁵⁰ In October 2001, the Indonesian Government stopped humanitarian aid for the remaining East Timorese who had not been repatriated. Food deliveries stopped on 31 December 2001.⁵¹

It is estimated that 300,000 to 400,000 East Timorese remain displaced in Indonesia. At the end of 2002, an estimated 80,000 East Timorese refugees remained in the Indonesian territory of West Timor.⁵² Australia has hosted 1,800 East Timorese asylum seekers for almost a decade, without granting them refugee status, but many now face forced repatriation. In December 2002, the Australian government began reviewing their temporary status⁵³ and protests at forced repatriation began to take place. Australia will be in breach of its international obligations if it repatriates people while the situation remains unsafe in East Timor.

Indonesia is not a signatory to the UN Refugee Convention and has no government system for granting refugee status. The government

47 *Prevent Conflict 2002, Building Human Security in Indonesia*, 2002, www.preventconflict.org accessed 15/12/02

48 *Ibid*

49 *Ibid*

50 *Ibid*

51 *World Refugee Survey 2002* available at www.refugees.org/world/articles/wra02_easial.cfm accessed 15/12/02

52 *Ibid*

53 'First Decision on East Timorese Protection Visa Applicants', press release by Minister for Immigration, available at www.minister.immi.gov.au/medi_release/media02/r02087.htm accessed 20/5/03

allows asylum seekers to remain in Indonesia, primarily under the care of the UNHCR until a 'durable solution', meaning relocation to another country, is found. The Australian government has criticised both Malaysia and Indonesia for its contributions to people-smuggling operations that have seen mainly Middle Eastern asylum seekers arrive in Australia in recent years.⁵⁴ Facilitating this is the Malaysian visa-free entry policy for nationals from most Islamic countries. Both the Indonesian and Malaysian authorities have denied that they are responsible for Australia's situation, yet both the Malaysian and Indonesian governments have taken significant steps to curb human smuggling.

Indonesia also produces its own asylum seekers. Officially, 5,300 Indonesians were refugees or asylum seekers in 2001. 5,100 were from Irian Jaya and 200 were Achenese living in Malaysia. Unofficially a further 3,000 Achenese live in Malaysia in refugee-like situations, without any official status, often in rural areas beyond detection by Malaysian officials.

The answers for Indonesia are far from simple and without political will and resources, which are both unlikely to prove adequate in the current context, problems with displaced people will continue. If a solution to the Aceh situation can be found it may lead to the return of asylum seekers from Malaysia though the increase in hostilities between Achenese and the Indonesian Government means that this is likely to be an area of considerable conflict in years to come.

Australia and its Region

The Australian and Asian examples indicated that the existing laws, practices and policies have failed to aid refugees in the Asian region, for a variety of domestic, political and racial reasons. Current evidence suggests that the refugee crisis in Asia is an enormous problem that will continue, and the consequences of the inefficiencies, inabilities, domestic politics of xenophobia and racism, and diplomatic etiquette mean that refugees will go on suffering.

Australia's role in international human rights and refugee laws has been consistent at times with the best intentions of a land of migrants and refugees and at other times consistent with its colonialist, White Australia history. This chapter indicates Australia's lack of understanding of official historical, cultural and political context for the regional refugee crisis, a reality consistently resisted and denied by the Howard government. An understanding of the reasons for regional instability and thus for refugee flows would better equip Australian policy makers to apply best practice standards in human rights and refugee law.

54 'Border Control Training in the Pacific Region', press release by Minister for Immigration, available at www.minister.immi.gov.au/media_release/media02/r02036.htm accessed 20/5/03