People smugglers: The other 'boat-people'

HANNAH PURDY

Abstract

With over 16 million refugees and asylum seekers worldwide, the necessity of an effective global response has never been more paramount. However, with little consideration of the realities of the refugee situations, Australia's border protection policies have been strengthened, limiting the legitimate solutions available to asylum seekers. This article will focus on the alternative solutions demanded by asylum seekers, and in particular on the 'assistance' provided by people smugglers. People smugglers apprehended in Australian waters are found to be Indonesian fishermen, with the nation's high poverty rate considered the primary driver for their involvement in smuggling activities. Without adequate support from their government, Indonesian fishermen may consider the income generated from people smuggling ventures more beneficial than the potential risks such as imprisonment. It will be argued that Australia's response to the 'boat people' challenge must change: resources need to be targeted correctly with a focus on development in Indonesia, rather than barrier building. Disadvantaged Indonesian fishermen must be provided with increased income opportunities and security, while asylum seekers need to be provided with legitimate relocation options. This will see the Australian government more effectively working towards its goal of "stemming the flow of refugees".

Our small boats drift.
We are the foam
floating on the vast ocean
we are the dust
wandering in endless space
our cries are lost
in the howling wind.¹

1 Isamu, A. and J. Daigaku. (1978) *Boat people: today's "untouchables": the holocaust of the 20th century - documentary* = *Tham nan cua the ky thu 20* Asian Relations Center, Socio-Economic Institute, Sophia

The mass departure of Vietnamese refugees following the fall of Saigon during the 1970s propelled the term 'boat people' into common use. These lyrics, penned in response to the plight of these refugees, poetically express the hopelessness and despair felt by many forced to flee their homeland. In 2001, the Australian Government "thundered that Australia's historic generosity towards refugees had made it a soft target for a new breed of organised criminals: the people smugglers".² More recently, then Prime Minister Kevin Rudd stated, "people smugglers are engaged in the world's most evil trade and they should all rot in jail because they represent the absolute scum of the earth".³ These statements are highly politicised and are indicative of the Australian Government and public's perceptions of, and attitudes towards, people smugglers and refugees. Policies are targeted to increase border protection methods and decrease the arrival of refugees, with little consideration of the refugees themselves.

With little scholarly attention paid to the relationship between asylum seekers and people smugglers in Indonesia, this study will highlight some missing elements of the people smuggling picture and will seek to fill a gap in the relevant literature. As the relationship needs to be understood in the broader context of globalisation and migration, the issues will be discussed in relation to the global refugee situation. Australia's responses will then be discussed; and through an analysis of a refugee experience, the incongruity of Australian and global responses to refugees will be explored. It will be shown that refugees will seek alternate pathways if they are unable to be assisted through legitimate avenues.

This analysis will develop into the existence of people smugglers in response to this demand, and Australia's political responses. Once again, the incongruity of these responses will be explored in comparison with the reality. The motivations and necessity of people smuggling for the 'small players', Indonesian fishermen, will be analysed; considering poverty to be the primary driver of involvement in people smuggling activities. Inadequacies within the Indonesian system and responses to this poverty will be explored, with an emphasis on Indonesia's position within the process of refugees attempting to reach Australia via sea.

In conclusion, alternative solutions and recommendations to the global problem of refugee resettlement and the existence of people smugglers as an alternative solution for refugees will be outlined. Issues of development will be found to be of key importance. It will be argued that Australia's response to 'boat people' must change. Rather than strengthening border protection and entrance barriers, resources need to focus on issues of development, providing asylum

University, Tokyo., p. 13.

2 O'Neill, M. (2008). *Blind Conscience*. Sydney, University of New South Wales Press Ltd. , p. 6.

3 Berg, C. (2010). "Seeking A Political Crisis." *Governance & Service Provision: The Drum Unleashed*, from <http://www.ipa.org.au/news/2135/seeking-a-political-crisis>.

seekers with legitimate relocation options and poor Indonesian fishermen with increased income opportunities. Development, dealing with the issues of poverty and corruption as well as relocation, needs to be addressed in order for any positive steps to be made.⁴ For development to be targeted correctly an adequate assessment of all components of the problem is required; the reason for the existence of people-smugglers, and the benefits and costs of becoming a people smuggler must be considered.

Refugees Worldwide

Since the cessation of World War I the plight of refugees has become an international concern.⁵ By 1950, approximately 1.5 million refugees had been recognised internationally and the need for a global response became essential. The United Nations High Commissioner for Refugees (UNHCR) was established in response. 1951 saw The United Nations Convention Relating to the Status of Refugees created,⁶ remaining today as the key relevant global treaty,⁷ with 43.3 million forcibly displaced people now in existence worldwide at the end of 2009; including 15.2 million refugees and 983,000 asylum seekers.⁸

Australia and its territories, as of January 2010, is home to 22,548 refugees and 2,350 asylum seekers.⁹ The vast majority reaching Australia by air with a valid visa for entry, applying for asylum while living in the community.¹⁰ According to Julian Burnside, human rights and refugee advocate, the rate of people arriving in Australia by boat "has always been tiny. The largest number to arrive in any 12-month period over the past three decades is 4100. Compare that with about 200,000 new permanent migrants every year".¹¹

4 Nicholson, B. (2002). "The Wrong End of the Telescope: Economic Migrants, Immigration Policy, and How it Looks from Albania." *The Political Quarterly* 74(4): 9 p. 440.

5 Barnett, L. (2002). "Global Governance and the Evolution of the International Refugee Regime." *International Journal of Refugee Law* 14: 24. p. 241.

6 Ibid., p. 245.

7 McMaster, D. (2001) *Asylum seekers: Australia's response to refugees*, Melbourne University Press, Melbourne, p. 9. IN Phillips, J. (2010). *Asylum seekers and refugees: what are the facts?* D. o. P. Services. Canberra, Parliamentary Library: 18. p. 3.

8 UNHCR. (2010). "Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons." *2009 Global Trends*, Retrieved 19 June, 2010, from <http://www.unhcr.org/4c11f0be9.html>.

9 UNHCR (2010). 2010 Regional Operations Profile - East Asia and the Pacific. *Australia*.

10 DIAC, (2010) *The facts about immigration detention*, media release, 3 July 2009, viewed 7 June 2010, http://www.newsroom.immi.gov.au/media_releases/739?page=4&

11 Burnside, J. (2010). Abbott ignorant on boat arrivals. *The Age*, Fairfax Media. & Phillips, op. cit., p. 6.

Australia's Response to Refugees

Although small, the number of unauthorised arrivals has been increasing since 1988. Yet it was not until John Howard's 1996 - 2007 political leadership that the issue became more prominent due, in part, to the significant increase in unauthorised boat arrivals between 1999 and 2001. The Howard Government response included the Border Protection Legislation Amendment Act 1999, adding to the Customs Act 1901 and the Migration Act 1958, targeted to stop asylum seekers reaching Australia. Three key incidents in the second half of 2001; the Tampa Affair, the children overboard affair, and SIEV X sinking, all of which are now well documented,¹² particularly highlighted the various 'inadequacies' within the existing legislation, leading to the "major shift in Australian immigration policy".¹³

The proximity of the three incidents to the events of September 11 terrorist attacks reinforced public alarm, and as the arrivals were from the Middle East, a hardening of attitudes occurred.¹⁴ Anti-refugee rhetoric increasingly labelled asylum seekers as 'illegals',¹⁵ while the government was led to "thunder that Australia's historic generosity towards refugees had made it a soft target for a new breed of organised criminals: the people smugglers. Floodgates were opening to the world".¹⁶ Howard was determined to strengthen legislation further, utilising the public's unease against those who would 'throw their children overboard' to legitimise the proposed measures.¹⁷ This incident became a central component of the 2001 Federal election campaign, and after winning his third term in office, Howard created and enshrined additional powers in the Border Protection (Validation and Enforcement) Act 2001 (BPVE) and the

12 See for instance;

Hatton, T and Audrey Lim (2005), 'Australian Asylum Policy: The Tampa Effect', *Agenda*, 12 (2), 15.

Mares, P. (2002). *Borderline: Australia's response to refugees and asylum seekers in the wake of the Tampa*. Sydney: UNSW Press.

Mathew, P. (2002). 'Australian Refugee Protection in the Wake of the Tampa,' *American Journal of International Law*. 16. 372.

13 Hugo, G. (2002). "Australian Immigration Policy: The Significance of the Events of September 11." *International Migration Review* 36(1): 4. p. 38.

14 Ibid p. 39.

15 Hatton and Lim, op. cit., p. 115.

16 O'Neill, op. cit., p. 6.

17 McMaster, D. (2001). *Asylum seekers: Australia's response to refugees*. Melbourne, Melbourne University Press. p. x.

Migration (Excision from Migration Zone) Act 2001.¹⁸ Current policy became a re-emergence of earlier White Australia policy.¹⁹ Refugees became queue jumpers.²⁰

Yet "the concept of an orderly queue does not accord with the reality of the asylum process".²¹ According to the UNHCR, less than 1 per cent of the world's refugees may be resettled in any given year.²² With the "absence of a solution for millions of refugees in protracted situations continuing to pose a major challenge to UNHCR and its partners, to host countries, the refugees themselves and the international community at large".²³ While annually 2.5 to 3 million places are available for international migrants,²⁴ the UNHCR estimates that only 79,000 refugees are accepted by resettlement states each year. This figure is particularly small in comparison to the 747,000 refugees that the UNHCR also estimate will be in need of resettlement in 2010 due to the absence of durable solutions.²⁵

Yet "none of this seems to matter to a country that has increasingly been willing to use aggressive military manoeuvres in order to keep these refugees at bay".²⁶ Popular opinion asserts that those seeking to reach Australia via illegitimate means are queue jumpers, merely seeking a better life for self-serving reasons. This approach is ignorant of the realities of refugee situations.²⁷

The Refugee Experience

The arrival of asylum seekers to Australia involves more than these statistics and emotive public responses. With the development of more restrictive immigration policies, the 'human face' of the refugee issue has been often overlooked.

The story of Sondos Ismail, her schoolteacher husband Ahmed and their family, highlights these problems.²⁸ After her father was killed by Saddam Hussein's secret police, the family fled to Iran, hoping to find security. Unable to secure

18 Hatton, Timothy and Lim, Audrey (2005), 'Australian Asylum Policy: The Tampa Effect', *Agenda*, 12

(2), 15. p.119.

19 Wazana, R. (2004). "Fear and Loathing Down Under: Australian Refugee Policy and the National Imagination." *Refugee22*(1): 13., p. 83

20 Ibid p. 83.

21 Phillips, op. cit., p. 5.

22 UNHCR, (2009) *Statistical yearbook 2008*, Geneva, 2009, viewed 4 May 2010, <http://www.unhcr.org/pages/4a02afce6.html>; pp. 10 -11.

23 UNHCR (2009), *Global trends*, op. cit., p. 4.

24 Van Kessel, G. (2001). "Global migration and asylum." *Forced Migration Review 10*: 4. p. 10.

25 Durable solutions are the three options available to refugees and which the UNHCR can assist with; voluntary repatriation; local integration; or resettlement to a third country in situations where it is impossible for a person to go back home or remain in the host country. (Fundraising Reports,6. UNHCR: 2010c)

26 Wazana, op. cit., p. 84.

27 Ibid p. 86.

28 Kevin, T. (2004). *A Certain Maritime Incident: The sinking of SIEV X*. Melbourne, Scribe Publications. p. 33

adequate income in Tehran the family lost a child due to their inability to pay for medical care. After six years in this environment Ahmed's brother, living in the United States, sent US\$3000 for the family to seek out a better life.²⁹ Assured that Australia was a kind and generous country, the family moved to Indonesia and in 1999, Ahmed paid for passage for himself on a boat from Indonesia, hoping his family would be accepted later. Ahmed won the right to refugee status and after a period in detention, he was granted a temporary protection visa (TPV).³⁰ Progressively introduced since 1999, these new visas did not allow families to join those granted asylum in Australia for at least three years.³¹ The granting of asylum to all family members was precisely the outcome the family sought. With the removal of this option, Ismail and her remaining three children spent time in an Indonesian detention centre, finally resorting to using "people smugglers to try to be reunited, a move that was a much riskier proposition in 2001 than it had been for Ahmed".³²

Approached by Middle Eastern associates of Egyptian smuggler Abu Quassey, Sondas was promised the boat was safe. Charged US\$500 and kids free she was suspicious because her husband's trip had cost US\$1200.³³ Her husband begged her not to make the dangerous voyage but after two years apart in limbo, she was determined.³⁴ The vessel that Abu Quassey organised was small and unnamed. It was later to become known as SIEV X. Sondas survived the sinking but she and Ahmed lost their three daughters, Aiman, 9, Fatima, 7, and Zahra, 6. Sondas survived in the sea off the coast of Java for 19 hours before Indonesian fishermen found the boat's wreckage.³⁵

As starkly visible throughout Sondas' story, the concept of an orderly queue does not exist for asylum seekers. Asylum seekers attempting to reach Australia via sea are fleeing countries in which there may be no Australian immigration or UN office or attempting to gain a legitimate visa may be too dangerous.³⁶ Not all refugees who make it to Indonesia register with UNHCR,³⁷ nor do they all live in designated refugee camps. Either way, living conditions can be quite terrible. The situation in Indonesia results in refugees trying to preserve whatever cash they have while existing in a perpetual state of poverty. It is difficult to imagine the desperation Sondas experienced in caring for her children in these

29 Ibid p34

30 Head, Mike (2010), *Drowned refugees were victims of Australian policy*, Accessed 3 May, 2010 from <http://www.wsws.org/articles/2001/oct2001/refu-o29.shtml>.

31 Hatton and Lim. *Agenda*, p. 118.

32 Kevin, op. cit., p. 34.

33 Ibid

34 Ibid. p. 35.

35 Head, op. cit.

36 Phillips, op. cit., p. 5.

37 Ibid

circumstances. It is not difficult to see why she was determined to risk the sea voyage and join her husband after the family's attempts at finding a legal solution had failed.

The People Smuggling Experience

"The IOM and UNHCR have jointly stated that in the absence of legal migration options to pursue, migrants invariably exploit the asylum channel, 'it being often the only entrance possibility effectively open to them'".³⁸ Heckmann et. al. agree, "arguing that the increasing proportion of asylum seekers who use illegal migration channels - most notably smuggling - do so to 'circumvent restrictive admission policies in advanced industrial countries'".³⁹ Risking the sea voyage can be seen as less harmful than repatriation or a continued existence in Indonesia.⁴⁰ Accordingly, in response to this demand⁴¹ to overcome protective legal entrance barriers, people-smugglers⁴² have emerged. People smugglers facilitate illegal entry attempts across international borders.⁴³

Although scholarly research into current people smuggling activity is limited, judgements available from the Western Australian and Northern Territory Supreme courts of Australia provide much information regarding the role of fishermen in people smuggling activities, reflected in the following articles.⁴⁴ The anecdotal evidence in the following stories is representative of the circumstances surrounding many SIEV's ventures into Australian waters, in support of the notion that people smugglers are not criminal masterminds.

On April 8 2009 Hasanusi, an Indonesian fisherman, sailed into Christmas Island's Flying Fish Cove in his 12 metre wooden fishing boat with 38 Iraqi asylum seekers onboard. At his trial in March 2010, prosecutor Anthony Evers stated the crown case was straightforward. "Hasanusi is a people smuggler . . . [having] equipped his boat with enough fuel, food and water for the journey".⁴⁵ Prosecutors told the court that Hasanusi was paid double his normal wage to bring the group to Australia. Hasanusi testified "that he had been hired to take

38 Brolan, C. (2003). "An Analysis of the Human Smuggling Trade and the Protocol Against the Smuggling of Migrants by Land, Air and Sea (2000) from a Refugee Protection Perspective." *International Journal of Refugee Law* 14(4): 36. p. 570.

39 Van Kessel., op. cit., p. 10.

40 Hoffman, op. cit., p. 5.

41 Ibid. p. 1.

42 Brolan, op. cit., p. 573.

43 United Nations, *Protocol to Prevent, Suppress and Punish Trafficking in person, especially women and children, Supplementing the United Nations Convention against Transnational Organized Crime*.

44 The case judgements can be accessed at: <http://decisions.justice.wa.gov.au/supreme/supdcns.nsf>, and at: <http://dcssearch1.nt.gov.au/CES5/doj-ntsc.aspx> by using the search term 'people smuggling'. The articles referenced in this paper contain a summary of the judgements that I believe to be appropriate.

45 Guest, D. (2010). 'Accused people-smuggler's mutiny fear'. *The Australian*. 16 March 2010.

the group on a fishing trip and was forced to come to the Australian territory fearing that he would be thrown overboard otherwise - a jury rejected the claim... Judge Allan Fenbury said it was clear that the fisherman knew what was planned from the beginning, though he noted that Hasanusi was lured into crime by an organised trafficking operation. "You are a simple uneducated fisherman from Indonesia", Fenbury said. "It must have been the money that made you do this. The people smugglers will always prey upon people like you who need the money". Hasanusi was sentenced to 6 1/2 years in prison with a minimum of 3 1/2 years before good behaviour can apply".⁴⁶

In May 2010, four Indonesian fishermen were paid a nominal amount to bring a boatload of Afghan nationals to Australia.⁴⁷ The Supreme Court heard that the men were under the impression they were to drop the asylum seekers at Ashmore Island and then could return to Indonesia. "The court heard they did not understand the serious consequences of their actions. Three of the men were paid \$63 and the fourth \$150 before setting off for Ashmore Island. All four had given their money to their families. The court heard they were very poor people lured by 'real criminals' for a very small amount of money. The men have all been sentenced to serve a minimum of three years in jail. Justice Judith Kelly said the court was bound to give the men the minimum sentence of five years' jail, with a non-parole period of three years. She said it was an "extremely harsh" mandatory sentence that did not allow the court any discretion. Last year, Justice Dean Mildren also criticised the minimum sentence, after dealing with two Indonesian crewmen from the SIEV 36, which exploded after being intercepted by the Australian Navy".⁴⁸

The people smuggling process

The stories of these fishermen consistently demonstrate that convicted people smugglers are uneducated fishermen, earning more money for their involvement in the smuggling activities than from fishing. A fisherman is able to make a month in salary, sometimes many months salary in one venture. Although not all traditional fishermen will consider people smuggling to be a viable option for improving their economic status, it is hypothesised that if the opportunity for an individual to become involved with people-smuggling presents itself, poor fishermen will utilise the opportunity, considering the risks to be worth the opportunity to assist in the reduction of poverty for themselves and their families.

46 Associated Press, (2010b), 'Indonesia people smuggler jailed in Australia', *Arab News*. 22 April 2010. Available at; <http://arabnews.com/world/article45837.ece>

47 Stewart, P. (2010). People smugglers' \$63 boat trip ends in jail, ABC News.

48 Ibid

Like any social activity, people smuggling requires planning, organisation, and implementation. There are those like Abu Quassey, organiser of the SIEV X venture, and there are others who implement the operations. These others are the Indonesian crews of the various fishing vessels and are the small players drawn into this activity. The anecdotal evidence outlined previously supports the notion that the Indonesian crews apprehended in Australian waters are not criminal masterminds like Abu Quassey. Smuggling operations can be best considered as a grass-roots affair, "originating from within the stranded refugee communities and/or local Indonesian communities".⁴⁹ There is no evidence for any form of organised crime with "individuals involved in transporting people as an occasional and secondary occupation to their main income earning activity or loose, fluid networks of locally based smugglers, probably with transnational contacts through shared ethnicity or kinship".⁵⁰ Contrary to popular belief, people smugglers are not 'the scum of the earth'.

As will be shown, these people smugglers are disadvantaged Indonesian citizens, becoming involved in people smuggling activities as a result of many factors. These will be discussed in depth below, and include the loss of traditional land rights and poverty in Indonesia, the fact that a demand for their services as people smugglers exists, and that this activity will result in a payment greater than that which can be earned in their fishing occupation. It is a choice of economics.

Smuggling for Survival

The 3.06 million square kilometres of the Indonesian archipelago⁵¹ is home to "38 per cent of all marine fish species and some 78 per cent of the world's corals".⁵² The archipelago is divided, roughly down the centre, by a remarkable biological demarcation known as Wallace's line, separating the ecozones of Asia and Wallacea, a transitional zone between Asia and Australia. Significantly, to the east of the Wallace line the Eastern Indonesian regions of East Nusa Tenggara, Maluku and Papua,⁵³ have "access to the marine resources of the Arafura Sea

49 Marfleet, Phillip (2006), *Refugees in a Global Era* (Hampshire, UK: Palgrave Macmillan). p. 255.

50 Hoffman, op. cit., p. 2.

51 Suharto, (2007). Forthcoming the 2010 Indonesian Population and Housing Census: The 23rd Population Census Conference. *The 23rd Population Census Conference*. D. o. p. s. B. S. Indonesia). p. 2.

52 Dutton, Djohani, et al. (2009). Balancing biodiversity, conservation and development in eastern Indonesia. *Working with nature against poverty: development, resources and the environment in eastern Indonesia*. B. P. Resosudarmo. Singapore, Institute of Southeast Asian Studies. p. 129.

53 Resosudarmo, B. P. and F. Jotzo (2009). Introduction. *Working with nature against poverty: development, resources and the environment in eastern Indonesia*. B. P. Resosudarmo. Singapore, Institute of Southeast Asian Studies. p. 7.

which lies between Australia and Indonesia".⁵⁴ The Arafura is Indonesia's 'golden fishing ground' its' most commercially productive.⁵⁵ Roughly 12 million living east of the Wallace line "depend directly on biodiversity and ecosystem services for their livelihoods and well-being".⁵⁶

The growing demand for resources

However, the resources of this biologically diverse and economically important region "are under increasing pressure as global demand increases, as comparable resources in western and central Indonesia are depleted and as population expands due to in-migration and local economic and population growth".⁵⁷ The United Nations estimates that Indonesia's urban population has increased almost fourfold since 1950.⁵⁸

Overfishing occurs in response to increasing population and is related to a large-scale fishing boom in the Arafura Sea.⁵⁹ Primarily the result of large-scale illegal fishing, where commercial operators have not conformed to Indonesian Government requirements,⁶⁰ the below acceptable level of natural resources has "disrupted and diminished the opportunities for the small-boat [and traditional] fisherman of eastern Indonesia to derive a living from the sea".⁶¹ As these fishermen have seen their capacity to operate curtailed, and as competition for the remaining resources grows, they have been forced to extend their voyaging, shifting to strategic locations along coasts of eastern Indonesian southern islands.⁶² These fishermen are also more likely to resort to illegal and destructive fishing methods themselves, placing even greater pressure onto inshore environments essential for fish spawning; reducing further catch, returns, and social well-being⁶³ and leading to a dangerous cycle which "further diminishes the prospects of local communities for sustainable

54 Ibid. p. 8.

55 Resosudarmo, B. P., Napitupulu, et al. (2009). *Illegal Fishing in the Arafura Sea. Working with nature against poverty: development, resources and the environment in eastern Indonesia*. B. P. Resosudarmo. Singapore, Institute of Southeast Asian Studies: 178 - 200. P. 178

56 Dutton et al., op. cit., p. 125.

57 Ibid.

58 Kreager, P. (2006). "Migration, social structure and old-age support networks: a comparison of three Indonesian communities." *Ageing & Society* 26: 24. p. 39.

59 Fox, J. J., D. S. Adhuri, et al. (2009). *Searching for a Livelihood: The Dilemma of Small-boat Fishermen in Eastern Indonesia. Working with Nature Against Poverty: Development, Resources and the Environment in Eastern Indonesia*. B. P. Resosudarmo and F. Jotzo. Singapore, Institute of Southeast Asian Studies Publishing: 201 - 225. p. 206

60 (*Kompas*, 9 June 2003; *Tempo Interaktif*, 30 February 2003). IN Resosudarmo (Napitupulu and Campbell), op. cit., p. 184.

61 Resosudarmo (Napitupulu and Campbell), op. cit., p. 180.

62 Fox et.al., op. cit., p. 201.

63 Resosudarmo (Napitupulu and Campbell), op. cit., p. 193.

livelihoods and this contributes to increased poverty".⁶⁴ These threats to biodiversity and livelihoods have been further aggravated by the culture of corruption intertwined into the Indonesian system. "As a consequence, there is both little substantive protection from encroachment, hunting and illegal harvesting of resources and little incentive for park neighbours to manage adjacent lands and seas in ways that are compatible with nature conservation".⁶⁵ Without protection from encroachment, these waters are vulnerable to the kind of overexploitation known as the 'tragedy of the commons'.⁶⁶ Fishermen have become disenfranchised by the unfair enforcement of their individual rights and their inability to compete with larger illegal operators.⁶⁷

Indonesian fishermen have limited opportunities to break out of this poverty cycle. Attempting to increase their catch by fishing in Australian waters, or turning their hand to people smuggling are two ways of fending off poverty.

Indonesian-Australian Collaboration

Since 2007, Australian patrols of its waters are now supplemented by joint patrols with Indonesia "for a more coordinated approach to reducing illegal, unreported and unregulated fishing in the region".⁶⁸

The restricted access to Australian waters resulting from these increased patrols severely limits the ability of Indonesian fishermen to escape the cycle through fishing Australian waters. January 2010 figures show that number of boats caught fishing in Australian waters has declined to about 30 since June 2009, compared to "hundreds" over previous years. Increased patrols "have made it too risky for businessmen bankrolling the illegal fishing, but an industry expert says that the fishermen may turn to people smuggling to survive".⁶⁹ As Jim Fox asserts, "These fishermen are actually very skilled. They know the seas between Australia and Indonesia, and those skills they are going to try to put to work".⁷⁰ Professor Fox says Indonesia has also cut the fuel subsidy that helped make the

64 Dutton et al., op. cit., p. 130.

65 Ibid. p. 131.

66 The commons: "resource that is shared by many people. The atmosphere, oceans, lakes and rivers are commons that provide natural resources and absorb pollution. ... they can be used by anyone to any extent. Open-access commons are vulnerable to overexploitation because no one is responsible for controlling the intensity of their use. Overexploitation under these circumstances is known as the tragedy of the commons . . . Overfishing illustrates how tragedy of the commons is a consequence of 'rational' decisions by individual resource users to get as much of the resource as possible". (Marten 2001: *Chpt 10*)

67 Resosudarmo (Napitupulu and Campbell) , op. cit., p. 190.

68 Australian Customs and Border Protection Service, (2007). 'Australia and Indonesia conduct joint fisheries patrol'. *Customs media release*. 1 November 2007. Available at; <http://www.customs.gov.au/site/content9614.asp>

69 News, A. (2010). Patrols could force fishermen into people smuggling.

70 Ibid.

trips viable. "The bosses who control that trade can shift their capital and do other things," he said. In Papua "and elsewhere a lot of that capital has moved into illegal logging, but for the poor fishermen there are very few alternatives. Temptation now is for some of these people to get back into people smuggling".⁷¹ Home Affairs Minister Brendan O'Connor disagrees, drawing attention to the more than 20 successful prosecutions in which jail terms of five or six years have been imposed. O'Conner believes that the jail terms should deter fishermen from taking jobs as people smugglers.⁷² Yet in reality, and despite this statement, the boats keep coming. The Australian, on June 19 2010, reported that during the previous week the Australian Navy had intercepted two suspected asylum-seeker boats off Christmas Island. They were on the 70th and 71st boats to arrive this year and the fourth and fifth suspected asylum-seeker boats to enter Australian waters from Indonesia in the week.⁷³

Australia's policies have clearly not been successful. Nor has Indonesia, in collaboration with Australia or through its own initiatives, successfully responded to the regional flow. "Indonesia's domestic laws against people smuggling are largely based on immigration offences and not related to people smuggling as such. What this means is that if a person ultimately seeking asylum in Australia enters or exits Indonesia legally, which is relatively easy to do, there is little the Indonesian authorities can do".⁷⁴ At a local level, Indonesia's judiciary remains susceptible to bribery, so charges can easily be dropped or convictions avoided or reduced. Corruption within Indonesia's law-enforcement agencies is rampant, making it almost impossible for international maritime organisations to control the region. Despite Australia's desires, Indonesia has more important priorities than passing new, stronger laws to crack down on people smuggling. "This is compounded by the slowness of the passage of much legislation and the disinterest or antipathy felt by some Indonesian legislators towards Australia . . . One factor in this antipathy is that some Indonesian legislators believe the problem is Australia's, not theirs."⁷⁵ They also note that Australia devotes considerable border protection resources to stopping Indonesian fishing in Australian territorial waters - waters they say were traditionally Indonesian".⁷⁶

71 Ibid.

72 Ibid.

73 Perpitch, N and D. Guest, (2010), *Asylum seekers boats keep coming as riot case hits court*. The Nation. 19 June 2010. Page 6.

74 Lintner, Bertil (2002), *Blood Brothers: Crime, Business and Politics in Asia* (Chiang Mai: Silkworm Books). p. 303.

75 Lintner, op.cit., p 304.

76 Kingsbury, op. cit.

Indonesia as a Transit Country

Asylum seekers attempting to enter Australia by boat invariably arrive having transited through Indonesia.⁷⁷ The Indonesian President Yudhoyono, in identifying his country as a 'transit' country, has also expressed a fundamental truth, "Australia as a destination country and Indonesia as a transit country cannot resolve this issue by ourselves".⁷⁸ Indonesia's inability to resolve the issue by itself is further complicated by "the absence of national refugee legislation and procedures".⁷⁹ The UNHCR is the primary provider of protection and assistance to refugees and asylum-seekers, undertaking responsibility for registration, status determination and the search for durable solutions in Indonesia.⁸⁰

Finding durable solutions will not be easy. Corruption is a significant issue. In regards to human trafficking, a United States Department of State report, *Trafficking in Persons Report 2010* states, "Corruption remains endemic in Indonesia, and members of the security forces continued to be involved both directly and indirectly in trafficking ... Fraudulent recruitment brokers involved in trafficking often operate outside the law with impunity. Some Ministry of Manpower (MOM) officials reportedly licensed and protected international labor recruiting agencies involved in human trafficking, despite the officials' knowledge of the agencies' involvement in trafficking. Some fraudulent recruitment agencies tied to families or friends of government officials or police make deals when caught, and then continue to operate. Government passport services remained the object of widespread corruption, and recruitment agencies routinely falsified birth dates, including for children, in order to apply for passports and migrant worker documents".⁸¹

The degree of corruption exposed above, together with the corrosive effects noted in the World Bank report underline President Yudhoyono's acknowledgement that Indonesia cannot resolve the issue by itself. Over more than the past decade, the policies of Australian Government's, both Liberal and Labour, have failed to stop asylum seekers attempting to enter Australia by boat. This seemingly intractable problem is identified by Bimal Ghosh, who states, "when there are high emigration pressure in sending countries, and powerful demand pull in

77 Tailby, R., (2001) 'Organised Crime and People Smuggling/Trafficking to Australia. *Australian Institute of Criminology, trends and issues* No. 208., p. 4.

78 Associated Press, (2010a), 'Indonesia, Australia agree on asylum seeker plan', *The Jakarta Post*, 10 March 2010. Available at: <http://www.thejakartapost.com/news/2010/03/10/indonesia-australia-agree-asylum-seeker-plan.html>

79 UNHCR., *Australia*.

80 Ibid

81 United States Department of State, (2010) *Trafficking in Persons Report 2010 - Indonesia*, 14 June 2010, available at: <http://www.unhcr.org/refworld/docid/4c1883ecc.html>.

the destination countries and especially when the two converge, restrictions on admission do not, by themselves, stop migration; they only drive the movements into irregular channels".⁸²

Restrictive immigration policies and the consequent tight control of Australia's maritime border have clearly failed.

Alternative Solutions and Recommendation

In the very long-term Bimal Ghosh's notion of regulated openness, involving an international approach to the orderly movement of people may be the way forward.⁸³ Ghosh believes in the ability of international organizations to solve international problems, and in this sense, regulated openness; the notion of open borders sustained by a code of cooperation between members, based on a set of mutually agreed norms and principles to "secure a good part of the efficiency-related benefits of openness while avoiding much of the distributional tension and negative externalities that free movement would generate",⁸⁴ is similar to the idea of an international global warming regime. The movement of asylum-seekers and refugees cannot be solved within national borders and so an international approach, and calls for a new international regime are attractive. However, as the global warming debate has shown it is often easier to reach agreement among nations that something must be done than to agree on what to do.

A global response to this global problem is necessary but enacting a response through an International agreement will take a long time. More immediately, practical solutions are required.

Australia's responses to asylum seekers and people smugglers have focused on increasing border protection methods and creating disincentives for arrivals. Yet despite the large amounts of money spent on such things as funding the IOM and UNHCR in Indonesia, arresting and prosecuting smugglers, operating detention centres and border surveillance; people smuggling continues.⁸⁵ Australia's contributions to the UNHCR refugee fund for such things as detention centres and their own spending on strengthening border protection methods could more appropriately be used to alleviate some of the root causes of the displacement of asylum seekers. Until those causes are addressed, people

82 Ghosh, B., (2005) *Managing Migration: Whither the Missing Regime?* UNESCO (15 February 2005), Available at, <http://unesdoc.unesco.org/images/0013/001391/139149e.pdf>

83 Ibid.

84 Ibid., p. 11.

85 Hoffman, op. cit., p. 7.

will continue to flee life-threatening situations. These people are desperate: they seek asylum for their very existence and will continue to do so until conditions are safe.⁸⁶

"If Australia is serious about putting an end to people smuggling, it needs to address the reasons why asylum seekers risk getting on a boat".⁸⁷ As a global problem, the existence of refugees, and thus the demand for people smugglers will not disappear unless all root causes, such things as war, famine, and natural disasters are combated. This is highly unlikely. Thus, it is imperative that these causes are considered in any attempt to stop unauthorised arrivals attempting to reach Australia as simply increasing migration barriers can backfire, encouraging people smuggling ventures.⁸⁸ "It is recognised within migration research that irregular people movements cannot be turned on and off like a tap, although an assumption that they can, appear to underpin some policy decisions".⁸⁹ More realistically, providing asylum seekers and refugees with satisfactory alternatives is the only way to ensure effective prevention as "they only turn to smugglers in the absence of both viable and legal options. When these are available, the customer base then falls away and the trade stops".⁹⁰ However, these options are not currently available. Less than 1 per cent of the world's refugees may be resettled in any given year,⁹¹ and with the absence of durable solutions, the three primary solutions available to refugees, this number is not likely to increase.

More appropriate re-settlement and processing options must be provided for refugees. "Drastic improvements must also be made to the registration and resettlement processes to give asylum seekers more hope that their claims are being considered in a transparent and timely manner".⁹² This could occur if the Australian government were to place funds in an Indonesian refugee processing centre rather than an offshore detention facility. Furthermore, funds currently spent on detention centres in Indonesia could be more appropriately allocated to deterrence and development options for the region. Deterrence through information, education, adequate health care, employment, legal and social services would comfort refugees, making them less likely to seek out an alternative solution.

Deterring fishermen from becoming people smugglers will involve addressing the tragedy of the commons, which leads to much of the poverty experienced by fishermen in Indonesia. While environmental degradation may not be reversed,

86 McMaster, op. cit., p.

87 Hoffman, op. cit. pp 7-8

88 Ibid. p. 4.

89 Castles, p. 208 IN Ibid.

90 Hoffman, op. cit., pp. 1-2.

91 UNHCR, *Statistical yearbook 2008*, pp. 10 -11.

92 *Submission 16 to the Senate Inquiry*, pp. 7, 4 -5 and Hoffman, op. cit. pp 7-8

measures can be put in place to promote protection of the commons. Primarily, individual rights to the resources must be recognised and incentives put in place to encourage the abidance of license regulations and less destructive harvesting methods.

While it will take time to put such measures into force, the long-term benefits will be an increase in catch quality and quantity, improving incomes for fishermen. In the short term, combating the inequalities caused by poverty is paramount. Although it is a regional problem, if Australia desires to diminish the flow of asylum seekers attempting to enter Australia it must focus its efforts on assisting Indonesia to provide such things as education, employment opportunities, and social welfare to affected individuals.

The problem of fishermen in poverty, turning to people smuggling, needs to be addressed with regional development, focused on combating the root causes of poverty. This is particularly important when considering that the current preventative measures, namely, punishment, have been demonstrated to be ineffective. If fishermen are removed from the equation, for asylum seekers without legitimate options their means of travel to Australia by sea is removed. Australia's response to the 'boat people' must change. Rather than strengthening border protection and entrance barriers, resources need to focus on issues of development, providing asylum seekers with legitimate relocation options and poor Indonesian fishermen with ways to increase their income opportunities.