

‘Chaos, death and suffering on our doorstep’

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I would like to begin by thanking Susan Martin and the Institute for the Study of International Migration for inviting me to Washington and the Center for Australian and New Zealand Studies for co-sponsoring this event.



Herman Wainggai

Herman Wainggai is a West Papuan refugee currently living in Australia. He is the leader of a group of 43 West Papuans who in January this year arrived by canoe in Queensland, in the far northeast of Australia. When interviewed by immigration officials, they sought asylum – which, in the Australian context, meant that they applied for a protection visa. In March, the Immigration Department announced that 42 of the 43 applications had been successful.

Following this announcement, Indonesia’s political leaders and its media complained vociferously. The Indonesian ambassador in Canberra was recalled. In response to these protests, the Australian government introduced legislation into parliament, the Migration Amendment (Designated Unauthorised Arrivals) Bill, designed to deter West Papuan nationalists from seeking Australia’s protection and to remove those who were to do so in future, from Australian territory. While the legislation was prompted by the arrival of Wainggai and his 42 companions, it would have effectively stopped all asylum seekers arriving by boat from being processed in Australia and from accessing Australian courts. Under the legislation, all such asylum seekers would have been taken to the former Australian colony of Nauru to be processed there. Even if their refugee claims had been successful, Australia could have opted not to resettle them – which would have meant that they may have remained on Nauru indefinitely.

The government and other proponents of the bill put forward two main arguments: they said that the legislation would address an anomaly, namely that for some time asylum seekers arriving on an Australian island excised from the migration zone have not had access to the Australian legal system and that it was only reasonable to apply the so-called Pacific Solution (the extraterritorial detention and processing of asylum seekers that had been introduced in 2001 in the wake of the *Tampa* crisis) also to those few who reached the Australian mainland; and they said that it was wrong to provide a sanctuary

for political activists who abused Australia's hospitality to agitate against the government of their home country – particularly if the country in question was Australia's immediate neighbour, an important regional power and ruled by a friendly government. Opponents of the legislation argued that the Pacific Solution had been fraught with numerous problems and should be scrapped rather than extended, and that Australia should not rewrite its refugee policies to placate the government in Jakarta.

In August, the Migration Amendment Bill came before Parliament. In the Lower House, the House of Representatives, the legislation passed comfortably (even though four members of the governing Liberal-National coalition did not support it). In the Upper House, the Senate, where the government holds only a wafer-thin majority, all government senators would have had to support the bill to ensure its success; when it became apparent that at least one of them was going to vote against it, the government withdrew the bill before it could be debated. The defeat of that legislation was extraordinary not only because of the dissent from Liberal Party senators, which was unprecedented, but also because so far the Labor Party opposition had supported the thrust of the government's asylum seeker policies.

More recently, an Australian newspaper has claimed that Herman Wainggai spent two years recruiting members of the group seeking asylum in January, and that he deliberately selected people who would easily be accepted as refugees in Australia and who hailed from different parts of West Papua. According to a West Papuan lawyer allegedly involved in organizing the exodus in January, 'We wanted to show the world a small picture of the terrible human rights situation across all of Papua. It was a tactical move in the struggle, to publicise the situation here.' That same lawyer also revealed that preparations are currently underway for another group of West Papuan refugees to sail to Australia.

Between March and August, Australia's response to the 43 West Papuans and the government's proposed legislation were the subject of extensive and often very passionate public debate. That debate was largely about the events following the arrival of the 43 West Papuans in January. References to developments that had taken place before January 2006 were almost exclusively concerned with Australia's response to so-called unauthorised arrivals since the early 1990s.

In the early 1990s, Australia's Labor government became concerned about the number of Cambodian asylum seekers arriving in Australia. Australia had played a crucial role in brokering the 1991 peace settlement in Cambodia, and did not want to be seen to be undermining the legitimacy of the government in Phnom Penh by accommodating Cambodians fleeing their country. To deter boat arrivals, in 1992 the government introduced legislation that made it mandatory for all those arriving without a valid visa, including children, to be detained until a decision about their visa application had been reached; those granted a visa would then be released, others would be deported. Boat arrivals peaked in 1994, with 21 boats carrying 1071 asylum seekers arriving between 1 July 1994 and 30 June 1995, but dropped significantly over the following four years.

As a result of the 1996 federal elections, a conservative Liberal Party-National Party coalition under the leadership of John Howard ousted the Labor Party from government. The conservatives' refugee and asylum seeker policies were very similar to those of the Keating- and Hawke-led Labor Party governments, which had been in power since 1983. In response to the success of the ultra-nationalist One Nation Party, however, the Liberals began appealing to voters concerned about non-European immigration and multiculturalism in order to shore up their support. What distinguished the Howard government from its predecessor was its anti-asylum seeker rhetoric, rather than its asylum seeker policies.

In 1999, the number of asylum seekers arriving by boat once again rose sharply. In 1999-2000, there were 4174 such 'unauthorised boat arrivals'. Most of them were from Afghanistan and Iraq. They usually reached Australia (or Australian territories in the Indian Ocean such as Ashmore Reef and Christmas Island) on small boats chartered by people smugglers in Indonesia. The detention centres became overcrowded. It was evident that the policy of mandatory detention had failed in that it had not been a strong enough disincentive for people desperate for the opportunity to flee intolerable circumstances and rebuild their lives.

On 25 August 2001, the Rescue Control Centre at the Australian Maritime Safety Authority instructed the Norwegian container carrier *Tampa*, on its way from the Western Australian port of Fremantle to Singapore, to assist a boat in distress about 55 nautical miles from Christmas Island. The *Tampa* rescued 433 refugees, most of them Hazaras fleeing the Taliban, and 5 Indonesian crew from the *Palapa 1*, a 20-metre Indonesian ferry which would have been ill-suited under the best of circumstances to carry such a large number of passengers.



The deck of the Tampa

The *Tampa*'s Norwegian captain decided to disembark his 438 'passengers' at the nearest port, at Australia's Christmas Island. On 29 August, Australian special forces took control of the *Tampa* and transferred the refugees to an Australian navy vessel. As part of the so-called Pacific Solution negotiated with the governments of New Zealand, Nauru and Papua New Guinea, New Zealand agreed to process 150 Afghan refugees, including all unaccompanied minors. Nauru accommodated the remainder in two hastily constructed detention centres.

The Howard government then rushed legislation through parliament to deny all refugees intercepted before they could reach the Australian mainland access to Australian courts and to Australia's refugee determination process. Instead they would all be taken to either Nauru or Papua New Guinea and detained there until their cases had been decided by either the UNHCR or Australia's Department of Immigration. These decisions could not be appealed in Australia.

The terrorist attacks of 11 September 2001 occurred only two weeks after Australian special forces had boarded the *Tampa*. Now the government was quick to associate the 'boat people' (most of whom were of Middle Eastern origin) with terrorists – keeping asylum seekers out of Australia now supposedly became necessary because they could pose a security threat.

The government realised that a focus on threats to Australia's security, and a firm response to such threats, could bolster its chance of winning the 2001 federal election. John Howard's promise to voters, 'We decide who comes to this country and the circumstances under which they come!', became the catchcry of the governing coalition parties and the defining one-liner of the election campaign. The government won another term in office.

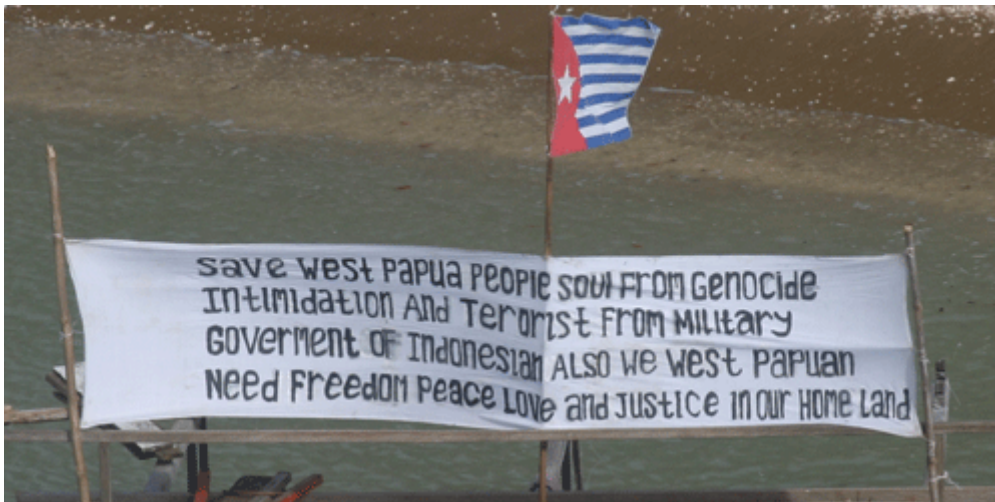
Over the next four years, Australia's response to asylum seekers remained in the spotlight. Since 2001, it has been overall the most controversial and talked-about issue in Australian political debate. In Australia, critics of the government's policy focused on the human costs of the mandatory detention and extraterritorial processing policies and, albeit to a lesser extent, on the damage these policies were doing to Australia's reputation. The critics kept portraying asylum seekers in immigration detention as victims, as intrinsically good people (to counter the government's insinuation that they were 'illegals', 'queue jumpers' and potential terrorists), and as people who would be model immigrants and, later, model citizens. There was almost no mention of the circumstances that compelled asylum seekers to leave their homes. First person narratives by asylum seekers rarely featured in Australian public discourse.

Asylum seekers themselves were effectively isolated from the Australian public. They resorted to highly symbolic protests, which often involved self-harm, to draw attention to their situation; on several occasions, while on hunger strike, asylum seekers sowed their lips shut. They had little control over how their actions would be read. The government successfully used these protests to depict asylum seekers as people who were culturally so different that they could not be integrated into the Australian community.

Last year, government backbenchers successfully lobbied for a change of policy. Children were released from detention. The detention centre on Nauru was almost completely emptied, with only two Iraqi refugees remaining on Nauru because they had not received the required security clearance from Australia's domestic intelligence agency ASIO.

The unauthorised arrival and subsequent detention of the 43 West Papuans at first seemed to be yet another chapter in the story that had begun with the arrival of the *Tampa* in 2001, if not with the introduction of mandatory detention in the early 1990s. But there were significant differences, although these were not always acknowledged in public debate.

The West Papuans identified themselves as political activists and used their arrival in Australia – in a canoe and flying the Morning Star flag, which symbolises West Papuan aspirations for independence – to make a political point. Unlike most others seeking Australia’s protection, they landed on the Australian mainland. Unlike most other asylum seekers arriving by boat, they did not use the services of people smugglers. For the West Papuans, Australia was clearly the country of first asylum (whereas for many of the asylum seekers who had arrived between 1999 and 2001, Australia, while not the first country they reached after fleeing their homes, was the first that had signed the Refugee Convention). The West Papuans did not lend themselves easily to be depicted as passive victims.



Banner flown by the 43 West Papuan refugees upon their arrival in Queensland in January 2006

The situation in West Papua itself became an important issue in Australia. And the government’s refrain, ‘We decide who comes to this country and the circumstances under which they come’, no longer worked – in fact it could be used against an Australian government willing to listen to the government of another country when deciding who should be admitted to Australia.

Those debating Australia’s response to the West Papuans and the government’s proposed bill assumed that the only relevant context was that of the past five (or perhaps: 14) years. They then treated the draft legislation either as an unprecedented measure or as a response to an unprecedented problem. It was curious that there was very little interest in exploring whether or not in the past refugees had used Australia as a platform in attempts to undermine the authority of governments in their home countries, whether Australia’s

national interest had been harmed by politically active exiles, whether or not Australia had previously condoned the activities of secessionist rebels, and whether or not Australia has been guided by foreign policy considerations when formulating its refugee and asylum seeker policies.

Australia's main broadsheet newspapers, including the *Australian*, which belongs to Rupert Murdoch's News Limited and is usually supportive of the Howard government, campaigned vigorously against the Migration Amendment Bill. The following extract from the *Sydney Morning Herald* (which generally promotes liberal views – an Australian *Washington Post*, if you like) provides a succinct summary of a key set of arguments used by the bill's opponents.

National dignity as well as humanity should put our attitude beyond doubt. We are not such an inconsiderable country that we have to worry about pressure from Djakarta; we are not so poor in resources that the problem of providing for a few hapless people should worry us; we are not, one hopes, so gullible as to believe that we risk giving harbour to dangerous agitators.

The problem with this quote is that it is not from an editorial published in 2006 but from one that appeared in January 1970.

Before the arrival of the first Indochinese 'boat people' and East Timorese 'evacuees' in the mid-1970s, West Papuans comprised the only *sizeable* group of refugees arriving uninvited on Australia's doorstep and seeking its protection. The exodus began even before Indonesia assumed control of West New Guinea in May 1963. By the early 1970s, thousands of West Papuans had fled what was then called West Irian (and, later, Irian Jaya) to the Australian territory of Papua and New Guinea. In 1969, a small group of West Papuans fled directly to an Australian island in the Torres Strait.

The Indonesian government has always maintained that the western half of the island of New Guinea is an integral part of the Indonesian nation state. Until 1962, it was of course a Dutch colony, and until December 1961, Canberra had supported the Dutch rather than the Indonesian position. Since December 1961, however, the Australian government has been as consistent in its position as has its counterpart in Jakarta with regard to Indonesia's claim over West Papua.

In 1971, for example, a Foreign Affairs document stated: 'As the status of West Irian has been settled and accepted internationally, we must be careful not to take any action which could be regarded as an infringement of Indonesia's sovereign rights. This includes, of course, any action which could be interpreted as support or encouragement for dissident elements.' The Australian government's most recent commitment to recognise Indonesia's sovereignty over Papua is merely the logical continuation of a consistent Australian policy reaching back to December 1961.

In the early 1960s, at the time of the Dutch withdrawal and eventual Indonesian take-over (after a short interim period in which West New Guinea was formally administered by the

United Nations), the Australian government may not have been able to anticipate the extent to which those supporting a continuation of Dutch rule or independence would be persecuted by the Indonesian authorities. But within a very short time, intelligence gathered by Australian government officials from refugees in Australian Papua and New Guinea amply demonstrated the fact that the Indonesian security forces were routinely perpetrating human rights violations in West Irian.

Since it became aware of such human rights violations, the Australian government consistently played down its knowledge of them. On 18 May 1965, for example, the Minister for Territories responded to the suggestion that returned refugees were being ill-treated in West Irian by declaring in parliament: 'I say very definitely that there is no evidence of this whatsoever', while at the same time evidence of precisely such ill-treatment was mounting and made available to the government through the monthly reports of the Local Intelligence Committee (T.P.N.G.). Thus the idea that the Australian government has *suddenly* become mindful of Indonesia's interests is patently absurd.

Equally absurd is the idea that the introduction of the Migration Amendment Bill constituted an unprecedented attempt to bypass Australia's international legal obligations under the 1951 Refugees Convention (to which Australia had acceded in 1954). It wasn't until 2 December 1973 that the Australian government signed the 1967 Protocol which removed the Convention's temporal and geographical limitations. On 1 December 1973, Papua New Guinea had become self-governing. While the granting of self-government was still one important step removed from the granting of independence (which occurred in September 1975), in December 1973, with Australia's transfer of responsibility for Papua New Guinea's internal affairs to the government in Port Moresby, it became the responsibility of the latter to deal with West Papuan refugees – both those already in the country (some of whom were living in impromptu camps close to the border) and those trying to cross the border into Papua New Guinea's Sepik and Western districts. It was only then – when Australia was no longer responsible for these refugees – that Australia committed itself to universally applying the 1951 Convention to all those seeking its protection.

Between 1962 and 1973, Australia had refused to commit itself to the provisions of the 1951 Convention with respect to *all* refugees, regardless of where they came from, largely because it did not want its response to people fleeing Indonesian-controlled Western New Guinea to be governed by international conventions and because it did not want the UNHCR to become involved in the refugee determination process in Papua and New Guinea.

From about 1965, West Papuan refugees were usually allowed to remain in Papua and New Guinea if they were able to convince the Australian authorities that they had been politically active in West Irian and had been persecuted by the Indonesians on account of such political activity. By 1969, 75 West Papuans and their families had been allowed to stay in Papua New Guinea on five-year permissive residence visas, the forerunners of today's temporary protection visas, TPVs. By December 1973, about 500 West Papuan permissive residents were living in Papua New Guinea.

Many more, however, were returned to the Indonesian-controlled half of New Guinea. Those who were allowed to stay on permissive residence visas could do so only after they had signed an undertaking not to engage in anti-Indonesian political activity. (Then, as now, the Australian government was convinced that West Papuan separatism needed to be discouraged. In April, Australia's immigration minister, Amanda Vanstone, wrote in a newspaper article: 'Separatism is a toxic cause that could, if encouraged, result in chaos, death and suffering on our doorstep. Such a human disaster would mean a flood of normal citizens fleeing homes they would otherwise have no desire to leave.')

Permissive residence visas did not entitle their holders to travel to Australia. While the Australian authorities were willing to accommodate some West Papuan refugees in Papua and New Guinea, they were unwilling to countenance the presence of such refugees in Australia. They were also barred from settling in the border region and, in some cases, directed where to live: In 1968, the Territory's administration established a camp for West Papuan refugees on Manus – the same island where, more than three decades later and as part of the Pacific Solution, Australia would once again fund the construction of a camp for asylum seekers.

West Papuan permissive residents were not recognised as refugees under the 1951 Convention, nor granted asylum under Australia's 1956 political asylum policy. They could never be sure whether or not their temporary visas would be renewed, and whether the authorities would not one day deport them to Indonesia.

When the authorities in Canberra and Port Moresby were formulating and administering Australia's policy regarding West Papuan refugees, they liaised closely with the Indonesian government. The latter received detailed briefings about Australia's relevant negotiations with the UN High Commissioner for Refugees and also about the cases of individual refugees. Australia even exchanged intelligence with the Indonesians about West Papuan insurgents. In contrast, the Australian government kept information about the process the authorities used to distinguish between 'political' and 'non-political' refugees, about the precise number of refugees crossing into Papua and New Guinea, and about the conditions in West Irian / Irian Jaya, which compelled West Papuans to flee, from the Australian public as much as that was possible.

The two histories I have recounted – one concerning Australia's response to asylum seekers between 1992 and 2005, and the other concerning its response to West Papuan asylum seekers between 1963 and 1973 – draw attention to two distinctly different public policy approaches to asylum seekers.

The first approach was governed by Australia's 1956 asylum seeker policy and, more broadly, by ideas about asylum as practised, for example, in the Greek city states or in 19th century Britain. I believe ideas about asylum (as opposed to refugee status) informed the drafting of Article 14 of the UDHR and of the 1967 UN Declaration on Territorial Asylum. According to such an approach, asylum seekers are accepted for humanitarian

reasons as long as their acceptance does not adversely affect Australia's relations with other countries or as long as such adverse effects do not unduly concern Australia.

According to the second approach, asylum seekers are a particular class of refugees seeking to be resettled, who in turn are a particular class of prospective immigrants. The admission to Australia of refugees is governed by procedures administered by the Department of Immigration: refugees have to meet health and character requirements and pass a security check. Currently Australia accepts 13,000 immigrants per year under its humanitarian program. 6000 of those are in the refugee category. According to official figures, Australia has accepted some 650,000 refugees for resettlement since the end of World War II. (The real figure may be substantially higher.) They were counted as refugees because their resettlement was facilitated by the IRO, the ICEM or the UNHCR. In all other respects, they were immigrants much like, for example, assisted passage immigrants from Britain or Italy.

Once asylum seekers are the responsibility of the immigration department, they pose a fundamental problem, because their suitability as settlers does not determine whether or not they are granted a visa. Instead they are merely assessed against the criteria of Article 1 of the 1951 Refugee Convention. They are seen to be sneakily bypassing the elaborate selection procedures Australia has put in place for migrants. Ideas about 'queue jumpers' and 'illegals' and the immigration department's hostility towards asylum seekers are at least partly due to the misunderstanding that asylum seekers should be treated as prospective immigrants. The idea that asylum seekers bypass normal migrant selection procedures may then also be responsible for an *undue* reliance on the Convention criteria – after all the criteria are all that is left to distinguish between desirable and deserving immigrants on the one hand, and undesirable and undeserving immigrants on the other.

In both approaches, there is an emphasis on Australia's national interest – in relation to foreign policy in the first instance, and in relation to population policy in the second.

I am not suggesting that future boatloads of West Papuans ought to be assessed under Australia's old asylum seeker policy or that Australia should adopt the approach it took between 1963 and 1973. But I am convinced that it would be useful to identify the limitations of the current approach, which makes asylum seekers into illegal immigrants.

Would it be possible to draw on *two* traditions: first, international refugee law – the criteria of Article 1 of the 1951 Convention – to identify those in need of protection (provided that it is acknowledged that these criteria were developed in response to a very specific situation in early 1950s Europe), and, second, international human rights law (the right to seek *and enjoy* asylum as formulated in the UDHR and elaborated in the 1967 UN Declaration on Territorial Asylum)?

Once the dust has settled, the controversy surrounding Australia's response to Herman Waingai and his 42 companions ought to lead to a broader debate about Australia's approach to asylum seekers. An *informed* historical perspective that allowed us to understand the ramifications of Australia's response could, I hope, facilitate such a

broader debate. Or put another way, such a debate could only be fruitful if it were informed by sound historical analysis.

Thank you for your attention.

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