

‘Too Prosperous?’ Indonesian Responses to Australian Asylum-seeker Policies

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This chapter seeks to address two issues. First, why Indonesia has not stopped asylum-seekers from using its territory as a transit point for entry to Australia; and second, Indonesian attitudes to Australian policy on asylum-seekers.

Part I: The Indonesian Context

Indonesian facilities for asylum-seekers are already under great strain. The Foreign Minister, Hasan Wirayuda, claimed in August that 2,000 asylum-seekers (mainly Afghan, Iraqi and Irianian) are currently in detention (Brummitt, 2001). At least another 251 had joined them by October 2001. This has pushed Indonesian refugee accommodation facilities to the limit.

Foreign citizens without legal documents or awaiting deportation are held in the *Karantina Imigrasi* - or Immigration Quarantine - supposedly a place of temporary detention. There is, however, no effective time limit on detention and no working formal method of case review. There is also a lack of clear and routinely-followed guidelines as to how asylum-seekers should be dealt with. Indonesia has not yet signed the United Nations Convention relating to the Status of Refugees of 1951 and its 1967 protocol, so the government will not consider applications for asylum (Roberts, 2001: 28). This leaves the United Nations High Commission for Refugees (UNHCR) branch in Jakarta as the only processing point but there is much confusion as to whether, and, if so, exactly when, the UNCHR or IOM (International Organization for Migration) should be involved (Roberts, 2001:28)

In most cases, the Immigration Department lacks funds to either deport asylum-seekers or try them for breach of immigration laws. Instead it deals with most for breach of procedural rules and cases grind through the immigration system and periods of detention are ordered. For many asylum-seekers the outcome is that they are not referred to the UNCHR or IOM at all. Instead, they are administratively denied refugee status; are either deported with the assistance of their own Embassy; or are detained indefinitely at the *Karantina*.² Even those who do manage to involve the UNHCR office can experience delays of years (Roberts, 2001:28; SBS, 2001) - even after they have been recognised as genuine refugees. Mares (2001) states, for example, that of 535 asylum-seekers classified as refugees by the UNHCR since 1999, only 18 have “departed for resettlement in a third country” and so far in 2001, only 4 (Mares, 2001b). According to Jakarta

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² This paragraph draws on Roberts 2001b.

Immigration officials, there are “large number” who have been held in the Kaldires detention centre in Jakarta for more than a decade, some even for over 40 years (Ibid).

Porous Prisons?

Indonesia’s refugee facilities are notoriously bad for asylum-seekers who do not have the means to buy themselves better accommodation. Some detention centres are former hotels (Mares, 2001b) but in the worst cases those without means (Roberts, 2001:28) are confined to 2 x 2 metre cells where they are fed a subsistence diet of rice and vegetables and are denied is no access to reading materials or other activities.

For those with means, however, it is possible to arrange reduced periods of detention or even access outside. Likewise, of asylum-seekers who are detained, those with money frequently escape. At present Indonesian estimates place missing refugees from detention camps at least 30 per cent.³ There is no mystery about where the missing refugees are headed. Because Indonesian detention conditions are so bad, because refugee status in Indonesia is largely meaningless; and because time can stretch more or less indefinitely in detention there is little reason for asylum-seekers not to take the risk of an illegal boat ride to Australia (SBS, 2001d).

These ‘missing’ asylum-seekers significantly distort official statistics and thus Australian understandings of the situation, as Mares (2001a) has shown. The Australian government points to a disparity between the percentage of refugee-status applications made by Afghans accepted by the UNHCR in Indonesia (14% of total applications) and by the Australian system (84%) to suggest the Australian system is ‘soft’ and thus an incentive for asylum-seekers. This ignores the fact that many of the Indonesian applications are effectively abandoned before a decision is made as to their status, usually because frustrated applicants give up and opt for illegal entry to Australia. Their cases are declared ‘otherwise closed’. When this category is taken into account, the real level of approval for the UNHCR for Afghan asylum-seekers for 2000⁴ is 70.7% - much closer to the Australian level. Likewise, Iraqi applicants had a 74% acceptance rate at the hands of the UNHCR and 80% plus in Australia.

Averaging out statistics – and excluding the ‘otherwise closed’ cases - the world UNHCR average recognition rate for all asylum-seekers in 2000 was 26.4%. Australia’s average approval measured on the same basis for the same period was in the ‘tougher’ end of the range at between 24 to 25% (Mares 2001a). The irony here is that by misrepresenting the relative levels of approval,, Minister Ruddock has probably made Australia seem more lenient on asylum-seekers than Indonesia, when in fact it is not – thus, ironically, achieving the exact opposite result of his policy of seeking to deter boat people.

³ Confidential information, Department of Justice official, Jakarta, 2001

⁴ The equivalent figure for 2001, according to Mares (2001a), is only 31%, although the year was not complete at the time of writing; and it is likely that this figure will rise significantly as a result of appeals.

So most Indonesian detention centres are rendered porous by money but draconian for those who lack it. Why is the Indonesian system so dysfunctional that asylum-seekers prefer to illegally board unseaworthy ships and attempt to enter a hostile Australia? There are several explanations.

Why improve anyway?

First, like the Australian government, the Indonesians see little point in making detention an attractive option for would-be immigrants. The government believes that if refugee facilities of a better standard were available, it would encourage countries such as Malaysia and Australia to direct refugees to those facilities; would discourage detainees from seeking assistance from their own Embassies and families; and might lead to Indonesia being considered a destination rather than a transit. Provision of organised processing and more humane facilities, it is believed, would therefore only worsen the problem of illegal immigration and increase costs for government. As the Indonesian Foreign Minister, Hasan Wirayuda, puts it, “We need to have detention facilities that in the end also deter the future illegal migrants who come to Indonesia” (ABC, 2001a).

Unfortunately, however, because Indonesia is seen by most asylum-seekers as nothing more than a transit point for Australia and New Zealand the deplorable state of the Indonesian system is not likely to figure large in their decision to use it as a ‘jump off’ point, as few expect to remain there long – at least when they first arrive.

Lack of funds

Secondly, Indonesia lacks the financial means to fund a better system. It remains wracked by the economic crisis from which its fellow casualty countries – Thailand and South Korea – have now emerged. The state budget therefore is still under enormous pressure. The government has great difficulty balancing, on the one hand, repayment of the crisis bailout loans provided under the auspices of the IMF and World Bank; and, on the other, implementing the projects that it has agreed to as conditions of those loans (Lindsey and Taylor, 2000).

It is useful to briefly consider the full scale of Indonesia’s economic predicament. Growth collapsed to –13.2% in 1998 and in 1999 recovered only as far as –4% (CCH, 2001). The banking sector effectively disintegrated, with more than 80% of banks technically insolvent (Lindsey, 2000). From 1996 to 1998, Indonesia’s public debt and recapitalisation costs as a share of GDP jumped from 23.9% to an extraordinary 72.5%. Today, Indonesia’s foreign debt totals US\$137.6 billion – an amount equal to annual gross domestic product (AFP, 2001). Of this debt, 54% is owed by the government and repayments constitute almost 40% of total budgetary revenues, according to the World Bank (Radio Australia, 2001). The comparable figures for Malaysia are from 35% to only 33%, for Korea, 8.0% to 10.5% and for Thailand, 3.7% to 14.6%.⁵ As to the private sector, around 53% of Indonesian firms are unable to meet their debt repayments, while the figures for South Korea are only, 17.2%, for Malaysia, 13.8% and for Thailand,

⁵ The source for statistics in this paragraph other than Claessens et al is IMF (1999).

22.3% (Claessens et al, 1999). In these circumstances, the dramatic collapse in lending in Indonesia is hardly surprising: a percentage change reduction of 50% over the period 1998 to 1999. The next worst casualty was Thailand, which did not even reach 10%, while Korea remained positive. The consequences for ordinary Indonesians have been horrific. By 1998, half the workforce of 40 million Indonesians found themselves jobless (Masduki, 1999) and the current figure is probably still around 40%.

Indonesia is therefore reluctant or even unable to fund the trials or deportation of asylum-seekers, let alone build, staff and operate facilities extensive enough to deal with a refugee problem that it is believed would probably increase in response to the creation of such facilities. Substantial external funding for any reform to the immigration system in Indonesia will therefore be an absolute pre-requisite for change, according to the Indonesian Institute of Sciences (LIPI) (Nurbianto, 2001)

Charity begins at home

Thirdly, Indonesia has its own internal refugee problems and its ability to deal with homeless people is strained to breaking point by domestic refugees. Even a brief recital of the recent events that led to large numbers fleeing their homes suggests the magnitude of the problem.

In the lead-up to the fall of President Soeharto, ethnic and religious violence erupted in Kalimantan (Parry, 1998); and ‘ninja’ killings of *dukun santet*⁶ and *abangan*⁷ religious leaders that appeared to involve military or government support terrorised Eastern Indonesia and Java. After Soeharto’s fall, East Timor was pillaged by military-backed militias; communal wars broke out in Ambon, Maluku and elsewhere in Eastern Indonesia; the war with *Gerakan Aceh Merdeka*⁸ continued and even escalated; and Irian’s long-standing secessionist ambitions segued into a low-level guerrilla conflict. The breakdown of Soeharto-era transmigration programmes, as transmigrants are attacked and forced off their holdings by traditional communities has become widespread. The best-known case involves transmigrant Madurese fleeing violent Dayak ‘ethnic cleansing’ in Kalimantan (Parry, 1998; Lindsey, 2001).

This has meant that there is now a large displaced and impoverished population of homeless seeking better pickings across the islands of Indonesia. There is no way to precisely quantify their numbers. National Police Spokesman, Inspector General Didi Widayadi has put the figure at “hundreds of thousands” (Tempo, 2001) but this is clearly a gross understatement. Refugees from Timor alone amount to 190,000; and the Coordinating Minister for People’s Welfare, Jusuf Kalla, estimates total internal refugee numbers at 1.2 million, a commonly-agreed figure (Jakarta Post, 2001; SBS, 2001; Mares, 2001b).

⁶ Shamans.

⁷ Non-orthodox Muslims. This category would catch the majority of Indonesian Muslims.

⁸ Free Aceh Movement

The government, understandably enough, prioritises the welfare of internal, voting ‘refugees’ – that is, displaced citizens - over the ‘transit’ problem (Nurbianto, 2001). It therefore sees foreign asylum-seekers both as a relatively minor issue numerically and, in any case, as a problem properly to be dealt with by the country of ultimate destination, Australia (this issue is considered further below). Obviously, Indonesia could do more to improve the way it deals with asylum-seekers but the political will to do so - logically enough - remains weak, for the short term at least. Both the means and motivation to do something about the problem are absent.

Border Controls: Defending the Indefensible

The next issue I will address looks beyond Indonesia’s internal immigration and refugee problems to answer a question frequently asked in Australia’s domestic debate on how to deal with asylum-seekers: why has Indonesia failed to prevent use of their seas by people smugglers arranging asylum-seeker travel from Indonesia to Australia?

There is a common assumption among Australians that Indonesia could easily prevent people smuggling by better policing its borders. This is peculiar, given that it is widely acknowledged in Australia (and has become more apparent since the MV Tampa incident) that defending Australia’s Northern boundaries is an extremely difficult task. How much more difficult is it for Indonesia to defend its ocean boundaries, given that it is an archipelagic state of over 17,000 islands - many of which are only tenuously under central governmental control at the best of times - and across which more than a million displaced persons are currently scattered?

The reality is that Indonesia’s vast and fragmented sea borders will continue to be exploited by people smugglers for the foreseeable future, whatever the political will of any government in Jakarta.

Military Incapacity

Whatever the policy position of the civilian government of Indonesia, the security forces at its disposal to prevent people-smuggling through its territory are nowhere near up to the task. It usually surprises Australians that Indonesia’s military (TNI – *Tentara Nasional Indonesia*) is the smallest in Asia per head of population and that its per capita expenditure is also extremely small – well below Australia and Singapore for example.

The TNI is not able to control current ethnic and religious tensions and can barely maintain security in urban centres. There is a widely-held view in Indonesia that TNI could only hold five cities across the nation if widespread instability erupts again as it did in 1998 with the fall of Soeharto. Furthermore, military equipment is outdated and poorly maintained. The armed forces lack spare parts and proper service due to severe shortfalls in military budgets brought on by the economic crisis and worsened by the only recently-moderated US arms embargos.

The Airforce and Navy are in a particular parlous state. Seen as politically suspect under the army-dominated rule of Soeharto, they have been neglected for three decades. They are now unable to prevent increasing piracy in key sea-lanes like the Straits of Malacca and there is no real prospect that they will be able to more effectively police Indonesia's coasts in the near future. An Indonesian 'coast watch' is simply not an option (Roberts, 2001:28)

Fishing or Smuggling?

Further, in addition to organised people smuggling, there is a huge 'informal' smuggling sector constituted by virtually anyone with a fishing boat. Most Indonesia fishers are extremely poor, earning less than \$1.00 per day, and live in such basic conditions that jail in Australia may actually offer higher standards of living.

The destruction of a confiscated boat by Australian authorities may not be much of a penalty for members of the crew who have no interest in the vessel. Unfortunately, however, it usually results in impoverishment for owner or lessees and their communities - and many fishing boat crew do, in fact, have financial obligations relating to the purchase or use of their boats. There are now suggestions, in fact, that confiscation of fishing boats that have entered Australian waters from islands such as Roti has led fishing communities into people smuggling as an alternative source of income. Here surveillance and enforcement is actually aggravating, not ameliorating, the problem.

Together, these circumstances makes it very hard to adequately restrain informal smuggling through formal criminal sanctions, destruction of boats or through increased naval surveillance.

An Illegal Legal System

Another critical problem for the Indonesian government is that, like the economy, the legal system is also in crisis. By the end of Soeharto's rule in May 1998, the judiciary and the legislature, effectively functioned (or dysfunctioned) solely as arms of the bureaucracy (Lev, 1999; Lindsey, 2000). The consequences of this were, first, the removal of formal avenues of opposition to the executive; secondly, the absence of functioning formal mechanism for rational transaction management or dispute resolution, whether between citizens or between state and citizens; and thirdly, the rise of alternative, irregular and informal methods of dispute resolution and transaction management to fill the vacuum created by popular fear of courts and politics (Lindsey, 1999). In Hiscock's words (2001), new 'soft' law arose - alternative, informal political norms - to deal with issues that would be resolved by 'law in books' in a state with a less politicised legal system.

At their lowest level, these informal alternatives took the form of petty corruption and facilitation payments, as well as sophisticated traditions of informal dispute resolution. At their highest level they constituted something approaching a shadow system, a 'secret' cronyist 'black' state, in which 'real' business and policy-making took place. The New

Order state of Soeharto thus became one predicated on bad faith, that is to say, effective transacting, decision-making and politics at all levels were carried out in the shadow system, widely understood - a public secret - but not formally acknowledged (Lindsey, 1999).

Although rolling back corruption became a key theme of the *Reformasi* movement that toppled Soeharto; and although there has been a wave of major statutory reforms aimed at 'cleaning up' the system; and although a range of new agencies have been established with the same aim (Lindsey and Dick, forthcoming), very little that is concrete has been achieved in the post-Soeharto era. Attempts to prosecute corrupt judges have been consistently blocked by the Courts (Assegaf, 2001); and despite dozens of failed prosecutions only one significant New Order crony, Bob Hassan, is behind bars.⁹

The manifest failure of Indonesian law reform turned into a public farce when the former President's son, Tommy¹⁰ was convicted of fraud, disappeared and then obtained an acquittal after nine months on the run. He did not appear in Court and is yet to be sighted by them.

As matters presently stand, three Presidents after Soeharto, the New Order legal system thus remains largely intact. Cases are still decided on the basis of politics or bribery. Judges are poorly educated and have little experience in using adjudicative skills, as there has historically been little need for those skills (Lev, 1999). The Attorney General's Department, the Supreme Court and the Police compete in popular perceptions for the title of most corrupt institution in Indonesia.

The enormity of the task of law reform is hardly surprising. Indonesia is a vast, complex and diverse country. It endured violent occupation by the Japanese and a bloody war from independence from the Dutch from 1945 to 1950. Under the first President, Soekarno, seven years of tenuous parliamentary rule followed, destabilised by as many as five major armed secessionist rebellions. From there the state lurched into seven years of Marxist-leaning dictatorship, still under Soekarno. His 'Guided Democracy' administration destroyed Indonesia's re-emerging economy and isolated the nation internationally before ending in a military take-over that resulted in the death of around 1 million leftists and the imprisonment of as many. Soeharto then ruled Indonesia as an increasingly corrupt, military-backed dictatorship for three decades.

⁹ Some officials – including one Regent, or local administrative head – have been convicted of corruption and jailed, *and* have exhausted their rights of appeal, but none could be said to be a 'big fish'. Mohamad (Bob) Hasan (timber tycoon, intimate of the Soeharto family and briefly Minister for Trade in the last cabinet of his business partner, Soeharto) is the exception. He was convicted of stealing US\$75 million of Ministry of Forestry funds. He was fined Rp 15 million and sentenced to two years imprisonment of which he had already served 14 months while on remand. In a sense he has been a 'soft' target, however, as his Chinese ethnicity makes him vulnerable. The real test is whether a *pribumi* crony who retains political power can be convicted *and* jailed. So far this has not occurred.

¹⁰ Hutomo Mandala Putra.

The current appalling state of the legal system and government departments such as Immigration is therefore no accident. Until 1998 there was no real opportunity to develop functional, independent and effective state systems. Starting again, clearly, would never be easy. On the contrary, it is time-consuming and complex and hasty reforms - what Neilson (2000) calls a 'rush to law' - have always had little chance of success. It would therefore be unrealistic to expect that there would be any serious prospect of major improvement over, say, the next 5 years. This means that even if Indonesia did ratify the Refugee Convention, it will not, in the near future, be properly equipped to process asylum-seekers effectively and fairly, let alone deal with the complex international legal issues often raised by refugees.

Forgeries

A more specific legal problem is that the bulk of those illegally entering Australia from Indonesia enter Indonesia 'legally'. Most are given visas by corrupt Indonesian officials on payment of bribes (Roberts, 2001:28). This is routine and easy to do, because customs officials' salaries are so low (around \$200 per month for a senior official). In other cases, isolated ports where officials lack skills or equipment to spot fake passports are targeted by smugglers (Brummitt, 2001).

These techniques make it very difficult to deal with the refugees - assuming that they can be tracked down at all once they have entered Indonesia - because it is usually impossible to prove that their visas were obtained illegally. It is therefore certain that there are more asylum-seekers aiming for Australia who are at large in Indonesia than there are languishing in the squalor of Kaldiress.

Consequences

The roots of the Indonesia's failure to provide an effective immigration system that can deal humanely, quickly and justly with asylum seekers are thus systemic and entrenched. In simple terms, although Indonesia could do more to prevent people smuggling, it is probably beyond its capacity to stop it or even to significantly reduce the numbers of asylum-seekers transiting through its territory to Australia. Indeed, in present circumstances the fact that Indonesian authorities were able to apprehend 1,500 asylum-seekers in the last 18 months (Mares, 2001b) is little short of remarkable.

The very obvious vulnerability of Indonesia's tessellated coastline and its decrepit public administration is, of course, routinely exploited by those managing the international rackets and is the reason why Indonesia is now the preferred route to Australia of 85% of the asylum-seekers who make it here by boat (Roberts, 2001:28).

This means that Australia will achieve little by attempting to blame Indonesia or shift responsibility to the North by funding detention centres. To the extent that responsibility is transferred to Indonesia, the longstanding and embedded problems in the economy, the

immigration system and the armed forces described above mean that there will be little likelihood of real change in the near future.

The bilateral debate between Australia and Indonesia over responsibility for asylum-seekers is being conducted then in the context of an extremely limited Indonesian capacity to deal with immigration issues; and a consequent lack of enthusiasm for the issue in Jakarta. In these circumstances, the next issue to address is how Indonesian has reacted to the 'hardline' policy Australia adopted toward Asylum-seekers in the wake of the MV Tampa incident? How do Indonesians view Australia now?

Part II: Indonesian Attitudes Towards Post-Tampa Australia

Unfortunately, the net result for bilateral relations has been resoundingly negative.

Australia as racist

There is no doubt that the widely-held perception of Australian racism in Indonesia, and indeed, much of South East Asia, has been strengthened in recent years by the combination of the very wide reporting in Southeast Asia of Pauline Hanson's comments (including her call for public floggings: Sydney Morning Herald, 2001); frequent depiction of Australia as a systematic abuser of Aboriginal human rights; the very selective and sensationalist coverage of Australian military conduct in East Timor; and now the Tampa episode. It is widely believed or, at least, suspected by Southeast Asians that a covert version of the White Australia policy still informs the attitudes of the Australian government.

Most Australians assume that these perceptions are exaggerated or held only by a minority of its Northern neighbours. But my experience is that they are common and normal, even among educated middle-class Southeast Asians and the elite. And we tend to forget that some of these perceptions are, in fact, sometimes accurate, in part at least - as regards some Australians.

This means that there is little sympathy in Southeast Asian for Australians complaining about 'illegals' who are, after all, predominantly Asian and Muslim – and Indonesia, with at least 80% of 215 million Muslims, is the world's largest Islamic country. There is a perception among Indonesians that Australians are reluctant to admit refugees *because* they are Asian and Muslim and thus are automatically regarded as a threat to 'Western' Australia. This is a view easy to find in Australian public debate, as Mares (2001) has shown. It is implicit in Minister Peter Reith's statement tying asylum-seekers to the September 11 terrorists, because they "can use your country as staging post for terrorist activities"; and explicit in shock-jock Ron Casey's absurd claim that asylum-seekers are "an invasion by stealth ... a Muslim takeover" (Mares, 2001). Many Indonesians believe that Australians feel that Asians and Muslims should stay in Asian and Muslim countries and that they have no place in 'white', 'Christian' Australia. Obviously a vocal minority of Australians agree.

This perception has a more profound effect on Indonesian government policy and bilateral relations than is usually realised. There is, for example, a sense in Indonesian government reactions on that Tampa issue that it is a way of subtly ‘having a go’ at perceived white Australian arrogance. One senior Indonesian government official remarked wryly to me during the Tampa crisis that rather than Indonesia accepting Australian assistance to set up a processing centre in Indonesia, perhaps Indonesia should find money to help Australia expand its existing facilities so that Australians could have the opportunity to get used to living with Muslims! Naturally, these perceptions are only heightened by the growing sense of polarisation between Muslims and *kafir* (non-Muslims) created by the war in Afghanistan.

John Howard

A further significant factor in Indonesian perceptions of Australia in the context of asylum-seekers has been Prime Minister John Howard. Regardless of whether or not it is true, is widely received as fact in Indonesia that Howard’s government is racist and anti-Asian, as well as being hostile to Islam and Indonesia in particular (ABC, 2001a). Partly this is a result of the way the coalition government handled public pronouncements on East Timor policy – and in particular, the sense that it turned on Indonesia without accepting responsibility or ‘guilt’ for having supported the occupation of East Timor for more than two decades and having recognised Indonesian sovereignty over the territory.

Interestingly, the perceived ‘anti-Asianness’ of the Coalition government is seen in Indonesia as stemming from Howard personally, in part because he led the Australian reversal of policy on East Timor; in part because it is often he who expresses his government’s public criticisms of Indonesia; and partly because his style seems unnecessarily aggressive and deliberately ‘undiplomatic: ‘megaphone diplomacy’ as the Indonesian Foreign Minister, Hasan Wirayuda labelled it (ABC , 2001a).

The result is an intense dislike of Howard among Indonesian opinion makers, especially amongst senior government figures in the Department of Foreign Affairs, the military and PDI-P,¹¹ led by President Megawati Soekarnoputeri and the the largest party in the legislature.

The Prime Minister is also perceived in Indonesia as prepared to manipulate racial issues and the bilateral relationship (the two are usually inseparable in Indonesian understanding) for domestic electoral advantage. East Timor was presented in this fashion in every major Indonesian daily. His Tampa policy is seen in the same light, as Indonesian newspapers follow the lead of the Minister for Defence, Matori Abdul Djilil, who bluntly described Australia’s handling of the Tampa issue as a racist “attempt to gain popularity for the upcoming general election” on the part of the Prime Minister (Tempo, 2001).

Diplomatic boomerang

¹¹ *Partai Demokratis Indonesia – Perjuangan*, Indonesian Democratic Party – Struggle.

In the circumstances, it was always unlikely that Indonesia would be responsive to an Australian proposal to establish expanded detention centre facilities to hold refugees in Indonesia, least of all a proposal from Howard. After all, the asylum-seekers want to go to Australia and, as argued above, the Indonesian government has only limited interest in dealing with them in Indonesia and limited capacity to do so, even if did have more interest. Indeed, in light of the massive problems described above it would irresponsible for Indonesia to pretend that they could much to create a more effective system, even with Australian funds.

So, in the etiquette of Indonesian politics – which is largely Javanese in substance - Megawati's failure to answer John Howard's phone call – only two weeks after he visited her in Jakarta - was widely read as a refusal even to entertain the idea and indicating utter contempt for his proposal, as well as anger at his blunt and hectoring criticisms of Indonesia's position on the issue. In Indonesian terms, it is hard to think of a harsher snub than refusing to take a call from a fellow leader who had *just* returned from a state visit to Jakarta.¹² Howard would have been well advised to not put the proposition to Indonesian the form he did, or at the time he did – or perhaps at all, given the poor state of bilateral relations under his leadership.

The matter was made worse by the failed delegation of Ministers Downer (Foreign Affairs), Reith (Defence) and Ruddock (Immigration) to Indonesia to try again (Asia-Pacific, 2001b). They were – from an Indonesian perspective – coming cap-in-hand, playing into President Megawati's plan to renew Indonesian pride and its old standing as the leading Southeast Asian power. Her attitude has been a subtler version of the tag first offered by her father and later copied by Soeharto, 'Go to hell with your aid'. In her hands it becomes, perhaps, 'let some Pacific banana republic take the dollars but not us'. The Ministers were thus - in Indonesian eyes – humiliated by the failure of their mission.

The subsequent Indonesian offer to convene a regional conference to discuss the issues may offer a way out of the present impasse. This approach reflects the consistent Indonesian position that any solution to the asylum-seeker problem must be an international, multilateral one (ABC, 2001c; Nurbianto, 2001). In Minister Wirayuda's words, "this is not simply a problem between Indonesia and Australia"(ABC 2001b). It should also be noted, however, that by offering dialogue with Asia-Pacific states on people-smuggling, Indonesia is subtly rebuking Australia. The sub-text is that Australia failed to achieve agreement with Indonesia first because it was holding Indonesia responsible for what is clearly a regional issue involving more than a bilateral relationship; and secondly, because Australia pushed its own solution without first trying to build a regional consensus through dialogue and negotiation. A regional dialogue approach also allows Indonesia to exert its very considerable regional muscle in dealing with Australia. Australia's bilateral economic strength is a much-diminished bargaining chip at the Asia-Pacific table when others are playing with population numbers, access to markets and racial and religious solidarities.

¹² Howard suggested that it 'is not rude in Indonesian culture not to return a telephone call'. My own experience is that the opposite is true. Indonesians I spoke also disagreed with Howard.

On balance then, Australia has strengthened Indonesia vis-à-vis Australia in the subtle perceptions of power balance operating in Jakarta politics. Much of the benefit obtained from Australia's post-Wahid 'courting' of Megawati has thus been lost.

Selfish and Inhumane

Another view of Australian asylum-seeker policy common among Indonesians is that as a nation we are selfish and lack humanitarianism – particularly toward non-whites. Australia is seen as unwilling to share its prosperity and acting harshly and callously towards 'less fortunate' Asians and aboriginals (whom the Indonesian press tends to view as nominal 'Asians'). Australia has therefore long been presented as a systematic abuser of aboriginal human rights in the Indonesian media. This attitude was exploited by gutter-press reporting of alleged atrocities supposedly committed by Australian troops in East Timor, again, stories widely believed to contain some truth by many Indonesians.

This Indonesian reading of Australia as greedy, lacking in compassion and selfish was well-enunciated by Dr Amien Rais, the speaker of the DPR,¹³ the legislature, and leader of the small but influential orthodox modernist Islamic party, PAN,¹⁴ during his recent visit to Australia. Recounting his meeting with Minister Ruddock, he said:

“... You have to blame yourself because your country is too prosperous ... These people [asylum-seekers] are a humanitarian problem, more than political problem. I think we have to approach these unfortunate human beings [who] are descendants of Adam and Eve you know, with humility ... The reason why they risk their lives is because they ... want to be normal human beings. ... I believe Australia is a great country ... which can absorb a couple of thousand unfortunate people ...”
(ABC, 2001a)

Rais' views are not exclusive to his constituency. They have also directly informed the response of the Megawati government, as the Minister of Defence, Matori Abdul Djilil, a traditionalist and less-orthodox Muslim leader, has also made clear (Wadrianato, 2001:2).

Destination Responsibility

Indonesian intransigence on the asylum-seeker issue is also linked to the commonly-held view in Jakarta that it is the destination country that should have responsibility for asylum-seekers. Police Ins. Gen Didi Wiyadi made this clear recently, saying that “Australia, as the destination country ... should not seek to handover responsibility to transit countries such as Indonesia”. Dewi Fortuna Anwar, formerly adviser to President Habibie, has expressed the same view: “... it would be unfair for Indonesia to shoulder all the problems of the refugees since the nation was only a transit point ...” (Nurbianto, 2001).

¹³ *Dewan Perwakilan Rakyat*, People's Representative Assembly.

¹⁴ *Partai Amanat Rakyat*, People's Mandate Party.

Of course this is the precise opposite of the Australian government position that links should be cut earlier in the chain. This basic difference of principle will always make negotiation very difficult, whether bilaterally or in regional negotiations (Tempo, 2001). The gap is, of course, exacerbated by the fact that there is still no 'issue-specific' Memorandum of Understanding between Indonesia and Australia on handling asylum-seekers or illegal immigrants; or on how and where and in what cases responsibility falls (Roberts, 2001:28). Australia is assisting Indonesian agencies such as the police and bilateral agency-to-agency cooperation does occur but it is limited, often informal and sometimes ad hoc (SBS, 2001).

In summary, then by seeking to establish a bilaterally-agreed detention centre on Indonesian territory before there is an agreed documentary framework and multilateral policy on asylum-seekers, Australia is, in Indonesian terms, behaving arrogantly and even neo-colonially.

Conclusion: Not simple or quick

The basic problem for Australia in its dealings with Indonesia in relation to asylum-seekers is that Indonesia has only very limited capacity to prevent them from moving to Australia or indeed properly detain and process them. Indonesia's difficulties in dealing with refugees are immense and have multiple causes. They are linked to broader national political issues such as the failure of the security forces; the problem of internal refugees; the continuing economic crisis; the destruction by Soeharto of the legal system; and the massive corruption that is one of his administration's chief legacies.

None of these very significant problems will be resolved quickly or easily. They are part of the growing pains of a gigantic state that has transformed itself from dictatorship to an emerging democracy in just three years - and with surprising success, in the very difficult circumstances that have arisen since the Asian economic crisis of 1997. Indonesia now must reform its public administration to match its political renaissance. That will take much longer - at least ten years on an optimistic assessment - and there are, as yet, few signs of progress.

On a bilateral basis, asylum-seeker policy is significantly complicated by the widespread perceptions of Australia as having a covert racist agenda and by clumsy mishandling of relations with Jakarta by the Coalition government. We are seen as inhumane and selfish, unwilling to share our prosperity. Little has been done to change these perceptions. Indeed, under the Coalition government Australia managed - quite unnecessarily and very destructively - to entangle its asylum-seeker policy debate with increased religious tensions created by the American-led war in Afghanistan and then tie both directly to the management of the bilateral relationship with Indonesia.

One result of the Coalition's post-Tampa hardline approach to Asian asylum-seekers has been severe damage to Australia's relationship with Indonesia. It will take a major and sustained effort - and a major policy re-think - to right this. And it must be righted. Unlike boat people, Indonesia will not float or be towed away or sink into the Timor Sea.

What sort of future will Australia's 20 million people have in Southeast Asia without a functioning government-to-government relationship with the 215 million people that make up Southeast Asia's regional leader and largest power; the world's fourth-largest country; its third-largest democracy; and its largest Muslim population?

REFERENCES

- ABC, 2001a, Asia Pacific Transcript, *INDONESIA: Australia seeks support against people-smugglers*, 6 September
- ABC, 2001b, Asia Pacific Transcript, *INDONESIA: Australia seeks support against people-smugglers*, 7 September
- ABC, 2001c, *Asia Pacific Transcript*, *MPR Chairman lashes out at 'stupid' Islamic militants*, 19 September
- AFP, 2001, *Megawati paints bleak picture of Indonesia economic recovery*, 1 November
- Ibrahim Assegaf, 'Legends of the Fall: Indonesian Anti-Corruption Agencies', in T. Lindsey and H. Dick (eds), *Corruption in Asia: Rethinking the Governance Paradigm*, Federation Press, Sydney
- Chris Brummitt, 2001, *Indonesian Police Detain Refugees*, AAP, 29 August
- CCH (eds. T. Lindsey and A. Whiting), 2000, 'Indonesia', *Doing Business in Asia*, CCH, Singapore
- Stijn Claessens, Simeon Djankov and Daniela Klinebiel, 1999, *Bank and Corporate Restructuring in East Asia: Opportunities for Further Reform*, Financial Sector Discussion Paper 3, World Bank, Washington.
- Mary Hiscock, 2000, 'Remodelling Asian Laws', in T. Lindsey (ed), *Indonesia: Bankruptcy, Law Reform & the Commercial Court*, Desert Pea Press, Sydney, 28-43
- Jakarta Post, 2001, *Indonesia Expects to Repatriate 190,000 East Timorese Refugees by End of 2001*, 19 December
- Daniel Lev, 1999, 'Comments on the Course of Law Reform in Modern Indonesia', in Lindsey, Tim (1999) (ed), *Indonesia: The Commercial Court and Law Reform in Indonesia*, Sydney, Federation Press
- Tim Lindsey, 1999, *Black Letter, Black Market and Bad Faith: Corruption as Rational Response and the Failure of Reformasi Hukum*, in Chris van Dierman and Chris Manning (eds.) *Indonesia in Transition*, CSEAS/ Indonesia Project, ANU, Canberra
- Tim Lindsey, 2000, *Abdurrahman, the Supreme Court and Corruption: Viruses, Transplants & the Body Politic in Indonesia*, in Arief Budiman and Damien Kingsbury, *Indonesia: The Uncertain Transition*, Routledge, London

Tim Lindsey, and Veronica Taylor, 2000, 'Rethinking Indonesian Insolvency Reform: Contexts and Frameworks' in Lindsey, T. (ed), *Indonesia: Bankruptcy, Law Reform & the Commercial Court*, Sydney: Desert Pea Press, 2-14

Peter Mares, 2001, 'A Pacific Solution: Reflections on the Tampa affair and September 11', *Eureka Street*, Vol 11 No. 9 November 2001

Peter Mares, 2001b, 'Moving the barriers off-shore: cooperation with Indonesia reduces the number of 'boat people' arriving in Australia', unpublished paper, on file with author

Teten Masduki, 1999, *Labour Law Reform in Indonesia: To Serve The Interests of Multinational Companies*, unpublished paper, Beijing, on file with author

William Neilson, 2000, 'Reforming Commercial Laws in Asia: Strategies and Realities for Donor Agencies' in Lindsey, T. (ed), *Indonesia: Bankruptcy, Law Reform & the Commercial Court*, Sydney: Desert Pea Press, 15-27

Bambang Nurbianto, 2001, 'Allocate island for immigrants: Expert', *Jakarta Post*, 26 October

Richard Parry, 1998, 'What Young Men Do', *Granta*, 62, pp. 83–124

Radio Australia, 2001, Transcript: *Indonesia: Donors concerned at lack of economic reform*, 6 November

Anita Roberts, 2001, 'Don't Let Them Drown', *Inside Indonesia*, April-June, 28

Anita Roberts, 2001b, 'Before Reaching Australian Shores', unpublished paper, copy on file with author

SBS, 2001, Date Line Transcript, *Tropical Transit Lounge*, 22 August

Sydney Morning Herald, *Spray at Muslims, call for floggings: Hanson back on the radar*, 23 August 2001

Tempo Interactive, 2001, *Illegal Immigrants*, 4 September

Glori K Wadrianto, 2001, 'Indonesian akan dorong Australia Terima Penungsi Afghanistan', *Tempo*, 31 August, 2