

RESTRICTIVE TRENDS IN MIGRATION FLOWS: A POSTCARD FROM AUSTRALIA*

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Abstract: *In August 2006 Australia abandoned the proposal for a new law to expand its restrictive regime on the admission of unauthorized arrivals by sea. The Australian legislation while ultimately abandoned is a reflection of general international restrictive trends on migration flows. Migration is a function of specific push and pulls factors that are frequently overlooked. In all its forms, migration also presents specific advantages to the destination states as well as the source states. In spite of the advantages, restriction of migration is a common practice. Restrictions have increased in the period post September 11 and are set to increase further with states using a variety of means to discourage immigration flows. In the case of Australia, the suite of restrictions is clearly more extensive with respect to asylum seekers. While the plans to expand the restrictions may have been abandoned for now, given the potential for increases in migrations flows in a global environment of hard economic conditions particularly in developing states, the push to revisit the expansion in the restrictions is only a matter of time.*

"[I]t is time to take a more comprehensive look at the various dimensions of the migration issue, which now involves hundreds of millions of people and affects countries of origin, transit and destination. We need to understand better the causes of international flows of people and their complex interrelationship with development." (Kofi Annan, Report of the Secretary-General, A/57/387)

No Country has ever advanced by closing its borders

Introduction

On 13 April 2006, the Australian government announced plans to introduce a law that would allow all unauthorised asylum seekers arriving in Australia by boat to be processed in the Pacific island nation of Nauru or other nominated offshore territories outside Australia. The proposed legislation called the *Migration Amendment (Designated Unauthorised Arrivals) Bill 2006* was introduced in House of Representatives in May 2006. The Explanatory Memorandum that accompanied the Bill indicated that the purpose of the Bill was to amend the *Migration Act 1958* (the Act) to expand the offshore processing regime introduced in 2001. Under the 2001 regime, an unauthorised non-citizen arriving in the country must enter Australia through what is described in the Australian *Migration Act 1958* as the 'migration zone'. The migration zone includes all Australian ports and airports on the Australian mainland and states. However, the 2001 regime excised Australian islands and offshore territories from the migration zone. The effect of the arrangement was to discourage unauthorised arrivals in Australia by sea.

The expansion of the 2001 regime through the Bill would have meant that all persons arriving at mainland Australia unlawfully by sea including those airlifted to Australia at the end of a sea journey on or after 13 April 2006 were to be treated as if they had landed in an excised place. The proposal attracted considerable interest nationally. In the face of mounting concerns, the Australian government decided to abandon the proposal altogether.

While Australia may have decided to abandon its plans to expand restrictions on entry into its territory for unauthorised arrivals, the Australian approach on unauthorised arrivals is very much a symptom of emerging trends internationally on the restriction of migrations flows. Confronted with ever increasing numbers of unauthorised arrivals, states continually explore avenues to manage what is perceived as a migration crisis.

The aim of this paper is to explore the restrictions under the Australian migration regime against a background of general migration flows and emerging international restrictive trends in migration.

General Migration Flows

“At the start of the 21st century, one out of every 35 persons worldwide is an international migrant. Over the last 35 years, the number of international migrants has more than doubled.”¹ The late twentieth century was once described as ‘the

* This paper is based on a presentation originally delivered at the ‘Memory and Migration: Social Configurations of the Individual Archive’ *Symposium at Akademie Schloss Solitude organised by*

age of migration'² The Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) affirm fundamental human right to freely leave any country, including one's own, and to freely return to one's country. While the right is expressed in terms of *emigration* it has to be understood in much broader and comprehensive terms to include entry into other countries because without the capacity to enter into another country the right to leave one's country becomes meaningless. The reality is that in today's world, most people are free to leave their country, but only a few have the right to enter another country of their choice. Is it possible to imagine a world without borders or indeed migration without restrictions?

In a world very obsessed with sovereignty, the idea of migration without borders poses a challenge to a conventional paradigm that is constructed on passports, visas and the right of entry. In the process it is often forgotten that migration is very much a human rights issue. Migration 'has an outstanding role in human rights because one of the most essential and general forms of human freedom can only be realized through it, namely that man is free to choose where to go, where to stay, and where to live.'³ History demonstrates that migratory movements take on a different colour depending on time and space. There is a natural human inclination to move or migrate in search of a better environment. Indeed, we see this all the time around us within the boundaries of the state. If you look carefully there is a chance you will find that your next door neighbour is a migrant from another town or another city. This strong human inclination is not something that can be controlled easily by visas, boundaries border police and migration controls as such. So long as we have the *human* inclination to travel, 'artificial' migration controls will not necessarily be able to stop migration flows. The statistics on migration flows prove this point.

Migration flows: brief statistics

Around 175 million persons currently reside in a country other than where they were born, which is about 3 per cent of world population. It is estimated that that 'sixty per cent of the world's migrants currently reside in the more developed regions and 40 per cent in the less developed regions.'⁴ Most of the world's

the Art, Science & Business Programme (June 9 to 11, 2005).

¹ The total number of international migrants is estimated at 174,781,000 persons in 2002, 2.8857 percent of the world population, in *Facts and Figures on International Migration*, International Organization of Migration.

² Castles, S. and Miller, M., *The Age of Migration*, Basingstoke, Macmillan, USA, 1998

³ Foldesi, Tamas, 'The Right to Move and Its Achilles' Hell, The Right to Asylum', *Connecticut Journal of International Law*, Spring 1993, at 289.

⁴ International Migration 2002,

<http://www.un.org/esa/population/publications/ittmig2002/ittmigrep2002english.doc>

migrants live in Europe (56 million), Asia (50 million) and Northern America (41 million). Almost one of every 10 persons living in the more developed regions is a migrant. In contrast, nearly one of every 70 persons in developing countries is a migrant. Refugees constitute about 9 per cent of the migrants in the world. At the end of 2000, the number of refugees in the world stood at 16 million.⁵

Push and pull factors in migration

Migration involves the *movement* of people. If one accepts that labour is a resource in the market place, then at a very fundamental level, migration as we see it today is a logical representation of free market principles. For the most part, migration is the result of movement of a resource towards the most profitable location. It is thus not surprising that most of the world's migrants live in the affluent states of Western Europe. International migration is thus intrinsically linked to the development process, which in turn is affected by the process of globalisation. Among the important elements in the discourse of globalization and migration are income and demographic disparities.

Income disparities

The increasing income disparities between rich and poor nations, and the failure of integration of world markets in the globalization process into a more balanced and equitable movement of capital and investment to all regions has created economic conditions in source countries that routinely exclude a growing number of people from meaningful economic participation. This has thus heightened migration pressures, at least in the short- and medium-term.⁶ For example, it was predicted in the 1990s that as a result of the North American Free Trade Agreement (NAFTA) and the closer integration of Mexico's economy into those of the United States and Canada, one million Mexican farmers, out of a population of 28 million farmers, would leave the countryside each year for a ten-year period and migrate to either mid-sized Mexican cities, border areas to work in *maquiladoras* assembly plants, or to the United States.⁷ These conditions have been exacerbated by the development and existence of 'dual labour markets' in the developed economies. The existence of such markets encourages the 'inflow' of cheap migrant labour willing to work for lower wages.

⁵ Ibid.

⁶ See Escape Route: The limits of globalization: yes, rising trade reduces poverty, but for the millions left behind, migration may be the only option Newsweek 17 December 2001, 48.

⁷ United Nations Non-Governmental Liaison Service (NGLS) *NGLS Roundup* "Human Rights of Migrants" 89, March 2002.

Demographic disparities

The Economic pressures have been fuelled further by regional and global demographic disparities with corresponding labour surpluses and shortages particularly in the lower wages labour market. The combination of income disparities between nations, the ever increasing global and regional demographic disparities and dual labour market conditions creates a natural drift of labour from the economic poor but 'demographically rich' nations to the economic rich but 'demographically poor' nations.

Rationalizing the restrictions on migration flows

Consistent with free market principles, one can point to the benefits of migration flows. There is now ample evidence that migration can have positive impacts on both the destination communities and the communities of origin. Migration also has the potential of facilitating the transfer of skills and contributing to cultural enrichment. Today the number of people residing outside their country of birth is at an all-time high with the vast majority of migrants making meaningful contributions to their host countries.

The culture of restrictions

In spite of the merits of migration, the reality is that all countries do restrict immigration flows. These restrictions are dictated by various factors, including racism, ethnic hatred, an inherent element of human nature that frequently pushes us to differentiate between "us" and "them," and an embed ignorance that breeds fear of and prejudice against people who are not a part of 'us'. In many instances, the 'us' and 'them' sentiment then provides the unfortunate foundations for 'state-legitimated ethnocentric, racist and xenophobic antimigrant, and antimigration' subculture. In times of economic difficulties, migrants are perceived as the 'takers of jobs'; in times of epidemics and health crisis they are viewed as the carriers of diseases that need to be kept out. In difficult security conditions, migrants become a security risk and the target for exclusion. All these factors are frequently woven into the political decision making process and exploited for political purposes. The law is then used to formalise the political decisions.

In the last few years, immigration has become a major issue of concern in an increasing number of countries. More recently, in the aftermath of the events of 11 September 2001, some countries have further tightened their policies towards immigrants, refugees and asylum seekers. The implementation of national policies to affect levels and patterns of international migration has also intensified,

spreading to all regions of the world. Over the past decades, the number of Governments adopting new measures to influence migration has grown rapidly. In particular, the number adopting policies to lower immigration rose from 6 per cent in 1976 to 40 per cent in 2001.⁸

Restrictions on migration flows involve considerable economic cost to the receiving state and significant human cost to potential migrants. The IMO reports that the 25 richest nations of the world spend some 25-30 billion dollars per year on the enforcement of migration controls and related administrative measures⁹.

The cost is more tragic in human terms. The consequences of these restrictions on migration flows are in part reflected in the number of people who die on their way to receiving countries. It is estimated that at least one migrant dies every day at the U.S.-Mexico border, mostly because of hypothermia, dehydration, sunstroke and drowning¹⁰. In Europe it is estimated that at least 920 migrants died while trying to reach Europe between 1993 and 1997¹¹ while over 3000 migrants died between 1997 and 2000, attempting to cross the Straits of Gibraltar.¹² There have been similar tragic outcomes of undocumented fatalities in attempted migration off the coasts of Australia, at the border between Mexico and Guatemala, and across the Sahara.¹³

Perceived porosity of borders and legal restrictions on migration: developing trends

Controlling immigration has become an important field of policy. Most destination states are strongly concerned with what is perceived as the porosity of their borders to flows of migration. States increasingly look for ways to restrict migration flows. The techniques used range from the construction of walls along boundaries and the use of technologically advanced equipment including high-intensity lighting, high steel fencing, body-heat- and motion-detecting sensors and video surveillance as seen between the United States and Mexico and in the European regions, notably around Gibraltar and the border between Spain and

⁸ International Migration Report 2002.

⁹ Martin, Philip (2003) *Bordering on Control: Combating Irregular Migration in North America and Europe*. Geneva: IOM Migration Research Series no. 13.

¹⁰ Cornelius, Wayne A. (2001) 'Death at the Border: Efficacy and Unintended Consequences of US Immigration Control Policy', *Population and Development Review* 27(4): 661-685; Cornelius, Wayne A et al (eds.) (2004) *Controlling Immigration. A Global Perspective*, 2nd edition, Stanford: Stanford University Press, pp. 3-48.

¹¹ Eschbach et al. (1999).

¹² United Nations, Economic and Social Council, E/CN.4/2002/NGO/45.

¹³ Pécoud and Guchteneire, Migration without borders: an investigation into the free movement of people *Global Migration Perspectives* 27, 2005.

Morocco. In addition to physical and electronic barriers, states have a complex array of legal mechanisms to restrict migration flows

Restrictions in the name of security

It has been argued that one 'of the truly ironic results of the Oklahoma City bombing of 1995, a terrorist act with no foreign connections, was that it led to the enactment of unprecedented restrictions on the admission of non-citizens to the United States.'¹⁴ The restrictions on immigration flows into the US have become even more stringent since events of September 11 2001. Before September 11, the US Congress was considering legislation that would have eased restrictions it had imposed in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)¹⁵. Such restrictions include expedited removal and severe limits on judicial review. There were also clear indications that the US Supreme Court was willing to construct the IIRIRA liberally and more favorable to non-citizens.¹⁶ Events of September 11 brought out a new anti-migrant mentality in the pursuit of national security. October 26 2001, the United States enacted the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act or Act).¹⁷

Before the PATRIOT Act was enacted INA § 212(a)(3)(B), 8 U.S.C. § 1182(a)(3)(B) (2000) (concerning terrorist activities) barred criminals, saboteurs, espionage agents, and terrorists from entering the US.¹⁸ But the PATRIOT Act came to extend the reach of the INA. Section 411 of the PATRIOT Act extends the grounds for restricting the entry of suspected terrorists into the US. It broadens the definition of terrorist organization and defines 'terrorist activity' to include "providing funds", "other material financial benefit," or other material support to a group designated as a terrorist organization. The Act also bars persons who have used their position of prominence to endorse or espouse terrorist activities, or to persuade others to do so. It also bars an individual who is the spouse or child of someone found inadmissible as a terrorist if the underlying activity occurred

¹⁴ C. Hathaway and Colin J. Harvey, *Framing Refugee Protection in the New World Disorder*, 34 *Cornell Int'l L. J.* 257, 258 n.2 (2001).

¹⁵ Pub. L. No. 104-208, 110 Stat. 3009.

¹⁶ See the Courts decision in *INS v. St. Cyr*, U.S., 2001 U.S. LEXIS 4670 (2001), and in *Zadvydas v. Davis*, U.S., 2001 U.S. LEXIS 4912, Nos. 99-7791 and 00-38 (2001).

¹⁷ Pub. L. No. 107-56, 115 Stat. 272.

¹⁸ The INA § 212(a)(3)(B) excludes entry for a non-citizen if there is a "reasonable ground to believe" that he has engaged or, on entry, will engage in terrorist activity; or if he has incited terrorist activity. The legislation further bars any member of a foreign terrorist organization or a representative, including a spokesman, of such a group. The legislation defines 'an internationally terrorist activity' to include hijacking, assassination, a violent protected person, or the use of various agents or devices to endanger persons, or damage property.

during the prior five years.

It is not only the United States that has adopted more restrictions in the post September 11 environment. Many immigration destination states have adopted or are considering adopting a range of legal measures and techniques that include:

- *Passenger pre-inspection* – where immigration and customs officers who do full clearance for entry to the country of destination are stationed abroad at airports, inspecting passengers departing for the officers' country.
- *Immigration Liaison Officers (ILOs)* where officers are posted close to the centres of criminal activity, or in source countries of irregular migrants, to work with local law enforcement agencies and international agencies such as Europol to prevent irregular migration and help close down related illegal and criminal operations.
- *Airline Liaison Officers (ALOs)* - are immigration inspection officers posted abroad to work with, and train, airline staff in the prevention of travel of persons with fraudulent documents or IDs.
- *Advanced Passenger Information(System) (API)* –involves agreement between countries, and between airlines and Governments, permitting passenger manifests to be sent by the airlines ahead of flights to the Immigration authorities of the country of destination, for pre-checking before arrival.

In dealing with terrorism, the issue is not whether to exclude terrorists from entry into a country; the issue is how to devise protocols that ensure that innocent migrants are not excluded from migration. Similarly, on the more specific question of asylum, the issue is not whether a state can and should exclude asylum seekers who do not meet international criteria for asylum. The issue is the more complex one of how to develop and implement legitimate procedures that ensure that asylum seekers with genuine claims are not excluded by the destination country. The challenge for the destination states therefore is how to craft credible asylum policies that reflect the humanitarian demands of the condition of refugees and the obligations under relevant international instruments, without undermining the integrity of their immigration regimes. For Australia, this challenge has become a perennial and potentially divisive element in the national debate on immigration and asylum seekers.

Legal restrictions in the case of asylum seekers: The Australian perspective

The 1951 Convention for the Determination of Refugee Status and the 1967 Protocol (the Convention) defines a refugee as a person who owing to well founded fear of persecution on the grounds of their race, religion, political opinion

nationality or membership of a particular social group is either unwilling or unable to return to their country of nationality or habitual residence. State signatories to the Convention such as Australia undertake an important humanitarian obligation to accept and to process asylum-seekers who come to their frontiers claiming refugee status. However it remains the sovereign right of each state to regulate who it admits into its territory. A state may use a combination of 'offshore' and 'onshore' administrative measures to regulate the admission of aliens into its territory. These measures can impact adversely on the humanitarian basis of the Convention.

Offshore measures

A significant element of the Convention is that it is territorial in its application: an asylum-seeker can claim the benefit of the protection under the Convention when they have entered a state. However, the Convention does not define nor provide guidance on what constitutes *entry into the territory of a state* or *arrival at the frontier of a state*. The result is that states anxious to restrict the influx of asylum-seekers can and do apply exclusionary 'offshore' strategies to deny 'entry' into their territories. There are three main forms of 'offshore' exclusionary strategies: The most basic form is interception, which denies the asylum-seeker access to the territory of a prospective receiving state and thereby excludes the asylum-seeker from seeking protection from that state.¹⁹ Another strategy is to define 'entry' restrictively by excluding or excising part or parts of a state's territory from 'entry' into the state for the purposes of immigration and for seeking asylum for that matter. Thirdly, a state may attempt to deny or prevent entry of asylum-seekers into its territory by diverting, encouraging or causing their transfer into the territory of another state. By their nature, all three exclusionary strategies have the potential to undermine the humanitarian character of the Convention.. Where these strategies are adopted without adequate justification, a state runs the risk of breaching its obligations under the Convention.

Onshore measures

The Convention imposes obligations on signatory states to process asylum-seekers for the purposes of granting them refugee status where asylum-seekers meet the Convention criteria. But it does not specify the particular administrative procedures a state must adopt for the processing regime. In 1977 the Executive

¹⁹ In the paper prepared for the Global Consultations discussion on asylum and migration, International Maritime Organization (IOM) states that "Many States which have the ability to do so find that intercepting migrants before they reach their territories is one of the most effective measures to enforce their domestic migration laws and policies."

Committee of the High Commissioner's Programme, at its twenty-eighth session, recommended that procedures adopted by each contracting state should satisfy certain minimum standards or requirements.²⁰ While the United Nations High Commission for Refugees (UNHCR) *Handbook on Procedures and Criteria for Determining Refugee Status* also provides basic guidance on determination procedures, it admits it is not possible to prescribe identical determination procedures for signatory states to the Convention. The *Handbook* notes that it is left to each state 'to establish the procedure that it considers most appropriate, having regard to its particular constitutional and administrative structure.'²¹ The procedures for processing asylum-seekers therefore vary considerable between states.

It is possible for a state to adopt restrictive onshore procedures that discourage asylum applications. Such measures may consist of 'administrative' or 'immigration' detention. It may also include specific limitations on administrative or review proceedings in the determination process. Restrictive onshore measures can and do impact significantly on the humanitarian essence of the Convention..

Interception

In broad terms, interception is a common phenomenon in state practice. Interception, or 'interdiction' as it is often called, occurs when a state prevents asylum-seekers from reaching its territory to claim asylum. There is no accepted definition of 'interception' in international law in general and in refugee law in particular. However the United Nations High Commission for Refugees (UNHCR) defines it as:

encompassing all measures applied by a state, *outside its national territory*, in order to prevent, interrupt or stop the movement of persons without the required documentation crossing borders by land, air and sea, and making their way to the country of prospective destination²². (emphasis added).

²⁰ Such minimum standards for status determination include the issuing of appropriate instructions to the competent officials in dealing with asylum seekers, the provision of necessary guidance to asylum seekers, and the clear identification of the authority to deal with asylum applications. (see *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status* HCR/IP/4/Eng/REV.1, Reedited, para. 192 (Geneva, January 1992).

²¹ *Ibid*, para. 189.

²² *Interception of Asylum-Seekers and Refugees: The International Framework and Recommendation for a Comprehensive Approach* EC/50/SR/CRP.17

The UNHCR definition, which is arguably the only definition of the term to date is far from satisfactory and underscores the lack of understanding of the substantive international legal issues that underpin interception. The UNHCR's approach unduly emphasizes the action taken by a state 'outside its national territory' to prevent or stop entry of persons. It seems to overlook the fact that a destination state can redefine 'entry' for the purposes of immigration. This can in turn significantly impact on any claims under the Refugee Convention.

Excision of territory

The excision of territory consists of the removal or exclusion of the territory of a state from its jurisdiction. In practice however states do not ordinarily remove portions of their territory from their jurisdiction. States can however exercise a 'milder' form of excision by excluding the territory for the definition of a particular act or conduct. For instance, current Australian legislation defines entry into Australia for the purposes of immigration to mean entry into the 'migration zone'. In addition, the *Migration Amendment (Excision from Migration Zone) Act 2001* excludes Cocos Island (retrospective to 17 Sep 2001), as well as Christmas Island, Ashmore Reef and Cartier Reef (retrospective to 8 Sep 2001) from the Australian Migration Zone under the *Migration Act 1958*. The effect of the excision is that any person arriving at these Australian territories would no longer have the right to seek refugee status.

The Pacific Strategy

Under the excision legislation, asylum-seekers who enter Australia's excised territories can be taken to a 'declared state'. Nauru and Papua New Guinea became 'declared states' in accordance with the legislation and thus enabled the transfer of asylum seekers under the 'Pacific Strategy'.

Mandatory Detention

The detention of asylum-seekers is not a common practice in international law. Indeed the Convention provides that asylum-seekers who enter the territories of Contracting States without authority and present themselves to authorities immediately are not to be subject to any punishment for breaching the immigration law. The Convention is however silent on the issue of administrative detention which might enable a state to hold an asylum seeker until he or she is deported. Even though the Convention provides that a person who is denied asylum must be

allowed reasonable time to depart the territory of the state which rejects his or her application, the Convention makes no provisions for stateless persons or persons who are unable for reasons outside their control to depart the country. The problems that can arise in relation to such asylum-seekers are demonstrated by Australia's policy of mandatory detention. The *Migration Act 1958* makes it mandatory for designated law enforcement officers to detain unlawful asylum-seekers found in the country and to keep them in detention until they are removed from Australia. Where it is impossible for such asylum-seekers to be removed from the country, current law permits immigration authorities to detain them indefinitely. A number of very recent decisions of the High Court of Australia confirm the constitutional validity of these arrangements.²³

Restrictions on access to judicial review (the privative clause)

A privative clause is a term or provision in a legislation that purports to exclude the jurisdiction of a court to review an administrative decision. The essence of such a clause is in effect to 'oust' the jurisdiction of the courts with respect to a particular matter that may be subject to an administrative decision. In late 2001 the Australian Government introduced a 'privative clause' amendment to the Act to *restrict* access to judicial review of asylum related decisions.

In Australia as in many countries, the primary decision regarding an asylum application and the subsequent review are essentially administrative decisions. Judicial review through access to the courts provides an avenue for superior courts to control excesses of jurisdiction by inferior tribunals and administrative bodies. Judicial review therefore provides an effective mechanism for seeking relief in migration proceedings generally and in asylum matters in particular. While the High Court of Australia has held in a number of recent cases that the privative clause is legally valid in Australian law,²⁴ some questions have been raised about its legal propriety in international human rights law in general and under the Convention in particular.

Temporary Protection Visas (TPVs)

Another onshore strategy used in Australia to manage asylum-seeker admissions is the Temporary Protection Visa (TPV) system. TPVs were introduced by the Australian Government in 1999 in response to a surge of unauthorized boat

²³ *Al Masri*, [2004] HCA 37 (6 August 2004); *Al-Kateb v Godwin Al Khafaji* [2004] HCA 38 (6 August 2004).

²⁴ See for instance *Plaintiff S157 v Commonwealth* [2003] HCA 2.

arrivals who had used people smugglers to travel to Australia. Prior to the TPVs, all asylum seekers accepted as refugees in Australia, were granted immediate access to protection visas provided permanent residence and immediate access to the settlement support arrangements available to refugees resettled from overseas. The TPV allows an asylum-seeker to reside in Australia for a period of 36 months. After the period, the asylum-seeker is required to make an application for further and permanent protection. If however the circumstances in connection with which the asylum seeker was granted refugee status have ceased and there are no new circumstances, then by virtue of the cessation clause under Article 1(C) (5) of the Convention, the asylum-seeker can be refused protection.²⁵ The Convention is silent on TPVs and would even seem to permit such arrangements under the cessation clause of Article 1C(5). However by their nature TPVs create uncertainty for asylum-seekers given their temporary character.

Conclusions

Restriction on migrations flows is ultimately an issue of human rights. While there is no doubt that each nation retains a sovereign right to protect its borders and to ensure national security, it is also the case that the current international approach to migration is far from equitable. That nationals of some states are permitted easy access to some countries and yet the same countries stringently restrict access for nationals of poorer countries is a good testimony of the many equalities in the current system. International migration is a reality that is intricately connected with globalization. With the continued disparity between the wealth of nations, migration numbers will continue to grow bringing more pressures on the destination states to develop a more appropriate method of dealing with the problems. This will continue to pose challenges to the liberal values of modern democracies. As one author correctly asks:

To what extent can tough measures of border controls coexist with the harmonious functioning of democracies? The liberal values and human rights principles that guide societies cannot stop at their borders; they must guide countries' behaviour toward outsiders arriving at their gates. The way a society handles the fate of foreigners ultimately reflects the values upon which it is based, and the issue regards the price – in terms of dignity and human rights – developed countries are prepared to pay to control their

²⁵ Further changes were introduced in September 2001, to restrict TPV holders' eligibility to obtain permanent residence in the future. Under the 2001 changes, asylum seekers granted TPVs and who make a further Protection Visa applications are not able to access a permanent PV if, since leaving their home country, they have resided for at least seven days in a country where they could have sought and obtained effective protection.

borders.²⁶

In spite of the liberal philosophy of most developed states, the reality is that restrictions on migrations flows have increased in the period post September 11 and are set to increase further with states using a variety of means to discourage immigration flows. In the case of Australia, the suite of restrictions is clearly more extensive with respect to asylum seekers. While the plans to expand the restrictions may have been abandoned for now, given the potential for increases in migrations flows in a global environment of hard economic conditions particularly in developing states, the push to revisit the expansion in the restrictions is only a matter of time.

²⁶ Pécoud and Guchteneire, *Migration without borders: an investigation into the free movement of people* Global Migration Perspectives 27, 2005.

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