Chapter 40

Refoulement and Refugees

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ABSTRACT

Refoulement, a French word meaning to reject; or backwash, is a contentious issue in the international law and policy. However, the word is unknown to most of the public world – the Australian government operations to deter asylum seekers titled ‘pushing back the boats’, ‘operation sovereign borders’ are questionably pushing the limits as to what’s refoulement and what isn’t – but the worded meaning in the convention relating to the status of refugees is the process by which a persecuted asylum seeker is forcibly removed back to a place where they are re-exposed to the same danger from which they are trying to escape. In this article, the author hopes to provide information to others who are interested in the area of refugee policy and, in particular Australia’s role in the development of this increasingly important field of international law as well as the implementation of their own unique approach to dealing with asylum seekers arriving in their territorial waters by boat. In this chapter the author has made every effort to provide an unbiased, politically non-partisan view of the current policies which Australia has implemented under domestic law, which includes the act of turning back of boats and offshore processing in third-nation processing facilities.

I. INTRODUCTION

From a Legal perspective, the term refoulement is found in the 33rd article of a piece of legislation – drafted in response to the holocaust and other atrocities which occurred in Europe during World War II – known as the 1951 United Nations Convention Relating to the Status of Refugees. The following is a discussion of some of the issues surrounding refugees, particularly Australia’s attitude towards its obligation to them.

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II. BACKGROUND: WORLD WAR II AND THE UNITED NATIONS REFUGEE CONVENTION

Following World War I, there were a significant number of persons displaced who left their home countries in search of refuge in safer conditions, in countries other than their own. Considerate governments around the world responded by creating legislation to allow these people to have travel documents in order to facilitate their quest for satisfactory living conditions, free from abhorrent persecution – or what we would now call – seek asylum. Following from the refugee crisis in the aftermath of World War II, which saw a significant increase in the number of refugees – a number of countries collaborated, under the auspice of the United Nations, in Geneva to form the United Nations Convention Relating to the Status of Refugees, or ‘The 1951 Convention’. Instigated under the auspice of the League of Nations in 1921, and later amended by the UN 1967 Protocol, the 1951 Convention effectively covers who exactly a refugee is and what protection they are entitled to, in states which are members of the Convention and/or the Protocol concerning the Status of Refugees.

One of the Sections of the 1951 Convention, Article 33 is perhaps the most contentious and heavily debated piece of legislation in the issue on Refugees and Asylum seekers in Australia and elsewhere, as it is this section which defines the internationally agreed upon definition of *refoulement*. It is this article (33) which states, at subsection 1, that: “No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” (Art.33 Refugee Convention, 1951 UN) And it is in these words that lay the issue of whether or not Australia’s policies – which have been implemented under a number of different names including: Operation Relex, Operation Relex II and the Pacific Solutions since the early 1990’s – are in fact, legal.

In the first part of the 20th Century, the continent from which most refugees were displaced from was Europe. As previously discussed, it was World War I & II which first brought nations together in an effort to restore satisfactory living conditions to the innocent people displaced by those events. The initiative was successful, and a significant proportion of the 1.5 million refugees were successfully re-settled around the world, including around 50000 Jewish refugees who were resettled in Australia after persecution in Nazi Germany (Rutland 2015). However, the second half of the 20th century brought about a change in the geographic representation of Refugees. No longer was Europe the main stage of global conflict, and no longer were the traditional ‘migration routes’ being followed. There were now added dimensions to the global issue of human beings seeking asylum in an effort to escape the inhumane disruption in their way of life occurring in their home countries.

III. PUSH FACTORS, PULL FACTORS, AND CONTEMPORARY MIGRATION ROUTES

Sociologists, lawyers, and other refugee experts will often refer to what are called ‘push’ and ‘pull’ factors when discussing the movements of refugees. Pull factors refer to conditions in a destination country which are favourable for asylum seekers, such as a healthy economy, favourable visa processing times and systems, and the likelihood of being well received in the destination country (as an example, offshore processing could be perceived as a means of reducing Australia’s pull factor). It should, however, be noted that little evidence suggests that these factors are in fact taken into account consciously when those