Refugee Identities and the MV Tampa

by Binoy Kampmark

On August 26, 2001, the Norwegian cargo vessel MV Tampa was requested by Australian Safety and Rescue to pick up 438 mainly Afghan refugees from their sinking vessel, the I Palpina, chartered by "people smugglers" 140 kilometers north of Christmas Island. The safest destination for the Tampa was Christmas Island, given that its Captain, Arne Rinnan, did not want to risk "potentially dangerous factors across an open ocean which may have resulted in massive loss of life." The refugees on the Tampa also threatened to jump if the boat turned back to Indonesia.

On August 27, Cabinet Office told Bill Taylor, Administrator on Christmas Island, to prevent any vessel reaching the Tampa. Two days later, Rinnan assessed that the medical situation on the Tampa was deteriorating, and rang for assistance from authorities on Christmas Island. When none was forthcoming, Rinnan moved to within four nautical miles off Christmas Island. Forty-five Australian SAS troops were sent out to intercept the vessel. A standoff ensued which saw the MV Tampa stranded at sea while the Howard Government deliberated on its options. The HMAS Manoora subsequently shipped the refugees to the Pacific Island of Nauru. Most refused to leave the boat, having been promised by traffickers a place of asylum on the Australian mainland. The Tampa refugees were subsequently shipped to detention centers erected on Nauru, Vanuatu, and Papua New Guinea as part of the Howard Government’s "Pacific Solution."

The decision was challenged in the Federal Court by the Victorian Civil Liberties Association and a Melbourne solicitor Nick Vadarlis, arguing in submissions that the Tampa refugees had been illegally detained by an excessive use of executive power. The case succeeded before the Justice who found no illegal detention of the refugees and a proper use of powers by the executive. To shore up its legal position from further challenges, the government passed a series of laws with an executive power. The case succeeded before the Justice that found no executive power.

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The Tampa refugees presented the Howard government with a political option to shore up diminishing popularity.

Tony Wright of the Bulletin saw this as Howard's "own peculiar imitation of Thatcher's Falklands War," drawing inspiration from the 1982 campaign against Argentina that proved hugely popular in the following year's British election. Howard's actions yielded similar results. Polling agency Rehame Media Monitors found in early September polling that 78 percent of talkback radio callers endorsed Howard's expulsion of the Tampa. Another Australian poll for the same period by AC-Nielsen put the number at 77. Pollster Gary Morgan told the 7.30 Report that the Tampa issue had helped contribute to a 20 point blow-out in the week after the September 11 attacks on the U.S. favor of Howard over Labor Opposition Leader Kim Beazley.

In the subsequent treatment of the Tampa four identities manifested themselves. The refugee was an invader violating Australian sovereignty. As Howard told Parliament in late August, "There is no doubt the integrity of the borders of Australia has been under increasing threat from the rising flood of unauthorized arrivals."

The same refugee was a criminal-assassin, feigning sickness and fear. According to a columnist in the Australian, the boat refugees were pretenders, lacking papers to vindicate their status: "Of the 4141 who landed during the 2000-01 financial year, 60 per cent had no identity papers whatever." Not all of them could be 'innocent.'

The Tampa refugee was also a potential terrorist after the terrorist attacks in the U.S. on September 11; in the words of government member Peter Slipper, there "was an undeniable linkage between illegals and terrorists."

Nor could such a refugee be wealthy—being so would violate the "fair go" where other refugee applicants waited processing in UN run refugee camps. A letter writer to the Australian regarded the moves of the Tampa refugees to jump the refugee queue as those of a "gimmie brigade who want everything now."

Finally, the internationalized Tampa became the foundation for various responses. Norwegian officials were highly
critical, citing the detention off Christmas Island as a violation of the Law of the Sea (1982) and immoral. "This [incident] has provoked many and will remain with us for a long time," claimed Steinar Sjoelie, Secretary General of the Norwegian Council For Refugees.4 Every day in European news broadcasts the Tampa story was covered as an ongoing drama, with two or three minutes devoted to the story in national newscasts. In contrast, the reaction in the United States was paradoxical as Australia's treatment of the Tampa was reported in such papers as the Los Angeles Times, but otherwise garnered minimal major media attention and faced little criticism from President Bush or the State Department who were impressed by Australia's credentials as a long-standing ally in the Pacific. The subsequent attacks of September 11 saw security predominate in talks over domestic refugee rights issues.

The Tampa refugees violated Australian sovereignty through assuming the role of invaders. The Maginot Line of Australian sovereignty was threatened by asylum seekers equipped with leaky boats and suspicious intentions. Immigration Minister Philip Ruddock explained in Parliament that new approaches to asylum seekers were due to "increasing threats to Australia's sovereign right to determine who will enter and remain in Australia."5 A letter to the Sydney Morning Herald found an analogy in Advance Australia Fair in response to the Tampa invaders: "Shall foreign foe e'er sight our coast, Or dare a foot to land, We'll rouse to arms like sires yore To guard our native strand."6 In reality the flood rhetoric was an illusion, as pointed out by a law lecturer at Sydney University: "Compared with most prosperous nations, the number of people entering Australia to seek asylum is minuscule."7

In granting the writ of release to the Tampa refugees, Justice North refused to treat the refugees as invaders. His Honor held that Parliament had given Australia an adequate regime to protect its borders and any argument of threatened sovereignty was superfluous. Citing old authority that an alien was free the moment he set foot on Australian soil, it was open for the refugees to apply "for release . . . from the alleged unlawful detention."8 As the deportation of aliens was now "comprehensively governed by [the Migration Act]" the executive had no authority to detain and expel the Tampa refugees." Justice North also observed that the Government's treatment of the Tampa was highly unusual, as the "situation was handled so that the [Migration] Act would not apply."9

On appeal to the Full Court of the Federal court, the arguments transformed the non-citizen on the Tampa into a subject with lesser rights than a citizen: the refugee reverted to the alien invader. The alien was a special legal creature susceptible to expulsion, a lesser juridical entity, not being in the position of a 'British' or Australian subject.10 According to Justice Beaumont remedies under Australian law required Australian right holders, not non-citizen invaders: the "compulsory entry [by the Tampa] could only be justified if those persons have a right recognized by law to enter that zone."11 This right never existed since the Tampa refugees had no "common law right to enter [Australia]."12

According to Justice French, the Australian executive, a legal composite of Governor General, Prime Minister and Cabinet, had the powers to "do all those things which must be done for the effective exercise of the power to expel [aliens]."13 It was apposite to a nation's 'sovereignty' that "the Government of the nation would [not] lack under the power conferred upon it directly by the Constitution, the ability to prevent people not part of the Australian community, from entering."14

This "gatekeeping" function had not been eroded by the Parliament and specifically by the existing Migration Act (1958). Parliament, to abrogate the extensive powers of a security conscious executive, could only do so by "unambiguous provision", express words or by necessary implication.15 It followed that the executive had not improperly used its inherent powers. The distress of the Tampa refugees was not the concern of Australian officials as, opined Justice French, they "derived from circumstances which did not come from any action on the part of the Commonwealth."16

The favorable decision for the Howard Government paralleled legislative activity in the Australian Parliament designed to prevent the Tampa refugees from landing on the Australian mainland. According to the newly passed Border Protection Act (2001), refugees "in respect of whom there were reasonable grounds for believing that their intention was to enter Australia unlawfully," could be repulsed by coastline authorities.17 The Tampa refugees who had entered the zone were refused protection visas notwithstanding their presence in Australian territory at the time of their detention. Uniquely, the BPA was specific to the exclusion of vessels from the territorial sea such as the Tampa and another vessel that had arrived previous to it, the Aceng.18

The amending acts of Parliament subsequently excised the territorial sea to protect "Australia's shores from being entered illegally." The concept of Australian sovereignty was

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18. First Tampa Case, para. 95.
19. Ibid., para. 120.
20. Ibid., para. 75.
22. Ibid., para. 111.
23. Ibid., para. 125.
24. Ibid., para 186.
25. Ibid., para. 193.
26. Ibid., para. 184.
27. Ibid., para. 213.
28. BPA, Part 2, sections 5, 6.
29. BPA, s. 2.
elastically stretched excluding Christmas Island as a landing point for asylum seekers. According to One Nation senator Len Harris, this new “migration zone” would “put a stop to illegal boat people applying for a visa while they remain in the migration zone.” Commonwealth officers were given sweeping powers to “take the person, or cause the person to be taken, to a place outside Australia.” The detained refugees within the migration zone would not be entitled to enforce any rights against the Commonwealth in either a criminal or civil court of law.

The amending acts were questionable in their conformity with international law. The Universal Declaration of Human Rights possessed an article granting “everyone . . . the right to seek and enjoy asylum from prosecution.” Such avenues had been restricted by the BPA, limiting avenues of appeal and creating a new class of visa applicants. Furthermore, the specific exclusion of territory for immigration purposes was legally incongruous as “a treaty is binding in respect of its entire territory.” This made the discharge of Australia’s obligations under the Refugee Convention (1951) incomplete, since it could fulfill the international obligations for all Australian territory bar the newly created “migration zone.”

II

The ‘criminal’, deceptive conduct of the Tampa refugees proved a formidable target for the Howard Government. One Nation Senator Len Harris suspected the motivations of the refugees, whom he regarded as expert actors: “These people are very adept in using the emotive to emphasize the human side of this.” The Tampa refugees were “illegal criminals” who had “been probably sitting in a McDonald’s or a Kentucky Fried in Indonesia before they boarded that boat.” The refugees had met up with traffickers in Indonesia over a Western meal, and planned the trip to land at their own leisure, evincing a visible “criminal intent.” Prime Minister Howard was similarly skeptical about the suffering of the Tampa’s human cargo. Every situation has its 450 souls. Every situation has stories of hunger strikes, even suggestions of throwing children overboard. The Tampa was no tragedy, merely an effort on the part of law-breakers to be dramatic. Three of the sickness cases were “very mild”; another “was completely feigned.” Howard told members of the press that no one on board “was in need of urgent medical assistance.” Government politicians were intent on stopping the smuggling of refugees but portrayed the criminality of both traffickers and refugees as a symbolic unity. Foreign Minister Alexander Downer expressed a firm policy on punishing traffickers or human cargo: “We don’t want to be inhuman about it but we need to be firm.” Australia had “to try to do something to stamp out this illicit and ugly people trade that’s going on basically out in the Middle East.” To punish the trade, it was necessary to punish the goods. The Minister of Defence, Philip Reith, similarly made no distinction between the refugee and the refugee trafficker: “They [smugglers] put these people on these boats and they are sending them to Australia in defiance of Australian law and ultimately in defiance of the right of the Australian people to decide who comes to Australia and who doesn’t.”

The association between criminal conduct and Islamic immigrants was made with greater ease, given the extensive coverage afforded to rape trials perpetrated “on young white women by young [Muslim] Lebanese men in Bankstown and other Sydney suburbs” earlier in the year. The Muslim criminal immigrant was already operating in Australia’s suburbs, or, in the words of author Jane Albrechtston, “a small but insidious group of Lebanese boys are raping Caucasian girls.”

In early September, Sydney-based radio personality Alan Jones advanced the criminal theme in an interview with Prime Minister Howard, claiming that the Tampa refugees had committed acts of “piracy”:

Jones: “[Rinnan’s] heading in one direction and turns the boat around [towards Australia] because of the behavior of those on board.”
Howard: “You mean piracy by the people on board?”
Jones: “Yep.”

National Party MP De-Anne Kelly adopted a similar trope of the “law-breaker.” The Tampa refugees had refused to get off the HMAS Manoora that was, in the common language of one Kelly voter, akin to the driver who refused to accept a police breathalyzer. “People got pretty sick seeing [the boat people] on TV and refusing to get off the Manoora.” The asylum seekers refused to acknowledge the world of fair play. “You can’t play by the rules for all these years and accept what these people are doing.”

The mistrust towards the Tampa refugees increased after September 11, 2001 when four hijacked passenger planes, piloted by members of an Afghanistan-based Arab terrorist network, attacked the World Trade Center and the Pentagon in the United States. The criminal refugee became, inferentially, a terrorist. In Howard’s words, quoted while campaigning in Brisbane in early November, “You

31. BPA, sections 3A(b) amending subsection 183(3A).
32. BPA, 1AA amending subsection 183(3A).
don't know who's coming in and you don't know whether they do have terrorist links or not.”

The panic was instantaneous. John McPhee, resident of Lismurde in Western Australia, suggested in a letter to the Australian that “the hearts-and-flowers ilk” were gullible in inviting an Islamic fifth column into Australian life. Australians were “unnecessarily” laying the seeds of “sabotage, spying and treachery” in letting the Tampa asylum seekers in.44 Member of Parliament Peter Slipper made a remark a few days after the attacks that as some Tampa refugees came “from the country that is the center of terror, I would be particularly concerned if those people were allowed to enter Australia.”45 Jones asked radio listeners rhetorically “how many of these Afghan boat people are [terrorist] sleepers?”46

In the rural town of Gympie in Southeast Queensland gun dealer Ron Owen and President of the Firearms Association of Australia neatly fit terrorism and asylum seeker in one picture. The whole northern coast was up for the taking. “We can’t stop a few hundred boat people running around in the Northern Territory for a few weeks.... If they are offensive we have no hope.”47 The aircraft of September 11 were substituted by leaky boats occupied by, in the words of Melbourne radio host Derryn Hinch, “Bin Laden appointees.” Defence Minister Reith encouraged the association, quoting American advice that Australia “had to be able to manage people coming into [the country] to sift prospective terrorists.”48

The September 11 terrorist attacks in the U.S. converted the Tampa refugee into a security problem within the framework of war. Security risks were increased by the multicultural tolerance expressed by Australian immigration policy. Previous Coalition and Labor governments, according to National Party Senator John Stone “opened our doors to all and sundry irrespective of cultural background.”50 Islam, September 11 and the Tampa became symbols of cultural separation. “All the past brainwashing to the contrary notwithstanding, all cultures are not equal,” claimed Stone. After September 11, it was “dangerous to keep insisting that they are.”51

Frank Devine of the Australian expressed a similar view. “While extending the hand of friendship, it is reasonable since September 11 to be wary in dealing with Muslims.”52 Another Australian letter writer was more direct: “These [Tampa refugees] are Muslims whose values are so different there can only be tension and problems.” Fulfilling Pauline Hanson’s prophecy of cultural ghettos, the Muslim refugee would seek Australian compassion and “still live their culture here without assimilating.”53

The electoral slogan of the government was one of security and safety, and Howard made it clear in his campaign speech of late October that national security involved “a proper response to terrorism” and an “uncompromising view about the fundamental right of this country to protect its borders.” While Australia was naturally generous, only “we will decide who comes into this country and the circumstances in which they come.”54 One regional paper circulating in marginal Liberal seats in North Queensland promoted the themes of safety, security, and legal criteria. A vote for [Liberal Candidate for Herbert] Peter Lindsay protects our borders.” On the day of the election, the security message of the papers became the icons of Liberal and National Party billboards placed around electoral booths across the country.55

III

Perceptions of the Tampa refugee as wealthy created an identity of the “queue jumper.” The asylum credentials of the Tampa refugee were less relevant than the economic act of “jumping” the immigration queue. The payment of a sum to escape Afghanistan was itself a disentitling act—it showed a lack of indigence. Geoffrey Barker of the Financial Review summed attitudes thus: “They [the refugees] have sought to hide their [true] identities and to jump the queue for admission to Australia as refugees.”56 This violated the sense of a “fair go” inherent in the Australian ethos: I do not see, fair’s fair,” claimed Helen Hughes of the Center of Independent Studies.”57 I do not see that Australia should select the refugees and immigrants by those who can pay.”58 De-Anne Kelly was inclined to a similar view. “People for whom every dollar counts are more clear sighted about the fact that boat people who can buy their way over here for $30,000 shouldn’t be given an open door.”59

Former CARE worker Steve Pratt told prominent Sydney radio personality John Laws that Tampa refugees stole places in a queue. They were not in need; they denied spots for legitimate claimants.60 As a letter to the Australian editor suggested, there were many as “desperate” and “photogenic”

50. Ibid., p. 13
57. Helen Hughes with Tony Jones, Lateline: Friday Forum, ABC Television, August 31, 2001 (herein Friday Forum).
as any Tampa refugee who waited "with patience and good grace for the Australian system to process their applications for asylum."

Michael Duff, writing in the Courier Mail, claimed that the queue legitimized refugee animosity. There was no racism involved, simply economics. For Duff, the wealthy bypassed queues."Their private money enables them to situations where queues matter." The vulnerable poor, strung by low income and charity, were in contrast "powerless." Power, on the contrary, resided in the refugee. According to Jones, queue-jumping refugees were protected by the court system at the expense of queue-abiding citizens: "There are people who are waiting 18 months for a worker's compensation case. If you're injured in a car accident it takes until you're in your grave to get into court—this mob just walk up and walk in." Views of the subverted queue did not stop with conservative radio hosts such as Laws and Jones. Secretary to the Defence Minister, Brendon Nelson, tried convincing North Sydney Rotarians that refugees had to be indulgent to be convincing: a rich refugee was not a refugee worthy of Australian processing. It had been reported to him that some Tampa refugees had "mobile phones." They were not "poor"; they could not have been in need.

In contrast, Australian columnist and Radio National host Philip Adams claimed that queues would not have mattered if white farmers from President Mugabe's Zimbabwe had sought to journey to Australia. "Will we turn them away with our navy or will our ships form a guard of honor to guide them to our shores?" No dumping on "that literal shit-heap Nauru" would greet their arrival. The queue was a mechanism to protect wealth—"the nice houses in nice suburbs" surrounded by "furnishings and objets d'art." Another critic of the refugee policy, La Trobe University professor Robert Manne, denied the existence of a queue. "The truth is that there is no queue in any sense that any kind of Australian would understand in the refugee situation."

IV

Various international perspectives were generated by the Tampa stand off. The Tampa refugee was portrayed differently from the perspective of Norwegian officials. Issues of justice and international law were at stake, not matters of sovereignty and security."One cannot force a ship which the captain deems unfit to sail into international waters," stated the Norwegian Prime Minister. Norwegian Foreign Minister, Thorbjørn Jagland, had never witnessed "such a situation that a Norwegian ship in distress has been met with the threat of use of force, rather than assistance from the nearest harbor and the coastal nation, which are obliged to give assistance." According to Mr. Jagland, the reaction from Australian authorities was inconsistent with international law and general principles of humanity. Once in control, the Australian authorities decided to neglect its refugee obligations when it was "absolutely clear that Australia's responsibility continued to exist as it was an Australian lead operation." Any desire to expel the Tampa from Australian waters would have been contrary to the tenor of the Law of the Sea since the Tampa was entitled to enter Australian waters once its captain "declared his ship in distress." Australia's response separated the refugee from the humanity inherent in the condition of distress.

According to a BBC reporter surveying the reactions of Norwegians to Australian responses to the Tampa, Howard was a renascent Margaret Thatcher, seeking a victory against refugees, conveying an attitude "cowardly, insular." Other commentary focused on the crude manner the Tampa was handled. A spokesman for the Norwegian shipping line Wallenius Wilhelmsen, owner of the Tampa, saw Australian attitudes to the Tampa refugee as those of a "banana republic." Other reactions verged on the incredulous. The paramedic and doctor accompanying the SAS soldiers were able to separate sick refugees from healthy ones in one hour. The single doctor "must be a superman," remarked Karsten Klepsvik, spokesman for the foreign minister. How 438 people could be medically assessed in one hour was, for Mr. Klepsvik, a mystery. The American reaction to the Tampa refugees was framed on two levels. At a political level, there was no direct criticism by either the Bush Administration or the State Department; from the non-government organizations, criticism was often scathing.

A letter from Human Rights Watch and the U.S. Committee for Refugees to Howard in late October expressed concern at the restrictive amendments to Australia's migration regime as it then stood. The recent amendments to Australian law seriously infringe upon the right of refugees not to be returned to a country where their lives or freedom are threatened [the principle of non-refoulement]. The creation of a new class of refugee—those specifically entering the excised migration zone—"single[s] out a special set of individuals as more deserving of protection than others." American readers of the Los Angeles Times would read that the Tampa situation is a "prime example of the struggle for the future of the world's refugees."
Times read accounts by journalist Richard C. Paddock on how the Tampa issue was the primary motivation for returning Howard to power.  

On the political level Australia was not an ally to be negatively defined, but a sentimental friend crucial in the fight against terrorism and poverty. President Bush reserved generous praise for Howard in his meeting with the Australian leader on September 10. “Australia is a generous land, mindful of the struggles of poor nations, always helping when and where it can.” The security relationship ignored domestic issues in favor of international cooperation. Bush was reluctant to criticize a close ally over its domestic policies. This was curious, noted a journalist to the U.S. State Department’s Deputy Spokesman Philip T. Reeker, “given the fact that there was a refugee standoff involving Australia.” Reeker responded by claiming that the Tampa crises had been solved to the satisfaction of both the President and the State Department. “They [Australia, Indonesia, and Norway] have done that and so we are quite satisfied with that.” Reeker chose instead to emphasize the “robust” U.S.-Australian relationship based on “shared values.”

Alistair Cooke developed a similar theme of security and protection in a Letter from America, discussing meetings held in Canberra by Secretary of State Colin Powell and Secretary of Defense Donald Rumsfeld. The veteran journalist emphasized America’s approval for its “longest and stoutest ally in the Pacific.” Discussions between U.S. and Australian officials held in the wake of September 11 did not place the Tampa in a public arena, an arena already dominated by discussions about the war on terrorism.

In an interview with PBS news presenter Jim Lehrer, Howard used the terms of the stable protector in the Pacific. The metaphor of stable guardian was threatened by the metaphor of the flood. Even if Australia was large, as Lehrer pointed out, Howard claimed that “thousands” were waiting to enter via the trafficking channels of smugglers. The deterrent aspect of repulsing the Tampa was emphasized: Australia could not be seen as “a soft touch.” Reith opined a few days before Howard’s departure for Washington that there was “anecdotal evidence” available that “the people traffickers [in Indonesia] are still waiting to see what’s going to happen.”

The Bush Administration’s approval for Australia’s tough stance towards boat people was more implicit in Reith’s radio interview with Hynch, where terrorist infiltration was cited as a main concern. Assistant Secretary of State Jim Kelly had given the Defence Minister the go ahead to “manage people coming into your country”—this was especially important to avoid a potential “pipeline for terrorists.”

Four distinct refugee identities were created in the discourse on the Tampa after August 2001: the criminal-actor, the wealthy queue-jumper, and international viewpoints on boat refugees. These identities were accentuated by the attacks of September 11 and the proximity of the Howard Government to an election, where issues of security and safety from terrorism shaped immigration attitudes. It was easy to conflate the refugee as a terrorist and criminal, since allegations of “piracy” by Jones were easily transformed into visions of terrorist “sleepers.” Given that most of the refugees were Muslim, the separateness of their culture and the connections between Islam and September 11 engendered cynicism towards multicultural policies.

The separateness of the Tampa refugee was also emphasized by the “queue-jumper” image, which was anomalous with notions of the Australian “fair go.” Other refugees were waiting in queues and did not, according to writers like Hughes, have the resources to subvert it. As a consequence the Tampa refugees became upstarts against legitimate applicants.

International reactions were mixed. U.S. responses were based around political interests—ignoring the Tampa issue in favor of the “shared” values held by both America and Australia—and non-government groups who were highly critical from a human rights perspective. Norwegian officials used themes of international law and humanitarism, finding Australia’s treatment of the refugees to be provincial and arcane.

These refugee “identities” can be rationalized as part of a broader world debate on refugee flows. According to former Prime Minister Paul Keating in early November, the question was whether Australia would “let the drawbridge down or... keep it up?” In the long run, claimed Keating, Howard’s Tampa-legacy was a barren “kingdom of nothingness” structured on national chauvinism and strategically manipulated fear.

76. Ibid.
80. Reith in Hynch interview.

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