
The Law of the Sea Convention 1982 and the Refugee Convention 1951 provisions: How they might impact on extant Australian Government policy concerning illegal immigration

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Introduction

It has been two years since Arne Rinnan, the captain of the Norwegian registered MV *Tampa*, rescued 436 asylum seekers¹ from the stricken vessel *Palapa*. Captain Rinnan intended to head for Indonesia but was persuaded by the asylum seekers, mostly Afghanis, to proceed to Australia. The *Tampa* sailed for Christmas Island, the nearest Australian territory, where a stand-off with the Australian Government² ensued for several days.³ The government would not allow Captain Rinnan to land the asylum seekers or even enter territorial waters. This hardline approach toward asylum seekers onboard *Tampa* drew world condemnation and thrust illegal immigration and people smuggling⁴ issues into the spotlight.

Illegal immigration, in particular unauthorised arrivals by boat, poses a challenge in terms of border control for the government.⁵ Any solution needs to represent national interests while at the same time ensuring Australia, as a good global citizen, meets obligations to the international community. These obligations are cast in international law which is basically a system of rules and principles that aim to govern relations between sovereign states. International law is one of the key factors which a responsible government should consider before deciding on a course of action.⁶

This paper aims to assess whether the 1982 *United Nations Convention on the Law of the Sea* (UNCLOS) and the 1951 *Convention Relating to the Status of Refugees*⁷ impacts on extant government policy concerning illegal immigration. Firstly a background on illegal immigration is provided to place the problem in both an international and national context. The subsequent development of Australia's policies to deal with this challenge is presented to highlight the firm approach taken by the government. The paper then examines relevant rules of law with respect to recent events to establish if Australia's policies and domestic law are consistent with international law. Finally, the paper assesses the extent to which international obligations have been upheld or, on the other hand, Australia's national interest has prevailed at the cost of good global citizenship.

Background

There has been growing international concern since the late 1990s, particularly in Western democratic countries, over the frequency with which asylum seekers use people smuggler services in order to immigrate illegally. Indeed, according to the International Organisation for Migration (IOM), people smuggling has emerged as a successful global industry involving the illegal movement of around four million people for USD 7–10 billion per year.⁸

The people smuggling network has, over the years, become more sophisticated. Many countries feel that their national sovereignty has been compromised by the escalating numbers of asylum seekers attempting to gain entry across their borders. This concern has grown particularly

since September 11 and the Bali bombings. A climate of suspicion and vulnerability has developed. Countries want control over who enters their territory, a task made more difficult when the numbers of asylum seekers grow and the people smugglers become more organised. The United Nations High Commission for Refugees (UNHCR) states that poverty, economic disparities, labour market opportunities, limited scope for legal migration and conflict will continue to motivate people to use people smugglers in the future.⁹ Indeed the pressure from illegal immigration is expected to increase over the next 25 years—the only real solution being the long-term aim of improving living standards, political stability and democratic institutions in countries of origin.¹⁰ Hence people smuggling in the short to medium term will continue as a global problem that requires the coordinated efforts of governments around the world to resolve. Examples of recent regional and international efforts to address this problem include two Regional Ministerial Conferences on People Smuggling¹¹ and the signing of ‘The People Smuggling Protocol’ by 95 countries in December 2001.¹²

Australia’s current level of concern with regard to this problem is encapsulated by Philip Ruddock’s comment that ‘people smuggling must first be recognised for what it is: a profitable and direct attack on a state’s sovereign right to determine who may enter and remain in its territory’.¹³ Government concern developed incrementally after 1975 in response to the first unauthorised boat arrivals. Concern has intensified since 1999 due to a significant increase in illegal immigrant numbers. There were 8,316 illegal immigrant arrivals by boat between July 1999 and June 2001 compared to 4,114 in the preceding ten years. This represented more than a 100 per cent increase in numbers with a corresponding shift in the nationality of illegal immigrants from Asian to Middle Eastern.¹⁴

Australia’s policy response

The government maintains that current illegal immigration policies are consistent with obligations under international law and asserts that Australia, as a sovereign country, can decide who can and who cannot enter and stay in its territory.¹⁵ Various *Migration Act 1958* amendments and other related legislation provide convenient signposts to track the government’s policy development with respect to illegal immigration.

The *Migration Act 1989* reduced discretion by departmental officers and tightened control of the immigration program by the introduction of mandatory deportation of illegal entrants. The *Migration Reform Act 1992* introduced mandatory detention for all unlawful non-citizens while status determination processes were conducted.¹⁶ In 1999 further amendments of the *Migration Act* created provisions for people smuggling offences and a three year temporary protection visa for unauthorised arrivals in lieu of a permanent protection visa.¹⁷ Border protection legislation was also passed in 1999 which gave the Australian Defence Force substantial new powers exercisable without a warrant.¹⁸ In 2001, as a result of the *Tampa* incident, six Acts were passed that had significant effects on illegal immigration.¹⁹ These effects included retrospective validation of border protection measures taken with *Tampa*, wider enforcement powers under the *Customs and Migration Acts*, the excision of offshore territories from the migration zone for the purpose of visa applications, a new protection, humanitarian and refugee visa regime, partially codified refugee assessment criteria, mandatory sentencing for people smugglers and a privative clause²⁰ relating to judicial review of migration decisions.²¹ The new 2001 legislation provided the framework for the ‘Pacific Solution’ where asylum seekers are housed and processed at Papua New Guinea or Nauru but paid for by Australia.

The legislative responses between 1989 and 2000 illustrate that government’s stance had toughened against illegal immigration with an emphasis on detecting, escorting and detaining asylum

seekers. In 2001 the policy shifted to prevention and deterrence.²² The government's new policy did not allow unauthorised arrivals to land on Australian territory in an uncontrolled manner for the purpose of claiming refugee status.²³ This policy was effectively implemented by a change in Navy operations from Operation CRANBERRY, a reactive posture, to Operation RELEX, a forward deterrence posture.²⁴

In concert with these legislative changes the government also implemented a number of strategies over the last five years to combat illegal immigration. In 1999 the Prime Minister established a Coastal Surveillance Task Force which recommended a number of actions to strengthen coastal surveillance procedures. These included improved Navy, Coastwatch and Customs capabilities, harsher penalties for people smugglers and international efforts aimed at source and transit countries.²⁵ A second task force was formed—the Unauthorised Arrivals in Australia—which looked at issues of international cooperation to combat irregular migration and people smuggling.²⁶ At the same time the government prides itself on its 'managed' immigration policy where 12,000 refugees are provided with residence in Australia each year. The government states that this figure is threatened each time unauthorised arrivals reach our shores making it even more determined to defeat people smuggling and the perceived abuse of Australia's refugee determination processes.²⁷

Applicable rules of law

Australia is constrained in its actions against unauthorised boat arrivals that breach domestic immigration law by two key international conventions—UNCLOS and the Refugee Convention.²⁸ There are also other rules of law appropriate for consideration in the analysis of illegal immigration issues such as the *Vienna Convention on the Law of Treaties* (VCLT) 1969, the *International Convention on Maritime Search and Rescue* (ICMSR) 1979, *Australia's Migration Act 1958* and the *Acts Interpretation Act* (AIA) 1901.

The government's ability to effectively deal with people smuggling depends to a large extent on its powers in the various maritime zones of jurisdiction articulated by UNCLOS. Firstly two maritime zones under sovereignty are applicable in Australia's case—internal waters and the territorial sea. Article 8 states that the waters on the landward side of the territorial sea form part of the internal waters. Articles 2 and 3 establish state sovereignty over the territorial sea, out to a limit not exceeding 12 nautical miles. Combining articles 2 and 8 enables inference that internal waters are the same as land territory for jurisdictional purposes. A state's sovereignty over its territory is absolute and complete but is still limited by international obligations under customary international law and treaty obligations.²⁹ A limiting factor to a state's sovereignty in the territorial sea is found under Article 17 where ships of all states enjoy the right of innocent passage. Article 19, however, stipulates that a passage is no longer innocent if it prejudices the peace, good order or security of the state. In particular a passage is deemed prejudicial if the ship unloads any person contrary to the immigration laws of the coastal state or is involved in any activity that does not have a direct bearing on the passage. Article 25 gives the state jurisdiction to take the necessary steps in its territorial sea to prevent passage which is not innocent. Article 33 establishes the contiguous zone 24 nautical miles from the baseline of the territorial sea where a state may exercise the control necessary to prevent infringement of its immigration laws within its territory or territorial seas. Article 98 details a ship's duty to render assistance to any person found at sea in danger of being lost or to rescue people in distress if informed of their need for assistance. Additionally under Article 98 (2) every coastal state shall promote the establishment, operation and maintenance of an adequate and effective search and rescue service.³⁰

The Refugee Convention entered into force on 22 April 1954 and represents a consolidation of previous international instruments relating to refugees. It provides comprehensive codification of refugees' rights and lays down basic minimum standards for the treatment of refugees. The scope of the convention was limited to persons who became refugees as a result of events occurring before 1 January 1951. As time passed and new refugee situations emerged, international feeling was that refugee provisions needed to be widened. Accordingly, on 4 October 1967 the Protocol relating to the Status of Refugees came into force. This protocol applies the substantive provisions of the Refugee Convention to all refugees regardless of the date. Recently the Refugee Convention has come under criticism for being out of touch with today's reality that people smugglers abuse the protection regime offered for refugees. This has resulted in Western countries being more restrictive in their interpretation of the convention. Erika Feller, UNHCR's Director of International Protection, asserts that a restrictive reading of the Refugee Convention is not the appropriate reaction. The basis of the convention is timeless.³¹ Two articles are considered so fundamental by the Office of the UNHCR that no reservations may be made to them.³² The first is Article 1 which defines a refugee as a person who *...owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.*³³ The second is the principle of non-refoulement articulated by Article 33, according to which a refugee cannot be expelled or returned by a state in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened.³⁴ Article 31 covers refugees unlawfully in the country of refuge who may not have penalties imposed upon them on account of their illegal entry as long as they present themselves without delay to the authorities.³⁵

The VCLT has been described as the most important piece of work undertaken by the International Law Commission.³⁶ This convention entered into force on 27 January 1980 and is a comprehensive code of rules governing the law of treaties.³⁷ Three provisions are pertinent³⁸: Article 27 regarding a state's internal law and observance of treaties,³⁹ Article 29 on the territorial scope of treaties⁴⁰ and Article 31 on the general rule of interpretation.⁴¹

The ICMSR is aimed at developing an international search and rescue (SAR) plan so that no matter where an accident occurs, the rescue of persons in distress at sea will be coordinated by a SAR organisation.⁴² There are two relevant articles⁴³: Article 2.1.9 where a state shall take urgent steps to provide the most appropriate assistance available and Article 2.1.10 where assistance shall be provided regardless of nationality or circumstance.⁴⁴

As previously described, the government has enacted domestic legislation to address illegal immigration issues. In particular the *Migration Act 1958* is complex legislation that specifies requirements to be met by those who wish to enter and remain in Australia. It is through the *Migration Act* that Australia articulates its obligations under international law. Section 5 of the *Migration Act* defines the migration zone. Basically the migration zone is made up of the land area, starting at the low water mark, of all the states and territories of Australia.⁴⁵ Port precincts are also included in the migration zone.⁴⁶

Interpretation legislation, such as AIA, plays a fundamental role in promoting desirable features in drafting legislation. These features include brevity and consistency between different pieces of legislation.⁴⁷ The relevant article is under Section 15B concerning application of Acts

in the coastal sea. Every Act shall be taken to have effect in the coastal sea as if it were a part of Australia. The coastal sea is defined as the territorial sea of Australia.⁴⁸

Application of rules of law

To understand the impact of international law on Australian policies, it is useful to apply relevant rules of law to recent events—the *Tampa* incident and the ‘Pacific Solution’. On 29 August 2001 *Tampa* entered Australian territorial waters without authorisation and intended to land its passengers due to the Captain’s concern for his ability to care for them onboard. Was Australia under obligation to accept these passengers? Article 98 places the duty to render assistance on the master of the ship not the nearest coastal state. Australia is only required to operate a SAR service under Article 98. However under the ICMSR Articles 2.1.9 and 2.1.10, states must provide the most appropriate assistance available after receiving information that a person is in distress at sea, no matter what the circumstance. The *Palapa* sank within the Indonesian SAR area of responsibility. This was recognised by Captain Rinnan when he intended to return the passengers to Indonesia but was persuaded to go to Australia.⁴⁹ This raises the question of whether rescued persons are able to select their destination. This proposition seems unreasonable as the master of the ship together with the SAR organisation would decide the best destination taking a number of factors into account. The *Tampa* passengers did however select their destination and Australia provided extensive humanitarian aid to the ship at anchor. Therefore, Australia met the obligation to render assistance.

The *Tampa* was stopped in the territorial sea and boarded by the Special Air Service. Government took the position that the passengers could not be landed at Christmas Island. The boarding of *Tampa* is an issue that is covered by UNCLOS under a number of articles. The ship was in territorial waters under Australian sovereignty (Articles 2 and 3) and if not in innocent passage (Articles 17 and 19) Australia was entitled to take the necessary steps to prevent the passage (Article 25). These necessary steps would include boarding in order to stop the *Tampa* from entering internal waters. The *Tampa* was not in ‘innocent passage’ as it intended to land its passengers, which was in contravention of Australia’s immigration regulations. Thus Australia was well within its rights to board the ship and ask the Captain to leave territorial waters.

The *Tampa* remained in territorial waters and on 1 September 2001 the government announced that *Tampa*’s passengers would be moved onboard HMAS *Manoora* and taken to Nauru for processing of asylum claims.⁵⁰ What precisely was the status of the passengers? The government was well aware that the original vessel *Palapa* was being used by people smugglers to facilitate the arrival of asylum seekers in Australia. This partly explains the reticence to accept passengers off *Tampa* because in reality the government wished to deal with this incident for what it really was—illegal immigration not a duty to render assistance. From an illegal immigration perspective, the government was focused on denying *Tampa* entry into the migration zone which in this case was the port precinct of Christmas Island. Entry into the migration zone is the definitive point where Australia acknowledges international obligations under the Refugee Convention. If entry is achieved, the asylum seeker can access the protection visa regime offered under the *Migration Act*. The outer limit of the migration zone is the mean low water mark which effectively means a person must be standing on land or be in the port before they can claim asylum. This situation has greatly reduced the area available to asylum seekers within which they can activate their claim.

On the other hand the provisions under Article 2 of UNCLOS clearly say that sovereignty of a coastal state extends beyond its land territory to the territorial sea. It seems, therefore, that the

Migration Act does not accord with Article 2 because the migration zone should actually include the territorial sea. In support of this position, the AIA states that every Act shall be taken to have effect in the coastal sea as if it were a part of Australia, and the coastal sea is defined as the Australian territorial sea. Thus it could be said that an asylum seeker is ‘in Australia’ when a vessel enters the territorial sea. The asylum seekers onboard *Tampa* should therefore have been taken ashore at Christmas Island for status determination processes. In addition, the legislation that excised territories (Christmas, Cocos and Ashmore Islands) from Australia’s migration zone for the purpose of denying visa application rights contravenes UNCLOS by attempting to limit sovereignty for particular purposes such as immigration. Applying the VCLT provides further insight into the shortcomings of domestic legislation. Obligations under the Refugee Convention begin as soon as asylum seekers enter the Australian territory, including in the territorial sea off Christmas Island. The government cannot abrogate its responsibilities on account of its internal laws.

The transfer of asylum seekers to Nauru and the ‘Pacific Solution’ raise further issues. Was Australia competent to craft domestic laws to authorise the implementation of status determination processes offshore in another country? The legalistic answer appears to be ‘yes’. Obligations under the Refugee Convention were still met by Australia because the refugee definition was applied offshore during the status determination process. Once a refugee had been ‘approved’ the government would take resettlement action. For example, as of October 2002 1,495 people on Manus and Nauru sought refugee status determination. Of these 701 have been approved and 200 refugees have been allowed into Australia. Others have been sent to New Zealand and Sweden.⁵¹ As well, obligations for non-refoulement were met during the *Tampa* affair and the ‘Pacific Solution’. The government did not send prospective refugees back to the place of persecution. Instead asylum seekers were turned away from Australia only to countries where formal service agreements to host processing centres were in place. These centres, paid for by Australia, are managed by the IOM until refugee status is determined.⁵² Finally the obligation under Article 31 not to penalise refugees unlawfully in the country of refuge requires discussion because detention of asylum seekers could be seen as a penalty. Detention centres have come under intense Human Rights criticism, particularly for poor living conditions and children behind bars. Detention has been strongly asserted as a violation of the Refugee Convention.⁵³ On closer examination of Article 31 (2) however, necessary restrictions on the movement of refugees are permitted until their status in the country is regularised. It is reasonable therefore that until asylum seekers have their status determined as refugees, Australia can restrict movement or detain asylum seekers in order to facilitate the identification process. Restriction of movement has been translated in the *Migration Act* as mandatory detention and while this wording is unfortunately harsh, it is consistent with the Refugee Convention.

Conclusion

Illegal immigration poses a serious challenge for the government in light of the heightened security-conscious environment of today’s world. People smuggling is seen as a threat to national sovereignty and has been identified in international forums as a significant problem. Numbers of asylum seekers over the next 25 years are expected to increase due to world economic disparities and continued conflict. They will continue to utilise people smugglers in their search for a better life with the only long-term solution being an improvement in living standards, political stability and democratic institutions in countries where asylum seekers originate.

Any approach adopted by the government to address illegal immigration must accord with international obligations so that Australia can maintain its record as a good global citizen. The

government has an unashamedly tough approach to asylum seekers. The current policy of prevent and deter came into force in 2001 whereby no unauthorised arrivals would be allowed to land on Australian territory in an uncontrolled manner. Domestic legislation was enacted to set the framework for the government's 'Pacific Solution' which authorises offshore processing of asylum seekers in a different country.

My assessment is that the international obligations of UNCLOS and the Refugee Convention do and must significantly impact on extant government policies. However, although the government's policy approach to illegal immigration has been legitimised in the *Migration Act*, I believe that the basis of this domestic legislation is flawed and at odds with international law. In particular the migration zone defined in the *Migration Act* has effectively retracted jurisdiction from the territorial sea—but only with respect to immigration. This is inconsistent with UNCLOS and ultimately reduces the opportunity of an asylum seeker to establish a claim under the Refugee Convention. So, no matter how the government complies with international obligations in certain areas, a balance between UNCLOS, the Refugee Convention and the *Migration Act*—which is supposed to implement this international standard—has not been achieved. This could damage Australia's reputation, if it hasn't already, as a good global citizen.

Endnotes

1. Asylum seekers are people who seek asylum. Asylum is generally regarded to mean the protection provided by a country to refugees on its territory; Department of Foreign Affairs, 1996–2003, *People on the Move – Facts at a Glance*, Viewed 21 August 2003 at <http://www.dfat.gov.au/illegal_immigration/people_on_the_move_definitions.html>, p. 1.
2. Hereafter referred to as ‘the government’.
3. S Kaye, ‘Tampering with Border Protection: The Legal and Policy Implications of the Voyage of the MV *Tampa*’ in *Protecting Australia’s Maritime Borders: The MV Tampa and Beyond*, Martin Tsamenyi & Chris Rahman, (eds), Centre for Maritime Policy, University of Wollongong, 2002, pp. 59–60.
4. People smuggling is procuring the illegal entry of a person into a state of which the person is not a national or permanent resident, in order to obtain a financial or other material gains. Defined in Article 3 of the Protocol against the Smuggling of Migrants by Land, Sea and Air, UN Convention against Transnational Organised Crime; Department of Foreign Affairs, 1996–2003, op. cit., p. 1.
5. A Millbank, 1999, ‘Boat People, Illegal Migration and Asylum Seekers: in Perspective’, *Current Issues Brief 13 1999–2000*, Department of the Parliamentary Library 14 December 1999, viewed 20 August 2003 at <<http://www.aph.gov.au/library/pubs/cib/1999-2000/2000cib13.htm>>.
6. M Dixon, 1990, *Textbook on International Law*, Blackstone Press Ltd, London, p. 2.
7. Hereafter referred to as ‘the Refugee Convention’.
8. Department of Immigration and Multicultural Affairs, 2002, *People Smuggling – Australia’s Experience and Policy responses – A background paper*, viewed 21 August 2003, <<http://www.minister.immi.gov.au/borders/detention/peoplesmugg.htm>>, p. 3.
9. UNHCR World News, 2002, *Common Agreement Reached on People Smuggling*, viewed 22 August 2001 at <<http://www.unhcr.ch/cgi-bin/tenis/vtx/home/+AwwBmepVX-swwwwwZwwwwwwhFqnN>>, p. 1.
10. A Millbank, 1999, op. cit., p. 12.
11. Two Regional Ministerial Conferences on People Smuggling, Trafficking in Persons and Related Transnational Crime were held in Bali in February 2002 and April 2003 in response to escalating numbers of people attempting to move illegally through the region. Thirty-eight ministers representing 36 countries attended and pledged their commitment to enhancing regional cooperation to combat people smuggling. Department of Foreign Affairs and Trade, 2003, *Second Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime*, Bali 29–30 April 2003, Viewed at <http://www.dfat.gov.au/illegal_immigration/bali_conference_0403_bkg_paper.html>, p. 1.
12. Australia signed the People Smuggling Protocol to the United Nations Convention against Transnational Organised Crime on 22 December 2001. Department of Foreign Affairs and Trade, 2001, *Australia Signs UN Protocols to Combat People Smuggling and Illicit Manufacturing of and Trafficking in Firearms*, Media Release, FA188/22 December 2001, viewed at <http://www.dfat.gov.au/media/release/foreign/2001/fa188_01.html>, p. 1.
13. P Ruddock, 2001, ‘What the United Nations Should Do About People Smuggling’, *United Nations Chronicle online edition*, viewed 26 August 2003 at <<http://www.un.org/Pubs/chronicle/2001/issue2/0102p34.htm>>, p. 1.
14. Department of Immigration and Multicultural Affairs, 2001, *Background Paper on Unauthorised Arrivals Strategy MPS 131/2001*, viewed 21 August 2003 at <http://www.minister.immi.gov.au/media_releases/media01/r01131_bgpaper.htm>, p. 2.
15. Department of Immigration and Multicultural Affairs, 2003, *New Measure to Strengthen Border Control*, Viewed 19 August 2003 at <http://www.immi.gov.au/facts/71border_1.htm>, p. 1.
16. B York, 2003, *Australia and Refugees, 1901–2002 Annotated Chronology Based on Official Sources: Summary*, Department of the Parliamentary Library, Chronology no. 2 2002–03, viewed 20 August 2003 at <<http://www.aph.gov.au/library/pubs/chron/2002-03/03chr02.htm>>, p. 10.
17. *ibid.*, p. 14.
18. W Gately & C Moore, ‘Protecting Australia’s Maritime Borders: The Operational Aspects’ in *Protecting Australia’s Maritime Borders: The MV Tampa and Beyond*, Martin Tsamenyi & Chris Rahman, (eds), Centre for Maritime Policy, University of Wollongong, 2002, p. 46.

19. Six Acts passed on 26 September 2001 were: *Migration Amendment (Excision from Migration Zone) Act 2001*, *Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Act 2001*, *Migration Legislation Amendment (Judicial Review) Act 2001*, *Migration Legislation Amendment Act (No 1) 2001*, *Migration Legislation Amendment Act (No 6) 2001*, *Border Protection (Validation and Enforcement of Powers) Act 2001*.
20. A privative clause operates to give decision-makers wider lawful operation for their decisions and thereby reduces the grounds on which the courts can set aside such decisions as being unlawful. P Ruddock, 2002, 'The Immigration Policies of the Commonwealth Government', *National Observer*, No. 54, Spring 2002, p. 16.
21. York, *op. cit.*, p. 14–15.
22. Senate Select on a Certain Maritime Incident, 2002, *A Certain Maritime Incident*, Senate, Parliament of Australia, viewed 30 August 2003 at <http://www.aph.gov.au/senate/committee/maritime_incident_ctte/report/contents.htm>, pp. 13–14.
23. *ibid.*, p. 3.
24. *ibid.*, p. 14.
25. New legislation such as the *Border Protection Legislation Amendment Act 1999* resulted from recommendations made by the Coastal Surveillance Task Force.
26. Department of Immigration and Multicultural Affairs, 2001, *op. cit.*, pp. 2–3.
27. Ruddock, *op. cit.*, p. 14.
28. Australian Command and Staff College, 2003, *CMP 902 Law of the Sea*, University of Wollongong, Centre for Maritime Policy, p. 23.
29. Dixon, *op. cit.*, p. 79.
30. Division for Ocean Affairs and the Law of the Sea Office of Legal Affairs, 1997, 'United Nations Convention on the Law of the Sea', *the Law of the Sea*, pp. 23–57.
31. UNCHR, 2002, 'A Timeless Treaty Under Attack: Reconsidering the Convention', *The 1951 Refugee Convention*, viewed 25 August 2003 at <<http://www.unhcr.ch/1951convention/protection-work.html>>, pp. 1–2.
32. Office of the United Nations High Commissioner for Refugees, 1996, *Introductory Note, 1951 Convention Relating to the Status of Refugees and 1967 Protocol Relating to the Status of Refugees, Resolution 2198*, Geneva, viewed 20 August 2003, <<http://www.unhcr.md/artpdf/51conv67prot.pdf>>.
33. *1951 Convention relating to the Status of Refugees*, Article 1, viewed 20 August 2003 at <<http://www.unhcr.md/artpdf/51conv67prot.pdf>>.
34. *ibid.*, Article 33.
35. *ibid.*, Article 31.
36. Dixon, *op. cit.*, p. 206.
37. Maryan Green, NA, 1987, *International Law Third Edition*, Pitman Publishing, London, p. 163.
38. International Law Commission, *Vienna Convention on the Law of Treaties 1969*, viewed 30 August 2003 at <<http://www.un.org/law/ilc/texts/treatfra.htm>>.
39. Article 27 on the internal law and observance of treaties states 'A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.'
40. Article 29 on the territorial scope of treaties states '...a treaty is binding upon each party in respect of its entire territory'.
41. Article 31 on the general rule of interpretation states that 'A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.'
42. International Maritime Organisation, *International Convention on Maritime Search and Rescue*, viewed 3 September 2003 at <www.imo.org/conventions/contents.asp?doc-id=653&topic_id=257#5>.

43. *International Convention on Maritime Search and Rescue, 1979*, viewed 3 September 2003 at <www.admiraltylawguide.com/conven/searchrescue1979.html>.
44. Article 2.1.9 states that ‘on receiving information that a person is in distress at sea in an area within which a Party provides for the overall co-ordination of search and rescue operations, the responsible authorities of that Party shall take urgent steps to provide the most appropriate assistance available.’ Article 2.1.10 states that ‘Parties shall ensure that assistance be provided to any person in distress at sea. They shall do so regardless of the nationality or status of such a person or the circumstances in which that person is found.’
45. *Migration Act 1958*, viewed 30 August 2003, <<http://scaleplus.law.gov.au/html/pasteact/0/436/0/pa000130.htm>>.
46. Migration zone means ‘the area consisting of the states, the territories, Australian resource installations and Australian sea installations and to avoid doubt includes: a) land that is part of a state or territory at mean low water and b) sea within the limits of both a state or a territory and a port; c) piers, or similar structures, any part of which is connected to such land or to ground under the sea; but does not include sea within the limits of a state or territory but not in a port.
47. Attorney-General Department, 1998, *Review of the Commonwealth Act Interpretation Act 1901*, viewed 3 September at <<http://www.law.gov.au/agd/Department/publications/introduction.htm>>.
48. *Acts Interpretation Act 1901*, Section 15B, viewed 21 August 2003 at <http://www.austlii.edu.au/au/legis/cth/consol_act/aia19011230/s15b.html>, p. 1.
49. Kaye, *op. cit.*, p. 60.
50. N Hancock, 2001, ‘Refugee Law – Recent Legislative Developments’ *Current Issues Brief 5 2001-02*, Department of the Parliamentary Library, viewed 21 August 2003 at <<http://www.apf.gov.au/library/pubs/CIB/2001-02/02cib05.htm>>, p. 3.
51. Senate Select on a Certain Maritime Incident, *op. cit.*, pp. 6–7.
52. *ibid.*, p. 6.
53. Human Rights Watch, ‘Background: Refugee Convention Violations’, *Human Rights News*, viewed 23 August 2003 at <<http://www.hrw.org/press/2001/12/refconbg1211.htm>>, pp. 1–2.

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