

CHAPTER V

THE IMPLEMENTATION OF AUSTRALIA'S PACIFIC SOLUTION

This chapter will explain about the implementation of Australia's Pacific Solution. It was started by the Tampa Case that became one of the triggers before implementation of Pacific Solution. Next, it will explain about the implementation of Pacific Solution. Next, this chapter also will describe the contradictory of the Pacific Solution toward the 1951 UNHCR Convention and 1967 Protocol Relating to Status of Refugee. Then, the writer also will give some critical analysis toward implementation of Pacific Solution.

A. Tampa Case

One of moment that becomes background of the Pacific Solution implementation is Tampa Affair or Tampa Case. Tampa Case started on August 26, 2001 when the Norwegian freighter, MV Tampa, rescuing more than 400 immigrants including woman and children, from a sinking boat wanted to enter the Australian waters. The ship was intent to land in Christmas Island. Then the Australian

government ordered the ship to remain outside of Australian territorial waters and changed course for Indonesia.

Due to the unconditional situation of the people inside the boat, the Captain of the ship, Arne Rinnan, refused it. When the ship came closer to Australian territorial water, the Australian government sent 45 Special Air Service (SAS) troops to board the ship, avoiding any of the occupants from disembarking¹.

The action of Australian government had made a controversial. The government was perceived had acted rudely and ignore about the human right issue. The impact of Tampa Case also influence the popularity of the Prime Minister at that time, John Howard, went down. In order to lift up his vote in federal election, Howard took the Tampa case as an issue of sovereignty. Continuing the case of Tampa, the government then introduced the Pacific Solution and the asylum seekers in MV Tampa was taken into the third countries. John Howard held press conference and stated:

Ladies and Gentlemen, Mr. Ruddock and I have called this news conference this morning to announce that an agreement has been reached so that all of the people on board the MV Tampa can be processed in third countries, not in Australia or in an Australian Territory, to have their claims for refugee status determined and then dealt with under the normal processes applying to refugees around the world.²

¹ Mary Crock et al., *Future Seekers II Refugees and Irregular Migration in Australia*, The Federation Press, Sydney, 2006, p.114

² John Howard, Prime Minister, Joint Press Conference with Minister of Immigration the Hon. Philip Ruddock MP, September 1 2001,

<<http://www.sievx.com/articles/psdn/20010901HowardRuddockConf.html>> accessed on June 30

B. The Implementation of Pacific Solution

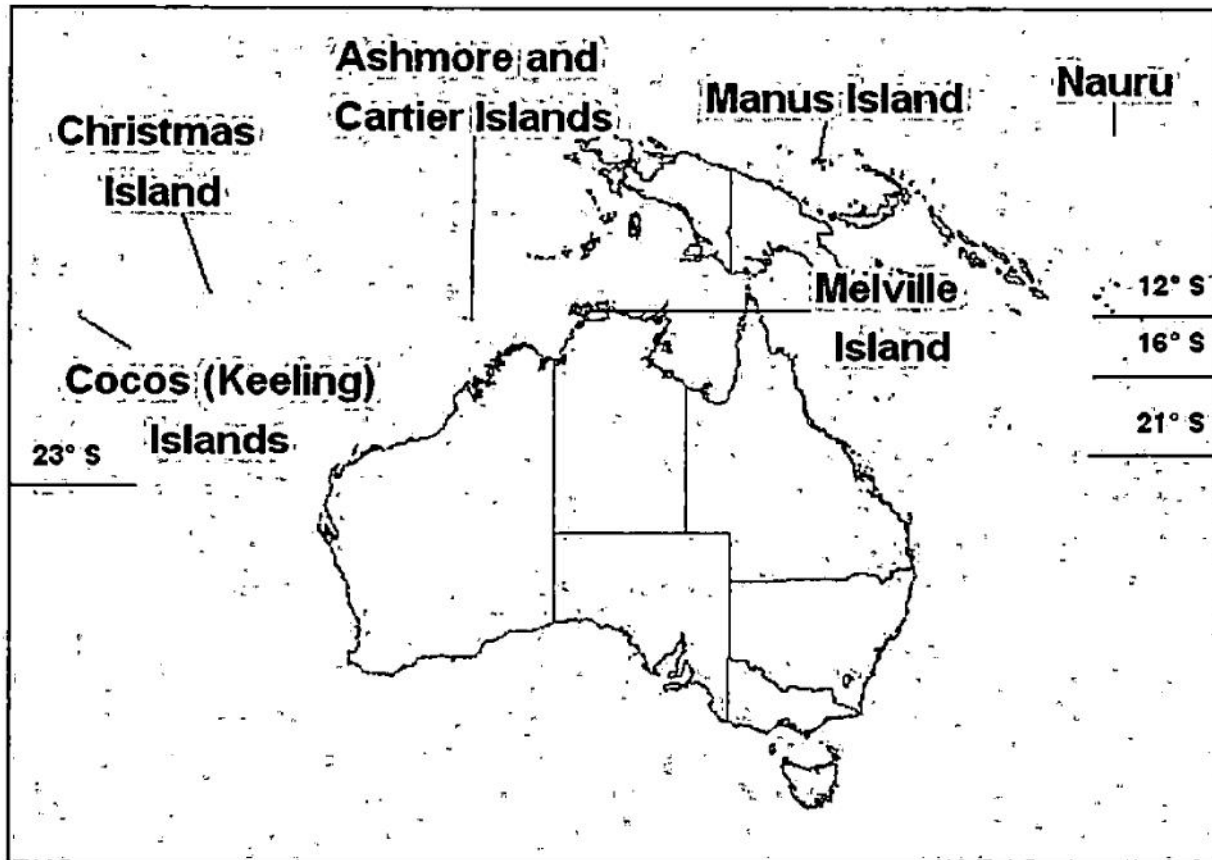
Australia's Pacific Solution has three main concepts. The first is thousands of islands were excised from Australia's migration zone or Australian territory. The second is the Australian Defense Force commenced "Operation Relex" to interdict vessels containing asylum seekers. Finally, the third is these asylum seekers were removed to third countries in order to determine their refugee status³.

1. The Excision Territory from Migration Zone

The excision of certain territory from Australia's migration zone was a new strategy at that time. People who enter Australia at excised offshore places are considered not to have entered Australia's mainland for the purpose of applying for a visa. There are some islands that have been excised based on The Migration Amendment (Excision from Migration Zone) Act 2001. There are Christmas Island, Ashmore Island and Cartier Islands that were excised on 8 September 2001, and Cocos (Keeling) Islands were excised on 17 September 2001.⁴

³ Wikipedia, 'Pacific Solution' <http://en.wikipedia.org/wiki/Pacific_Solution> accessed on August 6

Figure 5.1
Australian Map of Territory Excision from Migration Zone



Source: Janet Philips, Adrienne Millbank⁵

2. The Interdiction at The Sea

The program of the interdiction vessels of asylum seekers was called “Operation Relex” and executed by Australian Navy. It begun on 3 September 2001 and as of mid 2006 “Operation Relex II” remained in force. On Operation Relex, the

⁵ Janet Philips, Adrienne Millbank, 'Research Note no. 22 2003-04: Protecting Australia's Borders', Parliament of Australia website. November 24 2003. <<http://www.apnh.gov.au/library/pubs/rn/2003->

Australian Naval should run three major works. They should stretch its resources, interfere politically in its operation and strain its compliance with international law on the safety of life at sea⁶. On its operation, the navy has successfully intercepted many boats from reaching Australia's mainland.

Figure 5.2

The Number of Boats Stopped by Operation Relex

Date	People	Arrived
26 August 2001 (Tampa)	433	Waters off Christmas Island
8 September 2001	231	Ashmore Island
10 September 2001	130	Ashmore Island
12 September 2001	129	Waters off Ashmore Island
15 September 2001	65	Cocos Island
6 October 2001	222	Christmas Island
20 October 2001	219	Christmas Island
28 October 2001	29	Ashmore Island
31 October 2001	149	Waters off Ashmore Island
8 November 2001	160	Ashmore Island

9 December 2001	62	Cocos Island
27 May 2002	1	Ashmore Island

Source: Mary Crock et al., p.120

3. The Removal of Refugee into the Third Countries

One of way to deny asylum seekers access to Australia's mainland was by processing their refugee claim in the third countries. Boats that have entered Australian waters or landed on excised Australian territories have been redirected to other countries. Australia had tried to approach some neighborhood to take over the refugee. Yet, some of them like Indonesia, East Timor and Fiji, refused the Australia's offer. There are only two countries that approve the Australia's offer, Nauru and Papua New Guinea. In Nauru and Papua New Guinea, Australia made an agreement to set up a detention center for the asylum seekers while their claims were processed. Offshore processing centers have been created on Manus Island (PNG), Nauru and Christmas Island⁷. These are the number of detainees in Nauru and Manus Island:

⁷ Oxfam, 'Refugee Realities Education Kit Later Adolescence: Topic 9', Oxfam website, <<http://www.oxfam.org.au/refugee/public/resources/education/docs/ACT/ACT-EdKit-LA-T9.pdf>>.

Figure 5.3

Number of Detainee in Manus Island and Nauru

(2001-2003)

Outcome Nationality	Present	Returned Voluntarily	Resettled Refugees	Resettled Non-refugees	Other	Total
Afghan	-	420	329	36	1*	786
Bangladeshi	-	4	-	3	-	7
Iranian	-	16	3	1	-	20
Iraqi	-	24	623	37	-	684
Pakistani	-	6	2	1	-	9
Palestinian	-	-	21	-	-	21
Sri Lankan	-	4	2	-	-	6
Stateless	-	-	4	-	-	4
Turkish	-	8	2	-	-	10
Total	0	482	986	78	1	1547

Source: Oxfam Australia

C. The Contradictory Of Pacific Solution Toward Australia's International Obligation

As mentioned in previous chapter, there are some of international obligations should be run by Australia as the signatory of the 1951 UNHCR Convention and 1967 Protocol relating to the Status of Refugee. The implementation of Pacific Solution was assessed that Australia has breached their international obligations

There are some points of Pacific Solutions failed to meet Australia's international obligation:

1. Detention Centre

The establishment of processing center in some places like Nauru and Manus Island in Papua New Guinea under Pacific Solution era was assessed as a detention center for the refugee while they wait for their claim. It was contradict to the principal of 1951 UNHCR Convention which state:

Liberty is a fundamental human right, like asylum. As a general rule, detention of asylum-seekers is not acceptable. It is particularly undesirable when those detained include the very vulnerable — children, single women, and people with special medical or psychological needs, such as torture victims. They are not criminals; they have already suffered great hardship and jailing them is wrong.... Detention is only acceptable if it is brief, absolutely necessary, and instituted after other options have been implemented. Acceptable purposes include to verify identity; to determine the elements on which the claim for asylum is based; the protection of public order; or, if necessary, in cases where refugees have destroyed documents or used fraudulent ones. Detained asylum-seekers should always be informed of their rights — including the right to challenge their imprisonment. All asylum-seekers must maintain the possibility of contacting the local UNHCR office, other agencies, and a lawyer.⁸

The concept of detention centre violate the Convention because it apply to all refugee including women, children and torture victims, it also not brief and necessary. The refugee can be detained in week, month even in year and they live in detention centre like prisoners without get their right as written in the Convention.

The detention centre also contrary to the article 31 of the 1951 Convention which state:

⁸ UNHCR, Text of 1951 UNHCR Convention and 1967 Protocol relating to the Status of Refugee, Communications and Public Information Service, Switzerland, n.

The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.⁹

Pacific Solution seems prohibit the refugee without valid document come to Australia. The government also argued that the people should be detained and waits until their valid document finish.

2. Interdiction of Vessel

The interdiction of vessel at the sea was assessed as a breach of the article 33 of 1951 Convention which state:

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.¹⁰

The interdiction of vessel at sea by Operation Relex seems like a refoulement for refugee. They were not allowed to land in Australia mainland and should return to their departure point. This action is very contrary to the principal of 1951 UNHCR.

Besides the violations above, the Pacific Solution was also considered as the contradictory to some essential of human right principal. Many international organizations of human right assesses that the treatment of the government for refugee who intent to come to Australia seems like inhumanity.

⁹ UNHCR, Text of 1951 UNHCR Convention and 1967 Protocol relating to the Status of Refugee, Communications and Public Information Service, Switzerland, p. 29

¹⁰ UNHCR, Text of 1951 UNHCR Convention and 1967 Protocol relating to the Status of Refugee, Communications and Public Information Service, Switzerland, p. 30

D. Critical Analysis toward the Pacific Solution

Pacific Solution was assessed as the controversial policy. Even though the government received many critics from many field, the government still implement the policy for several reasons. In domestic, there were some sides that opposed this policy. They argued that Pacific Solution is not a solution, yet it is also described as the cynical and unsuccessful policy. It can be seen from some points of this policy assessed broke Australian law either. For instance, arriving in Australia without documents, in a boat, uninvited, actually it is not illegal under Australian domestic law and this exact situation is provided for in section 36 of Australia's own Migration Act¹¹. But on the Pacific Solution, that such people has been mandatorily to detain until they are granted a visa or removed. Australian public also assumed Pacific Solution as money wasting. They assumed that this policy has spent a lot of Australian budget for the interception, building the detention centre and give aid to the third country who agreed to build a detention.

In international arena, Pacific Solution also received criticism from a number of areas like from Amnesty International, refugee rights groups and other non-governmental organizations. They also deemed Pacific Solution has broken the principal of the universality of human right. On the other sides, UNHCR as the institution for refugee protection, also had strong concern about the Pacific Solution

¹¹ Jessie Taylor, 'The Newly Proposed Refugee Laws: A Renovation of John Howard's Pacific Solution', *The Justice Project website*, June 8 2006, <[http://csusap.csu.edu.au/~pforman/this week/jp oppose pac solution.pdf](http://csusap.csu.edu.au/~pforman/this_week/jp_oppose_pac_solution.pdf)>, accessed on September

and assessed it as unusual solution. They claimed that Australia was failing to meet its international obligations in the UNHCR 1951 Convention relating to the Status of Refugees and the 1967 Protocol.

If we see from the fact, the conflict happened in many part of the world including white country, yet the refugee had been detained in detention centre mostly was come from the colored people. It is also became a question for the people why Pacific Solution seems only applied to the colored people. So, Pacific Solution is not only has broke the UNHCR Convention but it also like a discrimination from the