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BOATS, BARS AND A BANG

THE DETENTION OF REFUGEES AND HUMAN RIGHTS

A PISTOL, A PRINCE AND AN ANGRY YOUNG MAN

On the 26th of January 1994, the day of the year when Australia commemorates its 'National Day', David Kang decided it was a good time to take a stand for the human rights of Australia's boat people.

He felt that the days celebrations should more fairly reflect the make-up of Australian society and the values held within it, including our commitment to human rights and our international obligation to refugees on Australian soil.

The fact that Prince Charles would be present at the official ceremony meant that the action he proposed to take would receive not just national, but international coverage.

Firing a starting pistol, David Kang lunged at Prince Charles as he prepared to address the official Australian gathering.

For his efforts, Kang, a 24 year old student of Macquarie University, Sydney, was restrained by security and later faced a number of serious charges. He had, however, achieved his objective. He gained widespread media coverage of his actions and raised questions, here, and overseas, about Australia's policy of detention of boat people and the human rights issues involved.

BACKGROUND

Following the fall of Saigon in 1975 there were approximately 52 boats from Vietnam carrying refugees, which arrived in Australia between 1975 and 1981. This is what is regarded as the 'first wave' of boat people.

Arrivals during this period were granted 'refugee status' almost automatically by the Australian Government.

No further boats arrived until November 1989. Since that date a number of boats (mainly from Cambodia, China and Vietnam) have landed. This is what is regarded as the 'second wave' of boat people.

The Federal Government's policy regarding unauthorised boat arrivals since 1989, has been to detain all arrivals for the entire period while their application for refugee status is being considered.

Thus, from the date of arrival, a boat person, whether man, woman or child, has been held in a detention centre such as Port Hedland in Western Australia or Villawood in New South Wales until their status has been officially determined.

This has meant many people have been detained for very long periods of time and this includes very young children (some of whom have been born in detention).

ARGUMENTS FOR DETENTION

As with the government of any country, the Federal Government of Australia has the right to protect and control its national borders. It is this right it is argued, which the Government is pursuing when it detainees unauthorised and undocumented boat people.

FEAR OF INVASION

In the face of the fear of invasion, the Government is keen to let it be known that it is diligent in the protection of its borders and prepared to take swift and harsh action against unauthorised entry into the country.

Therefore, on the basis of fear of invasion, the Government justifies its policy of detention.

FEAR OF A FLOOD OF BOAT PEOPLE

Another argument for the detention of boat people is that it will act as a deterrent to others. This is justified on the basis that there is a fear of a 'flood' of boat people.

The 'flood' theory can perhaps be traced back to the 1980's when the Federal Government actively pursued a policy of attracting vast numbers of citizens from the People's Republic of China to study English at private language colleges.

At the time of the Tiananmen Square massacre there were tens of thousands of Chinese students in the country. In response to the massacre, the then Prime Minister, Mr Hawke, announced that no Chinese national would be returned to China against their wishes.

This threw Australia's immigration programme into chaos. It also alarmed many people who imagined that as a response, boatloads of Asians would turn up on our shores unannounced.

Public statements made by politicians whipped up this fear of flood to almost panic levels. For example, Jim McKiernan, a Western Australian Senator in 1992, announced that "Australia will be inundated with boats full of people". (Western Australian 21.4.92).

FEAR OF QUEUE JUMPING

There is an argument that Australia needs to protect the integrity of its immigration programme and that boat people threaten this by being seen as trying to jump the immigration queue.

In the House of Representatives in 1992, the then Minister for Immigration, Mr Hand, made a statement reflecting this fear. He said: "The Government is determined that a clear signal be sent that immigration to Australia may not be achieved by simply arriving in this country and expecting to be allowed into the community".(Hansard, 5.3.92, p2371)

FEAR OF ABSCONDERS AND CRIMINALS

The Government also argues that a state should be able to detain unauthorised arrivals until it is satisfied that they will not abscond into the larger community, or where the arrivals can be regarded as a threat to the community (for instance, they are identified criminals and so forth).

DISCUSSION QUESTIONS

1. Does detention in a 'civilised country' necessarily act as a deterrent to people who are trying to escape plague, pestilence, famine,war and/or atrocities in their own countries which may spell certain death to themselves and their families?

2. How realistic do you think the fear of a 'flood' of boat people is?

ARGUMENTS AGAINST DETENTION

Those who argue against detention say that boat people are not people invading the country. They are people who make a desperate bid to escape countries where they may be persecuted or their lives are threatened by horrors such as war.

They put to sea in fishing boats risking the dangers of the ocean, attack by pirates and death by starvation or thirst in the hope of finding safety in Australia.

The claim that there is likely to be a flood of boat people has been proven wrong. Boat people represent a very small percentage of those applying for refugee status in Australia.

Furthermore, to detain people who are making a desperate plea for safety in order to deter others who are also desperate from making the same plea is not only using punishment as a deterrence but is contrary to international refugee law.

To describe boat people as queue jumpers shows a failure to recognise that the queue is generally in camps in third world countries where the mortality rate is high and human rights abuses are high.

In terms of the fear of absconders and criminals, the authorities make no attempt to screen criminal aliens or other security risks from the remainder of the arrivals. The policy of detention is universal. It is a policy which indiscriminately detains all boat people, for lengthy periods often involving years

In short, it is argued that the detention of boat people in Australia goes far beyond what is necessary to protect national security, verify identity, or determine the elements on which the claim to refugee status is based. It has become an overriding issue of human rights.

Furthermore, by detaining all boat people in detention centres for long periods of time, they are effectively receiving criminal punishment despite the fact that these asylum seekers are not criminals and have not been charged, tried or convicted with criminal offences.

Often they are detained in places like Port Hedland, which isolates detainees from their community support groups, and their legal advisers and places them in a situation of physical discomfort due to the heat of the desert climate and where 'outside contact' is discouraged, which raises further human rights issues.

A BREACH OF INTERNATIONAL LAW

The policy of detention of asylum seekers as it currently operates in Australia arguably contravenes the 1951 United Nations Convention on the Status of Refugees (the Convention).

Article 31 of the Convention states:

1. 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 ... enter or are present in their territory without authorisation, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularised or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

RESEARCH QUESTIONS

1. What is the definition of a refugee in the 1951 United Nations Convention on the Status of Refugees (the Convention)?

2. Consider the Convention and its 1967 Protocol, to which Australia is a party, and outline Australia's international obligations to refugees.

3. What sections of the Migration Act 1958 (Cth) deal with the detention of refugees and what powers of detention do they afford the Australian Government?

ASSIGNMENT

In 1992 the Refugee Council of Australia published a series of recommendations concerning the detention of asylum seekers in Australia. ('Position Paper with respect to Asylum Seekers and the Refugee Determination Procedure' May 1992,p1). Evaluate the recommendations which are as follows:

1. the Government's practice of detaining asylum seekers should be abolished;

2. detention should only be used under special defined circumstances such as to establish the identity of the claimant or if the claimant is found by a magistrate to be a risk to the community;

3. minors should not be detained under any circumstances;

4. there should be regular judicial review of a decision to detain an asylum seeker;

5. conditions of detention are to meet certain standards;

6. no detainees should be held in penal institutions.