The Network for International Protection of Refugees



Australia: Operation Sovereign Borders, Turnbacks and Political Cover-ups

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Summary:

Since commencement of Operation Sovereign Borders, observers are quetioning on details of the LNP ¹ government's boat turnbacks and secretive "on-water" procedures. The analysis here shows that the current boat turnbacks to Indonesia are the product of undisclosed bilateral agreement by Australian and Indonesian governments, which was planned and negotiated by Rudd-Gillard governments. The Operation Sovereign Borders is a mere facade put up by LNP government for a public relation exercise. The LNP's subsequent cover-ups about this agreement warrants a scrutiny on government's underlying motives. Detailed questions must be raised about the government's use of very expensive long-term offshore detention and the government's failure to find alternative solution for the asylum-seekers now held in Nauru and PNG.

Contact:

E-mail: <u>uneoo [AT] netipr.org</u>
Web: <u>www.netipr.org/</u>

¹ Liberal and National Party's (LNP) Coalition Government, incumbent since August 2013.

AUSTRALIA:

Operation Sovereign Borders, Turnbacks and Political Cover-ups

by
Dr U Ne Oo
Coordinator
Network for International Protection of Refugees
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Since the commencement of Operation Sovereign Borders, many observers have been questioning over the details of the operation, especially with the government's boat turnback procedures. The Liberal/National Coalition Government (LNP) continue refusing to disclose any operational details of its "on-water" procedures, whilst proclaiming as its "get tough on boats" policy being a great success.

Looking deeper into these issues, the analysis here shows that the current boat turnbacks to Indonesia are the product of undisclosed agreement by Australian and Indonesian governments. That bilateral boat turnback agreement (here after, the bilateral Agreement) was to have been planned and negotiated by Rudd/Gillard/Rudd governments, and concluded in 2013 by the then Prime Minister Kevin Rudd. That bilateral Agreement is part and parcel of Gillard Labor government's refugee policy, promoted by the panels of experts led by Angus Huston in August 2012.

In this context, the Operation Sovereign Borders is a mere facade being put up for the public relation exercise by Abbott/Turnbull LNP government. The LNP government has gone a great length to cover up this bilateral Agreement. For most part, or it so appeared, the LNP would not wish to give any credit on this Agreement to the Labour party. It is time to reassess the assumption that offshore detention is the most effective deterrent measure. In particular, the situation warrants a detail scrutiny on the LNP government's unacceptable practice of long-term offshore detention and that of the government's failure to find alternative solution for the detained asylum-seekers.

The nature of bilateral boat turnback agreement

Whilst there has been no official statements made by Indonesian and Australian authorities on this, the bilateral Agreement appears to cover for any individuals, who either lawfully or unlawfully passed through Indonesian territory, who may have arrived Australia unauthorized by a boat can be returned back to Indonesia. This also appears to be the result of a compromised asylum solution, formulated by the Gillard government in 2012, in which the policy settings attempted to strike a balance between Australia's responsibility to protect refugees and the government having to deal with

mixed movements of labor migrants and secondary asylum-seekers ², ³.

The LNP government's highly secretive 'on-water' procedures appears to be a process of identifying the passengers and crews on-board, ascertaining whether their point of embarkation have been Indonesia and, possibly, verifying these information with relevant authorities in Indonesia.

<u>Labour's plight - the asylum crises (2010-2013)</u>

The historical background on Australia's treatment of asylum-seekers arrived by boats, along with political built-up to the asylum crisis were succinctly summarized in the article by Robert Mann ⁴. The Rudd government's 2008 winding down of Operation Relex, rescinding of TPV and closing down of Nauru Offshore Detention Center had actually signaled the asylum-seekers, who stationed mainly in Indonesia, to come to Australia by boats ⁵, ⁶. A trickle of asylum boats had started to arrive in 2008, increasing 2,726 in 2009 and 6,555 in 2010.

This total number of asylum-seekers arrived Australian shore, of course, is minuscule in comparison to other countries which are hosting refugees and displaced people through out the globe ⁷. However, Australia is the only country in Asia-Pacific region which offers a permanent resettlement opportunity to refugees. This generosity of heart appears to have come from the fact that Australia is a prosperous multi-cultural country of which majority of the population are settlers, migrants and refugees. This opportunity for resettlement, inevitably, has also been a 'pull factor' for those seeking a refuge, security and prosperity.

The role of Liberal party under Tony Abbot leadership has also been crucial in fomenting the Labour government's asylum crises. For Australian Liberal Party, the willingness to exploit the issue of refugee and asylum-seeker for political gains has become its trademark $^8,\,^9.$ As the asylum boats were streaming in, the Liberal party launched brutish campaign against Labour government on border security. The mass media colluded with Liberal Party and the unity within Labour party had crumbled. Kevin Rudd was ousted in July 2010, and succeeded by Julia Gillard 10 . The issue of unauthorized boat arrivals was a major contributing factor in destabilization of Rudd Labour government.

Throughout Gillard's government era, the asylum boats had continued arriving. One of the innovative solutions put forward by Gillard government in

http://www.netipr.org/saorg/docs/20120801_huston-expert-panel-report.pdf

² Huston's 2012 Expert Panel Report

³ Table: Global Forced Displacement 2010-2011, pp 21. http://www.netipr.org/saorg/docs/20120801_huston-expert-panel-report.pdf

⁴ Australia's Shipwrecked Refugee Policy by Robert Mann. https://www.themonthly.com.au/australia-s-shipwrecked-refugee-policy-tragedy-errors-guest-7637

⁵ http://www.smh.com.au/national/flight-from-nauru-ends-pacific-solution-20080207-1qww

⁶ https://en.wikipedia.org/wiki/Pacific_Solution

⁷ Table: Global Forced Displacement 2010-2011, pp 21. http://www.netipr.org/saorg/docs/20120801_huston-expert-panel-report.pdf

⁸ NetIPR's Submission to Senate Inquiry into Migration Zone Excision, 27-Jul-2002. http://www.netipr.org/saorg/NetIPR_20020726_SenateSubmission.pdf

⁹ Treasonous minions by NetIPR, 16-May-2016. http://www.netipr.org/saorg/node/23

 $^{10 \}quad https://en.wikipedia.org/wiki/Australian_Labor_Party_leadership_spill, \underline{2010}$

2011 has been the so-called Malaysian asylum-swap deals. Under this arrangement, the 800 of unauthorized boat arrivals will be exchanged with 4,000 refugees in Malaysia over four years. That arrangement was approved by international humanitarian organizations, such as UNHCR and IOM.

Always seeking to exploit the asylum boat issues, Tony Abbott and Liberal Party had sabotaged the arrangement for Malaysian asylum-swap deals. The Liberal Party's reason for refusal on that asylum-swap was that Malaysia is one of the countries which had not signed up for the Refugee Convention. This refusal tantamount to Liberal Party back-stabbing on the Labour government because, for Labour government, it was the only feasible solution for asylum-seekers at that time ¹¹, ¹². The Liberal party, on the one hand, was cynically promoting boat turnbacks to Indonesia, which also is not a signatory to the Refugee Convention. The number of asylum-seekers coming by boat unusually had jumped in threefold to an average of 18,000 par years in 2012, 2013. Once again, the Labour rank-and-file's confidence has evaporated and the elected PM Julia Gillard was ousted in 2013, this time, by Kevin Rudd.

Indonesia's position and the role of Rudd

Three times on a row ¹³, the issues of asylum boats coming mainly from Indonesia has proven to be a destabilizing factor which is enough to dislodge Australian governments. As for Australia-Indonesia relations, historically, there appears to be a lingering animosity within Indonesian polity, particularly towards Australian Liberal party identities, regarding with refugee related issues linked with the independence of East Timor during 1990s. Nevertheless, the Government of Indonesia has been cooperative on reducing asylum boats departing to Australia. With the acquiescence approval from Indonesia, the Australian government had been able to carried out certain form of boat turnbacks (interceptions at high-seas) during the era of Operation Relex, Relex II and Resolute (here after, Relex(s)) ¹⁴, ¹⁵.

With regards to leadership challenges on a serving Prime Ministers, the Australian public may necessarily take the view that these are within the norms of rough-and-tumble party politics. However, such outlook may not be shared by other countries, particularly in the Asia-Pacific region. This issue of ousting a serving Prime Minister is equivalent to a military-coup, or a violent usurpation, which considered as seriously destabilizing to a country. The Indonesian leaders, no doubt, were quite aware that the asylum boats from their shore had caused the Australian leadership spills and understand the plights of Labour leaders. As for the 'come-back' Prime Minister Kevin Rudd,

¹¹ Robert Mann, Ibid. 4

¹² Shedding some light on OSB. 2-Jun-2016. http://www.netipr.org/saorg/node/27

¹³ On account of asylum boat arrivals, the two elected Prime Ministers got ousted; Kevin Rudd (2010) and Julia Gillard (2013). In a twist of irony, in 2015, in order to have 'not a single boat' landing in Australia, the LNP government's DIBP had paid bribery to Indonesian boat crews. In this case, the government has committed an impeachable offense. Though no proper action were ever taken, the election time has come, Senate Inquiry ended up with interim report. See Senate Inquiry Pages.

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Payments_f or_turn_backs/Submissions

¹⁴ Fact Check, Australican Broadcasting Cooperation.

http://www.abc.net.au/news/2013-09-26/government-turn-back-boat-policy/4979898

¹⁵ https://en.wikipedia.org/wiki/Operation_Relex

he must have been the most qualified person to receive a sympathetic cooperation from Indonesian political leaders regarding with asylum boats.

In sum, by 2013, the political environment was right for negotiating the bilateral boat turnback agreement, which prescribed by Huston Report in 2012. As for the Indonesians, they have always cooperated on turnbacks since the era of Operation Relex(s). In the following, one is to determine whether there be any such bilateral Agreement.

The Profiling Methodology

In digression: The governments doing political cover-ups is nothing new. For grassroots activists, when you have no means to "find something out", then you'll have yourselves to "figure it out". To this end, I have used "Fermi Problem" or similar type of analytical method to get to the conclusion ¹⁶. In non-scientific communities, this method might have been known as 'heuristic' or 'back-of-the-envelope' methods. I prayed that you will patiently walk through each arguments presented here in the followings, and hoped that you will reach the same conclusion as to mine.

I. Political groundworks for bilateral turnback Agreement

As a result of asylum crises in 2010 and 2013, there has been a major policy shift in Australia. In particular, there has been a significant scale-down of provisions on traditionally generous refugee protection and resettlement undertakings. This topics had been covered in another posting and will not be repeated here 17 .

As noted earlier, there had been some forms of boat turnbacks during the era of Operation Relex(s) (2001 - 2007). The asylum boats detected by ADF/RAN were being pushed back into Indonesian territorial waters, 12 nm from the coasts. The usual practice was that the Australian authorities sent "diplomatic notes" before asylum boat is turned back to Indonesia, which Australian side is never expecting to receive an acknowledgement. Then this turnback is considered as being approved by Indonesian authorities 18 . Obviously, this practice is very dangerous because boat passengers will have to take a long journey back, along with their wellbeing were left unchecked.

Australia and Indonesia have been part of the Bali Process, which is a multilateral forum discussing asylum seekers and people smuggling issues, that the source and transition countries have participated. By Australian and Indonesian governments' collaborative efforts, the UNHCR had opened its office in Jakarta since 2008 ¹⁹. The negotiation with Indonesian authorities for properly organized boat turnbacks appears to have taken place under Gillard Labour government since 2012. For example, in Huston Report's Recommendation 4.

"... bilateral cooperation on asylum seeker issues with Indonesia be advanced as a matter of urgency, particularly in relation to:

¹⁶ https://en.wikipedia.org/wiki/Fermi_problem

¹⁷ UN Refugee Convention and Huston Report 2012 – A case of public mood-swings and government policy shift by NetIPR, 11-Jun-2016. http://www.netipr.org/saorg/node/29

¹⁸ Fact Check, Australican Broadcasting Cooperation.

http://www.abc.net.au/news/2013-09-26/government-turn-back-boat-policy/4979898

¹⁹ DIFFICULT JOURNEYS: ACCESSING REFUGEE PROTECTION IN INDONESIA (2010). http://www.austlii.edu.au/au/journals/MonashULawRw/2010/29.html

Enhanced cooperation on joint surveillance and response patrols, law enforcement and search and rescue coordinations ..."

In Section 3 of Huston Report, more details are being outlined as:

" 3.22 ... the following areas of bilateral cooperation with Indonesia should be pursued as a matter of priority:More extensive maritime cooperation between Australia and Indonesia should be developed across a range of activities, including cooperative patrols and joint surveillance patrols, collaborative search and rescue operations, information exchanges and exercises.....The close bilateral cooperation on law enforcement and intelligence exchanges in relation to people smuggling activities should be further consolidated, broadened and resourced along lines similar to the other bilateral programs currently underway. ... A practical agenda of initiatives should be developed between Australia and Indonesia to be pursued under the auspices of the RCF established under the Bali Process and in liaison with the newly established RSO."

On turnback issues:

"3.77 Turning back irregular maritime vessels ... can be operationally achieved ... but only in circumstances where a range of operational, safety of life, diplomatic and legal conditions are met......The State to which the vessel is to be returned would need to consent to such an return.....A decision to turn around a vessel would need to be made in accordance with Australian domestic law and international law, including 'non-refoulement' obligations, and consider any legal responsibility.....Turning around a vessel would need to be conducted consistently with Australia's obligations under the SOLAS Convention,...."

Which also indicates the newly negotiated regime of boat turnbacks would be consistent with Australia's international treaty obligations. This is a stark contrast to previous boat turnbacks during Operation Relex(s) which has given no consideration to many of those treaty obligations, especially the 'non-refoulement'.

In sum, the political groundworks for the bilateral Agreement had already carried out before 2013.

II. The surge in boat arrival in 2012-2013

There was unusually large increase in the number of boat arrivals in 2012-2013. In 2010-2011, the average rate was (5000 IMAs) par year, which that rate suddenly jumped to in 2012-2013 (18,000 IMAs) par year 20 . This three fold increase has been attributed by some observers as of the Gillard government's failure to implement the Malaysian asylum-swap deal 21 . Such observation cannot to be ruled out altogether, but should be considered as a

 $^{20 \} http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1314/QG/BoatArrivals$

²¹ Australia's Shipwrecked Refugee Policy by Robert Mann https://www.themonthly.com.au/australia-s-shipwrecked-refugee-policy-tragedy-errors-guest-7637

possible contributing factor.

This surge in boat arrivals in 2012-2013 can be explained, perhaps, within the context of Australia and Indonesia were negotiating for a proper boat turnbacks at that time. Apparently, these IMAs had chosen the asylumboat option instead of registering with UNHCR office in Jakarta that had been in operation since 2008 $\,^{22}$. This unnatural increase of boat arrivals may be due to the fact the 'people smugglers' were somehow aware that the boat turnback negotiations had been underway and that, therefore, were rushing to Australia before the asylum door is closed.

III. Rudd's diplomatic activity

Under Gillard government, Kevin Rudd was the Foreign Affairs Minister, which he later moved to the back bench. Nevertheless, he would all along be aware about the formulation of the bilateral Agreement. When Rudd gaining back the Prime Minister's position, he secured that bilateral Agreement, possibly during the months of July-August 2013. On July 2013, PM Kevin Rudd met with Indonesian President and the two leaders agreed to convene a special ministerial level meeting on people smuggling and asylum issues ²³. In that meeting, Kevin Rudd praised the efforts of Indonesian President as:

"[The conference will] explore concrete operational policy responses, including new regional responses and actions to enhance boarder security [and] addressing the problem of irregular movements of persons,.... problem of people smuggling is a problem for our entire region, therefore the president's initiative is for all of us to work together, and I salute you Mr president, on your bold move."

The observers are therefore reporting about the downward trend in boat arrivals that had occurred since July 2013, two months before the LNP coming into power ²⁴. That downward trend can be seen in the John Menadue's analysis on boat arrivals for 2013 (Table: [July 4145, Aug 1591, Sep 873, Oct 339, Nov 207, Dec 355]). This indicates that the implementation of bilateral boat turnback had already agreed upon and coming into force since July-August 2013 onwards, then continues with the facade of Operation Sovereign Borders which commenced on September 2013.

IV. Report of RAN incursions

Obviously, the LNP government has political interest to covered up the Labour government negotiated bilateral Agreement. The RAN has, since July-August 2013, been operating under the bilateral Agreement, which is an entirely different regime from the Operation Relex(s). For this, we can observe the February 2014 reported incidents of RAN incursions into Indonesian waters. For example, The Guardian had reported the incidents as 25 , 26 :

²² http://www.austlii.edu.au/au/journals/MonashULawRw/2010/29.html

²³ http://www.abc.net.au/news/2013-07-05/annual-indonesia-australia-leaders27-meeting/4802680

²⁴ Tony Abbott did not stop the boats. John Menadue, 8-Dec-2014. http://johnmenadue.com/blog/?p=2863

²⁵ https://www.theguardian.com/world/2014/feb/19/australian-vessels-unintentionally-entered-indonesian-waters-six-times

²⁶ https://www.theguardian.com/world/2014/apr/17/australian-ship-went-far-deeper-into-indonesian-waters-than-

"A leaked Indonesian navy report...found Australia's naval ships had entered Indonesian territorial water often and with ease before ... January (2013).... Indonesian navy spokesman reiterated that the 6 January incursion was a knowing and intentional breach."

The asylum seekers, who were on turned back boat had told the reporters that the RAN vessel dimmed its lights when getting close to the Indonesian shoreline.

Obviously, one cannot accept that the personnels of RAN would be so incompetent as to 'miscalculate maritime boundaries'. That surely is a spin. The RAN will only enter any of Indonesian territory only if they have had prior consent from the governments and within the knowledge of both Navy Forces. This can only happen with the existence of the bilateral Agreement.

When towing back the asylum boats, the RAN being able to get close to Indonesian coasts is good for the safety of boat passengers. This cannot happen under Operation Relex(s), which the boats are to be left at 12 nm limits from the Indonesian coasts.

V. Senate Inquiry on Bribery payments to smugglers ²⁷

There are two crucial pieces of information that came out from the Senate Inquiry regarding with the bilateral Agreement. At the Senate Inquiry, the LNP government refusing to give any necessary details about OSB, even with the condition of 'in-camera' interviews, and that the Government had resorted to public interest immunity to avoid further questions. It is obvious that the LNP government would like to covered up not only about the bribery payments to Indonesian asylum-boat crews, but also on the bilateral Agreement. Nevertheless, we can find the confirmation that certain form of agreement exists between Australia and Indonesia in the Minister Dutton's response to the Senate Committee as (page 74 of Senate Interim-report) ²⁸:

"Impact upon Australia's relations with foreign States ... Australia relies heavily on the ability and motivation of neighbouring sovereign States to contribute and cooperate in respect of search and rescue and/or safety of life at sea activities. The confidentiality of communications and information between the Commonwealth and the sovereign States is essential to the candid and collaborative liaison between the respective government agencies that undertake such activities."

According to the Minister Dutton, the disclosure on the details of OSB (the bilateral Agreement) will, in fact,:

- Undermines the further development of international agreement and cooperation;
- *Undermines the working relationship between operational agencies in*

disclosed

²⁷ Senate Inquiry Page:

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Payments_for_turn backs/Submissions

²⁸ Interim Report by Senate Legal and Constitutional Affairs Committee on Payment of Cash and other Inducements May 2016. http://www.netipr.org/saorg/docs/20160504_senate-interim-report.pdf

- relation to safety of life at sea;
- Further increases the tactical advantage of people smugglers and consequently increases the risk to the wellbeing of IMAs.

The second crucial information on the bilateral Agreement may be derived from observing the response of Indonesian authorities as regards to the DIBP's cash payments to smugglers. We may all remember that there were two instances of payment made to the Indonesian boat crews. The first one was on May 2015 with 65 Sri Linkan nationals on-board that had been heading towards New Zealand. The second instance was on late June 2015 with two dozen passengers from Bangladesh and Burma on-board coming to Australia 29, 30. The Indonesian authorities had raised their concerns about the payments made on the first boat, but said nothing about the second one. This may indicates that Indonesian government is sensitive about the Australian government interfering with asylum boats heading towards any other destinations, except to Australia. In other words, Indonesia is prepared to take the responsibility for any asylum boats departing from its coasts and heading towards Australia. However, Australia will not be in line with the bilateral Agreement when interferes with the asylum boats sailing towards any other destinations, such as New Zealand.

Truth matters

Given the Liberal Party's built-up of momentum on its "border security credentials" lead up to the 2013 Elections, it is entirely predictable that Tony Abbott and LNP government had to lie about OSB and needed to cover-up the bilateral Agreement 31, 32. However, the government lie and cover-up is one thing, the incompetence and cruelty is guite another thing. The LNP government has been most cruel to the asylum-seekers now detained for 3 years in Manus Island and PNG. On taken into account of Huston Report's recommendations, one has to wonder why these asylum-seekers are being kept in detention for so long? Is it just a mere incompetence of the LNP government that they're unable to find the solution for those asylum-seekers? Or has LNP government got any other ulterior motives? Job for the boys, for instance. Obviously, the Kevin Rudd's PNG deals and all these detainees, including those asylum-seekers languishing in the community are being used by LNP government as the exhibition for "Labour Problems" and "The Monument of Labour Asylum Policy Failures". This is cruel enough. But, is the LNP government 'incompetent and cruel' or 'cruel and cruel'? Keep pondering!

End of Report.

In Solidarity, U Ne Oo, Sydney.

²⁹ By Hook or by Crook – Australia's abuse of asylum-seekers at sea by Amnesty International. 28-Oct-2015. http://www.netipr.org/saorg/docs/20151028_australia-abuse-asylum-seekers-at-sea-by-ai.pdf

³⁰ Boat bribery payments and motives behind. 3-Feb-2016. http://www.netipr.org/saorg/node/12

³¹ Our Plan, Real Solution for All Australians, January 2013. http://www.netipr.org/saorg/docs/20130101_lpa-real-sloutions-for-all-australians.pdf

³² The Coalition's Operation Sovereign Borders Policy, July 2013. http://www.netipr.org/saorg/docs/20130701_osb-policy.pdf

BY AIR MAIL

POSTCARD OF

TRUTH

Sender: NetIPR

To: Hon. Tony Abbott

Your government's lie and cover-up about Operation Sovereign Borders is exposed here.

http://www.netipr.org/saorg/node/30





To: Hon. Tony Abbott

You and Liberal Party have lied to the Australian public about Operation Sovereign Borders.

You and Potatoheads think
you've successfully buried the truth with lies and spins.
You can hide the truth from journalists.
You may hide the truth from your opponents.
You may even hide the truth from secret agents.
But you can never hide the truth from
the analysts and activists.

Network for International Protection of Refugees

