Despite the lack of boat arrivals, New Zealand has introduced new laws to deal with irregular migrants arriving by sea. Could it be that the New Zealand government is afraid that Australia could tell asylum seekers to keep moving east, asks Klaus Neumann

Asylum seekers from Sri Lanka hold banners and the national flag of New Zealand on a ship at Bintan island, Indonesia, on 11 July 2011. Apparently on their way to New Zealand, they were detained by Indonesian police. Unik Maulida/EPA

IN MARCH this year Germany’s interior ministry alerted state authorities to the arrival of thousands of irregular migrants from Africa. According to the ministry, the Italian government had released the Africans from camps it planned to close, handing each of them a three-month residence permit and €500. The permits allowed the migrants to travel freely among the twenty-six European countries that have abolished border controls under the Schengen agreement, and most of them appear to have proceeded to Germany. Some had extra assistance from the Italians: a migrant from Togo told the La Stampa newspaper that he had been given a rail ticket to Munich. Authorities in Hamburg made the Italian practice public in late May, claiming that 300 Africans had ended up in their city alone and reporting that attempts to encourage the migrants to return to Italy (by offering to pay for their travel) had failed.

The Schengen agreement allows Italy to issue residence permits provided the holders have sufficient funds to cover their costs of living for the duration of the permit. By May, the 300 Africans in Hamburg had long since spent their 500 Euros, were homeless, and had to be cared for by Hamburg’s social services when charities weren’t able to provide them with food and accommodation. The European Commission is currently investigating the case.

Because many irregular migrants to Europe make the journey from the North African coast to the Italian island of Lampedusa, Italy has received comparatively large numbers. The migration intensified after Libya’s Muammar Gaddafi was ousted and migrant workers from sub-Saharan Africa became the targets of racial violence. Italy has been responsible for feeding and sheltering the growing number of arrivals, and for processing any applications for political asylum.

Italian authorities have tried before to get rid of irregular migrants by issuing residence permits. In April 2011, when Italy was inundated by refugees from Tunisia in the wake of the Tunisian revolution of late 2010 and early 2011, the permits allowed many of them to take the train to France. Eventually the French stopped the trains at the border in contravention of the Schengen agreement. This technique may be unique, but the practice of passing the buck when it comes to asylum seekers and other unwelcome arrivals is common. French authorities have frequently been accused of not doing enough to prevent irregular migrants from crossing to Britain from Calais or via the Eurotunnel, for example, and in 2002 protests from Britain prompted Nicolas Sarkozy, who was then the French interior minister, to order the closure of the Sangatte refugee camp at Calais.

Australia has occasionally been on the receiving end of a similar practice, although not all attempts – by countries in South East Asia – were successful. Following the fall of Saigon in April 1975, thousands of refugees fled Vietnam by boat. Those who reached Singapore were reportedly provided with food and water, and given
maps that showed them how to make it all the way to Australia. “Fleeing Vietnamese ships may risk voyage to Australia,” a headline in the Australian reported on 6 May 1975. None of them got as far as Australia – it wasn’t until 26 April of the following year that a boat carrying five Indochinese men arrived in Darwin – but the mere prospect of “boat people” arriving in Australia caused much alarm in Canberra. Australia’s foreign minister, Don Willesee, told prime minister Gough Whitlam that he was “concerned that the question of the Vietnamese refugees in Singapore and the ‘spectre of an armada’ sailing for Australia will now become the issue which will most attract public opinion and potentially present the greatest problems.” Whitlam, who didn’t have much time for Vietnamese refugees generally, authorised a policy whereby any “boat people” arriving in Australia would be disembarked “into custody” in order to be able to return them to their boat “for the purpose of departing them from Australia.”

Australia may consider itself blessed because its borders are less porous than those separating Europe from Africa and Asia, or the United States from Central America. But that also means that the authorities can’t easily move people on by putting them on the next train.

IF IRREGULAR migrants reaching Australia were told to proceed to another country where their asylum claims would be processed, then they would most likely be advised to try their luck in New Zealand. So far, though, the Australian government has never encouraged “boat people” to travel across the Tasman Sea under their own steam and seek asylum.

But Australia has shipped off asylum seekers to New Zealand with the blessing of the government in Wellington. In 2001, John Howard’s government persuaded its New Zealand counterpart to accommodate many of the asylum seekers who had arrived off Christmas Island on board the MV Tampa: 131 of them in September 2001, and another seventy-seven who were resettled to New Zealand after having been processed in Nauru and recognised as refugees. In March this year, in the course of the annual Australia–New Zealand leaders meeting, NZ prime minister John Key made this pledge to Julia Gillard: “New Zealand will work closely with Australia to annually resettle 150 refugees who have arrived irregularly in Australia by boat to seek asylum, as part of a regional approach to irregular migration. The arrangement will be within New Zealand’s Refugee Quota Programme and operate so that irregular maritime arrivals gain no advantage through choosing irregular migration pathways.”

The NZ government’s willingness to take asylum seekers off Australia’s hands has not been uncontroversial. In 2001, the government was lambasted by the National Party opposition for taking in “queue jumpers” from the Tampa, and many New Zealanders agreed with maverick New Zealand First leader Winston Peters’ assessment that prime minister Helen Clark wanted to show a soft heart but did not have the head to match. Following the agreement between Key and Gillard earlier this year, former National Party immigration minister Aussie Malcolm complained that not only was Australia breaching its international obligations but it had also “sucked New Zealand into the mess.”

On at least two occasions, asylum seekers making landfall in Australia have in fact been trying to reach New Zealand. In April of last year, a group of ten Chinese nationals, members of Falun Gong, sailed from Malaysia to Darwin but claimed that Australia was not their intended destination. According to the Australian Financial Review, they planned to travel to New Zealand because, unlike Australia, that country did not have a policy of mandatory detention. Initially, Julia Gillard seemed pleased by their plans to move on; she told the ABC: “They have not asked for asylum in Australia and they are on a seaworthy vessel, so we are not in a position where we could detain them against their will.” Eventually, however, the Australian authorities encouraged the Chinese to make applications for protection visas in Australia.

In April this year, a boat carrying sixty-six irregular migrants from Sri Lanka landed in Geraldton on the coast of Western Australia. According to Michael Pezzullo of Australia’s Customs and Border Protection Service, they had been on their way to New Zealand, having planned “to cross the Indian Ocean, to steer as far as possible from what they presumed to be our patrol areas and the reach of our surveillance, to sort of hook around the south-western corner of Australia across the Bight, to hook around the southern part of Tasmania and then to pop across the Tasman Sea.”
When Pezzullo fronted Senate Estimates hearings in May, Liberal senator Gary Humphries was obviously intrigued by the possibilities the case raised. "If this vessel was on its way to New Zealand," he asked Pezzullo, “in what circumstances would we have otherwise said, ‘You’re not coming to Australia; you’re going somewhere else,’ and let them pass through? Obviously they were not well on their way to New Zealand if they were going via Geraldton. But if this had happened in, say, the Torres Strait, or somewhere else…” Pezzullo declined to “speak hypothetically.” Humphries’s scenario must be a tempting one for a federal opposition committed to “turning back the boats” while being aware that the government of Indonesia, where most of the boats carrying asylum seekers originate, is scathing about its policy and has ruled out welcoming boats turned back by the Australian navy.

The Sri Lankans who sailed to Geraldton in April, and the Chinese who reached Darwin last year, believed that they would be received more favourably in New Zealand than in Australia. Australians critical of their government’s asylum seeker policies also tend to assume that New Zealand is a model refugee-receiving nation. In the wake of the Howard government’s harsh asylum seeker policies, some Australians said they were ashamed of being the citizens of a country that locked up children in places such as Woomera and Baxter, and some have even talked about emigrating to New Zealand. “My son, who lives in London tells me that Australians living there tell the Poms that they are from NZ,” one contributor told an ABC online forum in January 2002.

New Zealand’s reputation is largely due to its role during the Tampa affair. After the Australian government ordered special forces to board the vessel, the government of Helen Clarke generously offered to take all families and unaccompanied minors and process their asylum claims without locking them up in detention centres. Later, it allowed the thirty-six unaccompanied minors from the Tampa to sponsor more than 200 close family members to join them in New Zealand. But those who applaud New Zealand’s exemplary humanitarian stance tend not to refer to its comparatively paltry refugee resettlement program. Nor do they refer to its response to “boat people,” for the simple reason that New Zealand has never been faced with this kind of arrival.

Nevertheless, the NZ parliament last week passed legislation to deal with irregular migrants arriving by boat. The Immigration Amendment Act allows the authorities to seek a warrant from a district court judge to detain asylum seekers for initially up to six months, and to suspend the processing of protection claims, should there be “mass arrivals” – defined as arrivals of more than thirty people in the same craft – of irregular migrants.

Recommending the legislation to parliament, immigration minister Michael Woodhouse said last week that it was “part of a wider package of measures aimed at deterring people-smuggling ventures from targeting New Zealand.” The bill had been introduced by his predecessor, Nathan Guy, in May 2012, after the arrival of the ten Chinese asylum seekers in Darwin. “Ten illegal migrants may seem like a small number, but once such an arrival has been achieved, New Zealand could be seen as a more attractive option for like-minded people,” Guy warned at the time.

Notwithstanding the recent legislation, New Zealand’s approach seems mild-mannered in comparison to Australia’s. In Australia, asylum seekers arriving by boat can be detained indefinitely. In New Zealand, parliament has agreed on a time limit. Unlike in Australia, the detention of asylum seekers in New Zealand requires a warrant signed by a judge. And asylum seekers will be detained and processed in New Zealand rather than warehoused on a faraway Pacific island.

In Australia, the draconian measures adopted by the Gillard government are comparatively uncontroversial. Mandatory detention and offshore processing have the support of both major parties; in fact, the government and the opposition have tried to outdo each other by proposing even harsher policies. In New Zealand, by contrast, the Immigration Amendment Act has been hotly debated. Not only have Amnesty International New Zealand, the Refugee Council of New Zealand, and a host of other human rights organisations protested against the legislation, but New Zealand Labour, the Green Party and New Zealand First all voted against the bill in parliament last week.

IN THE wake of the Tampa affair, much has been written about Australians’ subconscious fear of being invaded by sea. The deep-seated hostility to “boat people” has been linked to the White Australia policy, which defined Australia for much of the twentieth century. But New Zealanders are hardly more relaxed about “boat people"
than Australians. After all, Australia introduced laws to deter asylum seekers after thousands of them had arrived, yet the New Zealand bill was prompted by a declaration of intent by ten people who, in the end, never made it to that country.

The NZ government’s initiative is hardly comparable to the Keating government’s 1992 mandatory detention legislation, which was drafted in response to the arrival of asylum seekers from Cambodia. It is closer, perhaps, to Gough Whitlam’s reaction in 1975 to news that Vietnamese “boat people” might reach Australia. While his fears turned out to be as unjustified then as the NZ government’s concerns are now, it has to be conceded that northern Australia and Western Australia, and Australian territories in the Indian Ocean including Cocos Island and Christmas Island, can be reached quite easily from Indonesia – hardly the situation facing New Zealand. “People, look at the map,” New Zealand Labour MP Phil Twyford implored his parliamentary colleagues in April during the second reading of the Immigration Amendment Bill. “We are one of the most geographically isolated countries on earth. The Tasman Sea is one of the most dangerous stretches of water anywhere. There is no threat, and if there is, the threat is likely to be so small and so unlikely, how can it possibly justify the Draconian measures in this bill?”

The recent legislation is not the only evidence of New Zealanders’ anxieties about unauthorised arrivals by boat. For me, news of the Immigration Amendment Act 2013 brought back memories from when I was living in New Zealand some years ago. One evening in June 1999, the evening news conveyed the distinct impression that the country was about to be invaded. In a grave voice the newsreader announced that parliament had convened for a late-evening session to pass urgent immigration legislation. The National Party–led government had hastily brought on the debate because of rumours that the Alexander II, a ship carrying 102 Chinese irregular migrants, had departed Honiara in the Solomon Islands and was heading to New Zealand. According to the immigration minister, Tuariki Delamere, the vessel had been refuelled and re-provisioned by the Solomon Islands authorities. The 1999 legislation, the Immigration Amendment Bill (No. 2), also provided for the detention of “mass arrivals.” It was intended to facilitate the immediate application of provisions of the Immigration Amendment Act 1999, which had been passed earlier that year but was not yet in force. Then, as last week, New Zealand Labour opposed the legislation. The Alexander II didn’t materialise in New Zealand waters and the National Party’s panic mongering proved to be entirely unwarranted. The 1999 law was eventually repealed by the Immigration Act 2009, its provisions relating to “mass arrivals” never tested.

Australian politicians may harbour dreams of being able to tell intercepted asylum seekers that they should try their luck in New Zealand. But law-makers across the Tasman aren’t really afraid of New Zealand becoming a dumping ground for asylum seekers told to move on by their powerful neighbour. Their readiness to legislate for the detention of “boat people” is due to two other factors.

First, many New Zealanders are at least as fearful of seaborne invaders, and at least as suspicious of non-European, predominantly Muslim asylum seekers, as are most Australians. It is telling that New Zealand had a hugely popular reality television show about safeguarding its borders two years before Border Security began screening on Australia’s Seven Network. Being seen to be tough on asylum seekers may not be as universally popular in New Zealand as it is in Australia, but at a time when the problem is purely hypothetical, it is perhaps easy for parliamentary critics of the government to be principled.

Second, when they’re trying to imagine what would happen if New Zealand were to experience a “mass arrival” of thirty or more asylum seekers, politicians in Wellington need to look no further than Australia. If Australia, which comfortably accommodates more than 10,000 refugees and other humanitarian entrants each year, can’t deal with asylum seekers arriving by boat, how could New Zealand, which resettles only 750 refugees annually, be expected to cope?

In debates about New Zealand’s response to asylum seekers, Australia has been the obvious reference point. “Australia has had a huge problem. We do not want to have it happen here,” Tuariki Delamere told parliament during the June 1999 debate about the Immigration Amendment Bill (No. 2). Speaking about the more recent Immigration Amendment Bill, the National Party’s David Bennett said, “When we look at the legislation, we look at other countries that are in a similar boat, like Australia.” According to Bennett’s party colleague Mike Sabin, “If
we look across the Tasman at our neighbour Australia, and at the challenges that that nation is confronted with when it comes to mass arrivals and this issue of refugees, there is no more salient message for us than seeing what happens there.” Another National Party MP, Jami-Lee Ross suggested, “If the Australian government of the past had listened to that type of criticism and those types of concerns and done nothing, then it would have an even bigger problem than what it has got today… Our nearest neighbour is Australia, and they do have this problem. If we sit back and do nothing, then we will have exactly the same problem.” Australia’s nightmare could have been avoided if they had legislated in anticipation of the arrival of “boat people,” the National Party’s Scott Simpson argued during the bill’s first reading in May of last year. “This is the sort of legislation that Australia should have been considering many years ago,” he said. “The arguments we have heard today are the sorts of arguments we probably heard from people who opposed that sort of thing back then, and who now have lived to rue the day.”

The spectre of finding themselves in the same situation as Australia’s – supposedly inundated by ever-increasing numbers of asylum seekers arriving by boat – and the desire to learn from what are perceived to be Australia’s mistakes, have motivated the New Zealand government to push for a return to the 1999 legislation. It also believes that the harsher Australia’s asylum seeker policies become, the more likely it will be that people smugglers will consider New Zealand an attractive option. It matters little that these views are not necessarily borne out by hard evidence; after all, neither the ten Falun Gong members who sailed to Darwin last year, nor the sixty-six Sri Lankans who landed in Geraldton two months ago, used people smugglers.

GOVERNMENTS in Europe have also been concerned about the different treatments afforded to asylum seekers in different countries. The Africans who left Italy for Germany in the past few months did so because they knew they would be better off in Hamburg or Munich than in Rome or Naples. But the realisation that some EU countries are considered to be softer targets has not led to a further race to the bottom. Last week, the European parliament agreed on new streamlined rules for the treatment of asylum seekers, which will come into effect in 2015. They are designed to force countries such as Greece, which have had particularly harsh policies, to grant asylum seekers basic rights. While Germany and other countries that have been more attractive destinations are able to influence policies and practices in Greece, however, New Zealand is hardly in a position to make Australia relax its policies. John Key’s government therefore believes that New Zealand will need to become a similarly unattractive destination for forced migrants.

New Zealand will not necessarily match Australia’s asylum seeker regime, however, because both sides of the political debate over asylum seeker policies are using Australia as a reference point, though not as a benchmark. New Zealanders often pride themselves on having done much better when it comes to relations between European settlers and Indigenous peoples. Similarly, many New Zealanders believe that their country is more humanitarian than Australia. It therefore becomes an issue of national pride not to stoop as low as Australia in relation to asylum seekers. In last week’s debate about the Immigration Amendment Bill, Catherine Delahunty of the Green Party also invoked an Australian experience: “They have just completely failed, and it comes out of a tradition in Australia, which I remember as an older person, called the White Australia Policy. They do not have a tradition of respect for difference, and that has come home to roost in the most ugly way.”

Maybe Senator Humphries’s idea of moving boats on – to tell them to hook around Tasmania and then to pop across the Tasman Sea rather than turning them back to Indonesia – deserves further consideration. Perhaps if enough New Zealanders could be convinced that the opportunity to expose Australians as a bunch of unreconstructed racists is worth the trouble of accommodating a few thousand asylum seekers, his scenario could still become reality. •