Beyond deterrence: reframing the asylum seeker debate

It's time to fundamentally rethink Australia’s approach to asylum seekers, free of narrow assumptions about what's politically feasible, write Anne McNevin, Peter Mares, Damir Mitric, Klaus Neumann and Savitri Taylor.

Bangladesh routinely turns back boats – like the one on which this woman journeyed – carrying Rohingya people fleeing religiously motivated violence in neighbouring Myanmar. Munir uz Zaman/AFP Photo

Current policies to prevent and deter asylum seekers from reaching Australia by boat are justified by the assertion that these policies save lives. Yet forced and irregular migration is a global phenomenon, so tighter controls along some borders tend to increase the level of migration along other routes and across other frontiers. The humanitarian success claimed for Operation Sovereign Borders is therefore misleading: instead of trying to reach Australia by boat, those facing unacceptable risks of serious harm in their home countries will resort to alternative, no less dangerous routes to other countries that seem able and willing to offer them protection. If all borders are closed to them, they will continue to suffer the harm from which they would flee if they could.

So, should Australia simply ignore the loss of life at sea and accept people-smuggling to our shores as inevitable? No. That would amount to applying a survival-of-the-fittest filter to refugee protection – prioritising those who manage to raise the money for a perilous journey and then survive it. Such acceptance would also ignore the potential pull factor that successful journeys to Australia can create.

But nor should we accept the application of systematic cruelty to unauthorised arrivals in order to “send a message” to deter others from making a similar journey. This is ethically indefensible. It is to use people as means, rather than to treat them as ends. It is also rank hypocrisy to claim to care for the wellbeing of asylum seekers, while inflicting extreme suffering on those who actually come within our effective control.

A more humane and ultimately more effective way of addressing forced and irregular migration is to adopt long-term strategies that will reduce the number of asylum seekers wishing to get on boats in Indonesia or elsewhere. This approach requires us to engage with the issue of why people feel compelled to leave their home countries. This is not to say that our response should be limited to addressing the root causes of displacement; but any response that does not tackle these root causes risks losing sight of the fact that forced and irregular migration is a symptom of broader problems.

Human mobility is the result of a complex mix of factors. The dichotomy that contrasts “genuine refugees” with “economic migrants” is misleading because it suggests that every individual falls into one category or the other. In fact, all migration derives to a greater or lesser extent from an uneven distribution of security (the ability to live a safe, dignified life with a reliable livelihood) and opportunity (the capacity to flourish). The fact that security and opportunity are generally more available to Australians than to, say, Hazaras in Afghanistan or Congolese is an accident of birth rather than a matter of entitlement. However, those who lack security and opportunity will not inevitably seek to obtain it in Australia (or other wealthy countries). In fact most people are attached to their homes and loved ones and want to live well where they are or in close proximity to home. Nevertheless, inequalities lie at the heart of forced and irregular migration, and necessitate more sophisticated approaches to addressing its root causes.

In responding to forced and irregular migration, Australia may need to determine thresholds of security and opportunity that engage either our international legal obligations or our moral duties. However, those thresholds
should not be used to denigrate or victimise people who fall below what will always be an imperfectly drawn line. The current demonisation of “bogus” asylum seekers and “economic migrants” is unhelpful, as is the use of the term “illegals” to delegitimise those who may have good reasons to travel without prior authorisation.

Dehumanising non-citizen others (those referred to as “aliens” not too long ago) and subjecting them to state-sanctioned cruelty does long-term damage to citizens’ relationships with each other. Much like the effect of colonialism in a previous era, a punitive policy of deterrence is likely to lead to a brutalisation of society. There are thus profound civic and self-interested reasons to fundamentally rethink our response to asylum seekers and other irregular migrants.

The current policies directed at asylum seekers are wrong because they are unjust. They may also be characterised as disgraceful or shameful or heartless, but advocacy for a just policy cannot rely on fickle emotions such as anger or shame or pity. Compassion towards asylum seekers and anger at policy-makers who appear to lack compassion may be useful in prompting reflection. However, unless we ground our responses to asylum seekers on a political level as a matter of addressing injustice, we risk faltering when emotions sway.

At a minimum, Australia’s response to forced and irregular migration must accord with its international legal obligations. Since the continued existence of the international legal order is vital to Australia’s own security and prosperity, it is in Australia’s long-term interests to abide by the rules of that order independently of what we think about the rights or wrongs of particular aspects of it.

Asylum seekers are people seeking the protection of a state other than their own because their own state is unwilling or unable to fulfil the protective functions expected of a state. The Refugee Convention, as modified by the Refugee Protocol, imposes obligations on Australia with respect to “refugees” as defined in those treaties. Australia also has obligations under other treaties to which it is a party and under customary international law to provide protection to certain non-citizens who do not fall within the Convention’s definition of “refugee.” Beyond the international protection obligations owed to particular categories of non-citizen, however, Australia is obliged by the various treaties to which it is a party to respect the human rights of all people within its territory or jurisdiction regardless of their status. In other words, it is irrelevant to the applicability of Australia’s human rights obligations that a particular person may be a “bogus” asylum seeker or an “illegal” arrival.

Many of Australia’s current asylum seeker policies do not accord with our international human rights obligations. For example, our policy of indefinite, mandatory detention routinely results in violations of the prohibition on arbitrary detention contained in article 9 of the International Covenant on Civil and Political Rights. We should not allow such policies to continue.

This does not mean that the only way for Australia to meet its international obligations is to provide permanent residence to everyone who arrives on our shores and is found to be in need of protection. Neither the Refugee Convention nor any other source of international legal obligation places a duty on any particular state to provide a given refugee with a home in the sense of full incorporation into the national community.

Temporary protection could become a key part of Australia’s asylum seeker policy, as long as it is reconceptualised to comply with international human rights law. There would, for example, have to be a case-by-case assessment of how long a given individual could be left in a state of uncertainty before it became “cruel, inhuman or degrading treatment” contrary to article 7 of the International Covenant on Civil and Political Rights. In the case of particularly vulnerable individuals, the immediate granting of permanent residence may be the only way to avoid breaching article 7. Avoiding such a breach probably also requires that permanent residence in Australia or elsewhere be made available to any person whose protection needs persist beyond three to five years. In addition, people granted temporary protection visas would need to be allowed to reunite with their immediate families, and to leave and return to Australia.

Our response to forced and irregular migration should also take account of Australia’s membership of an international community. This membership requires a commitment to share responsibility for challenges that are beyond the capacities of any single member to resolve. Forced and irregular migration is one such challenge. It is in the interests of both the individuals and the states concerned that those displaced from their homes should obtain a durable solution to their plight. While no single state has the capacity to provide a solution to all those in
need of one, states acting collectively can and should do so.

Australia’s response should be informed by its capacity for assistance (be that resettlement, financial aid or something else). An informed discussion about Australia’s capacity, including how to define and measure it, would help to establish more rational grounds for a decision on an appropriate response.

Australia’s current response to forced and irregular migration does not encourage long-term, capacity-focused, regionally and internationally collaborative approaches. By flouting our international legal obligations, we are setting a dangerous precedent for countries in the region and elsewhere. Moreover, by reducing the size of our refugee and humanitarian resettlement program from 20,000 to 13,750 places, we have signalled to our neighbours that we are not serious about sharing responsibility. The likely consequence is that our neighbours will be disinclined to assume any further responsibilities themselves.

Only after we have set our own house in order will we be in a position to advocate credibly for effective international or regional responsibility-sharing strategies. One strategy could be the provision of local integration options by countries of first asylum. Countries with high demand for labour, such as Malaysia, may well be open to such options on the understanding that long-term integration would necessitate a secure legal status and the right to work, education and so on, but would not automatically imply the right to citizenship. It should be emphasised, however, that current plans for resettlement of refugees in Papua New Guinea, Nauru and Cambodia fall far short of being humane, practical or sustainable. Schemes to resettle refugees in countries that lack the political stability and labour-market conditions to ensure their safety and livelihood amount to a shifting, rather than a sharing, of responsibility.

The claim that Australia has been generous in its response to refugees and asylum seekers in the past has no place in an argument for a particular response to refugees and asylum seekers in the present. Past and present must not become elements of a zero-sum game whereby generosity in one outweighs cruelty in the other. A critical understanding of past responses to refugees and asylum seekers, which would debunk the idea that Australia has been traditionally generous, is nevertheless important to help us understand the cultural limitations of policies and why some options are likely to be more successful than others.

A critical understanding of historical responses to asylum seekers would also shed light on the extent to which the contemporary situation is overwhelmingly interpreted through the lens of state security. This is important because that particular perspective hinders our capacity to engage in reasoned, long-term and globally contextualised thinking about how to live with and respond to the ongoing reality of forced and irregular migration. Too often, the state-security argument is used to imbue discussion about asylum seekers with a false sense of threat, an unnecessary level of secrecy and an alarmist sense of urgency.

Since 1901, the Australian public has been overwhelmingly hostile towards people seeking Australia’s protection and arriving without having gone through a rigorous selection process. “Unauthorised arrivals” in that sense have included Jewish Holocaust survivors arriving from Europe, Egypt or Shanghai in the immediate postwar years; Vietnamese “boat people” in the late 1970s; and “unauthorised maritime arrivals” between 2009 and 2013. However, there have been exceptions to this hostile reception – including the acceptance of West Papuan asylum seekers in 1969, 1985 and 2006 – and the level of hostility has varied, depending on the number of arrivals, their provenance, the perceived state of the Australian economy, and political leadership. Thus concerns about boat arrivals were less pronounced in 1977 or 2008 than in 1992 or 2010. Public opinion regarding asylum seekers can shift, but such shifts are unlikely in situations where both major parties condone irrational fears about maritime arrivals.

There is no reason why asylum seeker policy must reflect public opinion. Good public policy is often ahead of public opinion. That was the case during the second world war when Australia accommodated thousands of wartime refugees from Asia, although their admission contravened the White Australia policy. It was also the case in the early 1950s when Australia admitted large numbers of immigrants from southern Europe. In fact, as the current policies demonstrate, public opinion can be an excuse for poor public policy that entrenches objectionable fears and prejudices.

It is feasible for political leaders not only to act ahead of public opinion but also to inspire public support for
dramatic shifts in policy. The initially unpopular economic reforms in the 1980s and 1990s are particularly relevant examples, because they were introduced alongside a deliberate effort to shift public anxieties and expectations about the function of borders and cross-border flows – in that case, borders and flows relating to trade and finance.

Positive leadership with respect to forced and irregular migration will not be possible unless we encourage debate that operates outside the parameters currently set by policy-makers and outside narrow assumptions about what is politically feasible. Unless we preserve a role for such debate – and indeed champion its necessity – we ultimately endorse the status quo and reduce our intellectual impact to modest reform at best and palliative apologism at worst.

Australia’s harsh regime of border protection has contributed to almost “stopping the boats” – at least for now. The majority of Australian voters welcome this outcome. Yet this apparent solution is inherently unstable. The situation in camps in Papua New Guinea, Nauru and Christmas Island is a mix of explosive volatility and self-destructive despair. The lives of men, women and children are being destroyed. Asylum seekers in the community on bridging visas live in an agony of uncertainty that prevents them from rebuilding their lives. Temporary protection – as currently conceived by the federal government – will only prolong this agony. The policy of using the navy to return asylum seekers to Indonesia creates great stress and anxiety among defence force personnel and adds considerable diplomatic risk to Australia’s delicate relations with a close and important neighbour. Added to all this is the unsustainable financial cost of Operation Sovereign Borders.

The pause in boat arrivals offers an opportunity to reframe the debate and consider how we might do things differently and better. It is not beyond human capability to develop a truly cooperative system of regional refugee protection – a system that would reduce the number of displaced people getting on boats and risking their lives at sea, and also offer them practical assistance and hope for the future. Australia can either offer leadership in this regard, or it can continue to pursue policies that render such a goal ever more remote and unachievable. •