**Ideas and Society Program**

**Refugees and our Common Humanity**

**Wednesday 10 July 2012 – 1.00pm**

**Tia Spanos**

Good afternoon delegates, directors and AMUN Secretariat. I hope that the community sessions have been productive and going strongly, or at least that some sort of constructive chaos is taking place at the moment.

I’ll just introduce myself briefly. I am Tia Spanos. I’m your Under-Secretary General for Speakers. I hope that the speakers program has sparked your imagination somewhat and I’m sure that this event will continue to do so. This is our key speaker event for AMUN 2012, and it’s based around the theme of the conference – with is Rights, Recognition and Responsibility. Discussion will seek to discern and address the issues which confront refugees, as well as circumstances and conditions which they face. The main objectives of the forum will be to clearly outline the varying perspectives taken, in regards to the status of, and international duty towards, displaced peoples, as well as providing delegates with broader picture on the positive and normative aspects regarding action on this prominent international issue.

The panel is a diverse group of academics who will engage delegates with their different methods in approaching the topic of refugees and human rights. Our panellists will challenge concepts, opinions and policy, both domestic and international, and will highlight the physical and bureaucratic circumstances of displaced peoples.

We are also proud to announce that our event today is co-hosted by the Ideas and Society Program of La Trobe University, and now I’ll just briefly introduce our panellists today.

So, Professor Robert Manne was educated at the universities of Melbourne and Oxford. He now holds a personal chair in Politics at La Trobe University and is convenor of the Ideas and Societies Program. He’s a Fellow of the Academy of Social Sciences in Australia as well. He’s been involved in the writing or editing of approximately twenty books and many, many articles. In 2005, he was voted Australia’s leading public intellectual in a survey conducted by the *Sydney Morning Herald*. Rob has taught the majority of the Secretariat in some capacity, throughout our degrees and we are so proud and excited to share that with you today, and for you to witness the greatness that is, and why we’re so excited to have him facilitating our panel today.

Raimond Gaita is a Professorial Fellow at the Melbourne Law School, in the Faculty of Arts at Melbourne University and an Emeritus Professor of Moral Philosophy at Kings College, London. He’s also a Fellow of the Australian Academy of the Humanities. Raimond has contributed extensively to public discussion about reconciliation, collective responsibility and the role of moral considerations in politics. You may also be familiar with Raimond’s work through *Romulus My Father* which I, as well as many other people I know, studied at high school, and it was a great book. So, thank you.

We also have Dr Yusuf Sheikh Omar, who is a former refugee and detainee from Maribyrnong Detention Centre. He is a very well-versed academic. He received a BA from the International University of Africa and Sudan. He has a Masters of Human Science from the International Islamic University of Malaysia, and he received his second Masters is Educational Leadership and Management here at La Trobe as well as his PhD. We graduated together in March. I’m not as well educated. I’m just a Bachelor. He is also the founder of the Australian Somali Youth Association and he currently works as a Research Assistant at Melbourne University and is also an Executive Member of the Somali Australian Friendship Association.

And lastly, but not least, we have Dr Savitri Taylor, who’s the Director of Research in the School of Law here at La Trobe. Dr Taylor’s specific area of research interest is refugee law and asylum policy, at the national, regional and international level. Dr Taylor is Deputy Editor of the International Relations Journal *Global Change, Peace and Security* and an editorial board member of the Law Journal, *Law in Context*. She is heavily involved with the refugee sector in Australia and the region.

So, we have a vast array of knowledge and esteemed people here today and I think they’re excited to speak with you all and speak amongst one another, and the secretariat, I know, is very excited to hear them, and I think you’ll all get a lot out of it. So, let things begin.

**Robert Manne**

Thanks very much Tia.

[applause]

Well, I wanted to first say, as a La Trobe patriot, believe it or not, I came here in 1975 and have never left and it’s the university I feel a great deal of affection for, and I really wanted to congratulate the students, many of whom I know organised this conference. I think it’s a wonderful achievement.

The issue we’re going to be discussing today is one that will be with you for the rest of your lives, I’m sure. It’s an issue of global significance and I think will become even more so over time, and it is, those of you who are Australian will know, it’s been at the centre, in one way or another, of our politics, ever since the late 1990s and looks as if it won’t go away. I think Tia and others, who have been responsible for putting the panel together, have done a great job in the selection of the panellists, because it’s an issue that needs to be looked at I think, from many different perspectives.

Rai, who’s one of my oldest and dearest friends, is I think one of the most distinguished and profound moral philosophers in this country. We’ve been talking about issues of this kind for a very long time. But he will look at it from the point of view of moral philosophy.

Yusuf will do something which is extremely significant and I think without which this discussion isn’t properly grounded. Yusuf is now a scholar, but was a refugee, and spent time in the Maribyrnong Detention Centre and I want him to talk to you about the experience from that point of view. East Europeans used to say they experienced communism on their own skins, and Yusuf has experiences asylum seeker policy on his skin, and he will talk about that.

These discussions can’t be really kind of practical unless we understand the law and the problems of law and the nature of international law and the obligations that flow from there, and I know this is a United Nations Conference, so you’re all interested in questions of law. And we’re, at La Trobe, we have one of Australia’s leading refugee legal experts, Savitri Taylor, and I was very pleased to suggest to Tia that she join us in this panel, because she can do something which is really necessary in such a discussion.

And I probably won’t be able to restrain myself from discussing the politics of the situation, and abusing my rights as Chair.

The way I’m going to proceed is to ask three or four questions of each of the panellists, one by one, to take them to some of the things I think are central. They’ll have to be reasonably brief, because then we’re going to have a short panel discussion and then the event won’t make sense unless you ask your questions. There’s a microphone at the front – we’re not having a roving mike because of the logistical difficulties, so what you’ll have to do if it’s all right, is to form an orderly queue, which is appropriate to an asylum seeker discussion [laughter] over there, not Maribyrnong or Port Hedland, and come one by one to the microphone. But please, as we talk, do think about … and often the most interesting questions are the most simple. So don’t feel intimidated, and please ask the questions that are on your mind.

So, if I could start Rai, with you because of the very general nature. When Tia and I were talking about this session, she asked me if I had a suggestion for the title, and instantly I said, Refugees and our Common Humanity. The reason I did is really because of a wonderful book of essays that Rai has written, called *A Common Humanity* and I think that’s really where the beginning point of this discussion needs to be. So if Rai, I can begin with a sort of … a kind of two-headed question. Partly what you mean, and I have to ask you to be brief about this, by the term “common humanity” which is a very common term but you use it precisely, and then the second part of the question is, what bearing does the term have on the sort of responsibilities that governments and societies as stable and prosperous as this one might have towards refugees. What part of common humanity comes to play in that idea of responsibility?

 **Raimond Gaita**

Well, I suppose I just have to tell a little story to illustrate. It’s something that I think has rather radical potential, morally and for law, although it may not seem so at first. And it’s a story that I tell in my book *A Common Humanity*, about a woman who was staying with us in London and her son – she was from New Zealand. Her son was killed in an accident in Scotland and she was waiting for the coroner’s report, staying with us, and at a certain point, she was watching television and on the TV screen there appeared Vietnamese women, grieving over dead children who had been killed in bombing raids during the Vietnam war. She for a moment leant towards the screen as though she had a sense that she shared with these women a common suffering, but then as she sat back and said “oh, but it’s different for them. They can just have more”. And I found that an astonishingly revealing remark, because I took it immediately as the expression of racism. She wasn’t, it’s important to understand, making a semi, sort of anthropological remark – she wasn’t for example saying, look they’ve been so brutalised by war that life had become cheap, but maybe after a few years they will be like us. And they can’t just have more, in the way that people sometimes get a pup after a dog has died.

What I found incredibly revealing about this when I reflected on it, is … first of all, she was denying that they had a certain kind of individuality, because their children were replaceable – that their suffering couldn’t go deep, and our sense of suffering in the case of when we lose somebody, is connected with that distinctive perspective, that person was in the world, and she somehow thought that they weren’t, the Vietnamese weren’t that. And one could see immediately that that applied to everything, not just having children. Their sexual lives – every – she felt, what she expressed was, nothing can go deep for them. And you could also see, once she saw that, once she thought that of them, that she also thought that nothing we could do to them could wrong them quite as deeply as we could wrong one another. And so, I also found it absolutely fascinating that, consistent with the way she saw them, she knew they were rational beings, right? She knew they were persons, in the way that philosophers talk about persons, or people talk about persons, when they wonder whether a foetus is a person and so on. She knew ordinary facts about them. And what I think is radical about this is, if that’s right, if consistent with her perception that nothing can go deep with them, she knew that they were rational beings, she knew the ordinary set of facts about them, then she was prepared to attribute to them everything that moral philosophers, political philosophers and legal philosophers construct their theories from. This is what was astonishing.

And if it’s a question of going deep, if it’s a matter of things going deep, failing to see go deep with people, that’s an essential element of failing to see that they share with us a common humanity. Or to put it another way, if in order to see other peoples on the earth as sharing with us a common humanity, we have to see them as having an ever-deepening response to the big facts of the human condition – that we’re mortal, that we’re sexual beings and so on. If that is true, then we have to find a language in which constantly to reveal the depth in the lives of the peoples who sometimes seem strange from that. And at the moment that can’t be the abstract language of universal law. The assumption of international law has been, and it’s been the assumption of political philosophy, that we have to always extract from the contingent historically conditioned ways of living of all the peoples of the earth, a set of principles – I think that in the end will be revealed … increasingly we will find that satisfactory. It’s obvious, for example, that if you describe someone, a victim of torture, as someone whose rights have been violated, you can’t possibly characterise the terrible wrong that has been done to that victim. So I think in the end, the abstract language of rights, is going to seem very thin to us in international law, unless it is embedded in a much deeper description of the ways people live their lives, in a idiom which is local to them.

So, if I could quickly stop – the model for universality here should not be abstract principles which extracts from everything that’s particular about the lives of this or that people, but it will be … the model will be great literature, which we translate from one natural language into another natural language. It will be poetry from one country or another that enables us to understand one another. Not the abstracted principles. So it will be universality that we get from the translation. And it’s very interesting that nobody any more thinks that we ought to aspire for an Esperanto into which to translate everybody’s culture. So that would be the first thing I would want to say about that.

**Robert Manne**

If I could just now ground this in the whole question of the refugee issue, I think we’d agree Rai, that the experience of the second world way, in particular the experience of the holocaust, and the fact that so many countries had not opened their doors to Jewish refugees at a time when it was possible to save lives, led to a certain moment in world history, where the Refugee Convention could be written and a sense that many of the countries of the world had towards refugees, crystallised, not only in law, but in ethics and in feeling. You’ve said to me recently, and I’d like you to say a little bit about whether you think that moment, where the Refugee Convention was written and feelings about refugees were so central to Western sensibility at least, can be maintained, or whether you think something new is going to happen, as the world has changed so much in the last sixty, seventy years.

**Raimond Gaita**

Well, I doubt that it can be maintained without some quite radical re-thinking, of things. In that sense, radical re-thinking takes time. It’s not going to happen any time … it’s not going to resolve the issue that’s before parliament at the moment. Thought it seems to me one of the very great movements post-war, was a developing hostility to racism, that seems to me to be weakening, everywhere in the world. In a way we’re going backwards on that. But one of the things that strikes me about contemporary discussion amongst, let’s say, roughly the intelligentsia, by which I include people like us and journalists, and so on, is how … theory is not a word I much like, but I might convey what I want by saying, it’s lacking a kind of theoretical instinct or interest. One of the things that struck me for example, when we were students, is how … to what degree discussion about politics was informed by thoughts about what the nature of labour is, for example. Really basic things. What does it mean for a human being to have nothing, but his or her labour to sell? And building up politics from something very basic there. And now I’m inclined to say what we have to re-think, especially in the recognition that the colonial era is over and the resentment that we rightly have attracted in the West because of our colonial adventures are … somehow or other we have to start right at a very basic point again. And recognise that we in the West enjoy the great privileges of the earth, for no better reason for the most part, than luck, because we’re born in a place, or allowed to be immigrants in a place, and the majority of the earth’s population suffers the miseries of the damned. And if we could have a constantly strongly imaginative sense of that, and from there, trying to build up, again, a kind of moral conception of under what conditions we can say, no you can’t come. Because unless somebody’s going to say, anybody can move wherever there want, there are going to be restrictions. But I think in this particular context, talk of rights may do more harm than good. Talk of rights was usually to protect the interests of the oppressed. I suspect more and more, talk of rights will be used as a form of building a razor wire around countries, and more and more, we’ll hear of it in contexts like “we have the right to determine who comes here”. It will be used more in that context.

And we would have a much better moral sense I think, of what’s at issue there, if we started thinking about the obligations we have to people’s needs. And that would lead it to a much more concrete sense of what the people suffer when this or that is denied them, or this and that is done to them. What we get, if we’re going to have what will be a very divisive argument about the right to this and the right to that.

**Robert Manne**

Final question before I turn to Yusuf. I don’t think anyone could deny that since the 1990s, Australia has treated asylum seekers who arrive without visas harshly, with mandatory detention, with temporary protection visas if they’re successful, and being regarded as refugees, with towing boats back being suggested again, with sending people to Nauru to be processed and so on. You’ve got a very short time Rai, to say what you would say to both government and citizens when they say, the only way in which we can prevent a flood of the people you just described as in desperate need. The only way we can prevent them coming here and flooding our country is to treat them harshly. What’s your answer to that? What do you say about the harsh deterrent policy that this country has been practising for the last, more than a decade?

**Raimond Gaila**

Well, I would say that if it’s true that that’s the only way, which I’m not convinced that it’s the only way, but supposing I were convinced, I would say, in that case, we can’t use harsh measures as a deterrent. I think this is a simple moral principle. You can’t treat people brutishly in order to deter them from coming to your shores. Morally, it’s out of the question. And if that means a lot more come, it means a lot more come. I’m not convinced that that is the alternative. But I actually do think … I’ll just say very quickly. I did once argue, when I was in the country Victoria, with the kind of people who are supposed to be in favour of these cruel policies, I did argue with them in pubs and so on, when I was there for a few weeks writing, and I kept saying, look, we all know it’s a difficult issue, and forget about queues for a minute. Is it justified to do what we’re doing when what we’re doing is keeping kids behind razor wire? For up to five years. And they shuffled and they said, literally and metaphorically, turned their eyes away and said, but of course you can’t have queue jumpers, and we’ve got to protect our borders, etc, etc. And I said, all right, forget about that, just focus on this one question. Can we justifiably keep kids behind razor wire? And in the end, they said, no. And then I did the same thing with a question about the adults. I said, look, does the policy for the adults have to be so cruel? And again, they shuffled and in the end they said, no.

Now, I don’t know quite what to make of it, but one lesson I’m inclined, or hope, to draw from it, is that if our politicians were to do something similar … but it takes a long time to say, come on, can we do this as a nation? Can we … then, I’m much more optimistic. Let’s put it this way. If it came to it, and politicians did this, and still Australians were prepared to enact these, I think barbaric policies, some of them, then I would be … I would just be terribly shocked and heartbroken, actually, about this nation.

**Robert Manne**

Yusuf. I haven’t heard this story, and I do want to hear this story, which is the story of why you left Somalia. Somalia, isn’t it? And then again, it has to be brief I’m afraid, what happened to you when you … how you got to these shores and what happened to you when you did reach them?

**Yusuf Sheikh Omar**

First of all, thank you very much for giving me this opportunity, as well, to share my views and experiences. What I’m talking is not from an advocate point of view – it’s a personal point of view. I left Somalia for the Sudan as a student the first time, in 1990, when I got a scholarship in Malaysia, and during that time I was a writer in Somali politics and Arabic and Somali language as well. And when I finished my Masters in Malaysia and my visa had to expire at that time, in 21 days, so I thought to manage my life and to find a way to survive and get safe, it was impossible actually to go back to Somalia, the Civil War, particularly to someone like my level of education, to go back to the warlords and the clans. Then I came to Australia, I had some information, and idea that Australia is a great nation and I can easily get a protection visa and all this stuff, then I came to the detention. My first experience was not that good.

**Robert Manne**

Why did you go to detention?

**Yusuf Sheikh Omar**

The detention, because when I arrived in Melbourne, I brought false documents of course. I surrendered myself to the government authorities and then they put me into a van, a prison van exactly. It was quite very tough and useful experience to see myself in that kind of car, I was taken to detention and ordered just to determine my case. And the first Somalian I met, he was from my community background, some of the clans and tribes. He was from my community. And he said, prepare yourself to be here one or two or three years. And I thought he was talking, just by his mind, and without facts and I would say experience. And I spent in detention almost for two years.

**Robert Manne**

In Maribyrnong?

**Yusuf Sheikh Omar**

In Maribyrnong Detention Centre. So it was an experience that I don’t like everyone to see. The detention, particularly with the most vulnerable young people, like children who were born in detention, or sick women, pregnant women. It’s the experience of that continues with you a long time, maybe the whole of your life, yeah. I assume some of you had a car accident, and also you will remember every time, the hit you had, so that kind of experience was my experience in the detention. It was not really good – full of frustration and uncertain future, where you go, brought back, and get the visa or stay in the detention, and we know around the fifty detainees are now in indefinite detention centre in Australia, they are not wanted by any other government, or not by Australia or any other government and their future could be in the detention forever, for life.

**Robert Manne**

Could I ask you a question to follow up from that? You must have, in that period of detention, felt despair and a sort of an anxiety which it’s hard for those who haven’t been in that experience to be easily able to grasp. Did you feel during that time, bitterness towards this country?

**Yusuf Sheikh Omar**

Yes, it’s a good question. The officers in the detention, many of them were ill-trained. They were not well trained, their treatment was not good to the detainees and yeah, of course, when you are a refugee and kept in the detention, you develop a very negative experience in general, yeah? Also as a human being, sometimes you might not generalise these negative perceptions to everyone, but just when you experience that kind of life, you develop some kind of experience. But the positive side was, all the officers were not bad, actually some were very good. And when I got out from the detention centre, my perceptions were quite opposite. I got very positive feedback, very helpful. Not everyone is good, but most of the people are very nice what they say – helpful and understanding of the refugee experience and I was feeling this morning that for the three per cent of Australian people, when they hear the term of refugee, they get in their mind is health, they get in their mind the protection visa, so in that sense most Australians and mostly when they come to the refugees, rather than the media and the politicians, so it was quite an experience.

**Robert Manne**

My third question, final question, having had the real experience of detention and so on, can you … what’s your response to the kind of debates that Australian politicians have about the refugee question, or the asylum seeker question?

**Yusuf Sheikh Omar**

My views and suggestions are to treat them the same way they would like to be treated. As a human being, to put themselves in their shoes as well. And not to use them as a political game or election campaign, or to use them in, what do they call it, border security or security point of view. Just to help them, to treat them and for the general Australian people, also to understand their situation, their past experience that was very tough and very challenging, and the current experience in Australia, when you are given a visa and protection, that means actually that you have got everything you needed – it’s a long way to integrate and become socially accepted, and to get your basic needs – employment, education, networks, friends, you’re still remembering back home, what’s going on. And at the same time you think how to establish your life and get a job and education. So you are between difficulties. Some of you, it’s difficult to understand them. Try to help them, not to, what to say, put extra difficulties that they don’t really deserve, so that’s my suggestion.

**Robert Manne**

Savitri – the first question I want to ask you. I know that you have been very critical of all of the policy of now two of the three main political parties, or three of the four main political parties in this area. You’re in part an international lawyer, or a student of international refugee law, what do you think is the minimal requirement of international law in regard to people who arrive here without visas, and on boats, without … as spontaneous arrivals. What does … from the point of view of international law, what is required of the Australian government, do you think?

**Savitri Taylor**

Well the Australian government is a party to the 1951 Refugee Convention and the 1967 Refugee Protocol, and it’s undertaken several obligations under these treaties. The key one, but not the only one, is the obligation of non-refoulement which means the obligation not to send refugees, within the meaning of the Refugee Convention, back to places where they will be in danger, and the way that the Refugee Convention is constructed, someone is a refugee because they meet the criteria set out in the Convention, regardless of whether anyone has gone through a process and identified them as being refugees. So what we say is it’s declaratory of refugee status, a determination of refugee status is declaratory and not constitutive. What that means is if someone comes to Australia and claims Australia’s protection, the only way that Australia can meet its obligations to that person, should they be a refugee, is to consider their claims and then if the claims are made out, to give them the benefit of the rights set out in the Convention.

**Robert Manne**

Can I ask, just pushing on from that a bit, numerous things have been done since the late, or since the early 1990s, mandatory detention, temporary protection visas, towing boats back to Indonesia, offshore processing, etc, etc. But I’m asking you now a very kind of legally tight question. In all of those things, do you think Australia has been acting unlawfully, according to international law?

**Savitri Taylor**

Well, certainly mandatory detention is definitely a breach of Australia’s international obligations and the Human Rights Committee of the United Nations has on several occasions, found on specific cases that Australia has been in violation of the …

**Robert Manne**

Is there an article of the Convention that that breaches?

**Savitri Taylor**

Of the 1951 Refugee Convention? The 1951 Refugee Convention has provisions about non-penalisation of people who come from a place where … fleeing and coming to Australia. It also has provisions about allowing freedom of movement. But Australia’s obligations don’t begin and end with the Refugee Convention. It also has obligations under the International Covenant of Civil and Political Rights, and one of those obligations is not to subject people to arbitrary detention, which is what mandatory detention is. So Australia has to take all of the obligations it has under various treaties. But in terms of whether Australia is in breach, has been in breach of international law by taking people to, say, Nauru, Australia puts itself at risk of breaching its international obligations when it sends people to a place where they may be mistreated or which might in turn send them somewhere else. At least in the Pacific Solution scenario, Australia maintained a large degree of control and therefore was able to ensure that, for instance, they were not removed from Nauru to a place where they would be persecuted, though there are probably occasions where there was what’s called constructive refoulement, which is conditions were so appalling in Nauru that people thought – I would rather go back to persecution in my own country than languish here. So there was that – that probably happened, even in the Nauru context. But for instance, if one were to send people to Malaysia, that wouldn’t of itself immediately be a breach, but it could be, if Malaysia mistreats people or if Malaysia does something to send them back to a place where they would be persecuted. And this is the trouble that international law has had – that we want to be careful and say, you put yourself at great risk of breaching your obligations and we’re pretty damned sure that they’ve been breached, but we can’t prove it, because of course, you’ve got rid of the people, and we can no longer see what’s happening to them. Yes.

**Robert Manne**

Now, I’d like us to … can I ask one question first? Of everyone and then Rai … The question I’d like to ask of everyone, and this is … I’ve been thinking about this recently, and it’s troubled me a lot, and this is in regard to the Australian situation. About a thousand people have drowned on their way to Australia, because I think, of the conditions on the boats and so on and so forth. The danger of the trip to Australia. Does that influence the way any of you think about Australia’s situation? The dangers that people, as it were, are exposed to by the trade in asylum seekers? That’s been the moving force in the last two or three months in Australia, I’d say. Rai?

**Raimond Gaita**

I think there’s an obligation to do what one can to prevent those deaths at sea, but I think the concept of what … what we’re able to do has to be to some extent, must be constrained by not only what we’re legally able to do, but also morally able to do, and there I would just repeat the point that I made earlier – that if we … that it can’t be part of a way of deterring these people from going on to boats, on which they might capsize and so on. It can’t be part of that deterrent, to treat them cruelly. I can’t see, I don’t think anything justifies treating people cruelly. If we’re stuck, we’re stuck – we’ve just got to treat – we’ve got them and we have to make do – there can never be an option to treat them cruelly in order to deter them.

**Savitri Taylor**

I personally think that to send out a message that we’re going to treat people so badly here, that they shouldn’t come, is not actually doing anything about the conditions that made them desperate enough to risk their lives on boats in the first place. So, what people will do is, instead of say from Afghanistan, coming across to Australia in very risky ways, they will go across the Mediterranean and drown there, trying to get somewhere else. So, or they will remain trapped in places like Malaysia, where they’re also experiencing appalling conditions. So I think what we’re really saying when we say, we don’t want to see these people is literally that – we don’t want to *see* these people die, as long as they suffer and die out of our sight, it’s perfectly all right, because unless we do something to make the conditions that they’re fleeing better, and instead we just make the conditions in Australia so bad that they would rather suffer and die in other ways, then I don’t see what we’ve achieved.

**Yusuf Sheikh Omar**

I would like to ask – they choose in between death and life, but what I’m saying is, people are just scapegoats of a political argument – two powerful political parties who only like us if we may be of use, and that’s one point, and the second point, our government, as Australian people, but as a government, what we’re doing is destroying the Australian habitation, that’s real, and thirdly, it shows that Australia has failed to reconcile with its original government and neighbourhood to solve this problem. So we’re just acting alone without managing our problem regionally.

**Robert Manne**

Now, Rai wanted to ask a question, but while Rai is asking a question, for those of you who have questions, and I’m astonished to see we’re approaching … we’ve got another fifteen minutes or so, but the time has flown. Could people who’d like to ask a question, form an orderly queue and then I really would like to have your views expressed. So Rai, if you ask your question.

**Raimond Gaita**

It was just about your phrase “being at risk”. Presumably, Australia, if it were to send refugees to Malaysia, would be required to do whatever it could to ensure that they weren’t afterwards badly treated. How far does that … presumably they can’t just say, well it’s in the lap of the gods now. And if they’re badly treated, ooh, then we’re in trouble, but if … so why couldn’t the convention simply be that if there is a risk that they will be badly treated, then the obligation is on you not to place them in that situation. Why isn’t it that?

**Savitri Taylor**

Well, that’s absolutely right, and that’s why an international lawyer would say that Australia can’t simply send people that arrive here and engage our protection obligations, can’t simply send them to another place, without making a case by case assessment of whether in doing so, they might be at risk. For instance if someone obviously had a case where they might be at risk of religious persecution in Malaysia, or they might be persecuted for their sexual orientation, or whatever, you need to ascertain that on a case by case basis in Australia, and then if you determine that there is such a risk, not send them. And so again, an international lawyer would say, you can’t just say, let’s turn them around in, you know, 72 hours, which is what Australia wanted to do under the Malaysia arrangement, back to Malaysia, they’d have to go through some kind of process.

**Robert Manne**

First question.

**Questioner**

Firstly, thank you for your address. I really enjoyed it. But I wanted to ask, particularly Dr Taylor, how does Australia deal with people who have arrived on our shores and have adverse ASIO security checks. If we can’t detain them indefinitely, which we can’t, and we can’t return them to the country they’ve fled, what do we do about this?

**Savitri Taylor**

Well, actually, as a matter of international law, Australia cannot keep people in detention indefinitely, sorry, something happened with my microphone. The High Court is pondering right now, whether as a matter of Australian law Australia can keep people in detention indefinitely, because the relationship between Australian law and international law is that international law doesn’t automatically become part of Australian law, although the courts tried to interpret domestic law in a manner which is not inconsistent with Australia’s international obligations. So that’s the problem that the High Court is grappling with right now. There is a decision called Al-Kateb which suggests that under the legislation which was by the High Court, that suggests that under the legislation as it’s presently drafted, there might be situations in which it’s perfectly all right for people to be kept in detention for ever, but the High Court is being asked either to determine that Al-Kateb does not apply in the particular situation which is now in front of the High Court which is … Al-Kateb dealt with somebody who was a stateless person, whereas the case in front of the High Court now deals with someone who has actually been found to be a refugee within the meaning of the Refugee Convention. And one argument being put to the High Court, is, well, the Act was never intended to keep those people in detention. The other argument being put to the High Court is that if Al-Kateb suggests anything else, it should be overruled. So we’ll see, but otherwise, yes, as a matter of international law, Australia can’t just keep people in detention indefinitely.

And they don’t need to. An adverse ASIO security assessment, even under domestic law, does not mean that people have to be detained. That is a quite separate thing that the Australian government has chosen to do when it could do things like make a residency termination, which is a mechanism which exists under domestic law to have people technically in detention but with a large degree of freedom.

**Robert Manne**

Next question.

**Questioner**

My question is for Raimond. In regard to your discussion of common humanity, universality, you negatively defined it as not a set of overarching abstract principles. So I was wondering how you would consolidate this with the suggestion that cultural diversity would imply diverse basic moral codes, specifically that because they’re so diverse, you need that kind of abstract characteristic for it to apply, or be applicable.

**Raimond Gaita**

Well, diversity doesn’t have to entail abstraction, because that’s why I suggested a different model for universality could be the translation of great literature, which often has ethical content from one language into another. But my main point, one of my main reasons for thinking this is, I agree with a legal philosopher called Jeremy Waldron, who says that law, he means this generally, not just international law, but I think it applies to international law too, is only as good as the morality in which it’s embedded. And now, one of the troubles at the moment with the international law, is that the morality in which some of it’s embedded, I take it, is in their preambles, so the Declaration to the … the preamble to the Universal Declaration of Human Rights talks about the inalienable dignity of every human being, and talks about the human family and so on. Now I actually think the concept of inalienable dignity turns out to be philosophically unsustainable. But there’s something really important that can be captured when we would describe the violation of inalienable dignity but that has to be in a much more concrete language, which has all sorts of resonance and so on. In fact, I think it has to be done … I mean, I made the point when I said, look if you say a victim of culture has had their inalienable dignity violated, or their rights violated, there must be a much more concrete way of capturing what it is that has been done to that person, and why it is morally terrible. Not just terrible from the point of view of physical suffering and psychological suffering. That’s why friends of mine who are writers for example, can’t believe that people in legal philosophy, in international law have so much trouble here. They say, yeah, we capture it in art. That’s how we capture what’s … the terribleness that is done. And if you want to learn what it is to share a common humanity with the Iranians, watch an Iranian film. Etc, etc. So that would be the model. It’s not as simple as that, but that’s the basis of it.

**Questioner**

Firstly, thank you very much to the panel. It’s been very illuminating. My question is for Dr Taylor and also Mr Manne, if you’ll entertain the question. Given the current rhetoric surrounding asylum seekers in Australia, particularly those coming by boat, do you believe that there’s a threat, or potential that Australia may revoke its ratification of the Refugee Convention?

**Robert Manne**

Savitri, do you want …

**Savitri Taylor**

I say and I could be proven horribly appallingly wrong, but I don’t think that’s likely, especially not under a Labor government, because Australia, and even under the Howard government, Australia has always wished to appear to be a good international citizen. Australia has never ever made the argument that it’s breaching its international obligations and it doesn’t care. It’s always tried to make a legal argument as to why what appears to be a breach of its international obligations is really not. So, I think, to put it bluntly, Australia won’t do that because it’s not a good look, which doesn’t mean that it won’t try everything it can to wriggle its way around all the obligations it has on paper.

**Robert Manne**

Yes, I actually, I won’t say more because I agree that as apparent breaches in international obligations haven’t had … not only have not had sanctions but have not even had much criticism, either here, or that much abroad. I can’t imagine that the loss of face in leaving the Convention would be sufficiently important, because the costs of remaining within the Convention and acting more or less as the government wants have not been shown to be that high. Thank you. Next question.

**Questioner**

I’d like to address this question to Dr Taylor. I feel that the most important facet of the complex interaction between international and domestic law is the ability for international law to mobilise domestic pressure to change domestic law. Do you feel that the illegality of things like mandatory detention is enough to mobilise domestic politics in Australia? Or is something else required?

**Savitri Taylor**

 The language of international law doesn’t seem to have got much traction with the Australian public I must say, which is why … it has traction with lawyers, but I think, yes, we need a richer language so maybe that’s what Rai is saying. I think that the concept of inherent human worth and human dignity and the idea that there is something due to that, is a very important idea and that is at the heart of international human rights law, you know. But I still remember from Rai’s book, *A Common Humanity*, that rights and duties are meaningless unless you can see the bearer of the rights as the intelligible beneficiary of someone’s love. And I think that’s right. I don’t think that means to throw away the language of rights and duties, because I do think we have to hang on to the idea that there is something that we owe as a matter of right to another person’s humanity, but to enrich our idea of what that means, we have to look elsewhere, and law can’t supply that language.

**Robert Manne**

Very interesting.

**Questioner**

Thank you for your presentation today. I recently went to a conference that was held in Geneva and somebody from the UN opened the session with the question, what is the difference between you and a refugee? And they said, the difference was, circumstance. Merely circumstance. And I was wondering from all of you, so it’s not directed at any one particular person, do you think that a lack of empathy might be a key issue in the refugee debate?

**Robert Manne**

Could I ask Yusuf to say something. The question is whether the difference between being a refugee and not being a refugee and understanding the difference, rests of a failure of empathy.

**Yusuf Sheikh Omar**

I think that basically the difference is, as we said, the condition and the situation and after that, the media also can make a difference, in negative ways, when it comes to the case of refugees as well. The term of refugee or asylum seeker is a kind of stigma in Australia and controversy created by the media and the politicians, and my worry and my concern is the longer term influence and impact of media with say public education to the younger generation, younger Australians. I will give you an example. A friend of mine told me a while ago his daughter very much hates refugees. And Muslims. And I said, why? And he went back to her and he asked her, and she said, because what I’m learning and what I’m hearing from the media, they are not good, they are bad. They take the goodness of the country, they promoting the culture of fear. So, the public media, the Australian media, some of them, and what they say in newspapers. If you tried to learn and understand the refugee situation from these forces, you might develop a sense of maybe hatred or something like that. But refugees have never been, have never caused social unrest in Australia, they were very positive, very nice, the media and the politicians have never talked about the positive side of refugees as human beings, their achievements. Like my case, I did my PhD, I, what I say, I promote Australia, habitation – so, no one talks about the positive side of it.

**Raimond Gaita**

Just on empathy, if I go back to that example of that woman thinking of the Vietnamese, that it’s different for them, they can just have more. In relation to people, of whom she would never dream of saying that, her white constituency, she might fail to have empathy for some people who are suffering, within that constituency. The trouble with her incapacity to find it even intelligible, that things go deep in the lives of the people whom she has a racist denigration for, is a different … it’s not a failure of empathy. And since I think, and as you mentioned, a lot of the hostility I think, to refugees, is racially based in Australia. Then empathy isn’t the basic issue.

**Questioner**

My question is directed towards Professor Manne, and it relates to the political context of Australia. And I think that the reason why the Australian government treats refugees so poorly is to pander to the Australian close-mindedness of some electorates. And so the reason why both parties are so against boat people and are trying to resolve this problem of the boat people who are coming to invade Australia, which is preposterous, is because if they advocate, I think, a more positive image, they risk losing votes. And so my question is, do you see any possible solution to this conundrum?

**Robert Manne**

If I’m really truthful, and I have to be brief, because of the time, I don’t think in the short term there is much chance that those who arrive by boat will be treated with humanity by the political parties. I think … I’m not a scientist, but a political thinker needs to look at opinion polls and nothing has been more steady over a very long period, than the hostility of two-thirds, roughly, of Australian people, to spontaneous arrivals by boat. So that when John Howard took advantage of it politically with the *Tampa*, he was not creating something that wasn’t there before, unfortunately, he was using a feeling that was already there. And it’s got … I think in the last two or three years, it’s got worse and worse and more and more blatant and I don’t think in any short term way it can be turned around. It’s one of the bases of my thinking about the issue, which I haven’t burdened you with, but which is a bit different from Savitri’s and from Rai’s, actually. But anyhow … but I don’t think there’s any simple way of turning that about. If both main political parties had kept their head over the last fifteen or twenty years, things might not have come to much, but I think now the hostility to spontaneous boat arrivals is more or less unable to be changed, in the short term, the next few years.

We’d better stop there. If I can say before Tia says something. Thank you all so much for coming, and it’s been an unusual discussion because it’s had a kind of depth which I think most discussions of this issue don’t have, and for that I want to thank Savitri, Yusuf and Rai very much. And thank you all for your interest.

[applause]

**Tia Spanos**

I would also just like to thank on behalf of the Secretariat and everyone that’s here today, all of our panellists and our facilitator who have been here, for agreeing to take some time out of their day to come and share their insights and expert opinions with us. It’s certain that there’s been a great depth in information, knowledge and ideas explored here today and I think it’s allowed everyone to have a more open understanding of the issue and what refugees face, be it through real life experiences, or the external drama of international law, which is confusing and convoluted and sometimes doesn’t achieve the results that are needed to help the world progress and move forward. So thanks very much for your time, and just a round of applause …