

New evidence on the development of
Australian refugee policy, 1976 to 1983



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Merton College
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A thesis submitted for the degree of
Doctor of Philosophy in History
Trinity Term 2013

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Short Abstract

This thesis aims to improve historical knowledge of Australian refugee policy between 1976 and 1983, a unique and transitional moment in the nation's history and in international refugee movements. The discussion will be based on original evidence drawn from archival records and oral history interviews, and informed by a broad literature which recognises that refugee policy is a product of varied political imperatives and historical context.

First, Chapter Three reveals that because the Fraser government could not deport the Indochinese boatpeople who sailed to Australia, it sought to approve their refugee status in order to legitimate its announcements that only 'genuine' refugees were being admitted. In doing so, the Fraser government was required to defend the processing of boat arrivals to the public and within the bureaucracy.

Chapter Four finds that historical and political considerations informed the Fraser government's choice not to reject or detain boat arrivals but to instead introduce legislation against people smuggling. The chapter presents new evidence to disprove claims expressed in recent academic and media commentary that the government's *Immigration (Unauthorised Arrivals) Act 1980* (Cth) marked a particularly harsh stance and that passengers on the *VT838* were deported without due process, and draws from

ideas within the literature concerning the need for states to promote the integrity of the refugee concept.

Chapter Five contributes to international literature on refugee status determination procedure by studying the Australian government's assessment of non-Indochinese. Through a dataset created from UNHCR archives it is found that the quality of briefing material and political considerations could influence deliberations on individual cases. Chapter Six contributes to literature on in-country processing, revealing how Australia's programme in Chile and El Salvador was a means of diversifying the refugee intake but caused tensions between the Department of Immigration and the Department of Foreign Affairs.

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Extended Abstract

This thesis aims to improve historical knowledge of Australian refugee policy between 1976 and 1983, a unique and transitional moment in the nation's history and in international refugee movements. During these years the Australian government was seeking to manage the shift away from decades of racially discriminatory immigration policy to a new era of international obligations and the nation's prominent role as a country of first asylum. The Liberal/National government led by Malcolm Fraser responded to the nation's first large-scale arrival of asylum seekers and established Australia's first formal refugee policy framework. This policy included a refugee status determination procedure and a Special Humanitarian Programme that was subsequently expanded by the incoming Hawke Labor government in 1983.

Since the early 1990s Australia's refugee policy has been a source of domestic controversy and international criticism, due to the increasingly restrictive approach that successive governments have taken towards asylum seekers. These developments have drawn attention to the manner in which the Fraser government responded to refugees during the late 1970s and early 1980s, fuelling an ongoing debate in the Australian academy and the media. Many academics and journalists have argued that the Fraser government exhibited generosity in its response to asylum seekers arriving by boat,

while a small number of other commentators have argued that the government's response was grudging at best. At issue is whether policy thirty years ago could really be that different from today or, indeed, from the long years of 'White Australia' that guided the nation's immigration programme until 1973.

The problem with this debate is that it draws from a limited body of investigative scholarship and a limited range of evidence. Nancy Viviani authored the most comprehensive study of the Fraser government's refugee policy in 1984, and was able to both praise the Fraser government's commitment to international obligations and to acknowledge that refugee policy was driven by national interests, yet the handful of more recent studies of Fraser government policy have viewed pragmatism as hard-heartedness and interpreted changes in policy without reference to developments at the international level or to literature within the field of refugee studies.

This thesis will present original primary source evidence drawn from archival records of the United Nations High Commissioner for Refugees ('UNHCR') and the Australian government, and oral history interviews with former politicians, policy-makers and refugee advocates. The discussion will be informed by a broad literature from the fields of Australian history and refugee and immigration studies, which recognises that refugee policy is a product of varied political imperatives and historical context.

The thesis is divided into seven chapters, the first two of which explain the research aims, literature and historical context, method and source material. The following four chapters analyse separate but interrelated aspects of refugee policy between 1976 and 1983, based on distinct research questions, while the final chapter offers concluding remarks. Firstly, Chapter Three and Chapter Four concern the Fraser

government's response to Indochinese refugees sailing to Australia by boat. This is a subject that dominates academic and public debate over the Fraser government's legacy, because this was the first large-scale arrival of asylum seekers on Australian shores and the government did not resort to the same deterrence measures that characterise Australian policy today. Chapter Three asks, what did the Fraser government do instead? The UNHCR and United States' application of *prima facie* refugee status to those fleeing Indochina had given the Fraser government few alternatives, so in order to accept all boat arrivals while avoiding the perpetuation of a morally hazardous asylum flow and successfully managing a domestic political issue, the government had to assert administrative authority over their reception and processing. The chapter compares press releases and ministerial speeches with previously unexplored UNHCR records to reveal how the government told the public and the bureaucracy that it would only admit 'genuine' refugees, and it used the Determination of Refugee Status Committee ('DORS') to achieve this objective. DORS institutionalised the government's position on unmeritorious cases while functioning as a rigorous status determination procedure in accordance with the nation's international obligations. The fact that the Indochinese boat arrivals were allowed to stay in Australia is commonly acknowledged in the literature, but this has never been explored due to a lack of primary evidence. The chapter remedies this through a detailed exposition of the DORS process. Importantly, it is revealed that the Fraser government's unofficial policy to approve all boat arrivals as refugees caused considerable tensions amongst DORS members, and therefore the government was not just required to perform a 'balancing act' between the forces of public opinion on the issue of boat arrivals, as Viviani has observed, but also within the bureaucracy.

Chapter Four of this thesis examines the narrow range of policy options that the

Fraser government possessed when confronting an increased and commercial Indochinese exodus through 1978 and 1979. The discussion examines proposals for turning boats around and establishing detention centres, and the Fraser government's actions against people smuggling under the *Immigration (Unauthorised Arrivals) Act 1980* (Cth). These three topics have occupied the recent academic and media commentary on Fraser government policy, as they resemble measures that have been introduced by Australian governments during the last two decades. The Fraser government has been lauded for not choosing the first option to turn boats around, scrutinised for considering the second option to detain refugees, and criticised for adopting the legislation. This chapter draws on the aforementioned UNHCR documents, oral history interviews and other printed primary sources to challenge these conclusions. It asks, what were the historical and political considerations that shaped decision-making? To answer this question the chapter elucidates ideational dynamics within the Department of Immigration and the government that pushed for or against these policy options. It is found that ultimately the Fraser government viewed the *Immigration (Unauthorised Arrivals) Act* as the best means of managing the moral hazards, political imperatives and symbolic historical consequences of Australia's role as a country of first asylum. The government's decision-making was constrained by concern for the nation's international reputation and White Australian history, and how these factors would affect its ability to work with countries of first asylum in South-East Asia to manage the refugee problem. The chapter uses a combination of oral history, archival records and refugee studies literature to challenge arguments put forward by Jack Smit and Rachel Stevens concerning this legislation and the case of the *VT838*, whose passengers were deported in 1981 after it was found that they were not Indochinese refugees. The chapter directly disproves claims that the legislation against people

smugglers marked a new and particularly harsh stance against boat arrivals, and that passengers of the *VT838* were assessed without due process. In doing so the chapter draws on ideas within the literature concerning the need for states to promote the integrity of the refugee concept. The evidence presented in this chapter supports arguments put forward by Viviani, Mary Crock, Malcolm Fraser and Margaret Simons that the Fraser government was confronted with the same or greater policy problem as more recent governments, but made very different decisions on how to respond to this challenge.

Chapter Five follows on from the examination of the DORS process in Chapter Three, to investigate the assessment of non-Indochinese asylum seekers between 1978 and 1983. Within the international literature on refugee status determination, it is widely acknowledged that because states that are signatory to the 1951 United Nations Convention Relating to the Status of Refugees and/or its attendant 1967 Protocol have some discretion over how the procedure operates within their jurisdiction, it can be subject to political interests or influenced by the quality of briefing material on conditions in the applicants' countries-of-origin. Yet within the literature there are very few instances in which researchers have had access to detailed, behind-the-scenes evidence of the administrative process, and have instead relied on publicly released information on status determination outcomes. This chapter helps to address this shortcoming by analysing a dataset of 409 decisions on non-Indochinese that was created for this thesis from UNHCR archival records, and combines this evidence with oral history and Australian government archival records. This produces several findings, the first of which is that DORS' deliberations were made more difficult by a reliance on interview transcripts to assess an applicant's credibility and the receipt of briefing material that was not always objective or up-to-date. This briefing material was supplied

by the Department of Foreign Affairs, which expressly prioritised bilateral relations in its approach to refugee policy. It is posited that the inclusion of four different departmental representatives on DORS, each with different priorities and perspectives, helped to encourage vigorous debate and overcome problems associated with the briefing material. It is also found that DORS was willing to postpone a decision or make recommendations for compassionate/humanitarian leave to remain under Section 6A(1)(e) of the *Migration Act 1958* (Cth) for applicants who did not fulfil the Convention criteria but who nonetheless merited sympathetic consideration.

Chapter Five then proceeds to substantiate these findings by measuring the opinions of DORS members and the status determination outcomes relating to applicants from the six largest national groups within the DORS non-Indochinese caseload: Iran, Iraq, Pakistan, Afghanistan, Poland and El Salvador. It is found that if Foreign Affairs advised that conditions in a country were too unsafe for the applicant to return, then DORS would exercise its discretion under Section 6A(1)(e) of the *Migration Act*. It is also found that the briefing material supplied by Foreign Affairs was influential in shaping DORS deliberations on the nature of persecution experienced by particular religious or social groups within countries such as Iraq and Iran, in a manner that was unfavourable to the applicants and which led to what the UNHCR called a tendency ‘to adopt a policy of group rejection’. The chapter then explores particular incidents in which the Department of Immigration sought to avoid setting precedents that would attract a larger flow of asylum seekers from Iran and the Soviet Union, and an incident in which the Department of Foreign Affairs emphasised the diplomatic consequences for Australia if a Chinese applicant was approved for refugee status. Finally, the evidence demonstrates that the provision for compassionate/humanitarian leave to remain was sometimes used to grant an applicant refuge while avoiding these

diplomatic sensitivities or precedents. Ultimately these findings support ideas within the international literature that the quality of briefing material and political considerations can influence status determination procedure.

Concluding the analysis of refugee policy development, Chapter Six investigates the previously untold story of Australia's in-country Special Humanitarian Programme in Chile and El Salvador. The small body of literature on in-country programmes operated by Canada and the United States indicates that the practice can be designed as a means of deterring unwanted asylum flows and creating an 'alibi' for restrictive entry policies, but the evidence presented in this chapter shows that the Australian programme was not designed to counteract a flow of asylum seekers from Chile and El Salvador. It was instead part of the Fraser and Hawke government's efforts to diversify the refugee programme, away from traditional source countries in the Soviet Union and Christian minorities in the Middle East and, most recently, Indochina. The programme was also a means of responding to acute humanitarian situations that were exacerbated by United States' support for the Chilean and Salvadoran governments, as well as a means of responding to the demands of ethnic communities in Australia, and ultimately the programme contributed to a large refugee and humanitarian intake from Chile and El Salvador between 1983 and the early to mid-1990s.

Chapter Six draws from the oral history of former Immigration officials closely involved with the in-country programme and former Minister for Immigration Stewart West to chart the logistics and administrative criteria involved in processing Chileans and Salvadorans in their home countries. The chapter also discusses the Canadian programme in El Salvador, using interviews with two former Canadian officials. Importantly, the in-country programme was not promoted by the Australian government as a means of enhancing the nation's reputation as a generous country of resettlement.

Instead, through a combination of oral history and archival evidence the chapter finds that the programme was ‘kept quiet’ for political reasons at the domestic and international level. The Hawke government’s orientation toward Latin America was interpreted by the Liberal/National Coalition, then in Opposition, in distinct ideological terms, and the chapter collates archival evidence which shows that the programme also caused tensions within the Department of Foreign Affairs, and between Foreign Affairs and Immigration, due to sensitivities over bilateral relations. This was part of a larger friction between the departments over the control of refugee policy that had endured for several years. The evidence suggests that then Foreign Minister Bill Hayden supported West’s initiative in Latin America despite the attitudes within his department, but there was no political will for a similar in-country initiative for East Timorese, and therefore it is posited that Foreign Affairs’ approach to refugee policy was flexible and dependent on a range of both domestic and external considerations

Ultimately Chapter Six asks, what does the in-country programme reveal about the development of Australian refugee policy during the early 1980s? It is argued that the in-country programme is extremely significant to Australia’s immigration history, for it demonstrates that during a unique and transitional period the Australian government was able to pursue an ambitious and activist refugee policy. Given the political sensitivities that the in-country programme provoked, the chapter queries whether it represents the limits of refugee policy-making at that time. It is argued that the story of the in-country programme can made an essential contribution to the historical and political debate over the Australian government’s capacity in this policy area.

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List of Abbreviations

Department of Immigration	Department of Immigration 1945 – 1974
	Department of Labor and Immigration 1974 – 1975
	Department of Immigration and Ethnic Affairs 1975 – 1987
	Department of Immigration, Local Government and Ethnic Affairs 1987 – 1993
	Department of Immigration and Ethnic Affairs 1993 – 1996
	Department of Immigration and Multicultural Affairs 1996 – 2001
	Department of Immigration, Multicultural and Indigenous Affairs 2001 – 2006
	Department of Immigration and Multicultural Affairs 2006 – 2007
	Department of Immigration and Citizenship 2007 – 2013
Department of Foreign Affairs	Department of Immigration and Border Protection 2013 – present
PM&C	Department of Foreign Affairs 1970 – 1987
	Department of Foreign Affairs and Trade 1987 – present
Boat arrivals	Department of the Prime Minister and Cabinet
	Variously known in Department of Immigration publications from 1978 to 2013 as:
	Refugee boats
	Boatpeople
	Unauthorised arrivals
UNHCR	Unauthorised Maritime Arrivals
	Irregular Maritime Arrivals
DORS	United Nations High Commissioner for Refugees
RSD	Determination of Refugee Status Committee
	Refugee Status Determination

SHP	Special Humanitarian Programme
Refugee Branch	Branch within the Department of Immigration and Ethnic Affairs, known as: Refugee and Special Programs Branch, 1978 to 1980 Refugees and International Branch, 1981 to 1984
SRV	Socialist Republic of Vietnam
Goodwin-Gill Collection <i>(within footnotes)</i>	University of Oxford, Bodleian Social Science Library, RSC Collection, Goodwin-Gill Collection

Please note that debates within the Australian Parliament will be cited in the footnotes using a commonly accepted Australian style:

Australia. *Commonwealth Parliamentary Debates*, [House of Representatives or Senate] [DATE], [PAGE]

Chapter One: Introduction

Since the early 1990s Australia's refugee policy has been the source of domestic controversy and international criticism due to the increasingly restrictive approach that successive governments have taken towards asylum seekers.¹ Legal scholar Mary Crock has described the implementation of measures such as indefinite mandatory detention and offshore processing over the last two decades as a 'brutalisation' of both Australian migration law and government policy.² Matthew J. Gibney wrote that Australia has become 'arguably the most unwelcoming country towards asylum seekers in the Western world'.³ These developments have drawn attention to an earlier phase in Australia's immigration history, when the Liberal/National government led by Malcolm Fraser, in power from 1975 to 1983, responded to the nation's first large-scale arrival of asylum seekers and established Australia's first formal refugee policy framework.

The period 1976 to 1983 was a unique and transitional moment in Australian immigration history and in international refugee movements. The Fraser government was confronted with an unprecedented problem when Australia became a prominent country of first asylum in 1976 due to the proximate Indochinese refugee exodus that had begun the previous year.⁴ This was just three years after the racially discriminatory

¹ For example, in August 2013 the United Nations High Commissioner for Human Rights found that Australia's indefinite detention of 46 asylum seekers amounted to 'cruel, inhuman and degrading treatment', a violation of Article 7 of the International Covenant on Civil and Political Rights – see further: United Nations High Commissioner for Human Rights, *Australia's detention of 46 refugees cruel and degrading, UN rights experts find*, Geneva, 22 August 2013, accessed 23 September 2013, at <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=13648>>.

² M. Crock, 'Refugees in Australia: Of Lore, Legends and the Judicial Process', presented at the Annual Colloquium of the Australian Judicial Conference, Darwin, N.T., 31 May 2003, p. 8. See further: M. Crock, 'Apart from Us or a Part of Us? Immigrants' Rights, Public Opinion and the Rule of Law, *International Journal of Refugee Law*, 10 (1998), pp. 67, 72.

³ M. J. Gibney, *The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees* (Cambridge, 2004), p. 167.

⁴ The concept of first asylum is a customary principle of international law, and has been defined in Article 26 of the 2005 European Union Council Directive on Minimum Standards on Procedures for Granting and Withdrawing Refugee Status as a country in which an applicant for asylum has been recognised as a

‘White Australia Policy’ had been abolished by the Labor government of Gough Whitlam. Under Whitlam, Australia had also ratified the United Nations' 1967 Protocol to the 1951 Convention Relating to the Status of Refugees. The Protocol had extended the definition of refugee under Article 1A(2) of the Convention, by removing the temporal and geographic limitations that had applied the instrument primarily to those who became refugees as a consequence of events in Europe before 1951.⁵ To illustrate the dilemma that the Australian government now faced it is worth briefly quoting a frank excerpt from the Department of Immigration’s annual report of 1977-78, *Review* ‘78:

We are locked into international obligations towards refugees which, we dare say, never envisaged the movement of people on the large scale now being experienced.... Australia’s credibility and status as a civilised, compassionate nation are under test.⁶

Ever since this time successive Australian governments have been preoccupied, to varying degrees, with the difficult nexus between the legacy of 'White Australia', the nation's international obligations under refugee law and the globalisation of forced migration flows.

The period 1976 to 1983 fully encompasses the Fraser government’s transition from an ad hoc approach to refugee admission, as practiced by previous governments, to

refugee and can avail themselves of that protection, or ‘enjoys sufficient protection in that country, including benefiting from the principle of *non-refoulement*’ (the obligation on a state not to return an individual to territories where they may be at risk of torture, serious harm or persecution) – see further: G. S. Goodwin-Gill and J. McAdam, *The Refugee in International Law*, third edition (Oxford, 2007), pp. 218-9, 727-8.

⁵ The amended definition is cited here as a means of informing the discussion of refugee status determination in Chapters Three and Five of this thesis: ‘Any person who... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence... is unable or, owing to such fear, is unwilling to return to it’ – see further: United Nations 1951 Convention Relating to the Status of Refugees, Article 1A(2); United Nations 1967 Protocol Relating to the Status of Refugees, Article 1(2).

⁶Australia. Department of Immigration and Ethnic Affairs, *Review* ‘78 (Canberra, 1978), p. 26.

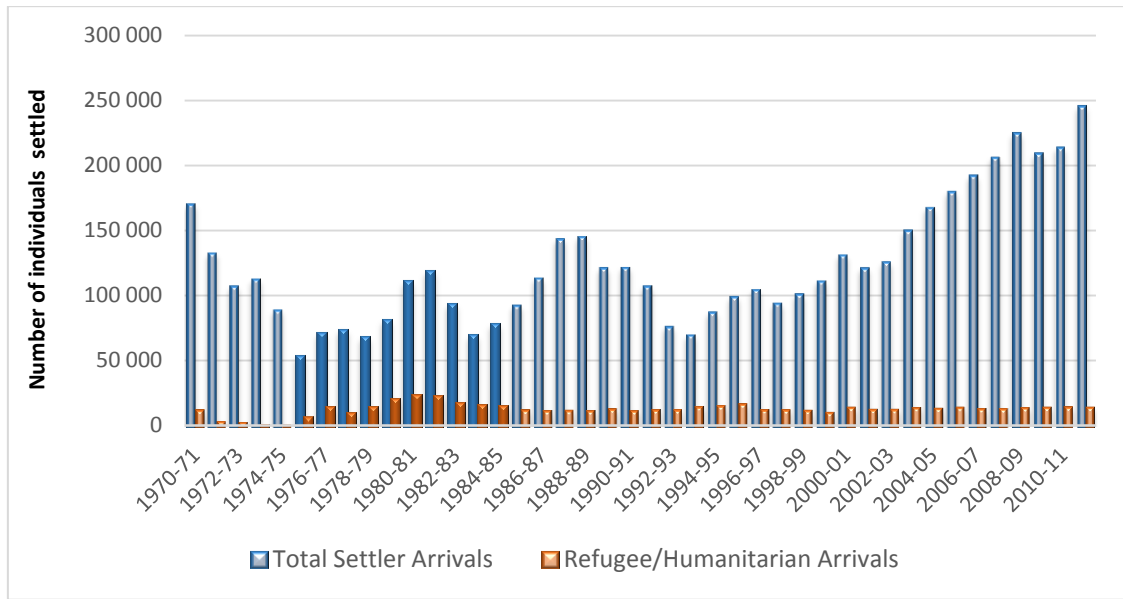
a formal refugee policy, refugee status determination procedure and a Special Humanitarian Programme that was subsequently expanded by the incoming Hawke Labor government in 1983. The policy and mechanisms created during these years form the foundation of Australia's refugee and humanitarian programme today. Importantly, studies of Australian immigration history concur that during these years the nation's new non-discriminatory immigration policy endured its first real test, through the admission of Indochinese through the refugee programme.⁷ By 1984 the percentage of Asians within Australia's total annual settler intake, which included the refugee programme, had risen to 43 percent, a far cry from the single digits of the White Australia era.⁸

Australia has resettled more than 750,000 refugees and persons in humanitarian need since the end of the Second World War.⁹ Figure 1 below places the years 1976 to 1983 in historical context. Beginning at the tail end of the large post-Second World War migration programme, the graph represents how the refugee/humanitarian stream of the migration programme compares to the total migration programme over time. Refugees and those admitted under broader humanitarian categories were admitted at an average annual rate of 16,716 between 1976-77 and 1983-84, before steadying to an average annual rate of 12,726 from that point on. Figure 2 below shows that during the period 1976 to 1983, the refugee and humanitarian intake comprised an unusually large proportion of the total migration programme each year, reaching a height of almost 25 per cent in 1979-80. The years 1976 to 1983 were a turning point in this story.

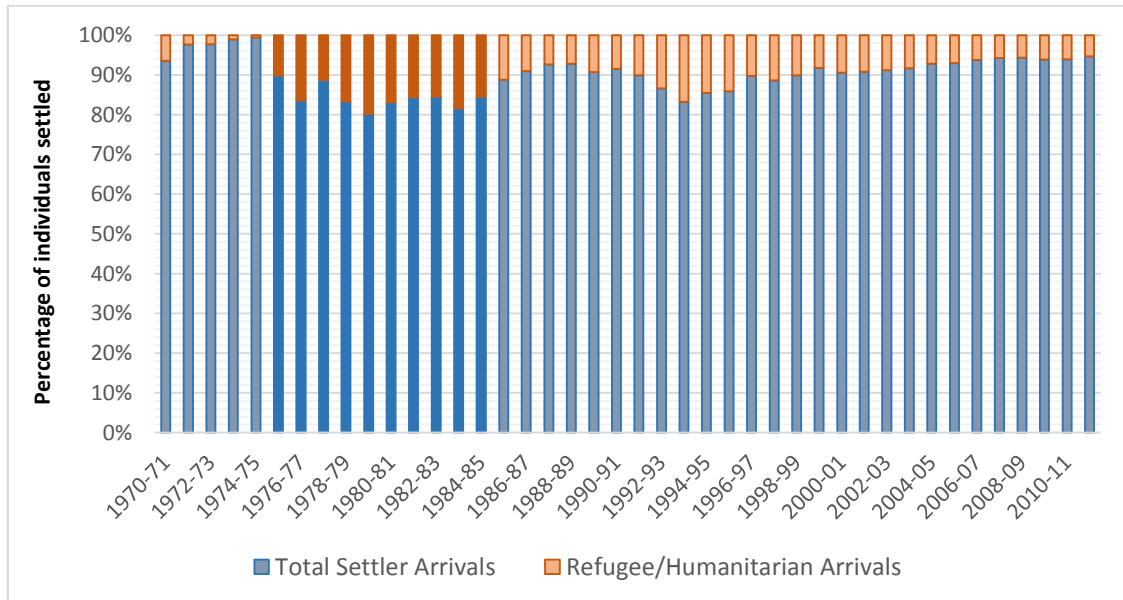
⁷ G. Tavan, *The Long Slow Death of White Australia* (Carlton North, 2005), p. 205; J. Jupp, *Immigration* (Sydney, 1991), p. 87; J. Jupp, *From White Australia to Woomera: The Story of Australian Immigration* (Cambridge, 2002), p. 42; N. Viviani, *The Long Journey: Vietnamese Migration and Settlement in Australia* (Carlton, 1984), p. 109; Viviani, *The Indochinese in Australia, 1975 to 1995: From Burnt Boats to Barbecues* (Melbourne, 1996), p. 1.

⁸ Australian Bureau of Statistics, *Yearbook Australia 1986* (Canberra, 1986), p. 117.

⁹ Australia. Department of Immigration and Citizenship, *Australia's Humanitarian Program 2013-14 and Beyond*, Information Paper (Canberra, 2012), p. 17.

Figure 1: Refugee/Humanitarian Arrivals in historical context, 1970-71 to 2011-12

Source: All Total Settler Arrivals and Refugee/Humanitarian Arrivals from 1977-78 taken from Department of Immigration and Citizenship statistics.¹⁰ Refugee/Humanitarian Arrivals for 1970-71 to 1974-75 taken from 'Assisted Passage' figures in Australian Bureau of Statistics *Year Book Australia* 1975-76, p. 166. Refugee/Humanitarian Arrivals for 1975-76 to 1976-77 taken from Department of Immigration and Ethnic Affairs annual reports 1976 and 1977.

Figure 2: Refugee/Humanitarian Arrivals as a percentage of Total Settler Arrivals, 1970-71 to 2011-12

Source: As for Figure 1.

¹⁰ Australia. Department of Immigration and Citizenship, *Historical Migration Statistics*, excel table (Canberra, 2012).

The manner in which the Fraser government responded to refugees, as compared with later governments, has become an important part of debate in the Australian academy and the media over the nation's refugee policy. Former Prime Minister Fraser has used his own record to be a vocal critic of current policy.¹¹ Many academics and journalists have argued that the Fraser government exhibited 'exemplary generosity' toward Indochinese arriving in Australia by boat (hereafter 'boat arrivals').¹² A small number of other commentators have argued that the government's response was 'grudging' at best.¹³ At issue is whether the approach to refugees thirty-five years ago could really be less restrictive and more generous than the approach today or, indeed, than the long years of 'White Australia' that guided the nation's immigration programme until 1973.

The problem with this debate is that it draws from a limited body of investigative scholarship. The most comprehensive study of the Fraser government's refugee policy, political scientist Nancy Viviani's *The Long Journey: Vietnamese Migration and Settlement in Australia*, was published in 1984. Through the use of news

¹¹ For example, see further: O. Laughland, 'Malcolm Fraser on Coalition Asylum Plans: No Limits to the Inhumanity', *The Guardian*, Australian edition, 16 August 2013, accessed 26 September 2013, at: <<http://www.theguardian.com/world/2013/aug/16/malcolm-fraser-coalition-asylum-policy>>; M. Fraser, 'Vietnamese Refugees were a Boon not a Burden', *The Age*, 29 July 2013, accessed 27 September 2013, at: <<http://www.theage.com.au/federal-politics/political-opinion/vietnamese-refugees-were-a-boon-not-a-burden-20130728-2qsh4.html>>.

¹² R. Manne, 'Tragedy of Errors: Australia's Shipwrecked Refugee Policy', *The Monthly* (March 2013); R. Manne, 'Asylum Seekers', *The Monthly* (Sept. 2010); B. York, 'The myth of our humanitarian tradition', *The Age*, 27 June 2003, accessed 6 October 2013, at <<http://www.theage.com.au/articles/2003/06/26/1056449364608.html>>; M. Steketee, 'History Not Always Meant To Be Easy', *The Australian*, 20 March 2010, accessed 6 October 2013, at: <<http://www.theaustralian.com.au/arts/books/history-not-always-meant-to-be-easy/story-e6frg8nf-1225841454998>>; M. Sketete, 'Malcolm Fraser The Unsung Hero of Humane Refugee Policy', *The Australian*, 2 January 2010, accessed 6 October 2013, at <<http://www.theaustralian.com.au/opinion/columnists/fraser-the-unsung-hero-of-humane-refugee-policy/story-e6frg7ax-1225815259755>>. See also: R. Manne, *Making Trouble: Essays Against the New Australian Complacency* (Collingwood, 2011), p. 118.

¹³ R. Stevens, 'No, the Fraser era was not a golden age for asylum seekers', *The Age*, 2 February 2012, accessed 14 September 2013, at: <<http://www.smh.com.au/federal-politics/political-opinion/no-the-fraser-era-was-not-a-golden-age-for-asylum-seekers-20120201-1qtce.html>>; H. G. P. Colebatch, 'The Left Rewrites its History on Refugees', *Quadrant*, 54, no. 10 (2010); S. Macintyre, 'Fear of invasion has given way to fear of the refugee', *The Age*, 20 June 2003, viewed 14 September 2013, available at: <<http://www.theage.com.au/articles/2003/06/19/1055828433377.html>>.

media, government statements and an examination of resettlement outcomes, and writing before a comparison with later governments was even possible, Viviani deemed the Fraser government's refugee policy to have been a success:

The first and most enduring conclusion to be drawn, is that Australian governments have upheld international law and custom on refugees... It has not only proved of immense humanitarian benefit... [it] has been an example to other states.¹⁴

Viviani's assessment has been echoed by prominent scholars writing on refugee law or immigration policy more generally, such as Crock, Gibney and James Jupp, among others. Despite the fact that archival records pertaining to the Fraser government are now publicly available, the depth and quality of Viviani's research on this subject remains unsurpassed.¹⁵

Viviani was able to both praise the Fraser government's commitment 'to international law and custom' and to acknowledge, in a 1985 paper, that Australia's refugee policy is driven by the self-interested desire to offset international criticism and manage asylum flows.¹⁶ Viviani did not see these objectives as being necessarily incompatible. This is an important point that will be taken into account in this thesis, because it recognises that refugee policy is a product of varied political imperatives and historical context. Unfortunately the point has been lost on scholars such as Jack Smit and Rachel Stevens, who have authored some of the very few recent papers on the Fraser government's legacy, as they have viewed pragmatism as hard-heartedness and interpreted changes in policy and in government statements in isolation, without

¹⁴ Viviani, *The Long Journey*, p. 113. See also: Viviani, *The Indochinese in Australia, 1975 to 1995*, pp. 8-9.

¹⁵ Crock, 'Refugees in Australia', p. 8; Jupp, *From White Australia to Woomera*, pp. 43, 45; Gibney *The Ethics and Politics of Asylum*, p. 167; A. Edwards, 'Tampering with Refugee Protection: the case of Australia', *International Journal of Refugee Law*, 15, no. 2 (2003), pp. 192-193; P. Mares, *Borderline: Australia's treatment of refugees and asylum seekers* (Sydney, 2001), p. 73.

¹⁶ N. Viviani, 'The Vietnamese in Australia: new problems in old forms', in I. H. Burnley, S. Encel and G. McCall (eds.), *Immigration and Ethnicity in the 1980s* (Melbourne, 1985), p. 242

reference to developments at the international level or to literature within the field of refugee studies.¹⁷

Limited scholarship has perpetuated reliance on a limited range of evidence, and as a result arguments in the literature and the media have ossified around a few key policy options featured in Fraser government archival records, including the response to commercial shiploads of refugees, the establishment of detention centres and legislation against people smugglers. Important aspects of the Fraser government's refugee policy, such as its status determination system or the Special Humanitarian Programme, have been overlooked. The Hawke Labor government's in-country programme in Latin America, which was established in 1983, has also been neglected. Inter-departmental dynamics and the role of the Department of Foreign Affairs in refugee policy have not been explored. It is essential to take these overlooked factors into account if we are to reach a more informed understanding of the history of Australia's refugee policy.

This thesis aims to improve historical knowledge of Australian refugee policy between 1976 and 1983. To achieve this aim, the thesis will draw on original primary source evidence from archival records of the United Nations High Commissioner for Refugees (hereafter 'UNHCR') and the Australian government, and from oral history interviews with former politicians, policy-makers and refugee advocates. The thesis will analyse this evidence using both qualitative and basic quantitative methods as a means of gaining insight into the decision-making of politicians and public servants, and the role of political interests in Australian refugee policy.

The four main chapters in this thesis will address the following questions in turn:

¹⁷ Stevens, 'No, the Fraser era was not a golden age for asylum seekers'; J. Smit, 'Malcolm Fraser's response to commercial refugee voyages', *Journal of International Relations*, 8, no. 2 (2010), pp. 76-103; Stevens, 'Political debates on asylum seekers', pp. 526-541.

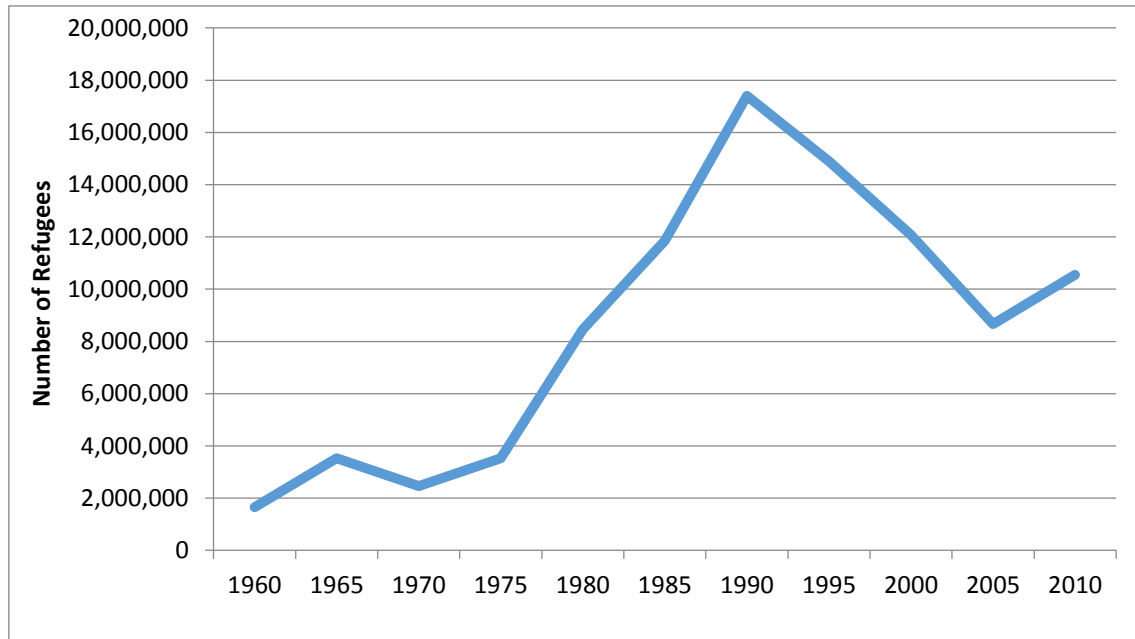
firstly, if the Fraser government did not manage boat arrivals using the restrictive deterrence measures that were adopted by later governments, what did it do instead? Secondly, what were the historical and political considerations that shaped decision-making? Thirdly, what were the administrative, political and humanitarian influences on refugee status determination procedure for non-Indochinese applicants? And finally, what does the story of Australia's in-country Special Humanitarian Programme tell us about the development of refugee policy during the early 1980s?

1. Historical Context and Literature

This thesis is an historical study that draws from a broad literature within the fields of Australian history and immigration and refugee studies. In doing so this thesis places Australian refugee policy within the context of the twentieth century's 'era of refugees', described by the philosopher Hannah Arendt as a period in which the refugee problem became 'too numerous to be handled by an unofficial practice destined for exceptional cases', no longer confined to isolated cases of political and religious persecution.¹⁸ The change in the estimated global numbers of refugees over time, according to UNHCR statistics, is represented in Figure 3 below:

¹⁸ H. Arendt, *The Origins of Totalitarianism* (New York, 2004), p. 373.

Figure 3: Estimated global number of refugees (per million) at five year intervals, 1960 to 2010



Source: Figures are taken from the United Nations High Commissioner for Refugees' Office of Statistics.¹⁹ Figures are at five year intervals, and include those defined as refugees under the 1951 United Nations Convention and 1967 Protocol, the 1969 Organisation of African Unity Convention, stateless persons, and persons enjoying temporary or complementary protection

The 1980s saw the multi-disciplinary field of refugee studies flourish, as scholars and practitioners charted the changing nature of refugee movements and the responses of receiving states over the course of the twentieth century. The years following the Second World War have been characterised by both David A. Martin and Astri Suhrke as an essentially 'Eurocentric' and Cold-War approach to permanent resettlement of Displaced Persons and 'Iron-Curtain Nationals', in which receiving countries were driven by moral obligation, cultural identification and socio-economic self-interest.²⁰ In contrast, the 1980s has been characterised for the increased volume of refugee movements and the direct arrival of 'jet-age' asylum seekers into Western

¹⁹ United Nations High Commissioner for Refugees, *Total Refugee Population by Country of Origin, 1960 - 2010*, excel table (Geneva, 2011).

²⁰ D. A. Martin, 'The New Asylum Seekers' in D. A. Martin (ed.), *The New Asylum Seekers: Refugee Law in the 1980s*, The Ninth Sokol Colloquium on International Law (Dordrecht, 1988), pp. 2-3. See also: A. Suhrke, 'Burden-sharing during refugee emergencies', *Journal of Refugee Studies*, 11, no. 4 (1998), pp. 404, 413; N. L. Zucker and N. F. Zucker, 'From Immigration to Refugee Redefinition: A History of Refugee and Asylum Policy in the United States', in G. Loescher (ed.), *Refugees and the Asylum Dilemma in the West* (University Park, Penn., 1992), pp. 54-69.

countries, and the subsequent adoption of restrictive entry policies and deterrence measures by receiving states that were further developed through the 1990s and into the 2000s.²¹ Ultimately, as Gil Loescher wrote in 2003, where once it was politically valuable for resettlement countries to exhibit a tolerance for refugees, the end of the Cold War and the greater mobility of asylum seeking ensured that a state's political interest became invested in keeping them out.²²

1.1 Obligations towards refugees

The era of refugees, and the development of state responses to them, generated pressing philosophical questions on the nature of state obligations towards refugees. It is worth considering these here, because at its core the debate over the Fraser government's legacy is about Australia's capacity and willingness to accept refugees. These questions are based in the concept of a state as a bounded territory and the population within it as a political community of membership, fortified by the imagined threat of aliens 'without and within'.²³ This political community, the state, acts in the interests of its members, its citizens. Its responsibilities thus include controlling entrance as a means of protecting the community's collective identity.²⁴ Control of entry

²¹ Martin has posited that the increased volume and mobility of refugee movements may be due to a range of causes such as the attraction of 'quota' refugee programmes in countries of resettlement, more affordable international transportation, and the commercialisation of people smuggling – see further: Martin, 'The New Asylum Seekers', pp. 2-6; M. J. Gibney, 'The State of Asylum: Democratisation, Judicialisation and Evolution of Refugee Policy', in S. Kneebone (ed.), *The Refugees Convention 50 Years On: Globalisation and International Law* (Aldershot, 2003), pp. 19- 30; Gibney, *The Ethics and Politics of Asylum*, p. 4; A. Suhrke and A. Zolberg, 'Issues in Contemporary Refugee Policies', in A. Bernstein and M. Weiner, *Migration and Refugee Policies: An Overview* (London and New York, 1999), pp. 143-145; C. Joppke, 'Asylum and State Sovereignty: A Comparison of the United States, Germany and Britain', *Comparative Political Studies*, 30, no. 3 (1997), pp. 260-261.

²² G. Loescher, 'UNHCR at Fifty: Refugee Protection and World Politics', in N. Steiner, M. Gibney and G. Loescher (eds.), *Problems of Protection: The UNHCR, Refugees and Human Rights* (New York and London, 2003), p. 11. See also: G. Loescher, *Beyond Charity: International Cooperation and the Global Refugee Crisis* (New York and Oxford, 1993), pp. 7-9;

²³ P. Marfleet, *Refugees in a Global Era* (Hampshire, 2006), p. 263. See further: H. Sidgwick, *The Elements of Politics* (London, 1891), pp. 211-215; C. Tazreiter, *Asylum Seekers and the State: The Politics of Protection in a Security Conscious World* (Aldershot, 2004), p. 139.

²⁴ Gibney, *The Ethics and Politics of Asylum*, p. 28. See also: Sidgwick, *The Elements of Politics*, pp. 295-297; P. Cole, *Philosophies of Exclusion: Liberal Political Theory and Immigration* (Edinburgh, 2000), p. 4.

was a founding principle of the Australian nation in 1901 and it continues to underpin the administration of immigration policy today. Immigration scholars such as Jupp, Freda Hawkins and Robert Birrell have observed that Australia's population has been 'planned and engineered to a greater extent than is true for almost anywhere else'.²⁵

The refugee stands outside this political community as a non-citizen, unconnected to its shared history and culture and faced with the burden of substantiating their claim for protection.²⁶ In 1951 Arendt argued that the experiences of the Second World War had shown that natural human rights are not inviolable, but dependent upon national rights. She wrote that because nationality confers legal rights and political status, for refugees 'the abstract nakedness of being nothing but human [is] their greatest danger'.²⁷ The right of the state to preference its own interests, including living standards and internal cohesion, over the admission of necessitous non-citizens has been explored by communitarian philosopher Michael Walzer, Gibney and others.²⁸ In 1988 the philosophers Peter Singer and Renata Singer offered a persuasive utilitarian argument that the basic needs of refugees will always be greater than the material interests of national residents and the cohesion of the national community, and that therefore Australia and other countries should at least double their refugee intake.²⁹ Of

²⁵ Jupp, *From White Australia to Woomera*, p. 17; F. Hawkins, *Critical Years in Immigration: Canada and Australia Compared* (Kingston, 1988), p. xxxvii; B. Birrell, 'Immigration Control in Australia', *Annals of the American Academy of Political and Social Sciences*, 534 (1994), p. 109. See also: K. Cronin, 'A Culture of Control: An Overview of Immigration Policy-Making', in J. Jupp and M. Kabala (eds.), *The Politics of Australian Immigration* (Canberra, 1993), p. 84.

²⁶ See further: Gibney, *The Ethics and Politics of Asylum*, p. 27; Tazreiter, *Asylum Seekers and the State*, p. 139.

²⁷ Arendt, *The Origins of Totalitarianism*, pp. 380-381. See also: M. Walzer, *Spheres of Justice: A Defence of Pluralism and Equality* (Oxford, 1983), pp. 31-32.

²⁸ Walzer, *Spheres of Justice*, pp. 48-51; Gibney, *The Ethics and Politics of Asylum*, pp. 59-64; M. Weiner, *The Global Migration Crisis: Challenges to States and to Human Rights* (New York, 1995), pp. 169-182. See further: A. Zolberg, 'International Migrations in Political Perspective', in M. M. Kritz, C. B. Keely and S. M. Tomasi, *Global Trends in Migration: Theory and Research on International Population Movements* (Staten Island, NY, 1981), pp. 7, 23; Tazreiter, *Asylum Seekers and the State*, p. 139.

²⁹ P. Singer and R. Singer, 'The Ethics of Refugee Policy', in M. Gibney (ed.), *Open Borders? Closed Societies? The Ethical and Political Issues* (New York, 1988), pp. 116-127. See also: Gibney, *The Ethics and Politics of Asylum*, pp. 62-63.

most relevance to this thesis is the idea that states are ethically bound to implement clearly defined refugee criteria, lest they create a moral hazard by encouraging prospective asylum seekers to engage in risky or fraudulent behaviour.³⁰ This will be referenced in Chapters Three and Four.

Refugees have become additionally problematic for resettlement nations because their claims to protection challenge the state's sole jurisdiction over entry. For instance, the customary principle of *non-refoulement*, as articulated in Article 33 of the 1951 Convention obligates a state not to return individuals to territories where they may be at risk of torture, serious harm or persecution.³¹ According to Guy S. Goodwin-Gill, while the Convention 'does not guarantee a right of entry in so many words', it does place obligations upon states to respond to those seeking asylum in a certain manner, including a duty not to impose penalties for the mode of arrival.³² Thus through the system of mandatory detention and previous policies of temporary protection Australia has been in breach of the Convention in several respects.³³ Crock has consistently argued that the Australian government has come to view its Convention obligations as 'a direct threat' to its control of the migration programme, due to the spontaneity, provenance and volume of onshore arrivals, and that this antagonism has informed legislation and jurisprudence since the late 1980s.³⁴ These developments have taken place despite the fact, as Crock and co-author Ben Saul have emphasized, that onshore

³⁰ Weiner, *The Global Migration Crisis*, pp. 173-4.

³¹ E. Lauterpacht and D. Bethlehem, 'The scope and content of the principle of non-refoulement: Opinion', in E. Feller, V. Türk and F. Nicholson (eds.), *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (Cambridge, 2003), p. 89; G. S. Goodwin-Gill, 'The Right to Seek Asylum: Interception at Sea and the Principle of Non-Refoulement', *International Journal of Refugee Law*, 23 (2011), pp. 444-5.

³² G. S. Goodwin-Gill, *International Law and the Movement of People between States* (Oxford, 1978), pp. 137-8.

³³ G. S. Goodwin-Gill, 'Article 31 of the 1951 Convention Relating to the Status of Refugees: non-penalisation, detention and protection', in E. Feller, V. Türk and F. Nicholson (eds.), *Refugee Protection in International Law*, pp. 209, 216.

³⁴ Crock, 'Apart from us or a part of us?', pp. 67, 72; M. Crock, *Immigration and Refugee Law in Australia* (Sydney, 1998), pp. 9, 123 -127; M. Crock and B. Saul, *Future Seekers: Refugees and the Law in Australia* (Sydney, 2002), p. 11.

refugees ‘are also the *only* refugees that Australia is *legally obliged* to protect under international law’.³⁵

1.2 Refugee policy and the national interest

It is widely accepted in refugee studies scholarship that a nation’s response to refugees is shaped by notions of national interest, and two interpretations are directly relevant to this thesis. The first is that refugee policy serves to enhance a nation’s international reputation. In a 1998 paper Suhrke and Aristide Zolberg wrote that refugee policy offers a state the opportunity to ‘overcome its past and achieve legitimacy in the eyes of its neighbours and the international community’.³⁶ This idea has been echoed in the work of Jupp and legal philosopher Catherine Dauvergne, who wrote that the point of refugee policy is to ‘mark the nation as good, prosperous, and generous’, and the argument is substantiated by the Australian government’s active promotion of the annual resettlement programme as a clear representation of ‘Australia’s generous nature’ and ‘culture of toleration’.³⁷

The second interpretation concerns other political, economic and social imperatives. In Loescher’s work, he examines how the admission of refugees to resettlement countries during the twentieth century has been customarily based on

³⁵ Crock and Saul, *Future Seekers*, p. 10. See also: M. Crock, ‘The Refugees Convention at 50: Mid-Life Crisis or Terminal Inadequacy? An Australian Perspective’, in S. Kneebone (ed.), *The Refugees Convention 50 Years On*, pp. 55-58.

³⁶ Suhrke and Zolberg, ‘Issues in Contemporary Refugee Policies’, p. 144.

³⁷ Indeed, Danielle Every has noted that the Australian government uses its long-standing involvement in refugee affairs to argue that a restrictive approach to asylum seekers is charitable and defensible - see further: Jupp, *From White Australia to Woomera*, p. 182; C. Dauvergne, *Humanitarianism, Identity, and Nation: Migration Laws in Canada and Australia* (Vancouver, 2005), p. 7; A. Vanstone, forward to Department of Immigration, Multicultural and Indigenous Affairs, *Refugee and Humanitarian Issues: Australia’s Response* (Canberra, 2005), p. 2; K. Rudd, Australia. *Commonwealth Parliamentary Debates*, House of Representatives, 29 October 2009, p. 11547; D. Every, ‘A Reasonable, Practical and Moderate Humanitarianism: The Co-option of Humanitarianism in the Australian Asylum Seeker Debate’, *Journal of Refugee Studies*, 21, no. 2 (2008), pp. 211-213. For a different take on this, see further: K. Neumann, *Refugee Advocacy and the Sound of Good Intentions*, Paper delivered at Foundation House 4 October 2006, La Trobe University Refugee Health Research Centre Seminar Series.

‘political, ethnic and ideological sympathies’.³⁸ This idea was explored in the literature after the United States re-calibrated its approach to refugees in the 1980s away from a traditional bias toward individuals fleeing Soviet states, to individual case assessment of asylum seekers and large-scale resettlement of refugees from outside Europe.³⁹ A 1989 paper by Norman L. Zucker and Naomi F. Zucker concluded that in the post-Cold War era the United States’ refugee policy was shaped by a ‘troika’ of interests: foreign policy, domestic community pressure and cost factors.⁴⁰ Although the budgetary side of this equation is beyond the scope of this thesis, Zucker and Zucker’s emphasis on the nexus between foreign policy and domestic imperatives has been echoed by Loescher, and offers a simple and very convincing framework for the analysis of how Australia developed refugee policy in the late 1970s and early 1980s.⁴¹ These ideas will be reflected in Chapters Three, Four, Five and Six of this thesis.

In the Australian context, the work of Viviani is in essential agreement with this framework. Viviani wrote in 1985 that the response to the Indochinese was based on a balance between international pressure and domestic opinion, which was shaped in part by economic, racial and humanitarian interests.⁴² Unlike Zucker and Zucker’s assessment of the United States, Viviani did not consider these factors to have negatively impacted on Australia’s refugee policy at that time. In his 2002 book *From White Australia to Woomera* Jupp elucidated on the imperatives that shape this policy area, writing that refugee resettlement is designed to create ‘a co-operative image’ for

³⁸ Loescher, *Beyond Charity*, pp. 20, 39, 131, 156; Loescher, ‘UNHCR at Fifty: Refugee Protection and World Politics’, p. 4-5. See also: G. Loescher and J. A. Scanlon, *Calculated Kindness: Refugees and America’s Half-Open Door, 1945 to the present* (New York and London, 1986), pp. 25-33.

³⁹ See further: M. Gibney and M. Stohl, ‘Human Rights and U.S. Refugee Policy’, in M. Gibney (ed.), *Open Borders? Closed Societies?*, pp. 151-183. Michael S. Teitelbaum has explored the relevance of foreign policy considerations in preventing or causing forced migration – see further: M. S. Teitelbaum, ‘Immigration, Refugees and Foreign Policy’, *International Organisation*, 38, no. 3 (1984), pp. 429-450.

⁴⁰ N. L. Zucker and N. F. Zucker, ‘The Uneasy Troika in U.S. Refugee Policy: Foreign Policy, Pressure Groups and Resettlement Costs’, *Journal of Refugee Studies*, 2, no. 3 (1989), pp. 359-372.

⁴¹ Loescher, *Beyond Charity*, p. 156.

⁴² Viviani, ‘The Vietnamese in Australia’, pp. 239-242.

Australia within the international community in keeping with the nation's status as a party to the Convention and Protocol, to address the demands of migrant communities and to contribute to the population and workforce.⁴³ The latter is in keeping with the objectives of planned entry, social cohesion and economic growth that characterise the general immigration programme.⁴⁴

The idea that national interests shape refugee policy is particularly important in the context of Australia's response to refugees during the period under consideration for this thesis. This is because Fraser has long stated that his government's admission of refugees from Vietnam was part of a moral and ethical obligation given Australia's military involvement in the United States' war in that country.⁴⁵ The arguments put forward by Dauvergne, Suhrke and Zolberg, Loescher, Zucker and Zucker, Viviani and Jupp would suggest that these obligations were underpinned by self-interest, and that a large Indochinese resettlement programme was a means of building a 'co-operative image' in the international community while managing a regional refugee outflow and demands within the Australian community that the nation should aid the Indochinese. It is hoped that the discussion in Chapters Three and Four will demonstrate that the interpretations offered by Fraser and by the refugee studies literature are compatible, and that a humane and ethical refugee policy can serve other national interests.

1.3 Refugees in Australian history

To examine how Australian refugee policy has been based on this balance between foreign policy and domestic considerations, including social and economic imperatives, it is necessary to turn to the historical literature and what this tells us about

⁴³ Jupp, *From White Australia to Woomera*, pp. 6, 182.

⁴⁴ *ibid*, p. 6.

⁴⁵ Interview with M. Fraser, 14 December 2010, Melbourne, Australia; M. Fraser and M. Simons, *Malcolm Fraser: The Political Memoirs* (Carlton, 2010), p. 420; Steketee, 'Malcolm Fraser, the Unsung Hero of Humane Refugee Policy'.

Australia's response to refugees over time. In doing so we must note the difference between the response to refugees selected for resettlement outside Australia, and those who claim protection onshore. Firstly and most importantly, between 1901 and 1973 admission to Australia was guided by a White Australia Policy, which was implemented through dictation tests and calculated nomenclature at the point of admission or in randomised inspections and which was underpinned by the *Immigration Restriction Act 1901* (Cth) and its successor the *Migration Act 1958* (Cth).⁴⁶ The concept was inspired by what Arendt called the 'race-thinking' of the late nineteenth and early twentieth century.⁴⁷ It was born within an international mood of racial solidarity between settler nations and within the international labour movement.⁴⁸ Ideas of racial superiority and exclusivity took hold in Western countries during the nineteenth century, and scholars such as Marilyn Lake and Henry Reynolds and David Walker have argued that Australia felt particularly insecure in close proximity to its more populous Asian neighbours.⁴⁹ Imperialist ideas of racial superiority were twisted by distance and environment so that 'the sense of race was more anxious and correspondingly more aggressively xenophobic'.⁵⁰

Generations of Australian historians have explored how a fledgling colonial society became imbued with such a special sense of geographic vulnerability and a fear

⁴⁶ The dictation test was used less frequently after the 1930s and was abolished in 1958 - see further: A. Markus, 'White Australia', in G. Davison, J. Hirst and St. Macintyre (eds.), *The Oxford Companion to Australian History*, revised edition (South Melbourne, 2001), p. 341; Jupp, *From White Australia to Woomera*, pp. 8-10.

⁴⁷ See also: Jupp, *Immigration*, p. 83; J. Jupp, 'From 'White Australia' to 'Part of Asia': Recent Shifts in Australian Immigration Policy Towards the Region', *International Migration Review*, 29, no. 1 (1995), p. 207.

⁴⁸ M. Lake and H. Reynolds, *Drawing the Global Colour Line: White Men's Countries and the International Challenge of Racial Equality* (Melbourne, 2008), pp. 3-9, 150-157.

⁴⁹ Lake & Reynolds, *Drawing the Global Colour Line*, pp. 5-9; 137-138, 163-165; D. Walker, *Anxious Nation: Australia and the Rise of Asia 1850-1939* (St. Lucia, 1999), pp. 2-5, 98-106, 124-126. See also: Mares, *Borderline*, p. 27; Hawkins, *Critical Years in Immigration*, p. 24. See also: H. I. London, *Non-White Immigration and the White Australia Policy* (New York, 1970), pp. 4-7; A. C. Palfreeman, *The Administration of the White Australia Policy* (Carlton, 1967), pp. 1-2.

⁵⁰ S. Macintyre, *The Oxford History of Australia: Volume 4 1901-1942* (Oxford, 1986), pp. 68-69.

of cheap non-white or non-British labour.⁵¹ In *The Australian People* in 1946, Brian Fitzpatrick described this problem as ‘local clannishness’, a variant ‘of that dislike and resentment of foreigners, xenophobia’.⁵² Writing more than fifty years later, Andrew Markus has shown how this clannishness has manifested through ‘chauvinistic forms of nationalism and the politics of race’ as a result of significant social and economic change during the post-White Australia, post-Cold War period.⁵³ The literature reflects a view that Australia’s response to refugees and immigrants has always been informed by this sense of insecurity. Journalist and author Peter Mares described it as the product of a society that is ‘hostile to its foundations’ as ‘one of the world’s true immigrant nations’.⁵⁴ Jupp observed in 2002 that policy in this area ‘is not a value-free process’, but is instead informed by ‘long and strong xenophobic, racist and insular traditions’.⁵⁵

Only a handful of studies have examined White Australia’s response to individuals seeking protection. The archival record and the work of historian Michael Blakeney demonstrates that Australia took a very begrudging response to Jewish refugees in the 1920s and 1930s because governments were wary of a backlash from constituents and the trade union movement.⁵⁶ Australia had engaged with international refugee affairs in the 1920s, through the Office of the High Commissioner in the League

⁵¹ Collins has charted how hostility toward migrants manifested in the trade union movement since the 1870s, and was a key concern for the Labor government of Ben Chifley when it sought to undertake large-scale resettlement of Displaced Persons after the Second World war - see further: J. Collins, *Migrant Hands in a Distant Land: Australia’s Post-war Immigration* (Sydney, 1988), pp. 138-145; Lake and Reynolds, *Drawing the Global Colour Line*, pp. 156-157. See also: Interview with M. Cass, 21 December 2010, Melbourne, Australia; R. M. Crawford, *Australia* (London, 1960), pp. 143-144.

⁵² B. Fitzpatrick, *The Australian People: 1788-1945* (Carlton, 1946), p. 28.

⁵³ A. Markus, *Race: John Howard and the remaking of Australia* (St. Leonards, 2001), p. 200.

⁵⁴ Mares, *Borderline*, p. 4.

⁵⁵ Jupp, *From White Australia to Woomera*, p. 6.

⁵⁶ National Archives of Australia, A457, H400/5, Immigration. Immigration of Jewish Refugees, barcode 83897; M. Blakeney, *Australia and the Jewish Refugees, 1933-1948* (Sydney, 1985), pp. 23, 37; J. Jupp, *The Australian People: An Encyclopaedia of the Nation, its People and Their Origins*, new edition (Cambridge, 2001), pp. 534-5; National Archives of Australia, A433, 1943/2/46, *Refugees (Jewish and others) – General Policy File*, barcode 74068. See also: National Archives of Australia, A445, 235/5/6, *Protests – re: Jewish Immigration*, barcode 75578; Australia. *Immigration – Government Policy*, Ministerial Statement 6 March 1947 (Canberra, 1947), p. 1. For comparison with Canada’s failure to accept Jewish refugees, see further: I. Abella and H. Troper, *None is Too Many: Canada and the Jews of Europe 1933-1948* (Toronto, 1986).

of Nations, but the White Australia Policy made few exceptions for humanitarian need alone. The work of historians Sean Brawley and Neumann have elucidated the more nuanced manner in which the Australian government responded to asylum seekers from across the world during the Second World War and post-war period, including the Dutch East Indies, China and West Irian, and have found that there were instances in which public opinion did not align with the staunch administrative insistence on racial controls.⁵⁷

The post-Second World War era

Scholars began to seriously examine the admission of refugees to Australia in the 1970s, after the nation's momentous post-Second World War immigration programme had come to an end. This programme had included more than 250,000 refugees from Europe, who had been resettled in response to the Japanese attack on Darwin in 1942, a shortage of manpower, and a shortage of shipping with which to transport British migrants.⁵⁸ The refugees included more than 170,000 Displaced Persons from Central and Eastern Europe and the Baltic States between 1947 and 1954,

⁵⁷ See further: S. Brawley, 'Mrs O'Keefe and the Battle for White Australia', *Memento*, National Archives of Australia, (Winter 2007), pp. 6-8; K. Neumann, *Refuge Australia: Australia's Humanitarian Record* (Sydney, 2004), pp. 15, 43, 47-49, 65, 76-77; Australia. National Population Council, *Refugee Review* (Canberra, 1991), p. 65; See also: Australia, *Commonwealth Parliamentary Debates*, House of Representatives, 18 May 1965, p. 1553; Australia, *Commonwealth Parliamentary Debates*, House of Representatives, 31 August 1965, p. 581; Australia, *Parliamentary Debates*, House of Representatives, 12 April 1967, p. 1142; Australia, *Commonwealth Parliamentary Debates*, House of Representatives, 2 May 1967, p. 1579; K. Neumann, 'Hush-hushing the whole matter: the UNHCR, Australia and West Papuan Refugees', *Refuge*, 23, no. 1, (2006), pp. 69-80; K. Neumann, 'Asylum Seekers, Willy Wong, and the Uses of History: From 2010 to 1962 and Back Again', *Australian Historical Studies*, 42, is. 1 (2011), pp. 126-139; K. Neumann, *Seeking Asylum in Australia – an historical perspective*, paper presented at Monash University 28 November 2005, pp. 5-6; Brawley, 'Mrs O'Keefe and the Battle for White Australia', pp. 6-8.

⁵⁸ Refugee Council of Australia, *Australia's Refugee and Humanitarian Programme: community views on current challenges and future directions* (January 2009) p. 12; C. A. Price, *Family Re-Union and Refugees: Development and Outcomes of Official Policy*, working copy, University of Oxford, Bodleian Social Science Library, RSC Collection, 24 May 1979, p. 10; See also: National Archives of Australia, A446, Control Symbol 1962/67291, ICEM [Intergovernmental Committee for European Migration] – Australian Attitude, barcode 1957922. See further: Australia. Immigration – Government Policy, Ministerial Statement 2 August 1945 (Canberra, 1945), p. 1; Australia. Immigration – Government Policy, Ministerial Statement 22 November 1946 (Canberra, 1946), pp. 1, 10.

who served as contract labourers for two years on arrival.⁵⁹ Writing in the 1970s and 1980s, immigration scholar Egon F. Kunz bluntly described the process as ‘an aggressive recruitment of Caucasians’, who were the ‘human guinea pigs’ for the government’s foray into non-British immigration.⁶⁰ In 1981 the demographer Charles A. Price noted that Australia had been censured by international agencies for an apparent lack of interest in ‘helping the unfortunate’ as compared to ‘finding healthy and industrious “factory fodder” for its population and development programs’.⁶¹ In 1988, after a series of tariff cuts to manufacturing had undercut a major employer of migrants from non-English speaking backgrounds, labour historian Jock Collins charted the Displaced Persons’ economic experiences in *Migrant Hands in a Distant Land: Australia’s Post-war Immigration*.⁶² Collins argued that while the Displaced Persons’ entry into the labour market enabled Australian-born workers to advance into higher paid positions, they nonetheless had opportunities for social and economic mobility due to a thriving post-war economy, unlike their Indochinese counterparts thirty years later.⁶³ In demographic terms, this refugee intake has been described as transformative. In a 1992 paper Brawley argued by changing the nation’s ‘racial and cultural parameters’ the Displaced Persons helped to bring an end to White Australia.⁶⁴ Jupp has

⁵⁹ Jupp, *Immigration*, pp. 71-75. See further: Interview with H. Grant, 6 January 2011, Canberra, Australia.

⁶⁰ E. F. Kunz, *Displaced Persons: Calwell’s New Australians* (Sydney, 1988), pp. xviii, 29-34; E. F. Kunz, *The Intruders: Refugee Doctors in Australia* (Canberra, 1975), p. 2.

⁶¹ C. A. Price, ‘Immigration Policies and Refugees in Australia’, *International Migration Review*, 15, no. 1/2 (1981), p. 101. See also: Gibney, *The Ethics and Politics of Asylum*, p. 177; D. McMaster, *Asylum Seekers: Australia’s Response to Refugees* (Carlton, 2001), p. 46.

⁶² Australia, *Commonwealth Parliamentary Debates*, House of Representatives, 26 October 1967, p. 2303. See also: A. Jordens, *Alien to Citizen: Settling Migrants in Australia, 1945-75* (St. Leonards, 1997), p. 243; C. Lever-Tracy and M. Quinlan, *A Divided Working Class: Ethnic Segmentation and Industrial Conflict in Australia* (London, 1988), pp. 1, 22, 41; M. Webber, *The Performance of Australian Manufacturing Industry*, Working Paper 91-2, Monash-Melbourne Joint Project on Comparative Australian-Asian Development (Melbourne, 1991), pp. 1-2; B. Qing Zhang and M. Webber, *The Australian Clothing Industry: Competition, Productivity and Scale*, Working Paper 91-5, Monash-Melbourne Joint Project on Comparative Australian-Asian Development (Melbourne, 1991), p. 2.

⁶³ Collins, *Migrant Hands in a Distant Land*, pp. 51, 140.

⁶⁴ Brawley, ‘Slaying the White Australia Dragon: Some Factors in the Abolition of the White Australia Policy’, in N. Viviani (ed.), *The Abolition of the White Australia Policy: the Immigration Reform*

written that they ‘laid the foundations’ for a multicultural society.⁶⁵ Through government-to-government agreements these refugees were succeeded by large non-refugee arrivals from Italy, Greece, Cyprus, Turkey and Yugoslavia (to name a few) between 1947 and 1974.⁶⁶

A broad survey of the literature on Australia’s political development during the post-war years shows that refugees served another purpose for Australia. The large resettlement programme enabled the nation to become actively involved in international humanitarian organisations and thereby global politics. Loescher and Scanlon’s *Calculated Kindness* described how refugees became ‘symbols of foreign policy’ during the Cold War, their defection to the West an ideological victory.⁶⁷ Australia had participated in the development of the Universal Declaration of Human Rights and was fostering a reputation as a welcoming and generous country.⁶⁸ At first, the Australian government was able to balance foreign policy interests with the domestic imperatives of racially discriminatory entry policy. Australia was the sixth signatory to the 1951 Convention on 22 January 1954, thereby bringing the Convention into force 90 days later, but the archival record shows that during the draft negotiations in 1951 Australia was openly opposed to those provisions that would ‘constitute a direct danger to the

Movement Revisited, Griffith University Centre for the Study of Australia-Asia Relations, Australia-Asia Papers no. 65, June 1992, p. 2.

⁶⁵ Jupp, *From White Australia to Woomera*, p. 13; Jupp, *Immigration*, pp. 72-75.

⁶⁶ See further: C. A. Price, ‘Australia: A New Multicultural Country?’, in D. Kubat (ed.), *The Politics of Migration Policies: Settlement and Integration, The First World into the 1990s* (New York, 1993), pp. 7-9; Jupp, *From White Australia to Woomera*, pp. 13-19; C. A. Price, ‘Australian Immigration: The Whitlam Government 1972-75’, in C. A. Price and J. I. Martin (eds.), *Australian Immigration: A Bibliography and Digest* (Canberra, 1976), p. A14-A16; Gibney, *The Ethics and Politics of Asylum*, p. 173; Price, *Family Re-Union and Refugees*, p. 10; Australian Bureau of Statistics, *Yearbook Australia 1969* (Canberra, 1969), pp. 147-150; Collins, *Migrant Hands in a Distant Land*, pp. 10-12. For discussion of settlement schemes with Italy and Turkey, see further: Australia, *Commonwealth Parliamentary Debates*, House of Representatives, 26 September 1967, pp. 1279-1280; Australia, *Commonwealth Parliamentary Debates*, House of Representatives, 5 October 1967, pp. 1794-1795. See also: Australia, *Commonwealth Parliamentary Debates*, House of Representatives, 21 September 1966, pp. 1149, 1154.

⁶⁷ Loescher, *Beyond Charity*, p. 21. See also: Loescher and Scanlon, *Calculated Kindness*, pp. 25-33; Interview with H. Grant.

⁶⁸ Australia. National Population Council, *Refugee Review*, p. 67.

concept of a White Australia'.⁶⁹ Along with countries such as France and the United States, Australia argued against the idea that the Convention should enshrine protection for refugees outside Europe, without temporal limitations under the draft Article 1(2):

The widening of the definition...would require Australia not to discriminate against non-Europeans, or to punish them for unlawful entry. Such a provision is, in fact, a complete negation of the immigration policy followed by all Australian governments since the foundation of the Commonwealth.⁷⁰

Australia also expressed a fear that Article 26 of the Convention, providing freedom of movement, would impact upon the nation's indentured labour programme for Displaced Persons and displease the trade union movement in Australia.⁷¹ Retaining the ability to select entrants in accordance with domestic needs was essential to the long-term success of the immigration program:

...considering the numbers of refugees who have already arrived in Australia as part of a general migration scheme, and that included among future migrants will be many who might be expected to fall within the definition of "refugee" as set out in the present Convention, it will be realised that acceptance of the text in its present form could cause difficulties in administration and control.⁷²

By the late 1950s, however, the domestic arguments could no longer be balanced with foreign policy.⁷³ Academics in the 1960s began to explore the Policy's impact on diplomatic relations since 1901 and the messy realities of its enforcement against migrants from Asia and the Commonwealth.⁷⁴ In a study of government archival records Meg Gurry and Gwenda Tavan found that the White Australia Policy caused tensions

⁶⁹ A. Zimmerman (ed.), *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol* (Oxford, 2011), p. 1642; National Archives of Australia A446 1960/66509 UNO [United Nations Office] Convention on the Status of Refugees - part 1.

⁷⁰ National Archives of Australia A446 1960/66509 UNO [United Nations Office] Convention on the Status of Refugees - part 1.

⁷¹ *ibid.*

⁷² *ibid.*

⁷³ See further: Brawley, 'Slaying the White Australia Dragon', pp. 2-3.

⁷⁴ See further: A. T. Yarwood, *Asian Migration to Australia: the Background to Exclusion, 1896-1923* (Parkville, 1964); A. C. Palfreeman, *The Administration of the White Australia Policy*, pp. 113-8; London, *Non-White Immigration and the 'White Australia' Policy*, pp. 14-21.

within the bureaucracy, because the Department of External Affairs (the precursor to Foreign Affairs) believed that Immigration did not appreciate the challenges that the White Australia Policy presented for Australia overseas.⁷⁵ The need to improve the nation's reputation within the Asian region and internationally is widely acknowledged by scholars of Australian immigration and political history as having contributed to the Policy's modification under the *Migration Act 1958*, its increasing obfuscation in the 1960s and its eventual abolition in 1973.⁷⁶ From the vantage point of the late 1980s, Hawkins assessed that during this long process, 'great damage had been done' to Australia's image, particularly amongst developing states.⁷⁷ Then Labor Prime Minister Gough Whitlam recognised this reality when he announced the Policy's abolition in 1973, and stated that he believed that Australia would henceforth enjoy 'a growing standing as a distinctive, tolerant, cooperative and well regarded nation' not only amongst its Asian neighbours 'but in the world at large'.⁷⁸

⁷⁵ M. Gurry and G. Tavan, 'Too Soft and Long-Haired? The Department of External Affairs and the White Australia Policy, 1946-1966', *Australian Journal of International Affairs*, 58, no. 1 (2004), pp. 128-129.

⁷⁶ See further: S. Brawley, 'The Department of Immigration and Abolition of the White Australia Policy reflected through the Private Diaries of Sir Peter Heydon', *Australian Journal of Politics and History*, 41, no. 3 (1995) pp. 421-2; S. Brawley, *The White Peril: Foreign Relations and Asian Immigration to Australasia and North America 1919-1978* (Sydney, 1995), pp. 326-9. P. G. Edwards, *Prime Ministers and Diplomats: The Making of Australian Foreign Policy* (Melbourne, 1983), pp. 55, 177; I. Russell, 'Australia's Human Rights Policy: From Evatt to Evans', in I. Russell, B. H. Chua, P. Van Ness, *Australia's Human Rights Diplomacy* (Canberra, 1992), pp. 18-19; Hawkins, *Critical Years in Immigration*, p. 103; Jupp, *From White Australia to Woomera*, p. 10-11; M. Jordan, 'The Reappraisal of a White Australia Policy Against the Background of a Changing Asia, 1945-67', *Australian Journal of Politics and History*, 52, no. 1 (2006), pp. 224-243; Price, 'Australian Immigration – The Whitlam Government 1972-75', pp. A2-A5; K. Rivett (ed.), *Immigration: Control or Colour Bar? The Background to White Australia and a Proposal for Change*, (Carlton, 1966), p. 29. See also: Jordens, *Alien to Citizen*, p. 216-217; Palfreeman, *The Administration of the White Australia Policy*, pp. 21-25, 47-49; A. Grassby, *The Tyranny of Prejudice* (Melbourne, 1984), pp. 48-49; London, *Non-White Immigration and the 'White Australia' Policy*, pp. 25-28, 42-51; Australia, *Commonwealth Parliamentary Debates*, House of Representatives, 9 March 1966, pp. 69; Australia, *Commonwealth Parliamentary Debates*, House of Representatives, 26 October 1965, pp. 2191, 2196; Australia, *Commonwealth Parliamentary Debates*, House of Representatives, 24 March 1966, p. 584; Markus, 'White Australia', p. 687.

⁷⁷ Hawkins, *Critical Years in Immigration*, p. 103.

⁷⁸ Hawkins, *Critical Years in Immigration*, p. 94; see also: M. J. Kirby, *Whitlam as Internationalist*, Speech to the Whitlam Institute, University of Western Sydney (2010). See also: Australia, *Commonwealth Parliamentary Debates*, House of Representatives, 24 May 1973, p. 2649. See also: Australia, *Commonwealth Parliamentary Debates*, House of Representatives, 7 September 1967, p. 1023; Australia, *Commonwealth Parliamentary Debates*, House of Representatives, 24 May 1973, pp. 2644-2645.

Moving away from White Australia

A need to balance foreign policy and domestic imperatives was not necessarily altered by the end of White Australia. The desire to improve the nation's international image was tempered by concerns about how demographic change would be received within the Australian community. Although the Whitlam government of 1972 to 1975 abolished the Policy and promoted the new concept of a 'multicultural' Australia, it nonetheless pursued a decreased immigration intake, bringing the annual total to an historic low of around 53,000 in 1974-75.⁷⁹ Both Price and Ann-Mari Jordens, author of the history of the Department of Immigration *Alien to Citizen*, have argued that this enabled the Whitlam government to give the 'appearance that immigration had radically changed' while 'running little risk of alienating voters'.⁸⁰ Their view is corroborated elsewhere: for instance, in the work of Viviani and Joanna Lawe-Davis it is suggested that the new government sensed 'a widespread concern' that 'the community needed to come to terms with the effects of its diverse ethnic structure'.⁸¹

The primary sources indicate that successive governments of the early 1970s were reluctant to effect actual change. As late as October 1972 the Liberal government of William McMahon prevaricated in responding to the forced exile of Ugandan Asians from Idi Amin's new regime, despite a large international relief effort. Officials in the Department of Immigration and the Department of Foreign Affairs were torn between 'the domestic political implications of chartering an aircraft to bring Asians to

⁷⁹ See further: Jordens, *Alien to Citizen*, pp. 227-228; J. Jupp, 'Immigrant Settlement, Ethnic Relations and Multiculturalism in Australia', in J. Higley and J. Nieuwenhuysen (eds.), *Nations of Immigrants: Australia and the USA Compared* (Cheltenham, 2009), pp. 155-159.

⁸⁰ Jordens, *Alien to Citizen*, pp. 18-19, 226; Price, 'Australian Immigration: The Whitlam Government 1972-75', p. A6; M. Grattan, 'Immigration and the Australian Labor Party', Jupp and Kabala (eds.), *The Politics of Australian Immigration*, p. 129.

⁸¹ N. Viviani and J. Lawe-Davies, *Australian Government Policy on the Entry of Vietnamese Refugees, 1976 to 1978*, Research Paper no. 2, Centre for the Study of Australian-Asian Relations, Griffith University (1980), p. 2.

Australia', and the desire to 'move quickly to obtain the best migrants'.⁸² McMahon himself publicly discussed the Ugandan Asian situation in terms of 'non-European stock'.⁸³ A year earlier the Department of Immigration published 'The Evolution of a Policy', drawing direct comparisons between the large intake of Displaced Persons and the new potential for non-European migrants:

After more than a century of British migration we undertook an ambitious social experiment in massive European migration. While it is proceeding commendably, there is no compelling reason to add unnecessary problems to it without forethought or planning.⁸⁴

The Department was essentially saying that European migration had been 'ambitious' enough for Australian society, and non-white immigrants could stir resentment amongst the public if not handled cautiously.⁸⁵ The need to be mindful of community opinion was even acknowledged among those who advocated for non-discriminatory immigration.⁸⁶ The influential Immigration Reform Movement of the 1960s, led by economist and activist Professor Ken Rivett, was conscious of keeping public anxieties and prejudices in check:

In deciding on the numbers to be admitted from particular sources, race and colour could be taken into account if public attitudes in Australia made this advisable.⁸⁷

The Movement believed that immigration should be sufficiently regulated by

⁸² National Archives of Australia, A1838, 1634/164 Part 6, Immigration – Australian Policy and Relations with Other Countries – Uganda – General. It should be noted that the UK government was also ambivalent about accepting the Ugandan Asians.

⁸³ *ibid.*

⁸⁴ Australia. Department of Immigration, *The Evolution of a Policy* (Canberra, 1971), p. 17. See also: Hawkins, *Critical Years in Immigration*, p. 95. See also: Tavan, *The Long Slow Death of White Australia*, p. 180-181.

⁸⁵ New Zealand took a similar view of non-discriminatory immigration at this time - see further: R. Gallienne, *The Whole Thing Was Orchestrated: New Zealand's Response to the Indo-Chinese Refugees Exodus 1975 to 1985*, University of Auckland Centre for Asian Studies Resource Papers (Auckland, 1991), p. 16.

⁸⁶ For a detailed discussion of assimilation, integration and multiculturalism, see further: Collins, *Migrant Hands in a Distant Land*, pp. 226-243.

⁸⁷ K. Rivett, 'The Immigration Reform Movement', in Viviani (ed), *The Abolition of the White Australia Policy*, p. 16.

government so as ‘to keep Australia reasonably free from racial tension’.⁸⁸

The manner in which the Australian government managed a transition to non-discriminatory policy, and whether or not this was out of step with community opinion, has been debated within the literature since the intake of refugees and migrants from Asia increased in the 1980s.⁸⁹ Indeed, it was the subject of heated parliamentary and public debates in 1984 as the Fraser and Hawke governments’ diversification of the refugee and immigration programme made visible differences to the Australian community.⁹⁰ In A. C. Palfreeman’s seminal 1967 study *The Administration of the White Australia Policy*, he anticipated that prejudice would survive the Policy’s demise when he wrote that the concept of a White Australia was based on ‘two different planes’: the higher plane of community opinion, and the lower, administrative manifestation of this.⁹¹ In her authoritative study of the Whitlam and Fraser era, *Critical Years in Immigration: Canada and Australia Compared*, Hawkins wrote that in 1973 ‘the Policy was by no means dead in any of the major political parties or among the public generally’, even if the question of its legislative and administrative abolition had been resolved, and scholars such as Jupp, Markus, Collins and Ellie Vasta and Stephen Castles have noted a lingering insecurity and xenophobia within contemporary Australia.⁹²

⁸⁸ *ibid.*, p. 15.

⁸⁹ G. Tavan, ‘The Dismantling of the White Australia Policy: Elite Conspiracy or Will of the People?’, *Australian Journal of Political Science*, 39, no. 1 (2004), pp. 109-125; Tavan, *The Long Slow Death of White Australia*, pp. 1-5, 238. See further: K. Betts, *Ideology and Immigration: Australia 1976 to 1987* (Carlton, 1988), p. 120.

⁹⁰ See further: Interview with S. West, 6 January 2012, Sydney, Australia; ‘Rage and Tears as the House Divides’, *Sydney Morning Herald*, 9 May 1984, pp. 1, 4; ‘Irate Member Hurdles Bench’, *Illawarra Mercury*, 9 May 1984, pp. 1-2; Viviani, *The Indochinese in Australia, 1975 to 1995*, pp. 7-8; Markus, *Race*, pp. 28-33, 59-72.

⁹¹ Palfreeman, *The Administration of the White Australia Policy*, pp. 3-4.

⁹² Hawkins, *Critical Years in Immigration*, p. 103; J. Jupp, ‘Immigration and the Nation State’, in A. Markus, J. Jupp and P. McDonald, *Australia’s Immigration Revolution* (Crows Nest, 2009), pp. 45-50; Markus, *Race*, pp. 104-112, 200-203; J. Collins, ‘The Changing Political Economy of Australian Racism’, in S. Castles and E. Vasta (eds.), *The Teeth are Smiling: the Persistence of Racism in Multicultural*

During the Indochinese intake of the late 1970s and early 1980s the Fraser government was conscious of the White Australia Policy's legacy. Fraser's first Minister for Immigration Michael MacKellar, presented principles of immigration policy to Parliament in 1978 which reiterated a long-held view that 'the size and composition of migrant intakes should not jeopardise social cohesiveness and harmony within the Australian community'.⁹³ At the same time, however, the Department of Immigration was keenly aware that the nation's international reputation and its relationships within the region depended on a generous Indochinese refugee intake, and it made sure to communicate this to the Australian public.⁹⁴ Admitting non-white migrants was what Viviani called a 'balancing act', or as the Department of Immigration phrased it, an 'ambitious social experiment', that had to be planned and carefully guided for fear of intolerance within the Australian community, even more than the entry of Europeans had been.⁹⁵ Unlike the post-war intake from Europe, the Indochinese constituted an unknown quantity, with no prescribed role in the economy and no prescribed role in what Dauvergne calls the 'ideological vision of community or family'.⁹⁶ They represented a marked demographic shift in the Australian community, and ultimately between 1975 and 1995 well over 189,508 Indochinese had been resettled in Australia.⁹⁷

A country of first asylum

The balancing act was made even more difficult by the fact that the Fraser

Australia (Crows Nest, 1996), pp. 73-96; S. Castles and E. Vasta, 'Introduction', in S. Castles and E. Vasta (eds.), *The Teeth are Smiling*, pp. 1-5.

⁹³ Australia. Department of Immigration and Ethnic Affairs, *Australia's Immigration Policy* (Canberra, 1978), p. 3; Australia, *Commonwealth Parliamentary Debates*, House of Representatives, 24 May 1977, p. 1714.

⁹⁴ Australia. Department of Immigration And Ethnic Affairs, *Review '78*, p. 26; Proceedings of the Conference on the Indochina Refugee Situation held at the Coombs Lecture Theatre, Australian National University in Canberra, 30-31 July 1979, audio file, National Library of Australia.

⁹⁵ Viviani, *The Long Journey*, p. 70.

⁹⁶ Dauvergne, *Humanitarianism, Identity, and Nation*, p. 7.

⁹⁷ Viviani, *The Indochinese in Australia, 1975 to 1995*, p. 159. See also: Australia. Department of Immigration, Local Government and Ethnic Affairs, *Australia's Refugee Resettlement Programs: An Outline* (Canberra, 1988), p. 1.

government, and all governments since then, have had to respond to asylum seekers arriving by boat. Prior to this point, Australia had never experienced a large influx of asylum seekers, and comprehensive statistics on the small sporadic number of asylum claims were never maintained.⁹⁸ Once the boats began to arrive the history of Australia's response to refugee movements became a different story and, as both Gibney and Viviani have noted, 'a more divisive subject' in Australian society.⁹⁹ Unlike the arrival of asylum seekers by air or as occasional stowaways on merchant ships, boatloads of non-citizens landing on Australian shores brought to life an historic anxiety within the Australian community. Mares has drawn a parallel between the nation's response to boat arrivals and the imagery and fear that sustained White Australia, which was generated in a settler society more than a century ago. He described this sentiment brilliantly in *Borderline*:

There is a deeply held, yet irrational anxiety that Australia is perpetually in danger of being overrun; that our sovereignty is brittle and our borders are weak. It is as though this continent were a rickety lifeboat, and all the world's oppressed and poor are desperately swimming towards us, threatening to drag us under.¹⁰⁰

The archival record indicates that the Australian government had worked to avoid being a country of first asylum many years before the large-scale arrival of asylum seekers began in the late 1970s. In 1951 the Department of Immigration and the Australian delegation at Geneva believed parts of the draft Convention were far more relevant to Europe, for which the instrument was largely intended, than to an island continent on the other side of the world. That refugees seeking protection should be allowed to freely enter a nation's territory was considered particularly out of touch with Australia's geographic reality:

⁹⁸ This will be discussed further in Chapter Five.

⁹⁹ Gibney, *The Ethics and Politics of Asylum*, p. 179; Viviani, *The Indochinese in Australia, 1975 to 1995*, p. 4.

¹⁰⁰ Mares, *Borderline*, p. 27. See also: Viviani, *The Indochinese in Australia, 1975 to 1995*, p. 5.

[Article 31] is obviously designed to meet conditions in Europe where there are frontiers across which a refugee may escape. It would hardly accord with Australia's immigration policy if the Atlantic and Pacific Oceans were to be ranked as frontiers across which asylum should be sought.¹⁰¹

Implicitly, the Australian government was rejecting a principle of customary international law and Article 14 of the Universal Declaration of Human Rights: an individual's right to seek asylum. The statement could also be read as suggesting that Australia's post-war refugee intake had no driving humanitarian imperative.

The archival record also shows that through the 1960s, as Australia was militarily involved in the United States' war in Vietnam, successive governments deferred a serious consideration of whether or not to accept Vietnamese refugees if the need arose.¹⁰² Likewise, by 1973 when the Whitlam government ratified the 1967 Protocol, it did not formulate a policy to manage these new obligations. Thus, when the United States' war in Vietnam ended in April 1975 the evacuation of locally-engaged staff and other Vietnamese to Australia was hindered by administrative inefficiencies and Whitlam's reluctance to accept large numbers of refugees due to their perceived political biases against a Labor government, and the archival record hints at the distress this caused to the Australian Ambassador and embassy staff in Saigon.¹⁰³ Australia had been 'caught flat-footed', in the words of Price, with no discernable idea 'as to how non-discriminatory refugee policy should work'.¹⁰⁴ This is one of the more prominent explanations (among several) that historians have offered for the Whitlam and Fraser

¹⁰¹ National Archives of Australia A1838 855/11/11 part 2, quoted in Neumann, 'Hush Hushing the Whole Matter', pp. 69-80.

¹⁰² National Archives of Australia A446 1970/95844, Evacuation of Refugees from South Vietnam.

¹⁰³ National Archives of Australia A1838 626/2/9/2/6 Part 2, Post Liaison Vietnam – Crisis Task Force – Emergency Measures and Evacuation

¹⁰⁴ C. Price, 'Immigration and Ethnic Affairs', in A. Patience and B. Head, *From Whitlam to Fraser: Reform and Reaction in Australian Politics* (Melbourne, 1979), pp. 207-8. Viviani noted that the Whitlam government ultimately accepted 1093 Vietnamese for resettlement by August 1975 – see further: Viviani, *The Long Journey*, p. 64.

governments' sluggish response to Vietnamese refugees during 1975 and 1976.¹⁰⁵

On 24 May 1977 MacKellar presented principles of refugee policy to Parliament.¹⁰⁶ In Viviani's interpretation, the announcement was a reaction to the arrival of small boats carrying Vietnamese to Australian shores from April 1976 onward.¹⁰⁷ Yet in an interview conducted for this thesis MacKellar stated that these ideas had been developed over some time, and the documentary evidence supports this claim.¹⁰⁸ The Liberal/National Opposition's policy platform in 1975 had advocated the establishment of formal policy mechanisms to replace an ad hoc approach to refugee admission and 'cater for emergency situations', and in 1976 the Senate Standing Committee on Foreign Affairs and Defence had recommended that Australia 'be in a position to respond quickly and efficiently to refugee crises'.¹⁰⁹ Notwithstanding this evidence, there is merit in Viviani's view, and the analysis in this thesis will demonstrate that formal refugee policy was developed through the late 1970s and early 1980s as a means of establishing a sense of order and control over an unpredictable phenomenon.¹¹⁰

Chapter outline

This chapter has established the aim and scope of this thesis, and has situated Australian refugee policy of 1976 to 1983 within its historical context. The chapter has

¹⁰⁵ Grattan, 'Immigration and the Australian Labor Party', p. 130; Viviani and Lawe-Davies, *Australian Government Policy on the Entry of Vietnamese Refugees, 1976 to 1978*, pp. 1, 5; Price, 'Australian Immigration: The Whitlam Government 1972-75', p. A9; W. C. Robinson, *Terms of Refuge: The Indochinese Exodus and the International Response* (London, 1998), p. 152. See also: Australia. Senate Standing Committee on Foreign Affairs and Defence, *Australia and the Refugee Problem* (Canberra, 1976), pp. 24-25. See also: Interview with M. MacKellar, 22 December 2010, Melbourne, Australia.

¹⁰⁶ Australia, *Commonwealth Parliamentary Debates*, House of Representatives, 24 May 1977, pp. 1713-1716; National Archives of Australia LC1366 Part 1, Refugee Policy [Submissions nos. 1160, 1916, 2014, 2173 and 2572 refer]

¹⁰⁷ Viviani, *The Long Journey*, pp. 71-72.

¹⁰⁸ Interview with M. MacKellar.

¹⁰⁹ Australia. Senate Standing Committee on Foreign Affairs and Defence, *Australia and the Refugee Problem*, pp. 89-94; Australia, The Liberal and National Country Parties, *Immigration and Ethnic Affairs Policy* (August 1975).

¹¹⁰ See further: Viviani, 'The Vietnamese in Australia', p. 242. See also: A. Suhrke and A. Zolberg, 'Issues in Contemporary Refugee Policies', p. 144.

shown how the Australian government sought to balance the nation's domestic and international interests in the admission of refugees and migrants. Chapter Two will discuss the research design of this thesis, including the range of primary source material. These opening chapters lay the contextual and methodological groundwork for the analysis that follows.

The historical debate on the Fraser government's legacy in this policy field is overwhelmingly concerned with its response to boat arrivals, because that phenomenon has absorbed Australian political debate in recent years. How could the Fraser government have managed the policy challenge any differently in comparison to later governments? Surely it resorted to punitive deterrence measures just as readily? Chapters Three and Four deal directly with these questions, in relation to the Fraser government's response to Indochinese who sailed to Australia between 1976 and 1981. Chapter Three is the first study to detail how and why boat arrivals were allowed to remain in Australia, despite the Fraser government's warnings to the contrary. The chapter is based on previously unexplored archival records created by the then UNHCR Legal Representative in Australia. Chapter Four seeks to challenge interpretations of three commonly cited policy options that the Fraser government had when considering how to respond to an influx of boat arrivals, and the chapter situates the government's policy options in relation to changing international perceptions of the Indochinese outflow, as well as the historical and political considerations involved in managing Australia's role as a country of first asylum.

Chapter Five contributes to the international literature on refugee status determination. Following on from the discussion in Chapter Three, this chapter uses a dataset of non-Indochinese applicants for refugee status created from the aforementioned UNHCR archival records. The chapter combines this dataset with oral

history sources and other archival records to quantitatively and qualitatively analyse influences on Australia's status determination process between 1978 and 1983.

Chapter Six completes the story of refugee policy development during this critical transition period away from White Australia. The chapter discusses how the Hawke government used the Special Humanitarian Programme, as established by the Fraser government, to initiate the extraordinary in-country rescue and resettlement of several thousand individuals from Chile and El Salvador. The story told in this chapter elucidates a continuity of approach between the Fraser and Hawke governments, and reveals an activism within the Department of Immigration that fuelled broader tensions with the Department of Foreign Affairs. The in-country programme was part of a deliberate ideological and geographic diversification of Australia's refugee programme, away from traditional source countries in Soviet Europe and, most recently, Indochina.

Chapter Two: Research Design and Method

The previous chapter presented evidence that the admission of refugees by the Australian government has been historically based on varied and intersecting notions of national interest. Viewing Australian policy through this lens, the focus of this thesis will be the decisions made by politicians and public servants, primarily those within the Department of Immigration. The thesis will draw from a range of archival sources and interviews with former Fraser and Hawke government members, Department of Immigration officials and others involved with refugee policy in the period 1976 to 1983.

It is appropriate to concentrate on decision-making by politicians and by officials within the Department of Immigration during this period, because the government was grappling with a transition away from decades of discriminatory policy to an era of international obligations and Australia's prominent role as a country of first asylum. Importantly, the Department was perceived by politicians and public servants of the period to have retained a White Australia mind-set in the years following the Policy's abolition.¹¹¹ In an interview with Hawkins, Whitlam infamously described the Department as 'racist, sexist, narrow and hidebound'.¹¹² In his view, 'the Department was totally wedded to the White Australia policy in all its ramifications'.¹¹³ The interpretation has been echoed by Fraser, by Moss Cass, former Shadow Minister for Immigration 1977 to 1980, and by John Menadue, former Secretary of the Department from 1980 to 1983. In an interview conducted for this thesis, Fraser attributed a 'latent

¹¹¹ Hawkins, *Critical Years in Immigration*, p. 101; Jordens, *Alien to Citizen*, p. 238.

¹¹² *ibid.* Hawkins writes in her footnotes that 'these views should be seen in the context of Mr. Whitlam's general distrust of the public service, and his evident desire to rearrange it and to experiment with new structures' – Hawkins, *Critical Years in Immigration*, p. 318, f.12.

¹¹³ Hawkins, *Critical Years in Immigration*, p. 101.

racism' within the Department to 'a very narrow core' who 'regarded themselves as gatekeepers'.¹¹⁴ Social science literature shows us that 'institutions embody cultures and past political decisions' and this can constrain an organisation's future behaviour.¹¹⁵ Fraser's comments were made in relation to the making of refugee policy, and the discussion in Chapter Four of this thesis will show how a 'gatekeeper' mentality manifested in comments and policy proposals by Department staff as the government sought to respond to boat arrivals.

While the focus of this thesis is on the role of politicians and public servants, the analysis does seek to take into account the role of the UNHCR where possible. It is beyond the scope of this research to detail the way in which community or ethnic groups engaged with the policy-making process, but their influence is acknowledged where referenced by interviewees or archival records. Similarly, it is unfortunately beyond the scope of this research to explore jurisprudential developments in refugee law or administrative law.

The focus on decision-making by politicians and public servants has necessitated a search for new primary sources. Academic and media commentary on Australian refugee policy during the late 1970s and early 1980s has tended to rely on a

¹¹⁴ Interview with M. Fraser; Interview with M. Cass; Interview with J. Menadue, 12 January 2011, Sydney, Australia. See further: H. Martin, *Angels and Arrogant Gods* (Canberra, 1989), pp. 96-97. In more recent years the criticism of the Department's culture has related to its Compliance functions (the detention and removal of non-citizens). Inquiries by the Commonwealth Ombudsman into the mismanagement and unlawful detention and/or deportation of Australian citizens in 2005 found that 'staff failed to take into account the basic human rights obligations that characterise a democratic society' – see further: Australia, *Inquiry into the Circumstances of the Vivian Alvarez Matter*, Report by the Commonwealth Ombudsman (Canberra, 2005), p. 31; Australia, *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau*, Report by the Commonwealth Ombudsman (Canberra, 2005), pp. ix, 25, 54, 160-172, 193-195. Similarly, in David Marr and Marion Wilkinson's brilliant investigation of the Tampa affair in 2001, *Dark Victory*, they described the Department of Immigration as having an 'overpowering ethos' of embattlement, cynicism and total control – see further: D. Marr and M. Wilkinson, *Dark Victory* (Crows Nest, 2004), p. 40. See also: Viviani, *The Indochinese in Australia, 1975 to 1995*, pp. 19-20.

¹¹⁵ P. John, *Analysing Public Policy* (New York and London, 2000), p. 40; G. Allison and P. Zelickow, *Essence of Decision: Explaining the Cuban Missile Crisis*, second edition (New York, 1999), p. 145; G. A. Akerlof, 'Procrastination and Obedience', *The American Economic Review*, 81, no. 2 (1991), pp. 15-16.

limited range of primary sources, such as parliamentary debates, media releases, speeches and other public statements by politicians of the time and, since 2006, cabinet records and other archival documents. In comparison, scholars writing on the policies of later governments have had access to a greater range of primary material, including numerous pieces of legislation, legal proceedings, inquiries by several parliamentary committees and the Commonwealth Ombudsman, and reports by the Human Rights and Equal Opportunity Commission and external organisations.¹¹⁶ While researchers have experienced difficulties gaining behind-the-scenes insights into detention centres and status determination procedures, the Australian government's legal and political manoeuvrings on asylum claims, offshore processing and mandatory detention have provided rich textual evidence for historians and legal scholars, and have been examined at length through the scholarship of Crock and Viviani, the investigative journalism of David Marr and Marion Wilkinson, and the distressing case studies of refugee status determination procedure compiled by Peter Mares, David Corlett and Linda Briskman et. al.¹¹⁷

1. Sources

In his introduction to *Malcolm Fraser PM* in 1989, the political scientist Patrick Weller predicted that 'interviews about recent events are a necessary adjunct to the official records', because the archival documents 'will be all that historians have when they are finally released'.¹¹⁸ Weller's first point is a valuable one, and this thesis has benefited enormously from the fact that the latter half of his statement, a lack of oral

¹¹⁶ Neumann, *Refuge Australia*, p. 11.

¹¹⁷ See further: Crock, 'Refugees in Australia', pp. 1-22; Viviani, *The Indochinese in Australia, 1975 to 1995*, pp. 19-28; Marr and Wilkinson, *Dark Victory*, pp. 62-144; Mares, *Borderline*, pp. 35-99; D. Corlett, *Following Them Home: the Fate of the Returned Asylum Seekers* (Melbourne, 2005); L. Briskman, S. Latham and C. Goddard, *Human Rights Overboard: Seeking Asylum in Australia* (Carlton North, 2008). See also: Tazreiter, *Asylum Seekers and the State*, p. 192.

¹¹⁸ P. Weller, *Malcolm Fraser PM: A Study in Prime Ministerial Power* (Ringwood, 1989), p. xvi.

histories, has not come true. In recent years the opportunity to undertake oral history interviews has been available *alongside* the archival records, providing a richer and more comprehensive picture of policy-making. The Fraser government cabinet records were first released in 2006, and in 2013 the public now has access to records dating to the Hawke government of 1985.

Weller was granted special access to Fraser government cabinet records and interviews with the man himself, but sadly Weller's book does not address refugee policy. Hawkins was also granted interviews with current and former Ministers for Immigration while researching her 1988 book *Critical Years in Immigration*, and according to the text Hawkins had access to departmental 'policy files', although it is unlikely that these were confidential documents that may now (or in the future) be released through the National Archives of Australia. In comparison, Viviani did not rely on either of these primary sources as she constructed, almost contemporaneously, formative studies of the Fraser government's policy making on Indochinese refugees from government and Opposition press releases, news media coverage, UNHCR reports and other publicly available materials.

It is surprising that in the midst of the current debate over the Fraser government's legacy, scholars have not capitalised on the ability to combine oral history and archival records in their research. Smit drew on cabinet records and parliamentary debates to critique the Fraser government's response to boat arrivals in a 2010 paper, but based purely on these sources, Smit's study draws conclusions that do not hold up against the insights and nuance that oral history provides. Smit's conclusions will be discussed further in Chapter Four. The only work that relies upon both oral history and

archival records is Fraser's memoir, co-authored by Margaret Simons.¹¹⁹ Like Weller, Simons had extensive access to Fraser government cabinet records and to the man himself. Although Simons made excellent use of the voice of MacKellar and others in the archival documents, devoting an entire chapter to refugee and immigration policy, the study is obviously written from Fraser's perspective and does not draw heavily on interviews with others as a means of consistently confirming or counterbalancing his story.

2. Method

The research for this thesis was primarily undertaken in the United Kingdom and Australia between 2009 and 2013. It involved archival research in the Bodleian Library in Oxford and extensive research trips to the National Archives of Australia and the National Library of Australia in Canberra. New and original oral history sources were also collected through interviews in various locations in eastern Australia, with one oral history interview conducted in Paris, and two oral history interviews conducted by correspondence with former Canadian government officials.

It should be noted that these interviews led to the discovery of previously unexplored archival sources and programmes. It was through speaking with former Chief Migration Officer Barbara Phi and then to former Secretary John Menadue that the existence of the in-country Special Humanitarian Programme was discovered. This fresh information sparked a subsequent search for interviewees who had direct knowledge and experience of the in-country programme, such as former Chief Migration Officer Judy Betts and former Head of the Refugee Branch Trevor Griffiths. Although the archival record has not yielded specific reference to the programme, oral

¹¹⁹ Fraser and Simons, *Malcolm Fraser: The Political Memoirs*, pp. 416-443.

history has helped to identify crucial information in the archives that allows this initiative to be placed within the context of inter-departmental tensions and foreign policy considerations. This will be discussed further in Chapter Six.

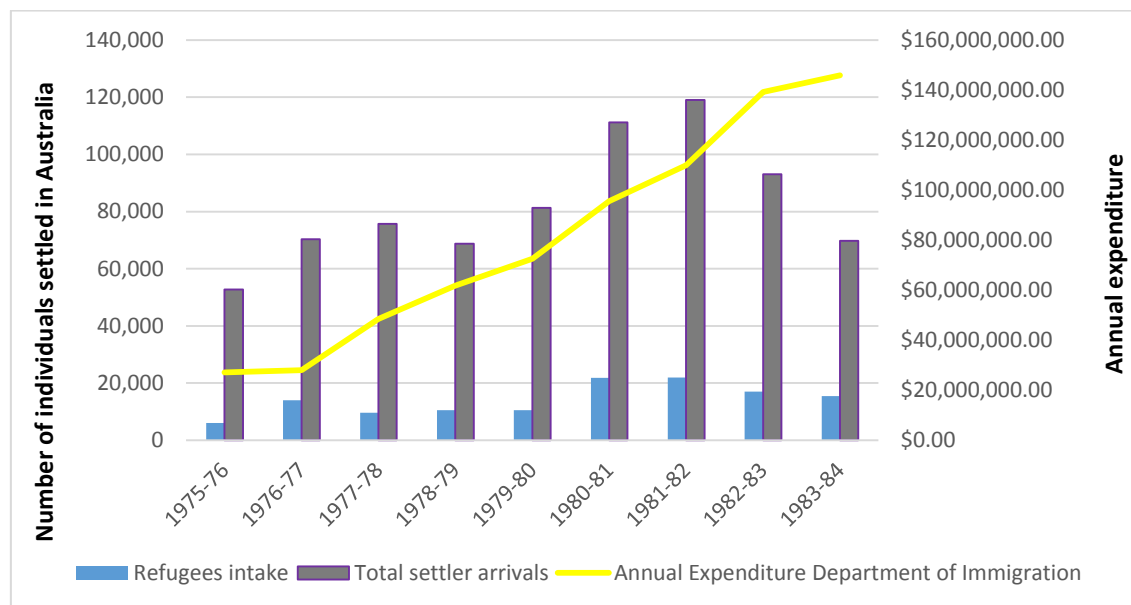
Similarly, a discussion with Professor Guy S. Goodwin-Gill revealed the existence of his notes and files pertaining to Australia's Determination of Refugee Status Committee (DORS), taken by him during the period 1978 to 1983 and presently held in the Bodleian Social Science Library at the University of Oxford. It is believed that these files have not been explored by scholars of Australian policy until now. Importantly, these files cover status determination of Indochinese and non-Indochinese applicants, and these decisions are not represented in the publicly available archival records. Furthermore, the files present an outsider's perspective, that of the UNHCR in its liaison with the Australian government. Goodwin-Gill's notes and reports give us not only commentary on the inner-workings of refugee status determination, but also an assessment of the government's performance in this policy area. Former DORS representatives were interviewed for this thesis, although unfortunately these interviews were conducted before the files were examined. Nonetheless, the DORS process was discussed by these interviewees and their testimony has been used to expand upon, validate and compare with the story contained in Goodwin-Gill's files. These sources underpin the discussion in Chapter Three and Five, and contribute to Chapter Four.

2.1 Oral history

The research for this thesis benefited from the fact that during the years under investigation, 1976 to 1983, the Department of Immigration was expanded and the refugee section was elevated to become the Refugee and Special Programs Branch (hereafter 'Refugee Branch'). By the time the Hawke government took office in March 1983, the Department of Immigration's annual expenditure had grown four-fold since

1975.¹²⁰ In an interview conducted for this thesis, former head of the Refugee Branch Trevor Griffiths attributed this institutional growth to the focus on improving and expanding settlement services in the wake of ‘The Review of Post-Arrival Programs and Services to Migrants’, otherwise known as the Galbally Report.¹²¹ The establishment of the Refugee Branch may also be attributed to the government’s formulation of refugee policy and the growing resettlement programme. Figure 4 below shows how the Department grew over time in relation to the size of the refugee programme and the migration programme.

Figure 4: The annual refugee intake and total annual settler arrivals (left axis) compared to Department of Immigration annual expenditure (right axis) 1975-76 to 1983-84



Source: Figures compiled from Department of Immigration annual reports and Commonwealth legislation.¹²²

¹²⁰ Australia. Department of Immigration and Ethnic Affairs, *Review '76* (Canberra, 1976), p. 36; Australia. Department of Immigration and Ethnic Affairs, *Review '77* (Canberra, 1977), p. 45; Australia. Department of Immigration and Ethnic Affairs, *Review '78*, p. 72; Australia. Department of Immigration and Ethnic Affairs, *Review '79* (Canberra, 1979), p. 96; *Appropriation Act (No. 1) 1979-80* (Cth); *Appropriation Act (No. 1) 1980-81* (Cth); *Appropriation Act (No. 1) 1981-82* (Cth); *Appropriation Act (No. 1) 1982-83* (Cth).

¹²¹ Interview with T. Griffiths, 23 November 2012, Paris, France; Australia. Department of Immigration and Ethnic Affairs, *Review '79*, pp. 18-20.

¹²² Australia. Department of Immigration and Ethnic Affairs, *Review '76*, p. 36; Australia. Department of Immigration and Ethnic Affairs, *Review '77*, p. 45; Australia. Department of Immigration and Ethnic Affairs, *Review '78*, p. 72; *Appropriation Act (No. 1) 1979-80* (Cth); *Appropriation Act (No. 1) 1980-81* (Cth); *Appropriation Act (No. 1) 1981-82* (Cth); *Appropriation Act (No. 1) 1982-83* (Cth).

Refugee policy occupied a significant number of people at varying levels of an administrative and political hierarchy, and by default created a rich oral history resource. In addition, it was due to this increased capacity and resources that the Department was able to pursue a Special Humanitarian Programme in Latin America, and this will be discussed further in Chapter Six.

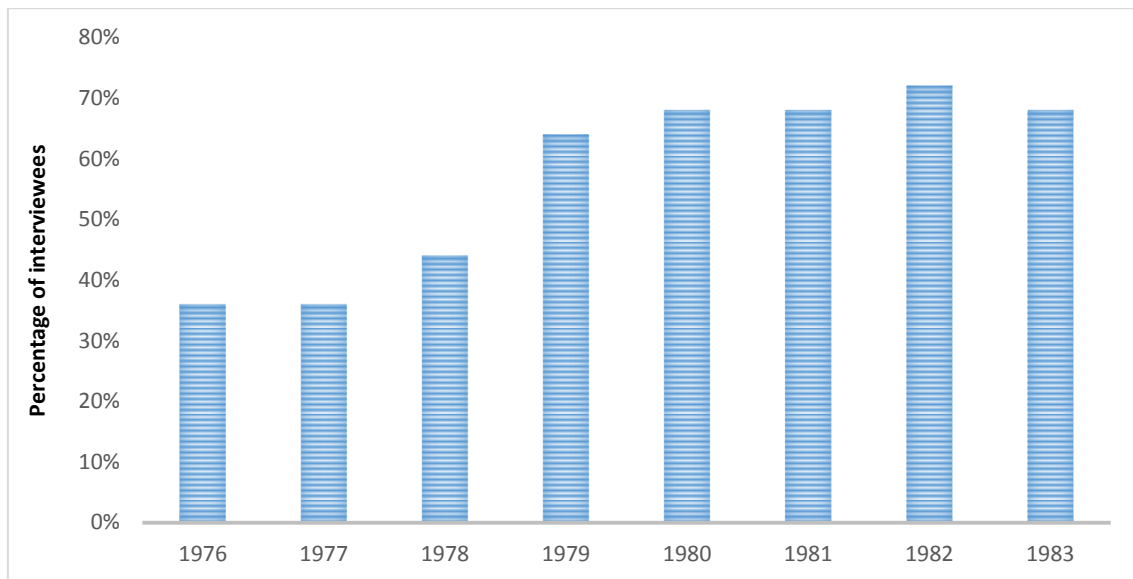
In total 32 former and current public servants, politicians and refugee advocates were interviewed for this research. Two of these individuals are not referenced in the thesis because they were interviewed in order to gain a contemporary perspective on this policy area, including the workings of current refugee status determination and offshore selection procedures. A further two interviewees are not referenced because the content of their interviews was not used as evidence for the subject matter that has ultimately been presented in this thesis. These individuals include Andrew Metcalfe, former Secretary of the Department of Immigration and former chief of staff to Minister Phillip Ruddock and Jim O'Callaghan, senior official in the Department's Policy and Programmes Branch. Of the remaining 28, three chose to be quoted anonymously. Participants are listed below in order of interview:

1. Professor Guy S. Goodwin-Gill, UNHCR Legal Representative in Australia 1978 to 1983
2. The Hon. Ian Macphie, Minister for Immigration 1979-1982 (*interviewed for a second time twelve months later*)
3. The Rt. Hon. Malcolm Fraser, Prime Minister of Australia 1975-1983
4. The Hon. Petro Georgiou, senior advisor to Prime Minister Fraser 1975-1979
5. The Hon. Moss Cass, Shadow Minister for Immigration 1977-1980
6. The Hon. Michael MacKellar, Minister for Immigration 1975-1979
7. Ian Lindenmayer, Assistant Secretary Department of Immigration 1978-1984
8. Anonymous public servant 'C'

9. Harold Grant, career Immigration official
10. Derek Volker, Assistant Secretary and Deputy Secretary, Department of Immigration 1975-1981
11. Barbara Phi, DORS representative for the Department of Prime Minister & Cabinet and then head of DORS for the Department of Immigration, 1980-1986
12. Marion Le, migration agent, co-founder of Indo-Chinese Refugee Association (ICRA) and refugee advocate since 1975
13. Tony Greville, DORS representative for the Department of Prime Minister & Cabinet 1980-1984
14. Harris van Beek, National Director of Amnesty International Australia 1982 to 1995
15. Anonymous public servant 'A'
16. John Menadue, Secretary Department of Immigration 1980 to 1983
17. Wayne Gibbons, career Immigration official, positions include Regional Director, North Asia, early 1980s
18. Anonymous public servant 'B'
19. The Hon. Phillip Ruddock, Minister for Immigration 1996-2005
20. Peter Hughes, career Immigration official
21. Arja Keski-Nummi, career Immigration official
22. The Hon. Stewart West, Minister for Immigration 1983-1984
23. Judith Betts, Senior Migration Officer in Chile 1983-1984
24. Margaret Piper, Executive Director of the Refugee Council of Australia, 1991 to 2005
25. Trevor Griffiths, Assistant Secretary, Refugee Branch and Chair of DORS, 1981-1985
26. Peter Eyles, Assistant Secretary of the Settlement Branch then Head of Operations and International Division Department of Immigration, 1981-1985
27. Raph Girard, former Director of Refugee Affairs in the Canadian Department of Labor and Immigration, involved with Canada's in-country programme in El Salvador
28. Jean Roberge, senior official in the Canadian Department of Labor and Immigration who helped establish the Canadian in-country programme in El Salvador

The majority of the interviewees, aside from the Canadian officials, were involved with Australian refugee policy from 1979 through to 1983. This period came at the height of the Indochinese exodus and the government's resettlement programme, and after the Determination of Refugee Status Committee had begun to function. Figure 5 below shows the percentage of the 25 interviewees (excluding the Canadian participants and Mr Ruddock) that were involved in immigration and/or refugee policy in any one year between 1976 and 1983. Mr Ruddock is excluded because although he was in Parliament from 1974 onward, he did not hold an official position within this area during the period under consideration.

Figure 5: The percentage of oral history interviewees involved in immigration and/or refugee policy in each year 1976 to 1983



Source: Compiled from information supplied by interviewees

The oral history interviewing process began in 2010, when prominent figures from the Fraser era, including former Prime Minister Fraser, former Ministers for Immigration Ian Macphée and Michael MacKellar, as well as former Shadow Immigration Minister Moss Cass, former Secretary John Menadue and former senior advisor to Fraser Petro Georgiou, were contacted for participation. The process continued to include a key figure from the Hawke era, former Minister for Immigration

Stewart West. His successor, Chris Hurford, was also contacted but ultimately this opportunity did not eventuate. Former Minister for Immigration under the Howard government Phillip Ruddock participated. Others who were approached but declined to be interviewed include former Prime Minister Gough Whitlam, former Prime Minister John Howard, and former Labor Opposition Leader Kim Beazley. Those who did not respond to interview requests include former Prime Minister Hawke, former Minister for Foreign Affairs Andrew Peacock and former Canadian Minister for Labor and Immigration Lloyd Axworthy

These men are all publicly known for their role in immigration history. Yet to get behind the scenes and speak to former public servants who carried out the government's policy, and to those refugee advocates who engaged with them, was a different and more challenging task; the first question was of course, how to identify them? And secondly, how to contact them? These oral history interviewees were selected and contacted through personal referrals, beginning with contacts supplied by Professor Goodwin-Gill, currently a Professor of International Refugee Law and fellow at All Souls College Oxford, who had previously worked with many Immigration officials during his time with the DORS Committee. A large number of interviewees had stayed in touch with one another since leaving the Department, and kindly recommended former DORS colleagues to contact for further research.

Given the sensitivity of working with living subjects, the interview process was approved by the University of Oxford's Central University Research Ethics Committee (CUREC). Most interviewees signed a standard form (developed for this research project and approved by CUREC) which stated that at any point during the interview or afterward they could opt for anonymity, retract statements or request that comments be

considered ‘off the record’.¹²³

Interviews were usually transcribed, except for the discussion with anonymous public servant ‘C’ as this individual did not wish to be audio recorded. Transcripts of interviews are available for examiners on request from myself or my supervisor Dr Deborah Oxley. Some transcripts reflect the entirety of the interview, others only contain the most relevant comments if the discussion between myself and the interviewee was particularly expansive. The transcripts for anonymous public servants ‘A’ and ‘B’ will only contain the sections cited in this thesis, in order to maintain the interviewees’ anonymity.

The interviews were guided by a basic set of questions, mostly delivered verbally and in person during the interview. Interviews with Peter Eyles, Raph Girard and Jean Roberge were conducted via correspondence, so these interviewees had time to consider their answers. Similarly, a list of questions was delivered to Stewart West before our interview and this proved extremely fruitful, in that Mr West had detailed answers prepared and had given considerable thought to the issues at hand. As such, in retrospect, I would prefer to have used this format for all interviews, although short lead times would have made this impractical in some instances. Questions were nonetheless tailored to the individual as much as possible and naturally discussion was shaped by the level and timing of their involvement in refugee policy. Broadly speaking, however, all interviews included reference to the following:

- How Australia’s response to refugees changed during the years 1976 to 1983
(and before and after, depending on the interviewee)

¹²³ At this point I am still awaiting Mr Ruddock’s signature on this form.

- How different departments and/or external organisations such as Amnesty International and the UNHCR interacted on refugee policy
- The culture of the Department of Immigration
- Details of particular refugee programmes and responses to asylum seekers

The experience of interviewing political figures was noticeably different from that of public servants or refugee advocates, and there were also differences within these two groups as well. It is worth discussing these here in turn. Firstly, some political figures posed a unique challenge given their extensive experience speaking on the record about this topic. For example, Mr Ruddock talked at length but steered the conversation on his own terms. Given that he had spent many years verbally defending (indeed, advocating) the Howard government's policies on asylum seekers, it was difficult to question his views.¹²⁴ For his part Mr Fraser was very willing to answer questions, although in many ways his recollections and the opinions he expressed resemble those already on the public record. In comparison, Mr West and Mr Macphee were willing to ponder the nuances of each topic and engage in a greater level of self-reflection than other political figures.

Public servants and refugee advocates were also highly articulate and possessed a detailed knowledge of this policy area, even if their direct involvement had concluded some years ago. A number had considerable experience speaking on the public record about refugee policy, such as Marion Le, Arja Keski-Nummi, John Menadue and Margaret Piper. Efforts were made to contact former public servants who had worked in departments other than Immigration, but ultimately only three were interviewed. The external perspective was therefore provided by refugee advocates such as Le, Piper and

¹²⁴ Peter Mares wrote about his interview with Ruddock in *Borderline*, and his observations broadly reflect my own experience – see further: Mares, *Borderline*, pp. 105-112.

Harris van Beek, and their views of refugee processing have been augmented by the evidence found in Goodwin-Gill's DORS files. In general, refugee advocates and former public servants did not differ markedly in their impressions of policy outcomes or DORS' decision-making.

Most importantly, many public servants who were interviewed had worked in the Department of Immigration for several years, sometimes decades, lending useful insight into continuity and change in both politics and administration. This included Keski-Nummi, Peter Hughes, Wayne Gibbons and Trevor Griffiths. They therefore possessed a greater knowledge of this policy area, and all its legislative and administrative changes, than the ministers who were involved with refugee policy for a relatively short time period.

Literature in the field of oral history recognises that the form of an interviewee's testimony can reveal a great deal about the importance they place on particular events and experiences, and how these things may have changed over time due to external cultural or political influences.¹²⁵

It is unclear whether or not the comparison with later events caused interviewees who held public office or senior positions in government departments to enhance their own legacy, because testimonies generally aligned with evidence in other sources. Most interviewees did not recall personal errors or failures, but, if anything, stressed that the implementation of policy could be difficult. Former Hawke government Minister for Immigration Stewart West proved a notably candid exception when he stated that he should have done more for East Timorese refugees, a point which will be discussed further in Chapter Six.

¹²⁵ P. Thompson, *The Voice of the Past: Oral History* (Oxford, 2000), p. 129; A. Portelli, 'What Makes Oral History Different', in R. Perks and A. Thomson, *The Oral History Reader*, pp. 35-36.

2.2 Archival records

This thesis has drawn on two main archival sources: the collection of government records in the National Archives of Australia, and the Refugee Studies Centre Collection at the University of Oxford. These sources will be discussed here in turn. Research was also conducted at the Department of Immigration and Citizenship Library in Canberra, the National Library of Australia and the State Library of Victoria during four research trips to Australia.

In order to gain a wide-ranging understanding of the admission of refugees in Australian history, the archival research process included the consultation of records dating back from the 1920s through to the 1980s, enabling a better appreciation of refugee admission and the management of asylum seekers in the White Australia era. Given the volume of government records held by the National Archives, records were selected based on the specifics of their title (e.g. ‘Review of Indochinese Refugee Situation’), and then on as broad a basis as possible. In total, more than 165 files were examined.

It is of course acknowledged that, like oral history, archival records are a selective representation of the past. Thompson and others have noted that archives ‘do not come to the historian by accident’ but were purposefully created and retained by public servants whose interests are different to those of the historian.¹²⁶ Certainly the oral history has shown this claim to be very true; were it not for the oral history interviews, I would never have discovered information about the in-country programme in Latin America because the story is not evident within the archival documents (the reasons for which are discussed in Chapter Six). In addition, some interviewees who

¹²⁶ Thompson, *The Voice of the Past: Oral History*, p. 124; R. C. Snyder, H. W. Bruck and Burton Sapin, with new chapters by V. M. Hudson, D. H. Chollet and J. M. Goldgeier, *Foreign Policy Decision Making (Revisited)* (New York, 2002), p. 52.

had held senior positions within the public service told me (off the record) of events in which departmental memorandums or proposals for action were deliberately discarded rather than filed for posterity, because the ideas expressed within these documents were considered by departmental staff at the time to be extreme or extraneous to the extant policy position.¹²⁷

Many records were listed on the National Archives database as ‘Not Yet Examined’, which meant that they had not been assessed for public release and requests for examination had to be submitted. Some requests lodged in 2010-11 were not fulfilled in time for the completion of this research. In 2011-12 I was named a ‘National Archives of Australia/Australian Historical Association Postgraduate Scholar’, and this status meant that examination requests lodged during that twelve month period were expedited.

The documents examined in the National Archives included Whitlam and Fraser government Cabinet records, Department of External Affairs and Department of Foreign Affairs records, and Department of Immigration records. It also included the ‘Commonwealth Persons’ files for Fraser and his former departmental head Geoffrey Yeend, among others. Within these files documents ranged from correspondence and memorandums of conversation, to cables, news clippings and cabinet submissions. Many files did not yield any worthwhile evidence, but as with the oral history interviews the research process was nonetheless instructive and provided a valuable sense of historical context.

The Refugee Studies Centre Collection is held in the Bodleian Social Science Library at the University of Oxford, and it contains Professor Goodwin-Gill’s DORS

¹²⁷ See also: Thompson, *The Voice of the Past: Oral History*, p. 126.

files. These records were primarily authored by Goodwin-Gill, and there are a small number of records authored by other UNHCR officials at the Sydney Branch Office. The files include reports and correspondence, and notes on 92 DORS meetings between October 1978 and April 1983. In two instances, there are also copies of official minutes (of meetings on 16 October 1979 and 6 April 1981) alongside Goodwin-Gill's notes.

The official DORS minutes are otherwise not accessible to the public through the National Archives or the Department of Immigration and Citizenship Library. Together, the official minutes and Goodwin-Gill's notes provide a rare opportunity to compare versions of the same event. A comparison between these two sources shows small discrepancies on both sides, such as the exclusion or inclusion of comments made by particular departmental representatives, or, in one instance, the details of a vote. Abstracts from the official minutes and Goodwin-Gill's notes of a meeting on 16 October 1979 are cited below in order to compare how the case of an applicant was recorded.

Official minutes:

Case No. 1 [applicant's name] Decision: The Committee rejected the applicant for refugee status but recommended him for humanitarian consideration on grounds of ethnic origin. The Foreign Affairs representative considered that the applicant qualified for refugee status because he is of Chinese ethnic origin (Attorney-General's representative abstained from voting).¹²⁸

Goodwin-Gill's notes:

Case 1: [applicant's name]. I recommend that the applicant be given the benefit of the doubt in the light of his ethnic origin and brother's service in the armed forces of the previous regime. Mr Jones thought his political opinions should also be considered. Case rejected, but recommendation for

¹²⁸ Goodwin-Gill Collection, DORS Minutes, *Minutes of DORS meeting, 16 October 1979*.

special treatment agreed in view of the applicant's age (17) and ethnic origin.¹²⁹

Note that Goodwin-Gill's version does not mention that the Attorney-General's representative abstained from voting on this case or the opinion of the Department of Foreign Affairs, but it does mention that the applicant was a minor. In turn, note that the official version does not record the opinions expressed by the representatives from the UNHCR (Goodwin-Gill) or the Department of the Prime Minister and Cabinet (listed in Goodwin-Gill's note as a Mr Jones). It is therefore difficult to know how accurate a record Goodwin-Gill's notes are, but at the same time it is clear that the official minutes are also a flawed source. Goodwin-Gill's notes occasionally record quite controversial or politicised comments made by departmental representatives, and we can assume that these would never appear in the official minutes. Perhaps in Goodwin-Gill's records we are getting a better insight into the true political dynamics of refugee status determination than official records would ever allow. The value of Goodwin-Gill's files and what they can tell us about Australia's nascent status determination procedure will be discussed further in Chapter Five of this thesis.

2.3 Sources and evidence: some observations

Studies of foreign policy decision-making contain valuable insights for the analysis of Australian refugee policy. In *Essence of Decision: explaining the Cuban Missile Crisis*, Graeme Allison and Philip Zelikow examined an evolving situation that had intense political consequences at the domestic and international level, and they argued that to treat a government as if it were a 'centrally coordinated, purposive individual' obscures the fact that decision making is a complex internal process, performed by 'not one calculating individual but [by]...a conglomerate of large

¹²⁹ Goodwin-Gill Collection, DORS Minutes, *Note for File: DORS meeting 16 October 1979*.

organisations and political actors’.¹³⁰ If this idea is applied to the study of Australian refugee policy history, it suggests that when a departmental secretary or staff member proposes a course of action, such as forcibly turning boats around, this attitude may tell us something about the culture of the organisation, but it does not necessarily represent of the views of the Minister or Prime Minister. In contrast, in Smit’s 2010 paper he claimed that because the disparaging term ‘queue jumper’ had been used in a Department of Immigration broadcast on Radio Australia, it was therefore directly attributable to Fraser.¹³¹ While studies of the Fraser government have noted that the Prime Minister was well-informed as to the activities of his Ministers and their portfolios, Smit’s conclusion is unsubstantiated and overstretched.¹³² The combination of sources in this thesis can demonstrate that it is unrealistic to automatically draw a line of culpability from the comments of a bureaucrat to the Prime Minister.

The combination of oral history and archival sources in this thesis can reveal contradictions between the evidence that highlights the varied experiences of interviewees within government and the bureaucracy. Leading oral historian Paul Thompson wrote in 1998 that the primary value of oral history lies in the fact that ‘it allows a multiplicity of standpoints to be represented’, and this fact has proven to be true, although not always conducive to a consistent version of events.¹³³ For example, the work of Viviani states that the 1977 election generated ‘alarmist’ headlines about boat arrivals which ‘reflected the emergence of unease within the community’.¹³⁴ Clyde Cameron’s *The Cameron Diaries* also mentions the issue, and as the number of boats

¹³⁰ Allison and Zelikow, *Essence of Decision*, p. 3. See also: Snyder et. al., *Foreign Policy Decision Making*, pp. 172-4.

¹³¹ Smit, ‘Malcolm Fraser’s Response to ‘Commercial’ Refugee Voyages’, p. 86.

¹³² See further: J. Walker, ‘Prime Ministers and their staff’, in P. Weller (ed.), *Menzies to Keating: The Development of the Australian Prime Ministership*, London, Hurst and Company, 1993, p. 37; Weller, *Malcolm Fraser PM*, pp. 57-58, 355, 399-400.

¹³³ P. Thompson, ‘The Voice of the Past: Oral History’, in A. Thomson and R. Perks (eds.), *The Oral History Reader*, p. 28.

¹³⁴ Viviani, *The Long Journey*, p. 79.

increased markedly during November and December of that year it seems a very straightforward assessment.¹³⁵ Yet in oral history interviews conducted for this thesis Malcolm Fraser and his former senior advisor Petro Georgiou played down the idea; by their recollections the campaign was very much focused on a scandal involving then Treasurer Phillip Lynch as well as issues related to the economy.¹³⁶ Fraser stated that he 'wasn't conscious' of the refugee situation 'being a major issue' because 'we still weren't playing politics with [it]'.¹³⁷ If the Prime Minister and his senior adviser didn't experience the refugee question as a salient election matter, does that make plain the broad preoccupations of a leader in comparison to the more direct, hands-on experience of a minister? Michael Mackellar certainly remembered the election weeks in a different light during his oral history interview, recalling that there was a lot of public debate and 'it wasn't all plain sailing'.¹³⁸ Does the disparity in their experiences suggest that it was not an election issue amongst the politicians and press gallery in Canberra, thereby strengthening Fraser's argument that his government wasn't 'playing politics' with refugees? Does it reflect the level of Fraser's involvement with this policy area? Hawkins observed that Fraser had an 'attitude of judicious non-involvement provided everything was under control', and MacKellar and Macphee's recollections support this.¹³⁹

If this doctoral research were being conducted at a point where the archival records were 'all that remained', as Weller predicted, the task of weighing the evidence would be different. Archival sources offer an insight into the official decision making process, but they give us a particular viewpoint. They do not reflect the debates within

¹³⁵ See further: C. Cameron, *The Cameron Diaries* (Sydney, 1990), p. 809.

¹³⁶ Interview with P. Georgiou, 16 December 2010, Melbourne, Australia.

¹³⁷ Interview with M. Fraser.

¹³⁸ Interview with M. MacKellar.

¹³⁹ Hawkins, *Critical Years in Immigration*, p. 130. See also: Interview with M. MacKellar; Interview with I. Macphee, 8 December 2010, Melbourne, Australia. See also: Weller, *Malcolm Fraser PM*, pp. 97-104.

the department or in informal discussions.¹⁴⁰ The oral history of those who attended the meetings, authored the publications or carried out the policy can unearth ideas and contextual detail that aren't documented in official sources. In turn, getting the measure of this topic becomes commensurately more difficult. E.H. Carr wrote sympathetically of the historian who tackles modern subject matter, for they do not confront 'a manageable corpus of historical facts'.¹⁴¹ What they do confront certainly makes for a more challenging and fruitful research process.

Conclusion

The divisive and difficult nature of Australia's current approach to asylum seekers has invariably encroached on this research process. It has informed the choice of research topic, and it has necessitated careful navigation between the simplistic 'myths and counter-myths', as Neumann called them, that characterise historical debate on this subject.¹⁴² It has required a conscious effort not to succumb to what Marilyn Lake described in *The Historian's Conscience* as the temptation 'to construct a past that best suits current political needs'.¹⁴³

In some ways the use of oral history has made this task easier. Speaking with a range of historical actors has illuminated the realities and complexities of refugee policy. Thompson makes the very valid point that oral history has the power to present a variety of historical viewpoints which challenge an interviewer's own judgements of the

¹⁴⁰ Weller, *Malcolm Fraser PM*, p. xv.

¹⁴¹ E. H. Carr, *What is History?*, second edition (London, 1990), pp. 13-15.

¹⁴² In her book *Oral History: Understanding Qualitative Research*, Patricia Leavy has described this as 'the context of discovery', where the oral historian should disclose the values they bring to the topic – see further: P. Leavy, *Oral History: Understanding Qualitative Research* (Oxford, 2011), pp. 70-71.

¹⁴³ M. Lake, 'On History and Politics', in S. Macintyre (ed.) *The Historian's Conscience: Australian Historians and the Ethics of History* (Carlton, 2004), p. 96.

evidence and the subject matter, and this is certainly the case here.¹⁴⁴ Indeed, this is why it is such a shame that contemporary researchers on this subject have not embraced the opportunity to conduct oral history interviews.

Oral historians note that an interview is a dialogue that reflects the interests and presumptions of both parties.¹⁴⁵ Thus researching a topic that is so controversial in Australian political debate meant that interviewees may have had a preconceived notion of who I was and what kind of evidence I wanted to find, even though I strove to ensure that my own ideas about Australia's current refugee policy did not unduly influence my approach to the interview process.¹⁴⁶ In turn, as the researcher I needed to avoid being influenced by the views of individual interviewees who expressed strong opinions on this subject area. Referring back to the archival sources and validating interview responses against the evidence within these documents enabled me to gain some perspective on the oral history, and a greater appreciation of the nuanced and multidimensional nature of policy making, implementation and administration.

An in-depth combination of archives and oral history can demonstrate that decision-making on refugee policy during the years 1976 to 1983 was a more dynamic and multi-faceted process than the current debate over Australia's refugee policy history suggests. Lake writes that 'good history and good politics are not the same project', the former designed to develop nuanced and contextualised understanding of complex events, and it is hoped that the research presented in this thesis can go some way to achieving this endeavour.¹⁴⁷

¹⁴⁴ Thompson, 'The Voice of the Past: Oral History', in Thomson and Perks (eds.), *The Oral History Reader*, p. 28; P. Thompson, *The Voice of the Past: Oral History*, p. 222.

¹⁴⁵ Portelli, 'What Makes Oral History Different', pp. 38-39.

¹⁴⁶ *ibid.*

¹⁴⁷ M. Lake, 'On History and Politics', p. 96.

Chapter Three: Status determination of Indochinese boat arrivals

On the night of 8 May 1975 the Whitlam government was advised that a boatload of 27 Vietnamese refugees could soon make their way to Australia. Less than two weeks after the fall of Saigon, the Australian government was confronting what would become the 'boat people' phenomenon. The 27 refugees had been rescued off the coast of Singapore a day earlier, and in a letter sent to the High Commission they asked to come to Australia.¹⁴⁸ They were among many thousands who had engineered their own escape after the United States stopped evacuating refugees to Guam on 2 May. Overwhelmed by the arrival of 8000 Vietnamese in just four days, the Singaporean government was now threatening to re-provision this particular boat, 'and had supplied them with charts for Australia and the Philippines'.¹⁴⁹

Prime Minister Whitlam was in Washington, en route from the 1975 Commonwealth Heads of Government Meeting in Jamaica where he had discussed Australia's participation in international resettlement efforts.¹⁵⁰ But the government did not have a planned response to the outflow, let alone to this small group requesting Australia's help. Whitlam's Deputy Secretary of the Department of the Prime Minister and Cabinet (PM&C), Geoffrey Yeend, had been managing the initial news of the 27 refugees' rescue. 'The Australian' newspaper had already reported rumours that large vessels carrying hundreds of Vietnamese were planning to sail south, and Yeend was

¹⁴⁸ Australia. *Commonwealth Parliamentary Debates*, House of Representatives, 15 May 1975, p. 2307.

¹⁴⁹ National Archives of Australia, M4797 1. The United States had stopped evacuating refugees off the coast of South Vietnam on 2 May 1975 – see further: Senate Standing Committee on Foreign Affairs and Defence, *Australia and the Refugee Problem*, p. 7.

¹⁵⁰ Australia. *Commonwealth Parliamentary Debates*, House of Representatives, 15 May 1975, p. 2307.

focused on avoiding 'unfavourable publicity' for the Whitlam government.¹⁵¹ When the telegram from the Singaporean government arrived on the night of 8 May, Yeend was alerted. He began coordinating conflicting advice from his colleagues in the departments of Labor and Immigration, Foreign Affairs and PM&C, and there ensued a series of long-distance phone calls between senior staff travelling with the Prime Minister, and several conversations between Yeend, Foreign Affairs and then Acting Prime Minister Jim Cairns. At a meeting in Cairns' office the next morning, it was decided that the navy could escort boats 'to the appropriate reception points' if necessary, and the Secretary of the Department of Defence, Arthur Tange, was informed accordingly. The meeting concluded, and Yeend returned to his office to write in his notes:

'We agreed that it was too early to be moving on the refugee reception side, but that if ships were sailing towards Australia we would need to look something better than helpless...'¹⁵²

This story has been buried in the National Archives for thirty-five years, in an obscure file full of Yeend's personal correspondence. It is one of the earliest known instances of Vietnamese boat people seeking to reach Australia, and it is revealed here for the first time.¹⁵³ Yeend's notes reveal a scrambled consultation within the bureaucracy, based on an implicit understanding of a looming problem and the need to find a way of managing it.

The May 1975 incident symbolised portentous matters for the Australian government. The refugees were from Asia, and they were seeking spontaneous entry to

¹⁵¹ See further: K. Neumann, 'Oblivious to the Obvious? Australian Asylum-Seeker Policies and the Use of the Past', in K. Neumann and G. Tavan (eds.), *Does History Matter? Making and debating citizenship, immigration and refugee policy in Australia and New Zealand* (Canberra, 2009), pp. 47-48.

¹⁵² National Archives of Australia M4797 1. The archival record shows that by the time a UNHCR representative was sent to speak with the 27 refugees at Australia's behest, they had left Singapore along with thousands of other refugees who are believed to have sailed to Guam and the Philippines.

¹⁵³ Neumann cites archival evidence that the Department of Immigration knew of two large container ships heading to Australia on 9 May – see further: Neumann, 'Oblivious to the Obvious?', pp. 47-48.

a white settler society that had only recently renounced racially discriminatory immigration policy and ratified the 1967 Protocol. Moreover, these refugees and the thousands of others who sailed out of Vietnam for countries of first asylum that week were the harbingers of a morally hazardous situation for the international community, in which ‘the ‘explicit or implicit promise of admission as refugees’ stimulated a greater refugee flow out of Indochina.¹⁵⁴

The Whitlam government decided on 19 May 1975 that prospective boat arrivals would be taken into custody, yet this government never had to deal with the arrival of boats from Vietnam.¹⁵⁵ It received 2538 evacuees from East Timor in August 1975, but for reasons that are beyond the scope of this thesis their arrival was managed differently to that of the Indochinese.¹⁵⁶ By the time the first Vietnamese boat reached Australia in April 1976, a Liberal government led by Malcolm Fraser was in office. How did this government seek to be something better than helpless?

The Fraser government told the Australian public and the bureaucracy that it

¹⁵⁴ See further: M. S. Teitelbaum, ‘Tragic Choices in Refugee Policy’, in J. M. Kitagawa (ed.), *American Refugee Policy: Ethical and Religious Reflections*, Conference on Ethical Issues and Moral Principles in United States Refugee Policy (Washington D.C. and Minneapolis, 1984), pp. 32-36.

¹⁵⁵ Neumann, ‘Oblivious to the Obvious?’, pp. 48-49.

¹⁵⁶ Chapter Six includes a brief discussion of the Australian government’s response to East Timorese refugees. It appears that the Timorese are not included in official statistics of boat arrivals, and are not counted in the Department’s definition of the ‘first wave’. For detailed figures see further: Australia. Department of Immigration and Ethnic Affairs, *Review ‘80* (Canberra, 1980), p. 49; A. Wise, *Exile and Return: Among the East Timorese* (Philadelphia, 2006), p. 45. For refugee statistics see further: Department of Immigration and Citizenship, *Submission to the Joint Select Committee on Australia’s Immigration and Detention Network*, September 2011, pp. 165-168. The archival record shows that in diplomatic negotiations with the Indonesian and Portuguese governments, the Whitlam and Fraser governments tended to class the Timorese as ‘evacuees’ or as ‘temporary entrants’ rather than refugees, despite references to them as refugees in parliamentary debates and archival records, including by Whitlam himself – see further: Australia. *Commonwealth Parliamentary Debates*, House of Representatives, 3 September 1975, p. 915; ‘Refugees tell tale of carnage in Dili streets’, *The Canberra Times*, 26 August 1975, p. 1; National Archives of Australia, A1838 1690/1/6/2 Part 1, ‘Australian refugee policy – relations with other countries – Indonesian Timor – Timor refugees reimbursement’; Australia. Department of Immigration and Ethnic Affairs, *Review ‘76*, p. 15; P. Walsh, ‘Timorese Family Reunions: Casualties of Politics and Corruption’, *Migration Action*, 5, No. 1, 1981, pp. 4-9; National Archives of Australia, A6980 S251079 ‘Refugee Branch – Timor family reunion – visit to Timor – November 1978 – Part 2’; Australia. *Commonwealth Parliamentary Debates*, House of Representatives, 4 September 1975, p. 1063; Jupp, *The Australian People: An Encyclopaedia of the Nation and its Origins*, p. 706. See also: Australia. Parliamentary Library, Legislative Research Service, Foreign Affairs Group, *East Timor – Notes on the Humanitarian Situation*, 1979; J. Pilger, *Distant Voices*, Vintage, London, 1994, p. 235.

would only accept boat arrivals who were ‘genuine’ refugees, and it used the Determination of Refugee Status Committee (known as ‘DORS’) to achieve this. How and why it did so is the subject of this chapter. The chapter will begin by analysing the government’s message to would-be boatpeople, the Australian public and the international community, and will then compare this to the reality of the Indochinese outflow and the status determination process. Evidence is drawn from previously unexplored archival records created by the former UNHCR Legal Representative in Australia, Guy S. Goodwin-Gill, who was a member of DORS from 1978 to 1983.

The fact that the Indochinese boat arrivals were allowed to remain in Australia has been widely acknowledged in the literature but the reasons behind this have never been explored due to a lack of detailed primary sources.¹⁵⁷ Furthermore, Stevens has interpreted the government’s insistence that it would only accept ‘genuine’ refugees as a resistant and ungenerous stance that was designed to ‘de-legitimise’ the boatpeople’s claims.¹⁵⁸ By drawing on Goodwin-Gill’s files, this chapter will provide original evidence as to why none of the boatpeople were ever sent back, how this compared to government statements on the issue, and the recurrent inter and intra departmental debates over the status determination process. This chapter will provide context to the discussion of other deterrence measures in Chapter Four.

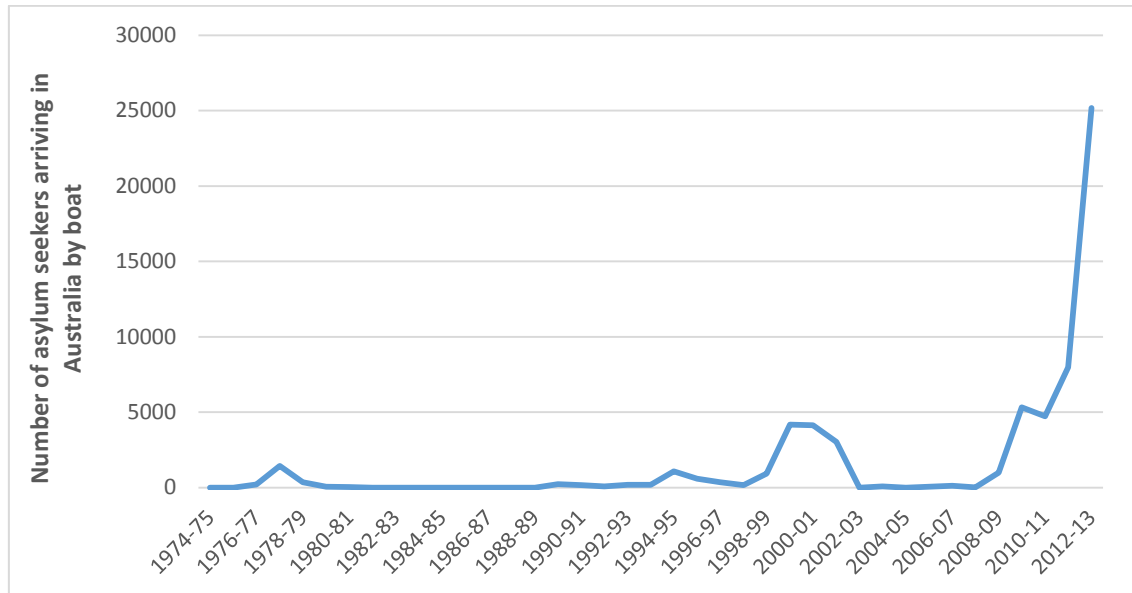
In the three and half decades from May 1975 to the end of June 2013, approximately 61,879 people have sailed to Australia and sought refuge. They have

¹⁵⁷ Viviani and Lawe-Davies, *Australian Government Policy on the Entry of Vietnamese Refugees, 1976 to 1978*, p. 23; Price, ‘Immigration Policies and Refugees in Australia’, pp. 102-103; Fraser and Simons, *Malcolm Fraser: The Political Memoirs*, p. 418; Viviani, ‘The Vietnamese in Australia: new problems in old forms’, p. 237; Mares, *Borderline*, p. 74; Viviani, *The Indochinese in Australia, 1975 to 1995*, p. 12; McMaster, *Asylum Seekers*, p. 71; C. P. Rodd, ‘Boats and Borders: Asylum Seekers and Elections, 1977 and 2001’, in D. Lusher and N. Haslam (eds.), *Yearning to Breathe Free: Seeking Asylum in Australia* (Sydney, 2007), pp. 39, 46.

¹⁵⁸ Stevens, ‘Political Debates on Asylum Seekers’, p. 532; Stevens, ‘No, the Fraser era was not a Golden Age for Asylum Seekers’.

come in four waves, to use the Department of Immigration and Citizenship's terminology, as indicated in Figure 6 below.

Figure 6: Asylum seekers arriving by boat to Australia by financial year 1974-75 to 2012-13.¹⁵⁹



Source: Figures compiled from Department of Immigration and Ethnic Affairs annual reports 1976-1981, Department of Immigration and Citizenship publications, and Commonwealth Parliamentary Library publications.¹⁶⁰

For Australian governments, boat arrivals are seen to challenge ‘many fundamental tenets of Australia’s migration, quarantine, customs and even defence policy’.¹⁶¹ They are also a political problem, stirring what former Department of Immigration Secretary Lou Engledow called ‘the fears under the surface of the

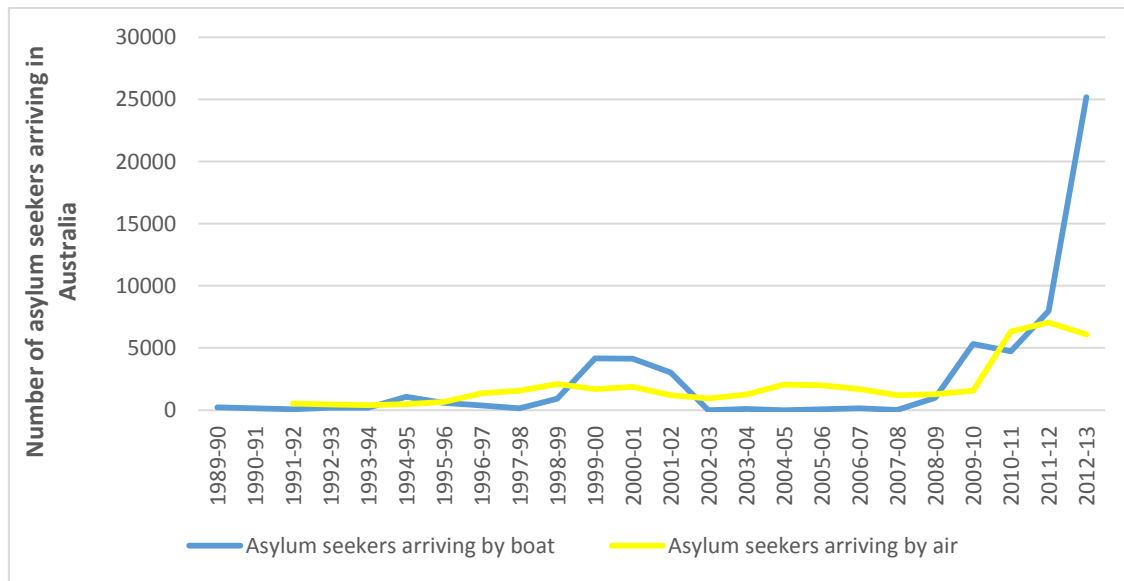
¹⁵⁹ These figures do not include an additional 26,088 people who arrived by aeroplane between 1991 and 2011, or the 2538 evacuees from East Timor who arrived by boat in August and September 1975.

¹⁶⁰ See further: Australia. Department of Immigration and Citizenship, *Submission to the Joint Select Committee on Australia’s Immigration and Detention Network*, pp. 165-171; Australia. Department of Immigration and Citizenship, *Asylum Trends 2011-2012*, p. 2; Australia. Department of Immigration and Citizenship, *Asylum Statistics Quarterly Tables: March Quarter 2013*, p. 1; J. Phillips and H. Spinks, *Boat Arrivals in Australia Since 1976*, Commonwealth Parliamentary Library, accessed 02 August 2013, at <http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2011-2012/BoatArrivals#AppendB>. The Liberal/National government led by Tony Abbott, elected September 2013, has indicated that it will no longer issue figures on future boat arrivals – see further: D. Wroe, ‘Clamp on Boat Arrival Figures’, *The Age*, 21 September 2013, accessed 21 September 2013, at <<http://www.theage.com.au/federal-politics/political-news/clamp-on-boat-arrival-figures-20130920-2u5as.html>>.

¹⁶¹ Australia. National Population Council, *Refugee Review*, p. 132. See also: ‘Medical condition of Vietnamese refugees’, *Commonwealth Record*, 29 June 1977, p. 797.

Australian mind'.¹⁶² In turn, the way in which they are managed reflects on the nation's international reputation, an issue that will be discussed in Chapter Four. The waves of boats have been joined by a steady but less conspicuous stream of asylum seekers arriving by air since 1991, when the earliest figures are available, as illustrated in Figure 7 below:

Figure 7: Asylum seekers arriving by boat and by air, 1989-90 to 2012-13.



Source: As for Figure 6, with additional information drawn from the University of Queensland Migrant Smuggling Working Group.¹⁶³

Within each of the seven governments, countless high-level interdepartmental meetings have sought to find solutions to the legal and political challenges posed by 61,879 individuals. Taskforces have been formed and disbanded. Generations of public servants like Yeend have weighed the political costs, crafted policy responses and proposed legislative changes. Unlike the refugee resettlement program that the government has carefully planned for over three decades, boat arrivals are an evolving and changeable problem. Figure 8 demonstrates how this problem has been addressed

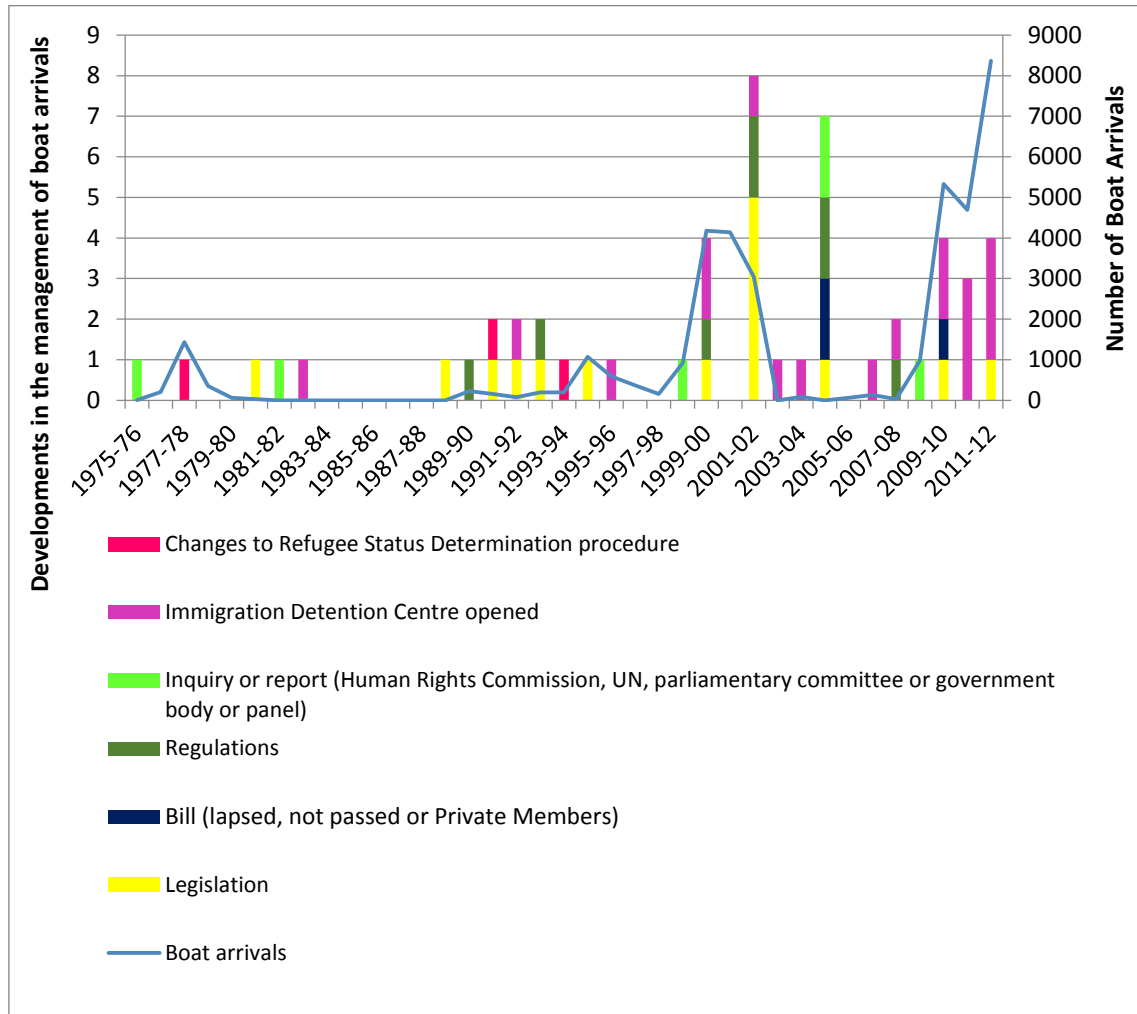
¹⁶² Proceedings of the Conference on the Indochina Refugee Situation.

¹⁶³ It must be noted that air arrivals normally hold visas, while boat arrivals do not. See further: University of Queensland, T. C. Beirne School of Law, Migrant Smuggling Working Group, *Statistics and Other Data*, accessed 4 August 2012, at <<http://www.law.uq.edu.au/index.html?page=156456#air-arrivals>>; Department of Immigration and Citizenship, *Asylum Statistics Quarterly Tables: March Quarter*, 2013, p. 1.

over time, through the opening of detention centres, new legislation or regulations, government inquiries and NGO reports. It reflects the fact that Department of Immigration procedures became increasingly codified from the late 1980s on.¹⁶⁴ The management of asylum seekers has been accomplished through the establishment of Immigration detention facilities, legislative and regulatory measures and Refugee Status Determination (RSD) procedures.

¹⁶⁴ Crock, 'Refugees in Australia', p. 8.

Figure 8: Immigration Detention Centres, inquiries or reports, RSD procedures and legislative measures of direct relevance to boat arrivals (left axis) compared with trends in boat arrivals (right axis) 1975-76 to 2011-12.



Source: Most entries taken from Department of Immigration and Citizenship, *Submission to the Joint Select Committee on Australia's Immigration Detention Network*, September 2011, pp. 100-112.¹⁶⁵

Figure 8 makes plain that the first wave of boat arrivals was not managed through the suite of legislative and administrative mechanisms that are commonplace today. So what did the Fraser government do instead?

As stated in Chapter Two, historians know more about the government's

¹⁶⁵ Other sources: Australia. Senate Standing Committee on Foreign Affairs and Defence, *Australia and the Refugee Problem* (Canberra, 1976); Australia. *Commonwealth Parliamentary Debates*, House of Representatives, 24 May 1977, pp. 1713-6; Australia. Senate Standing Committee on Foreign Affairs and Defence, *Indochinese Refugee Resettlement: Australia's Involvement* (Canberra, 1981). The chart does not include Memorandums of Understanding or other agreements signed with countries such as Papua New Guinea, Malaysia or Afghanistan. The graph does not include relevant decisions in the Federal or High Court.

response to the second, third and even fourth waves of boat arrivals than they do about the first, due to the impressive research work of journalists and academics, and the availability and sheer variety of primary sources. The legislation, inquiries and reports referenced in Figure 8 are markers of a concerted institutional response, and a far cry from Yeend's night in Canberra years earlier. A boatload of asylum seekers sailing to Australia today is received into a \$1.5 billion network of detention centres.¹⁶⁶ Today Australia is 'better than helpless'. Exactly how the Fraser government sought that state of control from 1976 to 1981 is less well known. This chapter will contribute new evidence to this important question.

1. Sympathy, safety, and 'genuine refugees'

Eleven months and eighteen days after the Australian government was first confronted with the unfulfilled prospect of Vietnamese sailing south, the first 'boatpeople' edged into Darwin harbour on 26 April 1976. They were five young men who had travelled for almost two months through South-East Asia, navigating their way to Darwin using only a single page torn from a school atlas.¹⁶⁷ From all accounts, the Australian press paid very little attention to these five young men and the portents of their great journey.¹⁶⁸ Within the Department of Immigration, however, there was a little more perturbation about their achievement. Senior Migration Officer Wayne Gibbons had worked directly under Whitlam's Immigration Minister Clyde Cameron and was involved in Australia's resettlement of Vietnamese refugees in 1975. Just as Yeend had done, Gibbons implicitly understood the threat that this vessel posed:

¹⁶⁶ See further: Australia. Senate, Legal and Constitutional Affairs Legislation Committee, *Estimates*, Department of Immigration and Citizenship Portfolio, 28 May 2013; See also: K. Bem, N. Field, N. Maclellan, S. Meyer and D. Morris, *A Price Too High: The Cost of Australia's Approach to Asylum Seekers*, A Just Australia and Oxfam Australia, August 2007; G. Nicholls, *Deported: A History of Forced Departures from Australia* (Sydney, 2007), pp. 142-149.

¹⁶⁷ See further: B. Grant, *The Boatpeople: 'An Age' Investigation* (Ringwood, 1979), pp. 7-8, 14-15.

¹⁶⁸ Viviani and Lawe-Davies, *Australian Government Policy on the Entry of Vietnamese Refugees, 1976 to 1978*, p. 4; Neumann, *Oblivious to the Obvious?*, f.30.

... the first boat arrived in Darwin. I got sent up there, and our major fear then – I had a very strong fear – was, if we don't handle this well, the mood of the public will become paranoid. So we kept it as quiet as we could, it didn't become a big issue, we made people believe it was just a lucky experience for these few men on a boat, they couldn't have done it with a larger group because it was too far a journey...¹⁶⁹

By the end of that year more boats began to arrive. Evidence from UNHCR records and government press releases suggests that these small vessels were equally fortunate, lacking sailing experience, charts or detailed bearings for their journey.¹⁷⁰ Others may have tried, and failed.

The exact date on which every boat reached Australia is not well-documented in departmental publications or other sources, although occasionally arrivals were listed in the *Commonwealth Parliamentary Debates*.¹⁷¹ Viviani's early work contains details of monthly arrivals up until 1978.¹⁷² The image in Figure 9 is from the National Library database, and was evidently created by the Department of Immigration. It shows the timing of boats for the 36 months between April 1976 and April 1979, although it does not include those boatpeople who were rescued at sea while seeking to make their own way to Australia.¹⁷³

¹⁶⁹ Interview with Wayne Gibbons, 9 July 2011, Oxford, United Kingdom.

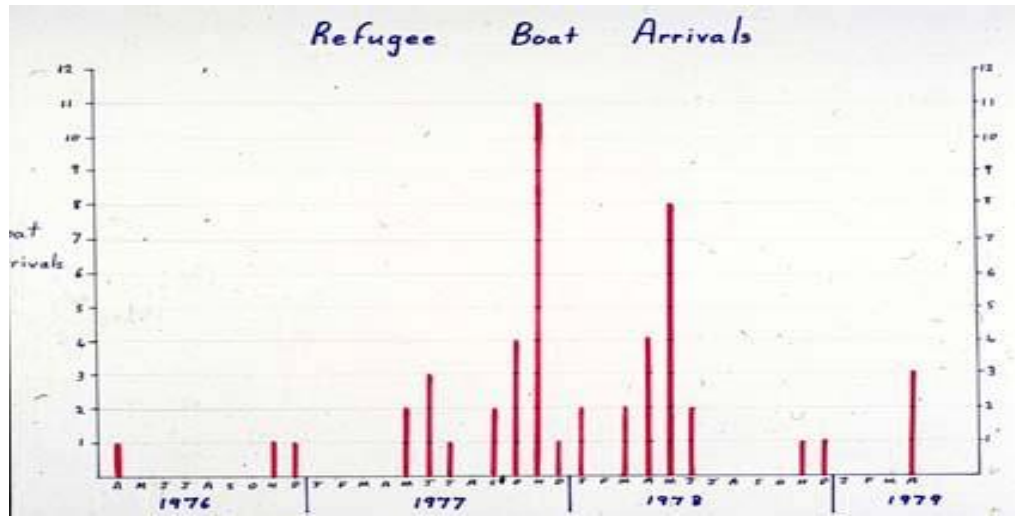
¹⁷⁰ Goodwin-Gill Collection, DORS Minutes, Note for File: concerning visit to Darwin 18 to 21 April 1979.

¹⁷¹ Australia. *Commonwealth Parliamentary Debates*, House of Representatives, 9 May 1978, pp. 2095-6.

¹⁷² See further: N. Viviani, *Australian Government Policy on the Entry of Vietnamese Refugees in 1975*, Centre for the Study of Australian-Asian Relations, Griffith University, 1980, graph 3 (*no page number*).

¹⁷³ For example, in August 1976 a boatload of 22 Vietnamese were rescued off the coast of Indonesia: 'Vietnamese refugees offered sanctuary', *Commonwealth Record*, 31 August 1976, p. 550; 'Vietnamese refugees in Singapore', *Commonwealth Record*, 1 September 1976, p. 550; 'Vietnamese refugees arriving in Australia', *Commonwealth Record*, 5 September 1976, p. 558.

Figure 9: Department of Immigration graph of boats arriving in Australia, April 1976 to April 1979



Source: National Library of Australia, 'Department of Immigration graph showing seasonal boat arrivals', image number A12111

The image is consistent with the fact that boat arrivals were an uncommon occurrence until mid-1977, and peaked at 1432 people in the financial year 1977-78. The increase is believed to have been driven by a suppression of private enterprise by the Vietnamese authorities in March 1978, which encouraged the departure of ethnic Chinese.¹⁷⁴ What is most interesting about the fall in boat arrivals after mid 1978 is that numbers leaving Vietnam were actually increasing throughout that year. It is generally recognised in primary sources and original studies of the exodus that the financial year 1978-1979 was the real point of crisis.¹⁷⁵ The reason why boats sailed to Australia less frequently, and then stopped entirely in 1981, is a complex question that relates to broader international efforts to respond to the outflow. It is beyond the scope of this thesis to discuss these efforts in more detail.

The Fraser government's public attitude to boat arrivals changed over time, as

¹⁷⁴ This will be discussed in more detail in Chapter Four.

¹⁷⁵ 'Visit to South-East Asia', *Commonwealth Record*, 4 July 1978, p. 833; 'Refugees initiative adopted by UNHCR', *Commonwealth Record*, 18 October 1978, p. 1453; 'Assistance for Indochinese Refugees', *Commonwealth Record*, 12 December 1978, p. 1710; 'Speech to UNHCR meeting in Geneva', *Commonwealth Record*, 11 December 1978, p. 1715; B. Grant, p. 82; Viviani, *The Long Journey*, p. 46-47.

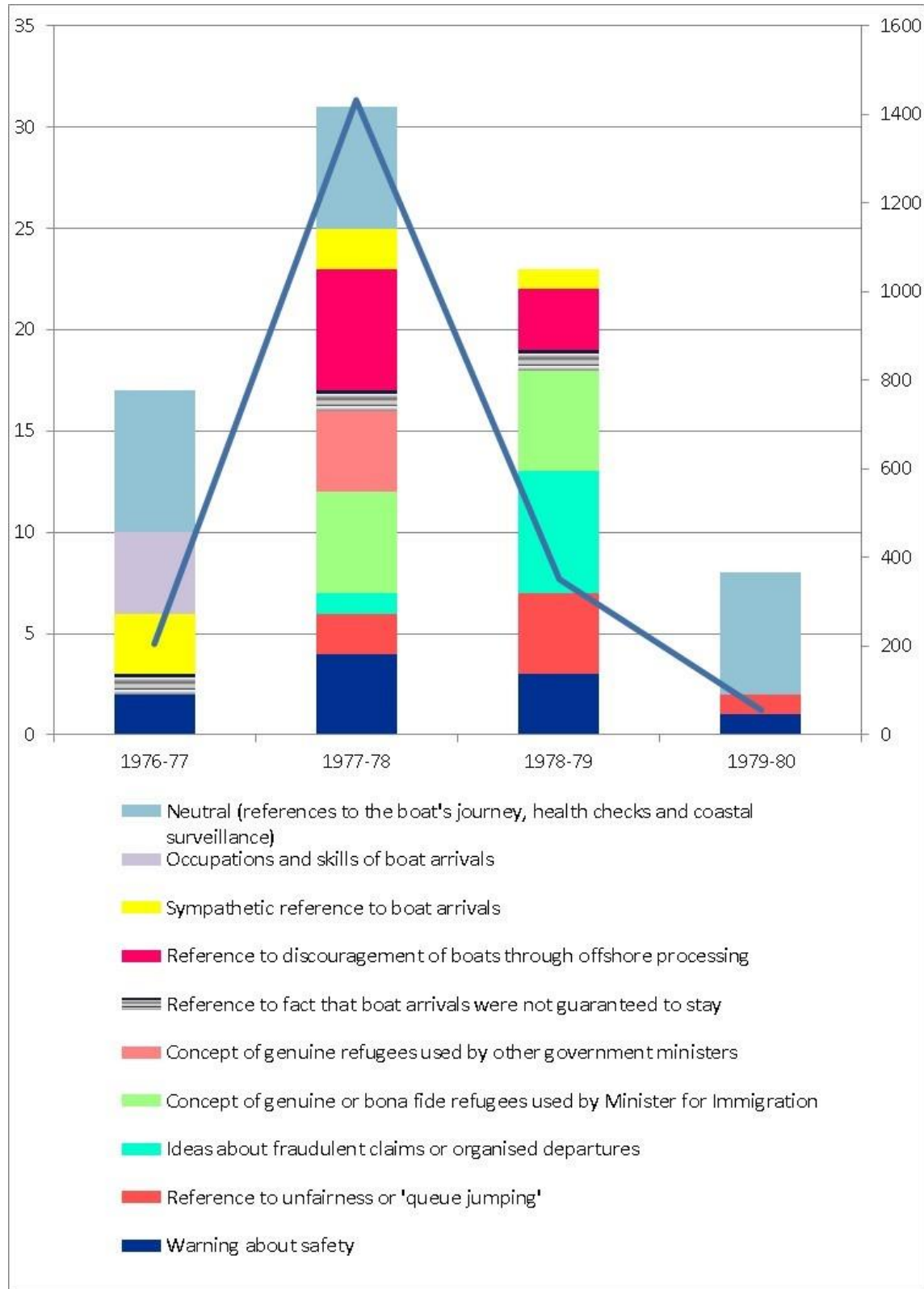
they became a more regular phenomenon and as the outflow from Indochina grew bigger through 1978 and 1979. This change can be clearly traced through the rhetoric of government press releases and ministerial speeches. Analysing these sources is a worthy research exercise, because recent qualitative examinations of parliamentary debates, media reports and other public statements by Stevens and by Chelsea Piper Rodd have reached opposing conclusions as to whether the Fraser government exhibited moral leadership on the issue of boat arrivals. Furthermore, Stevens and Rodd do not examine government statements before the election campaign of late 1977, but these must be considered an essential part of the story because they articulated a compassion for the boatpeople and are therefore distinct primary sources.¹⁷⁶ They are included in this section.

Figure 10 measures how the content of government statements changed through the first wave, from 1976-77 to 1979-80. It is based on the analysis of ten different subject areas or messages in 59 government press releases (which include ministerial statements and speeches) published in the *Commonwealth Record*, beginning in mid-1976 when a boatload of 22 Vietnamese were rescued by an Australian oil-rig supply vessel off the coast of Indonesia and requested to be resettled in Australia.¹⁷⁷ At times several messages were represented in the one press release. References to boat arrivals in press releases produced after June 1980 were irregular and limited in their content, so have been excluded from this figure.

¹⁷⁶ Stevens, 'Political debates on asylum seekers', p. 529-32; Rodd, 'Boats and Borders', pp. 36-39, 46. See also: Viviani and Lawe-Davies, *Australian Government Policy on the Entry of Vietnamese Refugees, 1976 to 1978*, pp. 10-32.

¹⁷⁷ 'Vietnamese refugees offered sanctuary', p. 550; 'Vietnamese refugees in Singapore', p. 550; 'Vietnamese refugees arriving in Australia', p. 558.

Figure 10: Changing references to boatpeople in Fraser government press releases (left axis), compared to the number of boatpeople arriving on Australian shores (right axis), July 1976 to June 1980



Source: *Commonwealth Record*, July 1976 to June 1980.

In 1976 and the first half of 1977, government press releases largely reported arrivals in a neutral manner, referring to the journey of each boat, the health of those on board and how it was detected offshore. At times, the government portrayed the handful of boats as fortunate, having survived a ‘harrowing experience’. The tone of those particular announcements was very sympathetic, expressing concern only at the hardship the boatpeople had endured on their journey. The quote from MacKellar in a press release of 27 June 1977 is a good example of this. It described the travel itinerary that the Department had organised for 73 Vietnamese who had landed on Australia’s north-west coastline:

Our main consideration in making these arrangements is the comfort of these people who have suffered severe hardship on their journey. By shuttling them to Darwin, the refugees will have a full day’s rest before flying on to Sydney.¹⁷⁸

The Department of Immigration said the boat arrivals were being offered ‘sanctuary’ if they wanted to stay in Australia and met ‘acceptable health and character standards’.¹⁷⁹ In one instance, the Department even cited a letter in English that Vietnamese passengers gave to Customs officers on arrival in Darwin harbour in late December 1976. It read, ‘Please help us for freedom... please, Australia government help us live in Australia’; MacKellar described this as ‘all that needed to be said’.¹⁸⁰

Figure 10 showed that on four occasions in 1976-77 the skills set of the boat arrivals was promoted, as the Minister announced to the Australian public that ‘breadwinners’ on-board included a chemical engineer, accountants, an optical repairer, a bank clerk, typists, a mechanic and a plumber.¹⁸¹ MacKellar also adopted the position

¹⁷⁸ ‘Airlift of Vietnamese refugees’, *Commonwealth Record*, 27 June 1977, p. 797.

¹⁷⁹ ‘Vietnamese refugees offered sanctuary’, p. 550.

¹⁸⁰ ‘Vietnamese refugees to stay in Australia’, *Commonwealth Record*, 20 December 1976, pp. 1527-28.

¹⁸¹ ‘Vietnamese refugees offered sanctuary’, p. 550; ‘Vietnamese refugees accommodated in Brisbane’, *Commonwealth Record*, 12 November 1976, p. 1220; ‘Vietnamese refugees to stay in Australia’,

that while Australia would ‘continue a strong refugee resettlement program’, ‘it must balance the claims of compassion and humanity with the needs of the workplace’.¹⁸² This indicates that the Department was seeking to ease concerns about the economic impact of the refugee intake, which became a popular theme in political debate and media commentary due to the fact that the Fraser government was increasing the annual immigration intake from historically low levels under the Whitlam government during a period of higher than usual unemployment.¹⁸³ It was exacerbated by a suspicion that boatpeople were ‘economic refugees’, which gained traction when the outflow from Vietnam changed in 1978 to include a large proportion of ethnic Chinese, a traditionally merchant class, and their flight coincided with the rise of commercial people-smuggling ventures and the complicity of authorities in the Socialist Republic of Vietnam (SRV).¹⁸⁴

The sympathetic tone of the 1976-77 press releases was still observable two years later, but by the beginning of 1977 the government’s language began to change very slowly, almost imperceptibly at first. Alongside the sympathetic language

Commonwealth Record, 20 December 1976, pp. 1527-1528; ‘Vietnamese boat refugees’, *Commonwealth Record*, 26 June 1977, p. 760.

¹⁸² ‘Refugee resettlement program’, *Commonwealth Record*, 19 September 1977, p. 1269. This was part of the overall principle that refugees would be resettled within Australia’s capacity to do so. It became a permanent fixture of government statements on refugee policy, harking back to the traditional post-Second World War conception of immigration as automatically associated with economic development in the mind of the Australian public and the bureaucracy.

¹⁸³ The Labor Opposition claimed the government was pursuing an ‘anti-workers’ strategy and that unemployment was at a record high, with migrants being the hardest hit. Opposition members asked questions in the House about whether the Vietnamese refugees were employed or receiving social security benefits. At the same time, an editorial in the *Financial Review* in June 1979 suggested that the ‘industrial cannon fodder’ of post-war resettlement was once again available; the Indochinese refugees should be embraced as ‘willing workers’ who would take the jobs that Australians did not want – see further: ‘Effects of increase in immigration quota’, *Commonwealth Record*, 4 August 1976, p. 281; ‘National population trends’, *Commonwealth Record*, 21 April 1977, pp. 460-461; Editorial, ‘Why we need more Vietnamese refugees’, *The Australian Financial Review*, 21 June 1979, Goodwin-Gill Collection, DORS Gen; ‘Speech to migrant rally’, *Commonwealth Record*, 3 April 1977, p. 372; ‘Rebuttal of migrant unemployment claim’, *Commonwealth Record*, 5 April 1977, p. 382; ‘Migrant unemployment figures’, *Commonwealth Record*, 12 September 1977, p. 1226; Australia. *Commonwealth Parliamentary Debates*, House of Representatives, 23 May 1978, p. 2367; Australia. *Commonwealth Parliamentary Debates*, House of Representatives, 24 October 1978, p. 2242; Australia. *Commonwealth Parliamentary Debates*, House of Representatives, 17 August 1978, p. 445.

¹⁸⁴ The perception was not improved when SRV officials told Australian politicians and journalists that boatpeople were leaving ‘to seek the easy life’ – see further: Viviani and Lawe-Davies, *Australian Government Policy on the Entry of Vietnamese Refugees, 1976 to 1978*, p. 32; J. Jesser, ‘Australian policies encouraging refugee exodus, envoy says’, *The Canberra Times*, 26 June 1979, p. 1.

MacKellar began to speak of safety concerns, warning would-be boatpeople of the danger of the journey, because by now stories of lives lost at sea were making international headlines:

Anyone who encourages people to set out in these small, often unseaworthy boats, which are inadequately prepared and equipped for a long and hazardous journey must understand the responsibility associated with their actions. No one knows for certain how many of these boats have set out for Australia. Consequently no one knows how many, if any, have failed to survive the long voyage.¹⁸⁵

MacKellar also began to issue warnings that boatpeople were not guaranteed residence in Australia. On 31 January 1977 he asserted that Australia would likely take a more strict approach if the practice of sailing south became ‘a large-scale project’.¹⁸⁶ He reiterated on 10 June ‘that any refugee landing in Australia will initially be permitted only to stay temporarily’.¹⁸⁷ By the end of November 1977 it was ‘the Government’s position that genuine refugees would not be turned back’.¹⁸⁸

Figure 10 indicates that as boat arrivals increased government statements became multifaceted messages aimed at a varied audience. They began to reflect the Fraser government’s efforts to ‘internationalise’ the refugee problem during 1978, by appealing to other states to share the burden and assist countries of first asylum:

...no nation, because of its geographical situation alone, can agree to be a passive recipient of very large numbers of refugees and displaced persons...
No nation could agree to others viewing it as the inevitable recipient of such

¹⁸⁵ ‘Warning to boat refugees’, *Commonwealth Record*, 10 June 1977, p. 702; ‘Vietnamese boat refugees’, p. 760.

¹⁸⁶ MacKellar as quoted in news articles from *The Herald Sun*, 31 January 1977, and *The Age*, 1 February 1977, and cited in Viviani, *The Long Journey*, p. 71.

¹⁸⁷ ‘Warning to boat refugees’, p. 702.

¹⁸⁸ ‘Ownership of Vietnamese refugee boat’, *Commonwealth Record*, 30 November 1977, p. 1792; Goodwin-Gill Collection, DORS Gen, *UNHCR Report on Mission to Australia from 23 November to 6 December 1977*; Viviani wrote that this message was broadcast into South-East Asia via Radio Australia in mid-1978, but no other evidence for this has been found – see further: N. Viviani, *The Long Journey*, 1984, p. 83; ‘Indochinese refugees’, *Commonwealth Record*, 6 December 1977, p. 1850.

movements. Certainly the Australian nation could never agree to such a proposal.¹⁸⁹

To would-be boatpeople and to the Australian public, the government's emphasis shifted from sanctuary to their status as refugees. It sought to make a normative appeal about 'genuine' refugees to all parties: the international community, the Australian public, prospective boatpeople and those who would transport them:

Mr MacKellar stated that the whole Australian Indochinese refugee program would be placed in jeopardy if refugees continued to arrive in such a manner. Apart from the enormous risks involved in such a perilous journey it was unfair to those in refugee camps who were prepared to wait for orderly processing.¹⁹⁰

Statements such as these invoked notions of fairness and placed a question mark over the legitimacy of claims made even by 'genuine' refugees.

In *The Long Journey* Viviani concluded that the Fraser government had successfully performed a 'balancing act' between the extremes of public opinion.¹⁹¹ It had been caught between the demand from community groups that as a large, sparsely populated country Australia should accept many more refugees, and those who accused the government of trying 'to flood Australia'; for example, a group calling itself the Immigration Control Association made references to Australia's experience in the Second World War and claimed that Fraser and MacKellar were 'actually encouraging the new (peaceful) Asian invasion threatening to overwhelm us'.¹⁹² The government therefore sought to appreciate community anxieties while simultaneously making

¹⁸⁹ 'Speech to UNHCR meeting in Geneva', *Commonwealth Record*, 11 December 1978, p. 1716.

¹⁹⁰ 'Refugee boat sighted off W.A.', *Commonwealth Record*, 10 November 1979, p. 1692.

¹⁹¹ Viviani, *The Long Journey*, 1984, p. 70. See also: Viviani and Lawe-Davies, *Australian Government Policy on the Entry of Vietnamese Refugees, 1976 to 1978*, p. 9.

¹⁹² Proceedings of the Conference on the Indochina Refugee Situation; Interview with P. Hughes, 14 December 2011, Canberra, Australia; Australia. *Commonwealth Parliamentary Debates*, House of Representatives, 17 August 1978, p. 445.

important clarifications to the Australian public.¹⁹³ In 1978 MacKellar declared that although the Department would take ‘determined action’ against unauthorised arrivals, foreshadowing the legislation against people smugglers that would be introduced in 1980, the boatpeople were not ‘illegal’.¹⁹⁴

...let me make one thing absolutely clear. The people who have made trips to Australia in small boats are not illegal immigrants. They have made unauthorised trips to Australia but as soon as they arrive they are processed in the normal way and are given valid entry permits, so they are not illegal immigrants.¹⁹⁵

This clarification was not only legally correct but sought to counter a racist backlash from sections of the community.¹⁹⁶

¹⁹³ Figure 10 shows that in 1977-78 the government developed the idea of that boat arrivals were ‘queue-jumping’. Contrary to evidence elsewhere, the term first appeared in a Department of Immigration press release of March 1978. It gained a mixed reception in the media, and MacKellar rejected the interpretation in April 1979 – see further: ‘Arrival of Vietnamese refugee vessel’, *Commonwealth Record*, 25 March 1978, p. 267; M. Cass, ‘Stop this unjust queue jumping’, *The Australian*, 29 June 1978, p. 7; Interview with M. Cass; Viviani, *The Long Journey*, p. 83; Fraser and Simons, *Malcolm Fraser: The Political Memoirs*, p. 417; Editorial, ‘No Transit Camps’, *Sydney Morning Herald*, 31 July 1979, Goodwin-Gill Collection, DORS Gen; Editorial, ‘Flotsam’, *The Canberra Times*, 16 November 1978, p. 2. ‘Government Changes Tack to Welcome Boat People’, *The Australian*, 24 April 1979, quoted in Smit, ‘Malcolm Fraser’s response to commercial refugee voyages’, p. 86. See also: ‘Indochina Refugee Situation’, *Commonwealth Record*, 12 October 1978, pp. 1397-1398. The term enabled the government to sympathise with fears within the ethnic communities that refugees were usurping the place of existing migrants and family reunion applicants, although MacKellar did point out that the refugee and family reunion streams of the migration programme were separate, and ‘there can be no question that more of one means less of another’ – see further: ‘Comments by W.A Minister on refugees’, *Commonwealth Record*, 16-22 April 1979, p. 464; ‘Speech to Country Liberal Party in N.T.’, *Commonwealth Record*, 20 May 1978, p. 565. Then President of the Australian Council of Trade Unions and future Prime Minister Bob Hawke decried that ‘every boatload’ of refugees was being accepted while family reunion applicants were subject to more restrictive assessment – see further: Betts, *Ideology and Immigration*, p. 155; B. Wain, *The Refused: The Agony of the Indochina Refugees* (New York, 1981), p. 26. The Mayor of Darwin and the Darwin Waterside Workers Federation were vociferous in their comments against the stream of boats, believing them to be economic opportunists who would threaten Australian jobs – see further: Viviani and Lawe-Davies, *Australian Government Policy on the Entry of Vietnamese Refugees, 1976 to 1978*, pp. 20-22. See also: B. Juddery, ‘Refugee flow ‘asset’ to Australia: Zubrzycki’, *The Canberra Times*, 4 May 1979, p. 1; Goodwin-Gill Collection, AUL: Reports, *UNHCR Sydney Branch Office, Report to the United Nations High Commissioner for Refugees January-December 1977*.

¹⁹⁴ ‘Control over unauthorised arrivals’, *Commonwealth Record*, 23 January 1979, pp. 64-65.

¹⁹⁵ Australia. *Commonwealth Parliamentary Debates*, House of Representatives, 26 May 1978, p. 2591.

¹⁹⁶ See further: Cass, ‘Stop this unjust queue jumping’. The rhetorical boundaries that MacKellar set were blurred by his successors, and studies have identified a pervasive criminalisation of asylum seekers in Australian political debate since the late 1990s – see further: N. Klocker and K. M. Dunn, ‘Who’s Driving the Asylum Debate? Newspaper and Government Representations of Asylum Seekers’, *Media International Australia Incorporating Culture and Policy*, No. 109, November 2003, pp. 71-92; R. Manne with D. Corlett, ‘Sending Them Home: refugees and the new politics of indifference’, *Quarterly Essay*, is. 13, 2004, p. 10; M. MacCallum, ‘Girt by Sea: Australia, the refugees, and the politics of fear’, *Quarterly*

Opinion polls conducted between 1977 and 1979 showed that one quarter to one third of respondents thought the Fraser government should stop the boatpeople from arriving or resettle them elsewhere.¹⁹⁷ In an oral history interview conducted for this thesis MacKellar recalled how he had been confronted with these views:

...in public meetings and things... They'd say, 'you're bloody mad, why don't you go out there, we've got a Navy, go out there and if they won't go home blast them out of the water?!' And I'd say, 'Oh, that's terrific, yeah that'd look really good on international television wouldn't it? The Australian Navy firing on unprotected ships with women and children on board. It'd look really good!'¹⁹⁸

After an increased number of arrivals had coincided with the federal election campaign of 1977, Goodwin-Gill reported to the UNHCR that the boats had raised 'questions of inadequate defences, fears of epidemics and of an invasion by cheap labour', and two years later he again reported 'considerable hostility to the idea of an Asian intake' and a general opposition to an increase in the overall immigration programme due to conditions within the Australian economy.¹⁹⁹

The press releases and speeches charted in Figure 10 show that the government was keen to plant the message that Australia's door was not wide open. Price believes that the government deliberately withheld residency from new arrivals, and he writes that this was communicated to would-be boat arrivals in South-East Asia via Radio

Essay, is. 5, 2002, p. 43; M. Leach and F. Mansouri, 'Strange Words: refugee perspectives on government and media stereotyping', *Overland*, 2003, p. 172; S. Pickering, 'The Hard Press of Asylum', *Forced Migration Review*, 8, 2000, p. 32.

¹⁹⁷ See further: K. Betts, 'Boatpeople and Public Opinion in Australia', *People and Place*, 9, no. 4 (2001), p. 40; R. Stevens, 'Political Debates on Asylum Seekers', pp. 535-536; M. Goot and I. Watson, *Population, Immigration and Asylum Seekers: Patterns in Australian Public Opinion*, Parliamentary Library, Parliament of Australia, May 2011, p.38 f76; Viviani, *The Long Journey*, p. 102; Interview with I. Lindenmayer, 5 January 2011, Canberra, Australia.

¹⁹⁸ Interview with M. MacKellar.

¹⁹⁹ Goodwin-Gill Collection, AUL: Reports, UNHCR Sydney Branch Office, *Report to the United Nations High Commissioner for Refugees January-December 1977*; Goodwin-Gill Collection, AUL: Reports, UNHCR Sydney Branch Office, *Report for 1979 to the United Nations High Commissioner for Refugees*. See further: Viviani, *The Long Journey*, pp. 74-79; Price, 'Immigration Policies and Refugees in Australia', p. 103; Cameron, *The Cameron Diaries*, p. 809; Viviani and Lawe-Davies, *Australian Government Policy on the Entry of Vietnamese Refugees, 1976 to 1978*, pp. 22-23.

Australia.²⁰⁰ Nonetheless, the boatpeople who arrived before March 1978 were ultimately accepted as permanent settlers. Their status was confirmed by the Minister in mid-1979.²⁰¹

Those who arrived after March 1978 were informed that they would have to submit an application to the government's new Determination of Refugee Status Committee (DORS). Goodwin-Gill's record of his visit to Darwin in April 1979 shows that this message was directly communicated to new arrivals by Immigration officials:

At all times the Australian authorities attempt to make clear to those arriving directly that a favourable decision on residence is not automatic, that every case is to be considered on its individual merits and that residence will depend upon the applicant qualifying as a refugee under the 1951 Convention.²⁰²

An emphasis on 'genuine' refugees did not, of course, pave the way for identifying those who fell outside the criteria. The efficacy of the DORS process had been publicly questioned as early as May 1978, just two months after it began, when muttered accusations from anonymous intelligence officials appeared in the Australian press to the effect that 'once boatpeople appear off the coast, their arrival is a fait accompli', and DORS scrutiny of their claims was 'severely limited'.²⁰³ This was a result of limited information, limited resources and the volume of the outflow. MacKellar acknowledged the problem to Cabinet in November 1978:

We have evidence that some people continue to be in fear of their lives or their liberty. Working largely through interpreters and without opportunity for first-hand check back in Vietnam, our capacity to test the stories of

²⁰⁰ Price, 'Immigration Policies and Refugees in Australia', p. 103.

²⁰¹ Goodwin-Gill Collection, DORS Gen, *Telex from UNHCR Sydney, 8 June 1979*. See further: Viviani, *The Long Journey*, p. 69.

²⁰² Goodwin-Gill Collection, DORS Gen, *Note for File: concerning visit to Darwin 18 – 21 April 1979*.

²⁰³ A. Clark, 'The Boat People Force a Policy Turnabout', *The National Times*, week ending 13 May 1978, in Goodwin-Gill Collection, DORS Gen.

refugees is limited. We therefore cannot assert that every Vietnamese who presents himself is a refugee.²⁰⁴

According to Fraser and Simons, the Prime Minister's advisors pointed out that it was equally impossible to tell if boat arrivals weren't refugees.²⁰⁵ The Department publicly conceded that questions 'about the classic definition of a 'refugee' and whether all those presenting themselves fit the description' were proving difficult to answer.²⁰⁶ In 1979 then Secretary Lou Engledow explained that even if an individual does not fit the Convention definition, 'how can we return him to a Vietnam that has given him no document of identity and will not thereafter recognise him?'.²⁰⁷ These challenges will be discussed further in Section Three of this chapter.

2. Prima facie refugees and a moral hazard

In late 1978 and again in 1979 the UNCHR asserted that all persons fleeing Indochina were to be considered *prima facie* refugees.²⁰⁸ According to former UNHCR official Pirkko Kourula, they were not considered refugees by the countries of first asylum, 'but were, *ipso facto*, regarded as refugees by resettlement countries'.²⁰⁹ This

²⁰⁴ National Archives of Australia, A12909 2771, Submission no. 2771: Review of the Indo-Chinese Refugee Program – Decision 7255.

²⁰⁵ Fraser and Simons, *Malcolm Fraser: The Political Memoirs*, p. 419.

²⁰⁶ Proceedings of the Conference on the Indochina Refugee Situation.

²⁰⁷ *ibid.*

²⁰⁸ See further: J. C. Hathaway, 'Labelling the "Boat People": The Failure of the Human Rights Mandate of the Comprehensive Plan of Action for Indochinese Refugees', *Human Rights Quarterly*, 15, no. 4 (November 1993), pp. 686-7. Ivor C. Jackson writes that the idea that the Indochinese were *prima facie* refugees was manifest in UNHCR correspondence in 1975 and 1976 - see further: I. C. Jackson, *The Refugee Concept in Group Situations* (The Hague, 1999), pp. 316-346. See also: Robinson, *Terms of Refuge*, pp. 161-163; G. Coles, 'Approaching the Refugee Problem Today', in G. Loescher and L. Monahan, *Refugees and International Relations* (Oxford, 1989), pp. 379-381.

²⁰⁹ P. Kourula, *Broadening the Edges: Refugee Definition and International Protection Revisited* (The Hague, 1997), p. 103. The presumptive declaration of refugee status ended with the Comprehensive Plan of Action (CPA), which was negotiated through the late 1980s to help resolve enormous residual camp populations in countries of first asylum. By that stage the international community had accepted that those who were still fleeing Vietnam were doing so for economic reasons. James C. Hathaway has argued that the Convention definition was never applied correctly for the Indochinese; it was far too liberal during the original outflow, and far too restrictive after the CPA was introduced. Hathaway wrote in 1993 that the change in perceptions of the Indochinese refugee problem were not accompanied by 'a substantive shift in the nature of the protection claims advanced'. Certainly evidence from the Refugee Council of Australia indicates that non-governmental organisations held concerns over the quality of

was a means of encouraging a resettlement effort and encouraging countries of first asylum to allow the Indochinese to stay temporarily, as well as circumventing suspicions about the merits of those who had paid their way out of Vietnam with the complicity of the SRV authorities and doubts about the nature of persecution that individual boatpeople had suffered. The question of what exactly constituted persecution was unresolved in international law, and the DORS deliberations outlined in the following section reflect this.²¹⁰

The presumptive declaration caused problems for Australia because, as MacKellar informed Cabinet in late 1978, the internal policies of the SRV meant that ‘people are leaving Vietnam without official and adequate documentation, thus being thrust onto the rest of the world whether that world is ready to take them or not’.²¹¹ He stated that the United States had accepted the *prima facie* determination, but Australia could not ‘unreservedly’ do the same because of its position as a country of first asylum.²¹² In January 1979 Goodwin-Gill reported to UNHCR that MacKellar was attempting to promote a new term, ‘departees’, in order to distinguish those who had fled with the complicity of the SRV authorities from earlier boat arrivals or those resettled out of camps in South-East Asia. The UNHCR had to publicly reiterate its position that ‘regardless of the manner of their exit such people were of concern’.²¹³

The presumptive declaration of refugee status was questioned in the early 1980s,

status determination for those Indochinese who had entered refugee camps after the agreed ‘cut-off’ date for guaranteed resettlement under the CPA – see further: Hathaway, ‘Labelling the “Boat People”’, pp. 686-7; J. Foale, *The End of an Era: Report on the International Conference on Indo-Chinese Refugees, Geneva, 13-14 June 1989*, Refugee Council of Australia (1989), p. 8; D. Wolf and S. Lowman, ‘Toward a New Consensus on the Vietnamese Boatpeople’, *SALS Review*, 10, no. 2 (1990), p. 108. See also: Jackson, *The Refugee Concept in Group Situations*, pp. 327-9.

²¹⁰ See further: B. M. Tsamenyi, ‘The Boat People: Are They Refugees?’, *Human Rights Quarterly*, 5, no. 3 (1983), pp. 362-364.

²¹¹ National Archives of Australia, A12909 2771, Submission no. 2771: Review of the Indo-Chinese Refugee Program – Decision 7255.

²¹² *ibid.*

²¹³ Goodwin-Gill Collection, AUL: Reports, *UNHCR Sydney Branch Office, Report for January 1979*.

when it was believed that the flow of people from Vietnam, Cambodia and Laos had become ‘self-perpetuating’.²¹⁴ Although the numbers leaving each country fluctuated considerably from 1979 through the early 1980s, the camp populations in Malaysia, Indonesia, Singapore, Thailand and the Philippines were still at sizeable levels.²¹⁵ In 1984 the demographer Michael S. Teitelbaum argued that the exodus from Indochina, among other asylum seeker movements at that time, had become a moral hazard, in which the ‘explicit or implicit promise of admission as refugees stimulates its own refugee flows’.²¹⁶

The Fraser government had been keenly aware of the implicit moral hazard in its response to boat arrivals. MacKellar’s statements to Cabinet had emphasised that the government could not be ‘compliant’, for fear of encouraging more Vietnamese to sail south. As this chapter has shown, his public statements emphasised the dangerous nature of the journey. To an audience in Sydney on 15 May 1979, MacKellar stated the following:

²¹⁴ A. Suhrke, ‘Indochinese Refugees: the law and politics of first asylum’, *Annals of the American Academy of Political and Social Science*, 467 (May 1983), pp. 103-104; Wolf and Lowman, ‘Toward a New Consensus on the Vietnamese Boatpeople’, pp. 103-104; Jackson, *The Refugee Concept in Group Situations*, pp. 329, 339-340.

²¹⁵ Suhrke, ‘Indochinese Refugees: the law and politics of first asylum’, p. 103-104. For information about the camp populations during the 1980s see also: Lawyers Committee for Human Rights, *Seeking Shelter: Cambodians in Thailand, A Report on Human Rights* (New York, 1987), pp. 26-28.

²¹⁶ Teitelbaum, ‘Tragic Choices in Refugee Policy’, p. 34. The idea that the morally hazardous outflow encouraged fraudulent claims gained currency in the early 1980s. Up until this point Australian officials processing out of the camps in South-East Asia accepted the prima facie declaration, and selected persons based on other criteria. This included indicators that the refugees would settle successfully, such as language skills or occupation, and family links with Australia – see further: Viviani, *The Long Journey*, pp. 116-21. In 1981 then Minister for Immigration Ian Macphie toured the region with Secretary Menadue, and they were advised that the outflow had changed. In March 1982 Macphie told the House that ‘a proportion’ of those leaving were doing so ‘to seek a better life’. Trevor Griffiths was made Head of the Refugee Branch and tasked with implementing case-by-case determination, where the refugee status of each individual would be assessed by officers on the ground. This took effect on 1 July 1982. Griffiths stated in his oral history interview: ‘...the Indochinese programme had become fairly degraded, in the sense that the camps were filling up with people who, as the situation stabilised and improved in Indochina... were more opportunistic than terrified’ – see further: Interview with T. Griffiths. Australia. *Commonwealth Parliamentary Debates*, House of Representatives, 16 March 1982, p. 991; Robinson, *Terms of Refuge*, pp. 154-5; Goodwin-Gill Collection, AUL: Reports, *UNHCR Sydney Branch Office, Report for 1982 to the United Nations High Commissioner for Refugees*.

The Australian government believes that we must avoid attracting people from their homeland on promises which are not only false but which, because of their humanitarian characteristics, are producing an exacerbation of what is already a crisis situation.²¹⁷

The political scientist Myron Weiner has elaborated on Teitelbaum's idea, arguing that a refugee policy which encourages individuals 'to take hazardous risks for desirable ends' is morally unsound and 'an invitation to abuse'.²¹⁸ A moral hazard is a situation that encourages risky behaviour such as irresponsibility or fraud, and while the precise application of the concept to conflict situations has been questioned by Robert W. Rauchhaus, if the general idea is applied to the case of Indochina it is clear that the Department of Immigration saw both these characteristics in the outflow.²¹⁹ The Department of Immigration tried to publicly discourage prospective boatpeople by warning them of the dangers of the journey, as Figure 10 showed. MacKellar essentially framed the attempt to reach Australia by boat as unnecessarily risky, because Australia was providing resettlement opportunities out of the camps in South-East Asia. In turn, the government also promoted the idea that unmeritorious or fraudulent claims to protection would be identified and rejected through the DORS process. As the next section in this chapter will demonstrate, this did not necessarily happen.

²¹⁷ Minister for Immigration, Speech to the Sydney Journalists' Club, 15 May 1979, in Australia. Department of Immigration and Ethnic Affairs, *Issues in Immigration: Selected 1979 Speeches*, M. J. R. MacKellar, Minister for Immigration and Ethnic Affairs, 1975-1979 (Canberra, 1980) (no page number)

²¹⁸ Weiner, *The Global Migration Crisis: Challenge to States and to Human Rights*, pp. 173-174.

²¹⁹ R. W. Rauchhaus, 'Conflict Management and the Misapplication of Moral Hazard Theory', in T. W. Crawford and A. J. Kuperman (eds.), *Gambling on Humanitarian Intervention: Moral Hazard, Rebellion and Civil War* (Abingdon, 2006), pp. 64, 71. See also: A. J. Kuperman, 'Mitigating the Moral Hazard of Humanitarian Intervention: Lessons from Economics', *Global Governance*, 14, (2008), pp. 220, 226-8.

3. The DORS Committee

From the outset, the DORS Committee operated on the understanding that the Indochinese boatpeople could not be sent back. Regardless of the vagaries of their individual journeys, even if they had stopped at port in Malaysia, Indonesia or Thailand, ‘Australian authorities believed that, in the final analysis, they would have no option but to permit the persons concerned to remain in Australia’.²²⁰ This was made clear at one of the first inter-departmental meetings concerning the Committee’s establishment, during the election campaign of November 1977, and four months before DORS began to function. It was to influence the Committee’s assessment of all Indochinese boat arrivals over the next four years, a determined *fait accompli* maintained in various informal ways by the Department of Immigration but which was often questioned by the other departmental representatives on DORS and, as Goodwin-Gill’s files show, within the Department itself. The analysis presented here will show how DORS members assessed Indochinese boat arrivals in accordance with, or in spite of, this policy.

The UNHCR was represented on DORS in a non-voting capacity, acting as an observer to the integrity of proceedings and offering expert advice on conditions in countries of origin and on international law. DORS otherwise consisted of voting representatives from four Departments: Immigration, Attorney-General, Prime Minister & Cabinet (hereafter PM&C), and Foreign Affairs. A second representative from Immigration chaired the meeting, but did not cast a vote unless required to break a tie. DORS recommended one of four outcomes: refugee status, compassionate/humanitarian leave to remain (for those whose claims did not quite fit the Convention definition), deferral for further investigation, or rejection. Recommendations other than deferral were referred to the Minister for the final decision. The full details of the DORS

²²⁰ Goodwin-Gill Collection, DORS Gen, *UNHCR Report on Mission to Australia from 23 November to 6 December 1977*.

procedure will be explored in Chapter Five, as it encompassed both Indochinese and non-Indochinese applications for protection.

Goodwin-Gill's records contain his notes on DORS meetings from October 1978 to March 1983, as well as a handful of records created by other UNHCR staff who attended DORS and inter-departmental meetings concerning DORS between November 1977 and August 1978. The Committee considered both Indochinese and non-Indochinese cases. The latter are the subject of Chapter Five of this thesis. The former will be analysed here. They feature in Goodwin-Gill's files until January 1983, providing four years and three months' worth of data on Indochinese applicants for refugee status.

There are 921 decisions in the dataset. It should be clarified that these are *decisions*, not 921 applicants. Of these, only two are listed as concerning Laotian applicants and two Cambodian, and the overwhelming majority were Vietnamese (including ethnic Chinese). This resembles the composition of the boat arrivals during the first wave.²²¹ The names of individual applicants are not recorded in the dataset for privacy reasons, and because there are some instances in which Goodwin-Gill's notes do not list these details.

As stated in the previous section, boatpeople who arrived before March 1978 were granted permanent residency by the Department of Immigration. This amounted to 1043 persons.²²² The 1035 who arrived after this date were intended to be assessed individually by DORS. The records suggest that all these boat arrivals were subject to

²²¹ Evidence from the *Commonwealth Parliamentary Debates* shows that only a handful of the boat arrivals during this first wave were Cambodian and Laotian; the overwhelming majority were Vietnamese (including ethnic Chinese) – see further: Australia. *Commonwealth Parliamentary Debates*, House of Representatives, 22 August 1978, p. 590.

²²² Goodwin-Gill Collection, DORS Gen, *Telex from UNHCR Sydney, 8 June 1979*; Australia. *Commonwealth Parliamentary Debates*, House of Representatives, 21 August 1979, p. 373.

DORS procedure but this is difficult to confirm for several reasons. Firstly, Goodwin-Gill's files give us evidence of 921 decisions between October 1978 and April 1983, but 156 of these cases are listed being 'reconsidered'. Cases that were postponed may not have been resolved by DORS or resolved within the date range of Goodwin-Gill's files. In addition, Goodwin-Gill's notes also contain the assessment of Vietnamese who applied for asylum in Australia through other means of arrival, such as stowing away on trading vessels. These are included in the total of 921.²²³

Secondly, Goodwin-Gill's files suggest that some cases may not have come before the Committee. At the end of 1978 he reported the discovery that asylum seekers were subject to 'a form of preliminary screening' before their cases were referred to DORS.²²⁴ Goodwin-Gill did not specify whether these included Indochinese boat arrivals or not, however in an 'unexpected but useful' discussion he had on 9 January 1979 with senior DORS officials in the Immigration Department they discussed the continuing difficulties the Department faced in attempting to approve all the Indochinese. This was a time when DORS representatives were heatedly disagreeing about the interpretation of the Convention in relation to their assessment of boat arrivals:

Mr Hoffman asked Mr Nimmo to see that DORS papers were carefully checked in future to ensure that for the present, only "certainties" went before the Committee (!).²²⁵

The exclamation mark appears in Goodwin-Gill's notes, indicating his astonishment at

²²³ Records of DORS meetings in 1981 and 1982 indicate that a small number of Vietnamese who had stowed-away on container ships or been rescued by British merchant vessels – see further: Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 18 June 1981*; Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 16 July 1982*; Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 15 November 1982*.

²²⁴ Goodwin-Gill Collection, AUL: Reports, *UNHCR Sydney Branch Office, Report for 1978 to the United Nations High Commissioner for Refugees*.

²²⁵ Goodwin-Gill Collection, *DORS Minutes, Note for File: concerning meeting on 9 January 1979*.

this suggestion. There is no further evidence to indicate that Mr Hoffman's instructions were carried out, although in a confidential assessment of DORS that Goodwin-Gill authored for the UNHCR in April 1979, he noted that 'there is some evidence to suggest that a form of preliminary screening does occur'.²²⁶ He stated that 'any such practice would appear to be inconsistent' with UNHCR guidelines and rules of procedure, even though the UNHCR 'has repeatedly expressed the view that procedures should not be abused by manifestly ill-founded applications intended merely to obtain or prolong residence'.²²⁷ At the end of 1979, Goodwin-Gill reported that the practice of preliminary screening had been abandoned due to the interventions of the UNHCR's Sydney Branch Office.²²⁸ It is therefore quite difficult to prove that every Indochinese case was brought before the Committee, because we cannot collate sufficient evidence from government documents or UNHCR archives to know whether 'manifestly ill-founded' cases were screened out or 'certainties' screened in.

In addition to this, some boat arrivals may have been resettled in countries to which they had stronger family or legal ties. Goodwin-Gill's files indicate that this may have happened on a very small number of occasions. Finally, the arrival of boatpeople and their assessment by DORS was not immediate, and evidence from the files suggests a delay of several weeks if not a few months.²²⁹ Given that approximately 17 percent of decisions were for a deferral, it is possible that cases were still being considered years later. Certainly Goodwin-Gill's files show that two Indochinese persons were

²²⁶ Goodwin-Gill Collection, DORS Gen, *UNHCR Review of the Procedure for the Determination of Refugee Status, April 1979*.

²²⁷ *ibid.* Manifestly unfounded or abusive claims are those deemed to 'be so obviously without foundation as not to merit full examination at every level of the procedure' – see further: UNHCR Executive Committee Conclusion No. 30, 1983, 'The problem of manifestly unfounded or abusive applications for refugee status or asylum'.

²²⁸ Goodwin-Gill Collection, AUL: Reports, *UNHCR Sydney Branch Office, Report for 1979 to the United Nations High Commissioner for Refugees*.

²²⁹ See further: Goodwin-Gill Collection, AUL: Reports, *UNHCR Sydney Branch Office, Report for April 1979*.

considered by DORS in January 1983. Goodwin-Gill reported in April 1979 that ‘delays are now occurring as a result of the time taken to complete inquiries into the background of applicants’.²³⁰ The records also show that the Committee’s Indochinese workload became disproportionate to its staffing and resource levels.²³¹

Of the 921 instances in which Indochinese cases were assessed by DORS between October 1978 and January 1983, 748 recommendations were for approval of refugee status or compassionate/humanitarian leave to remain, 154 recommendations were for the case to be postponed, and only 19 recommendations were for the case to be rejected. Even though 156 cases were reconsidered, the rate of approval was still very high, and Chapter Six will analyse DORS’ assessment of non-Indochinese for comparison.

Although Committee members negotiated and defended their competing interpretations of each case, the final outcome would invariably favour whatever view was held by the Immigration representative. This was partly because of the desire to approve Indochinese cases, and partly because the DORS Chair (from Immigration) could exercise a deciding vote. The representative from Attorney-General’s was therefore adamant that members’ dissenting opinions and reasons for abstaining be recorded. The Attorney-General’s representative is recorded as abstaining 129 times out of 921, and dissenting approximately 24 times. These abstentions were often in favour of a recommendation for compassionate/humanitarian leave to remain rather than refugee status. The Foreign Affairs representative is recorded as abstaining on 22 occasions and dissenting on 31 occasions, a much smaller number. Fewer still were the

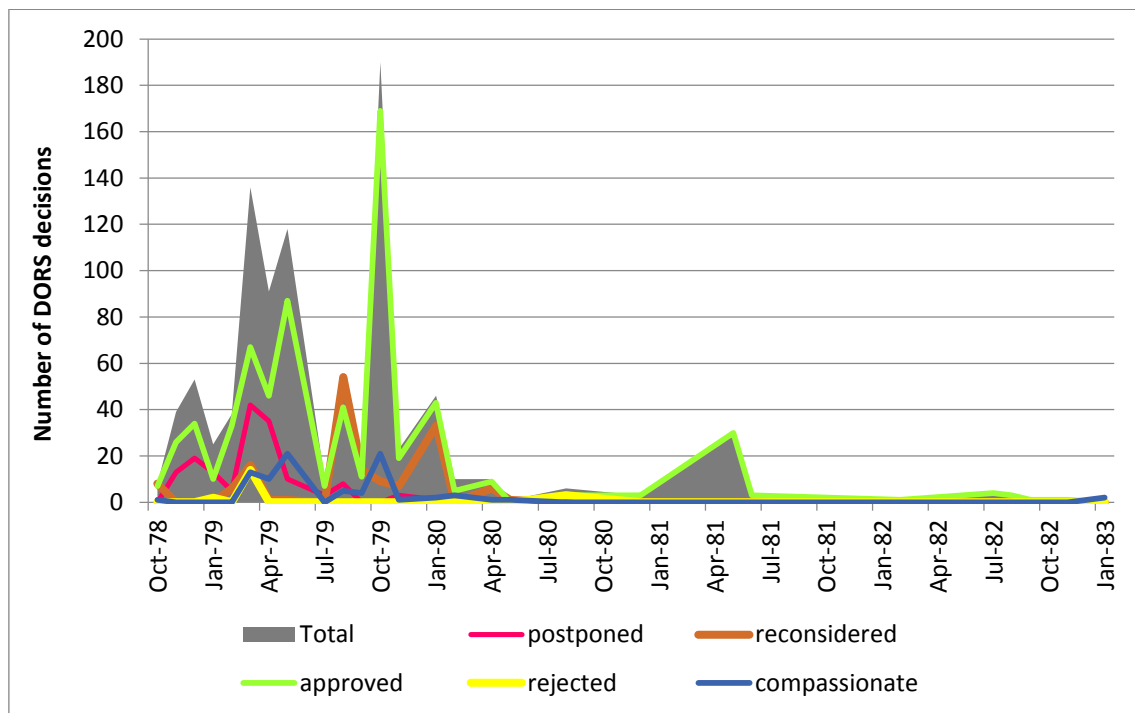
²³⁰ Goodwin-Gill Collection, DORS Gen, *UNHCR Review of the Procedure for the Determination of Refugee Status, April 1979*.

²³¹ *ibid.*; Goodwin-Gill Collection, DORS Gen, *Letter to Mr. I Simington from Dr. G. S. Goodwin-Gill, 17 April 1979*.

documented objections of the representative from PM&C, who dissented twice in favour of a recommendation for refugee status.

Examination of Goodwin-Gill's records shows that DORS approached the assessment of boat arrivals in two broad phases. The first was March 1978 to 21 March 1979 (although Goodwin-Gill's files contain only one report of a DORS meeting before October 1978). During this period a small number of Indochinese cases were rejected and many were postponed for further investigation. The second phase was from 21 March 1979 to January 1983, when Committee members agreed to defer cases for further consideration rather than reject them outright. In actuality, however, they appear to have instead opted for refugee status or compassionate/humanitarian leave to remain. This second phase was characterised by an initially large backlog of applications, and considerable debate over how to resolve them efficiently. Figure 11 below shows how the volume and outcome of applications varied over time:

Figure 11: The number of Indochinese cases assessed by DORS and their outcome, October 1978 to January 1983



Source: Goodwin-Gill Collection, DORS Minutes.

The graph shows that in the first phase the Committee was more likely to postpone Indochinese cases for reconsideration. In the second, it is clear that Committee members were more likely to approve Indochinese cases. This section will address these phases in turn.

3.1 Voting patterns

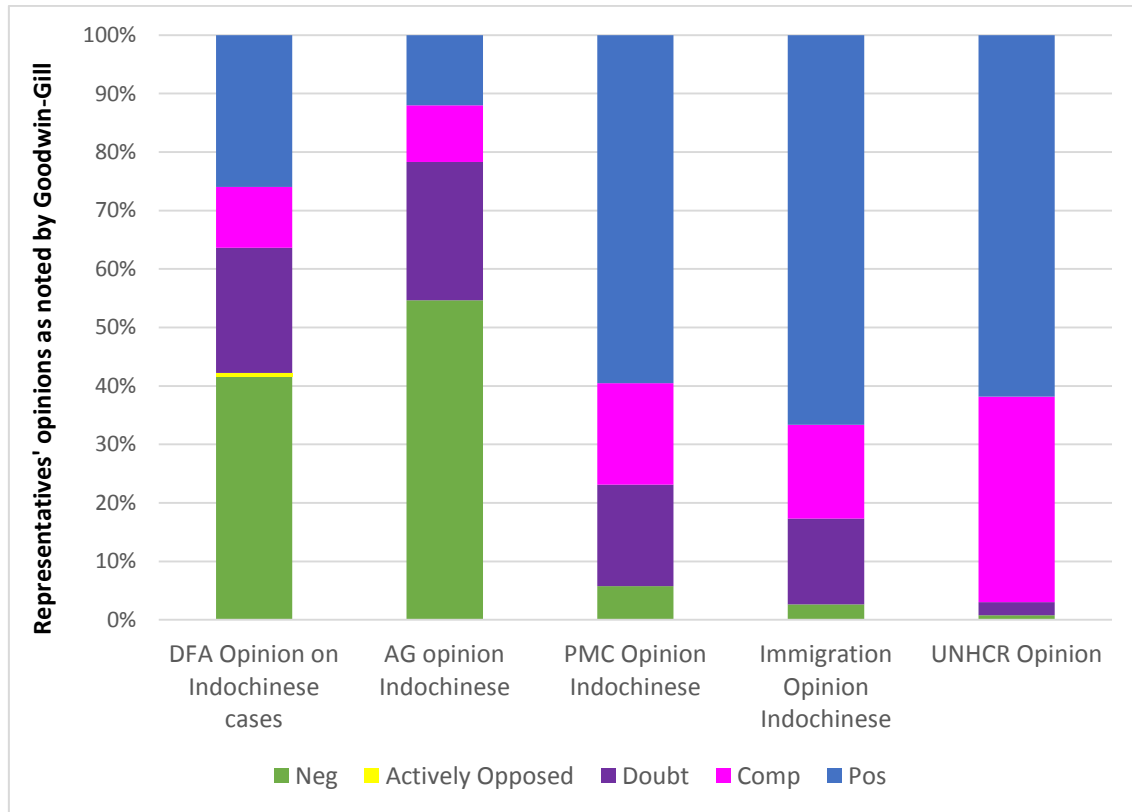
The idiosyncrasies of departmental views on Indochinese applications are charted in Figure 12 below. The graph represents the opinions that the individual representatives are recorded as expressing on individual cases in Goodwin-Gill's notes. An opinion from at least one representative, including the UNHCR, was recorded 81.2% of the time. Some representatives are recorded more often than others:

- Department of Foreign Affairs: views expressed 16.7% of the time (154 recorded occasions out of a total of 921)
- Attorney-General's Department: views expressed 28.9% of the time (267 recorded occasions out of a total of 921)
- Department of the Prime Minister and Cabinet: views expressed 13.1% of the time (121 recorded occasions out of a total of 921)
- Department of Immigration and Ethnic Affairs: views expressed 8.1% of the time (75 recorded occasions out of a total of 921)
- UNHCR: views were expressed 14.2% of the time (131 recorded occasions out of a total of 921)

The charts below certainly indicate that the departmental representatives from Foreign Affairs and Attorney-General's were more vocal or opinionated than their colleagues. Views are measured in five categories: compassionate/humanitarian leave to

remain ('comp'); doubtful ('doubt'); negative ('neg'); actively opposed ('actively oppose'); and, positive ('pos').

Figure 12: Views of departmental representatives on DORS, concerning individual Indochinese applications for refugee status, October 1978 to January 1983



Source: Goodwin-Gill collection, DORS Minutes.

These figures show varying but persistent levels of doubt on the part of departmental representatives. A qualitative analysis of Goodwin-Gill's files indicates that the doubtful opinions they expressed were largely a result of uncertainty about conditions in Vietnam and the nature of the outflow.

3.2 The first phase: March 1978 to March 1979

For the first year of its operation DORS meetings featured intense deliberation on the Committee's interpretation of the Convention, and on how intelligence assessments of the situation in Indochina matched up against the claims of individual boat arrivals. At the inter-departmental meetings concerning proposed DORS procedure in late 1977, the UNHCR representative Mr Gilberto Rizzo had observed that at that time the Department of Immigration's assessment process used 'very liberal criteria'

and ‘the over-riding consideration seems to be whether the person concerned would be confronted – irrespective of the actual reasons for his departure – with serious difficulties if returned to his country of origin’.²³² Once the DORS Committee began operation, however, records indicate that the representatives from Foreign Affairs, PM&C and Attorney-General’s ‘expressed strong reservations about according refugee status in the absence of special distinguishing factors’.²³³ In August 1978 the UNHCR representative, a Mr E. Solomon, reported that Committee members doubted ‘the severity of penalties that returned escapees might suffer’ and ‘the severity of conditions’ in the re-education camps; these reservations resurfaced again and again during that first year.²³⁴ Goodwin-Gill described his first DORS meeting on 10 October 1978:

Nearly 1¼ hours was spent by the committee in an exercise of heart and soul searching. The topics discussed included: conditions in the SRV; the lack of information about what actually happened in that country’ the notion of persecution’ whether politico/economic measures of general application could amount to persecution; the inadequacy of interview reports.²³⁵

Before the meeting, the UNHCR had sent a memorandum to Committee members that explained conditions in the Socialist Republic of Vietnam (SRV) and the UNHCR’s position. Goodwin-Gill and the UNHCR representative Gilberto Rizzo soon noted that, ‘if indeed it had been read at all, it had certainly not been digested’. The UNHCR representatives spent the meeting stressing ‘time and again’ that ‘positive and detailed information was not available and that in any event it was not essential to the determination of refugee status’:

²³² Goodwin-Gill Collection, DORS Gen, *UNHCR Report on Mission to Australia from 23 November to 6 December 1977*.

²³³ Goodwin-Gill Collection, DORS Minutes, *UNHCR, Report from the Legal Consultant, UNHCR Sydney, on the DORS Committee Meeting of 15 August 1978*; Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 26 April 1979*.

²³⁴ Goodwin-Gill Collection, DORS Minutes, *UNHCR, Report from the Legal Consultant, UNHCR Sydney, on the DORS Committee Meeting of 15 August 1978*.

²³⁵ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 10 October 1978*.

It was emphasised that a refugee was essentially someone who did not enjoy the protection of his government... enough was known about what was happening in SRV to justify the finding that most of the cases came within Article 1 of the 1951 Convention. The Committee did not appear to be greatly moved by these arguments...²³⁶

Goodwin-Gill's report for 1978 states that decision-making was slow and that the UNHCR representative had to repeatedly emphasise that 'detailed information is rarely available in refugee applications', that it is 'not essential to determination of status' and that a refugee 'is essentially someone who does not enjoy the protection of his government'.²³⁷ Goodwin-Gill's notes suggest that during his first few weeks on the Committee officials from departments other than Immigration had to be trained in the art of objective, methodical case assessment that was conducted in accordance with UNHCR guidelines. The UNHCR and Immigration representatives had to remind the other Committee members that if boat arrivals had spent time in a refugee camp in Malaysia or Thailand, this was irrelevant to their claim for Australia's protection, due to Australia being a signatory to the Convention; the Immigration Chair would reiterate the obvious logistical and political problems faced by host countries in South-East Asia.²³⁸

Goodwin-Gill's files record some revealing exchanges between DORS members, and while they usually appear to be misunderstandings there are, on occasion, more cynical failures on the part of some departmental representatives to grasp the basics of international law or the 1951 Convention. In one instance, the UNHCR representative was reiterating his organisation's position that the SRV authorities were unlikely to welcome the boatpeople back, and was thereby essentially denying them 'the

²³⁶ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 10 October 1978*.

²³⁷ Goodwin-Gill Collection, AUL: Reports, *UNHCR Sydney Branch Office, Report for 1978 to the United Nations High Commissioner for Refugees*.

²³⁸ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 6 December 1978*; Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 15 March 1979*.

normal incidents of nationality, the right to enter one's own State'. The representative from the Department of Foreign Affairs disagreed:

Mr Scott appeared to consider that there was nothing inherently objectionable in so restricting or even denying the entry of nationals.²³⁹

Goodwin-Gill has noted in his academic work that the right to return to one's country is implied and recognised in Articles 9 and 13(2), respectively, of the Universal Declaration of Human Rights.²⁴⁰

Later in the same meeting, the UNHCR representative and Mr Scott disagreed heatedly on the very essence of the UNHCR's mandate and the evidentiary requirements of the DORS procedure when discussing a particular case. The Foreign Affairs representative was, in Goodwin-Gill's recording of the incident, 'most hostile', and essentially 'preferred to refuse refugee status on the basis that unobtainable evidence had not been obtained'.²⁴¹ The UNHCR representative argued that 'it was scarcely apposite to require of applicants for refugee status that they satisfy even the standard of proof required in civil proceedings'.²⁴²

Mr Scott retorted that the Committee could not accept economic migrants within its definition of refugee, as UNHCR did. The Legal Adviser objected strongly, and stated that economic migrants were not to be found mentioned in the mandate of the Office.²⁴³

Eleven days later Mr Rizzo reported to the Department of Foreign Affairs that their DORS representative 'seems to voice the most negative comments on applications that

²³⁹ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting of 3 November 1978*.

²⁴⁰ Article 9 states that 'No one shall be subjected to arbitrary arrest, detention or exile', while Article 13(2) states that 'Everyone has the right to leave any country, including his own, and to return to his country'. See further: G. S. Goodwin-Gill, 'Voluntary Repatriation: Legal and Policy Issues', in G. Loescher and L. Monahan (eds.), *Refugees and International Relations*, pp. 258-260; United Nations, Universal Declaration of Human Rights, at <<http://www.un.org/en/documents/udhr/>>.

²⁴¹ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 3 November 1978*.

²⁴² *ibid.*

²⁴³ *ibid.*

do not indicate unquestionable political persecution and/or punishment'.²⁴⁴ He was told in reply that the only reason this representative had not been replaced was due to staffing shortages.²⁴⁵ The Department of Foreign Affairs assured Mr Rizzo, however, that it did not have a pre-determined approach to its assessment of DORS cases.²⁴⁶

During this early period the Committee was struggling to assess the credibility of applicants and their fear of persecution. Both Goodwin-Gill and his predecessor Solomon reported to UNHCR that the 'insufficiency of evidence' was a fundamental problem, but that this could be remedied over time as Committee members grew more experienced and actively developed a body of documentation on conditions in source countries.²⁴⁷ As it was, the UNHCR representative had to remind Committee members to be content 'with the statements recorded in the interview reports, read in the light of what was known or reasonably to be supposed concerning events and conditions in SRV'.²⁴⁸ The interview reports were, it seems, a contributing factor to the Committee's uncertainty and lack of evidence. Boatpeople were interviewed on arrival by Immigration officials, and completed a standard form, but both the skills of the interviewers and the pro forma questions were initially yielding ambiguous or incomplete answers. In late 1978, Committee members were recorded as being unsure 'just how the answers should be interpreted'.²⁴⁹ The DORS Chair reassured members that the government was ensuring that 'all sorts of new information was coming in, [and] there was a possibility now of additional interviews and of improving

²⁴⁴ Goodwin-Gill Collection, DORS Gen, *UNHCR, Report on visit to the Department of Foreign Affairs and the Department of Immigration and Ethnic Affairs, Canberra, on 14 November 1978*.

²⁴⁵ *ibid.*

²⁴⁶ *ibid.*

²⁴⁷ Goodwin-Gill Collection, DORS Gen, *UNHCR Review of the Procedure for the Determination of Refugee Status, April 1979*; Goodwin-Gill Collection, DORS Minutes, *UNHCR, Report from the Legal Consultant, UNHCR Sydney, on the DORS Committee Meeting of 15 August 1978*.

²⁴⁸ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 3 November 1978*.

²⁴⁹ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 9 November 1978*.

interviews'.²⁵⁰ In a report to the UNHCR of April 1979, Goodwin-Gill deemed the process to have 'improved with experience'.²⁵¹ At the end of that year he reported that the Committee's performance was 'most satisfactory', as it had sought to interpret the Convention 'in a consistent manner' and also adopted 'where necessary, a generally humanitarian position in cases which may not fall precisely within the relevant international instruments'.²⁵²

The records show that the assessment of individual cases reflected the Committee's understanding of conditions in Vietnam. Opinions were influenced by the advent of organised escapes on container ships and the fact that large numbers of ethnic Chinese were fleeing targeted economic restrictions and discrimination. Figure 12 shows that when departmental representatives from Foreign Affairs and Attorney-General's are recorded as expressing an opinion on Indochinese cases, this opinion is often negative. A qualitative analysis of Goodwin-Gill's files indicates that these representatives appear to have imbibed the concept of 'economic refugees' that had taken hold of Australia's political debate on the refugee problem and, evidently, the bureaucracy that was trying to respond to it. Even though MacKellar had dismissed the idea that the boatpeople were economic opportunists after his tour of the camps in mid-1978, and had expressed compassion for their plight, the commercially arranged exodus was somehow seen as being different.²⁵³

²⁵⁰ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 22 November 1978*; Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 6 December 1978*.

²⁵¹ Goodwin-Gill Collection, DORS Gen, *UNHCR Review of the Procedure for the Determination of Refugee Status, April 1979*.

²⁵² Goodwin-Gill Collection, AUL: Reports, *UNHCR Sydney Branch Office, Report for 1979 to the United Nations High Commissioner for Refugees*.

²⁵³ Viviani and Lawe-Davies, *Australian Government Policy on the Entry of Vietnamese Refugees, 1976 to 1978*, p. 32.

People who have boarded vessels with the knowledge and assistance of their government are unlikely to meet the accepted definition of a refugee.²⁵⁴

The idea manifested in DORS deliberations. In the first months of Goodwin-Gill's tenure at the end of 1978, some representatives took the default position that those who had potentially paid for their escape 'could not be real refugees'; the UNHCR representative had to remind the Committee that 'the fact that money had been paid or assistance given could not by itself negate a claim to refugee status'.²⁵⁵

The Committee took some time to appreciate the idea that ethnic Chinese were persecuted as a social group. Legal scholar James C. Hathaway has pointed out that refugee protection is relevant if a government fails to 'ensure the non-discriminatory allocation of available resources to meet the most basic socio-economic needs', but evidence shows that Committee members initially failed to grasp the concept of class discrimination, questioning the relevance of applicants having been moved to New Economic Zones and suffering economic deprivation.²⁵⁶ There are many occasions in which the UNHCR representative would argue a case on 'cumulative grounds', but Goodwin-Gill reported that 'the Committee has been reluctant to rely on the cumulative approach, or to take such account of ethnic factors'.²⁵⁷ There are, in turn, occasions when the Foreign Affairs and Attorney-General's representatives would dismiss cases as 'economic migrants and draft dodgers' who feared poor living standards.²⁵⁸ As late as April 1979, after representatives had visited Darwin to inspect the reception process

²⁵⁴ National Archives of Australia, A12909 2906, Submission no. 2906 – Review of Indo-Chinese Refugee Situation – Decision no. 7510.

²⁵⁵ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 3 November 1978*; Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 10 October 1978*.

²⁵⁶ Hathaway, 'Labelling the Boatpeople', pp. 694-695; Goodwin-Gill Collection, DORS Minutes, *UNHCR Report from the Legal Consultant, UNHCR Sydney, on the DORS Committee Meeting of 15 August 1978*.

²⁵⁷ Goodwin-Gill Collection, AUL: Reports, *UNHCR Sydney Branch Office, Report for 1978 to the United Nations High Commissioner for Refugees*.

²⁵⁸ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 15 March 1979*; Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 26 April 1979*.

first-hand, the Foreign Affairs representative stated that ‘the Vietnamese of Chinese ethnic origin to whom he had spoken were not Convention refugees’, ‘they were simply capitalists looking for an opportunity to remain capitalists’.²⁵⁹ The Immigration representative would refer Committee members to the UNHCR handbook for status determination procedures, which made reference to “victims of general economic measures”, and the UNHCR representative would advocate ‘the view of a minority being forcibly obliged to abandon its traditional way of life, in the commercial, cultural and linguistic sense’.²⁶⁰

Goodwin-Gill’s files allow us to see that the perceptions of the outflow that were colouring public debate in Australia also filtered into the administrative process. Figure 12 showed that it was not uncommon for some members of DORS to express doubts on the merits of individual cases, but this did not necessarily reflect the outcome. Applications for refugee status submitted by Indochinese boat arrivals had a very high approval rate. Why was this the case?

As stated at the beginning of this section, UNHCR records show that when DORS was established in 1977 the Department of Immigration recognised that boat arrivals could not be sent back.²⁶¹ It is likely that Goodwin-Gill knew this when he began his involvement with the Committee in October 1978, although his notes indicate some surprise when, on 3 November 1978, he was quietly informed of the Department’s desire to approve all Indochinese cases. Before a DORS meeting that day, the UNHCR legal representative had an informal conversation with Ian Simington, the then Head of the Department of Immigration’s Refugee Branch:

²⁵⁹ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 26 April 1979*.

²⁶⁰ *ibid.*

²⁶¹ Goodwin-Gill Collection, DORS Gen, *UNHCR Report on Mission to Australia from 23 November to 6 December 1977*.

Mr Ian Simington indicated to me informally that a policy existed whereunder no boat person's application for status was to be refused or to be allowed on purely humanitarian grounds. For this reason the Department of Immigration would continue to have any potentially negative cases deferred ("for further inquiries") and reconsidered time and again.

Nineteen days later, at another DORS meeting on 22 November, this policy was opaquely explained to other Committee members. The Attorney-General's representative, a Mr Byrne, asked the chair, 'Why has no Indochinese been refused?'. He received a non-sequitur in reply:

Mr Hoffman replied: "Because of public commitments. Because of government decisions that only (genuine) refugees will be allowed to remain; all those rejected will be liable to deportation"²⁶²

Goodwin-Gill's annual report for 1978 states the following:

The Committee is aware that, under existing government policy, no Indochinese application is to be rejected. It has also found that, where it rejects such an application but nevertheless recommends asylum on humanitarian or compassionate grounds, the case will be referred back to the Committee to enquire further and reach a positive decision.²⁶³

This occurred quite early in Goodwin-Gill's tenure on the Committee, which suggests that the unofficial policy had always been in place. Indeed, in February 1978 MacKellar had told Cabinet that DORS would allow the government to defend itself against claims that the boat arrivals did not merit Australia's protection:

Some criticism may also come from those who deny that the people involved are refugees at all in the accepted international sense. It will be necessary to point to measures that are taken to verify their refugee status, including through the Committee on Determination of Refugee Status.²⁶⁴

At this stage, judging by the evidence contained in Goodwin-Gill's notes, no

²⁶² Goodwin-Gill Collection, DORS Minutes, *Note for File: dated 6 December 1978*.

²⁶³ Goodwin-Gill Collection, AUL: Reports, *UNHCR Sydney Branch Office, Report to the United Nations High Commissioner for Refugees for 1978*.

²⁶⁴ National Archives of Australia, A12909 1916, Submission no. 1916: Indo-Chinese Refugees – Decision 4609(FAD).

Indochinese boat arrival had been refused by DORS. It is clear that despite the government's stated position, it was essentially in a bind, unable to deport the boat arrivals to Vietnam or to anywhere in South-East Asia. The challenge that boat arrivals presented for Australia was noted publicly by MacKellar and Immigration staff on several occasions.²⁶⁵ In late 1978 at an international conference on the refugee problem in Geneva, MacKellar called on the SRV and other nations in the region to remedy this situation:

Countries need assurance that people proved not to be genuine refugees will be accepted back by those countries from whence they came.²⁶⁶

This assurance was not immediately forthcoming, and the realities of the outflow in the region meant that deporting boatpeople was a diplomatic and political impossibility. The UNHCR was advised by Immigration that Australia was not 'intending to welch on any of its international obligations', 'despite recent ministerial statements' that may have given a different impression.²⁶⁷ It seems that the Fraser government was only 'something better than helpless' when it came to these boat arrivals, because DORS institutionalised rigorous Immigration control. In an interview conducted for this thesis, Professor Goodwin-Gill reflected on the Committee's purpose:

I didn't see it quite this way at the time but I see in retrospect that was a very important part of local [public relations], it was presenting to Australia the impression of control. Yes they may be arriving in small boats but rest assured every single one of them is being examined by an inter-departmental committee who were deciding whether they were refugees or not. The fact that we never found someone not to be a refugee was neither here nor there.²⁶⁸

DORS had both a domestic purpose and an international one. The Head of the

²⁶⁵ 'Humanitarian issue of refugees', *Commonwealth Record*, 29 November 1977, p. 1792; 'Speech to Institute of International Affairs', *Commonwealth Record*, 19 August 1978, p. 1066; Proceedings of the Conference on the Indochina Refugee Situation.

²⁶⁶ 'Speech to UNHCR meeting in Geneva', *Commonwealth Record*, 11 December 1978, p. 1716.

²⁶⁷ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting 9 January 1979*.

²⁶⁸ Interview with G. S. Goodwin-Gill, 25 November 2010, Oxford, United Kingdom.

Department's Refugee Branch, Ian Simington, told Committee members in April 1979 that the purpose of DORS was 'to act as a deterrent', because boats were expected to keep arriving. This was a month in which 248 Vietnamese arrived by boat. The Attorney-General's representative replied that DORS 'had evidently had no deterrent effect'.²⁶⁹ The representative complained to the Committee in July 1980 that the processing of boat arrivals through DORS 'was only a shallow appearance of [status] determination'.²⁷⁰

After Mr Hoffman obliquely explained the Department of Immigration's position to DORS Committee members on 22 November 1978, there ensued four months of debate and frustration over the assessment process. The UNHCR report of 1978 reflected this:

This policy and practice have tended to have an adverse influence on the Committee, particularly when faced with the occasional very weak or indeed impossible case.²⁷¹

Departmental representatives who had already stated that they were unwilling to approve cases that lacked 'distinguishing factors' became more vocal in their criticism of the Committee's conduct, the representative from the Attorney-General's Department complaining that 'the Committee was bending too far to bring applicants within Article 1 of the Convention'.²⁷² He stated on several occasions that 'he was afraid of having to justify himself before the Attorney-General', and that he had a 'personal need to have reasons for decisions if questioned by his department'.²⁷³ The Attorney-General's

²⁶⁹ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 26 April 1979*.

²⁷⁰ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning DORS procedural meeting on 9 July 1980*.

²⁷¹ Goodwin-Gill Collection, AUL: Reports, *UNHCR Sydney Branch Office, Report for 1978 to the United Nations High Commissioner for Refugees*.

²⁷² Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 22 November 1978*.

²⁷³ *ibid*; Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 15 March 1979*; Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 21 March 1979*.

representative was the only member to reference their department in this manner, however the Foreign Affairs representatives were often concerned that the Committee should avoid setting irresponsible precedents in decisions on Indochinese cases.²⁷⁴

The criticism also went the other way. Mr John Nimmo, an Immigration official and regular DORS member, commented that ‘the criteria invoked by the Committee appeared to him to have varied with every meeting’, and he was concerned for cases which *should* have been approved for refugee status rather than compassionate/humanitarian leave to remain.²⁷⁵ The UNHCR representative stated that ‘it was unfortunate that Vietnamese applications... were so influenced by earlier ministerial statements’, because the process had become too restrictive through the government’s emphasis on ‘genuine’ refugees. He argued that this concept did not automatically mean a refugee within the Convention definition, and that the Committee should exercise its recourse to the secondary concept of compassionate/humanitarian status, which was endorsed by the UNHCR.²⁷⁶

Even though the Department of Immigration wanted boat arrivals to be individually assessed, and publicly promoted it as an exacting process, it had nonetheless been quietly hoping that DORS would be characterised by a liberal interpretation of the Convention. It was not to be. Mr Hoffmann admitted to Goodwin-Gill in January 1979 that ‘he felt the Committee was fed up with being pushed to accept weak cases’.²⁷⁷ That month two Vietnamese boatpeople were recommended for rejection. Goodwin-Gill’s notes show that these were considered to be weak cases in which even the UNHCR representative expressed a negative opinion, although UNHCR

²⁷⁴ Goodwin-Gill Collection, DORS Minutes, *Note for File, concerning meeting on 9 November 1978*; Goodwin-Gill, DORS Minutes, *Note for File, concerning meeting on 26 April 1979*.

²⁷⁵ Goodwin-Gill, DORS Minutes, *Note for File, concerning meeting on 26 April 1979*.

²⁷⁶ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 9 January 1979*.

²⁷⁷ *ibid.*

recommended that further information be sought about conditions in Vietnam before the pair be deported. It is not clear whether the UNHCR representative or other Committee members genuinely believed or expected that these persons would be removed from Australia. Judging from Goodwin-Gill's records, it certainly appears that they were among the first to be rejected outright.²⁷⁸ There is evidence that an ethnic Chinese woman was rejected in late 1978 but her case was still unresolved in mid-1980.²⁷⁹ After this meeting on 9 January 1979 Goodwin-Gill met with the Immigration representatives on DORS, and his notes state that 'Committee members are aware that no Vietnamese applicant has been refused'.²⁸⁰

In March fourteen more boatpeople were recommended for rejection, and matters came to a head. At a meeting on 15 March the Immigration representative made 'a very strong plea' for the recommendation of compassionate/humanitarian leave to remain rather than outright rejection, saying he believed 'that humanitarian treatment should be accorded to all those who left SRV under present conditions'.²⁸¹ The Foreign Affairs representative favoured rejection "*pour encourager les autres*", 'to kill the idea that all those arriving directly in Australia are accepted'.²⁸² Goodwin-Gill asked whether those who were rejected might be able to stay in Australia on compassionate/humanitarian grounds:

I asked what was the procedure in such cases; I was informed that no Indochinese rejections had yet been passed to the Minister and the form of any such recommendation had not therefore been decided. I asked whether

²⁷⁸ It must be noted that cases were sometimes deemed to be 'rejected' by the Committee (and therefore in Goodwin-Gill's notes) when they failed to be approved for refugee status but were therefore eligible for compassionate/humanitarian status.

²⁷⁹ Goodwin-Gill Collection, DORS Minutes, *Note for File, concerning meeting on 6 August 1980*.

²⁸⁰ Goodwin-Gill Collection, DORS Minutes, *Note for File, concerning meeting on 9 January 1979*.

²⁸¹ Goodwin-Gill Collection, DORS Minutes, *Note for File, concerning meeting on 15 March 1979*.

²⁸² *ibid*.

the Committee had made any recommendation in respect to the cases rejected on 7 March and understood that none had been made.²⁸³

On 21 March, as the Committee was voting to reject another three cases, the Immigration representative Mr Forster warned members that if no recommendation for at least compassionate/humanitarian leave to remain were made, 'then the Minister would be left with no option but to return those concerned to Vietnam'.²⁸⁴

Mr Forster stressed the seriousness of the Committee's refusal to make any recommendation. He asked how the Minister avoid the situation where the Committee had agreed that the applicant before them was not worthy of humanitarian consideration.²⁸⁵

The answer, we can surmise, is that Immigration would simply delay passing the cases on to the Minister; and if it did, the UNHCR representative advised that it would make its own representations directly to the Minister.²⁸⁶ It was at the close of this meeting that the representative from the Department of the Attorney-General's devised a solution to the impasse, 'the principle of a complete re-interview for all those Indochinese cases which were rejected without the Committee making a recommendation for humanitarian treatment'.²⁸⁷ Goodwin-Gill recorded that 'this proposal received general support and it was agreed that this course should be adopted for all those so far rejected, and that re-interview would be the norm in future'.²⁸⁸ Therefore the small number of boatpeople represented in Figure 11 as having been recommended for rejection in the first few months of 1979 would now be re-interviewed. In essence, this agreement ensured that Committee members were no longer forced to approve weak cases if their departmental priorities or conscience did

²⁸³ *ibid.*

²⁸⁴ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 21 March 1979.*

²⁸⁵ *ibid.*

²⁸⁶ *ibid.*

²⁸⁷ *ibid.*

²⁸⁸ *ibid.*

not condone it.

3.3 The second phase, 29 March 1979 to January 1983

The second phase was based on this understanding. Cases were postponed for re-interview on 78 occasions out of 663. Recommendation for humanitarian treatment had occurred only once before 15 March 1979, and after this point it was used in 75 instances out of 733. Yet the problematic nature of the government's policy continued to rankle. Now that Committee members knew the outcome of their deliberations was essentially pre-determined, they were reluctant to assess Indochinese cases through the same procedure for two reasons: firstly, because in early 1979 there was a reported backlog of more than 500 cases; and secondly, because of the need to avoid 'bending the definition in the Convention' and setting 'many unfortunate precedents'.²⁸⁹ Attorney-General's queried that if the Minister for Immigration could 'bring in' refugees selected by 'his officials' in South-East Asia, 'then he would seem also to be free to declare that direct arrivals also qualified as refugees'.²⁹⁰ Foreign Affairs shared this impression, believing that there was a generic caseload that was not eligible for refugee status:

The Chinese in Vietnam were not suffering discrimination, their life-style was simply being altered to bring them into the main-stream of Vietnamese life.²⁹¹

This dissatisfaction was manifest within Immigration itself, and senior staff manoeuvred to persuade the Minister for a new approach. Goodwin-Gill was advised by an Immigration official in May 1979 that the Minister may very well be encouraged to *only* accept for permanent residence those boat arrivals that had been approved by DORS as

²⁸⁹ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 22 February 1979*; Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 26 April 1979*.

²⁹⁰ Goodwin-Gill Collection, DORS Minutes, *Note for File, concerning meeting on 26 April 1979*.

²⁹¹ *ibid.*

refugees.²⁹²

Throughout 1979 Committee members pursued the idea that DORS was not a suitable process for boat arrivals, and that this single large group of applicants should be assessed in a timely manner. The departments had very different ideas about how to do this. The Immigration and UNHCR representatives encouraged the Committee to recommend compassionate/humanitarian leave to remain where a case was considered to fall short of Convention status. The Immigration representative stated that ‘all cases rejected for refugee status should be entitled to special treatment on humanitarian or compassionate grounds’, and usually the PM&C representative tended to agree.²⁹³ Goodwin-Gill noted in his April 1979 report to UNHCR headquarters that Committee members were reluctant to use this ‘fall back’ provision.²⁹⁴ Attorney-General’s insisted that cases had to be considered on their individual merits, ‘both as to the question of status and as to the matter of a recommendation for special treatment’, and even for the latter recommendation he sought ‘factors which make the applicant exceptional and distinguish him from the run of the mill’.²⁹⁵

Even though Immigration did not want to give the impression that every boat arrival would remain in Australia, a de fault recommendation for compassionate/humanitarian status was seen by other Committee members as essentially doing just that. For the Attorney-General’s department, the priority was to ensure the integrity of the decision-making process, and a ‘blanket recommendation would have no influence on the Minister’.²⁹⁶ They advocated case-by-case determination. At first, Foreign Affairs agreed with this insistence on individual

²⁹² Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning discussion on 9 May 1979*.

²⁹³ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 26 April 1979*.

²⁹⁴ Goodwin-Gill Collection, DORS Gen, *UNHCR Review of the Procedure for the Determination of Refugee Status, April 1979*.

²⁹⁵ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 26 April 1979*.

²⁹⁶ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 21 March 1979*.

assessment:

Mr Baker also thought there were grave dangers in the Committee making a blanket recommendation; this might encourage a shipload of four or five thousand to turn up in Darwin in the expectation that finally all would be allowed to remain.²⁹⁷

Yet by April 1979 Foreign Affairs was strongly advocating for group determination, supported by PM&C:

...the position then taken by the Department of Foreign Affairs caused something of a stir: they were in favour of giving 'carte blanche' to all direct arrivals of ethnic Chinese origin. In this they were supported by the representative of the Department of Prime Minister and Cabinet, and both Departments indicated that they were not in fact prepared to go on looking at any more ethnic Chinese applications.²⁹⁸

Immigration insisted in reply that the government would never allow group determination of boat arrival cases, as it would mean reneging on its public commitments to accept only 'genuine' refugees. Boats were expected to keep arriving, and if DORS was to reassure the Australian community that their reception was rigorous and controlled, 'it was unlikely that Cabinet would agree to any general statement classifying direct arrivals as refugees'.²⁹⁹ The Immigration representative told DORS members in September 1979 that questions about the DORS process had been raised in the House of Representatives, and that even though he would have liked to 'write out' the entire boatpeople caseload, this would be 'politically impossible'.³⁰⁰ The alternatives to group recommendation that DORS considered included the formation of sub-committees or the approval of 'a percentage of cases' by the Immigration representative

²⁹⁷ *ibid.*

²⁹⁸ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 13 June 1979*; Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 26 April 1979*.

²⁹⁹ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 26 April 1979*.

³⁰⁰ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 16 October 1979*.

alone, but there is no evidence to suggest that these options were adopted.³⁰¹

Group determination was considered to be ‘politically impossible’ on two fronts: publicly and bureaucratically. As a senior Immigration official explained at a procedural review meeting of DORS in July 1980, ‘it would be unacceptable’ for any government to essentially enable a group of people to resettle in Australia ‘simply by coming here’.³⁰² Moreover, the official stated that the government should not have to reconsider a policy just because of the number of boat arrivals inconvenienced ‘a relatively junior level inter-departmental committee’.³⁰³ He chastised representatives from the departments of the Attorney-General and Foreign Affairs for continuing to request a change in the government’s position.

By the end of 1980 however, it seems that things had changed. Goodwin-Gill’s report for that year states that DORS had adopted a group approach ‘in regard to Vietnamese asylum seekers of Chinese ethnic origin’.³⁰⁴ There is no evidence in the files of exactly when, why or how this occurred, and in this document Goodwin-Gill still reported the number of cases considered, approved, rejected and/or recommended for compassionate/humanitarian status.

The issue of group determination was part of a bigger concern about the increased and commercialised nature of the outflow. DOS members wondered how the Committee would manage if ‘a big ship bearing 2 or 3 thousand Indochinese came into

³⁰¹ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 26 April 1979*; Goodwin-Gill Collection, DORS Gen, *UNHCR Review of the Procedure for the Determination of Refugee Status, April 1979*.

³⁰² Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning DORS procedural meeting on 9 July 1980*.

³⁰³ *ibid.*

³⁰⁴ Goodwin-Gill Collection, AUL: Reports, *UNHCR Sydney Branch Office, Report for 1980 to the United Nations High Commissioner for Refugees*.

Darwin'.³⁰⁵ The Attorney-General's representative concluded that while the boatpeople 'could be considered as refugees in a very general sense', the Convention was not the right instrument under which to deal with them and DORS 'was not set-up to deal with 2000 or more applicants nor was it equipped to do so'.³⁰⁶ Department of Immigration archival records show, however, that Immigration officials continued to believe that the system could manage up to 20,000 arrivals.³⁰⁷ This scenario will be discussed in Chapter Four.

The number of boat arrivals decreased markedly after mid-1979, and the last boat sailed to Australia just before Easter 1981. In June 1980, when the newly appointed Minister for Immigration Ian Macphie announced an amnesty for illegal immigrants known as the Regularisation of Status Program, DORS members debated whether Indochinese boat arrivals should be considered under this mechanism instead.³⁰⁸ At this stage there were 170 cases of Vietnamese boatpeople still outstanding.³⁰⁹

Surprisingly, Goodwin-Gill's files show that in August 1980 the Secretary of the Department of Immigration resolved that Indochinese who had arrived by boat before 31 December 1979 were to be processed for residence under the Regularisation of Status Programme.³¹⁰ It is most likely that the Secretary in question was John Menadue, who began the role after the retirement of Lou Engledow in July that year. There is strangely no further mention of this policy in Goodwin-Gill's files. The next Indochinese boat arrival cases were considered by DORS in December 1980, and the assessments appear to have proceeded in the usual manner.³¹¹ It is unknown whether

³⁰⁵ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 22 February 1979*.

³⁰⁶ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 26 April 1979*.

³⁰⁷ National Archives of Australia, A1209, Treatment of Unauthorised Boat Arrivals 1979.

³⁰⁸ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 6 August 1980*.

³⁰⁹ *ibid.*

³¹⁰ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 27 August 1980*.

³¹¹ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 4 December 1980*.

those who had arrived before 31 December 1979 had already been through the DORS process at the time that this decision was announced.

In September 1979, the Immigration representative had advised the Committee that it may likely complete the assessment of Indochinese boatpeople with ‘twenty to thirty rejected cases, in respect of which it would be unwilling to make any recommendation for special treatment on humanitarian grounds’.³¹² He invited the UNHCR to make representations to the Minister if it so wished. Examination of all Goodwin-Gill’s files provides a roughly similar figure: 19 decisions were for rejection between October 1978 and January 1983.

Whether any of these cases were passed on to the Minister and ultimately deported has not been conclusively proven, however, it would appear from the numerous references throughout Goodwin-Gill’s files that all the boatpeople were allowed to remain. Certainly in July 1980, after 94 percent of Indochinese boat arrival cases had been considered by DORS, two departmental representatives made statements to the effect that so far ‘most’ or ‘the bulk of’ Indochinese cases had been allowed to remain in the country. Another representative stated that ‘all’ had been granted permanent residence. The slight differences in these statements may hint at the fact that some cases were still to be processed, or that some boat arrivals had been resettled in countries to which they had stronger ties. The senior Immigration official who chaired the particular meeting maintained the official government line that even though the boatpeople had been allowed to remain, this ‘did not necessarily mean that all future cases would be’.³¹³

³¹² Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 21 September 1979.*

³¹³ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning DORS procedural meeting on 9 July 1980.*

Conclusion

In conjunction with the analysis of non-Indochinese cases in Chapter Five this chapter constitutes the first historical study of the DORS process. The literature has tended to present DORS as a footnote to a story which played out in the media, the parliament and the Cabinet, established purely as a reaction to the political problem that the boat arrivals represented.³¹⁴ Historian Barry York wrote that DORS was created ‘when it became clear’ that some boat arrivals ‘were not refugees but economic migrants’.³¹⁵ Viviani wrote that DORS was ‘presented as a means of assuring applicants of the protection of the UN Convention’ but was actually designed for domestic reasons.³¹⁶ On the one hand these interpretations do not give enough weight to the fact that the DORS process was an inevitable part of Australia’s obligations under the Convention and Protocol, and the UNHCR was pushing signatory states to develop formal status determination procedures from the late 1970s onward.³¹⁷ On the other hand, the general impression that DORS contributed to political objectives is borne out by the evidence in Goodwin-Gill’s files.

The presumptive declaration of refugee status for all who fled Indochina, and the morally hazardous situation this created, presented the Fraser government with an unprecedented dilemma. The government sought to be ‘something better than helpless’ by steadfastly promoting one position in public while implementing another very differently in private. DORS was intended ‘to act as a deterrent’ by providing a rigorous selection process and signalling to prospective boat arrivals that they should not engage in unnecessarily risky behaviour. DORS institutionalised the government’s stance

³¹⁴ Stevens, ‘Political Debates on Asylum Seekers’, p. 532; McMaster, *Asylum Seekers*, p. 52.

³¹⁵ York, ‘The myth of our humanitarian tradition’.

³¹⁶ Viviani, *The Long Journey*, p. 80.

³¹⁷ Executive Committee of the High Commissioner’s Programme, Conclusion 8, 1977; See also: Goodwin-Gill and McAdam, *The Refugee in International Law*, pp. 529-530.

against unmeritorious cases, while allowing it to receive the boat arrivals in accordance with its international obligations under the Convention and Protocol.

Through revealing the previously unknown story of DORS, this chapter provides vital historical context for the fact that the Fraser government insisted on accepting only ‘genuine’ refugees. In a 2012 article in *The Age* newspaper, Stevens overreached considerably by arguing that when MacKellar warned that boat arrivals would not necessarily be allowed to stay, the intention was ‘similar to the current [Liberal/National] Coalition policy of ‘turning back the boats’.³¹⁸ The evidence presented in this chapter shows that there is absolutely no similarity between these two policies, and Stevens’ attempt to equate the two suggests that her assessment of the Fraser government’s actions is informed by an assumption that Australia’s current approach to asylum seekers is merely a continuation of old practices. Furthermore, this chapter has shown that the assertion of a rigorous status determination process was morally sound, as both Teitelbaum and Weiner have noted.

Ultimately the government’s insistence on only taking ‘genuine’ refugees lessened the difficulties and uncertainties that DORS members encountered in their assessment of Indochinese applicants. DORS rarely made recommendations to reject and it appears that those who were not granted refugee status or compassionate/humanitarian status were never removed from Australia.³¹⁹ The forcible removal or voluntary departure of individuals during the second, third and fourth waves are well-documented, but there is no evidence in Goodwin-Gill’s files to suggest that the Fraser government implemented similar measures when dealing with Indochinese

³¹⁸ Stevens, ‘No, the Fraser era was not a Golden Age for Asylum Seekers’.

³¹⁹ Goodwin-Gill, DORS Minutes, *Note for File: concerning meeting on 26 April 1979*; ‘Comments by W.A Minister on Refugees’, p. 464.

boat arrivals.³²⁰ According to the historian Glenn Nicholls' valuable work *Deported: A History of Forced Departures from Australia*, non-criminal deportations actually spiked in the late 1970s (relative to the average for the time), but neither Nicholls nor the primary sources examined for this thesis indicate that boatpeople were not among those being removed.³²¹

Viviani characterised the government's attempts to manage the issue of boat arrivals as a 'balancing act' between the forces of public opinion.³²² Now through the analysis of Goodwin-Gill's files this chapter has shown the true extent of this strategy, revealing that the Department had to pursue a balancing act within the bureaucracy as well. The government was forced to defend the merits of the status determination process on all fronts, including within the Department of Immigration. Furthermore, the evidence shows that the government was supported in this endeavour by UNHCR staff, who sought to encourage a liberal application of the Convention criteria and to counter misunderstandings amongst DORS members about the merits of protection claims and the nature of the outflow.

³²⁰ See further: Bem et. al., *A Price Too High*, p. 25-26; Nicholls, *Deported*, pp. 138-142; P. Glendenning, C. Leavey, M. Hetherington, M. Britt and T. Morris, *Deported to Danger: A Study of Australia's Treatment of 40 Rejected Asylum Seekers*, Edmund Rice Centre (2004); P. Glendenning, C. Leavey, M. Hetherington and M. Britt, *Deported to Danger II: The Continuing Study of Australia's Treatment of Rejected Asylum Seekers*, Edmund Rice Centre (2006); Corlett, *Following Them Home: the Fate of the Returned Asylum Seekers*.

³²¹ Nicholls, *Deported*, p. 114. In May 1978 MacKellar told Parliament that six crew members of the *Song Be 12*, which arrived in Darwin in late November 1977, chose to remain on-board and return to Vietnam. He also stated that one person had returned to Indonesia from a boat that arrived in March 1978 via Jakarta. Viviani writes that the *Song Be 12* was a Vietnamese trawler that was 'commandeered' by refugees in the Saigon River, and that there were three Vietnamese soldiers on board – see further: Viviani, *The Long Journey*, p. 77; Australia, *Commonwealth Parliamentary Debates*, House of Representatives, 9 May 1978, p. 2096. See also: 'Arrival of Vietnamese refugee vessel', *Commonwealth Record*, 25 March 1978, p. 267; 'Status of Vietnamese refugees', *Commonwealth Record*, 26 March 1978, p. 268; 'Refugee situation in Darwin', *Commonwealth Record*, 2 December 1977, pp. 1795-1796; 'Speech to Institute of International Affairs', *Commonwealth Record*, 19 August 1978, pp 1064-1065. In October 1981 a boatload of 146 people arrived in Darwin aboard the *VT838* and after they were found not to be Indochinese they were deported. This case will be discussed further in Chapter Four – see further 'Deportation of illegal immigrants', *Commonwealth Record*, 27 December 1981, p. 1699; Australia, Department of Immigration and Citizenship, *Submission to the Joint Select Committee on Australia's Detention Network*, p. 165.

³²² Viviani, *The Long Journey*, p. 70. See also: Rodd, 'Boats and Borders', pp. 36-39.

DORS was the Fraser government's best means of signalling to the Australian public and to would-be boat arrivals that Australia was asserting administrative control over their admission and of responding to the morally hazardous nature of the Indochinese outflow. Within the bureaucracy and to the public, the idea that some Indochinese may be sent back was always maintained.

Chapter Four: the post-White Australia policy dilemma

Between early 1978 and mid-1979 the refugee outflow from Indochina grew exponentially. By mid-1979 Australian newspapers reported ‘a new threat’ of refugee invasion on a scale that ‘no one seriously believed could happen’ until now.³²³ The Department of Immigration was making contingency plans for the arrival of between 20,000 and 100,000 boatpeople. The Minister for Foreign Affairs advised Cabinet that the situation ‘has all the ingredients for one of the most controversial and divisive issues in Australian history’. The Fraser government’s efforts to respond to the refugee problem would be jeopardised by a hostile public reaction fuelled by traditional fears of what was pejoratively known as the ‘yellow peril’. The Minister warned of ‘a head-on collision’ between foreign policy interests and domestic public opinion. At the same time, however, Cabinet agreed that by virtue of its history Australia was at risk of serious reputational consequences:

As a large, underpopulated ‘white’ country Australia would be especially vulnerable to international criticism if we failed to respond in a humane manner to the arrival of boat refugees from Asia on Australian territory.³²⁴

The Minister for Foreign Affairs’ statements reflect the historical and political challenge that Australia faced in responding to boat arrivals. Control of immigration was a founding pillar of the Australian nation, firmly premised on racial discrimination. After 1972 this foundation was re-calibrated with the formal abolition of the White Australia concept. The assertion of full administrative control over the migration intake

³²³ P. Cornford, ‘Camps may be only answer for refugees’, *The Australian*, 21 June 1979, in Goodwin-Gill Collection, DORS Gen.

³²⁴ National Archives of Australia, A12390, 380, Memorandum 380 ‘Indo Chinese Refugees’.

now worked in tandem with the need to build the nation's new non-discriminatory image on the international and domestic stage. It was essential to the Fraser government's ability to manage this aspect of demographic change very carefully.

Boat arrivals challenged these dual imperatives. They ensured that Australia was a country of first asylum for the Indochinese, and as the outflow from Indochina became larger and commercial from 1978, it became a priority for Australia to avoid becoming a country of first asylum on a very large scale. This chapter will look at how the Fraser government sought to reconcile competing historical and political imperatives in choosing how to achieve this objective.

The chapter will begin by discussing how the Fraser government understood the possibility of an influx of boat arrivals. This will contextualise the government's decision-making process. The Fraser government explained to the Australian public in 1979 that it only had a 'narrow range of options' with which it could respond to the heightened and dynamic refugee outflow.³²⁵ It sought a means of avoiding status as a first asylum destination that would meet both administrative and reputational priorities. Section Two of this chapter will ask: how did it go about doing this? It will discuss three policy options that have garnered the attention of scholars for their resemblance to the policies of later governments. The first, pushing back or repatriating boats arrivals, was debated within the bureaucracy but dismissed by the government. The second, establishing detention centres, was debated by the government but rejected by Fraser and ultimately not adopted. The third was chosen and implemented: legislation against

³²⁵ Proceedings of the Conference on the Indochina Refugee Situation. Teitelbaum wrote that in its response to the Indochinese situation, the United States had only three options: to allow the boatpeople to be pushed out to sea by countries of first asylum; to persuade countries of first asylum to resettle the Indochinese; or, to promote internationalisation of the refugee problem and accept large numbers for resettlement in the U.S. Teitelbaum wrote that the third of these options was chosen 'for strategic reasons and out of humanitarian concern' – see further: M. S. Teitelbaum, 'Immigration, Refugees and Foreign Policy', *International Organisation*, 38, no. 3 (1984), pp. 443-4.

people smugglers. What were the historical and political considerations that made penalties for people smugglers the more feasible policy for the Fraser government?

These three policy options are just samples of many that were considered and, in some instances, adopted by the Fraser government. They were chosen to be discussed here because they aptly reflect the geographic and symbolic facets of this post-White Australia policy dilemma. Moreover, they build on the evidence established in Chapter Three that Australia was politically unable to repatriate the boatpeople or send them back to camps in countries of first asylum.

In so doing, this chapter will not address the ‘boat-holding’ arrangements negotiated by Australia with countries of first asylum in mid-1978 and MacKellar’s efforts to ‘internationalise’ the resettlement caseload in 1979, which are commonly cited by protagonists and scholars as being successful means of preventing boats arriving.³²⁶ It will not address the apparent disabling of boats by Immigration officials in South-East Asia.³²⁷ Nor will it address the concept of ‘temporary refuge’, which was mooted in 1980, and the discussion of how to approach the SRV authorities about the demographic and commercial nature of the exodus.³²⁸ Most importantly, this chapter will not discuss the Orderly Departure Programme or how the processing of refugees out of the camps in South-East Asia was a means of lessening ‘any encouragement for people to attempt the hazardous journey to Australia in small boats’.³²⁹ These subjects have been ably

³²⁶ Viviani, *The Long Journey*, p. 84; Clark, ‘The Boat People Force Policy Turnabout’. See also: Interview with M. Fraser; Interview with M. MacKellar. See also: National Archives of Australia, A12909 2771.

³²⁷ Smit, ‘Malcolm Fraser’s Response to ‘Commercial’ Refugee Voyages’, pp. 88-89; Martin, *Angels and Arrogant Gods*, p. 107.

³²⁸ See further: Australia. Senate Standing Committee on Foreign Affairs and Defence, *Indochinese Refugee Resettlement: Australia’s Involvement*, Submission by the Department of Immigration and Ethnic Affairs, vol. 2, p. 1174; National Archives of Australia, A12909 2771; National Archives of Australia A12909 3327, Submission no. 3327 – Review of Indo-Chinese Refugee Situation – Decision no 9149.

³²⁹ ‘Refugee Team for Thailand’, *Commonwealth Record*, 26 July 1977, p. 956.

examined in the existing literature.³³⁰ They belong to what the Department called ‘an overall strategy’ to ensure refugees in Indochina or within the camps in South-East Asia did not need to set sail for Australia.³³¹

The three policy options that will be discussed in this chapter are at the core of the debate over the Fraser government’s legacy. Historians and journalists have used them to argue about the way this government navigated between the promotion of a generous, tolerant Australian polity and the assertion of sovereign control over entry to Australian territory. In summary, the Fraser government has been lauded for not pushing back or repatriating the boats.³³² It has been scrutinized for considering detention centres, and criticised (and misunderstood) for enacting legislation against people smugglers. Smit and Stevens have both concluded that by implementing this legislation, the *Immigration (Unauthorised Arrivals) Act 1980* (Cth), the Fraser government did not welcome the boatpeople ‘with open arms’.³³³ The papers by Smit and Stevens are the only detailed academic discussions of these policy choices, but there was some coverage in the news media following the release of relevant archival records in 2009 and 2010. Journalist Mike Steketee was among several Australian writers who argued that the Fraser government exhibited ‘courageous leadership’ or a marked difference in

³³⁰ See further: Tsamenyi, ‘The Boat People: Are They Refugees?’, pp. 348-373; Viviani, *The Indochinese in Australia, 1975 to 1995*, pp. 9-10; M. Crock and D. Ghezelbash, Do Loose Lips Bring Ships? The Role of Policy, Politics and Human Rights in Managing Unauthorised Boat Arrivals, Legal Studies Research Paper, Sydney Law School no. 10/72 (Aug. 2010), p. 14; Viviani, *The Long Journey*, pp. 42-48; B. Stein, ‘The Geneva Conferences and the Indochinese Refugee Crisis’, *International Migration Review*, 13, no. 4 (Winter 1979), p. 722; D. McNamara, ‘The Origins and Effects of Human Deterrence Policies in South-East Asia’, in G. Loescher and L. Monahan, *Refugees and International Relations* (Oxford, 1989), pp. 123-133.

³³¹ Senate Standing Committee on Foreign Affairs and Defence, *Indochinese Refugee Situation: Australia’s Involvement*, p. 1259.

³³² D. Murphy and Y. Narushima, ‘“Turn Them Back” Mantra Rejected in 1979’, *The Age*, 1 January 2010, accessed 30 September 2013, at: <<http://www.theage.com.au/national/turn-them-back-mantra-rejected-in-1979-20091231-lkyc.html>>; J. Menadue, ‘The Pacific Solution didn’t work before and it won’t work now’, *The Drum*, ABC Online, 14 March 2012, accessed 30 September 2013, at: <<http://www.abc.net.au/unleashed/3886792.html>>.

³³³ Stevens, ‘Political Debates on Asylum Seekers’, p. 540; Smit, ‘Malcolm Fraser’s response to Commercial Refugee Voyages’, p. 85. See also: Colbatch, ‘The Left Re-Writes Its History on Refugees’.

tone compared to the politicking of recent governments, and that the government prioritised the nation's international reputation.³³⁴ All these interpretations have been based on the same body of archival evidence and parliamentary debates. This chapter offers new insights from Goodwin-Gill's files and oral history interviews to enhance this existing knowledge and test these conclusions.

1. 'An immense problem'

When the first boatpeople arrived in Darwin in April 1976, Gibbons' 'very strong fear' was for 'a larger group'. This was reiterated many times by Departmental officials over the next five years. By mid-1978 the size and complexity of the Indochinese outflow meant that officials in the Department of Immigration genuinely believed that Australia could experience a massive influx of boat arrivals. The possibility was unprecedented in peacetime, but the exodus to Australia's north was immense and politically complex. This section will outline how these expectations developed.

The Indochinese exodus comprised the immediate outflow of around 135,000 Vietnamese after the end of the United States' war in Vietnam, and between 1975 and early 1978 it is believed that another 30,000 Vietnamese successfully reached countries of first asylum.³³⁵ In February 1978 MacKellar advised Cabinet that the flow of boats into Malaysia was continuing unabated and it was expected to do so at a rate of 1000

³³⁴ Steketee, 'History Not Always Meant To Be Easy'; Steketee, 'Malcolm Fraser The Unsung Hero of Humane Refugee Policy'; M. Steketee, 'Fraser Rejected Detention for Boat People', *The Australian*, 1 January 2009, accessed 30 September 2013, at: <<http://www.theaustralian.com.au/in-depth/cabinet-papers/fraser-no-to-detention/story-e6frgd9o-111118449731>>; C. Stewart and M. Steketee, 'Refugee Crisis 'A Threat to Unity', say 1979 Cabinet Papers', *The Australian*, 1 January 2010, accessed 30 September 2013, at: <<http://www.theaustralian.com.au/news/nation/refugee-crisis-a-threat-to-unity-say-1979-cabinet-papers/story-e6frg6nf-1225815135600>>; Murphy and Narushima, "Turn Them Back" Mantra Rejected in 1979'; P. Hudson, 'A Specific Solution that Worked', *The Age*, 1 January 2009, 30 September 2013, at: <<http://www.smh.com.au/news/national/a-specific-solution-that-worked/2008/12/31/1230681578337.html>>.

³³⁵ M. Osborne, 'The Indochinese Refugees: cause and effects', *International Affairs*, 56, no. 1 (1980), p. 39.

per month for the next two years.³³⁶ Events in Vietnam soon changed this. The number of people fleeing Vietnam increased dramatically as a result of the economic alienation of the ethnic Chinese population in the first half of 1978, and increased again after conflict between Vietnam and China in early 1979.³³⁷ This exodus was aided in part by commercialised people smuggling.³³⁸ Where in May 1978 Cabinet had been advised that the outflow from Vietnam was expected to be ‘at least 20,000 per year’ for the next three years, just twelve months later the outflow had reached its peak of more than 50,000 per month.³³⁹ Added to this was the co-evolution of Cambodian and Laotian refugee flows from 1975 onward.³⁴⁰

For the period 1975 to mid-1979 W. Courtland Robinson has estimated that more than 663,000 Vietnamese were evacuated or fled, 160,000 Laotian refugees crossed into Thailand, and around 525,000 Cambodian and ethnic Vietnamese fled the reign of the Khmer Rouge and its aftermath, a total of almost 1.4 million.³⁴¹ The number of refugees fleeing Indochina dwarfed the number that managed to sail to Australia. A comparison can be made using UNHCR figures cited by Viviani, on the number of Indochinese reaching countries of first asylum by land or by boat between 1975 and 1982. The sizeable figures represented in Figure 13 below still do not include 131,000 evacuees to the United States in April and early May 1975, as well as large

³³⁶ National Archives of Australia, A12909 1916. See further: National Archives of Australia, A13075, 4558/FAD, Cabinet Minute (Foreign Affairs and Defence Committee) – Refugees from Indo-China.

³³⁷ Osborne, ‘The Indochinese Refugees: cause and effects’, pp. 39-40; Viviani, *The Long Journey*, p. 18. For further information about the movement of Cambodian refugees over the Thai border see further: L. C. Thompson, *Refugee Workers in the Indochinese Exodus 1975-1982* (Jefferson, N.C., 2010) pp. 171-172.

³³⁸ National Archives of Australia, A12909 2771. See also: National Archives of Australia A12909 3327.

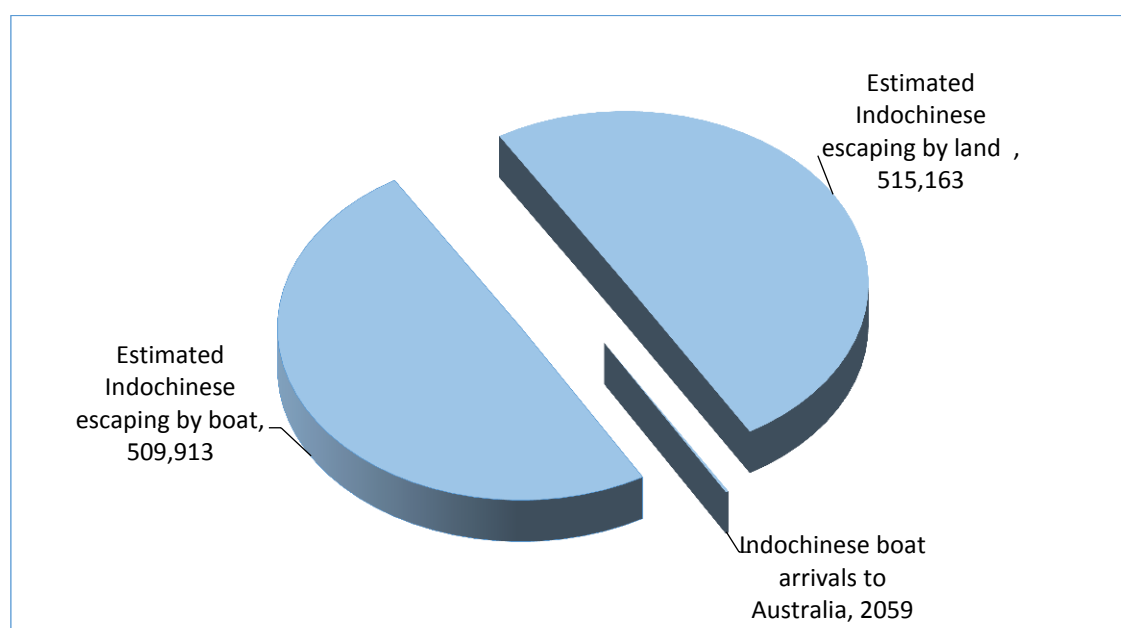
³³⁹ National Archives of Australia, A10756 LC1366 – Part 1; National Archives of Australia A12909 3327. See further: Viviani, *The Long Journey*, p. 42; Hawkins, *Critical Years in Immigration*, pp. 179-182; Stein, ‘The Geneva Conferences and the Indochinese Refugee Crisis’, pp. 716-717; National Archives of Australia A12909 3327.

³⁴⁰ See further: Robinson, *Terms of Refuge*, pp. 14, 44-50, 103-106; Grant, *The Boat People: An Age Investigation*, p. 98. See also: National Archives of Australia A12909 3327; National Archives of Australia, A12909 1916.

³⁴¹ Robinson, *Terms of Refuge*, p. 50. See also: Osborne, ‘The Indochinese Refugees: cause and effects’, pp. 37-46.

groups that fled to China, to Vietnam (from what was then Kampuchea) and Thai-run border camps.³⁴² Osborne estimates that 250,000 refugees were accommodated in China as of mid-1979.³⁴³

Figure 13: Indochinese boat and land arrivals in countries of first asylum compared with boat arrivals to Australia 1975 to 1982



Source: UNHCR figures quoted in Viviani, *The Long Journey*, p. 43-44; Australia. Department of Immigration and Citizenship, *Submission to the Joint Select Committee on Australia's Immigration Detention Network*, p. 102.

In retrospect, it is clear that Australia escaped the brunt of the exodus. In his interview for this thesis, MacKellar explained the situation his department confronted at the time:

We had a huge humanitarian problem, which if we just let it go... nobody really knows how many boats would have arrived, but they could have been in the thousands. I've heard some estimates of how many people were on the water at any one stage which really were quite dramatic. But I've got no proof of any of that. But that's what we were told. So we had this immense problem sitting up there heading our way.³⁴⁴

Derek Volker, a First Assistant Secretary and then Deputy Secretary in Immigration

³⁴² Viviani, *The Long Journey*, pp. 43-44.

³⁴³ Osborne, 'The Indochinese Refugees: cause and effects', p. 47.

³⁴⁴ Interview with M. MacKellar.

during that period, said an influx was not simply a belief but a real possibility:

There was the potential, at one stage, that you could have had 150,000, 200,000 people coming down, quite literally...³⁴⁵

These fears were shared by other departmental staff at the time.³⁴⁶ MacKellar told Cabinet in mid and late 1978 that ASEAN governments anticipated that the outflow would ‘increase significantly beyond present levels’.³⁴⁷ He was unable to predict ‘the limits of the flow’, but that ‘it could amount to hundreds of thousands of people’.³⁴⁸ In July 1979 he told Cabinet that ‘possibly three million residents’ could leave.³⁴⁹ That month the Department detailed its expectations in an inter-departmental committee. The archival record is revealing, because it indicates that the Department’s sense of the possible influx of boatpeople was so enlarged that it considered 20,000 arrivals to be ‘a small number’.³⁵⁰ It described a scenario in which ‘we really get inundated’ as constituting more than 100,000 boatpeople.³⁵¹ An article in *The Canberra Times* reported that ‘normally cautious bureaucrats’ believed that an estimate of 150,000 was ‘quite reasonable’.³⁵²

The estimates were not unreasonable given the imperfect information the Department was receiving. Governmental and inter-governmental agencies struggled to determine the size of the exodus during the peak years 1978 to 1980, and estimates of how many boatpeople were lost in the Gulf of Thailand and the South-China Sea varied

³⁴⁵ Interview with D. Volker, 6 January 2011, Canberra, Australia.

³⁴⁶ Goodwin-Gill Collection, DORS Gen, *Note for File: Report on visit to the Department of Foreign Affairs and the Department of Immigration and Ethnic Affairs, 14 November 1978*. See also: National Archives of Australia, A12909 2771.

³⁴⁷ National Archives of Australia, A10756 LC1366 – Part 1.

³⁴⁸ National Archives of Australia, A12909 2771. See also: Fraser and Simons, *Malcolm Fraser: The Political Memoirs*, p. 416.

³⁴⁹ National Archives of Australia A12909 3327.

³⁵⁰ National Archives of Australia A1209, Treatment of Unauthorised Boat Arrivals, 1979

³⁵¹ *ibid.*

³⁵² B. Juddery, ‘Refugees and yet more refugees’, *The Canberra Times*, 27 June 1979, p. 2.

wildly.³⁵³ The stories of boatpeople falling victims to piracy were infamous; in 1981 it was estimated that 77 per cent of boatpeople were attacked by pirates.³⁵⁴ Viviani cited an argument that the estimates may have been wilfully exaggerated in order to deter prospective boatpeople and achieve domestic political objectives.³⁵⁵ Certainly Goodwin-Gill's files indicate that the Department of Immigration did seek to use 'visual aids' such as television and film to 'dramatise the refugee situation in South East Asia... and create a groundswell of public opinion' in favour of the resettlement effort.³⁵⁶ The dramatic nature of the exodus enabled MacKellar to emphasise Australia's international obligations to his domestic audience. He urged the public 'not to forget the human tragedy represented by these few small boats'.³⁵⁷

The tolerance of first asylum countries such as Malaysia, Thailand and Singapore had been tested since the outflow began, but after the developments of 1978 it was said to be stretched to its limits.³⁵⁸ Their public protestations essentially echoed Walzer's argument that for a state 'to take in large numbers of refugees is often morally necessary', but to adhere solely to this principle creates the threat of being 'overwhelmed'.³⁵⁹ The Thai ambassador to Australia told an audience in Canberra in

³⁵³ See further: Robinson, *Terms of Refuge*, p. 59; Wain, *The Refused*, p. 83; Grant, *The Boat People: An Age Investigation*, p. 81; K. St Cartmail, *Exodus Indochina* (Auckland, 1983), p. 90; Hawkins, *Critical Years in Immigration*, p. 173; Osborne, 'The Indochinese Refugees: cause and effects', pp. 37-38; ABC radio, 'Vietnamese refugees dying at sea in an attempt to escape their homeland', *AM*, broadcast 23 November 1978, in National Archives of Australia, M1277 175 [Personal Papers of Prime Minister Fraser] Refugees [relates to boat people].

³⁵⁴ See further: National Archives of Australia, A6980 S251347, Indo-Chinese Refugee – Action by United Nations High Commissioner for Refugees – Part 5; Grant, *The Boat People: An Age Investigation*, pp. 63-67; K. L. Whiting, 'Pirates attack refugee boats with impunity', *The Canberra Times*, 14 August 1979, p. 6; 'U.N Reports 50 Vietnamese Slain and 10 Raped by Pirates', *New York Times*, 25 December 1985.

³⁵⁵ Viviani, *The Long Journey*, p. 95.

³⁵⁶ Goodwin-Gill Collection, AUL: Reports, *UNHCR Sydney Branch Office, Report for November-December 1978*.

³⁵⁷ 'Humanitarian issue of refugees', *Commonwealth Record*, 29 November 1977, p. 1792; 'Comments by W.A Minister on refugees', p. 464; 'Speech to Commonwealth Club of Adelaide', *Commonwealth Record*, 26 April 1979, p. 500; 'Speech to National Press Club', *Commonwealth Record*, 15 August 1979, p. 1154.

³⁵⁸ See further: National Archives of Australia, A10756 LC1366 – Part 1.

³⁵⁹ Walzer, *Spheres of Justice*, p. 51.

July 1979 that there was no need to ask the Thai government to show humanity, because 'it has been swamped by humanity'.³⁶⁰ Two years later Australian officials in Bangkok were advised that the Thais 'could only think of their national survival'.³⁶¹ The strain was most famously articulated by then Singaporean Prime Minister Lee Kuan Yew when he stated that his government 'had to grow calluses on the heart' or 'bleed to death'.³⁶² Australian authorities feared that the countries of first asylum could encourage or were encouraging the outflow to go south, due to a 'traditional enmity' toward ethnic Chinese within those societies and due to the fact that resettlement had not kept pace with the refugee inflow.³⁶³ MacKellar advised Cabinet throughout 1978 that this could have direct consequences for Australia:

...Malaysian attitudes will harden... They could arrive eventually at a decision to turn all boats away; given the unsympathetic Singaporean and Indonesian attitudes, that leaves Australia as the destination.³⁶⁴

In 1979 these countries took dramatic measures to encourage the international resettlement effort.³⁶⁵ Singapore was rumoured to be towing boats back out to sea at enough speed that they fell apart.³⁶⁶ Malaysia announced in June 1979 that it would no longer accept any further arrivals, and re-doubled efforts at refusing to allow boats to land.³⁶⁷ Thailand undertook violent repatriation exercises after it became inundated with Cambodians fleeing the fall of the Khmer Rouge.³⁶⁸ UNHCR officials were made aware

³⁶⁰ Proceedings of the Conference on the Indochina Refugee Situation.

³⁶¹ National Archives of Australia, A6980 S251347.

³⁶² Wain, *The Refused*, p. 200; Australia. Senate Standing Committee on Foreign Affairs and Defence, *Indochinese Refugee Resettlement: Australia's Involvement*, p. 1165.

³⁶³ National Archives of Australia, A12909 2771, Submission no. 2771: Review of the Indo-Chinese Refugee Program – Decision 7255. See further: Interview with M. MacKellar.

³⁶⁴ National Archives of Australia, A12909 2771.

³⁶⁵ National Archives of Australia A12909 2014, FAD Committee; Cabinet Minute; Submission No. 2014 – Indo-Chinese Refugees – Ongoing Programme – Decision no. 4844 (FAD). See further: Grant, *The Boat People: An 'Age' Investigation*, p. 72.

³⁶⁶ Juddery, 'Refugees and yet more refugees', p. 2.

³⁶⁷ See further: Viviani, *The Long Journey*, p. 47; Martin, *Angels and Arrogant Gods*, pp. 105-107; National Archives of Australia A12909 3327.

³⁶⁸ See further: Robinson, *Terms of Refuge*, pp. 45-50.

of these events in order to send a message to the international community that resettlement efforts had to be stepped up.³⁶⁹

Evidence from government archival records suggests that authorities in the region were genuinely concerned that the outflow would continue, and did not believe the SRV authorities had control over mass escapes.³⁷⁰ In June 1980 the Department of Immigration advised that it anticipated more arrivals within the next four to six months, even though no boats had arrived since the previous year.³⁷¹ The Department gave a similar assessment to a Senate inquiry in August 1981. It reported that the outflow from Indochina continued to cause serious instability within the region and was not expected to ease.³⁷² Again in 1982 the Department of Foreign Affairs reported that the outflow of boats from Vietnam was expected to continue ‘at present levels of 60,000 to 70,000 per year’.³⁷³ Volker told the Senate inquiry in 1981 that the Department was continuing its efforts ‘towards averting the possibility of a renewed influx of unauthorised refugee arrivals on our shores’, because public acceptance of the nation’s refugee policy depended on it.³⁷⁴

2. ‘A narrow range of options’

In May 1978 the Minister for Immigration and the Minister for Foreign Affairs advised Cabinet that citizens within the Socialist Republic of Vietnam were beset by the expropriation of property and a scarcity of food, and they would likely take enormous

³⁶⁹ See further: Osborne, ‘The Indochinese Refugees: cause and effects’, pp. 47-49; Thompson, *Refugee Workers in the Indochina Exodus, 1975 – 1982*, pp. 172-178; Robinson, *Terms of Refuge*, pp. 45-50.

³⁷⁰ National Archives of Australia A6980 S251347; National Archives of Australia, A1209, Treatment of Unauthorised Boat Arrivals 1979; Juddery, ‘Refugees and yet more refugees’, p. 2.

³⁷¹ National Archives of Australia, A1209, Treatment of Unauthorised Boat Arrivals 1979.

³⁷² Australia. Senate Standing Committee on Foreign Affairs and Defence, pp. 1181-1182.

³⁷³ National Archives of Australia, A12909 5439, Migration Program for 1982/83, 1983/84 and 1984/84 – Decision no. 17849.

³⁷⁴ Australia. Senate Standing Committee on Foreign Affairs and Defence, *Indochinese Refugee Resettlement: Australia’s Involvement*, p. 1171.

risks to escape. Australia therefore faced ‘some difficult decisions’.³⁷⁵ As the outflow from Vietnam became more voluminous, and once it became clear that the transportation of refugees had become a commercial enterprise, the contingency planning for boat arrivals became more complicated and urgent.³⁷⁶ The Minister for Immigration told Cabinet that Australia’s humanitarian goodwill was being exploited, and it must not be ‘compliant’ in its response.³⁷⁷ To do so would give ‘the green light’ for a large-scale migration that was not of the Australian government’s design, but rather ‘to a timetable and scale devised by another government and businessman’.³⁷⁸ Cabinet requested a review of policy options in February 1978 and again that November.³⁷⁹ MacKellar told Cabinet that ‘we are still not in a position to cope with the physical implications of a boat possibly carrying over 2000 refugees arriving in Darwin’, particularly if the vessel was deliberately immobilised by those on board.³⁸⁰ This section will outline how three options were debated within the public service and the Cabinet in the belief that Australia could experience a continued and larger inflow of boats.

2.1 Pushing back or repatriating the boatpeople

The fact that the Fraser government did not repatriate or push back Vietnamese refugees has been noted by historians and protagonists.³⁸¹ The debate behind this decision has received less attention than the second and third policy options that will be discussed in this chapter. This is due to a lack of evidence that pushing boats back or repatriating passengers was ever considered to be a feasible option. It was only

³⁷⁵ National Archives of Australia, A10756 LC1366 – Part 1. See also: Proceedings of the Conference on the Indochina Refugee Situation.

³⁷⁶ See further: National Archives of Australia, A10756 LC1366 – Part 1.

³⁷⁷ National Archives of Australia, A12909 2771.

³⁷⁸ *ibid.*; National Archives of Australia, A12909 2906.

³⁷⁹ National Archives of Australia, A13075, 4558/FAD; National Archives of Australia, A12909 2771.

³⁸⁰ National Archives of Australia, A12909 2771.

³⁸¹ Fraser and Simons, *Malcolm Fraser: The Political Memoirs*, p. 419.

mentioned in public statements or Cabinet records when ministers and senior bureaucrats ruled it out. This section will present new evidence that the idea was considered within the bureaucracy.

During the federal election campaign of November 1977, and a concurrent spike in boat arrivals, MacKellar had explicitly repudiated calls to turn back the small vessels that were reaching Australia:

This government will not indiscriminately “make examples” of boat refugees by turning some of them back. Our controls are designed to prevent the entry of people falsely posing as refugees, but we will not risk taking action against genuine refugees just to get a message across. This would be an utterly inhuman course of action.³⁸²

MacKellar had taken the moral high ground in the face of calls to ‘blow them out of the water’, as discussed in Chapter Three. He pointed to the unrealistic nature of the proposition, and the need for a flexible approach:

We cannot afford to take a rigid stance. Simple solutions such as “turn away all the boats”, on examination, prove not to be acceptable. Turn away to where? To sink? To Malaysia? Why should Malaysia, with its crowded camps accept back refugees who have decided to go to Australia?³⁸³

This position was reiterated in policy discussions for most of 1978. On 22 March 1978 Ian Simington, who was then at PM&C but would soon be Head of the Refugee Branch in Immigration, advised Prime Minister Fraser that even though the government needed to act ‘with firmness’ against boat arrivals, deportation or turning boats around were ‘not practical, legal or moral options’.³⁸⁴ In the Cabinet submission of May 1978, the Ministers for Immigration and Foreign Affairs had explained that ‘turning the boats around’ or repatriating those found not to be refugees to Vietnam was unfeasible, due to

³⁸² ‘Humanitarian issue of refugees’, *Commonwealth Record*, 29 November 1977, p. 1792.

³⁸³ ‘Speech to Institute of International Affairs’, *Commonwealth Record*, 19 August 1978, p 1066.

³⁸⁴ National Archives of Australia, A10756 LC1366 – Part 1.

the ‘obvious political and international difficulties’.³⁸⁵

Goodwin-Gill’s files show us, however, that the option was a live question later that year and into 1979. What was originally seen as politically, morally and legally unfeasible would be considered thanks to the advent of a commercial trade in refugees in October and early November 1978. Word came through in the middle of a DORS meeting that a ship carrying 3000 Indochinese was sailing in Indonesian waters.³⁸⁶ The vessel was the *Hai Hong*, a coastal freighter that transported paying Vietnamese out of Vietnam with the complicity of the SRV authorities. The vessel was ‘packed to the gunwales’ with around 2,450 mostly ethnic Chinese passengers.³⁸⁷ The Fraser government was reluctant to accept this container-load of people, and its position was soon vindicated when the UNHCR and regional authorities realised that the *Hai Hong* could be part of a new and highly organised operation. The *Hai Hong* was repeating the efforts of the *Southern Cross*, which had masqueraded as a merchant shipping vessel that took on board drowning refugees two months earlier.

Bruce Wain’s *The Refused* contains a detailed journalistic investigation of the *Hai Hong*’s provenance and journey. He wrote that Australian officials wanted the *Hai Hong* venture to fail as a deterrent to any future commercial people smuggling operations.³⁸⁸ Australia negotiated with the UNHCR regional representative in Kuala Lumpur, Mr Rajagopalam Sampatkumar, about the credentials of the *Hai Hong* passengers, and on 3 November Sampatkumar issued a statement in which he described the boat’s movements and questioned ‘the motive of the owners, agent and the

³⁸⁵ *ibid.*

³⁸⁶ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 3 November 1978.*

³⁸⁷ Wain, *The Refused*, pp. 16 - 35. See also: Viviani, *The Long Journey*, pp. 85-87.

³⁸⁸ Wain, *The Refused*, p. 27. See also: Grant, *The Boat People: An Age Investigation*, pp. 116-123.

captain’.³⁸⁹ Three days later MacKellar issued a corresponding statement in which he said that ‘this was the first situation where there had been strong reason to doubt the bona fides of a group’.³⁹⁰ The *Hai Hong* spent two weeks being refused port at various countries in South-East Asia, and conditions onboard began to deteriorate. Ultimately once the UNHCR was able to interview passengers it announced that it considered them to be refugees, and organised their resettlement among western nations.³⁹¹ A UNHCR report for January 1979 shows that the Department was not inclined to accept *Hai Hong* passengers for family reunion with Vietnamese already in Australia.³⁹²

Goodwin-Gill’s files reveal that on 14 November 1978, when the situation was still being resolved, the Head of the Department’s Refugee Branch, Ian Simington, told the UNHCR representative in Australia Mr Gilberto Rizzo that Australia could not respond as generously to the *Hai Hong* passengers as Canada and the United States had done, because it could not be seen to tolerate the vessel’s *modus operandi*.³⁹³ Geographically, Australia ‘was in a more difficult position than those two countries’:

Australia found itself faced with a potential wave of 500,000 Vietnamese of Chinese origin still living in Vietnam.³⁹⁴

Simington went on to explain that if indeed the SRV authorities were supporting the exodus of this population, then it would only be encouraged to continue in this endeavour ‘if Australia did not take a ‘tough’ attitude’. The public service had considered how to ‘make an example’ of the *Hai Hong* in order to ‘get a message

³⁸⁹ Wain, *The Refused*, p. 27.

³⁹⁰ ‘Reports on Vietnamese refugee boat’, *Commonwealth Record*, 6 November 1978, p. 1547.

³⁹¹ Wain, *The Refused*, pp. 28-35; Robinson, *Terms of Refuge*, pp. 28-29; St Cartmail, *Exodus Indochina*, p. 104; Viviani, *The Long Journey*, pp. 85-86.

³⁹² Goodwin-Gill Collection, AUL: Reports, *UNHCR Sydney Branch Office, Report for January 1979*.

³⁹³ The Canadian public and authorities were also uncomfortable with the commercial enterprise of the *Hai Hong*, but Canada agreed to resettle 600 passengers. See further: H. Adelman, *Canada and the Indochinese Refugees* (Regina, 1982), pp. 35-36.

³⁹⁴ Goodwin-Gill Collection, DORS Gen, *UNHCR Report on visit to the Department of Foreign Affairs and the Department of Immigration and Ethnic Affairs, Canberra, on 14 November 1978*.

across'; it was the very option that MacKellar had told the public and the Cabinet would not be pursued:

Mr Simington went so far as to say that the possibility of turning the *Hai Hong* back to the high seas if it were to try to land in Australia had been discussed in the Department, in consultation with Foreign Affairs. He expressed the hope that this would not happen...³⁹⁵

Simington was speaking to Rizzo in the midst of the *Hai Hong* affair, when the boat's fate was still undecided and it was moored off the coast of Malaysia. There is no evidence within Goodwin-Gill's files to indicate that MacKellar supported the idea of turning the *Hai Hong* back.

While the *Hai Hong* did not attempt to reach Australia, but the desire to make an example of future boats arrivals lingered within Immigration. By early 1979 several other large shiploads of refugees had caught the international community's attention, attempting to berth at Hong Kong and Manila.³⁹⁶ Australia had refused to accept any passengers for resettlement. In April 1979 248 people sailed to Darwin in a handful of boats, the largest surge in arrivals for well over a year. That month, Departmental Secretary Lou Engledow wrote a private submission to MacKellar in which he asked for 'urgent' and 'serious' consideration to be given to the return of future boat arrivals to Vietnam. A copy of the document was contained in a safe in Mr Simington's office, and when Mr Norman Hoffman was Acting Head of the Refugee Branch during Mr Simington's overseas trip in May 1979, he took the opportunity to show it to Goodwin-Gill:

On the arrival of the next boatload of weak cases, it was suggested, the Department of Foreign Affairs should be requested to call upon the Vietnamese embassy to document those arriving for repatriation to Vietnam.

³⁹⁵ *ibid.*

³⁹⁶ These boats were the *Tung An*, the *Skyluck* and the *Huey Fong*. See further: Viviani, *The Long Journey*, pp. 88-92.

The writer noted that such a practice would cost much less than keeping them in Australia, though he admitted that the national and international cost was “not calculable”.³⁹⁷

Engledow wrote that he had heard the cases before DORS were weak, ‘not genuine refugees’ but rather ‘adventurous youths’, ‘spontaneous migrants’ and others who did not wish to experience poor living standards in Vietnam. He reasoned that any political fallout from repatriation could be offset by ‘an announcement of an increase in the quota for refugees from camps’.³⁹⁸

These incidents point to some elasticity of opinion amongst senior Immigration officials. In the midst of ongoing boat arrivals, and the continued threat of a large ship heading for Australia, the temptation to ‘make an example’ of the next boat lingered. Hoffman told the UNHCR representative that Secretary Engledow and a deputy secretary were ‘hard’ in relation to the boats, while another deputy secretary was ‘in-between’.³⁹⁹ The Minister, according to Hoffman, was ‘open to persuasion’. This last assessment is difficult to verify, as it is not borne out by the Cabinet records or MacKellar’s public statements.

MacKellar’s message to the Australian public certainly became more practical and less overtly moral in the wake of the *Hai Hong* affair. In public statements, he focused on the logistics of receiving such a large volume of applications. The Minister was essentially trying to prepare the community for the possible arrival of a similar vessel:

We must face a possibility that large numbers of people might turn up repeatedly on crippled vessels, entering and refusing to leave Australian ports. Without documents, they are virtually stateless and not returnable. The question for national government is not simply how does one help some

³⁹⁷ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning discussion on 9 May 1979*.

³⁹⁸ *ibid.*

³⁹⁹ *ibid.*

refugees, but how can one react to the possibility that a tide of so-called refugees could sweep in? How does one check their credentials?⁴⁰⁰

In a sign that the Minister had disagreed with his proposal to forcibly repatriate boatpeople, Engledow posed a similar hypothetical scenario to an audience at the Australian National University in July 1979 and presented the same conclusion.⁴⁰¹ The message was one of pragmatism in the face of an evolving outflow. It permeated the bureaucracy and into the news media; Immigration officials based in South-East Asia told *Canberra Times* journalist Bruce Juddery that there was ‘absolutely nothing’ that Australia could do once the boats reached Darwin.⁴⁰² As MacKellar advised Cabinet, ‘there is no realistic expectation that any of these people could be returned to Vietnam or that the Vietnamese Government would accept them.’⁴⁰³

Historical and political considerations

It would appear that turning boats around was never considered by the Fraser government to be a feasible option, regardless of the discussion within the bureaucracy, because to do so would only serve to sully Australia’s international image and isolate it diplomatically. Engledow stated publicly that ‘there were no soft options’ for responding to the refugee problem. The government was essentially in a bind, because it was ‘mindful of its international responsibilities’ as a party to the 1951 Convention ‘and as a full participating partner in the region into which the refugees have been flowing’.⁴⁰⁴ An article in *The Australian* in June 1979 made the same point, stating that ‘Australia is at the very limit of the escape route’, but both its Convention status and

⁴⁰⁰ ‘Speech to Austcare’, *Commonwealth Record*, 26 November 1978, p. 1627.

⁴⁰¹ Proceedings of the Conference on the Indochina Refugee Situation.

⁴⁰² B. Juddery, ‘Treading a tricky tightrope between opposing domestic and international pressures’, *The Canberra Times*, 29 June 1979, p. 2.

⁴⁰³ National Archives of Australia, A12909 2771.

⁴⁰⁴ Proceedings of the Conference on the Indochina Refugee Situation.

geographical isolation meant that it could not turn them away.⁴⁰⁵

Australia's status as a signatory to the Protocol was a relatively recent development, and it was intrinsically linked to the move away from the era of racially discriminatory immigration. Under the previous Liberal government in the late 1960s, officials had recognised that 'a failure to accede to the Protocol would leave Australia open to charges that... it was unwilling to agree to the protection of the Convention applying to Asians and Africans'.⁴⁰⁶ Now, as a country of first asylum for Asian refugees, the Convention was a symbol of Australia's character. MacKellar publicly stated that ratification of the Protocol by Australia, Canada, the United States and New Zealand between 1968 and 1973 denoted a standard of beliefs, humanitarian obligations and participation in the international community.⁴⁰⁷ As Engledow told the public and as MacKellar told Cabinet, denying the refugees would betray the nation's 'honour'.⁴⁰⁸

Australia's relationships in the region compounded its inability to reject the boatpeople. Throughout 1978 and 1979 Australia had been urging countries of first asylum in the region to refrain from 'pushing off' boatpeople, making guarantees that their caseloads would be resettled by the international community. This was the 'boat-holding' exercise that Viviani considered to be successful, and which both MacKellar and Fraser have cited as an example of good faith negotiation between Australia and countries of first asylum.⁴⁰⁹ Goodwin-Gill reported to the UNHCR at the end of 1978 that MacKellar's '*entente cordiale*' had been 'temporarily successful' in stemming the

⁴⁰⁵ Cornford, 'Camps may be only answer for refugees'.

⁴⁰⁶ National Archives of Australia A1209 1975/274, 'Protocol relating to the Status of Refugees'.

⁴⁰⁷ See further: M. MacKellar, 'The International Implications of Immigration and Refugee Policy', *Heindorff Memorial Lecture*, Queensland Branch, Institute for International Affairs, Brisbane, 4 June 1979, in Australia. Department of Immigration and Ethnic Affairs, *Issues in Immigration*, (no page number).

⁴⁰⁸ Proceedings of the Conference on the Indochina Refugee Situation; National Archives of Australia, A12909 2771.

⁴⁰⁹ Interview with M. Fraser; Interview with M. MacKellar.

flow of boats to Australia.⁴¹⁰ The Australian government knew, however, that these arrangements were delicate, that it was 'naïve' to suppose that countries of first asylum would be 'sympathetic to the Australian objective of having refugees held, perhaps indefinitely... until final settlement can be arranged around the world'.⁴¹¹ MacKellar advised Cabinet that the government could not 'rely too heavily on established friendships or publicly-expressed attitudes'. Australia was in 'a relatively isolated position' both geographically and politically, and he was 'not optimistic' about the willingness of European countries to offer resettlement places.⁴¹²

Refusing the *Hai Hong* or other large vessels would have had serious repercussions for Australia's relations within the region and its long-term credibility in responding to the outflow. The nation's refugee burden was so small in comparison to that of Western Europe or South-East Asia, and its landmass was so large, that other countries 'see our open spaces and our reserves of materials as a warrant for doing much more, more quickly'.⁴¹³ In the same way that DORS was unable to reject Indochinese cases, the realities of the exodus and the international resettlement effort meant that Australia could not push the *Hai Hong* back out to sea.

2.2 Detention

Administrative detention had existed to varying degrees under the *Migration Act* for many years, but it became mandatory for all unlawful non-citizens under the *Migration Amendment Bill 1992* (Cth) and indefinite in 1994 under the *Migration Reform Bill 1992* (Cth).⁴¹⁴ It has long been the source of great controversy for the

⁴¹⁰ Goodwin-Gill Collection, AUL: Reports, *UNHCR Sydney Branch Office, Report for 1978*.

⁴¹¹ National Archives of Australia, A12909 2771.

⁴¹² *ibid.*

⁴¹³ Proceedings of the Conference on the Indochina Refugee Situation. See also: 'Hong Kong Refugee Plea', *The Canberra Times*, 20 August 1979, p. 3.

⁴¹⁴ See further: Department of Immigration and Citizenship, *Submission to the Joint Select Committee on Australia's Immigration Detention Network*, p. 204-206; Crock, 'Refugees in Australia', p. 7.

financial and reputational costs to the state, and for the psychological costs to and human rights violations of detainees (including children).⁴¹⁵ Fraser and Macphee have been vocal critics of the policy, as it marks a visible difference between the Fraser government's approach to boat arrivals and that of later governments. The establishment of 'reception centres' or 'transit camps' for boat arrivals was nonetheless mooted by the Department of Immigration, Cabinet and the Labor Opposition during 1978 and 1979, and it is important to re-examine this process.

On 3 May 1978, the Ministers for Immigration and Foreign Affairs proposed the construction of 'minimum facility reception centres' away from major cities, as a means of processing boat arrivals for resettlement in Australia or elsewhere.⁴¹⁶ They recognised that it would need to be handled 'sensitively'. Fraser and Simons write that the idea was firmly rejected. In mid-1978 after his ministerial tour of South-East Asia MacKellar again proposed that a study be undertaken into 'possible sites' and operations of 'a refugee holding centre in Australia'.⁴¹⁷ Archival records show that PM&C advised against this idea, believing that while it may have some deterrent effect the 'domestic and international reaction' would be emotive and hostile.⁴¹⁸

Once again in November 1978 MacKellar told Cabinet that there was still a 'strong possibility' that reception centres would be required. These would possibly function 'under United Nations supervision and at United Nations cost'. MacKellar argued that Australia was still unprepared for a large group of arrivals; it could not simply prevent this scenario 'by saying we have no camp to put them in', and indeed it

⁴¹⁵ See further: Bem et. al., *A Price Too High*; Australia. Human Rights and Equal Opportunity Commission, *A Last Resort? National Inquiry into Children in Immigration Detention* (Apr. 2004), pp. 283-299, 359-444.

⁴¹⁶ National Archives of Australia, A10756 LC1366 – Part 1.

⁴¹⁷ *ibid.*

⁴¹⁸ *ibid.*

was likely Australia could not cope without one.⁴¹⁹ He asked the Cabinet to agree to ‘the general thinking’ on a reception centre, which would enable confidential negotiations to begin with the Northern Territory government.⁴²⁰

In his interview conducted for this thesis, MacKellar stated that ‘there are all sorts of stories’ about how the submission for reception or transit centres went to Cabinet and the archival records themselves ‘give a false impression of that’.⁴²¹ The evidence in Goodwin-Gill’s files certainly hints at some competing ideational dynamics within the broader policy-making process. Oral history sources enable us to examine this further.

MacKellar believes his department did the right thing in canvassing what he referred to as ‘detention’ centres, because they were addressing a logistical problem:

I think that they quite properly put forward a range of options, one of which was detention centres if, you know, the numbers got to a certain extent, how are we going to stop them from travelling all over the place.⁴²²

What is most interesting, however, is MacKellar’s explanation for why the submission was brought to Cabinet. Fraser attributed the idea of detention facilities to the White Australia mentality that lingered within the Department of Immigration, and his memoirs present an image of a ‘reactionary streak’ within both the Department and his own parliamentary party.⁴²³ He did not deliberate on the internal political reasons behind it, but Weller’s analysis can provide some insights. He writes in *Malcolm Fraser PM* that Fraser saw the Cabinet process as being a central part of government and used

⁴¹⁹ National Archives of Australia, A12909 2771.

⁴²⁰ *ibid.*

⁴²¹ Interview with M. MacKellar.

⁴²² *ibid.*

⁴²³ Fraser and Simons, *Malcolm Fraser: The Political Memoirs*, pp. 419, 425. See also: Interview with M. Fraser; M. Fraser, ‘Manus Island: Inquiry is needed to know what has been done in our name’, *The Guardian*, Australian edition, 25 July 2013, accessed 28 July 2013, at <<http://www.guardian.co.uk/commentisfree/2013/jul/25/manus-island-malcolm-fraser-royal-commission>>.

it strategically to ‘maximise his own influence’ and gain consensus:

Under his leadership Cabinet met regularly and considered the critical issues. However it was also politically convenient: Fraser understood the value of collective action, the advantages of drawing his ministers into decisions and the strengths of Cabinet commitment.⁴²⁴

It would appear, therefore, that the Cabinet submission was partly a political move. The archival record shows that the Prime Minister read the May 1978 submission in advance, and agreed that it could be brought before Cabinet.⁴²⁵ MacKellar says it was a means of placating the more hardline members of his own party:

But you had to put forward the options. And if you didn’t put forward the options then you had to take into account the reactions of your fellow Ministers. Say you didn’t consider that option, some of the more hardliners would have said, ‘oh we’ve got to do something about this, we just can’t have them coming in willy nilly and going everywhere’⁴²⁶

Indeed, it may also have been a means of placating MacKellar’s own department. The archival record shows that Secretary Engledow actively supported the concept of such facilities, and from the evidence in Goodwin-Gill’s files we can see that he represented a hardline point of view within the Department.⁴²⁷ As Hoffman testified to Goodwin-Gill, other senior officials shared this approach.⁴²⁸ MacKellar has said that he did not support the idea of detention centres, and he put it to Cabinet in the knowledge that Fraser would refuse it.⁴²⁹ Once Cabinet had rejected the idea, ‘then it’s been addressed’.⁴³⁰ Fraser has said that MacKellar ‘did not push it’, and MacKellar backs this

⁴²⁴ Weller, *Malcolm Fraser PM*, p. 108. See also: P. Weller, ‘Prime Ministers and Cabinet’, in P. Weller (ed.), *Menzies to Keating: The Development of the Australian Prime Ministership*, pp. 16-17.

⁴²⁵ National Archives of Australia, A10756 LC1366 – Part 1.

⁴²⁶ Interview with M. MacKellar.

⁴²⁷ National Archives of Australia, A10756 LC1366 – Part 1.

⁴²⁸ Goodwin-Gill Collection, DORS Gen, *Note for File: concerning discussion on 9 May 1979*.

⁴²⁹ Interview with M. MacKellar.

⁴³⁰ *ibid.*

version of events.⁴³¹

The fact that the proposal for reception centres or, possibly, detention centres was raised more than once is perhaps attributable to the dramatic evolution of the Indochinese refugee situation over the course of 1978 and the ongoing search for effective policy solutions. The proposals were a direct result of the logistical difficulties that Australia would face were the possible inundation of boats to actually occur. How would the government receive, process and resettle tens of thousands of boatpeople? As MacKellar said in his oral history interview, ‘if the numbers got to a certain extent, how are we going to stop them from travelling all over the place?’⁴³²

Fraser’s memoirs present a slightly confusing picture of how these proposals were received. Simons writes that Cabinet considered ‘suggestions’ for centre locations, but then writes that the idea did not reach the planning stage. Fraser is quoted as saying it was rejected every time and he would not stand for it.⁴³³ In his oral history interview and in his memoirs, Fraser says he thought the Department of Immigration’s proposals for detention centres were ‘racist barbarism’ and he ensured they were quickly dismissed:

...the consideration they got in cabinet would have taken no more than five minutes every time they came up.⁴³⁴

MacKellar mused that Fraser’s leadership on the refugee issue meant that Ministers were reluctant to challenge his final decision.⁴³⁵ Yet as journalist Mike Steketee has pointed out, the archival record indicates that it ‘received more consideration than

⁴³¹ Fraser and Simons, *Malcolm Fraser: The Political Memoirs*, p. 419; Interview with M. MacKellar.

⁴³² Interview with M. MacKellar.

⁴³³ Fraser and Simons, *Malcolm Fraser: The Political Memoirs*, p. 420.

⁴³⁴ Interview with M. Fraser. See also: Fraser and Simons, *Malcolm Fraser: The Political Memoirs*, p. 419.

⁴³⁵ Interview with M. MacKellar.

Fraser suggests', thanks to an inter-departmental committee that was formed in 1979.⁴³⁶

It is thanks to the work of this committee that we can gain an insight into how the government weighed the political, reputational and logistical facets of the refugee problem.

Plans A, B and C

In July 1979 Cabinet agreed that 'discreet' contingency planning for a possible influx be continued.⁴³⁷ An Inter-departmental Committee on the Treatment of Unauthorised Boat Arrivals considered the reception and accommodation of boat arrivals. It offered three possible plans of action for the Fraser government, based on consideration of Australia's Convention obligations and community opinion, along with the projected costs for a new reception system.

The archival record shows that 'Plan A' was the status quo.⁴³⁸ This involved an entry procedure that seems unsophisticated in comparison to the well-funded system in place today. The reception of arrivals was described in a number of primary sources, and Goodwin-Gill recorded his impressions after he visited Darwin in April 1979. The Australian government was using 'constant aerial surveillance' by the Royal Australian Air Force and a commercial company in order to try to ensure that boats were detected and then escorted into harbour by a coastal patrol vessel. For the most part it seemed to be a friendly affair:

⁴³⁶ Steketee, 'Fraser rejected detention for boat people', *The Australian*.

⁴³⁷ National Archives of Australia A12909 3327.

⁴³⁸ National Archives of Australia A10122 D/52 Part 1 Cabinet Papers – Legislation against unauthorised boat arrivals. The committee was also tasked with examining international maritime law and 'the possibility of action outside territorial waters'.

Any urgent assistance will be rendered by the patrol boat crew and it is evident that rations are often shared and that crewmembers frequently donate cigarettes.⁴³⁹

Once the boat was moored it was subject to quarantine, health and customs inspection, to detect the presence of serious diseases, monkeys, rats, insects ‘or other infestations’, and ‘dutiable cargo’.⁴⁴⁰ Passengers were also subject to an immigration check, to determine provenance and details of the journey. This involved translators where necessary.

A government press release of September 1977 stated that once cleared by Immigration and Customs officials, ‘those on board are then taken ashore’, but Goodwin-Gill noted an odd stage in this process, in which passengers were re-provisioned with food and water and ‘left at the quarantine buoy for around 72 hours’.⁴⁴¹ Goodwin-Gill stoutly questioned the delay, and received ‘a very strong reaction’ from the Head of the Refugee Branch who was accompanying him in Darwin:

[Mr Ian Simington] replied that Australia had not invited the asylum-seekers and they would have to put up with it; he claimed that Australia was being tough in this regard, although he admitted that keeping direct arrivals out in the harbour for only 72 hours was also rather petty.⁴⁴²

There is no further explanation for this action in Goodwin-Gill’s notes.⁴⁴³ The

⁴³⁹ Goodwin-Gill Collection, DORS Gen, *Note for File: concerning visit to Darwin 18 – 21 April 1979*. See also: Hieu Van Le AO, Lieutenant Governor of South Australia, quoted in J. Menadue, A. Keskinummi and K. Gauthier, *A New Approach: Breaking the Stalemate on Refugees and Asylum Seekers*, Centre for Policy Development, 2011, p. 17. Mr Van Le was among those boatpeople to reach Australia during November 1977.

⁴⁴⁰ Goodwin-Gill Collection, DORS Gen, *Note for File: concerning visit to Darwin 18 – 21 April 1979*; [Title unknown], *Commonwealth Record*, 12-18 September 1977, p. 1226; National Archives of Australia, A446 1981/95004 Benefits for unauthorised boat arrivals in Australia – Part 2; Interview with M. MacKellar; Interview with D. Volker.

⁴⁴¹ [Title unknown], *Commonwealth Record*, 12-18 September 1977, p. 1226; Goodwin-Gill Collection, DORS Gen, *Note for File: concerning visit to Darwin 18 – 21 April 1979*.

⁴⁴² Goodwin-Gill Collection, DORS Gen, *Note for File: concerning visit to Darwin 18 – 21 April 1979*.

⁴⁴³ In March 1978 Australian authorities were anticipating the entry into Australian waters of a boat carrying refugees, and it was suspected that this boat had been engaged in nefarious activities during the journey from Vietnam. It was resolved that the passengers and crew would be held onboard for two days while investigations were undertaken. However this appears to have been a one-off decision, and it is not

passengers were transferred to the Quarantine Station outside of Darwin when, as Goodwin-Gill wryly concluded, ‘the necessary period of retribution in Darwin harbour’ had elapsed.⁴⁴⁴ Goodwin-Gill’s impressions of the Quarantine Station were favourable, and suggest free association between the boatpeople and the small number of staff:

I was greatly impressed by the efforts of those responsible to create and maintain a viable institution out of very little material... [and] the extent to which the services of the refugees themselves are called in aid. In some respects this is due to the shortage of staff, but the consequence of allowing the refugees to assist in the running of the Station, to do their own cooking, and to keep the premises looking good appears to be of psychological benefit after the enforced inactivity of a long sea voyage.⁴⁴⁵

During their stay the boat arrivals were able to cook meals for themselves with fresh ingredients, engage in recreational activities, and make use of ‘a fish trap [that] has been constructed by the sea edge [and] to which the asylum seekers have free access; trevally and mud crabs are an addition to their diet’.⁴⁴⁶ The length of time they stayed at the Station depended on the individual case, but it appears to have been between five days and two weeks.

Immigration officials conducted interviews with the boat arrivals at the Quarantine Station, and after the short period of stay they were granted temporary entry permits and moved to migrant hostels in major cities.⁴⁴⁷ It was during this period that DORS considered their applications for refugee status.⁴⁴⁸ At the hostels the boat arrivals were able to access the ‘full range of social security benefits’, they could engage in employment, and they could choose to move to private accommodation anywhere in

clear whether this is the boat discussed in Goodwin-Gill’s notes - see further: National Archives of Australia, A10756 LC1366 – Part 1.

⁴⁴⁴ Goodwin-Gill Collection, DORS Gen, *Note for File: concerning visit to Darwin 18 – 21 April 1979*.

⁴⁴⁵ *ibid.*

⁴⁴⁶ *ibid.*; [Title unknown], *Commonwealth Record*, p. 1226; National Archives of Australia, A446 1981/95004; National Archives of Australia, A1209, Treatment of Unauthorised Boat Arrivals 1979.

⁴⁴⁷ See further: Viviani, *The Long Journey*, p. 69; see also: Interview with D. Volker; [Title unknown], *Commonwealth Record*, p. 1226; National Archives of Australia, A446 1981/95004.

⁴⁴⁸ National Archives of Australia, A446 1981/95004 Benefits for unauthorised boat arrivals in Australia – Part 2.

Australia. In May 1978 Cabinet had considered abolishing these social security payments to the boat arrivals while their applications were being processed, as a means of lessening Australia's attractiveness as a country of first asylum. PM&C advised against it. Fraser's own department advised that this would 'not have the slightest deterrent effect'.⁴⁴⁹ Indeed, it would be 'widely regarded as a vindictive measure'.⁴⁵⁰

For now, at current levels of arrivals, the inter-departmental committee concluded that Plan A was the best option:

...the present procedures for dealing with unauthorised boat arrivals are adequate, if expensive. They are consistent with Australia's international obligations and provide a mechanism which conforms with present domestic legislation for treating persons who arrive directly in Australia without prior authority.⁴⁵¹

It went on to state that the status quo 'would be at risk' in the event of a large influx which was 'in excess of available facilities and in numbers considered by Government to be beyond our absorptive capacity'. Indeed, MacKellar had told Cabinet in mid-1978 that 'we are facing a tight accommodation situation in hostels', and that refugees would have to be restricted to staying no more than four months.⁴⁵² The committee stated that in the event of a large influx, 'temporary holding while international resettlement opportunities were sought would be required'.⁴⁵³

Plan B involved 'limited restraint in holding centres' to support quarantine, customs and health checks if the numbers of boat arrivals increased markedly.⁴⁵⁴ It appears that the concept of 'limited restraint' meant that boat arrivals could still move

⁴⁴⁹ National Archives of Australia, A10756 LC1366 – Part 1.

⁴⁵⁰ *ibid.* The idea was proposed again in July 1979 by the Minister for Immigration and the Minister for Foreign Affairs – see further: National Archives of Australia A12909 3327.

⁴⁵¹ National Archives of Australia A10122 D/52 Part 1.

⁴⁵² National Archives of Australia, A10756 LC1366 – Part 1. See also: National Archives of Australia, A12909 2771.

⁴⁵³ National Archives of Australia A10122 D/52 Part 1

⁴⁵⁴ *ibid.*

around the community, but could not move to alternative accommodation elsewhere. The cost of their accommodation would be deducted from their Social Security payments.

Plan C is the most historically significant option. It provided for the operation of detention centres, which would remove boatpeople from the community and ‘avoid any risk of unauthorised assimilation’.⁴⁵⁵ They could be detained for up to six months, during which their ‘rights and duties’ would be comparable to that of gaoled prisoners. Plan C was deemed to be most relevant to an ‘exceedingly large scale influx’.⁴⁵⁶

The Department announced it would not be establishing ‘transit camps’ in July 1979. Initially in an interview with the *Sydney Morning Herald* published 20 July MacKellar stated that the government had ruled out establishing camps for the present time.⁴⁵⁷ When asked what the government would do if a freighter carrying 3000 refugees landed off Darwin, MacKellar avoided a definite answer:

Let us wait until that eventuality occurs. We want to make sure that it doesn’t happen.⁴⁵⁸

His circumspection suggests that perhaps the ‘low-key’ and ‘discreet’ planning for camps was to continue in case such a facility was required, even though Simons writes that Fraser ‘made sure that no planning was done’.⁴⁵⁹

In the same interview with the *Sydney Morning Herald* MacKellar reiterated the unknown potential of the refugee problem, stating that there may have been up to one

⁴⁵⁵ *ibid.*

⁴⁵⁶ *ibid.*

⁴⁵⁷ S. Milson, ‘Wait and See Policy on Refugees’, *Sydney Morning Herald*, 20 July 1979, in Goodwin-Gill Collection, DORS Gen.

⁴⁵⁸ *ibid.*

⁴⁵⁹ Fraser and Simons, *Malcolm Fraser: The Political Memoirs*, p. 420.

million ethnic Chinese still seeking to leave Vietnam.⁴⁶⁰ A week later, the newspaper reported that the Department had ruled out establishing detention centres.⁴⁶¹ That weekend Secretary Engledow told his audience at the Australian National University that such facilities were diplomatically and logistically unrealistic:

There is no practicable way we can expect other countries to resettle people from camps in Australia. There is no practicable way of forcing people to live in such camps indefinitely, without a tremendous guard apparatus.⁴⁶²

The archival record suggests, however, that Cabinet was still mulling over the possibility of detention centres in mid-1980, and it agreed to set aside \$30,000 dollars in the 1980/1981 federal budget for ‘contingency arrangements for unauthorised boat arrivals’.⁴⁶³

Historical and political considerations

The public statements by the Minister and his Secretary in July 1979 reflect the fact that detention centres were not desired, but were deemed a potential necessity. When the ALP announced that it had adopted camps as party policy in July 1979, Dr Moss Cass, Shadow Minister for Immigration, stated that the ALP had considered and rejected the options of towing boats back out to sea, repatriating boatpeople to Vietnam, and letting them become Australian residents, essentially the same ‘narrow range of options’ that were faced by the Fraser government. *The Australian* declared that the idea was ‘out of step with reality and at odds with public opinion’.⁴⁶⁴ Detention was seen as creating a long-term liability. Most importantly, it was historically and politically

⁴⁶⁰ Milson, ‘Wait and See Policy on Refugees’.

⁴⁶¹ ‘No Transit Camps’, *Sydney Morning Herald*, 31 July 1979, in Goodwin-Gill Collection, DORS Gen.

⁴⁶² Proceedings of the Conference on the Indochina Refugee Situation. See also: ‘Australia not to have camps’, *The Canberra Times*, 31 July 1979, p. 7.

⁴⁶³ National Archives of Australia, A10756 LC1366 Part 3, Refugee Policy [Submission nos. 3200, 3349, 3786, 3863, 4850, 4015, 4905 and 5039 refer].

⁴⁶⁴ Editorial, ‘No Transit Camps’, *The Australian*, 20-21 July 1979, in Goodwin-Gill Collection, DORS Gen. Stevens cites a range of opinion polls conducted between 1977 and 1979 – see further: Stevens, ‘Political Debates on Asylum Seekers’, pp. 535-536.

problematic for Australian society.

Debate about the proposal for detention coalesced around the belief that Australia was a country of resettlement, not a country of first asylum. The question was whether detention would be a fundamental reversal of this role. Some argued that centres were actually a means of lessening Australia's responsibilities in the event of a mass influx. Under the ALP plan, Cass said the temporary refuge camps would enable Australia to care for 'uninvited refugees' on behalf of the UN'.⁴⁶⁵ This would theoretically share the burden with the UNHCR and thereby reduce Australia's obligations (although under the ALP's plan Australia would contribute to the resettlement effort). In addition, the archival record shows that the Department of Immigration believed that if boat arrivals were secluded in camps or centres away from population centres, as proposed in Plan C, this would lessen their claim to stay in Australia:

We would have difficulty convincing other governments to resettle refugees who would appear to have become part of the Australian community.⁴⁶⁶

Others argued that institutionalising refugees would cement Australia's role as a country of first asylum. The nation would then invariably become as over-burdened and dependent on third country resettlement as its regional neighbours were. In January 1979 Cabinet was advised that this would be exacerbated by Australia's status as 'an affluent, lightly populated, migrant receiving country'.⁴⁶⁷ In the same way that Australia's history, geography and diplomatic relationships rendered it unable to push

⁴⁶⁵ 'Labor lays down its policy: Temporary stay for boat people', *Sydney Morning Herald*, 20 July 1979, in Goodwin-Gill Collection, DORS Gen.

⁴⁶⁶ National Archives of Australia, A10756 LC1366 Part 3. This is the same line of reasoning that was used to support the establishment of remote detention centres by then Immigration Minister Gerry Hand in the early 1990s – see further: Interview with A. Keski-Nummi, 4 January 2012, Canberra, Australia; Interview with M. Le, 9 January 2011, Canberra, Australia.

⁴⁶⁷ National Archives of Australia, A12909 2906.

boats back out to sea, it was unrealistic to expect other countries to resettle from its territory. An editorial in the *Sydney Morning Herald* argued that the proposal for detention centres/transit camps was ‘well-meaning’ but impracticable.⁴⁶⁸

The historical and reputational consequences of the camps were salient, both within and outside the government. According to Simons, Fraser’s own department advised that the camps were inhumane and damaging to Australia’s international reputation.⁴⁶⁹ When PM&C warned that the camps would provoke an ‘emotive’ response in the Australian community, it was essentially pointing to the symbolism of a white settler society locking up Asian refugees in the desert. Opponents argued that the policy would have disastrous social consequences. It would institutionalise a discrimination between those boatpeople who only reached camps in South-East Asia, and those who had the ‘perseverance and courage’ to sail all the way to Australia.⁴⁷⁰ Mick Young, who was then the Labor spokesman for employment and industrial relations, spoke against his own party. Young said that the unlikely resettlement of the refugees elsewhere meant that temporary refuge would invariably turn into ‘permanent ghettos’:

If we are to have those people in the hostels permanently, and have people encamp permanently in the hope that someone would take them off our hands, within a few years, I would think we would have the White Australia policy being written back into the platform of the Labor Party.⁴⁷¹

His arguments were supported by editorials in *The Australian* on 20-21 July 1979 and the *Sydney Morning Herald* on 31 July 1979.⁴⁷²

⁴⁶⁸ Editorial, ‘No Transit Camps’, *Sydney Morning Herald*.

⁴⁶⁹ Fraser and Simons, *Malcolm Fraser: The Political Memoirs*, p. 419.

⁴⁷⁰ Editorial, ‘No Transit Camps’, *The Australian*.

⁴⁷¹ ‘Labor lays down its policy: Temporary stay for boat people’, *Sydney Morning Herald*.

⁴⁷² Editorial, ‘No Transit Camps’, *The Australian*; Editorial, ‘No Transit Camps’, *Sydney Morning Herald*.

2.3 Legislation against people smuggling

The *Immigration (Unauthorised Arrivals) Act 1980* has garnered critical attention from Smit and Stevens due to the legislation's enactment against a group of asylum seekers on-board the *VT838* in October 1981.⁴⁷³ The facts of this case are sorely misunderstood, and have been used to imply that the Fraser government took a harsh line against boat arrivals comparable with that of later governments.⁴⁷⁴ It is worth re-examining them here.

In the wake of the *Hai Hong* affair, on 23 January 1979, Cabinet approved the creation of an interdepartmental committee for the following purpose:

...to consider and recommend legislative change to provide effective powers over unauthorised boat arrivals in Australian waters and severe penalties on persons involved in bringing people to Australia without prior authority, particularly for profit.⁴⁷⁵

This was an 'urgent' proposal for legislation change.⁴⁷⁶ The submission noted 'the continuing escalation of the boat refugee outflow'; Malaysia was pushing boats off, leading to 'a rapid build-up of refugees in Indonesia'. This meant that 'boats could head for Australia'.⁴⁷⁷

In May 1979 Cabinet agreed to the proposed legislation.⁴⁷⁸ The *Immigration (Unauthorised Arrivals) Bill 1980* was drafted over the following months, taking into consideration Australia's obligations under the Convention and public opinion. The inter-departmental committee concluded that imposing sanctions on the master, crew and others persons responsible for the vessel would be the best approach:

⁴⁷³ Stevens, 'Political Debates on Asylum Seekers', pp. 537-538; Smit, 'Malcolm Fraser's Response to Commercial Refugee Voyages', pp. 89-101.

⁴⁷⁴ York, 'The Myth of Our Humanitarian Tradition'.

⁴⁷⁵ National Archives of Australia A10122 D/52 Part 1.

⁴⁷⁶ *ibid.* Viviani, *The Long Journey*, pp. 47, 87.

⁴⁷⁷ National Archives of Australia A10122 D/52.

⁴⁷⁸ National Archives of Australia A12909 3200, Submission no. 3200: Legislation against unauthorised boat arrivals – Decision no. 8905.

On humanitarian grounds and for reasons primarily flowing from our obligations under the Convention on refugees, no action apart from determination of status should be taken in relation to the passengers on arrival, except in cases where they have been involved in commandeering the vessel.⁴⁷⁹

The legislation was designed to be brought in for a limited period when necessary, so as to ‘provide flexibility’ and ‘help defuse public criticism’ of the measures. The Bill contained provisions that enabled it to come into operation on a date to be proclaimed, and only remain in force for twelve months unless extended by a resolution passed by both Houses of Parliament. When Minister for Immigration Ian Macphee introduced the Bill in May 1980, he said he hoped it would prove to be ‘an effective deterrent’ for people smuggling operations by both air and sea.⁴⁸⁰ He told the Parliament that at that time the authorities had no reason to believe such a ship was on its way, ‘but we cannot afford to assume’ that there would be no further arrivals, given ‘the pattern of recent history’.⁴⁸¹

The *Immigration (Unauthorised Arrivals) Act* was never used to respond to Vietnamese boat arrivals. Just one boat carrying Vietnamese refugees arrived after it was passed by the parliament, shortly before Easter 1981.⁴⁸² It was the last of the first wave, and according to Goodwin-Gill’s files the 30 passengers on-board were processed through the usual determination of status procedure.⁴⁸³ This is important to note, because when Macphee introduced the Immigration (Unauthorised Arrivals) Bill to Parliament he emphasised that the legislation was not directed at the boatpeople themselves, but instead sought to curb the exploitation of migrants by ‘rackets’

⁴⁷⁹ National Archives of Australia A10122 D/52; National Archives of Australia, A12909 3200.

⁴⁸⁰ Australia. *Commonwealth Parliamentary Debates*, House of Representatives, 1 May 1980, p. 2520.

⁴⁸¹ *ibid.*, p. 2518.

⁴⁸² Senate Standing Committee on Foreign Affairs and Defence, *Indochinese Refugee Resettlement: Australia’s Involvement*, p. 1279.

⁴⁸³ Goodwin-Gill Collection, AUL: Reports, *UNHCR Sydney Branch Office, Report for 1981*.

capitalising on forced migration and ‘profiteering from human distress’.⁴⁸⁴ Macphee had received bi-partisan support for the legislation, although as Smit pointed out, the Bill was not without its critics in the Parliament.⁴⁸⁵

The legislation was ultimately enacted to deal with a group of persons claiming to be Vietnamese. In October 1981, 146 people arrived in Darwin aboard the fishing vessel the *VT838*. The boat had been detected before it reached Australia’s territorial waters and Macphee had asked the Governor-General to proclaim the legislation. Australian authorities had suspected from the outset that the boat’s provenance was unusual. The group had transited at the Pilau Bidong refugee camp off the Malaysian coast, and declined UNHCR advice to stay there. The passengers were all eventually deported when it was confirmed that they were not Indochinese refugees as they had claimed. Australian authorities reported that the passengers were in fact from Taiwan and Hong Kong, who had flown to Bangkok and set sail from Songkhla on the southern Thai coast.⁴⁸⁶

Macphee oversaw the handling of the incident, and reported that Immigration officials and Australian Federal Police worked closely with Royal Hong Kong Police to investigate their credentials.⁴⁸⁷ Fifteen days after their arrival, Macphee told the House that ‘intensive interviews’ had been conducted to determine whether those on board had legitimate claims for refugee status, and the interview process was now completed.⁴⁸⁸ A report in the *Canberra Times* described the interviews as ‘interrogations’, in which

⁴⁸⁴ Australia. *Commonwealth Parliamentary Debates*, House of Representatives, 1 May 1980, pp. 2517-2518.

⁴⁸⁵ Smit, ‘Malcolm Fraser’s response to commercial refugee voyages’, pp. 91-94.

⁴⁸⁶ Australia. *Commonwealth Parliamentary Debates*, House of Representatives, 20 October 1981, pp. 2192-2194; J. Menadue, *Things You Learn Along The Way* (Ringwood, 1999), p. 217; Interview with I. Macphee, 8 December 2010.

⁴⁸⁷ Interview with I. Macphee, 8 December 2010; Australia. *Commonwealth Parliamentary Debates*, House of Representatives, 20 October 1981, pp. 2192-2194.

⁴⁸⁸ Australia. *Commonwealth Parliamentary Debates*, House of Representatives, 20 October 1981, pp. 2192-2194.

Immigration officials had to separate the women and children from the men, and fight ‘a psychological battle’ in the face of the asylum seekers’ hunger-strikes and suicide threats.⁴⁸⁹ Goodwin-Gill’s files tell us that UNHCR was kept ‘fully informed of all stages of the investigation’ and ‘found no reason to intervene’.⁴⁹⁰

In 2003 historian Barry York wrote in *The Age* that Fraser’s current status ‘as a champion of the pseudo-left’ is undermined by the fact that his government ‘acted swiftly against unauthorised arrivals who had paid people smugglers’:

In October 1981, his government detained a group of 146 at Darwin and deported them.⁴⁹¹

York offered no explanation of this incident and did not state that the passengers were not Indochinese. Both Smit and Stevens have also failed to note the passengers’ true provenance, which exacerbates their misinterpretation of the government’s response. Smit’s 2010 paper was the first detailed discussion of the *VT838*, but despite the level of research Smit still concluded that the government acted in underhand, ‘unsavoury’ and politically motivated manner.⁴⁹² Goodwin-Gill’s files show very clearly that this was not the case. Furthermore, Smit implied that the Fraser government’s assessment of the *VT838* was not above-board:

None of the accusatory claims launched at the passengers were ever tested in a court...⁴⁹³

In 2012 Stevens went further, claiming that the Minister acted inappropriately and suggesting that the passengers were assessed by DORS. Stevens failed to substantiate

⁴⁸⁹ C. Brammall, ‘Special Pressure put on ‘Illegals’’, *Canberra Times*, 30 January 1982, Goodwin-Gill Collection, DORS Gen.

⁴⁹⁰ Goodwin-Gill Collection, AUL: Reports, *UNHCR Sydney Branch Office, Report for 1981*.

⁴⁹¹ York, ‘The Myth of Our Humanitarian Tradition’.

⁴⁹² Smit, ‘Malcolm Fraser’s Response to Commercial Refugee Voyages’, pp. 100-102.

⁴⁹³ *ibid.*, p. 101.

this with any evidence:

The comments by Macphee [to Parliament] pre-empted the decision of the DORS Committee in determining the refugee status of the unauthorised arrivals.⁴⁹⁴

Smit's and Steven's conclusions are misleading, because as detailed in Chapter Five of this thesis, applicants for refugee status were initially assessed by officers of the Department, then by the DORS Committee, and finally by the Minister. Smit overlooked the fact that judicial review would never have occurred until after this process was completed. Stevens overlooked the fact that DORS would not have examined cases already found to be manifestly ill-founded or abusive. All the evidence in the Minister's statements, *Commonwealth Parliamentary Debates* and Goodwin-Gill's files suggests that the passengers' claims were found to be manifestly ill-founded or abusive in first-instance decisions by Immigration officials. Indeed, Goodwin-Gill's end-of-year report for 1981 indicates that the handling of the VT838 passengers did not raise objections from the UNHCR. Goodwin-Gill related that there had been no instances that year of abusive detention of refugees or asylum seekers, and 'no interventions were necessary to prevent refoulement or expulsion'.⁴⁹⁵

At the end of December, 127 of the VT838 passengers were transported on chartered QANTAS jets to Taiwan and Hong Kong, while the remainder were held for further investigation before ultimate deportation.⁴⁹⁶ Macphee received bi-partisan

⁴⁹⁴ Stevens, 'Political Debates on Asylum Seekers', p. 537.

⁴⁹⁵ Goodwin-Gill Collection, AUL: Reports, *UNHCR Sydney Branch Office, Report for 1981*.

⁴⁹⁶ 'Deportation of illegal immigrants', *Commonwealth Record*, 27 December 1981, p. 1699. In an oral history interview conducted for this thesis Macphee stated that because Australia did not diplomatically recognise Taiwan, the Department used Taiwanese contacts in Australia to organise the repatriation of the VT838 passengers. See further: Interview with I. Macphee, 8 December 2010. Smit writes that the asylum seekers were deported 'under a media ban' and offers no citation for this, but an article in *The Canberra Times* offers some clues, reporting that Immigration officials 'had to go to considerable lengths about secrecy when removing the deportees to the airport' because they feared 'there were going to be demonstrations and that we'd have to drag people kicking and screaming on to planes' which would be 'very difficult to explain to people'. See further: Brammall, 'Special Pressure put on 'Illegals''.

support for this from then Opposition Shadow Minister for Immigration, Mick Young.⁴⁹⁷ Goodwin-Gill's files indicate that Macphee also received the support of the UNHCR, in that the agency fully accepted that the refugee claims of the *VT838*'s passengers were false and their deportation justified. In his monthly reports for October and December 1981 Goodwin-Gill reiterated that the vessel 'was part of a highly organised syndicate'.⁴⁹⁸

Its evident Thai design and construction, as well as the good health and condition of those on board, had already aroused suspicion when the vessel stopped briefly at Pulau Bidong; subsequent inquiries confirmed that the trip had been organised to circumvent the migration law through abuse of the asylum process.⁴⁹⁹

In October Macphee had told the House that the crew would be prosecuted under the *Immigration (Unauthorised Arrivals) Act*.⁵⁰⁰ Smit wrote that there was no evidence 'of a 'magistrate's hearing' under the terms of the [*Immigration (Unauthorised Arrivals) Act*]'.⁵⁰¹ Goodwin-Gill's files show us that this is because 'the sanction of deportation was finally preferred'.⁵⁰²

Historical and political considerations

The Department of Immigration and Citizenship has described the *Immigration (Unauthorised Arrivals) Act* as 'arguably the antecedent to legislation introduced in 1991, 1992 and 2005 dealing with the status and processing of IMAs [Irregular Maritime Arrivals]'.⁵⁰³ Macphee takes a nuanced view of this. In his second oral history interview conducted for this thesis he articulated what he considers to be an essential

⁴⁹⁷ Interview with I. Macphee, 8 December 2010. Australia. *Commonwealth Parliamentary Debates*, House of Representatives, 20 October 1981, p. 2194.

⁴⁹⁸ Goodwin-Gill Collection, AUL: Reports, *UNHCR Sydney Branch Office, Report for December 1981*.

⁴⁹⁹ Goodwin-Gill Collection, AUL: Reports, *UNHCR Sydney Branch Office, Report for October 1981*.

⁵⁰⁰ Australia. *Commonwealth Parliamentary Debates*, House of Representatives, 20 October 1981, p. 2194.

⁵⁰¹ Smit, 'Malcolm Fraser's Response to Commercial Refugee Voyages', p. 101.

⁵⁰² Goodwin-Gill Collection, AUL: Reports, *UNHCR Sydney Branch Office, Report for 1981*.

⁵⁰³ Department of Immigration and Citizenship, *Submission to the Joint Select Committee on Australia's Immigration and Detention Network*, p. 20.

difference between this and later pieces of legislation. Macphee believes that the approach to people smuggling was justified by the Fraser government's large-scale resettlement programme out of the region.⁵⁰⁴ Furthermore, the *Immigration (Unauthorised Arrivals) Act* did not function in tandem with a system of mandatory detention, which Macphee has abhorred as 'barbed-wire imprisonment, continuing cruelty and expensive folly'.⁵⁰⁵

The legislation was also in step with the international community's interpretation of the Indochinese outflow, which concerned how resettlement and first asylum countries should respond to morally hazardous and state-sanctioned refugee flows. It was argued that the international agreements on resettlement that were made at Geneva in 1979 had given Vietnam the freedom to offload unwanted citizens, and potentially set a precedent for other states.⁵⁰⁶ Hong Kong had already strengthened penalties against human trafficking, and both MacKellar and Macphee believed that for a state to expel its unwanted populations was a violation of 'standards of international conduct' that showed no concern for the people themselves or for other governments that have to resettle them.⁵⁰⁷ The 1980s saw an increasing focus on the accountability of countries of origin in creating refugee flows, and how receiving states should respond to this conduct.⁵⁰⁸ Coles, a former UN official, wrote in 1989 that the international community's efforts should henceforth be directed 'towards the prevention of refugee

⁵⁰⁴ Interview with I. Macphee, 8 December 2011, Melbourne, Australia.

⁵⁰⁵ I. Macphee, speech at the launch of *Compassionate Bastard*, Glebe, NSW, 30 September 2011.

⁵⁰⁶ Stein, 'The Geneva Conferences and the Indochinese Refugee Crisis', p. 722.

⁵⁰⁷ National Archives of Australia, A12909 2906; National Archives of Australia, A12909 2771; Australia. *Commonwealth Parliamentary Debates*, House of Representatives, 1 May 1980, p. 2517. In 1975 an inter-departmental committee in the Whitlam government had expressed concern that the acceptance of boats would 'not go unnoticed to Australia's north' – see further: National Archives of Australia, A1209, 1975/1689, Entry of Vietnamese Refugees to Australia – Selection Criteria and Arrangements.

⁵⁰⁸ J. I. Garvey, 'The New Asylum Seekers: Addressing Their Origin', in Martin (ed.), *The New Asylum Seekers: Refugee Law in the 80s*, p. 188; Teitelbaum, 'Immigration, Refugees and Foreign Policy', p. 449.

movements and towards return'.⁵⁰⁹ This was a re-evaluation of durable solutions that Australia supported; according to Coles, in 1981 the Australian government argued at the international level that an emphasis on resettlement would relieve the country of origin of all responsibility, and 'could not be justified on humanitarian or political grounds'.⁵¹⁰

The Minister for Immigration and the Shadow Minister for Immigration contended that the *Immigration (Unauthorised Arrivals) Act* actually upheld Australia's commitment to refugees. Macphee made the argument then and still today that the passengers on the *VT838* 'were economic immigrants who were bypassing immigration processes... Meanwhile there were genuine refugees in detention camps whom we had to process'.⁵¹¹ Stevens claimed that Macphee's arguments sought to justify exclusion, but as this chapter has shown the UNHCR supported the government's assessment completely.⁵¹² Macphee reiterated the position that MacKellar had articulated many times during his role as Minister: Australia was ready to assist 'genuine' refugees, but that did not mean it would always be able to accept 'without question' large groups 'who push their claims for resettlement' ahead of others.⁵¹³

In an oral history interview conducted for this thesis, Macphee's former Department of Immigration Secretary, John Menadue, reflected on the *VT838* incident by arguing that a liberal immigration policy 'had to be firmly enforced'.⁵¹⁴ Menadue's comments essentially reflect Teitelbaum and Weiners' arguments. When he labelled the

⁵⁰⁹ Coles, 'Approaching the Refugee Problem Today', pp. 379-392. See also: B. Harrell-Bond, *Refugees and the International System: The Evolution of Solutions*, 1996, pp. 9-10, University of Oxford, Bodleian Social Science Library, RSC Collection.

⁵¹⁰ Coles, 'Approaching the Refugee Problem Today', p. 391.

⁵¹¹ Interview with I. Macphee, 8 December 2010; Australia. *Commonwealth Parliamentary Debates*, House of Representatives, 20 October 1981, pp. 2192-5.

⁵¹² Stevens, 'Political Debates on Asylum Seekers', pp. 533, 537-8.

⁵¹³ Australia. *Commonwealth Parliamentary Debates*, House of Representatives, 1 May 1980, p. 2518.

⁵¹⁴ Menadue, *Things You Learn Along The Way*, p. 217.

Indochinese outflow a moral hazard in 1984, Teitelbaum argued that states must address ‘the tragic choice’ that ultimately characterises refugee policy: exacerbating a humanitarian crisis, or increasing civilian suffering through rescinding involvement altogether.⁵¹⁵ To find a midpoint between these options is an ethical imperative, because refugee admissions to a receiving state cannot be open-ended, no matter how much goodwill there may exist in a national community toward the specific refugee problem, because that would only serve to encourage greater risk taking. Teitelbaum, Weiner and, most recently, Australian political journalist Bernard Keane have argued that demands for a large liberally defined refugee intake are ducking the tragic choice and exacerbating the moral hazard: ‘Unwillingness to defend the integrity of the refugee concept is ethically questionable’.⁵¹⁶

In the Australian context the problem also has an historical undertone. For the Fraser government making difficult policy choices and defending the integrity of the refugee concept was not just about discouraging Indochinese from risking their lives and being exploited by commercial people smuggling operations; it was seen as central to the success of the nation’s refugee intake and its transition away from a racially discriminatory past. In expressing bi-partisan support for the *Immigration (Unauthorised Arrivals) Act* Young told the House that entry had to be Australia’s decision alone, because this decision-making was ultimately based on ‘the acceptance and tolerance of the Australian people’.⁵¹⁷ This tolerance had been integral to the successful intake of Indochinese refugees, and it was essential if the nation was to show

⁵¹⁵ Teitelbaum, ‘Tragic Choices in Refugee Policy’, pp. 34-35.

⁵¹⁶ Teitelbaum, ‘Tragic Choices in Refugee Policy’, pp. 32-36; Weiner, *The Global Migration Crisis*, pp. 173-4; B. Keane, ‘“Let Them All Come” is “Stop The Boats” for Unthinking Progressives’, *Crikey*, 29 July 2013, viewed 30 September 2013, available at: <http://www.crikey.com.au/2013/07/29/let-them-all-come-is-stop-the-boats-for-unthinking-progressives/?wpmp_tp=1>. See also: D. McMaster, ‘Asylum Seekers and the Insecurity of a Nation’, *Australian Journal of International Affairs*, 56, no. 2 (2002), pp. 288-9.

⁵¹⁷ Australia. *Commonwealth Parliamentary Debates*, House of Representatives, 20 October 1981, p. 2194.

the world that it had truly moved on from White Australia.⁵¹⁸

Conclusion

The size and nature of the Indochinese outflow meant that the Fraser government's anticipation of a large-scale influx was not unreasonable. Viviani wrote in 1996 that the crisis in 1978 and 1979 had 'frightened the government', and that this ensured a lack of political leadership on the issue.⁵¹⁹ Certainly the equivocation in MacKellar's public statements on the hypothetical arrival of large shiploads of refugees, and the staunch refusal to accept passengers from the *Hai Hong*, support this assessment. The evidence presented in this chapter, however, gives the government much more credit than Viviani does. MacKellar's public statements were pragmatic and pre-emptive. His department recognised that a 'developing public antagonism' within the Australian community toward the boat arrivals was because the public did not understand the difficulties of the situation or appreciate the government's narrow range of options.⁵²⁰

The Department told Cabinet that the government's policy was 'eminently defensible on humanitarian and legal grounds and this needs to be put effectively' to the Australian public.⁵²¹ Doing so included explaining the nation's obligations under the Convention. To reiterate a point made in Chapter One of this thesis and in the introduction to this chapter, the advent of the Indochinese outflow after the ratification of the 1967 Protocol in 1973 had created an unprecedented policy challenge for Australia. The Fraser government told the public that it was 'locked into international obligations' which 'never envisaged the movement of people on the large scale now

⁵¹⁸ *ibid.*

⁵¹⁹ Viviani, *The Indochinese in Australia, 1975 to 1995*, pp. 10-11.

⁵²⁰ National Archives of Australia, A12909 2906.

⁵²¹ National Archives of Australia, A10756 LC1366 – Part 1.

being experienced'.⁵²²

When the size of the Indochinese outflow is considered in the light of more recent history, the Fraser government's decision-making becomes all the more significant. This is because the possibility of Australia receiving an inundation of boat arrivals has become a central part of political debate on refugee policy in the last two decades. In 1999 Howard government Immigration Minister Phillip Ruddock was said to have been advised that 'whole villages' from the Middle East could attempt to reach Australia.⁵²³ In May 2010 then Federal Opposition leader Tony Abbott dramatically posited that 'millions' of prospective asylum seekers 'might be at least tempted to swap their current existence for the opportunities of a new life in Australia'.⁵²⁴ In July 2013 Abbott spoke of a 'national emergency' that required a military response to interdict boats at sea.⁵²⁵ This language has been used to underpin punitive deterrence measures, but as Viviani wrote in 1996, it is not founded on 'any credible fears of an influx' precisely because the 'greatest exodus in the history of Southeast Asia' did not lead to such an outcome. Rather, 'it is founded on fears of adverse public opinion'.⁵²⁶

The current historical debate turns on the question of whether the Fraser government sought to respond to boat arrivals in the way that its successors did. Ruddock, who oversaw many of the overt and punitive deterrence measures of the Howard government as Minister for Immigration from 1996 to 2005, disputes the suggestion that just because there was 'no barbed wire, no camps' during the Fraser

⁵²² Australia. Department of Immigration and Ethnic Affairs, *Review '78*, p. 26.

⁵²³ Australian Broadcasting Corporation, *7.30 Report*, 15 November 1999, accessed 7 October 2013, at <<http://www.abc.net.au/7.30/stories/s66377.htm>>.

⁵²⁴ Leader of the Opposition, *Address to the Menzies Research Centre*, Royal Australian College of Surgeons House, Melbourne, 4 May 2010.

⁵²⁵ K. Murphy, 'Abbott Unveils Response to Rudd's PNG Plan: Operation Sovereign Borders', *The Guardian*, 25 July 2013, accessed 27 July 2013, at <<http://www.guardian.co.uk/world/2013/jul/25/abbott-png-operation-sovereign-borders>>.

⁵²⁶ Viviani, *The Indochinese in Australia, 1975 to 1995*, p. 11.

years, as Fraser himself says, there was no concerted and like-minded deterrence effort.⁵²⁷ In contrast, Fraser and Simons have argued that the departmental advice that Fraser's government received was likely just the same as that of his successors, but the difference lies 'not in the advice, in the gravity of the crisis or in the public attitudes, but in the choices his government made'.⁵²⁸

Comparisons between the Fraser government's choices and those of later governments have been made by both Viviani and Crock, and their conclusions align with Fraser and Simons' argument. In 1996 Viviani noted that the second wave of boat arrivals were also from Indochina, and that they sparked the same 'clash of values' within the Australian community, a struggle between the need to control entry, to deter boats and to meet international obligations. Yet Viviani argued that given the Hawke and Keating's response to the second wave, including the introduction of mandatory detention, 'the circumstances of entry and post-arrival treatment... have changed radically' since the late 1970s and early 1980s because fear of adverse public opinion has prevailed over other imperatives.⁵²⁹ More recently, in 2010 Crock and co-author Daniel Ghezelbash drew an important distinction between the treatment of the first wave and that of the second, third and fourth, by describing the Fraser government's approach as one of 'containment', because deterrence measures (such as the pushing back or repatriation of boats) were not adopted.⁵³⁰ Containment was achieved through the aforementioned 'broader strategy' of international efforts to stem the flow of people fleeing Vietnam and reduce the burden on countries of first asylum, a strategy that was beyond the scope of this chapter. Although Chapter Three demonstrated that the DORS process was intended to deter boat arrivals, the evidence presented in this chapter

⁵²⁷ Interview with P. Ruddock, 16 December 2011, Sydney, Australia; Interview with M. Fraser.

⁵²⁸ Fraser and Simons, *Malcolm Fraser: The Political Memoirs*, p. 419.

⁵²⁹ Viviani, *The Indochinese in Australia, 1975 to 1995*, pp. 6-7.

⁵³⁰ Crock and Ghezelbash, 'Do Loose Lips Bring Ships?', p. 13.

supports Crock and Ghezelbash's conclusion that the Fraser government chose containment over explicit deterrence measures, for reasons that will now be briefly reiterated.

The Fraser government did not choose to turn boats around or deport individuals back to Vietnam, despite the fact that Department of Immigration officials considered these options in order to 'get a message across' to prospective arrivals. By virtue of geography and law Australia was seen as a country of first asylum, and the government chose to honour this obligation even though it did not wish to accept the role on such a large scale. At the height of the outflow in 1979 MacKellar explained to the public that Australia's status as one of the only countries within the region that was a signatory to the 1951 Convention and the 1967 Protocol was particularly limiting:

I cannot help wondering whether the Whitlam Government fully comprehended the consequences of ratifying the Protocol.⁵³¹

It was history that made the management of these obligations especially difficult. During the election campaign of November 1977 the Minister for Immigration and the Minister for Foreign Affairs released a joint statement explaining Australia's position, and MacKellar was careful to note this position again as the outflow increased:

Our immigration policy has been misunderstood and misrepresented abroad in the past. It has taken a sustained effort to remove this misunderstanding. If we now respond to the Vietnamese refugee question in a narrow, ungenerous and emotive way, that effort will have gone for nothing.⁵³²

Denying the boatpeople was not conducive to building Australia's credibility on the international stage. Its 'status as a civilised, compassionate nation' in the wake of

⁵³¹ Minister for Immigration M. MacKellar, *Heindorff Memorial Lecture*, p. 14.

⁵³² Joint statement by Minister for Foreign Affairs and Minister for Immigration, 'Humanitarian issue of refugees', *Commonwealth Record*, 29 November 1977, p. 1791; 'Speech to Institute of International Affairs', pp. 1061-66.

racially discriminatory policy was 'under test'.⁵³³

The evidence presented in this chapter has also shown that the proposal for detention centres was not embraced for historical and practical reasons. The government recognised that if detention or camp facilities encouraged a greater number of boat arrivals, Australia would be unable to avoid full responsibility as a country of first asylum or would reject the customary principle of first asylum entirely and, as the inter-departmental committee on the Treatment of Unauthorised Boat Arrivals found, denounce its Convention obligations. The government feared that if Australia detained thousands of Asian refugees on an indefinite basis, this would damage the nation's image and its progress away from a racially discriminatory past.

Both MacKellar and Ruddock were interviewed for this thesis, and both were asked whether Australia's international reputation was a consideration in this policy area. Their answers are revealing:

MacKellar:

Oh yeah... I always thought it was important and I still think it's important and I thought it diminished very greatly in recent times with the refugee... We had a terrific reputation (he says!), I'm sorry to sound boastful about it but I think we did, I think we did. I think people said, you know, 'that's how you do it'.⁵³⁴

Ruddock:

No. Never.⁵³⁵

The contrast between the statements of the two former ministers and the evidence presented in this chapter demonstrates that the Fraser government's policy

⁵³³ Australia. Department of Immigration and Ethnic Affairs, *Review '78*, p. 26.

⁵³⁴ Interview with M. MacKellar.

⁵³⁵ Interview with P. Ruddock.

options were constrained by reputational concerns as much as by the logistical imperatives of collaborating with countries in the region to manage the outflow and, indeed, there was a symbiosis between the two considerations. The Fraser government chose to fully acknowledge its obligations as a country of first asylum because, as Loescher wrote in *Beyond Charity*, a commitment to the principle of first asylum can function as part of broader efforts to control a refugee outflow.⁵³⁶ This chapter and the discussion in Chapter Three have demonstrated how the Fraser government sought to achieve this in the context of the Indochinese exodus.

The *Immigration (Unauthorised Arrivals) Act* was in step with ideational developments in the international community against commercial people smuggling and state-sanctioned refugee flows. The legislation represented a balance between foreign policy and domestic opinion, facilitating the customary assertion of administrative control over entry to Australian territory, while allowing the government to emphasise its commitment to the protection of ‘genuine’ refugees. While Smit and Stevens viewed the *Immigration (Unauthorised Arrivals) Act* as a sign of hard-heartedness that was akin to the harsh policies of later governments, the legislation was the most favourable policy option for the Fraser government at a critical point of transition in international refugee movements. It enabled the Fraser government to carefully navigate both the moral hazard of the Indochinese exodus and the historical and political pitfalls of the post-White Australia policy dilemma.

In *The Long Slow Death of White Australia*, Tavan writes that social reforms of the 1970s in areas of multiculturalism, Asian immigration and Aboriginal affairs ‘forced Australians to confront, once and for all the practical consequences of the bipartisan decision taken during the early 1970s to abolish racial discrimination in public

⁵³⁶ Loescher, *Beyond Charity*, pp. 199-200.

policy'.⁵³⁷ The Fraser government is considered to have managed the resettlement of Asian migrants successfully.⁵³⁸ It performed, to reiterate Viviani's point, a 'balancing act' between the forces of public opinion. Close analysis of its response to boat arrivals is an important part of this overall assessment. Even though the boats ceased to arrive thanks to a 'broader strategy' at the international level, the decision-making process is nonetheless historically significant.

If the Indochinese refugee intake was the first 'and most difficult' test of the end of White Australia, as it is popularly considered to be, then the Fraser government's response to boat arrivals was part of this challenge.⁵³⁹ The government was presented with the unplanned entry of just over two thousand people, from a proximate and distended refugee crisis. To have unquestioningly accepted the boat arrivals would have set a precedent that, it was feared, could attract many more. To have denied them would damage Australia's international image. Either choice had symbolic historical consequences. The Fraser government was trying to determine how to effectively manage refugee movements on an ongoing basis, and the shadow of the nation's past hung heavily over this process.

⁵³⁷ Tavan, *The Long Slow Death of White Australia*, p. 214.

⁵³⁸ Manne, 'Asylum Seekers'; K. Rivett, *A Refugee Policy for Today and Tomorrow*, Institute of Public Affairs NSW, (Sydney, 1980), p. 2; Viviani, *The Indochinese in Australia, 1975 to 1995*, pp. 9-11.

⁵³⁹ Viviani, *The Indochinese in Australia, 1975 to 1995*, p. 1.

Chapter Five: The Determination of Refugee Status Committee

On 1 May 1980 the DORS Committee was convened 'as a matter of urgency' to debate the case of a Kurdish man from Iraq who had applied for refugee status. There was a great deal of conjecture over the validity of the applicant's fear of persecution and the credibility of his story. The Committee read through background information from Amnesty International, the Department of Foreign Affairs and media publications. As was customary, each member presented a view in accordance with the legal, administrative or political priorities of their respective departments. The Department of Foreign Affairs representative and the Department of Immigration representatives did not believe the applicant's story or that he had a well-founded fear of persecution. Although they accepted that Kurdish activists were subject to persecution, they suspected that this applicant's expressed motivations for migrating were spurious and that he was 'demonstrably trying to get round the Migration Act'.⁵⁴⁰ The representatives from the Department of the Prime Minister & Cabinet and the Attorney General's Department shared these reservations but were prepared to give the benefit of the doubt. Ultimately, the case was deferred for further investigation. After such a lengthy and fruitless debate, the Attorney-General's representative complained that 'had the applicant been Indochinese, the Committee would have accepted him'.⁵⁴¹

The DORS Committee may have observed the prima facie refugee status of all Indochinese boatpeople, but its assessment of non-Indochinese was a different and more complex story. The records of former UNHCR legal representative Professor Guy S.

⁵⁴⁰ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 1 May 1980*.

⁵⁴¹ *ibid.*

Goodwin-Gill contain evidence of 409 DORS decisions on non-Indochinese applicants from 46 countries, taken at 92 DORS meetings between October 1978 and April 1983. The records provide a qualitative record of Committee deliberations, of varying length and detail, for all but 27 of these decisions. This chapter uses these records to produce a unique study of DORS' deliberations.

In mid-1983, just after Goodwin-Gill left the Committee, an internal Department of Immigration review noted that DORS was a 'genuine attempt at fair dealing' but at times it was unnecessarily subject to the consideration of bilateral factors and government idiosyncrasy.⁵⁴² That same year, Christopher Avery published a pioneering study of nascent refugee status determination (hereafter 'RSD') procedures across Europe, North America and Australia. Avery was particularly critical of their respective decision-making processes:

None of the ten countries examined in this article has devised a refugee status determination system that is beyond reproach at every stage of the process. None has ensured that solidly competent, fully informed, and fundamentally impartial individuals conduct interviews, make decisions, and review determinations from the arrival of refugees at the border through final appeal. None has managed to create a determination procedure which meets all of the recommended standards of practice...⁵⁴³

Australia was found to require 'significant improvement' in the initial interview and decision-making procedures, along with Canada, the United Kingdom, the United States, Sweden and Switzerland. These reports draw attention to the possible influence of political considerations on DORS' deliberations and the quality of briefing material that DORS members relied upon, and Goodwin-Gill's files enable these issues to be investigated further.

⁵⁴² Interview with anonymous public servant 'C', 6 January 2011. See also: C. L. Avery, 'Refugee Status Decision-Making: The Systems of Ten Countries', *Stanford Journal of International Law*, 19, 1983, pp. 249-250.

⁵⁴³ Avery, 'Refugee Status Decision-Making', p. 352.

The chapter will begin with a discussion of the nature of RSD, and the significance of these files to an existing literature that is based largely on publicly released data rather than behind-the-scenes records. Section Two will then outline the manner in which DORS operated, using evidence from Goodwin-Gill's files, government archival records and oral history interviews. Section Three will analyse the data contained in Goodwin-Gill's files. DORS deliberations can be investigated in two ways: through Goodwin-Gill's impressions and record of conversations, and through a quantitative analysis of the voting patterns of DORS members and the outcome for applicants by national group. Using both these approaches can produce a more detailed impression of DORS' assessment of the non-Indochinese caseload. Section Three will ask whether there were distinguishable biases in the outcomes for applicants from particular countries-of-origin, and if so, were these related to the briefing material DORS members had received? Furthermore, were DORS' deliberations influenced by broader deterrence measures or political considerations?

These are very important questions for our understanding of RSD in Australia and internationally. States that are party to the 1951 United Nations Convention Relating to the Status of Refugees and/or its attendant 1967 Protocol (hereafter 'States parties') are obligated to provide for status determination, but these instruments do not mandate a specific method of doing so. As a result the very nature of RSD is inherently subject to 'the overall efficacy of a state's internal administrative and judicial system' and the characteristics of the refugee flow that the state must respond to.⁵⁴⁴ The procedure varies widely across jurisdictions, operating with differing levels of

⁵⁴⁴ Goodwin-Gill and McAdam, *The Refugee in International Law*, p. 528. See also: G. S. Goodwin-Gill, 'Article 31 of the 1951 Convention Relating to the Status of Refugees: non-penalisation, detention and protection', in E. Feller, V. Türk and F. Nicholson, *Refugee Protection in International Law*, pp. 215-217; J. C. Hathaway, 'A Reconsideration of the Underlying Premise of Refugee Law', *Harvard International Law Journal*, 31, no. 1 (1990), pp. 166-168; A. Schloenhardt, 'To Deter, Detain and Deny: Protection of Onshore Asylum Seekers in Australia', *International Journal of Refugee Law*, 14, no. 2/3 (2002), pp. 305-307.

transparency and resources.⁵⁴⁵ Although States parties are committed to a universal definition of ‘refugee’ under Article 1A(2) of the Convention, Hathaway has argued that this is undermined by the lack of procedural direction and therefore political and strategic interests are free to override humanitarian considerations in the determination of refugee status.⁵⁴⁶

1. Refugee Status Determination: recognition rates and existing literature

The literature on RSD generally relies on publicly released aggregate data. The UNHCR publishes the annual rate of refugee claims and successful ‘recognition rates’ (the approval of refugee status) for States parties each year, but for the period before the mid-1990s there are noticeable gaps in their utility and availability across jurisdictions. For most Western European states, data on application rates, recognition and applicants’ countries of origin are usually available from around 1980 if not earlier. For the United States and Canada, application rates and recognition rates are available from 1980 onward, but it is not until the late 1980s that these data are grouped by country of origin.⁵⁴⁷ For Australia, total application numbers are published by the UNHCR from 1989, but country of origin details are only available from 1994 onward.⁵⁴⁸ Furthermore, because the implementation of RSD is a matter for individual States parties, there are variations in the quality and provenance of the aggregate data across

⁵⁴⁵ See further: D. Bronkhorst, ‘The Realism of a European Asylum Policy: A Quantitative Approach’, *Netherlands Quarterly of Human Rights*, 2 (1991), pp. 142-151; E. R. Thielemann, *Does Policy Matter? On Governments’ Attempts to Control Unwanted Migration*, IIS Discussion Paper no. 9 (2003), p. 4; T. J. Hatton, ‘Seeking Asylum in Europe’, *Economic Policy* (2004), pp. 14, 25; E. Neumayer, ‘Asylum Recognition Rates in Western Europe: Their Determinants, Variation and Lack of Convergence’, *Journal of Conflict Resolution*, 49, no. 1 (2005), pp. 63-64.

⁵⁴⁶ Hathaway, ‘A Reconsideration of the Underlying Premise of Refugee Law’, pp. 166-171. See also: Loescher, *Beyond Charity*, p. 157-159.

⁵⁴⁷ See further: United Nations High Commissioner for Refugees, *Asylum Applications lodged in Industrialised Countries: 1980 – 1999*, Geneva, 2001.

⁵⁴⁸ E. Neumayer, ‘Asylum Destination Choice: What Makes Some West European Countries More Attractive than Others?’, *European Union Politics*, 5, no. 2 (2004), p. 167; United Nations High Commissioner for Refugees, *Statistical Yearbook 2001* (Geneva, 2001), Annex C.1, p. 112; United Nations High Commissioner for Refugees, *Statistical Yearbook 2003* (Geneva, 2003), Annex C.5.

jurisdictions. RSD figures may be drawn from slightly different domestic procedures and may be calculated by each country along different lines.⁵⁴⁹ Some countries exclude claims deemed to be manifestly unfounded or abusive from the final total, or exclude claims approved for subsidiary humanitarian status, thereby raising the percentage of claims approved for refugee status.⁵⁵⁰

Qualitative insights into influences on RSD are limited by the nature of the procedure. From a survey of the literature on RSD in the fields of refugee law and migration studies, it would appear that detailed information on individual cases is usually only available if these cases become the subject of an administrative review process that is open to observers, or a judicial review.⁵⁵¹ In a 1991 paper, human rights researcher Daan Bronkhorst described status determination in Western Europe as being ‘shrouded in confidentiality’, which meant that ‘there was hardly any direct evidence of deliberate injustice [sic] done to political refugees’.⁵⁵² In a 2005 study of recognition rates in Europe, Eric Neumayer reiterated that ‘having access to individual data is very rare’.⁵⁵³ Rebecca Hamlin, Crock and Crock and Saul have noted that Australian first-instance decision making and administrative review is closed to the public and

⁵⁴⁹ M. Vink and F. Meijerink, ‘Asylum Applications and Recognition Rates in EU Member States 1982-2001: A Quantitative Analysis’, *Journal of Refugee Studies*, 16, no. 3 (2003), pp. 304-305; J. Crisp, *Who has Counted the Refugees? UNHCR and the Politics of Numbers*, Policy Research Unit, United Nations High Commissioner for Refugees (Geneva, 1999), pp. 4-5.

⁵⁵⁰ See further: Neumayer, ‘Asylum Recognition Rates in Western Europe’, p. 49; Bronkhorst, ‘The Realism of a European Asylum Policy’, pp. 150-151. In October 1981 Goodwin-Gill reported that there had been an increase in ‘individuals trying to circumvent the immigration law’ and that DORS was examining ‘the general question of admissibility and its relation to incompatible and manifestly ill-founded applications’ – see further: Goodwin-Gill Collection, AUL: Reports, *UNHCR Branch Office Sydney, Report for October 1981*. In 1982 Goodwin-Gill reported that Committee members continued the practice of examining such cases ‘in a summary procedure’, during which any Committee member or the UNHCR representative could request that the application should be examined in full – see further: Goodwin-Gill Collection, AUL: Reports, *Goodwin-Gill Collection, AUL: Reports, UNHCR Sydney Branch Office, Report for 1982 to the United Nations High Commissioner for Refugees*.

⁵⁵¹ See further: D. E. Anker, ‘Determining Asylum Claims in the United States: Summary Report of an Empirical Study of the Adjudication of Asylum Claims Before the Immigration Court’, *International Journal of Refugee Law*, 2, no. 2 (1990), pp. 252-264.

⁵⁵² Bronkhorst, ‘The Realism of a European Asylum Policy’, pp. 142-143.

⁵⁵³ Neumayer, ‘Asylum Recognition Rates in Western Europe’, p. 50.

‘shrouded in secrecy’.⁵⁵⁴ In 2009 Linda Camp Keith and Jennifer S. Holmes called for researchers to pursue more wide-ranging analysis:

...only a few studies, to our knowledge, have used individual level data and none have been able to include evidentiary factors or applicant characteristics. The only asylum data available to the public is the outcome of the case, relevant dates, the country of origin, and the judge name or non-identifying asylum officer code.⁵⁵⁵

A handful of studies in the United States have proved the exception, producing analyses based on hard-won primary source material. Most notably, this includes a 2007 paper by Jaya Ramji-Nogales, Andrew I. Schoenholtz and Philip G. Schrag, entitled *Refugee Roulette: Disparities in Asylum Adjudication*, which was based on data provided by the Department of Homeland Security. It showed that RSD outcomes depend greatly on the personal characteristics of the individual government official that is responsible for the claim.⁵⁵⁶ Two years later Camp Keith and Holmes published a small study of 81 cases from 1998 to 2005 that they sourced from the Human Rights Initiative of North Texas. The authors set out to measure the influence of factors that were ‘typically unobservable’ in publicly released RSD data, because they had access to socio-economic and demographic details of each individual applicant such as level of education, religion, English proficiency and marital status. The authors found a strong correlation between the political or economic or cultural characteristics of the applicants and the recognition rate (although the small sample size should be taken into account when considering these results). For example, applicants from countries in which there was guerrilla or terrorist activity were less likely to be approved, while those applicants

⁵⁵⁴ R. Hamlin, ‘International Law and Administrative Insulation: A Comparison of Refugee Status Determination Regimes in the United States, Canada and Australia’, *Law and Social Inquiry*, 37, no. 4 (2012), p. 953; Crock, ‘The Refugees Convention at 50: Mid-Life Crisis or Terminal Inadequacy?’, p. 66; Crock and Saul, *Future Seekers*, pp. 57-58.

⁵⁵⁵ L. Camp Keith and J. S. Holmes, ‘A Rare Examination of Typically Unobservable Factors in U.S Asylum Decisions’, *Journal of Refugee Studies*, 22 (2009), p. 225.

⁵⁵⁶ J. Rami-Nogales, A. I. Schoenholtz and P. G. Schrag, ‘Refugee Roulette: Disparities in Asylum Adjudication’, *Stanford Law Review*, 60, is. 2 (2007), pp. 295-412.

from countries with higher levels of economic development were more likely to be granted asylum because, according to the authors, they were perceived as being less motivated by economic opportunism.⁵⁵⁷

In general it would seem that researchers of RSD face a common problem, which Bronkhorst has aptly articulated:

The only way to draw conclusions on the character of asylum seeker determination is to deal with the outcome of the process. This we can try and undertake by way of a model in which the government procedure is a 'black box'. We know what comes into the box (asylum applications) and what comes out (decisions on admittance and recognitions as refugee), but we don't know what happens inside the box.⁵⁵⁸

Goodwin-Gill's files are an exceptional primary source within this area of research. Although they do not offer the consistent level of demographic detail on each case that Camp Keith and Holmes had, these records contain first-hand accounts of decisions, deliberations and disagreements. Hamlin's 2012 study did not pursue interviews with decision-makers in Australia, Canada or the US, because 'obtaining official permission would have been next to impossible and would have inhibited candour'.⁵⁵⁹ Goodwin-Gill's records, on the other hand, name the decision-makers on the DORS Committee and cite their opinions on particular cases. Five of these individuals have been interviewed for this thesis, as well as three senior officials who oversaw DORS at various stages.⁵⁶⁰ By combining Goodwin-Gill's files with oral testimony and government archival records this thesis can offer a rare glimpse 'inside the box' of RSD procedure.

⁵⁵⁷ Camp Keith and Holmes, 'A Rare Examination of Typically Unobservable Factors in U.S Asylum Decisions', pp. 238-240.

⁵⁵⁸ Bronkhorst, 'The Realism of a European Asylum Policy', p. 147.

⁵⁵⁹ Hamlin, 'International Law and Administrative Insulation', p. 940.

⁵⁶⁰ Six former DORS representatives are among the interviewees for this thesis, but Mr Harold Grant was interviewed before Goodwin-Gill's files were examined, so he was not asked about DORS and he did not raise the subject himself. Due to Mr Grant's advanced years it was not possible to re-interview him for this purpose.

These files can also contribute to cross-jurisdictional quantitative studies of RSD in the 1980s, because Australian data for this period is currently unavailable. Longitudinal RSD data has been used to explore variation in application rates and recognition rates between jurisdictions; it has been noted that asylum seekers from the same country of origin can face very different outcomes depending on where they lodge a claim for protection.⁵⁶¹ Scholars have also investigated the role of RSD outcomes, alongside other key explanatory variables such as economic prosperity and past migration from a particular source country, in encouraging asylum seekers to pursue protection claims in one state over another.⁵⁶² Ultimately these questions are part of a broader debate on the capacity of states to control unwanted migration, and Neumayer and Hatton are among those who have quantitatively assessed the nexus between RSD outcomes and broader deterrence measures.⁵⁶³

⁵⁶¹ Scholars have noted these differences in the United States, Canada and Australia, but have focused a great deal of attention on differing application rates and recognition rates for asylum seekers in neighbouring countries in the EU. Neumayer (2005) and others have discussed the fact that this phenomenon may be the result of restrictions placed upon an individual's ability to choose a destination country through instruments such as the Dublin Convention (the Convention Determining the State Responsible for Examining Applications for Asylum Lodged in One of the Member States of the European Communities). See further: Avery, 'Refugee Status Decision-Making', p. 244; Bronkhorst, 'The Realism of a European Asylum Policy', pp. 144, 147, 151; Thielemann, 'Does Policy Matter?', pp. 4-8; P. Matthews, 'Safe For Whom? The Safe Third Country Concept Finds a Home in Australia', in S. Kneebone (ed.), *The Refugees Convention 50 Years On*, pp. 142-148; Hatton, 'Seeking Asylum in Europe', pp. 14, 25; Neumayer, 'Asylum Recognition Rates in Western Europe', pp. 45-48, 50, 63-64; Hamlin, 'International Law and Administrative Insulation', pp. 933-935; J. C. Simeon, 'The Response to Rapidly Fluctuating Refugee Status and Asylum Applications', *International Journal of Refugee Law*, 22, no. 1 (2010), pp. 82-86.

⁵⁶² Bronkhorst, 'The Realism of a European Asylum Policy', pp. 156-157; Thielemann, 'Does Policy Matter?', pp. 4, 11-34; Hatton, 'Seeking Asylum in Europe', pp. 33-34; Neumayer, 'Asylum Destination Choice', pp. 174-177; Neumayer, 'Asylum Recognition Rates in Western Europe', p. 48.

⁵⁶³ Neumayer, 'Asylum Recognition Rates in Western Europe', p. 48; T. J. Hatton, *Seeking Asylum: Trends and Policies in the OECD* (London, 2011), pp. 49-53; Vink and Meijerink, 'Asylum Applications', pp. 310-313. See further: G. P. Freeman, 'Can Liberal States Control Unwanted Migration?', *Annals of the American Academy of Political and Social Science*, 534 (1994), pp. 28-30. States parties have sought to counteract these 'pull factors' by imposing restrictions on the ability of asylum seekers to gain entry, their ability to make a claim and their ability to access welfare or employment; examples include carrier sanctions, visa requirements, pre-screening at departure points overseas and omitting to notify new arrivals of the claims procedure (among other measures) – see further: L. Schuster, 'A Comparative Analysis of the Asylum Policy of Seven European Governments', *Journal of Refugee Studies*, 13, no. 1 (2000), pp. 121-125; Matthews, 'Safe For Whom?', pp. 133-148; Crock and Saul, *The Future Seekers*, pp. 53-57; Thielemann, 'Does Policy Matter?', pp. 8-9, 14-15, 18-21; S. Taylor, 'Protection Elsewhere/Nowhere', *International Journal of Refugee Law*, 18, no. 2 (2006), pp. 287-294; Goodwin-Gill

2. DORS in context

In Chapter Three of this thesis it was noted that DORS was the Australian government's first formal RSD procedure in line with its obligations under the Convention. DORS is the precursor to the system in place today. This section cannot provide a detailed comparison between DORS and later procedures, nor can it offer a history of the jurisprudential and legislative developments that shaped RSD in Australia in the last three decades. The latter has been discussed by Crock, while the nature of current interview and review processes have been examined in some detail by Dauvergne.⁵⁶⁴ This section will instead outline the Committee's decision-making, review mechanisms and caseload during the 1980s, in order to shed light on DORS' deliberations and prepare for further analysis in Section Three.

2.1 Decision-making

The creation of DORS was approved by Cabinet in May 1977 as part of the new formal approach to refugee policy. Originally it was proposed that DORS could have the power to make decisions on applications for refugee status, but this was not approved by the Minister.⁵⁶⁵ Ultimately DORS was authorised to make recommendations to the Minister for rejection or approval of refugee status. Former head of DORS Barbara Phi believes this ensured a rigorous decision-making process:

and McAdam, *The Refugee in International Law*, p. 392; M. Gordon, *Freeing Ali* (Sydney, 2005), pp. 27, 32-38; Bem et. al., *A Price Too High*, pp. 16-21; Edwards, 'Tampering with Refugee Protection', pp. 196-202; Schloenhardt, 'To Deter, Detain and Deny', pp. 309-317.

⁵⁶⁴ Crock and Saul, *Future Seekers*, pp. 52-74; Crock, 'The Refugees Convention at 50', pp. 47-89; M. Crock, 'A Sanctuary Under Review: Where to From Here for Australia's Refugee and Humanitarian Program?', *University of Sydney Law School Legal Studies Research Paper*, 09/60 (2009); M. Crock, 'Judging Refugees: The Clash of Power and Institutions in the Development of Australian Refugee Law', *University of Sydney Law School Legal Studies Research Paper*, 09/61 (2009); Dauvergne, *Humanitarianism, Identity and Nation*, pp. 95-117; See also: Australia. Senate Legal and Constitutional References Committee, *A Sanctuary Under Review: An Examination of Australia's Refugee and Humanitarian Determination Processes* (Canberra, 2000).

⁵⁶⁵ Goodwin-Gill Collection, DORS Gen, *UNHCR, Report on Mission to Australia from 23 November to 6 December 1977*.

We made our assessment and recommendations but we did not have a delegation to approve on any grounds. We could issue a visa, an entry permit, because all migration officers at a certain level can do that. But I could not award residence, I could not allow people to stay... I had to go to other directors, or to my boss, or to the Minister. I didn't want it, because it meant that my position was very clear. I was not in the business of handing out any benefits. And that meant that also we were cross-checking what we were doing. It's very easy when you're caught up in these processes to start thinking, 'oh dear, that's an Iranian women of a certain age and education and she must be a refugee'. And what it does is it keeps you honest, because you've got to go to another person and say, 'this person has this profile, they've been through this, they've done that, I think this is a 6A(1)(e) [compassionate/humanitarian leave to remain], can you see your way to approve?' And they didn't always. It kept the process honest, because it did mean we had to actually know what we were arguing, and we had to have parameters that were moderately consistent.⁵⁶⁶

Regardless of the observations about briefing material and political considerations that will be discussed later in this chapter, evidence suggests that DORS decision-making was thorough. Two former Department of Immigration officials who were involved with DORS, Peter Eyles and Barbara Phi, recalled that 'these committee meetings were vigorous, they were debated heavily' and 'they got quite savage'.⁵⁶⁷ Goodwin-Gill's files contain several references to his regard for the Committee's approach: in July 1980 he reported to Idoyaga that 'the DORS Committee takes its job of applying the 1951/67 definition of a refugee seriously', and at the end of that year he reported that 'as in previous years the Committee once again applied itself in a liberal manner'.⁵⁶⁸ Importantly, despite Phi and Eyles' characterisations of the debates,

⁵⁶⁶ Interview with B. Phi, 7 January 2011, Canberra, Australia.

⁵⁶⁷ *ibid.*

⁵⁶⁸ For example: Goodwin-Gill Collection, DORS Gen, UNHCR draft letter to Keith Baker, Department of Foreign Affairs, from Dr. G. S. Goodwin-Gill, Legal Advisor, 10 March 1982; Goodwin-Gill Collection, DORS Gen, *UNHCR Review of the Procedure for the Determination of Refugee Status, April 1979*; Goodwin-Gill Collection, DORS Gen, *UNHCR Interoffice Memorandum from Guy Goodwin-Gill to Hugo Idoyaga, 3 July 1980*; Goodwin-Gill Collection, AUL: Reports, *UNHCR Sydney Branch Office, Report for 1980 to the United Nations High Commissioner for Refugees*; Goodwin-Gill Collection, AUL: Reports, *UNHCR Sydney Branch Office, Report for 1981 to the United Nations High Commissioner for Refugees*. Under Art. 35 of the Convention, States parties are obliged to cooperate with UNHCR and 'facilitate its duty of supervising the application' of the Convention provisions. In an interview with Avery in 1983, Goodwin-Gill reported that as UNHCR Legal Representative he enjoyed a 'good working relationship' with fellow DORS members, and oral history interviewees said the same in return. See further: Avery, 'Refugee Status Decision-Making', p. 248; Interview with T. Griffiths; Interview with B. Phi; Interview with T. Greville, 10 January 2011, Tarago, Australia.

Goodwin-Gill reported that ‘no serious differences of opinion arose between the Committee and the Branch Office’ that year, which indicates that conflict over asylum seekers occurred between departmental representatives rather than between the government and the UNHCR.⁵⁶⁹ Eyles recalled that ‘DORS was where the really hard, in-your-face battles were fought’ between the departments.⁵⁷⁰

Out of 409 decisions in Goodwin-Gill’s files, applicants were approved on 96 occasions and rejected on 186 occasions. The Committee could also opt to have the applicant re-interviewed and the case deferred for further information. This occurred on 75 occasions. Of the remainder, 36 were granted compassionate/humanitarian leave to remain, and 16 were deemed to be inadmissible.⁵⁷¹ The Minister could choose to refer a case back to DORS for reconsideration if they disagreed with the original decision. Former Minister Ian Macphée said that in his opinion, the DORS Committee’s judgement ‘was impeccable’; he recalled overruling a recommendation only ‘once or twice’, but this disagreement was probably ‘on the side of generosity’.⁵⁷² In the UNHCR report for 1982, Goodwin-Gill wrote that Macphée’s new successor as Immigration Minister, John Hodges, had taken ‘the hitherto unprecedented action’ of approving two cases for refugee status against the Committee’s recommendation.⁵⁷³ Unfortunately there is no further evidence on the nature and provenance of these applications.

⁵⁶⁹ Goodwin-Gill Collection, AUL: Reports, *UNHCR Sydney Branch Office, Report for 1980 to the United Nations High Commissioner for Refugees*.

⁵⁷⁰ Interview with P. Eyles, email correspondence with author, December 2012; Interview with B. Phi; Interview with T. Griffiths. Hawkins wrote in 1988 that the DORS process ‘relied on a high quality of decision-making’. Importantly, Hawkins added that the process ‘did not appear to be susceptible to much abuse’, which may suggest that the problems identified by the Department and by Avery in 1983 were remedied by the late 1980s, or that Hawkins simply did not observe any political influence on DORS deliberations during the course of her research in Canberra – see further: Hawkins, *Critical Years in Immigration*, p. 190.

⁵⁷¹ The term ‘compassionate/humanitarian leave to remain’ is used here for consistency, but the primary sources contain multiple variations on this phrase.

⁵⁷² Interview with I. Macphée, 8 December 2010.

⁵⁷³ Goodwin-Gill Collection, AUL: Reports, *UNHCR Sydney Branch Office, Report for 1982 to the United Nations High Commissioner for Refugees*.

As Phi's testimony cited above indicates, DORS could recommend that an applicant remain in Australia on compassionate/humanitarian grounds under Section 6A(1)(e) of the *Migration Act 1958* (Cth), in cases that did not fit the Convention definition but nonetheless merited humanitarian concern. Evidence from Goodwin-Gill's files and from oral history interviews reveals that DORS members appreciated the ability to make this recommendation. Former departmental representatives recalled that 6A(1)(e) gave them 'flexibility and generosity'.⁵⁷⁴ Goodwin-Gill reflected on this when he wrote to the UNHCR representative in Australia, Hugo Idoyaga, in July 1980:

There are applicants whose cases, though deserving of sympathetic consideration, cannot on any interpretation be found to have a well-founded fear of persecution. To press for recognition of refugee status on the basis of a liberal interpretation beyond the limits of the words of definition themselves is to argue for abuse of those words such as would finally render them meaningless. Liberal interpretation has inherent limits, the words themselves. A liberal policy on asylum, however, has no such limits and it is this which is promoted when States are encouraged to take, and do take, persons who, while not formally satisfying the refugee definition, nevertheless have valid reasons for being allowed to remain.⁵⁷⁵

This option was explicitly recorded as being invoked for the non-Indochinese caseload on 36 occasions, but Goodwin-Gill's notes suggest that rejected applicants may have been considered for compassionate/humanitarian leave to remain on many additional occasions. For example, the case of a Tanzanian man was reconsidered and rejected in March 1983, but Goodwin-Gill's files state the following:

The case was rejected, but it was noted that UNHCR and PM&C wished the Minister's attention to be drawn to the substance of the [evidence in the case] and the otherwise generally credible story presented by the applicant.⁵⁷⁶

It is possible, therefore, that this case was approved for compassionate/humanitarian

⁵⁷⁴ Interview with former public servant 'A', 12 January 2011; Interview with B. Phi.

⁵⁷⁵ Goodwin-Gill Collection, DORS Gen, *UNHCR Interoffice Memorandum from Guy S. Goodwin-Gill to Hugo Idoyaga, 3 July 1980*.

⁵⁷⁶ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 4 March 1983*.

leave to remain under 6A(1)(e). Goodwin-Gill told Avery about this provision in 1983, for Avery's aforementioned research paper *Refugee Status Decision-Making: the systems of ten countries*:

Even when the Committee rejects the application of a claimant for whom I have made a positive recommendation, that individual is often allowed to stay in Australia on humanitarian grounds.⁵⁷⁷

Section 6A(1)(e) was axed when DORS procedure was codified under revisions to the *Migration Act* in 1989.⁵⁷⁸ Unless government records of DORS are made available through the National Archives of Australia, it will be impossible to know exactly how many rejected applicants were ultimately allowed to stay in Australia under this provision.

2.2 Interviews

Goodwin-Gill's files indicate that there were administrative weaknesses in the nascent status determination system. Firstly, as previously mentioned in Chapter Three, some pre-screening took place by Immigration and/or Foreign Affairs officials before applicants were interviewed and their case assessed by DORS. While it was standard procedure to gather preliminary information from each applicant (such as personal details and provenance), UNHCR suspected that a more rigorous form of 'screening out' was taking place, one that went beyond the identification of manifestly abusive or ill-founded applications.⁵⁷⁹ This was an issue that UNHCR took seriously because it was inconsistent with the DORS Rules of Procedure, which sought to ensure that an applicant did not have to make out a *prima facie* case before being admitted to the

⁵⁷⁷ Avery, 'Refugee Status Decision-Making', p. 248.

⁵⁷⁸ Crock and Saul, *Future Seekers*, p. 28; Crock, 'The Refugees Convention at 50', p. 60; Department of Immigration and Citizenship, *Submission to the Joint Select Committee on Australia's Immigration Detention Network*, p. 103.

⁵⁷⁹ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting at UNHCR Headquarters on 12 and 13 March 1979*.

determination of status process.⁵⁸⁰ Preliminary interviewing by Department of Immigration officers is part of the current RSD system in Australia, and the investigative work of scholars such as Savitri Taylor, Crock and David Corlett, and a 2000 inquiry by the Senate Legal and Constitutional References Committee for Legal and Constitutional Affairs, have identified similar problems with this practice.⁵⁸¹

Secondly, DORS members did not normally interview applicants themselves, but instead relied on interviews conducted by Departmental staff at state offices around Australia, following which the transcripts were submitted to Canberra.⁵⁸² Goodwin-Gill wrote in 1979 that DORS members sometimes struggled to assess the credibility of applicants when they could not interview them in person, and suggested that it may be appropriate in particularly contested cases to have the applicant appear before the Committee.⁵⁸³ This does not appear to have happened, although Goodwin-Gill met with applicants on some occasions.⁵⁸⁴ The problem was noted again by Avery and by the Department's internal DORS review in 1983, which concluded that, given the potential for an adverse DORS recommendation, the inability of DORS members to assess the

⁵⁸⁰ *ibid.*

⁵⁸¹ For information on pre-screening and other elements of the Australian procedure in 2013 see further - Refugee Advice and Casework Service, *Applying for a Protection Visa*, accessed 16 July 2013, at <<http://www.racs.org.au/causes/protection-visa-assistance/>>. In the past decade serious problems have been identified in the Department of Immigration's practice of deporting within 48 to 72 hours individuals who are, on preliminary assessment, deemed not to engage Australia's protection obligations – see further: S. Taylor, 'Re-Thinking Australia's Practice of 'Turning-Around' Unauthorised Arrivals: The Case for Good Faith Implementation of Australia's Protection Obligations', *Pacifica Review: Peace, Security and Global Change*, 11, no. 1 (1999), pp. 44-51; Australia. Senate Legal and Constitutional References Committee, *A Sanctuary Under Review*, pp. 110-119; Crock and Saul, *Future Seekers*, pp. 54-57; D. Corlett, *Returning Failed Asylum Seekers From Australia: A Discussion Paper* (2007), pp. 16-18, accessed 7 October 2013, at <<http://www.sisr.net/apo/asylum-corlett.pdf>> ; H. Cooper, 'Enhanced Screenings' Dangerous: Former Official', *ABC News*, 26 June 2013, accessed 16 July 2013, at <<http://www.abc.net.au/news/2013-06-10/asylum-seeker-enhanced-screenings-dangerous-former-official-says/4744628>>.

⁵⁸² Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 9 November 1978*. Applicants were also interviewed by the Australian Security Intelligence Organisation (ASIO) before their case was assessed by DORS. This served not only to investigate the applicant's background, but also to gather information on conditions in countries-of-origin.

⁵⁸³ Goodwin-Gill Collection, DORS Gen, *UNHCR, Review of the Procedure for the Determination of Refugee Status, April 1979*.

⁵⁸⁴ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 27 August 1982*.

‘perceptions and credibility’ of applicants through a face-to-face interview was a serious shortcoming.⁵⁸⁵ This problem was again identified in 1990 in another internal Department of Immigration report, cited in the National Population Council’s *Refugee Review*.⁵⁸⁶ Oral history interviewee Barbara Phi recalled that she found the decentralised nature of the process to be highly problematic when she took on the running of the Committee in 1985:

...initially the state offices used to do the interviews, and we then decided we’d bring it all to Canberra. We would do the interviews, we would check the transcripts, a quality control thing. Because we found that there were errors coming through in transcripts. I checked a couple of them and I had one, I read this chap saying, the transcript said something like, ‘what would you do if you went back home?’ ‘I would visit my friends’, and what he actually said is, ‘I would be killed’.

...it was a transcription problem. And I then said, ‘well look I want this brought in here’... Because that was Cote D’Ivoire, it was a serious thing to send someone back there. So we centralised the process and we sent staff out from Canberra, they did the interviews, they’d go for two or three days, interview people from morning to night, bring the tapes and things back, have them transcribed. We checked, signed and then put to the committee, and decisions [were] taken.⁵⁸⁷

When Phi described this as a ‘transcription problem’, she did not indicate that it was anything more than administrative error. In her interview Phi recalled similar problems that she encountered when she took on the running of DORS; for example, Farsi translators were being sourced from the Iranian embassy in Australia, a practice which

⁵⁸⁵ Avery, ‘Refugee Status Decision-Making’, p. 249; Interview with anonymous public servant ‘C’.

⁵⁸⁶ Australia. National Population Council, *Refugee Review*, pp. 122-123.

⁵⁸⁷ Interview with B. Phi. Problems in Australia’s current RSD application and interview process were identified by the Senate References Committee in 2000, David Manne in 2003, Crock in 2003, the Edmund Rice Centre in 2006 and Michelle Foster and Jason Pobjoy in 2011 (among others) – see further: Australia. Senate Legal and Constitutional References Committee, *A Sanctuary Under Review*, p. 119; D. Manne, ‘Foundering Justice: Stowaways’ Rights to Seek Asylum Are Being Denied’, *Eureka Street*, (March 2003), accessed 7 October 2013, at <<http://www.eurekastreet.com.au/articles/0303manne.html>>; Crock and Saul, *Future Seekers*, pp. 52-62; Crock, ‘The Refugees Convention at 50’, pp. 64-70; Glendenning, et. al. *Deported to Danger II*, pp. 53-56; M. Foster and J. Pobjoy, ‘A Failed Case of Legal Exceptionalism? Refugee Status Determination in Australia’s ‘Excised’ Territory’, *International Journal of Refugee Law*, 23, no. 4 (2011), pp. 592-599; O. Laughland, ‘Asylum seekers are being denied legal advice, refugee service claims’, *The Guardian*, Australian edition, 17 June 2013, accessed 9 September 2013, at <<http://www.guardian.co.uk/world/2013/jun/17/australia-refugees-legal-sri-lanka>>.

Phi says she ensured was quickly stopped.⁵⁸⁸

Phi's recollections relate specifically to the mid-1980s after Goodwin-Gill had left the Committee, but his files record two similar mis-steps, in which interviewing staff are reported as having failed to inform a non-Indochinese applicant of the correct procedure for making a claim.⁵⁸⁹ In April 1979 Goodwin-Gill also reported that UNCHR was not receiving notification of the application or, indeed, the record of the interview, until shortly before the meeting at which the application was to be considered, which transgressed DORS Rules of Procedure, but his end-of-year report for 1982 indicates that this problem had been resolved.⁵⁹⁰ Furthermore, the internal departmental review of DORS that was prepared in mid-1983 noted that the Department did not hold regular briefing sessions for interviewers, and that the interviews did not always reflect 'an organised attempt to cover Convention criteria or subsisting country situation reports'.⁵⁹¹ The review concluded that regardless of the Committee's earnest and thorough consideration, the lack of experience or oversight of interviewing staff put the integrity of each decision at risk.⁵⁹²

2.3 Review

In the early years of DORS the Minister's decision was final and there was no avenue for review. Derek Volker, who was involved in the establishment of DORS under the Fraser government, contextualised this by stating that the Committee was following on from a very different era, in which Immigration officers were never

⁵⁸⁸ Interview with B. Phi.

⁵⁸⁹ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 27 August 1982*; Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 15 April 1983*.

⁵⁹⁰ Goodwin-Gill Collection, DORS Gen, *UNHCR, Review of the Procedure for the Determination of Refugee Status, April 1979*; Goodwin-Gill Collection, AUL: Reports, *UNHCR Sydney Branch Office, Report for 1982 to the United Nations High Commissioner for Refugees*.

⁵⁹¹ Interview with anonymous public servant 'C'.

⁵⁹² *ibid.*

required to justify their decision to an applicant.⁵⁹³ In the first eighteen months of operation DORS functioned so informally that meetings were not minuted or recorded, and members were simply encouraged to take their own notes of proceedings and reasons for decisions.⁵⁹⁴

The original DORS procedure established in 1977 stated that rejected applicants could appeal to the Committee for reconsideration within 10 days, and it is clear from Goodwin-Gill's files that the UNHCR could make representations to the Minister if it disagreed with the DORS' decision.⁵⁹⁵ Applicants had recourse to review under the *Administrative Decisions (Judicial Review) Act 1977* (Cth), yet it appears that these avenues for review were rarely exploited during the Fraser government era.⁵⁹⁶ In 1979 departmental representatives queried whether DORS was subject to the Act, which had recently come into effect, and evidence shows that this question remained unanswered four years later.⁵⁹⁷

By the end of the 1980s however, the increasing judicialisation of refugee policy under the AD(JR) Act had ensured that migration decisions constituted 'the largest single category of applications' to the Federal Court, and these cases were

⁵⁹³ Interview with D. Volker. See also: Crock, 'Refugees in Australia', pp. 3-4; Martin, *Angels and Arrogant Gods*, pp. 75, 92.

⁵⁹⁴ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 22 February 1979*.

⁵⁹⁵ Goodwin-Gill Collection, DORS Gen, UNHCR, *Report on Mission to Australia from 23 November to 6 December 1977*; Goodwin-Gill Collection, DORS Gen, UNHCR, *undated notes on DORS procedure for non-Indochinese applicants*.

⁵⁹⁶ Avery, 'Refugee Status Decision-Making', pp. 247-248; Goodwin-Gill Collection, AUL: Reports, *UNHCR Sydney Branch Office, Report for 1982 to the United Nations High Commissioner for Refugees*; Hawkins, *Critical Years in Immigration*, pp. 190-191; Crock, 'Refugees in Australia', pp. 3-9.

⁵⁹⁷ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 22 February 1979*; Goodwin-Gill Collection, AUL: Reports, *UNHCR Sydney Branch Office, Report for 1980 to the United Nations High Commissioner for Refugees*; Goodwin-Gill Collection, AUL: Reports, *UNHCR Sydney Branch Office, Report for 1982 to the United Nations High Commissioner for Refugees*; Interview with anonymous public servant 'C'; Avery, 'Refugee Status Decision-Making', p. 248.

‘characterised by a rigorous dissection of the decision-making process’.⁵⁹⁸ The Hawke government therefore chose to introduce the *Migration Legislation Amendment Act 1989*, ‘to give refugee determination a sound base in domestic law and to guarantee natural justice and fairness to applicants’.⁵⁹⁹ The changes may also be attributable to the volume of applicants from the People’s Republic of China; several thousand Chinese nationals who had been in Australia at the time of the Tiananmen Square massacre in June 1989 had been invited to stay in a speech by then Prime Minister Bob Hawke.⁶⁰⁰ The subsequent spike in applications for refugee status can be seen in Figure 14 in the next section. Peter Hughes, who worked in the Department for almost three decades, explained why DORS was no longer capable of managing the caseload:

The DORS Committee was a kind of boutique process... a committee process that at that time dealt with about 500 asylum applicants per year. You could have however many people on the DORS Committee... you could have them pour over the application, have a chat about it, debate it... 500 applications a year, that's not many, that's one and a half a week...⁶⁰¹

Both Crock and Viviani have charted how status determination and review procedure changed during the early 1990s, because the Hawke and Keating governments reacted against the increasing rate of judicial involvement in migration decisions.⁶⁰²

2.4 Caseload

In 1990 Martin described RSD procedures in Western states as having been ‘cobbled together’ in the late 1970s and early 1980s, because this was ‘an era that

⁵⁹⁸ Australia. Department of Immigration, Local Government and Ethnic Affairs, *Review '89* (Canberra, 1989), page unknown; Australia. Department of Immigration, Local Government and Ethnic Affairs, *Review '90* (Canberra, 1990), p. 45.

⁵⁹⁹ Australia. Department of Immigration, Local Government and Ethnic Affairs, *Review '90*, p. 45; Department of Immigration and Citizenship, *Submission to the Joint Select Committee on Australia's Immigration Detention Network*, p. 103.

⁶⁰⁰ See further: Crock, ‘Refugees in Australia’, p. 7; Viviani, *The Indochinese in Australia, 1975 to 1995*, pp. 16-25.

⁶⁰¹ Interview with P. Hughes. See also: Goodwin-Gill Collection, AUL: Reports, *UNHCR Sydney Branch Office, Report for 1982 to the United Nations High Commissioner for Refugees*.

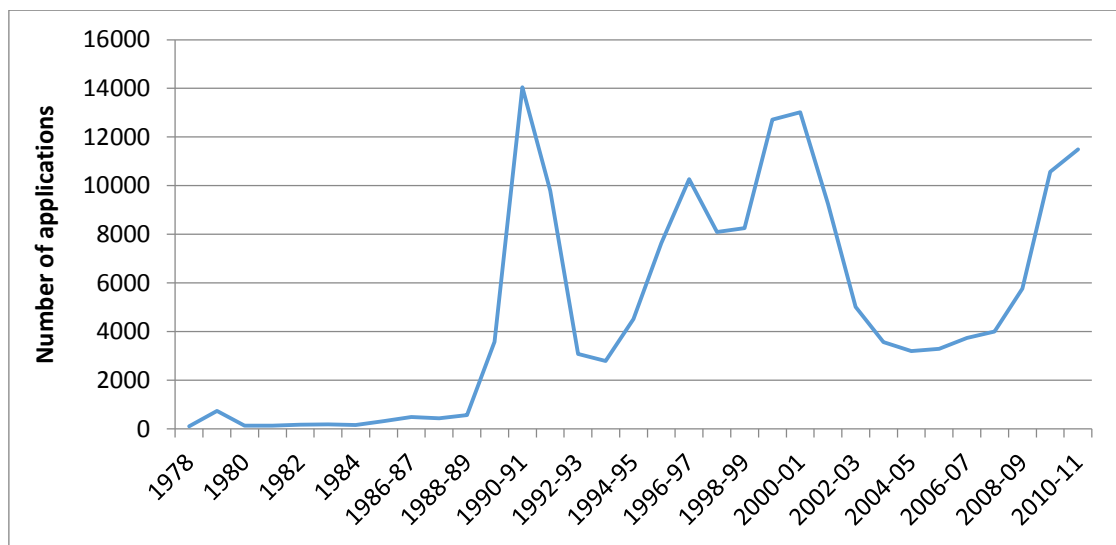
⁶⁰² Crock, ‘Refugees in Australia’, pp. 3-9; Viviani, *The Indochinese in Australia, 1975 to 1995*, pp. 22-24.

permitted leisurely consideration of modest caseloads'.⁶⁰³ Figure 14 below shows that Australia had a very small caseload between 1978 and 1983 in comparison to the volume of applications that were received in later years. Indeed, while Australia's caseload in the early 1980s did not exceed 200 per year, UNHCR publications show that during the same time period other countries were managing a much larger volume of applications: the United Kingdom received several thousand claims for refugee status per year and the United States received tens of thousands of claims each year.⁶⁰⁴

Figure 14 represents applications lodged by person who arrived in Australia by boat and other means:

⁶⁰³ D. A. Martin, 'Reforming Asylum Adjudication: On Navigating the Coast of Bohemia', *University of Pennsylvania Law Review*, 138, no. 5 (1990), p. 1252. See also: Crock, 'A Sanctuary Under Review', pp. 250-251. In 1977 the Executive Committee of the High Commissioner's Programme (ExCOM) noted that only a limited number of States parties to the Convention and Protocol had established formal RSD procedures. It called for States to 'establish such procedures and also give favourable consideration to UNHCR participation'. See further: Executive Committee of the High Commissioner's Programme, 28th Session, Conclusion 8, 1977; See also: Goodwin-Gill and McAdam, *The Refugee in International Law*, pp. 529-530.

⁶⁰⁴ United Nations High Commissioner for Refugees, *Asylum Applications lodged in Industrialised Countries: 1980 – 1999*, pp. 1, 17.

Figure 14: Applications for refugee status in Australia, October 1978 to June 2011

Source: Goodwin-Gill Collection, DORS Gen and AUL: Reports; National Population Council, *Refugee Review* (Canberra, 1990), p. 124; UNHCR *Statistical Yearbook 2003*; Department of Immigration and Citizenship, *Asylum Trends Australia: annual publication 2010-11* (Canberra, 2011), p. 2. Note that these figures are compiled from both calendar and financial year data. The figures for 1978 to 1982 are based on Goodwin-Gill's files, and as such may differ slightly from figures found elsewhere for that period. For example, see further: Australia. Senate Standing Committee on Foreign Affairs and Defence, *Indochinese Refugee Resettlement: Australia's Involvement*, p. 1212.

For the period before 1981, yearly figures are only available in Goodwin-Gill's files, and the total application figures used in Figure 14 and 15 in this chapter are taken from Goodwin-Gill's end of year UNHCR reports. Other graphs in this chapter are based on the total number of decisions represented in Goodwin-Gill's notes of DORS meetings.

It should be noted that in the primary sources there is a distinction between refugee claims, which were managed by the Department of Immigration, and political asylum claims, which were managed by Foreign Affairs. The internal departmental review of mid 1983 described political asylum as 'a protective mechanism for political defectors'.⁶⁰⁵ Goodwin-Gill wrote in 1979 that Foreign Affairs dealt with political asylum claims, and he recommended that these be passed on to DORS for refugee status determination if they were unsuccessful, because 'no intrinsic difference is evident

⁶⁰⁵ Interview with anonymous public servant 'C'.

between those who may apply for asylum and those who may apply for refugee status'.⁶⁰⁶ There are no figures available for refugee claims before DORS was established (and after Australia's ratification of the 1967 Protocol) and it is not clear whether the Australian government had any informal procedure in place to assess applications for refugee status. For political asylum claims before, and indeed after DORS was established, scholars have struggled to find conclusive figures simply because they were not collected. In 1983 the Department found that no records of asylum claims or outcomes had ever been kept.⁶⁰⁷

Nicholls has expressed the belief that only three cases of political asylum came before Australian authorities prior to the DORS process being established, but Neumann has offered evidence that far more asylum seekers were assessed in the post-Second World War era.⁶⁰⁸ Goodwin-Gill's files hint at the size and composition of the pre-1978 caseload, although the story remains inconclusive. A UNHCR report from late 1977 notes that when DORS was founded it was anticipated that it would assess around 300 cases per year.⁶⁰⁹ In February 1979, the files record a Foreign Affairs representative on DORS stating that their department was receiving a political asylum claim from one deserting seaman once a fortnight, and 'where punishment for desertion was the only reason advanced for a claim to asylum, such cases were rejected'.⁶¹⁰ There is no further evidence within the files to explain the difference between the departments' caseloads.

Goodwin-Gill's files show that at first the Committee dealt primarily with Indochinese, but as this caseload decreased more non-Indochinese claims were heard.

⁶⁰⁶ Goodwin-Gill Collection, DORS Gen, *UNHCR, Review of the Procedure for the Determination of Refugee Status, April 1979*.

⁶⁰⁷ Interview with anonymous public servant 'C'.

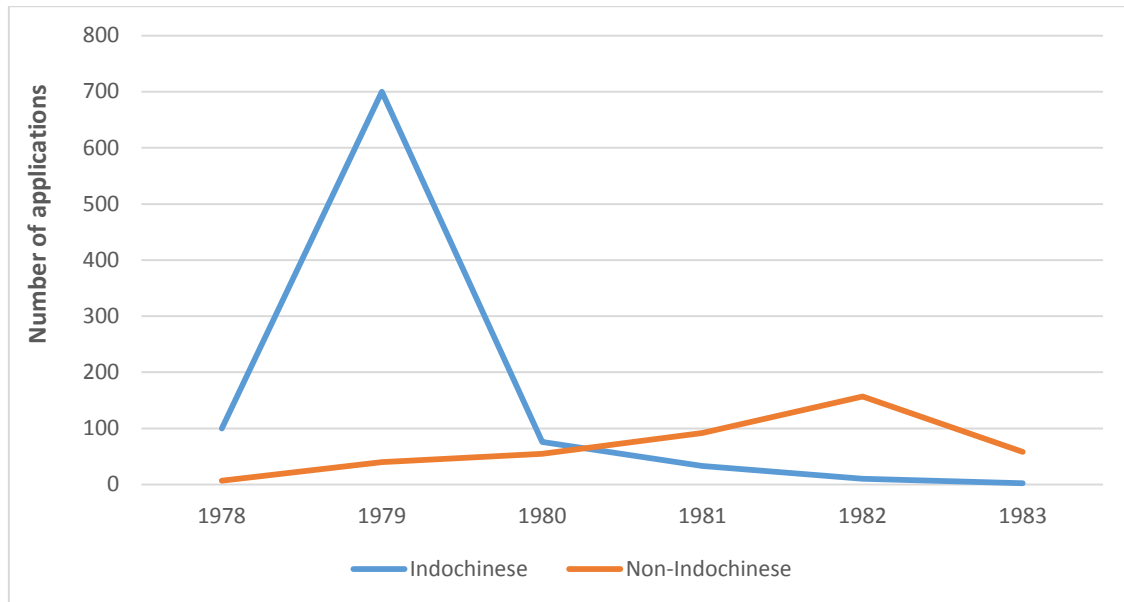
⁶⁰⁸ G. Nicholls, 'Unsettling Admissions: Asylum Seekers in Australia', *Journal of Refugee Studies*, 11, no. 1 (1998), p. 72; Neumann, *Seeking Asylum in Australia*, p. 8.

⁶⁰⁹ Goodwin-Gill Collection, DORS Gen, *UNHCR Report on Mission to Australia from 23 November to 6 December 1977*.

⁶¹⁰ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 22 February 1979*.

This is shown more closely in Figure 15 below:

Figure 15: Indochinese and non-Indochinese applicants for refugee status assessed by DORS, October 1978 to April 1983

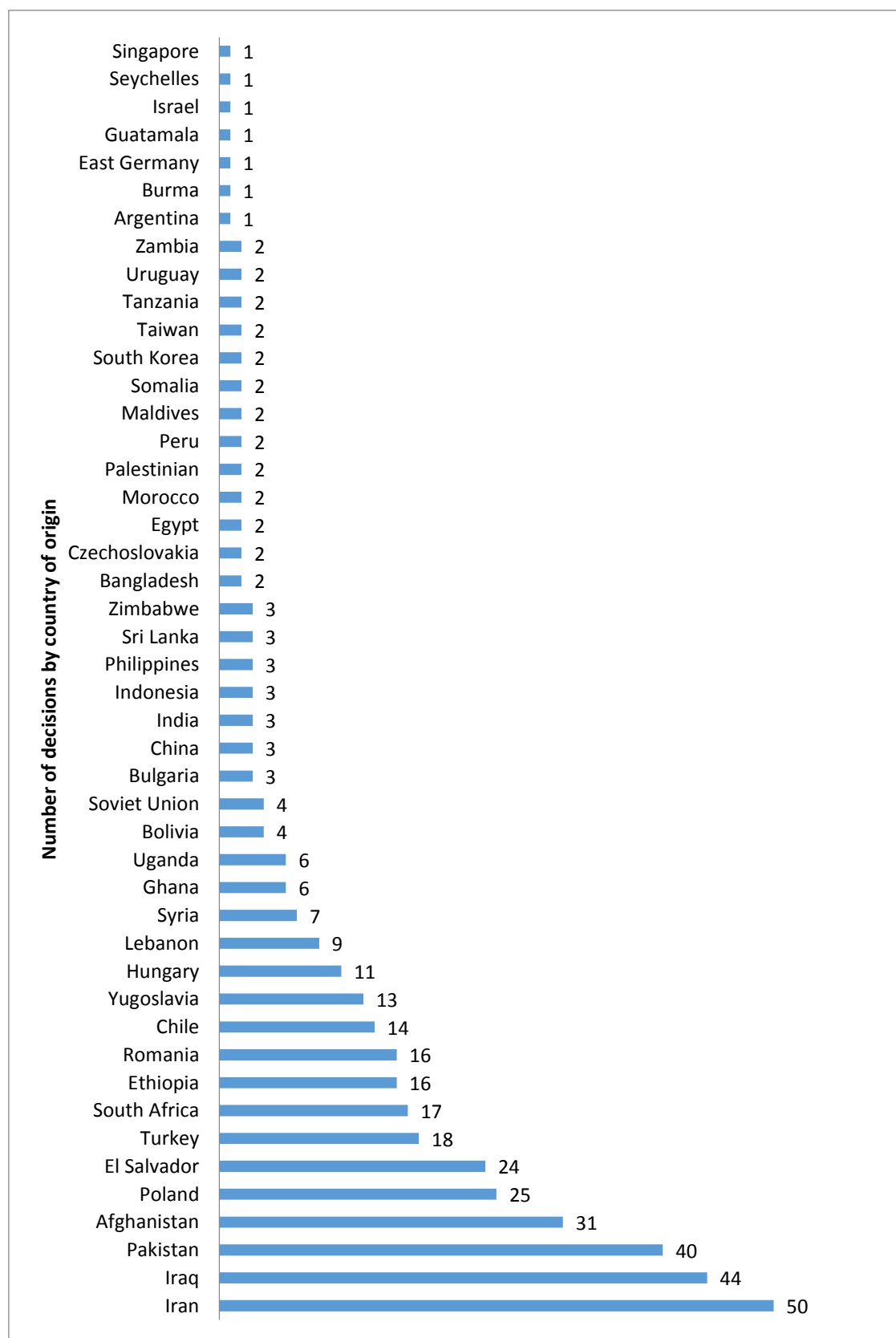


Source: Goodwin-Gill Collection, DORS Gen and AUL: Reports; National Population Council, *Refugee Review*, p. 124.

The peak caseload in 1979 represents some of the 1432 Indochinese who arrived by boat in the financial year 1978-79, along with 40 non-Indochinese applicants. The gradual peak in the non-Indochinese caseload in 1982 may indicate that more non-Indochinese cases were brought into the RSD system once it became established or it may have taken some time for them to proceed through the application and interview stage, and to finally appear before DORS.

The non-Indochinese caseload recorded in Goodwin-Gill's files consisted of applicants from 46 countries. Of these, 31 countries were represented by less than ten applicants each, which was 22 per cent of the caseload. The remainder fielded between 11 and 50 applicants, at 77.9 per cent of the caseload. The diverse non-Indochinese caseload is represented in Figure 16 below:

Figure 16: DORS' decisions on non-Indochinese applicants, October 1978 to April 1983, arranged by country of origin



Source: Goodwin-Gill Collection, DORS Minutes.

2.5 Information on conditions in countries-of-origin

The caseload represented in Figure 16 meant that DORS members had to learn about political conditions in a wide range of source countries, as well as the differing experiences of myriad religious and social groups within these countries. Evidence suggests that the ability of DORS members to achieve this knowledge may have been influenced by two factors. Firstly, Avery reported in 1983 that DORS members had ‘limited expertise’ because they served ‘only in a part-time capacity while performing other duties within their ministries’, although oral history interviewees did not recall experiencing problems of this nature.⁶¹¹ Secondly, however, DORS members received briefing material on conditions within countries-of-origin from the Department of Foreign Affairs, and archival and oral history sources noted that the objectivity and quality of the information was occasionally brought into question.⁶¹²

Foreign Affairs consistently asserted that applications for refugee status were of ‘paramount foreign policy significance’.⁶¹³ The Department of Immigration understood that Foreign Affairs’ priority was ‘not to take refugees where it would offend a source

⁶¹¹ Avery, ‘Refugee Status Decision-Making’, p. 249. Avery wrote that staff received ‘little training’, although Goodwin-Gill did note that the Department of Immigration held national training workshops for staff involved with the DORS process in 1980 and UNHCR was involved with these – see also: Goodwin-Gill Collection, AUL: Reports, *UNHCR Sydney Branch Office, Report for 1980 to the United Nations High Commissioner for Refugees*. There is no information on staffing levels in Goodwin-Gill’s files, but interviewee Barbara Phi stated that when she was in charge of DORS in the mid-1980s she initially had a staff of between 5 and 8 persons, and this increased to 13. It would therefore appear that DORS resources increased significantly as applications increased in the late 1980s. In his 1994 study of RSD procedure in Australia J. L. Fonteyne wrote that staff totalled about 370, half of which were case officers who dealt with initial assessments and interviews. Fonteyne wrote that this was ‘a significant down-scaling’ of staff from ‘a few years ago’ (although he does not give dates) when staffing levels were at 450 persons including around 300 case officers. Fonteyne attributed this decrease to, in part, the transfer of responsibilities from the in-house Refugee Status Review Committee (established in 1990) to the external Refugee Review Tribunal in 1993. See further: J. L. Fonteyne, ‘Refugee Determination in Australia: An Overview’, *International Journal of Refugee Law*, 6, no. 2 (1994), p. 254 f5. See also: Australia. Department of Immigration, Local Government and Ethnic Affairs, *Review ‘91* (Canberra, 1991), p. 68; Hamlin, ‘International Law and Administrative Insulation’, p. 954.

⁶¹² Interview with anonymous public servant ‘C’; Goodwin-Gill Collection, AUL: Reports, *UNHCR Sydney Branch Office, Report for 1982 to the United Nations High Commissioner for Refugees*.

⁶¹³ National Archives of Australia, A446 1982/95192 Part 2, Refugee Branch – Relations with Foreign Affairs.

country'.⁶¹⁴ Eyles is one of several interviewees who recalled that 'DFA's everyday concern was maintaining effective working relations with other countries and the very act of declaring someone a refugee ran the risk of offending the country of origin'.⁶¹⁵ Evidence from Goodwin-Gill's files indicates that this was an evolving problem. In 1981 he reported that 'a greater amount of generally objective information' was supplied by Foreign Affairs, but the following year he wrote that 'information on conditions in countries of origin appears increasingly affected by a degree of bias or subjectivity'.⁶¹⁶

Barbara Phi, Trevor Griffiths and other former DORS members recalled in their oral history interviews that the Foreign Affairs representative was demonstrably interested in the diplomatic implications of particular cases.⁶¹⁷ Phi stated that when she was given responsibility for DORS, senior staff in Immigration instructed her to ensure that the process was 'not to be influenced by extraneous factors like bilateral issues'.⁶¹⁸ Phi distinctly recalled that when Foreign Affairs was asked for further information about the claims of Baha'is fleeing Iran in the mid-1980s, a particular staff member who was in a position of influence within Foreign Affairs routinely dismissed the idea that this minority was the subject of state persecution.⁶¹⁹ When interviewed for this research, that person (who wished to be quoted anonymously) admitted that in hindsight, they had been wrong about the Baha'is.⁶²⁰ Phi attributed this incident to concerns about Australian trade with Iran, and research conducted by the Commonwealth Parliamentary Library shows that trade relations with Tehran were a particular focus for the Hawke

⁶¹⁴ *ibid.*

⁶¹⁵ Interview with P. Eyles; Interview with B. Phi; Interview with T. Griffiths.

⁶¹⁶ Goodwin-Gill Collection, AUL: Reports, *UNHCR Sydney Branch Office, Report for 1981 to the United Nations High Commissioner for Refugees*; Goodwin-Gill Collection, AUL: Reports, *UNHCR Sydney Branch Office, Report for 1982 to the United Nations High Commissioner for Refugees*.

⁶¹⁷ Interview with B. Phi; Interview with T. Griffiths; Interview with anonymous public servant 'A'.

⁶¹⁸ Interview with B. Phi.

⁶¹⁹ *ibid.*

⁶²⁰ Interview with anonymous public servant 'B', 9 July 2011.

government from 1984 onward.⁶²¹

Obtaining information about the varied caseload through Australian posts overseas was time consuming. Tony Greville, who was the PM&C representative on DORS on occasion between 1980 and 1984, recalled the difficulties that were encountered in investigating an applicant's background through sources in the home country:

...where someone may have taken a view that we reject [the applicant], we'd say well, 'What's the evidence? Can we get new information?' And one of the things that did take a long time was actually getting that information and then, it's not the only work that the Australian embassies have to do. It was in a sense not their highest priority.

It was probably more important to get it right, but again it was a matter of they couldn't just go and ring up their counterpart in their home place and say 'look, what's the answer?' Because of the danger of putting people in danger, potentially putting them in danger and those sorts of things.⁶²²

One of the most fruitful archival records examined for this thesis, *A446 1982/95192 Part 2, Refugee Branch relations with Foreign Affairs*, contains a letter from Trevor Griffiths to his superiors in Immigration in 1981 in which he expresses frustration at the quality of information supplied by Foreign Affairs to the Refugee Branch:

When we were preparing country background papers as an aid to case-by-case determination, Foreign Affairs insisted that they should have the primary responsibility for drafting papers on the human rights situation in refugee source countries and [they] presented material [to us] dated 1979!⁶²³

The evidence from oral history interviews and Goodwin-Gill's files indicates that DORS members were increasingly referring to background information from external

⁶²¹ N. Markovic, *It's Complicated: a timeline of Australia-Iran relations in historical perspective*, Commonwealth Parliamentary Library, Canberra, 2013, accessed 13 September 2013, at <http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2012-2013/Aust-IranRelations#_Toc355852451>.

⁶²² Interview with T. Greville.

⁶²³ National Archives of Australia, A446 1982/95192 Part 2.

organisations such as Amnesty International.⁶²⁴ Harris van Beek, the former National Director of Amnesty International Australia from 1982 to 1995, was interviewed for this thesis and he recalled liaising with the Department of Immigration, including the DORS Committee, and stated that his organisation's objective was 'to influence Australian government policy around human rights issues'.⁶²⁵

Trevor Griffiths and Barbara Phi both stated that staff within the Refugee Branch developed the capacity to undertake some of its own research, ensuring that staff were less reliant on Foreign Affairs' briefings.⁶²⁶ Griffiths was speaking about the period from 1981 to 1985, when he was Head of the Refugee Branch and therefore the titular Chair of DORS, while Phi was speaking about 1985 and 1986, when she managed DORS. The need for RSD decision-makers to have access to a solid collection of quality, objective and up-to-date background material is widely appreciated in RSD literature, and further detail on the nature of briefing material provided to DORS members will feature in the following section.⁶²⁷

3. Analysis of DORS deliberations and decisions

An original dataset has been created based on Goodwin-Gill's records of 409 decisions on non-Indochinese cases taken at 92 DORS meetings between October 1978 and April 1983. It records the following values:

1. Country of origin

⁶²⁴ Interview with H. Van Beek, 12 January 2011, Sydney, Australia; Interview with B. Phi; Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 13 December 1978*; Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 16 January 1980*; Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 3 November 1980*; Goodwin-Gill Collection, AUL: Reports, *UNHCR Sydney Branch Office, Report for 1982 to the United Nations High Commissioner for Refugees*.

⁶²⁵ Interview with H. Van Beek.

⁶²⁶ Interview with B. Phi; Interview with T. Griffiths.

⁶²⁷ See further: S. H. Legomsky, 'Learning to Live with Unequal Justice: Asylum and the Limits to Consistency', *Stanford Law Review*, 60 (2007), pp. 438-439; Goodwin-Gill and McAdam, *The Refugee in International Law*, pp. 545-547.

2. Region
3. Gender (stated on 258 occasions; 201 men, 57 women)
4. Ethnicity, minority or religion (stated on 78 occasions)
5. Whether the individual's claim is being reconsidered (stated on 31 occasions)
6. The outcome (Approved; Rejected; Compassionate/Humanitarian status; Postponed; Inadmissible)
7. The opinions expressed by each departmental representative, the chair and the UNHCR (when recorded): these include Positive; Doubtful; Negative; Actively Opposed; Neutral; Compassionate/Humanitarian status
8. Whether information provided by the Department of Foreign Affairs was used in the discussion
9. Whether information provided by the UNHCR was used in the discussion
10. Whether the vote was unanimous (stated on 165 occasions)
11. The vote (stated on 49 occasions)
12. The reason for the decision

Unfortunately it was not possible to record values for 'Age' or 'Occupation' of the applicants, as these were not listed with any detail or frequency. 'Gender' was recorded where possible, showing that men constituted the vast majority of applicants, but it will not be analysed in this chapter because cross-tabulation between gender and the RSD outcome or other values did not reveal anything significant.

It should be noted that these data are based on 409 *decisions*, not 409 applicants. This is because applicants' cases are often not resolved within the date range of Goodwin-Gill's files, and a total of 31 applicants are listed as being reconsidered.

To reiterate, these data will be combined with oral history and archival records to determine the following: whether there were biases in the voting patterns of DORS members or in the outcomes for applicants from particular national groups; whether

these were related to the briefing material DORS members had received; and whether DORS deliberations were influenced by broader deterrence measures or political considerations. This section will offer a broad overview of DORS members' voting patterns for the non-Indochinese caseload, and then analyse these in relation to the countries-of-origin that were subject to the largest number of DORS decisions. As shown in Figure 16, these are Iran (50 decisions), Iraq (44), Pakistan (40), Afghanistan (31), Poland (25) and El Salvador (24).⁶²⁸ To address the third question about the nexus between RSD and deterrence, this section will discuss three particular instances in which the Committee sought to avoid granting refugee status for political reasons.

3.1 Voting patterns

The charts shown in this section are based on the explicit opinions and/or votes of departmental representatives that are recorded in Goodwin-Gill's files. Opinions are used as a de facto indicator of how the representatives voted if their vote is not explicitly listed in the record.

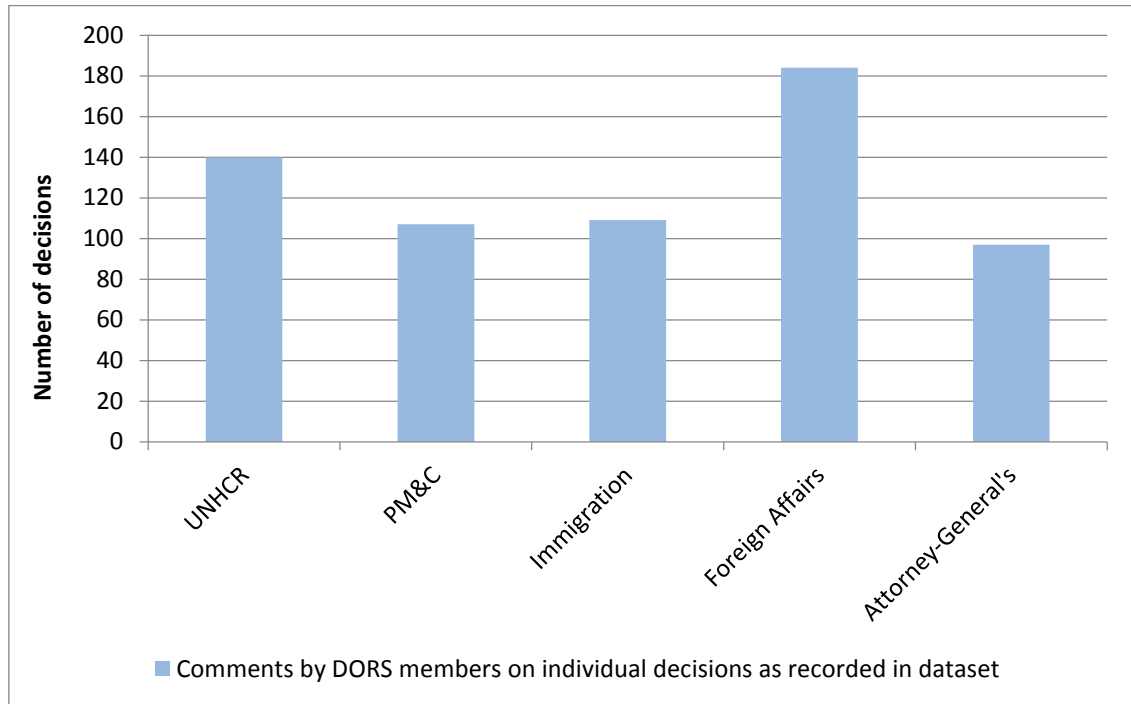
There are many instances in which Goodwin-Gill did not note the opinions of individual DORS members. The representatives from PM&C, Attorney-General's and Immigration are listed around a quarter of the time. The representative from Foreign Affairs is listed almost half the time, which perhaps reflects the fact that this department had expertise and background information to share with the Committee. Whether or not Goodwin-Gill listed his fellow DORS members' opinions on each case may have depended on factors such as the intensity of the debate, the nature of the case itself, and the workload of each meeting. He nonetheless recorded some detail on 382 of the 409 decisions, or 93.3 per cent.

⁶²⁸ Iranians, Iraqis and Afghans have been among the highest number of applicants for refugee status in Australia in recent years – see further: Australia. Department of Immigration and Citizenship, *Annual Report 2011-12* (Canberra, 2012), p. 133.

General voting patterns of each representative

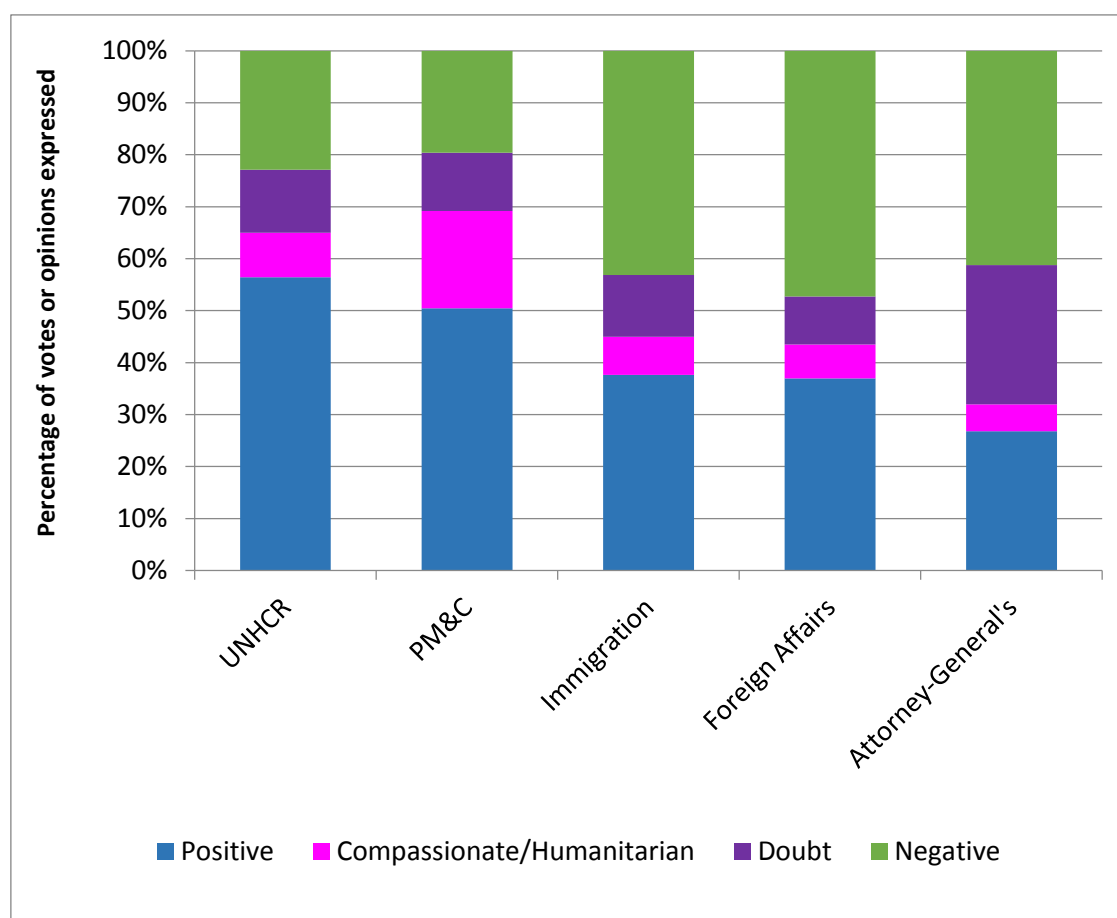
The following two figures indicate the frequency with which the different representatives are recorded in Goodwin-Gill's files as having contributed to discussion (Figure 17) and the positions that they took (Figure 18).

Figure 17: Participation rates of departmental representatives and UNHCR, as recorded in Goodwin-Gill's, October 1978 to April 1983



Source: As for Figure 16

Figure 18: Distribution of voting patterns of departmental representatives and UNHCR, October 1978 to April 1983



Source: As for Figure 16

The UNHCR representative's opinion is included in Figure 18 as an indication of its possible influence on the opinion of other DORS members, and the fact that UNHCR can be considered insusceptible to the political, administrative or legal influences on the departmental representatives. It was recorded on 140 occasions (34.2 per cent of the time). Although UNHCR did not have a vote on DORS, it was involved with the Committee in order to provide advice on international law and background information on countries-of-origin, as well as to oversee Australia's RSD procedure.

The qualitative evidence in Goodwin-Gill's files suggests that the PM&C representative on DORS was interested in the humanitarian perspective on each case and rarely expressed a negative opinion, and Figure 18 substantiates this. The graph

shows PM&C's opinion when recorded for 107 decisions (26.1 per cent of the time). The internal departmental review of mid-1983 described the PM&C role on DORS as 'a legitimate overview function in terms of government policy', and noted that the PM&C representative maintained the right to question the political or legal advice provided to the Committee.⁶²⁹ The following section of this chapter will show how this occurred on specific occasions.

The Department of Immigration vote shown in Figure 18 indicates that this representative opted to reject applicants on six more occasions than it chose to approve. If an opinion in favour of compassionate/humanitarian leave to remain ('Comp/Hum') is included with positive opinions, then Immigration voted to allow an applicant to stay in Australia slightly more often than they voted to reject them. There were 109 instances in which Immigration is recorded as expressing an opinion (26.6 per cent of the time).

It must be noted that the Immigration representative discussed here was not the Chair of the Committee, who was also from Immigration. The Chair's opinion was recorded by Goodwin-Gill on only 30 occasions (7.33 per cent of the time), and this has been listed in the dataset separately and has not been included in Figures 17 and 18, because the DORS Chair did not cast a vote unless it was required to break a tie.

There are 184 occasions in which Foreign Affairs are recorded as expressing an opinion on a case (44.9 per cent of the time). It has already been noted that Foreign Affairs representatives were concerned about the possible consequences for Australia's bi-lateral relations with countries-of-origin. It does not mean, however, that the Foreign Affairs representative on DORS refrained from voting in favour of non-Indochinese applicants. If an opinion in favour of compassionate/humanitarian leave to remain is

⁶²⁹ Interview with anonymous public servant 'C'.

included along with a vote for approval of refugee status, then Figure 18 shows that the Foreign Affairs representative voted to allow an applicant to stay almost as often as they voted to reject them.

It was noted in Chapter Three that the Attorney-General's representative took a strict approach to each case. Indeed, Goodwin-Gill wrote that this seemed at times to be an 'overly legalistic approach, coupled with over-insistence on the applicant satisfying an unobtainable standard of proof'.⁶³⁰ Figure 18 shows that on the 97 occasions when the Attorney-General's representative is recorded expressing an opinion (23.1 per cent of the time), they were less positive in their assessments than Foreign Affairs, but they rejected fewer applicants. It is interesting to note that oral history interviewees did not emphasise the influence or role of the Attorney-General's representative in their recollections of DORS deliberations or inter-departmental dynamics. Insights must be drawn from the Department of Immigration's internal DORS review of 1983, which stated that the Attorney-General's representative was a senior solicitor from the Human Rights Branch of that department, and they were interested in procedural fairness that was mindful 'of the individual and the public interest'.⁶³¹ The 'public interest' was defined as the maintenance of the rule of law without 'administrative short-cuts' and with 'observance of basic societal values' such as human rights.⁶³² The review concluded by stating that the Attorney-General's representative tended to contribute to DORS meetings by commenting on particular issues, rather than advocating a course of action.⁶³³ Figure 18 certainly indicates that the Attorney-General's representative was more often undecided as to the merits of a case, rather than strongly in favour of

⁶³⁰ Goodwin-Gill Collection, DORS Gen, *UNHCR Interoffice Memorandum from Guy S. Goodwin-Gill to Hugo Idoyaga, 3 July 1980*.

⁶³¹ Interview with anonymous public servant 'C'.

⁶³² *ibid.*

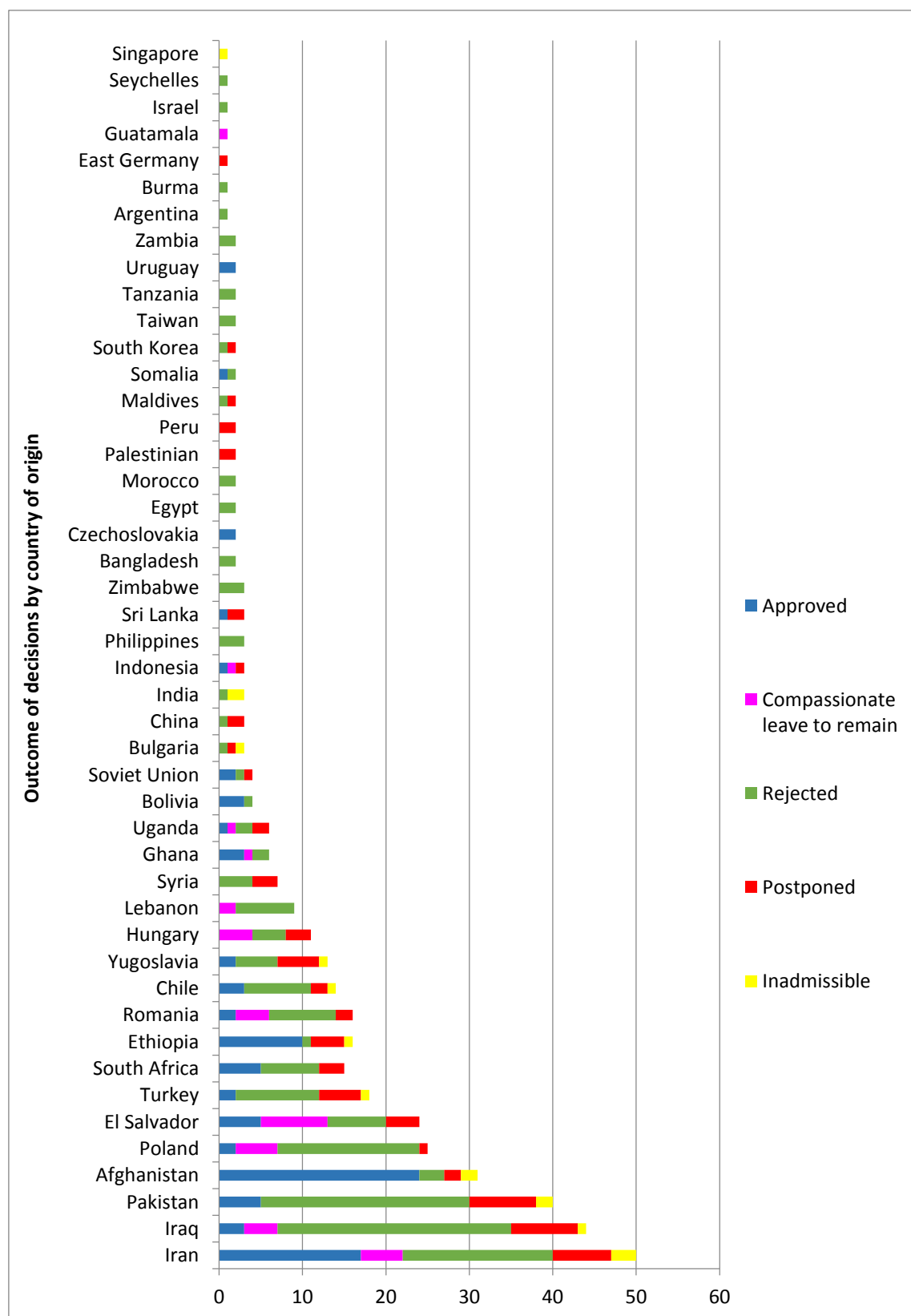
⁶³³ *ibid.*

approval or rejection.

Votes by countries of origin

Figure 19 demonstrates how DORS decisions affected applicants from all 46 countries, listing the decisions for approval, compassionate/humanitarian leave to remain, rejection, postponement or inadmissibility. It shows that the fourth largest national group, Afghanistan, had an extremely high recognition rate in comparison with other applicants. It also shows that compassion was shown to certain groups – most notably from El Salvador – but that for most, rejection represented the norm.

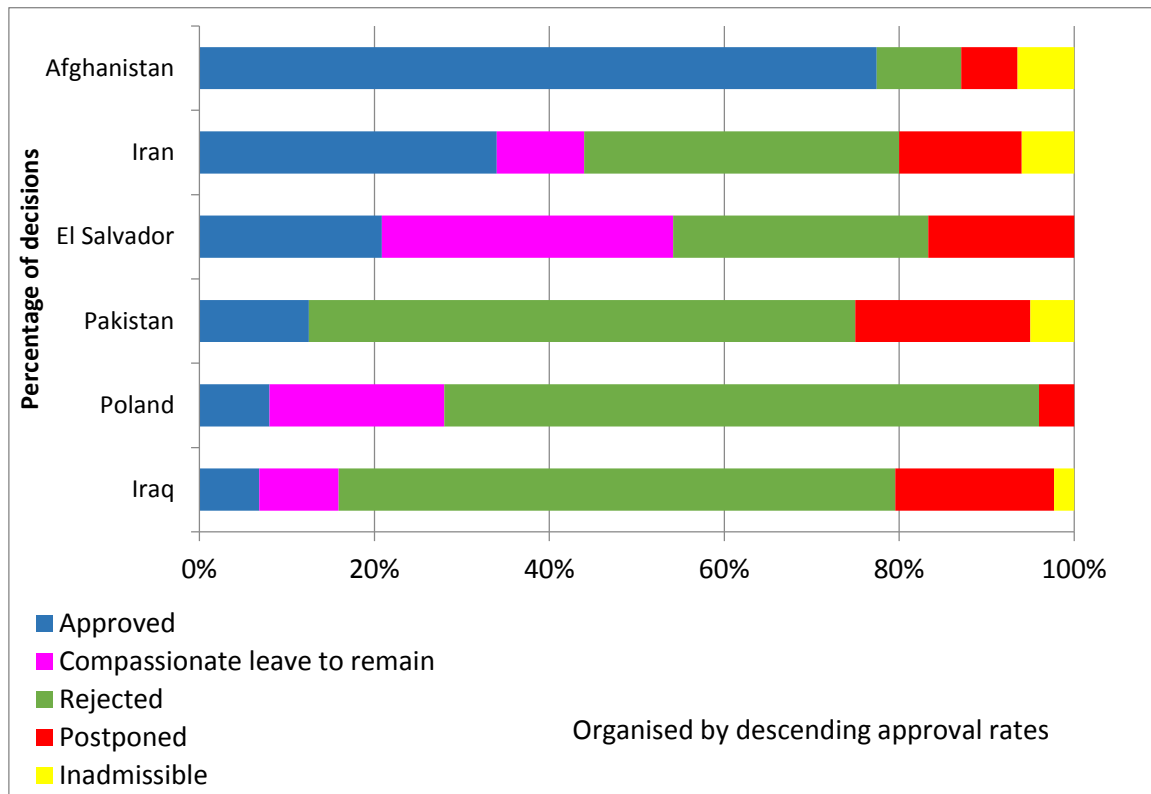
Figure 19: Outcome of decisions on DORS' non-Indochinese caseload, arranged by country of origin, October 1978 to April 1983



Source: As for Figure 16.

This section will discuss the outcomes for applicants from the six largest national groups in order of their approval rates: Afghanistan, Iran, El Salvador, Pakistan, Poland and Iraq. It will demonstrate the influence of Foreign Affairs briefing material in DORS deliberations, and that the conditions in some of these countries were hotly debated by DORS members.

Figure 20: Outcome of DORS decisions for applicants from the six largest national groups, October 1978 to April 1983



Source: As for Figure 16

Afghan applicants

In the aftermath of the 1978 Sawr revolution in Afghanistan, and in the midst of the Soviet invasion of that country, the Afghan applicants who came before DORS were overwhelmingly fleeing persecution on the grounds of political opinion or social group. In the 27 instances in which Goodwin-Gill has recorded a reason for the applicant's claim, all but two are related to political activities, connection to the old regime or a western education. The approval rate for Afghan applicants was 77 per cent, the highest

of all non-Indochinese applicants. Only three cases were rejected, and on one of these occasions the DORS Chairman stated that the case could be reviewed.

Foreign Affairs' view on conditions in Afghanistan evolved with the events in that country. At first, the assessment was cynical. On 9 May 1979 the Foreign Affairs representative dismissed a case for being 'a typical Afghani try-on':

He said there were inconsistencies in the application... The latest information indicated that the present regime was in control of the situation, the country had settled down and the only opposition now was from Moslem extremists.⁶³⁴

Goodwin-Gill and the PM&C representative argued against this view, while Immigration and Attorney-General's had mixed opinions. The Committee voted to reject the applicant, leading to one of only two occasions in which Goodwin-Gill is recorded as stating that UNHCR would take the case up with the Minister:

I stated that I was very surprised by the committee's decision and that UNHCR must therefore reserve its position on both the question of refugee status and the matter of asylum on humanitarian grounds. I anticipated that the case would be the subject of further proceedings.⁶³⁵

Two months later Goodwin-Gill reported to the UNHCR Branch Office that the appeal had been formally submitted, but 'it was the first of its kind' and 'the appropriate procedure remains to be clarified'.⁶³⁶

By January 1980, after the Soviet invasion of Afghanistan, the Department of Foreign Affairs had changed its position on conditions in that country. It advised DORS to defer Afghan cases indefinitely because it was 'not possible at this stage to make any firm assessment of the situation in their country of origin and of their claims to have a

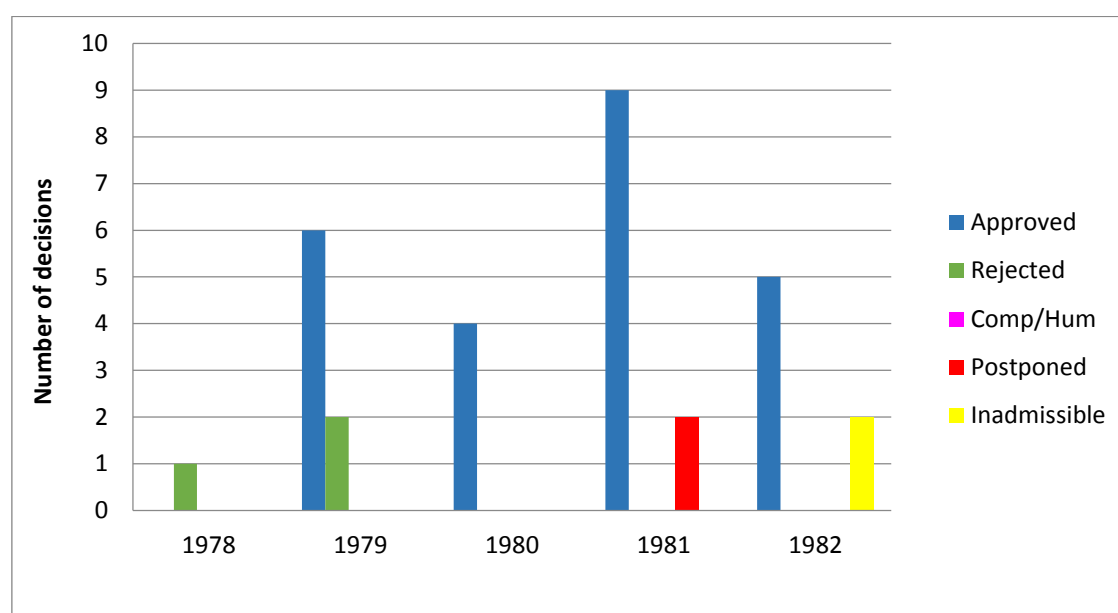
⁶³⁴ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 9 May 1979*.

⁶³⁵ *ibid.*

⁶³⁶ Goodwin-Gill Collection, AUL: Reports, *UNHCR Branch Office Sydney, Report for July 1979*.

well-founded fear of persecution’.⁶³⁷ In February three Afghan cases came before DORS and were approved, although Goodwin-Gill’s notes do not contain any details about the applicants’ claims. In August that year an Afghan case came before DORS, and UNHCR told the Committee that it had concerns about conditions in Afghanistan; as a result, while there were some doubts about the credibility of the applicant, his political activities were enough to render his claim for refugee status plausible. The Committee voted unanimously to approve the applicant’s case, even though ‘members had some individual doubts’.⁶³⁸ In Goodwin-Gill’s report for that year he wrote that the government ‘began to focus on the plight of Afghan refugees in Pakistan’, and Figure 21 below shows how this understanding of conditions in Afghanistan may have impacted on RSD outcomes.⁶³⁹

Figure 21: Decision-making on Afghan applicants for refugee status, October 1978 to April 1983 (31 decisions)



Source: As for Figure 16

⁶³⁷ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 16 January 1980*; Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 24 January 1980*.

⁶³⁸ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 27 August 1980*.

⁶³⁹ Goodwin-Gill Collection, AUL: Reports, *UNHCR Sydney Branch Office, Report for 1980 to the United Nations High Commissioner for Refugees*.

Iranian applicants

Iranians were the largest national group that came before DORS during the period under examination. This was a product of the Iranian revolution in early 1979, and applicants were usually fleeing religious persecution under the newly installed theocratic government, or claiming some form of political or social connection with the old regime. The approval rate for Iranian applicants was relatively high, at 34 per cent:

The cross-tabulation of DORS members' opinions with the 50 decisions does not tell a significant story about respective departmental positions on Iranian applicants. Members are noted as expressing an opinion on remarkably few occasions (Foreign Affairs, 20; Attorney-General's 14; PM&C 17; and, Immigration 14), and their opinions do not correspond to one another in any significant way.

An analysis of religious minorities within the Iranian caseload produces interesting results. The 17 decisions to approve were largely related to one minority group: applicants of the Baha'i faith. Of the 16 applicants who belonged to this minority, 11 were approved (68.7 per cent). The Baha'is were recognised by DORS members as being subject to persecution in Iran and out of these 11 votes to approve, 10 are recorded by Goodwin-Gill as being unanimous.

The evidence suggests that sympathy for the plight of the Baha'i was not extended to other religious groups in Iran. Representatives from Foreign Affairs and Attorney-General's believed there was no evidence of a consistent discriminatory policy against minorities except for the Baha'i.⁶⁴⁰ This had a strong impact on the assessment of other applicants from Iran who claimed persecution on the grounds of religion. DORS made 14 decisions on applicants from Iran who identified as Christian (they are

⁶⁴⁰ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 14 November 1979*.

described in Goodwin-Gill's notes as Christians, Assyrian Christians and Armenian Christians). Out of these 14 decisions, none were for approval of refugee status. Four of these decisions were to grant the applicant compassionate/humanitarian leave to remain, and one was to postpone the case. Of the nine decisions to reject, eight involved the use of Foreign Affairs' background material on the experience of Christians in Iran. Goodwin-Gill's files record several occasions where Foreign Affairs representatives refute the idea that Christians in Iran were persecuted. Shortly after the revolution, in March 1979, the Committee considered two Iranian Christians. Goodwin-Gill recorded the following:

The Foreign Affairs representatives stated that in their view there was no evidence that Christians or any other minorities were currently being discriminated against in Iran. [UNHCR Headquarters advises] that this was a time for caution, and that the situation of all minorities in Iran gave cause for concern.⁶⁴¹

Goodwin-Gill suggested deferral or temporary stay, but to no avail:

...case rejected and the committee refused to make any recommendation for deferral on humanitarian grounds. I advised the committee that I felt it likely that UNHCR would make representations directly to the Minister.⁶⁴²

It was rare for Goodwin-Gill to assert that UNHCR would take the case up with the Minister. His files reveal that other departmental representatives became convinced over the next twelve months that Christians from Iran did not have valid refugee claims. On 15 August 1979 Goodwin-Gill wrote of the PM&C rep:

[He] said that there was no evidence that Christians were being persecuted in Iran (he evidently based himself on advice recently received from the Australian mission in Tehran).⁶⁴³

In February 1980 another case was explicitly recorded as having been rejected 'on

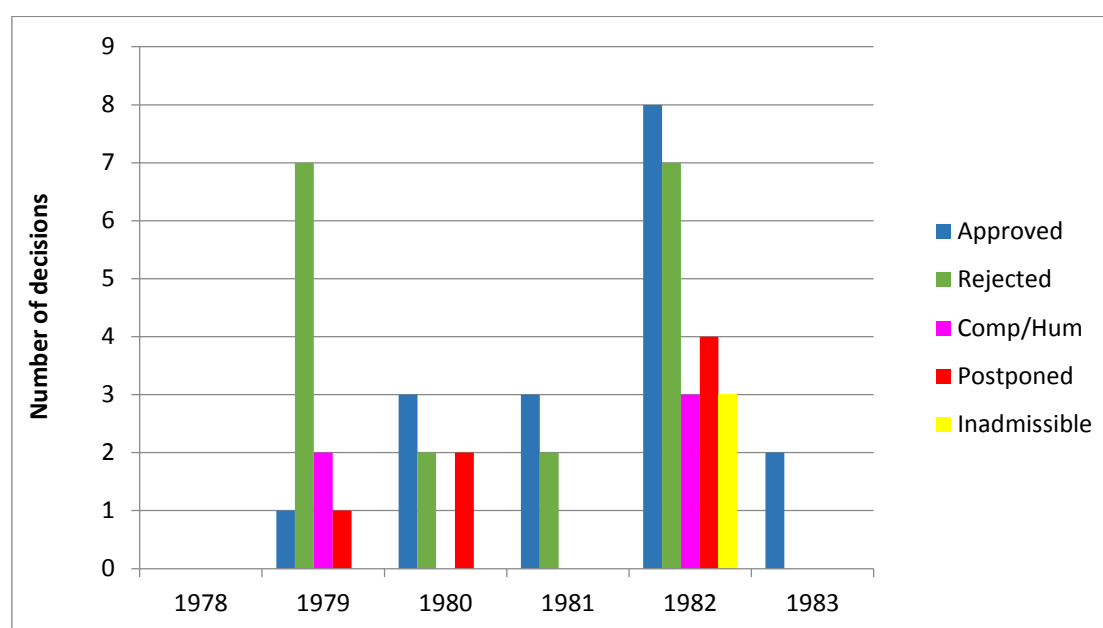
⁶⁴¹ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 21 March 1979*.

⁶⁴² *ibid.*

⁶⁴³ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 15 August 1979*.

ground of no evidence of persecution of Christians in Iran'.⁶⁴⁴ It appears that by 1982 the debate was evolving somewhat. Departmental representatives were questioning their understanding of events in Iran, and both PM&C and the Attorney-General's representatives are recorded as expressing concern for the plight of Iranian Christians.⁶⁴⁵ This may be due to the evolving nature of political conditions in Iran at that time and the quality of background information that DORS members had access to, although there is no evidence that members were referring to briefing material from external sources during these particular deliberations. Certainly Goodwin-Gill's protestations at the rejection of Christian applicants are a sign that he would have made reference to alternative information during DORS meetings. Figure 22 below shows differences in RSD application rates and outcomes for Iranians over four and a half years:

Figure 22: Decision-making on Iranian applicants between October 1978 and April 1983 (50 decisions)



Source: As for Figure 16

⁶⁴⁴ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 26 February 1980*.

⁶⁴⁵ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 11 June 1982*; Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 17 September 1982*.

Other influences on departmental attitudes to Iranians will be discussed in the following section of this chapter.

Salvadoran applicants

Applicants for refugee status from El Salvador were escaping a civil war that had broken out in 1980, which was characterised by a struggle for power amongst rightist military figures and centrist Christian Democrats against a left-wing insurgency. The greatest number of deaths and human rights violations occurred during the period 1980 to 1983.⁶⁴⁶ DORS was unanimous in voting for approval on five occasions (21 per cent). It recommended compassionate/humanitarian leave to remain on 8 occasions (33 per cent), half of which were unanimous. It recommended rejection on seven occasions (29 per cent), five of which were unanimous.

Despite the tendency for agreement amongst the Committee, a qualitative analysis of Goodwin-Gill's notes shows that the subtleties of each applicant's social and political position in El Salvador were carefully debated. They tried to discern whether an applicant would be singled out for persecution or have the same experience as any other Salvadoran in the midst of an unstable and lawless environment. Five of the seven applicants who were rejected were deemed not to be at risk of persecution; the remaining two returned to El Salvador voluntarily.

By 1982 the Department of Immigration had decided that conditions in El Salvador were such that applicants could not be returned for the time being, a decision that was also made for Polish applications in 1982, as this chapter will shortly discuss. In March that year Goodwin-Gill reported the Department's position on Salvadoran applicants to the UNHCR:

⁶⁴⁶ United States Institute of Peace, *From Madness to Hope: the 12 Year War in El Salvador*: Report on the Commission for Truth in El Salvador (1993), p. 20.

The Committee was advised that it was not currently proposed to require El Salvador nationals, whose applications for refugee status might be rejected, to return to their country of origin.⁶⁴⁷

Foreign Affairs briefed the Committee in July 1982:

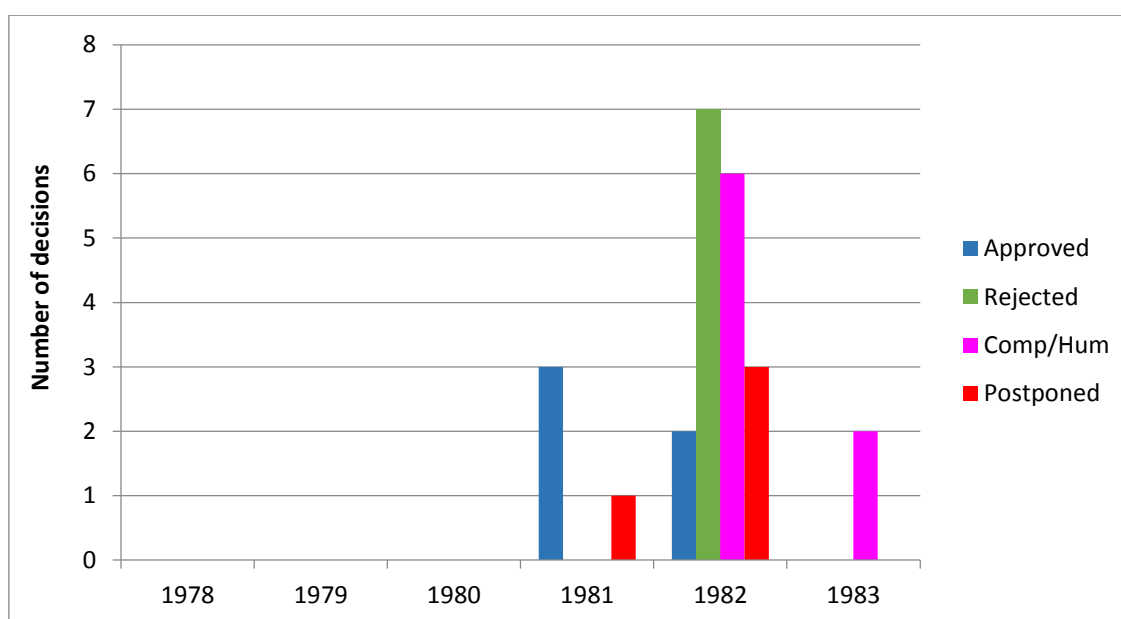
The guerrillas have the capacity to go into the cities and San Salvador is not secure... No crimes are being investigated... Violence is endemic, as is vengeance, and no prisoners are taken by either side.⁶⁴⁸

After Foreign Affairs gave this assessment, DORS recommended compassionate/humanitarian leave to remain for an applicant who readily admitted that they were not a refugee within the Convention definition but who requested refuge because they were ‘principally concerned with the security in El Salvador’.⁶⁴⁹ This was extraordinary, and testifies to the Committee’s appreciation of conditions in El Salvador. The Committee’s sympathetic view toward applicants from El Salvador during 1982 and 1983 can be seen in Figure 23 below.

⁶⁴⁷ Goodwin-Gill Collection, AUL: Reports, *UNHCR Branch Office Sydney, Report for March 1982*.

⁶⁴⁸ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 29 July 1982*.

⁶⁴⁹ *ibid.*

Figure 23: Decision-making on Salvadoran applicants, October 1978 to April 1983

Source: As for Figure 16.

It was at this time that Australia was increasing its intake of refugees from Latin America and preparing to establish an in-country programme in El Salvador. This programme is the subject of Chapter Six.

Pakistani applicants

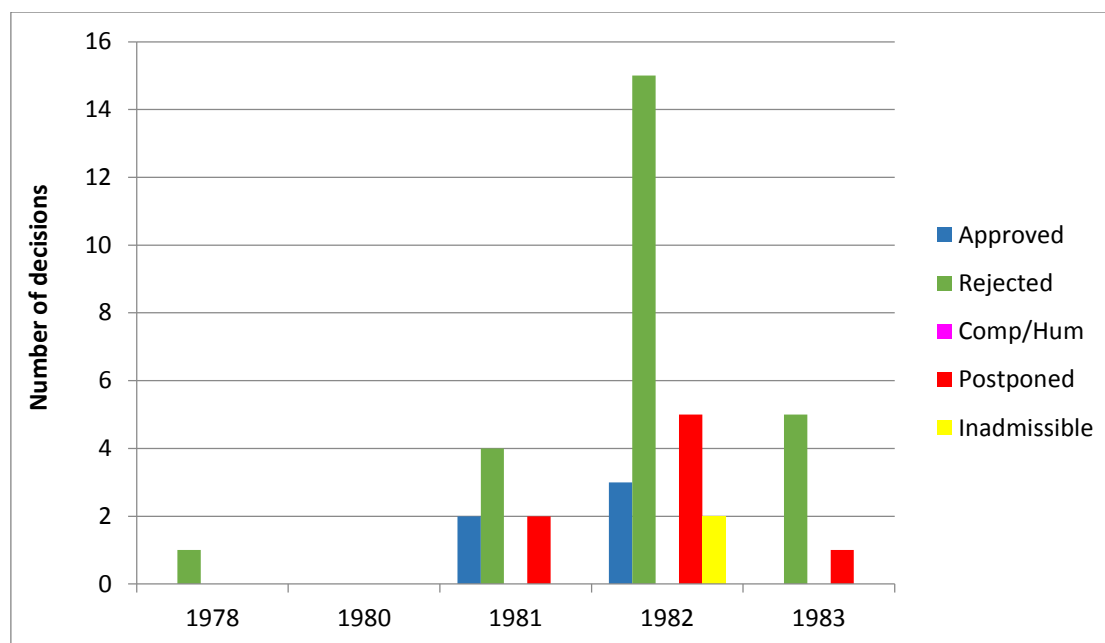
Pakistani applicants were generally fleeing political or religious persecution. The rejection rate was 63 per cent. Of the 25 decisions to reject, 17 were unanimous. Other cross-tabulation of departmental representatives' opinions does not reveal anything significant. This may be because explicit opinions are recorded on so few occasions.

All four cases in which applicants were identified as being of the Christian faith were rejected, and the UNHCR expressed a negative opinion in one of these cases. On October 1981 and again in August 1982 the Foreign Affairs representative is recorded as stating that 'there was no indication' that Christians were persecuted in Pakistan.⁶⁵⁰

⁶⁵⁰ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 9 October 1981*; Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 27 August 1982*.

Political events in Pakistan during the early 1980s bore on Committee deliberations. There were 11 decisions made in relation to applicants who were associated with the Pakistan People's Party (PPP) or other political activities. Of these, five were decisions to approve.

Figure 24: Decision-making on Pakistani applicants, October 1978 to April 1983 (40 decisions)



Source: As for Figure 16.

Polish applicants

Polish claimants for refugee status had a rejection rate of 68 per cent. Only two applications were ever approved, and five were recommended for compassionate/humanitarian leave to remain. Out of 25 cases, nine are listed as being 'ship jumpers' or 'ship deserters', while five are explicitly listed as having over-stayed their exit visas or having had their stay in Australia extended by the Polish authorities.

On the 106 occasions when DORS was confronted with applicants from Eastern-bloc countries, members often struggled to assess the likelihood that these individuals would be punished for seeking to desert their country. The Polish caseload is a great

example of this. In mid-1979 Foreign Affairs was trying to obtain further information about how deported persons or those who overstayed their exit visas would be received on return to Poland.⁶⁵¹ The departmental representative reported that punishment would likely include the denial of a passport, with ‘the possibility of a jail sentence’ depending on the circumstances of the individual case. Committee members noted that punishment on return did not equate with persecution.⁶⁵² In relation to both visa over-stayers and ship-jumpers, Foreign Affairs advised that ‘Poland was a relatively liberal country with regard to its treatment of citizens who remained abroad illegally’.⁶⁵³

By the early 1980s the assessment of conditions in Poland had altered. Foreign Affairs still considered that over-stayers would be subject to a fine rather than jail, but it now took a different view on the consequences for ship-jumpers. Goodwin-Gill reported at the end of 1982 that ‘a general policy’ had been applied to Polish ship-jumpers, whereby they were granted temporary entry permits and a right to work, ‘and final decisions were postponed pending developments’.⁶⁵⁴ Goodwin-Gill reported that the majority of cases were rejected, especially if membership of Solidarity was the only basis for the refugee claim, and this is reflected in Figure 25 below; he also reported that other specific political conditions were sometimes taken into account for compassionate/humanitarian leave to remain, but it is unclear how many of those rejected in 1982 were allowed to stay.⁶⁵⁵

At the beginning of 1983 Foreign Affairs reported the following:

There had been widespread repression, but no recourse to the indiscriminate use of terror such as had been employed in Stalinist days. Nevertheless, deep

⁶⁵¹ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 1 July 1979.*

⁶⁵² Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 29 August 1979.*

⁶⁵³ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 16 January 1980.*

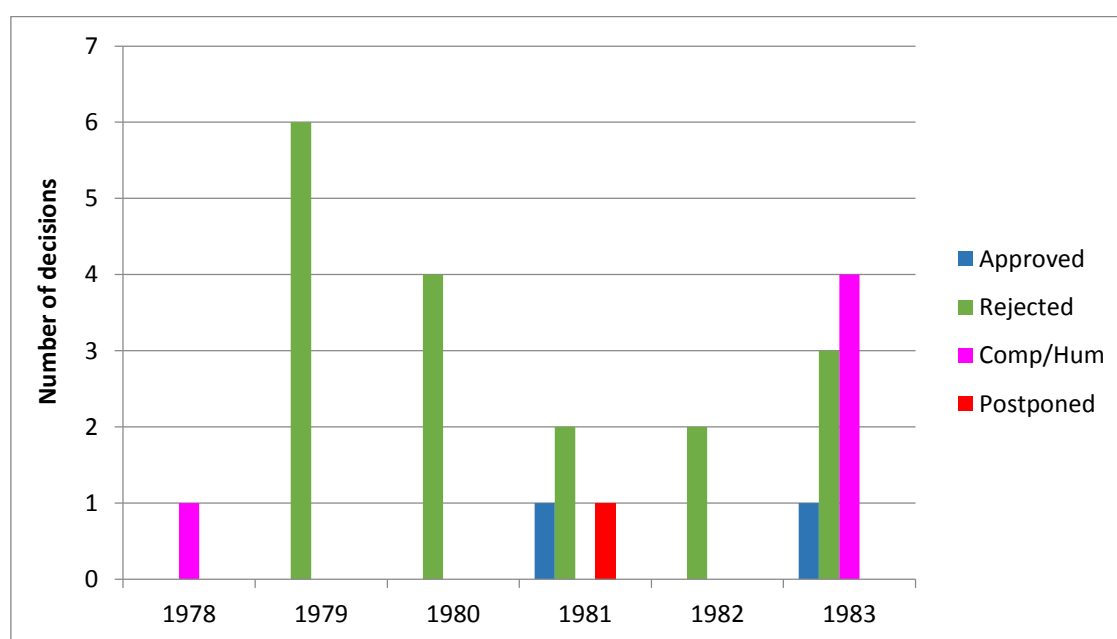
⁶⁵⁴ Goodwin-Gill Collection, AUL: Reports, *UNHCR Sydney Branch Office, Report for 1982 to the United Nations High Commissioner for Refugees.*

⁶⁵⁵ *ibid.*

divisions remained in the country. A deserting seaman would face penalties equivalent to that of a deserter from the armed forces. This could amount to three years jail, but a deserting seaman would also be dismissed... and without a job he would have no access to the ration system or to housing.⁶⁵⁶

Martial law had been declared in December 1981 to rout the Solidarity trade union movement. At this time, Australia had a targeted intake of Polish refugees through the annual resettlement programme, in response to an increased burden on Austria as a major country of first asylum in the region.⁶⁵⁷ While the merits and circumstances of each individual case were obviously different, the changed assessment of conditions in Poland is surely reflected in the number of recommendations for compassionate/humanitarian leave to remain in the first four months of 1983, shown in Figure 25 below:

Figure 25: Decision-making on Polish applicants for refugee status, October 1978 to April 1983 (25 decisions)



Source: As for Figure 16.

⁶⁵⁶ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 10 January 1983*; Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 10 February 1983*.

⁶⁵⁷ Australia. Department of Immigration and Ethnic Affairs, *Review '81* (Canberra, 1981), p. 48; Australia. Department of Immigration and Ethnic Affairs, *Review '82* (Canberra, 1982), p. 57; Australia. Department of Immigration and Ethnic Affairs, *Review '83* (Canberra, 1983), p. 29.

Iraqi applicants

Goodwin-Gill's files indicate that Iraqi applicants commonly claimed to be fleeing either political pressure compelling them to join the Ba'ath Party, or persecution for their identification with a religious or ethnic group. Figure 26 below shows that the Iraqi caseload had a very high rejection rate and an extremely low number of approvals (three). Of the 28 decisions to reject Iraqi applicants, 22 of these were unanimous.

Other cross-tabulations between departmental opinions do not reveal anything significant. Again, the religious/minority element is the most interesting and indicates a tendency on the part of DORS members to base their assessment of individuals on ideas about a large social group. Out of 44 decisions, there were 17 concerning persons who identified with the Christian faith and/or were Kurdish or Assyrian. Of these 17 decisions, 10 were to reject. Goodwin-Gill notes several occasions in which Committee members doubted the validity of these applicants' fear of persecution. On 6 August 1980 DORS assessed an Assyrian Christian who had a weak case:

Mr Pearce [of Foreign Affairs] said that Christians were not persecuted as a part of deliberate government policy. Mr Inder [of Immigration] did not think that the applicant or Christians in general suffered persecution in Iraq.⁶⁵⁸

Two years later the nature of persecution in Iraq remained a potent issue for DORS members. In August 1982 the PM&C and Attorney-General's representatives questioned the idea that all stories about political pressure to join the Ba'ath party were made up, but a Foreign Affairs representative held that there was a 'well organised system of

⁶⁵⁸ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 6 August 1980*. This case was unanimously rejected, but brought to the Department of Immigration's attention for inclusion under a programme that it ran at the time for Assyrian Christians.

advice about refugee status applications which existed in the Assyrian community'.⁶⁵⁹

The UNHCR representative replied that there 'seemed to be a danger that Assyrian applicants would be the victims of a group rejection' by DORS members.⁶⁶⁰

In January 1983 DORS considered three Iraqis who claimed they had been pressured into joining the ruling Ba'ath Party and were adherents to the Baptist faith. The Foreign Affairs representative firmly denied the merits of their claims, because Christian minorities were not 'officially' persecuted and Kurds 'were not discriminated against'. Goodwin-Gill records that he took the DORS members to task for a tendency to 'reject out of hand' these forms of persecution:

I said that I was very disappointed at the tendency to adopt the policy of group rejection without regard to the individual factors in every case. Because Kurds were not generally discriminated against, it did not necessarily follow that one individual Kurd might not be singled out for persecution. The same applied with regard to goldsmiths [an occupation claimed by some Iraqi applicants] and Baptists.⁶⁶¹

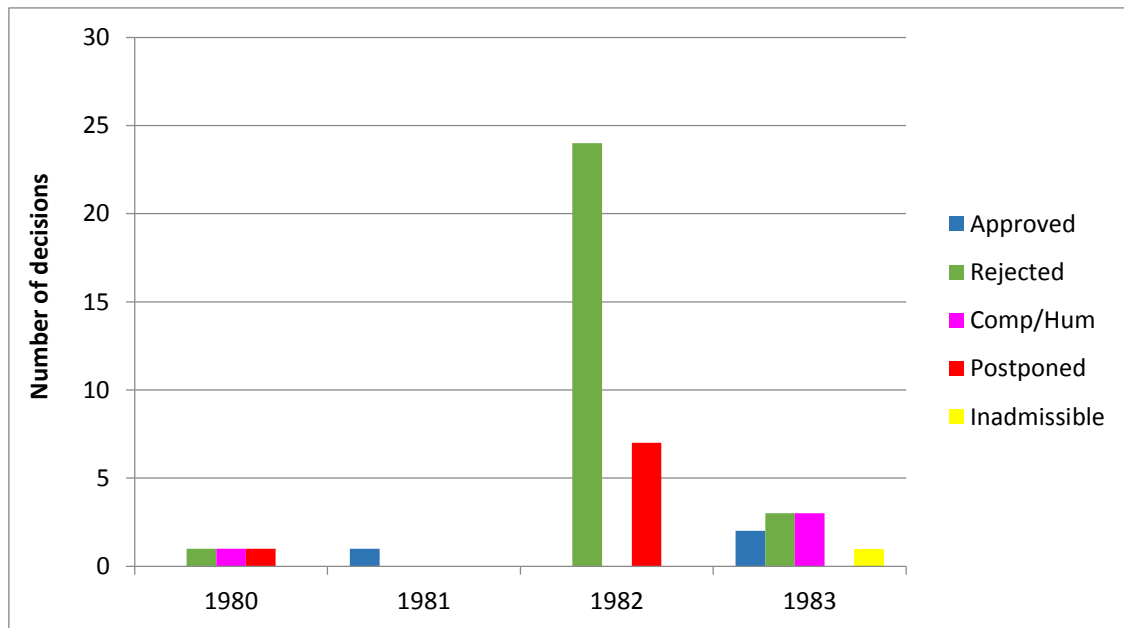
In the previous seven months DORS had experienced a large caseload of Iraqi applicants, who were either rejected outright or had their cases postponed for further investigation, as shown in Figure 26 below:

⁶⁵⁹ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 13 August 1982*. See also: Goodwin-Gill Collection, DORS Minutes, *UNCHR Note for File, concerning meeting on 13 April 1981*; Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 18 February 1982*.

⁶⁶⁰ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 13 August 1982*.

⁶⁶¹ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 10 January 1983*.

Figure 26: Decision-making on Iraqi applicants between October 1978 and April 1983 (44 decisions)



Source: As for Figure 16.

The comments by Foreign Affairs representatives and the graph above surely speak to the content of the briefing material that DORS members were receiving. Indeed, in March 1983 Foreign Affairs were adhering firmly to their position that Christians in Iraq were not persecuted, but other DORS members were questioning the quality of the background material. Trevor Griffiths, who was then Head of the Refugee Branch, commented that ‘there was an overall lack of hard information’, and he was ‘generally dissatisfied with the type of information currently available’.⁶⁶²

3.2 Deterrence

Chapter Three showed that the DORS process was intended to deter prospective Indochinese boat arrivals, even though in reality it could only legitimate their ability to remain in Australia. Was DORS also designed to deter non-Indochinese applicants? In relation to the entire caseload of applicants from 46 countries, the answer to this question is no. The qualitative evidence contained in Goodwin-Gill’s files, however,

⁶⁶² Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 4 March 1983*.

indicates that on a small handful of occasions the departments of Immigration and/or Foreign Affairs were concerned about accepting particular individuals due to a fear that this would encourage further arrivals from that country, or a fear of the consequences that a recommendation for refugee status would have on bilateral relations with the country of origin. In these instances the Committee could circumvent the problem by rejecting the claim for refugee status but recommending that the person stay on compassionate/humanitarian grounds.

For example, in late 1980 DORS debated the case of a Soviet ship-jumper who had sold his story to the *Sydney Morning Herald*. The case had attracted a great deal of publicity, and DORS members understood that this enhanced the applicant's fear of persecution if he were returned. The then Head of the Refugee Branch, Mr Ian Simington, expressed concern 'at the possibility of establishing a precedent which would allow all Soviet ship-jumpers to remain permanently in Australia'.⁶⁶³ He argued that the applicant 'would be treated no differently from any other Soviet citizen in a similar position and that he must have known the consequences which were likely to befall him'. The Foreign Affairs representative and UNHCR agreed that the applicant would face serious punishment if returned. The DORS vote was split and Simington exercised his casting vote to reject the applicant, however, he told UNHCR later that day that the applicant's ultimate fate was 'still to be determined'.⁶⁶⁴ It is possible that the applicant was allowed to stay on compassionate/humanitarian grounds, as a means of quietly avoiding the publicity and precedent of refugee status.

A second example concerns the case of an exchange student from the People's Republic of China who did not wish to return home. A DORS meeting was convened

⁶⁶³ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 11 December 1980*.

⁶⁶⁴ *ibid.*

urgently on 15 April 1983 to consider this case. The student had gone missing several days before he was due to return to China, and once apprehended as an illegal immigrant had applied for refugee status. Goodwin-Gill's files show that there were questions over the integrity of the student's application, for it appears that the student had not been properly informed during the interview of his rights under the Convention. The Head of the Refugee Branch and DORS Chairman, Trevor Griffiths, told the Committee 'that the Minister had specifically directed that the issue of refugee status should not be raised directly during the interview'.⁶⁶⁵ According to Goodwin-Gill's files, Griffiths said later that he hoped that the UNHCR representative would not get the wrong impression, and that 'at the present time the new ministers were not fully aware of the new DORS procedure'. If indeed the new Minister for Immigration Stewart West had issued these instructions, Immigration staff would have had little choice but to act in accordance with his direction. Unfortunately this evidence was not uncovered until after oral history interviews were conducted with both West and Griffiths. Nonetheless, it can be surmised that the case held political significance for the newly elected Hawke Labor government, and Griffiths explained the situation to the Committee at the time:

He reminded the Committee that the case was particularly sensitive and that the Government had decided that no action would be taken until after the visit by the Premier of the People's Republic of China.⁶⁶⁶

Indeed the bilateral relationship crossed the party divide. The previous year the Fraser government's Minister for Foreign Affairs had warned Immigration that despite the growth and diversification of the refugee programme, Australia should not think about accepting refugees from the People's Republic of China:

⁶⁶⁵ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 15 April 1983*.

⁶⁶⁶ *ibid.*

It would be a new and major political decision if we were to decide to take political refugees seeking relief from the Chinese government and such a move could have serious implications for the bilateral relations.⁶⁶⁷

DORS chose to defer the case for re-interview and one week later the Committee met again. Foreign Affairs, Immigration and UNHCR all agreed that the applicant was not likely to face persecution if he was returned to China, but he may be subject to re-education through labour. The applicant was unanimously rejected, and PM&C advocated humanitarian consideration but the Foreign Affairs representative raised a 'strong objection' to this on the grounds that if the applicant were allowed to stay in Australia, 'further student exchanges might be prejudiced'.⁶⁶⁸ Goodwin-Gill noted the following:

This debate continued for some length, but finally the Chairman reminded the Department of Foreign Affairs of his Department's competence to determine whether compassionate or humanitarian consideration applied and that this must always be done on a case by case basis.⁶⁶⁹

Again, it is possible that the applicant was not returned to China. Judging by Goodwin-Gill's notes the Committee's decision not to recommend refugee status was based purely on the merits of the case, and it appears that the proposal to recommend compassionate/humanitarian leave to remain did not easily circumvent the sensitivities of the case.

There is one instance in Goodwin-Gill's files in which Foreign Affairs and Immigration appear to seek the rejection of cases as a means of actively deterring future arrivals. Shortly after the Iranian revolution, DORS met on 7 March 1979:

The Committee was advised that a number of Iranian cases would shortly be coming up. Mr Simington asked Foreign Affairs for an assessment of the

⁶⁶⁷ National Archives of Australia, A446 1982/95192 Part 2.

⁶⁶⁸ Goodwin-Gill Collection, DORS Minutes, *Note for File, concerning meeting on 22 April 1983*.

⁶⁶⁹ *ibid*.

situation in time for the next meeting. He said it would be preferable if the appropriate Desk Chief could come and brief the Committee.⁶⁷⁰

At this point DORS had not assessed any Iranian applicants since Goodwin-Gill's files began in October 1978, and it is not known whether any Iranian applicants were assessed by DORS before this date. Two weeks later, at the next meeting on 21 March 1979, Goodwin-Gill made some surprising observations:

It was at once evident from discussion among Committee members that they had attended a Foreign Affairs briefing on Iran the previous Monday, and that the question of a "policy" on Iranians had been aired and perhaps decided.⁶⁷¹

At that meeting on 21 March DORS considered three Iranian applicants and rejected each of them. As mentioned in the previous section, the UNHCR representative vigorously defended two of these cases and stated that their claims would be taken up with the Minister. It is possible that these applicants were allowed to stay in Australia on compassionate/humanitarian grounds, but there is no evidence of this in the files. Of most concern are the comments made by Immigration officials later that day, and noted by Goodwin-Gill:

During the afternoon of 21 March, Ms Barbara Benson, a senior [Immigration] official not directly concerned with DORS, expressed approval of the rejection of the Iranian applications; had they been accepted she feared the Department would have been flooded with applications. Mr Nimmo, Secretary to the DORS Committee and frequently its Chairman, had also referred in passing to apprehension that "the floodgates would be opened" if the applications then before the Committee were accepted.⁶⁷²

The fact that the Department of Immigration was actively seeking to use RSD as a means of preventing further arrivals from Iran is troubling, and it is worth considering why the Department took this view of Iranians over other large national groups, such as

⁶⁷⁰ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 7 March 1979*.

⁶⁷¹ Goodwin-Gill Collection, DORS Minutes, *Note for File: concerning meeting on 21 March 1979*.

⁶⁷² *ibid.*

Afghans. There may have been some sympathy for applicants who were escaping conflict situations, such as in Afghanistan or El Salvador. Unfortunately this is a subject that cannot be explored fully here, but it does merit further research. The next three Iranian cases that came before DORS in mid-1979 were not rejected, and from November that year to January 1983 decisions on Iranian applicants wavered fairly evenly between approval and rejection. It is possible that this was due to an increased appreciation of the plight of the Baha'i caseload, as discussed in the previous section.

Conclusion

To reiterate a point made in Chapter Three of this thesis, Australian historians have paid very little attention to the DORS Committee. It is commonly presented as a footnote, merely incidental to the Fraser government's development of refugee policy. Goodwin-Gill's files allow us to see that DORS was essential to the fulfilment of Australia's obligations under international refugee law, for it was the Australian government's first formal status determination procedure and the precursor to the status determination system that Australia has in place today.

This chapter has assessed the operation of DORS during its early years, 1978 to 1983, and it is evident that during this period DORS assessed a diverse and challenging caseload. Departmental representatives were learning about human rights abuses in some countries for the very first time, while working hard to grasp the changing political situation in others.

Through a qualitative and quantitative analysis of the evidence in Goodwin-Gill's files, combined with oral history and government archival records, this chapter has presented an original study of DORS' deliberations. In Section Two it was found that the briefing material supplied by the Department of Foreign Affairs was not always

up-to-date or objective, and that Foreign Affairs expressly prioritised bilateral considerations in its approach to refugee policy. It was also found that DORS could exercise discretion under Section 6A(1)(e) of the *Migration Act* to encourage compassionate consideration for individuals who could not meet the Convention criteria but had an otherwise strong claim for protection.

It has also been found that DORS' deliberations were made more difficult by the fact that, as Avery noted, the Committee had to rely on interview transcripts to assess the credibility of each applicant. These administrative weaknesses may have been counterbalanced to some extent by the fact that the four departmental representatives brought distinct perspectives to the DORS process. Even though departmental representatives are not recorded as expressing an opinion on every occasion, the analysis in Section Three of this chapter demonstrated that departmental representatives, particularly those from PM&C and Attorney-General's, had very different voting patterns and opinions, and they were prepared to question the views of other Committee members. Goodwin-Gill reported that the Committee engaged in 'lengthy debates on the merits of individual cases', and this chapter has already shown that oral history interviewees shared a similar recollection.⁶⁷³

These findings were explored through analysis of the six national caseloads examined in Section 3.1 of this chapter. Although these groups constitute a fairly small sample size, a combination of both qualitative and quantitative evidence has substantiated the discussion in Section Two. The analysis of the Salvadoran caseload is particularly meaningful in that it demonstrates exactly how Foreign Affairs briefing material could ensure that DORS' exercised its discretion under Section 6A(1)(e) of the *Migration Act* to avoid deporting applicants who did not have strong claims for refugee

⁶⁷³ Goodwin-Gill Collection, AUL: Reports, *UNHCR Branch Office Sydney, Report for January 1983*.

status.

The Iranian, Iraqi, Afghan, Pakistani and Polish cases suggest that extraneous political considerations or prejudices could potentially influence DORS' deliberations. Unfortunately the sample size for the remaining 41 countries of origin in the DORS caseload is too small for the outcomes to be assessed on a broader level, but the evidence suggests that the briefing material that Foreign Affairs supplied on conditions in countries-of-origin had the potential to encourage what Goodwin-Gill called 'a tendency to adopt a policy of group rejection'. He explained this further in a letter to Idoyaga in July 1980:

The DORS Committee tends in practice to require no more than "a serious possibility" of persecution, although it yields on occasion to the temptation to equate no specific acts of persecution in the past with no likelihood of persecution in the future.⁶⁷⁴

Somewhat concerning is the fact that Goodwin-Gill expressed a similar assessment in a report three years later, in January 1983, and indicated that unspecified 'other members' shared his concerns:

UNHCR, together with other members of the DORS Committee, expressed its concern at a developing tendency to reject applications for refugee status on a class or group basis.⁶⁷⁵

It is beyond the scope of this thesis to investigate the objectivity, provenance and content of Foreign Affairs briefing material, or of Australia's diplomatic relationships with countries-of-origin, but these subjects merit further research. Furthermore, it is currently impossible to trace the fate of those applicants who were rejected by DORS, but if and when the relevant government archival records become available this question

⁶⁷⁴ Goodwin-Gill Collection, DORS Gen, *UNHCR Interoffice Memorandum from Guy Goodwin-Gill to Hugo Idoyaga, 3 July 1980*.

⁶⁷⁵ Goodwin-Gill Collection, AUL: Reports, *UNHCR Branch Office Sydney, Report for January 1983*.

deserves scholarly attention. The internal Department of Immigration review of DORS that was conducted in 1983 concluded that the consideration of ‘bilateral political factors’ meant that some DORS decisions could be put ‘under close scrutiny’.⁶⁷⁶

Finally, the cases of the Soviet ship-jumper and the Chinese applicant that were discussed in Section 3.2 of this chapter demonstrate how the priorities of the Department of Immigration and the Department of Foreign Affairs could influence DORS deliberations. Importantly, it was found that a discretionary recommendation for compassionate/humanitarian leave to remain under Section 6A1(e) could avoid creating precedents in highly publicised claims for refugee status and assuage diplomatic sensitivities.

It is difficult to assess how much this analysis of the DORS process can reveal about the Fraser and Hawke governments’ response to refugees, for the caseload was modest and, most importantly, it consisted of small numbers of individuals from many national groups. This has precluded meaningful statistical analysis of the overall recognition rate or of the outcomes across all countries of origin. Furthermore, unlike the Indochinese caseload, the assessment of non-Indochinese was not commonly discussed in the media or in the parliament. Thus this chapter has not analysed the non-Indochinese caseload with reference to government statements or broader policy objectives.

Whether the Minister for Immigration or senior departmental officials were interested or involved in the handling of each case depended on the nature of the applicant’s claim. The assessment of the Chinese applicant in 1983 was certainly of interest to senior members of the Hawke government and the bureaucracy, but this does

⁶⁷⁶ Interview with anonymous public servant ‘C’.

not mean that all cases warranted a similar level of attention. As previously stated, future research into the DORS process would benefit enormously from investigation into the nature of Australia's diplomatic relationships at that time.

The history of the non-Indochinese caseload under the Fraser and first Hawke government is a small but significant story. Crock has argued that due to the 'latitude' that relevant international instruments give to signatory states in the conduct of refugee status determination, the procedure in Australia has 'developed as much in response to particular historical or political situations as in recognition of our international legal obligations', and Crock's argument resonates with the interpretation of DORS presented in this chapter and in Chapter Three.⁶⁷⁷ The evidence considered throughout this chapter suggests that as Australia was becoming a more prominent country of first asylum, through the Indochinese and the growing non-Indochinese caseload, the emphasis on administrative control of entry that customarily governed other areas of immigration policy were just as important to DORS. Moreover, DORS deliberations indicate that there were complex attitudes toward refugee admission within Foreign Affairs and Immigration. The pre-planned rejection of Iranian applicants in March 1979, for example, was based on traditional anxieties about the influx of unwanted non-citizens, and this incident supports the claims made by Whitlam, Fraser, Cass and Menadue that the Department had a lingering 'White Australia mentality', as discussed in Chapter Two of this thesis (pp. 31-32). At the same time, the primary source material indicates that this was a rare incident. It is important to note that while the Department's internal review of 1983 suggested that some DORS decisions could be placed 'under scrutiny', Goodwin-Gill's annual reports to UNHCR indicated that he was generally very satisfied with DORS' application of Convention criteria and its willingness to postpone cases for

⁶⁷⁷ Crock, *Immigration and Refugee Law in Australia*, p. 127.

further consideration or to recommend compassionate/humanitarian leave to remain.

Goodwin-Gill and co-author Jane McAdam have noted that in theory RSD should require ‘no more than the application of a legal formula to a particular set of facts’, yet in practice they and many other scholars have continued to detail the same inherent problems in this procedure that Avery identified in 1983.⁶⁷⁸ These include the ability of individual decision-makers to elicit relevant information, weigh the evidence and assess the credibility of an applicant, as well as the political dynamics of the decision-making process.⁶⁷⁹ In a 2010 article in the *International Journal of Refugee Law*, James C. Simeon argued that no RSD procedure was flawless, and that States parties must be concerned with attaining well-resourced, expert first-instance decision-making that was independent of ‘political interference’.⁶⁸⁰ The analysis in this chapter shows that political dynamics and quality, objective briefing material are vital areas of interest for researchers of RSD procedure.

⁶⁷⁸ Goodwin-Gill and McAdam, *The Refugee in International Law*, p. 543.

⁶⁷⁹ *ibid.*, pp. 542-544. See also: Legomsky, ‘Learning to Live with Unequal Justice’, pp. 428-439; H. E. Cameron, ‘Risk Theory and ‘Subjective Fear’: The Role of Risk Perception, Assessment, and Management in Refugee Status Determinations’, *International Journal of Refugee Law*, 20 (2008), pp. 567-585.

⁶⁸⁰ Simeon, ‘The Response to Rapidly Fluctuating Refugee Status and Asylum Applications’, pp. 100-103.

Chapter Six: The in-country programme in Latin America

In early July 1983, a chartered QANTAS jet took off from Los Angeles en route to Australia. Onboard were 77 tradesmen, trade unionists, administrative workers and their families.⁶⁸¹ They were having a raucous party.⁶⁸²

The passengers had been political prisoners in Mariona prison, on the outskirts of San Salvador. They were among more than 500 dissidents released by the Salvadoran government through an amnesty at the height of a brutal civil war, and they were at the mercy of the country's roaming death squads. Through collaboration with Canadian officials, the International Red Cross and the International Organisation for Migration, the Australian government had rescued them through a daring and politically delicate operation, organising buses, bodyguards, charter flights and a perfect transit through the United States so as not to antagonise the Reagan administration.⁶⁸³ When the 77 boarded the plane in LA, they could relax. The QANTAS pilot was carrying their Immigration case files. They could celebrate.

This operation helped to establish Australia's in-country humanitarian programme in Latin America, which ran from 1983 to the mid-1990s. It was a discreet but substantial initiative for individuals who were at risk of persecution from inside their home countries. The programme operated in El Salvador and Chile through collaboration with local religious organisations, and on the basis of careful negotiations with local authorities and the Reagan administration.

⁶⁸¹ 'Political Prisoners from El Salvador', *Commonwealth Record*, 14 July 1983, p. 1022.

⁶⁸² Interview with T. Griffiths.

⁶⁸³ *ibid.*

The in-country programme contributed to the Australian government's resettlement of more than 2600 Chileans between 1983 and 1991, and more than 10,000 Salvadorans between 1983 and 1994.⁶⁸⁴ It contributed to an intake from Latin America which constituted ten percent of Australia's refugee and humanitarian programme for almost a decade. Former Department of Immigration officials interviewed for this thesis have described this work as passionate and life-saving, 'one of the most exciting programmes you can imagine'.⁶⁸⁵

Very little is known about the in-country programme's formation, operation or rationale, or the exact number of persons that it resettled in Australia. The programme was deliberately 'kept quiet' by the Department of Immigration, because according to former Secretary of the Department, John Menadue, it represented an inherent criticism of the Reagan administration's policies in Latin America.⁶⁸⁶ There is also strong archival and oral history evidence to suggest that the programme sparked deep ideological tensions within the Australian bureaucracy, because it represented a geographic and ideological shift in Australia's refugee intake. These sensitivities meant that the programme was given a low profile in official departmental publications. There is some discussion about the admission of Latin American migrants in the *Commonwealth Parliamentary Debates* and occasional opaque references to those refugees who are 'are at risk within their own country', but the specifics of the in-country intake are not discussed.⁶⁸⁷ Indeed, during a Senate Estimates hearing in 1988

⁶⁸⁴ Australia. Department of Immigration and Ethnic Affairs, *Review '84* (Canberra, 1984), p. 36; Australia. Department of Immigration and Ethnic Affairs, *Review '86* (Canberra, 1986), p. 66; Australia. Department of Immigration and Ethnic Affairs, *Review '87* (Canberra, 1987), p. 66; Australia. Department of Immigration, Local Government and Ethnic Affairs, *Consolidated Statistics* (Canberra, 1988), p. 48; Australian Bureau of Statistics, *Yearbook Australia 1996* (Canberra, 1996), p. 108.

⁶⁸⁵ Interview with B. Phi; Interview with T. Griffiths; Interview with S. West; Interview with anonymous public servant 'A', 6 January 2011.

⁶⁸⁶ Interview with J. Menadue.

⁶⁸⁷ Australia. *Commonwealth Parliamentary Debates*, House of Representatives, 7 September 1984, p. 824.

the then Minister for Immigration, Senator Robert Ray, was reluctant to predict the intake from El Salvador in the coming year due to his concern for diplomatic relations.⁶⁸⁸ Only a handful of brief references in the Department of Immigration's annual reports for the 1980s provide any real detail about the nature and size of the intake. The programme has therefore left scant textual evidence for historians.⁶⁸⁹

This chapter will provide the first study of Australia's in-country programme in Chile and El Salvador. Discussion will centre on the final years of the Fraser government and the first year of the Hawke government, 1979 to 1983, when the Department of Immigration and the Department of Foreign Affairs were becoming more aware of human rights abuses within Latin America and the in-country programme was developed. Four key questions will be addressed: why did the Australian government pursue an in-country programme in Latin America? How was it implemented? What were the foreign policy and political implications? And finally, what does it tell us about the development of Australian refugee policy during this period?

The discussion will draw on original interviews with former Minister for Immigration Stewart West, seven former Department of Immigration staff, and two former officials of the Canadian government who oversaw a similar programme for their government in El Salvador. At this point, the most detailed information on Australia's in-country programme can only be found through oral history, with reference to published documents and some archival records. Most of the relevant archival records have not yet been cleared for public access. These seven former Department of

⁶⁸⁸ Australia. Senate Estimates Committee, Department of Immigration, Local Government and Ethnic Affairs, 13 October 1988.

⁶⁸⁹ The National Population Council's *Refugee Review* of 1990 indicates that there may have been in-country programmes in Sri Lanka, Poland and Lebanon, but there is not enough evidence in government publications, parliamentary debates and archival records to fully investigate this. See further: Australia. National Population Council, *Refugee Review*, p. 125. See also: 'West Claims Progress on Migrant Policy', *The Canberra Times*, 2 November 1983, p. 16; Australia. Department of Immigration and Ethnic Affairs, *Review '88* (Canberra, 1988), p. 40.

Immigration staff and Mr West were the only Australian interviewees who knew about the programme. This was by virtue of their involvement with the Refugee Branch, and in some cases their direct involvement with the programme itself. They were unsurprised to hear that historians have not researched the programme, giving weight to Menadue's recollection that the programme was 'kept quiet'.⁶⁹⁰ Furthermore, their testimony does not always concur on exact dates or decisions, suggesting that the programme was unheralded.⁶⁹¹ Despite the limitations of oral history evidence, it still offers the best material currently available to begin investigating why and how in-country processing was initiated in Chile and El Salvador, and what it means for Australian immigration history.

Literature on in-country processing

In-country processing has enabled Australia, Canada and the United States to respond to specific refugee situations for several decades.⁶⁹² Aside from the Orderly Departure Programme from Vietnam, however, this form of processing has received little scholarly attention. This chapter contributes to a small body of literature on in-country programmes operated by Canada and the United States.

The literature indicates that in-country programmes may be used to deter

⁶⁹⁰ See further: Interview with A. Keski-Nummi; Interview with J. Menadue. See also: Interview with R. Girard, email correspondence with author, November 2012; Interview with J. Roberge, email correspondence with author, December 2012.

⁶⁹¹ See further: Interview with J. Menadue; Interview with S. West; Interview with J. Betts, 6 January 2012, Sydney, Australia.

⁶⁹² Australia currently has an In-Country Special Humanitarian Programme Visa (sub-class 201) but only a small number of individuals are resettled under this visa category each year - see further: Australia. Department of Immigration and Citizenship, *Annual Report 2011-2012*, p. 126. Judith Kumin wrote in 2007 that Canada and the United States 'devote significant shares of their refugee resettlement intakes to individuals who have not (yet) left their countries of origin'. Four years later Canada abolished its in-country resettlement programme, under the 'Source Country Class' visa - see further: J. Kumin, 'In-country 'Refugee' Processing Arrangements', in M. Jandl (ed.), *Innovative Concepts for Alternative Migration Policies: Ten Innovative Approaches to the Challenges of Migration in the 20th Century*, IMISCOE Reports (Amsterdam, 2007), p. 81; Citizenship and Immigration Canada, News Release: 'Government to refocus Resettlement Efforts', 18 March 2011, accessed 19 September 2013, at <<http://www.cic.gc.ca/english/departement/media/releases/2011/2011-03-18c.asp>>.

migration flows and, as Judith Kumin wrote in 2007, act as ‘an alibi’ for restricting access to asylum.⁶⁹³ The most prominent example is the United States’ in-country initiative in Haiti during the early 1990s, which was viewed by human rights organisations as serving to justify the interdiction and *refoulement* of Haitian asylum seekers.⁶⁹⁴ The rationale is also evident in the origins of Canada’s in-country programme in El Salvador, which was implemented in the very early 1980s under the ‘Oppressed Persons and Political Prisoners Designated Class’.⁶⁹⁵ The programme was partly a response to an increased flow of Salvadoran asylum seekers to Canada, who were soon subject to tighter visa restrictions.⁶⁹⁶ Raph Girard, former Director of Refugee Affairs in the Canadian Department of Employment and Immigration, stated that the United States’ denial of Salvadoran asylum claims ‘made Canada more attractive’, and through the encouragement of church and community organisations there was ‘a steady increase in the number of asylum seekers’.⁶⁹⁷

The systematic denial of asylum claims submitted by Salvadorans and others who had sought refuge in the United States spurred Canadian churches and NGOs such as Amnesty International to press the government to create a welcoming environment for these people in Canada. When official responses were deemed too slow, some of these groups resorted to vigilante action and organized the travel of some of the asylum seekers to Canada.⁶⁹⁸

The Canadian government resettled 1200 Salvadorans at the height of that country’s

⁶⁹³ Kumin, ‘In-country ‘Refugee’ Processing Arrangements’, p. 80.

⁶⁹⁴ Americas Watch, *No Port in a Storm: The Misguided Use of In-Country Refugee Processing in Haiti*, 5, is. 7 (Sept. 1993), pp. 14-36; B. Frelick, ‘In-Country Refugee Processing of Haitians: The Case Against’, *Refuge*, 21, no. 4 (2003), pp. 66-72; Kumin, ‘In-Country Refugee Processing Arrangements’, pp. 82-83.

⁶⁹⁵ This category was established in 1979 – see further: J. C. Hathaway, ‘Selective Concern: An Overview of Refugee Law in Canada’, *McGill Law Journal*, 33 (1988), pp. 696-697.

⁶⁹⁶ E. G. Ferris, *The Central American Refugees* (New York, 1987), p. 138; D. Matas, ‘Political Prisoners and Oppressed Persons Class and the Soviet Union’, *Refuge*, 10, no. 3 (Feb. 1991), p. 8; Hathaway, ‘Selective Concern’, pp. 676-715; J. C. Hathaway, ‘The Conundrum of Refugee Protection in Canada: From Control to Compliance to Collective Deterrence’, in G. Loescher (ed.), *Refugees and the Asylum Dilemma in the West*, (Philadelphia, 1992), pp. 78-79; Interview with R. Girard.

⁶⁹⁷ Interview with R. Girard.

⁶⁹⁸ *ibid.*

civil war from 1981 to 1983.⁶⁹⁹ Hathaway has written that while the intake of Salvadorans served the Canadian government's interest in fulfilling a non-discriminatory immigration policy, it had 'an underlying intention to avoid the uncertainties inherent in a policy of first asylum'.⁷⁰⁰

In contrast with these assessments, Australia's initiative in Chile and El Salvador was not designed to respond to a flow of asylum seekers. From the evidence in Goodwin-Gill's files, only 14 Chileans and 24 Salvadorans made onshore asylum claims between 1978 and 1983, and there is no evidence in oral history or archival records of a connection between these claims and the Department of Immigration's interest in Latin America.⁷⁰¹ Instead, it was inspired by varied political and humanitarian interests that will now be discussed in the following section.

1. Background to the programme

Why did the Australian government choose to establish an unusual and large programme in a part of the world that bore little geo-strategic consequence for Australia? This section will address this question in four parts: the programme's role in diversifying the refugee intake; the desire to respond to human rights abuses in Chile and El Salvador; the influence of community opinion and the capacity to implement the programme in those specific two countries.

1.1 The Special Humanitarian Programme

In 1981 the Fraser government established the Special Humanitarian Programme (SHP), a specific stream of the migration programme intended for persons who were in

⁶⁹⁹ Ferris, *The Central American Refugees*, p. 137.

⁷⁰⁰ Hathaway, 'The Conundrum of Refugee Protection in Canada', p. 78.

⁷⁰¹ Figures compiled by author based on information contained in: Goodwin-Gill Collection, DORS Minutes.

need of protection but who fell outside the Convention definition.⁷⁰² Fraser's second Minister for Immigration Ian Macphee and his departmental Secretary John Menadue viewed it as a means of facilitating non-discriminatory immigration policy and ridding the Department of what Menadue called its lingering 'white Australia mentality'.⁷⁰³

When Macphee announced the SHP to Parliament on 18 November 1981, he indicated that the concept had been in the pipeline since at least 1978, because 'the program was foreshadowed by the Government at the time of the last election'.⁷⁰⁴ References to a special humanitarian intake, separate to the refugee intake, were made in departmental publications from 1980.⁷⁰⁵ The UNHCR Branch Office in Sydney had been lobbying 'vigorously' for a broad humanitarian category for several years and it expressed 'immense satisfaction' at the SHP's introduction in 1981, but by 1982 the UNHCR reported that the SHP was slow to get going.⁷⁰⁶ Former Head of the Refugee Branch Trevor Griffiths agreed with this assessment, as he described the SHP as a 'fledgling mechanism' under the Fraser government.⁷⁰⁷ It was used to cater for groups who had been brought to Australia for many years as de-facto refugees, such as Jews from the Soviet Union and White Russians, but who no longer qualified under this definition when subjected to case-by-case assessment.⁷⁰⁸

The SHP gave the Department administrative flexibility and the capacity to respond to new humanitarian situations. In Parliament, Macphee said it was a means of

⁷⁰² Australia. *Commonwealth Parliamentary Debates*, House of Representatives, 18 November 1981, p. 3072.

⁷⁰³ Interview with J. Menadue.

⁷⁰⁴ Australia. *Commonwealth Parliamentary Debates*, House of Representatives, 18 November 1981, p. 3072.

⁷⁰⁵ Australia. Department of Immigration and Ethnic Affairs, *Review '80*, p. 10.

⁷⁰⁶ Goodwin-Gill Collection, AUL: Reports, *UNHCR Sydney Branch Office Report for 1981 to the United Nations High Commissioner for Refugees*; Goodwin-Gill Collection, AUL: Reports, *UNHCR Sydney Branch Office Report for 1982 to the United Nations High Commissioner for Refugees*.

⁷⁰⁷ Interview with T. Griffiths.

⁷⁰⁸ Australia. *Commonwealth Parliamentary Debates*, House of Representatives, 16 March 1982, p. 991.

providing ‘sympathetic consideration’ for those ineligible under the normal migration criteria or the strict Convention definition, ‘quasi-refugees with close relatives or ties in Australia’.⁷⁰⁹ These persons would be subject to ‘substantial discrimination or human rights violations’, and would have no comparable claim to resettlement elsewhere.⁷¹⁰ Both Menadue and Griffiths have elaborated on this, stating that the SHP gave the Department the ability to respond to persons at ‘immediate risk’:

That was the work we were very focused on, the very kernel of what the SHP had become, those sorts of acute humanitarian situations. Really acute, extreme...⁷¹¹

The SHP facilitated the Fraser and Hawke government’s increased focus on Latin America, and thereby enabled a distinct shift away from Australia’s traditional source countries in the Soviet bloc or its intake of Christian minorities in the Middle East.⁷¹² In a letter to PM&C dated 9 July 1982, Griffiths wrote that the ‘Latin American programme’ was ‘partly a response to requests by UNHCR for assistance’ and also ‘in line with our efforts generally towards international burden-sharing’.⁷¹³ Chileans and Salvadorans were included in this programme. In 1982 Macphee told Parliament that he had wanted to resettle a larger number of South American refugees in consultation with the UNHCR, but initially the demand was quite low.⁷¹⁴ Evidence from the *Commonwealth Parliamentary Debates* indicates that the Latin American programme

⁷⁰⁹ Australia. *Commonwealth Parliamentary Debates*, House of Representatives, 18 November 1981, p. 2705

⁷¹⁰ *ibid.*

⁷¹¹ Interview with T. Griffiths. See also: J. Menadue et. al, *A New Approach*, p. 27.

⁷¹² See further: Australia. *Commonwealth Parliamentary Debates*, House of Representatives, 1983, p. 662; ‘Visit of UNHCR High Commissioner’, *Commonwealth Record*, 16 February 1984, p. 217; A. Parkin and L. Hardcastle, ‘Immigration Policy’, in C. Jennett and R. G. Stewart (eds.), *Hawke and Australian Public Policy: Consensus and Restructuring* (South Melbourne and Crows Nest, 1990), p. 319.

⁷¹³ National Archives of Australia, A1209 1987/150 Part 1, Determination of Refugee Status – Policy.

⁷¹⁴ *ibid.* Australia. *Commonwealth Parliamentary Debates*, House of Representatives, 16 March 1982, p. 991.

was not fully implemented until 1983.⁷¹⁵

Menadue has spoken publicly about the SHP's application in Chile and El Salvador, but evidence from other oral history interviews suggests that the in-country programme did not begin until after he had left the Department in March 1983 following the election of the Hawke government.⁷¹⁶ Griffiths has said that under Menadue's direction Immigration staff were seeking out 'areas of humanitarian abuse' that Australia had previously neglected and to which it could respond through the SHP category, and he recalled that it was only after the Hawke government came to power that the SHP 'really took off'.⁷¹⁷ In a ministerial statement to Parliament in 1983, West stated that his department would place greater emphasis on Latin America because 'persons from totalitarian regimes in that part of the world are not receiving adequate representation in Australia's humanitarian programmes', which was 'unacceptable' given the enormous number of refugees within the region.⁷¹⁸

1.2 Responding to a refugee problem

Evidence suggests that the programme in Chile and El Salvador was a direct response to human rights abuses in these countries. According to both Menadue and Girard, the Australian and Canadian governments' active interest in El Salvador and Chile was 'largely a reaction to the installation of US-backed military governments'.⁷¹⁹ According to Menadue and Stewart West, it was also due to the lack of a UNHCR

⁷¹⁵ Australia. *Commonwealth Parliamentary Debates*, House of Representatives, 7 September 1984, p. 824.

⁷¹⁶ See further: Interview with J. Menadue; Menadue, *Things You Learn Along the Way*, p. 221; J. Menadue, 'Misinformation and ignorance breeds fear', 2010, accessed 24 February 2013 <http://www.johnmenadue.com/population/html_files/Asylum%20seekers%20precis%20for%20media.html>.

⁷¹⁷ Interview with T. Griffiths.

⁷¹⁸ Australia. *Commonwealth Parliamentary Debates*, House of Representatives, 1983, p. 662.

⁷¹⁹ Menadue, *Things You Learn Along the Way*, p. 221; Interview with R. Girard.

presence in El Salvador or resettlement programmes.⁷²⁰ Non-governmental organisations were reporting that hundreds of thousands of Salvadorans had been displaced, internally and over the border into camps in Honduras, but ‘protection is a permanent problem’.⁷²¹ In 1982 a senior Australian Immigration official was sent to Central America ‘to improve the understanding of the work of UNHCR and its limitations’, because the department believed that UNHCR efforts in the region were stymied by the United States’ reluctance to acknowledge humanitarian outflow from favoured regimes.⁷²² The interpretation of UNHCR’s role in the region at that time is shared by Loescher, who undertook field work in Central America in 1986 and found that the UNHCR’s work was ‘directly affected by the geopolitical and ideological context in which the US and local governments perceive the refugee issue’.⁷²³

The Carter and Reagan administrations offered political and financial support for successive Salvadoran governments as they struggled against a leftist insurgency, and thus took a dim view of claims for asylum.⁷²⁴ The policy and legislative details of this stance have been examined by Stephen Macekura, who wrote in 2011 that the U.S. *Refugee Act 1980* gave officials discretionary power to define ‘fear of persecution’ in individual asylum claims, and that therefore the reception of Salvadorans was shaped by

⁷²⁰ Interview with Menadue; Interview with S. West. See also: G. Loescher, ‘Humanitarianism and Politics in Central America’, *Political Science Quarterly*, 103, no. 2 (Summer 1988), p. 310.

⁷²¹ International Council of Voluntary Agencies, Conclusions of the ICVA Meeting on Refugees and Displaced Persons in Central America, San Jose Costa Rica, 21-23 November 1985, Goodwin-Gill Collection.

⁷²² Menadue, *Things You Learn Along the Way*, p. 221; Goodwin-Gill Collection, AUL: Reports, *UNHCR, Sydney Branch Office Report for 1982 to the United Nations High Commissioner for Refugees*.

⁷²³ G. Loescher, ‘Humanitarianism in Crisis in Central America’, Paper Presented to RSP Law Conference September 1986, University of Oxford; Loescher, ‘Humanitarianism and Politics in Central America’, pp. 304-306.

⁷²⁴ The United States agreed to accept around 50 of the amnestied political prisoners in September 1983, along with their family members – see further: B. Gwertzman, ‘Salvadorans to Gain Refugee Status’, *The New York Times*, 22 September 1983, accessed 11 September 2013, at <<http://www.nytimes.com/1983/09/22/world/salvadorans-to-gain-refugee-status.html>>.

foreign policy interests.⁷²⁵ Salvadorans and others from the continent were firstly subject to a quota system, under which Latin American applicants were allocated a tiny number of places in the annual refugee intake.⁷²⁶ They were also subject to a distinct ideological bias, because for the United States to recognise their claims to refugee status would be to acknowledge that their governments were unable or unwilling to protect them. Denying the refugee status of Salvadorans was therefore a foreign policy imperative.⁷²⁷ The State Department instead considered Salvadorans to be economic migrants, arguing that poverty and civil unrest did not entitle a person to asylum, because ‘if this were our test, half the 100 million people living between the Rio Grande and Panama would meet it’.⁷²⁸

1.3 Community demands

Both Macphee and West told Parliament that the SHP was designed to reflect Australia’s international responsibilities and to aid those with family links to Australia. In 1981 Macphee explained that ‘their relatives and compatriots in Australia, recognising the plight of these people, have asked the Government to provide some means of assistance’.⁷²⁹ Similarly, West told Parliament in 1984 that ‘we have a Latin American community now of about 50,000 who press the plight of their compatriots’.⁷³⁰ In his oral history interview for this thesis Menadue stated that the specific in-country

⁷²⁵ S. Macekura, ‘For Fear of Persecution: Displaced Salvadorans and U.S. Refugee Policy in the 1980s’, *The Journal of Policy History*, 23, no. 3 (2011), pp. 357-380.

⁷²⁶ D. Matas with I. Simon, *Closing the Doors: The Failure of Refugee Protection* (Toronto, 1989), pp. 182-183.

⁷²⁷ See further: Ferris, *The Central American Refugees*, p. 129; Loescher, ‘Humanitarianism and Politics in Central America’, pp. 296-297, 304-306.

⁷²⁸ C. Brown, *With Friends Like These: the America’s Watch Report on Human Rights and U.S. Policy in Latin America* (New York, 1985), pp. 117-140; D. M. Reimers, *Still the Golden Door: the Third World Comes to America* (New York, 1992), pp. 199-205; Prepared Statement of Elliott Abrams, Assistant Secretary of State for Human Rights and Humanitarian Affairs, before the Committee on the Judiciary Subcommittee on Immigration and Refugee Policy, United States Senate, Washington D.C., April 22 1985, p. 5, Goodwin-Gill Collection, Box 3.

⁷²⁹ Australia. *Commonwealth Parliamentary Debates*, House of Representatives, 18 November 1981, p. 3072.

⁷³⁰ Australia. *Commonwealth Parliamentary Debates*, House of Representatives, 7 September 1984, p. 824.

element of the SHP was a means of catering to the demands of expatriate communities within Australia. Menadue recalled that the Chilean community were ‘expressing concern to us in the Department about the problem of their fellows, family and others’, and ‘we were anxious to see what we could do to assist them’.⁷³¹

At this point in time the Chilean-born in Australia numbered around 14,000, having grown in the early 1970s and again in the aftermath of the 1973 coup.⁷³² Interest in family reunion was strong amongst the Chilean expatriate community during the late 1970s and into the mid-1980s.⁷³³ In contrast, Salvadorans had a much smaller expatriate presence in Australia in the early 1980s and very few family reunion entrants, and it is not yet clear whether the expatriate community in Australia agitated for in-country processing.⁷³⁴

1.4 Logistics

Evidence from the oral history interview with Trevor Griffiths indicates that in-country processing was established in Chile and El Salvador because the host governments allowed it, and because Australia was able to call upon the resources and infrastructure of other governments and organisations. Both the Fraser and Hawke governments wanted to increase the intake from Latin America and these two countries represented the most feasible and effective means of fulfilling this objective. Chile and El Salvador were also deserving humanitarian situations. Griffiths explained that Australia was physically incapable of operating similar schemes in neighbouring

⁷³¹ Interview with J. Menadue.

⁷³² Australian Bureau of Statistics, *Yearbook Australia 1986*, p. 117; Hawkins, *Critical Years in Immigration*, p. 170; Australia. Department of Immigration and Ethnic Affairs, *Background Paper: The Republic of Chile*, Settlement Branch, October 1985, p. 15; Jupp, *The Australian People: An Encyclopaedia of the Nation and its Origins*, p. 195.

⁷³³ Goodwin-Gill Collection, AUL: Reports, *UNHCR Branch Office Sydney, Report for 1978 to the United Nations High Commissioner for Refugees*; Australia. Department of Immigration, Local Government and Ethnic Affairs, *Consolidated Statistics*, p. 48.

⁷³⁴ Australia. Department of Immigration, Local Government and Ethnic Affairs, *Consolidated Statistics*, p. 48.

Central American states:

All I can remember was that it was too complex to, and we wouldn't have been allowed, to process from within Guatemala and people weren't crossing the borders. ... and also we weren't confident on the information we had [about Nicaragua], we weren't confident that it was a vast problem despite Reagan's pronouncements about the freedom fighters and so on. I think we really felt the problem that we could access that was real and that fitted with the Labor government's agenda was El Salvador and we were good with that.⁷³⁵

Ultimately the archival record and Department of Immigration statistics show that Australia took a small number of humanitarian entrants from Guatemala, Nicaragua, Honduras, Costa Rica, Uruguay and other Latin American countries over the course of the 1980s, but the sources do not indicate whether these individuals were processed within their home countries.⁷³⁶

2. How was the programme implemented?

A Department of Immigration publication of 1988 contained an unusually lengthy reference to the in-country programme, describing it as 'providing sanctuary' to those 'known to be targets of death squads or victims of torture'.⁷³⁷ Data from Department of Immigration and Australian Bureau of Statistics publications indicates that the Australian government was able to respond to the needs of a great many Chileans and Salvadorans over the course of more than ten years, and Figure 27 shows the number of individuals from those countries who were resettled under the Refugee and Special Humanitarian Programme during the 1980s and early 1990s. It is unclear exactly how many of these individuals were resettled through in-country processing, because usually the exact in-country intake was not listed separately in the primary

⁷³⁵ Interview with T. Griffiths.

⁷³⁶ National Archives of Australia, A1209 1987/150 Part 1; Australia. Department of Immigration, Local Government and Ethnic Affairs, *Consolidated Statistics*, p. 48; Australian Bureau of Statistics, *Yearbook Australia 1994* (Canberra, 1994), p. 144.

⁷³⁷ Australia. Department of Immigration, Local Government and Ethnic Affairs, *Review '88*, p. 40.

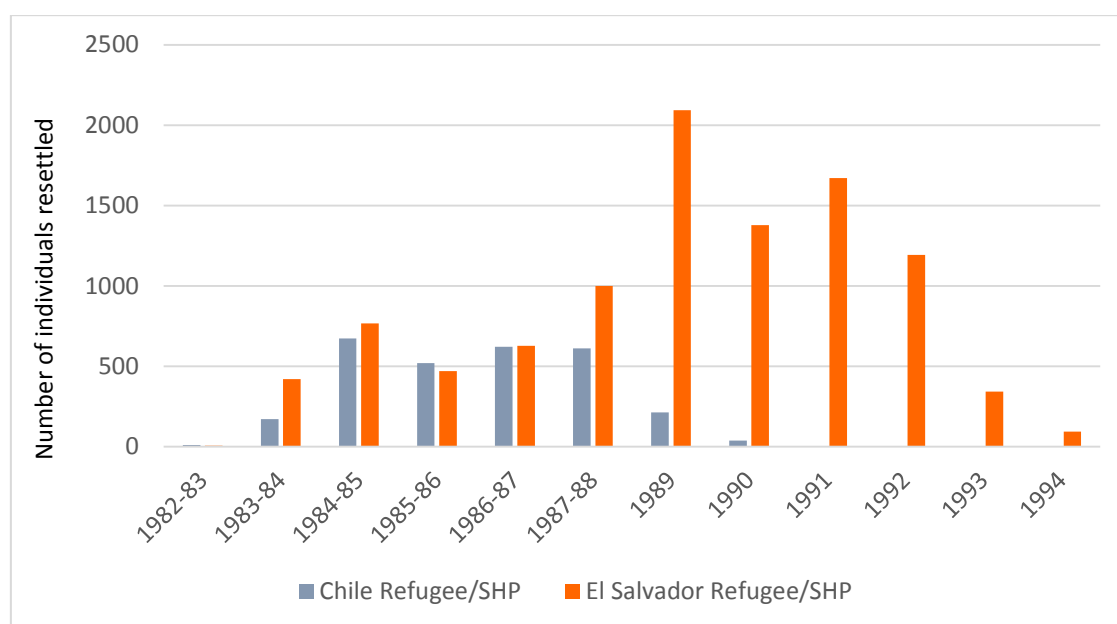
sources from Refugee or SHP figures. In addition, the resettlement of a small number of refugees from other Central American countries are sometimes collated with the Salvadoran figures in the Department's annual reports, but this has been clarified where possible through reference to the Department's own statistical publications.⁷³⁸ The figures below are nonetheless considered to be a reasonably accurate representation of the size of the in-country intake, particularly because the Department testified during a Senate Estimates Committee hearing of October 1988 that international organisations and church groups in Chile and El Salvador had advised that the demand for humanitarian resettlement out of these countries was decreasing and increasing respectively, and this is reflected in the annual intake from 1988 to 1994 represented in Figure 27 below.⁷³⁹ It is also necessary to state that this time period is considered to be broadly accurate, as the primary sources suggest that the in-country processing of Chileans ended around 1990-91, and the processing of Salvadorans ended in the mid-1990s.⁷⁴⁰ Figures were collated for these graphs through a mixture of calendar and financial year data.

⁷³⁸ Australia. Department of Immigration, Local Government and Ethnic Affairs, *Consolidated Statistics*, p. 48. See also: Australia. *Commonwealth Parliamentary Debates*, House of Representatives, 7 September 1984, p. 824.

⁷³⁹ Australia. Senate Estimates Committee, Department of Immigration, Local Government and Ethnic Affairs, 13 October 1988.

⁷⁴⁰ The Australian Bureau of Statistics *Yearbook Australia 1996* shows that the admission of refugees from Chile ceased in the calendar year 1991, and the admission of refugees from El Salvador decreased sharply between 1992 and 1994. At a Legal and Constitutional Legislation Committee hearing on 26 May 1995, the Department of Immigration and Ethnic Affairs indicated that the in-country programme in El Salvador was continuing into the following year 1995/96, but no further references to the programme were found in departmental or parliamentary publications after this date – see further: Australian Bureau of Statistics, *Yearbook Australia 1996*, p. 108; Australia. Legal and Constitutional Legislation Committee, *Department of Immigration and Ethnic Affairs*, 26 May 1995.

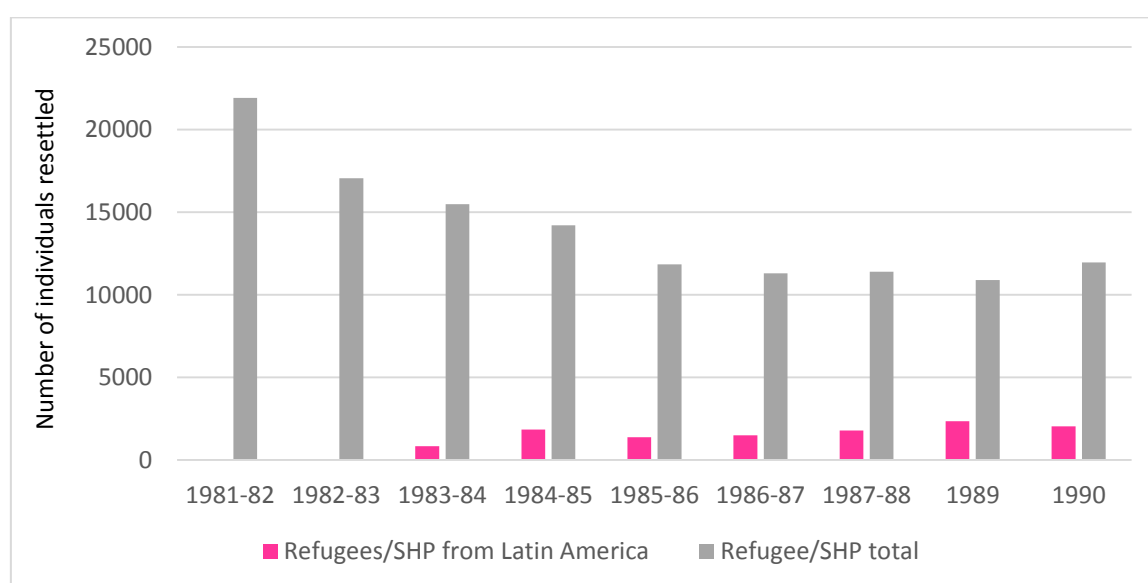
Figure 27: Australia's Refugee/SHP intake from Chile and El Salvador, 1983 to 1994



Source: Figures from 1982-83 to 1987-88 taken from Department of Immigration, Local Government and Ethnic Affairs, *Consolidated Statistics* (Canberra, 1988), p. 48. See also: Department of Immigration and Ethnic Affairs, *Review '84*, p. 36; Department of Immigration and Ethnic Affairs, *Review '86*, p. 66; Department of Immigration and Ethnic Affairs, *Review '87*, p. 66. Figures for 1989 to 1991 taken from Australian Bureau of Statistics, *Yearbook 1994*, p. 144, while figures for 1992 to 1994 are taken from Australian Bureau of Statistics, *Yearbook 1996*, p. 108 (note there is a slight discrepancy between these two publications).

Figure 28 illustrates how the intake from Latin America compared to the overall refugee and SHP intake for the decade 1982 to 1991:

Figure 28: Australia's in-country intake from Chile and El Salvador compared to the total Refugee/SHP intake, 1982-1991



Source: As for Figure 27.

2.1 Chile

The fall of the Salvador Allende government in Chile in 1973 spurred a large wave of Chilean migration to Australia, particularly refugee and family reunion cases.⁷⁴¹ Between 1973 and 1983, when in-country processing in Chile began, Australia had accepted 930 Chilean refugees and 10,665 Chileans through the normal migration programme, most of these arriving in the period 1973 to 1978.⁷⁴² Thus by the time that Macphee announced a greater focus on refugees from South America in March 1982, the number of Chileans who were resettled under the refugee programme had been in single digits for four years.⁷⁴³

Goodwin-Gill's files show that Chileans had been lodging applications for refugee status in Australia since application figures were first formally recorded in 1978. Claims during the period 1978 to 1983 were overwhelmingly rejected, for between 1978 and 1982 only three of the fourteen onshore applicants were approved for refugee status.⁷⁴⁴ The Department of Immigration was nonetheless regularly monitoring information about human rights abuses in Chile and neighbouring countries through its representative at the Australian embassy in Argentina.⁷⁴⁵

Interviewee testimony concurs with the idea that by the time West was appointed to the Immigration portfolio in March 1983, the department was concerned that Foreign Affairs staff at the Australian embassy in Santiago were not 'sympathetic enough' to what Immigration was trying to do for Chileans who wanted to flee.⁷⁴⁶ It is unclear what the Department had been attempting prior to the implementation of the in-country

⁷⁴¹ Australia. Department of Immigration and Ethnic Affairs, *Background Paper*, p. 15.

⁷⁴² *ibid.* See also: National Archives of Australia, M1335 19 [Personal papers of Prime Minister Fraser]

⁷⁴³ Australia. Department of Immigration and Ethnic Affairs, *Background Paper*, p. 15.

⁷⁴⁴ Goodwin-Gill Collection, DORS Minutes.

⁷⁴⁵ National Archives of Australia A446 1982/95101 Possible refugee situation – Falkland Islands. See also: National Archives of Australia, A1838 1690/5/5/1 Part 1 Australian refugee policy – relations with other countries – Chile – political refugees specific cases.

⁷⁴⁶ Interview with S. West; Interview with J. Betts.

programme, but it can only be surmised that it was related to the ‘Latin American programme’ that had been initiated under Macphee.⁷⁴⁷

In keeping with West’s stated objective to diversify the refugee program, in June 1983 two Immigration officials were sent to Buenos Aires ‘to assess refugee problems in the region’ and shortly afterward a single Senior Migration Officer was posted to the embassy in Santiago.⁷⁴⁸ This officer, Judy Betts, initiated the in-country programme in Chile. As West tells it, Betts went there ‘so that she could be responsible to me, and to the Department of Immigration not Foreign Affairs, because they were not happy with the programme and we were determined to do it’.⁷⁴⁹ Both Betts and Griffiths recalled that the Australian Ambassador in Santiago was hostile to the programme’s rationale and objectives, and viewed it as ‘a huge thorn’ in the bilateral relationship, an issue which will be discussed later in this chapter.⁷⁵⁰

Selection and processing

In an interview conducted for this thesis, Betts stated that she was instructed to develop admissibility criteria and ‘ground rules’ for the in-country programme in Chile, as at that time cases were being referred to Canberra for processing. After some months, she was granted permission to approve locally, as by then Betts had built networks with the local Catholic Church to identify and validate claims for resettlement.⁷⁵¹ Church networks were especially vital given that security clearances for individual cases could not be sought from the Chilean authorities. After West visited Santiago in August 1984, he told Parliament that he was satisfied that processing and identity checks were as

⁷⁴⁷ National Archives of Australia A1209 1987/150 Part 1.

⁷⁴⁸ Australia. Department of Immigration and Ethnic Affairs, *Review* '83, pp. 29-30.

⁷⁴⁹ Interview with S. West.

⁷⁵⁰ Interview with T. Griffiths; Interview with J. Betts.

⁷⁵¹ Interview with J. Betts.

‘effective as it is possible to be without endangering the safety of the applicants’.⁷⁵²

Betts identified two main caseloads in Chile: copper miners in the north of the country and dissidents who had been tortured or victimised by the authorities.⁷⁵³ The copper miners’ plight gained international media attention, and they will be discussed in this section as a means of illuminating the challenges that Betts faced in administering the programme. The copper miners had been dispossessed of their jobs and their homes after a mass strike against the military regime which began in June 1983.⁷⁵⁴ Rodolfo Seguel, the leader of the Copper Workers Confederation, had petitioned the embassy on their behalf and Betts made contact with them through a local priest. During the first year of the in-country programme, nearly 100 copper miners were processed for resettlement in Australia.⁷⁵⁵

When Betts arrived at the El Salvador Mines in northern Chile to interview these miners for resettlement, she and her party were harassed by the police and officials from the state-owned mining company Codelco. The in-country programme had quickly attracted the ire of the Chilean authorities, for as both the Minister and the officer recall, the Pinochet regime was ‘very unhappy about our programme’.⁷⁵⁶ When West toured the continent in August 1984, Chile was ‘the only place on that tour that I didn’t get to see anyone from the government’.⁷⁵⁷ By West’s recollection he stayed just one night,

⁷⁵² Australia. *Commonwealth Parliamentary Debates*, House of Representatives, 7 September 1984, p. 824. See also: Australia. Department of Immigration and Ethnic Affairs, *Review* ’88, pp. 51-52.

⁷⁵³ Interview with J. Betts.

⁷⁵⁴ E. Schumacher, ‘Copper Miners in Chile Defy Regime’, *The New York Times*, 17 June 1983, accessed 11 September 2013, at <<http://www.nytimes.com/1983/06/17/world/copper-mines-in-chile-defy-regime.html>>; E. Schumacher, ‘Chile Seizes Leader of Mass Protests’, *The New York Times*, 16 June 1983, accessed 11 September 2013, at <<http://www.nytimes.com/1983/06/16/world/chile-seizes-leader-of-mass-protests.html>>; M. Freudenheim and H. Giniger, ‘The World in Summary: Chile Gripped by Fear and Denial’, *The New York Times*, 26 June 1983, accessed 11 September 2013, at <<http://www.nytimes.com/1983/06/26/weekinreview/the-world-in-summary-chile-gripped-by-fear-and-doubt.html>>.

⁷⁵⁵ Australia. Department of Immigration and Ethnic Affairs, *Review* ’84, p. 36; Interview with J. Betts.

⁷⁵⁶ Interview with J. Betts.

⁷⁵⁷ Interview with S. West.

driving through the streets to the Ambassador's residence for a reception with staff and representatives of the local human rights agencies, and then flying out the next day. For his Senior Migration Officer stationed there, however, the tension lingered. Betts received threatening phone calls and a migration officer from another embassy was physically harassed. As Betts recalled in our interview, she remained committed to the task:

...the Chilean government had already said that they weren't happy... And so we were kind of constantly wondering what they might do, how they might react to us... After a while I started thinking that if this was the kind of place where [violence and harassment] was commonplace, then I really wanted to do the work that I was doing.⁷⁵⁸

The number of Chileans processed under the in-country programme rose from just under 149 in 1983-84 to 461 in 1985-86.⁷⁵⁹

Department of Immigration publications suggest that the in-country programme and other migration streams experienced a high volume of applications:

The Migration Office initially encountered difficulties in physically handling the volume of inquiries. To overcome excessive delays, the post adopted the procedure of giving all inquirers a leaflet explaining Australia's immigration policy in detail... If inquirers sought entry under the Special Humanitarian Programme, they were asked to provide a statement of claims for consideration.⁷⁶⁰

In 1988 the Department reported that the migration programme had garnered such attention from the Chilean community in Australia there were queues formed outside the embassy on Monday mornings.⁷⁶¹ Statistics published by the Australian government suggest that the Refugee / Special Humanitarian intake from Chile was maintained until

⁷⁵⁸ Interview with J. Betts.

⁷⁵⁹ Australia. Department of Immigration, Local Government and Ethnic Affairs, *Consolidated Statistics*, p. 48. See also: Australia. Department of Immigration and Ethnic Affairs, *Review '84* (Canberra, 1984), p. 36; Australia. Department of Immigration and Ethnic Affairs, *Review '86*, p. 71.

⁷⁶⁰ Australia. Department of Immigration and Ethnic Affairs, *Review '85* (Canberra, 1985), pp. 74-75.

⁷⁶¹ Australia. Department of Immigration, Local Government and Ethnic Affairs, *Review '88*, p. 52. See also: Australia. Department of Immigration and Ethnic Affairs, *Review '80*, pp. 80-81.

1991.⁷⁶²

2.2 El Salvador

The civil war in El Salvador began in 1980 and continued for more than ten years until a peace treaty was signed in January 1992 between the Government and the Farabundo Marti National Liberation Front, an umbrella group of five leftist organisations. The civil war had been characterised by a struggle for power amongst rightist military figures and centrist Christian Democrats, against a left-wing insurgency; it was a product of many decades struggle for land reform under authoritarian rule. The greatest number of deaths and human rights violations occurred during the period 1980 to 1983.⁷⁶³ Many of these executions, disappearances and massacres were the work of paramilitary ‘death squads’, anonymous terror groups which were connected to the right-wing military.

Goodwin-Gill’s records show that asylum seekers from El Salvador began lodging claims in Australia in 1981. Chapter Five of this thesis showed that the DORS Committee was reluctant to reject them outright. To reiterate, out of 24 applicants, five were approved for refugee status and eight were granted humanitarian leave to remain in Australia.⁷⁶⁴ This was one of the highest approval rates for refugee claimants in Australia during this period, and represented a growing appreciation of the significant and widespread atrocities occurring in El Salvador at that time. Foreign Affairs and Immigration were keenly aware that the Salvadoran authorities were ‘directly or

⁷⁶² Australian Bureau of Statistics, *Yearbook Australia 1994*, p. 144.

⁷⁶³ *From Madness to Hope*, p. 20. See also: Human Rights Watch, *The Lost Agenda: Human Rights and UN Field Operations* (New York, 1993), p. 15; M. Diskin and K. Sharpe, *The Impact of U.S. Policy in El Salvador: 1979-1985*, Institute of International Studies, University of California (Berkeley, 1986), pp. 26-29.

⁷⁶⁴ Goodwin-Gill Collection, DORS Minutes.

indirectly responsible for what amounted to terrorist activities’.⁷⁶⁵

In-country processing of Salvadorans began in mid-1983 with the rescue of the 77 political prisoners and their families, the story that was referenced at the beginning of this chapter. Earlier that year, Immigration staff became aware that the government of Álvaro Magaña was considering granting an amnesty for political prisoners. Interviewees stated that the Australians received information from the International Red Cross and the Canadian Government that upon release, these prisoners would be targeted by the paramilitary death squads.⁷⁶⁶ As Griffiths recalled, ‘there was no doubt in our minds that a rescue was what was involved’.⁷⁶⁷ He and his staff had followed the deteriorating and horrific human rights conditions in El Salvador, and Griffiths saw this amnesty as the best opportunity for Australia to respond:

...we knew if we wanted to strike a blow early on this is what we had to do and this was the most pressing problem.⁷⁶⁸

West was appointed Minister for Immigration in early March, just a few days before news of the proposed amnesty became public.⁷⁶⁹ Staff asked him to sign off on the resettlement initiative and West was in favour.⁷⁷⁰ Indeed, from the way that West spoke about the operation in his oral history interview, it appears to be a significant episode in his time as Minister:

It’s funny how things get started from small ideas and facts... the Department discovered that the government of El Salvador was about to declare an amnesty for a lot of the rebels they had in prison. And the purpose

⁷⁶⁵ Goodwin-Gill Collection, DORS Minutes, *Note for file: concerning DORS Meeting 9 October 1981*.

⁷⁶⁶ Interview with T. Griffiths; Interview with S. West.

⁷⁶⁷ Interview with T. Griffiths.

⁷⁶⁸ *ibid.*

⁷⁶⁹ ‘El Salvador Weighing Plan to Offer Limited Amnesty to Guerillas’, *The New York Times*, 20 March 1983, accessed 11 September 2013, at <<http://www.nytimes.com/1983/03/20/world/no-headline-045768.html>>. The Amnesty was approved on 4 May 1983 – see further: S. Kinzer, ‘Salvador Votes Amnesty for Prisoners and Rebels’, *The New York Times*, 5 May 1983, accessed 11 September 2013, at <<http://www.nytimes.com/1983/05/05/world/salvador-votes-amnesty-for-prisoners-and-rebels.html>>.

⁷⁷⁰ Interview with T. Griffiths.

was to let them out onto the streets and when they were on the streets the death squads were going to move in and clean them up. And that's how I went to El Salvador [in August 1984], and before that we'd implemented a programme which we were just kicking off...⁷⁷¹

West was immensely proud that his department 'went there and saved a few', and he described Hawke as having given him 'free rein' over the in-country programme.⁷⁷² Griffiths told a slightly different story, in which obtaining prime ministerial approval for the rescue operation in El Salvador was problematic. At the beginning of June 1983, Hawke was to enjoy his first official visit to Washington as Prime Minister:

...the dynamic was that Stewart with his constituents, left wing constituents, was in favour. Hawke was flying to Washington as part of this victory run, to see the Americans. Hayden was supportive. They consulted Hawke because it was an emergency response... and Hawke said he wasn't in favour of it... he was kind of a bit passive. He didn't say, 'you can't do it'...⁷⁷³

Immigration staff waited until Hawke had flown out of Australia on 2 June before obtaining final approval for the initiative from Acting Prime Minister Lionel Bowen.⁷⁷⁴ By the end of that month, more than 500 political prisoners were released from Mariona prison under the *Amnesty and Citizen Rehabilitation Act*.⁷⁷⁵ According to Griffiths and Jean Roberge, the Canadian Immigration official who oversaw that government's response to the amnestied prisoners, they were assembled in the local showground for processing by the international community.⁷⁷⁶ Roberge recalled that the Canadians began resettling the dissidents several weeks before the Australians arrived, but the lack of archival material makes it difficult to clarify these details.⁷⁷⁷ The oral history

⁷⁷¹ Interview with S. West.

⁷⁷² *ibid.*

⁷⁷³ Interview with T. Griffiths.

⁷⁷⁴ *ibid.*

⁷⁷⁵ *From Madness to Hope*, f56. *The New York Times* gave the number of amnestied political prisoners as 554 – see further: Gwertzman, 'Salvadorans to Gain Refugee Status'.

⁷⁷⁶ Interview with T. Griffiths; Interview with J. Roberge.

⁷⁷⁷ Interview with J. Roberge.

nonetheless conveys a sense of urgency. Griffiths described it as ‘a genuine rescue mission’ and remembers that staff were ‘all poised to go’.⁷⁷⁸ They ran the operation out of the Australian embassy in Mexico City:

...we had to go in in the most dramatic circumstances, buses, bodyguards and all that, bus people to the airport and make emergency arrangements to transport them... they were being shipped straight to Australia over Los Angeles and the Americans wouldn’t let them land, so they had to be very carefully, the transit had to be very carefully arranged... we had to arrange a perfect transit because the Americans wouldn’t allow them to land or even transit for any length of time... they go through the transit process and get straight on to the QANTAS flight. It was QANTAS out of LA.⁷⁷⁹

Soon after, on 14 July 1983, the Department of Immigration sent out a press release: seventy-seven Salvadorans had been selected to resettle in Australia. It stated that the ‘tradesmen, students, trade unionists and administrative workers’ had originally been imprisoned for ‘engaging in anti-government political or trade union activity’.⁷⁸⁰ In September that year, *The New York Times* reported that ‘so far’ Australia had accepted 44 amnestied prisoners and 52 of their relatives, and the Canadian government had accepted 131 prisoners and 159 relatives, which would suggest that the operation was not yet completed, although in a ministerial statement in September 1984 West indicated that the rescue of the amnestied prisoners had been completed the previous year.⁷⁸¹

Selection and Processing

The press release of July 1983 stated that the selection process was undertaken by Immigration staff ‘in conjunction with the Department of Foreign Affairs and

⁷⁷⁸ Interview with T. Griffiths.

⁷⁷⁹ *ibid.*

⁷⁸⁰ ‘Political Prisoners from El Salvador’, p. 1022.

⁷⁸¹ Gwertzman, ‘Salvadorans to Gain Refugee Status’; Australia. *Commonwealth Parliamentary Debates*, House of Representatives, 7 September 1984, p. 824.

Canadian officials’.⁷⁸² In conducting this operation and then establishing the in-country programme in El Salvador as a more permanent operation, the Refugee Branch relied on assistance from the Canadian government and the International Organisation for Migration (IOM), representatives of the Catholic Church and the Red Cross.⁷⁸³ According to Griffiths:

IOM was involved because they had the infrastructure on the ground, which we could never, didn’t want to create, could never create, because we weren’t accredited. I mean we didn’t have an embassy there, for example. So we had to stitch together all kinds of arrangements and we were very reliant, in my time, we were very reliant on the Canadians for help.⁷⁸⁴

Exactly how individuals in need of protection were selected and processed remains unclear, perhaps because the logistics of the programme may have changed over the course of the 1980s and early 1990s. Interviewees agree that Salvadorans in need of protection were recommended by representatives from the Catholic Church based in San Salvador, in particular by a human rights group called Tutela Legal that was affiliated with the Archdiocese of San Salvador.⁷⁸⁵ As West recalled, ‘it was very hard to evaluate them, [and] the Catholics were really the ones we had to depend upon’.⁷⁸⁶

Griffiths and another former senior public servant offered greater detail but had slightly different memories. Griffiths remembers a hands-on Australian involvement which was made possible by the local authorities:

...we were doing direct processing, we were sending people in from Mexico City to do direct processing in El Salvador, because the government was giving us permission to.⁷⁸⁷

The former public servant, who wishes to remain anonymous and so will be

⁷⁸² ‘Political Prisoners from El Salvador’, p. 1022.

⁷⁸³ Interview with T. Griffiths.

⁷⁸⁴ *ibid.*

⁷⁸⁵ Diskin and Sharpe, *The Impact of U.S. Policy in El Salvador*, pp. 26-29, 45.

⁷⁸⁶ Interview with former public servant ‘A’; Interview with S. West

⁷⁸⁷ Interview with T. Griffiths.

called public servant ‘A’, was involved with the programme at a later point. This person has stated that those Salvadorans were moved by IOM to Mexico City, and only then would staff from Australia’s Department of Immigration process them for resettlement:

...and what we would do is, if Tutela Legal identifies a person we are willing to have them moved to Mexico City ... by IOM in San Salvador who operated there... we would agree to them being moved to Mexico City on the basis... that we will resettlement them.⁷⁸⁸

It is possible that the method of selection and processing changed over time, but this is a question that can only be addressed through further archival and oral history research.

It is worth noting at this point how the Canadian government conducted its selection and processing of Salvadorans. Testimony provided by Girard relates specifically to the Canadian intake of political prisoners after the 1983 amnesty. He stated that Canadian officials ‘identified the people available for resettlement under the auspices of our program directly with the Head of the Amnesty Commission’, and ‘did what normal processing they could within the confines of the dangerous environment in which they working’.⁷⁸⁹ His colleague Roberge headed the mission to El Salvador after the political prisoners began to be released:

I was the first Canadian on the ground in San Salvador, having been sent from our Consulate in New York. A team followed in short order from Ottawa and we initially processed around 400 applicants who had been in jail and amnestied by President Duarte. Very few were actually politically inclined but all had suffered at the hand of the military junta security forces. The Australian team arrived perhaps five or six weeks later. I had already returned to New York by then. Both teams worked closely with IOM...⁷⁹⁰

Roberge offered some insight into the collaboration between the Australians and Canadians over the long-term:

⁷⁸⁸ Interview with former public servant ‘A’.

⁷⁸⁹ Interview with R. Girard.

⁷⁹⁰ Interview with J. Roberge.

IOM worked as the local agent for both Australia and Canada. Our officers travelled from Costa Rica and interviewed at the IOM office. Australian officers travelled from Mexico and also used the IOM office staff. Our teams sometimes overlapped and we exchanged information informally.⁷⁹¹

Roberge also stated that the Canadian government worked with Tutela Legal, the human rights office of the Bishopric of San Salvador that the anonymous Australian public servant recalled visiting. In his testimony, Roberge is referring specifically to the amnesty operation in mid-1983, when he and his team were liaising with both the government's Amnesty Commission, and the Catholic Church:

We also worked closely with the Tutela Legal office... The head was a Mrs. Hernandez, whose father had been a general and dictator of El Salvador in the 1930s. Her family connections allowed her some immunity and she was able to protect and assist many in the country. She would refer meritorious cases to us, independently.

Our team was ad hoc. Canada had no Embassy or office in El Salvador at the time. I was perhaps chosen for my fluency in Spanish, which allowed me to interact easily with all the individuals involved on the ground. Our aim was protection of the amnestied where it was felt that departure for abroad was needed or warranted.⁷⁹²

Roberge's statement reflects the sensitive and politically charged environment in which Canadian and Australian officials were working. Establishing and maintaining the in-country programme in El Salvador required diplomatic leverage and careful negotiation. For his part, West met with both the United States Assistant Secretary of State for East Asian and Pacific Affairs Paul Wolfowitz in Washington, and the Duarte government's Vice-President, Rodolfo Castillo Claramount in San Salvador.⁷⁹³ As stated earlier in this chapter, the in-country programmes in Chile and El Salvador could only succeed with the consent of the host governments. Griffiths and public servant 'A' offered largely

⁷⁹¹ *ibid.*

⁷⁹² *ibid.*

⁷⁹³ Australia. *Commonwealth Parliamentary Debates*, House of Representatives, 7 September 1984, p. 824; Interview with S. West; Interview with T. Griffiths.

similar recollections of the negotiations with the Salvadoran authorities:

Griffiths:

They were getting rid of people rather than seeing them murdered, which was kind of a, a bit of a pressure valve escape for them. So we had permission to do it.⁷⁹⁴

Public servant 'A':

What we negotiated... went very closely to this, with Foreign Affairs and others saying that, 'look, we understand that there are people on death squad lists'. And they accepted that... 'We Australia are willing to take them, if we know that they're going to be killed... we would be making you look better internationally by not another body being found in the street next morning by sending them into exile in remote Australia'. We were effectively getting rid of that internal dissident without the bloodshed.⁷⁹⁵

These statements hint at the political sensitivity of the programme, and this chapter will now turn to examining how these sensitivities played out within the Australian bureaucracy.

3. Foreign policy implications

By implementing an in-country programme in Latin America, the Department of Immigration was essentially pursuing an agenda at odds with the imperatives of the Department of Foreign Affairs. The very nature of an in-country programme is a condemnation of a government's relationship with its people. The duration and scale of processing in Chile and El Salvador was, as several interviewees noted, 'hugely insulting' and required very careful negotiation with the respective Chilean and Salvadoran authorities.⁷⁹⁶ It also represented an inherent criticism of the Reagan administration's support for rightist regimes in the region. Publicly, Foreign Affairs

⁷⁹⁴ Interview with T. Griffiths.

⁷⁹⁵ Interview with former public servant 'A'. See also: Interview with J. Menadue.

⁷⁹⁶ Interview with J. Betts; Interview with B. Phi.

expressed concern to the United States about the ongoing civil conflict in El Salvador and acknowledged the objectives of the in-country programme.⁷⁹⁷ Behind the scenes, however, interviewees have described the response of Foreign Affairs' officials to the programme as 'slight embarrassment but cooperation', 'not helpful' and 'hostile'.⁷⁹⁸ An examination of the Department of Foreign Affairs archives alongside records of the Immigration Department's Refugee Branch can help us to understand why this was the case.

3.1 Internal debate within the Department of Foreign Affairs

During the late 1970s and early 1980s, before the in-country programme was established, the Department of Foreign Affairs received correspondence from members of the public, human rights organisations and trade unions who were asking the Australian government to make diplomatic representations for political prisoners across Latin America.⁷⁹⁹ At this time the Department was interested in strengthening diplomatic ties in the region and reports of human rights abuses were inconvenient. This resulted in a conflict of interest between officers in Canberra, conscious of public sentiment and pressure on their Minister, and diplomatic staff on the continent. The former head of Immigration's Operations and International Division, Peter Eyles, oversaw Immigration's entree into Latin America, and in his recollection Foreign Affairs (DFA) had heads of mission 'who did not trouble themselves to think outside DFA orthodoxy'.⁸⁰⁰

Evidence of this can be found in correspondence between Foreign Affairs and its overseas missions. For example, in 1978 the Department concluded that Australia had

⁷⁹⁷ 'Policy Towards Central America', *Commonwealth Record*, 20 July 1983, p. 1062; 'Humanitarian Aid to Central America', *Commonwealth Record*, 21 May 1984, p. 933.

⁷⁹⁸ Interview with B. Phi; Interview with S. West; Interview with T. Griffiths.

⁷⁹⁹ See further: National Archives of Australia, A1838 262/9/11 Part 6, Latin America – Relations with Australia – Human Rights and Political Prisoners.

⁸⁰⁰ Interview with P. Eyles.

not suffered any damage to bilateral relations by participating in UN debates on human rights in Chile, although the Chilean government had expressed some displeasure to the Australian embassy in Santiago. The then Ambassador to Chile disagreed, arguing there were less disadvantageous means of expressing criticism. He wrote to Canberra stating that Australia's previous co-sponsorship of UN resolutions concerning Chile had begun 'to affect our working relationship'.⁸⁰¹ The letter went on to state that 'representations on individual cases, in most of which Australia had some *locus standi*, have not been counter-productive for our relations'.⁸⁰² Essentially the Ambassador was stating that Australia's public condemnation of Chile was damaging, but private representations were not.

Australia's relationship with El Salvador and other Central American countries was overseen by the embassy in Mexico City. The archival record shows that in 1979 and 1980 the Department of Foreign Affairs argued repeatedly with the then Ambassador to Mexico about whether to make representations on human rights issues to governments within the region:

... we took account of the reservations you have expressed about making human rights representations in Central America... (...concerning possible accreditation to Honduras, El Salvador and Nicaragua). However, we were also guided by the Minister's view that it is important to be able to say with regard to human rights in countries like Guatemala (Chile and Argentina are other examples) that Australian representatives have told local authorities of Australian concern. In addition, it is clear that there is growing interest in Australia in human rights questions in Central America and we can no longer avoid taking a position on them.⁸⁰³

Another cable to the Ambassador argued that 'a low-key approach' to Guatemala 'would have a limited impact on the bilateral relationship', indicating the increasing importance of human rights considerations for the Department:

⁸⁰¹ National Archives of Australia A1838 262/9/11 Part 6.

⁸⁰² *ibid.*

⁸⁰³ *ibid.*

...we feel that whatever slight damage may be done to an already slender relationship is outweighed by the necessity to express the very real concern felt by many Australians...⁸⁰⁴

In reiterating the Minister's wishes the cable gave credence to the views and information supplied by Amnesty International. In his reply, the Ambassador expressed serious doubt about the material that the Department relied upon:

In much of what I have read recently Amnesty seems light-hearted in the important matter of evidence, and seems to work on the assumption that anyone who dies a violent death in Guatemala, and there are plenty of them, is a victim of right-wing or government terror tactics, which is nonsense....⁸⁰⁵

Finally, and most importantly, the Ambassador poured scorn on Australia's desire to intervene in Latin America, a product of the nation's increasing contribution to international human rights discourse:

I think we should avoid being sucked into a situation about which we know very little anyway... And what will happen on that inevitable day when scatty accusations about treatment of Australian aboriginals becomes the issue of the moment for people who get a big kick out of writing to governments telling them to straighten themselves out?⁸⁰⁶

The internal tensions within Foreign Affairs over the importance of human rights considerations offer a fascinating side-story to the in-country programme. What mattered for Immigration in this case is that by 1983, when the Refugee Branch was organising the operation in El Salvador, they were aided by an embassy in Mexico that was headed by a new and more progressive representative. Cavan Hogue had worked in Malaysia during the height of the Indochinese exodus, and according to Griffiths, he 'knew which way the wind was blowing, and knew that there was only one thing to do

⁸⁰⁴ *ibid.*

⁸⁰⁵ *ibid.*

⁸⁰⁶ *ibid.*

which was to support this operation'.⁸⁰⁷ The Foreign Minister Bill Hayden announced in December 1983 that Australia had opened diplomatic relations with Nicaragua, El Salvador and Honduras, and that this would facilitate the acceptance of political refugees.⁸⁰⁸

3.2 Impact on the relationship between the Immigration and Foreign Affairs

The in-country programme fuelled tensions between Immigration and Foreign Affairs. This was part of a larger struggle over the refugee portfolio, which had been going on for several years. When refugee policy was formalised by the Fraser government in May 1977, it was designated to be the responsibility of Immigration, with input from Foreign Affairs.⁸⁰⁹ Immigration's total budget grew four-fold between 1975 and 1982, as Chapter Two of this thesis showed, and humanitarian entrants became an important part of the immigration programme.⁸¹⁰ The Department gained greater administrative resources, expertise and a dedicated Refugee and Special Programs Branch. In turn, Foreign Affairs established its own internal Refugee, Immigration and Asylum Branch in 1981, much to the annoyance of senior staff in the growing Immigration Department.⁸¹¹

Department of Immigration archives show that this ongoing inter-departmental wrangling over refugee policy was resented by the respective ministers. In September 1982 then Minister for Immigration John Hodges reprimanded his deputy secretary Ian Lindenmayer:

⁸⁰⁷ Interview with T. Griffiths.

⁸⁰⁸ Associated Press, 'Australia to open Latin Ties', *The New York Times*, 5 December 1983, accessed 11 September 2013, at <<http://www.nytimes.com/1983/12/05/world/australia-to-open-latin-ties.html>>; 'Seeking Australian Support: Salvadoran Rebel on Peace Visit', *The Canberra Times*, p. 6.

⁸⁰⁹ National Archives of Australia A10756 LC1366 Part 1

⁸¹⁰ Figures compiled by author, taken from Department of Immigration annual reports and *Appropriation Act (No. 1) 1979-80 (Cth)*; *Appropriation Act (No. 1) 1980-81 (Cth)*; *Appropriation Act (No. 1) 1981-82 (Cth)*; *Appropriation Act (No. 1) 1982-83 (Cth)*.

⁸¹¹ See further: National Archives of Australia, A446 1982/95192 Part 2, Refugee Branch relations with Foreign Affairs.

...the Minister said he had had a “gutful of the bickering that was going on between Foreign Affairs and this Department on such matters as refugee and student policy”. He told Mr Lindenmayer that he understood this had been going on for years and that officials were using him and [Minister for Foreign Affairs] Mr Street as pawns. Mr Lindenmayer said he explained to the Minister that the two departments saw themselves as possessing quite separate roles. Foreign Affairs was usually concerned to ensure that sound relations with foreign governments were maintained.⁸¹²

It appears the problem continued well into the following year. The archives contain many items of correspondence and internal memos that suggest Immigration perceived Foreign Affairs to be overstepping the mark in its contribution to refugee policy. Griffiths reported the interference to Peter Eyles and other superiors several times in early 1983:

I am becoming increasingly concerned at DFA interventions in program management and case management issues in ways and to an extent which do not reflect the specifics of their responsibilities in this regard.⁸¹³

Foreign Affairs did not approve of the expansion of Immigration’s purview into Latin America. When Immigration set out its annual refugee programme for 1982 through to 1985, Foreign Affairs strongly advised against an intake from Central America because this was ‘an unsettled and delicate situation’, and argued that ‘the refugee situation in South America has eased in recent years’.⁸¹⁴ Griffiths placed Foreign Affairs’ opposition to the intake from Latin America within the context of the refugee programme since the late 1970s, when a ‘humanitarian agenda’ had been set under the Fraser government:

[Originally] Foreign was quote ‘satisfied’, [they] couldn’t argue with the bias towards Indochina could they? It was only when the bias became different that... the ‘traditionals’ in the Foreign Ministry could argue that there were problems. So yeah that’s when the issues came up.⁸¹⁵

⁸¹² *ibid.* See also: Interview with T. Griffiths.

⁸¹³ National Archives of Australia A446 1982/95192 Part 2.

⁸¹⁴ National Archives of Australia, A12909 Submission no. 5439 Migration Program for 1982/83, 1983/84 and 1984/85, Decision no. 17849, 20 April 1982.

⁸¹⁵ Interview with T. Griffiths.

By March 1983, as the in-country programme was slowly getting underway and Immigration was communicating with staff on the continent, Foreign Affairs was sending follow-up cables that issued contrary instructions. They justified their actions to Griffiths by arguing that Immigration's cables 'represented a new step to extend the Latin American Refugee Program and as such raised substantial foreign policy questions', and 'any increase in our Latin American intake was not compatible with our level of interest in that region and jeopardized priority to the Indochinese'.⁸¹⁶ Two months later, Labor Senator Nick Bolkus told the Parliament that Foreign Affairs had actively interfered with Immigration cables to diplomatic posts in Latin America:

...during the last couple of years cables of directions to implement policy have not gone to posts in Central and Southern America. They had been physically prevented from going there by the Department of Foreign Affairs. In some instances follow up cables have been sent to posts in that region indicating that no action was to be taken consequent upon the previous cable that was sent.⁸¹⁷

Bolkus labelled this a politically motivated 'diplomatic sabotage'.⁸¹⁸

Correspondence between Stewart West and his Foreign Affairs counterpart Bill Hayden reveals the inimical positions of their portfolios; where Hayden argued that refugee resettlement was inextricably linked to 'our relations with their countries of origin', West argued that human rights and Immigration's prerogative were more important.⁸¹⁹ Interviewees noted however, that while Hayden may have supported Foreign Affairs' interests in relation to other refugee intakes, he was sympathetic to the resettlement of left-wing Latin Americans as part of the diversification of the programme:

⁸¹⁶ National Archives of Australia A446 1982/95192 Part 2.

⁸¹⁷ *ibid.*

⁸¹⁸ *ibid.*

⁸¹⁹ *ibid.*

...there was an unspoken political dimension i.e. “leftish” refugees balanced out to some extent the “rightist” [Iron-Curtain Nationals] which I suspect formed part of the Hayden/West alliance about this program.⁸²⁰

As West remembers it, Foreign Affairs were, ‘in bed with the Americans’, but nonetheless Hayden supported him.⁸²¹

Importantly, in West’s recollection this contrasted starkly with the vehement opposition that Hayden expressed when West had floated ideas about responding to Irian Jayan or East Timorese refugees.⁸²² In his oral history interview West recalled that while he had been given complete ‘free rein’ in Chile and El Salvador from Hawke, ‘I certainly never had free rein on East Timor’.⁸²³ West recalled that East Timorese seeking asylum in Australia were one thing – ‘if they made it they made it, they were not turned away’ – but he explained that there was no political will within the government for in-country processing within East Timor:

...well you could have been saying, 'We want an SHP programme from basically what was then Indonesia' [and] they would have said, 'You're nuts, there's no way in the world you're going to be able to go there and set-up what we did in El Salvador'⁸²⁴

West stated that he knew the idea would never gain approval because he had already raised the issue of asylum seekers from Irian Jaya, a region in Indonesia, with Foreign Minister Bill Hayden and had received a furious dressing down in response: ‘I was someone who was trying to talk up a storm... to deal with a problem that 'didn't exist’.⁸²⁵ West recalled his inability to respond to the East Timorese during his time as

⁸²⁰ Interview with P. Eyles. See also: Interview with T. Griffiths.

⁸²¹ Interview with S. West.

⁸²² *ibid.*

⁸²³ *ibid.*

⁸²⁴ *ibid.*

⁸²⁵ *ibid.* Goodwin-Gill’s files show that in November-December 1978 the UNHCR made representatives to the Fraser government on behalf of five Irian Jayan refugees who were in Papua New Guinea and needed resettlement, but it appears that these were unsuccessful – see further: Goodwin-Gill Collection, AUL: Reports, *UNHCR Branch Office Sydney, Report for November-December 1978*; Goodwin-Gill

Minister for Immigration with disappointment:

If you like it's one hole in my administration from '83 to '84 that maybe I should have looked at a lot more closely, in terms of what you could do for people to encourage them to leave. But I can tell you that neither Hawke nor Hayden were anxious for me to bring it on.⁸²⁶

The Fraser and Hawke governments did resettle East Timorese who were based in Portugal and other parts of the world under the SHP, and small groups of selected individuals were resettled from East Timor through negotiations with the Indonesian government.⁸²⁷ The archival records show that under the Whitlam and Fraser governments Immigration staff 'always considered Indonesia's wish to avoid the impression of a mass exodus of 'refugees''.⁸²⁸ Evacuees and family reunion cases were preferable terms, as Australia's Ambassador assured the Indonesians in July 1978, because the term 'refugee' 'had some rather unhelpful legal connotations'.⁸²⁹

It appears then, that at the ministerial level, Foreign Affairs' attitude toward individual refugee intakes was flexible, depending on a range of both domestic and external political considerations. The assertion of Foreign Affairs priorities over the refugee intake is a recurring theme in this thesis.

Collection, AUL: Reports, *UNHCR Branch Office Sydney, Report for 1978 to the United Nations High Commissioner for Refugees*. Similarly, the Hawke government sought to avoid granting refugee status to five Irian Jayans in the mid-1980s – see further: Interview with B. Phi; Interview with T. Griffiths; E. Biok, 'The Regional Perspective: Exporting Deterrence and Negating Human Rights Standards, *UTS Law Review*, 9 (2007), pp. 73-74. Arja Keski-Nummi recalled that when the Department of Immigration established a 'Special Assistance Category' for East Timorese who were outside East Timor in the early 1990s, under Minister for Immigration Gerry Hand, senior Foreign Affairs staff were similarly furious – see further: Interview with A. Keski-Nummi.

⁸²⁶ Interview with S. West.

⁸²⁷ See further: Australia. Department of Immigration and Ethnic Affairs, *Review '80*, p. 49; Australia. Department of Immigration and Ethnic Affairs, *Review '83*, p. 30; Australia. Department of Immigration and Ethnic Affairs, *Review '84*, p. 36; Jupp, *The Australian People: An Encyclopaedia of the Nation and its Origins*, p. 706; National Archives of Australia A6980 S251078 Part 1 'Refugee Branch – Timor family reunion – visit to Timor – November 1978'.

⁸²⁸ National Archives of Australia A6980 S251078 Part 1.

⁸²⁹ *ibid.*

4. Broader political implications

The desire to diversify the refugee intake had broader political consequences, relating to debates over the volume and criteria of the immigration programme that developed during the early to mid-1980s, and which were briefly referenced in Chapter One. West's stated objective to take more refugees from Latin America was interpreted in distinct ideological terms by some members of the Liberal/National Party, who were in Opposition from March 1983 and beginning to question the merits of non-discriminatory immigration policy and the refugee programme more broadly. Macphee went against the tide in his party and strongly supported West's vision for the portfolio.⁸³⁰ Other Opposition members accused the Hawke government of being 'socialist' and inconsistent in its representations to the Reagan administration over Central America.⁸³¹ West was the only left-wing member of Cabinet in the first Hawke Labor government, and was sharply criticised by the shadow ministers for Immigration and Foreign Affairs: 'According to them I was a dangerous left-wing minister, touring the world looking for left-wing refugees'.⁸³²

The Opposition issued nebulous warnings about the acceptance of large numbers of these so-called left-wing refugees, a legacy of Australia's Cold War ideological partisanship. The Shadow Immigration Minister cautioned West that the intake from Latin America could have 'extremely serious, if not explosive consequences' for the Australian community.⁸³³ A Liberal Senator drew implicit connections between the criminal backgrounds of Cuban refugees who were deliberately released to the United States by President Fidel Castro in 1980, and Australia's new intake of Latin Americans:

⁸³⁰ Interview with I. Macphee, 8 December 2010; Interview with S. West.

⁸³¹ 'Deputy Leader of the Opposition: Policy Towards Central America' *Commonwealth Record*, 25 July 1983, p. 1140; Interview with S. West.

⁸³² Interview with S. West. See also: Interview with P. Eyles.

⁸³³ Australia. *Commonwealth Parliamentary Debates*, House of Representatives, 18 May 1983, p. 665.

I just want to sound a note of caution... the Cuban Government eject[ed] people whose political beliefs were not compatible with that of the ruling regime but also it ejected all the other people who were otherwise socially undesirable. It virtually emptied its prisons and filled the United States prisons in several States. Whilst there is debate between regimes of differing views about what constitutes a social undesirable – some regimes might think it is because a person has right wing or left wing political views – I think we have a common view on the subject of common criminals. I hope that all care is taken to make sure that in expanding the number of refugees from South and Central America this does not happen to us.⁸³⁴

At this stage the in-country programme was only briefly referenced in the Department of Immigration's publications, but the Opposition had pursued the idea that the immigration programme was out of step with the tolerance of the Australian community.⁸³⁵ Griffiths stated that as the intake grew the Department was forced to gently promote the in-country programme as a 'good news story' to the Australian public, and thereby promote the diversification of the refugee intake more generally.⁸³⁶

The following is an excerpt from the oral history interview with Griffiths:

Griffiths:

...we realised we had to develop a policy in relation to torture including the management of torture victims when they came to Australia. And that was a very good news story as well, and we then began to leak this information to the Australian public. That this was the work we were doing, in order to get public support...

Higgins:

Why did you need public support?

Griffiths:

Because we were introducing into the country some strange new faces. And rumours began to circulate that we were taking torturers who'd inserted themselves into the programme and that the authorities were rewarding them for their services by giving them the golden exile to places like Australia.

⁸³⁴ Australia. *Commonwealth Parliamentary Debates*, Senate, 19 May 1983, p. 650.

⁸³⁵ Australia. *Commonwealth Parliamentary Debates*, House of Representatives, 8 May 1984, p. 2039.

⁸³⁶ Interview with T. Griffiths.

Higgins:

Who would perpetuate those claims?

Griffiths:

Well I can't say, probably rumours run round the ethnic communities, after all... So part of it became a package, to start to sell the idea of in-country as a response to most acute circumstances. And the most horrifying circumstances. And to start to sell, to associate the SHP with the other in-country or the other diversification initiatives, which the government wanted...⁸³⁷

It has been difficult to find published or archival sources that substantiate Griffiths' statement. Department of Immigration publications of the 1980s do not contain references to counselling programmes or other specific settlement services for Latin Americans. The only clue comes from the press release that was issued after the first Salvadoran intake in July 1983. It shows that the Department felt that it was necessary to clarify who these 'new faces' were, by assuring the public that the refugees were not suspected of having terrorist or extremist links.⁸³⁸

Conclusion

The story of Australia's in-country programme in Chile and El Salvador has never been told by immigration historians or refugee scholars, but it is extremely significant to Australia's immigration history. It was established during a period in which Australia is popularly remembered as being 'a model international citizen' in refugee affairs, after the abolition of racially discriminatory immigration in 1973 and before a 'brutalisation' of law and policy toward asylum seekers from the late 1980s

⁸³⁷ *ibid.*

⁸³⁸ 'Political Prisoners from El Salvador', p. 1022.

onward.⁸³⁹ Whatever may be said about the Australian government's reception of other refugees during the early 1980s (and the debate will no doubt continue), the in-country programme provides irrefutable evidence that the 'model' image is warranted at some level; the Australian government did pursue a progressive refugee policy that was remarkable in its ambition.

What is most interesting about the in-country programme is that, despite the political and bureaucratic challenges it confronted and surmounted, it was not used to yield reputational benefits for Australia. Just a few years earlier, the Fraser government's Indochinese resettlement programme was sold to the Australian public as a moral obligation, bound up with international commitments and the nation's image. Successive Ministers toured the country to promote 'a bi-partisan immigration policy', and departmental staff members were instructed to develop public relations material on the intake.⁸⁴⁰ In comparison, the in-country programme functioned discreetly, warranting just a few sentences in the Department's annual reports for the entirety of the 1980s. Despite Griffiths' testimony that the Department publicised the programme to a limited extent, the lack of evidence or reference to the programme in Departmental publications or other primary sources indicates that it did not contribute to the idea of Australia as a generous country of resettlement that successive governments have sought to cultivate. Instead, to quote Menadue, 'it was quite an achievement to implement the SHP without antagonising bilateral relations'.⁸⁴¹

The in-country programme in Latin America represents a continuity in the Fraser

⁸³⁹ Viviani, *The Long Journey*, p. 113; Gibney, *The Ethics of Politics of Asylum*, p. 167; Crock, 'Refugees in Australia', p. 8; Manne, *Making Trouble*, p. 118.

⁸⁴⁰ Australia. Department of Immigration and Ethnic Affairs, *Review '78*, p. 26; Interview with I. Macphree, 8 December 2010; Goodwin-Gill Collection, AUL: Reports, *UNHCR Sydney Branch Monthly Report April 1979*. See also: Proceedings of the Conference on the Indochina Refugee Situation; National Archives of Australia M1277 175; Interview with A. Keski-Nummi.

⁸⁴¹ Menadue, *Things You Learn Along the Way*, p. 221.

and Hawke governments' approach to refugee policy. The programme is a story about a deliberate ideological and geographical shift in Australia's refugee intake, the growing influence of the Department of Immigration in this policy area and the evolution of Australia's role in international refugee affairs. It is about the anxieties these things generated within the bureaucracy and the parliament.

The programme raises questions about the capacity of government to use refugee policy for activist purposes. In 1983 the Department of Immigration announced that it was working closely with Foreign Affairs to ensure 'greater prominent is given to humanitarian issues and priorities in consideration of refugee matters', and that these issues would become more prominent 'in the pursuit of Australia's external relations objectives'.⁸⁴² These developments must be considered, however, with reference to the approach of the Fraser and Hawke governments to refugees from Irian Jaya and East Timor, and in doing so the in-country programme becomes a more complex and revealing stage in Australian history. Given the political sensitivities that the in-country programme in Latin America provoked, perhaps it represents the limits of refugee policy-making at this crucial and transformative stage in Australia's immigration history. This is a tentative but potentially powerful question for future research.

Today the Australian government provides a small number of resettlement places under an In-Country visa (Sub-Class 201) and the SHP remains as a means of enabling families within Australia to sponsor individuals to resettle each year, but in-country processing no longer functions in the way that it once did. In her 2007 paper Kumin argued that in-country processing could be more widely implemented by countries in the European Union as a means of off-setting a restrictive approach to asylum seekers, thereby fulfilling a moral responsibility 'to allow persons in need of protection to find

⁸⁴² Australia. Department of Immigration and Ethnic Affairs, *Review '83*, p. 27.

it'.⁸⁴³ In relation to Australia, Menadue has also advocated for the government to establish new in-country initiatives under the SHP, and in doing so he has made comments in print and news media about the original programme:⁸⁴⁴

There is precedent for this in the Special Humanitarian Program which was developed by the Fraser Government in 1982 to assist persons in Latin America who were oppressed by military governments particularly in Chile and El Salvador. The SHP was deliberately designed and worded so that it could not be seen as a refugee program. Thousands came to Australia under this program. It was done quietly and diplomatically.⁸⁴⁵

Menadue's comments constitute the only recent public acknowledgement of this unusual and large intake. This is despite the fact that historians, refugee advocates and political commentators have been absorbed with the Australian government's record on refugee policy since the release of relevant Whitlam, Fraser and Hawke government archives in the past six years. The debate over refugee policy during the late 1970s and early 1980s is centred on whether leadership and generosity were evident in the response to boat arrivals and in the large-scale resettlement of refugees out of camps in South-East Asia. There is, evidently, a crucial gap in this historical conversation. It is hoped that this original study of the in-country programme in Latin America can further scholarly understanding of the Australian government's capacity in this policy area and the diversification of the immigration programme during the early 1980s, and contribute to the international literature on in-country processing.

⁸⁴³ Kumin, 'In-country 'Refugee' Processing Arrangements', pp. 79, 84-5.

⁸⁴⁴ Menadue et. al., *A New Approach*, pp. 27, 30. Menadue and Keski-Nummi called for a revived in-country programme in their submission to the Gillard Labor government's Expert Panel on Asylum Seekers in 2012 – see further: J. Menadue and A. Keski-Nummi, *Submission to the Expert Panel on Asylum Seekers* (2012), p. 12. See also: Refugee Council of Australia, *Submission to the Expert Panel on Asylum Seekers* (2012), pp. 11-12.

⁸⁴⁵ Menadue, 'Misinformation and ignorance breeds fear'.

Conclusion

This thesis aimed to improve historical knowledge of Australian refugee policy between 1976 and 1983. How was this achieved? Chapter Three built on a consensus within the existing literature that boat arrivals were allowed to stay in Australia, by revealing that the Fraser government had an unofficial policy to approve the refugee status of every Indochinese applicant in order to legitimate its claim that only ‘genuine’ refugees were being accepted. This strategy was the best means of recognising the *prima facie* refugee status of the Indochinese while also discouraging boat arrivals, as well as assuring the Australian public that the government was both in control of the refugees’ admission and fulfilling the nation’s international obligations. The chapter uncovered new evidence of the DORS process, and found that the unofficial policy did not go unchallenged within DORS or within the Department of Immigration. Indeed, departmental representatives on DORS questioned the level of persecution experienced by Indochinese applicants, and thus the government was forced to defend the merits of the status determination system both publicly and behind-the-scenes. Chapter Four continued to examine the issue of boat arrivals, querying three policy options that have been widely cited in academic and media commentary on the Fraser government. It was found that the *Immigration (Unauthorised Arrivals) Act 1980* (Cth) was viewed by the government as the best means of managing the moral hazards, political imperatives and symbolic historical consequences of Australia’s role as a country of first asylum. Importantly, the chapter used a combination of oral history, archival records and refugee studies literature to challenge interpretations of this legislation and the *VT838* incident as advanced by Smit and Stevens, placing the legislation within the context of changing international responses to refugee flows and using new evidence from Goodwin-Gill’s

files to refute these authors' misconceptions about the government's response to the VT838.

Chapters Five and Six looked beyond the commonly discussed aspects of refugee policy to seek a more comprehensive image of departmental dynamics and priorities. Chapter Five contributed to ideas within the international literature on refugee status determination by discovering that DORS' deliberations could be influenced by political interests or the quality of briefing material. The chapter found that DORS was willing to make a discretionary recommendation for compassionate/humanitarian leave to remain in cases that deserved sympathetic consideration but did not meet the Convention criteria, or to avoid diplomatic sensitivities or unwanted precedents that would arise from a recognition of refugee status. Through a qualitative and basic quantitative analysis the chapter also demonstrated that the nature of Foreign Affairs' briefing material could encourage the rejection or approval of particular social groups or nationalities. Chapter Six turned to examine the previously unexplored story of in-country processing in Chile and El Salvador, and asked what this initiative can tell us about Australia's refugee policy during the early 1980s. It was found that the programme played into broader tensions between the departments of Foreign Affairs and Immigration over control of this policy area, and enhanced anxieties within the parliament about the diversification of the refugee intake. The chapter made a significant contribution to literature on Australian immigration history by uncovering details of a remarkable resettlement policy.

The research method used in this thesis demonstrates that a combination of oral history and archival sources can uncover a great deal of important new evidence and behind-the-scenes insights, helping to reflect what Thompson called the 'multiplicity of standpoints' in the policy-making process. As a result, this thesis has pointed to a

number of areas that merit further investigation. Future research on Australia's refugee policy of the late 1970s and early 1980s could be enhanced through an examination of the experiences of public servants and the refugees themselves. For example, weaving together the stories of those who implemented in-country processing with those who benefited from it would create a more vivid history of this programme, revealing the risks and challenges that were faced by all involved in this 'genuine rescue mission'.

Chapters Three and Four proved that an analysis of behind-the-scenes detail, combined with an understanding of changing international interpretations of refugee movements, can either enhance or, importantly, overturn existing ideas within the literature about the nature of the Fraser government's decision-making. In 2010 Neumann wrote that the lack of historical scholarship on Australia's response to asylum seekers has combined with the divisive nature of current policy to ensure that the subject has been overly simplified into myth and counter-myth.⁸⁴⁶ To some degree this proposition is correct, because academic and media commentary has offered confident assessments that the Fraser government acted either generously or begrudgingly towards boat arrivals, but has not scratched far enough beneath the surface to appreciate or contextualise the varied influences on policy-making at the international level and within the bureaucracy. Even in his public statements and in his interview for this thesis, Fraser has painted a fairly straightforward political picture, where public or political opposition to the refugee intake ultimately fell by the wayside to 'a moral and ethical obligation'.⁸⁴⁷ Chapters Three and Four demonstrated that there is a much more complex and therefore compelling story to be told.

⁸⁴⁶ K. Neumann, 'Historians to the Fore: or, how to inform a much needed debate about Australia's response to refugees', *Australian Policy and History*, Institute of Social Research, Swinburne University of Technology, 2010, pp. 3-4.

⁸⁴⁷ Interview with M. Fraser.

Importantly, the claims made by Fraser and by many others that the admission of Indochinese refugees was based on moral responsibility and leadership can be tested and illuminated by behind-the-scenes, contextualised detail. Stevens' argued in 2012 that historians must not 'romanticize' the Fraser era as one of 'moral courage', but the evidence presented in this thesis showed that Stevens' presented a simplified alternative reading of events.⁸⁴⁸ Instead, it is hoped that Chapters Three and Four offered a more nuanced analysis, but one that supports the assessments made by Viviani and others that the Fraser government's policy 'upheld international law and custom' and was 'of immense humanitarian benefit', and therefore demonstrates that the reception of refugees can be humane and ethical while still being informed by, and fulfilling, other more political objectives.⁸⁴⁹

The evidence presented in Chapters Five and Six suggests that there are many more stories to be found within the history of refugee policy in the late 1970s and early 1980s, stories that hold significance for the Fraser and Hawke government's legacies in this area. How often a recommendation for compassionate/humanitarian leave to remain was made, how it affected the lives of individual applicants, and how it subverted foreign policy challenges will remain unknown until the relevant archival records become available. Similarly, the in-country programme was largely unheralded, and the lack of available archival evidence for this programme means that further oral history research is vital if the extraordinary details of this initiative are ever to be revealed. Importantly, if the model of in-country processing was not used to deter an asylum flow but to respond to an acute humanitarian situation, then it is also worth analysing the Department of Immigration's capacity for proactive refugee programmes, and asking whether the ambitious and politically sensitive initiative in Latin America represented

⁸⁴⁸ Stevens, 'Political Debates on Asylum Seekers', p. 540.

⁸⁴⁹ Viviani, *The Long Journey*, p. 113.

the limits of policy-making at that time.

Of most interest is the potential for further research on the intersection between foreign policy and refugee admission. As discussed in Chapter One, foreign and domestic imperatives are powerful and competing influences on refugee policy. Chapter Four argued that the Fraser government made policy choices with the nation's international image and diplomatic relationships in mind, while Chapters Five and Six highlighted how these relationships could cast a shadow over decision-making. Most notably, Chapter Six showed that an activist resettlement initiative could trouble the Department of Foreign Affairs; more recently, in 2002 Jupp wrote that Foreign Affairs viewed Australia's current restrictive and harsh approach to asylum seekers to be damaging the nation's diplomatic relations and international image.⁸⁵⁰ These complementary findings deserve further investigation, as they suggest that the nexus between foreign and refugee policy is a delicate one, subject to the shifting priorities of both portfolios.

Amidst the debate over Australia's current refugee policy, the Fraser era has been evoked by those who have argued for a more humane response to asylum seekers. The historical reference point concerns both policy and politics. For example, in July 2012 the Australian Greens Party announced a refugee policy based on the approach to regional processing that was taken by the Fraser government during the Indochinese exodus.⁸⁵¹ In August 2013, Menadue published an opinion piece in which he decried the dearth of leadership on refugee issues within the current Liberal/National and Labor parties. 'What a shameful country we have become', Menadue wrote. The piece closed

⁸⁵⁰ Jupp, *From White Australia to Woomera*, pp. 201-203.

⁸⁵¹ L. Wilson, 'Greens Cite Fraser Years in Refugee Plan', *The Australian*, 18 July 2012, accessed 11 October 2013, at <<http://www.theaustralian.com.au/national-affairs/policy/greens-cite-fraser-years-in-refugee-plan/story-fn9hmlgu-1226429100106>>.

with, 'Malcolm Fraser we need you now'.⁸⁵²

As the Australian government's current policy continues to be compared to an earlier period in the nation's history and, most recently, to the humanity shown by Italian authorities towards those who have died trying to sail to the island of Lampedusa, new historical research becomes vitally important to this subject area.⁸⁵³

The reason why can be summed up in the following exchange:

Higgins:

So when you were faced with the Indochinese exodus, what were the choices in front of you?

Fraser:

Well, say yes say no.

Higgins:

It was as black and white as that?

Fraser:

⁸⁵² J. Menadue, 'Hitting Rock Bottom', 16 August 2013, accessed 18 August 2013, at: <<http://johnmenadue.com/blog/>>.

⁸⁵³ E. Alberici, 'Italy Does Not Turn Back the Boats', *The Drum*, ABC Online, 9 August 2013, accessed 8 October 2013, at <<http://www.abc.net.au/news/2013-08-09/alberici-italy-asylum-boats-australian-model/4875134>>. M. Phillips, 'The Lampedusa Asylum Tragedy and the Lessons for Australia', *The Conversation*, 8 October 2013, accessed 8 October 2013, at <<http://theconversation.com/the-lampedusa-asylum-tragedy-and-the-lessons-for-australia-18980>>; P. Totaro, 'Lampedusa Disaster: What Australia can Learn from Italy', *The Guardian*, Australian edition, 8 October 2013, accessed 8 October 2013, at <<http://www.theguardian.com/commentisfree/2013/oct/08/lampedusa-refugees-italy-australia>>. It has been reported that the Italian Prime Minister Enrico Letta has granted posthumous citizenship to more than 200 people who died from a boat that foundered off the coast of Lampedusa in early October 2013 – see further: 'France Calls for a Refugees Summit After Many Die in Italy's Lampedusa Disaster', *The Australian*, 5 October 2013, accessed 8 October 2013, at <<http://www.theaustralian.com.au/news/world/france-calls-for-a-refugee-summit-with-300-feared-dead-in-italys-lampedusa-disaster/story-e6frg6so-1226733555421>>.

*What else could you do?*⁸⁵⁴

This question is at the heart of the re-examination of this period within the Australian media and academy. The question captures the political and moral exigencies of the outflow from Indochina. More broadly, the question reflects the challenges of decision-making on the reception of asylum seekers, and a state's capacity to respond to persons in humanitarian need around the world. Given the policy developments of the last two decades, and the evidence in government and UNHCR archives, there are clearly many more answers to Fraser's question.

It is hoped that this thesis has uncovered some of those answers, while contextualising policy of the late 1970s and early 1980s within a unique and transitional moment in national history and in international refugee movements.

⁸⁵⁴ Interview with M. Fraser.

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