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From the Editor's Desk (section only)

Indeed, state's response to non-traditional security threat has always lacked innovations. The play of state power becomes predominant, even when the 'threat' is from disarmed, marginalized refugees. This is precisely Jack Smit's contention with respect to Australia's former Prime Minister Malcolm Fraser's policy towards the refugees, arguing that Fraser was not the great humanitarian of Australian refugee policy many people have claimed in recent years. Such claims are held especially when painting a contrast with the hardline policies implemented by Prime Minister John Howard from 2001 onwards. Although Fraser achieved many things around the intake of Indo-Chinese refugees following the fall of Saigon, the combination of his 'boat-holding policy,' his deterrent international broadcast messages about 'queue jumpers' and his refusal to deal with five huge vessels sailing from Vietnam show that in relation to 'boat arrivals' Fraser was similar to all Prime Ministers that came after him, hoping that 'the boats would stop.' Fraser not only refused to deal with these five huge vessels, even after the UN stated that the passengers should be treated as refugees, he held them up as examples of 'trafficking' when his 'people smuggling laws' were presented, debated and passed in Parliament during 1980. Moreover, the policy patterns and directions set in place from 1978 to 1980, although they may well have been drafted by Australian immigration officials, confirmed the directions firmly maintained under successive governments from Fraser onwards. If Fraser would have employed a different response around immigration department initiatives, Australians may now well react very differently every time an asylum seeker boat arrives on their horizon. It is not difficult to see that much of what Fraser was doing with refugees had a domestic compulsion, for a large section of the Australian population was hardly ready for the 'Vietnam refugees'! This otherwise gives credence to what traditional realists were always saying that 'foreign policy is an extension of domestic policy.' But then the question that merits attention, what about the moral foundation of the state? How do we reconcile state power with claims of humanitarianism? Smit certainly sensitizes us with an issue that is probably far more relevant today than it was during the times of Malcolm Fraser.

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Malcolm Fraser's response to 'commercial' refugee voyages

By Jack H Smit ♣

Under Australia's former neo-conservative Liberal Prime Minister John Howard[1], hardline and deterrent policies targeting maritime asylum seekers attempting to reach Australian shores culminated in excessive measures[2]. Most of these measures escalated especially during the years 2001-2005[3], and former Prime Minister Malcolm Fraser was one of the many Australians who started speaking out for changes. He yearned for more moderate policies, and on frequent occasions he recalled his own policy initiatives supporting the notion of multiculturalism from the late 1970s and early 1980s. He advocated for a return by Australia to a fuller compliance with its international legal obligations for the treatment of asylum seekers and refugees, while he lamented the loss of political bipartisanship around refugee policy. Fraser maintained his voice throughout the first decade of the century[4], and many commentators started describing him as an example of how under good leadership Australia could act around refugees and asylum seekers, describing him as an "unacknowledged humanitarian"[5] while

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[1] John Winston Howard, Liberal Prime Minister 1996-2007

[2] David Marr and Marian Wilkinson, *Dark Victory*, Updated 2nd ed. (Crows Nest NSW: Allen and Unwin, 2004), Jack H Smit (erroneously named "Smits"), "Uninvited and Unheard: Australia's Case of Post-Tampa Boat Arrivals," *TAMARA, Journal for Critical Organization Inquiry* 8, no. 2 (2009).

[3] Peter Mares, *Borderline: Australia's Response to Refugees and Asylum Seekers in the Wake of the Tampa*, Revised 2nd ed. (Sydney: University of New South Wales Press, 2001), Margot O'Neill, *Blind Conscience* (Sydney: University of New South Wales Press, 2008).

[4] Malcolm Fraser, *RCOA: Melbourne Launch of Refugee Week* (Refugee Council of Australia, 2010 [cited June 29 2010]); available from http://www.safecom.org.au/pdfs/fraser-pm-2010-refweek-melbs.pdf.

[5] Mike Steketee, *Malcolm Fraser the Unsung Hero of Humane Refugee Policy* [Opinion (January 2, 2009)] (2010 [cited Jan 2 2009]); available from http://bit.ly/9MVIhK.

others, such as academic Robert Manne, argued that Fraser acted with "political decency"[6], and even called the period of his handling of the Indo-Chinese refugee influx as "the halcyon years for boatpeople"[7].

While these high profile attempts at public advocacy for more humane refugee policies are laudable, they can lead to serious factual and therefore historical distortions and omissions. Prominent barrister and refugee advocate Julian Burnside QC even claimed[8] that Fraser took in 25,000 "boat people" per year during the Vietnamese outflow years: while Burnside's numbers are not in error, labelling them as "boat people" distorts the fact that they arrived by plane after having been selected in refugee camps established by Fraser in several ASEAN[9] nations, and it belies the fact that Fraser had a determined policy to stop boats from arriving on Australian shores. To juxtapose Fraser and the hardline Liberal PM John Howard may have provided a mirror in which Howard looks nasty and Fraser looks good, but this paper contends that this framework is short-changing Australia in a period where a deep urgency exists for a full and objective debate about how it should treat unannounced asylum boat arrivals on its shores, if it wants to fully adhere to United Nations obligations laid down in its 1951 Refugee Convention[10], and if it wants to ask itself as a nation how the discourse around boat arrivals has developed since refugee boats first started coming during the Fraser government.

New Year's Day 2010 presented a unique and not previously possible opportunity to embark on a new review of Malcolm Fraser's response to boat arrivals. In accordance with Australia's 30-year secrecy clause for government documentation, the New Year saw the release of previously classified Cabinet documents for the year 1979[11], a year that saw the formulation of a range of policy responses to the arrival in Australia of refugee boats from Vietnam.

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[6] Robert Manne and David Corlett, *Sending Them Home: Refugees and the New Politics of Indifference*, *Quarterly Essay 13* (Melbourne, Vic: Black Inc., 2004), 2.

[7] Robert Manne, *Asylum Seekers* (2010 [cited August 18 2010]); available from http://bit.ly/dcsqPH.

[8] Julian Burnside, *Comfort All Who Flee Fear* (Fairfax Newspapers, 2010 [cited Sept 14 2010]); available from http://www.theage.com.au/opinion/politics/comfort-all-who-flee-fear-20100705-zxht.html.

[9] ASEAN: Association of Southeast Asian Nations, a regional cooperative economic and social framework group, established in 1967 by Indonesia, Malaysia, Philippines, Singapore and Thailand. See http://www.aseansec.org/

[10] UNHCR, *UN Refugee Convention.* (United Nations High Commission for Refugees: The UN Refugee Agency) (2006 [cited Sept 25 2009]); available from http://www.unhcr.org/pages/49da0e466.html.

[11] CofA, *Commonwealth of Australia: The 1979 Cabinet Records* (National Archives of Australia, 1979 [cited Jan 2 2010]); available from http://www.naa.gov.au/collection/explore/cabinet/by-year/cabinet-records-1979.aspx.

Submissions to Cabinet and Cabinet Minutes from January[12] and June[13] meetings provide fascinating insights into these new directions proposed by Australia's immigration department[14] and Fraser's immigration minister Michael MacKellar MP. In addition to these Cabinet documents being released to the public, the former Prime Minister published his *Political Memoirs*[15] just two months later. The Cabinet documents and Fraser's Memoirs became sources for the main arguments expounded in this paper, while Nancy Viviani's invaluable critical 1984 investigation of Australia's response to Vietnamese refugees[16] which includes thoroughly researched material from her interviews with refugees became an essential reference.

This paper starts with a short summary of how Australia was shaped since British convicts and settlers first arrived – through to the 1901 Federation of Australia, via the "White Australia Policy" through WWII to the mid 1970s in just a few paragraphs, which also show some attitudes of immigration officials to the UN Refugee Convention when Australia acceded to the treaty in 1954.

Following this section, the more specific context of the Fraser period under scrutiny has been provided. This section highlights some lesser known aspects of Fraser's time and paints the background to the central theme of this paper. This deal with the parliamentary debates of one piece of legislation, intending to criminalize 'organized' – and deemed 'commercial' –voyages by sea to Australia: the *Immigration (Unauthorized Arrivals) Bill 1980*[17]. The paper finishes with a section about the arrival and deportation of the only vessel that was deemed to be such a "trafficker's enterprise" and to which the legislation was applied: the VT 838, a vessel which found its six crew and all 140 passengers deported under a media ban on Boxing Day 1981.

The material presented constitutes Australia's first concerted attempt to deter boat arrivals, and it contends that the discourse around boat refugees saw its first

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[12] CofA, *Commonwealth of Australia - (Submission No 2906) Decision No 7510: Review of the Indo-Chinese Refugee Situation. Cabinet Minute 23 January 1979.* (National Archives of Australia, 1979 [cited Febr 15 2010]); available from http://www.naa.gov.au/.

[13] CofA, *Commonwealth of Australia - (Submission No 3200) Decision No 8905: Legislation against Unauthorized Boat Arrivals. Cabinet Minute 7 June 1979.* (1979 [cited Febr 17 2010]); available from http://www.naa.gov.au/.

[14] Throughout this paper lower capitals are used to indicate "informal" use. Its formal name has changed many times over the years. During Fraser's government period its name was *Department of Immigration and Ethnic Affairs*.

[15] Malcolm Fraser and Margaret Simons, *Malcolm Fraser: The Political Memoirs* (Carlton, Vic: Miegunyah Press, Melbourne University Publishing, 2010).

[16] Nancy Viviani, *The Long Journey: Vietnamese Migration and Settlement in Australia* (Carlton, Vic: Melbourne University Press, 1984).

[17] CofA, *Explanarory Memorandum: Immigration (Unauthorized Arrivals) Amendment Bill 1980* (Canberra: Parliament of the Commonwealth of Australia, 1980).

shift to criminalization by Australia's political elite during the Fraser years. This is illustrated through the inclusion of narrative from the parliamentary debates. To talk about 'refugees' in a country that has signed the UN Refugee Convention, and that has promised to honor its international legal protection obligations, and to take that talk from the discourse of the United Nations framework is one thing; but to maintain this talk and to maintain that discourse of UN protective behaviors in the face of the challenge of 'border incursions' by refugees who themselves assert that right to protection, proved to be quite another during the 1980 debates.

Background and context

To say that Australia is *"a racist country"* need not be a statement with derogatory intent. Since British convicts and settlers had arrived in the late 18th Century the country had deliberate designs and, immediately upon Federation in 1901, a national policy of racial exclusionism, the *Immigration Restriction Act of 1901*[18]. A documentary about the "White Australia Policy" and the immigration department[19] includes a comment about Australian attitudes around the beginning of the 20th century: *"to many, it seemed, it would always be that way; Australia would always be British and white."*[20]. Even before independence from Britain, the colonies were intent on maintaining racial purity and exclusionism. Mike Stuchbery's summary[21] of Australian asylum seeker fears notes the New South Wales *Chinese Immigration Act of 1861*, the Victorian *Chinese Immigration Act of 1855* and the resentment about the presence of Chinese and Asians against the deeply embedded notion that the colonies should maintain their British dominance. By the time Australia experienced the Second World War, especially in relation to the role of the Japanese, who bombed Darwin, this fear for Asians coupled with fears for invasions from the north[22]. In post-war decades this lingering fear found its expression in the term "Yellow Peril", and during the Cold War years as fears of "Reds" (communists).[23]

It must also be noted that in 1954, when Australia signed the 1951 United Nations Refugee Convention[24], the immigration department was the enforcer of

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[18] CofA, *Immigration Restriction Act of 1901* ((No 17 of 1901)) (Commonwealth of Australia, 1901 [cited July 24 2010]); available from http://www.foundingdocs.gov.au/item.asp?dID=16.

[19] Alec Morgan, *Admission Impossible. A Film by Alec Morgan* (Lindfield NSW: Film Australia, 1992), VHS Video, 55 mins.

[20] Ibid.

[21] Mike Stuchbery, *Asylum Seeker Fear Is in the Fabric of Our Nation* (Crikey, 2010 [cited July 12 2010]); available from http://bit.ly/aMOrYQ.

[22] Morgan, *Admission Impossible. A Film by Alec Morgan.*

[23] Ibid.

[24] UNHCR, *UN Refugee Convention.*

the White Australia Policy and the *Immigration Restriction Act[25]*, and this same department was now going to be charged with the operation and ongoing implementation of the Refugee Convention, Australia's first legally enforceable human rights instrument. Serious conflicts of interest could be expected, and, disturbingly so, they were already present. In the above mentioned documentary[26], historian Suzanne Rutland[27] presents her discovery of documents used by departmental officers assessing Displaced Persons (DPs) in Europe, where they were required to ask whether applicants were "of Jewish origin", not because they should apply preferential treatment to them, but so they could exclude them: of all 170,000 DPs accepted since 1947, just 500 Jews were selected by Australia[28]. The same form then asks whether applicants are "of pure European origin" before asking officers to determine whether any family member "is not of pure Aryan descent"[29]. This form was in use in the immigration department until the mid-1950s.

There is evidence of deeply held resistance during the 1950s in the immigration department against several aspects of the Refugee Convention, particularly against Article 31, which implores participating States to not punish refugees for having arriving 'illegally' to seek asylum or to discriminate against them on that basis. Quoting an immigration official in 1950, Palmer[30] depicts the reluctance by Australia following circulation of a draft of the Convention by the Ad Hoc Committee on Refugees and Stateless Persons:

> It is rather ridiculous to ask any State to subscribe to a convention which would deter it from imposing a penalty on an undesirable refugee who deliberately flouted its immigration law. To my mind it would be a definite step towards abandoning effective control over immigration.[31]

In relation to 'Unauthorized arrivals' – those mentioned in Article 31 of the Convention – Immigration Department's Secretary Tasman Heyes noted:

> [that they] should not be discriminated against and should not be subjected to any penalty for illegal entry, would be a direct negation

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[25] CofA, *Immigration Restriction Act of 1901.*

[26] Morgan, *Admission Impossible. A Film by Alec Morgan.*

[27] Associate Professor, department of Hebrew, Biblical and Jewish Studies, Faculty of Arts, the University of Sydney. See
http://sydney.edu.au/arts/hebrew_biblical_jewish_studies/staff/suzanne_rutland.shtml
[28] Morgan, *Admission Impossible. A Film by Alec Morgan.*

[29] Ibid.

[30] David Palmer, "The Quest for Wriggle Room: Australia and the Refugees Convention 1951-73," *Australian Journal of International Affairs* 63, no. 2 (2009).

[31] Ibid.: 292.

of the immigration policy followed by all Australian Governments since Federation.[32]

No directives came from the then Prime Minister Robert Menzies: there was no government press release to announce Australia's 22 January 1954 accession to the Refugee Convention[33], and no flags waved from public buildings. Immigration officers kept "simply treating refugees as ordinary immigrants"[34] and rejected European Displaced Persons if they were "too swarthy"[35]; or, as was the case with "a very dark gypsy with crinkly dark black hair", because he was thought to become a "stare object" at Sydney's Martin Place.[36] The White Australia policy, never publicly mentioned but as the "non-European policy", dominated attitudes of immigration officials, as it had since Federation, and exclusionism, harsh measures, and keeping out 'undesirable races' – or large-scale deportations[37] – determined the actions of the immigration department[38]. It was and remained a department that was dominated by controlling attitudes and control measures. Jupp writes that "a culture of control certainly exists and is usually shared by the Minister, regardless of party"[39] and claims that Fraser's predecessor, Prime Minister Gough Whitlam and his immigration minister Al Grassby, who in 1972 ended the White Australia policy[40], thought that the old department was so committed to White Australia, that it was "beyond redemption"[41]. Yet Whitlam and Grassby's reformist purpose for the department cost Grassby dearly: in 1974 he lost his seat, and Whitlam could not find anyone in his cabinet to take the portfolio, marking the abolition, from 1974-1976, of the immigration department for the first time in its history[42].

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[32] Klaus Neumann, *Refuge Australia: Australia's Humanitarian Record* ((Briefings Series) Sydney: University of NSW Press, 2004), 82, Palmer, "The Quest for Wriggle Room: Australia and the Refugees Convention 1951-73," 293.

[33] Palmer, "The Quest for Wriggle Room: Australia and the Refugees Convention 1951-73," 292.

[34] Charles A Price, "Refugees and Mass Migration: Australia," *International Migration Review* 20, no. 1 - Spring 1986 (1986): 82.

[35] Morgan, *Admission Impossible. A Film by Alec Morgan.*

[36] Harry Martin, *Angels and Arrogant Gods: Migration Officers and Migrants Reminisce 1945-85.* (Canberra: Department of Immigration and Ethnic Affairs, Australian Government Publishing Service, 1989), 32, 34-35.

[37] Glenn Nicholls, *Deported: A History of Forced Departures from Australia* (Sydney, NSW: University of NSW Press, 2007).

[38] Morgan, *Admission Impossible. A Film by Alec Morgan.*

[39] James Jupp, *From White Australia to Woomera: The Story of Australian Immigration* (Cambridge: Cambridge University Press, 2002), 63.

[40] Ibid., 37.

[41] Ibid., 62.

[42] Ibid., 37.

These were the antecedents, the attitudes, the frameworks and the thinking concepts about refugees, firmly embedded in the immigration department when Fraser came to power and when the first Vietnamese refugee boat with six passengers[43], the *Kiến Giang*, arrived near Darwin on 28 April, 1976[44], unannounced, "unauthorized and unexpected"[45].

1979 and the Cabinet documents

Several forces competed for dominance in determining Fraser's domestic response to the Vietnamese boat outflow during 1979. First, as evidenced by the Cabinet documents, there was a clearly lobbied and vigorously expressed intent by immigration officials to severely punish passengers and crew of boats that arrived 'without prior authority' in Australia; second, Fraser had to contend with domestic forces in the media commentariat and public opinion around any refugee intake; third, he had to consider Australia's relationships with the dominant forces in the Western world around Vietnam war issues; fourth, he had to deal with the ASEAN nations in the region, and fifth, he had to consider Australia's protection obligations under the UN Refugee Convention.

The Cabinet meetings saw a range of policies proposed to deal with those boats that made it to Australia, although the number was small compared to the total number of boats departing Vietnam. The precise number of boats that made landfall in Australia between 1976 and 1981 is unclear. Phillips & Spinks[46] say no figures for boat numbers are available before 1989, Schloenhardt[47] puts the number at 55, Betts[48] and Viviani[49] just cite the number of passengers, and Fraser's Immigration Minister Ian Macphee tells the House of Representatives in May 1980[50] that 53 boats had arrived since 1976. An all-time set of tables for

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[43] Marr and Wilkinson, *Dark Victory*, 45.

[44] Nancy Viviani and Joanna Lawe-Davies, "Australian Government Policy on the Entry of Vietnamese Refugees 1976-1978," in *CSAAR Research Paper No. 2*, ed. Griffith University Centre for the Study of Australian-Asian Relations (Brisbane Qld: Griffith University, 1980).

[45] Chelsea P Rodd, "Humanitarian Idealism Versus Populist Point-Scoring – an Historical Foray into Australia's Refugee Policy," in *Social Change in the 21st Century Conference* (Centre for Social Change Research, Queensland University of Technology: Queensland University of Technology, 2004), 3.

[46] Janet Phillips and Harriet Spinks, *Boat Arrivals in Australia since 1976* (Online only 25 June 2009; updated 14 July 2009, 4 August 2009, 18 November 2009.) (Parliamentary Library, 2009 [cited Dec 12 2009]); available from http://www.aph.gov.au/library/pubs/bn/sp/boatarrivals.htm.: 17.

[47] Andreas Schloenhardt, "Australia and the Boat-People: 25 Years of Unauthorized Arrivals," *University of NSW Law Journal* 23, no. 3 (2000): 36.

[48] Katharine Betts, "Boat People and Public Opinion in Australia," *People and Place* 9, no. 4 (2001): 34.

[49] Viviani, *The Long Journey: Vietnamese Migration and Settlement in Australia*, 85.

boat arrivals developed by the author lists the number for this period at 55 boats with 2,059 passengers [51].

Amongst other measures, the Cabinet submissions[52] proposed to

• reduce migrant benefits for those who arrive without prior authority;
• persuade other countries to cease prioritising resettlement to passengers of "trafficked vessels";
• ensure that "providing first refuge should be left to other countries";
• explore and secure change to international maritime law to allow "force" to return *Unauthorized* vessels, to "forcibly remove Unauthorized boat arrivals".

The submissions mention proposals to establish an "international reception centre", before adding that "under no circumstances should Australia offer … such a centre on its territory" in order to "diminish the likelihood of boat people seeking first refuge in Australia". A remote island or inland location "with natural protection" is suggested "to secure containment".[53] British government documents reveal 1979 telephone communication from Prime Minister Margaret Thatcher to Fraser, suggesting purchase of an island "as a place of settlement" for them all in Indonesia or the Philippines.[54]

In this *Political Memoirs*[55] Fraser sees the need to make it abundantly clear many legislative proposals tabled during this period were not drafted by Michael MacKellar, but by immigration officials [56]. Fraser is not just adamant about the origin of the legislative proposals: he also condemns the "ultra-conservative and reactionary elements" in the immigration department in the explosive assertions, where he claims sections of the department were marked by a "strong racist streak"[57].

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[50] Hansard-House, *Immigration (Unauthorized Arrivals) Bill 1980, Second Reading Debate I.*, ed. House of Representatives Hansard Government of Australia, vol. HofR 118, 1st May, 1980, page 2517-2520, *House of Representatives Hansard* (Canberra: Hansard of the House of Representatives, Commonwealth of Australia, 1980), 2517.

[51] Project SafeCom, *Keeping Perspective: Tables of Australia's Boat Arrivals since 1976.* (Project SafeCom, 2010 [cited June 27 2010]); available from http://www.safecom.org.au/pdfs/boat-arrivals-stats.pdf.

[52] CofA, *Commonwealth of Australia - (Submission No 2906) Decision No 7510: Review of the Indo-Chinese Refugee Situation. Cabinet Minute 23 January 1979.*
[53] Ibid.

[54] Yuko Narushima, *Thatcher Wanted Fraser to Buy Island for Refugees* (Sydney Morning Herald, December 31 2009, 2009 [cited Sept 23 2010]); available from http://bit.ly/53DsiY.

[55] Fraser and Simons, *Malcolm Fraser: The Political Memoirs.*

[56] Ibid., 419.

[57] Ibid.

While his biographer Margaret Simons claims that the Fraser government observed its international obligations in the context of the Refugee Convention prohibiting "the imposition of penalties on those seeking asylum for arriving without permission or papers"[58], immigration officials, as evidenced from the Cabinet documents[59], were determined to impose those same prohibited penalties on 'unauthorized arrivals' and their skippers.

Following the publication of his *Memoirs*, Fraser reminded radio[60] and television[61] audiences that he had held his ground faced with community hostility against Vietnamese refugees, unlike Australian Prime Ministers who had succeeded him.

The former Prime Minister also claims to have strongly pushed back against legislative proposals from immigration officials. In relation to proposals for the compulsory detention of all boat people on arrival in a proposed reception centre, Simons states:

> He says that MacKellar did not push it. It originated within the Department of Immigration and Ethnic Affairs. "We disposed of it within thirty seconds. I thought it was a piece of racist barbarism."[62].

Simons goes on:

> [Fraser's] own department consistently advised against the ideas of a reception centre, and of refusing refugees social security. Desperate people would not be deterred by being refused benefits, Fraser's advisers said. As for the reception centre: there were 'grave reservations'. It was not a viable option. It would damage Australia's international reputation. Most important, it was not humane or in accord with Australia's international obligations to refugees[63].

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[58] Ibid.

[59] CofA, *Commonwealth of Australia - (Submission No 2906) Decision No 7510: Review of the Indo-Chinese Refugee Situation. Cabinet Minute 23 January 1979*, CofA, *Commonwealth of Australia - (Submission No 3200) Decision No 8905: Legislation against Unauthorized Boat Arrivals. Cabinet Minute 7 June 1979*, CofA, *Commonwealth of Australia: The 1979 Cabinet Records*.

[60] ABC-RN, *Humane or Tough: A Response to Asylum Seeker Arrivals in Australia.* (2010 [cited April 8 2010]); available from http://www.abc.net.au/rn/rearvision/stories/2010/2859365.htm.

[61] ABC-TV, *1979 Cabinet Papers Released (Di Bain)* (2010 [cited March 17 2010]); available from http://www.abc.net.au/7.30/content/2009/s2784085.htm.

[62] Fraser and Simons, *Malcolm Fraser: The Political Memoirs*, 419.

[63] Ibid.

However, Fraser did not push back all proposals. He supported other immigration department proposals that would affirm and validate its inflexible, hardline and punitive policy intent in relation to 'unauthorized arrivals'. We do not know whether Fraser ever confronted the immigration department, arguing that such 'Unauthorized arrivals' had distinct rights under the UN Convention as laid out in Article 31, but York, countering claims that under Fraser Australia was a more humanitarian country than under John Howard, claims Fraser "took swift action" against Unauthorized arrivals who used smugglers[64].

Queue Jumpers

During 1978 the distinction grew between those coming in through the "front door" (Indo-Chinese taken in from refugee camps such as Bidong, Malaysia and Nong Khai in Thailand) and those coming in through the "backdoor" (boat arrivals). As Fraser states, "The solution to people coming in the backdoor was to open the front door wider"[65]. These 'backdoor' refugees were soon labeled "queue jumpers".

Fraser states that the first reference to the term "queue jumpers" is found in May 1978 immigration department communication[66] and in June in a column in *The Australian* by opposition party immigration spokesman Moss Cass[67]. During 2003 York[68] had also noted the column by Cass as the example of its first public use; as did Grewcock in 2009[69]. All these assertions are incorrect, but the omission by Fraser of how it was first used by his own government in May 1978 is disturbing, if not an attempt to rewrite history. Viviani had already publicly written in 1984:

> Several boats reached Darwin in April 1978 and in May, 321 people arrived, the worst month ever for Unauthorized arrivals. The government in broadcasts through Radio Australia to Southeast Asia spoke sharply about 'queue jumpers' and 'strong action' but the voyagers were not deterred[70].

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[64] Barry York, *The Myth of Our Humanitarian Tradition* (Opinion, June 27) (2003 [cited March 14 2010]); available from
http://www.theage.com.au/articles/2003/06/26/1056449364608.html.
[65] Fraser and Simons, *Malcolm Fraser: The Political Memoirs*, 420.

[66] Ibid., 417.

[67] Dr Moss Cass, *Stop This Unjust Queue Jumping* (Project SafeCom website documents.) (1978 [cited Febr 4 2010]); available from http://www.safecom.org.au/pdfs/moss-cass_queue-jumpers.pdf.

[68] Barry York, *Australia and Refugees, 1901–2002: An Annotated Chronology Based on Official Sources* (2003 [cited March 3 2010]); available from
http://www.aph.gov.au/library/pubs/online/03chr02.pdf.: 28

[69] Michael Grewcock, *Border Crimes: Australia's War on Illicit Migrants* (Sydney Institute of Criminology Series 29, Sydney: Institute of Criminology Press, 2009), 100.

[70] Viviani, *The Long Journey: Vietnamese Migration and Settlement in Australia*, 83.

Government usage of the term 'queue jumpers' was maintained until April 1979, when MacKellar told *The Australian* that he "no longer considered refugees arriving by boat to be queue jumpers"[71]. The news report notes that it sees MacKellar's statement as a policy reversal of four months earlier, when a vessel with 3,000 passengers (the *Hai Hong* - discussed below) was reportedly heading for Darwin.

The establishment of this term, splitting boat arrivals – the 'unauthorized' – from others, in essence depicting them "less deserving" and "opportunistic", was an important element in the immigration department's direction. It marked one of the significant crossroads in Australia's treatment of boat arrivals. For immigration officials it also provided an essential cornerstone for any future development of their two-tiered punishment of those sailing to Australia to seek asylum: the punishment of passengers and criminalization of those who brought them. While those who arrived by boat were treated well under Fraser: he did not approve for legislation to compulsorily detain them or withhold social security benefits as proposed by the department[72], Fraser remains either the creator or the co-creator of the derogatory term 'queue jumper'.

According to York[73], Fraser's next immigration minister Ian Macphee becomes the first[74] politician to use the term 'queue jumper' on the floor of the House of Representatives on 16 March 1982. Neither Fraser and Simons nor York put this in context: Macphee does not use the term in its usual semi-derogatory way to juxtapose boat arrivals against those waiting in the camps. Quite unlike Cass above, Macphee describes economic migrants who try their luck as refugee status claimants:

> …a proportion of people now leaving their homelands were doing so to seek a better way of life rather than to escape from some form of persecution. In other words their motivation is the same as over one million others who apply annually to migrate to Australia. To accept them as refugees would in effect condone queue-jumping as migrants[75].

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[71] The Australian, "Government Changes Tack to Welcome Boat People," *The Australian, Tuesday April 24 1979* 1979, 3.

[72] CofA, *Commonwealth of Australia - (Submission No 2906) Decision No 7510: Review of the Indo-Chinese Refugee Situation. Cabinet Minute 23 January 1979.*

[73] York, *Australia and Refugees, 1901–2002: An Annotated Chronology Based on Official Sources.*

[74] York makes this claim with the qualifier 'possibly'

[75] Hon. Ian Macphee, "Minister for Immigration and Ethnic Affairs (1979-82). Refugee Policy and Procedures. Statement to the House of Representatives, 16 March 1982.," in *Immigration Policies in Action: A Selection of Speeches* (Canberra: Australian Government Publishing Service, 1982), 39.

Fraser may well have tried to put responsibility for creating the term on the immigration department or blame the ALP opposition's Moss Cass for its first use, but the term was born, it was first used in Fraser government broadcasts, and no matter what MacKellar tried when he spoke to *The Australian* in April 1979[76], the genie would not go back in the bottle. The term has remained in use as political rhetoric with vilifying intent ever since.

According to Fraser, the 1979 Cabinet submissions paint a picture "apocalyptic in their predictions"[77]. The papers propose the scenario, with Malaysia turning boats away, that "boats could head for Australia"[78]. The documents suggest that "five large freighters" could arrive in Australia, and they point to the 1978 departure of five large vessels where "in excess of AUS$1 million" was made by the organizers[79], suggesting that profiteers of such "organized refugee movements" should be made subject to "severe penalties"[80]. The documents however do not identify any known smuggling syndicates: they are in fact talking about paid departures organized by the Vietnamese government[81]. Vietnam encouraged the outflow of refugees to 'cleanse' its community from dissidents and specific population groups, especially its ethnic Chinese minority, and numbers of residents departing had swelled to half a million by mid-1979. The Vietnamese government was reportedly making up to 250 million US dollars from those buying their way out of the country[82].

During 1979 it was easy to paint the Vietnamese communist regime, from which Australia received refugees, as a "bad" government, but it remains remarkable that immigration officials and Fraser proposed the first laws proposing to criminalize those who organized voyages "for profit" with one eye on painting threatening scenarios of boats that never had arrived in Australia and the other eye on what seemed a sensible policy on the part of the Vietnamese government, which organized paid departures for those unhappy with its policies and directions, "particularly ethnic Chinese and small businesspeople who were out of sympathy with the communist regime."[83]. According to Viviani,

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[76] Australian, "Government Changes Tack to Welcome Boat People," 3.

[77] Fraser and Simons, *Malcolm Fraser: The Political Memoirs*, 418.
[78] CofA, *Commonwealth of Australia - (Submission No 3200) Decision No 8905: Legislation against Unauthorized Boat Arrivals. Cabinet Minute 7 June 1979.*

[79] Ibid.

[80] CofA, *Commonwealth of Australia - (Submission No 2906) Decision No 7510: Review of the Indo-Chinese Refugee Situation. Cabinet Minute 23 January 1979.*

[81] CofA, *Commonwealth of Australia - (Submission No 3200) Decision No 8905: Legislation against Unauthorized Boat Arrivals. Cabinet Minute 7 June 1979.*

[82] CofA, *Commonwealth of Australia: The 1979 Cabinet Records*.

[83] Fraser and Simons, *Malcolm Fraser: The Political Memoirs*, 416-17.

...there are numerous refugee reports, supported by reports from foreigners resident in Vietnam, that after the Chinese incursion of February 1979, ethnic Chinese were encouraged, persuaded, and in some cases forced to leave their homes by local officials. The alternative often offered was relocation to a New Economic Zone. There are also reports of transport to the ships being arranged in government vehicles. Many accounts state that 'exit fees' were paid to officials at government offices. It was also said, in the case of large ships, that officials were present at loading and embarkation[84].

It was convenient for the department that the Vietnamese government organized paid departures facilitated by outside operators. It activated its agenda and campaign to punish those who arrived by boat without prior authority and to take harsh action against those who brought them, and this agenda coincided with Fraser's fears for hostile community reactions.

Mortality rates

The Cabinet documents also need scrutiny on mortality rate claims for sea voyages, because they played an important role in MacKellar's justification of the "boat-holding" policy – an attempt to persuade other ASEAN countries to hold boats planning to set sail for Australia. The Cabinet documents state:

Another factor which makes it difficult to assess the numbers leaving Vietnam is the mortality rate at sea. The British have referred to two-thirds; an ICRC [International Committee of the Red Cross] official has spoken in terms of an increase in the mortality rate from 50 to 70 per cent[85].

Viviani[86], who also provides evidence that MacKellar's boat-holding policy eventually came unstuck, takes issue with this high mortality rate. Reference to these extremely high mortality rates was made in public statements by MacKellar, but Viviani cites a *Far Eastern Economic Review* investigation of October 26, 1979 by Michael Richardson, where experts claim the percentage of deaths at sea were closer to 10-15%[87]. Such a high discrepancy puts enormous weight on the ethics of MacKellar, and it raises the issue of a serious error, if not a distortion of mortality rates, and using these distortions for political purposes.

Stopping the boats

While the Cabinet documents convey a clear impression that *'stopping the boats'* from arriving in Australia was a primary agenda for Fraser, MacKellar and the immigration department, from other sources comes conclusive confirmation that

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[84] Viviani, *The Long Journey: Vietnamese Migration and Settlement in Australia*, 92.
[85] CofA, *Commonwealth of Australia: The 1979 Cabinet Records*.

[86] Viviani, *The Long Journey: Vietnamese Migration and Settlement in Australia*, 89.

[87] Ibid., 95.

this was an openly declared strategy for the immigration department. Immigration officer Greg Humphries, in a commemorative booklet published ten years later by the department, states that in 1977 he *"...was given overall responsibility for responding to Vietnamese refugees including those who soon began arriving on Australia's northern shores by boat..."* [88]. He admits how he *" was sent to Malaysia with virtually my term of reference to stop these boats from coming to Australia..."* Humphries then goes on to happily reveal how he *"on many occasions"* with other immigration department staff and "boys" actively sabotaged and sunk boats in order to stop them from departing Malaysia for Australia[89]. Humphries is interviewed in Morgan's documentary[90], where he reveals further details about the sinking of these vessels:

> "So I was given the task of stopping these boats from arriving in Australia. That was pretty simple, I suppose, in terms of reference, but... eh, so, off I went again to the South China Sea with a team, and we located many a boat coming down the Malaysian peninsula. We encouraged the Malaysians to land them, put them in the camps so that they could be processed. There were still a percentage of the boats, eh, people themselves, who were determined to push on to Australia. Well, we took a pretty broad interpretation of the terms of reference to stop these boats; we did... because we had some very capable fellows with their screwdrivers and brace and bit. We bored holes in the bottom of the ships, of the boats, and they sank overnight, so they had to be landed. And we were very successful in stopping many of the boats, by one way or another."[91]

Fraser and MacKellar's "boat-holding" policy as described by Viviani[92], where Fraser's Immigration Minister lobbied ASEAN nations to hold boats planning to depart for Australia, may initially have been successful, but it was for self-interested and political purposes – to stop the boats. Even US Vice-president Walter Mondale was asked to carry out MacKellar's boat-holding negotiations with Indonesia on his way through while visiting Australia in 1978[93].

The Immigration (Unauthorized Arrivals) Bill 1980

Remarkably, the legislation proposed in June Cabinet documents is listed as *"Legislation against Unauthorized Boat Arrivals"* [94] and not, for example,

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[88] Martin, *Angels and Arrogant Gods: Migration Officers and Migrants Reminisce 1945-85.*, 100.

[89] Ibid., 109.

[90] Morgan, *Admission Impossible. A Film by Alec Morgan.*

[91] Ibid.

[92] Viviani, *The Long Journey: Vietnamese Migration and Settlement in Australia*, 83, 84, 89.

[93] Ibid., 83.

[94] CofA, *Commonwealth of Australia - (Submission No 3200) Decision No 8905: Legislation against Unauthorized Boat Arrivals. Cabinet Minute 7 June 1979.*

"Legislation against trafficking attempts to Australia". The name expresses the immigration department's agenda, and the fact that Fraser approved the laws tells its own story about his acceptance of this agenda, even in the face of the Refugee Convention's Article 31, detailing clear rights for such arrivals. The immigration officials' established term *"unauthorized arrivals"* confirmed their dim view of such vessels, and Fraser did not challenge its label for "refugee boats".

The legislation imposes penalties of ten years imprisonment and/or a fine of AUS$100,000 for organizers and crew who bring more than twelve people to Australia without prior authority. Initially to be presented to Parliament 1979[95], the Bill reaches the House on May 1, 1980 under the new Immigration Minister Ian Macphee. In his introductory speech Macphee clarifies that the punishable number of unauthorized passengers had been reduced from twelve to five[96], that the punishable number "may be increased or decreased by regulation under the Bill"[97], and that the laws will come "into operation on a date to be proclaimed and remain in force for a period of 12 months, unless sooner repealed"[98].

Using the labels "large vessels", "steel-hulled vessels", introducing notions of "trafficking", "profiteering", the Cabinet submission had argued that laws were needed to pre-emptively deal with possible arrivals. When tabling the laws in parliament, Macphee describes five vessels:

> Towards the end of 1978 five large freighters filled with Vietnamese arrived in parts of South East Asia. The Southern Cross sailed into Indonesian waters, the Hai Hong arrived off Malaysia, the Huey Fong and the Sky Luck showed up in Hong Kong and the Tung An went to the Philippines. Each carried between 1,500 and 3,000 passengers who had paid to leave their homeland with the sanction of their government[99].

Macphee argues that "this sort of situation can lead to rackets involving the clandestine importation of illegal immigrants flouting the laws of the country of entry"[100]. He argues the legislation will enable the government "to take firm, responsible action against those profiteering from human distress..." and "provide for the first time for adequate controls on vessels which might sail without invitation to Australia."[101] Confirming that the laws are not referring to actual arrivals, Macphee clarifies:

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[95] Ibid.

[96] Hansard-House, *Immigration (Unauthorized Arrivals) Bill 1980, Second Reading Debate 1.,* 2517-20.

[97] Ibid., 2518.

[98] Ibid., 2520.

[99] Ibid., 2517.

[100] Ibid.

> We have no reason to believe that any vessel … is currently sailing towards Australia but we cannot afford to assume that in the future no such vessels might try to make their way here.[102]

The *Short Bill Digest* dryly states the purpose of the Bill: "To prevent commercial attempts to bring to Australia, by air or by sea, passengers who have not received previous permission to enter."[103]

Opposition

Unannounced boat arrivals were an entirely new issue in Australia's modern history; that the laws passed the parliament without any upheaval seems remarkable. In the Lower House just two Members respond to Macphee's tabling speech[104]. The opposition, proposing amendments under Immigration spokesman Dr Moss Cass forms a meager line-up of speakers. The Senate seems equally disinterested in the Bill: following its introduction by Attorney-General Peter Durack just two Liberals rise to their feet, and after Senator Don Grimes reiterates opposition amendments outlined by Dr Cass, just one Senator responds. The ease of passage may be understood because proclamation was to take place 'only when needed' with a 12-month sunset clause. There is however also evidence of meetings between the Immigration Minister and the opposition spokesman[105], and this attempt at bipartisanship no doubt assisted to moderate opposition. That there was serious opposition from some in ALP ranks became clear from remarks by Gordon Bryant MP:

> I know that a lot of my colleagues worry a great deal about illegal immigrants coming to this country. All our ancestors came here without documents. They all came here to find refuge, paying little heed to the people who already lived here. Therefore, I am not too sure that this is not an unnecessary piece of legislation and that there are not other ways of handling these problems. I hope that when the legislation comes to its sunset time, it sets well and truly.[106]

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[101] Ibid., 2518.

[102] Ibid.

[103] CofA, "Short Digest of Bill: Immigration (Unauthorized Arrivals) Bill 1980 (80/87), 9 May 1980.," in *Parliament of the Commonwealth of Australia*, ed. Department of Parliamentary Services (Canberra: Commonwealth of Australia Parliamentary Library, Legislative Research Service, 1980), 1.

[104] Hansard-House, *Immigration (Unauthorized Arrivals) Bill 1980, Second Reading Debate 2.*, ed. House of Representatives Hansard Government of Australia, vol. HofR 119, 20th August, 1980, page 520-536, *House of Representatives Hansard* (Canberra: Hansard of the House of Representatives, Commonwealth of Australia, 1980).

[105] Ibid., 533.

[106] Ibid., 531.

If the language and discourse of the Refugee Convention were a measure for parliamentary debate, then Labor's Les Johnson MP, who in 1982 will become a government delegate to the UN[107], is a most significant contributor. With eloquence, he barely disguises his cynicism about the Bill:

> The whole purpose of this legislation is to heap our venom and our hostility on the people who move in to facilitate the transportation of refugees.[108]

Johnson succinctly argues a role for the UNHCR[109] or Red Cross if a vacuum exists when people are forced to leave their countries or if they need assistance to remove themselves:

> If we do not like the fact that people with ships are moving in to shift refugees from the shores of Indo-China to Asian ports or to Australia, we have to consider who should undertake that process.[110]

Nobody responds to the highly developed arguments he puts to the House, and he remains a lone voice. Dr Cass outlines the proposed opposition amendments, expressing concerns about:

• proposed equal criminal liability of crew as well as owners/skippers of the venture;
• shifting the onus of proof from prosecution to defendant;
• Circumvention of due judicial process because of proposed magistrates' hearings of the charges;
• Prosecutions needing prior approval by the Attorney-General.

Cass argues for the crew: "We need some reassurance that … an effort will be made to differentiate between the person really responsible and the crew members who are innocently doing their job."[111]

About the perceived shifting of the Onus of Proof, Cass argues: "The Opposition is worried about the onus of proof. We say that if the master has done it and it is proved, he is guilty and should be fined."[112]

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[107] According to the online resource Wikipedia, he was "an adviser to, and member of, the Australian Delegation to the United Nations General Assembly" in 1982. See http://en.wikipedia.org/wiki/Les_Johnson

[108] Hansard-House, *Immigration (Unauthorized Arrivals) Bill 1980, Second Reading Debate 2.,* 527.

[109] United Nations High Commissioner for Refugees

[110] Hansard-House, *Immigration (Unauthorized Arrivals) Bill 1980, Second Reading Debate 2.,* 527.

[111] Ibid., 521.

[112] Ibid.

Cass expresses concerns about the magistrates' hearings, arguing they are not "bound by any rules of evidence", and that the magistrate "may inform himself of any relevant matter as he thinks fit". He argues: "there should be some rules so that people's rights cannot be dismissed or ignored. We are suggesting that those words should be omitted."[113]

Bipartisanship

As mentioned, Fraser in retirement has lamented absent bipartisanship around refugee policies. Yet a full critique of his bipartisanship, international factors making this possible, including western condemnation of communism and the Vietnam war, and Australia's 'parliamentary culture' in which it developed, still awaits to be written.

On August 20 1980, in his response to Macphee's May 1st introduction of the Bill, Dr Moss Cass had already told the House of the intent to treat passage of the Bill with bipartisanship:

> The Opposition does not intend to oppose, but I want to make it clear at the outset that the Opposition did envisage seeking to have it referred to a legislative committee [...] to ensure that no injustices are done.[114]

While evidently the Bill faces considerable criticism, Dr Cass seems to strip all tension out of the debate by declaring *a priori* bipartisanship for its passage. Both in the House[115] and the Senate[116] further debate of the Bill is taken to the 'In Committee' stage[117] to debate proposed opposition amendments. While this is not unusual, exposure of the Bill may once more have been limited: time limits are imposed on any speaker as a result of this 'committee consideration. This might also have reduced the number of Parliamentary reporters present, or showing sufficient interest or time to attend the parliamentary work. Was *"doing things on the quiet"* and *"keeping issues which may be controversial, out of the news"* part of Fraser's bipartisanship strategy? Is it enough to state that during the 53rd Parliament Fraser's Liberals[118] enjoyed an overwhelming majority in

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[113] Ibid., 522.

[114] Ibid., 520.

[115] Ibid., 531.

[116] Hansard-Senate, *Immigration (Unauthorized Arrivals) Bill 1980, Second Reading Debate 2.*, ed. Senate Hansard Government of Australia, vol. S.86, 27 August 1980, page 440-447, *Senate Hansard* (Canberra: Hansard of the Senate, Commonwealth of Australia, 1980), 446.

[117] Before 1994 the current *'Consideration in Detail'* procedure in the Australian House of Representatives was conducted as a *'Committee of Whole'.* Time limits are imposed on speeches during this debate stage.

both Houses of Parliament to explain why the opposition, even while flagging serious concerns about the legislation, pre-empted the debate by offering bipartisanship for its passage? An election was forthcoming – voting for the House of Representatives and a half-Senate would be within months (18 October 1980) – and public opinion had stirred considerably around 'boat arrivals' during the 1977 election period. A July 1, 1978 *Canberra Times* poll had shown that 57% of people opposed accepting Darwin's boat refugees[119]; a February 1979 *Morgan Gallup* poll found 61% wanted to limit refugee intake, and 28% wanted to completely stop the influx[120]. Fraser as well as the ALP opposition were both tip-toeing around public opinion, and they limited their vision and outlook on the issues as a result, and not much had changed since before the previous election. Viviani argues:

> MacKellar's January [1979] statement condemning Vietnam's involvement and reaffirming his refusal to take refugees from large ships met almost universal approval in the Australian press. The political need to deter a proliferation of large boat arrivals in Southeast Asia, and even in Australia, dominated the government's stance.[121]

The Bill's debate shows deeply felt community concerns about refugee intake. Liberal Senator Peter Baume highlights the presence of xenophobia, *yellow peril angst*, racism and specific groups opposed the Indo-Chinese refugee intake, including "crazy groups" like the Immigration Control Association which hung slogans in trees aimed at the "yeller MacKellar"[122]. Senator Don Grimes claims that there is

> a certain element in which latent xenophobia is present [...] we [...] must be careful [...] not to overreact when introducing legislation such as this to control the flow of illegal refugees and the activities of those who seek to profit from human misery.[123]

Ignoring Grimes' questionable label "illegal refugees" – he provides greater detail:

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[118] NAA, *National Archives of Australia: Australia's Prime Ministers* (National Archives of Australia, 2009 [cited June 22 2010]); available from http://primeministers.naa.gov.au/primeministers/fraser/.

[119] Viviani, *The Long Journey: Vietnamese Migration and Settlement in Australia*, 84.

[120] Jim Stokes, *1979 Cabinet Records: The Historical Context and Issues of Interest* (National Archives, 2010 [cited Jan 2 2010]); available from http://www.naa.gov.au/collection/explore/cabinet/by-year/events-issues-1979.aspx.

[121] Viviani, *The Long Journey: Vietnamese Migration and Settlement in Australia*, 94.

[122] Hansard-Senate, *Immigration (Unauthorized Arrivals) Bill 1980, Second Reading Debate 2.*, 442.

[123] Ibid., 440.

> I dare say that as a result of the debate here today [we] will get more letters from those who are on the fringes of society and that we will get letters from the Immigration Control Association and others in the community who spend their time and their poison pens on such situations as this. I am glad though, that this Parliament has demonstrated that the expressed views of such people in the community will not stampede us into overreacting. I hope we will continue to take this attitude.[124]

Any outlook on Fraser's bipartisanship must be seen in relation to racism and anti-refugee sentiment in the Australian community, dreadful opinion polls about his refugee intake, and the fear amongst politicians for electoral damage. Fraser feared it, and the ALP had very recently experienced it in the campaign waged against Al Grassby during Whitlam's 1974 election campaign. Fraser's bipartisanship claims slump around the parliament's absence of understanding of the legal status of maritime asylum seekers who 'breach the border' in order to request asylum from persecution. It appears that Fraser's bipartisanship included strategies to minimize a public outcry over boat arrivals.

Large steel-hulled vessels

Viviani's account of Australia's response to the 1975-1982 Vietnamese refugee outflow[125] shatters any illusion that the *Immigration (Unauthorized Arrivals) Bill 1980* was created by a hardline immigration department before being 'reluctantly' brought to Cabinet by Fraser and MacKellar. Viviani recalls the stories of the large, steel-hulled vessels as described in the Cabinet papers[126] and by Minister Macphee[127] when he introduced the Bill to the House. The *Hai Hong*[128] had appeared in the South China Sea in November 1978 with 2,500 Vietnamese passengers; it caused a shockwave throughout ASEAN nations: questions were raised about the motives of owners, agents and captain of this voyage, even by UNHCR; the debate had raged about whether paying passengers could be classed as refugees at all. Landing had been refused by Malaysia and Indonesia, even while many on board had been in need of medical care. MacKellar had been quick with public statements "claiming the boat as evidence of profiteering in the Indochinese refugee situation"[129], but no action was forthcoming by Fraser or for that matter almost all countries, after UNHCR

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[124] Ibid., 447.

[125] Viviani, *The Long Journey: Vietnamese Migration and Settlement in Australia*.

[126] CofA, *Commonwealth of Australia - (Submission No 2906) Decision No 7510: Review of the Indo-Chinese Refugee Situation. Cabinet Minute 23 January 1979*, CofA, *Commonwealth of Australia - (Submission No 3200) Decision No 8905: Legislation against Unauthorized Boat Arrivals. Cabinet Minute 7 June 1979*.

[127] Hansard-House, *Immigration (Unauthorized Arrivals) Bill 1980, Second Reading Debate 1.*, 2517.

[128] Viviani, *The Long Journey: Vietnamese Migration and Settlement in Australia*, 85-87.

[129] Ibid., 85.

declared the passengers should be treated as refugees – a position supported by the USA. According to Viviani,

> The idea that the exchange of money should disqualify boat people from refugee status was challenged in Australia by editorials in the press, but MacKellar stuck firmly to his position.[130]

Eventually all of the 2,500 *Hai Hong* passengers were resettled by Malaysia, the USA, France and Canada[131] – but nobody came to Australia. The drama around the *Hai Hong* proved not an isolated incident. At the end of 1978 two more freighters with about 2,700 Vietnamese passengers aboard sought entry to Manila and Hong Kong[132]. The *Sky Luck* ('*Skyluck*' in Viviani) and *Tung An* confirmed the fears that the *Hai Hong* was not the only large organised vessel loaded with Vietnamese wanting to leave the nation. According to Viviani,

> As in the case of the *Hai Hong*, the Australian government promptly refused to accept any people from the ships on the grounds that it would not 'give support or encouragement to schemes organized by unscrupulous merchants in human cargoes whose aim was financial gain'. Fears that these and other freighters might turn up in Darwin were clearly the major motivation for this approach.[133]

The fourth vessel mentioned by Minister Macphee when tabling the legislation in Parliament, the *Huey Fong*, gets a mention when Viviani argues the involvement of the Hanoi government in paid departures:

> The *Far Eastern Economic Review* … reported that the Hanoi government had established a special department to 'co-ordinate' refugee exits in June 1978. The fee for each individual ethnic Chinese was 10 taels or strips of gold worth at the time about US$2670 (together with additional payments up to US$2000 for internal travel documents). Ethnic Vietnamese were faced with a surcharge of up to 50%, making their initial costs about US$4000. Senior government officials played no direct part in the transactions which were handled by Chinese businessmen from Cholon. Five taels of gold were paid to the government for each adult Chinese who left; the remainder was for the businessman to cover the costs of the voyage and allow him to make a profit. The *Tung An* and the *Huey Fong* had been part of the scheme, which involved complicated links between the ethnic Chinese communities in Hong Kong, Taiwan and Cholon. These ships had moored openly in the Mekong Delta and taken aboard about 5000 people 'under the gaze of local officials'.[134]

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[130] Ibid., 86.

[131] Ibid.

[132] Ibid., 88-89.

[133] Ibid., 89.

[134] Ibid., 91-92.

MacKellar refused to acknowledge the passengers of the *Hai Hong*, the *Sky Luck*, the *Tung An* and the *Huey Fong*, and Fraser refused to share the resettlement burden of the passengers with France, Canada, the USA and Malaysia, to whom it was left to carry out the protection and settlement of vessels sailing within Australia's regional zone. If Australia would have involved itself – especially following UNHCR's declarations that the passengers "should be treated as refugees"[135] – it would not have placed MacKellar at odds with the USA[136]. Significantly, interviews with passengers might have produced stories of extortion through 'exit fees' by Hanoi's government officials; Australians might have heard about those fleeing or coerced to depart, being forced to leave financial assets behind prior to departure[137], and Australia might have learnt that forcible boarding may have taken place before departure[138]. If Australia would have played its part in resettling the passengers and heard their stories, it is unlikely that MacKellar would have presented the *Immigration (Unauthorized Arrivals) Bill 1980* to the Parliament.

Royal Assent to the *Immigration (Unauthorized Arrivals) Bill 1980* was reported in both Houses on September 10, 1980. Authority of the Bill was extended to Christmas Island under the *Immigration (Unauthorized Arrivals) Amendment Bill 1980*[139]. Following the 1980 election, the returned Fraser government had introduced two more Bills[140] to this trio.[141] Curiously, the *Immigration (Unauthorized Arrivals) Amendment Bill 1980* deals a double prosecution design for skippers and crew first landing on Christmas Island, then sailing to the mainland[142]. There is no opposition or debate about this aspect of the Bill. For the opposition, Cass only offers general and questionable rhetoric:

> The purpose of this exercise is to try to prevent the traffic in bodies, the practice of offering passage to people seeking to flee from wherever it may be, and bringing them to Australian waters in the trust that once here these refugees would be given asylum[143].

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[135] Ibid., 86.

[136] Ibid.

[137] Ibid., 93.

[138] Ibid., 92.

[139] Hansard-House, *Immigration (Unauthorized Arrivals) Amendment Bill 1980, Second Reading Debate.*, ed. House of Representatives Hansard Government of Australia, vol. HofR 120, 27th November, 1980, page 154-155, *House of Representatives Hansard* (Canberra: Hansard of the House of Representatives, Commonwealth of Australia, 1980).

[140] Migration Amendment Bill (No. 2) 1980; Christmas Island Amendment Bill 1980

[141] Hansard-House, *Immigration (Unauthorized Arrivals) Amendment Bill 1980, Second Reading Debate.*, see December 4, 1980, p. 430.

[142] Ibid., 154.

[143] Ibid., 154-55.

Language

Moss Cass' label *'bodies'* is telling: earlier he had referred to the "trade in human bodies and misery"[144]. Throughout the debate of the Bill Members and Senators had been at pains to affirm that the Bill did not target refugees, that it was not directed at passengers. Yet Macphee had, within minutes of his introductory speech, called them 'illegal immigrants' clandestinely imported by 'rackets', he had talked about those 'profiting from human distress', he had once more talked about 'racketeers profiting from human distress'[145]. He had moved closer to the edge when he said that Australia would not always accept "without question large numbers of refugees who push their claims for resettlement ahead of those of their compatriots [sic] who wait patiently in the camps."[146] Here Macphee uses the term 'refugees', but in the context of 'large numbers' he implies they've done something wrong. Without using 'the term' he calls them *queue jumpers*.

On August 20, Liberal Member Peter Falconer had talked about "those who would traffic in human lives, namely those of refugees"[147]. Falconer also attempts to capture the opposing forces of 'good' and 'bad' to 'spontaneous' as opposed to 'organized' attempts to reach Australia:

> …one of the problems […] was how to distinguish between racketeers and the occupants of small boats that might come to Australia from time to time on a spontaneous basis. I refer to instances of small fishing vessels perhaps containing a dozen or two dozen people which do not really constitute the same sort of threat posed on Australia by large vessels containing up to 3,000 people[148].

ALP Member Les Johnson seems more ethical in his descriptions and goes to the heart of Australia's UN obligations by citing the full text of Article 31 of the Refugee Convention, before suggesting a role for UNHCR and the Red Cross in facilitating shipments of refugees[149] – but his suggestions are ignored.. Nevertheless, he also ramps up *'the rhetoric of evil'* reserved for skippers and crew, stating the Bill is

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[144] Hansard-House, *Immigration (Unauthorized Arrivals) Bill 1980, Second Reading Debate 2.*, 520.

[145] Hansard-House, *Immigration (Unauthorized Arrivals) Bill 1980, Second Reading Debate 1.*, 2517-18.

[146] Ibid., 2518.

[147] Hansard-House, *Immigration (Unauthorized Arrivals) Bill 1980, Second Reading Debate 2.*, 522.

[148] Ibid., 523-24.

[149] Ibid., 526.

…directed against immigration rackets, often involving large numbers of refugees and organized by unscrupulous traders in human suffering and misery.[150]

Liberal Member Billy Graham is happy to refer to Les Johnson's contribution to the debate as having dealt with "entrepreneurs of evil"[151], while the ALP's Gordon Bryant wonders "how many of the people on those ships have been involved in what I might call the vulture side of the refugee system."[152]

In the Senate the labels proposed for transport entrepreneurs, crew and skippers are similar, although less frequent, but there's also colorful terminology for the passengers. In addition to his reference to "illegal refugees" noted above, Senator Don Grimes refers to "ships or planes which arrive in Australia without a permit and or uninvited and which usually, of course, contain illegal immigrants, particularly refugees".[153]

In the debate, the parliamentary discourse around maritime refugees shifted. A new dichotomy entered, where small vessels were "spontaneous vessels" while large vessels became "organized boats", and on large boats the passengers became "victims of trafficking". The regard of the passenger as "refugee" on a large vessel also shifted to "illegal immigrant", or worse, "illegal refugees, flouting the laws of the country", or "victims of trafficking", while the voyage organizers were depicted as those connected with the "vulture side of the refugee system".

Refugees may at times be forced to pay an independent third party to assist them to get extracted from their nation; such an agreement with their third party might well be classified as a "commercial arrangement". No consideration was given in the debate to the possibility that many refugees may become 'activists', 'facilitators' and 'organizers', to enable their own or their group's departure from the country they leave behind. This was not acknowledged; neither was there debate about the role of the Vietnamese government in the organization of these voyages. There was no acknowledgement that the passengers may have been forced to depart around the voyages. The absence from the debate of these elements creates a deep sense of hypocrisy in the parliament. There was much parliamentary rhetoric that the Bill does not void Australia's obligations to refugees – yet, nobody raised the passengers' dilemma and circumstances, and nobody detailed steps Australia would take or would need to take to ensure due processing of the passengers on the ships whose crews and skippers would be prosecuted under the Bill.

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[150] Ibid., 524.
[151] Ibid., 528.

[152] Ibid., 529.

[153] Ibid., 240.

Royal Assent to the *Immigration (Unauthorized Arrivals) Bill 1980* was reported on September 10, 1980, and assent to the *Immigration (Unauthorized Arrivals) Amendment Bill 1980* was reported on February 24, 1981. After that, the legislation went dormant, in accordance with the intent to only seek proclamation "if and when needed". That did not take long. Seven months later there was trouble and someone rushed for the signature of the Governor-General, the Rt Hon. Sir Zelman Cowen. The VT838 had been spotted and was on its way to Darwin.

Deportation of the VT838

An 18 September phone-call from Malaysia's UNHCR to Australia[154] may have sealed the fate of the VT838: it had sailed via Malaysia, and UNHCR's suggestion to not proceed to Australia but seek processing from the Bidong[155] refugee camp[156] had been declined. A surveillance aircraft was deployed and HMAS Assail now monitored the vessel[157], while Macphee confirmed that the Act[158] had been proclaimed on September 30[159]. With this, Macphee had also compelled the discourse direction: the passengers and crew now had to *"fit the Bill"* – and any findings had to justify the Act's proclamation[160]. A combination of "sources" and partial statements by the Minister achieved this within days. Initially the *NT News* had been gentle, mentioning the boat's "unofficial entry" rather than "unauthorized arrival"[161]; the *Canberra Times* claimed "passengers would be accepted as refugees"[162]. Days later two organizers, 47-year old Tho Tu Knanh and his 46-year old wife Hugna Duc Tai were detained in Darwin

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[154] Hansard-House, *Hon Ian Macphee: Ministerial Statement Unauthorized Arrivals*, ed. House of Representatives Hansard Government of Australia, vol. HofR 125, 20th October, 1981, page 2192, *House of Representatives Hansard* (Canberra: Hansard of the House of Representatives, Commonwealth of Australia, 1981).

[155] Ibid.

[156] Russell Barton, "Suspicions on Refugees: Officials Check Bona Fides of New Arrivals," *Sydney Morning Herald*, Wed Oct 7 1981, 7.

[157] NT-News, *Northern Territory News: News Clippings from Oct 6 to Dec 26, 1981: Arrival and Deportation of the VT838.* (Northern Territory News, 1981 [cited March 31 2010]); available from http://www.safecom.org.au/pdfs/nt-times1981-boat-news-clippings.pdf.

[158] CofA, *Immigration (Unauthorized Arrivals) Act 1980. An Act Relating to the Bringing of Certain Vessels to Australia* (1980 [cited March 25 2010]); available from http://www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200403084.

[159] Hansard-House, *Hon Ian Macphee: Ministerial Statement Unauthorized Arrivals*.

[160] CofA, *Immigration (Unauthorized Arrivals) Act 1980. An Act Relating to the Bringing of Certain Vessels to Australia.*

[161] NT-News, *Northern Territory News: News Clippings from Oct 6 to Dec 26, 1981: Arrival and Deportation of the VT838.*

[162] CanTimes, *Canberra Times: News Clippings from October 6 to December 26, 1981: Arrival and Deportation of the VT838* (Canberra Times, 1981 [cited March 30 2010]); available from http://www.safecom.org.au/pdfs/canberra-times1981-boat-news-clippings.pdf.

police cells, while headlines screamed *"Money Found on 'Refugees'"*[163] after reports came that up to $US25,000 cash was on passengers[164]; soon Macphee claimed they had "not come directly" from Vietnam[165], invoking the UN Convention clause[166] justifying claims rejection; the passengers' physical conditions were deemed "too good" for refugees, and "too many healthy young men" were amongst them. Within weeks Macphee's allegations of a "extremely serious racket"[167] completed the vilification process. None of the accusatory claims launched at the passengers were ever tested in a court, nor is there evidence of a "magistrate's hearing" under the terms of the Act. A December 16 headline[168] *"Bogus boat people on their way"* clarified the organizer had been served with a Notice of Determination and ordered to repay $165,000 in government costs, preventing his re-entry of Australia for life. The group was deported to Taiwan on a QANTAS flight shortly after Christmas under a media ban.

The treatment of the VT838 and the deliberative criminalization of organizers, crew and passengers marked an unsavory end to Australian Vietnamese boat arrivals, yet 'removal' from Australia would have been possible without the nasty untested allegations Macphee, in concert with immigration officials, had unleashed. Political and media discourse[169] was starting to view Vietnamese refugees as "economic migrants" while Macphee was finalizing refugee policy changes[170], replacing blanket approvals with individual status determination, favoring 'family reunion'. More importantly, the VT838 saga affirmed the sole discretionary power of Australia's border officials, who had been able to prevent entry into the country of those who were, to achieve this end, depicted as border criminals. They had achieved this power by excluding any scrutiny of the courts.

Conclusion

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[163] Note the word 'refugees' in inverted commas

[164] NT-News, *Northern Territory News: News Clippings from Oct 6 to Dec 26, 1981: Arrival and Deportation of the VT838.*

[165] CanTimes, *Canberra Times: News Clippings from October 6 to December 26, 1981: Arrival and Deportation of the VT838.*

[166] See Article 31: UNHCR, *UN Refugee Convention.*

[167] CanTimes, *Canberra Times: News Clippings from October 6 to December 26, 1981: Arrival and Deportation of the VT838.*

[168] NT-News, *Northern Territory News: News Clippings from Oct 6 to Dec 26, 1981: Arrival and Deportation of the VT838.*

[169] Geoffrey Barker, "State of the Nation: Immigration Policy Put to the Test," *The Age* 1981.

[170] Macphee, "Minister for Immigration and Ethnic Affairs (1979-82). Refugee Policy and Procedures. Statement to the House of Representatives, 16 March 1982.."

While Fraser pushed back many of the immigration department's proposals, his determination crumbled when faced with the emergence of five massive Vietnamese boats. Initially he resolved this by ignoring the vessels, before depicting the boats as "trafficking enterprises" and legislating harsh criminal sanctions against operators and crew of such vessels. In this, Fraser became the first Australian politician to create "people smuggling" legislation. The opposition did not have the numbers to defeat the laws, while some strongly opposed them. It appears consent was achieved because Labor had accepted bipartisanship in the face of vehement community hostility and racism over refugee intakes. It can be argued that Fraser used Australia's Criminal Code for political purposes instead of its intended purpose – to fight crime. His Memoirs are silent about the legislation.

The introduction of the derogatory term "queue jumper" in Australia's refugee discourse, a term now firmly embedded in Australian conversations around boat arrivals, was a nasty development fuelling negative depictions of boat refugees. This development framed the formation of a discourse of criminalization of boat refugees, setting the context for future compulsory imprisonment and extreme punitive measures to passengers as well as skippers and crew, implemented by successive post-Fraser governments. Fraser disowns his own role in this development.

Faced with the end of the White Australia policy, immigration officials had shifted the focus of their control measures and zealous culture to "unauthorized arrivals", rejecting the UN Refugee Charter's demands for the treatment of "illegal arrivals". When Fraser was elected they had 30 years experience in executing harsh exclusionist measures and forced deportations and had practiced their arts as true border protection zealots, barring those who were unwelcome under the White Australia policy. The closure of the immigration department under Whitlam's reformist government was not followed by powerful departmental reform actions by Fraser when he resurrected it in 1976. If the department was 'beyond redemption' in 1974, its 1976 resurrection does not imply its culture had changed. In response to the first Vietnamese refugee boats, it presented to Fraser's 1979 Cabinet a series of harsh and punitive measures to deal with boat arrivals. This "suite of measures" targeted passengers and skippers of boats reaching Australia 'without prior authority'. Fraser did not reject all of these proposals.

Fraser was right to claim successive governments did not withstand similar pressures as he had experienced, but he sees these as pressures of hostile and xenophobic anti-refugee community sentiment: the long-term agenda of immigration officials was of greater weight in Australian politics, expressing itself as an insistence on governments and Immigration Ministers. The "mandarins at the border" did not abandon the templates they had developed, and eventually they found future governments who would progressively

implement their agenda. During 2010, former Prime Minister John Howard's Immigration Minister Philip Ruddock would boast about 'his' "interlocking suite of measures"[171], referring to policies he brought to the Parliament; yet another view might argue he merely claimed for himself the proposals first tabled at Fraser's 1979 Cabinet meetings.

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[171] Philip Ruddock, *Julia, Feeble-Me Tooing on Boatpeople Won't Work* (July 22 2010) (News Ltd, 2010 [cited Sept 23 2010]); available from http://bit.ly/bjv5aV.