

THE TREACHEROUS PATH
THE EXTERNALIZATION OF AUSTRALIAN ASYLUM POLICY IN
SOUTHEAST ASIA

Master of Arts in Law and Diplomacy Capstone Project

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Table of Contents

1: Introduction.....	1
2: Defining Refugees and State Obligations.....	9
3: The Regional Context and Countries of Origin.....	15
4: Common Paths to Southeast Asia and Australia.....	26
5: The Refugee Experience in Malaysia.....	30
6: The Refugee Experience in Indonesia.....	38
7: Australia and “Operation Sovereign Borders”.....	49
8: The Externalization of Australian Refugee Policy.....	61
9: Alternative Approaches to Migration.....	76
10: Conclusion.....	81

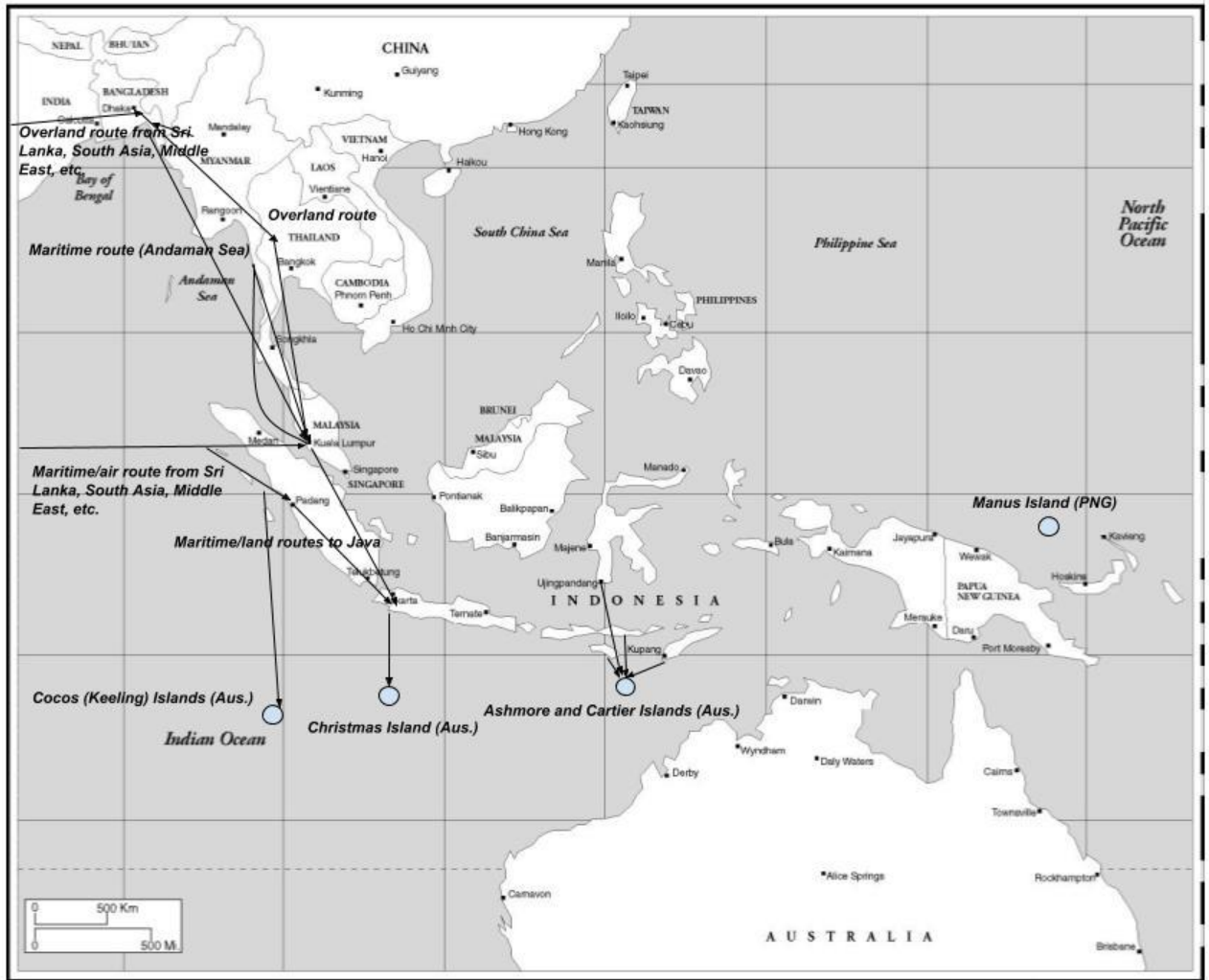
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SOUTHEAST ASIA



Common Irregular Migration Routes in Southeast Asia

Base map produced by the Cartographic Research Lab at the University of Alabama.

Chapter 1: Introduction

At the end of 2017, Australia's treatment of asylum-seekers, and specifically its policy of indefinite offshore detention of those attempting to reach the country by boat, appeared to be under attack on multiple fronts. In compliance with a 2016 ruling by the Papua New Guinea (PNG) Supreme Court,¹ Australia was forced to close its migrant detention center on Manus Island, PNG, where 690 men, most of whose asylum claims had been assessed to be legitimate,² were held in conditions criticized by the United Nations and other observers as inhumane.³ Some of the Manus detainees refused to be relocated to a facility elsewhere in PNG, citing fear of attack by locals; their food, water, and power supplies were cut off, and PNG police eventually forced the detainees to move after a month-long standoff.⁴ The Supreme Court of PNG later found that the detainees' human rights had been breached, opening the door to compensation claims against PNG and Australia.⁵

Meanwhile, over 300 men, women, and children remained in a second offshore processing center in the island nation of Nauru; a rare monitoring visit by the Office of the United Nations High Commissioner for Refugees (UNHCR) to the Nauru center found "harsh" conditions, "no opportunity for solitude," and "a sense of hopelessness" among detainees.⁶ While some of the detainees from PNG and Nauru were set to be resettled in the United States under a

¹ Kelly Buchanan, "Australia/Papua New Guinea: Supreme Court Rules Asylum-Seeker Detention Is Unconstitutional," *Library of Congress Global Legal Monitor*, May 2, 2016

² "Operation Sovereign Borders and offshore processing statistics," *Refugee Council of Australia*, December 15, 2017

³ "PNG police enter Australia's Manus Island asylum camp," *Al Jazeera*, November 23, 2017

⁴ Gina Rushton, "Human Rights Of Those Detained By Australia On Manus Have Been Breached, PNG Court Rules," *BuzzFeed News*, December 17, 2017

⁵ *Ibid*

⁶ "UNHCR monitoring visit to the Republic of Nauru, 7 to 9 October 2013," *United Nations High Commissioner for Refugees*, 2013

deal struck by Prime Minister Malcolm Turnbull of Australia and President Barack Obama of the U.S., many remained without a permanent destination.⁷ Australia's government has maintained that refugees attempting to enter the country by boat will never be resettled in Australia,⁸ but as 2018 began it remained unclear where else they could go. The crisis has led to a domestic and international outcry. The UN and human rights advocates have been sharply critical of Australia's policies,⁹ and an increasingly vocal minority of Australians have called on the government to reverse course and bring offshore detainees to Australia, in a campaign marked by the Twitter hashtag #BringThemHere.¹⁰ A 2017 poll found that 64% of Australians supported resettling the PNG and Nauru detainees in Australia, a significantly higher percentage than previous years.¹¹ Nevertheless, Australia continues to intercept migrant vessels and either detain their occupants or return them to their home countries.¹²

There has been significant scholarly attention paid to the plight of asylum-seekers in Australia; many scholars have been critical of Australia's compliance with international refugee and human rights law. But much of this work focuses exclusively on Australia and fails to consider the regional forces and conditions that are driving refugees to risk their lives in the attempt to reach Australia, "ignoring the larger socio-political context in asylum seekers' countries of origin and along the migratory routes" and "the pre-arrival experiences of asylum

⁷ Jarni Blakkarly, "Almost 200 refugees to leave Manus, Nauru bound for the US: reports," *Special Broadcasting Service*, December 16, 2017

⁸ "Operation Sovereign Borders," Department of Immigration and Border Protection, accessed December 18, 2017

⁹ Helen Davidson, "Manus humanitarian crisis a 'damning indictment' of Australia's refugee policy: UNHCR," *Guardian* (London), November 21, 2017

¹⁰ "Why Manus and Nauru Must Be Closed," *Refugee Action Coalition*, July 2017

¹¹ Robyn Dixon, "Australia doesn't want them. Trump doesn't either. Who are these refugees trapped in bleak island camps?" *Los Angeles Times*, February 2, 2017

¹² "Mixed Movements in South-East Asia, 2016," *United Nations High Commissioner for Refugees*, April 2017

seekers in transit.”¹³ It would be unwise to reduce migrants’ lived experiences to generalities, and the chaotic nature of asylum-seekers’ journeys makes reliable statistics difficult to obtain, but geography dictates that those attempting the crossing to Australia by boat must depart from the Southeast Asian countries to its north. Australia has responded to this reality by making border security a key component of its regional relationships.

The number of people attempting to claim asylum in Australia is relatively low compared to Western Europe, but Australia’s security, economic prosperity, and “reputation as a safe and democratic country offering a fair go for everyone” have led it to be seen as a potential safe haven for many refugees.¹⁴ Australia’s response has been to attempt to “shield the country and protect its many privileges”¹⁵ by effectively exporting the issue of migration, surrounding itself with physical, legal, and psychological barriers in an effort to keep the asylum-seeker “problem” confined to other states in the region. This is part of a trend that has been referred to as “externalization” or “*neo-refoulement*,”¹⁶ the latter being a reference to states’ legal obligation to avoid *refoulement*, or the forcible return of asylum-seekers to countries where their lives or freedom would be at risk. According to this argument, “the return of asylum seekers and other migrants to transit countries or regions of origin *before* they reach the sovereign territory in which they could make a claim” has the same practical effect as *refoulement* while remaining within the letter of the law, keeping them at bay “in a [geographic and legal] space outside juridical law, despite the law’s existence.”¹⁷ The treatment of asylum-seekers before reaching

¹³ Antje Missbach, *Troubled Transit: Asylum Seekers Stuck in Indonesia* (Singapore: ISEAS-Yusof Ishak Institute, 2015), 9

¹⁴ *Ibid.*, 7

¹⁵ *Ibid.*, 8

¹⁶ Jennifer Hyndman and Alison Mountz, “Another Brick in the Wall? *Neo-refoulement* and the Externalization of Asylum by Australia and Europe,” *Government and Opposition* 43, no. 2 (2008), 250

¹⁷ *Ibid.*, 251

their intended destinations is thus worthy of further study. Australian policy affects the lives of refugees long before they reach its shores.

This paper examines the connections between refugee protection policies and practices in Malaysia, Indonesia, and Australia. It concludes that the lack of protection for refugees in Malaysia and Indonesia is a significant driver of migration to Australia by boat, that Australia itself is directly and indirectly contributing to this lack of protection in nearby states through diplomatic pressure and material incentives, and that Australia is harming the human rights of migrants with its focus on deterrence and detention rather than protection. Without a change in Australia's attitude towards migrants, their human rights (including the right to seek asylum) will continue to be unprotected, leaving them vulnerable to abuse, indefinite detention, *refoulement*, and other violations.

Indonesia and Malaysia are major transit points for migrants attempting to reach Australia. The term "transit migration" is often used in public policy discourse to describe migrants traveling through one country with the intent to reach a different final destination.¹⁸ While there is no consensus on the precise definition of "transit migration," it can be broadly defined as a state of limbo, an "in-between-ness" in which normal life is "on hold," but one in which coping mechanisms and ideas of home are constantly in flux.¹⁹ The vast majority of migrants attempting to enter Australia by boat have transited through Indonesia,²⁰ and many of

¹⁸ Missbach, *Troubled Transit*, 13

¹⁹ Robyn C. Sampson et al, "The myth of transit: the making of a life by asylum seekers and refugees in Indonesia," *Journal of Ethnic and Migration Studies* 42, no. 7 (2016), 1137-8

²⁰ Sally Clark, "Navigating Asylum: Journeys from Indonesia to Australia" (PhD diss., Swinburne University of Technology, 2016), 5

these reach Indonesia by way of neighboring Malaysia (as well as Thailand).²¹ Unlike Australia, neither Indonesia²² nor Malaysia²³ is a party to the Convention relating to the Status of Refugees, the treaty that forms the foundation of states' obligations with regard to refugees, and both lack many of the protections for refugees that exist in Australia and other popular destination countries. In Malaysia, a country dependent on migrant laborers to sustain its workforce,²⁴ refugees are legally classified as illegal immigrants, with the constant threat of arrest hanging over their heads,²⁵ and the frequency of crackdowns and deportations leads many to move on to Indonesia.²⁶ Indonesia, however, also fails to recognize the legal status of refugees, and it is extremely difficult if not impossible for them to "integrate" into Indonesian society.

With limited capacity for refugee status determination in Indonesia and Malaysia, asylum-seekers often spend years or even decades in a state of legal limbo, with limited access to employment and public services and the prospect of detention and/or *refoulement* constantly hanging over them.²⁷ Those unfortunate enough to be detained in Indonesia face conditions that independent observers have described as "unacceptable" and are often "denied the basic necessities of life" due to neglect and lack of resources;²⁸ the country's Director General of Immigration acknowledged in 2012 that "Indonesia [does] not have the infrastructure to house immigration detainees in conditions which are 'good, right, healthy and human rights

²¹ Missbach, *Troubled Transit*, 68

²² Clark, "Navigating Asylum," 33

²³ *Ibid.*, 100

²⁴ Maureen Hickey et al, "A Review of Internal and Regional Migration Policy in Southeast Asia" (working paper, Migrating out of Poverty, United Kingdom Department of International Development, September 2013), 29

²⁵ Aizat Khairi, "Managing the Challenges of Refugees and their Rights in Malaysia" (presentation, First International Conference on Human Rights in Southeast Asia, Bangkok, October 14-15, 2010), 5

²⁶ Missbach, *Troubled Transit*, 69

²⁷ Clark, "Navigating Asylum," 153

²⁸ *Ibid.*, 117-8

dimensional.”²⁹ These barriers to success in Malaysia and Indonesia contribute to the decision of many migrants to risk their lives for the chance to find true sanctuary in Australia. Australia also has an extensive history of collaboration with both countries on the issue of refugees. Australian aid (directed specifically toward border security) and diplomatic pressure have led Indonesia to bolster its immigration detention system and crack down on people smuggling networks,³⁰ and Australia and Malaysia cooperated in an abortive “people swap” agreement that was struck down by an Australian court.³¹ Malaysia’s and Indonesia’s respective relationships with Australia thus offer a strong example of externalization.

Australia’s approach to asylum-seekers has implications far beyond its borders. With the rise of populist and nativist sentiment throughout the Western world in the 2010s, and growing concern about refugees as security threats or threats to national identity, other countries have begun considering policies similar to Australia’s, with some commentators comparing U.S. President Donald Trump’s proposed wall on the U.S.-Mexico border to the existing Australian “moat.”³² Trump spoke approvingly of Australia’s policy in a phone call with Turnbull shortly after taking office, saying of Australia’s zero-tolerance approach towards boat arrivals: “That is a good idea. We should do that too. You are worse than I am...because you do not want to destroy your country.”³³ In countries like Denmark and the Netherlands, which are receiving significant numbers of refugees fleeing humanitarian crises in the Middle East and Africa, populist

²⁹ Amy Nethery et al, “Exporting detention: Australia-funded immigration detention in Indonesia,” *Journal of Refugee Studies* 26, no. 1 (2012): 99

³⁰ Amy Nethery and Carly Gordyn. “Australia–Indonesia cooperation on asylum-seekers: a case of ‘incentivized policy transfer,’” *Australian Journal of International Affairs* 68, no. 2 (2014): 186

³¹ Clark, “Navigating Asylum,” 100

³² Alex McKinnon, “Australia’s sadist solution to asylum seekers isn’t a wall—it’s a moat,” *Quartz*, September 1, 2016.

³³ Greg Miller, Julie Vitkovskaya and Reuben Fischer-Baum, “‘This deal will make me look terrible’: Full transcripts of Trump’s calls with Mexico and Australia,” *Washington Post*, August 3, 2017

politicians have encouraged their countries to use Australia as a model for dealing with the new arrivals.³⁴ While using violence to turn back migrants remains a fringe idea in Europe and North America, working with neighboring countries to keep migrants away from the homeland at any cost, as Australia has done, is becoming an increasingly popular means of stopping the migrant “invasion.” As former Dutch parliamentarian Frits Bolkestein has put it, “There’s no solution to this, unless we adopt very nasty measures.”³⁵ In 2017, France’s president, Emmanuel Macron, proposed the creation of European Union-funded refugee processing centers in North Africa, perhaps presaging policies based on the Australian model;³⁶ Denmark’s ruling Danish People’s Party is considering a similar idea, with its deputy leader floating Morocco as a potential host country for Danish-run centers.³⁷

This trend of introducing policies focused on “erecting obstacles to prevent refugees from gaining legal and physical access to territory where they may obtain protection” is a departure from the “progressive expansion of the international refugee regime” during the Cold War era,³⁸ and risks rendering the idea of a right to seek asylum, and related legal principles like *non-refoulement*, increasingly obsolete worldwide. More broadly, scholars like Hyndman and Mountz (2008) have identified a general movement away from defining forced migration as a legal issue of human rights toward viewing it as a political issue centered on the security of states, to the detriment of refugees themselves. In other words, widespread anxiety about

³⁴ Karen Hargrave et al, “Closing borders: The ripple effects of Australian and European refugee policy: case studies from Indonesia, Kenya, and Jordan” (working paper, Humanitarian Policy Group, London, September 2016), 4

³⁵ Sasha Polakow-Suransky, “How Europe’s far right fell in love with Australia’s immigration policy,” *Guardian* (London), October 12, 2017

³⁶ Maria O’Sullivan, “Questioning the Australian Refugee Model,” *Refugees Deeply*, January 9, 2018

³⁷ Polakow-Suransky, “How Europe’s far right”

³⁸ *Ibid*, 3

refugees has transformed the dominant narrative “from legal imperatives to protect to political climates to exclude.”³⁹

There is also substantial evidence that the policies of Western destination countries can set an example for the policies of low- and middle-income countries. In Kenya, for example, scholars have observed that “restrictive policies in Europe have created a ‘new paradigm’ for refugee policies, and the violation of international obligations towards refugees in Europe meant that international legal instruments ‘do not have any integrity.’”⁴⁰ As will be discussed below, Indonesia and the rest of Southeast Asia have similarly looked to Australia as a model for refugee policy, and, in the words of one anonymous official at an international organization, “Australia has certainly set a very bad example for countries in the region.”⁴¹

This paper is divided into ten chapters. Chapter 2 will introduce the basic principles of refugee law and the terms and ideas used in the remainder of the paper. Chapter 3 explores the historical context surrounding forced migration to, and views of refugees within, the Southeast Asian region, and discusses the countries where refugees entering this region (particularly those attempting the crossing to Australia) come from. Chapter 4 provides a brief overview of the major routes of refugee journeys into and through Southeast Asia. Chapters 5 and 6 examine two Southeast Asian countries, Malaysia and Indonesia, in greater detail, focusing in particular on refugees’ relationships with the governments and populations of these countries, the refugee experience in these countries, and the factors that cause refugees to stay or leave. Chapter 7 looks at the development of Australia’s border protection regime and recent events that have placed the

³⁹ Hyndman and Mountz, “Another Brick,” 268

⁴⁰ Hargrave et al, “Closing borders,” 15

⁴¹ Ibid, 10

future of this regime in doubt. Chapter 8 analyzes how Australia's policy choices and priorities have directly and indirectly affected refugee policy in Indonesia, Malaysia, and the wider Southeast Asian region. Chapter 9 will present ideas for improving protection for refugees in Malaysia, Indonesia, and Australia, including alternatives to Australia's current approach and potential starting points for a regional protection regime that could share the burden of protection fairly across Southeast Asia. Finally, Chapter 10 will briefly sum up the ideas discussed in previous chapters and their implications for the future.

Chapter 2: Defining Refugees and State Obligations

The definition of a refugee under international law, which is more limited than the colloquial usage of the term, stems primarily from the 1951 Convention relating to the Status of Refugees, itself derived from efforts to support displaced persons in Europe in the aftermath of World War II.⁴² The Convention, as amended by the 1967 Protocol Relating to the Status of Refugees (which removed temporal and geographical restrictions on applicability), defines a refugee as someone 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, is 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.⁴³

⁴² Guy S. Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (Oxford: Oxford University Press, 2007), 19

⁴³ Convention relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150; Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267.

The 1951 Convention and 1967 Protocol remain the primary basis of international law concerning refugees, and their definition of refugee status has been adopted by regional human rights instruments in Latin America and Africa⁴⁴ and forms the basis of the broader definition adopted by the European Union.⁴⁵

Since 1951, the practical application of this definition has expanded somewhat to bestow a blanket assumption of refugee status on people of particular nationalities or social groups due to the “impracticability of individual determinations in the case of large-scale movements of asylum-seekers.”⁴⁶ The first case of this occurred in the 1970s, when those fleeing Indochina were considered to have lost the protection of their states by default; more recently, this standard has been applied to people fleeing conflicts in countries like Afghanistan and Iraq.⁴⁷ This “group approach”⁴⁸ to refugee status has been challenged by states at times but is consistent with practice adopted by UNHCR, the UN agency responsible for the protection of refugees, and other international organizations and states. This can effectively create two classes of refugees; all those fitting the broad definition are entitled to refuge and material assistance, but the “full spectrum of protection,” including permanent asylum or third-country resettlement, may be limited in practice to those “determined to have a well-founded fear of persecution” as mandated by the Convention.⁴⁹

⁴⁴ Goodwin-Gill and McAdam, *The Refugee in International Law*, 37

⁴⁵ Ibid, 39

⁴⁶ Ibid, 30

⁴⁷ Ibid, 31

⁴⁸ Ibid, 26

⁴⁹ Ibid, 31

The 1951 Convention outlines a number of obligations owed by states to refugees under their protection, including access to welfare, employment, and justice equivalent to those enjoyed by others in their territory.⁵⁰ A few other protections enshrined in the Convention are worthy of note. Article 31 mandates that states parties not penalize asylum-seekers who enter the country “without authorization” as long as they “present themselves without delay to the authorities and show good cause for their illegal entry or presence.”⁵¹ Article 32 prohibits the expulsion of refugees except on proven security or public safety grounds, and orders states parties to grant expelled refugees “a reasonable period within which to seek legal admission into another country.”⁵² Finally, Article 33 prohibits states parties from “expel[ling] or return[ing] (*refouler*) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened,”⁵³ a principle known as *non-refoulement*.

One important right not directly discussed in the Convention is the right of individuals to seek asylum. This idea is grounded in the Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in 1948, which states in Article 14 that “everyone has the right to seek and to enjoy in other countries asylum from persecution.”⁵⁴ The UDHR, while not legally binding, is generally considered to represent “the inalienable and inviolable rights of all members of the human family” and viewed as customary international law—that is, binding on all states regardless of their treaty obligations.⁵⁵ The UDHR provides

⁵⁰ Convention relating to the Status of Refugees

⁵¹ *Ibid*

⁵² *Ibid*

⁵³ *Ibid*

⁵⁴ Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948)

⁵⁵ Roman Boed, “The state of the right of asylum in international law,” *Duke Journal of Comparative and International Law* 5 (1994): 6

the basis for much of international human rights law, including the 1951 Convention. It should be noted that while customary international law ensures the right of individuals to *seek* asylum, and to leave their own countries in order to do so, no international instrument obliges states to *grant* asylum applications, and states “retain considerable discretion to construct sophisticated interception and non-arrival policies within the letter, if not the spirit, of the law.”⁵⁶

The Convention’s status is more controversial. As of early 2018, 145 states are party to the Convention and 146 to the 1967 Protocol. (A few states have only ratified one or the other; most prominently, the U.S. has only ratified the Protocol.) Most of the states that have not ratified either instrument are in Asia, and there is no binding Asian treaty or declaration on the subject,⁵⁷ a phenomenon that will be explored further in Chapter 3. Australia is a party to both the Convention and the Protocol, as are the nearby states of New Zealand, Papua New Guinea, East Timor, Cambodia, the Philippines, and China.⁵⁸ However, the remainder of South and Southeast Asia has not ratified either document, including Indonesia, Malaysia, Thailand, Vietnam, India, Pakistan, and Sri Lanka, among others.⁵⁹ (Nauru and a few other Pacific Island states are parties, however.)

UNHCR and many legal scholars consider *non-refoulement* to be customary international law, and in 2001 the states party to the Convention and/or Protocol adopted a declaration reaffirming *non-refoulement* as “embedded in customary international law”;⁶⁰ the UN General

⁵⁶ Goodwin-Gill and McAdam, *The Refugee in International Law*, 370

⁵⁷ *Ibid*, 37

⁵⁸ Convention relating to the Status of Refugees

⁵⁹ *Ibid*

⁶⁰ Goodwin-Gill and McAdam, *The Refugee in International Law*, 211

Assembly, other UN bodies, and legal experts have backed this idea as well.⁶¹ Some scholars argue that this overwhelming support makes *non-refoulement* a “peremptory norm” of international law (*jus cogens*), meaning that it cannot be limited under any circumstances, though others have disputed this.⁶² According to UNHCR, which is tasked by the international community with ensuring and enabling compliance with the Convention, *non-refoulement*’s customary status means that “refugees seeking protection must not be prevented from entering a country as this would amount to *refoulement*,” even in states that have not ratified the Convention.⁶³ Nevertheless, the application of the Convention and Protocol as a whole to non-parties remains contested, particular in the absence of enforcement mechanisms; as will be seen in the following chapters, not all states recognize basic tenets of refugee law such as *non-refoulement* in principle or respect them in practice.

Despite human rights advocates’ view of the Convention as “a milestone of humanity,” there have been calls in recent years for its revision or replacement with a document better suited to 21st-century challenges.⁶⁴ Some, such as Danish prime minister Lars Løkke Rasmussen, have called for a more restrictive replacement with looser rules surrounding *refoulement*,⁶⁵ while others have suggested a stronger treaty that would unambiguously protect more people (such as

⁶¹ Ibid, 215-6

⁶² Aoife Duffy, “Expulsion to Face Torture? *Non-refoulement* in International Law,” *International Journal of Refugee Law* 20, no. 3 (2008), 373

⁶³ “The 1951 Convention relating to the Status of Refugees and its 1967 Protocol,” *United Nations High Commissioner for Refugees*, 2011

⁶⁴ Patrick Kingsley, “UN backlash against call to scale back Geneva convention on refugees,” *Guardian* (London), January 6, 2016

⁶⁵ Ibid

those displaced by climate change).⁶⁶ For the foreseeable future, however, the 1951 Convention is likely to remain the primary source of international law concerning refugees.

Before discussing how these ideas apply in the Asia-Pacific region, it is worth pausing briefly to note the legal difference between refugees, asylum-seekers, and migrants, groups that are often conflated by the media and general public. Asylum-seekers are those attempting to claim asylum in a country, and they are legally considered refugees if their claims are found to be valid. The term *migrants* is a much more expansive one and can encompass everyone who relocates from one place to another, regardless of their reason for doing so. Many states formally distinguish between refugees and so-called economic migrants, who leave their homes to pursue economic opportunities elsewhere; the former group is seen as deserving of protection, while the latter is not.

This distinction is in line with the principles of refugee law, which is based on the idea that those in immediate danger in their home countries should acquire special status and protection, but its usefulness in examining migration has been questioned. Many people migrate for a combination of reasons, which can include both fear of persecution and desire for greater opportunities, and reducing them to simple labels may be counterproductive; additionally, some “economic migrants” may become *de facto* refugees through the dangers they face on their journeys⁶⁷ (as described in Chapter 6 with regard to Indonesia). Missbach (2015) points out that “increasingly, economic migrants in search of better life prospects and asylum seekers in need of international protection head in the same directions, travel along the same paths, rely on the same

⁶⁶ Khalid Koser, “Australia and the 1951 Refugee Convention,” *Lowy Institute for International Policy*, April 30, 2015

⁶⁷ Patrick Kingsley, *The New Odyssey: The Story of Europe’s Refugee Crisis* (New York: Liveright Publishing Corporation, 2017), 52

modes of transport and are confronted by the same challenges during their journeys,”⁶⁸ blurring the distinction between the two groups. For this reason, this paper uses all three terms depending on context: *migrants* is used to discuss issues pertaining to migrants in general (such as Malaysian and Indonesian labor laws), while *refugees* and *asylum-seekers* are otherwise used in examining issues specific to subjects—or would-be subjects—of refugee law. As mentioned in the introduction, the majority of asylum-seekers detained by Australia have been determined by the Australian government to be “legitimate refugees” rather than “economic migrants”; the extent to which this status is determined in Indonesia and Malaysia will be discussed in subsequent chapters. Given the impossibility of determining the status of every refugee and would-be refugee discussed here, this paper uses the term *refugees* to describe both those who have claimed asylum and those who intend or are attempting to do so. *Asylum-seekers* is used when specifically referencing those who are attempting to claim asylum. Much of the material in this paper applies to all migrants, regardless of whether they have claimed or intend to claim asylum, but this paper distinguishes between refugees and other migrants where possible.

Chapter 3: The Regional Context and Countries of Origin

At the start of the 21st century, Asia (excluding the Middle East) had the most “persons of concern” falling under UNHCR’s protection mandate. A 2004 survey by UNHCR found that UNHCR’s branch office in Malaysia had more refugees seeking asylum than any other office worldwide, and an Asian country (Myanmar) boasted the dubious distinction of having the

⁶⁸ Missbach, *Troubled Transit*, 13

second-most nationals claiming refugee status, a result of the country's continuing ethnic and religious strife.⁶⁹ In the 2000s and 2010s, global displacement has reached record numbers, and refugee crises in places like Darfur, Syria, and Yemen have led Africa and the Middle East to overtake Asia's number of persons of concern. Nevertheless, at the end of 2016 there were still 9.5 million persons of concern in Asia (not including the Middle East), including around 3.2 million refugees and 140,479 pending asylum cases.⁷⁰ This included over 92,000 refugees and 56,000 pending asylum cases in Malaysia, as well as 7,827 refugees and 6,578 pending asylum cases in Indonesia.⁷¹ Since 2015, the ongoing persecution of the Rohingya in Myanmar, which has been described as ethnic cleansing and even genocide (see below),⁷² has likely increased these numbers, which also exclude many potential asylum seekers "who are forced to live as 'illegal migrants' because [their host] states have no refugee recognition policy and many fear being refused refugee status by the UNHCR."⁷³

Despite the scale of the problem, there have been no attempts to create a regional human rights instrument centered on refugees, and many Southeast Asian states have not ratified either the 1951 Convention or the 1967 Protocol. The only attempt at a formal regional framework focused on migration is the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, a regional grouping of countries formed by Australia and Indonesia in 2002, but thus far the Bali Process has served as a forum for discussion of migration

⁶⁹ Sara Davies, "The Asian Rejection?: International Refugee Law in Asia," *Australian Journal of Politics & History* 52, no. 4 (2006), 562

⁷⁰ *UNHCR Statistical Yearbook 2016* (Geneva: United Nations High Commissioner for Refugees, 2018), 10

⁷¹ *Ibid.*, 7-8

⁷² "Myanmar: Who are the Rohingya?," *Al Jazeera*, November 30, 2017

⁷³ Sara Davies, *Legitimising Rejection: International Refugee Law in Southeast Asia* (Leiden: Martinus Nijhoff Publishers, 2008),

issues, with an emphasis on migration and people smuggling as security threats, rather than a tool for action.⁷⁴ Several reasons have been put forward to explain this phenomenon.

The dominant explanations for “Asian exceptionalism” include the prevalence of the so-called “ASEAN way,” the economic costs of acceding to international refugee law, and the perceived risk to social cohesion caused by excessive migration. The “ASEAN way,” which refers to the Association of Southeast Asian Nations (ASEAN) and its 10 member states,⁷⁵ is the idea that East and Southeast Asian states generally follow a policy of noninterference in each other’s internal affairs, and that concerns like the treatment of refugees—or even human rights in general—violate this idea of “good neighborliness” and “get in the way of major geopolitical and strategic concerns.”⁷⁶ This idea ties into the broader debate over “Asian values,” the idea that Asian societies traditionally place “order and stability” ahead of the rights of the individual and that each society has the right to develop according to its own values; proponents of this concept critique the idea of universal human rights as a neocolonial imposition.⁷⁷ The idea of human rights and democracy as contrary to “Asian values” has been fiercely debated in Asia and the West, particularly in the 1990s and 2000s. Many in the West have dismissed “Asian values” as an “excuse for authoritarian government,”⁷⁸ while some scholars in Asia have argued that Asian cultures have a long history of embracing democratic concepts, and that the post-colonial East-West dichotomy actually stems from “Asian politicians using aspects of Asian political

⁷⁴ Travers McLeod et al, “The Bali Process can do a lot more to respond to forced migration in our region,” *The Conversation*, March 30, 2016

⁷⁵ These states are Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam.

⁷⁶ *Ibid*, 9

⁷⁷ Diane K. Mauzy, “The human rights and ‘Asian values’ debate in Southeast Asia: Trying to clarify the key issues,” *The Pacific Review* 10, no. 2 (1997), 212

⁷⁸ *Ibid*, 211

culture/tradition like respect for authority and acceptance of hierarchy to suit their own needs.”⁷⁹

Despite such critiques, many observers believe that the idea of “Asian values” continues to inform Southeast Asian governments’ position on human rights in general and refugees in particular. ASEAN emphasizes noninterference of members in each other’s internal affairs, and generally does not comment on human rights concerns in member states.⁸⁰

Davies (2008) points out that despite ASEAN’s ideal of “good neighborliness,” Southeast Asian states have often used “the presence of refugees within their state to score political points over their neighbors,”⁸¹ and that the economic and social costs of embracing international refugee law have not stopped developing states outside Asia from doing so.⁸² To explain Southeast Asian rejection of refugee law, Davies instead examines its European origins and the fact that the Convention and Protocol “were not primarily developed to respond to Asian and African concerns about refugee problems.”⁸³ According to this view, Southeast Asian states see the Convention and Protocol as Eurocentric and “largely irrelevant” instruments⁸⁴ that are “the direct result of Western states presenting their own narrow understanding of the refugee problem and views of how law should interpret and deal with this problem,”⁸⁵ and thus have “never felt obliged” to ratify these documents.⁸⁶

Others have disputed Davies’ argument, pointing out that her points also apply to African countries, which have largely proven more willing to ratify the Convention and have reaffirmed

⁷⁹ Kunal Mukherjee, “Is there a distinct style of Asian democracy?,” *Journal of Asian and African Studies* 45, no. 6 (2010), 693

⁸⁰ Eleanor Albert, “The Rohingya Crisis,” *Council on Foreign Relations*, December 7, 2017

⁸¹ Davies, *Legitimising Rejection*, 8

⁸² *Ibid*, 10

⁸³ *Ibid*, 16

⁸⁴ *Ibid*, 18

⁸⁵ *Ibid*, 16

⁸⁶ *Ibid*, 18

its fundamental principles in regional human rights instruments. Southeast Asian states, by contrast, have instead focused on “immigration control and policing borders” and shied away from a specific focus on forced displacement and refugees.⁸⁷ Perhaps an even more pressing concern in the context of this paper is the question of whose interests refugee law is meant to serve. Refugee law as an institution is viewed by many leaders in Southeast Asia, and elsewhere in the developing world, as hypocritical and unfair, “imposing a heavy economic burden on developing states whilst relieving the world’s wealthier states of their humanitarian responsibilities,” which may be a key driver of noncompliance.⁸⁸

The absence of a legal or practical framework in Southeast Asian countries for dealing with large-scale migration became relevant in the 1970s during the Indochinese refugee crisis, which saw around three million people from Cambodia, Laos, and Vietnam seek refuge elsewhere in the region.⁸⁹ As the crisis intensified, the member states of ASEAN (particularly Malaysia and Thailand) began to argue that “permanent resettlement of refugees within their borders was neither possible nor desirable,” and by 1979 they jointly declared that they “had reached the limits of their endurance”⁹⁰ and “would only provide temporary asylum for refugees if the international community agreed to provide permanent resettlement places,” rejecting UNHCR’s growing assumption that Indochinese migrants as a general group were entitled to refugee status.⁹¹ Thailand and Malaysia received the largest numbers of Indochinese refugees,

⁸⁷ Angus Francis and Rowena Maguire, “Shifting Powers: Protection of Refugees and Displaced Persons in the Asia Pacific Region,” in *Protection of Refugees and Displaced Persons in the Asia Pacific Region*, ed. Angus Francis and Rowena Maguire (Farnham, England: Ashgate, 2013), 4

⁸⁸ Davies, “The Asian Rejection,” 574

⁸⁹ Davies, *Legitimising Rejection*, 85

⁹⁰ *The State of the World’s Refugees, 2000: Fifty Years of Humanitarian Action* (Geneva: United Nations High Commissioner for Refugees, 2000), 83

⁹¹ *Ibid.*, 89-90

and both “frequently resorted to pushing boats away from their coastlines.” Malaysia in particular was “perhaps the most resolute of the Southeast Asian first-asylum countries in pursuing the repatriation of Vietnamese boat people”⁹² and would eventually call for a regional burden-sharing system to lessen its share of refugees.⁹³

In response to such calls, the UN hosted an international conference on the Indochinese displacement crisis in Geneva in 1979, the first of its kind to focus on Southeast Asia, which resulted in a broad multilateral agreement. Western countries agreed to increase resettlement numbers, Vietnam agreed to promote “orderly and direct departures” as opposed to “illegal” ones, and the Philippines and Indonesia agreed to host temporary processing centers on sparsely populated islands to expedite the resettlement process.⁹⁴ The Indonesian government set up its center on the island of Galang, while making it clear that Indonesia would only host refugees temporarily until a permanent solution could be arranged, an arrangement described by some as “an open shore for an open door.”⁹⁵ This solution worked well for much of the 1980s; nearly half a million refugees were resettled in the space of 18 months,⁹⁶ and resettlement departures from Galang outpaced arrivals for years.⁹⁷

Beginning in 1988, however, departures from Vietnam once again began to surge, spurred by the relaxation of internal travel controls and the possibility of resettlement in the West. This time Western countries did not increase resettlement arrivals to keep pace with

⁹² Amarjit Kaur, “Refugees and Refugee Policy in Malaysia,” *UNEAC Asia Papers* 18, no. 1 (2007), 83

⁹³ Missbach, *Troubled Transit*, 32

⁹⁴ *The State of the World's Refugees, 2000*, 84

⁹⁵ *Ibid*

⁹⁶ *Ibid*

⁹⁷ Missbach, *Troubled Transit*, 35

movement into Southeast Asia, leading to the erosion of the Geneva consensus.⁹⁸ Malaysia unilaterally ordered its navy to push boat people back to sea to seek refuge elsewhere (mostly Indonesia) or die; Indonesia responded by stepping up air and naval patrols to counter “communist infiltration,” in one case firing on a refugee boat.⁹⁹ Another conference was held in Geneva in 1989, leading to the Comprehensive Plan of Action (CPA), which declared that migrants from Vietnam would not automatically be assumed to be refugees—those who could prove that their lives would be in danger in Vietnam would be resettled, while all others would be returned to Vietnam.¹⁰⁰ This achieved its purpose of discouraging departures from Vietnam, and Vietnamese asylum applications fell to negligible numbers,¹⁰¹ with 32,300 Vietnamese resettled after the CPA’s implementation and 83,300 whose asylum claims were rejected returned to Vietnam.¹⁰²

Despite the terms of the CPA, forcible repatriation was still reported,¹⁰³ and some refugee advocates critiqued the CPA as “running counter to the right to leave one’s country.”¹⁰⁴ In Indonesia, in particular, the process for refugee status determination was criticized as arbitrary and unfair, with widespread allegations of corruption and bribery; some detainees whose asylum claims were rejected participated in hunger strikes or committed suicide, and there were a number of riots.¹⁰⁵ Nevertheless, by the mid-1990s, Galang had been emptied by the Indonesian

⁹⁸ *The State of the World’s Refugees, 2000*, 84

⁹⁹ Missbach, *Troubled Transit*, 35-6

¹⁰⁰ *Ibid*, 37

¹⁰¹ *The State of the World’s Refugees, 2000*, 85

¹⁰² *Ibid*

¹⁰³ *Ibid*

¹⁰⁴ *Ibid*, 89

¹⁰⁵ Missbach, *Troubled Transit*, 41

military.¹⁰⁶ The CPA ended in 2001, years after asylum claims from Vietnam had dried up, and the last Vietnamese “boat person” left Malaysia in 2005.¹⁰⁷

The Indochinese experience created a precedent for Southeast Asia’s relationship with asylum-seekers to the present day, with deterrence and repression often the default response. As refugee numbers began to rise again in the 2000s, asylum-seekers were often treated as illegal immigrants and subject to detention and removal. In the mid-2000s, for example, thousands of Indonesians fleeing conflict and natural disaster in the province of Aceh were arrested in Malaysia, with dozens sentenced to jail or corporal punishment.¹⁰⁸

In the 2010s, steadily rising numbers of displaced people worldwide, persecution of the Rohingya in Myanmar (see below), and widespread poverty and destitution in Bangladesh led increasing numbers of people to flee east, into Thailand and Malaysia. In May 2015, authorities discovered dozens of mass graves containing the bodies of Rohingya and Bangladeshi migrants along the Thailand-Malaysia border (on both sides), leading Thailand’s prime minister, Prayut Chan-o-cha, to order a crackdown on trafficking networks.¹⁰⁹ Traffickers began to abandon boats full of refugees in the middle of the Andaman Sea for fear of landing on Thai soil and facing arrest, and Thailand, Malaysia, and Indonesia engaged in “a game of ‘maritime ping-pong’” with the boats, attempting to intercept them before they could land and pushing them back into international waters,¹¹⁰ resulting in hundreds, perhaps thousands, of deaths.¹¹¹ Facing

¹⁰⁶ Ibid

¹⁰⁷ Kaur, “Refugees and Refugee Policy,” 83

¹⁰⁸ “Malaysia: Acehese Refugees Face a Triple Threat,” *Refugees International*, April 12, 2005

¹⁰⁹ “Deadly Journeys: The Refugee and Trafficking Crisis in Southeast Asia,” *Amnesty International*, October 21, 2015

¹¹⁰ “Situation Report: Emergency Response—Rohingya and Bangladesh Migrants,” *MERCY Malaysia*, May 28, 2015

¹¹¹ “Deadly Journeys”

international pressure, Malaysia, Indonesia, and Thailand announced a change in approach on May 20, 2015, offering temporary shelter to as many as 7,000 Rohingya on the condition that they be permanently resettled elsewhere by the following May;¹¹² almost all Bangladeshi migrants were repatriated.¹¹³ By November 2016, however, only a small number of the Rohingya residing in Malaysia had been resettled. Most still languished in detention centers or in existing Rohingya communities, and a permanent solution remained elusive.¹¹⁴ A study of the lives of these asylum-seekers in Malaysia found that they faced constant restrictions on freedom of movement, employment, and other basic human rights, and that “the lives of Rohingya in Malaysia remain better than life in Myanmar only in relative terms.”¹¹⁵ This, then, is the environment that awaits migrants arriving in Southeast Asia, many of whom hope to eventually reach Australia.

As of June 2016, the majority of detainees in both the PNG¹¹⁶ and Nauru¹¹⁷ detention centers were from Iran. Other heavily represented nationalities included Afghanistan, Iraq, Pakistan, Bangladesh, Sri Lanka, Myanmar, and Somalia. According to UNHCR, the largest groups of refugees and asylum-seekers in Indonesia come from Afghanistan and Myanmar.¹¹⁸ Malaysia has recently seen a large influx of refugees from Myanmar, making it the most heavily

¹¹² Ibid

¹¹³ Daniel Sullivan, “Still Adrift: Failure to Protect Rohingya in Malaysia and Thailand,” *Refugees International*, November 2016

¹¹⁴ Ibid

¹¹⁵ Ibid

¹¹⁶ “About transferees on Manus Island,” *Edmund Rice Centre*, 2016

¹¹⁷ “About the transferees on Nauru,” *Edmund Rice Centre*, 2016

¹¹⁸ “UNHCR Population Statistics – Data – Persons of Concern,” *United Nations High Commissioner for Refugees*, accessed January 2, 2018

represented nationality among refugees in Malaysia,¹¹⁹ while others come from Sri Lanka, Syria, Somalia, and Yemen.¹²⁰

Although in-depth discussion of all countries of origin is beyond the scope of this paper, several of these states—including Afghanistan, Iraq, Somalia, Syria, and Yemen—are experiencing ongoing civil wars as of 2018. Iran saw a high-profile wave of emigration after its revolution in 1979, but since 2000 another wave of refugees, driven by Iran’s deteriorating human rights situation (particularly for religious and sexual minorities) and political tensions as well as a lack of economic opportunity, have fled the country, most seeking asylum in Western Europe.¹²¹ Sri Lanka’s decades-long civil war ended with a government victory over Tamil separatists in 2009, but human rights abuses by the government, particularly against the Tamil minority, remain a serious concern. Around 90% of Sri Lankan asylum-seekers to reach Australia have been determined to be refugees, and leaving the country through “unofficial” means is a crime in Sri Lanka, putting asylum-seekers who are returned there at risk of detention;¹²² in 2016 alone, two interceptions of boats by Australia saw their Sri Lankan passengers repatriated to Sri Lanka and arrested on arrival.¹²³ Many Pakistani refugees are members of religious minorities, who are at risk in their home country due to official persecution and sectarian violence.¹²⁴

¹¹⁹ Albert, “The Rohingya Crisis”

¹²⁰ “UNHCR Population Statistics – Data – Persons of Concern”

¹²¹ Shirin Hakimzadeh, “Iran: A Vast Diaspora Abroad and Millions of Refugees at Home,” *Migration Policy Institute*, September 1, 2006

¹²² Emily Howie, “Sri Lanka is a refugee-producing country. Here’s why,” *Guardian* (London), July 7, 2014

¹²³ “Mixed Movements”

¹²⁴ “UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Members of Religious Minorities from Pakistan,” *United Nations High Commissioner for Refugees*, May 14, 2012

A refugee crisis is also brewing within Southeast Asia itself as ethnic and religious minorities in Myanmar suffer increasing abuses at the hands of security forces. Around 100,000 civilians in Kachin and northern Shan states in northern Myanmar, mostly from minority ethnic groups, have been displaced in fighting between the military and separatist groups.¹²⁵ Most of the abuses documented by human rights advocates have occurred at the hands of Myanmar's armed forces, which have been accused of forced labor, torture, extrajudicial execution, intentional targeting of civilians, and other violations of humanitarian law.¹²⁶

In Rakhine state in northwestern Myanmar, the Rohingya, a Muslim minority group, are legally stateless, having never been recognized by Myanmar's government as citizens.¹²⁷ The government "has effectively institutionalized discrimination against the ethnic group through restrictions on marriage, family planning, employment, education, religious choice, and freedom of movement," which had long driven Rohingya to seek better lives elsewhere, as seen during the 2015 crisis.¹²⁸ This trend intensified into a massive humanitarian crisis in August 2017, when attacks by Rohingya militants led to a massive backlash against Rohingya civilians by the military, forcing over 600,000 (as of the end of 2017), more than half of Myanmar's Rohingya population, to flee the country.¹²⁹ In December 2017, the UN High Commissioner for Human Rights, Prince Zeid Ra'ad al-Husseini, accused Myanmar's government of planning an organized campaign of violence against the Rohingya, calling it "a textbook example of ethnic cleansing"

¹²⁵ "'All the Civilians Suffer': Conflict, Displacement, and Abuse in Northern Myanmar," *Amnesty International*, June 14, 2017

¹²⁶ *Ibid*

¹²⁷ Albert, "The Rohingya Crisis"

¹²⁸ *Ibid*

¹²⁹ *Ibid*

and warning that “elements of genocide” may be occurring;¹³⁰ Secretary-General Antonio Guterres has called the situation a “humanitarian and human rights nightmare.”¹³¹

While most displaced Rohingya have fled across Myanmar’s western border with Bangladesh, which now hosts over 800,000 Rohingya refugees, smaller numbers have traveled by boat to Thailand, and many of these proceed onward towards Malaysia.¹³² As of November 2017, out of the 152,420 refugees registered with UNHCR in Malaysia, 133,580 (around 88%) were from Myanmar, with around half of these being Rohingya and most of the rest belonging to other ethnic minorities.¹³³ Rohingya in Malaysia have no legal status and cannot access legal employment, education, or healthcare (see Chapter 5).¹³⁴ A small number of Rohingya have also migrated to Indonesia, which formally admitted 1,000 Rohingya in 2016 under international pressure.¹³⁵ ASEAN member states have not yet coordinated a response to the campaign against the Rohingya or the resulting displacement, and given the hostility of Myanmar’s government and public towards the Rohingya, the crisis is unlikely to be abated in the near future.

Chapter 4: Common Paths to Southeast Asia and Australia

There is no single path that refugees attempting to reach Australia follow or any one reason for seeking out Australia as a final destination. Precise information about people smuggling and other transit routes has been difficult for researchers to obtain, due to widespread

¹³⁰ “U.N.’s Zeid toughens warning of ‘genocide’ in Myanmar,” *Reuters*, December 17, 2017

¹³¹ Albert, “The Rohingya Crisis”

¹³² *Ibid*

¹³³ “Figures at a Glance in Malaysia,” *United Nations High Commissioner for Refugees*, accessed January 4, 2018

¹³⁴ Albert, “The Rohingya Crisis”

¹³⁵ *Ibid*

fear among migrants that law enforcement agencies might use such information to crack down on irregular migration.¹³⁶ A map of the most common routes to and through Southeast Asia, as will be detailed below, can be found at the beginning of this paper.

Many migrants fleeing Myanmar and Sri Lanka, as well as some coming from further east, enter Thailand by foot, where transport can be found to Indonesia (by boat) or Malaysia (by boat or overland).¹³⁷ One common but highly dangerous route, as discussed above, is to travel by boat from Bangladesh, Myanmar, or western Thailand to Malaysia across the Andaman Sea; in 2015, as described in chapter 3, large numbers of migrants, mostly Rohingya, were stranded at sea while attempting this crossing.

Malaysia's popularity as a destination also stems in part from its relatively lenient entry controls, which allow citizens of many Muslim-majority countries to receive a visa on arrival. Some migrants enter Malaysia legally and then overstay, while others enter on fraudulent travel documents¹³⁸ (though Malaysia, due to Australian pressure, has tightened visa restrictions in recent years).¹³⁹ Muslim migrants, such as the Rohingya, may also be drawn to Malaysia and Indonesia due to "the promise of some kind of Muslim solidarity, as opposed to Thailand with its majority Buddhist population."¹⁴⁰

Migrants who initially arrive in Malaysia often opt to "leave for Indonesia as soon as they could," mostly by boat from makeshift harbors in western Malaysia, through channels also used

¹³⁶ Missbach, *Troubled Transit*, 67

¹³⁷ Albert, "The Rohingya Crisis"

¹³⁸ Missbach, *Troubled Transit*, 67

¹³⁹ Asher L. Hirsch, "The Borders Beyond the Border: Australia's Extraterritorial Migration Controls," *Refugee Survey Quarterly* 36, no. 3 (2017), 73

¹⁴⁰ Missbach, *Troubled Transit*, 69

by undocumented Indonesian migrants returning home. A study of migrants in Indonesia found that most were drawn from Malaysia and other nearby countries due to the availability of a UNHCR office and the possibility of resettlement and protection, “although a minority offered that they intended to use it solely as a launching pad for irregular migration to Australia.”¹⁴¹ Those who are committed to reaching Australia see Indonesia as “one step closer”; others are drawn by the promise of a higher standard of living, lower costs, and weaker immigration enforcement.¹⁴²

Most refugees in Indonesia are drawn to the capital, Jakarta (on the island of Java), which they reach via air or overland after entering Indonesia.¹⁴³ As will be detailed in chapter 6, many asylum-seekers, even those who initially intend to seek protection from UNHCR through legal channels, eventually give up on the legal asylum and resettlement process and decide to leave the country. For some this means accepting international assistance to return to their home country, but others continue to seek out people smugglers for the increasingly dangerous crossing of the Indian Ocean to Australia. The most popular route before Australia tightened its border controls was from Java to Christmas Island, an Australian territory located directly south of Java. Other known maritime routes to Australian territory led from eastern islands such as Bali, Sulawesi, and Timor to the Australian-controlled Ashmore and Cartier Islands (these are uninhabited, but could still be considered Australian territory for the purposes of claiming asylum after rescue),

¹⁴¹ Clark, “Navigating Asylum,” 137

¹⁴² *Ibid*

¹⁴³ *Ibid*, 70

and from Sri Lanka and the Indonesian island of Sumatra to the Cocos (Keeling) Islands, another Australian territory.¹⁴⁴

Boats attempting one of these journeys today are generally intercepted by Indonesian or Australian authorities. The Australian government claims that no “people smuggling boat” heading for Australian territory has made it to shore since 2014.¹⁴⁵ Those who are caught can expect to be either repatriated (as with the aforementioned Sri Lankans) or detained. Australia’s former offshore detention center in PNG was located on relatively underpopulated Manus Island, located in the Bismarck Archipelago north of New Guinea proper and far from the national capital of Port Moresby. Nauru, which still hosts an active detention center, is an island in the South Pacific, thousands of miles northeast of Australia. One of the world’s smallest independent states, Nauru suffers from a lack of natural resources and economic opportunity, leading to chronic unemployment for its 10,000 citizens.¹⁴⁶

While there is no “typical” refugee experience, a profile of a former Manus detainee published by *The Guardian* in early 2018 provides one example of a trajectory for a refugee in this region. Mamudul Hasson is an ethnic Rohingya from Myanmar who fled his home village of Maungdaw in Rakhine State (in western Myanmar) in 2012, while still in his teens, after learning that he was wanted for questioning by the country’s repressive military. After initially fleeing to Bangladesh, Hasson decided to seek out a smuggling network and attempt the 10-day boat journey from Bangladesh to Malaysia, a trip that resulted in dozens of deaths after food supplies

¹⁴⁴ “Southeast Asia Migration Routes | 16 June 2015,” *International Organization for Migration*, June 16, 2015

¹⁴⁵ Annika Smethurst, “1000 days since last people smuggling boat reached Australia, Immigration Minister Peter Dutton says,” *Herald Sun* (Melbourne), April 22, 2017

¹⁴⁶ “About the transferees on Nauru”

ran out. According to Hasson's account, he was held for ransom for a month by armed people smugglers after reaching Malaysia, with the threat of being sold into slavery; eventually, out of desperation, he drew on his family's help to pay a smuggler to take him by boat to Java, and then onward to Christmas Island. By the time Hasson reached Christmas Island in October 2013, the Australian government had hardened its stance on unauthorized migration, and after Hasson landed he was immediately detained and transferred to Manus. After four agonizing years at Manus, Hasson was ultimately among a group of detainees chosen for resettlement in the U.S., under an agreement between the U.S. and Australia that will be explored further in chapter 7, and in January 2018 he left PNG behind for Florida.¹⁴⁷ This apparently happy ending, however, is far from typical of refugees in Southeast Asia.

Chapter 5: The Refugee Experience in Malaysia

Malaysia, in addition to hosting more refugees than Indonesia, relies significantly more heavily on migrant labor to drive its economy as well. A 2014 study found that there are around 1.5 million documented foreign workers in Malaysia (nearly half from Indonesia) and an additional 1.3 million undocumented foreign workers who had registered with the government.¹⁴⁸ Foreigners made up 8.3% of Malaysia's population as of 2010, compared to 0.49% in 1980.¹⁴⁹ Malaysia also has a long history as a destination for refugees. The country saw a significant influx of Indochinese refugees (as discussed in Chapter 3) as well as refugees from

¹⁴⁷ Oliver Laughland, "'It's freedom': Rohingya refugee reaches Florida after horror of Australian detention," *Guardian* (London), February 23, 2018

¹⁴⁸ Azizah Kassim, "Recent Trends in Transnational Population Inflows into Malaysia: Policy, Issues and Challenges," *Malaysian Journal of Economic Studies* 51, no. 1 (2014), 16

¹⁴⁹ *Ibid*, 9

the Moro insurgency in the Philippines during the 1970s; smaller groups of refugees from Indonesia, Myanmar, and Bosnia in the 1990s;¹⁵⁰ and the present-day flow described above beginning in the 2000s. As of the end of February 2018, UNHCR has identified 154,400 registered refugees and asylum-seekers in Malaysia,¹⁵¹ and more likely remain outside the formal registration process.

Despite this long history of foreigners in Malaysia and its dependence on foreign workers, policies and attitudes towards refugees have been inconsistent, and they are often unable to obtain legal recognition. Some observers have claimed that the government has “problematized” immigration in general, creating “a hostile environment for all migrants, particularly refugees and asylum seekers.”¹⁵² Scholars have pointed to a number of factors to explain the Malaysian government’s general hostility towards immigration. Malaysia’s existence as a multiracial society depends on “a social contract made between the *bumiputeras* (sons of the soil) and those who migrated to Malaysia at the country’s independence”; the growth of groups that do not fit either of these categories is seen as a threat to Malaysia’s stability.¹⁵³ McGahan (2009) argues that Malaysian leaders “are dependent on foreign labor for economic reasons, but they cannot be seen as such for political reasons,” and that migrants are used to construct Malaysian identity in opposition to “outsiders” and vilified as scapegoats for the nation’s ills.¹⁵⁴ Forced migration in general is also considered a “foreign” issue by Malaysian leaders, who have

¹⁵⁰ Arzura Idris, “Malaysia and forced migration,” *Intellectual Discourse* 20, no. 1 (2012): 37

¹⁵¹ “Figures at a Glance in Malaysia”

¹⁵² Amarjit Kaur, “Migration and the Refugee Regime in Malaysia: Implications for a Regional Solution,” in *Protection of Refugees and Displaced Persons in the Asia Pacific Region*, ed. Angus Francis and Rowena Maguire (Farnham, England: Ashgate, 2013), 95

¹⁵³ Idris, “Malaysia and forced migration,” 42

¹⁵⁴ Kevin McGahan, “The Securitization of Migration in Malaysia: Drawing Lessons beyond the Copenhagen School” (presentation, Annual Conference of the American Political Science Association, Toronto, September 3-6, 2009), 4

largely been spared having to confront mass displacement in their own country and its immediate neighborhood.¹⁵⁵ The Malaysian public has little contact with or knowledge of refugees, often viewing them as “a Western problem, something for richer countries to worry about.”¹⁵⁶ As a result, there is little domestic political pressure on the government to change its approach.

Most refugees in Malaysia reside in urban areas, with up to 90% living in and around Kuala Lumpur, the capital,¹⁵⁷ and smaller concentrations in the states of Penang in Peninsular Malaysia and Sabah on the island of Borneo.¹⁵⁸ The Malaysian government does not officially distinguish between refugees and illegal immigrants, who are subject to punishment under the Immigration Act of 1959/1963 (subsequently amended in 1997 and 2002 to include harsher penalties). Under the Immigration Act, illegal immigrants, regardless of asylum status, can be detained indefinitely pending deportation; if convicted of entering the country illegally, they can face prison terms of up to five years, a fine of 10,000 Malaysian ringgit (around \$2500), and six strokes of the cane.¹⁵⁹ Since 2002, Malaysian authorities have periodically cracked down on illegal immigration, with mass arrests of immigrants.

Malaysian immigration officers can be accompanied on such crackdowns by police and members of the People’s Voluntary Corps (RELA), a volunteer paramilitary organization whose members are particularly “ill-trained and...prone to abusing their power.”¹⁶⁰ In 2008 alone, RELA was accused of “rape, beatings, extortion, theft, and destroying UNHCR documents,” as

¹⁵⁵ Idris, “Malaysia and forced migration,” 42

¹⁵⁶ Gerhard Hoffstaedter, “The limits of compassion,” *Overland* 224 (2016)

¹⁵⁷ Jeff Crisp et al, “But when will our turn come? A review of the implementation of UNHCR’s urban refugee policy in Malaysia,” *Policy Development and Evaluation Service, United Nations High Commissioner for Refugees*, May 2012

¹⁵⁸ Khairi, “Managing the Challenges,” 4

¹⁵⁹ Kaur, “Refugees and Refugee Policy in Malaysia,” 82

¹⁶⁰ Khairi, “Managing the Challenges,” 8

well as burning a camp inhabited by Chin refugees from Myanmar to the ground and looting its residents' valuables.¹⁶¹ A 2017 report found that harassment of refugees by law enforcement was still common and that UNHCR registration was only partially effective in mitigating this problem.¹⁶² (The government announced its intention to remove RELA's capacity to enforce immigration law in 2009,¹⁶³ but at least as of 2012 there were no indications that this had occurred in practice.¹⁶⁴)

The government announced an amnesty in October 2011 for illegal immigrants who came forward, who would be given the choice of paying for work permits or accepting repatriation. However, crackdowns have continued since then, and advocates have accused the government of taking migrants' money while leaving them still vulnerable to arrest.¹⁶⁵ In one example of such an operation in 2013, over 2,000 migrants were arrested in 40 simultaneous raids nationwide. Those with UNHCR registration cards were released once their status was verified, but those without cards were detained and given the choice between deportation and paying a fine of 1000 to 1500 ringgit (\$340 to \$500); many refugees were forced into hiding to avoid this fate.¹⁶⁶ As a result, refugees have reported being afraid to look for work, or even go outside, for fear of arrest,¹⁶⁷ and many face verbal, physical, and sexual abuse by law enforcement.¹⁶⁸

¹⁶¹ "World Refugee Survey 2009—Malaysia," *U.S. Committee for Refugees and Immigrants*, June 17, 2009

¹⁶² "Examining Human Rights in the Context of ASEAN Regional Migration: Summary Report of Findings from APhR's Fact-Finding Mission to Malaysia, 3-7 August 2017," *ASEAN Parliamentarians for Human Rights*, 2017

¹⁶³ "Abused and Abandoned: Refugees Denied Rights in Malaysia," *Amnesty International*, June 2010

¹⁶⁴ Jera Beah H. Lego, "Protecting and Assisting Refugees and Asylum-Seekers in Malaysia: The Role of the UNHCR, Informal Mechanisms, and the 'Humanitarian Exception'," *Journal of Political Science & Sociology* 10, no. 17 (2012), 84

¹⁶⁵ Helen Davidson, "Malaysia accused of arresting asylum seekers and children," *Guardian* (London), September 4, 2013

¹⁶⁶ *Ibid*

¹⁶⁷ Chris Buckley, "Even in Safety of Malaysia, Rohingya Migrants Face Bleak Prospects," *New York Times*, June 3, 2015

¹⁶⁸ Davidson, "Malaysia accused of arresting asylum seekers and children"

Refugees are not permitted to send their children to public schools in Malaysia, leaving many of them unable to access formal education and relegated to volunteer-run learning centers,¹⁶⁹ in violation of Malaysia's commitments under the Convention on the Rights of the Child.¹⁷⁰ This includes children of asylum-seekers who were born in Malaysia.¹⁷¹ As non-Malaysians, refugees and asylum-seekers are charged significantly higher rates for health care at public hospitals. Those with a UNHCR identification card (which, as discussed below, are increasingly difficult to obtain) can receive a 50% subsidy, but since "the majority experience instability of employment," it is often difficult for even cardholders to afford care.¹⁷² This is particularly true for pregnant women and mothers of infant children, who often require treatment costing thousands of dollars.¹⁷³ Additionally, refugees who lack identification face the risk of being reported to authorities and arrested if they seek treatment in a hospital. Malaysian law requires public hospitals to accept emergency cases regardless of ability to pay, but a 2016 study found that this rule is not always followed.¹⁷⁴

In the absence of legal employment opportunities, refugees generally find informal work that Malaysian citizens do not want to do, often in the construction, manufacturing and service industries, where they are vulnerable to exploitation and unable to seek justice when abused.¹⁷⁵ Employers can be fined 5,000 to 10,000 ringgit (\$1300 to \$2500) for hiring unauthorized workers, creating a strong disincentive to give refugees jobs.¹⁷⁶ Refugees also have limited

¹⁶⁹ Sullivan, "Still Adrift"

¹⁷⁰ "World Refugee Survey 2009—Malaysia"

¹⁷¹ Kaur, "Refugees and Refugee Policy," 86

¹⁷² "Malaysia—APRRN," *Asia Pacific Refugee Rights Network*, March 2017

¹⁷³ Sullivan, "Still Adrift"

¹⁷⁴ *Ibid*

¹⁷⁵ Buckley, "Even in Safety of Malaysia"

¹⁷⁶ Davidson, "Malaysia accused"

access to shelter, often sharing crowded housing in urban areas and sometimes living at their places of employment.¹⁷⁷ Refugee women, in particular, face significant risk of sexual and gender-based violence (SGBV) due to their precarious status, with many reports of sexual abuse by employers against women who are unable to protest, and victims of SGBV are no longer given priority by UNHCR due to overwhelming demand for its assistance.¹⁷⁸

Migrants who are detained face conditions “significantly worse than conditions in jail,”¹⁷⁹ and in some cases are detained indefinitely, often without access to legal counsel.¹⁸⁰ In the words of Jerald Joseph, a member of Malaysia’s national human rights commission, “there is a zeal to take undocumented people off the streets, but then there is a disconnect where there is not enough money or resources to put into the system to avoid torture-like conditions.”¹⁸¹

International and national NGOs are generally denied access to immigration detention centers (IDCs), but many reports identify major problems with overcrowding, lack of food and water, poor sanitation, and lack of access to medical care; children are frequently detained with adults outside their families, putting them at risk of abuse.¹⁸² Between 2014 and 2016, according to the Malaysian government, 161 people died of disease in IDCs, almost half of whom were from Myanmar.¹⁸³ A 2017 report by *The Guardian* revealed that 24 refugees and asylum-seekers (all but two from Myanmar) had died in detention since 2015, with causes of death including disease and physical abuse; in at least one case, a man was beaten to death by guards and officially

¹⁷⁷ Kassim, “Recent Trends,” 22

¹⁷⁸ “Desperate Lives: Burmese Refugee Women Struggle to Make a Living in Malaysia,” *Women’s Commission for Refugee Women and Children*, May 2008

¹⁷⁹ “Malaysia: Invest in Solutions for Refugees,” *Refugees International*, April 19, 2011

¹⁸⁰ “Abused and Abandoned”

¹⁸¹ Laignee Barron, “Refugees describe death and despair in Malaysian detention centres,” *Guardian* (London), May 15, 2017

¹⁸² “APRRN—Malaysia”

¹⁸³ Barron, “Refugees describe death and despair”

declared to have died of illness.¹⁸⁴ In response to the *Guardian* article, the Malaysian government launched an official probe into abuse in IDCs,¹⁸⁵ but the results have not yet been made public.

Despite its general antipathy towards asylum-seekers, the Malaysian government continues to allow UNHCR—which is dependent on governments' permission to carry out its work—to operate and provide services in the country, as a “humanitarian exception” to its normal policy stance.¹⁸⁶ The Malaysia office of UNHCR, located in Kuala Lumpur, conducts refugee status determination for refugees in the country, provides identity cards (which are not considered official identification) to refugees whose status has been confirmed, and attempts to find durable solutions for refugees, either through third-country resettlement or, if safe, repatriation to countries of origin.

A chronic lack of resources and capacity as well as restrictions imposed by the government have severely limited UNHCR's ability to support refugees in Malaysia. Those wishing to register or access UNHCR services must travel to their Kuala Lumpur office in person, limiting support for refugees outside the capital.¹⁸⁷ UNHCR has experimented with mobile registration programs in other areas where refugees live, such as Penang, but refugees living outside Kuala Lumpur generally must pay their way to the city, often borrowing money to do so.¹⁸⁸ When refugees (including those in need of medical treatment) are able to come to UNHCR's office, they are often turned away by security guards if they lack an appointment, and

¹⁸⁴ *Ibid*

¹⁸⁵ Laignee Barron, “Malaysia opens investigation into immigration detention abuse,” *Guardian* (London), May 18, 2017

¹⁸⁶ Lego, “Protecting and Assisting Refugees,” 78

¹⁸⁷ “APRRN—Malaysia”

¹⁸⁸ Sullivan, “Still Adrift”

due to understaffing the wait time for even a preliminary appointment to register and receive an identity card can be over a year.¹⁸⁹ UNHCR has tried to compensate for this by updating refugees on asylum or resettlement applications via mobile phone or text, but due to refugees' precarious incomes and living situations it is often difficult to reach them.¹⁹⁰ A policy change made in 2015 as a response to heightened demand made access more difficult for refugees from Myanmar—unlike other refugees, they “are [now] prevented from registering directly unless they have been released from immigration detention, referred by an NGO or are already registered in some way in the UNHCR system, which is facing a considerable backlog in cases to be processed.”¹⁹¹ As for durable solutions, while many have no choice but to accept repatriation, the wait for resettlement can last for decades.¹⁹²

UNHCR is aware of the flaws in its protection efforts in Malaysia, and has made a number of efforts to use its limited resources more effectively. UNHCR funds and supports a number of refugee-led community organizations across Malaysia, which provide basic but invaluable services like healthcare and education and, in some cases, help organize employment for refugees.¹⁹³ Over time, individual refugee communities have attempted to build the capacity to assist their own members, even issuing their own unofficial identity documents,¹⁹⁴ but at times different groups “compete with each other for visibility and resources,” and some suffer from “competition, mistrust and manipulative leadership.”¹⁹⁵ (The Rohingya in particular also lack the

¹⁸⁹ Ibid

¹⁹⁰ Gerhard Hoffstaedter, “Working for (bare) life,” *Griffith Review*, August 2014

¹⁹¹ Ibid

¹⁹² Kassim, “Recent Trends,” 19

¹⁹³ Hoffstaedter, “Working for (bare) life”

¹⁹⁴ Buckley, “Even in Safety of Malaysia”

¹⁹⁵ Crisp et al, “But when will our turn come?”

community cohesion and organization of some longer-tenured refugee groups.¹⁹⁶) UNHCR and NGO partners have attempted a number of interventions aimed at creating livelihoods that would allow refugees to earn a stable income, but these have been hampered by lack of resources as well as refugees' inability to work legally in Malaysia.¹⁹⁷ An internal review by UNHCR found that "it is a challenge for UNHCR to understand the real dynamics of the many different refugee communities to be found in the country," and that UNHCR's local capacity has not kept pace with the scale of demand.¹⁹⁸

In short, refugees in Malaysia are under constant threat due to a lack of recognition by the government, and the international protection regime that is nominally meant to support them lacks the ability to effectively reach most people. It is small wonder, then, that a "dangerous but potentially very rewarding"¹⁹⁹ alternative—the passage to Australia—is a temptation for some, particularly those who have lost hope that their attempts to seek permanent resettlement in a true refuge will ever bear fruit. For these refugees (minus the handful lucky enough to be resettled in Australia through legal channels), their journey inevitably passes through, and in many cases ends in, Indonesia.

Chapter 6: The Refugee Experience in Indonesia

Indonesia does not have the historical experience with immigration that Malaysia does, and unlike Malaysia very few migrants see it as a destination in its own right—for the vast

¹⁹⁶ Buckley, "Even in Safety of Malaysia"

¹⁹⁷ "Desperate Lives"

¹⁹⁸ Crisp et al, "But when will our turn come?"

¹⁹⁹ Hoffstaedter, "The limits of compassion"

majority, it is viewed as a temporary stop on the way to somewhere else. As a poorer country than Malaysia with a much larger native workforce, it does not depend on migrant labor and has traditionally been a source of migrants, not a destination. An estimated 4.5 million Indonesians work abroad, mostly in other East Asian countries (such as Malaysia) and the Middle East.²⁰⁰

As mentioned in Chapter 3, Indonesia's experience with large flows of asylum-seekers dates back to the Indochina refugee crisis in the 1970s, when Indonesia established refugee camps on the island of Galang. After the resurgence of migration from Indochina in the late 1980s and the Comprehensive Plan of Action, under which the remaining detainees had their claims assessed and those who could safely return home were repatriated, the camps were emptied and closed by the late 1990s. The government of then-president Suharto characterized Galang as a "monument of humanity" and an example of Indonesia's strong human rights record, but personal accounts from former detainees describe detention as a difficult experience, and some Indonesian officials have characterized Galang as an "unpleasant" episode that "overstretched the country's capacity for hospitality" through the indirect costs of hosting asylum-seekers.²⁰¹ The steady increase in refugees in the 2000s—Indonesia saw 7,199 applications for refugee status in 2012, compared to 74 in 2005²⁰²—and Australia's increasingly militant border protection policies have proven more of a challenge for Indonesia.

²⁰⁰ "Profil," *Migrant CARE*, 2016

²⁰¹ Missbach, *Troubled Transit*, 41

²⁰² *Ibid*, 52

Surveys of migrants in Indonesia have indicated that most have chosen Australia as their final destination.²⁰³ For the vast majority, however, their lives are “put on hold” indefinitely due to Australia’s inaccessibility,²⁰⁴ and most will likely never reach the country they hope to call home. Asylum-seekers are supposed to be detained in one of Indonesia’s IDCs, where they wait for their claims to be processed and hold out hope for resettlement in Australia or another third country, but due in large part to overcrowding in Indonesia’s detention system, most refugees live outside it. Most migrate to larger cities like Jakarta (the capital), Surabaya, and Medan, which are seen as offering more opportunities but which also force them to compete with a much larger number of rural Indonesians who are flocking to cities for the same reason; other refugees have formed communities in smaller towns.²⁰⁵ Living outside IDCs allows for greater freedom of movement, but documented refugees must still regularly report their whereabouts to local authorities. Those found outside their assigned residential areas can be arrested and detained, and are sometimes extorted and forced to pay bribes (by both police and criminals) to avoid exposure.²⁰⁶

Indonesia has not ratified the 1951 Convention or the 1967 Protocol or created a legislative framework concerning refugees and asylum-seekers; responsibility for processing of asylum claims is given to UNHCR. Indonesia’s constitution declares that “everyone has the right for political asylum in other countries [outside their home country],” but this has never been

²⁰³ Bhatara Ibnu Reza, “Challenges and Opportunities in Respecting International Refugee Law in Indonesia,” in *Protection of Refugees and Displaced Persons in the Asia Pacific Region*, ed. Angus Francis and Rowena Maguire (Farnham, England: Ashgate, 2013), 117

²⁰⁴ Missbach, *Troubled Transit*, 91

²⁰⁵ *Ibid*

²⁰⁶ *Ibid*, 95

codified in law.²⁰⁷ Indonesia's 2011 immigration law, a response to increased migrant flows, did not add new protections for asylum-seekers and refugees, only stating that "victims of trafficking and human smuggling" should not face immigration sanctions.²⁰⁸ Under the 2011 law, those assisting "illegal migrants" can face up to two years in prison and a fine of up to 200 million Indonesian rupiah (\$15,000), while people smuggling carries a penalty of five to fifteen years in prison and a fine of 500 million to 1.5 billion rupiah (\$37,000 to \$112,000). However, prosecution of people smugglers has generally been limited to minor players rather than organizers or recruiters, and convicted people smugglers often receive sentences below the legal minimum.²⁰⁹ The 2011 law also introduced IDCs to Indonesia for the first time, "applying Australian immigration regulations" to restrict freedom of movement.²¹⁰

On December 31, 2016, President Joko Widodo (known in Indonesia by the nickname "Jokowi") signed a presidential decree meant to fill this protection gap, which many refugee advocates have cautiously described as "a step in the right direction."²¹¹ Presidential Decree 125 formally distinguishes refugees as a separate category from other migrants for the first time using the 1951 Convention's definition, and declares that those suspected of being refugees should be transferred to IDCs and referred to UNHCR rather than being deported,²¹² providing clearer direction on the responsibilities of different government offices with regard to refugee policy, including search and rescue operations, than had previously existed. Jokowi's decree makes

²⁰⁷ Ibid, 156

²⁰⁸ Ibid, 159

²⁰⁹ Ibid, 161

²¹⁰ Reza, "Challenges and Opportunities"

²¹¹ Dio Herdiawan Tobing, "Indonesia's refugee policy – not ideal, but a step in the right direction," *The Conversation*, September 6, 2017

²¹² "Regulation of the President of the Republic of Indonesia Number 125 Year 2016 Concerning the Handling of Foreign Refugees," *Office of the President of the Republic of Indonesia*, December 31, 2016

Indonesia the first transit country in Southeast Asia to formally differentiate refugees from other migrants.²¹³

However, some advocates have noted that Jokowi's policy remains a decree rather than law, meaning that it could be overturned by a future president, and argued that it does little to actually address refugees' protection needs.²¹⁴ Presidential Decree 125 does not provide any alternatives to the detention system (see below), introduce a legal mechanism to protect refugees, or address responsibility for funding refugee detention and other programs, which may result in "little improvement in people's day-to-day ordeals."²¹⁵ Perhaps more significantly, the decree "formalizes Indonesia's position that the only options offered to refugees are resettlement or repatriation," ruling out any form of integration into Indonesian society or access to any of the benefits available to citizens.²¹⁶ Given the extreme difficulty of reaching Australia, and the very limited opportunities for resettlement, this approach does not reflect the reality of many refugees' lives.

As in Malaysia, refugees in Indonesia are not allowed to work—since their stay is assumed to be temporary—and are not given access to public healthcare or other social services. Many of Indonesia's regional governments do not allow foreigners to attend public schools,²¹⁷ some areas permit registered refugee children to do so, but in practice very few are able to study,²¹⁸ due in part to ignorance of the law among school officials and lack of Indonesian

²¹³ Tobing, "Indonesia's refugee policy"

²¹⁴ *Ibid*

²¹⁵ Antje Missbach and Nikolas Feith Tan, "No durable solutions," *Inside Indonesia*, March 13, 2017

²¹⁶ *Ibid*

²¹⁷ Nethery et al, "Exporting detention," 93

²¹⁸ Thomas Brown, "Resisting limbo," *Inside Indonesia*, March 13, 2016

language skill among parents and children. Children whose asylum cases are still pending or who are unregistered cannot attend public schools.²¹⁹ (Presidential Decree 125 does not address access to education for refugee children.²²⁰) Registered refugees are usually safe from arrest provided that they follow a strict set of guidelines, including “registering with UNHCR, remaining within certain areas, not engaging in work, and not undertaking other business activity.”²²¹ However, registration with UNHCR can take years, which leaves asylum-seekers vulnerable to arrest in the meantime. Relations between refugees and the Indonesian community are often poor due to local perceptions of migrants as “troublemakers” who bring disease and crime, which at times has fueled local demand for their expulsion.²²²

Unlike in Malaysia, where refugees can often find informal jobs despite the ban on employing them, Indonesia “can hardly cope with the high rates of unemployment and underemployment of its own citizens” and offers few such opportunities for refugees to earn a living.²²³ UNHCR pays a monthly allowance to recognized refugees (generally 1.3 million rupiah, around \$97, per family in 2012), but has acknowledged that this amount is insufficient to meet basic needs due to lack of funding in comparison to demand; those seeking asylum do not receive an allowance.²²⁴ Some refugees support themselves with remittances from relatives elsewhere,²²⁵ while other groups of refugees have organized community-run schools and other institutions with support from NGOs.²²⁶ For most, however, these options are too limited to meet

²¹⁹ Missbach, *Troubled Transit*, 98

²²⁰ Missbach and Tan, “No durable solutions”

²²¹ Lucy Fiske, “Refugee Transit in Indonesia: The Critical Importance of Community,” *International Peace Institute*, March 8, 2017

²²² Missbach, *Troubled Transit*, 106

²²³ Antje Missbach, “Asylum seekers stuck in Indonesia,” *Jakarta Post*, April 4, 2014

²²⁴ Missbach, *Troubled Transit*, 99

²²⁵ Fiske, “Refugee Transit in Indonesia”

²²⁶ Brown, “Resisting limbo”

their needs, and since refugees are often forced to remain in Indonesia far longer than they expect, they frequently exhaust their savings after a few weeks or months.²²⁷ With the path to Australia largely closed off, many asylum-seekers choose to surrender to Indonesian authorities in the hopes of receiving basic services. In the words of one Indonesian migration representative, they “are so desperate that they sacrifice their freedom for food.”²²⁸ A 2014 article noted that Jakarta’s central immigration office had seen so many asylum-seekers coming to surrender that it was forced to block them from entering.²²⁹ Those who surrender or are arrested are placed in Indonesia’s immigration detention system.

As part of its efforts to prevent migrants from claiming asylum on its shores, Australia has provided significant funding to expand the IDC system in Indonesia;²³⁰ this will be explored in greater depth in chapter 8. Despite this support, substandard conditions in IDCs remain a serious problem. IDCs are often overcrowded, holding as many as four times their capacity, which has resulted in shortages of food, potable water, and living space as well as poor sanitation.²³¹ Migrants are often held indefinitely for years without being charged with a crime, and violence, abuse, and extortion are serious problems, particularly for unaccompanied children, who are detained with adults.²³² Corporal punishment and torture at the hands of both inmates and security guards have also been reported in Indonesian IDCs. An Afghan refugee who had unsuccessfully attempted to escape an IDC died in 2012 following severe beatings and torture. The following year, a violent brawl between Muslim and Buddhist detainees at the

²²⁷ “Asylum seekers left high and dry in Indonesia,” *IRIN*, April 9, 2014

²²⁸ Missbach, “Asylum seekers stuck in Indonesia”

²²⁹ *Ibid*

²³⁰ Nethery et al, “Exporting detention,” 89

²³¹ “Poor conditions in Indonesian immigration detention centres fuel violence,” *IRIN*, December 17, 2013

²³² Thomas Brown and Antje Missbach, “Refugee detention in Indonesia,” *The Interpreter*, May 12, 2017

Belawan IDC, which guards did nothing to prevent, led to the deaths of eight refugees from Myanmar.²³³ Due to understaffing and corruption, escape attempts are fairly common—some have resulted in fatalities, and recaptured escapees are often severely beaten by guards.²³⁴ Indonesian IDCs lack sufficient regulation to address human rights violations, and corruption and bribery are rampant.²³⁵

In 2014, partially in response to these problems, Indonesia partnered with UNHCR’s Beyond Detention campaign, committing to end detention of asylum-seekers and refugees and release all children from detention within five years. This has yielded some success, with the expansion of community housing facilities operated by the International Organization for Migration (IOM) as an alternative to IDCs, as well as the opening of a handful of shelters for migrant children. As of 2017, 4,225 refugees and asylum-seekers live in one of 42 community housing facilities in six cities, where they are afforded greater freedom of movement and basic necessities. Nevertheless, over 4,000 asylum-seekers and refugees, including hundreds of children, remain in detention.²³⁶ While refugee advocates had hoped that Jokowi’s 2016 decree would provide alternatives to detention, its pronouncements on the subject were vague and left such decisions to immigration officials.²³⁷

The only legal means that refugees stuck in Indonesia have of reaching Australia, or some other country where they can live in peace, is resettlement. But this hope remains elusive for all but a handful of refugees. Worldwide, less than 1% of refugees are ever resettled in a third

²³³ Missbach, *Troubled Transit*, 79

²³⁴ *Ibid*, 80

²³⁵ *Ibid*, 84

²³⁶ Brown and Missbach, “Refugee detention in Indonesia”

²³⁷ *Ibid*

country,²³⁸ and Indonesia is no exception to this trend. In 2016, according to UNHCR, only 323 refugees were resettled from Indonesia—318 to Australia and the rest to New Zealand²³⁹—out of around 14,000 registered refugees in the country.²⁴⁰ Australia, which had been the main resettlement destination for refugees in Indonesia, declared its intention to “drain the pool” in 2014²⁴¹ and will now only accept applications for resettlement from refugees who registered with UNHCR in Indonesia before July 2014,²⁴² further limiting options for those who have arrived since. Since “other countries generally consider refugees in Indonesia as Australia's responsibility,” very few are resettled to destinations other than Australia.²⁴³ The wait for resettlement can last for over a decade, and the amount of time one has spent waiting is not considered when identifying candidates for resettlement, which is generally offered to the most vulnerable refugees such as unaccompanied minors or those who are in immediate danger where they are.²⁴⁴ With the recent global surge in displacement, the increase in the number of refugees sheltering in Indonesia, and the projected decrease in refugee admissions by the U.S., resettlement appears likely to become even less attainable.

In recognition of this reality, UNHCR Indonesia took the extraordinary step in 2017 of launching an information campaign to tell refugees that “most refugees in Indonesia will not be able to benefit from resettlement,” and that they should assume that they are likely to stay in

²³⁸ “Refugee Admissions,” *United States Department of State*, accessed January 8, 2018

²³⁹ “UNHCR Population Statistics – Data – Resettlement,” *United Nations High Commissioner for Refugees*, accessed January 8, 2018

²⁴⁰ “UNHCR Population Statistics – Data – Persons of Concern”

²⁴¹ Jewel Topsfield, “Trapped in transit: What next for asylum seekers stranded in Indonesia?” *Sydney Morning Herald*, March 20, 2016

²⁴² Kristy Siegfried, “It’s not just in Greece that refugees are stranded,” *IRIN*, March 23, 2016

²⁴³ Topsfield, “Trapped in transit”

²⁴⁴ Jewel Topsfield, “Most refugees in Indonesia will never be resettled: UN Refugee Agency,” *Sydney Morning Herald*, October 31, 2017

Indonesia indefinitely, despite their lack of rights there.²⁴⁵ Refugees have grown more and more frustrated with UNHCR's inability to help them—a group of them held a protest outside the agency's Jakarta office in early 2017 to demand quicker processing of refugee applications.²⁴⁶ But since the number of resettlement admissions, as well as UNHCR's funding and resources, are determined by individual governments, there is little that UNHCR can do. Studies of refugees in Indonesia have found a general perception that “asylum seekers were unlikely to have their asylum claims fairly assessed in Indonesia,” which has strongly influenced the loss of faith in the legal asylum process among many.²⁴⁷

Refugees often do not consider the possibility that their stay in Indonesia may be indefinite. For example, one obstacle to education for refugee children in Indonesia is the fact that many parents do not learn or teach their children Indonesian, since they assume they will not be in the country long enough for language skills to matter.²⁴⁸ The reality of their situation can be difficult for refugees to accept, and anxiety is a common problem in refugee communities in Indonesia.²⁴⁹ Without the ability to work, access basic services, or send their children to school, they are forced to simply wait indefinitely, with no knowledge of when, or even if, their hopes will be realized—in one asylum-seeker's words, “it makes you crazy, a little psycho.”²⁵⁰

Two options exist for those whose frustration with living in limbo has reached the breaking point: voluntarily choosing repatriation to their countries of origin or attempting the

²⁴⁵ Topsfield, “Most refugees in Indonesia”

²⁴⁶ *Ibid*

²⁴⁷ Clark, “Navigating Asylum,”

²⁴⁸ Topsfield, “Most refugees in Indonesia”

²⁴⁹ Topsfield, “Trapped in transit”

²⁵⁰ *Ibid*

crossing to Australia despite the low probability of success. Thanks to Australian funding, IOM (which, unlike UNHCR, is not a rights-focused organization) has repatriated over 5,000 migrants since 2000, mostly to Afghanistan, Iraq, and Iran; this has raised concerns among some advocates about *refoulement*.²⁵¹ Investigations have found “multiple reports of IOM encouraging asylum-seekers to repatriate and sometimes taking advantage of their lack of knowledge of their right to asylum in order to persuade them not to claim asylum.”²⁵² For those who cannot return home—which, after all, is the basis for the legal definition of a refugee—the only option besides the status quo is to pay a people smuggler for the uncertain passage to Australia. Such smuggling has been dramatically reduced since Operation Sovereign Borders, Australia’s military campaign to “turn back the boats,” began in 2013, which has helped cause Indonesia’s current backlog of asylum-seekers; an Afghan refugee in Indonesia explained in 2014 that “there’s no opportunity to go by boat; no one’s trying to go now.”²⁵³ Despite the increased number of voluntary surrenders, most migrants detained by Indonesian authorities are caught attempting to leave the country, a consequence of an Australian-funded effort to strengthen Indonesian authorities’ interdiction capabilities.²⁵⁴ Australia’s government has encouraged this trend, launching an advertising campaign in Indonesia and other transit and source countries, even as far away as Iraq, to inform potential “boat people” that “you will not make Australia home” and that those attempting to cross illegally would be intercepted and turned back.²⁵⁵

²⁵¹ Cameron Doig and Asher Hirsch, “Why Indonesia Shows the IOM Isn’t Necessarily Helping Migrants,” *Refugees Deeply*, October 26, 2017

²⁵² Hirsch, “The Borders Beyond the Border,” 72

²⁵³ “Asylum seekers left high and dry”

²⁵⁴ Melissa Phillips and Antje Missbach, “Economies of transit: exploiting migrants and refugees in Indonesia and Libya,” *International Journal of Migration and Border Studies* 3, no. 2-3 (2017), 148

²⁵⁵ “Operation Sovereign Borders”

But a trickle of boats continues to attempt the crossing. At least five were stopped by Australia in 2016,²⁵⁶ and as recently as December 2017 a Sri Lankan boat was intercepted and its passengers deported.²⁵⁷ The status of refugees in Malaysia and Indonesia is so precarious and so hopeless that people are still willing to risk death or capture by one of the world's toughest border protection regimes for a slight chance at escape. One study of this phenomenon found that even with the knowledge of the dangers of the crossing, "people were turning to irregular migration because they were tired of feeling powerless in their own life."²⁵⁸

Chapter 7: Australia and "Operation Sovereign Borders"

Despite its geographical proximity to Southeast Asia, Australia is generally not considered part of the region. Since its founding as a nation-state by British colonists, Australia has seen itself as an outpost of Western civilization, a relatively small country (by population) dwarfed by neighboring Asian societies, which has given rise to a "fear of invasion" from the sea that scholars have identified as a common thread in modern Australian history.²⁵⁹ This anxiety manifested itself in the White Australia policy, which severely restricted non-European (and even non-Anglo-Saxon) immigration to Australia for much of the 20th century. The White Australia policy was gradually lifted between 1945 and 1973,²⁶⁰ and modern Australia is a cosmopolitan and multiethnic nation, but the fear of being overrun by invaders persists in

²⁵⁶ Janet Phillips, "Boat 'turnbacks' in Australia: a quick guide to the statistics since 2001," *Parliamentary Library, Parliament of Australia*, June 22, 2017

²⁵⁷ "Operation Sovereign Borders"

²⁵⁸ Clark, "Navigating Asylum," 151

²⁵⁹ *Ibid.*, 90

²⁶⁰ Jane McAdam, "Australia and Asylum Seekers," *International Journal of Refugee Law* 25, no. 3 (October 2013), 436

Australian society to this day. Modern efforts by political leaders to cast asylum-seekers as a threat to “the national fabric”²⁶¹ draw upon and appeal to this fear.

The origins of the so-called “Pacific Solution,” the modern-day policy of transporting asylum-seekers to detention centers in other states, can be traced to multiracial Australia’s first serious effort to limit immigration in 1992, when the (center-left) Labor Party government under Prime Minister Paul Keating first introduced mandatory temporary detention of those suspected of illegal entry into the country, as a reaction to an influx of Cambodian migrants.²⁶² However, it would be the (center-right) Liberal Party government²⁶³ of John Howard, elected in 1996, that would create Australian asylum policy as it exists today. The incident that sparked this change occurred on August 26, 2001, when MV *Tampa*, a Norwegian cargo ship, rescued 433 refugees, mostly from Afghanistan, from a sinking boat originating in Indonesia.²⁶⁴ Despite the captain’s warning that some of the refugees needed urgent medical care, the government refused to allow the *Tampa* to land in Australia. After several days, the captain defied orders and entered Australian waters, leading Australian special forces to seize the ship.²⁶⁵

The timing of the resulting national debate was significant—a few weeks after the *Tampa* affair, the September 11 attacks in the U.S. raised the specter of Islamic extremism infiltrating Australian society. Howard’s Liberals also faced likely defeat in November’s scheduled national

²⁶¹ Ibid, 425

²⁶² Stephanie Anderson, “Explore the history of Australia’s asylum seeker policy,” *Special Broadcasting Service*, July 24, 2015.

²⁶³ The Liberal Party traditionally governs as the leader of a center-right coalition, which as of 2018 also includes the National Party and two smaller state-level parties. Since the Liberals have dominated this coalition since the 1940s, this paper refers to Liberal-led governments as “Liberal governments” for the sake of simplicity. Source: “History of Preferential Voting in Australia,” *Australian Broadcasting Corporation*, 2004.

²⁶⁴ Peter D. Fox, “International Asylum and Boat People: The Tampa Affair and Australia’s ‘Pacific Solution,’” *Maryland Journal of International Law* 25, no. 1 (2010), 356

²⁶⁵ Ibid, 357

election,²⁶⁶ which likely informed his decision to use migration as an election issue. On September 30, Parliament passed a sweeping new law inaugurating what became the “Pacific Solution.” The law prevented those reaching Australia’s overseas territories (including Christmas Island, the Cocos (Keeling) Islands, the Ashmore and Cartier Islands, and others) by boat from claiming asylum, allowed boats carrying asylum-seekers to be intercepted and turned back, and permitted the indefinite detention of asylum-seekers landing in overseas territories; the detention centers in Nauru and at Manus Island in PNG would soon be opened for this purpose.²⁶⁷ The election campaign that followed was dominated by the migration issue, with Howard declaring that “we will decide who comes to this country and the circumstances in which they come.”²⁶⁸ In one high-profile case, Howard and other government ministers claimed that passengers on an intercepted vessel had threatened to throw their own children overboard to force Australia to rescue them (a charge that was never substantiated).²⁶⁹ The Liberals defied expectations to win a majority in November, and since 2001 Liberal campaigns have consistently charged Labor with being “weak on border protection,” meaning that “the possibility of an even remotely humane reform of the system carries with it the chance of severe electoral punishment for the Labor Party.”²⁷⁰

The new law succeeded in its goal of reducing the number of asylum-seekers reaching Australia²⁷¹ and gained broad public support, but this faded over the years due to a variety of

²⁶⁶ Fiona Broom, “Has the ‘Pacific Solution’ solved anything in Australia?” *Al Jazeera*, April 3, 2014.

²⁶⁷ Anderson, “Explore the history”

²⁶⁸ *Ibid*

²⁶⁹ *Ibid*

²⁷⁰ Robert Manne, “A History of Cruelty: The Origins of Australia’s Uniquely Harsh Asylum Seeker Policy,” *Australian Broadcasting Corporation*, October 28, 2016.

²⁷¹ Anderson, “Explore the history”

factors, including mental health problems among long-term detainees, evidence that the government had misrepresented asylum-seekers' actions (as in the aforementioned "children overboard" affair), and international condemnation.²⁷² When Labor returned to power in 2007, newly elected Prime Minister Kevin Rudd promised to dismantle the Pacific Solution. The Manus and Nauru IDCs were shut down, and all asylum-seekers were once again processed on Australian soil.

After this change, the number of boat arrivals steadily increased, and after several high-profile incidents of refugees dying at sea, public opinion turned against Rudd.²⁷³ McDonald (2011) points to the 2010 election as a turning point for the Australian conception of migrants, arguing that pressure from the Liberals drove Labor to "resecuritize" the migration issue and once again cast migrants as threats.²⁷⁴ A factional dispute within the Labor government before the election saw Rudd ousted in favor of Julia Gillard, who announced her intention to resume offshore processing. Gillard successfully led Labor to another victory, and two years later, the Manus and Nauru detention centers were reopened.²⁷⁵

In 2013, amid declining poll numbers and with another election due later in the year, the Labor Party removed Gillard as its leader and restored Rudd as prime minister. Rudd struck a very different tone from his first government, "stating that no refugees arriving by boat would be resettled in Australia with all others to be returned to their home country or held indefinitely in

²⁷² Matt McDonald, "Deliberation and Resecuritization: Australia, Asylum-Seekers and the Normative Limits of the Copenhagen School," *Australian Journal of Political Science* 46, no. 2 (2011), 286

²⁷³ Broome, "Has the 'Pacific Solution' solved anything?"

²⁷⁴ McDonald, "Deliberation and Resecuritization," 286

²⁷⁵ Amanda Cavill, "Factbox: A recent history of asylum seeker policy," *Special Broadcasting Service*, August 26, 2013

detention.”²⁷⁶ (In the previous incarnation of the Pacific Solution, over 70% of detainees were ultimately settled in Australia.²⁷⁷) But this hardline stance was not enough to stop the Liberals’ new leader, Tony Abbott, from accusing Rudd of being unwilling to protect Australians from the threat posed by asylum-seekers. The Liberals’ 2013 campaign centered on Abbott’s pledge to go beyond the Pacific Solution in an effort to “stop the boats,” by any means necessary.²⁷⁸

This line of attack proved popular with Australian voters, and in September 2013 they elected a Liberal-led government. Abbott made border security a major priority upon becoming prime minister, and under his leadership Parliament passed legislation enabling what Abbott dubbed “Operation Sovereign Borders,”²⁷⁹ which remains in force as of 2018. Under Sovereign Borders, all new boat arrivals would be transferred to Manus or Nauru within 48 hours of being detained in Australia.²⁸⁰ The new policy also gave the military a larger role in border protection, and border protection forces have become steadily more militarized since.²⁸¹ As mentioned in the last chapter, Operation Sovereign Borders was effective in dramatically reducing (but not stopping) unauthorized boat traffic to Australia. Despite the success of his signature policy, a decline in Abbott’s popularity with voters led the Liberals to replace him as leader with Malcolm Turnbull in 2015. A year later, the Liberal government was reelected, with Turnbull continuing as prime minister. Under Turnbull, Australia “has seen an ease of the three-word slogans such as ‘Stop the Boats’ but a continuation of the same policy,” and the government has continued to

²⁷⁶ Anderson, “Explore the history”

²⁷⁷ Aulden Warbrooke, “Australia’s ‘Pacific Solution’: Issues for the Pacific Islands,” *Asia & the Pacific Policy Studies* 1, no. 2 (2014), 338

²⁷⁸ McKinnon, “Australia’s sadist solution”

²⁷⁹ *Ibid*

²⁸⁰ Anderson, “Explore the history”

²⁸¹ McKinnon, “Australia’s sadist solution”

reject all calls to allow detainees to enter Australia or to end Operation Sovereign Borders.²⁸²

Migrants on intercepted boats are either detained indefinitely pending status determination or returned to their countries of origin; Australia has proven willing to return migrants to countries like Sri Lanka, where they are in danger of arrest or persecution.

A series of events beginning in 2016 has conspired to make the government's position more difficult to sustain. The presence of the Manus Island detention center had become controversial in PNG, with many Papua New Guineans "believing that PNG is being used as a dumping ground for Australia's problems," which led leaders of PNG's political opposition to file suit against their government on detainees' behalf.²⁸³ On April 26, 2016, the PNG Supreme Court ruled that detaining refugees against their will violates their right to personal liberty under PNG's constitution, ordering that PNG's agreement with Australia to detain foreign nationals on its behalf be terminated and that the detention center on Manus be closed.²⁸⁴

The court's ruling came as a shock to leaders in both countries. Prime Minister Peter O'Neill of PNG declared that his government would comply with the ruling and shut down Manus, while the Turnbull government continued to insist that no detainees would come to Australia.²⁸⁵ Australia eventually agreed to close Manus, with refugees not resettled in the U.S. (see below) to be granted asylum in PNG—PNG adopted a national refugee policy in collaboration with Australia, allowing for permanent resettlement and eventual PNG citizenship.²⁸⁶ Human rights advocates criticized this decision, arguing that PNG does not have

²⁸² Gemima Harvey, "Australia's Controversial Asylum Policies," *Diplomat*, December 4, 2015

²⁸³ David Fedele, "Resettling refugees in Papua New Guinea: a tragic theatre of the absurd," *Guardian* (London), May 20, 2016

²⁸⁴ Buchanan, "Australia/Papua New Guinea"

²⁸⁵ *Ibid*

²⁸⁶ "Recent changes in Australian refugee policy," *Refugee Council of Australia*, June 8, 2017

the capacity to accept refugees while guaranteeing their human rights. PNG is plagued by chronic poverty, instability, mass unemployment, and political turmoil, and the government has proven unable to deliver on its promises of support for resettled refugees or to keep them safe. Widespread insecurity in PNG and the hostility of many local people towards migrants leaves refugees vulnerable to violent crime, exploitation, and abuse.²⁸⁷ LGBT refugees are at particular risk in PNG, but have received no special attention from the Australian government. Same-sex sexual activity is illegal in PNG, punishable by up to 14 years in prison, and Human Rights Watch reports that LGBT “asylum seekers on Manus Island have reported being shunned, sexually abused, or assaulted by other asylum seekers”; the wider PNG community has also seen violence against LGBT people.²⁸⁸

Another setback for the government occurred in August 2016 with the *Guardian*'s publication of the so-called “Nauru files,” a collection of over 2,000 leaked incident reports from the Nauru detention center. Though long condemned by human rights organizations like Amnesty International, Australia's treatment of asylum-seekers in offshore detention had “flown under the radar of the international media” due in part to Australia's relative remoteness and the tightly controlled flow of information from Manus and Nauru.²⁸⁹ In Australia itself, the detainees were widely seen as “queue-jumpers” and potential criminals and terrorists, and their remote location reinforced “the divide between ‘them’ and ‘us,’” making it easier to turn a blind eye to abuses.²⁹⁰ But the Nauru files broke this silence, revealed widespread physical and sexual abuse

²⁸⁷ Fedele, “Resettling refugees in Papua New Guinea”

²⁸⁸ Human Rights Watch, *World Report 2018* (New York: Seven Stories Press, 2017), 420

²⁸⁹ McKinnon, “Australia's sadist solution”

²⁹⁰ McAdam, “Australia and Asylum Seekers”

of detainees—many of them children—and several incidents of self-harm, including self-immolation.²⁹¹ Although the government dismissed the files as “hype,”²⁹² the abuses revealed by the *Guardian* helped galvanize opposition to its policies at home and abroad.

By the end of 2017, polls indicated that a majority of Australians were now opposed to the continued offshore detention of migrants, and the detention regime faced significant legal and practical challenges. In addition to the aforementioned PNG case, the government has spent an unknown amount of money defending itself in Australian courts—this is on top of the estimated A\$4 billion (US\$3.1 billion) that Australia’s border protection and detention programs cost taxpayers in 2017.²⁹³ Pressure from human rights activists led Broadspectrum, the company that manages the Nauru detention center (and formerly managed Manus), to withdraw from its contract; the new operator, Canstruct International, will likely face similar backlash.²⁹⁴

After the failure of efforts to resettle detainees elsewhere in Southeast Asia (which will be described further in Chapter 8) and the decision to close Manus, the Australian government sought out a new destination for detainees: the United States. In September 2016, Australia agreed to resettle Central American refugees being detained in Costa Rica. Two months later, in what was dubbed “the refugee swap” by the media (a charge denied by both governments), U.S. President Barack Obama agreed to consider resettlement applications from an unspecified number of detainees from Manus and Nauru.²⁹⁵ The official U.S. rationale for accepting the

²⁹¹ Paul Farrell, Nick Evershed and Helen Davidson, “The Nauru files: cache of 2,000 leaked reports reveal scale of abuse of children in Australian offshore detention,” *Guardian* (London), Aug. 10, 2016

²⁹² McKinnon, “Australia’s sadist solution”

²⁹³ Paul Karp, “Australia’s ‘border protection’ policies cost taxpayers \$4bn last year,” *Guardian* (London), January 4, 2018

²⁹⁴ Helen Davidson, “Civil engineering firm Canstruct to take over operating Nauru detention centre,” *Guardian* (London), October 18, 2017

²⁹⁵ “Australia–United States Resettlement Arrangement,” *Kaldor Centre for International Refugee Law*, November 9, 2017

applications was to “relieve the suffering of these refugees”;²⁹⁶ more practically, the agreement represented a low-cost gesture of support for a close U.S. ally. Days after the decision to consider applications from Manus and Nauru, Donald Trump, who had called for the U.S. to accept fewer refugees during his campaign, was elected as Obama’s successor. While Trump was critical of the resettlement plan, calling it “rotten” and the “worst deal ever,” he ultimately agreed to honor it.²⁹⁷

The agreement does not address how many detainees would ultimately be resettled,²⁹⁸ and due to the decrease in resettlement numbers and the stricter vetting process instituted by Trump, the program to date has resettled fewer refugees than initially expected. In September 2017, 54 detainees from Manus and Nauru departed for the U.S.; a second cohort of around 190 were expected to be resettled in 2018 (mostly from Afghanistan, Pakistan, and Myanmar).²⁹⁹ However, both Australia and the U.S. have stressed the fact that this is a “one-off arrangement that likely won’t be repeated,” and it remains unclear how many refugees will ultimately be resettled and what will happen to those not accepted.³⁰⁰ The situation is complicated further by an executive order signed by Trump in 2017 (the subject of ongoing litigation as of this writing) that limits the ability of nationals of eight countries, including Iran, Somalia, Syria, and Yemen, to enter the U.S. Of the detainees resettled so far, none are from these countries, and Iranians—the most heavily represented nationality at both Manus and Nauru—have been told that the U.S. “will temporarily prioritize refugee applications from other countries” as a result of the executive

²⁹⁶ Ibid

²⁹⁷ Michelle Mark, “The first group of refugees from what Trump called the ‘worst deal ever’ with Australia are heading to the US,” *Business Insider*, September 28, 2017

²⁹⁸ “Australia-United States Resettlement Arrangement”

²⁹⁹ Ben Doherty, “Second cohort of Nauru and Manus refugees to be resettled in US,” *Guardian* (London), December 14, 2017

³⁰⁰ Mark, “The first group”

order.³⁰¹ As of 2018, then, the situation of the detainees who have not been resettled remains uncertain, and the policies that have led to their detention remain in place. Australia's immigration minister, Peter Dutton, has said that the Nauru detention center will remain open "forever," and there is no indication that reform of Operation Sovereign Borders is forthcoming.

The Pacific Solution and Operation Sovereign Borders have been subject to criticism from both legal and ethical perspectives. Australia's ratification of the 1951 Convention and 1967 Protocol means that it has agreed to follow the principle of *non-refoulement*, but its involuntary removal of refugees, including interception of ships outside its territorial waters,³⁰² raises *non-refoulement* concerns, particular given Australia's history of returning refugees to potentially threatening environments like Sri Lanka as well as states such as Indonesia that do not accept international refugee law. Since 2014 Australia's official stance is that officials' duty to remove illegal aliens "arises irrespective of whether there has been an assessment, according to law, of Australia's *non-refoulement* obligations in respect of the non-citizen," calling Australia's good faith in ensuring *non-refoulement* into question.³⁰³ As detailed in Chapter 2, Australia's (often indefinite) detention of migrants regardless of their potential claims to asylum violates its commitment under the 1951 Convention to "not discriminate against [asylum] applicants based on where they come from or how they arrive," and to the extent that a "right to asylum" exists it is clearly being ignored.³⁰⁴

³⁰¹ Doherty, "Second cohort"

³⁰² James Mansfield, "Extraterritorial Application and Customary Norm Assessment of *Non-refoulement*: The Legality of Australia's 'Turn-Back' Policy," *The University of Notre Dame Australia Law Review* 17, no. 8 (2015), 54

³⁰³ Jane McAdam, "We can resettle refugees in Australia and it's not just wishful thinking. This is how," *Guardian* (London), September 4, 2016

³⁰⁴ "Asylum Seeker Policy," *Law Council of Australia*, 2013

Violations of human rights in Australian detention centers had long been chronicled by human rights organizations and the UN, but the publication of the Nauru files shocked the world with the sheer hopelessness and despair they evoked. The files detailed many previously unknown cases of physical and sexual abuse by both guards and detainees, including abuse of children, and a number of cases of self-harm, including self-immolation.³⁰⁵ Suicide attempts had become common enough on Nauru by 2016 that guards were reported to “carry special knives designed to quickly cut down people attempting to hang themselves in their cells,”³⁰⁶ and at least two detainees on the island have died due to delays in medical treatment; health care at the Nauru detention center is generally inadequate.³⁰⁷ LGBT detainees are at particular risk of abuse, although same-sex sexual activity has been legal on Nauru since 2016.³⁰⁸

UNHCR has suggested that conditions at Nauru and Manus may violate detainees’ human rights, including the prohibition on “torture and cruel, inhuman, or degrading treatment,” the right to human conditions while detained, and the right to family life and privacy.³⁰⁹ Although the Manus detention center has been closed since October 2017, the remaining detainees are being held in Australian-built detention centers elsewhere on the island that lack adequate food, water, and shelter for all detainees, and detainees have spoken of “unbelievable and terrible conditions, worse than the old prison.”³¹⁰ Australia has claimed that the human rights situation in detention centers outside its territory is not its concern, but the 2016 PNG court

³⁰⁵ Farrell et al, “The Nauru files”

³⁰⁶ McKinnon, “Australia’s sadist solution”

³⁰⁷ “Recent changes in Australian refugee policy”

³⁰⁸ Ibid

³⁰⁹ “UNHCR monitoring visit to the Republic of Nauru”

³¹⁰ Ben Doherty, “Manus Island: 60 refugees to be moved to Port Moresby for US interviews,” *Guardian* (London), December 7, 2017

ruling that shut down Manus also found that both Australia and PNG are responsible for the welfare of Manus detainees.³¹¹ There is no evidence to suggest that conditions in the Nauru detention center are improving. (The Australian and Nauruan governments object to the description of Nauru's processing center as a "detention center," arguing that the restrictions on their movement stem from the terms of their visa rather than detention; however, the status of migrants on Nauru is routinely described as detention by legal scholars,³¹² the UN,³¹³ and media reports.³¹⁴)

The Australian government has thus been able to largely seal off the country from unauthorized migration flows, reducing its intake of refugees to a carefully chosen few while keeping thousands more at arm's length. This strategy has cost Australia billions of dollars, mobilized significant political opposition at home and condemnation abroad (even North Korea has criticized Australia in the halls of the UN),³¹⁵ and has the potential to cause long-term harm to relationships with allies like the U.S. (particularly given Trump's hostility to his predecessor's agreement with Australia), but the government appears to have deemed this a price worth paying. Australia does not exist in a vacuum, however. As the next chapter will demonstrate, its ability to keep migrants away from its shores stems from an effort to export its own border protection regime to the countries around it, and it has succeeded in making life more difficult even for those migrants who never attempt to reach its shores.

³¹¹ O'Sullivan, "Questioning the Australian Refugee Model"

³¹² Azadeh Dastyari, "Detention of Australia's Asylum Seekers in Nauru: Is Deprivation of Liberty by Any Other Name Just as Unlawful?" *University of New South Wales Law Journal* 38 (2015), 678

³¹³ "UNHCR monitoring visit to the Republic of Nauru"

³¹⁴ Farrell et al, "The Nauru files"

³¹⁵ Mark, "The first group"

Chapter 8: The Externalization of Australian Refugee Policy

The phenomenon of externalization, sometimes referred to by the more pointed term “*neo-refoulement*,” has become increasingly common as governments seek to create restrictive policies while still conforming to the letter of the law and retaining the appearance of compliance with human rights norms. Externalization can be broadly defined as efforts by states to move their migration control efforts beyond their own borders; this can consist of both the exporting of migration control instruments themselves (such as border control and anti-trafficking efforts) and the creation of provisions by which those entering the state without authorization can be returned to third countries or countries of origin (at least those considered “safe”).³¹⁶ The Polish sociologist Zygmunt Bauman summed up the rationale for this approach in 2002: “Since deportations and expulsions make dramatic television and are likely to trigger a public outcry and tarnish the international credentials of the perpetrators, governments prefer to steer clear of trouble by locking the doors against all who knock asking for shelter.”³¹⁷

Externalization can be formalized through bilateral or multilateral agreements or pursued on an ad hoc basis, and often consist of measures that have the stated goal of assisting third countries with migration control (such as supporting migrant apprehension and detention, readmission programs, and other capacity-building measures for immigration systems).³¹⁸ These efforts effectively constitute the “systematic enlistment of third countries in preventing migrants,

³¹⁶ Christina Boswell, “The ‘external dimension’ of EU immigration and asylum policy,” *International Affairs* 79, no. 3 (2003), 622

³¹⁷ Hirsch, “The Borders Beyond the Border,” 53-54

³¹⁸ Bill Frelick et al, “The impact of externalization of migration controls on the rights of asylum seekers and other migrants,” *Journal of Migration and Human Security* 4 (2016), 195

including asylum seekers, from entering destination states.”³¹⁹ Externalization has also led to a growth in “safe third country” agreements, based on a principle of refugee law that states that countries can refuse asylum to people who have already been granted protection by another “safe” state (that is, when sending people to a country they have already traveled through would not constitute *refoulement*). This is increasingly cited by states even when the “third country” in question does not fit UNHCR’s definition of “safety”; “nominal adherence to these criteria has often been deemed sufficient even when there are evident gaps between formal acceptance of principles and their realization in practice.”³²⁰

Externalization has become more common in the developed world as governments react to increased rates of migration. The U.S., facing a growth in undocumented immigration from the “Northern Triangle” of Central America (El Salvador, Honduras, and Guatemala) via Mexico in the 2000s and 2010s, has made efforts to regionalize its own border protection policies in an effort to keep Central Americans from attempting the crossing, including working with Mexico to crack down on transit migration. American policymakers have come to view Mexico as a “buffer zone to face external threats” from a region increasingly riven by drug-related violence, although some observers have pointed out that Mexico has its own reasons to restrict transit and is “more than a mere instrument of U.S. interests.”³²¹ Since 2008, the Mérida Initiative, a bilateral security agreement between the U.S. and Mexico, has seen the U.S. Congress appropriate over \$2 billion in assistance to Mexico with the goal of preventing the flow of both

³¹⁹ Ibid, 194

³²⁰ Ibid, 196

³²¹ Roberto Domínguez and Martín Iñiguez Ramos, “The south-north axis of border management in Mexico,” in *Externalizing Migration Management*, ed. Ruben Zaiotti (New York: Routledge, 2016), 227

illicit goods and undocumented migrants between Central America and Mexico.³²² In 2014 Mexico's government, under U.S. pressure, responded to a surge in migration from Central America with an unprecedented crackdown that resulted in a significant increase in deportations from Mexico,³²³ signaling a new level of cooperation with the U.S. on migration control (though the future of this cooperation under the Trump administration is unclear).

The European Union (EU), unlike the U.S., has used “preventive protection,” the idea that people can most easily be protected closer to home, as its primary justification for externalization.³²⁴ The EU has pursued “regional protection agreements” with important transit states like Ukraine and Libya since the 2000s, providing significant resources contingent on detaining and housing asylum-seekers, and these efforts were expanded in the 2010s as refugee numbers increased. In 2016 the EU reached an agreement with Turkey that allowed the EU to send migrants who had transited through Turkey back to Turkish detention centers in exchange for political and economic incentives, despite concerns over Turkey's status as a “safe third country”—non-Europeans cannot apply for refugee status in Turkey, and many nationalities (including Afghans and Iraqis) are denied even temporary protection there.³²⁵ The EU's proposed Partnership Framework, unveiled in the same year, would replicate similar agreements with over 16 countries in Africa and the Middle East (potentially including major countries of origin like Afghanistan and Somalia), “cutting trade and development assistance for countries that do not stem migration to Europe or facilitate forcible returns, while rewarding those that

³²² Frelick et al, “The impact of externalization,” 201

³²³ Ibid, 203

³²⁴ Hyndman and Mountz, “Another Brick,” 262

³²⁵ Frelick et al, “The impact of externalization,” 207-8

do.”³²⁶ Partner countries like Libya and Niger, where migrants are in constant danger of kidnapping and other violent crime, have already received hundreds of millions of dollars for the EU in support of their efforts to combat people smuggling.³²⁷ Despite uncertainty about the short-term impact of development assistance on migration,³²⁸ this dual focus on both controlling migration outside the EU’s borders and tackling its root causes has come to define the EU’s response to migration. Australia, by contrast, has placed greater emphasis on the former in its approach to externalization.

Mountz (2011) examines the symbolism and practical effects of the “enforcement archipelago,” the phenomenon of migrants being stranded or detained on islands, arguing that “facilities on islands serve the purpose of isolating migrants from communities of advocacy and legal representation, and in some cases from asylum claims processes that can only be accessed by landing on sovereign territory.”³²⁹ The latter purpose is particularly significant in the Southeast Asian context. The Australian government has created a geographic and legal space in which migrants cannot claim asylum, as they are entitled to do under international law, and cannot be fully recognized as part of local society. Australia’s “border” thus takes on legal and psychological dimensions beyond the merely physical. According to its website, the Australian Border Force “consider[s] the border not to be a purely physical barrier separating nation-states,

³²⁶ Hargrave et al, “Closing borders,” 6

³²⁷ Polakow-Suransky, “How Europe’s far right”

³²⁸ Boswell, “The ‘external dimension,’” 636

³²⁹ Alison Mountz, “The enforcement archipelago: Detention, haunting, and asylum on islands,” *Political Geography* 30, no. 3 (2011), 118

but a complex continuum stretching offshore and onshore, including the overseas, maritime, physical border and domestic dimensions of the border.”³³⁰

Australia has attempted to formally export migrants to nearby states with the so-called “Malaysian solution” proposed by the Gillard government in 2011. Under an agreement between Malaysia and Australia, 800 migrants who had come to Australia by boat would have been sent to Malaysia; in return, Australia would have resettled 4,000 registered refugees from Malaysia over four years.³³¹ Given the lack of rights and basic services for refugees in Malaysia, as discussed previously in Chapter 5, the proposal, while backed by UNHCR, faced a significant backlash among refugee advocates in both countries, who uniformly considered it a “backward step for refugee protection in the region.”³³² Lawsuits were filed challenging the legality of the Malaysian solution, and on August 31, 2011, the High Court of Australia ruled, in a 6-1 decision, that Australia could not legally transfer refugees to Malaysia for processing, since it was not a party to the 1951 Convention and therefore could not ensure the safety of asylum-seekers.³³³

This decision has severely limited Australia’s ability to directly export asylum-seekers elsewhere in the region since relatively few nearby states are parties to the Convention, PNG and Nauru being two exceptions. Another party to the Convention, Cambodia, signed an agreement with Australia (estimated to cost the Australian government \$39 million) to resettle Nauru detainees who volunteered, but only four detainees accepted the offer and the deal eventually fell

³³⁰ Hirsch, “The Borders Beyond the Border,” 48

³³¹ Savitri Taylor, “Civil Society and the Fight for Refugee Rights in the Asia Pacific Region,” in *Protection of Refugees and Displaced Persons in the Asia Pacific Region*, ed. Angus Francis and Rowena Maguire (Farnham, England: Ashgate, 2013), 47

³³² *Ibid.*, 48

³³³ *Plaintiff M70/2011 v Minister for Immigration and Citizenship* (2011) 244 CLR 144

apart.³³⁴ Other nearby parties like the Philippines and East Timor have categorically ruled out being used as a “dumping ground” for people who are Australia’s responsibility,³³⁵ and efforts to “export” migrants to more distant locales like Kyrgyzstan³³⁶ have been unsuccessful with the exception of the aforementioned U.S. resettlement agreement, which has been explicitly identified as a one-time arrangement. Several Pacific Island states with strong political and financial links to Australia are parties to the Convention, but they have responded negatively to the Pacific Solution and would be unlikely to agree to resettle refugees unless, like PNG and Nauru, they were “too desperate for money and too dependent on Australia’s continued patronage to bargain with the Australian government on equal terms.”³³⁷ As outlined in the previous chapter, PNG is ill-equipped to serve as a permanent destination for refugees, and Nauru’s tiny population and lack of economic opportunities (of its 10,000 residents, 90% are unemployed) make it unsuitable as a large-scale refuge, even if its citizens were willing to accept resettled refugees.³³⁸

There are thus very few alternative destinations for refugees, and Australia has proven unwilling to accept more than a small number and has committed to preventing unauthorized migration into the country, with those choosing this option being permanently barred from coming to Australia. The Turnbull government has gone so far as to turn down an offer by New Zealand to resettle detainees there for this reason—New Zealand citizens have special permission to live and work in Australia, and Australia refused to consider a solution that could

³³⁴ Anneliese McAuliffe, “Australia running out of countries to send its refugees,” *Al Jazeera*, November 2, 2015

³³⁵ *Ibid*

³³⁶ Harvey, “Australia’s Controversial Asylum Policies”

³³⁷ Warbrooke, “Australia’s ‘Pacific Solution,’” 345

³³⁸ *Ibid*, 343-44

become “a back-door way to get into Australia,” in the words of Immigration Minister Peter Dutton.³³⁹ From the Australian government’s perspective, it has been left with no acceptable option but to prevent refugees from reaching a geographic space where they can claim their rights. The Malaysian solution was an obvious attempt at this, but Australia’s evolving partnership with Indonesia has proven much more successful.

Indonesia and Australia, once in a “love-hate relationship,”³⁴⁰ have grown closer since Indonesia’s transition to democracy in the late 1990s, building security, trade, and cultural ties, but an “underlying mutual mistrust” still remains.³⁴¹ Indonesia’s size and history of instability have been sources of wariness for Australia, and concern about its status as a transit country for asylum-seekers has led successive Australian governments to prioritize migration control “capacity-building” in Indonesia since the 1990s.³⁴² Indonesia rarely detained asylum-seekers during the 1990s,³⁴³ and late in the decade Indonesia abrogated its existing security agreements with Australia to protest Australia’s intervention in East Timor. By 2000, however, relations had improved sufficiently to allow for the signing of a Regional Cooperation Agreement (RCA) in 2000, which was “aimed at disrupting people-smuggling operations but [contained] no guarantee of protection of refugees.”³⁴⁴ Under the RCA, Indonesia would detain people thought to be headed to Australia or New Zealand and refer them to IOM for “case management and care”; IOM’s activities in Indonesia were and continue to be funded by Australia.³⁴⁵

³³⁹ Mark, “The first group”

³⁴⁰ Nethery and Gordyn, “Australia-Indonesia cooperation,” 184

³⁴¹ Missbach, *Troubled Transit*, 177

³⁴² Nethery et al, “Exporting detention,” 94

³⁴³ *Ibid*

³⁴⁴ Missbach, *Troubled Transit*, 182

³⁴⁵ Nethery et al, “Exporting detention,” 95

The *Tampa* affair of 2001, in which the Howard government pressured Indonesia to accept the rescued refugees, led to a period of tension as Indonesia's government grew to resent the "scapegoating" of Indonesia as a source of unwanted migrants,³⁴⁶ but Indonesia nevertheless agreed to co-chair a regional conference on people smuggling and human trafficking with Australia in 2002. This meeting led to the Bali Process, a series of intergovernmental conferences that, over time, grew to focus exclusively on combatting human trafficking and transnational crime, with protection and human rights rarely addressed.³⁴⁷ With few exceptions, the Bali Process has promoted a discourse that paints unauthorized migrants as criminals and security threats and demonized those who transport them.³⁴⁸ In 2006, as part of the Bali Process, Australia and China designed model legislation to assist participating states in drafting their own laws; this legislation did not mention refugees or asylum-seekers and failed to provide any guidelines for their protection.³⁴⁹

People smuggling and other forms of human trafficking have been a consistent area in which Australia has taken pains to bring regional policies into line with Australian interests. Nethery and Gordyn (2014) point out that with the election of a Labor government in 2007, Australian focus shifted from dehumanization of refugees to criminalization of the means by which they come to Australia; Kevin Rudd's 2010 description of people smugglers as the "vilest form of human life...who should rot in hell" exemplified this attitude.³⁵⁰ Australia has provided significant financial and technical assistance for Indonesian police and intelligence efforts to

³⁴⁶ Missbach, *Troubled Transit*, 182

³⁴⁷ *Ibid*, 184

³⁴⁸ Hargrave et al, "Closing borders," 11

³⁴⁹ Hirsch, "The Borders Beyond the Border," 73

³⁵⁰ Nethery and Gordyn, "Australia-Indonesia cooperation," 188

combat people smuggling, particularly after the signing of the 2006 Lombok Treaty, which increased Australian maritime patrols in Indonesian waters in exchange for Indonesian crackdowns on people-smuggling.³⁵¹ As part of the treaty, Australia pledged to give Indonesia A\$452.5 million (US\$357 million) in aid, its largest single monetary commitment anywhere in the world.³⁵² This strict policy towards people smuggling continues to the present day, although this has not succeeded in eliminating the trade—in fact, studies suggest that restrictive asylum practices actually push migrants to resort to clandestine movements and thus end up fueling people smuggling.³⁵³ As discussed in Chapter 6, harsher sentences mandated by Indonesia’s 2011 Law on Immigration, while increasing the number of convictions, have not made a significant dent in the presence of people smuggling in the country—most of those convicted are low-level members of smuggling networks, while leaders tend to go unpunished.³⁵⁴

The Law on Immigration itself was the result of years of diplomatic lobbying by Australia, and the provision on immigration detention, in particular, strongly resembles Australian law. In examining the law, Nethery et al (2012) also find that “unlike the 1992 Law, the language which the 2011 law uses in relation to detention is very clearly derived from English equivalents, with detention referred to as ‘*detensi*’ or ‘*pen-detensi-an*’, immigration detention houses as ‘*rumah detensi imigrasi*’, and detainees as ‘*deteni*.’”³⁵⁵ The creation of an immigration detention regime in Indonesia, then, is perhaps the clearest example of Australia

³⁵¹ Ibid, 189

³⁵² Ibid

³⁵³ Missbach, *Troubled Transit*, 210

³⁵⁴ Ibid, 166

³⁵⁵ Nethery et al, “Exporting detention,” 97

externalizing its own refugee policy and creating a “buffer zone” around itself in which migrants can be blocked.

The 2000 RCA provided financial support for setting up detention centers, which had rarely been used before in Indonesia; a 2007 bilateral agreement, the Management and Care of Irregular Immigrants Project (MCIIP), refurbished and expanded detention centers in Indonesia and created a standard operating procedure (including human rights standards) for the operation of such centers,³⁵⁶ all under the auspices of Australian-funded IOM programs.³⁵⁷ Despite these efforts to promote human rights in the centers, conditions in the Indonesian detention centers—like those at Manus and Nauru—often remain significantly worse than would likely be tolerated in Australia, as described previously in chapter 6. Andrew Metcalfe, who served as Secretary of the Department of Immigration and Citizenship under the Rudd and Gillard governments, made Australia’s goals explicit in remarks to the Senate of Australia in 2010: “The funding here is to provide additional funds to Indonesia to strengthen its capacity to manage those people...to prevent, detect and hold people so that they are processed in Indonesia. That, of course, plays into an overall expectation that that would suppress the number of people coming to Australia.”³⁵⁸ The government’s aim is thus to prevent unauthorized migration by criminalizing it in neighboring countries.

Indonesia, unlike Australia, does not have a strong interest in stopping transit migration through the country—given Indonesia’s more serious economic challenges, and the frequent abuse of its own migrants in other countries, transit migration is not a particularly high

³⁵⁶ Ibid, 96

³⁵⁷ Missbach, *Troubled Transit*, 143

³⁵⁸ Nethery et al, “Exporting detention,” 96

priority.³⁵⁹ The direct costs of instituting a detention regime and cracking down on people smuggling have been borne by Australia, so Indonesia has had little reason not to acquiesce Australia's demands, gaining a stronger relationship with Australia at minimal cost to itself.³⁶⁰ However, since the late 2000s, successive Indonesian governments have expressed concern that Indonesia is being unfairly burdened by what should rightfully be a regional problem.³⁶¹

The Australia-Indonesia relationship has become increasingly strained since the election of the Abbott government in 2013 and the creation of Operation Sovereign Borders, with Indonesia's government angered that it was not consulted about the new policy.³⁶² Months after the election, press reports revealed a massive Australian espionage operation in Indonesia, including wiretapping of the president and other prominent officials, leading to the temporary suspension of all military and intelligence collaboration between the two countries.³⁶³ In the Indonesian presidential campaign of 2014, eventual winner Joko Widodo "proposed to take Australia to an international court over asylum seekers if future diplomacy should fail to solve the disagreement," and tensions have continued under his leadership.³⁶⁴ The 2015 Andaman Sea crisis, in which thousands of migrants were stranded on boats on the open ocean, saw Indonesia break with Australia's pushback policies in working with Thailand and Malaysia to develop a solution to the crisis, eventually allowing many migrants to access temporary shelter.

³⁵⁹ Missbach, *Troubled Transit*, 178

³⁶⁰ Nethery and Gordyn, "Australia-Indonesia cooperation," 190

³⁶¹ Missbach, *Troubled Transit*, 190

³⁶² Melissa Curley and Kahlia Vandyk, "The securitization of migrant smuggling in Australia and its consequences for the Bali Process," *Australian Journal of International Affairs* 71, no. 1 (2017), 48

³⁶³ Missbach, *Troubled Transit*, 196

³⁶⁴ *Ibid*

Since 2015 Indonesia has become more vocally critical of Australia's limited acceptance of resettlement applications and its unwillingness to consider resettlement of new arrivals to Indonesia. The 2016 meeting of the Bali Process saw Indonesian officials openly call on Australia to increase resettlement numbers and shoulder its fair share of the burden of migration; Australia's foreign minister, Julie Bishop, countered that "Australia is already playing a significant role."³⁶⁵ In addition to the resettlement question, the Indonesian government has also opposed the detention and mistreatment of underage (usually Indonesian) people smugglers captured by Australia,³⁶⁶ and has expressed alarm at Australia's maritime interdiction operations. An internal review by the Australian Navy in 2014 showed that Australian ships had breached Indonesian territorial waters at least six times in operations to intercept boats, leading to an outcry from the Indonesian government.³⁶⁷ Australia's externalization policies have thus harmed its relations with an important regional partner, despite Australia's efforts to prevent the costs of such policies from falling on the Indonesian government.

This approach has not been limited to Indonesia. In 2006, as mentioned above, Australia (partnering with China) created a security-focused legislative model, from which rights were absent, for the region to follow. At a 2011 meeting of the Bali Process, participating states adopted a Regional Cooperation Framework (RCF) reflecting Australian priorities, framing migrants as a security threat and pledging cooperation to combat people smuggling.³⁶⁸ Under the auspices of the RCF, a harmonized regional migration policy has begun to develop through

³⁶⁵ Siegfried, "It's not just in Greece"

³⁶⁶ Missbach, *Troubled Transit*, 196

³⁶⁷ Latika Bourke, "Navy breached Indonesian waters six times under Operation Sovereign Borders, review finds," *Australian Broadcasting Corporation*, February 19, 2014

³⁶⁸ Hirsch, "The Borders Beyond the Border," 70

capacity-building, information exchange, and the growth of the IOM's Australian-funded repatriation program, laying the groundwork for more countries to adopt an Australian-style approach.³⁶⁹ Australia has also worked one-on-one with regional states to promote policies that keep migrants away from its shores. In 2013, under diplomatic pressure from Australia, Malaysia stopped providing visas on arrival to nationals of Iran, Iraq, and Syria, and Indonesia stopped providing such visas to Iranians; the availability of visas on arrival was seen as a major incentive for migrants to travel by air to these countries before attempting to reach Australia.³⁷⁰ Australia has provided Malaysian and Sri Lankan police with military and surveillance equipment to combat people smuggling, which was described by one Australian official as an effort to “mak[e] sure that the boats do not start again.”³⁷¹ The Australian Federal Police have also been active in providing training workshops to police in Malaysia, Indonesia, and Thailand, emphasizing “the exchange of skills and information to combat maritime people smuggling and to enhance border management skills.”³⁷² Under the banner of regional cooperation, Australia has aggressively promoted its vision of border security throughout Southeast Asia—one that keeps migrants well away from Australian shores, and places a low priority on their rights and welfare.

Externalization has also had consequences for Oceania, particularly PNG and Nauru. Both countries depend heavily on Australian aid, and Australia has increased aid to both countries as compensation for agreements allowing detention of asylum-seekers there—the Rudd government doubled aid to PNG as part of negotiations for the Australia-PNG agreement,

³⁶⁹ Curley and Vandyk, “The securitization of migrant smuggling,” 46

³⁷⁰ Hirsch, “The Borders Beyond the Border,” 73

³⁷¹ *Ibid.*, 75

³⁷² *Ibid.*, 74

including “funding for services potentially impacted by a population increase as a result of the policy.”³⁷³ In the wake of Gillard’s decision to restart the “Pacific Solution” and Abbott’s creation of Operation Sovereign Borders, Pacific leaders criticized Australia for not consulting regional partners in developing what was billed as a “Pacific” policy.³⁷⁴ Fiji’s foreign minister, Ratu Inoke Kubuabola, told an Australian audience that “the Australian government has used its economic muscle to persuade one of our Melanesian governments to accept thousands of people who are not Pacific Islanders, a great number of them permanently...this was done without any consultation, a sudden and unilateral announcement, which is not the Pacific way and has shocked a great many people in the region.”³⁷⁵ Tensions between native ethnic groups and new arrivals have been an ongoing problem throughout much of the Pacific,³⁷⁶ suggesting that PNG, Nauru, and the region would require further assistance from Australia to become a safe destination for permanent resettlement.

As discussed in Chapter 7, PNG’s political opposition and many of its citizens have long been opposed to offshore detention in PNG. PNG’s agreement with Australia to reopen Manus and permanently house some refugees in 2013 stemmed from PNG’s economic dependence on Australia and, arguably, Prime Minister Peter O’Neill’s desire for Australian backing of his continued rule.³⁷⁷ O’Neill’s government has been criticized for rampant corruption and increasingly brutal police crackdowns on dissent; a whistleblower in the Australian Federal Police told journalists in 2015 that “the Australian government was turning a blind eye to the

³⁷³ Curley and Vandyk, “The securitization of migrant smuggling,” 52

³⁷⁴ Warbrooke, “Australia’s ‘Pacific Solution,’” 338

³⁷⁵ *Ibid*

³⁷⁶ *Ibid*, 342

³⁷⁷ Jeff Sparrow, “In PNG and Nauru, Australia’s immigration policy comes at the expense of democracy,” *Guardian* (London), June 15, 2016

corruption and police involvement in extra-judicial killings, for fear that the detention center might be closed.”³⁷⁸ Nauru’s government has also grown increasingly restrictive and intolerant of opposition since 2013, even as its economic dependence on Australian aid has increased. Stewart Firth, a fellow at Australian National University and an expert on Oceanian politics, argues that Nauru’s justice minister, David Adeang, “has seized the opportunity created by Australia’s dependence on his country to amass power and suppress dissent, secure in the knowledge that Canberra will offer little criticism” due to Australia’s desire to maintain its detention center on Nauru.³⁷⁹ By externalizing its migration policy, therefore, Australia has indirectly harmed democracy in the states that host its detention program, while creating an environment in its wider neighborhood that focuses on detention and control of the refugee “threat” at the expense of refugees’ rights.

All of this has resulted from Australian bilateral and multilateral diplomacy, but on a more fundamental level the example Australia is setting for Southeast Asia is a concerning one. As detailed in Chapter 3, Southeast Asia’s compliance with international refugee law has historically been limited. Australia’s important strategic role in the region and its adherence to norms of human rights, including the 1951 Convention and 1967 Protocol, could conceivably encourage such adherence among Australia’s regional partners. Unfortunately, the opposite effect seems more likely—Australia’s violation of the spirit of international refugee and human rights law, despite its adherence to much of the letter, helps create a regional environment in

³⁷⁸ Ibid

³⁷⁹ Ibid

which such violations are normal. An unidentified source explained this logic to Hargrave et al (2016):

It is important that countries in Europe and Australia consider that they are setting standards for other nations. Policies, even if focusing on a local electorate, have a global impact. Eroding international protection standards locally has ripple effects on other countries and regions. The right to seek asylum, the prohibition of *refoulement* and abolishing long-term detention of asylum-seekers and refugees are minimum standards that are best promoted via example.³⁸⁰

Australia's example, far from promoting such minimum standards, actively erodes them in the interests of keeping asylum-seekers well away from Australian shores.

Chapter 9: Alternative Approaches to Migration

The status quo in Australia and Southeast Asia forces refugees and asylum-seekers to spend years or decades without access to employment, education, or freedom of movement. Australia's offshore detention program is costing the government billions of dollars annually and inspiring increasingly strong opposition both at home and abroad. The Australian effort to transfer the refugee "problem" to its neighbors has caused tension within the region and has led many refugees into a state of indefinite limbo, denied their human right to seek asylum. What solutions might exist to this humanitarian and political crisis?

Australian human rights advocates have proposed a fairly simple alternative: ending the offshore detention regime and allowing detainees whose asylum claims are found to be

³⁸⁰ Hargrave et al, "Closing borders," 10

legitimate to settle in Australia as refugees. This is the central goal of the grassroots #BringThemHere campaign, which has pressured the government to shut down the Manus and Nauru detention centers and bring detainees to Australia; those involved with the campaign argue that “there is nowhere else for the Manus asylum-seekers and refugees to come but Australia.”³⁸¹

“Bringing them here” would presumably be accompanied by a full-scale reform of Australian detention practices. Julian Burnside, an Australian human rights lawyer and prominent critic of offshore detention, has proposed what he calls the “regional solution,” which would replace offshore processing with a less securitized regime based in Australia itself.³⁸² Under Burnside’s plan, the detention period would be capped at one month, after which asylum-seekers would be provisionally released (though required to report regularly to authorities). Burnside proposes requiring such “provisionally admitted” people to live in a specific rural area or smaller city so that government benefits paid to refugees would inject new life into the economies of those communities,³⁸³ an idea that could appeal to rural Australians. Refugee law scholar Jane McAdam proposes a simpler change: the insertion of language into Australian law mandating a “principled, good faith interpretation” of the 1951 Convention, which she believes would “flip our focus towards the responsibility to provide protection...rather than deflecting those in need” and cause the current system to collapse under the weight of its own hypocrisy.³⁸⁴

³⁸¹ “Why Manus and Nauru Must Be Closed”

³⁸² Julian Burnside, “Asylum seekers can be managed with cheaper and more humane options,” *Sydney Morning Herald*, June 19, 2014

³⁸³ *Ibid*

³⁸⁴ McAdam, “We can resettle refugees”

In either case, Australia's policy toward asylum-seekers would shift from focusing on securing the border and deterring potential migrants to protection and integration into Australian society.

Many Australians fear being overrun by huge numbers of refugees if such a policy change were to occur, but in fact refugee numbers would most likely remain, as they have always been, low in absolute terms due to Australia's remote location and the cost of reaching the country. At its peak in 2012, the number of asylum-seekers coming to Australia by boat was 17,202—this was only 1.47% of the world total that year, and is dwarfed by the 190,000 legal immigrants arriving in Australia in 2012.³⁸⁵ (By comparison, as of 2017, around 64,600 people—mostly from East Asia, North America, and Europe—were in Australia illegally after overstaying their visas.³⁸⁶) Australia's policy is meant to keep migrants from attempting the journey to Australia, but there is no clear evidence that the threat of being detained actually deters migrants.³⁸⁷ Studies in the U.S. have suggested that harsher border security measures lead to an increase in border deaths, and in general “deterrence can simply displace deaths to another site, or changes the demographics of who dies.”³⁸⁸ In Burnside's words, “The problem with a deterrent theory is that a deterrent only works if we make ourselves look nastier than the Taliban [in Afghanistan] or the [Mahinda] Rajapaksa government [in Sri Lanka], and I'm not sure that that's something that most Australians want.”³⁸⁹

To date, political factors have made a fundamental shift in Australia's treatment of migrants an unreachable goal. As discussed in Chapter 7, offshore detention of asylum-seekers

³⁸⁵ Jane McAdam, “Australia's draconian refugee policy is built on myths,” *Guardian* (London), October 30, 2013

³⁸⁶ Tom McLroy, “More than 64,000 people overstaying visas in Australia,” *Canberra Times*, July 19, 2017

³⁸⁷ “Asylum seekers and refugees: Myths, facts and solutions,” *Asylum Seeker Resource Centre*, 2013.

³⁸⁸ Sharon Pickering, “There's no evidence that asylum seeker deterrence policy works,” *The Conversation*, July 24, 2012

³⁸⁹ Angelica Neville, “Australia: Deterrence propaganda?” *Al Jazeera*, February 27, 2014

and the broader pattern of externalization of Australian migration policy have generally enjoyed widespread public support and have been implemented and maintained by both major parties, both of which oppose resettling Manus and Nauru detainees in Australia. A shift by the Labor Party to a more migrant-friendly asylum policy would leave it open to Liberal charges of being “soft on border protection,” a tactic successfully deployed by the Liberal Party in 2001 and 2013. For the Liberals, compromising even in part (for example, by permitting Manus detainees to settle in Australia while maintaining the detention center on Nauru) would risk alienating their base and open the door for an intraparty leadership challenge or the growth of smaller, more conservative parties at the Liberals’ expense.

Recent polling has suggested that advocacy campaigns like #BringThemHere are successfully shifting many Australians’ views of asylum-seekers—as of 2017, 64% support resettling detainees in Australia³⁹⁰—and an increasingly vocal protest movement is pressuring political leaders (particularly in the Labor Party) to change their approach to refugees, which has led some Labor elected officials to call for the end of offshore detention.³⁹¹ As yet, however, both major parties oppose resettling detainees in Australia, and it is unclear whether the protest movement will lead to lasting change. Even if #BringThemHere succeeds in ending offshore detention, a larger challenge remains: the development of a truly regional approach to refugee protection and border control. This would require collaboration between Australia and its neighbors as opposed to the recreation of Australia’s policies elsewhere in the region that has

³⁹⁰ Dixon, “Australia doesn’t want them”

³⁹¹ Katharine Murphy, “Ged Kearney wants more ‘humane’ policies: ‘Getting people off Manus and Nauru needs to be a priority,’” *Guardian* (London), March 23, 2018

been documented in this paper. Such a partnership could protect the human rights of migrants across the region while ensuring that the security needs of Australia and its neighbors are met.

What might a regional solution look like? The Bali Process, while to date focused more on border security than protection, could potentially adopt a more rights-based framework, building on the existing partnership between regional states in the service of migrant protection, and be reformed to allow developing countries like Indonesia to have an equal voice.

Alternatively, Australian bilateral diplomacy with regional partners, particularly Indonesia, could set the tone for more equal partnerships. However, while the interests of regional states would be represented if such a transformation were to occur, the voices of refugees would most likely not be heard in the halls of power. To ensure that their human rights are respected, a refugee protection framework would need to be developed, potentially in the form of a regional compact that would enshrine basic principles of refugee law in Southeast Asia. In considering this possibility, Jones (2014) critiques the idea that the concept of “protection space” is the best approach in Southeast Asia, claiming that it privileges state interests over those of refugees and forces UNHCR to take on what should be states’ responsibilities. Instead, he proposes that decriminalizing illegal entry—that is, enshrining the right to seek asylum as part of the growing network of human rights institutions in the region—would better ensure asylum-seekers’ access to protection.³⁹² Regardless of the framework adopted, a regional commitment to the rights of migrants would lay the foundation for a new approach to migration in the region. Rather than using its neighbors to keep migrants away from its shores, Australia could work with them as

³⁹² Martin Jones, “Moving beyond protection space: developing a law of asylum in South-East Asia,” in *Refugee Protection and the Role of Law: Conflicting Identities*, ed. Susan Kneebone, Dallah Stevens, and Loretta Baldassar (London: Routledge, 2015), 262

partners to ensure that migrants in the region have access to human rights and are not driven to attempt the dangerous crossing by boat from Indonesia.

Chapter 10: Conclusion

The number of forced migrants in Southeast Asia, and particularly those with Australia as their intended destination, continues to be relatively low in a global context, though the ongoing crisis in Myanmar is certainly a cause for concern. The number of asylum-seekers in Australian detention, and even the number currently detained or awaiting resettlement in Indonesia, is dwarfed by the number of displaced people worldwide. Nevertheless, the externalization of Australian migration policy has had a massive impact on thousands of lives, and continues to be a blot on the human rights records of Australia and other regional states. Australia's efforts to metaphorically move its "frontier" outward and deny people access to the protections of refugee law make those protections less meaningful, and may be harming relationships with key allies such as Indonesia and Malaysia.

Externalization, as discussed previously, is a migration control strategy that destination states adopt in part to remain faithful to the letter of international law while allowing other states (often ones with less democratic governments and/or more restrictions on freedom of information) to carry out the more unpleasant and controversial aspects of their migration policy. In the Australian case, this means that states like Indonesia and Malaysia, which have few legal protections for migrants and limited capacity to protect them, effectively end up violating migrants' human rights so that Australia does not have to. (This is in addition to the question of whether states like PNG can be legally considered "safe" final destinations for confirmed

refugees.) However, the emergence of Operation Sovereign Borders, one of the tightest border security regimes in the world, and the ongoing controversy over offshore detention has meant that, despite externalizing many of its policies, Australia's approach to migration has attracted widespread international and domestic criticism. Despite its problems, the popularity of Australia's approach among populist politicians in other developed countries may presage the widespread adoption of similarly asylum-unfriendly policies elsewhere, which casts doubt on the future of refugee protection in the 21st century.

As of early 2018, despite the resettlement agreement with the U.S., there have been no substantive changes in Australia's asylum policy, and its externalization efforts seem likely to continue. While 2016's Presidential Decree 125 (see chapter 6) recognized the status of refugees in Indonesia for the first time, refugees and other migrants stranded in Indonesia often lack the ability to fulfill their basic needs, and legal resettlement from Indonesia is a luxury afforded to very few. Refugees in Malaysia lack even the few protections afforded by Indonesian refugees' legal status, and few other countries in the region have ratified the 1951 Convention or instituted significant protections for refugees. With no apparent change in sight, refugees in Malaysia and Indonesia will continue to be driven to one of two dangerous options out of desperation: to voluntarily return to the countries from which they fled, or to attempt to reach Australia illegally, a treacherous path that is almost guaranteed to end in expulsion, detention, or death.

Works Cited

“‘All the Civilians Suffer’: Conflict, Displacement, and Abuse in Northern Myanmar.” *Amnesty International*, June 14, 2017. <https://www.amnesty.org/en/documents/asa16/6429/2017/en/>.

“About the transferees on Nauru.” *Edmund Rice Centre*, 2016. http://www.erc.org.au/about_nauru.

- “About transferees on Manus Island.” *Edmund Rice Centre*, 2016. http://www.erc.org.au/about_manus.
- “Abused and Abandoned: Refugees Denied Rights in Malaysia.” *Amnesty International*, June 2010. <https://www.amnesty.org/en/documents/ASA28/010/2010/en/>.
- “Asylum Seeker Policy.” *Law Council of Australia*, 2013. https://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/a-z-docs/AsylumSeeker_Policy_web.pdf.
- “Asylum seekers and refugees: Myths, facts and solutions.” *Asylum Seeker Resource Centre*, 2013. <http://www.asrc.org.au/wp-content/uploads/2013/07/MythBusterJuly2013FINAL.pdf>.
- “Asylum seekers left high and dry in Indonesia.” *IRIN*, April 9, 2014. <http://www.irinnews.org/report/99908/asylum-seekers-left-high-and-dry-indonesia>.
- “Australia–United States Resettlement Arrangement.” *Kaldor Centre for International Refugee Law*, November 9, 2017. <http://www.kaldorcentre.unsw.edu.au/publication/australia%E2%80%93united-states-resettlement-arrangement>.
- “Deadly Journeys: The Refugee and Trafficking Crisis in Southeast Asia.” *Amnesty International*, October 21, 2015. <https://www.amnesty.org/en/documents/ASA21/2574/2015/en/>.
- “Desperate Lives: Burmese Refugee Women Struggle to Make a Living in Malaysia.” *Women’s Commission for Refugee Women and Children*, May 2008. <https://www.womensrefugeecommission.org/empower/resources/314-desperate-lives-burmese-refugee-women-struggle-to-make-a-living-in-malaysia>.
- “Examining Human Rights in the Context of ASEAN Regional Migration: Summary Report of Findings from APHR’s Fact-Finding Mission to Malaysia, 3-7 August 2017.” *ASEAN Parliamentarians for Human Rights*, 2017. https://reliefweb.int/sites/reliefweb.int/files/resources/APHR_Malaysia-Fact-Finding-Mission-Report_Sep-2017.pdf.
- “Figures at a Glance in Malaysia.” *United Nations High Commissioner for Refugees*, accessed January 4, 2018. <http://www.unhcr.org/en-my/figures-at-a-glance-in-malaysia.html>.
- “History of Preferential Voting in Australia.” *Australian Broadcasting Corporation*, 2004. <http://www.abc.net.au/elections/federal/2004/guide/prefhistory.htm>.
- “Malaysia: Acehese Refugees Face a Triple Threat.” *Refugees International*, April 12, 2005. <http://www.refworld.org/country,,RI,,IDN,,47a6eeb927,0.html>.
- “Malaysia: Invest in Solutions for Refugees.” *Refugees International*, April 19, 2011. <http://www.refworld.org/pdfid/4e0843f32.pdf>.
- “Malaysia—APRRN.” *Asia Pacific Refugee Rights Network*, March 2017. http://aprrn.info/pdf/Malaysia%20Factsheet%20for%20NZ_MAR%202017.pdf.

“Mixed Movements in South-East Asia, 2016.” *United Nations High Commissioner for Refugees*, April 2017. <http://www.refworld.org/pdfid/590b18a14.pdf>.

“Myanmar: Who are the Rohingya?” *Al Jazeera*, November 30, 2017. <http://www.aljazeera.com/indepth/features/2017/08/rohingya-muslims-170831065142812.html>.

“Operation Sovereign Borders and offshore processing statistics.” *Refugee Council of Australia*, December 15, 2017. <https://www.refugeecouncil.org.au/getfacts/statistics/aust/asylum-stats/operation-sovereign-borders-offshore-detention-statistics/>.

“Operation Sovereign Borders.” *Department of Immigration and Border Protection*, accessed December 18, 2017. <http://www.osb.border.gov.au/en/Outside-Australia>.

“PNG police enter Australia's Manus Island asylum camp.” *Al Jazeera*, November 23, 2017. <http://www.aljazeera.com/news/2017/11/png-police-enter-australia-manus-island-asylum-camp-171123071027459.html>.

“Poor conditions in Indonesian immigration detention centres fuel violence.” *IRIN*, December 17, 2013. <http://www.irinnews.org/report/99344/poor-conditions-indonesian-immigration-detention-centres-fuel-violence>.

“Profil.” *Migrant CARE*, 2016. <http://www.migrantcare.net/profil/>.

“Recent changes in Australian refugee policy.” *Refugee Council of Australia*, June 8, 2017. <https://www.refugeecouncil.org.au/publications/recent-changes-australian-refugee-policy/>.

“Refugee Admissions.” *United States Department of State*, accessed January 8, 2018. <https://www.state.gov/j/prm/ra/>.

“Regulation of the President of the Republic of Indonesia Number 125 Year 2016 Concerning the Handling of Foreign Refugees.” *Office of the President of the Republic of Indonesia*, December 31, 2016. <http://www.refworld.org/docid/58aeec374.html>.

“Situation Report: Emergency Response—Rohingya and Bangladesh Migrants.” *MERCY Malaysia*, May 28, 2015. <https://reliefweb.int/report/malaysia/situation-report-emergency-response-rohinga-and-bangladesh-migrants>.

“Southeast Asia Migration Routes | 16 June 2015.” *International Organization for Migration*, June 16, 2015. <https://www.iom.int/infographics/southeast-asia-migration-routes-16-june-2015>.

“The 1951 Convention relating to the Status of Refugees and its 1967 Protocol.” *United Nations High Commissioner for Refugees*, 2011. <http://www.unhcr.org/4ec262df9.pdf>.

“U.N.’s Zeid toughens warning of ‘genocide’ in Myanmar.” *Reuters*, December 17, 2017. <https://www.reuters.com/article/us-myanmar-rohingya-un/u-n-s-zeid-toughens-warning-of-genocide-in-myanmar-idUSKBN1EC007>.

“UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Members of Religious Minorities from Pakistan.” *United Nations High Commissioner for Refugees*, May 14, 2012. <http://www.refworld.org/docid/4fb0ec662.html>.

“UNHCR monitoring visit to the Republic of Nauru, 7 to 9 October 2013.” *United Nations High Commissioner for Refugees*, 2013. <http://www.refworld.org/docid/5294a6534.html>.

“UNHCR Population Statistics – Data – Persons of Concern.” *United Nations High Commissioner for Refugees*, accessed January 2, 2018. http://popstats.unhcr.org/en/persons_of_concern.

“UNHCR Population Statistics – Data – Resettlement.” *United Nations High Commissioner for Refugees*, accessed January 8, 2018. <http://popstats.unhcr.org/en/resettlement>.

“Why Manus and Nauru Must Be Closed.” *Refugee Action Coalition*, July 2017. http://www.refugeeaction.org.au/wp-content/uploads/2017/07/Manus-and-Nauru-fact-sheet_update.pdf.

Albert, Eleanor. “The Rohingya Crisis.” *Council on Foreign Relations*, December 7, 2017. <https://www.cfr.org/background/rohingya-crisis>.

Anderson, Stephanie. “Explore the history of Australia’s asylum seeker policy.” *Special Broadcasting Service*, July 24, 2015. <http://www.sbs.com.au/news/explainer/explore-history-australias-asylum-seeker-policy>.

Barron, Laignee. “Malaysia opens investigation into immigration detention abuse.” *Guardian* (London), May 18, 2017. <https://www.theguardian.com/world/2017/may/19/malaysia-opens-investigation-into-immigration-detention-abuse>.

Barron, Laignee. “Refugees describe death and despair in Malaysian detention centres.” *Guardian* (London), May 15, 2017. https://www.theguardian.com/world/2017/may/16/dozens-of-refugees-have-died-in-malaysian-detention-centres-un-reveals?CMP=twt_a-world_b-gdnworld.

Blakkarly, Jarni. “Almost 200 refugees to leave Manus, Nauru bound for the US: reports.” *Special Broadcasting Service*, December 16, 2017. <https://www.sbs.com.au/news/almost-200-refugees-to-leave-manus-nauru-bound-for-the-us-reports>.

Boed, Roman. “The state of the right of asylum in international law.” *Duke Journal of Comparative and International Law* 5 (1994): 1-33.

Boswell, Christina. “The ‘external dimension’ of EU immigration and asylum policy.” *International Affairs* 79, no. 3 (2003): 619-638.

Bourke, Latika. “Navy breached Indonesian waters six times under Operation Sovereign Borders, review finds.” *Australian Broadcasting Corporation*, February 19, 2014. <http://www.abc.net.au/news/2014-02-19/navy-breached-indonesian-waters-six-times,-review-finds/5270478>.

Broom, Fiona. “Has the ‘Pacific Solution’ solved anything in Australia?” *Al Jazeera*, April 3, 2014. <http://www.aljazeera.com/indepth/opinion/2014/03/pacific-solution-solved-austral-201433113844238975.html>.

- Brown, Thomas, and Antje Missbach. "Refugee detention in Indonesia." *The Interpreter*, May 12, 2017. <https://www.lowyinstitute.org/the-interpreter/refugee-detention-indonesia>.
- Brown, Thomas. "Resisting limbo." *Inside Indonesia*, March 13, 2016. <http://www.insideindonesia.org/resisting-limbo-2>.
- Buchanan, Kelly. "Australia/Papua New Guinea: Supreme Court Rules Asylum-Seeker Detention Is Unconstitutional." *Library of Congress Global Legal Monitor*, May 2, 2016. <http://www.loc.gov/law/foreign-news/article/australiapapua-new-guinea-supreme-court-rules-asylum-seeker-detention-is-unconstitutional/>.
- Buckley, Chris. "Even in Safety of Malaysia, Rohingya Migrants Face Bleak Prospects." *New York Times*, June 3, 2015. <https://www.nytimes.com/2015/06/04/world/asia/rohingya-migrants-malaysia.html?partner=rss&emc=rss&r=2>.
- Burnside, Julian. "Asylum seekers can be managed with cheaper and more humane options." *Sydney Morning Herald*, June 19, 2014. <http://www.smh.com.au/comment/asylum-seekers-can-be-managed-with-cheaper-and-more-humane-options-20140618-zscza.html>.
- Cavill, Amanda. "Factbox: A recent history of asylum seeker policy." *Special Broadcasting Service*, August 26, 2013. <http://www.sbs.com.au/news/article/2012/12/21/factbox-recent-history-asylum-seeker-policy>.
- Clark, Sally. "Navigating Asylum: Journeys from Indonesia to Australia." PhD diss., Swinburne University of Technology, 2016. <https://researchbank.swinburne.edu.au/file/0a10e0f9-dcaf-4035-b185-bfeb70d59374/1/Sally%20Clark%20Thesis.pdf>.
- Convention relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150; Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267.
- Crisp, Jeff, Naoko Obi, and Liz Umlas. "But when will our turn come? A review of the implementation of UNHCR's urban refugee policy in Malaysia." *Policy Development and Evaluation Service, United Nations High Commissioner for Refugees*, May 2012.
- Curley, Melissa, and Kahlia Vandyk. "The securitization of migrant smuggling in Australia and its consequences for the Bali Process." *Australian Journal of International Affairs* 71, no. 1 (2017): 42-62.
- Dastyari, Azadeh. "Detention of Australia's asylum seekers in Nauru: is deprivation of liberty by any other name just as unlawful?" *University of New South Wales Law Journal* 38 (2015): 669-694.
- Davidson, Helen. "Civil engineering firm Canstruct to take over operating Nauru detention centre," *Guardian* (London), October 18, 2017. <https://www.theguardian.com/world/2017/oct/19/civil-engineering-firm-canstruct-to-take-over-operating-nauru-detention-centre>.

- Davidson, Helen. "Malaysia accused of arresting asylum seekers and children." *Guardian* (London), September 4, 2013. <https://www.theguardian.com/world/2013/sep/04/malaysia-accused-arresting-asylum-seekers>.
- Davidson, Helen. "Manus humanitarian crisis a 'damning indictment' of Australia's refugee policy: UNHCR." *Guardian* (London), November 21, 2017. <https://www.theguardian.com/australia-news/2017/nov/22/manus-humanitarian-crisis-a-damning-indictment-of-australias-refugee-policy-unhcr>.
- Davies, Sara. "The Asian Rejection?: International Refugee Law in Asia." *Australian Journal of Politics & History* 52, no. 4 (2006): 562-575.
- Davies, Sara. *Legitimising Rejection: International Refugee Law in Southeast Asia*. Leiden: Martinus Nijhoff Publishers, 2008.
- Dixon, Robyn. "Australia doesn't want them. Trump doesn't either. Who are these refugees trapped in bleak island camps?" *Los Angeles Times*, February 2, 2017. <http://beta.latimes.com/world/africa/la-fg-australia-refugees-20170202-story.html>.
- Doherty, Ben. "Manus Island: 60 refugees to be moved to Port Moresby for US interviews." *Guardian* (London), December 7, 2017. <https://www.theguardian.com/australia-news/2017/dec/08/manus-island-50-refugees-to-be-moved-to-port-moresby-for-us-interviews>.
- Doherty, Ben. "Second cohort of Nauru and Manus refugees to be resettled in US." *Guardian* (London), December 14, 2017. <https://www.theguardian.com/australia-news/2017/dec/15/second-cohort-of-nauru-and-manus-refugees-to-be-resettled-in-us>.
- Doig, Cameron, and Asher Hirsch. "Why Indonesia Shows the IOM Isn't Necessarily Helping Migrants." *Refugees Deeply*, October 26, 2017. <https://www.newsdeeply.com/refugees/community/2017/10/26/why-indonesia-shows-the-iom-isnt-necessarily-helping-migrants>.
- Domínguez, Roberto, and Martín Iñiguez Ramos. "The south-north axis of border management in Mexico." In *Externalizing Migration Management*, edited by Ruben Zaiotti (New York: Routledge, 2016): 225-237.
- Duffy, Aiofe. "Expulsion to Face Torture? *Non-refoulement* in International Law." *International Journal of Refugee Law* 20, no. 3 (2008), 373-390.
- Farrell, Paul, Nick Evershed and Helen Davidson. "The Nauru files: cache of 2,000 leaked reports reveal scale of abuse of children in Australian offshore detention." *Guardian* (London), Aug. 10, 2016. <https://www.theguardian.com/australia-news/2016/aug/10/the-nauru-files-2000-leaked-reports-reveal-scale-of-abuse-of-children-in-australian-offshore-detention>.
- Fedele, David. "Resettling refugees in Papua New Guinea: a tragic theatre of the absurd." *Guardian* (London), May 20, 2016. <https://www.theguardian.com/commentisfree/2016/may/20/resettling-refugees-in-papua-new-guinea-a-tragic-theatre-of-the-absurd>.

- Fiske, Lucy. "Refugee Transit in Indonesia: The Critical Importance of Community." *International Peace Institute*, March 8, 2017. <https://theglobalobservatory.org/2017/03/indonesia-refugee-crisis-unhcr/>.
- Fox, Peter D. "International Asylum and Boat People: The Tampa Affair and Australia's 'Pacific Solution'" *Maryland Journal of International Law* 25, no. 1 (2010), 356-373.
- Francis, Angus, and Rowena Maguire. "Shifting Powers: Protection of Refugees and Displaced Persons in the Asia Pacific Region." In *Protection of Refugees and Displaced Persons in the Asia Pacific Region*, edited by Angus Francis and Rowena Maguire (Farnham, England: Ashgate, 2013): 1-11.
- Goodwin-Gill, Guy S., and Jane McAdam. *The Refugee in International Law*. Oxford: Oxford University Press, 2007.
- Hakimzadeh, Shirin. "Iran: A Vast Diaspora Abroad and Millions of Refugees at Home." *Migration Policy Institute*, September 1, 2006. <https://www.migrationpolicy.org/article/iran-vast-diaspora-abroad-and-millions-refugees-home>.
- Hargrave, Karen, Sara Pantuliano, and Ahmed Idris. "Closing borders: The ripple effects of Australian and European refugee policy: case studies from Indonesia, Kenya, and Jordan." Working paper, Humanitarian Policy Group, London, September 2016. <https://www.odi.org/sites/odi.org.uk/files/resource-documents/11147.pdf>.
- Harvey, Gemima. "Australia's Controversial Asylum Policies." *Diplomat* (Washington), December 4, 2015. <http://thediplomat.com/2015/12/australias-controversial-asylum-policies/>.
- Hickey, Maureen, Pitra Narendra, and Katie Rainwater. "A Review of Internal and Regional Migration Policy in Southeast Asia." Working paper, Migrating out of Poverty, United Kingdom Department of International Development, September 2013. <http://migratingoutofpoverty.dfid.gov.uk/files/file.php?name=wp8-hickey-review-of-internal-and-regional-migration-policy-in-sea.pdf&site=354>.
- Hirsch, Asher L. "The Borders Beyond the Border: Australia's Extraterritorial Migration Controls." *Refugee Survey Quarterly* 36, no. 3 (2017): 48-80.
- Hoffstaedter, Gerhard. "The limits of compassion." *Overland* 224 (2016): 69-74. <https://overland.org.au/previous-issues/issue-224/features-gerhard-hoffstaedter/>.
- Hoffstaedter, Gerhard. "Working for (bare) life." *Griffith Review*, August 2014. <https://griffithreview.com/articles/working-for-bare-life/>.
- Howie, Emily. "Sri Lanka is a refugee-producing country. Here's why." *Guardian* (London), July 7, 2014. <https://www.theguardian.com/commentisfree/2014/jul/08/sri-lanka-is-a-refugee-producing-country-heres-why>.
- Human Rights Watch. *World Report 2018*. New York: Seven Stories Press, 2017. https://www.hrw.org/sites/default/files/world_report_download/201801world_report_web.pdf.

Hyndman, Jennifer, and Alison Mountz. "Another Brick in the Wall? Neo-Refoulement and the Externalization of Asylum by Australia and Europe." *Government and Opposition* 43, no. 2 (2008): 249-269.

Idris, Arzura. "Malaysia and forced migration." *Intellectual Discourse* 20, no. 1 (2012): 31-54.

Jones, Martin. "Moving beyond protection space: developing a law of asylum in South-East Asia." In *Refugee Protection and the Role of Law: Conflicting Identities*, edited by Susan Kneebone, Dallah Stevens, and Loretta Baldassar (London: Routledge, 2015): 251-271.

Karp, Paul. "Australia's 'border protection' policies cost taxpayers \$4bn last year." *Guardian* (London), January 4, 2018. <https://www.theguardian.com/australia-news/2018/jan/05/australias-border-protection-policies-cost-taxpayers-4bn-last-year>.

Kassim, Azizah. "Recent Trends in Transnational Population Inflows into Malaysia: Policy, Issues and Challenges." *Malaysian Journal of Economic Studies* 51, no. 1 (2014): 9-28.

Kaur, Amarjit. "Migration and the Refugee Regime in Malaysia: Implications for a Regional Solution." In *Protection of Refugees and Displaced Persons in the Asia Pacific Region*, edited by Angus Francis and Rowena Maguire (Farnham, England: Ashgate, 2013): 95-116.

Kaur, Amarjit. "Refugees and Refugee Policy in Malaysia." *UNEAC Asia Papers* 18, no. 1 (2007): 77-90.

Khairi, Aizat. "Managing the Challenges of Refugees and their Rights in Malaysia." Presentation at the First International Conference on Human Rights in Southeast Asia, Bangkok, October 14-15, 2010.

Kingsley, Patrick. "UN backlash against call to scale back Geneva convention on refugees." *Guardian* (London), January 6, 2016. <https://www.theguardian.com/world/2016/jan/06/un-backlash-against-call-to-scale-back-geneva-convention-on-refugees>.

Kingsley, Patrick. *The New Odyssey: The Story of Europe's Refugee Crisis*. New York: Liveright Publishing Corporation, 2017.

Koser, Khalid. "Australia and the 1951 Refugee Convention." *Lowy Institute for International Policy*, April 30, 2015. <https://www.lowyinstitute.org/publications/australia-and-1951-refugee-convention>.

Laughland, Oliver. "'It's freedom': Rohingya refugee reaches Florida after horror of Australian detention." *Guardian* (London), February 23, 2018. <https://www.theguardian.com/australia-news/2018/feb/23/rohingya-refugee-us-australia>.

Lego, Jera Beah H. "Protecting and Assisting Refugees and Asylum-Seekers in Malaysia: The Role of the UNHCR, Informal Mechanisms, and the 'Humanitarian Exception'." *Journal of Political Science & Sociology* 10, no. 17 (2012): 75-99.

Mansfield, James. "Extraterritorial Application and Customary Norm Assessment of Non-Refoulement: The Legality of Australia's 'Turn-Back' Policy." *The University of Notre Dame Australia Law Review* 17, no. 8 (2015), 18-58.

Mark, Michelle. “The first group of refugees from what Trump called the ‘worst deal ever’ with Australia are heading to the US.” *Business Insider*, September 28, 2017.

<http://www.businessinsider.com/what-is-the-us-australia-refugee-deal-trump-immigration-2017-8/#what-the-refugee-deal-is-1>.

Mauzy, Diane K. “The human rights and ‘Asian values’ debate in Southeast Asia: Trying to clarify the key issues.” *The Pacific Review* 10, no. 2 (1997): 210-236

McAdam, Jane. “Australia’s draconian refugee policy is built on myths.” *Guardian* (London), October 30, 2013. <https://www.theguardian.com/commentisfree/2013/oct/30/australia-refugees-asylum-immigration>.

McAdam, Jane. “We can resettle refugees in Australia and it's not just wishful thinking. This is how.” *Guardian* (London), September 4, 2016.

<https://www.theguardian.com/commentisfree/2016/sep/05/we-can-resettle-refugees-in-australia-and-its-not-just-wishful-thinking-this-is-how>.

McAuliffe, Anneliese. “Australia running out of countries to send its refugees.” *Al Jazeera*, November 2, 2015. <http://www.aljazeera.com/indepth/features/2015/11/australia-running-countries-send-refugees-151101080825920.html>.

McDonald, Matt. “Deliberation and Resecuritization: Australia, Asylum-Seekers and the Normative Limits of the Copenhagen School.” *Australian Journal of Political Science* 46, no. 2 (2011): 281-295.

McGahan, Kevin. “The Securitization of Migration in Malaysia: Drawing Lessons beyond the Copenhagen School.” Presentation at the Annual Conference of the American Political Science Association, Toronto, September 3-6, 2009.

McIlroy, Tom. “More than 64,000 people overstaying visas in Australia.” *Canberra Times*, July 19, 2017. <http://www.canberratimes.com.au/national/public-service/more-than-64000-people-overstaying-visas-in-australia-20170718-gxddpj.html>.

McKinnon, Alex. “Australia’s sadist solution to asylum seekers isn’t a wall—it’s a moat.” *Quartz*, September 1, 2016. <https://qz.com/771314/australias-sadist-solution-to-asylum-seekers-isnt-a-wall-its-a-moat/>.

McLeod, Travers, Peter Hughes, Sriprapha Petcharamesree, Steven Wong, and Tri Nuke Pudjiastuti. “The Bali Process can do a lot more to respond to forced migration in our region.” *The Conversation*, March 30, 2016. <https://theconversation.com/the-bali-process-can-do-a-lot-more-to-respond-to-forced-migration-in-our-region-56213>.

Miller, Greg, Julie Vitkovskaya, and Reuben Fischer-Baum. “‘This deal will make me look terrible’: Full transcripts of Trump’s calls with Mexico and Australia.” *Washington Post*, August 3, 2017. https://www.washingtonpost.com/graphics/2017/politics/australia-mexico-transcripts/?utm_term=.d1ed9e6a8f85.

Missbach, Antje, and Nikolas Feith Tan. "No durable solutions." *Inside Indonesia*, March 13, 2017. <http://www.insideindonesia.org/no-durable-solutions>.

Missbach, Antje. "Asylum seekers stuck in Indonesia." *Jakarta Post*, April 4, 2014. <http://www.thejakartapost.com/news/2014/04/04/asylum-seekers-stuck-indonesia.html>.

Missbach, Antje. *Troubled Transit: Asylum Seekers Stuck in Indonesia*. Singapore: ISEAS-Yusof Ishak Institute, 2015.

Mountz, Alison. "The enforcement archipelago: Detention, haunting, and asylum on islands." *Political Geography* 30, no. 3 (2011): 118-128.

Mukherjee, Kunal. "Is there a distinct style of Asian democracy?" *Journal of Asian and African Studies* 45, no. 6 (2010): 684-694.

Murphy, Katharine. "Ged Kearney wants more 'humane' policies: 'Getting people off Manus and Nauru needs to be a priority.'" *Guardian* (London), March 23, 2018. <https://www.theguardian.com/australia-news/2018/mar/24/ged-kearney-wants-more-humane-policies-getting-people-off-manus-and-nauru-needs-to-be-a-priority>.

Nethery, Amy, and Carly Gordyn. "Australia-Indonesia cooperation on asylum-seekers: a case of 'incentivised policy transfer'." *Australian Journal of International Affairs* 68, no. 2 (2014): 177-193.

Nethery, Amy, Brynna Rafferty-Brown, and Savitri Taylor. "Exporting detention: Australia-funded immigration detention in Indonesia." *Journal of Refugee Studies* 26, no. 1 (2012): 88-109.

Neville, Angelica. "Australia: Deterrence propaganda?" *Al Jazeera*, February 27, 2014.

O'Sullivan, Maria. "Questioning the Australian Refugee Model." *Refugees Deeply*, January 9, 2018. <https://www.newsdeeply.com/refugees/community/2018/01/09/questioning-the-australian-refugee-model>.

Phillips, Janet. "Boat 'turnbacks' in Australia: a quick guide to the statistics since 2001." *Parliamentary Library, Parliament of Australia*, June 22, 2017. <https://reliefweb.int/sites/reliefweb.int/files/resources/5351070.pdf>.

Phillips, Melissa, and Antje Missbach. "Economies of transit: exploiting migrants and refugees in Indonesia and Libya." *International Journal of Migration and Border Studies* 3, no. 2-3 (2017): 139-157.

Pickering, Sharon. "There's no evidence that asylum seeker deterrence policy works." *The Conversation*, July 24, 2012. <https://theconversation.com/theres-no-evidence-that-asylum-seeker-deterrence-policy-works-8367>.

Plaintiff M70/2011 v. Minister for Immigration and Citizenship (2011), 244 CLR 144 [High Court of Australia].

Polakow-Suransky, Sasha. "How Europe's far right fell in love with Australia's immigration policy." *Guardian* (London), October 12, 2017.

<https://www.theguardian.com/world/2017/oct/12/how-europes-far-right-fell-in-love-with-australias-immigration-policy>.

Reza, Bhatara Ibnu. "Challenges and Opportunities in Respecting International Refugee Law in Indonesia." In *Protection of Refugees and Displaced Persons in the Asia Pacific Region*, edited by Angus Francis and Rowena Maguire (Farnham, England: Ashgate, 2013): 117-134.

Rushton, Gina. "Human Rights Of Those Detained By Australia On Manus Have Been Breached, PNG Court Rules." *BuzzFeed News*, December 17, 2017.

https://www.buzzfeed.com/ginarushton/human-rights-of-those-detained-by-australia-on-manus-have?utm_term=.jheqyv4GnO.

Sampson, Robyn C., Sandra M. Gifford, and Savitri Taylor. "The myth of transit: the making of a life by asylum seekers and refugees in Indonesia." *Journal of Ethnic and Migration Studies* 42, no. 7 (2016): 1135-1152.

Siegfried, Kristy. "It's not just in Greece that refugees are stranded." *IRIN*, March 23, 2016.

<http://www.irinnews.org/news/2016/03/23/it%E2%80%99s-not-just-greece-refugees-are-stranded>.

Smethurst, Annika. "1000 days since last people smuggling boat reached Australia, Immigration Minister Peter Dutton says." *Herald Sun* (Melbourne), April 22, 2017.

<http://www.heraldsun.com.au/news/victoria/1000-days-since-last-people-smuggling-boat-reached-australia-immigration-minister-peter-dutton-says/news-story/8e3350181349ba0d66f16cf1dd4ad2ec>.

Sparrow, Jeff. "In PNG and Nauru, Australia's immigration policy comes at the expense of democracy." *Guardian* (London), June 15, 2016.

<https://www.theguardian.com/commentisfree/2016/jun/15/in-png-and-nauru-australias-immigration-policy-comes-at-the-expense-of-democracy>.

Sullivan, Daniel. "Still Adrift: Failure to Protect Rohingya in Malaysia and Thailand." *Refugees International*, November 2016. <https://www.refugeesinternational.org/reports/2016/rohingya>.

Taylor, Savitri. "Civil Society and the Fight for Refugee Rights in the Asia Pacific Region." In *Protection of Refugees and Displaced Persons in the Asia Pacific Region*, edited by Angus Francis and Rowena Maguire (Farnham, England: Ashgate, 2013): 35-52.

The State of the World's Refugees, 2000: Fifty Years of Humanitarian Action. Geneva: United Nations High Commissioner for Refugees, 2000

Tobing, Dio Herdiawan. "Indonesia's refugee policy – not ideal, but a step in the right direction." *The Conversation*, September 6, 2017. <https://theconversation.com/indonesias-refugee-policy-not-ideal-but-a-step-in-the-right-direction-75395>.

Topsfield, Jewel. "Most refugees in Indonesia will never be resettled: UN Refugee Agency." *Sydney Morning Herald*, October 31, 2017. <http://www.smh.com.au/world/most-refugees-in-indonesia-will-never-be-resettled-un-refugee-agency-20171031-gzbzhn.html>.

Topsfield, Jewel. "Trapped in transit: What next for asylum seekers stranded in Indonesia?" *Sydney Morning Herald*, March 20, 2016. <http://www.smh.com.au/world/trapped-in-transit-what-next-for-asylum-seekers-stranded-in-indonesia-20160317-gnlmkf.html>.

UNHCR Statistical Yearbook 2016. Geneva: United Nations High Commissioner for Refugees, 2018.

Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948)

Warbrooke, Aulden. "Australia's 'Pacific Solution': Issues for the Pacific Islands." *Asia & the Pacific Policy Studies* 1, no. 2 (2014): 337-348.