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**AUSTRALIA'S IMMIGRATION POLICY: ASYLUM
SEEKERS, SOVEREIGNTY AND INTERNATIONAL LAW**

Bachelor's Thesis

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I declare I have written the bachelor's thesis independently. All works and major viewpoints of the other authors, data from other sources of literature and elsewhere used for writing this paper have been referenced.

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ABSTRACT

An effective immigration policy is needed for a state to monitor and manage the transit of people across its borders, which is constructively designed to best focus on problematic areas. For more than five decades after the abolishment of the White Australia immigration policy, Australia is still in a state where immigration is strictly controlled by the Border Protection Force, promoting fierce protectorship of its state borders, especially regarding asylum seekers, refugees and, most prominently, the so-called boat people. It has been argued that Australia is breaching its responsibilities and commitments regarding international and human rights laws through a self-constructed right to exclude, vigorous and somewhat periodic anti-refugee propaganda, wedge politics and a culture of control over its civilian population. The aim of this research is to analyze the root causes of such draconian policies as well as the concept of mandatory detention, aided by questioning their ethicality and compatibility with the international and human rights laws, the drivers of the public mindset and the overall political development. Analysis of the Australian immigration policy allows concluding that it is largely influenced by political agenda fulfilled through creating a state of moral panic in the national community and is in contradiction with providing basic human rights, consequently having severe humanitarian effects on the asylum seekers, particularly the detainees. Through a dynamic analysis of theoretical reasoning and evidence-based findings, causes and effects will be identified and analyzed, highlighting the problem areas with exemplary cases. The structure of the research will begin with a theoretical explanation of the concept of sovereignty, explaining how it is related to the theory of International Relations, which will form the framework to be reflected upon throughout the paper.

Keywords: Australia, immigration policy, refugees, asylum seekers, boat people, sovereignty, detention centres, international law, human rights

INTRODUCTION

There are around 65 million people in the world, who are either seeking asylum in another country, have been granted refugee status or are internally displaced (United Nations 2016). Uncontrolled people movements have their roots in the post-Cold War world (dis)order, when globalization accompanied by the movement of money, goods and people has proven to be increasingly hard to control and monitor. The flow of asylum seekers has grown substantially during the past decades due to civil wars, political unrest, religious, cultural and social persecution and there are practically no universally acceptable or effective techniques available for its solution. Due to these large numbers, states around the globe, especially in the West, are reassessing their immigration policies, proactively finding ways to either expand the possibilities for asylum seekers to receive aid or controversially safeguarding their borders in spite of the fact that most of the asylum-seekers and refugees remain a great distance away from the Western societies altogether.

The Australian immigration policy can be perceived as a tough instrument used to block out potentially 'threatening' immigrants, particularly refugees and asylum seekers. The developments in the construction of Australia's immigration policy have stayed on a permanent course of restricting the inflow of asylum seekers since the second half of the XX century, highlighting the necessity to stop the entry of economically disadvantageous people, especially those arriving by boat, even turning them back to the originating country. In this context, the boat people are asylum seekers arriving by sea without a valid visa in search of political asylum. *The Universal Declaration of Human Rights* (1948) and the *Convention Relating to the Status of Refugees* (1951, 152) together with its later revisions state that everyone is entitled to seek asylum from persecution in another country without being discriminated, and cannot be returned to the country of origin by force, regardless of the possible violations of national immigration rules. In the case of Australia, these particular values have proven to be most controversial in the formulations of the immigration policy. Various governments over the past 25 years have approached the issue in a monotonous manner, having been focused on keeping the refugees out of Australia for security, internal

cultural and sociological reasons, accompanied by the need to assert its independence, sovereignty and self-determination along with safeguarding the cherished way of life. Prime Minister Howard (2001) has expressed the Australian mentality by stating that “the protection of our sovereignty, including Australia’s sovereign right to determine who shall enter Australia, is a matter for the Australian Government and [the] Parliament”.

Looking at the statistics of unauthorized boat arrivals a pattern of peaks and troughs can be identified. These highs and lows illustrate certain events in the originating countries, for example, the peaks occurred at the end of the Vietnam War, during the height of the Khmer Rouge in Cambodia, following the Tiananmen Square massacre in China, the Taliban advance into minority areas in Afghanistan (Fiske 2006, 219), beginnings of the Syrian Civil War, Kenyan Crisis, war in Somalia and destabilizations in Afghanistan and Sri Lanka. The amounts of boats arriving in Australia have decreased between the peaks. The main four waves of boat arrivals can then be identified (*see Table 1 and Appendix 1*) from 1976 to 1981, from 1989 to 1998 (90 boats carrying 3,119 people), from 1999-2001 (169 boats carrying 10,364 people) and from 2008 to 2014 (645 boats carrying 38,524 people). This research will limit its scope to the most recent three waves.

The developments regarding the immigration policy have not projected improvements in legislation towards a more humane and universally acceptable approach, but have rather hardened. Starting from the *Migration Amendment Act of 1992* in which it was set in stone that all unauthorized boat arrivals without a valid visa will be faced with mandatory detention to a current proposed policy of blocking any attempts of obtaining a visa at all. The subsequent Howard Government, with bipartisan support, passed the *Migration Amendment Act 2001*, known as the *Pacific Solution*, which effectively introduced offshore processing of visa applications as well as the Temporary Protection Visas (Phillips & Spinks 2013). The Pacific Solution was the immediate response to a sunken boat carrying refugees near the coast of the Christmas Island, which was rescued by a Norwegian-registered *MV Tampa*, but was refused permission to dock on Australian territory (McKenzie & Hasmath 2013, 418).

The Pacific Solution effectively excised surrounding islands from Australia’s migration zone, tightening the possibilities for unlawfully entered refugees to apply for a visa in these areas, furthermore, it set in motion Offshore Processing Centres on Nauru and the Manus Island in Papua New Guinea (Opeskin & Ghezelbash 2016, 74). Prior to the next federal election, the Australian Labor Party pledged to make serious changes to asylum and

immigration detention policy, amongst which it would give permanent protection to all refugees, limit the detention of asylum seekers for health, identity and security purposes, review its length and conditions and reverse the management of detention from private to the public sector (Phillips & Spinks 2013). Some of the promised adjustments were followed through; nevertheless, the direction remained the same.

Due to increased boat arrivals, however, the Gillard Government repealed the former government's decisions and reintroduced offshore processing, as well as expanded the network of onshore processing facilities. The most critical proposals by the government featuring the establishment of new offshore detention centres, the *Timor Solution* and the *Malaysia Solution*- both collapsed due to the rejection by the High Court (Foster & Pobjoy 2011, 618).

The Abbott Government introduced the Operation Sovereign Borders, initially directed at boat arrivals originating from Indonesia, which would be turned back in case of entrance to Australian waters. The Indonesian Government along with human rights and refugee advocates have condemned the operation primarily due to its inhumane treatment of refugees, its secretive nature and violations of Indonesian border by Australian frigates and Custom vessels (Australian Federal Parliament 2014). Furthermore, Prime Minister Tony Abbott has repeatedly labeled asylum seekers as economic migrants, portraying ignorance and lack of ethical responsibility.

The international community has reacted to such policies with malaise, suggesting that the process of detaining asylum seekers offshore, especially for extended periods, is non-compatible with the international law, let alone with its humanitarian obligations and that the government is inflicting crimes against humanity on asylum seekers and refugees. In 2014, independent federal MP Andrew Wilkie appealed to the International Criminal Court and requested the investigation and prosecution of the Abbott Government on the grounds of violating Article 7 of the *Rome Statute 1998* and provisions of the *Refugee Convention 1951*, *Convention of the Rights of the Child 1989*, *International Covenant on Civil and Political Rights 1966* (Maguire et al 2015, 186). Moreover, the Tasmanian barrister Greg Barns has publicly stated with confidence that the Australian government is guilty of committing crimes against humanity (ABC News 2014).

The domineering political arena has adopted a propagandist approach to deal with the issue of immigration, using slogans such as “No way. They will not make Australia home”

and “If you come here by boat without a visa you won’t be settled in Australia” (Martin 2015, 304). Targeting asylum seekers has become an efficient and commonly used electioneering party line, through which politicians seek to gain popularity since the issue has previously been underpinned in the collective minds of the public.

The usage of media as a tool to emphasize certain areas of social matters while withdrawing from others in a biased manner has altered the way the refugee question is perceived by the society. The populist rhetoric demonizes asylum seekers without any legitimate ground, depicting them as the villains of the piece. This has largely affected the public perception, having previously been more sympathetic towards asylum seekers and refugees (for example, victims of the Vietnamese War), but at present can be portrayed within the framework of a permanent moral panic over the issue. Over the past 20 years, the boat people arriving in Australia have originated from a wide array of countries (or are considered stateless), which unfortunately share same characteristics in their governance and state of unrest, such as Vietnam, Cambodia, Indonesia, Myanmar, China, Afghanistan, Iran, Iraq, Pakistan, Syria, Kenya, Somalia.

The area of immigration is under constant scrutiny and unrest- there are not many examples of countries that have a very open immigration policies and a lenient border control system. Therefore, it is important to note that further investigation of policies and their foundations within one country, as well as comparative analyses of states’ immigration policies worldwide are necessary for forming an extended overview of the current situation. This research, however, will limit its scope to Australia.

The paper seeks to conclude that the immigration policies of Australia are ill-suited and inconsistent with its humanitarian obligations, providing insufficient justifications to its detention system regarding human rights and that the policy formulation is largely affected by political agenda. The conclusive claim will be reached through a series of research questions, which assist in following the framework and logical reasoning on the subject.

The main research questions featured in this analysis are:

- How do Australian authorities perceive and frame the concept of sovereignty?
- Have the immigration policies changed with various governments and if, then how?
- Has the conduct of Australia’s Governments’ been lawful and in accordance with its obligations regarding the international and human rights laws?

- What is the response from the national and the international society?

In order to answer the research questions and accomplish the objectives, in the first part of the paper, the concept of sovereignty and independence, which forms the ground of Australia's immigration policies along with the historical developments of these policies, will be examined. A separate subchapter will focus on the terminology associated with the boat people, featuring a statistical overview of the numbers of arriving boats and people. It is necessary to further elaborate on the current administration's policies, determining whether the course of the political direction is changing, which will be conducted through discourse analysis in the subsequent chapters of the first part. A more in-depth analysis of the system of mandatory detention- its nature, effects on the detained and the ethicality of the concept- will be featured in the second part. An evaluation of the responses from the international community will help to form a judgment regarding the compatibility of Australian conduct with the international law and its humanitarian obligations, which will form the fourth part of the paper. However, the core of this paper does not focus on the legal system but rather on the normative manners of international politics. Similarly, the examination of the alteration and formulation of the mindset of the Australian peoples affected by the culture of control adopted by the government will illustrate and aid in reaching a conclusion.

The methodology for this research includes qualitative methods, such as discourse analysis and process tracing, especially for areas of policy formulations, to highlight and further analyze the problem areas and shortcomings when put into the framework of international and human rights law. Additionally, this research includes primary sources, such as public statements, national and international legislation, parliament speeches, academic research papers and articles and statistical data. It must be noted that due to the sensitivity of the area under research, some data might be questionable, particularly government spending on mandatory detention, access to which has been restricted and all the figures provided regarding the topic are estimates.

1. THE CONCEPT OF SOVEREIGNTY AND FORMULATIONS OF THE IMMIGRATION POLICY

From 2001, the Australian Government has rationalized an intractable approach to asylum seekers on the grounds of preserving its sovereignty. Over the course of past two decades, the scope of sovereignty has shifted, now being legitimized as the ‘right to exclude’, manifesting ethical and normative issues in its conceptualization.

According to the English School of International Relations, particularly the observations and contributions of Hedley Bull and John Vincent, the society of sovereign states should focus on the minimal goal of a disciplined coexistence between sovereign states and the imposition of idealist absolutes, such as the availability of human rights through an international guarantee and protection, is bound to bring negative side-effects (Suganami 2010, 25-26). The Australian Government has clearly adopted this approach in determining its degree of sovereignty and has given the concept of providing human rights to all a secondary status. In his book *The Anarchical Society: A Study of Order in World Politics*, Bull (1995, 83) argued that the relationship between sovereignty and human rights falls into the context of “[...] an inherent tension between the order provided by the system and society of states, and the various aspirations for justice that arise in world politics [...]”. Subsequently the relationship between the two can be understood two ways- in order to protect and maintain the international society, sovereignty should be given precedence over human rights or vice versa. The former is characteristic to the Australian Government’s reasoning over the issue of detaining, and the treatment of, asylum seekers, which will be illustrated in the next chapters.

The exclusiveness of Australia’s constructed right to decide over the concept of sovereignty does not take into account the inherent nature of seeking asylum- meaning that some states in the system are clearly unable to provide individual human rights- and does not take into account the statelessness of such individuals, who are lacking protection, raising questions about its ethicality and to a degree, a deflection from the ethical handling of the international community as a whole. The governments have failed to understand and

distinguish between the push and pull factors of such immigration. To illustrate, the asylum seekers, who come from war torn countries do not prioritize the economic benefits, or other pull factors, that Australia has to offer, but rather are forced by the push factors, such as fear of being or already having been persecuted for reasons of race, religion, nationality or political opinion. In various instances, the asylum seekers have no other choice if they wish to survive. Furthermore, the destination point, in this case Australia, is in all likelihood not chosen, but the people smugglers 'assign' it. Authorities in Australia have in a number of situations attempted to justify their approach by condemning the asylum seekers as if they were deliberately choosing the area of refuge to be specifically Australia.

The Australian immigration policy favours highly skilled migrants and refugees, at the same time condemning those who seek asylum for non-economic reasons, which are most characteristic to the boat people. The first wave of boat people included asylum seekers fleeing the war-torn Vietnam, as did the first half of the second wave of boat people, followed by increasing numbers of Cambodian and Southern Chinese asylum seekers in the second half. The third wave of arrivals featured mainly people from the Middle East, especially Afghanistan and Iraq and the last peak had already a combination of various Middle Eastern origins, such as Afghanistan, Pakistan, Iran, Iraq, Syria and a considerable concentration of Sri Lankans and Indonesians.

Combining the nature of such policies with the state's assertion over absolute sovereignty could just as well be used as a justification for the reinstatement of the White Australia Policy. This leads to the conclusion that sovereignty as the right to exclude is largely affected by the political and economic agenda, creating a situation where some policies and approaches are supported whereas others are marginalized.

What is more, setting the previously described concept of sovereignty into a universal framework raises the question that if Australia can determine its right to decide and exclude why cannot others? And if they can then why do they not pursue it? Then the answer becomes clear that by the logic of Australian authorities, they definitely could, as no sovereign state in a system of equal rights can be denied such freedoms. However, no other country possesses such strict policies for the reasons of maintaining equality in a system of liberal states and understandings of international and human rights laws as well as international treaty law, which are to be bound by for an efficient co-functioning of signatory states.

It is not to argue that any and all inflows of refugees should be accepted and welcomed, but rather that Australia is not one of those nations that must deploy such policies in order to secure its sovereignty and state of being. Even extremely poor countries, such as Pakistan, face large numbers of incoming refugees, which can be distressing for functioning governments and the whole population due to delicate internal ethnic conditions. Truly Great Powers that feature a considerable population, resources and military power, combined with determined leadership are the states typically in position of ignoring the interest and sentiments of others, independent of their goodwill (Maley 2003, 190). Yet it can be argued that even the hegemon United States does not play by its own rules, but rather benefits from multilateralism and the international order to which other states are bound to, as well. Therefore, to utilize hard power one has to be a hard power, which is questionable in the case of Australia.

To get a closer look and a more case-specific understanding of the policies formulated over the years by various governments, it is necessary to provide an overview of the progress throughout which the current status of mandatory offshore detention, strict control, monitoring of refugee movement and over asylum-seeker status' claims has been formed.

1.1 Irregular Maritime Arrivals

Irregular Maritime Arrival (IMA) refers to the asylum seekers who arrive in Australia by boat and without a valid visa. The various governments, further analyzed below, have used differing terms to describe the boat people, often replacing 'irregular' with 'illegal' or 'unauthorized', depending on the political course of the era and the political agenda. It must be stated that being an asylum seeker does not necessarily mean one has to be an illegal and the majority of the boat people do not fall into that category. By the conventions mentioned earlier, they must not be penalized for arriving without a visa and thus not complying with the destination state's immigration policies.

Referring to asylum seekers as irregular denotes a more neutral and humane approach (adopted mostly by Rudd and Gillard governments), whereas illegal and unauthorized are not politically correct terms and project negativity (Keating, Howard, Abbott and Turnbull governments), which have served the governments' schemes in the formation of an immigration policy by engaging in public propaganda, populism and wedge politics. The

latter governments have unjustifiably adopted terms, such as: folk devil, threat, contagion, invader, villain, terrorist, queue jumper, economic migrant and exploiter of the law, which are attached to the boat people and over exaggerated by the authorities to justify their self-appointed right to exclude, to alter the minds of the Australian people and engage them in the collective antagonism between Australia and the boat people. In this research, such terms will be considered politically incorrect and wrongful.

Table 1. Boat arrivals and corresponding numbers of people for 1989-2016

Year	Number of boats	Number of people
1989	1	26
1990	2	198
1991	6	213
1992	6	215
1993	3	81
1994	18	953
1995	7	237
1996	19	659
1997	11	337
1998	17	200
1999	86	3,724
2000	51	2,946
2001	32	3,694
2002	1	1
2003	1	53
2004	1	15
2005	4	11
2006	6	60
2007	5	148
2008	7	161
2009	60	2,726
2010	134	6,555
2011	69	4,565
2012	278	17,204
2013	104	7,474
2014	1	160
2015	0	0
2016	0	0
Total	927	52,392

Source: (Department of Immigration and Multicultural and Indigenous Affairs 2004)

The immigration waves, as discussed earlier, can be identified from 1976 to 1981, from 1989 to 1998, from 1999 to 2001 and from 2008 to 2013, with troughs in between. To further support the data collection, a visualized graph demonstrating the waves can be found in the Appendix (*see Appendix I*). The preceding table illustrates yearly arrivals of irregular boats and the number of asylum seekers respectively; the graph represents the peaks and troughs throughout the years.

The increase of arrivals during the second wave (90 boats carrying 3,119 asylum seekers) is proportionately much smaller compared to the fourth wave (645 boats carrying 38,524 asylum seekers), however, it can be argued that it bore considerably more significance as it lay the foundation for the immigration policy for years to come. Furthermore, it set the asylum seeker issue in the midst of political debate, as well as altered and formed the public stance taken towards the policies. At the time, without hindsight to the effects a policy can have over decades, the second wave can be understood as a crossroad, where the Australian government would choose its direction of action, an ill-suited turn, by the conclusions reached in this research.

1.2 The Keating Government and Mandatory Detention

The Keating Government of 1991-1996 was the first to introduce and execute the concept of mandatory detention to all who enter the country without a valid visa, which would arguably lessen the inflow of refugees and simplify the process by which they are either allowed or denied to enter the community. With the *Migration Amendment Act of 1992*, detention was intended to be merely an exceptional measure directed towards boat arrivals from Indochina, however, with the *Migration Reform Act of 1992*, effective from 1994, mandatory detention was expanded to include all ‘unlawful non-citizens’ arriving by boat, who were further liable for any and all costs related to their detention (Phillips & Spinks 2013). The 273-day detention limit was removed and indefinite mandatory detention accepted.

Minister Hand (1992, 2620) justified the reforms by stating that the boat people deliberately avoid the immigration processing procedure in order to delay the rulings “[...] by using the courts to exploit any weaknesses they can find in our immigration law [...]”. The portrayal of asylum seekers as deliberate exploiters of the immigration law and the courts is

beyond preposterous. As mentioned before, the people coming to Australia by boat are not looking to sabotage the system or gain any advantage over other ‘lawful’ immigrants, but have been put in a situation where they have no other legitimate choice if they wish to survive. Believing that these people have any access to the laws and policies of Australia in the first place can be perceived as credulous. Furthermore, setting sail on an unreliable and often fatal journey in itself characterizes the desperate circumstances of those people. Thus, the nature of political debate over asylum seekers was highly biased and illicit, taking into account the justifications by the government for such claims.

The amount of boat people seeking asylum in Australia was far smaller than of those arriving by planes with travel visas, however, the debate over boat people continued on a central stage, rarely featuring questions about the other group. This can be attributed to the visibility of the boat people, serving as a proxy for a more general immigration debate and being considered suitable targets for politicians’ criticisms. Minister Hand further elaborated that if the government failed to “[...] maintain strict border controls and regulate who is allowed into the [...] community, there is a grave potential for Australia to become an easy target for spontaneous mass movement” (Mannheim 2017). However, as it was indicated previously, none of the immigration waves were spontaneous, but rather systematic, an aftermath of a certain event in the originating country, indicating a forced movement of asylum seekers. Since it is unclear whether the statement was made publicly or between the walls of the parliament, it cannot be analyzed as a tool used for swaying the public, regardless, it shows lack of examination into the causes of such people movements or can even be perceived as a form of deliberate avoidance to these causes.

It is possible to argue that asylum-seeker targeting by a government is among the most indecent acts, justified by the fact that these people are one of the weakest links of humankind- they do not have a place in the society, are often stateless, homeless, have virtually no power, have been deplored of their rights and have close to no say in their future. In that sense, asylum seekers are easy targets and to take advantage of them characterizes how the Australian government has used their ‘availability’ and desperation for political gain and popularity within a nation.

From the start of the second wave of boat arrivals until 1994, 735 people crossed Australia’s borders on 18 boats, mainly originating from Cambodia (Philips & Spinks 2013, 2-4). In response to an increased number of boat arrivals Minister Keating lay the foundation

to the establishment of the first immigration detention centre located at Port Hedland, Western Australia. The disused mining camp was the first of a kind- specifically accommodating boat people.

The *Migration Reform Act* (1992), effective from 1994, expanded the criteria of mandatory detention, removed its time limit, introduced charges to be paid upon release and forbid unauthorized border arrivals from applying for a bridging visa, whereas other ‘unlawful’ groups who had previously owned a valid visa were still eligible for a bridging visa. This characterizes how boat people were treated differently from the onset of such policies primarily due to having entered the country on an ‘unauthorized boat’. Marginalizing boat arrivals in contrast to visa overstays, according to Phillips and Spinks (2013, 29), resulted in a sharp increase in their length of stay in detention, from an average 15.5 days to 523 days. The justification made by the government focused on an easier and more organized management of asylum claims, however, mandatory detention contrastingly extended the processing periods, which reflects how ill-equipped the system was in reality. The introduction of mandatory detention into the immigration policy set a precedent to all the ensuing governments that have assuredly followed suit and arguably magnified the phenomenon, however, the system was not synchronized to the increase in the amounts of boat arrivals from 1999, and the subsequent asylum seekers put in detention, which extended the periods in detention to months and years.

1.3 The Howard Government and the Pacific Solution

Under the succeeding Howard Government (1996-2007), immigration policy followed an almost identical line for the same purposes- to detain and limit the amount of incoming refugees with effective monitorial supervision. With the sharp increase in boat arrivals during the third wave, the government responded with even more oppressive policies such as the Pacific Solution and the introduction of the supplementary category for all asylum seekers whose requests for a refugee status had been acquired and accepted- the temporary protection visa (TPV).

Here it is suitable to argue that many of the policies of the Howard era follow similar patterns to the White Australia policy, which was essentially designed to obstruct the Asian population from ‘overflowing’ the white national community. It established a basis for

excluding foreigners and allowed the government to portray Australia as being surrounded by peoples and races that could potentially threaten its vitality and sovereignty. Anxiety over a possible invasion focused the country on a course of denigrating other races as a ‘menace or contagion’, which is further illustrated by Pauline Hanson’s *Maiden Speech to Parliament* (1996, 3862), where she raised her concerns by stating

“I believe we are in danger of being swamped by Asians. [...] They have their own culture and religion, form ghettos and do not assimilate. [...] A truly multicultural country can never be strong and united.”

The widespread fear of Australia’s national identity being under attack by immigration, threatening its values and ways of life, has since been rooted in the collective judgment, projecting nothing more than its fragility and lack of confidence in its own national values.

The conduct of the Howard Government can be characterized as a failure in formulating a discretionary immigration policy while complying with the obligations of the various international conventions it is voluntarily bound to. It can be argued that the government’s view of its responsibilities regarding human rights and refugees was subjectively interpreted and regarded as secondary to the national interests. According to Daryl Williams, a member of the Australian House of Representatives, “the [Human Rights] Committee is not a court, and does not render binding decisions or judgments. It provides views and opinions, and it is up to countries to decide whether they agree with those views and how they will respond to them [...]” (Kinley & Martin 2002, 466-470), clearly illustrating the government’s controversial stance towards treaty obligations as profoundly voluntary even once a member and a signatory.

Data analysis from the Howard era (*See Table 2*) allows concluding that the response from the government was disproportionate to real events. To illustrate, in 1997 there were approximately 51,000 unlawful people in Australia having overstayed their visas (Martin 2015, 309), of which 76% came as visitors, with the highest number of arrivals originating from the United Kingdom (11.8%), the United States (9.9%), the Philippines (6.8%) and China (5.4%), whereas boat arrivals in the same year accounted for less than 0.01% of all arrivals, which in essence should not be regarded as unlawful in the first place. Furthermore, the total amount of visa overstayers during the Howard era added up to 583,148 people (Wright 2014, 128) compared to 12,009 (*see Table 1*) asylum seekers arriving by boat.

Table 2. Top 5 visa overstayers by country of citizenship

Rank	Country	Number of people	Percentage of total
1.	United Kingdom	5,586	11.8
2.	United States of America	4,757	9.9
3.	Indonesia	3,497	6.8
4.	Philippines	2,798	5.5
5.	Peoples Republic of China	2,735	5.4

Source: Compiled by the author on the basis of data provided by the Department of Immigration and Citizenship

As Australian authorities frequently emphasized the illegality of the boat people, it is contradictory that the actual unlawful immigrants in the country, who came as visitors and were not seeking asylum, were overlooked and certainly not targeted as the boat people. Furthermore, Hanson’s claims of ‘being swamped by Asians’ then set a distrustful tone to the legitimacy of the government, its public announcements and speeches.

Subsequently it can be argued that at the time British nationals were the biggest ‘risk’ to Australian border security and the national community. To make matters worse, Chris Evans, a Federal parliamentarian and the Minister of Immigration and Citizenship, along with other members of the government, were aware of the statistics as it was stated during a parliamentary meeting that “[...] most visa over-stayers were English men under 25 who had simply enjoyed themselves too much to leave. [...] Or they’ve met a young lady and [are] having a good time” (Clark 2009). Deliberately avoiding facts and real events in order to pursue its nationally popular approach of targeting asylum seekers rather than focusing on the real issue prohibited the country from assessing and eliminating the so-called threats to Australia’s vitality. The statement made by Evans emanates contempt, as the visa over-stayers deem Australia and its way of life enjoyable, showing how immigrants are categorized by their preparedness to assimilate (Western immigrants already have the preconditions for a much favoured assimilation process) and their origin.

Australia’s controversial stance towards asylum-seekers can be further highlighted by the fact that between 1999-2000, there were around 2,500 Iraqi and 1,300 Afghani ‘unauthorized arrivals’ (including both, maritime and non-maritime arrivals), whereas people

of white, Western origin over-staying their visas accounted for 50,000, 27% of whom remained in Australia for more than nine years (Devetak 2004, 106). How could the government justify its condemnation of asylum-seekers and the alleged threat they pose to Australia's sovereignty and security while avoiding the statistics regarding visa over-stayers? The answer seems to lie in the process of assimilation, which had repeatedly been emphasized by the government and by the time had become a vital tool in formulating its immigration policy, posing an unwritten but crucial requirement for anyone who wished to enter the community. Immigrants from Western societies are more likely to assimilate- speak the language and have a similar lifestyle, whereas asylum-seekers of Middle Eastern or Indochinese origin follow a different religion, have a clashing culture and therefore pose a threat to the Australian way of life.

In response to a sunken boat carrying asylum seekers, later known as the Tampa Incident, the terrorist attacks in the United States in 2001 and the Bali bombings of 2002, the government introduced policies, which would set limits on and restrict the liberties of people suspected of being associated with terrorism (Price & Nethery 2012, 149). The constructed relationship between asylum seekers and terrorists was instrumental in contributing to a widespread fear that external insecurities were threatening Australia's borders. The regulation and supervision of Australia's borders became a primary political issue, which in return played a crucial part in the Coalition Government winning the federal elections the same year.

1.3.1 The Tampa Affair

Following the 1999 wave of refugees PM Howard had introduced new detention centres in the desert, as well as established a new visa category, the Temporary Protection Visa, to prevent asylum seekers from applying for a reunion with their families and from travelling abroad. However, these additions still did not halt the inflow of people entering Australia's waters by fishing boats, as in reality these were discredited solutions to a wrongfully perceived problem. At the time, two possible courses of action were on the table- the government could either abide by traditional humanitarian procedures or deal with the problem of asylum-seekers by military means. In a radio interview with Neil Mitchell, only three days before the Tampa Incident, the Prime Minister expressed his concern and claimed that for a humanitarian country such as Australia, using armed forces to deter people from entering Australia's waters and turning them back to where they came from was not an option

(Brennan 2003, 71). As the claim was refuted later, it is in hindsight easy to identify possible the reasons behind it- first being that the PM was truly concerned about having to use armed forces in such a situation; the second implies antecedent knowledge about an already made decision, which had to be made appear as a last resort and as something carried out with substantial reluctance.

In August of 2001, a sinking boat boarding 430 asylum seekers was rescued off the coast of Australia by a Norwegian-registered freighter *MV Tampa*. The Prime Minister responded to these events by forbidding the captain from docking on Australian territory, however, as many of the asylum seekers on board were in need of urgent medical attention, regardless of the orders from Canberra, the captain was headed towards Christmas Island. A counterargument to the circumstances on the ship might include the relative minority of the crew, cautious about being outnumbered in case a riot should break out. Now it became evident that even though prior to these events Howard was reluctant to turn back unreliable fishing boats or use armed forces to intercept, the Norwegian freighter did not fall into this category and it was less susceptible to questionings about moral conduct.

Following the ‘act of aggression’ John Howard ordered the deployment of the heavily armed Special Air Service Regiment (SAS) to board Tampa, after which he delivered his (in)famous speech in parliament emphasizing the need to protect Australian sovereign borders and its integrity by saying that “[...] the protection of our sovereignty, including Australia’s sovereign right to determine who shall enter Australia, is a matter for the Australian Government and this parliament” (Howard 2001). Furthermore, Foreign Minister Alexander Downer claimed “[...] it is important that people understand that Australia has no obligation under international law to accept the rescued persons in to Australian territory” (ABC News 2009). Even though the claim cannot be refuted in terms of legality, it can be perceived as a failed execution of its humanitarian obligations.

By the time, authorities were convinced that these asylum-seekers would not be resettled in Australia, backed by public support, and further indicated in a poll that was carried out at the outset of these events. In the poll conducted by *The Herald Sun*, readers were asked whether the asylum seekers on the ship should be allowed to land or not: out of 14,187 respondents, 615 were in favour of them being resettled and welcomed to the community, whereas 13,572 were in opposition (Crotty & Roberts 2008, 241). In order to not leave anything to chance and later rebuttal, the government put together a bill, assigning total

legal immunity to all Commonwealth officers regardless of obstacles that might rise during the course of eliminating ships from Australian waters (Crotty & Roberts 2008, 241-242). The Opposition was incapable of agreeing to such policies, which in turn provided Howard the chance to prove his supremacy and loyalty to the cause of sovereignty and border protection, which at the time had become largely popular with the public, furthermore, giving him the chance to put his electoral statement, “[...] we will decide who comes to this country and the circumstances in which they come” (Howard 2001, 8-9), to practice.

After carefully thought out diplomatic negotiations, Nauru and Papua New Guinea caved in return for well needed financial assistance, and the construction of two new detention centres began. These were almost explicitly designed for asylum seekers arriving by boat, who would face mandatory detention and offshore processing. However, as the construction took more time than anticipated and the possibility of some boats being left unseen under the radar remained, the assignment to prevent all further arrivals was passed onto the People Smuggling Task Force, who would improvise air and naval plans to repel all asylum seekers coming on fishing boats (Crotty & Roberts 2008, 243). At this point, Australia’s authorities had stepped outside the box of moral conduct- previously it had been unacceptable for a humanitarian country to use armed force to intercept these boats, but now it became a well established policy accompanied by public support. It can be argued that the Prime Minister was still lacking confidence in a boat-free Australia and was not provided with sufficient guarantee of a ‘state of safety’, which is why the decision of excising the most accessible islands in terms of proximity, the Ashmore, Christmas, Cartier and Cocos Islands, came into existence. These legislative changes characterize how the government was evading the morale of international law- often undertaking extreme measures to deter the boat people at all costs, rather than devising a system in which it would align its policies to humanitarian standards.

All of the above-mentioned actions taken by Howard fell perfectly into the government’s agenda and provided it with the justifications needed for demonstrating the extreme importance of border protection and the right to exclude certain individuals in order to safeguard the sovereignty of the country. It exemplifies how the Prime Minister took advantage of the situation, creating a wedge between the ALP members over the issue, divided by the stance taken towards the boat people. It was easy to exploit their hitherto electoral success by throwing a highly controversial legislation onto the table, knowing it

would create differing opinions within the opposing party, which would in turn portray insecurity and indecisiveness to the national community. Having succeeded in weakening the opposition, it was the perfect opportunity to show the nation how strongly he felt about the asylum seeker issue and how far he was willing to go to prove it.

The attacks of 9/11 rightfully produced global chaos and panic, the Tampa Incident remained local, however, the intersection of these two events provided an effective electioneering platform, especially for the Liberal Party. The terrorists of 9/11 were identified to be of Islamic background as were the majority of the boat people arriving between 1999 and 2001, which made it easy for the government to create a melting pot. Certainly, Middle Eastern and Islamic people were easy targets beforehand, particularly in the framework of border protection, nevertheless, the series of events provided a platform needed to justify the strict stance taken towards asylum seekers, as now it was possible to equate them with the terrorists, assuredly helping to gain public support. The government refrained from associating the asylum seekers as people possibly fleeing persecution under the Taliban regime, which once more shows how they were marginalized according to the preferences of the authorities, picking out certain aspects about the origins of these people while neglecting others. As previously the immigration policy was mostly circling around asylum seekers of Asian origin, the addition of Middle Easterners to the agenda further expanded the base of threatening ‘aliens’ and the pre-existing intractable stance on boat people created a further hardening of attitudes. Both of the events made it easier for the government to keep the issue of asylum seekers on the position of prominence during the election campaign, gaining popularity and support in an atmosphere of fear.

At the time, Howard was in his third term as Prime Minister and the likelihood of the government’s return at elections later the same year was still doubtful. The (un)fortunate turn of events provided Howard a chance to win the public support needed for success. Six months prior to the election Labor was ahead in most of the polls, however, the results of a poll conducted by AC Nielsen in early October 2001 determining the popularity of the Coalition and Labor parties, projected a 10% lead for the Coalition ahead of the Labor Party (Crotty & Roberts 2008, 246). It goes to show that over a longer period PM Howard might not have been as popular, but the last-minute policy changes and the unfortunate events swayed the public to vote for Coalition.

Two days into Howard's election campaign, another vessel was spotted in Australian waters, which was intercepted and the people on it were transported onto the Royal Navy ship to be taken to one of the detention centres for processing. It was later claimed by the government officials that during the process of transporting asylum seekers onto the ship, many of them threw their children overboard, which was portrayed as an act of blackmail and bribery by the asylum seekers, in order to be rescued and taken directly to Australia, not to the detention centres. Philip Ruddock, Foreign Minister, commented on the issue by stating "A number of people have jumped overboard and have had to be rescued. More disturbingly, a number of children have been thrown overboard. Again, with the intention of putting us under duress", taken even further by the Prime Minister, who commented by "I don't want in Australia people who would throw their children into the sea. [...] This is an attempt to morally blackmail Australia" (Bowden 2001). The *Children Overboard* affair naturally provoked extreme antipathy towards asylum seekers as they were deliberately demoralized by the government officials and the media through being portrayed as people capable of anything, even setting the safety of their children in danger. Moreover, it is possible to argue that it was not the government being blackmailed by the asylum seekers, but the population being blackmailed by the government. These accusations and the campaign itself turned out to be based on lies and fabrications, which had no factual ground. An investigation into the facts regarding the incident, carried out by a Senate Select Committee (2002, 15), found that it was the Navy suggesting people to jump overboard the sinking boat so they could be pulled onto the ship and rescued from drowning. The same report found that the handling of the proceedings was to show the government's strength on border protection issue and the behaviour of unauthorized arrivals was used as a justification for its policies.

The characteristics used by Ruddock and Howard described asylum seekers as hostile blackmailing people representing unacceptable family traditions and a lack of moral code. On a wider scale, these asylum seekers were dehumanized, called criminals, lawbreakers and other abusive and marginalizing words, all in order to gain advantage on a political arena. It can be argued that the government and opposition were both racing to the bottom with their claims, trying to determine whose immigration policies regarding asylum seekers could be harsher and more restrictive. Furthermore, the 'winners of the race' were selected based on how harshly they handled various scenarios, how badly they portrayed asylum seekers, and how much support they gained from the public through the before-mentioned propaganda.

Consequently, it can be stated that the draconian stance taken towards asylum seekers and the events of late 2001 helped determine the election by influencing the community through portraying the boat people as security threats in an already existing atmosphere of security anxieties and a serious affliction to the vitality of a sovereign Australia, particularly its dignity regarding border control and the state of its culture and way of life. The populist public discourse featured a clear distinction being made between ‘them’ and ‘us’, which further increased the gap between the asylum seekers being regarded as threats to vitality, aliens or devils, rather than human and deserving of protection.

Crotty and Roberts (2008, 240) have argued that under the leadership of John Howard, Australia’s political culture took a turn towards populist conservatism, illustrated by an active support for the policies of the United States in the War on Terror, becoming increasingly military in nature, more than at any other period since the leadership of Billy Hughes in the course of the World War I.

However, the course of undergoing various legislative changes to prevent any and all asylum seekers arriving by boat accompanied by the practice of wedge politics and public propaganda gives rise to questions about the ethical treatment and conduct regarding asylum-seekers. Is it ethically correct and acceptable to exploit the misery of others in order to gain advantage in a political arena? And how can a government reject providing basic human rights to all peoples regardless of their origin, especially those in urgent and desperate need? The government’s recurring acknowledgements regarding sovereignty and the integrity of its border control set a protectionist tone to the public debate, emphasizing the threat outlaws project onto the national community. From an ethical viewpoint, human rights of these asylum-seekers were set aside and once again ‘sovereignty’ proved to be of the uttermost importance. In subsequent speeches, authorities turned the argument around and focused the public attention on the needs of the national community. It was frequently stated that by refusing these asylum seekers to enter Australia, nationals’ human rights were protected and prioritized. These justifications, however, provide little ethical ground from the viewpoint of providing human rights to all.

Asylum seekers should be treated as a humanitarian rather than a security concern. Inherently harmless people, who have been persecuted in their state of origin and are seeking protection rather than an advantage, should not pose a security threat to a well-established nation such as Australia. It can be argued that asylum seekers are the embodiment of

vulnerability as they have had to flee a familiar environment, culture and habits to take on a journey risking their lives, thereupon arriving in a foreign domain where they are likely to be considered outlaws. Even though it is commonplace to debate that asylum seekers take their culture and habits along, it provides little justification in a situation where they remain a small minority. They lack even basic human security- they have little sense of self, no permanent shelter, very limited or no food and water supplies- and once they arrive at a place, where most of the population is secure, but if the only factor they have left is a sense of hope and if they are treated as a similar threat that took away their own security in the first place, it takes a toll on them, which might never be reversed.

That is not to say that security checks and policies are not necessary, but that these should not be designed to and aimed at deterring people at all costs. Additionally, it can be argued that focusing its immigration policy almost exclusively at preventing asylum-seekers from being processed as refugees and resettled in Australia, it is neglecting other possible security threats, such as visa over-stayers.

1.4. The Rudd and Gillard Governments

After Howard's 11-year long reign as Prime Minister and another run for Parliament, Kevin Rudd of the Australian Labor Party (ALP) won the federal elections in 2007. The ALP Platform presented, among others, desires to undergo serious policy changes regarding asylum seekers and refugees, including the dismantling of the Pacific Solution; replacing temporary protection (*see p. 6*) with permanent protection provided to all refugees; limiting the detention of asylum seekers to undergo security, health and identity checks; review the current length and conditions of the detention centres; retaining the excision of Ashmore, Cocos and Christmas Islands; creating a Refugee Determination Tribunal; and removing laws that prevent asylum seekers to access legal advice (Gartrell 2007). The Minister for Immigration and Citizenship, Chris Evans, commented on the Prime Minister's first year by stating "One of the first things the newly elected Labor Government did upon taking office was to stop processing asylum claims in the small Pacific Island State of Nauru" (Karlsen 2010), which was a great success for the immigration policy, however, the changes implemented under the Prime Minister were on various occasions contested by refugee advocacy groups and academics, regularly emphasizing that many of the promises only

looked good on paper, whereas in reality they did not differ greatly from the policies formed by previous governments. Michael White (2010, 154) has argued that the new approach did not inherently change the previous immigration policy as various hallmarks of the Pacific Solution remained in function.

Under the Rudd Government, mandatory detention persisted as a central element in the immigration policy- detention centres were maintained for health and security checks, the facilities on Christmas Island were continued to be used for maritime arrivals to surrounding islands and the territories excised under Howard were not reinstated, arrivals at which were still unable to apply for a visa. In 2009, however, some alterations were made regarding the detention debts and TPVs (*for more information see White, 154*).

During the following months, Rudd and Evans emphasized the dehumanizing and punishing effects long-term detention has on detainees and realized the circumstances in which the asylum seekers are once they depart on a boat journey. Furthermore, it can be argued that the government's mentality was shifting as both authorities redirected their focus from the asylum seekers to the smugglers, made them the targets of malaise and criticism. The new processing regime, which allowed asylum seekers to "[...] receive publicly funded advice and assistance, access to independent review of unfavourable decisions [...] by the Immigration Ombudsman" (Evans 2008), was a large step closer to a more humane and civilized approach regarding the processing of asylum seekers, as previously they were not able nor allowed to seek legal help justified by the fact that they remained outside of Australia's territory, even if they had forcibly been taken there in the process of interception.

In the course of the first two years of a Labor-majority government only 12 boats carrying 309 people arrived, however, with the start of the fourth wave, associated with the Kenyan Crisis and the war in Somalia which were the primary countries of origin for these asylum seekers, combined with a worldwide economic crisis, the number of boats arriving in Australia's waters increased from 7 in 2008 to 60 in 2009 (*see Table 1*). Destabilizations in Afghanistan, Iraq and Sri Lanka further increased the amount of arrivals, all of which follow the patterns of push, rather than pull factors. Nevertheless, opposition took a hard stand regarding these issues and blamed the new direction in immigration policy as the foremost cause for an increase in boat arrivals. Similarly to the Keating era, factors causing such immigration were not entirely analyzed nor put into the context of world affairs, but almost blindly overridden as push factors, set into the self-interested agenda of protecting Australia's

sovereign borders, the integrity of its border control and gaining popular support. As a fact of the matter, numbers of asylum seekers increased worldwide due to these unrests and Australia only faced a minor percentage, endorsed by the leading party.

With an increase in arrivals, public debate over immigration policies emerged with a bright light. It is hard to claim with certainty how much the policies enforced by the Rudd government had to do with the low numbers of boat arrivals prior to the election, however, the more lenient immigration policies coincided with the unfortunate world events and the public opinion towards the Labor government changed with it. A poll conducted by the Lowy Institute in 2010 generalized that 78 per cent of Australians were either moderately or very concerned about asylum seekers arriving in Australia by boat and that the government had failed in handling their arrival (Hanson, 3). The survey included a random sample of 1,000 respondents (margin of error ± 3.1 %). The Scanlon Foundation (Markus 2010, 36-39) conducted a survey the same year and the results showed that 60 per cent of Australians supported a tougher policy; 41 per cent believed that asylum seekers are trying to reach Australia by boat for a better life in contrast to 11 per cent who thought they were facing persecution, and overall the arrival of boats was met with a high level of negativity. The sample was comprised of 3500 random respondents (margin of error ± 3 %).

In response to the increased boat arrivals during the fourth wave, the government changed direction regarding its immigration policy- from a generally more humanitarian-oriented towards a restricted one. The political discourse on asylum seekers was reshaped to largely what Howard had paved the way for and the public had increasingly supported. The asylum claims from Afghanistan and Sri Lanka were suspended for six and three months, justified by the corresponding countries' changing circumstances, entailing that both are evolving and have stabilized enough not to regard asylum seekers originating from these countries as in a genuine need of protection from Australia (Evans, Smith, & O'Connor 2010). Regardless of the situations in Afghanistan and Sri Lanka, it can be argued that the change in policy was more likely connected to an increase in boat arrivals as a whole. As the majority of asylum claims came from these countries, it was an efficient instrument used to exploit the numbers of claims and to release pressure on the processing system. Furthermore, as opposition grew from the government and the public regarding the boat arrivals and other issues related to his leadership, Minister Rudd had to respond with a quick fix to increase support as opinion polls indicated a sharp fall in his popularity (Hartcher & Coorey 2010).

Shortly after, Julia Gillard replaced Prime Minister Rudd, however, the change in leadership was not accompanied by a positive change in terms of the immigration policy. The Labor government fast-tracked on the course of mandatory detention to reduce overcrowding and expanded the network of onshore and offshore facilities, as well as introduced the idea of regional processing centres. The Timor Solution, which ultimately failed, was based on an agreement with the Timorese authorities to allow their generous neighbour to send asylum seekers arriving by boat to their territory for processing. One of the most controversial proposals by Gillard includes the Malaysian People Swap, which was formed as a bilateral agreement in 2011 between Australia and Malaysia under which the latter would receive 800 irregular maritime arrivals from Australia in turn for 4000 UNHCR recognized refugees (Phillips & Spinks 2013). The consequences for the asylum seekers could have included even more persecution than in Australia, as Malaysia had not consented to the *Refugee Convention* (1948).

The language of the proposal showed how the boat people arriving in Australia are not regarded as genuine enough to be resettled and would require more resources to be processed, whereas the applications of UNHCR recognized refugees have already been taken care of and would just have to be resettled under the same conditions as the refugees under the humanitarian programs. It can be argued that these two categories are different sides to a same coin, one has already received recognition and the other has not. Therefore, PM Gillard was willing to swap the more time and resource-consuming boat people for five times more refugees, illustrating lack of interest in taking responsibility and an initiative deficit in a situation of humanitarian distress. It can be argued that the Timor and Malaysia Solution were attempts formulated entirely for national electoral success, without the acknowledgement of effective diplomacy. In addition, the proposal depicts the rationale started during the Howard era by emphasizing the ‘circumstances in which people arrive in Australia’. It had become clear that it was the mode of arrival that ‘shook the boat’, as the types of entering refugees could not be controlled or chosen. As Crock (1998, 67) has argued “asylum seekers represent a direct threat to the orderly conduct of a migration programme because they come uninvited and yet mandate consideration”. Hence, the possible adoption of the Malaysia Swap would reinstate the domain of control, the integrity of the immigration system and Australia’s security.

With an increase in boat arrivals in 2010 the detention system came under growing pressure, as did the Labor Government. The Gillard Government hardened its position to limit scrutiny from opposition and motioned a policy to release some of the long-term detainees into the community on bridging visas (Philips & Spinks 2013). From a humanitarian point of view, this was a move towards a more lenient operating pattern as the proportion of detainees decreased significantly. However, with new legislation and a decrease of asylum seekers in detention the public scrutiny increased and the policy was short-lived. In 2012, as a 'short-term' solution, offshore processing in Nauru continued, with a further expansion of a new detention centre in Papua New Guinea. After ten years, the asylum seeker policy was back to its roots, originating from the Howard rule and the functionings of the ALP election platform were essentially erased.

To conclude, the Gillard era can be characterized by political weakness, lack of quality political debate, populist sentiment and wedge politics. Various scholars, such as McKenzie and Hasmath (2013, 427), have argued that with an increase in boat arrivals populist antipathy towards asylum seekers extends, as well as resentment of the government, especially its deficiency in effective dealing with the issue.

1.5. The Abbott Government and Operation Sovereign Borders

The Opposition leader, Tony Abbott, had been very vocal about the Labor Government's stance regarding asylum seekers and often criticized it and its leaders about being soft, weak and not dedicated enough over Australia's border protection (Liberal Party of Australia 2013, 2). It was clearly stated by the Coalition that an increase in boat arrivals from 2008 came about due to failed Labor policies (Ibid.), however, as it was mentioned in the previous section, these increases can rather be linked with push factors, particularly destabilizations in Afghanistan, Iraq and Sri Lanka. The increase in IMAs was a good opportunity for the Liberal Party to take advantage of and play on the more humane approaches taken by Labor to sabotage the electoral public.

Winning office in September 2013, a primary incentive of the Abbott Government was to focus on border protection and carry through with campaign promises, featuring claims about 'stopping the boats'. Operation Sovereign Borders became effective immediately once the new government was sworn in, as did the renaming of the Department of Immigration and

Citizenship (DIAC) to Department of Citizenship and Border Protection (DIBP) (Ibid.). Alternating between the title of this particular agency already got its start in 1940s, which has projected the changing functions and responsibilities of the agency; the current DIBP attributes to a highly protectionist approach regarding the immigration issue. Furthermore, the Liberal Platform has strongly suggested referring to asylum seekers as illegal, rather than the previously used irregular, which symbolizes how the general rhetoric utilized by the leading party demonizes asylum seekers and condemns them as threats to the society.

Operation Sovereign Borders was designed to halt the ‘national emergency’ over border protection by establishing a targeted military-led framework to protect Australia’s borders and appointing a senior military commander to lead the project under a single operational and ministerial command (Ibid, 9). The policy plays around the concept of deterrence, in essence giving orders to turn back all boats to Indonesia, whenever it is safe to do so. However, it has proven to be just rhetoric and a formality as in reality many boats have been intercepted, asylum seekers transported onto lifeboats and then towed back just outside Indonesian waters not to breach the country’s borders. Therefore, the operation is focused on keeping boats out of Australia’s waters, turning them back when it is safe to do so, and providing ‘safe’ facilities in cases when it is not safe. In general, as the main objective of the policy was to decrease the number of boat arrivals to Australia, it has been successful in doing so (1 boat arrival from 2013 financial year to the present); however, the issue in itself has not been solved. The policy has been determined to neglect the push factors of immigration and therefore Australia’s obligations under international law, which will further be discussed in chapter 3.

Additionally, taking asylum seekers’ boats back just outside Australia’s borders shows how determined the government was to deter these people, rather than face their obligations and follow the provision of humanitarian aid. At this point it is quite irrelevant, whether the ‘takebacks’ were performed on original boats or were transported onto ‘safer’ lifeboats, the act itself gives grounds for deeming it irresponsible. It can be argued that the only ‘safe’ way to deter and turn back the boats would be for the Navy to actually take the asylum seekers from these boats and give them over to Indonesian authorities at the point of border interception or be allowed to take them to Indonesian mainland. This has proven difficult to manage, especially as it would require more finances and effective negotiations and

diplomacy between the two nations, neither of which is interested in handling the asylum seekers.

The number of asylum seekers who have been intercepted over the course of the operation, is due to the policy's secretive nature, a mere estimation, varying from around 500 people up to 4,000 (Phillips 2017). An example can be given from the concluding remarks of the DIBP (2017) March statement: during the reporting period there were no illegal maritime arrivals transferred to either Australian Immigration authorities nor to regional processing centres, however, during the same period, 25 people were detected within Australia's borders and consequently returned to the country of origin, Sri Lanka. The complicated language of such statements and the overall policy can cause confusion, as the phrase 'no illegal maritime arrivals' in reality exclusively focuses on the arrivals reaching Australia, not the attempts, which would suggest that there are various boats heading towards Australia, but since these are intercepted, turned or towed back, these do not count in the statistics. It can be argued that following the rhetoric, the authorities have successfully 'stopped the boats', whereas in reality they have just set up harsh enough barriers for these asylum seekers to get through.

The key initiatives of the Abbott Government to be undertaken in the first 100 days included extending offshore processing, emphasizing the need to find additional resettlement countries for those found to be refugees, as well as reintroducing TPVs (Liberal Party of Australia 2013, 15). It had become clear that the new government would take an increasingly strict stance towards asylum seekers, and will deter any attempts made to reach Australia, at all costs. However, if they did somehow 'fall through the cracks' and were to be resettled in Australia, rather than in a third country, they could only do so under temporary protection, which can be argued to cause damaging psychological effects, especially since the refugees are unable to start their lives in Australia in fear of having their status reassessed in a few years and subsequently being forced to emigrate to their country of origin to possibly face persecution.

As the operation is led by the military, there is little public information available regarding the specifics of the turnbacks, the conditions on the boats, the possible incidents occurring during the takebacks and the conditions in offshore processing and detention centres. PM Abbott has justified the veil of secrecy by stating, "we are in a fierce contest with these people smugglers. [...] And if we were at war, we wouldn't be giving out information that is of use to the enemy just because we might have an idle curiosity about it ourselves"

(ABC News 2014). Nevertheless, even in a state of war it is necessary to sustain certain transparency and keep the public informed to a satisfactory degree in order to provide confidence in a government. This has not been the case for Australia and concerns over the secrecy by the government has caused many groupings, including several human rights advocates to call for an end to the operation.

1.6. The Turnbull Government and Current Events

The Turnbull Government, from 2015 to the present, has followed suit with the policies of the previous era, indicating strong support to Abbott's policies, especially the Operation Sovereign Borders, which he has continued to implement under his leadership. Furthermore, PM Turnbull has publicly defended the country's immigration policies by justifying the draconian stance by having one of the most generous humanitarian programs in the world (Karp 2016). However, looking at the statistics provided by the Refugee Council of Australia (2016), it becomes clear that in reality the program is not as generous as it has been claimed to be- the country ranked 26th overall, 31st per capita and 46th relative to total national GDP, having resettled 0.48% (11,760 refugees) of the total 2.45 million refugees who had their status recognized or were resettled in 2015. It can be argued, that the government is hiding behind some favourable statistics in order to get recognition and support to its policies regarding asylum seekers arriving by boat.

The Prime Minister along with the Immigration Minister, Peter Dutton, have time and time again emphasized the illegality of people seeking asylum by boats, and focused the public attention on their mode of arrival (Gordon 2016), which allegedly is an extreme breach of the country's borders, sets Australia's sovereignty under imminent threat and poses a danger to the vitality and well-being of the Australian community. Consequently, it is possible to argue that Australia's authorities have over decades decided to exclude such people from being resettled on the grounds of not having entered the country through 'proper channels', regardless of their fear of death or persecution and a probable lack of access to those channels.

The immigration policy started out with pursuing limited mandatory detention, moved on to indefinite mandatory detention with additions of temporary protection visas over permanent ones, introduced several 'deterrent' acts, such as offshore processing and offshore

or third country detention, boat turnbacks, and has to the present day implemented restrictive or nonexistent provisions of human rights to asylum seekers. The most oppressive and ruthless of all these was introduced in 2016, known as the *Migration Legislation Amendment Bill* (Parliament of Australia, 4), which features a lifetime ban on refugees, who have either arrived by boat or have been sentenced to a detention centre, meaning that these people can never make a visa claim, whether it be as a refugee, a worker or a tourist. The analysis of the nature of the bill together with the authorities' focus on people smugglers over the asylum seekers themselves proves to be highly controversial. Such legislation would arguably not send a clear message to the smugglers to stop the provision of their services nor does it restrict their access to Australia, since they might not even be interested in reaching the country, but rather, this legislation is used as a disguise to penalize the asylum seekers under the set label of smugglers. Because ultimately it will be the refugees who have no future chance of migrating to Australia, whether it be under circumstances and by means favoured by the government or not.

The Turnbull Government has reacted to Papua New Guinean ruling over the Manus IDC as unconstitutional and illegal, and agreed to close the detention centre; its current population comprised of 829 male asylum seekers (*See Appendix 2*), but has failed in providing a timeframe or the possible solutions for the detainees (Doherty 2017). Now more than ever, these people are left in limbo, uncertain of how much longer they have to stay or where they will be taken next. Some of the detainees have already spent years in terrible conditions in confinement, without having a chance of uniting with their families. Neither of the governments are willing to accept and resettle these people into their communities, and are looking at relocating them to third countries, Nauru or forcibly sending them back to their countries of origin. Even though New Zealand offered to take a portion of the refugees, Turnbull (2017) has, after a year of negotiations, decided to stick with the United States as a receiving country, hoping to relocate approximately 1,250 refugees administered by the UNHCR from both, Manus and Nauru IDCs. Regardless of these public announcements, it cannot be claimed with certainty that these people will be resettled to the United States given the disregard and antipathy the US President has showed towards asylum seekers and refugees. Furthermore, if the refugees will be resettled, the conditions in which it will be done, remains unknown.

Consequently, it can be argued that the current government has taken an increasingly harsh and strict stance towards existing asylum seekers and refugees, as well as possible future arrivals; only accepting those who come through selected channels, and has exacerbated the rhetoric regarding these people by attacking their future possibilities. All these fall into the context of Australia's sovereignty and their self-designated right to exclude- further demonizing the asylum seekers by justifications of a national emergency over security, integrity and well-being.

2. DETENTION CENTRES AND DETAINEES: DETENTION CONDITIONS AND IMPACTS

The concept of mandatory detention, introduced under the Keating Government and carried on under subsequent governments, both the Liberal-National Coalition and Labor, is arguably one of the greatest policy fiascos. There are various reasons to justify this claim; it has been unsuccessful in conforming to the publicly stated objectives, it emphasizes punishment over protection, subsequently its non-compatibility with meeting the human rights obligations under international law, the excessive cost it has borne out of taxpayers pockets while the money could have been spent in more ‘threatening’ areas and it has dehumanized the public discourse, as well as denigrated the quality of political debate. The utmost downfalls of the policies incorporating mandatory detention have been its mean-spirited approach to human rights and the impacts it has ‘bestowed’ upon asylum seekers, who have been portrayed as high-risk security concerns deserving of such destinies, rather than people in desperate need of refuge.

For nearly three decades, the rationale behind mandatory detention has been deterrence and strict border control. It has become evident that the deterrence of boat people as a central element in the formulations of the immigration policy by various governments and opposition advocates has more recently shifted to focus more on the deterrence of people smugglers rather than the asylum seekers. However, centering attention on the smugglers can be argued to be a concealment adopted by the authorities in order to appear rightful, particularly in the eyes of critics and human rights advocates. It is not to say that such an approach is wrong, but rather that it should be followed by a change in policy not just rhetoric. Following the logic, it would be commonplace to assume that with the change in attitude, detaining asylum seekers has been downgraded to apply only to cases with ‘criminal backgrounds’ or even abolished altogether and applied to a large extent or only to smugglers. As it will further be explained and elaborated below, it becomes clear that this has not been nor is the case today.

The utilization of mandatory detention as a tool of deterrence has not been effective and this can further be demonstrated by statistics. After the Migration Amendment Act effective from 1994 boat arrivals decreased from 18 boats in 1994 to seven in 1995 (*see Table 1*), which could be associated with a change in policy if the numbers had not gone up the following year. Furthermore, the number of boat arrivals had increased twelve times by the end of the decade. The figures decreased again to one boat in 2003, but drastically increased between 2009 and 2012 to the maximum of 278 boats in a year. Hence, mandatory detention has not served its objective of deterring boat arrivals, as was initially anticipated. This can be attributed to ineffective policies used to counter a problem of an entirely different nature. As it has been mentioned earlier, the policy of detention was, and still is, a failed and stretched attempt to deal with a clearly exaggerated problem. It is difficult to comprehend how such a policy has prevailed over two decades, especially as it cannot be correlated with the statistics of boat arrivals, nor be given credit for solving the asylum seeker issue. Erika Feller (2011), UNHCR's Assistant High Commissioner for Protection, has claimed: "[...] detention is generally an extremely blunt instrument to counter irregular migration. There is no empirical evidence that the threat of being detained deters irregular migration or discourages people from seeking asylum [...]". Furthermore, it is possible to argue that asylum seekers do not have a choice once they depart on their journeys in search of a safe haven, but if they did, it would be a destination where they can be united with their families and live a safe and 'normal life', not to a state where immigration policies are extremely complicated to understand and include a possibly long-term mandatory detention.

Mandatory detention in mainland and offshore immigration detention centres (IDCs) will reach 25 years of activity this year. A concept that was initially meant to be provisional or temporary has become a settled and rooted policy, supported by all Australian Governments since 1992. Yet, it can be argued that such a policy has failed on most possible grounds, only providing the successful electoral advantage, which can also be regarded as a short-term and unnecessary victory.

This section of the paper will focus on the nature of the detention system and the effects and impacts it has had on the detained asylum seekers. The statistics will reflect the data for three offshore immigration detention centres, Nauru, Manus and Christmas Island and the combination of all mainland IDCs. The analysis regarding chosen IDCs is mostly limited to the time period of 2013-2017, with some exceptions.

2.1. Detention in Numbers

In order to achieve a greater understanding of the impacts, effects and the severity of mandatory detention, it is necessary to first make sense of the numbers¹. The total population of detainees on Nauru, Manus and Christmas Islands combined has gradually been declining since December 2013 (4,267 detainees). The number of detainees in the Manus IDC, for example, reached its height in January 2014 ‘accommodating’ 1,353 people; the population on Nauru was the highest in August 2014 with 1,253 people and the most populated detention centre on Christmas Island featured 3,233 people in July 2013. From April 2015, the numbers of detainees in all three centres has remained virtually the same with some volatility (up to \pm 50 people). The average number of people over the given period at Manus centre was 950 people, 657 people at Nauru and 916 on Christmas Island. As it can be seen, the number of detainees has been decreasing in all three IDCs until April 2015, and remained near constant over the next months. It is interesting to note that even though the before mentioned numbers have been decreasing, the average number of days spent in detention has been, contrastingly, increasing. The data proves, that the standard length of time spent in IDCs was 124 days at the beginning of January 2013, but has grown to almost 500 days in Mach 2017. Furthermore, the provided average does injustice to some of the asylum seekers, who spend years in IDCs, without being able to reunite with their families nor find legal help. (*See Appendix 2*)

The breakdown of detention population reveals that the majority of asylum seekers in IDCs are male, however, there is a substantial number of women and children, as well. For example, in January 2013, there were 902 children under the age of 18 in offshore and mainland detention facilities. In January 2014, the amount had only decreased to 895 children, but by January 2015 there were 119 and a year later 54 children in IDCs. The statistics regarding child detention have improved drastically under the last two governments if only the amount of detainees is considered, but when the length of detention is added into the equation, it becomes evident that likewise with adults, the periods of child detention have been increasing since 1999.

By the beginning of 2003 the average detention period was one year, three months and seventeen days, but by the end of the same year the average period had grown by approximately five months. The longest a child had been in detention by January 2004 was

¹ Figures provided do not include Immigration Transit Accomodation or Residential Housing facilities, but focus on offshore and mainland detention centers.

five years five months and twenty days, eventually released into the community on a temporary protection visa. Between 1999 and 2003, 14% of the total amount of children were unaccompanied, of which 54.5% were 16-17 year olds, 39% were between the ages of 13 and 15, 6.5% under the age of 13. What adds to these grave numbers is the fact that under the Howard policy of detaining all IMAs, even infants along with their mothers were put into detention centres. There have been reported cases of infants having been detained for extremely long periods, up to three years, which often added up to half of their lifetime. (Human Rights and Equal Opportunity Commission 2004, 9-11) Even though the mandatory detention of children was reformed in 2005, it was just a matter of policy and not always practice. PM Howard felt strongly about equality in the detention system, which ultimately meant that if it was necessary then even minors and infants will be detained for as long as necessary to process their claims.

Research has found that mandatory detention is overtly expensive compared to community housing- the cost of detaining a single asylum seeker in a detention centre was, in 2011, an average of \$339 per day, sided with \$39 per day for community housing (Edwards 2011, 85). These numbers characterize Australia's approach to asylum seekers in bold, emphasizing the view of mandatory detention's righteousness as a deterrent and a necessary policy for keeping the 'threats' away from the national population. As data has proven, a costly approach to a non-conforming issue has close to no benefits in the formulations of the immigration policy nor is it an effective deterrent once compared to IMAs. Button and Evans (2016, 41) have attempted to describe the cost of Australia's asylum framework, including the cost of offshore processing centres, onshore immigration detention, boat turn-backs, regional agreements and cooperation, however, due to lack of transparency and secrecy around the issue, it has been proven difficult to arrive at an accurate number. Regardless, their estimates found that from 2012 to 2016 the government used at least \$9.6 (AUD) billion on the policies of deterrence and is looking to further spend between \$4.0 and \$5.7 (AUD) billion over the next four years. Mandatory detention alone for the given period has cost around \$9.2 billion, for offshore and mainland facilities combined, and the yearly cost per detainee exceeds \$400,000.

2.2. Human Cost

One of the most extreme shortcomings of mandatory detention is unquestionably the effect it has on the asylum seekers, bringing about further trauma, which in most cases eventually results in damaged mental health. There is abundant data supporting this claim and reported incidences of physical, mental and sexual abuse. It must be noted, however, that these reports are arguably just few of many, as the proceedings and maintenance of the IDCs is under the supervision of three private companies, mandated by legislation not to publicize reports, about conditions nor about any other possible area. Australia's laws criminalize any disclosure of information by the contractors in the offshore processing centres and, therefore, a vast majority of the reports made by visitors to the IDCs rely on already published data and findings (Button & Evans 2016, 21).

A report published by Button and Evans (2016), after having spent 26 months in the Nauru centre concluded that children have been, among other things:

- detained in closed detention for remarkably long periods, some more than two years;
- disproportionately negatively affected by the experience of detention
- frequently exposed to harm, violence and abuse (over the given period, there were seven reports of sexual assault and 59 reports of assault on children)
- suffering significant harm to their mental health (over 30 reports of self-harm and 159 of threatened self-harm, which is an indication to deteriorated mental health)
- unable to reunite with their families

These findings were based on roughly two years of monitoring children in the detention systems, and do not include follow-ups, indicating that these issues, especially deteriorating mental health, will only get worse as there is not enough or no treatment provided to these children. What is more, with new legislation these children will be transferred to additional centres or will be forced to return home, where they could be further harmed. In addition to the abovementioned findings, it can be argued that children, who have been faced with prior torture or trauma, have been detained for long periods, have been separated from their families, are living in a closed detention and are exposed to violence, either inflicted upon them or others, are likely to face development problems. They have been

stripped of a ‘normal’ childhood, are likely not able to get access to neither education nor recreational activities, lack a secure environment, which are necessary components to a healthy maturing. The Human Rights and Equal Opportunity Commission (2004, 392) has observed that

“[...] a wide range of psychological disturbances are commonly observed among children in the detention centres, including separation anxiety, disruptive conduct, nocturnal enuresis, sleep disturbances, nightmares and night terrors, sleepwalking, and impaired cognitive development. [...] a number of children have displayed profound symptoms of psychological distress, including mutism, stereotypic behaviours, and refusal to eat or drink. [...] the symptoms of posttraumatic stress disorder experienced by the children were almost exclusively related to experience of trauma in detention.”

It is likely that the Australian Government is not concerned enough over these issues, as has been previously suggested and highlighted by various Prime Ministers’ statements, including annotations of ‘deserving’ treatment. Even though current detainees will highly likely never be resettled in Australia, it has been the case previously, which adds to the atmosphere of fear by the national community, given the fact that the people who have been resettled and become a part of the community, have already suffered trauma prior to departing to Australia, have been detained for increasingly long periods during which they have suffered further distress and possible harm, which in turn has attributed to deteriorating mental health and once they have reached the community it is possible that they actually are mentally ill and may pose harm to themselves and others. In these instances it is possible to argue that the government is deliberately creating a vicious cycle in order to prove the possible threat asylum seekers pose and justify their need for deterrent policies.

During a UNHCR (2015) visit to the Nauru IDC, the conditions at the centre were reported to be harsh with little natural shelter from heat during daytime, aggravated by difficulties such as noise and dust arising from the nearby construction zone and a phosphate mining facility; the living conditions were confined and restricted with insufficient ventilation, non-existent availability of privacy, overcrowded and there was limited access to medical treatments. In addition, there were various problems with sanitation, coupled with inadequate food and water supplies. It is no surprise that living under such conditions causes various diseases to spread, but as previously mentioned reports have noted, there is a lack of access to medical treatments, leaving many of the detainees to suffer. Amnesty International (2016, 17) has published reports of people setting themselves on fire, causing other types of self-harm, such as cutting body parts, sewing lips together, starving or attempting to commit

suicide; and repeated acts of aggression committed by the guards towards asylum seekers, such as throwing stones, beatings, verbal abuse, sexual abuse including rape, armed assault and others.

Pamela Curr and Sr. Brigid Arthur (2016) visited the Christmas Island facility as a part of the Brigidine Asylum Seekers Project, and they concluded from the visit that the detainees are living in an environment of fear and physical violence and face ongoing mental trauma and isolation. The current population features two groups of men- the asylum seekers, and criminals from different prisons after sentences of differing length following crimes of different nature (Ibid.). Concluding from this evidence, it is likely that the asylum seekers are under constant fear of having to live with criminals, whose sentences vary from armed robbery to rape, aggravated by the living conditions and uncertainty of their future.

Combining the extended periods of detention with uncertainty, lack of medical and legal assistance, and physical and verbal abuse inflicted upon asylum seekers unfortunately often leads to self-harm and deteriorating mental health. It is impossible to fathom how the previous and current governments have changed nothing over the course of more than 20 years, and it is increasingly nauseating to think that it had become a deliberate policy in order to deter any possible future asylum seekers to depart to Australia.

3. ARGUMENT OF NON-COMPATIBILITY WITH INTERNATIONAL LAW AND HUMANITARIAN OBLIGATIONS

Having covered the conduct of the Australian Government and its policies regarding asylum seekers, this part of the paper will focus on the non-conformity of the policies with international and human rights laws. However, as it is cumbersome to provide an all-inclusive overview of the policies' violations, the major failings will be focused on. These include, but are not limited to, the non-compatibility of refugee status' allocation, mandatory detention in general and of children, its length, offshore processing, boat turnbacks and definite prohibition of asylum seekers to claim any visa. The proposed shortcomings and deliberate circulations around the immigration policy will be analyzed in the framework of the *Convention Relating to the Status of Refugees* (1951); *the International Covenant on Civil and Political Rights* (1966); *Convention Against Torture* (1984); *the Convention on the Rights of the Child* (1990); and the *Optional Protocol on the Convention Against Torture* (2006); to which Australia is a signatory.

The *Geneva Convention Relating to the Status of Refugees* (1951, 14) defines a refugee as a person who “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country [...] and is unwilling to return to it” and the signatory states should not impose penalties on people who have entered the country without valid documentation, without regard to their mode of arrival. However, already beginning during the Keating era, regular breaches to Articles 1 and 31 can be identified, as asylum seekers arriving by boat were penalized by being sent to detention centres, even if initially to onshore facilities, and by imposing financial charges for their time spent in detention. The Convention limits acceptable detention to a sensible timeframe, which includes immediate health and security checks, but does not permit long-term detention, which has often been the case over

the past two decades. The authorities have, through indefinite mandatory detention, withheld refugees even after their claims have been processed, often due to unavailable preferable locations for resettlement. Detaining refugees for months and even years is clearly in violation with their rights, which, in addition, they are habitually and deliberately not informed of. Lack of legal assistance or any kind of support within the detention centres is a further violation of human rights, a contradicting legislation established by the *Migration Amendment Bill 2001*, known as the Pacific Solution.

UNHCR (2015, 5) has come to a conclusion that Australia, and subsequently Nauru and Manus governments, are acting inconsistently with international law, particularly the *Convention on the Rights of the Child 1989*, by not putting the best interests of the child first, removing their rights to family unity and often being separated from their parents against their will, not providing appropriate protection and assistance and are detaining children for excessive periods.

Furthermore, mandatory detention does not align with provisions of human rights to people in these facilities. Article 7 of the *International Covenant on Civil and Political Rights* (1966, 175) states “ [...] no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment [...]”, which has been violated on several grounds and occasions. As was outlined in the previous chapter, detainees have faced mental, physical and sexual abuse, which has often not been dealt with due to the lack of available services. Article 9 of the same framework outlines the rights to liberty and security, prohibiting detention, and in cases of justified detention, the people under restraint are entitled to proceedings before a court. If the detention of asylum seekers arriving by boat was to be temporary and justified for health or security reasons, these would not be applicable under the Convention, however, as cases of detainees have proven, they are detained for extensive periods and the only justification has been the time-consuming process of assessing the large number of such people, which is why they have been detained for months or years.

What is more, the mere act of developing legislation and policies against refugees and asylum seekers is in contradiction with the Rome Statute. Cavallaro et al (2017, 60) have argued

“Australian patrols and military vessels deprive them of freedom, detention security staff rape and abuse them, doctors fail to give them needed medical treatment, and inhumane detention conditions drive them to suicide, self-harm, and clinical depression. As an accumulation of

bureaucratic and administrative procedures, implemented with sanctioned cruelty, the Australian Government and its agents attacked a civilian population within the meaning of the *Rome Statute*”

Article 3 of the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1984) includes a clause about non-refoulement, which in simpler terms translates to a prohibited return of a people to another state, having possible reasons to believe they might be persecuted or subject to torture. Beginning with the Tampa Affair and the subsequent Pacific Solution and continuing to the presently employed Operation Sovereign Borders, Australia’s authorities have repeatedly turned back boats without providing protection to the asylum seekers onboard, refusing them to disembark and apply for a refugee status, which they possibly could not have done prior to disembarking. However, it is possible for the Australian Government to argue, particularly in cases of boat turnbacks, that it is not breaching the requirement of non-refoulement, since the boats carrying asylum seekers have yet not reached Australia’s territory and due to lack of transparency it is difficult to ascertain of refusals regarding immediate help. There is a lot of debate around the issue, as a ‘clear’ law applicable to these situations is virtually non-existent, nevertheless, it can be concluded that by refusing entry and physically blocking the way to Australia’s territory, it is as a result, bringing about the return of asylum seekers to a state, where human rights provision is missing and possible persecution may take place. This would then fall into the category of abandoning elements of humane considerations, and poor ethical conduct.

Independent federal Member of Parliament, Andrew Wilkie, appealed to the ICC alleging violations by the Abbot government to the Rome Statute, including “imprisonment and other severe deprivation of physical liberty [...] deportation and other forcible transfer of population [and] other international acts causing great suffering or serious injury to body and mental and physical health”, and other claims violating the *Refugee Convention*, *Convention on the Rights of the Child*, and the *International Covenant on Civil and Political Rights* (Maguire et al 2015, 185). Amnesty International (2001, 1) put forward an inquiry to the UN Committee Against Torture and the UN Human Rights Committee regarding the Tampa Affair, over possible refoulement and lack of access to medical care.

The UNHCR Periodic Review of Nauru (2015, 5) has concluded that asylum seekers were “ [...] subject to deprivation of their liberty, on a mandatory basis, in a closed place without an assessment as to the necessity and proportionality of the purpose of such detention in the individual case, and without being brought promptly before a judicial or other

independent authority.” Given that Nauru is not a signatory to these conventions, it has no obligation under international law to abide by the same rules as does Australia, however, as the latter has sent the asylum seekers to another country it will be breaching the law if these people face persecution or torture in Nauru. Therefore, it can be concluded, that Australia has and is repeatedly violating the concept of non-refoulment.

The most recent proposed policy under the Turnbull government, which would ban any future entries by a current or former IMAs, can be ruled illegal under the framework of the *Refugee Convention* (1951), as it would punish refugees from legally entering Australia, prevent them from uniting with possible family members, and forbid them their liberty to freedom of movement.

CONCLUSION

The aim of this research was to provide evidence and analyze the immigration policy formulations under various Australian Governments, from 1992 to the present, through the concept of sovereignty, while providing counterarguments to their justifications. In addition, the paper sought to argue that even if the drivers behind the policies were expressed as necessary for national security and the border protection's integrity, these were in reality motivated by political agenda. The national community has received often biased or partial information through the media, which has been the consequence of secrecy and lack of transparency from the government.

The total of 52,392 asylum seekers, who have reached Australia during the past 25 years, is a minor amount when compared to the overall population or to the number of asylum seekers worldwide. Regardless, the government and the majority of Australia's community have perceived it as an imminent threat to their vitality, way of life and survival. The authorities have failed in accepting the causes for their departure- fear of torture or persecution.

The concept of sovereignty and the right to exclude have provided the governments to implement increasingly strict policies. They have neglected the rights of asylum seekers and the causes for their migration; have nurtured a political rhetoric of marginalization and predilection based on the status, religion and culture of asylum seekers. The uncompromising need to protect a well-established state's borders has proven to be an answer to an exaggerated problem, leading to ineffective policies.

The Keating era laid the foundations for the draconian immigration policies, by introducing indefinite mandatory detention, applicable to people of all sexes and age groups, and focused the public discourse on demonizing the asylum seekers as exploiters, illegals, outlaws and invaders. The subsequent government introduced temporary protection visas, continued with mandatory detention by expanding the system, and inserted a fear of an 'Asian invasion' into the minds of the national public, which would set the Australian national

identity under attack. The Pacific Solution provided the necessary justifications for a robust border protection system, and highlighted the government's obligation to protect the Australian population from certain individuals. Prime Minister Howard took advantage of every possible situation, creating a long-lasting wedge between the political parties, and producing the framework for deeming asylum seekers as a security concern, rather than a humanitarian one. These moves were stimulated to gain electoral success instead to provide humanitarian aid and abide by international human rights laws.

Operation Sovereign Borders was established as another deterrent policy, to meet electoral promises of 'stopping the boats', which was successful by definition, but left the issue in itself unresolved. The arrivals to Australia stopped only due to physical blockades, leaving asylum seekers with limited possibilities of finding a refuge and security. In conclusion, turning back the boats can be perceived as a failed solution to an aggravated problem, equipped with little responsibility in regards to human rights and humanitarian aid.

A majority of the policies have been proven to be ill-suited for a humanitarian country, a nadir of which is mandatory detention. The system is overarchingly expensive, provides no merits as a deterrent, is non-compatible with human rights obligations and international law, and has uselessly mauled the political debate. In conclusion, Australia's immigration policies have been incompatible with international law, inconsistent with its humanitarian obligations, and there are close to no viable and long-term justifications to its detention system. The policies have been formulated primarily in regards to gaining electoral success or fulfilling a political agenda, reinstating the country's sovereignty and its right to exclude, in the course of which it has slandered, with self-constructed public support, harmless asylum seekers.

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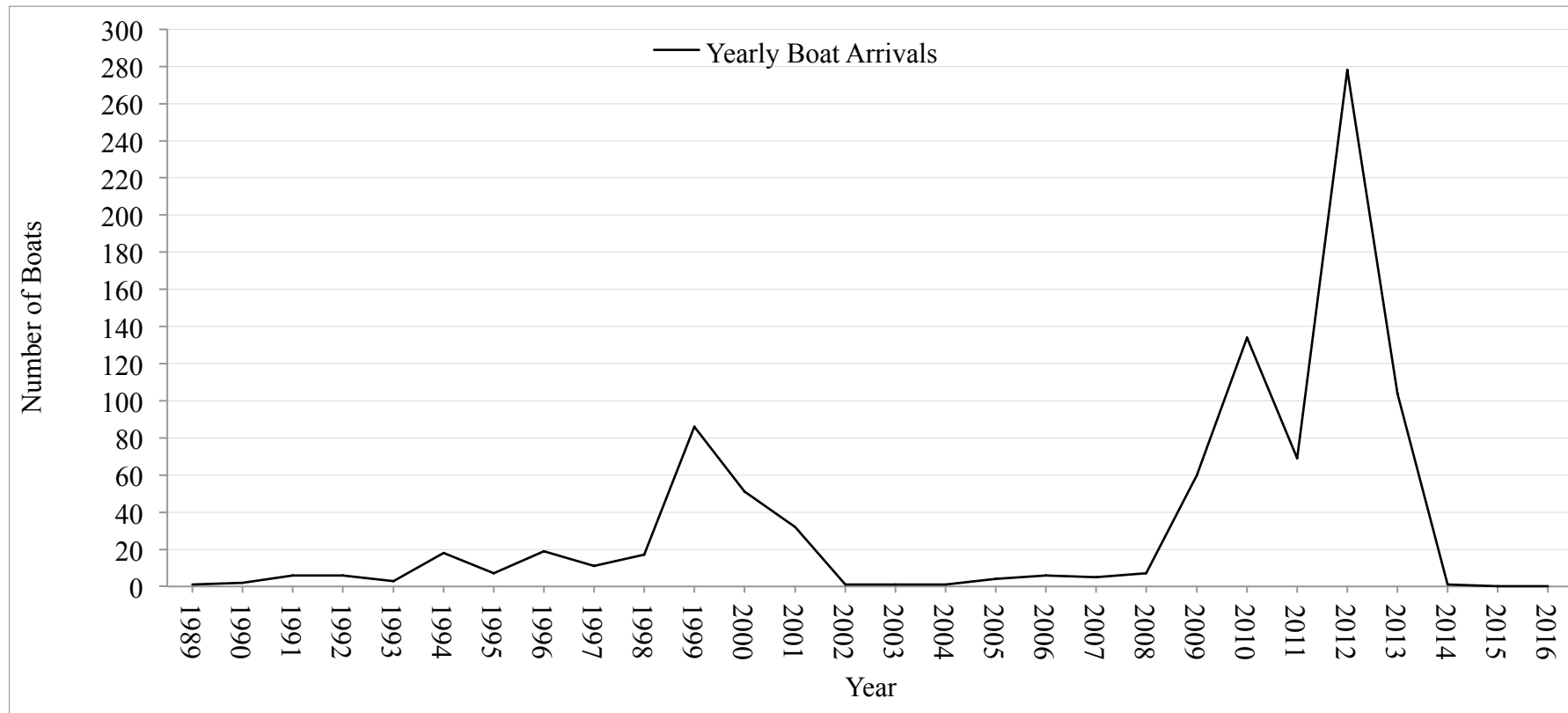
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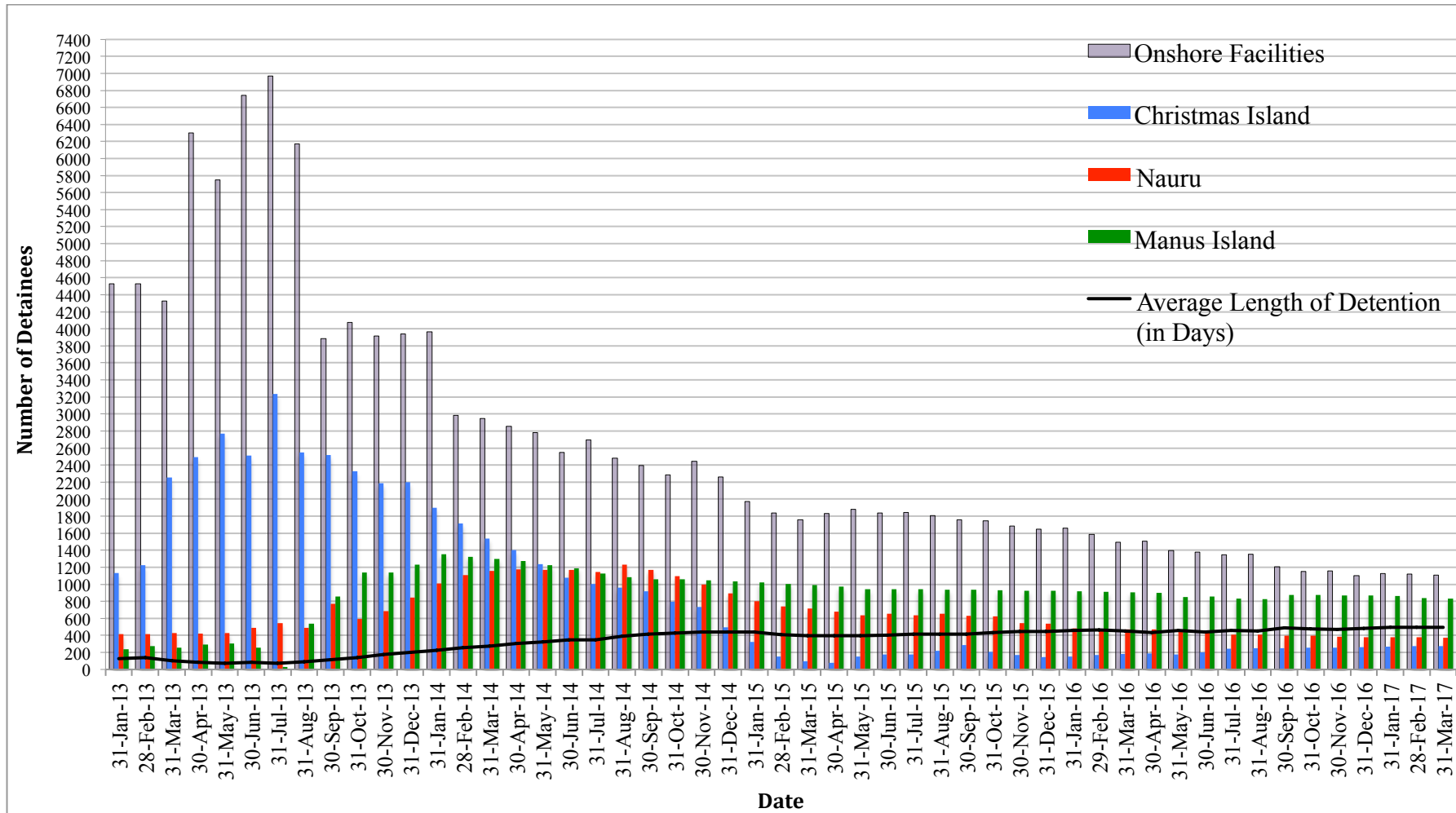
APPENDICES

Appendix 1. Waves of Immigration



Source: Prepared by the author on the basis of data collected from The Department of Immigration and Multicultural Affairs (2004).

Appendix 2. Offshore and Mainland IDC Populations and Overall Length of Detention



Source: Prepared by the author on the basis of data collected from The Department of Immigration and Multicultural Affairs webpage