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Abstract

This thesis examines Australia's extensive border anxiety, and why asylum seekers arriving by boat to Australian territory have been framed as a security threat. Since Australia is a migrant nation and has for most of its history as a Federation been receptive to refugees and asylum seekers, it remains unclear why Australia has implemented draconian measures to keep asylum seekers away. The focus in this thesis is in particular placed on the *Tampa* incident in 2001 which marks a crucial response from the then Liberal-Conservative Government under John Howard. By examining the discursive strategies employed by the Howard Government, this thesis shows how the issue of asylum seeking has been securitized. This thesis shows that Australia's construction of asylum seekers as a security threat is intertwined with fears that stem from the nation-building process as initiated during Australia's inception as a Federation. Moreover, the construction of threat is also linked with the Government's own political objectives. The securitization of the asylum seeker issue has crucial consequences for asylum seekers and impedes, among other things, their right to seek international protection.

Introduction

In a borderless world, human mobility is increasingly posing a challenge for developed states in the global North. The increased cross-border flows have changed from East-West to South-North flows, placing substantial pressure on the developed countries in the global North. While consequences of globalization such as the free movement of goods and flows of capital are positively embraced by developed countries, the movement of people constitutes an issue for a number of reasons.¹ For instance, one assumption stemming from this perspective is that migrants disrupt or have a threatening impact on both the national identity and the social cohesion of a given country.² This is because processes of globalization both enable more movements across borders, as well as enable migrants to have greater attachment to their home country which creates, among other things, insecurity for the receiving country as to the political loyalty of migrants.³ Another assumption stems from the political changes in the post-Cold War environment, where non-state actors, rather than states, have come to play an important role in the conceptualization of security issues.⁴

State responses to this change and challenge have been manifest by the imposition of tighter border control and set up of special agencies to deal with so-called 'irregular' migration.⁵ Following the 9/11 attacks, governments have further linked migrants and especially asylum seekers with terrorism, and have imposed harsh border security policies. States go at great lengths to protect their borders as this is often conceived as necessary for the preservation of the state and its capacity to control migration flows.⁶ Conversely, and as argued by Adamson, states are not necessarily losing control over their borders if they experience massive migration flows.⁷ As a consequence of states' increased border control and other measures, coupled with the impacts of globalization, the distinction between voluntary/forced and legal/illegal migration have been blurred and complicated.⁸ Although often clear distinctions are made between voluntary migration and forced migration: volition underpinning voluntary migration and coercion underpinning forced migration, Betts, among others, emphasizes that this distinction is unequal and difficult to establish as both

¹ Devetak (2007)

² Ibid.

³ Adamson (2006) p. 183

⁴ Ibid. p. 190, Devetak (2007)

⁵ Betts (2009)

⁶ Adamson (2006) p. 175-177

⁷ Ibid. p. 175

⁸ Betts (2009)

factors are present within these categories.⁹ The emergence of organized criminal networks is one example of the change in migration routes and flows, and which some migrants sometimes resort to in order to cross borders and seek asylum.¹⁰ The international system is created such that forced migrants i.e. refugees, have a form of safety net by means of different Conventions under international law and international human rights law which can offer them protection, whereas asylum seekers and irregular migrants who also may be fleeing persecution or other form of distress, experience difficulty in being recognized as meeting the standard of being granted this protection.¹¹ Statistics from UNHCR show that the 2013 mid-year number of refugees on a global scale was 11.1 million whereas asylum applications amounted to an estimated 456,000.¹²

The linking of migration with security characterizes both the domestic and foreign policy making on immigration in Australia. In fact, Australia constitutes somewhat of a unique case and can best be characterized as constituting a paradox. On the one hand, Australia is one of the world's largest migrant nations and has been relatively receptive to labor migrants, as well as refugees from both post-Second World War Europe and Asia.¹³ In fact, since Second World War and up until the 2013, Australia has received more than 800, 000 refugees.¹⁴ On the other hand, Australia's history is also saturated with racial anxiety and negative treatment of its Indigenous population and (labor) migrants.¹⁵ Geographically, and unlike many other continents and countries, Australia is also a very isolated country surrounded by sea and as such difficult to reach.

Some scholars have pointed to Australia's geopolitical position as being the overarching reason for Australia's extensive perception of insecurity. For instance, Schwebel claims that Australia has often been considered as being in an "*arc of instability*" because as a prosperous liberal democracy it is surrounded by impoverished or even 'fragile' states such as Papua New Guinea, Indonesia etc.¹⁶ One of the measures for responding to this perceived insecurity is evident in Australia's aid policy which has security issues as its priority instead of sustainable development or humanitarian concerns.¹⁷ Still, governmental efforts of embracing and accepting cultural diversity have been evident by the introduction of 'multiculturalism' in the late 1980s. Also, former

⁹ Betts (2009) p. 4

¹⁰ Ibid. p. 160-161

¹¹ Ibid.

¹² UNHCR (2103a) p. 6-10

¹³ McMaster (2002)

¹⁴ UNHCR (2013d) p. 3

¹⁵ McMaster (2002)

¹⁶ Schwebel, (2009) 111-113

¹⁷ Ibid.

Minister of Foreign Affairs Gareth Evans, has voiced the famous statement that “*Australia interests*” are, among other, “*being, and being seen to be, a good international citizen*”.¹⁸ In spite of this glorious objective, there has been an upsurge of negative perceptions on immigration which has brought scars to the untarnished image of this liberal democracy.

The discourse on asylum seeking has portrayed asylum seekers as being a security issue and a threat to Australia’s sovereignty, national identity, economy, and ecology.¹⁹ The extent and severity of framing asylum seekers as a security threat is evident not only by Australia’s strict border control measures, but also by its use of detention camps. These detention camps have been placed in deserted areas in Australia far from any civilization. According to Stevens, isolating asylum seekers from the rest of the community can be considered as means of encouraging asylum seekers to leave or not to apply for asylum.²⁰ Australia is the only (liberal democratic) country in the world that uses such means.²¹ Although Australia has the legal right to defend its borders and sovereignty, the policy of detention along with a range of other draconian policies, have by national and international critics been deemed as inconsistent with the international conventions to which Australia is a signatory.²² It is in particular the UN 1951 Convention Relating to the Status of Refugees and its 1967 Protocol that Australia has been breaching along with Human Rights standards.

Despite the heavy pressure and criticism, Australian governments from both sides of the political spectrum have continued to keep the detention camps as part of their immigration policy. As Gibney notes, Australia is “*the most unwelcoming country towards asylum seekers in the Western world*.”²³ The number of refugees and asylum seekers arriving to Australia is relatively small. Statistics from UNHCR estimate that on a global scale the number of asylum seekers in 2013 has been 612,700 whereof 24,300 had lodged an application in Australia.²⁴ Although UNHCR highlights an increase in applications of 54% from 2012, this number is still significantly low compared to the trends elsewhere, and most notably in Europe.²⁵ The increase in these numbers can be argued as being the result of destabilizing political situations in different regions, rather than due to ‘weak’ borders or the attractiveness of social welfare benefits in any of these countries. The

¹⁸ Evans (2001) cited in Gibney (2004) p. 166

¹⁹ Watson (2009) p. 142

²⁰ Stevens (2002) p. 881

²¹ Watson (2009) p. 79

²² Gelber & McDonald (2006)

²³ Gibney (2004) p. 167

²⁴ UNHCR (2013b) p. 8 – this number only reflects the number of those who actually succeed in reaching Australian territory and being able to apply for asylum. Also, these numbers are only indicative as they are based on applications from 44 selected industrialized countries.

²⁵ Ibid.

UNHCR also estimates that the industrialized countries that receive the majority of the world's asylum seekers are, Germany, France, Sweden, the US and Turkey.²⁶ Thus, the risk of Australia being overwhelmed by massive flows of asylum seekers is, based on these facts, currently very low. On the backdrop of these facts and the paradoxical nature of Australia's immigration practices, it is not readily apparent why Australia would frame asylum seekers as a threat. Hence, the research question that is posed for this thesis is:

RQ: Why have asylum seekers been framed as a security threat in Australia?

In posing this question I have chosen to focus this research on a specific time frame. The justification of this choice lies in the fact that the issue of asylum seekers has rarely been static in Australia, and has to some extent escalated towards the new century. The period of 1996-2007, which was the term of Prime Minister John Howard and the Liberal-Conservative government, is imperative to the issue of asylum seeking in Australia. Specifically, in 2001 the *Tampa* 'crisis'²⁷ occurred and marked a point where, as Michael Wesley stresses it, Australia went "*from engagement and openness to watchfulness and security.*"²⁸ Also, as Gibney puts it, the case of "*Australia is remarkable because so few asylum seekers were need to provoke a 'crisis.'*"²⁹ Besides drastically changing Australia's response to asylum seekers, the *Tampa* incident also marks a very contentious legal response from the Australian government. Thus, the *Tampa* incident constitutes a case which in many aspects is fruitful for examining why asylum seekers have been framed as a threat. Since the *Tampa* incident is extensive and to some extent initiated the controversial policy changes, more focus will be placed on this specific incident than on the numerous other solutions and (regional) agreements that the Australian Government put in place in the period 1996-2007.

²⁶ UNHCR (2013b) p. 9

²⁷ Henceforth referred to as incident. I choose not to use the term 'crisis' as it is a construct that supports the framing of asylum seekers as a threat.

²⁸ Wesley (2002) cited in McDonald (2005) p. 297

²⁹ Gibney (2004) p. 193

Approach and Framework

In conducting and guiding this research I have chosen to apply a framework that draws on- and combines different elements of discourse analytical approaches as derived from Laclau and Mouffe's discourse theory and Fairclough's Critical Discourse Analysis. Specifically, in this thesis I depart from the perspective that 'discourse' is "*a particular way of talking about and understanding the world (or an aspect of the world)*", where language use has an important role in the discursive construction of the world and the knowledge, identities, and social relations embedded within it.³⁰ Here, a dialectical relationship exists as language use not only frames the social world but is also largely influenced by the social world itself.³¹ Moreover, language use is also considered as being linked to issues of power as it can serve as means for certain societal groups to alter existing power relations, and to privilege certain groups over others.³²

Since these approaches emanate from social constructionism where our understanding of the world and the knowledge it produces are considered as created socially and discursively, these are critical to the perception that social practices and knowledge are static phenomena which cannot be changed or perceived differently.³³ Therefore, when examining the different constructions of the issue of asylum seekers in Australia it is possible to gain an understanding of how a taken for granted understanding of the social world is constructed both through language use and social action, and what implications these constructions have for the framing of the issue and the solutions employed.³⁴

In further supporting the examination of asylum seeking in Australia, Laclau and Mouffe's theoretical insight into identity and group formation will be used as it is a pivotal tool for explaining the different identity constructions that are identified in the different sources used. The material and sources utilized in this thesis are secondary sources. Specifically, I use books, articles, governmental reports, visual images from newspapers and articles, and transcripts of speeches from the various politicians implicated in the issue of asylum seeking in 1996-2007. Although these sources are fruitful for examining this issue, some sources present asylum seekers in problematic ways which already at this point need to be clarified. It is in particular in the governmental reports that labels such as 'boat people', 'illegal immigrants', 'unauthorized arrivals', and 'unlawful

³⁰ Jørgensen & Phillips (2002) p. 1-5

³¹ Ibid., p. 61

³² Ibid., p. 63

³³ Ibid., p. 5-6, 155

³⁴ Ibid., p. 145

citizens' are used to describe individuals who are arriving to Australia through unconventional channels, such as boats, and who for the most part are seeking international protection. Although these are solely descriptive labels, the use of these already indicates that negative perceptions of asylum seekers have been naturalized. In order to refrain from engaging myself in reproducing these taken for granted labels, it is very challenging to find a neutral label that can be used to designate these individuals. On the other hand, the previous introduction and research question of this thesis already designates these individuals as asylum seekers, which also is a categorization which implies a certain analytical standpoint. Still, to use the words of Jørgensen and Phillips, "*it is impossible to make all taken-for-granted understandings explicit and one cannot avoid introducing new taken-for-granted understandings*".³⁵ Having acknowledged that the numerous labels found in especially the governmental reports are problematic, they will be used in the first chapter in a context where they are necessary for describing the circumstances of certain governmental policies, but may also appear in other chapters for explanatory reasons. Throughout the remaining chapters, the term 'asylum seeker' will, however, be used.

The structure of this thesis is such that in Chapter 1 a general and historical overview over Australia's migration history and immigration policies is provided. In Chapter 2, the focus is on the *Tampa* incident and the construction of threat. Chapter 3 discusses Australia's response to the *Tampa* incident from a legal perspective. In Chapter 4 the discursive construction of identity is examined and in Chapter 5 the resistance to these identity constructions is discussed along with Australia's detention policy. Chapter 6 looks at the 2001 election, and the role that the asylum seeker issue (as presented through the *Tampa* incident) has played for the election and public opinion in general. Finally, Chapter 7 provides concluding remarks for the thesis.

³⁵ Jørgensen & Phillips (2002) p. 209

1. Australia's Migration History and The Issue of Asylum Seeking Pre-2001

Prior to examining the asylum seeker issue during the Howard government's term between 1996-2007, the following will first focus on the historical context of migration in Australia, as to give an overview of how and why the way was paved for the formulation of the draconian 'solutions' and policies during Howard's term. Moreover, the international refugee regime and the obligations it has established for states will also be addressed as to provide a legal perspective into asylum seeking and refugee protection.

1.1 The First Settlers and the First Influxes of Migrants

Historically, Australia is a settler society. During its time as a British colony in the eighteenth century, Australia received significant numbers of Anglo-Saxon migrants whereof most were convicts, and who also arrived by boats.³⁶ As Mary Crock explains; *"The Indigenous inhabitants had everything to fear from the first White settlers who came in their tall ships. For the convicts and gaolers on board those ships, the ancient land, its animals and its peoples were forbiddingly strange. The sense of cultural isolation of those settlers remained and grew as the colonies expanded, fostering a defensiveness that made immigration control a legislative priority"*.³⁷ In spite of the colonists' legislative policies of keeping (especially Asian) migrants from coming to Australia, such as through the 'Act to Make Provision for Certain Immigrants' in 1855, Australia experienced in the following decades an influx of both German refugees fleeing persecution and Chinese migrants who were needed for labor in the goldfields.³⁸ The presence and continued arrivals of Asian populations contributed to riots between European and Asian migrants which increased the colonists' fears that Australia could not be multicultural, and that Australia instead should be predominantly 'white'.³⁹ As a consequence, the Federation's 1901 Immigration Restriction Act including the White Australia Policy was created as an attempt in preventing Asian populations in entering and settling in Australia, but also to enable Australia in building a nation that was racially homogenic.⁴⁰ After the Second World War, Australia needed to sustain its population and to achieve economic development, which eventually led to the formal abolishment of the White Australia Policy in the

³⁶ Crock (2010) p. 2

³⁷ Ibid., p. 2

³⁸ McMaster (2002) p. 281, Crock (2010) p. 2

³⁹ Ibid., p. 281

⁴⁰ Devetak (2007)

1970s, enabling Asian migration and also leading to the introduction of ‘multiculturalism’.⁴¹ Evidently, fear of the ‘other’ has been one of the defining features of the creation of the Australian nation.⁴² In spite of this racial anxiety and fear, Australia has also positioned itself as a country which values multiculturalism and humanitarianism.

1.2 Australia’s Role in The International Refugee Regime

Australia’s commitment to the international refugee regime and burden sharing is evident by its support to United Nations High Commissioner for Refugees’ (UNHCR) commitment to achieve “*voluntary repatriation, local integration and resettlement*”.⁴³ The UNHCR is the main global organization that is responsible for refugees under the international refugee regime. The first steps towards fully establishing the international refugee regime took place with the creation of the League of Nations High Commissioner for Refugees (LNHCR) in 1921, where the “*Nansen Passports*” served as means of legitimizing refugees’ movements across borders.⁴⁴ Since the world at this time was divided between the West and the Soviet bloc, the establishment of the subsequent agencies for the administration of refugees, including the United Nations Relief and Rehabilitation Agency (UNRRA) and the International Refugee Organization (IRO), marked the power relations between these two sides. According to Watson, the Soviet disapproved and even contributed to the end of both the UNNRA and IRO as they considered these agencies to be established and working according to Western (mainly US) interests.⁴⁵

Following the mass population displacements in post- Second World War Europe, the establishment of what today is recognized as the international refugee regime was created. Accordingly, the United Nations, with the support of the Western powers, set up an agency for the administration and control of refugees: UNHCR.⁴⁶ With the creation of UNHCR followed also the legal construction and adoption of the definition of a refugee. Not only did the definition of a refugee delineate legal rights and protection for refugees, but it further reinforced the power struggle between the Western ideology of liberalism and the Soviet ideology of communism.⁴⁷ Specifically, it has been argued that the values and rights enshrined in the definition are civil and

⁴¹ McMaster (2002) p. 283

⁴² Crock (2010) p. 2

⁴³ UNHCR (2013c) p. 2

⁴⁴ Betts (2009) p. 37

⁴⁵ Watson (2009) p. 36

⁴⁶ Betts (2009) p. 37-38

⁴⁷ Watson (2009) p. 36

political and thus consistent with Western liberal individualism.⁴⁸ This has in turn served as means by which the Soviet could be degraded and the West could promote its ideology of democracy and freedom of movement.⁴⁹

1.3 The UN Conventions and Australia's Legal Obligations

The 1951 UN Convention Relating to the Status of Refugees and its 1967 Protocol are instruments of international human rights law.⁵⁰ The 1951 Convention and its 1967 Protocol 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; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events is unable or, owing to such fear, is unwilling to return to it.”*⁵¹ The term ‘asylum-seeker’, on the other hand, refers to an individual who has sought international protection and claims to be a refugee, but whose refugee status has not been determined.⁵² Nevertheless, the international refugee regime is important as it affords refugees certain rights and stipulates obligations for the receiving states.

As one of the first countries that has signed the 1951 Convention and its 1967 Protocol, Australia is obliged to offer the protection outlined by the Convention.⁵³ Now, since asylum seekers are not legally recognized as refugees, the 1951 Convention has, as argued by Watson, been considered as mainly applying to refugees only.⁵⁴ This, then, restricts the obligations owed to asylum seekers. Still, it is acknowledged that until asylum seekers have proved that they are refugees, and until the receiving state can prove that they are not, the receiving state is expected to treat asylum seekers in accordance with the standards laid out in the 1951 Convention.⁵⁵ One of the most important obligations for the receiving state is the principle of *non-refoulement* as outlined in Article 33 wherein it is recognized that: *“No contracting state shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or*

⁴⁸ Nyers (2006) p. 49-50

⁴⁹ Watson (2009) p. 36

⁵⁰ Malkki (1995) p. 500

⁵¹ UNHCR (1951) Convention and 1967 Protocol Relating to the Status of Refugees, Article 1

⁵² UNHCR (2013d)

⁵³ Gibney (2004) p. 177

⁵⁴ Watson (2009) p. 45-46

⁵⁵ Ibid., p. 46

political opinion."⁵⁶ Although this principle aims to prevent the receiving state from sending the asylum seeker back to the country from which they have fled, it is argued that states sometimes bend this principle by implementing certain strategies which may result in indirect *refoulement*.⁵⁷ For asylum seekers to prove that they are refugees and thereby deserving of the protection and rights laid out in the 1951 Convention, it is necessary for them to have access to the judicial system. This norm is established in Article 16 in the 1951 Convention where it is acknowledged that "*a refugee shall have free access to the courts of law on the territory of all Contracting States*" and that "*a refugee shall enjoy (...) the same treatment as a national in matters of pertaining to access to the Courts including legal assistance*".⁵⁸ As will become evident in the following sections, these two norms have been subject to different interpretations by the Australian government(s).

An important aspect within this is also that with the setting up of the international refugee regime the notion of the "*refugee-producing state*" and the "*refugee-protecting state*" was constructed.⁵⁹ This binary emerged out of the Cold War relations between the West and the Soviet, where the Western countries largely considered themselves as "*refugee-protecting*" casting the Soviet bloc as "*refugee-producing*".⁶⁰ These distinctions have also meant that the countries of first asylum, that is the countries which the asylum seeker first reaches, have usually been countries which are geographically close to the refugee producing country, thus lessening the burden from the Western liberal countries.⁶¹ Therefore, Western liberal countries have usually had the role of being a "*resettlement country*" which means that they have assisted UNHCR with refugee protection by receiving refugees from countries of first asylum through certain programs.⁶² In this regard, Watson emphasizes that resettlement countries have taken this role as to show that they are "*humanitarians and good international citizens*".⁶³ As was mentioned earlier, Australia strived to fulfill the latter, i.e. to become a 'good international citizen'. Since 1977, Australia has been a country of resettlement by means of its Humanitarian Program which includes on-shore protection and off-shore resettlement.⁶⁴ Under the on-shore protection, individuals who are in Australia and are seeking asylum can obtain a protection visa insofar they are found as being in need of protection,

⁵⁶ UNHCR (1951) Convention and 1967 Protocol Relating to the Status of Refugees, Article 33

⁵⁷ Watson (2009) p. 47-48

⁵⁸ UNHCR (1951) Convention and 1967 Protocol Relating to the Status of Refugees, Article 16

⁵⁹ Watson (2009) p. 37

⁶⁰ Ibid.

⁶¹ Watson (2009) p. 43

⁶² Ibid.

⁶³ Ibid.

⁶⁴ UNHCR (2013c) p. 2

while the off-shore resettlement programme is intended to assist refugees who are outside of Australia.⁶⁵ Through this programme 12,000 places are allocated for off-shore resettlement.⁶⁶

The Humanitarian Program works as a control system for Australia, as it helps to “*prevent disorderly and unpredictable arrivals*”.⁶⁷ In this regard, Stevens notes that the Humanitarian Program has also worked as a ‘queue’ for granting protection, and the fact that many asylum seekers circumvent this ‘queue’ and seek protection via the on-shore process, has been considered as constituting a problem for Australia.⁶⁸ It is also important to note that on a global scale, Australia receives less refugees and asylum-seekers than other (resettlement) countries. For instance, annual arrivals of this category amount up to 500,000 in the United States and 61,000 in Italy.⁶⁹ Although Australia considers these arrivals as a substantial issue and burden, Phillips and Spinks point out that the world’s poorest countries such as Pakistan and Iran have the heaviest burden and the largest number of refugees and asylum-seekers.⁷⁰ Equally, Australia’s resettlement quote is very low compared to other resettlement nations such as the United States which resettled 52,900 in 2004.⁷¹

1.4 ‘Boat Arrivals’ pre-2001 and The Introduction of Mandatory Detention

In the aftermath of the Vietnam War, Australia experienced large influxes of Vietnam War refugees. Among these Vietnamese arrivals were also some 2000 persons who had arrived by boat, hence the coining of the widely used term ‘boat people’.⁷² Thus, Australia became for a short period a country of first asylum. While these Vietnamese were considered as ‘genuine’ refugees and welcomed with sympathy, subsequent arrival of some 56 Indo-Chinese boat people were deemed as ‘illegal’ leading the governing elites to focus on the protection of state borders.⁷³ The reason why the arrival of the Indo-Chinese garnered attention was not only because of their mode of entry, but also the fact that they had spent approximately two weeks on the northwest coast of Australia

⁶⁵ UNHCR (2013c) p. 3

⁶⁶ Ibid.

⁶⁷ Stevens (2002) p. 865

⁶⁸ Ibid., p. 864-865

⁶⁹ Phillips & Spinks (2013b) p. 4

⁷⁰ Ibid.

⁷¹ Watson (2009) p. 44

⁷² Stevens (2002) p. 871

⁷³ Watson (2009) p. 81-82, Phillips & Spinks (2013a) p. 2

without being detected.⁷⁴ Also, in this context, the apparent perception of ‘illegal’ stems from the norm already established by the Humanitarian Program. As Stevens explains:

*“Visas for refugees and other program entrants are only issued for people arriving under the off-shore selection and resettlement program. There is no visa category for people whose stated primary aim in coming to this country is to claim refugee status. By entering the state illegally, asylum seekers become illegal or unauthorized arrivals, along with others who try to improve their situations by circumventing the visa entry system. They are therefore seen as a threat to sovereignty, for they undermine the integrity and control of the state’s borders and challenge the right of the state to determine who shall enter the country”.*⁷⁵

Further to this, Australia was eager to maintain its identity and status as a resettlement country, which led to the brokering of several agreements with Indonesia and Malaysia. This resulted in Australia’s acceptance of thousands of Vietnamese refugees who later could be resettled.⁷⁶ In response to these arrivals the policy of detention also came into use. According to McMaster, the policy of detention was already stipulated in the White Australian Policy and later in the Migration Act 1958.⁷⁷ Up until the 1970s, detention of these ‘unauthorized arrivals’ were handled under the *“turnaround provision”* whereby individuals who arrive to Australia without a visa were to be detained for a short period before being sent back with the carrier that had brought them to Australia.⁷⁸ With the arrival of the Indo-Chinese migrants who also arrived by boat, Australia set up three detention centers in the major cities of Perth, Melbourne and Sydney where these individuals would be detained until their case was being processed.⁷⁹

The introduction of mandatory detention was, however, implemented in 1992 when the Keating (Labor) government passed the Migration Amendment Act. 1992.⁸⁰ The intention with mandatory detention was to ensure that all ‘unauthorized arrivals’ including visa overstayers as well as asylum-seekers arriving by boat would be detained until their status is processed, that is, *“until they have satisfactorily completed health, character, and security checks and been granted a visa”*.⁸¹ Phillips and Spinks cite the then Minister for Immigration Gerry Hand for justifying mandatory detention by stating that *“The Government is determined that a clear signal be sent that*

⁷⁴ Watson (2009) p. 83-85

⁷⁵ Stevens (2002) p. 865

⁷⁶ Ibid., p. 871

⁷⁷ McMaster (2002) p. 283-284

⁷⁸ Watson (2009) p. 80-81

⁷⁹ Phillips & Spinks (2013a) p. 5

⁸⁰ Ibid., p. 5

⁸¹ Ibid., p. 7

migration to Australia may not be achieved by simply arriving in the country and expecting to be allowed into the community....".⁸² Statistics show that by June 1992 some 478 detainees, whereof 421 arrived by boat, were held in the numerous detentions centers across Australia.⁸³ Detention of these arrivals was set for 230 days, but in some cases extended for a longer period of time.⁸⁴

A noteworthy point in this regard is that the mode of entry to Australia had crucial importance for the treatment and detention of these individuals. This has been evident by, for instance, the introduction of the bridging visa through the Migration Reform Act 1992 (which became effective in 1994). Immigration Minister Hand specified the circumstances for acquiring a bridging visa by stating that: *"Unlawful non-citizens who satisfy prescribed criteria will be able to acquire lawful status and release from detention by the grant of a bridging visa. Bridging visas will not be available to people who arrive in Australia without authority.(...)"*⁸⁵ However, since asylum seekers usually arrive without authorization and without a visa, it means that the bridging visa did not apply to them.⁸⁶ According to Phillips and Spinks this decision has been justified by the fact that asylum seekers have been considered as circumventing the perceived 'queue' in the off-shore resettlement process whereas visa overstayers had followed the 'rules'.⁸⁷ Thus, the norm established by the Humanitarian Program served as the standard measure against which 'unauthorized arrivals' were being understood. In 1999 the Howard government introduced the Temporary Protection Visa (TPV), which enabled asylum seekers whose refugee status had been determined, to obtain temporary protection for three years and thereby release from detention.⁸⁸ Besides the protection offered, TPV holders were not afforded equal access to certain governmental services as refugees on permanent protection or those who were arriving through the off-shore process.⁸⁹

Since 1992, Australia has continued to make use of the mandatory detention and over the years both the number of detention centers and detainees has risen. Statistics show that in 1994-1995 there were 1176 detainees in detention of whom 1096 were boat arrivals, and by the end of the century this number had risen to 7477 whereof 4185 were boat arrivals.⁹⁰ The 'new' detention centers in Curtin in Western Australia and Woomera in South Australia have not only been created

⁸² Hand (1992) cited in Phillips & Spinks (2013a) p. 6

⁸³ Phillips & Spinks (2013a) p. 4-5

⁸⁴ Stevens (2002) p. 878

⁸⁵ Hand (1992) in Phillips & Spinks (2013a) p. 7

⁸⁶ Phillips & Spinks (2013a) p. 6-7, Stevens (2002) p. 880

⁸⁷ Phillips & Spinks (2013a) p. 7, this point will be brought up for discussion in a chapter later on.

⁸⁸ Stevens (2002) p. 884

⁸⁹ Phillips & Spinks (2013a) p. 9

⁹⁰ Ibid., p. 40-41

in some of the most isolated areas, but they have also been established in former military bases where the detainees are living under harsh physical conditions with no access to the surrounding communities.⁹¹

The previous sections have testified to the fact that the 1980s boat arrivals has turned asylum seekers into a very sensitive and complex issue for Australian Governments, and has led to an increased awareness of the need to focus on border protection. It has also become clear that the international community has created a regime for the provision of protection for refugees wherein certain obligations exists for receiving countries. Yet, the issue of asylum seekers reached a high peak in both the media and the government response in 2001 when the *Tampa* incident occurred. As mentioned earlier, this incident marks a very important shift in Australia's treatment and policy-making on asylum seeking. In order to grasp how and why such responses would be invoked, it is essential to take a closer look at the concept of securitization along with the exceptional measures that Howard chose to implement.

2. The *Tampa* Incident and Securitization

2.1 Conceptualizing Securitization

The traditional view on security stems from the realist perspective where the national-security of the state is pivotal to the state's existence.⁹² From this statist perspective the referent object is the state whose security should be protected from outside military aggressors with all means possible. With the changing global political environment, the notion of security has been expanded and has come to include Human Security. The Human Security approach acknowledges that non-military threats exist, and that these are most often directed toward populations rather than the state, thus making individuals the referent object.⁹³ Closely related to Human Security, and in opposition to the orthodox view, is the Critical Security Studies where security has further been expanded as to include different sectors including the military, environmental, economic, societal and political sector⁹⁴. Here, the approach of the Copenhagen School is pivotal as it examines the social construction of security and threats.⁹⁵ An important aspect within the Copenhagen School is also

⁹¹ Stevens (2002) p. 881

⁹² Betts (2009) p. 61

⁹³ Ibid., p. 66-67

⁹⁴ Buzan, Wæver & de Wilde (1998)

⁹⁵ Betts (2009) p. 70

that societal security takes its referent object to be collective identities- these especially being nations and cultural identities.⁹⁶ Threats to these collective identities, it is claimed, are constructed around binaries placing one social group against another.⁹⁷ In other words, this leads to the creation of ‘us’ and ‘them’. This is also where the notion of ‘securitization’ comes in.

The process of securitization refers to the framing of an issue as an existential threat that requires exceptional measures and urgent political priority.⁹⁸ This framing is presented by a governing elite and is enabled through a ‘speech act’ whereby the issue is identified and accepted by a relevant and important audience.⁹⁹ Securitization embodies not only a political act but also a discursive act. The ‘speech act’ does not necessarily involve the uttering of ‘security’ but includes also the use of certain symbols or metaphorical language whereby something is labelled as a threat.¹⁰⁰ As Buzan et. al. point out: “‘Security’ is a self-referential practice, because it is in this practice that the issue becomes a security issue- not necessarily because a real existential threat exists but because the issue is presented as such a threat”.¹⁰¹ In this process, the acceptance by- and persuasion of- the audience serves as means of legitimating the securitization move and can also serve as a measure of success. Although Watson notes that the success of securitization is not simple and can be placed on a continuum of success and failure.¹⁰² Watson also argues that Buzan et. al. have difficulty in specifying who the audience in the securitization process is, and Watson suggests that the audience for securitization should be found through an analysis of “the institutional structures and the discursive practices that produce “relevant” audiences in the first place”.¹⁰³ Thus, Watson suggests that securitization does not necessarily have to be initiated by governing elites but can also include the media, the political opposition and the judiciary, as these three actors often can bring more public attention to the issue, and they too can legitimize the securitization move or oppose it.¹⁰⁴ Besides the identification of an existential threat and the audience’s acceptance of it, successful securitization, it is argued, is intertwined with the implementation of the measures that address the threat.¹⁰⁵ When a given threat is recurrent,

⁹⁶ Buzan, Wæver & de Wilde (1998) p. 119-120

⁹⁷ Betts (2009) p. 71

⁹⁸ Buzan, Wæver & de Wilde (1998) p. 24

⁹⁹ Ibid., p. 26-27

¹⁰⁰ Ibid.

¹⁰¹ Ibid., p. 24

¹⁰² Watson (2009) p. 25

¹⁰³ Ibid., p. 19-21

¹⁰⁴ Ibid., p. 21-23

¹⁰⁵ Ibid., p. 26

securitization can become institutionalized by means of, for instance, military establishment.¹⁰⁶ If an issue, on the other hand, is under way or appears to become an existential threat, then securitization can be on an ad hoc level by means of establishing new institutions to deal with the threat.¹⁰⁷ Whether securitization is institutionalized or ad hoc it “*produces real political effects by violating normal practices within and between units*”.¹⁰⁸ What should be understood by this phrase is that securitization enables the governing elite to make decisions and initiate actions which otherwise would not be possible or legitimate, while also changing the relationship between units. The following excerpt from Watson illustrates this clearly:

“In the case of state interaction, securitization would involve a rejection of international, multi- or bilateral rules, norms and laws that normally govern state-state relations, with the threatened state claiming the right to rely on its own resources (military power, economic advantage) and its own priorities (national security)”.¹⁰⁹ Thus, successful securitization is when the governing elite makes a securitizing claim which is accepted by the targeted audience without further need for legitimation of the securitizing actor’s actions, and when the implementation of emergency measures alters the relationship between the units in question.¹¹⁰

2.2 The *Tampa* Incident: Constructing Asylum-Seekers as a ‘Threat’

The Howard Government’s powerful use of language in relation to the *Tampa* incident, and the Government’s construction of security have great implications for how the Government chose to deal with the issue, and how the issue became a central point of concern for the Australian society. As will become clear in the following, the Howard Government’s response to the *Tampa* incident fits well into the securitization framework. In August 2001, a sinking Indonesian boat with 430 Asian asylum-seekers¹¹¹ onboard was rescued by a Norwegian freighter ‘MV *Tampa*’.¹¹² While the nearest port of embarkation was in Indonesia, the *Tampa* decided upon the demand of the asylum-seekers to continue to the Australian territory of Christmas Island.¹¹³ Alerted by the situation, Prime Minister Howard denied the *Tampa* access to Australian territory, and claimed that “*We are not*

¹⁰⁶ Buzan, Wæver & de Wilde (1998) p. 27-28

¹⁰⁷ Ibid.

¹⁰⁸ Watson (2009) p. 27

¹⁰⁹ Ibid.

¹¹⁰ Ibid., p. 29-32

¹¹¹ These asylum seekers were from Afghanistan, Iraq, Pakistan and Sri Lanka

¹¹² Devetak (2007)

¹¹³ Watson (2009) p. 99 - 100

closing our doors to genuine refugees but we are saying we are unwilling to take people who are queue jumping. We are unwilling to have the integrity of our border controls compromised. (...)We're arguing for the right that any country has to decide who comes here and the circumstances in which they will come.”¹¹⁴ In another interview Howard proclaimed that: “Our position remains that we do not have a legal obligation to take these people (...) the ship does not have our permission to enter Australian waters (...) Every country has the right to refuse entry to the vessel of another country of course. It's fundamental to a nation's sovereignty, a nation's control of its borders”.¹¹⁵ Clearly, these asylum seekers were, then, considered as being a threat to Australia's sovereignty/national security.

Although Australia had experienced continuous boat arrivals since 1992, the *Tampa* incident was perceived as a problem of a larger dimension than previous arrivals. As noted earlier, Australia had experienced that their borders were becoming porous and needed to be controlled as there was a sense of invasion looming in the horizon. This understanding was apparent when Howard proclaimed that Australia would “draw a line on what is increasingly becoming an uncontrollable number of illegal arrivals (...)”.¹¹⁶ Thus, the *Tampa* was considered as an urgency that required exceptional measures. As Howard's previous statement indicates, allowing the *Tampa* to disembark the asylum seekers on Australian territory would respond to Australia showing that it was an “easy target”.¹¹⁷ What is more, the numerous detention centers had also reached their maximum capacity which meant that placing these asylum seekers in these centers was not a viable option for the Government.¹¹⁸ Initially, Howard attempted to ‘solve’ the issue through diplomatic negotiations with Indonesia. Since the Indonesian port of Merak was the nearest port of embarkation for the *Tampa*, Howard considered it to be Indonesia's ‘responsibility’ to accept the 430 asylum seekers, and because the vessel was Norwegian, Howard considered the issue altogether to be resolved between the governments of Norway and Indonesia.¹¹⁹ Howard even went as far as claiming that “We will also in our communications with the Indonesian Government indicate our willingness to provide our financial assistance to that Government to receive back the people in question”.¹²⁰

¹¹⁴ Howard (2001) Allan Jones Interview, Radio 2UE, 30 August 2001

¹¹⁵ Howard (2001) Jeremy Cordeaux Interview, Radio 5DN, August 29 2001

¹¹⁶ Howard (2001) Radio 3AW Interview, August 31 2001

¹¹⁷ Howard (2001) Allan Jones Interview, Radio 2UE, 30 August 2001

¹¹⁸ Watson (2009) p. 100

¹¹⁹ Howard (2001) Joint Press Conference with Minister for Immigration the Hon Phillip Ruddock, Parliament House, Canberra August 27, 2001

¹²⁰ Howard (2001) Joint Press Conference with Minister for Immigration the Hon Phillip Ruddock, Parliament House, Canberra August 27, 2001

Thus, there was a sense of “*moral panic*” and desperation from Australia’s side in ensuring that the asylum seekers never reached Australian shore. The notion of “*moral panic*” here is used to understand a socially constructed fear or anxiety which is invoked because of an increased concern that “*an established value system is being threatened*” or that “*a cherished way of life is in jeopardy*.”¹²¹ Stated differently, the asylum seekers onboard the *Tampa* were considered as more than simply a physical threat to Australia’s borders.

Yet the negotiations with Indonesia and Norway broke down leading Howard to take necessary measures to protect Australia’s sovereignty. This stance was clear when Howard stated that “*the government was left with no alternative but to order the chief of Australian Defense to arrange for defense personnel to board and secure the vessel*”.¹²² Subsequently, Howard ordered the Special Air Service (SAS) troops to storm the ship.¹²³ When the SAS troops took control of the ship they took the asylum seekers to third states including Papua New Guinea and Nauru, which, as Watson emphasizes, were not signatories to the 1951 Refugee Convention, and which has substantial implications for these asylum seekers.¹²⁴ According to Watson, the SAS troops also used physical force to ensure that the asylum seekers would leave the *Tampa*, and when the asylum seekers refused to do so, their behavior was portrayed as uncivilized and therefore used to support the perception that they were a threat to Australia’s national identity.¹²⁵ That Howard was willing to show that he would protect Australia’s borders and sovereignty with all means necessary was not only evident in his language use, but also in the responses that followed in the aftermath of the *Tampa* incident. Conversely, by employing language use that indicated that the asylum seekers on board the *Tampa* posed a national security threat enabled Howard (and his government) to address the issue with measures that are designed or intended to alleviate military threats.

¹²¹ Garland (2008) p. 11

¹²² Howard (2001) cited in Watson (2009) p. 101

¹²³ Devetak (2007), Betts (2001)

¹²⁴ Watson (2009) p. 101, Howard (2001) Allan Jones Interview, Radio 2UE, 03 September 2001

¹²⁵ Watson (2009) p. 101 -102

2.3 The Securitization Process; the Government's Response

Following the deployment of military troops, the Howard Government introduced the Border Protection Act 2001 and the Migration Amendment (Excision from Migration Zone) Act 2001 which collectively authorized the Government's use of force towards the asylum seekers, and removed the courts from reviewing any asylum claims or decisions.¹²⁶ In addition to this, the Act also excised the territories of Ashmore Reef, the Keeling and Cocos Islands, and Christmas Island from Australia's 'migration zone', because these islands are usually the first points of entry for 'unauthorized' boat arrivals in Australian territory.¹²⁷ As a consequence of this excision, those arriving by boat without a valid visa on these islands cannot make any legal claims to asylum.¹²⁸ Although this excision appears as if these islands have been removed from Australian territory and thereby legal authority, it has been established that this is not the case. In fact, in a Research Note from the Australian Parliament, Coombs emphasizes that "*Excising territory for the purposes of the operation of the Migration Act does not have the effect of removing areas from Australia's sovereign territory*" and that "*Such excisions have no legal effect upon any other activities such as customs, quarantine or fishing laws*" nor for the legal rights of those who may be residing on these islands.¹²⁹ Thus, the main objective of this excision is to target those who arrive by boats and deny them the legal right to seek protection. These Acts also implemented the naval '*Operation Relex*' which was to ensure that all 'unauthorized arrivals' would be intercepted before approaching Australian territory.¹³⁰ The intercepted asylum seekers would, then, be redirected to Nauru, Papua New Guinea or New Zealand where they would be detained and have their asylum claims processed.¹³¹ This arrangement was formally known as the '*Pacific Solution*', and to ensure its success on the part of these countries, the Australian government significantly increased its aid to both Papua New Guinea and Nauru.¹³² Moreover, this agreement was supported by a Memorandum of Understanding (MoU) between these parties which set the processing of claims for six months, and which also included a clause on *non refoulement*.¹³³ In addition to safeguarding its territory with all means necessary and keeping asylum seekers out, the Howard government also chose to put

¹²⁶ Devetak (2007) p. 105, Watson (2009) p. 103-106

¹²⁷ Coombs (2005) - See Appendix, fig.1 for Map over Excised Territory

¹²⁸ Devetak (2007) p. 105

¹²⁹ Coombs (2005) p. 1

¹³⁰ Watson (2009) p. 102

¹³¹ Phillips & Spinks (2013b) p. 15-17

¹³² Watson (2009) p. 103

¹³³ Kneebone (2006) p. 709-714

a ban on media and detention center's reports on the *Tampa* as well as subsequent boat arrivals.¹³⁴ The significance of this act will be discussed later on.

According to Watson, it was the media that started the securitization process as they in early 2001 were rather active agents in creating a sense of crisis around boat arrivals by using metaphoric language.¹³⁵ Besides influencing and shaping public opinion, the media provided the Labor opposition with the opportunity of accusing the Liberal government of having failed to protect Australian borders.¹³⁶ Hence, when the *Tampa* incident occurred Howard had the opportunity to show that the Liberals were in control of the borders by implementing exceptional means. Since there was an upcoming federal election, the accusations directed at the Liberal party were most likely also part of Labor's election strategy.

The role of the media also appears to have had significant impact on the Labor opposition as they endorsed the government's securitization moves. Watson cites the then leader of the Labor Party Kim Beazley for announcing that "*in these circumstances this country and this parliament do not need a carping Opposition*", which shows that Labor too considered the *Tampa* as an urgent issue and therefore considered it necessary to legitimize the government's decisions.¹³⁷ Yet, there were also political elites within the Labor Party that were divided over the *Tampa* issue, as some were advocating for a humanitarian response.¹³⁸ Another noteworthy point in the legitimization process is the influence the media and the government have had on the public. Specifically, polls conducted by newspapers in Australia suggest strong public support for the government's response to the *Tampa* issue.¹³⁹ Yet, here too there was a division between the media as Watson emphasizes that the national broadsheets such as the *Age* and the *Sydney Morning Herald* were pro a humanitarian response, whereas the tabloid newspapers such as the *Herald Sun* and the *Daily Telegraph* were endorsing the Government's response.¹⁴⁰

As is evident from the above, the Howard government's invocation of an already existing border anxiety, and the need to protect Australia's sovereignty and national identity have enabled the issue of asylum seekers to become securitized. Here four consequences of this construction and strategies of legitimization can be identified. First, the implementation of the *Pacific Solution* constitutes an important legal case where the government has attempted to shift its burden and to

¹³⁴ Watson (2009) p. 103

¹³⁵ Ibid., p. 98

¹³⁶ Ibid., p. 99

¹³⁷ Kim Beazley (2001) cited in Watson (2009) p. 104

¹³⁸ Watson (2009) p. 104-105, This point will be taken up for discussion in a chapter later on

¹³⁹ Ibid., p. 109

¹⁴⁰ Ibid., p. 104-105

avoid legal obligations stipulated by the 1951 Convention as well as different Conventions under international maritime law. Second, Howard has sought to construct and re-construct the identity of these asylum seekers, while also constructing Australia as being a ‘humane’ country, which has further allowed for Australia’s avoidance of legal obligations. Third, Australia’s national imaginary and the use of the policy of ‘multiculturalism’ itself constitute a national issue where different paradoxes exist, and which collectively enable for the fear of foreigners to exist. Lastly, the *Tampa* incident is inevitably an important strategy within the 2001 electoral campaign and has been used to influence public opinion and to win public support for the Liberal party. Collectively these issues provide a deeper insight into the rationale of framing asylum seekers as a threat to Australia’s sovereignty and national identity. In the following chapters, each of these issues are addressed.

3. The *Tampa* Incident and Australia’s Legal Obligations

3.1 The *Tampa* Incident through the Lens of the International Law of the Sea

When Howard blocked the *Tampa* access to Australian waters, Howard was arguing that Australia did not have the “*legal obligation*” to accept the asylum seekers or to let the ship into Australian waters.¹⁴¹ Howard’s argument and decision, however, stands on shaky ground as certain obligations exists for states to assist and rescue ships and lives at risk at sea. These obligations, along with a range of other, are inscribed in the 1974 International Convention for the Safety of Life at Sea (SOLAS), the 1979 Convention on Maritime Search and Rescue (SAR), and the 1982 Convention on the Law of the Sea under the International Maritime Organization (IMO).¹⁴² Norway and Australia are signatories to all of these Conventions.

In legal maritime terminology, the matter of the *Tampa* incident is to be resolved between the flag State, i.e. the state whose flag is on the vessel, and the coastal State.¹⁴³ Since the *Tampa* was flying the Norwegian flag and is owned by a Norwegian shipping company ‘*Wallenius Wilhelmsen*’, Norway holds an obligation as the flag State to render assistance to those in distress on the high seas.¹⁴⁴ Equally, Australia’s position as the coastal State makes it, as laid out by the SOLAS Chapter V, Regulation 15 (a), obliged to assist in rescuing those in distress.¹⁴⁵ Since it was

¹⁴¹ Howard (2001) Jeremy Cordeaux Interview, Radio 5DN, August 29 2001

¹⁴² Pugh (2004) p. 58, Barnes (2004) p. 49

¹⁴³ UN (1982) Convention on the Law of the Sea, Article 91 & Article 98, 1982, Barnes (2004) p. 59

¹⁴⁴ Barnes (2004) p. 59

¹⁴⁵ IMO (1974) International Convention for the Safety of Life at Sea (SOLAS), 1184 UNTS 3

the Australian coast guard authorities that responded to the distress call from *Tampa*'s Captain Arne Rinnan, Australia therefore had the obligation to assist the asylum seekers and not deny them access to Australian territory. Yet, as Pugh and Barnes both argue, there are numerous ambiguities related to these Conventions, as well as discrepancies between international law and Australia's domestic law which create great difficulty in establishing the unlawfulness of the response to the *Tampa*.¹⁴⁶ Among other things, Pugh notes that the notion of 'distress' itself is ambiguous as it can be "*fabricated to 'hitch a life' or used by pirates to lure ships*".¹⁴⁷ Still, because states are supposed to render assistance regardless of the legal status of the passengers in distress, there is an expectation to ensure that the lives of the passengers are not exposed to further danger.

As regards the obligations held by the flag State and stipulated by the SOLAS, Norway and Captain Rinnan fulfilled its duty by rescuing the asylum seekers from the sinking boat.¹⁴⁸ The consequence of this was, then, that because of the physical and medical conditions of the asylum seekers, Captain Rinnan found his own ship as being in distress and therefore needed Australia's assistance to 'disembark' the asylum seekers.¹⁴⁹ This is where another ambiguity surfaces, as international law grants the coastal State substantial power to decide when to allow 'disembarkation', and the definition of 'rescue' stated in the SAR is subject to different interpretations.¹⁵⁰ This is because the definition of 'rescue' as stated in the SAR is "*an operation to retrieve persons in distress, provide for their initial medical or other needs, and deliver them to a place of safety.*"¹⁵¹ According to Pugh, because of the different circumstances which revolve around what constitutes as 'place of safety' it has become a common norm that "*the state of the next port of call after rescue*" has been considered as carrying the responsibility for ensuring the rescue and safety of the distressed.¹⁵² In the case of *Tampa*, Australia has been the "*next port of call*", but as Barnes points out, for Australia the rescue was considered as completed when the *Tampa* picked up the asylum seekers, but since the *Tampa* at that time was still in distress it means that this perception is not consistent with constituting a completed rescue operation.¹⁵³

¹⁴⁶ Pugh (2004) p. 58, Barnes (2004) p. 50

¹⁴⁷ Pugh (2004) p.59

¹⁴⁸ Barnes (2004) p. 52

¹⁴⁹ Pugh (2004) p. 60

¹⁵⁰ Barnes (2004) p. 52-54

¹⁵¹ IMO (1998) Annex 3, Resolution MSC. 70 (69) 1979 International Convention on Maritime Search and Rescue, Chapter 1, Article 1.3.2, p. 2

¹⁵² Pugh (2004) p. 61

¹⁵³ Barnes (2004) p. 54

Immediately after *Tampa's* alert, Howard emphasized that Australia was “ready to fly a helicopter to take doctors and other medical assistance out there and (...) remain ready to provide humanitarian assistance”, which can largely be interpreted as Australia having assisted in rescuing the asylum seekers.¹⁵⁴ However, Australia’s stance changed the day after when Howard claimed that Captain Rinnan had “misrepresented the medical condition of the people on board”, and downplayed the situation of the asylum seekers by noting that the Australian Defence Force Doctor had concluded that there were ‘only’ “four people suffering dehydration, eight or ten with sprains and one with what he calls a soft fracture” and that “There are enough medical supplies to look after them.”¹⁵⁵ Furthermore, because the Australian domestic law on search and rescue is not consistent with international law, Australia decides itself when rescue is completed.¹⁵⁶ Further to this, Barnes points out that the coastal State, as specified by Article 24 in the 1982 Convention, holds a duty of allowing vessels to navigate in its territorial waters.¹⁵⁷ In this Article a non-discriminatory clause is also spelled out. Taking into consideration that the *Tampa* declared itself as being in distress and needed assistance, its presence in Australian waters can be considered as innocent and the *Tampa* therefore had the right to be in Australian waters. Although certain exceptions exists which enable Australia to render *Tampa's* passage as non-innocent, but this again depends on Australia’s notion of what constitutes a threat to its borders.¹⁵⁸ According to Barnes, Australia has bended the rules by both refusing the *Tampa* access to its territory, and by using armed forces to deter the asylum seekers.¹⁵⁹

Thus, it can be argued that Australia’s denial of allowing the *Tampa* to disembark in Australia undermines both the numerous Convention on search and rescue as well as the human rights obligations laid upon both Norway and Australia. It is in particular the obligation of upholding the 1951 Convention’s principle of *non-refoulement* that is central to this discussion. Here, Barnes emphasizes that no regulations exist as to the application of *non-refoulement* for individuals rescued at sea, and that Howard’s refusal of allowing the *Tampa* to disembark on Australian territory is, as such, not a direct breach of *non-refoulement*.¹⁶⁰ Barnes argument is somewhat stretched as he is also taking into consideration Australia’s right to determine what constitutes a threat. On the other hand,

¹⁵⁴ Howard (2001) Jeremy Cordeaux Interview, Radio 5DN, August 29 2001

¹⁵⁵ Howard (2001) Allan Jones Interview, Radio 2UE, 30 August 2001

¹⁵⁶ Barnes (2004) p. 55

¹⁵⁷ UN (1982) Convention on the Law of the Sea, Article 24, Barnes (2004) p. 55-56

¹⁵⁸ Barnes (2004) p. 55

¹⁵⁹ Ibid., p. 55-57

¹⁶⁰ Ibid., p. 62-63

it is acknowledged that Australia's interpretation of the 1951 Convention is limiting.¹⁶¹ For instance, even if the principle of *non-refoulement* is not directly breached, the asylum seekers on the *Tampa* have been directly refused the right to seek asylum by not being granted access to Australia's 'migration zone'. Still, human rights are universal and thus not subject to territorial limitation which means that even if Australia chooses to impose restrictions in the national legislation, then human rights obligations must be respected.

3.2 The *Pacific Solution* and Processing in a 'Safe' Third Country

Australia's agreement with its "*Pacific Friends*"¹⁶² in Nauru and Papua New Guinea constitutes a strategy of shifting the burden on so-called 'safe' third states. The consequences of Australia's sending intercepted asylum seeker for processing in Papua New Guinea and Nauru have had significant impact on refugee protection. According to Kneebone, the notion of 'effective protection' i.e. adhering to the principle of *non-refoulement* along with other provisions set by the 1951 Convention, has become an important subject of discussion in relation to the so-called 'safe' third countries.¹⁶³ This is because states have increasingly attempted to push the burden of asylum seekers and refugees towards these 'safe' third countries that may not have the capacity or environment to provide the necessary protection. Of vital significance to this discussion is the notion and construction of the 'safe' third country itself. Here reference can be made to Watson who argues that Western liberal states have begun to label transit states, that is, states through which asylum-seekers may go through on their way to their destination, as 'safe third countries'.¹⁶⁴ Thus, the 'safe' third country becomes categorized as a '*refugee protecting*' state which in extension means that when asylum-seekers merely pass through a 'safe third country' instead of applying for asylum in that country, their identity as refugee is doubted, and the receiving country can use it to exclude them from the determination process.¹⁶⁵ Therefore, the notion of a 'safe' third country works not only as means of assigning responsibility onto other countries, but also as protective means for the receiving state (in this case Australia) to safeguard itself from bearing the full burden of influxes of asylum seekers.

¹⁶¹ Barnes (2004) p. 65

¹⁶² Howard's own statement when being asked upon the status of the *Tampa* in Howard (2001) Allan Jones Interview, Radio 2UE, 03 September 2001

¹⁶³ Kneebone (2006) p. 699-700

¹⁶⁴ Watson (2009) p. 37-38

¹⁶⁵ Ibid.

In addition to portraying Nauru and Papua Guinea as ‘safe’ third countries, Australia has also considered Indonesia as being a ‘safe’ third country. Now, since Papua New Guinea is only a party to the 1951 Convention and has no refugee legislation contained in its national law, and neither Indonesia or Nauru have ratified the 1951 Convention, grave concerns have been raised as to whether these states have in practice obliged to the principle of *non-refoulement* along with human rights standards.¹⁶⁶ As regards Indonesia, Kneebone claims that Australia’s insistence on Indonesia being a ‘safe’ country is questionable as evidence exists that suggests the opposite.¹⁶⁷

In the light of the above and on the basis of the protection offered under the *Pacific solution*, it appears that there has been instances of “*direct, indirect and constructive refoulement*” in relation to the status and determination process of the 1,550 asylum seekers which since the arrival of the *Tampa* and as of early 2002 had been transferred to Nauru and Papua New Guinea.¹⁶⁸ According to Kneebone, *indirect refoulement* had occurred when Australia sent intercepted asylum seekers to Indonesia, which as the above indicates is not a ‘safe’ third country and is therefore severely constrained in providing sufficient protection.¹⁶⁹ Not only is this *indirect refoulement*, but sending asylum seekers to Indonesia without having their asylum claims assessed first is a form of penalty and is contrary to Article 31 in the 1951 Convention.¹⁷⁰ The fact that ‘effective’ protection was not offered to asylum seekers in the processing centers in Nauru and Papua New Guinea, and that *direct* and *constructive refoulement* had occurred, emanates partly from the complex rules that the Migration Amendment Act 2001 has imposed on people arriving to Australia as well as the ‘safe’ third countries. Besides removing judicial review on asylum claims, and not allowing the asylum seekers to have access to legal representation this Act under Subsection 5 (1) also introduced a new category of entrants, namely the “*offshore entry person*”.¹⁷¹ This category labels and entrant in excised territories as “*unlawful non-citizen*” and prevents the application of a Temporary Humanitarian Visa (THV) which besides providing protection also grants access to certain benefits and rights including the right to family reunion.¹⁷² Clearly, then, the premises surrounding the processing system also go against the non-discrimination Article 16 in the 1951 Convention. That

¹⁶⁶ Kneebone (2006) p. 710-711

¹⁶⁷ Ibid. p. 714

¹⁶⁸ Ibid., p. 707, 713

¹⁶⁹ Ibid., p. 714

¹⁷⁰ Ibid., p. 712

¹⁷¹ Australian Government (2001) Migration Amendment (Excision from Migration Zone) Act (2001) Subsection 5 (1), Kneebone (2006) p. 715

¹⁷² Australian Government (2001) Migration Amendment (Excision from Migration Zone) Act (2001) Subsection 5 (1) 46A, Kneebone (2006) p. 719, The THV visa replaced the TPV visa implemented in 1999

direct refoulement had occurred has been evidenced by the forcible return of both Afghan and Iranian asylum seekers.¹⁷³ In relation to the Iranians, Australia made an agreement with the Iranian government to take back asylum seekers whose claims had not been accepted and disclosed sensitive information to the government.¹⁷⁴ The consequences of Australia's agreement are likely to put these asylum seekers' already grave situation at further risk.

The previous sections have discussed the *Tampa* incident and the Howard government's response in the light of the legal obligations stipulated by international law. In the following the discursive constructions and reconstructions of the asylum seekers' as well as Australia's identity will be discussed. In addition to serving as legitimizing practices for the preventative and deterring policies imposed, these constructs also influence the asylum seekers opportunity for seeking asylum.

4. The Discursive Construction and Reconstruction of Identity

4.1 Discursive Identity and Group Formation

In seeking to understand and analyze the Howard Government's discursive construction of asylum seekers' identities, it is necessary to understand individual and collective identity construction through the perspective of Laclau and Mouffe's discourse theory. Here, individual and collective identity and group formation are understood through subject positions.¹⁷⁵ Individuals are appointed certain positions in discourse and these positions designate certain behavioral expectations to the individual. For instance Jørgensen and Phillips provide the example of a medical consultation where the doctor and patient have certain positions to which behavioral expectations are attached, and the failure to 'follow' or behave in accordance with these expectations alters the relationship and thereby changes the position of, for instance, the patient.¹⁷⁶ Further to this, an example is provided of the construction of 'man' where the meaning of 'man' is further constructed through a "*chain of equivalence*".¹⁷⁷ This means that 'man' is related to e.g 'strength', and contrasted against that which it is not, for instance the opposite, namely 'woman' and 'passion'.¹⁷⁸ Hence, to be considered as a 'man', the individual that has this position must follow the behavioral expectations attached to

¹⁷³ Kneebone (2006) p. 716

¹⁷⁴ Ibid., p. 717

¹⁷⁵ Jørgensen & Phillips (2002) p. 40-41

¹⁷⁶ Ibid., p. 41

¹⁷⁷ Ibid., p. 43

¹⁷⁸ Ibid.

‘man’. As previously mentioned, the construction of group identity follows the same logic as individual identity construction. Thus, group formation is constructed through a “*logic of equivalence*” where the different options of identification are excluded.¹⁷⁹ An example of this is the construction of the groups of ‘blacks’ in Post-Second World War UK where ‘blacks’ were contrasted against ‘whites’, and similarly those who were ‘non-white’ were considered as ‘blacks’.¹⁸⁰ An issue associated with this construction is that by leaving out other forms of identification, it ignores the inter-group differences. In relation to this, Jørgensen and Phillips also stress the importance of “*representation*” as the acknowledgment and acceptance of group existence contributes to specific understandings of society.¹⁸¹

As will become clear in the following, the Australian government has, throughout the response to the *Tampa* incident, constructed asylum seeker identities by means of the same logic, that is, asylum seekers’ behavior and identities have been measured and constructed by means of their positions in a given discourse. Here, asylum seekers’ subject positions are linked to the international refugee regime, as it is this that sets the standards of ‘normal’ or expected refugee behavior and identity.

4.2 The International Refugee Regime and the Standards of Refugee/Asylum-Seeker Behavior

State sovereignty has been premised upon the nation-state where a state-citizen-territory nexus exists.¹⁸² The concept of the nation-state, then, assumes an unproblematic relationship between these categories making the nation-state a given and natural entity for studying inter-state relations.¹⁸³ For Wimmer and Schiller taking the nation-state as “*the natural social and political form of the modern world*” is quite problematic especially in relation to migration.¹⁸⁴ Wimmer and Schiller argue that this has been characterized by three core trends: “*ignorance, naturalization and territorial limitation*”.¹⁸⁵ Historically each of these trends has further supported the state-citizen-territory nexus. What this means for the conception and study of migration is that this very same nexus also becomes the lens through which migrants are viewed. As emphasized by Wimmer and Schiller: “*Democracy, citizenship, social security and national self-determination are the vertexes*

¹⁷⁹ Jørgensen & Phillips (2002) p. 44

¹⁸⁰ Ibid., p. 44-45

¹⁸¹ Ibid., p. 45

¹⁸² Betts (2009) p. 44

¹⁸³ Ibid., p. 47-48

¹⁸⁴ Wimmer and Schiller (2002) p. 301

¹⁸⁵ Ibid., p. 308

of the world order of nation-states as it matured after the Second World War. Once this order is established, the nationalist imaginary can be projected on the surface of the earth and become territorially inscribed. For the isomorphisms between citizenry, sovereign, solidarity group and national entail that all corresponding territorial borders become coincident."¹⁸⁶ This nationalist imaginary then becomes challenged by individuals who come from the outside. Thus, migration disrupts the nation-building and it *"(...) appears as an anomaly, a problematic exception to the rule of people staying where they 'belong', that is, to 'their' nation-state."*¹⁸⁷ Following this logic, it can be argued that territory marks the boundary of membership of a nation, thus placing migrants outside. The relationship between refugees and sovereignty can also be understood through the notion of the state-citizen-territory nexus, as sovereignty is the ordering principle of this political community.¹⁸⁸ A refugee who is fleeing and crossing borders, then, becomes the anomaly of this nexus. Emma Haddad, as cited by Betts, argues that *"what in fact is 'going wrong' when refugees appear is that the theory and practice of the international state system and the concept of sovereignty on which it relies are failing to coincide".*¹⁸⁹ Thus, while practices of sovereignty are upholding order, disorder is created with the refugee being the outcome. In Nyers' words: *"Refugees – displaced as they are from the "authentic" political identities and communities of citizenship and nation-states, respectively – are therefore seen as no more than a temporary aberration to the norm, (...) Refugees are represented as a mishap, an accident that scars the moral and political landscapes of the international order."*¹⁹⁰ Refugees are, then, constructed as posing a problem which needs to be fixed as to restore the balance and the relationship in the state-citizen-territory nexus.

The reinforcement of sovereignty and the solution to the 'refugee' problem has also been evident in the establishment of the international refugee regime. According to Malkki, the refugee 'problem' was at first considered a military issue that was administered by the Displaced Persons Branch of the Supreme Headquarters Allied Expeditionary Force (SHAEP) which accordingly addressed the 'problem' with military means.¹⁹¹ The military logic was also evident in the

¹⁸⁶ Wimmer and Schiller (2002) p. 308-309

¹⁸⁷ Ibid., p. 311

¹⁸⁸ Nyers (2006) p. x-xi

¹⁸⁹ Haddad (2008) p. 4 cited in Betts (2009) p. 55

¹⁹⁰ Nyers (2006) p. 9

¹⁹¹ Malkki (1995) p. 499

construction and use of the refugee camp.¹⁹² It was, however, later recognized that refugees constituted a humanitarian issue.

The international refugee regime in Malkki's words "*produces the social, political and legal constructions that we now recognize as refugeeeness*".¹⁹³ In other words, with this regime followed what can be considered as the characteristics surrounding 'proper' (and by extension 'normal') refugee behavior and refugee identity. These characteristics constitute what Nyers terms as "*refugeeness*".¹⁹⁴ The concept of refugeeeness arises out of the insider/outsider relationship between the sovereign logic and the refugee, namely that the citizen has political agency and the power to be seen and heard, whereas the refugee being the obverse of the citizen possesses "*speechlessness, invisibility and passivity*".¹⁹⁵ The identity of the refugee is the product of the assumption that once uprooted or removed from its original territorial space, the refugee is no longer considered as a political agent. As put by Nyers: "*refugees signify an emptiness, an incompleteness vis-à-vis the meaningful positive presence to political subjectivity that state citizenship provides*".¹⁹⁶ Consequently, these characteristics that refugees are considered as possessing also serve as measures of the authenticity of the refugee and the refugee's motivations for seeking protection. In this respect, Nyers emphasizes how the legal definition of the refugee and the notion of 'fear' contained within it is means of creating this measure.¹⁹⁷

What is more, the definition laid out in the 1951 Convention also creates distinctions between the refugee and the migrant. According to Nyers the very fact that political and civil rights are prioritized over socioeconomic rights in the 1951 Convention is means of creating the distinction between the political and economic.¹⁹⁸ The consequence of this is that individuals who become displaced as due to market forces are considered as merely 'migrants' as their motivation for crossing borders is due to 'hope' for a better life, and not as due to 'fear' of persecution.¹⁹⁹ The assumption is that 'fear' i.e. "*well-founded fear of persecution*" creates more 'authenticity' of being a refugee as 'fear' contributes to "*speechlessness, passivity and invisibility*".²⁰⁰ Also, 'fear'

¹⁹² Malkki (1995) p. 499-500

¹⁹³ Malkki (1995) p. 506

¹⁹⁴ Nyers (2006) p. 9

¹⁹⁵ Ibid., p. xiv

¹⁹⁶ Ibid., p. 16-17

¹⁹⁷ Ibid., p. 57

¹⁹⁸ Ibid., p. 50

¹⁹⁹ Ibid., p. 20, p. 50

²⁰⁰ Ibid., p. xiv, 56-57

reinforces the refugee's situation as non-citizen and therefore something that needs to be corrected and placed inside the container of citizen-state-territory nexus.

The refugee behavior inscribed in the international refugee regime provides only one perspective into the discursive construction of identity, and the Government's legitimization of its responses. The other is that at the heart of the Howard Government's construction, and representation of asylum seekers' identity and Australia's identity in the *Tampa* debate, is also the conception of Australia's national identity and multiculturalism. In essence, it is also the way the national imaginary has been constructed and employed by the political right in Australia that is the crux of the continuous triggering of anxiety and negative perceptions towards asylum seekers.

4.3 National Imaginary and Australia's Policy of Multiculturalism

Benedict Anderson's notion of "*imagined communities*" is of crucial importance to this context. According to Anderson, nations are "*imagined communities*" where a certain sense of a belonging among the members of the nation exists and is understood, as Anderson puts it, as "*a deep, horizontal comradeship*".²⁰¹ In Australia, it can be argued that this comradeship rests on the creation of the Australian Federation and its introduction of the White Australia Policy. The White Australia Policy was not only a legislative policy for the restriction of (mainly) Asian immigration into the country, but it was also a policy that was, in the words of Ang and Stratton "*reflecting the new nation-state's desire to construct a modern national identity based on (a British-based) racial and cultural homogeneity*".²⁰² The perception of 'whiteness', and especially European whiteness, was according to Hage, constructed as a marker of 'civilization' during times of colonization.²⁰³ In extension, then, white Britishness also became associated with a high level of civilization.²⁰⁴ Thus, the White Australia Policy and the desire to keep Australia racially homogenous has been the foundation of its nation building, and it was through this policy that certain myths of what constitutes Australian values were constructed. According to Burnside notions of '*egalitarianism*', the '*fair-go*' and '*mateship*' i.e. helping others are some of the defining characters of the Australian national identity.²⁰⁵ Following the fall of the British Empire, and because Australia needed to sustain its population, immigration policies were created that allowed for the influx of European

²⁰¹ Anderson (2006 ed.) p. 6-7

²⁰² Ang & Stratton (1998) p. 28

²⁰³ Hage (2002) p. 419

²⁰⁴ Ibid., p. 419-422

²⁰⁵ Burnside (2007) p. 15-16

and later Asian migrants to Australia.²⁰⁶ The introduction of the multicultural policy contained in the National Agenda for a Multicultural Australia in 1989 has been argued as being means of “*redefining national identity*” in a time of demographic change.²⁰⁷ Embedded in the multiculturalist policy is the fact that there was possibility of creating ‘unity’ for all members of the Australian society, or as phrased by Ang and Stratton “*unity-in-diversity*”.²⁰⁸ Although multiculturalism has been positively accepted in most urban areas, negative views have been raised by prominent public figures and politicians from the political right. For instance, historian Geoffrey Blainey has condemned multiculturalism claiming that it could lead to ethnic rioting and divisiveness.²⁰⁹ Prior to becoming Prime Minister, John Howard too proclaimed negative perceptions on multiculturalism by leading an election campaign with the slogan “*For All of Us*” as well as emphasizing multiculturalism’s bias against “*mainstream*” Australia.²¹⁰ The founder of the right-wing party One Nation Party, Pauline Hanson, was also among the main critics of multiculturalism and its negative impact on “*ordinary*” Australians.²¹¹ Howard and Hanson’s emphasis on “*ordinary*” and “*mainstream*” Australians is directly linked to the contradictory logic of multiculturalism and the need to maintain the national imaginary as it was established during the White Australia Policy time.

Since the White Australia Policy in essence was about creating a racially homogenous nation, the abolishment of this policy, it is argued, is the Australian government’s attempt to suppress that “*race*” ever was a part of Australia’s national imaginary.²¹² That this was happening was, as argued by Ang and Stratton, evident in the fact that racial terms such as “*Asian*” were not used any longer, but instead migrant groups were designated by their ethnic identities, for instance “*Vietnamese*”, “*Filipino*” and “*Lebanese*”.²¹³ Thus, while Australians were provided with a new opportunity to reinvent their national identity in the spirit of cultural diversity, the notion of “*race*” still remains embedded in how some parts of the Australian society perceive of their national identity.²¹⁴ It is in particular Australians who have identified with the ‘*Anglo-Celtic*’, i.e. descendants of settlers whose imaginary was dominated by a white and homogenic society, that have not been provided with the

²⁰⁶ Hage (2002) p. 424

²⁰⁷ Ang & Stratton (1998) p. 22, Multiculturalism was, however, introduced already after the abolishment of the White Australia Policy in the early 1970s

²⁰⁸ Ang & Stratton (1998) p. 25

²⁰⁹ Ibid., p. 35

²¹⁰ Ibid., p. 24

²¹¹ Ibid., p. 24, The One Nation Party was established in the 1990s

²¹² Ibid., p. 33-34

²¹³ Ibid.

²¹⁴ Ibid., p. 26-27

opportunity to deal with the exclusionary and violent past that characterized the creation of their nation and their *“imagined community”*.²¹⁵ Instead, multiculturalism and its positive view on diversity has been considered as being imposed on them. Ang and Stratton point this out by claiming that: *“Given that “race” has been so formative to the Australian national imaginary, it cannot be erased from the imaginary simply by making it disappear from the textual surface of respectable discourse (...) for all of the state's efforts to reimagine the nation in the image of a nonracial paradise of “cultural diversity”, the trace of “race” continues to lead a subterranean life that remains effective in people's everyday understandings of what's happening in their country.”*²¹⁶ The consequences of the repression of *“race”* have been that political elites such as Howard and Hanson have invoked the discourse of *“race”* and brought this issue to the fore of the political debate. For instance, Hanson has been cited for stating that *“I’m not against Asians...but if you have too many of one race coming into Australia, it can upset your makeup and your culture”*.²¹⁷ To use the terminology of the Copenhagen School, Hanson’s claim above is raising awareness of ‘societal security’ where the increasing presence of Asian communities is deemed as threatening for both the existence and survival of the Australian community and national identity. In raising such concerns, both Hanson and Howard have played an instrumental role in giving *“mainstream”* Australia meaning to the experiences of having a diverse society, and have thereby created a division between *‘Anglo-Celtic’* Australians and multicultural Australia where the notion of *“race”* has become- and serves as- the marker of the boundaries of the imagined community.²¹⁸

The effects of these constructions have, then, been that the attempts of invoking the national identity, as it was created during the inception of the Federation, have been used for achieving certain ends. This is in particular articulated by White who claims that: *“There is no ‘real’ Australia waiting to be uncovered. A national identity is an invention. There is no point asking whether one version of this essential Australia is truer than another because they are all intellectual constructs, neat, tidy, comprehensible – and necessarily false . . . When we look at national identity, we need to ask, not whether they are true or false, but what their function is, whose creation they are, and whose interests they serve.”*²¹⁹ In the following it will, then, be analyzed and discussed how the constructions of the asylum seekers’ identity along with the construction of the Australian national identity have served certain ends on the part of the Howard Government.

²¹⁵ Ang & Stratton (1998) p. 33-34

²¹⁶ Ibid., p. 34

²¹⁷ Hanson (1998) in Clyne (2005) p. 178

²¹⁸ Ang & Stratton (1998) p. 35-37

²¹⁹ White (1981) p. viii cited in Every & Augoustinos (2008) p. 564

4.4 Asylum seekers as ‘Bogus’ Refugees and Australia as a ‘Humane’ Country

By means of using pejorative terms such as ‘bogus refugees’, ‘hijackers’, ‘queue jumpers’, and because of the events of 9/11- ‘terrorists’, to portray the asylum seekers onboard the *Tampa*, the Howard Government has sought to create asylum seekers as deviants.²²⁰ Therefore, asylum seekers have not only been portrayed as presenting a threat to Australia’s sovereignty, but also as a threat to Australian national identity and ‘Australian values’.

When commenting on why the *Tampa* vessel did not turn back to Indonesia, Howard claimed that “*there have been reports verified by the ship's captain to the effect that some of the people taken on board threatened him and insisted that the vessel set sail for Australian waters*” while his Immigration Minister Ruddock also emphasized that “*(...) there was a form of duress by threat of self-harm (...) that prompted him to change his course.*”²²¹ By using the terms “*threatened*” and “*duress*”, the implication is that the asylum seekers were ‘hijacking’ the vessel and instead of being the victims, they are constructed as criminals and a threat. Attributing these characteristics to asylum seekers enables and legitimizes the Government to respond with exceptional measures. The effect of this construction is also that these individuals cannot be ‘genuine’ refugees. Specifically, because they allegedly have used force to make their way to Australia, they cannot be considered refugees. This is again linked with the expectations to ‘normal’ refugee behavior established by the international refuge regime. The individuals on board the *Tampa* have, then, been considered against that which they are not: refugees. Refugees are supposed to be passive and express fear, but these individuals have threatened the captain which has assigned them agency thus making them ‘bogus’ refugees.

Another consequence of this construction is also that their refugee claims are assessed against this behavior. As has been mentioned earlier, the 1951 Convention and its 1967 Protocol does not recognize an ‘economic’ refugee, which makes it harder for an asylum seeker to prove their intentions with seeking asylum. This means, then, that asylum seekers are often suspected of having purely economic motivations. In a previous section it was noted that the asylum seekers’ refusal to leave the *Tampa* and board another vessel was interpreted by the media and the Australian government as uncivilized. According to Watson, a dichotomy was created where the asylum seekers were, among other things, portrayed as “*coerced others into not complying*” and “*refused to*

²²⁰ Watson (2009) p. 106

²²¹ Howard (2001) Joint Press Conference with Minister for Immigration the Hon Phillip Ruddock, Parliament House, Canberra August 27, 2001

disembark” while the SAS troops were portrayed as “*behaving dignified*” and “*showing restraint*”.²²² Again, the asylum seekers were considered as barbarian criminals that were to be put in control by the civilized Australian military troops. In this respect it seems crucial to note that Article 2 in the 1951 Convention, as Watson notes, also delineates certain expectations to asylum seekers which are valid even prior to the assessment of their refugee status.²²³ In Article 2 it is specified that “*every refugee has duties (...) which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order*”.²²⁴ In broad terms this means that refugees (and in this case asylum seekers) must respect the authorities. Considering this expectation and the portrayal of the asylum seekers’ behavior above, it can be argued that this construct has been instrumental in ensuring that these asylum seekers are not seen as genuine refugees. Put differently, the perceived violent and threatening behavior of these asylum seekers goes against the behavior that a ‘genuine’ refugee is expected to show. The consequences of depicting asylum seekers as ‘bogus’ not only hampers their access to an already restricted asylum processing system, but also discriminates them on the basis of their perceived motivations for seeking asylum.

How the national imaginary is intertwined in this construct is to be found in Howard’s interview from 30 August 2001. Here, Howard claimed that “*we are a warm hearted humane country but we want to make sure our warm hearts and our humanity are both extended to the most meritorious refugee cases in the world.*”²²⁵ Since it also has been acknowledged that “*helping refugees is part of Australians’ view of themselves*”²²⁶, it can be argued that on the basis of the above, the asylum seekers “*threatening*” behavior is means of abusing the humanitarian and generous country that Australia is portrayed as being. The insinuation is also that because Australia considers itself as taking its share of the burden of ‘genuine’ refugees, these ‘bogus’ refugees are preventing Australia from carrying out its humanitarian duties and being a ‘good international citizen’.

²²² Watson (2009) p. 101

²²³ Ibid., p. 41

²²⁴ UNHCR (1951) Convention and 1967 Protocol Relating to the Status of Refugees, Article 2

²²⁵ Howard (2001) Allan Jones Interview, Radio 2UE, 30 August 2001

²²⁶ Gibney (2004) p. 184

4.5 Asylum seekers as ‘Queue Jumpers’ and Australia as a ‘Fair’ country

The perception of asylum seekers as being ‘bogus’ refugees and ‘queue jumpers’ has occupied significant space both in the *Tampa* debate, and Australian political stage in general. As noted earlier, one of Howard’s first reactions to the *Tampa* incident was that: *“We are not closing our doors to genuine refugees but we are saying we are unwilling to take people who are queue jumping.”*²²⁷ Howard’s reference to *“queue jumping”* is primarily linked to Australia’s offshore processing and resettlement programme. The offshore resettlement program is considered as being the mechanism whereby the queue is maintained and immigration controlled. One aspect of Howard’s reference implies that those onboard the *Tampa* have circumvented Australia’s offshore resettlement program and are therefore not genuine refugees. The other is linked with Australia’s national identity as the Howard Government seeks to promote it.

The queue analogy is, however, far more complex than it may appear when solely considered through the arrangement of the offshore program. The notion of a queue designates people or objects that are in line.²²⁸ According to Gelber the queue can also be understood by looking at the sociological implications of this term. By looking at Weber’s understanding of bureaucracy, Gelber argues that a queue is similar to bureaucracy, as both of these systems are characterized by rules that are based on fairness and impartiality.²²⁹ As Gelber explains: *“the rules (...) can be learnt, and they can be impartially applied. Those who ‘earn’ the service do so by virtue of their preparedness to wait- and waiting is within the capabilities of all who wish to benefit from that service or product – and wait patiently until it is their ‘turn’”*.²³⁰

Based on this logic, those who do not wait patiently and jump the queue violate this system of order and rules, and are thereby unfair.²³¹ When this analogy is placed in the context of the Australian refugee and immigration system, it appears that it cannot be applied as such. The system of offshore application functions such that an asylum applicant can apply either directly through UNHCR or through designated Australian offshore processing posts.²³² Some of these offshore processing posts, it is claimed, are difficult to get into contact with and have also backlogs of applications which means that the new applications will be further delayed.²³³ Gelber herself has

²²⁷ Howard (2001) Allan Jones Interview, Radio 2UE, 30 August 2001

²²⁸ Gelber (2003) p. 24

²²⁹ Ibid., p. 25

²³⁰ Ibid., p. 26

²³¹ Ibid., p. 26

²³² Ibid., p. 27

²³³ Ibid., p. 27

tested this system by calling the processing post in Pakistan where the answering machine informed her that the office could not respond to any enquiries, and that she instead should contact the Australian Embassy in Thailand, or apply directly through UNHCR.²³⁴ Furthermore, as has been evident in an earlier section and as highlighted by Gelber, the Migration Act 1958 itself is created so that it disadvantages asylum seekers, as ‘unauthorized’ arrivals can only acquire a TPV visa and do not have access to legal services as those who arrive ‘legally’ i.e. through the off-shore program.²³⁵ The difficulty of establishing contact with a processing office and having the application processed, coupled with the fact that the Migration Act 1958 is set up to hamper the application process of asylum seekers, point to the fact that Australia’s offshore processing system does not even have a queue. In addition, the complex crisis which embodies the situation of a refugee contradicts the queue analogy itself. As Gelber notes: “(...) *the very reason refugees and asylum seekers are seeking refuge is due to their disorderliness of the situations they are fleeing; their dire need stands in contradistinction to the notions of the orderliness and impartiality of queues. This means that not only is there no queue for refugees to join, but even if there were (...) it would be wrong to ask them to join one.*”²³⁶ It can equally be argued that when asylum seekers who arrive by boat are accused of being ‘queue jumpers’, it is largely based on the perception that they have not waited patiently in queue somewhere offshore, and that they are not deserving of humanitarian assistance or protection. The distinction between genuine and bogus refugees is again invoked, as the ‘genuine’ refugee would wait in queue while the ‘bogus’ one circumvents it by illegally entering by boat.

Above all it is the fact that “*egalitarianism*” is considered as a defining feature of what it means to be Australian, and by portraying asylum seekers as violating the queue, they are violating Australian values, or are at least being the direct opposite of them. Thus, by not waiting patiently in the alleged queue outside of Australia, asylum seekers are portrayed as being ‘unfair’ whereas Australia is the fair country which gives an opportunity for all people to come and be granted access as long as they do so in a ‘fair’ matter. Further to this, Howard has claimed that “*every person who comes here illegally keeps somebody else out. And that is a humanitarian consideration. Some of the conditions in which refugees with more meritorious claims are living in refugee camps around the world are pitiful.*”²³⁷ What this translates into is that asylum seekers are portrayed as not only

²³⁴ Gelber (2003) p. 27

²³⁵ Ibid., p. 29

²³⁶ Ibid., p. 30

²³⁷ Howard (2001) Radio 3AW Interview, August 31 2001

violating the rules of fairness and being a threat to Australian national identity, but also as preventing ‘genuine’ refugees from being accepted into the “*warm hearted and humane*” country that Australia considers itself as being.

The issue of assuming that fair behavior grants fair treatment is troublesome, as it positions asylum seekers as being on equal foot with Australians.²³⁸ The issue is, as Every and Augoustinos emphasize, that this dual conceptualization implies that asylum seekers have voluntarily, and not because of coercion, left their home country thus reducing their status to that of economic migrants.²³⁹ This construct, in addition to all the policy amendments made, significantly hampers the asylum seekers opportunity to even apply for asylum in Australia. Earlier it was noted that Howard, even before his first term as Prime Minister, positioned himself as the promoter of “*mainstream*” Australia’s interests. Here too, there is a covert link to the national imaginary of the “*Anglo-Celtic*” Australians. According to Every and Augoustinos, during the time when the White Australia Policy was to be passed, there was a conception that fairness equaled with protecting the British settlers from competition of other non-white immigrants.²⁴⁰ Thus, it can be argued that Howard is attempting to do the same by using the queue analogy to deny access to people whose presence and values pose a threat to “*mainstream*” Australia, and to the promotion of the ‘*Anglo-Celtic*’ imaginary.

4.6 The ‘Children Overboard’ Affair and Australia as the Victim

The perception that asylum seekers were ‘queue jumpers’ only deteriorated when the Australian Defence Force in late 2001 intercepted a boat carrying 233 asylum seekers and transferred them onboard the Australian navy ship ‘*HMAS Adelaide*’.²⁴¹ According to Macken-Horarik, the ‘Children Overboard’ affair arose when one of the navy officers onboard the *HMAS Adelaide* informed the government office in Canberra that the asylum seekers were throwing their children overboard in an attempt to not be sent back to Indonesia.²⁴² As Macken-Horarik notes, the government and the media did not hesitate to question the credibility of the story, but instead relied on it through “*hearsay*”.²⁴³ The story of ‘Children Overboard’, however, turned out to be false. In 2004 claims

²³⁸ Every & Augoustinos (2008) p. 574

²³⁹ Ibid., p. 574

²⁴⁰ Ibid., p. 573

²⁴¹ Clyne (2005) p. 181, Macken-Horarik (2003) p. 285

²⁴² Macken-Horarik (2003) p. 285

²⁴³ Ibid., p. 286-287

were presented by former government advisor Mike Scafton that Prime Minister Howard and his staff had been informed of the falsity of the story.²⁴⁴ Still, the government did not choose to disclose this or to correct their allegations. Considering the political context and the awareness that the *Tampa* incident had raised on asylum seekers' behavior, Howard saw the 'children overboard' incident as means to further cement that these people were a threat to Australians.

Following the alleged incident, Howard claimed that *"(...)It's not within my frame of comprehension that people who are genuine refugees would throw their children into the seas"*²⁴⁵, and in another interview Howard went further by stating that *"I can't imagine how a genuine refugee would ever do that. A refugee flees persecution or flees a country more than anything else in the name of the future of his or her children and anybody who would endanger the lives of their children in that kind of way, I find it hard to accept(...)"*²⁴⁶ Here, Howard is contrasting the asylum seeker's behavior against the expected behavior of a 'genuine' refugee. In other words, the fact that these asylum seekers are not showing fear or acting passively constructs them as being 'bogus'. Instead, their behavior and motivations for coming to Australia is interpreted as being motivated by objectives other than fear. In addition, here the notion of '*moral panic*' is somewhat present as Howard's claim above is indicative of a substantial concern of the moral threat that these people pose to Australian values, and their deviation from Australian values or way of life in general.

In this regard, the media has played an instrumental role as they have used pictures as 'proof' of asylum seekers throwing their children overboard.²⁴⁷ According to Macken-Horarik, visual images are rather powerful in telling a story and can also add credibility to it.²⁴⁸ Earlier it was mentioned that Howard placed a ban on media's release of any photographs of the *Tampa* and the asylum seekers onboard. Evidently, then, Howard's strategic use of these two incidents differs in this respect. Since this incident happened a few days into the election, it can be argued that it further enabled Howard to stress his position as the defender of Australia's territorial integrity and national identity.²⁴⁹ However, the act of placing a ban on media reports and image releases can be argued as being a way of upholding the idea that these people constituted a threat and were not worthy of humane treatment. What is specifically meant by this is that any photos released of the asylum seekers on the *Tampa* would have created empathy towards the asylum seekers, because as Nyers

²⁴⁴ Nicholson, B. (2004, December 10). Howard Knew No Children Overboard: Report. *The Age*, p. 4

²⁴⁵ Howard (2001) Neill Mitchell Interview, Radio 3AW, October 08 2001

²⁴⁶ Howard (2001) John Faine Interview, Radio 3LO, October 09 2001

²⁴⁷ Macken-Horarik (2003) p. 287

²⁴⁸ Ibid.

²⁴⁹ This point will be discussed in a separate section on asylum-seeking as a strategy of the Federal election campaign

emphasizes such acts are “*promoting a vision of a shared and common humanity*”.²⁵⁰ The lack of any photographs from the *Tampa*, then, aims to firmly establish that asylum seekers are not within the state-citizen-territory nexus and therefore cannot be anything else than “*speechlessness, passivity and invisibility*”. In the ‘Children Overboard’ affair, on the other hand, the use of photographs is the reverse. One of the pictures used by the media has been derived from the Defence Department.²⁵¹ Although the picture is somewhat unclear and open to interpretation, the media emphasized that the children were wearing life-jackets. An article from *The Telegraph* covering the ‘Children Overboard’ story highlights how the then Immigration Minister Ruddock stated “*that the fact that the children were wearing life jackets indicated that the protest was premeditated and designed to place the government under duress*”.²⁵² As was the case with the *Tampa*, the asylum seekers here are also considered as ‘hijackers’ with a threatening behavior. The fact that Ruddock considers their actions to be “*premeditated*” assigns the asylum seekers agency, and turns them into ‘criminals’. And because these asylum seekers too have been intercepted in the high seas, they have jumped the queue and are therefore considered as deliberately abusing Australia’s egalitarian approach to asylum seeking.

Now, what should also be reduced from Ruddock’s statement is the fact that these asylum seekers are through their ‘threats’ making Australia the victim. Yet, it can be argued that it is not only the rhetorical statement that seeks to construct Australia as the victim, but also Howard’s permission to use photographs to support the perception that asylum seekers are a threat. Depicting these asylum seekers as a threat to Australian values was very clear when Howard emphasized: “*I certainly don’t want people of that type in Australia, I really don’t*.”²⁵³ Howard’s use of “*that type of people*” clearly demarcates that these individuals represent the obverse of Australian values, because putting children at risk is very inhumane and antithetical to Australians. On the basis of earlier labelling of asylum seekers, and the portraying of Australia as a “*humane*” country, it appears that Howard is employing the same tactics for ensuring that Australia is victimized and asylum seekers criminalized.

While the previous sections have discussed how the Howard Government has sought to construct the identity of asylum seekers which is embedded in a complex web of the international refugee regime and Australian national imaginary, the following seeks to discuss asylum seekers’

²⁵⁰ Nyers (2006) p. 16

²⁵¹ Defence Department (2001) in Macken-Horarik (2003) p. 291 – See Appendix, fig. 2

²⁵² Dutter, B. (2001, October 8) Refugees Throw Children into Sea, *The Telegraph*.

²⁵³ Howard (2001) John Faine Interview, Radio 3LO, October 09 2001

resistance to detention and the identities that have been imposed on them. There are in particular three aspects within this resistance that need to be examined. First, it is the symbolic significance of the actions of the detainees which is important in relation to the detainees' state of "*refugeeness*". Second, the mandatory detention policy is critical from a legal perspective. Finally, the detention policy and practices of the Australian government are intertwined with the Australian national imaginary as constructed on the basis of the White Australian Policy. Collectively, these three aspects open up another dimension for examining and understanding why asylum seekers have been framed as a threat to Australian society.

5. Mandatory Detention and the National Imaginary

5.1 Asylum seekers' Resistance to Detention and Australia as the 'Democratic' Country

For the Australian government, the numerous detention centers serve to maintain order and control, for those incarcerated these centers signify harsh physical and mental conditions. In the largest and most isolated detention center in Woomera the harsh conditions have caused unrest among the detainees. In 2002 the detainees initiated a hunger-strike and fifty asylum seekers stitched their lips together.²⁵⁴ The detainees or asylum seekers' resorting to stitching their lips together is a way of not only resisting their incapacitation, but it is also means of expressing their situation as refugees. Cyrus Sarang from Refugee Action Collective in Sydney has stated that the detainees "*want to cry out that this is not a democracy*".²⁵⁵

By stitching their lips, these asylum seekers represent "*refugeeness*" itself by making the "*speechlessness, invisibility and passivity*" visible with their bodies.²⁵⁶ As Nyers puts it: "*(...) they have devised strategies of resistance that highlight the politics of their caged bodies.*"²⁵⁷ The asylum seekers' resistance is, then, more than physical resistance to the captivity that they have been forced into, but is also a way of demonstrating the 'genuine' refugee identity and behavior that is expected from them. Thus, the detainees' lip-stitching presents a duality as it at once shows the Australian Government that these individuals should not be framed as 'bogus' refugees or 'queue jumpers', while on the other hand it further cements the perception that refugees are the aberration to the citizen-state-territory nexus and therefore pose a threat and need to be separated from the rest

²⁵⁴ Ahwan (2002, June 27) 50 Sew Up Lips in Hunger Strike, Detainees Claim, *The Age*.

²⁵⁵ Sarang (2002) cited in Wills (2002) p. 71

²⁵⁶ Nyers (2006) p. xiv

²⁵⁷ Ibid., p. 119

of the Australian community. The latter part of this argument appears to be the stance taken by Immigration Minister Ruddock's, whose reaction to this incident was to claim that *"Lip-sewing is a practice that is unknown in our culture...it is something that offends the sensitivities of Australians, and asylum-seekers believe it might influence the way in which we would respond...it can't and it won't."*²⁵⁸ Ruddock's use of *"unknown in our culture"* furthers the already created binary of 'us' and 'them' making the asylum seekers the dangerous 'other' which does not belong in the liberal democratic country which Australia identifies as being. Also, their behavior opposes Australian values because their lip-sewing is considered as means of intimidating the egalitarian nature of Australians, making them believe that these people are deserving of humane treatment. Clearly, Ruddock's perception is already fixed.

Equally, Howard has made similar allusions in regard to the resistance from the detainees as expressed in their unrest and riots that have found place in both Curtin and Woomera detentions centers in 2000 and 2001. The following excerpt from Howard's speech at the *Community Morning Tea Whitehorse Club* in 2001 also testifies to the view that any reactions or actions from asylum seekers are considered as intimidating and are the obverse of Australian 'values':

*"Now there are people in the community who are critical, that is a democracy. That is what our society is about. It is about the right of people to express a view and to have complete freedom of speech. It's also about the right of the will of the people, ultimately, to determine these things. And it is also very much about the right of people to express their views without fear of intimidation, or without fear of threats of any kind of physical violence or physical harm. We have a long and honoured tradition of vigorous, robust, and rambunctious political debate in this country. But we do settle our disputes through debate and not through physical force. And that is the Australian way and the Australian tradition."*²⁵⁹

This statement ultimately positions Australia as a democratic country where the Australian people and their rights are placed above the rights of those who are not part of this community. In the above, Australians are the fair and the civilized who behave in a dignified manner and who cherish the *"fair go"*, whereas the detainees are the uncivilized others who threaten the *"long and honoured tradition"* in Australia. Both Ruddock and Howard's reference to Australian values constitute somewhat of a paradox, and both statements are underpinned by the promotion of an 'Anglo-Celtic' national imaginary. This point is also taken up for further discussion by Julian

²⁵⁸ Ruddock (2002) cited in Wills (2002) p. 71

²⁵⁹ Howard (2001) Speech at Community Morning Tea at Whitehorse Club, Burwood, Victoria, 04 September 2001

Burnside who is a barrister, refugee advocate and staunch critic of the Howard Government. According to Burnside, identifying national values is rather complex, and Howard's continuous identification and 'use' of Australian national values is somewhat senseless because everything the Howard Government has done is in direct contradistinction to both "egalitarianism", "mateship" and the "fair go".²⁶⁰ Burnside is in particular referring to the Australian legend of 'Ned Kelly' whom Australians perceive as being a hero, but whose act throughout history can largely be considered as crimes, and even as 'terrorist' acts.²⁶¹ Australia's National Anthem too contains a sentence: "(...)'For those who come across the Sea we've boundless plains to share", which when placed in the context of Australia's treatment of 'others', makes Australian values appear as a paradox in itself, because as Burnside puts it: *For some of those who have come across the sea in recent years, we offer razor wire and misery. The boundless plains around Baxter Immigration Detention Centre must seem remote to those held for an indefinite time behind the 9000 volt electric fence. For those who come across the seas seeking protection, we offer exile to the bankrupt Pacific Republic of Nauru. (...) and "Finding a coherent set of national values which accommodates these facts is difficult."*²⁶² Besides aptly capturing the deterrent and draconian reality that asylum seekers face when arriving in Australia, Burnside's argument also covertly exemplifies that Australia's status as a democracy can be questioned from different aspects. This, then, bridges the gap to examining the legal aspect of Australia's detention policy as it is here that Australian values as promoted by the Howard Government are put to a test.

5.2. Australia's Policy of Mandatory Detention and UNHCR Guidelines

The detention of asylum seekers is as such allowed under the international refugee regime. However, UNHCR does consider it as being a "measure of last resort" which is utilized for the sake of "public order, public health and national security".²⁶³ Since it is the given state that determines what constitutes any of the categories above, UNHCR has created a set of guidelines on detention for states to abide by so that the use of detention as an automatic policy is avoided.²⁶⁴ These guidelines depart from the obligations stipulated by the 1951 Convention, that is, the right to seek asylum, as well as the international human rights instruments where it is recognized that

²⁶⁰ Burnside (2007) p. 15

²⁶¹ Ibid., p. 15

²⁶² Ibid., p. 15

²⁶³ UNHCR (2012) Guideline 4, p. 16-18

²⁶⁴ Ibid., p. 6, 19

individuals have the right to liberty and freedom of movement.²⁶⁵ The most important of these guidelines and which are especially linked to Australia's (mandatory) detention policy is that detention ought to be in conformity with national law and therefore not arbitrary.²⁶⁶ What this means is that asylum seekers' refugee claims must be assessed on an individual basis, and decisions to detain should not be discriminatory as is also outlined in the 1951 Convention's Article 3.²⁶⁷ Further to this, UNHCR also highlights that Article 31 in the 1951 Convention prohibits states from punishing illegal entrants, which means that detaining asylum seekers as punishment for entering without authorization is not in accordance with international law.²⁶⁸ These guidelines also stress the importance of national legislation setting standards as to the length of detention, as indefinite detention amounts to arbitrariness.²⁶⁹ Above all, it is also underscored that where detention is found necessary on basis of legislative priority, then humane conditions should be in place by means of allowing asylum seekers to have access to NGOs and UNHCR, treating them with dignity by taking their situation and needs into consideration, and ensuring that they are not placed in institutions which detain criminals.²⁷⁰

Australia's use of mandatory detention has received substantial criticism from refugee advocate groups, the Australian Human Rights Commission as well as other NGOs.²⁷¹ Yet, the criticism has not made the Howard government to change its policy or practices. Stevens cites the then Minister for Immigration Ruddock for further justifying mandatory detention by claiming that *"it permitted Australia to exercise its sovereign right to determine who may enter and remain in the country, provided a safe and secure environment in which asylum claims can be assessed, ensured that the government can determine whether the detainee posed a security or health risk, and that if an individual's claim for asylum failed he or she can be readily removed."*²⁷² Clearly, Ruddock's justification points heavily on purposes which constitute legislative priority i.e. security and health risks and which, according to UNHCR, are in line with international law.²⁷³ Another pivotal implication in Ruddock's statement is the way sovereignty is defined and employed in the context of asylum seeking.

²⁶⁵ UN (1966) International Covenant on Civil and Political Rights, Article 12, UNHCR (2012), p. 11

²⁶⁶ UNHCR (2012) Guideline 3, p. 14

²⁶⁷ Ibid. Guideline 4, p. 15

²⁶⁸ UNHCR (1951) Convention and 1967 Protocol Relating to the Status of Refugees, Article 31, UNHCR(2012) Guideline 4, p. 19

²⁶⁹ UNHCR (2012) Guideline 6, p. 26

²⁷⁰ Ibid. Guideline 8-9, p. 29-39

²⁷¹ Phillips & Spinks (2013a)

²⁷² Ruddock (2000) cited in Stevens (2002) p. 880

²⁷³ UNHCR (2012) Guideline 4, p. 16

According to Gelber and McDonald, the UN Working Group on Arbitrary Detention found that “*criminals were being treated better than asylum-seekers*” in Australia’s detention centers.²⁷⁴ Especially the detention of children has been a very contentious issue, as there has been evidence that children have been exposed to physical and sexual abuse.²⁷⁵ The detention of children is, then, also considered as being a violation of the 1989 Convention on the Rights of the Child.²⁷⁶ Besides being arbitrary, mandatory detention in Australia is also discriminatory and is used as a punishment for individuals who enter Australia’s territory without authorization. In an earlier section it was also noted that the *Pacific Solution* removed judicial review of asylum claims, and that those in detention have no access to either legal assistance or contact with NGOs. In addition to this, the detainees are responsible for covering the expenses for their detention.²⁷⁷ For instance, Burnside provides the example a newspaper coverage of a refugee that had been released from detention and whose expensive bill would be paid off in 170 years.²⁷⁸ Thus, Australia’s policy of mandatory detention in general goes against all of the guidelines set by UNHCR, as well as the obligations stipulated by both the 1951 Convention and International Human Rights Law. Also, it is hard to see how any of this would be in line with Australian values of being fair and helping others out. To expand this analysis a bit more, it is necessary to take a closer look at Australia’s domestic legislation of “*Commonwealth Criminal Code*”. As of 2002 Australia implemented “*The Commonwealth Criminal Code*” which is adopted in line with the Rome Statute under the International Criminal Court, and which gives jurisdiction to bring crimes of genocide, war crimes and crimes against humanity to the court.²⁷⁹ Article 268.12 of “*The Commonwealth Criminal Code*” identifies crimes of humanity as being when:

“1. *The Perpetrator imprisons one or more persons;*

2. *The Conduct violates article 9 of ICRP; (‘Freedom from Detention’)*

3. *The Conduct is committed knowingly as part of a systematic attack directed against a civilian population.*”²⁸⁰

On the backdrop of this, Burnside takes the standpoint and goes very far by claiming that both Howard and Ruddock, in principle, can be accused of having committed crimes against

²⁷⁴ Gelber & McDonald (2006), 275.

²⁷⁵ Phillips & Spinks (2013a) p. 21

²⁷⁶ Stevens (2002) p. 881

²⁷⁷ Burnside (2007) p. 16

²⁷⁸ Ibid.

²⁷⁹ Ibid., p. 16-17

²⁸⁰ Burnside (2007) p. 17, UN (1966) International Covenant on Civil and Political Rights, Article 9

humanity.²⁸¹ Although certain similarities can be identified between mandatory detention and the articles above, the intention of making this link is not to take Burnside's stance on concluding that mandatory detention in Australia can be considered as crimes against humanity. Rather this is done to illustrate the severity of Australia's practices, and to show that "*The Commonwealth Criminal Code*" to some extent works as a domestic mechanism for preventing arbitrary detention of (in this case) asylum seekers, but that it appears to be difficult to avoid in practice. Furthermore, the perceived Australian values of 'fair go' and egalitarianism also seem to be jeopardized by the legal system. For instance, Burnside argues that if Howard and Ruddock were to be accused of such crimes, the only way of bringing Howard and Ruddock (along with other Ministers in the Howard Government) to the court is if the Federal Attorney-General charges them, but since Ruddock was appointed the status as the Federal Attorney-General it is very unlikely that he is going to make retrospective charges against himself or Howard.²⁸² Therefore, asylum seekers in detention who stitch their lips together in the hope of achieving at least more humane treatment and conditions are unlikely to achieve any changes, as the "*fair go*" in Australia only appears to apply to the Howard Government itself. Furthermore, Burnside argues that different elements within the national legislation are relatively biased as the Federal Attorney-General is granted the power to, for instance, conceal evidence or ensure that the parties under accusation are prohibited from ever knowing what the evidence against them was.²⁸³ In the light of this, the notion of the "*fair go*" can hardly be said to fit with the Australian legal system or Howard's earlier statement of the people having right to be heard and speak out in a democracy. To cite Burnside: "*Fair trials are one of the basic assumptions of a democratic society. It is ironic - and tragic - that we have abandoned the ideal of fair trials, ostensibly to help save democracy from terrorists. These measures suggest that the greatest danger to democracy in Australia is the Howard government itself.*"²⁸⁴

The use of detention to keep (mostly) innocent people who are seeking Australia's protection incarcerated, of itself indicates that keeping the 'other' away has been a national priority for all Australian Governments since 1992. This is what the following seeks to discuss with the aim of further expanding the understanding of the anxiety that is brought forth by the 'other'.

²⁸¹ Burnside (2007) p. 17

²⁸² Ibid.

²⁸³ Burnside (2007) p. 20

²⁸⁴ Ibid., p. 19-20

5.3 The Legacy of the White Australia Policy and “Ethnic Caging”²⁸⁵

Australia’s practice of placing ethnic others in detention camps has been considered as means of achieving “the social cohesiveness of Australian society.”²⁸⁶ This practice and the perception of its means fit well into the definition of “ethnic caging” as put forward by Hage.²⁸⁷ According to Hage, “ethnic caging” represents the opposite of what the discourse of multiculturalism has sought to provide the Australian society with, that is, acceptance of diversity and tolerance towards ethnic others.²⁸⁸ As Hage puts it, “ethnic caging expresses a repressed structure that constitutes and underlies all of the reality of which it is part.”²⁸⁹ Thus, the crux of the matter is how ethnicity has been understood internally in multicultural Australia.²⁹⁰ Earlier it was emphasized that the top-down implementation of multiculturalism was rather ambiguous, and was negatively received by certain political elites as well as used to invoke a discourse on the White national imaginary that marked the creation of the nation. It is this invocation and the colonial fear of the ‘Anglo-Celtics’ that seems to be deeply embedded in the Australian national psyche that allows for the need to ‘cage’ asylum seekers.

In Australia, the colonial fears can be understood as constituting a “White Paranoia” which denotes fears of the White identity and the social and economic privileges that come with it as vanishing.²⁹¹ In this context, paranoia is, in the words of Hage: “a pathological form of fear based on an excessively fragile conception of the self as constantly threatened. It is also a tendency to perceive a threat where none exists or, if it exists, to inflate its capacity to harm the self.”²⁹² As was mentioned earlier, ‘whiteness’ was also a form of measure for civilization. In the light of the above, it can be argued that because “race” became repressed with the introduction of multiculturalism, and because Hanson and Howard both spoke out about the special treatment of the Indigenous people and other minorities, the political elite ensured to reignite the “White Paranoia”. What this did, is that it also ignited the fear that Australia never would become fully civilized, even though it managed to fully control the territory and fully marginalize the Indigenous population. Placing “White Paranoia” in the context of the arrival and detention of asylum seekers, it can be argued that it is means of ensuring that they do not threaten or disrupt the civilization that the “Anglo-

²⁸⁵ Hage (2000)

²⁸⁶ Wills (2002) p. 79

²⁸⁷ Hage (2000) p. 105

²⁸⁸ Ibid.

²⁸⁹ Hage (2000) p. 106-108

²⁹⁰ Ibid., p. 107

²⁹¹ Hage (2002) p. 419

²⁹² Ibid.

Celtics” sought to achieve. “*Ethnic caging*”, then, enables the resistance to ‘non-civilization’, and seems also to be a return to the nation-building that was initiated by the nation’s founding fathers.

Wills provides a different perspective on this, by arguing that what is also happening when asylum seekers arrive is that “*they remind them that they cannot ignore issues many sought to leave behind when they arrived in Australia: issues of poverty, fraught community, persecution(...)and war, and “their loss”*”.²⁹³ Wills further expands this argument by pointing to the fact that while this loss is sought to be kept away at distance, there is also the reminder to Australians of “*possession*”.²⁹⁴ Based on this argument and the fact that Australia never really reached a full closure with the Indigenous population, or as Hage terms it a “*post-colonial pact*”, asylum seekers also rattle the ‘uncivilized’ past and invoke fears that the Indigenous population could threaten the already established territorial possession.²⁹⁵ In the next chapter, it will be further discussed how Howard has constructed and invoked the “*White Paranoia*” during the Federal Election in 2001 where the issue of asylum seekers (including in the *Tampa* incident) was at the top of the political agenda.

6. The Asylum Seeker Issue and the 2001 Federal Election

6.1 The 2001 Federal Election; General Prognosis and Results

In addition to being framed as an immense security threat to Australia, analyses and surveys extracted from the 2001 Australian Election Study (AES) suggest that the issue of asylum seekers has had a decisive role for the outcome of the election.²⁹⁶ According to McAllister, well before the election in November 2001, the polls indicated that the Liberal-Conservative Coalition would suffer defeat to the Labor Opposition who was leading with 13 percentage points.²⁹⁷ This lead can be explained by different factors. For instance, Bean & McAllister note that the main issue of the election had been Healthcare and Education which were all Labor’s key issues, and that based on one of the major parliamentary debates, public preference was shown for Opposition leader Kim Beazley than for Coalition leader Howard.²⁹⁸ However, when the *Tampa* incident²⁹⁹ occurred and

²⁹³ Wills (2002) p. 88

²⁹⁴ Ibid.

²⁹⁵ Hage (2002) p. 421

²⁹⁶ McAllister (2003), Bean & McAllister (2002) Since it has not been possible to gain access to the primary AES source, the extracts from the AES are derived from the sources above.

²⁹⁷ McAllister (2003) p. 446

²⁹⁸ Bean & McAllister (2002) p. 272

Howard took a staunch stance on the preservation of Australia's borders as well as values, the polls shifted dramatically changing the 13 percentage point Labor lead into a comfortable 15 percentage point lead for the Liberals.³⁰⁰ As McAllister notes, the election became one where socio-economic issues were no longer at the top of the agenda, but instead it was the issue of border protection and asylum seekers.³⁰¹ Since the *Tampa* incident occurred a few weeks ahead of the events of 9/11, the domestic emphasis on national security became linked to global security threats such as terrorism, which further increased the support to the Government's approach. Another explanatory and remarkable factor for the Coalition's poll lead is also the fact that Labor did not oppose the Government's/Coalition's approach to the *Tampa* incident or the border protection agenda in general.³⁰² In fact, and as mentioned earlier, Opposition leader Beazley even announced that Labor was in full support of Howard's response to the *Tampa*.³⁰³ In the same period, public opinion polls were conducted by a number of newspapers where it was evident that up to 98% of the respondents supported Howard's response.³⁰⁴ For instance, in the *Daily Telegraph* the public supported that "*Howard was right to refuse landing rights to ship carrying illegal migrants*" and that "*it is right to insist Indonesia take responsibility for the Tampa boat people*".³⁰⁵ Similarly, polls in the Herald Sun endorsed that "*Australia should stand firm and not accept the illegal immigrants*".³⁰⁶ Since these two newspapers are tabloids and were earlier argued as being pro Howard's harsh stance on the *Tampa*, these results should be considered with caution.

Based on these factors and the actual election results, McAllister's provides the simple explanation that the Coalition's electoral triumph was due to its focus on border protection, and their ability to attract votes from Labor voters who prioritized the issue of border protection over education and health care, as well as the fact that Labor lost votes to the smaller parties such as the Greens and the Australian Democrats who largely considered the issue of refugees and asylum seekers as the most important.³⁰⁷ While this explanation seems to be a bit contradictory because the

²⁹⁹ In an earlier section it was also mentioned that prior to the *Tampa* incident, the media continuously pushed the asylum seeker/unauthorized arrival issue to the public sphere. In McAllister's analysis there is, however, no mentioning of the media's role.

³⁰⁰ McAllister (2003) p. 446

³⁰¹ Ibid.

³⁰² Ibid., p. 448

³⁰³ Kim Beazley (2001) cited in Watson (2009) p. 104

³⁰⁴ Watson (2009) p. 109

³⁰⁵ Voteline/Survey (2001) in Watson (2009) p. 109, Gaining access to these polls has not been possible, since none of the archives of either of the newspaper sources have stored the polls. In some cases, access has been denied or the links have been inaccessible. Therefore the results from the polls have been used from these secondary sources.

³⁰⁶ Voteline/Herald Sun (2001) p. 8 in Watson (2009) p. 109

³⁰⁷ McAllister (2003) p. 450-453 – See Appendix, fig. 3

Coalition also considered the issue of refugee and asylum seekers as imperative, the difference can be explained by the Greens and Australian Democrats' opposition to both Labor's support of the Government's approach as well as the Government's standpoint overall. Stated differently, the Greens and the Australian Democrats have voiced concerns about the Government's approach and advocated for a more humanitarian approach to the *Tampa* incident.³⁰⁸ In testing the public's support for the Government's/Coalition's stance on border protection, terrorism and asylum seekers, McAllister arrives at the conclusion that public opinion is linked with concerns for rising influxes of immigrants, certain stereotypes of immigrants and the impact these have on Australian national identity.³⁰⁹ Although McAllister's conclusion is close to the issues presented earlier in this thesis, his results are based on very leading questions, and questions which very likely are influencing public opinion rather than expressing it. The same can be argued for the polls conducted by the *Daily Telegraph* and the *Herald Sun*. For instance, one of the questions asked in the AES was "*Do you think the number of immigrants allowed into Australia nowadays should be reduced or increased?*".³¹⁰ In view of this and the earlier discussion of Howard's construction of asylum seekers as 'queue jumpers' and 'bogus' refugees, it can be claimed that it is very unlikely that respondents would wish for an increase in immigration numbers.

While the above, and the AES analysis, indicate that the asylum seeker issue was the issue that enabled the Coalition to win the election and remain in Government, Bean & McAllister emphasize how Howard rejected the claim that this issue was explanatory for his victory.³¹¹ Howard also expresses this in an interview immediately after the *Tampa* incident, where he takes the defensive position by claiming that the *Tampa* was not "*(...) in the context of the election (...). I'm doing what I think is right for Australia. I'm governing, I'm doing what is the best thing from the country's point of view and I'd be doing exactly the same irrespective of the timing of the election. It has nothing to do with the election and I don't seek to say anything else about that aspect of it.*"³¹² Here, Howard is portraying himself as the promoter of Australian values and protecting these by means of protecting the borders. Another imperative and somewhat covert issue here is that even though Howard is denying that the *Tampa* incident decided the outcome, Howard is playing on populist sentiments. Thus, McAllister's argument that the election was 'simply' because the Coalition took a tough stand on the asylum seeker issue and thereby won votes from the Opposition

³⁰⁸ Clyne (2005)

³⁰⁹ McAllister (2003) p. 454-460

³¹⁰ Ibid., p. 456

³¹¹ Bean & McAllister (2002) p. 278

³¹² Howard (2001) Jeremy Cordeaux Interview, Radio 5DN, August 29 2001

is not adequate for explaining the electoral outcome. Instead it can be argued that the *Tampa* incident was employed strategically in the election by Howard and his Party with the intent of achieving political advantage. How this was carried out, and what purpose it served is examined in the upcoming section.

6.2 Wedge Politics and Howard's Construction of Public Opinion

When Australia experienced the uprising of Hanson's One Nation Party it was at the same time experiencing a rise of populism in the political sphere.³¹³ This can be identified as populism precisely because Hanson's party was targeting and speaking on behalf of 'ordinary' Australians, like herself, whom she considered as being victims of multiculturalism, Asian immigration and Aborigines.³¹⁴ This also happened and arose in a period when the rural Australian population experienced a change in economic policies which did not benefit them. While One Nation Party's success only lasted a little over a decade, the tone that this party had set, seemed to have resonated well with the Howard Government, as Howard much like Hanson, engaged in representing and making policies for the 'mainstream' who were the victims of the 'elite'.³¹⁵

According to Wear, the reason why people can identify with populism is because "*many of those drawn to populism are estranged from contemporary society, anxious about the present, and nostalgic for an imagined past; there is nothing of the present that they wish to maintain(...)populism is frequently characterised by a sense of grievance and loss, alternating with surges of hope that the people will triumph against their oppressors.*"³¹⁶ Linking this to the complexity surrounding Australia's national identity and the ambiguity related to multiculturalism, it becomes clear why Howard would draw on populism. According to Wear's analysis of Howard's four terms in Government, Howard has throughout his four terms consistently used "*politicians' populism*" i.e. top-down populism by means of wedge politics.³¹⁷ Wedge politics embodies a strategy that is "*targeting unpopular or stigmatised social issues or groups as a way of defining 'mainstream politics' and linking political opponents to their support of these issues or groups*" with the intent of "*deliberately (...) undermining the support base of key political opponents in an attempt to*

³¹³ Wear (2008) p. 619

³¹⁴ Clyne (2005) p. 177

³¹⁵ Wear (2008) p. 625-626

³¹⁶ Ibid., p. 622

³¹⁷ Ibid., p. 618

gain political ascendancy and control the political agenda.”³¹⁸ On the backdrop of this, Howard has been ‘wedging’ the issue of asylum seeker arrivals and especially the *Tampa* incident. Howard’s construction and depiction of asylum seekers as a security threat and a threat to Australian values had the effect of putting the Opposition under pressure because they had a lead in the polls. Therefore, the Opposition had to submit their full support to the Coalition because “*the ‘wedged’ party is consequently forced to either ‘distance itself from unpopular causes or face political marginalization’*” and in this case lose the election which the Opposition had been leading up until the *Tampa* incident.³¹⁹ Yet this backfired for the Opposition as the polls ensured a large lead for the Coalition. Now, there was also a division inside the Opposition where some raised critical concerns over Labor’s support to the Coalition.³²⁰ Whether it was due to this disunion or the change in the polls, the Opposition withdrew this support within few days after Beazley’s announcement of the support to the Coalition’s approach to the *Tampa*. Howard’s reaction to this was to further undermine the Opposition: “*(...)I don't know whether the Labor Party wants to be bipartisan or not. I mean Mr Beazley does walk both sides of the street. I mean one day he was saying the last thing I needed with a difficult issue like this is a negative carping opposition. (...)he became exactly that. (...) The duty of an opposition on an occasion like this is to steadfastly support the national interest.*”³²¹ Howard’s discursive move here is clearly to label the Opposition as the ‘elite’ who in his opinion are acting against the national interest. Here, two pivotal points need to be clarified. First, by making the Opposition as the ‘elite’, Howard is marginalizing the Opposition and ensuring an electoral boost for his own Party. Second, the national interest in this context, and when used by Howard in general, can be argued as being relatively intertwined with the Australian values which Howard claims that he is protecting and promoting. Also, it is here that the “*White paranoia*” is expressed. Hage’s provides this interesting link by arguing that “*values for Howard constitute an essence*” and “*any opposing values are by definition opposed to national interest*”, because to him these values have emanated from the foundation of the nation in 1901 and should be protected as to ensure that the nation stays united.³²²

³¹⁸ Wilson and Turnbull (2001) p. 385-386 cited in Wear (2008) p. 625

³¹⁹ Ibid. cited in McKenzie & Hasmath (2013) p. 423

³²⁰ Watson (2009) p. 104

³²¹ Howard (2001) Joint Press Conference with Minister for Immigration the Hon Phillip Ruddock, Parliament House, Sydney September 01, 2001.

³²² Hage (2002) p. 433

What is more, Howard's definition of the national interest as constituting a defense of Australian values is as Hage puts it "*an Essence War*".³²³ Here, Howard is fighting against the 'elite' to save the "*the essential goodness of Australia and the pride of its people*" because "*they pick up on Bad deeds to pronounce Australians as essentially Bad*" whereas Howard "*picks up on the Good deeds to pronounce Australians as essentially Good*" and "*any voice that attempts to insist that the misdeeds committed in Australia's past and present cannot be so easily dismissed is immediately transformed into a Bad voice: the voice of the Bad other*".³²⁴ Thus, any critique coming from the 'other' or those who oppose Howard's standpoint needs to be contested. Further to this, Hage stresses how Howard considers that these values' "*important presence has been buried by the emphasis on multiculturalism, Asia, and Aboriginal land rights*".³²⁵ Since the 'elite' from Howard's perspective is associated with a promotion of all of the above, they are also a threat to Australian values.³²⁶ Thus, when the Opposition, including the Greens and the Australian Democrats, call for a humanitarian response to the *Tampa* incident (or asylum seekers in general), for the Coalition this is a betrayal of Australian values. Conversely, it can be said that this logic, then, also dictates that to unite the nation, Australia must not turn its back on its values and have a 'soft' stance or approach to asylum seekers. This pattern can be identified in yet another of Howard's statements: "*Well, I've got to reflect public opinion but I've also got to defend the national interest and it is clearly not in Australia's national interest to continue to be saying to the world, we are an easy target*".³²⁷ In defending the national interest, Howard has been very keen on stressing the weakness of the Opposition. For instance, Howard expressed that "*the fact is the Opposition is not really offering bipartisan support. They want the bipartisan support when it's convenient and comfortable*" and continued by noting their inability and unwillingness to make political decisions, especially when the 'national interest' is concerned: "*(...)but when there's a political point to be made they put the boot in*".³²⁸

By wedging the *Tampa* incident, the Coalition not only undermined the Opposition, they also made Labor supporters to turn towards the Coalition as well as the Greens and the Australian Democrats. This fact was stressed by McAllister, and was statistically also one of the reasons why Labor lost its comfortable lead. A consequence of using this tactic was also that Howard was able to

³²³ Hage (2002) p. 434

³²⁴ Ibid.

³²⁵ Ibid., p. 433-434

³²⁶ Clyne (2005) p. 190

³²⁷ Howard (2001) Allan Jones Interview, Radio 2UE, 30 August 2001

³²⁸ Howard (2001) Joint Press Conference with Minister for Immigration the Hon Phillip Ruddock, Parliament House, Sydney September 01, 2001

ensure that his framing of asylum seekers as a threat and the policies that followed would be legitimized. Specifically, when both national and international criticism on the handling of the *Tampa* incident, including the implementation of the *Pacific Solution*, was directed at the Government, Howard deemed these critics as “wrong”, “unfair” and “hypocritical”.³²⁹ Equally, Howard would defend his approach by emphasizing Australia’s refugee intake and its generosity in this context.³³⁰ In other words, the critics were also considered as against Australian values and in extension as “the voice of the Bad other”.³³¹ The overarching significance of this tactic is, as Gelber and McDonald also point out, that Howard had substantial power to shape and influence public opinion.³³² Therefore, the polls discussed in the beginning of this chapter, can be considered as reflecting an already constructed opinion stemming from the Government, rather than a reflection of peoples’ own perception on the issue.

7. Conclusion

In examining why asylum seekers have been framed as a threat in Australia, a complex pattern of different factors has been found. This thesis shows that the issue of asylum seeking in Australia has been securitized by the political elites in the Government. When the *Tampa* incident occurred in 2001, the Howard Government along with the help of the media initiated a securitization process, which through speech acts successfully constructed and sealed the asylum seekers onboard this vessel as a threat to Australia’s sovereignty and national identity, which further enabled the Government to implement exceptional measures. The securitization process was possible and successful for numerous reasons.

Prior to the *Tampa* incident, Australia had already experienced the arrival of boats carrying what would turn out to be asylum seekers. Since these arrivals undermined Australia’s offshore resettlement program, concern was created for how to control such arrivals that circumvent this program, even though the number of these arrivals was by no means colossal. Thus, the previous experience was further linked with the *Tampa* incident, leading the Howard Government to invoke a very statist perception of security where the state’s survival was at stake and needed to be

³²⁹ Howard (2001) Radio 3AW Interview, August 31 2001

³³⁰ Howard (2001) Radio 3AW Interview, August 31 2001

³³¹ Hage (2002) p. 434


³³² Gelber & McDonald (2006) p. 288

protected. The construction of asylum seekers as posing a security threat is, however, also deeply intertwined with Australia's national imaginary, as well as the international refugee regime.

Australia's nation building process has since the inception as a Federation in 1901 been turbulent and the top-down attempt to make Australia multicultural has been received with skepticism, especially from parts of society where the 'Anglo-Celtic' white imaginary was still alive. Moreover, the rise of Pauline Hanson's populist One Nation Party in the 1990s, and her concerns raised on influxes of Asians were also a prelude to the perception that Howard invoked in his construction of the asylum seekers' identities. Therefore, the continuous arrival of asylum seekers by boat is a disturbance to the disrupted and unfinished nation-building process as envisaged by the political right. The international refugee regime's has been employed as means of assessing the intentions of asylum seekers' arrivals, as well as a standard against which their identity was constructed. When asylum seekers did not behave in a manner that fits in the expected behavior of a refugee, their identity claims were questioned, and they could further be constructed as a threat to Australians. Although, in this case it can also be argued that the identity constructions were also created against the Australian 'values' as if their arrival was for the purposes of being naturalized into the nation rather than for seeking international protection.

The Government's securitization was also largely accepted, not only by the public but also by the Labor Opposition. This unity hinges both on the Government's discursive ability to garner public support for their standpoint, but also in their use of the issue for electoral advantage. It has been established that the Coalition's 2001 electoral victory was largely due to the asylum seeker issue, and the way the Howard Government managed to degrade the Opposition in ensuring votes for their own Party. On the other hand, staying in the Government would enable Howard to show the nation that he could both keep the asylum seekers away and protect the Australian way of life. In addition, the Government's marginalization of the judiciary on this issue also paved way for the *Pacific solution*.

The consequences of securitizing the asylum seeker issue have allowed the Australian Government to use extraordinary means and to render them as customary for addressing the issue. Australia's practices of intercepting asylum seekers at sea and sending them to third countries such as Papua New Guinea and Nauru have enabled the Government to assert control over migration, but it has also significantly eroded the norms of the international refugee regime. For the asylum seekers the consequences of these practices have meant that, among other, their right to seek asylum and to not be sent back to a place where they may face danger, have been significantly eroded as



well. Australia's legal obligations are to a large extent also to be questioned, but rely ultimately on Australia's interpretation of sovereignty and the obligations it owes to those inside of its own community.

The framing of asylum seekers as a threat in Australia is, then, linked with domestic socio-cultural and political changes. Although international developments and the processes of globalization inevitably influence asylum seeker flows to Australia, Australia's intense perception of insecurity appears to be embedded in its psyche as a nation. Equally, Australia's geographical remoteness and its status as a migrant nation seem to increase, rather than decrease, its insecurity. This thesis has also shown that despite a rising awareness of making individuals the referent object of security, the state remains the sole referent object of security even when compromises between these two can be made.

Appendix

Fig. 1.: Map over Australia: Excision³³³

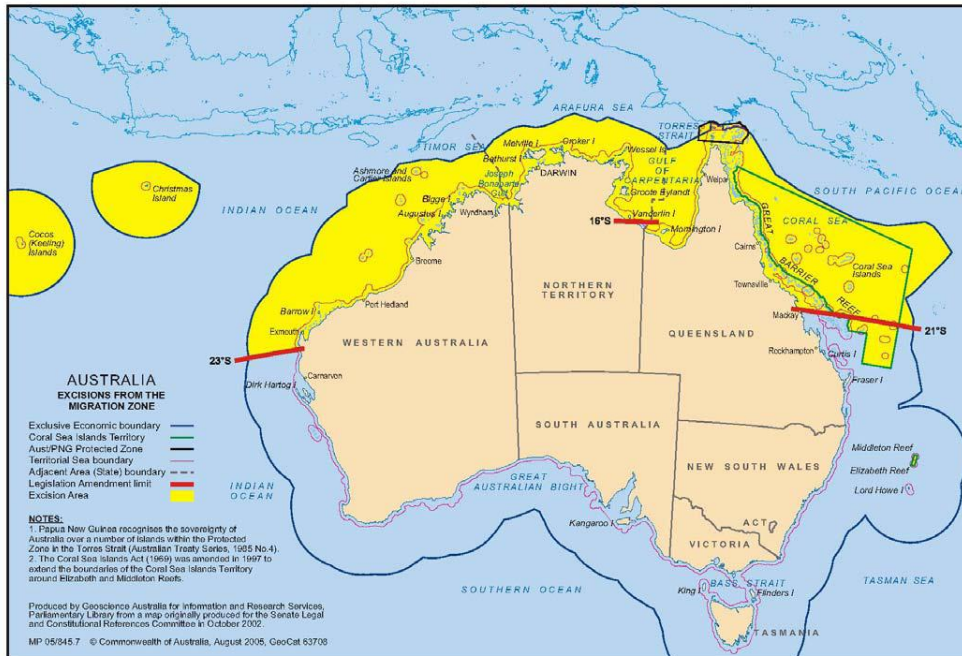


Figure 1

Fig. 2.: Picture: Children Overboard Affair³³⁴



³³³ Coombs (2005) p. 3

³³⁴ Department of Defence (2001) In Macken-Horarik (2003) p. 290

Fig. 3.: Public Opinion on Border Protection³³⁵

Table 5. Border protection and the vote

	Turn asylum-seekers back				Assist 'war on terrorism'			
	Vote				Vote			
	All	Labor	Lib-Nat	Dem	All	Labor	Lib-Nat	Dem
Strongly agree	37	32	42	20	20	16	26	3
Agree	25	21	33	14	48	45	56	51
Neither	18	21	15	20	19	22	12	23
Disagree	12	15	8	29	8	11	4	13
Strongly disagree	8	11	2	17	5	6	2	10
Total	100	100	100	100	100	100	100	100
(N)	(1967)	(673)	(845)	(103)	(1953)	(669)	(838)	(102)

'Please say whether you strongly agree, agree, disagree or strongly disagree with each of the following statements. ... All boats carrying asylum-seekers should be turned back. ... Australia should provide military assistance for the war on terrorism.'

Source: 2001 Australian Election Study (Bean, Gow and McAllister 2002).

³³⁵ Bean, Gow and McAllister (2002) in McAllister (2003) p. 455

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