

The Damned of Papua New Guinea

Australian policy and the failure of advocacy

(From: *Which Borders do we need?*)¹



*Abdul Aziz Muhamat, held in Manus camp for six years.*²

The smell of the bodies after the attack. The flight from his village. The unburied dead in the refugee camp. The dream of a ten-year-old boy who saw doctors at work and thought he wanted to do something like that one day. Memories of a childhood in Sudan.

Anyone like Abdul Aziz Muhamat who was born in Darfur towards the end of the 20th century grew up in a world of horror. Pro-government militias displaced millions, killed hundreds of thousands and destroyed thousands of villages. His brother was killed before Aziz could flee with his family to a refugee camp. He grew up there: until his parents sent him to the country's capital to prevent a kidnapping by rebels. But he did not feel safe with his uncle in Khartoum either, so he bought a ticket for a flight to Indonesia. Once there, he turned to smugglers. His destination: the Australian Christmas Islands south of Indonesia. His hope: asylum in Australia.

His first attempt to reach Australia failed; he survived an accident in a dilapidated fishing boat, in which five others drowned. On the second attempt, his boat was discovered by an Australian naval ship after days of fear. It took in the fugitives, and Aziz was given a new identity consisting of three letters and three numbers: QNK002. Little did he know that this would become his official name in the shadow world into which he disappeared for the next six years, until 2019. For shortly after he made it to the Christmas Islands, an Australian immigration official gave him the choice between returning to Sudan and transferring to Manus, a small island located in the Bismarck Sea in the north of Papua New Guinea. And so, from October 2013, he found himself near the equator, behind metal fences, in an unbearably hot room with 122 men from dozens of countries. At first, more than 1,200 asylum seekers lived in the camp

¹ Excerpt from: Gerald Knaus, [Welche Grenzen brauchen wir? Zwischen Empathie und Angst – Flucht, Migration und die Zukunft von Asyl](#), Piper, September 2020 [*Which Borders do we need? Between Empathy and Fear – Refuge, Migration and the Future of Asylum*].

² Photo: Michael Green.

in the middle of what was once a Japanese, then American, later Australian and finally a New Guinean military base.

Deprived of his freedom, Aziz was the victim of an Australian government policy to prevent further crossings from Southeast Asia through the abysmal treatment of a few thousand people on the Pacific islands of Manus and Nauru. Greg Lake of the Australian Immigration Department, who was responsible for the camps on Nauru and Manus in 2012, later explained that the intention behind the measures had been clear to everyone: The aim was to deprive the people on the islands of any hope for the future. Therefore, they were addressed by their number and never by their name. Their daily lives were organised down to the last detail so that they had no control over their lives, parents none over that of their children. They were told right at the beginning that they would be stuck for many years.³ At first, the Australian government tried to stop any information about the conditions in the camps from ever getting out, including through draconian threats of punishment, even for Australian doctors working on the islands. But to no avail: articles and reports, films and even a play about Manus appeared. John Zammit, an Australian psychologist who worked there in 2013, later described the camp as “hellish” and the psychological care he was supposed to provide there as pointless: John saw “people falling apart in front of [him]”, worn down by a life like a nightmare: humiliating days behind fences, senseless rules, inmates who had to beg even for toilet paper and soap. Many fell into apathy after years of imprisonment and uncertainty, queuing every night for sleeping pills and antidepressants. Others injured themselves, there were repeated cases of self-mutilation. One refugee was beaten to death by security staff during riots, a second died due to delayed treatment. From 2013 to 2018, 14 inmates committed suicide on Manus and Nauru. In 2019, there were renewed suicide attempts after former Australian migration minister Scott Morrison, a leading architect of this island attrition strategy, unexpectedly won the general election.⁴

Psychologist John Zammit described the conditions in the camps as torture. He later explained that he believed he would not have survived Manus as an inmate. And that he still remembers Aziz’s smile and charisma, an inspiration to others under the most adverse circumstances. Aziz took a leadership role in the camp, organised peaceful protests, acquired a mobile phone illegally and sent thousands of messages to a journalist. A Kurdish friend even wrote a book about camp life on a mobile phone. The goal of all those who were not broken was to shake up the world with their stories. And thus to remind them of their untouchable and violated dignity.⁵

In 2019, Aziz received the international Martin Ennals Human Rights Award and was allowed to leave Papua New Guinea for a fortnight. He gave a moving speech in Geneva and was granted asylum in Switzerland. And there, in Geneva, he showed me a photo on his mobile phone of the desk of Australian Prime Minister Scott Morrison, on which there was a small, grey boat with the inscription: “I stopped these”. For while human rights organisations have harshly criticised Australia’s border regime for years, Scott Morrison is proud of a policy that cost Aziz six years of his life and has been described by Australian doctors as torture. Morrison’s political success shows that there are many Australian voters who see things the same way. Explanations that somehow the citizens of this multicultural immigrant society would be particularly unempathetic towards people in need are not convincing. So what explains the popularity of this policy?

³ Greg Lake, “What Kind of Nation Are We Building?”, *Asylum Insight*, 19 January 2015, <https://www.asyluminsight.com/c-greg-lake>.

⁴ The Wheeler Centre, “I Need to Format My Memory”, *The Messenger*, accessed 14 July 2020, <https://www.wheelercentre.com/broadcasts/podcasts/the-messenger/2-i-need-to-format-my-memory>.

⁵ Behrouz Boochani, *No Friend but the Mountains: News from No Man’s Land* (btb, 2020).

In the 2013 election campaign, Australian opposition leader Tony Abbott promised his voters: “Of course, our ideal is not to have a single ship [carrying irregular migrants].”⁶ When a shipwreck in the central Mediterranean killed over 800 African migrants in April 2015, Abbott, now Australian prime minister, told Europeans the only way to stop the dying was to stop the boats. At the height of the refugee crisis in the Mediterranean in October 2015, he repeated his message at a lecture in London: “It’s been 18 months since the last illegal boat made it to Australia ... and – best of all – there are no more deaths at sea. So stopping the boats and restoring border security are *the only truly empathetic policies.*”⁷



Former prime ministers Tony Abbott (2013) and his migration minister Scott Morrison, prime minister since 2018: the two architectus of the “No way” deterrence policy in late 2013.⁸

An “empathic policy”? Australian Prime Minister Tony Abbott, like his successors, knew about the situation of the people on Nauru and Manus, because every incident there was documented.⁹ After more and more information about the intolerable conditions on the islands became public, politicians called on the Australian population to suppress their empathy for those held there. For example, Abbott’s successor, Prime Minister Malcolm Turnbull, appealed to his citizens in April 2016: “We cannot afford to let the empathy we have for the desperate situation of many people cloud our judgement.” And Australia’s Home Affairs Minister Peter Dutton said in June 2018 that Australia could not afford to be compassionate in the face of irregular migrants: “We are in danger ... a month ago we stopped a ship carrying 131 people¹⁰ ... All people need to know: A *single act of compassion* can undo all the hard-won gains of recent years.”¹¹ The argument: to enable this “only truly empathetic policy”, society had to suppress empathy for specific people. Moreover, it was worth a lot of money to the Australian government to prevent a public court case in 2017 about the conditions in the offshore camps. An Iranian asylum seeker who had been held on Manus had sued in the Supreme Court of the Australian state of Victoria.

⁶ Tom Iggulden, “Coalition to Take Even Harsher Approach to Asylum Seekers than Government”, *Australian Broadcasting Corporation*, 16 August 2013, <https://www.abc.net.au/lateline/coalition-to-take-even-harsher-approach-to-asylum/4893784>.

⁷ “Transcript: Tony Abbott’s controversial speech at the Margaret Thatcher Lecture”, *The Sydney Morning Herald*, 28 October 2015, <https://www.smh.com.au/politics/federal/transcript-tony-abbotts-controversial-speech-at-the-margaret-thatcher-lecture-20151028-gkkg6p.html>.

⁸ Photo: gettyimages / Graham Denholm.

⁹ Later, these documents were published by the British newspaper *The Guardian*.

¹⁰ Helen Davidson, “Turnbull rejects New Zealand offer to take 150 refugees from detention”, *The Guardian*, 29 April 2016, <https://www.theguardian.com/australia-news/2016/apr/29/turnbull-rejects-new-zealand-offer-to-take-150-refugees-from-detention>.

¹¹ “Compassion Can Undo Efforts against People-Smugglers: Dutton,” *SBS News*, 23 June 2018, <https://www.sbs.com.au/news/compassion-can-undo-efforts-against-people-smugglers-dutton>.

1923 others joined him. The plaintiffs sought compensation for serious physical and psychological harm and for their unlawful detention. They were able to rely on the Supreme Court of Papua New Guinea, which had ruled in April 2016 that the detention on Manus was unlawful. In September 2017, the Australian government accepted an out-of-court settlement and paid the plaintiffs compensation totalling 70 million Australian dollars (about 47 million euros at the time). Money has never played a major role in Australia's island policy. As of 2012, the expenditure for 3000 people in two camps amounted to about 600 million euros annually. The amount corresponded to the annual expenditure for the entire Australian court system.¹²

Just as money played no role, criticism from Australian civil society has been consistently ignored in Canberra since 2013. Human rights groups, doctors and artists protested tirelessly. The country's best-known writer, Richard Flanagan, called the island camps a criminal "zoo of cruelty".¹³ But Tony Abbott and his successors knew that not only the majority of the population, but also the country's largest opposition party saw no alternative to the camps. In April 2016, Bill Shorten, Opposition Leader and Labor Party Leader, declared that "there is not a single person in Labor who wants to see the boats leave again". In November 2017, Shorten pointed out, "The camps on Manus and Nauru were set up as transit centres to ensure Australia did not become a destination for people smugglers and to stop deaths at sea. This strategy has worked."¹⁴ This argument resonated with a large majority of the electorate. Thus, the NGOs' campaigns came to nothing. The vast majority of Australians saw no alternative to the offshore policy. The critics of this policy had none either.

It was a sobering lesson for human rights activists: it is not enough to point to innocent people suffering to bring about a change in policy as long as the criticised policy is not countered by an alternative that is capable of winning a majority. This is where the critics of the Nauru Manus policy in Australia failed.

The good Australians

The story of 20-year-old Lam Binh, who in April 1976 was the first boat refugee to reach Australia with a page torn out of a school atlas as a navigation aid, is now a subject of instruction in Australian schools.¹⁵ Together with his younger brother and three friends, Lam made the more than 3,500-kilometre journey from Vietnam to Australia. After a three-month journey, the boat arrived in Darwin harbour. When the immigration officials came on board, Lam said, "Welcome to my boat. My name is Lam Binh and these are my friends from South Vietnam. We request permission to stay in Australia." He was allowed to stay.¹⁶

¹² Ben Doherty, "Manus Island: Judge Approves \$70m Compensation for Detainees," *The Guardian*, 6 September 2017, <https://www.theguardian.com/australia-news/2017/sep/06/judge-approves-70m-compensation-for-manus-island-detainees>. "Detention Costs," *Refugee Action Coalition*, accessed July 14, 2020, http://www.refugeeaction.org.au/?page_id=3447.

¹³ Boochani, *No friend but the mountains*.

¹⁴ "Bill Shorten: Response to letter from Australians of the Year re Manus Island", *Independent Australia*, 24 November 2017, <https://independentaustralia.net/life/life-display/bill-shorten-response-to-letter-from-australians-of-the-year-re-manus-island,10965>.

¹⁵ "Anniversary of First Vietnam Boat Marked," *SBS News*, 23 August 2013, <https://www.sbs.com.au/news/anniversary-of-first-vietnam-boat-marked>.

¹⁶ National Museum of Australia, "Vietnamese Refugees Boat Arrival", *Defining Moments*, accessed 4 June 2020, <https://www.nma.gov.au/defining-moments/resources/vietnamese-refugees-boat-arrival>.



Hieu van Le, from boat refugee to governor of South Australia.¹⁷

In November 1977, Hieu van Le reached the north coast of Australia near Darwin. He too had left Vietnam with his wife in a small boat. “I was born and raised in a war-torn country far away from here. War was part of my life: rockets fired, noisy helicopters hovering overhead as we took cover ... and the haunting sounds of people suffering,” he later recounted. “The escape from Vietnam was dangerous, there were pirates, raging storms, even a volcanic eruption and incessant hunger and thirst.”¹⁸

Upon arrival, the young couple was taken to the south of the country. With the help of a local family, they both found work on an apricot farm. Van Le studied economics at the University of Adelaide and worked as an accountant. He became chair of the state’s Multicultural and Ethnic Affairs Commission and, in 2014, governor of South Australia, one of the six states.

Van Le often spoke publicly about the importance of migration to Australia and the generosity and openness he experienced: “In Australia, we have a long tradition of seeing immigration as a benefit, as building our human capital, and as a positive addition to our economy and our society. That’s what has made us who we are.”¹⁹ Despite the warm welcome, he missed some things from his old home. He recalled how his wife once sent him out to buy lemongrass for a traditional Vietnamese meal. He made a drawing of lemongrass to show the vendors, but when a shopkeeper said to him, “Mate, we don’t eat grass in Australia,” he gave up – for then. Because “in 30 years our society has gone through a dramatic change. The rows of Asian food in our supermarkets are just one example of this change that we now take for granted.” And this change is not limited to Australia. Van Le tells of his friend who arrived with him on the boat as a refugee in Darwin in 1977 and now lives in Virginia in the US. There he runs over 30 huge greenhouses where he grows lemongrass.²⁰

In 1945, Australia had 7 million inhabitants. In 1977, there were 14 million. Today it is 25 million.²¹ Numerous Australian governments had set themselves the goal of increasing the country’s population through immigration. However, even a decade before Van Les arrived, the so-called White Australia Policy still determined who was welcome as a migrant. For decades, Australia as a country of immigration was only interested in white immigrants and refugees from Europe. The “connection in the mind”, the association Richard Rorty spoke of

¹⁷ Photos: flickr / Gawler History and Wikimedia Commons / Bahudhara.

¹⁸ Karen Ashford, “Hieu Van Le’s Journey from Boat Person to Governor”, *SBS News*, 2 September 2014, <https://www.sbs.com.au/news/hieu-van-le-s-journey-from-boat-person-to-governor>.

¹⁹ Hieu Van Le, “Hieu Van Le: Immigration a Priceless Asset”, *The Advertiser*, 23 December 2010, <https://www.adelaidenow.com.au/ipad/hieu-van-le/news-story/42439a3dcd8c24e82186ceb5b7c83d>.

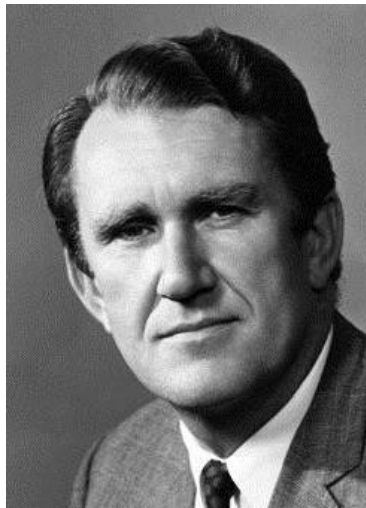
²⁰ Hieu Van Le.

²¹ “Population by Country | Australia”, Our World in Data, accessed 4 June 2020, <https://ourworldindata.org/grapher/population?country=~AUS>.

as the basis of solidarity, was attached to skin colour. The politics of a “white Australia” did not change until the early 1970s. Van Le was lucky that he only came to the country in 1977.

Van Le was also lucky to reach Australia before 1989. That year, refugees from a boat from Cambodia were arrested for the first time and detained for years. In 1992, the then Labor government introduced mandatory detention of all irregular arrivals. From 1995, even indefinite detention was allowed. Had Van Le reached Darwin in his boat in 2001, the government of the day would have taken him to Nauru. Had he arrived in 2013, he might still be stuck on Manus Island today. But in 1977, he was greeted in unmistakably Australian style: “As our damaged boat pulled into the harbour, we suddenly heard the buzzing sound of a boat approaching us. It turned out to be a tin boat with two guys standing in it. They waved at us and one of them was holding a beer, raised his hand and shouted: ‘Hi mate, welcome to Australia!’ That was a remarkable moment.”

1977 was the best, if not the only good time to arrive in Australia as a boat refugee. No one who made it here like Van Le was arrested. Moreover, many Vietnamese were resettled in Australia directly from camps in Southeast Asia. By 1983, a total of 70,000 had been resettled, and by 1997, 185,700 from all over Southeast Asia. During this period, only the United States took in more people per capita worldwide.²² Malcolm Fraser, the Prime Minister in charge, received much praise from human rights groups for this. In Australian director Eva Orner’s 2017 documentary *Chasing Asylum*, he explained his policy: “We had no choice. The fact that we had fought in Vietnam reinforced the sense of obligation I felt. We convinced Malaysia to set up a reception centre [for resettlement]. There, applications were processed, often quite quickly, within a month or two, and those who were allowed into Australia were flown here. So there was no danger of people drowning at sea after they went to the reception centre in Malaysia.” Fraser was proud of the „strong, very loyal Australian-Vietnamese community“ that was created.²³



Malcolm Fraser, Australia’s conservative prime minister from 1975 to 1983, “stopped” refugee boats by cooperating with and resettling tens of thousands of refugees from neighbouring Southeast Asian countries. Until his death in 2015, Fraser was a fierce critic of the Nauru policies of his successors.²⁴

²² Janet Phillips and Harriet Spinks, “Immigration Detention in Australia”, Department of Parliamentary Services (Parliament of Australia, 20 March 2013), 2.

²³ *Chasing Asylum* (Dogwoof, 2016), <https://dogwoofsales.com/chasing-asylum>.

²⁴ Photo: Wikimedia Commons / Commonwealth of Australia 2011.

In fact, Australian governments have managed to drastically reduce the number of people arriving in boats in Australia three times in the last 50 years: in 2001 and 2013 with the camps in Nauru and Manus, and from 1980 through Malcolm Fraser's policy. From 1976 to 1979, 2029 Vietnamese boat people reached Australia, but for years after that, hardly any boats arrived.

Opinion polls in 1979 showed Fraser that the majority of Australians supported the resettlement of a "limited number" of refugees under an orderly process.²⁵ At the same time, his government knew how important it was to ensure control over irregular migration. Because even then, even small numbers of irregular arrivals put the population on alert. Government contingency plans included measures that were all taken in later years: indefinitely detaining boat people in remote areas with minimal supplies or denying them permission to dock. But in 1979, this did not happen.

Australia under Fraser: „Holding the boats”²⁶

Irregular arrivals	
1976	111
1977	868
1978	746
1979	304
1980	0
1981	30
1982	0
1983	0
1984	0
1985	0
1986	0
1987	0
1988	0
1989	26

Fraser decided to cooperate with the transit countries. He offered the governments of Malaysia and Indonesia to resettle refugees in Australia in return for preventing boats from leaving for Australia. Fraser's then Immigration Minister said it was "naïve" to assume that first-receiving countries such as Malaysia would "look favourably on the Australian objective of detaining refugees, perhaps indefinitely, until international resettlement can be organised."²⁷

There is a fascinating book by the Australian historian Claire Higgins about this time and the internal discussions in Fraser's government. In it, she describes that forms of deterrence were also considered at the time, but then discarded. However, the migration minister declared in almost every press release that Australia's government was "in full control". In January 1978, he stressed that Australia would adopt a stricter policy towards boat people should they become

²⁵ Claire Higgins, *Asylum by Boat: Origins of Australia's Refugee Policy* (NewSouth Publishing, 2017), 35.

²⁶ Janet Phillips and Social Policy, "Boat arrivals and boat 'turnbacks' in Australia since 1976: a quick guide to the statistics", Parliamentary library, Research Paper Series, 17 January 2017, https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1617/Quick_Guides/BoatTurnbacks.

²⁷ Claire Higgins, 105.

a major phenomenon.²⁸ Higgins also shows that the US and Australia secretly damaged potential refugee boats in the ports of transit countries to make onward travel impossible.²⁹

The policy of generously accepting refugees was thus also made possible by stopping irregular boats. Between 1981 and 1989, no boat reached Australia irregularly. How Australia's government at the time and the population would have reacted if thousands had arrived in one year, as they did later in 2000 or 2010, is uncertain, because that did not happen.



Labour Prime Minister Kevin Rudd. He closed Nauru and ended the island policy in 2008 which he described as immoral. Then a Labour government reopened Nauru and Manus and he made the policy even tougher in 2013, before losing elections.³⁰

But why was it that in 1979, through cooperation with neighbouring countries, the number of arrivals was reduced to almost zero without deterring people through inhumane treatment, but not later? In fact, there was another such attempt in 2011. The Australian Labor Party had called the Nauru policy immoral and cynical when in opposition in 2007 and closed the two camps in 2008 after winning the election under Prime Minister Kevin Rudd. As a result, the number of boat people arriving had quickly increased again. Then, shortly before Christmas 2010, a terrible shipwreck occurred off the Christmas Islands. At least 27 people were killed when their smuggler boat was caught in a storm just off the coast. While metre-high waves smashed the leaking boat against the coastal rocks, islanders tried to help the refugees. One later reported: “Babies, children, maybe three or four years old, were hanging on to pieces of wood, screaming ‘help, help, help’. We threw them life jackets, but many of them couldn’t swim the few metres to reach them. If we had jumped into the water, we would have died ourselves.” Such scenes, filmed from the shore, shook the Australian public. Pressure to find a better policy grew, but the government did not want to reopen Nauru and Manus. In 2011, it proposed an alternative: an agreement with Malaysia. Malaysia would take back boat people from Australia and provide them with asylum procedures conducted there by the UNHCR.³¹ In return, Australia would take in a larger number of people in need of protection directly from Malaysia.³² This would

²⁸ Claire Higgins, 31.

²⁹ Claire Higgins, 102.

³⁰ Photo: Wikimedia Commons / Office of the Hon. Kevin Rudd

³¹ Stephen Kurczy, “Christmas Island boat tragedy fuels debate over Australian policy on asylum seekers”, *Christian Science Monitor*, 15 December 2010, <https://www.csmonitor.com/World/terrorism-security/2010/1215/Christmas-Island-boat-tragedy-fuels-debate-over-Australian-policy-on-asylum-seekers>.

³² “Asylum policy: Malaysia and Australia exchange refugees”, *Der Spiegel*, 25 July 2011, <https://www.spiegel.de/politik/ausland/asylopolitik-malaysia-und-australien-tauschen-fluechtlinge-aus-a-776403.html>.

simultaneously stop boats and promote legal resettlement without discouraging asylum seekers through poor treatment.

On 25 July 2011, the government presented the new „Memorandum of Understanding between the Government of Australia and the Government of Malaysia on the Transfer and Resettlement of Refugees“. It was brief:

“The Government of Australia will transfer certain persons applying for international protection for refugee status determination to Malaysia in exchange for the Government of Australia accepting certain persons classified as refugees by the United Nations High Commissioner for Refugees (UNHCR) in Malaysia.

This agreement presupposes that the UNHCR and the International Organisation for Migration (IOM) can fulfil the ... tasks and functions envisaged.

Under the agreement, Malaysia will accept the transfer of up to 800 asylum seekers from Australia. In return, Australia will resettle 4000 recognised refugees from Malaysia over a period of four years.”³³

The Labor government commented: “Don’t underestimate the determination of this government ... We don’t want people doing business with human misery. We want to remove the incentive for people to get on boats.”³⁴ The UNHCR welcomed the agreement the same day:

“UNHCR hopes that over time the agreement will lead to more protection in both countries and the region as a whole. It also welcomes the fact that another 4000 refugees from Malaysia will be given a durable solution through resettlement in Australia. The potential to work towards safe and humane options beyond dangerous boat journeys is also a positive aspect of this agreement.

The Convention and its implementing directives contain important safeguards, including respect for the principle of non-refoulement, the right to asylum, the principle of family reunification and the best interests of the child, humane reception conditions including protection against arbitrary detention, lawful status to remain in Malaysia until a durable solution is found, and the opportunity to receive education, access to health care and a right to employment.”³⁵

UNHCR already had decades of experience with this kind of cooperation in Southeast Asia. The agreement stipulated that the Australian government would cover all costs for the asylum process in Malaysia, medical care and school attendance. John Menadue, then head of the Australian Immigration Department, called the agreement a “rare opportunity to end the cruel treatment [of refugees]”. He said the potential of the agreement to strengthen refugee protection in the region should be recognised. As with Malcolm Fraser, the government’s goal was to “stop the boats”. And this policy was also based on cooperation with neighbouring countries, where asylum procedures were to take place in cooperation with the UNHCR. Added to this

³³ “Arrangement between the government of Australia and the government of Malaysia on transfer and resettlement”, 25 July 2011, <https://www.kaldorcentre.unsw.edu.au/sites/default/files/arrangement-australia-malaysia-transfer-resettlement.pdf>.

³⁴ “Transcript of joint press conference”, Prime Minister, 7 May 2011, https://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/759982/upload_binary/759982.pdf;fileType=application/pdf#search=%22bowen%20malaysia%22.

³⁵ “UNHCR Statement on the Australia-Malaysia Arrangement”, UNHCR, 25 July 2011, <https://www.unhcr.org/news/press/2011/7/4e2d21c09/unhcr-statement-australia-malaysia-arrangement.html>.

was the proposal to remove the incentive for irregular boat journeys through repatriations from a cut-off date.

But Labor had a problem: in 2011, the party did not have its own majority in parliament. Tony Abbott's Liberal Party, then in opposition, criticised the agreement. Why should Australia take in *more* people in need of protection from Malaysia (4000) than it sent back (800), when there was the Nauru option as an alternative that had worked in the past? Liberal MP Scott Morrison, (the current Prime Minister), saw any form of reception centres in neighbouring countries as having a pull effect. Instead, the Liberals offered the government to amend the Migration Act: "The designation of a country as the location of extraterritorial reception centres" should be made „without reference to international or national law". This would allow any one arriving to be sent to any country in the world.³⁶



The alternative to returning to the Nauru policy was the 2011 Australia-Malaysia Agreement to reduce irregular migration. It was defeated through an alliance between the Conservative and Green Party, between those who opposed all irregular migration and human rights groups.³⁷

At the same time, the Australian Greens, on whom Labor depended for a majority in parliament, also attacked the Malaysia deal:³⁸ MP Adam Bandt introduced a motion in parliament against the agreement. With the votes of Tony Abbott's opposition Liberal Party and two independent MPs, Bandt achieved a majority for this. A Greens spokesperson warned: "There is no way that the 800 people Australia is deporting will be treated better than the 94 000 other asylum seekers in Malaysia ... The Greens believe the Malaysia deal is inhumane."³⁹ This criticism was shared by human rights organisations. In an open letter, Human Rights Watch sharply attacked the Malaysia Agreement: "It is unacceptable to create an exception for 800 people to be exchanged when some 90 000 other refugees and asylum seekers living in Malaysia – with similar claims and protection needs – remain as 'illegal migrants' under Malaysian law, subject to arrest, detention and deportation."⁴⁰

³⁶ Migration Legislation Amendment (Offshore Processing and Other Measures) Bill 2011 (2011), <https://www.legislation.gov.au/Details/C2011B00193/Html/Text>, <http://www.legislation.gov.au/Details/C2011B00193>.

³⁷ Photo: gettyimages / Stanley Chou.

³⁸ Senator Sarah Hanson-Young, "Migration Amendment (Declared Countries) Bill 2011" (2011), 3, <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22legislation/billhome/s832%22>.

³⁹ "Greens Repeat Opposition to Malaysian People Swap", The Greens, 22 July 2011, <http://sarah-hanson-young.greensmps.org.au/articles/greens-repeat-opposition-malaysian-people-swap>.

⁴⁰ "Letter to the Prime Ministers of Australia and Malaysia Regarding the Australia-Malaysia Transfer and Resettlement Arrangement", Human Rights Watch, 26 July 2011, <https://www.hrw.org/news/2011/07/26/letter-prime-ministers-australia-and-malaysia-regarding-australia-malaysia-transfer>.

A human rights lawyer brought the agreement before Australia's High Court. In August 2011, the High Court ruled that the agreement contradicted the Australian Migration Act in force at the time. According to this law, asylum seekers could only be sent to countries that had a legal obligation to ensure access to an asylum procedure. Malaysia had not ratified the Geneva Refugee Convention and was therefore not obliged to provide access to asylum procedures.

The Australian Greens and Human Rights Watch were pleased with the ruling. The British⁴¹ *Guardian* wrote that the "failure of the Australian 'Malaysia solution'" was "a positive step for refugees".⁴² Then the predictable happened. Between summer 2011 and the end of 2013, 582 boats with 38 890 people reached Australia. 600 people drowned during this time. With no alternative policy, and with arrivals continuing to rise, Labor decided to do a U-turn and reopen the island camps. It was Kevin Rudd, who had closed the camps in 2008, who now announced in July 2013: "From today, asylum seekers who come here in boats without visas will never make their home in Australia." And Rudd added: "Our country is sick and tired of people smugglers exploiting asylum seekers and drowning them on the high seas."⁴³

The Migration Act, which the court had referred to in its ruling, was amended by Labor and the Liberal Party for this purpose. Rudd lost the election in autumn 2013, but since then almost the entire parliament has backed this policy. Abbott's Liberal Party returned to power and pursued the strictest deterrence policy to date, with brutal determination and at the cost of human rights violations.

Could Malaysia be expected to adequately cater for 800 or more refugees in 2011? Malaysia was then at the level of socio-economic development of Australia, Sweden and Germany in 1968.⁴⁴ John Menadue of the Australian Immigration Department pointed out that Malaysia had played a key role in the resettlement of Vietnamese boat people for many years: "Many have forgotten Malaysia's crucial role in finding solutions for hundreds of thousands of Indochinese refugees in the 1970s and 1980s as a country of first asylum ... This would not have been possible without regional cooperation."⁴⁵

Perhaps the Labor government should have offered the opposition more than just taking 4000 refugees. Maybe the Green Party should have demanded more guarantees and human rights organisations should have made more suggestions on how to monitor in Malaysia what happened to those who would be sent back. No one can say whether the agreement with Malaysia would have actually reduced the number of arrivals in 2011. Just as no one could have predicted in March 2016 whether the EU-Turkey Statement would achieve a reduction in boat people in the Aegean. What is certain is that in 2011 there was a possible majority and a regional

⁴¹ Plaintiff M70/2011 v Minister for Immigration and Citizenship; Plaintiff M106 of 2011 v Minister for Immigration and Citizenship, No. 32 (High Court of Australia, 31 August 2011), para 148.

⁴² Fergal Davis, "The Failure of Australia's 'Malaysia Solution' Is a Positive Step for Refugees", *The Guardian*, 4 September 2011, <https://www.theguardian.com/commentisfree/2011/sep/04/australia-failure-malaysia-solution-refugees>.

⁴³ Irial Glynn, *Asylum Policy, Boat People and Political Discourse: Boats, Votes and Asylum in Australia and Italy* (Palgrave Macmillan UK, 2016), 160.

⁴⁴ Per capita income Malaysia 2011: US\$ 19 390, Sweden: 1968: US\$ 19 532, Germany: US\$ 19 927, Australia 1968: US\$ 20 255. "GDP per capita in US\$ | Malaysia, Australia, Sweden, Germany", Our World in Data, accessed 1 June 2019, <https://ourworldindata.org/grapher/maddison-data-gdp-per-capita-in-2011-us-single-benchmark?time=1820.2016&country=MYS+SWE+DEU+AUS>.

⁴⁵ John Menadue, "Malaysia Refugee Deal a Rare Chance to End Cruel Treatment", *The Sydney Morning Herald*, 13 May 2011, <https://www.smh.com.au/politics/federal/malaysia-refugee-deal-a-rare-chance-to-end-cruel-treatment-20110513-1emal.html>.

partner for an alternative to the return to Nauru policy. Malaysia was ready, but opposition to any such cooperation was too strong.

In 2016, both Tony Abbott and Scott Morrison distanced themselves from their party's uncompromising campaign against the Malaysia solution. But by then it was too late. After 2013, the only thing left for opponents of the Nauru policy, who had also rejected the Malaysia deal, was to demonstrate against their government with no hope of political support from the two major parties. Criticism of the island policy did not abate. This made it possible for private funds to be found for projects like the film *Chasing Asylum*. But even its committed director Eva Orner stated in 2016 that she would not advise anyone to "come to Australia by boat" in view of the situation on the islands.⁴⁶ She responded in a later interview to the question of how politics in Australia could concretely change with a shrug.⁴⁷

Malcolm Fraser succeeded in combining state control and empathy for refugees through cooperation with neighbouring states. He convinced a sceptical Australian population to accept a large number of refugees in an orderly process. This policy continued for many years after the end of his government. It was humane and capable of winning a majority. It was possible in 1979, would have been possible in 2011 with an improved Malaysia solution, and remains possible in the future, should the debate in Australia turn seriously again to the question of how to achieve humane borders without human rights abuses.



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Gerald Knaus
**Welche Grenzen
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Zwischen Empathie und
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und die Zukunft von Asyl

Recommended:

Listen: <https://www.wheelercentre.com/broadcasts/podcasts/the-messenger>, on life in Manus.

Watch: [Chasing Asylum](#) by Eva Orner, on Manus and Nauru.

Read: [This pains me, but it's time to compromise on Australia's cruel asylum seeker policy](#), Robert Manne, *The Guardian*, 2018, on a way out of the Australian stalemate.



⁴⁶ Brigid Delaney, "Eva Orner on Chasing Asylum: 'Every whistleblower that I interviewed wept'", *The Guardian*, 30 April 2016, <https://www.theguardian.com/australia-news/2016/apr/30/eva-orneer-on-chasing-asylum-every-whistleblower-that-i-interviewed-wept>.

⁴⁷ "VICE Talks 'Chasing Asylum' with Filmmaker Eva Orner," *Vice*, accessed July 14, 2020, https://video.vice.com/en_nz/video/vice-talks-chasing-asylum-with-filmmaker-eva-orneer/572978fbc2bc5bca15423884

UNHCR 2011 on the alternative to Nauru/Manus policy



Monday 25 July 2011

UNHCR Statement on the Australia-Malaysia Arrangement

GENEVA – UNHCR notes the signature today of a bilateral Arrangement between Australia and Malaysia on transfer and resettlement.

UNHCR is not a signatory to the Arrangement, however it appreciates that both Governments have consulted with the Office.

UNHCR's preference has always been an arrangement which would enable all asylum-seekers arriving by boat into Australian territory to be processed in Australia. This would be consistent with general practice.

The current Arrangement worked out by both parties takes a different approach. It responds to the particular domestic and regional context of the asylum and migration situation in the Asia-Pacific region, which includes the need to address people smuggling challenges and, in particular, to prevent further loss of life at sea.

UNHCR hopes that the Arrangement will in time deliver protection dividends in both countries and the broader region. It also welcomes the fact that an additional 4000 refugees from Malaysia will obtain a durable solution through resettlement to Australia. The potential to work towards safe and humane options for people other than to use dangerous sea journeys are also positive features of this Arrangement. In addition, the Malaysian Government is in discussions with UNHCR on the registration of refugees and asylum-seekers under the planned Government programme announced in June on the registration of all migrant workers.

The Arrangement and its implementing guidelines contain important protection safeguards, including respect for the principle of *non-refoulement*; the right to asylum; the principle of family unity and best interests of the child; humane reception conditions including protection against arbitrary detention; lawful status to remain in Malaysia until a durable solution is found; and the ability to receive education, access to health care, and a right to employment.

The critical test of this Arrangement will now be in its implementation both in Australia and Malaysia, particularly the protection and vulnerability assessment procedures under which asylum-seekers will be assessed in Australia prior to any transfer taking place.

UNHCR will continue to monitor and review progress, remaining engaged with the parties to ensure the protection safeguards are implemented in practice as the two governments bring this Arrangement into effect.

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