

## Seeking Asylum in Australia - A Historical Perspective\*

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My interest in historical perspectives stems from a frustration with the current debate about Australia's response to refugees and asylum seekers. This debate tends to be unnecessarily narrow. More often than not, those advocating a more generous response seem preoccupied with playing a catch-up game by reacting to government spin. Attempts to move outside the terms set by the current government are regularly informed by a wider agenda that is also set by this government: thus refugee advocates often try to argue that asylum seekers are deserving applicants for a visa – either because they supposedly are essentially good people (to counter allegations such as those made by Prime Minister John Howard and members of his cabinet during the 2001 federal election campaign) or because they supposedly could play a useful role in the Australian economy (in response to the government's muddling of refugee and immigration policies).

Too often, crucial principles underlying the government's policy are accepted as a given – as if these principles were not in themselves historically contingent. Sometimes a certain state of affairs seems set in concrete because it supposedly has existed as long as anyone can remember. Generally, informed historical perspectives do not feature prominently in Australian political debate. Take, for example, the controversy over the Howard government's anti-terror legislation: how many of those defending or criticising the bills before parliament in late 2005 explored historical instances in which the Australian government used preventative detention and racial profiling to counter a perceived security threat? Or take the debate over Australia's response to refugees and asylum seekers: how many of those contributing to it have acknowledged the long and complex historical genealogies of the issues involved?

I am confident that it would be possible to broaden the current debate about refugees and asylum seekers – if only we remembered other states of affairs, and revealed the historical contingency and extraordinariness of the present. In this paper, I take two specific and very recent incidents as pretexts for delving into the past. One concerns the asylum request by the Chinese diplomat Chen Yonglin in May 2005, the other the discovery of four stowaways on an Australia-bound cargo ship some six months later.

On 31 October 2005, crew on board the bulk carrier *Furness Karumba* became aware that

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stowaways had hidden in the ship's cargo hold when it had sailed with a consignment of rock phosphate from the port of Laayoune, the capital of the former Spanish colony of Western Sahara which was annexed by Morocco and Mauritania in 1975.<sup>1</sup> By the time the stowaways were detected, two of them were dead. The ship was in international waters when their bodies were discovered, but was heading for Western Australia. The captain notified the Australian authorities, and after the ship's arrival in an Australian port, police questioned the crew and the two survivors, two young Moroccan men, who had been close to death themselves.<sup>2</sup> The two were also interviewed by DIMIA officials, who initially determined that there was no lawful reason for them to remain in Australia and that they would therefore be deported. Subsequently, the men lodged applications for a protection visa. While their applications were processed, they were kept in the Perth detention centre.<sup>3</sup>

Australians have become accustomed to associating leaky boats from Indonesia with those who reach Australia by sea and try to enter the country without being in possession of a valid visa. But since the end of 2001, there have been very few 'unauthorised boat arrivals'. Only three boats carrying 82 people arrived in 2003-04, and none in 2002-03 and 2004-05. The small but steady number of people who enter Australia as 'seafarer deserters' (that is, after jumping ship) or as stowaways has gone almost unnoticed. Between 1 July 2001 and 30 June 2005, DIMIA recorded a total of 64 stowaways, and almost four times as many seafarer

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<sup>1</sup> The fact that the *Furness Karumba* and its cargo had sailed from Laayoune raises other interesting issues which I cannot pursue in this paper but which could make us reflect on globalisation and on the links between seemingly unrelated issues: irregular and forced migration; Australian wheat farming; and the unsuccessful quest for self-determination by the people of Western Sahara. While the Moroccan government claims that the northern two-thirds of the phosphate-rich Western Sahara (which includes the port city of Laayoune) is now part of Morocco, this claim is not recognised by the United Nations (see, e.g., United Nations Security Council, 'Report of the Secretary-General on the situation concerning Western Sahara', 19 April 2005, UN document S/2005/254, <http://www.unhcr.ch/cgi-bin/texis/vtx/rsd/rsddocview.pdf?tbl=RSDCOI&id=42b921894>) or, for that matter, the Australian government. Interestingly, the Australian journalists reporting the death of the stowaways in early November 2005 consistently referred to Laayoune as a Moroccan port; none of them raised the possibility that the stowaways were from Western Sahara (rather than from Morocco and Mauritania proper, as initially reported), or that the men's departure might have been connected to the unsolved dispute over who ought to control Laayoune and its hinterland. Given the protracted refugee situation in the region, which is the direct result of the conflict over Western Sahara, and the history of human rights violations in the territory occupied by Morocco (see, e.g., 'U.S. Department of State Country Report on Human Rights Practices 2004 - Western Sahara - February 2005', 28 February 2005, <http://www.unhcr.ch/cgi-bin/texis/vtx/rsd/rsddocview.html?tbl=RSDCOI&id=4226d98df>), such a connection was certainly conceivable. Several weeks after the story about the four stowaways first broke, however, concerns were raised about the provenance of the *Furness Karumba*'s cargo (see Julie Macken, 'Wesfarmers "unaware" of illegality of cargo', *Australian Financial Review*, 2 December 2005).

<sup>2</sup> They pulled through not least thanks to the medical care they received on board the *Furness Karumba*. This is worth mentioning because such care can no longer be taken for granted. In January 2006, three crew members and the captain of the cargo ship *African Kalahari* appeared on murder charges in a South African court because they were accused of throwing seven stowaways overboard, two of whom drowned ('Stowaways overboard', *Sunday Mail* (Adelaide), 8 January 2006). See also Elissa Steglich, 'Hiding in the hulls: attacking the practice of high seas murder of stowaways through expanded criminal jurisdiction', *Texas Law Review* 78,6 (2000): 1323-46.

<sup>3</sup> Amanda Banks, 'Slow death at sea', *Weekend Australian*, 26-27 November 2005; Amanda Banks, 'Bid for a better life ends on freighter', *Weekend Australian*, 5-6 November 2005.

deserters. Most of the former were removed from Australia by the shipping company responsible for their arrival. There are no reliable estimates about the proportion of stowaways who evade detection before entering Australia. Some obviously do, as is evidenced by the immigration department's statistics about the detection of illegal immigrants: Between 1 July 2004 and 30 June 2005, DIMIA located 25 people who had entered the country as stowaways.<sup>4</sup>

Of those arriving as stowaways in Australia now, a minority lodge protection claims. As David Manne's experience suggests,<sup>5</sup> this may be partly due to the fact that the immigration department has occasionally prevented prospective asylum seekers arriving as stowaways from lodging an application for a protection visa. Those failing with their claims as well as all those who don't lodge a claim are deported. There was therefore perhaps nothing remarkable about DIMIA's initial advice that the two survivors from the *Furness Karumba* would be removed as soon as practicable. The only contentious issue seemed to be whether they had no lawful reason for being in Australia only because they had not been given the opportunity to state that reason in a format acceptable to the immigration department.

Stowaways have not always been automatically deported unless they could convince the Australian authorities that they were refugees according to a relevant international convention. Hersz Rozenberg, the young man on the cover of my book *Refuge Australia*, arrived in Sydney as a stowaway in 1941 on a ship from Japan. He was allowed to remain in Australia, and by 1946 had been naturalised.<sup>6</sup> Arguably in his case, the government's generous response was unsurprising given that he was a Polish Jew (although once the war had started, Australia accepted very few European refugees).

There were other cases in which the stowaway in question could not be easily identified as somebody fleeing persecution. Bas Wie was a seventeen-year-old from Timor who in 1946 arrived in Darwin by stowing away in the undercarriage of a Dutch plane. He did not claim to be a refugee and would hardly have been classified as one today. But he, too, was allowed to remain in Australia, even though his admission contravened the White Australia policy.<sup>7</sup>

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<sup>4</sup> Department of Immigration and Multicultural and Indigenous Affairs, *Managing the Border: Immigration Compliance: 2003-04 Edition*, Canberra: Department of Immigration and Multicultural Affairs (2005), pp. 29 and 33.

<sup>5</sup> David Manne, 'Foundering justice: stowaways' rights to seek asylum are being denied', *Eureka Street* 13,2 (2003): 18-19, <http://www.eurekastreet.com.au/articles/0303manne.html>.

<sup>6</sup> Klaus Neumann, *Refuge Australia: Australia's Humanitarian Record*, Sydney: UNSW Press (2004), pp. 55-56; O'Donnell, report on naturalisation application, 26 September 1946, National Archives of Australia: A435 1945/4/6017.

<sup>7</sup> 'NT remembers Bas Wie's great escape', 7.30 Report, ABC television, 7 July 2004, <http://www.abc.net.au/7.30/content/2004/s1149010.htm>; 'Javanese stowaway in amazing adventure', *Northern Standard*, 9 August 1946; 'Will boy stowaway be turned over to Dutch?', *Northern Standard*, 30 August 1946; 'Boy to remain in Darwin', *Northern Standard*, 13 September 1946; Garry Dembon, 'Aussie who rode the

I thought of Bas Wie, who was unconscious and had severe burns when he arrived in Darwin, as I read of comments made by Detective Sergeant Trevor Troy of Rockingham police. The police in Rockingham had been involved in recovering the bodies of the two dead stowaways and in interviewing the two survivors, because that's where the *Furness Karumba* had first docked to unload its cargo of fertiliser. 'Obviously [they] were desperate to find somewhere else to live', Troy had said.<sup>8</sup> In its simplicity, his observation was a powerful reminder that it is possible to regard fellow human beings like the two survivors not as 'unauthorised arrivals' but as individuals driven by hopes and fears that deserve to be taken seriously. 'The desperation contained in the stories of those people caught, often fatally, at the border needs to be reckoned with', Les Black wrote recently in a challenging essay.<sup>9</sup> Other than extreme recklessness, only desperation could make a person hide in a plane's undercarriage or in a cargo hold of rock phosphate. It was partly in recognition of that desperation that in 1946 the immigration minister had allowed Bas Wie to remain in Australia.

Bas Wie's trip to Australia was not organised by an international people smuggling syndicate. Neither were the journeys of the two African men from the *Furness Karumba*, of the three Iranians who arrived five years ago as stowaways in Portland, Victoria,<sup>10</sup> or of the Rwandan man who stowed away to Melbourne as a sixteen-year old and was deported to Kenya in 2002.<sup>11</sup> Allowing those people to stay in Australia would hardly have sent a signal to people smugglers that Australia was a soft target.

Many stowaways, however, have engaged people smugglers. In recent years, there were several cases in the United States of stowaways having been found in containers that had been fitted out to accommodate dozens of clandestine 'passengers'.<sup>12</sup> In Australia, stowaways used to account for a sizeable proportion of illegal immigrants. Most of them were Chinese. Many of them avoided detection. In many cases, it seems, their transport to and landing in Australia and their subsequent employment were organised by traffickers who received payments from the stowaways as well as from their Australian employers. In June 1959, the issue of Chinese illegal immigration was dramatically highlighted when the dead bodies of two men, who had stowed away to Australia on the *Taiyuan*, were found floating in Sydney harbour.

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wheel of fortune', *Australian Geographic*, no. 43, July-September 1966, pp. 21-22.

<sup>8</sup> Tim Clarke and Denise Cahill, 'Stowaways face deportation', *Australian*, 11 November 2005.

<sup>9</sup> Les Black, 'Falling from the sky', *Patterns of Prejudice* 37,3 (2003), p. 344.

<sup>10</sup> Neumann, *Refuge Australia*, p. 102.

<sup>11</sup> Phil Glendenning et al., *Deported to Danger: A Study of Australia's Treatment of 40 Rejected Asylum Seekers*, s.l. [Sydney]: Edmund Rice Centre for Justice & Community Education (2004), p. 9.

<sup>12</sup> See, e.g., '32 Chinese stowaways found in LA container', *China Daily*, 15 November 2005, [http://www.chinadaily.com.cn/english/doc/2005-01/18/content\\_410007.htm](http://www.chinadaily.com.cn/english/doc/2005-01/18/content_410007.htm)

In line with established government policy, Chinese stowaways, once detected, were automatically deported – until 1962, that is. In April 1962, two Liberal Party backbenchers tried to stop the deportation of a Chinese man, Willy Wong, who, after having allegedly arrived as a stowaway in 1954, had been found in a Sydney market garden in February 1962. They argued that nobody should be deported to the People’s Republic of China. Wong had not claimed to be a refugee. And he was deported anyway because the backbenchers’ intervention came too late. But the outcry triggered by his case effectively prevented any further deportations to China for at least the next ten years. Given the number of illegal immigrants from China who qualified for deportation, this was a significant departure from established government policy. Wong was an illegal immigrant, had probably made his way to Australia with the help of a people smuggling or trafficking syndicate, and was not a refugee, yet many Australians were deeply concerned about his deportation because they felt that it would be partly Australia’s responsibility if he came to harm in China on his return.<sup>13</sup>

The situation of many of those who these days try to enter ‘first world’ countries without being in possession of appropriate documentation is similar to that of Bas Wie and Willy Wong. For a variety of legitimate reasons, they feel compelled to leave their homes but have little hope of being accepted as refugees under the 1951 Refugee Convention. In her remarkable work of fiction, *Hope and Other Dangerous Pursuits*, Laila Lalami writes about the lives of four Moroccans who try to cross by inflatable boat from North Africa to Europe.<sup>14</sup> All of them are fleeing intolerable situations at home, but the question of whether or not they would qualify as refugees is not an issue in Lalami’s work of fiction. The stories she tells may remind us that the fears and aspirations of ‘unauthorised arrivals’ are often far more complex than either the proponents of restrictive asylum seeker policies or refugee advocates admit. Lalami’s book also suggests that codified criteria of who is and who isn’t a refugee (and thus a person deserving of asylum) may not always allow us to gauge the desperation of ‘unauthorised arrivals’.

In the current debate about Australia’s asylum seeker policies, it is often taken for granted that the criteria of the 1951 Convention are the ultimate yardstick. Thus in the case of the two survivors from the *Furness Karumba*, it seemed to matter only whether or not DIMIA would allow the men to lodge claims for protection and have these claims assessed fairly. If one accepted that this was the only issue, however, then one would also have to accept that the two men could legitimately be – and indeed should be – removed from Australia if it were found that they are not refugees according to the terms of the 1951 Convention.

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<sup>13</sup> Neumann, *Refuge Australia*, pp. 99-100; H. I. London, *Non-White Immigration and the ‘White Australia’ Policy*, Sydney: Sydney University Press (1970), pp. 130-31.

<sup>14</sup> Laila Lalami, *Hope and Other Dangerous Pursuits*, Chapel Hill: Algonquin Books (2005).

But maybe the cases of Bas Wie and Willy Wong hint at ways of reasoning in favour of inviting the two survivors from the *Furness Karumba* to stay, or at least not deporting them to whence they came. (Incidentally, according to the latest DFAT travel advice, the Western Sahara, where the four stowaways embarked on their journey to Australia, is so dangerous a place that no Australian should venture there).<sup>15</sup> Informed historical perspectives could prompt us to disregard the seemingly self-evident parameters within which we tend to discuss the fate of people such as the two survivors from the *Furness Karumba*.

I would like to leave the stowaway stories here for the time being, and now turn to the case of Chen Yonglin. In May 2005, this Chinese consular official delivered a letter to a DIMIA office in Sydney in which he sought political asylum in Australia.<sup>16</sup> The DIMIA officers were at first unsure as to how to deal with him. They communicated his request to the Department of Foreign Affairs and Trade, which in turn informed Minister Downer. He declined the request. Questioned about his decision Downer said on 7 June: ‘Well, look there have been only . . . two cases as far as I know in Australian history where asylum of that kind – political asylum – has been given – in the Petrov case, and I think there was one other case, a very long time ago.’<sup>17</sup> The next day, he added: ‘Well, he [Chen] didn’t lodge a formal application at all.’<sup>18</sup>

Hadn’t Mr Chen filled in the correct form? There are no forms to fill in. The foreign minister may, at his discretion, grant political asylum to anybody requesting it. A request may be made orally or in writing. The granting of asylum is an executive act. Successful asylum seekers are issued with a visa by the Department of Immigration. There is a special visa category for people granted political asylum by the Minister for Foreign Affairs: subclass 800.

The *outcomes* sought by Mr Chen on 26 May, when he requested political asylum, and then on 3 June, when he applied for a protection visa, are very similar. In both cases he sought Australia’s protection, including a guarantee that he would not be extradited or otherwise returned to China. But the processes triggered by a request for political asylum on the one hand, and by an application for a protection visa, on the other, are very different. One concludes with an executive decision informed by the minister’s judgment, in the other a person’s claim to be a refugee is assessed by DIMIA in the light of well-defined, indeed:

<sup>15</sup> Department of Foreign Affairs and Trade, travel advice for Morocco, <http://www.smarttraveller.gov.au/zw-cgi/view/Advice/Morocco> (viewed 26 November 2005).

<sup>16</sup> For a detailed discussion, see Foreign Affairs, Defence and Trade References Committee, *Mr Chen Yonglin’s Request for Political Asylum*, Canberra: The Senate.

<sup>17</sup> Alexander Downer, transcript of doorstep interview, Chennai, [http://www.foreignminister.gov.au/transcripts/2005/050607\\_ds.html](http://www.foreignminister.gov.au/transcripts/2005/050607_ds.html).

<sup>18</sup> Alexander Downer in an interview with Geoff Thompson, ABC AM, 8 June 2005, <http://www.abc.net.au/am/content/2005/s1387177.htm>.

codified, criteria. The foreign minister's decision on political asylum is discretionary and non-reviewable. The immigration department's assessment of a person's refugee claim can be contested before the Refugee Review Tribunal.

While refugee status is a twentieth-century invention, the institution of political asylum is at least two-and-a-half thousand years old.<sup>19</sup> The Greek city states knew about and respected it. A citizen of, say, Sparta, who feared for his life for reasons to do with his politics, could seek, and be granted, asylum in, say, Athens. The system worked as long as the state which the asylum seeker had fled was not powerful enough to make the harbouring state extradite him or her. Historically a nation-state's capacity to grant asylum was a mark of its international standing. In the nineteenth century, Britain's ability to grant asylum to dissidents from all corners of Europe was testimony to its hegemony.

The early twentieth century witnessed mass flights and mass expulsions on a previously unknown scale. From the 1920s, international organisations charged with representing the interests of stateless people promoted solutions whereby refugees would be protected by international law. In 1951, several countries, including Australia, collaborated in drafting the Convention Relating to the Status of Refugees. Article 1 of that convention defines those to be protected by it, namely persons who are outside their own country and unwilling to return to it 'owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.' Over the next few decades many countries acceded to the 1951 Convention and its 1967 Protocol and incorporated their terms into domestic legislation.

Australia didn't sign the Protocol until 1973. It was not until 1978 that the Australian government established a procedure for dealing with on-shore applications for refugee status in accordance with the Refugee Convention. But today, usually anybody in Australian territory who is seeking Australia's protection applies for a protection visa. The application is approved if, to cite the immigration department's official advice, the applicant 'engages Australia's obligations under the UN Refugees Convention'. Whether or not an applicant does is decided by 'assessing the claims against the definition of a refugee set out in that Convention',<sup>20</sup> that is by establishing whether the applicant is outside his or her own country owing to well founded fear of being persecuted etc. etc.

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<sup>19</sup> On the history of asylum, see: Liza Schuster, 'Asylum and the lessons of history', *Race & Class* 44,2 (2002): 40-56; Otto Kirchheimer, 'Asylum', *American Political Science Review* 53,4 (1959), pp. 985-1016; Felice Morgenstern, 'The Right of Asylum', *British Yearbook of International Law* 26 (1949), pp. 327-57.

<sup>20</sup> Public Affairs Section, Department of Immigration and Multicultural and Indigenous Affairs, *Fact Sheet 61: Seeking Asylum Within Australia*, Canberra: Department of Immigration and Multicultural and Indigenous Affairs (2003), p. 2.

What happened in Australia before 1978? On 16 October 1956, Cabinet approved ‘of the principle that political asylum and refuge should be available in appropriate instances to various categories of aliens namely Olympic Games visitors, members of visiting trade and other delegations, members of diplomatic and consular missions in Australia, certain other defectors and Asian leaders’.<sup>21</sup> The policy was applied when several Eastern European athletes sought to stay in Australia after the conclusion of the 1956 Olympic Games.

Between 1956 and 1978, most requests for asylum were decided much like Mr Chen’s application of 26 May 2005: by the foreign minister, in consultation with other relevant ministers and ASIO. Hundreds of people sought asylum in Australia or its territories in this period.<sup>22</sup> They were not required to fill in a form or to formulate their request in writing. Among those requesting political asylum before 1973 were diplomats and their dependants; seamen from Eastern Bloc countries; three naval ratings deserting a Portuguese frigate in 1961; and a Chinese stowaway. In the 1960s and early 1970s, West Papuans crossing from Indonesian-controlled West Irian into the Australian Territory of Papua and New Guinea comprised the majority of asylum seekers. While receiving hundreds of asylum requests, the government granted political asylum on few occasions (although more than twice). In many instances, it categorically ruled out the option of granting political asylum (as it did in Mr Chen’s case), but at the same time allowed asylum seekers to remain in Australia or its territories. Many (but by no means all) West Papuan asylum seekers were granted five-year permissive residence visas, the precursors of today’s TPVs.

I have referred to the history of asylum partly to lay to rest the claim, advanced by Minister Downer and others, that the institution of political asylum has been of little relevance in Australia. Fortunately, Downer’s own department seems to be aware of his powers regarding asylum seekers. A few years ago, a Foreign Affairs official highlighted these powers when questioned about the department’s role during the 2000 Sydney Olympics.<sup>23</sup>

Australia would do well to retain a dual system, *if* the granting of asylum were understood as an unbureaucratic means to offer protection to people in particularly precarious circumstances. There may even be situations when *Australia’s* interest would be better served by the swift and unbureaucratic granting of asylum (or the swift and unbureaucratic granting of permanent residence, as happened with some previous applications for political asylum), than by the issuing of a protection visa. (That was certainly the case with Mr Chen.) Today a

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<sup>21</sup> Cabinet, decision no. 487, 16 October 1956, National Archives of Australia: A4926 398.

<sup>22</sup> For the following, see Neumann, *Refuge Australia*, chapters 4 and 5; Klaus Neumann, ‘Asylum seekers and “non-political native refugees” in Papua and New Guinea’, *Australian Historical Studies* 33,120 (2002): 359-72.

<sup>23</sup> Ms Dunn, Joint Committee on Migration (Immigration entry requirements for the Olympic Games: Discussion), 5 February 1999, p. 54,

[http://parlinfoweb.aph.gov.au/piweb/view\\_document.aspx?id=22352&table=COMMJNT](http://parlinfoweb.aph.gov.au/piweb/view_document.aspx?id=22352&table=COMMJNT).

dual system could also be useful because the human rights of unauthorised arrivals are often ill served by the Immigration Department's narrow interpretation of the terms of the 1951 Refugee Convention.

That convention was not drafted with either defecting diplomats or 'unauthorised arrivals' – be they stowaways or boat people – in mind. Those drafting it had the experience of two groups of people in mind: refugees from Nazi Germany in search of a sanctuary, and displaced persons from Eastern Europe who refused to return to their home countries after the war had ended. The convention was the product of a very specific historical context: that of postwar Western Europe at the beginning of the Cold War. Those drafting the Convention were particularly mindful of the interests of those Western European countries that were accommodating refugees at the time, and of resettlement countries such as the United States and Australia.<sup>24</sup>

It was widely recognised that there was a significant difference between those being temporarily accommodated in a refugee camp and awaiting an offer for resettlement, and those seeking asylum after crossing a border. In the 1950s and 1960s, members of the UN therefore discussed the need for a second international instrument for the protection of asylum seekers (in addition to the 1951 Refugee Convention). This second instrument was to flesh out 'the right to seek and to enjoy in other countries asylum from persecution', which is guaranteed in article 14 of the Universal Declaration of Human Rights. In 1967, the UN General Assembly unanimously passed the Declaration on Territorial Asylum. It does not define those eligible to seek asylum but instead contains the so-called principle of unilateral qualification, which accords the state granting asylum the right to evaluate the reasons for doing so.<sup>25</sup>

According to international law, a person fleeing her own country and seeking another country's protection is not entitled to be granted refugee status in that second country. Nor does she have the right to be accorded political asylum. But governments that signed up to the 1951 Convention and the 1967 Protocol, as Australia did in 1973, are bound by international law to apply the criteria of Article 1 of the 1951 Convention. In that sense,

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<sup>24</sup> See Neumann, *Refuge Australia*, pp. 79-86; Gil Loescher, *The UNHCR and World Politics: A Perilous Path*, Oxford: Oxford University Press (2001), pp. 34-46.

<sup>25</sup> On the Declaration on Territorial Asylum, see P. Weis, 'The United Nations Declaration on Territorial Asylum', *Canadian Yearbook of International Law* (1969), pp. 92-149. The declaration is not legally binding; it could, however, be argued that Australia has obligations towards those seeking its protection beyond those emanating from its being a signatory to the 1951 Refugee Convention and the related 1967 Protocol, because it has acceded to other human rights international instruments. See Richard Plender and Noala Mole, 'Beyond the Geneva Convention: constructing a *de facto* right of asylum from international human rights instruments', in *Refugee Rights and Realities: Evolving International Concepts and Regimes*, edited by Frances Nicholson and Frances Twomey, Cambridge: Cambridge University Press (1999), pp. 81-105.

refugee status and political asylum are different privileges. Nation-states extend the latter to asylum seekers if they can afford doing so: because they are affluent (and can accommodate asylum seekers) and because their sovereignty is secure (and they therefore don't have to fear reprisals from the asylum seeker's country of origin).

A historically informed critique of the present could lend weight to an argument for the revival of a broader institution of asylum, as opposed to the reliance on the protection claim process. The plausibility and coherence of the narratives of persecution that are produced by those seeking to engage Australia's protection obligations shouldn't be the only criteria for Australia's response to unauthorised arrivals. Other considerations could include: an emigrant's desperation (as evidenced, for example, by their mode of arrival here), the fact that they arrive here and not elsewhere (that they happen to be knocking on *our* door),<sup>26</sup> the dangers they could be exposed to if deported, and our capacity to accommodate them.

History is usually credited with helping us to understand how the present became the present. But in this and in other instances, history could also prompt us not to take the present for granted.

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<sup>26</sup> See David Corlett, *Following Them Home: The Fate of the Returned Asylum Seekers*, Melbourne: Black Inc. (2005), pp. 208-16.