The Securitization of Humanitarian Migration

Digging moats and sinking boats

Scott D. Watson

Routledge Advances in International Relations and Global Politics

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This book examines how western liberal states are progressively restricting access to refugees and asylum seekers, even though these states have signed international agreements obliging them to offer protection to those fleeing persecution and to advocate the spread of human rights and humanitarian principles.

Watson examines how refugees and asylum seekers have come to be treated so poorly by these states through the use of policies such as visa requirements, mandatory detention and prevention/return policies. Providing extensive documentary analysis of debates on "restrictive" refugee policies in Canada and Australia, the author addresses the relationship between security and migration, an issue of increased importance in the aftermath of 9/11 and the war on terror. He then examines hotly contested policies such as detention and the forceful return of asylum seekers to demonstrate how attempts to securitize these issues have been resisted in the media and by political opposition.

Given the importance of providing refuge for persecuted populations, not only to ensure the survival of targeted individuals, but also to maintain international peace and security, the erosion of protective measures is of great importance today. The book will be of interest to students and scholars of international security, international relations, migration and human rights.

Scott D. Watson is Assistant Professor in International Security at the University of Victoria, Canada. He is also an occasional media commentator on issues of international security and migration policy.

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Introduction

Policies designed to keep asylum seekers out of the Western democratic states of Europe and North America range from the seemingly banal to the obviously pernicious. The list of policies includes carrier sanctions, international safe havens, visa requirements, safe third country agreements, offshore processing, "non-arrival" zones, mandatory detention, temporary protection and the withdrawal of socio-economic benefits. If nothing else, this list is impressive for its sheer transparency; these policies all have a common aim, to ensure that refugees and asylum seekers have minimal access to the protection regimes of the receiving state. The creation and implementation of such policies in Western states seem puzzling given that these same states have acknowledged in international treaties that the failure to offer protection to refugees raises humanitarian concerns and has the potential to destabilize international order. In fact, it was these very concerns that contributed to the creation and maintenance of the current international refugee regime by Western states in the first place.

This seemingly contradictory approach to refugees and asylum seekers reveals three complexities of modern international politics: states possess multiple and often contradictory interests and identities, protection for those fleeing persecution is an established if not universally observed international norm, and control over borders remains an essential practice of state sovereignty and national security. The movement of refugee populations and the unauthorized arrival of asylum seekers are not simply matters of humanitarian concern or of national security; they expose the complexity and contradictions of the modern nation-state and demonstrate the competing political, economic and humanitarian values associated with the management of international migration.

This book studies the processes through which border control policies designed to prevent or deter asylum seekers from seeking protection have been implemented in Western states that have a demonstrated commitment to refugee protection. It is a book about the implementation of border policy, but it is not a book on public policy. It is about how one set of priorities associated with protecting national security has come to predominate the discourse on humanitarian migration and how that discursive change has

altered the policy options available to political elites. In this book I ask: how is it that migration policies designed to limit the number of asylum seekers that can access the protection of the state have come to be accepted by liberal states that are (or claim to be) committed to the protection of refugees?

I address this timely and important question through the lens of securitization. By drawing on and further developing a framework of securitization, this project examines how humanitarian migration has been constructed as a security threat to receiving states, and how this securitized view of migration has made the use of more restrictive policies both acceptable and necessary. In its conventional understanding, securitization is a process whereby political elites justify emergency measures and break the normal rules by which they are otherwise bound by arguing and persuading an audience that a particular development represents an existential threat to the state or society (Buzan et al., 1998). Unlike conventional studies of securitization, this book begins by distinguishing what is meant by a securitized and a non-securitized relationship between the state and asylum seekers and by identifying policy measures that violate existing norms governing the treatment of asylum seekers. I focus on the process by which these extraordinary policies were rendered acceptable and essential in Western states. With such a reorientation, this book prioritizes three previously neglected elements of the securitization process: 1) the distinction between institutionalized and episodic forms of securitization; 2) the influence of legitimizing actors such as the political opposition, the media and the judiciary on the success of securitization attempts; and 3) the necessity of incorporating the domestic and international contexts.

The theory of securitization advanced in this project has relevance beyond the issue of humanitarian migration. It could be applied in a genealogical fashion to immigration policy generally to explain the gradual shift away from racial immigration criteria toward economic and family reunification. The theory is also applicable to a wide range of states, for instance it could be used to illuminate the response of the United States to Muslim immigrants since 11 September 2001, the rise of anti-immigrant parties in the EU and to the current debate over undocumented Mexican workers in the United States. Furthermore, it has the potential to make contributions far beyond the migration policy area, and could help illuminate a range of security topics such as humanitarian intervention, environmental change, strategic resource supplies, as well as intra- and inter-state war.

Definitions

I should clarify here some of the terminology in use. For the purposes of this study, I accept a common simplification of the complex phenomenon of migration that categorizes migrants based on the motivations states use to grant entrance: economic, family and humanitarian (see Dauvergne, 2005; Gibney, 2004). In most cases, migrants are motivated by a complex combination

of factors, thus making it difficult to categorize them by their motivation for migrating. However, most Western states are clear in their motivations for admitting migrants, and do so under well-defined categories. How states employ their motivations for admission to explain the motivation for migration is an important part of the disciplining role states play in the management of migration and exploring how states employ their modes of thinking about migration to advance particular policy measures is an important element of this book. Consequently, I use the following categories critically.

The first category, economic migration, is the primary mode of entry for immigrants in most Western states. Economic migrants are admitted on the rationale that they fulfill an economic need of the receiving state, ranging from unskilled workers to highly skilled, and from temporary to permanent. Many states—even traditionally non-immigration states—increasingly encourage this type of migration to further the economic prosperity of the state, to fill shortages in the labor market and to address concerns of demographic decline. The second category is family migration. In this case migrants are admitted for purposes of reuniting with family (defined by the host state), which ties into beliefs about the importance of family, the rights of residents to be reunited with family and the importance of family for the successful integration of immigrants into the receiving society.

The third category, humanitarian migration, is based on the notion that the migrant should be permitted entrance because denying entrance would contravene some sense of common humanity (Dauvergne, 2005: 6). This category includes both refugees and asylum seekers. I use the term "refugee" to refer to those whose refugee claims have been processed and who are recognized as refugees under the terms of the 1951 Convention or as people in need of protection based on humanitarian grounds not explicitly included in the 1951 Convention but included in a state's domestic legislation. Keeping with conventional usage, I use the term "asylum seeker" in reference to people who have sought international protection and whose claim for refugee status has not yet been determined (UNHCR, 2006: 43). Finally, because these categories do not capture all forms of migration, states and analysts must address those who do not fit neatly into these categories. The term "unauthorized" migration denotes individuals who have crossed an international border without the permission of the receiving state and whose basis for admission or rejection are not yet clear, whether it be for humanitarian considerations, employment or family reunification.

This book focuses on the category of humanitarian migration, but in doing so explores the ways in which the categorization of migration has been used in the political contestation over humanitarian migration. The economic aspect of migration figures prominently in the discourse on refugees and asylum seekers. In the popular and political discourse on migration in industrial, Western states, most migrants, even those who make refugee claims, are attributed economic motivations. In essence, all migrants are suspected of having economic motivations and the burden is on the migrant to demonstrate

his or her non-economic motivations. In the case of the asylum seeker, demonstrating his or her need for compassion and protection has become institutionalized in the refugee determination process. At the same time, humanitarian migrants are viewed as providing little to no economic benefit to the host state, and in many cases, are seen as an economic drain on national resources. This book explores the way in which economic migration is constructed as the norm against which the humanitarian migrant is measured. Indeed, the need to maintain the integrity and prevent the abuse of existing migration programs is often cited as the primary need for effective and restrictive border control policies.

The use of the term "humanitarian" to depict the motivation of states in permitting entrance to migrants and to refugees in their reason for migrating implies a self-evidential usage. In Chapter two, I devote a considerable amount of space to the meaning of humanitarianism, the role the concept plays in the maintenance of the state–citizen relationship and how humanitarian and state-security motivations both contributed to the definition of refugee and the current international refugee regime. Yet, it is useful here to provide a simple clarification of what is meant by the term. As it pertains to international migration, "humanitarian" refers to motivations that are not economic or family oriented, but rather stem from compassion or a general sense of common humanity (Dauvergne, 2005: 6). This usage acknowledges the myriad problem with this concept, which are explored in Chapter two, but concludes that such a distinction remains useful, because state actors, refugee advocates and other actors continue to employ this distinction and because as a discourse it is distinct from the logic of state security. In short, the humanitarian discourse locates the refugee as the referent object of security rather than the state, and renders different policy choices more or less acceptable. Even though humanitarianism may be a state-centric concept, it contributes to policy outcomes very different than those informed by a security or economic discourse.

This leads to the use of the term discourse. Following Fairclough, I use the term discourse in reference to a form of socially and historically situated social practice revolving around the use of spoken and written language and other forms of semiotic communication that is both socially shaped and socially constitutive (Fairclough, 1993: 134). Its constitutive function is twofold: it is constitutive in conventional, socially reproductive ways and in creative, socially transformative ways (ibid.). In this project, I examine both aspects; how discourse reproduces existing social relations (between states, states and citizens, and states and foreign citizens) and how it transforms those same relations. This project focuses primarily on the transformative process, which Hay has referred to as crisis moments, when the unity of the state is discursively renegotiated, re-achieved and a new trajectory is imposed upon the institutions that re-comprise it (Hay, 1999: 331). I refer to these transformative elements as "securitization," "securitizing moves" or more generally as "discursive practices." I employ the term "discourse" in reference

to the social reproductive element. Lastly, the terms security narrative or plot are used to describe the linguistic/grammatical features of specific securitization attempts.

Border control and unauthorized migration

The general openness of Western states to various forms of immigration has varied over time, with periods of open migration policies and periods of restrictive migration policies. Much of the scholarship on this issue is devoted to identifying factors that explain this historical variation, including levels of economic prosperity, ideological shifts or the geo-political forces that encourage convergence in immigration control policies in Western states (Freeman, 1995; Heisler and Layton-Henry, 1993; Meyers, 2002). The literature on humanitarian migration focuses on post Second World War change, where it is commonly claimed that the current era of restrictive policies stands in contrast to the relatively liberal policies toward humanitarian migration that prevailed during the Cold War (Weiner, 1995; Weiner and Munz, 1997; Keely, 2001; Meyers, 2002; Toft, 2007). During the Cold War period, asylum seekers were depicted as individuals who were voting with their feet; and offering protection to individuals fleeing from communist and fascist regimes was seen as a form of power, enhancing the security of the receiving state by undermining the moral legitimacy of their home state (Loescher, 2003). The restrictive turn that took place with the end of the Cold War occurred in response to a number of important changes: the end of the major ideological conflict driving refugee policies and foreign policy more generally combined with changing source countries of origin and a significant increase in overall numbers.

These forms of explanations tend to depict the implementation of restrictive policies as a natural response to objectively identifiable changes that occurred in the domestic or international environment. They fail to adequately explain how or why these changes were seen as necessitating new migration control policies. In other words, simply stating that leaders were responding to larger numbers of asylum claims or new source countries reveals little about why larger numbers or asylum seekers from non-European states were viewed as problematic. Large-scale refugee flows occurred prior to the end of the Cold War, as did flows from non-European states, but neither resulted in similar policies of restrictiveness. The contribution of this book is to expose how changes that occurred around the end of the Cold War were interpreted and portrayed by political and societal elites, and how these portrayals made previously unacceptable policies necessary for the protection of the state.

That the restrictive turn in border control policy followed a change in the source countries of refugee flows indicate that perceptions and fears of racial and cultural difference have played a critical role in the securitization of migration. Some scholars argue that the securitization of migration is built on the concept that cultural difference leads to social breakdown, as an expression of "new racism" (Ibrahim, 2005: 164; Gale, 2004: 323). While fears of cultural

difference have played a role in the restrictive turn, it is not the only concern informing the securitization of migration; the securitization of migration is based on concerns about nationality/race, class and gender (Tesfahuney, 1998; Bigo, 2002; Bigo and Guild, 2005). The securitization of migration has been achieved through multiple, overlapping fields of concern; migration is presented as threatening along a cultural/identity axis, but also along a socio-economic axis, a securitarian axis and a political axis (Buzan et al., 1998; Huysmans, 2000; Ceyhan and Tsoukala, 2002). The relative influence of each of these distinct areas of unease depends upon the social, cultural and historical context in receiving societies. This project focuses on which elements of the securitized discourse have contributed to the securitization of migration and the implementation of restrictive policy measures in Canada and Australia. In the nominally multicultural societies of Canada and Australia, the perception that migration and increased cultural heterogeneity as a result of migration causes a breakdown of social order is less prominent and is less frequently expressed as a justification for restrictive policy measures than is the case in the traditional non-settler societies of Europe; although it is a significant element in the Australian case (Gale, 2004). Yet, the other factors identified by Buzan et al., Ceyhan and Tsoukalas, and Huysmans all feature more prominently in the discourse on humanitarian migration in these two states—and thus, they emerge as a more prominent element in the securitization process. This is not to deny the "new racism" that underpins Canada's and Australia's border control policies, but it does indicate that such a discourse may have less resonance in these societies or that there has been an elite consensus to not raise this issue. In these states, as will emerge from the analysis that follows, concern over maintaining existing mechanisms of control has been the most prominent discourse legitimizing restrictive policy measures.

The securitization of migration is not built solely on the concept that cultural difference leads to social breakdown; this concern has been further removed from the process. Rather, it is based on the claim that uncontrolled migration leads to social breakdown. Thus, cultural difference and the admission of working classes and the poor do not directly produce social breakdown, otherwise political elites could not justify vast permanent migration programs that bring in migrants of many cultural backgrounds or permit the temporary entrance of poorer migrants to sustain certain industries. Rather, these states attempt to manage the unease associated with migration, and reassure the population that if properly controlled and managed by the state, multicultural and multi-class migration can benefit the state. Thus, the securitization process in Canada and Australia is less overtly concerned with race and class, than it is with controlling access to the state and about mode of entry. It is this concern that has brought the issue of humanitarian migration to the forefront of the securitization of migration. This book shows that mode of entry, rather than cultural difference, emerges as the most significant securitizing discourse. The use of national identifiers in the case of refugee

arrivals is as much about calling into question their status as refugees as it is about signaling their cultural difference.

Yet, mode of entry is clearly racialized (Tesfahuney, 1998). The analysis in this book demonstrates that concerns about class and cultural difference feature prominently in the practice of migration control, but in areas less visible to the public. The importance of nationality and cultural difference rarely enters into the discourse regarding migrants present in or at the borders of the state. Rather, it is more prominent outside the state, where border control is based on the categorization of risk based on nationality and class (Bigo and Guild, 2005). Thus, in addition to studying detention and naval interception policies, in Chapter five, I examine the visa policies of these states to uncover the discourses that legitimize the racial and class based categorization of risk.

Furthermore, not all Western states have responded to post-Cold War migration patterns in the same way. Some states adopted the most draconian restrictive measures, while others altered their existing asylum policies very little. Though all states may exhibit a concern with cultural difference, not all states do so equally. A theory explaining the implementation of restrictive asylum policies must be able to deal with this element as well. The existing body of work devoted to the divergence in immigration policy in Western states focuses on a number of domestic factors such as: public opinion, the role of ethnic and business interest groups, the influence of liberal courts and the economic effects of globalization (Freeman, 1995; Joppke,1998; Koopmans et al., 2005; Statham and Geddes, 2006). These explanations will be examined in greater detail in the second chapter, but it is important to note here that these theories have provided an important insight into the forces that influence migration and border control policies. Yet, these explanations exhibit three fundamental limitations. First, they are devoted to normally operating procedures and thus fail to account for how the processes that normally determine migration policy in democratic states have been sidelined in the name of national security. Secondly, the international context is often excluded from consideration. The domestic processes described often reflect a changing international context, yet the connection has not been fully considered. Thirdly, these explanations tend to treat the actors as unitary and rational. In light of these limitations, I argue that in order to understand the general approach to migration control that liberal democratic states take, as well as particular idiosyncratic policies one needs to examine the discursive practices that take place within these states surrounding the issue of border control and societal identity.

The field of security studies suffers from similar drawbacks, and as a whole has made little effort and has had little success in explaining variations in state responses to potential threats, exemplified in the debates over balancing power and threat, and the phenomenon of bandwagoning. Constructivist approaches to international relations have begun to address this gap in the security literature, by showing how cultural differences impact both what is perceived as threatening and what responses are appropriate (Jepperson, Wendt and Katzenstein, 1996; Huysmans, 2000; Williams, 1998; Weldes, 1999;

Waever et al., 1993). This study embarks from the constructivist position, employing securitization theory to address how humanitarian migration is seen as a threat in different Western states. The primary contribution of this book is to provide a framework in which the structural forces and dominant discourses of sovereignty and citizenship that produce convergence in immigration control policies is considered alongside the unique cultural and geo-political factors that produce divergence in specific areas of policy.

Framework

In this project I show how humanitarian migrants have been constructed both as threatened by the state and alternatively as a threat to the state. I argue that these two primary constructions of asylum seeker identity have narrowed the range of policies deemed acceptable in liberal democratic states. Drawing on the insights of securitization theory as developed by the Copenhagen school, I show that political and societal elites engage in discursive contestation regarding the identity of asylum seekers and the receiving state. These alternative representations aim to restrict the range of policy choices available to political elites by either portraying the asylum seekers as threatened objects deserving the protection of the state or alternatively as threatening objects that are a source of insecurity for the state. Successfully portraying the asylum seekers in one fashion over another, circumscribes the policy options deemed acceptable for policy makers, and encourages the implementation of policies that are consistent with the identity constructions of the dominant discourse.

The range of acceptable migration policies within a particular polity is shaped by and reflective of constructions of the national identity, particularly as it pertains to the creation of the membership of that community. For this reason, I have chosen to use two liberal, democratic, capitalist, settler states—Canada and Australia—for the empirical analysis in this project. Their identity as wealthy, liberal, democratic, capitalist states situate them in similar positions internationally. Of critical importance is that both states are refugee receivers and have historically demonstrated similar commitments to refugee protection, as illustrated by their refugee resettlement programs and financial support for the UNHCR, the international body devoted to the protection of refugees. However, both states have economic and political interests in maintaining the current international system with its focus on state sovereignty and its concomitant restrictions on trans-border movement.

While the above description is applicable to most Western liberal states, Canada and Australia make a useful comparison because they share important historical similarities in their approach to nation building, most notably with regard to their emphasis on immigration and the historical contestation over the exclusion and later inclusion of non-European populations. Recent turns in both states to a multicultural national identity further mark their useful comparison, as it is illustrative of a turn away from a traditional means of marking national identity based on racial, ethnic or religious characteristics.

Furthermore, both Canada and Australia rely heavily on the admission of humanitarian migrants to bolster key aspects of their national identity, particularly their role as good international citizens and as humanitarian actors. The admission of refugees has provided both states with the opportunity to contribute to resolving international crises in a demonstrative way, increasing their international profile as important and relevant actors. Lastly, Canada and Australia present a strong case comparison because it is not self-evident that either state faces a threat from unauthorized humanitarian migration based on any objective criterion. Both are geographically isolated from refugee-producing states, Australia by virtue of being an island state separated from its less stable neighbors by a long, perilous boat journey. Canada's only land border is with the US, which is generally considered not to be a refugee-producing state. It too is separated from less stable neighbors by significant bodies of water. While Canada and Australia each face unique geopolitical circumstances, one would be hard pressed to argue that either faced a significant threat from the arrival of large numbers of humanitarian migrants.

This is supported by an examination of the sheer numbers of arrivals. In 2004, France faced an inflow of over 58,500 asylum seekers, the UK—40,200, Germany—35,600, and the United States—27,900. Canada and Australia faced inflows of 25,800 and 3,300 respectively (UNHCR, 2004). This represented less than eleven percent and two percent of the total number of asylum seekers finding their way into the advanced industrial democracies. Comparatively, neither Canada nor Australia is exceptional in terms of the number of asylum seekers reaching their territory.

Furthermore, it is clear that asylum flows of this size do not threaten social cohesion or the absorptive capacity of either state. In 2004, Canada admitted 235,823 immigrants; ten times the number of asylum seekers that arrived seeking protection (Government of Canada, 2005). That same year, Australia admitted 123,424 immigrants; thirty-seven times the number of asylum seekers (DIMIA, 2006a). Even in its peak years for asylum claims, the number of immigrants granted entrance to Australia was eight times the number of asylum seekers who arrived (DIMIA, 2005a). Clearly, Canada and Australia face a much smaller "risk" of being inundated with unwanted asylum seekers than do other liberal democracies and the small numbers that do arrive do not come close to exhausting their capacity to absorb newcomers.

Strictly comparing one to the other, Canada would seem to be at greater "risk" than Australia. In terms of sheer numbers, a far larger number of asylum seekers arrive in Canada than arrive in Australia. Even based on per capita considerations, Australia, whose population is approximately one-third the size of Canada's, faces fewer asylum seekers than Canada. Since the implementation of harsh asylum control policies in 2001, Australia has received between an eighth and a fifth of the number of asylum seekers that Canada does. In the ten years prior to the 2001 crackdown, three times as many asylum seekers entered Canada as entered Australia, which is consistent with the difference in their respective populations (UNHCR, 1994b–2001).

Based on these "objective" standards of security risk there is no reason to conclude that either Canada or Australia faces a threat from asylum seekers, or that Australia faces a greater risk than Canada. In both states, political and societal elites have presented humanitarian migration as a threat, but these attempts have been more successful in Australia. Using these two states for the empirical analysis of the securitization of humanitarian migration provides an opportunity to show how, in the absence of objective security risks, humanitarian migration is treated as a greater threat in one state than another.

My comparison of Canada and Australia builds on an established scholarly literature devoted to the comparison of the migration policies of these two states. However, this project differs in that the aim is not to provide an explanation for the historical evolution of particular policies in each state or for the divergence of each state's immigration policies, though it makes a significant contribution to this end. Rather, this analysis focuses on the discursive practices associated with particular restrictive policies. To do so, I examine "crisis" periods when the national community has confronted the issue of humanitarian migration and alternative policy options have been publicly contested. In some cases, the securitizing attempts have been successful and restrictive policies implemented, altering the migration laws of the state. As such, these periods represent important moments in the development of the state's migration laws and national identity. In other instances, securitizing attempts have not succeeded, and the policies advocated in response have not been implemented or have been reversed through a process of desecuritization or counter-securitization. I contend that these failures are just as important in the development of migration law, as they become part of the national discourse on the state's identity. Consequently, as important to understanding how particular restrictive policies become accepted, it is equally important to understand how political and societal elites have resisted securitizing attempts and the implementation of restrictive policies. So while examining migration law is informative and important, it misses crucial elements of policy and law making whereby certain laws and policies are deemed unacceptable and remain outside the realm of possible actions by the state.

By examining periods of discursive contestation associated with restrictive policy measures, I identify the ways in which political and societal elites draw on established national symbols and myths to shape the discourse on humanitarian migrants to achieve a particular policy response. The policies under examination include visa requirements, detention and interception of asylum seeker vessels. In some instances, the period under examination is a crisis period. Starting with the premise that crises are socially constructed, I identify migration crises by whether or not the political and social elites in that state regard it as a crisis. Whether an issue is regarded as a crisis is indicated by the overall level of attention generated by the topic within the political community, as illustrated by the number of debates on the topic in the parliaments of both states or by public pronouncements by political elites, as well as by overall media coverage devoted to the topic. Thus, in periods of crisis, there is

a significant increase in media attention to the issue and an increase in attention given to the issue by political elites.

In this study, I employ an in-depth discourse analysis surrounding the three policy measures in each state. For Canada, I examine the media and political discourse surrounding the policies of detention and naval interception of asylum vessels during, and following, the 1987 and 1999 arrivals of boats carrying asylum seekers. I then examine the media and political discourse (or lack thereof) regarding the implementation of visa requirements and their use in response to increased refugee flows. For Australia, I examine the debate around mandatory detention in 1992 and 2001, the naval interception of asylum vessels in 2001, and Australia's universal visa system.

Outline

The book is divided into two sections, the first theoretical, the second empirical. The first section, which is composed of chapters one and two, focuses on the theory of securitization and the distinction between normal and securitized refugee policies. As the theoretical cornerstone of the book, Chapter one serves two main purposes: to explain the theory of securitization that will be used in the analysis that follows and to introduce the groundbreaking theoretical contribution of this book. Thus, this chapter draws attention to three re-orientations crucial to the success of securitization in explaining the implementation of restrictive refugee policies. First is to explain the role of legislative change in the securitization process—an element that has been grossly overlooked thus far. Focusing on this element introduces a corrective to the study of securitization that has tended to portray executive power as though it operates unchecked.

The second is to move the focus of analysis beyond discursive practices to wider social contexts that influence the success of securitizing claims. Rather than viewing the success of security claims as dependent upon the grammatical structure of the securitizing claim, as is the tendency in the existing securitization literature, or upon the power relations between those making the claim and its audience, this book contends that the success of securitizing claims are conditioned by social context, or general social knowledge that exists outside of or prior to the securitizing claim. For instance, claims that the implementation of a search and siege policy for asylum seeker vessels in Canada in 1987 was necessary for the protection of Canada were assessed against the failure of such searches to find subsequent asylum seeker vessels. Similarly, claims by the Australian government that the deportation of Cambodian asylum seekers would not endanger their security were assessed against reports of the intense fighting that Australian peacekeepers faced while deployed in Cambodia.

The third contribution, introduced here but explored at length in Chapter two, encourages the articulation of the difference between "normal" and securitized policies. For instance, instituting a visa requirement for citizens of

the Czech Republic in 1997 was regarded as a normal measure because of existing legislation that authorized the Canadian government to apply visa requirements on other states without legislative change. Whereas, intercepting and returning Sri Lankan asylum seekers back to Sri Lanka would be regarded as exceptional because there is no existing legislation authorizing such behavior, and doing so would require legislative change.

Together, these arguments provide a corrective to the primary weaknesses of existing accounts of securitization theory and shed light on the interconnectedness of the practices illustrated by the existing securitization approaches. Moving beyond the issue of legislative change, the first chapter concludes by observing that domestic legislation alone cannot account for existing standards of what constitutes acceptable and unacceptable responses to refugees and asylum seeker. This requires a renewed focus on the international refugee regime as the primary body defining the treatment to be afforded to asylum seekers. That is the subject of Chapter two.

The second chapter provides a framework for distinguishing between normal and securitized policies, placing policies designed to deal with humanitarian migration on a spectrum between humanitarian and securitized. Against conventional understandings, I contend that the humanitarian/securitized distinction is produced and maintained by an international refugee regime that simultaneously constructs refugees as both potentially threatened and threatening, and in so doing, attempts to balance humanitarian and state security concerns as the "normal" method of dealing with humanitarian migration. Consequently, this construction of the "normal" positions humanitarian and state security discourses as potential securitizing discourses that challenge the way in which refugees are handled by the state.

State-security concerns are reflected by the concepts of burden sharing and national security exemptions; while the humanitarian basis rests on principles of *non-refoulement*, non-punishment and fair adjudication of claims. In the second section of this chapter, I explore how these concerns have been incorporated into Australian and Canadian domestic legislation regarding the treatment of asylum seekers. This section provides a historical understanding of how Canada and Australia have attempted to balance the humanitarian and security concerns of the international refugee regime—and how the institutions and policies they have adopted has influenced future securitizing attempts.

The third chapter examines the controversial policy of detaining asylum seekers during the refugee determination process and the policy of naval interception in Canada. I focus on the use of detention and interception in response to the unexpected boat arrivals of asylum seekers in 1987 and 1999. In this chapter, I show that these measures were implemented as a result of a securitization process wherein asylum seekers were perceived as "bogus" refugees or as a threat to the Canadian state. Examining media and political discourse during these periods, I show how the policies were identified as necessary as well as the degree to which this characterization was challenged by opposition parties, non-governmental organizations and legal activists.

The fourth chapter examines these same policies in Australia, focusing on the 1990–92 boat arrivals and 2001 *Tampa* crisis in Australia. These cases demonstrate the importance of (1) discursive practices in reconstructing the identity of asylum seekers and (2) social context in the success of translating emergency measures into policy through legislative change. In these cases, members of the political and societal elite along with the media played a crucial role in constructing the arrivals as an existential threat, identifying the forceful removal of asylum seeker vessels as an appropriate response.

Comparing the use of these policies in Canada and Australia demonstrates that the successful implementation of detention in one episode does not always translate into a permanent policy through legislative change. In the cases examined, mandatory detention became the norm in Australia, much as visa controls and carrier sanctions have, but it remains an exceptional practice in Canada. These chapters importantly challenge the traditional securitization sequence assumed in the literature, marking an important theoretical contribution by showing that policies are often implemented as a matter of administrative action prior to securitizing speech acts. Such actions become contested once the opposition identifies these policies as extraordinary, and thus, require justification.

The goal of Chapter five is to demonstrate how restrictive measures are employed once they have been successfully implemented and accepted. I focus on the use of visa controls in Canada and Australia, and show how, like other restrictive measures, they are designed to prevent asylum seekers from entering the state. Yet as the cases explored demonstrate, use of such policies occurs by the executive branch with little judicial oversight or political contestation. Employing the framework set out in Chapter one, this chapter demonstrates that particular actors are empowered to depict asylum seeker flows as "bogus" and to enact restrictive measures. I contend that this reflects an institutionalized securitized relationship between states and asylum seekers, wherein the external prevention of asylum arrivals is seen as distinct from the humanitarian principles of the international refugee regime. The success of this securitization has made the administration of visa controls and carrier sanctions "normal," rather than extraordinary, restrictive measures.

The conclusion reflects on the degree to which humanitarian migration has been securitized in Canada and Australia. This chapter contends that the normal state of affairs in both states reflects the international construction of humanitarian migration as simultaneously threatened and threatening. As evidenced by the use of visa controls and carrier sanctions, in both states humanitarian migration has been securitized—yet this does not imply identical treatment or similar willingness to implement restrictive policy measures.

By introducing a new framework of securitization that incorporates the concept of gradations of securitization, this chapter argues that humanitarian migration cannot be considered equally securitized in both states. I contend that the difference in the level of securitization is demonstrated both discursively and by the range of powers entrusted to the executive to deal with

the issue. In this chapter, I contend that this reflects the success of Australian political elites in translating gains from successive individual securitizing episodes into the dominant discourse and as part of the normal securitized condition. This success lies in unique cultural and historical factors such as cultural differences, differences in political structure and geo-political factors.

The concluding chapter draws together the insights from across the cases to underline the key findings of the study and its implications for future research. It demonstrates that restrictive refugee policies are implemented as a result of a securitization process. Yet, I demonstrate that the implementation of restrictive measures is not simply the end result of a successful discursive contestation nor does it establish relationships that are either securitized or not. Furthermore, securitization should not be understood as a condition in which unlimited powers are bestowed on an executive power that may implement any policy it chooses.

Importantly, I highlight areas of future research opened up by the findings of this book, and contend that the recent turn to restrictiveness is neither permanent nor irreversible. Positioning humanitarianism as the "desecuritizing" discourse, this chapter calls for critical analysis of securitizing claims and a greater emphasis to be placed on the humanitarian principles associated with the international refugee regime.

This book demonstrates that migration policy is not simply legislation enacted to deal with an objectively identifiable existing problem, but rather reflects the construction of problems by political elites. I contend that the security claims of political elites can be assessed against existing social knowledge and the claims made by political elites themselves. This reveals that humanitarian migration cannot objectively be established as threatening, or non-threatening—rather that it is socially constructed; and that these securitized and humanitarian discourses produce real political effects that impact how refugees and asylum seekers are treated by recipient states.

1 Migration and securitization

The association of human migration with insecurity is not new; this connection is evident throughout history dating back to biblical times. In the seventeenth and eighteenth century, fears over the movement of people prompted the erection of town walls and the creation of passports to control migration (Torpey, 2000: 22–23). And in current times, concerns over international migration have contributed to a wide range of initiatives, from international cooperation on migration matters, to the expansion of supra-national organizations like the EU (Rudolph, 2006: 10–11), to the rise of right-wing anti-immigrant parties (Fetzer, 2000). Throughout history and in many states, societies and other forms of political collectivities, migration has often been portrayed and perceived as threatening, producing real political effects. During the Cold War, emigration from the Eastern bloc states was regarded as a matter of national security, and great efforts were expended to prevent it. In the Western states however, for much of the Cold War period, migration was relegated to the realm of low politics and off the security agenda, which was associated primarily with military security (Waever, 1995: 59; Hollifield, 2000).

The resurgence of migration back onto the security agenda in the Western states of Europe and North America coincided with the end of the Cold War. With the end of the political–military divide that had structured international politics since the end of the Second World War, increased focus was placed on identifying and responding to emerging security threats. Consequently, a number of non-military threats began to feature prominently in the study of security, including environmental degradation, health epidemics and pandemics, and migration (Dalby, 2002; M. Levy, 1995; Price-Smith, 2001; Weiner, 1995; Waever et al., 1993). In most cases, the reason for including issues like environmental degradation and international migration on the security agenda has been to provide a prima facie case that the issue does present a threat to national security and to encourage states to devote more resources to control and manage it. Migration has been linked with security in a variety of ways; from contributing to violent conflict and environmental degradation (Homer-Dixon, 1994), producing a backlash in receiving states (Teitelbaum, 1980), concerns over control of borders and the absorptive capacity of receiving states (Weiner, 1995) to the survival of civilizations (Huntington, 1996). Though

some of these connections have proven less convincing than others, together they highlight the fears of social and political upheaval that migration flows have evoked.

The expansion of the concept of security to include non-military security threats like immigration has faced entrenched opposition from neo-realists who have held a near monopoly on defining security within the English language security studies field. The privileged position of neo-realism and its focus on military security is a product of a Weberian understanding of the state-building process in the West. Making war and protecting citizens and/or subjects from military threats has been the fundamental building block at the core of the nation-state building process (Poggi, 1978; Tilley, 1990). It should come as no surprise therefore that the activities of the state's security apparatus have been devoted to providing security from military threats. Resistance to the depiction of migration as a security threat has emerged from the neo-realist school of thought that contends that the inclusion of non-military security threats such as migration undermine the conceptual clarity of the concept, and detracts from more important military issues (Mearsheimer, 1994; Walt, 1991; Freedman, 1998).

The ongoing debate over the inclusion of migration and other non-traditional issues in the security agenda, as part of the "broadening" of the field of security studies (Krause and Williams, 1996) is characterized by an objectivist approach to the study of security. This perspective treats threats as objective and existing externally to individual perceptions (Sjostedt, 2008: 9), thus issues do or do not represent a threat, regardless of whether or not individuals perceive and respond to them as such. Consequently, scholars who seek to broaden the concept of security as well as those who resist this broadening, base their arguments on the claim that one can objectively observe and measure the level of threat posed by migration and the costs that states face should they fail to confront these developments. In making these objectivist claims, analysts seek to acquire additional resources to combat the potential threat (Krause and Williams, 1996; Mutimer, 1999).

One problem with the objectivist approach to the study of security and the place of international migration in that field of inquiry is that it reifies the identity of the receiving and sending societies and the motivations and reasons for human migration. This is problematic because the representation of migration as a source of insecurity is not a constant throughout history nor is it held universally across all states or societies. At times, states such as Israel and Germany have used migration as a means of ensuring the continuation and survival of an ethnically based view of their societies (Levy and Weiss, 2002; Joppke and Rosenhek, 2002). Similarly, in settler states such as Australia and Canada, the growth associated with migration has been regarded as essential for the survival of these states. Even today, as populations in Western states age and decline, there is a growing sense that migration will be needed to ensure the existence of these societies (Teitelbaum, 1987; Straubhaar and Zimmerman, 1993). And, as noted earlier, during the Cold War, the

migration of people out of the communist states of Europe was part of larger security agenda associated with the victory of the capitalist "West" (Loescher, 1993; Goodwin-Gill and McAdam, 2007). These cases demonstrate that migration has and can be constructed in various ways, indeed as a source of security rather than insecurity.

A similar sort of objectivist reasoning is evident in the literature that has emerged to explain the formation of migration control policies. The body of work devoted to explaining the implementation of "restrictive" border control policies claims that such policies were implemented in response to observable and identifiable changes in the character of refugee flows in the late 1980s and early 1990s: larger numbers, different source countries and changing motivations of migrants from humanitarian to economic. In its most basic form, the argument proceeds as follows: during the Cold War, there were very few refugees, under three million in 1976. By 1990, the number of refugees had reached 17.2 million, a rapid increase that was interpreted as a growing threat (Weiner, 1995: 3). Prior to this explosion of the refugee population, most Western industrialized states received few asylum claims in any given year, with the exception of a few notable incidents such as Hungary (1956) and Czechoslovakia (1968) (Keely, 2001: 308). It was not until the mid-to-late 1980s that the number of asylum seekers began to climb significantly. The particular problem that larger numbers posed for many Western states was that the existing refugee determination systems had been created with small numbers in mind and whose primary solution was permanent incorporation into the receiving society (Keely, 2001: 304–5; Toft, 2007: 141). The rapid increase in the number of asylum seekers produced large backlogs of claims, and a general sense that the system was incapable of dealing with large flows. The devotion to permanent rather than temporary protection resulted in large numbers of refugees being admitted, which was portrayed as threatening to the social balance in states whose primary historical experience with migration was emigration (Toft, 2007: 143).

Even more problematic was another set of objective changes in the character of refugee flows: source countries had changed and the skill set and assimilability of refugees themselves had declined. During the Cold War, most refugees came from the communist states of Eastern Europe. Beginning in the mid-1980s, this began to change and by the mid-1990s, the majority of individuals seeking protection in the Western states were non-European. Furthermore, refugees from communist Eastern Europe were viewed as "enterprising, skilled, well educated and a potential source of vital intelligence" on the domestic and foreign policy of their home states (Toft, 2007: 143). With the end of the Cold War and as the source countries of refugees changed, most refugees now lacked high levels of formal education and did not possess work skills that were in high demand in receiving states (Weiner and Munz, 1997: 25–26). In other words, they were not regarded as enterprising, skilled, well educated nor a potential source of vital intelligence on their home states.

The attractiveness of such explanations is their parsimonious account of how objective changes in refugee flows led to changing behavior in refugee-receiving states. The problem is that this objectivist approach cannot explain why these developments were interpreted as they were or why other strategies were not adopted. Furthermore, these explanations make the implementation of restrictive border policies appear natural and unproblematic. Of central importance is how these developments and changes in refugee flow patterns were constructed and perceived by receiving states. By re-orienting the analysis to how actors in receiving states have constructed these changes in international patterns of refugee flows, greater attention is paid to the discursive practices that give significance to these changes, rather than treating them as changes that would inevitably produce identifiable and predictable consequences for which there was only one reasonable type of policy response. The response to changing migration patterns is based on subjectively held views of the significance of those changes, not on the changes themselves.

The idea that security encompasses subjectively held feelings is hardly new in the study of security. Among the earliest treatments of the subjective nature of security is Arnold Wolfers's seminal article on national security (Wolfers, 1952). Wolfers contends that security consists of both objective and subjective elements, and he admits that security threats can never be measured objectively, it is always a matter of subjective evaluation and speculation (Wolfers, 1952: 485). The varying perceptions of insecurity between nations and groups within nations facing similar external circumstances arise as a result of unique cultural and historical experiences (Wolfers, 1952: 486; Katzenstein, 1996, Roe, 1999). Thus, the extent to which a change in migration flows will be interpreted as threatening or not is partially dependent upon how migration has historically been situated in the society's historical myths and symbols. Thus, settler societies such as the United States, Canada and Australia can be expected to be open to most forms of migration, whereas traditional states such as Germany and France can be expected to be less receptive (Freeman, 1992, 1995, 2006). Clearly, shared historical experiences and myths concerning immigration in a society profoundly influence the receptiveness of that society to migration presently. Yet, too strong a focus on cultural factors risks obscuring the increasing convergence in policy responses in states with different historical experiences with migration. Furthermore, without an understanding of the mechanism whereby culture and history contribute to the construction of insecurity, the focus on cultural factors runs the risk of cultural determinism and the reification of a particular cultural identity.

When dealing with political collectivities such as states, societies, religious groups, ethnic groups, etc., (in)security cannot simply be reduced to subjectively held feelings based on one aspect of their communal history. Individual members of a society may play host to a variety of subjective fears or phobias independently arrived at (though this is highly debatable), but threats to human collectivities do not simply emerge as the aggregated sum of individual phobias. Nor do all individual members who share a specific group

identity feel equally threatened by similar developments, though a few primordialists and evolutionary biologists view group feelings of insecurity as natural and shared by all members of the group.[1] Rather, individuals who share a social identity do not respond naturally or uniformly to developments. Among scholars who study the nature of group identity and its relationship to "ethnic" or intra-state conflict there has emerged a near consensus that nations, and the developments that may threaten them, are socially constructed and contextual rather than natural and universal (Anderson, 1983; Gellner, 1983; Breuilly, 1994; Kaufman, 2001). However, there is no consensus on how nations (or some members thereof) come to view themselves as threatened. As Fearon and Laitin argue, the observation that collective identities, and thus threats, are socially constructed explains very little, because it does not incorporate agency (Fearon and Laitin, 2000: 845–46). What is required is a theory that explains how particular actors use culture and the content of the collective imagining in the construction of identity/threats. This forces the analyst to consider the role of argumentation, coercion and persuasion in the construction of collective identities and the threats to them. In short, it forces us to consider how threats are intersubjectively established, rather than subjectively held by all members of a political community.

Intersubjectivity and securitization

Securitization theorists claim that (in)security is intersubjectively established through a process known as securitization (Buzan et al., 1998: 25). In this process, an issue is presented as an existential threat by political and societal elites, and becomes regarded as a security threat only if and when the audience accepts it as such (Buzan et al., 1998: 25). For such claims to be successful, these securitizing agents must persuade an audience of the legitimacy of the claim. In democratic states, and likely in non-democratic states, there is a need to argue one's case since securitization can never only be imposed (Buzan et al., 1998: 23; Vuori, 2008: 68). Incorporating the role of persuasion and argumentation in the construction of threats overcomes the problems that plague objectivist and subjectivist accounts of security because it incorporates cultural factors that help explain differing responses between states to similar developments and identifies a significant role for agency in the construction of threats.

The most significant drawback to the communicative action approach put forward in securitization theory has been specifying who the audience of the securitizing claim is: who is it that needs to be convinced that a particular development represents a threat to the state or society? Securitization theory and its emphasis on an intersubjective view of security remains vague and under-theorized in this regard as the audience that is to be convinced of the security claim remains unspecified. In many instances, the entire voting population of the state seems to be the relevant audience, as Buzan, Waever and de Wilde claim that some security claims must be argued in the public sphere (Buzan et al., 1998: 28). By making such a claim, Buzan et al. implicitly

identify the "public" as an important audience of securitizing claims. At other times they cast doubt on the "public" as a relevant audience, noting that some securitizing practices do not take place out in the public arena at all (Buzan et al., 1998: 28). Elsewhere, Waever has argued that successful securitization need not require acceptance by the public, just that security measures avoid the escalation of public opinion (Waever, 1995: 58). Here, the public need not accept or believe or even know about the securitizing move, the primary requirement is that the public does not actively oppose it. Other scholars accord the public almost no role whatsoever, and focus almost exclusively on specialized agencies as securitizing actors, with governing elites as their relevant audience (Bigo, 2000: 195; C.A.S.E. 2006: 457–58). From this perspective, specialized agencies are empowered to identify and counteract threatening developments and their sole audience is the governing elite. In both cases, the audience is fairly limited, and the public largely excluded.

Subsequent work on the issue of the audience has more thoroughly explored which groups are the target audience of securitizing claims. Balzacq suggests that securitizing actors actually target multiple audiences, including the "public" as well as institutional bodies whose attitude have a direct causal connection with the desired goals, such as parliament or the Security Council (Balzacq, 2005: 185). The audience to whom the securitizing claim is made depends upon the purpose of the speech act, which can vary from efforts to raise an issue on the agenda, to deter certain actions or to legitimate past or future acts (Vuori, 2008: 84). Consequently, even in democratic societies, the "public" is only one of a number of relevant audiences, and one whose primary role is that of moral support or evaluating political legitimacy (Balzacq, 2005: 185; Vuori, 2008: 84–85). According to Vuori, the audience has to be such that that they have the ability to provide the securitizing actors with whatever they are seeking to accomplish with the securitization, in the Waeverian model, legitimacy for actions that go beyond regular liberal-democratic practices of policy making (Vuori, 2008: 72).

One problem with this formulation is that it makes it seem as though the securitizing actor is free to target the audience of their choice, and conversely to avoid other audiences when desired. This is especially the case during crisis decision-making, when the process may be restricted to an inter-elite audience (Vuori, 2008: 72). However, in these cases, even if most other potential audiences are excluded from the process of argumentation that produces a decision on the appropriate policy measures, the implementation of these measures themselves are difficult to hide and can thus result in a test of their legitimacy. Additionally, noting that there are multiple audiences encourages greater exploration into the relationship between these audiences. Under what circumstances do securitizing claims and the emergency measures implemented in response suffer legitimacy problems that in turn require political elites to garner support from the general public? And under what conditions are securitizing actors, such as specialized security agencies and political elites, free to securitize without public "consultation" or tests of legitimacy?

The ability of governing elites to limit the discussion over appropriate policy measures during crisis periods is based on the construction of a certain development as constituting a crisis, which in turn, legitimates the narrowing of discussion and audience. This seems a crucial step in the securitization process. Thus, rather than focusing solely on governing elites and identifying who their audience consists of, the analysis of securitization requires the examination of the institutional structures and the discursive practices that produce "relevant" audiences in the first place.

This requires the analysis of other actors besides the executive branch, the governing elites and the specialized agencies to whom they have delegated authority to identify threatening developments, which have dominated the study of securitization (Williams, 2003: 527). Three actors that are key to the securitization process but have been neglected thus far are: the media, the political opposition and the judiciary. In most democratic states, and even in some non-democratic states, these three institutions possess sufficient social capital to question securitizing claims and act in some way as a check on the political legitimacy of actions undertaken by the executive branch of the state, and thus stand as the most significant obstacles to the success of securitizing attempts. Other actors, such as NGOs and religious organization may also question the legitimacy of securitizing claims, but in most instances they lack the political capital to do so on their own—they require one of these organizations to pursue their claims. Consequently, I focus on the distinct roles that these three actors play in the securitization process.

Several securitization theorists have commented on the importance of the media in the process of securitization (Williams, 2003: 527–28; Buzan et al., 1998: 124), though few have actually addressed its role in significant detail. The role of the media in the process of securitization is complex and multifaceted. The media plays an instrumental role in the reproduction of society and in the maintenance of dominant constructions of the self and others (Kellner and Durham, 2006; Herman and Chomsky, 1988). Consequently, it plays an instrumental role in securitization, it constructs an "us" and "them," tells us what the conflict is about and what can be done to stop it. But its role as an agent is not altogether clear. Is it merely a site through which elite claims are communicated? Because the media deals almost exclusively in attributed opinions, it relies heavily on subject matter specialists and political leaders to shape the general orientation of their coverage (Zaller, 1992: 315–17). In most Western democracies, media coverage of many issues, including migration, has been dominated by the claims of the governing elites (Statham, 2003; Statham and Geddes, 2006). As Vultee notes, the media originates few if any frames themselves but instead selects from among those made available to them—primarily from elites. It does, in some cases, form perceptions of audience interests or concerns as well (Vultee, 2007: 26).

Therefore, to treat the media simply as a mouthpiece for governing elites ignores the important role it can play as a securitizing actor by forcing issues onto the policy agenda of political elites (Entman, 2004; Jones and Baumgartner,

2005; Iyengar and Kinder, 1987) or as a desecuritizing actor that interrogates certain aspects of the security claims of political elites. Thus, the media can serve a variety of functions in the securitization process. It can communicate the securitizing claims of other actors, it can make securitizing claims of its own and it can expose securitizing claims to contesting views. In most cases, it serves all three purposes.

Examination of media coverage during crisis periods provides important insight into the dynamic of securitization. Heavily contested issues tend to figure prominently in news coverage. In the case that a securitizing claim is heavily contested, media coverage is a critical site in the securitization process, serving to aid the securitization attempt or to contest its legitimacy. The importance of media coverage in the (re)construction of the significance of particular events, the identity of relevant actors and in the contestation over the legitimacy of emergency measures means it emerges as an important focus in the practice of security.

Similarly, the political opposition plays a key role in the securitization process because they can expand the audience of securitizing claims outside of the inter-governmental elite by using the media to appeal to the "public." Because leaders in democratic states take and maintain power through elections, they are susceptible to the congruence between their policy choices and public sentiment, leaving the political opposition in a position to gain power if the governing party fails to convince the public of the necessity and legitimacy of their policies (Reiter and Tillman, 2002: 812). The power of the political opposition in reining in securitizing actors is supported by existing studies that have shown that political opposition parties that take strong policy stances opposite to that of the government reduce the propensity of governments to escalate conflict (Prins and Sprecher, 2002: 335; Bennett and Paletz, 1994).

In some instances, the political opposition may initiate the securitizing claim, thus challenging the legitimacy of the government based on its failure to respond to a security threat. However, in many instances the political opposition is forced to respond to a securitizing move made by or accepted by the governing elites. In these cases, the political opposition can either assist or allow securitization to occur without challenge, or it can dispute the legitimacy of the securitizing claim. And though the political opposition can challenge securitization out of public view, its most effective course of action is to involve the "public" by engaging in public discursive contestation aimed at various elements of the securitizing claim wherein they challenge the way in which the state's or society's identity has been constructed, the way in which the development has been constructed or the appropriateness of the emergency measures proposed.

Lastly, the judiciary plays an important role in the securitization process because it is empowered to decide on the legality of policy measures. When policies have been implemented outside the normal rules binding a liberal democratic society, which is a common feature of securitization, the judiciary

becomes a key actor because at some point it most likely will be asked to decide upon the legality of those measures. The important role the judiciary plays in this process has been overlooked due to the pre-occupation with discursive practices that influence the securitization process simply because members of the judiciary are rarely involved in the discursive contestation over the construction of threats. Rather, the judiciary plays a role once emergency measures have been implemented, often, months or years after the period of intensive discursive contestation. Consequently, securitization is often marked by government elites restricting the scope of the judicial oversight over securitized issues, circumventing a normal part of the political procedure.

The social and political capital of these three institutions to challenge the legitimacy of a securitizing move requires that greater attention be paid to their role in the process. Indeed, so important is their role that explaining their silence, support and/or capitulation is a necessary component of any explanation of successful securitization. In some cases, these actors are systematically excluded from influencing the process or their consent and support has been acquired and institutionalized. Thus, the relative influence of these actors requires further development within the theory of securitization.

Institutionalized, episodic, intensification and expansion

The relative influence of the three legitimizing actors noted in the previous section depends upon the degree to which the securitization process has been institutionalized. Securitization attempts can be understood as occupying a position on a spectrum between institutionalized and episodic. A securitization may be described as institutionalized when threats are persistent or recurrent and the response and the sense of urgency has become institutionalized in the form of standing bureaucracies, procedures and military establishments to deal with those threats (Buzan et al., 1998: 28). At this end of the spectrum, the audience for the securitizing claims is limited to governmental elites and the importance of legitimizing actors is diminished. The agency responsible for that domain of security is empowered to identify a security threat and to apply the emergency measures previously deemed appropriate. As an institutionalized process, the identification of and the emergency response to an existential threat is often implemented without significant questions concerning the legitimacy of the act. This requires general acceptance and agreement on the part of the three "legitimizing" institutions.

This does not mean that these specialized security institutions (SSI) may freely identify new threats and expand the application of emergency measures to more and more developments. Institutionalized securitization is not automatic, or uncontested or always successful. The identification of a threat still requires specialized security institutions to persuade its audience that the new development is "of the same kind" as the existing institutionally defined threats. Thus, there may be grounds on which the interpretation can be challenged. The inclusion of a "similar" development within the domain of an

existing security institution may be contested by one of the three legitimizing institutions. Similarly, SSIs may argue that new powers are needed to deal with existing threats. Again, in such cases of intensification, the securitizing move is likely to evoke public debate over the legitimacy of the new measures.

Failure of the legitimizing institutions to challenge either expansion or intensification implies that they agree with the securitizing claim, care little about the issue or fear the repercussions of challenging the dominant interpretation. Chapter five explores this concept in greater detail, focusing on the application of visa requirements as indicative of institutionalized securitization. In the case of visa requirements, as well as other securitized policy measures, the authority of specialized agencies to accurately assess whether a state (or group or individual) is a threat is accepted and rarely contested by the political opposition or the media, nor is it subject to judicial scrutiny.

Not all securitizing moves are fully or formally institutionalized. When new measures or institutions are proposed to deal with a novel threatening development the move may be described as episodic. There is no set sequence to episodic securitization, contestation/legitimization may occur after emergency measures have been implemented, prior to their implementation or not at all. Contestation, if it does occur, may occur in the public eye between competing political elites, through the media, or in the courtroom. The form and sequence of episodic securitization depends upon who challenges the securitizing claim, whom the target audience is and whether securitizing actors are responding to or trying to prevent a challenge (Vuori, 2008: 79–83). Toward the episodic end of the securitization spectrum, the success of the securitizing claim is more precarious than in cases of institutionalized securitization and more highly dependent on a number of facilitating factors.

Indeed much of the work on securitization has been devoted to the identification of the factors that contribute to successful securitization. Consequently, more attention has been given to episodic forms of securitization than institutionalized. This focus on the episodic has been further enhanced by a general commitment to the speech act approach and the importance of discursive practices, which has resulted in the study of cases where discursive contestation figures prominently. Recognizing that a heavy focus on this aspect of securitization obscures other elements, a research program has emerged with a primary focus on the technocratic practices and institutions that dominate the security realm (Bigo, 2000, 2002; Huysmans, 2000, 2006; C.A.S.E., 2006). From this perspective, the study of securitization is the study of the creation of networks of professionals of insecurity, the systems of meaning they generate, and the productive power of their practices (C.A.S.E., 2006: 458). Though presented as a distinct approach to securitization, the focus on these security institutions may be better understood as occupying one end of a securitization continuum. And, regardless of whether securitization is episodic or institutionalized, for it to be successful, it still requires an audience (which could be a single person or a sub-committee) to be persuaded or convinced by the security claim.

Successful securitization and convincing the audiences

Though an audience may be generally convinced or unconvinced of a security claim, successful securitization is not an either/or proposition—securitizing claims may fully succeed, resulting in the institutionalization of the securitized relationship; they may fail, with the security claim categorically rejected; or they may produce an outcome in between, wherein the association of particular developments with insecurity becomes part of the general discourse, though emergency responses are not regularized in an institutional apparatus. In other words, there is a continuum of success and failure (Vuori, 2008: 72). The conditions that influence the relative success of these claims have occupied the lion's share of attention from securitization theorists. Buzan and Waever identify three factors that influence the likelihood that the audience will accept the securitizing claim: a demand internal to the speech act of following the grammar of security, the social conditions regarding the position of authority for the securitizing actor and features of the alleged threats that either facilitate or impede securitization (Buzan et al., 1998: 33). The first condition is internal to the securitizing claim in that it must follow the grammar or logic of security, by constructing a plot whereby a development is presented as an existential threat, a point of no return is identified and a possible way out offered (ibid.).

The second condition involves the power relationship between the person or organization making the securitizing claim and his/her audience. According to Buzan et al., the success of a threat claim depends upon the social capital of the enunciator, who must hold a position of authority from which to make such a claim (Buzan et al., 1998: 33). This holds for political elites as well as members of specialized security organizations or scientific communities. For instance, climate scientists (or an international panel of them) hold a suitable position of authority to make claims regarding the level of threat posed by global climate change while military intelligence organizations may hold a similar position regarding the level of threat posed by covert efforts to proliferate nuclear technology. Consequently, it is not just the threat claim that is dependent upon the acceptance of the audience, but the authority of the speaker as well. The deep embeddedness of social relations of power that greatly influence the dynamics of security articulations requires greater incorporation of the social sphere into the study of securitization (Stritzel, 2007: 365), an issue explored at greater length in the next section.

The third condition that Buzan and Waever identify most closely resembles the objectivist approach and it pertains to the features of the alleged threat. According to Buzan et al., not all developments are equally plausible as threats, and as such, the success of the securitizing move depends on whether the objects are generally held to be threatening, such as tanks or polluted water (Buzan et al., 1998: 33). The features of the threat are both external to the speech act and to the social dynamic related to the speaker/audience relationship, and constitute, in the words of one analyst, the inclusion of

"brute reality" (Vuori, 2008: 75). Similarly, Balzacq contends that external objective developments affect securitization (Balzacq, 2005: 181). Elaborating on this issue, Balzacq argues that the words of the securitizing actor must both resonate with an audience and stand up to assessment by an audience that can "look around" and assess the claim against the current information about the current state of affairs domestically and internationally (Balzacq, 2005: 182). This collective nod to objective developments and brute reality appears to incorporate the objectivist, neo-realist claim that threats are objective and exist externally to individual perceptions (Sjostedt, 2008: 9). However, this does not capture the complexity of the constructivist approach. Rather than viewing potential threats as having a constant, given nature, the securitization approach incorporates existing socio-linguistic and socio-political contexts that render particular objects more or less easily depicted and accepted as threatening (Stritzel, 2007: 369). In other words, the realm of agency of securitizing agents is limited by the contexts in which they operate. External context emerges as a fourth condition in addition to the linguistic/grammatical, the social capital of the securitizing actor and the features of the alleged threat.

The aforementioned conditions are necessary for successful securitization, but they do not guarantee successful securitization—they are, in the words of Buzan and Waever, facilitating conditions. In the end, the enunciation of a security threat and its acceptance by a relevant audience is only one part of the equation; the other is the identification and implementation of emergency measures.

The threshold of success and the implementation of emergency measures

The crux of the securitization claim is that successful securitization encompasses a situation that requires emergency measures and actions outside the normal bounds of political procedure (Buzan et al., 1998: 24). The phrase "outside the normal bounds of political procedure" must be read as consisting of the normal bounds of political procedures governing both inter-unit and intra-unit interaction. The inter-unit effect is clearly spelled out by Buzan and Waever, who argue that the political effect of securitization is the implementation of emergency measures that has an effect on *inter-unit* relations by breaking free of rules (Buzan et al., 1998: 26). In this situation, a unit does not rely on the social resources of rules shared intersubjectively among units but relies instead on its own resources, demanding the right to govern its action by its own priorities (Buzan et al., 1998: 26). Thus, securitization involves a rejection of the normal operating rules that govern the relationship between two units: presumably the unit responsible for the existential threat and the unit that is threatened. 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).

Yet, securitization has been described as "undercutting the political order within a state" (Waever, 1995: 52). In this respect, it appears that the primary effects of securitization are in the "domestic realm" and internal to the unit, rather than inter-unit. This is evidenced by the examples Buzan and Waever give as indicators of securitization: secrecy, levying taxes, conscription, placing limitations on otherwise inviolable rights or focusing the society's energy on a certain task (Buzan et al., 1998: 24). Similarly, Williams equates placing an issue "beyond normal politics" with "beyond public debate" (Williams, 2003: 515). Clearly, successful securitization violates the unit's normal political procedures for implementing policies in addition to violating the normal forms of interaction between units. In short, securitization will produce domestic and international political effects.

Yet, Buzan et al. claim that securitization need not result in the implementation of emergency measures to be regarded as successful, rather the existential threat has to be argued and gain enough resonance such that it is possible to legitimize emergency measures or other steps that would not have been possible had the discourse not taken the form of existential threats (Buzan et al., 1998: 25). From this view, it appears that Buzan et al. claim that successful securitization simply means that certain measures must be rendered within the realm of the possible, that it may be possible to legitimize emergency measures. In essence, it moves their conceptualization of securitization closer to that of Bigo and Huysmans, where the efforts of specialized institutions to define and manage social problems can be viewed as a form of securitization.

Treating a claim as successful if there is enough resonance that it is possible to legitimize emergency measures confuses the process with its successful accomplishment and risks treating securitization as a strictly rhetorical or discursive practice, having no political effects. As Vuori and others have noted, securitizing claims are made to legitimize the past or future use of emergency measures, not simply to make it possible to legitimize the future use of emergency measures. Attempts to legitimize emergency measures is a hallmark indicator of a securitizing claim being made, and should not be confused with a condition of success. In the case when securitizing actors are attempting to legitimize already implemented emergency measures, the continued need to legitimize these measures is an indicator of only partial success—even though it clearly meets the Buzan et al. criteria that it has reached the threshold at which it is possible to legitimize those measures. Thus, I propose that the successful end of the securitization spectrum is marked by the ability of political elites to implement emergency measures without the need to further legitimize their actions—this seems a better criteria of successful securitization than that proposed by Buzan et al. and fits more appropriately with the continuum of episodic-institutionalized securitization.

Some analysts avoid this problem altogether by equating successful securitization with the implementation of emergency measures. Though it resolves

the tension between the discursive and political effects of securitization, it sets the bar too high. It is possible to successfully securitize without actually implementing the emergency measures identified in the security narrative, but it should be regarded as more or less successful based on the effect of the enunciation itself to produce the inter-unit effect intended by the emergency measures. If emergency measures are not implemented and there is no change in the threatening development, it can hardly be regarded as a successful securitization. This is not merely semantic clarification, it is at the heart of what securitization is: it produces real political effects by violating existing normal practices within and between units.

Consequently, the study of securitization encompasses more than just the study of discursive practices, it must take into account political effects. To understand whether a securitizing discourse has had political effects it is necessary to conceptualize the distinction between normal and emergency measures prior to considering what constitutes successful securitization. The securitization framework as set out by Buzan and Waever (often referred to as the Copenhagen School) has largely avoided defining or clarifying what is meant by normal politics (C.A.S.E., 2006: 455). A number of securitization theorists have understood securitization to mean moving the issue out of the realm of the democratic process of government (Huysmans, 1998, 2000; Laustsen and Waever, 2000; Vuori, 2008: 66; C.A.S.E., 2006: 455), focusing exclusively on the intra-unit effects. In many instances, this is one important outcome of securitization. However, this unnecessarily limits the application of the concept to democratic states and it excludes consideration of inter-unit effects.

Two illustrations are insightful here. The passage of a law in a democratic state that strips certain citizens or foreigners of their rights, and permits authorities to put them in concentration camps clearly represents a securitized condition, even if it was passed in accordance with the normal rules of democratic governance. Similarly, the imposition of sanctions against another state implies a securitized condition, but may be implemented in a way that does not violate the existing democratic principles of governance. The "normal" cannot be understood with reference only to the existing institutional decision-making apparatus within the state, it must be understood with reference to the relationship between the units or actors whose relationship is reconstituted through the securitized discourse. What makes the internment of citizens and the imposition of sanctions emergency measures is not whether it was accomplished contra to democratic principles, but whether it violates the normal relationship between two units: the state and its citizens in the former, and two states in the latter.

Noting this problem, the Paris school has defined the "normal" as the practices constituted by professionals through technologies for ordering and managing social problems (C.A.S.E., 2006: 457). This approach nicely captures how in cases of institutionalized securitization, the normal relationship between units is in fact a securitized relationship. The problem however, is

that all efforts to identify, order and manage social problems are seen as securitized (ibid.). As noted earlier, such an understanding is too inclusive and risks obscuring differences in the way in which social problems are ordered and managed. For instance, requiring asylum seekers to present their case before a committee to decide on their refugee claim clearly represents a situation whereby professionals are attempting to order and manage what they have identified as a social problem. Indeed, as the next chapter demonstrates this is the normal way in which asylum seekers and Western states have interacted. However, treating this as a securitized relationship risks missing and potentially undermining the different ways asylum seekers can and have been treated while the determination process is carried out. Allowing asylum seekers freedom to work and travel and granting them civil and political rights during the determination process indicates a distinctly different relationship than detaining them for the duration of the process and denying them other socio-civil rights.

The conceptualization of the "normal" as the violation of existing norms of decision-making (democracy) also obscures the way in which these existing democratic mechanisms allow or sustain securitized relationships. However, viewing the normal functions of government as they attempt to identify and manage social problems as securitized obscures the different ways in which governments can deal with "problems." I propose that the only way to describe a normal relationship for the purposes of the study of securitization is to explore the political decision-making procedures within units in combination with the historical relationship between specific units. By re-orienting the discussion to relationships between units rather than normal forms of governance in one state, this forces the analyst to be more precise in the identification of relevant actors and to examine cases in greater detail. In Chapter three, I further develop this line of argument by exploring in detail the relationship between states and humanitarian migrants as well as the normal political procedures in Canada and Australia.

The framework of securitization

Thus far, I have tried to provide a framework for studying the process of securitization that incorporates several dimensions that had previously been unexplored. As the previous discussion illustrates, the theory of securitization remains at a high level of abstraction, making empirical analysis of the process difficult. Furthermore, the sequence of the process is unclear regarding whether the speech acts of securitizing actors initiate the process of securitization or represent the culmination of the process. Deciphering the role of discursive practices is made all the more difficult because the current framework does not account for multiple speech acts that occur at various stages of the securitization process, or that these acts serve distinct purposes and target different audiences. One other indeterminacy is that it is unclear whether the implementation of emergency measures is the endpoint of the process, the

pinnacle of securitizing success, or simply the beginning of a contestation over the legitimacy of such measures. Buzan and Waever seem to imply that once emergency measures have been implemented, the issue has become securitized, and that the only option at that point is to engage in desecuritization—a process which suffers from an even greater dearth of theorization and empirical examination.

To remedy these shortcomings and indeterminacies, I present a reformulated framework for studying the process of securitization that incorporates three requirements, moving from the general to the specific: identification of the issue domain, identification of episodes of securitization, and identification of the conditions that contributed to success or failure. The first requirement is a clear conceptualization of the issue domain under analysis. While most studies propose to study the securitization of "something" (AIDS/HIV, migration, human trafficking, transnational crime, etc.), few, if any, attempt to fully explore the content of that domain. Three features of the issue domain require clear articulation. The first issue concerns the units whose relationships are likely to be (re)constructed by securitization in this domain. In the case of traditional military security threats, the answer to this question is states, and likely two or more states in particular. However, in a growing number of issue areas, the relevant units are less clear. In the case of migration, the relationship affected may be sending/receiving/transit states or, more likely, the relationship between states and certain categories of migrants or migrants of a particular ethnic or religious persuasion. Only by identifying the units affected is it possible to create a clear sense of the other two elements of the issue domain: features of the normal relationship between these units and the dominant discourse constructing this relationship.

As noted in the previous section, identifying the normal relationship between units is a key element in the study of securitization. Only by generating a conceptualization of normal behavior is it possible to identify violations or instances of "emergency" behavior. The purpose of identifying the pattern of interaction associated with a non-securitized relationship is to facilitate understanding of how securitizing an issue produces real political effects. Again, using the issue of migration as an example, there are different behavioral expectations for foreign nationals seeking to enter the state as tourists and those who enter as enemy spies; just as there are different expected patterns of behavior by state officials as they encounter these two distinct groups. Only by establishing the different patterns of behavior expected of each actor is it possible to identify securitized relationships, and instances when norms have been broken, or when securitizing actors argue they should be broken.

The problem at this point is that "normal" or regularized behavior does not necessarily imply a non-securitized relationship. As noted earlier, in cases of institutionalized securitization, the normal patterns of behavior that govern the relationship between two units may reflect a securitized relationship. For instance, it has been normal in Australia for all unauthorized asylum seekers

to be detained throughout the refugee determination process, but that does not mean that this is not a securitized relationship. Only through the examination of discursive practices in addition to actual behavior can we establish the nature of the relationship between two units. By examining the metaphors and predicates attached to the units it is possible to identify how the units are understood, how they are given "taken-for-granted qualities and attributes and how they relate to other objects" (Milliken, 1999: 225–54).

The second step is to identify episodes of attempted securitization, of which there are two indicators: discursive contestation and implementation of emergency measures. Because securitization involves communicative action and legitimation that requires convincing others of the validity of one's position (Williams, 2003: 522), in many cases, the discursive features of securitization occur in the public eye and are captured in media coverage and in government speeches and debates. In these cases, analysts can identify instances of securitizing moves by examining how often the issue appears in these public forums. For instance, a drastic increase in the number of news stories on a particular issue or speeches devoted to the subject in the legislative body can signal a securitization attempt. Of course, it is not just the quantity of discourse that indicates securitization; the content is fundamental. In cases of securitization, some development or actor is identified as an existential threat. This can occur by a verbal act directly labeling something a security threat, or by use of various contexts, symbols and institutions (Williams, 2003: 526). The use of particular metaphors and symbols can accomplish a security association as effectively as directly naming a development as threatening. In these cases, analysts should look for securitizing language in which an object is directly identified as a threat, but also for metaphoric language, that associates an issue with war, natural disaster and calamity of all sorts.

As was explained in previous sections, not all securitization attempts generate a public record of communicative action and discursive contestation. However, it is still possible to identify such processes through the analysis of policy change. By itself, policy change is not a particularly convincing indicator as not all securitization attempts produce policy change and not all policy changes are the result of securitization. However, in cases where policy change is drastic and includes measures previously held to be unacceptable or a violation of strongly held principles, this often indicates securitization. A further difficulty, however, is that emergency measures may be implemented gradually. Though in the traditional formulation, the implementation of emergency measures is often presented as a singular act that is the culmination of the securitization process, securitizing actors may embark on the incremental escalation of measures taken to counter threats. Governing elites may have strategic reasons for proceeding incrementally, such as maintaining cohesion among the targeted audience, and to reduce opposition from their traditional political opponents. In such cases, it is still possible to identify episodes of securitization by examining policy measures by expanding the period of analysis.

The third and final requirement of the framework developed here is the in-depth analysis of the securitization process itself, identifying its conditions of success or failure. This involves analysis of the five facilitating conditions identified by various securitization theorists: the linguistic grammatical component of the claim, the social position of the securitizing actors, the purpose of the securitizing claim, the features of the alleged threat, and the social context in which the claim is situated. To these I add a sixth component, the strategies of argumentation.

The discursive contestation that occurs around the identification of threats involves more than one set of actors identifying an existential threat. It involves opponents making counter claims, and securitizing actors countering the counter claims. Thus, much of the argumentation that takes place during the securitization process does not concern the threatening development at all, but rather focuses on the significance of other developments or in discrediting counter claims (and claimants). In many instances, opposition to securitization takes the form of counter-securitization, where societal or political elites identify another referent object as threatened, either by the emergency measures implemented by the security provider to counteract the initial threat, or by some other development. In other instances, opposition to the securitization takes the form of desecuritization. Identifying which strategies are employed, and which are most successful should be an essential element in the study of securitization, particularly for those who deem it a negative development (Williams, 2003: 523; Waever et al., 1993; Waever, 1995).

Focusing greater attention on strategies of argumentation places greater emphasis on how securitizing actors employ their positions of power to "persuade" the target audience. While Buzan et al. note that securitization can never only be imposed (Buzan et al., 1998: 23), this should not detract attention from the way in which the argumentation over security can include coercive practices. Thus, my framework incorporates the way in which securitizing actors silence opposition, which can be accomplished through a variety of means, such as imposing secrecy, labeling dissenters, constructing the perception of a supportive public, limiting media coverage, circumscribing judicial oversight and continued reconstruction of the other unit's identity.

The remainder of the book employs this framework in the study of how humanitarian migration has been constructed as a security threat in Canada and Australia. Having established the issue domain under analysis as that of humanitarian migration, in the following chapter I examine the units whose relationship has been altered by securitizing moves, the normal behavior that governing their relationship and the discursive practices that sustain and maintain this relationship.

2 Norms of the international refugee regime

Addressing the normal relationship between states and refugees is like addressing the normal response to fire. In such situations, there are several layers of "normal" embedded in the situation. In certain situations, the occurrence of fire is regarded as an emergency, which in turn constructs a "normal" situation as one in which there is no uncontrolled fire. Yet, fires are a normal and recurring feature of life in buildings that are built in a certain way or of certain materials. The occurrence or fear of such a fire represents an emergency situation; yet, response to a fire is predictable and orderly—in essence it is normalized; it has been thoroughly and successfully securitized. In this normalized condition, there are norms and procedures that govern the reaction to fire by a variety of agencies: the occupants, the fire department, police, insurance companies, etc. Additionally, each of these institutions standardize their response and has embedded decision-making procedures. Under certain circumstances, even these norms may be violated: the command structure may be broken and measures may be implemented that are not part of the standardized response. When referring to and studying the construction and violation of norms pertaining to fire in Western societies, it is necessary to specify which set of norms is being addressed.

Similarly, when referring to the securitization of refugee flows, we are dealing with a specific set of normative structures. The "normal" as it pertains to refugees exists at a variety of levels. At its core, the refugee regime is constitutive of the normal relationship between states and their citizens, and refugee flows represent a violation of this relationship, and an exceptional condition (Nyers, 2006a; Soguk, 1999), not unlike house fire as abnormal. Yet, refugee flows have been and are a recurring and normal feature of international politics. Following the Second World War, the international refugee regime was established to normalize these situations, to create a standard and predictable response. In essence, refugee flows were securitized and the normal mode of dealing with these emergencies was established, a decision-making apparatus was constructed and a set of behavioral guidelines to be followed were codified in international law and domestic practice. Thus, it is possible to refer to two processes of the securitization of humanitarian migration—the first occurs at the international level, and was escalated

following the Second World War in which refugee flows were reproduced as the "abnormal" condition of the state/citizen norm and as a threat to international security, which required a standardized international response. The second, which is the focus of this book, occurs in individual states in which the norms and decision-making procedures that are the institutional expressions of the standardized international response are violated.

The first section of this chapter examines how the refugee regime works to construct the "normal" at the international level. It does so in two ways: first, it constructs the state/citizen as the normal mode of political organization, with the refugee as exception. Secondly, it constructs a specific Western liberal understanding as the normal type of relationship between states and their citizens. Thus, the creation and implementation of the international refugee regime was constructed to maintain an emergent international system emanating from the Second World War. The refugee regime functioned as one element of a larger structure constituting a clear "self" and "other" based on political and economic ideologies, with respect for human rights as an important element of this distinction. The refugee regime helped structure the relationship in this manner by providing a clear measuring stick by which to differentiate the two rivals. Thus, states from which refugees flowed were the "other"—states that violated human rights. The "self" was defined as the protectors of human rights, evidenced by the flow of refugees into these states. Changes in that international structure combined with the emergence of refugee flows from states excluded from the original "we–other" relationship have had an adverse impact on the relationship between states and refugees. Thus, I argue that it is essential that any explanation of individual state policies toward asylum seekers and refugees must take into account the structure of the international system. In short, the analysis that follows demonstrates how international structures constituted agents, and how those agents in turn structured key relations in international politics.

The second section of this chapter examines how the modern international refugee regime constructed humanitarian migration as a distinct form of migration, producing a series of behavioral expectations that distinguished the refugee from other immigrants. This constructed identity and the concomitant expectations produced an ideal-type standard against which state actors measure those who apply for refugee status. When the actual behavior of refugees has not conformed to these expectations, their identity as refugee has been cast into doubt by securitizing agents. By ascribing non-humanitarian motivations to asylum seekers based on their behavior, securitizing agents have been able to reconstruct the identity of asylum seekers as economic or family migrants, and in so doing, violate the normal rules governing the treatment of asylum seekers.

These rules are the subject of the third section of the chapter, where I examine in greater detail specific norms created by the refugee regime regarding states' treatment of asylum seekers. While the 1951 Convention specifically addresses state obligations toward refugees, in practice it has created a number of obligations toward asylum seekers as well. I identify four

basic expectations created by the international refugee regime for signatory states. Three of these expectations are negative, in that they outline what signatory states are not supposed to do to individuals seeking asylum, while the last is positive, in that it creates an expectation of what a state should do for asylum seekers. I argue that the norms of *non-refoulement*, non-arbitrary detention, non-punishment based on mode of entry and access to a fair hearing structure the relationship between refugee-protecting states and asylum seekers.

Refugees and the "normal" political arrangement

At its most basic, the concept of the refugee reinforces the modern understanding of the political: that each individual belongs to a bounded territorial community of citizens. In this understanding, the refugee is the exception to the citizen norm, and the only remedy is to "restore her to the natural political condition through repatriation or resettlement" (Soguk, 1999: 11). Peter Nyers makes a similar argument, arguing that the modern construction of the refugee is based on an understanding of what constitutes the proper and enduring form of political community—the citizen and the sovereign nation-state (Nyers, 2006a: 9). In this formulation, the refugee is an accident that scars the moral and political landscape of the international order, but one that is part of the practice of modern statism to secure the normality of citizenship and the state (Nyers, 2006a: 9).

What is clear, however, is that the modern understanding of the refugee is not concerned only with normalizing citizenship and the sovereign state as the proper form of political order, but also to privilege the Western liberal conceptualization of this relationship as the ideal form of political community. The international refugee regime as constituted by the 1951 Convention and the 1967 Protocol reflected and reinforced the rivalry in the international system that emerged post-1945. This regime contributed to the construction of the identity of the two rivals (the "free world" and the Soviet bloc in the parlance of the times) based on their adherence to certain human rights and also created expectations regarding their behavior toward their own citizens and toward foreign nationals fleeing persecution.

The definition adopted in the 1951 Convention established a hierarchy of rights, privileging civil and political rights over economic, cultural and social right and scales of violence broader than individual persecution (Hyndman, 2000: 9). According to Hathaway, the refugee definition was crafted by Western states to give priority to protection to those whose flight was motivated by pro-Western political values (Hathaway, 1991: 6). A prime example is the conflict between the two rivals over the issue of emigration and border control; the Western democratic states upheld the right of their citizens to choose their place of residence and to emigrate while the Soviet bloc states prevented their citizens from emigrating over fears of a mass exodus of dissatisfied citizens (Weiner and Munz, 1997: 25). So the refugee regime advocated only certain rights, those most likely to embarrass or de-legitimize specific regimes,

namely communists and Nazis. As a result, refugees represented a form of power because the granting of asylum was generally used to reaffirm the failures of communism and the benevolence of the West (Loescher, 2003). In addition to constructing the relations between the Soviet bloc and the democratic West based on ideological commitments to freedom of movement and democracy, refugee policy served an instrumental role, in that the West used it to embarrass communist states or to frustrate communist revolutions and destabilize nascent communist governments (Keely, 2001: 307).

That the refugee regime reflected an emergent rivalry is evident in its creation and evolution. Prior to the establishment of the UNHCR as the permanent body designed to deal with the problem of European refugees, temporary refugee agencies were used to help resolve the problem, including the United Nations Relief and Reconstruction Agency (UNRRA) and the International Refugee Organization (IRO). While these organizations were successful in looking after many people in need, and repatriating some as well, they were among the first victims of the emerging rivalry in the international system that would ultimately culminate in the Cold War between the Soviet Union and its European and American adversaries (Barnett, 2002: 242–46). Soviet hostility essentially ended the UNRRA's mandate, as the UNRRA had refused to forcibly repatriate refugees to Soviet territory after 1945, leading to the Soviet claim that the UNRRA prevented displaced persons from returning home. The IRO suffered a similar fate amid Soviet claims that the IRO was merely protecting traitors and serving US policy (Barnett, 2002: 244). Eventually, the Western powers created the international refugee regime and its permanent institutional presence, the United Nations High Commissioner for Refugees (UNHCR) in January 1951, without the consent or cooperation of its rival, the USSR; which in turn accused the Western powers of protecting people associated with fascist and anti-democratic regimes.

The debate over the definition of the refugee, the institution responsible for refugee protection as well as the preferred solutions to the "problem" was symptomatic of a larger struggle to identify the proper and ideal form of political organization in the international system. In addition to identifying the state/citizen relationship as the normal form of political organization, it further identified Western liberal states as the normal/preferred relationship structure between the state and its citizens. Tied to these concerns with establishing the sovereign nation-state based on the Western liberal model as the idealized norm, the refugee regime demonstrated that stability in relations between states was also a primary normative value. This is evident in the mid- and post-war discussion on refugees. A concern to promote regional stability in Europe was, and has continued to be, a dominant factor in the response to the refugee issue (Loescher, 2003). The successful reconstruction of devastated European states after the war was seen as essential to rebuild viable sovereign states and to prevent the spread of communism in Europe. The twin solutions of repatriation and resettlement of the millions of refugees in Europe following the war became essential to European stability.

Of course, stability and security concerns were not the only factor in the establishment of the refugee regime, there is little doubt that the Western powers were partially motivated by a humanitarian concern for the welfare of the millions of refugees that were still essentially homeless due to the destruction of the Second World War, and due to their failure before the war to assist Jewish refugees. The refugees were seen by the Western powers as victims in need of protection from tyrannical states. Thus, the creation of the refugee regime reflected the Western states' identities as protectors of the persecuted and as promoters of international human rights. It is hardly surprising then that the primary Western liberal states, the US, the EU states and Japan have accounted for 94 percent of all government contributions to UNHCR (Loescher, 2003; UNHCR, 2006).

The ideological commitment of the authors of the international refugee regime is evident in the definition of a refugee that was adopted. By enshrining the values that they did into the refugee definition, the Western states essentially constructed two types of states in the international system, refugee-producing states that endangered international stability and refugee-protecting states that ensured stability. The decision over which states produced refugees and which did not was left to individual states to decide. During the Cold War, there was a clear understanding of which states produced refugees and the vast majority of humanitarian admissions to the United States and its Western allies were from the Eastern bloc (Spijkerboer, 1997). The end of the Cold War and the emergence of new sources of refugee flows complicated that distinction. Consequently, Western states adopted a number of mechanisms to distinguish refugee producers from "safe" states.

The idea of safe states is now a prominent technique employed by Western states in the management of refugee flows. Many states created lists designed to more readily identify refugee-producing and refugee-protecting states or created special humanitarian classes that provided protection for individuals fleeing certain countries, such as Salvadorans and Guatemalans in the early 1980s (Adelman and Cox, 1994: 274–75). States have also created safe country of origins lists and created a different set of rules for claims that they considered manifestly unfounded. Designating a state as a "safe country of origin" identified that state based on whether its citizens face a real risk of persecution (Teitelbaum, 2001). States that have employed lists of safe countries of origin, such as Germany, used the list to fast-track manifestly unfounded claims out of the determination process, while claims from states that are not on this list and thus known to produce refugees were given full determination (Knipping and Samweber-Meyer, 1995). Canada for a time employed what it called the B-1 list, essentially an unsafe country of origins list, in order to fast-track refugee claimants that were known to be from refugee-producing states through the determination process (Knipping and Samweber-Meyer, 1995).

Recently, the concept of the "safe state" has been applied to transit states, through which refugees have passed on their way to their eventual destination

to claim asylum. In many cases, refugees traverse through multiple countries en route to claiming asylum in Europe, North America and Australia. As a result, the Western liberal states have chosen to identify these transit states as refugee protectors or not, by identifying them as safe third countries. A safe third country is a state through which refugee claimants have transited on their way to the receiving state to claim asylum and in which they could have claimed asylum and enjoyed protection had they wished to do so (Teitelbaum, 2001). The identity of transit states as refugee-protecting states has no impact on the identity of the home state as a refugee-producing state, but ultimately impacts the identity claims of the asylum seeker, by casting doubt onto their intentions. Labeling a transit state as a "safe third country" implies that the refugee could have claimed refugee protection in that state, but for economic or family reasons chose not to do so. As we shall see in the next section, this has become an important discursive practice and policy tool that states have increasingly utilized in an effort call a refugee's identity into question and limit their responsibilities. For those states that employ safe third country agreements, asylum seekers that pass through the safe third country are excluded from the refugee determination process in the country in which they made their refugee claim, and are returned to the safe third country (Glenn, 1996).

The adjustments states have made to their refugee determination processes indicates their responsiveness to the changing behavior of refugees and asylum seekers and reflects the fact that the relationship constructs constituted by the regime have endured beyond the structural conditions that fostered its initial adoption. So while the original distinction between refugee-producing and refugee-protecting states was meant to embarrass communist states and identify the Western liberal state as the ideal, the manner in which refugees were defined meant that such a distinction could apply to a variety of states with whom the Western liberal states did not have a rivalry relationship and from whom they did not want to encourage or accept refugee flows.

The rise of refugee flows from 'developing' countries coupled with the end of the Cold War meant that refugees were no longer viewed as a form of power for the Western liberal states. As a result, the change in international structure has presented an opportunity for political elites to alter the relationship between states and asylum seekers. However, the refugee regime and the recognition of refugees continue to reflect the international structure. Thus, states have increasingly relied on the identification of "safe" countries to both achieve international ends and to limit the number of asylum seekers that have access to the full refugee determination process. As we shall see in the chapters on Canada and Australia, the construction of the identity of other states, both source and transit, has become a prominent element in the discourse over refugee identity.

"Normal" refugee behavior

As noted in the last section, the identity of refugees was constituted as the obverse of the citizen. In essence, the refugee exhibits none of the characteristics

of the citizen; they are constituted as passive, voiceless and helpless (Soguk 1999; Nyers, 2006a; Malkki, 1996). Yet, the refugee is not understood based solely on what they are least like—the citizen—but on that which the refugee most closely resembles. Consequently, it is not the citizen identity construct against which the refugee is measured to determine their "refugeeness." The refugee was constructed based on existing forms of human movement recognizable to the state and the primary behavioral expectations of refugees were formed in contrast to other types of migrants. The refugee identity is based on and reinforces certain expectations regarding the behavior of individuals claiming to be refugees, as distinct from other types of foreign nationals that seek entry to a state.

In international relations, a number of role structures have evolved that reproduce the state/citizen as the norm and that simultaneously structure the relationship between states and the nationals of other states. Wendt defines a role structure as a configuration of representations of Self and Other as particular kinds of agents related in particular ways (Wendt, 2000). Representations of the Other (the foreign national) include: diplomats, settlers, missionaries, students, temporary workers, tourists, terrorists, spies, fifth columns, refugees, asylum seekers and illegal immigrants. All of these categorizations of foreign nationals are based on mutually understood role structures, which create expectations regarding the behavior of the foreign national and of the receiving state.

The immigrant is the representation of the foreigner against which refugees and asylum seekers are measured. Shacknove argues that Western governments view refugees as "worthy exceptions to the normal immigration control rule" (Shacknove, 1993: 516). They were like immigrants, but owing to their status as refugees, are entitled to bypass the normal immigration procedures. Thus, refugees are ascribed intentions that differ from immigrants in one fundamental way: immigrants seek to enter the state either for economic opportunity or family reunification, while refugees are motivated by political factors, primarily the desire to escape persecution (Hein, 1993: 44). The refugee differs from other voluntary types of migrants because they are perceived to be reluctant to uproot and they lack positive (i.e. economic or family) original motivations to settle elsewhere (Kunz, 1973: 130). In short, they are forced migrants. It is now generally accepted that the motivations that produce immigrant and refugee flows are actually far more complex and similar to each other than this characterization implies, yet states continue to structure their relationship with these actors based on this primary distinction.

The immigrant is the primary role structure attributed to foreign nationals seeking entrance to Western liberal states, particularly settler societies such as the US, Canada and Australia. The predominance of this representation is based on the identification of these states as attractive states that "pull" foreign nationals to their shores due to the opportunities they provide for migrants to improve the economic conditions of their lives and the lives of their families (Massey et al., 1993; Schoorl et al., 2000). In short, life in these

states is an enviable good and demand for entrance is high. This has two consequences: first, access to the state, and membership in the national community, is a good to be fiercely guarded; secondly, foreign nationals who seek to enter the state, particularly those from non-Western liberal states, are assumed to have economic motivations. This applies to refugees and asylum seekers as well, which has resulted in the division of asylum seekers into the "genuine" (fleeing persecution) and the "false" (economically motivated) (Ceyhan and Tsoukala, 2002: 28).

Historically, settler states such as Canada and Australia did not strictly differentiate between migrants based on their motivations for resettling. Prior to the creation of a distinct refugee category, the admission of foreign nationals for permanent settlement in resettlement states was done almost exclusively through immigrant admissions programs. Settler states such as the United States, Canada and Australia used their immigration programs to encourage certain types of people to permanently settle in their state, primarily those with economic skills needed in the state; at the same time these programs also prevented the entrance of undesirable foreign nationals, often based on their economic, health or racial attributes (Adelman and Cox, 1994; Freeman, 1992, 1995, 2006). The immigration program was used to admit large numbers of people, many of whom would now be categorized as refugees. At the same time, these same programs disqualified a large number of potential immigrants, again including many who would today be categorized as refugees. Thus, while these states did admit some immigrants on "humanitarian" grounds rather than strictly economic considerations, it was done on an ad hoc basis, by suspending the normal immigration criteria.

The creation of a refugee category resulted in part from a recognition that existing mechanisms to manage international migration were insufficient to deal with the scope of the crisis after the Second World War. By creating a distinct refugee category toward whom states had certain obligations, Western states created another standard in addition to economic and family migration by which foreign nationals could be admitted to the state. The problem that emerged was that potential immigrants who did not qualify under existing immigrant standards could attempt to use the refugee standard as their basis for admission.

Because of this and the way in which refugee status is decided, asylum seekers (those who claim to be refugees but have not yet been recognized as such) are often suspected of having economic or family unification motivations. Thus, the asylum seeker is an unknown entity, reflecting one of the most glaring ambiguities in the international refugee regime. The asylum seeker is an unknown because they do not fit into one of the existing role structures recognized by the state. In short, the receiving state is unsure whether the foreign national is motivated by economic or political concerns—though increasingly authorities in Western states regard asylum seekers as economically motivated (Ceyhan and Tsoukala, 2002: 28). While the asylum seeker claims the identity of "refugee," until their identity claim is processed and accepted

by the state, or the UNHCR, the foreign national is not yet a refugee. One reason for the ambiguity concerning the identity of the asylum seeker arises from the behavioral expectations of refugees and unauthorized immigrants.

There are a number of expectations of refugees and consequently asylum seekers, some of which stem directly from the 1951 Convention, others from the constitution of the "ideal" refugee. The 1951 Convention explicitly identifies two types of expectations: submissiveness to the receiving state and direct journey. That the refugee is to be submissive to the receiving state is clearly spelled out in Article 2, which states that refugees are expected to "conform to the laws and regulations as well as to measures taken for the maintenance of public order … of the country in which he finds himself" (UN, 1951, Article 2). Similarly, Article 31 stipulates that refugees are to "present themselves without delay to the authorities," and must "show good cause for their illegal entry or presence" (UN, 1951, Article 31:1). These clauses demonstrate the expectation that the authority of the state is not to be challenged and refugees are to fully cooperate with and submit to the authorities in the receiving state. Deference to the receiving state is not to be manifest only by abiding by their laws, additionally, refugees are expected to express gratitude for the protection offered and their behavior is interpreted in this light (Harrell-Bond, 2002: 60).

The Convention has also created an expectation that refugees should seek protection in the closest safe state. Article 31 states that refugees who are unlawfully in the country of refuge are expected to "come directly from a territory where their life or freedom was threatened" (UN, 1951, Article 31:1). While not strictly enforced, this has resulted in an expectation that refugees will flee to a neighboring state, where they will most likely be housed in a UNHCR administered refugee camp awaiting a solution. To move beyond the safest close state or to traverse long distances to another state implies that the refugee is motivated by something beyond or in addition to fleeing persecution, such as economic opportunity or family unification. Such motivations are ascribed to immigrants, not refugees. This expectation that refugees simply flee to the nearest safe state is evident in the types of solutions proposed to deal with refugees. The UNHCR claims that the most durable and favorable solution for refugees is localized protection with voluntary repatriation (Loescher, 2003). Only in rare or unusual circumstances is permanent resettlement in a distant state seen as a viable solution.

When the actual behavior of refugees or asylum seekers falls short of these behavioral expectations, their intentions are called into question and ultimately their identity as refugee is suspect. Also, when the behavior of asylum seekers more closely resembles the behavior of unauthorized economic immigrants than it does refugees, the identity of asylum seekers again becomes suspect. The problem is that asylum seekers often behave more like unauthorized economic migrants than the "ideal" refugee. Both often lack authorization and identification and both often rely on the services of people smugglers to gain access to the state. Further, for a variety of reasons,

primarily psychological, asylum seekers may not immediately report their presence to the state authorities, may be uncooperative in the refugee determination process and may appear ungrateful, thus behaving in a manner that fulfills the expectations people have of illegal immigrants (Lacroix, 2004: 147–66). The dissonance created between expected and actual behavior has provided fertile ground for securitizing actors. In the subsequent chapters, I will explore how un-refugee-like behavior has been used by securitizing actors to reconstruct the identity of asylum seekers from that of victim to that of threat.

The patterns of behavior expected of refugee and asylum seekers stems from the motivations and intentions ascribed to them in international law and practice, and the idea that granting asylum or refugee status was a benevolent and charitable act on the part of the receiving state. In this way, the refugee population itself has been divided into real and bogus refugees. The normative ideal for refugees is the "real" or "good" refugee that flees to the nearest state, stays in a refugee camp awaiting resettlement or repatriation, all the while fully cooperating with the local authorities in whatever decisions are made regarding their welfare. They are to be passive and speechless. The "bogus" or the "bad" refugee circumvents the "queue" by traversing multiple states to make an asylum claim in a Western liberal state, is uncooperative with authorities and attempts to be an active participant in matters regarding his or her welfare. As the following chapters demonstrate, the identification of the "bad" or "bogus" refugee figures prominently in securitizing attempts aimed at reducing the state's obligations to refugees and asylum seekers. The 1951 Convention explicitly acknowledges that refugees and asylum seekers may need to traverse state boundaries without authorization to seek protection—and explicitly denies states the right to penalize them for their unauthorized entry. Yet, it also creates certain behavioral expectations of refugees that make a number of behaviors suitable grounds for violating the normal way of dealing with refugees and asylum seekers. These identity constructions have altered the behavior of both states and refugees/immigrants. In defining the "refugee" as it has, the refugee regime distinguishes refugees from immigrants by infusing refugee identity with specific intentions and creating certain expectations regarding their behavior. At the same time, it creates a different set of obligations on the part of the state.

Norms of refugee protection

In addition to setting down the definition of a refugee, the 1951 Convention set out the normal processes by which states would respond to refugee flows. It did so by creating a list of obligations states have toward refugees as well as a series of exclusions, whereby states may exclude certain refugees from these general obligations. Though all signatory states are expected to fulfill their obligations laid out in the Convention, the regime has not created equal burdens on all states.

The obligations contained in the refugee regime, combined with a continued assertion of the right of states to manage international migration, has meant that the Western liberal states have not been the states most burdened by the implementation of the refugee regime. Countries of first asylum have faced the primary obligation for protecting refugees, which meant that states geographically proximate to the refugee-producing states have faced the largest burden. The country of first asylum distinction is based on an understanding of refugee intentions implicit in the definition of a refugee. Refugees are defined as individuals fleeing for protection, in some cases for their lives, which has come to be understood in such a way that implies that refugees have no time to plan, very little money with which to execute their escape and stop as soon as they are free from immediate danger. Because of this, geographically isolated states and those that do not share a boundary with a refugee-producing state make the argument that they are not or should not be countries of first asylum. This is based on the assumption that for the refugee to access the state would be costly, involve extensive and time-consuming planning and likely would involve transiting through a number of other states, some of whom could provide protection or where the UNHCR is present and able to provide protection.

States do face significant incentives to limit their identification as a country of first asylum. Under international law, countries of first asylum have a number of responsibilities toward asylum seekers, including the responsibility to determine whether the individual qualifies for refugee status as well as to provide for their basic necessities. As we shall see in the next section, the principle of *non-refoulement* makes it difficult to avoid these obligations. Besides the high costs associated with refugee determination, in most Western liberal democracies refugee determination can take a long time, during which the refugee may form attachments in the community, making their removal difficult. Because of these responsibilities, states have become more and more adamant in determining which state actually was, or should have been, the country of first asylum.

Despite the efforts of Western liberal states to avoid being countries of first asylum, the Western liberal settler states have still used refugee protection to bolster their identity claims as humanitarians and good international citizens. States that are not the country of first asylum but that provide durable settlement for the refugee involving the selection of refugees for resettlement and providing for their placement and integration into the community are referred to as resettlement states (Mbuyi, 1993). Of course, resettlement is not an explicit international obligation, but rather is undertaken because of the "generous and humanitarian nature" of the resettlement state. States that resettle refugees portray themselves as doing their fair share in shouldering an international burden. Thus, for states that do not face a significant influx of asylum seekers, the refugee resettlement scheme provides an opportunity to identify themselves as generous and humanitarian by resettling refugees from countries of first asylum, in essence by shouldering some of the burden. These states

cooperate with international organizations, primarily the UNHCR, by offering to resettle refugees from camps whose claims have already been processed and accepted.

There are only a few resettlement states in the world, including: Denmark, Sweden, Canada, Australia, New Zealand, the US, Norway, Finland and Switzerland (Mares, 2002). Even then, some of these states resettle only a few hundred refugees per year. The primary resettlement states are Canada, Australia and the United States. In 2004, Canada resettled 10,500 refugees, and has on average resettled 10,000 refugees per year since the early 1990s. In addition to those resettled, Canada has accepted between 10,000 and 15,000 asylum seekers per year from onshore claims (UNHCR, 2006). The numbers resettled in Australia have varied more widely than in Canada, primarily because onshore claims count against the total humanitarian program. In 2004, Australia resettled 16,000 refugees, but during the 1990s and early 2000s resettled 8,000—15,000 refugees per year. In addition to the resettlement program, Australia admits between 2,000 and 5,000 onshore refugee claimants per year. In comparison, the United States resettled 52,900 refugees in 2004, while historically averaging between 80,000 and 90,000 during the 1990s and 2000s.

Thus, the resettlement program serves to reinforce the state's humanitarian identity, but it also plays a crucial role in the construction of "normal" refugee behavior. Refugees that come into the state through the resettlement program behave in a manner consistent with the intentions and expectations accorded to refugees by the Convention. Because resettled refugees have gone through the proper international mechanisms for gaining refugee status, they are regarded as "genuine" refugees, and are law-abiding refugees that would make good citizens (Tazreiter, 2004). Those that do not enter via the resettlement program are often characterized as jumping the queue, and thus are not law-abiding people—even if they are refugees. Despite the fact that there are so few resettlement places available and that the vast majority of refugees have no chance of being selected for resettlement, these states can and have claimed that their resettlement programs have created a queue. Thus, asylum seekers who do not wait in refugee camps to be selected but rather self-select and turn up uninvited may be portrayed as queue-jumpers, or not as refugees at all.

Both Canada and Australia have historically identified themselves as countries of resettlement, and have enacted relatively generous refugee resettlement programs. That the resettlement program serves as an important identity marker for these states is evidenced in the legislation used to implement the refugee regime. In the 1976 Immigration Act, the Canadian government listed two of the primary reasons for incorporating the international refugee regime as filling its international responsibilities and in keeping with its humanitarian past (Dirks, 1977; Knowles, 1997). Similarly, the Australian government, upon incorporating the refugee definition into its domestic legislation in 1978 argued that it recognized its humanitarian commitments and

its international responsibility to resettle refugees (Hawkins, 1991). These states continue to describe their refugee policies as reflecting their humanitarian nature and fulfilling their international obligations.

Though the size and makeup of the refugee resettlement program has been a bone of contention during some periods in Canada and Australia, these states' transition to countries of first asylum has been far more contentious. Until the early-to-mid-1980s, Canada and Australia were not countries of first asylum in that there were very few refugees who arrived on their territory that had not come through their resettlement programs. However, with advances in transportation technology and the profitable expansion of people smuggling enterprises, both states faced an increase in the number of asylum seekers that made them countries of first asylum. This has not occurred without significant effort on the part of the state to prevent it. Both states have implemented border control policies such as carrier sanctions, visa requirements and safe third country policies in an effort to prevent asylum seeker arrivals. Resettlement states have benefited enormously from the refugee regime; they were able to maintain a humanitarian and compassionate identity while selecting the refugees that came into the state and maintaining control of their refugee intake. Additionally, very few expectations were created of them under the international refugee regime. The regime mostly created expectations for countries of first asylum that identified themselves as refugee-protecting states. The transition of such states to countries of first asylum has created an obligation to abide to international rules and norms pertaining to asylum seekers.

Norms of the refugee regime

The most basic and significant norm of the international refugee regime emerges from the decision to allow states to take direct control of the process of refugee determination and to establish a legal framework permitting the screening of refugee applicants on a variety of national interest grounds (Hathaway, 1990: 144). In this way, the refugee regime reproduces the state as the normal form of political organization and the actor empowered to make life and death decisions over the human population.

At the same time, the decision-making power of individual states with respect to refugees and asylum seekers was circumscribed by the obligations set out in the 1951 Convention and the 1967 Protocol (which lifted the temporal and geographic limitations of the 1951 Convention). These documents, supported by other international treaties and agreements, provide a clear statement of duties that receiving states or countries of first asylum owe to refugees and asylum seekers. They do so by laying down a minimum standard for the treatment of refugees (Barnett, 2002; Hawkins, 1991). These minimum standards make it possible to identify states that fulfill their international obligations and those that do not. The problem is that many of these duties are perceived as applying only to recognized refugees under the 1951 Convention.

The Convention and other human rights agreements have very little to say regarding those seeking refugee status or others given protection of the state but that do not have Convention refugee status. Thus, while the responsibilities of states toward refugees are fairly well laid out in the 1951 Convention, there are very few rules relating explicitly to the treatment of asylum seekers and others in refugee-like situations. In law and practice, states have fewer obligations toward asylum seekers than they do refugees. However, the 1951 Convention and supporting human rights agreements, combined with state practice since the Second World War, provides some indication of what is expected of states toward asylum seekers.

The refugee regime has created four expectations of states toward asylum seekers. These expectations are based on an underlying principle that receiving states should cause no further harm for refugees. While the asylum seeker is not yet a refugee, they may be, and until the asylum seeker's identity has been established, the state is expected to act in accordance with the principle of causing no further harm. Essentially, burden of proof rests on both parties in this exchange. Asylum seekers essentially must show that they are refugees before they are accorded the full rights of refugees as stipulated under the refugee regime. However, there is a commensurate responsibility for states to show that asylum seekers are not refugees before they can deny the basic protections owed to refugees.

I identify four norms that pertain to asylum seekers: *non-refoulement*, legal processing of claims, non-arbitrary detention and non-punishment based on mode of entry. The most prominent expectation is that of *non-refoulement*, which according to some international legal scholars, has achieved the status of customary international law (Hathaway and Dent, 1995; Loescher, 2003). In addition to the well-established norm of *non-refoulement*, this project argues that the refugee regime supports three accompanying behavioral expectations of states when dealing with asylum seekers: legal processing of claims, non-arbitrary detention and non-punishment based on mode of entry.

Non-refoulement

Among the strongest expectations created by the refugee regime is the principle or duty of *non-refoulement*. This duty is outlined in the 1951 Convention and the 1967 Protocol, with parallel provisions in other international agreements including the International Covenant on Civil and Political Rights and the Convention against Torture (Bruin and Wouters, 2003). The principle of *non-refoulement* states that

> no contracting state shall expel or return 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 political opinion
>
> (UN, 1951: Article 33)

Though there is no consensus on what obligations this principle actually requires of states, it is generally accepted that states adopt a course of action that does not amount to *refoulement* (Lauterpacht and Bethlehem, 2003). This is not tantamount to an obligation to grant asylum (Goodwin-Gill and McAdam, 2007; Helton, 2003; Hathaway and Dent, 1995) but *non-refoulement* has been interpreted as meaning that states permit asylum seekers who have arrived at their borders to enter the state to make a refugee claim, which is to be determined prior to any attempted return. In most Western states, claimants have been permitted to remain pending a long-term solution (Goodwin-Gill and McAdam, 2007), but they need not do so.

Because the exact obligations under this general principle are unspecified and generally unclear, recipient states have adopted a number of measures that do not directly violate this norm, but act to restrict the number of asylum seekers who make claims in the state. Recipient states may send asylum seekers on to make their claim in another state or to one of the states through which they had passed without violating the principle of *non-refoulement*; provided there is no risk that the refugee will be sent from there to a territory where they may be at risk (Lauterpacht and Bethlehem, 2003). Furthermore, state practice indicates that the norm of *non-refoulement* likely prohibits sending or returning a refugee to another state that has not signed the Convention and that may then return the refugee to their original home state where they face persecution (Dummett, 2001).

In practice, the principle of *non-refoulement* has meant that any asylum seeker outside their home state that has arrived in the territory (or territorial waters) of a receiving state should not be returned to their home state prior to a determination of their refugee status. This includes the notion of indirect *refoulement*, whereby asylum seekers are returned to third states, that in turn forcibly return them to their home state (Feller, Turk and Nicholson, 2003). What constitutes the territory of the receiving state is a theme I will return to in Chapter six.

As with other norms of the refugee regime, the principle of *non-refoulement* reflects and is productive of the construction of "normal" refugees, those to whom the obligation is due and those to whom it is not. The refugee definition is clear that it applies only to those who are outside their home state and this is reflected in the principle of *non-refoulement*. Because the underlying basis of the norm is not to return refugees (and by association asylum seekers) to areas where they face persecution it implies that the principle applies only to those who have left their home state. In this case, the obligation is owed only to those who arrive at the state's borders, not to those who have not yet fled. This has profound implications for those who are still in their home state but who want to flee. *Non-refoulement* prohibits the return of asylum seekers, not the prevention of their departure to the receiving state. Consequently, carrier sanctions, visa requirements and interdiction at foreign air- and seaports, all of which aim to prevent the asylum seekers from leaving their home state to reach a particular receiving state, strictly speaking do not

violate this principle as they are not being returned to their home state. This element is taken up in greater detail in Chapter six on visa requirements.

Because the international refugee regime reproduces the sovereignty of states, several contradictions have emerged. First, the state is empowered to determine when the normal conditions under which the principle of *non-refoulement* apply. Thus, states may violate the principle in instances where an individual refugee is a demonstrable threat to national security and public safety (UN, 1951: 15, 31–32; Lauterpacht and Bethlehem, 2003:133; Bruin and Wouters, 2003). There are also indications that national security can be evoked to justify denying entry to asylum seekers in instances of mass influx, where the magnitude of the influx represents a threat to public order (United Nations, 1967; Lauterpacht and Bethlehem, 2003). The exceptions to the principle clearly reflect a securitized discourse, where asylum seeking represents a potential threat to the state, either in the form of individual claimants or because of the magnitude of the refugee flow.

The second contradiction concerns asylum seekers who have fled their home state but have not yet arrived in a receiving state. Again, states have been empowered to decide when someone has officially arrived in their territory, or even to decide what parts of their territory count as part of their territory for the purposes of making a refugee claim; and thus when duties are invoked and when protections apply. Thus, territory has emerged as a site of contestation in the securitization process, a theme that is explored in subsequent chapters. Though there are multiple ambiguities regarding this concept, under normal conditions *non-refoulement* obliges states to not return asylum seekers and refugees to their home state.

Legal processing of claims

A theme that should now be obvious is that the refugee regime reinforces the sovereignty of the state, in that it empowers the state in a variety of ways. This holds true in the matter of how refugee claims are to be decided. The refugee regime does not specify how refugee claims are to be processed (Hathaway, 1990: 166), though there are broad guidelines. Though no specific article contained in the 1951 Convention states that the claims of all asylum seekers must be processed in the state's legal system, two related articles have this effect. Article 32 of the Convention states that "expulsion of a refugee shall only be in pursuance of a decision reached in accordance with due process of law"; while Article 16, states that "all refugees shall have free access to the courts of law" (UN, 1951). Together, these two articles have created an expectation that a signatory state cannot simply deny asylum seekers protection and expel them from its territory by simply asserting that they are not refugees. There must be some legal determination of the asylum seeker's claim against the standards of the 1951 Convention—as interpreted by the state.

In most Western liberal states, the processing of refugee claims is done by the immigration department or independent panels, with a right to appeal the

initial negative decision to the judicial system in keeping with the laws of that country. The basic norm stipulates that all asylum seekers should have a fair chance to demonstrate that they are in fact refugees. This necessitates access to the legal system of the receiving state, including legal assistance and the right to seek an appeal of a failed claim.

Many states have attempted to alter the legal procedures available to asylum seekers, in an attempt to speed up the determination process and to reduce the backlog of claimants. Attempts to ignore or change existing legal norms pertaining to the refugee determination process clearly demonstrates the way in which securitizing actors "break the rules that otherwise bind," which Buzan et al. and others have interpreted as the normal decision-making rules in democratic states. Efforts to refuse or expedite refugee determination processes by reducing access to the legal system is a clear indicator of a securitizing move, as it violates the normal decision-making procedure of liberal democracies. This is evident in both the Canadian and Australian cases explored in Chapters four and five.

Non-arbitrary detention

The international refugee regime does not prohibit the detention of asylum seekers, but it has created expectations regarding its use by signatory states. Detention is expected to be an exceptional measure, it is not to be arbitrary and it is to be humane. According to the UNHCR's Revised Guidelines on the Detention of Asylum Seekers, as a general principle, asylum seekers should not be detained (UNHCR, 1999). The restriction against the normal detention of asylum seekers is further elaborated by the UN Executive Committee Conclusion No. 44 which concludes that detention is an extraordinary measure and should be applied only in particular circumstances. Conclusion No. 44 states that detention should normally be avoided but is permissible to verify identification, to determine the elements on which the refugee claim is based, where identity documents have been destroyed or are fraudulent, or to protect national security or public order. The UNHCR argues that detention due to the lack of documentation is permissible only when there is clear intent to mislead the authorities and that detention to verify identity does justify ongoing detention during a prolonged status determination procedure. International practice indicates that detention of asylum seekers ought not to be resorted to for simple reasons of administrative convenience and that detention must be of the shortest possible duration (Hathaway and Dent, 1995). Consequently, an asylum seeker may be detained on the following grounds: the claimant is a danger to the public, is a "flight risk" or the claimant has not established his or her identity. The problem is that these categories are not clearly defined in international law, which empowers national actors to define and decide when such extraordinary circumstances arise.

The second norm relates to the arbitrariness of the decision to detain, which reflects two elements. The first is the individual nature of the decision

to detain. Though the international refugee regime does not specify the mechanism by which the decision to detain is made, the norm is that decisions on detention, as well as refugee status, are to be made on an individual basis. In other words, a person should not be denied refugee status or be detained without having individually been assessed. In Canada, individual asylum seekers are required to establish their case, and there exists extensive bureaucratic and legislative framework surrounding the norm that refugee determination is normally individually assessed (see Goodwin-Gill and McAdam, 2007: 53–60). Similarly, the justifications for detention are also based on individual attributes, and are not to be based on their membership of a particular social group. Support for this stems from Article 3 of the 1951 Convention, which stipulates that the provisions of the Convention should apply without discrimination as to race, religion or country of origin. Consequently, asylum seekers are not to be detained simply because they came from a particular country, or because they are of a particular ethnic or religious background, but because as individuals they meet the conditions justifying detention. Goodwin-Gill concludes that the individualized aspect of fundamental human rights on which the refugee regime is based requires case-by-case consideration of detention (Goodwin-Gill, 1986: 215).

Another way in which arbitrariness is to be avoided has been interpreted that detention must be imposed in accordance with and authorized by law (Goodwin-Gill and McAdam, 2007: 463). Arbitrary is typically understood as a violation of the rule of law, but being consistent with the rule of law does not preclude the arbitrariness of detention, particularly when broad powers have been given to the executive powers under existing laws (Pratt, 2005: 69; Goodwin-Gill, 1986: 199). Thus, accordance with the rule of law cannot be the sole standard of arbitrariness. According to Goodwin-Gill, for a decision not to be arbitrary means more than just being legal, it must be just—which he defines in terms of being respectful of the detainee's rights, most notably the right to liberty (Goodwin-Gill 1986: 196).

For Pratt and Goodwin-Gill, an effective mechanism to avoid arbitrary detention is to ensure that the decision to detain is subject to review, because it limits the discretionary power of immigration officers and allows for judgment on whether the decision to detain takes the human rights of the detainee into consideration. Thus, the body empowered to review detention decisions is an important element. Pratt and Goodwin-Gill both advocate full judicial review of detention decisions—though in most states, this has been a contentious issue.

The third aspect of detention prescribed in international agreements and in UNHCR executive decisions is that detention is to be humane. While it seems paradoxical to describe detention in any way as humane, there are clearly more and less humane conditions of detention. Pertaining to refugees, there are two elements of detention that apply to its humanity: the detention of asylum seekers with common criminals and the level of access asylum seekers have to the UNHCR or national refugee assistance agencies (UNHCR Executive

Committee, 1986). More humane forms of detention are those that separate asylum seekers from common criminals and that ensure they have access to refugee assistance agencies.

Perhaps the strongest evidence in support of the existence of a norm against mandatory detention is the practice of states, wherein only one Western state—Australia—employs mandatory detention for the duration of the claims process and locates detention facilities in remote areas to reduce access to refugee assistance agencies. In other states, detention is justified only in cases of national security, to establish identity or to prevent the release of serious criminals.

Non-punishment based on mode of entry

Article 31 of the Convention prevents states from

> imposing penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence
>
> (UN, 1951)

Thus, refugees are not to be punished for entering the state clandestinely or without proper documentation, provided they came directly from a state in which they faced persecution and notified authorities of their presence within a reasonable period of time. This interpretation of the Article has been upheld by the UNHCR Executive Committee, which has acknowledged on numerous occasions that refugees will have justifiable reasons for illegal entry, such as Conclusions 15, 22, 44 and 58 (Feller, Turk and Nicholson, 2003; UNHCR Executive Committee, 1979, 1981, 1986, 1989).

The tricky part of course is the condition imposed stating the refugee had to come directly from the state in which they faced persecution. Refugees coming to Western countries often traverse through various states on their way to the advanced Western liberal states to make a refugee claim. In practice, Western liberal states have rarely imposed this condition and Article 31 has been interpreted to apply to persons who have transited other countries or have been unable to find effective protection in the first country to which they flee. State practice has been to treat all asylum seekers equally, regardless of whether or not they transited through another state, which has been interpreted as in keeping with Article 3, which states that the provisions of the Convention should be applied to all refugees without discrimination as to race, religion or country of origin (Hathaway and Dent, 1995).

I argue that these four norms encapsulate the humanitarian principle that states should not re-traumatize refugees. What this means for asylum seekers is that they should not be sent back to a country where they face persecution

before their claims are processed in a fair manner, with access to the legal system of the receiving state. Furthermore, they are not to be punished for entering the state illegally or without documentation.

Conclusions

In this chapter I have attempted to identify what constitutes the normal relationship between Western liberal states and asylum seekers. I argue that it is essential to understand the normal relationship between units in order to identify and understand the securitization process, because by definition it involves the breaking free of normal rules and relationship structures. In exploring the creation and implementation of the international refugee regime, I have shown that the establishment of this regime marked an important change in international relations. Notably, it constituted refugees as distinct actors within the international system, and imbued refugees and asylum seekers with particular intentions and created behavioral expectations on the part of both signatory states and those seeking refugee status.

This regime however, was not simply a neutral product of international argumentation and diplomacy in which all states had equal say, it served the purposes of a few select states and reinforced an emerging rivalry structure in the international system. Despite a historic shift that altered the structural conditions that shaped and influenced the creation and evolution of this regime, the regime persists and continues to create obligations for signatory states. However, it also continues to be a tool for states to reinforce new relationships within the international system.

Insofar as the regime created obligations for receiving states, it created expectations of signatory states to treat asylum seekers in a manner consistent with the identity constructs contained in the regime. The expectations created by the regime on signatory states toward asylum seekers follow the broad humanitarian principle of preventing further traumatization of refugees. This meant following four behavioral expectations: *non-refoulement*, legal processing of claims, non-arbitrary detention and non-punishment based on mode of entry.

The two states under examination in this study, Canada and Australia, are signatory to the relevant international treaties that comprise the international refugee regime. As resettlement states, both Canada and Australia have used their protection of refugees to support their humanitarian identity claims and for the most part have treated those seeking refugee status in their states in a manner consistent with the expectations of states that are signatory to the international refugee regime. As the following chapters show, in Canada and Australia the relationship between the state and asylum seekers has reflected changing relationships in the international system. Consequently, societal and political elites have attempted to reconstruct the identity of and their relationship with asylum seekers by reconstructing the identity of other states. They have done so by depicting either the asylum seeker's home state or

transit states through which they may have passed, as a safe country rather than as a refugee-producing state. Even so, Canada and Australia have not done so in the same ways with the same results. The significant divergence between these two otherwise very similar states in how they have treated asylum seekers is a puzzle not adequately explained by explanations that focus on the material incentives faced by states. The remaining chapters explain this variation in outcomes by tracing the processes of securitizing episodes and by identifying how these processes succeed or fail.

3 Detention and naval interception in Canada

Compared with other Western liberal states, the association of humanitarian migration with insecurity in Canada is relatively weak. Indeed, it is this perceived lack of concern with border security that has led to concerns from its southerly neighbor that Canada's borders are porous and that it has become a haven for terrorists. Yet, as the previous chapters indicate, in Canada, as in other states of the world, migrants (including humanitarian migrants) have always been associated with insecurity. Canada's history is replete with policies and practices that lay bare this connection: race-based immigration quotas, head taxes, visa requirements and carrier sanctions to name a few. Even more notorious instances surround the refusal to take in Jewish refugees prior to the Second World War and the turning away of Sikh migrants aboard the *Komagata Maru*. All of these policies have been justified in the name of national security.

Yet, Canada's history may also be told as one of generosity and humanitarianism, from its large-scale resettlement practices, high success rates of asylum claims to relatively generous socio-economic rights it affords to refugees and asylum seekers. The Canadian people hold the remarkable distinction as the sole people to have been awarded the Nansen Medal for the protection of refugees. In comparison with other Western states Canada's response to asylum seekers and refugees, a few historical instances notwithstanding, has been less pre-occupied by security concerns. As such, the Canadian case represents an exceptional opportunity to study instances in which national security has been evoked in response to asylum flows and to identify the factors that contribute to successful securitization, and those that have favored de-securitization. In this chapter I examine two such cases: the 1986–87 boat arrivals and the 1999 boat arrivals.

1986 and 1987 boat arrivals

Prior to the early 1980s, Canada identified itself primarily as a country of resettlement, and experienced a relatively modest number of asylum seeker arrivals. By the mid-1980s, a growing number of asylum seekers were arriving at Canadian ports of entry, altering Canada's identity from a resettlement

state to a country of first asylum. Like a number of other states previously isolated from refugee-producing states by virtue of their geographical location, Canada faced obligations under the 1951 Convention that it had previously avoided in large numbers. This fundamental identity shift prompted Canadian political elites to consider changes to the existing refugee determination process, illustrated by successive Canadian government's authorizing several reports in the early 1980s (Hardcastle, Parkin, Simmons and Suyama, 1994: 109). These reports consistently referred to Canada's international humanitarian obligations and consequent changes broadly reflected a commitment to the norms of the international refugee regime.

At this time, asylum seekers to Canada arrived primarily by air or through ports of entry along the United States border. And though the growing number of such arrivals had generated a significant backlog in cases and pressure to quicken the determination process, this was not regarded as a threat to Canadian security nor as an issue requiring immediate, emergency measures. Reform of the refugee determination process proceeded slowly, with numerous reports and recommendations made and few implemented. This changed with the arrival of asylum seekers aboard boats in 1986.

The 1986 arrivals

On 11 August 1986, Canadian fishermen rescued 152 asylum seekers from Sri Lanka off the coast of Newfoundland—the first large-scale unauthorized boat arrivals since the early 1900s. The asylum seekers had departed from Germany aboard an ocean going vessel named the *Aurigae* and were set adrift from the larger vessel in life rafts off the coast of Canada. The initial response of the immigration department and the Canadian government generally to this rather unusual arrival nicely demonstrates the normal process that asylum seekers faced when entering Canada in the 1980s. The asylum seekers were brought ashore and housed in university residences where they initiated refugee claims and Canadian authorities confirmed their identity. Within three days of arriving, they had been released from detention and most had relocated to Toronto and Montreal to find housing and support from the large Tamil communities in these centers. In nearly all aspects, the 1986 boat arrival is distinctive by the normality of the response by Canadian officials compared with subsequent boat arrivals.

Non-refoulement was firmly entrenched as the guiding principle in Canada's refugee determination process. The Canadian state had developed a list of countries to which asylum seekers, even those whose refugee claims were unsuccessful, would not be forcefully returned. In 1986, this list became the basis of a fast-track refugee determination process, whereby asylum seekers from the eighteen refugee-producing countries on the B-1 list were granted Minister's Permit, exempting them from making a refugee claim and going through the refugee determination process (Matas and Simon, 1989: 95). The goal was to free up resources to eliminate the backlog of cases from countries

that were less clearly producing refugee flows. Sri Lanka was one of the states on that list. In keeping with this humanitarian approach, the boat arrivals from Sri Lanka were not detained and despite their arrival by boat, they were not subject to punitive measures based on their mode of entry. The B-1 list exempted them from the refugee determination process; therefore, they did not need access to the legal system during the claim process.

Yet, this particular episode exposed deep divisions in Canadian society that gave rise to a securitizing claim. The "normal" treatment of the boat arrivals faced intense media coverage and presented a window of opportunity for those who opposed the way in which the asylum seekers were permitted entrance to Canada.

Securitization or problematization claim

One of the most difficult issues to grapple with in the theory of securitization is the distinction between the identification of an event as a problem or a security threat. Though Waever et al. identify a clear distinction between securitizing discourses and normal political processes of problematization, scholars such as Jef Huysmans and Didier Bigo see difficulties with that distinction. The 1986 arrivals in Canada indicate the problematic distinction between securitization and problematization. The arrival of the asylum seekers in 1986 revealed significant opposition to the existing policies governing the treatment of asylum seekers, particularly those on the B-1 list—though few identified the asylum seekers as an immediate threat requiring emergency measures. Rather, media coverage and some political elites depicted this as a serious problem, both in the tone and magnitude of their coverage of the boat arrivals. The Canadian media rarely reports on the arrival of asylum seekers, and in even fewer circumstances has the media publicly interrogated the claims of asylum seekers. Yet, in this case, the media played a key role in undermining the dominant humanitarian discourse by reporting that the asylum seekers had lied about their journey.

The asylum seekers claimed to have traveled to Canada directly from India, after fleeing there from Sri Lanka. Media coverage in all the papers under examination reported that they had departed from Germany, widely regarded as a safe state, where they had already filed refugee claims. In essence, the perception was that the asylum seekers were no longer in need of protection since they had reached protection in another Western liberal democracy.

Furthermore, the inaccuracy of the asylum seekers' story was incommensurate with the behavioral expectations of "genuine" refugees who are expected to flee directly from persecution, who are not expected to have already found protection and who are expected to be truthful and cooperative with authorities in the receiving state. The disjuncture between the actual behavior of the asylum seekers in this case and the expectations created by the refugee regime, and the prominence of this aspect of their story due to intensified media coverage cast doubt on their "refugeeness" as well as the appropriateness of Canada's response.

The untrustworthiness of the asylum seekers was underpinned by frequent depictions of them in media accounts as: "standing by their story," "leaving a safe haven," "maintaining their silence," "jumping the queue," "blatantly entering" and "entering illicitly" (e.g. Shalom, 1986: 4; Story and Hall, 1986). Rather than depicting the asylum seekers as helpless, passive victims, as is common in a humanitarian discourse (Malkki, 1996; Nyers, 2006a), these discursive devices constructed them as active, untruthful migrants exploiting Canada's refugee determination process. In short, their behavior was consistent with the behavioral expectations of illegal migrants and "bogus" refugees.

After it was revealed that the asylum seekers' original story was untrue, the representation of Canada as a humanitarian state gave way to delineations of Canada as "a dumping ground," a "soft touch," "suckers" or as "gullible" (e.g. Ludlow, 1986; Winsor, 1986). In this representation, the quick release of the asylum seekers on Minister's Permits was not a positive development that fast-tracked genuine refugee claims and reduced the burden on the refugee determination process as it was intended; but rather, it was portrayed as a weakness in Canada's border control that should be corrected and stopped.

This depiction of the asylum seekers was not the dominant representation in the media's coverage, but there is evidence to suggest that this perception of the asylum seekers and Canada was at least well supported among the Canadian public. The majority of the letters to the editor reproduced this construction of the asylum seekers and Canada's asylum policies. Additionally, the media and political elites clearly believed that there was significant public backlash against the asylum seekers, indicated by the large number of angry calls and letters from constituents (e.g. Vienneau, 1986: 8). Opinion polls indicate public support for more restrictive refugee policies. An Angus Reid poll, published in the *Toronto Star* on 29 September noted that 58 percent of Canadians favored a policy review to allow fewer refugee entries, while less than 35 percent felt Canada should continue its current course or do more for refugees (*Toronto Star*, 1986: 3).

Some political elites sought to use this for political advantage. After initially supporting the government's acceptance of the refugees, by late August, opposition leader John Turner openly questioned the existing practices of admitting asylum seekers and was critical of the government for having acted too quickly and for not having detained the asylum seekers while their stories were thoroughly investigated before allowing them into Canadian society. Turner stopped short of depicting the asylum seekers as a threat, but did publicly question whether they should have been admitted so quickly and without investigating and confirming their story first. It was not just the opposition that used this event to press for policy change. On 13 August, Immigration Minister Benoit Bouchard warned, "the refugees could open the door to a flood of Third World castaways" and stated that Canada would need to review its refugee policies (quoted in *Canadian Press*, 1986a). Other Conservative backbench MPs also questioned the government's quick acceptance of the asylum seekers (O'Donnell, 1986b: 8), exposing a rift in the

governing party over the "problem" of asylum seekers. Party discipline and humanitarian sentiments ultimately favored desecuritization: Immigration Minister Bouchard changed his tune and four days after his "flood remarks," when he stated that "the situation is under control … I hope we let them (the Tamil asylum seekers) live their lives" (Bouchard quoted in *Canadian Press*, 1986c).

The challenge to Canada's existing asylum practices does not meet Waever's criteria for a securitizing move as a point of no return was not identified nor were exceptional measures proposed. Furthermore, it was not the dominant representation in the media coverage or amongst political elites. However, media coverage of this event and the speech acts of notable political elites did reconstruct Canada's asylum policies as problematic and in need of change. Against Waever's formulation, I contend that this may be seen as one step toward securitization, the intensification of the problematization of an issue. The challenge was strong enough to force political elites to engage in desecuritizing discursive practices. The government was forced to justify the "normal" response to this event.

Desecuritization

The speedy admission of the Tamil asylum seekers was consistent with existing practices/legislation and was sustained by an existing humanitarian discourse that depicted asylum seekers as potential victims and Canada as a humanitarian state. Media coverage of the 1986 arrivals supported these humanitarian identity constructions, by depicting the Tamils as doubly victimized. First, the Tamils were constructed as victims of the ship's captain who was consistently depicted as having "abandoned them at sea." The moniker "castaways" became a popular term used by the media to identify the subjects of their reports. Sustaining this humanitarian characterization was the attribution of passive characteristics to the asylum seekers such as: "living in fear," "found adrift," "fleeing," "fleeing violence," "rescued," "forced to leave," "smuggled" and "cast away."

Secondly, the asylum seekers were depicted as victims of violence and persecution in Sri Lanka. The ongoing conflict in Sri Lanka featured prominently in news coverage: headlines proclaimed that Tamil refugees had "fled land of bombs and whispers" and from "Violence in Paradise" (e.g. Weintrub, 1986; Finlayson, 1986). The general humanitarian tone of the newspaper coverage is revealed by the terminology employed in the newsprint media coverage. The newspapers and news magazines consistently referred to the arrivals as "refugees," which served to construct the asylum seekers as victims that had a genuine claim to the protection of the Canadian state under international law.

At the same time, media coverage and political elites portrayed Canada as a humanitarian country that offered protection to those fleeing danger. Canada's action in permitting entry to the Tamil refugee claimants was described in the media coverage as "welcoming," "sympathetic and understanding,"

"humanitarian and generous," "commendable" and "morally responsible." The securitizing discourse which expressed opposition to granting the asylum seekers' entrance was denounced as "unthinkable," "small-minded and ignorant," "devoid of compassion," "a knee jerk reaction" and "racist backlash."

The dominant humanitarian discourse constructed the Tamil asylum arrivals as genuine refugees in need of protection. The dominance of this discourse is illustrated by the general tone of coverage devoted to the arrivals by the Canadian media over the course of the event. This coverage is illustrated in Table 3.1.

Though there are some regional differences, in total 74 percent of the 82 front-page articles were predominantly humanitarian in their coverage, describing the asylum seekers as having legitimate refugee claims and Canada's admission policies as humanitarian and consistent with its international obligations. Eighty percent of the 194 other articles and 85 percent of 13 editorials reproduced the humanitarian discourse. As noted in the previous section, less than 46 percent of 70 letters to the editors supported the humanitarian discourse. Though not a particularly effective measure of public support, the letters to the editor do suggest that the humanitarian discourse emanating from the media's coverage and from political elites did not resonate strongly with some members of the Canadian public.

Though the media presented a humanitarian depiction of the asylum seekers in its coverage, it was not the key desecuritizing actor. The governing Conservative Party was the actor most strongly engaged in desecuritizing rhetorical practices. In this case, the Prime Minister, who rarely spoke about refugee matters, attempted to reinforce the humanitarian representations of the asylum seekers and Canada, particularly after competing and less humanitarian constructions of the asylum seekers and Canada's identity challenged their response to this particular episode and to asylum seeking in general. In response to criticism in the media and to divisions within his own party over this issue, Prime Minister Brian Mulroney repeatedly emphasized Canada's humanitarian tradition in dealing with refugees. On 17 August, Mulroney urged "Canadians to show compassion" to the Tamil refugees and argued that "Canada's

Table 3.1 Humanitarian media content: 13 Aug–7 Oct 1986

% Humanitarian (Total)	*Front Page*	*Articles*	*Editorials*	*Letters*
Globe and Mail	67% (18)	89% (55)	100% (4)	53% (15)
Toronto Star	81% (42)	84% (75)	100% (4)	44% (27)
Vancouver Sun	43% (7)	74% (27)	0% (2)	25% (4)
Montreal Gazette	79% (14)	61% (33)	100% (3)	43% (21)
Macleans	100% (1)	100% (4)		67% (3)
Total	74% (82)	80% (194)	85% (13)	46% (70)

Source: Reprinted courtesy of *Journal of International Law and International Relations.*

humanitarian traditions dictate that they not be turned away" (quoted in O'Donnell, 1986a: 1). Again on 6 September, the Prime Minister defended his decision to grant the Tamils entry by comparing the Tamils to Jewish refugees in the Second World War and explicitly stated that "refugees are welcome in Canada and we will open the doors" (quoted in Ruimy, Sept. 12, 1986).

The securitization framework developed in the previous chapters placed strong emphasis on the role of the political opposition. This is borne out in the 1986 case. Early on, both parties supported the humanitarian frame. The Liberal and New Democratic parties supported the government's approach to the asylum seekers and endorsed the course of action they had taken. On 16 August, Ed Broadbent of the New Democratic Party and John Turner of the Liberal Party publicly lauded the response of the Mulroney-led Conservative government. Broadbent stated that "providing refuge was the only option" while Turner stated that "Tamils had to be given temporary shelter in Canada" (quoted in *Canadian Press*, 1986b). The justifications employed by political elites to defend existing policies regarding the admission and detention of asylum seekers revealed a humanitarian discourse that portrayed asylum seekers as potential refugees and the Canadian state as humanitarian. This discourse was largely supported in the media coverage of the asylum seekers' arrival and initially, in the speech acts of most political elites.

The challenge to normal asylum procedures that emerged in 1986 did not result in the implementation of emergency measures against these particular asylum seekers nor did it result in immediate changes in the refugee determination process—in that regard it could not be regarded as a successful securitization. However, the "problematization" of refugee arrivals had several important political effects. First, it spurred policy change, leading to the abolition of the B-1 list and the tabling of restrictive legislation already in the works. As early as 1985, the government had begun to work on a new refugee bill; this became Bill C-55, which was designed to streamline the refugee determination process, with the primary goal of alleviating the backlog of refugee claims. This bill was finally introduced a few months after the 1986 incident, in May of 1987. The bill, however, was not well supported. Both opposition parties opposed the legislation and it appeared that they would ensure the bill would not pass without significant amendments. The Liberal Party, which controlled the Senate at the time, succeeded in delaying passage of the bill. By June of 1987, the bill had only just gone to second reading with the government exhibiting no urgency to pass the legislation. It was in this climate that the 1987 Sikh asylum seekers arrived. The events of the summer of 1987 drastically altered the context in which that bill would be considered.

The 1987 arrivals

Between the summer of 1986 and 1987, asylum seekers continued to arrive in Canada by plane and land and all were handled in a manner consistent with existing norms and laws—though there was an increasing sense in policy

circles that Canada's refugee system was unable to cope with the increasing numbers (Hashemi, 1993). Though the 1986 boat arrivals had exposed divisions over the treatment of asylum seekers in Canada and provoked proposed legislative change, it had not resulted in a violation of the rules governing the way the state responded to asylum seekers nor had it produced any change to the way asylum seekers were to be handled in the meantime.

In the summer of 1987, another boatload of asylum seekers arrived off the west coast of Canada, this time 174 mostly Sikh asylum seekers from India. All 174 of the asylum seekers were detained on grounds of national security, even though few were actually suspected of being security threats. In all, most of the arrivals were detained for twelve days, some over thirty. In 1987, this length of detention was exceptional; asylum seekers that arrived by air or land usually spent no more than a few hours being detained and questioned by immigration authorities (Wilson, 1987: 1). Furthermore, the detention of the asylum seekers violated existing laws pertaining to the detention of asylum seekers. By law, a detained asylum seeker was to be brought before an adjudicator within forty-eight hours, and to be reviewed every seven days thereafter (Matas and Simon, 1989: 150). The immigration department did not bring the detainees before an adjudicator within the time frame as set out in Canadian law. Also, the immigration department did not inform the asylum seekers of their legal rights before questioning nor did they grant immediate access to legal counsel. It was eight days before all of the asylum seekers were granted access to legal counsel.

Ultimately, the detention was ruled as being in violation of Canadian law by the Federal Court, and the asylum seekers were ordered to be released from detention (Green, 2008). Even after the arrivals were ordered released, many of the arrivals continued to be detained for more than five days. This was due to the special provisions the Canadian government had stipulated for their release. The immigration department required that the refugee claimants be sponsored, with sponsors posting performance bonds of $3,000 to $9,000. This extraordinary requirement, which was required of few other asylum seekers in Canada, resulted in the asylum seekers being held in detention after they had been ordered released as they awaited sponsors.

As a further affront to established legal principles, the government required the arrivals' lawyers to use government interpreters. And, as part of the Immigration Ministry's identity and security checks, they decided to notify the asylum seekers' country of origin of their names. This constituted a serious violation of established practice. Rarely, if ever, do receiving countries send the names of asylum seekers to their home states for fear that the refugee claimants' families may be targeted. The violation of this basic norm, which is designed to prevent further trauma, reproduced the government's claims that India was not a refugee-producing state and that the asylum seekers were not refugees.

The detention of the asylum seekers also violated international norms. Against international norms that detention be based on individual determination (Gibney and Hansen, 2003: 4), all of the asylum seekers in this case were

detained, not due to individual assessments that produced a reasonable conclusion that each represented a security threat, but based on their mode of entry and their nationality. In this case, detention was not employed as an exception based on national security concerns. All of the asylum seekers were detained even after immigration adjudicators had decided individual claimants did not represent a security threat.

Indeed, by the end of the process, detention seemed to have been used as a form of punishment, contrary to international norms. Those among the 174 arrivals who were subject to longer term detention on the grounds of national security were eventually ordered to be released when it became clear that they were not threats, and that the government had actually ceased to investigate their own claims. The adjudicator that ordered the release of the last men concluded, "there is no evidence that such questions (concerning their security threat) were pursued or addressed in any appreciable degree" (quoted in Jones, August 11, 1987). A lawyer for some of the asylum seekers, Lee Cohen, speculated that the government never took the security claims seriously but was "looking for its pound of flesh here" (Jones, August 11, 1987).

By all accounts the detention of the asylum seekers in 1987 was exceptional, and in violation of Canadian norms and laws, and international norms and laws relating to the detention of asylum seekers. This exceptional policy measure was rendered possible by a securitizing discourse that presented the boat arrivals as illegal immigrants that represented a threat to Indian security, Canadian security, as well as Canada's humanitarian traditions.

The detention of the asylum seekers was not the only extraordinary measure implemented in response to the 1987 arrivals. The Canadian government implemented a full air and sea search for other asylum seeker boats and invoked an emergency recall of parliament to implement a "crackdown on illegal immigrants and to prevent the smuggling of migrants" (Cleroux and Malarek, 1987). It was only the second emergency recall in Canadian history. The government had taken the exceptional step of recalling parliament during the summer in order to pass legislation designed to alleviate the threat from asylum seekers and to legitimize the exceptional measures that had been implemented. This is a crucial stage in the process of securitization. Rather than stopping analysis with the implementation of extraordinary measures, such as detention and the attempted naval search and interception, it is necessary to examine how these measures are legitimized and institutionalized through the legislative process. Before turning to that stage, it is necessary to identify the securitizing narrative that rendered the initial violation possible, and that would shape the external context around which contestation over legislative change would occur.

The securitization process

The imposition of extraordinary measures in 1987 was the result of the successful construction of the asylum seekers as a security threat that required an

emergency response. Unlike in 1986, the media's coverage of the boat arrivals was hostile to the asylum seekers, a representation that was actively promoted by the government and opposition party. Furthermore, specialized security agencies were critical in the portrayal of the 1987 arrivals as a threat.

The media, government and opposition cast the identity claims of the asylum seekers into question immediately upon their arrival, well before any determinations had been made. This move signaled an important shift away from the humanitarian representation of asylum seekers represented in the 1986 case. These asylum seekers were constructed as threatening through three interrelated narratives that depicted the arrivals as a threat to Canadian security, Indian security and to Canada's refugee and immigration system.

The first step in the securitizing discourse was to establish that the asylum seekers' claims to be "refugees" were unfounded. Media coverage in all four papers under examination reported that Sikh asylum seekers rarely succeeded in their refugee claims in Canada, noting that "few Indians given refugee status since 1982" and that "174 are unlikely to get refugee status" (e.g. *Globe and Mail*, 1987: 4; Story, 1987: 8). From the very beginning of this event, the asylum seekers' identity claims were rejected through the use of previous refugee determination cases.

This was evident in the terminology employed by the Canadian news media. The term "refugee" was used far less often and less consistently across the papers to identify the 174 Sikh boat arrivals than it had been used the previous year. In their analysis of the news discourse, the *Toronto Star* reported that the various newspapers across the country had used 23 different terms to describe the asylum seekers. The Toronto papers, the *Star* and *Sun*, used the term "refugees" much more frequently than the other papers, while the *Globe and Mail* primarily used the term "migrants" and stories from the *Canadian Press*, which featured prominently in all four of the Canadian newspapers, used national identifiers such as "East Indians or Asians" (Goodman, 1987: 2). Generic terms such as "arrivals," "group" or "the 174" were also commonly used. When the term "refugee" was employed, it was often qualified as "would-be," "economic" or "financial."

Across the four newspapers and one news-magazine that I examined, the most commonly applied descriptions focused on economic motivations. "Jumping the queue" and "abusing the system" were common claims that reconstructed a non-humanitarian relationship between the asylum seekers and the Canadian state, which consequently carried with it the norms of immigration, rather than refugee admission. Because these "migrants" had arrived in an unauthorized manner, they were consistently depicted as "economic migrants," "illegal migrants" and "illegal aliens" (e.g. Fox, 1987: 2; Poirier, 1987c: 1; Toulin, 1987: 9).

The second related narrative focused the motivations of a smaller number of the "migrants" who had claimed refugee status. In this narrative, the asylum seekers were not simply reconstructed as economic migrants as is often the construction visited on asylum seekers in similar situations, rather

they were portrayed as a potential threat to both Canadian and Indian security. Here, the importance of external context and historical setting to the securitization process is evident. Sikh terrorism was of particular concern in Canada in 1987. The bombing of an *Air India* flight by suspected Sikh terrorists in 1985 claimed 329 lives and remained a prominent story in Canada throughout the late 1980s. Because the bombing had occurred just two years earlier and the investigation into the bombing was ongoing, Sikh terrorism was an easily available symbol to rouse fear and suspicion. In the five months prior to the arrival of the 174 asylum seekers in 1987, there were 27 stories relating to *Air India* and Sikh extremism in the *Globe and Mail* alone, and over 35 in the *Toronto Star*. On 24 June 1987, ambassadors from Canada and Ireland and Canadian relatives of the victims marked the second anniversary of the incident, which garnered significant news coverage. Earlier in 1987, a major book was published on the subject of *Air India* and Sikh terrorism. This external context was a key factor in the construction of the asylum seekers as a threat to Canada.

The connection between the arrivals and Sikh "terrorism" and "militants" appeared regularly in editorials and news articles and, not surprisingly, was a common theme in the letters to the editor (e.g. Edwards, 1987a, 1987b, 1987c). The use of "militants," "separatists" and "terrorists" was familiar to most Canadians as a clear reference to the perpetrators of the *Air India* bombing. Even when the connection was not made explicitly, the media included details that strongly insinuated this connection. News reports repeatedly noted that the asylum seekers carried bags emblazoned with the word "Khalistan" and reported that the asylum seekers were affiliated with and had been sent by the International Sikh Youth Federation, which was described as a separatist organization (Martin, July 17, 1987, p. 2).

It was not just the media that insinuated this connection between the asylum seekers and Sikh terrorism. Specialized security agencies played a prominent role in the securitization process; the RCMP made several public announcements that most of the asylum seekers were associated with separatist groups and that seven of the "refugees said they would kill" if instructed to do so by these organizations (e.g, Donovan, 1987: 1; Story and Donovan, 1987: 1). The RCMP also announced that one of the claimants confessed to having killed two men in India, and that another had already been deported from Canada for violating Canadian laws (e.g. Malarek, 1987: 1). These claims, which were reprinted without question in all four of the print news sources under examination, portrayed all of the asylum seekers as a potential threat to Canada. Many of these claims later proved to be either unfounded or untrue, yet they profoundly shaped the discourse on the asylum seekers by portraying them as potential terrorists.

The Indian government also contributed to this depiction of the asylum seekers. Through the Canadian news media, the Indian government expressed concerns about the asylum seekers, speculating about their intentions and the timing of their arrival (e.g. Edwards, 1987b: 1). These news articles quoted

Indian officials and left the impression that the timing of the arrival of the 174 Sikhs fortuitously coincided with an upcoming visit to Canada by Indian Prime Minister Rajiv Gandhi. The Indian government speculated that the asylum seekers may have been sent to Canada to assassinate the Indian Prime Minister, an assertion reprinted in Canadian newspapers. The Indian envoy in Canada was quoted as saying that Canada had become "the world's largest exporter of Sikh terrorism," a phrase prominently reported and largely undisputed in the Canadian media throughout the episode.

Table 3.2 illustrates that the dominant discourse concerning the Sikh asylum seekers was significantly different from the boat arrivals in 1986. Of the total 146 front-page headlines, just 38 percent portrayed the asylum seekers in a humanitarian way, identifying them as victims in some manner and Canada as having a responsibility to take them in. Over 60 percent of front-page articles portrayed the asylum seekers in a securitized manner, either as illegal migrants or Sikh terrorists. The back-page articles were slightly more favorable to the asylum seekers with close to 60 percent portraying the asylum seekers in a humanitarian fashion. Even *Macleans*, which had strongly favored a humanitarian discourse in the 1979 and 1986 asylum seeker crises, adopted a significantly less humanitarian tone in its coverage.

In stark contrast to its response the previous year, the governing Progressive Conservative Party adopted the securitized representation of the asylum seekers. Indeed, the government actively attempted to control the discourse on the Sikh asylum seekers: Immigration Minister Benoit Bouchard informed the media and government agencies that they should not be referred to as "refugees" but rather should be called "migrants" (*Canadian Press*, 1987: 1). On 18 July, Prime Minister Brian Mulroney referred to the 174 Sikh arrivals as "illegal aliens," a far cry from how he had referred to the 152 Tamil refugees a year earlier and a term that was commonly used to refer to illegal economic migrants (e.g. O'Donnell, 1987: 1). On another occasion, Immigration Minister Benoit Bouchard called the asylum seekers "bogus refugees … because they lie" (quoted in *The Toronto Star*, 1987b: 11). The discourse emanating from the governing elites was that these asylum seekers were illegal migrants.

Table 3.2 Humanitarian media content: 11 July–31 Oct 1987

% Humanitarian (Total)	*Front Page*	*Articles*	*Editorials*	*Letters*
Globe and Mail	43% (44)	64% (101)	44% (9)	69% (26)
Toronto Star	43% (54)	61% (108)	64% (14)	44% (34)
Vancouver Sun	23% (22)	52% (67)	67% (6)	40% (10)
Montreal Gazette	23% (26)	55% (31)	100% (1)	28% (18)
Macleans		57% (7)		33% (3)
Total	38% (146)	60% (314)	60% (30)	47% (91)

Source: Reprinted courtesy of *Journal of International Law and International Relations.*

The political opposition contributed to the securitizing discourse as well. The leader of the Liberal Party, John Turner, argued that had he been leader he would have intercepted and turned back the boat carrying the asylum seekers (Temple, 1987: 14)—a clear violation of the principle of *non-refoulement*. He later accused the asylum seekers of exploiting Canada's refugee system, of "destroying the humane and open way this country deals with visitors and refugees" and of "underhanded cutting the queue and jumping the line" (quoted in *The Toronto Star* 1987a: 4).

Other specialized security agencies supported the securitizing discourse. The media reported that "Canadian military officers" felt that the arrival of the asylum seekers had exposed Canada's long coastline as "easily penetrated" (Matas, July 15, 1987: 4). Within days of the asylum seekers arrival, a task force instructed to examine Canada's immigration security well before the arrival of the asylum seekers released its findings that Canada's immigration security was too lax (Cleroux, 1987: 1; Edwards, 1987c: 8). Just one week after the task force released its findings, a Senate committee investigation into Canada's immigration program revealed that it found that foreign terrorists were able to slip into Canada largely undetected (Poirier, 1987a: 3). One senator depicted Canada's refugee determination system to be near collapse (Vienneau, 1987: 1). Even though these conclusions were not based on the July arrivals, the timing of their release contributed to the sense that asylum seekers, and the Sikh asylum seekers in particular, represented a threat to Canada.

It was this securitized atmosphere that rendered the extraordinary detention measures, costly air and sea search and the emergency recall of parliament possible and acceptable. Yet, to end the story at this point is to ignore important elements of the securitization process. The emergency measures implemented by the government had met resistance by the judicial branch, indicated by the Federal Court's decision to order the release of the asylum seekers, and was to meet resistance in the legislature and in the media as well, as the government attempted to "institutionalize" the extraordinary measures through legislative change. The full air and sea search was plagued by questions as to what the government would or could do if they found subsequent boats carrying asylum seekers. It was openly speculated that the government would lose a court battle over the interception and forced return of boats at sea had any been found. In this context, the judicial and legislative branches play a key role as the government attempted to legalize the emergency measures they had implemented and to prevent further court challenges on the use of these extraordinary measures.

Bills C-55 and C-84

The government justified the emergency recall of parliament on the grounds that it needed to enhance the government's power of detention, which had been successfully challenged by the Sikh asylum seekers' lawyers and to grant the government other necessary powers, such as the power to intercept and return asylum seeker vessels. Immigration Minister Benoit Bouchard justified

the recall and subsequent pieces of legislation as a necessary response to an issue of "grave national importance." In his speech, Bouchard claimed that the number of migrants entering Canada by posing as refugees had reached critical proportions. He claimed that the arrival of the Sikh asylum seekers had endangered the physical safety of the migrants, imperiled the security of Canada and, worst of all, jeopardized public support for Canadian immigration and refugee programs (Bouchard, 1987).

According to the government, the two new bills were essential to equip the government with the necessary tools to prevent the smuggling of people to Canada and illegal immigrants from abusing the refugee determination system. As originally formulated by the government and presented to parliament, the bills authorized searching, without a warrant, the properties of people suspected of aiding people smuggling; the authority to turn back boats without processing refugee claims; to return asylum seekers to a safe third country; and to detain asylum seekers indefinitely.

Specifically, Bill C-84 introduced a number of changes to Canada's detention policies. Instead of holding refugee claimants for 48 hours without a hearing, the new bill sought to increase that to seven days. And, instead of requiring a renewal of detention seven days after the initial hearing, the new bill sought to extend that to 21 days without a hearing. According to the director of the Government's Task Force on Refugee Status, the desire to increase the length of detention without review was to encourage asylum seekers to tell the truth and retrieve their identity documents (Cleroux, 1987: 2). In short, the purpose of the bill was to discipline asylum seekers to behave like genuine refugees, or face prolonged detention and other deterrent measures.

In the end, the measures implemented with the legislative changes that resulted from the 1987 securitization did not significantly alter the norms and rules pertaining to the reception of asylum seekers. Two factors contributed to this: successful desecuritization during the legislation phase that led to the inclusion of sunset clauses on the most draconian measures and the opposition party's control of the Senate. The media, refugee advocates and both opposition parties were instrumental to the desecuritization of the issue, as they all strongly and vocally opposed many of the provisions contained in the two bills. Liberal dominance of the Senate prevented the bills from being passed without amendments.

The desecuritization process was aided by two external factors. The first was that the immediate threat had passed and was reconstructed as non-existent. The media reported on the failure of the air and sea search to find any asylum seekers aboard other suspected asylum seeker vessels. The well-publicized failure of the search contributed to the desecuritization of the issue. The opposition parties, with the support of a receptive media, accused the government of "overreacting" and "wasting a shocking amount of money" (Poirier, 1987b: 1). The political opposition's claim that the government had overreacted was further supported by the well-publicized findings of the refugee determination committee that the Sikh asylum seekers did not pose a

threat to Canada and did not have connections with terrorist groups. The publication of these findings further discredited the securitizing move that had justified the emergency measures originally.

In short, the failure to "institutionalize" the emergency measures illustrates that state elites are not able to securitize simply through discursive practices unconstrained by "real-world" events. External context matters. State elites are constrained not necessarily by material, objective criteria, but by socially constructed relevant criteria that they have used to substantiate their securitization claims. Drawing on the criteria on which the government had based their securitizing move and over which they had little control (i.e. more boats and terrorists ties), political opponents had an opportunity to challenge the government's securitizing discourse and its subsequent policies.

The government did succeed in passing slightly revised versions of legislation that had been blocked by the Liberal opposition for close to two years, which speaks to the powerful impact of the discursive practices that had identified Canada's refugee determination system as a source of insecurity. Importantly however, the opposition had succeeded in amending the legislation such that the emergency measures were not permanently entrenched. They were able to do so because the Liberal party controlled the Senate and by convincingly portraying the legislation as a draconian overreaction to a threat that was no longer pressing. Consequently, the power to intercept and return boats without processing refugee claims was subject to a sunset clause. By the time it expired two years later, no further asylum seeker boats had arrived in Canada, a factor external to the discourse itself but which was used to show that such measures were unwarranted. Additionally, the safe country provision was not put into effect until after 2001 (Dench, 2001), mainly because the Canadian government failed to negotiate safe third country agreements with other states. A similar fate befell the use of security certificates, which were designed to permit the government to indefinitely detain non-citizens (including refugees) deemed a security threat. Though implemented in 1987 they were not used until after 2001.

The 1986–87 cases in Canada reveals several aspects of the securitization process. Clearly, discursive practices are an important element of this process, but so too is the external context. Just as the Air India bombing and concerns about Sikh terrorism played a key role in justifying the extraordinary measures against Sikh asylum seekers in the summer of 1987, the finding that such connections were exaggerated and the failure of further boatloads of asylum seeker to arrive on the shores of Canada were used to desecuritize the issue and render the draconian measures contained in the proposed legislative unacceptable and inappropriate.

This case also reinforces the importance of several actors that have been the subject of previous examinations of the securitization process, including: the governing elites, the media and specialized security agencies. What these cases contribute to the established body of securitization literature is the important role that the political opposition and the judiciary play. When the government

and opposition parties are unified in their interpretation of the issue of asylum seekers, securitization is successful. When they are not, securitization is less successful, as the 1986 and 1987 cases attest. Divisions within the governing party and the decision of the Liberal opposition leader to swing from support for the humanitarian acceptance of the asylum seekers to critiquing this response and advocating a more restrictive response impeded desecuritizing efforts by the government in 1986; while in 1987, the Liberal Party was key to minimizing the success of the securitizing move. Though initially the opposition leader was supportive of the extraordinary measures and called for more restrictive measures, he then switched when it became apparent that the threat on which the securitizing move had been based was less credible and when refugee advocates and humanitarian groups had altered the discourse to the "un-Canadian" nature of the proposed legislation. This provided an opportunity for political and electoral advantage.

Similarly, the judiciary emerges as a relevant and important actor in this process. The decision of the Federal Court that the asylum seekers should be released from detention ended one type of emergency measure, and forced the government to enact legislative change that would legitimize the extraordinary measures they had implemented. The important role of the judiciary emerges even more strongly in the Australian context.

The 1987 case demonstrates that discursive practices produce real political effects; the portrayal of asylum seekers as illegal immigrants and as potential security threats rendered detention measures, sea and air searches and the recall of parliament possible. Turning now to the 1999 case for comparison will further demonstrates how the security narrative itself plays a crucial role in the type of emergency measures that may be justified and the ability of political elites to strategically engage in a securitizing discourse.

The 1999 boat arrivals

In the 1987 case, the Sikh boat arrivals were portrayed as a threat to Canadian security, and to a lesser extent, Indian security, rendering a range of extraordinary measures necessary and appropriate. Other arrivals during this period were not portrayed in the same way, and were not subject to these extraordinary practices. However, the boat arrivals were depicted as symptomatic of a flawed refugee system, which in turn contributed to the implementation of legislation that further institutionalized the securitization of asylum seekers into Canada.

Bills C-55, C-84 and subsequent legislation reflected the securitized discourse that gained currency through the 1987 incident. Consistent with the depiction of Canada's refugee determination system as deeply flawed, the government's priority was on tightening up the process by reducing the time to process claims and by reducing the number of asylum seekers that reached Canada. Less drastic change was visited on the norms and rules pertaining to the detention of asylum seekers, though there were changes that reflected

greater security concerns. The grounds for detention remained basically the same: people whose identity could not be established, who were suspected of being a security risk or who were a flight risk were held in detention; but the power to detain became more discretionary. Security certificates were introduced that allowed the minister to detain an asylum seeker without providing evidence, and greater discretion was given to immigration control officers to incarcerate, fingerprint and photograph asylum seekers (Hashemi, 1993: 21). Rather than overhaul the entire detention system or make detention mandatory, the new legislative changes embedded greater power in the executive branch in situations deemed a security threat—with the power to decide on these situations also situated in the hands of the executive.

The resultant change in detention practices turned out to be minimal. Throughout the 1990s, asylum seekers that entered Canada were individually assessed and deemed to be, or not to be, a security threat. The numbers of individual claimants who arrived by plane or land and who were deemed a security threat and therefore subject to detention did not increase drastically, nor was the duration of detention expanded significantly. Canadian authorities still detained few asylum seekers, and those that were detained were held for a relatively short period. Between the early 1990s and 1999, less than one-third of asylum seekers were detained, and for those that were, the length of detention averaged less than 16 days (Government of Canada, 2002). As was the practice before the legislative changes brought about after 1987, once an asylum seeker's identity was established and they were found to not be a security risk, they were released into the community with the expectation that they would appear before the IRB for their hearing.

In 1999, the normal procedures governing the arrival of asylum seekers were again subject to a securitizing claim that resulted in the implementation of extraordinary measures. This occurred in response to the arrival of 599 asylum seekers aboard four boats off the west coast of Canada over a twelve-week period in the summer of 1999. Of these 599, 429 (72 percent) of the asylum seekers were held in long-term detention (Government of Canada, 2004b). Taking into account that refugee claimants aboard the first boat were not subject to long-term detention, the detention rate of asylum seekers aboard the second, third and fourth boats was close to 100 percent. The average length of detention for the 437 marine arrivals held in detention in 1999–2000 was 212 days, fourteen times the average of other detained asylum seekers; and for the 352 marine arrivals remaining in detention in 2000–2001, detention averaged another 147 days (Government of Canada, 2004).

The conditions of their detention were extraordinary as well. The initial detention facilities set up for the asylum seekers were in a military gymnasium and barracks in Esquimalt, and consisted of barbed wire, attack dogs and floodlights, 24-hour police supervision, with an ultimate cost in the tens of millions of dollars (Beatty, 1999b: 9). The condition of long-term detention was also "extraordinary," the majority of the boat arrivals were transferred to detention facilities in Prince George, a remote area of northern British

Columbia that was a long way from refugee advocates and lawyers for the asylum seekers (Mountz, 2004). Those who were not transferred north were detained in correctional facilities with common criminals.

The effects of the decision to detain in a remote area were striking. Access to legal representation and refugee advocates was minimal, and special accommodations had to be made for processing their claims. Mountz notes the geographical isolation of the asylum seekers may have had a deleterious impact on the success of their refugee claims—most of those who had positive claims were detained in the Vancouver area where they were able to access better lawyers, interpreters and advocates (Mountz, 2004: 337).

The detention of the boat arrivals in 1999 violated the basic norms of the refugee regime. Though detention remained an exceptional practice in Canada in that the majority of asylum seekers were not detained, it had become the norm for boat arrivals. If 1987 had set the precedent, the 1999 case established an institutionalized response to boat arrivals, such that future arrivals by boat, such as that in 2002 also resulted in "mandatory" detention for the duration of the asylum seeker's claim.

Furthermore, the detention in 1999 was not based on individual assessment, as is the norm, but on group assessment. The Canadian government argued that the Chinese boat arrivals as a group posed a flight risk, thus justifying detention. An immigration spokesperson claimed "the percentage of Fujian clients that report voluntarily for removal is very close to zero." Clearly, the decision to detain was based on an understanding that the asylum seekers would not be granted refugee status and on a statistical assessment of previous claimants from Fujian. The arbitrariness of the detention is highlighted by the arrival of asylum seekers from China by air at the height of concern over the boat arrivals. In September 1999, 75 Chinese asylum seekers arrived by air; they were however, treated in the "normal" manner for asylum seekers. The immigration department's defense of the treatment given to the Chinese asylum seekers who had arrived by air, reveals the discourse that sustained the distinction between "normal" and "exceptional" asylum seekers: the latter were part of an international human smuggling organization and would likely take measures to avoid deportation (Tessier, quoted in Skelton, 1999a).

Lastly, the detention was inconsistent with principles of humanitarianism. The asylum seekers, including the children, were handcuffed and shackled and subject to 24-hour police surveillance. Additionally, they were initially denied access to legal counsel so that the CIC could learn as many details about the journey as possible (Mountz, 2004: 336). The CIC detained most of the asylum seekers in the remote community of Prince George, where full legal access and support from refugee advocates was unavailable. Clearly, the detention of the boat arrivals in 1999 violated the norms and rules of the international refugee regime, and the norms of Canada's existing refugee process. What is important about the 1999 case is the interplay of multiple securitizing narratives that identified different referent objects but that rendered detention a necessary and acceptable response.

The securitization process

As in 1987, the media played a critical role in the securitization process in two ways; it reproduced the dominant portrayal of asylum seekers as illegal economic migrants rather than refugees and created a sense of crisis in the tone and magnitude of its coverage. The arrival of asylum seekers in Canada by air or land rarely generates significant or extended news coverage. Coverage of the boat arrivals in 1999 was extensive and served to create the impression of a crisis. Between 21 July and 21 September, the *Globe and Mail* devoted over 23 front-page stories to the issue over the 10-week "crisis," while the local daily with the largest readership, the *Vancouver Sun*, devoted over 40 front-page stories to the Chinese boat arrivals. In this intensified media coverage, the dominant construction was that the boat arrivals were illegal immigrants who had paid smugglers to bring them to North America for better economic opportunities, but who were more likely to end up exploited in circumstances akin to "indentured" servitude or forced into the sex industry in the United States (Greenberg, 2000: 531).

In the Canadian newsprint media, the arrival of the boats was immediately identified as an instance of large-scale human smuggling, rather than the arrival of refugees. The asylum seekers were identified as illegal immigrants with no legitimate claim to refugee status. All four of the newspapers under examination in this study almost exclusively employed the term "illegal migrant" to describe the arrivals. Even papers that had historically favored the term "refugee" for asylum seekers adopted an illegal migration discourse for these particular asylum seekers. The term "refugee" was rarely used; and when it was, it was used to distinguish the boat arrivals as "bogus," "economic" or "illegal" refugees from "genuine" refugees (e.g. Collacott, 1999: 13; Gibson, 1999: 13; Thompson, 1999a: 10).

The human smuggling theme was supported by an emphasis on the amount of money the asylum seekers had paid smugglers to get to Canada; with the reported amounts varying from $25,000 to as much as $80,000. Paying for escape has often conflicted with the behavioral expectations created of refugees, but in this case, it was not just that they had paid for their transportation, but that they had not paid all of it up front. The four papers were replete with stories of how illegal immigrants, and by connection these asylum seekers, would have to work off their debts to those who had arranged their transport, often for low wages and in exploitative industries.

The media drew often on a particular symbol to locate the asylum seekers within this smuggled migrant narrative. The term "climbing Golden Mountain" was a recurring term used to situate the migration as economically rather than politically motivated. The term "Golden Mountain" was used by Chinese migrants, and subsequently by the Canadian media, to describe the United States and referred to the economic migration of Chinese workers to the United States dating back to the influx of Chinese prospectors during the gold rushes of the 1800s (Cernetig and Mickleburgh, 1999: 2; Mountz, 2004).

By drawing on this symbol, the movement of the asylum seekers was situated within a longer historical pattern of economic migration from poverty in China to the wealth of the United States. Indeed, emigration from Fujian by sea was depicted as "a way of life" and an important "rite of passage" for young people who sought to reach the United States where they would earn enough money to support their family back home in China (Manthorpe, 1999: 1). The discrepancy in wealth evident in Fujian province was used to support this narrative, as wealth in this poor region indicated people whose family members had successfully made it to "Golden Mountain" (Armstrong and Mickleburgh, 1999: 4). The clear message in the Canadian media was that asylum seekers from Fujian province in China were economic migrants who had paid a large sum of money for an opportunity to improve the lives of their family and not refugees fleeing political persecution.

Table 3.3 demonstrates the dominance of the illegal migration discourse pertaining to the asylum seekers. Over 75 percent of front-page articles referred to the asylum seekers as illegal immigrants, while 67 percent of non-front-page articles and 63 percent of letters to the editor identified them as such. Forty-five percent of the editorials, which historically have proven to favor a humanitarian discourse in relation to asylum seekers, employed an illegal migrant discourse and advocated sending them back to China. Of the articles and editorials that did employ a humanitarian discourse, the vast majority still referred to the asylum seekers as illegal migrants, but either advocated treating them in a humanitarian manner or in letting them stay because of their difficult voyage. Fewer than five percent of the news pieces claimed that the asylum seekers from China had a genuine refugee claim. This is all the more surprising because at the same time as the boats were arriving; there was considerable media coverage of human rights abuse in China and refugee claimants from China had a 58 percent approval rate in Canada (Mountz, 2004: 336).

Consistent with the construction of the asylum seekers as illegal economic migrants, the media interpreted the decision of the boat arrivals to claim refugee status as a means to gain freedom to move on to the United States to pursue their economic goals. The newsprint media frequently reminded their

Table 3.3 Humanitarian media content: 21 July–30 Sep 1999

% Humanitarian (Total)	*Front Page*	*Articles*	*Editorials*	*Letters*
Globe and Mail	26% (23)	40% (55)	40% (15)	38% (39)
Toronto Star	20% (10)	24% (38)	69% (13)	29% (21)
Vancouver Sun	25% (40)	41% (71)	56% (25)	38% (98)
Montreal Gazette	20% (5)	18% (49)	50% (12)	75% (4)
Macleans		40% (10)		33% (18)
Total	24% (78)	33% (223)	54% (65)	37% (180)

audience that the refugee determination process would "take years to process" explicitly stating that during that time the claimants were likely move on to the United States to find work (e.g. Lee, 1999: 1). The continued assertion that the asylum seekers would abandon their refugee claims and disappear was one of the most prominent themes that emerged in the Canadian media's coverage of the event. To support this view of their "bogus" refugee claims, the asylum seekers were depicted as "being evasive" and "uncooperative"; while their stories were "very similar" and that they all appeared to have been "coached in what to say" (Beatty, 1999a: 1).

Of course, on its own, this human smuggling discourse did not dictate the implementation of emergency measures, or point toward detention as the most appropriate response. Indeed, the human smuggling discourse had been the dominant representation of Chinese asylum seekers prior to the arrival of the first boat and the asylum seekers aboard the first boat were not subject to extraordinary detention measures. Arrivals aboard the first boat had been released into the community within two weeks of their arrival, which was consistent with the average length of the detention for asylum seekers detained in Canada. The push for extraordinary detention measures resulted from three developments: a strong securitizing narrative emanating from the political opposition with significant public support, the arrival of three more boats and the disappearance of a large number of the asylum seekers who had been aboard the first boat. Thus, it was not simply the discursive practices that reconstructed the identity of the asylum seekers as illegal migrants that produced a securitized response; external context was a key factor.

The political opposition

From the outset of the boat arrivals, the opposition party at the time, the Reform Party, portrayed the asylum seekers as a threat to Canada. Upon the arrival of the first boat, Reform MP John Reynolds referred to the asylum seekers as "criminals" and called for them to be deported immediately, without having their claims processed (quoted in Lunman, 1999: 1). The Reform immigration critic Leon Benoit mirrored these claims and argued that illegal migration was fueling an increase in crime, increasing the risk of communicable diseases and posing a risk to the economy due to a potential United States response (McInnes, 1999: 3). Reminiscent of the 1987 incident, Benoit urged the Liberal government to recall parliament to enact emergency legislation to deal with the issue. Preston Manning, the leader of the Reform Party and the official opposition, also urged the government to recall parliament in order to use the notwithstanding clause to overrule the rights of all asylum seekers to a hearing, a right that had been established by the Canadian Supreme Court as a result of the *Singh* decision. To counter the threat Canada faced from asylum seekers, Manning argued that all asylum seekers should be subject to mandatory detention, have no avenue for appeals and face speedy deportation (quoted in Thompson, 1999b: 7). The Reform Party

exerted significant pressure on the government to respond in an extraordinary way by portraying the asylum seekers as "threatening to the safety, health and economic stability of Canada" (ibid.).

Apparent support among the Canadian public for stronger action added pressure on the government to act. Increased media attention combined with the content of their coverage, shifted public opinion on immigration (Mountz, 2004: 330). There were public expressions of hostility toward the asylum seekers, and the public's response was referred to as "backlash" and "public rage" (e.g. Girard, 1999: 1). Radio phone-in calls were reported as overwhelmingly in favor of sending boats back, while the *Toronto Star* reported that 93 percent of respondents agreed that Canada's refugee policy was no longer good for the country (Stefaniuk, 1999: 2). It is important not to use these indicators as indicative of the Canadian public as a whole or to overstate public hostility. One opinion poll that was reported in all four papers showed the Canadian population evenly split, with 49 percent opposed to taking in the asylum seekers, and 49 percent supportive (*Canadian Press*, 1999). What these indicators reveal is that the strong position taken by the Reform Party had significant support among sectors of the Canadian population and could be exploited to their political advantage. The sense of crisis created through media coverage and the securitizing claims being made by the official opposition put the government under significant pressure to respond (Pratt, 2005; Mountz, 2005).

"Alternative" securitizing narrative

The dominant portrayal of the asylum seekers in the Canadian media was as individuals who had been smuggled into Canada, who would eventually make their way to the United States where they would work to pay off the smugglers. The asylum seekers were portrayed as victims who would be coerced to work for low wages in exploitative industries. Thus, when over 30 of those released from the first boat disappeared, the plot constructed by the human smuggling narrative was seemingly confirmed. According to this discourse, smuggled migrants still owed substantial amounts of money to their smugglers, and would be forced to pay of their debt. As individual claimants failed to pursue their refugee claims or report to the required immigration authorities, news coverage focused on the circumstances surrounding their "disappearance."

Media coverage reported on the fear among both the refugee claimants and the Chinese community that the asylum seekers were being "stalked and intimidated by local gangs" (Abramson, 1999). The term "snakeheads" became a prominent term in media coverage as well as in the discursive practices of politicians and law enforcement officials and was used extensively during this crisis to describe the people smugglers who actively recruited and transported people for profit (Mickleburgh, 1999a, 1999b). Unable to pay the fee for being smuggled into North America upfront, the smuggled people remained

indebted to the smugglers, who would then force the smuggled people to pay off their debt once in North America through indentured servitude, sometimes in the sex industry. The large number of unaccompanied minors and single women among the boat arrivals was reported as being unusual and perhaps indicative of a human trafficking operation. The discourse portrayed the boat arrivals as victims, not of their home state (which would make them refugees), but of people smugglers and human traffickers.

The disappearance of a large number of asylum seekers was not inconsistent with the number of asylum seekers who regularly abandon their claims. Immigration officials admitted that the majority of Chinese refugee claimants from Fujian abandoned their refugee claims, yet few were subject to the same extraordinary detention policies. This was due to the manner of their arrival. Those who arrived by air have not been subjected to the same detention policies as those who arrive by boat. Such a legacy has continued since the 1999 arrivals. This is evident in the response of immigration officials to the arrival of refugee claimants by boat in 2001. A spokesman for Immigration Canada defended the policy of detaining boat arrivals because of "a very organized effort to smuggle human cargo by ship under extremely inhumane conditions. … detention is a tool we can use to discourage this" (Mickleburgh, 2001). The RCMP also defended the policy, stating that it "prevents 'snakeheads' from making money on their people smuggling schemes" (ibid.). Boat arrivals have been equated with human smuggling and trafficking in the popular and official discourse and are consequently detained for their own protection, while air arrivals have not been associated with human smuggling and are not regularly detained.

The government justified the detention of the Chinese asylum seekers on the grounds that it was for their own protection, achieving two interrelated goals: cutting the traffickers off from their source of profit and offering a measure of protection to their victims (Dench, 2001). The other extraordinary measures proposed by the Reform Party, such as forcefully returning the boats, immediate deportation or denying a full refugee determination, were not consistent with the migrants-as-victims discourse. Indeed, the Reform Party's narrative was one of threat—whereby the asylum seekers were depicted as representing a threat to the health, safety and economy of Canada. To some extent, the Canadian government engaged in desecuritizing claims, stressing that "the government would not endanger smuggled migrants" (Caplan quoted in Laghi, 1999: 1). The extensive media coverage and securitizing moves made by the Reform Party created an atmosphere where the government was expected to act, but the decision to detain further boat arrivals was justified on the grounds of protecting victims of smuggling operations.

The 1999 case strengthens our understanding of the securitization process by demonstrating how multiple and conflicting narratives may justify similar policy responses. The securitizing claim pushed by the Reform Party identified the asylum seekers as a threat to Canada and advocated a range of exceptional measures—including detention. Similarly, the securitizing claim

advanced by the government depicted the asylum seekers as threatened by people smugglers and also rendered detention an acceptable response. Exceptional measures may be justified based on a number of distinct security narratives. In this case, pressure for the government to respond in some way to the boat arrivals stemmed from the extensive media coverage, the securitizing claims of the opposition and the general public hostility toward the asylum seekers. Yet very few of the measures advocated by the Reform Party or in the media were implemented. Thus, this securitizing narrative could hardly be said to have shaped the policy response, even if it created the pressure to act.

The emergency measures implemented by the government remained consistent with the human smuggling discourse, which was further supported by the disappearance of some of the asylum seekers from the first boatload. Thus, the 1999 case highlights how material developments have an impact on discursive practices. The disappearance of asylum seekers from the first boatload was more consistent with the dominant human smuggling discourse than the security threat narrative. At the same time, this demonstrates that material developments are only attributed meaning through discursive practices. The failure of refugee claimants to show up for their hearings has been interpreted in a variety of ways—as miscommunication, as economically motivated, as an indication that they have gone "underground," but rarely as a kidnapping—as it was depicted in the 1999 case. Response to their disappearance was based on how that development was interpreted and understood.

Conclusion

The cases presented in this chapter present a picture of the gradual securitization of humanitarian migration in Canada. Though more restrictive measures advanced in response to individual crisis episodes have largely failed to be institutionalized in the Canadian context, the progressively less humanitarian depiction of asylum seekers is evident through these cases. The perception of asylum seekers as potential refugees that was evident, though contested, in the 1986 incident was replaced by 1999 with a perception of asylum seekers as illegal economic migrants. Though other developments between 1986 and 1999 obviously contributed to this gradual shift, the securitization episodes outlined in this chapter played a significant role in establishing acceptable restrictive measures. The depiction of asylum seekers as threatening in 1987 and the use of detention and naval interception in response to those arrivals, made future arrivals more easily constructed as threatening and the use of such policies more acceptable—even though they failed to be fully institutionalized through legislative change.

Furthermore, these cases support a more fully developed conceptualization of the securitization process as laid out in earlier chapters. Though discursive practices remain central to my analysis, external context and political configurations of power figure more prominently than in existing accounts of securitization. The role of actors such as the media, political opposition and the

judiciary are brought to the fore, in addition to the key role that governing elites play.

This chapter has shown how humanitarian migration has been securitized in the Canadian context. There has been a clear and steady move from the late 1970s to the present time where asylum seekers have been presented as illegal economic migrants rather than genuine asylum seekers. This process has occurred to a significant extent due to the crises studies in this chapter. The 1987 episode led to more restrictive legislation in the form of Bills C-55 and C-86; while the 1999 episode led to the Immigration and Refugee Protection Act—which replaced the Immigration Act of 1976 with a more restrictive approach to asylum seekers and a heightened concern with national security.

Yet, this chapter also highlights the strength of the humanitarian discourse in Canada. The degree to which the humanitarian discourse resonates in Canadian politics is evident in the 1986 case, the desecuritization efforts in 1987 and, problematically, in the justification of detention in the 1999 case. In comparison with other states, the securitization of humanitarian migration is far less intense or institutionalized in Canada. Assessing overall levels of securitization in Western liberal states, and the value of such assessment, is the subject of the concluding chapter. Prior to that, I set out the comparative context by examining the securitization of humanitarian migration in Australia.

4 Naval interception and detention in Australia

Australia has implemented some of the most restrictive asylum policies in the world. Alone among Western liberal states, Australia requires the mandatory detention of asylum seekers for the duration of the refugee determination process and provides fewer socio-economic rights for successful claimants than most. In 2001, it implemented the *Pacific Solution*, in which the Australian navy intercepted asylum seeker boats and forced the asylum seekers to third states, some of whom were not signatories to the 1951 Refugee Convention. Only the United States and Italy have implemented similar types of militarized intervention.

Why Australian governments would resort to such measures is not immediately obvious. Australia is a settler society that has historically been open to immigration and has relied on it to sustain its workforce and population. Its explicitly racist immigration policy was done away with in the 1970s, around the same time as in the United States and Canada. And, asylum seeking is not a particularly large problem—on a per capita basis it receives far fewer asylum seekers than other Western liberal states. Furthermore, it is an economically prosperous state that has experienced near continuous economic growth since the early 1990s. In addition, the Australian state has demonstrated a commitment to refugees, evident in its large refugee resettlement program and its contributions to the UNHCR and other humanitarian organizations.

Given these factors, the intense securitization of unauthorized migration in Australia is puzzling. Examining how humanitarian migration has been portrayed as a security threat provides insight into the factors that have contributed to the implementation of such policies. In this chapter, I examine the implementation of mandatory detention and naval intervention as the outcome of two separate securitization processes. The first occurred in response to the "the second wave" of boat arrivals between 1989 and 1992. It was a "quiet" securitization marked by modest media attention, and that was focused primarily on "internal" threats, such as activist judiciaries and immigration lawyers. The second occurred in 2001 and is referred to as the *Tampa* crisis, a securitization process in which governing elites, aided by intensive media coverage successfully securitized the issue of asylum seeking, by reconstructing the asylum seekers as a threat to the state and thereby gaining

the support of the opposition. These two cases demonstrate the multiple paths of securitization, as each followed very distinct processes, entailed different strategies and differentiated between internal and external threats.

"Quiet" securitization and detention

Contrary to what we might expect from a speech act approach to securitization, in which political elites identify a threatening development and advocate the implementation of measures to counteract the threat, the implementation of mandatory detention for asylum seekers in Australia happened virtually without discursive contestation or securitizing speech acts. Temporary detention practices already in place for unauthorized arrivals who were not seeking asylum were simply applied to unauthorized asylum seekers. This can partly be explained by migration patterns to Australia in the 1980s. Following the arrival of boats carrying asylum seekers during the Indo-Chinese refugee crises of the late 1970s, Australia implemented a number of policies to prevent such arrivals, including participation in the Orderly Departure Program for Indo-Chinese refugees and crafting agreements with Indonesia and other nearby states to resettle refugees from these states in return for their cooperation in preventing, or at least not assisting, asylum seekers from carrying on to Australia. These international agreements demonstrate the commitment of Australian political elites to reinforce and reproduce Australia's identity as a country of resettlement rather that of first asylum.

In combination with visa requirements and carrier sanctions, these international agreements produced results; for most of the 1980s, Australia experienced few unauthorized asylum seeker arrivals and none by boat. As a result, there had been no institutionalized response to the arrival of unauthorized asylum seekers. Policies implemented in response to the unauthorized refugee arrivals between 1976 and 1979 were viewed as temporary and thus resulted in no institutional presence. The absence of spontaneous refugee arrivals in the 1980s reinforced this perception.

There was, however, an institutional mechanism in place to deal with non-humanitarian forms of unauthorized arrivals. Between 1983 and 1991, Australia averaged between 2500 and 3300 unauthorized arrivals annually (Crock, 1993: 29). Consequently, the government and immigration department developed procedures and policies for dealing with these arrivals. The majority of such arrivals were permitted entry after being granted visas at the site of their arrival (usually airports), while those refused entry were returned to their embarkation point on the carrier that had delivered them to Australia (ibid.).

Those who were to be returned were detained in accordance with established practice at the time, which Crock refers to as the "turnaround provision." People who arrived at Australia's border without authorization (a visa) were to be removed on the carrier that brought the person to Australia. To ensure that the person did not "enter" Australia, where they would enjoy greater protections and would have to be subject to a deportation order to be

returned, carriers were notified immediately and the person was taken into custody while still in the physical confines of the place of disembarkation (Crock, 1993: 28). Consequently, people who arrived at Australia's points of entry without a visa could be refused entry and detained for a short time until the carrier that had brought them to Australia removed them. It was this "turnaround provision" that was used to detain asylum seekers who began arriving by boat and without authorization in the late 1980s.

The system relied heavily on the discretionary power of immigration control officers who could decide which unauthorized arrivals would be granted entry and which would not. In the mid-1980s, these officers would make on-the-spot refugee determinations and allow the asylum seekers to enter or send them home without a full determination by the Determination of Refugee Status Committee (Crock, 1993: 30). This practice ended in the mid-to-late 1980s as a result of series of judicial decisions that required more extensive "legal" status determinations (ibid.). What this meant is that a very small number of unauthorized arrivals who claimed refugee status wound up being detained for the duration of their status determination. Due to the nature of Australia's control system, originally it was boat arrivals who were affected by this.

Thus, the initial implementation of detention for asylum seekers in Australia was accomplished not through a securitization process whereby developments were presented as a threat or whereby emergency measures were proposed and imposed, but was accomplished administratively by applying the existing policies created to deal with illegal migrants to a "new" phenomenon—asylum seeking.

In some respects, the use of detention by the Australian state is puzzling. The use of detention for asylum seekers was strongly rejected in the late 1970s when refugees from Indo-China arrived, unauthorized, aboard boats. In response to these arrivals, the immigration minister granted entry permits and accommodations were provided in migrant hostels (Stevens, 2002: 871). On the face of it, the policy measures implemented in the late 1970s would seem to have been the most relevant and appropriate to apply for asylum seekers in the late 1980s. Yet, they were not. One factor that contributed was the lack of continued unauthorized arrivals through 1979 to the early and mid-1980s, which may have produced institutional momentum for those policies. The lack of arrivals in the 1980s meant that these policies had not become institutionalized through continual use, and ceased to be the most relevant policy option available to the immigration department as asylum seekers began to arrive in the late 1980s.

More importantly was the way in which the identity of these arrivals was constructed. In the late 1970s, people fleeing Indo-China were perceived to be refugees (Stevens, 2002: 871; Viviani, 1984, 1996). The "second wave" arrivals that began in the late 1980s were not. Political actors constructed the identity of these arrivals as illegal immigrants, rather than as refugees. The depiction of asylum seekers as illegal immigrants identifies them as a threat to state sovereignty, because they undermine the integrity and control of the state's

borders and its right to determine who shall enter (Stevens, 2002: 865). This reconstruction is evident in the response of then-Prime Minister Bob Hawke who, in 1990, offhandedly referred to unauthorized boat arrivals as illegal economic migrants—despite the fact that they had asked for asylum and their claims had not yet been determined. His remarks equating asylum seekers with illegal immigration were essentially an aside in his controversial speech announcing special accommodation for Chinese students and intellectuals to settle in Australia for humanitarian reasons after the Tiananmen Square massacre (Millett and Ellingson, 1990: 1). The "illegal immigration" comment attracted some criticism from refugee advocates, but it seems to have been the accepted representation of boat people in the media and amongst political elites. Whatever criticism there was of Hawke's statement concerning boat arrivals, it was all but lost in the ensuing debate regarding Chinese students in Australia. Future boat arrivals were similarly labeled, such that by the early 1990s referring to boat arrivals as illegal migrants was standard and largely uncontested in Australia. Because the boat arrivals had been reconstituted as illegal immigrants, it was acceptable for the government to apply policies designed to deal with illegal immigrants.

In this case, the application of detention policies was not spurred by a sense of crisis over the boat arrivals. It was implemented initially in response to the arrival of one boat carrying less than 30 asylum seekers. Neither was there a sense of crisis in the media—media coverage of boat arrivals in 1989 and the early 1990s was surprisingly sparse. For example, the first boat arrival in November 1989 garnered a single article in the back pages of the *Sydney Morning Herald*. Subsequent boat arrivals in 1990 and 1991 received similarly scant attention. It was only with the prime minister's decision regarding Chinese students in June of 1990 that the boat arrivals garnered much attention in the media. Even then, the vast majority of the media coverage focused on the announcement related to Chinese students. When the boat arrivals did make it into the news, the media supported Hawke's characterization of the boat arrivals: typical of the response in the media was that "a great number of the Chinese, probably most, are no more refugees … than the luckless Cambodians arriving in north-west Australia" or that "the Cambodian boat people are, for the most part, what Hawke calls them, economic refugees"(Hastings, 1990: 10).

The detention of the boat arrivals was not intended to be long. Under the "turnaround provisions" used by the immigration department at that time, the detention of most unauthorized arrivals who did not claim asylum was short; they were promptly returned on the next flight out. As it turned out, detention for a number of the first boat arrivals was lengthy. Since the government could not remove asylum seekers until their refugee status was determined and all appeals exhausted, the turnaround provision, though not written as such, amounted to lengthy and mandatory detention. The length of detention of boat arrivals in 1989 and the early 1990s was an unforeseen and unfortunate consequence of legislation designed to deal with other types of unwanted migration.

At the time, there was nothing in Australian law stating unauthorized asylum seekers had to be detained, at this time the immigration minister had a great deal of discretion on immigration matters and could have granted temporary visas or permitted release on bail (Crock, 1993: 32). In fact, the decision to detain was highly discretionary and arbitrary. Illegal migrants who overstay their visas and those who claim asylum after arriving on a legally valid visa vastly outnumber unauthorized asylum seekers and are not subject to mandatory detention. Furthermore, all unauthorized arrivals could be detained at the discretion of the immigration officer, but in practice, it was primarily boat arrivals who were detained (Stevens, 2002: 878).

This was partially due to the strong association of border control with national security and the belief that the decision to accept refugees must always remain with the government (Hawkins, 1991: 178). This was evident when the government first implemented the international refugee regime and it was evident in 1990. Based on this association, all forms of asylum seeking and illegal migration threaten the government's ability to decide who enters and stays in the country. Yet, boat arrivals in particular have been singled out as a greater threat than other forms of unauthorized arrival or overstay, despite their historically much lower numbers (see Stevens, 2002: 868–69). A 1990 document on Australia's regional security reveals the perception of boat arrivals, warning of the dangers of unregulated population flows. According to the document, there was a danger of "new flows of boat people on a massive scale – beyond the ability of civil or military authorities to prevent" (Jenkins, 1990: 11). Fears of Asia's "teeming, breeding millions" arriving on boats was a recurrent theme in Australian history, and the need to control who enters the country and under what conditions has been a prominent theme of Australian political elites (Cox and Glenn, 1994: 284–86).

Consequently, developments that could be depicted as undermining the government's control of its borders were amenable to being constructed as a threat. In 1992, there were three developments that were portrayed as threatening the government's ability to control the borders. The first was the undetected arrival of a boatload of asylum seekers on the Australian mainland in January 1992; second was a court ruling on the illegality of Australia's detention policies; and third was protests by detained asylum seekers whose refugee claims had been rejected. In response to these events, the Australian government implemented a number of emergency measures to alleviate the threat. What is remarkable about this case, is the "threat" identified in the securitizing narrative, and consequently, the form that "emergency measures" would take.

1992 arrivals

In January 1992, 56 asylum seekers arrived in rather unusual circumstances on the northwest coast of Australia. Unlike other boat arrivals, they had landed on the coast of the Australian mainland undetected and had spent over two weeks in Australia without the government's knowledge. Had the

asylum seekers not stumbled upon a remote outpost in Australia's harsh outback, it would likely have been much longer. The story of their arrival and survival were quite extraordinary. The Chinese asylum seekers had landed in a part of Australia that is extremely inhospitable: it is very rocky and extremely hot, temperatures exceeded forty-five degrees during their journey. The area is also home to crocodiles and deadly snakes and very few people wander around this area of Australia. The asylum seekers survived in this terrain for two weeks, some as long as four weeks. The asylum seekers were only discovered when some of them turned up at a remote outpost. Once it was learned that there were a large number of asylum seekers still wandering around the outback, Australian authorities implemented a massive rescue effort. The rescue effort garnered significant media attention, and there were numerous expressions of humanitarian sentiment, wherein the safety of the asylum seekers was the primary concern and even some expressions of admiration for their survival skills. The extraordinary rescue effort was successful in finding all 56 of the Chinese asylum seekers. However, the humanitarian aspect of the story was short lived, as the media and political elites reconstructed the arrival of the 56 Chinese asylum seekers from an incredible survival story, to a matter of Australian national security.

The news media's coverage of the event reinforced the dominant representation of asylum seekers as illegal immigrants by contrasting them with "genuine" Chinese refugees. The media identified them as "working people," "from villages in Southeast China," "not Beijing intellectuals" and "not students" (e.g. Kennedy, 1992a: 1; Lynch, Irving and Lloyd, 1992: 1). Though it was accepted that China was a refugee-producing state, "genuine" refugees from China were understood in a very narrow sense: the pro-democratic intelligentsia. Thus, the emphasis on their vocations played an important role in the reconstruction of their identity.

The authenticity of the asylum seekers' refugee claims was cast under further suspicion by reports that the asylum seekers had spent up to five months in Indonesia arranging and planning their trip (Kennedy, 1992b: 2; Mackinolty, 1992a: 3). Based on the existing behavioral expectations of refugees, spending this amount of time in a third state in which they were not persecuted created the impression that the boat arrivals were not refugees, even though Indonesia was not a signatory to the 1951 Convention and was under no obligation to abide by the principle of *non-refoulement*. Spending this amount of time in Indonesia did not alter their refugee claims under international or Australian law, but entered part of the public discourse as a means of constituting their identity as illegal migrants.

Table 4.1 demonstrates that the dominant discourse surrounding the January boat arrivals was oriented toward a securitized discourse, in which the asylum seekers were portrayed as illegal immigrants whose arrival either undermined Australian security or demonstrated the weakness of Australia's border controls. Though previous arrivals were generally portrayed as illegal migrants, the fact that all had been intercepted or arrived on remote Australian

Table 4.1 Media content: January–March 1992

	Front Page	*Back Page*	*Editorials*	*Letters*
Securitized	75% (12)	60% (49)	83% (10)	81% (30)
Humanitarian	25% (4)	40% (33)	17% (2)	19% (7)

island outposts far from the mainland meant they were not readily identified as threatening. Furthermore, compared with previous boat arrivals as far back as 1989, the 56 Chinese boat people garnered far more news coverage. In comparison, one boat that arrived in late 1991 received no national news coverage at the time of its arrival.

The primary reason that the 1992 arrivals were subject to greater media attention was because that they had arrived on the Australian mainland undetected, whereas previous boats had been intercepted and escorted to Australia. This aspect played into fears regarding loss of control of the border and potential for invasion. One aspect of the story that evoked security concerns was the health and ecological implications of their undetected arrival. Health concerns and the fragility of Australia's ecology have played a crucial role in legitimizing the need for Australian authorities to maintain absolute control over their borders, which was evident in this case. Fear that some of the asylum seekers may have had tuberculosis or that they may have introduced foot and mouth disease or rabies to Australia's fragile ecosystem reinforced the threatening depiction of the asylum seekers (e.g. Aisbett, 1992: 4).

Furthermore, the unique nature of this arrival was presented as evidence of a weakness in Australia's border defenses. There was speculation in the media that the surveillance of Australia's northern coast was seriously flawed. Representatives of Coastwatch, the civilian organization charged with the surveillance of Australia's waters conceded that with "37,000 kilometres of coastline to cover, the organization could not be expected to catch everything" (quoted in Mackinolty, Humphries and Betti, 1992: 1).

This inability to catch everything "reawakened fears about encouraging more boat people to follow" (e.g. *Sydney Morning Herald*, 1992: 8). Such fears were stoked by members of the government; MP Graeme Campbell asserted that "illegal arrivals would arrive in their tens of thousands and reduce the standard of living (in Australia) to that of a Bangladeshi village" (Crouch, 1992: 14). Campbell recommended using the Australian air force to ensure that Australia maintained control over who may enter the country.

Australia's Council of Trade Unions (ACTU), a powerful political actor in Australian politics and one that exerts significant influence on the Labor Party, expressed similar concerns about the impact of large numbers of illegal immigrants driving down Australia's standard of living. The ACTU's immigration officer, Alan Matheson stated that massive illegal population movements in Asia were the greatest threat to Australia's control over its own immigration program (Millett, 1992a: 1).

A significant element of the securitizing discourse constructed the January boat arrival as "a precedent for future action" and Australia's inability to prevent such arrivals as a "calamitous invitation to land in growing numbers" (e.g. Chesterton, 1992: 12). Thus, the threat identified in this narrative was the exposure of Australia's vulnerability to increasing numbers of boat arrivals that would cause deleterious social and economic strain. Members of the media speculated that this boat would be followed by "thousands more" and that these arrivals would "cost millions" (e.g. Crouch, 1992: 14). Allowing the latest arrivals to remain in Australia was labeled as a "dangerous precedent" and encouraging "another flood of so-called refugees" (Glascott, 1992: 2).

One solution or "way out" identified in this narrative was to increase surveillance and intelligence. There were calls to radically reform the existing civilian Coastwatch system or even to use the Australian military to patrol Australia's northern coastline (e.g. Ballantyne, 1992: 16; Carbon, 1992b: 4). The Australian government considered these types of solutions. After the discovery of the asylum seekers, the government announced that it would conduct a review of the Coastwatch system and hold talks with various departments to see what could be done to "prevent further arrivals" (quoted in Mackinolty and Easterbrook, 1992: 5). The government's inquiry concluded that failure to prevent the arrival of the January boat rested with the "existing philosophy" of Coastwatch. The inquiry concluded, however, that an "urgent reconsideration of its existing philosophy" would again restore Coastwatch's ability to be an effective monitor of Australia's northern coastline (quoted in Lagan, 1992a: 3).

In short, the government decided that increasing detection and interception capabilities was not the most effective or appropriate solution. Rather, the government, supported by the opposition, posited that the necessary solution to the threat of more boat arrivals was to reform the refugee determination process to reduce how long asylum seekers spent in Australia. The government (Labor) and the leading opposition party (Liberal) focused blame for the continued unauthorized arrivals not on Coastwatch and the surveillance system, but on the refugee determination process and the legal avenues for appeal that prevented the speedy deportation of failed claimants. Failure to quickly deport asylum seekers was seen as a pull factor drawing illegal migrants to Australia that no amount of investment in Coastwatch could remedy. The reason that the Coastwatch option was not considered must surely rest with international and domestic norms pertaining to the treatment of asylum seekers. At this point, neither the government nor the opposition was willing to advocate for the interception and *refoulement* of asylum seekers. Because this course of action was excluded from the realm of possibility, this meant that even intercepted vessels would still have to have their claims processed, which would not reduce the factors pulling unwanted asylum seekers to Australia. Consequently, extending executive power over the refugee determination process became the goal.

The handling of the 1992 boat arrivals demonstrates the government's efforts to limit the role of the judiciary and immigration advocates. The

immigration department attempted to deny the asylum seekers' access to legal aid. When members of the legal community and the media made this public, Immigration Minister Gerry Hand said the asylum seekers had been offered legal representation and had refused (quoted in Mackinolty, 1992b: 3). Eventually, they were granted access to lawyers, but the government made clear its position on the right of asylum seekers to legal aid: the immigration minister publicly stated that legal representation for the asylum seekers was "an unnecessary use of taxpayers' funds" (quoted in Mackinolty 1992c: 2). Comparison with the Canadian case is telling. In both 1987 and 1999, the government attempted to deny or delay access to legal representation, but was eventually forced to do so. Like their Australian counterparts, Canadian officials even claimed the asylum seekers had not requested it or had refused it. Yet, immigration ministers in Canada did not claim that the legal protections offered to asylum seekers were a waste of taxpayers' money.

Limiting legal aid for the 1992 arrivals, however, was simply the first, and rather unsuccessful, attempt to limit the role of the judiciary in immigration matters in 1992. Political elites shifted the securitizing discourse, identifying legal protections and judicial interference as the immediate threat to Australian security. Consistent with this narrative, the immigration minister announced new regulations in February of 1992 designed to speed up the determination process and to ensure quick deportation of failed claimants. On the *7.30 Report*, a prominent television news program, Mr. Hand announced that all illegal entrants who did not qualify as refugees would be deported within two months of their arrival, including the 56 boat people who arrived in January—further reproducing the identity of asylum seekers as illegal immigrants (Austin, 1992: 1). Long considered a compassionate Labor member on the left of the party, Mr. Hand relinquished his former "compassionate" position by claiming that he had been "duped" into being too soft on boat people. In his speech, Hand targeted the asylum seekers' lawyers, whom he accused of manipulating the system in order to extend the amount of time refugee claimants spent in Australia. According to Hand, he and all of Australia were "victims of rorters"—an Australian term used to describe people who manipulate the system for their own personal advantage (Taylor, 1992a: 1). Hand concluded, "nothing short of swift action will remedy the perception that Australia is not in control of its borders" (Austin, 1992: 1).

Hand's speech was remarkable in a number of ways. It refocused attention from external threats—the asylum seekers and Australia's "vulnerable" borders—to internal threats—immigration lawyers and judges. Having identified the internal representation of the security threat, the measures necessary to counter the threat focused on these actors. In response to the perceived threat posed by rorters and manipulative lawyers, the government introduced a number of regulative changes designed to speed up the refugee determination process and reduce the judiciary's influence on the process. One significant change in the regulations was to place the onus of proof of refugee status on those making the claim, requiring the claimant to provide documentary

evidence to support their claim (Crock, 1993: 35). This established an incredibly difficult standard for refugee claimants to meet, and which has contributed to Australia's low acceptance rates for asylum seekers. The new legislation also set a 28-day limit for lodging refugee applications, meaning that asylum seekers who did not contact immigration officials within a month were not eligible to claim refugee status. The regulations were designed to fast-track asylum seekers through the system, with the explicit goal of deporting failed claimants within two months of their arrival. As extraordinary as these changes were, removing the judiciary's influence on the refugee matters would require legislative rather than regulative changes. Two new developments provided the impetus for emergency legislative change.

Detention and "interference" from the courts

Given the dominant security narrative in the spring of 1992, two separate, but related legal actions were used by political elites to reinforce the perception that the courts were undermining Australia's control of its borders. The first concerned a legal challenge over the detention of the 1989 boat arrivals. In May of 1992, the Federal Court was to hear an application for the release of 27 of the Cambodian boat people who had been in detention for over two years based solely on the existing "turnaround provisions." The second legal challenge was to prevent the imminent deportation of failed refugee claimants to Cambodia. On 7 April, the Federal Court temporarily prevented the government from deporting failed refugee claimants back to Cambodia until a review of conditions in Cambodia could be carried out. Under ordinary circumstances, these court challenges would not have prompted an extraordinary response, but as a result of the securitizing move spurred by the 1992 arrivals and Gerry Hand's speech identifying immigration lawyers and the courts as the source of Australia's insecurity, the two proceedings took on extra importance.

Australian political elites used these judicial "interventions" to support their claim that the Australian government was no longer able to control the borders. Members of the government claimed that the boat people's lawyers were "campaigning to undermine the integrity of Australia's refugee determination process" and that the judicial reviews were responsible for prolonging the detention of asylum seekers (Kirk and Millett, 1992: 8). The opposition party was even more severe in its criticism of the role of the judicial system. Philip Ruddock, the shadow minister for immigration explicitly stated that these appeals demonstrated that the government is "no longer able to adequately control and supervise entry" (Glascott, 1992: 2). The leader of the opposition, Dr. Hewson, said the refugee system was "in crisis" and called for the government to "scrap judicial review and to stop illegal immigrants from mounting costly and time-consuming appeals through the courts" (Parkinson, 1992a: 1). Later in 1992, Ruddock explained the opposition's support for government legislation to expand the powers of the executive in matters of immigration on the grounds that "the role of the courts collectively … has

brought about a significant problem for the government of the day." According to Ruddock, action against the courts was necessary because of the "creative way the Australian High Court got into the business of determining refugee claims when it was always intended that these should be administrative matters" (quoted in Crock, 1993: 33). Throughout the summer, opposition parties maintained public silence and bi-partisan support on this issue (Kingston, 1993).

The imminent decisions on detention and deportation prompted the government to act. Less than two days before the Federal Court was to make its decision on the detention appeal, the government passed emergency legislation limiting the judiciary's power to decide on detention cases. Hand himself noted the exceptional nature of this legislative change (Millett, 1992b: 3). The legislation was passed with the approval of the opposition and effectively ended the legal appeal on detention. Though the emergency legislation was also appealed, the government introduced sweeping changes with the Migration Amendment Act of 1992.

In July of 1992, the government passed the Migration Amendment Act 1992 which clearly stipulated that asylum seekers were to be held in custody until they leave Australia or are given an entry permit (Stevens, 2002: 878). No longer were they caught up in the "turnaround provisions" of existing legislation, which had exposed the government to legal challenges. As a further attempt to legitimize its mandatory detention policy that had been in place extra-legally since 1989, the legislation was retroactive to include those that had arrived after and had been detained since 18 November 1989; the day before the first boat landing at Pender Bay that had initiated the "second wave" of boat arrivals. According to this legislation, unauthorized asylum seekers were classified as "designated persons," and were by law to be kept in custody and only released if removed from Australia or granted an entry permit (Crock, 1993: 34). With this policy, Australia became the only liberal democratic state that legally required the detention of unauthorized asylum seekers for the entire duration of the determination process (Brennan, 2003). The UN Working Group on Arbitrary Detention has condemned Australia's policy as mandatory, automatic and indeterminate.

In addition to legalizing and mandating mandatory detention, the Act aimed to remove the courts from the refugee determination process altogether. In Section 54R, the government forbade any court from ordering the release of a "designated person" from detention (Crock, 1993: 34)—an exceptional attempt to undermine the role of the judicial branch and to substantially expand the powers of the executive. At the time, Australia's Human Rights Commissioner claimed that this violated a number of international agreements pertaining to the detention of foreign nationals. Ultimately, the matter ended up in the courts. This provision was eventually ruled invalid by the High Court, though the court accepted that the grounds on which the detention of asylum seekers could be appealed and on which the judiciary could decide were very limited. Furthermore, the High Court ruled that detention of asylum seekers previous to the introduction of the Amendment

Act in 1992 was illegal (Richards, 1993: 18). In response, the government passed another amendment limiting the rate of damages payable to a "designated person" for wrongful detention at one dollar a day (ibid.; Crock, 1993: 34). Additionally, the government set up an independent body called the Refugee Review Tribunal to handle appeals from refugee claimants whose claims had been rejected by the immigration department in an attempt to further remove the judicial branch from the refugee determination process, (Millett, 1992c: 3; Crock, 1993).

Severely circumscribing the role of the judiciary was not the only exceptional measure imposed by the Australian government in 1992. In an attempt to crackdown on refugee applicants, the federal government announced that applicants would be denied welfare benefits for six months after making their application (Easterbrook, 1992b: 17). And in an attempt to quickly remove existing refugee claimants, the government announced an additional $26 million to help clear the backlog of refugee claims (Masanauskas, 1992b: 40).

Deportation and counter-securitization

The government's efforts to re-establish control of Australia's borders also involved the forcible repatriation of failed refugee claimants to their home state. In 1992, the Australian government entered into negotiations with the Cambodian government to facilitate the repatriation of failed refugee claimants. Incredibly, this negotiation was occurring at the same time that the Australian government was considering withdrawing their peacekeeping troops due to the deteriorating situation in Cambodia (see Parkinson, 1992b: 4). Despite the ongoing violent conflict in Cambodia, the government claimed that there were areas of Cambodia that were safe for refugees to be returned to.

As noted earlier, in April of 1992, the Federal Court first issued an injunction against deportation and then set aside the government's decision to deport the failed Cambodian refugee claimants. This decision set the stage for the legal appeal over their detention noted in the previous section. In defending repatriation, Hand claimed that the Cambodian asylum seekers had been assessed against the UN's criteria, and that they would not suffer from persecution if they were returned (Millett, 1992a: 1). This precedent set the stage for repatriation agreements to be concluded with China, Indonesia and Pakistan, none of whom had signed the 1951 Refugee Convention and where the safety of returnees could not be guaranteed.

The extraordinary measures implemented by the government met with significant opposition. In the summer of 1992, there was a series of well-publicized protests and rallies over the government's emergency legislation and the planned deportation of asylums seekers whose refugee claims had been rejected. Notably, the asylum seekers themselves were instrumental in this counter-securitization move. When the first 37 of the boat people had been rejected at the final stage of the appeal process and were to be deported to Cambodia, the failed refugee claimants engaged in various forms of protest. Though in

many respects, asylum seekers are dispossessed of the social capital to effectively make a securitizing claim, they engaged in hunger strikes in the detention centers, wrote open letters to the Australian people and government, and threatened mass suicide and other forms of self-harm, while some even managed to escape from detention.

The counter-securitizing move of the asylum seekers was supported by various NGOs. The pleas and protests of the refugees were joined by public demonstrations and condemnations of the deportation policy led by the Catholic Church, the Refugee Council of Australia and several members of Australia's law community. These groups challenged the government's depiction of Cambodia as a safe state to which failed claimants could be returned. They sought to reconstruct Cambodia as an unsafe state due to its poor human rights record and ongoing violent conflict. These groups held a number of rallies, where important Cambodian public figures, such as the Venerable monk Long Sakhon, spiritual leader of the Khmer people in Sydney, claimed that the boat people would die if returned to Cambodia by the federal government (quoted in Allison, 1992: 7). Even visiting Cambodian politicians supported such a view. A member of Cambodia's Supreme National Committee, Mr. Son Sann, argued that Cambodian asylum seekers faced significant danger if returned to Cambodia. In a press conference held alongside Senator Gareth Evans, Mr. Son Sann said, "human rights is [sic] not yet respected in Cambodia" (quoted in Wright, 1992: 6).

Media coverage of the Cambodian conflict gave support to the counter-securitizing discourse. News articles frequently detailed Australian peacekeeping efforts in Cambodia and described the country as "in ruins," "war torn," "destitute" and "unsafe" (e.g. *Reuters*, 1992: 21; Williams, 1992: 12). Even speeches by the government depicted Cambodia as an unsafe state. In early April, the Australian Prime Minister, Paul Keating, expressed concern about the level of fighting in Cambodia, stating that the government would withdraw Australian peacekeepers if the fighting grew worse (Millett, 1992a: 1). Apparently, the state was too dangerous for armed Australian soldiers, but safe enough for refugees to return. The debate over the identity of Cambodia as a refugee-producing state was a key element in the contestation over the government's deportation policy. Casting Cambodia as a refugee-producing state, or even as state where the protection of the asylum seekers' human rights could not be guaranteed, meant that Australian authorities could (or should) not forcibly return people there, even if their refugee claims had failed.

Consequently, the discourse sought not only to reconstruct Cambodia's identity, but also Australia's. The protests called Australia's identity as a generous, humanitarian states into question by repeatedly emphasizing that Australia's acceptance rates of asylum seekers compared unfavorably with Canada and the United States—indicating that Australia's refugee determination system was somehow unfair or biased against the asylum seekers (e.g. Masanauskas, 1992a: 13).

Justice Marcus Enfield, along with other members of the law community and some media commentators claimed that the government's emergency measures violated the International Covenant on Civil and Political Rights (Connolly, 1992: 17). Australia's Human Rights Commissioner, Mr. Brian Burdekin, publicly condemned the decision and claimed to have warned the government weeks prior to introduction of the legislation that such a course of action was in violation of Australia's international treaty obligations (Millett and Kirk, 1992: 5).

Media coverage in the summer of 1992 is reflective of the discursive contestation that was taking place. Table 4.2 indicates that the "humanitarian" discourse was significantly stronger than it had been prior to the announcement of forced repatriation of failed Cambodian asylum seekers in mid-March 1992. The media coverage related to the deportation of failed asylum seekers to Cambodia during this period appears to be almost evenly divided, illustrating that in media coverage and public perception, there were deep divisions and contrasting views of who was threatened by boat arrivals and the government's extraordinary response.

As was the case in Canada, opinion polls indicate stronger public support for the government's securitizing discourse that depicted the asylum seekers as illegal immigrants who should be deported. One poll reported by the *Daily Telegraph* indicated that 59 percent of respondents said the boat people should not be allowed to stay, with 41 percent saying they should (Hocking, 1992: 2). This is the same percentage as the letters to the editor of all five papers, with 41 percent advocating, in some manner or another, the humanitarian discourse. Compared with the securitization that occurred in 2001, where indications are that the Australian public was strongly supportive of the securitizing discourse, this result indicates a fairly divided population. Support for the public protests during the summer of 1992 and the sympathetic media coverage indicate relatively strong support for the counter-securitizing attempt.

Of critical importance to the fate of the asylum seekers in Australia, and to securitization theory, was that the counter-securitizing attempt lacked support from either of the two major political parties. The securitizing discourse put forward by the political elites in the government and opposition was not the dominant representation portrayed by the media, nor was it dominant among the Australian population. Yet, there was clear bi-partisan support among the political elites of the government's policies designed to re-assert control over the refugee determination process through mandatory detention, forced repatriation, fast-tracking the determination process and removing the judiciary from the refugee determination process.

Table 4.2 Migration media content: March–August 1992

	Front Page	*Back Page*	*Editorials*	*Letters*
Migration	43% (6)	50% (83)	54% (7)	59% (13)
Humanitarian	57% (8)	50% (83)	46% (6)	41% (9)

Legitimization

In the face of a significant and well-publicized counter-securitizing discourse, the government sought to legitimize their actions by refuting most of these claims. As noted earlier, a supportive opposition that advocated similar, if not more restrictive, measures aided the government's legitimization strategies. Additionally, external context had an impact as well. At least two more boats arrived during the summer of 1992, one carrying Polish asylum seekers—which the government portrayed as a strong indication that Australia's reputation as a "soft touch" for illegal immigrants was global.

According to Hand, the boat arrivals had to be kept in detention, with the courts forbidden to order their release because their release would undermine government strategy for determining refugee status or entry claims and to send a clear message that migration to Australia could not be achieved by simply arriving in the country and expecting to be allowed into the community (quoted in Stevens, 2002: 878). The legitimization of its extraordinary measures involved more than explaining the rationale behind the measures, it consisted of the denunciation of the asylum seekers and their supporters. The governing elites, and segments of the media, drew on behavioral expectations of "genuine" refugees to further support the claim that boat arrivals were illegal immigrants. The protests and actions of the asylum seekers were incommensurate with the identification of refugees as passive and voiceless persons who lacked political agency and were to cooperate with authorities in the receiving state. The assertion of agency by the asylum seekers was consequently understood as an attempt to undermine the authority and control of the Australian state. The failed refugee claimants were variously described as "roof jumpers," "hunger strikers," "rioters" and "escapees" (e.g. Humphries, 1992: 9; Wainwright, 1992: 7). Media commentators and the opposition described their behavior as "exercising moral blackmail," while Immigration Minister Gerry Hand referred to the appeals and protests of the boat people as "antics for photographers and television cameras" and as "other such stunts" that were simply "delaying tactics to gain sympathy"(e.g. Carbon, 1992a: 2; Humphries, 1992: 9). Dismissing the pleas of the asylum seekers as another stalling tactic reproduced the depiction of asylum seekers as illegal migrants attempting to delay their deportation and undermining control of Australia's borders.

Hand also defrayed criticism of the conditions inside Australia's detention centers by comparing them with the refugee camps to which most refugees had fled. According to Hand, Australia's detention centers were "plush" compared to Thailand's camps (quoted in Carbon, 1992a: 1). In describing the camps in such a way, Hand defrayed the criticism that Australia was in breach of international law and that the detention in Australia had created a special obligation toward the refugees.

The government also attempted to undermine the NGO groups that supported the asylum seekers, accusing them of "campaigning to undermine the

integrity of Australia's refugee determination process" (quoted in Kirk and Millett, 1992: 8). By portraying Australia as threatened by the intentional actions of asylum seekers and their lawyers, and by the naivety of the humanitarian churches and refugee advocates, the government was able to dismiss the counter-securitization claims and thereby legitimize its actions.

Another tactic employed by political elites to legitimize the emergency actions they had initiated was to reiterate its humanitarian identity. Governing elites depicted the actions they had implemented as being commensurate with Australia's identity as a humanitarian state that fulfilled its international obligations toward refugees. Government representatives, such as the prime minister and immigration minister, described Australia's refugee determination process as "just and fair" and "the fairest in the world" (Taylor, Dropulic and Thomas, 1992: 1). Hand reiterated that Australia "was fair, will continue to be fair and if you are what you say you are, there is nothing to fear" (Easterbrook, 1992a: 6).

In support of this claim and to appease earlier accusations that it had attempted to keep legal representation from boat arrivals, the government emphasized that the asylum seekers had received extensive legal assistance. In stressing the fairness of the process and the extensive legal assistance, Australia was depicted as having fulfilled its humanitarian obligations. Furthermore, Hand claimed that the government's legislation aimed to limit the ability of the Australian courts to rule on detention as "consistent with Australia's international obligations" (quoted in Taylor, 1992b: 1).

The impending and eventual arrival of two more boats in the summer of 1992 aided the government in withstanding the humanitarian challenge. Coastwatch announced it was on the lookout for a boatload of Indonesian asylum seekers, while the Australian Customs Service told a federal inquiry that "the boat option for people wishing to leave their homeland is a real and continuing threat" (Lagan, 1992b: 3). After the subsequent arrival of Chinese boat arrivals, the Department of Immigration claimed that the department could not prevent their arrival because they cannot stop them in international waters and that it was government policy to give anyone who came to Australia a fair hearing (Irving, 1992: 8). As was noted earlier, at this time, the only option available to Australian policy makers was to escort the boats to Australia, assess their claims in a fair, speedy and consistent manner and to quickly deport failed refugee claimants. This stance assumes greater importance when compared with 2001, which I turn to in the next section.

The government also tried to support its contention that Cambodia was a safe state, justifying its negotiation of a repatriation agreement with the Supreme National Council in Cambodia. During the same press conference in which Cambodian SNC member Mr. Sun Sann claimed Cambodia was unsafe, Senator Gareth Evans said that Australia judged Cambodia's human rights situation to be "improving" (Parkinson, 1992b: 4,). The government's construction of Cambodia as a safe state was bolstered by the "voluntary" repatriation of some Cambodian refugees. During the contentious appeals

process, after the government had won approval for its detention policies by the courts, a number of Cambodian refugees chose to return home rather than carry on with their refugee claims and stay in detention. They were assisted by the Australian government, which paid for their airfare and gave them a monthly stipend to help restart their lives in Cambodia. This scheme allowed Cambodians to return to Cambodia for one year, after which they would then be eligible to return to Australia as permanent residents (Birrell, 1994: 116; Crock, 1993: 38). Those who took up the offer and return to Cambodia rather than sit in Australian detention centers were identified in news reports as "voluntarily repatriating" or as "deciding to return home" (e.g. Lloyd, 1992: 11), creating the impression that Cambodia must be safe.

In the end, the Australian High Court decided that most of the Australian government's legislative amendments were within its constitutional powers, though it did rule that the clause banning the courts from making decisions on detention was invalid and that the detention of asylum seekers prior to 1992 had been illegal. In essence, however, the government succeeded in expanding executive control over the refugee system. Consequently, most of the failed refugee claimants were deported to Cambodia, while subsequent asylum seekers who arrived in Australia without a visa faced mandatory detention for the duration of their determination process, limited access to judicial appeals, a tougher standard for proving their "refugeeness," and restricted socio-economic rights/benefits once they were granted entry.

The events of 1992 are revealing both in terms of how immigration policy is implemented and in how security threats may be defined and acted on. This case demonstrates the prominent role that political elites play in constructing threats and identifying appropriate policy measures. Cohesion within the core group of political elites, which consists of the governing and opposition parties, was a key factor in the implementation and legitimization of extraordinary measures in the face of a strong counter-securitizing claim. As we saw in the Canadian cases, the success of the governing elites in maintaining support from potential political challengers is essential to the success of securitization claims. Furthermore, this case demonstrates how policy measures previously not even considered or deemed completely unacceptable become both acceptable and necessary. In 1979, the Australian government claimed it would never lock up asylum seekers in camps (despite strong pressure to do so), yet just ten years later it required unauthorized asylum seekers to be detained. It is also noteworthy that in 1992 intercepting boats in international waters and refusing them entry to Australia was dismissed outright as unthinkable—it was not an option. Less than ten years later, it became an acceptable and necessary measure.

This case also reveals important insights into counter-securitization. The counter-securitization attempt was initiated by the protest actions of the asylum seekers themselves and indicates that security does not always follow a speech act, but may be spurred by other types of actions, such as hunger strikes and protests. However, it also reveals the importance of discursive

practices as an essential component of the securitizing attempt. The actions of the asylum seekers did not "speak" for themselves, they required the media and NGOs to interpret and give meaning to these actions, by printing their letters and by constructing their actions as a legitimate effort to avoid deportation to an unsafe state. The government also interpreted these actions as evidence of their identity as illegal immigrants rather than refugees. Though the counter-securitizing attempt enjoyed significant levels of support from the general population, from the media and from prominent societal elites in Australia, it was not the dominant mode of representation in the media and among the public, but most notably it lacked support from political elites.

The 2001 *Tampa* crisis

The process through which naval interception came to be implemented and eventually legitimized in Australia in 2001 was different in many respects from the process through which mandatory detention of asylum seekers came to be implemented between 1989 and 1992. In 2001, the decision to use the military to forcefully intercept boats carrying asylum seekers to Australia was not "quiet" in any sense of the term, there was extensive media coverage contributing to a sense of crisis, and political elites regularly issued statements, declarations and proclamations on the issue. And, unlike detention, naval interception and forced return of asylum seekers to third states was not an existing policy that was simply applied to a new development. Furthermore, the securitizing narratives were radically different. In 2001, the existential threat was principally "external" rather than "internal" and the vilification of asylum seekers intensified from illegal migrants to hijackers and terrorists. These differences demonstrate the multiple paths and various trajectories the securitization process can take.

Yet, there were also noteworthy similarities. The behavioral expectations of asylum seekers embedded in the international refugee regime played an important role in the reconstruction of the asylum seekers' identity. And, as in 1992, the implementation of emergency measures faced challenges—both legal and discursive—which forced the government to adopt a number of discursive and legislative tools and strategies to overcome these challenges. This too is revealing about the securitization process. The issue domain greatly influences the shape and content of the narrative, while political institutions that constitute the normal processes of government heavily shape the form that resistance takes to the politics of exception.

The events of the summer of 2001 could more accurately be described as an intensification of the securitization of humanitarian migration in Australia. The vilification of asylum seekers was made possible by previous securitizing moves and the representations visited on boat arrivals in 2001 built on the existing dominant representation of unauthorized boat arrivals in Australia as illegal immigrants who had jumped the migration and refugee queues to come to Australia. The dominance of this view had sustained bi-partisan support

among the primary political elites for the government's asylum seeker policy since 1992, which was to "hoover up asylum seekers and deliver them to detention" (Marr, 2001: 51).

However, these policies were not uncontested. The 1992 case demonstrates that segments of Australian society were deeply concerned about the length and condition of detention for asylum seekers. This was true in 2001 as well; conditions inside detention centers had attracted a fair bit of negative media attention in 2001, and protests by detainees and sympathizers in Australian society continued.

For the government, there were other problems with the existing system. The number of asylum seekers in detention continued to rise as the number of unauthorized boat arrivals increased during the late 1990s and into 2001. The combination of mandatory detention, continuing avenues of appeal, difficulty with deportation to some states and rising numbers of asylum seekers meant that detention facilities in Australia were close to capacity by the summer of 2001.

Through the early months of 2001, the Australian government's response to this problem was twofold: the first strategy was to "improve" the existing system by speeding up the determination system by further limiting appeals on failed claims. According to the Australian Prime Minister, the only way to resolve the problem was to "toughen the laws. If you toughen the laws and shorten the time within which people's status is resolved you make it harder for people to abuse the legal system" (Howard, 2001a). This statement was clearly aimed at the opposition party. Reminiscent of the Canadian situation in 1987, the primary opposition party, Labor, controlled the Australian Upper House—the Senate—and was blocking legislative changes that would, in Howard's phrase, toughen the laws. As in the Canadian case, the opposition in the Senate had stalled the passing of legislation that would have reduced the role of the judiciary to decide on refugee matters.

The second strategy pursued by the government was to increase detention capacity. On this, the government had moved forward, announcing the construction of three more detention centers for asylum seekers. The construction of new centers was necessary to sustain the existing system, first by improving conditions inside detention facilities by reducing overcrowding in existing centers; and secondly, by increasing capacity so that the government could continue to hoover up and deliver into detention the growing numbers of unauthorized boat arrivals.

These proposed responses are telling; they revealed the government's commitment to the existing policy framework set out in 1992. In this respect, these proposed changes fit within the normal mode of refugee policy in Australia at that time. Thus, when the second largest boatload ever to reach Australia landed on Christmas Island on 16 August 2001 with 348 souls aboard, the government admitted it had no choice but to respond in the "normal" manner. Prime Minister John Howard exclaimed, "we have to deal with them as we have with the others" (Howard, 2001a). Certain segments of the media,

especially the virulent and popular talkback-radio hosts suggested forcefully turning the boats back. In response, Howard declared that a humane nation like Australia could not "turn un-seaworthy boats which are likely to capsize and the people on them be drowned, we can't behave in that manner" (ibid.). The prime minister's emphasis on "un-seaworthy" boats turned out to be prescient. Less than ten days later, the arrival of a seaworthy vessel carrying rescued asylum seekers provided an opportunity for the Howard government to act.

The *Tampa* was a Norwegian commercial vessel that had rescued asylum seekers whose boat had sunk in the waters between Australia and Indonesia. In this respect, the *Tampa* was unlike every other boat carrying asylum seekers to Australia: it was a large seaworthy vessel in no danger of sinking that had rescued shipwreck survivors in international waters where the nearest port of call was an Indonesian port four hours away. Under the law of the sea, the Australian government stood on far less shaky legal and moral ground in refusing the *Tampa* access to Australian ports than they did with other un-seaworthy, unauthorized boat arrivals under the international refugee regime. The arrival of the *Tampa* represented an opportunity for the government to take measures that would indicate that Australia was in control of its borders and put into effect new measures that would prevent the arrival of asylum seekers without worrying about the boat capsizing and its occupants drowning. The *Tampa* crisis of 2001 demonstrates that securitizing language can be used strategically to legitimize the execution of policies previously considered unacceptable and to bolster support for a government in an election year. Yet, Howard's speech acts in response to the *Tampa*'s arrival was not the start of the securitization process. The government was under pressure to act as a result of securitizing discourse initiated by the media and opposition in the spring and summer of 2001.

The sense of crisis that emerged in the summer of 2001 and that enabled Howard to bring about drastic policy change was in part a product of the media's focus on the issue of asylum seeking. From 1 August to the 26th (the day before the *Tampa* incident), there were over sixteen stories on boat arrivals in the *Australian* newspaper alone, fifteen in the month of July, and twenty in June. In the *Sydney Morning Herald*, there were over fifteen stories on boat arrivals in the ten days prior to the *Tampa* arrival; eleven in the *Daily Telegraph*, seventeen in the *Herald Sun* and eight in the *Age*. The frequency of stories on this issue clearly constructed the arrival of asylum seekers as a pressing issue. The tone of the coverage added to this sense of crisis. The news coverage depicted Australia as threatened through the use of metaphors such as "flooded" and "invaded." In these representations, which invoked natural disaster and war metaphors, the number of "illegal immigrants" threatened to overwhelm Australia. The use of this metaphoric and hyperbolic language was an effective discursive device commonly used to imply that the situation, if left unchecked, would wreak havoc on Australia (Chavez, 2001).

The opposition party contributed to this sense of crisis and used it as an opportunity to attack the Liberal/National coalition government on an issue

area in which Labor was typically viewed as softer than the government. In early August, Labor immigration spokesman Con Sciacca accused the government of having failed to control Australia's borders. Sciacca claimed that "the latest influx showed the government's approach was not acting as a deterrent … they have failed miserably to stem the numbers of asylum-seekers arriving on our coastline" (Saunders, 2001a: 5). A week before the *Tampa* incident, Sciacca stated, "if the government was serious (about stopping boat arrivals) they would establish an Australian coast guard service which would act as a maritime police force" (Clennel, 2001: 6). According to the Labor Party, the coast guard would protect Australia's borders by boarding boats and encouraging boat people to turn around and head back for Indonesia and would send a message that Australia was serious about protecting its borders (ibid.). Though short on specifics, the main political opposition party in Australia seemed to be advocating a policy of interception at sea and forced *refoulement*. Again, on 24 August, only two days before the *Tampa* arrived, Sciacca claimed the government "had lost control of the situation" (Saunders, 2001b: 4). The combination of the media's creation of a sense of crisis through the use of metaphoric language and the accusations of the Labor opposition that the government had lost control over Australia's borders created significant political incentives for the Liberal party to respond in an extraordinary way.

As a result, acting firm on the issue of border control and "re-establishing" control over Australia's refugee system achieved three interrelated goals for the Liberal/National coalition government, it would alleviate the pressure from the opposition, it would reinforce the Liberal/National government's strengths in an election year and it would appeal to the supporters of the One Nation Party. Of course, the government did not cite these reasons to justify the extraordinary measures; the securitizing move that followed was based on the claim that control of Australia's borders could not be maintained without drastically altering the government's policies toward boat arrivals and implementing policies previously deemed unacceptable. The dominant discourse emanating from the media, the opposition and the government presented the growing number of boat arrivals as a threat to Australia.

The *Tampa*

As noted earlier, the *Tampa* was a Norwegian vessel that had rescued asylum seekers whose boat had sunk between Indonesia and the Australian territory of Christmas Island. The closest port of call was in Indonesia, and the Australia government expected the asylum seekers to be returned there. The *Tampa*'s captain intended to return the asylum seekers to Indonesia, but the asylum seekers protested and demanded that the ship head to Australia. The captain reversed course and headed to Australia. Australian authorities informed him that he should turn back and take the asylum seekers to Indonesia. Given the situation on board the ship, the captain decided to head for Australia. Upon hearing that the *Tampa* was heading toward the outlying Australian territory

of Christmas Island, rather than an Indonesian port, the Australian government made the decision to refuse the *Tampa* permission to deliver the rescued asylum seekers (Marr and Wilkinson, 2003: 26–36). It was an extraordinary measure to deny a Norwegian commercial vessel permission to disembark rescued passengers, especially because it was the Australian Coastwatch service that had initiated the rescue call to which the *Tampa* had responded to pick up the asylum seekers.

Speaking on talkback radio on 28 August 2001, PM John Howard justified the government's decision by depicting the asylum seekers not just as illegal migrants, but as "unauthorized arrivals" who "forced the captain to turn from his original course … under duress" (Howard, 2001b). Politicians, such as Junior Finance Minister Peter Slipper (*The Australian*, 2001), media commentators (e.g. Ball, radio 2GB Sydney, 2001), talkback callers and letters to the editors referred to the *Tampa* asylum seekers as "pirates" or "hijackers." This representation served to distinguish the asylum seekers aboard the *Tampa* from previous boat arrivals, which in turn justified a uniquely harsh response. This portrayal of the asylum seekers represented a departure from the existent dominant discourse that portrayed asylum seekers as queue-jumping illegal immigrants, to queue-jumping illegal immigrants who would intimidate their rescuers to get what they wanted. As has been a common refrain in securitizing discourses, the failure of asylum seekers to meet the behavioral expectations of refugees has been used to justify the violation of existing rules and norms of appropriate treatment.

The government combined justifications based on a securitized representation of the asylum seekers aboard the *Tampa* with existing securitized representations of Australia. According to Howard, this boat arrival was part of a larger movement that "created a situation where we lose control of our capacity to determine who comes to this country" (Howard, 2001b). As indicated in the 1992 case, this was a recurrent theme in the justification of extraordinary policies against asylum seekers. Furthermore, the prime minister depicted Australia as being no longer capable of responding to boat arrivals in the "normal" manner. Those aboard the *Tampa* could not be handled in accordance with existing policies because "our detention facilities are now at a breaking point as far as capacity is concerned" (ibid.).

Consequently, Howard concluded that it was in the "national interest to draw a line on what is increasingly becoming an uncontrollable number of illegal arrivals in this country" (Howard, 2001c). The discourse emanating from the Australian government was that the system that had been in place since 1992 was now under threat of collapse and that the *Tampa* was the line in the sand.

On 29 August, the prime minister appeared on the popular television program the *7:30 Report* and reiterated that "we have an absolute right to decide who comes to this country and there is a concern … that we are fast losing that right" (quoted in Enderby, 2001: 11). Using militaristic terms, Howard proclaimed "they [asylum seekers aboard *Tampa*] will never enter Australia …

we won't retreat" (quoted in Kelly, 2001: 1). Howard described the government's stance as "protecting Australia's borders and defending our right to decide who comes to this country" (Howard, 2001c). By framing the issue in militaristic terms such as protecting and defending, the policy options available to the Howard government were narrowed considerably, making it difficult to compromise and take in the asylum seekers without suffering a politically damaging retreat. Rather than backing away from the militaristic language he had used, Howard explicitly stated that that Australia would do "whatever was necessary" to prevent the *Tampa* from depositing its human cargo in Australia (Clennel and Allard, 2001: 1).

At first, the government pursued a diplomatic solution with Indonesia and even Norway, as the Australian government attempted to shift responsibility for taking in the asylum seekers (Marr and Wilkinson, 2003). As the negotiations failed and the *Tampa* continued to sit off the coast of Australia awaiting permission to offload the rescued asylum seekers, the situation on board was deteriorating. The government was concerned that the ship would move close enough to Australian territory for the asylum seekers to make it to shore. The claim that the asylum seekers aboard the *Tampa* would never reach Australian soil escalated the costs and possibility of compromise and made the use of extraordinary measures to prevent their arrival necessary. To end the weeklong standoff, the government approved the use of force against the *Tampa*, ordering the SAS to board and take control of the vessel. The use of the elite Australian military unit was not cheap; it cost the government three million dollars per day to have the SAS housed on Christmas Island, and subsequently on board the *Tampa*. Summarizing the securitizing logic, Howard claimed "the government was left with no alternative but to order the chief of the Australian Defense Force to arrange for defense personnel to board and secure the vessel" (Grattan, 2001: 7).

The government's decision to board and secure the vessel did not resolve the question of what to do with the asylum seekers. Indonesia refused to take them back, so the Australian government arranged to escort the asylum seekers to third states in the region, where their asylum claims could be processed. Having secured control of the vessel by force, the government coerced and tricked the asylum seekers into disembarking onto an Australian navy vessel (see Mares, 2002).[1] From there, the asylum seekers were transported to third countries where many of the asylum seekers were physically forced to disembark. The asylum seekers' resistance to this "solution" was then further used to portray them as fundamentally un-Australian and as a source of disorder. News stories about the asylum seekers described how they had resisted the government's decision to force them to third states, the asylum seekers were depicted as "trashing the navy ship," "did not cooperate," "coerced others into not complying" and "refused to disembark" (e.g. Powell and Saunders, 2001; Saunders, Barclay and Powell, 2001: 11; *Daily Telegraph*, 2001: 1). Against this construction, Australian military forces were depicted as "professional," "patient," "behaving dignified," "using minimal force" and "showing

restraint" (e.g. Akerman, 2001: 22; McDonald, 2001: 10). The reconstruction of the asylum seekers and the need to use exceptional measures rested on this basic dichotomy.

Most notably, few media reports questioned the government's interpretation of the *Tampa* arrival or the behavior of the asylum seekers as they were forced to disembark in a third country, nor did the media differentiate between the few who fit this description and the majority who had cooperated with the Australian authorities. Conditions aboard the Australian naval vessel transporting the asylum seekers to third countries were not ideal. Marr and Wilkinson report that the areas in which the asylum seekers were held were extremely hot and overcrowded, and there were an insufficient number of beds and bathrooms for the number of asylum seekers on board (Marr and Wilkinson, 2003). Additionally, they noted that many of the asylum seekers had been tricked into getting on board, on the assumption they were going to Australia. Others had no idea where they were headed. The conditions surrounding the transportation of the asylum seekers contributed to the uncooperative behavior of some of the asylum seekers, in another instance of state actions in response to a perceived threat contributing to behavior that supports this construction.

What started out as an exceptional response to one unique case, and an expensive solution to the problems that decision left unresolved, became institutionalized as the new "normal" response to the arrival of unauthorized boat arrivals. The use of Australian military forces to board and secure a foreign vessel was an exceptional act, as was the decision to forcefully direct asylum seekers to third states that had not ratified the 1951 Refugee Convention, to have their claims processed. But, once these norms were broken, the government was able to apply this response to other boat arrivals. Having used the military in this circumstance rendered the use of the military in response to other boat arrivals appropriate and necessary. Consequently, the government instituted a larger set of policies for dealing with asylum seekers, which it referred to as the *Pacific Solution*. The *Pacific Solution* involved the interception of asylum seekers by Australian naval vessels and the redirection of them to third states to process their refugee claims.

To ensure the success of the new *Pacific Solution*, the Australian government initiated a naval blockade named *Operation Relex*. For the first time, the Australian government replaced the civilian Coastwatch system with a military operation, something it had repeatedly rejected since 1992. In this military exercise, the Australian navy was guided by aircraft to intercept boats carrying asylum seekers on the high seas, and to forcefully prevent them from entering Australian territorial waters. *Operation Relex* lasted four months, during which the Australian navy intercepted twelve boats, returned four to Indonesia, had three sink and impounded five (Brennan, 2003). The cost of the naval blockade was significant, $20 million a week to deploy their fleet to the northwestern approaches to prevent further boat arrivals (Mares, 2002). There were other costs to the blockade as well. It directly resulted in three drowning deaths and contributed to a further 352 drowning deaths after

SIEV X, a vessel carrying asylum seekers, sank while attempting to sail to Australia (ibid.).

As part of this solution, the Australian government arranged for third countries, such as New Zealand, Nauru and Papua New Guinea to take all asylum seeker arrivals and process their claims. With the exception of those headed to New Zealand, the asylum seekers were held in detention while their refugee claims were processed, at first with the help of the UNHCR, and later by Australian immigration officials. In exchange for this arrangement, the Australian government offered increased aid to Papua New Guinea and Nauru.

The cost of the *Pacific Solution* was staggering. Australia dramatically increased its aid budget to Nauru and Papua New Guinea to house the refugees. The $6.8 million given to Nauru in exchange for processing the asylum seekers represented a 200 percent increase over the previous year. The government then re-prioritized a further $34 million to Papua New Guinea over the course of nine days (Mares, 2002). To fund the *Pacific Solution*, the government was forced to double its budget for dealing with unauthorized boat arrivals, from an initial budget of $250 million in 2001–2 to over $570 million by the end of that fiscal year (ibid.).

The Australian government also sought to render its new asylum seeker policy free from judicial oversight. The Migration Amendment Act instituted a privative clause, meaning that most immigration and asylum-related decisions could not "be challenged, appealed against, reviewed, quashed or called into question in any court" (Morris, 2000: 6). The government also excised a number of Australian territorial possessions including Christmas Island, Ashmore Reef and the Cocos Islands. Asylum seekers who arrived on these excised territories were (and are) not considered to have landed on Australian territory for the purposes of the Migration Act. As such, they cannot apply for asylum under Australian laws and are processed under a different set of rules, with fewer procedural safeguards and fewer appeal rights (Mares, 2002).

One last extraordinary measure implemented by the government was the enforcement of a complete news blackout on the asylum seekers. In an effort to prevent photos from being taken and humanizing the asylum seekers, the media was not permitted to go near the *Tampa*, or subsequent vessels holding asylum seekers (Marr and Wilkinson, 2003). The naval officers who dealt directly with the asylum seekers were also under a "no communication order," preventing them from releasing photos or stories about their work, even to family (ibid.). The Australian government further mandated a blackout on news from refugee detention centers, and required those who worked in the detention centers to sign secrecy clauses and to refrain from speaking to the media (Mares, 2002).

Legitimization

One of the most striking developments during the *Tampa* crisis was the decision of the Labor opposition party, which had previously blocked legislative changes that would have limited judicial oversight over asylum matters, to

withdraw its opposition and support the government's new legislation. This decision clearly illustrates the role that securitizing discourses can have in coercing or forcing the political opposition to abandon its opposition. As the government implemented its extraordinary policy of refusing entrance to the *Tampa*, it had near full cooperation from the Labor Party, which found itself in a position where it could not oppose the securitizing move, partly because it had been advocating a clampdown on illegal migration. Though the Labor Party had not advocated the response the government initiated and had actively resisted many of the measures recommended by the government, they wound up supporting the government's course of action. The Labor Party essentially removed itself from its role of questioning and opposing the government when on 30 August, Kim Beazley, leader of the Labor opposition party stated, "in these circumstances this country and this parliament do not need a carping Opposition" (quoted in Price, 2001: 2). His use of the phrase "these circumstances" reinforced the impression of a crisis situation in which unity of the government was essential to overcome a threatening development.

While the Labor Party forfeited the opportunity to challenge the securitizing claim and the emergency measures proposed by the government, some segments of Australian society voiced their opposition. As in 1992, humanitarian and refugee advocacy groups such as the Australian Association of Churches and the Australian Council for Refugees challenged the government's response. There were also a number of political elites who dissented from the securitized discourse and the extraordinary measures implemented by the government. At least one Liberal backbencher, Petro Georgiou, challenged the response of his party and called for a return to acceptance of the 1951 Refugee Convention. The Labor Party was more clearly divided over the decision of its leadership to support the government. Several Labor MPs challenged the direction of the Labor's leadership in supporting the government's course of action. Representatives from two smaller Australian parties, the Green Party and the Democrats, also advocated a humanitarian response.

The media was also clearly divided over the actions of the government. As Table 4.3 shows, the editorials in the five newspapers under examination differ significantly in their support of the government's response. The popular tabloid papers, along with talkback radio, were extremely hostile to the asylum seekers and continued to support the securitized discourse; while the editorial staff of the national broadsheets (the *Age*, the *Australian* and the *Sydney Morning Herald*) were critical of the government's response.

Table 4.3 Newspaper editorial coverage: 15 August–15 October 2001

Editorials	*Australian*	*The Age*	*Sydney Morning Herald*	*Daily Telegraph*	*Herald Sun*
Securitized	36% (16)	15% (2)	15% (4)	53% (16)	61% (20)
Humanitarian	64% (29)	85% (11)	85% (23)	47% (13)	39% (13)

This same pattern is evident in the letters to the editor that were published in each of the papers. While the difference in letters printed may reflect actual differences in letters submitted to each newspaper, it also likely reflects an intentional effort on the part of the editorial staff to construct the paper and its readers as a monolithic identity, as conservative or liberal, or in this case generally supportive or opposed to the government's response to asylum seekers (Burn and Parker, 2003). What is clear from the letters to the editor and the editorials is that a significant portion of the Australian media opposed the government's actions and advocated a humanitarian response.

In the face of opposition from those advocating a more humanitarian response to the asylum seekers aboard the *Tampa*, the government's first response was simply to disclaim responsibility for the asylum seekers. On talkback radio, Howard asserted that the asylum seekers "were picked up in a search and rescue zone for which Indonesia was responsible … the port of nearest feasible disembarkation was Merak, an Indonesian port" (Howard, 2001b). Howard reiterated Indonesia's responsibility several times: "the fact that they came from Indonesia, it was an Indonesian vessel, it had an Indonesian crew … our interpretation of the international law applicable it is appropriate that they be returned to Indonesia" (ibid.). Once it became evident the Indonesians would not accept responsibility for the asylum seekers, the political, media and societal elites who supported the securitization move employed four strategies of legitimization. First was to implement legislation authorizing the use of force that they had already undertaken and to prevent further court challenges that might hinder their efforts. The second strategy was to continue to reconstruct the asylum seekers' identity from illegal migrants who would do anything to get into Australia, to outright threats to Australian safety and values. The third strategy was to co-opt the humanitarian discourse; and lastly, political and societal elites silenced the humanitarian challenge and those dissenting from the securitized discourse by labeling them as traitors or anti-democratic. It is to each of these strategies that the analysis now turns.

One central element of the opposition to the government's policies was that the government's response violated Australian Law. Initially, the Federal Court found that the response to the *Tampa*'s arrival constituted unlawful confinement, but that was subsequently overturned on appeal (J. Howard, 2003: 37). To legitimize the extraordinary measures and prevent further court challenges, the Australian government implemented the Border Protection

Table 4.4 Letters to the editor: 15 August–15 October 2001

Letters	*Australian*	*Sydney Morning Herald*	*Daily Telegraph*	*Herald Sun*
Securitized	26% (47)	39% (75)	74% (145)	70% (205)
Humanitarian	74% (134)	61% (118)	26% (52)	30% (87)

Act. The Border Protection Act contained a number of extraordinary measures, including: redefining persecution to limit the number who would qualify for protection; limiting judicial appeals to failed refugee claims; the excision of parts of Australian territory; authorizing the use of force against the asylum seekers; and limited court action against the government for its response. This legislation redefined immigration and asylum-related decisions as falling under a "privative clause," meaning they could not be challenged, appealed against, reviewed, quashed or called in question in any court (Morris, 2003: 6). The privative clause asserted the power of executive over the judiciary, and accomplished what had begun in 1992 with the removal of the judiciary from immigration matters. The Border Protection Act made the government's use of force against the *Tampa* and subsequent boat arrivals legal and removed the use of force against asylum seekers beyond the scrutiny of the courts, eliminating one of the grounds for criticism that the government had acted illegally. In doing so, the government essentially eliminated a court challenge over the legality of the "detention" of the asylum seekers aboard the *Tampa*.

While legislative change legitimized the measures already implemented, this was made possible through the radical reconstruction of asylum seeker identity. The exceptional measures implemented in 2001 initially sprang from a challenge over the *Tampa* asylum seekers, but that single episode was not the sole basis of the securitizing narrative. Successful securitization relied on the continued re-production of asylum seekers as a threat to Australia. Thus, at various time throughout this crisis, asylum seekers were identified as queue-jumpers, pirates, intimidators, blackmailers, hostile to Australian authorities, terrorists and people who throw their children overboard. The asylum seekers were no longer portrayed as jumping the queue to find work and better economic opportunities in Australia; rather the boat arrivals were identified as a threat to Australia by bringing in values that differed widely from the core Australian values, or by intending to do Australians physical harm.

After the 11 September 2001 attacks in the United States, political and societal elites in Australia drew on fears of terrorism to vilify asylum seekers. Defense Minister Peter Reith made the connection when he stated that the terrorist attacks on the United States would only "reinforce the whole security issue in terms of dealing with terrorism and that means you've got to be able to control your borders"(quoted in Henderson and Powell, 2001: 9). Queensland Liberal MP Peter Slipper claimed that it was not "beyond the realm of possibility that the Taliban regime could well be sending people to Australia as terrorists under the guise of illegals" (e.g. The *Australian*, 2001: 1). In addition to prominent members of the government making this claim, newsprint media commentators, prominent talkback-radio hosts and legions of talkback-radio callers and writers of letters to the editor expressed fears that asylum seekers had some connection to Osama bin Laden and terrorist networks (e.g. Kofahi, 2001: 25; MacTierney, 2001). While humanitarian organizations and commentators attempted to demonstrate the falsity of this claim, neither the government nor the opposition party rejected this assertion.

Another bizarre episode in the fall of 2001 further legitimized the extraordinary measures the government had implemented by depicting the asylum seekers as inhumane people who would intentionally endanger the lives of their children. As the navy forcibly turned back boats to Indonesia, it was feared that asylum seekers would jump overboard or scuttle their boats to ensure rescue by the Australian navy and an opportunity to claim asylum in Australia. The government claimed that asylum seekers aboard one such vessel (*SIEV 4*) that had been intercepted and turned around by the Australian navy had thrown their children overboard to force a rescue and provide an opportunity for them to make an asylum claim in Australia. The allegations later proved to be untrue, but the story made headlines across the country and reproduced the asylum seekers as fundamentally un-Australian, indicated by their profound lack of respect for the lives of their children. Summing up the feelings that this story was meant to convey, Howard proclaimed, "these are not the type of people we want in Australia" (Marr and Wilkinson, 2002). Throughout the summer and fall of 2001, political elites and the Australia media legitimized the draconian measures that had been adopted to prevent the arrival of asylum seekers by depicting the asylum seekers as pirates, hostage takers, terrorists and uncaring parents who would throw their children overboard.

This depiction of the asylum seekers contributed to the co-optation of the humanitarian discourse by the Australian government. According to this argument, Australia's humanitarianism was threatened not by the Australian government's draconian response, but rather by the actions of the asylum seekers themselves. Throughout the crisis, the media and the governing elites, including the prime minister, accused the asylum seekers of "trying to intimidate us through our own decency" (e.g. Clennel and Crichton, 2001: 1). Thus, the only way to protect Australia's humanitarianism was to stop the abuse of Australia's humanitarianism and to prevent moral blackmail. In this discourse, it was the "queue-jumpers," "rorters" and "manipulators of the system" that undermined the fairness of the system. To emphasize this point, the governing elites and media repeatedly referred to the asylum seekers as illegal arrivals, whose refugee claims were less meritorious than those in refugee camps. The government claimed that the refugee claims of asylum seekers had less merit than those refugees who remained in camps, and that asylum seekers took spots from genuine refugees (Howard, 2001c). Howard claimed that, "every person who comes here illegally keeps somebody else out" (ibid.). According to the government, preventing unauthorized arrivals enabled the government to let in others in greater need and with more meritorious refugee claims. The immigration minister stated the influx of asylum seekers had created "the potential that Australia would lose the capacity to be able to help refugees through a proper resettlement program" (Ruddock, 2005).

The Australian government used its resettlement program to dismiss criticism over its exceptional response. Howard reminded Australian and international critics that Australia "takes more refugees per capita than any other

country in the world, except Canada" (Howard, 2001c). The claim that Australia takes the most refugees per capita is not entirely accurate. It is true of refugee resettlement—Australia resettles the second most number of refugees on a per capita basis. However, many non-resettlement states house far larger refugee populations per capita than Australia. According to the UNHCR, between 1999 and 2003, Australia housed three refugees per 1,000 inhabitants, placing them 46th in the world (UNHCR, 2003). While the per capita claim has a long history in the construction of Australia's humanitarian identity, the evidence does not support such a claim.

Australia's per capita resettlement rate was used to defray international criticism. The Norwegian press's criticism of Australia over the refusal to admit the *Tampa*, a Norwegian vessel, became a significant story in the Australian press. Norwegian diplomats also publicly expressed their displeasure with Australia's treatment of the *Tampa*'s crew and rescued passengers. The response from the Australian government and media to Norway's criticism was to bolster Australia's identity as a humanitarian state by comparing Australia's refugee intake to that of their chief critic, Norway. As a result, Norway's refugee determination system, the numbers they resettled and the number they accept from in-country determination all came under critical scrutiny in Australia. Media commentators were direct in the defense of Australia's humanitarian reputation, referring to their Norwegian critics as "living in glass houses" and "hypocritical" (e.g. Behm, 2001: 17). While this was a minor diplomatic row between the two countries, response to international criticism illustrated how important the appearance of humanitarianism was and is to many Australians and the Australian government.

The government sought to further bolster its humanitarian identity and deflect criticism by emphasizing what it was doing *for* the asylum seekers, rather than what it was doing *to* the asylum seekers. The government constantly relayed to the public that it was providing food, water and medical care to the asylum seekers aboard the *Tampa*, and to asylum seekers that were subsequently taken aboard Australian navy vessels. The government also announced a drastic $14 million dollar increase in its contribution to the UNHCR's activities in Afghanistan and Pakistan, and offered generous assistance to the Indonesians to build a transit camp for refugees.

Public support and silencing dissent

The "public" occupies a complex place in the literature on securitization. Most work on securitization concedes that in democratic states, the public is an important audience of securitizing claim (see Buzan et al, 1998; Balzacq, 2005; Vuori, 2008). From this perspective, public support for emergency measures can signal the success of the securitizing discourse. Yet, as the 1992 events in Australia indicate, strong public support is not always necessary for successful securitization. Indeed, in many cases, the "public" may not be a primary audience of securitizing claims, or may be completely unaware of the

process. This is evident in the following chapter on visa policies. Yet, in 2001, the Australian "public" played a crucial role.

First, "public" support for Howard's policies toward the *Tampa* and the implementation of the *Pacific Solution* suggest that the portrayal of asylum seekers as a threat to Australia that began in the late 1980s and escalated in the years and months prior to the *Tampa* incident was widely accepted among many sectors of the Australian public. Opinion polls strongly suggest this was the case. The *Daily Telegraph* published a series of polls that indicated extremely strong support from the Australian public. In the first, 98 percent of respondents answered that "Howard was right to refuse landing rights to the ship carrying illegal migrants" (Voteline/Survey, 2001a: 32). The second poll run by the paper indicated that 97 percent agreed that "it is right to insist Indonesia take responsibility for the *Tampa* boat people" (Voteline/Survey, 2001b: 27). The last poll run by the *Daily Telegraph* in late September reported that 90 percent of respondents agreed that "the high court appeal over the *Tampa* boat people is a waste of time and money" (Voteline/Survey, 2001c: 29).

The *Herald Sun* conducted polls on the boat people and the extraordinary measures as well, and produced similar results. Of the 13,572 respondents, 98.5 percent said they "support turning away the boat people" (Voteline/*Herald Sun*, 2001a) while the next day 93 percent of 11,454 respondents agreed that "Australia should stand firm and not accept the illegal immigrants" (Voteline/*Herald Sun*, 2001b: 8). On 17 September, the paper reported that 97 percent thought civil liberties groups should not have intervened in court to bring the *Tampa* boat people to Australia (Voteline/*Herald Sun*, 2001c: 17). On 9 October, the *Herald Sun* ran its last poll of the crisis, asking "should boat people who throw children into the sea be accepted into Australia as refugees?"; 97 percent of the 8474 respondents said no (Voteline/*Herald Sun*, 2001d: 21).

The polls conducted by the tabloid papers indicate two very significant elements of the securitization process: first, the narrative that depicted the asylum seekers as a threat to the Australian state was the dominant representation of the asylum seekers for the responding readership of these papers and it produced a strong level of support for the exceptional measures. The second significant element is the way in which these polls reproduce the securitized discourse. The polls targeted a very narrow audience and asked clearly "biased" and leading questions. Despite the problems with the polling methods, the results were used to demonstrate that the Australian public overwhelmingly supported the government's actions. Research in the social sciences demonstrates amply the effects of framing on poll results, and these are prime examples not simply of gauging but constructing public opinion.

The broadsheets reproduced independent, and less methodologically problematic, polls to gauge the level of support among the Australian public; though they also reported the results of talkback radio polls, as well as the *Daily Telegraph* and *Herald Sun* polls, with little questioning of their bias or

accuracy. The *Australian* reported that a Newspoll that had asked whether respondents "supported turning back either all or some boats carrying asylum seekers" resulted in 85 percent of respondents in the 35–49 age group saying yes, while 90 percent of the 18–35 and 50+ age groups responded positively (Henderson, 2001: 12). On 31 October, the *Australian* reported that the latest Newspoll indicated that 56 percent of respondents said all boats should be turned back (Garran, Shanahan and Saunders, 2001: 1). The *Sydney Morning Herald* and the *Age* both reported a Herald-ACNeilsen poll that found that 77 percent of the population agreed with Howard's decision to refuse the boat people entry (Grattan, McDonald and Clennel, 2001: 1; Dodson, 2001: 1). These polls were used to support the claim that the vast majority of Australians supported the government's decision, though none of the newspapers examined how the discursive practices of political and media elites had shaped the public's response nor whether the polls themselves may have had an impact on the response rate.

The construction of the supportive public through the securitized discourse and opinion polls was then used to gain cooperation from the opposition and to silence dissenting voices. The importance of Australian public opinion was exaggerated in an election year, meaning that both the government and the opposition party were playing to the polls. The extraordinary measures imposed by the government were legitimized by the perception that the Australian public was wholly supportive.

The government and members of the media dismissed media, political and societal elites who had accused the government of ad hoc governing in response to the opinion polls as "anti-democratic" and denying the "will of the majority" (e.g. *Herald Sun*, 2001: 24). This was not the only discursive practice employed to silence dissent. Those that opposed the government's policies were dismissed through a number of discursive practices. Refugee advocates were labeled as "do-gooders," who were too naïve to realize the folly of their views or as the "chattering classes" whose snobbery led them to believe that they knew better than the rest of society (e.g. Cock, 2001; H. Williams, 2001).

Some members of the media employed even harsher, militaristic terms to describe those opposed to the government. The opposition's initial resistance to legislative change was described as "torpedoing the Ship bill," "sinking the government's plan" and "compromising the government" (e.g. Madigan, 2001: 4). Reflecting the heavily securitized discourse, media commentators and at least one government backbencher referred to those who opposed the government's stance as traitors. Such was the success of the securitizing discourse and antipathy for those who opposed it that hostility was frequently and inappropriately expressed, indicated by hate mail, indignant phone calls and even bullets sent in the mail (see Probyn, 2001: 4).

In the 2001 case, the public was an important audience of the securitizing claims. It clearly had an impact on the decision of the opposition to support the government and on the government to escalate its response (Mares, 2002).

More than that, however, public opinion became a tool through which anyone opposed to the securitization attempt could be silenced, ridiculed or dismissed. The media and government played a crucial role in shaping public opinion through the discursive practices employed in depicting the asylum seekers as a threat and through biased and leading opinion poll questions.

The *Tampa* crisis demonstrates nicely the process of securitization, including the discursive practices that made emergency measures possible and necessary, how emergency measures are implemented and institutionalized and lastly how these actions are legitimized. The ability of the governing elites to maintain cohesion in the core group (the governing party and the political opposition) attests to the importance of these actors in the securitization process. The extraordinary means implemented by the Australian government indicate the type of action states are capable of when humanitarian migration has been thoroughly securitized.

Conclusions

Looking at how restrictive asylum policies have been implemented in Australia reveals much about the dominant discourse pertaining to asylum seekers. The international refugee regime reproduced and reinforced the representation of population movements, including asylum seeking, as a potential source of insecurity for states. In Australia, more than other places, this representation has shaped the discourse on asylum seekers and the policy measures used to deal with this process. As many authors have noted, the Australian approach to asylum seeking is marked by a strongly held belief in the need to control entrance to the Australian state (Birrell,1994; Cox and Glenn, 1994). Control over borders and national security have become strongly associated.

Yet, to focus only on this aspect of Australia is to ignore equally strong values that resonate in Australian society, such as humanitarianism and fairness. Australia's humanitarian commitments are exemplified in its refugee resettlement program as well as funding for the UNHCR and other "humanitarian" organizations. In these particular instances, the values of national security and border control do not conflict with humanitarianism and fairness. In fact, they are mutually constitutive.

Yet, when asylum seekers subvert control measures and arrive without authorization these values become conflictual in that their "logics" demand opposing responses. Thus, in these instances the relative weight accorded to multiple values depend upon discursive practices that construct the identity of the asylum seekers, the receiving state and other relevant actors, such as home or transit states. In the securitization process, one representation of identity is privileged or reified over all other possible representations, rendering previously unacceptable policy responses both acceptable and necessary.

The Australian cases examined in this chapter highlight the varying paths this process may take. Key divergence points include the importance and timing of speech acts, the timing of the implementation of emergency measures,

the primary audience, the role of the media, and the location of threats "internally" or "externally." Contrary to existing theories of securitization, this chapter demonstrates that the implementation of extraordinary measures cannot be understood as the endpoint of the securitization process, but is actually a mid-point, after which opponents make de- or counter-securitizing claims forcing securitizing actors to legitimize the measures they have implemented. Importantly, I identify some of the strategies governing elites in Australia have employed to legitimize their extraordinary measures, demonstrating how, in democratic states, opposition to securitizing attempts has been silenced and cohesion among political elites maintained. What these cases reveal is that there is no set script or path for securitization; it can be accomplished in a variety of ways.

Not surprisingly, however, the cases also reveal strong similarities. These similarities emerge from the issue domain under examination; both cases reflect the bounded discourse in the domain of humanitarian migration. Consequently, the international refugee regime looms large, even when it is not explicitly appealed to. In both cases, the behavioral expectations created of "genuine" refugees limited the agency of asylum seekers and provided fertile ground for securitizing actors to challenge their identity claims. Hunger strikes in 1992 and resistance to forced relocation in 2001 by asylum seekers were understood within the dominant representation of the "bogus" and the "genuine" refugee. Perversely, cooperation with authorities is not evidence of their "refugeeness."

These cases also show that the identity of asylum seekers and the receiving state are not the only relevant identities constructed during this process. In both cases, the identity of other states became a key element of the securitizing claim. In 1992, the identity of China and Cambodia as safe states received substantial attention from political elites, as did Indonesia, Nauru, Papua New Guinea and Norway in 2001. The recognition of refugee status always implies the reconstruction of the identity of other states, and in Australia great pains were made to reconstruct as safe several countries either known to produce refugees, generally be unsafe, or have declined to sign the Refugee Convention.

Additionally, both cases reveal the extent to which securitization in liberal, democratic states fundamentally involves a contest between the executive and the judiciary, broadly understood. The implementation of emergency measures necessarily involves the judiciary in this process, in various ways. It can be a target of securitizing claims, as was the case in 1992; or a secondary target as in 2001. Furthermore, the judiciary can contribute to desecuritization by deciding against the government (executive) or to securitization, by ruling in their favor.

Though this book develops a theory of securitization that moves beyond simply defining it as a violation of domestic processes of decision- and rule-making, it does still highlight the extent to which securitization is at its core concerned with the power and ability of the executive to define, identify and

counteract security threats. This chapter and the preceding one amply illustrate that securitization often does involve the violation of domestic norms of rule-making, but it is not the only feature. At its core, securitization involves a change in the relationship between two units. The detention of asylum seekers in 1989 and the forced interception in 2001 demonstrated a change in Australian policies from international norms and previous treatment of asylum seekers in Australia, which were based on a more humanitarian understanding of asylum seekers.

In the next chapter, I explore the securitization of border control through visa regimes. I contend that visa policies demonstrate the unquestioned nature of states to control entry to the state, even when they prevent refugees from seeking protection. In this respect, the imposition of visa requirements do not resemble the imposition of detention or forced interception, yet they have similarly dire consequences for refugees and asylum seekers.

5 Visa requirements in Canada and Australia

Visa requirements have become one of the most ubiquitous and efficient forms of controlling international migration. As with other forms of immigration and border control, the use of visas can be viewed as a barometer of national anxiety (Salter, 2003: 32). In both Australia and Canada, the use of visa requirements reveals an increasing number of anxieties associated with international migration, and humanitarian migration in particular. Visas have been used to limit access to refugee claimants and to ensure that humanitarian migrants use the "proper," state-sanctioned means of obtaining protection—resettlement. They also reflect anxiety about the use of the humanitarian migration program by non-humanitarian migrants. Lastly, visas reflect a general anxiety about the insecurity of the international passport regime. These anxieties and fears stem from a dominant discourse in which foreigners are identified as threatening and the state as a sovereign entity with a duty and right to control entry.

The visa is, in essence, a letter of permission that allows a non-resident to be in a foreign state for a specified purpose and period. This permission is granted only after the foreigner has been certified by the receiving state as safe and not inadmissible. Because the passport alone is an unreliable means of controlling migration and ensuring the identity and intentions of migrants (see Salter, 2003) the visa has become the key element in the remote control of international migration. Combined with carrier sanctions, the use of visa requirements has made it very difficult for unauthorized foreign nationals to reach receiving states (Guiradon and Lahav, 2000: 178).

The use of visas stems from the perceived need to assess the level of threat posed by foreigners prior to their arrival at the state; this reflects a securitized relationship in which nationals of foreign states are regarded with suspicion, mistrust and fear (Bigo and Guild, 2005: 236). Fear of foreigners is not simply a product of modernity and is a recurrent theme in human history, but with the advent of nationalism and the nation-state, fear of foreigners has been entrenched as state authorities have embarked on a process of expropriating the legitimate means of movement (Torpey, 2000). In this process of expropriation, states have developed several technologies of control, including identity cards, passports, border crossings, carrier sanctions and the visa.

These technologies of control have become so commonplace that Erika Feller argues that visas have always been accepted for the purpose of controlling immigration, drug trafficking, terrorism and for generating income (Feller, 1989: 50).

At the same time, the fallibility of these control mechanisms has served to reproduce the representation of the foreigner as threatening; unauthorized arrivals and those who violate the conditions of their visa demonstrate that the state remains incapable of fully controlling migration. Unauthorized arrivals in particular are seen as threatening both because of what their arrival reveals about the sovereignty of the state as well as what their method of arrival intimates about their own character. Well-publicized unauthorized entries expose the inability of the state to control its borders—signaling the hypocrisy of its own claims of sovereignty and potentially encouraging future unauthorized arrivals. Furthermore, in most cases, unauthorized arrivals would have been excluded had they applied for a visa and had the state been able to control its borders. This has meant that unauthorized arrivals are assumed to possess characteristics or belong to groups already viewed as a threatening and inadmissible by much of the receiving society (Collinson, 1996: 78).

Though states continue to develop new technologies of control in response to the failure of existing practices (see Guiradon and Lahav, 2000) visa requirements remain the "first line of defense" against the threat posed by foreign nationals (Torpey, 1998: 252; Bigo and Guild, 2005: 235). Foreign nationals regarded as undesirable or dangerous require pre-approval by the state to arrive at its entry points, while those perceived as desirable and low-risk are not subject to a visa requirement. (Neumayer, 2005: 75). The visa regime has been based on the initial categorization of threat posed by foreign nationals based solely on their nationality—as visas are applied to states (Bigo and Guild, 2005: 255). Thus, certain nationalities face very different constraints on international mobility than others. Exceptions to the general norm of exclusion are granted based on national characteristics (in the case of visa waivers granted to states) or through a process of individual assessment (in the case of granting a visa). Through the individual assessment process, front line immigration officers assess whether or not individual claimants represent a security threat based on three categorizations of risk: poverty, health and criminal/terrorist tendencies.

Theoretically, these controls could be exerted and threatening foreigners turned away after they arrived at the state's border; however, the move toward remote control reflects the perception that the border is no longer an effective place to control entry (Bigo and Guild, 2005: 235). Arrival at the border triggers certain responsibilities on the part of the state (including those outlined in Chapter two) and assessing the risk posed by a prospective migrant at the border would either require the state to grant entrance during the process or bear the costs of housing and feeding (or detaining) applicants while their application is processed. By ensuring that this process takes place while the

migrant is in their home state or a third state, the receiving state reduces the costs associated with the thorough assessment of potential migrants and avoids triggering international obligations spelled out in the international refugee regime, human rights agreements and domestic legislation. Remote assessment prevents access to legal protections extended to those physically in a state's territory—unlike a negative refugee determination in-state, a negative decision by visa officers is not subject to various legal avenues of appeal. Consequently, the value of visas as a remote immigration control device has been enhanced due to the development of international norms pertaining to the treatment of foreign nationals that come into effect once the foreign national is on one's territory or at one's border.

The politics and economics of migration

Of course, states have interests related to international migration besides keeping out undesirable and threatening foreign nationals. There are economic and political benefits to encouraging and sustaining the movement of people across national borders. These competing interests are evident in the use of visa requirements and waivers. Many states waive visa requirements to ensure economically and politically advantageous forms of migration are not adversely affected by the perceived need to restrict some types of entry. Neumayer has shown that economic interdependence between individual states is a strong factor in the decision to apply visa requirements and exemptions (Neumayer, 2005). As a means of control, visa requirements have proven to be remarkably flexible for the management of migration to enhance the economic and security interests of individual states. Yet, even with this flexibility, states still often face a dilemma between facilitating the cross border movement of people for economic and political benefits and limiting and controlling that flow for its perceived security interests (Neumayer, 2005: 74; Heisler and Layton-Henry, 1993: 149).

There are political factors as well. As noted earlier, granting a visa waiver is viewed as a friendly act, thus putting pressure on friendly states to reciprocate. Though many states claim that visa exemptions are not based on reciprocity (Canada, for example), Neumayer finds that visa exemptions demonstrate a strong pattern of reciprocity (Neumayer, 2005). In Canada, pressure from the European Union to exempt all European states from Canada's visa requirement has influenced its visa decisions on Hungary and the Czech Republic. Domestically, political factors play a role in the decision to implement visa requirements as well. Ethnic communities within states often oppose visa requirements for their home state to facilitate family travel. Kelly and Trebilcock note that in the Canadian case, fear of alienating the Turkish and Portuguese communities played a role in the lengthy delay to re-instate the visa requirement on those countries (Kelly and Trebilcock, 1998: 415).

But, what of humanitarianism? In previous chapters I have argued that states have humanitarian obligations to protecting refugees and to other foreign

nationals in specific circumstances. These codified obligations have circumscribed the range of policies available to state actors in their efforts to control entry to the state. Loescher and Milner argue along similar lines, suggesting that according to international law states have the right to control entry and to enforce their borders, but are also bound by international refugee and human rights instruments to enforce their borders without infringing the right of persons in need of protection to seek asylum (Loescher and Milner, 2003: 595). The constraining effect of these agreements is evident in the debates over detention and naval interception of asylum seekers detailed in previous chapters. Yet, border control policies such as visa requirements and carrier sanctions are increasingly being employed by states with seemingly no concern for humanitarian outcomes. Not only have states shown little concern for the security of individuals subject to visa requirements, states have actually targeted these measures against populations known to be vulnerable and insecure. It is now common practice for Western European and North American states to impose visa requirements on nationals of refugee-producing states (Collinson, 1996: 80). For instance, in the EU, Article 100c of the Treaty Establishing the European Community calls for the imposition of visa restrictions on countries in the event of an emergency situation posing a threat of sudden inflow from that country into the community (Neumayer, 2005: 75).

The more common categorizations of risky migration: those based on nationality, poverty, health and character have long and complex histories (see Salter, 2003; Torpey, 2000). What this chapter is concerned with is not how these categories of risk have been constructed, but how humanitarian migration has been included with other perceived threatening forms of migration. Through the examination of visa requirements and, in the Australian case, temporary protection visas, I argue that control over the entry of humanitarian migrants is considered an essential component of state security. Refugee flows and asylum claims that undermine the state's control of entry have come to be constructed as threatening, and the visa requirement has emerged as the primary means of control.

The portrayal of humanitarian migration as threatening is not a product of domestic factors alone. Though I argue that the production of specific foreigners as threatening is largely shaped by political and media elites within states, these processes are heavily influenced by the international context and the ways in which states have categorized risk. The association of national security with border control has produced a hierarchy of threatening forms of humanitarian migration based on the level of compliance with the visa regime, ranging from resettlement (full compliance) to legal entry/change of status to unauthorized entry (no compliance). Resettlement is the preferred mode of entry and is perceived as the least threatening because it enables the resettling state to exert full control over the process. Resettlement enables states to determine how many refugees arrive, when and where they arrive; it allows security checks to be carried out before they arrive and it enables states to select refugees based on their ability to integrate and succeed. Furthermore,

as was noted in previous chapters, it also reproduces the claim that there is a queue for the entry of humanitarian migration.

The other two forms of entry represent a circumvention of a state's control over their borders, to varying degrees. The state still exerts some measure of control over legal entrants who then apply for refuge status because the migrant must first acquire a visa and undergo security checks prior to their arrival. In this way, this type of humanitarian migration is less risky, and states have typically not viewed this mode of entry as especially problematic. This does not mean states have not attempted to discourage this type of migration, but that they engage primarily in preventative measures, with the visa serving as the primary preventive measure. This has been most evident in the case of the arrival of humanitarian migrants from visa exempt states. Canada, which exempts several states from its visa requirement, has, on several occasions, attempted to prevent migrants from visa-exempt states making refugee claims. This chapter argues that the use of preventive strategies represents and reproduces a securitized relationship, but that these measures have not been viewed as exceptional measures for two reasons: they are not prohibited by international law/norms and because of the institutionalization of this securitized relationship.

The form of entry most associated with insecurity is unauthorized arrival, in which a migrant from a state for whom visas are required has arrived without a visa or with an invalid or illegal visa. In such cases, preventive measures such as the visa, carrier sanctions and interdiction have failed and the migrant may be subject to such punitive measures such as imprisonment, fines, deportation and prohibition on return. The difficulty arises when the migrant claims refugee status. The refugee regime explicitly notes that refugees may need to arrive without authorization to escape persecution and in Article 31 of the Convention explicitly prohibits punishment of refugees based on their mode of entry. Consequently, punitive measures for refugees are viewed as violating the norms of the refugee regime. In Australia, this norm has been violated with the implementation of the temporary protection visa for refugees who have arrived illegally. In the Australian section of this chapter, I show that this was accomplished through an ad hoc securitization process orchestrated by Australian political elites and the media. Yet, to understand how the temporary protection visa and visa requirement have come to be viewed as distinct measures with differing levels of acceptability and implemented through disparate processes, it is necessary to examine how the international refugee regime has constructed some measures as an acceptable means of controlling entry, and not others.

The international refugee regime and visas

International norms of state sovereignty reinforce the claim that states have a right to control entry. At the same time, the international refugee regime prohibits and limits the use of particular migration control tools, though the

realm of policy tools affected by this regime stems from the very narrow way in which the refugee has been defined in international law. According to the 1951 Convention, a refugee is someone who is outside of the country of his nationality; consequently its norms and rules are based on the assumption that the refugee or asylum seeker is encountering the receiving state at its frontiers or borders as they exit their home state—and consequently, this is where the receiving state's obligations are understood to begin. This is explicit in the injunction against *refoulement*; states shall not return a refugee to the frontiers of territories where his life or freedom would be threatened (United Nations, 1951: Article 33.1).

One consequence of the understanding that obligations are spatially located is that states have played fast and loose with their borders; excising parts of their territory, intercepting asylum seekers on the high seas or creating non-arrival zones in their ports and airports to circumvent some of the obligations detailed in Chapter two. Though playing with borders in these ways has resulted in the circumvention of some of the obligations states owe to refugees, such as access to courts or a full determination procedure, in most cases the principle of *non-refoulement* has still been observed. Asylum seekers who end up in non-arrival zones or on excised territory are rarely returned to the frontiers of the persecutory state prior to some determination of their status. Yet, even *non-refoulement*, the strongest norm of the refugee regime, offers no protection to those still inside their home state.

Goodwin-Gill contends that the traditional reading of *non-refoulement*, which is supported by state practice, is that it applies at the moment at which asylum seekers present themselves for entry, either within a state or at its border—even if at that point they are not technically outside their home state (Goodwin-Gill and McAdam, 2007: 208). He concludes that this applies whether the relevant action takes place beyond the national territory of the state, at border posts, other points of entry, in international zones, at transit points or even in international waters (ibid.: 246), though he does not list embassies. At first glance, this reading of the principle raises questions about the use of visa requirements and the location of the border for purposes of humanitarian obligations. Embassies, consulates, visa-processing centers and other government offices abroad exist inside the territory of a host state, but for matters of diplomacy are considered the sovereign territory of the sending state. Because of this, these centers could be considered a site at which foreigners presents themselves for entry, and thus subject to the prohibition on *non-refoulement*.

State practice indicates that obligations to refugees do not begin at offices abroad. Gregor Noll, who explores the applicability of the principle of *non-refoulement* and various human rights treaties to the use of visas, concludes that visa claims at embassies are different from rejection at the frontier and interdiction on the high seas (Noll, 2005: 552). According to Noll, the prohibition on expelling or forcibly repatriating suggests a direct relationship between the removing agent and the territory from which removal takes place;

thus, he concludes that with regard to embassy applications, one cannot subsume the rejection of a visa under the terms expulsion, return or *refoulement* (Noll, 2005: 555–56). The standard understanding of *non-refoulement* as posited by Noll, Goodwin-Gill and others, and as practiced by states, is that requiring a visa of foreign nationals of a particular state and even denying a visa to a persecuted person does not violate the prohibition on *refoulement*.

The obligations created by the refugee regime are perceived as coming into effect only once an asylum seeker has left their home state—even if they have not yet "entered" another. Yet, the principle of *non-refoulement* is not the only grounds on which use of visa requirements has been challenged. Article 14 of the Universal Declaration of Human Rights states that everyone has the right to seek and enjoy in other countries asylum from persecution. According to Loescher, refugees have the right to seek asylum, but states are not obliged to grant it: states retain the power to grant and deny asylum (Loescher, 1993: 139–40). Efforts to enshrine a right to asylum have failed, as Western states have, on numerous occasions, rejected such a provision in international law (Goodwin-Gill and McAdam, 2007: 204; Loescher, 1993: 140). While the right to seek asylum has not been interpreted as a right to be granted asylum, it does imply the right to leave one's country for the purpose of seeking asylum. This is supported by Article 13 of the Declaration, which states that everyone has the right to leave any country, including their own. What this implies for border controls, and visa policy more specifically, is disputed.

Ann Dummett argues that the right of emigration logically must imply a right of immigration (Dummett, 1992: 173). Short of the existence of at least some states or territories that permit free entry for those who wish to leave their home state, instruments that prevent emigration (such as visa controls) violate the universal human right of emigration (ibid.). Dowty, Walzer and others dispute this interpretation by articulating a right of communities to control entry (Dowty, 1987; Walzer, 1983) and state practice and discourse has reasserted that right. Clearly, the right to control entry powerfully shapes the discourse on visas and other forms of remote control. Yet, in many respects, Dummett's argument regarding the ability of individuals to leave their home state actually empowers states to insist on a right of exit without a commensurate right of entry.

Dummett argues that short of the existence of at least some states that permit free entry, states are not permitted to prevent emigration for the purpose of seeking protection. While no states currently permit free entry, very few states have the physical ability to maintain full control of their borders—particularly weaker states that are commonly contiguous to refugee-producing states. Thus, prohibiting an asylum seeker to embark on a voyage to Canada or Australia for the purposes of seeking protection does not prevent that person from fleeing to another receiving state closer to the refugee's home state. Indeed, Western states such as Canada and Australia have used the location of UNHCR camps to support their decision to impose visa requirements.

Furthermore, Western states utilize a variety of methods, such as financial assistance, establishment of UNHCR camps, opening embassies, providing food aid or imposing sanctions, to encourage states that share a border with refugee-producing states to keep their borders open, thus ensuring refugees have somewhere to flee. Because "protection" is available, often in neighboring states, Western states can justify their remote control policies. During the Indo-Chinese refugee crisis of the late 1970s, Australia, Canada and other Western states promised financial assistance and drastic increases in resettlement from camps in Southeast Asian states to encourage those states to keep their borders open to humanitarian migrants. The inability of states to prevent asylum seekers from crossing a border to seek protection thus ensures him or her an exit option, even if it is not enshrined as a right of exit, and thus sustains the use of visa requirements as a legitimate means of controlling international migration.

In many respects, the limited scope of humanitarian and human rights norms pertaining to the right of exit and the prohibition on *non-refoulement* acts as a permissive cause of the use of visas against humanitarian migrants. But, observing the lack of a norm against the use of visa requirements does not explain why states are opposed to curtailing the use of visas nor does it sufficiently address the specific conditions and processes that have resulted in the imposition of visa requirements in response to refugee flows. To address these shortcomings, I examine the use of visas in response to humanitarian migration in Canada and Australia.

Visa policy in Canada

The use of visas to control access to the Canadian labor market has a long history in Canada, but it was not until 1978 that the Canadian government formally implemented a universal visa system for all foreign nationals seeking to enter Canada. Under the 1976 Immigration Act, and upheld in the 2001 Immigration and Refugee Protection Act, a foreign national must, before entering Canada, apply to an officer for a visa (Government of Canada, 2001a: Part 1, Div. 1. Section 11:1). This has meant that any foreigner wanting to enter Canada or to board a plane for Canada had to be in possession of a valid visa, which allowed the foreigner to engage in certain specified activities: work, study, visit, etc. Like other states that employ visa requirements, Canada has used visas as a means of protecting its society and workforce from foreigners perceived to be threatening. Foreigners may be represented as threatening in a variety of ways; they may drive down wages, take jobs from nationals, introduce contagious disease, become dependent on the state, alter the ethnic balance or bring in "conflicts from the old world," etc. As Bigo observes, the visa requirement is fundamentally based on suspicion, fear and mistrust of foreign nationals (Bigo and Guild, 2005: 236).

Technically, Canada's visa requirement is universal, but certain states are exempt from the visitor's visa requirement, allowing citizens of that state to

visit Canada for up to three months without a visa, though they are prohibited from working and studying. Waiving the visa requirement is regarded as an exceptional and welcoming act, signaling that the relationship between the sending and receiving states is friendly (Neumayer, 2005: 77) and that its nationals are trustworthy. Denying visa-free status is not necessarily an unfriendly act, but it does indicate that some citizens of the sending state are suspicious. This is explicit in Canadian regulations, visa exemptions are granted to countries that pose minimal health, safety and security risks to Canadians, as well as minimal threats to the integrity of the immigration and refugee program (Government of Canada, 2007a). Currently 144 countries are subject to visitor visas, while just 47 are exempt (ibid.). Not surprisingly, most of the states that have been granted visa waivers by Canada are economically advanced, Western liberal states (Hashemi, 1993: 7).

Yet, the visa requirement is not simply a reflection of the relationship between states, it signals a suspicion of nationals from that state—not the state itself. Didier Bigo argues that the visa is based on an individual- or minorities-to-states basis (Bigo and Guild, 2005: 240). Thus, the visa may be designed to restrict access to certain individuals or minority groups contained in certain states. The Roma are a good example. Though Canada's visa policy does not explicitly prohibit entry to Roma, Canada has re-imposed visa requirements in response to Roma refugee applicants from the Czech Republic and Hungary. Both states had been exempt from the visa requirement at one point, but because Roma from these states had been applying for refugee status, the visa exemption was revoked. Once the visa requirement was reinstituted, individual assessment of visa applicants acts to prevent certain people from coming to Canada, including those statistically most likely to make refugee claims—in this case the Roma. Thus, states may generally be on friendly terms, such as Canada and Hungary or the Czech Republic, but its citizens still subject to a visitor visa requirement.

While the visa requirement indicates suspicion and fear of foreign nationals, it does not amount to a blanket prohibition on travel or entry to Canada. Individuals from non-exempt states may be granted a visa if a Canadian immigration officer is satisfied that the person is not inadmissible, that is, not regarded as a threat (Government of Canada, 2001a: Section 1, Div 1, Section 11:1). Thus, the assumption is that a significant number of citizens of certain states or a particular group represent a threat, and are therefore, inadmissible. The list of inadmissible classes to Canada has changed over time, both in content and language. At one point, inadmissible classes included idiots, imbeciles and morons, physically defective persons, homosexuals, the insane, etc., but in 1976 the list was refined to broader categories such as those liable to endanger public health and safety or likely to place an excessive burden on health and social services (Kelly and Trebilcock, 1998: 395). The Inadmissability Clause contained in Division 4 of the IRPA, passed in 2001, represents similar fears, excluding individuals on the grounds of security threat, human rights violations, serious criminality, criminality, organized criminality, health,

financial reasons, misrepresentation, non-compliance with the Immigration Act and accompanying an inadmissible family member. Most of the categories of risk are based on "security" interests such as criminality, human rights violations or membership in violent organizations, but the list includes the longstanding concerns with health and poverty as indicators of threat.

One category not included explicitly on the Canadian inadmissible list is that of the refugee. Being a refugee in and of itself is not grounds for being classified as inadmissible, yet, refugees are most definitely excluded through the visa system. Unlike any other applicant for a visa, according to Canadian law a refugee must be outside their home country to apply. With the exception of five states, refugees cannot apply to come to Canada while still in their home state. Once they have fled their home country, a refugee may apply for a permanent resident visa, but first must be referred by the UNHCR or other accepted referral agency or by a private sponsorship group. This presents the most significant hurdle for a humanitarian migrant, because without a referral the refugee cannot even apply for a visa. In the vast majority of cases, securing a referral requires accessing a UNHCR refugee camp.

This practice reproduces the depiction of the refugee as helpless and passive, strips them of agency and reinforces the representation of the refugee as incapable of acting, and one who is acted on or on behalf of (see Malkki, 1996; Soguk, 1999; Nyers, 2006a). Given the extremely low probability of being referred for resettlement, the visa system encourages refugees to "act" in other ways—to use visitor's visas as a means of escape or to attempt to circumvent the visa system entirely by unauthorized entry. Previous chapters amply illustrate how these forms of agency violate the behavioral expectations of refugees as created by states in the refugee regime and are then used as evidence in the reconstruction of the asylum seekers' identity from persecuted refugee to law-breaking illegal immigrant.

Even if a refugee does manage to secure a referral, it does not guarantee a positive assessment. To qualify for a permanent resident visa the refugee must still prove that they are not inadmissible based on the Inadmissibility Clause in Division 4 of IRPA. Applicants must answer a series of questions assessing the level of risk they pose based on national security, criminality, human rights violations, serious criminality and organized criminality. Furthermore, the applicant must provide a detailed personal history, such as education, employment, place of residence, membership in organizations, military service and government positions. The application process for referred refugees clearly denotes a climate of mistrust and suspicion in which the refugee is mistrusted and is feared as a potential threat. In the case of private sponsorship, the refugee must also show that they are privately sponsored or that they have the funds necessary to support themselves and their family. In this case, the refugee is assessed against another categorization of risk—poverty. The privately sponsored refugee may be denied a visa on the grounds that immigration officials suspect that they will become financially dependent on the state if allowed into Canada.

As the visa regime has become entrenched as a normal part of international migration, unauthorized arrival and the use of the visa exemption to seek asylum are viewed as threatening to the control regime. Canada has employed carrier sanctions and interception officers to prevent unauthorized arrivals, but with a long, undefended border, complete prevention of unauthorized entry is regarded as an unrealistic and unachievable goal (Cox and Glenn, 1994: 283–85). The Canadian state has focused instead on preventing perceived abuse of the visa waiver system. In the event that a sufficiently large number of citizens of a visa-exempt state apply for refugee status, visa exemptions may be withdrawn—thus forcing humanitarian migrants from those states to use the resettlement route or enter illegally. Re-imposition of the visa is often a last resort, after information campaigns and cooperation with the refugees' home states have been exhausted. In the event such measures do not stem the flow, visa requirements are implemented.

The use of visitor's visas to target refugee flows in Canada has contributed to a gradual reduction in the number of states granted visa exemptions: in 1989, 65 states were exempt from Canada's visa requirement (Matas and Simon, 1989: 34), today 44 are exempt. The withdrawal of visa exemption for Haiti in the late 1970s; Chile in 1980; and Guatemala in 1984 were all in response to an increase in the number of asylum seekers (Matas and Simon, 1989). This was also the case with the visa requirement for Sri Lanka, Portugal and Turkey (Kelly and Trebilcock, 1998: 414–15) as it was in the case of the Czech republic in 1997; Hungary in 2001; Zimbabwe in 2001; and Costa Rica in 2004.

This measure has proven very effective in preventing access to asylum seekers. After the withdrawal of the visa exemption, claimants from Costa Rica decreased from 1,335 in 2003 to less than 55 in 2005; Zimbabwe from 2,195 in 2001 to 92 in 2002; Hungary from 2,961 in 2001 to 252 in 2002; the Czech Republic from 9,333 in 1997 to 43 in 1998 (Government of Canada, 2006).

The re-imposition of visa requirements in response to the arrival of humanitarian migrants represents a case of institutionalized securitization, whereby a standing bureaucracy deals with persistent and recurrent threats (Buzan et al., 1998: 27). Like the military sector, the inadmissibility criteria for states reveals that migration is an area where states have long endured threats from foreigners, and consequently there are institutionalized procedures to deal with these threats. As Buzan notes, there is no need for drama, because it is implicitly assumed that when we talk of the issues (in this case migration) we are by definition in the area of urgency (ibid.: 28). What marks this type of migration control as an interesting case of securitization is that it need not rely on public securitizing speech acts. The standing bureaucracy deals with these threats in accordance with existing procedure—the re-imposition of the visa requirement.

Visa requirements and the protection of the migration regime

Refugee claims from visa-exempt states are viewed as threatening because they are seen as undermining the integrity of the migration control regime.

They do so in three ways: they undermine the state's control over the entry of humanitarian migrants through the resettlement program, they undermine the state's control over non-humanitarian migration through the regular migration program and they expose the insecurity of the international passport/individual identity regime. Thus, visa requirements have become the blunt tool used to uphold the integrity of these systems.

The visa requirement is used to control the entrance of refugees through the resettlement program in Canada. Though all onshore refugee claims are viewed as undermining the integrity of the resettlement program, a small enough number of such claims is viewed as an acceptable level of risk. The level in Canada is two percent; the Canadian government reconsiders the exemption status of a state if its citizens make up two percent of Canada's total refugee claims in a year (Berthiaume, 2007). The two percent standard has been a fairly robust standard; of the 19 states that have met this criteria since 1996, every state but Mexico has had its visa exemption revoked. This measure is based on the total number of claims, without reference to the success rate of these claims. The disregard for the success rate of claims demonstrates that the visa is used not to prevent abuse, but to discipline refugees to ensure they use the proper means of accessing protection. The imposition of the visa requirement on Guatemala in 1984 clearly demonstrates this logic.

In 1984, the Canadian government removed the visa exemption for Guatemala in response to an increase in refugee claimants from a regime that was clearly persecutory. The previous year, the success rate of Guatemalan refugee claimants in Canada exceeded 70 percent and in early 1984, the Canadian government joined the United Nations in condemning Guatemala for abuses taking place there. In other words, it was clear that the Canadian government recognized that refugee claimants from Guatemala had "genuine" claims. Yet, removal of the visa exemption garnered no significant coverage in the mainstream media. In parliament, the visa issue was a very minor matter. Only one Member of Parliament questioned the government's decision to impose the visa on Guatemala. Dan Heap, a member of the New Democratic Party and an outspoken proponent for refugees, questioned government members on four separate occasions. Despite Heap's efforts, the decision to impose a visa requirement on Guatemala did not become a major issue in the House of Commons, was not embraced as a relevant issue by the primary opposition party and never moved beyond one member's concern over the issue.

In response to Heap's questions, the government provided an explanation for its decision. According to the government, the visa requirement was necessary because "the government cannot keep pace with the volume of claims" (Ethier, 1984). Upon further questioning, the government revealed that a "more generous provision [has been] put in place" than the visa exemption (Roberts, 1984). The more generous provisions included expedited visa processing and the eventual inclusion of Guatemalans in the special designated classes of refugees. In essence, the special provisions allowed Guatemalan refugees to seek protection in Canada while still in Guatemala, thereby preventing

Guatemalan asylum seekers from reaching and making claims in Canada, forcing them to make their claims at the Canadian embassy in Guatemala.

Implemented as a matter of regulatory change, rather than legislative change, the decision to remove Guatemala's visa exemption met with minimal resistance or debate among the governing elite and with limited public exposure via media coverage. The government justified this policy on the grounds that it was necessary to maintain the existing system and to reassert control and pre-selection over refugees entering Canada. Abuse of the system was not the motivating factor; rather it was implemented to ensure control over the entry of refugees.

At the same time, the Guatemalan case reveals that humanitarian considerations were not completely ignored in the visa requirement decision-making process. The alternative resettlement measures implemented for Guatemalan refugees clearly indicate that states recognize the need to provide protection for refugees and the deleterious effect visa requirements have on the ability of refugees to access protection. In this case, the security of the state, defined exclusively in terms of its ability to control the entrance of humanitarian migrants, was afforded priority over the security of refugees—though the security of refugees was not completely absent from consideration.

The visa requirement is also used to ensure the state's control over the entry of non-humanitarian migrants. According to the Canadian government, visitor visa requirements are often used as a control measure in response to escalating numbers of *unfounded* refugee claims (Government of Canada, 2001b)—though the Guatemalan case demonstrates that this is not always the case. In this view, the visa waiver permits non-humanitarian migrants to use the visa waiver and refugee determination process to circumvent the controls imposed on non-humanitarian migrants through Canada's point system for admission of immigrants. The points system, which was adopted in 1978, selects potential immigrants based on economic and family criterion—assigning points to applicants based on specific attributes, such as language proficiency, education, etc.

Onshore refugee determination has often been viewed as a means to circumvent this system. Thus, the visa requirement has been used to ensure that family and economic migrants use the regular migration route rather than the refugee determination process. The imposition of the visa requirement on Costa Rica in 2004 is a prime example of this logic. Between 2002 and 2004, an increasing number of Costa Rican nationals, who were exempt from the visa requirement, were applying for refugee status in Canada, such that by 2004, Costa Rica was among the top six source countries.

In this case, the visa was imposed not because Costa Rica was viewed as a refugee-producing state, but because it was not. The success rate of asylum seekers from Costa Rica was less than two percent at a time when the average in Canada was over 50 percent; and the dominant representation of Costa Rica in Canada was as "a longstanding democracy," with an "excellent human rights record" and an "independent judiciary" (e.g. Jimenez, 2004a, 2004b).

In this representation, the asylum seekers were non-humanitarian migrants who were using their visa-free status and the refugee determination process to gain permanent residence in Canada without qualifying based on Canada's point system. A similar logic resulted in visitor's visas being applied to Portugal and Turkey. The use of the visa requirement in these cases demonstrates a concern with ensuring the integrity of the existing non-humanitarian immigration control system as the only means of entry for non-humanitarian migrants.

The visa requirement is also used to protect the state from the insecurity of the international passport regime, an issue explored at length by Mark Salter (2003). Because the visa regime is dependent upon the passport regime as a secure way to identify foreign nationals, states are dependent upon the ability of other states to ensure the integrity of their passports. Waiving the visa requirement of a state implies not only a friendly relationship with that state as Neumayer suggests, but also denotes trust in the security of their national identification—the passport. In such cases, anyone carrying the passport of a visa-exempt state, provided they pass the visual inspection of the passport, has access to the state; and the ability of non-nationals to gain access to those identity documents undermines the integrity of the system and its ability to keep out persons who may otherwise have been inadmissible. Thus, visas are imposed on states whose passports are viewed as insecure.

Such concerns were especially prominent in the heavily securitized atmosphere after the September 2001 attacks on the United States. At that time, the United States and a number of other states began to pursue more secure forms of the passport, as well as a host of other measures designed to establish control over the identity and movement of foreign nationals (Salter, 2003). In addition to concerns over the security of identity documents, in the US, there were well-publicized fears that Canada's immigration and refugee system was a source of insecurity. As a result, two "solutions" were advanced: increased border security along the Canada–United States border and the establishment of a North American security perimeter through the harmonization of immigration and border control policies (Andreas and Biersteker, 2003). In Canada, the response of the United States triggered competing claims about Canadian security. On one side, there were fears that failure to cooperate with the United States would negatively affect Canada's economy as the United States' government moved to restrict cross border movement. On the other, there were fears that cooperation with the United States on border security would mean a loss of sovereignty and an inability to set its own immigration and refugee policies (Pauly, 2003: 102).

The Canadian government pursued a number of measures designed to provide greater security and to ameliorate American concerns over the Canada–United States border, including: anti-terrorism legislation, tightened immigration regulations and a safe third country agreement (Pauly, 2003: 100). In December of 2001, the Canadian government also announced that visa requirements would be imposed on eight countries (Dominica, Grenada, Hungary, Kiribati,

Nauru, Tuvalu, Vanuatu and Zimbabwe) that were already subject to visas in the American system.

The reason cited for the decision to re-impose visa requirements on Zimbabwe and the six small island states was directly connected to the issue of terrorism and security. According to the immigration department, identity documents issued by these states were insecure. The immigration minister informed the media that passports from these particular states could easily be obtained by undesirables and those deemed security threats; allowing them to enter Canada without being assessed or investigated (Clark, 2001). One immigration official was quoted as saying that "there has been a 600 per cent spike in non-Zimbabweans arriving at Canadian border carrying Zimbabwean passports" (Harper, 2001). The spike in "Zimbabwean" arrivals was reflected in the increasing number of refugee claims from that country. In the year 2000, 245 asylum seekers from Zimbabwe sought refuge in Canada, representing less than a sixth of one percent of the total number of refugee claimants in Canada. In 2001, there were over 2,700 claimants carrying Zimbabwean passport, representing close to six percent of the total number of claimants (Government of Canada, 2006). The drastic increase in the number of refugee claims was partially attributed to the declining security of the Zimbabwean passport.

Thus, in this case, the visa requirement was used to protect the state from the insecurity of the passport regime, and the inability of the Zimbabwean state and the six island states, to ensure the security of their identity documents. In this way, the visa regime may be used to discipline states that fail to fulfill the expectations of the international community regarding the security of the passport regime as well as disciplining individual migrants to adhere to established migration mechanisms.

The decision to impose visas on Zimbabwe was opposed by the Canadian Council for Refugees, because they feared it would prevent people from fleeing persecution (Clark, 2001). By December of 2001, there was little doubt that Zimbabwe was a refugee-producing state. Members of the Canadian Parliament discussed and debated the situation in Zimbabwe and Canada's response to Mugabe's government on 14 separate occasions in 2001. The political, social and economic unrest caused by reforms imposed by Mugabe's government were regular features in international and Canadian news reports. In the four papers under examination, there were over 100 stories on the deteriorating situation in Zimbabwe in the six months prior to the visa decision. Just days before the visa requirement was re-imposed, Canadian news outlets reported that the Mugabe government had attacked the opposition, independent media offices and vendors selling independent papers (*Associated Press*, 2001). Though the situation in Zimbabwe could hardly be described as a crisis for Canadian politicians in 2001, the dominant representation of Zimbabwe in the media and by political elites was as a refugee-producing state. Furthermore, this construction of Zimbabwe's identity was reflected in the acceptance rates of Zimbabwean asylum seekers in Canada, who had a

success rate over 70 percent (Clark, 2001), at a time when the average in Canada was 57 percent.

The Immigration Minister, Elinor Caplan, defended the visa decision by proclaiming that Canada was

> proud of our humanitarian and compassionate response to people in genuine need. The difficulty we all face is that there are some people who come who don't tell us the truth and are using the refugee determination systems for other reasons
>
> (Caplan quoted in Harper, 2001)

The Prime Minister defended the new visa rules by arguing that "cooperation (with the U.S.) is important … we all gain when we have security in any country" (Chretien, quoted in Clark, 2001). The insinuation from the government in Canada was that some asylum seekers with documents from certain states, including Zimbabwe, were using the visa exemption and refugee process for ends that would undermine Canadian and American security.

The Canadian government recognized the negative effect visa requirements would have on genuine Zimbabwean refugees during its commiserations over the implementation of the visa requirement. In this case, nearby UNHCR camps in Namibia and Zambia were viewed as presenting sufficient opportunity for Zimbabwean refugees to obtain protection (Caplan, 2008). This demonstrates the way in which the visa and resettlement regimes are viewed as mutually reinforcing; the visa requirement is rendered appropriate and not a denial of protection through the availability of UNHCR camps, which simultaneously reinforces the claim that there exists a resettlement queue. Conversely, the resettlement program is maintained through the use of visa requirements that physically limit the ability of refugees to flee anywhere besides neighboring states and UNHCR camps.

The appropriateness of visa requirements as a migration control tool and of the immigration bureaucracy as the appropriate body to determine when such measures should be implemented is indicated by the lack of attention to the visa decisions by the media and political elites. In the Guatemalan case, the decision was mentioned in parliament four times by one particularly vigilant MP, but it was not a major issue. The media ignored it entirely. The visa decision on Costa Rica was reported by the Canadian newsprint media twice—both by the *Globe and Mail*; and in the Zimbabwean case, there were four stories on the visa decision—two from the *Globe and Mail*. In neither the Costa Rica nor Zimbabwe case did any of the political parties question or debate the decision in parliament. With visa requirements, such questions are not needed since it is understood that visa policy is in the realm of national security. Furthermore, the hegemonic discourse was that there were other, more appropriate means for humanitarian migrants to access protection. Canada's resettlement program, considered among the most generous in the world and highlighted in Caplan's defense of the visa decision, sustained the

impression that refugees who had fled to neighboring states could still seek protection in Canada. The visa exemption system was designed to facilitate the movement of tourists and family visits, not humanitarian migrants, family migrants or economic migrants.

The imposition of the visa requirement, and the response to it, clearly indicates that it is an accepted tool of migration control. In many respects, this is a product of an international regime that reinforces state sovereignty and border control and limits the obligations of states to foreigners at its own borders. Yet, the decision to impose visa requirements is very much a product of a domestic discourse of danger, in which specific foreign nationals, or identity documents from foreign states, are viewed as suspicious and untrustworthy. The lack of drama or contestation of this policy reflects both the institutionalization of this threat and the absence of international norms against their use. This is not the case with punitive measures toward asylum seekers at or in the state. As contested and prohibited measures they too reflect a securitized discourse, but one that is dominated by contestation among political elites, rather than an institutionalized bureaucratic process. This is evident in the Australian case of temporary protection visas.

Australia

Like Canada, Australia uses visa requirements to keep out foreigners viewed as threatening, to maintain its immigration and refugee resettlement program and to protect it against the insecurity of the international passport regime. The types of threatening foreigner the visa aims to exclude are criminals, health risks and the poor. Not surprisingly, Australia's inadmissibility criteria bear a marked similarity to Canada's, and other Western states. This securitized relationship between the state and foreign nationals has become institutionalized in nearly all states, to varying degrees, though Australia's extensive and elaborate visa system is symptomatic of an intensely securitized relationship. Its visa requirement regime applies to far more states than any other Western states, with New Zealand as the only exemption (Stevens, 2002: 865). In comparison, Canada currently exempts close to 45 states, and the United States, 27. As a further means of control, Australia employs numerous classes and subclasses of visas. This enables different conditions to be applied to each type of visa, which enables Australian authorities to exert greater control over each class of migrant and allows the immigration department to profile those who violate the terms of the visa. This has meant that Australia's immigration ministry can identify characteristics of individual migrants who violate the terms of their visa and withhold visas from individuals statistically likely to do so (Cox and Glenn, 1994: 286). This is possible because Australian authorities track both entry and exit, meaning Australian authorities have an accurate count of the number of people still in Australia on various types of visas and those who have overstayed their visa, as well as detailed personal information on each (Birrell, 1994: 112). Compared with the Canadian visa system,

the Australian system is far more comprehensive, and as noted earlier, exhibits greater concern with control over entry and exit and with detecting and preventing fraudulent claims.

One consequence of this system is that migrants cannot use a visa exemption to access Australia's onshore refugee determination system—they must either obtain a visa and arrive legally or arrive in an unauthorized manner. Furthermore, the Australian government need not produce a list of states whose nationals are regarded with more suspicion or whose passports are less secure, since all are subject to the visa requirement. Therefore, Australia does not impose visa requirements in direct response to refugee flows; since states that produce refugee flows are already subject to visas, the Australian government can use the visa application process in the same way as Canada—to weed out potential asylum seekers and ensure they use the intended humanitarian migration program—resettlement.

As in Canada, the resettlement program is the primary means through which humanitarian migration to Australia may legitimately take place. Refugees and other humanitarian migrants are expected to apply for a protection visa while outside Australia—where they are subject to intensive security checks and are owed no obligations by the state. In turn, the universal visa requirement prevents the arrival of those foreign nationals whom Australian authorities suspect may apply for asylum, which maintains the resettlement program as the preferred mode of entry for humanitarian migrants. While visas mitigate the risk of a foreign national applying for asylum once they arrive at the state, this has not prevented asylum seekers from entering on other types of visas for the purpose of seeking asylum (change of status claims). Yet, neither Australia nor Canada view change of status asylum claims as especially problematic—since their entry was authorized by the state and their level of threat (based on health, criminal and financial criteria) has already been assessed through the visa application process. In short, they present less of a threat to the receiving state.

That change of status refugee applicants are viewed as less threatening than unauthorized refugee applicants is evident in Australia's temporary protection visa. Implemented in 1999, the Australian government essentially created a two-tier system for refugee applicants: resettled refugees and people who arrived lawfully (change of status applicants) were eligible for permanent protection, while unauthorized entrants were eligible only for Temporary Protection Visas (TPV) (Stevens, 2002: 884). Prior to this, the Australian protection visa worked in the same way as the Canadian protection visa; any person that was recognized as being owed protection by the state was given permanent protection, with a standard set of socio-economic rights, such as travel, family reunification, financial assistance, etc.

The differences between permanent and temporary protection in Australia are substantial. TPVs are valid for three years, and the holder cannot apply for permanent protection until 30 months have passed. During this time, the TPV holder is not eligible for income support, has limited access to Medicaid,

has no automatic right of return if they choose to leave Australia and has no access to family reunion (Stevens, 2002; Mansouri and Bagdas, 2002). To qualify for permanent protection, and the rights and privileges associated with it, the applicant must reapply and demonstrate that repatriation to their home state is not possible. In 2001, as part of the changes implemented following the *Tampa* crisis, some TPV holders were excluded from applying for permanent protection altogether: those who had spent more than seven days in another state where they could have accessed protection and those who had committed a serious crime in Australia while under the TPV.

Like the visa requirement, the TPV is designed to maintain the integrity of Australia's immigration and refugee resettlement program. By punishing unauthorized arrivals by providing a less attractive form of protection for refugees, the TPV is designed to encourage humanitarian migrants to apply for Australian protection through the proper, resettlement program, and to dissuade non-humanitarian migrants from attempting to use the onshore refugee determination process to circumvent Australia's immigration program, which, like Canada's, relies on the point system.

Unlike the use of entrance visas, temporary protection is not the norm in the international migration regime and it alters the terms of protection offered to refugees, which violates existing norms of refugee protection. Not surprisingly, the process leading to the use of TPV's has differed significantly from the process of changing visa requirements in Canada. Because the TPV violates existing norms and alters the relationship between the state and refugees, the violation of such norms had first to be rendered necessary and acceptable. Institutionalized forms of securitization do not accomplish this—it required an ad hoc securitization process.

The securitizing move that resulted in the implementation of the temporary protection visa rested on three interrelated claims: 1) the asylum seekers were illegal migrants victimized by people smugglers; 2) they were jumping the refugee queue and could have accessed protection elsewhere; and 3) the rapid escalation of arrivals presented a threat to Australia. The first claim was an extension of the dominant representation of asylum seekers since 1989, which by 1999 was accepted virtually without challenge by the main political parties and media. The media used the term illegal immigrants and boat people interchangeably, while Labor's immigration critic and the Immigration Minister explicitly equated the two in parliament (e.g. Sciacca, 1999; Ruddock, 1999b). This representation of asylum seekers was virtually uncontested by political elites and in the mainstream media.

What differed in the 1999 discourse from that in 1992 was that the migrants were depicted as victims of people smugglers. A variety of characterizations supported this claim: the arrivals were duped into coming to Australia either by false promises of free access to Australia's medical services (e.g. MacKinnon, 1999a, 1999b) or by promises of employment that ultimately wound up being coercive employment in the illegal labor market (e.g. Hughes, 1999) or the sex trade (e.g. Mcclymont and Clennel, 1999; McKinnon, 1999a;

The Daily Telegraph, 1999: 1). Consequently, the onshore refugee determination process was depicted as encouraging people smugglers to victimize desperate people and to bring in people that represented a threat to Australia. The Prime Minister, John Howard, summed up the connection "illegal immigration, people smuggling … poses a very significant threat to countries like Australia" (Howard, 1999). In this construction, this type of migration undermined the very purpose of the visa regime, to keep out threatening types of migration.

The second claim made in 1999 reflected a concern with maintaining resettlement as the primary means of humanitarian migration to Australia. It was based on the changing source countries of asylum seekers in the late 1990s and actually belies the first claim, in that it acknowledges some of the asylum seekers may have genuine refugee claims. By the late 1990s, a growing number of boat arrivals to Australia originated from more distant countries such as Iraq, Iran, Somalia, Sri Lanka and Afghanistan rather than the Chinese and Cambodians that dominated such arrivals in the early 1990s. This meant that the most recent arrivals had traversed ever-greater distances to arrive in Australia and had spent significant time in several states prior to reaching Australia. According to the Immigration Minister, the asylum seekers "have been living in security and safety for a number of years in third countries and are now seeking to get to the front of the queue for asylum places in Australia" (Ruddock, 1999b). On another occasion he noted that "they are people who are not local to our region, they have traveled halfway around the world … to seek protection here. In many cases they are relinquishing situations of security they are now in" (Ruddock, 1999c). Furthermore, the asylum seekers were depicted as "people who had already obviously have alternative protection available to them" (Ruddock, 1999b). He went on to note that the system was being exploited by "those who do have alternatives while those who have no alternatives miss out" (Ruddock, 1999b).

This representation reinforced the claim that there was a queue for resettlement in Australia, and that unauthorized arrivals were circumventing this queue and taking spots from refugees in more serious need of protection. This was reflected in the construction of Australia as an easy target around the world that was attracting migrants through its protection visa. Thus, the issue was not that the boat arrivals were not refugees, but that they were refugees who had traveled great distances and could have accessed protection closer to their home states. In short, they were acting in ways that violated the behavioral expectations of refugees. By "deciding" where and how to best achieve protection, the asylum seekers were violating the expectations set out in the international refugee regime and reinforced through the use of UNHCR camps and resettlement programs.

The construction of boat arrivals as illegal immigrants who could have accessed protection elsewhere re-produced Australia as an easy mark or a soft target, a depiction that had been common since the late 1980s and became increasingly prominent in the 1990s. In that sense, the discourse on asylum

seekers in 1999 was not that different from previous years. What marked the issue as a crisis requiring emergency measures in 1999 was the escalating rate of arrival. According to Ruddock, there had been a "very rapid escalation" and a "huge increase" in authorized arrivals; resulting in a refugee system that was "under enormous pressure" (Ruddock, 1999c). The opposition party, the Labor Party, played an important role in constructing the arrivals as a threat. In May of 1999, Con Sciacca, the Labor Party's immigration critic issued two separate press releases claiming that "illegal immigrant problem quickly [was] reaching crisis proportion" and that "the flood of illegal immigrants" [was] a major crisis and a possible threat to national security (Sciacca, 1999). In parliament, Sciacca claimed that Australia was facing a "current crisis of illegal immigrants" (ibid.).

The media contributed to the sense of crisis, with over 120 stories on boat arrivals and illegal immigration between January and October 1999 between the four papers under examination. The papers overwhelmingly depicted the asylum seekers as illegal migrants, and contributed to the sense of crisis by using flood metaphors, and associating the arrivals with people smuggling, organized crime and sex trafficking. Headlines like "Illegal Migrant Numbers Keep Rising," "Rusty Boats beat Leaky Security" and "First Wave in Flood of Illegals hits WA" (McKinnon, 1999; Skehan, 1999; Wynhausen, 1999) supported the dominant representation of the asylum seekers as illegal immigrants and Australia as threatened by the sheer number of arrivals.

The securitized depiction of the asylum seekers and Australia was virtually uncontested such that the two main political parties fought to present themselves as the party that was tougher on illegal immigration. According to the Labor Party spokesman, the "Labor Party is as tough as, if not tougher than, the government when it comes to illegal immigrants" (Sciacca, 1999). In turn, the governing Liberal-National coalition sought to depict itself as tougher on immigration by characterizing the Labor Party as preventing the government from addressing the issue. On numerous occasions, the government called for the opposition to "withdraw their Senate Opposition and allow the passage of the legislation that will do so much to remove the perception … that this country is a relatively easy mark" (Howard, 1999).

Given that both parties sought to portray themselves as tough on illegal immigration, most of the measures proposed by the government were uncontested and even supported by the opposition; including increased people smuggling fines, more money for coastal surveillance, increased search and seizure powers, fingerprinting and DNA testing of asylum seekers and temporary protection visas. Yet, as the previous quote indicates, there was disagreement between the parties over one proposed measure. The coalition government sought to pass a privative clause restricting the right of the court to intervene on immigration matters—continuing the effort to prevent judicial review of failed claims dating back to 1989. According to Ruddock, the privative clause was necessary to prevent abuse of the refugee system (Ruddock, 1999a). On three occasions in 1999, he called on the opposition to support

the privative clause legislation. The Labor Party was able to prevent this legislative change due to their control of the Senate, and did so on the grounds that there was no link between the illegal immigrants and the ability of failed asylum claimants to have their cases reviewed by the judiciary. Instead, the opposition called for the creation of an Australian coast guard and greater diplomatic efforts to combat people smuggling (Sciacca, 1999). Notably, opposition to the privative clause measure continued until the summer of 2001, when the Labor Party dropped its opposition in the wake of the *Tampa* crisis.

The securitization process that resulted in the introduction of the TPV in Australia differed significantly from changes in visa requirements in Canada. In many respects it was a product of the institutionalization of the visa and the nature of the measure proposed. In Australia, the government was implementing a new type of visa and was not simply applying existing measures already institutionalized as in the Canadian case. Consequently, the opposition was in a better institutional position to prevent the changes from taking effect—as it had with the privative clause. At one point, it even appeared the Labor Party might challenge and prevent the implementation of the TPV. Once opposition to the measure, voiced by refugee advocate groups such as the Refugee Council of Australia, church groups and Amnesty International, became public, some members of the Labor Party expressed reservations over the measure (e.g. Cauchi, 1999). Labor spokesman Sciacca even admitted that there were differences of opinion within the Labor Party over the TPV (MacKinnon, 1999c). In the end, the Labor Party did not use its control of the Senate to prevent the measure from being implemented. Gerry Hand, a former Labor Immigration Minister and a member of a government committee summed up Labor's eventual support for the TPV on the grounds that "either let the minister run the program … or let the international people smugglers run the program for you" (ibid.).

There were actors in Australian society that viewed the measure as a violation of Australia's international obligations, and Labor briefly flirted with opposing the TPV. Thus, unlike changes in visa requirements in the Canadian case, the government was forced to publicly legitimize the new visa policy. According to the Immigration Minister, the TPV was necessary to "reduce the attractiveness of Australia as an option for those who seek to come here unlawfully" (Ruddock, 1999a). The goal was to make its protection system unattractive to prospective refugees in the hopes of deterring them from choosing to go to Australia. In the face of receiving a diminished form of protection, refugees would presumably either take the lawful route, or choose another destination.

The same measures did not apply to change-of-status applicants, the TPV targeted unauthorized arrivals. According to Ruddock, there were good and appropriate reasons to be more concerned about unauthorized arrivals. First, the state needed to know "whether they pose a risk to the health of Australian community" and "whether they are criminals … or whether they pose a risk to our security" (Ruddock, 1999e). Unauthorized arrivals were depicted

as more threatening than other forms of asylum seekers, even though both "abused" the refugee determination process. The same measures were not needed for lawful arrivals, because "we have had an opportunity to clearly identify them and to satisfy ourselves from information made available to us that they are not criminals and they are not of security concerns" (ibid.). Regarding visa overstayers, Ruddock argued, "we know who they are and if they happen to overstay a visa I do not regard it as being the same urgency" (ibid.).

In addition to explaining how unauthorized asylum seekers in particular represented a more threatening form of migration, the government made an effort to downplay the exceptional nature of the TPV arrangement and to refute claims it violated Australia's international obligations. Introducing the TPV on 13 October, Ruddock commented, "the measure is not unusual" (Ruddock, 1999b), noting how temporary protection had been used by Australia in the past and that it had been used in response to refugees from Kosovo. Ruddock argued that permanent protection was not the required, or even the preferred form of protection in the international refugee regime:

> There is strong international support for what we are proposing. In addition to saying on Friday that the refugee convention does not stipulate what kind of visa a sovereign state should issue to refugees in fulfilling their obligations, the UNHCR had this to say: Refugees are particularly vulnerable to migration networks, organized criminal rings … UNHCR is supportive of measures which are designed to minimize such activity while maintaining and strengthening the international refugee protection regime.
>
> (Ruddock, 1999d)

The media supported this representation, reporting that the UNHCR supported the TPV and quoting Hitoshi Muse, the UHNCR representative in Australia: "temporary visas would not breach human rights obligations" (MacDonald, 1999). In this construction, the TPV was a legitimate measure because it was actually supported by the UNHCR. While temporary protection has been endorsed by the UNHCR in a number of situations, the most problematic component of the TPV was not necessarily the temporary component, but the other ways in which the TPV punished asylum seekers. Refugees granted TPVs were denied access to settlement support services, employment assistance programs, the full range of social security benefits, family reunification rights, English language training and the automatic right of return (Mansouri and Bagdas, 2002: 23). The refugee regime clearly prohibits punishing asylum seekers based on their mode of entry (UN, 1951: Article 31:1; Stevens, 2002: 884), and various human rights treaties stress the importance of the family unit and family reunification (Mansouri and Bagdas, 2002: 8–9). The TPV was designed to deny these rights to refugees, to make Australia less attractive to genuine and bogus refugees and to enforce resettlement as the appropriate means of entry for refugees. Yet, according to

the Australian government, the limited protection offered under the TPV did not qualify as punishing refugees based on their mode of entry, since it equated punishment with fines or imprisonment (Stevens, 2002: 884).

The government straightforwardly admitted that the TPV targeted those who were "found to be in need of refugee protection" (Ruddock, 1999b), but justified it on the grounds that they were unauthorized arrivals who undermined the existing system for providing protection. This rationale is reminiscent of the Canadian case, where the success rates of asylum seekers were immaterial to the re-imposition of visa requirement, what was of concern was ensuring that refugees used the appropriate mechanism for immigrating to Canada. In the Australian case, the protection visa itself was altered to encourage compliance with the existing protection system.

Australia's universal visa requirement demonstrates the importance its governments have placed on controlling entry to the state and the fear, mistrust and suspicion it has of foreign nationals. The implementation of the TPV demonstrates the government's willingness to diminish protection offered to recognized refugees in the hopes of deterring unauthorized arrivals by making Australia less attractive for refugees. The discursive practices of political and media elites in 1999 rendered this extraordinary measure acceptable and necessary to secure Australia from threatening migrants and to sustain resettlement as the appropriate method of humanitarian migration.

Conclusion

The use of visa requirements in both Canada and Australia reflects fear and suspicion of foreigners based on their national identity—either because nationals of such states are more likely to be threatening or because the identity documents of such states are untrustworthy. The individual assessment component of the visa application is clearly designed to prevent the arrival of foreigners categorized as threatening, based on their character, health and socio-economic position. The comparison of Canada's and Australia's visa policies demonstrate the similar view of foreign nationals and how they have categorized threat. At their core, both reflect a securitized relationship between the state and foreign nationals and both use visas to maintain the resettlement program as the normal mode of humanitarian migration to these states and to ensure compliance with regular migration channels.

Yet, the visa systems employed in these two states clearly demonstrate difference in the degree of securitization. Australia's universal visa regime and its use of temporary protection for unauthorized arrivals reflect a more securitized condition than in Canada. As Glenn and Cox note, Australia has placed greater emphasis on maintaining control over the entry and exit of foreign nationals than has Canada. The reasons for this are multiple: geographic location, historical/cultural experience, influence of labor unions, division of governmental power and the number of unauthorized boat arrivals have all played an important role. What this chapter reveals is that despite

these differences, international norms regarding the treatment of foreigners, and refugees, both enable and constrain political elites in both states. Violations of international norms of protection have occurred as Australian authorities have more successfully, and repeatedly, depicted Australia as threatened by humanitarian migration.

Lastly, this chapter also clearly demonstrates the distinctive nature of institutionalized and ad hoc forms of securitization developed at length in the second chapter. In the case of Canada's use of visa exemptions, the immigration bureaucracy played an instrumental role in the identification of threat, and in the appropriate response. The assessment of the CIC was virtually unchallenged by political elites or the media, nor was the appropriateness of the measures imposed questioned. This reflects a securitized relationship in which the means of averting recurrent threats are already legitimized as an appropriate and normal response. However, the ad hoc securitization process is demonstrated in the Australian implementation of the temporary protection visa. In this case, the threat was established through public pronouncements and the measures proposed and implemented to deal with the threat were extraordinary, requiring legitimization and subject to public contestation.

The arrival of refugees outside of the resettlement program has been viewed as threatening to the sovereignty of the state, regardless of the merits and success rates of individual claimants and the obligations of the international refugee regime. Visa requirements have been used to ensure that humanitarian migrants comply with the existing resettlement regime for humanitarian migrants. This is made possible by the international refugee regime, which has created a set of obligations that come into effect only at the territorial borders of the state, with embassies and visa processing centers excluded as the territorial border.

Conclusion

The tension between ensuring national security and providing protection for refugees is inscribed into the international refugee regime and the domestic legislation of all signatory states. This should not be surprising—after all the 1951 Convention was not a fundamental break from existing practice, it built upon an existing migration regime and the discourses of danger that sustained it. As Shacknove observes, providing asylum to refugees was viewed as an exception to the normal immigration rule (Shacknove, 1993: 516). The recognition of refugees as a distinct form of migration and the creation of state obligations to them always threatened the state's ongoing project of expanding its capability to control who entered the state and how. To that end, the 1951 Convention created expectations of both states and refugees, but reinforced the sovereignty of the state in the Schmittian sense, it reproduced the right of the state to decide on the exception, situations when the expectations and obligations contained in the Convention no longer applied.

On the face of it, there seems to be very little inherent risk to Western states from people fleeing oppressive regimes in search of protection. The number of refugees worldwide has declined from a high of 16.4 million in 1993, to less than 10 million in 2006 (UNHCR, 2006). Including all persons of concern to the UNHCR (which includes refugees and the internally displaced), there are currently 21 million people worldwide whom one might reasonably expect to flee to the West for protection. However, of the 600,000 (just three percent of all refugees) of these people who seek asylum annually, less than half (290,000) do so in the Western industrialized states (UNHCR, 2006: 44–46). Furthermore, given the scrutiny asylum seekers receive upon entering the state and through the refugee determination process, it seems highly unlikely that terrorists would use this route to infiltrate Western states. William Maley argues that terrorists have been far more successful in using tourist and student visas for such purposes (Maley, 2004). If the arrival of asylum seekers invokes deep-seated fears for the security of the state, it is hardly because so many make it to the West or the historical proclivity of humanitarian migrants to bring ruin to receiving states. Yet, political elites increasingly claim that humanitarian migration threatens the state, justifying the violation of existing normative standards regarding the treatment of refugees.

In this book, I have made three main arguments regarding how asylum seekers have come to be viewed as threatening. First, the association of migration with insecurity is not a recent development but is an ongoing process by which the foreigner is constructed as dangerous. The refugee regime is both reflective and reproductive of this depiction. Consequently, control of migration has been institutionalized through standing bureaucracies designed to defend the state from the recurrent threats of international migration—including humanitarian migration (Buzan et al., 1998: 27). The institutionalization of the migration threat has meant that some measures designed to restrict access for refugees are not accomplished through a speech act form of securitization, but rather are uncontested and implemented through the bureaucratic mechanism designed to respond to the ongoing threat—visa requirements being a prime example.

Yet, this securitization has not rendered any and all measures to restrict access to foreigners as acceptable and uncontested. In the realm of humanitarian migration, the international refugee regime established international norms of protection for refugees, constraining the realm of appropriate actions for states in the response to certain foreign nationals. Thus, violation of these norms is made possible through an ad hoc securitization process, which is marked by securitizing speech acts, discursive contestation, legislative change and justificatory rhetoric.

The second argument of this book is that refugees have been constructed as distinct, though severely constrained, actors in the international realm through the refugee regime. This construction has severely limited the realm of legitimate forms of agency by refugees through the creation of behavioral expectations. As a number of critical scholars such as Peter Nyers, Nevzat Soguk and Roxeanne Doty have noted, the expectation is that refugees remain passive and submissive to state authorities. In turn, state actors use the expectations created of refugees to assess the authenticity of the refugee's identity claim. Those who violate these behavioral expectations are more easily constructed as "bogus" refugees and as threatening.

Lastly, I argue that securitization produces effects at two levels: the internal decision-making apparatus and the external relationship between units. Building on the work of Buzan et al., I developed a framework of the securitization process that examines the breaking of the normal rules relating to these two domains; through the violation of liberal democratic norms of decision-making and by altering the relationship between units from normal to securitized. I have shown that in ad hoc securitization processes drama and discursive contestation is an essential part of the process and the initial response is improvised rather than institutionalized. In some cases, as with detention in Australia, the improvised response is institutionalized and the "emergency measure" becomes the normal policy response that is universally applied in cases of future arrivals. A very different outcome emerged in Canada. Ad hoc securitization was successful in that emergency measures to alleviate the immediate threat were implemented, but the emergency measures were not fully institutionalized as

the normal policy response to the arrival of future asylum seekers. In essence, detention was institutionalized, but not applied universally. It remains an exceptional act, but one that would be implemented in exceptional circumstances and with judicial oversight. Though both represent an institutionalization of a securitized relationship between the state and asylum seekers, they occupy distinct places on the spectrum of securitization based on the degree to which the outcomes altered the existing relationship between the state and asylum seekers and the degree to which liberal democratic norms pertaining to arbitrariness and judicial oversight were violated.

Canada and Australia

The differences between Canada and Australia regarding the securitization of migration that are evident throughout the volume reflect internal and external differences between the two states. While there are a number of striking similarities in the history, culture, political traditions and institutions in Canada and Australia, there are striking contrasts in how Canada and Australia have implemented the international refugee regime and in how they have responded to the arrival of asylum seekers. As the previous chapters have shown, attempts to securitize humanitarian migration in Canada have been less common and have met with less success. In many respects, Australia stands in stark contrast to the Canadian case over the treatment of asylum seekers. Detention has been mandatory since 1989, (legally since 1992), unauthorized asylum seekers are eligible for temporary protection only, and in 2001, the Australian government authorized its military to intercept and prevent asylum seeker vessels from reaching Australian territory. Naval interception has never been implemented in Canada, despite occasional calls to do so; and even with recent changes in the use of detention, detention of asylum seekers in Canada remains an extraordinary practice. Refugees once recognized by the state are granted the same form of protection regardless of the mode of their arrival. In comparison with all other Western liberal states, Australia stands as the most restrictive and among the least hospitable for unauthorized asylum seeker arrivals, while Canada stands as among the least restrictive.

One contribution of this project has been to place this comparative assessment in a larger context, in which migration, including humanitarian migration, is intensely securitized in both states. The categories of risk by which refugees may be rendered inadmissible clearly reflect a threatening view of foreign nationals in both states. Additionally, the use of visa requirements, carrier sanctions and overseas interdiction officers to ensure that refugees use the resettlement program to access protection demonstrates the priority states have placed on securing their border control mechanisms of the state over that of refugees themselves. Yet, we cannot ignore important differences in the treatment of refugees in Canada and Australia and other industrialized states.

In many respects, the difference in treatment of refugees between states is over-determined. Among the myriad reasons noted by comparative scholars

are cultural factors (historical concern over Asian invasion, failure of multiculturalism); geo-political factors (location in south-east Asia and proximity to refugee-producing states); bureaucratic/institutional factors (administrative vs. adjudicative immigration programs); judicial/institutional factors (Charter of Rights in Canada); political factors (rise of One Nation Party in Australia; strength of unions in Australia); and even ecological differences (fragility of Australia's ecology). To a certain extent, all of these factors have played a role in shaping the way in which the Australian and Canadian states and societies have responded to humanitarian migration. The purpose and design of this project does not lend itself to the identification and measurement of causal factors that explain the difference between the two states, but it has demonstrated how many of these elements are used by securitizing elites in the reconstruction of the identity of asylum seekers, as well as sending and receiving states. Additionally, two elements that have received scant attention stand out as contributing factors as a result of the analysis undertaken for this project: relationship between the executive and judiciary and historical experience with boat arrivals.

One key difference between Australia and Canada reflects the way political elites regard the role of the courts in migration matters and the refugee determination process. In Australia, political elites have frequently identified the judicial branch, and immigration lawyers, as part of the threat to Australia's borders. Beginning in the late 1980s, successive Australian governments have consistently attempted to further remove the judiciary from migration matters. With the implementation of the privative clause in 2001, the executive in Australia has effectively removed the judiciary from most areas of migration control.

In contrast, in Canada hostility to the judiciary is less often expressed, and political elites have expended great efforts to ensure that new legislation will not be ruled un-constitutional or in violation of the Charter. The *Singh* decision in particular has become a lightening rod of controversy regarding the role of the Canadian courts in migration matters, though efforts to overrule or undermine this decision and the courts in general have not yet become central elements in the debate over immigration. Though the now-reformed Reform Party advocated using the "notwithstanding clause" to overturn the controversial *Singh* decision in 1999, efforts to remove the courts from the refugee process in Canada have been episodic and largely unsuccessful—and political elites have been largely deferential to the decisions of the courts.

One reason for this stems from the second oft-overlooked factor—Canada and Australia's respective experiences with boat arrivals. Australia's experience with humanitarian migrants has been profoundly shaped by the fact that boats have been a recurring means of arrival for unauthorized humanitarian migrants. In contrast, Canada has had very little experience with boat arrivals. The most successful securitizing moves—in 1987 and in 1999—have been the result of the unauthorized arrival of asylum seekers aboard boats. In 1987, the arrival of one boat sparked existing tensions over Canada's refugee

determination process. That no further boats arrived was a key factor in the opposition's ability to force amendments to the original versions of Bill C-55 and C-84. Similarly, in 1999, the arrival of four refugee boats triggered significant public opposition and encouraged the opposition party to publicly endorse overturning the *Singh* decision. Given the public hostility expressed toward the boat arrivals, the continued arrival of boats bearing refugees would likely have increased support for the Reform Party and increased pressure on the government to enact more restrictive measures.

Though Australia receives far fewer asylum claims than does Canada, the fact that historically, many have arrived by boat helps explain why humanitarian migration has been securitized to a greater extent in Australia. Responses to boat arrivals in the United States and Italy also indicate support for the conclusion that method of arrival plays an important role in the perception and construction of threat. In such instances, humanitarianism becomes a source of weakness for the state rather than a value to be promoted and respected.

The securitization of humanitarianism

This project has identified numerous ways in which humanitarian values shaped and are shaped by state practice. The incorporation of humanitarian commitments to refugees and asylum seekers in resettlement states such as Canada and Australia have meant that these programs have become a fundamental aspect of both Canada's and Australia's national identity. Consequently, like other aspects of a state's or society's identity, it often becomes the object of securitizing attempts. Thus, we see in both states, that securitizing actors often justify the implementation of restrictive measures on the grounds that they are necessary to maintain the state's humanitarian commitments. Like all aspects of a state's identity, the state's humanitarian commitments become available as an element of their identity that needs protection from those who would undermine it—in these cases asylum seekers, migration lawyers or anti-immigrant groups. In the cases examined in this study, asylum seekers were themselves blamed for threatening the state's humanitarian commitments to refugees by undermining public support for these programs.

In portraying asylum seeker as queue-jumpers who are responsible for rousing public opposition to refugees, asylum seekers were often portrayed as undermining the state's humanitarian efforts, most often associated with large-scale resettlement of refugees. Thus, resettlement becomes the sole embodiment of the state's humanitarian obligations to refugees and those who circumvent it are seen as a threat to these programs. This development lends credence to those who have questioned the co-optation of the humanitarian discourse by states, and necessitates further research. The extent to which public support is necessary, both morally and practically, for providing protection for refugees, and the role of unauthorized arrivals in fomenting this opposition needs to be addressed. As more and more state leaders justify

restrictive measures on these grounds, academics need to respond by critically interrogating such claims.

Erosion of norms and the study of securitization

One of the central emerging critiques made of constructivist scholarship is the focus on normatively "positive" developments in international politics (see: Barkin, 2003; Desch, 1998). Constructivist scholars have devoted much of their work to empirically demonstrating that "positive" or "progressive" change is possible in world politics. As a result, they have tended to focus on the emergence of international norms that are defined as morally progressive, such as the elimination of slavery, the ban on certain types of weapons and the spread of human rights norms (e.g. Finnemore and Sikkink, 1998; Nadelman, 1990; Price, 1995). The near exclusive focus on positive developments is a problem, particularly for critical theorists, who argue that constructivist scholars do not pay significant attention to relationships of power and domination inherent in all political developments, including those that constructivists regard as "positive" (Ashley and Walker, 1990). While I accept the validity of this criticism, I think this project makes a significant contribution to this debate by identifying what I argue is the dissolution of a "good"—if profoundly imperfect norm: the protection of people fleeing political persecution. The depiction of asylum seekers as a threat to the state and the resultant implementation of policies designed to deter, detain and deport asylum seekers often have wretched consequences, such as the imprisonment of desperate, traumatized refugees for years; the detention of children; the separation of young children from their parents; and the forceful repatriation of people to states where they face persecution and torture. These policies have also encouraged desperate people into more desperate measures, taking more dangerous routes and employing the services of unscrupulous people smugglers and human traffickers, often resulting in conditions of forced labor.

In the two states under examination in this study, Canada and Australia, successful securitization attempts that have identified asylum seekers as a threat to the state have resulted in the erosion of the positive developments embodied in the international refugee regime. In other words, they have affected a decline in the protection offered to asylum seekers. This is not only the case in Canada and Australia, but is a trend common to almost all advanced, Western, industrial democracies. The tightening of borders through the use of migration control policies such as visa requirements, carrier sanctions and safe third country agreements has occurred as governing elites attempt to prevent the arrival of humanitarian migrants. There are few academics who argue this is a positive development.

In this study, I have shown how the erosion of the refugee regime has occurred to a greater or lesser extent, in two Western liberal democracies. Ultimately, this project argues that the securitization of humanitarian migration undermines the international refugee regime and the protections it offers to those seeking

asylum from persecutory states. For a time, the international refugee regime seemed to have established itself as a strong international regime served to enhance the protection of human rights. There are 146 states that are party of to one or both of the 1951 Convention and the 1967 Protocol, the primary international agreements regarding the treatment of humanitarian migrants. Furthermore, these international agreements have been incorporated into the domestic legislation of nearly all Western liberal democracies. The norm of *non-refoulement* has proven to be one of the strongest international human rights norms, arguably having achieved the status of customary international law. Yet the increasing treatment of humanitarian migration as a threat to national security seems to indicate a decline in the strength of the international refugee regime.

The most obvious response to the decline of the international refugee regime is that the end of the Cold War produced a structural shift that reduced the importance of the refugee regime. Indeed, as Chapter two demonstrates in detail, the creation and implementation of the international refugee regime cannot be understood outside of the prevailing international structural conditions at the time of its inception. The refugee regime was constituted by and constitutive of the international rivalry that emerged after the Second World War. Consequently, it constructed refugees in a distinct manner, based on the Western liberal commitment to political rights. In doing so, it constructed refugee-producing states as morally bad, and receiving states as good. In this formulation, refugees served as a form of moral power in which "the West" was the clear beneficiary.

While the end of the Cold War removed the structural condition supporting the refugee regime, the actors created by this regime have persisted beyond the structural conditions that gave birth to them, and acted in ways not predicted by the existence of the international structure. Thus, the erosion of the positive norms embodied in the refugee regime cannot be explained by changes in international structure. While the structural conditions following the Second World War shaped the international refugee regime and constructed actors within that context, it constructed actors with agency. Under the refugee regime, states maintained the ability to reconstruct the identity of other units in the system, altering who it considered refugee-producing states and consequently who it considered refugees. Consequently, at various times during the Cold War, refugees from Communist states were alternatively welcomed as a form of moral power and during other periods, shunned as infiltrators and fifth columns.

The argument here is that the erosion of the international refugee regime cannot be explained entirely by the end of the Cold War. Had the Cold War persisted, it is likely that a similar decline in the refugee regime would have occurred. Indeed, there were signs of erosion in the international refugee regime before the Cold War had ended. Furthermore, the current international structure may be replicating conditions that existed near the beginning of the Cold War and that have not produced similar responses to people

fleeing rival states. Thus, based solely on the prevailing international structure, it is not clear why refugees from Islamic fundamentalist states have not been constructed in the same manner as Cold War refugees—as a form of moral power and an indictment of those regimes.

Ultimately, understanding changes in refugee norms requires an understanding of how states situated in a particular international structure constituted new actors in the international system to reproduce the identity constructs shaped by an emergent international rivalry, and in turn, how those actors have persisted beyond and responded to changes in that international structure. Thus, while international structure is an important component in the establishment and erosion of international norms, changes in international norms cannot be explained without studying the practice of agents. This project examines an important activity in which agents are involved: securitization.

While further research into the erosion of the international regime is required to identify causal processes and the association between international structure and agents, this project has made an important contribution by highlighting how the positive norms of the international refugee regime have been eroded over time as a result of agents engaging in securitization attempts. I hope that this signals a shift in constructivist scholarship toward a greater concern with "negative" change in world politics.

While constructivists have attempted to show that positive change in world politics is possible, it is also important to note that the ontological, epistemological and methodological commitments of constructivist scholarship do not preclude the study of "negative" developments. The near exclusive focus on "positive" change may emanate from a normative commitment among constructivist scholars to not participate in or contribute to the potential development and implementation of "negative" norms. In other words, there is a concern that academics should refrain from doing work that may assist political actors in reducing commitments to human rights. Nowhere has this concern been more strongly voiced than in the study of securitization. Critical scholars have argued that the study of securitization encourages or demonstrates to political actors how to securitize issues (Eriksson, 1999). Waever has defended the Copenhagen school, asserting that they denounce securitization, arguing instead for a process of desecuritization and a return to normal politics (Waever, 1995, 2003).

Thus, the Copenhagen school and many of its critics share a normative commitment that the process of securitization is a "negative" development to be avoided. I contend that such a view of securitization is largely due to the unnecessary restriction of the number of potential referent objects to the state and society. This study has shown that in some cases this concern over securitization is justified, as it has led to xenophobic reactions that have contributed to a decline in the protection offered to asylum seekers. However, the initial creation of the refugee regime and the humanitarian response to numerous asylum seeker populations, such as the 1979 Indo-Chinese refugees,

demonstrates that not all successful securitizations are actually "negative" developments. The portrayal of Indo-Chinese exodus as an emergency requiring an extraordinary response in Canada resulted in the resettlement of 50,000 refugees in one year alone, an extraordinary achievement by any standard. Similarly, in Australia, the emergency discourse contributed to the resettlement of close to 20,000 refugees between 1977 and 1978. Though public opposition in Australia in 1979 limited the resettlement response, the Australian government was still able to resettle an additional 14,500 refugees in 1979 due to the continued depiction of the asylum seekers as victims of the Vietnamese state. This extraordinary rate of refugee resettlement was due to the leadership provided by political and media elites in Canada and Australia. These elites were instrumental to resisting counter-securitization attempts by securitizing actors who sought to identify the asylum seekers as a threat to the receiving state and society.

The role of the humanitarian discourse should not be underestimated. In all of the securitization attempts in Canada and Australia in which the primary referent object was the state, there was a significant challenge to that discourse which sought to identify the asylum seekers as the referent object of security. These humanitarian discursive challenges, while not always successful in supplanting securitizing attempts, often ameliorated the extraordinary measures the governing elites sought to implement, and forced concessions and legislative amendments from the government.

The positive contribution of a humanitarian discourse goes beyond these particular crises. As Chapter two demonstrates, the creation of refugees as a distinct actor in international politics rested on the successful securitizing discourse following the Second World War. It was that securitization that produced an international commitment to refugee protection, which has resulted in an extraordinary increase in protection offered to individuals fleeing persecution in their home state. It needs to be emphasized that hundreds of thousands, perhaps millions, of asylum seekers have been offered protection because of the successful humanitarian securitization of asylum seekers that was embodied in the international refugee regime. In 2004 alone, the UNHCR provided direct assistance to five million refugees. Of these five million, 30,000 found homes through resettlement programs, while close to one and a half million voluntarily repatriated to their home state (UNHCR, 2006).

Of course, the refugee regime is not without flaws. This book demonstrates that the international refugee regime and the form of protection it provides was created by and for select Western states. This was accomplished by defining a "refugee" in a very specific manner that maintained the power of the state to determine who was and was not a refugee and benefited particular states in the emerging international rival structure (Loescher, 2003). Could more refugees have been saved if the Western powers had implemented a different, less narrow definition of refugee or invested far less power in the hands of states to determine who qualifies as a refugee? Most definitely. Will more refugees face persecution and death in their home state, in transit and in

receiving states if the international community continues to undermine the integrity of the international refugee regime? Without a doubt. Like most constructivist scholars, I contend that positive change in world politics is possible, and in this case can be accomplished by identifying how the erosion of "positive" international norms occurs.

One of the purposes of this project has been to demonstrate that positive normative change in the form of refugee protection has occurred as a result of the successful securitization of humanitarian migrants in Western liberal democratic states. However, unlike the Copenhagen school I have not identified securitization as an inherently "negative" force for change. The referent object of security is an important element in the consideration of whether the process of securitization is a "positive" or "negative" development. A return to a humanitarian discourse, with individuals or groups at risk of persecution in their home state as the primary referent object, would represent a positive development over the current trend; one in which scholars can make a contribution by identifying the process by which asylum seekers have been reconstructed as a threat to the state.

The state and security

This project also speaks broadly to the place of the state in the study of international relations. Specifically, my examination of the securitization of humanitarian migration addresses the role of the state in the study of security and migration. As noted earlier, the place of the state in the study of security is contested. Neo-realists in security studies assert that the state should remain the sole referent object in the study of security, while critical security theorists and human security advocates argue that privileging the state in the study of security may lead to increased insecurity for individuals (Booth, 1991; UNDP, 1994).

In that regard, this work comes down on the side of the critical security theorists and the proponents of human security. One important contribution of this work has been to demonstrate the negative repercussions on humanitarian migrants of securitization attempts that maintain the state as the primary referent object of security. In cases where the state was identified as the primary referent object over humanitarian migrants, the policies implemented increased the level of insecurity for humanitarian migrants; in some cases there were deaths. In cases where humanitarian migrants were cast as the primary referent object of security, policies were implemented that enhanced protection for them, and had little to no impact on the security of the receiving state.

However, this project does not support the conclusion that the state should play no role in the practice of security. The empirical examination undertaken in this study demonstrates the preponderance of the state in the practice and discourses of security, an insight noted in the earlier works of the Copenhagen school (Buzan, 1995; Waever, et al., 1993; Waever, 1995). The dominance of

the state in the security discourse was demonstrated both as a referent object of security and as a security provider.

As Buzan and Waever have noted, successful securitization requires an actor with sufficient capability to provide security, unfortunately, they interpret this as having a sufficiently repressive apparatus. As the examples in this work have demonstrated, successful humanitarian securitization requires an actor capable of providing for the security of the referent object. Humanitarian actors and NGOs in Canada and Australia appealed to the state to act, as it alone had the capacity to provide for the protection of the asylum seekers. Even with the generous level of private sponsorship that made the Canadian response to refugees possible in 1979, these extraordinary measures would have been impossible to implement without the capability of the Canadian state to transport the refugees to Canada. Again, in 1979, many of the Southeast Asian states responded in a humanitarian manner to the influx of Indo-Chinese refugees, though unfortunately some were simply incapable of providing for the refugees' security. These examples demonstrate the positive role that the state can play in the provision of protection for individuals.

The fact that discursive practices appealing to the state are so readily available is testimonial to the strength of the state in the practice of security. While critical theorists may debate the value of this, the multiple discourses on migration, strongly advocate the protection of the state. The dominance of the state in the practice of security is also highlighted by the near unchallenged assertion that a state response was the appropriate response to the threat. While there were expressions of what Buzan and Waever have termed societal security, few securitizing agents called on any actor other than the state to provide security. Anti-immigrant groups that sought to securitize the influx of humanitarian migrants in most cases had the governing elites as their primary audience. These groups sought to influence governing elites, so they would implement the coercive capacity of the state to act to prevent immigration. Similarly, the asylum seekers and their humanitarian advocates called on the state, or the governing elites, to act by offering protection to the asylum seekers.

One element that warrants greater attention than could be given in this study are the manifestations of societal securitization, in which elites called on some segment of society to respond to the enunciated threat rather than the state. Violence by anti-immigrant groups against asylum seekers in Australia, while rare in both cases, was one indication of societal securitization. These groups normally identified a particular race as a threat to society, and advocated a societal response—against the wishes and authority of the state. Perhaps of greater interest is the asylum movement that emerged in both Canada and Australia. The most evident and vocal of these groups emerged in Australia, from groups that openly advocated providing refuge for asylum seekers who had escaped from mandatory detention in Australia. The act of providing protection to escaped detainees clearly signals a shift in both the

referent object and security provider. For both the asylum movement and the anti-immigrant groups, it was the state's policies of permitting immigration or detaining refugees that represented the threat. The existence of such groups does not undermine the claim that the state remains the dominant actor within the discourse on security, but does demonstrate that there are other potential non-state security discourses.

The dominance of the state in the discourse on security should not be used analytically to exclude all other potential referent objects, or normatively to justify any and all policies in the name of state security. As the success of the humanitarian discourse demonstrates, states are capable of offering protection to foreign nationals. Additionally, the relocation of security provider from the state to individuals or other referent object may increase insecurity for a great number of individuals and groups, as was evident in cases where societal groups such as anti-immigrant groups or the asylum movement acted against their perceived threat. These episodes prompted significant discursive challenges reiterating the importance of maintaining law and order. Thus, from the perspective of avenues for protecting refugees, rather than removing the state from the practice of security, the better strategy appears to be to challenge the identity of the state, to show that not offering protection to those outside the state actually represents a greater threat to the state or the existing political community than does incorporating others into the political community through immigration.

Other units in IR: refugees as actors

The assertion that the international refugee regime constituted refugees as relevant actors within the international system is a major departure point of this project, and one which I hope will encourage further research into this area. Refugees, like other actors in the international system, have been endowed with particular characteristics, intentions and behavioral expectations. Conversely, states are (or were) obliged to behave in a particular manner toward those claiming refugee statues, and to offer certain protections to them. The basis of the relationship between states and refugees is humanitarian in character and has been securitized in a particular manner. This humanitarian relationship portrays the refugee as the unit being threatened, with receiving states having obligations as providers of security.

This relationship is clearly not equal. The formulation contained in the international refugee regime is designed to maintain the place of the state as the primary actor in the international system, and imbues the state with the power and authority to decide who is and is not a refugee. As Prem Rajaram observes, the humanitarian representation of the refugee essentially circumscribes the refugee as a helpless, powerless and voiceless actor (Rajaram, 2002). Even the refugee advocacy network within and between states is complicit in this construction of the refugee, and as such helps maintain the state dominated relationship.

The individual state's power to decide who is and is not a refugee has led to a number of inconsistencies. This is highlighted by the wide variation in the acceptance rates of asylum seekers within the advanced liberal democracies. In the early 2000s, Canada's acceptance rates consistently averaged around 43 percent (Government of Canada, 2006c), while in Australia the acceptance rates of asylum seekers' claims ranged between 10–35 percent (DIMIA, Population Flows, 2001, 2003–2007). We find similar disparities of acceptance rates in the European states and the United States. While each state faces different flows of asylum seekers with varying levels of legitimacy to their claims, this wide variation is also the result of different implementations and interpretations of the refugee convention. Under the refugee regime, each state has been free to interpret the refugee convention as liberally or conservatively as its governing elites see fit. Thus, the cases under examination in this study reveal that there are differing standards of persecution and of "well founded fear," as well as different standards relating to membership in appropriate groups. There is also variation with regard to the amount of evidence asylum seekers need to provide and in the type of determination process itself. Variation exists because individual states are given the power and authority to act. The minor variations between Western liberal states in the interpretation and implementation of the refugee regime should not obscure the fact that there was, and is, general acceptance of the role identities of refugees. Rather it demonstrates that the refugee regime was designed to maintain states as the dominant, though not sole, actor in the international system.

While the relationship between states and refugees provides states with a range of freedom regarding their actions, in essence, only two actions have been ascribed to the refugee in this relationship: the act of escaping, by leaving their home state and the act of claiming refugee identity, by presenting themselves to authorities of the receiving state. Refugees are the victims of a state's actions; they flee, and are then subject to the actions of the receiving state. Attempts on the part of the refugee to take further actions become highly suspect. The discourse analysis engaged in this project reveals that when asylum seekers attempt to act beyond the act of escaping or claiming the identity of refugee, this has been used to reconstruct the identity of the asylum seeker. Hunger strikes, roof-top protests, making demands, evading authorities, escaping detention, writing letters, extensive planning and paying for their escape: all these actions that asylum seekers take to find security or to be treated humanely became part of the discursive challenge to their identity claims. This has clear practical relevance from the perspective of the refugee, while desperate people may be led to do any number of such things to save themselves and their family, the relatively narrow confines of the role identity ascribed to refugees constructs such acts as illegitimate, ruling out numerous behaviors (that are often otherwise understandable in situations of desperation) as constitutive of genuine refugees.

While the relationship between the state and refugees reflects and maintains the power disparity between the two units, we should not overlook the many

ways in which refugees act in the international system. As the list of actions asylum seekers have taken in the previous paragraph demonstrates they have not lost the capacity to act in a manner outside the provisions of the state. States have been unsuccessful in limiting the actions of refugees to the two acts ascribed to them by the international refugee regime. Therefore, it is important that these actions in defiance of the state become known and that these actions are interpreted by discursive practices in the host society in a manner consistent with a humanitarian or emancipatory discourse. For this to occur political elites must exercise moral leadership and the freedom and objectivity of the media must be maintained.

The examination of the relationship between states and refugees opens the door to further theorizing the manner in which states form their relationship with other units in the international system. Current IR theorizing focuses on "like units." This unnecessarily limits the range of actors and actions that take place in the international system and does a further disservice to the potential contribution of their theories. Units such as terrorist groups, people smugglers and international organized crime all seem to fit within the enemy construct from Wendt's analysis, in that states recognize they are actors in the international system, but do not recognize their claim to exist (Wendt, 2000). Addressing unlike units within existing theories would certainly help academics explain a greater range of phenomenon that occur in international politics.

Notes

1 Migration and securitization

1 See Patrick James and David Goetze, 2001 as an example.

4 Naval interception and detention in Australia

1 To convince the asylum seekers to board the navy vessel, some asylum seekers claimed the government told them they would be taken to Australia.

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