

'UNLESS THE WATER IS SAFER THAN THE LAND'*

* Warsan Shire – Home

no one leaves home unless
home is the mouth of a shark
you only run for the border
when you see the whole city running as well

your neighbors running faster than you
breath bloody in their throats
the boy you went to school with
who kissed you dizzy behind the old tin factory
is holding a gun bigger than his body
you only leave home
when home won't let you stay.

no one leaves home unless home chases you
fire under feet
hot blood in your belly
it's not something you ever thought of doing
until the blade burnt threats into
your neck
and even then you carried the anthem under
your breath
only tearing up your passport in an airport
toilets
sobbing as each mouthful of paper
made it clear that you wouldn't be going back.

you have to understand,
that no one puts their children in a boat
unless the water is safer than the land
no one burns their palms
under trains
beneath carriages
no one spends days and nights in the stomach of
a truck
feeding on newspaper unless the miles travelled
means something more than journey.
no one crawls under fences
no one wants to be beaten
pitied

no one chooses refugee camps
or strip searches where your
body is left aching
or prison,
because prison is safer
than a city of fire
and one prison guard
in the night
is better than a truckload
of men who look like your father
no one could take it
no one could stomach it
no one skin would be tough enough

the
go home blacks
refugees
dirty immigrants
asylum seekers
sucking our country dry
niggers with their hands out
they smell strange
savagely
messed up their country and now they want
to mess ours up
how do the words
the dirty looks
roll off your backs
maybe because the blow is softer
than a limb torn off

or the words are more tender
than fourteen men between
your legs
or the insults are easier
to swallow
than rubble
than bone
than your child body
in pieces.
i want to go home,
but home is the mouth of a shark
home is the barrel of the gun
and no one would leave home
unless home chased you to the shore
unless home told you
to quicken your legs
leave your clothes behind
crawl through the desert
wade through the oceans
drown
save
be hunger
beg
forget pride
your survival is more important

no one leaves home until home is a sweaty voice
in your ear
saying-
leave,
run away from me now
i dont know what i've become
but i know that anywhere
is safer than here





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INTRODUCTION

This report is the outcome of the Masters Studio in Forensic Architecture, Centre for Research Architecture, Goldsmiths University of London. It was generated by students working collaboratively on a “Live Project”; an intensive hands-on pedagogical experiment that launched this academic year’s studio activities. Over the course of four weeks, twenty MA students conducted in-depth research into Australia’s immigration policies and practices at sea, producing spatial and visual analysis that reveals a striking pattern of human rights violations taking place off the coasts of Australia.

The Live Project was conducted in partnership with the Global Legal Action Network (GLAN), whose February 2017 communication to the International Criminal Court (ICC) called for the launch of an official investigation into the abuse of asylum seekers in offshore detention facilities in Nauru and Papua New Guinea. The aim of this collaboration is to provide GLAN with further elements of evidence that would allow it to continue addressing the legality of Australia’s immigration policy before and beyond the camps, and to push the Court into shifting its focus from ‘spectacular’ violence to ‘banal’ or ‘normalised’ violence that appears as an inevitable by-product of global social and economic structures.

After conducting initial broad-based research focused on understanding Australian immigration policies at sea since 2001 in combination with the introduction of violent practices of containment without protection, the students narrowed their focus to a series of cases that took place under the ongoing military-led border security initiative “Operation Sovereign Borders” (2013-present). These cases represented episodes of maritime interception, on-sea detention, and pushback operations, each of which manifested convincing indications of human rights abuses: from the violation of the rule of non-refoulement to the crime of deportation under international criminal law.

In investigating and reconstructing these events, students developed creative forensic methodologies to cross-reference already available research when available and in particular to overcome the overall lack of information, which is a consequence of the Australian government’s policy of “on-sea” secrecy. Their work also involved tracking and exploring the development of particular patterns of practice at sea and situating these patterns in relation to the shifting political context in which they occurred, as well as inserting them within the longer histories of settler colonial violence.

As a preliminary investigation conducted within the limitations imposed by the time-frame of a pedagogical project (and with every effort having been made to verify the accuracy of the information presented here), the materials developed by the graduate students, nonetheless, offer a strong indictment of the policies and practices put in place to deter people from arriving in Australia by boat. In this sense, this report establishes the basis for further collaboration with GLAN to address the current lack of accountability for these violations.

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	DATE	CREW	MIGRANTS ON BOARD	NATIONALITIES
01	08-21/09/2013	16	475 (7 boats)	
02	21/09/2013	2	31	Indonesian
03	22/09/2013	3	18	Indian
04	25/09/2013		7	
05	26/09/2013	2	70	
06	26/09/2013	2	44	Iran, Iraq, Pakistan
07	27/09/2013		31 (31 dead)	
08	27/09/2013		80	
09	30/09/2013	3	79	
10	09/10/2013	2	53	
11	10/10/2013		79	Sri Lanka
12	12/10/2013		53	
13	15/10/2013	2	40	
14	15/10/2013	1	41	
15	18/10/2013	2	126	
16	21/10/2013		40	
17	23/10/2013		28	
18	07/11/2013	2	61	
19	10/11/2013	4	36	
20	11/11/2013	2	66	
21	11/11/2013		61	
22	15/11/2013	4	35	
23	27/11/2013	2	9	
24	27/11-06/12/2013		185	
25	29/11-06/12/2013		27	
26	01/12/2013	2	29	
27	04/12/2013	2	70	Myanmar
28	04/12/2013	2	25	
29	05/12/2013	2	61	
30	08/12/2013	2	3	
31	11/12/2013	2	69	
32	13/12/2013	2	47	
33	19/12/2013	2	98	
34	23 or 24/12/2013	1	49	
35	27/12/2013	2	45	Sudan, Eritrea, Somalia, Ghana, Egypt, Yemen, Lebanon
36	28/12/2013	2	38	
37	08/01/2014	2	25	
38	15/01/2014	2	56	Pakistan, Afghanistan, Bangladesh, Iran, Iraq, Palestine

DEPARTURE POINT	INTERCEPTION POINT	INTERCEPTING VESSELS	AFTERMATH
	30 Nautical miles off Christmas Island	HMAS Maitland	Placed in immigration detention
	West of Ashmore Reef	ACV Triton, Australian Customs vessel	Migrants were interviewed by an Indian consular official in Darwin, then returned to India
PNG or Indonesia	Boigu Island, Queensland, Australia	ACV Botany Bay	Migrants taken to Horn Island and then returned to PNG
Indonesia	145 Nautical miles North of Christmas Island	HMAS Maryborough	
	40 Nautical miles off Java	Australian Navy	
	NNW of Darwin	ACV Triton, Australian Navy	Migrants detained on Christmas Island
Indonesia	50 Nautical miles North of Christmas Island		
Sri Lanka or Indonesia	3 Nautical miles West of Cocos Islands		Migrants taken to Cocos Islands, then returned to Sri Lanka
108 Nautical miles North of Christmas Island	50 Nautical miles North of Christmas Island	HMAS Bathurst, HMAS Ballarat, 2 Australian Navy Vessels	Migrants detained on Christmas Island
			Flown back to Vietnam
Indonesia	North of Christmas Island		Arrival of this vessel triggered debate about the effectiveness of AU coastal surveillance capacity
Myanmar		HMAS Broome	
	23 Nautical miles Northeast of Christmas Island	HMAS Larrakia	
		Australian Navy	
Endari, South Sulawesi, Indonesia	NW of Darwin	HMAS Stuart, HMAS Parramatta	
	NNW of Christmas Island		
An island off Java	Near Christmas Island	Aeroplane, 2 speedboats, HMAS Stuart, HMAS Maitland, 1 Customs boat	Migrants were abandoned in a lifeboat 3 hours from the Indonesian shore

	DATE	CREW	MIGRANTS ON BOARD	NATIONALITIES
39	05/02/2014	2	36	Iran, Bangladesh, Nepal, Pakistan
40	24/02/2014	2	26	Iraq, Iran, Pakistan, Nepal, Bangladesh, Egypt
41	05/05/2014	3	18	India, Nepal
42	20/05/2014	2	1	
43	29/06/2014		157	Sri Lanka
44	06/07/2014	1	40	Sri Lanka
45	27/07/2014		157	
46	15/11/2014		38	Sri Lanka
47	09/02/2014		4	
48	17/02/2015			
49	20/03/2015		46	Vietnam
50	22/03/2015			
51	05/05/2015	6	62	Sri Lanka, Bangladesh, Myanmar
52	01/06/2015			
53	25/06/2015	2	25	
54	20/07/2015		42	Vietnam (not confirmed)
55	21/07/2015	4	46	Vietnam and others
56	25/07/2015	2	25	Bangladesh, Pakistan, Myanmar
57	05/10/2015		27	
58	23/09/2015		21	Bangladesh, India, Pakistan
59	15/11/2015			
60	20/11/2015	1	16	India, Nepal, Bangladesh
61	??/02/2016			
62	??/03/2016		6	
63	??/05/2016		12	
64	20/06/2016		21	
65	16/08/2016		6	
66	??/03/2017		25	Sri Lanka
67	20/08/2017		6	China

DEPARTURE POINT	INTERCEPTION POINT	INTERCEPTING VESSELS	AFTERMATH
Jakarta, West Java	Near Christmas Island	Triton, HMAS	Migrants arrived at West Java
	Near Christmas Island		
Sulawesi, Indonesia, Rote Island	Near Ashmore Reef, Australia	Australian authorities, Indonesian Navy	Abandoned in waters near East Nusa Tenggara Province, detained in Kupang, West Timor
Pondicherry, India	16 Nautical miles from Christmas Island	ACV Ocean Protector	ACV Ocean Protector sailed towards India, India refused to take them back, then taken to Cocos and finally to Nauru
Unknown point in Sri Lanka	200 Metres from Cocos Island	ACV Triton	Taken back and handed over to Sri Lankan navy, who handed them over to the Criminal Investigation Dept. 5 in custody, 9 children discharged, 27 bail
Chilaw, Sri Lanka	Between Cocos Island and Indonesia	BPC vessel	1 migrant detained in Australia
La Gi in Binh Thuan, Vietnam	High seas	HMAS Choules	
Pelabuhan Ratu, Indonesia	International waters/ Indonesian waters	Cape-class Patrol boat, 2 speedboats, HMAS Wollolong	Migrants detained on Australian Border Force ship for 7 days, then returned to Indonesia in 2 fishing boats
	93 miles from Dampier	Northwest-based police boat Delphinus, Commonwealth naval vessel (not confirmed)	
La Gi in Binh Thuan, Vietnam	High seas	HMAS Choules, Bay Class, landing ship dock	
Kupang, Indonesia	Australian waters	HMAS Larakkia II, Border Force Ship	Immigration detention in Kupang, the crew awaits a people smuggling trial
Pameungpeuk Garut, Southwestern Java coast	No interception		
Jakarta, Indonesia	200 meters from Christmas Island	Unidentified Australian navy vessel	Sent back to Indonesia on a fishing boat, rescued near Tablolong, West Timor
Vietnam	Timor Sea		Vietnamese court sent migrants to prison under Hanoi's new immigration law for between 18 and 42 months
Saibai Island in the Torres Strait			Kolony Bama, 55, arrested for smuggling 40 people along with one more suspect. Being tried in Cairns court.

<p>indefinitely (created by the Howard government in 2004) accusing them of breaking Articles 7 ('No punishment without law') and Article 9 ('Freedom of thought, conscience, and religion') of the Convention.¹³ This year also saw an upsurge in the number of children in detention, 1,992 children in total.⁷ Earlier that year in April, the Boston Marathon Bombings were carried out by two extremists, who were provoked by the wars in Iraq and Afghanistan.¹⁴</p>	<p>Convention."¹⁵ The government also introduced the 'Code of Behaviour' in January for all adults seeking refuge, which sets out the expected way of 'behaving' in Australian communities. And introduced 'The Character and General Visa Cancellation Bill' in November, after cutting funding from the Refugee Council of Australia earlier that year. Violent riots were carried out in Manus Island detention center in February, by security staff and police against detainees after earlier protests. This resulted in the death of Reza Berati and sixty injured people.³ The war in Iraq worsens as IS (Islamic state) move through the country to capture Baghdad in June, displacing millions of Iraqis.¹⁶</p>	<p>'protected information,' will be liable for two years in prison.¹⁷ In June 2015 allegations against the government's Security Intelligence Service were made that people smugglers were paid to return sixty-five Indonesian refugees back to Indonesia, this was confirmed by Amnesty International in October based on evidence (the report no longer exists). On the 11th of February all children and their families on Nauru were released into Australia after the 2014 report; 'The Forgotten Children: National Inquiry into Children in Immigration Detention 2014.'</p>	<p>government accepted 12,000 permanent refugees from Iraq and Syria that September.¹⁸ There were also major bombings by Islamist extremists in; Paris killing 130 people, Turkey killing 33 people, Russian passenger airline killing was targeted 224 people, California killing 14 people.¹⁹ The government decided to join the United States on airstrike missions in Syria targeting ISIS. Tony Abbott gave the Margaret Thatcher memorial lecture at Guildhall in London in October. He stated that Europe was weakening itself and that refugees are no longer in desperate need of safety once they've crossed several borders to reach the western countries but could now be compared to 'economic migrants.' The only way to stop the boats he argued is to copy Australia's policy;</p>
<p>2014</p>	<p>2015</p>	<p>Fazel Chegeni, an Iranian refugee who was suffering from mental health gained refugee status in 2012, but was later refused leave because of an assault incident, where he was jailed for six months, he was found dead outside the detention center on Christmas Island on the 8th of November. Fazel's death started violent riots inside Christmas Island detention center and a damage of \$10 million was made to the facilities.³</p>	<p>"In Europe, as with Australia," he said, "people claiming asylum - invariably - have crossed not one border but many; and are no longer fleeing in fear but are contracting in hope with people smugglers. However desperate, almost by definition, they are economic migrants,"</p> <p>The governmental bodies that were present at the memorial described the refugee crisis leading to the 'Suicide of Europe'</p>
<p>The Abbott government passed 'The Migration and Maritime Powers Legislation Amendment Bill' with significant changes, such as;</p> <p>A. "Providing the Immigration Minister with the power to detain people at sea (including outside Australia's jurisdiction) and send them to other countries or vessels, even without the permission or knowledge of those countries;"</p> <p>B. "Removing most references to the Refugee Convention and instead creating a 'new, independent and self-contained statutory framework' which sets out Australia's own interpretation of its protection obligations under the Refugee</p>	<p>On the 25th of March, the Migration Amendment (Protection and Other Measures) Bill was introduced, it states that 'a protection visa can be refused if a person refuses to disclose their identity, nationality or citizenship.' On the 1st of July, the government introduced 'The Australian Border Force act' and under section 42 stated that a person who commits the offence of disclosing</p>	<p>This year saw the biggest influx of refugees fleeing their homes from the middle east. The Australian</p>	

<p>and compared it to the 1973 novel 'The Camp of the Saints' by Jean Raspail.²</p>	<p>described as the 'worst humanitarian catastrophe in a generation.' The 'Jungle' in Calais is demolished and thousands of refugees were displaced across France. 2016 also saw the 'rise of the far-right in Europe' inspired by the arrival of thousands of refugees and the continuous terror attacks by 'Islamist extremists' on the west.²⁰</p>	<p>¹ ssl.law.uq.edu.au/som-database/</p>	<p>load_binary/5P1X6.pdf;fileType=application/pdf#-search=%22boat%20arrivals%20in%20Australia%20since%22</p>
<p>2016</p>	<p>Two asylum seekers on Nauru set themselves on fire and Peter Dutton claimed advocates encouraged asylum seekers to act in this way. In April 2016 Papua New Guinea's supreme court ruled that Australia has breached the refugees right to liberty by sending them to Manus and detaining them indefinitely. Peter Dutton responded that the people detained 'would not be brought back to Australia.'³</p>	<p>² www.theguardian.com/world/2017/oct/12/how-europes-far-right-fell-in-love-with-australia-immigration-policy</p>	<p>¹² www.britannica.com/event/Pakistan-Floods-of-2010</p>
<p>An article published by The Guardian on 18th of March; 'Should the EU adopt Australia's boat policy?' The article expressed that David Cameron was to adopt Australia's boat policy to turn away boats and exclaimed the rest of Europe should do the same. The article presents an interesting argument against the EU adopting the same practice of 'turn-backs' as Australia, due to different political climates surrounding Australia and the EU, and stated that Australia has 'significantly' breached the 'non-refoulement principle of the refugee convention.' In June 2016 conflict in Eastern Aleppo, Syria worsened and was</p>		<p>³ www.refugeecouncil.org.au/getfacts/timeline/</p>	<p>¹³ www.echr.coe.int/Documents/Convention_ENG.pdf</p>
		<p>⁴ www.onthisday.com/events/date/2002</p>	<p>¹⁴ https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r5346</p>
		<p>⁵ www.smh.com.au/news/National/Bakhtiari-family-deported-under-cover-of-darkness/2004/12/30/1104344932116.html</p>	<p>¹⁶ www.theatlantic.com/international/archive/2015/10/how-isis-started-syria-iraq/412042/</p>
		<p>⁶ www.bbc.co.uk/news/uk-33253598</p>	<p>¹⁷ www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Flag-Post/2015/October/Border_Force_Act</p>
		<p>⁷ legalanswers.sl.nsw.gov.au/hot-topics-77-refugees-australias-refugee-policy-timeline</p>	<p>¹⁸ www.theguardian.com/australia-news/2015/sep/09/australia-to-accept-an-extra-12000-syrian-refugees-and-will-join-us-led-air-strikes</p>
		<p>⁸ www.unhcr.org/uk/statistics/unhcrstats/4676a71d4/2006-global-trends-refugees-asylum-seekers-returnees-internally-displaced.html</p>	<p>¹⁹ edition.cnn.com/2014/08/08/world/isis-fast-facts/index.html</p>
		<p>⁹ www.theage.com.au/news/national/pacific-solution-to-be-abolished/2007/12/01/1196394637575.html</p>	<p>²⁰ www.theguardian.com/news/2016/mar/18/should-eu-adopt-australia-stop-the-boats-policy-guardian-briefing</p>
		<p>¹⁰ www.unhcr.org/uk/statistics/unhcrstats/4852366f2/2007-global-trends-refugees-asylum-seekers-returnees-internally-displaced.html</p>	<p>¹¹ parlinfo.aph.gov.au/parlInfo/download/library/prspub/5P1X6/up-</p>



I

TAKEBACKS

43 One of the modalities used by the Australian Government to deal
44 with unauthorized maritime arrivals within Operation Sovereign
49 Borders is a strategy referred to as 'takeback', in which
55 'Australia works with a country of departure to effect the
63 return of passengers and crew, either by plane or via an at-sea transfer from one sovereign authority to another.'¹ In this arrangement, the Australian Navy intercepts and returns third country nationals (from Sri Lanka and Vietnam, parties of specific agreements with Australia) to their alleged countries of origin, after conducting a short interview process referred to as 'Enhanced Screening'.

For the purpose of this report, we have considered five exemplary cases of takeback that occurred between 2013 and 2016 and which allow us to highlight some of the features and criticalities of this process. Our analysis breaks the process up into four different stages, each defined by a specific geographical or architectural space:

1. The country of origin;
2. The migrants' vessel;
3. The detention onboard the Australian ship;
4. The forced return to the alleged country of origin.

A key focus of our investigation was the third phase: a period of forced detention, often lasting several weeks, during which time the process of Enhanced Screening – introduced in 2012 for Vietnamese and Sri Lankan nationals – would take place.² During the Enhanced Screening, Immigration Officials carry out a simplified interview to determine whether the interviewees can even have access to the actual asylum request procedure, with two possible outcomes: screened out or screened in, the latter of which allows the migrant to file a protection claim.³ The Enhanced Screening procedure is based on an assumption by the Australian Authorities that Vietnamese and Sri Lankan nationals are 'not generally considered to be 'at risk'' in their countries of origin. Therefore, the Enhanced Screening procedure is structured in a way that usually stops asylum seekers from starting a protection claim procedure, preventing a proper investigation into their claims. As a result of the limited framing of the the Enhanced Screening, since its introduction in 2012 most Vietnamese and Sri Lankan asylum seekers have been 'screened out' and forcibly taken back to their countries of origin without the possibility of filing a protection claim.



Rik Soderlund, *Coco Islands Bus*. May 2016 - Asylum seekers are brought to the airport of the Islands, to be repatriated to Colombo (Sri Lanka).

¹ www.kaldorcentre.unsw.edu.au/publication/turning-back-boats

² Based on Migration Act 1958, Section 198. The Enhanced Screening Guidelines dated April 2013 (hereinafter the "Guidelines") have been release in the same year following a Freedom Of Access (FOI) request (FOI) FA 13/06/00920.

³ Guidelines, April 2013, p. 6. Also, both Vietnam (2016) and Sri Lanka (2009, 2017) have signed specific Memorandum of Understanding (MoU) on people smuggling with Australia.

CASE 43 29-06-2014



Tran Thi Tranh Loan family

On the 13th of June 2014, a boat with 157 Sri Lankan Tamil asylum seekers left from Pondicherry, India. Some had been in refugee camps in Pondicherry, some lived in the community around the camps while others made the journey from Sri Lanka to Pondicherry to be on this boat. 37 of the 157 were children. The boat's engine failed 16 nautical miles from Christmas Island. On 29th of June 2014, the asylum seekers were picked up by the Australian Border Patrol Vessel ACV Ocean Protector, which responded to their distress call and attempted to return them back to India. The ACV Ocean Protector arrived off the Indian coast on the 10th of July and stayed there for 12 days, during which the group was kept below decks in windowless rooms for 22 hours a day during a diplomatic standoff. Some members of the group were also taught how to use lifeboats that would take them back to India. In the end, Indian authorities refused to take back the asylum seekers. During this time, the asylum seekers filed a case in the Australian High Court for wrongful detention. ACV Ocean Protector then turned back and went to Cocos Island, from which the asylum seekers

were finally transferred to Nauru Detention Centre after narrowly losing their case in the High Court. The total period of detention lasted 29 days.

CASE 44 06-07-2014

On the 12th of June 2014, a boat with 41 people (37 Sinhalese and 4 Sri Lankan Tamils) left from an unknown location in Sri Lanka for New Zealand and was intercepted by the Australian Border Patrol vessel ACV Triton west off Cocos Island. On the 6th of July, they were handed over to the Sri Lankan navy vessel SLNS Samudra off the Port of Batticaloa in Sri Lanka after what the UNHCR claimed was a brief assessment of their asylum status. Australian authorities claim that interviews were conducted with translators in Sydney but asylum seekers also claim they were asked only four questions. According to Australian authorities, one Sinhalese person was eligible for further screening but chose to return. The Sri Lankan Navy handed the group to the Criminal Investigation Department and they were produced before a magistrate in the south-western port of Galle. During the detention by Sri Lankan police, the



Tran Thi Lua family

asylum seekers were beaten up. Eventually 5 were taken into custody, 27 were granted bail and 9 children were discharged.

CASE 49 20-03-2015

This case took place between the 7th of March 2015, and 18th of April 2015, during the Operation Sovereign Border initiative. A fishing boat left Phan Thiet Port in Vietnam and was intercepted by the Australian Bay Class Navy vessel HMAS Choules on the 20th of March at an unknown location at sea. The HMAS Choules held all forty six asylum seekers on board for nearly one month. The partial path the Choules took during this period is featured on the AIS diagrams shown below. Although little is known about the treatment of the refugees on the ship during this time, the asylum seekers report a translator not being physically on board with them while they were being screened and say that they didn't know they were being sent back until their arrival back to Vung Tau Port, in Southern Vietnam.

During their time on board the Choules the refugees were reassured from Australian officials that they would face no repercussions for leaving Vietnamese soil via a written confirmation from the Vietnam government to the Australian officials. Yet, upon their arrival back to Vietnam, the Vietnamese

government arrested four of the forty six asylum seekers for 'people smuggling', which went against what Australia had presented to the asylum seekers. The Australian Navy, and Prime Minister Tony Abbott stated to Australian media that Australia undertook this



Asylum seekers spent 22 hours a day locked in this room on the Ocean Protector for 29 days.

exchange based on 'trust' in the Vietnamese government, implying that Australia had not been aware and was not responsible for the arrest of these four people.

There are currently no available records detailing the treatment or detainment of the migrants aboard the ship during the screening process. However, Tran Thi Thanh Loan, who was on board the HMAS Choules and was one of the four asylum seekers who was sentenced to prison after the turnback to Vietnam, will be used here as a core case study on the turnback cases.

CASE 55 21-07-2015

This case took place between the 7th of July 2015 and 23rd of July 2015, also during the Operation Sovereign Border initiative. A fishing boat with forty six Vietnamese asylum seekers on board, left La Gi in Binh Port on the 7th of July. Over the next two weeks, the boat

navigated in an unknown path around Indonesia and towards the North West coast of Australia. On the 21st of July 2015 the boat was intercepted by an unknown Australian vessel near an oil rig off the coast of Dampier. Between the 21st and the 23rd of July the enhanced screening process was conducted. Australia determined that none of the asylum seekers qualified and they were flown back to Vietnam, again with the Australian government telling them they would face no repercussions from Vietnam. Yet when they arrived in Sai Gon Airport on the 23rd of July, three of the asylum seekers were arrested for 'people smuggling.'

Tran Thi Thanh Loan (mentioned previously) and Tran Thi Lua (involved with the 21st of July case) were tried for their involvement in organising the trips. Both of these women attempted to escape Vietnam for a second time together in January 2017. They did not make it to Australia but wrecked along the Indonesian coast, after

the Indonesian government detained them in a detention centre near Jakarta. Both Loan and Lua remain in contact with their Vietnamese lawyer, Vo An Don, and an Australian human rights activist, Shira Sebban. Vo An Don made a statement about the sentences Loan and Lua received from the Vietnamese government;

"The Vietnamese government believed that their crimes were punishable by law, which collectively included: buying food and supplies, steering the ship, commandeering the ship and propositioning people to escape with them. Generally, when refugees are returned to Vietnam, they receive minor punishments like monetary fines rather than jail time. I don't really understand why in these two instances they were sent to jail. But the new penal code in Vietnam classifies these crimes as punishable by jail time. Currently, the new law does punish this crime with very harsh sentences."

Both women and their children have now applied and received refugee status from a detention centre in Jakarta. When they get the opportunity to speak to Vo An Don or Shira Sebban, who have assisted the children of these families financially from afar while their mothers were in prison, they recount brutal stories of Vietnamese prison and confusion at such harsh sentences. Their cases are very similar; they leave from nearby ports, take similar fishing boats with the same number of people on board, happen just months apart, and have the same repercussions. No one is granted refugee status and both times Vietnam went against their word and arrested several of the asylum seekers. There is a form of violence in the actions represented in these cases, both in their content and in their repetition. This begs the question, why did the Australian government allow these unlawful, violent actions to happen the first time, and why, once a precedent of Vietnam going against their word had been established, did they allow it to happen again two months later?

CASE 63 02-05-2016

On 2nd May 2016 a boat with 12 people from Sri Lanka was intercepted by the Australian Navy in the Lagoon between Cocos Island. The people – who claimed Tamil ethnicity – were brought onboard of the Ocean Protector Navy's vessel, where they were subject to the "enhanced screening" procedure. On 5th May they were moved to a third boat, and brought to the Cocos' West Island, where they were transferred to a bus. Cardboard was placed over the windows of the bus used "to minimise people getting eyes on them". The group was placed on board a chartered jet, which left the

island at 9:30pm, arriving at Colombo's Bandaranaike airport in the early hours of the following morning.

In Colombo the taken back asylum seekers were taken into police custody.

"Now, Sri Lanka's Immigration Department has confirmed its officers have given the group over to the country's Criminal Investigation Department. Immigration Department spokesman Lakshma Zoysa said the group was being investigated to determine "how they went from Sri Lanka". "They are involved in criminal activities, yeah, that's an immigration crime," he said. The group is also being questioned he said, to try and glean information about who organised the trip."

No details are available on the outcomes of that detention.

www.theguardian.com/world/2014/aug/06/beaten-spied-on-asylum-seekers-reveal-oppression

www.smh.com.au/federal-politics/political-news/immigration-department-officials-screen-asylum-seekers-at-sea-via-teleconference-20140702-3b837.html

www.thesundayleader.lk/2014/07/13/the-journey-of-the-returned-asylum-seekers/

www.bbc.co.uk/news/world-asia-28189316

www.abc.net.au/news/2014-08-04/timeline-157-asylum-seekers-intercepted-at-sea/5647852

www.theguardian.com/australia-news/2014/oct/14/tamil-asylum-seeker-held-at-sea-wasnt-asked-basic-questions-high-court-hears

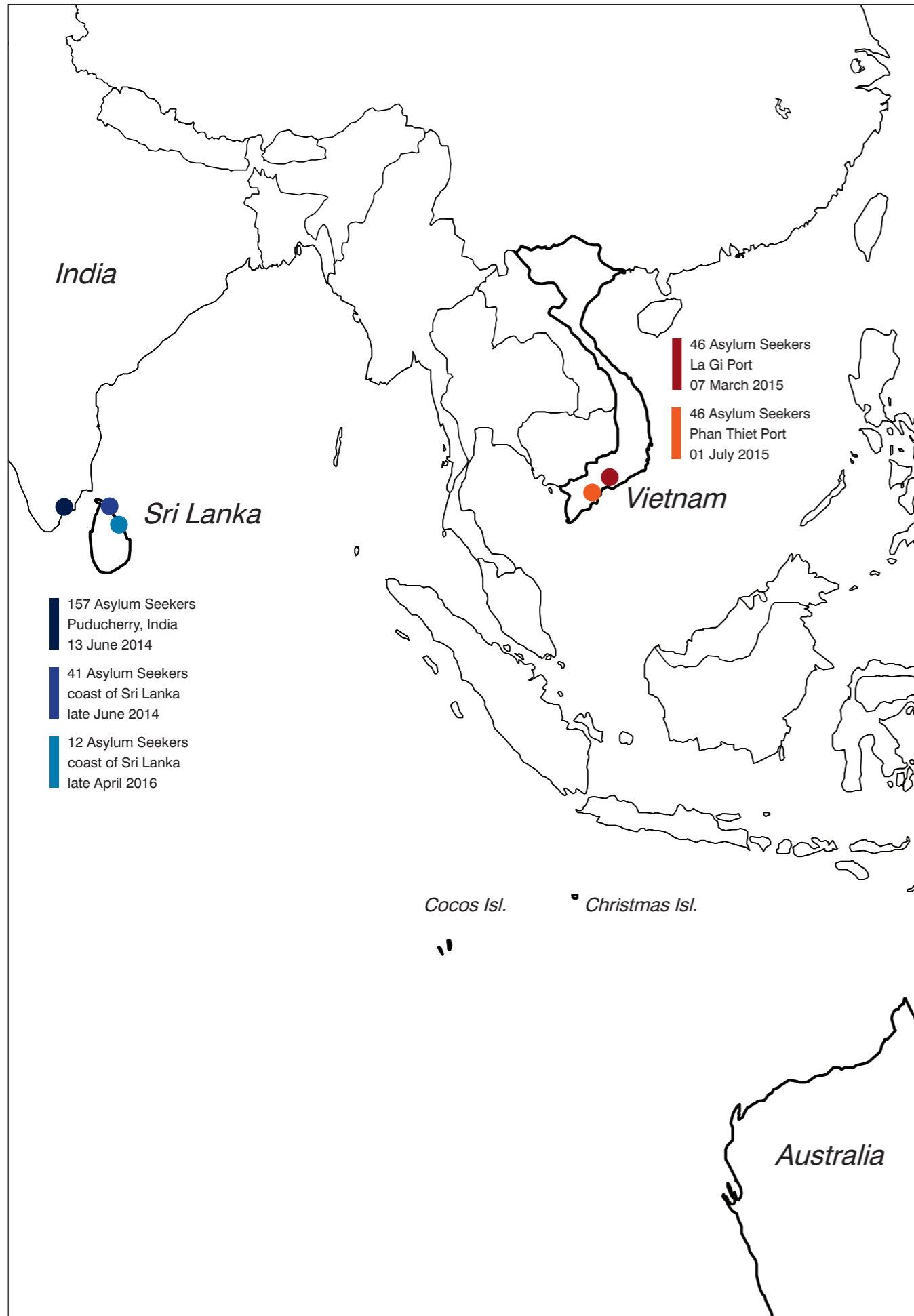
www.austlii.edu.au/au/cases/cth/HCA/2015/1.html

theguardian.com/world/2014/jul/27/asylum-seekers-landed-cocos-islands-tamils

uploads.guim.co.uk/2016/05/23/Legal_and_Constitutional_Affairs_Legislation_Committee_2015_05_25_3493_Official.pdf

www.loa.fm/our-stories/asylum-seekers

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'UNLESS THE WATER IS SAFER THAN LAND'



PHASE ONE: DEPARTURE

1951 Convention on Refugees

Article 1 – Definition of the term “refugee”:
“...wellfounded Fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion...”

Sri Lanka

Cases of mistreatment and torture of women and men in detention, for reason of their family members’ alleged former links with the LTTE (Liberation Tigers of Tamil Eelam). Killings have been reported which appear to be politically motivated, targeting persons believed to be LTTE sympathizers.¹

Vietnam

Vietnam actively suppresses political dissent. Those who criticise the government, who use the internet to publish ideas on government political pluralism and human rights, or who otherwise express views perceived as posing a threat to the government or Communist Party of Vietnam (CPV), are at risk of arbitrary arrest and detention on account of their political opinion. The government continues to restrict speech that criticizes individual government multiparty democracy, or questions policies on sensitive matters such as human rights, religious freedom, or sovereignty disputes with China.²

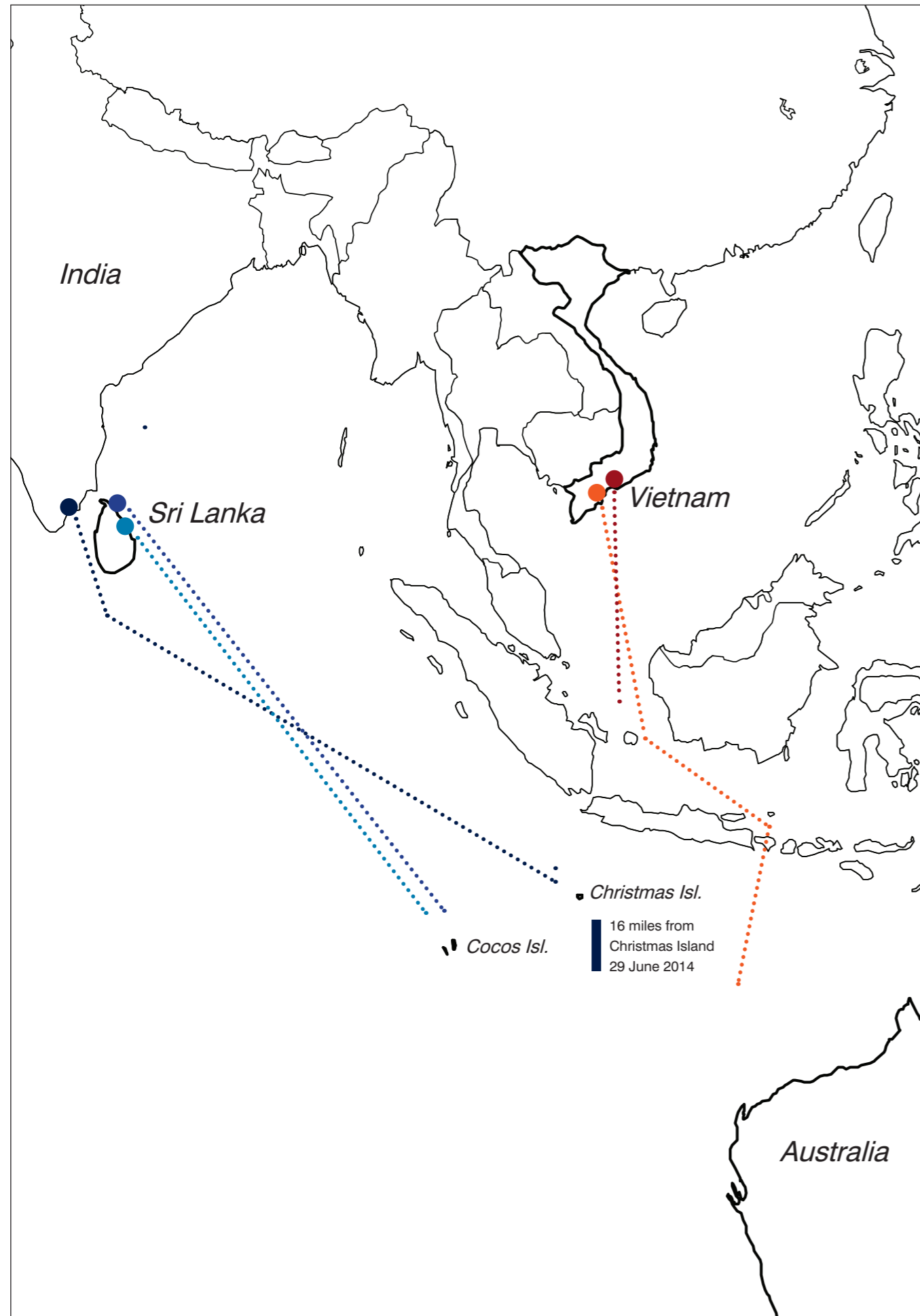
LUA AND LOAN’S EXPERIENCE

‘It’s not that we couldn’t find work. We can definitely work. We still have jobs,’ Lua says, ‘[m]y family has a business, has boats to go out to the sea. The Vietnamese government wants us to go out to the sea, fish, and guard the sea and islands. But when Chinese ships attacked, and seized our boats, we informed the Vietnamese authorities in our town, and asked them what they are going to do. They just nodded along and told us to continue to go out to the sea. When the Chinese continued to ram into our boats, killed our fisherman, all they said was, “can only look, can not say anything.” That’s how life is in Vit Nam, you can’t say anything.’ ‘It’s very dangerous out in the ocean, anything can happen,’ she says. ‘If I go, I might die. But if I stay in Vietnam, I may still die. I’d be more content to have my body eaten by the fish in the sea than have a state-authorized death at the hands of the Vietnamese communists.’

¹ UN High Commissioner for Refugees (UNHCR) 2012, UNHCR Eligibility Guidelines for assessing the International Protection Needs of Asylum-Seekers from Sri Lanka, 21 December, pp.27-28.

² UK Home Office, Country Policy and Information Note Vietnam: Political opponents. Version 2.0 November 2016

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'UNLESS THE WATER IS SAFER THAN LAND'

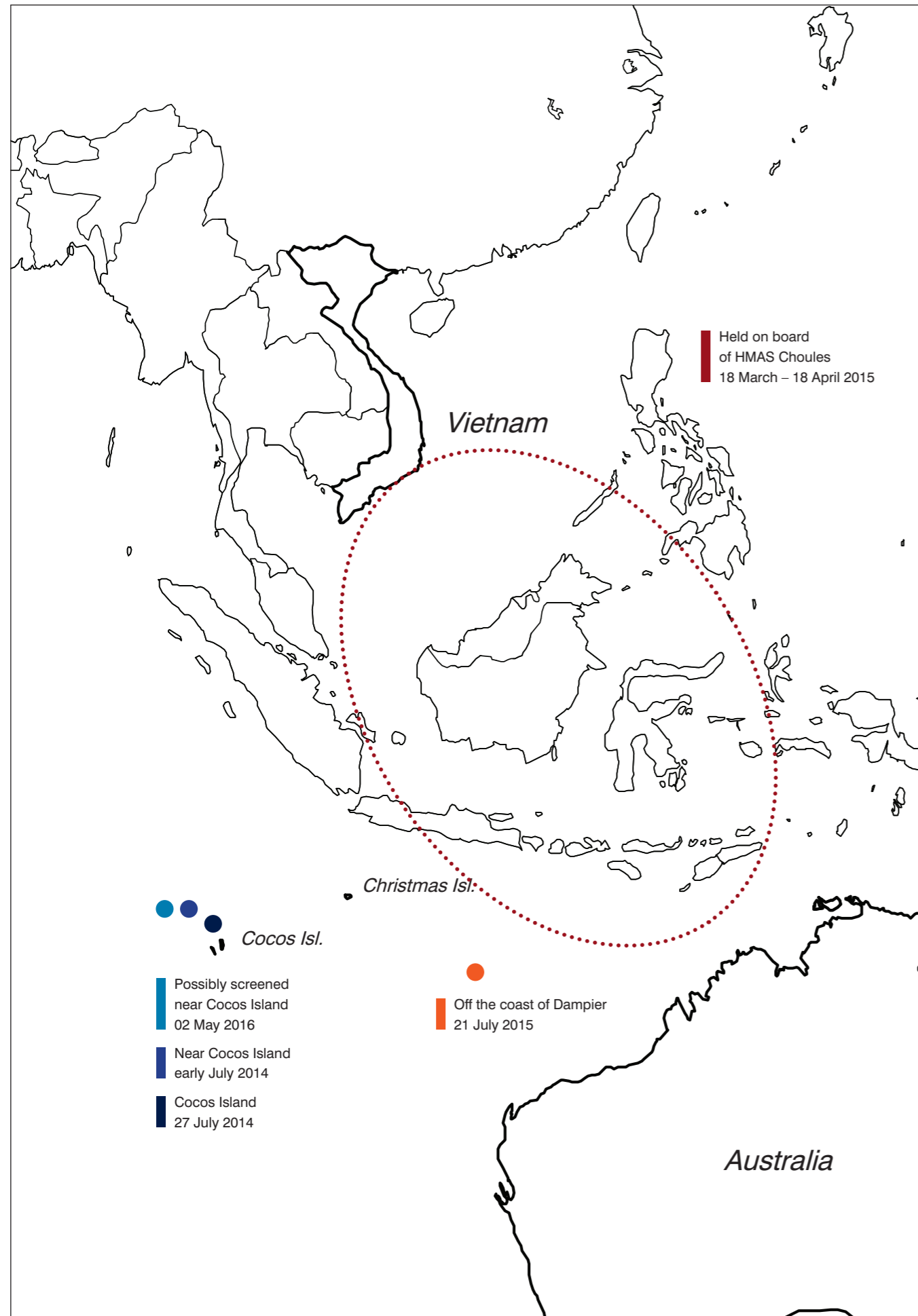


PHASE TWO: JOURNEY

Both women and their children have now applied and received refugee status from a detention centre in Jakarta. When they get the opportunity to speak to Vo An Don or Shira Sebban, who have assisted the children of these families financially from afar while their mothers were in prison, they recount brutal stories of Vietnamese prison and confusion at such harsh sentences. Their cases are very similar; they leave from nearby ports, take similar fishing boats with the same number of people on board, happen just months apart, and have the same repercussions. No one is granted refugee status and both times Vietnam went against their word and arrested several asylum seekers. There is a form of violence in the actions represented in these cases, both in their content and in their repetition. This begs the question, why did the Australian government allow these unlawful, violent actions to happen the first time? And why, once a precedent of Vietnam going against their word had been established, did they allow it to happen again two months later?¹

¹ www.theguardian.com/world/2014/aug/06/beat-en-spied-on-asylum-seekers-reveal-oppression

I: TAKEBACKS



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'UNLESS THE WATER IS SAFER THAN LAND'



PHASE THREE: INTERCEPTION, ENHANCED SCREENING

The boats are intercepted by Australian Navy and the people onboard are detained

The people of Vietnam and Sri Lanka are 'not generally considered to be "at risk" in that country'; therefore since 2013 their access to Australia is subject to a simplified procedure (the "Enhanced Screening").

Within this procedure, Immigration Officials carry out an "Interview" and then fill a "Protection File Note", where they indicate if the person is:

- screened out: pushed back;
- screened in: allowed to file a protection claim.

In most cases, Vietnam and Sri Lanka nationals have been screened out.



Border Force Vessel



RV Triton

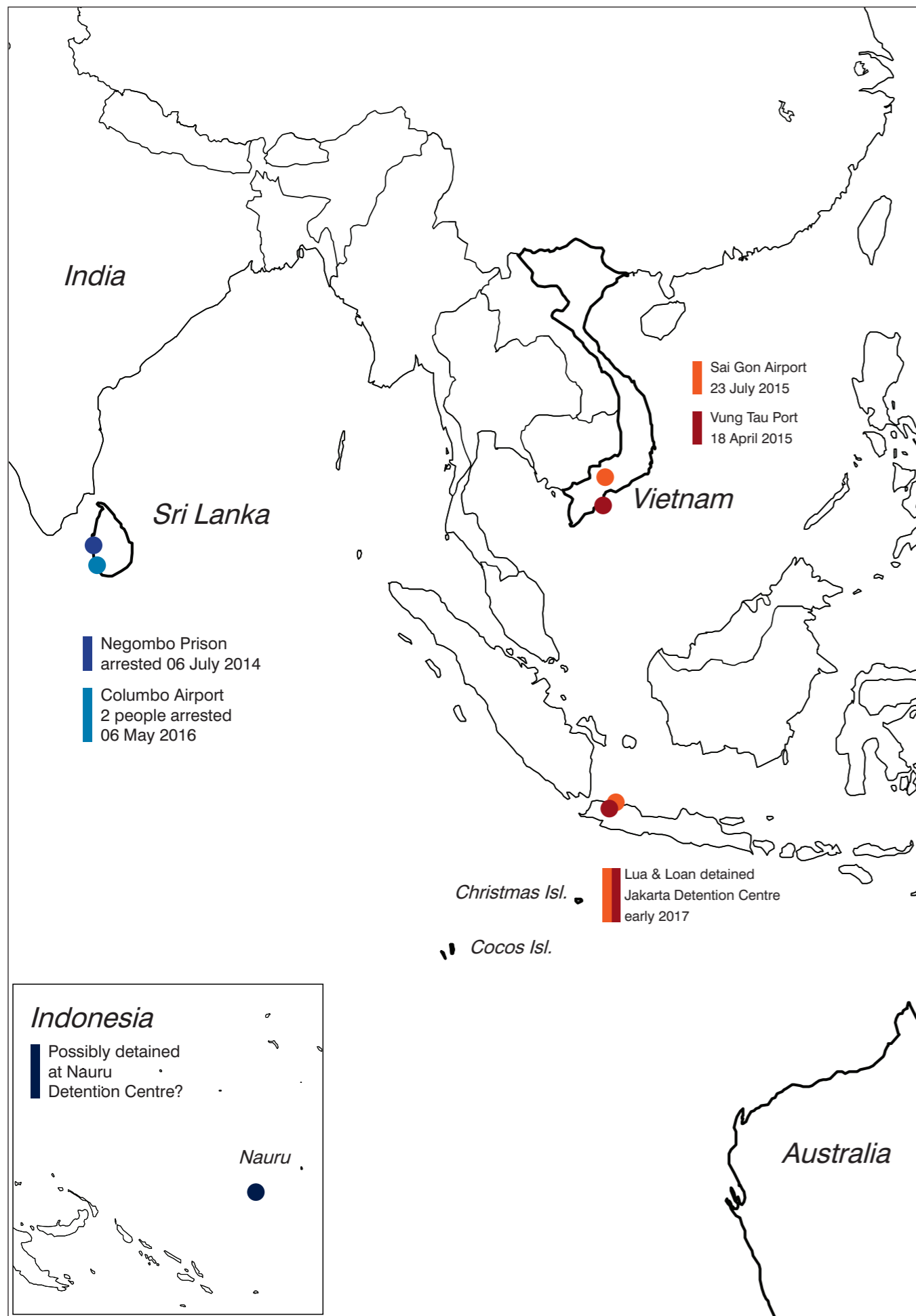


HMAS Choules



ACV Ocean Protector

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‘UNLESS THE WATER IS SAFER THAN LAND’



PHASE FOUR: RETURN

Both Vietnam and Sri-Lanka Criminal Codes provide for fines & detention in the case of ‘people smuggling’.

Australian Authorities accept this possibility, but they consider that detention will not be used toward those not actively involved in the smuggling.

Sri Lanka

48. “(...) there is a real chance he will be charged and fined under that law. (...) If the applicant were to plead not guilty, I find it highly likely that he would be bailed on personal surety. There is no information before me that indicate that the applicant was involved in organizing or facilitating people smuggling and (...) ordinary passengers are generally viewed as victims. I am therefore satisfied that the applicant is likely to receive a fine rather, than a custodial sentence. I accept that the applicant could be fined, but (...) any fine may be paid by instalments and I do not accept that this would cause him economic hardship or otherwise threaten his capacity to subsist. Accordingly, I find that any fine imposed, or the requirement for any bail, surety or guarantee, would not constitute serious harm.

49 (...) there is also a possibility he may be detained for several days while awaiting an opportunity to appear before a magistrate. While I find that a period of detention of more than a few days is remote, I accept that such detention may occur in a Sri Lankan prison. (...) I am not satisfied on the evidence before me that the applicant has any vulnerabilities or health concerns that preclude the possibility of a brief detention. In all circumstances, I find that any questioning and detention the applicant may experience would be relatively brief and would not constitute serious harm, as non-exhaustively defined in the Act.”¹

Vietnam

24. “The Constitution of Vietnam provides for freedom of movements. However, there are penalties for Vietnamese nationals that depart the country unlawfully, including without travel documents or false passports. (...) I have accepted the applicant departed Vietnam without a passport in violation of Vietnamese law and I find he may be liable for a fine on that basis. DFAT advise that there is no information before it that persons who have sought asylum outside of Vietnam receive different treatment from the Government than any other returnees to the country, although those that have departed unlawfully may be briefly detained and fined for that departure. In relation, however, to people who have paid money to people smugglers, (...) they are viewed by the Government as victims of criminal activity (...). I am not satisfied that the applicant faces a real chance of harm on the basis that he departed Vietnam illegally, that he has spent time in Australia or that he unsuccessfully sought asylum in Australia.”²

LUA AND LOAN’S EXPERIENCE

When they transferred us back home, the immigration in Sài Gòn, the police of Binh Thun province, and the local police of La Gi commune were all waiting for us.

Loan says, ‘I thought he was going to die in prison. The beatings are so brutal in there, but if you die they will just say you committed suicide. That’s how the communist state police is. They never admit to what they do, they’ll just publicly say you killed yourself even if the truth is that they beat you to death... They’re so evil. That’s why I’m not going back. There’s more honor in dying in a foreign country than at the hands of the state police. It’s so shameful. If they were to beat him to death in there, they would have just said that he killed himself because I left home and never admit to the abuse. The police are ruthless like that.’

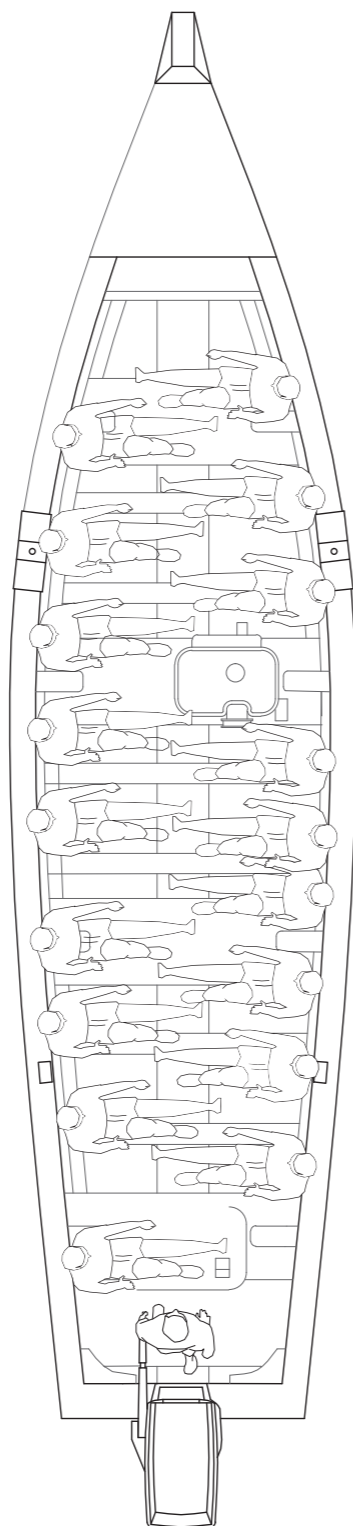
¹ IAA16/01473 of 6 July 2017
² IAA17/02056 of 9 May 2017

I: TAKEBACKS

What we are trying to examine in this chapter is the relation between the different spaces available for the refugees during their trip.

Such a process is composed of two paradigmatic acts, occurring on two different physical stages: (i) on the fishing boat, a precarious means of transportation usually not suited for sailing the high sea, on which the group of fleeing people perform the first part of their travel; (ii) on the Australian Navy vessel, which intercepted the group.

In each section we depict the correlation between the physical space available to an asylum seeker and the space of their subjectivity, based on depositions of witnesses that were subjected to the Enhanced Screening¹ process in the last years.



¹ See Enhanced Screening Policy Guidelines (April 2003), released by Australian Government-Department of Immigration and Citizenship under the Freedom of Information Act (1982) and partially reported in this document.

My name is Tran Thi Thanh Loan. I'm a Vietnamese citizen, 35 years old, mother of 4 children.

We fled Vietnam and were heading for Australia not because we couldn't find work, we can definitely work. I earn a few dollars a day by buying fruit from local orchards, which I sell in front of my parents' house.

My family has a business, has boats to go out to the sea. We left on one of our boats from a shore a couple kilometers from xxxxxx, the place where I was born and raised.

The Vietnamese government wants us to go out to the sea, fish, and guard the sea and islands. But when Chinese ships attacked, and seized our boats, we informed the Vietnamese authorities in our town, they just nodded and told us to continue to go out to the sea.

When the Chinese continued to ram into our boats, kill our fishermen, all they said was, 'Can only look, cannot say anything.'

That's how life is in Vietnam, you can't say anything. It's very dangerous out in the ocean, anything can happen. If I go, I might die. But if I stay in Vietnam, I may still die. I'd be more content to have my body eaten by the fish in the sea than have a state-authorized death at the hands of the Vietnamese communists.

We tried to escape before together with my husband Ho Trung Loi. He is already serving a two-year sentence following the attempt to seek asylum in Australia in a jail seven hours' drive from my family's home and is not due for release until mid-2017.

We are facing up to 15 years' jail as repeat offenders under the recently amended Vietnamese penal code. My children were about to be forced to leave school and live in an orphanage.

At that point, we decided to stop trying, and if this other country didn't want to accept us, then that would be it. When they transferred us back home, the immigration in Saigon, the police of Binh Thuan province, and the local police of La Gi commune were all waiting for us.

I thought I was going to die in prison. The beatings are so brutal in there, but if you die they will just say you committed suicide. That's how the communist state polices.

They never admit to what they do, they'll just publicly say you killed yourself even if the truth is that they beat you to death...they're so evil.

That's why I'm not going back. There's more honor in dying in a foreign country than at the hands of the state police. It's so shameful.

If they were to beat him to death in there, they would have just said that he killed himself because I left home and never admit to the abuse.

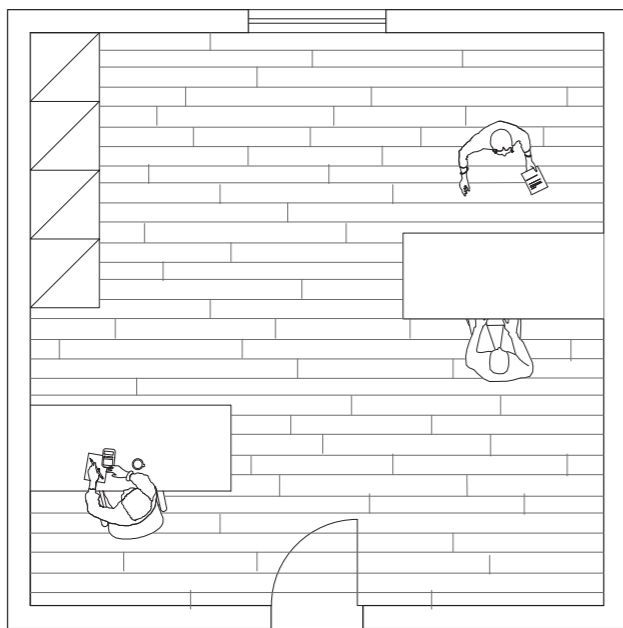
CHORUS, the title of the first section, depicts the context to which the asylum seekers are subjected when they leave their country of origin in their desperate attempt of reaching the Australian shores. Usually packed on fishing boats or small vessels, exposed to a perpetual condition of danger, due both to external causes such as weather and sea tantrums, or to internal ones, related to the precarity of their legal status, asylum seekers, during this phase carry with them their personal history together with their religious and social identity, not mediated by any source of power or institutionalized protocol.

Despite the constant physical threat and the lack of space onboard, the subjectivity of the travellers, encounter no obstacle in its expression. Multiple voices are staged on the vessel, independently from the formation of a community during the pilgrimage, they coexist without overlapping or confusing each other, resembling in their interweaving a polyphonic chorus: different melodies and tones coexist on the same stage without losing harmony or coherence.

The present text is not the transcript of a specific Enhanced Screening interview and was thus not recorded during such a process.

Anyhow, this content is the rearranging of real testimonies that we have encountered during the project.

Even if the content has been partially rearranged to better fit the format of the interview, all the facts and situations described are real.



- Q1: Do you understand the interpreter?
- Q2: Do you object to this interview being recorded?
- Q3: Nominal Roll / Migration History / Reason for Travel
 - Q3a: Boat ID - Family and given names - Date of birth - Country - Ethnicity
 - Q3b: Any family on the boat?
 - Q3c: Any family in Australia?
 - Q3d: Where did your boat depart from?
 - Q3e: Where did you board the boat?
- Q4: {question reserved to those that have not come directly from their countries}
- Q5: Preamble object of the interview
 - Q5a: do you understand?
- Q6: Additional questions at confirmation of nominal roll data
 - Q6a: What is your current occupation?
 - Q6b: Where did you reside just prior to leaving for Australia?
 - Q6c: What are your reason for coming to Australia?
 - Q6d: Do you have any other reason for coming to Australia?

=== CENSORED ===

- Q7: Further examination of protection related information.
 - Q7a: Do you understand?

=== CENSORED ===

- Q8: Country Information relating to [Vietnam] [Sri Lanka]
- Q9: Natural Justice Break
- Q10: Have you anything to add to what you have already said?

My name is Tran Thi Thanh Loan. I'm a Vietnamese citizen, 35 years old, mother of 4 children.

[REDACTED] I earn a few dollars a day by buying fruit from local orchards, which I sell in front of my parents' house.

[REDACTED] We left on one of our boats from a shore a couple kilometers from xxxxxx, the place where I was born and raised.

[REDACTED]

[REDACTED]

[REDACTED]

We tried to escape before together with my husband Ho Trung Loi. He is already serving a two-year sentence following the attempt to seek asylum in Australia in a jail seven hours' drive from my family's home and is not due for release until mid-2017.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

SOLOIST, derived from solo (from the Italian: solo, meaning alone) term used in music to describe a piece or a section played or sung by a single performer. In using this term, which is usually associated to a great extent of creativity and freedom of expression, we want to underline the contradictions to which the asylum seeker is subjected during the Enhanced Screening process.

Enacted on board of Australian Navy ships, into rooms that do not differ so much from a standard work office, this act involves three main actors: two officers, well trained in the execution of such protocol (which sometimes can even be absent, as the interview can take place by phone), and the asylum seeker, finally alone, who mistakenly expects to have space (both physical and symbolic space) to report their personal background, their personal history and their fears in order to claim the right of asylum on top of solid legal basis. Nonetheless, this soloist is continuously interrupted and counterpointed by the arrangement played by the two officers: no space for the expression of individualities is made possible, no opportunity for backing up any rightful claim is given, only the dry and aseptic unfolding of personal data is allowed in the room.

In addition, since the presence of a translator in the room is not to be taken for granted, the three actors operate into a situation of incommunicability that can be only partially solved by the intervention of the interpreter on the phone or via webcam. The performance of the soloist is thus undermined by the systematic interferences of the bureaucratic protocol into the space of the self with an effect that opposes the standard meaning of the term itself.

According to the Enhanced Screening Guidelines (released in 2013 under the Freedom of Information Act), there is no evidence that the interviewees are being explicitly offered the option of claiming “refugee” status. Evidence seems to show that questions concerning protection claims (specifically Q7 & Q8) are only asked by the Interviewing Official if the issue had been previously raised by the same interviewee. In addition, there is no guarantee that neither the Interviewing Official nor a translator are going to be present in person at the interview, as the Guidelines allow for a phone interview. Therefore, the Enhanced Screening procedure has been heavily criticized by human rights advocates (in primis by UNHCR¹), because it does not allow for a proper hearing of the asylum seeker.

¹ www.unhcr.org/afr/news/press/2014/7/53baa6ff6/returns-sri-lanka-indi-viduals-intercepted-sea.html

Should a formal protection procedure start, then it would trigger an in-depth investigation and eventually the granting of the “refugee” status by the Immigration Assessment Authority (IAA). Also, a negative outcome may be challenged in front of the Australian Administrative Tribunals. This pattern has emerged in several cases in front of the Australian Administrative Tribunals, such in the cases of:

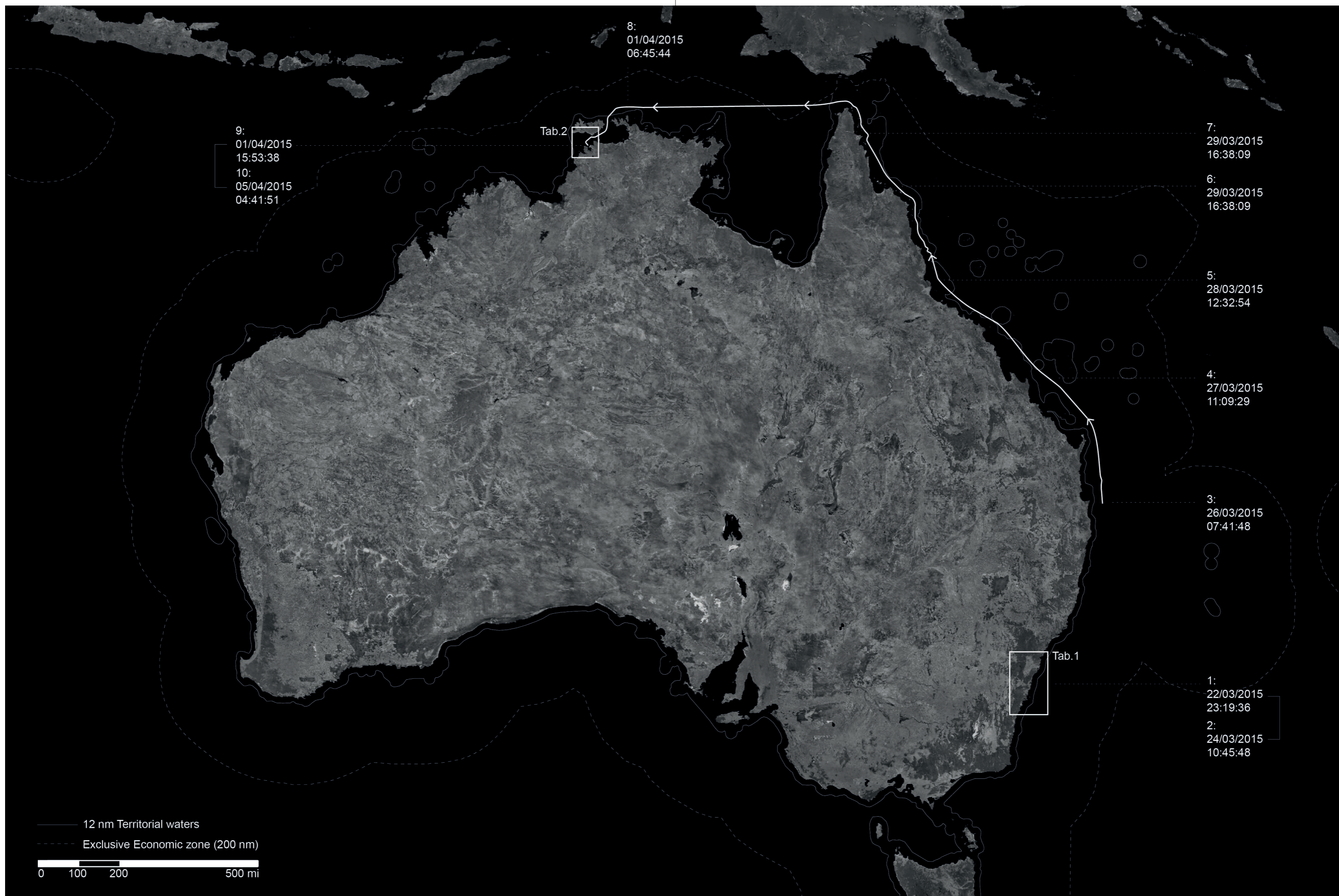
– *Sri-Lanka*: the family of a LTTE family (1312181 – Refugee – AATA 3512 – 29 September 2015) or imputed links to LTTE (1403517 – Refugee – AATA 3922 – 1 June 2016)

– *Vietnam*: the cumulative effect of religion, family background and political opinion in the case of a victim of immigration fraud (1609717 – Refugee – AATA 4386 – 6 September 2016), or just religious grounds (1504822 – Refugee – AATA 1195 – 29 June 2017).



Scott Fisher/EPA, Asylum seeker boat near Christmas Island

49



49 OVERALL MAP (pp. 34-35)

The HMAS Choules is a large Australian navy vessel (176 meters long with a large flight deck aft) that was commissioned on the 13th of December 2011 for the purpose of getting landing forces and equipment ashore. It is manned by 158 crew members and can hold up to 700 passengers, as well as heavy artillery such as tanks and trucks. It was used to intercept a small Vietnamese fishing boat on the 20th of March 2015.

The 46 Vietnamese asylum seekers were held on the Bay Class HMAS Choules until the 18th of April. During this period the refugees were 'Enhanced screen' and were then taken back to Vung Tau, Vietnam. These boats aren't usually involved with the Operation Sovereign Borders initiatives and are typically used only to transport troops or provide disaster relief.

Tab. 1 (p. 37)

The AIS Maps show the first recorded exit point for the HMAS Choules from the HMAS Kuttabul Naval Base, Sydney on the 22nd of March 2015 at 23:19 pm. However, due to the known knowledge that the Vietnamese vessel was intercepted on the 20th of March, we can assume the HMAS Choules has journeyed back to its base between the 20th and 22nd of March with the refugees aboard.

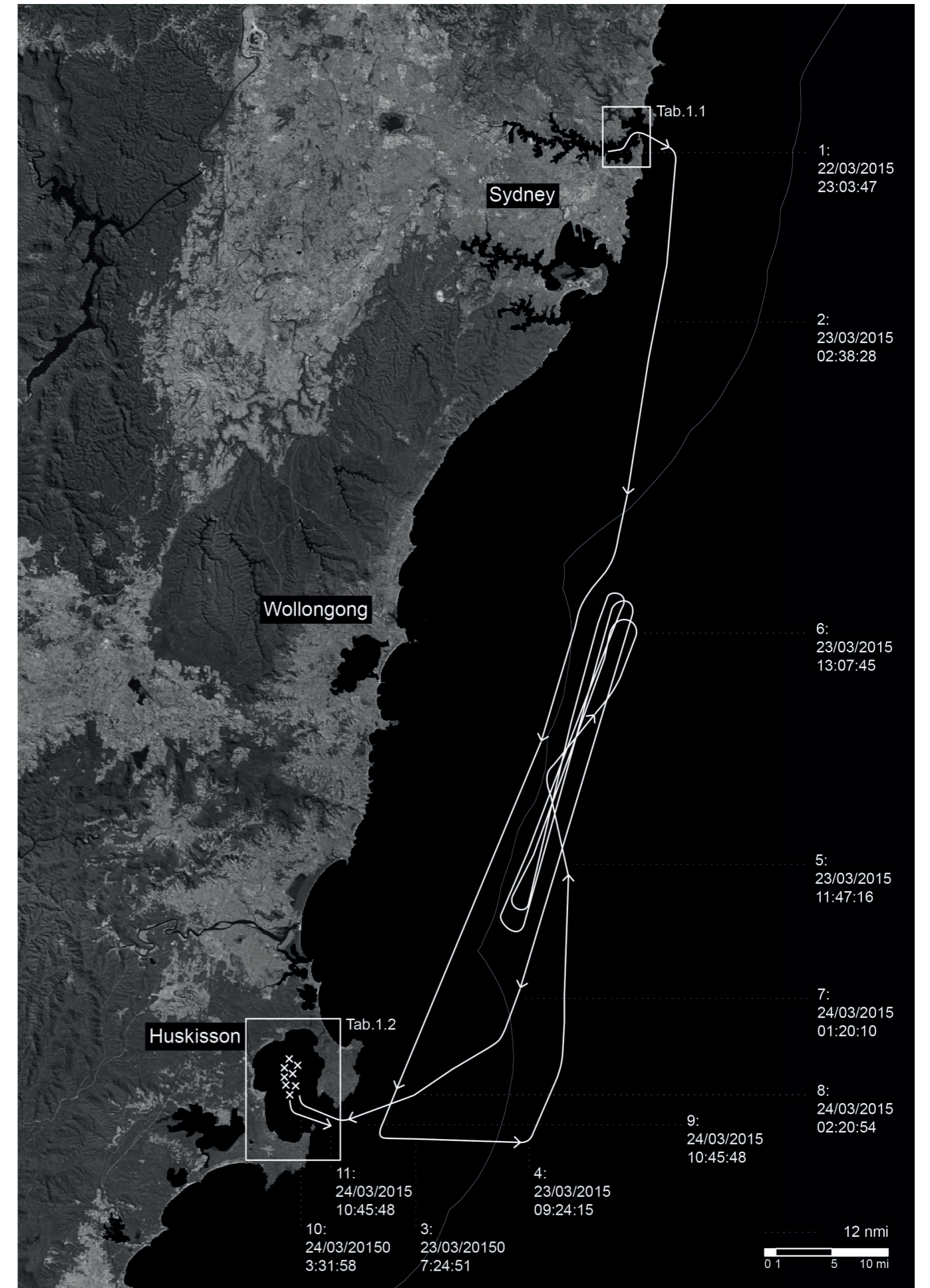
Tab. 1.2 (p. 39)

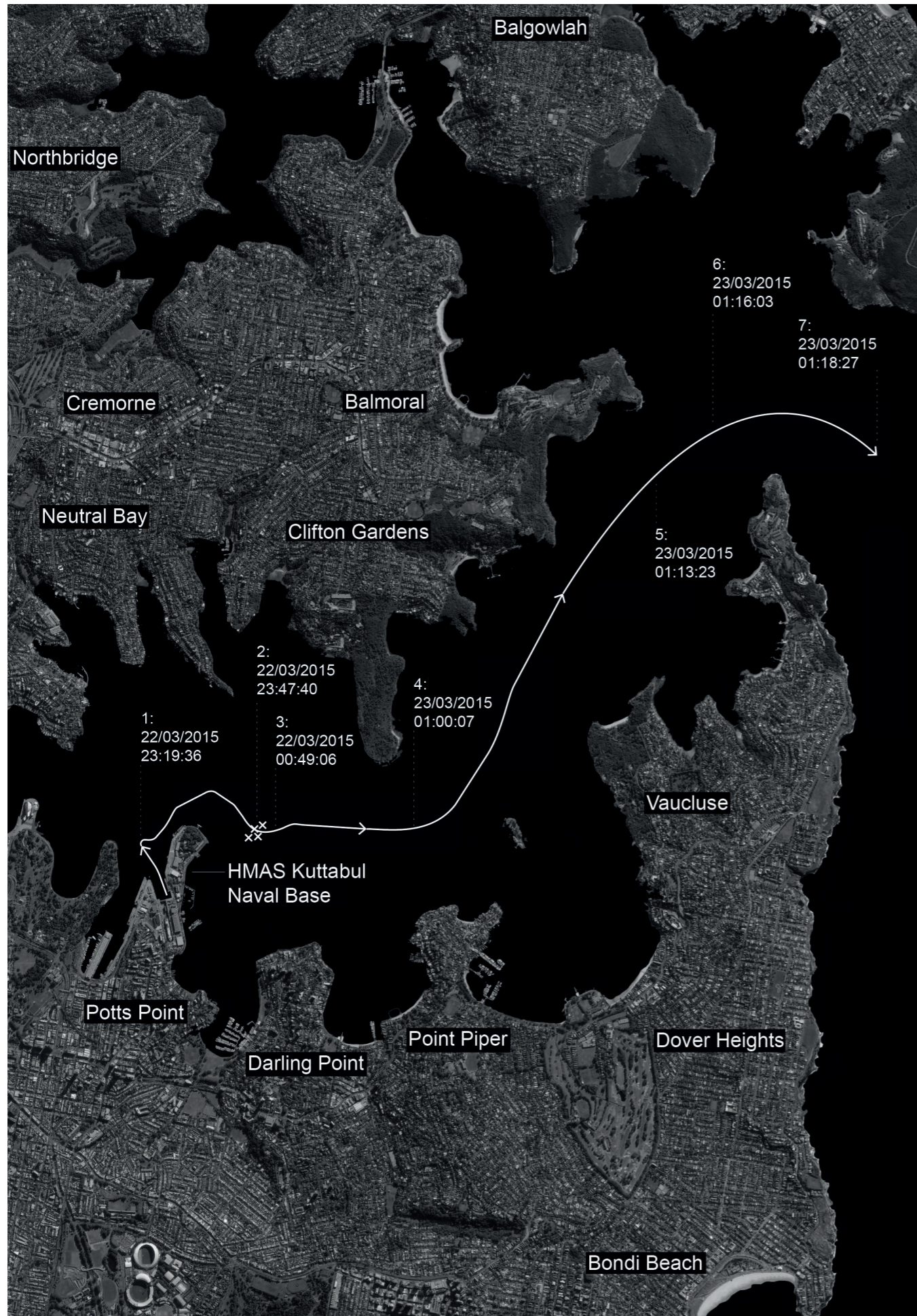
The naval ships next stop was between the 23rd and 24th of March was the naval point of HMAS Creswell at Huskisson. We can see the vessel making four long courses along Jervis Bay and Wollongong on the South East coast of Australia before exiting the territory to make another stop north of Australia.

Tab. 2 (p. 40)

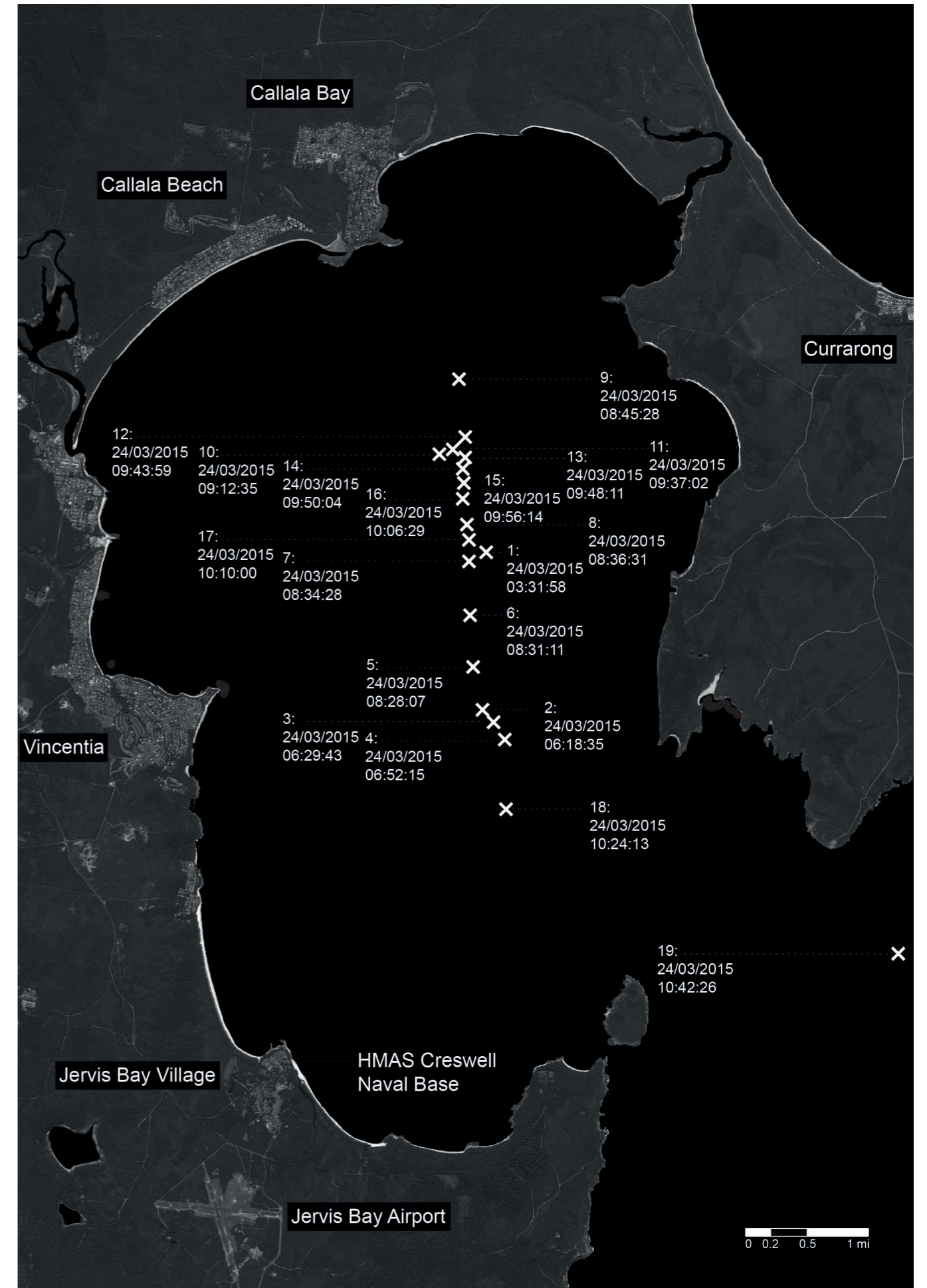
The last stop recorded was made between the 24th of March and the 5th of March. The ship with the detainees on board made a trip to Darwin, North of Australia where the HMAS Coonawarra bay is located. This ship reached Darwin and made three circular rounds before heading towards the Coonawarra Naval Base on the 5th of March at 03:35 am, the ship halted for two hours before leaving the base and heading North West at 04:41 am.

According to a legal Senate Committee from the 25th of May 2015, during the time the detainees were on board the naval ship, the Australian officials were awaiting a document from the Vietnamese government to confirm that the Vietnamese refugees will not be prosecuted upon arrival back to Vietnam.



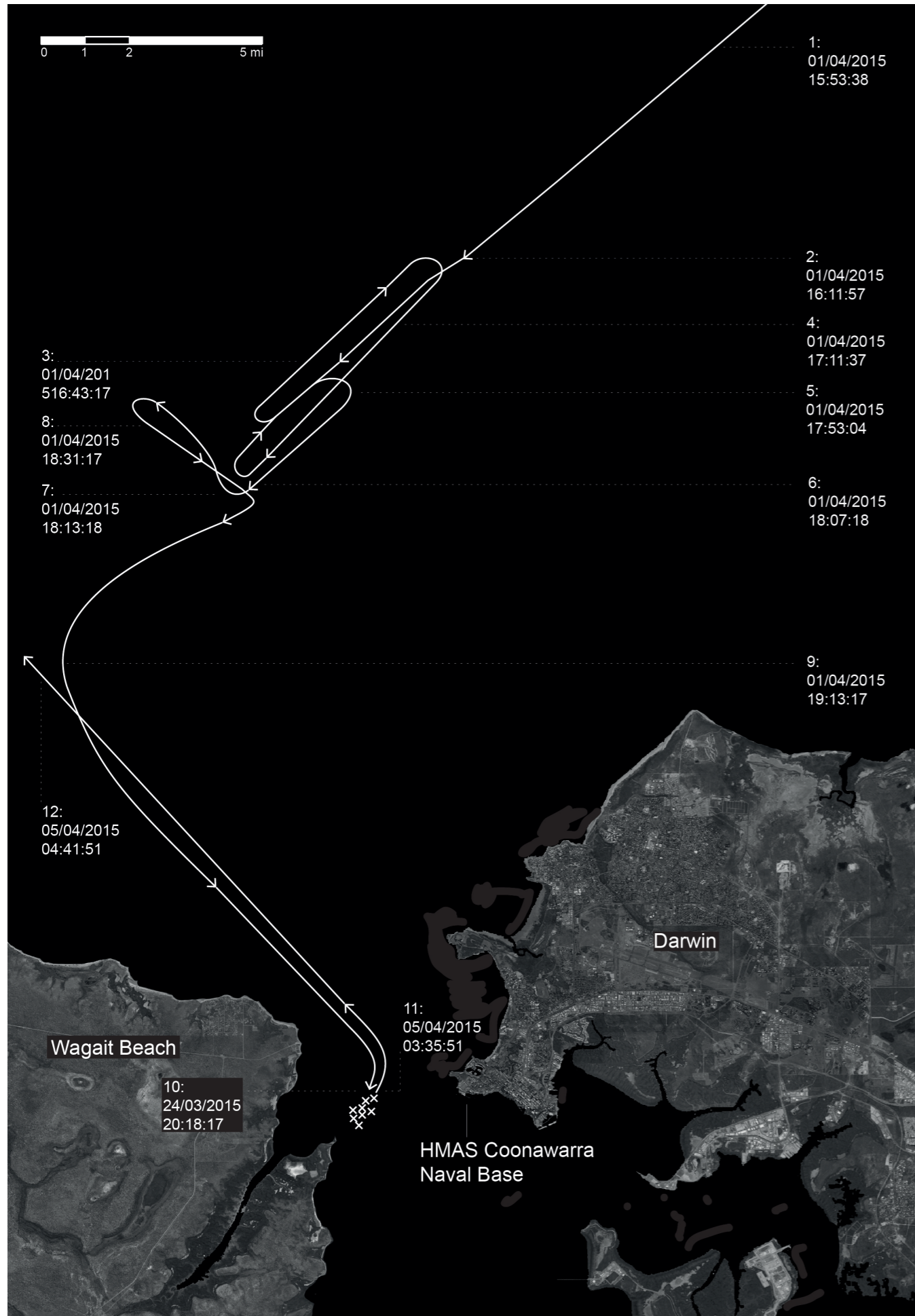


'UNLESS THE WATER IS SAFER THAN LAND'



I: TAKEBACKS

49



'UNLESS THE WATER IS SAFER THAN LAND'

I: TAKEBACKS



II

TURNBACKS

35 This section concerns
38 Indonesia and the shifting
39 modalities of effective
40 control exercised by the
51 Australian government to
56 intercept and refoule a
60 vulnerable population on
Indonesian identified vessels
over a two year period from
December 2013 to November
2015 during a period of
deteriorating diplomatic
relations. Our conclusions
are three-fold:

1. That the Australian government operated a common and ongoing plan to covertly refoule a vulnerable population to Indonesia;
2. That the Australian government effected a common and ongoing plan to deprive a vulnerable population of their human rights and dignity for the duration of detention under effective control;
3. That the Australian government operated a common and ongoing plan to disguise these activities and mislead the Australian public.

The evidence constructed here for the period between December 2013 and November 2015 concerning Indonesia, adjoins a larger picture of a systematic, evolutionary and grave set of apparatuses designed for deterrence. We believe that the ongoing activities of the Australian government and navy, the continuing opaqueness of the political narrative set, and the lack of prosecution for OSB crimes evidenced here, set a grave precedent for other nation states that might wish to conflate a humanitarian, refugee crisis with a people smuggling epidemic for political ends.

Three subsections follow: the Riski 02 case (December 2013), the Lifeboat cases (January/February 2014), and Fishing Vessel cases (May/July/November 2015). The

section forms an overall genealogy of the changing face and shifting modalities of effective control exercised covertly by the Australian government and navy to refoule a vulnerable population to arbitrary places of safety. What is clear is that the Australian government and navy actively decided to use increasingly covert means over the period from December 2013 to November 2015 to disguise their activities both from the Australian public, and Indonesian government. Each subsection therein constructs and sets out the type of vessel used - its proportions, conditions and thresholds - and the zones identified as their cut-loose by the Australian navy. In doing so, what emerges is an evolving frame of illegal on-sea detention, torture (see Subsection I), negligence (see Subsection I, II and III) and collusion with people smuggling groups (see Subsection III). These crimes are admissibly grave.

Operation Sovereign Borders is less a monolithic design than a series of evolutionary apparatuses customised to State. In this regard, the customised Indonesian node of OSB generates differing modalities of effective control to its Sri Lankan and Vietnamese counterparts. In contrast to the latter two, maritime relations between Australian and Indonesia have expressed a brittle dynamic over the past two decades. Following the fall of Indonesia's authoritarian regime in 1998, diplomatic relations have oscillated hot and cold through a series of flash-points: Australia's intervention in East Timor, the Tampa affair, the Bali bombing and terrorist attacks, the execution of Australian convicts on drugs smuggling charges.

Identifying these irruptions informs our understanding of the metastasising Indonesia-

concerned apparatus. In November 2013, the Australian media, ABC and the Guardian presented to the public a classified government document revealing Australia's attempt to spy on the Indonesian president, his wife, and eight ministers and government officials (MacAskill & Taylor, 2013). The Australian Prime Minister Abbott refused to apologise to Indonesia for information gathering as it was a 'common practice of every government' (Griffiths, 2013). In reaction, Indonesia recalled its ambassador from Canberra and soon after the Indonesian President Yudhoyono declared to suspend cooperation with Australia in their intelligence exchange and information gathering concerning military and people smuggling activities (BBC, 2013).

The first case discussed in this part, about the Riski 02, locates itself within the weave of this fast-moving, deteriorating climate. Riski 02 was recorded as intercepted on the 27th of December 2013, eight kilometers from the Australian shore. The vessel was then detained, towed and released at an arbitrary distance from Rote Island. The vessel was subsequently reported by an Indonesian police man drifting near the island on the 6th of January 2014. This first subsection opens out the space of the migrant vessel as an offshore detention and deterrence facility.

CASE 35

Date: 27-12-2013

On the 27th of December 2013, the vessel Riski 02 sat out from the East coast of South Sulawesi, Indonesia. It is estimated that 49 asylum seekers and two crew members were onboard at the time of departure. Eight kilometres from the Australian shore, the Riski 02 lost four of its passengers at sea due to high waves. Passengers sent out a distress call to international emergency services (by dialing number 112) and were ordered to keep moving towards safety while search and rescue teams were on their way. When the Australian Navy vessel HMAS



Parramatta arrived on scene a few hours after the call, the asylum seekers' vessel had already reached Melville Island, North of Pirlangimpi, Australia. Searches for the missing passengers proved unsuccessful. Passengers who were on the shore were apprehended by Australian navy personnel and returned to Riski 02, which was boarded by Australian navy personnel and turned back to Indonesia after five days of navigation. During this prolonged period of detention, passengers were held partly on deck and inside the boat in punitive conditions. Several passengers suffered from deep burns on their palms allegedly inflicted upon them by Australian Navy personnel. The latter were also accused of pepper spraying agitators and providing limited access to the toilet on board the vessel. The Federal

Government has vehemently denied that any asylum seekers were deliberately injured. The Australian Defence Force Investigative Service (ADFIS) has allegedly carried out an internal investigation of the event, however, the results of the investigation are not accessible to the public.

CASE 38

Date: 15-01-2014



Cikepuh | Aus Lifeboat #1 | 56 pax. | AHMAS Stuart & HMAS Maitland attended

Asylum seekers told journalists that they set out for Christmas Island by boat from an island off the coast of

Java on the 5th of January 2014. There were 56 aboard the boat including one woman and a toddler. After three or four days at sea, having been seen by an Australian aeroplane they scuttled their leaky boat to avoid being turned back to Indonesia like other asylum boats they knew of. They were rescued from the water by HMAS Stuart, transferred to a Customs vessel and 'tricked' into thinking they were being taken to Christmas Island. After five days in Australian custody the group were transferred to a small lifeboat and told they only had enough fuel to return to Indonesia; they were reportedly left three hours sailing time from the Indonesian shore. The Indonesian crew deserted the lifeboat in sight of land and the asylum seekers steered the vessel into shore, crash landing on a coral reef on a

deserted beach in the remote area of Cikepuh on the 15th of January. The returnees made a perilous journey through the jungle on foot to reach safety. An Iranian couple in Cisarua told journalist Paul Toohey that they had been visited by a group of survivors from this voyage on the 17th of January who told them that 'three people died while crossing a river in the jungle' during their trek back to safety. Two asylum seekers who were returned to Indonesia on the lifeboat told Al Jazeera reporter Step Vaessen that they were left in the water for two and a half hours in sight of Navy vessels before being rescued.

CASE 39

Date: 05-02-2014

Pangandaran Bay | Aus Lifeboat #2 | 34 pax. | HMAS Bathurst & ACV Triton attended

Indonesian media reports state that on the 26th of January 2014, a group of 36 asylum seekers including 11 women - one of whom was pregnant - and at least two young children aged less than five years old, set sail from the south coast of West Java for Christmas Island. They were at sea for about 36 hours before they were intercepted by OSB close to Christmas Island on the 28th of January. Sometime after interception, they were herded into a navy vessel and their boat reportedly sunk by Australian officials. Australian media reports

concerning this group of asylum seekers began in late January with claims that people were being held on HMAS Bathurst and that an orange lifeboat was being towed by ACV Triton several miles off Christmas Island. The lifeboat was reportedly towed near Christmas Island for at least five days, from the 29th of January to the 3rd of February. During this time it was reported that two men – asylum seekers on one of the Navy vessels – had been hospitalised, one on the 31st of January ‘for urgent medical treatment in relation to a heart condition,’ and a second man on the 3rd of February. It appears that the remaining 34 asylum seekers from this group were transferred into an OSB lifeboat (capacity 90 persons) on the morning of the 5th of February and towed back to Indonesia by an Australian navy vessel, arriving in Pangandaran Bay the same evening. People returned in the lifeboat told the Indonesian media that there had been some kind of physical altercation (presumably with Australian OSB personnel) and that they believed two men in their group died – presumably the two men referred to above who were removed to Christmas Island for medical treatment.

In March of that year, George Roberts attempted to discover the current whereabouts of these two men (named Ali & Hossain) but was unsuccessful. The asylum seekers also made video recordings inside the lifeboat on the journey back to Indonesia, which they subsequently provided to the media. A transcript of this video recording indicates that some of the group may have been turned back to Indonesia on a previous vessel and that one of them may have died in the jungle trying to reach safety. The transcript also suggest that this vessel was SIEV 879. That same month, Roberts

interviewed people returned to Indonesia on this lifeboat for the 7.30 report and discovered that an Iranian couple Arash & Azi Sedigh had also been returned on another lifeboat on the 15th of January. This report by Roberts also included another video recording made inside the lifeboat. The lifeboat was reportedly manufactured in China by Jianguyinshi CO.LTD Beihai LSA, 33 # Beihuan Road, Yuecheng Town Jianguyin City 214 404 JIANGSU Province of China.

CASE 40 Date: 24-02-2014

Kebumen | Aus Lifeboat #2 | 34 pax. | HMAS Bathurst & ACV Triton attended

According to Indonesian media reports, 26 male asylum seekers aged between 17 and 35, departed Pelabuhan Ratu for Christmas Island on the 19th of February. The group comprised people from Pakistan, Iran, Afghanistan and the United Arab Emirates. The asylum seekers were at sea for three days and three nights before they were intercepted by the Australian Navy near Christmas Island. They were taken on board a Navy vessel and their boat was destroyed at sea. They were transferred to an OSB lifeboat (capacity 55



persons) close to Indonesia and left to make their own way back to land. The boat was found washed up on rocks at Kebumen on Monday, the 24th of February about 1pm local time.

CASE 51 Date: 05-05-2015

This case was the object of a Legal and Constitutional Affairs References Committee of the Australian Senate in May 2016, and featured as the main case documented in the Amnesty International report ‘By Hook or By Crook: Australia’s Abuse of Asylum-seekers at Sea’, published on the 29th of October 2015. On the 5th of May 2015, 65 passengers from Sri Lanka, Bangladesh and Myanmar accompanied by six crew members left Indonesia for New Zealand. Australian Border Force and navy ships first intercepted the boat on the 17th of May in international waters, inspecting the boat’s equipment and food supplies for half an hour, after which they disembarked. The two Australian ships followed the boat until the 22nd of May, when a second interception took place. The night of the 22nd of May, 58 male passengers were forced to remain outside the cabin with no protection from the

elements, resulting that many of them became sick and vomited. The Australian ships escorted the asylum seeker boat to Greenhill Island, where they arrived on the 24th of May. Upon arrival, 50 passengers were transferred to a Border Force ship and held in custody for about a week. Passengers, crew and Indonesian police alleged that Australian officials paid the crew a total of US \$32,000 to return the passengers to Indonesia. One of the 15



passengers who remained on the original boat witnessed an Australian official giving the Indonesian captain a thick white envelope. The Indonesian police later confiscated the money. In the early hours of the 31st May, the passengers were transferred by Australian officials to two new fishing boats (‘Jasmine’ and ‘Kanak’) at Ashmore Reef, which were not as well-equipped as the original boat. That afternoon, one of the fishing boats (‘Jasmine’) ran out of fuel and its passengers had to move onto the other boat (‘Kanak’). This second, now overcrowded, boat struck a reef off Indonesia’s Landu Island in the afternoon and local people assisted in the

rescue. The crew members were charged with people smuggling in Indonesia and were tried in October 2015. The asylum seekers were held in Kupang, West Timor in immigration detention, in some cases for a number of years.

CASE 56 Date: 25-07-2015

On the 16th of July 2015, 25 asylum seekers from Bangladesh, Pakistan and Myanmar, along with two crew

members left from South Sulawesi in Indonesia. Between the 22nd and 23rd of July, they were transferred on a new boat in Kupang and made their way towards Australia. On the 25th of July at 11am, passengers saw two Australian ships heading towards them: the HMS Larrakia II and an Australian Border Force ship. As their boat was leaking, the asylum seekers signalled to the ships that they were in distress, however the Australian ships did not respond until around 6pm. They were then transferred onto the HMS Larrakia

II. On the 27th of July, the group were transferred onto the border force ship where they were interrogated (purpose unclear) and contained in cells, where medical attention was denied. Before sunrise on the 1st of August, the asylum seekers were woken and brought to the ‘Harum’, a fishing boat procured by the Australian Government. On the ship they were provided with life jackets, a GPS set to the coordinates of Rote Island, limited fuel, three to four maps, two mobile phones and a walkie-talkie. Later that day, ‘Harum’ ran out of fuel east of Kupang, near Tablolong, before being rescued by locals and taken to land.

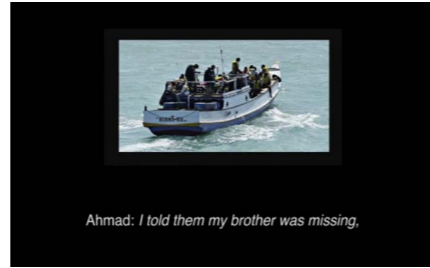
CASE 60 Date: 20-11-2015

On the 10th of November 2015, 16 people from India, Nepal and Bangladesh, and one crew member left from Jakarta in Indonesia. They then travelled towards Christmas Island where, on the 20th of November at 5:45am, they were intercepted just 200m from the jetty at Flying Fish Cove by an unidentified naval vessel. An hour later, their boat was towed by a patrol vessel to 5km from the shore of Christmas Island. From the 20th to the 24th of November, the asylum seekers and crew were detained on a Naval vessel around Christmas Island, during which time their original boat was destroyed. The naval vessel then sailed east to meet ‘Farah’, a fishing vessel that was in dock in Darwin. The asylum seekers and crew were transferred onto the ‘Farah’, where they were given life jackets, limited fuel, maps directed towards Rote Island, Indonesia, and a leaflet explaining their return. The asylum seekers were then found, after running out of fuel, stranded at sea near the town of Tablolong, West Timor. They were rescued by locals and then referred to local police.

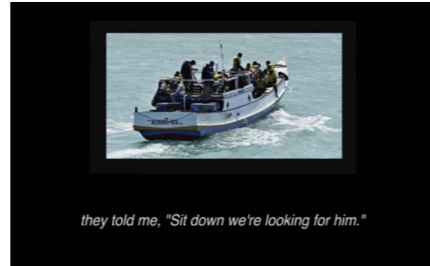
35 DEPARTURE & STATUS

Riski 02 sat out a few days after the implementation of Operation Sovereign Borders. Australia has international obligations to protect the human rights of all asylum seekers and refugees who arrive in Australia, regardless of how or where they arrive and whether they arrive with or without a visa. These rights include the right not to be arbitrarily detained. This case shows proof and alleged evidence of the government infringement of these international laws.

The case took place between the 27th of December 2013 and the 6th of January 2014, i.e. a few days after the start of Operation Sovereign Border. The Riski 02 travelled from the East coast of South Sulawesi, Indonesia to Melville Island, North of Pirlangimpi, Australia, where was turned and 'towed' back to Roti Island, Indonesia. It is estimated that 49 asylum seekers and two crew members were onboard at the time of departure.



Ahmad: I told them my brother was missing.

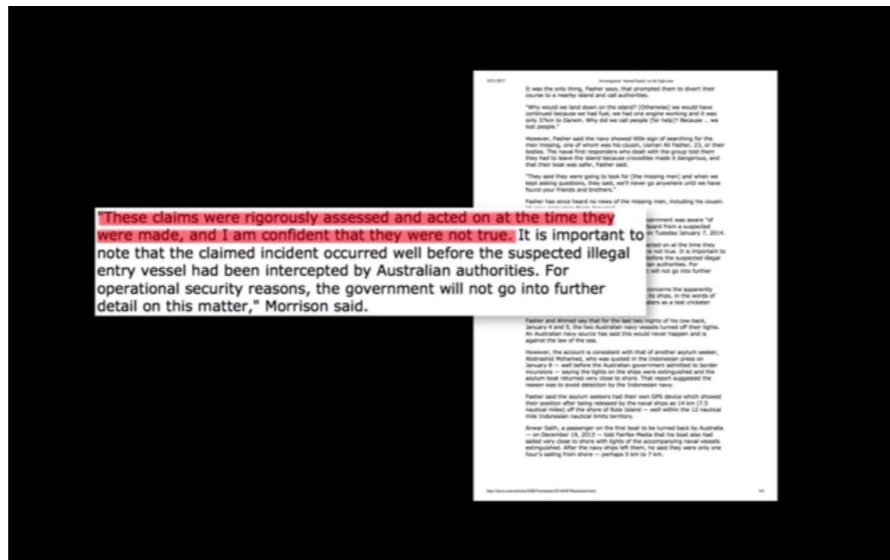
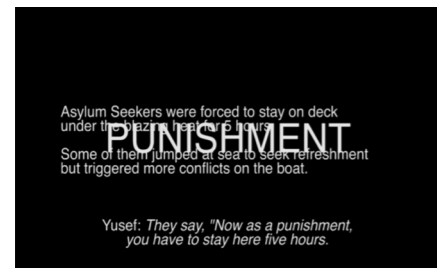


they told me, "Sit down we're looking for him."



They hit me and then they sprayed me.

1. During the event of agitated seas during the night of the 31st of December to the 1st of January, asylum seeker Ahmad loses his brother at sea and the boat sees 4 other passengers fall overboard. (captured from the 'Riski' video)



2. Minister of Immigration Scott Morrison has repeatedly denied illegal governmental action, in the case of the Riski the alleged burns and the breach of illegal waters. Denial on his behalf is a form of violence at a level of knowledge production. (captured from the 'Riski' video)

'UNLESS THE WATER IS SAFER THAN LAND'

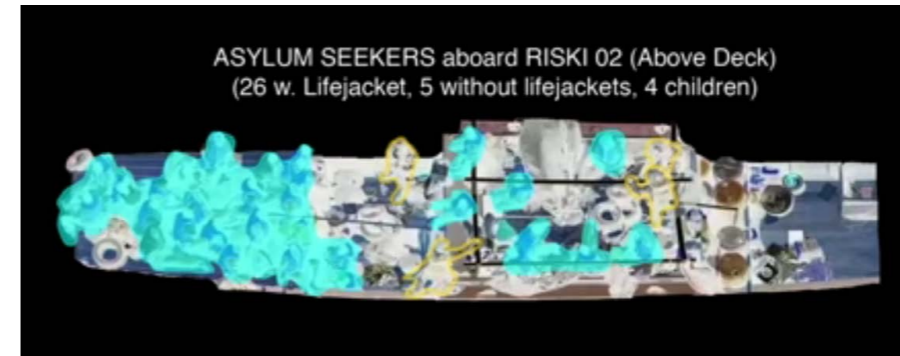
INTERCEPTION & TURNBACK

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Eight kilometres from the Australian shore, after entering Australian waters, the vessel – which at that point legally became an SIEV – lost four of its passengers at sea due to high waves. Passengers sent out a distress call to international emergency services (by dialling number 112) and were ordered to keep moving towards safety while search and rescue teams were on their way. When HMAS Parramatta arrived on scene a few hours after the call, the asylum seekers' vessel had already reached shore. Searches for missing passengers proved unsuccessful. Those who were on the shore were apprehended and returned to their own vessel, which was boarded by Australian Navy, Army and Airforce officers.



3. An aerial shot taken from above the Riski02 by local onlooker near the Indonesian shore shows asylum seekers accompanied by Navy officials. (captured from the 'Riski' video)



ASYLUM SEEKERS aboard RISKI 02 (Above Deck) (26 w. Lifejacket, 5 without lifejackets, 4 children)

4. This first diagram shows a total of 35 asylum seekers on board the Riski02. 26 people are clearly depicted as wearing life-jackets when 5 adults and 4 children seem to be wearing none. (captured from the 'Riski' video)



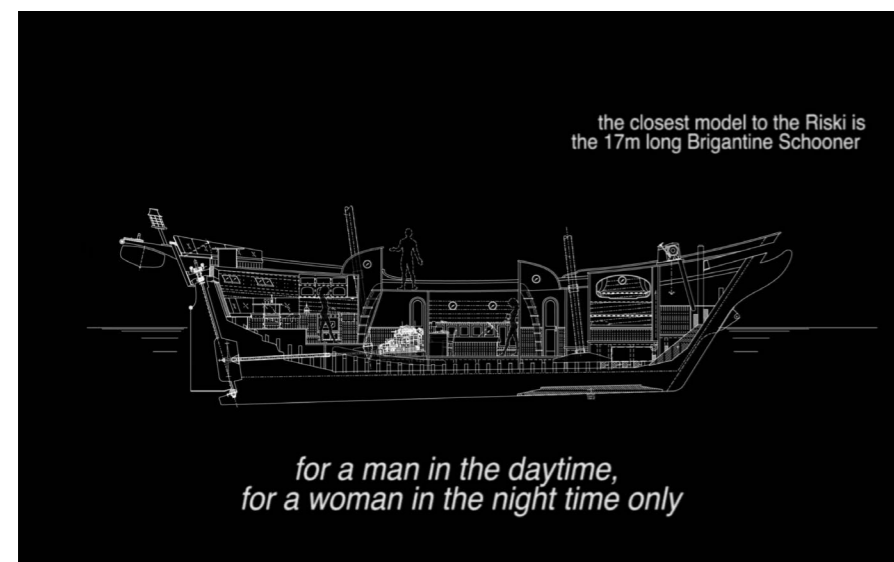
(4) NAVAL OFFICERS aboard RISKI 02 (Above Deck)

5. This diagram highlights 4 Navy officials wearing deep blue suits as well as helmets and safety gear. (captured from the 'Riski' video)

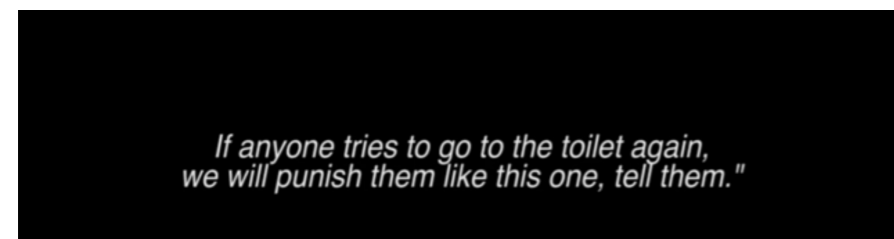
II: TURNBACKS

35 DETENTION

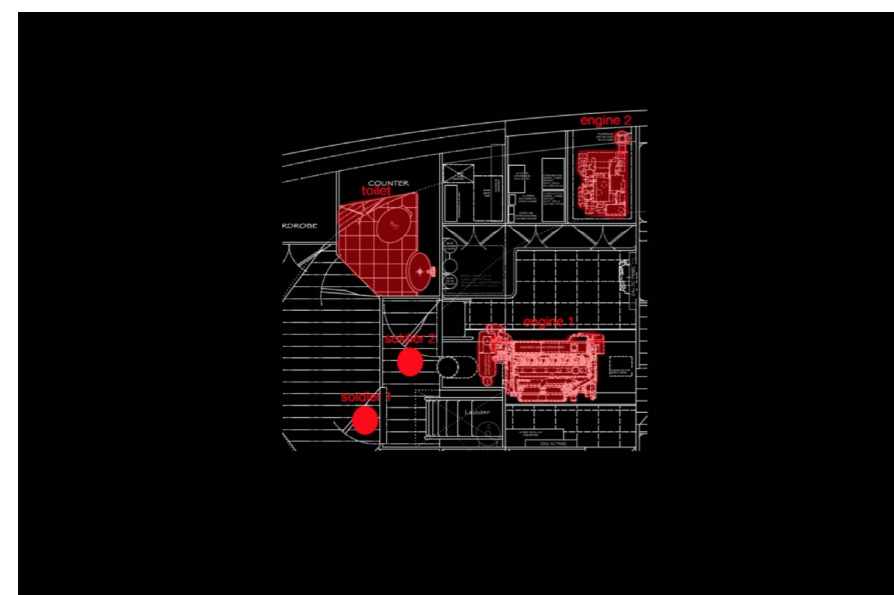
From then on, the SIEV takes the space of a detention centre. Asylum seekers were held partly on deck and inside the boat and were allowed one toilet break a day; men during the day and women during the night. Quickly, passengers began to protest; none of them had been screened nor even given the opportunity to seek for asylum. In response to this protest, navy officers consolidated the restrictions and pepper sprayed people forcing their way to the toilet, eventually burning detainee Yousif Fasher's hand on the vessel's exhaust. During this time, Australian officials were reported to have repeatedly inflicted harm upon passengers. Amongst other allegations, former asylum seekers claim to have been detained on deck in the blazing heat of Oceanic summer. Conflicts and detention lasted until their arrival at Indonesia's Roti Island after five days at sea.



6. This blueprint of a 17m long Brigantine Schooner, a typical Indonesian leisure boat, is the closest representation of what the interior of the Riski02 could have looked like. Its cabin space, although much larger in this image, allows to imagine the premises of the events in which asylum seekers claim to have been restricted access to the toilet and later forced to hold the steaming hot engine. (captured from the 'Riski' video)



7. Testimony of several asylum seekers describe the events which Navy officials restricted the access to the toilet from once during daytime for men and once at night for women. Some testimonies claim that after forcing their way to the toilet, Navy officials threatened of burning people's hands on the engine. (captured from the 'Riski' video)

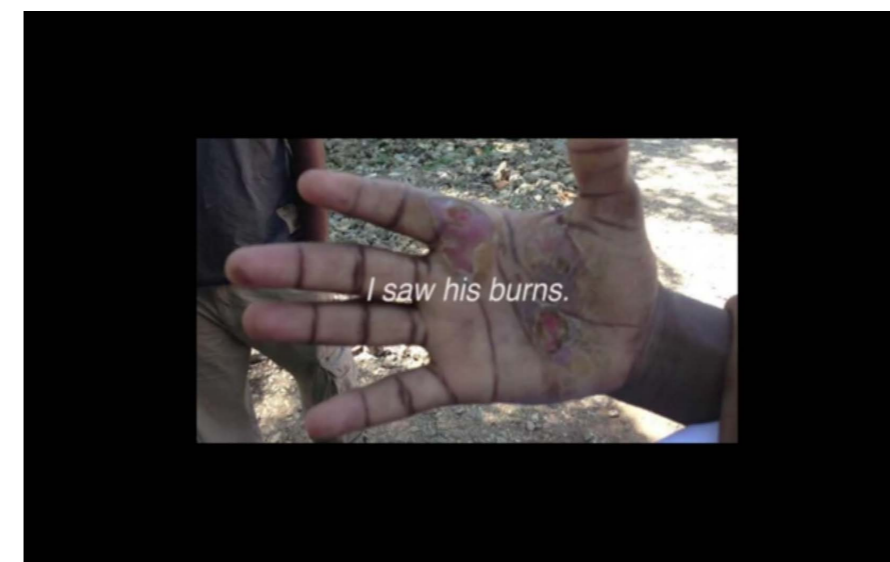


8. This diagram shows the proximity between the engine room, the toilet and the ladder and the two Navy officials that are believed to have guarded the boat's cabin.

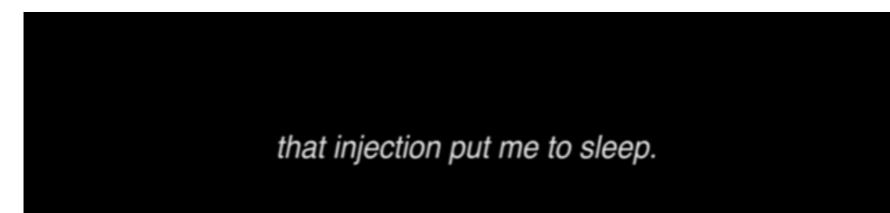
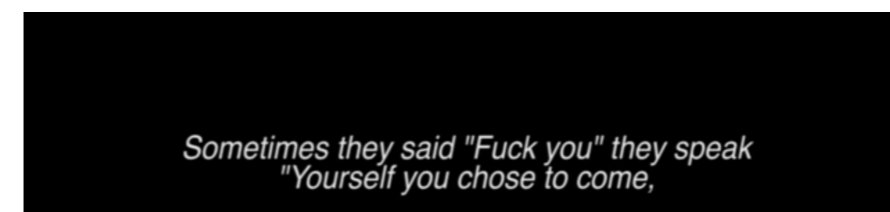
BURNS & COLONIAL DOMINATION

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A violation of the palm connotes a violation of individual identity; the palm being an object of biometric identification and hence an acknowledgement of the individual as well as individual rights. Historically, these actions inflicted upon the asylum seekers – the punitive actions taken by Australian navy personnel upon the asylum seekers – resonate strongly with notions of colonial domination and the treatment of slaves during the 'Congo Horrors' in the period of 1885 to 1908. The so-called "Congo Free State" under King Leopold II was marked by severe atrocities, violence and major population decline. Notably, during that era, workers' hands were severed by rogue Force Publique soldiers who were made to account for every shot they fired by bringing back the hands of their victims. This particular case echoes with the punitive burning of the asylum seekers' hands aboard the Riski 02.



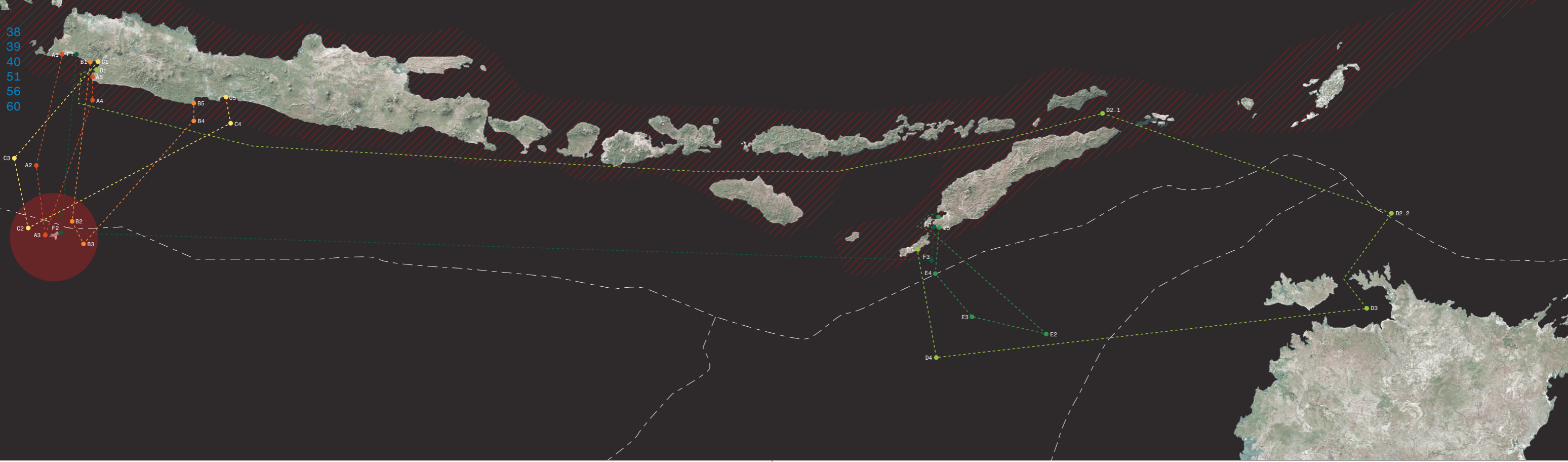
9. Evidence shows the hands of asylum seeker. Testimonies from those that were aboard the Riski02 claim several forms of violence and injustice from the behalf of the Australian Navy. (captured from the 'Riski' video)



DENIAL

Shortly after the events, Australian Minister for Immigration Scott Morrison denied the allegations by stating: 'These claims were rigorously assessed and acted on at the time they were made, and I am confident that they are not true.' In other statements concerning the case, Morrison uses the words such as 'baseless' and 'unsubstantiated' when referring to the testimonies of the former asylum seekers. This type of attitude from a world leader is inappropriate: the denial of possible human suffering and state violation of human rights are at stake. There is a form a violence in denial at a level of knowledge production.

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LIFEBOATS/FISHING BOATS

The first part of this subsection concerns three turnback cases conducted under Operation Sovereign Borders in the period between January and February 2014 in which three orange semi-submersible lifeboats were mobilised by the Australian navy, where the act of refoulement was imposed on a vulnerable population of asylum seekers and refugees back to the edge of Indonesia's territorial waters. Part II examines the material shift in the Australian government's strategy to utilising fishing vessels. Our inquiry operates at two scales – the micro(interior) of the lifeboat and the macro(exterior) of the Javanese drift waters and mainland (see map above). The former forms a speculation on the in-built functionality of the lifeboat as designed by the architects of OSB, the latter opens out a series of questions regarding the extent and spatial stretch

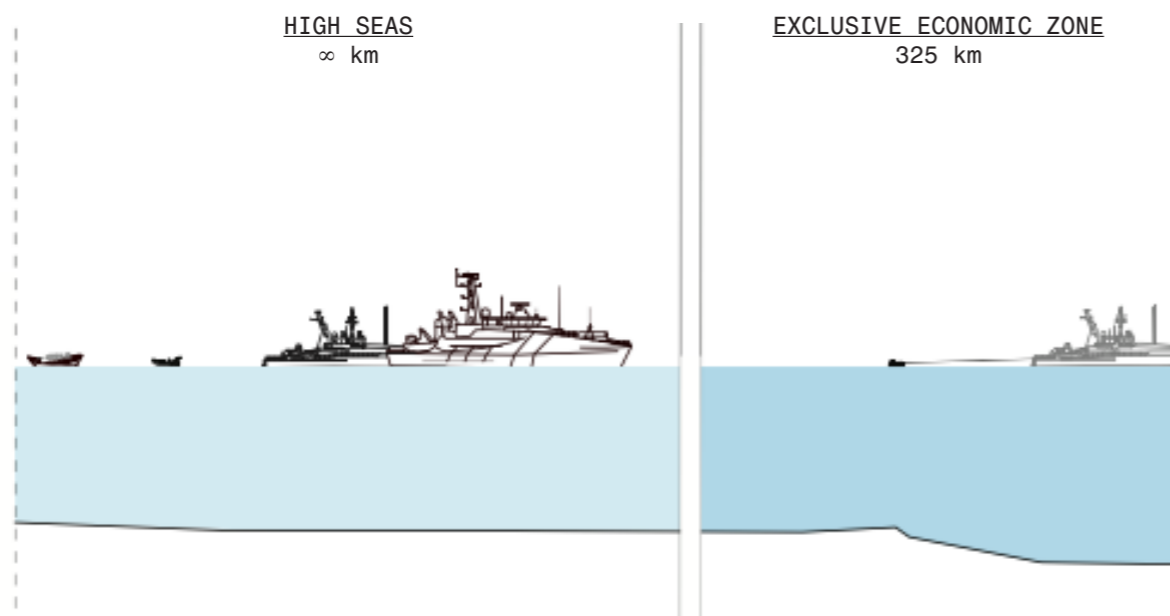
of Australia's responsibility to the asylum seekers and refugees under conditions of effective control.

Our legal argument focuses on the 'place of safety'. International law requires that a rescue operation is terminated at a 'place of safety', defined as "a location where the rescue operation is considered to terminate [and] a place where the survivors' safety of life is no longer threatened and where their basic human needs (such as food, shelter and medical needs) can be met" (IMO Resolution, MSC.167 (78)/26). In key, we contend that Australia's strategy of covertly releasing lifeboat vessels on the edge of Indonesia's territorial waters with inadequate on-board supplies operates in direct contravention to this. As with the previous section (Riski 02), we further contend that the on-board conditions of the lifeboat vessels operate by a detentive logic designed to deprive and deter a

vulnerable population from not only entering Australia on the present occasion but all future potential occasions. This detentive design is then further explored in the metastasising of a shifted strategy of procurement, position and typology to fishing vessels for more covert operational means.

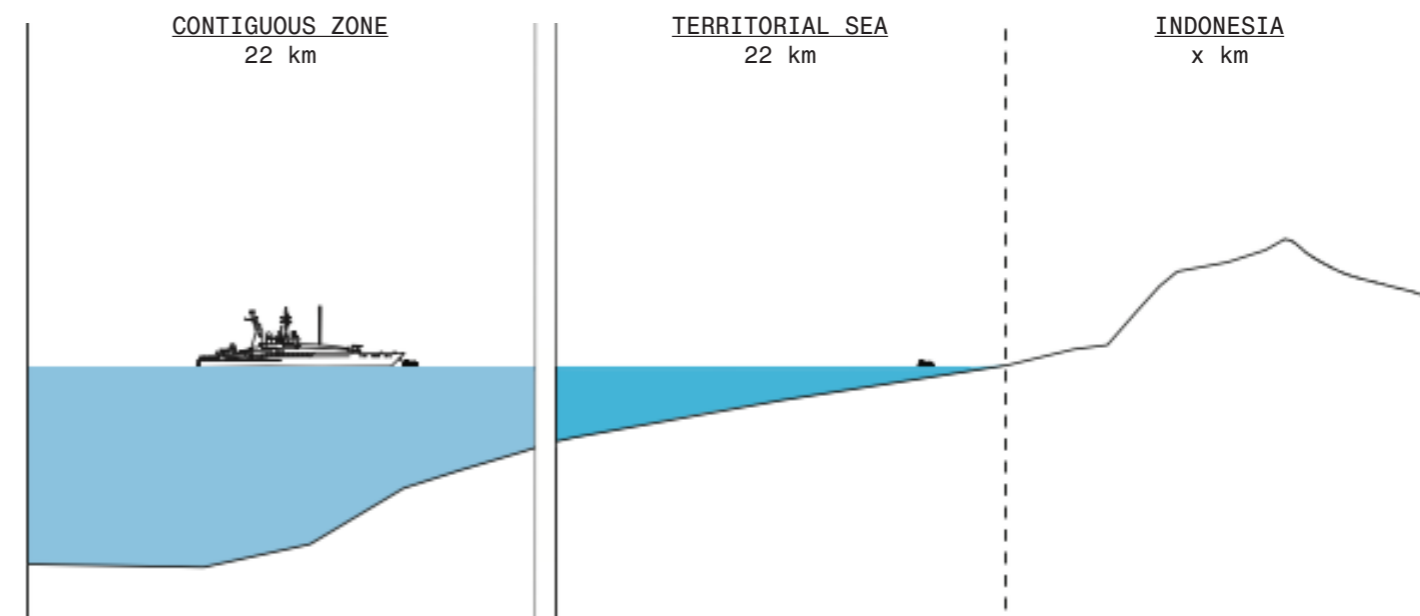
	Departure	Interception	Turn-Back	Cut-Loose	Crash-Land
CASE 38 15-01-2014	A1 ●	A2 ●	A3 ●	A4 ●	A5 ●
CASE 39 05-02-2014	B1 ●	B2 ●	B3 ●	B4 ●	B5 ●
CASE 40 24-02-2014	C1 ●	C2 ●	C3 ●	C4 ●	C5 ●
CASE 51 05-05-2015	D1 ●	D2 ●	D3 ●	D4 ●	D5 ●
CASE 56 25-07-2015	E1 ●	E2 ●	E3 ●	E4 ●	E5 ●
CASE 60 20-11-2015	F1 ●	F2 ●	F3 ●	F4 ●	F5 ●

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	<u>DEPARTURE L/T</u>	<u>INTERCEPTION L/T</u>	<u>TURNBACK START L/T</u>
● CASE 38	Island off Java. 05 Jan 14	Mid-Ocean 08 Jan 14	Transfer from naval to lifeboat. Near Christmas Island
● CASE 39	Undetermined Location / Likely off Java. 26 Jan 14	Near Christmas Island: 28 Jan 14	Near Christmas Island
● CASE 40	Pelabuhan Ratu, Sukabumi Regency, Indonesia. 19 Feb 14 (13:00)	Near Christmas Island 21 Feb 14 (1:00)	Undetermined Location
● CASE 51	Pelabuhan Ratu, Indonesia, 5 may 2015	I-1 in international waters north of Timor, 17 may 15. I-2 Arafura sea, 22 may 2015	Ashmore Reef, 31 may 2015
● CASE 56	Kupang, Timor, 22/23 july 2015	Timor Sea, 25 july 2015 5pm	Timor Sea, 1 Aug 2015 8am
● CASE 60	Jakarta, Indonesia, 10 nov 2015	200m from Christmas Island, 20 nov 2015	Timor Sea, 24 nov 2015

'UNLESS THE WATER IS SAFER THAN LAND'



	<u>CUTLOOSE L/T</u>	<u>DRIVE & DRIFT L/T</u>	<u>CHRASHLAND L/T</u>	<u>TREK L/T</u>
	'3 hours' from Cikepuh	Indeterminate	Remote Cikepuh: 15 Jan 14	Intercepted in Cisarua: 17 Jan 14
	'33km out'. At 6km/h Lifeboat speed = 5 hours from Java in optimal conditions	05 Feb 14	West Coast of Pangadaran Bay. West Java 05 Feb 14 (approx 20:30)	Intercepted in Cisarua: 17 Jan 14
	3 days kept below decks. Likely 24 Feb 14	Indeterminate	Bay near village of Kebumen. 24 Feb 14	Indeterminate
	Closer to Rote Island, 11am 31 may 2015	Afternoon of 31 may 2015	Landu island, 4:30pm, 31 may 2015	Rescued at sea by Indonesian police, 31 may 2015
	Closer to Rote Island, 1 aug 2015	Out of the coast of Tablolong, times undetermined	Tablolong	Rescued near Tablolong, Timor, by Indonesian police, 1 aug 2015.
	Timor Sea: 10°56'55"S 123°29'10"E, 24 nov 2015	Waters around Tablolong, 26 nov 2015	Rescued at sea around Tablolong by Indonesian Police, 26 nov 2015	Rescued around Tablolong by Indonesian Police, 26 nov 2015

II: TURNBACKS

38 CAN AN ADULTERATED, DISPOSABLE, LIFEBOAT REALLY BE CONSIDERED
39 A 'PLACE OF SAFETY'?
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'Place of Safety' : "A location where the rescue operation is considered to terminate. It is also a place where the survivors' safety of life is no longer threatened and where their basic human needs (such as food, shelter and medical needs) can be met" (IMO Resolution, MSC.167 (78)/26)

'Place of Unsafety': A location where the rescue operation is not considered to terminate. It is also a place where the survivors' safety of life is still threatened and where their basic human needs (such as food, shelter and medical needs) cannot be met (Formative Definition).

A policy of leaving rescued persons in unseaworthy boats on the high seas is inconsistent with Australia's obligations under SOLAS to deliver rescued persons to a place of safety through coordination and cooperation with other States. In the cases 38, 39 and 40, the Australian navy operated in direct contravention of this. Here, we again open out the lifeboat vessel as an offshore detention facility with inbuilt deterrent design functionality and examine it against the recommendations of the landmark *Hirsi Al-Jamaa and Others v. Italy* ruling for the naval interceptor to:



9.3. **GUARANTEE** for all intercepted persons humane treatment and systematic respect for their human rights, including the principle of non-refoulement, regardless of whether interception measures are implemented within their own territorial waters, those of another state on the basis of an ad hoc bilateral agreement, or on the high seas;



9.4. **REFRAIN** from any practices that might be tantamount to direct or indirect refoulement, including on the high seas, in keeping with the UNHCR's interpretation of the extraterritorial application of that principle and with the relevant judgments of the European Court of Human Rights;

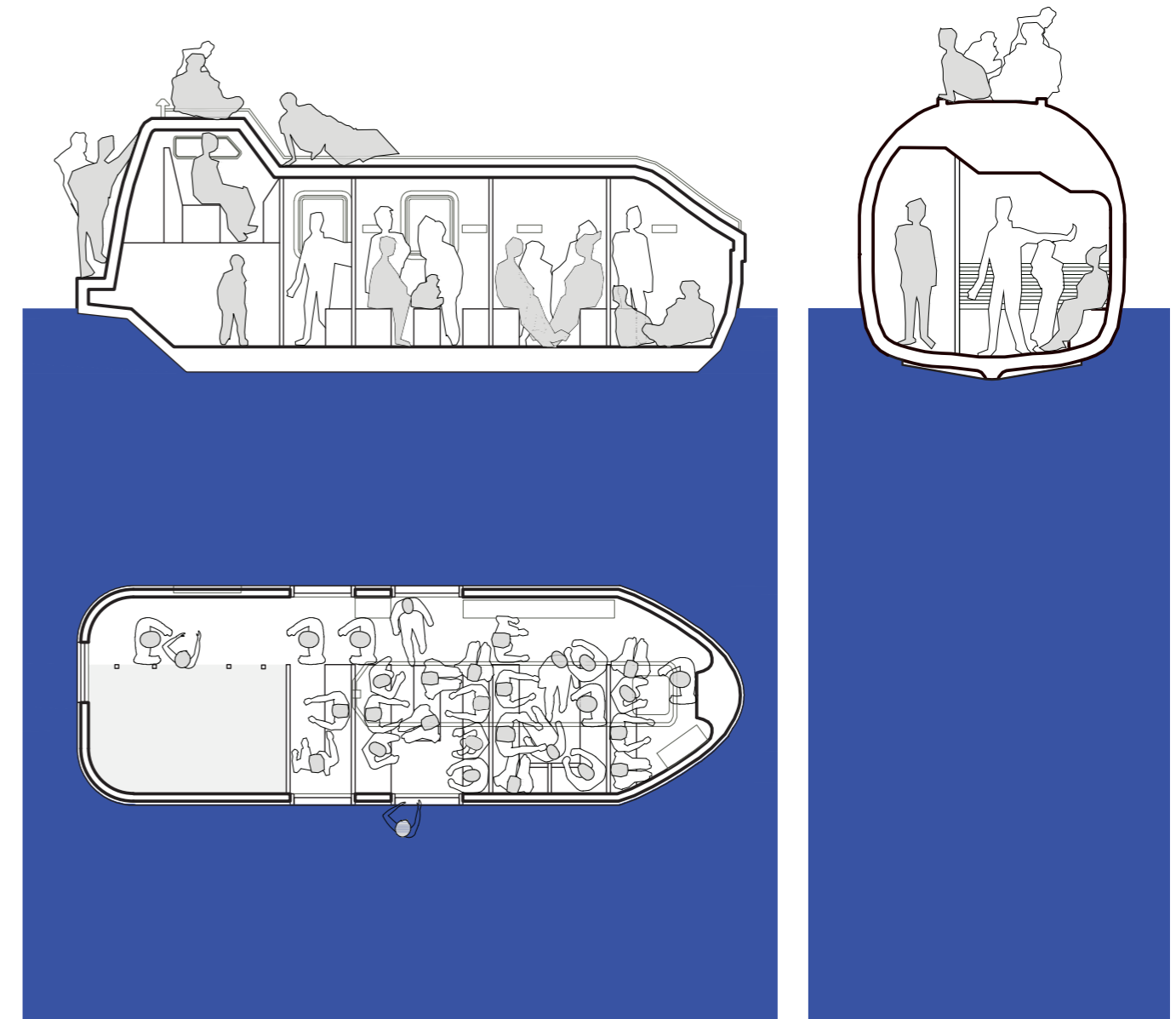


9.5. **CARRY OUT** as a priority action the swift disembarkation of rescued persons to a "place of safety" and interpret a "place of safety" as meaning a place which can meet the immediate needs of those disembarked and in no way jeopardises their fundamental rights, since the notion of "safety" extends beyond mere protection from physical danger and must also take into account the fundamental rights dimension of the proposed place of disembarkation;

9.6. **GUARANTEE** access to a fair and effective asylum procedure for those intercepted who are in need of international protection.

'UNLESS THE WATER IS SAFER THAN LAND'

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Against this criteria, particularly points 9.5 and 9.6, the legal frame re-focuses to an analysis of conditions, thresholds and (dis)proportions surrounding the lifeboat vessel as the Australian navy's designated place of disembarkation and takes as its courtroom model a 3D prototype of the lifeboat vessel (Model: Vanguard Lifeboat - VG8.5C; Dimensions (L x B x D): 8.5m x 3.2m x 3.3m Capacity: 85, Speed: 6 Knots / 11 km/h, engine: 60L; 'Spares Removed') in order to reconstruct Australia's crime of detention, negligence and non-innocent offloading at an arbitrary place of unsafety. The parameters of investigation are legion and could concern: food/fuel-cap/water/screening platform/medical needs/seamanship skills/prevaling sea conditions/weather conditions. From the small openings of our research, what does, however, appear recurrent is a signature arbitrary calculus and negligence of the possible outcomes to a vulnerable population cut-loose on high-seas with inadequate supplies and vessel capability as part of an ongoing and common plan to deny, deprive and deter the fundamental rights of its subjects by design.

II: TURNBACKS

38 The following is stated in
39 the UNHCR's Practical Manual
40 for Monitoring Immigration
Detention: By depriving a
person of their liberty, the
State assumes responsibility
for providing for that
person's vital needs.

It is incumbent on the State to mitigate the loss of liberty as far as possible by ensuring that the detention environment and conditions are respectful of the dignity and non-criminal status of immigration detainees. Further, care needs to be taken in the design and layout of the premises to avoid as far as possible any impression of a carceral environment. This means that both the detention environment and the living conditions must be decent in every respect. Against this criteria, what emerges in the design and utilisation of lifeboats by the Australian state is a thoroughly planned and executed operation to 'avoid as far as possible any impression of a carceral environment' while simultaneously 'arbitrarily detaining and depriving persons in that very position.' In doing so, what are taken are direct measures to misleadingly deflect and covertly work around its international obligations in an ongoing and common plan which we believe thereby holds sufficient gravity to admit to the apparatus of the ICC. Our research also then extends to a question of where Australia's responsibility for a vulnerable population under its effective control terminates if the place of disembarkation is itself terminally deferred to the high seas and not a Port or terminal where 'protection from physical danger and the fundamental rights dimensions' of the individual are met (non-refoulement). What emerges is a spatial narrative of places of unsafety: terminally deferred. By

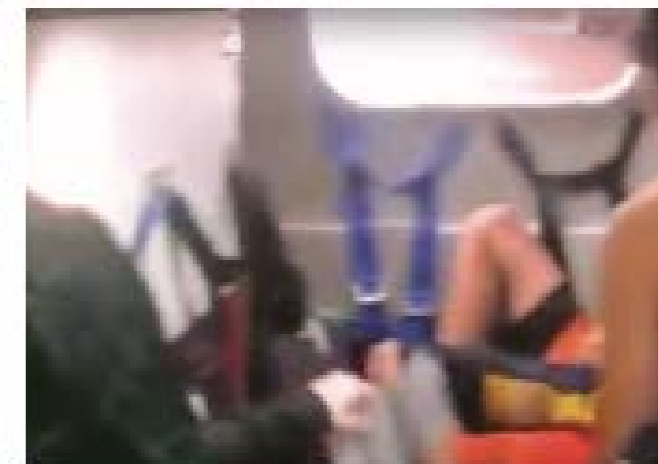
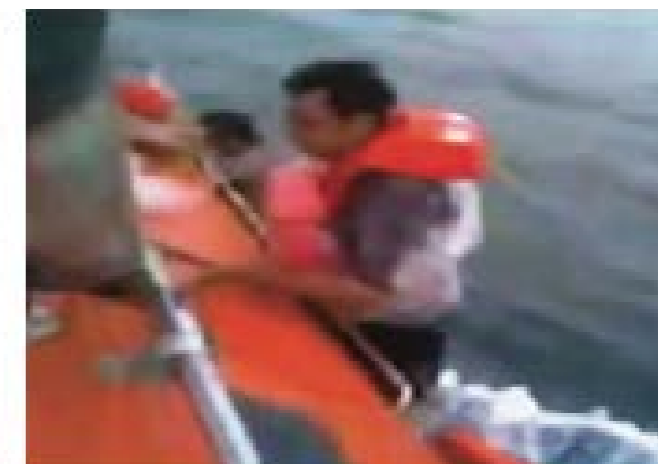
thereby opening out and re-constructing the series of events that emerge once the Vanguard vessel is released on the edge of Indonesian territorial waters, a case of negligence as first-order (cutloose), second-order (crash-land), third-order (trek) and fourth-order (Indonesian refugee detention camp, refouled) places of unsafety, terminally deferred and endured is brought against the Australian government, whereby the 'extra-territorial reach of [its] human rights obligations' (Goodwin-Gill, 2010) is thrown into sharp, prosecutive relief against its shortfalls.

In the cases recorded here of CASE 38, CASE 39 and CASE 40, the probabilistic zones of release/vessel cut loose are identified from a triangulation of survivor trace memory, archival media and the identifiable boundary of Indonesian territorial waters where offloading was most likely (CASE 38: '3 hours from Cikepuh; CASE 39: '33km out'). (Although not included here, an aggregation of oceanic drift models, meteorological data and satellite imagery would add further weight to the model). The probabilistic zones of crash landing are identified by cross-matching media releases with google earth data (Case 38: Remote Cikepuh; Case 39: West Coast of Pangadaran Bay, West Java; Case 40: Bay near village of Kebumen). From this, a case of first-order and second-order on-water negligence begins to construct itself. SEE FOOTNOTE. By then further opening out the evidential inquiry to the conditions of the landing site - its topography and topological proximity to inhabited areas/hospitals/police stations - the case extends to enfold the outcomes of the Australian state's on-sea negligence as off-sea effects of third-order (trek) and fourth-order (Indonesian

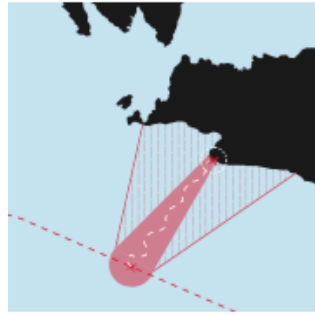
refugee detention centre) direct culpabilities. The diagrams that follow are preliminary openings into the parameters of such research and might be examined in line with the case brought against the Australian state for refouling a vulnerable population to a non-signatory state to the Refugee Convention in which Human Rights Watch reports have recently disclosed how:

Immigration authorities and Indonesian police arrest migrants and asylum seekers either as they cross into Indonesia or as they move towards the boats to Australia; NGOs and asylum seekers have also reported arrests in the areas outside Jakarta where many migrants live. Indonesian authorities routinely detain families, unaccompanied migrant children, and adult asylum seekers for months or even years in informal detention facilities and formal Immigration Detention Centers (IDCs). Migrants, including children, are typically detained without judicial review or bail, access to lawyers, or any way to challenge their detention.

The stills to the right document the interior conditions of CASE 40 and were subsequently provided to the media alongside reports that there had been a physical altercation with Australian OSB personnel in which two men in the group had died. A transcript of the video recording further indicated that some of the group may have been turned back to Indonesia on a previous vessel and that one of them may have died in the jungle trying to reach safety. Identifying a case of first-order and second-order on-water negligence may here then affix to a broader case of culpable homicide enacted under the direct responsibility of the Commanding Officers of HMAS Bathurst and ACV Triton.

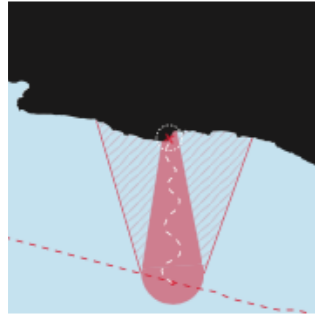


38
39
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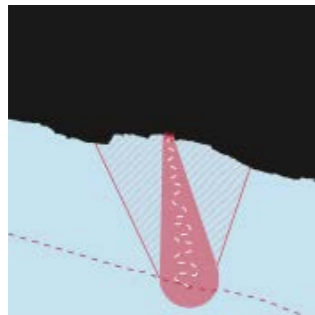
CASE 38
15-01-2014

The crash land site for case 38 was located on the coast of one the westernmost part of the West Java province. The crashland was located approximately 22.5 km from the closest hospital, in Ciwaru, and would have required an uphill climb through light and dense brush within the jungle.



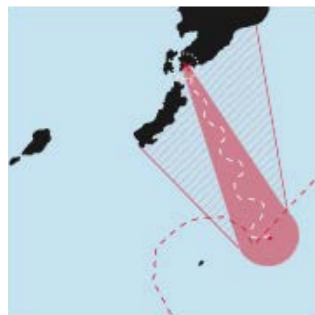
CASE 39
05-02-2014

The crash land site for case 39 was located on the eastern coast of the West Java province, outside the small village of Cijulang. While the boat crashed in a populated area, the nearest major medical clinic is located 40 km away. The journey there consists of steep uphill climbs, with flat stretches, through dense jungle.



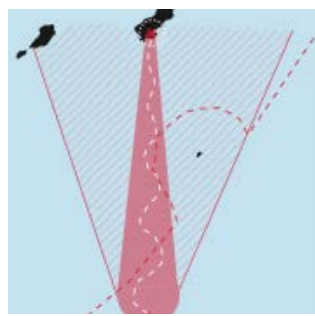
CASE 40
24-02-2014

This case had the ideal circumstances of the crashlandings that were examined. The site of the crash is near a fishing village and the nearest hospital is 15 km away. However when considering the diagram on the left showing possible trajectories of the life vessel, other outcomes were very probable.



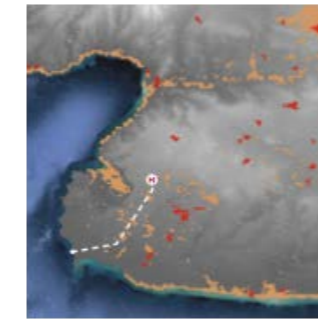
CASE 51
05-05-2015

Case 51's crash land site was located on the tip of peninsula-like landmass on the east coast of East Timor. The crashland site set travelers 22 km from the nearest hospital and put them in a condition where they would have had to traverse an initial 180 m steep uphill climb through medium-dense jungle.

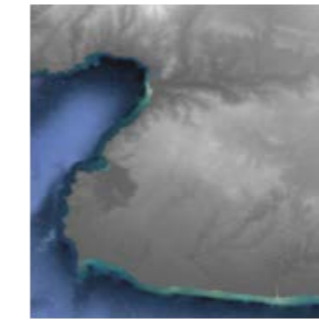


CASE 56/60
25-07-2015/20-11-2015

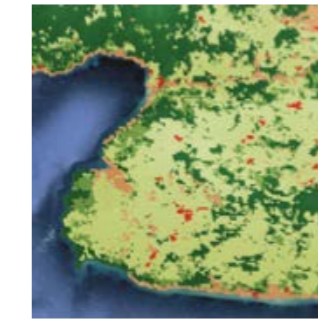
In the final case examined, the crash land was located on a smaller island just southwest from the crash location of case 51. This small island is less populated than Java and East Timor, and covered in large areas of medium-dense foliage. The crash land was located 34.5 km from the nearest hospital, the first half being a steep uphill climb.



Journey to Closest Hospital:
4hrs 49mins, 22.5km,
Uphill: 349m, Downhill: 61m



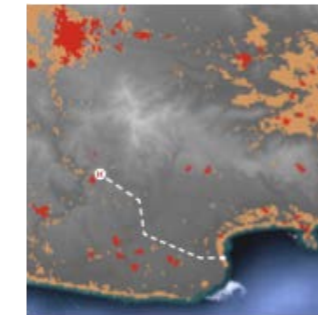
Low Terrain Coverage:
Approximately 30%



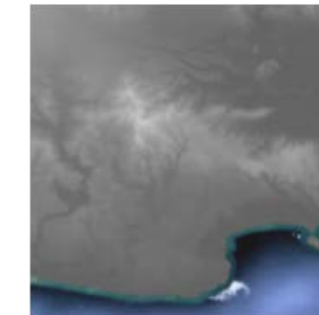
Land Coverage: High jungle coverage; Complex terrain



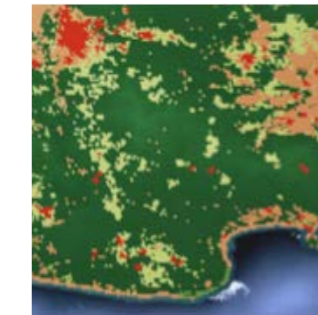
Satellite Image: Taken from Google Earth



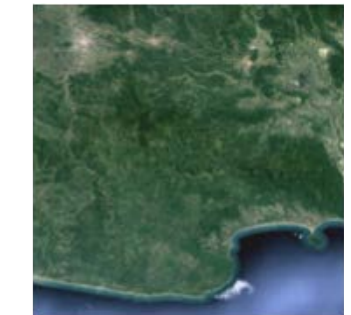
Journey to Closest Hospital:
8hrs 32mins, 40.7km,
Uphill: 384m, Downhill: 136m



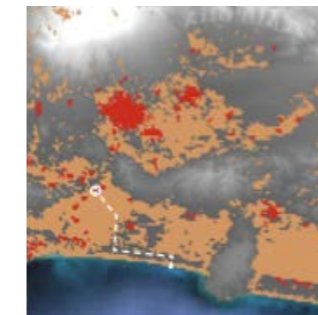
Low Terrain Coverage:
Approximately 20%



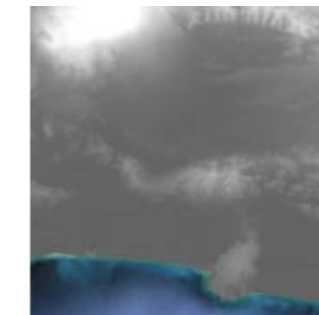
Land Coverage: High jungle coverage; Complex terrain



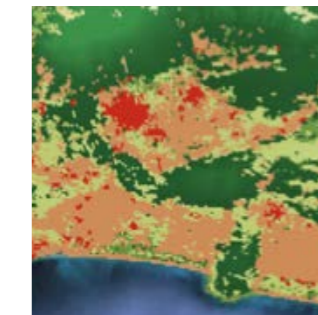
Satellite Image: Taken from Google Earth



Journey to Closest Hospital:
3hrs 6mins, 15.3km,
No significant terrain



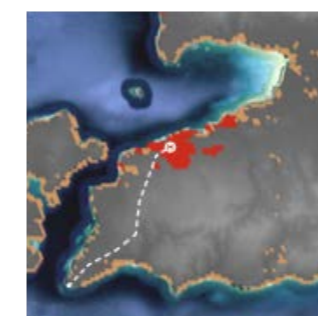
Low Terrain Coverage:
Approximately 20%



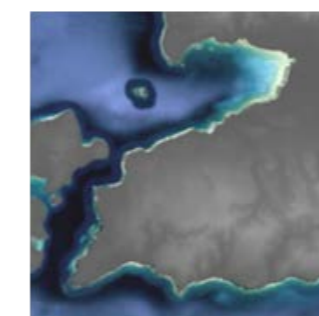
Land Coverage: Low jungle coverage; vicinity to fishing village



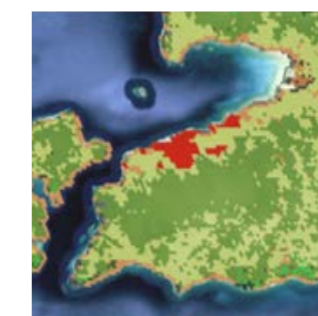
Satellite Image: Taken from Google Earth



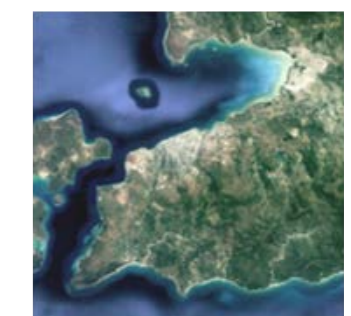
Journey to Closest Hospital:
4hrs 45mins, 22.6km,
Uphill: 300m, Downhill: 244m



Low Terrain Coverage:
Approximately 80%



Land Coverage: Moderate jungle coverage; small island



Satellite Image: Taken from Google Earth



Journey to Closest Hospital:
7hrs 7mins, 34.5km,
Uphill: 264m, Downhill: 83m



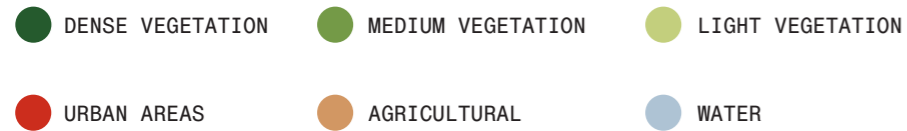
Low Terrain Coverage:
Approximately 80%



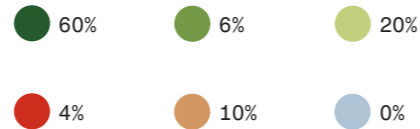
Land Coverage: Moderate jungle coverage; small island



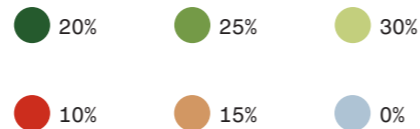
Satellite Image: Taken from Google Earth



Because crashlandings occur on the coast at 0m elevation, there is always an uphill climb required to search for social services, flee police, etc. While much of the southern Indonesian coast is covered with small fishing communities, these communities don't have the social services necessary to process asylum seeker claims and treat serious injuries. We suggest many if not all of these small communities would not be considered a place of safety. Many coastal stretches highlighted below and on the right, show consistent areas of light to dense jungle which could hinder asylum seekers in their search for a place of safety.

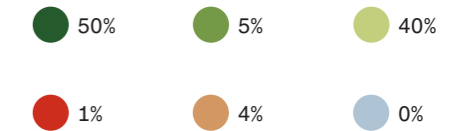


Combination of light and dense vegetation through which urban areas could be reached.

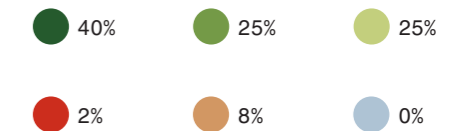


Mostly medium to light vegetation combined with urban areas and agriculture.

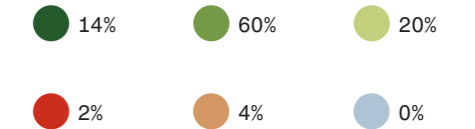
'UNLESS THE WATER IS SAFER THAN LAND'



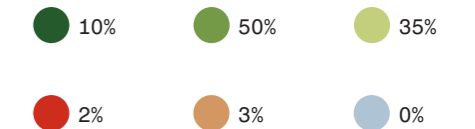
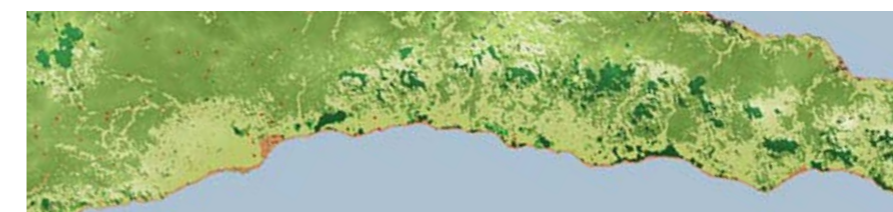
Predominantly dense vegetation, sparsely populated.



Mostly dense and medium vegetation, sporadic presence of agriculture and urban areas.



Medium to dense vegetation, low concentration of populated areas.



Mostly light vegetation alternated by agriculture and dense to medium vegetation.

II: TURNBACKS

51 In the three cases of migrant boats (departed from Indonesia in
56 2015) that we explore in the following section, there are varying
60 offences that the Australian Government can be made accountable for, specifically people smuggling offences, illegal detention practices and insufficient resources provided for the safety of migrants at sea. However, in our research we focus on the one consistent factor in each case, which is that the Australian Government provided migrants and crew with a specific kind of fishing boat (image 1) to send them back to Indonesia. All of these boats have the same specifications and it is known that 10 boats were procured by the Australian Government through a builder in Vietnam (image 7). As a natural progression of the previous section's conceptual understanding of the 'Place of Safety', we argue that the fishing boats, as replacement for the lifeboats, also do not meet the requirements of a 'Place of Safety'. Every fishing boat involved ran out of fuel and was provided with very little food and water supplies, endangering the migrants on board. We argue that providing such insufficient resources puts the migrants and crew in a vulnerable position in which little can be done to ensure their safety, once the instance of the pushback has taken place. The ambiguity surrounding the procurement of these fishing boats, and their outsourcing to Asia, also enhances the increasingly creative and systematic measures that the Australian Government have taken to pushback asylum seekers, and which occurs under a veil of secrecy.

The diagrams that we have created are to be read chronologically like a clock, through which we divide each of the cases into four sections for interrogation: INTERCEPTION, DETENTION, PLACE OF SAFETY and STATE ENACTED SMUGGLING. It is the latter two moments of action in which we see opportunities for further conceptual and legal enquiry.

INTERCEPTION

Refers to the point at which the migrant boat is intercepted by Australian authorities. In each of the cases this involves various naval ships, geographical locations and methods of interception.

DETENTION

Refers to the process in which the migrants were detained, often on board a naval ship, and each unique to the kind of treatment and questioning that did or did not take place.

PLACE OF SAFETY

Describes the point at which the migrants are transferred onto the fishing vessels and are provided with resources (for each case there are varying levels of information about these resources). With the significance that all of the boats were sent North

towards Rote Island and were provided with a small and calculated amount of fuel, we analyse whether the boats meet the conditions of a 'Place of Safety'. It is also important to highlight that these boats are seen as 'disposable', and therefore fit only for the journey back to Indonesia. Compared to the lifeboats, these fishing boats are 'camouflaged' at sea, as their design is based on regional traditional fishing boats.

STATE ENACTED SMUGGLING

Refers not only to the cases in which it is identified that money was exchanged between the Australian Government and the crew, but also the possibility of including the provision of the fishing boats as a material gain for the migrants and crew. We base this mainly on the protocol established at the UN convention against

'Protocol against the smuggling of migrants by land, sea or air', supplement of the UN convention against transnational organised crime:

[ART. 6.2.C SP]

The procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident. (Art 3 of Smuggling Protocol), including 'organizing or directing others to commit an offence.'

[ART. 6.3 OF SP]

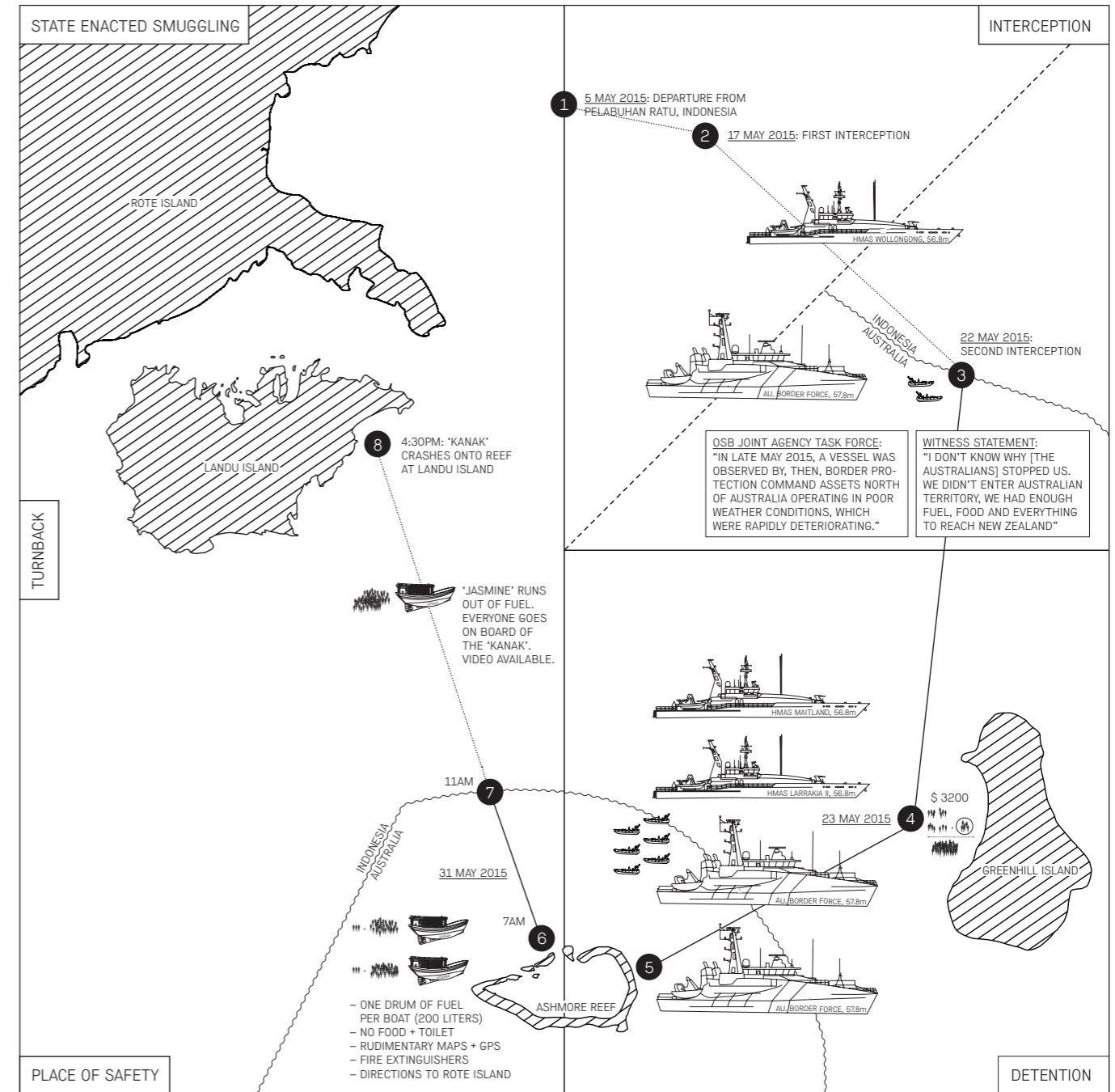
Aggravating circumstances to a smuggling offence are those 'that endanger, or are likely to endanger,' the lives or safety of the migrants concerned; or that entail inhuman or degrading treatment, including for exploitation, of such migrants.

transnational organised crime, as outlined above. Arguing from this angle could extend the already extensive work Amnesty International has undertaken on cases where monetary exchanges have taken place. Also, it is significant that in recent years in Australia and Europe, immigration discourses have shifted their focus towards the immoral people smuggler, making the Australian Government's involvement in such activities more questionable, and highlighting their systematic shift towards to employment of fishing boats.



1. Fishing boat 'Kanak' seen on Rote Island

'UNLESS THE WATER IS SAFER THAN LAND'



INTERCEPTION

Australian authorities justified their interference by claiming the asylum seeker boat was in distress, however, this was denied by passengers and crew. The location of the second interception is unclear, as the crew places it in Indonesian waters (illegal), while Australian authorities claim it was in international waters.

DETENTION

On the first night after interception 58 male

passengers were held outside the cabin with no protection from the elements. Passengers were then detained for a week in poor conditions (cramped, unventilated rooms) and medical attention was denied (including for one pregnant woman, who was in severe pain). Interviews were conducted but the reason for this treatment remained unclear.

PLACE OF SAFETY

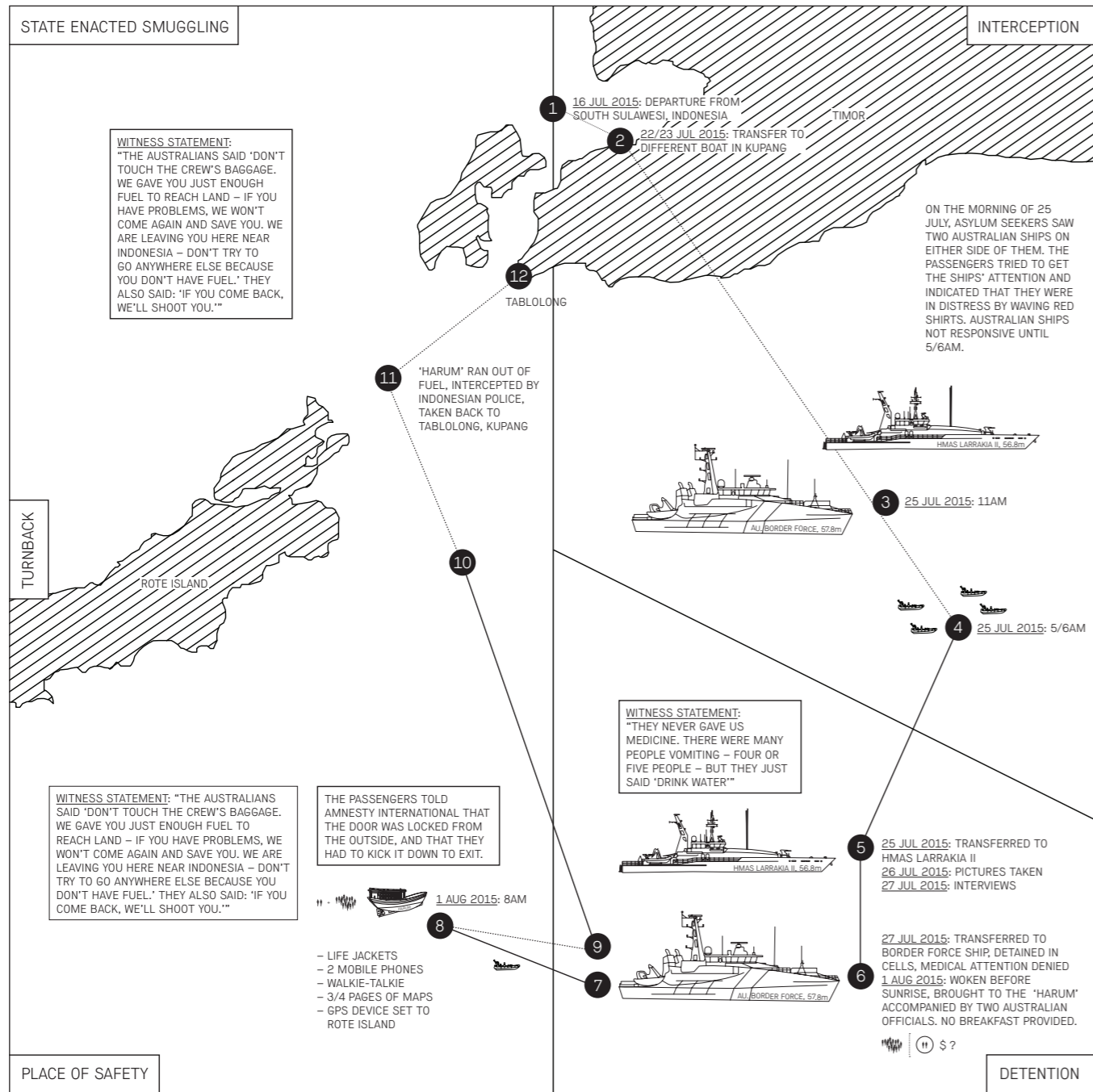
Neither of the two given fishing boats were provided with sufficient fuel, leading

to a dangerous transfer and an overcrowded boat. No food or toilets were on board and the fishing boats were not as well-equipped as the original vessel.

STATE ENACTED SMUGGLING

Next to providing fishing boats for the journey, Australian authorities allegedly paid crew US \$32,000 (image 3) in order to coerce them to take the passengers to Rote Island, Indonesia. Provision of maps and directions to Rote Island was given.

II: TURNBACKS



INTERCEPTION

While in sight of the asylum seeker boat, Australian ships failed to respond to its distress signals for a period of around 7 hours.

DETENTION

Conditions of detention were described as similar to the May 2015 case; medical attention was denied when necessary. Interviews were conducted but the reason remained unclear.

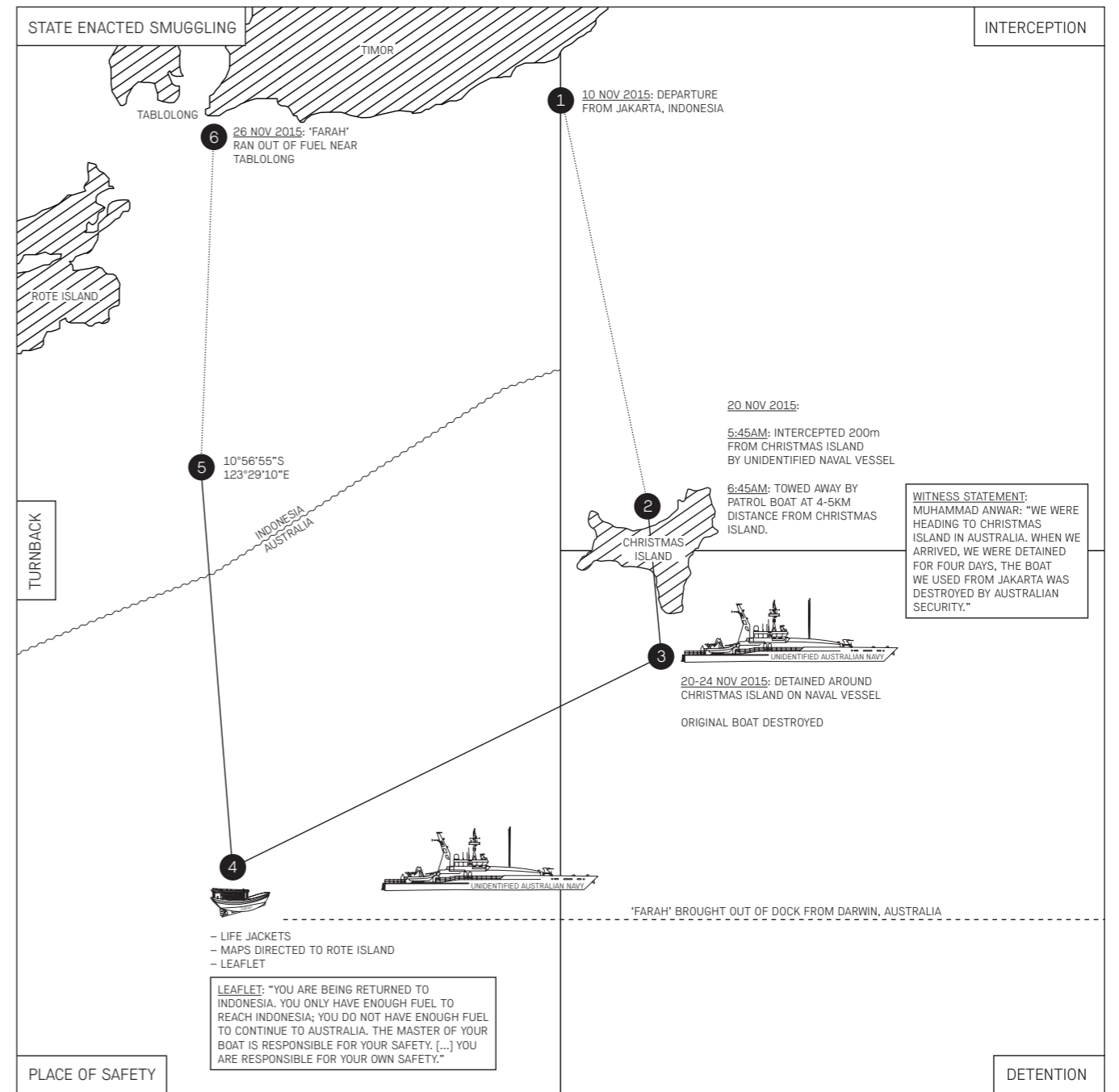
PLACE OF SAFETY

The provided fishing boat ran out of fuel before reaching its destination, leading the boat to drift before being rescued by Indonesian police. In addition, Australian authorities had locked the door to the cabin from the outside, which passengers then had to kick down in order to exit.

STATE ENACTED SMUGGLING

Next to the provision of a boat, it is possible that the crew was paid a

sum of money to return people to Indonesia. Once the passengers noticed that the fishing boat was going in the direction of Indonesia they argued with the crew and forced them to return to the Border Force ship, after which the Australian officials behaved aggressively and prohibited them to touch the crew's baggage - they then escorted them closer to Rote Island. Provision of maps and directions towards Rote Island were given.



INTERCEPTION

The original asylum seeker boat was destroyed.

DETENTION

Detained for 4 days around Christmas Island. No access to screening.

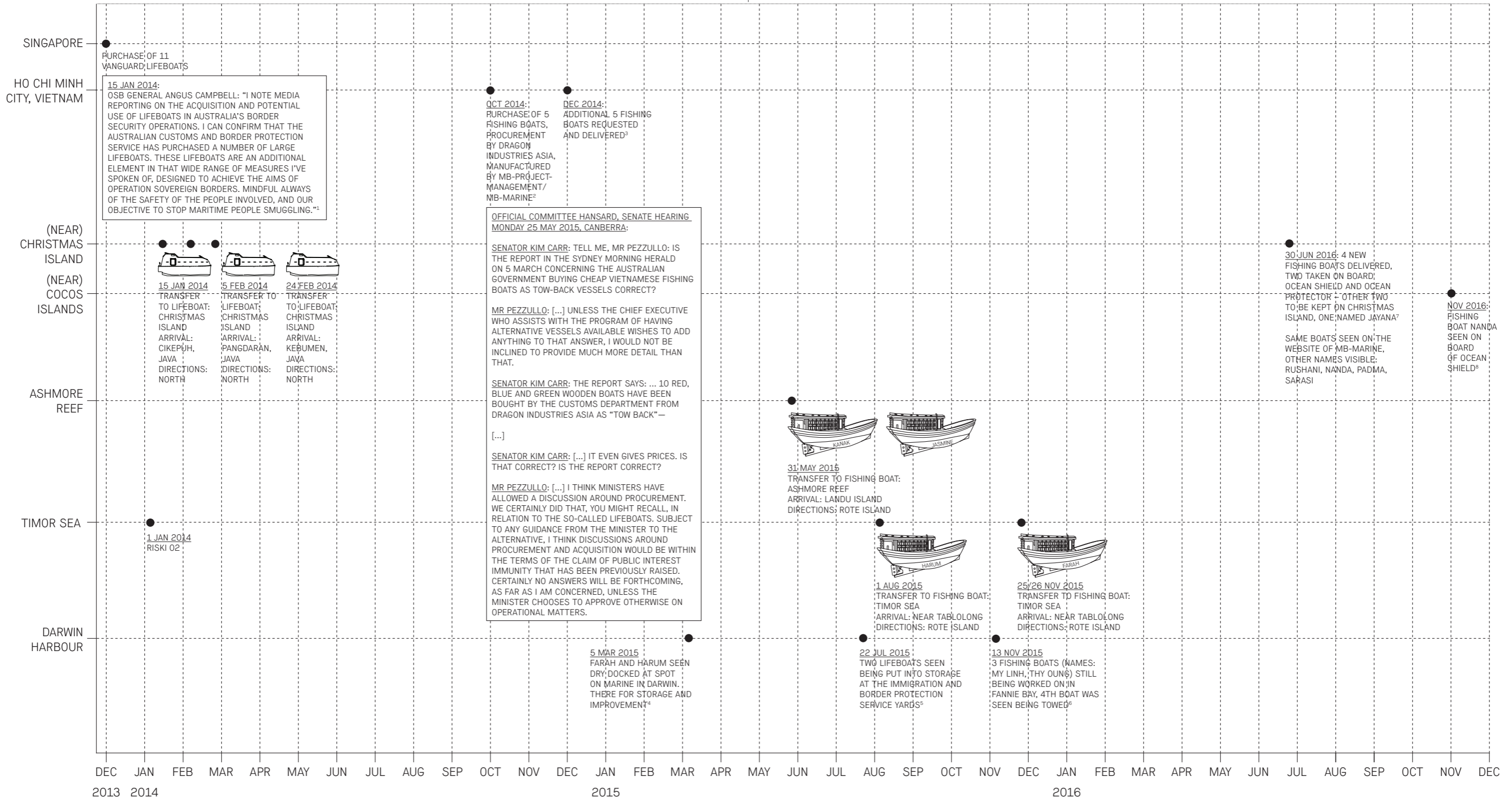
PLACE OF SAFETY

The given fishing boat was provided with insufficient fuel, causing the boat to run out of fuel before reaching its destination, necessitating rescue by Indonesian police.

STATE ENACTED SMUGGLING

Provision of fishing boat and maps directed towards Rote Island (image 2).

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The company through which the boats were procured is the Hong-Kong registered *Dragon Industries Asia*, who confirm on their website that the project was completed in 18 weeks (image 13). 5 Vietnamese boats were built for the Australian Government in October 2014, and then a further 5 were procured in December 2014 in a multi-

million dollar deal with *Dragon Industries Asia*. In what follows we have listed a number of notable events in relation to the acquisition of the fishing boats:

- On the 5th March 2015, numerous boats are spotted in Darwin Harbour where they were being stored and also were being refurbished, presumably to match Australian Standards of safety (image 7). These specific improvements made were the replacement of the bulkheads and recalking.

- In a Senate meeting for immigration and border control on the 25th May 2015, a head civil servant, Mr Pezzullo, refuses to confirm if the boats were procured by the company, claiming "immunity" from discussing such issues.

- Dragon Industries Asia* have been equally vague. Previous news outlets have investigated further into the statements on their website and they have since refused to provide extra details. On one occasion in The Sydney Morning Herald, a spokesperson for the company said they were a

Software company.

- Their director, Tim Clements, is registered as their director since 2014 and appears on company documents (image 12) until recently in 2017, yet his LinkedIn page claims he left *Dragon Industries Asia* in 2015.

- The company employed to build the boats is also a Hong Kong registered company named *MB-Marine*. Their website features an almost identical description to the *Dragon Industries Asia* company description.
- Marc Bruijns, who owns *MB-Marine*, exposes some friction between *Dragon Industries Asia* and *MB-Marine* on Twitter, with vague declarations of frustration towards Tim Clements surrounding money and the creation of the website 'www.lookingfortimclements.com', which has since been shut down, but with no archived information available ([image 14](#)).
- The original specifications of the boats are no longer available, therefore our information about its design is limited. We only know estimates of the length of the boat to be between 12-15m and have access of one image to the interior ([image 6](#)).
- There is also a report in November 2016 in which another boat is being transferred on the Australian Ocean Shield dated after the original procurement ([images 8-11](#)). Although we have not confirmed this, it suggests that an extra 10 boats were procured by the Government, as the boat matches an image on the *MB-Marine* website. You can see the identical boats on the *MB-Marine* website, two of which were transferred onto Ocean Shield and Ocean Protector, and two others were kept on Christmas Island. These coincide with the names placed on the side of the boats on the website

- of *MB-Marine*. This would suggest that the method of boat procurement continues, and proves the disposable nature of the deployment of these boats.
- At the end of October 2017, the *Dragon Industries Asia* website was shut down, although we were able to locate their company details for 2017 on the company registrar from Hong Kong, and therefore it is assumed that they are still active.
- When we did have access to the website, little information was expressed about the manufacturing of boats. Archives of the website mainly show social media activity rather than detailed descriptions of their involvement in boat manufacturing.

HOW THE PROJECT COULD BE FURTHERED

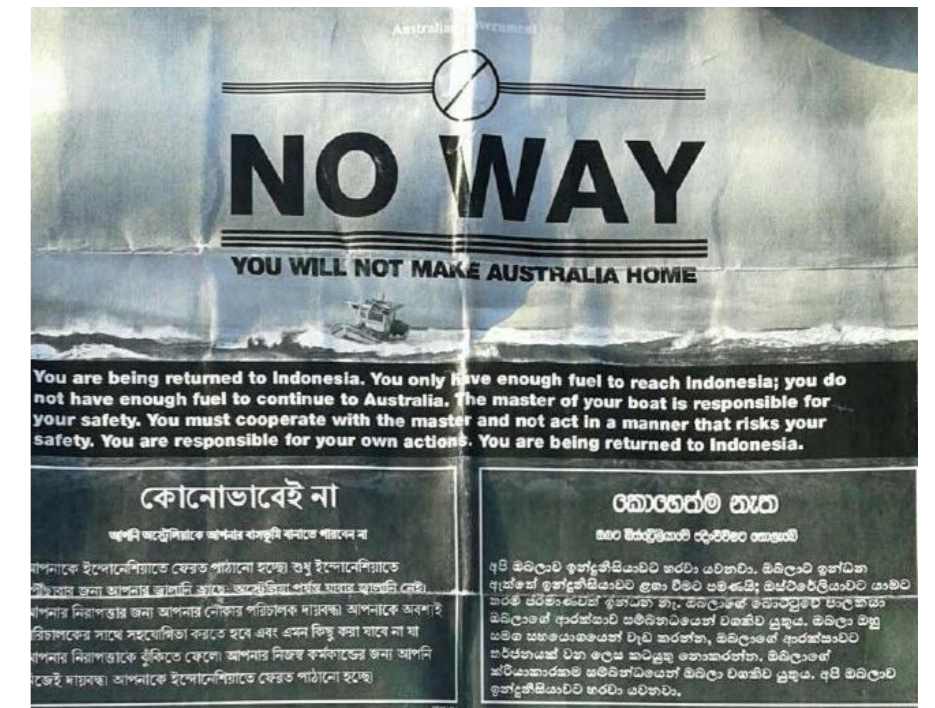
We feel that these angles of the narrative could be benefitted by the following:

- One area we feel could be further investigated would be to calculate the exact amount of fuel required to reach Rote Island from cut-loose points in each of the cases. This however would require more detailed information about the boat specifications, specifically the boat engine used and the boat's dimensions.
- With more advanced oceanography skills, and detailed information about sea conditions at the time of the journeys back to Indonesia, more accurate measurements could be made to calculate the required amount of fuel for distances between the cut-loose moment, and safe arrival on shore.
- An analysis of the conditions on Rote Island would also be beneficial to highlight if this is a safe location regarding population density and distance to medical resources, since all the boats were directed towards
- Rote Island.

- By Hook or by Crook, report, Amnesty International, 2015
- Official Committee Hansard, The Senate, 25 May 2015
- Legal and Constitutional Affairs References Committee, The Senate, May 2016
- www.mb-marine.com
- www.dragonindustriesasia.com
- ssl.law.uq.edu.au/som-database/#formstart
- www.news.com.au/national/vietnamese-fishing-boats-latest-weapon-in-fight-to-stop-asylum-seekers-from-reaching-australia/news-story
- www.abc.net.au/news/2015-06-02/asylum-seeker-boat-crashes-onto-reef-after-being-turned-back/6513520
- www.theguardian.com/australia-news/video/2015/jun/16/asylum-seeker-account-people-smugglers-video



2. Map of Rote Island provided in the November 2015 case, with starting point coordinates



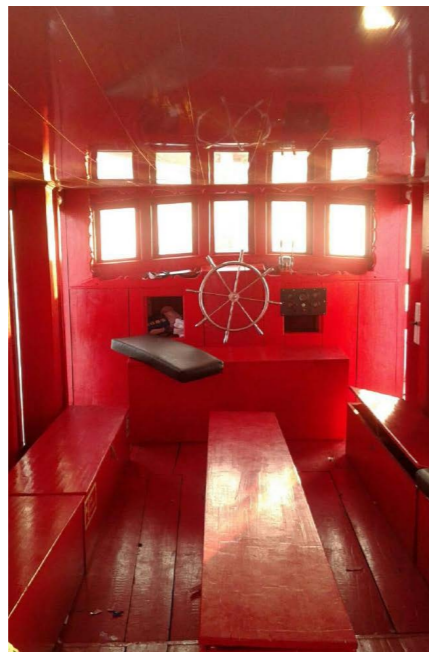
4. 'No Way' leaflet provided in the November 2015 case



3. Money given to Indonesian smugglers (Amnesty)



51 5. 'Kanak' and 'Jasmine' seen after arrival on Rote Island and in a report by Indonesian police.



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6. Interior and exterior of the 'Farah', seen in Tablolong, West Timor



7. Several of the first 10 fishing boats seen in the Darwin harbour

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8. 'Nanda' seen on board of the Ocean Shield



9. Second 10 fishing boats seen at MB-Marine

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10. 'Padma' test drive at MB-Marine

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11. Arrival of the second 10 fishing boats at Christmas Isl.

表格 Form **NAR1** 附表一 Schedule 1 (非上市公司適用 FOR NON-LISTED COMPANY)

本申報表的結算日期 Date to which this Return is Made Up
 09 04 2017
 日 DD 月 MM 年 YYYY

公司編號 Company Number 1888327

非上市公司的成員詳情 (第 13 項)
Particulars of Members of a Non-listed Company (Section 13)
 (有股本的上市公司必須填報此頁。如空位不足，或超過一類股份，可附加附表一。)
 (Non-listed company having a share capital must complete this page. If the space provided is insufficient, or if there is more than one class of shares, please use additional Schedule 1.)

截至本申報表的結算日期的成員詳情 Particulars of Member(s) as at the Date to which this Return is Made Up

股份類別 Class of Shares Ordinary

此類別股份的已發行總數 Total Number of Issued Shares in this Class 1

姓名/名稱 Name	地址 Address	股份 Shares		備註 Remarks
		現時持有量 Current Holding	轉讓* Transferred* 數目 Number 日期 Date	
Dragon Industry Holdings Limited	Suite 1, Commercial House One, Eden Island, Republic of Seychelles	1		

* 如公司的股份自上一份周年申報表日期以來(如屬首份周年申報表，則自公司成立為法團以來)有任何轉讓，有關詳情亦請一併申報：股份受讓人的姓名/名稱請在「備註」一欄註明。
 * If there have been any transfers of the company's shares since the date of the last annual return (or since incorporation if this is the first annual return), please also provide details of the transfers; the name of the transferee should be stated in the 'Remarks' column.

頁 Page 1 / 1

表格 Form **NAR1** 公司編號 Company Number 1888327

12 董事 Directors
 A. 董事 (自然人) Director (Natural Person)
 (如超過一名董事屬自然人，請用續頁 B 填報 Use Continuation Sheet B if more than 1 director is a natural person)

請在適用的空位內加上 ✓ 號 Please tick the relevant box(es)

身分 Capacity 董事 Director 候補董事 Alternate Director 代替 Alternate to (Nil)

中文姓名 Name in Chinese (Nil)
 英文姓名 Name in English CLEMENTS
 名字 Other Names Timothy Daniel

前用姓名 Previous Names
 中文 Chinese (Nil)
 英文 English (Nil)

別名 Alias
 中文 Chinese (Nil)
 英文 English (Nil)

住址 Residential Address
 66 Digby Street
 Gosnells
 WA 6110
 國家/地區 Country/Region Australia

電郵地址 Email Address (Nil)

身分證明 Identification
 (a) 香港身分證號碼 Hong Kong Identity Card Number (Nil)
 (b) 護照 Passport 發給國家 Issuing Country Australia 號碼 Number E4080750

No. 1888327 編號

CR 公司註冊處 COMPANIES REGISTRY

CERTIFICATE OF INCORPORATION
 公司註冊證書

I hereby certify that 本人謹此證明
 Dragon Industries Asia Limited

is this day incorporated in Hong Kong under the Companies Ordinance 於本日根據《公司條例》(香港法例第 32 章) (Chapter 32 of the Laws of Hong Kong) and that this company is limited. 在香港註冊成為有限公司。

Issued on 9 April 2013.
 本證書於二〇一三年四月九日發出。

Ms Ada L. L. CHUNG
 Registrar of Companies
 Hong Kong Special Administrative Region
 香港特別行政區公司註冊處處長鍾麗玲

Note 註:

CR 註冊辦事處地址更改通知書 Notice of Change of Address of Registered Office 存案 Filed

公司註冊處 Companies Registry 表格 Form **NR1** 公司編號 Company Number 1888327

1 公司名稱 Company Name
 Dragon Industries Asia Limited

2 更改詳情 Details of Change
 只屬申報有更改的項目 Please complete item(s) with change(s) only

(a) 新註冊辦事處地址 New Address of Registered Office
 (本處不接納非香港地址。轉交地址或郵政信箱號碼均不可接受)
 901 Hermes Commercial Centre,
 4 Hillwood Road,
 Tsim Sha Tsui,
 地區 Region 香港/HONG KONG

生效日期 Effective Date 28 2 2014
 日 DD 月 MM 年 YYYY

(b) 新電郵地址 New Email Address
 生效日期 Effective Date on behalf of Extend Secretaries Limited
 日 DD 月 MM 年 YYYY

簽署 Signed: 姓名 Name Extend Secretaries Limited 日期 Date 28/2/2014
 董事 Director/公司秘書 Company Secretary

提交人資料 Presenter's Reference
 姓名 Name Ethos (Hong Kong) Limited
 地址 Address 901 Hermes Commercial Centre, 4 Hillwood Road, Tsim Sha Tsui, Hong Kong

請勿填寫本欄 For Official Use
 2300946743 NR1 14/04/2014 1888327

電話 Tel: 3468 5025 傳真 Fax: 3585 5889
 電郵 Email:
 編號 Reference: NR1/sk
 指明編號 120/14 (2014 年 3 月) Specification No. 120/14 (March 2014)

VESSEL PROCUREMENT

Posted on November 6, 2014 by Dragon — No Comments ↓



Dragon oversaw construction outsourcing of 5 alternative transportation vessels from Asian based shipbuilders, delivering on time and on budget.

Dragon Industries Asia was tasked by a government agency to manage procurement of 5 vessels from preliminary design and approval through to construction, seaworthiness trials, international delivery logistics and customs clearance.

Dragon provided comprehensive procurement, construction and delivery management, including:

- Manpower recruitment and management
- Project management and client representation
- Naval Architect verifications and reviews
- Fabrication design management
- Shipyard selection and management
- Launch and trial
- International sea logistics, including utilisation of heavy lift vessel

This project was delivered to exceptionally tight deadlines, with final delivery of all vessels within 18 weeks of project inauguration. Upon completion of the vessels Dragon was given a repeat order to be delivered by the end of the last quarter in 2014, further enhancing Dragon's ability to service its clients quality, delivery and management needs.

Posted in Past Projects

13. Description of Vessel Procurement as seen on the website of *Dragon Industries Asia*

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Marc Bruijns @Marc_Bruijns · 6 Sep 2015
 SEPTEMBER 2015 - Tim Clements keeps spending our and somebody's else money!!!!
<http://www.lookingfortimclements.com>

Marc Bruijns @Marc_Bruijns · 6 Sep 2015
 @TimPickertWith Unfortunately we had to update the website
lookingfortimclements.com

Marc Bruijns @Marc_Bruijns · 15 Jan 2015
 Great boat, constructed in Vietnam under Western management and expertise.
 For specifications, download the... fb.me/7j4d00gOz

14. Excerpts from Marc Bruijns' (founder of MB-Marine) Twitter account

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60 12. *Dragon Industries Asia* company documents from the Hong Kong company registrar (all available there). Tim Clements still shows up on the 2017 annual return

	FORMED	FORMATIVE
35 <u>DETENTION*</u> 38 39 40 43 44 49 51 55 56 60 63	The action of detaining someone; or the state of being detained in official custody (from Oxford English Dictionary).	To DETAIN is to prevent an individual or group from freedom of movement. To be put in DETENTION means that you are being punished and watched over. Kept against your will, a prisoner of an authority. A DETAINEE is often a POLITICAL PRISONER, someone who has broken a/the LAW of a/the land and is being held in PRISON or another form of spatial bounding and corporeal control against their free will. DETENTION is used to keep children after school as a reprimand for breaking the rules. Detention is a DETAINEE, an individual or group being held against their will, being held in custody, imprisoned. Detained is a middle ground, an in between arriving and leaving, being kept but not because you want to. If you are detained, you are not welcome where you have tried to go and not welcome to leave under your own volition. DETERRITORIALIZATION, conceptualized by Gilles Deleuze & Félix Guattari in 1972, is the schizophrenic, fluid, unbounding and reorganizing of previously understood or known territories within a globalizing, post-capitalist culture. It refers to the constantly shifting and dis-/reconnecting of socio-spatial dynamics that is omnipresent within contemporary culture: geographically, socially, and technologically. Deterritorialization is directly related to the detainment, reorganization, and prevention of bodies from movement by authorities and the state.
*deterritorialization		
35 <u>(DIS)PROPORTION</u> 38 39 40	An instance of being out of proportion with something else. 'There is a disproportion between the	A disproportionate detentive design is modular, it relies on unit standardisation and repeatability across

	FORMED	FORMATIVE
	scale of expenditure and any benefit that could possibly result'; origin mid 16th century: from dis-(expressing absence) + proportion, on the pattern of French disproportion from English Oxford Living Dictionaries. Pushing back asylum seekers or holding them on the seas may constitute arbitrary arrest and detention in contravention of Australia's obligations under international law. Whether or not it does will depend on the particular facts of the case. For instance, while a rescue operation may mean that asylum seekers are held on a vessel pending their disembarkation at a place of safety, this may transform into arbitrary detention if the state cannot show that holding them on a boat (in certain conditions) is reasonable or proportionate in the circumstances.	objects and systems and as we will see an ongoing common plan. It is also therefore scalable. Scalability is possible only if project elements to not form transformative relationships that might change the projects as elements are added. It is machinic. A disproportionate detentive design is a design with in-built functionality for detention and as we will see deterrence. It machines disproportion.
	<u>ENHANCED SCREENING</u>	The ENHANCED SCREENING has received heavy criticism by human rights advocates (including UNHCR), in that it does not allow a full investigation of the protection claims that a person may have. In fact: (1) the same possibility of raising protection claims in not clearly framed in the Guidelines (the issue has to be raised by the claimant); (2) there is no guarantee that a translator is going to be present in person at the interview (as the Guidelines allow for phone interview). In addition to the requirement that detention is not arbitrary, and that conditions of detention are humane, Article 9(4) of the International Covenant on Civil and Political Rights (ICCPR) requires that anyone deprived of liberty be entitled to bring court proceedings to determine without delay whether or not
		43 44 49 51 55 56 60 63 43 44 49 55 63

35 EXCISION
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	<p>their detention is lawful. These standards require, among other things, prompt and regular access to legal counsel; provision, in a language they understand, of information regarding the right to bring proceedings for a decision on the lawfulness of their detention; the right to appear before a court (or the right of a court to order the appearance of a person before it); and the prohibition of practices that render curial review 'effectively unavailable to an individual, including [as a result of] incommunicado detention.</p>
<p>EXCISION excludes a place from the migration zone, which is any place in Australia where a person arriving without a valid visa – what is technically called “without lawful authority” – can still make a valid visa application.</p> <p>In 2001, as a response to the Tampa Affair, John Howard proposed and passed legislation (Migration Amendment (Excision from Migration Zone) Act 2001 and the Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Act 2001) that redefined Christmas Island, Ashmore and Cartier Islands, Cocos Islands and Australian sea and resources installations as well as any other external territories, or state or territory islands, prescribed by regulations as “excised offshore places”.</p> <p>Importantly, this legislation was also retrospective. When the MV Tampa reached Christmas Island, it was an excised zone. In 2013, mainland Australia was also excised from the migration zone.</p>	<p>This policy is designed to make potential asylum seeker boat arrivals invisible and to exclude potential refugees from the international rule of law. It obeys to the ‘logic of invisibility: resemblance with ‘bare life’ where sovereign power reduces those who are outside the realm of ‘exception’ to a bare existence and seeks to remove any traces of them. The governing of asylum seekers has moved beyond the ‘iron cage’ of rationalised bureaucracy to instead more closely resemble ‘bare life’ where sovereign power as state power reduces those who are outside the realm of ‘exception’ to a bare existence and seeks to remove any traces of them. The asylum seeker is detained, is contained by the Australian Navy through weapons of no-choice and logistics.</p> <p>Giorgio Agamben, Homo Sacer: Sovereign Power and Bare Life (Stanford University Press, 1998]</p>

FORMED	FORMATIVE
<p><u>HOLD (OF THE SHIP)*</u></p>	<p>“The part of the hold in which cargo is carried.” according to the Dictionary of Leisure, Travel and Tourism where “cargo” means “freight or goods carried in the hold of an aircraft or by ship.” in the Tourism Society’s dictionary for the Tourism Industry. (b) or “the part of a ship... where goods are carried.” according to the Cambridge dictionary. In relation to OSB (Operation Sovereign Borders), the ship is the fishing boat, the lifeboat, the vessel boarded by asylum seekers and/or Australian Navy to turnback or takeback. The hold is the passenger capacity of the ship. Lifeboats noted in specific cases have a passenger capacity ranging from 55 – 90 persons.</p>
<p>* logisticality * containment * on-boat detention</p>	<p>In mapping of the perilous journeys of the asylum seekers approaching Australia, there is a pattern of detainment, of the ever-closing door of refuge towards which they move. Once they are intercepted, the door shuts and detainment starts. From the enhanced screening procedure, to the turn-back, take-back then onto the possible crash, the asylum seeker is detained, is contained by the Australian Navy through weapons of no-choice and logistics. The hold of the lifeboat is where the cargo i.e. the asylum seekers are kept, and transported as goods through the system of take-back or turn-back. The hold of the ship is a traumatic space in which asylum seekers (human capital) are depersonalised by the logistical solutions and calculations by the Australian Navy, just as logistics has the desire to free the flow of goods from human error.</p> <p>“Modern logistics was marked, branded, seared with the transportation of the commodity labor that was not, and ever after would not be, no matter who was in that hold or containerised in that ship.” from “Fantasy in the Hold” in the Undercommons by F. Moten and S. Harney.</p>
<p><u>LIFEBOAT*</u></p>	<p>Sourced from Singapore. Fully enclosed and submersible 8.5m x 3.2m capsule, including safety belts, navigational equipment, life jackets, limited provisions of food and water, and a fuel-capped inboard diesel motor. From</p> <p>www.news.com.au/first-closeup-look-at-a-lifeboat-the-abbott-government-is-using-to-stop-asylum-seeker-boats/news-story/4ed4d4ab337be96f4e2b9ab9f9815823 accessed 22 Nov 17</p>
<p>* bare life * form-of-life</p>	<p>The LIFEBOAT does not equate to a place of safety. The lifeboat functions as an offshore detention facility. If the boat of interception-towback-and-cutloose is an offshore detention facility, what is the facility or the purpose of its detentive function? Deterrens. Third declension: deterring, hindering, averting, repressing. The function of detention is deterrence, operationalised through the capped object-relations of fuel/food/water/due-process/platform/procedure.</p>

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35 <u>NON-REFOULEMENT</u> 38 39 40 43 44 49 51 55 56 60 63	<p>The principle of NON-REFOULEMENT applies to REFUGEES under Article 33 of the 1951 UNHCR convention states:</p> <p>“No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his [or her] life or freedom would be threatened on account of his [or her] race, religion, nationality, membership of a particular social group or political opinion.”</p>	<p>Australia combines two legal approaches to get around the principle of non-refoulement. Vanderbilt Journal of Law explains that they use a combination of the Strict Approach/Absolute State Sovereignty Approach and Collective Approach. Since Operation Sovereign Borders deflects both boats (strict approach) and responsibility (collective approach) it is difficult to legally unhinge their poor treatment of refugees and potential non-refoulement violations.</p> <p>The refoulement of illegal arrivals by sea has been carried out by Australian Authorities in a number of way, such as TURNBACKS, TAKEBACKS, and PUSHBACKS.</p>
35 <u>'ON-WATER' SECRECY</u> 38 39 40 43 44 49 51 55 56 60 63	<p>Australian Immigration Minister Peter Dutton said in a Guardian article:</p> <p>“It’s been a longstanding policy of the government not to comment on on-water matters.” Australian officials are under no obligation to give information in official enquiries or before the courts of any interception, detention, enhanced screening and pushing back of all ‘irregular’ arrivals, under the principles of national security and public interest. Equally, Australian officials are immune from being prosecuted in relation to the handling of such people.</p>	<p>The application of the national security principle in immigration matters, under a rhetoric of a country on a war-footing and in a state of exception, is disproportionate to the aim of the management of potential refugees offshore and therefore does not justify operating without the safeguards given onshore, with practices as non-reviewable and indefinite detention. In particular, the abuse of the principles of national security and public interest lead in practice, to the impunity of the Australian government officials to be charged with offences such as people smuggling or illegal detention, as they have immunity from prosecution and are not obliged to give statements in legal proceedings.</p>
51 <u>PEOPLE SMUGGLING</u> 56 60	<p>The offence of PEOPLE (migrant) SMUGGLING is “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of</p>	<p>The resorting on the part of the Australian government in the 5 May 2015 case, to allegedly paying PEOPLE SMUGGLERS to take migrants back to Indonesia</p>

	FORMED	FORMATIVE
	<p>the illegal entry of a person into a State Party of which the person is not a national or a permanent resident”. (Art. 3 of SMUGGLING PROTOCOL).</p> <p>It includes the “organizing or directing others to commit such offence.” (Art. 6.2. OF S.P.)</p> <p>“To endanger, or likely to endanger, the lives or safety of the migrants concerned or that entail inhuman or degrading treatment, including for exploitation, of such migrants.” (Art. 6.3 of S.P.)</p> <p>In the incident of 5 May 2015, the Australian officials may have been responsible of organising or directing the crew to commit a people-smuggling offense, given that: it was under Australian officials’ instruction and with their material assistance (including two boats, fuel, maps, and GPS) that the offense of smuggling people into Indonesia took place. Also, the Australian officials paid the smugglers and instructed them to land on Rote Island. The aggravating circumstance of putting their lives at risk is present as the vessels provided for the turn back were too small and gave them insufficient fuel. In addition, they mistreated the migrants while they were in Australian custody.</p> <p>The Australian officials forced asylum-seekers to stay in the rain for hours with no shelter, detained them in overcrowded and unventilated cells, denied them medical treatment, and transferred them onto boats with no toilet.</p>	<p>corresponds with the logic of invisibility, thus making asylum seeker boat arrivals invisible and remove all traces of them. The governing of asylum seekers has moved beyond the ‘iron cage’ of rationalised bureaucracy to instead more closely resemble ‘bare life’ where sovereign power as state power reduces those who are outside the realm of ‘exception’ to a bare existence and seeks to remove any traces of them.</p> <p>Giorgio Agamben, Homo Sacer: Sovereign Power and Bare Life (Stanford University Press,1998)</p>
	<p>PLACE OF SAFETY*</p>	<p>“A location where the rescue operation is considered to terminate. It</p>
		<p>A PLACE OF SAFETY would be such if authorised by an external inspector throughout</p>

	FORMED	FORMATIVE
40 49 51 56 60	<p>is also a place where the survivors' safety of life is no longer threatened and where their basic human needs (such as food, shelter and medical needs) can be met."</p> <p>from IMO Resolution MSC.167 (78) / 26 / Add.2.Annex 34, Pg 10.</p> <p>"...A place which can meet the immediate needs of those disembarked and in no way jeopardises their fundamental rights, since the notion of "safety" extends beyond mere protection from physical danger and must also take into account the fundamental rights dimension of the proposed place of disembarkation."</p> <p>from the Hirsi al Jamma recommendations article 9.5.</p>	<p>the entire real time use, to ensure there is no risk. When its location is outside the state (such as the high seas), those states shall act in accordance with their legal obligations, including those emerging from international human rights law and international refugee law.</p>
	*state of exception	
35 38 39 40 43 44 49 51 55 56 60 63	<p><u>REFUGEE*</u></p> <p>One who has a "...well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion..."</p> <p>(1951 Convention on REFUGEES, article 1 – Definition of the term REFUGEE).</p> <p>The definition is often used in Law and Courts to differentiate "asylum seeker" (perspective refugees) from "economic migrants" (who are not entitled to the 1951 Refugee Convention rights).</p> <p>The "refugee" status has to be recognized by the Immigration Assessment Authority (IAA), whose negative outcome may be challenged in front of the Australian Administrative Tribunals.</p>	<p>In the case of unlawful arrivals by sea Australian Authorities have created several obstacles to the possibility of starting asylum claims.</p> <p>Therefore, asylum seekers are evicted of the protections provided for by the 1951 Convention.</p>
	*violence at a level of knowledge production	
35 38 39 40	<p><u>SOVEREIGN BORDERS</u></p> <p>Operation SOVEREIGN BORDERS was an initiative that commenced in September 2013 and ended in February</p>	<p>SOVEREIGN BORDERS blurred all lines between government and military operations. The policies and associated</p>

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	<p>2017. The explicit logic of the multi-agency operation Sovereign Borders was to deter asylum boat arrivals with a rhetoric of a country on a war-footing. The SB used slogans, collective memories of national myths and the loudhailer politics of 'stopping the boats'.</p> <p>Operation Sovereign Borders was an important forerunner to the passage of legislation such as the MPLA Bill 2014.</p> <p>(Migration and Maritime Powers Legislation Bill 2014).</p> <p>This law reversed (and changed) the burden of proof so the legal burden of proof was transferred to the asylum seekers to establish their need for protection; an anomaly of harsh, restrictive measures to asylum seekers arriving by boat, but rather indicates an accumulation of such punitive approaches to asylum seekers for more than two and a half decades.</p>	<p>propaganda secure the "border" outside and reconstitute national identity inside. Sovereign Borders is happy to appear extreme, because the more sensational it is the less hard it has to work to turn back boats. It is because Operation Sovereign Borders operates in the space of the popular imaginary as well as in physical and political space that it's rhetoric is such a dangerous contagion.</p>	43 44 49 51 55 56 60 63
	<u>TAKEBACKS, TURNBACKS, PUSHBACKS</u>	<p>Specifically, Operation Sovereign Borders (OSB, 2013) defines TURNBACKS as 'the safe removal of vessels from Australian waters, with passengers and crew returned to their countries of departure'; and TAKEBACKS as a transfer (often at sea, but also by airplane) of passengers from one sovereign authority to another 'where Australia works with a country of departure in order to see the safe return of passengers and crew'.</p>	35 38 39 40 43 44 49 51 55 56 60 63
	<u>WITNESS TESTIMONY</u>	<p>Testimony is first-person. An entirely phenomenological concept of worldview and subjectivity. Testimony is the psychic re-enactment of loss, testimony is performance. Testimony collapses the political onto the human scale, re-realizing</p>	35 49 51 55 63

FORMED FORMATIVE

oath or affirmation, as distinguished from evidence derived from writing and other sources.”

From “Witness.” and “Testimony” In Dictionary of Legal Terms: Definitions and Explanations for Non-Lawyers, 2016.

the strange; making the disaster familiar.

We encounter structures of power when we testify and when we hear the testimony. Investigative practice has a torrid history with its witnesses, with child witnesses, with victims of sexual assault, employing a ‘skeptical’ or ‘forensic’ ear with which it hears and digests testimony. The testimony as a recollection of past events is intrinsically linked with memory and our relationship with it in the formal legal setting.

How do we manage our trauma in legal spheres and how can we put stock in the ‘utterings’ of a victim? How do we reconcile what we think of as empirical fact with a memory skewed and made blurry by time and trauma?

The singular witness and international conventions signed by member states come into conflict when it is revealed that the conventions aren’t honoured by member states. It reveals how collapsable international human rights law is, and puts into question the efficacy of the conventions.

