



Received: 1 December 2016 | Revised: 23 March 2017 | Accepted: 23 March 2017

Asia & the Pacific Policy Studies, vol. 4, no. 2, pp. 272–285

doi: 10.1002/app5.181

Original Article

The Sri Lankan Civil War and Australia's Migration Policy Response: A Historical Case Study with Contemporary Implications

Judith Betts  and Claire Higgins*

Abstract

Sri Lanka's civil war lasted almost 26 years and cost tens of thousands of lives. Since the end of the war in 2009, several thousand asylum seekers from Sri Lanka have sought protection in Australia, but both Labor and Liberal/National Coalition governments have taken a restrictive approach to their arrival and have expressed support for the Sri Lankan government. This article explores Australia's response to the protection needs of Sri Lankans during an earlier era, at the outbreak of the war in 1983, when a Labor government processed Tamils 'in-country' under Australia's Special Humanitarian Program.

Key words: refugee, Sri Lanka, immigration policy, asylum seeker, Australian history

1. Introduction

The Black July riots in 1983 started a civil war in Sri Lanka that lasted 26 years and resulted in the deaths of an estimated 80–100,000 people (ABC 2009). Following the end of the conflict, approximately 4,500 Sri Lankan asylum seekers arrived in Australia by boat between 2009 and 2013 (DIAC 2009, 2010, 2011, 2012, 2013; DIBP 2014). By 2012, Australia's Labor government had instituted a policy of quick 'enhanced screening' for Sri Lankan arrivals (AHRC 2013), and Minister for Foreign Affairs and Trade, Senator Bob Carr, argued a year later that there was no evidence that 'Tamils live in fear and are fleeing their country' (Carr cited in Ewart 2013). This was despite reports of human rights abuses in Sri Lanka during and after the war, from the United Nations High Commissioner for Human Rights, Amnesty International, Human Rights Watch, and the International Bar Association, that have detailed cases of the Sri Lankan authorities' use of rape and sexual violence as a means of torture, the torture of Tamil civilians and government-sanctioned abuse of journalists, judges and opposition politicians (Alberici 2013; Amnesty International 2013; Human Rights Watch 2013; International Bar Association 2013; Jupp 2013; Renshaw 2013; United Nations 2015). Since 2013, Australia's Liberal/National Coalition government has intercepted Sri Lankans at sea and returned them to their government (Kaldor Centre 2016b).

The civil war's beginning in 1983 and its end in 2009 coincided with Labor governments

* Betts: University of Technology Sydney, Broadway, New South Wales 2007 Australia; Higgins: Andrew and Renata Kaldor Centre for International Refugee Law, University of New South Wales, Sydney, New South Wales 2052 Australia. Corresponding author: Higgins, email: c.higgins@unsw.edu.au. Dr Higgins would like to acknowledge the financial support of the National Archives of Australia 'Margaret George Award'.

in Australia, but the response by the Hawke government in 1983 was markedly different from that of the Rudd and Gillard governments in the late 2000s. In 1983, Australia chose to process applications for resettlement on humanitarian grounds 'in-country'. This paper draws on archival documents from the Australian Department of Foreign Affairs and publications of the Australian Department of Immigration and Ethnic Affairs to examine how Australia admitted Sri Lankans under the in-country Special Humanitarian Program (SHP) if they had a family sponsorship in Australia and could prove they had been adversely affected by the outbreak of communal violence in Sri Lanka in July and August 1983.

Australia's use of processing within Sri Lanka has not been explored until now. This is because the in-country program operated relatively discreetly, and evidence suggests it operated on a limited scale. But unearthing the details of this program offers new insights into Australian refugee policy history. The program demonstrates the respective agendas of the departments of Foreign Affairs and Immigration concerning the degree to which refugee policy ought to be subjected to foreign policy interests and also illuminates the broader domestic imperatives that shaped refugee policy. Immigration used the program to carefully respond to lobbying by Sinhalese and Tamil communities in Australia while still managing the sensitivities of the bilateral relationship with Sri Lanka, because it framed the criteria for resettlement around those who had been 'adversely affected by the violence'. On the face of it, therefore, this precluded Australia from favouring the resettlement of one group over another, but the nature of the violence meant that, in reality, Tamils were likely to be successful applicants.

2. Australia's Special Humanitarian Program

In 1981 the Australian government established the SHP, a specific stream of the migration program intended for persons who were in need of protection but who fell outside the definition

of refugee set out under Article 1(A)(2) of the 1951 Refugee Convention. The SHP was intended to provide flexibility in Australia's response to protection needs around the world, operating alongside the annual refugee intake. In Parliament, the Minister for Immigration in the Liberal/National Fraser government, Ian Macphree, then said the SHP was a means of providing 'sympathetic consideration' for those ineligible under the normal migration criteria or the strict Convention definition, 'quasi-refugees with close relatives or ties in Australia' (Australia. Commonwealth Parliamentary Debates 1981). These persons would be subject to 'substantial discrimination or human rights violations' and would have no comparable claim to resettlement elsewhere.

While not specified at the time, the SHP provided the means through which applicants could be processed within their country of origin. It was this program that Stewart West, a subsequent Minister for Immigration in the Hawke Labor government, implemented in response to the Sri Lankan communal violence of July 1983. By this time, the SHP had been used to resettle former political prisoners and dissidents directly out of Poland and was being implemented in El Salvador and Chile (Department of Immigration 1983; Higgins 2014). It was a form of processing that has been used at various times over the past three decades on a small scale by governments in Australia, Canada and Europe, and on a larger scale by the United States, to respond to specific refugee-like situations. The most direct reference in Australian government publications stems from a 1991 review of Australia's refugee policy, which states the following:

The SHP... enabled Australia to operate outside its restrictive migration programs, accepting people such as 'in-country refugees' in Poland, El Salvador, Chile, Lebanon and Sri Lanka (the only countries so designated), and others outside their country of usual residence and experiencing or fearing gross discrimination but not persecution' (Australia. National Population Council 1991).

In addition to providing Australia with a more flexible mechanism with which to provide

humanitarian protection, the SHP was also the means of geographically diversifying Australia's humanitarian program, following the introduction of non-racially discriminatory immigration policy in the early 1970s, and then a subsequent large-scale resettlement of Indochinese refugees. The SHP facilitated a global focus for Australia's humanitarian program, beyond long-standing refugee source countries in the Soviet bloc and the recent intake from Indochina, and towards those fleeing human rights violations in other parts of the world (Higgins 2014). It is arguable that Australia's response to the plight of Tamils in 1983 was partly shaped by this new focus.

As a result of these changes, however, the SHP became a site of tensions between Foreign Affairs and Immigration. When refugee policy had been formalised in May 1977 by the Coalition government of Malcolm Fraser, it was designated to be the responsibility of Immigration, with input from Foreign Affairs. The Department of Immigration operated with awareness that for Foreign Affairs, applications for refugee status were of 'paramount foreign policy significance', and the priority was 'not to take refugees where it would offend a source country' (A446 1982/95192 Part 2). During the early 1980s, the two departments disagreed over the extent to which Foreign Affairs could assert foreign policy considerations over the direction of Australia's growing refugee program (Higgins 2014). In 1982, when the terms of the SHP were being formalised by Immigration, Foreign Affairs expressed concern that the program could be seen by potential source country governments as hostile—an explicit criticism of their relationship with their people (A1838 1632/5/23 Part 2)—and wished for Immigration to avoid publicity around individual SHP cases or programs. Foreign Affairs requested that its own senior officials be able to review any individual SHP applications that may have implications for the bilateral relationship between Australia and the country-of-origin (A1838 1632/5/23 Part 2).

The SHP also had practical administrative implications that concerned both Immigration

and Foreign Affairs. It was a Foreign Affairs responsibility to provide advice on the political and social conditions in countries of origin; the likely response of the government of the country of origin to an SHP; and the terms of any announcement of a special program. It was an Immigration responsibility to manage the policy process in consultation with Foreign Affairs, to interview individuals and make decisions about eligibility. However, these administrative exchanges were at times a site of tension between the two departments, with conflict arising over responsibilities for refugee and human rights reporting and consequently staffing at overseas missions, including Geneva, and liaison with the UNHCR (A1838 932/29/1 Part 4; A1838 1632/5/23 Part 2).

3. The Outbreak of Sri Lanka's Civil War as Recorded by Foreign Affairs

3.1. Sri Lanka Before the Civil War

The Tamil population had been subject to discrimination and occasional violence since Sri Lankan independence in 1948. Under colonial rule, the British had hired and favoured the Tamils, building excellent missionary schools in the north, with the effect that Tamils often had a greater facility in English and were over-represented in government jobs. When the British left the country, they left a model of democracy that paid no special attention to the rights of minorities and with English as the official language. In 1956, however, the passage of the Official Language Act No. 33 of 1956, which became known as the 'Sinhala Only Act', replaced English with Sinhala as the language of government and education. Seen by supporters as a demonstration of independence from their colonial masters, the Act effectively barred Sri Lanka's non-Sinhala-speaking minorities (including Tamils) from employment within the public service. According to the 1953 census, the 'Sri Lankan' Tamils, who had lived in Sri Lanka for 2–3,000 years, constituted almost 11 per cent of the population at the time, while

the so-called Indian Tamils, who had been brought to Sri Lanka in the 19th Century by the British to work in tea, coffee and rubber plantations, constituted 12 per cent of the population (CICRED series, 1974). Much of the 'Sri Lankan' Tamil population lived in the north and east of the country, while a number of Tamils lived in Colombo, including professionals and business owners (CICRED, 1974). The Indian Tamils tended to live in the centre of the island close to the plantations and employment (CICRED series, 1974).

While some of the restrictions on Tamils' access to education and government employment were eased over time, the 'Sinhala Only' Act left a legacy of bitterness, which gave rise to periodic violence and nurtured the creation of both Tamil and Sinhalese extremist groups. A number of Tamil groups, including the Tamil Tigers (the Liberation Tigers of the Tamil Eelam, LTTE) and the more moderate Tamil United Liberation Front political party, formed out of a desire for the protection of a Tamil homeland. Hyndman (1992) has detailed an escalation of tit-for-tat violence between the LTTE and military or police, reprisal attacks on the civilian population, thuggery and a diminished rule of law. The Prevention of Terrorism Act of 1978 gave sweeping powers to police to search, arrest and detain anyone suspected not only of terrorist activity but also of activities seen as supporting the terrorist cause. According to Hyndman, although the legislation was 'general in its wording', for many years, it was 'directed almost exclusively at young Tamil males' (Hyndman 1992). There were harsh penalties for persons connected with or believed to be connected with any unlawful activity, such as putting up posters or harbouring a 'terrorist' overnight, including detention without charge for successive 3 month periods up to a maximum of 18 months (Hyndman 1987). The Australian High Commission in Colombo reported that the Sri Lankan Director of Criminal Investigation, Snr Superintendent M.D.A. Rajapaksa, had advised that emergency regulations enabled security forces operating in the north of Sri Lanka to bury or cremate

bodies in secret without an inquest or post-mortem (A1838, 1690/1/18 Part 1). While the Sri Lankan government publicised the deaths of members of the security forces, the numbers of Tamil civilians killed in reprisals remains unknown.

3.2. *Black July and the Beginning of the Civil War*

In late July 1983, Colombo erupted into violence. While race riots were a periodic occurrence in Sri Lanka (there were anti-Tamil riots in 1956, 1958, 1977 and 1981), the July 1983 riots have been described as a 'pogrom' and have since been referred to as 'Black July' (Weiss 2012). Over a period of 7 days, anti-Tamil rioters burned and looted Tamil homes and killed an estimated 4,000 Tamils, leading to a civil war that lasted 26 years. Thousands were injured and 200,000 were displaced as their homes and businesses were destroyed. Sparked by the LTTE's killing of 13 soldiers in the north (itself a reprisal for the claimed rape of two Tamil schoolgirls), the riot began in Colombo and spread to other parts of the island. The Tamils targeted were the so-called Sri Lankan Tamils, who were predominant in professions and in the bureaucracy.

Australian government archival records constitute a rich source of evidence on these incidents. Reports from the Australian High Commission suggested that the violence was not spontaneous but organised, with rioters in possession of lists of Tamil-owned houses and businesses; indeed, the archives show that some SHP applicants suggested that these lists were electoral rolls (a fact that was later substantiated in a UN report) (A1838, 1690/1/18 Part 1; United Nations 2011). Many rioters appeared to have been transported in government-owned buses. In streets where Tamils lived, only those homes owned by Tamils were burned down, sometimes with their occupants inside, while Tamils living in Sinhala-owned houses were dragged out and bashed while their houses were spared (A1838, 1690/1/18 Part 1). An embassy report described a staff member seeing someone set alight in the street (A1838, 1690/1/18 Part 1,

1981). The rioters appeared to act with impunity, burning and bashing in full view of police who did not intervene (A1838, 1690/1/18 Part 1). It was believed that many of the mobs were led by people with connections to the ruling United National Party (A1838, 1690/1/18 Part 1). Displaced Tamils were transported by sea to Jaffna in the north, ostensibly for their own safety, while what was left of their properties was confiscated by the state, and according to the Australian Embassy in Washington, ‘virtually all Tamil-owned property in Colombo [was] burned to the ground’ (A1838, 1690/1/18 Part 1). In subsequent days, the violence spread to other cities, while in Welikada maximum security prison, 52 Tamil political prisoners were brutally murdered in two separate incidents (Hyndman 1987).

It took President Jayawardene 4 days to address the nation, and when he did, he blamed the violence on Tamil demands for a separate state:

Because of this violence by the terrorists, the Sinhalese people themselves have reacted. I feel that the movement for separation should have been banned long, long ago. (Jayawardene 1983).

The President announced new provisions that would strip the civil rights of anyone advocating a separate state, including the Tamil United Liberation Front, which represented Tamils in the Parliament:

I cannot see, and my government cannot see, any other way by which we can appease the natural desire and request of the Sinhala people to prevent the country being divided (Jayawardene 1983).

Behind the scenes, Australian authorities took a different view. In reporting from the post, the Australian High Commissioner in Colombo suggested that ‘the fact that wealthy Tamils with good UNP (United National Party) connections have not been spared suggests that there has been a deliberate attempt to destroy the economic strength and influence of the Colombo Tamils [(Sri Lankan Tamils living in Colombo)...and that] elements close to the government may themselves have played a

significant role in the events of the past few days’ (A1838, 1690/1/18 Part 1). As Hyndman has noted, the Sri Lankan government failed to commission any kind of enquiry into the events of ‘Black July’ or to prosecute those responsible (Hyndman 1987).

3.3. *Flight of Refugees from Sri Lanka*

The outbreak of communal violence in July 1983 and a deteriorating level of security and violence thereafter led to the ‘weakening of the authority of the rule of law’, an ‘erosion of democratic values’ and ‘increasing racial antagonism’ in which violence committed by both the LTTE and by forces allied with the government escalated (Hyndman 1985). Over the next few years, 106,000 Sri Lankans claimed asylum in Europe, constituting the fourth largest country of origin for total asylum applicants on that continent (UNHCR 2001). While there had been a small number of claimants before the conflict began in 1983, the number increased substantially after this point. According to Koser and Van Hear, by the 1990s, up to 300,000 Sri Lankan refugees joined existing diasporas of economic migrants from Sri Lanka in North America and Europe (Koser and Van Hear 2003). Sri Lankans constituted one of the largest—if not the largest—groups of asylum applicants in Canada, Australia and the United Kingdom during that decade (UNHCR 2001). Later, during the years immediately before and after the end of the civil war in 2009, Sri Lanka was consistently represented among the top 14 countries of origin for asylum seekers (UNHCR 2013b).

During the early 1980s, Australian authorities were paying close attention to the increasing number of Tamil asylum seekers around the world. In the lead-up to the events of July 1983, there was a surge of young Tamil men arriving in Canada and West Germany applying for refugee status. On 6 July 1983, the Australian High Commission in Colombo cabled Canberra to advise that the Canadian government was considering introducing visa requirements to discourage Sri Lankan Tamils from seeking refugee status (A1838, 1690/1/

18 Part 1). During the first 4 months of 1983, the Canadian government's Refugee Status Committee had approved 7 out of 30 Tamil applications and there was concern that successful claims might 'encourage more to try their luck in Canada' (A1838, 1690/1/18 Part 1). Soon after the events in Colombo, Canada introduced 'Special Measures' for Sri Lankans, making it easier for some Sri Lankans to remain in Canada, while imposing a visa requirement on those who wished to enter the country (Kelley and Trebilcock 2010; Hathaway 1988). While the Canadians were reported to have been assured by Sri Lankan authorities that there was no political harassment involved, the West Germans had reached an agreement with the Sri Lankan government for the repatriation of 'any northern terrorist found to have sought political asylum in West Germany' (A1838, 1690/1/18 Part 1).

Foreign Affairs' internal memos suggest that before the war, in the early 1980s, officers of the department largely accepted the Sri Lankan government's framing of Tamil grievances as 'fundamentally economic' in nature and of the 'terrorist' threat posed by Tamils. This was despite ongoing reports of the harassment of Tamils and an estimate, based on advice from the Sri Lankan security services in August 1982, of a hard core Tiger membership split between two hostile factions of between just 45 and 60 members (A1838, 1690/1/18 Part 1). Reports from the Australian High Commission in Colombo described a history of the Sri Lankan army and police responding to terrorist acts by harassing numbers of Tamil youth who were treated badly, some incarcerated for long periods of time often without their families knowing their whereabouts. But on 6 July 1983, a memo from the Australian mission in Colombo enclosed an article on asylum seekers from the pro-government local paper, *The Island*, and suggested that 'though grossly overwritten and giving only one side of the story, [the article] nevertheless points rightly to the possibilities for the pursuit of 'bogus' [refugee] claims and essentially "commercial" objectives inherent in the current situation'

(A1838, 1690/1/18 part 1). And other governments were also wary of Tamil claims. On 4 April 1983, the High Commission cabled Canberra to advise that

Our impression is that, to date, most Sri Lankan Tamil applicants for refugee status overseas have denied any association with 'terrorist' groups, claiming instead to be victims (on ethnic grounds and perhaps on suspicion of 'terrorist' involvement) of indiscriminate harassment, arbitrary detention and/or physical abuse by police/members of the armed forces. The experience of other governments suggests that the authenticity of documentation produced as evidence of victimisation by refugee applicants warrants careful examination as forgeries have been detected (A1838, 1690/1/18 Part 1).

By this point, only a tiny number of Sri Lankans had claimed asylum in Australia (Higgins 2016). Two applicants were considered by Australia's Determination of Refugee Status Committee in July 1982, a year before the events in Colombo. One of the applicants was a Tamil Tigers fighter. The records indicate that the plight of Tamil asylum seekers was an unfamiliar area for Australian decision-makers, and these cases were deferred for further inquiries. A third applicant was considered by the Committee in March 1983 and granted refugee status on the grounds that the individual was considered likely to be singled out on the grounds of race and political opinion if returned to Sri Lanka.

Hyndman noted in a 1987 study that given the discriminatory application of the Prevention of Terrorism Act and the massacre of Tamil political detainees in July 1983, among other factors, 'it would seem that many Sri Lankan Tamil applicants for refugee status would be able to establish that, should they be returned to Sri Lanka, they would have good reason to fear persecution within the meaning of the Convention' (Hyndman 1987). The number of Sri Lankans claiming refugee status in Australia increased during the mid to late 1980s (A1838 932/22 Part 1), and although the number of those Sri Lankan claimants who were approved or rejected by the Committee for this period is not published, individual case files suggest that the

Committee viewed rejected cases with a degree of sympathy (A463 1987/765 Part 1; A463 1987/765 Part 2). It is possible that some were allowed to remain in Australia on compassionate grounds under Section 6a(1) (e) of the *Migration Act 1958* (Cth) or were allowed to remain for an extra 2 weeks under a special 'policy on Sri Lankans' that Immigration adopted, allowing UNHCR the opportunity to review the rejected claim (A1838 932/22 Part 1; D399 S1985/030156).

4. Australia's in-Country Program in Sri Lanka

On 29 July 1983, 'in the light of the growing inter-communal tension and violence in Sri Lanka', Stewart West, Minister for Immigration and Ethnic Affairs, instructed his department to

- expedite consideration of sponsorship applications already lodged by people in Australia for the entry of their relatives or where Australian residents wished to sponsor relatives who had been adversely affected by civil disturbances;
- draw to his attention any situations where it appeared that family migration would not be approved, so that the application might be considered under Australia's Special Humanitarian Program; and
- favourably consider any applications by Sri Lankans presently in Australia as visitors or temporary residents to extend visas up until the end of September 1983 in the first instance (This period was later extended.) (Australia. Minister for Immigration and Ethnic Affairs 1983)

Under the SHP, 'close relatives' included uncles, aunts, nephews, nieces, first cousins, grandparents and grandchildren. If no such relationship existed, then an applicant needed to 'have some claim on Australia, e.g. former student or resident, former employee of an Australian firm or diplomatic mission' and have been affected by the communal violence (A1838, 1690/1/18 Part 4). The family relationships were therefore relatively broad, and the reason for this is not specified in the

documents. Importantly, there is no indication that applicants were prioritised according to the characteristic of their connection with Australia. The SHP today operates slightly differently. Under the Global Special Humanitarian Program (visa sub-class 202), family links are defined closely: applicants who have a partner, dependent child, parent or sibling in Australia receive first priority, while applicants who have an extended family member in Australia (such as grandparents, aunt, uncle, niece, nephew or cousin) receive second-order priority. The ability of friends, distant relative or organisations to sponsor applicants remains in place, but these receive third priority (DIBP 2015). Under the In-Country Special Humanitarian visa (sub-class 201), an applicant may self-refer or be proposed by an immediate family member in Australia.

Under the program as announced by Minister West, Sri Lankans who were resident in Australia had to lodge a sponsorship application form in Australia nominating a relative or other individual in Sri Lanka, and Immigration would determine that if that nominated person was not eligible for normal migration entry or family reunion, they would be considered under the SHP. The preliminary eligibility check was performed in Australia, and then, the Australian High Commission would contact that nominated person in Sri Lanka and invite them to attend an interview at the diplomatic post in Colombo on a particular date and time. In keeping with the terms for the SHP listed above, that individual would have to demonstrate that they had been adversely affected by the violence (A1838, 1690/1/18 Part 4). It is not clear whether 'the violence' in this case extended past the communal conflict of July and August 1983; the Immigration annual report of 1984 stated that while 'the special concessions for family migration' were rescinded in January that year, 'eligible applicants continue to be considered under the SHP, although sponsorships have dropped markedly' (DIEA 1984).

Initially announced as a short-term mechanism, it is unclear exactly when the SHP was last employed 'in-country' for Sri

Lankans, although evidence suggests that so-called special measures for Sri Lankans under the SHP were discontinued in June 1988 (DIEA 1988). The program contributed to the admission of 720 people over the first 2 years: 297 in 1983/1984 and 423 in 1984/1985, and potentially smaller numbers in subsequent years (DIEA 1986). In 1985, Immigration reported that 'the number of sponsorships received following the communal violence of July and August 1983 continued to decline in 1984-85' (DIEA 1985). The exact number of Sri Lankans processed 'in-country', as distinct from the SHP more broadly, is not specified in the records.

The in-country SHP in Sri Lanka operated slightly differently from the other in-country programs that Australia was running in El Salvador and Chile at that same time. First, generally speaking eligibility under the Latin American programs was not solely based around a single event or time period; rather, entry was granted to those who suffered serious discrimination or human rights violations at the hands of authorities or paramilitary groups, although the Australian government did work to resettle specific groups of amnestied political prisoners in El Salvador and trade unionists who had been internally displaced in Chile. Second, at times, Australian officials working in Latin America had to liaise with intermediaries, such as the Catholic Church or other non-governmental organisations, in order to identify prospective applicants. There is no evidence that officials had to do the same in Sri Lanka, as sponsorship applications were lodged in Australia.

4.1. Foreign Policy Interests and Domestic Considerations

The Australian government's immigration response to the events of Black July, though measured, was apparently more generous than some officials in the Department of Foreign Affairs would have advised. A subsequent cable from Foreign Affairs Canberra to the Australian High Commission in Colombo (21 July 1983, A1838, 1690/1/18 Part 1) sent as the communal violence in Sri Lanka escalated

conveyed the Minister for Foreign Affairs Bill Hayden's desire to meet with the Sri Lankan High Commissioner to discuss the Tamil situation. The cable expressed Foreign Affairs concerns at the Minister for Immigration and Ethnic Affairs, Stewart West's, proposal to make a number of places available to Tamils under the SHP. The Australian post in Colombo was asked to comment on 'the suggestion by Mr Hayden of the need for a formal, strong expression of concern' to the Sri Lankan government (A1838, 1690/1/18 Part 1):

Such a statement, we assume, would have to balance actions and aims of the Tamil extremists, the severity of measures taken under the prevention of Terrorism Act, the basic difficulties of the communal problem, and the generally sound human rights record of the Sri Lanka Government over the years (A1838, 1690/1/18 Part 1) (*emphasis added*).

Foreign Affairs officials took pains to avoid the appearance of the Australian government supporting the Tamils and counselled that any public announcement of the extension of the SHP—as a result of the communal violence—should not refer to Tamils, but rather to 'any Sri Lankan adversely affected by the community violence': this despite the obvious targeting of Tamils in the violence. The 'Tamil question' had not been an issue in the Australia/Sri Lanka relationship, and Foreign Affairs had no desire for it to become one. Officials felt there was a 'risk that Australia [would] be seen as supporting other Tamil demands' and that it was in Foreign Affairs' 'interests to encourage [Immigration] to select applicants from all minority groups' (A1838, 1690/1/18 Part 3).

The efforts to avoid the appearance of favouritism were also motivated by domestic concerns. Immigration customarily insisted that the direction of the humanitarian program had to take into account the demands and interests of the Australian community. Foreign Affairs agreed, expressing the view that the SHP intake should not have a disproportionate number of 'one ethnic group over another, because of the need for a balanced

representation in the Sri Lankan community in Australia' (A1838, 1690/1/18 Part 1). The position led to representations from Tamil groups in Australia, unhappy at a perception that Sinhalese were being advantaged under SHP provisions, while Sinhalese groups in Australia complained that Tamils were being advantaged. Publicly 2 years later, Immigration held that it did not know how many Sinhalese and Tamils had been resettled in Australia under the SHP, because 'in line with the government's non-discriminatory immigration policy, no record is kept of ethnic, religious or racial backgrounds' (Australia. Commonwealth Parliamentary Debates 1986). In private at the time, the fact that the SHP was not a refugee program was a distinct semantic benefit for Foreign Affairs and Immigration officials, who carefully argued to representatives from the ethnic communities that although Australia was providing more resettlement places for Sri Lankans as a direct response to the inter-communal violence, this did not constitute an acknowledgement of a 'refugee' situation as such (A1838, 1690/1/18 Part 3).

There were, however, differences between Foreign Affairs and Immigration as to the extent to which the SHP should be used as a foreign policy tool. In February 1984, when the UN Committee for Human Rights was sitting in Geneva, the Australian High Commission in Colombo suggested that Australia might offer suspension of the SHP as a means of showing support for President Jayewardene's 'conciliatory efforts' in convening an all-party conference with political opponents in Sri Lanka. The High Commission suggested that Australia

use the Special Humanitarian Program as a vehicle to express the fact that we are still concerned about the security of minorities [in Sri Lanka]. This could either take the form of a statement suspending the program and supporting the all-party conference (so as not to give the impression of undermining it while it is still in progress) or alternatively a statement signaling our determination to continue SHP nominations until a satisfactory solution to the problem has been reached (A1838, 1690/1/18 Part 5).

The head of the Refugees Branch in Immigration responded with the view that 'we do not see the use or otherwise of the Special Humanitarian Program as a viable option to be considered for achieving the stated objective' (A1838, 1690/1/18 Part 5). It was argued that using the SHP as a diplomatic tool would undermine the global nature of SHP criteria and run the risk of 'singling out Sri Lankans for discriminatory treatment'. In any case, Immigration sought to argue that the 'SHP is unlikely to be interpreted as a comment on the human rights performance of the Sri Lankan authorities' because it was limited to family sponsorship (A1838, 1690/1/18 Part 1).

This debate over the manner in which source country governments would interpret the SHP had been an ongoing source of disagreement between the two departments since the previous year, when the SHP had been initially used to accept entrants from countries of first asylum in the Middle East and Europe. The Department of Immigration and Ethnic Affairs believed that because the SHP was not a refugee program, it could not constitute a statement that a source country was refugee-producing, an argument that Foreign Affairs disputed (A1838 1632/5/23 Part 2). Ultimately, however, it appears that any sensitivities that may have arisen between Australia and the Jayewardene government over the resettlement of Sri Lankans on humanitarian grounds were managed successfully (A1838, 1690/1/18 Part 5).

5. Conclusion

The differences in the responses of the Hawke government in 1983 and the Rudd and Gillard governments in the late 2000s can be attributed to two factors. First, while the size and composition of the immigration program was a simmering political issue in 1983, only a small number of asylum seekers were arriving in Australia at that point and there were no maritime arrivals (as compared with the period 1976 to 1981). Australia's response to those Sri Lankans in need of protection was therefore an attempt at striking a balance

between humanitarian concerns, domestic political considerations and foreign policy. In comparison, in the late 2000s, public disquiet in Australia over the arrival of tens of thousands of asylum seekers, many of them Tamils, meant that domestic political considerations weighed differently, and heavily, on the Australian government's refugee policies (Kelly 2014). In the intervening period, the number of asylum seekers reaching Australia by boat had increased markedly (although far below the number arriving in many other countries). The Sri Lankans were among more than 44,000 people who sailed to Australia to claim protection during the years 2009 to 2013 (Phillips 2014).

While immigration management in Australia has long involved security measures—with visitors checked against warning lists and migrants and temporary residents subjected to health, police and character checks—in the post 9/11 'war on terror' environment, the irregular maritime arrival of asylum seekers was framed in Australian political debate as a national security concern. Prime Minister Rudd's attempt to unwind restrictive policies on unauthorised boat arrivals was seen by many as having contributed to the arrival of 61 boats (carrying 2850 people) during 2009, and almost 7000 arrivals in 2010 (Kelly 2014). The politics of so-called border protection became framed as a test of leadership, and it was in this context that successive Australian governments sought to enlist Sri Lanka's help in preventing the departure of both Tamil and Sinhalese, despite the fact that it went against the international tide of concern over the Rajapaksa government's poor human rights record.

As many as 40,000 Sri Lankan civilians, mostly Tamils, are believed to have died in the months before the crushing defeat of the Tamil Tigers at the hands of the Sri Lankan military (United Nations 2011; PIAC 2014). But not long after assuming office in January 2015, Sri Lanka's Prime Minister, Ranil Wickremesinghe of the United National Party, part of the Sirisena government, claimed in an interview with the Australian media that the Australian government's silence on alleged

human rights abuses was the price it paid to secure cooperation from the former government of Mahinda Rajapaksa on stopping asylum-seeker boats (Hodge 2015). At the close of the war in 2009, when 200,000 Tamil civilians were reportedly held in forced internment in Sri Lanka (United Nations 2011), the Australian Labor government 'announced an \$11 million aid package for Colombo and a memorandum of understanding on "legal co-operation on people-smuggling"' (Hodge 2014). In 2013, when Canada, Mauritius and India boycotted the Commonwealth Heads of Government Meeting in Colombo because of alleged human rights abuses against Tamils, Australia's the Coalition government defended the Rajapaksa government and gave a gift of two navy patrol boats to the Sri Lankan coast guard to assist them in preventing asylum seekers from departing the country (Hodge 2014). In 2014, Australia declined to co-sponsor a UN Human Rights Council resolution for an international inquiry into alleged war crimes committed in Sri Lanka during the closing stages of the conflict (Australia. Minister for Foreign Affairs and Trade 2014).

Second, by the time the war ended, the LTTE was considered a proscribed terrorist organisation by governments in more than 30 countries around the world, although it was not proscribed in Australia (Nautilus Institute for Security and Sustainability 2007). LTTE assassinations of Sinhalese civilians and rival Tamils, along with other terrorist activities, had reduced international support for the cause of a Tamil homeland, despite the fact that the terrorism of the Tamil Tigers was matched by the terrorism of the Sri Lankan military (Weiss 2012). Weiss has argued that in the eyes of the international community, the Sri Lankan government successfully framed the war's end as a victory over terrorism (Weiss 2012; United Nations Human Rights Council Resolution S-11/1, 2009).

While the international community's perception of the civil war was eventually revised and the United Nations Human Rights Council came to support an inquiry into human rights violations in Sri Lanka (United Nations

Human Rights Council Resolution 25/1, 2014), as previously stated, Australia declined to co-sponsor this initiative. According to Sentas, the Tamil community in Australia was ‘criminalised as suspect’ towards the end of the war and subject to ‘widespread informal questioning’ or harassment by police, based on intelligence provided by Sri Lankan authorities (Sentas 2010). Tamil asylum seekers fleeing to Australia were suspected of having links to the LTTE, an idea reportedly fuelled by information provided to Australian authorities from officials in Sri Lanka (Neighbour 2010). As a result of these heightened security measures, a number of Sri Lankan asylum seekers and refugees have been subject to indefinite immigration detention in Australia (Kaldor Centre 2016b).

Today, Sri Lankans continue to seek asylum in Australia in small numbers and in larger numbers around the world (UNHCR 2016). While they constituted the second highest group of asylum claimants in Australia in 2012–13, the recognition rate was very low, at 11.6 per cent (DIAC 2013). In July 2013, the Rudd government announced that asylum seekers arriving by boat would not be resettled in Australia. Between this point and December 2013, once the Abbott government had fully implemented a ‘turn back the boats’ policy, Sri Lankans (and asylum seekers of other nationalities) who made the maritime journey were transferred to offshore detention on Manus Island in Papua New Guinea, or Nauru. Since late 2013, most asylum seekers attempting to reach Australia by boat have been intercepted at sea and turned around. At the time of writing, it is believed that Australian officials had transferred at least five boatloads of suspected asylum seekers to the custody of Sri Lankan authorities, and little is known about their fate upon return (SBS 2016; Kaldor Centre 2016a). Another boatload of 157 Sri Lankans was held by Australian authorities at sea for 4 weeks in mid-2014, before being transferred into Australia’s offshore immigration detention system (Kaldor Centre 2016b).

Australia’s current policies may prevent Sri Lankan asylum seekers from reaching

Australia, but they do not negate the protection needs of those individuals who are fleeing persecution nor do they provide an alternative, orderly pathway to safety. As a result, since the end of the civil war, some scholars and practitioners have called for the Australian government to set up ‘an emergency quota’ for Sri Lankans seeking protection (Jupp 2012) or to consider utilising existing migration channels—such as skilled or family reunion visas—much as it did in the aftermath of the July 1983 violence. Others have called for the Australian government to expand its intake under the existing In-Country (sub-class 201) visa and under the humanitarian program more generally (Douglas et al. 2014; Australian Human Rights Commission 2016). This is because currently, less than 1 per cent of entrants to Australia each year arrive under the 201 visa, and while the Global Special Humanitarian Program comprises a large proportion of Australia’s annual humanitarian intake, at around 5000 people per year, demand for more places is reportedly high (Australian Human Rights Commission 2016). Studies in other contexts have found that the decision by a resettling state to offer in-country processing requires political will (Hein & de Donato 2012). While the in-country SHP in Sri Lanka is a small-scale example of this model of processing, it suggests that Australia can provide humane and orderly access to protection in a way that carefully manages both domestic political and foreign policy considerations.

References

Australian government archival records

- National Archives of Australia A1838 1690/1/18 Part 1 *Australian Refugee Policy – Relations with Other Countries – Sri Lanka*.
- National Archives of Australia A1838 1690/1/18 Part 3 *Australian Refugee Policy – Relations with Other Countries – Sri Lanka*.
- National Archives of Australia A1838 1690/1/18 Part 4 *Australian Refugee Policy – Relations with Other Countries – Sri Lanka*.

- National Archives of Australia A1838 1690/1/18 Part 5 *Australian Refugee Policy – Relations with Other Countries – Sri Lanka*. National Archives of Australia A1838 1632/5/23 Part 2 *Immigration – Australian Policy – Entry Residence Controls – Special Humanitarian Program*.
- National Archives of Australia A1838 932/29/1 Part 4 *Refugees and Asylum – Relations with Other Departments and Organisations – Liaison with Department of Immigration and Ethnic Affairs*.
- National Archives of Australia A1838 932/22 Part 1 *Migration – Refugees and ICEM DORS Policy and General*.
- National Archives of Australia A446 1982/95192 Part 2, *Refugee Branch – Relations with Foreign Affairs*.
- National Archives of Australia A463 1987/765 Part 1 *Freedom of Information Consultations with DILGEA on DORS Committee Minutes*.
- National Archives of Australia A463 1987/765 Part 2 *Freedom of Information Consultations with DILGEA on DORS Committee Minutes*.
- National Archives of Australia, D399 S1985/030156 *Application for Refugee Status and or Political Asylum*.
- Australia. Department of Immigration and Ethnic Affairs [DIEA] (1984) Annual Report 1983-84, Australian Government Publishing Service, Canberra.
- Australia. Department of Immigration and Ethnic Affairs [DIEA] (1985) Annual Report 1984-85, Australian Government Publishing Service, Canberra.
- Australia. Department of Immigration and Ethnic Affairs [DIEA] (1988) Annual Report 1987-88, Australian Government Publishing Service, Canberra.
- Australia. Department of Immigration and Citizenship [DIAC] (2009) Annual Report 2008-09, Canberra.
- Australia. Department of Immigration and Citizenship [DIAC] (2010) Annual Report 2009-10, Canberra.
- Australia. Department of Immigration and Citizenship [DIAC] (2011) Annual Report 2010-11, Canberra.
- Australia. Department of Immigration and Citizenship [DIAC] (2012) Annual Report 2011-12, Canberra.
- Australia. Department of Immigration and Citizenship [DIAC] (2013) Annual Report 2012-13, Canberra.
- Australia. Department of Immigration and Border Protection [DIBP] (2014) Annual Report 2013-14, Canberra.
- Australia. Department of Immigration and Border Protection [DIBP] (2015) PAM3: Refugee & Humanitarian, Offshore Humanitarian Program, Visa Application and Related Procedures, Canberra.
- Australia. Minister for Immigration and Ethnic Affairs (1983) Tensions in Sri Lanka, *Media release* #59/83, 29 July, Canberra.
- Australia. Minister for Foreign Affairs and Trade (2014) Supporting reconciliation in Sri Lanka, *Media Release*, 28 March, Canberra.
- Australia. National Population Council (1991) Refugee Review, Australian Government Publishing Service, Canberra.

Australian government publications

- Australia. Commonwealth Parliamentary Debates (1981) House of Representatives, 18 November, Australian Government Publishing Service, Canberra.
- Australia. Commonwealth Parliamentary Debates (1986) House of Representatives, 16 September, Australian Government Publishing Service, Canberra.
- Australia. Department of Immigration and Border Protection (2015) Procedures Advice Manual (PAM3).
- Australia. Department of Immigration and Ethnic Affairs [DIEA] (1986) Australian Immigration: Consolidated Statistics, no. 14, Australian Government Publishing Service, Canberra.
- Australia. Department of Immigration and Ethnic Affairs [DIEA] (1983) Annual Report 1982-83, Australian Government Publishing Service, Canberra.
- Australia. Department of Immigration and Ethnic Affairs [DIEA] (1984) Annual Report 1983-84, Australian Government Publishing Service, Canberra.
- Australia. Department of Immigration and Ethnic Affairs [DIEA] (1985) Annual Report 1984-85, Australian Government Publishing Service, Canberra.
- Australia. Department of Immigration and Ethnic Affairs [DIEA] (1988) Annual Report 1987-88, Australian Government Publishing Service, Canberra.
- Australia. Department of Immigration and Citizenship [DIAC] (2009) Annual Report 2008-09, Canberra.
- Australia. Department of Immigration and Citizenship [DIAC] (2010) Annual Report 2009-10, Canberra.
- Australia. Department of Immigration and Citizenship [DIAC] (2011) Annual Report 2010-11, Canberra.
- Australia. Department of Immigration and Citizenship [DIAC] (2012) Annual Report 2011-12, Canberra.
- Australia. Department of Immigration and Citizenship [DIAC] (2013) Annual Report 2012-13, Canberra.
- Australia. Department of Immigration and Border Protection [DIBP] (2014) Annual Report 2013-14, Canberra.
- Australia. Department of Immigration and Border Protection [DIBP] (2015) PAM3: Refugee & Humanitarian, Offshore Humanitarian Program, Visa Application and Related Procedures, Canberra.
- Australia. Minister for Immigration and Ethnic Affairs (1983) Tensions in Sri Lanka, *Media release* #59/83, 29 July, Canberra.
- Australia. Minister for Foreign Affairs and Trade (2014) Supporting reconciliation in Sri Lanka, *Media Release*, 28 March, Canberra.
- Australia. National Population Council (1991) Refugee Review, Australian Government Publishing Service, Canberra.

Other primary and secondary sources

- Alberici E (2013) Malcolm Fraser Calls for Boycott of CHOGM in Sri Lanka, *Lateline*,

- ABC, 26 April, <<https://www.youtube.com/watch?v=tXwelz4qu1Y>> accessed 20 April 2015.
- Amnesty International (2013) Sri Lanka's Assault on Dissent, London.
- Australian Broadcasting Commission (2009) Up to 100,000 Killed in Sri Lanka's Civil War: UN, 21 May, <<http://www.abc.net.au/news/2009-05-20/up-to-100000-killed-in-sri-lanka-civil-war-un/1689524>> accessed 25 March 2016
- Australian Human Rights Commission [AHRC] (2013) The Enhanced Screening Process, Australian Human Rights Commission, Sydney.
- Australian Human Rights Commission (2016) Pathways to Protection: A Human Rights-Based Response to the Flight of Asylum Seekers by Sea, Australian Human Rights Commission, Sydney.
- Committee for International Cooperation in National Research in Demography (CICRED) (1974) The Population of Sri Lanka, United Nations, Colombo, <<http://www.cicred.org/Eng/Publications/pdf/c-c46.pdf>> accessed 24 March 2016
- Douglas B, Higgins C, Keski-Nummi A, Mcadam J, Mcleod T (2014) Beyond the Boats: Building an Asylum and Refugee Policy for the Long Term, Report Following a High Level Roundtable, Australia 21, Centre for Policy Development and the Andrew & Renata Kaldor Centre for International Refugee Law, Canberra.
- Ewart H (2013) Man Claims Rape and Torture upon Return to Sri Lanka, 7.30 Report, ABC, <<http://www.abc.net.au/news/2013-04-24/sri-lankan-details-claims-of-rape-and-torture-by-army/4649954>> accessed, 21 April 2015.
- Hathaway J (1988) Selective Concern: An Overview of Refugee Law in Canada. *McGill Law Journal* 33, 676–715.
- Hein C, De Donato M. (2012), Exploring Avenues for Protected Entry in Europe: Report, European Council on Refugees and Exiles.
- Higgins C (2016) New Evidence on Refugee Status Determination in Australia, 1978–83. *Refugee Survey Quarterly* 35(3), 71–93
- Higgins C (2014) Australia's Little-Known in-Country Programme in Latin America. *Refugee Survey Quarterly* 33(1), 8–24.
- Hodge A (2014) Bishop Opts out of Push for UN Sri Lankan Human Rights Probe, *The Australian*, 29 March, p 9.
- Hodge A (2015) Sri Lanka Abuse Silence 'Price of Boats Deal', *The Australian*, 23 February, p 7.
- Human Rights Watch (2013) 'We Will Teach You a Lesson': Sexual Violence Against Tamils by Sri Lankan Security Forces. Viewed 10 April 2015, <<https://www.hrw.org/report/2013/02/26/we-will-teach-you-lesson/sexual-violence-against-tamils-sri-lankan-security-forces>>
- Hyndman P (1985) Human Rights, the Rule of Law and the Situation in Sri Lanka. *UNSW Law Journal* 8(2), 337–61.
- Hyndman P (1987) The 1951 Convention Definition of Refugee: An Appraisal with Particular Reference to the Case of Sri Lankan Tamil Applicants. *Human Rights Quarterly* 9(1), 49–73.
- Hyndman P (1992) Sri Lanka: A Study in Microcosm of Regional Problems and the Need for More Effective Protection of Human Rights. *Denver Journal of International Law and Policy* 20(1992), 269–303.
- International Bar Association (2013) A Crisis of Legitimacy: The Impeachment of Chief Justice Bandaranayake and the Erosion of the Rule of Law in Sri Lanka, Report of the International Bar Association's Human Rights Institute, London, April 2013.
- Jayawardene JR (1983) Presidential Address to the Nation, 28 July, text <<http://tamilnation.co/indictment/genocide83/gen13.htm>> accessed, 28 Feb 2016.
- Jupp J (2013) Sri Lanka and Human Rights: Australia's CHOGM Dilemma, *The Conversation*, 3 May <<https://theconversation.com/sri-lanka-and-human-rights-australias-chogm-dilemma-13893>> accessed 10 March 2016.
- Jupp J (2012). Why the Increase in Sri Lankan Asylum Seekers?, *The Conversation*, 9 November <<https://>>

- theconversation.com/why-the-increase-in-sri-lankan-asylum-seekers-10575> accessed 10 March 2016.
- Kaldor Centre for International Refugee Law (2016a), Factsheet: Refugees with an Adverse Security Assessment by ASIO, University of New South Wales <<http://www.kaldorcentre.unsw.edu.au/publication/refugees-adverse-security-assessment-asio>> accessed 11 March 2016.
- Kaldor Centre for International Refugee Law (2016b) Factsheet: Turning Back Boats, University of New South Wales <<http://www.kaldorcentre.unsw.edu.au/publication/turning-back-boats>> accessed 11 March 2016.
- Kelly P (2014) *Triumph and Demise: The Broken Promise of a Labor Generation*. Melbourne University Press, Carlton.
- Kelley N, Trebilcock M (2010) *The Making of the Mosaic: A History of Canadian Immigration Policy*, second edn. University of Toronto Press, Toronto.
- Koser K, Van Hear N (2003) Asylum Migration and Implications for Countries of Origin, Discussion Paper, World Institute for Development Economics, Geneva.
- Nautilus Institute For Security And Sustainability (2007) Diaspora Dilemmas: Australia and the Sri Lanka Conflict, <<http://nautilus.org/apsnet/diaspora-dilemmas-australia-and-the-sri-lanka-conflict/>> accessed 24 March 2016.
- Neighbour S (2010) Tamil Tigers at the Front Door, *The Australian*, 16 July <<http://www.theaustralian.com.au/national-affairs/tamil-tigers-at-the-front-door/story-fn59niix-1225892362845>> accessed 11 March 2016.
- Phillips J (2014) *Boat Arrivals in Australia: A Quick Guide to the Statistics*. Commonwealth Parliamentary Library, Canberra 23 January 2014.
- Public Interest Advocacy Centre [PIAC] (2014) Island of Impunity? Investigation into international crimes in the final stages of the Sri Lankan civil war, International Crimes Evidence Project, Sydney.
- Renshaw C (2013) The Problems with Recognising Sri Lankan Boat Arrivals as Refugees, *The Conversation*, 3 May, <<http://theconversation.com/the-problems-with-recognising-sri-lankan-boat-arrivals-as-refugees-13895>>, accessed 21 April 2015.
- Sentas V (2010) Terrorist Organisation Offences and the LTTE: R v Vinayagamoorthy. *Current Issues in Criminal Justice* 22(1), 159–69.
- SBS (2016) Asylum Seeker Boat Turned Back to Sri Lanka: Dutton, *SBS News*, 23 February 2016 <<http://www.sbs.com.au/news/article/2016/02/23/asylum-seeker-boat-turned-back-sri-lanka-dutton>> accessed 29 March 2016.
- United Nations High Commissioner for Refugees [UNHCR] (2001) *Asylum Applications in Industrialized Countries: 1980–1999 Trends in Asylum Applications Lodged in 37, Mostly Industrialized, Countries*. United Nations High Commissioner for Refugees, Geneva.
- United Nations High Commissioner for Refugees [UNHCR] (2013b) *Asylum Trends 2012: Levels and Trends in Industrialized Countries*. United Nations High Commissioner for Refugees, Geneva.
- United Nations Secretary-General (2011) Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka, Geneva, 31 March.
- United Nations Human Rights Council (2015) Report of the OHCHR Investigation on Sri Lanka (OISL), Geneva, 16 September.
- United Nations High Commissioner for Refugees [UNHCR] (2016) Global Trends: Forced Displacement in 2015, Geneva, 20 June.
- United Nations Human Rights Council (2009) Resolution S-11/1 Assistance to Sri Lanka in the Promotion and Protection of Human Rights, 27 May.
- United Nations Human Rights Council (2014) Resolution 25/1 Promoting Reconciliation, Accountability and Human Rights in Sri Lanka, 27 March.
- Weiss G (2012) *The Cage: The Fight for Sri Lanka and the Last Days of the Tamil Tigers*. Bellevue Literary Press, New York.