'STAYPUTS' AND ASYLUM SEEKERS IN DARWIN, 1961-1962

Or, How three Portuguese Sailors Helped to Undermine the White Australia Policy'

by Klaus Neumann

In September 1961, the attempted deportation of three Darwin-based Malay pearlers became one of the
callas célèbres of the White Australia policy.' With the support of many Darwin residents, the three men
fought for the right to stay in Australia. For weeks, their case created headlines in newspapers around the
country. After spending some time in hiding in Darwin, two of the men - labelled in the press the 'Stayput
Malays' - challenged their deportation orders in the High Court. 'Before a decision was given', Douglas
Lockwood wrote in his history of Darwin, 'the government, in a remarkable reversal, dropped the
deposition proceedings and they were allowed to remain.' Fellow journalist Jim Bowditch, who had
campaign long and hard for the men's right to stay in Australia, emphasised the role popular support for
them played in that reversal, but he, too, seemed to have been baffled by the timing of the government's
announcement: 'Support built up around Australia for the three 'Stay puts' who had worked so hard for so
little in the Australian pearling industry and suddenly the Government dropped deportation proceedings'.
The third detailed published account of the affair, in Lyn Riddett's article 'The Gateway and the Gatekeepers',
also highlights the support for the divers in Darwin but provides no explanation for the government's
decision to let them stay.'

This article aims to shed light on the reasons behind the government's change of heart. Situating the case
within the context of Australian immigration policies at the time, it suggests that the case of the Stayput
Malays cannot be sufficiently understood either from a Darwin perspective or within the framework of a
history of the White Australia policy.

The three pearling operatives in question - Deras bin Saris, Zainal bin Hashim and Jaffa bin Madun' -
had been employed by the Darwin-based master pearler Jimmy Gonzales, one of the veterans of Nonh
Australia's pearling industry. They had been in Australia since 1949, 1955 and 1952, respectively. All three
had moved to Darwin in the late 1950s from Broome, probably as a result of the declining demand for
pearlers in Western Australia.

In the late 1950s, the Australian mother of pearl industry entered a period of crisis that culminated in its
collapse in 1962.' The demand for mother of pearl decreased dramatically. This was largely due to
improvements in the manufacture of plastic buttons. In November 1959, the president of one of the major
companies involved in the mother of pearl trade in the United States told the Australian Trade Commissioner
in New York:

The problem is a simple one - survival or non-survival...Practically ever since the war the cheaper
volume items used plastics. In recent years the plastic has become so excellent and surpassed mother
of pearl in laundering and wearing tests that now it is used in the majority of the better priced
garments.;

At the same time, the European market was oversupplied with pearl shell, and the Australian Trade
Commissioner in Bonn reponed 'a perpetual slashing of prices.' In the Northern Territory, the number of
indentured labourers employed in the pearling industry declined from eighty-six in September 1957 to
thirty-seven in December 1960, while the number of local employees declined from forty-nine to seventeen
over the same period.9

Towards the end of the 1960 pearling season," it transpired that Jimmy Gonzales was unlikely to continue
in the business. As a master pearler, he was responsible for the maintenance of employees who had been
recruited from overseas, as well as for their repatriation should they stop working for him and not be
engaged elsewhere in the industry. At that stage, he had four overseas pearlers still in his employ: apart from the three Malays mentioned above, they also included a Chinese pearler, Chan See Cham, who had begun working in the industry in 1957. Beginning on 6 December 1960, the Department of Immigration repeatedly approached Gonzales to remind him of his obligation to effect the men’s repatriation. Gonzales promised to make arrangements but failed to deliver on these promises.

On 18 April 1961, the Northern Territory News featured the situation of two of Gonzales’s former employees: bin Saris and bin Madun. The paper told its readers that the men had been in Australia for twelve and ten years respectively, that they no longer had ties to their native country, and that they wished to remain in Australia. "Under the headline 'They earned right to citizenship!', the paper’s editorial invoked Australia’s ‘reputation for a “fair go”’ and asked: ‘Should they now be treated as interlopers to be cast out once their period of usefulness [sic] has ceased?’ Then and in subsequent articles, the News was at pains to assure its readers that it did not question the White Australia policy. Instead it argued that to let the pearlers remain in Australia would be both sensible and generous, and would have no bearing on the policy’s intentions."

The News reported that Jock Nelson MHR, the Northern Territory’s Labor representative, would try to intercede on their behalf. "Nelson’s approach followed that of the News (albeit without its editor’s rhetorical flourishes): he supported the White Australia policy but disagreed with its administration in this particular case.

At the time, requests to work outside the pearling industry and then to be granted permanent residence in Australia were not unusual and had often been acceded to. Since the White Australia policy had been relaxed in 1956, numerous pearl divers, who had once entered Australia as indentured labourers, had been allowed to stay on after the expiration of their contracts. But in 1961 permissions were only given if either the employee had worked in the Australian pearling industry for at least fifteen years, or if he had married an Australian.

Simeon bin Said, for example, had, with the exception of time he served with the Australian Army, been a pearling operative from 1934 to 1955 when he was granted permission to work onshore. When applying for naturalisation in 1960, his application was approved after he was said to have demonstrated his good character and his participation in Australian social life by being ‘a liberal donor to the orphans Xmas tree and picnic’ and ‘an active member of the Broome rifle club’. Bakri bin Denim had arrived in Australia in 1955. In February 1961, after his employer, a Broome-based master pearler, decided not to re-engage him for the 1961 season, he married an Aboriginal woman, with whom he had been in a relationship for several years, and applied for permission to work outside the pearling industry. "Not only was his application readily approved; in April 1961, he was granted permanent residence and in November he was naturalised."

The Immigration Department’s policy regarding the granting of permanent residence to pearling operatives who married Australians was not publicised – probably for fear that indents would marry merely for the sake of obtaining a permanent residence permit. It is most unlikely that the overseas pearlers did not know how they would be able to secure their stay in Australia. But they may not have been aware of the extent to which the Department usually followed its policy and tried to avoid making exceptions that could be regarded as precedents.

Jaffa bin Madun, Zainal bin Hashim, Deraus bin Saris and Chan See Cham were neither married nor had they worked long enough in the pearling industry to qualify for so-called ‘liberal attitude status’. Deraus bin Saris had applied to the Department of Immigration in 1959, when the Department...
employed in Broome, to 'relinquish his employment in the Pearling Industry and to remain in Australia, under exemption, to engage in an occupation of his own choice'. "Notifying the Department of his application, the Sub-Collector of Customs had noted that the applicant 'is single, speaks good English, has conducted himself very well in the community, and [that] his application is enthusiastically supported by Mr. W. Scott, his most recent employer'." But the application had been refused because bin Saris had been found not to be eligible for the concession he had sought.

Following the publication of the first newspaper article on bin Saris and bin Madun, public support for the men began slowly to build, particularly in Darwin. The campaign was led by the editor of the Northern Territory News, Jim Bowditch, who had decided to make the story public in the first place. Bowditch was a formidable crusader for social justice. "I gathered the impression that he is seeking what he considers to be a better form of society and I would describe him as an idealist', a field officer of the Australian Security Intelligence Organisation (ASIO) accurately characterised Bowditch in a report in 1960; he 'has a ready ear to listen to any persons [sic] problems and seems to champion those people who, because of colour, creed or their own ability, have failed to achieve their ambitions or have in some way been baulked by authority'. Other prominent supporters included Jock Nelson; the Darwin lawyer and Member of the Northern Territory Assembly, Dick Ward; and the leaders of the Northern Australia Workers Union (NAWU): its President, Bert Graham, and its Secretary, Paddy Carroll.

The NAWU was no stranger to lending its support to pearlers. In April 1955, the Malay pearl diver Yap Ah Chee had been sacked by the Paspaley Pearling Company. He had threatened to resign his job when Paspaley refused to pay for the repatriation of the body of a fellow Malay diver who had died while working for his company. Ah Chee refused to be repatriated and, with the help of Darwin unionists, went into hiding. The NAWU supported him when he decided to fight his former employer in the courts. Bowditch, too, had advocated his case, particularly on the pages of the Northern Territory News. Ah Chee was eventually deported in June 1955 after his court challenge was unsuccessful.

Six years later, a similar stand-off between the Department of Immigration and individual pearlers loomed when the former Gonzales employees signalled that they did not want to be repatriated. In August 1961, bin Saris and bin Madun appealed to the Prime Minister, the Minister for Immigration and the Governor-General to allow them to stay in the country. "Afraid of setting a precedent, the Department of Immigration was not willing to meet their requests. By August 1961 it realised that Gonzales was unable, and perhaps also unwilling, to effect their departure from Australia. It therefore resorted to the only remaining option and proceeded to take charge of the repatriation.

Trying to facilitate the pearlers' departure, the Department of Immigration encountered an obstacle that was not uncommon in the cases of pearling operatives who had been recruited in Hong Kong or Singapore and who had been in Australia for a long time. Jaffa bin Madun's travel documents had initially been issued by the British authorities in Singapore. They had since expired. The British High Commission in Australia could not revalidate the documents without specific authority from the Singaporean authorities, and that was not forthcoming. The Department therefore decided to focus its efforts on bin Saris and bin Hashim, who had both been issued with valid travel documents, which were held by its Darwin office. The two men were booked on a plane that was to depart Darwin on 20 September.

As, thanks to Bowditch's efforts, Darwin residents became more familiar with the case, a group of young members of the Communist Party collected signatures for a petition in support of the
Malays. One fifth of Darwin's population signed. The NAWU declared that in case the pearlers were deported, it would call a stoppage and blacklist any master pearler trying to introduce non-European labour to Darwin. On 19 September, with the deportation looming, Darwin waterside workers carried out the NAWU's threat. That same night, a public meeting in their support was held at the Darwin Oval; at its conclusion the crowd marched on Government House. Roger Nott, the Administrator, met a delegation and listened to the protesters' concerns.

A second protest meeting on 20 September followed. At Darwin High School, a class went on strike in support of the pearlers. The same day, Alexander Downer, as Minister for Immigration responsible for the case, issued a statement rejecting demands that the Malay divers be allowed to stay and saying that he 'knew from his experience in Malaya for four years while in the AIF in World War 2 that it was one of the most advanced, prosperous and pleasant countries'.

Meanwhile, the Department of Immigration's efforts to repatriate the men continued. When the plane that was meant to take bin Saris and bin Hashim to Singapore was delayed, they were rebooked on a Qantas flight scheduled to leave Darwin on 21 September. But while a large group of supporters, including Bowditch, Ward, Carroll and Graham, assembled at the airport, the deportees themselves failed to materialise. They had gone into hiding. Meanwhile, Downer had issued deportation orders for bin Saris and bin Hashim, which were soon challenged in the courts by Dick Ward.

By now, largely thanks to the efforts of the Darwin-based journalist Douglas Lockwood, the case had made headlines around Australia. 'Mateship for Malays', a Melbourne Sun headline demanded. Downer had no intention of backing down and was supported in his stance by Robert Menzies, who on 23 September offered him the backing of Cabinet. Three days later the two fugitives gave themselves up to the Administrator. They were arrested but released the same day after giving an undertaking that they would report daily to Les Liveris, the local Commonwealth Migration Officer. The Immigration Department's plans to take them into custody the next day to ensure their deportation were thwarted when relevant information was leaked to the Anti-Deportation Committee. Gordon Brooks, an Assistant Secretary of the Department of Immigration who on 28 September was dispatched to Darwin to take charge of the affair, suspected that the Administrator himself had betrayed the plans. The men went again into hiding, and on 28 September another protest meeting at Darwin Oval condemned the government's actions and elected an Anti-Deportation Committee. The plan to march again to the Administrator's office was abandoned when the protesters realised that they would have to walk back to the Oval for their cars. Darwin's protesters were noisy and persistent - and sensible: the campaign in support of the Stayput Malays was remarkably economical and efficient.

Being sheltered by their supporters, for more than two weeks the Malays eluded all efforts by the police to locate them. On 13 October, an agreement between the Anti-Deportation Committee and the Department of Immigration, which had been brokered by Nelson, allowed the deportees to remain at large while a challenge to the deportation order was considered by the High Court. On 26 October, Bowditch, bin Saris and bin Hashim flew to Melbourne to brief prominent lawyer Frank Galbally. The Malays found employment in Melbourne and did not return to Darwin for many months.

Their arrival in Melbourne coincided with the beginning of the 1961 election campaign. Students opposed to the White Australia policy heckled Downer and Menzies at public appearances during the campaign. They blackened their faces and sang to the tune of 'Michael Row the Boat Ashore':
Old Bob Menzies be ought to know, White Australia,

That the divers they shouldn’t go, No more White Australia.

Let’s be human, Let’s be bold, White Australia,

A new world arises from the old, No more White Australia.

While the government’s Darwin critics had emphasised the specific circumstances of the Malays, who were known to many in the Darwin community, their supporters in the southern states tended to use the case to highlight the flaws of Australia’s restrictive immigration policy. During the election campaign, the case of the Stayput Malays came to symbolise all that seemed wrong about the White Australia policy.

The story thus far is remarkable on account of how the plight of the Malays first galvanised public opinion in Darwin, and then caught the imagination of many Australians elsewhere. But further developments and the final outcome of the case of the Stayput Malays can only be understood in the context of another controversy involving the Department of Immigration and the Darwin community. On 7 December 1961, the Portuguese frigate Goncalves Zarco arrived in Darwin on one of its regular visits. On 9 December, Australians went to the polls, not knowing that they would have to wait nine days to find out that they had narrowly returned a Menzies-led government. On 10 December, three naval ratings from the Portuguese frigate - Joaquim Teixeira, Jose Manuel da Costa and Norberto Augusto Andrade - jumped ship and went into hiding in Darwin. In line with government policy regarding deserters, the Department of External Affairs informed the Portuguese Charge d’Affaires, Manuel d’Almeida Coutinho - as the Australian representative of the ship’s owner - of the desertion and requested that he arrange for their repatriation once they had been apprehended. Coutinho in turn asked that the Australian authorities take the necessary steps for the apprehension and deportation of the sailors. On 14 December, three days after the frigate had left the Darwin port, the three sailors asked the Northern Territory Administrator for political asylum.

At the time, the Australian government was not obliged by international law to examine the men’s request for asylum, never mind grant the request should it be justified. While Australia had been a signatory of the Universal Declaration of Human Rights of 1948, article 14 of which proclaimed a right to seek and enjoy asylum, the Declaration was not considered a legal instrument defining the obligations of nation states vis-a-vis refugees. In 1954, Australia had ratified the 1951 Refugees Convention, but in the version signed by Australia the Convention only made provisions for people who had become refugees as a result of events occurring in Europe before 1 January 1951. In fact, when the United Nations Commission on Human Rights discussed a draft declaration on the Right of Asylum in the late 1950s and early 1960s, the Departments of Immigration and Territories ensured that the Australian delegation objected to wordings which could be interpreted as granting refugees the right to enter a country and seek asylum.

But in 1956, in anticipation of requests for political asylum during the Melbourne Olympics, the government agreed ‘that political asylum and refuge should be available in appropriate instances to various categories of aliens.’ Applications for political asylum were to be handled by the Director-General of Security in consultation with the Departments of Immigration and External Affairs. But the government did not foresee requests for asylum from nationals of countries other than the Soviet Union, Poland, Czechoslovakia, Hungary, Bulgaria, Romania, East Germany, Albania, Yugoslavia, China, North Korea and North Vietnam, or from Laotians living under the Pathet Lao. Until December 1961, requests for asylum were in line with the government’s
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anticipations. At the conclusion of the 1956 Olympic Games, many members of the Hungarian Olympic team and some other Eastern European athletes sought political asylum in Australia and were allowed to either remain in Australia or proceed to the United States. During the following five years, successful asylum seekers included citizens of the Soviet Union, Hungary, Yugoslavia and Poland.

While it was ASIO's responsibility to assess any asylum claims, the decision about whether or not to grant political asylum to the sailors rested with the Department of External Affairs and its minister. After receiving advice from ASIO that the men 'could not be regarded in any sense as "defectors,...') the Department's Secretary, Arthur Tange, reported on 19 December that there were no grounds to grant asylum to the sailors and recommended that they should be deported. The implementation of that decision, that is the actual deportations, was the responsibility of the Department of Immigration. That Department had on previous occasions granted residence permits to deserters seeking asylum in Australia. In December 1960, for example, two Polish seamen, Stanislaw Iwinski and Kasimir Kozak, deserted the Polish merchant ship Stefan Okrzeja in Brisbane and Melbourne, respectively, and applied for political asylum. In both cases, the Australian authorities decided to treat their requests for asylum as if they were applications for permission to remain in Australia, and granted permanent residence status to them. In the late 1950s and early 1960s, the Department of Immigration made similar decisions in the case of other deserters and stowaways from Eastern European countries.

On 20 December 1961, Alexander Downer tried unsuccessfully to pass a message to Robert Menzies, who had held the External Affairs portfolio since Richard Casey's resignation in February 1960, to ask him to let the Portuguese sailors stay in Australia. The next day, just before handing over responsibility for External Affairs to Garfield Barwick, Menzies endorsed Tange's recommendation and agreed that the sailors be deported. Downer had no choice but to sign deportation orders. Rather than drawing on the precedent set by the Hungarian athletes in 1956, the government treated the Portuguese sailors as deserters. The Australian authorities had little experience with asylum seekers but were used to deserters: in the December quarter of 1961 alone, the Department of Immigration counted 259 deserters, most of them British or Greek nationals. It usually fell to the shipping companies to take responsibility for their departure from Australia - if a deserter went into hiding, the Department took out a deportation order.

On 4 January 1962, External Affairs informed the Portuguese Charge d'Affaires that asylum had not been granted and that the men would be deported to Dili on the next available flight. The sailors were apprehended and transferred to Darwin's Fannie Bay Goal. On 9 January, Dick Ward's associate Richard Keller instituted habeas corpus proceedings in the Northern Territory Supreme Court challenging the deportation orders. The Departments of Immigration, Attorney-General and External Affairs agreed that the deportation be deferred to allow the legal action to proceed.

The case of the Portuguese asylum seekers attracted as much public attention as that of the Malays earlier. There were rallies in Sydney and Brisbane, newspaper editorials all over the country demanded the sailors' release, and trade unionists, academics and others wrote letters of protest to the government. Few public voices doubted that Portugal was ruled by a ruthless dictator, and that the three Portuguese sailors had reason to be fearful about a return home and should be allowed to stay in Australia. Even an internal briefing paper written in February 1962 by an officer from the Department of External Affair's European Section was blunt in its assessment: 'Portugal economically and politically is probably the most backward country in
non-Communist Europe... The present regime... is essentially a dictatorship.’” British and Australian newspapers carried articles about the level of repression that existed under Salazar.’”

The cases of the Stayput Malays and of the Portuguese asylum seekers intersected on several levels. Some of those prominently supporting the Malays were also pushing for the right of the three Portuguese to remain in Australia. They included Northern Territory News editor Jim Bowditch, and Jock Nelson MHR, who raised the issues of the Malays and of the Portuguese in Parliament.” They also included the Northern Territory Administrator, Roger Nott, who could not openly support the men because of his office, but whose sympathies were evident. Others who backed the Portuguese had not raised their voices in the case of the Stayput Malays; they included the Leader of the Opposition, Arthur Calwell, who harshly criticised the government over its handling of the sailors’ asylum requests.”

In both cases Alexander Downer was perceived to be the minister responsible for the deportation order. But while Downer was adamant that no exception from existing policy be made for the Malays, he wanted the Portuguese to stay. The decision not to grant political asylum to the Portuguese had been made by Menzies in his capacity as Minister for External Affairs. The new minister, Garfield Barwick, was not prepared to alter it: ‘I thought that we owed it to a friendly power - Portugal is the oldest (and continuing) ally of Great Britain - to return to its custody deserting members of its defence force.” Barwick was, however, in favour of letting the Malays stay in Australia. In the postwar period, the Department of External Affairs had been lukewarm at best in its support of the White Australia policy. Through the reports it received from Australian diplomatic representatives in Asia, the Department was aware of the damage the restricted immigration policy did to Australia’s reputation overseas.

After Downer had ordered the deportation of bin Saris and bin Hashim, the Department of External Affairs carefully monitored the reaction in Singapore and Kuala Lumpur. While the Malayan government declined to be drawn on the issue, Downer’s refusal to allow the two pearl divers to remain in Australia ‘attracted considerable and generally unfavourable publicity’ in the Malayan print media. But the support the pearlers received in Darwin was also noted in Kuala Lumpur and Singapore.

While the case of the Portuguese was before the court in Darwin, Zelman Cowen, then a professor of law at the University of Melbourne, and James Gobbo filed a statement of claim concerning the deportation orders against bin Saris and bin Hashim in the Australian High Court. On 28 March, Justice Bridge upheld the Immigration Department’s right to deport the three Portuguese, and their lawyers applied for leave to appeal the decision in the High Court.

In his capacity as Minister for External Affairs, Barwick was sympathetic to the Portuguese request to deport the sailors to Portugal. But in his capacity as Attorney-General, he came to realise that it would be ‘wrong in law’ to use the deportation provisions of the Immigration Act and hand over the sailors to the Portuguese authorities.” In March, Barwick persuaded the Portuguese government to dismiss the three sailors from the navy and to drop its request for their deportation to Portugal or one of its colonies with the argument that Portugal’s insistence on their return would cause the Australian media to dwell on the nature of the Portuguese regime.” As Barwick later wrote in his memoirs, he was ‘not prepared to accept the journalists’ assertions as to the characteristics of [Salazar’s] rule’.” Welcoming the Portuguese government’s decision and seemingly anxious to assure it of his sympathies, he told Coutinho ‘that the communists, who might have otherwise continued their efforts to cause embarrassment over the ratings’ had now turned their attention to other causes.” Earlier the Department of External Affairs had overridden objections by the Department of Territories and agreed to further visits...
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by the GoncalvesZarco, which was back in Darwin (but anchored in the bay) on 19 March 1962.77
Barwick was still intent on abiding by Menzies' decision, but sought to deport the men to Brazil,
which had previously welcomed a prominent critic of the Salazar regime.

On 11 April, Downer received Zelman Cowen, counsel for the two Malays, who stressed the
special circumstances of the case and made a plea for clemency. He also offered the Minister
two compromise solutions: to allow the men to stay in Australia in the understanding that they
would not return to Darwin, and to extend their stay for a trial period. "A few days later, officers
of the Department of Immigration contacted the Department of Primary Industry to find out
whether bin Saris and bin Hashim could perhaps be placed with a master pearler in Broome.
The answer was negative.79

On 30 April 1962, the High Court rejected the Portuguese sailors' application for leave to appeal
the Supreme Court's decision.80 According to Barwick's memoirs, he arranged to meet Downer
late that night to discuss the cases of the Malay pearlers and the Portuguese sailors:

I repeated that I thought that Downer should not deport the Malays. They had been here
a long time and as far as I knew had not misbehaved. I said I knew that he felt that the
Portuguese should not be returned to Salazar. I said I had so far been unwilling to alter
the Prime Minister's direction, but I had found grounds on which I could properly allow
the Portuguese to remain. But in [hat event I would want him to allow the Malays to stay.
We talked this over until about 3 am., when we reached agreement that there would be no
deportation either way.81

In his diaries, Peter Heydon, the Secretary of the Department of Immigration, recorded a slightly
different version of this late-night horse-trading. After the announcement of the High Court's
decision, he learnt that 'Barwick and Downer had decided to explore Brazil as a possible place
of asylum and to make an announcement to this effect without mentioning Brazil.'82 Heydon, who
had opposed the deportation of the Portuguese all along,83 wrote two strongly-worded
memoranda to Downer, imploring him not to proceed along those lines. He warned the minister
that an approach to Brazil would 'put us in a ridiculous light in many countries'.84 Only an
announcement that the Portuguese sailors had been allowed to stay would protect 'the
Government from all sorts of emotional and illogical Press exhortation and criticism'.85 Heydon
recorded in his diary:

As a result Barwick agreed to consider the mailer further with Downer. Meanwhile Ken Bailey
[the Solicitor-General; KN] had talked to Arthur Nuii [Heydon's deputy; KN] about Brazil being
a wise solution. Barwick was not at Cabinet because of an official engagement at night. 'Came
back to Parliament House after I had gone home at 11.00 p.m. The Minister rang me at 11.45
saying that he and Barwick had done a package deal - both the Portuguese and the Malays
could stay.86

Barwick wrote his memoirs more than three decades after the events in question. He erred about
the time of the meeting and about who the Malays involved in the 'package deal' were: he
remembered them as sixteen men 'who had illegally entered Australia several years earlier'.
Given the case's final outcome, he had no reason to mention the Brazilian option. But both
sources suggest that the outcome of the case of the Portuguese sailors determined the outcome
of the stand-off involving the Malays. A journalist writing for the Sunday Mirror went as far as
claiming that Downer had been prepared to resign if Barwick had not agreed to let the Portuguese
stay. ‘If the meeting with Zelman Cowen had swayed Downner's opinion, then he probably
would have acted some time between 11 and 30 April. At best, he procrastinated, keeping his
options open.
Interestingly, neither Heydon’s diary notes nor his memoranda to the minister mention the possible effect the government’s defense of the two deportation orders against bin Saris and bin Hashim could have had internationally or domestically. He could have reasonably assumed that among its Asian neighbours, Australia’s reputation was poor anyway on account of the White Australia policy, which two weeks earlier had been dramatically enforced when a Chinese stowaway, Willie Wong, had been deported to the People’s Republic of China.” In the context of Australian domestic politics in the early 1960s, the deportation of three refugees from Salazar’s Portugal was thought to be more problematic than the implementation of the White Australia policy.

The outcome of the two cases raises interesting questions about the government’s motivation to review the deportations. In the case of the asylum seekers, the government accepted the humanitarian argument, even if it did not share it. The Portuguese were viewed as refugees of sorts; it mattered less that they were also prohibited immigrants. The government was far less willing to compromise the integrity of Australia’s immigration policy by departing from established practice in the case of the Darwin pearlers, even if some of its members believed that there were good reasons to let the pearlers stay in Australia. The Malay pearlers were in the first instance prohibited immigrants; it mattered less that they were also law-abiding long-time residents of Australia who had lost the ties with their countries of origin. The case of Willie Wong suggests that Downer may well have defended the High Court challenge, if the fate of the pearlers had not become a bargaining chip in his negotiations with the Minister for External Affairs.

It is instructive to compare the case of 1962 with a more recent decision by the Minister for Immigration, Amanda Vanstone, to release Iranian asylum seeker Ebrahim Sammaki from detention, to allow him to remain in Australia and to enable his two children to join him.” Sammaki reached Australia by boat from Indonesia, leaving his Indonesian wife and their two children behind. His wife was killed in the Bali bombing of October 2002. Vanstone and her predecessor Philip Ruddock had been able to ignore the humanitarian argument which by the 1990s had become increasingly identified with chardonnay-swilling elites. Vanstone acted because the children had become associated with the Australian victims of the 2002 Bali bombing - no more powerfully than when Prime Minister John Howard took young Sarah Sammaki’s hand as he posed for a group photograph on the occasion of the bombing’s first anniversary, and because it was ‘in the national interest to demonstrate that Australia is a compassionate country’.” Unlike in 1962, this demonstrative act was to appeal to an overseas rather than to an Australian audience.

In 1962, by contrast, the Australian government’s decision was little influenced by considerations about Australia’s international reputation. The government had clearly been prepared to deport the pearlers regardless of the public reaction in Malaya, which was after all one of Australia’s staunchest allies in the region. In the end, Garfield Barwick’s concerns about the relationship with Portugal also did not matter much.

When in November 2003, Vanstone asserted that ‘Mr Sammaki is not a refugee’ her decision was taken in spite of Sammaki’s applying for asylum in Australia. In May 1962, Barwick and Downer asserted that ‘[n]o case existed for the grant of political asylum’, but they acted as they did because the sailors were asylum seekers and not merely illegal immigrants.

The Department of Immigration granted temporary, and later permanent, residence permits to the Portuguese sailors, bin Saris and bin Hashim.” Although in their joint statement Barwick and Downer had been at pains to stress that their decision could not be seen as a precedent,” Chan See Cham, on whose behalf Darwin’s Chung Wah Society had quietly lobbied behind the
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scenes," Jaffa bin Madun, and a fifth Darwin-based pearler, Mohamed Nasir bin Wahab, were also allowed to stay in Australia.98

One final question remains: what role did public opinion in Darwin play in the outcome negotiated on the evening of 30 April 1962? Was there a causal nexus between the extraordinary outpouring of public support for the Stayput Malays in Darwin and Downer and Barwick's decision of 30 April 1962? On its own, the support the pearlbers and the Portuguese sailors enjoyed in Darwin, mattered little: Darwin was small and remote, and the government was easily able to brush aside community sentiment in Darwin - be it because it was supposedly the result of communist agitation,99 or be it because it had supposedly been stirred up by a newspaper editor who was himself 'partly coloured', as an officer in the Prime Minister's Department surmised,100 or whose 'views were undoubtedly influenced by the fact that he was married to a mixed blood girl', as a senior officer of the Immigration Department believed.101

The Darwin response mattered, however, in that it sparked a nationwide campaign. This campaign was particularly important in the case of the three Portuguese sailors. The events of September 1961, when the Darwin community rallied behind the Malay pearlbers, were crucial for the saga's final outcome in that the level of mobilisation reached in September was critical in shaping the Darwin community's response in December 1961 and January 1962, which in turn then triggered sufficient national interest to force the government's hand.

Notes

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3 J Bowditch. 1993, Whispers from the North, Northern Territory University Press, Darwin. p 104, emphasis added.


5 In official documents and in newspaper articles, several other spellings can be found: Darus bin Saria, Daru bin Saris, Draus bin Sasip, Draus bin Saris, and Daris bin Saris; Saina1 bin Hashim; Jaffa Madunne, Jafar Bin Madon, Jafa bin Madon, Zarar bin Madon. and Jaffa Madune.

7 Otto Gerdeau Co. to A J Day. 12 November 1959, A1310 632/4/1, National Archives of Australia (NAA), Canberra.
8 R K Scott to Secretary Dept of Trade, 10 February 1960, A 1310 632/4/1, NAA, Canberra.
9 J C Archer to Secretary Dept of Territories. II October 1957; J C Archer to Secretary Dept of Territories, 10 January 1961, both FL 1957/802, NAA, Darwin.
10 Darwin's pearling season usually extended from May to December.
16 Telegram, Jock Nelson to ABC Darwin, 28 September 1961; J N Nelson to M Tait, Victorian Association for Immigration Reform, 19 October 1961, both NTRS 588, folder M, Northern Territory Archives Service (NTAS).
17 B Murray-Smith to Commonwealth Migration Officer, 10 March 1960, E601 11959/66, NAA, Darwin.
18 R J Dickbart to Commonwealth Migration Officer, 1 March 1961, E60 I 11959174, NAA, Darwin.
19 See, for example, A L Nutt to Commonwealth Migration Officer Perth, 12 June 1957, E601 11961/67, NAA, Darwin.
23 On Bowditch's campaigns and personality, see D Lockwood, The Front Door, pp 182-84; Ruth Lockwood, monologue, 1981, p 44, NTRS 226, TS 266, NTAS; Barbara James, 'The Bowditch Fighting Background'. Star (Darwin), 21 February 1980; Barbara James, 'Jim Gets a Paper, and Alice Gets an Advocate', Star (Darwin), 28 February 1980; Barbara James, Sensational Gambling Story Launches Bowditch Era', Star (Darwin), 6 March 1980.
24 Field Officer to Senior Field Officer, 23 June 1960, A6119 3045, NAA, Canberra.
26 [Deraus bin Saris and Jaffa bin Madun] to Governor-General, 18 August 1961, A446 1962/66080; [illegible], file note, 4 September 1961, A463 1961/6391, both NAA, Canberra.
28 H G Brooks to Secretary Dept of Immigration, 19 September 1961, A446 1962/66080, NAA, Canberra.
29 H G Brooks to Secretary Dept of Immigration, 13 September 1961, A446 1962/66080, NAA, Canberra.
31 H G Brooks to Secretary Dept of Immigration, 21 September 1961, A446 1962/66080, NAA, Canberra; Ruth Lockwood, monologue, 1981, p 15, NTRS 226, TS 266, NTAS.
34 Deportation order for Deraus bin Saris, 21 September 1961; deportation order for Zainal bin Hashin, 21 September 1961, both in A446 1962/66080, NAA, Canberra.
36 A L Nutt, file note, 25 September 1961, A446 1962/66080, NAA, Canberra. Downer and Menzies agreed that it was unnecessary to refer the matter to Cabinet (ibid.).
37 Deraus bin Saris to Commonwealth Immigration Officer, 26 September 1961; L Liveris, file note, 26 September 1961, both E37 1970/1874 pt I, NAA, Darwin.
39 Police Station Darwin, day journal, entry for 28 September 1961, p 152, F282, vol 150, NTAS.
40 The 'fantastic story of two weeks hiding in and around the Darwin area' (L Liveris, file note, 13 October 1961, E37 1970/1874 pt I, NAA, Darwin) has been told in print by Jim Bowditch (Whispers from the North, pp 99-104) and is therefore not recounted here.
41 J N Nelson to A R Downer, 4 October 1961; AR Downer to J N Nelson, 10 October 1961, both in A446 1962/66081, NAA, Canberra.
42 Quoted from London, NOLL- White Immigration, p 127.
43 See, for example, 'Get Rid of Our Ugly Legacy' (editorial), Age, 21 September 1961; Harvey L Perkins, Australian Council of Churches, to A R Downer, 22 September 1961, A446 1962/66080, NAA, Canberra.
44 The Goncalves Zareo visited Darwin four times between September 1959 and December 1961 (P Hasluck, CPD, Representatives 35 (15 May 1962), p 2357),
45 'Seamen Flee from Goncalves Zarco', Northern Territory News, 12 December 1961,
49 See, for example, A L Nutt to Secretary Dept of External Affairs, 3 June 1960, A1838929/6/1 pt 2, NAA, Canberra.
50 Cabinet minute, decision no. 487, 16 October 1956, A4926 398, NAA, Canberra. For the following, see also Neumann, Refuge Australia, pp 56-60.
51 R G Casey, Cabinet submission no. 398, 4 October 1956, A4926 398, NAA, Canberra.
52 F H Stuart to Secretary Dept of External Affairs, 12 December 1956, A1838 1606/4, NAA, Canberra.
55 K Kozak to Immigration Department Melbourne. 12 December 1960, A1838 1606118; S Iwinski, statutory declaration, 20 December 1960, A1838 1606/17, both NAA, Canberra.
56 G Hartley to Secretary Dept of Immigration, 23 January 1961; THE Heyes to Secretary Dept of External Affairs, 19 September 1961, both A1838 1606/17, NAA, Canberra.
57 H G Brooks to Secretary Dept of Immigration, 21 December 1961, A446 1962/65208, NAA, Canberra.
58 'Crew Members Who Have Deserted December Qtr. 1961', nd, A446 1972/77125, NAA, Canberra.
59 A R Downer, CPD, Representatives 36 (10 October 1962), pp 1394-95.
61 H G Brooks to Deputy Secretary Dept of Immigration, 8 January 1962. A446 1962/65620, NAA, Canberra.
63 G B Feakes to Harry, 14 February 1962, A 1838 49/2 pt 1, NAA, Canberra.
64 See, for example, 'Portugal Secret Police Like Nazis Says Lawyer', Observer (London), 4 March 1962; 'A "Benevolent" Dictator's Reign of Terror', Mirror (Sydney), 8 February 1962; Alan Trengove, 'Portugal- Land of Miseries', Herald (Melbourne), 10 January 1962.
66 See, for example, 'Calwell's Plea for 3 Sailors', Northern Territory News, 28 April 1962.
71 R A Woolcott to Secretary Dept of External Affairs, 23 October 1961, A446 1962/66082, NAA, Canberra.
72 (1962)3FLR249.
75 Barwick, A Radical Tory, p 165.
Klaus Neuman


78 R J Harmey, 'Note of Conference between Minister for Immigration and Professor Zelman Cowen on 11 April, 1962 Regarding Malay Deportees', nd, A6980 S250391, NAA, Canberra.

79 E L Charles to Secretary Dept of Immigration, 17 April 1962, A6980 S250391, NAA, Canberra.

80 (1962) 36ALJR63.

81 Barwick, A Radical Tory, p 166.

82 Peter Heydon diary, entry for 30 April 1962, MS3155 box 22, folder 184, National Library of Australia, Canberra (NLA).

83 See, for example, P R Heydon, 'Record of Conversation', 7 March 1962, A446 1962/65620, NAA, Canberra.

84 P R Heydon, 'Note for Minister', 30 April 1962, A446 1962/65620, NAA, Canberra.

85 P R Heydon to Minister, nd (30 April 1962), A446 1962/65620, NAA, Canberra.

86 Peter Heydon diary, entry for 30 April 1962, MS3155 box 22, folder 184, NLA.

87 Barwick, A Radical Tory, p 165.

88 'Downer Felt Like Quitting', Sunday Mirror, 6 May 1962.

89 Willie Wong arrived in Australia as a stowaway in 1954, and subsequently worked as a market gardener in Matraville (Sydney). In March 1961, he was arrested by Immigration officials and deported to China via Hong Kong. Arguing that Wong was merely an illegal immigrant, Downer ignored representations by members of his own party, namely Wilfrid Kent Hughes and William Wentworth, not to deport Wong to communist China. The issue received much publicity in Australia in mid-April 1961, after Wong had crossed the border between Hong Kong and China. (CPD, Representatives 35 (2 May 1962), pp 1817-18; 'Man Deported to Red China after 8 Years in Australia', Sydney Morning Herald, 14 April 1962; 'M.P.'s Fail in Bid to Save Red Chinese', Age, 14 April 1962; Neumann, Refuge Australia, pp. 98-100)

90 The same observation could be made about the government's response to asylum seekers from West Irian; see K Neumann, 2002, 'Asylum Seekers and "Non-Political Native Refugees" in Papua and New Guinea', Australian Historical Studies, vol 33, no 120, pp364-370.

91 Meaghan Shaw and Penelope Debelle, 'Sarnmaki Family to Be Reunited at Last', Age, 7 November 2003.

92 Amanda Vanstone, quoted in Michael Gordon, 'Selective Compassion Not Compassion at All, Amanda'. Age, 7 November 2003.


94 'Statement by the Minister for External Affairs...and the Minister for Immigration...', 1 May 1962, A18381525/31248pt2, NAA, Canberra.

95 P R Heydon to Minister, 29 October 1962, A6980 S250391, NAA, Canberra; P R Heydon to Minister, 8 August 1962, A446 1964/47561, NAA, Canberra.

96 'Statement by the Minister for External Affairs...and the Minister for Immigration...', 1 May 1962, A1838 1525/3/248 pt 2, NAA, Canberra.

97 Roger Nott to A R Downer, 21 September 1961, A446 1962/66081, NAA, Canberra; E Fong to Administrator, 29 September 1961, A446 1962/66082, NAA, Canberra.

98 W H McMillan to Assistant Secretary Entry Policy Branch, 11 November 1963; [illegible] to Chief Migration Officer, 10 December 1965, both A6980 S250391, NAA, Canberra.
The Anti-Deportation Committee, for example, was reported 'to be dominated by known Communists' (cablegram Dept of External Affairs to Australia Mission to the United Nations, 4 October 1961, A452/1961/6114, NAA, Canberra).

[Illegible], file note, 4 September 1961, A463/1961/6391, NAA, Canberra.