

The Central Role of Cooperation in Australia's Immigration Enforcement Strategy

By Henry Sherrell

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March 2022

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Executive Summary

Cooperation with other countries has become a central part of Australia's border enforcement strategy over the past three decades. Sparked by increasing focus on preventing irregular maritime migration, successive Australian governments have pursued deeper cooperation with their neighbors at both the bilateral and regional levels. These partnerships are key to addressing some of Australia's ongoing enforcement challenges: managing its vast maritime borders but also tackling people smuggling, providing access to humanitarian protection while minimizing abuse of the asylum process, and returning people without grounds to remain.

Australia's current enforcement strategy rests on its universal visa requirement, disruption of people-smuggling networks, its offshore processing and resettlement policy for asylum seekers intercepted at sea, and its boat turnbacks policy. While other factors play a role, these comprise the foundation of the country's strategy. Australia sets its visa policy on a unilateral basis, whereas the other three immigration controls rely on cooperation. Beginning in 2001, Australia started processing in a third country the asylum claims of people seeking to reach Australia by boat, and from 2013, extended this practice to result in resettlement of those whose protection claims are recognized in other countries. These changes meant that no irregular maritime migrants could ultimately be resettled in Australia. But implementing this policy requires reaching agreements with other countries willing to host this offshore processing and/or resettle people. Alongside this policy, in 2013 Australia reintroduced its boat turnbacks policy as part of its Operation Sovereign Borders initiative. Under this policy, enforcement officials intercept and return boats to just outside the territorial waters of the country of departure. While Australia decides whether a vessel can be returned safely, the process requires informal cooperation with other countries to ensure that they readmit these boats to their territory. These policies have "stopped the boats" but also reflect associated drawbacks.

Sparked by increasing focus on preventing irregular maritime migration, successive Australian governments have pursued deeper cooperation with their neighbors at both the bilateral and regional levels.

Australia does not employ a one-size-fits-all approach to cooperation, instead using a combination of bilateral and regional partnerships and formal and informal arrangements. At the regional level, Australia has successfully pursued cooperation to tackle people smuggling through the Bali Process, resulting in many of its members passing model legislation. However, Australia's recent efforts to prioritize data and intelligence sharing and Indonesia's attempt to prioritize a regional protection framework through this forum have been less successful. At the bilateral level, Australia has developed close working relationships with neighboring countries and those further afield. Indonesia is the major bilateral partner in the region, reflecting its proximity and status as an important transit country for irregular migrants and asylum seekers trying to reach Australia. The two countries have signed a regional cooperative arrangement that establishes measures to address irregular maritime migration to Australia, including funding for the voluntary repatriation of irregular migrants, case management, accommodation, the provision of detention facilities, training and awareness-raising for Indonesian officials, and information campaigns targeting

prospective asylum seekers before they leave. Indonesia and Australia also cooperate on a more informal, de facto basis on boat turnbacks, whereby Indonesia does not prevent boats from being returned toward Indonesian territorial waters. Over the past two decades, border enforcement has become a mainstay of the Australia–Indonesia relationship.

Australia has also successfully pursued cooperation with other countries, including Nauru and Papua New Guinea on offshore processing and the United States on resettling select numbers of refugees from offshore centers on Nauru and Manus Island. Australia's enforcement policies have effectively stopped unauthorized maritime arrivals, which was a primary motivation for pursuing cooperation with other countries in the region. In turn, cooperation has served as a policy tool for improving enforcement and asylum policies in partner countries, through financial and practical support at the bilateral level or establishing new standards and partnerships at the regional level. But Australia's cooperation has also brought significant tradeoffs, most notably curbing asylum seekers' access to effective refugee status determination processes and support. In turn, while cooperation is key to achieving Australia's enforcement goals, questions about their sustainability remain, especially regarding contentious issues such as boat turnbacks and returns. Concerns about the human rights of asylum seekers and the legitimacy of territorial asylum, as well as the fact that Indonesia may withdraw cooperation in the future, make for a difficult policy environment.

Australia could consider several steps to strengthen its cooperation with other countries in the region and address the challenges that have emerged in these partnerships:

- ▶ **Think strategically about short- and long-term interests.** Australia should consider how to balance the short-term priorities informing its enforcement strategy with its long-term interests in the region. Domestic politics have typically shaped Australia's enforcement priorities and have sometimes led to unintended consequences, as illustrated by the “never, ever” resettlement pledge; this approach, whereby maritime asylum seekers are prevented from being resettled in Australia, has left refugee populations in limbo in offshore processing centers. And as the economic and geopolitical power of countries such as Indonesia and Malaysia grows, Australia will need to strike new compromises to achieve its enforcement priorities.
- ▶ **Pay greater attention to the interests of partner countries.** To create more durable bilateral relationships, Australia needs to pay greater attention to the interests and priorities of its partners. For example, Australia could consider providing more practical and financial support to help Indonesia deal with a growing population of asylum seekers, refugees, and irregular migrants that partly results from this bilateral cooperation. This will help insulate the relationship from domestic politics (by illustrating the continued benefits of cooperation) and create a more level playing field for future cooperation.
- ▶ **Address the protection gaps that have emerged from this cooperation.** Alongside supporting partner countries that now must look after refugees and asylum seekers, Australia should consider ways to provide durable solutions for these populations. Australia's advantage lies in refugee resettlement. Although Australia reduced resettlement places in 2020 in response to the COVID-19 pandemic, expanding resettlement opportunities and the associated political capital could allow Australia to pursue regional cooperation.

Cooperation on border and immigration enforcement is now entrenched for Australia. Cooperation initiatives with various countries have led to success in preventing irregular maritime arrivals. Yet these partnerships are dependent on a host of factors, many of which require more urgent attention. It is inevitable there will be difficult tradeoffs in the future, given the differences between domestic political interests and regional geopolitical objectives, but addressing them will be essential to sustaining and improving cooperation on migration management.

1 Introduction

Over the past three decades, successive Australian governments have increasingly prioritized border management, particularly the prevention of irregular maritime migration. Since the early 1990s, all Australian governments have attempted to curb irregular migration by boat to Australia, with former prime minister John Howard famously declaring, “We will decide who comes to this country and the circumstances in which they come.”¹ A strong history of control thus informs Australian border enforcement, reflecting the Australian public’s longstanding cultural expectation that their government control the movement of people across borders. But while there is little public tolerance for irregular arrivals by boat,² in practice public opinion tolerates other forms of irregular migration to a greater extent, including people overstaying their visas or claiming asylum after arriving on a different visa.

Cooperation plays a central role in Australia’s immigration policy and border management policy and administration. While the breadth and depth of cooperation with other countries has varied over time, Australia’s active engagement is currently at a high point. Since 2010 in particular, the Australian government has increasingly sought to combine current and emerging immigration controls in a more cooperative regional framework.

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While Australia’s geography favors proactive border management policies, given that most visitors and migrants arrive by air, Australia is now grappling with several enforcement challenges. As the number of entries and exits to Australia has risen, fueled by more people moving for business, tourism, and education, the pressure on Australia’s immigration system has grown. Using late 20th century approaches to manage growing mobility may not work. And in the wake of the COVID-19 pandemic, which effectively shut down most travel and immigration to Australia, the Australian government faces increasing pressure to ensure a biosecure border that will prevent the spread of future public-health threats.

A related concern is how to balance the objectives of managing maritime borders, undermining the smuggling of people, and protecting the integrity of the visa system, on the one hand, with maintaining access to legal immigration and humanitarian protection, on the other. People who travel to Australia by boat cannot claim asylum in Australia, which represents a significant departure from longstanding international protection norms. Polls suggest the Australian public is fairly evenly split on whether

¹ Patrick Barkham, “Australia Votes on How Tightly to Close the Door,” *The Guardian*, November 9, 2001.

² A 2016 survey found that 61 percent of Australians disapprove of asylum seekers who try to reach Australian by boat. See Andrew Markus, *Mapping Social Cohesion 2019* (Melbourne: Monash University, 2019).

Australia's immigration controls and border management are appropriate or too harsh.³ However, the national parliament reflects broad political acceptance of these measures.

Finally, while cooperation with other countries has enabled Australia to largely fulfill its pledge to stop the boats, it also leaves Australia's enforcement strategy vulnerable to external forces. Noncooperation from either Indonesia, the major transit country en route to Australia, or countries hosting asylum seekers would be a major shock to Australia's enforcement strategy and operational capabilities. The question is thus how to build bilateral and regional partnerships that are insulated from daily politics and sustainable over the medium to long term.

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This report outlines the enforcement challenges facing Australia; Australia's current enforcement strategy; and the role of cooperation in that strategy, including examples of cooperation between Australia and other countries in the region. The report concludes with a brief evaluation of cooperation in the context of enforcing border management and discusses policy recommendations for strengthening cooperation in Australia's enforcement strategy.

2 The Enforcement Challenges Facing Australia

Enforcing Australia's maritime borders is not a new challenge, but various factors have made this task more difficult. Successive periods of maritime migration—the post-Vietnam War period in the 1970s, 1998–2001, and 2009–2013—have increased the scale of migration, bringing greater policy and operational challenges. Since the introduction of mandatory immigration detention for irregular maritime arrivals in Australia in the early 1990s, the strategic environment has changed drastically due to the increased speed at which irregular migration can occur and evolve. Diffuse movement and smuggling networks, relying heavily on new technology such as social media, can respond to changes in the operational environment at an unprecedented rate.

A. Managing Maritime Borders

Australia's lack of land borders means that successive governments mandate robust and effective controls on air travel that apply to most arrivals. But managing vast sea borders presents unique difficulties, as both Australia and Indonesia attest. The sheer scale of the task presents significant operational difficulties. Long coastlines and extensive Australian territorial water claims make this a resource intensive activity.

There is also immense pressure to monitor Australia's maritime borders closely. Images and videos of small, rickety, overcrowded boats crashing onto rocks in Australian territory are etched into the collective public and political memory. Since 2009, stopping deaths at sea has become a quasi-humanitarian issue, as more

³ In both 2018 and 2019, the Scanlon Foundation's *Mapping Social Cohesion in Australia* report found that 47–49 percent of people were concerned “that Australia is too harsh in its treatment of asylum seekers and refugees,” compared to 47–53 percent of people who were not concerned. See Markus, *Mapping Social Cohesion 2019*.

than 1,000 deaths at sea occurred between 2009 and 2013.⁴ Public opinion thus judges new boat arrivals extremely harshly, and they represent the most visible sign of failure in Australian immigration policy. Many Australian officials believe the country must actively pursue effective border management because failure to do so incentivizes high-risk journeys and cedes control to smuggling networks. This failure presents as a moral hazard and unacceptable risk for the Australian government.

B. Preventing People Smuggling

The main operational aspect of managing maritime borders is to crack down on the people smugglers who facilitate boat arrivals. Australia (and other governments and enforcement agencies) has framed these smugglers as dangerous nonstate actors deserving contempt.⁵ However, skepticism of this stance is warranted. Anyone considering a journey to Australia via boat will eventually encounter smugglers to facilitate their journey. Smugglers emerge from the underlying demand of people seeking to travel to Australia, including those with valid asylum claims and those seeking economic opportunities. Yet, once established, smuggling networks can also promote their own demand by actively seeking potential migrants and facilitating their journey.

What is not contested is the role that human smugglers now play. They are a structural component of the environment and well-established actors in their own right. In contrast to common belief, smuggling networks can be “large [and] multilayered” and have many professional elements.⁶ This represents a major change from a generation ago, when those seeking asylum by boat to Australia were not part of a broader network. A key challenge is the speed at which smugglers operate and their ability to lie dormant intermittently before re-emerging during windows of opportunity.

C. Providing Access to Humanitarian Protection While Minimizing Abuse of the Asylum Process

A central challenge is how to provide access to a protection regime while preventing irregular maritime arrivals to Australia. Since mid-2013, government policies have successfully prevented irregular maritime arrivals. Yet, this has occurred in the context of a severely restricted policy framework for people to lodge valid protection claims.

The inability to lodge a claim in Australian territory, the deliberate exclusion of Australian jurisdiction, and new asylum policies such as “enhanced screening” have attracted significant criticism as failing to provide an appropriate level of access to protection under the 1951 Refugee Convention. Combined with Australian cooperation with low-income countries such as Papua New Guinea and Nauru to process and resettle maritime asylum seekers, these facts have attracted broad criticism from civil society and international actors that Australia does not provide an appropriate policy framework for irregular migrants, including those with valid protection claims.

⁴ Mary Anne Kenny and Sara Davies, “FactCheck: Did 1200 Refugees Die at Sea under Labor?” The Conversation, March 3, 2015.

⁵ Former Australian prime minister Kevin Rudd famously called people smugglers “the absolute scum of the earth.” See Emma Rodger, “Rudd Wants People Smugglers to ‘Rot in Hell,’” ABC News, April 17, 2009.

⁶ Graeme Hugo, George Tan, and Caven Jonathan Napitupulu, “Indonesia as a Transit Country in Irregular Migration to Australia” (Department of Immigration and Border Protection working paper series no. 8, September 2014), 3.

D. *Returning Migrants without Grounds to Remain*

One of the most difficult mechanisms at the heart of contemporary asylum policy is forced returns. Australia has traditionally struggled to return people rejected in the refugee status determination process, particularly Iranian and Afghani nationals. In addition, those found to be stateless are unable to be returned. The result is a population without legal status who cannot be returned and who live in mandatory detention in Australia, Papua New Guinea, or Nauru.⁷ Over the past decade, close cooperation with Sri Lanka and Vietnam has brought some success in returning individuals, but this has attracted significant criticism because of the potential for refoulement. These returns occur as both the Sri Lankan and Vietnamese governments actively seek the return of failed asylum seekers whereas many other governments do not.

E. *Measures of Success*

Finally, another challenge is the Australian government's framing of success as a zero-sum game. No boat is acceptable, nor is the resettlement of a single irregular migrant who comes to Australia by boat. This represents a considerable shift from even the early 2000s, when the Howard government resettled many people who had arrived by boat in Australia after they were granted refugee status offshore. Today, such policy flexibility does not exist, removing a powerful lever to address difficult or intractable cases. This limits the Australian government's discretion to act and could undermine its enforcement policy goals over the long term. Removing the Australian government's ability to resettle irregular migrants arriving by boat who are granted a protection visa results in fewer options and represents a growing challenge in the context of fewer global refugee resettlement places.

3 *Australia's Current Enforcement Strategy*

Australia's enforcement strategy comprises several immigration controls. These include visa policies, policies to intercept and process boats at sea, and policies that prevent asylum seekers who arrive by boat from accessing protection in Australia. While these controls appear to be Australia's unilateral actions, in practice many of these controls rely heavily on formal and informal cooperation with other countries at both the bilateral and regional levels.

A. *Key Components of Australia's Enforcement Strategy*

A Universal Visa Requirement

Underlying Australia's enforcement strategy, and all border management and immigration controls, is the country's universal visa requirement, in place since 1994. People without a visa are deemed "unlawful noncitizens." A person can become an unlawful noncitizen if they enter Australia without a visa, overstay a visa, or have their visa canceled while in Australia.⁸

⁷ As of July 2021, 108 asylum seekers remained in Nauru, and 125 asylum seekers remained in Papua New Guinea. See Hannah Ryan, "Hundreds Remain Offshore Eight Years On," *Canberra Times*, July 25, 2021.

⁸ Alan Freckleton, *Administrative Decision Making in Australian Migration Law* (Canberra: ANU Press, 2015).

The universal visa framework is the Australian government's unilateral policy decision and is widely accepted and institutionalized. Embedded via legislation and regulation, the universal visa system allows codified enforcement that seeks to eliminate misunderstanding about whether a person has the right to enter and remain in Australia. It provides a clear picture of who is in Australia and whether they are entitled to be there.

Offshore Processing and Resettlement

Another important component of Australia's immigration controls is its offshore processing policy for maritime migrants, which may ultimately lead to resettlement in another country. The Australian government's policy of offshore processing began as a response to the Tampa crisis in 2001.⁹ Since this time, offshore processing and resettlement have emerged alongside boat turnbacks as the key plank in Australia's border enforcement strategy. Offshore processing and resettlement of irregular migrants intends to deter people from seeking asylum by boat, given they will not gain entry to Australia to make an asylum claim. From 2001 to 2013, the primary policy lever was offshore processing of protection claims. This was a deliberate decision to prevent potential asylum seekers from lodging protection applications under Australian jurisdiction. However, despite the location of the asylum visa processing, many of those granted refugee status were subsequently resettled in Australia, and policymakers thus perceived this policy as an inadequate deterrent. Starting in July 2013, Australia extended offshore visa processing to resettlement in other countries, and the Australian government refused to resettle any irregular maritime migrants in Australia, regardless of their protection claim.

Boat Turnbacks

In addition to establishing formal offshore processing and resettlement policy, Australia has introduced a policy of boat turnbacks. The Abbott government reintroduced this policy in 2013 as a component of the Operation Sovereign Borders initiative (see Box 1). The policy includes turnbacks, whereby a boat is intercepted and returned to just outside the territorial waters of the country of departure, and takebacks, whereby Australia arranges to return people to the country of departure via sea or air transfers.¹⁰ While Australia decides whether to return a vessel, enacting this policy requires cooperation with countries of departure. For example, Australia and Indonesia have cooperated on boat turnbacks, and Australia has closely cooperated with Sri Lanka and Vietnam on takebacks. Between 2013 and 2021, 38 documented cases of boat turnbacks and takebacks occurred, involving more than 800 migrants in total.¹¹

9 The Tampa crisis occurred when a Norwegian container ship, the MV Tampa, rescued 433 people in the Indian Ocean. The captain sailed to Christmas Island (an Australian territory) at the behest of the passengers, but the Howard government refused to allow them to enter Australian waters. When the ship did enter Australian waters, military forces boarded and forcibly removed the asylum seekers, and they were the first cohort of people whose visa applications were processed in Nauru.

10 Andrew and Renata Kaldor Center for International Refugee Law, "Turning Back Boats" (research brief, Andrew and Renata Kaldor Centre for International Refugee Law, University of New South Wales, August 2018).

11 Report of the Special Rapporteur on the human rights of migrants, Felipe González Morales, "Report on Means to Address the Human Rights Impact of Pushbacks of Migrants on Land and at Sea," UN Human Rights Council, 47th Session, June 21–July 9, 2021, 13. Between 2013 and 2018, there were 33 documented cases. Harriet Spinks, "Boat Turnbacks in Australia: A Quick Guide to the Statistics," Australian Parliamentary Library, June 20, 2018.

BOX 1**How Australia Manages Its Immigration Controls**

Since 2013, the Australian government has made sweeping administrative changes to the oversight of border management, in response to the increasing difficulty of enforcement. The government first merged the immigration portfolio with customs and later with national security, leading to the creation of the Department of Home Affairs.

Within the Department of Home Affairs sits the Joint Agency Taskforce overseeing Operation Sovereign Borders (OSB), the military-led response to border management established in 2013. The introduction of the military to lead the operational response was a significant change in border policy administration. As of May 2019, OSB included three components, each led by a different part of the bureaucracy: The Australian Federal Police leads the “Disruption and Deterrence task group.” Maritime Border Command, which is supported by the Australian Defence Force and the Australian Border Force, leads the “Detection, Interception, and Transfer task group.” The Department of Home Affairs and Australian Border Force leads the “Regional Processing, Resettlement, and Returns task group.”

These task groups oversee the main immigration controls for border management primarily related to the maritime border. This includes boat turnbacks, takebacks, and assisted returns; enhanced screenings of asylum claims; offshore processing and resettlement; oversight of voluntary and forced returns; and communication efforts to deter human smugglers and prospective migrants.

While the Department of Home Affairs leads Australia’s immigration policy, the Department of Foreign Affairs is the lead agency for high-level dialogue and long-term cooperation with countries in the region. For example, in the first weeks of the Abbott government, in response to the pending introduction of boat turnbacks, Australia’s foreign minister emerged as the lead negotiator with her Indonesian counterpart, Marty Natalegawa, to brief the Indonesian government about new policy directions. Across the Australian government, this required strong policy coordination. This coordination primarily occurs via the National Security Committee of the Australian Cabinet, which represents major bureaucratic and ministerial interests.

These sweeping changes to Australia’s immigration and border protection infrastructure have created a mega portfolio whereby the government administers immigration and border management alongside counterterrorism, cyber security, intelligence, and national policing. Consequently, stakeholders increasingly view managing the maritime border through a security and identity lens. At the same time, the public narrative on migration has shifted away from the postwar tradition of nation building and toward a stricter focus on mobility and managing the border.

Sources: Australian Department of Home Affairs, *Annual Report, 2018-19* (Canberra: Australian Department of Home Affairs, 2019); Australian Department of Home Affairs, “Organisational Chart: Joint Agency Task Force – Operation Sovereign Borders,” accessed January 15, 2021.

Initiatives to Combat People Smuggling

Australia has numerous initiatives to target people-smuggling operations to the country. Operations to disrupt people smuggling exist across the region, drawing on intelligence and military assets. Frequent communications campaigns target people who may assist with smuggling operations, such as local fisherman seeking additional income. Engagement with other countries has resulted in new legal institutions criminalizing people smuggling across South and Southeast Asian regions, with strong support from Australian officials and resources to build this capacity.

Enhanced Screenings for Asylum Seekers

Changing norms regarding how Australia applies policy to asylum seekers is also part of the country's enforcement strategy. For example, Australia now uses enhanced screening on boats, which serves as a fast-track asylum determination process. Enforcement officials use these screenings to quickly assess whether someone may have a valid protection claim, leading to either a formal refugee status determination or to their swift removal. Because little public information about the process exists, the number of successful asylum seekers who have gone through the enhanced screening process is unclear. Critics argue that this process goes well beyond the norms of international law and lacks safeguards, consequently risking refoulement of those with legitimate claims to protection, because the brief refugee status determination process is not robust given it often occurs at sea and without any legal support for prospective asylum seekers.

B. Cooperation and Australia's Enforcement Strategy

Cooperation exists across nearly all immigration controls in Australia's enforcement policies. Boat turnbacks, offshore processing and resettlement, countering people-smuggling networks, and forced returns all represent forms of cooperation. It would be impossible to process and/or resettle an asylum seeker intercepted at sea without another country's explicit support and permission.

Likewise, without the cooperation of other countries, Australia would be unable to address significant enforcement challenges. This cooperation is varied and distinct. Issues such as regional processing and resettlement require close, active cooperation, while other issues such as boat turnbacks require more passive cooperation. Many issues such as building capacity for intelligence and policing units rely on bilateral cooperation, while more long-term approaches such as building legal frameworks and creating mechanisms to share information and data are conducive to a regional framework. Much of the cooperation is deliberate and coordinated; at other times, it emerges in an ad hoc manner in response to certain events.

4 The Role of Cooperation in Australia's Enforcement Strategy

Successive Australian governments have seen regional cooperation as increasingly important for achieving their enforcement goals. The political salience of asylum and irregular migration at home has been the main factor promoting cross-country cooperation, as increased cooperation after the Tampa crisis in 2001 illustrates and following large spikes in irregular migration between 2009 and 2013. It may be the case that these domestic considerations, while they remain front and center regarding policy direction, are now complemented by a stronger institutional approach to cooperation. The prioritization of security policy has generated deeper cross-country links between operational and policy actors, such as the centralization of functions within the Department of Home Affairs. While hard to assess, this may be a structural change that could lead to a more sustainable approach to cross-country cooperation. Growing political continuity in Australian government priorities has created the space for these institutional links.

In countries across the region, cooperation with Australia arises for various reasons, including geopolitical demands, domestic political demands, and financial incentives. For example, the Andaman Sea Crisis of 2015 appears to have institutionalized a stronger form of regional cooperation at bureaucratic and civil-society levels, in the form of now well-established track 1.5 dialogues, such as the Asia Dialogue on Forced Migration. The crisis occurred when more than 25,000 Rohingya asylum seekers fled Myanmar by boat and sought to travel to Bangladesh, Malaysia, Indonesia, and Thailand.¹² Thousands were stranded as countries initially refused to allow passengers of the boats to disembark.¹³

Identifying shared goals and incentives to create a process for pursuing these goals is the foundation of this cooperation.

No single method of cooperation or special lever exists for the Australian government in building effective relationships with other countries. The region's approach to managing irregular and mixed migration is heterogeneous; consequently, there is no universal approach. The relevant policy or approach changes according to where people embark on their journey, what their destination is, and the method of movement. For example, while Indonesia is the major transit country for irregular migrants seeking to apply for asylum in Australia, these flows do not generally include Indonesian citizens, whereas Sri Lanka is a country of origin for asylum seekers, with some of its citizens travelling directly to seek asylum in Australia. Regardless of the approach, identifying shared goals and incentives to create a process for pursuing these goals is the foundation of this cooperation.

The form of cooperation (e.g., bilateral or regional, formal or informal) depends on the context. Stakeholders often heavily favor bilateral cooperation as it can respond more quickly to changing events and can be easier to build cross-country trust given that fewer actors are involved. Aligning key interests is also significantly easier in a bilateral environment. Regional cooperation is comparatively slower, but it is more insulated from changing domestic government priorities and, thus, can prove more stable. The issues at stake also inform the decision to pursue bilateral or regional cooperation. Bilateral cooperation tends to focus on operational participation and can provide financial incentives when Australia seeks cooperation with low-income countries. This cooperation tends to be more formal. Regional cooperation tends to focus on issues such as institutional capacity-building, is often more informal, and can require deeper links and longer time frames. Australia has typically preferred to work bilaterally, whereas Indonesia, for example, has long called for a genuine regional protection framework to address the maritime movement of people. The following case studies highlight how these different examples of cooperation manifest in Australia's enforcement strategy and how they fit together.¹⁴

12 Travis McLeod, Peter Hughes, Sriprapha Petcharamesree, Steven Wong, and Tri Nuke Pudjiastuti, "The Andaman Sea Refugee Crisis a Year on: What Happened and How Did the Region Respond?" *The Conversation*, May 26, 2016.

13 This was part of a broader asylum movement in which hundreds of thousands of Rohingya fled Myanmar. The majority are displaced in Bangladesh.

14 This is not an exhaustive list of Australia's cooperation arrangements. Other arrangements and other countries are also relevant, particularly Sri Lanka and Malaysia.

A. *Bilateral Cooperation: The Indonesian-Australian Relationship*

Indonesia is the major bilateral partner for Australia's enforcement strategy, given its proximity and status as a transit country for irregular migrants and asylum seekers trying to reach Australia. While the relationship has sometimes been rocky, a contemporary history of practical support has emerged by building capacity to counter people smuggling. Both governments increasingly seek to promote economic integration and trade-based approaches to foreign affairs and cooperation, rather than a more overt focus on migration and border enforcement. These governments seek to weigh cooperation on migration issues within the framework of a broad bilateral relationship.

Cooperation between the two countries increased in the early 2000s, driven by Australia's growing focus on stopping irregular maritime migration and the recognition that Indonesia would need to be a key partner in these efforts. Successive Australian governments have allocated significant financial and political resources to cooperation.¹⁵ For example, Australian funding and know-how was central to the development of Indonesia's growing number of detention centers.¹⁶ However, stopping the boats has rarely been a high priority for the Indonesian government. While successive Indonesian governments have accepted Australian assistance on this issue, it is a relatively weak basis for cooperation—and if this support were to end, Indonesia might simply discontinue these initiatives. Without a notable change in circumstances (e.g., a large-scale migration crisis), it is difficult to see how the Indonesian government will perceive border enforcement or tackling people smuggling as higher priorities. In addition, divergent geopolitical goals regarding irregular migration may arise, particularly given the large, growing population of Indonesian citizens who become irregular migrants throughout the region (seeking work as opposed to asylum). This trend could provoke domestic resistance in Indonesia to cooperation with Australia, which the Indonesian government has thus far largely managed to paper over.

Different forms of cooperation between Australia and Indonesia exist. Formal cooperation centers on the Regional Cooperative Arrangement (RCA), which outlines the two countries' responsibilities regarding people intending to seek asylum in Australia. Australia provides most of the RCA's funding, reportedly amounting to AUD 238 million for the International Organization for Migration (IOM) in Indonesia between 2001 and 2016.¹⁷ This funding supports Indonesian operations for voluntary repatriation of asylum seekers whose claims are rejected, case management, accommodation, the provision of detention facilities, training local law enforcement, raising awareness among Indonesian government officials, and communication campaigns directed to potential asylum seekers in their countries of origin, which include people coming from across the Middle East and Central Asia.

The RCA establishes formal processes to incorporate both the IOM within Indonesia and the United Nations High Commissioner for Refugees (UNHCR). This process embeds international standards and norms regarding refugee protection in environments in which the destination country is not a signatory to the

15 Amy Nethery and Carly Gordyn, "Australia-Indonesia Cooperation on Asylum-Seekers: A Case of 'Incentivised Policy Transfer,'" *Australian Journal of International Affairs* 68, no. 2 (2014): 177–193.

16 Nethery and Gordyn, "Australia-Indonesia Cooperation on Asylum-Seekers."

17 According to Hirsch, Australia has given AUD 238 million to the International Organization for Migration (IOM) through the Regional Cooperative Arrangement (RCA). See Asher Lazarus Hirsch and Cameron Doig, "Outsourcing Control: The International Organization for Migration in Indonesia," *The International Journal of Human Rights* 22, no. 5 (2018): 681–708.

For Indonesia, this cooperation with multilateral actors lends legitimacy to the country as an emerging geopolitical power.

Refugee Convention. This aspect has traditionally been important for Australian policymakers as it provides a sort of safety net regarding the protection framework. However, whether this is a current goal of the Australian government is unclear, given ministerial antipathy to UNHCR. For Indonesia, this cooperation with multilateral actors lends legitimacy to the country as an emerging geopolitical power.

This formal, active cooperation contrasts starkly with the informal, passive cooperation on boat turnbacks. Australia's reintroduction of boat turnbacks in 2013 occurred over the objections of the Indonesian government. Almost a decade later, the Indonesian government's official position is that boat turnbacks are an ad hoc and dangerous response to people smuggling.¹⁸ Yet, despite this public position, the Indonesian government has not actively contested or prevented most boat turnbacks, suggesting de facto informal cooperation on this issue.

Why does Indonesia cooperate in this manner? As it governs a massive archipelago, the Indonesian government cannot condone boat turnbacks, a practice well outside established norms regarding international waters, such as the United Nations Convention on the Law of the Sea. Yet, at the same time, the sheer size of the coastline combined with current service capacity mean that the Indonesian government cannot effectively monitor and police irregular movements. In addition, the Indonesian government keenly understands the value and priority the Australian government places on border enforcement. Senior Australian government officials, including the prime minister, the foreign minister, and the minister for home affairs, continue to make mention of the movement of irregular migrants through Indonesia, showcasing the Australian government's willingness to spend political capital in this relationship to prioritize tackling irregular migration.

However, the prospect of Indonesia deciding not to cooperate (even passively) on boat turnbacks remains a possibility. Since September 2013, Indonesia has threatened or carried out such lack of cooperation on numerous occasions, demonstrating this type of informal cooperation's inherent instability. In November 2013, for example, the Indonesian government refused to readmit several asylum seekers from a boat that had departed Java. Australia reportedly attempted to negotiate for two days but was then forced to detain asylum seekers on Christmas Island (i.e., Australian territory) before transferring them to Nauru.¹⁹ Additionally, in June 2015, the Indonesian police investigated a boat turnback after the boat ran aground en route to Indonesia and villagers rescued those on board. Senior Indonesian officials, including the head of the Indonesian military, criticized revelations that the crew allegedly received cash payments from Australian customs officials.²⁰ These examples illustrate Indonesia's potentially fluid role in the policy of boat turnbacks and the potential for future noncooperation, for example if there were a change in government or government policy or a sudden increase in irregular migrants or asylum seekers moving to and transiting

18 For an example of this position, see Amanda Hodge, "Boat Turn-Backs 'Could Disturb Bilateral Relations' Indonesia Warns," *The Australian*, March 10, 2016.

19 George Roberts, "Indonesia Says Australian Navy 'Pushed Back' Asylum Seeker Boat that Ran Aground," ABC News, February 4, 2014.

20 George Roberts, "Indonesia Documents Detail Boat Turnback and Alleged Payments to People Smuggling Crew," ABC News, June 17, 2015.

through Indonesia. Active noncooperation would fundamentally transform the Australian government's capacity to enforce boat turnbacks.

Since the 2009–13 period, the number of people departing Indonesia for Australia by boat has fallen drastically. But it is difficult to disentangle the RCA's role relative to other immigration controls such as boat turnbacks and offshore resettlement. What is clear is the RCA's effect on detention trends in Indonesia, as Australian-funded detention facilities in the country housed 4,273 people identified as likely transit asylum seekers to Australia in February 2016.²¹ In addition, as detailed above, the future of informal cooperation on issues such as turnbacks is uncertain. As Indonesia grows as an economy and geopolitical power, its calculus for cooperating with Australia may shift, especially on sensitive issues such as turnbacks.

B. Bilateral Cooperation: Offshore Processing and Resettlement

As Australia has pursued offshore processing and resettlement, it has sought cooperation with several countries to achieve this. The most notable examples are Australian cooperation with Nauru and Papua New Guinea, which have hosted asylum processing centers and accepted resettled refugees. But Australia has also sought resettlement deals with Cambodia, the United States, and New Zealand and an asylum processing deal with Malaysia and Timor-Leste. Four of these deals, with Nauru, Papua New Guinea, Cambodia, and the United States, resulted in the movement of people, while the other three were policy failures. The contrasts in this bilateral cooperation over the last two decades show the importance of shared goals and incentives to success or failure.

Australia's hard-line commitment to never resettle refugees who try to reach its shores by boat leaves the country with limited options and can test the patience and cooperation of its partners as Australia attempts to secure resettlement agreements. To date, Australia has secured resettlement agreements with only three countries: Cambodia, Papua New Guinea, and the United States. And these efforts rest on unstable foundations. The continuation of the United States–Australia refugee deal after the election of President Trump immediately cost a large amount of political capital. The Papua New Guinea government appears unwilling to resettle refugees who do not wish to remain in Papua New Guinea. The Cambodia deal has now concluded. Given the importance of third-country resettlement as a policy lever in Australia's enforcement strategy, the onus remains on the Australian government to continue exploring options in response to future movements of irregular migrants, asylum seekers, and refugees.

Australia's Cooperation with Nauru and Papua New Guinea

Australia has embarked on formal cooperation with Nauru and Papua New Guinea, resulting in both the two partner countries hosting asylum processing centers (2001–08, 2012–13) and Papua New Guinea accepting resettled refugees (from July 2013 onwards). These were initially the only countries to agree to host visa processing centers for asylum seekers in the wake of the Tampa crisis, and again in the 2012 reintroduction of offshore visa processing. Underpinning this formal cooperation are multiple agreements and

²¹ Hirsch and Doig, "Outsourcing Control."

relationships, intended to signal the partnerships' robustness and the economic and geopolitical benefits of hosting asylum seekers on behalf of Australia.

Different incentives motivate this cooperation. The Australian government's offshore processing and resettlement policies hinge on finding willing partners as part of its broader efforts to prevent maritime migration to Australia. Nauru and Papua New Guinea do not share this priority, but as two low-income countries with weak political and administrative institutions, they seek status as good neighbors to the region's dominant geopolitical power as well as the reward of financial compensation and regional partnerships.²²

Australia's partnerships with Nauru and Papua New Guinea have been critical components of its enforcement strategy, but significant challenges remain. One relates to the quality of the processing centers in both Nauru and Papua New Guinea, which fall below Australian standards. In both countries, oversight and administration of the detention centers are not high priorities due to resource constraints and other,

In this setting, asylum seekers receive limited access to health care and legal assistance to complete the asylum process, particularly compared to Australian standards.

more pressing policy priorities. In this setting, asylum seekers receive limited access to health care and legal assistance to complete the asylum process, particularly compared to Australian standards. Some stakeholders note that these conditions are better than those for many asylum seekers across the world. This argument is weak given the alternative is Australia hosting those claiming asylum. Stakeholders also have concerns about the

quality of the refugee status determinations that Nauru conducts, given the country's financial and legal constraints,²³ despite relatively high positive decisions issued by Nauru. These unequal provisions inform a major criticism of Australia's offshore processing and resettlement policies overall.

This form of cooperation has also been costly for the Australian government in both political capital and financial resources, with some estimates placing the cost of offshore visa processing and resettlement in these two countries at the equivalent of AUD 400,000 per person per year during the 2013–16 period.²⁴ In addition, by agreeing to host these facilities when no other country would, the Papua New Guinea and Nauru governments have gained newfound leverage to influence policy, such as the direction and scope of Australia's aid policy.²⁵ For example, the Papua New Guinea government, in the wake of accepting asylum seekers, appeared to successfully agitate for additional capital projects, which Australia had previously been largely unwilling to fund.

Despite these concerns, the agreements remain and have proved sustainable to date. But whether the short-term financial benefits for both countries represent long-term value is unclear. The settlement prospects of those determined to be refugees in Papua New Guinea are slim given the country's society,

22 Michelle Rooney, "Negotiating Asylum and Settlement in ONG: Who Has Snookered Whom?" Devpolicy Blog, July 29, 2013.

23 Madeline Gleeson, "Refugee Status Determination in Nauru" (research brief, Andrew and Renata Kaldor Centre for International Refugee Law, University of New South Wales, August 2018).

24 Lisa Button and Shane Evans, *At What Cost? The Human, Economic and Strategic Cost of Australia's Asylum Seeker Policies and the Alternatives* (Carlton: Save the Children Australia and UNICEF Australia, 2016).

25 Stephen Howes, "The Aid Implications of the PNG Solution: What Isn't, Is, and Might Be Happening," Devpolicy Blog, July 26, 2013.

which is built on tight-knit cultural and familial kinship. As noncitizens in both countries, refugees also lack access to education and health services. In 2017, four years after agreeing to the resettlement of migrants whose protection visa claims were granted, the Papua New Guinea government began publicly claiming that Australia must resettle refugees who do not wish to live in Papua New Guinea.²⁶ This occurred in the context of the Papua New Guinea government attempting to close the detention center on Manus Island and responding to constant criticism about asylum seekers' treatment. Such a move would undermine the core premise of this cooperation, and while it has not yet occurred, it raises questions about the long-term reliability of this partnership.

Australia's Cooperation with the United States

By 2016, the Australian government was seeking alternatives to resettlement in Papua New Guinea and Nauru. In 2016, Australia reached an agreement with the United States whereby the United States would accept up to 1,250 refugees from Nauru and Papua New Guinea, in exchange for Australia accepting a small number of refugees from protracted situations in Central America. This agreement reflected the two countries' deep bilateral relationship and their shared experience of resettling large numbers of refugees. It was also fortunate timing: in response to the Syrian refugee crisis of 2015–16, the Obama administration sought various practical measures to support international progress and cooperation on enhancing refugee resettlement.

The election of Donald Trump in November 2016 brought a clear shift in U.S. resettlement policy that threatened the agreement's existence. But the Australian government insisted that the agreement be honored, including during an infamous phone call between President Trump and Prime Minister Turnbull. This insistence required the deep reserve of political capital available only in close bilateral relationships, and meant that the issue subsequently required constant attention from government and diplomatic actors, at a cost of acting elsewhere. In many respects, the United States–Australia agreement and cooperation exemplifies extremely robust cooperation that transcends ideological differences from one administration to the next. This is rare but also speaks to the strength of some forms of bilateral cooperation.

In many respects, the United States–Australia agreement and cooperation exemplifies extremely robust cooperation that transcends ideological differences from one administration to the next.

Five years later, this agreement is near conclusion. As of May 2021, the United States had admitted 940 refugees, and another 258 refugees were waiting to travel, with just 52 places remaining available under the agreement.²⁷ But at the time of writing, there were no plans to renew the agreement.²⁸ Instead, Australia

²⁶ Ben Doherty, "Papua New Guinea Tells Australia It Must Resettle Refugees Unwilling to Stay," *The Guardian*, October 30, 2017.

²⁷ Michael Koziol, "Almost 1000 Refugees Still in Limbo as US Deal Approaches Completion," *The Sydney Morning Herald*, May 23, 2021.

²⁸ Tess McClure and Ben Doherty, "New Zealand Offer to Resettle Australia's Offshore Refugees Still Active as US Deal Nears End," *The Guardian*, May 29, 2021.

may need to look for alternatives, such as New Zealand's offer of resettlement places (described below) or recent efforts to sponsor refugees through Canada's private refugee sponsorship program.²⁹

Australia's Cooperation with Cambodia

Australia signed a deal with Cambodia in 2014 to provide resettlement places to refugees held in Nauru. Reports indicated that Australia pledged an additional AUD 40 million in aid funding and to meet all costs associated with the process, such as housing and education costs for refugees who decided to resettle in Cambodia, which amounted to about AUD 5 million over the subsequent three years.³⁰ However, the Cambodian agreement faced issues from the start. Unsurprisingly, when refugees in Nauru were offered the choice to resettle there, few took the offer, as they were skeptical of living in a country without a tradition of refugee resettlement and economic opportunities available to foreigners. Two years after the deal was signed, five people reportedly had agreed to be resettled in Cambodia, but only two remained in the country.³¹ The deal expired in 2018 and has not been renewed.

This is perhaps the most transactional of Australia's bilateral cooperation deals to promote offshore resettlement. The deal occurred prior to the U.S. agreement. From the beginning, clear concerns existed about Cambodia's capacity to deliver key support processes outlined by Australia. Reporting in 2019 indicates that neither of the organizations contracted by the Australian government, IOM and Connect Settlement Support, could secure a passport for a refugee, preventing them from accessing certain social and economic opportunities such as gaining formal employment.³² The Cambodian government acquired additional monetary aid expenditure and ensured that the Australian government provided support for any refugees resettled in the country.

Australia's Unsuccessful Cooperation with Timor-Leste, Malaysia, and New Zealand

Australian bilateral cooperation has also had several high-profile failures regarding offshore visa processing and resettlement. Australian efforts to secure an offshore processing agreement with Timor-Leste failed in 2011. Australia's prime minister at the time, Julia Gillard, first announced the deal prior to the 2010 election, noting that discussions with the president of Timor-Leste and UNHCR had begun. However, this proposal quickly unraveled and was formally rejected by the Timor-Leste government in early 2011.

The proposal failed for several reasons. The Australian government announced the deal when formal discussions had not progressed beyond establishing interest. Politics informed this decision: at the time,

29 MOSAIC, a nonprofit settlement organization based in Vancouver, Canada, is working with the Refugee Council of Australia, UN High Commissioner for Refugees (UNHCR) in Australia, Canada Caring Society, and Ads-Up Canada Refugee Network on Operation #NotForgotten, which aims to sponsor refugees located in Nauru and Papua New Guinea to come to Canada through the refugee private sponsorship program. At the time of writing, MOSAIC had submitted applications for 144 refugees and 98 family members to the Canadian government for approval. See MOSAIC, "Operation #NotForgotten (ONF)," accessed August 4, 2021; Mostafa Rachwani, "More than 140 refugees in Australian Detention Set to Be Resettled in Canada under Sponsorship Scheme," *The Guardian*, May 20, 2021.

30 Lauren Crothers and Ben Doherty, "Australia Signs Controversial Refugee Transfer Deal with Cambodia," *The Guardian*, September 26, 2014.

31 Australian Associated Press, "\$55m Cambodia Deal that Resettled Two Refugees a 'Good Outcome,' Says Dutton," *The Guardian*, March 9, 2016.

32 Yaara Bou Melham and Helen Davidson, "From Nauru to Limbo: The Anguish of Australia's Last Asylum Seeker in Cambodia," *The Guardian*, December 29, 2019.

the Labor government had closed the Papua New Guinea and Nauru centers and was responding to overcrowded Australian facilities that hosted people claiming asylum. Australian policymakers also focused on reaching an agreement with the president, who was not part of the daily executive government, rather than negotiating with the Timor-Leste prime minister and cabinet. And Timor-Leste had few incentives to embark on such an agreement. The country's government was reluctant to bear responsibility for the administration of any visa processing center, with a "not inconsiderable risk of things going horribly wrong."³³ In addition, Timor-Leste's large endowment of natural resources and sovereign wealth fund mitigated immediate pressure to seek these forms of international financial support.

Another failed attempt at bilateral cooperation occurred with Malaysia. Negotiated in 2011, the proposed Australia–Malaysia "people swap" agreement would have seen Australia accept 4,000 refugees from Malaysia in return for sending 800 asylum seekers in Australia to Malaysia. The proposal's purpose was to deter people arriving by boat, and the Malaysian government was attracted to the prospect of resettling 4,000 refugees from Malaysia. While not a party to the agreement, UNHCR hinted at informal support in a public statement, hoping it would "deliver protection dividends in both countries."³⁴

But the agreement also attracted many domestic critics, who argued that Australia could not monitor and guarantee the rights of asylum seekers in Malaysia. The idea of swapping people between countries seemed alarming to many and not something a country such as Australia should do. Ultimately, the Australian High Court deemed the deal illegal and therefore disallowed it, as Malaysia was not a signatory to the 1951 Refugee Convention. In the weeks following, the Gillard government could not gain the Australian Parliament's support to amend the *Migration Act 1958* and allow the agreement to go forward.

Whether the agreement ultimately would have been an effective deterrent is unclear, although the investment of political and diplomatic capital suggests the Australian government believed in its potential. The agreement was unique in that it matched distinct goals, namely, substantial reduction in the number of long-term refugees in Malaysia with an opportunity for Australia to potentially deter rising numbers of asylum seekers arriving by boat in Australian territory. But the agreement's failure upended cooperation with Malaysia and has seemingly prevented further engagement on visa processing and resettlement.

This refusal is a clear example of how Australia's zero-tolerance approach to irregular migration risks undercutting its border enforcement strategy.

Finally, the Australian government has reached an agreement with New Zealand regarding refugee resettlement. New Zealand has made a standing offer to resettle up to 150 refugees per year from Nauru and Papua New Guinea. But the Australian government remains unwilling to accept, fearing

that the free movement arrangement between Australia and New Zealand would undermine the Australian "never, ever" resettlement pledge regarding maritime migration to Australia—although this position may change as the U.S. agreement winds down.³⁵ This refusal is a clear example of how Australia's zero-tolerance approach to irregular migration risks undercutting its border enforcement strategy. Given that it takes five

33 Savitri Taylor, "Asylum Seeker Processing in East Timor: A Salutation for Whom?" Inside Story, March 9, 2011.

34 UNHCR, "UNHCR Statement on the Australia-Malaysia Arrangement" (press release, July 25, 2011).

35 McClure and Doherty, "New Zealand Offer to Resettle Australia's Offshore Refugees."

years for a person granted refugee status in Nauru or Papua New Guinea to gain New Zealand citizenship and, thus, be eligible to move to Australia, resettlement in New Zealand appears to be a weak pull factor. In turn, people resettled to other countries such as the United States could come to Australia on a tourist visa, further undermining this argument. The result of this political intransigence is a prolonged wait for people granted refugee status in Nauru and Papua New Guinea to be resettled elsewhere.

C. *Regional Cooperation: The Bali Process*

The Bali Process on People Smuggling, Trafficking in Persons, and Related Transnational Crime is the most prominent example of regional cooperation in Australia's border enforcement strategy.³⁶ Australia's desire to raise awareness of people smuggling in and through Southeast Asia motivated the Bali Process. The process is primarily a forum for dialogue between countries, with high-level ministerial representation, supported by ongoing bureaucratic representation. The establishment of the Bali Process was a significant strategic coup for Australia and filled a major geopolitical gap, particularly regarding regional cooperation on migration and border enforcement. The original 2002 Bali Process meeting was the first ministerial-level conference on people smuggling in the region.³⁷ Australia was able to embed its goal of countering this smuggling within a robust regional cooperative framework. This allowed Australia to regionalize its policy on people smuggling, which included operational disruption combined with multiple layers of legal institutions.

Initially, the Bali Process proved a highly strategic forum for Australia's enforcement strategy because the process shaped regional efforts to deter irregular migration and smuggling networks. The most successful example is the coordination and standardization of legislation across many Bali Process countries to deter and criminalize people smuggling.³⁸

Stakeholders view this cross-country legislation as a gold standard, and in some countries it represented the first instance of criminalizing people smuggling. However, some stakeholders critique the effectiveness of this legislation given the frequent conviction of people lower down the food chain rather than the main organizers or recruiters.³⁹

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This process exemplifies how Australia used a regional forum to introduce broader attempts to deter people-smuggling networks across the Southeast Asian region. Promoting this type of activity across this many countries would have been impossible in a bilateral environment, given the coordination and

36 Since 2002, the Bali Process has sought to foster cooperation among countries, specifically by sharing information and developing practical initiatives. As a regional ministerial-level forum, the Bali Process meets every second year. In between, there are senior official meetings and a host of working groups. Indonesia and Australia co-chair the Bali Process, which includes another 45 members, including UNHCR, IOM, the United Nations Office on Drugs and Crime (UNODC), and the International Labour Organization (ILO).

37 Andrew Carr, "The Engagement Pendulum: Australia's Alternating Approach to Irregular Migration," *Journal of Australian Studies* 40, no. 3 (2016): 319–336.

38 Carr finds "within the first three years of the Bali Process, nineteen countries passed the model legislation." See Carr, "The Engagement Pendulum."

39 Antje Missbach, "Prosecuting People Smugglers in Indonesia," *The Conversation*, September 13, 2013.

resource challenges. The process also reflected a period of shared, regional security concerns, as the first meetings occurred shortly after the 9/11 attacks in the United States (and subsequent fallout) and the Bali bombing in 2002.

In addition, in the wake of the Andaman Sea Crisis in 2015, the Bali Process prompted changes to address the institutional failures that had emerged. As the crisis unfolded, the Bali Process could not respond meaningfully despite being the primary regional mechanism for dialogue on irregular migration. This led to a reform package, including the adoption of a formal consultation mechanism that enabled the Bali Process to respond quickly to events and emergencies. Stakeholders created a task force on planning and preparedness to build operational capacity within the cooperative framework. These are generally viewed as positive developments to ensure the Bali Process can play a more active role in the next crisis.

Despite these successes in 2016, regional cooperation via the Bali Process has slowed, reflecting its members' divergent interests. In 2011, Australia's struggled to introduce offshore processing centers in response to rising maritime migration between 2010 and 2012, as Indonesia expressed strong reservations about ad hoc proposals and sought, instead, to focus on a regional refugee protection framework.⁴⁰ More recently, the UN criticized the Bali Process in 2020 for not doing more to assist stranded Rohingya refugees.⁴¹

In turn, while improving data and information sharing is a major theme of the Bali Process, little progress has occurred over the last seven years. For example, in 2012, a top-priority project of the Regional Support Office was to improve data collection, use, and sharing, specifically relating to immigration and biometrics. Funded by the Australian government, the program sought baseline analytics for the harmonization of metrics and enhanced ability to share data.⁴² But to date, the proposed Regional Biometric Data Exchange Solution has failed to materialize, despite a substantial amount of work undertaken.⁴³

This limited progress partly reflects the complexity of sharing identity data between states, which presents various privacy and data security issues.⁴⁴ Managing these concerns has proven exceedingly difficult, especially given members' different standards and capacities to share data. But the central issue appears to be that many Bali Process member countries do not prioritize investments in data-sharing infrastructure. Given the demand on resources, and the trust required for countries to rely on shared data, it is difficult to view this regional setting as appropriate for Australia's enforcement strategy. The membership of the Bali Process is likely too large to make progress on this issue, while the competing priorities of the two process co-chairs—Australia and Indonesia—raise broader issues around how effective the institution can be in the future.

40 Paul Maley, "No Hope for PMs East Timor Solution," *The Australian*, March 30, 2011.

41 UNHCR, "Inaction Has Been Fatal, Says UNHCR, as Dozens of Rohingya Refugees Perish at Sea" (news release, September 7, 2020).

42 Bali Process Regional Support Office, "Enhancing Collection, Use, and Sharing of Data" (information sheet, 2012).

43 In October 2017, Australia and Indonesia noted that work will continue on the Regional Biometric Data Exchange Solution (RBDES) and that Member States would attend a workshop on biometrics in identity integrity in immigration. However, the summary of the 2019 steering group meeting does not mention data, nor was an update on the RBDES provided. See Bali Process Regional Support Office, "Policy Framework for the Regional Biometric Data Exchange Solution: Part 10" (framework, 2012); Bali Process, "Bali Process Strategy for Cooperation: October 2017 Update - 12th Ad-Hoc Senior Officials' Meeting" (strategy document, October 2017), 4; Bali Process, "Ad Hoc Group Senior Officials' Meeting – Co-Chairs' Statement" (statement from meeting in Da Nang, Vietnam, July 23, 2019).

44 As Kristian Hollins notes, "The sharing of identity data between states is a complex issue. Concerns about privacy, integrity of data storage, longevity, corruption, and identity theft are all significant considerations." See Kristian Hollins, "Comparative International Approaches to Establishing Identity in Undocumented Migrants" (working paper, Lowy Institute, Sydney, April 11, 2018).

The most recent ministerial declaration in August 2018 was bland and largely noncommittal regarding major initiatives.⁴⁵ Incentives across Bali Process countries are diverging, such as different approaches to resourcing antismuggling initiatives, resulting in fewer common themes around which to frame action. A common question from policymakers interviewed as part of this study was, “What does the Bali Process stand for now?” They sensed that the low-hanging fruit has been picked, and identifying common goals may be a bridge too far given the disparate interests. A substantive change in approach may be necessary, including modifying key governance structures, such as rotating co-chairs and including fewer member countries, to allow the group to better focus on key priorities.

5 Evaluating Australia’s Enforcement Strategy through the Lens of Cooperation

Australia’s response to its enforcement challenges shows the central role of cooperation in the country’s border management and in its policies to curb irregular maritime migration. In this era of globalization, countries cannot act alone on immigration policy and border enforcement. Autarky is a nonstarter. Cooperation with other countries has thus played a central role in curbing maritime migration to Australia.

Supporters of cooperation, primarily those in and around government, view deepening engagement and cooperation between countries as one piece of the puzzle to improve immigration governance, as these activities help to overcome particularly difficult policy barriers. Yet, at the same time, cooperation demands a willingness to accept uncertainty and requires confronting tradeoffs that result from this strategy, particularly regarding access to protection.

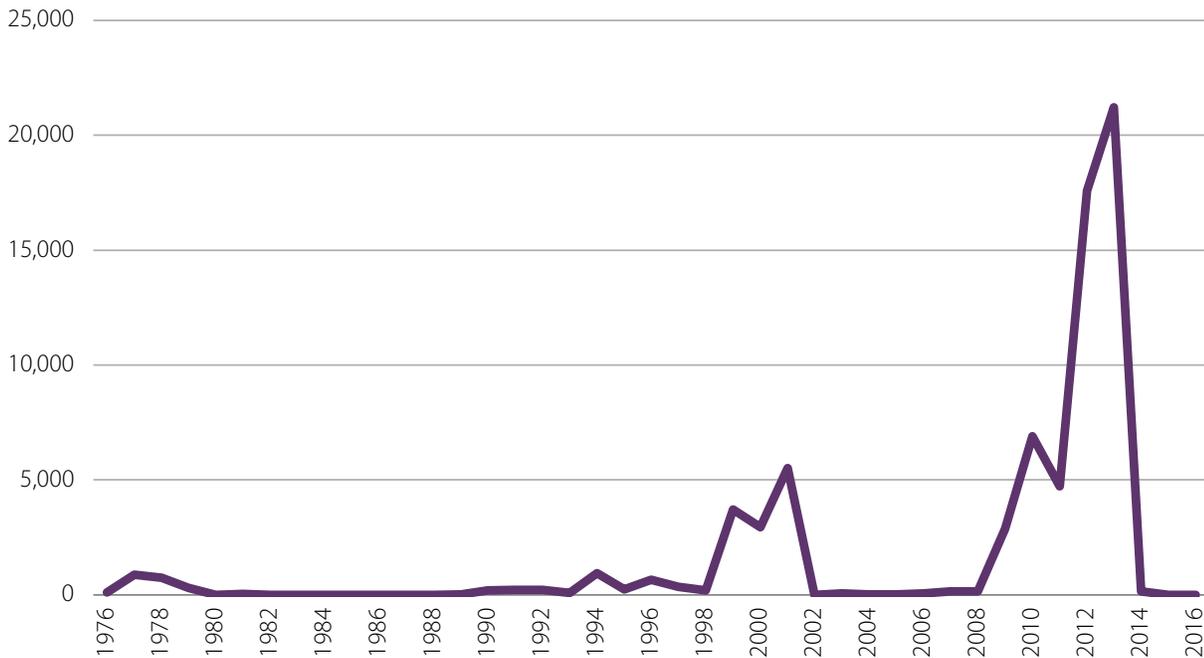
A. *How Has Cooperation Supported Australia’s Goal of Stopping the Boats?*

Since 2013, a consensus has emerged that the combination of the “never, ever” resettlement commitment and boat turnbacks is largely responsible for the reduction and subsequent complete prevention of irregular maritime migration to Australia. These two immigration controls have proved highly effective parts of Australia’s enforcement strategy.

Bilateral cooperation has provided the foundation for enforcement success in both formal (offshore processing and resettlement) and informal (turnbacks) contexts. The elimination of boats reaching Australian territory clearly marks the success of these immigration controls (see Figure 1). In contrast, regional cooperation unraveled in 2010 and 2011, as the proposed Timor-Leste offshore processing center failed and the Malaysia Solution was rejected. The latter development led to a sharp increase in arrivals in the subsequent period as people-smuggling networks responded to apparent policy paralysis in Australia. Boat turnbacks, particularly offshore processing, require constant management and attention in the form of both political capital and funding.

⁴⁵ The Bali Process, “Declaration of the Seventh Ministerial Conference of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime,” August 7, 2018.

FIGURE 1

Number of Asylum Seekers Arriving in Australia by Boat, 1976–2016

Note: Source material on original number of people includes crew, number of boats not available for 1976–1988
 Source: Janet Phillips, “Boat Arrivals and Boat ‘Turnbacks’ in Australia since 1976: A Quick Guide to the Statistics,” Australian Parliamentary Library, January 17, 2017.

B. What Are the Drawbacks of Australia’s Cooperation?

Stopping the boats is the Australian government’s clear strategic and tactical priority. The disruption of people-smuggling networks is working. However, significant, ongoing challenges remain. Key policy objectives such as forced returns remain mired in difficulty, and when they occur, they are subject to claims of refoulement. Improving capacity to build protection regimes and operational initiatives for data and intelligence sharing does not appear to have succeeded.

While effective in curbing maritime migration, Australia’s border management policies come at great expense, a total of almost AUD 10 billion between 2013 and 2016.⁴⁶ As numbers of asylum seekers dwindle, this cost has fallen but nonetheless remains a substantial fiscal expenditure. While immigration controls and border management budgets are generous, they are finite, and the decision to spend heavily on offshore processing includes opportunity costs for spending on other migration priorities. For example, there has been a recent reappraisal of resources spent in Indonesia on supporting asylum seekers and UNHCR-assessed refugees.

Serious questions also remain about whether Australia’s enforcement strategy can balance competing interests, particularly regarding asylum seekers’ access to effective refugee status determination processes.

⁴⁶ Button and Evans, *At What Cost?*

Turnbacks do not allow migrants to lodge valid protection visa applications in Australia, while offshore processing shifts Australia's responsibility to other countries, with varied success.

While this policy approach may be appropriate for some contexts, turnbacks may present too many drawbacks in future scenarios. For example, while Rohingya refugees do not commonly attempt to travel to Australia by boat, the protracted Rohingya crisis suggests that this may occur in the future. Rohingya claims to protection are among the strongest in the Asia-Pacific region, and an emerging population of Rohingya refugees lives in the Indonesian province of Aceh, while Rohingya refugees seeking to travel to Malaysia via Indonesia continue to arrive.⁴⁷ It is neither desirable nor practical for the Australian government to consider using boat turnbacks for Rohingya asylum seekers.

In addition, while a rapid increase in protection claims from Indonesian citizens departing Indonesia directly is currently unlikely, recent historical examples are relevant. Australia provided protection to 42 Indonesian citizens from the province of Papua in 2006.⁴⁸ Given this precedent, the Australian government would not seek to return future Indonesian asylum seekers to Indonesia without a genuine status determination process.

Formal cooperation also has limitations. Critics of the RCA and Australia's cooperation with Indonesia argue that as Indonesia has not signed the 1951 Refugee Convention, the most durable solution for asylum seekers owed protection remains resettlement in Australia. Instead, the opposite is emerging as people successfully navigate the refugee status determination process in Indonesia under the auspices of UNHCR but then face limited resettlement options because the Australian government has eliminated the possibility of humanitarian resettlement for people in Indonesia.

C. *How Sustainable Is Australia's Cooperation with Other Countries?*

Bilateral cooperation has been key to achieving Australia's enforcement goals, but it can be difficult to sustain. Australian public support is divided regarding Australia's cooperation with other countries on asylum and border enforcement. Approximately half the population, when surveyed, believes asylum seekers should receive either permanent or temporary residency in Australia. The other half supports the status quo, including offshore resettlement and turnbacks.⁴⁹ While this division may not have an immediate effect, it is worth considering how domestic public opinion can shape cooperation on border enforcement.

As the Australian government often prioritizes border enforcement much more prominently than its partner countries do, the idea that partner countries will maintain their commitments on these issues requires a leap of faith. Experience shows that these partnerships can be volatile, whether regarding informal cooperation on boat turnbacks or more-formal agreements relating to offshore processing or resettlement.

47 Krithika Varagur, "More Rohingya Refugees Arrive in Indonesia's Aceh," VOA News, May 7, 2018; Bryony Lau, *A Transit Country No More: Refugees and Asylum Seekers in Indonesia* (N.p.: Mixed Migration Centre, 2021).

48 Antje Missbach and Wayne Palmer, "Indonesia: A Country Grappling with Migrant Protection at Home and Abroad," *Migration Information Source*, September 19, 2018.

49 Markus, *Mapping Social Cohesion 2019*.

This volatility is prominent in Australia's cooperation on boat turnbacks. Australia's informal cooperation with Indonesia on this issue is challenging, as senior levels of the Indonesian government clearly oppose turnbacks. For now, given Australian pressure and the broader goal of keeping the bilateral relationship strong, Indonesia tolerates the policy. But it is not difficult to imagine how circumstances might change, for example, in the event of a migration crisis into or around Indonesia or the election of a more nationalist president. As Indonesia continues to grow both economically and in geopolitical power, securing this informal cooperation may prove more difficult. A future Indonesia may see Australian turnbacks as a threat to its own sovereignty. Countries in the region may also see turnbacks as "free-riding" on more formal regional cooperation.

Australia's more formal bilateral cooperation with Indonesia appears to be more stable but must nonetheless navigate risks. For example, the population of asylum seekers registered with UNHCR in Indonesia has steadily grown from 367 at the end of 2000 to 3,476 by the end of 2019.⁵⁰ While Indonesia may be willing to accept a small number of asylum seekers living in this legal grey area and without recourse to formal resettlement opportunities, there is likely a numerical limit at which point consideration turns to alternative options. Missbach finds no surge in asylum seekers attempting voluntary repatriation, due to Australian enforcement efforts, which have, instead, resulted in a growing population in Indonesia.⁵¹

6 Looking to the Future

Australia's support of a domestic enforcement strategy through multiple types of cooperation is helpful. The most important takeaways are that acting unilaterally on border enforcement is now a nonstarter, and cooperation is necessary. Furthermore, important lessons emerge about the inherent fragility of cooperation and its relationship to domestic political dynamics.

Few other countries have developed such an extensive arrangement of cooperative mechanisms and relationships. While Australia's geography and other contextual factors shape the country's enforcement environment, important findings stem from decades of cross-country cooperation. Where it works well, Australian cooperation recognizes shared goals and underlying incentives for how to work together. Where it works poorly, Australian cooperation becomes burden-shifting characterized by flimsy financial transactionalism.

The most important takeaways are that acting unilaterally on border enforcement is now a nonstarter, and cooperation is necessary.

A. What Should Australia Prioritize for Future Cooperation?

In general, Australia cannot dictate geopolitical terms in Southeast Asia. Australia has created a successful border enforcement framework only because successive Australian governments have spent unprecedented amounts of political capital and financial resources on these policy goals. Given these dynamics, Australia

⁵⁰ UNHCR, "Refugee Data Finder," updated June 18, 2021.

⁵¹ Antje Missbach, "Asylum Seekers' and Refugees' Decision-Making in Transit in Indonesia," *Journal of the Humanitarian and Social Sciences of South East Asia* 175, no. 4 (November 2018): 419–445.

should prioritize future cooperation that can reduce this expenditure because it is politically unsustainable and has large opportunity costs. Australia can do this while maintaining its overarching policy goals.

To do so, Australia should seek deeper regional cooperation with the two key countries in the region: Indonesia and Malaysia. Ensuring successful responses to irregular migration requires a policy toolkit not built exclusively on boat turnbacks and offshore resettlement in developing countries. With the Bali Process acting as the conduit, these three countries should seek to create a genuine regional protection policy framework. The goal would be a mechanism that interweaves status determination, resettlement, and returns across the three countries and allows key actors to address and trade off concerns. This would provide a more structurally secure source of regional cooperation that attempts to provide solutions for migrants before they get on a boat provided by people smugglers.

Ensuring successful responses to irregular migration requires a policy toolkit not built exclusively on boat turnbacks and offshore resettlement in developing countries.

This undertaking would be immense and difficult for the Australian government, requiring key political compromises with Indonesia and Malaysia. Furthermore, without a crisis, it is difficult to find an incentive to generate this type of action under the current government. However, the seeds for this cooperation already exist. In 2018, the Malaysian government publicly committed to signing the 1951 Refugee Convention. As Malaysia starts this process, a window of opportunity exists to work with Malaysia on a regional protection policy framework at the same time. As of 2019, there were 179,000 refugees and asylum seekers (and an additional large stateless population) in Malaysia, which may act as an incentive for Malaysia to cooperate with Australia on resettlement.⁵² Similar incentives exist for Indonesia, given its preference for regional approaches. Indonesia was a member of the United Nations Security Council between 2019 and 2020 and initially identified strengthening regional organizations as one of four priority areas.⁵³ Indonesia strongly prefers regional processes rather than bilateral agreements.

This does not mean that Australia should abandon bilateral cooperation. Australia's bilateral relationship with Indonesia will continue to be pre-eminent, and Australia will continue to maintain bilateral cooperation with countries such as Sri Lanka and Vietnam. The recommendations outlined above should complement these established approaches.

B. What Steps Can Make Australia's Cooperation More Sustainable?

Australia's cooperation underpins its policy to stop the boats. As the push factors for irregular maritime migration grow, Australia's deterrence and disruption approach will likely prove insufficient. Policymakers will need to expand and complement the current enforcement toolkit. Yet, this cooperation is far from sustainable. Australia will increasingly find itself in a position of relative weakness in future geopolitical shifts. Over time, Indonesia and Malaysia will exert more, not less, influence in the region and shift

⁵² UNHCR's data for 2019 include 129,107 refugees under UNHCR's mandate, 50,730 asylum seekers, 108,332 stateless persons, and 55,000 people of concern. These data include duplicates, however; Rohingya individuals may hold refugee status and be stateless, for example. See UNHCR, "Refugee Data Finder"; UNHCR, *Global Trends: Forced Displacement in 2019* (Geneva: UNHCR, 2020), 61.

⁵³ Ministry of Foreign Affairs of the Republic of Indonesia, "Indonesian Membership of the UN Security Council" (press release, April 8, 2019).

the balance of power (and the incentives on the table) regarding decisions in key areas of concern for cooperation.

On resettlement, Australia could pursue a regional mechanism as a way to build more sustainable cooperation with Indonesia and Malaysia. At minimum, this would require Australia to offer additional resettlement places, including annual placements reserved for protracted populations in the region. In addition, Australia should be willing to consider more flexibility in resettlement outcomes. Australia should consider walking back the “never, ever” resettlement commitment, as this will likely become a veto point for regional partners, who will likely view it as an abrogation of responsibilities. While this possibility may appear unlikely now, a future scenario could emerge in which a Malaysia–Indonesia–Australia agreement allows Australia additional political leeway to adapt existing policy approaches, given domestic considerations.

In addition to resettlement, Australia could offer numerous tangible incentives to foster a more benign environment for building cooperation. Australia could seek out Malaysia as a rotating co-chair of the Bali Process and offer additional immigration destinations in Australia for Malaysian citizens, such as under the work and holiday visa—although the latter will hinge on the lifting of COVID-19 travel restrictions. In addition, Australia, Indonesia, and Malaysia should agree on a reduced Bali Process forum in which core regional interests are discussed, instead of the current bloated approach stemming from the excessive number of member countries. This process would benefit from groups of eminent persons’ formal review of the Bali Process, with support from the Asia Dialogue on Forced Migration. Instead of focusing on issues such as data-sharing arrangements, stakeholders should prioritize core issues such as durable solutions to irregular migration, crises of asylum, and protracted refugee situations, given that each country has strong incentives to address these.

Australia could play a more active role in building Indonesia’s institutional capacity and supporting the growing irregular migrant population living in Indonesia. In addition, Australia could actively support Indonesia’s efforts to protect its growing emigrant workforce, as President Jokowi has made this a central theme of Indonesian foreign policy. Australia’s recent introduction of a legislative framework to address modern slavery is one example. Each of these incentives and potential policy approaches could expand cooperation and tilt it toward Indonesian and Malaysian interests.

C. How Should Australia Deal with the Tradeoffs, Particularly Those Surrounding Access to Protection?

Finally, the Australian government must address the institutional weakness of the region’s current refugee protection regime and proactively strengthen it. The first priority should be to secure durable solutions for refugees in Nauru and Papua New Guinea. Finding legitimate third-country resettlement options is clearly not easy, but Australia could consider pursuing this as part of a broader approach to regional cooperation.

In negotiations with other countries on protection, Australia should capitalize on its strong history of refugee resettlement. While Australia reduced its resettlement places in 2020, citing the impact of COVID-19, it should consider expanding places in the next few years to demonstrate Australia’s commitment to protection in the region and to build goodwill. This could generate sufficient political capital to realize

genuine gains in regional cooperation on protection, combined with improving asylum seekers' access to protection.

The Rohingya crisis is a case in point. This crisis challenges the region and requires durable regional engagement and cooperation to lessen the pressure on Bangladesh (which hosts roughly 1 million Rohingya refugees⁵⁴) and to avoid a repeat of the 2015 Andaman Sea Crisis. To date, while Australia provides some aid to help meet basic needs in refugee camps, it has largely refrained from engaging on resettlement, refusing to allocate places in Australia's humanitarian resettlement program for Rohingya refugees.⁵⁵ Changing this stance would signal to regional partners that Australia is genuine about regional engagement on protracted situations.

Australia could also use the incentive of additional resettlement places to reinvigorate cooperation with Malaysia. Australia could support Malaysia's signature to the 1951 Refugee Convention, thereby overcoming the key barrier to future bilateral and regional cooperation between the two countries. This would embed a protection framework in a country with 181,000 refugees and asylum seekers.⁵⁶ Finding alignment on elements of status determination could help Australia and Malaysia work toward another protocol agreement in which Australia could accept a specified number of refugees in protracted situations in return for Malaysia agreeing to future asylum-seeker processing and/or resettlement of migrants currently in Nauru.

Expanded resettlement options could help move the needle in bilateral cooperation with Indonesia, too. Despite almost two decades of concerted bilateral cooperation, Afriansyah refers to Indonesia's increasing population of asylum seekers, refugees, and irregular migrants who have sought to transit through the country as a "ticking bomb."⁵⁷ Increased waiting periods for standard processes, combined with a lack of genuine resettlement opportunities, could turn the situation in Indonesia into a much more negative experience. Australia should actively address this increasing population by continuing to provide support where possible and should consider allocating formal resettlement places, which ended in 2014.

In the medium to long term, Australia should consider ways to bridge traditional rights-based approaches to protection pioneered in Europe and the emerging, contemporary practices in nonsignatory countries such as Malaysia and Indonesia. For example, while UNHCR publicly opposes asylum seekers actively choosing a country, in transit countries such as Indonesia this is precisely what occurs when asylum seekers then attempt to continue to Australia. By focusing on core protection interests in the form of a protection outcome and how to apply outcomes in a 21st century context, Australia could facilitate a broader conversation about how to govern and reimagine modern asylum processes. Moreover, as Indonesia and Malaysia experience large-scale mixed migration, Australia could also lead the conversation about how to update current frameworks and close this protection gap.

54 UNHCR, "Operational Data Portal—Refugee Response in Bangladesh," updated February 28, 2022. See also Amal de Chickera, "Stateless and Persecuted: What Next for the Rohingya?" *Migration Information Source*, March 18, 2021.

55 Then-prime minister Tony Abbott infamously said "Nope, nope, nope" in relation to resettling some of the 8,000 Rohingya refugees caught up in the 2015 crisis. See Shalailah Medhora, "Nope, Nope, Nope: Tony Abbott Says Australia Will Take No Rohingya Refugees," *The Guardian*, May 20, 2015.

56 UNHCR, "Malaysia," accessed March 17, 2022.

57 Arie Afriansyah, "Indonesia and the Global Compacts on Refugees and Migration," *International Journal of Refugee Law* 30, no. 4 (December 2018): 684–686.

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Acknowledgments

This report was commissioned for the Transatlantic Council on Migration, an initiative of the Migration Policy Institute (MPI), with support from the Government of Australia. It informed the Council's discussions at a virtual meeting held in July 2021 on "International Cooperation on Managing Migration: Recent Progress and the Way Forward."

The Council is a unique deliberative body that examines vital policy issues and informs migration policymaking processes across Europe, North America, and Australia. The Council's work is generously supported by the following foundations and governments: the Carnegie Corporation of New York, the Calouste Gulbenkian Foundation, and the governments of Australia, Canada, Germany, the Netherlands, Norway, and Sweden.

For more on the Transatlantic Council on Migration, please visit: www.migrationpolicy.org/transatlantic.

The author thanks Kate Hooper, who was magnificent from the beginning to end of the process of writing and publishing this report. He would also like to thank the staff at MPI who edited and published the report. Finally, he would like to thank Demetrios G. Papademetriou, who was ever generous with his time and support.

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Design: Sara Staedicke, MPI
Layout: Liz Heimann
Cover Photo: iStock.com/Михаил Руденко

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Suggested citation: Sherrell, Henry. 2022. *The Central Role of Cooperation in Australia's Immigration Enforcement Strategy*. Washington, DC: Migration Policy Institute.

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