Reimagining the protection response to irregular maritime arrivals

A principle-based regulation with a human security approach

Jeswynn Yogaratnam

I Introduction

History does not repeat itself,
but it does rhyme.[1]
Mark Twain

In 2013 I visited a place called the Darwin Lodge or also known as an Alternative Place of Detention ('APOD'). This is a place of detention located onshore in Darwin, Australia. The reason I am referring to the APOD is because it sets the scene to the human security concerns, from onshore to offshore processing centres, of many asylum seekers who choose to arrive in Australia in an unregulated way.

According to a report by the Australian Human Rights Commission, the APOD was used to detain unaccompanied minors and families with children who were mostly irregular maritime arrivals attempting to seek asylum in Australia.[2] The term 'irregular maritime arrivals' in this paper refers to a non-citizen or an 'unlawful non-citizen' under s 46A(1) of the *Migration Act 1958* (Cth) ('*Migration Act*') who seeks asylum in Australia after 12 August 2012.[3] In Australia this classification of people seeking asylum has been referred to as 'unauthorised maritime arrivals' and more recently 'illegal immigrants'.[4] I find these terms inappropriate and will proceed to use the term 'irregular arrivals' throughout this paper.

When I visited the APOD, I recall that those who arrived by boat were identified by their boat registration number. I was granted access to visit a Rohingya family based on a social visitation policy at the time. When the family arrived at the reception hall of the APOD, they interacted with each other in Bahasa Malaysia. I noted that they must have been in transit in Malaysia for a few years. This is because when I visited Malaysia periodically, I met with Rohingya families similar to the ADOP family. These families alleged being persecuted in Myanmar. Some of the families who fled to Malaysia registered their refugee status determination ('RSD') application with the local United Nations High Commissioner for Refugees ('UNHCR') office. However, the significant waiting period and Malaysia being a non- *Refugee Convention*[5] state meant that many of the Rohingya were in a state of indefinite transit. Over time, they became proficient in the local language. The uncertainty of the RSD outcome and

opportunities to resettle in a state that is a signatory to the *Refugee Convention* led some Rohingya to make arrangements with people smugglers. These arrangements were for the purposes of making their way to *Refugee Convention* signatory states like Australia and New Zealand.

During my visit to the APOD, I gained more out of the social visit than expected. This was partly because we conversed in Bahasa Malaysia and did not need an interpreter. I believe this direct form of communication put them at ease and lifted the inhibitions about the purpose of my social visit. My observation at the end of the meeting was that, for the family, speaking freely about their life in the Rakhine State of Myanmar prior to the alleged persecution and during the alleged fear from persecution, had therapeutic value, if not a temporary relief from an emotional burden they often suffer in silence with. Their grim nervous look at the beginning of our meeting turned to broad smiles at the end of our one-hour of social engagement. They talked about their human security while they were in detention and when fleeing from persecution in Myanmar. For the purposes of this paper, human security refers to factors that have an impact on the safety and vulnerability of irregular arrivals while in detention onshore in Australia and offshore in regional processing centres.[6] To the Rohingya family, their human security while in detention was about their right to access healthcare, the right to education for their children, their personal security, the security of their community within a detention setting, their right to work and their right to culture (for example language, dietary preferences, dress code, and significant cultural calendar events). Their dream was to be granted refugee status and resettle in Australia.

The story signifies that even if history does not repeat itself in the way in which people may choose to seek asylum, it does rhyme with the consequences of seeking asylum in an 'unregulated' way: the consequence being that asylum seekers are forced to seek refuge from 'refuge'. The place of refuge, that is, a *Refugee Convention* state, becomes a reason to seek an alternative place of refuge because of their human security concerns. The prolonged, and in some cases indefinite lengths of time in detention in regional processing centres, transforms their deemed 'safe'[7] place of refuge to a mental health trap.[8] As such, we need to call it out for what it is. It is human security at crisis perpetuated by rule-based regulations that are failing to protect the human security needs of irregular arrivals. Simply put, rule-based regulations are a prescriptive way of regulating whereas principle-based regulations are normative in nature. The former can be a set of rigid rules whereas the latter may be based on dynamic principles that have a flexible approach taking into account responsiveness and priorities.

The example below by Burgemeestre, Hulstijn and Tan illustrates the difference between rule-based regulations and principle-based regulations:

> Rule-based regulation prescribes in detail how to behave: 'On Dutch highways the speed limit is 120 km/hour'. In principle-based regulation norms are formulated as guidelines; the exact implementation is left to the subject of the norm: 'Drive responsibly when it is snowing'.[9]

The human security concerns of the Rohingya family and the principle-based regulatory approach are central to the 'reimagining' of an alternative way forward. The first part of the article explains the 'reimagining' of the protection approach to irregular arrivals based on the concept of human security. The second part explains the reason for applying the human security concept when dealing with irregular arrivals. The third part qualifies the concept by reference to the scholarship of Taylor Owen.[10] The final part is a summary to an interdisciplinary analysis that explains the operationalisation of the concept through John Braithwaite's theory of principle-based regulation.[11] It explains the need for a dynamic approach as opposed to a rigid rule-based prescription when responding to the human security needs of irregular arrivals. The article sets out a high-level interdisciplinary study on the intersection of political science on human security with immigration law and policy in Australia in relation to irregular arrivals in detention onshore and offshore.

II The untenable status quo compels a need to 'reimagine' protection approaches

Volker Türk noted that we have reached a scale of such global significance that it is

no longer viable to maintain the status quo on protection obligations for those affected by forced migration.[12] The note of caution by Volker Türk can equally be applied to the status quo of human security concerns faced by irregular arrivals who are kept in detention. It is also no longer viable. Triggs emphasised that it is critical to remember in this context that 'these aren't statistics and they're not just legal principles or abstract ideas ... You're actually dealing with human beings.'[13] Triggs states that 'it's almost in our DNA in Australia to react negatively to those who arrive in the country in a way that the Government describes as illegal.'[14] She noted that 'the idea that our borders are insecure goes to the very heart of Australians' sense of our own security and our own nationhood'.[15]

It is my opinion that the human security approach responds to the observation by Triggs when it comes to treating irregular arrivals like human beings. This is because the human security approach addresses the vulnerability of the individual and may facilitate a therapeutic and trauma-informed response when making policy for irregular arrivals.

In addition, the human security approach may also expose the common national security and border security crisis to be in fact a crisis of the ruling political community. This was noted by Bilgic in the European context, where irregular arrivals are synonymised with notions of national security or border security crisis.[16] The lack of solidarity, the fear-mongering about irregular arrivals, the panic on the scourge of people smuggling and the call for more rule-based regulations draws political solidarity further away from practical responsibility-sharing solutions as part of domestic, regional and international cooperation. As a result, it enables the ruling political community, for example in Australia, to fall into a state of disconnect with the human security needs of irregular arrivals. The disconnect leads to commitments that implement 'hard-headed' measures similar to those found in Operation Sovereign Borders, exacerbating the need for asylum seekers to seek refuge from 'refuge'.[17] This observation does not displace the importance of state sovereignty and the security of the state, but instead highlights the need to embed a form of principle-based regulation that works in tandem with state sovereignty and national security concerns.

In the case of the Australian Government's offshore regional processing arrangements, the evidence-base informs us that the regional processing centres have presented irregular arrivals with insurmountable psychological harm and other health security concerns.[18] The recent *Home Affairs Legislation Amendment (Miscellaneous Measures) Act 2019* (Cth) (commonly referred to as the 'Medevac' law) highlights the consequences of placing irregular arrivals in places where health security is not at par with Australian standards.[19] Indeed, the Medevac law is a way forward in attempting to expedite transfers of irregular arrivals to mainland Australia to respond to the health risks of those transferred to Nauru or Manus Island. But as a rule-based regulation it presents similar challenges to other immigration rules. It is weighed down by layers of discretionary administrative decision-making processes to the point that, at first instance, the Minister of Home Affairs can exercise ministerial powers to overturn the decision of the doctors. Although the Medevac law provides for a specialist panel to review the decision of the Minister that circumvents the court process, the whole administrative review process could delay the urgency of the request by up to ten days for a transfer to take place after the panel has reviewed the matter.[20] The delay can exacerbate the health condition of the patient who urgently requires medical treatment not available at the regional processing jurisdiction. This could lead to the Medevac legislation failing to achieve its intended purpose, that is, to expedite transfers based on medical opinions. The argument here is not about the merit of Medevac law but the regulatory regime in which it operates, that is, a rule-based regulatory approach. Having said that, anecdotal evidence from certain not-for-profit organisations involved in the referral of patients from the regional processing centres acknowledge that most decisions by doctors are not challenged and where it is called for review, the decision of the independent panel is usually adhered to.

The recent laudable decision by the Federal Court of Australia in *CCA19 v Secretary*, *Department of Home Affairs*[21] (the '*Medevac case*') demonstrates that the courts are willing to uphold the Medevac law by looking at the intent and purpose of the law, as well as allowing for assessment

Still image from Simon Kurian's documentary, 'Stop the Boats'. Manus Island (Simon Kurian)

by doctors, even remotely. But the process of undergoing such a legal challenge undermines the purpose of transfers under the law as the focus on legal-administrative technicalities simply adds to the delays. Furthermore, the decision has led to lobbying by the current Home Affairs Minister, Peter Dutton, to repeal the Medevac law.[22] The act of the government repealing laws that have been upheld by the courts for the benefit of irregular arrivals is well precedented. One example is the High Court case commonly referred to as the Malaysian Solution Case,[23] where the majority upheld the need for the Minister to consider the 'relevant human rights standards' before the asylum seekers were transferred to another jurisdiction for offshore immigration processing. After the decision, the Government repealed the then s 198(A)(3)(a)(iv) of the *Migration Act*. That section set out the relevant human rights standards that a Minister needs to consider in the decision-making process when declaring the transfer of irregular arrivals to an offshore jurisdiction. The point being, we need an alternative approach that does not dwell on rule-based regulations but instead prioritises a principle-based regulatory response, especially when dealing with human security needs of asylum seekers.

III Why the human security approach?

Ogata noted that 'the concept of human security presents a useful entry point to the central issue of security of the people because by focusing on the people who are the very victims of today's security threats, you come closer to identifying their protective needs'.[24] This form of assessment of security reveals the 'social, economic and political factors that promote or endanger their security'.[25] While Ogata's observations refer to people who are displaced due to internal conflicts within the state, the statement resonates to the lack of attention given to human security assessment of the socio-economic conditions that affect the lives of irregular arrivals, especially in offshore regional processing centres. This is because if such an assessment was carried out, it may be that the regional processing centres in Nauru and Manus Island be deemed unsuitable for the irregular arrivals. [26]

In a summary, the human security approach is 'human-centred' in that its principal focus is on people both as individuals and as communal groups. It is security-oriented in that 'the focus is on freedom from fear, danger and threat.'[27] Simply put, human security 'is a response to the urge to know what one should care about, what is in one's power to do, and what crises are looming.'[28] For the purposes of this article, it sets the premise on the relevance of human security to policymakers on matters relating to irregular arrivals. For example, in the case of the death of Hamid Khazaei that occurred while being detained at Manus Island in 2014, it was reported that the coroner found 'significant flaws' in the process of getting Mr Khazaei off Manus Island, including a 'lack of a documented approval process that resulted in a missed opportunity to transfer him on a commercial flight to Port Moresby on 25 August'.

In that case, an urgent transfer request from a doctor did not proceed as expected. Instead, an immigration official queried the decision and asked to clarify the reason medication could not be sent to the detention centre. The immigration officer then referred the request to a superior who did not read the referral until the next day. By then, Mr Khazaei's condition had 'deteriorated significantly' and doctors advised that his transfer was 'very urgent'.[29]

In such a case, dealing with physical and mental health risks could have been avoided if the inclusion of principles regulating human security on healthcare policy was core to the policymaking when transferring asylum seekers offshore. It may shift the zero-sum game of the Operation Sovereign Borders policy that attempts to offset the detriment suffered by irregular arrivals transferred offshore with the benefit gained by the Australian Government from zero boats arriving in Australia. A principle-based regulation grounded by medical opinions should determine the next cause of action. Evidently, the rule-based regulation causes delays, not only because of the bulwark of bureaucracy involved but also due to the self-conflicted exercise of ministerial discretion. This self-conflict arises out of two primary reasons: one, to avoid disparaging remarks of the local healthcare system in the regional processing jurisdiction as part of state diplomacy; and two, to maintain the impression that the regional processing regime works.

IV The proposed human security approach

A snapshot to the human security approach by Owen

Owen explains human security to be the 'protection of the vital core of all human lives from critical and pervasive environmental, economic, food health and political threats.'[30] He explains that 'critical' attaches 'urgency' to the concept, that 'pervasive' attaches 'scale' and that 'vital core' attaches 'survival' to the definition.[31] Therefore, any type of harm has the possibility of being a human security threat but it does not become an insecurity unless it has an objectively determined degree of urgency and is of a wide scale that threatens the life of the individual.

Owen's approach suggests that the severity 'bar' should be set as a political line, meaning that international organisations, national governments, experts and NGOs would determine what would be included as a human security threat at a given time in a particular region.[32] Therefore, the boundaries are determined by political priority, capability and will. This means that the primary responsibility for ensuring human security falls on the national government. However, Owen cautions that 'if threats crossing the human security threshold are caused by the Government or if the Government are unable to protect against them, the international community should act.'[33]

Owen analyses human security from the perspective of a threshold-based definition, based on severity. According to Owen, human security can be both analytically useful and relevant to policy if the threshold-based definition of human security is applied. The importance of this approach is that it looks at the consequence while paying attention to the cause.[34] The challenge with this approach is the assessment on the subjective nature of severity. I believe that this challenge can be addressed by a principle-based regulatory approach that sets guidelines on severity. The discussion on setting guidelines on severity is out of scope for purposes of this paper but suffice to say that the Hamid Khazaie case is worth examining as a case study when developing guidelines that deal with health and medical needs as a part of the human security policy for irregular arrivals at offshore regional processing centres.

V Enabling human security to be operationalised through principle-based regulation

Why principle-based regulation?

Braithwaite highlights that '[t]he big problems facing states would require creative regulatory solutions.'[35] There is no doubt that the offshore regional processing policy is a big problem for Australia. As such, we need to look for creative regulatory solutions because as Braithwaite observed when referring to rule-based regulations:

> …traditions of excellence within the disciplines were narrowing their capacity to deliver creative solutions to these big problems. If these creative solutions were to have a chance of arriving, regulation could not continue to be thought as an inelastic thing of law. Rather it had to be seen as a multilevel dynamic process in which many actors play a part and have varying capacities and means of intervention.[36]

Braithwaite's regulatory theory which is based on responsiveness places an 'emphasis on flexibility and the complementarity of regulatory instruments rather than following a preset sequence of responses.'[37] Based on the earlier discussion of the Medevac law, it appears that the Medevac law operates on a preset sequence of responses, from the opinion of the two medical doctors to the administrative processes involved. This may affect the efficiency of responsiveness when dealing with cases of urgency and severity.

How can the principle-based regulation be operationalised?

The short answer to this question is to attach principle-based regulations to the rules or create independent, principle-based regulations that have a responsive mechanism to the human security in question. The principle-based regulatory regime is operationalised or triggered once the responsible entity regulating the human security in question takes a responsive approach and applies the fast-track regulatory mechanism. For example, in the *Medevac* case, once the responsible entity from the Medical Evacuation Response Team decides to transfer the patient from the regional processing country to Australia, the decision authorises a fast-

track regulatory mechanism or a bypass from rule-based regulations requiring ministerial approval. Instead, the next cause of action is predicated by the responsible entity making a decision based on: one, the principle on the patient's best interests; and two, the severity to human security in question assessed. Both assessments are made based on guidelines or protocols that govern the professional body of the responsible entity. This means that the response to human security needs will no longer require authorisation from a government minister. Instead, the body that governs the security in question will have authority to make the responsive decision. Regarding the *Medevac* case, the Kaldor Centre for International Refugee Law succinctly describes the high level process and structure as follows:

> An independent Medical Evacuation Response Team ['MER'] has been established to oversee the triage of people in offshore processing countries who are in need of medical treatment. The group is composed of a number of non-governmental organisations, who will work directly with medical professionals. It also includes caseworkers, counsellors and lawyers.[38]

While the current position of the Medevac law would still require the MER to gain approval from the Minister, the principle-based regulatory approach would not. It does not require amending the Medevac law but instead drafting the operational policy framework from the provisions that currently authorises the powers of the independent panel. The benefits of such an independent body will not only depoliticise the decision-making process but uphold the fundamental principles regulating the professional body responsible for conducting medical assessments and making the medical recommendations. Such decision-making enables principles from the ethical norms on the best interest of the patient within the codes, guidelines and policies by the Medical Board of Australia to be part of the broader regional processing risk management policy on health security of irregular arrivals.[39]

VI Conclusion

This article sets out the essence of reimagining the protection approaches applying the human security approach through a principle-based regulation. It is important to note that this paper is part of a broader theme under the UN Global Compact on Refugees 2018 ('GCR'). Much of the reimagining of human security within the regional processing centres can be extended to the proposals for international cooperation outlined in the GCR. The parallels to the people-centred[40] as part of the human security concept and the GCR make the reimaging outlined in this paper a plausible way forward in the spirit of Trigg's reminder that we are dealing human beings.[41] ⚖

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References

1 A quote attributed to Samuel Clemens also known as Mark Twain, quoted in Brian Adams, 'History Doesn't Repeat, but It Often Rhymes', *Huffington Post* (online, 19 January 2017) <https://www.huffingtonpost.com.au/brian-adams/history-doesnt-repeat-but-it-often-rhymes_a_21657884/>.

2 Irregular arrivals include those who have been either apprehended and detained by the Australian maritime authority when their vessel was interdicted at sea within the contiguous zone or apprehended at any of the migration excised zones under the s 5 of the *Migration Act 1958* (Cth).

3 *Migration Act 1958* (Cth) s 46A(1) ('*Migration Act*').

4 Australian Human Rights Commission, *2010 Immigration Detention in Darwin* (Report, 2010) <https://www.humanrights.gov.au/sites/default/files/content/human_rights/immigration/idc2010_darwin.pdf>.

5 *Convention Relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 137 (entered into force 22 April 1954) read together with the *Protocol Relating to the Status of Refugees*, opened for signature 31 January 1967, 606 UNTS 267 (entered into force 4 October 1967) ('*Refugee Convention*').

6 Jeswynn Yogaratnam, 'A People-Centred Refugee Approach: Revisiting UNDP's Human Security Concept' (2017) 11 *UNSW Law Society Court of Conscience* 58, 62.

7 On the issue of a 'safe' place, reference can be made to s 74 of the *Maritime Powers Act 2013* (Cth) and the High Court decision in *CPCF v Minister for Immigration and Border Protection & Anor* [2015] HCA 1, 51-53. This case dealt with issues relating to irregular arrivals being detained in a contiguous zone and the exercise of powers by the maritime officers to take them to a 'safe' place.

8 In June 2017, the Supreme Court of Victoria approved a $70 million settlement in the Manus Island class action against the Australian Government. The class action represented 1,923 detainees who were detained at Manus Island Detention Centre. The allegations in the class action were, inter alia, that detainees suffered serious physical

and psychological injuries as a result of the conditions in which they were held at the Manus Island Detention Centre: 'Manus Island Detention Centre Class Action', *Supreme Court of Victoria* (Web Page, 6 September 2017) <https://www.supremecourt.vic.gov.au/news/manus-island-detention-centre-class-action>.

9 Brigitte Burgemeestre, Joris Hulstijn and Yao-Hua Tan, 'Rule-Based versus Principle-Based Regulatory Compliance' (Conference Paper, Legal Knowledge and Information Systems JURIX 2009: Legal Knowledge and Information Systems,16 December 2009).

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13 Jane Hutcheon, 'Gillian Triggs Says She's Been 'Radicalised' in the Job as Human Rights Commission President'*, ABC News* (online, 23 June 2017) <http://www.abc.net.au/news/2017-06-23/gillian-triggs-human-rights-commission-radicalised-in-the-job/8643024>.

14 Ibid.

15 Ibid.

16 Dr Ali Bilgic, 'A Human Security Perspective on Migration: A Compass in the Perfect Storm' (Inaugural lecture Prince Claus Chair in Development and Equity, International Institute of Social Studies, Erasmus University Rotterdam, 12 April 2018) 5, citing Nicholas De Genova, 'The Border of Europe and the European Question' in Nicholas De Genova (ed), *The Borders of "Europe": Autonomy of Migration, Tactics of Bordering* (Duke University Press, 2017) 1.

17 Operation Sovereign Borders is a border security policy that was initiated by Minister Scott Morrison when he was the then Minister of Immigration and Border Security. It is a paramilitary border security operation that commenced in 2013 and was the Liberal-National Parties answer to people smuggling and border protection. The operation is setup with the objectives of, inter alia, turning back boats en route to Australia with people attempting to seek asylum in an unregulated way; and increasing the capacity of off-shore processing centres. It was a response to the increase of boat arrivals at the time. The policy was implemented following the Report of the Expert Panel on Asylum Seekers in August 2012 also known as a the Houston Report — see Angus Houston, Paris Aristotle and Michael L'Estrange, Expert Panel on Asylum Seekers, Department of the Prime Minister and Cabinet (Cth), *Report of the Expert Panel on Asylum Seekers* (Report, August 2012); Peter Billings, 'Irregular Maritime Migration and the Pacific Solution Mark II: Back to the Future for Refugee Law and Policy in Australia?' (2013) 20 *International Journal on Minority and Group Rights* 279.

18 Ibid 8. See also the decision of the Supreme Court of Justice of Papua New Guinea in *Belden Norman Namah, MP Leader of the Opposition v Hon Rimbink Pato, Minister for Foreign Affairs and Immigrations* (SC1497, SCA No 84 of 2013) that led to the order to close down the Manus Island Detention Centre.

19 The Medevac legislation enables the non-citizen in the regional processing country to be transferred to Australia if the transfer is recommended by two treating doctors who share the opinion that the transfer is necessary because of the need for treatment or further assessment.

20 Note that the Minister reserves the right to veto the decision to transfer a patient to Australia on security grounds and this is not appealable. For example, if the Minister knows that the person has a substantial criminal record and the Minister reasonably believes the person would expose the Australian community to a serious risk of criminal conduct.

21 [2019] FCA 946.

22 'Dutton ready to repeal asylum seeker medevac laws', *SBS News* (online, 3 July 2019) <https://www.sbs.com.au/news/dutton-ready-to-repeal-asylum-seeker-medevac-laws>.

23 *Plaintiff M106/2011 by his litigation Guardian, Plaintiff M70/2011 v Minister of Immigration and Citizenship* [2011] HCA 32 ('*Plaintiff M70/2011'*). See also Kate Ogg, 'A Sometimes Dangerous Convergence: Refugee Law, Human Rights Law and the Meaning of 'Effective Protection' (2013) 12 *Macquarie Law Journal* 109.

24 Sadako Ogata, 'State Security – Human Security' (Fridjof Nansen Memorial Lecture, UN House, Tokyo, 12 December 2001) 10 <http://archive.unu.edu/hq/library/Collection/PDF_files/UNU/publ-ogata.pdf>.

25 Ibid.

26 An assessment process was part of the transfer assessment requirement in the past. In the *Malaysian Solution Case* the majority upheld the need for the Minister to consider the relevant human rights standards before the irregular arrivals are transferred to another jurisdiction for offshore immigration processing. Subsequently, the Australian Government repealed, inter alia, the provisions of the *Migration Act* which the majority relied on, in particular s198(A)(3)(a), which dealt with the 'relevant human rights standards' that the Minister needs to consider in the decision-making process. See *Plaintiff M70/201* (n 23). See also Kate Ogg, 'A Sometimes Dangerous Convergence: Refugee Law, Human Rights Law and the Meaning of 'Effective Protection" (2013) 12 *Macquarie Law Journal* 109.

27 Ramesh Thakur and Edward Newman, 'Introduction: Non-Traditional Security in Asia', in Ramesh Thakur and Edward Newman (eds), *Broadening Asia's Security Discourse and Agenda: Political, Social and Environmental Perspectives* (United Nations University Press, 2004) 1, 4.

28 Ibid 52.

29 Asylum seeker Hamid Khazaei contracted a leg infection in the Manus Island detention centre and was declared brain dead within a fortnight. He died after series of clinical errors and delays, including a lack of antibiotics and a doctor's request for an urgent transfer denied by immigration official. Coroner found the Government had not met its responsibility to provide comparable health care to Australian standards, with the Manus Island clinic below benchmark: Josh Robertson, 'Asylum Seeker Hamid Khazaei's Death from Leg Infection Was Preventable, Queensland Coroner Finds' *ABC News* (online, 30 July 2018) <https://www.abc.net.au/news/2018-07-30/asylum-seeker-hamid-khazaei-coronial-inquest-death-preventable/10050512>.

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31 Taylor Owen, 'The Uncertain Future of Human Security in the UN' (2008) 59(1) *International Social Science Journal* 113, 127 <http://www.taylorowen.com/Articles/2008%20Owen%20-%20UN%20and%20HS%20chapter.pdf>.

32 Ibid.

33 Ibid.

34 Note, critics like Roland Paris have said that human security has no policy utility. However, Paris also states that 'one possible remedy for the expansiveness and vagueness of human security is to redefine the concept in much narrower and more precise terms, so that it might offer a better guide for research and policymaking': Roland Paris, 'Paradigm Shift or Hot Air?' (2001) 26(2) *International Security* 87. See also Astri Suhrke, 'Human Security and the Protection of Refugees' in Edward

Newman and Joanne van Selm (eds), *Refugees and Forced Displacement: International Security, Human Vulnerability, and the State* (United Nations University Press, 2003) 93, 104.

35 Peter Drahos (ed), *Regulatory Theory: Foundations and Applications* (Australian National University Press, 2017) 117, xxviii.

36 Ibid.

37 Ibid xxxii.

38 Kaldor Centre for International Refugee Law, 'The Medevac Law: Medical Transfers from Offshore Processing to Australia' (Factsheet, 5 March 2019) <https://www.kaldorcentre.unsw.edu.au/publication/medevac-law-medical-transfers-offshore-detention-australia>.

39 See also 'Codes, Guidelines and Policies', *Medical Board of Australia* (Web Page, 1 August 2019) <https://www.medicalboard.gov.au/Codes-Guidelines-Policies.aspx>. Note that in 2005 the Federal Government set up the Detainee Expert Health Advisory Group ('DEHAG'). DEHAG comprised of representatives of the Australian Psychological Society, Royal Australian College of General Practitioners, Royal Australian and New Zealand College of Psychiatrists, Australian Medical Association, Royal College of Nursing Australia, Federation of Associations of Survivors of Torture and Trauma, Public Health Association, Australian Dental Association, and a paediatrician from the Royal Australian College of Physicians. DEHAG was tasked with advising the immigration department about health and mental health services of asylum seekers in detention. It was eventually disbanded in 2013 due to experts reporting publicly on poor health care of detainees and the poor access to health care services. Although DEHAG was an independent entity it was operating under an immigration rule-based regulatory model which caused the tension when the professional bodies were applying the principle that governed their professional bodies when making recommendations.

40 Yogaratnam (n 6).

41 Hutcheon (n 13).

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