

## 7 Site Inspection: On Boats and Ships, their Appropriation for Flight and Migration

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### 7.1 WHAT CHARACTERIZES BOATS AND SHIPS AS VEHICLES?

Described as “a small buoyant structure for travel on water”<sup>1</sup> a boat can essentially be characterized by its ability to traverse bodies of water. To float on water is a boat’s property and condition. Yet, “travel on water” points, in fact, to more than the mere floating; first, it points to a directional movement, and second, to transportation. For, it is not the boat that travels; cargo or passengers travel *by water*, while the boat moves and carries *across water*. With its agency consisting in its ability to float and to transport cargo, the navigable boat thus allows for taking the liquid route. Facilitating mobility and transportation is an essential characteristic of any technology of movement; vehicles generally enable increased independence from a fixed place. Yet, what distinguishes boats and ships from other technologies of movement and transportation is the medium they are devoted to: the sea.

The sea – as the medium to be crossed and by which the boat is carried – places its own stamp on the journey and requires the vehicle to be fabricated in a certain way. While the sea, together with Archimedes’ principle,<sup>2</sup> governs the

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1 Merriam Webster, sub voce “boat,” at: <https://www.merriam-webster.com/thesaurus/boat> (accessed March 29, 2019).

2 Archimedes’ principle indicates that a body floats if its weight is equal to the weight of the liquid (water) it displaces with its volume. The force that drives the vessel down into the water (weight) equals the force that drives it up (buoyancy which is proportional to the displaced volume). The form of the bow plays a significant role, as it de-

watercraft's fabric and basic design, its functional use determines its size and facilities. Fishing vessels, canoes, yachts, dinghies are small, light and easily maneuverable vessels used for pleasure boating or fishing; they are suited for inland and coastal waters. The unwieldy container ships, tanker ships or cruise ships are deployed on international seagoing voyages; their enormous volumes are matched by (equally) massive bows. Overall, the relation between size, shape and utilization arranges itself around the capacity to float.

From the late 15th century onwards, this capacity made the modern venture of navigation possible. Maritime vessels were used to explore the globe, to enhance trade, to expand spheres of influence and to displace, exploit or exchange whatever found ashore. Considered iniquity or even blasphemy in ancient and pre-modern times, seafaring later took on a promising connotation (Makropoulos 1998: 56-57). The sea itself was no longer regarded from a distance as an arbitrary force, adverse to (spatial) orientation and characterized by unpredictability and "anomy" – that is, without legal force or binding effect (ibid: 56). In the course of the modern times, the sea could rather be experienced by sailing across it. Taking inspiration from the practice of seafaring adventures, the sea was seen as a challenge, as an element to be braved and mastered by means of navigation. Nautical metaphors thus changed fundamentally in meaning (Blumenberg 1997). Seafaring became the epitome of human curiosity and of a justified pursuit of happiness (Makropoulos 1998: 57). To this date, the ship stands for the extension of "the faculty and scope of human cognition and action" (Makropoulos 1997: 11).

It is noteworthy that the notion of 'ship' is not infused by acceleration in overcoming distances unlike other vehicles such as the airplane or car (Siegfried 2005; Geisthövel 2005). Seafaring rather symbolizes, first and foremost, the *practical* possibility of freedom.<sup>3</sup> It is not velocity that distinguishes boats and ships from other vehicles, but the possibility and (technical) suitability of an otherwise impossible endeavor: the crossing of the sea. In addition to being a technology of movement, boat and ships are enablers and facilitators, the latter in the most literal sense of the word. Similarly, Rebekka Ladewig (2005: 64) sees the common characteristics of all ships – maritime ships, airship, spaceships – in the

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termines how much water is displaced, e.g. in the case of bulbous bows. This will also determine how much additional cargo weight can be transported by the vessel.

- 3 In fact, while aviation symbolizes a rather intellectual freedom, navigation has been regarded as the practical venture through which freedom could be achieved (Makropoulos 1998: 56).

fact “that they enable humans by their concessive, enveloping and protective character, to move through elementary (natural) spaces and open them up as spaces of action and play.” In a sense, the proverbial ocean of opportunity can only be accessed by means of boats and ships. Lastly, boats, ships and vessels stand for the passage, middle passage, the transit, the route itself (Certeau 2013 [1984]: 121; Gilroy 2000). They transmit, transport and transgress; they not only facilitate but initiate.

In thinking about boats and ships there is always an encounter with the changing nature of the sea, its unpredictability, its perils and promises. Imaginations on the nature of the sea concomitantly evoke the phenomenology of seafaring, of being on board a vessel, which, in turn, underpin any imagining of boats and ships. Michel Foucault (1986 [1967]: 27) depicts a boat as “a floating piece of space, a place without a place, that exists by itself, that is closed in on itself and at the same time is given over to the infinity of the sea [...],” It is in this context, that Foucault characterizes the ship as the “heterotopia par excellence,” as “greatest reserve of the imagination” (ibid). While in Ladewig’s portrayal the relation between water and craft emphasizes access to opportunities and the protective character of the vessel, Foucault depicts it as a “piece of space” without external reference and completely at mercy of the ubiquitous sea. While the ship promises to cross the sea, to bring about an unknown, yet promising future, the sea advises caution. The ship promises, the sea admonishes.

### 7.1.1 The Medium of the Sea

Any maritime crossing fundamentally depends on the medium of the sea and its (weather) condition. In fact, while the vessel crosses the ocean, the water carries the craft. Even if the progress in navigational technologies – from compass to GPS, from wooden sailing ships to post Panamax ships – masks the intimacy between water and craft, the place element (Ger.: *Ortselement*) nevertheless requires alignment. The sea is a functional necessity and an essential threat to any vessel.

Following Simmel’s way of describing and analyzing space, the sea can be described as a purely sensual formation, which does *not* form itself in space.<sup>4</sup> It is surface or turmoil. Applying Deleuze’s and Guattari’s (2013: 479) portrayal of the qualities of the sea, seafaring can be envisioned as an encounter with affects.

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4 While the border famously is defined as “sociological fact, that forms itself in space” Simmel (1997 [1908]: 144).

Accordingly, seafaring can be described as an *experience of space* rather than an overcoming of it. According to the French philosophers “the sea is the smooth space par excellence” (ibid). As opposite to striated space, smooth space is mainly characterized by its incommensurability with measures and defined properties.

“Whereas in the striated forms organize a matter, in the smooth materials signal forces and serve as symptoms for them. It is an intensive rather than extensive space, one of distances, not of measures and properties. [...] Perception in it is based on symptoms and evaluations rather than measures and properties. That is why smooth space is occupied by intensities, wind and noise, forces, and sonorous and tactile qualities, as in the desert, steppe, or ice.” (Deleuze/Guattari 2013: 479)

It follows that the sea cannot be bound. Moreover, as aesthetic impression and lived experience, the ocean is undifferentiated; it does not show any landmarks to which the eyes can hold onto. With the sea being a smooth space, the seagoing vessel becomes itself a (land)mark, point of reference and sign of life. While the sea swallows and blurs, the vessel, its direction, route and cargo indicate the relations at stake.

### 7.1.2 On Boats, Ships and their Differences

According to a basic definition provided by the *Columbia Electronic Encyclopedia*, a boat is a “small, open nautical vessel propelled by sail, oar, pole, paddle, or motor.” It follows that the “use of the term boat for larger vessels, although common, is somewhat improper, but the line between boats and ships is not easy to draw.”<sup>5</sup> With regard to their utilization, however, boats are neither intended nor suitable for the open sea, which is both reflected by and due to their small bow. This relative unseaworthiness blends into legal definitions of both the term “boat” and “ship.”

The dominant negative classification for “ship” is that “on the one side, (motor)boats, floating docks, pontoons, and seaplanes [...] are not considered ships” neither are “boats or any yachts which are propelled by sails or oars” (Rah 2009: 59).

In her comparative examination of the meaning of the term “ship” in German, British, US-American, French and Greek legal texts, Heidi Engert-Schüler

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5 Columbia Electronic Encyclopedia, sub voce “boat,” at: <http://www.infoplease.com/encyclopedia/history/boat.html> (accessed March 29, 2019).

(1979: 59) extracts the overall definition that a ship “is an item of a not minuscule size [Ger.: *Gegenstand von nicht unbedeutender Größe*], which is suitable and dedicated for the sea” [Ger.: *zur Schifffahrt geeignet und bestimmt*]. The tautological definition – a ship is a vehicle capable of navigation – links the characteristics of a ship to its technical suitability (Ger.: *Eignung*) for the high sea. Yet, Engert-Schüler already conducts her analysis under the premise that the term ship refers to a sea-going vessel on international voyage (ibid: 26-29).

A ship is imagined against the background of the high seas which it crosses. Boats, in contrast, are used in lakes, coastal and internal waters. In our imagination, boats move in a placid, recreational scene; they are goods and chattels, the economical basis of local fishermen or sports equipment, linked to adventures. One of the few conceivable images of a small boat on the high seas is that of a life boat. A boat does not cross an ocean, nor does it push a frontier. It stays local as it generally returns to its place of departure. Ships, in contrast, are used to change location. Likewise, Engert-Schüler stresses that the prime characteristic of seafaring is not transportation but the change of location (1979: 58). The intention of seafaring, however, the crossing-over, the change of location may as well be pursued on a boat. This is to say that the suitability to travel the open sea (Ger.: *Eignung*) does not by implication comply with its dedicated purpose (Ger.: *Widmung; Nutzung*). A boat may be found on the open sea, too; yet, does it *ipso facto* turn into a ship? And what difference would it make?

In fact, international law attaches a variety of legal consequences to the factual finding that an “item is a ship” (Engert-Schüler 1979: 25). The rights and obligations defined in international maritime law apply to ships and not to boats, such as for example the right to innocent passage (Rah 2009: 15). However, technical qualifications do not suffice for the legal recognition of a watercraft to be a ship. Cargo has its bearing on the classification of vessels, too: the 1974 International Convention for the Safety of Life at Sea (SOLAS) defines a vessel that “carries more than twelve passengers” as a “passenger ship”<sup>6</sup> – *regardless of size*, as Patricia Mallia (2010: 35) points out.

According to the rights and obligations under the Law of the Sea,<sup>7</sup> a watercraft is only treated as a ship when flying a flag. The flag indicates the nationality of

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6 SOLAS, Chapter I, Regulation 2(f).

7 The 1982 United Nations Law of the Sea Convention (LOSC) is the most comprehensive interstate agreement on the rules and obligations concerning international seafaring. 91 countries have signed the LOSC; in 2013 the European Union also signed it.

ships (Gavouneli 2006: 206-209; Rah 2009: 17-18). By flying a flag, a ship indicates that it is registered with the respective state. However, ships cannot be registered with just any state and thus fly its flag. Art. 91 (1) of the Law of the Sea Convention (LOSC) stipulates that “[t]here must be a genuine link between the State and the ship.” When a ship bears a flag, it thus indicates a consented legal relationship: the flag bearing said state holds both legal authority over that vessel and its cargo as well as responsibility for it. By flying a flag, a vessel displays its jurisdictional reference, that is, the laws that apply on board as well as those of the state which then is obliged “to effectively exercise its jurisdiction and control in matters administrative, technical and social, ranging from the construction, equipment and seaworthiness of ships to the manning, labor conditions and the training of crews on board.”<sup>8</sup> A vessel is thus considered a ship when identifiable, that is, localizable with regard to its legal position in international relations.

What is relevant in this context is the question whether for the factual finding “item is a ship” flag state regulations should be recognized or not. In this regard, Sicco Rah deduces from the LOSC that “vessels that are not legally entitled to flying a flag [...] may not be regarded as ships.” (Rah 2009: 16) In contrast, Engert-Schüler argues that the reference to flag state is not appropriate, as not every item that wears a flag turns into a ship (Engert-Schüler 1979: 25). By means of her comparative analysis of legal texts, she proves that the suitability for the high seas and not the registration with or reference to a flag state is the most significant feature of a ship in legal understanding (ibid: 25-26, 59). Reviewing the understanding of the term ship in both the texts of the LOSC, in different multilateral international agreements, as well as in German maritime law, Inken von Gadow-Stephani minimizes the definition even further: she argues that one should act on the assumption of a ship “if an item serves the locomotion on water” (2006: 19-26, here: 26). She accordingly defines “ship” as an item “that can move by floating” (Ger.: *der sich schwimmend fortbewegen kann*) (ibid: 23). This definition does not distinguish between boats and ships. Gadow-Stephani places emphasis on the mere ability of the floating movement on water – and not to the suitability for the high seas. Thus, she does not see the prerequisite for the applicability of rights in a technical qualification, but a physical ability and moving presence on water.

Ultimately, ships are not considered independent legal entities. This holds true despite diverse (metaphorical) conceptions of a ship as legal territory, and contrary to common references to the rights of a ship (Rah 2009: 15). Ships are

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8 LOSC Art. 94.

no subject of international law. As vehicles they are rather “merely movable objects [Ger.: *lediglich bewegliche Sachen*] in the ownership and possession of states or international organizations” (Gadow-Stephani 2006: 19). It follows that the rights of a ship are rights which states grant each other (Rah 2009: 21).

By implication this also means that the recognition of a vessel as ship brings state politics to the table. When, in turn, the vessels used for maritime migration are regularly depicted as boats, this might also serve to circumvent international politics. This aspect will be elaborated further below.

When addressing the characteristics of boats and ships as technologies of mobility, its technical specifications and requirements can be distinguished from the legal terminology of the term ship as well as from the metaphorical reference to boats and ships. In all three contexts, boats and ships are treated unequally although a clear definition of their distinguishing features is lacking. The only recurring distinction between boats and ships is their size as the technical condition of seaworthiness. Other technical classifications blend into legal references, and vice versa. Together they serve as a basis for claiming or rejecting obligations and competences toward the vehicle and its passengers. As this study is interested in the reference to boats and ships in the context of EU border surveillance and control practices, it is not important to distinguish between boats and ships by definition; nor will I maintain a defined separation between boats and ships. This section rather reveals that the description of a vehicle is simultaneously a negotiation of competences and obligations toward its (in)animate goods.

## 7.2 APPROPRIATION OF BOATS AND SHIPS FOR FLIGHT AND UNAUTHORIZED MIGRATION

As vehicles, boats and ships generally assist in traversing maritime distances. If, however, the purpose of the change of location is flight or clandestine migration, this later appropriation impacts upon the condition of the itinerary, its organization, its departure and arrival, the fate of the human cargo and on the vehicle itself. Seaborne escape and migration is hardly “travel by water.”

Correspondingly, the suitability of the vessel is not only directed to seafaring alone. The purpose of flight or clandestine migration has its own bearings on the suitability of the vessel. Boats and ships that are appropriated for the purpose of flight or clandestine migration are compromised by a dual, yet ambivalent, sometimes conflicting suitability (Ger.: *Eignung*): for the purpose of clandestine seaborne migration small boats are, for instance, more suitable than ships, as it is more difficult to detect boats amid the waves. In terms of seaworthiness, howev-

er, small boats are not suited for the open sea. Furthermore, the condition and thus seaworthiness of a vessel is thwarted by the profitability of commercialized migration.

The following section illustrates and examines the implications of dual suitability. Under the premises that the vessel appropriated for flight and clandestine migration incorporates this dual suitability, a site-inspection, which focuses on the practicalities and experiences of flight and migration by boat, gains strategic relevance. Starting with the earliest appropriation of boats and ships in the context of the Indochina Refugee Crisis, I intend to explore the characteristic difference the boat makes as a means of movement in the context of unauthorized migration.

### **7.2.1 Boats and Ships as Appropriated during the Indochina Refugee Crises**

Since the systematic use of vessels for the purposes of escape during the Indochina refugee crisis, the “refugee boat” can be considered a particular *type* of vessel: a vessel classified by its (human) cargo. The boat, in turn, gives name to the passengers it transports: the boat-people. Moreover, the vehicle leaves its mark on the person: even after disembarking “an encounter with travel follows you around. Long after your journey is finished you remain a boat person” (Walters 2011: 5).

The term “boat-people” was coined during the Indochina Refugee Crisis following the Vietnam War. The communist takeover of the three Indochinese countries Vietnam, Cambodia and Laos in 1975 forced approximately three million people to seek refuge in neighboring Southeast Asian countries over the next two decades.<sup>9</sup> According to UNHCR’s statistics, about one fourth of these refugees, which amounts to 796,310 persons, were Vietnamese refugees who escaped by boat.<sup>10</sup>

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9 Various studies on the Indochina Refugee Crises attempt to quantify and classify the number of refugee during that period Robinson (1998: 2), Davies (2008: 85), Thompson (2010); Wain (1981: 42). However, all note that these numbers can only be minimum estimates, as thousands are believed to have perished en route and in the hands of pirates.

10 UNHCR (2000): *The State of the World’s Refugees: Fifty Years of Humanitarian Action*, Chapter 4 (Flight from Indochina: 79-105, here p. 98 and 102) at:

When forces of the communist North marched into Saigon in April 1975, American forces attempted to evacuate Vietnamese people by airlifting them from the rooftop of the American embassy. Between April 21 and 29, 1975, 35,000 Vietnamese were to be flown out (Vo 2006: 65). The Pentagon “positioned more than two dozen aircraft carriers, destroyers, and merchant marine vessels off the Vietnamese coast” (Robinson 1998: 18). When on April 30, Saigon was taken by the communists, airlifts became impossible, and escapees used “supply and patrol boats, landing craft, fishing boats, trawlers, tugs, ferries, and anything that could float” (Vo 2006: 70) to flee Saigon. The then US President Gerald Ford ordered the ships of the U.S. Seventh Fleet to drop anchor outside Vietnamese territorial waters and take escapees on board (ibid: 3). The exodus was an emergency evacuation, with scarce logistical resources and no time left.

Reports of the sea being crowded with “overloaded fishing boats and other small craft” (Thompson 2010: 28), of Vietnamese fishers setting their boats on fire to force the US Navy to take them on board illustrate the precipitous exodus that the Vietnamese reportedly called “the running” (ibid: 27). The staggering number of 60,000 refugees over several days is tangibly illustrated in depictions of the US Navy having to hoist people aboard using cargo nets instead of ladders, which proved infeasible given the scores of people trying to climb them. Moreover, the limit of persons to be taken aboard US ships was raised several times (Vo 2006: 70).

Considering the haste in fleeing Saigon aboard “anything that could float” (Vo 2006: 70), the appropriation of boats and ships in this context occurs within the framework of an emergency situation: for the appropriation of boats and ships this meant that the characteristic of “floating” was enough. In this situation, boats were not a means of first or last choice, but rather *the* last resort. The fact that during evacuation no attention was paid to ensure the escape of high-risk persons, that is, “Vietnamese who work for any element of the US mission” (Robinson 1998: 17), illustrates not only the time pressure and urgency of the evacuation but also its indiscriminate operationalization. There was no triaging or classification; there were contingents of Vietnamese to be fitted on ships. Those taken on board US ships were taken to the US military base in Guam, where arrangements had been made to process 50,000 Vietnamese. Most of them were relocated to the US.

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<http://www.unhcr.org/4a4c754a9.html> (accessed August 27, 2019), [hereafter cited as UNHCR Report (2000): Flight from Indochina].

Overall, in that situation, the sea was the last open route, and floating vehicles the only suitable option to take said route. However, those sea-lifted Vietnamese refugees were never described by the term boat-people, neither by the American forces nor by UNHCR. The Vietnamese were referred to as refugees, evacuees, or simply as the Vietnamese people. The appropriation of boats and ships in this context was spontaneous and functional rather than strategic. Even though fishing boats and other watercraft had been used to escape, and even though this image of fleeing Saigon by sea determined the image of the evacuation, this scenario did not elicit the term “boat-people.” The peculiar hybrid of the “boat-people” is not the product of an emergency situation and does thus not carry its notion of urgency and final run.

### 7.2.2 “Boat-People”: An Evasive Term

However, following the ad-hoc mass evacuation, the mode of escaping by boat continued. While UNHCR registered 378 boat escapees landing on neighboring shores in 1975, their number increased to 5,247 in 1976, and rose further to 15,690 over the next few years (Wain 1981: 42).

In retrospect UNHCR described its “initial reaction” as “to treat these movements as the aftermath of war rather than as the beginning of a new refugee crisis.”<sup>11</sup> Yet, the increasing number of individuals fleeing Vietnam by sea rendered a clarification of their refugee status and the subsequent processing necessary; especially so, since neighboring Southeast Asian states were increasingly reluctant toward allowing Vietnamese refugees to land on their shores. Already in 1975, UNHCR mentioned difficulties in “ensuring that Indochinese people seeking asylum by boat would be rescued at sea or provided with asylum upon arrival in Southeast Asian states” (quoted in Davies 2008: 89).

Despite these concerns, UNHCR did not grant *prima facie* refugee status<sup>12</sup> to the people leaving Vietnam. Even more irritating was that “there was no mention

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11 UNHCR Report (2000): Flight from Indochina, p. 81.

12 “*Prima facie* refugees is a term used to identify a large number of people fleeing events in which they may not have actively participated, but fear the consequences for themselves and those around them if they do not flee, it also takes into account those that have been personally threatened or persecuted. In contrast to individual refugee status granted under the 1951 Convention, *prima facie* refugee status is used in situations where individual screening is not possible, though this does not preclude eventual individual screening for refugee status.” (Davies 2008: 20).

of refugees at all in the earliest communications between UNHCR and Southeast Asian states in the immediate aftermath of the Vietnam war” (Davies 2008: 90). In 1975 and 1976, the Indochinese were regarded and referred to as displaced persons by UNHCR and Southeast Asian officials alike (ibid: 91; Robinson 1998: 20-25).

The year following, the term boat-people came to be used in negotiations between Southeast Asian government officials and UNHCR. The first official documents referring to Vietnamese refugees as “boat-people” were UNHCR’s Weekly Notes in 1977 in which the organization summarized “the increasing denial by Southeast Asian states to ‘boat-people’ arrivals unless the UNHCR guaranteed that the asylum seekers’ asylum would be temporary only” (quoted in Davies 2008: 93, fn. 38). In October 1977, Thailand, the Philippines and Indonesia requested during different meetings of the United Nations General Assembly to treat the problem of the so-called boat-people as a global one. Arguing that allowing boat-people to land might attract an even greater influx, Southeast Asian governments justified their rejection of Vietnamese refugees (ibid: 93).

The term boat-people thus was either inadvertently or purposefully used in a period during which both UNHCR and the receiving neighboring countries avoided calling or classifying the Vietnamese as refugees. UNHCR’s continuous efforts to have Southeast Asian governments sign international refugee law, namely the 1951 Refugee Convention and its 1967 Protocol, limited the pressure UNHCR could possibly put on those countries’ governments with regard to taking on the increasing number of Indochinese attempting to arrive by boat. Considering this, it seems plausible that UNHCR therefore refrained from granting *prima facie* refugee status and from using the term “refugees.” The United States, in contrast, pushed toward calling the people fleeing Vietnam, Cambodia or Laos, refugees. In response to UNHCR’s evasive rhetoric, the US representative Haugh was considered to rather “dropped [...] large hints about what he found missing from the discussion” (Robinson 1998: 22).

“The refugee [...] fled from his homeland as an individual who had been deprived of his human rights and it was noteworthy that the High Commissioner directed his program of international protection and material assistance to the refugee as an individual and that each project was geared to the rehabilitation of the refugee and the restoration of his faith and hope in humanity.” (quoted in Robinson 1998: 22)

However, Davies (2008: 94) points out that commentators also interpreted the US’s prompt recognition of a *prima facie* refugee status as a justification for

waging war against communism in the region. The many refugees were taken as proof of an inhumane and authoritarian communist regime.

In this atmosphere of terminological vagueness, typical of negotiations, the term boat-people might have been “inadvertently coined,” as Martin Tsamenyi (1983: 348) argues. As it were, the term became utilized as it put, in a descriptive fashion, a visual image into language. Moreover, the term summed up the practical common denominator of those Indochinese who fled by boat as their classificatory characteristic and attribute: they came by boat; or rather, they were in a boat and needed to land somewhere. As UNHCR and Southeast Asian government officials came to use the term “boat-people” to avoid using the obliging term “refugee,” the periphrasis boat-people also echoes this hesitation and indicates a latent doubt of the refugee status of persons on board a certain type of vessel. At first glance, this might appear to merely suspend the refugee debate; yet, it restructured the international response toward the emerging Indochinese refugee crisis and its protagonists: the boat-people. In fact, the concrete setting of ‘a group of people in a boat at sea’ opened up new arguments and provided time and space for negotiations.

Meanwhile, Thailand, Malaysia and Indochina increasingly turned away boats from their shores; this pushback put pressure on the international community to address the issue as a global one. At the same time, boat-people ended their state of uncertainty at sea by provoking a distress situation. Barry Wain reports in his monograph *The Refused* that it was a “common but dangerous practice to hole their boats so they would be allowed to land” (Wain 1981: 65). Yet, the reluctance of Southeast Asian states to admit Indochinese boat-people not only occurred in avoidance of legal obligation and in keeping local hostility toward the Indochinese at bay. It was also an expression of a growing skepticism that the new government in South Vietnam was not only actively “exporting refugees” (Thompson 2010: 162) but was also profiting from it. And, in fact, an unofficial “pay-as-you-go policy” (Robinson 1998: 41) perpetuated the exodus of ever more Vietnamese, most of them ethnic Chinese who were “invited” to leave and charged for this option. Underlining their doubt in the genuine refugee status of the boat-people, Southeast Asian officials thus started to refer to them as “illegal migrants.”

When in 1978 “several of the boats arriving on the shores of countries in Southeast Asia were not small wooden fishing craft but steel-hulled freighters chartered by regional smuggling syndicates and carrying over 2,000 people at a

time”<sup>13</sup> the increasing irritation led to forceful refusals. Southeast Asian countries argued that a prerequisite for a temporary asylum of refugees on their shores was the guaranteed permanent resettlement in other countries of the international community. Temporary asylum was thus traded against permanent resettlement. The two situations involving the freighters *Southern Cross* and *Hai Hong*, which I will address in the section following, catalyzed this kind of international policy arrangement, which became known under the phrase “an open door for an open shore.”

### 7.2.3 The Southern Cross and the Hai Hong Incidents

The voyages of the coastal freighters *Southern Cross* and *Hai Hong* came to be remembered as “the first organized refugee movement involving a non-Vietnamese vessel” (Wain 1981: 18)<sup>14</sup>. The incident of the *Hai Hong* was tangible evidence that the transport of refugees had turned into an organized and profitable business. And still, this did not clarify but rather intensify the international debate over the refugee status of the persons on board.

The refugee pick-up of the *Southern Cross* was arranged by the Vietnamese businessman Tay Kheng Hong. Tay used his business and government contacts and convinced the managing director of Seng Bee Shipping, Chong Chai Kok, and the Finnish sea captain, Sven Olof Ahlqvist, who possessed a Singaporean employment pass, to use the 850-ton Honduras-registered freighter for the commercial transport of Vietnamese passengers. When the *Southern Cross* left Singapore on August 24, 1978, it was empty and supposedly going “to collect a cargo of salt” in Bangkok (Wain 1981: 18). Instead, the freighter docked in Ho Chi Minh City, formerly Saigon, and picked up 1,250 people who had paid the Vietnamese authorities six to eight pieces of gold (ibid: 21), which roughly amounts to 1,500 Euros today. The involvement of local authorities at the very least is demonstrated in the below description of the logistic arrangements for embarkation:

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13 UNHCR Report (2000): Flight from Indochina p. 82.

14 The description of the two voyages mainly follows Barry Wain’s detailed examination. The earliest account of the two incidents dates from 1979 and is provided by Bruce Grant’s (1979) investigation *The Boat People*. Larry Clinton Thompson’s (2010) account offers further insights of the US perspectives on both the freighters’ incidents as well as on the Indochinese Exodus in general.

“[T]he *Southern Cross* had received red-carpet treatment when it went to collect its cargo. A Vietnamese government pilot launch came alongside; the pilot boarded the *Southern Cross* and guided it up the twisting Saigon River to a berth in Ho Chi Minh City. The ship was supplied with fresh water and vegetables, guarded by troops patrolling the wharf and guided by the same pilot to the collection point in the following day. The pilot and three armed soldiers spent the night on board. In Ho Chi Minh City, Tay had been taken to a restaurant for a meal with civilian officials. On its departure the *Southern Cross* was allowed to fly the red-and-yellow Vietnamese flag, had the benefit of the pilot’s services until it was two hours in the open sea and was not challenged by Vietnamese security patrols.” (Wain 1981: 21)

The refugee-freighter was escorted by government officials out to the open sea. Once it reached international waters, the Captain radioed that his freighter had rescued 1,220 Vietnamese “in international waters from four large fishing junks” (Wain 1981: 18-19) and wished to put them ashore immediately in Malaysia. The Malaysian government refused permission for the vessel to land and escorted it out of its territorial waters again. Singapore, too, refused to accept the vessel. The crew of syndicates, which had already left the freighter when the distress call had been sent, rejoined the ship together with a load of additional water, food and fuel sent by the shipping company as the vessel was stranded at sea. Almost one month after its departure, on September 21, 1978, the *Southern Cross* had drifted into Indonesian waters, where Ahlqvist “beached deliberately on Pengibu Island” (ibid: 19). Even though Indonesian authorities suspected that the captain of the ship might attempt to solve the dilemma over the refugees by purposely grounding the vessel in order to capitalize from the situation with regard to insurance; however, “a trade in refugees never occurred to them – or to anyone else” (ibid). Doubt was cast on the patterns of navigation, rather than on the status and the circumstances of the passengers. This changed with the second set of deceptive maneuvers the same group of syndicates launched with the *Hai Hong*.

Tay again organized a freighter through his contacts at Seng Bee Shipping, employed the Indonesian Sunsun Serigar as new captain and registered the “aging coastal freighter” (Wain 1981: 16) with Panama for a month. It had been arranged that 1,200 refugee passengers would be picked up by the *Hai Hong*. This time, there was no red-carpet treatment; Vietnamese officials instead expected the *Hai Hong* to take an additional 1,300 passengers aboard. They enforced their demand by threatening to arrest the crew and its captain and by blocking the ship’s exits. On October 24, 1978, the heavily overcrowded *Hai Hong* left the

port of Saigon with approximately 2,500 passengers on board, the vast majority being ethnic Chinese.

With engine trouble and a typhoon endangering the voyage, the captain corrected his northward course and directed the *Hai Hong* toward Indonesian archipelagos. When on November 2, 1978, the captain of the *Hai Hong* radioed to the Eastern South Asia regional office of UNHCR in Malaysia, he briefly reported “that he was in Indonesian waters with more than 2,000 refugees on board” (Wain 1981: 23; Thompson 2010: 150). Later the same day, the captain sent another radio message to the UNHCR office in Kuala Lumpur in which he provided more details:

“He said the *Hai Hong* was Panamanian-registered, Singapore-owned. [...] [I]t had been en route from Singapore to Hong Kong when, on October 23, it had developed engine trouble near Lincoln Island in the Paracels. The following day it had been boarded by more than 2,000 refugees from between 10 and 15 smaller boats.” (Wain 1981: 23)

The reported chronology, however, attracted suspicion. Why would a captain wait an entire week to inform UNHCR after having picked up such a large number of refugees, and why would he first change his course? Furthermore, most practical doubts emerged as it seems implausible that “2,000 Vietnamese [had] managed to gather at one place in the middle of an ocean, 225 miles from the coast of Vietnam, as Typhoon Rita stirred the seas and sent much larger vessels scurrying for shelter” (Wain 1981: 23). This and further inconsistencies lead to official investigations. Both the Australian and Southeast Asian governments as well as UNHCR were deeply disturbed by the level of commercialized and organized refugee trade for which the voyage of the *Hai Hong* provided evidence. In his short statement of November 3, Rajagopalam Sampat Kumar, Regional Representative of UNHCR, expressed concerns about an illicit market of people trafficking from southern Vietnam which would jeopardize UNHCR’s assistance for “genuine refugees.” Amongst policy makers in Canberra it was even concluded “that the *Hai Hong* venture must fail and that its failure must stand as deterrent to any similar enterprises in the future” (ibid: 27).

On November 6, the *Hai Hong* was driven from Indonesian waters. When on November 9, the freighter dropped anchor again, it did so twelve miles off the Malaysian Port Klang. At that time, it was flying the Malaysian flag.<sup>15</sup> While

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15 During the investigation, it turned out that the *Hai Hong* was formerly “registered in the Malaysian port of Penang” (Wain 1981: 29) under its original name, *Golden Hill*.

Sampatkumar made efforts to board the *Hai Hong* and assess the situation of the people on board, the government in Kuala Lumpur ordered the ship out of Malaysian waters. It was made clear that “if the ship proved obstinate the government would take all steps necessary to force it beyond territorial waters” (Wain 1981: 32).

Meanwhile pictures and documentaries of the *Hai Hong* – of more than 2,000 thirsty and devastated people, cramped on a scrap-metal vessel in the middle of the ocean – began to spread in Western media. Shock and sympathy might have triggered the relatively quick commitment to “take” the boat-people from the *Hai Hong* and resettle them as refugees. Word was again passed to UNHCR. Sampatkumar, who, in fact, was increasingly worried about UNHCR’s poor access to the freighter and the poor health of some of the *Hai Hong* passengers, seemed to reverse his opinion overnight. UNHCR officially declared that it considered the passengers of the *Hai Hong* as refugees (Wain 1981: 32-33). It was added from UNHCR headquarters that “in the future, unless there are clear indications to the contrary, boat cases from VietNam be considered prima facie of concern to UNHCR.”<sup>16</sup> With 657 *Hai Hong* passengers resettled in Germany, 604 in Canada, 897 in the United States, 222 in France, 52 in Switzerland, nine in New Zealand and eight in Australia, the new category of the humanitarian refugee was created.

The shift in perspective is remarkable: the humanitarian eye was not geared toward refugees from war or an authoritarian regime, but toward people on a boat. While official political discourse in the region evaded and protracted the decision on the refugee status, Western policy makers rather discussed the situation aboard the *Hai Hong*, the dangers of the seaborne escape, the bad condition or unseaworthiness of refugee vessels. The boat was referred to as a mirror of the misery of the Vietnamese people. Their immediate neediness consisted in being aboard an overcrowded and unseaworthy vessel. The urgency to do something was manifest in the bad condition of the vessel.

With the voyage of the *Hai Hong* ending successfully for the Vietnamese refugee, two more ships followed: the *Tung An* with 2,300 Vietnamese on board, and the *Huey Fong* with more than 3,000 passengers on board. And again, the situation on board was protracted until coastal states received assurance that the refugees would be resettled elsewhere after disembarkation (Thompson 2010: 151). Yet, these were almost the final larger ships from Vietnam. “Thereafter,

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16 Quoted in UNHCR Report (2000): Flight from Indochina, p. 83.

refugees turned to flight in smaller craft and at a much greater risk, hoping to sneak ashore in one or another Southeast Asian country” (ibid). Robinson assumes that the “organizers learned that big ships drew too much attention and began to abandon them for smaller vessels” (Robinson 1998: 32). Similarly, Grant notes that the “attraction of the freighters was that they were safer, minimizing the dangers of piracy and death at sea. The use of cargo ships gave the whole exodus a higher profile, and led to a more thorough investigation of the system that brought paying refugees out of southern Vietnam” (Grant 1979: 116). Likewise, Singapore’s Prime Minister, Lee Kuan Yew, commented in 1979 that the “latest exodus of ‘boat-people’ and ‘ship-people’ [was] the result of acts of cold calculation, measured in gold” (quoted in Thompson 2010: 162). And in fact, the profitability of trafficking refugees is more evident in the cases of cramped freighters.

During the late 1970s the image of rickety and cramped vessels became an emblem for grief and suffering in the Western media, which ultimately catalyzed the establishment of the humanitarian refugee and justified resettlement quotas. Escape by boat was taken as proof of neediness and refugee status. Yet, among Southeast Asian countries, it is precisely the neediness of Vietnamese boat-people which was contested. Until today, and also transferred to the European context, both trajectories meet in the expression boat-people and the image of the overcrowded and unseaworthy refugee boat.

### 7.3 WHAT DIFFERENCE DOES THE BOAT MAKE?

With unauthorized migrants and refugees on board, boats and ships can thus be distinguished with regard to the level of international politics they can trigger. Boats not only “sneak ashore” (Thompson 2010: 151) and thus signify the possibility of an unauthorized, unsighted entry, they also escape open international diplomacy if not conflict.

Ships and freighters not only attract more attention due to the mere number of passengers they can carry. They also involve, by means of their technical and legal references, legal obligations, business ties, and the question of state jurisdiction over the vessel and its cargo. Yet, does it in fact make a difference, whether refugees are on a boat or ship?

Lee Kuan Yew’s statement cited above in fact implies at least a symbolic difference between “boat-people” and “ship-people.” A freighter is a bold hint to the commercialized structure of facilitated maritime migration, and the genuine status of the refugee is ever more questioned on a ship than on a boat. In these

cases, the state of the vessel as unseaworthy – and in this case unseaworthiness can be due to the fact that the vessel is simply too small for the high seas or due to its poor condition, being rusty, rickety, made of scrap metal – becomes a proxy for the neediness of the passengers on board. The vessel signifies urgency, while the recognition of an eventual refugee status is protracted.

Size and seaworthiness, the two main distinguishing features between boats and ships, are thus turned on their heads by the appropriation of vessels in the context of flight and migration: while the size of the ship (it cannot be small) and the seaworthiness qualify a vessel for international voyages, a small or unseaworthy boat is what qualifies its passengers for international protection.

What can be observed for the case of the refugee boat is a dual, yet ambivalent, sometimes conflicting suitability (Ger.: *Eignung*) which not only responds to the nature of the sea, but also to the nature of international refugee policies.