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Refugee Policy is a Realist's Nightmare: The Case of Southeast Asia

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Abstract

Although Southeast Asia has experienced one of history's most complex and massive displacement of populations during the Indo-China crisis, it remains one of the least advanced regions in terms of refugee law and practice. This paper explains the region's compassion fatigue towards refugees. States' responses to refugee protection are limited by a prevailing sense of sovereign rights and communalism in the region, and the primordial need to safeguard national interest and state security. Other factors include lessons from the Indo-Chinese exodus, the underdevelopment of some economies, and a general poor record of human rights in the region.

Keywords: Refugees; Southeast Asia; Realism; State security.

National Interest, State Security and Refugees

Lee Kuan Yew, Minister Mentor of Singapore once remarked, "You've got to have calluses on your heart or you just bleed to death." (Lloyd, 2000) Lee, then Prime Minister of Singapore, made this comment in response to the arrival of Indo-Chinese refugees in the 1970s.[2] If his expression en-

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[2] The Indo-China crisis occurred in the aftermath of U.S. withdrawal from Vietnam in 1975. Between 1975 and 1995, more than 3 million left the three countries of Indo-China – Cambodia, Laos and Vietnam. The sheer scale and complexity of the massive displacements of populations make this period one of the most definitive moments in the history of refugee flows (Robinson, 1998, p. 272).

capsulates the attitudes of most state leaders and governments in the region towards humanitarianism, then the manifestation of this is in the apathy displayed by Southeast Asia during the humanity disaster that befell East Timor in 1999. Not only did the Association of Southeast Asian Nations (ASEAN) fail to act swiftly to avert or alleviate the outbreak of mayhem and deaths in the aftermath of the East Timor election, it did not publicly condemn the Indonesian government for the orchestrated atrocities committed on innocent civilians.

The word "refugee" conjures up an image of someone who has entered the country by clandestine means, who is seeking to take advantage of the wealth of the host country, and who has little regard for the rule of law or national interests (Dauvergne, 2003, p. 9). In Southeast Asia, due to the lack of a refugee policy, the refugee or asylum seeker is often perceived as an "illegal migrant", or at times, a "criminal" or "terrorist" (Kuppusamy, 2003; Pang, 1998, Tan, 2001). They are: the 140,000 Burmese refugees and some Hmong refugees from Laos in Thailand; hundreds of ethnic minority Montagnards from Vietnam in Cambodia; Iraqi refugees and Afghan asylum seekers in Indonesia; and refugees from Aceh, Bosnia-Herzegovina, Iraq, Palestine, Africa and the Moro refugees from Southern Philippines in Malaysia. Sovereignty and domestic security are central concerns of Southeast Asian countries and viewed as fundamental to state survival (Beeson, 2003). This is because most countries in the region are still undergoing the precarious process of state building, political consolidation and economic development. Forced migration can be a threat to "state boundaries, political institutions or governing structures" and therefore has the potential to 'bring down' or 'weaken' state structures (Milner, 2000, p. 12). In addition, unwanted refugees and migrants may create ethnic, cultural or religious tensions within the host population, and compete for scarce jobs, economic resources and social services with the host community (Milner, 2000, p.17). Threats to socio-political stability are especially poignant if the refugees and migrants are perceived as distinctively alien from the local population.

Moreover, there is a prevailing fear that granting rights to refugees will only attract more of them, which will in turn result in the abuse of the system by economic migrants, transnational organized syndicates, and terrorists. In certain situations, a neighbouring country may exploit a country's generous immigration policy and engage in the dumping of its unwanted people. Hence, ruling regimes fear that anti-government groups or opposition political parties will seize advantage of popular discontent against a sizeable group of "unwelcome" aliens, resulting in violence, social disorder or even a change in the political regime (Weiner, 1995, p. 175). This point was neatly encapsulated in the speech of Singapore's former Minister for Foreign Affairs, S. Rajaratnam at the height of the Indo-China refugee crisis:

> *…the refugee question can at a certain point become the responsibility not of the country where the refugees originated, but of others who are expected to take it over. There are many more millions of refugees outside Southeast Asia. If this be the case, they will insist that the same consideration and solution proposed here, be extended to the refugees to be settled elsewhere – as a matter of right. Can we make a distinction between the two? There are many in Africa, perhaps 3 million – are we going to make a distinction if they seek to be so treated? … Supposing a country says, "Yes, we also insist that our citizens be so settled," or if any country wants to get rid of its population or sections of its population, are we going to accept this precedent that once a country disavows responsibility then we should take over the responsibility?[3]*

To policymakers in Southeast Asia, it is dangerous to view the refugee problem purely in humanitarian terms. Sovereignty and domestic security remain jealously guarded and viewed as fundamental to state survival in Southeast Asia (Beeson, 2003; Funston, 2000). Sovereignty underpins Southeast Asia's adoption of realism as a political approach

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[3] Speech by S. Rajaratnam, Minister for Foreign Affairs, at the United Nations Meeting on Refugees and Displaced Persons in Southeast Asia in Geneva, 20 July 1979.

in what they perceive to be an anarchical global environment (Acharya, 1999). Although realism is not unique to Southeast Asia, it helps explain the policies of many political leaders in this region with regards to refugees (Muntarbhorn, 1992). Therefore, having a refugee policy may be a nightmare for the "realist" state leader or government in Southeast Asia, with the worst possible consequence of the loss of power and control.

Realism and Refugees

Realism rests on five main assumptions: 1) states are major actors; 2) states are unitary rational actors; 3) international anarchy shapes the motives and actions of states; 4) states are preoccupied with power and security; and 5) prospects for cooperation are limited (Grieco, 1993, p. 118-119). Sovereign states guided by realist principles are prepossessed with state security and national interests, and are constantly mindful of the relative gains of both themselves and of their adversaries during cooperation or competition.

Realism explains the reluctance of most states in admitting too many asylum seekers and readily granting them refugee status.[4] In a realist's world, moral imperatives are limited and easily derived. One of Machiavelli's chief lessons for the prince is that a leader must learn to deal with the world as it is, not as he wishes it to be (Kegley, 1995, p. 318). We may therefore interpret the realist's concern with state security to mean the need to tighten border controls, prevent human smuggling and trafficking, and restrict or turn away asylum seekers who are fleeing poverty or a war. A large influx of refugees or unwanted migrants can strain the economy, upset a delicate ethnic balance, exacerbate existing internal tensions, or threaten political stability at the national or local level. The rational and calculating statesman cannot

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[4] With regards to refugees, this paper does not distinguish between realism and neorealism because both agree on crucial issues such as the meaning of international anarchy, its effects on states, and the problem of cooperation.

afford to jeopardize his position of power as a result of respect for moral principles (Weiner, 1995).

It can be argued that opening borders risks endangering both domestic security and economic development of any country. The desire to assert autonomy and self-governance, and the twin challenges of nation building and economic development, have led political elites in Southeast Asia to embrace realist principles as a linchpin for policymaking and governmental practices.

Human Rights and the Refugee Convention

It appears that the realist emphasis on sovereign rights, state security and national interest is at odds with the liberal universal emphasis on humanitarianism and human rights and, hence, refugee protection based on the notion of human security. The principal sources of protection for refugees are the United Nations refugee treaties, the 1951 Convention Relating to the Status of Refugees, and its 1967 Protocol.[5] Of the 10 members of ASEAN, only Cambodia and the Philippines are signatories to the 1951 Refugee Convention and its 1967 Protocol. It is unlikely that other states in the region would sign and ratify the UN Refugee Convention and its treaties any time in the foreseeable future, after more than half a century of disinterest.

The reasons against Southeast Asia's recognizing the rights of refugees and according them protection are complex and interlocking: First, there is a poor record of states in Southeast Asia to adopt any international standards related to human rights. This can be attributed to the fear of Western cultural imperialism and external interference in what are considered matters within domestic jurisdiction. Governments and political leaders in Southeast Asia regard as primordial state sovereignty and non-interference in the domestic affairs of their countries and that of other countries. There

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[5] As of March 2006, the total number of State Parties to the 1951 Convention and its 1967 Protocol is 143. The 1967 Protocol removes the geographical and time limitations of the Convention. See the official website of the UNHCR <http://www.unhcr.org>

is a strong belief that international norms should be subjected to regional and national "particularities" (Muntarbhorn, 2002, p. 5). For example, economic, social and cultural rights are emphasized over civil and political rights. Primarily, this is because many countries in Southeast Asia remain beleaguered by poverty and under-development. Civil and political rights are luxuries that only people in developed countries can enjoy. The pressing task for developing countries (in Southeast Asia) is to guarantee the people's right to means of subsistence by economic and social development (Inoue, 1999, p. 34). In Southeast Asia, only the Philippines and Vietnam have acceded to key human rights treaties, such as the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, and their Protocols.[6] Only the Philippines is signatory to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families 1990. However more countries have showed greater fervour in signing up to the Convention on Transnational Organized Crime 2000 and its Protocols on human trafficking and smuggling. The only treaty to which all Southeast Asian countries are parties is the 1989 Convention on the Rights of the Child. Even so, there is a tendency for Governments in the region to make broad reservations to limit their acceptance of rights or reject some rights outright.

Second, the legislation and practice of a country's immigration policy is highly complex and constantly evolving. Hence, countries are reluctant to enter into multilateral commitments in the area of policy on foreigners. Third, countries in Southeast Asia lack the necessary infrastructure and knowledge to apply the UN Refugee Convention and its Protocol. Besides, the substantial financial costs needed to supervise and implement its numerous provisions represent deterrence for some states to ratify. Fourth, the perception that more advanced industrialized countries have a greater responsibility to take care of refugees and displaced people. Not only are they economically more endowed to do so, they

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[6] Cambodia has signed both but has not ratified either.

also happen to be the creators of the Refugee Convention in the first place. Fifth, compared to the massive numbers of refugees and displaced persons in other parts of the world such as Africa and the Middle East, the number of refugees in Southeast Asia is still manageable.

If member states of ASEAN already had a tainted view of humanitarianism before the Indo-Chinese exodus, this belief was certainly reinforced by the inadequate support they had received from the international community at a time when the region was choking under the colossal weight of uninvited refugees and asylum seekers. The next section examines the Indo-China crisis in the 1970s and 80s and its subsequent impact on the region's attitude and policy towards refugees. The Indo-China calamity was exceptional in that it presented complex dilemmas in issues of national security, politics, law, economics and society, as well as imperative humanitarian needs, to many countries for a considerable length of time. The region's response to the crisis highlighted the limits of protection in a politicized context as state leaders and governments were torn between humanitarian principles on the one hand and national, regional and international security concerns on the other.

Impact of the Indo-China Crisis

The mass exodus from the French Indo-China countries in the 1970s and 80s had a lasting impact on Southeast Asian countries' attitudes and policies towards refugees and forced migrants. In the mid-1970s, the Vietnamese refugees, especially the ethnic Chinese, were perceived by Southeast Asian countries as a security threat (Simmance, 1995). The region was just beginning the arduous process of nation-building and economic development, with some countries undergoing counter-insurgency operations of their own. Malaysia was concerned about its delicate ethnic balance while Singapore was afraid of being overwhelmed by large numbers of foreigners due to its small-state vulnerability. Indonesia remained suspicious of the Chinese, particularly after the attempted coup of 1965 (Simmance, 1995). Apart from the fear that the inflow would be irreversible, leaving the countries

stranded with an unmanageable refugee burden, which was destabilizing for the region, political leaders were also genuinely concerned about the "domino" theory of communist expansion: "who could tell how many undercover agents and revolutionaries might be exported from Indo-China under the guise of refugees?" (Simmance, 1995, p. 77)

Singapore's unsympathetic, no-nonsense approach towards irregular immigrants is borne out of the country's experience with Vietnamese refugees in the 1970s (Cheang, 1980). During the Indo-China crisis, seven countries had promised resettlement for the refugees, but not all kept to their word. Home Affairs Minister Wong Kan Seng once said, "We have learnt our lesson and will no longer accept any refugees even if third countries promise to resettle them." (Pang, 1998) At that time, the Singapore government also believed that the refugee problem was part of a political maneuver to destabilize Southeast Asia, leading to eventual domination by super powers (Pang, 1998). Hence, it was impossible for them to view the refugee problem purely in humanitarian terms. The Singapore Immigration and Registration had said that the small island nation was in no position "to accept anyone who claims to be a refugee, whether economic or political" (Tan, 2001). To do so would open Singapore to the danger of being awashed by colonies of people claiming to be refugees, with serious implications for socio-political stability and economic development (Tan, 2001). Singapore's vulnerability as a tiny Chinese-dominated country surrounded by her "bigger" Malay neighbours necessitates "realist" foreign policies: self-interests and self-help are key principles to securing the country's survival.

By virtue of geography, Thailand was the only first-asylum country to bear the burden of refugees and displaced persons from all three Indo-Chinese countries: some 758,000 entered the country by both land and sea during 1975 to 1993. Thai Prime Minister Kriangsak Chomanan had commented that the country was not being flooded by refugees, but being drowned (McNamara, 1990). In 1979, Thailand carried out the largest single *refoulement* since the establishment of UNHCR in 1951 when it moved more than 40,000

Cambodians by bus from the Aranyprathet area to the border and forced them at gunpoint back into Cambodia. Despite strong criticisms from the international community, Thailand remained adamant that unless there was a satisfactory and immediate international response, it would continue its policy of forced expulsions of the Cambodians. Since then, Thailand has had a conflicting policy towards refugees. It remains a non-party to the 1951 Convention and its 1967 Protocol, which means that, "it has complete discretion in determining the legal status of displaced persons on Thai soil, and in the event of treating a displaced person as an illegal immigrant, in deciding whether to enforce its Immigration Law" yet Thailand has played host to Burmese refugees for nearly two decades now (Muntarbhorn, 1980). The refugee population registered in camps has expanded from some 20,000 in the mid-1980s to about 120,000 in 2000.[7] Despite criticisms from human rights groups about the quality of protection in Thailand due to the frequency of forced returns, rejection at the frontier, and attacks on refugee camps by the Burmese military, it is likely that Thailand will remain noncommittal to refugees in the future.

Surrounded by neighbours with perennial refugee problems such as Indonesia, the Philippines, and Vietnam, it is little wonder Malaysian authorities believe that ratifying the Refugee Convention is tantamount to a suicidal act. They claim that Malaysia is "a small nation with porous borders in a region with potentially explosive refugee problems" (Kuppusamy, 2003). The Indo-Chinese exodus was a grim reminder that accepting refugees will be akin to opening the floodgates and letting hordes of refugees and undocumented migrants overwhelm the nation (Kuppusamy, 2003). At the height of the Vietnamese influx in 1979, Malaysia adopted the most dramatic 'push-off' policy, forcing 386 boats con-

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[7] See "Burmese Refugees in Thailand at Risk," Press Backgrounder, *Human Rights Watch*, 6 May 2000, <http:// www. hrw. org/ press/ 2000/ 05/ thaiback0506.htm> (03/11/03).

taining 51,422 refugees back to sea during 1979, and threatening to send away 70,000 more that were already in camps.

At the ASEAN Foreign Ministers' meeting in Bali on 28-30 June 1979, all five ASEAN states agreed in principle that they would not accept any more boat arrivals from Vietnam (Simmance, 1995). In the view of ASEAN countries, the concept of "international burden sharing" never translated itself into significant number of resettlement places. Despite America's calls to "internationalize" the resettlement response, four countries – the United States, France, Canada and Australia – remained the most significant recipients of Indo-Chinese refugees, and only two other western countries – Belgium and West Germany – had taken in more than 1,000 each (Simmance, 1995, p. 80).

Conclusion

Mention 'refugee' and Southeast Asia recoils from unpleasant memories relating to the Indo-Chinese exodus. Southeast Asia choked under the colossal weight of the massive flows of Indo-Chinese refugees that spanned over two decades, and this has deterred any open-door immigration policy in the region. Southeast Asia's history of communalism and nation building, its obsession with domestic security and national interests, means that the refugee or asylum seeker can find little respite in the region. The general lack of accession to international human rights treaties in Southeast Asia and the tenuous path of economic development in many countries further bolster the prioritizing of national development goals over external humanitarian concerns.

Ironically, it is the very instability of governance and national development in both Southeast Asian countries and countries outside the region that will compel the region to place the issue of forced migration on national agenda. People will continue to cross international borders in search of safety, succour and dignity as a result of many factors: regional conflicts, economic and social crises, political instability, human rights abuses, racism, religious intolerance, economic inequalities, hunger, over-population, under-development and so on. The only way for Southeast Asian

countries to protect national interests and ensure regional stability is to cooperate on managing forced migration in a responsible and sensible way, which includes protecting the rights of refugees. Sadly, refugees are as timeless as borders appear to be fixed and immutable.

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