

Chapter 12

The Politics of Forced Migration in Southeast Asia



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12.1 Introduction

Forced migration occurs within and across borders for highly compelling reasons. These include natural disasters, famine, climate change, environmental degradation, development induced displacement, and, of course, persecution and conflicts. In this chapter, forced migration is used in the last two senses, thus corresponding closely to the United Nations 1951 Convention Relating to the Status of Refugees (the Refugee Convention) and its 1967 Protocol (the Protocol). The fact that this term is required at all, rather than the commonly understood ‘refugee’, is a political matter, with some states steadfastly refusing to recognise the existence, legal or otherwise, of the latter.

Forced migration is deeply and concurrently enmeshed with the interests, aspirations, and competencies of nation states. The state refers to a polity with a defined territory, population, and government with the sovereign authority, instruments and means to administer the same through fiat and force. The nation, in contrast, refers to the real or imagined qualities that give the peoples within it a sense of identity and belonging (Anderson, 1983). These range from exclusive ethnoreligious centric, to inclusive liberal and civic forms. These two concepts are key to understanding the many dimensions and complexities of forced migration politics. In the case of Southeast Asia, nationhood appears especially cogent.

Throughout history, violent conflicts have been common when competing ideas of statehood and nationhood are heatedly contested. These escalate when the parties to the conflict are supported by other countries aligned according to the latter’s

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strategic, political, and economic interests. Those caught up in the ensuing violence are then forced to flee persecution, atrocities, and death within and across borders, with women, children, the sick and the elderly as their greatest victims. The states they seek refuge in, however, may themselves be experiencing security and internal challenges of their own. These weigh heavily, shaping defensive, uncooperative or, at best, ambivalent and non-transparent policies.

In Southeast Asia, forced migration politics cannot be understood in purely abstract or normative terms, i.e., divorced from the complex milieu of political-social contexts and situations of its individual member states. The nation states of mainland and archipelagic Southeast Asia have all been party in one way or another to the lethal interplay of inter- and intra- state and national factors. Today, open inter-state conflicts are by and large avoided in favour of quieter bilateral diplomacy and negotiation. Behind borders, however, nation building, with ethnicity and religion as central elements, remains an ongoing process and play a significant role in the treatment of citizens and non-citizens (Suryadinata, 2015).

There has been a tendency for some scholars and advocacy groups to overlook the messy histories and present-day political and social divisions and constraints within and among states (see, for example, Tubakovic, 2019). Instead, there is assumed to be a Southeast Asian collective mindset by virtue of their membership of the Association of Southeast Asian Nations (ASEAN). ASEAN's longevity and global acceptance is certainly notable. For all its declarations and agreements, however, it is itself an imagined community, and one that is as fallible as others of its genre. These have been clearly and extensively documented by those who know the region well.

In this chapter, the differences of Southeast Asia's member states are highlighted. Whatever their aspirations and desired impressions, these states are as (if not more) dissimilar as similar, and they act accordingly. It then proceeds to examine two key episodes of forced migration: from mainland Southeast Asia (1975–1996) and Myanmar (1980s–present). The dynamics and some of the key differences between the two are noted. Following this, some of the realities forced migration politics at the regional and global and concludes with what might be the main takeaways. Nation states change when their perceptions of advantage and disadvantage do. The development of new norms and societal changes hold the hope to the evolution of their forced migration policies.

12.2 Southeast Asia: As Dissimilar as Similar

Except for Thailand, the pre-statehood histories of Southeast Asian states were shaped by the interests of their colonial powers (Abraham, 2020). As Croissant and Lorenz (2018, p. 6) note: “In Southeast Asian postcolonial societies, nation-building was the project of political and intellectual elites in the almost complete absence of a common sense of nation and culture.” Not only were many fledgling democracies left with the task of integrating ethnic and religious minorities left behind but also a

large absence of civil and humanitarian values and traditions in the treatment of ‘the other’—both within their borders and outside of them.

The aftermath of this were conflicts, some large scale and immediate, such as on the Southeast Asian mainland, while others, comparatively smaller and more drawn-out, were faced by archipelagic states. The latter included their own inter-state disputes, armed insurgencies, and ethnic-religious separatist movements such as in Mindanao (Philippines), Aceh (Indonesia) and three Southern provinces of Thailand. Each of these led to people movements crossing borders, forced or otherwise, and in the 1970s and early 1980s, Malaysia was a haven for migrants from all three. In the case of Myanmar, inter-ethnic conflicts, which predate independence, remain an existential challenge to the present day.

ASEAN has been widely cited as a key factor for ensuring peace and stability in the region. Its role, however, has not been instrumental in resolving conflicts and disputes but as a diplomatic mechanism to build political trust and confidence through cooperation (initially only economic) despite them. It would take almost 10 years before members were sufficiently assured to hold the first summit of leaders, another 34 years before this became an annual affair, and 42 years for the summit to be biannual. During this time, cooperation has greatly diversified, and member states today are working to create an ASEAN Community by 2025 comprising political-security, economic and socio-cultural pillars.

Southeast Asia has gained a reputation for economic dynamism, with exports and direct foreign investment figuring prominently. The region is promoted as a region of 656 million, with intra-regional trade and investment policies facilitating the economic growth and development. This, however, neglects important structural developmental characteristics. Singapore and Brunei, with a combined population of less than 1% of the total, achieved high income status in 2020, while Malaysia and Thailand, at 15% of the total, were upper middle-income status (World Bank 2020). The remaining six states of Cambodia, Indonesia, Laos, the Philippines, Myanmar, and Vietnam—comprising 86% of the region’s population—remain categorised as lower middle income.

Per capita incomes in purchasing power parity terms vary widely. (Table 12.1) The UNDP’s Human Development Index (HDI), which, in addition to standards of living factors in life expectancy and years of education shows that Indonesia, Laos, the Philippines and Vietnam, fall in the third quartile of the world’s countries, with Cambodia and Myanmar in the bottom quartile. Where it can be stated that there is greater uniformity in the region is with respect to income distribution. The shares of national income of the bottom 40% of households are relatively similar, as are their Gini coefficients.

These differences do not capture the full extent of the political economic complexities within them. If there is one mindset that permeates the region, however, it is developmental statism. A developmental state is one where governments assume active roles in the planning and guiding of economic activities. Scholars have emphasized that government guidance of private sector activities (but also interventions), combined with external orientation, is what Southeast Asia learned from the

Table 12.1 Southeast Asia – Human development, income distribution & poverty

No	Country	2020 GNI/ capita PPP \$	2020 HDI rank N = 189	% Income of lowest 40%	% Below national poverty	Gini coefficient
1	Brunei D	63,965	47	Na	Na	na
2	Cambodia	4246	144	Na	17.7	na
3	Indonesia	11,459	107	17.5	9.4	38.1
4	Lao PDR	7413	137	19.1	18.3	36.4
5	Malaysia	27,534	62	15.9	7.6	41.0
6	Myanmar	4961	147	18.6	24.8	38.1
7	Philippines	9778	107	16.6	16.7	40.1
8	Singapore	88,155	11	Na	Na	na
9	Thailand	17,781	79	18.4	9.9	36.5
10	Viet Nam	7433	117	18.8	6.7	35.3

Source: World Bank (2020)

economic successes of Northeast Asia, and that was, and is, responsible for their rapid economic growth and transformation.

The darker side of developmentalism is that it also leads to varying degrees of what has been termed predatory or rent-seeking behaviour. Predatory states naturally operate where the rule of law, control of corruption and government effectiveness are at their weakest. Here, World Bank (2020) indicators suggest that lower middle-income states also have the lowest scores in this regard. In terms of voice and accountability, Indonesia and the Philippines (regarded by many scholars as the region's only two electoral democracies) have the highest scores, followed by Malaysia and Singapore. This is supported by the Freedom House (2020) scores for civil and political rights.

The political elites of member states, especially when backed by the force of their militaries are, not surprisingly, the least sensitive to the freedoms and rights of its citizens, never mind those of forced migrants. Regimes of source states may even cynically view those fleeing as a way of ridding themselves of troublesome elements in the population. For those that have gained a measure of developmental success through external orientation, there are greater tensions. The ability to continue to perform is progressively harder (the so-called 'middle-income trap') especially with economic partners demanding not just national treatment provisions but also labour, environmental and, increasingly, human rights standards.

In short, the development needs and demands of the region are still widespread and real. These have a bearing on forced migration policies in terms of their perceived economic, social, and political costs. The extent of the rule of law, control of corruption and government effectiveness also vary widely in practice. These can, and are known to, be relevant towards the humane treatment of forced migrants. Less than optimal levels of voice and accountability and civil and political rights further mean that the consequences of actions are non-transparent and largely unaccountable.

12.3 Global Action, Unsettling Memories (1975–1996)

After the end of the Vietnam War in 1975, over 1 million people from mainland Southeast Asia fled their countries in the space of four short years (UNHCR, 2000). The US had formally arranged to resettle 120,000 Vietnamese and 5000 Cambodians in 1975 but this proved to be woefully inadequate. By 1979, despite 200,000 more having been resettled, 160,000 remained in Thai border camps, while about 180,000 were on islands of the Philippines, Indonesia, and Malaysia. In the first 6 months of that year, there were three new arrivals for every one forced migrant resettled and the ratio was growing. In June alone, there were 54,000 arrivals of ‘boat people’ and ASEAN as a block formally announced that they could not accept more arrivals and Malaysia and Thailand began pushing back vessels out to sea.

As highlighted earlier, Southeast Asian countries were still struggling with their own security aspects of state and internal nation building in the 1970s. It is important to note that their economies were deemed by the World Bank as either less developed or developing in status. In 1980, Malaysia’s and Indonesia’s US dollar per capita income was less than a fifth of the present, while Thailand’s was just a tenth. The Philippines’ economy was relatively the highest at a little less than a quarter of 2020 (IMF 2021).

No ASEAN state in 1979 had ratified the Refugee Convention or the Protocol. (The Philippines would do so in 1981 and Cambodia later in 1992). The facilities that they had been persuaded to offer by international agencies were fast outstripped by the rising numbers of arrivals. For example, Pulau Bidong, a tiny island off the east coast of Malaysia, had a carrying capacity of 4500. In June 1979, it was reported that 40,000 forced migrants were housed there (Refugee Camps, 2012–2014). Obviously, conditions in the overcrowded camp were extremely poor. Also, of concern were signs of better organisation and the use of larger seaworthy vessels by people smuggling networks.

Given the urgent humanitarian crisis, the UN Secretary General, Kurt Waldheim, convened a Meeting on Refugees and Displaced Persons in South-East Asia in July 1979 in Geneva at which 65 countries participated. At that meeting a “major breakthrough” was announced, with Indonesia and the Philippines officially announcing that they would host processing centres. The meeting officially underscored the fact that ASEAN would only allow boats to disembark on the condition that the occupants only stayed more than a specified period. This came later to be known as “open shores for open doors” but critics called it ASEAN’s “passing of the buck”. Whatever the case, the practice of pushing back boats was largely (but not totally) halted, and the UN High Commissioner for Refugees (UNHCR) was able to hold meetings with states to negotiate capacity and administrative improvements.

No commitments of resettlement places were made at the Geneva meeting. The international community was nevertheless fully engaged in funding the forced migrant centres and, most importantly, offering and processing resettlement places. These were vital but equally critical was the cooperation of Vietnam, which signed and implemented an Orderly Departure Programme (ODP) in 1979. The ODP

bolstered the confidence of first asylum states that fewer boats would be in the water, thus easing the strain on the processing centres. From 1980–86, the numbers of new arrivals fell below those resettlements, which went to 20 countries, led by the US, Australia, France, and Canada.

In 1987–88, however, there were new waves of boat arrivals. By this time, the international community showed little appetite for accepting more forced migrants, believing them to be driven by economic and not political motives. Unsurprisingly, first asylum states mostly responded by closing borders and pushing boats back out to sea, causing a second humanitarian crisis. This was discussed at a non-government dialogue on the side lines of ASEAN meetings in Bangkok by officials of the US, Australia, Thailand, and the UNHCR. Their draft, finalized in Kuala Lumpur, formed the basis for a second Geneva meeting in 1989 and the Comprehensive Plan of Action (CPA) for Indochinese Refugees (Casella, 2016).

Two controversial policy changes were embedded in the CPA. The first was that forced migrants arriving after a cut-off date were subject to refugee status determination, while those arriving before would continue to be resettled. This meant that there would be those who would not qualify for resettlement and would have to be returned to the source country. The second essential component of the CPA was the agreement of the source state, Vietnam, to take back those that had been deemed unsuitable for resettlement without imposing penalties and allowing UNHCR to independently monitor its implementation. This was seen to be the key to avoiding violating the non-refoulement principle but gave rise to objections by legal and political scholars, non-government organizations and even those in international humanitarian agencies themselves who were concerned that standards of refugee protection had been lowered.

That Vietnam was prepared to cooperate may say as much about the global and regional environmental conditions as its own policy enlightenment. Its main economic and military supporter, the (then) Soviet Union was weakening while tensions with China were rising. In any case, the CPA formally ended in 1996 with the repatriation of those who remained in camps in Indonesia, Malaysia, and Thailand to Vietnam.

In total, of the three million people that had fled from mainland Southeast Asia, 2.5 million had been resettled and half a million had been returned. Between 1975–95, ASEAN first asylum countries had given temporary refuge to some 1.4 million by land and sea, with Thailand bearing the major burden (53%), followed by Malaysia (18%), Indonesia (8%) and the Philippines and Singapore (6%) (Stange & Sakdapolrak, 2018).

The lessons learned from the two decades of forced migration from mainland Southeast Asia depend on the perspective adopted. International relief agencies hailed the extraordinary response by the international community, while expressing regret that concerns were not always consistent at the cost of lives lost at sea and the human suffering at the hands of pirates and human traffickers. Humanitarian and legal groups saw this as entirely avoidable were it not for the staunch refusal of ASEAN countries to offer anything more than temporary refuge (Robinson, 2004).

The lessons in Southeast Asian nation states have not been adequately studied and documented but invariably internalised would be the social, economic, and political considerations (especially costs) that had to be made amidst great policy uncertainty. A related argument is the belief that more favourable treatment of forced migration incentivises further flows (as was the case in 1987–88). This so-called ‘floodgate’ argument appeals to simple logic and is pervasive in many host countries, including those in Southeast Asia. It is an issue that humanitarian agencies, non-governmental organizations and donor countries know intimately, having to operationally address and work through them.

12.4 Global Outcries, Subdued Responses (Late 1970s – Present)

Even before the flow of forced migrants from mainland Southeast Asia had formally ended, another wave of forced migrants, though smaller, was growing due to political unrest, multiple armed conflicts, and ethnic persecution in Myanmar. Myanmar offers further insights into the local-national-regional-global nature of political forced migration. In the east, the affected states were Thailand which as a bordering state once again bore a brunt of forced migration, Malaysia, and Indonesia, while to its west, it was Bangladesh and India.

Resettlement efforts began in the late 1970s and 1980s, mainly from camps on the Thai border and Malaysia, but data is unavailable. From 2003–2020, however, it is known that a total of 217,100 Myanmar nationals, primarily the Karen but also smaller numbers of Karenni, Kachin, Chin and other ethnicities, were resettled, with the US taking the lion’s share at 80%, and Australia and New Zealand accounting for 12% (UNHCR, 2021a). In contrast, the resettlement of the Muslim Rohingya was far fewer at 12,000 “plus” to the US as of 2017.

As of mid-2020, the UNHCR considered 1.9 million in Myanmar to be Peoples of Concern (POC), of which 1.6 million Rohingya accounted for 84% (UNHCR, 2021b). Of the balance, 104,000 of other ethnicities were internally displaced in Kachin and Northern Shan, and the 93,000 housed in nine camps on the Thai border adjacent to Kayah, Kayin and Tanintharyi states. UNHCR Malaysia reported that 153,000 forced migrants were from Myanmar, of which the Rohingya account for 101,000 (66%) and the balance of 52,000 from the various ethnic groups of Chin, Kachin, and other Western Myanmar states. The number of unregistered forced migrants, many of them children, are unknown. Since 2021, the situation has further devolved, with another 206,000 internally displaced person because of armed conflicts and unrest since the February 1 military coup.

Discriminatory policies had long been practiced against the Rohingya but in 1978, the Myanmar military (Tatmadaw) began a concerted operation of mass arrests and acts of violence, forcing 200,000 Rohingya to seek refugee in neighbouring Bangladesh before being repatriated. The situation worsened in 1982 when

Myanmar introduced a citizenship law that officially deprived the Rohingya of citizenship (Ostrand, 2014). After the 1988 nationwide protests and annulled 1990 elections, another 250,000 Rohingya in 1991–92, were driven across the border, and again in 1996–97 and 2012. During each of these incidents, atrocities against women and children were reported.

In 2012, US President Barak Obama made a historical visit to Myanmar, and again in 2014 when the country held the ASEAN chair. On both occasions, he spoke out on behalf of the Rohingya, calling for an end to their discrimination. In 2015, Myanmar held national elections, with National League for Democracy (NLD) of Aung San Suu Kyi winning more than half of all seats in both the upper and lower houses. There was widespread optimism that Myanmar had turned the corner on democracy and human rights, although long-time Myanmar watchers, and Suu Kyi herself, were more cautious about the course that progress would take.

As it turns out, the latter were right. The 2008 Constitution, under which the 2015 elections, had been contested reserved 25% of seats for Tatmadaw appointees and gave its Supreme Commander control over the home affairs, border affairs and defense portfolios, powers that could be used without parliamentary or judicial oversight. In the Rakhine State Parliament, the Arakan National Party garnered the most votes, followed by Tatmadaw appointees. Except for the appointment of the Chief Minister, the NLD was relegated to a minor political role in the state's affairs.

The year 2015 was notable for another reason. People smuggling networks from Bangladesh and Myanmar had been quietly operating for an unknown number of years, both by land (the so-called “Terror Road”) as well as by sea. In that year, the mass graves were discovery on the Thailand-Malaysia border led Thai, Malaysian and Indonesian authorities to intercept boats from Bangladesh and Myanmar and push them back out to sea. This left some 6000–8000 stranded at sea without food or water and an unknown number perished at sea. Amidst the international outcry of what has come to be known as the Andaman Sea Crisis, separate meetings were quickly convened in Jakarta, Putrajaya, and Bangkok.

At the Putrajaya meeting, Indonesia and Malaysia relented by announcing that they would halt boat pushbacks and offer temporary shelter, again with the provision that the forced migrants were resettled in a year (Joint Statement of the Ministerial Meeting on the Irregular Movement of People in Southeast Asia 2015). Thailand did not agree to this but undertook commitments to rescue and resupply at sea. Countries provided financial assistance but offers of resettlement were limited. When Australian Prime Minister Tony Abbot was asked if Australia would provide resettlement places, his emblematic answer of “nope, nope, nope” was perhaps representative of countries at that time (Asian Dialogue for Forced Migration, 2016).

Any hopes for a lull were dashed in August 2017 when the bloodiest actions yet undertaken by the Tatmadaw and paramilitary groups caused around 740,000 Rohingya to flee to Cox's Bazar in Bangladesh. In contrast to previous episodes, there has been no success in their return from the UNHCR camps. As State Counsellor, Suu Kyi herself came in for international criticism for not speaking out

for minorities in general and the Rohingya in particular and it did not help her reputation when she chose, for what can only be considered political motives, to appear at the International Court of Justice at the Hague in 2019 to defend the actions of the Tatmadaw against accusations of rape, arson, and killing of Rohingya victims. She described “the conflicts as internal conflicts and said if human rights violations had occurred that would not rise to the level of genocide.”

The plight of the Rohingya and the solidarity shown by members of the 57-member Organization of Islamic Countries (OIC) is an interesting political phenomenon that deserves more research. The matter is regularly on the agenda of OIC summits and states have supplied finance and material. Bangladesh, which maintains that they are Forcibly Displaced Myanmar Nationals (FDMN), has allowed them to reside in camps run by UNHCR with the assistance of other international humanitarian agencies and donor countries. Apart from Malaysia, Pakistan, Saudi Arabia, and the United Arab Emirates also house significant numbers of Rohingya. Yet there have been no collective discussions of the block offering resettlement places (Rahman, 2021).

In Malaysia, political Islam plays well in domestic politics with visas having been given to relatively small numbers of Bosnians, Palestinians, Syrians, Iranians, and others with capital and professional skills from the Middle East and South Asia. Those without visas, notably the stateless Rohingya, however, are afforded scant protection, little access to medical and education services, and are at constant risk of harassment and arrest. Despite this, Malaysia has remained a destination of choice among many Rohingya, partly due to the existence of family and community networks.

In Indonesia, the 2016 Presidential Regulation No. 125 addressed some humanitarian concerns such as the rescue of forced migrants and temporary protection in internationally funded shelters but not including resettlement thus leading to a state of what researchers have called a state of “permanent temporariness” (Missbach et al., 2018). Indonesia has had strong relations with the Myanmar government since the 1940s (Lang, 2012). Indonesian foreign policy prioritises non-intervention in its regional and multilateral relations. This prudence, however, is not without challenges because of domestic pressures from Muslim organisations for greater humanitarian actions (Adiputra & Missbach, 2021).

In contrast to forced migration from the mainland Southeast Asia, forced migration from Myanmar, and particularly the Rohingya, has not commanded the same level of global attention or coordinated responses. The return and repatriation of Rohingya to Myanmar after 2017 had seen no progress, much to the frustration of Bangladesh. Developed countries have been vocal in speaking out against their political persecution, funding the Joint Response Plans for the Rohingya Humanitarian Crisis, and providing bilateral assistance. There have been negligible offers of resettlement places, however, so that ASEAN states do not have the assurances of being first asylum states and an ODP-type scheme cannot be negotiated.

12.5 Regional and Multilateral Politics

In 2007, ASEAN member states adopted the ASEAN Charter which, for the first time since 1967, gave the organisation a legal personality. Article 14 of the Charter provided for the formation of an ASEAN human rights body and in 2009 the ASEAN Intergovernmental Commission on Human Rights (AICHR) was established. AICHR was responsible for drafting a ASEAN Human Rights Declaration which, in 2012, was subsequently signed by the ASEAN Summit, the supreme policy-making body. Paragraph 16 of the Declaration clearly states that “everyone has the right to seek and receive asylum in another country based on the laws of that country and applicable international treaties” (ASEAN Declaration of Human Rights 2012).

The Declaration was well received and greatly enhanced ASEAN’s reputation as a progressive regional organization. In international law, however, declarations are not legally binding but have the effect of norms setting and establishing principles that member states intend to work towards. Since 2012, there have been no further discussions on common regional positions and strategies on forced migration or any other articles in the Declaration for that matter. The Declaration’s provisions thus remain, if at all, aspirational goals and it is unlikely that ASEAN will decide to adopt a regional approach and framework on forced migration any time soon (Petcharamee, 2016).

Nor has there been a motivation by more ASEAN member states to consent to the UN Refugee Convention and Protocol. It is important to note that of the 193 members of the UN, three-quarters have signed and ratified the Convention and Protocol, including low and lower middle-income ones. Among ASEAN member states, only the Philippines and Cambodia are signatories, making the region an anomaly by international standards (Table 12.2).

Table 12.2 Southeast Asia states’ ratification/signing of selected international instruments

	Country	1951 Refugees Conv. & 1967 protocol	1954 UN Conv. on statelessness	2000 UN Anti- smuggling protocol	2000 UN Anti- trafficking protocol	2015 ASEAN Conv. in trafficking in persons	2019 global compact for migration	2019 global compact for refugees
1	Brunei D	–	–	–	2020	2016	2018	2018
2	Cambodia	1992	–	2005	2007	2016	2018	2018
3	Indonesia	–	–	2009	2009	2016	2018	2018
4	Lao PDR	–	–	2003	2003	2016	2018	2018
5	Malaysia	–	–	–	2009	2017	2018	2018
6	Myanmar	–	–	2004	2004	2016	2018	2018
7	Philippines	1981	2011	2002	2002	2017	2018	2018
8	Singapore	–	–	–	2015	2016	Abs.	2018
9	Thailand	–	–	–	2013	2016	2018	2018
10	Viet Nam	–	–	–	2012	2016	2018	2018

Source: The Core International Human Rights Instruments and their monitoring bodies | OHCHR
Note: Conv = Convention

Interestingly, in May 2018, a coalition of Malaysian opposition parties, the *Pakatan Harapan*, won the right to form the government for the first time. Among the pre-election promises that had been made, largely at the behest of civil society organisations, were to sign and ratify the Refugee Convention and Protocol, along with other human rights instruments. This was later reaffirmed by the Prime Minister, Mahathir Mohamad, in his speech to the 73rd UN General Assembly that year. His government was preoccupied with its domestic reform agenda, but a parliamentary committee was established in late 2019 to explore the legislative requirements of accession. The *Pakatan Harapan* government, however, was replaced in January 2020.

While all ASEAN states have acceded to the UN Convention Against Transnational Organized Crime, only half of its members are parties to the supplementary Protocol on the Smuggling of Migrants by Land, Sea and Air (the Anti-Smuggling Protocol). All, however, have now acceded to the Protocol to Prevent, Suppress and Punish Trafficking in Persons (the Anti-Trafficking Protocol), the last ones being Singapore in 2015 and Brunei in 2020.

The Andaman Sea Crisis of May of 2015 called for a regional response, and, in addition to the diplomatic measures described earlier, an Emergency ASEAN Ministerial Meeting on Transnational Crime (EAMMTC) was convened in July. This led to the issuance of an ASEAN Ministerial Declaration on the Irregular Movement of Persons in Southeast Asia in September. The Declaration expressed concern over the movement of persons and the “impact on the national security of the affected countries, namely Malaysia, Myanmar, Thailand and Indonesia” and agreed to include people smuggling on its agenda. It also urged for the early ratification of the 2015 ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP), one of the few legally binding instruments it has managed to agree on, as well as its Plan of Action.

By 2015, almost all ASEAN members already had national anti-human trafficking laws in place. (Brunei which would subsequently introduce one in 2019) National legislations and the ACTIP itself, however, were non-uniform and of varying standards (UNODC, 2017). Of equal, if not greater, concern was the question of enforcement. If the US State Department’s Trafficking in Persons (TIP) Report is anything to go by, only the Philippines and Singapore fully met its minimum Tier 1 standards in 2021. Indonesia and Laos were in Tier 2, indicating that significant efforts were being made to meet the minimum standards, while Brunei, Cambodia, Thailand, and Vietnam were on the Tier 2 Watchlist (US State Department, 2021). Myanmar was in the lowest Tier 3 category, i.e., not making significant efforts to meet minimum standards, joined by Malaysia which had been downgraded from the Tier 2 Watch List the year before.

Meanwhile, the Bali Process as a consultation forum did not take direct action in relation to major displacement incidents. Its role in the 2015 Andaman Sea crisis was retrospective. The Sixth Bali Process Ministerial Conference (March 2016) affirmed the core objectives and priorities of the Bali Process through the adoption of the Bali Process Declaration on People Smuggling, Trafficking in Persons and Related Transnational Crimes, where the scale and complexity of irregular

migration challenges, both within and outside the Asia Pacific region, were addressed. It noted how regional consultations and the establishment of the Bali Process Regional Support Office (RSO) strengthened practical cooperation in refugee protection and international migration, including human trafficking and smuggling, and other components of migration management in the region. As with any organisation, the Bali Process depends on its leadership to be visionary and proactive. Political relations between its two co-chairs, Australia and Indonesia, further appear to be a factor in inhibiting regional collective action from going beyond statements and declarations, and to ensure that responses to forced migration are tangible and timely.

Anti-human trafficking efforts impact forced migrants but do not address the latter's need for protection and welfare. In 2016, the global community was galvanised when all 193 members of the UN adopted the New York Declaration for Refugees and Migrants, which contained the elements of the Comprehensive Refugee Response Framework (CRRF) and paved the way for the negotiation of the Global Compact for Safe, Orderly and Regular Migration (GCM) and the Global Compact for Refugees (GCR). This first-ever framework and the two compacts were arguably the most important global developments since the 1951 Refugee Convention and 1967 Protocol. The new approaches taken by the CRRF were, first, to ease pressures on host countries and communities, second, enhance refugee self-reliance, third, expand third-country solutions and, fourth, support conditions in countries of origin for safe return.

The CRRF, GCM and GCR are also non-legally binding on states which, in any case, retain the rights to manage their affairs in accordance with their national laws and policies. Their value lies in the setting of international norms over time and articulation of principles worked towards. It was hoped that this would encourage developed countries to be as engaged in these humanitarian concerns as they were during the 1970s and '80 s. It was disappointing therefore that the US, under President Donald Trump, voted against both Compacts. Among European Union countries, Hungary, Czech Republic, and Poland voted against the GCM, while Hungary also voted against the GCR. Among ASEAN member states, Singapore abstained from voting for the GCM but voted in favour of the GCR, as did the others.

Throughout the twentieth Century, the US has not only resettled the greatest number of forced migrants but also exercised leadership, in concert with like-minded states, to encourage other states to do so. In the context of the Cold War (1947–91) with the (then) Soviet Union and its allies, democracy and human rights were critical to contrast the competing ideologies. One might have wished for a stronger role to be taken by the UN, but the institution depends critically on the five members permanent members of the Security Council, not all of whom take an expansive view of humanitarian issues. From 2017, anti-immigration sentiments spilled over to forced migration in the US, Australia and even among members of the European Union.

US President Joseph Biden in 2021 announced a ten-fold increase in refugee resettlements to 125,000 in the first year of his administration but there have not been clear indications as to whether the US will become a party to the GCM and

GCR. Immigration in general has become a divisive issue in US domestic politics and the resettlement of forced migrants is unfortunately conflated with it. Backing the global initiatives at a time when parties to the Refugee Convention and Protocol appear to be backsliding on their commitments will do much to ensure that the humanitarian agenda is preserved, not only in Southeast Asia but around the world.

The COVID-19 pandemic has put undoubtedly thrown a spanner into any movements to any further progress (Crawley, 2021). With member states now at various stages of success in managing it, forced migrants have been unwelcomed, with closure of borders and denial of boat landings. Within borders, the protection and treatment of forced migrants, never high to begin with, have further regressed (Crawley, 2021). This defensive stance will no doubt remain at least until there is a return to ‘normalcy’. Even then, it remains an open question as to whether the informality under which forced migrants have been treated will remain or whether more formal (and stringent) measures will be taken.

12.6 Conclusion

The politics of forced migration is fundamentally conditioned by governmental elites acting in what they see as the real and perceived interests of nation states at the local, national, regional, and global levels. Where states are large, secure, and sufficient, they can provide humanitarian assistance and offer resettlement places. The former has been, and is, critical for the support of the Rohingya camps in Bangladesh and prevented much more chaotic outcomes. Southeast Asian states generally perceive of themselves as not having the resources, ability, or the luxury of distance to do so. This perception continues to be held despite 86% of the world’s 82.4 million forcibly displaced persons being hosted by developing countries in 2020, with 73% being neighbouring countries (UNHCR, 2020).

The institutional capacities of states to implement their national interests is also an important consideration. Source countries in Southeast Asia may have incentives to permit citizens to leave owing to poverty and underdevelopment, or a means of getting rid of ‘unwanted’ or ‘troublesome’ elements of the population, usually ethnic and religious minorities. For transit countries, there may be hesitancy in acting as first asylum for fear of ending up as *de facto* long-term hosts, i.e., the “permanent temporariness” phenomenon. As elsewhere, camps on the Thailand/Myanmar border, for example, have existed for over four decades despite resettlements to third countries and some voluntary returns. Border closures since the annulment of 2020 general elections on 1 February 2021 have meant that the numbers in the camps have not swelled.

For the more developed states, especially those already relying on foreign workers, it may seem that the case for including forced migrants into their low-wage labour force is straightforward. Foreign worker intakes, however, are regulated by inter-governmental memorandums of understanding, visas determine lengths of stay and sectors of employment, while contracts set out remuneration and working

conditions. Forced migrants do not have similar legal status and their lengths of stay, particularly if they are stateless, are indeterminate. Regardless of their status, international law prohibits states from refoulement or sending them back to their countries of origin if their safety and treatment is not assured.

These, together with the inherent unpredictability of forced migrant flows, mean that Southeast Asian states remain cautious in adopting legal obligations towards forced migrants. The fact that Thailand and Malaysia do host forced migrant populations without formal policy announcements or change of laws deserves recognition. The political decision-making behind these 'off-the-book' actions have not been adequately studied and documented. While clearly suboptimal as forced migrants are not afforded even minimal levels of protection and welfare, and they are subject to discretionary actions and harassment by state actors, international humanitarian organisations and concerned countries nevertheless do recognise that the situation could potentially be far worse if this were not the case.

ASEAN is a useful for member states to defend their national interests but those expecting its many declarations, agreements, and conventions to be binding, translated into national policies, and implemented, even when not perceived to be in national interests, are often disappointed. Even for serious crimes such as human smuggling and trafficking there is a variety of practices. When there is leadership and forced migration is framed as a collective global endeavour, ASEAN members have shown a willingness to take more positive and cooperative attitudes and actions. This was the case when the UN took initiatives from 1979–1988 and 1989–1996 with respect to dealing with the problem forced migration from mainland Southeast Asia. This has not been as notable with respect to the ongoing Rohingya crisis. Likewise, the Bali Process, which is a consultation forum for countries of origin, transit and destination with the support of RSO, faces its challenges in developing strategies for solving the problem of forced migration in the Asia Pacific.

The GCM and GCR are norm setting and intended to encourage work towards the progressive achievement of long-term goals. The COVID-19 pandemic ravaging the region make the prospects of a more accommodating approach to forced migration particularly bleak in the near term, understandably, turning nation states inwards. It is vital that these efforts continue through and after this global challenge. As part of the GCR, the CRRF, is already being rolled-out in stages. As of 2021, Thailand is the only Southeast Asian state that is implementing programs, namely, by enhancing refugee self-reliance through education and supporting conditions for safe and dignified return to the country of origin.

These efforts can considerably improve the conditions on the ground with respect to provision of more services such as health, education, and housing to make up for the lack of accessibility by forced migrants. In other affected states, local civil service organisations are taking on these responsibilities out of religious obligations and social consciousness. Non-governmental think tanks and scholars are also seeking to influence their respective polities in adopting initiatives, many of them at the micro level, that will alleviate the suffering of forced migrants without comprising their state and national interests.

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