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Sovereign States and Refugee Rights Protection in ASEAN

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Introduction

Southeast Asia has historically been the site of large-scale forced population movements and crises (Caballero-Anthony 2015; Kneebone 2019). The region is not only an important place of origin for labour migration but is also a transit region and, to a limited extent, a destination for refugees and asylum seekers (Kneebone 2012a; Petcharamesree 2016a). All Southeast Asian states – with the exception of Timor-Leste – are members of ASEAN. Despite this situation, ASEAN has not shown leadership on refugee issues in recent years (Kneebone 2014a; 2014b; see also Introduction and Chapter 1 in this volume) and no coordinated regional approach to refugee movement has developed. Further, as I will explain in this chapter, individual member states are reluctant to commit to legally binding obligations concerning the handling of refugees in the region (Ab Wahab 2017). I argue that the ASEAN context acts as a 'brake' on the responses of ASEAN member states to refugees who are conceptualized as 'irregular migrants' (Kneebone 2014b). Further, by analysing and comparing recent measures for handling refugees introduced by member states Thailand, Malaysia and Indonesia, I demonstrate the influence of ASEAN's respect for national sovereignty.

ASEAN's assertion of a traditional, Westphalian conception of the unitary state with sovereignty being absolute and exclusive was first expressed in Article 2(b) of the 1976 Treaty of Amity and Cooperation in Southeast

Asia. It was reiterated in the 2007 ASEAN Charter in Article 2(2)(b), which asserts the 'respect for the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN Member States'. The ASEAN Charter neither allows for a more flexible interpretation of state sovereignty nor provides for any exception to the rule of noninterference (Petcharamesree 2016b: 155). These principles constitute what is called the 'ASEAN Way' (Acharya 1997, 2017). Amitav Acharya (2017) explains that 'the "ASEAN way" consists of a code of conduct for inter-state behavior as well as a decision-making process based on consultations and consensus'. A defining feature of ASEAN is its norms of decision making by consensus and the principle of noninterference in the affairs of other member states (Kneebone 2014b).

The international community, regional civil society groups and ASEAN parliamentarians have frequently called for ASEAN to develop a comprehensive refugee and asylum seeker policy, or governance for promoting regional refugee protection (McMillan and Petcharamesree 2021: 65). Some of these demands have referenced the Comprehensive Plan of Action for Indochinese Refugees 1989 (CPA) on Indochinese refugees, which was adopted in June 1989 (see the Introduction and Chapter 1) and contributed to ending the exodus of Vietnamese boat people in the region. These groups argue that another CPA is needed to address the current refugee crises, especially the refugee movements that followed the Andaman Sea crisis in 2015 and the successive waves of Rohingya refugees who have been fleeing Myanmar and Bangladesh since 2017. During the 2015 Andaman Sea crisis, the three most affected states in the region – Thailand, Indonesia and Malaysia – appealed to the international community to assist them with their 'humanitarian' efforts, which they claimed went beyond 'their international obligations' (Ministry of Foreign Affairs of Malaysia 2015). The obligations to which they referred were their human rights obligations under international instruments, which will be discussed later in this chapter, including the nonrefoulement obligation, and obligations that exist under the ASEAN human rights regime (McMillan and Petcharamesree 2021).

In 2015, it was not ASEAN but the Bali Process that responded to the situation (Bali Declaration 2016; Kneebone 2017: 37). The Bali Process is co-chaired by Indonesia and Australia and brings together forty-five member states and four international organizations, including the UNHCR (the Bali Process n.d.; Kneebone 2014a; McCaffrie 2022). Again in 2022, there was a call by the UNHCR, the IOM and the UNODC to respond to the situation through the Bali Process (Joint Statement 2022; IOM, UNHCR and UNODC 2022) rather than through ASEAN (see the Introduction to this volume).

In 2015, ASEAN member states made it clear, as they had done during the CPA, that their commitments were temporary and that they expected

the international community to 'share the burden' of refugee protection. Specifically, in the Andaman Sea crisis in 2015, they made the resettlement of Rohingya refugees within one year a condition for granting temporary shelter. The three countries perceive themselves as transit states; therefore, local integration is generally ruled out as a durable solution, while 'voluntary' repatriation is near-impossible, considering the ongoing violence and political instability in the refugees' countries of origin. Repatriation programmes for refugees to return to Myanmar from Thailand and Malaysia are pending. Forced returns and deportations are common practices (Chen 2021; Moretti 2022: 110–12).

It is worth noting that the CPA instituted refugee status determination (RSD) procedures at the regional level with interstate and interregional cooperation with the UNHCR (Prabandari and Adiputera 2019). However, this was a controversial aspect of the CPA (Hathaway 1993; Nichols and White 1993). For example, Arthur C. Helton (1990) highlights that the status determination procedures conducted by Southeast Asian states at that time never embraced screening in the name of refugee protection; instead, the procedure was conceived as a deterrent to Indochinese refugees. Sara E. Davies (2014: 328) contends that the CPA contributed to the institutionalization of state noncompliance with the international protection regime and the compromise of asylum seekers' full access to refugee status. Despite the use of the *UNHCR Handbook*, which was intended to provide uniform guidance, individual countries with no experience in RSD applied their own standards and no uniform definition of 'refugee' emerged (Davies 2014). Notably, the CPA screening procedures did not become the basis of refugee law in ASEAN states.

Southeast Asia is currently dealing with a smaller magnitude of displaced people than during the Indochinese refugee crisis of the 1970s and 1980s. Even though less than 1% of the approximate 20.7 million refugees who exist globally are resettled each year (UNHCR n.d.a), resettlement remains the preferred durable solution to the refugee situation. ASEAN member states' experience with the CPA remains a crucial reference point for their practices on refugee management.

In this chapter, I focus on recent policy developments in the handling of refugees in the three main receiving states: Thailand, Indonesia and Malaysia. The aim of this discussion is to show how the approaches of these three states reflect ASEAN framings and perceptions of sovereignty, human rights and refugee protection. To make this point, I analyse the approaches of the three states through Seyla Benhabib's three normative positions, namely liberal nationalism (which emphasizes state control), liberal internationalism (which tempers liberal nationalism with international norms) and cosmopolitan interdependence (which moves away from state-centric approaches). I conclude that the defensive sovereignty practised by these

states reflects ASEAN framings and perceptions of human rights and forced migration, including refugee protection. In other words, despite apparent progress at the national level, sovereignty remains far from being eclipsed by human rights protection for refugees.

In the next section, I provide an overview of the laws and policies that the three countries apply to deal with refugees and asylum seekers. This discussion demonstrates that these groups are generally treated as an exception to immigration regulation. I then discuss the recent developments initiated by Indonesia, Malaysia and Thailand. Thailand, for example, recently initiated the National Screening Mechanism (NSM) through the Aliens Regulation (see Chapter 5 in this volume) and Indonesia instituted Presidential Regulation concerning the Treatment of Refugees (PR 125) (see Chapter 4 in this volume). The establishment of the NSM in Thailand and the lack of state RSD procedures in Malaysia (see Chapter 6 in this volume) and Indonesia is a particular focus in this chapter.

Common Approaches to Refugees as Forced Migrants in Indonesia, Malaysia and Thailand

Historically, Thailand, Malaysia and Indonesia have hosted the largest number of refugees and asylum seekers in Southeast Asia. These states are often countries of first asylum, but are not parties to the 1951 Refugee Convention or the 1967 Refugee Protocol. In Southeast Asia, only Cambodia, the Philippines and Timor-Leste have acceded to these instruments, yet none of them has fully implemented its obligations under the 1951 Refugee Convention. In avoiding legally binding international commitments on refugees, ASEAN member states instead opt to regulate refugee movement through their individual domestic laws.

The key commonality between the laws on refugees in Thailand, Malaysia and Indonesia is the lack of a clear legal and policy framework on rights protection, and refugee status recognition in their national laws. As was noted in the Introduction to this book, in all three states, the starting point is that refugees are prima facie illegal immigrants, unless they fall within some other policy. This could indeed be described as a 'de facto' refugee policy. The refugees in these countries are therefore interchangeably categorized as 'undocumented' forced migrants or as 'illegal immigrants'.

A common feature of the policies of the three states is avoidance of the term 'refugee', thus emphasizing that they are nonsignatories to the 1951 Refugee Convention and the 1967 Refugee Protocol. The Thai authorities continue to describe those staying in 'temporary shelters on the Thai–Myanmar borders' as 'people fleeing from fighting' or 'displaced persons from Myanmar', while Malaysia classifies these migrants into two categories: documented or

undocumented ('legal or illegal'). Although Indonesian law includes the language of 'granting asylum for foreigners' and 'refugees from abroad' in Law No. 37/ 2009 on Foreign Relations (Dewansyah and Handayani 2018: 476), in the absence of a procedure, in practice, Law No. 6 of 2011 on Immigration (hereinafter 'Law No. 6') may be applied (Kneebone, Missbach and Jones 2021). In fact, all three countries primarily use immigration law to deal with forced migration, regardless of the number of refugees arriving. At present, these Southeast Asian countries have no long-term policies for refugee management; instead, they have been implementing a patchwork of ad hoc policies in response to crises as they arise (Islam et al. 2021: 11). An ad hoc approach based on humanitarianism results in marginalizing refugees from state protection.

In Indonesia, Law No. 9/1992 Concerning Immigration (hereinafter 'Law No. 9') was replaced by Law No. 6 with the assistance of the Australian government (Kneebone 2017), but the new law 'does not allocate asylum seekers or refugees a special status, they are often categorized as illegal immigrants if they enter Indonesia without a valid immigration document'. Malaysia and Thailand use immigration laws that are more than forty years old: Thailand's Immigration Act B.E. 2522 and Malaysia's Immigration Act 1959/63. Unlike Indonesia, in Malaysia and Thailand, changes to law mostly occur on an ad hoc basis, meaning that there is not a coherent strategy in the legal system. In all three states, the strict application of immigration law is the default norm.

In Indonesia, the government shifted its policy from the 'tolerance' approach of Law No. 9 (which stated that the government 'may deny entry' to certain foreigners) to the 'detention-centered' approach of Law No. 6 (under which the government 'shall deny entry' to certain foreigners) (Nethery, Rafferty-Brown and Taylor 2013: 95). The more recent laws and policies on refugees and asylum seekers have been influenced by bilateral cooperation with Australia, which has occurred since the late 1990s. This relationship has resulted in an increase in the use of immigration detention centres and border security measures in Indonesia to prevent asylum seekers from reaching Australian territory (Nethery and Gordon 2014; Kneebone 2017). Australia's funding of the IOM in Indonesia has been overwhelmingly focused on border control and irregular migration-related projects, including detention (Hirsch and Doig 2018: 688); however, it was Australia reducing its funding to IOM Indonesia that resulted in the vast majority of refugees in detention in Indonesia being released in 2018, many of whom have since transitioned into 'alternatives to detention' (Missbach 2021: 225).

In Malaysia, refugees are identified and categorized as illegal immigrants under immigration law, which specifies that 'non-Malaysian citizens living in the country without a valid pass or permit are seen as criminals, and can be punished by a fine of not more than RM10,000 (US$2,434) or imprisoned

not exceeding five years or both, and shall also be liable to whipping of not more than 6 strokes' (Immigration Department of Malaysia 2018). In Thailand, the Immigration Act B.E. 2522 is the key legal mechanism for dealing with refugees as it specifies the crime of and penalty for being 'illegal immigrants'. None of the laws of these three countries provides any specific legal protection for refugees.

Human rights violations by states in the ASEAN region is another common feature (Langlois 2021). ASEAN portrays an ambiguous approach to human rights in its key instruments (Kneebone 2014b: Chapter 11). The establishment of the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the ASEAN Commission on the Protection and Promotion of the Rights of Women and Children (ACWC), as well as the adoption of a number of declarations, including the AHRD, has not prevented major rights abuses.

It is unclear whether ratifications of international human rights treaties by Malaysia, Thailand and Indonesia have contributed to the protection of refugee rights. These ratifications are set out in Table 0.1 in the Introduction. Thailand and Indonesia are similar in terms of their commitments to international agreements and treaties under the UN system and are party to most international human rights treaties. Indonesia alone has ratified the ICPRMW. In contrast, as noted in Table 0.1 in the Introduction, Malaysia has only committed to three treaties: the CEDAW, the CRC and the CRPD. Malaysia is one of the only UN member states that has not signed the ICERD (Anuar 2019; Ladiqi and Zuhari 2021).

However, Indonesia is arguably better positioned than Malaysia and Thailand to make progress on the implementation and domestication of international human rights mechanisms. This is evidenced by Indonesia's domestic legislation, which includes many of the rights that international human rights law seeks to promote. For example, the 1945 Indonesian Constitution and Law No. 39/1999 on Human Rights enshrine in Indonesian law the principles of nonrefoulement and nondiscrimination, freedom of religion, the right to marry and found a family, freedom of association, the right to access courts and legal assistance, the right to housing, the right to naturalization, the right to education and the right to freedom of movement (SUAKA n.d.a, n.d.b; Kneebone 2017). Although Indonesia has ratified various human rights treaties, the guarantee of and access to those rights depends on whether they have been integrated into the domestic legal system.

It is more difficult to implement international human rights in law in Thailand and Malaysia. Neither state has a coherent system or legal framework for the domestication of human rights treaties. Additionally, both Malaysia and Thailand have made reservations to provisions in treaties; some of these reservations have created obstacles for refugees and the accessibility of their rights and protection. Previously, Thailand's reservation to Article 22 of the CRC, the protection of refugee children, prevented any

Thai law from prescribing measures for the protection of, assistance in realizing, and access to the rights of, refugee children in some areas, including the screening process, RSD, the provision of assistance and welfare support. Malaysia has made several reservations to the three human rights treaties to which it is party. The most striking are its five reservations to core articles of the CRC: Article 2 (non-discrimination), Article 7 (birth registration and the right to a name and nationality), Article 14 (freedom of thought, conscience and religion), Article 28(1)(a) (compulsory and free primary education for all) and Article 37 (torture or other cruel, inhuman or degrading treatment or punishment and unlawful or arbitrary deprivation of liberty) (Child Rights Coalition Malaysia 2013).

As Malaysia, Thailand and Indonesia are not parties to the 1951 Refugee Convention and lack national refugee legislation, the three countries allow the UNHCR to play a key role in protecting the rights of refugees in their jurisdictions. Until 2005, Thailand took responsibility for the RSD of Burmese refugees. The ad hoc administrative framework mandated the Provincial Admission Boards (PAB) to screen refugees and recognize Burmese refugees as part of a nationality-based group. However, the PAB process has stalled, with no registrations since 2008 (Mathew and Harley 2014; Chapter 5). For other groups, including urban refugees, the Thai government has an informal understanding with the UNHCR, which registers refugees and issues a certificate upon registration. Unfortunately, UNHCR documentation does not provide much protection and the agency does not have the capacity to conduct RSD as quickly as is desirable. On average, registration takes two to four months and RSD takes two years (Mathew and Harley 2014).

In Malaysia, the UNHCR offers a limited form of protection under its mandate. The UNHCR conducts RSD and offers wide ranging assistance which enables refugees to be empowered with basic self-reliance in the absence of any state support (see Chapter 6). The UNHCR also issues certificates in Malaysia, but the provision of a UNHCR certificate does not result in formal, legal status being conferred by the Government of Malaysia. Malaysian authorities do not use the term 'refugee'; instead, refugees are 'UNHCR cardholders in Malaysia' (Petcharamesree et al. 2020). Moreover, Malaysia has been criticized by the UNHCR for forcibly repatriating asylum seekers to Myanmar, thus violating nonrefoulement principles (*UN News*, 25 October 2022).

Like Malaysia and Thailand, Indonesia permits the UNHCR to conduct RSD within its jurisdiction. The Indonesia–UNHCR understanding is different from the relationship between UNHCR and the other two states as it resulted from an arrangement made in 2002 between Indonesia and Australia known as the Regional Cooperation Arrangement (RCA) (Kneebone, Missbach and Jones 2021: 7–8). A 2002 immigration directive, entitled *Procedures regarding Aliens Expressing Their Desire to Seek Asylum or Refugee Status*, accords UNHCR documentation some recognition, while a

2010 directive, *Regarding the Handling of Illegal Immigrants*, allows refugees to stay in Indonesia temporarily (Kneebone, Missbach and Jones 2021: 7). This 2010 immigration directive was replaced in 2016[1] and now specifies that '"illegal immigrants" in Indonesia are subject to administrative action on immigration, but that asylum seekers and refugees will be dealt with by Indonesian authorities in co-operation with the UNHCR' (Kneebone, Missbach and Jones 2021: 7).

Despite its efforts, the UNHCR seems to have only limited influence on meaningful changes to refugee protection in the three countries. Indeed, UNHCR card holders are not protected from arrest or detention. The UNHCR has been reluctant to apply too much pressure in the pursuit of change lest it jeopardize its operations in these countries (Severson 2020). The tenuous nature of these UNHCR operations has been highlighted by a recent Government of Malaysia proposal to shut-down UNHCR's Malaysian office, which has been criticized by local civil society actors (*Free Malaysia Today* 13 October 2022). Although UNHCR is not influential in the three host states, it is relied upon to adopt a major role in refugee protection and management. In addition to providing funding, financial support, technical advice and humanitarian assistance to refugees, the UNHCR is expected by Thailand, Malaysia and Indonesia to coordinate resettlement to third countries.

Recent Developments in Handling Refugees and Asylum Seekers

There have been some recent changes to the laws and policies that govern the handling of refugees and asylum seekers in Indonesia, Malaysia and Thailand. However, I argue that the motivations for these reforms, especially in Malaysia and Thailand, are based on migration management and national security concerns and do not indicate that the two states are shifting towards recognizing the international status of refugees and their need for protection.

As noted previously, Indonesia's legal framework recognizes refugees but offers them limited protection (Mixed Migration Centre 2021). In December 2016, the President of Indonesia, Joko Widodo, signed PR 125, which contains key refugee-related definitions and establishes processes for the detection, shelter and safeguarding of refugees and asylum seekers (UNHCR n.d.b). PR 125 acknowledges the existence of refugees by defining them in terms similar to those employed in the 1951 Refugee Convention.[2] However, PR 125 does not expressly prohibit refoulement (Tobing 2017). It was also criticized for being 'biased' as it applies a security approach, rather than a human rights approach, to managing refugees and asylum seekers in the country (Kneebone, Missbach and Jones 2021; Sadjad

2021). Additionally, PR 125 does not propose self-reliance or integration of refugees as potential solutions to refugee management in Indonesia. It does not accord any more rights to refugees than what refugees are already guaranteed under domestic law (see Chapter 4 in this volume). Most importantly, the responsibility for refugee protection remains with 'international organizations' – that is, the IOM and the UNHCR, with the UNHCR still responsible for RSD (Kneebone 2017). PR 125 also clarifies that the only legal options for refugee are resettlement or voluntary repatriation; local integration is not an option (Mixed Migration Centre 2021). In addition, immigration authorities remain responsible for monitoring refugees and asylum seekers, as the need to protect refugees due to their status under international law is not well understood by local officials (Kneebone 2020). Finally, while PR 125 provides greater legal certainty and creates standard procedures for coordination and effective collaboration among government agencies, it does not create a system for RSD (Tobing 2017). Still, during the current practice of UNHCR-operated RSD in Indonesia, lawyers are permitted to be present. This is not the case in Malaysia and Thailand.

In recent years, Thailand has made some progress towards the better handling of refugees. In September 2016, the then Prime Minister Prayuth Chan-O-Cha pledged at the UN Summit on Refugee and Migration that the Thai government would end the detention of refugee and asylum-seeker children and establish an effective screening system to differentiate refugees from economic migrants. On 10 January 2017, the government adopted a cabinet resolution to revise the laws and regulations that are relevant to the management of refugees and illegal immigrants. On 25 December 2019, the Aliens Regulation was published in the Royal Gazette. This is a Regulation of the Office of the Prime Minister, which is an executive policy mechanism rather than a law. The Aliens Regulation transfers the responsibility for the management of 'refugees' and 'illegal immigrants' from the National Security Council to the newly established Protected Persons Screening Committee (PPSC)

The Aliens Regulation was considered by some as key to the development of Thailand's refugee management and rights protection mechanisms. Prior to the creation of the Aliens Regulation, the Thai government did not have any explicit policies or laws on refugees, although the historical policies described by Napaumporn and Kneebone in Chapter 2 protected many groups of refugees, despite not being expressly addressed towards 'refugees'. However, the Aliens Regulation does not meet the expectations of academics and civil society groups (see the critique in Chapter 5). Importantly, the term 'refugees and asylum seekers' is not mentioned in the document; instead, the terms 'displaced person', 'evacuee' and 'those fleeing fighting' are used. The sole legislative reference to the screening process is contained in the Immigration Act B.E. 2522. The preamble to the Aliens Regulation states that:

> Currently there are aliens who enter and reside in Thailand, whether legally or illegally under the Immigration Laws, which caused Thailand alien management problems especially with regards to those who came to Thailand and are unable to return to their country of origin since they have a reasonable ground to believe that they would face harm from persecution upon departure from the Kingdom.

These 'aliens' are seen as problematic because their presence 'affects the public order, national security, and international relations'. The legal status of aliens in Thailand and 'problems related to the deportation of those aliens to the country of origin or facilitation to a third country' are also mentioned. The justification is that 'an alien screening mechanism for this group of aliens … is in line with the state of Thai society and international circumstances' (preamble to the Aliens Regulation).

The Aliens Regulation contains numerous 'fatal flaws' (Lewis and Davies 2020; Chapter 5 in this volume). First, there is no clear definition of the people who are deserving of protection. Although in some parts of the Aliens Regulation the definition of 'alien' appears to be similar to the definition of 'refugee' in the 1951 Refugee Convention, such as the person being unwilling or unable to return to the country of origin, other parts are less clear. Rather than following the 1951 Refugee Convention definition for understanding the 'reasonable ground of persecution', these grounds are to be determined at the discretion of the PPSC. In addition:

> The Regulation … introduce[s] a new and under-defined term: 'person under protection', a non-Thai national at reasonable risk of experiencing harm violating 'human rights and human dignity'. The new term eschews internationally recognized definitions of 'refugee' and seemingly permits the flexible decision-making with which RTG [Royal Thai Government] is comfortable. (Severson 2020)

Second, the composition of the PPSC is problematic. According to clause 5 of the Aliens Regulation, the Committee mainly consists of high-ranking officials and is chaired by the Commissioner-General or Deputy Commissioner-General of the Royal Thai Police. The Deputy Permanent Secretary of the Ministry of Interior serves as the Deputy Chairperson. The PPSC also includes four experts, but they are appointed by the Chair. Civil society groups working in the field have proposed that academics with knowledge of and experience with the issues be assigned these expert positions; however, none has been appointed. The four 'experts' who were finally selected were retired, high-ranking officers from the Ministry of Interior or the Ministry of Foreign Affairs. Since the PPSC is completely controlled by members who come from the security sector and there is no participation by other stakeholders, the security approach prevails over human rights. The prevalence of government officials on the

Committee also indicates that it will adhere to strict border control (in line with Behabib's notion of 'liberal nationalism', which is discussed in the last section). The new procedure continues the existing policy, which bars the UNHCR from assessing the status of some groups of people, such as North Koreans, Burmese people, the Rohingya and ethnic Hmong people from Laos.

Third, the procedure established by the Aliens Regulation seems to deviate from the accepted substantive and procedural norm (Severson 2020) of 'rights to reasons' as decisions that deny requests for asylum cannot be appealed. Fourth, at the time of writing, the Standards Rules of Procedures had not been finalized; therefore, no clear criteria for the NSM have been put in place.

Fifth, national security seems to be prioritized over the principle of nonrefoulement. Clause 15 of the Aliens Regulation allows for an ambiguous exception to prevention of nonrefoulement 'where national security is threatened'. The Thai government's understanding of 'national security' has never been clearly defined anywhere. It is worth noting that Thailand is a party to the ICCPR and the CAT. These two treaties recognize the nonrefoulement principle. Finally, the Aliens Regulation embodies longstanding features of the Thai government's approach to refugee protection, including continued resistance to international refugee law and reliance on third-country resettlement.

In Malaysia, there is a mix of migration types, but, at present, there is no distinction between asylum seekers, refugees and undocumented migrants under domestic law. Programmes that protect and assist refugees and asylum seekers in Malaysia are implemented through informal mechanisms that were established by the UNHCR, in cooperation with NGOs. The Malaysian government does not distinguish refugees from irregular or illegal migrants, so the UNHCR's role is justified on humanitarian grounds; an exceptional grant of UNHCR status is not rooted in official government policy and it is not legally recognized. Therefore, refugees in Malaysia are especially vulnerable to inconsistent government policies, including detention and expulsion (Lego 2012; Nah 2019). The Malaysian government is not relinquishing any of its sovereignty by allowing there to be exceptions for refugees; rather, the state is asserting its sovereignty. The UNHCR's humanitarianism only makes a small contribution to the enormous effort that is needed to provide assistance to refugees. This position enables the Malaysian government to tolerate the UNHCR's existence in the state. As Hoffstaedter and Jalil (see Chapter 6) explain, Malaysia retains enormous discretion over who it tolerates and sometimes even accepts – Muslim refugees in particular. Acknowledging that the Malaysian government's humanitarianism is controlled by the state is useful for recognizing the limitations of the humanitarian approach: refugee protection must be premised on the rights that are guaranteed to refugees in international law.

Changes to Malaysia refugee protection were expected after the 2018 general elections. The then-government pledged to develop a more comprehensive policy for refugees and asylum seekers. The steps taken by former Prime Minister Mahathir Mohamad's government towards ratifying the 1951 Refugee Convention is indicative of the proposed changes to refugee and asylum seeker protection. Under Promise 59 of Pakatan Harapan's pre-election manifesto, the coalition pledged to address the Rohingya and Palestinian refugee issue and ratify the 1951 Refugee Convention, which would regularize the status of refugees in the country (Pakatan Harapan 2018: 121). Under Promise 35, 'Raising the dignity of workers and creating more quality jobs', Pakatan Harpan promised labour rights for refugees:

> Recognising that Malaysia is hosting more than 150,000 refugees, including Rohingyas and Syrians, the Pakatan Harapan Government will legitimise their status by providing them with UNHCR cards and ensuring their legal right to work. Their labour rights will be at par with locals and this initiative will reduce the country's need for foreign workers and lower the risk of refugees from becoming involved in criminal activities and underground economies. Providing them with jobs will help refugees to build new lives and without subjecting them to oppression. (Pakatan Harapan 2018: 78, quoted in Munir-Asen 2018: 17)

For the first time, Malaysia had a written commitment on refugee protection, providing refugees with access to social services and the right to work. However, Malaysia's sudden change in government in 2020 curtailed the possibility of better recognition and rights protection for refugees (see Chapter 6 in this volume). The return to power of the long-governing UMNO, combined with the COVID-19 pandemic, resulted in an official crackdown on undocumented migrants, including refugees, and a surge in xenophobic sentiments, particularly towards Rohingya residents (Walden 2020). As noted earlier in the chapter, Malaysia has since been criticized by the UNHCR for forcibly returning asylum seekers from Myanmar to their country of origin and violating the principle of nonrefoulement (*UN News*, 25 October 2022). Like many of its neighbours, Malaysia's official policy on asylum seekers and refugees is that they are 'illegal migrants' and subject to detention (Wake 2016). Since 2020, mass refugee arrests and detention have been justified under the pretence of being public health measures during the pandemic (Chew 2020). There is limited explicit policy regarding refugees, which means that official responses tend to be determined on an ad hoc, inconsistent and often subjective basis (Wake 2016).

Nevertheless, there have been some positive developments in Malaysia. Some Malaysian Members of Parliament have formed the APPGM on Refugee Policy, where parliamentarians and policy makers can discuss refugee and migrant policy in a non-partisan forum. From 17 to 23 June

2022, Malaysia was the first country in the region to welcome the Special Rapporteur (SR) on the situation of human rights in Myanmar, Thomas Andrews. SR Andrews engaged with various government agencies as well as the Malaysian Human Rights Commission, SUHAKAM and civil society groups: 'The visit reflects our serious commitment to finding a peaceful and lasting solution to the crisis in Myanmar including the crisis in Rakhine, which has led to one of the biggest refugee situations in the region in recent years. The situation in Myanmar is also crucial to ASEAN's security and stability' (Ministry of Foreign Affairs of Malaysia 2022). In an address made in Malaysia, Andrews stated that 'Malaysia not only recognises this fact, it has been willing, through the words and actions of Foreign Minister Saifuddin, to challenge ASEAN to re-examine their current policy on Myanmar' (*The Sun Daily*, 23 June 2022). Indeed, Malaysia's Foreign Minister at the time of writing, Saifuddin Abdullah, has been a vocal critic of the Myanmar junta since it seized power from Aung San Suu Kyi's democratically elected government in February 2021. Saifuddin has also taken an interest in refugee welfare and has proposed that the Organisation of Islamic Cooperation establish a refugee education foundation to promote quality education for refugees (*Malay Mail* 2022). However, at the same time, his government has repatriated Myanmar asylum seekers and proposed the closure of the UNHCR's office in Kuala Lumpur.

Despite some positive moves towards better refugee protection in Malaysia, there have been no discussions about RSD. As there is no sign that the Malaysian government intends to establish mechanisms to process asylum seekers and refugees in the territory, the UNHCR continues to conduct registrations and RSD. 'But because it has no formal agreement with the Malaysian government, UNHCR's interventions with the government on behalf of refugees are ad hoc' (Human Rights Watch 2000: Chapter V). During COVID-19, the Malaysian authorities denied the UNHCR access to detention centres, where the UNHCR conducts RSD (Ananthalakshmi and Chu 2020). The Malaysian government's full control over the UNHCR's activities, including RSD, demonstrates the reinforcement of the primacy of state sovereignty, which Malaysia guards carefully. This pattern of prioritization and what it reveals is also important to the analysis of Thailand.

Prospects for Indonesia, Malaysia and Thailand to Become Leaders in Refugee Protection

As has been evident in past refugee management policies in Indonesia, Malaysia and Thailand, ad hoc measures to address specific cases or issues at certain periods of time have been the primary tools used by these states. Under the domestic immigration laws of all three states, people who

seek refuge are classified as 'illegal immigrants'. In some circumstances, policies 'allow … asylum seekers to reside temporarily in the country pending durable solutions', which exempts these people from the strict classifications of the domestic law (Muntarbhorn 2021: 424). However, these exemptions do not indicate any overall policy change; recent developments in the three countries highlight the lack of long-term policies on refugee management. This demonstrates the mentality of governments in the region that seek to avoid any long-term responsibilities for refugees. Yet: 'There has been a tendency by Southeast Asian States to avoid using the term "refugees" at the national level, even though they have to deal with the term in international fora' (Muntarbhorn 2021: 424). By not using the term 'refugee' and clearly placing refugees as fitting within the definition of 'illegal migrants' in legislation (with the partial exception of Indonesia), the three states are implying that they do not recognize the international status of refugees and therefore may deny refugees international protection.

Indonesia is the only country of the three with domestic law that reflects a human rights approach to asylum. Article 28G(2) of the 1945 Indonesian Constitution, which sits in Chapter XA with other human rights guarantees, describes 'the right to obtain political asylum from another country' and freedom from torture. Arguably, this provision imposes an obligation on the state to grant asylum seekers access to basic rights following an appropriate national RSD procedure (Dewansyah and Nafisah 2021). However, the provision on the right to obtain political asylum has not been implemented in national law (Kneebone 2020).

PR 125 provides some guarantees for refugees and asylum seekers, such as procedures for rescues at sea and the provision of shelters with health and religious facilities (Sumarlan 2019: 79; Kneebone 2020; Sadjad 2021; Chapter 4 in this volume). Yanuar Sumarlan (2019: 85) argues that the 'Regulation seems to revoke the old and fossilized rule that "Indonesia will never acknowledge refugees legally" in the hope of creating some illusions that the system "is evolving somewhere"'. Instead, it facilitates detention centres and an inefficient immigration system (Sumarlan 2019: 85). Bilal Dewansyah and Ratu Durotun Nafisah have conceptualized PR 125 as a reflection of the Indonesian government's response to asylum seekers and refugees as 'humanitarian assistance', as well as its adoption of a politicized and securitized immigration-control approach (Sumarlan 2019; Dewansyah and Nafisah 2021). They argue that the competition between the three approaches relied upon in Indonesia – the human rights approach (through the right to asylum), humanitarianism (understood as discretionary extralegal protection) and immigration control – constitute a 'triangulation' of asylum and refugee protection in Indonesia in which the latter two prevail (Sumarlan 2019; Dewansyah and Nafisah 2021). This

is evidenced by the rise of anti-Rohingya refugee tension and pushbacks to Rohingya boat arrivals in late 2023 (*Al Jazeera* 2023). In contrast to the lack of ASEAN consensus (Tucker 2023) in responding to human rights abuses in Myanmar, 'Indonesia has opted to engage with Myanmar rather than isolating it' (Markar 2013). In Indonesia's view, this is not interference with Myanmar's internal affairs, nor is it noncompliant with the 'ASEAN way' of noninterference in handling relations and interactions between member states. As Yunizar Adiputera and Antje Missbach (2021) explain, the Indonesian government has a policy of 'quiet diplomacy', which enables it to balance the regional nonintervention paradigm and its humanitarian objectives. However, the lack of enforcement and implementation of PR 125 and the tensions created nationally by the continuing Rohingya refugee crisis do not inspire confidence in Indonesia's capacity to promote better refugee protection in the region (cf. Chapter 4).

Due to the Thai government's lack of concrete and systematic policies on refugee issues, the 'refugee problem' persists, together with a substantial statelessness population (see Chapter 2). However, Thailand has sufficient legal mechanisms to deal with refugee issues and to provide them with a degree of protection. This is facilitated through enabling national legislation, including the National Education Act 1999, which provides education for all, universal health coverage and the Civil Registration Act 2008, which enables children who are born and live in Thailand to register at birth. The newly initiated NSM should help Thailand to manage the risks and consequences associated with accepting long term refugees. Arguably, with Thailand's recent development of different mechanisms for processing 'refugees', Thailand is ready and has an adequate body of knowledge (see Chapter 2) to sustainably manage refugees in a manner that respects human dignity and human rights, and mitigates the risks and impact to society, the economy and the security of the country. Themba Lewis commends Thailand's new NSM and describes it as 'a real possibility of better protection for refugees. If Thailand builds upon the proposed regulation, it could become a regional leader in operationalising fair processes that protect refugee rights. It could create a regional milestone' (Lewis and Davies 2020).

However, it is doubtful whether Thailand will become a regional leader in refugee protection. On the one hand, Thailand's conduct is unlikely to inspire other states. Thailand has been very selective when dealing with refugee issues in the country and region (see Chapter 2), and although the Thai government has instituted the Aliens Regulation procedure through the Prime Minister's Office (rather than as Cabinet decisions – see Chapter 2), this does not mean that Thailand's approach is ideal. The government continues to avoid the term 'refugee' and instead uses 'person deserving protection', which is not clearly defined. Thailand is therefore intentional

in its continued avoidance of taking full responsibility for protecting refugees. The path towards actual protection is still long.

Malaysia's approach to refugee protection is arguably defined by the fact that the bulk of its refugee population originates in Myanmar and by its migration policies that discriminate on the basis of race (see Chapter 6 in this volume). It is not surprising that Malaysia welcomed the UN Special Rapporteur on the situation of human rights in Myanmar, as successive Malaysian governments have been vocal in criticizing Myanmar for its treatment of Rohingya refugees. On occasion, Malaysian leaders have publicly spoken about Malaysia's responsibility to the international community, as well as its obligation to ensure that its 'ASEAN colleague[s] [take] proactive steps to prevent the matter from further deteriorating' (ASEAN Parliamentarians for Human Rights, 9 November 2020). Former Malaysian Prime Minister Mahathir bin Mohamad even urged Malaysia to move away from its noninterference policy in the case of Myanmar in order to pressure Myanmar to shoulder this responsibility. Mahathir advocated for ASEAN states to work together on this issue, not because it would benefit international relations, but because the situation of the Rohingya is an issue of humanity.[3] However, Malaysia's stronger stance against Myanmar is not echoed by other ASEAN states.

The continuing plight of the Rohingya in light of ongoing violence in Myanmar and the failure of ASEAN states to formulate a strong stance against Myanmar has been described as ASEAN's 'weak spot' (Tucker 2023). The latter is arguably a consequence of ASEAN's assertion of a traditional, Westphalian conception of absolute and exclusive sovereignty.

Manifestations of Sovereignty

In this section I examine the extent to which the responses of the three states reflect Benhabib's three normative positions – liberal nationalism, liberal internationalism and cosmopolitan interdependence – to understand their responses to refugees and the latter's rights in the ASEAN context. I use these positions to explain the policy and 'legal' developments in handling refugees and asylum seekers in Indonesia, Malaysia and Thailand, arguing that the liberal nationalist and liberal internationalist positions prevail. However, I highlight the contradictions between these first two positions in the ASEAN context. Cosmopolitan interdependence, which emphasizes individual rights, is currently far from the ASEAN reality.

In and among ASEAN states, the binary between citizen and noncitizen remains intact. Benhabib argues that despite the emergence and internationalization of human rights in response to the insights gained from the

horrors of the twentieth century, human rights are merely the rights of citizens (Benhabib 2020: 78). In analysing the 1951 Refugee Convention and the 'demos'[4] in the context of states' refugee admission practices, Benhabib applies these three normative positions as contemporary political philosophy.

Liberal Nationalism

Liberal nationalists emphasize well-protected borders and a centralized agent of some kind that takes responsibility for protecting a country's limited 'resources' as well as ensuring the continuity of its public culture and democratic values (Benhabib 2020: 92). 'Immigration and transnational movements across borders are permitted, but the regulation of their quantity and quality remain sovereign privileges' (Benhabib 2020: 92). Although Indonesia, Malaysia and Thailand allow refugees and asylum seekers to cross their borders and stay in their territories (often unwillingly),[5] on a humanitarian basis, these states have the right to regulate refugees' access to their territories. Malaysia and Thailand do so through RSD conducted by the UNHCR (and in the foreseeable future, through the NSM in the case of Thailand). As previously discussed, the RSD mechanism is managed by either the national government (as in Thailand) or the UNHCR under 'delegation' from the state (as in Malaysia and Indonesia) and therefore is directly or indirectly controlled by the state. Although these states claim to respect international human rights commitments, they have pushed back against and limited asylum seekers' access to rights and/or barred certain groups of asylum seekers from accessing RSD. With their reservations to relevant provisions in international human rights instruments and their continued refusal to ratify the 1951 Refugee Convention, these states make it clear that they prioritize 'in the first place, "our" law, "our" precedents, and "our" values' (Benhabib 2020: 93). In the liberal nationalist position adopted by Indonesia, Malaysia and Thailand, international law is perceived as a constraint on sovereignty; therefore, these states deliberately construct state sovereignty as if it were still absolute. In this sense, the rights of migrants and refugees are always secondary to national security, national welfare and, ultimately, the rights of its citizens.

Liberal Internationalism

According to Benhabib, liberal internationalists 'argue that it is wrong to think of sovereignty as a unilateral prerogative to be wielded against others. Rather, states exist within regimes of sovereignty that change over time. The Westphalian model of the absolute jurisdiction of a central

authority over all that is living and dead in its territory is a myth of the past' (Benhabib 2020: 93). Liberal international sovereignty is exercised within a system of international law and its institutions (Benhabib 2020: 93). In contrast to the more traditional, state-centric view of liberal nationalism, liberal internationalists acknowledge that states must balance self-interest with international obligations (Benhabib 2020: 93). However, this may lead to compromises and choices; for example, Benhabib recognizes that 'states have the prerogative to define their labor market policies as they choose' (2020: 93). Similarly, states in the region have developed different policies for groups of refugees depending on their origin and ethnicity (this is particularly the case for Malaysia, and notably in the past Thailand selected displaced persons according to their ability to integrate into Thai society (see Chapter 2)).

This approach suggests that the adoption of the Charter of the United Nations, the UDHR and other international human rights treaties, as well as the emergence of regional norms, does not change the state sovereignty regime. States voluntarily sign or ratify international human rights treaties, including the 1951 Refugee Convention, if and when they see fit. State obligations are prescribed, but there are no mechanisms to effectively enforce them. The 'weakness' (Benhabib 2020: 93) of the liberal internationalist view is, as T. Alexander Aleinikoff suggests (2018: 298), that the refugee regime is seen not as a system, but as a series of bilateral and multilateral bargains. Benhabib suggests that this approach leads to the 'deterritorialization of responsibilities' (Benhabib 2020: 94).

Aleinikoff (2018: 298) argues that by accepting a state-based refugee regime, states do not understand the international refugee regime as a system of norms of protection; instead, they view it as a series of bilateral and multilateral bargains. This was evidenced in the abortive and controversial deal struck by Australia and Malaysia in 2011. In an agreement that was signed in July 2011, the states affirmed an arrangement concerning asylum seekers and refugees in the Asia-Pacific region (Arrangement between the Government of Australia and the Government of Malaysia on Transfer and Resettlement). As stated by the Australian and Malaysian Prime Ministers, 'under the arrangement, 800 asylum seekers who arrived in Australia by boat would be transferred to Malaysia to have their claims for protection assessed and Australia would resettle 1000 recognised refugees from Malaysia per year for up to four years' (Australian Human Rights Commission 2011; Kneebone 2012b: 160).[6] This bilateral agreement demonstrates how states can declare that they are adhering to international human rights and refugee norms while 'shifting' their responsibilities; however, in reality, deals like this one are incompatible with states' responsibilities.

As other chapters in this book illustrate, governments in the Southeast Asian region often practise two dimensions of sovereignty which reflect 'liberal nationalism' and 'liberal internationalism'. Kuncoro and Prabandari (see Chapter 4) call these dimensions 'internal' (describing the state's control within its territory) and 'external' (referring to the state's independence in the international sphere). Kuncoro and Prabandari argue that these dimensions of sovereignty are tempered by responsibility; however, Keegan et al. (see Chapter 7) argue that states exercise international sovereignty to balance national self-interest with international obligations as they relate to the protection of their borders.

Cosmopolitan Interdependence

Whereas both the liberal nationalist and the internationalist treat migratory movements across international borders 'primarily as matters to be regulated, governed, and controlled' (Benhabib 2020: 94), cosmopolitan interdependence, the third position advanced by Benhabib, 'proceeds from the premise that human mobility is an anthropologically deep-seated drive of the human species and that the regulation of human mobility through national borders is quite recent in human history' (2020: 94). Benhabib (2020: 95) suggests that this concept of cosmopolitan interdependence is embodied in the recent Global Compacts, which have common aims for refugee and migrant movements (see the Introduction).

The cosmopolitan position pushes liberal internationalists beyond the perspective of the state. Introduced by Immanuel Kant, cosmopolitanism is perceived as the '"utopian horizon" of humanist values and tolerance', which opposes 'the narrow perspectives of nationally-based identities and rights' (Lejeune et al. 2021: 5). The cosmopolitan position moves away from a 'state-centric perspective of social and political dynamics' and shuns methodological nationalism (Lejeune et al. 2021: 5, citing Beck 2007).

However, there are debates over Benhabib's approach to cosmopolitanism (Benhabib 2006: 147–86); in the context of migration, Benhabib claims that hospitality is always conditioned and 'marked by particularity in politics' (Honig 2006). This is clearly true in the case of ASEAN member states (see Chapter 2), although these states also maintain strict control over borders in accordance with liberal nationalism. At the same time, the initiatives and efforts made by civil societies (and parliamentarians in the case of Malaysia) in the region to overcome the 'us and them' or 'citizen and noncitizen' binary should not be ignored (see Chapters 6, 7, and 9 and cf Chapter 1 in this volume). These actions reflect cosmopolitan hospitality being used differently and more authentically, which in turn improves refugee protection.

Conclusion

Despite some 'developments' in the laws and policies adopted by Thailand, Indonesia and Malaysia, it is doubtful whether any of the three countries examined will lead a coordinated response to refugee issues. Individual states are more concerned about securing their borders and maintaining the support of their voting populations than about protecting the rights of alien non-citizens.

ASEAN members are reluctant to criticize other members due to the 'noninterference' principle; this is despite the fact that Article II(3) of the Bangkok Principles, to which ASEAN members are parties (see Chapter 1), describes granting refugee status to asylum seekers as a nonpolitical act.[7] Like other ASEAN member states, Thailand is reluctant to recognize the refugee status of any group, both in fact and in law, because recognition implies that persecution has been committed by the state of origin and this is understood as interference in the internal affairs of neighbouring states.

A further obstacle to ASEAN coordination is that ASEAN does not have the necessary institutions to deal with transnational issues, especially for human rights violations in the context of migration (Kneebone 2014b). The key challenge in ASEAN is the lack of political will to make changes on a large scale due to the nationalistic nature of the policies and laws that are in place in its member states.

Most ASEAN member states view the plight of asylum seekers and refugees from a humanitarian perspective, but do not recognize them as such, or use the language of 'refugees'. As was previously highlighted, of the nonsignatory states to the 1951 Refugee Convention that were examined in this chapter, only Indonesia recognizes the term 'refugee' in law but has not implemented the law. For these states, protecting their sovereignty is far more important than enacting refugee management; humanitarianism has become a euphemism for state discretion. Thailand keeps state sovereignty intact behind the veil of the NSM, while Indonesia and Malaysia preserve their sovereignty by delegating refugee management to the UNHCR, even though asylum is a state sovereign discretion (see the Introduction). In this context, it is difficult to foresee the development of a subregional approach.

The different approaches applied by Indonesia, Thailand and Malaysia, as discussed in this chapter, reveal that the traditional Westphalian concept of sovereignty – as absolute and unlimited state power over internal law or decision making –is not generally contested in ASEAN states (cf. Chapter 4). The understanding of state sovereignty as applying to the 'unitary, absolute and legitimate state' is problematically evident in the context of migration and human rights (Hashmi 1997: 3) in ASEAN and remains unchallenged.

There are a range of views on whether ASEAN and its members are moving towards a more rights-based approach. For example, Yuyun Wahyuningrum (2021) has argued that despite ongoing challenges, AICHR's ability to promote and protect human rights in the region has strengthened over the last decade. I have argued elsewhere that incremental progress towards embedding human rights norms into institutions like the AICHR is the most promising means by which to protect refugee rights (McMillan and Petcharamesree 2021). Still, even as individual states ratify international human rights instruments, the challenges of shifting nationalism to cosmopolitanism and encouraging burden sharing remain. Sovereignty and territorial integrity remain the key features of the ASEAN regional system. In forced migration, interdependence (cosmopolitan) sovereignty has been overshadowed by national sovereignty. Most, if not all, ASEAN member states still fully adhere to the idea of 'domestic sovereignty'. They believe that they can control their domestic affairs and strictly adhere to Westphalian sovereignty by emphasizing the principle of noninterference with the internal affairs of other states (Krasner 1999). ASEAN's current institutionally designed human rights regime does not accommodate redefining state sovereignty or changing the understanding and application of ASEAN norms.

The current regime of state sovereignty as exercised by ASEAN states works against refugee protection. I have been advocating for regional cooperation under a system of shared regional governance that is guided by international human rights law, as well as for states to recognize that people 'are displaced because of the violence and injustice committed against them by their own states, and because the political authority governing the territories in which they reside has failed to assure their membership and human rights' (Benhabib 2020: 96). I do not advocate for full cosmopolitan interdependence as it is too idealistic. I am also not suggesting that the region should operate without borders; instead, what is required is greater accountability to protect the rights of migrants and refugees. In many ways, ASEAN member states have demonstrated awareness of universal human rights standards, as is evident in the ratification of some international human rights treaties and commitments made at the international level. Benhabib's idea of 'cosmopolitanism' does not require unconditional hospitality or infinitely open borders; instead, her work calls for a mediation between the universal and the particular. In fact, by hosting asylum seekers and refugees for so long and providing a level of protection to some groups of 'refugees', Thailand, Indonesia and Malaysia balance the universal and particular, even though the way in which this is enacted is not a perfect solution.

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Notes

1. See discussion in Chapters 3 and 4 of this volume. Despite Article 28G(2) of the 1945 Indonesia Constitution which protects 'the right to obtain political asylum from another country', the 2011 Immigration Law provides no space to address asylum and refugee issues when it allows the immigration authority to deny entry of anyone without valid travel documents. See Bui Thu Thuy.n.d. 'Refugee protection in ASEAN: The right to be recognized as a refugee'. Retrieved 29 June 2024 from chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://law.unimelb.edu.au/__data/assets/pdf_file/0011/4356650/BUI-Thu-Thuy.pdf.
2. PR 125 defines a refugee as: 'a foreigner who resides within the territory of the Republic of Indonesia due to a well-founded fear of persecution due to race, ethnicity, religion, nationality, membership of a particular social group, and different political opinions, and does not wish to avail him-herself of protection from their country of origin and/or has been granted the status of asylum-seeker or refugee by the United Nations through the United Nations High Commissioner for Refugees.'
3. Mahathir bin Mohamad in his address at the *International Conference on the Plight of the Rohingya Part II: Crime against Humanity*, organized by Perdana Global Peace Foundation, 15 June 2015, Kuala Lumpur. This international conference was a follow-up to the initial conference, which took place in 2012, following the June 2012 Rohingya crisis in Myanmar. Mahathir is the President of the Perdana Global Peace Foundation and Tan Sri Norian Mai is the Chairman.
4. According to Benhabib, the 'demos' refers to the 'constitutional subject of a self-determining entity in whose name sovereignty is exercised, which pertains to the citizens in the polity' (Benhabib 2020: 79). For a more detailed discussion of this concept, see Benhabib (2004: 20).
5. Editor's note: that is, they provide asylum to these forced migrants. See the discussion of the basis of asylum in the Introduction to this volume.

6. Kneebone (2012b) engages in extensive discussion of the Arrangement between the Government of Australia and the Government of Malaysia on Transfer and Resettlement.
7. Article II(3) states that: 'The grant of asylum to refugees is a humanitarian, peaceful and non-political act. It shall be respected by all other States and shall not be regarded as an unfriendly act so long as its humanitarian, peaceful and non-political nature is maintained.'

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