Conclusion

Sovereignty, Responsibility and Human Rights

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The chapters in this book have examined the responses of three Southeast Asian states – Indonesia, Malaysia and Thailand – to the issue of refugee protection. A common feature in the responses of the three states is that refugees are managed at the national level as discretionary 'humanitarian' exceptions to immigration policy and are viewed as a 'problem' of mixed and forced migration (see Chapters 7 and 10; see also Petcharamesree 2016) rather than as individuals with rights and a status in international law. In Chapter 10, Sriprapha Petcharamesree suggests that this approach, alongside the lack of specific national systems for determining refugee status, amounts to 'de facto refugee policy'.

We argue that this common response reflects the 'faultlines' of the international refugee protection regime, namely tension between the perception of refugees as 'displaced persons' and a 'problem' of forced migration, and the international refugee law concept of the refugee as a rights-bearing individual. This tension underlies the two Global Compacts created in 2018 – the Global Compact on Refugees (GCR) and the Global Compact for Safe, Orderly and Regular Migration (GCM), to which Indonesia, Thailand and Malaysia all made commitments, as discussed in the Introduction. The Compacts collectively emphasize the need for a broadened base of support and stakeholder participation for refugee protection, for expanded 'pathways' or third-country solutions, including complementary pathways, and for international cooperation and 'burden' or responsibility sharing.

Burden or responsibility sharing for the implementation of durable solutions is another aspect of the international refugee protection 'regime'

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(Betts 2010: 18). The lack of state solidarity on refugee protection is a key motivation behind the Global Compacts and another 'faultline' that is replicated in Southeast Asia. In Chapter 1, Abraham suggests that states in Southeast Asia perceive the 1951 Refugee Convention as an instrument of colonialism and consider that refugee protection is the responsibility of the Global North. He argues that the international refugee protection regime is biased against the Global South, which hosts a disproportionate proportion of displaced persons[1] on a temporary basis for humanitarian reasons. Recent statistics show that over three-quarters (86%) of refugees seeking asylum are hosted in low and middle-income countries (UNHCR n.d.) but that typically less than 5% of those refugees will be resettled in third countries (Kneebone and Macklin 2021: 1091). The 2015 statement by the Foreign Ministers of the three Southeast Asian states discussed in the Introduction to this book (Ministry of Foreign Affairs of Malaysia 2015) indicates that these states expect the Global North to assist with resettlement of refugees as they did during the Indochinese crisis and the ensuing Comprehensive Plan of Action (CPA). This expectation has had a corrosive effect; states in the region have high expectations from the Global North.

These faultlines reflect the notions of humanitarianism and sovereignty which we have employed as counterpoints to understand how refugee protection is perceived and granted by the three states. At first sight, this might suggest two irreconcilable concepts, but as we explained in the Introduction, humanitarianism is a 'chameleon' concept that has many meanings, ranging from respect for all humanity and their human rights (see Chapter 10) to decisions based on political factors, depending on the context (Chimni 2000; Kneebone 2010). However, in practice as is shown in many of the chapters in this book, humanitarian approaches to refugee protection in Southeast Asia take the form of granting of discretionary, extralegal protection as an exercise of individual sovereign state power. Thus, sovereignty incorporates the idea of 'humanitarian' protection.

In Southeast Asia, as is often the case elsewhere in the world, refugees are perceived as a crisis of forced migration to which humanitarian emergency responses are needed. The practice of granting asylum as a temporary measure in Southeast Asia, and indeed globally, is a flow-on from this perception of refugees, demonstrating that Southeast Asian states are not the only 'outliers' in refugee protection practices.

There are some special features of the Southeast Asian situation that need to be highlighted. As Abraham points out in Chapter 1, there is a high proportion of urban refugees competing for resources with domestic urban poor in cities with limited infrastructure, which embodies '[a] shadow discourse' of political refugees and economic migrants. As explained in the Introduction, the three states are linked through a common dependency on labour migration that can lead to overlaps between refugees and irregular

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migrant workers – that is, refugees who take low-skilled jobs to survive are perceived as 'economic' irregular migrants rather than as refugees who have a status in international law.

Further, Abraham refers to the 'illiberal' character of states in the region, to the presence of fragile democracies and to authoritarian governments in which 'citizenship' is not a homogeneous notion and does not necessarily confer equal rights. In other words, although, as explained in the Introduction, the economic standing of states such as Malaysia and Thailand is strong, the benefits are not equally shared by the population. As several chapters in this book emphasize, these states are concerned to shore up their images as strong protectors of national security and identity through border management policies (see Chapter 4 regarding Indonesia, Chapter 5 regarding Thailand and Chapter 6 regarding Malaysia). This suggests a lack of confidence in their ability to control their populations. This 'image' problem is reflected in how states in the region perceive human rights, as will be discussed later here.

There are two other important factors which are shared by the three states: first, they are all members of ASEAN (as explained in the Introduction and Chapter 10) and therefore are bound by its principle of 'noninterference'; and, second, on the issue of human rights, the three states have ambivalent views that reflect ASEAN thinking on human rights (see Chapters 4 and 10).

In this conclusion we first summarize how sovereignty – the second of our two counterpoints – is understood in the context of refugee protection and the granting of asylum in Thailand, Indonesia and Malaysia. Second, we link sovereignty and state responsibility to the debate over human rights. Third, we discuss the role of civil society in negotiating with states for protection and the former's potential to break the impasse between the discourse of crisis-led humanitarian responses to forced migration and sovereign reluctance to recognize the refugee in international law.

Sovereignty and Refugee Protection in Southeast Asia

The idea of sovereignty is one of the central themes of this book. It is a complex notion that has been the subject of debate and discussion amongst scholars since the formation of territorial states in the seventeenth century following the Peace Treaties of Westphalia in 1648 (McVeigh 2021: 221). Traditionally, sovereignty meant absolute and unlimited power exercised by a single ruler (in the Hobbesian version; see also Chapter 10) or by a collective body in the form of a state (in Rousseau's version). The sovereignty of modern states, for instance, is reflected in the supremacy of state-created law that allows the state to exercise authority over the people within the limits of its territorial boundaries (McVeigh 2021: 224).

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The authors of the chapters in this book stress the internal and external dimensions of sovereignty whilst also recognizing other interconnected concepts of sovereignty. In other words, they also recognize sovereignty in its territorial or spatial and jurisdictional aspects of sovereignty on the other. As Muntarbhorn explains: 'Sovereignty is very much linked with the exercise of State power, its competence and jurisdiction' (Muntarbhorn 2021: 27). In this section we highlight how our authors have employed 'sovereignty' in different senses to explain the responses to refugee protection by the three states.

'External' sovereignty references a state's international law standing, its creation and its position in the international order. By contrast, a state's internal sovereignty broadly concerns its domestic hold on power. As Muntarbhorn explains, these two senses of sovereignty – the external and the internal – are closely linked to state identity in Southeast Asia:

> There is inherently a nexus with the right to self-determination which has been a wrenching question not only in regard to decolonization but also how non-colonial States deal with the different peoples on their territory in terms of their participation, decision-making and stakeholdership. (Muntarbhorn 2021: 29)

In this passage, Muntarbhorn reflects the historical background of modern Southeast Asian states, suggesting that this has led to difficult decisions concerning their exercise of sovereignty. For example, in Chapter 1 of this volume, Abraham links the 'rejection' by Southeast Asian states of the international refugee protection regime to a postcolonial stance, owing to their exclusion from the drafting process of the 1951 Refugee Convention and the 1967 Refugee Protocol (Abraham 2023).

Conversely, Kuncoro and Prabandari in Chapter 4 refer to recent scholarship on postcolonial nations, which argues that the rights to independence, basic human rights and self-determination became the basis on which newly founded governments justified their independence[2] and subsequent rule. Kuncoro and Prabandari argue that recent policy changes in Indonesia reflect an awareness on the part of the Indonesian state of its sovereign responsibility to protect refugees on its territory. Their argument is that sovereignty is not a fixed concept, but one that evolves over time in a normative and practical way. In the case of Indonesia, they suggest that the Indonesian state is tentatively adjusting its perception of its sovereignty.

In the case of Indonesia, Kuncoro and Prabandari argue that through Presidential Regulation concerning the Treatment of Refugees (PR 125), internal sovereignty is preserved and asserted by maintaining the image of a strong and coordinated government. At the same time, they suggest that, PR 125 also preserves Indonesian external sovereignty, as indicated by the fear that the Andaman Sea refugee crisis would provoke criticism from the

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international community against the Indonesian government for pushing Rohingya refugee boats back to sea. Kuncoro and Prabandari conclude that PR 125 is not a protection measure, but rather a compromise between maintaining a strong image domestically and internationally.

Kuncoro and Prabandari demonstrate how PR 125 is the arena where sovereignty and responsibility for protecting refugees in Indonesia not only compete but also complement and continuously interact with one another. By utilizing the concepts of internal and external sovereignty, they show how sovereignty has evolved over time and how it changes Indonesia's perspectives on its moral responsibility in protecting refugees and asylum seekers. In their view, sovereignty and humanitarianism – in the sense of the moral responsibility of the state in the international arena (external sovereignty) – are compatible and even complement one another.

In Chapter 2, Napaumporn and Kneebone illustrate the historical exercise of sovereignty for humanitarian reasons by Thailand – a country that has not been colonized. They explain that the Thai government has long provided humanitarian responses and protection under national laws and policies to selective groups of displaced persons, including refugees and asylum seekers from neighbouring countries, especially from the 1940s to the 1970s. These responses were determined by national security and state interests, which reflected Thailand's internal interests and conception of sovereignty – namely, its willingness to allow individuals and groups to integrate into the Thai community when it would benefit the community. However, in many instances these decisions were also influenced by geopolitical factors and its external sovereignty. Although this selective approach led to a large legacy of stateless persons, Thailand has now chosen to address this legacy with the assistance of the UNHCR, thus recognizing the relevant international human rights norms on statelessness. Chapter 2 illustrates Thailand's exercise of sovereignty in all senses – both internal and external, as well as territorial (allowing access to territory) and jurisdictional (selectively conferring a status on some individuals).

In Chapter 5, through her analysis of Thailand's new screening mechanism (NSM), enacted through the Aliens Regulation, Coddington reaches a similar conclusion to Kuncoro and Prabandari about the importance of internal sovereignty for the Thai government. She argues that the Aliens Regulation is aimed at creating 'affective impressions' of humanitarian protection and administrative competence within Thai migration governance, while still securitizing migration (and its external borders) and maintaining the dependence on ad hoc, arbitrary migration enforcement internally.

In Chapter 6, Hoffstaedter and Jalil examine contemporary Malaysian state policy in giving protection to selected refugee populations through the issuance of different types of documentation. They argue that the 'Malaysian way' is in line with other countries in the region that prioritize

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national sovereignty in terms of providing refugee protection over applying a principled framework based on international law. They suggest that Malaysia asserts its sovereign decision to provide humanitarian assistance on a case-by-case basis based on current national sentiments, regional needs and global standing, rather than the rules and principles of international human rights and refugee law. In other words, they stress the importance of internal sovereignty for securitizing migration and external borders.

In Chapter 10, Petcharamesree examines and compares whether the refugee status determination (RSD) procedures established by the three states (discussed in Part II of the book) contribute to better protection of the rights of refugees. She concludes that the procedures are another form of legitimization of humanitarian protection outside the 1951 Refugee Convention and 1967 Refugee Protocol and that '[a]n ad hoc approach based on humanitarianism results in marginalizing refugees from state protection'. She observes that the national procedures being developed in these countries are driven by a concept of state sovereignty that is more important than human rights protection. She analyses sovereignty practices in terms of Seyla Benhabib's three concepts of 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) (Benhabib 2020). She concludes that the 'defensive' or protective sovereignty practised by ASEAN states (which include Indonesia, Thailand and Malaysia) reflects ASEAN's noninterference principle.

From this discussion we can conclude that sovereignty is central to state responses to refugees in Southeast Asia. States in Southeast Asia tend to be self-conscious about their 'image', both internally and externally, and as such are concerned about preserving their authority both internally (in relation to their domestic populations) and externally (in terms of international standing), and about achieving a balance between these two aspects. As we will explain in the final section of this conclusion, this concern surrounding 'image' is an important factor in considering the role of nonstate actors in refugee protection in Southeast Asia.

The Right to Asylum and Refugee Status Determination: Another Arena for Sovereignty

States also exercise sovereignty over refugees in spatial/territorial and personal/jurisdictional senses when they grant asylum by allowing access to their territory and continuing to host refugees. The basic right to which all refugees and asylum seekers are entitled in international law is the right to asylum (see the Introduction). It is uncontroversial that the granting of

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asylum requires a decision to allow refugees and asylum seekers access to territory (or sovereignty in a spatial/territorial sense). It is less accepted that this imposes a responsibility on a state to provide a legal status (which involves an exercise of sovereignty in a personal/jurisdictional sense) to which rights attach. Notably, it has been argued by Dewansyah and Nafisah (2021) that the constitutional status of the right to seek asylum in Indonesia imposes an obligation or responsibility on the Indonesian state to create an RSD procedure.

Despite debate regarding the consequences of a state's granting of asylum, as indicated in the Introduction, in international refugee law, each refugee is entitled to a status and to a durable solution. In the Introduction we summarized the arguments of those who interpret the right to 'enjoy asylum' as a right to a status determination as a key responsibility of asylum-granting sovereign states. This requires transparent, nondiscriminatory and fair procedures to identify persons who are refugees.

In practice, the three states rely on the UNHCR to conduct RSD (although to different degrees). This practice in itself involves a devolution of sovereign power (Kneebone 2017). As each case study in Chapters 4, 5 and 6 demonstrates, RSD is an important factor in explaining a particular state's relationship with, and the role of, the UNHCR in that jurisdiction. That role has not been the focus of this book, which is not to ignore its central importance to refugee protection and its complex relationship to each of the three states in Southeast Asia (Jones 2014; Chapter 10). As each of the three chapters in Part II explains, state motives for introducing or permitting the UNHCR to conduct RSD are for pragmatic rather than principled reasons. Hoffstaedter and Jalil describe the UNHCR as a 'surrogate state' in the case of Malaysia; by contrast, as explained below, Indonesia has a very different relationship with the UNHCR and Thailand's relationship with the UNHCR is complex (see Chapter 5). The authors of these chapters (Kuncoro and Prabandari; Coddington; and Hoffstaedter and Jalil) link RSD practices to the exercise of internal and external sovereignty.

Of the three states, Indonesia has the most developed and coherent administrative arrangements with UNHCR and the most progressive laws and policies. However, since 2002, Indonesia has 'outsourced' its responsibility for RSD to the UNHCR (Kneebone 2017). Kuncoro and Prabandari in Chapter 4 argue that PR 125 – which creates a legal and policy framework for refugee protection in Indonesia, and permits UNHCR to conduct RSD for both refugees and asylum seekers – was created to maintain both Indonesia's external and internal sovereignty, although they, alone of all the authors in Part II, also suggest that these arrangements reflect some acceptance of state responsibility.

In relation to Southeast Asia, we challenge the claim that: 'Domestic mechanisms to confer rights and legal status do exist, and can serve as a

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foundation for positive practices regionally and globally' (Islam et al. 2021: 27). Rather, the discussion in Chapter 10 of this book of local responses and RSD at the national level in each of the three states suggests that they are unlikely to lead to better outcomes for refugees, contrary to the claims of some scholars from the region.

From the failure to accept the status of refugees in international law flows the denial of basic rights (as explained in the Introduction) and 'durable solutions' to refugees in Indonesia, Thailand and Malaysia. These rights are denied to refugees through discretionary humanitarian approaches, as explained by the authors in this book. Local integration is not offered to refugees and chances of resettlement are slim; safe repatriation is not an option. Further, as Masardi explains in Chapter 3, many refugees in Indonesia pin their hopes on resettlement elsewhere and are reluctant to challenge their lack of rights for fear of damaging their prospects of securing a durable solution; they are prepared to 'settle for less' whilst in transit.

Human Rights and the State: The Role of Nonstate Actors

We turn now to consider the link between state sovereignty and human rights, and to consider the role of nonstate actors in this setting. Several chapters in this book have discussed and analysed the role of civil society in the three states of Thailand, Indonesia and Malaysia, notably in Chapter 3 and in Part III.

In his study of international law in Asia, Muntarbhorn stresses the importance of the UN Charter in determining the meaning of sovereignty (2021: 29–31). The UN Charter – which sets out the norms for the behaviour of states in the international order – affirms in its preamble 'faith in fundamental human rights' and the 'equal rights of men and women and of nations large and small'. Muntarbhorn also opines that sovereignty is anchored in an obligation or responsibility towards the people of the state (2021: 41). The development of the notion of human rights in modern law is linked to the principle of popular sovereignty, as human rights focus on the responsibility of the democratic state to its population (Habermas 1996).

In 1993, when states in the Southeast Asian region came together to support the idea of human rights for 'vulnerable groups', such as migrant workers, refugees and other 'displaced persons' (Article 11 of the 1993 Bangkok Declaration), they did so through a binary of the differentiated roles of developed and developing countries. The 1993 Bangkok Declaration – which preceded the Vienna World Conference on Human Rights – referred to the disparity in economic development between the Global North and the Global South as the main obstacle to realization of rights in Southeast Asia

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(Article 18), and to the need to create favourable conditions for the effective enjoyment of human rights at both the national and international levels.

There are two notable aspects of the 1993 Bangkok Declaration. First, it perpetuates the 'myth of difference' (Chimni 1998; Chapter 10 in this volume) between the Global North and the Global South, which is a suggested explanation for rejection of the international refugee protection regime, following the perceived exclusion of states in the region from the drafting process of the 1951 Refugee Convention (Krause 2021). This perceived difference extends to responsibility for refugee protection and solutions through the suggestion that states in the Global North should shoulder the burden of responsibility. This deflection of responsibility is also embodied in the 2015 statement by the Foreign Ministers of the three states (Ministry of Foreign Affairs of Malaysia 2015). Second, Article 11 of the 1993 Bangkok Declaration situates refugees within the context of mixed and forced displacement – a common characteristic of the response of these three states as already remarked.

Some thirty years later, is the stance taken in the 1993 Bangkok Declaration still valid? The summary of the economic position of Indonesia, Malaysia and Thailand in the Introduction suggests that the disparity in income between the Global North and the Global South is now less marked in some parts of Southeast Asia than it was in 1993, and that the important disparity is now within the region and within individual countries rather than between regions. As was pointed out in the Introduction, Malaysia and Thailand both receive high numbers of migrant workers and refugees because of their strong economies, whereas Indonesia is an 'exporter' of migrant labour. All three countries have achieved significant economic growth since the Asian financial crisis of the late 1990s and have reached upper-middle-income status.

Southeast Asian states tend to perceive human rights in confrontational terms (Kneebone 2019; Chapter 10 in this volume), despite Indonesia and Thailand having specifically signed up to the major international human rights treaties (see Table 0.1 in the Introduction). Further, the 1948 UDHR is regarded as embodying customary law norms (Ghai 1998: 170) and does not require ratification for these norms to be applicable. So why do these states see human rights as confrontational?

Yash Ghai argues that this stance represents a 'statist' view of human rights and a fear of their destabilizing effect. Specifically, there is concern that human rights will be used to mobilize internal dissent and/or that they will lead to criticism and intervention by the international community. Indeed, this is a region that has seen significant internal conflict and continues to be the site of separatist insurgencies, including in Thailand's Deep South and Indonesia's West Papua. Antipathy to human rights appears to be linked to preservation of internal and external sovereignty.

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Muntarbhorn further explains that 'regrettably several Asian States are not democratic and have a tendency to undermine political rights while they might be favourable to economic rights' (2021: 81). He adds: 'Some less than democratic governments still voice various particularities, such as "Asian values" … which they claim should prevail over international standards' (2021: 87).

The 'Asian values' argument often reflects on the lack of representation of Asian states in the debates leading up to the adoption of the UDHR. This 'crude' (Ghai 1998) argument can be readily refuted by pointing to the participation of Asian states in the UDHR debates (Glendon 2001; Muntarbhorn 2021: 84–86) and to the universality of the human rights principles (UNESCO 1949). Further, it has been suggested that the 'Asian values' argument is another example of 'Asian exceptionalism' (Saul, Mowbray and Baghoomians 2011). Muntarbhorn (2021) opines that the argument is not actually to do with 'Asian values' per se, but rather a result of undemocratic practices.

By contrast, Jiyoung Song (2015) argues that the concept of individual human rights is a Western construct whereby the state is seen as responsible for human rights protection, and indeed as a likely perpetrator of human rights breaches. In other words, she suggests that the Western concept of human rights pits society against the state and challenges state authority. She explains that in Asia, the concept of human security is preferred by states to the confrontational concept of rights, as the former recognizes the moral authority of the state as the primary guarantor of international human rights, and the need for supranational measures to solve issues of 'irregular migration' (which she uses as her example). She suggests that human security is promoted as a collective concept as it recognizes that the issues cannot be solved by one state alone. Kneebone (2019) has previously argued that in Southeast Asia, the concept of human security (Edwards and Ferstman 2010: 3) is promoted as an alternative to human rights (see also Chapter 4 in this volume); that is, ASEAN protects human security rather than human rights. This idea is promoted by some Singaporean scholars (Caballero-Anthony 2012: 127; Caballero-Anthony and Cook 2013: 1–13). In Chapter 10 in this volume, Petcharamesree strongly refutes the view that ASEAN's influence will lead to better protection of refugees – an argument supported by ASEAN's inability to address the ongoing conflict and displacement crisis in Myanmar.

It is often suggested that civil society and nonstate actors can fill the democratic gap between the individual and the state by advocating for the rights of individuals and promoting acceptance of human rights norms (Piper and Uhlin 2004), including in the international arena (Spiro 2011). For example, in her analysis of the APRRN – a 'network platform' of local civil society actors founded in 2008 (see Chapter 8 in this volume) – Alice Nah stresses

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the role of APRRN to 'influence state behaviour on refugee protection' (Nah 2016: 231) and to persuade 'governments from below' (Nah 2016: 225). In Chapter 9 of this volume, Viartasiwi describes nonstate actors as 'intermediaries as they work between the state and the beneficiaries of the work'. However, if human rights are viewed as confrontational, this may complicate the role of civil society in a region characterized by different types of authoritarian governments, several of which are routine abusers of human rights. Indeed, in these states the work of civil society and advocates (including academics) is sometimes seen as 'subversive'.

In Chapter 7 of this volume, Keegan, Jones and Khakbaz suggest that much advocacy by civil society in the region is confrontational to state concerns as it involves 'naming and shaming' (Spiro 2010). The chapter draws on the authors' practical experiences with HOST International, an international NGO that works with displaced people living in urban settings in the Southeast Asian region. The authors propose a more localized approach to refugee protection, which avoids confrontation techniques and focuses on mediating between state and civil society through collaborative and collegiate negotiations. Three words summarize their approach: 'compromise, cooperation and compassion'. They describe, for example, HOST International's 'strategic engagement' with the Thai government and other civil society actors (such as the APRRN), which resulted in the Memorandum of Understanding on the Determination of Measures and Approaches Alternative to Detention of Children in Immigration Detention Centres.

In their analysis, Keegan, Jones and Khakbaz employ Amitav Acharya's concept of 'norm circulation' (Acharya 2004; 2013). This involves the two ideas of 'localization' and 'subsidiarity'. A localized approach is inward-looking. It involves making foreign ideas and norms consistent with a local cognitive prior (Acharya 2009: 21; Acharya 2011: 97). Subsidiarity, on the other hand, is outward-looking. Its main focus is on relations between local actors and external powers, in terms of the former's fear of domination by the latter (Acharya 2011: 97). The authors argue that this approach will improve access to rights and provide increased protection for forcibly displaced persons (Acharya 2013: 469) in a way that is palatable for host states in Southeast Asia. HOST's approach reflects Acharya's process-oriented approach to norm 'socialization' of states; one that is potentially appropriate for Southeast Asian states that are suspicious of Western norms and values.

In Chapter 8, Taylor discusses the role of APRRN and the promotion of refugee rights in Southeast Asia in the period from 2016 to 2021 and offers a more 'traditional' view of the role of civil society – that is, a 'gap-filling' and persuasion-from-below approach. Taylor explains how the Network's Southeast Asia Working Group, thematic Working Groups and Bangkok-based Secretariat have engaged with refugees, other civil society actors and

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national governments in Southeast Asia using ASEAN mechanisms, and with the negotiation and operationalization of the GCR. As she explains, the APRRN works at the national, regional and international levels. She observes that 'the APRRN's alliances and cross-relationships have, indeed, been a resource and impact multiplier' and that: 'Building CSO networks to pursue desired policy changes increases the chances of success by enabling CSOs to engage with states on more equal terms' (citing Milner and Klassen 2021).

Taylor describes how the APRRN works to achieve national law and policy reform through supporting its members in their advocacy work with individual governments (such as by organizing side meetings with the Permanent Missions of Indonesia, Malaysia and Thailand during the UNHCR–NGO consultations in Geneva), and by directly supporting their members in their work with states. For example, she explains how the APRRN and SUAKA worked together over several years to encourage the Indonesian government to create PR 125. The impact of the APRRN's advocacy continues to be evident through its messaging on the resurgence of boat journeys in the Andaman Sea and calls for regional governments to do more to ensure the protection of Rohingya refugees. Still, the lack of state action on the Rohingya crisis underlines the significant challenges facing civil society in Southeast Asia and the limitations of advocacy when states prioritize sovereignty over human rights.

In Chapter 9, Viartasiwi argues that nonstate actors are more than pressure groups to encourage better behaviour by states; rather, they are central to refugee management in Indonesia. Her chapter is based on interviews with members of civil society organizations (CSOs), government officials and officers of international organizations. She argues that in Indonesia, their role is complementary to that of the state and international organizations, and that nonstate actors facilitate a considerable amount of refugee protection.

Viartasiwi discusses the important concept of a community of practice (CoP) in developing effective working relations. She explains the link between practice and the transformation of agency into effective practices in the Indonesian refugee protection context. For Indonesian nonstate actors working on refugee protection, joining a community organization can be key to enhancing agency and developing practices.

The key message of this discussion is that networks of nonstate actors are generally more successful than individual CSOs in negotiations with states in the region, which are protective of their sovereignty, both internal and external. This discussion also suggests that states – particularly Indonesia, which sees itself as a leader in ASEAN and an important regional diplomatic player – are sensitive to their international standing and image when making decisions about refugee protection. Furthermore, Viartasiwi's discussion

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shows that both external and internal views of sovereignty often require states to make some compromises, but that this sensitivity also means that refugee rights may be compromised.

What Needs to Change?

In this book we have aimed to show that the three states – Thailand, Indonesia and Malaysia – cannot simply be labelled as 'outliers' to the international refugee protection regime. Rather, we argue that their respective responses to refugees reflect the faultlines of the international refugee protection regime, many of which are thrown up by the 2018 Global Compacts process (and especially the GCR as discussed in the final section of the Introduction). We have also moved away from the popular framing of Southeast Asia as one of regional 'exceptionalism' in recognition of the global dynamic of refugee protection, and the limited chances of successful regional initiatives. For example, ASEAN does not currently have an institutional design to implement and accommodate human rights norms and principles that are necessary for refugee protection (see Chapter 10; see also Kneebone 2016).

In the Introduction we explained that the international refugee protection regime emphasizes the shared role of states in the global order to work together to resolve the 'refugee problem', although this responsibility is not expressly stated in the 1951 Refugee Convention and has not yet led to better refugee protection, either in Southeast Asia or in other regions. For this reason, states came together again to work out a new approach through the Global Compacts. While the Global Compacts of 2018 contain statements about shared responsibility for refugee protection, this approach involves a shift from a focus on states to including private and other actors, including refugees themselves. It also includes an emphasis on a broader range of protection from the traditional durable solutions to complementary pathways.

The challenge for refugee protection in Southeast Asia (as elsewhere) is to ensure that complementary pathways do not swallow up international refugee protection; that by 'responsibilizing' refugees and private partners in refugee protection, the state is not released from its responsibilities to provide a 'durable solution' and a stable status. For example, the UNHCR emphasizes the centrality of refugee rights in international law and that complementary pathways are *in addition* to the traditional solution of resettlement (UNHCR 2022). Yet states such as Malaysia are more enthusiastic about providing migrant worker visas than refugee protection (Chapter 6 in this volume). In order to balance their humanitarianism and sovereignty, states in the region need to acknowledge the status of refugees by removing

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discriminatory practices. These new approaches bring other risks. Whilst states in the Global North are providing educational pathways for selected (mainly young and educated) refugees, this may be a double-edged sword leading to a 'brain drain' in the Global South. On the other hand, it might lead to there being more refugee protection and advocacy in the future.

The Global Compacts also bring about opportunities, such as more localized solutions and external donor involvement through a broader range of stakeholders as Keegan, Jones and Khakbaz suggest (Chapter 7). Abraham notes in Chapter 1 that states in the region are concerned about the economic pressure created by refugees, especially in urban areas, and how to balance the needs of refugees against those of the local population. These economic pressures have political consequences, contributing to the fragility of states and their sense of insecurity in relation to their populations. In other words, they play out in the way that sovereignty and human rights are perceived by states in the region.

These new developments suggest that there is incremental change in state approaches to refugees in the Southeast Asia, which could lead to better understanding of the challenges that refugees face as individuals, away from the perception of refugees as victims (see Chapter 3) or as objects of a crisis of forced or economic migration. If that approach leads to a recognition of 'moral responsibility' owed to refugees that tempers the need to preserve absolute sovereignty – as Kuncoro and Prabandari argue is happening in Indonesia – that is a small start. As Keegan et al. suggest (see Chapter 7), by using Acharya's theory of 'norm circulation', norm creation is a dynamic and continuing process in Southeast Asia that requires multiple influences, actors and strategies. These must recognize both the 'internal/localized' processes and the 'external/outward-looking' factors and the norms that influence decision makers and key actors in refugee protection policy and its implementation. Meanwhile, communities of practice (CoPs – Chapters 8 and 9) amongst CSOs are alleviating state responsibilities.

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Notes

1. By contrast, the statistics cited in the Introduction suggest that the three states host a small fraction of the global refugee population.
2. In the case of Indonesia, there is evidence that a strong postcolonial stance formulated at the Bandung Conference of 1955 (see Chapter 1) was the genesis of its 'standalone' approach to refugee issues (see Chapter 4; see also Kneebone, Missbach and Jones 2021).

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