

# Positions of Responsibility: The Search for Solutions to Irregular Migration in Southeast Asia

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*This essay series explores the human costs and policy challenges associated with the displacement crises in the Mediterranean and Andaman Seas. The essays explore the myths or misconceptions that have pervaded discussions about these two crises, as well as the constraints or capacity deficiencies have hampered the responses to them. See [more ...](#)*



Last year, global media attention thrust into the spotlight the plight of irregular migrants from Bangladesh and Myanmar. From 2012 through the first half of 2015, an estimated 100,000 people risked their lives in hazardous journeys by boat to neighboring countries, notably Thailand, Malaysia and Indonesia.<sup>[1]</sup> These migrants were not welcomed on arrival but instead faced 'forced pushbacks' until a temporary ad hoc agreement was reached that allowed them to stay, pending a determination of their status, for a period of up to a year.<sup>[2]</sup>

This initial reaction by Southeast Asian governments to the flow of migrants through the Bay of Bengal and Andaman Sea reflected the dominant perceptions of migrants as posing a threat to state security and stability. The reaction also highlighted their reliance on bilateral or mini-lateral attempts to address the situation, rather than system-wide responses that engage all important stakeholders.

The policies initiated by governments in the region were in many ways strikingly similar to those put into effect in the late 1970s in response to the so-called Indochinese exodus. Yet, it is important to note that, in the earlier case, the regional actors ultimately achieved a compromise solution to the Indochinese refugee problem, in the form of the Comprehensive Plan of Action (CPA). Revisiting the circumstances under which this solution was attained could provide valuable lessons regarding how states and communities in the region might work together, in conjunction with major international actors, to develop a humane and sustainable solution to the root causes of irregular migration that recently dominated the news.

## The Geneva Conferences on Indochinese Refugees

Communist victories in Vietnam, Cambodia and Laos in 1975 caused an estimated three million people to flee to other Southeast Asian countries or China over the next twenty-five years. The continued mass exodus of people from the Indochinese peninsula generated global attention. International efforts to address the protracted humanitarian emergency were spearheaded by the United Nations High Commissioner for Refugees (U.N.H.C.R.). Meanwhile, however, many of the Southeast Asian 'frontline states' (i.e., countries of first asylum) initially implemented 'forced pushbacks'—turning back boats carrying refugees and expelling from their territorial waters. It was the global media coverage of these events that motivated key stakeholders to search for a solution.[3]

On July 20-21, 65 governments responded to an invitation from the U.N. Secretary General to participate in an international conference in Geneva on Indochinese refugees. Importantly, this first conference focused solely on the consequences of conflict, without addressing its root causes. To be sure, the meeting produced some positive results. Worldwide resettlement pledges increased. Participants endorsed the general principles of non-refoulement (non-forcible return) and asylum (though without making any formal commitments regarding the latter). And the pushback of Vietnamese boats was halted. Nevertheless, by 1989 it had become clear that a longer term political solution to the refugee outflow was needed. The second Geneva conference on Indochinese refugees sought to address the root causes of the phenomenon.

While the activation of the international refugee system through the U.N.H.C.R. increased the assistance and protection of refugees in Southeast Asia, the compromises that made this possible came a steep cost. The Southeast Asian states ensured that local integration was not in the cards. In their eyes it was not feasible to allow for an unknown number of ethnic Chinese refugees to be settled locally without the risk of a sustained domestic backlash. This meant that the onus was put on resettlement states to provide places for the refugees. In the absence of such guarantees, the system would have returned to the breaking point. All the stakeholders needed to fulfil their part of the bargain. Equally, before 1989 American officials were unhappy at the prospect of repatriating people to communist regimes, given that such regimes were ideologically opponents. Furthermore, repatriation in these circumstances would have been contrary to U.S. Cold War media campaigns of "people voting with their feet." However, with the end of the Cold War, U.S. policy shifted in favor voluntary repatriation to Vietnam—a policy change that was reflected in the second international conference on Indochinese refugees, held in Geneva in June 1989....

What the two conferences highlighted was that in order for a sustainable political solution, all key stakeholders needed to be involved in negotiations, including those that fled for fear of persecution, their country of origin, recipient states and the wider international community. The inability to achieve this solution in the first conference highlighted Vietnamese intransigence and domestic economic and political policies as the root of the problem. The political solution to the exodus took a decade to materialize and happened when Vietnam agreed to allow voluntary repatriation and orderly departure, during which time the root causes had changed and the Doi Moi economic reforms[4] were underway. However, the ability to recognize and reassess the refugee flow was hampered by the regional overarching norm of non-interference.

At the second Geneva conference, the 70 governments in attendance adopted a new regional approach to respond to the plight of the refugees, known as the , that agreed the Comprehensive Plan of Action (CPA). Importantly, the CPA included cooperation from Vietnam as well as the good offices of U.N.H.C.R. to train and provide assistance to those recipient states that needed it.[5] In the action plan, the U.N.H.C.R. was given a supervisory role, which ensured that there was an international presence in the revised process.[6] The main difference between the two international conferences was that the first conference dealt with the outflow of refugees and their resettlement, whereas the second conference focused on the

root causes of the exodus. The 1989 CPA was designed as a compromise agreement between the producer, recipient and resettlement states.<sup>[7]</sup> The main CPA objectives were:

- to prevent organized clandestine departures;
- to encourage and promote regular departure procedures and migration programmes;
- to maintain guarantees of first asylum;
- to establish region-wide consistent refugee status determination procedures;
- to continue resettlement of Vietnamese refugees, long-stayers as well as those newly determined to be refugees; and,
- to repatriate rejected asylum seekers to Vietnam<sup>[8]</sup>

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The CPA brought a regional dynamic to the international refugee system in Southeast Asia. It ensured that there were some modifications to the operational role of the U.N.H.C.R. as well as the regional refugee system more generally. The Southeast Asian states agreed upon regional standards in response to the refugee determination procedures and to guarantee first asylum for the Vietnamese. There was a standard imposed after a specific cut-off date, which brought some semblance of consistency. Alongside these regional standards, the role of U.N.H.C.R. was expanded to work inside the producer state (Vietnam) to observe the return of those not deemed officially-sanctioned refugees.<sup>[9]</sup> While the CPA arrangements in place were notably successful, their implementation was inconsistent and found as many critics as advocates of the new arrangements. Indeed, the strength of the refugee system lies in its ability to morph into local contexts, allowing the assistance and protection to continue in ways which may not always be optimal but does offer relief to those affected. Indeed, the CPA was noted by the Secretary-General as the first attempt to provide a “consistent region-wide refugee status determination process to be conducted in accordance with national law and internationally accepted practice.”<sup>[10]</sup> Rather than reaching an impasse, the stakeholders, through instrumental humanitarianism, reached an agreement instead—one that adapted to regional constraints (i.e., essentially acceded to an informal U.N.H.C.R. presence in Southeast Asia). These relationships formed the basis for U.N.H.C.R.’s involvement in the region today.

## Emerging Stakeholders

While the negotiations over the future of the Indochinese refugees were held with governments, international organizations, the Red Cross Movement and international non-governmental organizations, local communities have highlighted underappreciated avenues for negotiation in the past year. In Indonesia, Acehese fishermen adhered to Adat, a local customary law which calls for kindness to those in difficult situations, and rescued many irregular migrants who were in distress at sea. The fishermen conveyed the migrants to Aceh, and provided them with essentials such as shelter, food, water and a place to wash—all this in breach of the position held by the Indonesian government in Jakarta, which initially had refused to allow the irregular migrants entry.<sup>[11]</sup> The humanitarianism demonstrated by the Acehese fishermen caused Jakarta to rethink its policies towards the irregular migrants in this particular instance and to revisit its policies towards refugees in general. This episode illustrates the power of communities in drawing on their own experiences and, in turn, influencing national policies. It also underscores the fact that even though some states may not be signatories to the Refugee Convention, local norms exist that essentially promote what it stands for. These local customary norms and laws should be identified, as in the case of the Acehese fishermen, and used to demonstrate the consistency between local communities and international conventions.

At the regional level, A.S.E.A.N. has undergone significant normative development, including the

establishment of the A.S.E.A.N. Troika in 1999,[12] the enactment of the A.S.E.A.N. Charter in 2008,[13] the formation of the Tripartite Core Group in the aftermath of Cyclone Nargis[14] as well as the endorsement of the A.S.E.A.N. Human Rights Declaration in 2012.[15] Taken together, these developments are evidence that it might indeed be possible to forge regional agreements that are comprehensive in nature and that recognize the multi-stakeholder environment (i.e., that include civil society groups, local governments as well as the more traditional actors such as national governments, international organizations, and others). It is therefore important to draw on the experiences of these regional mechanisms to identify ways and means that A.S.E.A.N. has facilitated processes to forge solutions at the regional level.

## Forging Comprehensive Agreement

The experience of negotiations during the Indochinese exodus through the two Geneva conferences on Indochinese Refugees illustrates the conditions needed to forge a comprehensive agreement to address a significant migration challenge. The second Geneva conference showed that the domestic political changes in Vietnam through the Doi Moi reforms offered an opportunity for first asylum and resettlement countries to engage with the country of origin, which provided the catalyst to agree a compromise political solution with significant buy-in from all stakeholders. If we fast forward to today and the outflow of Myanmar Muslim minorities including Rohingya and Kaman as well as Bangladeshi irregular migrants into Southeast Asia, it can be seen that the new government led by Aung San Suu Kyi in Myanmar offers an opening for the international and regional community to come together to negotiate a political solution for the irregular migrants that face uncertain futures in Southeast Asia.

While there is currently little appetite for a solution by most actors in Myanmar, it is important for key stakeholders to invest in the groundwork now. Drawing on the precedence of the Comprehensive Plan of Action as well as notable other regional mechanisms and the principles of engagement contained within them offers a foundation upon which to build a potential sustainable political solution. However, the fourteen-year period between the beginning of the Indochinese exodus in 1975 and the second Geneva conference on Indochinese refugees in 1989 highlights the protracted nature of negotiations and offers a humbling reminder that the path to sustainable political solutions is long and context-specific. It is therefore also important for an interim arrangement, like that agreed at the first Geneva conference on Indochinese refugees, to ensure that the principles of humanitarianism are upheld for the irregular migrants in the immediate term. Finally, it will be important to engage communities in Myanmar, the recipient states and the wider international community as key stakeholders to ensure the sustainability of a longer term political solution.

**Note:** The author is indebted to Liliane Fan for insights about Adat customary law, provided in her presentation on "Local Acehese Rescue and Welcome of Rohingya And Bangladeshi Boat Journey Survivors and the Humanitarian Principles of Aceh's Hukum Adat Laot," delivered at the Conference on Inter-regional Comparisons of Humanitarian Action, Singapore, February 22, 2016.

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[7] S.A. Bronee, "The History of the Comprehensive Plan of Action," *International Journal of Refugee Law*, Vol. 5, No. 4 (1993): 535.

[8] *Ibid*, 540.

[9] A.C. Helton, "Refugee Determination under the Comprehensive Plan of Action: Overview and Assessment," *International Journal of Refugee Law* 5, 4 (1993): 557.

[10] A.C. Helton, "The Comprehensive Plan of Action for Indo-Chinese Refugees: An Experiment in Refugee Protection and Control," *N.Y.L. School Journal of Human Rights*, VIII (199): 118.

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