



**Universiteit Leiden**

# Role of Developing Country in Providing Aids to Refugees: the Case of Thailand

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By

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## Abstract

The role of developing countries in providing aids to refugees has been significant, particularly as the frontier or country of first asylum that needs to deal with the spillover refugee mass influx from conflict zones across the world. However, their role has been little researched and devalued. In Southeast Asia, Thailand has received a constant flow of refugees from a number of neighboring countries where conflicts escalated into violence within the past 40 years. The lack of effective or systematic mechanism in handling and treating refugees had frequently made Thailand face criticism from the international community regarding human rights violations, and accordingly, derogated their role and contribution in the regime. This controversy is partly due to the different approaches between the Western-dominated global humanitarian concept, and the local perception of the issue. This study aims to explore the past refugee policies of the Thai Government to determine whether the country's commitment match with its real actions in the refugee missions, and what contextual factors influenced those policy decisions. The findings are expected to highlight the conceptual gap between the global and national level, which explains why the role of Thailand, or by extension, the developing country, in the refugee regime has been undermined and overlooked.

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## Abstract

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# Chapter I: Introduction

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The refugee crisis happening across the world today is a humanitarian issue that impacts every nation both directly and indirectly. The over 22.5 million refugees currently scattered across different regions are subject to international protection according to the 1951 UN Refugee Convention and the 1967 Protocol. However, most of the host countries into which such refugees arrive are developing countries, and this creates problems. In the Southeast Asia region, the refugee problem is a protracted one. Thailand, along with many other developing countries, does not have adequate capacity to resolve the refugee crisis alone. Even though the country has been accepting millions of refugees onto its soil over the past 30 years; it has also been severely criticized by the international community regarding its treatment of refugees with claims that these allegedly infringe on basic human rights. Moreover, the policy to push back some groups of refugees also violates international customary humanitarian law. Yet, the reason behind this state policy is often rooted in security concerns and in the political priorities of the country.

This research will explore the core concepts of the international refugee regime, such as the non-refoulement principle and the universality of humanitarianism, in order to explore their interpretation in Thailand. The purpose of the study is to determine the gap between the differing approaches and perspectives towards the refugee mission in a global and national context. Following from this, will be a discussion on whether or not the status of a country as 'developing' has been overlooked or devalued, particularly when that country has faced the mass influx of refugee populations for decades. Ultimately, the thesis seeks to explore whether international humanitarian principles and instruments, that have overwhelmingly been set by developed countries and enforced upon the rest of the world, have failed to consider the historical or political contexts of developing countries, and that this might foster the view that developing countries act as rights violator without sufficient recognition of that state's relative role in alleviating the global refugee problem.

The research will review the refugee policies of Thai government over the past 40 years, examining factors that influenced those decisions, what consequential impacts or outcomes resulted from them, and the responses or involvement of the international community to Thailand's refugee policies in a number of cases.

To start off, it is important to define the general term of 'humanitarian aid,' the participation and cooperation between nations through the United Nations (UN) in humanitarian undertaking, what

dilemma or challenges exist within the humanitarian regime, and how the case of Thailand relates to these concepts.

### **1.1 What is humanitarian aid?**

The spate of conflicts and natural disasters happening across the world today has led to widespread moral concern and the promotion of humanitarian action. Humanitarian aid generally refers to the assistance provided to the victims of natural disasters, conflicts, or social unrest that can be carried out by international organizations, governments of sovereign states, non-government organizations, and other institutions with main purposes to "save lives, alleviate sufferings, and maintain human dignity," (Samuels, 2006). The historical timeline of humanitarian aid can be traced back to the 18th Century, though the field did not come out as one of the main global missions until mid-20th century, specifically, after the Second World War. During the Cold War, humanitarianism as a moral concept expanded rapidly across the globe, starting among developed nations and particularly, within the world's major powers. Its root in the fields of international relations and anthropology has only deepened. The concept has, for the first time, become obviously politicized as the United States and the Soviet Union both attempted to use aids to attract more allies (Davey & Scriven, 2015, p.123). During the same period, humanitarianism was heavily and commonly emphasized and encouraged among the international community with the aim to assist those who suffered in the aftermath of the Second World War. A commitment to humanitarianism increasingly became regarded as a moral obligation and a standard of practice to be upheld by the international community. This Western-centric perception of humanitarianism is portrayed in many literatures, such as Michael Barnett's *Empire of Humanity* (2011).

However, Johanne Paulmann (2016) offers a counter argument to the Western-centric view of humanitarianism. One of the dilemmas of international humanitarianism in the contemporary world is how the universality of humanitarianism is being translated into the contexts of national or local level (Holmes, 2016). Industrialized or developed countries set the humanitarian framework for the rest of the world to follow, and often criticize and pressure countries that fail to meet this international moral line. Meanwhile, most literary

works do not emphasize the capacity and perspective of developing countries; their role, contribution, and struggles in providing humanitarian aid.

The United Nations, which provides guidelines and sets the standard of international humanitarian conducts, also reflects the dominant perspective of developed/industrialized nations.

## 1.2 Overview of the United Nations Humanitarian Missions

Following its predecessor, the Leagues of Nations' footsteps, the United Nations was founded in October 1945 with the goal of promoting cooperation among nations. The United States, which emerged as the superpower during the post- World War II era, demonstrated strong determination to 'develop' the 'underdeveloped' world as part of its strategy to battle the spread of communism; it consequently put much efforts in redesigning the international system planted within the UN itself (Martin J., 2015).

Development assistance has been one of the key missions of the international system, while humanitarian relief operations have strongly been encouraged by the United Nations for decades.

The United Nations regards humanitarian aid, as indicated in the Charter, as one of its main goals "to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character"<sup>1</sup>(United Nations). Furthermore, Humanitarian assistance is embedded within many UN bodies and entities, namely the Office for the Coordination of Humanitarian Affairs (OCHA) of the UN Secretariat, The UN Central Emergency Response Fund (CERF), the United Nations Development Programme (UNDP), the United Nations High (UNHCR), the United Nations Children's Fund (UNICEF), the World Food Programme (WFP), The UN Refugee Agency (UNHCR), and the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). The humanitarian missions of the UN continue to expand overtime. As of today, the missions also include the peace keeping and in some cases, military intervention in disputed areas to alleviate the situation from its root cause on the long term basis.

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<sup>1</sup> 'Charter of the United Nations. Chapter I: Article I. United Nations. Retrieved from



All member nations, bound together by the UN Charter, have been encouraged to adopt and improve humanitarian policies and standards. Humanitarianism as an international moral standard has been growing more systematically and significantly within the world's most prominent international organization in recent decades.

Economic and political stability, which vary among the UN member states, prevent each member to contribute equally in providing humanitarian aids. Developing countries, due to less economic or political stability, are most likely seen to be recipients of the aids rather than donors, or in many cases, they are even seen as human rights violator rather than an advocate. Particularly, the global South, which mostly made up of nations in Asia and Africa that only regained full independence after World War II, have been struggling with their domestic issues and economic instability. Therefore, these countries normally have been the recipients not the donors of humanitarian aids. Main donors today are governments of the Western countries, with Sweden as the biggest donor, allocating 1.40% of its GDP on foreign aid, followed by Norway (1.05% of GDP), Luxemburg (0.93% of GDP) and Denmark (0.85% of GDP). Largest non-Western donors include the United Arab Emirates (1.09% of GDP), Japan (0.22% of GDP) and South Korea (0.14% of GDP), (OECD, 2016).<sup>2</sup>

Both the UN-dominated humanitarian actions and aid contribution data indicate that international humanitarianism is a moral standard established and imposed by industrialized Western countries to the rest of the world. It is an instrument through which the more developed nations can scrutinize the developing states, telling them what to do, and how they should do things to comply with such standard. If they failed; their recognition on the global stage could be affected. Cases to support such statement will be discussed in later chapters.

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<sup>2</sup> ['Development aid in 2015 continues to grow despite costs for in-donor refugees'](#). Organization for Economic Cooperation and Development (OECD). 13 April 2016.

### 1.3 Dilemma in humanitarian aid for refugees

As mentioned above, the Western-centric humanitarianism creates a dilemma in universal humanitarian actions, which in many cases exclude or overlook the historical and political contexts, and contribution of the less developed countries.

Refugee crisis challenges the concept of 'burden sharing' among all nations. The international solidarity is the notion being promoted in light of this global challenge, however, the constantly growing refugee population today is testing such solidarity (Boswell, 2003). Whose responsibility is it? Who should share this burden, and how much efforts should each country contribute based on what criteria? Donor nations, majority of which are developed countries, and refugee recipient countries might answer these questions differently, thus make it difficult to have a universal humanitarian approach to tackle the problem.

In 2015, Lars Løkke Rasmussen, Prime Minister of Denmark made a controversial remark during a television broadcast, stating that the humanitarian efforts should "focus on refugees' rights in the first country they reach," (Chadwick, 2015). His speech, though strongly scrutinized by the UN, certainly reflects major problem in humanitarian efforts--- the challenges and the lack of understanding between countries of first asylum, and developed (donor) nations. The role of developing countries in being the first frontier to receive massive influx of refugees from conflicts around the world is crucial in the international humanitarian regime. However, their contribution has been barely recognized, and usually undermined by the human rights violation claims, which often results in immense pressure by the international community. A provocative question related to this argument has been raised by Newman: how "can one explain the contrast between the generosity which poor countries are expected to show, when hundreds of thousands of refugees pour across their frontiers, and the precautions taken to ensure that as few asylum seekers as possible ever reach the shores of rich countries?" (Newman, 2003, p.3). The question clearly strikes at the heart of the contemporary international refugee regime, and emphasizes the absence of neutral and fair dialogue between developing and developed countries in humanitarian efforts. His book further suggests that refugee issue, or any form of migration in general, is inseparable from national security concern of any sovereign state. Hence, the underlying context of national security, which drives refugee policies in developing countries, cannot be ignored.

Little literary work had been done in analyzing the contributive role, contextual factors, and perspectives of developing countries that serve as refugee recipients. As mentioned, Holmes points

out the dilemma of the contemporary humanitarian aid, and its controversial 'universality' that might overlook the contributing factors at the local or national level. This gap of understanding may have existed for decades, yet only been highlighted ever than before in the past few years that the refugee crisis expands throughout the globe. Thailand, a long-term host to millions of refugees that has been struggling to comply with the international humanitarian standard, is a good case to demonstrate the gap.

#### **1.4 The case of Thailand**

Today, majority of refugee recipient countries are developing countries. Amnesty International reported that developing countries are hosting 86 percent of the total refugee populations around the world (Amnesty International, 2014). While the directions of humanitarian policies for refugees, and the international human rights principles originated from the West; developing countries abide by them with "legitimate concerns about the ability of the economy to absorb and support refugees as well as security concerns about the impact of a mass population influx on the social fabric of their society" (MacLean, 2012, p.5). The majority of Southeast Asian nations did not ratify the UN 1951 Refugee Convention, but many of the member states including Thailand had "shouldered refugee burdens for many years," and the refugee influx, especially those of the ethnic minorities had become the protracted refugee situations in the region (Niyomsilpa, 2012).

Thailand has never been a key player in initiating humanitarian efforts in refugee assistance, but the country is undoubtedly an important actor in solving Southeast Asia's protracted refugee situations. The influx of Indochinese and Burmese refugees into Thailand during 1970s-1980s put the country into its very first challenge as a host state that caught attention of the international community. Policies throughout those decades that involved both refoulement claims and commitment rhetoric have been controversial. While Thailand desires to maintain its reputation and commitment in global humanitarian regime, the country also fails to respect many human rights principles and improve its weak legal regime in refugee protection.

The research will present the case of Thailand, a developing country that has been facing refugee influx from its neighboring countries for more than half a century. As a developing country with upper-middle income, Thailand does not possess adequate budget and

resources to handle the continuous influx of refugees on its own, and is more likely seen as an aid recipient nation. Since its membership approval to the United Nations in 1946, Thailand's role and participation in the organization has gradually and steadily been growing. The country, though faced with several hundred thousands of refugees, did not take part in the United Nations multilateral treaty namely the Convention Relating to the Status of Refugees, also known as the 1951 Refugee Convention, and the following Protocol Relating to the Status of Refugees (the 1967 Protocol). Thailand, nevertheless, has been accepted a large number of refugees onto its soil, and invited UNHCR to operate and establish refugee camps along its borders. The facilitation and humanitarian assistance provided by the Royal Thai Government (RTG) to refugees offer an alternative perspective to the Western-centric concept of humanitarianism. Though lacking formal humanitarian policies incorporated within the national development plans; humanitarian assistance to refugees has reflected Thailand's attempts to elevate its role and participation in both regional and international stages. Hence, the focus of this research will be put on the humanitarian aid activities of Thailand, specifically in refugee mission, as a way of participation in the United Nations, and at large, the international community. Nonetheless, the differing approaches and understanding of local social context between the refugee recipient country and the industrialized donor countries might conflict and consequently hamper the humanitarian missions for refugees in Thailand.

It is very crucial to look into the cases of different groups of refugees that flowed into Thailand during the past 40 years. As these cases can best demonstrate the local perspectives and approaches toward refugee missions, which are deeply intertwined with foreign affairs, regional political sensitivity and domestic security concerns. Despite the status of developing country, and the RTG's periodically reluctance to comply with the international obligation toward refugees; the country has been accepting millions of refugees into its land.

What this research wishes to find out is:

***What are the role and contribution of Thailand in the international refugee regime, and to what extent the gap of approaches between the international and national level affect the***

*international recognition of such role and participation contributed by developing country in the refugee regime?*

This main thesis question is aimed to fill the literature gap on the international humanitarian aid system that has primarily been focusing on the approaches of developed nations. To find the answers to this question, it is crucial to get familiarized with the definition of the term 'refugee', how this term is interpreted or perceived on the national and international levels, and how these different definitions affect the legal framework and humanitarian obligations of the nation. The social contexts and political sensitivity in Southeast Asian region will be discussed to analyze why the refugee recipient country acts or decides in certain ways that may contradict or not comply with the international humanitarian standard. Different groups and types of refugees arriving to and residing in Thailand from 1975-2015 will reflect both obstacles, challenges, and contribution the country has made in humanitarian actions. In light of this argument, the criticisms from various non-governmental organization (NGO) groups and the media regarding the country's treatment of refugees cannot be ignored in order to gather different approaches and dimensions of the issue.

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## Chapter II: Methodology

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The research will use qualitative approach by employing "a qualitative analysis of narrative data," and secondary sources literature (Waters, 2000), and puts focus on people's subjective experience. The objective of this research is to elaborate the role, contribution, and internal perception of developing countries in refugee missions that might be derogated due to the gap between the Western-centric approach and local perception of refugee host state. Though the gap of perspectives is difficult to measure, this thesis features the interviews and academic literature as primary sources. The comparison between two different interviews will be analyzed to provide the results, in which demonstrates such gap. Secondary sources include government's speeches, news articles, publications and reports from various international organizations to provide background of the issue, as well as reflection of global perception of Thailand's humanitarian activities.

Two interviews have been conducted as a primary source to gather the empirical knowledge and data from persons who had been directly involved with the refugee missions/ policies in Thailand. In order to get a well-rounded angle of the issue, one of the interviewees represents the government sector, while the other is from the NGO background.

The first interviewee, H.E. Kasit Piromya, is a former Minister of Foreign Affairs, and an experienced diplomat who held past post as an ambassador in Russia, Indonesia, Germany, Japan, and the United States. His expertise in international relations and diplomacy, Kasit was different from most of Thailand's Foreign Affairs Ministers who usually came from politician background. During his time as the Minister from 2008 to 2011, not only did he emphasize the importance of Thailand's role in humanitarian regime; he also initiated, led, and implemented a number of refugee-related projects with the goal to solve the protracted refugee problem in the country. With his key role, past actions and involvement in Thailand's refugee regime; Kasit, hence, is the perfect candidate to elaborate and reflect the stance of the Thai government, and also represents the top-down (policy-centric) approach in this topic.

The second interviewee is Kraisak Choonhavan, a former Senate, university professor, and an active human rights activist. Kraisak has a wide range of experiences in the field of

human rights. He has worked with various local and international NGOs, as well as closely cooperated with governmental sectors and the UN to improve the human rights situations in Thailand. His empirical and scholastic knowledge accompanied by personal passion regarding refugees are exceptional. Stories of refugees he has heard, collected or directly experienced are vital to this study. They reflect real challenges that were faced in the fieldwork, offer details of human rights violation cases that were not known by general public, and most importantly provide the insights of an expert having worked in the field with the understanding of both local and international contexts of the issue.

The answers of the interviewees are expected to be biased based on their personal experiences and perceptions of the issue. These biases will be used to illustrate and emphasize the contrast in the role of Thailand in the international refugee regime.

By combining the literature review, news reports and interview analyses, the information obtained can offer theoretical, empirical, and critical dimensions of the issue, therefore, ensures both internal and external validity of the study.

This study does not aim to look at the treatment of any particular group of refugees or any specific phenomena, but rather the course of actions and policies Thailand has towards refugees in general, which will be accompanied by contextual and theoretical analyses.

The limitation of this research concerns the lack of data from the Thai government. As RTG never had any specific refugee policies; there had been very limited government reports and official documents regarding humanitarian (or particularly refugee) policies, budget allocation, collaboration framework, or even roadmaps available to the public. The main sources of information hence are produced by various international human rights organizations, which according to Kraisak Choonhavan, one of the interviewees, often wrote "self-censored and exclusive reports" on the purpose of maintaining "a good working relationship with the successive Thai governments". Data such as number of refugees lacks consistency between different organizations' records, while the cooperation between Thai governments, UNHCR, and non-governmental organizations (NGOs) are at times very vague due to the overlapping responsibilities of the involved parties.

The societal relevance of this research directly involves the current refugee crisis around the globe, which impacts every nation. The author hopes this research will contribute to reducing the gap between international principles of refugee regime, and the recognition of efforts and contribution by developing countries that are hosting refugees. In light of the global refugee crisis today, the dilemma in humanitarianism is an arising question, which may hamper the collective efforts of international community in providing protection to refugees. By researching and discussing the political and historical context of refugee crisis in Thailand and Southeast Asia, this thesis aims to provide better understanding of approaches, decisions, actions and efforts by Thailand that can reflect discordant or dilemma of humanitarian efforts within the international refugee regime.

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## *Chapter III: Thailand's Refugee Missions*

Thailand did not ratify the two key instruments of the international refugee regime: the 1951 Refugee Convention and the 1967 Protocol. Though Thailand has been handling millions of refugees from the neighboring countries; the country does not have the legal framework that supports its refugee missions. This chapter will explore RTG's past policies and actions in humanitarian undertaking for refugees, and discuss the gap in interpretations of the legal context relating to refugee protection that differ between global and local level. This gap of perceptions of refugee status contributes to the incoherence and challenges in cooperation between RTG and other global actors.

### **3.1 Historical overview of RTG's policies toward refugees**

Thailand situates at the center of Southeast Asian region. Besides its strategic geographical location, the country exceptionally excelled its diplomatic skills in defending its sovereignty against colonial powers throughout the history, and also narrowly avoided the violence conflict as well as civil war that tore many Southeast Asian nations apart during the Cold War (Liang, 1977). Thailand was hence an apparent desired country of first asylum for huge amount of refugees from neighboring countries, and for many refugees, the country is deemed as the final destination for resettlement as well. The ways Thailand has been handling the issue reflect both internal and external factors that affected the decisions of RTG during certain time frame.

Since the early Rattanakosin era (late 18th century onward), kings of Thailand (with absolute ruling power) had always welcomed various groups of refugees including Vietnamese, Mon, and Chinese to reside in the country, blend in with the local communities and even gave them Thai nationality (Silpawut, 1992, p.67). However, after the Second World War, the political and social structure had tremendously deviated from that during the absolute monarchy reign. The concepts of national interest preservation and security concern, which complexly intertwined with Thailand's relations with the major powers, had great influences on the government's policies toward refugees. Silpawut's research (1992) provides comprehensive overview, which can be divided into three main phases: before 1975, between 1975-1979, and 1979 to the end of 1980s.

### ***3.1.1 Refugees Arriving Before 1975***

The event that triggered the first flow of Vietnamese refugees into Thailand was the First Indochina War between France, one of the former major colonial powers, and the Vietminh nationalist-communist revolutionaries. The Battle of Dien Bien Phu in 1954 drove over 70,000 Vietminh populations to flee the violence to Thailand through Laos and Cambodia. Initially, the Thai government "allowed them to stay in Thailand, without restricting the residential areas, and commanded the Ministry of Interior to treat them well" (Silpawut, 1992, p.69). Nonetheless, as this group of Vietnamese refugees was the Vietminh, the military government led by General Plaek Pibulsongkram began to feel threatened by the spread of communist ideology. Consequently, the government implemented a number of regulations on refugees, including assigning refugees to stay in the controlled areas in eight provinces, specifying refugees desired to leave the areas must obtain permission from the authority; making the Vietnamese alien registration list; and appointing provincial police to observe and inspect activities of Vietnamese refugees. After the first Indochina War ended, RTG negotiated with North Vietnam to gradually send around 45,000 Vietminh refugees back home, while the remaining refugees were awaiting the return or the resettlement in third country. However, Vietnamese born to refugee parents in Thailand were eligible to apply for Thai nationality.

The situation for Chinese refugees during this period was not very different from the Vietnamese refugees (Sukhothai Thammathirat University, 1992, p. 394). Chin Ho or Chin Haw was a common term to call political refugees that fled the Chinese civil war after the victory of Mao Ze Dong's Communist Party. This group of refugees, comprised of the 93rd Corps, supporters of Chiang Kai Shek's nationalist Kuomintang Party, their families, and some other anti-communist groups from Yunnan Province, entered Thailand via Myanmar and Laos during 1953- 1961. Besides disarming all Chin Haw ex-militia, the regulations the government imposed on Chin Haw were more or less the same as the Vietnamese refugees (Silpawut, 1992, p.71).

The most complicated case was the refugees from Myanmar, or at the time known as Burma. The peace after the independence from the British rule was short lived and followed by the clash between the Burmese government and various ethnic minority groups. As the

Burmese government was crushing down the resistant groups; the Mon, Karen and Shan ethnic minorities fled to Thailand. The Thai government was much cautious about handling this group of refugees, as most of them were considered the opposition groups to the Burmese government. With concerns of allegation of assisting the hostile groups that might affect the relations with Burmese government; RTG imposed regulations to strictly restricting the Burmese refugees from any political movement. In addition, any Burmese refugees leaving the control areas were subject to punishment, and descendants of Burmese refugees that were born in Thailand were not eligible to obtain a Thai national.

Silpawut (1992) further suggests that the RTG found it difficult to return the refugees of these three major groups back to their countries, as most of them had settled the whole family with new born children on Thai soil; the Thai government therefore preferred the local integration of existing refugees over refoulement policy. Moreover, both the number and the regulations to handle the refugees prior to 1975 seemed to be doable and not much of a 'burden' to the nation.

### ***3.1.2 Refugee Arriving between 1975-1979***

The refugee spillover began to overwhelm Thailand right away in 1975, after the United States of America lost the Vietnam War and gradually withdrew its troop out of the region; the predicted domino effect became real, as Laos and Cambodia both fell under communism following the victory of the Communist Vietnam. The abandonment of the US, Thailand's biggest ally and aid provider throughout the 1950s to mid-1970s, had left the country stranded and surrounded by Communist neighbors; meanwhile the first massive wave of Vietnamese refugees came, mostly by sea, into Thai soil. The violence of the horrific Indochina War a few years earlier spilled over Laos and Cambodia, and triggered large groups of political refugees to flee their homelands. Most of the refugees were diplomats, former government officials, and politicians who opposed the communists and the Khmer Rouge. The United States, which was deeply engaged and intervening in domestic political affairs in the Indochina, brought many Vietnamese, Cambodian and Hmong (the CIA-trained ethnic army to fight against the Laotian Communist insurgents) via plane to take refuge in Thailand before preparing to resettle them in the US later.

The RTG's policies toward refugees began to take clearer shape, as the steady flow of refugees entering the country could no longer be avoided or compromised by non-regulated policies. Political conflicts within the Indochinese states and Thailand had tendency to escalate, while the maintenance of good relations with the US was also a challenge. The external factors (balancing foreign relations with neighbors and the world's superpower) added up to the internal factor caused by the changes in Thai politics at that time. The long reigning military regime was overthrown, and was replaced by the civil government. Unstable political situation at home even made the country fell into a more vulnerable state. The rise of civil movements led by students pressured the civil government to re-establish relationship with the communist neighbors, and discharge US army bases in Thailand. At the same time, the bureaucrats and the Supreme Command Headquarters that held key power in making security policies supported the repatriation and blockade of refugees, as they saw the influx of refugees as a threat to national security. Initially, Thailand on the one hand still provided temporary shelters and necessary aids to refugees according to the international customary law and moral standard; on the other hand, the countries clung on to strict regulations on refugees, tightening border control as well as water police patrol to block the refugees, and tried to return and push back as many refugees as possible. In 1976, RTG also initiated negotiations with Cambodia and Vietnam to re-establish diplomatic relations and pave a way for further cooperation. Though the communist governments of Laos and Cambodia called for Thailand to return their political refugees while promising they would face no punishment afterward. However, most refugees were fearful of their governments and were not willing to return.

The repatriation policy began to backfire in 1978 when RTG forcefully drove 42,000 Cambodian refugees back to Cambodia. The incident caught the attention of the international community that strongly condemned and called on Thailand to stop such action. The pressure from the international community urged RTG to reconsider its refugee policies.

### **3.1.3 *The Second Wave of Refugee in 1979***

The second wave of refugees flooded Thailand again in 1979. Nevertheless, the major changes in external factors on both regional and global levels directed the change in RTG's policies to an open door policy.

First, the implementation of refugee repatriation policy had stained the country's reputation on the global level. After the renowned incident with Cambodian refugees, Kurt Waldheim, the United Nations Secretary General at that time, sent his words to General Kriangsak, Prime Minister of Thailand; requesting the cessation of refugee repatriation, while governments of the US, France, Canada, other international organizations, human rights groups and the media reported, protested, and criticized RTG's poor treatment, and repatriation of refugees.

Second, the tension between Thailand and its neighbors alleviated through the re-establishment of diplomatic relations and multi-party negotiations. Notably the relationship between Thailand and the Khmer Rouge had transformed from "hated enemies" into "trading counterparts" (Cook, 2005). In response to the change in regional politics, the Thai government had drastically shifted the policies toward refugees from refoulement to the open-door policy. Both Cook (2005) and Silpawut (1992) mentioned that RTG took the refugees along the border as a human buffer between Thailand and Vietnam-Cambodia.

Third, RTG had realized that it was impossible to completely block the flow of refugees coming by land through a 1,750 kilometre long Thai-Lao border, and 798 kilometre long Thai-Cambodian border. Also, the safety concern of Vietnamese refugees, also known as the 'boat people' who mostly came by boat, but got attacked, raped, and at times killed the entire boatload by local fishermen or pirates caught the attention of many media and human rights groups. RTG was heavily condemned for worsening the situation by ignoring the cruelty and violence occurred to them and continuing to order the water police to push back the refugee boats to face life-threatening danger.

Fourth, according to global political context during the Cold War time, RTG knew that filling the human rights requirements of the US and its major power allies was an essential prerequisite to receiving foreign aids. Therefore, improving the policy toward refugees not

only would redeem the country's name in the international community, but also increase the potential of receiving economic or development aid.

The open-door policy was implemented during 1979-1980. Meanwhile, the violent conflict broke out between Cambodia and Vietnam in 1979 and the fighting situation worsened during the next few years. Thailand had received several hundred thousand Cambodian refugees that fled the violence.

During this period until early 1990s; RTG had claimed to play a more prominent role in cooperation with UNHCR to implement peace plan and ensure a safe return of Cambodian and Lao refugees to their home countries. The refugee management in camps had also become more systematic under the supervision of UNHCR and international organizations. Education, cultural adaptation, and vocational training programs for refugees were provided.

Thailand still continued to face both the influx of refugees, and the criticism on treatment of refugees throughout the last decade of the Cold War and post-Cold War period onward, especially refugees from Myanmar that constantly escaped persecution by military government to Thailand.

Number of refugees has soared dramatically in the past two decades, meanwhile the nature of global conflicts have changed. Dr. Janjira Sombatpoonsiri, an academic scholar stated that the 1990s marked the conflict of identities, where people flee persecution on particular religious, political or ethnic groups (ThaiPBS, 2015).<sup>3</sup> However, after 9/11 the world witnesses the internationalization of civil war, which involves the rise of terrorism. New group of war refugees do not limit their escape route to bordering countries. Some came to Thailand, and the situation of the new comers is very different from that of the previous Indochinese refugees.

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<sup>3</sup> ThaiPBS (television station) transcribed interviews of three refugee/ human rights experts and scholars who were guest speakers during an academic seminar: "Mercy-based Politics: Refugee Crisis in Europe and Asia," held on 14 September 2015 at Thammasat University. ThaiPBS published the transcription under the title 'Refugee Crisis...the Test of Global Kindness,' on 21 September 2015, retrieved from <http://www.aftershake.net/?p=1394>

### 3.1.4 Urban refugees

Urban refugees residing in Bangkok and metropolitan areas came from over 40 countries around the world (Raktham, 2017). Asylum Access Thailand, an independent organization, reveals that there are currently around 8,000-9,000 urban refugees in Thailand; the number had tripled from 2014 (Asylum Access Thailand). The largest group of urban refugees is from Pakistan, followed by Vietnam, Somalia, Iraq, Palestines, and Syria. The number of urban refugees began to soar as the refugee crisis from internationalized civil wars and terrorist attacks especially in the Middle East in recent years has worsened and spread to every part of the world. Among all urban refugees, approximately 4,100 have been registered as refugees with UNHCR, while the rest are still holding a status of asylum seeker (Isranews Agency, 2017).<sup>4</sup>

The rising number of urban refugees in Thailand reflects the global trend of refugee crisis, and emphasizes the role of states in 'burden sharing' to respond and alleviate the problem. Without an effective or a proper refugee screening and registration mechanism, Thailand barely attempts to differentiate between economic migrants, victims of human trafficking, and war refugees, who should be protected by host state.

Most urban refugees in Bangkok arrived with a dream to resettle in a third country. However, the rate of successful resettlement cases made up to merely one per cent of the overall refugee population in Thailand, while the general process is on the first come, first serve basis, and the chances depend on the assessment of the refugee's 'vulnerability'. As a result, thousands of urban refugees who are awaiting their resettlement are living in fear; too scared to go to work or school where they might be at risk of being arrested and deported by Thai authorities (Haiij, 2017). As most countries of origins of urban refugees do not border Thailand, deportations are costly, thus RTG only decides to detain arrested refugees for a long time; some could even be subject to "indefinite detention," (UNHCR, 2006, p.4).

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<sup>4</sup> Isra News Agency reported the interview of Siwawong Suktawee, representatives of Coalitions for the Rights of Refugees and Stateless Persons in a public seminar held on 22 June 2017. Retrieved from <https://www.isranews.org/isranews-news/57365-refugee-57365.html>



### 3.2 Different interpretations of the status of refugee between Thai and global contexts

The idea of defining the status of refugees developed from post-World War II era, when millions of people were displaced due to the destruction of the greatest war in human history. The international community agreed that displaced persons during post-war time should receive the international protection, and the non-refoulement principle should be entrenched and practiced worldwide (Cheevapanich, 2016). One of the problems in refugee mission is how each nation defines the term 'refugee'. This can affect how the national law of any particular country permits or supports the humanitarian missions to refugees. The United Nations organized the Convention Relating to Status of Refugee in 1951 (the 1951 Refugee Convention or the Geneva Convention), and the Protocol Relating to Statuses of Refugees (the 1967 Protocol) to close the gap between different meanings of refugees. In Article I, 'refugee' is defined as:

*"A person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."*

The definition of the term refugee sets the framework for basic rights any displaced person shall get and also the legal guidelines for governments of each country to treat and handle them (UNHCR). The term 'asylum seeker' is then used for people who seek refuge but the request for sanctuary is yet to be decided. The status of refugee can only apply when a state qualifies and grants the rights to international protection according to the 1951 Refugee Convention. The following 1967 Protocol affirmed the definition of the term 'refugee', and constituted the treaty outlining international law to protect displaced peoples.

This definition, in a common interpretation, only applies to political or war refugees, and does not cover displaced persons due to natural disaster or poverty. The major problem, however, is the 1951 Refugee Convention only consisted of 145 parties, while the 1967

Protocol is ratified by 146 states (UNHCR). Thailand, the country of the case study, did not ratify to both conventions.

For countries that are not a party to the UN 1951 Refugee Convention, refugee and asylum seeker status is unlikely to be recognized by domestic law. In Thailand, refugees are commonly regarded in the national law, or specifically the Immigration Act B.E. 2522 (AD 1979), as 'displaced person' and 'illegal immigrants.' This generalization of the term in local legal context can make a tremendous difference, since displaced persons without formal refugee status might be subject to arrest, detainment, or deportation.

According to Thai law and Immigration Act, a displaced person is a person who escapes from fighting, riot, civil war or any warfare and enters the Kingdom of Thailand illegally. Therefore, in theory, all refugees and displaced people are all considered illegal immigrants. In practice, however, the Public Affairs Institute suggests in its publishing that in practice, the terms 'displaced person,' and 'illegal immigrant' applied to separate groups of refugees. 'Displaced person' is used to describe a person who "entered Thailand before 1979, and registered themselves with the Thai authority, while 'illegal immigrant' specifies those who "enter the country in 1979 and after, and are detained at the refugee center," (Silpawut, 1992, p.11-12). Consequently, refugees in Thailand were not subject to conditions and protection rights as specified by the United Nations Refugee Convention. The recognition of their statuses and rights solely depends on the consideration of the RTG, which might alter upon periodic political or regime changes. Roisai Wongsuban, former officer of International Rescue Committee (IRC) points out that RTG hitherto classifies displaced persons (asylum seekers) into two main groups: non-Burmese, and Burmese. For non-Burmese asylum seekers, RTG works with UNHCR to screen and investigate their backgrounds, whether they really escaped persecution or violence, and if they were eligible to be registered as refugee and protected by international law. Burmese nationals are a different story. RTG does not permit UNHCR to involve in background screening of this group as they mostly arrive in large number and screening of each individual is time consuming. The government groups them together in refugee camps along the border, similar to what governments of Turkey, Jordan and Lebanon handle the flow of Syrian refugees.

*Analysis of Gaps in Refugee Protection Capacity (Thailand)*, a report produced by UNHCR in 2006, highlights the challenges for international organizations to deal with and work within the frame of the RTG's interpretation of status of refugees. It also points out the gap between international and national legal frameworks results in both informal and formal deportations by the Thai authorities, increasing the risks of refugees in facing violence and persecution, and hampering further international efforts in local integration and refugee resettlement.

### **3.3 Cooperation between RTG and UNHCR**

As the aforementioned report points out, Thailand though has not ratified the two main instruments of the international refugee regime namely the 1951 Refugee Convention and its 1967 Protocol; the country has been a party to a number of other UN human rights instruments, and has comprised many international human rights concepts into its domestic law (UNHCR, 2006).<sup>5</sup> The RTG invited UNHCR to set up an office in Thailand in 1975, in response to the massive influx of refugees from neighboring countries fleeing political turmoil and violence in their homelands.

Since Thai law has not incorporated the systematic refugee registration or the admission of asylum seeker function into its national legislation; UNHCR has stepped in to fill this gap. The process is led and carried out by UNHCR, but jointly conducted with the RTG, which appoints Provincial Admissions Boards to screen asylum seekers from Myanmar, the 90 per cent majority of refugees in Thailand today, before the registration process takes place (UNHCR, 2006, p.13). The joint refugee registration system mainly applies to refugees from Myanmar, who are living in the nine camps along Thai-Myanmar border. The camps are administered by RTG, under responsibility of the Ministry of Interior. Meanwhile the international and local NGOs provide assistance and supports from food, shelter, medical care to education for refugees in the camps. In 2012, Human Rights Watch refugee policy director and consultant published a report claiming that as of 2006 only 60 per cent of approximately 140,000 Myanmar refugees had been registered by the Thai government

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<sup>5</sup> 'Analysis of Gaps in Refugee Protection Capacity, Thailand.' United Nations High Commissioner for Refugees (UNHCR). November 2006. P.4.

(Frelick and Saltsman, 2012).<sup>6</sup> Only Myanmar refugees in the camps can be granted refugee status, while those of the same nationality but living outside the camp are not given the official refugee status, and could be subjected to immediate deportation, "unless they present themselves not as refugees but as migrant workers, and go through the expensive, difficult, and often corrupt process for obtaining migrant worker status"(Human Rights Watch).<sup>7</sup> This statement coincides with Niyomsilpa's research, which suggests that the RTG's refugee protection policy hugely overlaps with the migration control of illegal migrant workers, and this negatively affects the efforts to provide protection to refugees (Niyomsilpa, 2012, p.65). The cases of refugees and asylum seekers of other nationalities demonstrate even more complications.

Since the establishment of UNHCR Office in Thailand 41 years ago, RTG has reportedly permitted UNHCR the access to only certain groups of refugees. Different groups of refugees can roughly be classified as the following:

- Mhong (Lao)
- Vietnamese
- Cambodian
- Myanmar refugees
- Chinese political refugees
- Urban refugees

The first four were the earliest groups of refugees coming to Thailand since post-World War II period. Myanmar refugees steadily arrived throughout the past three decades and are now accounted for up to 90 per cent of all refugee population in Thailand. The urban refugees are among the latest to arrive, and residing in Bangkok and metropolitan areas. This group consists of refugees from wide range countries of origin, including Syria, Pakistan, Iraq, Palestine, Sri Lanka, Democratic Republic of Congo, Iran, China, Vietnam, Egypt and

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<sup>6</sup> Frelick, Bill & Saltsman, A. 12 September 2012. "Adhoc and Inadequate: Thailand's Treatment of Refugees and Asylum Seekers".

<sup>7</sup> Human Rights Watch. 13 September 2012. "Thailand: Refugee Policies Ad Hoc and Inadequate Closed Camps, No Work Authorization Lead to Stagnation and Abuse"

Somalia (Urban Refugee Organization).<sup>8</sup> The number of refugee populations both in total and by group always fluctuates over time and are different in each involved party's record.

As RTG did not include formal refugee protection mechanism in its national and development agendas; each group of refugees is subject to an adhoc-basis policies and executive discretion of Thai authorities (Frelick, 2012). The state agencies that have key roles in handling refugees include:

1. The Office of National Security
2. Ministry of Interior
3. Ministry of Defense
4. Border Patrol Police
5. Ministry of Foreign Affairs
6. Immigration Bureau

The state departments that have to cooperate and work closely with UNHCR and other international organizations are Ministry of Interior and Ministry of Foreign Affairs. Under Ministry of Interior, the Operation Center for Displaced Persons in cooperation with the Department of Provincial Administration will assign Governors, Vice Governors, District Chief Officers, and Assistant District Chief Officers of the areas where the camps are located to handle day-to-day administration tasks within the camps, and liaise with UNHCR in refugee relocation (moving refugees to different camps) and return (to homeland on a voluntary basis) process. As Ministry of Interior is responsible for the daily fieldwork, the Ministry of Foreign Affairs handles what it does best--- the diplomatic task on the global scale. The ministry is in charge of reviewing transnational and international treaties, conventions, and agreements, coordinating with international organizations, and most importantly "promoting Thailand's operations in providing humanitarian assistance to refugees according to the international humanitarian principles,"<sup>9</sup> (Sukcharoen, 2014, p. 18).

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<sup>8</sup> Urban <http://urban-refugees.org/bangkok/>

<sup>9</sup> Sukcharoen, N. Individual Study on the Policy of Closing 'Temporary Shelter' on Thai-Myanmar Border: A Tendency of Rights Violation of War Refugees". August 2014. Copy rights of Thailand's Ministry of Foreign Affairs.

However, the recent development of the policies and level of cooperation by RTG in the past decade as mentioned above can only provide one dimension of challenges and struggles of Thailand. To determine other factors affecting the efficiency and capacity of the developing country in providing aid to refugees, the historical overview of policies toward different groups of refugees in different time period must be addressed.

### **3.4 Thailand and the Non-Refoulement Principle**

Refoulement is the term rooted from the French word 'refouler,' which means "to drive back or repel," (Fiddian-Qasmiyeh, Loescher, Long, and Sigona, 2014). Non-refoulement principle is considered by many, if not the majority of scholars, as an international customary law that forbids states to return asylum seekers and refugees to countries or places where they are likely to face danger and persecution. The main textual basis of the principle can be found in Article 33 of the 1951 Refugee Convention, which reads:

*"No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his [or her] life or freedom would be threatened on account of his [or her] race, religion, nationality, membership of a particular social group or political opinion."*

Moreover, the principle has been the backbone of many international human rights treaties, especially those that aim for international protection of refugees, and applies to all states even if they are not signatories to the 1951 Refugee Convention. Weissbrodt and Hortreiter (1999) point out that today almost all nations, Thailand included have ratified at least one international treaty or agreement, in which incorporated the non-refoulement principle. Therefore, Thailand, as part of the international community, is accordingly bound to respect the non-refoulement principle as well.

However, the principle, which is one of the most crucial instruments in the international refugee regime, only sets an obligation to prevent a negative response of a state. In other words, it just specifies that host states shall not drive back refugees to places they are at risk of danger, but the principle does not set the obligation for the positive response of a state, meaning the host state is not obligated to approve the refugee status, or the right of asylum to asylum seekers or displaced persons in the country (Piwawattanapanich, 2015).

The collective goal to provide international protection to refugees is inseparable to the human rights obligation of states. Basic human rights of all human beings need to be appreciated by all nations. Thailand was one of the first 48 nations to vote in favor of passing the Universal Declaration of Human Rights in 1948. Article 14 of the document that was adopted by the United Nations General Assembly in Paris specifies that "everyone has the Right to seek and to enjoy in other countries asylum from persecution" (Cheevapanich, 2016).

Even though Thailand is not a party of the 1951 Refugee Convention; the country has ratified seven other multilateral human rights agreements. Two of which, namely the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and International Covenant on Civil and Political Rights (ICCPR), incorporated the non-refoulement principle within the agreements.

Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment states that:

*No State Party shall expel, return (refouler) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.*

While Article 7 of ICCPR reads:

*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*

The UN Human Rights Council (UNHRC) has primarily interpreted the above Article as any State Party shall ensure that no individual shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment from repelling, extradition, or driving back the person from its territory to place where he would be in danger. The interpretation plainly covers the principle of non-refoulement (Sukcharoen, 2014, p.7).

Many scholars such as Goodwin-Gill who wrote *The Refugee in International Law* believe that non-refoulement principle is an international customary law. However, some law scholars argue that the principle itself is not clearly defined, and therefore, difficult to be

accounted as a norm in international law ought to be respected by all nations. Weissbrodt and Hortreiter (1999, p.3) suggest that the unclear scope of protection of non-refoulement principle includes the risk of persecution or danger assessment of the country to which the refugees are returned, the criteria of individuals that should be granted protection, and the limits of protection from the principle. This coincides with Pivawattanapanich's article that also elaborates the limits of protection from refoulement: *ratione personae*, and *ratione loci*. *Ratione Personae* specifies the limits of who should be granted protection, and whether or not the principle should apply to a mass influx situation. *Ratione loci* demonstrate the limits in term of location where the non-refoulement principle can still apply. The principle is undoubtedly applicable within the host state's territories, yet it is still diversely interpreted if the non-refoulement principle should apply to the border of the frontier, and territorial seas (Pivawattanapanich, 2015).

International human rights organizations and local NGOs, such as Amnesty International, Human Rights Watch, and Coalition for the Rights of Refugees and Stateless Persons (CRSP) claimed in their Joint Statement that Thailand has always shown no respect to the non-refoulement principle by forcibly driving refugees back to neighboring countries where they may risk dangers from persecution, or what the Statement referred to as "soft deportation" (Human Rights Watch, 2017).<sup>10</sup> The recent cases of Rohingya and Uighur (Muslim- Turkic ethnic minorities of Xinjiang Uighur Autonomous Region in China), and the past issues with Cambodian and Vietnamese refugees indicate the intention of RTG to push back refugees off the territory, and ultimately the disrespect toward non-refoulement principle. UNHCR (2006, p.12) argues that "most deportations" in Thailand "are not considered to be refoulement," however, RTG's monitoring and refugee returning system is insufficient to ensure non-refoulement.

On the one hand, since the principle still has unclear scope and limits both in terms of *ratione loci* and the risk assessment the refugees may face; it could neither be concluded

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<sup>10</sup> Joint Statement. "Thailand: Implement Commitments to Protect Refugee Rights End detention, forcible returns of refugees". (Signatories: Amnesty International Asia Pacific Refugee Rights Network Asylum Access Thailand Coalition for the Rights of Refugees and Stateless Persons Coalition on Refugee Protection FIDH - International Federation for Human Rights Fortify Rights Human Rights Watch Migrant Worker Rights Network Migrant Working Group People Empowerment Foundation Save the Children Ummatee). 6 July 2017.



that Thailand has always been violating the international customary law, nor could it determine Thailand's insufficient participation in the international refugee regime. On the other hand, Thailand, even though legally bound to abide by the non-refoulement principle; the country does not recognize the status of 'refugee' or 'asylum seeker' within its legal context. A large number of asylum seekers in Thailand arrived on tourist visa or without any document at all. Once the visa expires, the asylum seekers will automatically be considered by the Thai authorities as 'illegal immigrants', whom could be subjected to be returned, arrested or deported out of the country rightfully according to Thai Immigration Act. Therefore, the claims against Thailand regarding violation of the principle may reflect the perspectives and concerns of the international organizations and developed countries, but might not appear the same for RTG. This sensitive legal interpretation, again, stresses the problem in the 'universality' of major instrument employed in international humanitarian efforts.

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## Chapter IV: Different takes on Thai refugee policy achievements

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Thailand's refugee missions demonstrate a mixture of achievements and criticisms. However, due to the lack of mutual agreements between Thailand and other main actors in the international refugee regime, Thailand's refugee policies were often regarded as a human rights violation. The country though demonstrates considerable efforts and commitment through rhetoric on the global stage; its refugee policies still deeply intertwine and immensely depend on the concerns of national security and the stability of regional political context. These internal or regional factors may be overlooked and not taken into account by the international refugee regime, thus highlights the contrast between the global and national perception of Thailand's refugee policies. This chapter will determine the gap between Thailand's rhetoric on global stage and the real actions that have been taken in refugee missions, which will reflect the gap between the universal humanitarian standard, the challenges or factors causing host country's human rights violations, and ultimately, how this gap relates to the derogation of the developing countries' role in the refugee regime.

### 4.1 Positive achievements of Thailand's refugee policies

*"Thailand is a Buddhist country where the society is open minded, determined both by the friendliness of the Thai people, and by the royal policy that welcomes peoples of different nationalities and religions to reside in Thailand under their majesties' gracious royal protection"*

----- Kasit Piromya

Thailand, as one of the most popular choices as country of first asylum, does not incorporated refugee missions within the country's development agenda plan and legal regime. Hence, the policies towards refugees solely depend on the decisions of each government, which often affected by the national security concern, and diplomatic relations with its neighbor governments. Despite limitations due to regional political context and security concern that resulted in the country's brief period implementation of refugee

blockade and repatriation during late 1970s; Thailand had accepted over three million refugees into its kingdom during the past three decades.

As a transit country that borders many countries of refugee origins in Southeast Asia, the most apparent role of Thailand in the international refugee regime is cooperating with the United Nations and developed countries that are donor countries to tackle the refugee problem in a durable manner. Not only Thailand had to handle the spillover of refugees from neighboring countries that had been constantly in violent conflicts; the country also needs to maintain good relations with neighboring governments and the world's major powers as well.

The contribution of Thailand in refugee regime does not limit to only providing temporary shelter or protection, but also covers the support for the peace building operation in the region to reduce conflicts that are the root cause of refugee problem.

Kasit Piromya, former Minister of Foreign Affairs states in the interview that "Thailand had succeeded in contributing efforts to the peace building operation in Cambodia, as is evident in the United Nations' taking a temporary control over Cambodia for peace keeping purpose, while arranging national election to end political conflicts".

The interviewee also mentioned his experiences while taking the position of Director-General of the Department of International Organizations during 1991-1994 that the Ministry of Foreign Affairs had worked with international organizations and governments to alleviate and tackle refugee crisis in the region. The ministry had collaborated with the United Nations to create a model scheme, which had successfully solved the crisis regarding the Vietnamese boat people. Dr. Naruemon Thabchumpon, an academic scholar suggests that RTG's policies in general are mercy-based. She recalls the incident of the Vietnamese Boat People in 1978 that RTG provided them basic needs including food, water, boat fuel, and also welcomed them to go ashore (ThaiPBS, 2015). The most brutal fate facing Vietnamese boat people was pirate attacks in South China Sea. Hundreds of pirate attack cases were reported each year, and most of the time, there was no survivor from each attack. In 1982, UNHCR launched an anti-piracy program in Thailand, and Thai officials played great supporting role in the campaign. Thai navy and marines were in charge of sea and air patrols, while Thai police supported the land-based operations including fishing boat

registration and raising public awareness regarding anti-piracy. From 1984 to 1991, Thai officials had arrested 161 suspects on piracy charge, 106 of which were convicted (Robinson, 1998, p.183).

Hmong ethnic minorities from Laos that poured into Thailand after the victory of the Communist Pathet Lao were also provided humanitarian assistance. Thailand initiated negotiation with Laotian government to safely returning some Hmong refugees back, while the Ministry of Foreign Affairs facilitated and provided documents for some who preferred to resettle in the third country or return home. A total of 4,000 Hmong refugees had successfully been resettled back home.

As for Burmese refugees, the situation was much more sensitive and complicated due to political instability within Myanmar. RTG has been providing occupational trainings and basic education for Burmese refugees, while many negotiation initiatives with the government of country of origin had been made. However, the persecution of various ethnic minority groups in Myanmar continues for decades. The ministry, on behalf of RTG and together with the United Nations, had urged the Burmese government to set up safe zones to ensure the safe return of the Burmese refugees, but the complex political sensitivity with the Burmese military regime had made the operation difficult, and sees no concrete results until today.

The struggle to cooperate with the government of Myanmar is perhaps the most obvious in the case of Rohingya refugees, which had become regionalized if not internationalized in the past few years. Thailand, as well as Malaysia has been pressured greatly by the international community for pushing back the Rohingya. The Ministry of Foreign Affairs then attempted to stipulate the state's humanitarian approach toward the problem, and to end the refoulement or the push back of refugee boats. However, the interviewee also noted that the plan is not accomplished, as "the process has not been seriously carried on and executed".

The internal management within the Thai bureaucratic system and constant changes in political power may slow down or cause discontinuity of refugee policy. Despite plans that are awaiting real actions, Thailand has indicated more determination and pledged commitment on the global stage in solving the global refugee crisis in the past two decades.

For instance, the country's participation in Bali Process, a forum co-hosted by the governments of Indonesia and Australia aiming for setting forth the strategy for regional cooperation to coping with migration and human trafficking issues, results in the exclusive discussion between Thailand's Foreign Affairs representatives, UNHCR Assistant High Commissioner for Protection, and the Director of International Organization for Migration (IOM) with particular focus on tackling war refugees from Myanmar, and urban refugees residing in Thailand.

During the Leader's Summit on Refugees 2016 in New York, hosted by the government of the United States and the United Nations Headquarters, Prime Minister General Prayuth Chan-o-cha delivered a speech that stresses Thailand's contribution in humanitarian assistance to refugees, and pledged commitment to end refugee children detention, and establish refugee screening mechanism (Human Rights Watch, 2017). RTG has allocated 180 million US dollars for providing healthcare, education, and legal assistance for refugees in the country. He mentioned that Thailand, not only take in many refugees, but also provides them with vocational or occupational skill training within refugee camps, and helps facilitate documentation such as birth certificate for the new born, and arrangement of transportation for refugees who desire to return to their home countries. Thailand also expressed its consideration in incorporating effective screening mechanism but will focus more on the victims of human trafficking, and not directly addressing the screening for refugees.

Besides expressing determination on various multilateral discussion tables in improving refugee treatment conditions within the country; RTG also demonstrates enthusiasm in international refugee regime. Thailand has offered 7.26 million baht (200,000 USD) humanitarian aid assistance to the governments of Jordan and Lebanon, two countries that had been severely affected by the refugee spillover in the Middle East, both hosting over three million refugees (Thairath, 2016). Sek Wannamethee, spokesperson for Thai Ministry of Foreign Affairs revealed that the RTG also gave 200,000 USD humanitarian assistance aid through UNRWA and Palestine Red Crescent Society to Palestinian refugees in Gaza strip, and another 100,000 USD was donated through Yemen Red Crescent Society to provide humanitarian assistance to Yemeni war refugees (Ministry of Foreign Affairs, 2016).

Considering the contribution and supportive attitude Thailand presents through leader's speeches at international conferences relating refugee problem; it seems like the country has been boasting the achievements in refugee missions, and its advocate for global humanitarian regime.

Thailand's development in providing humanitarian assistance to refugees is arguably the most evident during the past two decades, perhaps after the various cases of human rights violations in the country had caught much negative attention from the international community. It is obvious that the image the RTG has been trying to portray on the global stage is the supporting and contributing role as a developing country that shares the burden and responsibility with the world in refugee crisis despite, as PM Prayuth addressed, "limited resources". The main question is whether the humanitarian activities the country has said to be conducting truly comply with the international standard.

## **4.2 Negative criticism on human rights violation against refugees in Thailand**

*"The seemingly humanitarian policy of accepting hundreds of thousands refugees is deceptive."*

---- Kraisak Choonhavan

Despite RTG's efforts and rhetoric on the global stage regarding the country's past supportive role in the international refugee regime; Thailand has consistently been criticized on the human rights violation and poor treatment of refugees who entered the country. Many international agencies, NGOs, and news agencies constantly report cases of mistreatment and inefficiency of Thai government's handling of refugees. Bill Frelick, Human Rights Watch Refugee Program director has in 2012 published a report titled 'Adhoc and Inadequate: Thailand's Treatment of Refugees and Asylum Seekers,' examining the living conditions of Myanmar refugees in the camps and other refugees outside the camps, which signifies inadequate protection of refugees in Thailand, and their risks of deportation by Thai authorities (Human Rights Watch, 2012). The Thai state's lack of humanitarian treatment for refugees, leaving them extremely vulnerable and abandoned, and led to cases

of horrifying abuse of refugees. Sadly, the history of these human rights violations could be traced back for decades.

Among the cases, the abuse of Vietnamese refugees during the mid-1970s certainly needs to be addressed. The year 1975 marked the defeat of the United States in the most horrific war of the Century--- the Vietnam War. The event caused over seven million casualties and triggered the "mass exit" of Southern Vietnamese. Kraisak Choonhavan, a former Senate, university professor and a devoted human rights activist, stated in the personal communication that RTG's policies towards Vietnamese refugees during 1970s-1980s had shifted dramatically from the 1930s-1940s when RTG had a concrete nationalist and anti-colonial policy, and was supportive of anticolonial movements in Burma, Vietnam, and Laos. Thai government still welcomed the Vietnamese political refugees, including leaders, activists, and their families up until the late 1950s or during the Vietnamese war of independence against the French. However, as mentioned in earlier chapter, the shape of regional and international politics had tremendously transformed in light of the Cold War, which increased the US' engagement in Indochina. As the war came to an end with the US' defeat, Thailand was left to deal "with the huge human effects of the war --- refugees".

The Vietnamese refugees, women and children included, were no longer accepted, or even "brutally prevented from landing on Thai soil". Those who came via small fishing boats "were either pulled back to sea by Thai water police or purposely crashed and left [the refugees] to drown". Those on the boats that were pushed back fell victim to Thai fishermen who were known to have preyed on refugee boats; they raped, looted- then killed entire boatload. The interviewee recalled his experiences when he interviewed fishermen in Trat Province in 1979 that they, "without shame, wished they could meet up with Vietnamese refugees so they could get rich," and another time when he had a private conversation with a UNHCR officer, who he said "risked his life by swimming out to sea in Songkla in desperation, to save a number of Vietnamese women and children." Kraisak personally regards RTG's treatment of Vietnamese boat people as "the worse humanitarian violation." UNCHR reported a shocking number of pirate attack cases, 349 out of 452 boats carrying Vietnamese to Thailand were attacked "in 1981 alone;" 578 women were raped, another

228 abducted, and 881 people went missing or dead.<sup>11</sup> Pushbacks of refugee boats by Thai authorities not only reflected that the state turned a blind eye on this brutal reality, but also indirectly sending those men, women, and children to face their cruel ending.

Large number of Burmese refugees, which made up the majority of the current refugee population in Thailand fled the war from Karen and Kayah state and began to arrive in Thailand in 1984 (International Rescue Committee). RTG facilitated the establishment of refugee camps along the Thai-Burmese border (see Figure 1), while the humanitarian assistance to cover basic needs of refugees was offered by international organizations and NGOs. However, Kraisak revealed that in reality, the non-governmental aid workers' "access to the existing camps have been extremely limited - in fact, prohibited by the Interior Ministry, until [they] got access through human rights commissioner " not long ago.

**Figure 1:** Location and size of Burmese refugee camps in Thailand (December, 2013)



<sup>11</sup> UNHCR. The State of World Refugee 2000. Chapter 4: the Flight from Indochina. P.87



Media and international organizations have constantly reported the poor living conditions of refugees in camps. RTG does not allow local integration of refugees. Though, the government expressed that it will support expansion of vocational training programs and initiate self-reliance activities for refugees (UNHCR, 2006). However, refugees are generally not allowed to move or leave the camps and not permitted to work (IRC). Their potential unrealized, poor psychological conditions and stress of refugees lead to repeated cycle of serious problems. Alcoholism, domestic violence, sexual abuse, exploitation of children, and suicide are common among refugees residing in camps (Thai Committee for Refugees Foundation, 2015). Voluntary repatriation of Burmese refugees are extremely unlikely, since the political situations in Myanmar even after the regime change have yet to stabilized. Refugees are fearful to return, but to be controlled within camp areas is not them freedom and protection they left home for.

RTG agreed to open up resettlement opportunities for Burmese refugees, but the availability of space is limited, and selection process of the third countries also allow only a tiny proportion of refugees to resettle (UNHCR, 2006). From 2005 to 2014, over 70,000 Burmese refugees from Thai camps were successfully resettled in the US, while another 19,000 refugees were resettled in Canada, Australia, Finland and Japan in the same period (Tan, 2014). However, the number of successful cases made up merely one per cent of the overall refugee population flow in the country (Raktham, 2017).

Refugees residing in camps may still have hopes for brighter future in the third country, but for the Muslim Rohingya, who fled brutal violence close to ethnic cleansing from Myanmar's Rakhine state; their hopes could be diminished right at the moment their boats reach Thai shore. Rohingya refugees have been subject to pushed back or arrested. The boats (mostly without engines) that were pushed back to the sea by Thai authorities, though provided with full load of food and water, but some were insufficient before the refugees reach another shore, resulting in death from starvation of some refugees, and the rest was left extremely vulnerable to persecution or human trafficking. The major concern of international organizations is the indefinite detention by RTG, which occurred to many Rohingya refugees arrested by the authorities (Quinley, 2017). Both measures the RTG employed: pushback and detention could be seen as human rights violation against refugees.

### **4.3 The contrast between achievement and criticism due to the gap in conceptual differences**

Indeed, there is a sharp contrast between the two interviews that have been conducted for this research. On the one hand, the interview with the former Minister of Foreign Affairs indicates the Thai state's compliance and supportive role to the international refugee regime. On the other hand, Kraisaak Choonhavan's answers demonstrate brutal reality of constant human rights abuses by the Thai government on the refugees.

The lack of systematic information record and management of refugee regime in Thailand made the speeches and pledges by RTG on refugee missions appear rather weak. There have been only very few, if any, government policy documents, action plans, budget or activity reports, or follow up evaluation on refugee situation in Thailand could be found in the government database that can be accessed by the public. Besides the press releases from the government news bureau, and speeches addressed to the public; the humanitarian aid plans for refugees are only kept inside within the involved departments, and out from the public acknowledgement. Even the government's announcement of national budget allocation for refugee regime, which totals as much as 180 million USD, or equal to 0.05% of the country GDP, to provide education, medical care and basic legal counseling service for the refugees, but the details of actions, and allocation are nowhere to be found. Human Rights Watch (2017) expressed that RTG's commitments pledged to protect refugee rights are "noteworthy and appreciated," yet they are "concerned by the lack of progress in implementing these commitments".

Furthermore, RTG's claim of implementing government-funded projects that covers preparation and resettlement process for refugees who are willing to resettle in third countries, has also not been mentioned in any reports, or records by the media and international agencies. Only government reports partially related to refugees that are available often overlap with those of immigration control, and economic migrants or labors, thus no concrete action plan created specifically for refugees could be extracted.

On the contrary, the cases of refugee abuse and human rights violations can be backed up by a number of reports from the media and human rights agencies. That being said, this

research is not to discredit or conclude that the government's statements are not credible. What is more important is to determine the gap between words of commitment and real actions that have been taken.

The supportive image RTG is presenting demonstrates the attempt of the country to maintain position and participation as a member of the global community by showing sign of acceptance and compliance to the norm of international customary law and humanitarian principles. However, as cases of refugee abuses indicated, much of RTG's decisions in accepting or pushing back refugees are based on political motifs.

The forceful return of two Chinese activists by RTG was commented by Sophie Richardson, Human Rights Watch China Director: "these actions blatantly contradict the pledge to uphold rights that the prime minister made before the UN General Assembly. It's deeply alarming, if not surprising, that the junta's deference to abusive neighbors takes priority over the rule of law." This indicates the dilemma in humanitarian aid, when the international obligation to aid refugees contradicts or challenges the direction of foreign policies and security of the nation.

The recent development of the Rohingya refugee crisis from Myanmar that poured into Thailand and Malaysia further emphasizes the lack of common ground between developed/ donor nations, and developing/ refugee recipient nations. As political violence and ethnic persecution towards the Rohingyas still persists, if not worsened in Myanmar, while there is so far no signal of a political change that could bring about a safe environment for their return.

The contrast between rhetoric and actions of RTG in refugee regime is clear, and also reflects the larger gap between the international humanitarian principle and local perspective of the refugee recipient nation. The result of this gap is the discordance within the global humanitarian effort itself, and perhaps the discouragement of the country that attempts to balance the humanitarian commitment and its national security concern.

" We live in an impure world. I can't think of a single country in this world (with the exception of perhaps Iceland) that has a pure history of humanitarian policy."

--- Kraisak Choonhavan

The quote above points out that every nation-state is driven by national interest. Stability and national security are prioritized. The swift changes in Thailand's policies towards refugees within the past 30 years involved both the relations with neighboring countries and the world's superpowers. Drawing back to Newman's argument mentioned in Chapter II, refugee policies are motivated by national security of states.

The United States was alarmed by the spread of anti-colonial movements, which left power vacuum in many parts of Southeast Asia, thus vulnerable to the spread of the Soviet Communism (Glasser, 1995). Seeing Thailand as a 'stable center of Asia,' the US began to tighten diplomatic ties with RTG, supporting the country with economic aid and military trainings (Zhu, 2014). Throughout the Vietnam War, Thailand had been a strong anti-communist supporter, a reliable ally to the US, and the base for the American military operations in Southeast Asia that the country was even referred to by the US as their "unsinkable aircraft carrier," (Osornprasop, 2007). After the war ended and the withdrawal of the US troops from the region, Thailand, which hosted seven American military bases, "in which millions of tons of bombs and chemicals were deployed against the people in the region causing some seven million of death," did not want to be reminded that it was "the main partner in these crimes against humanity," (K. Choonhavan, personal interview, 2017).

The Cambodian and Hmong refugees were also part of the "human effects" Thailand was left to deal with after the US army left the region. Though the Lao Hmong and Cambodian refugees did not face as unfortunate and cruel fate as the Vietnamese; the policy towards them was largely politicized. As mentioned, the Hmong people are ethnic minorities in Laos, who were trained by the CIA to counter the Communist insurgents in Indochina (Leepreecha, 2011). The defeated Hmong soldiers and their families fled to Thailand and were "openly welcomed" by RTG. The camps administered by the Supreme Command Headquarters of Thai armed forces were "immediately set up" upon arrival of some 54,000 Hmong political refugees. The same arrangement was made for the US-supported troops from Cambodia, but the camps for Cambodian refugee camps were directly operated by UNHCR.

The forced return of approximately 42,000 Cambodian refugees in 1978 was due to national security concern, as Thailand had already taken in 160,000 Cambodians since 1975, and RTG

saw emerging disputes along the border, which involved earlier group of refugees. However, the protest by UNHCR and UN Secretary-General influenced RTG to cease further forceful repatriation, and build more refugee camps to receive new comers. The second wave of refugees in 1979, triggered by the Vietnamese occupation of Cambodia, brought another 300,000 Cambodians to Thailand; "this lot included almost the entire army of the Khmer Rouge regime which is now considered as the most heinous and genocidal in the 20th century". During this time, the Western Alliance, including the US, UK, France, as well as China "began supporting RTG to use the refugee camps as support for another war inside Cambodia". The Cambodian refugee camps co-operated by UNHCR, international NGOs, and Christian organizations served a dual objectives: a humanitarian one to provide aid assistance and a political one to support the war against the Vietnamese installed regime in Phnom Penh (K. Choonhavan, personal interview, 2017).

The groups of Indochinese refugees Thailand was encouraged to offer aid and protection all involved in the US' anti-communist regime in the Indochina. Kraissak even concluded the RTG's policies towards Indochinese refugees as "a continuation of a convoluted pro-US or pro-Western world strategy to oppose Vietnam, or any country supported by the then Soviet Union".

After the Cold War, regional politics had tremendously changed. Regional cooperation and solidarity within Southeast Asia had grown. Thailand, as a strategic state located at the heart of the region, had been trying to balance the relations with the major powers from the West, China, as well as all its neighbors. Politics and national security still plays major part in refugee situations. Most of the recent cases impacted by the political sensitivity between the host state and the countries of origin involved China and Myanmar.

Thailand began to normalize its tie with China for military aid and assistance after the withdrawal of the US from the region in 1975 (Chingchit, 2016). Today, the two countries still maintain rather close diplomatic and economic bond. China, the growing superpower of the East, is known for human rights abuse against various minorities and political opposition groups. According to Human Rights Watch (2015), RTG has, despite the protest by UNHCR, deported Dong Guangping, and Jiang Yefei, two Chinese activists who were taking refuge in Thailand and had already been arranged for a resettlement in a third

country, back to China in 2015. The similar fate happened to 109 Muslim Uighur ethnic refugees in the same year, as RTG arranged a forced repatriation back to China where the Uighur minorities are known to face brutal persecution (Phasuk, 2017).

The most frequent repatriation cases occurred to refugees from Myanmar, especially the Rohingya. As discussed earlier, the soft deportation or at times the forced repatriation of refugees did not comply with the international humanitarian standard. Throughout the past few decades that Thailand needs to shoulder massive flow of Burmese refugees; RTG did not care to return refugees to face danger, and rarely made any comment on the violent persecution against ethnic minorities in Myanmar, which has been the root cause of refugees.

Myanmar is rich in natural resources, particularly the resource crucial for energy sector. The Thai-Myanmar economic tie can be traced back for decades, and Thailand is the second largest trading partner of the country. Interests and political sensitivity between the two countries is what RTG prioritizes over humanitarian cooperation towards protection of the persecuted groups.

Without regards to regional political sensitivity, or limitations of the refugee recipient country, the core root of the refugee crisis persists. When a standard emerged out of one particular social context and imposed upon the other, where cultural, historical, social and political contexts are different can create a big loophole in cooperation, and also raises the question of 'universality' of the standard itself. The questionable universality of international protection concept could never be this controversial in light of the refugee crisis in present era. The notion of burden sharing emerged during the 1950s as a concept aiming for nation-states to share responsibility to protect refugees in mass influx situation, as occurred within Europe after World War II (Boswell, 2003). Nowadays, the concept is used to promote "international solidarity among states receiving refugees," (Boswell, 2003). If host states rejected or failed to comply with this notion; other states involved with the refugee influx consequently need to shoulder more burden, and the most affected from this scenario is the refugees themselves.

The principle of non-refoulement is indeed one of the key instruments binding nations to share the burden of accepting refugees. However, the weight of the 'burden' each nation

has to bear has been a controversial topic. Who gets to determine whether a nation has done well enough or not enough in complying with this 'universal' principle? Developing countries that are currently hosting 86 per cent of refugee populations, and some, such as Thailand, have been facing refugee influx for almost half a century, are often criticized, if not condemned, by the international community for cases of pushbacks. Developed countries, bearing the role of the donors providing financial aids and in many cases, taking in refugees for resettlement, somehow hold greater power to criticize those countries of first asylum.

There are indeed two sides of a coin in this dilemma of refugee regime. While developed countries may take the idea of burden sharing to pressure developing countries to promote the protection of refugee rights, yet at the same time, developing countries that are economically and politically unstable, "are often not equipped to deal with refugee crises," (Maclean, 2012). Also, the dilemma includes the necessitation of "humanitarian aid that attempts to work within the political context of the host country while still seeking the best options for refugees" (Jacobsen, 2005).

At the same time, developed countries signaled discordant in this burden sharing concept as well. As most refugees desire to resettle in developed countries, the burden in refugee crisis can overwhelm transit states or countries of first asylums if the third countries do not approve the resettlement plan to take in refugees. This links back to Newman's question regarding the contrast between the roles of developing countries in receiving refugees, and the willingness of developed countries to share the burden through resettlement.

**Table 1: Refugee resettlements in industrialized countries 1993-2002**

Country of resettlement	1994	1995	1996	1997	1998	1999	2000	2001	2002	Total
Australia	13,557	15,412	11,100	7,816	12,558	8,398	7,330	6,659	9,172	92,002
Canada	10,100	11,101	10,937	10,369	9,645	9,779	13,518	12,245	10,389	98,083
Denmark	3,757	2,018	601	501	444	501	464	531	490	9,307
Finland	651	642	840	627	304	543	756	739	571	5,673
Iceland	-	8	-	17	23	75	24	23	-	170
Ireland	650	-	-	-	-	1,032	40	52	23	1,797
Japan	456	231	151	157	132	158	135	40	-	1,460
Netherlands	498	492	475	187	524	11	204	223	155	2,769
New Zealand	737	822	780	527	677	1,135	699	749	674	6,800
Norway	694	1,591	788	1,343	1,124	3,942	1,481	1,269	1,216	13,448
Sweden	7,431	1,956	1,629	1,180	1,130	546	1,501	1,089	1,042	17,504
United Kingdom	260	70	20	-	-	-	-	-	-	350
United States	112,981	99,974	74,791	69,276	76,181	85,076	72,143	68,925	26,839	686,186

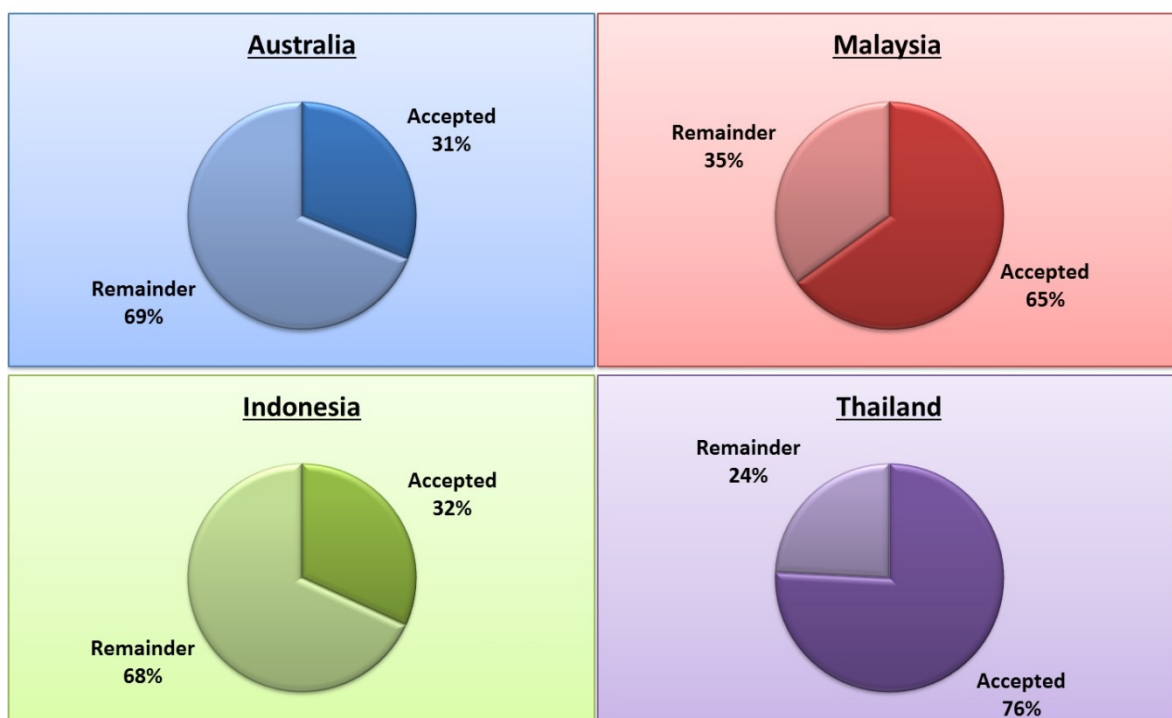
Resettlement is a mechanism of burden sharing employed during the late 1970s in the midst of the Indochinese refugee crisis (Thielemann, 2006). As indicated in Table 1, the number of refugee resettlement in most industrialized nations has drastically declined during 1983-2002.

Lars Løkke Rasmussen, the Danish Prime Minister who stated that the humanitarian efforts should "focus on refugees' rights in the first country they reach," also called for the change in "the rules of the game," referring to the revision of the 1951 Refugee Convention (Kingsley, 2016). His controversial speech though negatively perceived by other Western countries reflects the reality of receding efforts of industrialized countries that are signatories to the 1951 Convention in receiving refugees.

The rejection of Rohingya refugees by the Australian authorities on several occasions is a good example of the Western countries' reluctance to share the refugee burden, and in this case, it directly relates and impacts the regional refugee regime. The figure below shows the comparison of refugee acceptance rate between Australia, Malaysia, Indonesia and Thailand in 2013. Australia, which is far more developed in all aspects compared to the other three nations accepted the least number (Tan, 2015).

**Figure 2:**

### Comparison of refugee acceptance rate in 2013





The burden sharing scheme poses a big question of 'how the burden should be distributed?'. The assessment of burden sharing includes two types of criteria: the justice-based criteria and the outcome-based criteria. The justice-based criteria employ "static indicators, such as the receiving-country GDP, population, or size of territory," while the outcome-based criteria concerns impact on the root conflict, international security, and protection of refugees (Boswell, 2003). If applied such criteria to refugee crises in Southeast Asia; Thailand, along with other ASEAN neighbors seem to offer a generous share of burden, only limited to certain political context. Ratifying the 1951 Refugee Convention, recognizing and approving legal status of refugees are seen by RTG as a concrete move that leaves no space for foreign policy adjustment within the region.

Amidst the recent Rohingya refugee crisis, Indonesia proposed in the ASEAN meeting to cooperate with Myanmar, where the root of the crisis lays (Jati, 2015). If states responsible for starting, or intensifying the conflicts should show responsibility in alleviating the spillover outcomes of the disputes, then the weight of burden sharing scheme should also be revised. Internal conflicts in Southeast Asia had mostly been flamed, intensified and intervened by external actors since the colonial era to the Cold War, as evident in the cases of Indochina as an outcome of the cold War, and ethnic conflicts in Myanmar that could be traced back to the British divide and conquer strategy. While bordering states handled the aftermath of these complex phenomena, industrialized nations seem to return with greater power to pressure and impose international obligations upon them. Aid assistance, systematic strategy guidelines and donations might not answer to the political sensitivity issue, security concern, or social impact in the refugee affected regions.

#### **4.4 Role and contribution of developing countries being overlooked?**

The legal framework of Thailand does not recognize the status of refugee in the same sense as the international framework represented by the 1951 Refugee Convention. Technically speaking, if the country claims that all displaced persons entering the kingdom are illegal immigrants according to the domestic law; Thailand has a full sovereignty to repel or deport them. One fact could not be denied; Thailand has taken millions of refugees onto its soil, facilitating, and sheltering them. This humanitarian undertaking alone reflects "the noble

act of participation and contribution as a member of the international community," (K. Piromya, personal interview, 2017).

The burden sharing of the present international refugee regime seems to be imbalanced, as 86 per cent of refugees are received by developing countries. Even though Thailand's acceptance of refugees could not be compared to the mass influx of refugees in Jordan, Lebanon, yet the contribution and commitment of the country's humanitarian effort should not be overlooked, and the limitation of that effort should not be neglected or condemned, but understood. At the same time, the international humanitarian standard and obligations should also be respected and adhered. The bridge and balance between the two approaches (global and national level) is vital to the refugee regime. Nonetheless, the case of Thailand demonstrates the lack of mutual understanding and compromise.

As Kasit Piromya mentioned in the interview, 4,506 Lao Hmong were sent home in 2009, upon the agreement made between RTG and Lao government. RTG initiated the negotiation with Lao PDR to safely return Hmong refugees who had been residing in Thailand since the Cold War period. The Lao government ensured the "better life" for those who returned after years of refuge in Thailand. UNHCR, however, protested this return agreement, claiming some of the refugees did not return voluntarily (Thairath, 2009).

In this case, it is difficult to conclude if the decision of RTG was intended to forcefully return despite the will of refugees. The non-refoulement principle only specifies the inhumane act of forcefully repatriation where people would risk violence and persecution. However, there has been no report of violation of agreement by the Lao government, only that they were returned without every individual's consent. The view of what is a "better life" is a subjective one and can hardly be a standard of humanitarian regime.

Instead, the case shows that the developing country host state may seek alternative solution through a diplomatic negotiation with the refugee country of origin to ensure a safe return of refugees. This case also highlights the importance of regional cooperation that could progress in favor of the development in humanitarian standard of the whole region. Meanwhile, the international community can monitor the progress and provide supporting guidelines.

## 4.5 Regional cooperation framework to tackle refugee crisis in Thailand

Every refugee crisis cannot be solved by one nation alone. The efforts of UNHCR and international community are indeed vital to set the obligation and standard of conducts. However, this should also be accompanied by the understanding of local contexts.

Jati (2015) published an article suggesting that ASEAN can learn from Europe in handling refugee crisis. He recognizes Southeast Asian nations' achievement and capability of working together to tackle the Indochinese refugee crisis, but points out that there has been no continuation of regional cooperation and policy framework. The main obstacle is the political will of the member states.

Theilemann (2006) analyzes the burden-sharing notion in the context of the European Union (EU), and explains the two key factors that drive burden sharing initiatives: the norm-based motivations, and interest-based motivations. The norm-based motivations include solidarity with other countries and solidarity with refugees, while the interest-based motivations concern prevention against mass influx and adherence to the international obligations. These concepts have yet to appeal to or develop within Southeast Asia.

The protracted refugee problem partly derived from the lack of effective framework and cooperation within the ASEAN. Most member states do not concern "the rights-based framework of [refugee] protection," but employ a "migration-control oriented approach," (Niyomsilpa, 2012). The adhoc policies common in Thailand and its neighbors obviously are not a durable solution to tackle the protracted refugee crisis.

The concern about security and cost of receiving refugees can be resolved through the harmonization of policies (Theilemann, 2006). The mutual understanding of regional political, economic and security contexts within the region is a bottom-up approach that can strengthen humanitarian cooperation from within, protect against external pressure, and collectively prevent economic or security threats from the refugee crisis as well. Regional cooperation framework on refugee problem in regions of developing economies can also be seen in Africa and South America under Convention Governing the Specific Aspects of

Refugee Problems in Africa 1969 and Cartagena Declaration on Refugees 1984 respectively (Niyomsilpa, 2012, p.79).

The successful development in regional refugee regime can benefit both refugees and the host countries in all aspects. Refugees will be protected, while host countries can sustainably solve the protracted refugee problem, ensuring the national security, while complying with the international humanitarian obligations. Member states that refuse to cooperate or take the benefits from free-riding opportunity is at risk of being isolated in other aspect of cooperation. This will also allow international organizations to monitor the progress, work in a better environment, and reduce the gap between the Western-centric humanitarian approach and the local context.

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## Chapter V: Conclusion

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This thesis aims to explore Thailand's role and contribution as a developing country in the international humanitarian regime for refugees. To determine this, it is crucial to analyze the historical overview of Thailand's past humanitarian actions in refugee regime; to what extent those actions comply with the international standard; what factors drive the actions; and what struggles are faced by the country. The findings reflect the role of the developing country in the global refugee regime, as well as the gap between the universal humanitarian standard and the local contexts that influence refugee policies.

Thailand undoubtedly has a long history in refugee regime, and particularly played a huge part in the Indochina refugee crisis. The country, though generously received over three million of refugees in the past four decades, still faces much criticism over the lack of efficiency in refugee protection and cases of human rights violation against refugees. This results in the marginalization of its role and contribution in the international refugee regime. Many international organizations and critics suggest that the major problem in Thailand's inefficient refugee regime is the fact that Thailand does not ratify the two core agreements concerning refugees: the 1951 Refugee Convention and its 1967 Protocol. This produces the gap in legal framework in refugee protection and also reflects different approaches to the problem between the global and local actors.

Despite not ratifying the international agreements, Thailand desires to gain international recognition for its humanitarian commitment, but the efforts are hampered by the fire at its backyard: the human rights violation against refugees. The two interviews conducted in this research highlight these contrasting stances of the country's position in the world's humanitarian regime, and clearly illustrates the refugee protection gap between the country and the international principle.

However, while the international humanitarian standard points out the improvement the country needs to work on; the standard itself also lacks universality and regards to the local contexts. The standard enforced by industrialized nations and imposed on developing nations indicates bias and unequal weight in burden sharing. The bridge between the global standard and the local context, hence, is utmost vital.

The international humanitarian principles should certainly be taken as guidelines for all nations, but the local contexts, role and contribution of developing countries in the refugee regime should also be emphasized more. In Thailand, what is obviously lacking is an effective mechanism to ensure the protection of refugee rights, and a systematic, structured, and transparent procedures concerning refugee programs. In light of this argument, the regional cooperation could be a key for Thailand and fellow ASEAN members to improve the refugee treatment standard, which will pave the way to the international recognition of their contribution as well.

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Word count: 16,118





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