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Integration**

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A New Comprehensive Plan of Action: Addressing the Refugee Protection Gap in Southeast Asia through Local and Regional Integration

Keane Shum

Abstract

In 1989, 70 countries agreed on Comprehensive Plan of Action (CPA), a multi-faceted approach to resolving the Indochinese boat people crisis. It seemed to work: in a matter of years, there were effectively no more Indochinese boat people in Southeast Asia. And yet two decades later, with hundreds of thousands of refugees still seeking asylum in Southeast Asia, the region operates in a refugee protection vacuum. Indeed, only two countries are party to the 1951 Refugee Convention and there exists no framework to address forced migration flows before they develop into refugee emergencies.

This paper proposes a new Comprehensive Plan of Action for Southeast Asia. In the first section, it does so by understanding the lessons of the original CPA and why its implementation provoked countries to offer less, not more, protection to refugees. The second section of the paper then argues that this damaging legacy of the CPA can be reversed by turning to the durable solution of local integration, which has the best hope of incentivising countries to protect refugees in pursuit of their own interests. A new framework, this paper suggests, could both enhance refugee protection and further states' own interests primarily by utilising local and regional integration as a much-needed source of migrant labour, and also by dispelling traditional assumptions that the region is averse to humanitarian assistance.

The final section of this paper offers a blueprint of how this new framework would operate in practice. It traces the path of refugees as they arrive at a country of first asylum, undergo status determination, and enter into a labour pool that matches their work capability with the labour needs of the region, while also being eligible for resettlement in certain circumstances. A new framework, this paper concludes, must convince the region that protecting—and integrating—refugees is in its own best interest.

Introduction

There is a striking paradox in the world of refugee protection: the part of the world which is home to more refugees than any other is the same that is most conspicuously absent from the list of states parties to the Convention Relating to the Status of Refugees.¹ In this massive swath of Asia, stretching from the mountains of Pakistan to the islands of Indonesia, only two countries—Cambodia and the Philippines—have signed on to the constitutive document of the international refugee regime.²

More than two decades ago, the international community, with the full and eager cooperation of the Association of Southeast Asian Nations (ASEAN), embarked on a game-changing approach to burden-sharing in the refugee context. Whatever its flaws, the Comprehensive Plan of Action (CPA) undeniably achieved its goal of ending the Indochinese refugee crisis: in a few years, the number of Vietnamese

¹ UNHCR (2009) *2008 Global Trends: Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons* [last accessed at <http://www.unhcr.org/4a375c426.html>].

² UNHCR (2008) *States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol*, 1 October [last accessed at <http://www.unhcr.org/3b73b0d63.html>].

seeking asylum each year plummeted from 70,000 to an astonishing 41,³ and almost 125,000 refugees were resettled in third countries such as the United States and Australia.⁴ At the same time, the much smaller number of refugees arriving overland from Cambodia and Laos also diminished.⁵ By 1998, the CPA was over and only small pockets of Indochinese refugees remained from the refugee crisis that had gripped Southeast Asia for almost a generation.

Despite this apparent success, leading scholars of the CPA have questioned its utility as a model for future multilateral and multifaceted approaches to manage forced migration. As Arthur Helton noted in the later days of the CPA, ‘it remains to be seen whether truly universal lessons can be drawn from the CPA in managing solutions for asylum seekers in Asia or elsewhere.’⁶ W. Courtland Robinson concluded his epic monograph of the Indochinese refugee crisis by asking: ‘what new ground has been gained in Asia, if any, in the search for mutual commitments on asylum?’⁷

In 2010, these questions remain unanswered. For all that the region has changed, little, if any, new ground has been gained regarding issues of forced migration and asylum. The ‘brutal sort of burden sharing’ seen during the Indochinese crisis has long outlived the CPA⁸ —just as Malaysia once pushed back boats of Vietnamese,⁹ so Thailand now pushes back boats of Rohingya from Myanmar.¹⁰ On the fringes of the region, Australia, ever wary of being a country of both asylum and resettlement, is in the midst of negotiating a deal with Indonesia that effectively pushes boats back out to sea before they arrive on Australian shores.¹¹ Even Cambodia, one of the region’s two states parties to the 1951 Refugee Convention, still forcibly returns asylum seekers without performing status determination.¹²

The absence of a humanitarian emergency on the scale of the Indochinese exodus creates the false impression that forced migration and asylum are not significant problems in Southeast Asia today. However, ‘[r]efugee emergencies’, as Andrew Shacknove has observed, ‘are a chronic condition of our time.’¹³ Without any

³ ROBINSON, W. C. (2004) ‘The Comprehensive Plan of Action for Indochinese Refugees, 1989-1997: Sharing the Burden and Passing the Buck’. *J. Refugee Stud.* 17: 319, 323.

⁴ *Id.* at 325.

⁵ ROBINSON, W. C. (1998) *Terms of Refuge: The Indochinese Exodus and the International Response*, Zed Books: London.

⁶ HELTON, A. C. (1993) ‘Refugee Determination under the Comprehensive Plan of Action: Overview and Assessment’. *Int’l J. Refugee L.* 5: 543, 558.

⁷ ROBINSON, *supra* note 5, at 287.

⁸ *Id.* at 189.

⁹ See HELTON, *supra* note 6, at 556 (citing HELTON, A. C. (1992) ‘The Malaysian Policy to Redirect Vietnamese Boat People: Non-Refoulement as a Human Rights Remedy’. *N.Y.U. J. Int’l. L. & Pol.* 24: 1203); DAVIES, S. E. (2008) *Legitimising Rejection: International Refugee Law in Southeast Asia*, p. 192.

¹⁰ RAHMAN, M. and YOUNG, I. (2009) ‘Hundreds dead, set adrift by Thais’. *South China Morning Post (H.K.)*, 18 January; see also ROBINSON, *supra* note 5, at 43 (describing an almost identical Thai pushback of Vietnamese boats in the late 1970s).

¹¹ See NARUSHIMA, Y. (2010) ‘Call for Indonesian asylum solution’. *Sydney Morning Herald*, 9 March [last accessed at <http://www.smh.com.au/world/call-for-indonesian-asylum-solution-20100308-psvs.html>].

¹² UNHCR, ‘UNHCR deplores deportation of asylum-seekers before claims heard’, UNHCR Geneva Press Release, 19 December [last accessed at <http://www.unhcr.org/4b2f3b9b9.html>].

¹³ SHACKNOVE, A. (1993) ‘From Asylum to Containment’. *Int’l J. Refugee L.* 5: 516, 531.

framework that survived the CPA, all that remains in the region is a refugee protection vacuum.¹⁴ With chaos ever on the cusp in Myanmar and political upheaval never far away in Bangladesh and Thailand, Southeast Asia and its neighbours cannot afford to wait for the next crisis to reformulate their policies on forced migration.

Instead, as Gil Loescher proposes, '[b]y reaching long-term agreements to share responsibility for all refugees likely to affect their region, individual states would not only escape unfair burdens but would also diffuse the adverse effects of the overall refugee problem over time.'¹⁵ This paper offers a blueprint for how Southeast Asia can build those long-term, responsibility-sharing agreements.

The paper will first give a brief background of the CPA and what lessons can be learned from its successes and failures. Second, it will seek to explain why the 'forgotten' durable solution of local integration is a necessary component of a new refugee framework for Southeast Asia, and how the region could be convinced to buy into such a framework.¹⁶ Finally, the paper will provide recommendations for how refugees and host countries might build the infrastructure of this new refugee protection policy.

The Comprehensive Plan of Action

In June 1989, the representatives of 70 governments gathered in Geneva for the International Conference on Indo-Chinese Refugees.¹⁷ Across the South China Sea, the last embers of the Cold War continued to ignite mass upheaval, contributing to (or creating) a refugee crisis unlike anything the world had ever seen. Hundreds of thousands of Vietnamese were still abandoning their homeland and setting off on fishing boats through pirate-infested waters, lured by the promise of a better life in the developed world.¹⁸

In Geneva, the international community—and particularly the so-called 'countries of first asylum' in Southeast Asia—sought a comprehensive solution.¹⁹ A similar conference, often termed the First Geneva Conference, had taken place 10 years earlier and successfully arranged for the resettlement of 450,000 Indochinese refugees from camps throughout the region to the developed world in an agreement that was later coined 'an open shore for an open door'.²⁰ Soon after those camps emptied out, a new generation of asylum seekers arrived, and 'it seemed to some that

¹⁴ See DAVIES, *supra* note 9, at 222 (citing CHANG-MUY, F. (1992) 'International Refugee Law in Asia'. *N.Y.U. J. Int'l. L. & Pol.* 24: 1177).

¹⁵ LOESCHER, G. (2001) *The UNHCR and World Politics: A Perilous Path*, pp. 366-367.

¹⁶ JACOBSEN, K. (2001) 'The forgotten solution: local integration for refugees in developing countries'. *New Issues in Refugee Research*, UNHCR Evaluation and Policy Analysis Unit Working Paper No. 45 [last accessed at <http://www.unhcr.org/3b7d24059.html>].

¹⁷ See BRONEE, S. A. (1993) 'The History of the Comprehensive Plan of Action'. *Int'l J. Refugee L.* 5: 534, 539; ROBINSON, *supra* note 3, at 320.

¹⁸ ROBINSON, *supra* note 5, at 166, 183, 189; see BRONEE, *supra* note 17, at 536.

¹⁹ Although Hong Kong is neither a country nor a member of ASEAN, it played a pivotal role in the Indochinese refugee crisis, and all references in this paper to the countries of Southeast Asia should be read to include Hong Kong.

²⁰ ROBINSON, *supra* note 3, at 320.

open-ended resettlement, at least in part, was perpetuating an open-ended need for asylum.²¹ The 1989 conference in Geneva was meant to secure an endpoint.

The Comprehensive Plan of Action adopted by the delegates in Geneva represented a fundamental shift in international refugee policy. Southeast Asian nations that were pushing back boats agreed to guarantee temporary asylum on the condition that all boat people would undergo individualised screening to determine if they were ‘genuine’ refugees.²² Previously, every asylum seeker achieved *prima facie* refugee status and was automatically eligible for resettlement.²³

Boat people who arrived after various cut-off dates between 1988 and 1989 were held in the same camps where their predecessors had been held (and where many remained); and all new arrivals were now subject to status determination conducted by government officials.²⁴ Of the 115,075 boat people who underwent status determination, the 32,314 who were ‘screened-in’ were offered resettlement places in Western countries as per the CPA agreement,²⁵ while the remainder who were ‘screened-out’ returned to Vietnam, if not ‘voluntarily’ then eventually by force.²⁶ The CPA also revitalised a separate ‘Orderly Departure Program’ that pre-empted the flow of boat people by providing a legal avenue through which over 400,000 Vietnamese were resettled in the U.S. directly from Vietnam.²⁷

The CPA did end the Indochinese boat people crisis effectively. Indeed, only four years after the CPA came into effect, there were no more boat people arriving on Southeast Asian shores.²⁸ That dramatic success, however, came at a high cost to refugee protection in the region. The dismal state of refugee protection in Southeast Asia today is a direct result of the Indochinese boat people crisis. Though the ‘compassion fatigue’ so often cited during the crisis may indeed have played a part,²⁹ the true legacy of the CPA in Southeast Asia is that it ‘institutionalized non-compliance’,³⁰ and ‘was designed not so much to preserve asylum as to obviate the need for it.’³¹

After 15 years of recognising boat people as *prima facie* refugees,³² Southeast Asian governments found that ignoring international refugee law actually led the international community to pay more attention to their concerns.³³ Whenever they pushed back another boat, or camp conditions deteriorated, Western assistance

²¹ Id.

²² See BRONEE, *supra* note 17, at 541.

²³ See id.

²⁴ See HELTON, *supra* note 6, at 547-556; see ROBINSON, *supra* note 3, at 326-327; see ROBINSON, *supra* note 5, at 194, 199.

²⁵ ROBINSON, *supra* note 5, at 206.

²⁶ See id. at 193-194, 215-222.

²⁷ See id. at 194-198.

²⁸ ROBINSON, *supra* note 3, at 323.

²⁹ DONAHUE, C. (1990) *International Law and Refugees in South East Asia*, Lawasia: Kensington. p. 8.

³⁰ DAVIES, *supra* note 17, at 188.

³¹ ROBINSON, *supra* note 3, at 323.

³² BRONEE, *supra* note 17, at 541.

³³ DAVIES, *supra* note 8, at 109.

would increase.³⁴ As the Governor of Hong Kong admitted, ‘you cannot blame people in Hong Kong for drawing the conclusion that help would be greater if policies were harsher.’³⁵ Ultimately, by ‘insist[ing] the situation was beyond their control and that they no longer felt compelled to adhere to provide first asylum’, Southeast Asian countries impelled Western countries to agree to the CPA and individualised status determination.³⁶

A new effort to protect refugees in Southeast Asia must therefore achieve the same kind of regional buy-in attained by the CPA, but with incentives that encourage, not discourage, compliance with international refugee law. It requires a shift in refugee policy as fundamental as the introduction of status determination. Just as the CPA provided political incentives—status determination and the deterrence of future flows of boat people—which persuaded countries to offer asylum, a new plan must provide economic incentives to persuade countries to offer refugees the often ‘forgotten solution’ of local integration.³⁷

A New Way Forward

Local Integration: The Most Durable of Durable Solutions

The international response to refugee crises has typically turned to so-called ‘durable solutions’ that insert clarity and predictability into the process, for refugees and governments alike. Voluntary repatriation, resettlement, and local integration are thought to offer the best chances for refugees ‘to rebuild their lives in dignity and peace’, and to prevent ‘protracted situations’ where ‘the absence of longer-term solutions aggravates protection problems.’³⁸

Resettlement, despite being the solution for just one percent of the world’s refugees, is the only durable solution currently available in Southeast Asia.³⁹ Voluntary repatriation is not an option because the vast majority of refugees in the region are those that have fled longstanding conditions of persecution in their home countries, such as minority ethnic groups from Myanmar.⁴⁰ ‘Local integration’, meanwhile, ‘with its connotation of permanence, has fallen out of political favour, and the term is now a loaded one arousing negative reactions in host governments and donor agencies alike.’⁴¹ This is largely because ‘[t]here is no vision that refugees and assistance programs could be a development asset to countries of first asylum, or that they could promote human security there.’⁴² That vision need not be an empty one. With the right set of incentives tailored to the region and a candid rejection of the

³⁴ *Id.*

³⁵ ROBINSON, *supra* note 5, at 55 (quoting Governor Murray MacLehose in DAVIES, L. (1991) *Hong Kong and the Asylum-Seekers from Vietnam*, p. 7).

³⁶ DAVIES, *supra* note 9, at 109.

³⁷ JACOBSEN, *supra* note 16.

³⁸ UNHCR, ‘Durable Solutions’ [last accessed at <http://www.unhcr.org/pages/49c3646cf8.html>].

³⁹ UNHCR, ‘Resettlement’, [last accessed at <http://www.unhcr.org/pages/4a16b1676.html>].

⁴⁰ See THAILAND BURMA BORDER CONSORTIUM (2010) ‘Burmese border refugee sites with population figures: January 2010’ [last accessed at <http://www.tbcc.org/camps/2010-01-jan-map-tbbc-unhcr.pdf>].

⁴¹ JACOBSEN, *supra* note 16, at 2.

⁴² *Id.* at 3.

traditional assumptions against local integration, Southeast Asia could become the birthplace of an approach to refugee protection that embraces refugees as development assets instead of liabilities.

Incentivising Local and Regional Integration

As described above, the lasting weakness of the CPA was that it incentivised bad behaviour. Indeed, throughout this plan, governments discovered that in the context of refugee protection, '[n]on-cooperation reaped higher dividends than cooperation'.⁴³ A new framework for Southeast Asia must instead 'demonstrate to governments that assisting refugees is not only a virtue in itself, but a means for advancing their domestic or international interests'.⁴⁴ If local integration can be combined with foreign aid incentives and more narrowly-tailored resettlement policies, it offers the best hope of achieving regional acceptance because it is the only durable solution that has the potential 'to focus on the needs and constraints of host countries and governments as much as on those of refugees'.⁴⁵ The following sections detail how these incentives and policies could be structured.

A. Conditional Foreign Aid and Resettlement Match

Although local integration will be the keystone to this new approach, conditional foreign aid and continued but limited resettlement are vital supplements. As High Commissioner Poul Hartling observed during the Indochinese crisis, '[t]here is now no way in which the problem can be resolved by piecemeal measures....No single action, however generous, will suffice'.⁴⁶ Moreover, aid and resettlement commitments from developed countries would address any concerns that a new burden-sharing agreement was simply a burden-*shifting* plan for Western countries to absolve themselves of responsibility.⁴⁷ CPA-era policies such as UNHCR's 'self-sufficiency projects' in Thailand 'taught Southeast Asian states that compliance with UNHCR's demands would in all likelihood lessen their chances of receiving financial and humanitarian assistance'.⁴⁸ Compliance under a new plan to offer local integration would instead *increase* the chances of receiving financial and humanitarian assistance.⁴⁹

The amount of aid could be directly proportional to the number of refugees offered local integration in the host country; countries with the highest rate of local

⁴³ DAVIES, *supra* note 9, at 109.

⁴⁴ SHACKNOVE, *supra* note 13, at 517.

⁴⁵ JACOBSEN, *supra* note 16, at 3; *see also* HATHAWAY, J. C. (1991) 'Reconceiving Refugee Law as Human Rights Protection'. *J. Refugee Stud.* 4: 113 (proposing a similar framework for a new global refugee regime based on countries' mutual interests).

⁴⁶ ROBINSON, *supra* note 5, at 52 (quoting High Commissioner Hartling in UNHCR, Consultative Meeting with Interested Governments on Refugees and Displaced Persons in Southeast Asia, Summing-Up by UNHCR, Annex I, in Note by the High Commissioner for the Meeting on Refugees and Displaced Persons in Southeast Asia 6 (July 9, 1979)).

⁴⁷ SHACKNOVE, *supra* note 13, at 531 ('A policy of good governance requires, at a minimum, a modest parallel commitment by donor States....These States cannot expect other, more vulnerable, nations to execute demanding, even heroic, reforms, or improve human rights conditions, at and the same time claim that it is beyond their own substantial means to sustain a commitment to asylum.').

⁴⁸ DAVIES, *supra* note 9, at 104.

⁴⁹ *Id.*

integration would be eligible for additional refugee-related foreign aid. Likewise, aid could be withheld if countries do not meet a baseline number of locally integrated refugees. In this way, as Hathaway notes, '[l]ess developed states might be willing to [integrate] refugees beyond their quotas if the additional resources received would enable them to enhance the standard of living of their nation as a whole.'⁵⁰

The fact that foreign aid would be dependent on the amount of refugees locally integrated, as opposed to the amount of refugees simply granted asylum, addresses fears that a policy 'that monetizes and commodifies refugees, will lead to the relegation of the asylum obligation to a diminishing number of States.'⁵¹ No country under this new system could simply abandon asylum altogether by sacrificing its share of foreign aid. If a country were willing to sacrifice foreign aid because it did not have the capacity to locally integrate refugees or did not need foreign aid, it would remain a country of first asylum while refugees were processed for integration elsewhere in the region through a placement system discussed in the next section of this paper. These countries would then stand to double their losses by giving up not only foreign aid, but also the commitment of developed countries to resettle any refugees already in the country. This is because resettlement countries would agree to resettle one refugee for every refugee locally integrated, thereby employing resettlement 'as a stimulus to local integration', instead of as a replacement to local integration.⁵² This would correct the skewed incentives of the Indochinese refugee crisis, when one resettlement place was offered each time a host country granted *temporary* asylum, regardless of whether asylum seekers met the refugee definition or not.⁵³

With foreign aid windfalls and resettlement guarantees in hand,⁵⁴ Southeast Asian governments might be persuaded that locally integrated refugees can indeed 'be a development asset to countries of first asylum.'⁵⁵ This can be achieved by convincing

⁵⁰ HATHAWAY, *supra* note 45, at 127.

⁵¹ SHACKNOVE, *supra* note 13, at 531.

⁵² ROBINSON, *supra* note 5, at 277. Note that so long as the number of new refugees arriving is not more than double the number of refugees currently being resettled through ad hoc resettlement programs, a one-to-one resettlement-to-local integration ratio would not increase the total number of refugees resettled. For example, if 20,000 refugees from Southeast Asia are currently being resettled each year, there would have to be 40,001 newly arriving refugees each year for resettlement countries to be undertaking any greater a resettlement burden. In fact, in 2009, the number of refugees resettled from Southeast Asia to the United States alone was 19,867, along with at least 1,959 Burmese refugees resettled to Australia, whereas the number of new refugees in Southeast Asia was 21,998. *See* UNITED STATES OFFICE OF REFUGEE RESETTLEMENT (n.d.) 'Fiscal Year 2009 Refugee Arrivals', U.S. Department of Health and Human Services: Washington [last accessed at <http://www.acf.hhs.gov/programs/orr/data/fy2009RA.htm>]; AUSTRALIAN GOVERNMENT DEPARTMENT OF IMMIGRATION AND CITIZENSHIP (2010) 'Fact Sheet 60 - Australia's Refugee and Humanitarian Program' [last accessed at <http://www.immi.gov.au/media/fact-sheets/60refugee.htm>]; UNHCR (n.d.) 'Statistical Online Population Database' [last accessed at <http://apps.who.int/globalatlas/default.asp>]. The number of new refugees in Southeast Asia is calculated by subtracting the number of refugees residing in the region in 2008 from those residing in the region in 2009, according to UNHCR figures for the following countries: Cambodia, Hong Kong, Indonesia, Malaysia, the Philippines, Singapore, Thailand and Timor-Leste (UNHCR does not count any refugees residing in Laos or Myanmar).

⁵³ *Id.* at 31.

⁵⁴ DAVIES, *supra* note 9, at 12.

⁵⁵ JACOBSEN, *supra* note 16, at 3.

Southeast Asian countries that it is in their best interests to give refugees something they have scarcely had in the region: the right to work.

B. Local and Regional Integration

By giving locally integrated refugees the right to work, the Southeast Asian community could accomplish three important objectives. It could, first, tackle the region's immense and still growing labour needs—migrant workers compose more than one-fifth of the total labour force in countries such as Malaysia and Singapore.⁵⁶ This could, second, be achieved through an organised system of migrant labour that would, third, serve as a revenue-generating tool. To be clear, only those recognised as refugees through status determination procedures would be eligible for local integration and work rights. All screened-out asylum seekers would be, as they are now and were during the CPA, returned to their countries of origin.

Once asylum seekers are recognised as refugees, they would be offered local or regional integration according to where they or their family members could best meet a labour need. Those refugees who are unable to work, including those that suffer from physical or mental disabilities and/or those experiencing trauma from the events which led to their forced migration, and who do not have family members able to work would be prioritised for the resettlement match program described above. Such need-based placement would not be unlike the placement of refugees resettled to the United States; once they are cleared for arrival in the U.S., refugees are placed in the state where voluntary organisations are best equipped to support them.⁵⁷ In a regional integration model, refugees would be placed in the Southeast Asian country where they are best equipped to support the local economy. In this new framework, where 'any duty of reception beyond the first asylum stage would be a function of the state's available resources and absorptive capacity, the majority of less developed countries would ultimately host only those refugees deemed to provide a net benefit to their society.'⁵⁸

Inevitably, such a system would begin to look a lot like the points-based, skilled migration policies of various countries around the world. Some refugee advocates have warned against the blurring of lines between refugee and immigration policy, arguing that it confuses priorities. The reality, however, is that 'so long as inclusion is granted only to some, asylum is linked, as an institutional and policy matter, to immigration.'⁵⁹ Though refugee policy should not be forced 'into the mould of normal immigration in an effort to meet the bureaucratic preference for routine and

⁵⁶ See DUCANES, G and ABELLA, M. (2008) *Labour Shortage Responses in Japan, Korea, Singapore, Hong Kong, and Malaysia: A Review and Evaluation*, ILO Asian Regional Programme on Governance of Labour Migration Working Paper No. 238 (Jan. 2008).

⁵⁷ GEORGETOWN HUMAN RIGHTS ACTION (2009) *Refugee Crisis in America: Iraqis and their Resettlement Experience*, Georgetown University Law Center, p. 9; see 8 U.S.C. § 1522(a)(2) for placement guidelines and requirements.

⁵⁸ HATHAWAY, *supra* note 45, at 128. States would, of course, have to implement policies that allow refugees to maximise their potential benefit to society by eliminating common barriers to integration such as language, transportation, and the transfer of professional qualifications.

⁵⁹ SHACKNOVE, *supra* note 13, at 519.

predictability’, once refugees are granted asylum, routine and predictability are precisely the goals of a ‘durable’ solution.⁶⁰

Linking asylum to labour would, after all, convince host countries of the domestic benefits of local integration. Ultimately, ‘governments tend to be more motivated by domestic than foreign factors when formulating public policy. Immigration and asylum policies are no exception.’⁶¹ With a new, legal supply of labourers working within the system, above ground instead of underground, governments would stand to gain increases in tax revenue. The countries in the region that stand to benefit the most—those with the strongest economies and the greatest need for labour—are Thailand and Malaysia.⁶² These two countries also happen to host the greatest number of refugees in the region.⁶³ Both countries have already seen ‘immense economic benefit from the work of Vietnamese and Burmese migrants, who work for low wages and in conditions in factory jobs that locals would not generally consider.’⁶⁴ By providing refugees with legal employment status, host countries—and refugees themselves—would enjoy economic benefits without the exploitative pitfalls that often accompany illegal migrant labour.

Conceptualising refugees as part of the migrant labour workforce may also convince countries that rather than undertaking a humanitarian burden at the behest of the Western world, they are absorbing refugees into a longstanding migrant labour policy. ‘Migration is the main means by which Malaysia has dealt with its labour shortage’, with migrants making up as much as 22 percent of its workforce and engaging in a variety of sectors from ‘construction and plantation’ to ‘agriculture, manufacturing, and services’.⁶⁵ Singapore has an even greater dependence on migrant workers, who ‘are estimated to comprise 29 percent of Singapore’s total labour force.’⁶⁶

Incorporating refugees into this well-established migrant workforce could therefore change traditional attitudes towards refugees. Instead of being perceived as economic and political burdens that languish in camps until a third country is willing to take them, refugees would be seen as no different from the one in every five workers in Malaysia, or nearly one in every three in Singapore, who is from another country. Although this might dilute the special status accorded to refugees that distinguishes them from other migrants, so long as refugees are granted legal status—thereby protecting them from the worst abuses of migrant workers⁶⁷ and forced return to

⁶⁰ *Id.* at 533.

⁶¹ *Id.* at 525.

⁶² INTERNATIONAL MONETARY FUND (2010) *World Economic Outlook Database* [last accessed at <http://www.imf.org/external/pubs/ft/weo/2010/01/weodata/index.aspx>] (national economies as measured by GDP per capita, and excluding the city-states of Singapore, Brunei, and Hong Kong).

⁶³ UNHCR, *Thailand: Statistical Snapshot* (Jan. 2009), available at <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e489646> (counting 112,932 refugees residing in Thailand); UNHCR, *Malaysia: Statistical Snapshot* (Jan. 2009), available at <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e4884c6> (counting 36,671 refugees residing in Malaysia).

⁶⁴ DAVIES, *supra* note 9, at 11-12.

⁶⁵ See DUCANES and ABELLA, *supra* note 56.

⁶⁶ *Id.* at 27.

⁶⁷ See AMNESTY INTERNATIONAL (2010) *Trapped: The Exploitation of Migrant Workers in Malaysia*, Amnesty International Publications: London, pp. 49-62 [last accessed at <http://www.amnesty.org/en/library/asset/ASA28/002/2010/en/114eba25-6af5-4975-9ea3->

their countries of origin—creating the conditions for refugees to blend into their adopted societies is the very goal of local integration. In fact, standing out as a distinct class of migrants entitled to greater benefits than native citizens is often what fosters resentment towards refugees.

There are proven examples of the economic benefits of local integration to host countries, where granting refugees the right to work or own land has stimulated local communities. Under the International Conference on Central American Refugees ('CIREFCA'), the UNHCR and UNDP-managed venture to regionalise refugee solutions in Central America, Costa Rica offered local integration—including permanent residence—to refugees, whose success alongside local entrepreneurs led the President of Costa Rica to say publicly that 'by coming here, they have in fact made our country richer.'⁶⁸ Local integration promoted by CIREFCA also benefited Mexico, where 'the projects were seen as an attractive means to develop the poorest areas of the country.'⁶⁹ Similar accounts of successful local integration that 'stimulated some sectors of the local economy' have been reported throughout Africa and also in Belize, Honduras, and Pakistan.⁷⁰

To cushion the ebbs and flows of economic growth, the aforementioned match of one resettled refugee for one locally integrated refugee could operate across a five-year time horizon. This way, in a particular year when labour demand in Southeast Asia is high, resettlement countries would not necessarily have to match the number of locally integrated refugees for that year. If, however, labour demand contracted within that five-year period, more resettlement places would be offered to make up for the previous years of high labour demand.

Giving locally integrated refugees the right to work yields the additional advantage of providing training and work experience to those that might wish to eventually return to their countries of origin. If indeed voluntary repatriation becomes a possibility, '[i]ncorporating return migration into a policy of local integration will make it more acceptable to both refugees and host countries.'⁷¹ Returnees can then take the skills they learned from working in their host country and contribute to the revitalisation of their native communities. That is what transpired under CIREFCA, when Guatemalan refugees returned from exile in Mexico with new skills in agriculture and infrastructure, and women in particular took to entrepreneurship, giving them 'a role

02c22f6bdc5a/asa280022010en.pdf]; HUMAN RIGHTS WATCH (2010) *From the Tiger to the Crocodile: Abuse of Migrant Workers in Thailand*, Human Rights Watch : New York, pp. 36-51 [last accessed at http://www.hrw.org/sites/default/files/reports/thailand0210webwcover_0.pdf].

⁶⁸ REDMOND, R. (1995) 'The human side of CIREFCA'. *Refugees Magazine*, Mar. 1, 1995, [last accessed at <http://www.unhcr.org/publ/PUBL/3b5426de4.html>]; see also BETTS, A. (2006) 'Comprehensive Plans of Action: Insights from CIREFCA and the Indochinese CPA'. *New Issues in Refugee Research*, UNHCR Evaluation and Policy Analysis Unit Working Paper No. 120 at p.10 [last accessed at <http://www.unhcr.org/43eb6a152.html>] (reviewing the work of CIREFCA, a comprehensive project undertaken by UNHCR and UNDP to improve the development conditions for refugees and repatriation in Central America).

⁶⁹ BETTS, *supra* note 68, at 13.

⁷⁰ See JACOBSEN, *supra* note 16, at 15-16.

⁷¹ JACOBSEN, *supra* note 16, at 5.

in rebuilding and enabl[ing] them to earn an income while the men g[o]t the fields prepared.⁷²

Dismantling Assumptions Leftover from the CPA

The CPA demonstrated that conceding to some of the region's requests—such as individual status determination—could align the region's self-interest with the imperative to provide some form of protection to refugees and abide by some tenets of international law.⁷³

If a new system is to succeed, in addition to providing incentives for local integration, the following section will show that it must likewise align regional self-interest with a renewed protection imperative in Southeast Asia. This can be achieved in two ways. First, the economic and political complexion of Southeast Asia has dramatically improved since the time of the CPA, and as such, countries in the region can no longer rely on the traditional excuses of poor political and economic conditions so often cited during the CPA. Second, the region is no stranger to humanitarian gestures; countries in the region must recognise that a new system would simply be the continuation of their own history of offering respite to their religious and ethnic brethren in need.

A. Rejecting Traditional Excuses

The '[p]revailing political and economic conditions' that once justified countries' 'compassion fatigue' during the period of the CPA have disappeared.⁷⁴ For the countries in the region that received significant amounts of asylum seekers during the time of the CPA, the rise of their gross domestic product per capita over the last three decades is staggering: Hong Kong's has grown by 551 percent; Indonesia, 444 percent; Malaysia, 417 percent; the Philippines, 288 percent; and Thailand, 633 percent.⁷⁵ Singapore, which adamantly refused to take in any boat people during the Indochinese crisis and argued that Southeast Asian countries' 'status as developing states provided a justification for their reluctance to sign the (refugee protection) instruments,⁷⁶ has seen its per capita GDP soar 830 percent.⁷⁷ It is now the fourth richest territory in the world, just ahead of Brunei (fifth), and Hong Kong (eighth).⁷⁸ Indonesia, meanwhile, is now the world's 15th largest economy, closely followed by Thailand (24th), and Malaysia (30th).⁷⁹

This period of stunning economic growth has also been the most peaceful in the region's history, all while absorbing the hundreds of thousands of refugees that have passed through since the time of the CPA. Such evidence contradicts the traditional routine of blaming refugees for social and economic problems.⁸⁰

⁷² REDMOND, *supra* note 68 (quoting UNHCR officer Jose Samaniego).

⁷³ DAVIES, *supra* note 9, at 227.

⁷⁴ DONAHUE, C. *supra* note 29, at 8; DAVIES, *supra* note 9, at 121.

⁷⁵ INTERNATIONAL MONETARY FUND, *supra* note 62.

⁷⁶ DAVIES, *supra* note 9, at 128.

⁷⁷ INTERNATIONAL MONETARY FUND, *supra* note 62.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ JACOBSEN, *supra* note 16, at 11.

Individual countries in Southeast Asia could use their commitment to refugee protection to demonstrate that they have turned the corner in seeking out a greater role in the international community. ASEAN has already begun moving in that direction with the inclusion of a human rights body in its recently adopted Charter⁸¹ and its willingness to call for free and fair elections in Myanmar.⁸² With visions of becoming a larger player on the world stage,⁸³ ASEAN may be willing to take on the regional role ‘better suited to resolving local conflicts’.⁸⁴ Given ‘the resources and political will to act’, regional bodies such as ASEAN ‘are more likely to have a direct interest in resolving the problems’ of forced migration,⁸⁵ just as its member states did when working together to adopt the Bangkok Declaration on Irregular Migration.⁸⁶

B. A History of Humanitarianism

The region has long offered a helping hand in situations ‘where an ethnic or religious affiliation existed between refugees and their countries of asylum.’⁸⁷ During the Indochinese refugee crisis, Malaysia accepted Muslims from Cambodia and the Philippines,⁸⁸ and China resettled 260,000 ethnic Chinese from Vietnam.⁸⁹ Following the 2004 Indian Ocean tsunami, Malaysia permitted over 30,000 Acehnese refugees and migrants to stay and work in Malaysia temporarily.⁹⁰ There may be potential to continue that tradition with comparable situations today by aligning local integration with ‘the preference of states to admit “national or ethnic relatives”, or those who are otherwise affiliated to the asylum state, and whose admission may therefore be seen to be less of an intrusion of a state’s right to communal closure.’⁹¹

While a new framework should be careful not to ‘reinforc[e] the power of dominant groups’ and play into ethnocentric narratives, it must also make the most of the limited possibilities available for protection in the region.⁹² Malaysia has given legal

⁸¹ ASEAN Charter, Article 14, 20 November 2007 [last accessed at <http://www.aseansec.org/publications/ASEAN-Charter.pdf>].

⁸² RUWITCH, J. (2010) ‘ASEAN urges Myanmar to hold fair elections’. *Reuters*, 9 April [last accessed at <http://www.reuters.com/article/idUSSGE63803N20100409>].

⁸³ BLOOMBERG NEWS (2009) ‘Southeast Asian Nations Talk of Economic Union’. *N.Y. Times*, 1 March [last accessed at <http://www.nytimes.com/2009/03/02/business/worldbusiness/02asiaecon.html>].

⁸⁴ LOESCHER, G. (1993) *Beyond Charity: International Cooperation and the Global Refugee Crisis*, Oxford University Press: Oxford, p. 190.

⁸⁵ *Id.*

⁸⁶ Bangkok Declaration on Irregular Migration, 23 April 1999 [last accessed at <http://www.smc.org.ph/rights/bangkok.htm>].

⁸⁷ RONBINSON, *supra* note 5, at 277.

⁸⁸ DAVIES, *supra* note 9, at 9, 150 (as long as they met a need for labour); ROBINSON, *supra* note 5, at 42.

⁸⁹ RONBINSON, *supra* note 5, at 276.

⁹⁰ USCRI, *World Refugee Survey: Malaysia* [last accessed at <http://www.unhcr.org/refworld/docid/485f50c385.html>].

⁹¹ HATHAWAY, *supra* note 45, at 126.

⁹² SHACKNOVE, *supra* note 13, at 525-526 (‘In other States where multiculturalism may be officially endorsed, such as Malaysia, immigrants and refugees may be even more suspect if they upset the existing ethnic and power configuration. In such places, the admission of foreigners is attractive only if it reinforces the power of dominant groups.... Occasionally, domestic policies will dictate preferential treatment for specific refugee populations.... where the power of a dominant group is reinforced, as in the admission of Muslim Filipinos (sic) by Malaysia.’).

status to significant numbers of Rohingya in the past,⁹³ and, along with Indonesia, may be more willing to accept Rohingya than Thailand in the future.⁹⁴ Tamils from Sri Lanka may also be welcome by the predominantly Tamil makeup of Malaysian Indians. Along religious lines, Christian groups from Myanmar may find a more accommodating host in the Philippines. Even China could contribute, having recently accepted up to 30,000 ethnic Chinese refugees of the Kokang minority from Myanmar.⁹⁵ If the often conflicting and considerably poorer countries of South Asia—Bangladesh, India, Nepal, Pakistan, and Sri Lanka—can agree on the South Asia Declaration on Refugees,⁹⁶ the countries of Southeast Asia, in partnership with traditional resettlement countries, should likewise find common ground in offering humanitarian assistance to forced migrants.

A Blueprint for a New CPA

What would this new framework look like in practice? The following sections provide recommendations for how a local integration-based solution could take shape, both leading up to and following the recognition of refugee status.

Pre-Recognition

A. Status Determination

1. A national corps of specially trained asylum officers or a UNHCR status determination team would conduct status determination; the promptness and quality of status determination are essential to give the system credibility and, more importantly, to avoid the significant costs of hosting asylum seekers for prolonged periods.⁹⁷
2. The status determination process would take up to three months, with a first instance assessment by an asylum officer within one month of arrival and a subsequent appeal to a domestic tribunal within another two months. During this time, governments grant asylum seekers freedom of movement, cash and

⁹³ USCRI, (2004) 'Malaysia Moves Forward on Legal Status for 10,000 Rohingya Refugees from Myanmar', USCRI Press Release, 9 November [last accessed at http://www.uscrirefugees.org/2010Website/5_Resources/5_6_Newsroom/5_6_3_Press_Releases/USCRI_Rohingya.pdf].

⁹⁴ LOESCHER, *supra* note 14, at 284-286.

⁹⁵ FULLER, T. (2009) 'Fleeing Battle, Myanmar Refugees Head to China'. *N.Y. Times*, 28 August [last accessed at <http://www.nytimes.com/2009/08/29/world/asia/29myanmar.html>].

⁹⁶ South Asia Declaration on Refugees, Eminent Persons Group on Refugee and Migratory Movements in South Asia, January 2004 [last accessed at http://www.uscrirefugees.org/2010Website/5_Resources/5_5_Refugee_Warehousing/5_5_2_International_Standards/South_Asia_Declaration_on_Refugees.pdf].

⁹⁷ For a critique of status determination during the CPA, *see* HELTON, *supra* note 6, at 556-558; MUSHKAT, R. (1993) 'Implementation of the CPA in Hong Kong: Does it Measure up to International Standards', *Int'l J. Refugee L.* 5: 559, 561-562, 566-569 (reviewing CPA status determination by the Hong Kong government in particular; as with most other jurisdictions in the region, status determination in Hong Kong is now conducted by UNHCR); SHACKNOVE, *supra* note 13, at 524-525.

food assistance to ensure asylum seekers are counted at regular intervals and to discourage them from abandoning the system.⁹⁸

B. Denial and Deportation

- Institute minimum humane standards for deportation.
- Governments are to alert asylum seekers upon arrival that deportation follows the exhaustion of their appeals, to prevent the ‘rising tide of tension and violence’ that accompanied the early 1990s deportations of Vietnamese from Hong Kong who had arrived assuming resettlement was guaranteed.⁹⁹
- Governments may make final avenues of appeal available to rejected asylum seekers depending on domestic law regarding orders of removal, or whether the country is a party to the Convention against Torture (CAT).¹⁰⁰

Post-Recognition

- Upon determination of refugee status, governments would instruct refugees that they must accept whatever durable solution is first made available to them; holding out for what they perceive to be better alternatives—such as resettlement to a developed country—would subject them to deportation if such an alternative does not materialise within a certain timeframe. This take-it-or-leave-it approach would act as a screening mechanism in itself by deterring only those asylum seekers whose primary goal is resettlement, and not protection from persecution.

A. Priority Resettlement

- Those refugees who meet special criteria, such as family reunification for those with family members already in a third country, and those with special needs such as unaccompanied minors and the physically or mentally disabled, would be eligible for priority resettlement. Depending on what conflicts are ongoing in the world, refugees with a special association to a third country

⁹⁸ Such assistance could be given at extremely generous levels and still cost far less than the approximately \$75,000 spent detaining each additional asylum seeker at Christmas Island. Even in Malaysia, one study estimated that food alone for migrants in detention in just the state of Sabah cost over one million ringgit per day, or \$327,000. See UNITED PRESS INTERNATIONAL (2010) ‘Christmas Island reaches asylum capacity’, UPI.COM, 2 April [last accessed at http://www.upi.com/Top_News/Special/2010/04/02/Christmas-Island-reaches-asylum-capacity/UPI-25121270216425/]; MULOK, D. and KOGID, M. (2008) ‘Low-Cost Housing in Sabah, Malaysia: A Regression Analysis’, *Asian Social Science*, 4: 27, 28 [last accessed at <http://www.ccsenet.org/journal/index.php/ass/article/view/705/677>].

⁹⁹ RONBINSON, *supra* note 5, at 217 (describing the scene at Whitehead camp in Hong Kong, where ‘police units with full anti-riot gear were deployed amidst threats of widespread demonstrations and mass suicide attempts.’).

¹⁰⁰ In the large region of Asia described at the outset of this paper where only two countries are party to the Refugee Convention, five countries are party to CAT, India and Pakistan are signatories, and China has extended its obligations under CAT to Hong Kong. U.N. Treaty Collection, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, status as of 7 April 2010 [last accessed at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en].

may also be eligible for priority resettlement, such as Afghans or Iraqis who have worked with the United States, United Kingdom, Australia, or other governments involved in NATO and other military operations.¹⁰¹

B. Local and Regional Integration

- To prevent abuse of the system, the process could be coordinated by an international organisation such as UNHCR, the International Organization for Migration, or the International Labour Organization.¹⁰² The administrators would primarily collect data regularly submitted by each country's ministry of labour, detailing their domestic labour shortages and the industries or types of work that would benefit from organised migrant labour.
- The coordinating organisation would interview refugees upon their being granted asylum for the kinds of work they are either experienced in or able to undertake. If those results match any areas of labour shortage identified by the asylum country's ministry of labour, then local integration is offered in that country.
- Otherwise, a second option opens up for regional integration—a kind of hybrid of local integration and resettlement—in another Southeast Asian country where a match can be made.
- Administrators overseeing the placement process would be subject to strict oversight measures such as no contact with refugees and minimal contact—for the sole purpose of data transmission—with government officials. These administrators who aggregate the data and determine matches could be based in a neutral seat, such as Geneva, whereas Southeast Asia staff would be responsible for assessing refugees' work capabilities and facilitating their integration once a match has been made in Geneva.
- If more than one other country in the region expresses a need for certain types of work, additional factors such as language or ethnic and religious ties will determine which of the other countries is the best fit for a refugee. Under no circumstances could refugees be regionally integrated to a country or locale where they would face a risk of persecution.
- Wherever integration takes place, either in the country of first asylum or elsewhere in the region, governments would bestow upon refugees the full rights and responsibilities of residence in that country, including any obligation to pay income tax.

¹⁰¹ The U.S. government has given this kind of priority access to Iraqi refugees by 'providing admission for Iraqis that worked for the United States or its contractors in Iraq' under the 'priority two (P-2) processing category for Iraqis'. GEORGETOWN HUMAN RIGHTS ACTION, *supra* note 57, at 9, 11 (citing Refugee Crisis in Iraq Act, Public Law 110-181, 122 Stat. 3 (2008)).

¹⁰² See KEEFE, P. R. (2009) *The Snakehead: An Epic Tale of the Chinatown Underworld and the American Dream*, Doubleday: New York, p. 109 (describing the rampant corruption of Thai immigration officials at Bangkok Airport: 'Thailand is extravagantly corrupt even by the standards of Southeast Asia.').

- Governments could grant refugees conditional permanent residence on the path to citizenship that could be revoked during the first year of integration if they commit any serious, non-political and non-immigration crimes that meet the exclusion provisions of the 1951 Refugee Convention.¹⁰³

C. Final Resettlement

- If no match can be made between a refugee's qualifications and any labour demands throughout the region, she or he would be eligible for resettlement to a third country outside Southeast Asia.
- As long as no more than half of recognised refugees fail to meet a regional labour demand over a five-year horizon (to account for fluctuating labour demand), the number of those resettled in this way would not exceed the commitment by developed countries to match one resettlement offer for every offer of local integration.

Conclusion

To the late Sergio Vieira de Mello, who administered the CPA, there was a simple but guiding principle for his work in the refugee arena: 'If there is a way to avoid setting up a camp, find it', and '[i]f there is a way to close a camp, take it.'¹⁰⁴ At the most basic level, this is the goal of a new refugee framework in Southeast Asia centred on the ability of local integration to meet labour shortages. In a region all too familiar with refugee camps, the proposed system would avoid setting up camps, and it would close camps.

Undoubtedly, the often-competing political forces within ASEAN and between ASEAN and the developed world would need to coalesce around a new framework in a spirit of cooperation rarely seen in Southeast Asia. Implementation would require a stronger, more cohesive ASEAN and further, an ASEAN committed to human rights and international law in ways it has only begun to consider, let alone follow through with. But indeed, there is a precedent for this kind of cooperation: it was called the Comprehensive Plan of Action.

Mistakes are inevitable; a robust status determination system would be a long time in the making, and even then, there are bound to be refugees who are denied asylum and wrongfully refouled. Abuse of the framework is inevitable. Although this paper has discussed at length the incentives available to nations, it has only briefly addressed the incentives for refugees to game the system and guarantee resettlement

¹⁰³ Convention relating to the Status of Refugees, Article 1.F, Article 33.2, July 28, 1951 (Article 33.2 states, 'The benefit of [non-refoulement] may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.').

¹⁰⁴ POWER, S. (2008) *Chasing the Flame: One Man's Fight to Save the World*, Penguin: London, p. 23.

by lying about their work experience and ability. These and other pitfalls are inevitable. But so is the next refugee crisis.

The CPA taught us that when Southeast Asia acts after a crisis breaks out, the region cooperates with each other and the international community out of necessity, but at a great cost to refugee protection once the crisis has passed. Repeating that mistake need not be inevitable. The better way forward is cooperation *before* the next crisis, out of mutual interest, with great benefits to the region, to individual countries, and, of course, to refugees themselves.

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