

The Refugee Crisis in Southeast Asia: The Malaysian Experience

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Abstract: In Southeast Asia, the protection space available for refugees, asylum seekers, and stateless people is fragile and unpredictable. This is due to the lack of national legal frameworks in most of these countries. In fact, some states have introduced restrictive policies such as denying safe disembarkation or access at the airport and narrowing protection space and access to asylum. There is also an increase in maritime pushbacks and instances of *refoulement*. In addition to not being party to the 1951 Refugee Convention, Malaysia lacks the legislative and administrative framework to address refugee matters; this has continued to pose various challenges to its sovereignty for decades. As a result, all asylum seekers and refugees are treated as irregular migrants, and in the absence of substantive engagement by the authorities, the United Nations High Commissioner for Refugees (UNHCR) remains the last option to shoulder the burden of their international protection responsibilities. The current development of humanitarian problems washing up on its shores from Myanmar and Bangladesh echoes grave concern for Malaysia, such as its impact on the tourism industry, especially Western tourists. Malaysia is already home to about 150,000 foreign migrants, of which roughly 45,000 are Rohingya refugees. The present paper investigates the impact of the presence of refugees in Malaysia, being a non-signatory party to the Refugee Convention of 1951. It further examines the mechanisms in place to safeguard the rights of refugees, and how such an initiation has been managed without letting it affect the sovereignty and integrity of the nation.

Keywords: Refugees Crises, ASEAN, Malaysian Experiences, Refugees Convention, Foreign Immigrant, and Sovereignty integrity.

I. INTRODUCTION

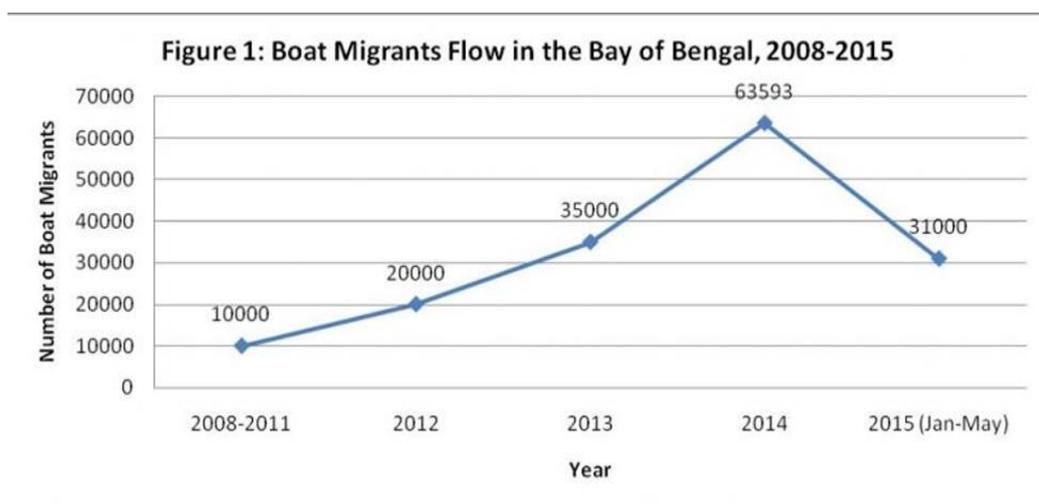
The practice of granting asylum to people fleeing persecution in foreign lands is one of the earliest hallmarks of civilisation. References to it are found in texts written 3,500 years ago, during the blossoming of the great early empires in the Middle East, such as the Hittites, the Babylonians, the Assyrians, and ancient Egyptians. Over three millennia later, the protection of refugees was made the core mandate of the UN refugee agency, UNHCR, set up to look after refugees, specifically those waiting to return home at the end of World War II [3]. The 1951 Geneva Convention is the main international instrument of refugee law. The Convention clearly spells out who a refugee is, and the kind of legal protection, other assistance, and social rights refugees should receive from the countries signatory to the document. The Convention also defines a refugee's obligations towards host governments. It also describes certain categories of people, such as war criminals, who do not qualify for refugee status [1]. Although the Convention was limited to protecting mainly European refugees in the aftermath of World War II, its 1967 Protocol expanded the scope of the Convention, as the problem of displacement spread around the world.

As stated in the 1951 Convention Relating to the Status of Refugees, a refugee is defined as a person who, owing to a well-founded fear of being prosecuted 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, unwilling to avail himself of the protection of that country [2]. In other words, a refugee is someone who has been forced to flee his or her country because of persecution, war, or violence. A refugee has a well-founded fear of persecution for reasons of race, religion, nationality, political opinion, or membership in a particular social group. Most likely they cannot return home or are afraid to do so. War and ethnic, tribal, and religious violence are leading causes of refugees fleeing their countries. In comparison to economic migrants, who have the freedom of protection by their home country and are free to go back as they please, refugees only have the right to safe asylum outside of their country’s borders. Malaysia has taken in a significant number of refugees and asylum seekers under its care, despite not being a signatory to the 1951 United Nations Convention Relating to the Status of Refugees and its 1967 Protocol [4].

II. ASEAN AND THE REFUGEE CRISIS

The growing Southeast Asian refugee crisis largely involving Myanmar’s persecuted Rohingya minority has strong similarities with the humanitarian disaster at Europe’s doorstep. Refugee destinations, such as Malaysia, Thailand, and Indonesia and the regional bloc the Association of Southeast Asian Nations (ASEAN) to face up to the challenge, as the European Union finally appears to be doing with its crisis. At first sight, the Southeast Asian situation appears to be under control: both the origin and intended destinations of the refugees are in the same region, and the main countries concerned are all members of ASEAN [5]

Recent studies indicate that thousands of refugees Myanmar and Bangladesh, predominantly seeking improved economic opportunities, are adrift in the Andaman Sea and the Straits of Malacca due to denial of passage by several countries. This follows the earlier discovery of mass graves of refugees on the Thailand-Malaysia border tied to human trafficking by transnational criminal networks. The increase in the number of refugees is the result of the ongoing persecution of the Rohingya, who are denied Burmese citizenship, and regularly subjected to violence at the hands of the military. [6] It is alleged that not less than 25,000 people had left the Bay of Bengal in the first quarter of 2015, double the number in the same period of 2013 and 2014. It is also reported that not less than 300 of them lost their life while attempting the crossing also see figure 1.



Sources: <https://www.google.com.my/search?q=data+of+refugee+in+SouthEast+Asia+-+malaysia+2016>

Figure 1

The ASEAN Parliamentarians for Human Rights, a long-standing advocacy group for the Rohingya problem, has called for an adequate solution to the issue of refugees in the region. The group made it known that the situation contains nearly every risk factor identified in the UN Framework for Analysis of Atrocity Crimes. The Organisation of Islamic Cooperation has also expressed concern and called for ASEAN to act. The UNHCR has appealed Southeast Asian governments to put in place search-and-rescue operations, and to keep their borders open for those stranded at sea. Ideally

in the long-term, a set of policies would seek to improve the plight of the Rohingya, and thus to stem the tide of dangerous migration, break up the international trafficking rings, increase the safety of journeys attempted, and provide an effective long-term resettlement process for migrants who do complete their passage [4].

This is in line with the multifaceted approach adopted by the EU in response to the significant refugee problem largely from sub-Saharan Africa and Arab states such as Iraq and Syria across the Mediterranean, where thousands have lost their lives.¹ Even though this has created problems for European nations, such as decision regarding the last destination of each refugee, the UNHCR has praised fair distribution of refugees among member states. It is believed that the progress being made in Europe could offer a credible way forward for ASEAN. However, one should accept the reality that there are significant barriers. For instance, while European integration is much older and more advanced than that in Southeast Asia, a majority of ASEAN members have not signed the 1951 UN Refugee Convention or the 1954 Statelessness Convention. In Malaysia, for example, those who do make landfall are unable to work legally and often forced into low-paying exploitative labour, because the country is yet to be a signatory to the Convention [1].

While the proximity of the source of the problem might otherwise provide an opportunity for an effective solution, in Southeast Asia, it has only highlighted limitations of the capacity for cooperation. There exists a spirit of non-interference among member states' domestic policies – a policy inherited from opposition to colonialism and the military expeditions of the Cold War and a conflicting regional mix of cultural and religious histories outlined by ASEAN's founding charter; the 1967 Bangkok Declaration adopted by all primary members of ASEAN. The bloc focuses on issues of collective gains, such as economic and security partnerships [7]. Most criticism of ASEAN focuses on its unwillingness to address human rights abuses. This includes frequently failing to censure the Myanmar government throughout its long history of state-sanctioned violence and taking too long to respond to the upheaval caused by East Timor's independence from Indonesia in 1999-2000. It should be noted that ASEAN has made some progress towards modifying its non-critical position during the past decade, including offering a strong and unified rebuke of the Burmese junta following its crackdown on civilian protestors in 2007. However, efforts supposedly aimed at boosting its human rights-promoting infrastructure have frequently been derided. The ASEAN Intergovernmental Commission on Human Rights (AIHCR), established in 2009, is seen by many to be toothless, while ASEAN's Human Rights Declaration of 2012 has also been dismissed as a declaration of government powers disguised as a declaration of human rights [8].

III. HUMAN TRAFFICKING IN ASEAN

Trafficking in persons is a serious crime that affects the fundamental human rights, dignity, and integrity of all its victims including women, men, and children. ASEAN has made efforts to fight human trafficking *inter alia* through the establishment of regional counter-human trafficking laws and human rights bodies to establish best practices for member countries. Nevertheless, the International Labour Organisation (ILO) recently declared that there are more than 11.7 million forced labour victims in the Asia-Pacific region, representing the biggest concentration of forced labour victims in the world. This estimation shows the achievements and deficiencies of ASEAN's counter-human rights violations strategies at the national and regional level. It offers suggestions for the reform of ASEAN's anti-trafficking laws and for the creation of a regional anti-trafficking human rights body specialised in preventing human trafficking, promoting the equal protection of all trafficking victims, and prosecuting human traffickers. ASEAN member countries have committed themselves to the fight against trafficking in persons. This includes the commitment to work together to prevent trafficking, to identify and protect victims, and to ensure that offenders are punished [8].

To succeed in the fight against trafficking, ASEAN member countries need access to the best possible information. This includes raw data about the trafficking situation, and information to determine how to prevent trafficking, protect victims and prosecute traffickers. Four ASEAN member countries (Cambodia, Indonesia, the Philippines, and Thailand) have allowed external researchers to examine and assess their internal processes of data collection. This demonstrates their commitment to continual improvement, and it leads to accessing better data and ultimately better information and knowledge about trafficking in persons in Southeast Asia. The uncovering of mass graves believed to be those of refugees

¹ Ahmad Zahid, Security screening required for Syrian refugees in Malaysia retrieved from: <http://english.astroawani.com/malaysia-news/security-screening-required-syrian-refugees-malaysia-ahmad-zahid-94258>

from Myanmar mostly Rohingya through what is termed human traffickers saw Thai Prime Minister Prayuth Chan-o-cha calling for a three-way meeting with Myanmar and Malaysia, a strategic attempt to invoke wider ASEAN powers. Although a regional meeting was called to address the issue at a later date, it can be seen that the outcome has not resulted in further tangible steps [7].

IV. MALAYSIA AND THE UN CONVENTION ON REFUGEES

Malaysia is not a signatory to the UN Convention on Refugees; therefore, asylum seekers who find themselves in the country lead a precarious existence on the margins of society, at risk of arrest as illegal immigrants, since Malaysia makes no distinction between undocumented or illegal workers and refugees. A majority of them live in urban areas and have no right to work or to send their children to school. In 2011, a well-known “Malaysia Arrangement” was signed between Australia and Malaysia which stipulated the role of Malaysia in Clause 10, it allows the transfer of individuals who have already engaged Australia’s international protection obligations to a country which is not bound by equivalent obligations under international law or its own law, and which cannot be relied upon to behave as if it were [9].

According to Human Rights Watch, Malaysia’s willingness to recognise a group of asylum seekers as being lawfully present has also been a positive development. However, creating an exception for 800 swapped people while 90,000 other refugees and asylum seekers on Malaysian soil remain illegal migrants and subject to deportation is unacceptable and contradictory. There was outcry within and outside Malaysia regarding the deal. Domestically, people believed that the country would look stupid in the eyes of the international community because it is not a party to the UN Refugee Convention of 1951. Others opined that the country need not burden itself with pursuing something totally illegal, and even contradicting domestic laws. Similar criticism was waged by activists and human rights organisations against the Australian government, calling to alter the agreement. As a result, the Australian High Court held and declared by the majority that it is invalid for asylum seekers who entered Australia at Christmas Island to be transferred to Malaysia [10].

V. HISTORY OF REFUGEES AND ASYLUM SEEKERS IN MALAYSIA

Malaysia’s first significant experience with refugees and asylum seekers occurred after the fall of Saigon in 1975 when Vietnamese boat people started to arrive in Malaysia. The first phase consisted of 47 refugees. Soon they were arriving in larger numbers, and Malaysia became the temporary home to more than 250,000 refugees, all from Vietnam. In fact, Malaysia was only willing to act as an offshore processing entity as it deemed the influx of such vast numbers and their ethnic makeup (especially ethnic Chinese) problematic to the local atmosphere. Under the Comprehensive Plan of Action for Indochinese Refugees of 1989, Malaysia became a first protection space for these boat people. They were housed in camps and had to wait several years for a durable solution that usually meant resettlement in a third country. In 2005, the last Vietnamese refugees left Malaysia and were voluntarily repatriated to Vietnam after spending more than 20 years in Malaysia [2].

Although the situation has improved over the last few years with the increase in raids and less overt rent-seeking on the part of the authorities, refugees and asylum seekers continue to face tough challenges in Malaysia, because UNHCR does not provide them with financial support for housing and food. They must find illegal work to support themselves and their families. Having found it difficult, incoming refugees contemplate the treacherous journey by boat to Australia. In Malaysia alone, there are around 100,000 asylum seekers and refugees registered with UNHCR, while additional tens of thousands of asylum seekers remain outside of the purview of UNHCR. Due to lack of legal status, the vast majority have found limited protection in Malaysia; many have work and some access to community-run schools and health centres. In 2011, UNHCR resettled 8,370 refugees to third countries [11].

Malaysia wants to provide refugee protection on its terms – it wants to choose when and for whom it provides protection. According to Alice Nah, a lecturer at the Centre for Applied Human Rights at the University of New York, “As such, it prefers to resettle refugees from afar rather than provide status to those who have already arrived on its shores. These decisions are partly political. They are partly related to concerns about irregular movement.” There are some four million foreign workers in Malaysia, about half of them working illegally in jobs that Malaysians themselves do not want, such as construction sites, plantations, and as kitchen and waiting, staff. The UN has stepped up calls to register people more effectively and allow registered refugees to work. In November 2002, the Home Minister told the parliament that the

government was considering that option for the Rohingya Muslims, Myanmar's persecuted Muslim minority, who have been coming to Malaysia for decades and currently number about 50,000 [1]

Refugees from Myanmar forms the majority of refugees and asylum seekers in Malaysia; they are very well organised, maintain community organisations, and provide an array of services in collaboration with local NGOs. This is much harder for smaller refugee communities that do not have the resources, cultural or religious support networks, and a critical mass of leaders and organisers at their disposal. Since refugee communities in Malaysia have varied experiences, their response to long waiting times for resettlement and educational and work opportunities vary. This situation makes it paramount to respond to the people dying on their way here through a regional lens that incorporates an understanding of the pressures in the source, transit, and destination countries.

VI. MALAYSIAN HANDLING OF REFUGEES

For the past 40 years, Malaysia has been a major destination for refugees seeking either temporary or permanent refuge from devastating conflicts in the region and further afield. Unlike many ASEAN member states, Malaysia is not a signatory to the 1951 Refugee Convention and its 1967 Protocol, therefore, refugees and asylum seekers who find themselves in the country lead a precarious existence on the margins of society, at risk of arrest as illegal immigrants, since Malaysia makes no distinction between undocumented workers and refugees. Although the majority live in the cities, they are not permitted to work or to send their children to school [19]. Asylum seekers include Filipino refugees from Mindanao who arrived during the late 1970s and early 1980s, over 50,000 of whom fled to Sabah, Cambodian and Vietnamese refugees during the 1980s and 1990s, a small number of Bosnian refugees in the early 1990s, and Indonesians from Aceh in the early 2000s [12].

Malaysia also continues to receive refugees from Myanmar's troubled ethnic minorities, especially the stateless Rohingya. Most of these Myanmar asylum seekers arrive by crossing the Thailand-Malaysia border illegally. Interestingly, Malaysia has at best an *ad hoc* policy towards refugees, and there is no clear and official plan from the Malaysian government on how best to handle these groups. However, despite not being a signatory to the UN Refugee Convention, Malaysia does allow the presence of refugees in the country on the basis of humanitarian grounds and cooperates with the UNHCR in addressing these issues (UNHCR, the UN Refugee The present research also investigates how Malaysia has handled refugees from four significant nations, namely, Vietnam, Myanmar, Bosnia, and Syria [13].

(a) Vietnamese Refugees in Malaysia:

Vietnamese refugees fled Vietnam by boat and ship after the Vietnam War, especially during 1978 and 1979, continuing until the early 1990s. It is estimated that 2 million refugees left Vietnam between 1975 and 1995, while the number of boat people leaving Vietnam and arriving safely in another country totalled almost 800,000 during the same period. It is believed that a majority of the refugees did not survive the passage, facing danger and hardship from pirates, overcrowded boats, and storms. The refugees' immediate destinations were the Southeast Asian countries Hong Kong, Indonesia, Malaysia, the Philippines, Singapore, and Thailand [14]. The sharp uptick of refugees fleeing Vietnam by boat in 1978-9 coincided with the 1978 Vietnamese invasion of Cambodia and the 1979 Chinese invasion of Vietnam, which further destabilised Vietnam, and resulted in tens of thousands of casualties. While North Vietnam had been the object of a US trade embargo since 1964, Vietnam's military action against the Khmer Rouge provoked further condemnation by the US and its allies, resulting in additional harsh economic sanctions being imposed on Vietnam by a number of countries. The economic sanctions imposed on Vietnam by the United States and its allies were lifted in 1994-5, and Vietnam was re-admitted to the Association of Southeast Asian Nations. As a result, thousands of refugees returned to Vietnam, and their number declined drastically from their host nations [15].

On August 8th, 1978, Bidong was officially opened to house refugees from Vietnam. However, people from Vietnam had lived on the island soon after Saigon fell into communist hands. From 1978 until 1991, the island was mostly home to Vietnamese refugee boat people, who had escaped Vietnam to flee the Communists. In the late 1970s, Pulau Bidong was also home to Cambodians fleeing the Khmer Rouge regime. In other words, the Malaysian government and the UNHCR agreed to locate Vietnamese refugees temporarily in Pulau Bidong instead of on the mainland. In the early years, people lived in the trees, tents, or anything they could find to avoid the hot tropical sun, rain, and ocean storms. A few years later, the Malaysian government, the Malaysian Red Crescent Society (MRCS), UNHCR, and other relief agencies developed

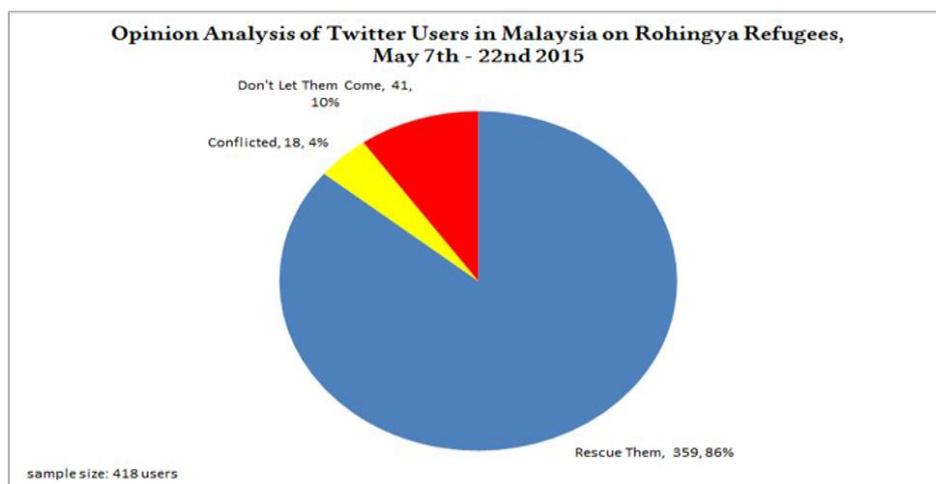
the island so that it had longhouses, a hospital, schools, clinics, temples, churches, coffee shops, a post office, a vocational school, and some refugee-owned shops such as bakery shops, tailor shops, fruit stands, and small markets [16].

During this time, the Malaysian Police Task Force was organised, and did an excellent job of protecting people from getting hurt, such as from illegal fishing, illegal wandering into the mountains for wood, and from crimes and general disorderly conduct. The Monkey House jail was established to jail people who violated the island policies. Later, they set up multiple security offices in each residence zone along with the main Island Camp Office, to which refugee people would vote or appoint officials to enforce policies, nightly patrol, and security. 90% of the island was “forbidden area”. Only a small portion on the south side was used for UNHCR offices and refugee housing [17].

To stop waves of boat people who kept leaving Vietnam, the UNHCR posted a closing date for “automatic acceptance to the third country” on 14th March 1989. As a result, those who reached the island after the closing date had to go through screening processes where they have to prove that they were political refugees and not economic refugees. They were also given three chances to prove their political status. Due to this screening process, over 9,000 refugees were repatriated to Vietnam from Malaysia, since they did not qualify for political status. However, a majority of these repatriated refugees were given another chance by the UNHCR in Vietnam, and most of them were granted asylum in third countries. Those who arrived after 14th March 1989 spent longer time on Pulau Bidong until the island shutdown in October 1991, and the Sungei Besi Refugee Centre in Kuala Lumpur was established. It is estimated that 250,000 Vietnamese refugees landed on the eastern shores of Malaysia and camped in the two different locations of Pulau Bidong and Sungei Besi. Although the Pulau Bidong camp officially closed in 1991, and the Sungei Besi camp officially closed in 1996, the last remaining Vietnamese refugees finally left Malaysian shores on 28th August 2005 [18].

(b) Bosnian Refugees in Malaysia:

Although a small number of Bosnian refugees arrived in Malaysia as early as 1991, a public demonstration by Malaysia in 1994, and a sense of Islamic solidarity made Malaysia offer asylum to 350 Muslims fleeing as refugees from the collapse of Yugoslavia. The Malaysian government helped by providing scholarships for students, as well as basic housing, and allowed them to work. Malaysia was one of the strongest supporters of the Bosnian cause during the war, and it remained the only Asian country to accept Bosnian refugees. During the war, Malaysia sent UN Peacekeeping troops to the former Yugoslavia. Malaysia maintains a number of investments in Bosnia-Herzegovina, one of the most significant of which is the Bosmal Group – a joint venture set up between Malaysian and Bosnian interests. At the time, a number of Bosnian students studied at the International Islamic University Malaysia in Gombak. Malaysia maintains an embassy in Sarajevo, and Bosnia-Herzegovina maintains an embassy in Kuala Lumpur. Once the war ended and students among them completed their studies, majority of Bosnians residing in Malaysia returned home [19]. Malaysian public opinions agreed that the Rohingya refugees must be rescued and be provided with humanitarian assistance (see chart 1).



Sources: [https://politweet.wordpress.com/2015/06/10/opinion-analysis-on-rohingya-refugees-by-twitter-users-in-malaysia/retrieved on 21 August 2016](https://politweet.wordpress.com/2015/06/10/opinion-analysis-on-rohingya-refugees-by-twitter-users-in-malaysia/retrieved%20on%2021%20August%202016)

Chart 1

The historical treatment received by Bosnians in the 1990s made led to criticism of the government from certain quarters over the reckless handling of Rohingya refugees. The conservative Muslim group Ikatan Muslimin Malaysia's vice president, Abdul Rahman Mt Dali, said that as a Muslim-majority country, Malaysia was obligated to take in the Muslim refugees who suffered state-sanctioned discrimination in Myanmar. He proclaimed that Rohingya refugees could be provided training and job opportunities. Malaysia offered refuge to Bosnian Muslims fleeing ethnic conflict in 1994, as well as to some 250,000 Vietnamese refugees in the 1970s and 1980s until the Pulau Bidong refugee camp in Terengganu closed in 1990 [20].

(c) Refugees from Myanmar and the Rohingya in Malaysia:

Tens of thousands of Muslim Rohingya have fled Myanmar in the past year, many of them taking to the sea in the spring of 2015 to try to reach Indonesia, Malaysia, and Thailand. A long-building crisis prompted the latest surge in refugees. The discriminatory policies of the Myanmar government in the Rakhine State have caused hundreds of thousands of Rohingya to flee since the late 1970s. Their plight has been compounded by the response of many of Myanmar's neighbours, who have been slow to take in the refugees for fear of a migrant influx they feel incapable of handling. Therefore, more than 32,000 registered Rohingya refugees have sought refuge in Bangladesh, while over 200,000 additional unregistered Rohingya refugees are believed to live in the country, according to UNHCR estimates. According to the UN, more than 137,000 refugees from Myanmar were registered in Malaysia as of September 2014, including tens of thousands of Rohingya. The Global Emergency Overview, which tracks humanitarian crises, tallied more than 40,000 UN-registered Rohingya as of last December, but activists say there is roughly an equal number of unregistered Rohingya in the country. Malaysia has signalled a growing unease with the migrant influx. As a result, in May 2015, Malaysian Deputy Home Minister Wan Junaidi Jafaar asserted that Malaysia has treated the Myanmar migrants humanely but that they cannot afford to allow them to flood their shores. The Rohingya also seek refuge in Indonesia, although the number of refugees there remains relatively small, estimated at roughly 2,000 as of June 2015. Indonesia's military chief had earlier expressed concerns that for his country to ease immigration restrictions would spark an influx of people coming in the thousands [27].

Thailand serves as a common transit point for Rohingya leaving Myanmar through boats before moving on foot to Malaysia or continuing by boat to either Indonesia or Malaysia. A Reuter's report of 2013 found that some Thai authorities colluded with smuggling and trafficking networks in the exploitation of detained Rohingyas, with the deputy commissioner general of the Royal Thai Police conceding that officials might have profited from smuggling. In May 2015, amid international pressure, Indonesia and Malaysia offered temporary shelter to thousands of migrants. Malaysia launched search-and-rescue missions for stranded migrant boats, while Thailand agreed to halt pushbacks. Myanmar's navy also conducted initial rescue missions at the same time. Similarly, in June 2015, several secret mass graves were detected by Malaysian police in the Thai border town of Padang Besar. In its 2014 *Trafficking in Persons Report*, the US State Department downgraded Thailand to Tier 3 as a source, destination, and transit country for men, women, and children who are subject to trafficking. Recently, however, the military-led government in Bangkok has prioritised a crackdown on smuggling and trafficking rings following the discovery of mass graves in what are believed to have been detention camps. However, some experts say that new punitive measures directed at traffickers are responsible for the increase in abandoned vessels at sea, a development that has worsened the humanitarian crisis [27].

(D) Syrian Refugees in Malaysia:

The United Nations High Commission for Refugees estimates that Syria's bloody five-year civil war has created more than 4.6 million refugees, while another 7.6 million people have been displaced within Syria. The overwhelming majority have sought refuge in Turkey, Lebanon, Jordan, and other countries in the Middle East. However, others, especially those with some money behind them, have found their way further afield. Travelling all the way to Southeast Asia, the Malaysian office of the UN's refugee agency said it had registered 822 Syrians by the end of December 2013, compared to 285 in October, and just eight before the war started. Refugee activists who work in close collaboration with the community say that because of the length of time it takes to register officially, the actual number is probably even higher, perhaps in the low thousands. Despite not being party to the UNHCR, Malaysia has a good record of allowing refugees to reside on its soil on humanitarian grounds. Having recognised that, last year the local office of UNHCR thanked the Malaysian government for not forcibly returning any Syrian asylum seekers to their homeland [19].

The Malaysian Social Research Institute works with what it calls “minority refugees“ – including Afghans, Somalis, and the new arrivals from Syria. It gets financial support from the UNHCR and Credit Suisse, which helps fund the group’s community school, but admits it has been “pushed to its limits” by the new arrivals. In October 2015, during his speech at the 70th United Nations Assembly, Prime Minister Najib Razak pledged to open doors to 3,000 Syrian refugees in three years to help with the refugee crisis. In line with this pledge, Zahid Ahmad Zahid, the Deputy Prime Minister and Home Minister, declared that five Syrian refugee families had been brought into the country under the first phase and that the government was now in the process of bringing in the second group of Syrian migrants. He further elaborated that “We will give priority to Syrian students in Malaysia who want to bring their families here, families of Syrian workers working in Malaysia, like chefs in restaurants, and families of professionals, like medical doctors and those in the field of engineering” [19]. Zaid explained that Syrian immigrants would not be granted a Malaysian passport, but emergency travel documents as they do not have international passports. The professional group will be given work visas while students will get student visas. He asserted: “I have also written to several organisations for them to supply money, furniture, and home appliances to help the Syrian immigrants who are temporarily staying here” [21]. Ahmad Zahid also launched the Syria Immigrant Humanitarian Fund with the collaboration of nine non-governmental organisations, namely, Humanitarian Care Malaysia (MyCare), Syria Care Malaysia, Malaysian Humanitarian Aid and Relief (MAHAR), Angkatan Belia Islam Malaysia (ABIM), and IMAM Response and Relief Team (IMARET). Due to concern from certain quarters, Zaid further downplayed the danger that Syrians may cause Malaysia if terrorists found their way through the refugee umbrella; he pledged that screening will be done with the cooperation of Interpol and the UNHCR to ensure that they are refugees [21].

VII. RECOMMENDATIONS

Even though Malaysia has strict immigration rules that prohibit illegal entry into the country, and Malaysia enacts severe punishment for anyone found guilty of doing so, the exception granted on humanitarian grounds means that at certain times these rules are not enforced. It is also important to note that by allowing these refugees to stay, the state is not playing an active role in protecting them or their rights. Instead, the UNHCR (since 1975) and other NGOs, including religious-based organisations, have played a crucial role along with the Malaysian government. The major flaw of Malaysia’s current *ad hoc* refugee policy is that the government is trying to deny existing problems related to asylum seekers and refugees. It also causes greater uncertainty and confusion for all parties; especially Malaysian authorities tasked with handling refugees. Malaysia’s most successful handling and adequate management of refugees came almost 30 years ago during its role in what is known as the international Comprehensive Plan of Action (CPA) for Indochinese Refugees. A major flow of Vietnamese refugees to Malaysia in the 1970s and 1980s led to the drafting of the CPA in Kuala Lumpur in March 1989, and its subsequent adoption at the international conference in Geneva in June of the same year [22].

The CPA was not only set up to stop the flow of boat people from Vietnam, Cambodia, and Laos but also provided a framework for refugee status determination for asylum seekers from these countries and their voluntary repatriation and resettlement to third countries. Consensus was achieved between the countries of origin, host countries of the first asylum, including Malaysia, and third countries beyond the region. Under the agreement, Malaysia accepted around 250,000 Indochinese boat people who resided at the Pulau Bidong refugee camp in Terengganu. Malaysia managed to provide temporary protection to refugees at that time because of coordination with third countries and countries of origin, while the refugees sheltered at refugee camps in Malaysia were processed by UNHCR to determine their refugee status. Once they were proven to be entitled to the refugee status, third countries such as Australia, the United States, the United Kingdom, and the European States resettled them. As for non-refugees, Vietnam was willing to accept them back voluntarily. The international consensus among different countries and the leadership of the UNHCR were key factors in this successful example of what is termed *burden-sharing* in solving the major refugee issue at that time. Since the last Vietnamese settlement of 1996, there have been no more comprehensive multilateral agreements regarding the issue. With so much uncertainty and inconsistency caused by current policy, and with so many refugees living in limbo, perhaps it is time for Malaysia to revisit a comprehensive and multilateral approach to the movement of asylum seekers in the region [23].

The present work strongly suggests that Malaysia officially recognises the presence of refugees within its territory by regulating the group and facilitating their enjoyment of their rights. By not recognising the rights of refugees, such as their right to education, the direct consequences of lack of access to basic education may result in illiteracy and other social problems which Malaysia will have to face in the long run. Education has always been considered a factor to guarantee the social stability of a community; it is also vital to deviate from practising what violates the principle of human rights of refugees. Moreover, practices which are inconsistent with the provisions of the Convention Relating to the Status of Refugees (CRSR), such as detention and imprisonment, will not serve any good purpose to Malaysia. As a consequence, the refugees cannot be easily sent back, and they may remain in detention centres for longer, placing more financial burden on the authorities, especially in the context of infrastructure and resources. By deporting refugees, Malaysia is contributing to human trafficking and smuggling, since traffickers are known to take advantage of refugee deportations. Since Malaysia's economy relies so much on migrant workers, the country should utilise working age refugees by letting them join the local workforce after the adequate screening. This will make it more manageable for the government to combat economic migrants. It is high time that Malaysia devises a specific legal and institutional framework to deal with refugees in the country. There is no way to effectively stop them from coming in, since the border is porous, and many unofficial points of entry are being used. The phenomenon has never ceased since the 1970s. To avoid further mistreatment and violation of refugee rights, the government needs express protection granted under the written law so that inconsistencies and change of policies do not victimise refugees. The law should also require the establishment of an independent refugee screening mechanism which is subject to appeal and judicial review. It was recently reported that syndicates were selling falsified refugee identity cards. As a result, the UNHCR in Malaysia launched a new refugee identity card on 21st May 2016. The UNHCR representative in Malaysia, Richard Towel, believes that with enhanced security features, it will not only give refugees protection but could also help to soften Malaysian authority's policy that prohibits them from securing jobs and getting their children a proper education. It will lead to stability in the lives of refugees. Towel also indirectly appeals to Malaysian authorities to accept refugees already in Malaysia, since those refugees have viewed Malaysia as their final destination rather than transit. As of April 2016, there were 154,140 refugees and asylum seekers registered with UNHCR in Malaysia. More than 90% of them were from Myanmar, while the rest were from Sri Lanka, Pakistan, Somalia, Syria, Iraq, Yemen, Palestine, and Iran [24].

However, this appeal did not go well with Malaysian authorities; Deputy Home Minister, Nur Jazlan, blasted UNHCR for pressuring Malaysia to take responsibility. Jazlan argued that Malaysia has accommodated the refugees based on UNHCR's request, but only on the understanding that Malaysia is a transit country. Therefore, it is not fair to force Malaysia's hand to take responsibility for refugee aftermath. He said: "Malaysia is a transit country, but suddenly, they want us to be a final destination? This is totally irresponsible. They do not even follow their own charter let alone our policies and laws" [25]. Jazlan further asserted that UNHCR's statements ran counter to the Federal Constitution as well as the sensitivities of the country's citizens [25].

VIII. CONCLUSION

Malaysia's ability to truly address the situation would be enhanced if the larger coordinating powers of ASEAN could be invoked. The association does have a precedent in effectively dealing with the effects of regional disasters, as when it played a leading role in the humanitarian response to Myanmar's Cyclone Nargis in 2008, after first facing opposition from the government of Myanmar. Addressing the causes of the refugee crisis, including the domestic policies of its members, will prove a sterner test. Nonetheless, a good guide to what ASEAN could undertake is found in the recommendations of the report of ASEAN Parliamentarians for Human Rights. These include expanding the mandate of the AIHCR to include country visits, inquiries, complaints, and emergency protection mechanisms, and ensuring adequate independence and staffing support. The step could help improve the domestic plight of the Rohingya, the wider refugee problem, and the region's overall limited capacity to address human rights. Nevertheless, it is hoped that the current development of issuing the new refugee card in Malaysia will improve the situation.

The discussion in this paper shows that the UNHCR is facing growing challenges. The challenges lie not only in the increase in the number of refugees and other persons of concern who fall under its mandate but also because UNHCR's duty of screening asylum seekers on behalf of or in lieu of a state's machinery is tainted with several issues of credibility and fairness. There are also problems when states completely ignore UNHCR's work while letting the office carry out

refugee status determination. Simultaneously, UNHCR has no outright control over state matters, which makes the effort less effective than it could be. Even with direct assistance from the UNHCR, refugees and asylum seekers find themselves with an uncertain legal status; identification papers are not recognised and depend on easily altered policies to protect them. Even though UNHCR is allowed to operate in Malaysia to process applications for refugee status, the actual weight attached to UNHCR identity papers or documentation is highly questionable. In simple words, even though the authorities accept the UNHCR's presence, their powers are not recognised. Malaysian authorities, in practice, seem to be trying to undermine the UNHCR mandate; they fail to acknowledge as refugees individuals holding such documents. The current development of issuing a new card to refugees in Malaysia may improve the situation.

Countries participate in treaty-making provide their services on the basis of national interest in building global or regional alliances, and through them, seek to influence the standards by which international relations are conducted. Hence, ratification of international treaties does not involve a handing over of sovereignty to an international body. Treaties may define the scope of a state's action, and treaties which a state ratifies may influence the way in which that state behaves domestically and internationally. The decision to ratify a treaty is a judgement where any limitations on the range of possible actions may be outweighed by the benefits which flow from the existence of a widely-endorsed international agreement. In Malaysia, for instance, the ratification of an international treaty has to pass through the legislative body and be formally legislated in the constitution in conformity with various domestic laws before it can be finally considered legally ratified. Moreover, this cannot be done unless it has been convincingly considered a national interest.

Malaysia has been actively accommodating refugees, both from neighbouring states such as Vietnam, Cambodia, Laos, Aceh and Myanmar, as well as overseas, such as Bosnian and Syrian refugees. Regardless of this commitment that costs the government both manpower and capital, it remains unrealistic for Malaysia to host several thousand refugees without any legal stand. On the other hand, Malaysian efforts have not received due recognition from the UNCHR, due to Malaysia's non-signatory status to the 1951 Convention on Refugees. It does Malaysia no good regarding reputation in the eyes of the international community if such effort cannot be reputably recognised [12]. Therefore, whether Malaysia sticks to the status quo or does otherwise remains a continuing debate. Nevertheless, Malaysian authorities need to consider every aspect, most importantly, national interest, before finalising a decision to granting a formal refugee status.

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