Chapter 1

The Eurocentric 1951 Convention

The First and Second World Wars left large numbers of people displaced throughout Europe, and indeed, throughout the world. Prior to the creation of the Office of the United Nations High Commissioner for Refugees (UNHCR) in 1951, there had been several attempts to create refugee organizations at the international level. These organizations did not work with a formal generally-agreed upon definition for the refugee, and they only dealt with specific groups such as Russians, Armenians and European Jews. As a result, they did not assist all refugees in general. The UNHCR’s 1951 Convention Relating to the Status of Refugees (hereafter referred to as the 1951 Convention) was meant to provide an inclusive and representative definition of the ‘refugee’, and set standards that would guide states’ response to refugees. James Read described it as the ‘magna carta’\(^1\) of international refugee law.

However, the 1951 Convention and the UNHCR has also been described as right from the beginning being ‘enmeshed in the international politics of the East-West conflict and refugees were perceived as elements of power in the bipolar rivalry’\.\(^2\) James Hathaway argues that refugee law was a direct product of powerful states’ interests dominating the drafting process. The ‘universalization’ of international refugee law was ‘designed and administered by European states for European refugees [and was] accompanied by a substantive and procedural narrowing of

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the underlying commitment to protection'. Sharing this view, this chapter will demonstrate that both the 1951 Convention and the UNHCR were formulated to serve mainly European interests and the political purposes of Western states. I argue throughout this book that the Eurocentric environment in which international refugee law was created has enabled Southeast Asian states to successfully argue that these laws were not applicable to their irregular migrant problems. In this chapter I will demonstrate how Western states’ political and domestic interests inhibited the potential for a broader understanding of the refugee problem. This enabled Southeast Asian states to claim that they could not identify with the purpose and practice of the refugee law instruments. First, Southeast Asian states denied any knowledge of the instruments and once this claim became unfeasible, maintained that the instruments did not apply to the specific refugee situations that they faced.

In this chapter I develop the Eurocentric argument in four parts. The first part focuses on the refugee protection organizations that existed prior to the establishment of the UNHCR and consider why these failed, necessitating the creation of the UNHCR. The second part of the chapter examines the establishment of the UNHCR after the Second World War, and the purposes it was meant to fulfill. The overwhelming concern about the burden of refugees in Western European states and increasing Cold War hostilities dominated decisions about who the UNHCR was to assist. The third part of this chapter will then look at how political and region-centric concerns affected the drafting of the 1951 Convention. I show that suggestions by states such as India and Pakistan about the definition of a refugee and the scope of the Convention's applicability were not included in the final draft. The process of drafting the 1951 Convention provides the focus for the fourth and final part of this chapter. I will identify how the marginalisation of non-Western approaches to refugees during the drafting process affected the newly emerging Southeast Asian states’ perception of the instrument, its purpose and applicability to their specific refugee situations.

1.1 Evolution of international refugee protection

On 20 February 1921, the President of the International Committee of the Red Cross, Gustav Ador addressed the Council of the League of Nations on the Russian refugee problem. Ador requested that the appointment of a High Commissioner be made, so that he could define the status of Russian refugees and coordinate

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4 Over one million Russian refugees, who had fled due to the upheaval of World War One and the 1918 Communist Revolution, were scattered across twenty-one European countries which all differed in their treatment of these people. Stoessinger, J. G. The Refugee and the World Community (Minneapolis: The University of Minnesota Press, 1956), p. 16.