Chapter 3


Between 1975 and 1996, approximately three million people from Cambodia, Laos and Vietnam sought refuge in Southeast Asia and were either returned to their country of origin or resettled in third countries.¹ Of all the Southeast Asian states where the Indochinese sought first asylum, only the Philippines became a signatory to international refugee law during this period.² This chapter begins the exploration of why the largest refugee crisis to confront Southeast Asia since the Second World War did not prompt states in the region to accede to international refugee law. It looks at the initial stages of the Indochinese refugee crisis—between 1975 and 1979.

The chapter will proceed in three parts. The first part provides a brief historical overview of the myriad conflicts that inspired the Indochinese refugee crisis. The second part traces the development of Southeast Asian responses to the outbreak of the crisis. In particular, I focus on communications between Southeast Asian states and the UNHCR about the potential role of international refugee law in dealing with this crisis, and the key role that Western states played in enabling

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¹ Robinson, *Terms of Refuge: The Indochinese Exodus and the International Response*, 1998, p. 2; UNHCR, *The Status of Refugees*, 2000, p. 102; Loescher, *The UNHCR and World Politics: A Perilous Path*, 2001. However, Robinson (1998), UNHCR (2000) and Loescher (2001) all note that the precise number of Indochinese who sought asylum may never be known as thousands perished in Southeast Asian waters at the hands of pirates. In addition, there were many who were able to seek refuge in the region—but did so covertly and thus their numbers are unknown.

² Philippines acceded on the 22 July 1981.
Southeast Asian states to manipulate the crisis to serve their perceived short-term interests. In 1978 and early 1979, the dramatic increase of asylum seekers in the region prompted Southeast Asian states to adopt brutal rejection practices against these populations. Southeast Asian states refouled people seeking asylum in unseaworthy boats and refused to process those that managed to reach the shoreline. These actions prompted some Western states and the UNHCR to take a greater role in the crisis. This was negotiated through the 1979 Conference on Refugees and Displaced Persons in Southeast Asia. In the third and final section of this chapter, I discuss the outcome of the 1979 Conference and focus in particular, on the absence of demands for Southeast Asian states to adopt greater responsibility for the Indochinese refugee populations, other than providing temporary asylum. I argue that this outcome can be directly attributed to Southeast Asian states ability to manipulate the political and legal uncertainty surrounding the Indochinese refugee crisis in the period 1975–1979.

3.1 A background to the Indochinese refugee crisis

Indochina was highly unstable after World War II and the French remained determined to cling to what remained of their empire in the face of numerous concerted nationalist movements. The ensuing violence and instability prompted several refugee movements. Thailand had already received a significant number of Vietnamese and Laotian refugees who had fled the repression of pro-independence movements by the French in the 1940s and 1950s. At the time, Thailand supported these independence movements and the refugees’ arrival was not unwelcome, as Thailand hoped to gain more regional influence with the defeat of French imperialism. The majority of refugees were ethnic Vietnamese from Cambodia, Laos and Vietnam, and members of the Viet Minh (Vietnam communist party) or Lao Issara (Free Laotians). The Thai government at the time was largely unconcerned about having pro-communist Viet Minh migrants seek refuge in their thousands along their border regions. Indeed, Thai citizenship was offered to asylum seekers as they crossed the border and many were resettled in Thai provinces.

3 To refoule an asylum seeker to their country of origin, without first determining their claim to refugee status, is a breach of Article 33 in the 1951 Convention. However, the rule of non-refoulement has become so important that it is now considered to have customary status in international law. This means that even states not party to the 1951 Convention are expected to obey this law. See Lauterpacht, Sir E. and Daniel Bethlehem, ‘The Scope and Content of the Principle of non-refoulement: Opinion’, in Feller, E., Volker Turk and Frances Nicholson (ed.), Refugee Protection in International Law: UNHCR’s Global Consultations on International Protection (Cambridge: Cambridge University Press, 2003). For a dissenting view see Hailbronner, K., ‘Non-refoulement and “Humanitarian” Refugees: Customary International Law or Wishful Legal Thinking?’, Virginia Journal of International Law, Vol. 26, No. 4 (1986).
