

**Asia Security Initiative Policy Series
Working Paper No. 3
March 2010**

**Operationalising Regimes and Recognising Actors:
Responding to Crises in Southeast Asia**

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Abstract

Southeast Asia as a region has a unique history, and the evolving relationships between its communities, states, regional organisations and the international community reflect this. Given this context, there is a need to better understand the motivations of the actors in negotiations, to account for the finished agreement and its impact on the region both in the short and long terms. This paper investigates the motivations behind two regional responses in two different periods of time. The first case under investigation is the set of regional responses formulated to address the Indochinese exodus in the 1970s and 1980s. The second case under investigation is the regional response to those affected by Cyclone Nargis in Myanmar during the late 2000s and early 2010. Both of these agreements have been held up as historic and ground breaking achievements within the international relations of Southeast Asia. Firstly, this paper sets the scene by critically surveying some of the literature on regionalism and game theory. Secondly, this paper investigates the politics behind these bargaining agreements and assesses the structural and agency conditions that surrounded their formulation. Finally, this paper evaluates why these agreements are hailed as historic successes, and then assesses both responses in action. Through the investigation of these two agreements, this paper argues that agency in Southeast Asia was best reflected through the coordination of the regional association as demonstrated by the longer term implications of the Cyclone Nargis response. However, while this particular agreement offers an opportunity for a sustained trusting relationship with the stakeholders, it does not necessarily mean it can be replicated elsewhere but rather provides evidence of the actors' motivations and provides some policy recommendations to further ground the progress made to make such occurrences more likely to occur in the future.

Biography

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*The author would like to thank Howard Adelman and Astri Suhrke for their constructive comments and helpful feedback. All errors remain his own. Please direct all comments to isdbcook@ntu.edu.sg

This Policy Series presents papers in a preliminary form and serves to stimulate comment and discussion. The views expressed are entirely the author's own and not that of the RSIS Centre for Non-Traditional Security (NTS) Studies. The paper is the result of research conducted under the Asia Security Initiative programme on internal challenges supported by the MacArthur Foundation. Visit www.asicluster3.com to find out more about this initiative. More information on the work of the RSIS Centre for NTS Studies can be found at www.rsis.edu.sg/nts.

Abbreviations and Glossary

ADDMER - ASEAN Agreement on Disaster Management and Emergency Response

AHA Centre - ASEAN Coordinating Centre for Humanitarian Assistance on Disaster Management

AHTF - ASEAN Humanitarian Task Force for the Victims of Cyclone Nargis

ARF – ASEAN Regional Forum

ASEAN – Association of Southeast Asian Nations

ASEAN FMM – ASEAN Foreign Ministers Meeting

ASEAN SOM – ASEAN Senior Officials Meeting

CPA – Comprehensive Plan of Action

DALA – Damage and Loss Assessment

ERAT – ASEAN Emergency Rapid Assessment Team

ICRC – International Committee of the Red Cross

ICIR – International Conference on Indochinese Refugees

IHL – International Humanitarian Law

IHRL – International Human Rights Law

MOU – Memorandum of Understanding

NGO – Non-Governmental Organisation

ODP – Orderly Departure Program

PMC – ASEAN Post Ministerial Conference

PONJA – Post-Nargis Joint Assessment

PONREPP - Post-Nargis Recovery and Preparedness Plan

TCG – Tripartite Core Group

UN – United Nations

UNDAC – UN Disaster Assessment and Coordination

UNHCR – United Nations High Commissioner for Refugees

VTA – Village Tract Assessment

Policy Recommendations

Cooperation Across and Between Levels of Governance

- All regional states should ratify the Refugee Convention and Protocol to recognise refugees and ensure their protection to promote regional peace and security.
- Regional stakeholders should recognise their obligations under International Humanitarian Law (IHL) and International Human Rights Law (IHRL) and make every effort to enshrine these in law at the national level.
- The ASEAN Agreement on Disaster Management and Emergency Response (AADMER) should be built upon by formalising the member state financial and personnel contributions to the ASEAN Coordinating Centre for Humanitarian Assistance on Disaster Management (AHA Centre) and run responses such as the ASEAN Emergency Rapid Assessment Team (ERAT) to consolidate successes in the wake of Cyclone Nargis.
- Sustained efforts by all stakeholders in the current ASEAN Humanitarian Task Force for the Victims of Cyclone Nargis (AHTF) and Tripartite Core Group (TCG) to assist in capacity building at the community level to 'build back better' through the framework of the Post-Nargis Recovery and Preparedness Plan (PONREPP).
- Encourage all stakeholders to meet the financial needs of the recovery for those affected by Cyclone Nargis through PONREPP.
- Recognise the good offices of the ASEAN Secretariat, and in particular the role of the ASEAN Secretary-General, in leading and coordinating the regional mechanism to those affected by Cyclone Nargis and work towards further developing the roles of the ASEAN Secretariat and Secretary-General.
- Ensure that a comprehensive approach is taken to identify the stakeholders involved in situations of displacement and ensure their involvement in decision-making particularly vulnerable populations whose voice is oftentimes overlooked.
- Identify the most appropriate facilitator for negotiations of a given situation and provide them support in fostering greater understanding and trusting relationships between the stakeholders.

Introduction

This article analyses the policy responses of two situations, the Indochinese exodus and the aftermath of Cyclone Nargis, and investigates the politics of bargaining entered into by stakeholders in the Southeast Asian region. It is an effort to evaluate both the structural and agency conditions that allow for the existence of particular agreements and whether they have any longer term effect on the international relations of Southeast Asia. Providing the conceptual and theoretical backdrop to this investigation is normative scholarship on regionalisation, game theoretical scholarship and issue linkage. Both responses to these two different crises were seen as historic achievements by those involved; then again, it should come as no surprise that vested interests sell the fruits of their labour positively. As a result, this investigation will as objectively as possible assess the role of stakeholders in the formulation and enactment of these bargaining agreements.

During the Indochinese exodus, stakeholders agreed to the Orderly Departure Program (ODP) and the Comprehensive Plan of Action (CPA). The latter agreement ensured respect for fundamental refugee protection norms, and is arguably one of the better examples of operationalising the refugee protection regime in the international system, and the best example of it in Southeast Asia. In the aftermath of Cyclone Nargis, stakeholders agreed to establish an ASEAN-led assistance mechanism, the ASEAN Humanitarian Task Force (AHTF) and Tripartite Core Group (TCG), to respond to those displaced by the cyclone. These mechanisms have provided the first regionally led effective response to a natural disaster in Southeast Asia. It is in this vein that I investigate these two responses to evaluate whether they were successful in and of themselves, and whether they had any longer term implications.

At the beginning of 2010, Southeast Asia had three signatory states to the 1951 Refugee Convention and the 1967 Protocol – Cambodia, the Philippines and Timor Leste. However, before the 1979 CPA, there were no signatories in Southeast Asia. Sara Davies (2005, 2008) argues that the absence of Southeast Asian states from the negotiating process that established the global refugee regime and saw the emergence of the Refugee Convention determined the absence of Southeast Asian states. While customary international law and international refugee protection norms are well-established, their application in Southeast Asia has not been guaranteed.

The emergence of the ODP and the CPA ensured that the fundamental refugee protection norms were implemented in Southeast Asia, but for a specific aim and purpose. The aim and purpose was to manage the refugee flow from the Indochinese peninsula, both in the first wave in the aftermath of the Vietnam War and the subsequent second wave in the 1980s. Indeed, this is not uncommon to other regions where the application of universal standards has been part of international bargaining, such as the Cartagena conference on Central American refugees. These international bargaining agreements have been initiated through the United Nations via multilateral processes. These *ad hoc* processes have attempted to address specific regional mass movement of refugees (Betts, 2009, 15). Ultimately the

application of international refugee protection norms has been initiated through persuading concerned stakeholders that they have an interest in abiding by them.

In the aftermath of Cyclone Nargis there was international outrage over the decision by the military government in Myanmar to heavily restrict or refuse international assistance to those affected by the cyclone. As a result of this, Surin Pitsuwan, the ASEAN Secretary-General initiated dialogue and worked with international actors and the military government to find common ground and ways for immediate humanitarian assistance to be delivered. The decision by Surin Pitsuwan to do this was grounded in the ASEAN Agreement on Disaster Management and Emergency Response (AADMER), which at the time of the cyclone had not come into effect. This further highlighted the diplomatic skills of the ASEAN Secretary-General in leading a regional effort to find a solution for those affected by Cyclone Nargis.

The agreed international responses to the Indochinese exodus and Cyclone Nargis differed in many contextual ways, but taking a step back and analysing the structural and agency conditions that led to the responses to these two cases will illuminate some key characteristics of bargaining in the region and provide some insight into why one particular response did not lead to ongoing interaction but stopped at its mandate end, compared to the other response where political space appears to have offered continued interaction over not only the particular response but over longer term issues as well.

Before this article advances further it is important to define the concepts under consideration. This article utilises the definition of regime as espoused by Keohane and Nye (1989) that pushed for a simpler concept of regime, 'regimes are institutions with explicit rules, agreed upon by governments that pertain to particular sets of issues in international relations'. However, to operationalise the concept of regime I reflect the observations of Steven Krasner at the beginning of the 1982 *International Organisation* special issue; a regime is

'a set of implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations'. Principles are beliefs of fact, causation, and rectitude. Norms are standards of behaviour defined in terms of rights and obligations. Rules are specific prescriptions or proscriptions for action. Decision-making procedures are prevailing practices for making and implementing collective choice' (Krasner, 1982, 2).

It is through this lens that this article investigates why some particular agreements affecting the displaced are effective and how these can be replicated in the future.

In much of the literature it is recognised that the international refugee protection regime favours the global North over the global South (Chimni 1998; Castles 2004). From the initial bargaining that took place in advance of the Refugee Convention, international refugee protection norms are framed to have three possible outcomes to protect refugees. These are

voluntary repatriation, local integration, and resettlement (UN 1951, 1967). However, these three outcomes are subject to intense scrutiny and debate between the stakeholders to a given refugee movement. In the next section I unravel the debates and framing actions of the concerned stakeholders to provide a theoretical basis for understanding the implementation of these international refugee protection norms.

Issue Linkage, Localisation and Civil Society

Issue Linkage

The Southeast Asian region has its own characteristics that define its interactions, which are mostly related to the Association of Southeast Asian Nations (ASEAN), and are consensus building and non-intervention in the internal affairs of a member state (ASEAN 1967, 2008). These regional developments offer competing norms for those associated with international refugee protection. This can be better understood through the tensions illustrated by Checkel (1999) and Florini (1996), where international norms are subject to both domestic political concerns and international agreements. The development of ASEAN has provided another level (regional) through which international norms have to gain acceptance before they can be implemented. Indeed, the regional association plays a gatekeeper's role, where Southeast Asian states frame their decisions within the regionally accepted norms. Admittedly, these regional norms are contested with the promotion of regional peace and security (ASEAN 1967, 2008), so the framing of displacement is a crucial one. This can be taken on by international organisations such as the United Nations High Commission for Refugees (UNHCR) or another stakeholder (state or civil society organisation) through public diplomacy.

In his recent book, Alexander Betts (2009) argues that smaller states are able to influence larger states if they can link the secondary concern of refugees to a primary concern such as security or trade. So not only are there stakeholder concerns of agency conditions but also concerns over structural conditions. It is through this framing role that one set of norms gains acceptance over another. Betts categorises this interaction as *inter-linkage*. However, the role of regional actors such as ASEAN can provide another avenue for the promotion of refugee protection norms, in addition to the public diplomacy of international organisations such as the UNHCR. *Inter-linkage* can go further in understanding the multiple actors involved in the refugee regime. The numerous actors involved at the local, regional, international and non-governmental level are all stakeholders with their particular interests.

Through the notion of *inter-linkage* Betts operationalises the international refugee protection regime through a suasion game analogy whereby one (weaker) actor 'A' (such as the global South) has a dominant strategy to cooperate, that the other (stronger) one 'B' (such as the global North) can exploit, or one (stronger) actor 'B' has a dominant strategy to defect and the other (weaker) actor 'A' must cooperate to avoid an even worse outcome (Betts, 2009, 32). The weaker actor's preferred strategy is to cooperate – either because non-cooperation is not practically viable or because it would lead to even greater costs. The stronger actor, however, is in a position to choose to defect, and that is likely to be its preferred position

(Betts, 2009, 33). In the context of Southeast Asia, it is important to recognise that as a developing region and in the post-1997 Asian Financial Crisis world, it has nuanced differences with other global South regions, a reason why this article focuses only on this particular region; it has an increasingly important international economic role but also remains in close proximity to areas of conflict and natural disaster, two salient factors of displacement.

Betts recognises that the existence of structural conditions such as relevance to the stakeholders does not necessarily translate into concern of the stakeholders. Betts purports that 'cross-issue persuasion depends on the existence of a structural relationship between issue areas. But the existence of these structural interconnections is an insufficient condition for the substantive linkages to influence the behaviour of Northern states. In addition to requiring a structural basis, cross-issue persuasion also requires agency. Which actors influence behaviour depends upon the agency of these actors' (Betts, 2009, 180). Essentially, he argues that without an actor framing a given situation, the states concerned either do not recognise the issue as one of concern or have yet to be convinced otherwise. As a result, the actions of a given actor (UNHCR or ASEAN Regional Forum for example) have been important in altering, drawing on, or simply recognising and effectively communicating substantive issue linkages to persuade other actors to change their behaviour (Betts, 2009, 180). That said, the UNHCR knew it had limited influence and that it could not force Southeast Asian states to comply with international legal mechanisms they were not signatories to (Davies, 2005, 170).

However, while the role of issue framer is significant, it is not a sufficient condition. In other words, public diplomacy by one actor, without structural conditions, is simply not enough to convince states to alter their behaviour. Analytically, institutions can be significant in two respects: they may be more or less effective, and they may be more or less robust (or resilient) (Hansclever et al, 1997, 2). However, the UNHCR has been able to change or recognise and effectively communicate substantive issue linkages: institutional design, an epistemic role, argumentation, and the provision of information (Betts, 2009, 180), i.e. the framing tools that align the interests of refugee producing states, refugee recipient states and resettlement states. However, it is important to note that while a particular issue linkage is important in advancing and responding to protection issues for displaced populations it needs to be tempered with considerations of expediency. In other words, the kind of framing that may appeal to the immediate issue of protection for one group of displaced persons may have wider and longer term implications that undermine the regime.

In the case of the issue framer, the actor identifies *common interests* between the relevant stakeholders. It is important to note that *common interests* do not assume that actors' interests are identical. It is highly unlikely that two states will have identical interests; they can be broadly similar but *common interests* are not necessarily identical at one time, or indeed, the issue linkage may not necessarily be the same. For example, the reason why one particular state adheres to regime norms can be different from why another does so. In this sense I deviate from what Hansclever et al argue '...it is not interests (preferences over

outcomes) that are adjusted when states cooperate, but policies (preferences over actions). Consequently, the means that states employ to help them realise these common interests do not (or need not) change those interests' (Hansclever et al, 1997, 32). Also, from my reading of it, there is a belief here that interests are not adjusted when states cooperate, i.e. when two states cooperate on one given area, one state can reframe another issue or causally link it to the area of cooperation, thus altering the state's perception and understanding of their interest in pursuing a given policy. In other words, the reason a state adheres to regime norms may vary over time. Simply put, a state may enter a regime for one reason and subsequently realise that they are adhering to the norms for another.

Localisation

The way in which international norms are implemented rests on their acceptability by the stakeholders concerned. On localisation, Acharya (2004) rightly recognises the agency role of local actors in performing, framing and grafting norms. However, as argued earlier in this article, the agency function should not be exclusively assigned to any one actor – local, regional or international. The role of norm entrepreneur is contingent upon stakeholders, whether individual personalities or those operating within an organisation. In other words, the importance of understanding internal dynamics of actors, such as the role of Chairperson at the ASEAN Regional Forum (ARF) in agenda setting, needs to be highlighted. Acharya points to Keck and Sikkink (1998) who argue that norm displacement occurs when an external norm attempts to replace a local norm through moral superiority or when greater efficiency has already been internally tested. However, it fails when an internal norm is stronger and/or untested. If a norm entrepreneur finds that it can adapt and co-opt the local norm, then it succeeds (Acharya, 2004, 247). While this argument from Acharya and its application in Southeast Asia has some significance, it appears that there is an assumption that localisation only occurs at the regional level rather than at the state or sub-state level.

Acharya (2004) locates the challenge of normative scholarship as the need to shift the balance of international/external norm entrepreneurs to be contested by national/local level norm entrepreneurs. It can even be a combination of both external and internal norm entrepreneurs working towards a similar outcome but through different histories that can fuel the transition to creative normative shifts. Acharya cites Osborne (1990) to say that in Southeast Asia, society utilises 'foreign ideas to suit their own needs and values'. This could well be part of the case but the norm also needs to be responsive to all those the regime governs if it stands any chance of having a long term impact. In fact, this is where the limitation of the Orderly Departure Program (ODP), the Comprehensive Plan of Action (CPA), ASEAN Humanitarian Task Force (AHTF), and the Tripartite Core Group (TCG) agreements come into play. While these are examples of effective bargain agreements, they were ultimately only operational for a specific period of time and mandate, and did not necessarily signal a tangible, longer term shift in normative compliance.

The ODP and CPA included the United States, which had strategic interests in maintaining a presence in Southeast Asia, and this was dove-tailed with humanitarian concerns both in the United States as well as other resettlement states like Canada; Vietnam, which had an

interest in legitimising its new government and its *doi moi* policies as well as gaining access to significant development aid; and the first asylum states which, in exchange for hosting and recognising the refugees, were able to ensure they would only be temporary populations and their international image would be better as a result of them demonstrating compassion. This last point about international image is a weak but noticeable variable in persuasion of the first asylum states. Ultimately, as the Cold War drew to a close, and the refugee flows took on a new character, 'compassion fatigue' set in, losing US and other resettlement nations' interest because the movement of people began to be seen as illegal economic migration, an implication that brought about the concluding arrangements of the CPA without leaving anything in its place. While the UNHCR remained to observe returning populations, once its mandate for such activities was concluded, its operating space also disappeared. As there was no 'localisation' as Acharya (2004) refers to it, the norms of non-refoulement and burden-sharing simply ended. As part of the CPA there was limited interaction over local capacity building in this regard.

For an international norm to really be localised there needs to be evidence of it at the national or local level. Ultimately this is why when the CPA was concluded, without the significant transfer of the norms to other levels of governance, these norms were disengaged. In the aftermath of the CPA and without it being truly localised, the protection norms simply concluded at the end of the agreement. We can see this through UNHCR assessments, which constantly refer to capacity building, and its lobbying for refugee protection norms to be enacted into national and local legislation. Even the Philippines, which has signed the Refugee Convention, still does not have sufficient domestic legislation to adequately implement its norms. However, this case study is compared to the agreement made after Cyclone Nargis to access and protect those displaced. While it is always difficult to compare with an ongoing and evolving situation, there are already noticeable differences in how the cooperation achieved after the cyclone has dove-tailed into wider issues of concern that were highlighted as a result of the post-cyclone disaster response.

Considering these approaches allows the reader to better understand and explain how complex bargain agreements are made to implement norms such as refugee protection and humanitarian assistance norms. Through these case studies the reader can see the complex relationship between actors and the roles that each of them plays in operationalising these norms at the theoretical and practical levels. To further elucidate these, this article will evaluate and analyse the ODP and CPA, and subsequently the evolving relationship of the AHTF and TCG.

The Indochinese Exodus: Bargaining the Orderly Departure Program and Comprehensive Plan of Action

During the formulation of the ODP and CPA, the most significant UN agency for the Indochinese refugees, the UNHCR, had to meander its way through many obstacles. The UNHCR faced government regulation, confrontations between different political actors, and was backed by a mandate that had not been signed by majority of the affected states.¹ The

ability of UN agencies to operate in all kinds of territories is paramount to the success of the organisation. Unravelling the relationship between stakeholders in the region, and determining the effects these ultimately had on the promotion of refugee protection norms will show the successes and challenges that the regime faces.

Prior to the CPA, there were some important developments in the treatment of refugees in Southeast Asia; for example, the issuing of identity cards in Thailand. However, these developments were not grounded in law and were *ad hoc* arrangements illustrating the fragility of the international refugee protection regime in Southeast Asia (Chang-Muy, 1991, 1177). Thus an analysis of how the bargaining process works is important to demonstrate regime robustness. There was a reliance on the non-governmental organisation (NGO) sector to assist and protect refugees while *ad hoc* arrangements were considered and worked out. This stems from the regional and international impression that the cause of the first wave of refugees was largely a result of American foreign policy, and ongoing rivalry between China, the USA and the USSR, with the responsibility and ultimate solution in American hands in 1975. However, by 1978 the *Hai Hong* affair – the *Hai Hong* ship was docked off the Malaysian coast for nine days in a standoff with the Malaysian government, who refused the refugees on board entry – mobilised international action and saw the emergence of a regional *quid pro quo* of permanent resettlement for first asylum. The Canadian government offered to resettle 600 of the 2,450 refugees on board the ship. This policy later became known as the ‘open door for an open shore’ policy. The Canadian strategy was not only a humanitarian one but also in solidarity with the United States (Robinson, 2000, 139).

The policy change by the Southeast Asian governments came in 1979 when Mahathir Mohammad, then deputy prime minister of Malaysia, announced that refugees in Malaysia would be expelled and those seeking to enter in future would be shot if they ignored warnings to go away (Osborne, 1980, 49).² Mahathir Mohammed warned that people would drown if they tried to sink their boats in Malaysian waters in hope of rescue (Stone and McGowan, 1980, 43). Only after this announcement was there enough outrage from Western nations and the international community to demand immediate international action (Shawcross 1979, 5). The outrage against Mahathir Mohammad’s comments reverberated around the world; the Malaysian government sought to alter the statement. At the time there were 50,897 refugees in Malaysian camps at Pulau Tengah, Pulau Besar, Pulau Bidong, Kota Baru, Kuantan, Sabah, Sarawak, and a transit centre (Stone and McGowan, 1980, 43). The reaction came at the same time as the lobbying of the UN by the then prime minister of UK, to host an international conference on Indochinese refugees and displaced persons in Southeast Asia. The crisis arose out of the refusal of these two states to allow entry to any more refugees and their new policy of forced push backs (Stein, 1979, 717).

The roles of the UN, UNHCR and NGOs faced many challenges during this period, given that the UNHCR had many and competing roles in refugee protection, refugee status determination and repatriation (Nichols and White, 1993, 70). These roles depended on where they operated in Southeast Asia and reflected their relationship with individual

governments (Nichols and White, 1993, 25). However, within these constraints, these stakeholders provided assistance to both the first asylum states and the international community. They drew international attention to the Indochinese exodus through both humanitarianism and human rights promotion in the region and internationally. Their roles evolved alongside the regional normative evolution from non-intervention towards intervention in the Indochinese exodus. To map the evolution of these roles it is important to analyse the interactions of the stakeholders throughout the period and reflect on what the two international conferences on the Indochinese exodus achieved.

While a previous attempt to discuss the Indochinese exodus in 1978 failed, the 1979 international conference on refugees and displaced persons in Southeast Asia succeeded. The conference ensured that there was further burden-sharing of the refugee cases in Southeast Asia. The agreement spelt out how to proceed, although no formal agreement was signed at the international conference; the international community was clear as to how it was going to approach the situation. A report from the UN Secretary-General summed up the discussion:

- It was agreed that resettlement should proceed on a larger and faster scale. Worldwide resettlement pledges increased from 125,000 in May 1979 to 260,000 for 1979 and 1980. The United States doubled its monthly quota from 7,000 to 14,000 for an annual figure of 168,000.
- The government of Vietnam gave assurances that it would 'cooperate with UNHCR in expanding the present seven-point program designed to bring departures within orderly and safe channels'. This was in reference to a Memorandum of Understanding (MOU) signed by UNHCR and Vietnam on 30th May 1979, which spelled out steps for the orderly departure from Vietnam of 'family reunion and other humanitarian cases'.
- The governments of Indonesia and the Philippines each pledged to establish regional processing centres to help move refugees more quickly on to resettlement. The site in the Philippines was to hold 50,000 refugees and the Indonesian site 10,000.
- New pledges to UNHCR totalled about \$160 million in cash and in kind. This far exceeded the amount UNHCR had received for Indochinese programmes since 1975.
- 'Finally,' noted the report from the Secretary-General, 'the general principles of asylum and non-refoulement were endorsed' (Robinson, 2000, 53-4).

The significance of the agreement is that resettlement states such as Australia, Canada, France and the United States significantly increased resettlement opportunities. This was particularly noteworthy after the *Hai Hong* affair, when Canada agreed to take 25 per cent

instead of its usual informal quota of 10 per cent of the refugees, and received the Nansen Medal eventually, for its initiatives in breaking the sticking points around an agreement to respond to the Indochinese exodus. Under the second initiative, the UNHCR brokered a deal with the Hanoi government to organise an ODP. Under the 1979 agreement, Vietnam took an active stance against those refugees fleeing clandestinely but allowed them to exit in a legitimate fashion for resettlement in the West (Aldrich, 1986, 296). Vietnam agreed 'that for a reasonable period of time it will make every effort to stop illegal departures' (Stein, 1979, 718). The ODP provided exit visas to applicants through the UNHCR. These applicants were then flown to a recipient state where they remained in processing centres until they were resettled. Resettlement states agreed to take those refugees in the camps in advance of their arrival at the recipient states' camps (Aldrich, 1986, 296). Most important was the agreement that non-refoulement and asylum were assured so long as the resettlement states kept their promise of doubling resettlement opportunities to approximately 250,000 refugees (Stein, 1979, 718).

The 1979 agreement reached in Geneva helped the international community to manage the humanitarian situation in Southeast Asia but also attempted to stem the tide of refugees flowing out of the Indochinese peninsula (Helton, 1989, 25). With the mechanisms in place to cope with the exodus, a new era was ushered in for the Indochinese refugees. One of the main omissions from the conference was the question of where refugees who sought asylum in regional recipient states would go if they were not resettled internationally. At the beginning of the 1980s the international community found that the exodus was to have a second wave. As a result of the Vietnamese economic crisis in 1986, there was an upsurge of the outflow of people, which brought about the hosting of another international conference.

No sooner had the 1979 agreement been made than its inconsistencies became apparent; Western states were pressuring the Soviet bloc to allow anyone wishing to leave while at the same time pressing Vietnam to prevent unsanctioned departures (Osborne, 1980, 52) and provide a regularised and orderly departure programme. The programme assisted in reducing the number of unauthorised departures of Vietnamese refugees significantly. While Hanoi was accused of overzealous implementation of the new agreement in stopping illegal boat departures, the implementation of the programme ensured that departure numbers decreased. Departures fell from 56,941 in June 1979 to 17,839 in July and then to 9,734 in August of the same year, and subsequently non-orderly refugee departures averaged only 2,600 per month. The recipient states were persuaded by the initial ODP success in reducing the number of boat people arriving on their shores and by the large increase in resettlement opportunities offered by the West (Robinson, 2000, 58). As the bargain agreement began to ring true, the regional recipient states adhered to the international refugee regime norm of non-refoulement.

However, the agreement suffered with an imminent threat of breakdown, which was the increasing reluctance from the resettlement states to acknowledge that there were still genuine refugees pouring out of Indochina and the Vietnamese suspension of its ODP to the USA (Helton, 1990, 114). Western commentary focused on the refugees as economic

migrants than genuine refugees. It was during the last years of the ODP that the Ford Foundation sponsored a seminar in Thailand in May 1988, bringing together all the stakeholders to share their experiences. The meeting was scheduled to take place in advance of the regular ASEAN Senior Officials Meeting (ASEAN SOM) and before it, a meeting of the ASEAN working group on Indochinese Refugees was held. The various recommendations were forwarded to the ASEAN Foreign Ministers Meeting (ASEAN FMM) in Bangkok and the subsequent discussion between ASEAN and their 'dialogue partners' at the 21st ASEAN Post Ministerial Conference (PMC) (Jambor, 1992, 25).

During the conference, ASEAN foreign ministers issued a statement calling for the convening of an International Conference on Indochinese Refugees at the ministerial level under the auspices of the UN Secretary-General in 1989 to formulate a new Comprehensive Plan of Action for Indochinese Refugees, which was subsequently endorsed (ASEAN 1988). The process of instigating the conference is characteristic of how many agendas are formulated but most significantly in Southeast Asia where informal dialogue forms a large part of interstate interactions. The costs of securing temporary asylum in Southeast Asian states without addressing the underlying causes of the exodus finally came to push the international refugee regime to its limits.

The aim of the second International Conference on Indochinese Refugees (ICIR) was to provide a 'region-wide refugee status determination' to consolidate and coordinate the international response to the exodus and to find a solution to the seemingly perpetual nature of the exodus (Helton, 1990, 116).³ The CPA document included cooperation from Vietnam as well as the good offices of UNHCR to train and provide assistance to those recipient states that needed it (Bari, 1992, 487). The UNHCR was also given a supervisory role in the agreement reached, which ensured that there was an international presence in the revised process (Bari, 1992, 488). The main difference between the two conferences was that the first dealt with the outflow of refugees and their resettlement, whereas the second focused on the root causes of the exodus. The second conference came at a time when major international changes, such as the liberalisation of Vietnam's economic policy and engagement with external development assistance, made it possible to focus on root causes.

The second conference happened after Vietnam decided to pursue *doi moi* economic reforms in 1986 and also moved toward the decision to withdraw from Cambodia. These changes in intrastate and inter-state policy opened the way for addressing root causes, something that was not possible in the circumstances of 1979. International leaders hoped that the second conference would bring an end to the exodus and fulfil the provisions of the international agreements. The CPA was designed as a compromise agreement between the producer, recipient and resettlement states (Bronee, 1993, 535). The main CPA objectives were:

- to prevent organised clandestine departures
- to encourage and promote regular departure procedures and migration programmes
- to maintain guarantees of first asylum
- to establish region-wide consistent refugee status determination procedures
- to continue resettlement of Vietnamese refugees, long-stayers as well as those newly determined to be refugees
- to repatriate rejected asylum seekers to Vietnam (Bronee, 1993, 540)

The CPA brought a regional dynamic to the international refugee regime for the Southeast Asian region. It ensured that there were some modifications to the operational role of the UNHCR as well as the regional refugee regime more generally. The Southeast Asian states agreed upon regional standards in response to the refugee determination procedures and to guarantee first asylum for the Vietnamese. There was a standard imposed after a specific cut-off date, which brought some semblance of consistency. Alongside these regional standards, the role of the UNHCR was expanded to work inside the producer state (Vietnam) to observe the return of those not deemed officially-sanctioned refugees (Helton, 1993, 557). While the CPA arrangements in place were notably successful, their implementation was inconsistent and found as many advocates as critics of the new arrangements.

The CPA for the first time brought the international refugee regime to Southeast Asia and even involved the UNHCR in the returning of those not deemed refugees, and it assigned the UN High Commissioner for Refugees a special role.⁴ This arrangement was established in the MOU between the UNHCR and Vietnam, which established that the Hanoi government would ensure that the voluntary repatriation from first asylum states was with dignity and conformed to national and international laws (Bari, 1992, 502).

What the two international conferences, the ODP and the CPA, did was to ensure the continuation of the international refugee regime in a form that was agreeable to all stakeholders. While the applicability of the CPA was time-bound, there were significant experiences that the UNHCR, Southeast Asian states and the international community reflect on when providing and protecting subsequent refugee flows. Indeed, the CPA was noted by the Secretary-General as the first attempt to provide a 'consistent region-wide refugee status determination process to be conducted in accordance with national law and internationally accepted practice' (Helton, 1990, 118). As the West grows increasingly wary of resettlement as a suitable solution for refugees it appears that containment strategies will abound and that regional agreements will be brokered. With this in mind this article draws attention to the role of ASEAN as another actor that can both influence and be a forum for influence by others that will assist those displaced. The strength of a regime lies in its ability to morph into local

contexts, allowing assistance and protection to continue in ways that may not always be optimal but does offer those displaced, assistance and protection.

Post-Cyclone Nargis: The ASEAN Humanitarian Task Force and Tripartite Core Group

Before Cyclone Nargis hit Myanmar, at the beginning of May 2008, the poor flow of information between those who worked inside the country and those based outside ensured that there was little understanding of the situation within Myanmar.⁵ At the political and official level, the military regime had reduced ICRC's access to those affected, which resulted in ICRC scaling their activities down in 2006. The internally displaced had limited access to relief assistance because the military regime imposed restrictions on and closely monitored the movement of NGOs (TBBC, 2005, 60). However, while there were restrictions placed on NGOs, some agencies managed to continue to access populations of concern. An example of this is the UNHCR's western border effort, which started with the Rohingya repatriation to Northern Rakhine State from Bangladesh and continues as an integration mission. Most recently, with the focus on preparing for elections, the military government has 'made some overtures to the Muslim residents of Northern Rakhine state, suggesting their legal status may be improved'. As a result, the UNHCR has significantly expanded its activities in education, health and infrastructure (UNHCR 2010).

The UNHCR's involvement was the result of a 1993 MOU involving the UNHCR, the military regime and the Bangladeshi government, with funding from Western donor nations. Previous bilateral efforts in the late 1970s were unsuccessful and were met with widespread international condemnation (Barnett 2000). This agreement allowed the UNHCR access to the refugee population to determine the voluntary nature of their return (Abrar, 1995, 38). Since the voluntary repatriation the UNHCR operation on the western border has focused on Rohingya integration. This operation remains *ad hoc* and reliant on interpersonal relationships between the UN and government officials. It is through this informal channel that the UNHCR has created a political space for itself in Myanmar, which laid the groundwork for some limited access to populations of concern.

However, it is important to note that this operation's *ad hoc* nature ensures that UNHCR activities are contained to a specific area and population. This example demonstrates that there are three identifiable constraints for a regime stakeholder to gain access to a population of concern in Myanmar. The first constraint is an agency's ability to persuade the government that it is the right agency for the job. In this case the UNHCR was positioned as a facilitator between the host and recipient states in the 1993 MOU thus allowing it to utilise its public diplomacy function and promote a trusting relationship with the governments. The previous bilateral efforts were no longer an option for Bangladesh as it sought to avoid international criticism, although recent efforts have seen bilateral agreements between the two governments return regarding the Rohingya in 2010. The second constraint was the availability of funds from donor governments. Without these funds the UNHCR would not operate along the western border. The third constraint is the maintenance of relations between the UNHCR and military officials. These personal relationships between

government and UN officials ensure access to the population of concern and underline the importance of agency conditions in persuading regime actors to adopt core principles.

The internal dynamics of the state show that international actors face significant constraints in promoting international norms. Through the example of the UNHCR experience along the western border, three constraints emerge: gatekeeper acceptance, a role carried by the UNHCR so long as the other stakeholders continue to recognise this role, continued funding through multiple avenues, and the continuation of good personal relationships between international actors and military officials. If these constraints are met, then the international actors are able to access the population of concern. However, this political space is limited to a specific population of concern and it is unlikely that the political space will be consolidated nationally.

More recently in 2008, in the wake of Cyclone Nargis, there have been more significant developments in the realm of humanitarian assistance, the one area in which the global North is formally engaged in Myanmar under the current sanctions regime. In the immediate aftermath of Cyclone Nargis, the initial response of the military regime in Myanmar was to perceive itself as capable of responding to the immediate humanitarian needs of its affected population and to block and delay international aid. However, these efforts proved to do little to alleviate the suffering of those directly affected by the Cyclone (Abramovitz and Pickering, 2008).

However, in the wake of ASEAN diplomacy through the recommendations of the ASEAN Emergency Rapid Assessment Team (ASEAN-ERAT) and based upon the ASEAN Agreement on Disaster Management and Emergency Response (AADMER), the military regime, United Nations and ASEAN agreed to establish the ASEAN Humanitarian Task Force (AHTF) and the Tripartite Core Group (TCG), which promote international cooperation and understanding between the military regime and international actors wanting to offer humanitarian assistance. This was initially achieved through the dispatch of ASEAN-ERAT, which consisted of sending medical teams from ASEAN member states to the affected delta areas alongside a government medical team and the UN Disaster Assessment and Coordination (UNDAC) team (ASEAN 2008). Both, the AHTF and TCG groups were established at the 19 May 2008 ASEAN FMM in Singapore, which was shortly followed by a fundraising conference, immediately kick-starting the new mechanism into practice through the 25 May 2008 ASEAN-UN International Pledging Conference in Yangon. The AHTF, which was mandated to provide policy decisions and set priorities and targets, comprised 20 high-level and senior officials from ASEAN member states whereas the TCG was to oversee day-to-day operations. The TCG initially agreed to conduct a Post-Nargis Joint Assessment (PONJA) on 31 May 2009 to determine the full scale of devastation and the immediate, medium and long term needs of those affected. The key findings of the PONJA Report were:

- More than half of the households living in the most affected townships lost all food stocks.
- While more than half the households reported that they were able to secure food from local markets, this did not preclude their dependence on humanitarian assistance.
- More than 65 per cent of households surveyed reported health problems among household members during early June 2008; mostly, colds, fevers, and diarrhoea.
- 50 to 60 per cent of schools were destroyed or damaged; further limits were placed as they were used for other purposes post-Cyclone.
- Vulnerable groups faced severe challenges including loss of official documents, making it difficult to secure assistance and restart lives; an inflow of male workers added to the gender imbalance created by the cyclone and increased vulnerabilities of women; and potential to engage in high-risk occupations to secure a living (ASEAN 2009).

Following the PONJA report launch at the ASEAN FMM in Singapore on 21 July 2008, the TCG began conducting a series of periodic assessments called Periodic Reviews and Social Impact Monitoring, reflecting quantitative and qualitative methods respectively, to document overall progress towards meeting the goals of emergency relief and recovery efforts (ASEAN 2009). The first Periodic Review was carried out six months after the cyclone. The key findings of the first Periodic Review highlighted that the pre-existing social issues before the cyclone were ongoing; access to healthcare and outreach into communities was good, although there were challenges to the functioning of the healthcare system itself; food aid had reached every survey community, although food insecurity existed around Yangon; many households remained in inadequate shelters; there was improved water security in the immediate term but potential insecurity during the medium term as a result of households using more surface water in the dry season; livelihoods were disrupted and will need long term investment to create sustainable economic growth; and the geographical reach of aid and outreach was not sufficient (ASEAN 2009). These findings mapped out the shorter and longer term challenges facing affected communities and provided a clearer indication of the direction needed to progress on these issues. The PONJA was also unprecedented in that it was the first post-natural disaster assessment conducted under a regional mechanism, the TCG. The PONJA report was prepared by the government of Myanmar, ASEAN and the UN with the support of humanitarian and development organisations (ASEAN 2008b).

The fifth meeting of the AHTF in January discussed progress made on humanitarian assistance, recommendations for the mechanism including mandate extension. As a result of the meeting, the TCG launched the Post-Nargis Recovery and Preparedness Plan (PONREPP) on 9 February 2009 which provides for the transition from emergency relief to

longer term recovery. The PONREPP was launched in advance of the ASEAN FMM at the 14th annual ASEAN Summit at Cha-am, Thailand on 27 February 2009, where foreign ministers agreed to extend the AHTF and TCG mandate until July 2010 (ASEAN 2009). One of the significant outcomes of the PONREPP was that in order to maintain the UN cluster system, it was reconfigured into three Delta Working Groups – Basic Services (health, water and sanitation and hygiene, education, and nutrition); Livelihood (economic, personal and food security); and Social and Physical Protection (protection of vulnerable groups, environment, shelter and disaster risk reduction) (ASEAN 2009). These three groups largely fall respectively within the immediate, medium and long term concerns of those affected, and again show that there is significant influence from each of the TCG stakeholders. Subsequently the TCG organised a Post-Nargis and Regional Partnership Conference, which was held on 25 November 2009 in Bangkok and generated US\$88 million in financial support pledges for the one-year implementation of the PONREPP (ASEAN 2008c); this was in order to keep to the TCG mandate due to expire in July 2010.

The Periodic Review was initiated by the TCG as a process of assessing, monitoring and reporting on people's needs and the situation in the affected areas. Together with earlier assessments, such as the Village Tract Assessment (VTA) and the Damage and Loss Assessment (DALA), the Periodic Review provided a powerful tool to inform stakeholders of the situation on the ground with those affected so they can tailor their activities according to needs at the household level, whether it be European financial assistance or local providers (ASEAN 2010). The Periodic Review II found that significant progress was made, but the immediate post-disaster efforts were focused on returning conditions to pre-cyclone conditions, and that such conditions were weak and needed strengthening. It also revealed that efforts should focus on the longer-term challenge of 'building back better'. The Periodic Review II laid the groundwork in providing recovery and sustaining the momentum towards successfully addressing longer-term challenges (ASEAN 2008c).

While the TCG mechanism to promote cooperation and understanding in the wake of Cyclone Nargis continues to produce results, it is important to recall previous experiences of other international agencies. The UNHCR operations on the western border in Myanmar is an example suggesting that while access to those affected by Cyclone Nargis in the delta region would be gained, there are three constraints on this partnership continuing. These constraints are the continuance of ASEAN as the gatekeeper or facilitator; continued funding by donor states, and the maintenance of good personal relationships between Myanmar, ASEAN and the UN.

On one level, ASEAN and the international community need to be involved to work with the military regime in Pyinmana to make progress on community level issues. At this level ASEAN and the international community can provide a coordinated policy towards encouraging the greater participation of the international and regional community to recognise, develop and implement policy towards the most vulnerable populations in Myanmar. On the other level the international community needs to develop policies that will foster greater international cooperation towards the most vulnerable in Myanmar and

recognise the limitations and the incremental nature of ASEAN's policymaking process. The most plausible avenue at present is to build on the progress of the TCG, to continue its work in the delta region of Myanmar. Indeed, at present, it appears that the stakeholders in the TCG have discovered their positions of responsibility in emergency disaster response and longer term community capacity building. Ultimately the TCG will have achieved its mandate, nothing more, and nothing less.⁶ However, the knock-on effects of the successful conclusion of the TCG and the shift from emergency response to longer term community capacity building is an area where ASEAN is well placed to facilitate and build on its successful experience of coordination during the post-Cyclone Nargis recovery phase.

Conclusion

This article has sought to develop and nuance regime theory to better account for domestic political concerns in operationalising regime norms in different scenarios, and also other agents of change such as civil society. Through the case studies of responses to the Indochinese exodus and Cyclone Nargis, this article has demonstrated that the bargaining process is complex and multifaceted, yet with the use of issue-linkage or framing of a given situation, regime norms can be implemented or upheld. It demonstrated that while the role of regional and international stakeholders is of great significance, the internal dynamics of the state and civil society cannot be overlooked, and to do so is to rule out the ability to identify the persuasion agent. Through a brief survey of the regime literature this article highlighted the conflation of the terms localism and regionalism, where the literature weighs heavily on a top-down approach rather than a balanced view that accounts for internal dynamics and civil society. This article understands regionalism as the intersection of global and local, where states begin a journey of regional self-discovery, common interest and issue linkage in regimes. Additionally this article highlighted a key difference between the two agreements under investigation. It demonstrated that while both agreements are largely seen as a success *per se*, the CPA was not able to dove-tail continued engagement in the longer term under those conditions, whereas the work of the AHTF and TCG have positioned the regionally led mechanism well to continue engagement with the stakeholders involved.

It was the aim of this article to provide a useful critique of regime theory and provide two case studies to investigate the dynamics of the bargaining agreements to illustrate how agreement is formed and operationalises assistance to and protection of those displaced. Another aim was to analyse and better understand the structural and agency conditions of the bargaining arrangements and why, on the one hand, both are seen as historic achievements, but on the other, only one has created political space to continue interaction under similar conditions. Indeed, what these cases have shown is that the agency condition of the regional organisation, ASEAN, was insignificant in the first case whereas in the second case it was much stronger and provided the agency necessary to mediate the needs of those displaced with national political considerations of member states and considerations of the international community and civil society. Indeed, the increase in ASEAN agency during the humanitarian response to Cyclone Nargis is summarised well in the words of Chavarat Charnvirakul, the Thai Minister of the Interior,

'ASEAN's continued journey to creating a caring and sharing ASEAN community by the year 2015, exemplified through the collective response to the aftermath of Cyclone Nargis which may be seen as a successful demonstration of the benefits of closer cooperation, broader integration and multi-stakeholder partnerships...' (ASEAN 2009a).

Above all, the significance of this comparison highlights the growing agency of ASEAN in Southeast Asia to provide an avenue of cooperation. However, it is important to remember the limitations of this comparison; it is a comparison of only two regional, albeit the most significant, responses in Southeast Asia to a regional human security issue. As a result, we must be clear about what we can take away from this. Both case studies highlighted the contentious issue of national sovereignty, but the former case study focused on cross border issues whereas the latter focused on capacity building at the community level. Indeed, this difference can be attributed to the success of the latter and failure of the former to provide an ongoing forum for collaboration and exchange on the particular issue. This comparison also highlighted the importance of regional agency in negotiating agreements with all stakeholders on issues of concern. In response to Cyclone Nargis, the regional level provided the facilitation needed to ensure assistance to and protection of the affected population, and this provides significant lessons for future negotiations in Southeast Asia.

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¹ The UNHCR had a non-operational presence in the first asylum states and its programmes were implemented by government partners and NGOs (CGUS, 1979, 16).

² The reason for such statements was the overriding racial tension in Malaysia. As the majority of the Indochinese refugees were ethnic Chinese there was a fear that moves to locally integrate the refugees would promote tension between the ethnic Chinese community and the ethnic Malays. During this time the Malay population constituted 47 per cent of the population and formed the largest group; the ethnic Chinese constituted 34 per cent and formed its second largest group (Stubbs, 1980, 118).

³ While this was the aim of the conference through the CPA, procedures differed significantly from first asylum state to first asylum state (Nichols and White 1993, 172).

⁴ High Commissioner Hocke was appointed at the United Nations Secretary-General's special representative to Vietnam which included duties such as overseeing the repatriation of the failed asylum seekers.

⁵ Interview with UN official, 17 March 2010.

⁶ Interview with UN official, 17 March 2010.