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Refugee Protection in Malaysia: A Historical and International Law Perspective within the ASEAN Context

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ABSTRACT

People flee their home countries of origin for a multitude of reasons including fear of persecution, escape from armed conflict and avoiding ethnic cleansing. The factors precipitating large-scale human migration and instances of these exodus can be traced back over several centuries. Regrettably, even in the present era, these occurrences of forced mass migration still persist. This study seeks to examine the historical trajectory of refugee protection in Malaysia, with a specific focus on the legal framework governing the treatment towards refugees within Malaysia's borders. This is a qualitative legal study harnessing data from online resources including government websites, organizational repositories, case law databases, and academic journals. This study finds that within the ASEAN context, Malaysia and Myanmar have the lowest number of ratified human rights conventions among member states. Further, Malaysia's adherence to international obligations for refugee protection is contingent upon the enactment of domestic legislation giving effect to its corresponding international instrument. Malaysia's legal system does not distinguish between illegal immigrants, asylum-seekers or refugees, and case-law evidences differential judgements meted out for the same categories of persons, namely asylum seekers, in Malaysia. The study's findings will provide valuable insights on the necessity of inter-state cooperation within the ASEAN region, akin to the 1989 Comprehensive Plan of Action for Indo-Chinese Refugees, in addressing the refugee crisis in Malaysia.

Keywords: customary international law, international law, refugee, humanitarian grounds, mass migration

INTRODUCTION

People flee home countries in the hopes of finding safe haven for themselves and their family, but even after the perilous journey through terrible conditions, these people find themselves in positions not very much different than what they endured back home.

Historically, Malaysia's stance towards refugees have been cordial with the admittance of the Indochinese boat people from Vietnam in 1975. Subsequently, Malaysia established the Vietnamese Illegal Immigrant (VII) Task Force and the People's Volunteer Corps ("RELA") with the aim of preventing further incoming refugees and asylum seekers from Vietnam. During this period, Malaysia, despite not being a state member of the United Nations 1951 Convention and 1967 Protocol relating to the Status of Refugees ("1951 Refugee Convention" and "1967 Protocol"), cooperated with the United Nations High Commission for Refugees ("UNHCR") in the *1989 Comprehensive Plan of Action for Indo-Chinese Refugees* ("CPA") whereby refugees present in Malaysia were screened to obtain refugee status and was then subsequently resettled to third countries. The CPA remains the only formal legal agreement in dealing with refugee protection, entered into between UNHCR and states in Southeast Asia. Despite having successfully tackled the situation involving refugees and asylum seekers from Vietnam, there is still failure to instill a sense of obligation unto states in the region on issues concerning refugee protection (Kneebone 2016).

In 2015, the Rohingya "boat people" stranded at sea and some of whom reached Malaysian land tested Malaysia's and other Southeast Asian ("SEA") nations' responses. Save for the Philippines and Cambodia, other states within the SEA region are not a party to the 1951 Refugee Convention and 1967 Protocol and states

like Malaysia equate refugees with 'illegal or irregular' migrants'. Incoming refugees are not seen as a group of people requiring protection, but are portrayed as a threat to the security of the state and their successful entry into a particular state are depicted as a weakness upon that states' ability to govern and control its border (Kneebone 2014). Subsequent to the landing of about 1000 refugees from Myanmar on the coast of Langkawi Island off the Northwestern coast of Peninsular Malaysia in early May of 2015, Malaysia announced that it would be increasing its border patrol in the surrounding area to prevent any further landing of boats (The Guardian 2015).

The majority of refugees and asylum seekers are seen as a threat to Malaysia's security. As Malaysia does not recognise refugees and continues to label them irregular migrants, there is a widespread belief that refugees coming into Malaysia affect local jobs and displace local workers. However, refugees are not legally allowed to work and, even if they do so discreetly, they do not work other than manual labour or other temporary jobs (Amnesty International, 2010). As Malaysia is not a party to the 1951 Refugee Convention and 1957 Protocol, it is not placed under any obligation to provide the rights necessary to be afforded to refugees, namely the right to employment and education. Regardless, Malaysia does cooperate with UNHCR which has a presence in Malaysia, and does not unnecessarily deport individuals who the UNHCR have recognized as person of concern.

The question remains whether certain human rights obligations owed towards refugees can be imposed on Malaysia when it is not a party to the international instrument governing such rights, namely the 1951 Refugee Convention and 1967 Protocol? To answer that question, this article will make an attempt to answer the following questions: whether refugee law has evolved to a status of customary international law imposing certain degree of obligations onto states; whether Malaysia implements the current rules providing refugee rights domestically; whether the national legislation on immigration addresses the minimum standard required to be afforded to refugees and asylum seekers and whether or not Malaysia can be held to be in breach of its obligations in the event that it fails to abide by the minimum standard of protection.

METHODOLOGY

This qualitative legal study harnesses data from online resources including government websites, organizational repositories, case law databases, and academic journals. A comprehensive legal review targeting examples of few domestic laws and cases related to the refugees and prohibited migrants. Using a thematic analysis, emphasis is given to the obligations of Malaysia pursuant to international law and customary international law, the Malaysian Immigration Act 1957 and obligations to refugees based on humanitarian considerations. The findings from legal analysis are cross-referenced with authoritative reports, yielding a rich understanding of the intersection of these themes within the context of refugee protection within Malaysia.

MALAYSIA AND INTERNATIONAL LAW

The question of applicability or persuasiveness of an international legal document within the domestic legal system differs from state to state and it is uncontested that each state would have different methods of applying such international legal documents depending on their own Constitution. The situation is similar in Malaysia.

With regards to international declarations, such as the Universal Declaration of Human Rights 1984 ("UDHR"), Malaysia maintains that the provisions outlined within the UDHR are of

a persuasive nature and not binding. Judicial acknowledgement of such position in the domestic legal system can be found in *Merdeka University*. In *Merdeka University,* Abdoolcader J articulated the principle that the UDHR is not legally binding, and is at most, merely persuasive within Malaysia's domestic legal framework due to its status as a declaration and not a convention. Subsequent cases *inter alia*, the case of *Mohamad Ezam*, followed this line of argument. The assertion that declarations lack binding force on states is widely accepted among jurists across many legal systems, and there exists a broad consensus on this matter without any notable conflicts or disputes.

In the context of ASEAN, it is observed that Malaysia and Myanmar have the lowest number of ratified human rights conventions among the member states. Malaysia has currently ratified three human rights conventions, namely the Convention of the Elimination of All Forms of Discrimination against Women 1981 ("CEDAW"), the Convention on the rights of the Child 1990 ("CRC") and its corresponding Optional Protocols, and the Convention on the Rights of Persons with Disabilities 2008.

In relation to conventions, treaties and international agreements, the Malaysian Federal Constitution and case laws suggest that adherence to such international obligations within the Malaysian legal system is contingent upon the enactment of domestic legislation that gives effect to the corresponding international instrument. Thus, Malaysia is characterized as a dualist state. The aforementioned stance demonstrates that Malaysia adheres to the '*doctrine of transformation'*, which posits that international law (conventions and treaties) and domestic law are distinct legal systems. Consequently, the incorporation of international provisions into domestic law necessitates the enactment of local legislation for that purpose.

Malaysia's application of the doctrine of transformation is cemented in the Federal Constitution under Article 74(1), which provides the exclusive power of the Parliament to "make laws with respect any of the matters enumerated in the 'Federal List' or the 'Concurrent List'" itemized under the Ninth Schedule. The 'Federal List' under the Ninth Schedule contains numerous subject matters, *inter alia:*

In addition to Article 74(1), Article 76(1)(a) further enumerates the power and competence of the Parliament to enact legislations –

1. *External Affairs, including –*
   - *(a) Treaties, agreements and conventions with other countries and all matters which bring the Federation into relations with other countries;*
   - *(b) Implementation of treaties, agreements and conventions with other countries; …*

Therefore, for any international conventions or treaties to come into force and become binding and applicable in Malaysia, the Parliament must first enact law to that effect. The Federal Court (the apex court) in the case *Bato Bagi*, held as follows:

> "[180] on the issue whether this court should use 'international norms' embodied in the UNDRIP (United Nations Declaration on the Rights of Indigenous Peoples) to interpret arts 5 and 13 of the Federal Constitution I have only this to say. International treaties do not form part of our law, unless those provisions have been incorporated into our law."

The Court of Appeal's case of *AirAsia,* similarly held that despite being a signatory to CEDAW, it does not have the force of law in Malaysia because the same is not enacted into any local legislation. Subsequently, Wong Kian Kheong JC in

the High Court case of *Kraft Foods Schweiz Holding* took it upon himself to not refer to the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS") holding that, as the provisions contained therein have not been incorporated into the domestic legal system by the Malaysian Parliament and as a corollary, have not yet become part of Malaysia's domestic laws, he was not bound to refer to TRIPS to determine whether or not the definition of 'mark' and 'trademark' would include 3D marks under the Malaysia's Trade Marks Act 1976.

The judges in the aforementioned judgments adopted a definitive stance on the applicability of international conventions and treaties. Nevertheless, uncertainties developed when examining the applicability of the 1951 Refugee Convention. The judgment rendered by Mohd Sofian JC in the case of *Subramaniyam Subakaran* reveals a notable ambiguity. Specifically, when considering a revision application put forth by an individual seeking asylum, the judge referred to and concurred with the court's ruling in the case of *Mohamad Ezam*. In doing so, he asserted that the court was not under any obligation or compulsion to adhere to the provisions outlined in the 1951 Convention and the 1967 Protocol. This fact is evident, given that Malaysia has not ratified either the 1951 Convention or the 1967 Protocol. Nevertheless, the rationale behind his decision was not adequately elucidated. It is important to highlight that although the JC acknowledged the limited applicability of the 1951 Refugee Convention and 1967 Protocol in specific aspects of the judgment, he openly invoked these legal instruments to solidify his rationale for upholding the lower court's verdict. The specific mention was made to Article 2 of the 1951 Refugee Convention, which encompasses the overarching responsibility of a refugee to adhere to the legal framework and regulations of the host state. Based on this provision, the JC concluded that the refugee, or the defendant in the current matter, is therefore subject to the domestic legislation of Malaysia, specifically the Malaysian Immigration Act of 1959.

The observation can be made that the Malaysian judges demonstrate a strong commitment to the doctrine of stare decisis in their resolution of legal disputes. However, this strict adherence to precedent can lead to a perplexing application of legal principles and the establishment of a potentially convoluted body of case law. By rigidly adhering to the principle of *stare decisis* and citing the court's ruling in *Mohamad Ezam*, *Subramaniyam* neglected to differentiate between various forms of international legal instruments, specifically failing to distinguish between a declaration (UDHR) as discussed in *Mohamad Ezam*, and a convention (the 1951 Refugee Convention and 1967 Protocol) which was the focal point of the dispute at hand.

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CUSTOMARY INTERNATIONAL LAW UNDER THE DOMESTIC LEGAL SYSTEM

The introductory section of this chapter illustrates that declarations are seen as persuasive rather than legally binding within the domestic legal system of

Malaysia, a view that is also taken by other states in various jurisdictions. For international conventions and treaties, it is necessary for the Malaysian Parliament to pass legislation to incorporate the requirements of these treaties and conventions into the domestic legal framework. Nevertheless, the issue regarding the relevance of international declarations and conventions in the domestic realm becomes more intricate when specific articles within these declarations or conventions are contended to be customary international law.

In what manner does Malaysia, if at all, integrate customary international law rules that have achieved international recognition into its domestic legal framework? Given the limited number of international conventions that Malaysia has ratified and the existing constraints that persist even after ratification, such as the requirement for domestic legislation adoption and reservations made to specific provisions within international conventions, customary international law becomes pertinent in establishing the minimum standards that all states, including Malaysia, must uphold in ensuring the fundamental rights afforded to non-nationals or refugees within their jurisdiction.

Breitenmoser and Wildhaber (1988) conducted a study examining the diverse methodologies adopted by specific European nations in addressing the legal issue pertaining to the incorporation of customary international law inside their respective domestic jurisdictions, which concluded that in the majority of European states, including those with a dualist legal system, customary international law is recognised and incorporated into the domestic legal system through the widely accepted principle 'international law is part of the law of the land' (Breitenmoser, S., & Wildhaber, L. 1988). By referring to each state's constitution in Western Europe, they concluded that the 'principle of automatic and direct applicability of customary international law is generally recognized in the state's doctrine and practice.'

Contrary to the practice in Europe, Malaysia's Federal Constitution does not make any specific reference to customary international law; neither does it contain any provision indicating international law is to be a part of the law of the land.

Before achieving independence in 1957, the courts in Malaysia followed a legal framework for customary international law that closely resembled that of the colonial power at the time, namely the British courts. Consequently, the Malaysian courts adopted the doctrine of incorporation, albeit with certain restrictions (Hamid AG and Khin MS 2006). The post-independence judicial practises of Malaysian courts remain ambiguous. Scholars have argued that Malaysian courts do not apply customary international law unless there is explicit statutory authorization. Regrettably, the scarcity of Malaysian case law hinders a comprehensive examination of the domestic application of customary international law. The absence of judicial rulings in this context presents a challenge in analysing and determining the evolving stance of Malaysian courts on matters pertaining to customary international law within Malaysia. Hence, in contrast to other jurisdictions where the incorporation of customary international law into the domestic legal system is explicitly addressed in accordance with the state's constitution, such as the case of *Targeted Killings* in Israel, there is a lack of specific judicial pronouncements regarding the application of customary international law within the Malaysian domestic legal framework. In Malaysian jurisprudence, there is a tendency to briefly allude to customary international law when addressing the relevant laws in a given case such as in the case *Public Prosecutor v Oie Hee Koi* and *Stanislaus Krofan*. However, it is noteworthy that no court has rendered a specific judgement that definitively establishes the position of customary

international law within the domestic legal framework.

Another important piece of legislation often cited when discussing the incorporation of common law, international law or customary international law is the Civil Law Act 1956 (Malaysia). Section 3 addresses the application of English common law, rules of equity and certain statutes, and enumerates the following:

3. (1) Save so far as other provision has been made or may hereafter be made by any written law in force in Malaysia, the Court shall—

(a) in Peninsular Malaysia or any part thereof, apply the common law of England and the rules of equity as administered in England on the 7 April 1956;

(b) in Sabah, ... as administered or in force in England on 1 December 1951;

(c) in Sarawak, ... as administered or in force in England on 12 December 1949, subject however to subparagraph (3)(ii):

Provided always that the said common law, rules of equity and statutes of general application shall be applied so far only as the circumstances of the States of Malaysia and their respective inhabitants permit and subject to such qualifications as local circumstances render necessary.

The legal consequence of the aforementioned Section 3 is that the Malaysian courts are required to apply English common law, as it existed at the cut-off date, 7 April 1956, when no written law, specifically local statutes, is applicable, subject to the condition that it does not conflict with any prevailing public policy in Malaysia. Consequently, it is worth noting that the customary international law, which is deemed relevant under English common law as of the cut-off date, may also be enforced inside the legal framework of Malaysia. Subramaniam (2008) have opined that that irrespective of the judge's position in *Public Prosecutor v Narongne Sookpavit*, Malaysia still applies English common law as at 7 April 1956 subject to the provisio in Section 3(1) of the Civil Law Act 1956; and as the English common law 'recognizes international law as part of the law of the land' without the necessity of it having to be adopted as statute to become English law, thus, the rights that flow from customary international law through English common law will be recognized by the Malaysian courts by virtue of its implementation of English common law (Subramaniam, Y 2008).

In contrast to their approach when addressing the issue of applying international treaties, the Malaysian court has demonstrated inconsistency in its approach to the question of the application of customary international law. In certain instances, such as the case of *Public Prosecutor v Narongne Sookpavit*, the court has held that customary international law is not applicable. However, in other cases, the court has applied established principles of customary international law to resolve disputes brought before it. For example, in *Olofsen*, a case was instituted in the High Court of Singapore against the Government of Malaysia to recover damages for false imprisonment. The suit was instituted in Singapore (whilst still being a part of the Federation of Malaysia), and continued even after Singapore's separation on 9 August 1965, thus the actions was dismissed by the High Court of Singapore under the universally acknowledged principle of law relating to immunity of sovereign state from judicial process of a foreign country. Singapore became a part of the Federation of Malaysia on 16 September 1963, and the judicial power of the Federation of Malaysia was vested in in the Federal Court, and the High Courts in Malaya, Borneo and Singapore by virtue of Section 13 of the Malaysia Act 1963. The suit commenced on 21st June 1965 under the provisions of the Government

Proceedings Ordinance, 1956 of Malaya as extended to Singapore by the Modification of Laws (Government Proceedings and Public Authorities Protection)(Extension and Modification) Order, 1965. Although this was a case decided in the High Court of Singapore, historically, Singapore was a part of the Straits Settlements together with the states of Malacca and Penang, which were collectively under British power; and the laws applied in this case can safely be taken to be a representative of the overall stance of the judicial body within Malaysia and Singapore at the time.

The principle of sovereign immunity was also examined in the case of *Village Holdings Sdn Bhd*, where Shanker J adopted a contrasting position to his prior judgement. Notably, he explicitly applied the principle of sovereign immunity, grounding it on the applicability of English common law in Malaysia as stipulated in Section 3 of the Civil Law Act 1956 (Malaysia). Consequently, Shanker J effectively incorporated this customary international law principle into the domestic legal framework.

Based on the aforementioned cases, it is evident that the Malaysian judicial system exhibits irregularity and inconsistency. Moreover, it is improbable that the courts will establish any novel precedent regarding the applicability of customary international law unless compelling evidence is presented in cases involving this matter.

In relation to state practice, Malaysia's official statements given in a national, regional or international setting are all to be considered in order to ascertain Malaysia's practice, as the term state practice are not to be taken literally as strictly the acts of that state, but would also consist of 'official views expressed on various occasions' at United Nations conferences, as stated in the *Colombian-Peruvian asylum case* and 'the public expression of their views' as prescribed in the *Continental Shelf*.

> *By formal source one is referring to the reason for the validity of the rules. Treaty law has its validity in the relevant treaties. Customary international law has its formal validity in the practice of states. Since, in our contention, resolutions constitute state practice, they can be the formal validity of rules of international law* (Asamoah, O. Y. 1966).

The aforementioned excerpt by Asamoah holds significance in assessing Malaysia's role in establishing international customary law through its voting behaviour. By casting a vote on a resolution, Malaysia effectively commits itself to the outcome; as such, a vote constitutes a formal state action. In the context of the General Assembly, multiple states collectively participate in voting, and the aggregation of these votes serves as evidence of state practise. Thus, *opinio juris* could further be alluded from the actions or omission of that particular state. Rosalyn Higgins had further highlighted that it is not the declaration or resolution itself that is binding, but it is the state's acceptance through its vote, that binds the state to comply with the resolution (Schwebel, Stephen M., & American Society of International Law 1971). Malaysia's state practice through its formal declarations shall be scrutinized in the following paragraphs.

BETWEEN *ILLEGAL* OR *PROHIBITED IMMIGRANTS* AND REFUGEES OR ASYLUM SEEKERS UNDER MALAYSIAN CASE LAWS

The legal position for asylum seekers or refugees in Malaysia is that they are still subject to our domestic laws, including the [Immigration] Act (*Tun Naing Oo v Public Prosecutor* (2009)).

Malaysia has been criticized for not making any distinction between a refugee, an asylum-seeker, and an illegal immigrant,

and for their abysmal treatment of all three categories of people consistently as that of a *prohibited immigrant*. The Immigration Act 1959 (Malaysia) (the "Act") defines a 'prohibited immigrant' as anyone who is not a citizen, and who falls under the categories listed as being of a prohibited class under section 8(3), *inter alia*, persons not in possession of valid travel documents. Individuals who are found to be in violation of this particular provision may be subject to deportation from Malaysia as mandated by the Director General in accordance with Section 31 of the Act. It is contended that this provision extends to encompass refugees and asylum seekers, which goes against the customary international principle of *non-refoulement*. Further, section 6(1) of the Act governs control of entry into Malaysia and denotes that no person other than a citizen shall enter Malaysia without *inter alia* a valid entry permit or a valid pass; and under subsection (3) of the same provision, persons found to be in contravention of this section shall further be liable to whipping of not more than six strokes.

The legal question of whether or not these provisions under the Act are applicable to refugees and asylum seekers are addressed in the *Subramaniyam* case where a Sri Lankan national who was a UNHCR registered asylum-seeker, was convicted under the Act for entering Malaysia without a valid pass, and was subsequently sentenced to four months imprisonment and one stroke of the rattan. An application was made for a review against the decision because the applicant was a registered asylum seeker with the UNHCR under the 1951 Refugee Convention and 1967 Protocol, but Mohd Sofian JC rejected the application, ruling that the applicant's status had no bearing on the punishment and that he should not be given leniency. In conclusion, *Subramaniyam* established the premise that the Act and section 6 apply to everyone, including refugees and asylum seekers.

Subramaniyam and *Tun Naing Oo* are cases that discuss the proportionality of punishments for refugees under the Act. Both cases asserted differently regarding the necessity and proportionality of the punishment. Mohd Sofian JC rejected the revision application (reviewing the whipping punishment) in Subramaniyam, placing the burden on refugees or asylum seekers to present themselves to the authorities immediately and show a 'good cause for their illegal entry' to avoid punishment under the Act. Whereas in *Tun Naing Oo*, the punishment of caning under section 6(3) of the Act was held to be discretionary due to the words 'shall… be liable'. The applicant was not engaged in a crime of violence or brutality at the time of detention, and the sentence of two strokes of the rattan and 100 days imprisonment was deemed excessive. The lower court's decision of two strokes of the rattan were overturned. Yeoh Wee Siam JC in *Tun Naing Oo* cited the then-Attorney-General of Malaysia, Tan Sri Abdul Ghani Patail, in his ruling–

> "that the law does not make caning mandatory for convicted illegal immigrants' and those that were sentenced to caning … had committed the offence repeatedly or had been involved in crimes that threatened the public repeatedly".

Unlike *Subramaniyam*, *Tun Naing Oo* accepted that notwithstanding the Act's infraction, care should be taken not to impose disproportionate punishments on refugees and asylum seekers who have not committed grievous crimes.

From the statutes and cases above, it may be concluded that the Malaysian legal system does not distinguish between illegal immigrants and refugees or asylum-seekers. The provisions, briefly examined, clearly subject both categories of people who have entered Malaysia to the same legal treatment, and the cases cited show how refugees or asylum seekers are

convicted under the Act as illegal or prohibited immigrants regardless of their status under the 1951 Refugee Convention and 1967 Protocol.

Since *Tun Naing Oo* in 2009, Malaysian enforcement agencies still detain refugees and asylum seekers or those deemed 'persons of concern' by UNHCR, but they are not charged under the Act and are released upon UNHCR's intervention. This may be due to the increase in news coverage of refugees and asylum seekers worldwide, particularly the Rohingya crisis in Myanmar, and the judiciary's willingness to accept the executive body's position that refugees should be treated better. These reasons may have affected enforcement organisations' conduct when putting UNHCR-recognized refugees and asylum seekers into custody in Malaysia by not prosecuting them with violating the Act. However, the question that remains is whether these refugees or asylum seekers should have even been detained in the first place? And whether such detention violated Malaysia's international minimum standard for protecting refugees and asylum seekers?

REFUGEES OR *'ILLEGAL IMMIGRANTS'* OUTSIDE THE CONSTRAINTS OF MALAYSIAN CASE LAWS

Repeatedly, Malaysia has emphasised that its endeavours to support refugees are solely driven by humanitarian considerations, rather than a sense of need to comply with any international legal commitments. One could posit that the distinction between humanitarian duty and legal duty is increasingly becoming less clear.

Through the case of *Tun Naing Oo* this often-cited principle of humanitarian treatment accorded to refugees was given judicial notice when the court acknowledged the Attorney General's comment in the 14 February 2005 edition of the New Straits Times (Malaysia's local newspaper) stating that Malaysia 'accorded humanitarian treatment to immigrants. This 'humanitarian' stance is not a novel theme but could be said to have been the dominant and prevalent reason Malaysia provided assistance in many of the past refugee movement within the region – from the Filipino refugees fleeing the Mindanao Island in the Philippines in the 1970s to the fleeing Cambodian and Vietnamese refugees during the Indo-Chinese refugee crisis in the 1980s to 1990s, the Bosnian refugees fleeing Yugoslavia during the 1990s civil war, and to the acceptance of Syrian refugees fleeing war-torn Syria in 2015.

The declaration made by former Prime Minister Najib Razak on Malaysia's acceptance of 3,000 Syrian migrants in 2015 may similarly be interpreted as a pledge by Malaysia to provide assistance to Burmese refugees, including the Rohingya and Chin minority. Upon a closer reading of his full speech, it becomes apparent that Najib Razak is solidifying Malaysia's contradictory stance. On one hand, he strongly maintains that individuals escaping the dire humanitarian conditions in the Andaman Sea are classified as irregular migrants. On the other hand, he acknowledges the global refugee crisis stemming from the events in Syria.

By reading Malaysian parliamentary hansards, the government's stance on refugees is revealed. During the parliamentary session of 4 November 2015, Reezal Merican, Malaysia's Deputy Minister at the Ministry of Foreign Affairs highlighted that the government has no intention to accede to either the 1951 Refugee Convention or the 1967 Protocol, and stressed that any assistance given to refugees moving forward will only be made on humanitarian and compassionate considerations. Merican further hinted at Malaysia's incapability to provide for refugees should it decide to accede to the 1951 Convention and Protocol, and even made reference to states in Europe that in spite of being state parties, had still maintained a closed-door policy to

accepting the Syrian refugees. Despite knowing the government's position, opposition lawmakers called for the government to recognise asylum seekers and refugees to stop unlawful trafficking in the borders during Parliamentary sessions on 22 November 2016 and 23 March 2016. Further requests were also made by the opposition party for the government to recognize refugees and asylum seekers by providing temporary gainful employment, access to healthcare, and education to refugee children, even if such recognition and assistance, if granted, would be based on humanitarian grounds rather than legal obligations.

In addition to parliamentary sessions, a look at statements made at the international level provides valuable insights about Malaysia's approach to the matter of refugees and asylum seekers. Several statements made by Malaysia on the world stage are presented below:

i) At the United Nations Security Council Meeting on Cooperation between the United Nations and the Regional and Sub-regional Peace and Security (European Union), New York on 6 June 2016, the Permanent Representative of Malaysia to the UN, Ramlan Ibrahim reiterated Malaysia's stance, acknowledging that Syria is faced with a refugee crisis, whilst holding that the situation in the Southeast Asian region was considered to be one of 'human trafficking and people smuggling'.

ii) A decade ago, a similar tone was propagated when Malaysia's representative made its comment and statement in response to the Report of the International Law Commissions on the work of its 59th session:
Malaysia is currently not a party to any international conventions relating to refugees or stateless persons … as well as the ICCPR and ICESR and is therefore under no legal obligation to provide such protection and rights available under those treaties. Malaysia however had been treating illegal immigrants with full respect to their dignity and based on actions on humanitarian grounds … the concept of refugee do not exist in Malaysian legal framework.

iii) The Malaysian Representative at the sixth Committee of the 67th Session of the UN General Assembly on November 1, 2012, stated that Malaysia does not recognise 'refugee status' without being a party to the 1951 Refugee Convention and 1967 Protocol. Despite not recognising such status, Malaysia makes 'special arrangements with UNHCR on humanitarian grounds' for refugee influxes.

ASSISTANCE ACCORDED TO REFUGEES UNDER HUMANITARIAN GROUNDS

Mann (2016) conducted a historical analysis to explore many instances in which sovereign countries encountered significant influxes of refugees. These instances include the displaced Jewish people, the Haitian migrants and refugees, the Vietnamese 'boat people' and the Iraqi and Afghan migrants. These examples were brought forth to show the different ways sovereign power responded, from legally upholding that the executive branch are permitted to close its borders to Haitian refugees seeking entry into the United States in the US Supreme Court case of *Sale v Haitian Centers Council (1993)*, to the Australian High Court case of *Ruddock v Vadarlis (2001)* which similarly upheld that Australia's sovereign power justified its executive action of removing the rescued asylum seekers. Building on past

experiences, Mann (2016) further sets the interesting notion of the dual foundation of international law, which are a state's sovereignty through collective political will and positive law, and the distinct and separate source of human rights; and sets the tone that the humanitarian reasoning mainly dominating a government's stance in providing assistance to refugees could be a form of 'non-positive soft law' (Mann, 2016).

The concept of 'non-positive soft law' should be considered when addressing the issue of granting asylum seekers and refugees' access to the territory of another sovereign state. In many instances, international law may not adequately align with the desired outcomes of our conscience or morality, albeit the subjective nature of these terms. Thus, although jurists like Kunz opine that actions done by States with the 'conviction that it is morally binding … a norm of international morality … may have come into being, but not a norm of customary international law' (Kunz, 1953), it is argued that such acts by sovereign states on the basis of humanitarian assistance, often driven by public pressure to act morally in times of crisis, contribute to the establishment of a new normative international rule. This aligns with Mann's (2016) assertion that references to humanity entail a corresponding obligation on states of certain duties, despite the criticism thrown at it being a 'moral rhetoric thinly masking the interests of the powerful' (Mann 2016).

If Kunz's (1953) position as mentioned above were to be applied to states, in this instance Malaysia, that have predominantly provided aid to refugees on the basis of humanitarian reasoning's, Malaysia's actions would only contribute to the creation of a norm of international morality. However, it is worth considering whether there exists a substantial distinction between a norm of international morality and customary international law. If we were to assert that humanitarian reasoning or non-positive soft law only constitute the basis international morality, this would contradict previous instances of codification of a non-positive soft law, namely the Martens Clause in the Preamble to the 1899 Hague Convention via the insertion of '… the laws of humanity and the requirements of the public conscience' (Mann 2016). Hence, the counterargument is posited against the proposition put forth by Kunz (1953) that the provision of aid and assistance, even under the premise of 'humanitarian' reasons, can potentially establish a positive kind of soft law, that will ultimately bind a state. It would be hard to conceive of a state that has consistently provided humanitarian assistance abruptly reversing its stance, declaring its refusal to further extend such humanitarian assistance.

THE HUMAN RIGHTS 'INTERNATIONAL STANDARD' IN MALAYSIA

The term 'international standards' was mentioned in Amnesty International's 2010 report when it reported that:

> *Malaysia has consistently failed to ratify international standards that protect and promote the rights of refugees and asylum-seekers*.

This notion was held by Amnesty due to the lack of international conventions that Malaysia has acceded to that governs human rights generally, and refugee rights particularly. Amnesty further reported that despite this lack of accession to international conventions, Malaysia is still bound by customary international law, and is therefore required to respect principles such as *non-refoulement.* However, from the report it could be seen that Amnesty's notion of international standard is primarily the obligations due to refugees under the relevant multilateral conventions and treaties (i.e. the right to employment and education), which Malaysia is ultimately not a party of. And in relation to customary

international law, Malaysia's domestic case laws portray the incoherent stance on its application within the domestic plane. As such, Amnesty's report may not have much value in terms of influencing Malaysia to adopt an improved framework on refugee rights. Despite that, Malaysia presently is accepting refugees and asylum seekers, and have had no current cases of breaching the principle of *non-refoulement*.

Illiberal states tend to sign human rights treaties more to satisfy international pressure that they should, than because of a true commitment to the moral weight of the documents themselves (Davies 2013).

The legal framework of other states within ASEAN exhibit diverse characteristic, with its own set of processes to address the issue of refugees, or more appropriate referred to in this context, forced migration concerns.

i) THE PHILIPPINES

The Philippines is the only ASEAN state member to have acceded to both the 1951 Refugee Convention and the 1954 Convention relating to the Status of Statelessness. In October 2012, via Department Circular No.058, the Department of Justice Manila established a combined refugee and statelessness status determination procedures, under the purview of the Refugees and Stateless Persons Protection Unit (RSPPU).

ii) CAMBODIA

Cambodia is the only other ASEAN member state that has acceded to the 1951 Refugee Convention. UNHCR Global Report 2000 highlighted that at the time, despite not having translated the 1951 Refugee Convention into its domestic legislation, Cambodian authorities remains respectful towards documentations provided by UNHCR to refugees. In 2008, Cambodia established a Refugee Office within the purview of the Ministry of Interior's Department of Immigration, incorporated the 1951 Refugee Convention into its domestic legislations, and inaugurated new procedures recognizing refugees and asylum seekers. Cambodia has the most comprehensive legal framework in ASEAN, consisting of among others, birth registration and education.

iii) THAILAND

As of January 2017, UNHCR (Thailand) reports that there are currently 102,553 refugees living in nine refugee camps in Thailand, which is run by the government and assisted by local NGOs. In terms of refugee determination procedures, the Thailand government undertake the process themselves via 'Provincial Admission Boards' located in provinces with higher refugee density. Further ingenuity by the Thailand government in creating a fast-track procedure for family members of registered individual refugees as reported in UNHCR's 2012 Global Report is an admirable initiative, considering the fact that Thailand is not a party to the 1951 Refugee Convention.

iv) INDONESIA

UNHCR records the number of persons of concern in Indonesia in the year 2015 amounting to 13,548, which consists of both refugees and asylum-seekers. Refugees and asylum seekers in Indonesia generally find it harder to sustain their living due to the lesser amount of job opportunities in the country, compared to either Thailand or Malaysia. This condition pushes refugees and asylum seekers take the perilous journey from Indonesia to Australia, despite the strict immigration policies implemented in Australia beginning the year 2014.

v) VIET NAM

UNHCR reported that at the end of the year 2010, there were a recorded number of 10,200 stateless persons and 1,928 refugees in Viet Nam. Despite Viet Nam not being a state party to the 1951 Refugee, Viet Nam has significant legal frameworks in place,

addressing both birth registration and naturalization. UNHCR commended Viet Nam for the expansive rights guaranteed under the Law on Vietnamese Nationality 2008 as the provisions cover *inter alia* rights for refugee children born in Viet Nam (irrespective of the parents' status) to obtain Vietnamese citizenship.

vi) LAO PEOPLE'S DEMOCRATIC REPUBLIC

Similar to Cambodia, Lao PDR have not acceded to the 1951 Refugee Convention. It is reported by UNHCR that at present, there are no active cases of asylum seekers, refugees or stateless persons within Lao PDR. Nonetheless, UNHCR further reported that Lao PDR had acted in contravention of the customary international principle of *non-refoulement* in May 2013 when it deported nine individuals, including five children, from the Democratic People's Republic of Korea (DPRK) to China, and who were reportedly sent back to DPRK.

vii) ASEAN Legal Framework

In addition to their respective national legal frameworks, ASEAN states have collectively recognised the need for a set of human rights standards more comprehensive than the UDHR in order to effectively address human rights concerns. Consequently, through the efforts of the ASEAN Inter-governmental Commission on Human Rights' ("AICHR"), ASEAN collectively adopted the ASEAN Human Rights Declaration ("AHRD") on 18 November 2012 at the 21st ASEAN Summit in Phnom Penh, Cambodia, uniting on human rights issues including civil and political rights, economic, social, and cultural rights, and cooperation in the promotion and protection of human rights. The adoption of AHRD received mixed responses, with some viewing it as a step forward in a region that emphasizes more on the set of rights often-dubbed as the 'Asian values' over individual rights, and a region with extremely traditional notions of state sovereignty. However, the UN Human Rights Council's Coordinating Committee on Special Procedures commented on the provisions of AHRD that, 'advocating a balance between human rights and duties creates much greater scope for Governments to place arbitrary, disproportionate and unnecessary restrictions on human rights'. From a certain point of view, it could safely be said that the 'AHRD contains both progressive and problematic elements' (American Bar Association 2014). Nonetheless, there are always two sides to a coin, and the AHRD could also be seen as a pragmatic compromise, a welcome step by ASEAN states towards strengthening human rights protection and cementing their commitment to such protection in a region with a diverse range of states with different historical backgrounds and ratifications and accessions to major human rights conventions. The ADHR is seen as an evolution within ASEAN that, despite its limits, cannot be ignored because it addresses human rights practically within the means each ASEAN state can enforce (Rodolfo 2013).

There is widespread agreement that the provisions of the ADHR are not legally enforceable in the region and that the provisions are merely persuasive for judges to refer to in the (extremely unlikely) event that claims of a violation of rights are brought before the domestic courts, an action that is actually guaranteed by Article 5 of the ADHR. However, as anticipated of a non-binding document, such action can only be brought by individuals for alleged violations of rights guaranteed under the constitution or law of the individual's own state, and there is no reference of a violation of rights guaranteed under the ADHR.

Out of the forty declarations contained in ADHR, of interest and relevant in dealing with the issue of refugees are the three declarations provided below:

> *16. … right to seek and receive asylum in another State in accordance with the laws of such State and applicable international agreements.*
>
> *31. (2) Primary education shall become compulsory and made available free to all.*
>
> *39. ASEAN Member States share a common interest in and commitment to the promotion and protection of human rights and fundamental freedoms … in accordance with the ASEAN Charter.*

Despite the fact that Declaration 16 grants individuals the right to seek asylum, this right is limited by the phrase "in accordance with the laws of such state and applicable international agreements." It appears that the text makes the right to seek asylum contingent upon the domestic laws of a state and any international agreements it has entered into; in the case of ASEAN states, only Cambodia and the Philippines would have legal obligations under the 1951 Refugee Convention, as they are the only states to have acceded to the international instrument. It would be imprudent to conclude that ASEAN member states are unwilling to recognise that the principle of asylum has crystallised into customary international law because they failed to mention any other principles of international law in paragraph 16. Inevitably, the term 'applicable international agreements' would also refer to the UDHR, the Vienna Declaration and Programme of Action ("Vienna Declaration") which was adopted by the World Conference on Human Rights on 25 June 1993, both of which are applicable within the ASEAN region, and the Asian-African Legal Consultative Organization ("AALCO") Bangkok Principles on the Status and Treatment of Refugees ("Bangkok Principles"). Article 14 of the UDHR, paragraph 23 of the Vienna Declaration and Article II of the Bangkok Principles all '*affirm the fundamental right without distinction of any kind to seek and enjoy asylum from persecution in another state and upholds the rights of refugees to return to their country of origin*'. The Bangkok Principles additionally recognize the principle of *non-refoulement*.

In accordance with Article 31 of the ADHR, the reaffirmation of the fundamental right to education accords with the obligations of all ASEAN member states under the CRC, to which all ten states are parties. Although the right to education here does not specifically refer to the rights of refugee children, but rather to the rights of children in general, it is a broader scope of rights that would inevitably include refugee children. Despite the wording of this declaration and the legal obligations under the CRC for state parties to provide free education to all, albeit only for primary education, it is evident that Malaysia is not complying with this obligation, as the majority of refugee children have not received primary education from the Malaysian government.

Furthermore, it is overly optimistic to assume that the effective implementation of human rights obligations among ASEAN members is guaranteed by the wording of the provision stated in Article 39. This provision states that members are committed to promoting and protecting human rights and fundamental freedoms, with the objective of achieving this through cooperation among member States and other relevant organisations. The lack of specificity, clarity, and enforceability in the commitment to safeguard human rights and fundamental freedoms within the ASEAN Charter is the reason for its perceived generality, vagueness, ambiguity, and absence of reference to other legal frameworks. As previously said, it should be noted that the enforcement provision of the ADHR, as outlined in Article 5, is subject to the constitutional and legal constraints of each member state. Consequently, this grants each member state the ultimate discretion to establish the

specific rights standards that it will provide for individuals within its jurisdiction.

SYNTHESIS BETWEEN RELEVANT STATE PRACTICE AND OPINIO JURIS OF ASEAN MEMBERS

We have seen in the preceding paragraphs that each ASEAN member has a different legal framework and set of procedures in place for dealing with the issue of refugees on their territory, and it is safe to state that Thailand and Cambodia have more efficient processes than the other member states. Currently, it appears that member states have a limited open-door policy regarding the acceptance of refugees seeking asylum, permitting them access and subjecting them to refugee-determination procedures conducted either by the UNHCR or by the member state's authorities. Consequently, in terms of state practise, all ASEAN member states share a similar perspective, namely, that there is a general acceptance of asylum-seeking procedures and that individuals found on their territory who claim to be refugees or asylum seekers must undergo the necessary procedures to attain that status. The same cannot be said for subsequent rights refugees should be guaranteed in asylum-seeking countries, such as the right to education or healthcare, as the member States are not obligated to provide such rights because, with the exception of Cambodia and the Philippines, they have not ratified the 1951 Refugee Convention.

Due to its broad and general provisions, and the fact that, despite the existence of such a declaration, absolute power to determine the standard of human rights or the rights accorded to refugees and asylum-seekers is still absolute, it is safe to assume that the provisions contained in the ADHR are insufficiently comprehensive and adequate to address the protracted refugees, asylum-seekers, and statelessness situation in the Southeast Asian region. Another criterion for determining effectiveness that is absent from the ADHR is the existence of an independent judicial authority capable of ensuring that states adhere to and implement its provisions. In contrast to Europe, Africa, and the United States, Asia is notorious for the absence of a supranational human rights adjudication system to judge prospective human rights violations. However, judicial decisions are not the only means to ascertain state practise and *opinio juris* of states within the ASEAN region on issues pertaining to refugees and asylum seekers. UNGA resolutions containing UNHCR doctrine may be considered as 'evidence of customary international law, either of state practise or *opinio juris* (Lewis 2017).

CONCLUSION

Over time, the influx of irregular migrants in Malaysia, driven by the pursuit of improved economic opportunities, has resulted in a desensitization of the local community towards the difficult circumstances faced by refugees and asylum seekers in the region. Some even going as far as equating refugees and asylum seekers to economic migrants, failing to recognize and acknowledge the need for better and more improved protections towards these people. Although times are changing, there are still a minority few who are unwilling to concede that a stronger framework and collaboration between the local government and independent organizations assisting the refugees will in the long run benefit the local population themselves by improving security, safety and even add on to the economic growth. The traditional notion that is still prevalent in most ASEAN member States, is the insistence on state sovereignty and member States' unwillingness to interfere in another state's governance, and this prevents stronger condemnation towards other States that have committed or failed to prevent breaches of human rights obligations occurring domestically.

During the mid-1970s to early 1980s, Indochinese refugees' crisis, Malaysia actively participated with UNHCR in the CPA, together with other states in the Southeast Asian region. Despite some criticism of the CPA as a whole, it is undeniable that ASEAN member states admirably embraced the concept of 'burden-sharing', eager to not prolong and actively address the prevalent refugee crisis at the time.

> … *[m]ore than two decades ago, the international community, with the full and eager cooperation of the Association of Southeast Asian Nations (ASEAN), embarked on a game-changing approach to burden-sharing in the refugee context. Whatever its flaws, the Comprehensive Plan of Action (CPA) undeniably achieved its goal of ending the Indochinese refugee crisis ... By 1998, the CPA was over and only small pockets of Indochinese refugees remained from the refugee crisis that had gripped Southeast Asia for almost a generation* (Shum 2011).

The type of cooperation seen during the CPA is something that needs to be achieved to tackle the refugee situation in Malaysia. Although this may be difficult due to the stigma surrounding refugees and asylum seekers entering Malaysia, particularly those from Myanmar, both the executive and the general human rights movements are committed to improving the plight of refugees present in Malaysia and the treatment towards potential asylum seekers.

Malaysia remains respectful of the principles of *non-refoulement* and asylum despite the unresolved legal status of the application of customary international law in Malaysia and the uncertain future of its accession to the 1951 Refugee Convention or 1967 Protocol. Concerning the possibility of Malaysia acceding to the 1951 Refugee Convention and 1967 Protocol, there is hope in the will of the people, those who place a higher value in being human and allowing those seeking refuge and asylum in, than those who believe it preferable to keep borders closed. As Mann (2016) concluded, 'human rights are defined by the fact that in the exceptional case they cannot be suspended by an act of sovereign will'. Consequently, citizens are obligated to influence the actions of their sovereign through pressures of humanitarian assistance, which in the end may potentially alter Malaysia's overall landscape with regard to refugees.

REFERENCES

AirAsia Bhd v Rafizah Shima bt Mohamed Aris [2015] 2 CLJ 510 (AirAsia)

Amnesty International (2010), Abused and Abandoned: Refugees Denied Rights in Malaysia, 16 June 2010, ASA 28/010/2010, available at: https://www.refworld.org/docid/4c19d1aa2.html [29 August 2023]

Asamoah, O. Y. 1966. *The Legal Significance of the Declarations of the General Assembly of the United Nations*. Springer eBooks. https://doi.org/10.1007/978-94-011-9495-2

Bato Bagi & Ors v Kerajaan Negeri Sarawak & another appeal [2011] 6 MLJ 297 (Bato Bagi)

Breitenmoser, S., & Wildhaber, L. 1988. *The Relationship between Customary International Law and Municipal Law in Western European Countries*. Zeitschrift Für Ausländisches Öffentliches Recht Und Völkerrecht, Bd. 48. S. https://edoc.unibas.ch/4437/

Che-Meh N, Malaysian Rep. on Agenda Item 79: Report of the International Law Commission on the Work of its 63rd and 67th Session athe Sixth Committee of the 67th Session of the United Nations General Assembly, New York, 1

November 2012, https://www.un.int/malaysia/sites/www.un.int/files/Malaysia/67th_session/2012-11-01_ilc_report.pdf [29 August 2023]

Colombian-Peruvian asylum case, Judgment of November 20th, 1950 (Colombia v. Peru)

Continental Shelf (Libyan Arab Jarnahiriya/Malta), Judgment, I. C.J. Reports 1985, p. 13. pp. 29–30, § 27

Crawford, J. 2012. Brownlie's Principles of Public International Law. https://doi.org/10.1093/he/9780199699698.001.0001

Department Circular No. 058 - Establishing the Refugees and Stateless Status Determination Procedure [Philippines], 18 October 2012, available at: https://www.refworld.org/docid/5086932e2.html , [17 November 2023]

Davies, M. 2013. The ASEAN Synthesis: Human Rights, Non-Intervention, and the ASEAN Human Rights Declaration. *Georgetown Journal of International Affairs*, 51–58. https://digitalcollections.anu.edu.au/handle/1885/25155

Hamid AG & Khin MS. 2006. '*Judicial Application of International Law in Malaysia: An Analysis'*, http://www.malaysianbar.org.my/international_law/judicial_application_of_international_law_in_malaysia_an_analysis.html#1 (citing Blackstone W, Commentaries on the Law of England, Vol IV, Chapt. V, (1765-1769) at p. 55) [29 August 2023].

Jaafar US, Malaysian Rep. on Agenda Item 82: Report of the International Law commission on the Work of its 59th Session at the Sixth Committee of the 62nd Session of the United Nations General Assembly, New York, 25 October 2007, https://www.un.int/malaysia/sites/www.un.int/files/Malaysia/62nd_Session/62unga024.pdf [29 August 2023]

Mann, I. 2016. *Humanity at Sea: Maritime Migration and the Foundations of International Law*. Cambridge Studies in International and Comparative Law. Cambridge: Cambridge University Press. doi:10.1017/CBO9781316563106

Kneebone, S. 2014. The Bali Process and Global Refugee Policy in the Asia-Pacific Region. *Journal of Refugee Studies*, 27(4), 596–618. https://doi.org/10.1093/jrs/feu015

Kneebone, S. (2016). Comparative Regional Protection Frameworks for Refugees: Norms and Norm Entrepreneurs. *The International Journal of Human Rights*, 20(2), 153–172 https://doi.org/10.1080/13642987.2016.1141499

Kraft Foods Schweiz Holding GmbH v Pendaftar Cap Dagangan [2016] 11 MLJ 702 (Kraft Foods Schweiz Holding)

Kunz, J. L. 1953. The Nature of Customary International Law. *American Journal of International Law*, 47(4), 662–669. https://doi.org/10.2307/2194914

Letter from the Coordination Committee of the Special Procedures of the Human Rights Council on the draft ASEAN Human Rights Declaration, UNOHCHR ("Coordination Committee Letter"),
http://www.ohchr.org/Documents/HRBodies/SP/LetterASEAN_Nov2012.doc [29 August 2023]

Lewis, C. 2017. *UNHCR's Contribution to the Development of International Refugee Law: Its Foundations and Evolution*. Routledge eBooks (pp. 121–144).

https://doi.org/10.4324/9781315092478-5

Merdeka University Berhad v Government of Malaysia [1981] 2 MLJ 356 (Merdeka University)

Mohamad Ezam Mohd Noor v Ketua Polis Negara & Other Appeals [2004] 4 CLJ 309 (Mohamad Ezam)

Olofsen v Government of Malaysia [1966] 2 MLJ 300

Prime Minister Najib Razak's speech given at the 70th Session of the United Nations General Assembly in New York in 2015, speech obtained from the Ministry of Foreign Affairs http://www.kln.gov.my/web/can_ottawa/e2015/-/asset_publisher/ME2g/blog/prime-minister-calls-for-new-solutions-to-address-extremism-and-refugee-crisis?redirect=%2Fweb%2Fcan_ottawa%2Fe2015 [29 August 2023]

Public Prosecutor v Narongne Sookpavit & Ors [1987] 2 MLJ 100 (Narongne Sookpavit)

Public Prosecutor v Oie Hee Koi & Associated Appeals, [1968] 1 MLJ 148, (Oie Hee Koi).

Rodolfo CS, East Asia Forum http://www.eastasiaforum.org/2013/02/08/aseans-declaration-advances-human-rights-in-asia/ [29 August 2023]

Schwebel, Stephen M., & American Society of International Law. 1971. *The Effectiveness of International Decisions ; Papers of a Conference of the American Society of International Law and the Proceedings of the Conference*. Ed. Stephen M. Schwebel. Leyden : Dobbs Ferry, N.Y.: Sijthoff; Oceana Publications

Shum K. 2011. A New Comprehensive Plan of Action: Addressing the Refugee Protection Gap in Southeast Asia through Local and Regional Integration, *Oxford Monitor of Forced Migration Vol. 1, Number 1*, 60–77

Stanislaus Krofan & Anor v Public Prosecutor [1967] 1 MLJ 133 (Stanislaus Krofan)

Subramaniam, Y. 2008. The United Nations Declaration on the Rights of Indigenous Peoples: Additional Enforceable Land Rights for the Orang Asli? *2 MLJ lxxv, Malayan Law Journal Articles*, (citing Highet, K. 1994. Oppenheim's International Law, Vol. I, Peace (2 vols.) (9th Ed.). Ed. Sir Robert Jennings and Sir Arthur Watts. Burnt Mill: Longman, 1992. Pp. lxxxvi, 1133. Indexes. American Journal of International Law, 88(2), 383–386. https://doi.org/10.2307/2204109)

Subramaniyam Subakaran v PP [2007] 1 CLJ 470 (Subramaniyam)

The ASEAN Human Rights Declaration: A Legal Analysis http://www.americanbar.org/content/dam/aba/directories/roli/asean/asean-human-rights-declaration-legal-analysis-2014.authcheckdam.pdf [29 August 2023]

The Asian-African Legal Consultative Organization (AALCO), Bangkok Principles on the Status and Treatment of Refugees ("Bangkok Principles"), 31 December 1966 http://www.refworld.org/docid/3de5f2d52.html [29 August 2023]

The Guardian (2015), https://www.theguardian.com/world/2015/may/12/malaysia-migrants-boats-rohingya-bangladesh-myanmar-burma [29 August 2023].

Tun Naing Oo v Public Prosecutor [2009] 5 MLJ 680 (Tun Naing Oo)

UN High Commissioner for Refugees (UNHCR), Good Practices Paper – Action 6: Establishing Statelessness Determination Procedures to Protect Stateless Persons, 11 July 2016, available at: https://www.refworld.org/docid/57836cff4.html [17 November 2023]

UNHCR http://reporting.unhcr.org/sites/default/files/UNHCR%20Indonesia%20Factsheet%20-%20AUG2015.pdf [29 August 2023]

UNHCR http://www.unhcr.org/uk/protection/statelessness/4d651eeb6/world-map-parties-1954-convention-relating-status-stateless-persons-1961.html [29 August 2023]

UNHCR Universal Periodic Review: Lao People's Democratic Republic http://www.refworld.org/country,,UNHCR,,LAO,,54c0d9414,0.html [29 August 2023]

UNHCR Universal Periodic Review: Socialist Republic of Viet Nam http://www.refworld.org/country,,UNHCR,,VNM,,51c946514,0.html [29 August 2023]

Village Holdings Sdn Bhd v Her Majesty the Queen in Right of Canada [1988] 2 MLJ 656 (Village Holdings)

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