

Protection; Challenges to the United Nations High Commission for Refugee and Malaysia's Government.

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Abstract: Refugee or asylum seekers are more than simply a human rights issue. Refugee movements are also an essential part of international politics. This study will delve into the Malaysian government and United Nations High Commission for Refugees (UNHCR) challenges for the protection of refugee in Malaysia. The UNHCR operation in Malaysia is not without problems. Even though Malaysia is not a signatory to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, that does not mean that nothing can be done to protect the refugees in the country. The reasons Malaysia should cooperate with UNHCR needs to be addressed rapidly to find a long term solution for this problem. This will then followed by analyzing Malaysia's international commitment and obligation relating to Refugee in general. Discussion will touch on the role of Malaysia as a state party to the United Nation (UN) and its refusal to ratify the 1951 Convention Relating to the Status of Refugee (CRSR). Other dimension of this paper is the highlight of the mechanism that Malaysia's government should adapt to assist the UNHCR in resolving the challenges. Finding of this study will show the extent of protection offered to refugees under domestic laws and the reasons why Malaysia should fulfill its international obligation towards refugee and also the further effort that must be initiated to clinch compliance to protection under international law.

Keywords: Refugees, Unhcr, Malaysia, Challenges, cooperation

INTRODUCTION

Refugees are people who cross international borders in order to flee from human rights exploitations and conflict (Betts and Gill 2011). Refugees are “prima facie” evidence of human rights violations and helplessness. People who are victimized and dispossessed of their country and communities and means of livelihood are frequently forced to flee across the borders of their home countries and seek safety abroad.

Generally, wherever states have maltreated their own people or there have been wars, people have left their own country. Furthermore, the problem of refugees is significant in the world and also important for our understanding of a current issue that significantly affects the lives. The problems of refugee effecting the aspects of national and international politics, policy making process, human right and development which highlighted by the evolving international legal regime and point out that understanding of these impacts are very crucial. Since the boat people era in 1970s, the UNHCR has been existing in Malaysia. From the very beginning, the Malaysian government is not play any role in any processes relating to refugees, UNHCR independently managing all this matter. (UNHCR, 2014). Furthermore, UNHCR also plays an important role in detention. One such case in which UNHCR intervenes is the case, where a boy aged 17 from Indonesia was charged with an offense under the Immigration Act 1959 for illegal stay. Representative of the UNHCR was present at the trial. The charge was then withdrawn when the prosecutor was satisfied that the boy is a mandate refugee under the support of UNHCR.

Moreover, UNHCR collaborating with several non-governmental Organizations and volunteers in Malaysia. Apart from that UNHCR provides assistance for refugees in a variety of areas including education, financial assistance, healthcare,

shelter, counseling, and other welfare needs (UNHCR, 2014). All these assistance is important for refugee because in Malaysia they did not get such services and Malaysia government imposed several laws to utilize such services. Therefore, the Malaysian government has agreed that those who hold the UNHCR identification documents will not be accused with illegal entry or failure to produce valid travel documents but this is not a pledge against likely detention and abuse by the enforcement authorities including the civilian’s voluntary army (Human Rights Watch, 2004).

UNHCR’s notable work in the country can be traced during the Indochina refugee crisis and in the handling of Filipino refugees in Sabah. In both crises, UNHCR played an important role in providing shelter and material assistance to the refugees amidst political pressure and challenging reaction on the part of the authority and the local people (Robinson, 2006).

The problem is ongoing despite numerous calls made by various NGOs and human rights advocates to acknowledge refugee rights (Supaat, 2013). Having UNHCR to do all the work relating to refugees does not mean that Malaysia has discharged its duty and responsibility under the International Law. As supported by many scholars, the principle of Non- Refoulement (NR) has become an international custom and therefore binds Malaysia even though it’s non- ratification of the CRSR. Under the rule of NR, a state is prohibited from returning any person or refugee to a territory that will expose the person to the risk of persecution, torture or inhumane treatment and degradation. Furthermore, there is only one UNHCR office found in Kuala Lumpur. Because of that, since 1997 until now other problems have occurred due to lack of UNHCR presence in Malaysia. This means refugees must travel to the Kuala Lumpur to make the application. It is causing high expenses for the refugee to apply for the UNHCR identity card.

SIGNIFICANCE OF THE STUDY

The importance of this study is to identify that why Malaysia should play a significant role in the protection of refugees in Malaysia even though it has faced huge challenges. This study examines the role and duty of the Malaysia as a United Nations member country in assisting UNHCR to resolve refugee resettlement problems in Malaysia. The study will reveal the importance of close cooperative relationship between Malaysia and UNHCR. The researcher attempts to identify the implications if Malaysia's government responds to overcome the problems faced by both UNHCR and refugees in Malaysia. It will give a huge contribution to the government to develop a relationship with the UNHCR. The finding would be contribute not only to improve the policies of refugee in Malaysia but to produce a clear understanding and awareness of protecting refugee in the humanitarian basis. On the other hand, the findings of this study will help improve Malaysia's reputation in the international community. extend the growing body of literature in refugee studies in Malaysia. The study will also contribute in bridging the existing gap in the literature on the challenges of UNHCR in Malaysia.

LITERATURE REVIEW

According to Melander (1981), demonstrated that, the allowing of asylum seekers in the developing country seeks financial contribution from other countries too, especially, when the refugee have found the shelter for them in a country. The further, mentioned that an important responsibility for the international organizations for the asylum seekers which must coordinate to assist them.

Moreover, According to Goodwin (1986), in his article, International Law and the Detention of Refugees and Asylum

Seekers, provides, the detention of refugees and asylum-seekers demands separate handling, but can never be disjointed from the context of the whole. He emphasized that, international solidarity and burden sharing will be the best solutions to the refugee problems and challenges and together with similar developments. Therefore, detention involves for the international community and UNHCR, both a elementary human right issue and a basic protection matter.

According to Kelley (2007) in his other work, examine that, whole generations have certainly not known the only country they can legitimately call home. There are huge of refugees living their life in restricted camp due to no long-lasting solutions and the denial legal nationality in their country of asylum. In the host country, and predominantly for those countries with the highest number of refugee, the expenditures of doing so are more than their insubstantial economies can tolerate.

Dow (2011), defines refugees as those persons who are "unexpectedly forced to involuntarily leave their homes and flee for their lives often to unknown destinations" (p. 211). However, forced migration can be introduced by many circumstances, such as natural or man-made disasters, or conflict-related events. In 1951, the U.N. Forced migration for refugees, in this respect, is considered conflict induced displacement, where persons are forced to flee across international borders in search of safety and protection from violent conflict. However, when refugees arrive at their host country, refugee assistance programs strive to help the refugees become self-sufficient within a short time.

The refugees in Malaysia

This sub-section widely discusses about the situation of refugees in Malaysia. There are several literatures mainly discussed about the obstacles and

challenges of Refugee in Malaysia. On the other hand, in this sub-section, the previous studies have primarily concentrated on the challenges of refugee in Malaysia and the factors that lead to the challenges that facing by refugee in Malaysia.

According to Human rights watch (2004), foreign government should encourage Malaysia to provide protection and assistance to all the refugees and UNHCR on its soil and also ratify the refugee convention. Moreover, Should urge the Malaysia government to revise its laws as to permit UNHCR and other agencies to provide humanitarian assistance for asylum seekers and refugee. This article argued that, Malaysia government should strengthen and support UNHCR consistently in its protection role in Malaysia..

According to Anni (2005), Malaysia is not a signatory to the 1951 Convention Relating to the status of refugee 1967 protocol. It has no legal framework, guidelines or administrative procedures to address the right to seek asylum or to provide humanitarian assistance or protection of refugee. Moreover, he mentioned in his work that, asylum seekers and refugee are viewed as prohibited immigrants as per Malaysia Immigration laws. This means, the asylum seekers and refugees who illegally enter and stay and are subject to the threat of arrest, detention and deportation contrary to international law. Besides that, refugee in Malaysia lives in inhabitable huts or squatter settlements with no basic needs such as electric, water or sanitary system.

According to Amarjit (2007), Malaysia is a key player in regional and global affairs and is in a strong position to initiate programs for the inclusion of human rights concerns in refugee policy in the region. The author further explains that, Malaysia admissions of refugees and its refugee protections are poor compared to its neighbor country Thailand, which hosts refugee camps are frequently razed

to the ground by 'Rela' official. Similarly, Malaysia is hostile to human rights group that work with refugees compared to Thailand. Yet the debate on Malaysia's refugee policy should not undecided the fact that there has been some commitment to refugee protections in various periods.

According to Hema (2013), in her work, "Myanmar's Rohingya Refugee in Malaysia Education and 'The Way Forward' focuses mainly on education policies for the Rohingya refugee children. She mentioned that, policies for child refugee education in Malaysia should be formulated and implemented by UNHCR as the international organization which deals with refugees.

However, according to Beah (2013), in his work, he emphasize that, protection and assistance of refugee and asylum seekers in Malaysia is implemented through informal mechanisms established by the UNHCR in cooperation with NGO and made possible through a state of exception justified on the grounds of the Malaysia state's irregular declaration of humanitarianism. Moreover, the UNHCR's existence in Malaysia is justified, service oriented NGO's are allowed to function, and Muslim refugees, especially are tolerated and sometimes even accepted into society.

Chuah (2014) in his work he mainly emphasizes on quality of life among children of refugees in Malaysia. He mentioned that, most refugee escape from their countries due to the security threats from the armed forces that seized political power in their countries. In most cases, it is not only the political parties, but also the ethnic minorities have been inhibited. Besides that, he argued that Malaysia received the second largest new individual applications for refugee status, about 15 700 new claims in the year of 2011. He mentioned that according to the UNHCR report 2011 it is estimated to have 86680 refugees and people in refugee like situation in Malaysia.

However, according to Don & Lee

(2014), the representations of asylum seekers and refugees as illegals contribute to conveying them criminal abilities, which offers the reason for 'keeping them out'. Moreover, Criminalization is reflected in the decision of words identified with the discipline for violating migration laws, including making a move against them, kept, extradition. Detent and return them to their country. These are the two things are happening here. To start with, by distinguishing asylum seekers and displaced people as illegals' and they are being conflated into the all the more debilitating and risky illicit migrant classification, which discloses the need to protect ourselves. Second, securitizing refugees and asylum seekers as dangers is a procedure used to legitimize the activity of keeping them out of the nation and sending them home.

THEORETICAL CONCEPTIONS

A refugee has been part of international politics affecting almost all parts of the world. Refugee has been and will continue to be an international concern. There are several schools of thought in International Relations which providing significant theories to securitize the problems occurring in the international arena. In this study, the researcher will apply two theories to explain the issue which fit in social Constructivism, and Securitization, where the theories and concept apt to give an understanding of the issue to the readers. The importance of theories, Constructivism and Securitization to the study lie in their major postulations. Constructivist assumptions that have human traits and its focus on individuals are relevant to the study. A refugee is humans and the state traits of human should come to bear in the way refugees are treated. However, the Securitization theory that focuses on security is also relevant to the study. The refugees should be secured in the host countries and should not be humiliated or maltreated.

Constructivism

Constructivism has evolved as an influential approach in International Relations theory. In this study, the researcher attempt to explain the constructivism theory to make a clear understanding for readers about the research topic. To explain the fundamentals principals of constructivist theory, it is important to examine the theory of International Politics of Alexander Wendt and his Extroverted (1999), which is offers most broad view point of constructivist theory. This theory stipulates that the structures of interaction are influenced by shared conceptions. Moreover, identities and interests are formed by collective ideas. Wendt(1999), was not the first to shed light on human interaction. Notable Philosopher such as Thucydides had illustrates how Language and treaty influence identities as well as how it enables power to be translated into influence (Lebow 2001). Besides, the theory attaches importance to the meanings that are assigned to material objects, rather than the mere existence of the objects .It holds that reality is socially made and emphasizes norm development, identity, and ideational power than the other major theoretical paradigms. In fact, norms, identity, and ideas are important elements in constructivist theory.

Although, International Relations are not easily visible to human sense, On the other hand, states have "human" traits (Wendt 1999). According to Walts(1998), individuals are the unit of analysis in Constructivist theory. Similarly, Wendt(1999) identifies the states as primary unit of analysis. However, states are made up of individuals who belong to a state system and his responsibility to individual within the state system as well as to the state.

The constructivist approach is a useful and complementary tool that lends itself well to and examination of the role of

norms and identity in refugee politics. It asks us to look at how identities and interests accordingly evolve. Moreover, how and why statist perceptions of refugees and the refugee issue change overtime. According to constructivist approach, state perception of the refugee problem are influenced by inter-subjective practices which include norms and ideas, that socialize states and influence on states interests and identities. Behavior, interest and relationship are socially constructed thus they can and do change (Haddad, 2008). The norm of refugee protection acts to redefine state interests and identities towards refugees and forces a rethinking of the concepts of the other and of confined political communities. If the refugee is seen as a threat, this threat is constructed according to social processes and the identities and interests within the state system at one particular period, rather than being natural or inevitable.

Securitization

In order to get a solution for the issue discussed above, Securitization spectrum is important to be implemented in this study to get a clear judgment for the issue. The school of Copenhagen developed at the conflict and peace Research Institute (COPRI) of Copenhagen and is represented by the fictions of Barry Buzan, Ole Waever, Jaap de wild and others (Waever1995;Buzan et.al.1988;Buzan Waever 2003). The Copenhagen school has established a significant body of concept rethinks security, most remarkably through its ideas of securitization and de-securitization. The School of Copenhagen has played significant role in expansion the commencement of securitization.

Refugee as well as asylum seekers has been part of a global politics but refugee and asylum seekers studies have not been the focus of International Relations theories as they should be. Because probably that refugee studies has been

taken a temporary phenomenon which does not need sophisticated theorizing. But it is important to identify which theories are more relevant in analyzing state behavior and also human threat on the asylum seekers case, moreover securitization concept and theory could explain well towards the issue. So the theories attempt to give the study its proper place within the discipline to explain the asylum seekers case with the help of theories in international relations.

According to Barry Buzan and Ole Weaver, the both scholar define security as an existential threat to the reference object. However, reference objects here, refer to the designated bodies such as non-state actor, people and ethnic. In his exertion, "People, States and Fear" Buzan point out a wide understanding of security grounded levels and divisions. Moreover, individual, state and international system is the three levels that identified and addressed in Buzan's work. Nevertheless, Buzan stated that, security should be consider to be about the pursuit of freedom and also from threat and the capability of states and also societies to sustain their autonomous identity and their functional integrity alongside forces of transformation, which they look as antagonistic. Therefore, survival is the bottom line in the security element, however it also rationally comprises a extensive range of distresses about the circumstances of existence. Rather this level range of concerns ceases to virtue the insistence of the "security" label which ascertains threats as substantial enough to permit emergency action and incomparable actions, comprising the use of force and develops part of everyday uncertainties of life is one of the complications of the theory (Collins, 2012). Besides that Buzan analyses how five sectors of security (Political, Military, Economic, Societal, and Environmental) might affect the "periphery" based on variations in the "center". The five subdivisions of security are an imperative

concept to understand when studying about securitization theory applied to a case.

DISCUSSION

Before 1997, Malaysia continues to receive refugees from Filipino, Cambodia and Vietnamese refugees. Malaysia's most successful policy in dealing with refugees came almost 30 years ago during its role in the international Comprehensive Plan of Action (CPA) for Indochinese Refugees (Robbinson, 2004). A major flow of Vietnamese refugees in Malaysia and the region more largely in the 1970s and 1980s led to the drafting of the CPA in Kuala Lumpur in March 1989 and its adoption at an international conference in Geneva in June that same year. Malaysia managed to give temporary protection to the refugees at that time because of the coordination with third countries, and countries of origin. The refugees sheltered in refugee camps in Malaysia were processed to determine their refugee status (Aslam, 2015).

However, since the plan ended on 6 March 1996, there has been no more comprehensive multilateral agreements regarding the refugee issue (Aslam, 2015). Due to that, so much uncertainty and inconsistency caused by current policy, and many refugees are struggling to survive in Malaysia. Moreover, without recognition of the refugee status by the Malaysian government, the refugees in Malaysia are continuously being harassed. There is no written treaty that authorizes the UNHCR (Lynn & Melanie, 2011). Perhaps, it is right time for Malaysia to reconsider a comprehensive and multilateral approach to the movement of refugee in the region. Even though Malaysia is not a signatory that does not mean that nothing can be done to protect the country's refugees (Dauvergne, 2003). The reasons Malaysia should cooperate with UNHCR needs to be addressed rapidly to find a long term

solution for this problem.

According to United States' world refugee survey in 2009, indicated that Malaysia is one of the worst violators of refugee rights. Malaysia's role in regional and global governance is now severely focus as both ASEAN chair and serving member of the United Nations security council for 2015-2016 (Aslam, 2015). This will provide ever greater impetus for Malaysia to react responsibly as a member of the international community relating to refugee issues. Theoretically, the researcher has observed that there have been several studies conducted on refugee issues in Malaysia, which clearly identified by the researcher in the literature review. Thus, there are no studies of why Malaysia should respond to the challenges and obstacle facing by UNHCR and what are the implications for Malaysia if Malaysia cooperates with UNHCR.

CONCLUSION

To summarize, from reviews of extant previous literature found that, most studies examined the situations of refugees in Malaysia and also most of the studies indicated that less of international community assistance for the refugee problems. Malaysia did not differentiate between asylum seekers and other irregular migrants who face prolonged detention in worse conditions. Hence, refugee in Malaysia can be canned as a form of punishment and they are not allowed to work in Malaysian and also cannot send their children to any schools in Malaysia. Moreover, Malaysia relies on under-resourced and overburdened UNHCR to identify and protect refugees in the country. Besides, Malaysia should build its own system for fairly determining the status of refugee and asylum seekers. Therefore, Malaysia should urge its neighbors to help and compassionate refugee (Human rights watch, 2011). This article mainly emphasizes on resettlement of refugee and the author mainly indicated resettlement of refugee is an excellent

solution. ,this issue should take into the consideration to embed the challenges of UNHCR. However, by fix the UNHCR challenges by the Malaysian government, could create virtuous reputation for Malaysia and also could recover the blames that Malaysia receiving until now from the international community relating to refugee issues.

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