

CHAPTER II

Conceptual Framework

State interests and international principles espoused in international law are often at variance in the world arena. The issue of refugees and their protection is certainly no exception. Refugees are received with vastly varying amounts of acceptance or rejection by receiving countries and are often the cause of inter-state conflicts or domestic controversy. Government actors are thus, at times, tempted to treat this group of non-nationals in less than humanitarian terms, counter to the articles of various conventions pertaining to the administration of refugee situations.

The Burmese displaced persons are subject to much of the same controversy as humanitarian organizations criticize the Thai government for their treatment of asylum seekers while at the same time, Thai officials claim that the refugees are a threat to national security. Thai policy toward Burmese displaced persons, i.e. those persons resident in the twenty-five plus refugee camps along the border and the students in Bangkok and the Safe Area, will be analyzed first through national security and second, through the principles of international law with the objective of determining which variables and processes the Thai government utilizes in policy making toward the Burmese displaced persons and second, to ascertain where the two paradigms conflict.

The original proposal for this thesis suggested that international relations be the focus of the analysis, but after delving into the research and becoming more familiar with the subject, I realized that national security would be a much sharper implement

for dissecting Thai actions pertaining to the Burmese displaced persons. Also expressed in the original proposal was an intention to examine the “mechanism of ‘constructive engagement;’” however, once again, after further research I came to realize that constructive engagement was not in fact a mechanism but a euphemism in defense of a policy that had been initiated some three years prior (See Chapter VI for a complete explanation and analysis). It is thus my belief that Thailand’s policy toward and relations with its neighbors has hinged upon the concept of security and therefore I have given emphasis to this concept in this thesis.

National Security

When assessing or examining a nation-state’s policy one must deal with the opinions of officials in the government who operate in terms of national, or often self, interest likened to economic profit maximization. The classic economic argument that humans are utility maximizers lends support to this claim. The axiom is not only true in economics but in politics as well. If one is to analyze the policy of government personnel who act in such a manner, then the utilization of a conceptual base consistent with policy makers will prove valuable. National security is the most appropriate tool for doing so.

National security is traditionally defined by the West in terms of a state’s military and defense capability, focusing primarily on threats originating from external sources. Issues such as population, the environment, and health were defined by the cold war bureaucrats as “low politics” while military and economic ones “high politics.”

The concept of security takes on broader definition when utilized in the Third World, however. Some authors posit that the ASEAN countries see security in a more holistic manner encompassing the economic and ecological sectors as well as the traditional military.¹ Their argument suggests that ASEAN states' national security institutions consider each of these as a particular threat to the state under the broader heading of comprehensive security.

Acharya, Dewitt and Hernandez in the article *Development and Security in Southeast Asia* wrote that the majority of states within ASEAN are authoritarian and depend on economic success or military force to sustain their regimes.² Though in May 1992, Thailand seemingly broke the cycle of authoritarianism to popular election to authoritarianism which has dominated the process of government transition for decades, the possibility of a military coup d'etat has yet to be entirely erased from the minds of politicians. The country is still a transition democracy; the military yet remains an institution which can challenge political parties for power, and therefore elected governments remain cautious not to lead themselves into a crisis where the military can seize command of the country.

The Thai concept of national security, though also in transition, has still not developed much past that of the Third World. In the Third World, national security is often concomitant with the security of a regime or interest group and it is in fact the insecurity of these groups vis-a-vis other domestic groups that leads to this perspective. Mohammed Ayoob wrote that the concept of security is applied "to the

¹ Ball. 1994 and Acharya, Dewitt, and Hernandez. 1995.

² Acharya, Dewitt, and Hernandez. 1995. 10.

security of the state - in terms of both its territory and its institutions - and to the security of those who profess to represent the state territorially and institutionally."³

The disparate actors within the Thai polity primarily respond to what they perceive as threats to their groups interests. Various groups and personalities within the military, bureaucracy and business community are concerned with their own survival and interests; security, thus, being interpreted differently by each. It is when issues such as the environment, migration, or health

threaten to have immediate immediate political consequences or are perceived as being able to threaten state boundaries, political institutions or governing regimes, these other variables must be taken into account as a part of a state's security calculus.⁴

Thai refugee policy shall therefore be examined first through the lens of comprehensive security and the security of interest groups. The most relevant components of comprehensive security for my analysis are the following:

1. Conventional security;
2. Economic security;
3. Environmental security; and
4. Health security.

Definitions of Security

Conventional security is called so because it has been the priority of the Western world well over the past century and has dominated much of the literature. It

³ Ayoub, Mohammed. *The Third World Security Predicament: State Making, Regional Conflict, and the International System*. 1995. 8-9.

⁴ Ayoub. 8.

encompasses security from all challenges to a state's national sovereignty from an external military threat. Conventional security is measured in terms of defense capability. It is the security with which the world is most familiar, states dedicating massive proportions of their budgets in its pursuit.

On economic security, Vincent Cable wrote that it "concerns the degree to which national security is threatened by dependence on external sources of technology, raw materials, food and fuel", what he called "security of supply".⁵ Since the cessation of cold war hostilities, many countries have shifted their security/foreign relations agenda towards economic concerns, though military issues remain a constant as evidenced by continued arms modernization in the Southeast Asian region.. Threats to a state's economy have often become the grounds for defensive or offensive action.

One particularly alarming trend related to economic security is the threat posed by areas of disputed sovereignty, especially those containing valuable natural resources. Conflict in the Spratly Islands, due in part to the possible existence of oil reserves, is the most serious threat to regional security in Southeast Asia. As governments need to maintain a steady supply of resources to fuel economic development, denial of these is often a subject of concern.

The employment of economic levers to push a state towards a certain action are becoming increasingly more popular, though they have met with marginal success. Unilateral threats of this nature are often nullified through diversification of a state's sources. Nonetheless, supplies of oil and to a lesser extent, natural gas, remain salient

⁵ Cable. 1995.

variables in many states' security calculus. States of lesser economic development may also avoid severing links with any source of income or material supplies.

Not to be confused with the access to resources which is a central component of economic security, environmental security acknowledges that ecological systems do not recognize international boundaries and the nation-state system within which these borders are defined. Rainforests and watersheds do not end at lines on a political map. Environmental security may thus be defined as protection of complex ecological systems.

The environmental facet of the security calculus has been popularized internationally within the last decade, and is becoming, albeit slowly, a security concern in many nations. Threats to the environment are often non-empirical and opaque to which security planners are challenged to plan a response. Issues such as global warming remain scientific question marks with many states adopting a "wait and see" attitude whereas national behavior (resource consumption, pollution controls, seeking alternative sources of energy, etc.) are adjusted minimally.

The threat from a poorly managed environment, nonetheless, is a serious one as Norman Myers elaborated in his book **Ultimate Security**. Myers argued that the most substantial threats to security arise from environmental hazards which lead to shortages in vital resources such as water.⁶ This relates then to economic security with a competition over the supply of resources and the space in which they are to be found. Environmental security may be seen as the preservation of an ecological system

⁶Myers. **Ultimate Security: The Environmental Basis of Political Stability**. 1993.

without which valuable resources would be lost, while the economic aspect would concern competition over and access to these resources.

The final aspect of security to be addressed in this thesis, one unfamiliar to the contemporary security literature, is the issue of health. Health of ones citizens has been a variable included in the national policies of states worldwide, though it is in those states with relatively superior health conditions that a threat from external sources is often perceived.

The health of a state's citizens unquestionably affects economic capacity. The HIV/AIDS epidemic has had serious economic repercussions as workers are no longer productive and costs of medical care are born by the state and/or the family. The cost is multiplied when figuring in the overwhelming number of orphaned children left by the disease.

HIV/AIDS is perhaps the most dramatic of these, but there are many others which are equally concerning to authorities. Re-introduction of a disease by persons of one state to a state in which the disease has been eradicated or introduction of new diseases to a state are more immediate concerns for policy planners. Malaria, the plague, ebola and filariasis (elphantitis) are all relevant examples. The HIV/AIDS virus is thought to have originated in Africa; had state policy makers recognized the disease at the onset and predicted the effect it would have on their respective countries and the world, they probably would have quarantined it to that continent.

These four aspects of security shall be the scale on which Thai security and related refugee policy will be measured in Chapter IV.

Refugee Rights

It has been from the international community, particularly the West and their respective bodies that Thailand has received the most criticism over its refugee policy. The West, like many member of the international community, operates under the principles embodied in the United Nations 1951 Convention and its 1967 Protocol. This instrument defines refugees as people who, because of a well-founded fear of persecution because of race, religion or political orientation, have fled the protection of and thus reside outside of their home state.⁷ Those fleeing combat situation or civil strife where they themselves were not direct targets are not considered "convention refugees" though some regions of the world, the Organization of African Unity in its Convention Governing the Specific Aspects of Refugee Problems in Africa for example, have chosen to provide them with rights equal to those defined within the convention. From these two instruments, refugees receive certain rights under international law. The 1951 Convention is also the central mechanism used for defining refugees by the countries which are signatures.

Refugee/Displaced Person

The 1951 convention under which the UNHCR operates established the official definition of refugee which would be applied for years to come:

A refugee is a person who "owing to well founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such a fear, is unwilling to avail himself of the protection of that country..."⁸

⁷ 1951 United Nations Convention relating to the Status of Refugees. Article 1 A(2).

⁸ Convention Relating To The Status Of Refugees. Chapter I/Article I.

Within another section of the definition, the document states that the convention only applies to those displaced before 1951. In the wake of anti-colonial revolutions sweeping Africa in the 1960s, a new wave of refugees emerged.

Because of the new African crisis, the Protocol of 1967 was written which abolished the Convention's time limit. This allowed for the definition and related assistance to be provided to all groups, past, present and future. This amendment pushed the original list of signing states to a much higher total than that of the original Euro-centric document. The original was of little interest to most of the world due to its time constraint and geographic focus. Most of Asia, however, still refrained from signing.

Ratified within the 1951 Convention were the rights of those defined as refugees. These rights gave the asylum seeker privileges equivalent to nationals. They were not to be imprisoned or confined in any way; they were to have the opportunity for employment, access to the legal system, health care, education and housing as well as enjoy freedom of movement.

In the cases of mass exodus, where it is problematic to immediately determine the status of all, those fleeing are considered displaced persons by the UNHCR. Though the term had been in use for nearly thirty years prior, it first officially entered the lexicon of the UN General Assembly in 1975 during the war in Indochina and eventually, displaced persons were deemed to fall under the mandate of the UNHCR.⁹ The term displaced persons allows the UNHCR the flexibility to advocate protection

⁹Goodwin-Gill. *The Refugee in International Law*. 1983. 8-10.

without each individual having to prove “a well-founded fear,” something which many may be incapable of doing under the constraints of UN conventions.

Regardless of definitional intricacies, the Thai government was not a signatory to the 1951 Convention or the 1967 Protocol; originally because the Convention was Euro-centric, evolving from a post-World War II environment, and then because it did not serve Royal Thai Government national security interests to do so, especially in the context of the Vietnam War. The RTG has continuously referred to the Burmese as displaced persons and requested that the UNHCR utilize the term “persons of concern” for those determined to be convention refugees in place of refugee because they did not want to have to officially admit to the Burmese that they were harboring refugees, who were opposed to the government in Rangoon, on Thai soil.¹⁰

The term displaced persons is used in situations where a mass exodus has occurred when people, because of violence, persecution, economics or environmental reasons, move from their place of residence to another country. It contains connotations of crossing boundaries of the nation-state. Regarding the Burmese, the Thai might apply the term to avoid obligations and to have at their disposal a flexible definition to utilize to the benefit of national security concerns.

Strictly under Thai law, all displaced persons are in fact classified as illegal immigrants. Article 17 of the Immigration Act does allow for temporary asylum with the permission of the Cabinet and the Ministry of Interior. But when inquiring as to government policy towards the displaced persons, an official with the Ministry of

¹⁰ Interview with a senior official of UNHCR. 1995.

Interior stated that Thailand differentiates Burmese displaced persons into three groups of Burmese which are permitted to stay in Thailand:

1. Those who have entered Thailand before March 9, 1976
(Burmese Displaced Persons/ผู้พลัดถิ่นสัญชาติพม่า)
41,762 persons in nine provinces;¹¹
2. Persons fleeing conflict who live in Mae Hong Son, Tak, Phetchuap Khiri Khan, and Kanchanaburi
(Persons Fleeing Conflict/ผู้หลบหนีเข้าเมืองจากพม่า)
91,191 persons;¹²
3. Students/Dissidents
521 students registered with the Ministry of Interior
2,000+ students registered with UNHCR as Persons of Concern
222 dissidents registered with the Ministry of Interior.

It is the two latter groups with which this thesis shall be concerned. The first group has attained Thai citizenship along with the Chinese nationalist Kuomintang and the Dien Bien Phu era Vietnamese refugees. The two main issues concerning refugee rights to be examined under this section are the right to asylum and the corollary right to protection and second, the issue of repatriation.

Protection

Arthur Helton posits that asylum, though not defined within the legal framework of the 1951 Convention nor its 1967 Protocol, is understood to be “the act

¹¹ General Phenphat. *The Problem of Immigrants and Persons Fleeing Conflict*. 1987. p. 5-6.

¹² Burmese Border Consortium. June 1995.

of providing 'protection' to refugees seeking entry to a territorial jurisdiction".¹³ **The Dictionary of World Politics** defines it similarly as "a quasi-legal process where one STATE grants protection to a national or nationals of another."¹⁴ Legally, the right of asylum belongs solely to the state, not the individual. This means that a person seeking asylum in a state must request it and that the state has the right to deny or accept the request.

Paradoxically, however, once a person has entered a receiving country, they may not be sent back under the principle of the 1951 Convention (Article 33) prohibiting *refoulement*. *Refoulement* is defined as the forced return of refugees to the country of origin - states in essence have a duty to protect refugees within their borders.¹⁵ The concept of *non-refoulement* also prohibits states from refusing entry to refugees at their borders. *Refoulement* may take two principal forms: direct, such as physical moving of or threat of violence against refugees forcing them back to their country of origin, or indirect - the creating of an intolerable situation again forcing refugees to return. Helton writes "The failure to provide tolerable conditions effectively promotes return and thus undermines the principle of *non-refoulement*."¹⁶

When examining asylum, the term "protection" within its definition also demands further elaboration. "Protection" writes Helton, is "the act of upholding fundamental human rights, such as the core rights declared in the covenants on civil

¹³ Helton. **Displacement and Human Rights: Current Dilemmas in Refugee Protection.** 382 - 383.

¹⁴ **The Dictionary of World Politics.** 22.

¹⁵ Helton. 383.

¹⁶ Helton. 1990.

and political rights.”¹⁷ The UN Declaration on the Human Rights of Individuals Who are Not Nationals of the Country in Which They Live embodies the guaranteeing of “security of person and freedom from arbitrary arrest or cruel, inhumane or degrading treatment.”¹⁸ Pragmatically, these points within the aforementioned UN Declaration should be the minimal responsibilities of the state towards protection of refugees. Though ideal, it may be impossible politically and/or economically for a state to provide the human rights that Helton suggests; in fact, many of those rights may not even be enjoyed by a state’s own citizens. No rationale exists, however, to justify the humiliation, torture or arbitrary arrest of refugees.

The aforementioned definitions of protection focus on legal protection within international law. They are concerned with providing legal protection to those who have crossed an international border and have lost or been deprived of this protection at home and therefore require another source.¹⁹ What is not mentioned within the human rights of the UN Declaration for protection of foreigners is the very serious problem of physical protection from attacks on camps. Because refugees often come from a group somehow related to military or at least political conflict, they are many times targeted during military campaigns. Refugee camps are frequently perceived, rightly so, to be supporters of one side in a conflict as a source of supplies or as a manpower pool.

One frequently raised question in the case of armed attacks against refugee camps is whose responsibility it is to defend the camps? Camps are, generally, to be

¹⁷ Helton. 1990. p. 383.

¹⁸ Helton. 385.

¹⁹ Helton. 1990.

open exclusively to non-combatants and any armed personnel who wish to enter a refugee camp must surrender their weapons when crossing the border. The refugees, therefore, forfeit all defensive capability. Who then should take the responsibility? The UNHCR does not have the mandate to do so. The resolution of contention originating from the crossing of an international border and infringement on the sovereign territory of a state by troops of another state is the responsibility of the offended state.

It is clear that in cases of asylum seekers fleeing combat, national security of the host nation is often brought into question. Little can be done if the host state is weaker in military strength than the attacker. Though the granting of asylum is commonly understood to never be interpreted as a hostile act, when a state with less than cordial relations with a second state grants asylum to members of a group challenging the authority of the second state, state number two may suspect at least tacit support for the opposing faction. This type of threat perception is a potential catalyst for future discord. The consequences may also be that for reasons of national security the principle of *non-refoulement* is compromised.

Repatriation

Repatriation is considered to be one of the three durable solutions to a refugee situation (the others include local integration and third country resettlement).

Refugees are people who do not enjoy a permanent relationship with one of the sovereign states within the world system; durable solutions are aimed at remedying

this.²⁰ Repatriation will be the only durable solution examined in this thesis as Thai authorities have insisted that the refugees will return and not be absorbed into the Thai community and second, because resettlement has been extremely limited, aimed primarily at those participating in the 1988 pro-democracy uprising in Burma.

Repatriation is defined as the return of refugees to their country of origin in safety and with dignity. Article 33 of the Convention states in no uncertain terms that refugees should under no circumstances be forcibly repatriated - the principle of *non-refoulement*. The issue attracts controversy when the officials concerned, exclusive of the asylum-seekers, decide on the conditions conducive to a safe return and take action based on their decisions.

In perhaps one of two optimum scenarios, "safety" is defined by the combined efforts of the UNHCR, the state of origin, the state of asylum and the refugees themselves. This should theoretically insure a safe return with proper political, economic and social reintegration of returnees in the state of origin, though this is not always the case. If negotiations exclude one of the parties, there is a risk of an uncoordinated repatriation program which may lead to unnecessary loss of life and/or future social, economic or political problems stemming from ineffective reintegration.

The second ideal scenario is what is known as spontaneous repatriation. The refugees, in a spontaneous repatriation, decide themselves that it is safe to return home and do so without the assistance of a UN or state body. This can be successful if refugees have access to accurate information as to the situation in the sending country. However, if the information is inaccurate or incomplete, the asylum seekers may return

²⁰ Gallagher. 1994.

to conditions uncondusive to the repatriation, ranging from open hostility and military conflict to lack of access to land and/or legal rights.

Particularly unacceptable scenarios are those where the state, sometimes in collaboration with the UNHCR, decides that the situation is safe and coerce a repatriation. A state may in some instances find the refugees a threat to national security either as a military target of a neighboring state or domestically by destroying the environment or creating political tension. Perhaps a worse scenario though is not when the state of origin and state of asylum are opposed but when they have good relations. The refugees are said thus to obstruct smooth relations between the two states. In either of the aforementioned cases, the state often opts for forcing the refugees to return to what they deem "safe conditions."