COMPLIANCE WITH INTERNATIONAL HUMAN RIGHTS AND REFUGEE RIGHTS PRINCIPLES.

The Case of Myanmar and its Refugees in Thailand

“Everyone has the right to seek and to enjoy in other countries asylum from persecution.”
Universal Declaration of Human Rights, Article14 (1)
Compliance with International Human Rights and Refugee Rights Principles. The Case of Myanmar and its Refugees in Thailand

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Abstract
The people of Myanmar find their personal security and well-being threatened by the military authorities of the country and have no option but to leave their homeland and seek refuge in Thailand. Nevertheless, seen as the burden and element of insecurity the refugees are often left unprotected or even expelled by the Thai authorities. The situation as such recalls what some observers shortly named “unwanted and unprotected”.

The thesis focuses on the provisions of international human rights and refugee rights principles and traces the impact of international standards on the refugee problem situation. This research aims to assess the compliance with the international human rights and refugee principles in the Myanmar-Thailand case. Taking into account the particularity of this case, the aim has a twofold structure. On the one hand, it seeks to analyze the compliance with the international human rights principles in the Myanmar context. On the other hand, it needs to analyze the compliance with the international refugee and human rights standards of the Myanmar refugees in Thailand. Falling in-between the international law and international relations theories the compliance-based theory is employed to guide the analysis and help answer the fundamental question of this research: Why is compliance with the international human rights and refugee rights principles in the case of Myanmar and Thailand problematic?
Acknowledgements

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I enhanced my knowledge and had the chance to learn the refugee subject from a humanitarian point of view, when carrying my Internship with the Office of Humanitarian Affairs of the United Nations World Food Programme (HQ Rome) in July 2002 – January 2003. This placed me in an ideal position to learn-by-working on issues related to refugee emergency work, and I wish to acknowledge the team from the Situation Room for friendliness and cooperation.

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— Alexandru Nartea
Linköping, Sweden
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<tr>
<td>ASSK</td>
<td>Aung San Suu Kyi</td>
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<td>CHR</td>
<td>Commission on Human Rights</td>
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<td>CRPP</td>
<td>Committee Representing the People’s Parliament</td>
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<td>CAT</td>
<td>Convention Against Torture</td>
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<td>CEDAW</td>
<td>Convention on the Elimination of Discrimination Against Women</td>
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<td>CERD</td>
<td>Convention on the Elimination of Racial Discrimination</td>
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<td>CRC</td>
<td>Convention on the Rights of the Child</td>
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<td>ECOSOC</td>
<td>(UN) Economic and Social Council</td>
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<td>IDP</td>
<td>Internally Displaced People</td>
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<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>ICESCR</td>
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<td>ILO</td>
<td>International Labour Organization</td>
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<td>KNU</td>
<td>Karen National Union</td>
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<td>NCGUB</td>
<td>National Coalition Government of the Union of Burma</td>
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<td>NLD</td>
<td>National League for Democracy</td>
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<td>NGO</td>
<td>Non-Governmental Organization</td>
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<tr>
<td>RTG</td>
<td>Royal Thai Government</td>
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<tr>
<td>SLORC</td>
<td>State Law and Order Restoration Council</td>
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<td>SPDC</td>
<td>State Peace and Development Council</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<td>UNGA</td>
<td>United Nations General Assembly</td>
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<td>UNHCHR</td>
<td>United Nations High Commissioner for Human Rights</td>
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<td>UNHCR</td>
<td>United Nations High Commissioner for Refugees</td>
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<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
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1. Introduction

Mass refugee movements are neither new nor unique for developing countries. They have been a political as well as humanitarian issue far beyond this century. The important difference is that, refugees earlier were regarded as assets rather than liabilities, and countries granted refuge to people having viewed them as an index of power and national greatness.¹

The Myanmar² people that find their personal security and well-being threatened by the military authorities of the country have no option but to leave their homeland and seek refuge in Thailand. Nevertheless, seen as the burden and element of insecurity the refugees are often left unprotected or even expelled by the Thai authorities. The situation as such recalls what some observers shortly named “unwanted and unprotected”.³

It would come as a contradiction to say that, but, while as never before people today are entitled to an extensive list of human rights and freedoms, some people in certain parts of the world would hesitate to speak that they enjoy their fundamental right, the “right to life”. The Myanmar people situation is one example of this reality.

There is presently more than half a century this nation is struggling within a context of authoritarian regimes and civil war. A situation that caused and is still causing widespread human rights violations and displacement. Some commentators even stated that Myanmar has as many problems as one could imagine. In this realm, it should be mentioned that there are 2 million Myanmar people in Thailand that fled civil war, various forms of human rights violations or economic hardship. To make the situation worse, there are also an estimated 1 million internally displaced people (IDP) in Myanmar, with the potential to become refugees. Therefore, a simple calculation makes the number of displaced people as high as 3 million in an area of 2,401 km of border between Myanmar and Thailand.⁴ However, this are only numbers that show the grandeur of the problem, as each and every one of the millions has a human life behind.

² Whether to call the country ‘Myanmar’ or ‘Burma’ provokes controversy since political connotations are associated with each form. In July 1989, the State Law and Order Restoration Council (SLORC) changed the name of the country, along with several other large cities and administrative divisions. The United Nations and many governments subsequently recognized these name changes, although some countries (such as the United States, several European countries and Australia) still refer to the country as Burma. While the military regime claims that it has simply re-instated the original transliterations for the country, its political opponents regard the name change as illegitimate. The opposition movement calls on a boycott of the name ‘Myanmar’ as a form of protest against the regime’s human rights abuses and lack of consultation regarding the change. This thesis retains the name ‘Myanmar’ as applied by the national government, the UN and some countries, and should not be perceived as a political judgment. See, International Crisis Group, “Myanmar: The Politics of Humanitarian Aid”, Asia Report No. 32, Brussels and Bangkok, April 2002; and, Lang H., “The Repatriation Predicament of Burmese Refugees in Thailand: A Preliminary Analysis”, UNHCR Working Paper No. 46, Canberra: Australian National University, July 2001.
³ See, Chapter 6.
This saying, the actuality and importance to address the protection of human rights in Myanmar as well as the protection of human rights and refugee standards for those in Thailand becomes an imperative for nowadays-political analysis.

1.1 Purpose and Procedure

The thesis focuses on the provisions of international human rights and refugee principles and traces the impact of international standards on the refugee problem situation.

The aim is to assess the compliance with the international human rights and refugee principles in the Myanmar-Thailand case. Taking into account the particularity of this case, the aim has a twofold structure. On the one hand, it seeks to analyze the compliance with the international human rights principles in the Myanmar context. On the other hand, it needs to analyze the compliance with the international refugee and human rights standards of the Myanmar refugees in Thailand.

With respect to the thesis research procedure there are several interrelated issues to flag up. First, the relevant international human rights and refugee protection instruments and mechanisms will be assessed, and their relationship identified. Second, to outline the state of human rights and displacement situation in Myanmar, as well as Myanmar refugees in Thailand. Third, the policy (both, official and implemented) of Myanmar and Thailand will be analyzed with regard to their coherence with the human rights and refugee protection standards, as well as the policy appropriateness to reflect these principles. And fourth, the state of compliance or noncompliance with the human rights and refugee standards, through the compliance-based theory guidance, will be analytically discussed.

1.2 Research Questions

Having outlined above the purpose of the research, the research questions come to facilitate the study process and operationalize the purpose. It should be noted here, that the working questions are in synchrony with the exploratory as well as explanatory character of the study. Therefore, drawing from the purpose, the following questions will be addressed in this study:

Q1: How do human rights relate to refugee rights?

Q2: What is the situation regarding human rights and displacement in Myanmar? What is the situation regarding Myanmar refugees in Thailand?

Q3: How does the policy of Myanmar and Thailand with respect to human rights and refugee principles shape the situation as such?

Q4: Why is compliance with the international human rights and refugee standards in the case of Myanmar and Thailand problematic?
1.3 Definition of the “Refugee” Concept

According to the 1951 Convention Relating to the Status of Refugees, a refugee is someone who:

“1. Has a well-founded fear of persecution because of his/her: race, religion, nationality, membership in a particular social group, or political opinion;
2. Is outside his/her country of origin; and
3. Is unable or unwilling to avail him/herself of the protection of that country, or to return there, for fear of persecution.”

1.4 Previous Studies

The research that has been done on Myanmar and its refugees in Thailand, especially from a legal point of view, is sparse. Most of the information is found in legal texts of the United Nations (UN) and reports of various human rights or refugee specialized Non-Governmental Organizations (NGOs), however, not in published literature. This type of information is merely functional or advocacy kind as instead of explaining and analyzing the issues it seeks to explore, reveal and change the situations. In this context, it should be mentioned that this thesis intends to contribute towards filling one missing part. Nevertheless, the reports of Human Rights Watch and Amnesty International bring considerable case information for understanding the situation in the field, and also, the data help to problematize the human rights and refugee protection issue for this research. The UN, through its human rights institutions and relevant agencies, provide a comprehensive source of legal material on the Myanmar human rights violations and the refugee protection problems in Thailand.

The studies of Chimni, Goodwin-Gill, and Hathaway and Dent have contributed to the present research by bringing insight to the refugee field on the whole, whereas Gorlick, Stavropoulou and UNHCR helped in identifying the relationship between the refugee and human rights field. In this context, the previous research on refugees’ protection and human rights is important for the present study since it traces the path to approach the Myanmar-Thailand case. Here should be mentioned the international human

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5 The concepts of “Refugee”, “Asylum Seeker” and “Migrant” have distinct connotations. Asylum seeker is a general term for a person who has not yet received a decision on his/her claim for refugee status. It could refer to someone who has not yet submitted an application or someone who is waiting for an answer. Too, the main difference between migrant and refugee is that, unlike migrants, refugees do not choose to leave their countries; they are forced to do so. See, Jastram K. and Achiron M., “Refugee Protection: A Guide to International Refugee Law”, UNHCR and Inter-Parliamentary Union, Geneva, 2001.

rights and refugees protection instruments, as well as the UN ‘soft law’ that set the level and standards from where to look at this particular case.

From a theoretical standpoint, the compliance-based theory developed by Guzman is significant for the subject of this thesis as well as in the field of international law and relations’ scholarship at large. Its importance derives from the position it assured between the international law theories and those of international relations. Also, the strength of Guzman’s theory is its ability to explain both the instances of compliance and noncompliance. This saying, the international human rights and refugee protection principles in the Myanmar-Thailand case, finds the theoretical developments brought by Guzman, useful to employ.
2. Theoretical Framework

2.1 Towards a Compliance-Based Theory of International Law

Compliance is important to international law’s role in regulating the interaction of nations. If compliance is absent, resources devoted to the creation and maintenance of international legal structures are wasted, and the study of international law loses the reason. This Chapter presents the compliance-based theory of international law, which Guzman has extensively developed, and which the subject of this thesis calls. The compliance-based theory is employed with the aim of explaining why and when states comply with international law. Achieving an empirical and policy analysis of international law, and by deduction international human rights and refugee law, would be possible to expect only with an understanding of the connection between international law and state actions. Therefore, the functioning of international legal system needs a workable theory of international legal and regulatory cooperation that compliance theory makes available. In this regard, the traditional legal and international relations theories have failed to address compliance satisfactorily.

According to Guzman, most conventional international law theories assume that there is compliance but fails to ask why. As such, the absence of an explanation of why states obey international law in some instances but not in others threatens to undermine the foundation of the international law discipline, adds the author. In turn, the theory of compliance developed in this thesis explains instances of compliance with international law and also, instances of violation. It shows a theoretical model of how international law can affect state behavior and why states sometimes violate the law, as empirical evidence proves. Regarding the state behavior, the compliance theory makes standard assumptions that states are rational, they act in their self-interest, and are aware of the impact of international law on their behavior. Above all, Guzman sustains that the compliance-based theory is build upon the institutionalist theory and has certain elements that are consistent with neorealism and liberal theory. However, unlike most institutionalist

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9 Traditional legal theories of compliance have been unable to provide a constructive theoretical framework for compliance, in part because they cannot explain instances of violation. On the other hand, neorealists argue that international law has no effect on national behavior, explaining breach but not compliance. In, Guzman A. T. (2002).
10 It is consistent with both, neorealism and institutionalism that states are independent and they act only in their own self-interest. Ibid.
11 The author sustains that the theory of compliance complements liberal theory when states are view as unitary actors engaged in the pursuit of national goals. Where liberal theory is one way of studying these goals. Ibid.
discussions of international law, the treaties do not represent the exclusive focus of the compliance theory since the ‘soft law’ is also considered.\textsuperscript{12}

2.2 A Compliance-Based Theory of International Law

As noted above, Guzman puts forward a theory of international law in which compliance comes in a model of rational, self-interested states. In the light of compliance theory, international law can affect state behavior because states are concerned about the reputation and direct sanctions that follow its violation. It thus argues that by developing and preserving a good reputation states are able to extract greater concessions for future promises. In this respect, Downs and Jones conclude that states generally comply with international obligations because of their broader concern with their reputation as reliable partners, and their interest in a rule governed international system.\textsuperscript{13} Nevertheless, the scope of this thesis leads to a discussion of the compliance theory from three interrelated angles: (1) the relevance of the international law, (2) the instances of violation and of compliance, and (3) the implication of international law in specific areas.

2.2.1 The Relevance of International Law and Compliance Theory

Guzman lays out an example where the use of a contract can yield a cooperative outcome and compliance with the rules:

“Suppose, for example, that two individuals agree to swap vacation homes for the summer. They each agree to care for the other’s home, including the performance of certain regular maintenance chores.

While on vacation, however, maintenance is time consuming, expensive, and boring, so there is a tendency to avoid it. The most probable model predicts that neither party will honor their promise to care for the other’s home.

Despite this tendency towards shirking, if their agreements is legally enforceable, the shirking party must pay damages which, if high enough, will induce the parties to carry out the promised maintenance.”\textsuperscript{14}

As a result, law changes the payoffs and solves the dilemma by imposing a penalty against the shirking party. To change the equilibrium, the penalty must change the payoffs enough to make the cooperation a dominant strategy for each party. Equally important, to generate a model in which the law matters, Guzman emphasizes the need to have a mechanism through which violations are sanctioned. However, in the international setting, states must rely on the imperfect system of international sanctions and

\textsuperscript{12} Shelton D. (2000).
\textsuperscript{14} Guzman A. T. (2002).
reputational effects.\textsuperscript{15} In other words, this could be seen as a limitation of international law that affects the extent of compliance, and consequently, leads to noncompliance in some instances.

2.2.2 Violation and Compliance from a Theoretical Perspective

According to Guzman, any given international obligation is modeled as a two-stage game. In the first stage, states negotiate over the content of the law and the level of commitment. In the second stage, states decide whether or not to comply with their obligations. In the same time, international law affects a state’s self-interest, and thus its compliance decision in two ways. First, it can lead to the imposition of direct sanctions such as trade, military, or diplomatic sanctions. Second, it can lead to a loss of reputational capital in the international arena. If the direct and reputational costs of violating international law are outweighed by the benefits thereof, a state will violate the law.\textsuperscript{16} Gerhart approaches the same issue by stating that, “a state measures the costs and benefits of compliance and makes a decision about its level of compliance given those costs and benefits.”\textsuperscript{17}

Guzman holds the view that reputation causes future relationships to be affected by today’s actions. Accounting for reputational effects, a decision to violate international law will increase today’s payoff but reduce tomorrow’s. This explains not only why nations comply with international law despite the weakness of existing enforcement mechanisms, but also why they sometimes choose to violate the law. Moreover, because the opportunities and risks facing a country vary both over time and across contexts, however, a country may choose to follow a particular law at one time or in one context and violate it at another time or another context.\textsuperscript{18}

On the other hand, and also in line with Guzman theory, Tarzi sees compliance with international law as a learning process that occurs in several ways: (1) modeling after other successful states, (2) rewarding conforming behavior through the recognition and praise conferred on states that comply with the law by other members of the international community, (3) ridiculing states for noncompliance, (4) applying diplomatic and economic pressure to states that break the law. However, Tarzi goes further when he links compliance with state identity and categorizes the states in ‘norm-supportive’ and ‘non-conforming’. Thus, the states with non-conforming identity emphasize their unique or distinctive attributes from the international society and are less likely to cooperate and comply. However, change is possible, sustains the author. Specifically, changes in political leadership, regime change, changes in ideology and domestic system could shift the identity towards a higher compliance level.\textsuperscript{19}

\textsuperscript{15} Ibid.
\textsuperscript{16} Ibid.
\textsuperscript{18} Guzman A. T. (2002).
2.2.3 International Law, Limitations and the Theory of Compliance

The compliance-based theory that Guzman puts forward reconsiders what international law has been traditionally thought to comprise and consequently defined as. Despite treaties and customary international law, that classical international law regards as its components; the compliance-based theory argues that ‘soft law’ needs to be included as well. Therefore, the compliance-based theory defines international law “as those promises and obligations that make it materially more likely that a state will behave in a manner consistent with those promises and obligations than would otherwise be the case.” The proposed definition of international law reflects the fact that international obligation comes in different forms and with varying levels of compliance pull. With regard to the soft law Guzman concludes that unlike treaties, they do not represent a complete pledge of a nation’s reputational capital. Still, the logical consequence could be two-fold: (1) it would be easier for states to enter into an obligation and thus make some sort of commitment, and (2) it would be more difficult to comply with the obligation.

Moreover, the theory predicts that international law will have a reduce impact in the areas of greatest importance to the countries. Thus, Guzman believes that the central topics in international law like, the laws of war, territorial limits, neutrality, arms agreements, and military alliances are among the areas least likely to be affected by international law. The most promising fields of compliance according to the theory are therefore those in which reputational effects are likely to affect the behavior – the questions with low stakes. However, issues involving large stakes could be influenced through an indirect use of international commitments by focusing on simpler questions that might seem to diminish the grandeur of the field.

For example, a UN call towards Myanmar to stop the violation of human rights and causes of mass displacement is unlikely to have much relevance. This is because the Government of Myanmar could pledge the state integrity and sovereignty being threatened by insurgent groups. As such, the human rights and non-displacement issues on the one side will be most probably overweight by the state integrity and sovereignty on the other side of the balance. However, if an agreement could be reached to systematically monitor distinct human rights compliance in the field, the outcome could be positive. Therefore, the use of international law should be pursued according to its limitations.

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20 Soft law is considered to include any promises made by the states through instruments that fall short of full-scale treaties, such as memoranda of understanding, executive agreements, non-binding treaties, joint declarations, decisions, resolutions, agreements pursuant to legislation etc. Guzman A. T. (2002).

21 Ibid.

22 Ibid.

23 The compliance-based theory in Myanmar-Thailand case is extensively used in the Analysis, Chapter 7. This specific example was drawn to support the argument of the possibility to achieve compliance deriving low-stakes questions from large stakes issues.
3. The Legal and Institutional Framework of the International Refugee Protection System

Legal analysts view the states as holding the primary responsibility to protect their citizens. However, when governments are unwilling or unable to protect their citizens, individuals may suffer serious violations of their rights and they might be forced to leave their homes to seek safety elsewhere, as for instance in another country. Subsequently, since the governments of their home countries no longer protect the basic rights of refugees, the international community then takes the role to step in, and ensure that those basic rights are respected.24

Chapter 3 explores the international human rights and refugee law and institutions, since they set the standards and the foundation from where the research looks upon the concrete cases. Moreover, the foregoing discussion on refugee and human rights fields’ relationship adds a basic feature for the Analysis (Chapter 7), and research on the whole.

3.1 International Human Rights Law

The idea of establishing a system of human rights law at the international level is a relatively recent development and has taken shape through the United Nations. The UN Charter (1945) proclaims as one of the purposes and principles of the UN “promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion” (Art. 1, par. 3). Moreover, member states of the UN pledge themselves to take action in cooperation with the UN to achieve this purpose.25 Since the adoption of the UN Charter in 1945, the 1948 Universal Declaration of Human Rights (UDHR) and the Refugee Convention in 1951, a number of other international human rights treaties were developed, including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both adopted in 1966. In 1965 the UN enacted the Convention on the Elimination of Racial Discrimination (CERD). The remaining principal human rights instruments are the Convention on the Elimination of Discrimination Against Women (CEDAW, 1979), the Convention Against Torture (CAT, 1984) and the Convention on the Rights of the Child (CRC, 1989).26

The development of human rights treaties after the Universal Declaration of Human Rights have benefited the formulation of the laws and principles as they use a more precise and inclusive language than the Declaration, as noted by Gorlick.27 However, the coming into force of the Covenants and the other human rights treaties,

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26 These are the principal international human rights instruments. In addition, there are other specific international human rights laws. For a full list and texts of human rights documents a comprehensive reference is the compilation done by Brownlie, I. and Goodwin-Gill, G. S. (eds), “Basic Documents on Human Rights”, fourth edition, Oxford: Oxford University Press, 2002.
mentioned above, by which states parties accepted a legal as well as moral obligation to promote and protect human rights and fundamental freedoms, did not in any way diminish the influence of the UDHR. As pointed out by United Nations High Commissioner for Human Rights (UNHCHR), the very existence of the post UDHR human rights treaties, and the fact that they contain the measures of implementation required to ensure the realization of the rights and freedoms set out in the Declaration gives greater strength to the Declaration.\(^{28}\)

Moreover, the Universal Declaration is indeed universal in scope, as it preserves its validity for every member of the human family, everywhere, regardless of whether or not states have formally accepted its principles or ratified the human rights treaties. On the other hand, the treaties being multilateral conventions are legally binding only on those states that have accepted them by ratification or accession. In many important resolutions and decisions adopted later on by the United Nations bodies, the human rights treaties together with the Declaration have been cited as the basis for action. Furthermore, some regional, national as well as local courts have cited principles set out in the human rights treaties in their decisions. And finally, as documented by UNHCHR, in recent years, national constitutional and legislative texts have increasingly provided measures of legal protection for human rights principles.\(^{29}\)

### 3.2 International Refugee Law and Standards

The foundation of international refugee law is the 1951 Convention Relating to the Status of Refugees. The Refugee Convention defines the term “refugee” and sets the minimum standards for the treatment of persons who are found to qualify for the refugee status.

Because the Convention was drafted in the wake of World War II, its definition of a refugee focuses on persons who are outside their country of origin and are refugees as a result of the events occurring in Europe or elsewhere before 1 January 1951. As new refugee crises emerged during the late 1950s and early 1960s, it became necessary to widen both the temporal and geographical scope of the Refugee Convention. Thus, a Protocol to the Convention was drafted and adopted.\(^{30}\)

The 1967 Refugee Protocol is independent of, though integrally related to, the 1951 Convention. The Protocol lifts the time and geographic limits found in the Convention’s refugee definition. Together, the Refugee Convention and Protocol cover three main subjects:

1. The basic refugee definition, along with terms of cessation of, and exclusion from, refugee status.\(^{31}\)


\(^{29}\) Ibid.


2. The legal status of refugees in their country of asylum, their rights and obligations, including the right to be protected against forcible return, or refoulement, to a territory or where their lives or freedom would be threatened;\footnote{Ibid, Article 2-34.}

3. State’s obligations, including cooperation with UNHCR in the exercise of its functions and facilitating its duty of supervising the application of the Convention.\footnote{Ibid, Article 35.}

By acceding to the Protocol, states agree to apply most of the articles of the Refugee Convention to all persons covered by the Protocol’s refugee definition.\footnote{Brownlie, I. and Goodwin-Gill, G. S. (2002).} Yet the vast majority of States have preferred to accede to both the Convention and Protocol. In doing so, states reaffirmed that both treaties are central to the international refugee protection system.\footnote{UNHCR, “States Parties to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol”, as of 1 April 2003. Online at <www.unhcr.ch>.}

\section*{3.3 UN Human Rights Institutions}

There are several UN bodies dealing specifically with human rights. They derive their mandates either from the UN Charter – often called Charter based bodies, or from particular human rights treaties – treaty based bodies. In this regard, Gorlick holds the view that the UN bodies are developing in a promising manner in addressing the protection of refugees’ human rights. The body of jurisprudence coming out of the UN human rights mechanisms plus their decisions, resolutions, conclusions and recommendations has articulated a legal foundation which adds support to advocacy efforts on behalf of refugees (see Appendix I).\footnote{Gorlick B. (2002), p. 18.}

The principal human rights body, which deals with standard setting, creates new human rights mandates and acts as a repository of the United Nations for reporting on country specific and thematic human rights is the Commission on Human Rights (CHR, see Appendix II). The Commission was established by the Economic and Social Council (ECOSOC) in 1946 and has met annually since that time. It has a broad mandate to discuss any issue related to the protection of human rights, although, its main activities have focused on standard-setting and investigating violations of human rights relating to particular themes or individual countries. The CHR can solicit studies, make recommendations and prepare drafts of international instruments relating to human rights. Through passing resolutions at its annual sessions it may also recommend the establishment of specific procedures in the form of Working Groups and Country and Thematic Rapporteurs.\footnote{UNHCR, “Human Rights and Refugee Protection (RLD 5)”, Geneva, 1995.}
The Sub-Commission on the Prevention of Discrimination and Protection of Minorities, as a subsidiary body of the Commission on Human Rights, reports annually to the Commission (see Appendix II). Its principal activity has been to initiate studies on human rights questions, which often lead to the development of new international standards. It can also take up human rights issues in particular countries.

Besides the Charter based human rights bodies highlighted above, the UN human rights conventions established committees or treaty bodies to oversee or supervise the implementation of the provisions of the treaty (see Appendix II). The authority of these treaty bodies varies depending on the convention, but in general they have two main functions. First, it is to periodically examine reports submitted by state parties, which indicate the steps taken by the concerned state to implement the provisions on the convention. Second, it is to receive and decide on petitions from individuals or states concerning specific violations of the treaty rights. In addition to these principal functions, the work of the treaty bodies serves to publicize findings of human rights violations. During examinations of state party reports, government representatives may be called upon to explain why there are shortcomings in complying with international human rights standards and they may be encouraged to work towards remedying difficulties.

There are currently six UN treaty bodies (see Appendix II). The Human Rights Committee was established under the International Covenant on Civil and Political Rights. Further, the Committee Against Torture was established under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Next, the Committee on the Rights of the Child was established under the Convention on the Rights of the Child. Also, the Committee on the Elimination of Racial Discrimination was established by the Convention on the Elimination of All Forms of Racial Discrimination. Too, the Committee on the Elimination of Discrimination against Women was established by the Convention on the Elimination of All Forms of Discrimination against Women. Finally, the Committee on Social, Economic and

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38 The Sub-Commission on the Prevention of Discrimination and Protection of Minorities is often called the Human Rights Sub-Commission or simply the Sub-Commission. This thesis uses the names interchangeably. Ibid.


40 UN, “International Covenant on Civil and Political Rights (ICCPR)”. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966.

41 UN, “Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)”. Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984.


Cultural Rights was established by the International Covenant on Economic, Social and Cultural Rights.\textsuperscript{45}

The mechanisms created by the Commission on Human Rights and its Sub-Commission, for example working groups or special rapporteurs, and the treaty bodies set up by the human rights treaties are all established to ensure that human rights are respected. However, the main differences are: first, the treaty bodies can deal only with states parties to the treaty and there is the legal obligation on such states to cooperate with the body, and second, the CHR and Sub-Commission mechanisms can deal with issues within their mandate in any UN Member State, but the legitimacy of their work is occasionally challenged by governments who do not accept their scrutiny.\textsuperscript{46}

### 3.4 UN Refugees Protection Institution - UNHCR

The United Nations General Assembly (UNGA) created the office of the United Nations High Commissioner for Refugees (UNHCR) in the aftermath of the World War II. UNHCR has the mandate to ‘provide international protection’ and ‘seek permanent solutions’ to the problems of refugees by way of voluntary repatriation or assimilation in new national communities.\textsuperscript{47} According to its Statute, the work of the Office shall be of an entirely non-political character. It is to be ‘humanitarian’ and ‘social’ and to relate, as a rule, to groups and categories of refugees. Of the two functions, the provision on international protection is of primary importance, for without protection, such as intervention to secure admission and non-refoulement of refugees, there can be no possibility of finding lasting solutions.\textsuperscript{48}

Besides defining the refugees, the UNHCR functions have developed in time through General Assembly and Economic and Social Council provisions and include: (1) promoting the conclusions of international conventions for the protection of refugees, supervising their application and proposing amendments; (2) promoting through special agreements with governments the execution of any measures calculated to improve the situation of refugees and to reduce the number requiring protection; and (3) promoting the admission of refugees.\textsuperscript{49} After all, besides the declared functions UNHCR’s indirect or promotional activities encompass the application of national laws and regulations benefiting refugees. The development and adoption of appropriate national laws, regulations and procedures, promotion of accession to international instruments and the development of new legal instruments, are examples of indirect activities.\textsuperscript{50} The UNGA

\textsuperscript{45} UN, “International Covenant on Economic, Social and Cultural Rights (ICESCR)”. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966.

\textsuperscript{46} UNHCR (1995).


\textsuperscript{50} Goodwin-Gil, G. S. (1998).
and ECOSOC resolutions can extend the functional responsibilities of UNHCR, as its subsidiary organ. However, they do not thereby directly impose obligations on states.

Nevertheless, UNHCR’s activities are based on a framework of international law and standards that includes the 1950 UNHCR Statute and 1951 Convention and 1967 Protocol Relating to the Status of Refugees, the 1948 Universal Declaration of Human Rights and International Covenants plus the other human rights treaties, as well as an array of international and regional treaties and declarations, both binding and non-binding, that specifically address the needs of refugees.

### 3.5 The Relationship between Human Rights and Refugee Law

The Secretary-General of the United Nations emphasized in a statement that ‘if only the Charter of the United Nations and the Universal Declaration of Human Rights were fully respected, there would be no refugee problem’. This stating, the Secretary-General flag up the importance of respecting human rights and also showed the existence of linkages between the human rights law and refugees.

However, until recently human rights law and refugee law were considered as two separate branches of international law. In textbooks these issues are dealt with in different chapters without pointing out any connections. Some law experts believe that in general terms, the responsibility for the two branches of law lies within state practice to have distinct ministries or departments dealing with the two issues. According to Melander, the coordination of the issues has to take place at the local or domestic level. However, the author indicates that mistakes may occur because of ignorance of a branch of law outside a delegate’s special knowledge and interest. The reason for marginalization of refugee issue from human rights, at the international level, has been argued by some authors through the unwillingness of governments to allow international scrutiny of their policies towards refugees. The gap between the two branches is also relevant in the case of intergovernmental and nongovernmental organizations. On the one hand, the Commission for Human Rights has

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51 Regional refugee treaties have been developed in Africa and Latin America, for instance. Yet Asia does not have any regional treaties for refugee protection. The Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa is a regional treaty adopted in 1969. In 1984 a colloquium of Latin American government representatives and distinguished jurists adopted the Cartagena Declaration. See, Jastram K. and Achiron M. (2001).

52 There are two categories of documents at the UN level. One of the categories comprises the legally binding documents to which states adhere by signing the obligations, and are usually named the Conventions, Covenants or Treaties. Another category is the so-called “soft law” that is non-binding in nature since states cannot adhere. Nevertheless, it is widely believed that many of the non-binding documents became part of the international customary law principles, like the Universal Declaration of Human Rights. See, Chapter 3.5.


55 Ibid.

the responsibility for human rights law while the United Nations High Commissioner for Refugees for refugee law. On the other hand, as Amnesty International points out, NGOs working on refugee issues, at both international and national level, tend to remain separate from human rights NGOs and therefore have remained unfamiliar with human rights programs. In this respect, human rights and refugee law from an organizational and structural point of view are seen as separate branches of law with little or no relationship, sustains Melander. As Stavropoulou points out, in UN political and expert bodies practice the question of refugees rarely appeared in human rights deliberations. However, the borderline between them is artificial and their mutual interdependence is increasingly recognized.

The links between the protection of human rights and the protection of refugees are obvious. In most cases the reasons underlying refugee movements relate to violations of internationally recognized human rights. Whether people flee persecution directed at them as individuals, as members of ethnic minorities, religious or linguistic groups, or as a result of civil disorder and armed conflict, in sum - it is the threat to their life and liberty that forces them to flee across international borders. Further, the right of people to leave their countries and seek asylum abroad is one of the fundamental rights in the 1948 Universal Declaration of Human Rights. Also, the right of those genuinely at risk not to be forcibly returned to a country where their human rights will be violated (non-refoulement) is also a fundamental human right. In turn, respecting this right is an effective means of preventing further human rights violations. Next, the manner in which refugees are treated in the country of asylum raises many human rights questions, such as arbitrary detention, protection of family life and protection against racism and discrimination.

The universal human rights instruments, which read in conjunction with the refugee specific rights regime set a wide range of measures of respect for the basic dignity of refugees. The network of instruments is of significance particularly where states are not parties to the 1951 Convention. Chimni observes that in such an event human rights instruments can be invoked to guarantee the basic rights of refugees. Several authors agree that while individual states might not be parties to all of the instruments, the framework of international human rights standards that the law provides is important for carrying out protection and assistance activities related to refugees.

Hathaway and Dent state that ‘the maturation of human rights law over the past four decades, has to a certain extent filled the vacuum of protection that necessitated the development of a refugee specific rights regime in 1951’. Human rights law has evolved beyond the norms of the refugee regime, so that refugees now may derive protection of

57 Ibid.
59 The human rights violations that caused the refugees to flee their countries sometimes appeared on the agenda, while the forced displacement as such was not debated as a human rights problem. The UN expert bodies rarely explored the linkages between causes, symptoms and solutions. See, Stavropoulou M., “Displacement and Human Rights: Reflections on UN Practice”, Human Rights Quarterly, Vol. 20, No. 3, 1998, pp. 515-554.
their basic human rights from both the refugee specific 1951 Convention and from general human rights instruments. However, these rights regimes overlap and contain different standards in many areas and questions arise as to how they should be logically reconciled.63

Analysts agree that there are two conceptual areas where human rights and refugee rights converge: the first includes human rights violations as causes of displacement and displacement as human rights violation, while the second is comprised of violations of the human rights of refugees. In addition, there are two areas of work that combine human rights and refugee issues, one ‘theoretical’ and one ‘institutional’. While the first seeks to interpret the refugee law in the broader context of human rights law, the second focuses on monitoring the implementation of refugee law by the international human rights supervisory mechanisms, asserts Stavropoulou.64

Focusing on the violations of human rights of refugees and their protection, a starting point in assessing the relationship between human rights and refugee law is a more careful examination of the areas of overlap, competing standards and gaps of the regimes. From this point of view, rights practitioners have noted several areas of overlap between human rights and refugee law, including the rights to employment, social assistance, education, freedom of movement, nondiscrimination and freedom from expulsion. In general terms, some scholars, as for instance Hathaway and Dent, recognize that refugee specific rights aspire to a lower standard of treatment. However, since the rights in the Refugee Convention are often framed differently from their counterparts in conventional human rights law, it can be difficult to determine which of the standards affords a stronger basis for protection, conclude the authors.65

While they overlap in several areas, the comparison of refugee law with human rights law reveals a number of rather unique rights to one or the other regime. Given the particularly vulnerable situation of refugees, the extended protection established beyond the general human rights by the Refugee Convention, should not be perceived as a surprise. Refugee specific rights are needed to address unique questions relating to personal status, naturalization, illegal entry, the need for travel and other identity documents and especially the threats to expulsion and refoulement. In this respect, Hathaway and Dent find questionable the absence from the Refugee Convention of the basic civil rights such as the right to life, liberty and security of person; the rights to protection from slavery, torture and arbitrary arrest, detention or imprisonment; the right to equal protection before the law; and the right to freedom of thought, opinion and expression. Moreover, the right to family reunification is not formally guaranteed by the Refugee Convention, but is included at the level of a nonbinding resolution in the drafting conference’s Final Act.66

According to Goodwin-Gill, the precise treatment and protection of refugees varies and depends on whether the state in which they find themselves has ratified the Convention and Protocol or any other relevant treaty. However, adds the author, the basic

66 Ibid, pp. 204-205.
human rights that derive their force from customary international law\textsuperscript{67} indicate the content of the general obligations which control and structure the treatment by states of nationals and aliens.\textsuperscript{68} Notwithstanding the importance human rights adds to refugee jurisprudence, some refugee protection experts state that there are advantages and disadvantages of having parallel systems of protection. In some cases, human rights law has been little used on behalf of refugees. In other cases, it is a recent development that states are becoming aware that their human rights obligations also may require specific measures. Still in others, provisions with a particular human rights focus have proven inadequate to protect those in search of refuge.\textsuperscript{69}

After all, there are four reasons why human rights should assist in protecting refugees. First, human rights law can reinforce existing refugee law.\textsuperscript{70} For example, the most basic right for refugees not to be subject to refoulement is stipulated or interpreted as meaning non-refoulement in several international instruments. The 1951 Convention Article 33 (par. 1) provides that:

“No Contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”\textsuperscript{71}

The provision of non-refoulement could be understood from the Universal Declaration of Human Rights, Art 14 (par. 1), as it writes:

“Everyone has the right to seek and to enjoy in other countries asylum from persecution.”\textsuperscript{72}

Next, the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides in Article 3 (par. 1) that:

“No State Party shall expel, return or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture.”\textsuperscript{73}

Also, the UN Declaration on the Protection of All Persons from Enforced Disappearance provides in Article 8 (par. 1) that:

\textsuperscript{67} Countries not under treaty obligations are still bound to observe them insofar as these instruments reflect customary international law. See for example, Helton A. C., “Displacement and Human Rights: Current Dilemmas in Refugee Protection”, \textit{Journal of International Affairs}, Vol. 47, Issue 2, 1994, pp. 379-399.


\textsuperscript{69} Ibid.

\textsuperscript{70} UNHCR (1995).

\textsuperscript{71} UN, “Convention Relating to the Status of Refugees”, (1951).

\textsuperscript{72} UN, “Universal Declaration of Human Rights”. Adopted and Proclaimed by General Assembly resolution 217 A (III) of 10 December 1948.

\textsuperscript{73} UN, “Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment”, (1984).
“No State shall expel, return or extradite a person to another state where there are substantial grounds to believe that he would be in danger of enforced disappearance.”

In the UN principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, Principle 5 writes:

“No one shall be involuntarily returned or extradited to a country where there are substantial grounds for believing that he or she may become a victim of extra-legal, arbitrary or summary executions in that country.”

Second, human rights law can supplement the existing refugee law. As noted above, the Refugee Convention and Protocol are silent on some issues (i.e. right to life, liberty and security), whereas international human rights law includes provisions that might be applicable. In this context, legal scholars believe that international refugee instruments were never meant to address all human rights of refugees.

Third, many human rights provisions are universally applicable. Although over 125 states are party to the 1951 Convention and/or 1967 Protocol, there are still many states which host large numbers of refugees and which have not acceded to either instrument. Saying this, when a state is not a party to the refugee law treaties it is difficult to secure a legal basis for the protection of refugees in that country. However, as discussed above a number of international human rights standards are universally applicable, as they attained the status of customary international law. UNHCR and many scholars hold the view that the principle of non-refoulement forms part of the customary international law. Furthermore, some states that are not party to the refugee law treaties are party to human rights treaties that include provisions of benefit to refugees. A case in point is the Myanmar refugees in Thailand. While not a party to the refugee law treaties Thailand has adhered to many of the international human rights instruments, which could be invoked to protect the refugees (see Appendix III).

And fourth, human rights law has implementing bodies. Many of the international treaties that protect human rights including rights which might benefit refugees, establish supervisory mechanisms, which can issue authoritative opinions on the content and scope of particular rights guaranteed in the treaty. In some instances, these committees can

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77 The reduced adoption of the 1951 Convention and its Protocol is particularly significant with regard to Asian States. If comparing with the other regions of the world, the Asian continent stands last with respect to the number of States that adopted the refugee treaties. See, UNHCR (April 2003).
receive and decide upon complaints submitted by individuals alleging a violation of the treaty.\textsuperscript{79}

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\textsuperscript{79} UNHCR, (1995).
4. Research Design

The purpose of the study is to analyze how the compliance with the human rights and refugee principles is performed in a given refugee-like situation. Whereas, in the context of this research the compliance with the human rights and refugee rights has to be seen as a problem, as when there is a lack of obedience with the standards it both could create refugees and leave them unprotected. Thus, when translated into a problematic situation there is a need to provide an empirical analysis of a concrete case that would show and test the compliance with the human rights and refugee rights. The design of this research comes to meet two demands. First, to provide an illustration of compliance or noncompliance with the human rights and refugee principles, and second, with the help of the theory to give an explanation of why a situation as such can occur despite the existence of international human rights and refugee standards.

In this regard, from a methodological point of view the research turns to raise the importance of considering the case study as the major design frame and the policy analysis as the operational tool.

4.1 The Case Frame – Extensive Case Study

Yin defines a case study as a research strategy employed when ‘how’ or ‘why’ questions are being posed, when the investigator has reduced control over events, and when the focus is on a contemporary phenomenon within some real-life context. Equally important, the explanation and analysis of the particular refugee case of Myanmar-Thailand in the larger framework of human rights and refugee standards, plus its reflection through a compliance based theory makes the research area extensive. Therefore, the extensive case study form stands appropriate to be used.

According to Gomm, Hammersley and Foster, the extended case study is an elaboration of the basic study of case material that deals with a sequence of events, sometimes over quite a long period of time. The authors add that the same actors are involved in a series of situations in which their structural positions must continually be re-specified, and the flow of actors through different social positions specified. The particular significance of the extended case study is that since it traces the events in which the same set of main actors are involved in the case over a relatively long period; the processual aspect is given emphasis. Thus, it could be concluded that the extended case study enables the research to trace how events chain on to one another, and therefore how events are necessarily linked between them over a period of time.

Accordingly, the Myanmar-Thailand refugee case, as mirrored through the human rights and refugee standards, should be seen as a process that could be divided into two sections: this is for analytical purposes – Myanmar and Thailand cases. In this regard, the Gomm et al.’s extended case study methodological conclusion speaks for the possibility

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to make use of several case studies in the larger framework of the extended case study. As such, the case study will lose its classical understanding as a method and will rather take the shape of a ‘design feature’, or more broadly, a ‘frame’ that will determine the boundaries of information-gathering and analysis, which is in line with Stoecker’s approach. As a result, the research frame of the extensive case study will comprise several interrelated cases where the policy analysis will be used to provide the answers for the research questions put forward earlier. And then, the policy analysis findings would be brought up together in the larger research frame to build up the theoretical explanation and concluding reflections.

4.2 Policy Analysis

As noted above the policy analysis will have an operational and functional role within the larger frame of this case study. As such, the policy analysis technique will serve as a tool that cuts down the scope of the research to concrete and operational questions. In this way it will address and explore the elements that comprise the larger picture that is to be seen in the theoretical case analysis.

Stowe and Turnbull developed several sets of tools for analyzing policy, from which this study calls three of them to be used: (1) tools to analyze policy ‘on the books’ – that is, to analyze policy documents for their coherence with the core concepts; (2) tools to analyze policy ‘on the street’ – that is, to analyze how the core concepts are implemented; and (3) tools to determine whether a policy is appropriate to reflect one or more of the core concepts.

In this context, it should be clarified that the first two sets of tools address the coherence of the policy. Once again, one set will analyze the extent to which an existing written policy is coherent with the core concepts, and the other will analyze the extent to which policy as implemented is coherent with the core concepts. In both cases, by coherent it is meant that the policy incorporates or supports one or more concepts. In fact, knowing how coherent a policy is with one or more core concepts informs the research with: what the policy is, what it intends to accomplish, and even what it does accomplish. In this light, the coherence speaks about the strengths and weaknesses in current policy according to how strongly or weakly the policy advances the particular core concepts. Next, the third set of tools will help determine whether a particular core concept should be the foundation of a specific policy. It thus raises the question of whether it is appropriate for a core concept (or more of them) to be reflected in a given policy. As such, the appropriateness set analyzes the extent to which a core concept should be reflected in a policy.

This research accepts the policy analysis with the meaning of a technique employed to analyze any types of relevant official texts, and documented actions that
serve as evidence of a particular course of actions, taken by the state authorities with regard to certain normative principles. In other words, the policy analysis intends to analytically ‘read’ the documents that bear upon shaping the actions, or at least with such an intention, of the Myanmar authorities with regard to its people human rights protection, and similarly, the Thai authorities with respect to Myanmar refugees rights and human rights protection. Equally important, the core concepts are drawn from the internationally accepted normative texts (such as UDHR, UN Charter, and other relevant treaties, covenants and conventions), and serve as a unit of analysis. In the case of Myanmar, this research uses the human rights protection as a concept that sets the necessary standards of analysis. However, given its particularity, in the case of Myanmar refugees in Thailand the analytical principles enhance both the human rights protection concept and the refugee rights dimension. Whereas, the concepts seem to have a slight variation as to the case approached, this research retains the frame of the concepts of each case as being equal. As such, the matter of change is in substance \( (A \leftrightarrow A+) \) as opposed to the change in form \( (A \Rightarrow B) \). In other words, if the Myanmar case, using the above conceptual terms, equals \( A \); than the Thailand case equals \( A+ \).

4.3 Material

As previously noted, the case framework establishes the boundaries of the research material, while the policy analysis uses the relevant secondary data. Equally important, there are three groups of texts that are developed according to the subject approached. The first group of texts includes documents that provide insight to the issue of human rights and refugee standards or a combination of the two (see Appendix I). The second group of data would be derived from documents that include the issue of human rights and refugee standards within the context of Myanmar policy and case (see Appendix III, IV and V). Finally, the third group of texts comprises documents that include texts referring to human rights and refugee principles within the context of Thai policy (see Appendix III and IV).

Nevertheless, the research materials take into consideration the definition of the international law provided by the compliance-based theory and includes relevant components of both, treaties and ‘soft law’. Therefore, since the treaties generally set the standards, the relevant human rights and refugee treaties would be used throughout the research process. The soft law is a complementary form of documents that enhance the understanding of the treaties or provide an alternative especially when treaties are silent or inappropriate to be used empirically. As such, the soft law includes: the UN resolutions, decisions, statements or mission reports; the Myanmar *note verbale*, official statements or responses to the UN; UNHCR appeals and reports. It is worth to note that in the case of Thailand this research would also consider materials of the International NGOs and relevant updates.

4.4 Reliability and Validity of the Research
The reliability and validity problems of the research would stem from the classical critique of the case study as a research method, and policy analysis as its operational tool. The two main problems that could be associated with the method and tool of this research is the risk of generalization and interpretation, as drawing from Stoecker’s studies. Therefore, this poses fundamental questions to the reliability and validity of the study.

However, this research does not use the case study in the traditional methodological meaning. Despite the fact that the present thesis uses the case study as a framework that shows the boundaries of gathered information and analysis, the scope of this thesis is a study of the case in itself. In this respect, no generalizations are made to include other human rights or refugee protection cases from other areas, or distinct scenarios under the present explanations. The wider frame of the human rights and refugee protection systems and the relationship between the two, has been discussed with the goal to bring the necessary background for the further analysis of the cases. Still, and to a certain extent, the knowledge and the insights of this research would be productive when planning to do a similar study with other scenarios. This saying, one interested in the subject matter, and reading this study, could draw the conclusions and be aware of possible problems in other refugee-like situations as leading from this thesis.

As a strategy against the risk of arbitrary interpretations there have been developed standard issues to explore and explain through the policy analysis. Also, the policy analysis extensively uses the documents as a source of research materials. And as such, it is more likely to have an accurate interpretation of the policy based on clearly written texts, than would other methods offer. As regarding the possible effect of the bias on the objectivity of the interpretation, the fact that I am considering a case that is not culturally and geographically related to me, is another asset with respect to objective interpretation. However, not the same could be claimed when referring to the issue of refugee protection on the whole.

5. “The Problems of Myanmar and Myanmar’s Problems”

Chapter 5 provides an overview of the context in which the current human rights situation in Myanmar has emerged. The section discusses the political challenges of the country and the ethnic dimension, which are important elements to take into consideration when proceeding towards an assessment of the human rights and displacement situation. Finally, the introduction to the human rights and displacement in Myanmar outlines important aspects of the situation that subsequently led to a refugee problem.

5.1 Historical Context

Rather than being notable for its diverse ethnic history and rich natural resources, Myanmar is distinct as the setting of one of the longest-running civil wars in the world. Declared independent from British rule in 1948 (after 63 years of colonization), Myanmar has experienced internal conflict along political and ethnic lines that has continued through three successive eras of government: parliamentary democracy (1948-62), military socialist (1962-88) and ‘transitional’ military rule (since 1988). The British colonial rule never had the Myanmar nation-building as an objective and the present internal divisions are believed to be a consequence since colonial times, according to Myint.

Though patchy, the Union agreement reached by all ethnic groups at Panglong in 1947 had come to a critical point when the Aung San – its promoter, had been assassinated (1947). The armed insurrections by the central authorities against ethnic groups had begun in 1948 and had rapidly escalated to include most of the ethnic minorities. As ethnic disillusion with the Union grew stronger and by the late 1950s many ethnic minority regions remained under the control of ethnic groups, the idea of federalization and the creation of Burman state for Burman-majority areas, of equal status to the minority states, began to set up.

However, the federalization concept was rejected and in March 1962 the military led by General Ne Win seized power and ousted the country’s president and the democratically-elected government, thereby ending the experiment of parliamentary democracy of 14 years. The policies instituted by the dictator General Ne Win included the ‘Burmese Way to Socialism’, which prescribed a nationalized economy and expanding military machine. Moreover, a violent ‘Four Cuts Campaign’ began, in which forced relocation, scorched earth tactics, and free-fire zones were employed to withdraw or avert life-sustaining resources from the ethnic civilian population.

89 Herein, the “Burma” country name is preserved for historical reasons. See, supra-note 2.
91 In other words, the ‘Four Cuts’ strategy implies cutting the insurgents off from: food supplies, funding, intelligence and recruits. See, International Rescue Committee and Women’s Commission on Refugee
In 1988, together with the emergence of opposition blocks and Ne Win resignation, political resistance swelled into historic student-led demonstrations. The nationwide nonviolent protests were met with indiscriminate state violence in which thousands of anti-government protesters were killed. The Nobel Peace Prize Laureate and General Secretary of the National League for Democracy (NLD) Aung San Suu Kyi (ASSK) was placed under house arrest in 1989. In 1990 the military junta bowed to public pressure for democratic elections and promised to transfer power. However, when the NLD won 59.9 percent of the popular vote and 82 percent of the parliamentary seats the junta reneged on its promise and further escalated its military aggression.\footnote{If Not Now, When? Addressing Gender-based Violence in Refugee, Internally Displaced and Post-conflict Settings. A Global Overview, New York, 2002. Online at <www.theirc.org>.

5.2 Current Political Crises and Democracy Movement

In the aftermath of the military coup and the establishment of the State Law and Order Restoration Council (SLORC) in 1988, the National League for Democracy (NLD) was formed. Initially, the aim of the NLD was the creation of a league of all democratic forces struggling for the restoration of democracy in the country. At the same time, various opposition parties and groups came into existence. A number of these were registered as political parties in preparation for participation in the general elections promised by the SLORC. However, many groups including students had at that time to flee to the border areas controlled by minority groups to find a temporary sanctuary from where they could enforce the right to armed resistance to the military dictatorship.\footnote{Ibid.}

The military regime still refuses to recognize the free and fair elections of 27 May 1990, and shows no concrete signs of willing to give up power whatsoever. So far the present regime, known as the State Peace and Development Council (SPDC),\footnote{Myint M. (2000), pp. 11-15.} has made no significant changes in the government policies as regards progress towards democratization or basic improvements in the quality of life among people of Myanmar.

The SPDC claims that the military-dominated National Convention is the appropriate forum for dialogue with NLD and the parties representing Myanmar’s various ethnic minorities. However, as Myint points out, the present form of the National Convention that has since 1993 the task of drafting a new constitution is not a democratic forum. Although the NLD initially participated in its deliberations it withdrew in 1995 because of its undemocratic nature.\footnote{The SLORC changed its name to the SPDC on 15 November 1997. In, Federation of American Scientists, “Burma Insurgency”, Military Analysis Network, January 2000.} Worth of notice is the National Coalition Government of the Union of Burma (NCGUB) that has been established in 1990 by a group of elected members of parliament that gathered on the Thai-Myanmar border. The NCGUB is a government-in-exile with the mandate to secure international support for the

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Women and Child, “Situation in Burma and Among Burmese Refugees in Thailand” in, IRC and WCRWC
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implementation of the results of the election. It has since 1990 met with foreign diplomats and politicians, conducted fact-finding missions, and participated in conferences and workshops in an attempt to advance the struggle for democracy. Also, renewed calls to recognize the elections and the following SPDC failing responses have pushed the NLD to form the Committee Representing the People’s Parliament (CRPP) composed of thirteen political leaders. Being supported by 251 parliament members including MPs from ethnic parties the CRPP annulled all laws promulgated since 1998 and called for the release of all political prisoners.

From 1988 coup until now (2003), the ruling SPDC has achieved no peace, development, law or order. The latest reports come to show the contrary, that it continues to promote suppression politically and chaos economically. Reconciliation talks with the opposition NLD and its leader, Aung San Suu Kyi, are forever promised as months drag by into years. Since ASSK release from house arrest in May 2002, both sides have been taking a less confrontational approach, and appeared uneasily ready to make limited concessions to each other’s demands. Although, the releases of ASSK from house arrest and of 297 political detainees are positive signs per se, many political analysts remain doubtful of SPDC sincerity. The suspicion persist that the junta is conceding the minimum necessary to whitewash its own reputation and gain foreign assistance, without actually yielding any hold on power. The UN special envoy to Myanmar, Razali Ismael, has made nine trips to Myanmar to date in an attempt to see significant changes. However, in a recent statement the special envoy threatened to quit his post unless significant talks critical to the future of Myanmar, above low-level contacts, takes place between NLD and SPDC. As regarding the political prisoners, international observers note that most of those released are low-level dissidents, as an estimated 1,300 remain in jails including those elected in the 1990 elections.

5.3 The Question of Ethnic Minorities

“… (Myanmar military) government accused the Karen, Shan and Karenni of wanting independence… The Karen Nation Union (KNU) says it will carry out further attacks against the government if the right of ethnic minority groups continue to be suppressed…” (clarity and emphasis added)

For more than fifty years the army has battled diverse ethnic insurgencies. These ethnic minority insurgent groups have sought to gain greater autonomy, or in some cases, independence has been claimed from the dominant Burman majority. As such, the...
The government justifies its security measures as necessary to maintain order and national unity. In this context, Steinberg identifies the Burman nationalism and the diverse ethnic nationalism as a component of center-periphery issue, which is related to the question of national unity. It thus constitutes an important factor, among others, in contemporary Myanmar that leads to cleavages and tensions. Following the same approach Smith argues that the ‘dilemma of national unity’ is the major reason in the complexity of ethnic politics in the country.

The ‘ethnic question’ is especially important in Myanmar because of the size of the ethnic groups population, ongoing civil war, and the need for ethnic communities to be involved in any future political dialogue. Ethnic minorities in Myanmar comprise about one third of the country’s population, with majority Burman constituting the remainder (see Figure 1). Under the 1974 Constitution, the political map demarcated seven ethnic minority states – the Chin, Kachin, Karen, Kayah, Mon, Rakhine and Shan – and seven divisions where Burmans are in the majority (see Appendix VII). But this is a simplification as the last census that attempted a detailed analysis was conducted by the British in 1931 and identified 135 linguistic sub-groups from 13 ethnic families.

Considering the dimensions of the ethnic issue, political analysts point out that there are three major political forces in present Myanmar: the SPDC that rejected the last elections results, the NLD that challenges the right of the SPDC to rule the country, and the ethnic minorities who are opposed to the military government ruling parts of the country they deem their own home lands. The UN General Assembly has recognized

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**Figure 1.**

**Ethnic Groups in Myanmar**

(\% of total population)

- Burman: 68\%
- Karen: 7\%
- Rakhine: 4\%
- Chinese: 3\%
- Mon: 2\%
- Indian: 2\%
- Other (combined): 5\%

Source: Earth Rights International (2001)

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102 Federation of American Scientists (January 2000).
the importance of ethnicity in fuelling conflict in Myanmar and since 1994 has called for a tripartite dialogue between the military government, the NLD and ethnic minority groups to achieve national reconciliation and improvement in human rights situation.\textsuperscript{109}

However, as International Crisis Group asserts, the present set up of political forces shows the need to reassess the ethnic minorities as a ‘third force’. It thus comes to underline that unlike the armed forces and the pro-democracy opposition, the ethnic minorities lack a unified organizational structure and therefore capacity to pursue shared goals.\textsuperscript{110} In this respect Smith concludes that, though the lack of unity between different ethnic groups is evident, each of them are strong separately. In turn, it represents an example of the political phenomenon known as ‘weak state, strong societies’, where the central government has been unable to impose its will, except by the use of force.\textsuperscript{111}

Ethnic minorities groups consider themselves discriminated and have openly accused successive governments of a deliberate policy of ‘Burmanisation’. They feel not only marginalized economically, but also their social, cultural, and religious rights are being suppressed.\textsuperscript{112} In a policy paper Shwe indicates that while they originally fought for independence, today almost all groups merely seek increased local autonomy and equality within a new federal state structure.\textsuperscript{113} The military government, however, still suspects them of scheming to split the country and sees this as justification for its repressive, often brutal policies in minorities’ areas. The ceasefires strategy employed by the government since the late 1980s has brought relief in some areas but no real solution yet, and fighting continues, as illustrated above by the recent news alert. In this respect, the military junta states that they have agreed ceasefires with 17 armed opposition groups, most of who were ethnically based.\textsuperscript{114} However, the skepticism persists since, on the one hand, they have not led to more permanent political arrangements and most ceasefire groups still maintain their armies and weapons as well as their own territories. On the other hand, there are still non-ceasefire groups fighting in eastern Myanmar.\textsuperscript{115} The armed conflict remains one root cause of human rights abuses and a deepening humanitarian crisis, including the displacement of people that is approached below.

\textbf{5.4 Human Rights Record and Displacement}

Myanmar is a country, at present, under the military authority and has a long history of repressing its inhabitants. The military government has been responsible for many human rights abuses. Thousands of people have been killed, injured, tortured,

\begin{footnotesize}
\begin{enumerate}
\item[111] Smith M. (2002), pp. 12-34.
\item[115] The main groups that continue to fight are: the Karen National Union (KNU), the Karenni National Progressive Party (KNPP), and the Shan State Army-South (SSA-South). In addition there are smaller armed groups operating, some of whom are break away group fractions. See, International Crisis Group (May 2003).
\end{enumerate}
\end{footnotesize}
forcibly relocated or detained without trial, while others have fled the country.\textsuperscript{116} Continued human rights problems documented by human rights NGOs also include the widespread use of forced labor, censorship, use of child soldiers, violations of religious freedom, and atrocities committed against ethnic minorities. The rights of freedom of speech, of the press, assembly, association and privacy are largely absent, according to Human Rights Watch.\textsuperscript{117} Nevertheless, warnings of a ‘silent emergency’ concerning human rights have continued since the beginning of the 1990s.

In this light, UN through its human rights bodies as well as specialized agencies and various NGOs focused their attention on the situation in Myanmar. The UNGA in the first resolution adopted on the situation in Myanmar in 1991 expressed its concern for the grave human rights situation. It called upon the government to take steps towards the establishment of a democratic state and the need for an early improvement.\textsuperscript{118} However, due to the lack of improvement of human rights and a gradual worsening of the situation the UNGA had been issuing resolutions on a yearly basis, which were specifically addressed to Myanmar (see Appendix IV). Therefore, there is presently a record of eleven UNGA resolutions with still another one waiting to consider Myanmar in 2003 as well.\textsuperscript{119}

Equally important, the Commission on Human Rights (and sometimes the Sub-Commission) has ever since 1992 considered the question of violation of human rights in Myanmar. It has done so through adopting resolutions and appointing (or extending the mandate of) a country specific Special Rapporteuer each year. As an example, the latest CHR resolution strongly urges the Government of Myanmar:

“(a) To restore democracy and respect the results of the 1990 elections and to enter immediately into substantive and structured dialogue with Aung San Suu Kyi and other leaders of the National League for Democracy towards democratization and national reconciliation and at an early stage to include other political leaders in these talks, including the representatives of the ethnic groups;

(b) To end the systematic violations of human rights in Myanmar, to ensure full respect for all human rights and fundamental freedoms, to end impunity and to investigate and bring to justice any perpetrators of human rights violations…

(c) Without further delay to cooperate fully with the Special Rapporteur of the Commission on Human Rights to facilitate an independent international investigation of continuing reports of sexual violence and other abuse of civilians carried out by members of the armed forces…

\textsuperscript{117}Human Rights Watch, (January 2003).
(d) To release unconditionally and immediately all political prisoners…
(e) To put an immediate end to the recruitment and use of child soldiers…
(f) To lift all restraints on peaceful political activity of all persons, including former political prisoners, by, inter alia, guaranteeing freedom of association and freedom of expression, including freedom of the media…
(g) To end the systematic enforced displacement of persons and other causes of refugee flows to neighboring countries, to provide the necessary protection and assistance to internally displaced persons…”\textsuperscript{120}

As a matter of UN system procedure, the Economic and Social Council has regularly taken note of CHR resolutions and endorsed the appointment or extension of Special Rapporteur to Myanmar through its decisions. It also requested and encouraged the UN Secretary General to continue the discussion with the government of Myanmar on the situation of human rights, and the United Nations High Commissioner for Human Rights to cooperate with other relevant UN agencies with the view to pursue human rights improvements.\textsuperscript{121}

Similarly, the International NGOs took a proactive approach and campaign against the atrocities and human rights violations in Myanmar. One indicator is the increasing number of reports that document human rights abuses in Myanmar submitted for the CHR, ECOSOC and Secretary General attention. Only in 2003 alone, by the time of writing this thesis, the NGOs issued 8 reports for UN human rights bodies’ consideration (see Appendix IV). The submitted reports have credible evidence showing the lack of respect for the civil and political rights, as well as economic, social and cultural rights on behalf of military junta. Moreover, the question of mass exoduses and displaced persons has been brought once again to the CHR attention.\textsuperscript{122} In this regard, the Human Rights Watch has recently reported as much as one million internally displaced people in Myanmar and an estimated two million people that fled to Thailand.\textsuperscript{123}

\textsuperscript{123} However, the number of both IDPs and refugees is not precise as various sources point out different figures. This is due to the lack of access in the IDPs areas as well as the frequent movement of displaced people, also across the border. See, Human Rights Watch (January 2003).
The following Chapter focuses on the causes of forced displacement in Myanmar, and then, the normative framework of refugee protection in Thailand. The pages outline the major problem of the refugee protection system in Thailand, that is, the unfavorable environment faced by the Myanmar refugees due to the Thai policy. Also, this section discusses the classification of Myanmar people by the Thai authorities, which is important for a full understanding of the refugee situation.

6.1 Reasons for Leaving Myanmar

As discussed above, Myanmar is known as having an extensive record of human rights abuses and therefore numerous reasons that push the inhabitants to leave their homes. After all, field research (carried in Thailand by NGOs specialized in refugee assistance and protection) reveals a number of primary reasons causing Myanmar people to seek refuge in another country. There are five main reasons:

1. Forced relocations and land confiscation. For example, in the Shan State alone, the military authorities in an attempt to cut off the support to the Shan resistance began a systematic program of forced relocation and land confiscation affecting as much as 80,000 Shan people in 1996. However, forced relocation and land confiscation strategy employed by the junta is common in many ethnic minority areas. Documented by human rights NGOs, many of who had been relocated the year before were once again forced to move. As such, by 1998 over 300,000 people had been affected by relocations and land confiscation and fled to Thailand.

2. Forced labor and portering. The forced labor practice inflicted upon the people of Myanmar has been thoroughly documented by international bodies such as International Labour Organization (ILO) and Commission for Human Rights, as well as numerous human rights groups. The ILO has taken action unprecedented in its eighty-year history to sanction the Burmese authorities for its continued use of forced labor. Reports attest that, thousands, if not hundred of thousands, of those now living in Thailand, have experienced forced labor and portering.

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125 Relief Assistance NGOs have formed together the Committee for Coordination of Services to Displaced Persons in Thailand (CCSDPT), that comprises 19 NGOs dealing with one of the three services: 1.primary health and sanitation, 2.education, and 3.food shelter and relief. For a detailed discussion on NGOs, see for example, Gorg J. E. and Buck T., “Burma Interim Program Review. January 16-February 6, 2002”, USAID, Development Information Services, June 2002.
128 Commission on Human Rights (2003), Paragraph 3 (c) and 4 (c). E/CN.4/RES/2003/12.
129 In November 2000, the ILO urged its 174 members and other international bodies to review their relations with Myanmar, to ensure they were not abetting forced labor. In, The Economist Intelligence Unit, “Country Watch List: Myanmar”, June 2001.
3. War and political oppression. Civil war and suppression of political dissent have forced migration from Myanmar for many decades. The realities of civil war, extensive use of weapons and the increasing size and capacity of the armed forces are analyzed and detailed by International Crisis Group.\(^{131}\) Equally important, human rights NGOs documented that often the various militant groups are not distinguishable to the civilian population, and in addition, the violence often extends to involve groups protecting their own interests (such as logging and drug trafficking). Still, the most vulnerable victims are civilians caught in conflict-ridden areas (primarily ethnic minority communities), as Caouette and Pack point out.\(^{132}\)

4. Taxation and loss of livelihood. The SPDC is known for imposing heavy taxes, which are levied in arbitrary and unexplained ways. These ‘taxes’ are not only monetary in nature, but often take the form of a percentage of one’s harvest or livestock. Above all, these taxes do not depend on any clear system and therefore vary from one location to another, nevertheless as an illustration; Burma Issues brings up one case:

“...The majority of this tax is porter tax, giving 13,000 kyat\(^{133}\) every three months to the troops who control the area. They also have to pay tax to the police and every village has to provide 92 baskets of rice per year to the Burmese military. They could also pay in cash, 92 baskets of rice being the equivalent of 32,200 kyat. On the top of this is the tax also paid to the DKBA for machinery, like tractors. If villagers cannot pay these taxes they will move...”\(^{134}\)

5. Economic conditions. According to the World Bank, the Myanmar government would have to change its economic policies, otherwise, the people of Myanmar are unlikely to benefit substantially from a resumption of growth in the region. It further warns that the domestic agricultural and private sectors will be unable to fulfill their potential and the pressure on living standards will continue. In turn, that could have devastating consequences for poverty, human development and social cohesion in Myanmar. As such, the people might loss the sense of hope for economic changes and see no other option but to go abroad.\(^{135}\)

6.2 A Note on Thai Policy Towards Refugees from Myanmar

As of December 2002, there were 112,000 refugees residing in nine camps scattered along the Thai-Myanmar border, according to UNHCR (see Appendix VI).\(^{136}\) However, Human Rights Watch adds that there are also hundreds of thousands more in


\(^{133}\) Kyat is the currency of Myanmar. The official exchange rate for 1000 kyat is 160 USD, while the black market exchange rate for 1000 kyat is 1 USD, of March 2003. In The Economist Intelligence Unit, “Burmese banks: Kyatascrophe”, March 2003.


Thailand who were unable or unwilling to stay within the refugee camps, but who had suffered clear abuse at the hands of the government of Myanmar.\textsuperscript{137} On the whole, this is connected with the Thai policy towards refugees and in particular with how the Royal Thai Government defines ‘refugees’.

Lang sustains, that defining refugees in Thailand is a delicate matter. The author explains, that the Royal Thai Government (RTG) is not a signatory to the 1951 Convention on Refugees and its companion 1967 Protocol (see Appendix III), and under national law asylum seekers in Thailand are technically ‘illegal immigrants’. Also, in strictly formal terms, the concept of ‘refugee’ does not exist, and so does the legal refugee protection. Lang adds that since the late 1990s, the official speeches of Thai policy has been expressed in terms of “displaced people fleeing fighting” (rather than ‘refugees’), “temporary shelters” (rather than ‘refugee camps’), and their official status as illegal entrants under Thai law.\textsuperscript{138} In this respect, Gorg and Buck emphasize that the greatest effect of terminology disparity has been the restriction of asylum seekers from receiving official refugee status and the limitation in the activities of assistance to refugees, both within and outside the camps. Also, the conditions inside the camps for ‘official’ refugees surpass those for unofficial refugees and migrant workers outside the camps throughout Thailand. Therefore, the Thai authorities fear an influx of refugees into the camps from inside Myanmar as well as from unofficial refugees and migrant workers communities. In addition, the authorities are wary of growing links between refugees and the Thai economy, both official (the growing migrant worker community) and illegal (the drug trade).\textsuperscript{139} Accordingly, the refugees from Myanmar live in fear of deportation back into the hands of their persecutors or to the abusive environments from which they fled.

As the Thai government seeks to expel all undocumented migrants with little distinction between refugees and migrants,\textsuperscript{140} a close examination reveals that the definitions employed to classify the people from Myanmar in Thailand are not clear-cut, but in fact, often blur one into the other. Indeed, there is an arbitrary line between the groups that have been designated ‘temporarily displaced’, ‘students and political dissidents’ and ‘migrants’. Caoutte and Pack draw the conclusion that the faulty distinctions on behalf of Thai authorities often result in the vast majority of these people being denied asylum and protection and the superficial identification of millions as simply migrants seeking work.\textsuperscript{141}

\subsection*{6.3 The Classification of People from Myanmar by the Government of Thailand}

The classification of Myanmar people in Thailand comprises three categories, which enjoy distinct statuses and levels of protection from Thai authorities.

One category includes the temporarily displaced persons. The RTG officially identifies the 112.000 people residing in refugee camps as ‘temporarily displaced’,

\begin{itemize}
  \item Human Rights Watch (1998).
  \item Lang H. (July 2001).
  \item Gorg J. E. and Buck T. (2002).
\end{itemize}
commonly referred to as ‘refugees’.

Those allowed to enter the camps are primarily ethnic Karen and Karenni whom the Thais have determined were ‘fleeing fighting’ when they left Myanmar. However, this narrow definition excludes many people of different ethnicities who also have been caught in the civil war and forced to leave their homelands as a result of human rights abuses and various other forms of persecution. As such, large groups of asylum seekers remain on the Myanmar side of the border unable to gain access to Thailand. Also, those who have made their way to Thailand have been denied access to the camps and slated for deportations, as stated in numerous reports.

Hence, strictly adhering to its ‘fleeing from fighting’ criteria for granting asylum, the Thai authorities severely limited the number of those officially admitted to the country and those inside for protection and assistance. The Shan, Akha, Lahu, Wa, Kachin and other minority populations would be ignored the ‘temporarily displaced’ status and therefore leaving them no option but to seek work for their survival. One possible explanation is that the Thai Government conventionally follows what the Myanmar Government declares as ceasefire and non-ceasefire ethnic groups. Subsequently, the Thai authorities accept only Myanmar people holding the ethnicity of the non-ceasefire groups. Thus, the RTG would have to consider broadening the definition to include, not only those ‘fleeing fighting’, but also those fleeing the ‘effects’ of fighting and civil war, as many relief organizations and UNHCR recommend.

Another category comprises the students and political dissidents. These people include the students and political activists who fled Myanmar following the crackdown on the pro-democracy movement by the military in 1988. The majority of those accepted were among the nearly ten thousand people who flooded into Thailand following the ’88 uprisings, first to the jungles along the border and later making their own way to Bangkok.

However, because of the political sensitivities, both the RTG and UNHCR, use the term ‘person of concern’ rather than ‘refugee’ for the displaced students and dissidents. The concept of ‘person of concern’ has not been clearly defined by the authorities and UN refugee agency. However, it seems to be one that downgrades the meaning of the refugee concept to a lesser favorable treatment. Moreover, only those who could prove that they were involved in the 1988 demonstrations and also who could make their own way to Bangkok were granted ‘person of concern’ status. According to Human Rights Watch, the students, including those who were registered as ‘person of concern’ often have been treated no differently from migrant workers or tourists who had overstayed their visas. They could be arrested, sent to immigration detention centers and/or deported with other illegal migrants. In turn, many students often preferred not to identify themselves as ‘person of concern’ when they were arrested because doing so would often lengthen their time in the detention centers. Whereas migrants were routinely deported to the border sites where they could bribe officials and make their way back to

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142 UNHCR (December 2002).
145 Ibid.
Bangkok. In this context, the ‘persons of concern’ were often subject to prolonged detention since immigration authorities considered how to handle their cases, documented by the human rights organization.\textsuperscript{147}

Still another category and the last are the ‘migrants’. ‘Migrants’ is the category used to identify an estimated two million people from Myanmar in Thailand, since the first two categories comprise a reduced number. As argued above, a number of factors contributed to this influx of people, including ongoing civil war, extensive human rights abuses, political, economic and social instability. Moreover, Caouette and Pack argue, that the influx of people from Myanmar arrived at the time Thailand has experienced the economic boom of the late ‘80s early ‘90s and found itself in dire need of unskilled labor. However, the permissive period has come to an end when the Asian countries experienced the economic crisis of 1997 and the rampant unemployment. It therefore, made the Royal Thai Government to adopt a resolution providing that Thai people were to be hired in place of migrant workers, add Caouette and Pack.\textsuperscript{148} As such, the Myanmar people fall into a situation with reduced working possibilities and grounds to receive a legal status.

Furthermore, the only relevant piece of Thai legislation, the 1979 Immigration Act (amended in 1980) provides that all aliens without passports, equivalent identification documents or visas, as well as undocumented asylum-seekers are considered ‘illegal immigrants’ and liable to summary deportations.\textsuperscript{149} As an illustration, the written statement submitted by Asian Legal Resource Centre to CHR notes the Thai authorities tendencies to treat all people from Myanmar as ‘illegal migrants’ and the concomitant policy of forced repatriation.\textsuperscript{150} After all, the definition strikes to the middle of the problem since there is no clear line between different categories used by Thai authorities to identify Myanmar people status. As Tra sustains, “they all cross the border because they want to survive; equally, they flee from war, torture, forced labor and a life in fear; due to forced relocation and other human rights abuses they cannot support themselves or their children.”\textsuperscript{151}

\textsuperscript{147} Ibid.
\textsuperscript{149} Human Rights Watch (1998).
7. Analysis

7.1 Policy Analysis of the Myanmar Case

Following the discussion in the research methodology section, Chapter 7.1 provides an analysis of the Myanmar policy with respect to the core concepts. The core concept in the case of Myanmar is the human rights standards and protection. The Chapter offers an analysis of the coherence of Myanmar official (written) policy as well as implemented policy with respect to human rights standards. Also, it further explains the inappropriateness of the core concepts, emphasized by the Rangoon authorities, to be reflected in the policy. The policy analysis intends to clarify the political rationale of the Myanmar authorities with regard to compliance with the international human rights principles.

7.1.1 The Coherence of Myanmar Policy with the Human Rights

The Myanmar policy in terms of human rights is reflected in numerous documents. One would find two distinct views on human rights policy of the country by observing the position taken by the military Government of Myanmar on the one side, and the UN, International NGOs, opposition forces of Myanmar (also EU, USA and still others) on the other side.

As briefly noted above, the most important human rights promoter and defender, the UN, has repeatedly expressed its concern towards the Government of Myanmar policy based on continued violations of human rights directed against its people. Regularly since 1991 the UN has urged and called upon the Rangoon authorities to stop the human rights abuses including those that result in large-scale displacement of persons and flows of refugees. The UN finally reaffirmed that Myanmar, as a member (of the UN), has an obligation to promote and protect human rights and fundamental freedoms under various international instruments in the field. As such, the position taken by the UN institutions shows multiple signs that the policy of the Government of Myanmar tends incoherent with the human rights concept.

The military government, however, portrays a different picture, of the government policy with regard to human rights standards. This can be understood from analyzing the official responses of the Government of Myanmar through its Permanent Representative and Leader of the Myanmar Observer Delegation to the UN. The Rangoon authorities started since 1999 to issue official documents highlighting what is in their view the real human rights situation in Myanmar and constitutes the Government policy. As a matter of fact, the official policy in this area came to be issued not because of any gesture of free will on behalf of the military government, but rather as a ‘must’ to

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152 See, Appendix IV.
154 The official responses usually take the form of Statements and Note Verbale addressed to specific UN Institutions, in this case, Commission on Human Rights. See, Appendix V.
reply to multiple UN observations. The documents therefore, reflect a position of critique against the UN resolutions, one of contra arguments, excuses and emphasis on some positive developments.

The Permanent Representative asserts, “It is not the policy of the Myanmar Government to encourage or condone anyone to commit any violations of human rights, let alone carrying out harassments of any kind on its own people as its policy”. It further adds that the accusations of “systematic violations of human rights in Myanmar” are inaccurate and incorrect, put forward by UN without any evidence. Moreover, the UN resolutions contain “sweeping allegations of violations of human rights against the ethnic minorities”, which the Government of Myanmar does not consider credible and plausible.  

In 2003, as since 1999, the Rangoon authorities addressed to and circulated within the UN the note verbale annexing the report “Myanmar today in a nutshell” containing ‘insights’ for a better understanding of the situation in Myanmar and the human rights issue in the country. The military government claims, “a good understanding of five fundamental phenomena – 3 specific characteristics, a vision and one political process in Myanmar – is essential to a full and proper appreciation of the current situation in Myanmar”. According to the Government of Myanmar:

“The first characteristic specific to Myanmar is that Myanmar is a multi-racial society with 135 national races. The second specific characteristic is its strategic geopolitical position, forming a link between South Asia and South-East Asia and situated alongside the biggest and most powerful Asian neighboring countries. The third specific characteristic is that the problem of insurgency and that of maintaining peace and tranquility have bedeviled the country since its independence in 1948 until recently.

A vision shared by all the Myanmar people is to establish a peaceful, modern and developed democratic state.

The most important current political process, taking place in Myanmar, is the constitution-making process through the national Convention that will lead to the emergence of a strong and enduring state constitution and the subsequent election of a democratic government in accordance with the new constitution.”

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156 See supra-note 154.
158 Citation note. In attempting a faithful citation, no change has been made to the text regarding bold and italic text properties. Source, Ibid.

42
Consequently, due to the above-mentioned characteristics, the Rangoon authorities identify the following national tasks as its foremost policy elements:

“To safeguard and consolidate unity and solidarity among the national races. To maintain peace and tranquility throughout the country. And, to safeguard non-disintegration of the Union and sovereignty and to pursue an independent and active foreign policy.”

Next, the military government underscores the positive developments prevailing in terms of human rights situation and adequate human rights policy. It points out that the majority of the ethnic armed groups (17.5 out of 18) have concluded peace agreements with the Government of Myanmar and legal fold and development prevails in the border regions. Furthermore, with respect to the forced labor issue, the note verable shows recognition that the people of least developed areas (that is, ethnic minorities regions) are requested (that is, forced) to help as laborers ‘for their own benefits’, which is a ‘unique Myanmar labor tradition’. As such, the military government assures the UN that there is no forced labor in Myanmar, however, because of the ILO pressure they felt obliged to issue orders that prohibit such practices.

Similarly, the government considers the allegations of forced relocations as untrue since the resettlement of some local population in ethnic areas is voluntary and for the purpose of border areas development. Moreover, the political instability and national reconciliation question is an internal political issue, according to the military government. It adds, that they are laying down a firm foundation through the National Convention and constitution making, which is a step-by-step process. After all, the Myanmar delegation at the UN, in the name of Rangoon authorities, has dissociated itself each year since 2000 from the UN resolutions on the situation of human rights in Myanmar, since they do not adequately reflect the Myanmar human rights policy in their view.

For all that, there are points raised from both, the UN and the Government of Myanmar, that need to face each other and answer the fundamental question of whether the Myanmar policy is coherent with the human rights concept. One point of departure is to view the process as a whole, and to recognize that both parties took a confrontational approach rather than one of cooperation. Having an understanding from both sides that a discussion of the human rights policy is necessary, a situation of confrontation adds confusion rather than clarity in analyzing the policy and identifying the state of its coherence with the human rights. While the UN holds a critical point of view towards the coherence of Myanmar policy with the human rights concept, the Government of Myanmar holds a sharp denial approach of having a policy as such. It is likely that this kind of situation might lead nowhere, and if it does, then slowly.

Equally important, the UN as well as the Rangoon authorities, bring up an extensive array of questions under the so-called ”situation of human rights in Myanmar”.

159 Ibid.
Therefore, the actors make the issues at stake difficult to distinguish between each other and thus to give a comprehensive judgment to the policy as a whole. It simply implies, whether particular questions are relevant to be included and to be given priority under the human rights situation in the country and its policy discussion. This point is important for parties to bear with, especially in a situation as complex as Myanmar has. While still aware that the economic, political and social issues are interrelated and moreover, frequently inseparable, worth of asking is whether that always helps in Myanmar case. For example, the problem of refugees and IDPs that constitutes a sound humanitarian, political and security question, would rather feed into the “situation of human rights in Myanmar” then the UN call to honor the results of the 1990 elections, or the Government of Myanmar economic growth argument, as a matter of human rights relevance and priority.

Next, as on behalf of the military government, it is important to highlight, that there are questions raised by the UN that have been answered inadequately, some only partially and still others have not been answered at all. The UN call towards the Government of Myanmar to eradicate the practice of forced labor has been cataloged by the Rangoon authorities as a ‘unique tradition’, which constitutes an inadequate answer as soon as forced labor practice has been identified and documented as a cause of displacement.164

Furthermore, the UN demand to stop the civil war and the fighting against ethnic minorities groups has been argued by the military government as being accomplished through the ceasefire agreements that have been achieved with 17.5 out of 18 ethnic groups. However, the military government overlooks that peace is not fully accomplished in the ethnic areas because of the break away fractions from the original ethnic groups that signed the ceasefires. As such, the argument of ceasefires constitutes a partial one to be claimed in support of what the government calls ‘prevailance of peace and tranquility throughout the country’.165

Finally, the military government has ignored the repeated concern of the UN regarding the large number of IDPs and the flow of refugees to neighboring countries, plus calls to honor the obligations of Myanmar under international law in this area. The military government went only that far as to state that, ‘the issue of migrants has been further complicated by the presence of economic migrants and the followers and family members of the insurgent groups’.166 Therefore, the question of refugees still remains open.

After all, it cannot be denied that the UN as well as the Government of Myanmar ceased to put forward issues of Myanmar policy in the light of human rights concept, nor can be overlooked the energy of parties to formulate a policy with regard to human rights situation. Indeed, work has been done at the level of the Myanmar human rights policy. However, the weaknesses discussed above speak about the intentional character of a Myanmar policy advanced by the UN on the one hand, and military government on the other. Whether the policy intention as advanced by the UN and the Myanmar Government truly seeks to address the adequate human rights issues of the country

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164 See, Chapter 5.4 and 6.1.
situation raises a question mark. Too, whether Myanmar party is ready to formulate a policy coherent with the human rights concept after many twists and contras, raises another question mark. That gives ground to conclude, that the Myanmar human rights policy concepts need to be strategically rethought and intentionally fair.

7.1.2 The Coherence of Implemented Policy with the Human Rights

The coherence of Myanmar implemented policy with the human rights concept leads the analysis in addressing the issue of how law-making and law enforcement functions in Myanmar. As previously noted, the Myanmar’s Tatmadaw (armed forces)\(^\text{167}\) constitutes the supreme power and subsequently, has control of executive, legislative and judicial branches. As such, the SPDC is the creature of the Tatmadaw that rules the country since the 1988 coup d’état. For functional purposes they are one and the same group, in essence a military junta exercising the power of dictatorship.\(^\text{168}\)

The Myanmar Government, that is SPDC, has put extensive effort to demonstrate to the UN and the international community that it is not their policy to encourage or condone anyone to commit any violations of human rights. Moreover, the forced labor practice is non-existent in Myanmar, although orders have been issued to prohibit such a practice. Furthermore, the SPDC praises the establishment of the national Human Rights Committee in 2000 under the Minister for Home Affairs, which has the mandate to promote the human rights. Moreover, it highlights the constitutional process unrolling in the country under the National Convention, where constitutional arrangements will guarantee the political equality of all the ethnic groups and human rights protection of all under the fundamental state law.\(^\text{169}\)

Having established a Human Rights Committee with the role to promote the human rights, issuing orders prohibiting the practice of forced labor and having a constitutional process that will protect the human rights of all without any difference as to ethnic belonging, seems to reflect a high level of coherence of human rights concept with the implemented policy. However, there are several points to take in account before a sound judgment of implemented policy coherence with the human rights concept could be stated.

As a matter of the constitution process, the fundamental political issue, that the new constitution would have to address is the ethnic conflict, which has been the major cause of systematic human rights violations that consequently led to displacement. In this regard, the main demand from the ethnic groups is political equality that would transform the government system into a ‘genuine federal system’ in which the ethnic Burmese would no longer be granted special privileges. According to Win, as long as the

\(^{167}\) The Armed Forces of Myanmar are often called the *Tatmadaw*. The references in the field use the originally Burmese language word “*Tatmadaw*” when meaning the Armed Forces. See for example, International Crisis Group, (September 2002).

\(^{168}\) Ibid.

constitution fails to guarantee political equality for the ethnic groups, they will continue their resistance against the central government, no matter how democratic it would be.\textsuperscript{170}

On the other hand, the military government sees the existence of the ethnic insurgency movements, together with their demands for political equality, as a justifying factor for imposingpressive actions resulting in human rights violations. The Myanmar Government official policy reflected in the national tasks of “Myanmar today in a nutshell” does not speak of political equality, instead bearing to ‘safeguarding the non-disintegration of the Union and sovereignty’ principle.\textsuperscript{171} Therefore, it becomes evident that the process of constitution making as it stands presently does not envisage the ethnic minorities demand, at least at the level of official policy formulation.\textsuperscript{172} And as such, it cannot be supportive in arguing the coherence of implemented policy with the human rights concept, as having the constitution-making process the mechanism to implement the human rights policy.

Equally important, the Rangoon authorities’ decision to establish the Human Rights Committee seems to be a tactical move given that the enforcement of laws is absent and there is a lack of rule of law. All the violations of human rights in Myanmar exist merely because there is no due process of law. Win brings the example when in 1998 the Supreme Court judges have been removed, which demonstrates the interference on behalf of military government and use of the judicial appointments as a maneuver to influence the judicial system at all levels. Therefore, there is no case involving military human rights violations that can be independently tried since the military government controls the judiciary system, concludes the author.\textsuperscript{173}

As such, the establishment of Human Rights Committee is not a guarantee that would help to implement the principles of rule of law and the human rights concept. At last, such a mechanism cannot be put forward as an argument of implemented policy coherence with human rights principle since it lacks strength, authority in the area, and independence.

With regard to forced labor, the issuance of ‘orders’ to prohibit such practices, bearing to Myanmar’s commitment before the UN and the ILO in particular, needs to be reviewed. In fact, there are various Ministers, Departments, Police Forces, the SPDC itself, also at different country levels, that issue orders prohibiting forced labor. Besides, the ‘orders’ is the standard procedure of making laws in Myanmar. Accordingly, it appears that many institutions or individuals in senior positions can make laws, without any regulation of delegation. In any event, as Saffin asserts, the rule of law principles envisage that law making can never be delegated. Since the Rangoon authorities found it necessary to have many orders prohibiting forced labor, issued from so many


\textsuperscript{172} The National Convention established to run the constitution-making process, and its ill representation of various ethnic groups and national political actors, is another argument that dismisses its relevance. See, Chapter 5.2 and also, supra-note 95.

departments at central, regional and local level, serves as evidence that the central government is unable to have its ‘laws’ implemented, sustains Saffin.\textsuperscript{174}

Thus, the attempts to demonstrate to the international community through the issuance of ‘orders’, that Myanmar’s implemented policy is coherent with the human rights concept considering force labor is a failure in itself. At last, a simple issuance of orders does not reflect a due implementation of the policy. Also, to prove that Myanmar has a friendly human rights policy fly in the face of documented evidence, and displacement is one of them.

\textbf{7.1.3 The Appropriateness of Myanmar Policy for Reflecting the Human Rights}

As argued above, the Myanmar policy, both written and in practice, falls short of being coherent with the human rights concept. One reading the ‘Myanmar today in a nutshell’ policy formulation, would find the human rights concept as a footnote of the document and not as a strong principle, as the situation would rather call. Instead, what the policy has as the core concept is ‘to safeguard the non-disintegration of the Union and sovereignty’.\textsuperscript{175} It is thus, important to explore and understand how appropriate is the core concept, as advanced by the Government of Myanmar, to form the foundation of a human rights claimed policy.

According to Schairer-Vertannes, the influence of the international human rights treaties and the UN declarations may have little effect on nations like Myanmar who insist on the primacy of sovereign rights and where domestic issues are in connection.\textsuperscript{176} Similarly, the Permanent Representative of Myanmar has often stated that issues they believe to have effect on sovereignty are internal political questions. Moreover, according to the military government, the attempts by outsiders to influence the events under the cause of promoting the human rights are unacceptable. Publicly acknowledged, “such tactics have not worked and will not work, as far as Myanmar is concerned”, the Rangoon authorities sustained.\textsuperscript{177}

As such, the military government asserts that human rights claims cannot encroach on the principle of state sovereignty, thereby deflecting a suggestion of international intervention and affirming that the issue is one that is best addressed locally. However, Eide holds the view that and ‘open sovereignty’ approach where human rights would be a fundamental furtherance of the overall policy does not put the concepts against each other.\textsuperscript{178} The basic human rights documents show no necessary conflict between the principles of sovereignty and respect for universal human rights, points out Schairer-Vertannes. The United Nations Charter assures the sovereignty principle under


\textsuperscript{177} Permanent Mission of Myanmar (2003).

Article 2(1), except in situations of international peace and security (Article 2(7)), adds the author.\footnote{Schairer-Vertannes R. (2001), pp. 98-100.}

As noted, the exception clause of sovereignty principle under Article 2(7) brings a new dimension to its inviolability. Welhengama explores the issue in the context of “the right to secession – an ultimate remedy for trapped minorities”. The author sustains that, when a part of the population is deprived of the fundamental human rights and is subject to persistent oppression on ethnic, racial, religious or linguistic grounds, then, it is arguable that the human rights concept overrules the sovereignty principle.\footnote{Welhengama G., “Minorities’ Claims: From Autonomy to Secession. International Law and State Practice”, Hampshire: Ashgate Publishing Limited, 2000, pp. 236-241.} Consequently, the extensive evidence of human rights violations and documented discrimination against the ethnic minorities, with IDPs and refugees as a result, gives supportive ground for human rights concept to win the argument. At last, it can be concluded that sovereignty is not the appropriate core concept to dominate the Myanmar policy agenda regarding human rights, when human rights violations exist.

\section*{7.2 Myanmar Compliance with the Human Rights}

The starting point in analyzing the compliance with the human rights standards is to identify how relevant the international standards are thought to be by Myanmar authorities. Thus, judging according to the actions pursued by the Government of Myanmar there are several signs that support the thesis that international law has a certain degree of relevance in this case. In other words, the Military Government would never consider taking any actions at all if the international law and setting would be irrelevant.\footnote{At this point, it is significant to consider the actions themselves, whereas, living aside their quality.} Subsequently, the Rangoon authorities would not bother with replying to the frequent UN resolutions nor would they formulate a policy in response to the UN ‘situation of human rights in Myanmar’. In this context, it is also significant that Myanmar approved the visits of the UN Special Envoy, of the Special Rapporteur and of the ILO delegation. Notwithstanding the poor quality of such actions, in any case, it issued ‘orders’ prohibiting the practice of forced labor as pressure came from the ILO, and it also established a Human Rights Committee to prove the ‘commitment’ made to the UN.\footnote{See, Chapter 7.1.2.} At last, the question of why would the military government take such actions would receive the answer that – international law and setting matters.

On the other hand, the fundamental principle of compliance-based theory (though neorealism too) is the assumption that states are self-interested and rational entities. As a matter of Myanmar policy analyzed in Chapter 7.1, the concepts advanced by the Rangoon authorities include the claims of ‘national unity’, ‘sovereignty’ and ‘internal affairs’ which sustains the self-interest and rationality clause of Myanmar as an entity. At the same time, the other side of the same coin, which is of the concepts, entails the consequence of noncompliance.

As such, the ‘national unity’, ‘sovereignty’ and ‘internal affairs’ are concepts that the military government balances with the ‘human rights’ standards when deciding
whether to comply or not with the human rights principles. Therefore, there is the perception that the costs of complying with the human rights principles are too high to be given approval. Moreover, what Myanmar authorities see, is that these concepts face each other, and if complying it would endanger and risk the maintenance of the other. This explains why Myanmar is not a party to many important human rights treaties.¹⁸³

The reputational capital that Myanmar would put forward, should it be a party, is too high given that the compliance cost is high as well. It can be assumed that, the military government preference is to advance reduced reputational capital for the resolutions, decisions and statements (soft law) that the UN addresses, and hence, not to comply. Otherwise, given the perceived high stake of the question and consequent noncompliance, in the case of treaties it would be even more costly, according to Guzman’s theory of compliance. In this regard, the theory foresees that high stakes issues are less likely to be influenced by the international law, and hence, to comply with.¹⁸⁴

However, the significant ‘remedy’ that compliance-based theory advances with regard to high stakes questions, is the possibility to diminish the grandeur of, or split the issue, by bringing questions with reduced stakes, nevertheless with similar desired outcomes.¹⁸⁵ Therefore, the UN (and international community) call towards Myanmar to comply with the human rights standards of the international instruments in the area could be substituted with the following, as for example: to allow the UN representatives to visit the country and cooperate with the Myanmar authorities towards enhancing the human rights situation; to allow the UN relevant bodies and agencies to establish sub-offices in the ethnic states of Myanmar to carry development projects; to cooperate with the UN (in a monitor capacity) with respect to the judicial process in Myanmar, as well as constitution-making procedure. Also, by splitting the ‘human rights’ concept in distinct rights that it includes, as for instance the prohibition of forced labor or forced relocation, makes the stakes lower and compliance more likely.

7.3 Policy Analysis of the Thailand Case

Chapter 7.3 provides an analysis of the Thai policy with respect to the core concepts. The core concepts in the case of Thailand are the human rights and refugee rights standards and protection. The Chapter explains the failure of Thai authorities to formulate an official (written) policy and offers an analysis of the coherence of the implemented policy with regard to human rights and refugee protection standards. Also, it further explains the present inappropriateness of the core concept, which is repatriation (deportation), emphasized by the Royal Thai Government, to be reflected in the policy. The policy analysis intends to clarify the political rationale of the Thai authorities with regard to compliance with the international human rights and refugee rights principles.

¹⁸⁵ See, Chapter 2.
The underlying factors conducing displacement continue in the refugee sending state, and consequently, Thailand is bound to receive the uprooted people and offer protection. As noted above, the RTG gives Myanmar refugees temporary asylum in nine camps along the border. At the same time, the camp refugees are only a part of the entire displaced population as many others live outside the camp structure. This is due to the Thai policy of defining and classifying the Myanmar refugees.\(^{186}\)

The effects of the policy have been well documented by various interested parties. Nevertheless, a Thai policy as such has never been officially formulated and clearly stated in any formal documents. UNHCR has, since 1998, as one of its primary objectives put forward in “UNHCR Global Report/Appeal-Thailand” on a yearly basis, to promote the development of national refugee legislation consistent with international standards. However, as the objective stands in 2003 too, it has still to be achieved. Moreover, the UN refugee agency has frequently stated the absence of the refugee national legislation and the fact that Thailand is not a signatory to the Refugee Convention and Protocol as one of the fundamental constraints in Myanmar refugee protection (see Appendix III).\(^{187}\)

As a matter of fundamental state law, several human rights NGOs generally regard the Constitution of Thailand as having an increased scope for human rights protection especially since its renewed adoption in 1997. However, it does consider only Thai citizens and not refugees or migrants.\(^{188}\) For illustration, the Constitution of Sweden serves as an interesting reference. While the fundamental freedoms and rights are proclaimed throughout the Constitution to be guaranteed for ‘all citizens’, it does have an important Article 20, which reads that, “a foreigner within the Realm shall be equated with a Swedish citizen in respect of fundamental rights and freedoms”.\(^{189}\)

On the other hand, Thailand has acceded to five out of 6 principal international human rights instruments (see Appendix III), and as a signatory party, it is bound to respect its principles. As mentioned in Chapter 3, certain regulations from international human rights instruments apply to all the people, with no distinctions of any kind. Therefore, the human rights concept of everyone, and by deduction of refugees, ought to be incorporated in the framework of national human rights policy. As such, if the refugee policy is non-existent independently, it could be otherwise derived from the larger frame of human rights policy. Specific Articles of international instruments themselves, sustain an interpretation of this kind. For example, Article 16 (1) of ICESCR in conjunction with the rights stipulated in the treaty, reads:

\[^{186}\] See, Chapter 6.
“The State Parties to the Present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein”.  

In this context, it is worth of mention that while the above article does not necessarily assert the adoption of a national policy with regard to the rights stipulated in the treaty, a human rights policy in itself usually serves as a first step in complying with its regulations. Notwithstanding the advance character of the Thai policy with respect to human rights as illustrated by the Constitution of Thailand, it ceased to include the important clause that the human rights standards apply to all the people and not only Thai citizens.

At last, it can be concluded that Thailand has been reluctant to officially specify its policy towards Myanmar refugees as sustained by the absence of any national legislation in the area, and also by overlooking to incorporate the refugees in the larger framework of human rights policy. After all, it demonstrates the unwillingness of the Royal Thai Government to put its refugee policy concepts (the implemented policy, as discussed below) for the scrutiny and debate as its official policy in the area. An analysis of the policy coherence with the core concepts would obviously be a part of scrutiny. Moreover, should refugee policy concepts (as they stand in the implemented policy) be officially inserted in the larger frame of national human rights policy, it risks to change its advanced character and decrease its scope.

7.3.2 The Coherence of Implemented Policy with the Human Rights and Refugee Standards

Although, Thailand does not have a refugee policy stipulated officially in any documents, this fact did not impede Thailand to carry out a policy when it comes to practical regulations. On the whole, Thailand has allowed refugees from Myanmar to enter and reside within the country and it has also provided temporary asylum and protection. In this respect Lang argues that, Thailand has been a host country to large flows of displaced persons since 1975 that arrived from Indochinese states and were at times amounting to some one million persons.

Therefore, from the perspective of the Thai authorities, this kind of permissive policy relates to the context of a host country shouldering a protracted refugee burden that has also grown in scale, complexity and capacity as a security threat. The influx of refugees has entailed extensive costs for Thailand in terms of administration and personnel, environmental degradation, deforestation, epidemic control and the displacement of affected Thai villages. In terms of national security, the presence of refugee camps along the border has frequently caused the spilling of the civil war on Thai side of the border, creating further pressure for Thai authorities. After all, it implies that Thailand does not want to remain an indefinite host and refugees cannot live

indeterminately in the country.\textsuperscript{192} This explains why Thailand is reluctant to give full recognition of all Myanmar people on its territory that match the refugee status and those recognized as such, to be ‘refugees’ and not ‘temporarily displaced’.\textsuperscript{193}

From this point of view, the RTG has started since the mid 1990s a restrictive policy towards refugees and more ‘control’ over the situation. Instances of violation of refugees’ protection standards have been frequently reported by international human rights NGOs as well as UNHCR. The major Myanmar refugees protection problems in Thailand are: (1) the refoulement of Myanmar refugees both at the border and within the Thai territory,\textsuperscript{194} (2) the instances of arrest and detention of Myanmar people found on its territory, both with or without appropriate documentation, (3) the discrimination of different ethnic minorities from Myanmar with regard to status determination and permission to reside in refugee camps,\textsuperscript{195} (4) the inadequate status determination procedure and the absence of the right of appeal, and (5) the restriction of movement and activities of refugees.\textsuperscript{196}

In light of the above-mentioned problems that stream from the implemented Thai policy towards refugees from Myanmar, the incoherence of the policy with the core human rights and refugees principles cannot be overstated. The principle of non-refoulement as part of customary international law should be respected even if Thailand is not a party to the 1951 Convention or 1967 Protocol, according to the UNHCR.\textsuperscript{197} Next, the principle is also found in the Universal Declaration of Human Rights, Article 14.\textsuperscript{198} Moreover, the principle of protection against refoulement has an implicit connotation in ICCPR, Article 7 to which Thailand acceded in 1996, which provides that: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”.\textsuperscript{199} The provision of Article 7 includes an implicit prohibition of refoulement where the person is at risk of torture.

The principle of arrest and detention is reflected in the UDHR, Article 5 and ICCPR, Article 7, under the same legal text, that: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”.\textsuperscript{200} With certain limitations the ICCPR further provides through Article 9(1), that: “Everyone has the right to liberty and security of the person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.”\textsuperscript{201} Moreover, the refugee children as a specific

\textsuperscript{192} Ibid.
\textsuperscript{193} See Chapter 6.
\textsuperscript{194} The non-refoulement principle applies both at the border and within the territory of the receiving state. UNHCR, \textit{Article 33: Prohibition of Expulsion or Return (‘Refoulement’)}, in UNHCR, “Convention and Protocol Relating to the Status of Refugees”, Geneva, March 1996, p. 32.
\textsuperscript{195} For example, the Shan people are summary considered to be illegal immigrants and not allowed to enter and reside in refugee camps. See, U.S. Committee for Refugees, “World Refugee Survey 2003 – Thailand”, Washington, June 2003. Online at <www.refugees.org>.
\textsuperscript{197} UNHCR (1995).
\textsuperscript{198} UN, “UDHR” (1948), Art. 14.
\textsuperscript{199} UN, “ICCPR” (1966), Art. 7.
\textsuperscript{200} UN, “UDHR” (1948), Art. 5. and UN, “ICCPR” (1966), Art. 7.
\textsuperscript{201} Ibid, Art. 9, Par. 1.
group are legally protected against arbitrary arrest and detention under the Convention on the Rights of the Child, Article 37 to which Thailand acceded in 1992 (see Appendix III).

The standard setting principles against discrimination of specific ethnic minorities from Myanmar could be derived from the provisions of equality of treatment with respect to public relief, for example: UDHR (Article 25) and ICESCR (Article 9) to which Thailand has acceded in 1999. The discrimination with regard to social security and the right to housing stands against the ICESCR (Article 9 and 11) and UDHR (Article 25). Finally, the discrimination against ethnic minorities when implies the right to life, liberty and security of person is unlawful according to UDHR (Article 3) and ICCPR (Article 6 and 9).

Furthermore, the fair asylum procedures under the international human rights standards are reflected through the provisions of the ICCPR, Article 13:

“An alien lawfully in the territory of a State to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purposes before, the competent authority or a person or persons especially designed by the competent authorities.”

However, the right set out in Article 13 of the Covenant applies only to aliens ‘lawfully’ in Thailand. Moreover, the 1951 Convention does not provide any specific guidance as to the procedure to be applied by states when undertaking refugee status determination. Therefore, it merely resides in the competence of the Royal Thai Government and UNHCR to seek the modality of Myanmar refugees’ status determination.

Finally, the restriction of refugee movement is unlawful under the provisions of the UDHR (Article 13), the ICCPR (Article 12) and the CERD (Article 5) to which Thailand became a party in 2003 (see Appendix III).

At last, given the above examples of refugee protection standards under the international human rights instruments to which Thailand acceded or otherwise universally applicable, the refugees from Myanmar still encounter difficulties due to the incoherence of implemented Thai policy with the standards, that it has the obligation to respect.

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204 UN, “ICESCR” (1966), Art. 9, 11 and UN, “UDHR” (1948), Art. 25.
205 UN, “UDHR” (1948), Art. 3 and UN, “ICCPR” (1966), Art. 6, 9.
7.3.3 The Appropriateness of Thai Policy for Reflecting the Human Rights and Refugee Standards

An analysis of the Thai policy and its coherence with the refugee protection standards has been discussed above. Nevertheless, it further raises the question of how appropriate the refugee protection standards, which are reflected in its implemented policy and subsequent ‘justification’, are to be reflected in the policy.

The main argument against an appropriate refugee protection policy has been the national security, as well as the economic burden that is noted above. Indeed, the Royal Thai Government has always tightened its policy and control over the refugees when certain incidents involving the Myanmar people have happened. Among the most striking were: the cross-border incursions that compromised the security of refugees and the Thai population, and the inviolability of Thai territory;\(^{208}\) the hostage-taking and siege of the Myanmar Embassy in Bangkok in October 1999 and of Ratchaburi Hospital in January 2000;\(^ {209}\) and the recent warnings of planned kidnapping of Myanmar Ambassador in Bangkok in June 2003.\(^ {210}\)

Under the motives of national security and economic burden the Government has frequently pushed ahead with summary deportations of illegal immigrants among whom there have been refugees as well. Some of the most sound deportations have been carried through cooperation with the Rangoon authorities, when it has been explained that the people were resettled in the ‘safe areas’ where fighting is not present.\(^ {211}\) In legal terms and against the negative connotation that the notion of deportation implies, the ‘repatriation’ is the procedure seen by the Thai authorities as the remedy for the situation.\(^ {212}\) Consequently, the core concept and concomitantly the planned action under the refugee protection standards, stands the repatriation.

In this context, Lang points out that repatriation is a highly charged concern, encompassing a complex mix of factors and parties with vital stakes. These principally involve the position of the host country, the conditions in and attitude of the country of origin, the role and prospect for access by the UNHCR, and the position of refugees’ representatives and advocates, adds the author.\(^ {213}\) However, the problem in Myanmar refugees’ case, for a policy of repatriation, is ultimately located within Myanmar. According to international norms, the starting point for repatriation involves a fundamental change in the underlying causes of displacement.\(^ {214}\) Yet, as still Myanmar people flee the country to find sanctuary in Thailand, the causes of displacement by far remain unchanged. At last, it can be concluded that the repatriation concept stands


inappropriate to be reflected in present Thai policy. In fact, what Myanmar refugees need is further and enhanced protection, based on appropriate Thai policy.

7.4 Thailand Compliance with the Human Rights and Refugee Standards

In the case of Thailand, if the international law and setting is irrelevant, the consequence would be no action. However, there are significant actions taken by the Thai authorities that prove the opposite. Despite the restrictions Thailand has accepted large numbers of Myanmar refugees to enter its territory. Though limited, the Royal Thai Government has offered protection to the refugees as temporarily displaced. Moreover, the Thai authorities have allowed the establishment of refugee camps on its territory and certain groups of refugees to reside in them. Equally important, Thailand has experienced the security concerns and carried the economic burden of a refugee host country. As such, the conclusion can be drawn that the international law and setting matters for Thailand.

The most interesting pattern that the compliance based theory would have to explain is why there is such a variation across time with regard to compliance with refugee standards. In other words, why would Thailand sometimes have a positive attitude (to some extent) while at other times would harden its policy? There are several variations in its policy that could be observed over time. For example, Thailand has had a rather permissive policy, in terms of both acceptance and protection of refugees until 1997, while after, the Thai policy and attitude towards refugees hardened. Also, during the last five years the Thai policy has been fluctuating according to the incidents that have happened involving Myanmar people residing on its territory.

According to Guzman, the compliance is a dynamic political phenomenon that varies in accordance with the opportunities and risks that a country may face both over time and across contexts. In this regard, a country may choose to follow a particular law at one time or in one context and violate it at another time or another context. As several reports state, the reason why Thailand had a permissive policy until 1997 was due to the demand of workforce at that time. Then, with the Asian economic crisis the demand for workforce has considerably decreased, while in the same time the number of refugees increased. Accordingly, what has been an advantageous opportunity before 1997 has changed to a disadvantage after. The same theoretical explanation applies to the variations considering the incidents that sometimes triggered a tighter policy towards refugees. What changes in the second example is the variable, from ‘opportunities’ to ‘risks’.

Moreover, from the host country point of view Myanmar refugees are at present perceived as a burden. A compliance-based theory perspective would imply that there are no benefits for to comply with the standards, except that a reputational loss will be entailed if noncompliance is the choice. This explains why Thailand is neither fully complying nor entirely avoiding compliance. While pushing ahead with the repatriation

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216 See, Chapter 6.3.
217 See, Chapter 7.3.3.
plan to avoid the costs of hosting the Myanmar refugees, a position at the middle secures the status quo of its reputation.

An interesting issue to approach is why the UN, that is through UNHCR, have acted in a reduced manner in the case of Thailand as comparing to the Myanmar case. One possible explanation is claimed to be the long and traditional presence of the UN in the country. From this point of view Bangkok is a strategic place that secured the regional presence of the UN in South-East Asia. Also, as a leading country in the region with regard to UN presence, Thailand has significant cooperation with the UN that already became a tradition. As one of the leading and important UN hosting countries in the region, the UN pursues a softer approach towards the Thai authorities. The compliance-based theory does not feed into the discussion of a possible scenario as this one. Indeed, the international law and setting it is regarded by the theory, and it must be, independent and impartial. Nevertheless, from an empirical point of view, situations as such are not impossible.
8. Conclusions

Why is compliance with the international human rights and refugee standards problematic in the case of Myanmar and Thailand? This is the fundamental question that the thesis has put forward to accomplish. A ‘why’ question as this one, would need to follow the ‘how’ compliance with the international human rights principles works in protecting the human rights of the Myanmar people. Similarly, the refugee case logical enquire of this study, also needs to ask, how compliance with the human rights and refugee principles works in protecting the rights of the Myanmar refugees in Thailand.

As approached in the Myanmar situation background of the Chapter 5, and deeper through the analysis of the Myanmar human rights policy of the Chapter 7.1, the human rights situation in the country is one of deep concern. The military government that seized the state power in 1988 rules the country under a hostile human rights environment towards its own people. This situation led to an extensive flow of people becoming displaced and seeking refuge in different countries, with the vast majority in Thailand. While the Myanmar authorities deny having a policy ‘that encourage and condone anyone to commit any violations of human rights, or that carries harassment of any kind on its own people’, there are several indicators that demonstrate the contrary and makes the human rights concern legitimate. The Myanmar refugees in Thailand are one of these indicators. In this context, one of the links between the human rights and refugees fields, discussed in Chapter 3, is argued and illustrated by the Myanmar-Thailand refugee case. That is, when there is lack of human rights protection in one country could lead to a refugee flow across the border to the neighbor country.

As such, compliance with the international human rights principles comes uneasy to assess when Myanmar authorities deny being a party to human rights violations. The compliance-based theory views such a tactical move by the Rangoon authorities as one of the ways to avoid the reputational loose and the sanctions. Moreover, beyond what the theory of compliance envisages, and in the same time a valuable point to the theory, the case of Myanmar is much deeper than first thought when it comes to the reputational loose. The Government of Myanmar needs to abide to the international human rights principles for the most because it is illegitimate and it has reduce recognition, and any actions against the provisions of the international human rights could cause even greater illegitimacy and less recognition of the Government. In many cases, however, a simple rejection of being involved in human rights abuses is not enough to avoid the consequences, according to the compliance-based theory. This is explicitly so, when the magnitude of noncompliance with the human rights principles is as substantial as in the case of Myanmar.

Form a legal point of view; the most appropriate procedure to find out whether the Rangoon authorities committed human rights abuses is to put the case for the scrutiny of an international justice body. However, at the international level this has been an exceptional procedure with a rare use (for example, the International Tribunal for the Former Yugoslavia), with the International Court of Justice lucking the power and the mandate in this area. Another case in point is that, Myanmar has taken no action to accede to many of the international human rights treaties so far, despite repeated calls from the UN (see Appendix III). Since treaties, as opposed to other forms of (soft) law, have legally binding force on the state parties, the noncompliance with the human rights
principles would induce higher consequences for the Government of Myanmar if nonconforming. This explains why the authorities of Myanmar opted not to accede to the human rights treaties, as when involved in human rights violations and being a signatory party, could bear a higher price to pay. Accordingly, the reduce international force and authority to scrutinize the human rights violations in Myanmar, and the existence of the possibility to stay out of the provisions of the international human rights binding principles, is one explanation why is compliance with the international human rights principles problematic in the case of Myanmar.

At the international level, the UN human rights bodies, and the international NGOs specialized in human rights protection and promotion, have carried the investigation and documentation of the various forms of human rights violations in Myanmar. The UN human rights bodies have repeatedly expressed their concern to the human rights situation in Myanmar. The human rights bodies, through the resolutions and the decisions adopted specifically for the Myanmar, called on the Government of Myanmar to stop the human rights abuses and displacement of people in the country. The UN further emphasized the obligation of the Myanmar, as a member state of the UN, to comply with the UN legal texts adopted for the Myanmar, and other internationally recognized human rights documents (for example, UDHR). Instead, the Government of Myanmar has issued the major human rights policy paper of the country, the note verbale annex “Myanmar today in a nutshell”. Differently to what such a document would require, the main issue discussed in the policy paper is not the human rights question, but rather the ‘state sovereignty and integrity’. Therefore, it can be concluded that the human rights protection does not stand as the core concept of the human rights policy of the country. In turn, the state sovereignty and integrity concept replace the one of human rights protection of the ‘human rights’ claimed policy.

On the one side, such a policy seeks to ignore the international concern vis-à-vis human rights, and consequently takes off the compliance with the human rights principles from the discussion agenda. On the other side, such a policy seems to have the intention to legitimize any actions pursued by the Rangoon authorities with regard to compliance with the human rights principles. The state sovereignty and integrity is a sound concern, and it has been for as long as states are the main entities in the international relations setting. However, as argued in the Chapter 7.1.3, the state sovereignty and integrity is a legitimate concern unless the compliance with the human rights stands as a concern too. Moreover, the concepts do not exclude each other as Rangoon authorities seem to assume. Replacing one concept with the other, leads to what the compliance-based theory names ‘questions with high stakes’. According to the same theory, the high stakes issues have a reduce probability of compliance. To conclude, the replacement by the Rangoon authorities of human rights issue, based on the assumption of ‘conflicting concepts’ and the high stakes outcome, is another explanation why is compliance with the international human rights principles in the case of Myanmar problematic.

The discussion of the Myanmar refugees’ protection problems in Thailand in the Chapter 6, and the analysis of the Thai policy in the Chapter 7.3, gives reliable reasons to find problematic the compliance with the human rights and refugee protection principles in the case of Thailand. The RTG ceased to put forward an official policy with regard to refugees protection despite having 2 million Myanmar people that fled and reside on its territory. Moreover, documented by the specialized international NGOs, the Thai
authorities have repeatedly carried summary deportations of the Myanmar people, at
times, with no scrutiny of the reasons they are on its territory. Otherwise, many of the
refugees have been left unprotected and had no choice but to seek jobs for their survival,
that conversely has worsen their situation since it is easier to categorize them as ‘economic migrants’ than ‘refugees’. A situation as such feeds into the description ‘unwanted and unprotected’ according to some authors.219

Analyzed in Chapter 7.3, the RTG has been reluctant to recognize many of the
Myanmar people that fled various forms of human rights abuses due to the economic
burden and perceived element of insecurity. In turn, this explains why an official policy
has not been issued. An official Thai policy would have incorporated the international
human rights and refugee rights principles, which consequently, could have been against
the Thai interests. Moreover, an official Thai refugee policy could put the RTG in a
situation to adhere to many of the international refugee principles, even in the case when
Thailand is not yet a signatory party to the 1951 Refugee Convention and 1967 Protocol.
Compatible with the compliance-based theory approach, a nonconforming policy with the
international standards could lead to a certain degree of reputational loose. To conclude,
the present status quo position gives the Thai authorities the ‘right’ to carry a politics
congruent with their interests while supporting limited reputational loose. This is one of
the reasons why the compliance with the international refugee principles is problematic in
the case of Thailand.

As argued in Chapter 3 and analyzed in Chapter 7.3, there are human rights
principles that might be used for the protection of the refugees, since they apply to ‘all
the people’, with no distinction of any kind. Since Thailand has acceded to several human
rights treaties (see Appendix III), it has an obligation to abide to its regulations. However,
despite what the international human rights treaties allow, there is the erroneous
perception that human rights and refugee rights are two distinct areas. The human rights
treaties have a limited use for the protection of Myanmar refugees by the Thai authorities.
In the same time, the noncompliance with the international human rights principles that
apply to the refugees means, that there is noncompliance with the international law. The
Appendix IV “Human Rights Country Specific Documents, Considered by United
Nations Institutions. Myanmar and Thailand” shows that the protection of the human
rights of the refugees in the case of Thailand has a reduce consideration by the UN
human rights institutions (in comparison with Myanmar, for example). Moreover, there is
no resolution issued in this regard. A situation as such, tells that there is limited
acknowledgement of the violation of the refugees’ human rights by the UN human rights
institutions. Consequently, this is another reason why the compliance with the
international human rights principles is problematic in the case of Thailand. In line with
the compliance-based theory approach, the extent to which the relevant players
acknowledge a violation affects the reputational consequences. At last, a simple
acknowledgement of the human rights violation of the Myanmar refugees in Thailand by
the UN human rights institutions could bend the balance towards greater compliance and
make a difference.

219 See Chapter 6 and supra-note 124.
8.1 Summary

This thesis discusses several interrelated issues. It lays out a theory that falls in-between the international law and international relations theories. It does so within the framework of theoretical development put forward by Guzman as compliance-based theory, which explains the instances of compliance and non-compliance with the law. The analysis of the policy and actions in Myanmar and Thailand case emphasizes the problems of complying with the international standards. The theoretical exercise is nevertheless a learning feature as it gives the possibility to identify where the stakes reside and which are the elements of change.

Also, the thesis introduces the reader to the international human rights and refugee protection instruments and mechanisms. While this offers a point of departure and the background, the following offers a feature for exploring the relationship between the human rights and refugee rights. As it has been shown, the relationship between the two fields was a missing part until roughly a decade ago, notwithstanding their much earlier birth as a law. The causal relationship between the two, that is when the human rights violations leads to displacement, reflects the impossibility to address the protection of refugees in Thailand without pointing out the human rights situation in the country of origin. Their complementarity as law regimes shows the possibility to address the causes of displacement in a more comprehensive manner. At the same time it offers a unique modality to enforce the refugee protection system or even to apply the human rights law when the country has not acceded to the refugee law.

Consequently, the study embarks on its exploratory scope to show the human rights situation in Myanmar that leads to a discussion of the human rights violations in the country and the causes of Myanmar people displacement. Similarly, the research approaches the situation of refugee protection in Thailand and the problems thereof.

Moreover, this thesis offers an analysis of Myanmar and Thailand policies with regard to human rights and refugee standards. In the Myanmar case, the policy has been formulated containing ambiguous elements, which downgrade the comprehensiveness of the policy with the human rights concept. As a matter of implemented policy, it has been argued that the military government’ claims, that the implementation mechanisms are present in Myanmar, does not support a policy as being comprehensive since the mechanisms have failed both in theory and practice. At last, the Government of Myanmar emphasis on national unity and sovereignty are not the only concepts to be reflected in the policy when human rights are violated, as argued in this study. In the case of Thailand, it is explained how the Thai Government has refrained from putting forward a refugee protection policy, and it has failed to establish an implemented policy coherent with the refugee protection concepts. Consequently, the repatriation concept does not stand appropriate to be reflected in the policy when the human rights violations continue in Myanmar, and displacement causes still unresolved, as the research reveals.

Finally, the research demonstrates the relevance of the international law and setting in the case of Myanmar as well as in the Thailand case. Nevertheless, it also explains why did Myanmar opted not to comply with the international human rights standards and which are the problems in this context. Accordingly, in the case of refugee protection in Thailand, the study explains why did the country in some instances
complied with the standards while in other not, and what could go beyond the compliance-based theoretical explanation.

8.2 Further Studies

This thesis is rather a beginning than an end of research in itself, and a follow up of one year or so showed the richness of the subject and the limit to have possibly studied the field from the many angles that came out during the research process.

While this thesis looked at the various ethnic minority groups in Myanmar as a coherent entity and approached the issue with the same standards, diving dipper into the ethnicity clause would reveal that this is not exactly so. A further study would have the challenge to explore and pose the question of why for example the Shan Myanmar refugees are given less favorable treatment in Thailand among the other ethnic refugees, and what is divisive between the distinct ethnic groups in Myanmar that made their cause and human rights achievement limited.

Another aspect that could be brought forward in further studies is the extent the relations between Thailand and Myanmar have affected the formulation and implementation of the countries’ policies with respect to human rights and refugee protection, and the consequences for the situation in the field it had. One point approached in the thesis is the cross-border incursions that often occurred on Myanmar-Thailand border and the effect it had on Thai policy towards refugees. However, this is only one point of the relationship issue, as it has been no further follow up on the question.
9. References

9.1 Literature


9.2 UN Documents


______, “Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)”. Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46, Geneva, 10 December 1984.


9.3 News Release

Word Count (excluding acknowledgements, footnotes, appendix and figures): 25 206
### Human Rights and Refugees Thematic Documents Considered by the United Nations Institutions

<table>
<thead>
<tr>
<th>Institution</th>
<th>Documents Considered</th>
<th>UN doc Index</th>
</tr>
</thead>
</table>

* Appendix I is compiled using the United Nations Documents Electronic Database. The documents selection has been done according to the human rights plus refugees issue. It comprises the documents considered during the 1994-2003 period, inclusive. Each document is codified and can be identified and fully accessed online at <www.unhchr.ch> using the UN doc Index provided in the table.
10.2 A-II.

United Nations Human Rights Organizational Structure

* Appendix II is compiled and structured using the, UNHCHR, “United Nations Human Rights Organizational Structure”, Geneva, 2003, Online at <www.unhchr.ch>. The Structure is adjusted to meet the needs of the thesis and increase its legibility.
10.3 A-III.*

Status of Ratifications of the Principal
International Refugee and Human Rights Treaties.
Myanmar and Thailand

<table>
<thead>
<tr>
<th>Treaties</th>
<th>Myanmar</th>
<th>Thailand</th>
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<tr>
<td>1967 Protocol</td>
<td>(-)</td>
<td>(-)</td>
</tr>
<tr>
<td>CESCR</td>
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</tr>
<tr>
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<tr>
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<td>CAT</td>
<td>(-)</td>
<td>(-)</td>
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<tr>
<td>CRC</td>
<td>15 July 1991</td>
<td>27 March 1992</td>
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Notes:

1951 Convention – Convention Relating to the Status of Refugees;

CESCR – International Covenant on Economic, Social and Cultural Rights;
CCPR – International Covenant on Civil and Political Rights;
CERD – International Convention on the Elimination of All Forms of Racial Discrimination;
CEDAW – Convention on the Elimination of All Forms of Discrimination against Women;
CAT – Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
CRC – Convention on the Rights of the Child;

(-) – No action has been taken towards accession.

### 10.4 A-IV.

**Human Rights Country Specific Documents,**
**Considered by the United Nations Institutions.**
**Myanmar and Thailand**

<table>
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<th>Year</th>
<th>Document Considered</th>
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<th>UN doc Index</th>
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<td>Situation of human rights in Myanmar. Note by the Secretary-General.</td>
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<td>A/57/290</td>
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<tr>
<td>Year</td>
<td>Resolution/Decision/Note</td>
<td>Body/Entity</td>
<td>Country</td>
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<td>2000</td>
<td>Situation of human rights in Myanmar. Note by the Secretary-General.</td>
<td>Permanent Mission of Myanmar</td>
<td>Myanmar</td>
<td>A/55/312</td>
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</table>

Note: The table lists resolutions, decisions, and resolutions adopted by the General Assembly, Economic and Social Council, and Commission on Human Rights, along with their respective bodies and entities, countries, and document codes.
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<th>Location</th>
<th>Document ID</th>
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<td>A/53/657</td>
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<td>Human Rights Questions: Human rights situations and reports of Special Rapporteurs and Representatives. Situation of human rights in Myanmar. Report of the Secretary-General.</td>
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<td>Myanmar</td>
<td>A/48/578</td>
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Notes:

ECOSOC – United Nations Economic and Social Council;


* Appendix IV is compiled using the United Nations Documents Electronic Database. The documents selection has been done according to the countries concerned (Myanmar and/or Thailand) plus the issue of human rights. It comprises the documents considered during the 1991-2003 period, inclusive. Each document is codified and can be identified and fully accessed online at <www.unhchr.ch> using the UN doc Index provided in the table.
### Documents Concerning Human Rights Situation in Myanmar.  
**Issued in Response to the UN Considerations**

<table>
<thead>
<tr>
<th>Year</th>
<th>Document Considered</th>
<th>Institution</th>
<th>UN doc Index</th>
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<td>2003</td>
<td>Statement by Permanent Representative and Leader of the Myanmar Observer Delegation to the fifty-ninth session of the Commission on Human Rights on the oral presentation by Professor Paulo Sergio Pinheiro.</td>
<td>Permanent Mission of Myanmar to UN Geneva</td>
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<td>2002</td>
<td>Statement by Permanent Representative and Leader of the Myanmar Observer Delegation to the fifty-eighth session of the Commission on Human Rights on the oral presentation by Professor Paulo Sergio Pinheiro.</td>
<td>Permanent Mission of Myanmar to UN Geneva</td>
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<td>2001</td>
<td>Statement by Permanent Representative and Leader of the Myanmar Observer Delegation to the fifty-seventh session of the Commission on Human Rights on the brief oral presentation by Professor Paulo Sergio Pinheiro.</td>
<td>Permanent Mission of Myanmar to UN Geneva</td>
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* Appendix V is compiled using the United Nations Documents Electronic Database and Online Burma/Myanmar Library. The documents selection has been done according to the country concerned (Myanmar) plus the issue of human rights. It comprises the documents considered during the 1999-2003 period, inclusive. Each document is codified and can be identified and fully accessed online at <www.unhchr.ch> using the UN doc Index provided in the table. Note that the documents marked (-) are not included in the United Nations Documents Electronic Database, instead available through Online Burma/Myanmar Library at<www.ibiblio.org/obl/>. 
10.6 A-VI.*

Map of Myanmar/Thailand.
Border Area and Refugee Camps

The “Map of Myanmar. Ethnic States and Divisions” has preserved its format and content as from the original source. However, for the purpose of this thesis the title of the map has been changed, its original being “States and Divisions of Burma”. Source, Earth Rights International, “Valued Less than a Milk Tin”, Washington, August 2001, p. 15. Online at <www.earthrights.org>.