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# Vietnamese Refugee Crisis International Response and Legal Frameworks

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## **Abstract**

Il Vietnam è un Paese la cui storia è caratterizzata da continue lotte per l'unità e la libertà territoriale, ma fu per l'indipendenza politica che la Nazione sostenne le battaglie maggiori, fronteggiando minacce provenienti sia dall'esterno che dall'interno.

I conflitti che più recentemente l'hanno coinvolto in tal senso ci riportano indietro agli anni della Guerra d'Indocina con i francesi, e la più nota Guerra del Vietnam con gli americani, lotte in cui ad aggiudicarsi la vittoria fu la fazione comunista del Paese, sostenuta da un radicato orgoglio nazionale che da sempre accompagnò il Paese nella sua resistenza all'influenza imperialistica occidentale. Tuttavia, la conquista della città di Saigon da parte dell'esercito del Nord, avvenuta il 30 aprile, 1975 e comportò quindi l'unificazione del Paese, diede inizio ad un esodo di preoccupanti dimensioni che, per circa due decenni, investì, sconvolgendoli, non soltanto i Paesi limitrofi, ma anche diverse Nazioni dell'Occidente.

Un capitolo introduttivo alla storia del Paese presenta i momenti e le figure salienti che guidarono il Paese lungo il percorso di creazione del sentimento patriottico Vietnamita, arrivando fino al termine del conflitto con gli americani e la trionfante avanzata comunista verso il sud del Paese.

Partendo da questo momento storico viene ad instaurarsi il contesto particolare del lavoro, il quale si pone l'obiettivo di analizzare i fatti successivi alla presa del potere dei Comunisti, nello specifico, la sconcertante diaspora che si originò in seguito a questo cambio politico, e che perdurò fino ai primi anni 90. L'attenzione delle pagine che seguono, dunque, non verrà posta tanto sulle cause scatenanti tale esodo, quanto sulla sua composizione, e successivamente sulla sua gestione e le relative conseguenze.

Il fenomeno migratorio si caratterizzò di tre momenti fondamentali che differiscono tra loro per soggetti, forme, numeri e gestione.

Il primo di questi, metaforicamente chiamati “ondate”, si originò contemporaneamente alle ultime fasi dell'avanzata militare comunista come conseguenza alla loro, ormai prevedibile, vittoria e fu sponsorizzato dall'esercito

americano.

Con il palesarsi della caduta di Saigon, Washington ordinò un piano d'evacuazione rivolto ai cittadini del Vietnam del Sud la cui incolumità veniva considerata “a rischio” per l'aver affiancato la potenza occidentale durante gli anni del conflitto; non solo, anche mogli e bambini dei membri dell'esercito, e un numero consistente di cattolici vennero inclusi tra i soggetti da evacuare durante tale missione, nota come “Frequent Wind”. Inoltre, molti furono gli episodi di singoli che tentarono di fuggire assieme al proprio nucleo familiare a bordo di imbarcazioni o di elicotteri abbandonati dall'esercito americano. Inizialmente, sia gli individui coinvolti nel piano di sgombero e coloro che fuggirono di propria iniziativa vennero collocati nelle basi americane di Subic Bay, nelle Filippine, e Guam, entrambe predisposte come centri temporanei di accoglienza, dove vennero esaminati al fine di un futuro ricollocamento negli Stati Uniti; questo venne organizzato tramite l'emendamento di una Legge proposta dal Presidente Carter, la quale autorizzava 130.000 Vietnamiti ad entrare negli Stati Uniti.

Una seconda e assai più critica ondata si ebbe tra il 1978 e il 1979, e si caratterizzò del fenomeno dei “Boat People”. Nel tentativo di fuggire ai cambiamenti economici, sociali e politici che stavano investendo il Vietnam del Sud, i cittadini organizzarono segretamente la propria fuga a bordo di piccole imbarcazioni fatiscenti, in un viaggio rischioso, e molto spesso fatale, attraverso il Mar Cinese Meridionale verso i vicini paesi del Sud Est Asiatico, rispettivamente Malesia, Thailandia e Indonesia.

Diversi furono i fattori che incoraggiarono i Vietnamiti ad intraprendere quest'odissea, seppur quasi sempre contrassegnata da insidie di origine naturale, quali tempeste e tifoni, o di natura umana, come gli attacchi da parte di pirati Tailandesi; quest'ultimo fu un fenomeno che crebbe in numeri e brutalità, in particolar modo nei ai primi anni Ottanta. Tra i principali vi furono i trasferimenti forzati verso le Nuove Zone Economiche, NEZ, ma soprattutto la minaccia di reclusione nei campi di rieducazione. Nell'urgenza di sviluppare l'economia del Paese, e di operare una redistribuzione demografica, la popolazione del Sud venne spostata dalle grandi città meridionali alle zone montuose del centro, dove erano state organizzate le cosiddette NEZ, aree

boschive e poco popolate che avrebbero dovuto essere trasformate e rese coltivabili per opera dei Vietnamiti. Per coloro che, invece, vennero inviati nei campi di rieducazione, una prospettiva ancor più drammatica: lavori forzati in stato di denutrizione e plagio psicologico erano alla base della gestione di questi campi.

Il clima di questi anni venne aggravato da una situazione economica opprimente, la quale penalizzò soprattutto la popolazione di origine cinese, gli Hoa, e dall'imminente guerra con la Cina. L'invasione della Cambogia da parte dall'esercito di Hanoi scatenò infatti l'ira del Paese confinante che invase a sua volta il nord del Vietnam nel Febbraio, 1979. La risposta di Hanoi non tardò a presentarsi e si concretizzò in un'espulsione forzata e organizzata di buona parte della popolazione sino-vietnamita; ciò spiega il motivo per cui una percentuale significativa dei "Boat People" di quel periodo si compose di Vietnamiti di origini cinesi.

Questa seconda ondata si contraddistinse per l'allarmante numero di sbarchi che giunsero nei Paesi del Sud Est Asiatico, i quali, gravati dal peso di migliaia di arrivi, operarono progressivamente una serie di politiche ostili ed infine lanciarono un ultimatum rivolto ai Paesi Occidentali. Così destata, la comunità internazionale rispose organizzando un'importante Conferenza sponsorizzata dalle Nazioni Unite, tenutasi a Ginevra nel 1979, a seguito della quale crebbe in maniera sostanziale l'impegno di tutte le parti coinvolte: Repubblica Socialista del Vietnam, Paesi di Primo Asilo (ovvero, i Paesi del Sud Est Asiatico), e Paesi di nuovo insediamento, (ovvero, i Paesi che si offrirono di accogliere i rifugiati). Rilevante fu la nascita dell'espressione "Primo Asilo" coniata durante la Conferenza e che condizionò la crisi nei momenti successivi; questa permise che i Paesi del Sud Est Asiatico non fossero obbligati a garantire asilo permanente ai rifugiati, onere che spettò invece ai Paesi Occidentali.

Uno dei risultati più significativi della Conferenza fu l'istituzione di un programma, l'*Orderly Departure Program*, ODP, che permetteva a coloro che volessero lasciare il Paese di potersene andare senza dover intraprendere viaggi illegali e rischiosi. Tale importante conseguenza, sommata ad un significativo incremento nelle offerte di nuovo insediamento, portò ad una sostanziale riduzione nel numero di arrivi lungo le coste dei Paesi del Sud Est Asiatico.

Tuttavia, i miglioramenti raggiunti a seguito della Conferenza ebbero vita breve, in quanto a partire dal 1987 il numero di Vietnamiti sbarcati nei Paesi limitrofi crebbe nuovamente, fino a raggiungere un ulteriore picco nel 1988: si ebbe così una terza ondata.

Per lo più composta da Vietnamiti rilasciati dopo anni di prigionia nei campi di rieducazione, e da giovani definiti “Amerasiatici”, nati da madre vietnamita e padre americano, quest'ultima ondata andò a confondersi con molti individui la cui fuga veniva troppo spesso giustificata da motivi economici, anziché vitali.

È qui che fondamentalmente si inserisce il nucleo della questione che si vuol trattare, ovvero la gestione del fenomeno migratorio sia da parte dei paesi del Sud Est Asiatico che dei Paesi Occidentali, tenendo conto del particolare contesto legislativo in tema di immigrazione e rifugiati del primo gruppo di attori coinvolti.

A tal fine va premesso che la regione del Sud Est Asiatico si caratterizza per una problematica assenza di leggi in materia che aderiscano a quelle internazionali: nessuno dei Paesi della regione, infatti, all'epoca della crisi umanitaria, era membro della Convenzione del 1951 in tema di rifugiati, né del successivo Protocollo del 1967. Per conseguenza a tale situazione, tutti coloro che giunsero lungo le coste dei Paesi del SEA vennero considerati come “migranti illegali” o “*non-genuine refugees*”.

Benché non aderissero ai sopracitati strumenti legislativi internazionali, il modo in cui furono definiti i Vietnamiti suggerisce un'implicita conoscenza dei termini, che non si limita al semplice significato degli stessi, ma ne comprende anche una sua applicazione pratica. In tal senso, infatti, l'adesione ai *Bangkok Principles* relativi allo Status e al Trattamento dei Rifugiati adottati nel 1966, dotò la regione del Sud Est Asiatico dell'idoneità e degli strumenti necessari ad affrontare, almeno concettualmente, la questione. Tali principi, seppur non vincolanti, riconoscono, dunque, il diritto d'asilo e il dovere al *non-refoulement*; ciononostante non comportarono un intervento concreto, mirato a risolvere la crisi, bensì vennero utilizzati per delegittimarsi dagli obblighi nei confronti dei richiedenti asilo.

La peculiarità di questo scenario, dunque, rese la gestione della crisi una

faccenda di competenza dell'Alto Commissariato delle Nazioni Unite per i Rifugiati, l'UNHCR, il quale, per evitare che i Vietnamiti fossero considerati "migranti illegali" dalle autorità dei Paesi del Sud Est Asiatico e conseguentemente privati dell'assistenza di cui invece avevano bisogno, si adoperò per definire, fin dal 1978, "rifugiati *prima-facie*" tutti i Vietnamiti che giungevano ad uno dei campi posti sotto lo propria amministrazione. Questo risultò poi nel nuovo insediamento diretto nei Paesi Occidentali e costituì il meccanismo funzionante alla base dell'OPD e della sua conduzione.

Tuttavia, quando il numero di arrivi si registrò nuovamente a livelli preoccupanti, la politica di gestione fino ad allora adottata venne considerata un fattore scatenante anziché un fattore risolutivo, e si poneva alla base della partenza di molti migranti economici; un sostanziale numero di profughi allora presenti presso i campi del Sud Est Asiatico, infatti, non rientrava nella definizione di "rifugiato" secondo quanto descritto dall'art. 1 della Convenzione del 1951.

Si rese dunque necessario un differente programma risolutivo, che si concretizzò nel *Comprehensive Plan of Action*, CPA, oggetto della seconda Conferenza che si tenne, sempre a Ginevra, nel 1989. Questo presentò soluzioni ancor più innovative rispetto al precedente, in quanto vennero introdotte procedure di *screening* volte a differenziare i rifugiati dai migranti economici; venne poi istituito un programma di rimpatrio rivolto a quest'ultimi, il quale rappresentò un'ulteriore novità. Nel complesso, il CPA e le soluzioni apportate condussero la crisi dei rifugiati provenienti dal Vietnam verso la risoluzione definitiva.

Analizzando la questione dal punto di vista dei Paesi di Primo Asilo, vengono presentati i casi di Malesia, Thailandia e Hong Kong.

Questi si mostrarono inizialmente sensibili alla questione umanitaria, tuttavia, con l'aumentare degli arrivi dei richiedenti asilo, l'atteggiamento dei primi due Paesi si trasformò, caratterizzandosi di azioni di respingimento, le cosiddette politiche di *push-back* dal duplice obiettivo di stimolare i Paesi occidentali a rendersi partecipi nella gestione del problema, e di deterrere ulteriori partenze dal Vietnam.

Oltre a presentare l'evoluzione delle politiche adottate singolarmente dai Paesi,

le quali si caratterizzarono per un alternarsi continuo, sono descritti alcuni dei campi che furono predisposti per accogliere temporaneamente i richiedenti asilo, nonché la vita al loro interno.

Infine, vengono esaminate le politiche adottate dai Paesi di nuovo insediamento, i quali si impegnarono ad adottare provvedimenti legislativi che fossero il più coerente possibile con la questione che si apprestavano ad affrontare, nonché i programmi di insediamento e accoglienza.

Si è scelto di analizzare Stati Uniti, Francia e Italia nello specifico. Tale decisione è motivata dal trascorso che i primi due Paesi hanno avuto con il Vietnam e dal senso di dovere che questo ha suscitato. Per quel che riguarda l'Italia, invece, l'accoglienza dei *Boat People* dal Vietnam ha rappresentato uno dei primi momenti in cui cominciò a delinearsi il suo inedito ruolo, passando dall'essere considerato un Paese di transito a un Paese per un insediamento *ex novo*.

Gli Stati Uniti già a partire dal 1975 si dotarono di un emendamento, l'*Indochina Migration and Refugee Act*, che permise a 130.000 Vietnamiti ammessi con lo status di *parolees*, di essere inseriti all'interno di un programma di insediamento definitivo, prevedendo importanti somme destinate all'assistenza finanziaria. Nel 1979, e seguito della seconda ondata di rifugiati, il contributo americano di concretizzò concedendo ad ulteriori 15.000 Indocinesi di entrare nel Paese, e a seguito della Conferenza di Ginevra, si decise che una quota mensile di 14.000 rifugiati avrebbe ottenuto il medesimo privilegio. Nel 1980, poi, venne emanato il *Refugee Act*, un atto che istituì una politica uniforme e definitiva in tema di rifugiati, e sostituì il frammentato sistema legislativo in materia, caratterizzato soprattutto da leggi *ad hoc*. Inoltre, tale emendamento portò gli Stati Uniti in linea con gli strumenti internazionali, in particolare col Protocollo del 1967, al quale la Nazione aveva aderito nel 1968. La decisione venne presa poiché il Protocollo e i suoi punti più salienti trovavano corrispondenza in un'altra legge alla base della politica d'immigrazione americana. Infine, consentendo ad altri 50,000 rifugiati di sistemarsi negli Stati Uniti, l'Atto legislativo permise inoltre che, qualora il contesto umanitario lo richiedesse, il Presidente in carica fosse autorizzato ad

ammettere un surplus di rifugiati, centralizzando quindi la responsabilità della gestione di simili questioni nell'autorità del Governo.

Per quanto riguarda l'impegno da parte francese, una parte consistente fu promossa dall'ente privato noto come *France Terre d'Asile*, la quale si occupò dell'apertura e gestione dei centri di transito, dei centri d'accoglienza e del processo di integrazione dei rifugiati. A seguito, invece, dell'episodio che vide coinvolta la nave Hai Hong, un circolo di intellettuali che vide la partecipazione di figure quali Jean Paul Sartre e Raymond Aron venne a crearsi su proposta di Bernard Kouchner, all'insegna del motto *Un Bateau pour le Vietnam*. Come suggerisce lo slogan, venne organizzata una nave, l'*Ile de Lumière* che nel 1979 operò nel Mar Cinese Meridionale, con lo scopo di trarre in salvo le imbarcazioni di Vietnamiti alla deriva. Inoltre, la nave ebbe il compito di soccorrere 20,000 dei richiedenti asilo presenti nel Campo di Palau Bidong, in Malesia ai quali la Francia avrebbe successivamente concesso di insediarsi nel proprio territorio.

Per concludere, parlando invece la politica di gestione in merito al tema dei rifugiati, essendo un membro della Convenzione del 1951 e del Protocollo del 1967, la Francia regola situazioni umanitarie di questo genere secondo i due citati strumenti internazionali.

La crisi dei rifugiati vietnamiti e la loro accoglienza in Italia, rappresentarono un caso di deroga alla clausola geografica, posta al momento della ratifica alla Convenzione del 1951, che avvenne nel 1954. Tuttavia questo non comportò una gestione illegale della questione, in quanto per stranieri provenienti da Paesi Extraeuropei, venne previsto l'attribuzione dello status di rifugiato secondo il mandato dell'UNHCR.

Un ruolo assolutamente fondamentale nella gestione del fenomeno migratorio dei Boat People Vietnamiti lo detenne la Caritas, la quale si prese carico dei processi di insediamento, accoglienza e sistemazione. Significativo fu inoltre la sua funzione nel muovere l'opinione pubblica e sollecitare il Governo ad intervenire in merito alla questione. L'associazione religiosa organizzò diverse missioni che portarono alcuni dei suoi rappresentanti principali a visitare i campi per rifugiati nel Sud Est Asiatico; lì condussero alcune difficili selezioni

volte a raggruppare un numero di rifugiati da condurre poi in Italia. La Caritas accompagnò i Vietnamiti durante tutto il processo di insediamento, offrendo il proprio supporto dalle fasi burocratiche a quelle di integrazione.

Similmente all'iniziativa francese, anche l'Italia organizzò una missione umanitaria autorizzata dal Governo, la quale prevedeva che 3 delle navi della marina italiana giungessero fino al Mar Cinese Meridionale per intraprendere un'operazione di ricerca e salvataggio, nota come "Operazione Vietnam". Lo scopo era quello di perlustrare le zone marittime maggiormente soggette alla presenza dei profughi, al fine di soccorrere i vietnamiti nelle loro imbarcazioni, e qualora questi avessero acconsentito all'essere condotti in Italia per un insediamento definitivo, sarebbero stati portati a bordo. La missione durò all'incirca un mese e si concluse con il salvataggio di circa 1000 persone.

Analizzando la questione secondo i temi presentati, è stato possibile prendere atto di come la crisi umanitaria oggetto del seguente lavoro sia stata affrontata a livello internazionale, regionale e nazionale.

Le due Conferenze di Ginevra, tenutesi nel 1979 e nel 1989 posero il problema dei rifugiati vietnamiti sotto la lente della comunità internazionale ed in entrambi i casi ciò che ne emerse portò ad una risoluzione della situazione, nel primo caso, temporanea, nel secondo, definitiva.

Tramite l'ODP, si ebbe una sostanziale riduzione del numero di partenze illegali dal Vietnam che fece pensare ad una risoluzione finale del problema; tuttavia la ripresa che si registrò dopo circa 6 anni dalla sua implementazione confermò il contrario. Tenendo conto dei mutamenti intercorsi all'interno del fenomeno, la soluzione che venne proposta per fare fronte al differente contesto, ovvero il CPA, portò invece, alla conclusione definitiva del problema dei rifugiati Vietnamiti.

Per motivare la mancata presa di posizione nei confronti della crisi umanitaria, e anzi, giustificare il proprio diritto ad un simile comportamento, i Paesi del Sud Est Asiatico fecero fronte all'assenza legislativa in tema di rifugiati, carenza che tutt'oggi li caratterizza, attraverso la propria adesione ai *Bangkok Principles*, i quali, pur riconoscendo i principi sanciti internazionalmente, non vincolano i propri aderenti, e soprattutto, dotano gli stessi di concetti e nozioni per le quali essi sono legittimati a perseguire un simile atteggiamento.

I singoli Paesi dell'Occidente, invece, provvedettero a dotarsi di nuovi sistemi legislativi che li inserissero in una cornice legale adatta alla gestione del problema. Inoltre, la stretta collaborazione tra i Governi, le agenzie private, spesso di carattere religioso, e l'Alto Commissariato dell'ONU per i rifugiati, il quale guidò i vari Paesi nei processi di insediamento, ricollocamento, ed eventuale rimpatrio, costituì un fattore fondamentale nella risoluzione della crisi.

Osservare come non solo la comunità internazionale, ma anche i singoli stati abbiano dovuto reinventarsi di fronte alla questione dei migranti vietnamiti, alcune volte adottando nuove e specifiche leggi, altre volte soltanto adattando le proprie al contesto particolare, ha dimostrato che difficilmente un unico metodo proposto possa adattarsi universalmente. Chiarificatrice in tal senso si è rivelata l'analisi dell'ODP e della sua breve efficacia: la strategia adottata durante la messa a punto del programma in questione, ovvero l'attribuzione generalizzata dello status di rifugiato, si dimostrò sì adeguata, eppure per un lasso di tempo e per un momento specifico di quel periodo. Una volta risultata inefficace e inconcludente, si rivelò necessario integrare quella stessa strategia, con altri strumenti ritenuti più idonei al nuovo scenario degli anni successivi, nel contesto, ovvero, di una migrazione mista.

Ciò, in breve, ha permesso di considerare che essendo le possibili soluzioni concretamente limitate, queste non fanno che ripresentarsi con costanza, seppur in contesti diversi; è in virtù di questi specifici scenari che un'applicazione standardizzata e universale dei metodi proposti per risolvere le questioni umanitarie risulti dunque inefficace.

## **Introduction**

International community responses to the current refugee crisis are a daily matter of discussion and concern, especially in Europe. The Old Continent is now plagued by endless numbers of escapees from the Middle East, and single Governments as well as the institutions of the European Union face regular challenges in dealing with the issue. Terms like refugees, asylum, reception and resettlement are now accustomed notions; but there was a time in history when these understandings affected a region of the world where, despite being already in use elsewhere, they were alien concepts: it was the end of the 1970s and the region was Southeast Asia.

Following the fall of the city of Saigon to Communist forces from the North Vietnam, 'high-risk' South Vietnamese were taken by American forces and were evacuated from the Country, giving rise to a massive human tide of people who chose to escape on rickety boats directed to neighboring Countries of Malaysia, Thailand, Philippines, Hong Kong and Indonesia, and which dramatically increased in its figure year after year.

From 1975 to 1995 about 1.2 million people left Vietnam. Every category of the population was included, elderly people as well as newborns; people coming from different social classes, whether they were generals, high officials, fishermen or farmers; they used every means they had to escape, by sea on small crafts or freighters, and by land, walking across borders or hiding in the jungles. Mostly, they left by sea risking to get caught by pirates, get raped and then savagely killed; they risked to drown in the high waters of South China Sea, during a storm or because of a typhoon; they also risked to be pushed away from their neighboring Countries where they have sought to find shelter. They left and lived in humiliating conditions in refugee camps in Malaysia, Thailand and Hong Kong, where they hardly bided their time waiting for being resettled elsewhere, hopefully the United States, and finally start a new life.

The majority of these people eventually did it, and was resettled in Western Countries: more than 883,000 in the US, more than 46,000 in France and about 3,000 in Italy. These numbers, however, do not count clandestine movements, nor they account for those who died on their way to safety as a result of abuses, piracy, and drownings.

This happened in a Country, Vietnam, in which the vicious circle of territorial division and reunion, and the related desire for unification guided by an extremely rooted national sentiment, represent a common thread in its history, and brought to devoted struggles and fights among Vietnamese themselves, as well as between Vietnam and other Nations.

It could be argued that it was paradoxical that once Vietnam finally reached its craved unity, what its very own people decided to do was to leave, without knowing where, without outlook of return, without future prospects, and taking the risk of likely death. However it happened, but its causes and reasons are not the objective of this work; in fact, although providing a general outlook of these, the work aims to analyze the “how” rather than the “why”, the consequences instead of the reasons.

The international echo that these mass movements of people provoked, led to the organization of regional meetings within ASEAN members and international conferences, realized in the attempt to issue innovative measures for such an unprecedented phenomenon. Moreover, anti-piracy solutions and rescue at sea activities were also launched, as well as specific programs for a particularly category of the Vietnamese population: the Amerasian children and unaccompanied minors. After a Ministerial ASEAN meeting, Countries of the region other than condemning Vietnam for its behavior, warned they have reached the limit of their hosting possibilities; it was an ultimatum. Thus, the first Geneva Conference was organized in 1979, sponsored by the United Nations and brought to the establishment of the Orderly Departure Program, ODP, the first of such new and experimental resolutions. Commitments arose from all parties: Vietnam agreed to monitor and to facilitate refugees departures for those who wish to leave the Country; first-asylum Countries assured to halt push-back activities; finally, Countries of resettlement increased their quotas. It was a success.

The outcomes of the first Geneva Conference had important results, and the situation increasingly improved in the years that followed until mid-1980s, when after nearly 7 years decrease, Vietnamese Boat People departures restored. This time, however, the situation was different. Matters of definition then arose, which implied a general rethinking of the issue, and a reconsideration of the means, as well as of the modalities with which it was to be

regulated. Were all those people really escaping dangers to their life? Or were they just leaving Vietnam for a better life in another Country? Were they refugees or were they economic migrants? And what is more, how to deal with such issues in a region where, when the refugee crisis began in 1975, none of the Countries was party to the 1951 Refugee Convention or the consequent 1967 Protocol? In fact, consequently to this lack of legislative measures, not a single State that was involved in Boat People arrivals gave authorizations for Vietnamese Boat People to bide in its territory for a permanent period, therefore all those who came were considered an illegal presence and treaded accordingly. How did, then, the international system face this condition?

Essential, in this critic situation, has been the role of UNHCR, since its presence in SoutheastAsia Countries, and its administration of the camps, entailed the automatic acceptance of refugees as a matter of its own concern, and thus allowed to all the Vietnamese to find, at least partially, the help they needed.

During the 1980s, however, with the flux of people again on rise, *prima facie* recognition was not accorded anymore to the totality of refugees; indeed, it became recognized as a “pull factor” for the escapees, who started to be identified as economic migrants. Thus, Countries involved both in providing First Asylum and those concerned with resettlement efforts had to reevaluate their legislative systems, in order to a better and more correct approach to the problem.

The international system as a whole had to reconsider its methods. Screening procedures to determine refugee status represent the major innovative feature of the process of differentiation that characterized the Comprehensive Plan of Action, CPA, an initiative that, eventually brought the exodus of Vietnamese asylum-seekers to an end. Moreover, it has long constituted the example to look at, as regards resettlement of refugees and the repatriation of those found not to be refugees, on the basis of international instruments and criteria.

Therefore, as previously mentioned, pages that follow will concentrate on the forms and means through which all this has happened.

How did this occur? How did the phenomenon develop? How did the neighboring Countries react and how did, instead, the international community? How did the crisis modified the legislative systems of the Countries that agreed to host and resettle the refugees? How did this flood of people

change the international system?

These are the main questions implicitly asked in the preparation of the work, whose answers built the structure. It is divided in four main parts, and every one follows a chronological order.

The first one starts with a synopsis of historical facts that characterized Vietnam. The chapter tells the story of Vietnam, its wars, its national sentiment and the communist belief that animated its most important leader. It begins with events from the XVII century until the victory of Communist forces from the North over the those of South, which finally put an end of nearly 30 years of civil war commenced with the French and followed with the Americans.

The second part and second chapter describe objectively the phenomenon, depicting the components of these “waves”, namely the people and their different social background. Moreover, it underlies the political and economic facts occurred in Vietnam that led to the three waves of refugees; and it concludes describing one of the most dangerous perils the “boat people” were going to face in their escape, namely piracy.

The third part of the work is its core. In its various chapters attempts have been made to describe how the international system responded to the problem, the developments that necessarily occurred, and how the crisis eventually was solved. In this sense, the third chapter starts with the Bali Conference, 1979, with which the problem as a whole received international attention, for ASEAN Countries and Hong Kong foreign ministers announced they have reached their limit in taking refugees, and hardly condemned Vietnam for rejecting its undesired people and encouraging them to escape to neighbor Countries. The first Geneva Conference that followed, consequently to the statement, provided several resolute measures to the problem, most importantly the Orderly Departure Program. Then the chapter proceeds with the description of two other solution proposed to tackle specific issues, namely the Amerasian Children, rescue at sea and piracy.

Before continuing with the description and the outcomes that came with the conference held several years later, in 1989, considered the evolution of the problem and the fundamental changes that it entailed, especially as regards

concepts and definitions related to the issue within the international legal framework, it has been considered essential for the reader to provide an historical excursus of the refugees legislation, as well as to clarify the differences among the categories and notions of the persons in need. This is, indeed, the subject of chapter four.

Once the ground has been prepared for a clear understanding of the developments related to the Vietnamese refugees crisis, the chronological order of the facts is restored with chapter five and with the description of the second Geneva Conference and its most important result, the Comprehensive Plan of Action, issued in 1989 which finally resolved the problem of the ceaseless flight of Vietnamese people.

The fourth part of this work focuses on the Countries involved in the issue, with a double description of both Countries of First-asylum and resettlement. Sixth chapter depicts how the flight of the Boat People affected Countries neighbor to Vietnam. Starting with a general overview of salient facts year after year in the Southeast region, Countries of Malaysia, Thailand and Hong Kong are then analyzed more in detail. Particularly, for each Country it has been sought to provide notions considered necessary for the understanding of the problem in its legal framework and its development. Furthermore, reception policies and the refugee camps are described, in the attempt to offer a vision of the problem for its humanitarian urgency. Then, the cases of reception centers in Indonesia and the Philippines are briefly presented.

Chapter seven, on the contrary, analyzes Countries of resettlement, although it is organized as the one it follows. Starting with the United States, the legislative system is described in its developments, which took account of the evolution of the crisis. Moreover, resettlement procedures and reception policies are described in conclusion. Similarly for France, but with a minor attention to its legal framework, attempts were made to describe how the former colony reacted to the critical situation, and what have been the humanitarian measures adopted. The reason behind the analysis of these two Countries is clearly their precedent in the history of the Country, and, as they admitted themselves, their sense of "owing it", to Vietnam. Finally, Italy has been chosen because the involvement in the Vietnamese refugee crisis gave birth to a gradual shift in its

role from a First Asylum or transit Country, to Country of resettlement. Once provided an overview of the legal context, reception and resettlement policies are described, particularly referring to the role play by Caritas. The chapter then concludes describing the humanitarian operation held by the Italian Navy in the South China Sea.

It has been sought to analyze such a wide subject in what have been considered its most important facets, namely historical facts, the different legislative contexts and related policies, resettlement and reception procedures. In this sense, the typologies of the texts and other forms of information consulted was chosen accordingly. Written books, daily newspapers and magazines archives, legal and Government documents, as well as UN reports constituted the main bibliography, and have been supported by articles and other sources found online. Texts based on testimonies have also been read, for they have been considered important to the understanding of the refugee crisis under a humanitarian point of view.

## 1.

### Historical Background.

#### 1.1 Vietnam in XVII and XVIII Centuries.

Division and reunion, and the hope for a unified Country have long characterized the history of Vietnam. From nearly 1627 to 1777, for instance, two families fought for the supremacy of the Country, namely the Trinh and the Nguyen, thus disrupting Vietnam unity consolidated in the Middle Age, when fighting the Chinese presence.<sup>1</sup> These feudal dynasties secretly attempted to gain main power from Le dynasty one century before, by defending the Monarchy from the threats made by usurpers Mac family. In 1558 the literate Nguyen were exiled in the Annam region, in the South, followed by some of other close families. In the North, on the contrary, the Trinh Lords were ruling, while pretending that the real power was in Le Monarchy's hands. However, their authority was limited until the Tonkin region, and their border was remarked by a wall built by the Nguyen Lords near the 17<sup>th</sup> parallel, the same line that would become the dividing border between the North and the South after Geneva Agreements, in 1954.<sup>2</sup> Although the two feudal houses had their own territory where to rule, they both desired for a unified Country, and therefore occasional fights started to break in 1627 until 1772, a timeframe during which Trinh's offensives were always repulsed, ending with the surrender of the North to a divided Vietnam. For over a century, the two dynasties ruled over their own territories with no mutual interferences, thus reaching a sort of stability.

This equilibrium was interrupted with the Tay-Son rebellion in the South. The insurrection got its name from the home village, in fact Tay Son, from where three brothers began their revolt in 1772.<sup>3</sup> Starting from the rural areas of central Vietnam and rapidly spreading over the South, the uprising overcame the Nguyen Family in 1777, thus concluding the perennial fight between the two houses, the Nguyen and the Trinh. Successively the Tay Son moved north, overthrowing also the Trinh house, in 1786. Vietnam was, again, unified.

However, Tay-Son authority lasted for nearly two decades, until the last

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1 Jean, Chesneaux, *Storia del Vietnam*, Editori Riuniti, 1968, p. 37.

2 Chesneaux, J., *op.cit.*, p. 38.

3 The three brother were: Nguyen Hue, Nguyen Nhac, Nguyen Lu. Chesneaux, J., *op.cit.*, 55.

surviving member of Nguyen family, Anh, defeated the usurpers thanks to the support of the French,<sup>4</sup> regained its territories and claimed himself emperor Gia Long, becoming the first one to rule over a united Vietnam.

He created a system where several privileges to French were granted, a situation that, however, completely changed with his successors, who professed religions different from Christianity.<sup>5</sup> Christians' persecutions were one of the excuses for which France forces began to seize and conquer Vietnamese cities, in the wider objective to reach China and transform it in one of its colonies. To this end, France first gained Cochin China in 1864, which thus became a French colony; in the years that followed, in the run to control the entire Vietnam, France and China fought each other, especially over the control of Tonkin region, that eventually became a French protectorate in 1883, as well as Annam region.<sup>6</sup> In 1887, then, the three Vietnamese regions, Tonkin, Annam and Cochin China, as well as Cambodia, became formal components of Indochinese Union.<sup>7</sup>

## **1.2 Awakening of Nationalist Sentiments.**

At the same time of the French gradual penetration and facing with the progressive decline of Vietnam's autonomy, rudimental nationalistic sentiments moved their first steps: *can vuong* movement, which began in 1885, was the very first of such forms of opposition.

In talking about nationalism in a Vietnamese framework, a clarification needs to be done: it is not the celebration and glorification of a national sentiment, however the claim for a very own tradition and identity.

The loss of its independence imposed Vietnam in a brutal and accelerated renewal of ideas and thoughts. At the beginning of the century, vietnamese intellectuals began to delineate [...] a political project based not on the loyalty to the emperor, but on the construction of a modern,

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4 A missionary, Pierre Pigneau (de Behaine) supported Nguyen Anh case and travelled to France, in 1787 to advocate his situation in Court. Thus a Treaty was signed between France and Cochin China with promises of assistance. Then, he recruited several volunteers and arrived in Vietnam in 1788 to help Nguyen Anh to the victory over the Tay Son. Bruce Grant, *The Boat People an Age Investigation*, Penguin Books, 1979 pp. 35-36.

5 First european presences in Vietnam were traders and missionaries, and the French people surrounding the Nguyen were, in fact, Christians.

6 Francesco Montessoro, *Vietnam, un secolo di storia*, FrancoAngeli, 2000, p. 44.

7 Grant, *op.cit.*, p. 37.

advanced, and 'westernized' national State.<sup>8</sup>

This intellectual awakening started with Phan Boi Chau and Phan Chu Trinh, although they were characterized by opposed visions and opinions. The first one believed that revolution and violent movements against the French were more essential than the modernization of the Country. On the contrary, Phan Chu Trinh thought that modernization was a fundamental means in order to achieve national freedom.

First revolutionary movements began in 1908, when population in central Annam protested against French financial measures.<sup>9</sup> However these revolts were soon repressed by French intervention that provoked intellectual migration to Southern China.

A further phase in Vietnamese nationalism development commenced in the aftermath of First World War, this time defined by individuals who had experienced French occupation and thus were more fascinated by “radical and opponent positions of western culture”<sup>10</sup> than Confucianism. This “third generation”,<sup>11</sup> however, declined soon: its moderate part, which basically claimed for a widening of political representatives, was too limited compared with the changing society; the radicals and their party called *Viet Nam Quoc Dan Dang*, or Vietnamese National Party, suggested military and violent actions in an environment that was still yet insubordinate and not completely consensual, and therefore not ready for such actions.<sup>12</sup>

### **1.3 Nationalism and Communism, a combination: Ho Chi Minh.**

Ho Chi Minh is the most remarkable figure of modern Vietnam for his blending of national ideology with the communist one. His patriotic feelings, the unrelatedness with Confucian traditions and the French presence in his Country

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8 Montessoro, F., *op.cit.*, pp. 105-106. Original text: La perdita dell'indipendenza aveva imposto al Vietnam un più brutale e accelerato rinnovamento delle idee e del pensiero. All'inizio del secolo, gli intellettuali vietnamiti iniziarono a delineare [...] un progetto politico fondato non più sulla fedeltà al sovrano, ma sulla costruzione di uno stato nazionale, moderno, progredito e “occidentalizzato”.

9 Montessoro, F., *op.cit.*, p. 110.

10 Montessoro, F., *op.cit.*, p. 122. Original text: “Tendenze radicali e di opposizione della cultura occidentale.”

11 Ibid.

12 Montessoro, F., *op.cit.*, p. 129.

were cardinal elements of his personality. He developed his nationalistic feelings in France during First World War period, where the principle of self-determination of peoples, promoted and advocated by the Triple Entente, was perceived as the right claim that could have freed Vietnamese population by French colonialism.

During the years of Russian revolution, Ho Chi Minh was in Europe and he felt particularly sensitive and very much in agreement with the claims made by the socialist leader, particularly the condemnation of colonialism. Lenin suggested a revolution of those States oppressed by colonial powers and Ho Chi Minh was comforted by the support offered in the struggle for freedom motivated by the idea that whatever the political and ideological basis of a liberation movement was, Moscow would have supported it for its revolutionary and progressive component.

In march, 1919 the Communist International, or Comintern, was founded, an organization that gathered all communist groups; France joined the association in 1920, and in this occasion, Ho Chi Minh adhered to the communist faction as the Indochinese delegate. The brief time he spent in Moscow was essential for his political development since he also had the opportunity to work within the Comintern; then he moved to Canton, China, where he founded, in 1925, the *Thanh Nien*, an association that allowed him to select and train future communist cadres, gradually introducing them to marxism and internationalism. Revolution, in his views, was connected to the transformation of the society, emphasizing social revolution and, particularly, population contribution.<sup>13</sup> However, his experience with the *Thanh Nien* arrived to an early conclusion in 1929, due to an internal fracture between members who wanted to prioritize national liberation and members who were more interested to the social transformation of the society. Notwithstanding the dissolution of the *Thanh Nien* and subsequent ideological fragmentation within the Country, communist headquarters in Russia believed the time was right for a revolution in Asia, and in 1930 called for the creation of a unique Vietnamese Communist Party.<sup>14</sup> This was an important step forward in nationalistic terms, because for the first time the term “Vietnam” was officially used to address to the whole

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<sup>13</sup> Montessoro, F., *op.cit.*, p. 145.

<sup>14</sup> The *Dang Cong San Viet Nam*. The fracture within the *Thanh Nien* led to the formation of three different and antagonist factions, and everyone claimed to be the legitimate one recognized by Moscow.

Country, although few months later the very name of the party was changed in “Indochinese”.

The aftermath of the Communist Party's birth was characterized by numerous popular revolts that involved both labors and peasants and caused turmoils within the entire Country. This was a consequence of a wider economic crisis that was troubling western Countries; France in fact had been administrating Indochina with an economic policy based on plantations and consequently exportations. “In the first half of 1930s, investment capitals losses in Indochina were substantial. [...] Social conditions worsened, with a sharpening and extreme poverty that in numerous areas of Indochina became endemic.”<sup>15</sup> Communists benefitted from the situation, considered the perfect framework for their propaganda, which had, indeed, a positive response. However, France's violent reaction ended the protests and Ho Chi Minh was arrested in June, 1931,<sup>16</sup> thus compromising the entire communist party that experienced a critic phase since. Notwithstanding the difficult situation brought to a further fragmentation of the Left, in 1933 a coalition was formed and found in the drafting of a weekly magazine, called *La Lutte*, the right environment to delineate a new political and revolutionary program that in a couple of years gained a wide consensus among the working classes, thus representing an important move forward in the anti-colonialism movement.

To counter the threatening spread of Nazism in the second half of 1930s, communists headquarters decided for a combined action of all the left-wing parties in what was called the Popular Front, which reunited communists, socialists and social democrats; moreover, to this action corresponded an improvement in France-Russia relations. However, when Russia signed the Non-aggression Treaty with Germany in 1939, France banished all leftist coalitions in Vietnam, which, in the meantime, have experienced the formation of an Indochinese Congress, in the south, representing all major political factions, and yet it was dominated by the Left.

#### **1.4 Japanese Occupation.**

The years that characterized Asia during Second World War showed the

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<sup>15</sup> Montessoro, F., *op.cit.*, p. 155.

<sup>16</sup> He was put in a jail in Hong Kong where he was detained until 1933.

Japanese rise in conquering the continent, in what was called “co-prosperity Sphere of Great East Asia”.<sup>17</sup> In 1940, in Indochina, Japanese troops gave France authorities an *ultimatum* which were force to indulge, since their Government in France had been defeated by German offensive and fell consequently. However, Japanese control in Indochina in terms of direct administration was left to the French, although their role was substantially reduced. The strategy utilized by the Japanese towards the Vietnamese was ambivalent, meaning that they tried to present themselves as the neighbors who come to free a Country from the colonizer, in the slogan “Asia for Asiatics”.<sup>18</sup> Comforted by this, the Vietnamese were convinced they had to copy Japanese example in the attempt to eliminate France presence. In 1945, however, Japanese attitude in Vietnam radically changed: their international defeat was getting gradually concrete, and they needed to prevent the likely of a landing from France's allies in Indochina that could have helped the colonial power. In fact, although both the USA and Russia agreed on the idea to not to return Indochina to Paris authority,<sup>19</sup> the UK supported position of France and its statement of having formal rights on Indochina and on its liberation from Japanese presence. It was for these reasons that Japanese forces gave French authorities an ultimatum on March 9, 1945 and proceeded with the occupation of Northern cities, with colonial troupes unable to react: Japan, thus, managed “to end the 80 year-long French power in Indochina.”<sup>20</sup> They proclaimed emperor Bao-dai who, in turn, declared the Independence of the Empire of Annam, essentially ending the French Protectorate installed in 1884. However, despite this final effort, Japan's presence in Vietnam was challenged by both the international framework, but especially by the growing presence of a new communist party, the *Viet Minh*.

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17 Montessoro, F., *op.cit.*, p. 175. “Sfera di co-prosperità della grande Asia Orientale.”

18 Montessoro, F., *op.cit.*, p. 180. Actually, their real intentions were as colonizing as French ones.

19 The leaders of USA and Russia, namely Roosevelt and Stalin, met during Teheran Conference from November 28 to December 1, 1943. China as well agreed on the issue, especially because in America's plans, discussed during Cairo Conference in October, 1943, Indochina should have been a trusteeship of China. Montessoro, F., *op.cit.*, p. 193.

20 Montessoro, F., *op.cit.*, 201.

## **1.5 The return of Ho Chi Minh and the formation of the Viet Minh.**

It was in this very period that Ho Chi Minh started to use this name, in the objective of presenting himself as a nationalist behind a new identity.<sup>21</sup> Following the 1939 crisis, most of the communists and nationalists went to China, where he also headed to in the attempt to create linkages and to find supporters to his personal cause: to achieve Vietnam independence. Then, in 1941, he finally went back to Vietnam where he called for a conference in Pac Bo, in May, that brought to the foundations of the *Viet Minh*.<sup>22</sup>

Two were the innovative features of this organization: its members, who were younger and came from the *Thanh Nien* experience, and its final aim, specifically the freedom of the Country from imperialist foreigners. To this patriotic accomplishment, an alliance of all social classes was necessary. This united front was, therefore, “an organization established and directed by communists, and yet composed by entities that represented different political, social, professional, religious groups.”<sup>23</sup> However, in 1942, Ho Chi Minh was arrested and he could return to Vietnam only in 1943. During his absence, the *Viet Minh* continued with the development of its organization, following the directives given at the Pac Bo Conference. It became influential in rural areas especially among tribal groups and minorities living in the mountains, because in Central and South Vietnam, as well as in Cities of Tonkin, French troupes' control was strictly conducted. Moreover, as regards recruitment, the party developed toward the establishment of what was called “military propaganda”,<sup>24</sup> aiming to create the political groundwork for the guerrilla, although armies were still scarcely available; in fact, it was not until 1944 that the *Viet Minh* acquired its military feature, beginning to distress French colonial power.

In 1945, although Japanese troupes defeated French colonial powers and Bao-dai proclaimed Vietnamese Independence, the fate of the Country was not free yet from alien interventions, since in the summer of 1945 the leaders of the

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21 His real name was Nguyen Tat Thanh but for most of the time, he used the name of Nguyen Ai Quoc.

22 Montessoro, F., *op.cit.*, p. 186. The full name of the party was *Viet Nam Doc Lap Dong Minh*.

23 Montessoro, F., *op.cit.*, p. 188. “Il fronte unito era in sostanza un'organizzazione costituita e diretta da comunisti, ma formata da organismi che rappresentavano differenti gruppi politici, sociali, professionali, etnici e religiosi.”

24 Montessoro, F., *op.cit.*, p. 198.

USA, UK and Russia met in Potsdam, Germany, and decided for a temporary division of Vietnam, along the 16<sup>th</sup> parallel: the North would be under Nationalist Chinese troupes, while the South would be returned to the French. Following Japan's official defeat consequently to atomic bombs on Hiroshima and Nagasaki at the beginning of August, 1945, the *Viet Minh* took advantage of the moment of power vacuum: with stressing political and military activities in what was called the “August Revolution”,<sup>25</sup> Ho Chi Minh ordered for a general insurrection. In a timeframe of few days *Viet Minh* forces managed to control mountain regions of Tonkin, and rural areas of Red River.<sup>26</sup> The insurrection then moved south, in several Annam provinces and on August 23, Bao-dai was forced to abdicate. Finally, to face international decisions regarding Vietnam, *Viet Minh* headquarters decide to proclaim the Democratic Republic of Vietnam on September 2, 1945.

## **1.6 Division of Vietnam.**

British forces soon reached Saigon and expelled the Viet Minh from administration of the city and forced its members to clandestinity,<sup>27</sup> and then were substituted by French who restored their colonial power. On the contrary, north of the 16<sup>th</sup> parallel, Chinese troupes of *Kuomintang* declared they were ready to recognize the *Viet Minh*, although the relationship with Chinese nationalists and Viet Minh had some tense moments.

In October, French troupes resumed their control activities, although they were force to face with guerrilla responses. Thus, understanding the political basis of the movement, they opted for political talks. In February 1946, the colonial power signed an agreement with China, obtaining Tonkin area in exchange of substantial economic concessions. On the Vietnamese front, Paris and the temporary Government of Hanoi reached an agreement on March 6, whose outcome was the recognition by Paris of the “Republic of Vietnam as a 'free' State [...] within the French Union”,<sup>28</sup> and the recognition of the foreign control over North Vietnam. Notwithstanding this appeasing agreement, their policies

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25 Montessoro, F., *op.cit.*, p. 210.

26 Montessoro, F., *op.cit.*, p. 207.

27 Montessoro, F., *op.cit.*, p. 215.

28 Montessoro, F., *op.cit.*, p. 221.

were actually irreconcilable: the French wanted to reestablish their colonial rule, while the temporary Government of Hanoi wanted total independence. French real intentions were disclosed in June, 1946, when d'Argenlieu, the High Commissioner for Indochina, proclaimed Cochin China an autonomous republic and yet under French control. Further decisions were to be concluded in the following months, specifically during a Conference at Fontainebleau, which, on a political level, was concluded with a unsatisfactory *modus vivendi*. It was clear that due the two political presences could not coexist anymore: War was about to begin.

### **1.7 The Indochina War.**

Hostilities began in November when French armies bombarded Haiphong, an attack that caused thousand of casualties. The *Viet Minh* acted differently, still trying to negotiate with the counterpart, who, in turn attempted to arrest Ho Chi Minh. As a response, with the Vietnamese leader appealing to the nation, the Indochina War officially began. The first phase of the war had no substantial developments: the *Viet Minh* was forced to moved back to mountain and rural areas where they rebuilt their bases and spread the guerrilla; France was forced to send some of its military forces in Madagascar, and thus lost the opportunity of a decisive action. Generally, however, French approach to the war against the *Viet Minh* was wrong from the basis: since they had no clear idea of how deep were the roots of nationalist sentiment, they thought the conflict would be a blitz rather than a long-lasting conflict.

In 1949 the French opted for the “Bao-dai solution. [...] What was denied to Ho Chi Minh, was now granted to Bo-dai”:<sup>29</sup> they reunited Cochin China with the rest of Vietnam and by appointing the former Emperor as Chief of State, they proclaimed the State of Vietnam on July 2, 1949.

Meanwhile in China the revolution ended with the proclamation of a communist Government, an event that was destined to modify entirely the international scenario. In fact, within the context of the Cold War, the fear for the spread of communism in Vietnam, where French troupes were apparently unable to win, was the main cause for the first Americans to reach Vietnam. The *Viet Minh*

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<sup>29</sup> Montessoro, F., *op.cit.*, pp. 234-235.

waged an increasingly successful guerrilla war, aided by China's supply of armies that granted the development of the military force to such an extent that, together with *Viet Minh* strategies, they started to achieve concrete and important military success, specifically during the battles of Cao Bang, but especially the one at Dien Bien Phu. The first battle was fought in 1950, and casualties for French troupes were numerous. Meanwhile, guerrilla continued its operations weakening colonial powers that were then limited solely in urban centers. In 1953 American troupes concluded their conflict in Korea and were therefore transferred in Vietnam; however, France wanted to conduct a further conflict, believing, this time, to pursue the successful strategy. General Navarre ordered the deployment of troops in Dien Bien Phu where they would attract vietnamese forces in the objective to fight conventional war, since in Navarre's opinion the Viet Minh had no changes to win for the lack of armies. He was wrong: Vietnamese encircled French troupes and left them isolated, with no opportunities for help nor supplies. The siege began in March and lasted until May 7, when last French defense forces finally fell.<sup>30</sup>

Meanwhile, in Geneva, representatives of USA, Russia, China, France, UK and Vietnam were holding political talks regarding conflicts in Indochina.<sup>31</sup> The outcome of the Conference was the division of the Country along the 17<sup>th</sup> parallel, with the Viet Minh ruling in the North and the French in the South; moreover, in order to realize a peaceful reunification of the Country, elections were granted within 1956.

However, these decisions were not respected since elections were never held, because they would have proclaimed *Viet Minh* victory, an outcome undesired by Western Countries, nor they ended conflict within Vietnam.

## **1.8 Two Vietnams.**

In the South, the strategy used by the US provided for a growing involvement that would erase French presence and substitute it. Furthermore, they wanted “to establish a regime in Saigon that, maintaining Vietnam divided, was a

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<sup>30</sup> Montessoro, F., *op.cit.*, p. 245.

<sup>31</sup> The United States did not concretely participate at the Conference, since they did not want to recognize nor deal with the People's Republic of China; they attended as observers. Moreover, Vietnam had two different delegations: one representing the Bao-dai regime, and one representing the *Viet Minh* and thus the Democratic Republic of Vietnam.

bastion against communism.”<sup>32</sup> In this sense they decided to rely on the person of Ngo Dinh Diem, a catholic, anticommunist who was favorable with American projects, who was elected President of the Republic of Vietnam during 1955 elections. His regime soon became a dictatorship: totalitarian attitudes were directed against every single form of opposition, being religious or political, particularly the communists; he persistently postponed Vietnamese elections granted by Geneva Accords, to the point that these were never held; he conceded Government duties to his close relatives, especially his brother who established an underground association aiming to spy potential opponents and to recruit loyal individuals; financial supports from United States were not utilized for supporting the population in need consequently to land reforms, rather they were directed to the military sector, which was substantially developed and called Army of the Republic of Vietnam, ARVN. As regards to American financial aids, great political value was assumed by the support in the reception of hundreds of thousands refugees coming from the North Vietnam.<sup>33</sup> In the Democratic Republic of Vietnam, *Viet Minh's* legitimacy faced no significant obstacles, since “potential adversaries to a Government that was now explicitly 'communist' were fleeing the territory controlled by the *Viet Minh*.”<sup>34</sup> As a matter of fact, in late 1954 nearly one million of North Vietnamese, former mandarins, individuals with ties with French and Bao-dai regime, but especially Catholics moved South. The majority of these came from Red River Delta area, where a large number of Catholics lived. Although a remarkable figure of Vietnamese would probably have moved anyway, this mass migration was used as a propaganda advantage by the US that decided to assist the flight of people from Communist North by providing units of its Navy in what was called Operation Passage to Freedom.<sup>35</sup> The United States sought to create the feeling that the substantial outflow of people was motivated by the fact that “North Vietnam was plagued with civil unrest and disorder”,<sup>36</sup> thus hoping “to dissuade the North Vietnamese leader Ho Chi Minh from pressing forward with demands for reunification elections [...] and to produce the added benefit of embarrassing

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32 Montessoro, F., *op.cit.*, p. 247. Original text: “Costituire un regime a Saigon che, mantenendo diviso il Vietnam, fosse un baluardo anticomunista.”

33 Montessoro, F., *op.cit.*, p. 251.

34 Montessoro, F., *op.cit.*, p. 252.

35 Kelly M., Greenhill, *Weapons of Mass Migration: Forced Displacement, Coercion, and Foreign Policy*, Cornell University Press, 2011, p. 287.

36 Ibid.

and delegitimizing the North in the lead-up to the scheduled vote.”<sup>37</sup> This outflow, actually, proved to be an advantage for the North, especially because without the Catholic component, the party could have spread its influence with more ease. On the contrary, the arrival of big numbers of Catholics rendered Diem's regime even more tense, whose outcome was, for instance, the Buddhist revolt in 1963.

Economic policy in Hanoi was directed towards the implementation of an economy managed by the State. North Vietnam entered in the socialist economic sphere adopting an economic model that was based on heavy industry; moreover, all those activities considered potentially capitalistic were eliminated and substituted with forms of collectivization. As regards rural reform, redistribution of agricultural properties was established, as well as tribunals that would sentence landlords or rich farmers. However several innocents were misjudged and being considered landholders were therefore arrested or even deported. These facts provoked a revolt in mid-1956 that deteriorated in November resulting in an insurrection for which it was necessary the intervention of the Army; the violent repression caused hundreds of casualties and thousands were deported. This crisis demonstrated the “disillusion” felt towards the regime, especially by intellectuals who publicly expressed their dissent for the lack of freedoms.<sup>38</sup>

Back to the Republic of Vietnam, the Buddhist uprising of June, 1963 was a protest for the discriminatory laws the Diem regime was pursuing. The protest reached its apex when a monk burned himself to death at an intersection in Saigon, as a response to the banning of the Buddhist flags issued in May. The international echo this episode had prompted the US Government towards a *coup d'etat* to overthrow Diem, on November 1. However, “despite Washington hopes, the Country did not experienced a bigger stability, nor it was formed a new leadership able to rule the Country.”<sup>39</sup> This was in consequence, also, to the renewed power of the communists within the South.

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<sup>37</sup> Ibid.

<sup>38</sup> Montessoro, F., *op.cit.*, p. 257.

<sup>39</sup> Montessoro, F., *op.cit.*, p. 278. The next personality who was able to maintain his power in the South was Nguyen Van Thieu, who was elected in 1965.

## **1.9 The National Liberation Front, NLF.**

After Geneva agreements, part of guerrilla forces stayed, clandestinely, South of the 17<sup>th</sup> parallel; Ho Chi Minh, between 1955 and 1956 commenced the reconstruction of the communist organization in the South. Meanwhile, in the North, trainings for military unities to send South were held and communication logistics along the Ho Chi Min's Trail were arranged: this was a path by which supplies and troops had been moving from north to south and it became an essential military activity because it granted the Viet Minh the formation of communist cells in the Countryside of South Vietnam, which would become fundamental in the future. In 1960, in opposition to Diem's regime, the National Liberation Front (NLF) had been organized, inspired by the *Viet Minh*, aiming to build a new democratic Government able to reunite the Country. In 1961, guerrillas in South Vietnam, called *Viet Cong* by the people, began their opposition activities in the Mekong Delta, however soon received RV and America's response.

## **1.10 American involvement and consequent War.**

USA army, in the meantime, had significantly increased its presence in Vietnam, providing consistent military equipments to the ARVN, which, however, was unable to conclude definitive victories, or to halt *Viet Cong* advance. The growing use of disruptive weapons in this period only gave propagandistic arguments to the communists that were used to increment the number of adherents to the party.

Until 1964, Washington was not ready for an attack to North Vietnamese forces and had to wait for the right occasion that finally happened in the summer of 1964, particularly with the Gulf of Tonkin Incident.<sup>40</sup> US President Johnson then received the permission from the Congress for harder measures, which were considered necessary to counter the enemy and to defend both Governments in the south. In February 1965, Johnson ordered the bombing of North Vietnam, hoping to prevent further penetrations of arms and troops into the South, but they resulted to be ineffective. Years of intensive bombing of the

<sup>40</sup> Montessoro, F., *op.cit.*, p. 280. It was a naval incident between Vietnamese and American vessels.

North and fighting in the South against the guerrilla, where American strategy was based on the principle of “search and destroy”, led to the use of sophisticated and modern technologies against an army composed by poor peasants fighting with old weapons. Notwithstanding this discrepancy, the will and strength of the *Viet Cong* and their leadership in the North did not weaken and the persisting strength of these insurgent forces became evident in the so-called Tet Offensive that began in late January 1968. This was an important nationwide offensive led by the *Viet Cong* that involved rural areas as well as cities of Hue and Saigon; American troupes managed to fight back and held their positions, and yet the extent and the tenacity that characterized guerrilla fights made the Americans realize that their hopes for winning the War were, then, almost nonexistent. Moreover, the echo that had this offensive was enormous, and internationally was considered as a political victory for the Viet Cong;<sup>41</sup> in addition, public opinion in America was becoming more and more critic towards the continuation of the War, and consequently, President Johnson ordered a reduction of the offensives in the North.

In May, 1968 talks with Hanoi were held in Paris, and later delegations of the NLF and Saigon regime were also included.<sup>42</sup> Viet Cong asked for the withdrawal of American troupes, resolution among South Vietnamese parties and general elections; again, these demands were not satisfied. Under President Nixon mandate, which began in 1969, Vietnam War was marked by another stage. At the beginning, a gradual withdrawal of American troop started; however, in America's intentions, Communist forces were not to win the war. To this end, peace offer came together with an *ultimatum* that was not accepted by the North Vietnamese. Furthermore, despite public opposition and initial decisions, Nixon later opted for an a massive increment of military forces and the decision to carry out operations in Laos and Cambodia, intended to destroy the Ho Chi Minh Trail. In 1972, the North Vietnamese launched an offensive over the border, an action that resumed American bombardments since 1968 in the so called “Christmas bombings”: a consecutive 24hours attack over Hanoi and Haiphong cities. In 1973 talks and negotiations were also resumed in January after nearly five years; the two parts called for a ceasefire that ended American involvement in Vietnam with the signature of the armistice on

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41 Montessoro, F., *op.cit.*, p. 284.

42 Montessoro, F., *op.cit.*, p. 285.

January 28. However, not even these agreements did bring the War to an end. While American forces were gradually withdrawing from Vietnam, the NLF was receiving increasing Russian and Chinese supplies: to win the war, with the final and longstanding aim to reunite the Country was not an option. South Vietnam and President Thieu believed that the United States would retaliate the bombing if the Paris agreements were to be broken; however, the Watergate scandal in which Nixon was involved, forced him to resign and the increased Congress hostility to the War, made the withdrawal continue and American contributions to the South completely halt.

ARVN armies fought obstinately, but in the early months of 1975 the North Vietnamese army moved South, province by province, seizing the cities of Hue, and than Haiphong.

Ten years of war ended on April 30, 1975 when also the city of Saigon fell and the Communists took the power of the South. "It is 11am a lone soldier runs forward to raise the Communist flag. By noon Hanoi's troupes fill the city, their flags are everywhere."<sup>43</sup> The city of Saigon have been called Ho Chi Minh City since then.

This event not only marked the end of the fight with the Americans, but also ended the 30 years of civil war that have been counterposing the North to the South. What would expect Vietnamese people since, was an unforgettable chapter not only in Vietnamese history, but in the International one, as well.

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43 Based on the documentary 'The Fall of Saigon' <https://www.youtube.com/watch?v=bBx9zJVUq3M> 30'15".

## 2.

# **The Three Waves of Vietnamese Refugees: Chronology, Political Context and Escapees' Socio-political Backgrounds.**

### **2.1 First Wave of Refugees: Operation Frequent Wind.**

In the first months of 1975 it became clear that the war was going dangerously closer to Saigon, demonstrated by the unstoppable advance of the NVA. Washington realized it was urgent to discuss an evacuation plan that would save those who were considered “endangered people”.

On April 15, Philip Habib, assistant secretary of the State Department, told Congress in a closed door session that the U.S. Would evacuate 17,600 Vietnamese who were actually working for the U.S. Government. The total number would rise to 130,000 if their dependents were counted.<sup>44</sup>

Since this moment, a massive migratory movement started, although in this very first case it was sponsored by the US Government through an evacuation plan, and as a consequence, the involved people were directly resettled to the refugee camps mainland.

Two days later the closed door session, Secretary of State Henry Kissinger and Ambassador Martin decided to initiate the evacuation process not only of American citizens<sup>45</sup>, but also as many as 200,000 Vietnamese.<sup>46</sup>

Besides, there was a prevailing sentiment that for some categories of Vietnamese, Americans were obligated to support their evacuation. These were

former employees; people who had worked closely with them; people who were at very high risk if they were captured by the Vietnamese; and the large numbers of Vietnamese who had established — with the many years of our

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44 Nghia M. Vo, *The Vietnamese Boat People, 1954 and 1975-1992*, Mcfarland & Co Inc Pub, 2006, p. 64. p 64.

45 The estimated number was 3,839 together with their dependents. W. Courtland Robinson, *Terms of Refugee: The Indochinese Exodus and the International Response*, Zed Books Ltd, 1998, p.17

46 Paul James Rutledge, *The Vietnamese Experience in America*, Indiana University Press, 1992 p. 3.

involvement — some sort of relationship with Americans, either through marriage legalized by civil authority or clergy, or through common law relationships.<sup>47</sup>

Meanwhile, North Vietnamese troupes had enclosed Saigon, blocking all the ways through which people could have left the capital. However, Ambassador Martin waited until the very last moment to actuate the evacuation procedure, fearing the spreading of panic among the city's inhabitants as was the case in Da Nang;<sup>48</sup> therefore only on April 29, Operation Frequent Wind IV was finally activated.<sup>49</sup>

This time, instead of using fixed-wing planes, helicopters were adopted to carry on the evacuation, for they were able to land in places where bigger aircrafts could not, such as rooftops. The operation resulted in a massive assembly that resulted in the biggest helicopter evacuation in history.<sup>50</sup> People gathered at the U.S. Embassy, where a pick-up was likely. Helicopters came down on the rooftop and then went right back up again, to fly to carrier Midway that was waiting off shore. The operation ended on April 30, 1975, when the last chopper took off at 7.53 A.M.<sup>51</sup> Such was the speed of the evacuation, that in 18 hours between April 29 and the 30 “scores of helicopters would appear like bees returning to the hive”<sup>52</sup> resulting in over 7,000 people evacuated.<sup>53</sup>

On April 30, 1975 Secretary of State Henry Kissinger announced in a press

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47 "Moments in U.S. Diplomatic History, The Vietnamese Boat People", Association for Diplomatic Studies and Training, accessed March 3, 2016: <http://adst.org/2014/07/the-vietnamese-boat-people/>.

48 “World Airways planes were chartered to pick up about 40,000 people. However, when the first plane landed it was mobbed by untold number of refugees who rushed onto the runway, planes were forced to leave in a hurry with their back door open, loading steps and wheels still down. The operation was cancelled and only 1,200 had been evacuated.” Nghia M. Vo, *op.cit.*, p. 58.

49 “Vietnam Evacuation: Operation Frequent Wind”, Air Force Historical Support Division, accessed March 3, 2016: <http://www.afhso.af.mil/shared/media/document/AFD-120823-033.pdf>.

Although it is generally known simply as “Operation Frequent Wind”, the one that was held between April 29 and 30 was exclusively the fourth and last stage of a bigger operation. As a matter of fact, formally, Operation Frequent Wind began on April 9, 1975 when cities from central Vietnam started falling one after the other due to the advancing North Vietnamese Army (NVA). Designated to evacuate Americans, options I and II were step by step airlifts; option III was a combination of air and sea lifts, while option IV was a helicopter lift from Saigon. Vo, Nghia M., *op.cit.*, p.200.

50 *Ibid.*

51 Vo, Nghia M., *op.cit.*, p.69.

52 “Operation Frequent Wind: April 29-30, 1975”, Naval History Blog, accessed March 3, 2016: <https://www.navalhistory.org/2010/04/29/operation-frequent-wind-april-29-30-1975>.

53 Vo, Nghia M., *op.cit.*, p.69.

conference that the evacuation program had been successfully completed and that the US involvement in Vietnam was finally, and truly over.<sup>54</sup>

Overall, the Americans evacuated by air or boat approximately 65,000 Vietnamese,<sup>55</sup> and roughly the same amount escaped on their own.

Many had access to planes or boats or were armed and could commandeer transportation. Vietnamese air force pilots took their planes, loaded them with family, girlfriend, or mistresses, or hired out space at more than \$10,000 per person and flew to US bases in Thailand. Vessels of the vietnamese navy evacuated families of crew members and friends and headed for Subic Bay in the Philippines. Other Vietnamese fled by sea in small fishing boats, barges, rafts, and floats and were picked up by friendly ships.<sup>56</sup>

However, such was the number of escapees that Subic Bay base was soon overwhelmed and the remaining evacuees were headed to Guam.<sup>57</sup>

Guam was a US territory 2,500 miles east of Saigon, whose population counted 94,000 persons in 1975, not including the American soldiers and staff. One third of the Island was occupied by air and naval bases, and bombing campaign

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54 Ibid. Text of the Press Conference: "Earlier today we announced that the evacuation had been completed. At that time we were not aware that an element of the ground security force remained to be evacuated. Therefore, the completion of the evacuation of these personnel actually occurred after the conclusion of the press conference. Latest reports indicate that the remaining security forces now have been evacuated." Notice to the Press, Office of the White House Press Secretary, April 29, 1975. Accessed April 21, 2016, available at: "The Gerald R. Ford Presidential Library", <https://www.fordlibrarymuseum.gov/library/document/0248/whpr19750429-026.pdf>.

55 Robinson, W. Courtland, *op.cit.*, p.18.  
The total number arises from all the picks-up organized during the first months of 1975, when civilians, in an attempt to escape from North Vietnamese troupes who were heading South, run from city to city, gathering at ports and airports. Vo, Nghia M., *op.cit.*, pp.55-63.

56 *Ibid.*  
Symbolic of this situation was the case of South Vietnamese Air Force Major Bung-Ly who load his family into a small airplane, took off from Saigon and managed to land on the Midway after the crew cleared the deck. Sharon Heilbrunn, "USS Midway Air Boss Remembers Heroic Bird Dog Airplane Rescue", April 25, 2010, accessed March 2, 2016: <http://www.kpbs.org/news/2010/apr/25/uss-midway-air-boss-remembers-heroic-bird-dog-airp/>.

American carriers waiting offshore were so crowded with evacuees that in other occasions, due to the lack of space on the decks "orders were given to push surplus helicopters over the sides of the ships to make room for more. Some pilots were told to drop off their passengers, then ditch their machines in the sea, bailing out at the last moment to be picked up by waiting rescue boats". "No room for helicopters", Mashable, accessed March 1, 2016: <http://mashable.com/2015/05/04/operation-frequent-wind/#XBSnbI5tskqI>.

57 Being much closer to Vietnam than Guam, Subic Bay Naval Base was a logic place where to warehouse the Vietnamese refugees. However, President Marcos declared that its Country would not have accepted the Vietnamese. Larry Clinton Thompson, *Refugee workers in the Indochina exodus, 1975-1982*, McFarland, 2010, p. 63.

influenced the entire life of the island.<sup>58</sup> Having a military asset notwithstanding, Guam governor offered to accept the refugees temporarily. “The military estimated that a maximum of 13,000 refugees could be housed on Guam and that the number was exceeded in the first two days of the evacuation. [...] By April 27, the numbers had reached 20,000 and the refugees [...] often had only the clothes on their backs.”<sup>59</sup>

First group of South Vietnamese arrived on the Island on April 23, and since then, with the evacuation from Vietnam procedures, “it continued to grow, even though an average of 1,000 refugees a day were being transferred to mainland reception centers.”<sup>60</sup> As a matter of fact, Guam was used as a temporary holding area while Washington organized a solution for the refugees, until eventually Operation New Life was issued.

The Army was tasked to provide a control element and the necessary forces for the most enterprising refugee support effort at any single site on Guam in what was called Operation New Life.<sup>61</sup>

Basically, the purpose of this operation was the processing of the refugees for final resettlement in the United States.

As soon as they reached the island, first of all people were screened and asked to fill out forms before being sent to a shared tent. Bathrooms were also shared by both men and women, since the camp was not provided with enough facilities. In addition, the camp was not adequately equipped to discard the amount of sewage generated. Infections and illnesses thus arose, caused by health services malfunction and by Dengue virus or because they transported by mosquitoes.<sup>62</sup>

The screening process was held by *volags*, voluntary agencies whose objective was to match refugees with a resettlement Country. The US Government had been turning to these private voluntary agencies since the Second World War, as they help emigrants in integrating into the new social environment. *Volags* had

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58 Thompson, L. Clinton, *op.cit.*, p. 62.

59 Thompson, L. Clinton, *op.cit.*, p. 63.

60 U.S. Library of Congress, Congressional Research Service, Review of U.S. Resettlement Programs and Policies, by Charlotte J. Moore, SN 52070054093 (1980), available from: <http://files.eric.ed.gov/fulltext/ED206779.pdf>.

61 Department of the Army, Office of the Deputy Chief of Staff for Operation and Plans, After Action Report: Operations New Life/New Arrivals, US Army Support to the Indochinese Refugee Program, 1977, available from: <http://dtic.mil/dtic/tr/fulltext/u2/a036359.pdf>.

62 Vo, Nghia M., *op.cit.*, p. 77.

the authority to organize and redistribute personnel, funds, and materials necessary to provide substantial aid; however they faced difficulties with this task, for the Governments' control on the program or their request that refugees lived in inadequate states in the caps, thus discouraging new escapees, but encouraging resettlement.

Originally the refugees were to be hosted by neighboring Asian Countries, however they were taken by the United States. As a matter of fact, president Gerald Ford signed the Indochina Migration and Refugees Act in May, “an act to enable the United States to render assistance to, or in behalf of, certain migrants and refugees”.<sup>63</sup> The number of authorized indochinese was set to 130,000, 125,000 of whom were Vietnamese.<sup>64</sup> After being seen by doctors, having their English skills tested and finally being provided with a Social Security card,<sup>65</sup> South Vietnamese took part to what is known as Operation New Arrivals, were transferred to refugee camps in US mainland, especially Camp Pendleton, California; Fort Chaffee, Arkansas; Eglin Air Force Base, Florida and Fort Indiantown Gap, Pennsylvania<sup>66</sup>. Here refugees would attend 6 months or more of education and cultural training to assist their assimilation in the new society.

### **2.1.1 Composition of the First Wave: who the refugees were and why they did escape.**

This first wave of refugees was composed by generally high-skilled professionals and well-educated Vietnamese.<sup>67</sup> Moreover, they were wealthier and, as already said, they had political ties with the US Government, a consequence of which was the familiarity with the English language that rendered their resettlement easier. Furthermore individuals who had family ties were also a considerable

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63 *Indochina Migration and Refugee Act of 1975*, Public Law 94-93, HR 6755, 94<sup>th</sup> Cong. , 1<sup>st</sup> sess., Action Memorandum for the President, (May 23, 1975), available from: <http://library.uwb.edu/static/USimmigration/89%20stat%2087.pdf>.

64 “Emigration from Vietnam and Reasons”, Vietnamese Citizens of Vietnam War, accessed March 3, 2016: <https://petertrannewtype.wordpress.com/emmigration-from-vietnam>.

65 Lily Rothman, “The U.S. Can Handle Much More Than 10,000 Syrian Refugees”, *Time*, September 15, 2015, available from: <http://time.com/4034925/vietnamese-refugees-united-states-history/>.

66 Robinson, W. Courtland, op.cit., p.132.

67 Gail P. Kelly, “Coping With America: Refugees from Vietnam, Cambodia, and Laos in the 1970s and 1980s”, in *The Annals of the American Academy of Political and Social Science*, Vol. 487, Sep., 1986, pp. 138-149, accessed March 3, 2016, available at: [http://www.jstor.org/stable/1046059?seq=1&cid=pdf-reference#references\\_tab\\_contents](http://www.jstor.org/stable/1046059?seq=1&cid=pdf-reference#references_tab_contents).

component of this first wave, since both wives or mistress of American soldiers were considered high-risk targets for Communists.

Lower classes as well had a little role in this initial migration. Fishermen, for instance, was the category that had always been represented in all waves, since they were those who owned or had access to boats.

By the time Saigon surrendered on April 30, a whole armada of supply and patrol boats, landing craft, fishing boats [...] and anything that could float headed toward the sea [...] that became crowded and filled with floating vessels that day.<sup>68</sup>

They left by whatever means was available: U.S. military aircraft, U.S. Navy ships, small boats, on foot. To stay meant to die.<sup>69</sup>

These two passages highlight the fact that everyone who could escape, tried to do it.

Reasons need to be searched in the widely feared cruelty of Communists. Catholics, particularly, were a further class that escaped in a high percentage during this first wave, “despite the fact that less than 20% of Vietnam's population professed Catholicism, close to 40% of all first waves refugees were Catholic.”<sup>70</sup> The main reason that stands behind this category's departure was the fear of Communists reprisals and unwillingness to live under their control,<sup>71</sup> since they have been among the most active anti-Communists.<sup>72</sup> Moreover, many of the Catholics who escaped were second-time migrants, Vietnamese native from the North who migrated South in 1954, at the end of Indochina War, when fearing reprisals from the Communists and motivated by the regime pro-Catholics established by Diem decided to move.<sup>73</sup>

The situation this time was very similar, for people from ARVN were sinners for having joined Americans during Vietnam War and they feared the idea of retributions from NVAs once they would find out which was the side they had

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68 Vo, Nghia M., *op.cit.*, p.70.

69 Rutledge, Paul J., *op.cit.*, p.2.

70 Gail P. Kelly, *op.cit.*

71 *Ibid.*

72 Le-Thi-Que, A. Terry Rambo, and Gary D. Murfin, “Why they fled: Refugee Movement during the spring 1975 Communist offensive in South Vietnam” in *Asian Survey*, Vol. 16, No. 9, Sep., 1976, pp. 855-863.

73 Gail P. Kelly, *op.cit.*

fought along with.

## **2.2 Second Wave of Refugees, the “Boat People”: 1978-1979.**

### **2.2.1 Internal factors for Escape: Reeducation Camps and NEZ.**

In the months and years that followed the fall of Saigon, several political and economic factors stood behind the enormous growth in refugees' number.

In May 1975 with the Communists in power, ARVN soldiers and policemen, as well as civil servants and member of political parties were arrested and sent to reeducation camps, where they were forced to hard labour, starvation diet and brain-wash procedures, whose objective was to transform them into socialists<sup>74</sup> and 'reeducate' them through hard labour and though reform.<sup>75</sup>

Imprisonment started with a three days reeducation course, at the end of which every detainee wrote a paper demonstrating “personal understanding of the new political realities.”<sup>76</sup> However the three-day course could last to more than 20 years.<sup>77</sup> Communists cadres who were responsible for brain-washing were all North Vietnamese, who had been taught that all the Southerners had lost their Vietnamese characteristics, their humanity and had been brutal in deciding to join imperialism and Americans.<sup>78</sup> Vietnamese officials reported that 50,000 persons were being detained in camps, however, according to refugees, the number of the people held in the camps is 100,000-300,000.<sup>79</sup>

As part of a major resettlement program that would redistribute people on the basis of economic development goals, Vietnamese were forced to move from crowded region of the South to less-populated, virgin forested areas known as New Economic Zones, NEZ. These were established in the Central Highlands and people had to clear and transform them into farming zones. This system however, appeared to be a punitive as well as preventive tool, for it was used to expel nearly 2 million people, who were not only unemployed or people in

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74 *Ibid.*

75 Vo, Nghia M., *op.cit.*, p.95.

76 Robinson, W. Courtland, *op.cit.*, p.26.

77 Vo, Nghia M., *op.cit.*, p.95.

78 Leislyanne, Hawthorne, *Refugee the Vietnamese Experience*, Oxford University Press, 1982, p.146.

79 Congressional Research Service, *World Refugee Crisis: The International Community's response* (1980), available from: <https://babel.hathitrust.org/cgi/pt?id=pur1.32754075441505;view=1up;seq=166>.

economic difficulties people, but also former Government personnel and relatives of those who were dispatched in reeducation camps.<sup>80</sup> Relocating people and the establishment of these NEZ had also to do with the necessity of increase food production, since agricultural production had declined and the Country faced an alarming food deficit.<sup>81</sup>

Life in these places was harsh, despite NEZ were considered the “civilian equivalent”<sup>82</sup> of reeducation camps.

Officially, settlers were supposed to receive 6 months' worth of food supplies, some seeds and tools and a hut. But most of the time, they found no housing facilities whatsoever, and sometimes no source of drinking water. [...] Lack of medicines increased the incidence of disease. Malaria and dysentery were rampant, pneumonia and skin diseases widespread.<sup>83</sup>

It is believed that 50,000 to 200,000 former soldiers, policemen, Government employees and members of the old political party are detained in refugee camps<sup>84</sup>

### **2.2.2 Economic Situation.**

To this overwhelming climate of oppression, which did not comprise only forced relocation, but travel and geographic restrictions as well,<sup>85</sup> economic factors had an important role in the growing desire to flee from Vietnam.

After the Fall of Saigon, South Vietnam was briefly put under the military control of North Vietnamese forces, until official reunification on July 2, 1976 and the establishment of the Socialist Republic of Vietnam: two diametric economies and *modus vivendi* were, thus, forced to unify and to coexist in a newly created Vietnam.

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80 Bruce M. Lockhart and William J. Duiker, *Historical Dictionary of Vietnam*, Scarecrow Press, 2006, pp. 253-254.

81 Robinson, W. Courtland, *op.cit.*, p. 26.

82 Vo, Nghia M., *op.cit.*, p. 96.

83 Robinson, W. Courtland, *op.cit.*, p. 27

84 Fox Butterfield, *The NY Times*, February 12, 1977.

85 On the basis of the experience of a young male doctor who spent two years in a reeducation camp, when he was released, he and his wife lived separately. At weekends they visited each other, and at every visit they had to submit a request to the police where they had to write time of departure and return, and reasons for visit had to be explicit. Hawthorne, L., *op.cit.*, p. 154.

As regards the economy, “By that time, the US aids to the South had ceased for one year. In addition, aids from China to the North were being cut step by step, along with emerging political conflicts of the two Countries’ leaderships, and would come to an end in 1978.”<sup>86</sup> However, a Five Years Plan was adopted in 1976, called “Socialist Transformation” for it followed the practices of the former Democratic Republic, namely, agricultural collectivization opposed to industry and commerce nationalization. The consequence showed to be disastrous: “the production decreased, agricultural outputs fell down, industry stagnated and commerce froze. The Country began to suffer from a shortage of food.”<sup>87</sup>

As for business, the new Government closed all the banks and seized all private companies, so families went bankrupt soon and private owners were later incarcerated or sent to NEZ. The explanation was that, since most of these activities flourished thanks to American investments, this cooperation brought the South Vietnamese to enrich themselves out of the poor people.<sup>88</sup> Communists cadres took their role, becoming new managers, thus forming a new social class.<sup>89</sup> Moreover, from the beginning of 1977, all the medium-seized companies, factories and business were gradually forced into a State of semi or full-nationalization.<sup>90</sup> Small and street vendors suffered of a similar fate: “the Government bought their stocks at the pre-1975 prices, and all these traders in turn also became workers of the State.”<sup>91</sup>

In 1978, situation in the South significantly worsen. The campaign to transform small business in the South led to an increase of arrests and forced transfers.<sup>92</sup> This restraint on private business had a particular effect on the Chinese (or Hoa, as the Vietnamese called them), since from the time they settled in Vietnam, they mainly engaged in business and commerce in the district of Cholon, the China-town of Saigon. The suburb was subjected, in March 1978, to a house-to-house search conducted by volunteers, “confiscating dollar bills and gold bars,

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86 “Economic performance of Vietnam, 1976-2000: New evidence from input-output model”, Development and Policies Research Center (DEPOCEN), accessed May 15, 2016: [http://depocenwp.org/upload/pubs/PhamQuangNgoc/Structural\\_change\\_%26\\_economic\\_performance\\_of\\_VN\\_DEPOCENWP.pdf](http://depocenwp.org/upload/pubs/PhamQuangNgoc/Structural_change_%26_economic_performance_of_VN_DEPOCENWP.pdf).

87 *Ibid.*

88 Hawthorne, L., *op.cit.*, p. 179.

89 Hawthorne, L., *op.cit.*, p. 178.

90 *Ibid.*

91 Hawthorne, L., *op.cit.*, p. 181.

92 Quang Trung Thai, *Vietnam Today: Assessing the New Trends*, Taylor and Francis, 1990, p. 59.

inventorying property and closing business”,<sup>93</sup> because of the pervasive role of the Hoa community in internal commerce. Together with the closure of private business, the monetary reform that imposed a new currency exchange contributed to paralyze the city.<sup>94</sup> The reason behind these actions lied in the upcoming war with China. There were still thousand of Chinese or Vietnamese of Chinese origins living in the South who were considered as a threat due to the alleged subversive activities in the North, especially in the, back then, extremely likely event of a conflict.

### **2.2.3 The War with Cambodia and China.**

Before 1954, the Chinese population in Saigon and its suburb of Cholon constituted about 34 per cent of the total population of the city which amounted to 1,600,000 persons.<sup>95</sup> It is estimated that the Chinese population in Vietnam in mid-1970s was about 2.6 per cent of the total population of nearly 48,000,000 people,<sup>96</sup> namely 1,236,000 Hoa individuals.<sup>97</sup> However, “in 1978-1979 some 450,000 ethnic Chinese left Vietnam or were expelled across the land border with China”.<sup>98</sup> This was a result of both domestic and foreign developments, namely in the economic sector, as explained in the previous chapter, and in the foreign policy with Cambodia, which brought to the war with China. However, the sharp increase of refugees outflow that characterized 1978-1979 was mainly motivated by the latter of the reasons mentioned.

As regard the domestic issues “the increasingly drastic actions taken to transform the capitalist economy of the south into a socialist one, led to protests

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93 Vo, Nghia M., *op.cit.*, p. 97.

94 Hawthorne, L., *op.cit.*, p. 123. Vietnamese Government finalized two currency reforms. The first one was in September 1975 for southern Vietnam to convert its capitalist currency into the socialist one and for the policy of establishing an egalitarian society by reducing the wealthy people in the South. The other reform was in May, 1978 and it was for the whole Country; it was made under the policy of promoting national unification and eliminating the postwar capitalists. Quang Trung Thai, *Vietnam Today: Assessing the New Trends*, Taylor and Francis, 1990, p. 59.

95 *Statistical Yearbook of Vietnam*. Vol 2. pp. 24,27. in Tran Khanh, *The Ethnic Chinese and Economic Development in Vietnam*, Institute of Southeast Asian Studies, Singapore, 1993, p. 23.

96 “Vietnam Population”, Index Mundi, accessed March 6, 2016:  
<http://www.indexmundi.com/facts/vietnam/population>.

97 *Statistical Yearbook of Vietnam*. Vol 2. pp. 24,27. in Tran Khanh, *op.cit.*, p. 23.

98 Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples - Vietnam : Chinese (Hoa)*, 2008, accessed March 4, 2016, available at:  
<http://www.refworld.org/docid/49749c7f8.html>.

by Chinese in Ho Chi Minh City against discrimination in relation to property loss.”<sup>99</sup> Moreover, fearing deportation into the NEZs, Chinese from North Vietnam started to cross the border in April. Beijing charged Hanoi of racial discrimination and deprivation of jobs to justify the undergoing exodus.

By mid-July 1978, however, Sino-Vietnamese relations had deteriorated and the burden of refugees had become so great that Beijing closed the border and began -without success- to insist that Vietnam take back most of the refugees.<sup>100</sup>

By the time China decided to close its border in July 1978, more than 160,000 Chinese had left through the Norther border into China mainland.<sup>101</sup>

As Sino-Vietnamese tensions escalated, movement of ethnic Chinese overland into China slowed, but Beijing claims 10,000 per month are still being forced across the border.<sup>102</sup>

Internally, anti-Chinese feelings spread throughout the Country, resulting in hard mistreatments that led to escapes.

Sensing possible propaganda content, observers reserved judgment on whether Hanoi was driving out the Chinese, who had never been known to cause trouble for the Government, or whether Beijing was fomenting the exodus to further its anti-Hanoi campaign.<sup>103</sup>

This, eventually, was concretized in a military attack in February 1979. However, the war between China and Vietnam was also a reflection of two other facts that happened in late 1978 soon became a vicious circle, namely, Vietnam’s increasingly worsening of relations with Cambodia, and the Vietnamese

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99 UNHCR, *The State of the World's Refugees: Fifty Years of Humanitarian Action*, 2000 Oxford and New York: Oxford University Press.

100 "Refugees, special study – July 1979", Texas Tech University The Vietnam Center and Archive, accessed March 6, 2016: <http://www.virtual.vietnam.ttu.edu/cgi-bin/starfetch.exe?c3WGk7fZGwC.5GSATuRwDvOhJrHoi37YUc3lHzCx5@Dg6Q@i.EMsVl.BwT.mM49B2oJjiYBplFyq.OeCgrOYQN8lbdw@dsxmaCfsxVMY/2123309004.pdf>.

101 Hawthorne, L., *op.cit.*, p. 123.

102 "Refugees, special study – July 1979", Texas Tech University The Vietnam Center and Archive, accessed March 6, 2016: <http://www.virtual.vietnam.ttu.edu/cgi-bin/starfetch.exe?c3WGk7fZGwC.5GSATuRwDvOhJrHoi37YUc3lHzCx5@Dg6Q@i.EMsVl.BwT.mM49B2oJjiYBplFyq.OeCgrOYQN8lbdw@dsxmaCfsxVMY/2123309004.pdf>.

103 Henry Kamm, "Vietnam Goes On Trial in Geneva Over Its Refugees", *New York Times*, July 22, 1979.

complete reliance on Russia and its economy, and by the signature between the two Countries of a Treaty of Friendship and Cooperation that called for mutual assistance in the event of a security threat, in November 1978.

In December 1978, Hanoi launched a full-scale invasion of Cambodia, defeated the Revolutionary Army and removed the Khmer Rouge leadership from power. Subsequently, in January it was established a pro-Vietnamese Government called People's Republic of Kampuchea, PRK, that marked the beginning of the Vietnamese occupation that would last for the next ten years.

China, which had supported the Khmer Rouge, retaliated against Vietnamese actions by invading Vietnam's territory from the Northern border; within two weeks, what is also know as the Third Indochina War, was over and Vietnamese troupes were defeated and Chinese ones withdrew.<sup>104</sup>

This, of course, conditioned even more the exodus of people, since almost the same time, an increasing number of ethnic Chinese were found among the boat people who fled from the South Vietnam, reaching Southeast Asia. What they reported was similar to what Chinese from the North said, that is Hanoi made them face a cruel choice: a poor and miserable life in either reeducation camps or NEZ, or emigrate.<sup>105</sup> Hanoi thus established a policy whereby ethnic Chines were forced to decide whether they leave the Country, or be relocated.

The Government highly encouraged Sino-Vietnamese to leave, through departures organized by the Cong An, or Public Security Bureau (PSB), which had been arranging this sizable, well-organized and approved exodus. "PBS officers sometimes recruited passenger directly. But in the South, they relied heavily on intermediaries [...]."<sup>106</sup> This trafficking of refugees became a lucrative business: "passengers had to pay two taels of gold as an 'application fee', five to eight taels as an 'exit fee', and two taels for the actual passage. Children older than five paid half price, those under five traveled free of charge.<sup>107</sup> In the North prices were lower, since the PBS officers dealt directly with the potential

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104 "The Third Indochina Conflict", Foreign Affairs, accessed May, 28, 2016:

<https://www.foreignaffairs.com/articles/asia/1986-09-01/third-indochina-conflict>.

105 Ibid. See also "Vietnam and the ethnic Chinese after 1975", Online Archive of California, accessed March 6, 2016, <http://www.oac.cdlib.org/view?docId=hb138nbo8w;NAAN=13030&doc.view=frames&chunk.id=ss2.10&toc.id=ss2.10&brand=oac4>.

106 Robinson, W. Courtland, *op.cit.*, p. 40.

107 One tael equals 37.79 grams of gold. Sucheng Chan, *The Vietnamese American 1.5 Generation: Stories of War, Revolution, Flight, and New Beginnings*, Temple University Press, 2006, p. 80. The same prices are reported in Robinson, W. Courtland, *op.cit.*, p. 40.

escapees, saving the costs of the intermediaries.<sup>108</sup> The organizer would then contact people interested in escaping, buy or renovate a boat, and they would buy fuel and supplies as well.<sup>109</sup>

Thus, “from a population of 1,236,000, the ethnic Chinese population shrank to 935,000 on October, 1979.”<sup>110</sup>

Therefore, other than the escape route by land, which was used by far fewer refugees and especially in the North Vietnam, people fled by boat, creating a dramatically growing outflow who continued to rise throughout 1978, in such an extent that “in the first half of the year more than 20,000 boat people arrived in South-east Asia, a number equalling all other arrivals over the past four years.”<sup>111</sup>

That the crisis was not a “a residue of a war that ended in 1975”<sup>112</sup> anymore, but that it has become the outcome of a political change whose causes were regional conflict and class struggle, finally became clear when in October 15, a big freighter called '*Hai Hong*' reached Malaysia with its 2,500 refugees aboard.<sup>113</sup>

The thousand of these hopeless asylum seekers who escaped Vietnam in fragile wooden boats, facing what seemed endless days of sailing, struggling to survive all the perils and failures, they were the real '*Boat People*', poorer and more desperate than the first one.

#### **2.2.4 Pirates' attacks.**

“Piracy in Southeast Asia is as old as seafaring itself. For the Vietnamese Boat People it posed an unexpected terror and for those seeking to protect them it was a vexing problem.”<sup>114</sup> It was unlikely that a boat was not victims of pirates' attacks or was spared by them, since their aggressions became more and more frequent and even more violent. Many were victims of RMP, an acronym that stands for rape, murder, and pillage<sup>115</sup> by Thai pirates. At the beginning, since they were mainly poor fishermen, what they were looking for was gold, and they

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108Called 'organizer' in Vo, Nghia M., *op.cit.*

109Vo, Nghia M., *op.cit.*, p. 90.

110Khanh,Tran, *op.cit.*, p. 25.

111Hawthorne, L., *op.cit.*, p. 227.

112Robinson, W. Courtland, *op.cit.*, p.41.

113Robinson, W. Courtland, *op.cit.*, p.28.

114UNHCR, *The State of the World's Refugees: Fifty Years of Humanitarian Action*, Oxford and New York: Oxford University Press, 2000.

115Vo, Nghia M., *op.cit.*, p.144.

were so eager that started to extract it from people's teeth.<sup>116</sup> The other thing that attracted them the most were girls, and episodes of rape are, therefore, tremendously numerous.<sup>117</sup> Besides, the number of murders is very high, being men or women, old or young, pushing them to sea and let them drown, or beating them to death. They destroyed and vandalized everything on the boats, stealing compasses and maps, disabled boats' engines and then created holes in the hold to make it sink.<sup>118</sup>

Ko Kra was a deserted island east from Thailand, which was synonym to terrific episodes of violence. Boat people who escaped through this route, after being robbed by pirates, were towed to the island, where other pirates' boat came. One time people experienced in only one night the visit of three different bands of pirates.

The last group drove all the men into a cave and raped the women until dawn. [...] The following nights and days, the pirates came back looking for the women who were hiding in the jungle or in the trees. They hunted the women, pulled them out and raped them again.<sup>119</sup>

In November 1979, Thai marine police reached the island carrying a doctor and a UNHCR officer, Ted Schweitzer, warned by an helicopter pilot for an oil company who spotted the refugees during a flight over the island. The officer saved 157 refugees.<sup>120</sup>

### **2.2.5 The Second Wave, a “torrent” of refugees.**

By mid-1979, more than 700,000 people had departed from Vietnam.<sup>121</sup> The Vietnamese boat flow, however, grew throughout 1978 and in the early months

116“Joe Devlin: The Boat People's Priest”, HistoryNet, accessed March 6, 2016:

<http://www.historynet.com/joe-devlin-the-boat-peoples-priest.htm>. This article was originally published in the April 1999 issue of *Vietnam Magazine*.

117 “Thai Pirates vs Vietnamese Refugees”, VietKa Archives of Vietnamese Boat People, accessed March 6, 2016: [http://www.vietka.com/Vietnamese\\_Boat\\_People/ThaiPirates.htm](http://www.vietka.com/Vietnamese_Boat_People/ThaiPirates.htm); Vo, Nghia M., *op.cit.*, pp. 144-149.

118Vo, Nghia M., *op.cit.*, p. 145.

119Vo, Nghia M., *op.cit.*, p. 148.

120Robinson, W. Courtland, *op.cit.*, p. 61.

121The number includes the 130,000 Vietnamese who left with the evacuation plan sponsored by the United States in April 1975, 250,000 who had fled north to China, 312,000 who had fled Vietnam by boat since mid-1975 and the 15,000 who have fled overland into Thailand. UNHCR, *The State of the World's Refugees: Fifty Years of Humanitarian Action*, Oxford and New York: Oxford University Press, 2000.

of 1979:

Since the 1975 American evacuation, the flow of refugees had filtered down to a trickle: 377 in 1975 and 5,619 in 1976; but by 1977 it became a flow – 21,276; by the end of 1978, a flood – 106,489; and in the first months of 1979, a torrent – 106,604.<sup>122</sup>

By June, 1979 the figures got even more alarming since boat arrivals severely escalated, with “more than 54,000 arrivals in June alone.”<sup>123</sup>

Those who survived the dangerous trip found temporary safety in other ASEAN Countries, which had to establish a number of refugee camps mainly in Thailand, Malaysia and Hong Kong, to deal with the rapidly increasing number of arrivals. However, alarmed that the increasing and apparently unstoppable flow of refugees could destabilize the whole area, some ASEAN Countries adopted 'push-back' policies, causing an even more dramatic humanitarian situation. The international community, thus realized it was necessary for Hanoi, and for Countries of first and second asylum as well, namely to stop illegal departures and a bigger and more effective commitment.

As a response, two significant international meetings were held in 1979: the first one was an ASEAN meeting in Bali that took place in late June, and which was succeeded by a second one, a UN conference in Geneva the following month.<sup>124</sup>

Thanks to these meetings the global community acknowledged the seriousness of the problem as an humanitarian crisis, thus countermeasures were issued and important results were achieved. Vietnam announced it would undertake actions that would eventually stop illegal departures, ASEAN Countries halted 'push-back' policies and worldwide resettlement generally increased.

Although being partially a direct responsible for people departures, Vietnamese Government began to feel concerned and embarrassed by the increasing escape attempts for which its people were ready to lose their lives in the attempt to flee their own Country. As a consequence, Hanoi launched an open campaign of intimidation: the city was covered of wall posters threatening with strict

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<sup>122</sup>Vo, Nghia M., *op.cit.*, p.83.

<sup>123</sup>UNHCR, *The State of the World's Refugees: Fifty Years of Humanitarian Action*, Oxford and New York: Oxford University Press, 2000.

<sup>124</sup>Robinson, W. Courtland, *op.cit.*, pp. 50-51.

penalties for people, who were considered traitors, caught in the attempt; at the same time sound trucks and loudspeaker broadcasts made similar announcements various times a day in public places, warning that penalties ranged from long periods in prison to death sentences, the latter reserved to boat owners who were discovered organizing escapees.

## **2.3 The Third Wave of Refugees: 1980-1989.**

### **2.3.1 The 1979 Geneva Conference Aftermath and the Third Wave.**

The situation slightly improved during the first half of 1980s, with refugees continuing to arrive, but in manageable proportions. After a six-years of improvement, however, in 1987 movements of refugees started to increase modestly until they reached a new peak in 1988: a third wave had begun.

This new phase concerned a very unfortunate and large category of Vietnamese society, namely reeducation camp prisoners.

Vietnam had sent one million people through a course of political reeducation following the communist victory in 1975. For most, this had involved three days of lectures and sessions but no more. The estimates of those detained for longer periods, however, ranged from 100,000 to 300,000 according to international human right observers and 40,000 by official accounts.<sup>125</sup>

In 1982 and in 1984 again, Hanoi submitted the offer to release reeducation camp prisoners provided that the US would accept to conduct resettlement procedures. Reagan Administration, which was already reluctant to accept a bilateral program in relation to the Amerasian Issue,<sup>126</sup> needed four more years to reach an agreement, which was a surplus to the future Comprehensive Plan of Action and Amerasian legislations.

Finally, on July 30, 1989 [United States and Vietnam] issued a joint statement following meetings in Hanoi that the two Countries would 'allow those released reeducation centre detainees who were closely associates with the United States or its allies and who wished to do so, to emigrate, together with their close

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<sup>125</sup>Robinson, W. Courtland, *op.cit.*, p. 195.

<sup>126</sup>Robinson, W. Courtland, *op.cit.*, p.197. Amerasian were the children of US servicemen.

relatives, to the United States'.<sup>127</sup>

Components of this new wave were mostly educated, ethnic Vietnamese, who served in the ARVN. In the many years spent in reeducation camps “they languished and struggled to just remain alive”,<sup>128</sup> and once being released, the situation for them did not change, for they were constantly surveilled by communist cadres in the eventuality they could still be a threat. In this sense, they also had to attend daily meetings where they were checked and further indoctrinated to socialism. Thanks to these meetings and the preventive method, police managed to create an oppressive society.

Employment was difficult to achieve as well, and menial jobs were the ones former detainees were able to obtain with more easily, for the high paying occupations were taken by communists cadres.<sup>129</sup> “It appeared to be a continuing flow of northern officials to the South to handle everything from security work to routine administration”.<sup>130</sup> Furthermore, it was reported that “a third of the Government staffs in the North would have to be transferred to the South to assure 'socialist transformation'”.<sup>131</sup>

Thus, with no future prospectives and no freedoms, what was left to former detainees was a life that became unlivable. This, together with a relaxation of travel restrictions, prompted them to leave.

In a 1985 UNHCR study that focused on the determination of subject involved in the escape from Vietnam, their reasons and their characteristics, it was reported that, as for the motives, this category and the claim to refugee status of its components, possibly, was the easiest to determine positively in an exodus where economic migrants were a growing presence.

### **2.3.2 Unaccompanied Minors.**

At the same time, a great portion of this third wave of escapees were 'Unaccompanied minors'.<sup>132</sup> This category, defined by the UNHCR as “those who

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127Ibid.

128Vo, Nghia M., *op.cit.*, p. 99.

129Hawthorne, L., *op.cit.*, p. 233.

130Fox Butterfield, “Hanoi Toughness In South Is Seen; Harsh Treatment of South Vietnamese by Hanoi Is Reported Anew”, *New York Times*, February 12, 1977.

131Ibid.

132Vo, Nghia M., *op.cit.*, p. 97.

are separated from both parents and are not being cared for by an adult who, by law or custom, is responsible to do so”,<sup>133</sup> have been sent overseas by their parents both to create a link for further resettlement, and, above all, in the hope of giving them a better future than the one they would have had in Vietnam.

In this sense, some concerns arose regarding the 'Unaccompanied Minors' issue. After some researches were conducted, it was demonstrated that

more than half the children were separated from their parents by circumstances, not death. Some children presumed their parents were dead on the basis of long separation or unfounded rumors. Other falsely claimed their parents were dead on the belief that their 'unaccompanied' status would facilitate their resettlement in third Countries.<sup>134</sup>

The problem was related to the idea of 'best interest of the child'.

In the case of children whose parents were dead, the above mentioned concept results in the reunification with a family member, or in the adoption by a responsible adult. However, in the Vietnamese case, concepts of reunification and best interests are in conflict, since “for many of the children, the separation from parents was an intentional act.”<sup>135</sup>

The problem is that many of the unaccompanied children living in camps and detention centers around the Southeast Asia, in condition ranging from difficult to dangerous, are there because their parents chose to send them with a view to their own resettlement [...].<sup>136</sup>

This was an argument that first appeared in 1982, when the US, stopped its resettlement cases of individuals who had not links to the Country, being familiar or professional. However, it has not been demonstrated by statistics that minors resettled abroad have been joined by family members, thus the hope to give them better life prospects had become the main reason for parents

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133UNHCR, *Refugee Children: Guidelines on Protection and Care*, Geneva, 1994, available at: [http://www.unicef.org/violencestudy/pdf/refugee\\_children\\_guidelines\\_on\\_protection\\_and\\_care.pdf](http://www.unicef.org/violencestudy/pdf/refugee_children_guidelines_on_protection_and_care.pdf).

134The conducted researches whom I am referring to, are those sponsored by the Norwegian Redd Barna and other NGOs. UNHCR, *The State of the World's Refugees: Fifty Years of Humanitarian Action*, Oxford and New York: Oxford University Press, 2000.

135Ibid.

136Robinson, W. Courtland, *op.cit.*, p. 211.

in sending them overseas.

Whether their reason for escaping were, everyone agreed that 'Unaccompanied Minors' should have been 'first among the first' to receive assistance, for they were a very vulnerable category. In 1989, within the CPA, UNHCR established Special Committees in each Country of First Asylum, whose members were representatives of the host Government, UNHCR itself, and other agencies with child welfare competence, to decide on a case-by-case basis what solution would be in 'the best interests' of each unaccompanied minor. UNHCR stressed that speed was fundamental, since prolonged stay in camps was potentially harmful to unaccompanied minors.

Despite the Special Procedures, children process were tremendously lengthy: "by November 1990, the caseload of new, post-deadline unaccompanied minors stood at 5,000",<sup>137</sup> and by the end of 1993, more than a half had turned 18', thus ending in the normal status determination process.

In twenty years, more than 1.2 million of Vietnamese left their Country of origin and found shelter in a foreign one. UNHCR statistics reported that 839,228 refugees and asylum seekers arrived in Countries of First Asylum from 1975 to 1995.<sup>138</sup> To this figure it should be added other 130,000 Vietnamese who had left with the American-sponsored operation and 250,000 Vietnamese of Chinese origins who had crossed the border in 1978-79. Besides, the figure did not count the tens of thousands who died during the sea passage. In fact, as regards the number of deaths at sea, figures are based on conjectures.<sup>139</sup> Australia's Minister for Immigration, Mr. MacKellar, said that the "estimate is that about 50 per cent of those leaving by boat perish on the journey";<sup>140</sup> however, "one experienced western official said he believed that between ten and fifteen per cent of refugees leaving Vietnam on small boats were lost at sea."<sup>141</sup>

On the whole, with the figures available, we can conclude by saying that more than 1.2 millions of Vietnamese departed from Vietnam and reached a safer

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<sup>137</sup>Robinson, W. Courtland, *op.cit.*, p. 210.

<sup>138</sup>See chart p. 20.

<sup>139</sup>Robinson, W. Courtland, *op.cit.*, p. 59.

<sup>140</sup>Michael Richardson and Patrick Boyce, "Big Viet rescue plan", *The Age*, July 20, 1979:

<https://news.google.com/newspapers?nid=1300&dat=19790720&id=vbRYAAAIBAJ&sjid=zpIDAAAIBAJ&pg=1879,1488286&hl=it>.

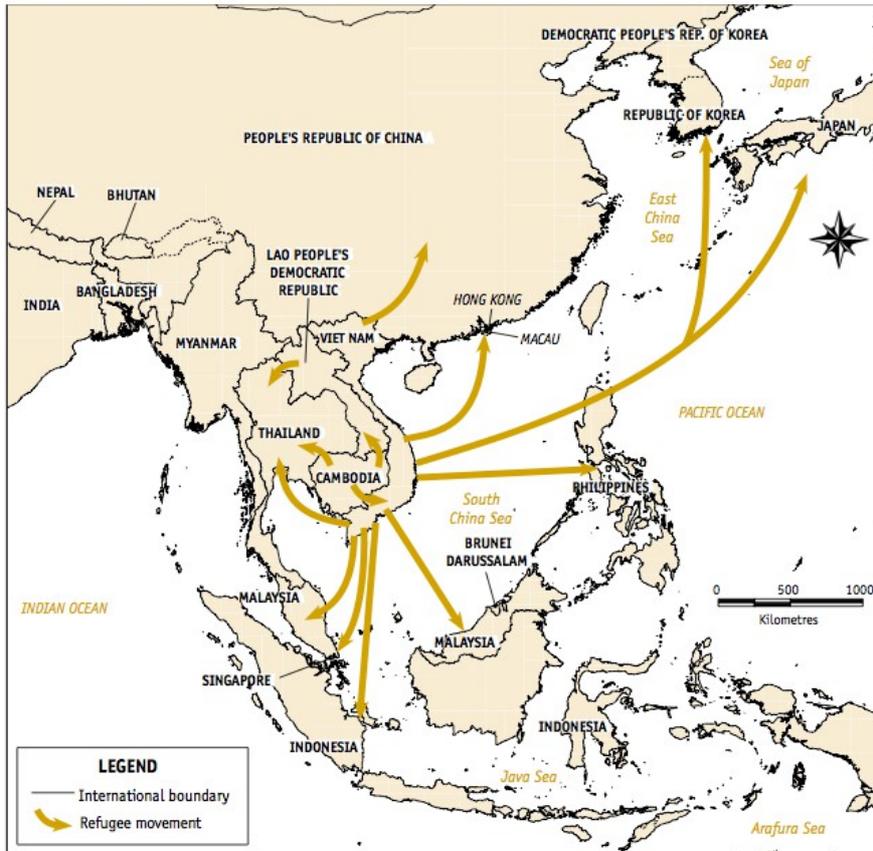
See also: Ennio Carretto, "Sarebbero almeno 200 mila i profughi annegati durante la fuga dal Vietnam", *La Stampa*, July 18, 1979.

<sup>141</sup>Grant, B., *op.cit.*, p. 81.

place.

**Exodus from Indochina, 1975–95**

**Map 4.1**



**Indochinese arrivals by country or territory of first asylum, 1975–95**

**Figure 4.3**

Country/territory of first asylum	1975–79	1980–84	1985–89	1990–95	Cumulative 1975–95
<i>Vietnamese boat people</i>					
Hong Kong	79,906	28,975	59,518	27,434	195,833
Indonesia	51,156	36,208	19,070	15,274	121,708
Japan	3,073	4,635	1,834	1,529	11,071
Korea, Republic of	409	318	621	0	1,348
Macau	4,333	2,777	17	1	7,128
Malaysia	124,103	76,205	52,860	1,327	254,495
Philippines	12,299	20,201	17,829	1,393	51,722
Singapore	7,858	19,868	4,578	153	32,457
Thailand	25,723	52,468	29,850	9,280	117,321
Other	2,566	340	321	0	3,227
<b>Sub-total (boat people)</b>	<b>311,426</b>	<b>241,995</b>	<b>186,498</b>	<b>56,391</b>	<b>796,310</b>

Source: UNHCR, *The State of the World's Refugees: Fifty Years of Humanitarian Action*, Oxford and New York: Oxford University Press, 2000. To the latter chart (Fig. 4.3) it has to be added a cumulative figure of 42.918 arrivals in Thailand by boat, thus the total amount is 839,228.

### 3.

## International Awareness.

### 3.1 ASEAN Ministerial Meeting in Bali, June 1979.

International consideration to the plight of Vietnamese immigrants escalated in 1979, when the human tide of Boat People increased to an unprecedented level. Public consternation outside of Asia raised when ASEAN Countries, namely Thailand, Malaysia, Indonesia, Singapore and the Philippines together with the British colony of Hong Kong, announced that they “have reached the limit of their endurance and have decided they would not accept any new arrivals.”<sup>142</sup> Therefore, they could no longer take immigrants into their overcrowded camps. This statement followed the Twelfth ASEAN Ministerial Conference held in Bali, Indonesia on 28-30 June, 1979.

The meeting was significant to give an effective response to the necessary measures demanded in order to deal with the serious situation in Southeast Asia, specifically with the influx of Indochinese refugees into neighboring Countries. During the Meeting efforts made by ASEAN Countries, like providing temporary accommodations, and the arrangement of processing centers cooperating with UNHCR were recalled, aiming to encourage the Conference members to endure in the efforts made and in seeking improvement, despite the continuous flow of refugees might be disarming and discouraging. As regards processing centers, whose important role in the implementation of the resettlement program was recognized, the offer of Galang Island by the Government of the Republic of Indonesia and Tara in the Philippines, already discussed at the Jakarta Meeting in May, were highly appreciated. The two Governments have indicated that they could accommodate 10,000 and 7,000 refugees in transit, respectively.<sup>143</sup>

The refugee problem had reached crisis proportions, and had caused severe

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<sup>142</sup>Joint Communique Issued at the Twelfth ASEAN Ministerial Meeting; Bali, Indonesia; 28-30 June 1979', in Thai Ministry of Foreign Affairs, Documents on the Kampuchean Problem: 1979-1985 (Bangkok: 1985), p. 78, in Robinson, W. Courtland, *op.cit.*, p. 50.

<sup>143</sup>UN General Assembly, *Meeting on Refugees and Displaced Persons in South-East Asia, convened by the Secretary-General of the United Nations at Geneva, on 20 and 21 July 1979, and subsequent developments: Report of the Secretary-General*, 7 November 1979, A/34/627, accessed March 15, 2016, available at: <http://www.refworld.org/docid/3ae68f420.html>.

political, socioeconomic and security difficulties within ASEAN Countries, whose degree caused destabilizing effects. Responsibilities for the unstoppable exodus were entirely attributed to Vietnam, not only for being the cause of it, but also for not having taken any effective preventive measure. Countries agreed that as the Country responsible for the flight, Vietnam had a decisive role to play in the resolution of the problem.

As for the resettlement program, although the efforts made by resettlement Countries and the UNHCR in providing permanent settlement were recognized, disappointment was expressed at the inadequacy in relation to the growing importance of the phenomenon. Decisive commitments need to be given to guarantee that efforts will grow proportionally to the problem, therefore resettlement Countries need to increase their admissions of displaced persons.

### **3.2 UN Conference in Geneva, July 1979.**

The Ministerial conference was followed by a UN meeting, whose invitation was issued by UN Secretary General Waldheim on June 30, 1979.<sup>144</sup> Sixty-five Nations were thus invited to attend the meeting in Geneva on 20-21 July, and Vietnam was the only one invited among the three Countries refugees were escaping from.<sup>145</sup> The purpose of the meeting in Geneva was to see what could be done about slowing the flow of refugees and about resettling those living in refugee camps.

In a preparatory note for the upcoming meeting, High Commissioner Poul Hartling said that “The problem has clearly run ahead of the solutions”.<sup>146</sup> The crisis that was undergoing in Southeast Asia was posing “fundamental rights to life and security at risk”<sup>147</sup> for hundreds of thousands of refugees. In underlining that the problem would be solved only through the commitment of the international community as a whole, Hartling laid out three priorities for a coordinated action.

First, he suggested that Countries concerned with the problem should take

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<sup>144</sup>Robinson, W. Courtland, *op.cit.*, p. 51.

<sup>145</sup>The regime that was set in Laos was non recognized by the United Nations and Vietnam would not attend if the Cambodians were invited. Robinson, W. Courtland, *op.cit.*, p. 53.

<sup>146</sup>UNHCR, *The State of the World's Refugees: Fifty Years of Humanitarian Action*, Oxford and New York: Oxford University Press, 2000.

<sup>147</sup>Robinson, W. Courtland, *op.cit.*, p. 51.

measures to halt the exodus, or at least to reduce flow numbers. Second, he stressed the importance of refugees not to be turned away and forced into situations that further endanger them. Third, the High Commissioner emphasized the absolute priority of reducing the unprocessed 350,000 cases of people awaiting for resettlement in Asia.<sup>148</sup>

Vice-President Walter Mondale made a potent appeal to the attenders recalling the failure of the international community and the Evian Conference, held in 1938 to discuss the resettlement of Jewish refugees on the eve of World War II, “later, 6 million Jews died in Hitler's death camps. The comparison of the Jewish Holocaust victims to the refugees dying daily in the waters of Southeast Asia was all too clear”.<sup>149</sup> Mondale then urged Geneva participants to “follow the US lead in doubling their resettlement quotas for Indochinese refugees, to ensure that such a failure would not be repeated.”<sup>150</sup> Despite the initial appeal made by Waldheim and the warning of interrupt any possible agreement made by Vietnamese Deputy Foreign Minister Phan Hien,<sup>151</sup> the Conference hardly maintained the attention at the humanitarian level, for spokesmen of Countries like China and Singapore sought to discuss also the political situation of the issue, meaning the “root causes of the exodus”.<sup>152</sup> China in particular, which was represented by deputy Foreign Minister, Zhang Wenjin, hardly condemned Hanoi of massacre, genocide, refugees deportation, attempt of destabilize Southeast Asia.

Going by the outcomes of the conference, despite participants did not signed any resolution, several new and fundamental initiatives arose from the meeting, therefore it could be said that the conference was more than a success:

- resettlement numbers in the West were agreed to expand from 125,000 to 260,000 in 1979, with the majority of the new places coming from the

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148Robinson, W. Courtland, *op.cit.*, p. 52.

149“Refugees From Vietnam and Cambodia”, Educating About Immigration, accessed March 13, 2016: <http://crfimmigrationed.org/index.php/lessons-for-teachers/147-hl8>.

150McNamara, “The Politics of humanitarianism”, Section II, P. 73 in Robinson, W. Courtland, *op.cit.*, p. 53.

151Mimmo Candito, “A Ginevra la Sorte di Un Milione di Vietnamiti”, *La Stampa*, 21 luglio 1979, accessed February 15, 2016, Original Text: “Wenjin ha accusato Hanoi di massacro, genocidio, esportazione di profughi, tentativo di destabilizzare l'Asia: non ha risparmiato una sola delle accuse che la Cina fa da tempo al vietnamiti, come se Waldheim non avesse fatto l'angosciato appello iniziale e Phan Hien la sua minaccia di far saltare ogni ipotesi di accordo.”

152Valerie O'Connor Sutter, *The Indochinese Refugee Dilemma*, Louisiana State University Press, 1990, pp. 144-5, in Robinson, W. Courtland, *op.cit.*, p. 53.

increased U.S. monthly quota of 14,000;<sup>153</sup>

- Vietnamese Government assured that "for a reasonable period of time it will make every effort to stop illegal departures",<sup>154</sup> and cooperating with UNHCR, it will bring departures within orderly and safe channels, promises made according to a MOU signed two months before, which illustrated first "steps for the orderly departures from Vietnam of 'family reunification and other humanitarian cases'";<sup>155</sup>
- both Indonesia and the Philippines agreed to establish regional processing centers to accelerate resettlement procedures; ASEAN Countries and Hong Kong undertook to "fully respect the principle of First Asylum";<sup>156</sup>
- generous offers were enhanced in financing UNHCR projects, totalizing about US\$160 million, more than doubling the total of the previous four years.<sup>157</sup>

Although no formal commitments were made regarding asylum, the meeting endorsed the general principles of asylum and *non-refoulement*. As the Secretary-General had said in his opening remarks, Countries of First Asylum expected that no refugees would stay in their Countries for more than a specified period. Thus was formalized a *quid pro quo* - temporary or 'first' asylum in the region for permanent resettlement elsewhere - or, as some came to describe it, 'an open shore for an open door'.<sup>158</sup>

The concept of First Asylum Country is described in Art. 26 of the Asylum

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153Barry Wain, "The Indochina Refugee Crisis", *Foreign Affairs*, accessed March 18, 2016: <https://www.foreignaffairs.com/articles/cambodia/1979-09-01/indochina-refugee-crisis>. As regards other Western Countries, "Canada's pledge arose from 8,000 to 50,000 by the end of 1980. Australia committed to an additional 14,000 on the top of the 22,000 already resettled. France had taken more than 50,000 by mid-1979, but agreed to take 5,000 more Boat People. Germany pledge 10,000 places. The UK agreed to take 10,000 Vietnamese from Hong Kong." Robinson, W. Courtland, *op.cit.*, p. 54.

154Wain, Barry, *op.cit.*

155Robinson, W. Courtland, *op.cit.*, p. 54. The Memorandum of Understanding laid the foundation of the Orderly Departure Program (ODP).

156A. Lakshmana Chetty, "Resolution Of The Problem Of Boat People: The Case For A Global Initiative", World Legal Information Institute, accessed March 17, 2016: <http://www.worldlii.org/int/journals/ISILYBIHRL/2001/8.html#FootnoteB19>.

157UNHCR, *The State of the World's Refugees: Fifty Years of Humanitarian Action*, Oxford and New York: Oxford University Press, 2000.

158W. Courtland Robinson, "The Comprehensive Plan of Action for Indochinese Refugees, 1989-1997: Sharing the Burden and passing the Buck", in *Journal of Refugee Studies* Vol.17, No 3, Oxford University Press, 2004, pp 319-333.

Procedures Directive, APD, which establishes “common standards of safeguards and guarantees to access a fair and efficient asylum procedure.”<sup>159</sup>

A Country can be considered to be a First Country of Asylum for a particular applicant for asylum if: (a) s/he has been recognized in that Country as a refugee and s/he can still avail him/herself of that protection; or (b) s/he otherwise enjoys sufficient protection in that Country, including benefiting from the principle of *non-refoulement*; provided that s/he will be re-admitted to that Country.<sup>160</sup>

According to Art. 25, however, States are allowed to deny asylum seeker requests if these are presented to a Country that despite not being a Member State of the APD is still considered of First Asylum.<sup>161</sup> This, of course, was not the case. On the contrary, indeed, UNHCR deeply advocated Countries of the region for granting asylum, for as it was noted, following the UNHCR December Consultative Meeting, “there can be no humane or durable solutions unless Governments grant at least temporary asylum in accordance with internationally accepted humanitarian principles.”<sup>162</sup>

At the end of the meeting, UN Secretary-General Waldheim stated:

“The response during our meeting has been significant. A remarkable spirit of cooperation has marked our deliberations. Many Countries have put forward concrete and imaginative proposals. Generous offers of contributions in places of resettlement, in funds, and availabilities for holding centers have been made.”<sup>163</sup>

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159“Asylum Procedures”, European Commission, accessed March 17, 2016: [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/common-procedures/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/common-procedures/index_en.htm).

160Council Directive 2005/85/EC, L 326/13, 1 December 2005, Official Journal of the European Union, accessed March 8, 2016: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:0034:EN:PDF>.

161Art. 25, Inadmissible Applications, par. 2: “Member States may consider an application for asylum as inadmissible pursuant to this Article if: (a) another Member State has granted refugee status; (b) a Country which is not a Member State is considered as a first Country of asylum for the applicant, pursuant to Article 26”.

162UNHCR, ‘Consultative Meeting on refugees and Displaced Persons in Southeast Asia, Convened by the Secretary-General of the United Nations at Geneva on 20 and 21 July, 1979, and Subsequent Developments’, 7 November 1979, in Robinson, W. Courtland, *op.cit.*, p. 51.

163Government of Australia, *Australian Foreign Affairs Record*, (AFAR), Department of Foreign Affairs, Granville, July 1979, p. 447, in A. Lakshmana Chetty, “Resolution Of The Problem Of Boat People: The Case For A Global Initiative”, World Legal Information Institute, accessed March 8, 2016: <http://www.worldlii.org/int/journals/ISILYBIHRL/2001/8.html#FootnoteB19>.

At a news conference after his closing speech, Mr Waldheim said he was gratified by the arrangement made with the chief Vietnamese delegate, Deputy Foreign Minister Phan Hien, whose promises regarding the halt of illegal departure were made during private consultations between the two.<sup>164</sup>

French delegation had proposed that Vietnamese authorities impose a six-months moratorium on clandestine departures, a suggestion which garnered strong support from the ASEAN Countries and, privately, some of the resettlement Countries as well.<sup>165</sup>

Despite such an action was sort of a suspension of the “right to leave any Country, including its own”, ratified by Art. 13 of the Universal Declaration of Human Rights in 1948.<sup>166</sup> Nonetheless, thousands were arrested and even sentenced consequently to the sanctions Vietnamese Government posed on illegal boat departures, inducing a sharp drop in numbers: “in the last quarter of 1979, arrivals averaged only 2,600 per month”.<sup>167</sup>

Vietnam, then, “by agreeing to the moratorium and the ODP, [Vietnam] scored a tactical victory at the Conference”.<sup>168</sup> By showing a total willingness to collaborate Hanoi reached a double goal in maintaining the important support of Western Countries, avoiding any criticism, together with achieving its objective of displace unwanted people.

### **3.3 The Orderly Departure Program.**

The international community was able to reach consensus on the way to tackle the problem of the Vietnamese refugees and asylum-seekers thanks to the existence of a Memorandum of Understanding signed between UNHCR and Vietnam on May 30, 1979, a seven-point agreement that laid the groundwork for

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<sup>164</sup>Henry Kamm, “Hanoi Said to Agree to Attempt to Halt Exodus of Refugees”, *New York Times*, July 22, 1979.

<sup>165</sup>Robinson, W. Courtland, *op.cit.*, p. 57.

<sup>166</sup>UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), accessed 6 March, 2016, available at: <http://www.refworld.org/docid/3ae6b3712c.html>.

<sup>167</sup>Robinson, W. Courtland, *op.cit.*, p. 58.

<sup>168</sup>Barry Stein, “The Geneva Conference and the Indochinese Refugee Crisis”, in *The International Migration Review*, vol. 13, No. 4, Winter 1979, pp. 716-723, accessed March 17, 2016, available at: <http://www.jstor.org/stable/2545184>.

the Orderly Departure Program, the ODP. It was the first occasion in which the UN Office get involved in helping people to flee from their Country, rather than dealing with the aftermath of such a phenomenon.

At interGovernmental consultations convened by UNHCR in December 1978, Governments urged the establishment of bilateral or multilateral arrangements to permit the departure of Vietnamese for family reunification abroad in an orderly fashion.<sup>169</sup>

Refugee family reunification was considered one of the basic function of UNHCR, as well as an humanitarian issue that needed the cooperation of Vietnam and Western Countries, whose agreement was to be found within the UNHCR. Reunification had been also a task of the IRCC, International Red Cross Committee, since 1976,<sup>170</sup> which was allowed by Hanoi Government to work on its soil in organizing departures.

During 1978 and early 1979, on an *ad hoc* basis, UNHCR organized a number of flights from Vietnam of persons prearranged for family reunification in third Countries, such as Australia, Germany, Italy, the Netherlands, and the United States. Consequently, UNHCR, the IRCC and Governments of these Nations started to be overwhelmed with requests from Vietnamese abroad for help in getting relatives leave Vietnam.<sup>171</sup>

US concerns were addressed, however, to two other issues: individuals closely associated with the United States' presence in Vietnam prior to 1975, including children of American citizens in Vietnam, the so-called Amerasian, and their immediate family members;<sup>172</sup> then, a further category of persons with other ties to the US, which were not defined in the other two, such as individuals who had studied abroad under american sponsorship, in the US or in a third Country; persons who had held positions in the South Vietnam civil administration, or, more generally, Vietnamese who had endured deprivations and penalties due to their link with the US Government. Therefore, these were the basic categories of

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169UN Doc. A/34/627, para. 5(a) in Judith Kumin, "Orderly Departure from Vietnam: Cold War Anomaly or Humanitarian Innovation?", in *Refugee Survey Quarterly*, vol 27, pp. 104-117, *Oxford Journals*, accessed March 17, 2016: <http://rsq.oxfordjournals.org/content/27/1/104>.

170Ibid.

171Ibid.

172The category of the Amerasian children later became the subject of a separate Law Bill in 1982.

Vietnamese eligible for the ODP.

The central understanding of the program was to make it possible for persons wishing to leave Vietnam to do so in a safe and orderly manner, thus establishing an alternative to the clandestine and often dangerous Boat People departures. Moreover, it sought to minimize the burden that considerable numbers of refugee arrivals have placed on the Countries of First Asylum of the region.

The Memorandum of Understanding established a selection process for those authorized to depart Vietnam, based on exchanges of lists between the Vietnamese Government and the receiving Countries, such as the United States. Under the process, receiving Countries submit to the Vietnamese Government a list of those for whom entry visas would be granted. Vietnam, in turn, provides the Country with a list of those eligible for exit visas. The United States processes for entry only those whose names appear on both lists.<sup>173</sup>

More specifically once an individual decided for the relocation through the ODP program, several steps then began, starting in Vietnam by the refugee himself, or in the United States by family members or friends. Family members had to fill an Affidavit of Relationship (AOR),<sup>174</sup> in addition to an application for family reunification. On the other hand, friends or non-relatives needed to file an Immigrant Visa Petition,<sup>175</sup> which would be sent to the individuals in charge for the ODP settled in the office in Bangkok.<sup>176</sup> “There the application is assigned a number, a case file is established, and assurances of financial support from the stateside supporter are verified.”<sup>177</sup>

Several cases happened of generous families to whom Vietnamese had no relationship and possibly did not even know, who wanted to offer their help, and

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<sup>173</sup> “Refugee Program, The Orderly Departure Program From Vietnam, Report to the Chairman, Subcommittee on Immigration, Refugees, and International Law, Committee on the Judiciary, House of Representatives”, United States General Accounting Office, April 11, 1990, accessed March 18, 2016: [www.gao.gov/assets/220/212436.pdf](http://www.gao.gov/assets/220/212436.pdf).

<sup>174</sup>Rutledge, Paul J., *op.cit.*, p. 66.

<sup>175</sup>Ibid.

<sup>176</sup>“Because US officials were prohibited from setting foot on Vietnamese soil, all interviews were carried out by private voluntary agency staff seconded to UNHCR; the files were then carried to the US Embassy in Bangkok, where consular and immigration officials made the final decisions on cases” Robinson, W. Courtland, *op.cit.*, p. 195.

<sup>177</sup>Ibid.

arranged to be a sponsor, host family through one of the many *volags*, allowing unfortunate families to be resettled. Sponsorship could be offered not only by individuals but also by organizations, churches, or sometimes even a States or Local Government that would commit to provide refugee families temporary shelter. The sponsor would also help the refugees in finding an occupation, enrolling in schools, and medical care and do whatever was necessary to assist a refugee family become independent. All this was done without incurring any financial responsibility.

The beginnings were difficult. By 1984, annual departures under the program had risen to 29,100, exceeding the regional boat arrival total of 24,865; overall, just 125,000 persons were resettled until 1987.<sup>178</sup> In the meantime, Vietnamese arrivals began to climb again, consequently to the release of the reeducation camps detainees and a relaxation in travel restrictions.

In January 1986, Vietnamese authorities suspended the processes of new ODP case, as a protest for a 25,000 applicants backlog in the US channel. Between the two Countries there was an unresolved issued, that is reciprocity. In 1982, American officials for the ODP realized that a single, long list with thousands of names was not the fastest way to deal with resettlement. Thus, late that year, American main list, the Visa Entry Working List, was supplemented with a smaller one where priority cases were presented, the Short Priority List.<sup>179</sup>

Meanwhile, however, Washington decided to stop interviewing refugee applicants who had no ties to the the US, creating a growing backlog that in 1985 reached the figure of 22,000 people.<sup>180</sup> Only in 1987, Vietnamese decided to suspend the Moratorium on ODP interviews that were thus resumed, with US officials allowed to handle the operation, this time, in Ho Chi Minh City. This important change was a consequence of overtures between the two States that even brought Hanoi and Washington to “the announcement of an 'agreement in principle' to expand Amerasian processing”.<sup>181</sup>

In 1988, the ODP began to climb again, following a four-year decline: “A total of 17,685 Vietnamese refugees were admitted during the fiscal year 1989 [...]. The

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178UNHCR, *The State of the World's Refugees: Fifty Years of Humanitarian Action*, Oxford and New York: Oxford University Press, 2000.

179Robinson, W. Courtland, *op.cit.*, p. 173.

180Robinson, W. Courtland, *op.cit.*, p. 174.

181Robinson, W. Courtland, *op.cit.*, p. 195.

fiscal year 1990 ODP refugee admissions level had been set at 26,500.”<sup>182</sup> By 1991, boat departures had essentially stopped. In that same year, more than 86,000 Vietnamese departed under the ODP,<sup>183</sup> reaching a highest mark; “from 1991 to 1995 orderly departures averaged more than 66,000 people per year, before finally tailing off to one-third that number in 1996.”<sup>184</sup> Between 1979 and 1997, more than 620,000 Vietnamese have been resettled through the ODP, with nearly 500,000 only in the United States.<sup>185</sup>

The ODP came to be acknowledged as a fundamental ingredient of the international response to the problem of clandestine flights from Vietnam. It constituted a first endeavor at preemptive actions, and it became part of the international community’s comprehensive response to the exodus from Vietnam, since it was later reestablished under the CPA. Moreover, it was also a first attempt to use orderly migration in the attempt to solve a refugee crisis.

The US Government later extended the Orderly Departure Program to Amerasians (Vietnamese children of US servicemen), and former political prisoners and reeducation camp detainees, as explained in the previous chapter.

### **3.4 The Amerasian Issue: Immigration Act, October 1982 and Homecoming Act, December 1987.**

Amerasians were children born to Vietnamese mothers and American fathers during the U.S. involvement in Vietnam in the 1960s and early 1970s. Because U.S. authorities discouraged marriage union between Americans and Vietnamese, very few soldiers managed to take their Vietnamese lovers and children to the US during American evacuation in April, 1975.

Because of their half American heritage, Communists detested these children, who were terribly treated, subjected to discrimination and called *bui doi*

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<sup>182</sup>“Refugee Program, The Orderly Departure Program From Vietnam, Report to the Chairman, Subcommittee on Immigration, Refugees, and International Law, Committee on the Judiciary, House of Representatives”, United States General Accounting Office, April 11, 1990, accessed March 18, 2016: [www.gao.gov/assets/220/212436.pdf](http://www.gao.gov/assets/220/212436.pdf).

<sup>183</sup>UN Doc. A/34/627, para. 5(a) in Judith Kumin, *op.cit.*

<sup>184</sup>Robinson, W. Courtland, *op.cit.*, p. 198.

<sup>185</sup>In Robinson, W. Courtland, *op.cit.* the total figure amount for 623,509 from 1979 to 1997, with the US having resettled 458,367 Vietnamese. The UNHCR, *The State of the World's Refugees: Fifty Years of Humanitarian Action* reports that from 1979 until 1999 more than 500,000 Vietnamese entered the US.

meaning 'the dust of life.'<sup>186</sup> They were deprived from basic education or jobs, thus many were homeless and had to live on the streets, with no contact to their American fathers. Moreover, Communists' most severe disdain was for children fathered by African American soldiers.

In 1982, the US Congress passed the Amerasian Immigration Act under the ODP, which allowed children born by American GIs to enter the United States as 'immigrants', though benefitting of a refugee status. "However, because the Vietnamese Government was not cooperative, only about 6,000 Amerasians and 11,000 of their relatives reached the United States under this law".<sup>187</sup>

According to the amendment, children had to meet certain criteria, that is being born in Indochina after 1950; having received a guarantee of financial and legal custody; and in the case of being a minor, agreements should have been made with the individual responsible for the child.<sup>188</sup>

Growing public interest in the issue, helped the two Countries in finding a better solution that arrived, eventually, in 1987 when US legislation passed in December establishing the Amerasian Homecoming Act.

Officially effective since March 21, 1988 with an expire date in two year, the Act was the first federal law that eased the immigration of Amerasian children. Being extended in 1989, it had been the milestone in processing the applicant children, who, in this case, had to have been born between January 1, 1962, and January 1, 1976.<sup>189</sup> Thanks to this law, Amerasian children and their relatives could apply for immigration.

During the peak years of immigration under this law, from 1988 to 1993, about 95 percent of all applicants and their relatives were admitted. By that time, the law had facilitated immigration for about 20,000 Amerasians and about 50,000 of their relatives.<sup>190</sup>

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186"Vietnamese Americans", City of Albuquerque, accessed February 22, 2016:

<https://www.cabq.gov/humanrights/public-information-and-education/diversity-booklets/asian-and-pacific-island-heritage-in-new-mexico/vietnamese-americans>.

187"Amerasian Homecoming Act of 1987", Immigration to the United States, accessed March 20, 2016: <http://immigrationtounitedstates.org/337-amerasian-homecoming-act-of-1987.html>.

188"1982 Amerasian Immigration Act", US Immigration Legislation Online, accessed March 15, 2016:[http://library.uwb.edu/static/USimmigration/1982\\_amerasian\\_immigration\\_act.html](http://library.uwb.edu/static/USimmigration/1982_amerasian_immigration_act.html)

189"Amerasian Homecoming Act of 1987", Immigration to the United States, accessed March 20, 2016: <http://immigrationtounitedstates.org/337-amerasian-homecoming-act-of-1987.html>.

190Ibid.

### 3.5 DISERO Program.

Shortly after the Geneva conference, President Jimmy Carter ordered the Seventh Fleet, operating in the South China Sea, to look for and pick up the Boat People who continued to flee Vietnam,<sup>191</sup> thus bringing the issue of Rescue at Sea on the surface.

According to UNHCR figures, from 1975 to 1978 a total amount of 6,674 people were rescued in 186 boats from 31 different Countries, out of the 110,000 who left Vietnam reaching the safety of an Asylum Country. From January to July, 1979, Boat People escapees climbed to more than 170,000, causing Malaysia and Thailand push back policies as a response, the number of boat rescued dropped to 49, with 4,593 passengers.<sup>192</sup>

As Mr. Hartling noted in the background note he prepared for the recently concluded conference in Geneva, “many thousands of boat cases have been rescued on the high seas by passing vessels.”<sup>193</sup> However, UNHCR numbers report a decrease in rescues, with terrible effects for which there are no sure numbers, only estimates that vary significantly, depending on the period of departure and the routes.<sup>194</sup>

On the subject of Rescue at Sea, UNHCR held a second meeting again in Geneva, in August, 1979. It was agreed for the establishment of a program throughout which a group of Countries, namely Canada, France, New Zealand, Sweden, Switzerland and the US, collectively agreed to guarantee resettlement for the Vietnamese rescued at sea by merchants ships within 90 days. The program, called DISERO (Disembarkation Resettlement Offers) had an almost immediate effect: by December, 1979 81 boats and their 4,031 passengers were rescued.<sup>195</sup>

A further Program was later implemented, in 1985, called Rescue at Sea

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191Alicia Campi, “From Refugees To Americans: Thirty Years Of Vietnamese Immigration To The United States”, Immigration Daily, accessed February 22, 2016:

<http://www.ilw.com/articles/2006.0313-campi.shtm>.

192Robinson, W. Courtland, *op.cit.*, p. 59. The same figures are reported in Vo, Nghia M., *op.cit.*, p. 168.

193'UNHCR Note-1979', p. 9, in Robinson, W. Courtland, *op.cit.*, p. 59.

194Bruce Grant, in *The Boat People: An 'Age' of Investigation*, says 10-15 per cent of those leaving on small boats were lost at sea. An other writer, Barry Wain in *The Refused: The Agony of the Indochina Refugees* also cite a figure of 10 per cent. In *Ibid.*

195Robinson, W. Courtland, *op.cit.*, p. 59 and Vo, Nghia, M., *op.cit.*, p. 168.

Resettlement Program, RASRO: sixteen Countries assured to resettle refugees rescued at sea. Both schemes provided an indication of the level of State cooperation required to secure effective response mechanisms.

The constituent elements of both schemes included: agreement of the coastal States to allow disembarkation; agreement of the coastal States to provide temporary refuge; open-ended guarantees from contributing third States that those rescued would be resettled elsewhere.<sup>196</sup>

However, the programs eventually failed: As a matter of fact, DISERO became contradictory with the CPA, implemented in 1989, which required that all new arrivals must go through screening processes. Both the DISERO and RASRO Programs, thought, represented a “watershed” moment, since for the first time the international community cooperated in the attempt to find a solution to the massive outflow of Boat People from Vietnam.<sup>197</sup>

On the whole, 67,000 Vietnamese were rescued at sea in a 15 year-period, from 1975 to 1990.<sup>198</sup>

### **3.6 Anti-piracy Solutions.**

There are no reliable information prior to 1981 of piracy attacks on Vietnamese Boat People. That year UNHCR begun to keep statistics on the issue: it was reported that 349 out of 452 Vietnamese boats arriving in Thailand had been attacked by pirates, for a total of 1,122 times:

Each boat had been attacked an average of 3.2 times and 77 per cent of all arriving boats had been attacked at least once. A total of 881 people were listed as dead or missing, 578 women had been raped and 228 people (virtually all of them women and girls) had been abducted.<sup>199</sup>

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<sup>196</sup>UNHCR, *Rescue at Sea, Stowaways and Maritime Interception*, 2<sup>nd</sup> Ed., 2011, available from: <http://www.unhcr.org/4ee1d32b9.pdf>.

<sup>197</sup>Joanne van Selm and Betsy Cooper, *The New Boat People – Ensuring Safety and Determining Status*, Migration Policy Institute, 2005, available from: <http://www.migrationpolicy.org/research/new-boat-people-ensuring-safety-and-determining-status>.

<sup>198</sup>UNHCR, *The State of the World's Refugees: Fifty Years of Humanitarian Action*, Oxford and New York: Oxford University Press, 2000.

<sup>199</sup>Robinson, W. Courtland, *op.cit.*, p. 166.

In response to the growing indignation within the international community concerning the issue, in February 1981 the US financed the Royal Thai Navy for a total amount of \$2 million to conduct air-sea surveillance, in a bilateral effort against piracy activities.<sup>200</sup> Such program resulted to be extremely expensive, and despite the large sums donated, money depleted in a short timeframe that did not lead to substantial results. Later, in August the same year, a second anti-piracy program was launched: the International Committee of the Red Cross, ICRC, brought to international consideration the plight of the unprotected Vietnamese. The UNHCR then initiate an internationally financed program to replace the previous accord. The outcome of the meeting was a total of \$3.67 million raised by the 20 potential donor States invited.<sup>201</sup>

A concrete consequence of this meeting resulted in the organization and consequent beginning of the Anti-Piracy Arrangement, which, starting from late June, 1982 enabled the Thai Navy of two extra patrol crafts, and the Marine Police with an additional boat. Moreover, a boat and a computer necessary for the registration of all the Thailand's fishing fleet were donated to the Harbor Department. It has been demonstrated that the situation improved the following year, with a decrease in the number of attacks to 64 per cent.<sup>202</sup> In 1984, the program developed toward land operations, such registration of fishing boats and crews by photographing the members.

At the same time, despite figures of attacks decreased, the degree of violence on the contrary, rose to alarming levels.

Piracy against Vietnamese refugees has never been more savage than now, although the number of refugee boats, and thus the number of attacks, is declining [...]. A compilation of survivors' accounts to the United Nations agency since 1982 puts the number of people killed by pirates at about 1,800. More than 2,300 women have been raped; almost all rape victims were assaulted repeatedly, usually by all or many of the fishing boat's crew members. In addition, 850 women who were abducted remain missing. From the accounts of women who were abducted and then let go, it is evident that the fishermen take them on their boats to rape them, often over several days, and frequently pass

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200Robinson, W. Courtland, *op.cit.*, p. 167.

201Barbara Crossette, "Thai Pirates continuing brutal attacks on Vietnamese Boat People", *New York Times*, January 11, 1982.

202Robinson, W. Courtland, *op.cit.*, p. 168.

them on to other crews.<sup>203</sup>

The reasons for the increase in these episodes of brutality are open to speculation. Some attributed it to the fact that Thai fishermen have been encouraged by years of virtual impunity in preying upon refugees. It is also advised that the growing hard Thai policy toward Vietnamese refugees, which has resulted in an increase of refugee boats turned or driven away, may have incentivized pirates' attacks. Others speculate that the very existence of an anti-piracy program, even if largely ineffectual so far, may heighten anxiety among the pirates to allow no witnesses to survive.<sup>204</sup>

Anti-piracy experts suggested that the majority of those pirates who were regular poor fishermen interested in easy prey to plunder, and therefore looked at attacking refugee boats as a business, had been discouraged and halted their activities; however, they had been replaced by professional, sadistic, criminals.<sup>205</sup>

Meanwhile, private international mercy ships, including most prominently the French *Ile de Lumière*, but the German *Kap Anamur* as well, shifted their operations, and rather than resupply island camps, they started to rescue Boat People. Although these two boats' efforts were highly appreciated, their contribution was limited and not well coordinated.

Eventually, starting from mid-1990, reports of pirate attacks on Vietnamese Boat People experienced an important decrease and at the end of 1991 the UNHCR Anti-Piracy Program was suspended.<sup>206</sup>

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203Henry Kamm, "Vietnam Refugees Face An Increasing Savagery", *New York Times*, July 4, 1984.

204Ibid.

205Robinson, W. Courtland, *op.cit.*, p. 171.

206UNHCR, *The State of the World's Refugees: Fifty Years of Humanitarian Action*, Oxford and New York: Oxford University Press, 2000.

## 4.

### The International Legal Framework.

#### 4.1. Definitions and Concepts.

To fully understand the role the CPA played in dealing with the Indochinese crisis, it is useful, as well as necessary, to provide a clear explanation of the situation, in international and legal terms.

Refugees issues are regulated by the 1951 Convention, which still remains the watershed of international refugee law, whose definition of “refugee” is the basis for the establishment of the refugee status.

First and foremost, however, some concepts need to be defined.

#### 4.1.2 Refugee Definition and the 1951 Refugee Convention.

The exercise of granting asylum to people escaping persecution in foreign lands is one of the milestones of civilization, grounded in Art. 14 of the Universal Declaration of Human Rights, 1948,<sup>207</sup> and for the humanitarian assurance it embeds it is considered the masterpiece of international refugees protection. The foundation of the 1951 Convention Relating to the Status of Refugees aimed to represent the binding legal structure of a common and international system meant to protect asylum seekers. Its Art.1 defines a refugee as someone who

As a result of events occurring before 1 January 1951 and owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the Country of his [or her] nationality, and is unable to, or owing to such fear, is unwilling to avail him [or her] self of the protection of that Country; or who, not having a nationality and being outside the Country of his [or her] former habitual residence as a result of such events, is unable or, owing to such fear, is

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207Art. 14: 1. Everyone has the right to seek, and to enjoy in other Countries, asylum from persecution. 2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations. UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), accessed 6 March, 2016, available at: <http://www.refworld.org/docid/3ae6b3712c.html>.

unwilling to return to it.<sup>208</sup>

In the drafting of the Convention, other than the well-known fundamental principles, a new one was added: the *non-refoulement*. The principle of *non-refoulement* is presented at Art. 33:

Prohibition of expulsion or return (*non-refoulement*) 1. No Contracting State shall expel or return (“*refouler*”) 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.<sup>209</sup>

The here stated definition was drafted following the Second World War, to provide the international community with a more general statement.<sup>210</sup> Two specifications have been later modified: the temporal limitation was officially removed by the 1967 Protocol, while the geographical restriction was withdrawn by the majority of member States, thus providing the Convention with a universal dimension, thus becoming an effective tool for determining refugee status.

States that are member of this agreement are obliged by the eligibility criteria outlined in determining whether an individual is a refugee or not. However, despite their membership, they are allowed to adopt a wider definition for refugees. Therefore, States in which people seek asylum hold the primary responsibility to ensure international protection, and consequent rights, to those qualified for the refugee status.

#### **4.1.3 Refugee Definition under UNHCR Statute.**

At the same time, State that are not member of the 1951 Convention, find their legal framework that allow them to handle a situation where refugees are

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<sup>208</sup>UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, accessed 6 March, 2016, available at: <http://www.refworld.org/docid/3be01b964.html>.

<sup>209</sup>Ibid.

<sup>210</sup>This was because “Prior to the Second WW, refugees were defined on an *ad hoc* basis with reference to their national origin”. UNHCR, *Self-study module on Refugee Status Determination*, September 1, 2005, accessed March 17, 2016, available at: <http://www.unhcr.org/43144dc52.pdf>.

involved within the definition provided by the 1950 Statute of UNHCR. Art. 6 cites:

1. Any person who has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization; 2. Any person who, as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality or political opinion, is outside the Country of his nationality and is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to avail himself of the protection of that Country; or who, not having a nationality and being outside the Country of his former habitual residence, is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to return to it.<sup>211</sup>

The two provisions are extremely similar, in such an extent that it is by now established that those who meet the eligibility criteria according to the 1951 definition, are also refugees within UNHCR competence.

Guided by its Statute, the Office has been playing a cardinal role in providing international protection the needy, and in finding durable solutions for both those who met the eligibility criteria for refugee status according the 1951 Convention and 1967 Protocol, as well as those who came within the extended refugee definition under its own mandate. Returnees, stateless persons, IDPs, and other people deserving humanitarian protection especially in the territory of those States that are not parties to the 1951 Convention or its 1967 Protocol, are today under the umbrella of UNHCR operations.

In order to effectively implement their obligations, States must determine who is a refugee according to the definitions available, that is, they have to conduct what has come to be known as RSD, Refugee Status Determination.

#### **4.1.4 Refugees, Migrants, and Asylum-seekers.**

Nowadays, with global migration patterns becoming increasingly convoluted,

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<sup>211</sup>UNHCR, *Statute of the Office of the United Nations High Commissioner for Refugees*, December 14, 1950, accessed March 17, 2016, available at: <http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=3ae69ee64&query=UNHCR%20Statute>.

and with border crossings involving flows of millions of people who are not only refugees, but also economic migrants, refugee status determination procedures have become more difficult, as well as essential.

Often traveling in the same way notwithstanding, refugees and migrants are fundamentally different: economic migrants decide to move aiming to improve their future prospects and those of their families; on the contrary, refugees are forced to move in order to save their lives or to maintain their freedom. Consequently to these essential dissimilarities, migrants and refugees are subjected to a different treatment accordingly.<sup>212</sup> If they are recognized as refugees, an exceptional legal regime is applied to them, and people will be entitled to several important rights and advantages, as well as assistance and protection measures.

There is a further distinction that has to be made, that is the one between refugees and asylum-seekers. The two terms are often confused or used indifferently; however, an asylum-seeker is “someone who says he or she is a refugee, but whose claim has not yet been definitively evaluated.”<sup>213</sup>

Recognition of refugee status is extremely relevant in the context of mass movements, where people seeking protection arrive in such numbers and at such a rate that individual determination of everyone's claims for refugee status become impossible. In similar situations, States and UNHCR often grant refugee status on a *prima facie* basis to those whose escape from a perilous situation is acknowledged by circumstances in the Country of origin, such as conflicts or episodes of generalized violence; consequently it is also considered unnecessary to conduct asylum interviews.

At the same time, it has become increasingly frequent for these three categories of people to travel alongside, and to use the same means of transports to cross borders. Besides, the majority of these movements are illegal, meaning that the people involved often lack the necessary documentation, or use unofficial crossing points, or involve human smugglers, or embark on dangerous sea or land travels.

Consequently to all the outlined similarities shared by migrants and refugees, what has been known as 'mixed migration' thus started. In the analysis of

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212“Refugees”, UNHCR, accessed March 25, 2016:

<http://www.unhcr.org/pages/49c3646c125.html>.

213“Asylum-Seekers”, UNHCR, accessed March 25, 2016:

<http://www.unhcr.org/pages/49c3646c137.html>.

migration it was recognized that the growing variety of forms and types of movement was making the fundamental distinction between those who chose to move, namely migrants, and those who are compelled to, namely refugees, a blurry procedure difficult to outline.

#### **4.2 The Southeast Asian and Vietnamese Framework.**

To transfer the above described situation to the context of Vietnamese refugee crisis, it can be said that at the beginning of the 1980s, despite the number of refugees experienced a decrease, debates over “the question of definition, numerical allocations, and the level of resources committed to Indochinese resettlement sharpened considerably.”<sup>214</sup>

As a matter of fact, there was a growing certainty that those who were now arriving on the coasts of First Asylum Countries were not refugees anymore, but economic migrants. The main reason behind this assumption was that the long-standing conviction for which all Vietnamese asylum-seekers were eligible for refugee status, an idea that had been the basis for the refugees program since the first Geneva Conference in 1979, has become a pull factor among the escapees. It was consequently to the *Hai Hong* incident that occurred in 1978 that UNHCR headquarters agreed to the request of one of their regional representative to recognize Vietnamese Boat People as *prima facie* refugees, and to accord the status “also in future, unless there are clear indications to the contrary”.<sup>215</sup> The regional delegate made that call following the few interviews he made to Vietnamese passengers and considered them and their situation a matter of UNHCR responsibility.

People facing economic difficulties were prompted to escape their Country of origin by a series of pull factors, especially the wide range of guarantees that have been provided to those who left before them. As a matter of fact, the ease with which refugees have benefited from Countries of First Asylum and the high resettlement quotas registered in those years had encouraged the movement of economic migrants.<sup>216</sup>

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<sup>214</sup>Robinson, W. Courtland, *op.cit.*, p. 161.

<sup>215</sup>Robinson, W. Courtland, *op.cit.*, p. 29. The *Hai Hong* issue will be described in chapter 5.

<sup>216</sup>A survey conducted by the US consulate in Songkhla confirmed that the majority of people that had left Vietnam in that period did it for economic reasons. *Far Eastern Economic Review*, July 17, 1981 in Robinson, W. Courtland, *op.cit.*, p. 161.

The increasing recognition of these dynamics reflected the situation highlighted above: Vietnamese Boat People movement was now a 'mixed migration'.

The CPA represented one of the first attempts to engage in, and to develop, a comprehensive approach to a 'mixed migration' of refugees and non-refugees across territorial waters, and to what has subsequently become known as the 'asylum-migration nexus'.<sup>217</sup> With the introduction of Resettlement Status Determination procedures, the CPA sought to guarantee access to international security for refugees in the convoluted context of mixed flows of people.

There was, however, another feature that made this process even more complex, that is the lack in ASEAN Countries and Hong Kong, and more generally in the whole Southeast Asia region, of a legal framework designated to the handling of refugee issues, which makes all the international instruments aimed to grant refugees protection above described to fall short of efficacy.

Most of the Asian Countries, indeed, have not adhered to the 1951 Convention and 1967 Protocol, and thus asylum seekers are reliant on UNHCR offices in the region for refugee status determination.<sup>218</sup>

At the beginning of the Indochinese exodus in 1975, not a single Country in the region which was affected by the endless exodus of Vietnamese Boat People had acceded to the two international instruments for refugees protection; nor did they give them permission to stay and some would not even allow temporary shelter.<sup>219</sup>

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<sup>217</sup>UN General Assembly, *Declaration and Comprehensive Plan of Action of the International Conference on Indo-Chinese Refugees, Report of the Secretary-General (A/44/523)*, 22 September 1989, A/44/523, available at: <http://www.refworld.org/docid/3dda17d84.html>. "The terms 'mixed migration' and the 'migration-asylum nexus' took hold during the Global Consultations on International Protection, launched by UNHCR in 2000 against the background of what the organization saw as a crisis in international protection of refugees at the time of the 50th anniversary of the 1951 Refugee Convention. A major part of that crisis was the increasing perception by the Governments and publics of western Countries – not least in the UK -- that large scale abuses of the asylum system were taking place: the view was that asylum seekers were really economic migrants in disguise." Nicholas Van Hear, *Mixed Migration: Policy Challenges*, March 29, 2001, edited in June 1, 2012, accessed March 25, 2016: <http://www.migrationobservatory.ox.ac.uk/policy-primers/mixed-migration-policy-challenges>.

<sup>218</sup>In April 2016, the only Southeast Asian Countries that have ratified the above mentioned Convention and Protocol are the Philippines, East Timor and Cambodia. "Refugee Protection in the Asia Pacific Region", Rights in Exile Programme, accessed April 1, 2016: <http://www.refugeelaidinformation.org/refugee-protection-asia-pacific-region>.

<sup>219</sup>UNHCR, *The State of the World's Refugees: Fifty Years of Humanitarian Action*, Oxford and New York: Oxford University Press, 2000.

The reason why ASEAN States are not members of the 1951 Convention and 1967 Protocol lies in the fact that both the provisions were formulated in a post World War II Euro-centric environment, that according to Countries of Southeast Asia, made them two useless instruments for the region. There are other explanations for the non-commitment to

Therefore, when Boat People from Vietnam started to reach *en masse* neighboring States that lacked of status determination procedures and definitions, they have been automatically labelled as 'illegal migrants', without consideration of the circumstances they had been escaping from.

Following the First Geneva Conference, several important commitments were made to face the exodus. Although no formal and concrete pledges were made regarding asylum, the conference confirmed the general principles of asylum and *non-refoulement*. As a matter of fact, the latter principle, for which a State can not return an individual to a Country where he is put in danger, has become a measure of customary international law, and thus States that are not party to the 1951 Conference and 1967 Protocol are bound by it.

Despite the huge humanitarian phenomenon with which have been invested, ASEAN States had not instituted a regional refugee instrument that would provide all members with a common framework to react to refugees issues in the region.<sup>220</sup> The relentless rejection of international law on the matter had had several effects:

First, there are large populations of people in each Southeast Asian Country who live without access to refugee status and who are thus labelled as 'illegal immigrants'. [...] Second, the absence of international refugee law places a large burden on the UNHCR to monitor and manage refugee flows, while conducting its own refugee status determination whenever possible. Third, it has created an impetus for the region's asylum seekers to seek refugee status outside the

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international refugee law, as such 'good neighborliness', for which the central argument is the non-interference in the internal policies and 'sensitive issues' of neighboring Countries. The perceived economic costs of accession, which are considered to be excessively expensive, and a financial burden too heavy for developing States that lack the necessary means to afford it are a further reason for the refusal in signing the international refugee law, as well as the idea that migrants represent a danger to the already fragile social cohesion of developing Countries. Finally, the Asian Values argument, for which it is said that the human right of granting asylum reflects an European value which is not endorsed in Southeast Asia. Sara Ellen, Davies, *op.cit.*, p. 9.

<sup>220</sup>Davies, Sara Ellen, *op.cit.*, p. 5.

ASEAN Members instituted a legal refugee instrument only in November 2012, that is the ASEAN Human Rights Declaration, where art. 16 states that "Every person has the right to seek and receive asylum in another State in accordance with the laws of such State and applicable international agreements." Despite the cited article, ASEAN Members still act reluctantly towards the concept of asylum issue and to the establishment of the related issue on their formal agenda, for the cardinal principle of non-interference in the domestic affairs of member State.

Savitri Taylor, *Refugee Protection in the Asia Pacific Region*, in "Refugee Protection in the Asia Pacific Region", Rights in Exile Programme, accessed April 1, 2016:

<http://www.refugeelegalaidinformation.org/refugee-protection-asia-pacific-region>.

region, for instance Europe, US, and Australia.<sup>221</sup>

As the 1951 Convention's definition of refugee is not recognized by the majority of Southeast Asian States, referring to these groups of people in such terms implies an understanding degree to which Countries in the region cannot access, and thus they are recognized as illegal escapees.

Despite the refusal to accede the the two international instruments, Southeast Asian States tried to legitimize their rejection to asylum seekers by staying within the framework of international refugee law. This can be demonstrated by the fact that Southeast Asian States came to use the terms 'asylum seeker', and 'non-genuine refugee', expressions that could have had a significance only inside the 1951 Convention and 1967 Protocol.<sup>222</sup> By using such terms, they took advantage of the international context outlined in the refugee law, to delegitimize the migrant society, for “the idea of a 'non-genuine' refugee only make sense within a discursive framework that acknowledges the theoretical possibility of 'genuine' refugees.”<sup>223</sup>

However, the majority of Asian States is signatory to the non-binding Bangkok Principles on Status and Treatment of Refugees, legally adopted in 1966 by the Asian-African Legal Consultative Organization (AALCO).<sup>224</sup> This institution counsels its members on issues of international law, thus acknowledging member States with the principle of granting asylum and with the notion of refugee, concepts that are thus obliged to be respected.<sup>225</sup> Moreover, the principle of *non-refoulement* was endorsed. To conclude,

Bangkok Principles are declaratory and non-binding in character and aim *inter alia* at inspiring Member States for enacting national legislation for the Status

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221Davies, Sara Ellen, *op.cit.*, p. 5.

222This is a theory presented in Davies, Sara Ellen, *op.cit.*.

223Davies, Sara Ellen, *op.cit.*, p. 19.

224The Asian-African Legal Consultative Organization (AALCO), was constituted on 15 November 1956. and it is considered to be a tangible outcome of the historic Bandung Conference, Indonesia, in April 1955. Initially, it was established as a non-permanent Committee for a term of five years, a term which was further extended until 1981, when it was decided to made the Organization a permanent Institution. Members totaled the figure of forty-seven member, comprising almost all the major States from Asia and Africa are presently the Members of the Organization.

“About AALCO”, Asian-African Legal Consultative Organization (AALCO), accessed March 30, 2016: <http://www.aalco.int/scripts/view-posting.asp?recordid=1>.

225Ibid.

and Treatment of Refugees and as a guide to deal with the refugee problems.<sup>226</sup>

In Southeast Asia, protection for refugees and asylum-seekers have always been weak and uncertain, due to a lack of legal frameworks, both national and international which make the achievement of regional harmonization more challenging.<sup>227</sup> Furthermore, some States have introduced restrictive policies, such as denying safe disembarkation or access at the airport. There is also an increase in "push backs" and instances of *refoulement*.

The role of the High Commissioner in the region had been, thus, extremely crucial, for it has focused on establishing responses to mixed migration, and consequent registration and documentation. It has also supported access to asylum and RSD, prevented *refoulement* and sought the achievement of durable solutions.

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226Asian-African Legal Consultative Organization (AALCO), *Bangkok Principles on the Status and Treatment of Refugees ("Bangkok Principles")*, 31 December 1966, accessed April 1, 2016, available at: <http://www.refworld.org/docid/3de5f2d52.html>.

227"Asia and the Pacific", UNHCR, accessed March 27, 2016: <http://www.unhcr.org/pages/4b17be9b6.html>.

## 5.

### **The Comprehensive Plan of Action, CPA, June 1989.**

#### **5.1 Preparatory Meetings in Bangkok, 1988 and Kuala Lumpur, 1989.**

After a 6-years decline, Vietnamese Boat People departures experienced a new development in 1988, with the number of asylum seekers growing by 84 per cent.<sup>228</sup> The reasons behind this expansion were a decrease in the effectiveness of the ODP, due to different concepts of people deserving international assistance between US and Vietnam; and a decline in the rate of resettlement in Western States.

In the attempt of arranging a new approach to the continuing and renewed problem of refugees, an inter-State meeting of 17 Governments was convened in Bangkok in October, 1988 as an informal consultation to negotiate the groundwork for the future Comprehensive Plan of Action, CPA. This initial meeting was purposefully informal without a predetermined agenda to follow, only aiming to examine what were the interests of States participants, as a preparation for the drafting of the new agreement.

A new approach to the problem in South-East Asia was in fact essential if the principles of First Asylum and humane treatment of refugees were to be sustained. The consensus reached at the 1979 Meeting on Refugees and Displaced Persons in South-East Asia had been undermined. The framework for a new approach had been laid down in the call by the Foreign Ministers of the ASEAN Countries for the convening of an alternative conference on Indochinese refugees.<sup>229</sup>

The three Countries more subjected to the Vietnamese Boat People outflow, specifically Indonesia, Thailand and Malaysia, stressed the importance of reaching a new consensus on comprehensive and durable solutions to deal in a

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<sup>228</sup>UNGA, Overview of UNHCR Activities: Report for 1988-1989, Submitted by the High Commissioner, Executive Committee of the High Commissioner's Program, Fortieth Session, A/AC.96/729, 25 August 1989, p.5 in Davies, Sara Ellen, *op.cit.*, p. 187.

<sup>229</sup>UNGA, Summary record of the 416<sup>th</sup> meeting on 3<sup>rd</sup> October 1988, executive committee of the high commissioner's program, thirty-ninth session, A/AC.96/SR.426, 18 October 1988, p. 6 in Davies, Sara Ellen, *op.cit.*, p. 190.

“realistic yet humanitarian manner”<sup>230</sup> the problem of refugees. By December, the Socialist Republic of Vietnam had agreed to a Memorandum of Understanding with UNHCR, setting out the principles to allow voluntary repatriation without punishment or persecution, and by allowing the Office to monitor reintegration. It was in the aftermath of these discussions that it was decided to convene an International Conference in the first half of 1989 to “find a comprehensive and durable solution to the continuing problem of Indochinese asylum-seekers and refugees.”<sup>231</sup>

The scene for the screening of asylum seekers starting from an agreed cut-off date, after which Vietnamese Boat People would no longer receive *prima facie* refugee status, emerged in these preparatory and informal meetings. In March 1989, delegates from 36 Countries, together with several interGovernmental agencies, met in Kuala Lumpur to arrange a new program indispensable to deal with the perennial humanitarian problem of Vietnamese Boat People. There, the draft declaration and the proposed CPA found the agreement of all the participants, allowing the text to be finalized before the main conference would have taken place in Geneva.

## **5.2 The Second Geneva Conference, June 1989 and the CPA.**

More than 70 Countries met in Switzerland for the final Conference, the Second International Meeting on Indochinese Refugees, held on 13-14 June 1989.

In his opening statement, the Secretary General said that due to the inability of the international community to resolve the root cause of the enduring mass displacement of persons that had marked the century, it was urgent, once again, to forge a new international consensus on the issue.<sup>232</sup>

During the Conference, the President expressed his view highlighting the basic principles of the agreement, referring to three main groups of States involved in the issue, namely Country of origin, Countries of First Asylum, and Countries of

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<sup>230</sup>UNGA, Summary record of the 432<sup>nd</sup> meeting on 6<sup>th</sup> October 1988, executive committee of the high commissioner's program, thirty-ninth session, A/AC.96/SR.432, 6 October 1988, p. 11 in Davies, Sara Ellen, *op.cit.*, p. 191.

<sup>231</sup>UN General Assembly, *Declaration and Comprehensive Plan of Action of the International Conference on Indo-Chinese Refugees, Report of the Secretary-General (A/44/523)*, 22 September 1989, A/44/523, accessed March 29, 2016, available from: <http://www.refworld.org/docid/3dda17d84.html>.

<sup>232</sup>Ibid.

resettlement. They were to achieve five objectives.

### **5.2.1 The Principle of First Asylum, the Halt of Clandestine Departures and Voluntary Return of non-refugees.**

Despite stressing the importance of an early removal of the burden placed with the ceaseless arrivals of Boat People on the shores of Countries of the region, it was reconfirmed the duty of ASEAN Countries to guarantee the principle of First Asylum, while waiting for the UNHCR to complete refugee status determination for the newcomers.

In the meantime, full commitment of Vietnam had to be addressed in taking effective measures to prevent clandestine departures.

Firstly, recalling that “extreme human suffering and hardship, often resulting in loss of lives, have accompanied organized clandestine departures”, it was considered “imperative that human measures were implemented to deter such departures.”<sup>233</sup> Suggested measures to discourage organized clandestine departures, were, for instance, mass media activities, or official actions directed against those organizing the escapes.

Secondly,

in order to offer a preferable alternative to clandestine departures, emigration from Vietnam through regular departure procedures and migration programs, such as the current Orderly Departure Program, should be fully encouraged and promoted.<sup>234</sup>

Thirdly, Vietnam had to allow the return of those determined not to be refugees, without any form of retribution or persecution.

### **5.2.2 Refugee Status Determination: foundation and procedures.**

The establishment of a region-wide Refugee Status Determination, RSD, Process “in accordance with the national legislation and internationally accepted practice”<sup>235</sup> was considered, probably, the most important feature

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<sup>233</sup>Ibid.

<sup>234</sup>Ibid.

<sup>235</sup>Ibid.

within the CPA.

It was agreed that in a predetermined period, the status of the asylum-seeker would have been defined by a competent national authority or body, in conformity with established refugee criteria embedded in the 1951 Convention and its 1967 Protocol, as well as the 1948 Universal Declaration of Human Rights, and other pertaining international instruments concerning refugees.

In addition, interpretation of those criteria for the status determination would have been guided by the Handbook issued by UNHCR in 1977.<sup>236</sup> Moreover, refugee status would have applied recognizing the delicate situation of the asylum-seekers involved, and the need to maintain family unity.

It is important to say that the adoption of UNHCR Guidelines for screening refugees, and thus determining their status, did not correspond to the acceptance by the Southeast Asian States of the basic principles enclosed within the 1951 Convention and 1967 Protocol. Rather the CPA meant that South-East Asian States had been successful in the process of legitimizing their argument inside the two instrument of the international legal framework. However, there is a difference with the 1951 Convention, namely that those who were labelled as refugees would have been resettled, while those who were not would have been repatriated.

As for those labelled 'refugees' following the implementation of the RSD procedures, resettlement program comprised an orientation briefing from a UNHCR representative that would have explained the third-Country resettlement program, the potential length of time they had to expect to spend in the camp awaiting for relocation, and the necessity of respecting the rules and regulations of the camp. Screening was fundamental also in determining in which camp the person would be allocated to, and the level of assistance they would receive.

Wherever possible, assurances to place all those determined to be refugees were

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<sup>236</sup>Since neither the 1951 Convention nor the Protocol prescribe any standard procedure on the Refugee Status Determination, Governments are allowed to outline their own appropriate process. However, in 1977 the Executive Committee of UNHCR requested the Office to issue the Handbook on Procedure and Criteria for Determining refugee Status, which would give some guidance on the mechanism to the Governments. Some constant features are For instance: written application, using a standard UNHCR Basic Data/Registration Form; personal interviews with the asylum seeker; the provision of an interpreter, if necessary. Michael Alexander, *Refugee Status Determination Conducted by UNHCR*, International Journal of Refugee Law, Vol. 11, no 2, Oxford University press, 1999, accessed April 1, 2016, available at: <https://www.jrs.net/assets/Publications/File/refugee%20status%20determination.pdf>.

to be sought from resettlement Countries within a prescribed period, unless willingness to return to Vietnam was expressed.

Responsibility for the process lied within the UNHCR, together with the full support of the involved resettlement Countries and Countries of Asylum, to organize efforts ensuring that departures are accomplished within that time.

Numerous were the roles for the Office in regard to the RSD procedures:

- UNHCR was to participate in the process as an observer and an advisor, according to the established refugee criteria and procedures;
- it would have advised “in writing each individual of the nature of the procedure, of the implications for rejected cases and of the right to appeal the first-level determination”;<sup>237</sup>
- the Office would have help in the drafting process of a universal questionnaire, whose scope was to provide the basis for the interviews, reflecting the elements of the relevant international instruments regarding refugees;
- UNHCR would have instituted a “comprehensive regional training program” for the people involved in the process with the role of officials.<sup>238</sup>

As for the procedures, it has been said already that every Country had specific features. Malaysia, for instance, after a five days period from when asylum seekers arrived, undertook preliminary interviews in the temporary reception center, and they were conducted by a local official. Further interviews, always based on the UNHCR questionnaire, occurred after the transfer of the applicants to a permanent camp, where they were once again interviewed by Malaysian officials. Throughout the interview process, UNHCR officials could be present as an observer, according the CPA statement, and in case an applicant wanted to appeal for the rejection of its status, he would be assisted by the Office. Those who were found to meet the requirements for refugee status were moved immediately to transit centers where their resettlement process started; on the contrary, the others, were moved to a center, waiting for repatriation.

Thailand wanted to closely work with the UNHCR in the process of determining

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<sup>237</sup>Ibid.

<sup>238</sup>Robinson, W. Courtland, *op.cit.*, p. 202.

the refugee status, and officials were provided with appropriate training by the Office. The UNHCR had to be immediately informed of all new arrivals, and then it granted access to the group, which was thus allowed to get interviewed by district officials,<sup>239</sup> and then sent to Holding Centers. No more than 30 days detention could pass between their arrival and the following interview, this time conducted by a team of the Ministry of Interior that was composed also by “two officials from the Operation Centre for Displaced Persons, two assistants and two interpreters”.<sup>240</sup> Within 45 days, the central Board for Status Determination in Bangkok had to issue the final decision on applicants. In this case as well, if individuals were rejected, the UNHCR could have made an appeal on their behalf, present its opinion, and then wait for a decision that this time had would have been final.

Generally, the Refugee Status Determination procedures were particularly interesting and crucial because for the first time in the region a common method based on the UNHCR Handbook on Procedures and Criteria for Determining refugee status was established, although it was applied by specifically trained ASEAN officials.

### **5.2.3 Resettlement and Repatriation Commitments.**

On the other hand, Countries of resettlement had to maintain their commitment to resettle readily and quickly all the refugees already in the camps, defined “Long-Stayers”,<sup>241</sup> up to the ‘cut-off’ point, which varied from State-to-State, but began from as early as 14 March 1989. Moreover, all those determined to be ‘refugees’ after the ‘cut-offs’ had to be resettled as well. As for ‘Long-Stayers’, a specific Resettlement Program was established, intending to offer a multi-year commitment to relocation; “refugees were advised that they do not have the option of refusing offers of resettlement, as this would exclude them from further resettlement consideration.”<sup>242</sup>

A topic very crucial to ASEAN States was the one about finding a solution for

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<sup>239</sup>Davies, Sara Ellen, *op.cit.*, p. 203.

<sup>240</sup>*Ibid.*

<sup>241</sup>UN General Assembly, *Declaration and Comprehensive Plan of Action of the International Conference on Indo-Chinese Refugees, Report of the Secretary-General (A/44/523)*, 22 September 1989, A/44/523, available at: <http://www.refworld.org/docid/3dda17d84.html>.

<sup>242</sup>*Ibid.*

those found not to be refugees, and in this sense it is possible to further understand the essentiality of the screening process.

The core decision was that individuals determined not to be refugees should have to return to their Country of origin according with “international practices reflecting the responsibilities of States towards their own citizens”,<sup>243</sup> and in this sense, every effort would have been made to encourage the voluntary return of such persons. At the same time, however, States from the region insisted that repatriation, even if conducted with coercive actions, was the best option, for it would have reduced the burden on First Asylum Countries, and it would have served as a deterrent, especially for economic migrants.<sup>244</sup>

The following measures would have been implemented aiming to achieve the process of repatriation: assurances by the Country of origin that returnees would be allowed to return in conditions of safety and dignity and will not be subject to persecution were made, and the procedure for readmission would be made in the shortest possible time.

This section, which was entitled as 'Plan of Repatriation', suggests how Countries have not found an agreement on the issue yet, especially because both Vietnam and the US insisted on the principle of voluntary repatriation. However, it was stated that:

If, after the passage of reasonable time, it becomes clear that voluntary repatriation is not making sufficient progress towards the desired objective, alternatives recognized as being acceptable under international practices would be examined.<sup>245</sup>

That is, after that “every effort will be made to encourage the voluntary return”,<sup>246</sup> involuntary return was acceptable.

The proposal of a regional holding centre under the protection of UNHCR was taken in consideration, offering a temporary measure to host those whose refugees status was denied and thus pending their eventual return to the

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243Ibid.

244Davies, Sara Ellen, *op.cit.*, p. 193.

245UN General Assembly, *Declaration and Comprehensive Plan of Action of the International Conference on Indo-Chinese Refugees, Report of the Secretary-General (A/44/523)*, 22 September 1989, A/44/523, available at: <http://www.refworld.org/docid/3dda17d84.html>.

246Ibid.

Country of origin.<sup>247</sup>

The importance of these three groups to cooperate was remarked as fundamental, for every Country's own contribution could have influenced directly the overall aim of finding a durable solution in a more general attempt to secure asylum.

The Steering Committee of the International Conference on Indochinese Refugees, at its seventh and final meeting in Geneva on 5 and 6 March 1996, confirmed that the CPA would formally come to an end as of 30 June 1996 and that UNHCR would phase down its care and maintenance activities with respect to Vietnamese non-refugees in ASEAN First Asylum Countries as of that date.<sup>248</sup>

## 5.6 The Aftermath of the CPA.

Two features were seen as fundamental in the CPA's success: firstly, the implementation of a 'cut-off date' for *prima facie* refugees; secondly, the commitment of the Countries in the region to *non-refoulement*.

Furthermore, both the USA and Vietnam continued to insist on the voluntary nature of returns as a vital component for the achievement of the program. As a matter of fact, the plan for repatriation had been organized on the basis of a spontaneous and intentional return, whose implementation followed assurances of safety and dignity conditions, short time readmitting procedures, and the UNHCR supervision.

The implementation of the 'cuts-off' put an end to the practice that has been used since 1979 to give *prima facie* refugee status to all those who landed on the shores of ASEAN Countries. Thus, in the aftermath of the Second Geneva Conference it was possible to see the difference that the screening procedure brought to the issue of Vietnamese Boat People. For instance, the numbers of people leaving Vietnam through the ODP grew from 15,123 in 1988 to 43,177 in 1989.<sup>249</sup> Moreover, "more than 60 per cent of those who arrived before the cut

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<sup>247</sup>Ibid.

<sup>248</sup>UNHCR, Executive Committee, *Update on Regional Developments in Asia and Oceania*, EC/46/SC/CRP (19 August 1996), accessed March 29, 2016, available from: <http://www.unhcr.org/3ae68cf94.pdf>.

<sup>249</sup>UN General Assembly, *Declaration and Comprehensive Plan of Action of the International Conference on Indo-Chinese Refugees, Report of the Secretary-General (A/44/523)*, 22

off date had been resettled by the beginning of 1990.”<sup>250</sup>

A Coordinating Committee and a ‘core group’ of States were convened, with the aim of providing a focal point to which three Sub-Committees could report their work.<sup>251</sup> Thanks to the activity of these groups, essential details were established, allowing the practical implementation of the CPA, which, from that moment on, was not a mere political agreement anymore.

Concerns over the three above issues and their effectiveness reached the most serious impasse in 1990, particularly as regards return for those not recognized as refugees. ASEAN States, indeed, complained about the lack of cooperation from Vietnam, which failed “to allow returns at a satisfactory rate and to reduce clandestine arrivals that led to crisis talks at the Steering Committee Meeting in Manila in mid-1990.”<sup>252</sup> Consequently, Countries of First Asylum threatened to abandon the principle of *non-refoulement*:

In the event of failure to agree even an intermediate solution to the Vietnamese Boat People problem, Countries of temporary refuge must reserve the right to take such unilateral action as they deem necessary to safeguard their national interest, including the abandonment of temporary refuge.<sup>253</sup>

The US, opposing to involuntary repatriation, had a share of responsibility, according the ASEAN States, for Washington was assuring protection to the Vietnamese intransigence and by treating the Vietnamese economic migrants on the same level as refugees, they were putting the principle of First Asylum in peril.

As a result of the Meeting in May, in Manila, a ‘Near Consensus Note’ was issued in July, 1990, which contributed to the draft of a compromise on the issue of non-refugees and their return to the Country of origin; the CPA was, then, back on track. The arranged compromise was that non-refugees should be actively encouraged to return on the basis of three months counseling, they would not be coerced, and they would be monitored by UNHCR following their

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September 1989, A/44/523, available at: <http://www.refworld.org/docid/3dda17d84.html>.  
250Ibid.

251The Sub-committees were, namely, 'Reception and Status Determination', 'Departures and Repatriation', and 'Resettlement'. Ibid.

252Ibid.

253Joint Statement by Countries of Temporary Refuge', Manila, 16/5/90, UNHCR in Ibid.

return to Vietnam<sup>254</sup>.

This time it was agreed that the modalities of return would be of First Asylum Countries' concern, and that they had to agree them with the Country of origin, under the UNHCR's guidance.

Mr Stoltenberg, then High Commissioner for Refugees, in his concluding speech for a later Information Meeting of the Steering Committee of the International Conference on the Indochinese Refugees, in October, 1990, said that:

Intensive counseling of potential returnees will have to be undertaken by my Office, starting with Hong Kong [...]. Through this process, and in accordance with the letter and spirit of the CPA, we intend to counsel those who have been found to be non-refugees that, as stated in the CPA, they must return to their own Country and their options in this respect are very limited. They can either wait in the camps for eventual mandatory return, without involvement of UNHCR in the process, or they can return to Vietnam now in safety and dignity under UNHCR's auspices and with the necessary guarantees.<sup>255</sup>

Moreover, he said that full implementation of the CPA would have been hard to achieve unless political willingness from all parties in implementing the Plan in all its aspects was concretely showed.

The erosion of First Asylum since the CPA was adopted is a fact which cannot be denied, particularly through the redirection of asylum-seekers. Rescue at sea had dropped dramatically due to the difficulties of disembarkation [...].<sup>256</sup>

Then the High Commissioner recalled the number of exceptional actions undertook by the Office for the CPA only because it was felt that they were indispensable in order to protect First Asylum in the region and to assist refugees who were under its mandate.<sup>257</sup>

Acknowledging the importance of voluntarism restored consensus, the CPA was then reconfirmed in April, 1991. "This reaffirmation that followed the Manila

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<sup>254</sup>Ibid.

<sup>255</sup>Thorvald Stoltenberg, United Nations High Commissioner for Refugees, Information Meeting of the Steering Committee of the International Conference on Indochinese Refugees, (Speech), 5 October 1990, accessed March 25, 2016, available at: <http://www.unhcr.org/print/3ae68fce8.html>.

<sup>256</sup>Ibid.

<sup>257</sup>Ibid.

meeting represented the achievement of a lasting consensus, which ultimately led to the resolution of the 'Boat People' issue."<sup>258</sup> UNHCR attempted to encourage the CPA's commitment to 'voluntary' return for non-refugees, basically, though, voluntarism was soon set aside and starting from around 1992 Countries of the region engaged in a growing process of forced return, becoming the common approach to the refugees situation, which was tacitly acknowledged by the UN Office.

Already at the end of 1989, Hong Kong started to exercise alternative ways to repatriate Vietnamese people, by forcing them in what the Government called 'mandatory repatriation',<sup>259</sup>

On 12 december, more than 100 Hong Kong police and prison guards escorted a group of 51 Vietnamese men, women, and children across the tarmac of Kai Tai Airport to a waiting Cathay Pacific jet. At 5:09 am, the plane lifted off for Hanoi.<sup>260</sup>

The reason behind this kind of action was deterrence, because at that time the former British colony was still facing with arrivals of Boat People from Vietnam. The international community, though, hardly condemned these coercive actions and the US, consequently to the CPA Steering Committee held in Geneva on January 1990, issued a one-year moratorium on involuntary returns, a punishment to which Hong Kong responded with the suspension of First Asylum.<sup>261</sup>

In 1993, UNHCR's representatives in Southeast Asia met in Jakarta to discuss the evolution of the CPA, and despite the progresses made where acknowledged, the presence of tens of thousands of non-refugees Vietnamese still in the camp because they refused to leave, was a matter of discussion: there was a recognized requirement to bring the CPA to and end.

The paper issued by UNHCR following the meeting in Jakarta authorized reductions of medicines and other type of assistances, freedom of movement and reduction of employment opportunities, as well as the elimination of all

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258UN General Assembly, *Declaration and Comprehensive Plan of Action of the International Conference on Indo-Chinese Refugees, Report of the Secretary-General (A/44/523)*, 22 September 1989, A/44/523, available at: <http://www.refworld.org/docid/3dda17d84.html>.

259Robinson, W. Courtland, *op.cit.*, p. 215.

260Ibid.

261Ibid.

educational programs.<sup>262</sup> The paper, thus, legally deprived rejected asylum seekers from those basic services that should have maintained their human dignity while pending repatriation, and that were endorsed in the 1989 agreement.

The CPA was concluded in 1996 with the deadline for repatriation set for June 25, 1996. First Asylum refugee camps were closed, although Indonesia and Thailand were not able to complete repatriation procedures in time; Malaysia, on the contrary, was the first Country to achieve the task.<sup>263</sup>

## 5.7 Evaluation of the CPA.

To conclude, it can be said that the CPA legitimized an already reluctant region when it came to acknowledge and implement international refugee law, legalizing an existing notion within the region, according to which asylum seekers were a temporary burden to which ASEAN States had no permanent obligations.<sup>264</sup>

Some considerations can be made in evaluating the CPA and its results.

As for the Country of origin, the willingness showed by Vietnam to get involved and to cooperate played a key role in the process. However, its will hid a personal interest and advantage: as a matter of fact, Vietnam's compliance to cooperate in the establishment of safe returns of non-refugees laid with the identification of returnees with economic funds and political benefits. Safe returns, indeed, would have been conducted under international assistance, which of course had an economic basis necessary to facilitate reintegration within Vietnam.

Thus, by realizing that supporting returns and fighting illegal departures through a combination of coastal controls, media activities reinforcement and persecution of the organizers, it would have attracted bilateral and multilateral support for development assistance, prompted the Socialist Republic to commit to the cause.

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<sup>262</sup>Robinson, W. Courtland, *op.cit.*, p. 218.

<sup>263</sup>Sara Ellen Davies, *Legitimizing Rejection: International Refugee Law in Southeast Asia*, Brill, 2008, p. 221.

<sup>264</sup>Sara Ellen Davies, "The 1989 Comprehensive Plan of Action (CPA) and refugee Policy in Southeast Asia: Twenty Years Forward What Has Changed?" in Ademola Abass & Francesca Ippolito, *Regional Approaches to the Protection of Asylum Seekers: An International Legal Perspective*, Ashgate Publishing, Ltd., 2014.

As for asylum Countries, UNHCR stressed the importance for them not to uphold the principle of *non-refoulement*, and to respect the principle of First Asylum for all the Indochinese arriving in the region, seeking for asylum. However, before they would commit to provide an unconditional commitment, First Asylum Countries needed to be sure that resettlement and return's procedures were effective, for screening process would have been, otherwise, meaningless.

Also the Countries of the region, therefore, showed a selfish attitude for which they agreed to help Vietnamese asylum seekers because it was a temporary solution, thus demonstrating that they were not really pledged in helping them. UNHCR played a fundamental role in the screening process, for it provided technical support and training courses, as well as pre-screening procedures. Notwithstanding the fact that these have been criticized for being restrictive and corrupt, condition in the camps were denounced as unacceptable, and First Asylum Countries were not honestly devoted to the refugees and their situation, they accomplished the CPA's tasks by conducting RSD procedures, supporting resettlement and returning processes, and tolerating camps and detention centers, although they caused domestic discontent. Responsibility for resettlement was agreed according to some principles decided in the aftermath of the conference:

Firstly, refugees would be resettled in Countries where they had the closest social ties; secondly, that 'long-stayers' would be processed first; thirdly, that there would be equitable burden-sharing of the caseload without close social ties.<sup>265</sup>

The CPA scenario allowed to acknowledge the flexibility with which the UNHCR faces particular and specific issues, a capacity integrated in its Statute that granted the Office to develop from a very specialized office born with the objective to help a person or a population when they had become displaced, they had crossed a border or had sought asylum in another State. In fact, the orientation presented during this situation introduced a new approach: with the

<sup>265</sup>Memo, Pierre Jambor, Representative to Thailand, to Headquarters, 'Draft Note to the Steering Committee on the Technical Meeting on Resettlement Held in Bangkok', 3/7/89, UNHCR in UN High Commissioner for Refugees (UNHCR), *Comprehensive Plans of Action: Insights from CIREFCA and the Indochinese CPA*, 1 January 2006, ISSN 1020-7473, available at: <http://www.refworld.org/docid/4ff163c82.html>.

growing importance of repatriation, the tasks of the UN Office for the matter and for reintegration grew as well.

The General Assembly have expanded UNHCR's mandate over the years to extend protection to include stateless persons, asylum-seekers, and returnees, groups that are not parties to the 1951 Convention or its 1967 Protocol, but are known as "mandate" refugees since they are under the scope of UNHCR operations thanks to its statute.<sup>266</sup>

A "homeland-orientation", that is the emphasis on return, reflected the emerging approach to refugee problems with the newer perspective which focused on the right to return to one's homeland, as well as the "right to remain" or the "right not to be displaced".<sup>267</sup> In this sense a general consensus that the Country of origin should be centrally involved in the effort to resolve refugee problems arose.

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<sup>266</sup>Paragraphs 3 and 9 of the Statute respectively states: "3. The High Commissioner shall follow policy directives given him by the General Assembly or the Economic and Social Council. 9. The High Commissioner shall engage in such additional activities, including repatriation and resettlement, as the General Assembly may determine, within the limits of the resources placed at his disposal." UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428(V), accessed March 29, 2016, available at: <http://www.refworld.org/docid/3ae6b3628.html>.

<sup>267</sup>UNHCR, *The State of World's refugee: in search for solutions*, Oxford University Press, 1995.

## 6.

### **Countries of First Asylum: policies adopted and life in refugee camps.**

#### **6.1 General Overview.**

Starting from May 1975, flows of Vietnamese Boat People reached the shores of Southeast Asian Countries, seeking for asylum, after a desperate and unplanned trip on overcrowded boats at the mercy of sea storms, pirates' attacks, and with time, even push-back policies, which were instituted by those same neighboring Countries as a consequence of the unstoppable and growing number of refugees. First Asylum States opened a number of refugee camps throughout their territories, where Boat People shared common living conditions: overcrowd, absence of private space for families or playing space for children, and control by police guards.

Malaysia and Thailand were the two Countries that received escapees from the very beginning of the migratory phenomenon. Malaysia was the Country that received the biggest number, followed by Thailand with its 5,300 Vietnamese, coming from sea and overland.<sup>268</sup>

At the same time, UNHCR issued a worldwide appeal to encourage Countries, other than those of the region, to commit themselves in the resettlement of the Vietnamese. “By the end of the year, Canada had resettled 5,200 Vietnamese, France had taken 4,500 [...]”,<sup>269</sup> and the US declared themselves to be ready to accept more than 10,000 refugees, in addition to the more than 130,000 already taken with the first wave.<sup>270</sup>

As the new socialist system become more and more severe, boat departures raised in mid-1977 and, by the end of the year, about 15,000 Vietnamese sought asylum in Southeast Asian Countries.<sup>271</sup>

In 1978 numbers arose significantly, Malaysia had the largest number with 4,325 Boat People landed in April, 1978.<sup>272</sup> Overall, “the number of people

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<sup>268</sup>Robinson, W. Courtland, *op.cit.*, p. 27.

<sup>269</sup>Robinson, W. Courtland, *op.cit.*, p. 24.

<sup>270</sup>Ibid.

<sup>271</sup>UNHCR, *The State of the World's Refugees: Fifty Years of Humanitarian Action*, Oxford and New York: Oxford University Press, 2000.

<sup>272</sup>Henry Kamm, “Vietnam's Refugees Set Postwar Record, *New York Times*, May 28, 1978.

fleeing by boat had quadrupled, and 70% of these were Vietnamese of Chinese origins".<sup>273</sup>

By the end of 1978, nearly 62,000 Vietnamese Boat People were settling in camps throughout Southeast Asia.<sup>274</sup> The largest amount was in Malaysia, again, with nearly 46,500 refugees, followed, this time, by Hong Kong, with 4,810.<sup>275</sup> As the numbers increased, so too did local hostility: in Malaysia, for instance, local people started to shot at Boat People while approaching land.<sup>276</sup>

This flow of people, however, was continuing and even accelerating: by the end of June 1979, Malaysia had 75,000 refugees,<sup>277</sup> more than 50,000 came in the first months of 1979 only;<sup>278</sup> Hong Kong had 59,000,<sup>279</sup> with almost 49,000 who arrived starting from February the same year.<sup>280</sup>

The first eleven months of 1978, brought 131,423 land and boats refugees to arrive in the camps of First Asylum. Bearing the "intolerable burden", the First Asylum Countries pursued deterrent strategies with the objective of stimulate international concern to the incessant flow of the Boat People.

Malaysia's and Thailand's refusals to accept any more refugees announced following the Bali Conference in June 1979, exacerbated the crisis. Both Countries had serious concerns that the current situation could have internal repercussions. Thailand feared that refugees from Cambodia were mainly Khmer Rouge who may be an insurgent presence in the zones closed to the border. On the other hand, Malaysia worried that the increasingly high number of ethnic Chinese from Vietnam, who came with the second wave of Boat People, could have altered the tension present already between the Malays and the Chinese.<sup>281</sup>

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273UNHCR, *The State of the World's Refugees: Fifty Years of Humanitarian Action*, Oxford and New York: Oxford University Press, 2000.

274Ibid.

275Robinson, W. Courtland, *op.cit.*, p. 32.

276Vo, Nghia M., *op.cit.*, p. 138.

277Robinson, W. Courtland, *op.cit.*, p. 50.

278See Chart p. 4 of "Refugees, special study – July 1979", Texas Tech University The Vietnam Center and Archive, accessed March 5, 2016: <http://www.virtual.vietnam.ttu.edu/cgi-bin/starfetch.exe?c3WGk7fZGwC.5GSATuRwDvOhJJrHoi37YUc3lHzCx5@Dg6Q@i.EMsVl.BwT.mM49B2oJjiYBplFyq.OeCgrOYQN8lbdw@dsxmaCfsxVMY/2123309004.pdf>.

279Robinson, W. Courtland, *op.cit.*, p. 50.

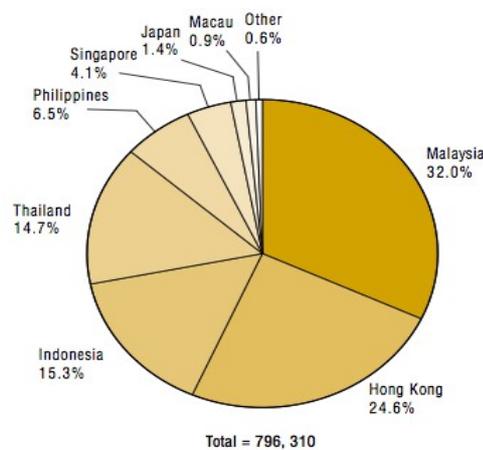
280"Refugees, special study – July 1979", Texas Tech University The Vietnam Center and Archive, accessed March 5, 2016: <http://www.virtual.vietnam.ttu.edu/cgi-bin/starfetch.exe?c3WGk7fZGwC.5GSATuRwDvOhJJrHoi37YUc3lHzCx5@Dg6Q@i.EMsVl.BwT.mM49B2oJjiYBplFyq.OeCgrOYQN8lbdw@dsxmaCfsxVMY/2123309004.pdf>.

281Stein, Barry, *op.cit.*

During the 1980s, refugee streams from Indochina persisted, however resettlement cases experienced a reduction due to “compassion fatigue”, an expressions that amounts to the inability to react sympathetically to a crisis due to the overexposure of the mentioned problem.<sup>282</sup> A concrete illustration of this euphemism is the attitude that neighboring Countries like Hong Kong and Malaysia, as well as Western Countries began to show in rejecting Boat People as illegal immigrants, to whom push back policies and resettlement refusal were addressed.<sup>283</sup> Despite there was a general decrease in figures of Boat People arrival in the first five months of 1990, which dropped by 40 per cent,<sup>284</sup> there was an increase in the number of people reaching the shores of Indonesia and Thailand, as a consequence of a change in attitudes that the Countries that have been the two main receiving Countries since 1988, namely Malaysia and Hong Kong, were having.<sup>285</sup> Malaysia pursued in the push back practices, Hong Kong rendered more and more public the deplorable conditions of its camps.

**Arrivals of Vietnamese boat people by country or territory of first asylum, 1975–95**

**Figure 4.2**



Source: UNHCR, *The State of the World's Refugees: Fifty Years of Humanitarian Action*, Oxford and New York: Oxford University Press, 2000.

<sup>282</sup><http://dizionario.reverso.net/inglese-definizioni/compassion%20ofatigue>. The term was first used in a political and humanitarian context by ASEAN States in their responses during sessions of the Executive Committee Meetings of the High Commissioner and in their Joint Statements, to describe resettlement States reluctance to continually accept Indochinese as refugees. Sara Ellen Davies, *op.cit.*, Brill, 2008, p. 153.

<sup>283</sup>"Boat People and Compassion Fatigue", *New York Times*, July 14, 1988, accessed March 20, 2016: <http://www.nytimes.com/1988/07/14/opinion/boat-people-and-compassion-fatigue.html>.

<sup>284</sup>Davies, Sara Ellen, *op.cit.*, p. 204.

<sup>285</sup>Ibid.

## 6.2 Malaysia.

### 6.2.1 Malaysian Policies until mid-1979.

Malaysia showed an initially harsh position towards the refugees, but since the US declared they would accept more people to resettle in mid-1977, her attitude slightly softened. Malaysian Government opened several refugee camps on its shore, one of the most famous was Palau Bidong, which hosted more than 20,000 Indochinese at the end of 1978,<sup>286</sup> although it was a deserted island until May.<sup>287</sup> From late that year, Malaysian attitude turned hostile again, since the figure of Vietnamese refugees in the camps increased.

Meanwhile, the clash between China and Vietnam made Hanoi decide to force out its ethnic Chinese minority; therefore, the majority of Vietnamese refugees who have arrived were Chinese origin, who created tense domestic political problems in a Country where ethnic balances between Chinese, Indians and Malays are an issue of political instability.

As a matter of fact, “Malaysia has a long history of antagonism between its Sino and Malay communities, thus Malaysian leaders had concerns that an incident at a refugee camp could spark racial violence within [the Country]”.<sup>288</sup> Moreover, refugee camps were concentrated on an area of Malay poverty and Muslim belief where anti-Chinese feelings are generally strong.

In October 15, 1978, an empty freighter, the *Hai Hong*, left Singapore heading Hong Kong. First, however, it had to stop off the Vietnamese boats to pick up 2,500 passengers from smaller boats that were arranged by a smuggler. Due to the bad weather, the ship with its human cargo was forced to deviate to Indonesia, where it was obliged to leave on November 8, this time heading to Malaysia. There, authorities officials demanded the boat returned to sea, but UNHCR intervention made it possible for passengers to be visited and saved.<sup>289</sup> This episode later confirmed Malaysians concerns that Vietnamese

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<sup>286</sup>Hawthorne, L., *op.cit.*, p. 152.

<sup>287</sup>Hawthorne, L., *op.cit.*, p. 227.

<sup>288</sup>"Refugees, special study – July 1979", Texas Tech University The Vietnam Center and Archive, accessed March 5, 2016: <http://www.virtual.vietnam.ttu.edu/cgi-bin/starfetch.exe?c3WGk7fZGwC.5GSATuRwDvOhJJrHoi37YUc3lHzCx5@Dg6Q@i.EMsVl.BwT.mM49B2oJjiYBplFyq.OeCegrOYQN8lbdw@dsxmaCfsxVMY/2123309004.pdf>.

<sup>289</sup>Robinson, W. Courtland, *op.cit.*, p. 28. This is the same issue described in chapter 4, as regards the status of *prima facie* refugees.

Government, together with Hong Kong syndicates, was colluding in lucrative activities of refugees tracking, fact that rendered Malaysia even more hostile toward the Boat People problem.<sup>290</sup>

The pressure local people put became mounting and the Government made a consequent decision to close its shores. The attempt, however, failed, being too expensive and complicated to realize.<sup>291</sup>

As the number of arrivals ballooned to 63,000 in 1978, the number of push backs jumped to 4,959. In the first six months of 1979, 267 boats carrying 40,000 refugees were towed out to sea; for the year 1979, a total of 51,422 were assisted out of Malaysian waters.<sup>292</sup>

In the month that followed the *Hai Hong's* arrival, indeed, Malaysia's National Security Council ordered the creation of the Federal Task Force on Vietnamese Illegal Immigrants, known as Task Force VII, whose main role was to decrease the number of boats arrivals. Two other goals were “to look after these people temporarily, and to see that they were resettled”.<sup>293</sup>

As a matter of fact, because of the growing imbalance between influx and outflow numbers as well,<sup>294</sup> Malaysia started to tow all refugee boats back to sea. One of the worse consequences of these refusals happened in March 1979, when a boat named MH-3012 with a cargo of 237 Vietnamese people was intercepted by a Malaysian Navy patrol.

The Vietnamese were towed south for 36 hours then cut loose and told to head for Indonesia. By this point, according to a UNHCR report on the incident, the

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290William Chapman, “Malaysia Reels Under Refugee Tide”, *The Washington Post*, December 11, 1978, accessed March 7, 2016:

<https://www.washingtonpost.com/archive/politics/1978/12/11/malaysia-reels-under-refugee-tide/8abe5ed4-f755-4e55-afa2-d194ce1245c9/>.

Two other ships were found involved in the refugees trafficking: the Southern Cross and the *Huey Fong*. The first one was a freighter that, in September 1978, stated to have rescued 1,200 refugees at sea and requested permission to land them in a Malaysian camp. Authorities, however, refused people to land. The ship then beached on an Indonesian island where it could disembark its human cargo. Captain's story was that he rescued all the refugees from smaller boats at sea. Later it was discovered he was involved in an organized migration of vietnamese people. The *Huey Fong*, instead, anchored outside Hong Kong with 3,318 refugees in December 1978. Vo, Nghia M., *op.cit.*, pp. 90-92; Robinson, W. Courtland, *op.cit.*, p. 28.

291Hawthorne, L., *op.cit.*, p. 228.

292Vo, Nghia M., *op.cit.*, p. 166.

293Ibid.

294Hawthorne, L., *op.cit.*, p. 227.

Malaysian officials knew the boat's engine and water pump were broken and that a newborn baby was on board. The MH-3012 drifted for four days, during which ten people died of dehydration.<sup>295</sup>

In May 1979 alone, Malaysia refused asylum to nearly 13,500 people.<sup>296</sup> The Country had started some sort of burden-sharing, by pushing refugees' boats back and sending them to its neighboring Countries. Thus, numbers started to equalize, with Indonesia receiving about 50,000 more Boat People, while the number of refugees the Country had received the previous year was lower than 3,000 people.<sup>297</sup> In addition, in late June, prior to the Bali Conference, it was reported that Malaysia's deputy prime minister, Mahathir Mohamad, claimed he had given order to 'shoot on sight' any Vietnamese found trying to enter Malaysian territory,<sup>298</sup> a comment that highlighted to what extent the granting of asylum was on the brink of collapse.

### **6.2.2 Policies following the UN Meeting in Geneva, 1979.**

Consequently to the Geneva Conference on Indochinese refugees held in 20-21 July, 1979, Malaysia halted all its refusal activities to refugees and promised an Open Door Policy,<sup>299</sup> granting its help as a temporary transit, since the influx of people coming would not be unmanageable as it was in early 1979.<sup>300</sup> This assurance lasted for nearly a decade, during which asylum was offered to more than 250,000 Vietnamese.

When boat arrivals newly increased in 1987, until they surged again the following year, Malaysia instituted a cut-off date for March 14, 1989, and later notified that the transit camp of Pulau Bidong would be closed from April 1989.<sup>301</sup>

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295Vo, Nghia M., *op.cit.*, p. 165.

296Robinson, W. Courtland, *op.cit.*, p. 43.

297Robinson, W. Courtland, *op.cit.*, p. 189.

298Robinson, W. Courtland, *op.cit.*, p. 51.

299Robinson, W. Courtland, *op.cit.*, p. 189.

300Robinson, W. Courtland, *op.cit.*, p. 58.

301A. Lakshmana Chetty, "Resolution Of The Problem Of Boat People: The Case For A Global Initiative", World Legal Information Institute, accessed March 8, 2016:

<http://www.worldlii.org/int/journals/ISILYBIHRL/2001/8.html#FootnoteB19>.

### **6.2.3 Policies following 1989 Geneva Conference.**

Despite being intended as a deterrent, the cut-off date did not have any effect and figures continued to grow, especially because Malaysia was forced to abandon its plan of action after the Second Geneva Conference on Indochinese Refugees, held in June 1989, where the Foreign Minister sat as Chairman. Notwithstanding the pledge to the International community, Malaysia continued to turn Vietnamese boat away: by the end of the year, authorities had pushed at least 3,200 people away.<sup>302</sup> This was probably a consequence to the fact that Malaysia supposed resettlement Countries to take bigger numbers of Vietnamese found to fit the refugee definition, and of even more concern, the Country complained that asylum seekers, whose application for international assistance had been rejected, were not sent back to Vietnam immediately. Malaysia continued to pursue its policy, which resulted being effective in the deterrence objective, and never restored asylum after 1989.<sup>303</sup>

### **6.2.4 The camps: Palau Bidong and Palau Besar.**

Palau Bidong was supported by the UNHCR, and divided in seven zones, each with its local council.<sup>304</sup> Once people were admitted to the island, they were given a number corresponding to the boat they arrived with, then “a photograph of each person was taken, and handed to the resettlement delegations according to boat number”;<sup>305</sup> refugees had then to fill in documents, which were necessary for the application to the UNHCR for further resettlement.<sup>306</sup> Life on the island was very miserable and difficult: by being completely built with leftovers and thrown-away materials, sanitary facilities were almost non-existent, weather was unpredictable and hardly bearable, mosquitoes and rats carried many diseases and food and water rations were very limited.<sup>307</sup>

Every three days each person was given a big plastic bag of rations. Inside it was one bag of rice, perhaps three-quarter s of a kilo in weight, a packet of dry

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302Robinson, W. Courtland, *op.cit.*, p. 190.

303Robinson, W. Courtland, *op.cit.*, p. 191.

304Vo, Nghia M., *op.cit.*, p. 154.

305Hawthorne, L., *op.cit.*, p. 27.

306Ibid.

307Vo, Nghia M., *op.cit.*, p. 154.

biscuits, two packets of instant noodles, and a can each of chicken, sardines, soya beans, and tomato sauce or peas. [...] Now and then they were given fresh vegetables, like cabbage, or cucumber, or tomatoes. Sometimes there was fresh fish, or canned milk, eggs or nuts.<sup>308</sup>

As for the water, only 8 liters per day per person were allowed.<sup>309</sup>

Government support was minimal, especially because the camp should have been a temporary solution, and although it eventually became permanent, Malaysian involvement never improved, it actually became more hostile.

In Palau Besar, on the East coast, there was another Malaysian refugee camp, which was in 1978 the largest one in Malaysia, with 3,000 people in May and 6,000 in July,<sup>310</sup> although “several hundreds left regularly about twice a month for resettlement [in third Countries].”<sup>311</sup> Delegations from Australia and US were the ones who came more frequently, and they were also the Countries were refugees wanted to go the most.<sup>312</sup>

Like two very autonomous Vietnamese communities, social life in both camps was organized by the refugees themselves. Black markets supplied by people who illegally went to shop at the Malay market on the mainland arose flourished, despite the incessant warnings of the officials against commercial activities, and which were closed in 1978.<sup>313</sup>

Refugees also attended English classes, which were held by people who volunteered their knowledges, and within the camp in Palau Besar, for instance, schools for both children and adults were organized.<sup>314</sup>

## **6.3 Thailand.**

### **6.3.1 Initial response.**

In June 1975, Thailand established a policy toward Indochinese refugees that seemed to close the opportunity to enter the Country, although some

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308Hawthorne, L., *op.cit.*, p. 279.

309Ibid. “For every 5 people each day we were allowed to take 40 liters.”

310Hawthorne, L., *op.cit.*, p. 266, Palau Bidong became the largest camp in Malaysia at the beginning of 1979.

311Ibid.

312Hawthorne, L., *op.cit.*, p. 267.

313Hawthorne, L., *op.cit.*, p. 266.

314Hawthorne, L., *op.cit.*, p. 265.

possibilities were left.

It is undesirable to allow displaced persons seeking asylum in this Kingdom to stay here. Those that come should be pushed out again, as soon as possible. When this cannot be done, they must be confined in displaced persons' camps.<sup>315</sup>

This attitude is confirmed by the local settlement issue, advanced by both UNHCR and the US, who tried to convince Thailand in adopting the policy offering various inducements, to whom Bangkok answered:

While it is easy to suggest all displaced persons be permitted to resettle in Thailand, even if funding were on hand, political and national security matters coupled with the shortage of arable land makes it impossible for us to consider this alternative. Thailand has still hundreds of thousands of landless farmers; in addition we are experiencing difficulties in assimilating the more than 70,000 Vietnamese refugees who came to our Country in 1945. We are, however, in spite of these two major obstacles, studying the possibility of permitting some of the displaced persons to resettle here.<sup>316</sup>

In July, 1977, Thailand and UNHCR signed an agreement aiming to differentiate refugees, and therefore people within the competence of UN agency, from those who were not *bona fide* refugees.<sup>317</sup> As a consequence, starting from November, those who satisfied the requirement of having fled from persecution were the only ones allowed to enter a UNHCR refugee camp, otherwise they would be sent to detention centers, while waiting for repatriation.

According to the Thai Government, at the beginning of 1977 there were nearly 3,000 refugees from Vietnam,<sup>318</sup> out of 80,000 Indochinese asylum seekers.<sup>319</sup>

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315 In Kosol Vongsrisart, Vanchai Julsukon, Cletus Rego and Jack Reynolds, eds, "The Indochinese Refugees (Thailand)" (Bangkok: Office for Human Development of the Federation of Asian Bishops' Conferences, 1980), p. 48, in Robinson, W. Courtland, *op.cit.*, p. 43.

316 Thai Ministry of Interior, "A Call for Humanity: Displaced Persons from Indochina in Thailand" (Bangkok: MOI, operation centre for displaced persons 1978), p. 15, in Robinson, W. Courtland, *op.cit.*, p. 25.

317 People who fled for economic reasons. Robinson, W. Courtland, *op.cit.*, p. 44.

318 David A. Andelman, "Exit Routes Closing for Indochina Refugees", *New York Times*, January 6, 1977.

319 Henry Kamm, "Thailand Finds Indochinese Refugees a Growing Problem", *New York Times*, July 1, 1977.

Because of its long borders with Laos and Cambodia and its long coastline along which refugee vessels from Vietnam seek shelter, Thailand has been the most hospitable Country in Asia for refugees from Indochina. As a result, it is the only Asian Country in which the number of refugees is large enough to constitute a real problem for the host Government.<sup>320</sup>

Thailand's hospitality, however, was the forced result of the little reception availability offered by other South-East Countries.

Starting from late that year, thus, Thailand took an increasingly hostile behavior toward the Boat People, operating occasional push backs, but it made no systematic effort to enforce the refusal policy until the flows increased, and only when Malaysian activities were not a secret anymore, Thailand followed its neighbor's steps acting explicitly against the arrivals.

### **6.3.2 Cambodian Refugees.**

The above mentioned hostility towards refugees was fueled by the double burden Thailand had to bear in this period consequently to Vietnamese actions. As a matter of fact, Thailand had not only to cope with 'Boat People', but also 'Land People' from neighboring Cambodia, whose refugees' inflow reached a peak in 1979, with approximately 200,000, due to the invasion of the Country by Vietnam.<sup>321</sup>

Starting from late 1977, border conflicts between Vietnam and Cambodia escalated, eventually reaching a peak on January 7, 1979, when Vietnamese forces entered Cambodian capital, Phnom Penh, and later claimed the liberation of the Country. Hanoi installed a puppet Government headed by Heng Samrin and the republic of Kampuchea was, then, in power. As the Vietnamese moved across Cambodia, the Khmer Rouge withdrew and so did the population, initially by staying within their borders; later, by the middle of the year, more than 100,000 Cambodians were massing at the border with Thailand. Bangkok already undertook push-back actions, but in June 1979, soldiers collected more

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<sup>320</sup>Ibid.

<sup>321</sup>Michael Hynd, "Thailand", Forced Migration, last modified August 17, 2011, accessed March 11, 2016: <http://www.forcedmigration.org/research-resources/expert-guides/thailand/alldocuments>.

than 42,000 Cambodian refugees in border camps and forced them down the mountainside at Preah Vihear into Cambodia. “At least several hundred people, and possibly several thousand, were killed in the minefields below”. The day following the push-backs, a representative of the International Committee of the Red Cross, ICRC, issued an urgent, public appeal for Thai forces to stop their actions; he was ordered to leave Thailand. Despite this was a largest instance of forced return, known as *refoulement* in international law, the UNHCR did not formally or publicly protest.<sup>322</sup>

A 'Open Door Policy' was declared in October for Cambodians gathered on the border, however, in January 1980 Thailand suddenly reversed its position and closed its doors to new arrivals.<sup>323</sup> “Henceforth, the Government declared, Cambodian arrivals would be kept in border encampments without access to third-Country resettlement.”<sup>324</sup>

### **6.3.3 Policies after Geneva Conference in 1979.**

Consequently to the UN Conference in Geneva, the situation improved: from mid-1979 to mid-1982, more than 600,000 Indochinese refugees were enabled for resettlement, half of those coming from Thai camps, a figure that demonstrates the real strain to which Thailand had long been subjected.<sup>325</sup> In addition, in 1981, Thailand's Ministry of Interior announced that some political changes were about to occur, in order to further diminish the boat arrivals, that is the implementation of a policy called 'human deterrence'. By maintaining the borders open while closing the doors for resettlement and UNHCR amenities, Thailand brought life in the camps to the minimum humane standards, and reducing the efficiency of resettlement system, whose positive results were considered an incentive in refugees' departures.

Despite Thailand announced its cut-off date for August, 1981, Vietnamese refugee arrivals in Thailand galloped from 2,807 in 1984 to 13,627 in 1987.<sup>326</sup> In

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<sup>322</sup>UNHCR, *The State of the World's Refugees: Fifty Years of Humanitarian Action*, Oxford and New York: Oxford University Press, 2000.

<sup>323</sup>Through the Open Door Policy, Thailand's commitments were not to turn anyone back, granting of temporary asylum for displaced persons until their resettlement, and voluntary repatriation only within UNHCR channels. Robinson, W. Courtland, *op.cit.*, p. 69.

<sup>324</sup>UNHCR, *The State of the World's Refugees: Fifty Years of Humanitarian Action*, Oxford and New York: Oxford University Press, 2000.

<sup>325</sup>Robinson, W. Courtland, *op.cit.*, p. 161.

<sup>326</sup>A. Lakshmana Chetty, “Resolution Of The Problem Of Boat People: The Case For A Global

January 28, 1988 after having pushed-back 40 asylum seekers from its shores, Bangkok announced that it would turn away all Vietnamese Boat People found heading toward Thailand, a statement which had been intended to inhibit the mounting numbers of boats coming from the neighboring Country.<sup>327</sup>

#### **6.3.4 The camps: Songkhla.**

Bangkok organized Songkhla Camp in Thailand June 1976 in Mueng District as a temporary solution, reflecting Thailand's policy of giving temporary shelter only. Thus built without considering the amount of refugees that would have arrived, the facility soon run out of space for the asylum seekers; therefore in December 1978, the existing 3,000 Boat People were transferred in a bigger camp that was constructed on a beach.<sup>328</sup> People survival depended on charity from small organizations which were working in the camp. "Doctors Without Frontiers took care of medical treatment for the refugees. And then later Catholic Relief took care of the medical supplies."<sup>329</sup> The Thai Government severely controlled the camps, and eventually the organizations were forced to leave, except Catholic Relief, for which worked Father Joe Devlin, known as the "Boat People's priest" for his help in caring for the Vietnamese Boat People who survived the trip from Vietnam to Thailand,<sup>330</sup> and where he succeeded in the realization of a Children Center.<sup>331</sup>

Thai authorities, upset about safety risks and the refugees' security, will not allow them to go outside the barbed wire around the camp, which has hosted refugees beyond capacity. But more continued to arrive, especially as a consequence of Malaysia refusal. So no refugee at the camp will criticize the Thai Government, because at least they were accepted there.

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Initiative", World Legal Information Institute, accessed March 8, 2016:

<http://www.worldlii.org/int/journals/ISILYBIHRL/2001/8.html#FootnoteB19>.

<sup>327</sup>Davies, Sara Ellen, *op.cit.*, p. 191.

<sup>328</sup>"Refugee Camps", last modified July, 2014, accessed March 8, 2016:

<http://www.refugeecamps.net/GalangCamp.html>.

<sup>329</sup>HistoryNet, "Joe Devlin: The Boat People's priest", accessed March 2, 2016:

<http://www.historynet.com/joe-devlin-the-boat-peoples-priest.htm>.

<sup>330</sup>Ibid.

<sup>331</sup>"Father Joe Devlin traveled to Songkhla in 1979. In 1975, he was one of the last Americans to be flown out of South Vietnam, and the same year he became the principal priest at the temporary base for Vietnamese refugees in Camp Pendleton, California. Legendary among both the Vietnamese and the Americans for his tireless work, Father Devlin spent five years in the Mekong Delta ministering to and doctoring thousands of Vietnamese peasants." Ibid.

However, due to the jammed conditions in the camp, many refugees preferred to live on the boats they used in the escape, anchored on the beach behind the camp.<sup>332</sup>

The task to provide food for the refugees was Thai Government's, which was funded by the UNHCR. However, Thai policemen did not deliver food supplies on time and on the right portions. In December 1977, Vietnamese people in the camp did not receive their food rations for four days in a row, due to a dispute between Thai authorities and the UN office, being the latter accused of not having sent the necessary funds.<sup>333</sup> The episode was explicative of the feelings of Thai Government regarding the presence of nearly 2,000 vietnamese refugees on its soil.

## **6.4 Hong Kong.**

### **6.4.1 First Vietnamese arrivals**

In the first years, the tiny British Colony and its refugee camps were known for the humane treatment reserved to the refugees, who “were allowed to work and earn a living while their cases were evaluated.”<sup>334</sup> To cope with the afflux of refugees, in 1979 a Permanent office of the UNHCR was established, as a consequence of its first crisis, which “started in late 1978 with the arrival of more than 3,300 Boat People abroad the *Huey Fong*.”<sup>335</sup> At first, UN office main objective was to help the Vietnamese Boat People, but over time, the goal has changed to include anyone who arrived in Hong Kong seeking asylum.<sup>336</sup>

With the Vietnamese invasion of Cambodia and the consequent war with China, the outflow of Vietnamese with Chinese origins directed to Hong Kong became prominent. The Chinese community in Vietnam had linkages with Hong Kong, due to the high percentage of Chinese who lived in the British Colony, who

<sup>332</sup>Paul Wedel, “Refugees Crowd Camp to Await New Beginning”, *The Citizen*, October 20, 1977 accessed March 9, 2016: <https://news.google.com/newspapers?nid=2194&dat=19771020&id=8LoyAAAAIBAJ&sjid=Be4FAAAAIBAJ&pg=912,5640340&hl=it>.

<sup>333</sup>Henry Kamm, “Boat People in Thailand, Four Days Without Rations, Feel Less Welcome Than Ever”, *New York Times*, December 21, 1977.

<sup>334</sup>Vo, Nghia M., *op.cit.*, p. 158.

<sup>335</sup>Robinson, W. Courtland, *op.cit.*, p. 31.

<sup>336</sup>UNHCR, The UNHCR Sub-Office Hong Kong SAR, accessed March 10, 2016: [http://www.unhcr.org/hk/preview/unhcr/en/about\\_us/Timeline%20on%20UNHCR%20Hong%20Kong%20.html](http://www.unhcr.org/hk/preview/unhcr/en/about_us/Timeline%20on%20UNHCR%20Hong%20Kong%20.html).

resulted from the numerous migration occurred since World War II.<sup>337</sup> The outcomes of these tense moments in Vietnam were nearly 70,000 refugees arrived in the camps of Hong Kong and pending for resettlement,<sup>338</sup> and for the three years that followed, the British colony continued to receive an average of 7,700 migrants per year.<sup>339</sup>

In the aftermath of the Geneva Conference in July 1979 a high rate of resettlement from Hong Kong was registered: “24,377 resettled in 1979, another 37,468 resettled in 1980, the peak year for resettlement, and 17,818 resettled during 1981.”<sup>340</sup>

#### **6.4.2 Harsh Policies of the 1980s.**

Moreover, in July 1982, Hong Kong instituted a closed camp policy to discourage Boat People from coming, whereby all Vietnamese were kept as prisoners, under the supervision of Correctional Services Officers,<sup>341</sup> until they could be resettled: services were reduced and opportunities for employment were restricted, with a consequent drop in arrivals for the following years that made it seem that the policy was effective.<sup>342</sup>

In mid-1987, Vietnamese arrivals began to climb again after a period of stability, encouraged by the relaxation of travel restrictions in Vietnam, and the prospect of resettlement in Western Countries. Tens of thousands of Boat People, leaving from North Vietnam took the route to Hong Kong, which saw 3,400 arrivals in 1987 and then, in 1988, the number climbed to more than 18,000,<sup>343</sup> a rate increase probably because this route was usually safe from storms and pirates. The Hong Kong policy then became more harsh, and in cooperation with the UNHCR, a screening policy was reintroduced whose 'cut-off' date was for June 16, 1988, starting from that date, all arriving Vietnamese Boat People were to be labelled economic migrants.<sup>344</sup>

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337Ronald Skeldon, “Hong Kong's Response to the Indochinese Influx, 1975-93” in *The Annals of the American Academy of Political and Social Science*, Vol. 534, Strategies of Immigration Control: An International Comparison (Jul., 1994), Sage Publications, Inc., pp. 91-105.

338Robinson, W. Courtland, *op.cit.*, p. 183. The same figure is reported in *Ibid.*

339*Ibid.*

340Skeldon, R., *op.cit.*

341*Ibid.*

342Robinson, W. Courtland, *op.cit.*, p. 183.

343Vo, Nghia M., *op.cit.*, p. 134. The same figure is reported in Skeldon, Ronald, *op.cit.*

344Skeldon, Ronald, *op.cit.*

The fact that the Vietnamese continued to leave for Hong Kong after the introduction of screening on 16 June 1988 showed that, unless the Government could show it was serious by repatriating screened-out boat people, screening was not a significant deterrent to those who wanted to leave.<sup>345</sup>

With the implementation of the Comprehensive Plan of Action, CPA, Hong Kong, together with other 75 signatory Countries, agreed to deal with the continuing influx of Indochinese Boat People: by deterring illegal departures, providing temporary refuge to all asylum seekers, establishing measures for their refugee status determination, resettling in third Countries those labelled as refugees, while repatriating those who were determined not through voluntary returns. Notwithstanding these commitments in late 1989, Hong Kong began once again to exercise coercive measures to repatriate Vietnamese people, by forcing them in what the Government called 'mandatory repatriation',<sup>346</sup> and justified its action as a deterrent.

Moreover, the British Colony received international critics for its screening process, since "by April 1989, the Hong Kong authorities had screened more than 1,300 Vietnamese cases but approved only 3, and these for reasons of family reunification, not their refugee qualifications."<sup>347</sup>

With more than 7,300 Vietnamese arriving here this month alone, the Hong Kong Government is under intense local pressure to stop the flow and rid the British colony of the 45,400 Boat People housed in camps, detention centers, tents and old ferry boats. The Vietnamese, who only a year ago totaled 14,000, are now the largest ethnic group here apart from the Chinese.<sup>348</sup>

The peak of Hong Kong's Boat People crisis was in 1991, when from a figure of 6596 arrivals in 1990, a peak of 20,206 was reached: by September, asylum-

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345Ibid. This was also motivated by the necessity of the Vietnam's agreement to take back the escapees.

346Robinson, W. Courtland, *op.cit.*, p. 215.

347Lawyers Committee for Human Rights, *Uncertain Haven: Refugee Protection on the Fortieth Anniversary of the 1951 UN Refugee Convention* (New York: 1991), p. 19 in Robinson, W. Courtland, *op.cit.*, p. 227.

348Barbara Basler, "Hong Kong Presses Its Hard Line on Boat People", *New York Times*, June 26, 1989, accessed April 6, 2016: <http://www.nytimes.com/1989/06/26/world/hong-kong-presses-its-hard-line-on-boat-people.html>.

seekers waiting in the detention centers were more than 64,300.<sup>349</sup>

In the attempt to face this upsurge, Vietnam, Hong Kong and the British Government reached an agreement on repatriation in October 1991, with UNHCR cooperation, consequently to several meetings held in Hanoi that resulted in the implementation of a Orderly Return Program, ORP, which was eventually adopted by all the Countries of First Asylum.<sup>350</sup>

Under this program, UNHCR granted transportation costs, as well as logistical support, assuring that these procedure did not involve the use of force.<sup>351</sup> Whether the reasons were, Vietnamese exodus finally ended in late 1991.<sup>352</sup> However, the distinction between voluntary and involuntary return became blurred with rising tensions in the Vietnamese camps and frequent outbreaks of violence especially in Hong Kong. In November the same year, the police and security officers forced a group of nearly 60 Vietnamese back to Hanoi, and in the years that followed, the camps of the Colony experienced rising tensions and episodes of violence.<sup>353</sup>

“There were, in early July 1993, still over 40,000 Vietnamese in Hong Kong: 2191 refugees awaiting resettlement, some 31,600 migrants awaiting repatriation, and almost 7000 awaiting screening.”<sup>354</sup>

From 1978 until 1995 roughly 200,000 Boat People arrived in Hong Kong, 144,000 were resettled in third Countries, 58,000 were repatriated to their Country of origin, and local integration was offered to 1,400.<sup>355</sup>

On 21 February 2000, the Hong Kong SAR Government announced the Widened Local Resettlement Scheme that allowed all Vietnamese refugees and boat people remaining in Hong Kong (about 2,400 people) to apply for identification cards and become local residents.<sup>356</sup>

An important and difficult decision for refugees came with the acceptance of

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349Robinson, W. Courtland, *op.cit.*, p. 216.

350Starting from Indonesia's signature of the ORP on October 2, 1993 the other ASEAN States followed the legal action soon after. Davies, Sara Ellen, *op.cit.*, p. 221.

351UNHCR, *The State of the World's Refugees: Fifty Years of Humanitarian Action*, Oxford and New York: Oxford University Press, 2000.

352Robinson, W. Courtland, *op.cit.*, p. 217.

353Ibid.

354Skeldon, Ronald, *op.cit.*

355UNHCR, The UNHCR Sub-Office Hong Kong SAR, accessed March 10, 2016: [http://www.unhcr.org/hk/preview/unhcr/en/about\\_us/Timeline%20on%20UNHCR%20Hong%20Kong%20.html](http://www.unhcr.org/hk/preview/unhcr/en/about_us/Timeline%20on%20UNHCR%20Hong%20Kong%20.html).

356Ibid.

this identity card, for accepting it, it would mean local resettlement and thus the end of refugees' hopes of being sent abroad. However, refusing it, they would lose any privilege to Government aid.

To this decision, another important one came, that is the closure in July, 2000 of the above mentioned camp left.

This event, finally put an end to the humanitarian issue of Vietnamese refugees that lasted for 25 years.

#### **6.4.1 The camps: Kowloon**

In the 1980s, refugee camps became violent and known for their horrible living conditions.

The quay in Kowloon was the biggest transit refugee camp in the world. After being subjected to extermination procedures in Discovery Bay (fearing plague and cholera people go through fumigation), 17 out of the 20 boats that came in the week end carried 1087 escapees. The quay was a nightmare: in five warehouses with no light and windows, on wooden benches, encircled by barbwire and temperature was almost 40 degrees: there 9,500 people live, sleep, and eat. Only 25 police officials, 6 Migration's agents and 4 voluntary nurses were responsible for these people and their basic needs, however the extremely limited amenities available: medicines, though insufficient, only eighteen bathrooms, soap and water.<sup>357</sup>

In Kowloon people usually spent from 1 to 8 weeks, waiting for resettlement in UNHCR camps. Food is served twice a day, but no other commodities are given to them. People had to follow strictly rules: they could not leave the camp until they had permission; they had to respect the given space, that is two meters in length and about half a meter wide; moreover, refugees had attend during the

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<sup>357</sup>Ennio Caretto, "Fra i diecimila vietnamiti nel porto di Hong Kong un messaggio: «Il nostro sogno è un Paese libero»", *La Stampa*, 4 luglio 1977, accessed February 2, 2016 Original text: "Al molo coloniale di Kowloon. dove attraccano dopo la disinfestazione a Discovery Bay (vengono fumigate per paura della peste e del colera), ho visto Ieri diciassette delle venti imbarcazioni, quelle arrivate durante il weekend portando 1087 fuggiaschi. Il molo é un inferno: In cinque capannoni senza luce né finestre, sulla pietra e su palchi di legno Improvvisati, dietro barriere di filo spinato, in un caldo umido che può sfiorare i quaranta gradi, camminano, dormono, mangiano 9500 persone. Appena venticinque tra i poliziotti, doganieri e secondini, sei funzionari dell'emigrazione e quattro Infermiere volontarie sovrintendono ai bisogni degli sventurati con mezzi di fortuna: medicine I insufficienti, diciotto gabinetti, sapone, acqua."

roll, which was called four times a day; if they came late, they were hit, and if they did not obey to the rules they were threatened of imprisonment.<sup>358</sup>

After a 10 days period, people were allowed to have a shower, for which half an hour time was given, for after that interval, no more water ran from the taps.

Usually people spent three months in the camp and then they were given a 'freed' card<sup>359</sup> that allowed the refugees to live within the society of Hong Kong. From that moment on, they would have had to provide for themselves, whilst remaining in the camp.

Employment in Hong Kong was easy to obtain for refugees, for they were less paid than local people, although what they earned was more than enough for them to survive. This caused the reaction of the inhabitants, fearing that later this could lead to internal declining conditions.

## **6.5 The Processing Centers: Galang, Indonesia and Bataan, Philippines.**

Indonesia's Foreign Minister proposed the creation of a center, which was set up by the UNHCR, in Galang Island, after the negotiation of a "\$650,000 contract to build five kilometers of asphalt road and a pier capable of receiving ships of up to 200 tons",<sup>360</sup> a proposal that was officially presented and approved at the Geneva Conference in 1979. However, the camp and its regional processing center became effectively operational only one year later. These centers had been proposed by Indonesia's Foreign Minister, whose scope was to alleviate First Asylum Countries from part of their refugee population.<sup>361</sup> During the early stage of the operations and until 1985, all refugees were granted *prima facie* status and provided with primarily amenities, like shelter, food, education and medical assistance. Moreover, resettlement was organized, within UNHCR channels, in third Countries of asylum, mainly US, Australia and Canada. The camp closed in 1996.

This camp hosted about 250,000 Indochinese Boat People until 1996, most of whom were Vietnamese;<sup>362</sup> it was well organized, with an administration office,

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<sup>358</sup>Hawthorne, L., *op.cit.*, p. 236.

<sup>359</sup>Hawthorne, L., *op.cit.*, p. 287.

<sup>360</sup>Robinson, W. Courtland, *op.cit.*, p. 55.

<sup>361</sup>Ibid.

<sup>362</sup>"Galang Refugee Camp 1976 - 1996", Refugee Camps, last modified July, 2014, accessed

a hospital and a school. “The island was quite entertaining because there was a cafe, a fruit market, and a supermarket where they sold different things.” Indonesians gave refugees food according to the size of the families, and fresh water was provided by camp officials.<sup>363</sup>

There were two separate refugee areas, named Galang I and Galang II, the latter offering better life conditions.

Similarly, Bataan Processing Center in the Philippines, was noted to be nicer as for food and accommodations than the Palawan Center. Opened in 1980 and funded by the UNHCR the center gave temporary shelter to nearly 400,000 Indochinese refugees, who came from other First Asylum Countries or directly from Vietnam, under the ODP, and were later resettled in third Countries.<sup>364</sup>

Philippines granted their contribution in relieving congestion in the region following the CPA, when a Regional Resettlement Transit Center (RRTC) was built in 1989.<sup>365</sup>

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March 8, 2016: <http://www.refugeecamps.net/GalangCamp.html>.

<sup>363</sup>Cargill, Mary Terrell and Huynh, Jade Ngoc Quang, *op.cit.*, p. 58.

<sup>364</sup>"Bataan Refugee Camp 1980 – 1995", Refugee Camps, last modified July, 2014, accessed

March 8, 2016: <http://www.refugeecamps.net/BataanCamp.html>.

<sup>365</sup>Robinson, W. Courtland, *op.cit.*, p. 194.

## 7.

### **Resettlement Countries.**

#### **7.1 The United States.**

##### **7.1.1 Legislations and Measures:**

##### **The Indochina Migration and Refugee Act, 1975.**

The United States had been the first Country that gave shelter and resettled 130,000 refugees in 1975, consequently to the conducted evacuation of the city of Saigon, back the day when the communists took the power in the South.

This first wave of refugees was later transferred to transit centers in California, Arkansas, Florida, and Pennsylvania where they would have to stay for up to six months, attending education and cultural programs which were necessary to facilitate their assimilation into the new american society.

On May 23, 1975 President Gerald Ford signed the Indochina Migration and Refugee Act of 1975, with which refugees were granted with special status to enter the Country and, more importantly, it established a domestic resettlement program, which was made possible by large sums of appropriations. Refugees were initially dispersed across the Country, in the attempt to prevent the concentration of resettled Vietnamese in a single geographic area.<sup>366</sup>

Prior to the passage of the Refugee Act, in 1980, most Southeast Asian refugees entered the United States as 'parolees', under a series of parole authorizations granted by the Attorney General according the Immigration and Nationality Act,<sup>367</sup> while permanent resident status was later accorded.

As the official document stated, the bill, ratified in 1977 under the sponsorship of Senator Edward Kennedy,

Provides that authorizations of appropriations for refugee assistance within the United States, such as welfare and related assistance, shall remain available until September 30, 1977, while authorizations for other activities, such as

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<sup>366</sup>“From Refugees To Americans: Thirty Years Of Vietnamese Immigration To The United States”, Immigration Daily, accessed April 1, 2016: <http://www.ilw.com/articles/2006.0313-campi.shtm>.

<sup>367</sup>Rutledge, Paul J., *op.cit.*, p. 37.

transportation of refugees to the United States, would expire on June 30, 1976. This reflects the expectation that, by the end of fiscal year 1976, the refugees will be resettled, but that there will be a continuing need for a period of time for welfare and related assistance.<sup>368</sup>

As emended, the Act authorized \$455 millions for assistance to Vietnamese refugees under the terms of the legislation, except for expenditures to carry out domestic assistance activities which were authorized in 1977.<sup>369</sup> A symbolic feature of the Indochina Migration Act was that it specifically endorsed Federal reimbursement for cash and medical assistance provided to Indochinese refugees with non-Federal shares.

Assistance to Indochinese refugees was provided on the same basis as Aid to Families with Dependent Children<sup>370</sup> for American residents of a State, other than the fact that prerequisites relating to family composition are removed. Refugees eligible for this assistance program are placed within it, and States are reimbursed through the refugee program for the pertaining expenses, which are about 46 percent on a national average, which would be paid by the States in the case refugees are actually migrants.

For refugees not eligible for the regular assistance program, full Federal compensation is provided to States; assistance to such refugees is based on the same income limitations and payment levels as apply in a State's program.

Full Federal funding is similarly provided for medical assistance. For refugees qualified for a State's traditional Medicaid program, the Refugee program reimburses what would normally be the States share of costs, namely about 44 per cent on a national average.<sup>371</sup> For other needy refugees, the program itself repaid the full cost of medical assistance. Eligibility financial criteria were the

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<sup>368</sup>*Indochina Migration and Refugee Act of 1975*, Public Law 94-93, HR 6755, 94<sup>th</sup> Cong., 1<sup>st</sup> sess., Action Memorandum for the President, (May 23, 1975), accessed April 1, 2016, available from: [http://library.uwb.edu/static/usimmigration/1970s\\_indochina.html](http://library.uwb.edu/static/usimmigration/1970s_indochina.html).

<sup>369</sup>“The AFDC (Aid to Families with Dependent Children) is a program administered and funded by Federal and State Governments to provide financial assistance to needy families. In an average State, more than half (55 percent) of the total cost of AFDC payments are funded by the Federal Government. The States provide the balance of these payments, manage the program, and determine who receives benefits and how much they get.” “What is AFDC?”, U:S: Census Bureau, accessed April 1, 2016: <https://www.census.gov/population/socdemo/statbriefs/whatAFDC.html>. The Program was issued in 1935 within the Social Security Act.

<sup>370</sup>Library of Congress, Congressional Research Service, *Review of US Refugee Resettlement Programs and Policies*, by Charlotte J. Moore, SN052070054093, 1980, accessed March 28, 2016, available from: <http://files.eric.ed.gov/fulltext/ED206779.pdf>.

<sup>371</sup>Ibid.

same as those for States' medicaid program.

The Indochinese refugee assistance program also provided funds for special projects in the areas of English language training, employment services, mental health, and others to facilitate the adjustment of the Indochinese refugees resettling under the Indochinese refugee assistance program.<sup>372</sup>

The Act was subsequently extended on a 4 year phaseout basis, until fiscal year 1981 to allow the continuation of the program while pending the enactment of the Refugee Act, which would have repeated the legislation.

Together with this legislation, the United States undertook further actions in the attempt to handle the humanitarian issue. In light of punitive measures which Vietnamese were forced to live with, such as detention in reeducation camps, relocation to NEZs, a second and bigger wave of Boat People began in 1978, until it reached a peak in 1979 when the Vietnamese Government undertook an expulsion program of individuals whose ethnic origins were Chinese. Countries of First Asylum started to receive endless numbers of desperate asylum seekers from Vietnam, reaching an average of 1,500 people per month,<sup>373</sup> and this humanitarian crisis notwithstanding, being overwhelmed and oppressed by the figures coming to their shores, they resorted to expel the Boat People.

Pressured by the international community for its moral and social responsibility, President Jimmy Carter, elected in 1977, responded through legislation and ordered the 7th Fleet to seek out vessels in distress in the South China Sea.<sup>374</sup>

At the same time, in July 1978 he gave approval to a State Department request to allow 15,000 Indochinese refugees to be admitted to the US, by choosing them from the boat cases, which were reported to be 7,121 to whom neighboring Countries had denied entry. Moreover, Washington also agreed to alleviate the burden on Thailand and other Southeast Asian Countries of nearly 80,000 asylum seeker, by admitting them within the Country using the “parole

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<sup>372</sup>Ibid.

<sup>373</sup>Jonathan, H. X. Lee, *Chinese Americans: The History and Culture of a People*, ABC-CLIO, 2005, p. 74.

<sup>374</sup>Ibid.

authority”.<sup>375</sup>

The parole mechanism used in the handling of Indochinese refugees granted them a different treatment.<sup>376</sup>

The Vietnamese who arrived in the United States before 1980 were admitted as parolees. While they could work in the Country, they and their children were ineligible for American citizenship until such time as they could obtain entry as resident aliens. Resident-alien status was conferred to a limited number of individuals yearly, based on their skill levels and occupations.<sup>377</sup>

Both the Ford Administration and the Congress realized that relying on the parole arrangement was not the most effective tool in dealing with US refugee policy. “Accordingly, the Ford Administration agreed not to authorize additional parole programs until legislation establishing new, systematic refugee admission procedures was enacted.”<sup>378</sup> However, Carter decided for the issue of the Indochinese Parole Programs, a plan that would have brought a total of 286,482 refugees enter the United States.<sup>379</sup>

During the First Geneva Conference in June, 1979 President Carter announced that the United States would have doubled the number of Indochinese refugees accepted as part of the international commitment reached to increase significantly the flow of assistances to the dispatched Boat People in Southeast Asian camps. In his announcement concerning this decision, which was made during an economic summit of industrialized nations in Tokyo, Carter recalled the "traditional compassion" of Americans in seeking approval for his decision:

'We are prepared to act with the compassion that has traditionally characterized the United States when confronted with such situations of human crisis,' he said. 'Thousands of human lives are at stake. Accordingly, I have decided to increase admissions of Indochinese refugees in the coming year from 7,000 per

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375Bernard Gwertzman, “President Approves Plan to Admit 15,000 More Indochinese Refugees”, *New York Times*, July 16, 1977.

376Library of Congress, Congressional Research Service, *Review of US Refugee Resettlement Programs and Policies*, by Charlotte J. Moore, SN052070054093, 1980, accessed March 28, 2016, available from: <http://files.eric.ed.gov/fulltext/ED206779.pdf>.

377Kelly, Gail P., *op.cit.*

378Library of Congress, Congressional Research Service, *Review of US Refugee Resettlement Programs and Policies*, by Charlotte J. Moore, SN052070054093, 1980, accessed March 28, 2016, available from: <http://files.eric.ed.gov/fulltext/ED206779.pdf>.

379See chart p. 108.

month to 14,000 per month.<sup>380</sup>

The decision to accept 7,000 refugees per month was dated April the same year, as a further improvement from the previous general monthly quota of 1,450 refugees coming from communist Countries or the Middle East, to the bigger amount that comprehended, this time, only Indochinese refugees.<sup>381</sup>

Following the announcement of the decision made by Washington, other participant States felt themselves prompted to increase their commitment. Japan, for instance, doubled its funding to UNHCR budget from 25 to 50 per cent of the total, and it offered \$6.5 dollars to cover half of the regional processing centers costs.<sup>382</sup> Other participants promised they would significantly augment their economic donations to refugee relief and to permit to more Boat People to enter their Countries.

“From August 1975 to the beginning of January 1979, the United States had contributed nearly \$58 million, or 52 per cent of the total.”<sup>383</sup> With the new commitments, the United States maintained their role as largest contributor in terms of resettlement, bringing 168,000 refugees a year in the Country; Japan, on the other hand, became the most important donor in financial terms.

However,

The total from 1975 to 1980 vastly exceeded the 17,400 slots provided annually for refugees. Presidents Gerald Ford and Jimmy Carter paroled them into the United States, and Congress provided funds for their settlement and allowed them to become refugees.<sup>384</sup>

It was evident, therefore, that U.S. refugee policies created in the aftermath of World War II were inadequate for the immense figure of refugees which the United States were this time obliged to deal with. Prior to that time, equal limitations imposed on immigrants were inflicted to refugees, except for

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<sup>380</sup>Edward Walsh, “US Doubles Quota of Asian Refugees”, *The Washington Post*, June 29, 1979.

<sup>381</sup>King, C. Chen, *China's War with Vietnam: Issues, Decisions and implications*, Hoover Press, 1987, p. 119.

<sup>382</sup>Robinson, W. Courtland, *op.cit.*, p. 54.

<sup>383</sup>Ibid.

<sup>384</sup>“Refugee Policies - Refugees and the cold war”, Encyclopedia of the New American Nation, accessed April 1, 2016: [www.americanforeignrelations.com/O-W/Refugee-Policies-Refugees-and-the-cold-war.html](http://www.americanforeignrelations.com/O-W/Refugee-Policies-Refugees-and-the-cold-war.html).

religious or political escapees who were slightly facilitated.<sup>385</sup>

The reason lied in the fact that, although it is one of the original signatories of the 1948 Universal Declaration of Human Rights, the first modern international agreement on asylum, as well as the 1951 United Nations Convention Relating to the Status of Refugees,

The U.S. Government had only addressed refugee issues through *ad hoc* legislation. The Immigration and Nationality Act (INA) of 1952 contained no provisions expressly covering the resettlement of refugees. It wasn't until 1965 that Congress amended the INA to provide for the resettlement of refugees as a new category of 'conditional entrants,' defining 'refugee' only in terms of geography (from the Middle East) and political regime (from communist Countries). Conditional entrants were capped at 17,400 annually. In 1968, the United States acceded to the 1967 United Nations Protocol Relating to the Status of Refugees, but continued to use its own definition of 'refugee.' Finally, in June 1980 U.S. law was brought into compliance with the international definition of 'refugee'.<sup>386</sup>

The Immigration and Nationality Act (INA) of 1965 marked a dramatic change in American immigration policy, abandoning the concept of national quotas, core assumption of the Immigration Act of 1924, which established a quota system for determining how many immigrants could enter the United States, restricted by Country of origin, that had been in place since 1921, when the Emergency Quota Act was established.<sup>387</sup> The latter, also known as Emergency Immigration Act, had been the first federal law in U.S. history to counter the immigration of Europeans, reflecting the growing American concern that people from southern and eastern Europe might have threatened the society with their presence. The law ratified that "no more than 3 percent of the total number of immigrants from any specific Country already living in the United States in 1910

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<sup>385</sup>Library of Congress, Congressional Research Service, *Review of US Refugee Resettlement Programs and Policies*, by Charlotte J. Moore, SN052070054093, 1980, accessed March 28, 2016, available from: <http://files.eric.ed.gov/fulltext/ED206779.pdf>.

<sup>386</sup>Alicia Campi, "From Refugees To Americans: Thirty Years Of Vietnamese Immigration To The United States", *Immigration Daily*, accessed February 22, 2016: <http://www.ilw.com/articles/2006.0313-campi.shtm>.

<sup>387</sup>Library of Congress, Congressional Research Service, *Review of US Refugee Resettlement Programs and Policies*, by Charlotte J. Moore, SN052070054093, 1980, accessed March 28, 2016, available from: <http://files.eric.ed.gov/fulltext/ED206779.pdf>.

could migrate to America during any year.”<sup>388</sup>

With President John F. Kennedy’s election in fall 1960, Government immigration policy began to change. As a matter of fact, Kennedy believed that immigrants were valuable to the Country and, before his assassination in 1963, he recommended that the quota system would be eliminated within five years. The Johnson's administration, following his victory in 1964, worked to remedy the national origins quota system points of weakness.

The major provisions of the Immigration and Nationality Act included:

1. Replacing national origins quotas with hemispheric caps of 170,000 from the Eastern Hemisphere and 120,000 from the Western Hemisphere, and
2. Establishing a new scale of preferences.<sup>389</sup>

The INA proved to be effective in bringing highly skilled professional and medical people to the United States. At the same time, however, it proved to be ineffective in countering the global number of immigrants. Refugees, for instance, made overall immigration numbers larger than those permitted under the act.<sup>390</sup>

## **The Refugee Act, 1980**

In 1980, then, Congress, in cooperation with the Carter Administration, passed a new law, dated March 17, to establish by statute a permanent US refugee policy, and to end a longstanding *ad hoc* approach that had regulated refugee admissions so far: the Refugee Act.<sup>391</sup>

It was designed to bring US legislation into compliance with international instruments, particularly the 1967 United Nations Protocol, to which the United States had acceded in 1968, since there were some provisions that shared similarities with the INA.<sup>392</sup>

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<sup>388</sup>*Immigration Act of 1921*, Public Law 67-5, HR 4075, 76<sup>th</sup> Cong., Sess. I, May 19, 1921, accessed April 2, 2016, available from: <http://library.uwb.edu/static/usimmigration/42%20stat%205.pdf>.

<sup>389</sup>Ibid.

<sup>390</sup>Ibid.

<sup>391</sup>Library of Congress, Congressional Research Service, *Review of US Refugee Resettlement Programs and Policies*, by Charlotte J. Moore, SN052070054093, 1980, accessed March 28, 2016, available from: <http://files.eric.ed.gov/fulltext/ED206779.pdf>.

<sup>392</sup>Namely Art.1 “The term "refugee" shall apply to any person who [...] owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular

In fact, during the brief consideration of the Protocol, the Administration and Congressional Committees made it clear that accession to the Protocol was to make no change in existing U.S. policy or rights granted to aliens in U.S. Legislation.<sup>393</sup>

The Act adopted the broader UN definition of a refugee. Being a special category of immigrants, refugees were exempted from the immigrant preference system, and were not subjected to regular immigration quotas. By establishing the legal basis through which individuals can achieve refugee or asylum status, the Act had extended the nation's reception law to refugees and asylum-seekers worldwide, thus signaling a central re-thinking of the way the United States had implemented its traditional pledge to principles of international human rights and refugee relief.

Title I of the Refugee Act of 1980 cited the Congress declaration:

It is the historic policy of the United States to respond to urgent needs of persons subject to persecution in their homelands, including, where appropriate, humanitarian assistance for their care and maintenance in asylum areas, efforts to promote opportunities for resettlement or voluntary repatriation, aid for necessary transportation and processing, admission to this Country of refugees for special humanitarian concern to the United States, and transitional assistance to refugees in the United States. The Congress further declares that it is the policy of the United States to encourage all nations to provide assistance and resettlement opportunities to refugees to the fullest extent possible.<sup>394</sup>

Moreover, Title I, section b stated the objectives of the Act, namely

to provide a permanent and systematic procedure for the admission to this Country of refugees of special humanitarian concern to the United States, and to

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social group or political opinion [...] and Section 243(h) of the INA, which "is amended by striking out "physical persecution" and inserting in lieu thereof "persecution on account of race, religion, or political opinion". Roger J. LeMaster, Barnaby Zall, *Compassion Fatigue: The Expansion of Refugee Admissions to the United States*, B.C. Int'l & Comp. L. Rev., Vol.6, 1983.

<sup>393</sup>Ibid.

<sup>394</sup>*The Refugee Act of 1980*, Public Law 96-212, 96<sup>th</sup> Cong., 1980, accessed April 3, 2016, available from: <https://www.gpo.gov/fdsys/pkg/STATUTE-94/pdf/STATUTE-94-Pg102.pdf>.

provide comprehensive and uniform provisions for the effective resettlement and absorption of those refugees who are admitted.<sup>395</sup>

Among the functions, the Act increased the annual “normal flow” of refugees to 50,000 for fiscal years 1980, and by establishing as well as funding assistance programs, it provided for effective resettlement. This procedure for admitting refugees, therefore, brought 50,000 new refugee applicants to be admitted; moreover, the Act presented a further new method called “consultation process”, which authorized the President to exceed such admission level if,

[the President] before the beginning of the fiscal year and after appropriate consultation, that admission of a specific number of refugees in excess of such number is justified by humanitarian concerns or is otherwise in the national interest.<sup>396</sup>

The Act also established an Office of Refugee Resettlement (ORR) within the Department of Health and Human Services, which had primary responsibility for the domestic refugee assistance program. It served as a “clearing house”<sup>397</sup>, for refugees data, but its main function was to fund and conduct, directly or through arrangements with other Federal agencies, “in consultation with and under the general policy guidance of the United States Coordinator for Refugee Affairs, programs of the Federal Government.”<sup>398</sup>

The Act made clear that the role of the Governments has to be central in the resettlement effort. In order to receive federal refugee funds, a State must have a plan approved federally to provide assistance and services to refugees.

The emphasis on the central role of the State meant a deemphasis on the direct relationship between the federal Government and specific localities that characterized the early years of the Indochinese program.<sup>399</sup>

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395Ibid.

396Ibid.

397Rutledge, Paul J., *op.cit.*, p. 38.

398Library of Congress, Congressional Research Service, *Review of US Refugee Resettlement Programs and Policies*, by Charlotte J. Moore, SNO52070054093, 1980, accessed March 28, 2016, available from: <http://files.eric.ed.gov/fulltext/ED206779.pdf>.

399David, W. Haines, *Refugees in America in the 1990s: A Reference Handbook*, Greenwood Publishing Group, 1996, p.17.

## Southeast Asian refugee Arrivals in the United States

Resettled under Special Parole Program (1975)	129,792
Resettled under Humanitarian Parole Program (1975)	602
Resettled under Expanded Parole Program (1976)	11,000
Resettled under “Boat Cases” Program (1977)	1,883
Resettled under Indochinese Parole Programs:	
August 1, 1977-September 30, 1977	680
October 1, 1977- September 30, 1977	20,397
October 1, 1978- September 30, 1979	80,678
October 1, 1979- September 30, 1980	166,727
Resettled under Refugee Act of 1980:	
October 1, 1980- September 30, 1981	132,454
October 1, 1981- September 30, 1982	72,155
October 1, 1982- September 30, 1983	39,167
October 1, 1983- September 30, 1984	52,000
October 1, 1984- September 30, 1985	49,853
October 1, 1985- September 30, 1986	45,391
October 1, 1986- September 30, 1987	40,164
October 1, 1987- September 30, 1988	35,083
October 1, 1988- September 30, 1989.	37,066
<b>TOTAL</b>	<b>915,092</b>

Source: Office of Refugee Resettlement.<sup>400</sup>

### 7.1.2 Resettlement procedures

The US procedures in processing refugees will provide an idea of what roughly all the Indochinese refugees had faced from 1979 to 1982: “case documentation, interviews, medical examination, re-interviews, travel preparations and departure.”<sup>401</sup>

1. Refugee Screening through interviews in the camps.

<sup>400</sup>The chart is reported in Rutledge, Paul J., *op.cit.*, p. 37.

The two parole programs authorized in 1975, one for additional Vietnamese and Cambodians refugees and one to assist allies of the United States from Laos. In May, 1976 a major parole program was issued to accommodate 11,00 refugees, primarily individuals with relatives already in the Country, or former workers for the Unites States. Library of Congress, Congressional Research Service, *Review of US Refugee Resettlement Programs and Policies*, by Charlotte J. Moore, SN052070054093, 1980, accessed March 28, 2016, available from: <http://files.eric.ed.gov/fulltext/ED206779.pdf>.

<sup>401</sup>Robinson, W. Courtland, *op.cit.*, p. 128.

These were conducted by Joint Voluntary Agencies (JVA), staff members who were working for the Department of State. The objective of these interviews was to collect biographical information, information about relatives in the USA, as well as language capabilities, education and work experiences.

2. Verification of the information provided by the applicants.

This phase involved various organizations to verify effective relationship with residents within the USA, or former employment with the American Government.

3. Determination of refugees being admissible or not.

The decision whether to approve or to reject an application was INS (Immigration and Naturalization Services) officers's, after having conducted personal interviews. Among the reasons for which a request could have been denied were for refugees found to be communists, criminals, mentally retarded, or suffering from dangerous or contagious disease.

4. Further interview.

This time, examinations were for those whose request had been approved, and they were necessary for *Volags* to determine where to locate the refugees and eventually confirm sponsors.

5. Medical examination.

One the sponsor had been confirmed, refugees received medical checkup. These were necessary to identify refugees with medical conditions that could have excluded them from being resettled, for instance mental disorders or contagious diseases. In case one applicant was found to have such issues, the family had to choose whether to remain in the camp with the concerned person, or to be resettlement anyway. "Thus, to resettle 1,000 refugees, 1,400 had to be medically processed."<sup>402</sup>

6. Departure.

Refugees eventually left the camps, after that transportation had been arranged.

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<sup>402</sup>Robinson, W. Courtland, *op.cit.*, p. 129.

## **Assistance to Refugees resettling in the US: Social Integration and Adaptation**

The involvement of *Volags*, private non-profit voluntary agencies, had been a core feature in the refugee resettlement operations conducted in the United States, especially following World War II. Their traditional role in the US relocation program had been to arrange US sponsorship for refugees while they are still overseas, and at their destination,

to provide for their reception; for initial food, clothing, and shelter; for the referral of adults to English-language training and to jobs or employment services; and for a variety of other services important to early functioning in a new environment, such as enrolling children in school.<sup>403</sup>

During the Indochinese Refugee Program, the work of the voluntary agencies was regarded as crucial to achieve successful refugee resettlement. *Volags* activities were even more essentials in the resettlement of those who were not eligible for the benefits of the major Federal refugee program for Indochinese.<sup>404</sup> Some voluntary agencies have even developed special programs for particular categories of refugees, for instance children who are unaccompanied by an adult, or refugees with particular work skills.

For a significant period they had been unassisted by the Federal Government, in fact, *Volags* had managed internal domestic refugee reception primarily with their own resources; however, when the Indochinese exodus begun in 1975, the Department of State arranged the reception and placement expenses for each refugee resettled to be covered, offering \$500 per person.<sup>405</sup>

The task of the agencies was to provide counseling at the reception centers and to arrange refugees' sponsorship. Orientation to American customs and to the new community is one of the elementary responsibilities of the local sponsor, who could have been a group of other agencies, a family or an individual, even

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<sup>403</sup>David, W. Haines, *Refugees in America in the 1990s: A Reference Handbook*, Greenwood Publishing Group, 1996, p.17.

<sup>404</sup>Library of Congress, Congressional Research Service, *Review of US Refugee Resettlement Programs and Policies*, by Charlotte J. Moore, SN052070054093, 1980, accessed March 28, 2016, available from: <http://files.eric.ed.gov/fulltext/ED206779.pdf>.

<sup>405</sup>Library of Congress, Congressional Research Service, *Review of US Refugee Resettlement Programs and Policies*, by Charlotte J. Moore, SN052070054093, 1980, accessed March 28, 2016, available from: <http://files.eric.ed.gov/fulltext/ED206779.pdf>.

though, generally, groups worked better.

The range of benefits offered to refugees varies from one agency to another, as well as from case to case within the same agency. Generally, services provided to refugees immediately upon their arrival normally included transportation, housing, some degree of financial assistance, medical and dental care. English language training is of leading importance, as it would have helped the refugee in the search for employment. Sponsorship occasionally included job opportunities, however, most of the time the voluntary agencies have helped the refugees through employment counseling, job development, or job training activities. Other services arranged by *Volags* included education counseling, mental health services, immigration counseling and help with family reunification difficulties.<sup>406</sup>

*Volags* had several linkage in conducting their operations, for instance the connection with religious groups was extremely close. The ORR cooperated with voluntary agencies in the assistance of refugees, making available sufficient resources for employment training and placement, in order to achieve economic self-sufficiency among refugees as quickly as possible. On the other hand, overseas, *Volags* cooperated with the Department of State to identify those who were eligible for resettlement within the Country, or to assist the refugees in meeting requirements necessary for immigration.

## 7.2 France.

When France relinquished colonial rule over Indochina in 1954 after a six-year war, it was thought that the emergence of the independent States of Vietnam, Laos and Cambodia would mark the end of French involvement. But 24 years and another - this time American- war later, France finds itself involved again, as host to a steady flow of Indochinese refugees.<sup>407</sup>

France committed herself in granting the right of asylum and formal status of refugees according to the 1951 Geneva Conference, and subsequent 1967 New York Protocol, rights that had been assured by the *Office Français de Protection*

<sup>406</sup>Ibid.

<sup>407</sup>Andreas Freund, "Refugees are Bienvenues in France", *The Spokesman Review*, January 14, 1979, accessed April 6, 2016, available from: <https://news.google.com/newspapers?nid=1314&dat=19790114&id=ezxOAAAAIBAJ&sjid=9e0DAAAAIBAJ&pg=7348.6149034&hl=it>.

*des Réfugiés et Apatrides* (OFPRA) operations.

When it was the moment for Vietnamese refugees to indicate the Country where they would have preferred to move for resettlement, they did not privileged France, but the United States. It is said that 91 per cent of the refugees in the camps, pending for departure in a new Country, expressed their hopes for being sent to the US, while France had been chosen by only 1.5 per cent of the refugees,<sup>408</sup> and it is very likely that it was because they were Vietnamese with relatives in the Country who could have sponsored them. A further reason could have been an easier employment, due to a diploma which was considered equivalent in France.

It is complicated to evaluate the real numbers of Vietnamese living in France, for, over the years, they have acquired French citizenship and thus disappeared from immigration statistics, fading within French population. Moreover, many were the Vietnamese who, back to Chinese expulsion from Vietnam, purchased false identity in order to escape from the Communist Government.

However, it has been evaluated that during the first wave of Boat People, refugees' figure coming from Vietnam accounted for more than 5,000 persons; while in the second one, Boat People arriving in France had more than doubled, reaching nearly 15,000, with almost 7,000 persons in 1979 only.<sup>409</sup> A sharp drop had been registered for the 1990s, when 3 736 Indochinese refugees arrived in France, with 3,000 being of Vietnamese origins.<sup>410</sup> The main reason is that, following the 1989 Geneva Conference, restrictive policies for reception were issued, for which Indochinese refugees had to undergo to screening processes following their arrival in neighboring Countries. To less than 8 per cent of escapees it had been conferred refugee status, while the others were all labelled as “illegal immigrants” and were thus left in the camps, waiting for repatriation.

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408“Quand la France ouvrait ses bras a 120,000 réfugiées sauvés en mer”, L'obs avec Rue 89, accessed April 10, 2016: <http://rue89.nouvelobs.com/2015/04/24/quand-france-ouvrait-les-bras-a-120-000-refugies-sauves-mer-258841>.

409Statistics are taken from France Terre d'Asile. “La Diaspora Vietnamiennne en France, Un Cas Particulier: La Region Parisienne”, Eglises d'Asie, accessed April 6, 2016: <http://eglasie.mepasie.org/divers-horizons/1995-10-16-la-diaspora-vietnamiennne-en-france-un-cas>.

410Ibid.

### 7.2.1 Initial Reception: the Role of *France Terre d'Asile*.

Reception of Vietnamese Boat People was immediate, since “French feel they have a special duty toward the outcast of their former colony [...]. Moreover France shares with the United States a time-honoured reputation as haven for the persecuted.”<sup>411</sup> In receiving immigrants, Paris gave preferences to Francophones, Vietnamese with relatives in France (nearly 60,000 were the Vietnamese who had arrived before 1975), and people who, having served in French colonial administration, had sort of a merit.

Starting in 1975 until 1995, France accepted more than 45,000 refugees from Vietnam.<sup>412</sup>

From the very beginning, it was decided that 1,000 Vietnamese refugee would be allowed to resettle in the Country, monthly, in response to the large amount of migrants escaping Vietnam in the late 1970s, considering the diaspora an American problem notwithstanding.

The anticommunism feelings typical of the right party, and the left-wing wrong awareness in supporting liberation movements that became oppressor toward their own population, permitted the consensus to be reached in starting this fundamental humanitarian cause.<sup>413</sup>

The purpose was the first responsibility of a private organization called *France Terre d'Asile*.

Funded in December 1970, the principal aim of this association is to maintain and develop one of the oldest French traditions, that is the right of asylum, in addition to the application of all the international conventions issued accordingly.<sup>414</sup> However, there were other structures that joined *France Terre d'Asile* in the establishment of a plan for reception, namely the Cimade, the Comité national d'entraide (national entry committee), the French Red Cross,

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411 Bruce, Grant, *The boat people, An 'age' investigation*, Penguin Books, 1980, p. 170.

412 See Appendix 2 based on UNHCR sources in Robinson, W. Courtland, *op.cit.*

413 “Quand la France ouvrait ses bras a 120,000 réfugiés sauvés en mer”, L'obs avec Rue 89, accessed April 10, 2016: <http://rue89.nouvelobs.com/2015/04/24/quand-france-ouvrait-les-bras-a-120-000-refugies-sauves-mer-258841>.

414 “Presentation de France Terre d'Asile”, France Terre d'Asile, accessed April 10, 2016: <http://www.france-terre-asile.org/objet-social/france-terre-d-asile/presentation/objet-social>.

the Secours catholique and the SSAE.<sup>415</sup> They co-worked in the welcoming of the refugees arriving in France, sharing duties and tasks. *France Terre d'Asile*, for instance, was responsible for the two Transit Centers, pending the opening of the *Centres Provisoires d'Hébergement* (temporary centers for shelter), called CPH. *France Terre d'Asile* not only managed the arrival and the reception of the refugees from Southeast Asia operating within the transit centers, but also controlled the process of integration.<sup>416</sup>

Two were the Transit Centers organized in the Paris area, one in Créteil, a southern suburb of Paris, whose first objective was to handle refugees' arrivals. Consequently, refugees were to undergo through medical examinations and social assistances, prior to their resettlement. These two centers were on the responsibility of a private nonprofit organization called “National French Committee of Franco-Cambodian, Franco-Laotian and Franco-Vietnamese Mutual Aid”, which was an annex of the French Labor Ministry and whose representatives were volunteers from various Government departments.<sup>417</sup>

The amount of Southeast asian refugees welcomed in France from 1975 until February, 1980 amounted to 63,056,<sup>418</sup> therefore demonstrating the important role in coordinating displaced persons held by the institution *France Terre d'Asile*, while mediating with the French Government in the creation of the *Dispositif National d'Accueil* (National Plan for Reception), the DNA.

According to Père Parais, a Catholic missionary who served in Vietnam and then joined the institution, the task of the organization was to

Run the reception centers (*centre d'accueil*). Normally, people would spend about 6 month in the reception centers. In Limoges, it could hold more than 300 people that was the largest in the Country and almost a regional center. The

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415“1971-1980 : La mise en place de l'action de France Terre d'Asile et du dispositif national d'accueil”, *France Terre d'Asile*, accessed April 10, 2016: <http://www.france-terre-asile.org/1971-1980/france-terre-d-asile/histoire/1971-1980>.

416Ibid.

417Andreas Freund, “Refugees are Bienvenues in France”, *The Spokesman Review*, January 14, 1979, accessed April 6, 2016, available from: <https://news.google.com/newspapers?nid=1314&dat=19790114&id=ezxOAAAAIBAJ&sjid=9e0DAAAAIBAJ&pg=7348.6149034&hl=it>.

According to the testimony given by Père Parais, in Robinson, others could have been the organizations working within and for *Terre d'Asile*, thus explaining why the two centers above mentioned were managed by the work of the National French Committee of Franco-Cambodian, Franco-Laotian and Franco-Vietnamese Mutual Aid. Robinson, *op.cit.*, p. 144.

418“1971-1980 : La mise en place de l'action de France Terre d'Asile et du dispositif national d'accueil”, *France Terre d'Asile*, accessed April 10, 2016: <http://www.france-terre-asile.org/1971-1980/france-terre-d-asile/histoire/1971-1980>.

smallest held 20 people. The main function of the reception center was board and lodging as well as medical follow-up and French lessons. Later, integration lessons were added. Cimade (*le Service Ecumenique d'Entraide*) gave each refugee 120 hours of French lessons. After a while, we called in other organizations to do technical training. In some centers, refugees got a total of 520 hours of training. Whichever organization was running the reception center under the auspices of *France Terre d'Asile*, would also have the responsibility of finding housing outside during 1975-82 this was easier but it became harder later on.<sup>419</sup>

Although the agreement was for 1,000 refugees per month, for the majority of year 1978 the refugees quota had exceeded by an average of 200 a month, aiming to accommodate the growing figures of Boat People. Consequently to the *Hai Hong* incident only, for instance, 232 Vietnamese were flown to Paris.<sup>420</sup>

By the eve of the International Geneva Conference in June, 1979, France had resettled over 50,000 Indochinese, a third of which were people coming from Vietnam, preceded only by the United States. However, during the conference, Paris committed for only 5,000 additional refugees, while worldwide figures ran to several hundred thousand. This was a consequence of the high unemployment rate France was registering in those years, for which the Government had previously declared it would have diminished the total foreign population “by one million, before 1985. [...] It was estimated that, by the end of the year (1979, ed) France will have an Indochinese immigrant population of 61,000.”<sup>421</sup>

This decision was followed by comments expressing dissatisfaction, even within France itself. Prime Minister Pierre Mendes-France stated:

Five thousand people is nothing. It even falls well short of the total offered by individuals and mayors. The least the Government could have done was offer the local authorities the number of refugees they had declared themselves ready to accept. If Valéry Giscard d'Estaing had announced 'France accepts 50,000

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419W. Courtland Robinson interview with Père Parais, Paris, February 27, 1996 in Robinson, W. Courtland, *op.cit.*, p. 144.

420Andreas Freund, “Refugees are Bienvenues in France”, *The Spokesman Review*, January 14, 1979, accessed April 6, 2016, available from: <https://news.google.com/newspapers?nid=1314&dat=19790114&id=ezxOAAAIBA.J&sjid=9e0DAAAIBA.J&pg=7348,6149034&hl=it>.

421Grant, Bruce, *op.cit.*, p. 170.

refugees', he would have given our Country an enormous moral advantage over its allies and, what is more important, might have compelled them to make similar efforts.<sup>422</sup>

Moreover, what France requested at the Conference was for Hanoi to impose a moratorium on the departure of refugees, in addition to the establishment of camps to control the exodus, aiming to reduce the massive numbers of people gathering at the reception centers in the host Countries. A further critique arose, this time concerning the moratorium, which was criticized as a “moral and juridical scandal.”<sup>423</sup> This was because, for the first time, a Country had been encouraged to limit the right of freedom of movement to its citizens, incentive which came by the international organization of the UN.

In five years, more than 22,300 Vietnamese applied for refugee status in France, among them nearly 19,500 came from refugee camps in Southeast Countries.<sup>424</sup>

### **A Boat for Vietnam, the *Île de Lumière*.**

Following the *Hai Hong* incident in November, 1978, to mobilize the population in favor of the Vietnamese Boat People, a committee was created in the following June under the slogan “*Un Bateau pour le Vietnam*” (A Boat for Vietnam).

Among the initiators of the project there was Bernard Kouchner, co-founder of *Médecins Sans Frontières* (MSF), in a politically heterogeneous configuration of intellectuals, who all became members of the committee, including philosophers like André Glucksmann, Jean Paul Sartre and Raymond Aron. Since the latter two personalities had had political divergencies and had been opposing each other for the last 30 years, by being in the same room and by agreeing on the same cause they demonstrated and stressed the urgency of the topic, which requested for a united France.

Officially launched on November 22, 1978, the campaign aimed to raise money in order to purchase a boat that would rescue Vietnamese refugees escaping

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422Ibid.

423Oliver Todd, L'Express in Grant, Bruce, *op.cit.*, p. 171.

424“La Diaspora Vietnamiennne en France, Un Cas Particulier: La Region Parisienne”, Eglises d'Asie, accessed April 6, 2016: <http://eglasie.mepasie.org/divers-horizons/1995-10-16-la-diaspora-vietnamiennne-en-france-un-cas>.

Vietnam directly from the China Sea, and to provide them shelter in a Country which had agreed to host them.<sup>425</sup>

Therefore, the hospital ship *Île de Lumière* was arranged, rented from Michel Cordier, french director of the caledonian Cargo Company who, being married a Vietnamese lady, was particular sensitive to the issue. Captained by François Herbelin the boat set sail in April, 1979 with a team of doctors and nurses on board.

As a first part of its mission, it anchored off the island of Palau Bidong, Malaysia, to offer essential medical treatments to more than 20,000 thousand Vietnamese Boat People who were living in the overpopulated camp.<sup>426</sup> Following the Malaysian Government announcement that it would start pushing refugees boats back to sea, Paris guaranteed safe haven in France to all those who would have been saved by the *Île de Lumière*.<sup>427</sup>

A second phase of the mission saw the *Île de Lumière* patrolling the Chinese Sea in order to give help to the rickety boats overcrowded with Vietnamese escapees. According to the captain of the boat, concerning this operation,

The French Government gave the authorization to return to Singapore with 800 refugees, were they would have waited for a visa. They were collected in only 4 days. They had to handle that amount of people in a 90 meter-long boat. Some Vietnamese volunteered to help them, since they were older and could speak French.<sup>428</sup>

On June 20, 1979 a press conference was held with French President Valéry Giscard d'Estaing at *l'Élysée* to discuss the issue. During this historic moment presented by the “Boat” Committee, by appealing to the moral duty of human beings, Jean Paul Sartre asked for French aid towards Indochinese refugees, especially Vietnamese Boat People: “It is a humane issue, which is consequently

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425David, Drake, *Intellectuals and Politics in Post War France*, Palgrave Macmillan, 2001, p. 153.

426“Grâce à l’« Île de Lumière », des milliers de Vietnamiens ont reconstruit leur vie”, La Croix, accessed April 15, 2016: <http://www.la-croix.com/Actualite/Monde/Grace-a-l-Ile-de-Lumiere-des-milliers-de-Vietnamiens-ont-reconstruit-leur-vie-2013-08-08-996240>.

427“Isle of Light: A Look Back at the Boat People and the European Left”, World Affairs, accessed April 15, 2016: <http://www.worldaffairsjournal.org/article/isle-light-look-back-boat-people-and-european-left>.

428“Grâce à l’« Île de Lumière », des milliers de Vietnamiens ont reconstruit leur vie”, La Croix, accessed April 15, 2016: <http://www.la-croix.com/Actualite/Monde/Grace-a-l-Ile-de-Lumiere-des-milliers-de-Vietnamiens-ont-reconstruit-leur-vie-2013-08-08-996240>.

a moral issue.”<sup>429</sup>

According to Kouchner, “*Un Bateau pour le Vietnam* Committee was primarily a revolt against the indifference and the conventions [*bienséances*] of politics, and was a prosper humanitarianism”.<sup>430</sup> As a matter of fact, the plight of Vietnamese Boat People gained popularity in Europe following the appeal Sartre made on the 20<sup>th</sup> of June, shaking State's awakening that thus, began to react.<sup>431</sup>

### **7.2.2. Resettlement Procedures.**

#### **Integration.**

The Vietnamese experience in France was a successful case of integration rather than assimilation, which would have meant that their identity would have been absorbed and thus erased. During their mandate as Prime Minister, both Jacques Chirac and Raymond Barre, from 1974 to 1976, and from 1976 to 1981 namely, had developed integration policies for Vietnamese refugees who wanted to resettle in France; moreover, President Giscard d’Estaing as well, had driven his policy aiming to facilitate and accelerate refugee reception procedures and their naturalization, which required years, normally, to be effective.<sup>432</sup>

The arrival of the refugees from Indochina had been the occasion to institutionalize new measures to deal with such issues, generating an innovative mechanism which had been the result of the cooperation between the Government, responsible for their security, and several associations entitled with refugees reception. In the past 5 years, France had experienced a period characterized by anti-immigration policies; a halt in labor migrants was issued in July, 1974, consequently to the economic recession that was troubling the Country, although the number of illegal foreigners did not diminished in the years that followed.

Following the fall of Saigon in 1975, however, French Government decided for the granting of asylum.

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429Original text: “C’est un affaire du point de vue humaine, c’est a dire du point de vue moral”.  
Press conference of the committee A Boat for Vietnam, interview to Jean Paul Sarte.  
<http://www.ina.fr/video/CAA7900725001>

430Drake, D., *op.cit.*, p. 153.

431“Rapporto sulla protezione internazionale in Italia”, Anci, Caritas Italiana, Cittalia, Fondazione Migrantes, Sprar, in collaborazione con UNHCR, Roma, 2014.

432“La communauté vietnamienne de France, De l’immigration intégration à la citoyenneté”, Vietnam mon Pays natal, accessed April 15, 2016:  
<http://www.vietnammonpaysnatal.fr/net/communautevnfrance.pdf>.

Generally, France only accepts refugees for resettlement on the basis of the above mentioned Conventions, and does not carry out resettlement selections, which are a matter of the UNHCR. Once resettled, refugees are granted a six-month temporary permit, as well as the right to work, and they obtain further related social benefits. They are required to officially present an asylum claim with the OFPRA, by filling an application form, assisted by a social public servant. The totality of the claims are then examined, and refugee status is normally assured within 2-6 months from the application. In case the procedure is not completed in the established time, the temporary permit can be renewed.

The first phase of reception process for Vietnamese provided for a period of permanence in one of the transit centers in Paris, where refugees without kin were sent. These shelters, as said, were manned by private humanitarian organizations, funded by the Government with \$15 a day per person.<sup>433</sup>

Vietnamese minority who had established in the Paris region, made their decision according to professional necessities: in the 13<sup>th</sup> arrondissement many Asian migrants had developed in the Asian food service, thus Vietnamese moved in that area, in the attempt to enter the society easily and fast.

However, the general rule wanted by the Government was to distribute Vietnamese refugees all over the Country, trying to avoid the creation of local ghettos.

With the Vietnamese Boat People massive arrival in France, around one hundred were the associations that had been established, and some of them are still operating. In some occasions, their rise had had a specific objective, especially in political terms, and therefore they had recruited supporters according to common positions and opinions. On the other hand, further groups had been founded with the aim to give their support in social and humanitarian terms. By promoting movements and actions to help Vietnamese Boat People, sometimes starting in the refugee camps of the Southeast Countries of First Asylum.

Numerous were the students associations as well, especially those composed by students and scholars of Vietnamese origins. Two antagonist organization had been the most important of this kind, playing a fundamental role in the issue:

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<sup>433</sup>Andreas Freund, "Refugees are Bienvenues in France", *The Spokesman Review*, January 14, 1979, accessed April 6, 2016, available from: <https://news.google.com/newspapers?nid=1314&dat=19790114&id=ezxOAAAAIBAJ&sjid=9e0DAAAAIBAJ&pg=7348,6149034&hl=it>.

*l'Union Générale des Vietnamiens en France*, (General Union of Vietnamese in France), UGVF, and *l'Association Générale des Étudiants Vietnamiens en France* (General Association of Vietnamese Students in France), AGEVF.<sup>434</sup>

## **Employment.**

After three months spent in the receiving centers, refugees would have been allowed to find a job, assisted by center personnel. The condition for the receiving of the temporary and renewable working permit were different, in this instance. Asylum seekers are not allowed to obtain the working permit until they receive the title of political refugees; on the contrary, refugees can work from the very beginning. Moreover, while migrants can receive their permanent permit consequently to one year of work, as the a general rule states, if they were Southeast Asian they would have received it after only three months.<sup>435</sup>

“According to the Government, 95 per cent found employment within five months, most of them in industry. [...] Others work in hotels, as tailors or as vegetable vendors in open markets. A tremendous boom in the popularity of Vietnamese cuisine has led to opening of several thousand restaurants in the Paris area alone.”<sup>436</sup>

As for professional categories, a great number of individuals who had practiced medical professions in Vietnam demanded to be resettled in France, and one of the reasons laying behind is that the professional conversion is almost immediate.<sup>437</sup>

Among European Countries, France was the one that received the biggest

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434“La Diaspora Vietnamienne en France, Un Cas Particulier: La Region Parisienne”, Eglises d'Asie, Eglises d'Asie, accessed April 6, 2016: <http://eglisie.mepasie.org/divers-horizons/1995-10-16-la-diaspora-vietnamienne-en-france-un-cas>.

435“Quand la France ouvrait ses bras a 120,000 réfugiées sauvés en mer”, L'obs avec Rue 89, accessed April 10, 2016: <http://rue89.nouvelobs.com/2015/04/24/quand-france-ouvrait-les-bras-a-120-000-refugies-sauves-mer-258841>.

436Andreas Freund, “Refugees are Bienvenues in France”, *The Spokesman Review*, January 14, 1979, accessed April 6, 2016, available from: <https://news.google.com/newspapers?nid=1314&dat=19790114&id=ezxOAAAAIIBAJ&sjid=9e0DAAAAIIBAJ&pg=7348,6149034&hl=it>.

437“La Diaspora Vietnamienne en France, Un Cas Particulier: La Region Parisienne”, Eglises d'Asie, Eglises d'Asie, accessed April 6, 2016: <http://eglisie.mepasie.org/divers-horizons/1995-10-16-la-diaspora-vietnamienne-en-france-un-cas>.

number: 80 per cent of doctors and 88 per cent of pharmacists, while Germany and other liberal Countries had only 20 and 12 per cent. Several reasons explain this large concentration in France. Doctors, pharmacists and dentists, as the majority of intellectuals from South Vietnam are interested in the French culture and civilization. Nearly everyone could speak French, a skill that allowed them to immediately integrate themselves in the new environment. For this category of Vietnamese, those who practiced medical and paramedical professions, the occupation conversion obstacle have never occurred.<sup>438</sup>

The majority of Vietnamese people coming to France had to accept the first job opportunity it was presented to them; being former teachers, professors or officers, these category of Vietnamese got an employment as night watchmen, security agents, couriers in french enterprises, as well as waiters, dishwasher or kitchen assistants in Asian restaurants. However, their social upward mobility was a likely possibility, since they usually attended evening classes and internship, they managed to become accounting assistants, computer technicians.

### **7.3 Italian Involvement.**

#### **7.3.1. Legal Context.**

Italy ratified the 1951 Geneva Convention on July 24, 1954 with Italian Law n. 722 called *Ratifica ed esecuzione della Convenzione relativa allo statuto dei rifugiati*; however setting the “geographic reservation”, meaning that foreigners from East Europe were the only ones allowed to present an asylum application.<sup>439</sup> The above mentioned clause was abolished in 1990, when Article

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438Original text: A l'intérieur de celle-ci, c'est la France qui en a accueilli le plus grand nombre, 80 % des médecins et 88 % des pharmaciens, alors que l'Allemagne et les autres pays de l'Europe libérale n'en ont reçu que 20 % et 12 %. Plusieurs raisons expliquent leur forte concentration en France. Médecins, pharmaciens et chirurgiens dentistes, comme la plupart des intellectuels du Sud-Vietnam restent attirés par la culture et la civilisation françaises. Presque tous parlent français, ce qui leur permet de s'intégrer immédiatement dans leur milieu. Pour toute cette catégorie de Vietnamiens des professions médicales et paramédicales, le problème de la reconversion professionnelle ne s'est pratiquement jamais posé. “La Diaspora Vietnamiennne en France, Un Cas Particulier: La Region Parisienne”, Eglises d'Asie, accessed April 11, 2016: <http://eglasie.mepasie.org/divers-horizons/1995-10-16-la-diaspora-vietnamiennne-en-france-un-cas>.

439“Rapporto sulla protezione internazionale in Italia”, Anci, Caritas Italiana, Cittalia, Fondazione Migrantes, Sprar, in collaborazione con UNHCR, Roma, 2014.

1 of Italian Law 39/90, known as *Legge Martelli* has been approved.

Actually, though, from 1954 to 1990 several humanitarian crisis occurred for which exceptions to the clause have been made, and the Vietnamese migration issue is such an example. Moreover, it was in this very period, namely late 1970s and beginning of 1980s, that Italy started to gradually shift from a Country of emigration to a Country of immigration, for Italy have been generally considered as a First Asylum or transit Country where refugees pended for resettlement in other States.

Responsibility for the analysis of asylum applications laid, until 1990, within the competence of the only Committee established in Italy tasked to recognize the eligibility of the applicants, specifically the *Commissione Paritetica di Eleggibilità, CPE*.<sup>440</sup> It was composed by officials from the Ministries of Internal and Foreign Affairs, as well as members of the UNHCR.

Taking account of the legislative impediments within the 1951 Convention, and the lack of a specific law that could regulate asylum requests, two were the modalities by which a refugee could obtain this status: “*de iure*” or “*de facto*”.<sup>441</sup> The first modality, or “under Convention”, was employed for foreigners coming from European Countries, to whom the Convention was applied. On the contrary, the modality *de facto*, or “under UNHCR's mandate” was utilized for several groups of foreigners, namely

those coming from non-European Countries, those who were directed to other Countries and thus were in Italy only in transit, those who were recognized as refugees in other Countries, and those who were temporary in Italy, asking UNHCR protection.<sup>442</sup>

Therefore, in case refugee status was recognized to asylum-seekers of non-European origins, thus derogating from the “geographical limitation” clause, they would have become responsibility of UNHCR. Such derogation was partly justified by Article 10, third paragraph of the Constitution, which states:

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440 Comitato Paritetica di Eleggibilità, CPE. Ibid

441 Nadan, Petrovic, *Rifugiati, profughi, sfollati. Breve storia del diritto d'asilo in Italia*, FrancoAngeli, 2011, p.30

442 Original Text: “[...] I rifugiati provenienti da Paesi extraeuropei, quelli in transito nel territorio italiano e diretti in altri Paesi, i rifugiati già conosciuti tali da un altro Stato contraente e coloro che si trovano temporaneamente in Italia e chiedono la protezione dell'ACNUR.” Ibid.

Foreigners to whom it is prevented, in their Country, the effective exercise of democratic freedoms granted by the Italian Constitution, has the right of asylum in the territory of the Republic, according to the conditions established by the law.<sup>443</sup>

However, in both cases, normal practice was to host asylum-seekers in the three centers called CAPS, *Centri di Assistenza per Profughi e Stranieri* in Padriciano, Capua and Latina.<sup>444</sup>

The first center was tasked with primary operations, namely people registration and the scrutiny of applications that would have been examined by the CPE. Moreover, here first contact was made with the voluntary agencies that would have managed future settlement. In the center in Latina paperworks for resettlement in other Countries was finalized. Finally, the third center, in Capua, hosted refugees pending for resettlement.

Starting from late 1970s, growing fluxes of potential refugees of non-European origins started to reach Italian territory and in several occasions Italian Government derogated from the “geographical clause”. However, it was not until December 1989 when Legislative Decree n. 416 was signed, establishing a system of “Norme urgenti in materia di asilo politico, ingresso e soggiorno dei cittadini extracomunitari e apolidi già presenti nel territorio dello Stato.”<sup>445</sup> This Law has been later modified in the Italian Law above mentioned, Law n.39 ratified on February 28, 1990, generally known as *Legge Martelli*. With the signature of this Law, Italy removed the “geographical limitation” clause and consequently everyone who had reached the Country was allowed to apply for asylum. Moreover, in its Article 1 some aspects concerning asylum and procedures to recognize refugee status are defined. This improvement notwithstanding, the right of asylum, as well as assistance to asylum-seekers, were not officially granted by legal acts, apart from article 10 of the

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443Original Text: Lo straniero, al quale sia impedito nel suo paese l'effettivo esercizio delle libertà democratiche garantite dalla Costituzione italiana, ha diritto d'asilo nel territorio della Repubblica secondo le condizioni stabilite dalla legge. “Costituzione Italiana, Principi Fondamentali”, Governo Italiano, accessed April 29, 2016: <http://www.governo.it/costituzione-italiana/principi-fondamentali/2839>.

444Assistance Centers for Asylum-seekers and Foreigners. “Rapporto sulla protezione internazionale in Italia”, Anci, Caritas Italiana, Cittalia, Fondazione Migrantes, Sprar, in collaborazione con UNHCR, Roma, 2014.

445“Essential rules concerning asylum, entry and residence of non-European citizens already in the Country”. Petrovic, N., *op.cit.*, p. 36.

Constitution.<sup>446</sup>

### **7.3.2. Reception and Resettlement: the Role of Caritas.**

During Vietnamese refugees' crisis, extremely important had been the role of religious institutions and churches. Caritas, particularly, had a leading role in reception programs from 1978 until 1982, collaborating with dioceses, parishes and Churches in Southeast Asia.

Basically, Caritas moved in two directions: firstly, the association tried to move public opinion, in the attempt that effective initiatives were promoted by the Government and Italian citizens, and that democratic Countries would issue programs to host these people in need. Secondly, Caritas committed in providing direct support to refugees.

From the very beginning, it offered £50,000 and appealed for a fund rising, whose outcome would have been donated to those humanitarian institutions in Southeast Asia that were hosting refugees.

In the attempt to urge the Italian Government in offering its support to this humanitarian crisis, on March 21, 1979 Caritas sent a letter to Prime Minister Giulio Andreotti, Ministries of Foreign and Internal Affairs, Ministry of Labour and Treasury Department announcing its commitment in receiving and taking financial responsibility for the resettlement of 200 asylum seekers from Malaysia's refugee camps for the period necessary to allow the Government to complete formalities necessary to the refugee status. Furthermore, the association would provide for 100 children in Malaysian camps, for as long as their resettlement in the new family would be organized and completed.<sup>447</sup> However, a response from the Government arrived only at the beginning of May, following a open letter again written by Caritas, which stated:

Unfortunately, the letter sent to Prime Minister, Foreign Minister, Minister of Labour and Treasury Department has not received an answer yet, notwithstanding the fact that the Italian President assured his intervention to the competent Ministries. The seriousness of the news we received in the past

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<sup>446</sup>“Rapporto sulla protezione internazionale in Italia”, Anci, Caritas Italiana, Cittalia, Fondazione Migrantes, Sprar, in collaborazione con UNHCR, Roma, 2014.

<sup>447</sup>Michel de Gigord, “Una grande campagna di solidarietà – La Caritas, il Governo e I Vietnamiti”, *Italia Caritas*, n°5, May, 1979.

days [...], urge us to publicly demand for a response [...]. Although we deeply appreciate the Ministry of Foreigners' decision to facilitate the entry of children abandoned in camps both in Malaysia and Indonesia [...] and their adoption in Italy [...], we are forced to realize that the exiguous cases of refugees received in Italy from 1975, and the possible reception of few others in future, with extremely slow and lengthy procedures, have almost no significance compared with the enormity and urgency of the issue.<sup>448</sup>

Finally, on May 8, 1979 the Government agreed to the requests made by Caritas and granted asylum to a number of refugees, provided that accommodation and employment were to be organized in advance.

Thus, thanks to the persistent and persuasive activities of Caritas, the Government issued a total amount of 3,000 entry visas and corresponding recognition of the refugee status.<sup>449</sup>

As regards to the clause posed by the Government, Caritas sent a further letter, this time addressed to Presidents of dioceses, appealing for parishes' support in granting reception, accommodation and assistance to families of refugees.<sup>450</sup>

Moreover, between 1979 and 1982, official delegations were authorized by Italian Government and International authorities to reach refugee camps in Thailand and Malaysia to meet groups of refugees who were willing to resettle in the Country. Consequently to these visits, nearly 2,000 individuals, especially families, were transferred in Italy in groups of about 50 persons each time, and refugee status was conceded.

In June, 1979 a first delegation composed by Caritas Vice-President Mgr. Giovanni Nervo and Dt. Claudio Francia went in Malaysia and in Thailand to meet and cooperate with the two Italian Embassies, local authorities and ONU representatives, in the attempt to delineate a program to move refugees from the camps to Italy, and to determine the first group of nearly a hundred persons to transfer.

Thus far, support activities in Malaysia had been difficult to organize, since the

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448Open Letter to Prime Minister Giulio Andreotti and Foreign Minister Arnaldo Forlani, April 28, 1979, accessed April 28, 2016, available from:

[http://www.caritasitaliana.it/materiali/Area\\_Riservata/mostra\\_boat\\_people/20.pdf](http://www.caritasitaliana.it/materiali/Area_Riservata/mostra_boat_people/20.pdf).

449“Rapporto sulla protezione internazionale in Italia”, Anci, Caritas Italiana, Cittalia, Fondazione Migrantes, Sprar, in collaborazione con UNHCR, Roma, 2014.

450Letter from Caritas Italiana to Presidents of Caritas Dioceses, May 14, 1979, accessed April 28, 2016, available from:

[http://www.caritasitaliana.it/materiali/Area\\_Riservata/mostra\\_boat\\_people/20.pdf](http://www.caritasitaliana.it/materiali/Area_Riservata/mostra_boat_people/20.pdf).

Country entrusted the Malaysian Red Crescent with the handling of the issue, and no other organizations could access to the refugee camps. Notwithstanding this situation, Italian Caritas was able to offer its help thanks to the cooperation with regulators. For instance, it sent \$10,000 to its Malaysian counterpart.<sup>451</sup> By contrast, collaboration in Thailand among religious institutions, as well as Caritas, local authorities and ONU official had been much easier; as a matter of fact, most of financial donations Caritas received, have been gathered in Thai refugee camps.<sup>452</sup> For instance, in 1980-1982 Caritas funded a Health Care Program in support of the activities carried out by its Thai counterpart, the COERR, Catholic Office for Emergency Relief and Refugees. The program was accomplished by a total of 39 doctors and 88 paramedics, helped by 20 interpreters, and had a final cost of 1,300,000 Lire, of which 80% was spent in medicines.<sup>453</sup>

In this occasion, however, the commission managed to find an agreement and a total of 51 refugees were selected in Thailand, 14 of them were taken from a boat that had been blocked for over two months in Bangkok's harbor from Thai authorities. In Malaysia, the same amount was taken from Palau Besar refugee camp. All these people, who had previously express their desire to be resettled in Italy, reached the Country on June 13 and 19, namely.<sup>454</sup>

Taking account of the provision expressed by Italian Government, refugees resettlement was assured by a number of citizens who had offered host and jobs opportunities, as well as parishes did, for they provided for entire families with the slogan: "A family to each parish".<sup>455</sup> Through this modality, both the United States and Australia managed to receive and resettle large numbers of families. Australian Government, for instance, agreed to the entry of 20,000 Vietnamese, whose reception was managed by the Church.<sup>456</sup>

To this day (June, 7 1979) Caritas has received 96 letters from 101 persons, families or groups for about 400 Vietnamese ( 200 of whom would receive an

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451 "Dal Vietnam si continua a fuggire", *Italia Caritas*, n°4, April, 1979.

452 *Ibid.*

453 Caritas Italiana, accessed April 30, 2016:

[http://www.caritasitaliana.it/materiali/Area\\_Riservata/mostra\\_boat\\_people/21.pdf](http://www.caritasitaliana.it/materiali/Area_Riservata/mostra_boat_people/21.pdf).

454 "La Caritas e i rifugiati vietnamiti", n° 8 *Italia Caritas*, August, 1979.

455 "Aprire le porte ai fratelli vietnamiti", n°6, *Italia Caritas*, June, 1979. Original text: "Ogni parrocchia, una famiglia."

456 "Il programma della chiesa in Australia", *Italia Caritas*, n° 4, April, 1979.

employment).<sup>457</sup>

In August the number had increased by 4000 persons.<sup>458</sup>

Starting from June, description of such offers were monthly published in Caritas magazine, *Italia Caritas*, together with requests from Vietnamese refugees, aiming to meet and satisfy in the best way possible their needs and those of the sponsors.<sup>459</sup>

A further delegation reached Malaysia and Thailand in July, 1979. Objective of the mission, this time captained by Mgr Vinicio del Perugia and Father Giuseppe Pasini, was to meet more than 550 other refugees who would have accepted to be resettled in Italy, on the basis of accommodation and employment offers presented by the Italian delegation.<sup>460</sup>

In Trengganu, Malaysia, they met with a UN official who had drafted a list of 700 possible candidates. After having conducted interviews with a group of individuals considered to be those who better responded to the accommodation offers they had, a total of 305 refugees were accepted.<sup>461</sup> In Thailand, the two representatives visited three camps, from where they accepted a total of 352 Vietnamese. Thus the final amount of this second mission accounted for 657 individuals, in 172 families.<sup>462</sup>

However, the actual number of refugees reaching the Country was lower, due to the slow response of the Italian Government.

Only 337 asylum seekers could enter Italy from refugee camps in Thailand and Malaysia, while 37 from Hong Kong: other 519 asylum-seekers are pending for transfer in Italy in these camps from July; the 907 Vietnamese rescued during “*Operazione Vietnam*” are still waiting in the reception centers, although from August 25, all those who wanted to stay in Italy had received from Caritas, their accommodation and their employment, following requests by the Government. This has happened notwithstanding the strong and passionate commitment of Officials and personnels from public offices who had to work with inadequate

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457“L'Italia finalmente ha aperto le porte ai profughi del Vietnam”, *Italia Caritas*, n° 7, July, 1979. Original text: “A tutt'oggi (7 giugno 1979) sono pervenute alla Caritas Italiana n. 96 lettere da parte di 101 persone o comunità o famiglie per circa 400 vietnamiti (dei quali circa 200 lavoratori).”

458“La Caritas e I rifugiati vietnamiti”, n° 8, *Italia Caritas*, August 1979.

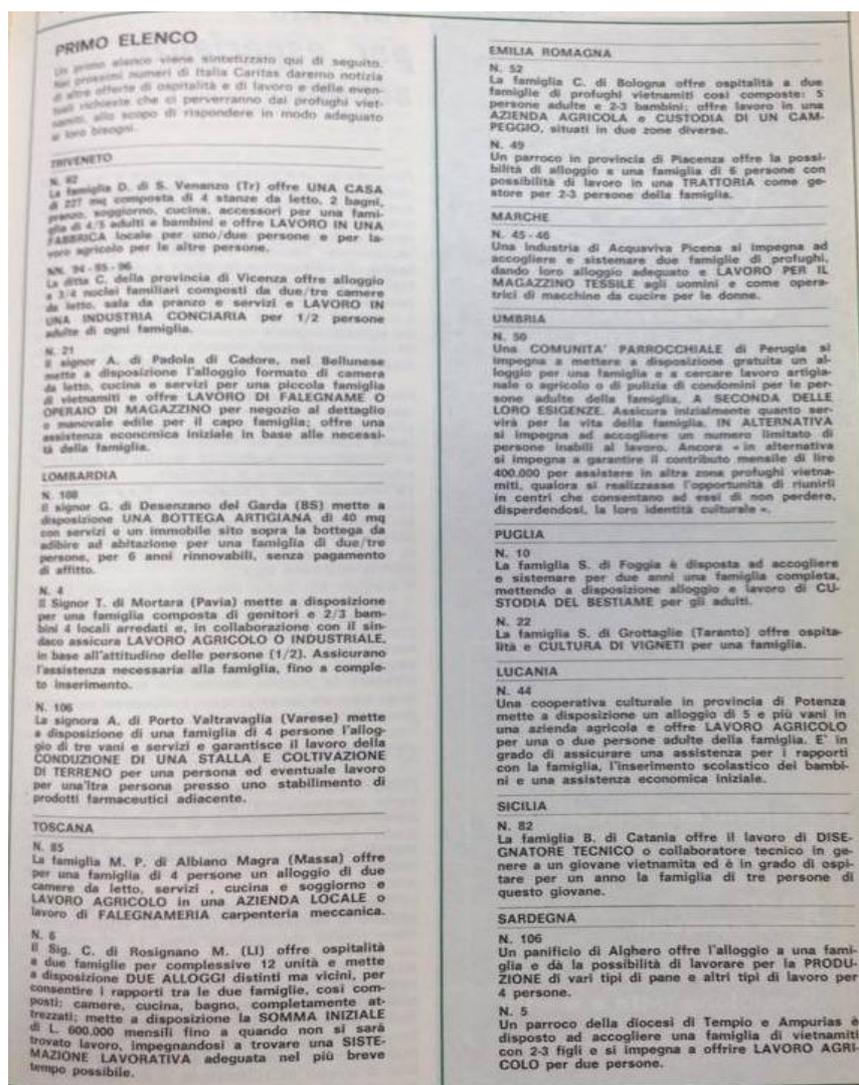
459 An instance of such offers is provided at the following page.

460“La Caritas italiana nei campi profughi”, n° 8 *Italia Caritas*, August 1979.

461*Ibid.*

462*Ibid.*

instruments for an emergence of this size.<sup>463</sup>



Source: *Italia Caritas*, n° 7, July, 1979.

## Reception procedures.

Upon arrival in Italy, usually refugees spent a couple of days in one of the CAPs managed by the Government, for the time necessary to receive their status and rigorous health examinations. They were moved, afterwards to one of the six

<sup>463</sup>“Mozione del convegno nazionale sul tema dei profughi”, *Italia Caritas*, n° 9, October, 1979. Original text: Soltanto 337 profughi sono potuti entrare in Italia dai campi della Thailandia e della Malesia e 37 da Hong Kong; altri 519 attendono nei campi fin dal mese di luglio di essere trasportati in Italia; i 907 salvati dalle navi sono ancora tutti nei centri di raccolta, sebbene già dal 25 agosto, tutti quelli che desideravano rimanere in Italia, abbiano già ricevuto dalla Caritas Italiana, su esplicita richiesta delle autorità governative la loro sistemazione di alloggio e di lavoro. Tutto ciò nonostante l'impegno assiduo e generoso dei Funzionari e del personale degli organi pubblici che si trovano ad operare con mezzi inadeguati per affrontare un'emergenza di queste dimensioni.

reception centers, where they would spend nearly one month, a time frame necessary for orientation designed to direct them towards an autonomous life in a new Country, with a new language and new customs.<sup>464</sup> Here they were first introduced to the family or community that would have hosted them, making them know each other gradually; their medical condition was evaluated and, where appropriate, they were given the relative cure and medicaments.

These reception activities were managed by volunteers from both religious and laical associations, all managed within Caritas' intervention.

At a bureaucratic level, once they had received their status, refugees had to:

1. Ask to the Italian police station, the *Questura*, the residence permit for the city where they would be resettled for accommodation and employment;
2. Present to the municipality a written declaration with personal information. At the moment of the declaration, personal identity could be demonstrated by exhibiting the eligibility document issued by the Special Committee, the CPE, that defined their political status; similarly it could be demonstrated the family composition of the declarer;
3. Request to the Employment Office – as regards the introduction to work experience – the pertaining authorization that would be issued by the Office according to the instructions given by the competent Ministry of Labour and Public Welfare with Law 8474, July 18, 1979;
4. Demand, pending the hiring, possible health care interventions to competent local authorities, according to articles 27 and 32 of Presidential Decree 27.7.77 n.616.<sup>465</sup>

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<sup>464</sup>Centers were located: two in Rome, one in Grottaferrata, one in Florence and one in Milan. Moreover, a total of 7 other centers were soon to be open: one in Novara, one in Taranto, one in Genoa, two in Trento and two more in Milan. “791 rifugiati del sud-est asiatico accolti direttamente dalla chiesa italiana attraverso il canale della Caritas.”, *Italia Caritas*, n° 8, August, 1979.

<sup>465</sup>Original Text: 1. richiedere alla questura il permesso di soggiorno nelle località delle rispettive province in cui andranno per la sistemazione alloggiativa e lavorativa; 2. rendere la prescritta dichiarazione anagrafica nel Comune dove andranno a risiedere. L'identità personale... all'atto della dichiarazione anagrafica potrà essere dimostrata con l'esibizione del “certificato di eleggibilità”, rilasciato dall'apposita Commissione paritetica di eleggibilità quali rifugiati politici; in egual modo potrà essere comprovata la composizione del nucleo familiare del dichiarante; richiedere all'Ufficio del Lavoro – per quanto concerne l'avviamento al lavoro - l'autorizzazione relativa, che l'Ufficio stesso rilascerà in base alle istruzioni emanate al riguardo dal competente Ministero del Lavoro e della Previdenza Sociale con circolare n. 8474 del 18 Luglio '79; 4. richiedere, nelle more dell'assunzione al

To assure both refugees and sponsor families, as far as accommodations, it has been suggested to regulate according the legal form of bailment.

On the other hand, at a civilian level, citizens' participated in providing the most disparate services. Accommodations and employment were not the only services granted; furthermore, language lessons and trainings, leisure and sport activities, professional programs, support in the process of integration in schools, and other aids were offered in order to ease the impact of a new life in an environment, otherwise, unfamiliar.

In this sense, numerous initiatives were launched; for instance, in February 1980, in Rome, Vietnamese community celebrated its Vietnamese New Year, the *Tet*.<sup>466</sup> It was a special occasion for the society to gather and celebrate a fundamental tradition from their Country of origin, although they were now in a different Nation. Furthermore, the need for a place where Vietnamese could meet once or twice in a week was considered important in the receiving process. Thus, an office was provided by a parish in Rome where, occasionally, other reception activities were organized. Moreover, in December 1981, Caritas suggested a further initiative: to send packages to families still in Vietnam, with basic goods, for 210,000 Lire.<sup>467</sup>

### **7.3.3. “Warships for humanitarian missions”:<sup>468</sup> *Operazione Vietnam.***

The American 7<sup>th</sup> Fleet was not the only one that was ordered to reach the

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lavoro, eventuali interventi sanitari ai competenti organi locali di cui agli artt. 27 e 32 del D.P.R. 27.7.77 n.616. These were the General rules for refugees' reception based on Ministry of Interior's Circular, General Direction for Civil Services, August 1979 – III, *Italia Caritas*, n° 9, October 1979.

466“Capodanno Vietnamita a Roma”, *Italia Caritas*, n° 4 April 1979.

467“A ogni famiglia un pacco dono”, *Italia Caritas*, n° 11, December 1981. The appeal was further published in April and May, 1982.

468“Fincantieri: navi da guerra per missioni di pace”, Ansa, accessed April 29, 2016:

[http://www.ansa.it/mare/notizie/rubriche/shippingecantieri/2013/06/29/Fincantieri-navi-guerra-missioni-pace\\_8949132.html](http://www.ansa.it/mare/notizie/rubriche/shippingecantieri/2013/06/29/Fincantieri-navi-guerra-missioni-pace_8949132.html).

Chinese Sea waters in order to give help to the rickety boats crowded with Vietnamese escapees, since two European Government decided for an analogous operation: France, with its *Ile de Lumiere* and Italy, with the 8<sup>th</sup> Naval group settled for the occasion.

Formed by a total of three boats, helicopter cruiser *Vittorio Veneto* and cruiser *Andrea Doria*, logistically supported by the replenishment tanker *Stromboli*, the group was tasked by the then Prime Minister Giulio Andreotti to rescue Vietnamese Boat People adrift in South China Sea and to bring them in Italy, if they were willing to. For the first time, Italy would have conducted a humanitarian mission on its own.

Departing from La Spezia on July 4, 1979 the *Andrea Doria* caught the other two vessels in Taranto, officially beginning the operation, called *Operazione Vietnam*, on July 5, when the three components of the squadron captained by Admiral Sergio Agostinelli left for Singapore.

The three warships had been reorganized to handle this humanitarian mission, rearranging their helicopter hangars to accommodate up to 1000 persons, the infirmary had been enlarged and empowered in its facilities and the medical equip, taking account of the specific situation, had been increased with a total of 20 doctors, hiring obstetricians and pediatricians, since children and women are in big numbers among the escapees.

Pantries had been filled with tons of rice, thousands of clothes and several other personal tools for the needy.<sup>469</sup> Moreover, three Vietnamese speakers were also boarded as interprets, a student Domenico Nguyen-Hun-Phuoc, and two Roman Catholic priests of Vietnamese origins, Father Domenico Vu-Van-Thien and Father Filippo Tran-Van-Hoai.<sup>470</sup>

The Fleet arrived on July 21, 1979 after a non-stop voyage of more than 12,000 kilometers.<sup>471</sup>

Once they arrived in Singapore, they spent four days at the Harbor to complete the necessary refueling; then on July 25, at 10 am local time the 8<sup>th</sup> Naval Group departed for the the South China Sea and its search and rescue operation.

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469La Stampa, 5 luglio 1979.

470"Operazione Vietnam", Internet Service, accessed April 29, 2016:

<http://www.internetsv.info/Vietnam.html>. Once in Singapore, Domenico Nguyen-Hun-Phuoc boarded the *Stromboli*, father Domenico Vu-Van-Thien the *Andrea Doria* and Father Filippo Tran-Van-Hoai the *Vittorio Veneto*.

471Ibid.

## Rescue Operation in the South China Sea

Supposedly, the operation was easy: the Fleet would have patrolled Malaysian Archipelago where the majority of Vietnamese boats was usually directed, in the attempts to intercept them and offer all the help they need, in terms of food, medicines and, if they accepted to be resettled in Italy, they would have taken on board.

However, the task the three Italian ships had received was surrounded by several uncertainties: first of all the direction to be headed to.

Since the majority of the Vietnamese escapees were from South Vietnam, the main route used was the one that led to south-west, to Thailand, Malaysia, Singapore and Indonesia. From South Vietnam, the shortest way was from ports in Mekong River Delta to the north-east coast of peninsular Malaysia, or southern Thailand.<sup>472</sup> These two main routes, particularly, were known to be the most used by the escapees, and such knowledge could have restricted the searching zone from the vastness area of the South China Sea. Nonetheless, the strong winds due to early monsoons, brought a further complication, for they could easily deflect small crafts such as those used by the Vietnamese people, deviating their direction. At the same time, strong winds could have discouraged refugees to depart, and thus delay searching operation of the 8<sup>th</sup> Italian Fleet. However, there could have been boats in that area resulting not from Vietnamese departures, yet from the push-back procedures operated by Malaysian police.

Thus, evaluating all these possibilities and variables, the 8<sup>th</sup> Naval Group set sail towards Anambas Islands and Trengganu Coast, considered as the more attainable zone where to find Vietnamese Boat in distress and therefore it was decided as the operational area.<sup>473</sup> The Vittorio Veneto kept an outboard position, flanked by the Andrea Doria, while the Stromboli sailed up the coast, and with this position they reached the operational area late the departure day.<sup>474</sup> Because of the enormity of the searching area, 600 nautical miles

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<sup>472</sup>Grant, B., *op.cit.*, p. 55.

<sup>473</sup>Mimmo Candito, "Singapore, siamo partiti alla ricerca dei profughi", *La Stampa*, July 25, 1979.

<sup>474</sup>Mimmo Candito, "Nel Mar della Cina il radar cerca il puntino bianco dei profughi Viet", *La Stampa*, July 26, 1979.

up North and 200 nautical miles wide,<sup>475</sup> exploration procedures are co-conducted with inspection activities run by the three helicopters of the Vittorio Veneto. The Anambas Island zone was particularly appropriate for researches, as well as the route that goes from the far end of South Vietnam to Malaysia, because both areas are close an area characterized by the presence of oil rigs.

The presence of the rigs, and the relatively short distance between Vietnam and Malaysia, help explain why nearly all the 200,000 people who left Vietnam in the eighteen months to mid-1979 first headed for Malaysia. The rigs also explain how several thousand small boats, many of them built for use only in coastal or inland waters, were able to complete the sea crossing even when those on board were inexperienced mariners, armed with little more than a compass and a school map. The rigs literally served as signposts in the sky at night.<sup>476</sup>

In August 1979 off the coast of Trengganu, Malaysia, there were some Exxon Mobil platforms, considered an attractive point where it would be easier to receive help, because of the eighteen meters high towers that were illuminated night and day.<sup>477</sup>

On July 26, 1979, at 7.43am, the radar of Vittorio Veneto detected a probable boat, and coordinates were immediately given to the helicopter closest to the position. Few minutes later the freighter received the confirmation: it was a boat crowded with Vietnamese people. It took more than one hour to the Vittorio Veneto to get closer to the boat, than to lower the raft boarded with a doctor and one of the Vietnamese priest, Father Filippo Tran-Van-Hoai, who had been tasked to translate the message the Italian Government had drafted:

The boats near you belongs to the Italian Navy and are here to help you. If you want to, you can be boarded as political refugees and taken to Italy. But, attention: we will take you to Italy, but we can not bring you to any other Country, and we can not tow your boat. If you do not want to come on board, you will receive water, food, support and medicines. Tell us what you want to do and what you need.<sup>478</sup>

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<sup>475</sup>*Ibid.*

<sup>476</sup>Grant, B., *op.cit.*, p. 56.

<sup>477</sup>"Operazione Vietnam", Internet Service, accessed April 29, 2016: <http://www.internetsv.info/Vietnam.html>, and Grant, B., *Ibid.*

<sup>478</sup>Original text: Le navi che vedete sono della Marina militare dell'Italia e sono venute per aiutarvi. Se volete, potete imbarcarvi sulle navi italiane come rifugiati politici ed essere

Before 10am Vietnamese people began to board the Italian freighter helped by the ship crew, despite the specific sanitary measures given in order to avoid any possible infection contagion. In half an hour a total of 128 Vietnamese are on board, there were 66 men, 39 women, and 23 children.<sup>479</sup>

At 7.35om, the same day, one of the Exxon Mobil oil rigs notified on the international assistance frequency that a craft with nearly 60 persons reached its area. This time, it was the Andrea Doria that received the order to sail in that direction, and at 1am on July 27, other 68 Vietnamese were rescued: thereof 35 men, 15 women and 18 children.<sup>480</sup>

However, the flux of boats leaving Vietnam had just experienced a sharp reduction, probably as a result of the promise made by Vietnam at the Geneva Conference on July 20-21, namely to halt illegal departures with the establishment of a program that would have made possible for persons wishing to leave Vietnam to do so in a safe and orderly manner. Thus, with this commitment that soon became tangible, Italian rescue operation had become more challenging, meaning that there were few boats to look for.

Thus, in the attempt to avoid a political failure, given the costs of the operation the Italian Government sent Undersecretary for Foreign Affairs Giuseppe Zamberletti, who had been deliberately appointed as Special Commissioner for *Operazione Vietnam*, to reach an agreement with Malaysian authorities in Kuala Lumpur. It was agreed that the 8<sup>th</sup> Fleet would have taken on board figures of refugees from Malaysia's camp in order to fill the available seats left.<sup>481</sup> However, on July 31, 1979 while the squadron was sailing South, an other signal was detected on the radar, close to Kuantan coast, Malaysia. It was a Malaysian guard ship that was dragging out to sea four boats crowded with refugees. It was very likely that what the crew of the Vittorio Veneto was witnessing, was an example of the well known practice of Malaysian Government to push-back

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trasportaati in Italia. Attenzione, le navi vi porteranno in Italia, ma non possono portarvi in altre nazioni e non possono rimorchiare le vostre barche. Se non volete imbarcarvi sulle navi italiane potete ricevere cibo, acqua e infine assistenza e medicine. Dite cosa volete fare e di cosa avete bisogno. "Missione Vietnam – Sono passati 30 anni...", Marina Militare, accessed April 28, 2016:

[http://www.marina.difesa.it/conosciamoci/notizie/Pagine/20090709\\_vietnam.aspx](http://www.marina.difesa.it/conosciamoci/notizie/Pagine/20090709_vietnam.aspx).

479Mimmo Candito, "Ho visto salvare 128 profughi viet", *La Stampa*, July 27, 1979.

480" In soccorso dei Boat People, una missione umanitaria quasi dimenticata", In Storia, accessed April 28, 2016:

[http://www.instoria.it/home/boat\\_people\\_missione\\_umanitaria.htm](http://www.instoria.it/home/boat_people_missione_umanitaria.htm).

481Mimmo Candito, "Finita la missione delle navi italiane", *La Stampa*, August 1, 1979.

refugees' boats, rather than the actualization of the agreement between the two Governments.

Two elements supported the argument. Firstly, the four boats had been filled with large amounts of water and fuel, which were unnecessary for the journey to Bidong Island. Secondly, the route along which the convoy was traveling would have led to the area where the Vittorio Veneto had rescued the first refugee boat, last thursday.<sup>482</sup>

Thus, following brief communications between the two boats, the Italian Freighter agreed to take the 319 Vietnamese.

However, an actual concretization of the agreement reached by Zamberletti with Kuala Lumpur occurred in the afternoon that same day. At 2pm Malaysian police boats approached the 8<sup>th</sup> Fleet and made the 392 refugees they were carrying to board on the Italian freighters.<sup>483</sup>

With a total of 907 Vietnamese on board, sailing back to Singapore, the Italian humanitarian mission in the South China Sea, thus, ended. The naval unit then left Singapore on August 2, and reached Venice on August 21, 1979.<sup>484</sup>

## **Conclusions.**

To conclude, a general question can be asked, that is: what have been the attempts to face and to deal with the Vietnamese refugee crisis, and how did the international community change in the process?

A first attempt has been described in chapter three, namely the Orderly

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<sup>482</sup>Ibid. According to the interviews made to the refugees rescued in this occasion, Malaysian officials forced them to board by saying that they would have been moved to the refugee camps in Palau Bidong.

<sup>483</sup>*Ibid.*

<sup>484</sup>"In soccorso dei Boat People, una missione umanitaria quasi dimenticata", In Storia, accessed April 28, 2016:[http://www.instoria.it/home/boat\\_people\\_missione\\_umanitaria.htm](http://www.instoria.it/home/boat_people_missione_umanitaria.htm).

Departure Program issued following the Conference held in Geneva in July, 1979, which had other outcomes of significant value. Together with the Vietnamese promise to try to halt illegal departures and, as an alternative, to promote orderly and direct departures from Vietnam for those who wished to leave, the international commitments made by the 65 participant Countries were several and important: worldwide resettlement pledges increased from 125,000 to 260,000; Indonesia and the Philippines engaged in the establishment of regional processing centers to accelerate resettlement; and further financial aids to UNHCR totaled about US\$160 million in cash.

However, among these successes, the Conference was also responsible for the the concept of 'First Asylum', whereby a Country's promise of temporary protection within its Country was proportional to another Country's offer of permanent resettlement elsewhere; a *quid pro quo* was thus decided.<sup>485</sup> For nearly a decade, moreover, Vietnamese refugees reaching neighboring Countries were labeled as *prima facie* refugees and were automatically put under UNHCR protection for future resettlement; this resulted in the relocation of nearly 623,800 refugees between 1979 and 1982.<sup>486</sup>

However, in chapter five, a significantly different approach to the issue is presented. The Comprehensive Plan of Action issued in 1989 following a second Conference in Geneva introduced screening procedures to determine whether a person was a 'genuine' refugee or an economic migrant, based on international procedures and concepts established by the 1951 Convention and the Handbook of UNHCR. This initiative was innovative in the sense that it was established in the attempt to provide a solution to the broader framework in which the Vietnamese exodus had resulted, that is a mixed migration: in case the person was not a refugee, meaning he was screen-out, he had to return to his Country of origin.

It is in the screening processes and subsequent refugee status determination procedures that the peculiarity of the Vietnamese Boat People crisis lies. Recalling chapter four, it has been explained that when the crisis began in 1975, none of the Countries of Southeast Asia region was member of the 1951 Convention on refugees, nor did they adhere to the 1967 Protocol, thus the

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<sup>485</sup>UNHCR, *The State of the World's Refugees: Fifty Years of Humanitarian Action*, Oxford and New York: Oxford University Press, 2000.

<sup>486</sup>Ibid. The figure refers to refugees from Indochina.

entire crisis have been handled within a context characterized by a fundamental absence of legislation for the matter. To overcome this deficiency, the main subjects involved in the management of the issue had to make important efforts and general reevaluations became essential within UNHCR and Countries of resettlement as well.

The Office of the United Nations became increasingly tasked with new responsibilities especially with the introduction of repatriation procedures. As a matter of fact, the change of the traditional approach to refugee problems “exile-oriented” and “refugee-specific”<sup>487</sup> to procedures more directed towards prevention and return, the latter beginning with the CPA, implicitly modified the role of the UNHCR. Contrary to the traditional paradigm that emphasized the right to leave one's own Country in seeking asylum somewhere else, the idea focused on the right to return to one's own Country of origin. This came together with the notion of State responsibility, that is “a Country that generates refugees must be held accountable to take the corrective actions needed for them to return home again, safely.”<sup>488</sup> Thus, the new operations held by UNHCR within the Country of Vietnam, in organizing the safe returns of Vietnamese repatriated, and more generally, the new paradigm for the UN Office, which expanded its operational presence in refugees' homeland Countries since, can be explained.

As for resettlement Countries, efforts to modify their national legislative systems to adapt their frameworks to the specific issue of Vietnamese refugees have been explained in chapter seven. Despite maintaining the fundamental principles of their legal order, they managed to provide the environment for a legitimate reception of refugees. Although they might have been motivated also by personal reasons in pursuing these approaches, they successfully conducted the resettlement of refugees, also through the cooperation with voluntary agencies and the leadership of the UNHCR.

Instead, as regards First Asylum Countries, in chapters four and six we understood that yet maintaining their hostile position towards the 1951 Convention on refugees, they managed to provide themselves with the international concepts of refugees and asylum; however, recalling Sara Ellen

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<sup>487</sup>UNHCR, *The State of World's refugee: in search for solutions*, Oxford University Press, 1995.

<sup>488</sup>Robinson, W. Courtland, *op.cit.*, p. 285.

Davies, the attempt was made to delegitimize their obligation to offer a permanent shelter. Asian States labeled all the Vietnamese as illegal migrants or as “non-genuine refugees”, but as clarified by the scholar, “the idea of a 'non-genuine' refugee only make sense within a discursive framework that acknowledges the theoretical possibility of a 'genuine' refugee.”<sup>489</sup> States neighbor to Vietnam admitted the international concepts regarding the refugee legislation with the adherence in 1966 to the Bangkok Principles, though, it has been said they are non-binding nor explicit in their commitments. Consequently, their approach towards the humanitarian issue was based on the granting of temporary asylum.

In answering to the wide range of “how” asked as regards the management of this crisis, the understandings acquired allow to make some observations.

The Vietnamese refugees crisis shed light on the limit of Southeast Asia States to formally adapt to the international legislation on refugees, despite “virtually every Country in Asia has been either a producer or a receiver of refugees, or both, since the Second World War”.<sup>490</sup> This same limit is currently present in the region, which did not work in the issue of an asylum policy regionally effective that could, at least, complement the international one. The reluctancy with which Asian States act persistently towards these fundamental concepts and issues have made refugee crises that followed challenging situations in a region that still behaves as it has no legacy to learn from or get inspired by.

The international system, instead, was changed by this crisis. Particularly, the traditional solution that characterized the refugees programs, namely resettlement, was the topic the suffered the most from a fundamental reevaluation. The practice of relocating nearly all the refugees became a predominant policy during this crisis, although later its significance started to unravel since it came to be considered a “pull-factor” in the outflow of people, loosing its role as best durable solution; on the contrary, repatriation programs started to expand considerably.

Although resettlement was not the solution, it was not the problem either; the fact that it did play a significant and positive role for the first decade of the Vietnamese exodus, suggests that a solution which is universal and durable for a crisis and its dynamic features is of difficult existence: the variables involved in

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<sup>489</sup>Davies, Sara Ellen, *op.cit.*, p. 19.

<sup>490</sup>Robinson, W. Courtland, *op.cit.*, p. 281.

generating a refugee emergency are endless, and our experience in witnessing current humanitarian plights allow us to understand that solutions, on the contrary, are limited.

Resettlement, repatriation, reception, refugee camps, push-backs are the same answers that continue to appear in such issues, like the *Tetriminos* in the Tetris game that keep falling down in the playing field. The objective of the game is to create an horizontal line that then disappears, by manipulating the *Tetriminos*; refugees should be that line, they should disappear, whether by receiving a new citizenship in the new Country and then blurring within the other inhabitants, or by the safe return to their homeland. It is a matter of combination of these solutions. The problem is that we are not playing Tetris.

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