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Rohingya Refugee Migration in the Post-Imperial Age

Diana Wong and Tan Pok Suan

Introduction

A refugee, according to Hannah Arendt, was a person who had no right to rights. Her statement was based on her own experience during the Nazi period of being stripped of German citizenship because she was a Jew. This definition of a refugee no longer holds true. In no small measure due to the lessons learned from that experience, a refugee rights regime – flawed and inadequate though it may be – has been established both at the transnational level and, in many Western liberal states, at the national level. This has enabled and legitimised substantial refugee flows and resettlements in the second half of the twentieth century. Less well known, however, are the substantial population displacements and settlements that are illicit and outside of any formal regulatory framework, which have been sustained not by the assertion of civil rights but by the 'paper citizenship' of weak states (Sadiq 2008) and the conditional 'hospitality' of shared cultural vernaculars.¹

In this paper, we draw on ethnographic fieldwork and interviews with a refugee group in Malaysia – the Muslim Rohingyas from the province of Arakan in Burma – to make the following arguments. Far from there being a unified and homogenous space of global or transnational migration, represented by the contemporary Western European (and/or US) experience, it would be more appropriate to think of contemporary patterns and practices of border-crossing migration in terms of 'imagined worlds' (Appadurai 1990) or 'overlapping zones' (Balibar 2003). Bowen (2004) has recently argued for the existence of a discursively constituted 'transnational Islamic space'. The information gleaned from our interviews with the Rohingya points to the existence of a contemporary transnational Islamic space or zone of migration governed by the practices of illiberal states and shared Muslim hospitality, and of a Muslim migrant world dwelling therein in the interstices of the illegal and the licit.

At the same time, Rohingyas are 'persons of concern' to the United National High Commissioner for Refugees (UNHCR) and thus clients of a transnational human rights regime. This regime, anchored in the legal norms of the Western liberal state, with its validation of refugees as a legal category, does confer some degree of state-transcending protection to extra-territorial populations that fall under its care. The second argument made in this paper concerns the pattern of mobility that the morphology of refugee migration entails. Whereas the prevailing image surrounding the refugee is that of immobility (as in the Agamben trope of the *camp*) in contrast to the mobility of the labour migrant, we argue, based on the Malaysian material, that the obverse can also be true.

The standard distinction between the migrant and the refugee in terms of personal motivation (voluntary versus forced) is one designed purely for the purposes of the asylum-granting state. This distinction is an instrument for the conferment of legal or illegal status by the state and is conceptually flawed when trying to understand contemporary migration flows, which are generally mixed in character. What could be of analytical value, however, is a distinction between refugees and labour migration defined primarily, though not entirely, by their specific regulatory regimes. Whereas refugee migration is in large part politically driven and (partially) subject to a transnational regulatory regime, labour migration is market-driven and subject to the regulatory regime of the nation-state.

Since the termination of the guest worker programmes in the Western European states in the mid-1970s, organised legal labour migration in the form of Temporary Foreign Labour Programmes (TFLP) has shifted to destination countries in the Middle East and Southeast and East Asia. In these countries, the rotational principle is strictly maintained and enforced, and settlement and family reunion is not permitted. The result is the establishment of transnational migration corridors with a stable two-way flow of entry and return of successive generations of migrants. Mobility and settlement outside of this narrow trans-border corridor is limited.

The refugee form of migration appears to result in quite a different morphology. As Zolberg has pointed out, refugee migration is not market-driven, although refugees do end up as economic migrants in the labour market; it is the result of 'refugee-generating states' (Zolberg 1983). As a consequence, return is difficult, thus hampering the emergence of the transnational corridor so typical of labour migration. On the other hand, thanks largely to the transnational refugee regime established since the end of World War II and expanded since the 1978 Indochinese refugee crisis, refugee displacement has been subject to a more complex spatial architecture, including the possibility and practice

of resettlement in so-called third countries in the West. For displaced Muslim populations, there is also an extensive Islamic zone of migration, as argued below. Large diasporas of far-flung but closely networked communities are the result. Compared with the tightly controlled corridor space of labour diasporas, the diasporic space generated by refugee migration provides for a high level of mobility for those plugged into its variegated web.

Migration in the Post-Imperial Age

Massive movements of the desperate and the despised across perilous state borders, generally known as refugee migration, were characteristic of the post-imperial age of successor nation-states in Asia. There was the partition of the Indian subcontinent, the Chinese flight to the offshore islands of Hong Kong and Taiwan, the division of the Korean peninsula, Dien Bien Phu and the creation of two Vietnams – the list could go on. The population displacements these cataclysmic state-making events generated were far from limited. Other than on the scarred victims and the internal constitution of the new nation-states, however, they left few traces on the international politics or the international academic literature of the day.

In Asia, newly minted post-colonial states were often inheritors of highly heterodox populations which the vast migrations unleashed by the capitalism of the imperial age had flung together. They were also, as nationalist claimants to the state, true believers in the anti-imperial notion of the territorially sovereign nation-state. One of the first acts of these new states was to put in place the state infrastructure – legal, administrative and policing – necessary for the protection of their borders, many of which had previously not existed. 'Nation-building' *within* the limits set by these borders was the order of the day. In the ensuing decades (from the 1950s to the 1980s) of what now seems in retrospect a 'short' post-imperial age, the populations of these post-colonial states remained largely confined within the borders of their territorial state. With some dramatic exceptions, such as the mass migrations from Bangladesh to India in 1971 and the exodus from Sri Lanka in the 1980s, mobility generally took the form of *internal* migration, often encouraged by the state concerned but visible to no other. The age of the great tropical migrations ceased; the dust had settled, it thus appeared, on the secure borders of the post-war, post-colonial world.

In Europe, the post-imperial age was absorbed by the post-war decades of economic reconstruction and growth, albeit in the shadow cast by the Cold War. The political competition generated by this new war, however, resulted in the freezing of territorial boundaries in the

European heartland and the immobilisation of captive populations behind that ultimate instrument of territorial and population control – the Wall. This brought two centuries of constant flows and movement across and beyond the European continent, culminating in the great population displacements of the various wars of the first half of the century, to an end (Bade 2000). Post-war Western Europe had succeeded, to a large degree, in having its internal population heterogeneity cleansed and its external borders sealed. Residual colonial populations from the Empire slipped in, especially to the Netherlands and Britain, but otherwise, the doors were shut. They were reopened in the 1960s only for the import of temporary guest workers from the continent's southern Mediterranean fringe, but under conditions of strict and well-managed legality, and as a short-term measure for the management of the labour market.

Under such circumstances, refugees and refugee migration – and indeed migration issues as a whole – remained low on the national and international political and academic agenda, relegated to a small group of specialists who were marginal to the establishments of both. Migrants and refugees, legal or illegal (this distinction did not seem to have been of much salience in an earlier time), if allowed to stay, were constituted as ethnic minorities creating 'issues' internal to the respective nation-states and their specific national policies. As such, they were blended out of view from everyone but the state concerned.

The end to this post-imperial/post-colonial/Cold War age of population immobilisation was heralded by a series of unrelated events in 1974 and their aftermath. The first occurred in West Asia. The 1974 oil boom and attendant economic expansion in the Arab world led in the subsequent decades to millions of foreign workers flocking to the region on a scale reminiscent of the great tropical migrations generated by the colonial capitalist expansion of an earlier age. In Europe, the hike in the price of oil brought the long period of European post-war reconstruction and economic growth to an abrupt end. In 1974, the recruitment of foreign labour was suspended and the European labour market was sealed off to the legal entry of labour migrants.

The Cold War continued, however, and gained fresh impetus from the 1975 fall of Saigon and the 'loss' of Vietnam. The subsequent dramatic exodus in 1978 of Indochinese 'boat people' from Soviet and China-backed Vietnam appeared to vindicate America's recently lost war. For the first time in decades, the plight and flight of refugees became a matter of 'high politics' (Suhrike 1993) in the international arena. The major Western powers mobilised existing international institutions such as the UNHCR, which had been set up to deal primarily with the messy population 'leftovers' of the great European wars of the first half of the twentieth century, to provide a solution for a population

located in what had until then been part of the imperial periphery. In an unwitting concessionary move, they also committed themselves for the first time to accepting for resettlement, on a contingent basis, refugees who came from outside the traditional European-American cultural nexus of population exchange. This was to be a fateful landmark event with profound consequences for contemporary global migration.

Western Europe had shut its doors to labour migration from its poorer southern neighbours in 1974. The floodgates to migration from even further afield were pried open with this 1978 intake of Indochinese refugees, for it set the precedent for the human masses that were to follow. The fall of Saigon in 1975 was not the end of the Cold War; it had merely triggered the onset of its final phase, that of proxy wars between Third World countries in the so-called Global South – Afghanistan, the Horn of Africa (Ethiopia, Eritrea, Somalia), the Iran-Iraq war – to name but a few. These 'refugee-generating' wars (Zolberg 1983) sent, for the first time since the fifteenth-century global expansion of the West, waves of human migration to the West – desperate individuals who, through the claim of asylum, wrested their right to cross borders surreptitiously and remain.

The two decades that followed thrust the question of migration onto the centre of the national agenda of various European nation-states as well as the regional European agenda. With the Schengen Treaty of 2001, the European Union became a single immigration zone with stiffer barriers to entry. This zone and its immigration practices remain nonetheless tied to the mores and norms of political liberalism, 'which afford migrants a measure of due process and equal protection' (Hollifield 2005: 29). The right to asylum, to family reunion and to the acquisition of citizenship have remained professed, if not sacrosanct, practices of the state, upheld by a strong and independent judiciary even when denied by the executive or administrative authorities. As the effectiveness of border controls – undermined in the 1980s through developments for which the Western liberal nation-state had been ill-prepared – is gradually restored through the effectiveness of supra-state coordination, the question of population control, of those who are already *within*, will become the defining migration issue.

The ascendance of the refugee and labour migration issue higher in the agenda of high politics has been followed by its recent entry into the debates of high theory. Once an issue mainly of marginal interest to demographers, labour economists and social workers, the figure of the refugee (and the migrant) has advanced to paradigmatic status in the work of leading social theorists. The influential concepts of 'bare life' (Agamben 1998) and 'hospitality' (Derrida 2000) come to mind. Agamben's allusion to Arendt's 'We Refugees' (Agamben 1995) gestures to the centrality of this figure in contemporary social thought.

Conceived as counter-discourses to the way the state 'sees', and frames, unwelcome refugees and migrants through the lens of its legal institutions, high theory – while offering a different political vision of the refugee to that of the state – has nonetheless accepted its basic empirical premises. Refugee migration (as illicit labour) is cast as overwhelmingly directed at Europe's fragile borders; refugees are a category distinct from economic migrants; and refugee status is seen as one of immobilisation, a reduction to 'bare life'.

A Rohingya Cartography of the Islamic Zone of Migration

In 1978, some 220,000 people crossed the Burmese banks of the Naaf river into Bangladesh, followed by a second mass exodus of some 250,000 people in 1991-92 (Grundy-Warr & Wong 1997). Viewed by the Burmese state as Bangladeshi illegal immigrants and therefore denied Burmese citizenship, these Rohingyas, as they called themselves, were recognised as refugees on a *prima facie* basis by the state of Bangladesh. The UNHCR, which recognised them as 'persons of concern', helped maintain the refugee camps set up by the Bangladeshi government and oversaw the two repatriation programmes under which substantial numbers (187,250 in 1979 and 230,000 in 1993) returned to Arakan. Recently, it succeeded in resettling a handful of refugees in Canada (Phiri 2008). A residual population of some 27,000 people lives in the remaining two camps (Phiri 2008). Outside of the two camps, 'an estimated 200,000, including many repatriated refugees who then fled for a second time, have settled in precarious conditions in villages and semi-urban slums ... with little or no access to humanitarian assistance and protection' (Lewa 2008: 40).

Flight and repatriation across the border, immobilisation in camp life, or precarious existence in border settlements – such is the standard cartography of refugee mobility, focused around the one immediate border of flight, with long-distance resettlement as an exceptional, residual solution. The actual cartography of Rohingya refugee migration appears to assume quite different contours. According to our key informant, MN,² they are 'all around the world':

I think the biggest population outside Burma, Arakan, is in Bangladesh. Then in Saudi Arabia. The third would be in Pakistan. Fourth, not sure.

The literature on Rohingyas is exceedingly sparse, especially with regard to the countries mentioned above, all of which are to be found in the Muslim world. To begin with, the Rohingya nationality does not exist –

except in the records of UNHCR programmes. Outside of these programmes, sanctioned by the legal norms underpinning a transnational rights regime of extraterritorial protection, the category Rohingya has no legal purchase. Officially, they do not exist. Yet scattered sources, largely from media reports, do provide evidence to corroborate MN's account.

A recent report speaks of '1.5 million' constituting 'a very conscious Rohingya diaspora' in exile (Perera 2008). There are 'some 350,000 Rohingyas purportedly living in Pakistan' (Nyi Nyi Kyaw 2008: 3). In Saudi Arabia, 'an estimated 500,000 Burmese, most of them Rohingya Muslims, reside in Makkah region, and most do not have contacts with their mother country and have special residential status in the kingdom' (*The Daily Star*, 9 August 2010).

When the major exodus across the border to Bangladesh occurred in 1978 (and even earlier, in 1968), not all remained immobilised within the camps, waiting for repatriation back across the border. In crossing the border to Bangladesh, the Muslim migrants from Buddhist Burma had not merely entered the territory of a foreign nation-state in which personal status is defined by that of citizenship or its absence; they had also entered an Islamic world then very much in motion.

The Islamic world had *begun* as a world in motion in which trade, warfare and travel were key practices (Netton 1993). The contemporary period of accelerated mobility began in 1974, a watershed year marking the commencement of the oil boom in the Gulf states of West Asia. Labour from all over the world poured into these population-scarce oil economies of the Arab heartland of Islam, the vast majority coming, understandably, from the world of Islam itself. First came labour from the population-rich Arab countries such as Yemen and Egypt as well as displaced Palestinian refugees. Migrants from the neighbouring Muslim states of Sudan and the African Horn were quick to follow. A little later, toward the end of the decade, Muslim populations in Asian countries – Pakistan, Bangladesh, India, Sri Lanka, Indonesia and the Philippines – started becoming absorbed into this new Islamic zone of migration.

From Bangladesh, the initial intake of 6,000 Bangladeshis occurred in 1976; within two years, the figure had risen to 22,809 (Jahan 1993). The Rohingya exodus to Bangladesh in 1978 was thus well-timed for further emigration into the wider Islamic world. As Lewa notes, 'for decades, smugglers and traffickers have sent Rohingyas to Saudi Arabia, Pakistan and the UAE where many obtained a temporary permit to stay' (Lewa 2008: 40). Our informant MN is more specific: 'as you know, many different governments have many different regulations' (MN, 19 December 2008).

In Bangladesh, official refugee status meant some degree of access to English education and other services provided by the UNHCR in the refugee camps. But as refugees, they had no access to the local institutions, especially of higher learning – ‘so that’s why their education is not so complete, not formal’ (MN, 19 December 2008). Those who moved on to Pakistan, on the other hand, were ‘really fortunate’. Instead of being absorbed into a system of refugee protection, they were integrated into an existing multi-ethnic Islamic state.

The people in Pakistan are really fortunate in terms of that. Because once they got there, they made an identity card. And they could easily go to schools and start to learn, become a citizen and start to learn – in those days. From 1990, it became a bit difficult. Before that, it was quite easy. We can easily say that there are a lot of educated students in Pakistan, especially in the field of Islam. We call it *Maulawi alim* – in English, ‘Islamic scholar’. Quite a number. (MN, 19 December 2008)

This account is corroborated by a recent study on citizenship practices in Pakistan. In the late 1970s, Pakistan was an Islamic state under General Zia Ul Haq. It was also a state whose very formation had been predicated on the need to provide a territorial refuge for Muslim minorities. As such, ‘Pakistan was a welcoming territory for any Muslim. A preferred outcome of such laws is that the majority of the claims to Pakistani citizenship have arisen from fellow Muslims – Afghan and Bangladeshi illegal immigrants’ (Sadiq 2008: 13).

Muslim identity was key to the acquisition of Pakistani citizenship, and Muslim identity was key to the construction of Rohingya identity:

Rohingyas are very religious, that’s one thing I can tell you. Why? You see, from 1968 we were persecuted. From the 1960s until now – 2008. Thirty-four years. And you cannot see anyone – after so much destruction of houses and homes, being kicked out of the country, of poverty, no education, no living standards, no hospitals, no school, nothing – I still can proudly say, not a single Rohingya has actually converted to Christianity or Hinduism. That is how strong we are. (MN, 19 December 2008)

As Muslim villagers in Arakan, where the level of participation in the national schools was low (Aye Chan 2005: 404), a rudimentary religious education in the form of recitation of the Koran was very often the only education acquired. In Pakistan, religious education was readily available and eagerly seized upon. As newly-certified citizens of the state, integration was secured through participation in the institutions of local

Islamic society, mainly the privately-run schools for Islamic education known as *madrassas*.

However, many Rohingya – now armed with their new identity as Pakistani citizens – chose to join the drove of other Pakistanis then making their way to the Gulf in search of employment. By the mid-1980s, when this temporary migration was at its height, there were an estimated 2 million Pakistanis in the Persian Gulf states. Thanks to the oil boom, this region became, by global standards, a major zone of immigration.

The migration regimes obtaining in this migration zone differ considerably from those in the West. None of the six Gulf Cooperation Council countries have signed any of the seven international instruments related to international migration, with the exception of the 2000 Protocol against the trafficking in women and children and the 2000 Protocol against the smuggling of migrants. Hence, neither the landmark 1951 Refugee Convention (ratified by 144 countries) nor the 1949 ILO Convention for migrant workers (ratified by 45 countries) set binding legal norms for the administration of the large foreign populations in these countries. Saudi Arabia for example, only permitted foreigners to apply for citizenship in 2004. Second- and third-generation children of long-established immigrants are not given access to tertiary education, which is reserved for citizens. Low-skilled contract workers are recruited under a sponsorship system – the *kafeel* system – amenable to widespread abuse, thanks in part to systematic work-visa trading and the resulting entrenchment of migrants with an irregular status (Shah 2005).

No borders, however, need to have been illegally trespassed. Most migrants enter into illegality *within* the borders of the country through visa irregularities. At the heart of the Muslim world, and Muslim mobility, are the sacred cities of Mecca and Medina, open to Muslims from all over the world. Every year, over a million pilgrims perform the haj. In 2010, the number was close to three million. Thousands more perform the *umrah* (the minor pilgrimage) throughout the year. In both cases, the number of over-stayers is large.

So it was for the Rohingyas. In this emerging Islamic zone of migration in the late 1970s, Saudi Arabia was the preferred destination for the Rohingyas (Lewa 2008: 40), with Mecca as a primary attraction. Many in the first generation arrived with an *umrah* visa and remained. MN, like so many others of the second generation, was born in Saudi Arabia. Today, he says, there are 800,000 to 1,000,000 of 'our community' living there.

The conditions for refuge and settlement there appear to have been quite different from those in Bangladesh or Pakistan. Unlike Pakistan, there was no provision in the Saudi constitution for the acquisition of

citizenship by foreigners. Initially, as in Bangladesh, there was *prima facie* recognition of refugee status with the issuance of a Rohingya Refugee Card by the Saudi authorities (MN, 19 December 2008). Unlike in Bangladesh, however, this was done without reference or recourse to the UNHCR, which has not been allowed to establish a presence in the country. Later, in 1994, Rohingyas in possession of foreign passports, mostly Pakistani or Bangladeshi, were accorded regularisation of status with a temporary permit to stay (and work) (Lewa 2008), in the full knowledge that ‘paper citizenship’ was a common practice on the Asian sub-continent (Sadiq 2008).

However, while no formal recognition was given to Rohingya nationality, the large Rohingya population in the country was clearly encouraged to organise itself as a self-administering community.

What they did was, they took some help from the government, and they opened their own schools only for Rohingya students, but using the syllabus of Saudi Arabian schools. So I’m also one of these students. We have so many schools there. These schools are fully, purely, for Rohingyas basically. There are no other nationalities at all. There are many schools like that. In the hundreds, not in tens or twenties. Almost every town has more than fifteen to twenty schools, every school has more than a few thousand students, and all of them are Rohingya. How they do it is that we have some top leaders, and they communicate with the government, and the government provides the funds for the books and the staff – a kind of charity. (MN, 19 December 2008)

The charity remains ambiguous and conditional. Those without papers are often raided and deported, with exceptional brutality displayed.³ Those with (false) papers are still without citizenship and hence with no official access to tertiary education, land or commerce. Life remains precarious.

Rohingyas in Malaysia: Between Protection and Illegality

Before Rohingyas became refugees en masse in 1978, there were already some who travelled to the neighbouring Muslim world – as pilgrims, traders, religious students – but they were few and far between. The solitary few who left often never returned, merging into the local Muslim society they visited – such as the 90-year old father of one of our informants, who had been in Malaysia for over 50 years.

A Rohingya presence in Malaysia emerged with the 1978 exodus. Most Rohingyas living in Kuala Lumpur today, however, came much

later – in 1992, in conjunction with the second mass exodus out of Arakan (Tan 2008: 47). Apprised while in Bangladesh of this (cheaper) alternative to Pakistan and Saudi Arabia by the smuggling networks, the subsequent chain migration (also organised by smuggling networks) led to the establishment of a sizeable Rohingya population in Kuala Lumpur (a figure of 15,000 to 30,000 is often quoted by informants). The official 2007 figure registered with the UNHCR is 11,277, of whom 23 per cent are women and 16 per cent children.

In a new policy initiative, the Malaysian state began registering Rohingyas in August 2006 for temporary work permits (known officially as IMM 13 permits). Since then, Malaysia has been turned into a 'primary destination' (Lewa 2008: 40).

Although the process was soon suspended due to allegations of fraud, rumours of registration and job opportunities in a booming economic environment spread like wildfire among Rohingyas in North Arakan and Bangladesh. Local smuggling and recruiting networks in North Arakan and Bangladesh swiftly emerged. Two deals are offered to prospective candidates: sea passage to the shores of southern Thailand for less than US\$ 300 or an all-inclusive package up to the final destination in Malaysia for between \$ 700 and \$ 1,000. (Lewa 2008: 40)

Those who cannot afford to pay US\$ 1,000 have to settle for the cheaper but more dangerous sea passage. It is this recent wave that has earned the Rohingyas – 'Myanmar's forgotten people' (Nyi Nyi Kyaw 2008) – some political and media attention and the epithet 'Asia's new boat people' (Lewa 2008). However, unlike the 1978 exodus of the Indochinese boat people which galvanised the 'international community' into action, this Rohingya attempt at escape will leave little trace on international politics or international migration patterns. Notwithstanding current attempts to address the issue at the ASEAN level, the Rohingyas must continue to rely on smuggling networks to bring them to other territorial and socio-legal spaces in which a new existence – individual and collective – can be wrung out of the vagaries of national and international law and the ambivalent hospitality of local societies. We shall use the stories of three Rohingya religious teachers, or *ustaz*, all registered with the UNHCR in Kuala Lumpur as 'persons of concern', to illustrate the texture of this existence.

Ustaz A (hereafter 'A') was born in 1967 in Akyab, the capital city of Arakan. He became a Hafiz (a title for the ability to recite the entire Koran by heart) by the age of 13 and had his subsequent religious education in Chittagong in Bangladesh. He then returned to Akyab and

worked as a mosque imam and taught at a local religious school before fleeing to Malaysia via Thailand in 1994.

'A' first survived by tutoring the children of local Malay families in Koranic recitation. Due to constant harassment by immigration authorities, he went to work on a construction site, as illegal migrant workers there pay 'protection money' on a monthly basis to the local police beat to ward off raids and detentions. His wife and son subsequently joined him from Arakan, but his wife, unable to cope with a life of constant insecurity, returned to Arakan. In 2005, 'A' married a Rohingya woman in Kuala Lumpur who had lost touch with her husband ever since his detention by Malaysian immigration authorities several years ago.

'A' became a highly regarded 'elder' of the Rohingyas in Kuala Lumpur and helped found the Rohingya Ulama Council in 2005. In 2008, he and his family were finally able to leave Malaysia for resettlement in Sweden under a UNHCR programme. A total of 45 Rohingya individuals/families have been resettled from Malaysia since 2007 (United States Committee for Refugees and Immigrants 1999).

Ustaz F, having lived here for nineteen years, appears to have decided to settle in Malaysia. Born in 1968 in Maungdaw, a town bordering Bangladesh, 'F' studied at the local *madrassa* from age five to seventeen. In 1985, after having participated in a student demonstration, he fled to Bangladesh and worked there for five years before returning to Maungdaw in 1990. When he decided to leave again together with a fellow villager, this time it was to head for Malaysia.

A chance meeting with an old Malay couple led to an invitation to teach their grandchildren the Koranic recitation. He stayed with them for a while before moving to the southern state of Johore, where he first met an Urdu-speaking Malaysian Indian who helped him find a job, and then a local Malay *ustaz* whose tenant he became for two years. This family, with whom he developed a close relationship, subsequently arranged a marriage for him with a local Malay girl. The two children who issued from the marriage remained with their mother when it ended in divorce ten years later.

'F' has worked in a variety of jobs in Malaysia – as a factory worker, security guard, store assistant, car salesman, dispatch boy, driver and religious tutor. When he lost his job in the 1997 Asian financial crisis, he went to Saudi Arabia, where his brother was running a business. He stayed for two years. It was only in 2007 that 'F' finally secured a position with a stable income as an *ustaz* in a Malaysian-run hafiz school in Kuala Lumpur. After having spent time in Bangladesh, Thailand and Saudi Arabia, 'F' seems to have decided to make Malaysia his home. He has been applying for citizenship since 1999, without success.

Malaysia is not a signatory to the 1951 Geneva Convention. It has, however, recognised certain population groups – all Muslim – as prima

facie refugees. Some degree of protection from the status of illegal immigrant has thus been accorded by the Malaysian state to the Muslim Rohingya migrants. As in Bangladesh, however, this state-accorded protection has been 'ad-hoc, arbitrary and discretionary'. It has also been erratic and confusing, with different positions taken at different times by different representatives of the state, from the highest to the lowest levels. The situation worsened considerably after 1997, when then Malaysian Prime Minister Mahathir Mohamad publicly referred to Rohingyas as 'illegal immigrants' whom Malaysia was having difficulty deporting because they were not considered citizens of Burma (United States Committee for Refugees and Immigrants 1999). In the subsequent government campaigns to 'rid the country' of the huge population of illegal immigrants in the country – then estimated at 1.5 million – Rohingyas, who constituted a fraction of this population, were not spared.

In 1998, the Kuala Lumpur office of the UNHCR was approached by Rohingyas for protection for the first time. In 2002, the UNHCR began issuing Temporary Protection Letters (TPR) valid for six months to Rohingyas who were registered with them as 'persons of concern', and in 2005, the TPR was extended to be valid for three years (Mehrom 2007). Informants rate the usefulness of the UNHCR card at 50-50. It was no guarantee, but it was still better than being undocumented. They found that some police officers did show more sympathy when shown the UNHCR card.

In the shadow of discretionary state hospitality and limited UNHCR protection, three-generational Rohingya families are now settling in Malaysia's capital city. The surest sign of a process of localisation is perhaps to be seen in the recent establishment of a *surau* (in 2007) and several *madrassas* (the first in 2005) financed by, and for, the community. The Rohingya Ulama Council had been founded by Ustaz A in 2005. Under the stewardship of the Council, which remains an entirely unofficial organisation internal to the community, several *madrassas* catering to Rohingya youth have been set up.

The nature of local society has facilitated the settlement process considerably. When 'K' was dropped off at the Malaysian border by his 'agent', having been told by him that 'Malaysia is a good place', he knew neither friend nor relative here. Like 'A' and 'F', he drifted away from the northern border toward the southern urban centres. Arriving in Klang, he went to a local Indian mosque and, seeing that they looked Indian (and similar to Rohingyas), attempted to speak to them first in Rohingya (a dialect of Bengali), then in Burmese, Urdu and Arabic – none of which cut any ice. A few days later, he overheard the Rohingya language being spoken by a group of people during Friday prayers at the mosque. He has since established himself in Klang.

Given the existence of a local Indian Muslim as well as Malay business community, many Rohingyas have found employment with these local businesses. Thanks to their religious education (there are over 200 Rohingya *ustazs* in Malaysia), many have also managed to establish close ties to local Malay families, often serving as Koranic tutors. Most Rohingyas speak fluent Malay, especially the younger generation. Nonetheless, relations with the local Malay society remain ambivalent, especially with formal Islamic institutions in the country. In one mosque, foreign Muslims were separated from local Muslims during Friday prayers, having to line up at the back. JAIS, the Islamic Affairs Department, has also disapproved of Rohingya attempts to get help from non-Muslim charitable organisations in Malaysia, such as the Christian Malaysia Care.

Localisation, however, does not mean immobilisation. In fact, settlement outside of a homeland (*sans* nationality) and outside of the camp (*sans* refugee status) has meant a life of constant mobility – shuttled from border to border, either in flight or deportation, and relocation from country to country, depending on the uncontrollable vagaries of the labour and political markets. In any event, life without a nationality remains difficult. In distinguishing himself from an undocumented labour migrant, Ustaz K, who is currently running one of the Rohingya *madrassas*, said:

I am not looking for money, I could look for money anywhere. It's not that I cannot live – I am looking for a *life*. More than that, I want a life for my children. I hope that I will not die before getting a nationality. (Interview with K, 30 November 2008)

Conclusion

The Rohingya experience suggests that refugee migration may be characterised as being open to both the possibility of settlement and resettlement (an option generally not available under guestworker labour regimes) and a life-world of hyper-mobility on the other. This mobility, in contrast to that of labour migration, is over-determined by a marked lack of directionality or low level of control over the destination and ultimate settlement. The loss of directionality stems from the vicissitude of flight from a persecuting state, aggravated by vulnerability to the actions of destination states. Notwithstanding these enormous legal barriers to the mobility of the 'unwanted' (Marrus 1985), a long-term consequence of such arbitrary dispersion has been the emergence of structures of opportunities for further mobility, as social and familial ties are established 'all over the world'. Contemporary refugee diasporas tend to be

more extensive in geographical scope for connected families than labour diasporas, and the mobility – legal and illegal – within the space thus generated is extremely high.

Refugee migration, with its inherently stateless and hence lawless – i.e. outside of the transnational rights regime – character, thus throws into even greater relief the tension between the illegal and the licit, as well as the academic perils of 'seeing like a state' (Scott 1998). As importantly, perhaps, it draws attention to what the modernist state (and its academics) *does not* and *cannot* see, as the space of the undocumented and the economy of the illicit remains, perforce, hidden from its administrative and hence enumerational order. In creating *legibility*, the state and its enumerational practices have also generated vast domains of *invisibility* – inaccessible not only to the eyes of the state but also to those of the academy which relies solely on the information gathered and made available by the state.

The Rohingya story also suggests that not all states see alike; in fact, with respect to the management of foreign populations, they may see very differently. The formal template of the nation-state has been adopted as the *sine qua non* for political existence in the modern world. Whilst taken to be paradigmatic, the modern nation-state – which frames its relations with the population within its territory (citizen and foreigner) entirely in terms of a legal order – is more of an exception than the rule among the 192 member states of the United Nations. The new post-colonial states of the post-imperial age may have developed the formal institutions of the modern nation-state, but their substantive behaviour has often remained substantially different.

Central to the vision of the modern nation-state is the distinction between the citizen and the foreigner, ideal-typically located in territorially distinct spheres of jurisdiction. Citizens were to remain within the 'embrace' of its territorial borders, while foreigners were to remain on the outside of them (Torpey 2005). More than just a physical artefact, the territorial border was a legal construct validating the right of the state to keep its people in and others out. Territorial control became the mode of governance par excellence of the modern state. As market and society grew beyond the territorial reach of the state, however, especially since the Great Transformation (Polanyi 1944) of the last century, the strict homology between people and territory has been irrevocably breached.

The modern liberal state, governed by the rule of law, continues to use legal instruments in the management of its foreign population, raising legal barriers to entry on the one hand, but providing legal space on the other for those who have been allowed to enter. A handful of Rohingyas have been allowed to enter under this legal regime. In illiberal states such as Saudi Arabia, where less legal space is accorded to

local civil society and in particular to non-citizens, a form of autocratic management laced with notions of ‘charity’ appears to have been put in place. The concern of the Saudi state seems to have been less with (violated) control of territory as with the effective control of population within its territory.

We must therefore problematise the way *the* state sees. Different *types* of states ‘see’ differently, and in looking at the interplay between the illegal and the licit, it may be necessary to look beyond the empirical acts of migrant trespass to the question of the construction of law or legality by the state itself – and the various norms and institutions with which this is done. ‘Bringing the state back in’ should include a reflection at this conceptual level on the differential making of law and legality by contemporary states.

A final comment may be in order. In the age of empire, heterodoxy of population and control of population mobility were not issues. The post-imperial age of the new post-colonial states witnessed, given the paradigmatic status of the territorial nation-state, the reassertion of state anxiety regarding the territorial control of population. The system of apartheid introduced in South Africa in the 1960s was the ultimate manifestation of this desire to identify populations with territory and to encapsulate homogenized populations within territory. With the great migrations of the last three decades – labour as well as refugee – this age would now appear to be coming to an end. To be able to trace its passing and the shape of the future to come, it would be necessary to see beyond the zone of European immigration and the way the state there sees.

Notes

- 1 The use of the term ‘hospitality’ here references its use by Derrida (2000). However, as will be seen from the text later, the hospitality is not the absolute hospitality of Derridean provenance. ‘Vernaculars’ refer to shared mediums of communication such as language or religion.
- 2 MN was an IT student at a private college in Kuala Lumpur at the time of the interview, and is currently running a computer business in Kuala Lumpur. Both his parents were born in Arakan and trekked across Bangladesh and India into Pakistan in the early 1970s, where they stayed for a couple of years before moving on to Mecca and settling there. MN was born in Mecca in 1980. He spent several months in Pakistan before coming to Malaysia for his studies in 1992. Whilst in Malaysia, he worked for several years for the UNHCR as a translator for Rohingya refugees.
- 3 MN, interview by authors, 8 August 2010.