

Chapter I

Introduction

A. Background

Being a citizen is the norm of today's world, therefore being stateless is an anomaly. In 2010, the Office of the United Nations High Commissioner for Refugees (UNHCR), also known as the UN Refugee Agency, estimated that there are about 12 million stateless persons worldwide and there is no region of the world that is free of the problems that lead to statelessness (UNHCR, 2012). Therefore, as the world's leading organization in aiding and protecting people forced to flee their homes due to violence, conflict and persecution, UNHCR has been providing shelter, food, other necessities and assistance to many refugees around the world. To prevent and reduce statelessness has been one of UNHCR's core mandate.

After the forming of the United Nation, UNHCR was created in 1950 with its headquarter in Geneva as a subsidiary organ of the General Assembly due to the rising refugee crisis. UNHCR was given the mandate to protect refugees, forcibly displaced communities and stateless people and was originally planned to operate for only 3 years. Fortunately, after the 1951 Convention relating to the Status of Refugees, the United Nation realized that the refugee crisis did not only happened in Europe but globally and a body addressing the issue is urgently needed. UNHCR, being the perfect body in the perfect situation, began to serve permanently to assist refugees and stateless persons all over the world ever since.

Being stateless means they have no legal power toward their existence. Thus, the quality of stateless people life can't be compared to those who possessed nationality as described by Feller (2009):

Because no country considers them citizens, stateless persons often do not have access to the rights that citizens take for granted. Statelessness often suggests living without identification papers that confer legitimate personality and the rights that go with them, including access to health insurance, jobs, land rights, and the freedom to travel freely. Births and deaths may not be registered, resulting in the legal invisibility of stateless persons: their life witnessed but never legally recognized (Feller, 2009).

One of many cases around the world that is very noticeable is the case of Bajau Laut in Sabah, Malaysia. Bajau Laut, also known as Sea gypsies, has been living and very much existing as a part of the Sabahan society for over 40 years (Chia, 2016). These people possess a semi-nomadic seaborne lifestyle that can be found throughout the South East Asian archipelago. (Nimmo, 1972) They live in boathouses called Lepa or Perahu, in which they fish, dive and live from the ocean. They don't often go to land unless they need to trade sea findings or fix their broken boat. At the same time, although subtly, they are active in the Malaysian maritime economic ecosystem.

Originally from the southern Philippine, these people are scattered from Sulu of Philippine to Sulawesi of Indonesia since at least back in the 18th century (n.d.). The existence of Bajau Laut is prominent as they are residing in three countries area, The Philippine, Malaysia and Indonesia. Unfortunately, their status of belonging is a problem some country can't simply solve. Unlike those Bajau in Indonesia or the Philippine who possess nationality, the nationality of Bajau Laut people residing in the Sabah coastal area is still denied by the Malaysian government regardless of their existence in the area for more than 40 years.

No country recognizes their existence. Therefore, they are legally invisible by having no legal document or protection over themselves. The problem of Bajau Laut's people made more complicated with the fact Malaysia has not ratified UN Conventions on related topic, which means the country does not have any legal or administrative framework for managing refugees. (United Nations High Commissioner for Refugees) Therefore, this paper examines how UNHCR's campaign in ending statelessness affects the life of Bajau Laut in Sabah despite Malaysia's policy on not ratifying UN Conventions related to Statelessness.

B. Research Question

1. What is the role of UNHCR in solving statelessness problem of Bajau Laut in Sabah, Malaysia?

C. Theoretical Framework

a. Intergovernmental Organizations

International organization translate to a hierarchical set of rules and objectives, a rationalized institutional instrument (Selznick, 1957) and has 'a formal technical and material organization: constitutions, local chapters, physical equipment, machines, emblems, letterhead stationery, a staff, an administrative hierarchy and so forth' (Duverger, 1972), while intergovernmental defines affairs conducted between two or more sovereign states. Therefore, an Intergovernmental organization is an entity working on common interests that established through a treaty between two or more sovereign state, such as the United Nation, European Union, or ASEAN.

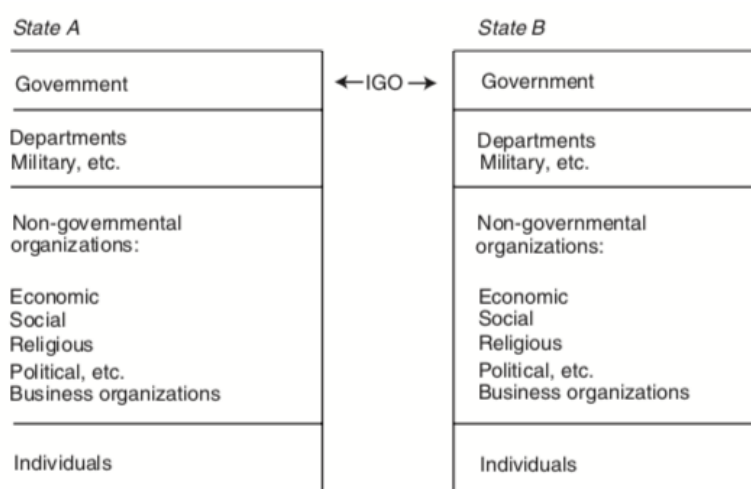


Figure 1 Intergovernmental relations and organizations

According to Wallace and Singer, intergovernmental organizations can be distinguished by three characters:

1. The organization 'must consist of at least two qualified members of the international system...' and should have been 'created by a formal instrument of agreement between the governments of national states'. Bilateral international organizations are included because they are still international organizations and because otherwise certain multilateral organizations would have to be excluded for the periods when their membership was reduced to two (Archer, 2001).
2. 'The organization must hold more or less regular plenary sessions at intervals not greater than once a decade' (Archer, 2001).
3. The organization should have a permanent secretariat with a permanent headquarters arrangement, and which performs ongoing tasks (Archer, 2001).

Aside from the three characters, one way to classify the intergovernmental organization is through examining their aims and activities. These aims and activities depict the intention of the organization's establishment as well as their goals and tasks as the organization take their place in a sort of political marketplace where the relationships between peoples, groups, business, nations states and blocs can be observed (Archer, 2001). Thus through examining these activities, the scope of the organization itself will be determined and the effect of intergovernmental organization's role may naturally be seen in the said political marketplace as described by Mansbach (1976):

Who often acknowledge a global political system suggests that it consists of 'numerous players who interact in patterned ways to control each other more or less

autonomously. Their independent decisions and policies serve as stimuli for one another and induce or constrain the behaviour of others' (Mansbach, Ferguson, & Lambert, 1976).

In other words, the term 'international system' – within which international organizations function – will be used in its fairly simple meaning suggesting that contemporary international relations take place within a defined area (which nevertheless is diffuse), wherein activities in one area are seen to affect those elsewhere and the whole structure is seen to be interconnected, through to what extent may be disputed (Archer, 2001).

In this globalization era, intergovernmental organization have come to hold a crucial role in the international politic arena and global governance as the existence of it shows how states are interdependence to one another in solving mutual issues. Not only states usually work together in an intergovernmental organization to create a mechanism for them to tackle various mutual issues, mechanisms established by IGOs to fix these issues are usually binding and also influencing other actors involved in the field. There are many cases where a policy established by an IGO is then adapted by many states. For example, in November 2014, UNHCR or United Nations High Commissioner for Refugees launched the #IBelong campaign to eradicate statelessness in the world by 2024. The office developed the Global Action Plan to End Statelessness, which propose a comprehensive strategic framework of actions to resolve the existing situations of statelessness, prevent new cases from emerging, and better identify and protect stateless populations (UNHCR, 2018). By 2018, nine states have developed or improved processes for evaluating statelessness, six states have changed their nationality laws, and two more have abolished gender segregation that prohibits women from passing their nationality on to their offsprings (UNHCR, 2018).

Intergovernmental Organization is the perfect theory to be used in this paper as it defines the subject of the research in this paper perfectly, which is UNHCR. Not only the theory serves as a defining agent, but through it, the roles of UNHCR in the case of Bajau Laut in Sabah can also be examined accordingly later in the analysis part of the paper.

b. Transnational Advocacy Network

Transnational Advocacy Network is a concept developed by Margaret E. Keck and Kathryn Sikkink where the ability of non-traditional international actors in mobilizing information strategically to create new issues, to persuade, pressurize, and gain leverage over much more powerful organizations and governments is prescribed (E. Keck & Sikkink, 1999). A Transnational advocacy network is made up of actors engaging on a topic on a global scale who are linked through mutual values, a collective dialogue, and dense exchanges of information and resources which allowed the information exchanges to be the core of their interactions. Issue areas characterized by high value content and informational uncertainty such as human rights or environmental issues are the common focus discussion of these networks. Network activists strive not only to affect policy outcomes, but also to change the terms and context of the discussion. They also encourage norm implementation by putting pressure on target actors to enact new policies and tracking compliance with regional and international requirements. Thus, Networks are communicative structures which influence discourse, procedures and policy that focusing on dynamic relationships among actors, the intersubjective creation of sense frames, and the negotiation and malleability of identities and interests (E. Keck & Sikkink, 1999).

A visual representation of human rights transnational advocacy network is a pattern which describes how an activism is design to work is called the boomerang pattern model (Bassano, 2014). This model shows how third world NGOs, who are prohibited from campaigning their concern by their own governments, collaborate with multinational NGOs to influence the global North.

As a result of this impact, governments in the global North exert pressure on the offending third world state, imposing social reforms that third world NGOs could not achieve on their own.

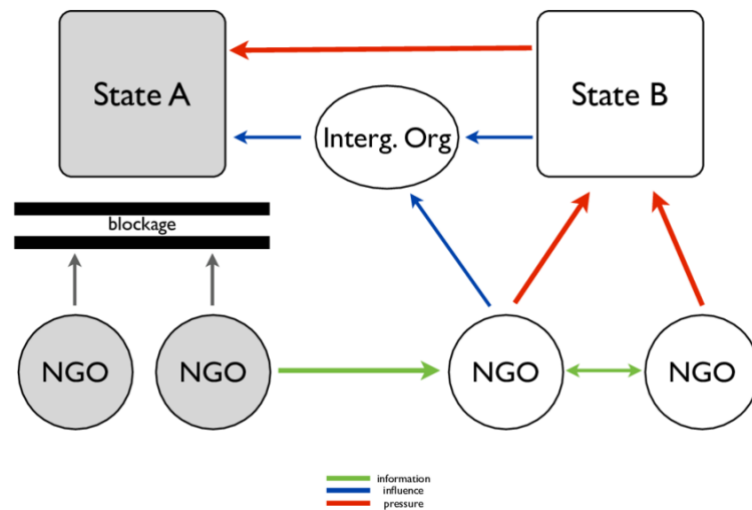


Image 1 The Boomerang Pattern

This concept is perfect to be implemented in this research for several reasons. First, the issue of stateless can be considered as a high value content issue which is one of the focus discussion of transnational advocacy network. Second, actors involved in this issue come from different sectors starting from states to non-states that are fitted according to the boomerang pattern, Malaysia as the State A, HUMANA as the local NGO, and UNHCR as the IGO. Not only that these actors are well fitted according to the boomerang pattern, the interactions between these actors resembles the concept transnational advocacy network the best.

c. Stateless

The term "Stateless" is normally used to describes people who held no citizenship or are not considered as nationals of a country (Blitz B. K., 2009). Although being stateless is legally not allowed by international law, according to data by the Office of the United Nations High Commissioner for Refugees (UNHCR), there are still about 12 million stateless persons worldwide (UNHCR, 2012). Thus, quoted from Blitz (2009), "The existence of stateless populations, therefore, challenges some of the key principles of international law and the discourse on human rights that have evolved over the past sixty years."

Essentially, the right to nationality for every people in the world is explicitly stated in the Universal Declaration of Human Rights (UDHR). Moreover, it has also been elaborated in two key international conventions relating to the topic of statelessness. This elaboration has successfully brought up the topic of statelessness into the United Nations official frameworks: the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. Now, both conventions serve as the primary international instrument that aims to regulate and improve the status of stateless persons (Blitz B. K., 2009).

All too often, stateless persons have difficulties in staying alive let alone claiming their basic human rights. Their births, marriages and even deaths are often undocumented, which makes them often to be powerless to seek redress through the courts (Goldston 2006). Also, Brad K. Blitz (2009) points out that:

There are also many others who are practically stateless or de facto stateless whose cannot claim their rights to nationality and unable to seek protection. De facto stateless persons usually unable to provide evidence of their national origin, citizenship, or other forms of registration of citizenship and may be exempted from

the formal state as a result. De facto stateless persons are not governed by the rules of the 1954 Convention relating to the Status of Stateless Persons under the international law, even though it contains a non-binding recommendation calling on states to 'consider sympathetically' the possibility of giving the same treatment offered by the convention to both de jure and de facto stateless persons (Blitz B. K., 2009).

Unfortunately, to date, there are only a few states that have ratified the stateless conventions, including the United Kingdom, Germany, France, etc. This fact has led to the multiplication of stateless cases all over the globe. Moreover, statelessness has only gain minor interest in the world of international politics over the past few years, despite UNHCR's mandate and its growing population. However, for the sake of the research, this concept is perfect to be used as it has successfully defined the object of the research, The Bajau Laut people in Sabah.

D. Hypotheses

To answer the research question as stated above using the theory of Intergovernmental Organization and the concept of Transnational Advocacy Network, hypothesis such as following is generated: Albeit no significant cooperation from Malaysia, UNHCR is still present and actively involved in solving stateless issue of the Bajau Laut in Sabah, Malaysia through active negotiation with the Malaysian government and collaboration with various local actors.

E. Research Methodology

This research will be conducted in qualitative methods, in which data will be collected through literature research from multiple journals, articles, and electronic books related to the topic. The obtained data will serve as secondary data which later be analyzed using a reductive approach with the existing theory and concept to answer the research question and test the hypothese mentioned above.

F. Purpose and Scope of Analysis

The research would serve as a comprehensive study on how an intergovernmental entity addresses a humanitarian issue in a region which have no legal framework while analyzing the entity's effect on a certain society. This research is focusing on the strategy used by UNHCR in solving statelessness problem of the Bajau Laut people in Sabah, Malaysia. The stateless people of Bajau Laut can be defined as those Bajau people who live on the Sabah sea area and possess no nationality. The sex and age of the person will not be a set back of the research.

G. Research Outline

The research outline would answer the research questions and analyze the hypothesis stated above. The structure of the research would be conducted as follows:

Chapter 1: As an introduction, this chapter will explain the background, research questions, theoretical framework, hypothesis, methods and approach, scope, and the outline of the research.

Chapter 2: This chapter gives details about the United Nations High Commissioner for Refugees (UNHCR). In this chapter, the writer will introduce UNHCR as an Intergovernmental Organization including its purpose, mandate, ongoing campaigns and also their existence in Malaysia especially.

Chapter 3: This chapter describes the people of Bajau Laut. Their history, characteristic and their development throughout the time would be explained, as well as their struggles on obtaining citizenship.

Chapter 4: This chapter analyzes how the UNHCR campaigning stateless issue in Malaysia.

Chapter 5: This chapter sums and concludes the research.