

**Bali Process on People Smuggling, Trafficking in Persons and Related
Transnational Crime
Senior Officials' Meeting
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UNHCR PRESENTATION

**The Challenges of Mixed Migration Flows:
An Overview of Protracted Situations within the Context of the Bali Process**

I. Introduction

International migration today is more complex than in the past, and so is refugee protection. As we know, people are coming into and moving within this region for various reasons. Migration in the Asia-Pacific area has traditionally served as a vehicle for economic and social development. This is evident when looking at labour migration in the region, which includes both labour producing and labour receiving countries. However, a significant number of movements are protection based and often triggered by dire human rights situations in countries of origin. While a clear distinction needs to be maintained between forced displacement and regular and irregular labour migration, it is increasingly evident that the phenomena intersect. It is important to understand the broader migration context and to analyze how forced displacement comes into play. This is particularly necessary in the Asia-Pacific region where, as we have seen, migrants and refugees alike hire smugglers and are exploited by traffickers. Smuggling and trafficking takes place against a backdrop of real protection needs.

In this environment, a major challenge for States, UNHCR and other stakeholders is to develop a coherent regional protection and solutions response to address the migration/refugee protection interface. In dealing with complex migratory flows of a composite nature, practical solutions are called for to broaden the protection space for those in need. Otherwise, it will be difficult to reduce the incidence of onward movement in the region and minimize exposure to exploitation and dangers of smuggling.

II. Refugees and Asylum-Seekers in the Region

While refugee and asylum-seeker movements are but a fraction of overall migratory movements in the Asia-Pacific region, they are nonetheless a significant component of the broader migration map. According to UNHCR statistics, if looking at figures for refugees, asylum-seekers and stateless persons in the region, the largest number are found in South West Asia, with 1.86 million, South Asia with 1.09 million, and South East Asia, with 1.03 million. The major asylum-seeker and refugee populations in the region by country of origin include those from Afghanistan, Iraq, Myanmar, and Sri Lanka.

Afghans of concern to our Office are found in large numbers in Pakistan and the Islamic Republic of Iran, and also in other countries such India, Australia, Malaysia, and to a lesser extent Japan and Indonesia. While Iraqis of concern are hosted mainly in Syrian Arab Republic and Jordan, they are also found primarily in Australia, Malaysia, Indonesia, India and Thailand. Myanmar asylum-seekers and refugees are hosted primarily in Bangladesh, Thailand, Malaysia, Australia, and India but are elsewhere as well. Sri Lankans are hosted primarily in India, as well as Malaysia, Australia, and Thailand.

Many of these refugees, particularly those more distant from their country of origin, have transited through other countries before arriving in their current country of asylum. This in itself is an issue that poses challenges to governments and needs to be further examined. Amongst these refugees and asylum-seekers, significant numbers have remained in protracted situations, and have grown increasingly frustrated in the absence of conditions that would allow them to return home. Some countries of origin are in an extremely fragile post-war transition to peace, while others continue to experience armed conflict or widespread human rights violations. Meanwhile, in some cases, refugees and asylum-seekers face a shrinking asylum space or a deterioration of security in their host countries. Access to basic services or to employment in countries of asylum are also often absent.

While there is a long-standing humanitarian tradition of hosting refugees in the region, toleration alone is not enough to provide them with the protection that meets international standards. What is often lacking is the legal framework to protect them. There is a low accession rate to the international refugee and statelessness instruments in the Asia-Pacific region, with a majority of States having signed neither the Refugee Convention nor the Statelessness Conventions. Some countries are not signatories to other core international human rights treaties. In addition, national refugee protection structures in the region are scarce. There is a lack of national legislation or national systems that would identify asylum-seekers and refugees and provide them with legal protection. Some countries legally label refugees and asylum-seekers as “illegal migrants” and they are subject to arrest, detention and even deportation. There is the perception among some countries that establishing mechanisms to assess their protection needs would create a pull factor. Others lack the resources to establish such mechanisms. Few countries have national institutions dealing specifically with refugees, which invites *ad hoc* and uncoordinated responses.

In the face of limited asylum space and inadequate conditions to encourage return to countries of origin, some refugees and asylum-seekers have started moving elsewhere, albeit not in large numbers. Preliminary data collected by UNHCR on those registered since mid-2008 indicates that Afghans are increasingly on the move and may comprise the largest group of onward movers. Other groups include onward movers from Myanmar, Iraq and Sri Lanka.

III. Muslim Residents of Northern Rakhine State in Myanmar

The issue of onward movers has dramatically come to the forefront most recently in the form of the Muslim residents of northern Rakhine State of Myanmar. The plight of this population has long been a concern to our Office and represents a significant protracted situation in the Asia-Pacific region. For a number of reasons, they have moved from Myanmar and Bangladesh to Thailand, Malaysia, and throughout the region, often with the assistance of people smugglers and subject to exploitation by traffickers.

In the past 30 years, there have been two massive exoduses from northern Rakhine State of Myanmar into Bangladesh, the first in 1978 and the second in the early 1990s. Both of these outflows were followed by large-scale repatriation in less than optimal conditions. In 1994, in the context of the second return, UNHCR established an office in the northern Rakhine State of Myanmar, which it still maintains today as part of an ongoing effort to stabilize the population.

In the meantime, however, the departure of Muslim residents of northern Rakhine State has continued. In addition to the 27,000 housed in UNHCR-assisted refugee camps in Bangladesh and the 13,000 registered with UNHCR in Malaysia, there are estimated to be some 200,000 living without any formal status in the area around Cox's Bazar in Bangladesh, and large numbers in Saudi Arabia and the Gulf States.

In some instances, they have moved as part of mixed groups, including Bangladeshi nationals in boats operated by smugglers and traffickers. At least for the last three years during the dry season, many have embarked on the dangerous sea journey from Bangladesh, and also more recently directly from the Arakan coast in Myanmar, in some cases resulting in tragic loss of lives. While most are presumed to be heading for Malaysia, some land in Thailand on route while a few have drifted as far as Indonesia and in one case in 2008, even as far as Sri Lanka. According to statistics gathered with the support of UNHCR, the numbers attempting to make the journey by boat from Bangladesh or directly from Myanmar doubled to some 6,000 last year. While, the boat people are almost entirely working age males seeking better survival strategies for themselves and their families that remain behind, the movements give rise to strong protection concerns as they take place against the background of the very precarious situation of this population in Myanmar itself and of the difficulties faced as an unregistered population by those who have moved to Bangladesh.

The situation of the Rohingya, with its refugee protection and economic dimensions, therefore presents, in critical form, a case study of the broader problem of onward movement affecting the region. The situation of the Rohingya needs both an immediate response and a broader solutions strategy. Any movement of people for protection related reasons requires access to territory and to an assessment of protection needs based on international standards. The issue also needs a regional approach that addresses the entire range of push and pull factors and the full cycle of displacement, which includes countries of origin, transit and destination. In the absence of such cooperation and of efforts to address root causes and stabilize the population through measures to improve

both rights and livelihoods at the points of origin, there is a likelihood that onward movements will continue.

IV. Mixed Migration Flows: Pragmatic Solutions

Indeed, the plight of this group provides a vivid illustration of the complexity of the issue of onward movements more generally. While many movements have a protection dimension and are more often than not the result of dire human rights situations in the respective countries of origin, economic and social factors play a role as well, certainly including when it comes to choosing destinations. As noted above, a significant number of countries in the region have seen rapid economic growth and have maintained a high demand for foreign labour, at least up to this latest global financial crisis. In addition, many on the move simply seek to join extended family or community networks elsewhere.

Adding to the complexity of the flows, migrants and refugees alike often engage people smugglers to move to other countries and to find employment. Refugees and asylum-seekers on the move often find themselves travelling in the same directions, and using the same routes and means of transport as economic migrants. They can all face the same perils, such as travelling in overcrowded, rickety boats operated by smugglers and ending up in the hands of traffickers for bonded labour.

In order to address this complex mix of migration and forced displacement, what is needed is a multi-faceted approach. Countries committed to combating people smuggling and addressing onward movements would do well also to examine comprehensive migration policies that take into account also the special circumstances of refugee movements. Along with a tough stance against smugglers and traffickers, there need to be corresponding protection measures in place for those that are exploited by them. There is also a need for broader measures to stabilize populations of migrants and asylum-seekers, thereby reducing the impetus to onward movement.

The protection space for refugees and other persons of concern needs to be broadened through pragmatic arrangements, especially in countries that are not party to the international refugee and/or statelessness instruments. For instance, when countries revisit their migration laws and policies, it would be useful for them to implement a screening mechanism in deportation proceedings that filters out specially protected categories of foreigners, such as asylum-seekers and refugees, trafficked persons, those at risk of statelessness, and vulnerable migrants on the basis of commonly agreed criteria. At the same time, improving the standard of treatment for asylum-seekers and refugees, particularly in terms of access to health care, education and employment, would be in the economic, security and humanitarian interest of host countries. Such an approach would be based on a responsible handling of population movements. It would both meet humanitarian protection concerns per se and constitute a valuable effort to address disorderly onward movements.

V. The Bali Process as a Platform for Discussion

The reinvigoration of the Bali Process provides an excellent platform for discussing broader measures addressing mixed flows. As it shifts from a focus on specific technical issues to consideration at a higher level, the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime provides a mechanism to bring affected member States together to promote dialogue on the issue of onward movement, examine the complex “push and pull” factors influencing people smuggling and trafficking for these groups, and explore opportunities for greater regional cooperation in addressing them. The related issues are complex, with not only humanitarian and protection dimensions but also political and security implications for the region.

In this regard, UNHCR welcomes and fully supports the proposed theme for the upcoming ministerial level meeting of “Irregular Migration – The Human Dimension.” UNHCR hopes that this will open up a space for a subsequent discussion that UNHCR would be pleased to convene with governments in the region on broader measures, such as the reception and registration of asylum-seekers and access to protection and basic services for those in need. UNHCR is convinced that by ensuring a harmonized approach to key aspects of forced displacement within broader migratory movements, we have a better chance to address disruptive onward movements. UNHCR believes, moreover, that increased ownership of the asylum issue by governments and related processes in the region needs to be part of any strategy.