



CO-CHAIRS' SUMMARY

Regional Roundtable on Irregular Movements by Sea in the Asia-Pacific Region, 18-20 March 2013 Jakarta, Indonesia

Introduction

1. The Government of Indonesia and the Office of the United Nations High Commissioner for Refugees (UNHCR) convened a Regional Roundtable on Irregular Movements by Sea in the Asia-Pacific from 18 to 20 March 2013 in Jakarta under the auspices of the Bali Process Regional Support Office. Participants included delegates from Bali Process Ad Hoc Group Members including Afghanistan, Australia, Bangladesh, Indonesia, Malaysia, Maldives, Myanmar, New Zealand, the Philippines, Sri Lanka, Thailand, Vietnam, the United States of America, the UN High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM). AHG Observers, Canada, and the UN Office on Drugs and Crime (UNODC), the Bali Process Regional Support Office (RSO), international organisations including the Office of the High Commissioner for Human Rights (OHCHR) and International Maritime Organization (IMO), government and NGO experts from other regions including the Caribbean, the Gulf of Aden and the Mediterranean¹ and academia also attended the Roundtable. A background paper was prepared by UNHCR to facilitate discussion.
2. The purpose of the Regional Roundtable was to promote “a common understanding of conceptual issues on irregular movements by sea with a view to inform the development of bilateral or multilateral arrangements among interested States.”² The focus of the Roundtable was to enhance understanding among participants of different aspects of irregular maritime movements, key actors, responsibilities and challenges and identify areas of interest for follow-up discussions and activities.
3. The meeting enabled participants to discuss some of the key challenges facing States in the Asia-Pacific region and to identify specific areas where cooperation and coordination at national and regional level were thought relevant.
4. The meeting was opened by Hasan Kleib, Director General for Multilateral Affairs of the Ministry of Foreign Affairs of the Republic of Indonesia, James Lynch, UNHCR Regional Representative and Regional Coordinator for South East Asia, and Bebeb Djundjungan and Greg Kelly, Co-Managers of the Regional Support Office. Participants were encouraged to address the issue of irregular migration by sea in a more holistic and comprehensive way

¹ Bahamas, Italy and the Regional Mixed Migration Secretariat in Nairobi.

² Bali Process Steering Group *Note on the Operationalization of the Regional Cooperation Framework in the Asia Pacific Region*, 12 October 2011, section 2.2 Irregular Movements by Sea.

that encompasses both legal and safe passage issues while also recognizing the root causes of irregular migration. The need to bolster regional and international collaboration was underlined as necessary to deal with highly organized criminal networks, as well as through law enforcement measures to prosecute perpetrators. At the same time, the need for a victim-centered approach that ensures the provision of assistance and protection on the basis of identified needs was noted.

5. The Roundtable was framed as the beginning of robust networking among experts and a platform for enhancing confidence-building measures among parties including countries of origin, transit and destination. The RSO was referred to as the implementing body of the Bali Process RCF through which approaches aimed at addressing all aspects of the cycle of irregular migration by sea from root causes to solutions could be developed.
6. These Summary Conclusions reflect broadly the themes and understandings emerging from the discussion.

Irregular Movements by Sea and the International Legal Framework

7. The first session started out with a number of experts who laid out the international legal framework governing search and rescue at sea and the treatment of people travelling as part of mixed movements up to and following disembarkation. This includes the international law of the sea, international human rights and refugee law and international criminal law.
8. Among the themes highlighted was the customary international law obligation of helping people in distress at sea, which applies regardless of territorial boundaries. The obligation to help those in distress, as well as establish mechanisms for search and rescue coordination, was underlined. The international legal framework encourages the development of regional mechanisms for cooperation. There is a high degree of ratification of applicable international maritime law instruments. What need to be further strengthened are national level coordination mechanisms that need to be complemented by regional coordination.
9. Experts identified the current state of international law including evolving areas with respect to the identification of locations where disembarkation should take place. This was thought to be an area worth further consideration. It was also considered useful to provide capacity building on the existing international legal framework.
10. The situation of irregular maritime movements raised a number of pressing issues especially in light of recent boat movements in the region. Experts identified the human rights risks for people at sea including loss of life, the risk of refoulement and the particular needs of vulnerable groups including women and children. Migrants and refugees were described as inhabiting a human rights limbo while travelling or upon reaching a destination other than their country of origin. Experts identified the need for a differentiated screening system to identify different categories through a migrant centered approach that ensures that those travelling irregularly by sea are not dealt with in a collective or arbitrary basis.

Irregular Movements by Sea: A Global Challenge

11. The second panel provided a platform for the exchange of valuable information from a comparative perspective by bringing into discussions experiences from the Mediterranean, the Caribbean and the Gulf of Aden for the purpose of cross fertilization and exchange of best practice. Participants noted that irregular migration by sea is not a national or regional

challenge but it is a global phenomenon that affects all regions. Mixed migration involves high risks associated with high levels of criminality and exploitation. Cooperation is required entailing the engagement of multiple actors and differentiated processes to distinguish between those with protection needs and those who move for economic reasons. Disembarkation was identified as a central part and a key challenge in all regions.

12. The meeting acknowledged the push and pull factors noting the complexity of root causes as they relate to poverty, lack of development, political instability and persecution. In the Asia-Pacific region, people with protection needs comprise a significant number of persons moving irregularly by sea.

Irregular Movements by Sea: A Regional Challenge for the Asia-Pacific

13. There has been an unprecedented increase in the number of persons travelling irregularly by sea in the region. Movements by sea can be arduous; it has become however the only choice for many people seeking international protection, better economic opportunities and reunification with family members. The importance of accurate, up to date data and published literature on migrant smuggling was identified as an important issue of knowledge and information exchange. The meeting was informed of the ongoing Voluntary Reporting System on Migrant Smuggling and Related Conduct assisted by the UNODC to strengthen engagement on information and intelligent sharing, underscoring the high value and utility that would derive from enhanced information sharing.
14. Thought provoking presentations were made by a country of origin and a country of transit/destination. From a country of origin perspective, the challenge of prevention was highlighted with respect to the lack of resources and expertise to manage overwhelming/significant numbers of potential migrants. The need for development in countries of origin was also highlighted as well as the need for capacity building. A country of transit/destination suggested that issues around irregular maritime movements cannot be resolved from a maritime law perspective but a more responsive approach to the realities of specific situations is needed. Such an approach would be multi-disciplinary and encompass search and rescue, training, education, inter-agency coordination and cooperation. It was also viewed that burden and responsibility sharing in supporting the most affected countries should be further encouraged. Practical experiences with respect to specific incidents were discussed. The perspective of the shipping industry was presented including current challenges relating to security threats and piracy in West Africa. The meeting was reminded that ship masters are obliged to rescue people in distress; however, problems occur with the identification of coastal states with disembarkation. A victim-centred approach was recommended while ensuring that smugglers and traffickers are prosecuted under the law.
15. During Working Group discussions, the complexity of disembarkation and the challenges of arranging for safe return when appropriate were identified. Participants also noted the importance of information sharing and cooperation between States but also within States between different agencies.
16. The common theme of all discussions was how to find accommodation between the national security concerns of States and the humanitarian and protection needs of smuggled and trafficked people. The complex interplay of root causes in countries of origin, preventive activities, cooperation in countries of destination as well as burden and responsibility sharing was highlighted. Better information about the choices smuggled people take can

help inform policy on incentives and disincentives that are crucial to any effective measures to irregular migration by sea. Therefore participants stressed the need for effective information campaigns in countries of origin and transit.

Addressing Different Aspects of Irregular Movements by Sea

17. Panellists addressed the question of irregular migration by sea from a number of perspectives, including effective prevention measures, a refugee protection perspective for those in need and from a broader migration management perspective. Panellists also reflected on the need to reduce the demand for people smugglers by effectively tackling irregular migration and dissuading irregular migrants who are not eligible for refugee protection, and in so doing preserving the integrity of the refugee and border processes. Criminalizing people smuggling was considered to be an essential first step with States ensuring robust investigation of offenders supported by intelligence shared both domestically and internationally. The protection dimension of the discussion highlighted the need to maximise efforts to reduce loss of life at sea, promote timely search and rescue, and assist coastal States to meet their obligations under applicable international law. Discussions underlined the need for protection-sensitive migration management systems that include profiling and differentiated procedures based on needs. Practical programs where maritime movements are dealt with in a broader migration management context were provided.

Regional Approaches to Irregular Movements by Sea/Scenario Planning

18. Panellists highlighted the value of the Regional Cooperation Framework, which aims to improve protection arrangements and burden sharing for asylum-seekers by promoting orderly migration management opportunities and protection sensitive reception approaches as well as looking beyond resettlement to durable solutions in a more expansive way. The Regional Support Office is the focal point for the Bali Process for opportunities to provide building blocks for the Regional Cooperation Framework over the medium and longer term. The Regional Cooperation Framework has reached a critical moment in time where cooperation should strive for a higher level of engagement.
19. UNHCR proposed for consideration by the meeting a draft Model Framework for Cooperation in rescue at sea emergencies. This was first discussed in an Expert meeting organized by UNHCR in November 2011 in Djibouti. An IMO draft regional arrangement or MOU was also presented for possible consideration for adaptation in the region.
20. During Working Group discussions, the complexity of irregular maritime movements and the need for cooperation at practical level was reiterated including the usefulness of Mobile Protection Response Teams. In practice, there are on occasion no clear lines between rescue at sea and interception as these concepts become blurred in an operational context. There was a recognition that irregular maritime movements need to be protection sensitive but there are other critical issues including prevention and counter-criminality issues that need to be considered.
21. The Model Framework has many useful elements but needs to be contextualized and expanded into the broader continuum of mixed flows and different stages in the migration cycle. The participants agreed that the general principles and operational checklists reflected in the Model Framework need to be developed to assist States to identify key areas of

- practical cooperation, as well as encourage better coordination among concerned States, principal actors and stakeholders in response to irregular movements by sea.
22. On the last day of the Roundtable, the participants considered two different scenarios where the discussions of the two days could be practically applied. These confirmed the practical challenges facing States in the region to assist people in acute situations of danger and distress.
 23. Participants highlighted the practical limitations of unilateral State action in dealing with the complex legal and operational dimensions of irregular maritime movements. It was noted that States that agree to receive and disembark persons rescued at sea needed to be reassured that they would not be left on their own in dealing with the repercussions after disembarkation. This would “dis-incentivize” States to take such action in the future. Conversely, they would be more likely to assist those arriving by sea if there was multilateral support, including financial and expert resources, in assisting States in finding practical solutions and outcomes after disembarkation.
 24. In this regard, it was recognized that the practical aspects of the Regional Cooperation Framework could be useful in developing a protection sensitive approach. In order to respond quickly and effectively to urgent maritime incidents, participants noted the importance of having a prepositioned regional approach.
 25. Specific proposals included:
 - a. the designation of focal points at the national and regional level including by supporting the network of national focal points which was developed by the RSO;
 - b. the development of guidelines and a simpler reference guide of applicable legal standards especially gaps relating to identifying places of safety for disembarkation;
 - c. strengthening regional cooperation in prosecuting smugglers and traffickers;
 - d. better harmonization and consistency of protection responses including identification of needs and processing, especially for vulnerable groups;
 - e. a better mapping of post-disembarkation options in the medium and longer term to ensure host States are properly supported.

The Way Forward & Concluding Remarks

26. The meeting identified a range of issues discussed during the Roundtable, including specific proposals emanating from the Working Groups that require further consideration and elaboration under the Regional Cooperation Framework. Participants express support to bring the outcomes of the Roundtable to the attention of the Senior Officials Meeting (SOM) for guidance on how the outcomes could be brought forward, including a possible referral to Ministers, for their consideration at the forthcoming Bali Process Ministerial Conference.
27. The Co-Chairs acknowledged the support of UNHCR for co-organizing the Roundtable, which was held under the auspices of the Regional Support Office whose contribution to the success of the Roundtable was much appreciated. The Co-Chairs expressed their gratitude to the Government of the United States of America for the financial support provided.
28. Participants expressed appreciation to the Government of Indonesia for its generosity and hospitality in hosting the Roundtable.

Jakarta, 20 March 2013

