



CO-CHAIRS' SUMMARY
International Workshop on the Protection of Irregular Movements of Persons at Sea
Jakarta, Indonesia, 21- 22 April 2014

Introduction

1. The Government of the Republic of Indonesia, in collaboration with the Office of the United Nations High Commissioner for Refugees (UNHCR), convened an International Workshop on the Protection of Irregular Movements of Persons at Sea (hereafter referred to as the Workshop) from 21 to 22 April 2014, in Jakarta, Indonesia. Representatives from Afghanistan, Australia, Bangladesh, Cambodia, Indonesia, Iran, Malaysia, Myanmar, New Zealand, Pakistan, Papua New Guinea, Philippines, Sri Lanka, and Thailand, as well as the UNHCR and the International Organization for Migration (IOM) attended as participants with representatives of Iraq, Fiji and the United Nations Office on Drugs and Crime (UNODC) being present as observers. The Workshop was also attended by a number of independent experts from Indonesia and the United Kingdom.
2. The purpose of the Workshop was to follow-up the implementation of the “Jakarta Declaration” adopted at the “Special Conference on Addressing Irregular Movement of Persons” held on 20 August 2013 in Jakarta, Indonesia. This workshop recognized the need for common responses involving countries of origin, transit and destination as well as more focused and action-oriented efforts under four pillars, namely prevention, early detection, protection and prosecution. The Workshop was also part of a process of dialogue on irregular maritime issues starting with the Regional Roundtable on Irregular Maritime Movements co-hosted by the Government of Indonesia and the UNHCR, and held in Indonesia in March 2013. This workshop intended to complement the Bali Process on People Smuggling, Trafficking in Persons and other related Transnational Crime.
3. The Workshop provided a forum for relevant stakeholders from the most affected countries originally invited to the Special Conference to exchange operational policies and practices under the protection pillar of the Jakarta Declaration. The focus of discussions was on three areas namely: building capacity to promote timely search and rescue operations through information sharing and coordination; developing a protection-sensitive migration management system, including for irregular movements by sea; and mobilizing necessary resources towards efficient management of irregular migration and victim protection.
4. At the opening session, H.E. Hasan Kleib, Director General for Multilateral Affairs of the Ministry of Foreign Affairs of the Republic of Indonesia delivered his welcoming address followed by remarks from Mr. James Lynch, UNHCR Regional Representative and Regional Coordinator for South East Asia. The focus was on common challenges and the need for coordinated joint responses to the irregular movement of persons by sea to be conducted through genuine regional co-operation on the basis of shared responsibility.

The workshop provided a timely opportunity to take concrete steps towards greater regional collaboration, clearer communication channels, and the protection of those in need. Using the Regional Cooperation Framework as a blueprint, UNHCR called for a comprehensive regional response that balances State sovereignty concerns with humanitarian considerations for the protection and welfare of people who move irregularly by sea.

5. In his keynote address, H.E. Dr. R.M. Marty M. Natalegawa, Minister for Foreign Affairs of the Republic of Indonesia highlighted that incidents of irregular migrants at sea are increasing at an unprecedented and alarming rate. The Minister noted that in spite of best efforts through the Bali Process, the irregular movement of persons, particularly by sea continues. The cross-border and complex nature of irregular movement of persons defies national solutions. A comprehensive solution is needed involving responsibility sharing rather than responsibility shifting. In parallel, efforts are required to address the root causes of maritime movements. The Minister underlined the need to promote and respect humanitarian needs and the human rights of persons moving irregularly by sea regardless of their legal status. Victim assistance and protection have always been among the principles of the Bali Process. The various legal instruments that States are party to, call for a victim centered approach that extends beyond the sea journey.

Setting the scene: snapshot of the current situation on irregular movement of persons by sea in the region

6. Mr. James Lynch, UNHCR Regional Representative and Regional Coordinator for South East Asia and Mr. Thomas Vargas, UNHCR Senior Regional Protection Adviser, provided an overview of trends and developments regarding irregular maritime movements as a global phenomenon, affecting the Mediterranean, the Caribbean, the Gulf of Aden, as well as the Asia-Pacific region. The challenge of protecting refugees, asylum-seekers, stateless persons, and migrants travelling irregularly by sea was complex, given the level of risk involved with regard to loss of life at sea, exploitation, abuse and violence in the hands of smugglers and traffickers. A number of UNHCR's regional and global initiatives were presented on protection at sea, including in the context of maritime interception operations, mapping options for disembarkation and monitoring irregular maritime movements. One intervention focused on national and bilateral measures to address people smuggling in addition to initiatives to promote regional cooperation.

Developing a protection-sensitive migration management system including for irregular movement of persons by sea

7. The first session considered the development of a protection-sensitive-migration management system, particularly in the context of irregular maritime movements. Expert panelists from academia and UNODC made presentations on the application of international maritime, human rights and refugee law, as well as international criminal law, as key components of a protection-sensitive migration management system. As a matter of well-established international law and subject to its treaty obligations, a State has the right to control the entry of non-nationals into its territory. Nevertheless, a balance needs to be struck between a State's powers to control its borders and its

obligations under applicable international law. The scope of the application of international obligations is not only relevant on the territory of a State but wherever a State exercises jurisdiction, including on the high seas. Among the issues highlighted was the absolute nature of the duty to respond to the needs of persons in distress at sea without discrimination and regardless of the location of incidents. Rights under different bodies of international law, including maritime, human rights, refugee and transnational crime law, accrue simultaneously and need to be taken into consideration as part of a comprehensive strategy. Protection starts with prevention, including through addressing the root causes. Focus on prevention alone, however, is an incomplete response; a victim centered protection approach to responses is also needed.

8. Current smuggling trends and developments in the region and beyond were presented. Note was made of insecurity being one of the root causes and a key driver behind migrant smuggling. While many persons may rely on smuggling networks to move irregularly in the region, many may end up becoming victims of trafficking in countries of transit or destination. A call was made not to consider smuggled persons as criminals as they most often become victims at the hands of smugglers. Reference was also made to experiences in other regions with regard to the opening of new legal channels for migration that provide for people's migratory aspirations while also addressing international protection needs. Opening new legal channels for migration was thought to be a more humane approach, which needs to complement law enforcement measures.
9. Seeking to deal with the problem of smuggling at transit or destination points may already be too late. There is a need to address this issue at the source in cooperation with countries of origin. Note was made of UNODC's initiative on the establishment of the Voluntary Reporting System on Migrant Smuggling and Related Conduct in which a number of countries present in the workshop participate to better understand the trend of migrant smuggling and further address the challenges it poses.
10. Participants discussed challenges with disembarkation of rescued people including to ensure for the identification of a place of safety. While the priority is to save lives at sea, State actions need to take into account human rights obligations including with respect to the principle of non-return to a place where the migrant fears persecution (principle of *non-refoulement*).

Building capacity to promote timely search and rescue operations with the goal of maximizing efforts to reduce the loss of life at sea

11. The second session commenced with representatives from academia and IOM commenting on current practices and operational challenges. It was noted that search and rescue capacity remains limited in the region with a number of States facing significant resource constraints to their capacity to respond in accordance with their international obligations. The necessity of building capacity was noted while acknowledging that SAR requires a coordinated effort among different agencies, whose capabilities also need to be strengthened. Examples were given of countries in the region engaged in cooperation and collaboration, at national, bilateral and regional levels. The possibility of pooling resources together to support joint action was highlighted.

12. Noting that protection starts by saving lives, participants underlined the need for enhanced coordination to strengthen capacity to respond effectively to situations of distress at sea at national and regional levels. While dwelling on terminology is not effective, there is a need for a common understanding of key concepts and language to underpin cooperation.
13. Participants reiterated the importance of prevention and referred to plans and measures underway to supporting this area of work. It was acknowledged that the goals of prevention, protection and prosecution needed to be pursued in parallel to effectively address the challenges at hand. Reference was made by a number of participants on various bilateral and regional arrangements that aim to build capacity on SAR. It was noted that the challenge is not only of rescuing individuals at sea, but also finding comprehensive solutions for their disembarkation to ensure a shared responsibility .

Mobilizing necessary resources towards efficient management of irregular migration and victim protection

14. Drawing from their own country perspectives, representatives from Iran, New Zealand and Sri Lanka provided presentations on how inter-agency cooperation and cooperation between countries leads toward efficient management of irregular migration while ensuring victim protection. The complexity of the irregular movement by sea was vividly illustrated from the perspective of origin, transit and destination countries. Comprehensive approaches were highlighted by the participants, which balance strong law enforcement measures with new legal channels for migration and ensuring for international protection
15. In this context, participants noted that important elements included capacity building effort, public awareness campaigns, and information sharing. Participants shared their national efforts as well as discussed ways of pooling resources that are at their respective countries' disposal to support the management of irregular migration and victim protection, particularly for women and children.

Table Top Exercise

16. Participants had the opportunity to engage, in a constructive manner, in a lively table top exercise that was conducted based on a fictitious scenario that covered key challenges to States on its obligations under international law and operational arrangements. Key international law principles were confirmed with respect to ensuring the protection of life at sea and disembarkation of those rescued at the place of safety. The principle of international cooperation requires putting in place a comprehensive and coordinated approach to respond not in an ad hoc manner but as part of regional cooperation solution involving countries and relevant international organizations namely UNHCR, UNODC and IOM.

Conclusions and Recommendations

17. Having engaged in lively deliberations, participants highlighted a number of protection sensitive measures to be taken in the context of a comprehensive response that also focuses on early detection, prevention, and prosecution. The following practical actions were recommended during the two-day Workshop:
- to ensure full promotion and protection of the rights of rescued or intercepted persons at sea and upon disembarkation in accordance with relevant international obligations;
 - to consider the development in advance of bilateral or regional agreements, standard operation procedures and terms of reference, as well as operational exercises that facilitate coordination and cooperation among countries in responding to individual incidents;
 - to consider under such agreements the development of common criteria on areas relating to the definition of distress at sea; assessment of conditions upon arrival at the rescue scene; contribution to costs and sharing of resources; definition of the place of safety for the purpose of disembarkation; and criteria for the treatment of people upon disembarkation on the basis of their identified needs;
 - to seek and strengthen the capacity of states in the region to respond to incidents of rescue at sea including among others addressing the root causes, targeted public awareness campaigns, and information sharing;
 - to encourage broader participation in the mapping exercise on disembarkation options to identify places of safety in the context of rescue or interception at sea, drawing from the activities that have been undertaken within the framework of the Bali Process including under the auspices of the Regional Support Office;
 - to further deliberate upon the function of Joint Mobile Response Team involving participation by affected countries, relevant international organizations and NGOs with respect to coordinating disembarkation efforts and assist in providing timely processing of claims
 - to consider using UNHCR's Protection Policy Paper on Maritime Interception Operations and the Processing of International Protection Claims as a reference for maritime interception operations in the region;
 - to support the Dialogue on Protection at Sea initiated by the UN High Commissioner to be held in December 2014; and
 - to invite States to continue the implementation and the follow-up of the Jakarta Declaration, focusing on the pillars of prevention, early detection, and prosecution.
18. Participants are of the view that practical actions highlighted at the Workshop, as reflected in the Co-Chairs' Summary, could be brought to the attention of the Bali

Process Steering Group and Ad Hoc Group to seek guidance on possible way forward under the Bali Process for proceeding with the modalities of their implementation.

19. Participants expressed appreciation to the Government of the Republic of Indonesia for its commitment, generosity and hospitality in organizing the Workshop. They also acknowledged the support of UNHCR in collaborating with Indonesia in the organization and implementation of the Workshop.

Jakarta, 22 April 2014.