

Past and present responsibility-sharing arrangements for refugees in the Asia Pacific region

Asia Pacific Refugee Rights Network

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Introduction

1. The first thematic discussion for the global compact on refugees on 10 July 2017 presents an opportunity for participants to examine the different approaches that have been taken to share responsibility for refugees among states, both past and present.¹ Taking stock of these approaches, in terms of identifying promising practices and lessons learned, will be critical to the ongoing development and implementation of a Global Compact on Refugees (GCR) and any interim application of the Comprehensive Refugee Response Framework (CRRF).
2. As a contribution to this discussion, the Asia Pacific Refugee Rights Network (APRRN) has submitted a reflections paper on the significance of the New York Declaration on Refugees and Migrants (New York Declaration) for the Asia Pacific region.² This reflections paper was first published on 12 June 2017 and distributed at the 2017 UNHCR Annual NGO Consultations.
3. This second brief submission complements the reflections paper. This submission addresses matters directly flagged for consideration in the agenda for the first thematic discussion, with a particular focus on the responsibility-sharing arrangements that have been developed and implemented in the Asia Pacific region. These include the historic Comprehensive Plan of Action for Indochinese Refugees (CPA) and the ongoing Solutions Strategy for Afghan Refugees (SSAR). This brief submission also considers other forums for the advocacy of greater responsibility-sharing in the Asia Pacific region, namely the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (Bali Process) and the Association of Southeast Asia Nations (ASEAN).
4. APRRN notes that while the first thematic discussion is titled “past and current burden- and responsibility-sharing arrangements”,³ APRRN believes that the term “burden” in this context is inappropriate because it implies that refugees have a negative value and it ignores the growing body of research that demonstrates the benefits that refugees can produce for their host communities.⁴

¹ UNHCR, “Towards a global compact on refugees” *Thematic discussion 1: Past and current burden- and responsibility-sharing arrangements - Palais des Nations (room XVII), Geneva, 10 July 2017: Concept Paper* (19 June 2017) <<http://www.unhcr.org/59525f887>>.

² APRRN, *Reflections on the significance of the New York Declaration on Refugees and Migrants for the Asia Pacific region* (12 June 2017) <<http://aprrn.info/wp-content/uploads/2017/07/APRRN-Reflections-on-the-significance-of-the-New-York-Declaration-on-Refugees-and-Migrants-for-the-Asia-Pacific-region-1.pdf>>.

³ UNHCR, above n 1, 1.

⁴ See, for example, Graeme Hugo, *Economic, Social and Civic Contributions of First and Second Generation Humanitarian Entrants: Final Report to the Department of Immigration and Citizenship* (Department of Immigration and Citizenship, June 2011) <<https://www.border.gov.au/ReportsandPublications/Documents/research/economic-social-civic-contributions-about-the-research2011.pdf>>; also Martin Enghoff et al, *In Search of Protection and Livelihoods: Socio-economic and Environmental Impacts of Dadaab Refugee Camps on Host Communities* (Royal Danish Embassy, Republic of Kenya, Norwegian Embassy, 2010).

For this reason, APRRN believes that responsibility-sharing is a more appropriate and accurate descriptor for these arrangements.⁵

The Comprehensive Plan of Action for Indochinese Refugees (CPA)

5. As stated in APRRN's previous submission, the first attempt to really apply a comprehensive refugee response to a large-scale refugee situation in the modern refugee regime took place in the Asia Pacific region. The Comprehensive Plan of Action for Indochinese Refugees (CPA), as it became known, was first designed in July 1979 as a large-scale response to the displacement of approximately one million refugees from Vietnam, Laos and Cambodia between 1975 and 1979.⁶ Ten years later, in 1989, the arrangement was formally named the CPA and updated to take into account change in circumstances and to reinvigorates states' commitments to the arrangement.
6. The key elements of the CPA, as first developed under the 1979 arrangement, were that 'countries of first asylum'- namely Indonesia, the Philippines, Malaysia, Thailand and Hong Kong- would provide temporary protection to the thousands of Vietnamese and Laotian refugees entering their territory by either land or sea. In return, states from outside the region, such as USA, Canada and Australia, offered to resettle large numbers of these refugees. The country of origin, Vietnam, also participated in the arrangement. It agreed, under a Memorandum of Understanding (MOU) with UNHCR first signed in May 1979, to minimise clandestine departures from Vietnam by developing routes for 'orderly departure' via Hanoi and Ho Chi Minh.⁷ This MOU aimed to reduce the number of boat departures from Vietnam and, in turn, minimise deaths at sea.
7. In the 1989 arrangement, two further mechanisms were added, primarily as a response to growing concerns among states that the conditions in the countries of origin had changed and that persons departing Vietnam and Laos were not all in need of international protection. These mechanisms were a regional refugee status determination (RSD) process and the development of a repatriation programme for persons found not to be in need of international protection. In the latter stages of this arrangement, forcible returns of persons found not to be refugees under the RSD process were enforced.
8. As an *ad hoc* response to a large-scale refugee movement, the CPA has often been identified as 'a qualified success' in terms of responsibility-sharing.⁸ The simultaneous application of a variety of

⁵ Responsibility-sharing in this context includes, as Mathew and Harley indicate, 'sharing responsibility both for physically hosting refugees and for financing their protection. It may also include sharing resources other than financial resources, such as specialized personnel, information or technology among states': Penelope Mathew and Tristan Harley, *Refugees, Regionalism and Responsibility* (Edward Elgar, 2016) 18. This issue is also addressed in Volker Türk and Madeline Garlick, 'From Burdens and Responsibilities to Opportunities: The Comprehensive Refugee Response Framework and a Global Compact on Refugees' (2016) 28 *International Journal of Refugee Law* 656, 664-665.

⁶ *Report of the Secretary-General on the Meeting on Refugees and Displaced Persons in South-East Asia*, UN GAOR, 34th sess, Agenda item 83, UN Doc A/34/627 (7 November 1979) [1]-[2].

⁷ *Memorandum of Understanding Between the UN High Commissioner for Refugees (UNHCR) and the Government of the Socialist Republic of Vietnam Concerning the Orderly Departure of Persons Who Wish to Leave Vietnam for Countries of New Residence*, 30 May 1979, reproduced in Luise Drüke, *Preventive Action for Refugee Producing Situations* (Peter Land, 1993) 241.

⁸ See Richard Towle, 'Processes and Critiques of the Indo-Chinese Comprehensive Plan of Action: An Instrument of International Burden-Sharing?' (2006) 18 *International Journal of Refugee Law* 537, 538; W C Robinson, 'The Comprehensive Plan of Action for Indochinese Refugees, 1989 - 1997: Sharing the Burden and Passing the Buck' (2004) 17 *Journal of Refugee Studies* 319, 321; Mathew and Harley, above n 5, 160.

protection measures, along with the inclusion of a wide variety of stakeholders (including states most capable of providing assistance as well as states most affected by the mass arrival of refugees), helped ensure the ongoing admission of refugees in countries of first asylum, as well as a significant opening up of resettlement places. Under the arrangement, more than one million refugees were resettled, either from the countries of first asylum or from Vietnam under the Orderly Departure Programme.⁹ The arrangement also led to promising practices in terms of ‘in-country’ monitoring, both for RSD and returnees, and the development of rescue at sea initiatives, including special resettlement arrangements for refugees following disembarkation under the Disembarkation Resettlement Offers (DISERO) and Rescue at Sea Resettlement Offers (RASRO) programmes.¹⁰

9. At the same time, there were some significant gaps in the CPA. First, it can be argued that the principal focus of the 1989 additional mechanisms was to deter further departures rather than to enhance protection. This was done by establishing screening mechanisms in such a way to ensure a very low number of people would be screened in, effectively lowering refugee protection standards. These measures were justified by the position that the situation in countries of origin had changed, even though reforms were both narrow and tentative. While countries of first asylum respected the obligation of *non-refoulement* on most occasions, at no stage did they offer the possibility of local integration to refugees as a durable solution. Refugees were held in ‘temporary confined transit’ facilities, rather than being permitted to move freely within host communities.¹¹ This had several impacts. It meant that the CPA paid scant attention to linking humanitarian support to refugees with development support for host communities. It also meant that, in comparison to the 1989 International Conference on Central American Refugees (CIREFCA), refugees had far less say in determining the most appropriate durable solution for their future.¹² Other measures, such as cash-based delivery systems to promote refugee self-sufficiency or measures to preserve the environment and infrastructure of host communities, were not contemplated during the CPA.
10. One of the main lessons that can be learned from the CPA is that while it led to significant protection gains for over a million people at the time, the terms of the arrangement also reinforced the position among states in the Southeast Asia region that long-term durable protection for refugees is a foreign responsibility. Many states in the region have maintained this core position to date, even though several have experienced significant economic growth since the time of the CPA. Resettlement countries have also not been so forthcoming in offering resettlement opportunities for refugees since the CPA, although it is unclear to what extent this is due to the CPA or other changes in circumstances.
11. The other main lesson that can be learned from the CPA relates to its failure to develop and implement sustainable national and regional asylum programmes with respect to refugees in the Southeast Asian region. The CPA’s region-wide RSD system, based on the 1951 Refugee Convention as well as UNHCR’s *Handbook on Procedures and Criteria for Determining Refugee Status*, was discontinued following the conclusion of the CPA. This is contrasted with CIREFCA, which

⁹ Mathew and Harley, above n 5, 151. See also Judith Kumin, ‘Orderly Departure from Vietnam: Cold War Anomaly or Humanitarian Innovation?’ (2008) 27 *Refugee Survey Quarterly* 104, 116.

¹⁰ See Anja Klug, ‘Strengthening the Protection of Migrants and Refugees in Distress at Sea through International Cooperation and Burden-Sharing’ (2014) 26 *International Journal of Refugee Law* 48, 56-7.

¹¹ See W C Robinson, *Terms of Refuge: The Indochinese Exodus & the International Response* (Zed Books, 1998) 281.

¹² See Mathew and Harley, above n 5, 182.

developed the first legal interpretations of the 1984 Cartagena Declaration¹³ and prompted some Central American states to ratify the 1951 Refugee Convention and implement national asylum policies and laws.¹⁴ Another concern about the CPA is its contribution to the development of a negative public discourse surrounding refugees, with terms such as ‘boat people’, ‘queue jumper’ and ‘economic migrant’ all emerging in this context.¹⁵

12. The Orderly Departure Programme from Vietnam, which some have considered perhaps the CPA’s ‘most significant and durable accomplishment’ given its widespread use at the time, has also been questioned due to the way it may have prevented large numbers of people in need of international protection from seeking asylum and the way in which the Vietnamese seemed to use the programme to remove an unwanted ethnic Chinese minority.¹⁶ In addition, the low number of asylum seekers screened in and the high number repatriations through the CPA RSD procedures has set a regional precedent and continues to influence the dominant view among states in the region that repatriation policy need not be based on international standards of protection or procedure.
13. If elements from the CPA were to be adapted for use today, then they would need to be complemented by measures that stimulate the local integration of refugees within asylum states and enable refugees to access basic services and pursue livelihoods while providing benefits to the host communities, both economically and culturally. Some options for further consideration include: the strategic use of resettlement, whereby resettlement places are increased in return for an equal or greater number of local integration places;¹⁷ the development of labour migration programmes for refugees (as contemplated in both the 2014 Brazil Declaration and Plan of Action and the CRRF); and, at the very least, the provision of lawful status in host states, including livelihood opportunities.¹⁸
14. Further, any arrangement considered for implementation in the Asia Pacific region today would need to prioritise the development of principled and sustainable national and regional architecture for ensuring the protection of refugees on an ongoing basis. It is important that refugee protection in the region is no longer seen solely as a foreign responsibility, particularly in countries that have seen considerable economic development over the last 20 years since the CPA. APRRN stands ready to assist all relevant actors with the development of appropriate national and regional asylum programmes in the region. APRRN also believes that there is a significant opportunity for greater international cooperation at the regional level in terms of search and rescue at sea and the

¹³ See Michael Reed-Hurtado, ‘The Cartagena Declaration on Refugees and the Protection of People Fleeing Armed Conflict and Other Situations of Violence in Latin America’ (Legal and Protection Policy Research Series No 32, UNHCR Division of International Protection, June 2013) <<http://www.refworld.org/docid/51c801934.html>> 15.

¹⁴ Mathew and Harley, above n 5, 181.

¹⁵ Ibid 157-8.

¹⁶ See Kumin, above n 9, 114-16.

¹⁷ See Keane Shum, ‘A New Comprehensive Plan of Action: Addressing the Refugee Protection Gap in Southeast Asia through Local and Regional Integration’ (2011) 1 (1) *Oxford Monitor of Forced Migration* 60, 66.

¹⁸ See Mathew and Harley, above n 5, 241-242.

development of robust admission and reception procedures and practices, particularly in light of the development of the Task Force on Planning and Preparedness within the Bali Process.¹⁹

Solutions Strategy for Afghan Refugees (SSAR)

15. Unlike the CPA, the SSAR is often considered as a quadripartite agreement rather than a 'comprehensive' responsibility-sharing arrangement for dealing with the protection of refugees. This is because the number of state actors formally involved in the arrangement is limited to the country of origin and the two main countries hosting the Afghan refugee population, and the solutions available under the arrangement are limited to return to the country of origin and temporary protection in the host communities.
16. Although the SSAR was formally developed in May 2012, efforts to coordinate responses to the mass displacement of the Afghan refugee population have been undertaken ever since displacement began following the communist coup in 1978 and subsequent Soviet invasion of Afghanistan in 1979. Most notably, in 1988, Afghanistan and Pakistan signed a bilateral agreement which focused on improving conditions in Afghanistan for voluntary return as part of the Geneva agreements.²⁰ In 2003, following the fall of the Taliban and the commencement of widespread return to Afghanistan, UNHCR negotiated two tripartite agreements with Afghanistan and Iran and Pakistan respectively for the management of repatriation operations.²¹ In this same year, UNHCR also suggested that the Afghan refugee situation could benefit from enhanced multilateral cooperation under UNHCR's Convention Plus Initiative, an initiative that shared many similarities with the current New York Declaration.²² In particular, this initiative proposed 'continued priority being given to repatriation and reintegration in Afghanistan', including measures to facilitate the inclusion of returnees and refugees within Afghanistan's national development programme, and enhanced inter-regional development assistance.²³
17. Despite these efforts, Afghan refugees remain the largest protracted refugee population in the world. Pakistan and Iran, continue to host, on a 'temporary' basis, more than 95% of the Afghan refugee population.²⁴ Inter-regional support by way of financial assistance has frequently fallen short in terms of need. For example, the first quarter report of the 2017 UNOCHA Humanitarian Response Plan indicates that only \$92 million USD of the \$550 million USD requested budget for

¹⁹ Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, *Attachment A: Review of Region's Response to Andaman Sea Situation of May 2015* (November 2016) <http://www.baliprocess.net/UserFiles/baliprocess/File/Review%20of%20Andaman%20Sea_Final_Bali%20Process%20AHG%20SOM_16%20Nov%202016.pdf> [14].

²⁰ See *Bilateral Agreement between the Republic of Afghanistan and the Islamic Republic of Pakistan on the Voluntary Return of Refugees* (1988), cited in Guy S. Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (3rd, 2007) 495, n 193.

²¹ UNHCR, *Background Document: Initiatives That Could Benefit From Convention Plus* (18 June 2003) <<http://www.refworld.org/docid/471dcaebo.html>> 2-3.

²² Ibid 2-4.

²³ Ibid.

²⁴ UNHCR, *Solutions Strategy for Refugees: Progress Report 2014* (2015) <<http://www.unhcr.org/uk/562a44639.pdf>> 4.

Afghanistan has been received to date.²⁵ Similarly, as at 20 June 2017, UNHCR has only reached 22% of its annual funding targets for Afghanistan, Pakistan and Iran collectively.²⁶

18. Importantly, since 2015, there has been a significant deterioration in conditions in Afghanistan that further complicate the resolution of the Afghan refugee situation and the application of the SSAR. In May 2017, the European Commission reiterated its previous assessment made in September 2016 that the humanitarian and security situation in Afghanistan 'can no longer be considered a "stabilisation phase", but has rather reverted to an increasingly acute humanitarian crisis'.²⁷ UNHCR, the World Bank and others have also documented the gravity of these deteriorating conditions for Afghan refugees, returnees and IDPs.²⁸
19. The key elements of the SSAR are not too dissimilar to the previous repatriation arrangements discussed above. The SSAR focuses on 'creating conditions conducive to voluntary repatriation through community-based investments in areas of high return; building Afghan refugee capital based on livelihood opportunities in Afghanistan in order to facilitate return; and preserving asylum space in host countries, including enhanced support for refugee-hosting communities, alternative temporary stay arrangements for the residual caseload, and resettlement in third countries'.²⁹ While these elements have been intellectually backed by many key humanitarian and development stakeholders and have been shown to improve refugee protection in other contexts,³⁰ there is the need for open and candid review as to why the SSAR has had limited success in addressing these issues since its formation in 2012.
20. Given that the CRRF is to be implemented 'for each situation involving large movements of refugees, including in protracted situations', there needs to be greater consideration as to how applying the CRRF to SSAR can assist with the ongoing protection of Afghan refugees and returnees, bring about solutions and effect a more equitable distribution of responsibility among states.³¹ This consideration needs to be inclusive, transparent and based on full respect for international human rights law.
21. It is clear that there is substantial political pressure from host states to resolve large-scale refugee situations, including protracted refugee situations such as the Afghan refugee situation. There is also a growing linkage in the CRRF between humanitarian and development support that aligns

²⁵ UNOCHA, *2017 Humanitarian Response Plan: First Quarter Report of Financing, Achievements and Response Planning* (January - March, 2017) <https://docs.unocha.org/sites/dms/Afghanistan/AFG_HRP_2017_Q1_Report_Jan_Mar_2017.pdf> 1.

²⁶ See UNHCR, *Afghan Situation: 2017 Funding Update as of 20 June 2017* (June 2017) <<http://reporting.unhcr.org/sites/default/files/Afghan%20Situation%20Funding%20Update%2020%20June%202017.pdf>> 1.

²⁷ European Civil Protection and Humanitarian Aid Operations, *ECHO Factsheet: Afghanistan* (May 2017) <http://ec.europa.eu/echo/files/aid/countries/factsheets/afghanistan_en.pdf> 2.

²⁸ See UNHCR and the World Bank, *Fragility and Population Movement in Afghanistan* (3 October 2016) <<http://www.refworld.org/docid/582boccb4.html>>.

²⁹ UNHCR, *International Conference on the Solutions Strategy for Afghan Refugees to Support Voluntary Repatriation, Sustainable Reintegration and Assistance to Host Countries* (May 2012) <<http://www.unhcr.org/afghanistan/solutions-strategy.pdf>> 12.

³⁰ See, for example, UNOPS, *PRODERE: Reflections on a revolutionary approach to development* (17 December 2015) <<https://www.unops.org/english/News/UNOPS-in-action/Pages/PRODERE-Reflections-on-a-revolutionary-approach-to-development.aspx>>.

³¹ *New York Declaration for Refugees and Migrants*, UNGOAR, 71st sess, Agenda items 13 and 117, UN Doc A/RES/71/1 (3 October 2016) ('New York Declaration') <http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/1&=E%20> Annex I: Comprehensive refugee response framework [4].

with many of the SSAR approaches. In many ways, the CRRF presents a new opportunity to reinvigorate commitments from international donors to assist with the Afghan refugee situation and to further implement sustainable development projects in both the host communities and Afghanistan. There may also be the possibility of greater resettlement opportunities. However, there is also a significant concern that the increasing pressure to implement solutions to refugee movements, both traditional and innovative, could lead to violations of international human rights law, particularly in the area of forcible return.

22. While the New York Declaration outlines that establishing conditions for return is the ‘primary goal’ of the CRRF and that ‘voluntary repatriation should not necessarily be conditioned on the accomplishment of political solutions in the country of origin’,³² all 193 states have agreed that ‘any type of return, whether voluntary or otherwise, must be consistent with ... international human rights law and in compliance with the principle of *non-refoulement*’.³³ The cardinal obligation of *non-refoulement* is also recognised as customary international law.³⁴ In regards to the Afghan refugee situation, APRRN is deeply worried about reports that the Pakistani government is making deliberate efforts to coerce refugees to return to Afghanistan, even though the conditions for cessation of refugee status in Afghanistan are clearly not met.
23. In the 2017 report ‘Pakistan Coercion, UN Complicity: The Mass Forced Return of Afghan Refugees’, Human Rights Watch (HRW) claims that the Pakistani government has implemented several measures since June 2016 to coerce Afghan refugees to depart Pakistan involuntarily.³⁵ These include:

increasingly insecure legal status; government announcements that all Afghans should leave, and the resulting ever-present threat of deportation; daily police extortion that intimidated and stripped them of their limited income and ability to make ends meet in Pakistan; arbitrary detention; police raids on their homes; exclusion of their children from Pakistani schools and shutting down Afghan refugee schools; and, to a lesser extent, police theft and unlawful use of force.³⁶

24. HRW states that ‘the exodus amounts to the world’s largest unlawful mass forced return of refugees in recent times’ and criticises UNHCR for its complicity in these human rights violations.³⁷ These are very serious allegations which require further analysis and review among all key stakeholders. It is noted that UNHCR and the World Bank have already acknowledged in October 2016 that the return of thousands of refugees from Pakistan to Afghanistan in recent times have been ‘mostly involuntary’.³⁸

³² Ibid [76], Annex I: Comprehensive refugee response framework [11].

³³ Ibid [78].

³⁴ See, for example, UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol* (26 January 2007) <<http://www.unhcr.org/4d9486929.pdf>> [15].

³⁵ Human Rights Watch, *Pakistan Coercion, UN Complicity: The Mass Forced Return of Afghan Refugees* (February 2017) <<https://www.hrw.org/report/2017/02/13/pakistan-coercion-un-complicity/mass-forced-return-afghan-refugees>> 16-25.

³⁶ Ibid 2.

³⁷ Ibid 2, 36-52.

³⁸ UNHCR and the World Bank, above n 28, 1.

25. Regardless of how the SSAR is to be further developed through application of the CRRF, there need to be sufficient protections in place to ensure that *refoulement* does not occur. This will likely involve the reinforcement of already established legal norms regarding the grounds for cessation of refugee status and the scope of UNHCR's mandate,³⁹ as well as greater responsibility-sharing provided to the countries that have now been hosting Afghan refugees for over 30 years.

The Bali Process and other forums for responsibility-sharing in the Asia Pacific region

26. Although they are not specifically mentioned in the agenda for the first thematic consultation, APRRN believes that the Bali Process and ASEAN also present opportunities for greater responsibility-sharing on refugee issues in the Asia Pacific region, and also notes the role that has been played in this regard by the Asia Dialogue on Forced Migration (ADFM) over recent years. APRRN stands ready to work with these forums to bring about positive protection changes for refugees and other persons of concern in the region.
27. Unlike the CPA and the SSAR, the Bali Process is a state-led process, led by the co-chairs Australia and Indonesia. Since its inception in 2002, its membership has grown to consist of 45 states, as well as three international organisations - UNHCR, IOM and UNODC.⁴⁰ According to its website, it is a 'forum for policy dialogue, information sharing and practical cooperation'.⁴¹ In 2012, it officially opened a Regional Support Office (RSO) in Bangkok, Thailand to operationalise elements of its agenda. Increasingly, the Bali Process has welcomed constructive dialogue with civil society and other actors.
28. Despite its core focus on people smuggling and transnational crime, Bali Process members have been progressively willing to consider refugee protection issues under its mandate. In 2011, Bali Process members, based on the recommendation of UNHCR, agreed to develop a Regional Cooperation Framework which included, among other things, proposals for the development of more uniform and consistent asylum procedures, and timely durable solutions for refugees to ease pressures on host countries.⁴² In 2016, Bali Process members, in response to the 2015 Andaman Sea Crisis, went further, adopting a declaration that recognises the importance of 'victim-centered and protection-sensitive strategies', strict respect for the principle of *non-refoulement* and the 'need for comprehensive and long-term solutions for mixed migration flows, which by definition can include refugees and irregular migrants'.⁴³

³⁹ See *Convention Relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 150 (entered into force 22 April 1954) (Refugee Convention) Art 1C(5) and (6); also UNHCR, *Guidelines on International Protection: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the "Ceased Circumstances" Clauses)* (10 February 2003) <<http://www.unhcr.org/3e637a202.pdf>>.

⁴⁰ The Bali Process, 'Membership' <<http://www.baliprocess.net/membership/>>.

⁴¹ The Bali Process, 'About the Bali Process' <<http://www.baliprocess.net/>>.

⁴² Foreign Ministers of Indonesia and Australia, *Fourth Bali Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime, Bali, Indonesia, 29–30 March 2011* <https://www.unodc.org/documents/southeastasiaandpacific/2011/04/som-indonesia/110330_FINAL_Ministerial_Co-chairs_statement_BRMC_IV.pdf> [16].

⁴³ *Bali Process Declaration on People Smuggling, Trafficking in Persons and Related Transnational Crime* (adopted at the Sixth Ministerial Conference of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, Bali, 23 March 2016) <<http://www.baliprocess.net/UserFiles/baliprocess/File/Bali%20Declaration%20on%20People%20Smuggling%20Trafficking%20in%20Persons%20and%20Related%20Transnational%20Crime%202016%20%20281%2029.pdf>> ('Bali Declaration').

29. While the Bali Process has been critiqued on occasions as being perceived, primarily, as a ‘talking shop’ and for a lack of transparency, there is increasing evidence to suggest that the forum is playing an important norm-setting role, particularly for states that have been unwilling historically to recognise refugees as a group of persons who have particular protection concerns. Further, as part of its review into its response to the 2015 Andaman Sea crisis, Bali Process members recognised their own deficiencies in responding to the events of May 2015 and committed to overcome these deficiencies by establishing a non-binding Task Force on Planning and Preparedness to develop protocols to ‘harmonise detection, search and rescue, disembarkation and shelter practices’.⁴⁴ It is clear that the ADFM (in which a number of APRRN members participate) played an important role in the formation of this review, which Bali Process members acknowledged.⁴⁵
30. ASEAN is another important regional body that should be engaged more consistently and strategically to strengthen regional protection for refugees. While ASEAN currently lacks any policy, framework or mechanism directly related to displacement, internal or external, ASEAN member states are increasingly engaging on issues of irregular migration. In July 2015, ASEAN held an emergency Ministerial Meeting on Transnational Crime Concerning Irregular Movement of Persons in Southeast Asia in response to the 2015 Andaman Sea Crisis, where it pledged to establish a task force and humanitarian trust fund to respond to the irregular movement of migrants and refugees in the region.⁴⁶ At the same time, several member states have become increasingly vocal towards particular refugee situations, and have expressed the importance of addressing root causes that have resulted in a regional refugee crisis. Most recently, Malaysia spoke out against the treatment of Rohingya in Rakhine State and called for an ASEAN Foreign Minister’s meeting to discuss the crisis.⁴⁷ However, follow-up has been weak in both these cases due to the lack of an official ASEAN mechanism to address irregular migration as well as its root causes. One more positive example is Indonesia, that has recently passed a Presidential Decree on Asylum Seekers and Refugees, which will present important opportunities to set precedent of good practice in the region.
31. One important development within ASEAN is that it has over the past decade invested in the creation of a legally-binding regional framework as well as operational capacity in humanitarian response in disasters. While these frameworks and operational arrangements are currently limited to ‘natural’ disasters, ASEAN in its Vision 2025 on Disaster Management explicitly recognised the occurrence and risks associated with human-induced disasters and need for ASEAN to be prepared to respond.⁴⁸ ASEAN’s disaster management capacity holds promise in the area of search and rescue operations. ASEAN’s humanitarian and disaster relief (HADR) capacities include well-coordinated military and civilian capacity, which would be important to engage in the development of any regional search and rescue capacity. This capacity, however, will need to be guided by political commitment to develop a regional approach and standby arrangements for search, rescue and

⁴⁴ Bali Process, above n 19, [14].

⁴⁵ Ibid [9].

⁴⁶ ASEAN, *Chairman’s Statement: Emergency ASEAN Ministerial Meeting on Transnational Crime Concerning Irregular Movement of Persons in Southeast Asia* (July 2015) <<http://reliefweb.int/sites/reliefweb.int/files/resources/Chairman-Statement-Emergency-ASEAN-Ministers-Meeting-on-Transnational-Crime-2-July-2015-1.pdf>>. [6].

⁴⁷ See ‘Malaysian PM sends aid for Muslim Rohingyas in Myanmar’, *Reuters* (online), 3 February 2017 <<http://www.reuters.com/article/us-myanmar-rohingya-malaysia-idUSKBN15114D>>.

⁴⁸ ASEAN, *ASEAN Vision 2025 on Disaster Management* (2015) <http://www.asean.org/wp-content/uploads/2012/05/fa-220416_DM2025_email.pdf>.

disembarkation in the region. The Bali Process Planning and Preparedness Task Force's Table Top Exercise held in May 2017 was an important step in this direction, and ASEAN should be encouraged to engage, work towards the interoperability of search and rescue systems, develop regional agreements on disembarkation locations and procedures.

Civil Society Engagement and the Asia Pacific Refugee Rights Network

32. APRRN is a network that brings together more than 300 civil society organisations and individuals from over 28 countries in the Asia Pacific working on refugee rights issues. APRRN is well-positioned to engage with relevant stakeholders with regards to the development of the GCR and its appropriate application in the Asia Pacific region.
33. APRRN has a longstanding commitment to supporting refugees in the region, and advocates at the domestic, regional and global levels on behalf of the rights of refugees in the Asia Pacific. APRRN has developed a core document that shapes its approach to furthering the protection of refugees and others in need of protection in the region. This document is known as the APRRN Vision for Regional Protection, and was developed following extensive consultation with members and other stakeholders between 2012 and 2014.⁴⁹
34. APRRN itself is a current example of responsibility-sharing arrangements for refugees in the Asia Pacific, modelling civil society engagement and cross border collaboration amongst refugee leaders, community-based organisations, national non-government organisation and faith-based organisation service providers, advocates and academia. An evaluation of UNHCR's revised Urban Refugee Policy reminds us that, "It is the relationship with civil society, at large, as opposed to a specific government entity, that is the key to expanding the protection space for refugees and asylum-seekers."⁵⁰
35. APRRN welcomes the clear commitment to adopting a 'whole of society' approach within the New York Declaration and believes that the best way to address diverse needs with limited resources is through collaboration, with refugees at the centre. Collaboration is only possible where all parties commit to nurturing the seeds of trust. Trust is earned and takes time, developing and strengthening through communication and implementation.⁵¹
36. While it might seem that there is little time for outreach to, or mutual capacity strengthening with, local and national actors in the face of the sheer number of people with immediate needs, this scale and complexity will continue to grow and become insurmountable unless we begin to prioritise capacity building of local and national actors as part of a long-term solution.⁵² "This does not mean engagement with only or even primarily government policy-makers, but should include: schools, hospitals, lawyers, law schools, law students, police, judges, municipalities and communities, social workers and every relevant service provider. Every step towards acceptance by these local actors of

⁴⁹ APRRN, *Asia Pacific Refugee Rights Network Vision for Regional Protection* (June 2014) <<http://aprrn.info/wp-content/uploads/2016/08/APRRN-Vision-for-Regional-Protection-14.6.14.pdf>>.

⁵⁰ UNHCR, *The Implementation of UNHCR's Policy on Refugee Protection and Solutions in Urban Areas*, (2012) <<http://www.refworld.org/docid/51c7fa9e4.html>>.

⁵¹ APRRN, *Strategies to Promote Protection inside and outside of RSD* (August 2016) <<http://aprrn.info/joint-report-with-laawg-strategies-to-promote-protection-inside-and-outside-of-rsd/>>.

⁵² Ibid.

responsibility for the refugees and asylum-seekers within their reach, with some accountability and justiciable framework, is progress towards meaningful State protection.”⁵³

The views expressed in this document do not necessarily reflect the views of all members of the APRRN network.

⁵³ Ibid.