



## Irregular Maritime Migration in the Bay of Bengal: The Challenges of Protection, Management and Cooperation

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### Executive Summary<sup>i</sup>

In the spring of 2015, irregular maritime migration across the Bay of Bengal entered a period of crisis, with a wave of migrants and refugees, mostly from Bangladesh and Myanmar, crossing or attempting to cross en route to Southeast Asia. The number of maritime migrants on this route tripled between 2012 and 2014.

Critical dangers attend this journey. Smugglers have held migrants for ransom to extort higher fees; they also abandoned migrant-filled vessels at sea when the Royal Thai Government cracked down on the smuggling. The ill-provisioned boats drifted, in some cases for months, as their passengers became more and more desperate. Denied permission to land, in some cases pushed back out to sea, an unknown number — believed to be upwards of 1,000 — have died of starvation, dehydration or violence aboard the boats since 2014.

At the center of the migration crisis is the exodus of stateless Muslims from western Myanmar (and in some cases, Bangladesh), mingled with Bangladeshi migrants seeking work opportunities in the wealthier countries of the region. Members of the Muslim minority, commonly known as the Rohingya,<sup>ii</sup> have suffered extreme poverty and discrimination since the end of the British colonial rule. Communal violence between the Muslim Rohingya and Buddhists in Myanmar's Rakhine State flared in 2012, resulting in the flight of Rohingya to neighbouring Bangladesh, where at least 200,000 remain. Tens of thousands of others embarked on irregular maritime journeys from Bay of Bengal ports in Myanmar and Bangladesh.

<sup>i</sup> The views expressed in this Issue in Brief are those of the author and should not be attributed to the International Organization for Migration (IOM) or the Migration Policy Institute (MPI).

<sup>ii</sup> The term "Rohingya" is a controversial one; Myanmar rejects its use to describe the Muslim population of Rakhine State. Use of the term in this brief does not imply endorsement of a particular version of the group's history, but is used as its most common identifier.



In the first ten days of May 2015, as a humanitarian crisis surrounding migrant boats in the Bay of Bengal, the Andaman Sea and the straits of Malacca region mounted, the challenges facing regional cooperation were notable.

This Issue in Brief attempts to put the crisis of 2015 into context, providing an overview of the routes and patterns of migration, the development of migration out of Myanmar's Rakhine State over the past few years and how policy responses to it have assigned priority to the protection of migrants and refugees, to the management of the maritime flows and to cooperation on migration with countries in the region and beyond. The brief concludes with several recommendations and a consideration of what recent history has to teach us about responses to maritime migration crises. Most Association of Southeast Asian Nations (ASEAN) countries are parties to international law on transnational crime and international maritime law, which may suggest a pathway to stronger regional cooperation on migration at sea, focused around the twin priorities of saving lives and countering smuggling.

## I. Introduction

As a vast region with myriad islands, peninsulas and ancient sea routes, Asia has an enduring tradition of maritime migration. In recent decades, this movement has become increasingly contentious, as refugees and irregular migrants traversing the region by sea complicate the attempts of governments in the Asia-Pacific region to control their borders, regulate immigration and fulfill their obligations under international law. Migrant workers from Asian countries are seeking work within the region in greater numbers (even as the Middle East and the West remain important destinations). Meanwhile, refugees fleeing persecution and conflict travel by land, air and sea (sometimes all three within the same journey) in search of asylum, preferably in a country where they also have a prospect of making a living.

These flows of people have persisted in the region for decades. But in the spring of 2015, irregular maritime migration across the Bay of Bengal to

Southeast Asia entered a period of crisis as a wave of migrants and refugees, most departing from ports in Myanmar and Bangladesh, crossed or attempted to cross the Bay of Bengal to reach Southeast Asia. Malaysia, with its 4 per cent unemployment rate and predominantly Muslim culture, was the desired endpoint for most. The number of maritime migrants on this route tripled between 2012 and 2014, reaching 63,000 in 2014 and 25,000 in the first quarter of 2015 (UNHCR, IOM and UNODC, 2015). The discovery in April and May 2015 of smuggler camps on both sides of the Thailand-Malaysia border showed the critical dangers that attend the journey. Barbed-wire pens, watchtowers, cages and dozens of graves marked the sites where smugglers held their human cargo for ransom, often extorting families for more money on threat of the migrant's death.

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Reports of the grim findings at the camps, first brought to light in Thailand, prompted the Royal Thai Government to crack down on smugglers. As is so often the case with phenomena as complex as maritime migration, a straightforward policy seems to have triggered unintended consequences. Smugglers fearful of encountering Thai law enforcement abandoned migrant-filled vessels at sea. The ill-provisioned boats drifted, in some cases for months, as their passengers became more and more desperate. Denied permission to land, in some cases pushed back out to sea (UNHCR, 2015a), an unknown number — believed to be upwards of 1,000 — died of starvation, dehydration or violence aboard the boats. Hundreds were rescued by local fishermen in Indonesia (Cochrane, 2015). In the face of a growing humanitarian disaster, on 20 May

2015, Malaysia and Indonesia agreed to receive the migrants on a temporary basis, pending resettlement or repatriation (Cochrane, 2015). An international conference in Bangkok on 29 May 2015 agreed to try to address the underlying causes of the migrants' departure (Fuller, 2015).

This Issue in Brief attempts to put the crisis of 2015 into context before concluding with several recommendations and a consideration of what recent history has to teach us about responses to maritime migration crises.

## II. Irregular Maritime Movements in the Context of Asian Migration

Irregular maritime movements in Asia are driven by both economic dynamism and disparity, in some cases with the added impetus of violence, repression and ethnic discrimination.

Divergent economic and population growth trajectories could, in the not-too-distant future, transform some of the Asian countries that are mainly countries of migrant origin (as listed in Table 1) into destinations themselves. While Malaysia and Thailand continue to send some migrant workers abroad (MPI Data Hub, n.d.-a; Lin, 2015), the rapid growth of their economies is drawing growing numbers of immigrants. Asian migration is characterized by extreme diversity. It encompasses forced and voluntary movements; regular and irregular migration; north-south, south-south and south-north trajectories; and both permanent and temporary flows in all migration categories. A distinctive feature of Asian migration is the large and growing proportion of women migrants. Migrant smuggling and trafficking in human beings are both major problems in the region.

The economic dynamism of Brunei, Malaysia, Singapore and Thailand attracts migrants from around the Bay of Bengal, Andaman Sea and the Straits of Malacca (BAM) region and farther afield.<sup>1</sup>

Table I: Major countries of the South and Southeast Asian Migration System

Countries of primarily migrant origin	Countries and territories of primarily migrant destination	Countries of both origin and destination
Bangladesh	Brunei	Malaysia
Cambodia	Hong Kong Special Administrative Region of China (SAR)	Thailand
China	Republic of Korea	India
Indonesia	Singapore	
Lao People's Democratic Republic	Taiwan Province of China	
Myanmar	Maldives	
Nepal		
Pakistan		
Philippines		
Sri Lanka		
Vietnam		

Note: Countries most involved in the maritime migration crisis of 2015 are in purple.

Source: Hugo, 2005, updated from MPI Data Hub, n.d.-a.



About one-third of the population of Singapore and nearly half of the population of Brunei Darussalam are foreign born (MPI Data Hub, n.d.-b). However, immigration into these two city-states is tightly and quite effectively controlled. On the other hand, large proportions of immigrants in Thailand and Malaysia — both among the top 25 destination countries for international migrants worldwide — are in irregular status (MPI Data Hub, n.d.-c). Thailand had an estimated 3.7 million foreign-born residents (5.6 per cent of its population) in 2013. The vast majority, about 3.5 million, came from the neighbouring countries of Myanmar (1.9 million), the Lao People’s Democratic Republic (926,000) and Cambodia (750,000) (MPI Data Hub, n.d.-b). Almost all were in the labour market, but only about half were registered or had started the registration process that would give them permission to work legally (Huguet, Chamrathirong and Natali, 2012). Malaysia was host to 2.5 million migrants (8.3 per cent of its population) in 2013. Slightly more than 1 million were from Indonesia; other major countries of origin were Bangladesh (352,000), Myanmar (248,000) and Nepal (201,000) (MPI Data Hub, n.d.-b). Irregular migration accounts for about half of the flow from Indonesia to Malaysia (Hugo, 2005).

Most of the migrants to Thailand traverse its land borders with the Lao People’s Democratic Republic, Cambodia and eastern Myanmar. Thailand has also been an important country of transit for maritime migrants from western Myanmar and Bangladesh who have been smuggled through Thailand to Malaysia. Up until the third quarter of 2013, Malaysia itself was a significant country of transit as migrants continued their journeys through to Indonesia, where they hoped to take to the sea again in order to reach Australia. But Australian policy after September 2013 refusing entry to all irregular maritime arrivals regardless of refugee status disrupted the final leg of that route (Newland et al., forthcoming 2015).

In the first half of 2015, the arc from the northern apex of the Bay of Bengal, from Bangladesh around to Myanmar, Thailand, Malaysia and Indonesia, was the epicentre of complex, irregular maritime flows. The people travelling include voluntary

labour migrants, refugees fleeing conflict or persecution, stateless persons, victims of trafficking, unaccompanied children and migrants impelled to leave their homes by severe poverty. Virtually all used smugglers, who commonly collect people in small boats and transport them to larger ocean-going vessels capable of holding hundreds of migrants (UNHCR, 2014b). The initial fee to get on board a ship is affordable, as low as 50 U.S. dollars. But many migrants get halfway to their destination only to find that they are being held for ransom; to gain release and delivery to the final destination, they or their families must pay an additional fee of hundreds or even thousands of dollars (UNHCR, 2014b).

The protection needs of these migrants differ. Many of the categories listed above — the refugees, the stateless, the children, the trafficked — are the subject of special provisions in international law to protect them from being returned to dangerous situations. But protection of the fundamental human rights of migrants trying to escape poverty and hopelessness is much less developed than protection for these special categories. Destination governments, meanwhile, are understandably concerned with controlling their borders and preventing public services from being overwhelmed, as well as preventing public backlash against migrants — and the officials perceived to be responsible for any loss of control over who enters and who remains inside their borders. In this context, the fundamental human rights of migrants too often go unprotected.

### III. Migrants and Asylum Seekers Cross the Bay of Bengal

Members of the Muslim minority in western Myanmar have suffered extreme poverty and discrimination since the end of the British colonial rule and the establishment of the modern state of Burma (whose name was changed to Myanmar in 1989). Like other religious minorities in Myanmar,

Figure 1: Southeast Asia Migration Routes





conflict with the dominant Buddhist culture and the state that embraces it has been a persistent thread in the lives of the Muslim population of Rakhine State, the majority of whom identify themselves as Rohingya. The Myanmar authorities deny the existence of Rohingya as a distinct ethnic group, instead portraying them as unauthorized immigrants from Bangladesh or the descendants of Bengalis illegitimately settled in Myanmar under colonial rule.

A history of communal tensions goes back to the colonial period and the turmoil of World War II, when Muslim volunteers in what is now Rakhine State were armed by the British to fight the Japanese and used their weapons both in the war and in conflicts with rival ethnic groups in the State (Chan, 2005). These volunteers were branded as traitors by many who fought for Myanmar's liberation from the British, a perception that was compounded when local Rakhine leaders petitioned to join parts of Rakhine State with East Pakistan in 1947 and, later, to join the newly created state of Bangladesh (HRW, 2000). In both cases, they were rebuffed but the Muslim residents of Rakhine State remained pariahs within Myanmar. Discrimination against them became official with the adoption of Myanmar's Nationality Act of 1982: "Rohingya" was not recognized as an indigenous ethnic group, and those identified as such were denied citizenship, rendering them effectively stateless.

About 180,000 people were affected by communal violence between Muslims and Buddhists in Rakhine State in June 2012 and again four months later, according to the United Nations Office for the Coordination of Humanitarian Affairs (IRIN, 2013). Some Rohingya fled to join impoverished communities in neighbouring Bangladesh; at least 200,000 are reckoned to remain in Bangladesh, where 32,600 have been recognized as refugees (Buckley and Ramzy, 2015).

In 2014, about 140,000 people, almost all stateless Muslims, remained displaced within Myanmar as a result of the violence. They were required to stay in squalid camps for internally displaced persons (IDPs), where they had no access to education or medical care, limited access to work and many other limitations on their personal freedom. Almost all

were living in precarious circumstances; meanwhile, local and national authorities took no action to make it possible for them to resume their former lives. Under these conditions, thousands left Myanmar. The United Nations High Commissioner for Refugees (UNHCR) reported that in the two years following the outbreak of violence (June 2012–June 2014), 87,000 people embarked on irregular maritime journeys across the Bay of Bengal from ports in Myanmar and Bangladesh. The vast majority were stateless Muslims from Myanmar, along with a much smaller proportion of Bangladeshi labour migrants (UNHCR, 2014a).

These journeys resulted in more than 1,000 known deaths between January 2014 and the end of March 2015 (UNHCR, 2015c). The distances travelled were great; many boats may have been lost at sea without ever being detected. From Rakhine State to Malaysia, for example, is 1,500 nautical miles. Some boats travelled still farther: one was intercepted by the Sri Lankan navy off the east coast of Sri Lanka in February 2013. It had lost its way and been at sea for two months. A total of 90 people on board had died of dehydration and starvation; 30 survivors were rescued (UNHCR, 2013). In 2012/13, some 1,600 Rohingya managed to reach Australia — a distance of more than 3,000 nautical miles — and others have been found as far away as the coasts of Indonesia and Timor-Leste (McAuliffe and Mence, 2014).

The most common destination for the Muslims leaving Rakhine State, however, has been Malaysia, a relatively prosperous and predominantly Muslim nation. As many as 500,000 migrants from Myanmar are believed to live in Malaysia, although many may have arrived before the anti-Rohingya violence in 2012. Almost all of the asylum applicants (98 per cent) in Malaysia come from Myanmar — some 149,920 out of 152,830 as of mid-2015 (Fuller, 2015). (Most of these, presumably, are Rohingya, but national-level data do not break down country of origin arrivals by sub-group.) Most of the Rohingya in Malaysia work in the informal sector (in agriculture, construction or domestic service, for example) without ever petitioning for asylum.

Migrants from western Myanmar and the coastal area of Bangladesh adjoining the Myanmar border

most often leave the shore on small boats and are then transferred to larger vessels with a capacity of 100–800 passengers. With passengers ultimately paying a total of between 1,600–2,400 U.S. dollars each in upfront and backend fees, smugglers made more than 100 million U.S. dollars in 2013 and in 2014 (UNHCR, 2014b). Smugglers routinely take people to Thailand by boat, before proceeding overland to Malaysia. The journey can be harrowing; once migrants reach the Thailand-Malaysia border, smugglers often demand more money to take them further. Those who are unable to pay are beaten, forced to work without pay, trafficked and in some cases, killed.

UNHCR estimates that 62,000 people departed from the Bay of Bengal in 2014, about 58,000 of them from the Bangladesh-Myanmar maritime border. This is nearly three times as many as in 2012 and up 12 per cent from 2013. An additional 25,000 set out during the first quarter of 2015. Some 750 people are estimated to have died on the voyage, from dehydration, starvation or abuse at the hands of smugglers. Of those irregular migrants who moved on from Malaysia to Indonesia — a jumping-off point for Australia before a zero-tolerance policy for boat arrivals shut off that destination — some have found themselves stuck in Indonesia, either awaiting resettlement to another country or looking for a chance to return to Malaysia.

The crisis that unfolded in April and May 2015 had multiple causes, both distant and proximate. The roots of the problem lay in the violence and discrimination experienced by the Muslim communities in Myanmar, particularly in the destruction of Rohingya communities in Rakhine State in 2012 and the grinding poverty of Rohingya communities established in Bangladesh. Poverty in the border region also drives some Bangladeshi citizens to become customers of migrant smugglers. The foreign secretary of Bangladesh estimated that perhaps one-third of the maritime flow in the BAM region in 2015 consisted of Bangladeshi nationals (Fuller, 2015). Unlikely to be recognized as refugees, the Bangladeshis would be eligible for Assisted Voluntary Return programmes administered by the International Organization for Migration (IOM).

If poverty, human-rights violations and statelessness are the root causes of the flows across the Bay of Bengal, the 2015 crisis erupted amid a sharp escalation in numbers, public revelations of the smugglers' brutal methods and the smugglers' reaction to the Royal Thai Government's campaign against them and the corrupt officials who facilitated (and profited from) their operations (ABC, 2015).

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As smugglers sought to avoid Thailand, the numbers of migrants in Malaysian and Indonesian waters escalated sharply in the first two weeks of May; thousands were stranded at sea with inadequate food, fuel and water. Indonesia and Malaysia announced at that time that they would not permit the boats to land and would turn them away unless, in Malaysia's case, the boats were sinking. Some migrant boats were turned away from the coastal states and furnished with food, water and fuel to continue their search for a destination (IRIN, 2014).

Strong expressions of international concern ensued, including a rare public statement issued jointly by the United Nations Secretary-General's Special Representative for International Migration, the UN High Commissioner for Refugees, the United Nations High Commissioner for Human Rights and the Director-General of IOM on 19 May 2015. It called for the leaders of Indonesia, Malaysia and Thailand "to facilitate safe disembarkation, and to give priority to saving lives, protecting rights and respecting human dignity" (UNHCR, OHCHR, IOM and SRSR, 2015). The statement urged states in the region and beyond to implement nine action points, including a scale-up of search-and-rescue (SAR) operations

**Table 2: Asia-Pacific States and International Frameworks**

	1951 Refugee Convention <sup>a</sup>	1974 SOLAS Convention	1978 SOLAS Protocol <sup>b</sup>	1988 SOLAS Protocol <sup>c</sup>	1979 SAR Convention	Bali Process Member	International Organization for Migration Member	International Maritime Organization Member	Anti- Smuggling Protocol <sup>d</sup>	Anti-Trafficking Protocol <sup>e</sup>
Bangladesh		X		X	X	X	X	X		
Brunei Darussalam		X	X			X		X		
Cambodia	X	X	X	X		X	X	X	X	X
China	X	X	X	X	X	X	(Observer)	X		X <sup>f</sup>
India		X	X	X	X	X	X	X	X	X
Indonesia		X	X		X	X	(Observer)	X	X <sup>g</sup>	X <sup>g</sup>
Malaysia		X	X	X		X		X		X <sup>g</sup>
Myanmar		X		X		X	X	X	X <sup>g</sup>	X <sup>g</sup>
Philippines	X	X				X	X	X	X	X
Singapore		X	X	X	X	X		X		
Sri Lanka		X				X	X	X	X <sup>h</sup>	
Thailand		X				X	X	X	X <sup>h</sup>	X <sup>h</sup>
Vietnam		X	X	X	X	X	X	X		X <sup>h</sup>

<sup>a</sup> United Nations Convention relating to the Status of Refugees, 1951.

<sup>b</sup> Amendments to the International Convention for Safety of Life at Sea (SOLAS).

<sup>c</sup> Ibid.

<sup>d</sup> Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.

<sup>e</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

<sup>f</sup> With reservation.

<sup>g</sup> Signatory only.

<sup>h</sup> Notes: ASEAN members in purple. SOLAS = International Convention for the Safety of Life at Sea; SAR = International Convention on Maritime Search and Rescue.

Sources: IOM, IMO, UNHCR and UNODC.



## **Box 1: Resolving a Maritime Migration Crisis: The “Boat People” of Vietnam, 1979–89**

If Southeast Asia presents us with a contemporary maritime migration crisis, its experience also points to one path toward resolution. The aftermath of the Vietnam War in 1975 saw a massive outpouring of people from Vietnam, the Lao People’s Democratic Republic and Cambodia. With the exception of the 140,000 who were evacuated alongside the departing American forces and about 250,000 who crossed the land border into China, most Vietnamese moved by boat without permission to disembark in another country. By 1979, 200,000 people had been resettled and 350,000 remained in the region, but the rate of arrivals was three times the rate of departures in first-asylum countries. In June 1979, the five member countries of ASEAN<sup>3</sup> declared that they could not accept further new arrivals. Boats bearing refugees were pushed back out to sea by the authorities.

The United Nations Secretary-General convened an international conference in July 1979, in a remarkably successful effort to address the humanitarian and political crisis, which threatened the traditions of asylum that had been codified after World War II.

Ultimately, some 623,800 people were resettled in 20 countries outside the region between July 1979 and July 1982 as a result of commitments made at the 1979 conference.

The 65 governments that attended the conference agreed on a variety of measures that brought the numbers down to manageable levels: worldwide resettlement offers for the caseload in first-asylum countries more than doubled, to 260,000. Vietnam agreed to an Orderly Departure Program (ODP) to facilitate migrants’ safe and orderly departure while mitigating irregular movement. Indonesia and the Philippines agreed to host regional processing centres for refugees being resettled. And first-asylum countries were assured that no refugees would remain with them permanently, and therefore agreed to stop pushing back the boats. As all these measures were implemented, the numbers of boat arrivals fell off, although they did not stop.

Separate from the United Nations conference, an anti-piracy programme was instituted by UNHCR in 1982 and an agreement was reached in 1979 to resettle refugees rescued at sea by commercial vessels (thereby increasing rescues at sea dramatically).

After nearly 10 years of success, the system hammered out in 1979 began to crumble. In 1987–88, arrivals again mounted and pushbacks resumed. But this time, the resettlement countries were not willing to accept that all those leaving Vietnam were *prima facie* refugees. A second international conference was held in 1989. The resulting Comprehensive Plan of Action (CPA) stands out as an example of international cooperation to resolve a major mixed flow of refugees and migrants while preserving first asylum and stemming boat departures. It was the first such plan to include the country of origin. Countries of first asylum in the region resumed temporary protection for boat arrivals. All arrivals, almost entirely from Vietnam, were given access to a full refugee status determination process; they had temporary protection while they went through the procedure and a resettlement guarantee if they were found to be refugees. If found not to be refugees, they were repatriated and given some reintegration assistance. Vietnam agreed to not punish asylum seekers for irregular departure and allowed the monitoring of returnees. An anti-smuggling campaign was accompanied by measures to increase the numbers and categories of people eligible to leave Vietnam via the ODP. The CPA was in effect until 1997. During that period, more than 109,000 Vietnamese returned home, ODP departures increased sharply, and another roughly 107,000 Vietnamese boat people were resettled. For all the resettlement successes that resulted from the 1979 and 1989 international conferences, the Indochinese migration crisis came with a terrible, incalculable human toll: as many as 10 per cent of all those who originally set out on boats died during the journey, most from drowning, dehydration or pirate attacks.

*Sources:* Robinson, 1998; UNHCR, 2000.



**Box 2: 10-Point Proposal for Action in the Bay of Bengal and Andaman Sea from UNHCR, IOM and UNODC**

1. Strengthen search-and-rescue (SAR) operations.
2. Establish effective, predictable disembarkation to a place of safety.
3. Establish or enhance reception facilities.
4. Identify and address those people with international protection needs.
5. Facilitate solutions for persons in need of international protection.
6. Support the return of those not in need of international protection.
7. Reinforce the gathering, sharing, analysis and use of information related to movements by sea.
8. Build capacity in countries of transit and first asylum.
9. Expand legal alternatives to dangerous movements.
10. Address humanitarian, human rights and particularly development needs in migrant source countries.

*Source:* UNHCR, 2015c.

in the Bay of Bengal and the Andaman Sea, an end to pushbacks, safe and predictable disembarkation of people rescued at sea and expanded channels for safe and orderly migration, including labour migration. Following a meeting of the foreign ministers of Thailand, Malaysia and Indonesia on 20 May 2015, Indonesia and Malaysia agreed to take in migrants stranded at sea on a temporary basis, pending resettlement or repatriation. The Philippines also announced that it would not turn away any migrant boats that might reach its territorial waters (Cochrane, 2015).

By late May 2015, rescue-at-sea operations had been expanded and refugee processing established. Boat arrivals in the BAM region appeared to be tapering off (Forsythe, 2015). Some migrants had been rescued and allowed to remain in Indonesia or Malaysia, while others had decided to return home. The vast majority remained stuck in legal limbo as they awaited a decision on their case for remaining in a destination country.

## IV. The International Legal and Institutional Framework in the Region

In the first 10 days of May 2015, as the humanitarian crisis surrounding the migrant boats adrift in the BAM region mounted, the challenges facing regional cooperation were notable. The initial reactions of the three destination countries revealed the paucity of legal and institutional resources for a regional response. ASEAN has no common agreements on migration except for a nascent process for mutual recognition of the qualifications of highly skilled professionals. Among the 10 ASEAN members, only two — Cambodia and the Philippines — are parties to the United Nations Refugee Convention. Neither Indonesia nor Malaysia are members of the IOM, the largest multilateral institution dealing with migration (Indonesia is an observer). Myanmar, the major source of the irregular maritime migrants, refused

to acknowledge any responsibility for the Rohingya, denying that they are citizens. As a result, there is little common ground for dealing with a mixed flow of migrants and refugees that affects multiple ASEAN countries in different ways.

There are, however, two bodies of international law to which most ASEAN countries are party: international law focused on transnational crime and international maritime law. Most have signed the anti-trafficking and anti-smuggling protocols to the United Nations Convention against Transnational Organized Crime. Similarly, most have signed the International Convention for Safety of Life at Sea (SOLAS), as amended, and (to a lesser extent) the International Convention on Maritime Search and Rescue (SAR) (see Table 2). Membership in the International Maritime Organization (IMO) and the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (Bali Process) is almost universal in the region. These endorsements may suggest a pathway to stronger regional cooperation on migration at sea, focused on the twin priorities of saving lives and countering smuggling.<sup>2</sup> As the events of April and May 2015 showed, however, one-dimensional approaches may bring undesirable and unintended consequences. A crackdown on smugglers may leave migrants exposed to greater danger; expanded maritime search and rescue without a plan for dealing with persons rescued may cause tensions among the states involved.

## V. International and Regional Responses and Recommendations

The 10 ASEAN members include five of the six countries most affected by the maritime migration crisis in the BAM region: Indonesia, Malaysia, Myanmar, the Philippines and Thailand, lacking only Bangladesh in the South Asian region. Malaysia, in its capacity as ASEAN chair, called a tripartite meeting of the Thai, Malaysian and Indonesian foreign ministers to discuss the crisis on 20 May 2015 — a meeting

that produced the first official collective response and set the stage for further regional discussions. Yet the association has been mostly silent on this issue, perhaps bound by a strong collective commitment to the principle of non-interference in member states' internal affairs (including the treatment of minority groups). This has handicapped it as a platform for regional responses.

Generally, regional mechanisms remained remarkably passive in the face of this crisis, despite mandates that seem tailor-made to address it. One example is the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime. Its 48 members include most of the countries in the Asia-Pacific region, as well as UNHCR, IOM and the United Nations Office on Drugs and Crime (UNODC). The Bali Process is a voluntary and non-binding Regional Consultative Process, whose objectives include promoting intelligence and information-sharing among members, combating people-smuggling and trafficking networks, and assisting their victims and reducing irregular migration in the region by promoting implementation of a Regional Cooperation Framework to achieve more effective cooperation (Bali Process on People Smuggling, Trafficking in Persons and Related National Crimes, n.d.). This framework, established by a ministerial meeting of the Bali Process in 2011, is meant “to enable interested Bali Process members to establish practical arrangements aimed at enhancing the region’s response to irregular movement through consistent processing of asylum claims, durable solutions for refugees, the sustainable return of those not owed protection and targeting of people smuggling enterprises” (Bali Process, n.d.). However, the governments involved in the 2015 crisis chose not to use this or other regional mechanism, perhaps because these are not designed to be emergency responses mechanisms and do not have that capability.<sup>4</sup> However, the Bali Process and other regional structures were invoked as follow-up mechanisms to the 29 May 2015 conference discussed below, perhaps signalling an intention to make greater use of them in the context of maritime migration.



The most acute phase of the maritime migration crisis in the BAM region in early 2015 inevitably brought to mind the massive outpouring of people from Indochina in the years following the Vietnam War (see Box 1). In both cases, although on a different scale, an international conference marked the beginning of more systematic international efforts to cooperate with the countries most immediately affected to manage the outflows and find a suitable resolution for the migrants and refugees caught up in the crisis.

## Convening a New International Forum

Confronting the present-day crisis, some 20 governments and several international institutions attended the Special Meeting on Irregular Migration in the Indian Ocean in Bangkok on 29 May 2015 at the invitation of the Royal Thai Government. Having at first announced that it would not attend the conference, Myanmar did so and absorbed little direct criticism of its treatment of the Rohingya. UNHCR was one of the few voices to explicitly call for “the full assumption of responsibility by Myanmar towards all people on its territory” (UNHCR, 2015b). The official summary issued at the end of the meeting, however, contained oblique references to country-of-origin responsibility. For example, it called for “full respect for human rights and adequate access of people to basic rights and services such as housing, education and health care,” and “emphasized the need for relevant countries and the international community to resolve irregular maritime migration . . . by addressing the root causes and other contributing factors” (UNHCR, 2015b). In addition to country-of-origin responsibility, the other major sticking point at the Bangkok conference was resettlement. The three main receiving countries in the region continued to insist that no residual caseload could remain within their borders, but that all those allowed to disembark should be resettled elsewhere. UNHCR pleaded for realism on this subject, noting that “in the light of several major crises around the world, rising numbers of refugees and asylum seekers and urgent needs everywhere, the capacity of a number of states to offer places is limited” (UNHCR, 2015b).

The weeks surrounding the conference saw several other governments from within and outside the region pledge to support efforts to help the displaced. The problem of disembarkation was resolved by the Philippines and Indonesia, which agreed to host processing centres for the boat arrivals. The United States pledged to lead any multi-country resettlement initiative for the refugee caseload. Turkey pledged funds to IOM and UNHCR for emergency operations, while Saudi Arabia and the United Arab Emirates agreed in principle to contribute to a humanitarian fund for migrants and refugees stranded at sea (Ahmad, 2015). The tiny West African country of Gambia said it would take all the refugees, although its capacity to do so was far from clear (Agence France Press, 2015).

**Better collection and sharing of data on maritime migration are needed to solidify the evidence base for policymaking.**

IOM, UNHCR and UNODC committed to supporting the governments in the region on humanitarian migration procedures and anti-smuggling efforts. To address the crisis more broadly they submitted a 10-point proposal for action (see Box 2), noting that “only a coordinated effort by the source, transit and destination countries in the region can provide protection for those who need it and successfully prosecute the perpetrators of this misery and death” (UNHCR, IOM and UNODC, 2015).

Better collection and sharing of data on maritime migration are needed to solidify the evidence base for policymaking. An Asia-Pacific facility to collect, organize and analyse information and data on migration could also identify the gaps in knowledge needed to support policymaking. The Regional

Mixed Migration Secretariat (RMMS) for the Horn of Africa-Yemen region, established in 2011, is a useful model for organizing data collection and research on migration in the region, including migration by sea.

Better evidence and analysis of the causes of maritime migration, including the involvement of organized crime in the smuggling industry, would help to define the nature of the problem. War, poverty and repression are undoubtedly root causes, but the patterns of boat departures do not map on to them as closely as one might expect. The profiles and motivations of migrants need closer study. The decision to make a dangerous, illegal voyage is complex. In addition to their own personal situations, migrants take account of the nature of border protection regimes, the costs of clandestine travel, the danger of the voyage, the presence of a known community (perhaps including family or friends) at the intended destination, the availability of rescue, the chances of being allowed to stay and the likelihood of being able to earn a living. The accuracy of information people have about these and other factors is highly variable. Understanding the information sources on which migrants rely is an important part of understanding the dynamics of migration.

Along with better data and analysis, more active use of forums for collaboration among countries in the region could help to support the development and management of migration policies. This is crucial at this juncture, as an Asia of emerging economies that will need labour must coexist alongside poorer countries that hope to supply it. The sea lanes of Asia have always been crucial to its dynamism, and people will continue to use them. The future prospects of the region will be enhanced if they can do so safely, legally and profitably.

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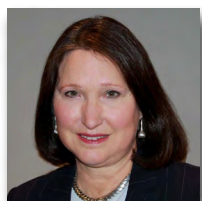
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## Endnotes

1. Malaysia's fairly liberal travel policy made it possible for travellers from Muslim countries, such as Iran and Iraq, to travel to Malaysia visa-free. The country thus has become both an attractive destination and a transit county in which irregular migrants can make arrangements for onward travel to, for example, Australia.
2. The Bali Process is not designed to be an emergency response mechanism and does not have that capability.
3. At that time, the members of ASEAN were Indonesia, Malaysia, the Philippines, Singapore and Thailand.
4. Other regional processes include the Manila Process and the Asia-Pacific Consultations on Refugees, Displaced Persons and Migrants, both established in 1996.

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