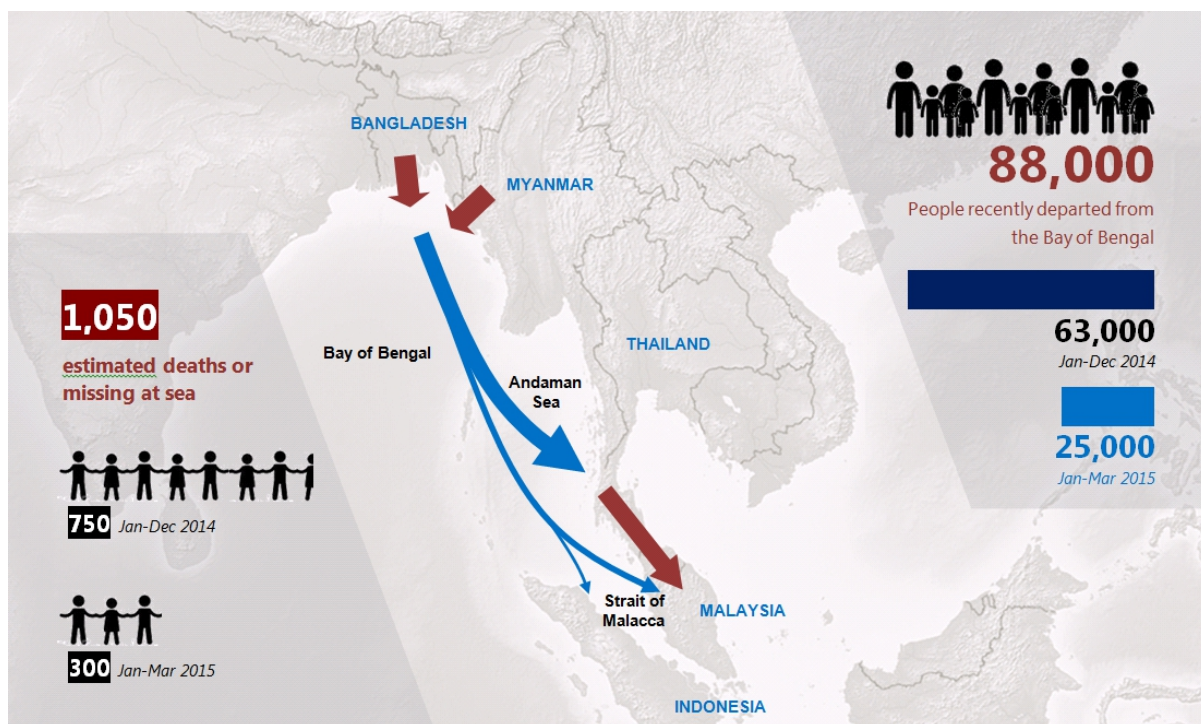


BAY OF BENGAL AND ANDAMAN SEA PROPOSALS FOR ACTION

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INTRODUCTION

An estimated 63,000 people are believed to have traveled by boat in an irregular and dangerous way in the Bay of Bengal and Andaman Sea in 2014. Another 25,000 joined them in the first quarter of 2015. They are part of a complex, mixed migratory movement composed of refugees, stateless people and economic migrants. Unregulated and, until recently, inconspicuous, the scale of the movement has tripled since 2012 and the level and scale of abuse suffered by voyagers is unprecedented in recent times.

Men, women and children risk being starved, constrained, beaten and forcibly separated. Women and girls are particularly at risk of sexual violence. Previously once ashore but now also on smugglers' boats, they are detained, sequestered and held for ransom. Non-payment can result in death. What may have begun as a voluntary journey is transformed into something no one would choose. The scale of deaths is unknown but, as the recent discovery of mass graves in smugglers' camps attests, it is likely to be even higher than the 1.2 percent of travelers estimated to perish from disease or mistreatment.

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. Smugglers and traffickers are criminals and should be treated as such. The people they exploit and abuse should not. A protection-sensitive approach will work in tandem with strong criminal law enforcement and security measures, but neither will work by themselves.

Only through collective action can a response be achieved that meets concerns over national security, the orderly management of migration and borders and the human security of the people affected without creating or exacerbating tensions between States.

Set out below are 10 concrete steps that governments in this region could take immediately to respond to the challenge confronting them in the Bay of Bengal and the Andaman Sea. They are organized into actions which address: (I) the sea journey and disembarkation; (II) reception, treatment upon arrival and regional responsibility-sharing; and (III) the root causes.

They build upon the Regional Cooperation Framework at the heart of the Bali Process, the already substantial efforts of national and international actors in the region and the fundamental objectives of ASEAN.

I. THE SEA JOURNEY AND DISEMBARKATION

1. Strengthen Search and Rescue (SAR) Operations

Search and Rescue at sea is a humanitarian act and a seafaring tradition. International law codifies into clear obligations these commitments to rescue those in distress at sea. The five countries most affected by the Bay of Bengal situation are all Parties to two of the three most relevant SAR Conventions, including the UN Convention on the Law of the Sea of 1982. It requires every coastal state to “promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and, where circumstances so require, by way of mutual regional arrangements cooperate with neighbouring States for this purpose.” The region at this moment is clearly confronted by circumstances that require close cooperation on search and rescue at sea. Two of the five countries are also Parties to the SAR Convention itself. Steps to this end could be taken by the other three countries through implementing without delay key measures, namely rescuing persons in distress at sea, including through cooperation of SAR teams in different countries. All countries in the region ideally would join in this effort.

2. Establish effective, predictable disembarkation to a place of safety

The main impediment to coordinated SAR is the current lack of consensus over responsibility for disembarkation. It is imperative to develop effective and predictable mechanisms for identifying without delay places of safety for the rapid disembarkation of refugees and migrants, particular those rescued in international waters. A *Policy Guide on Irregular Movements by Sea* has been developed through the Regional Support Office of the Bali Process, which together with ongoing initiatives related to disembarkation to places of safety and post-disembarkation assistance should be made available to decision and policy makers. Achieving clear and equitable arrangements for the disembarkation of refugees and migrants removes a major disincentive to rescue at sea. A range of responsibility-sharing options must be available to ensure that States disembarking refugees and migrants do not bear the burden alone. Pending the agreement of a regional regime, States are urged to agree not to push back boats arriving in their territories to other countries’ waters, international waters and particularly to countries of origin when people in need of international protection are aboard. They must be allowed to land in safety. This would be easier for affected States if all were to pledge simultaneously their commitment to allow disembarkation of boats arriving in their territories. None then would need to worry that others would seek to take advantage of the measures taken to protect lives.

II. RECEPTION, TREATMENT UPON ARRIVAL AND REGIONAL RESPONSIBILITY-SHARING

3. Establish or enhance reception facilities

With the sudden increase in arrivals, reception capacity in some States is overstretched, negatively impacting reception conditions. States receiving greater numbers of people will need support to improve reception conditions, especially first-response emergency reception. Additional facilities could potentially be established with regional and international community support, where needed. Such arrangements need to ensure the early identification of individuals with specific needs, unimpeded access to reception facilities by international and national organizations to address gaps in assistance, and timely referral to appropriate services. Wider responsibility-sharing arrangements to provide additional

reception capacity in other States could also be explored. Mobile protection teams composed of experts with complementary backgrounds and expertise from a range of stakeholders, including States, international organizations and NGOs, could also be established, in line with the Djibouti Summary Conclusions on Refugees and Asylum-Seekers in Distress at Sea.

4. Identification and treatment of those with international protection needs

Based on the current data, a large proportion—perhaps even a majority—of the individuals voyaging across the Bay of Bengal are refugees and, with many lacking any citizenship, are also stateless. These individuals are entitled to international protection, including access to asylum. In the absence of domestic refugee status determination systems, the most effective and efficient response may be the mobile protection teams referred to above. They could conduct rapid screening to identify individuals in need of protection, such as asylum-seekers, refugees, stateless persons, victims of trafficking or those who could be subject to torture or other cruel, inhumane or degrading treatment if returned to their country of origin, as well as extremely vulnerable individuals. Such individuals would be entitled, at least on a temporary basis, to international protection and a temporary stay permit in consequence. States will be supported, if required, by international organizations and international and national NGOs in meeting the humanitarian needs of the most vulnerable individuals, including trauma counseling, psychiatric care, gender-based violence response and physiotherapy, psycho-social support as well as the provision of primary healthcare. Determinative adjudication of status for those claiming an entitlement to international protection would be carried out by UNHCR pending the establishment of domestic asylum frameworks by the affected countries.



5. Facilitate solutions for persons in need of international protection

For individuals found to be in need of international protection, short and longer term solutions are required. In the short term, access to work in the host State is an important possibility. An open-minded examination of possibilities for stay needs to be undertaken. As set out in more detail below, there are significant labour market needs in some countries of the region and labour surpluses in other countries in the region. These correspond to the destination and source countries of the maritime movement. Irregular and dangerous travel is not an acceptable mechanism for supply to meet demand. Documentation, regularization of status, permission to work enabling the worker and dependent family members to access medical, health and other services, by contrast, could be. With will and creativity, the “lose-lose” of push-backs and recriminations between States could be transformed into a “win-win” for those States and the people who have, in the absence of alternatives, arrived irregularly. This home-grown regional solution could be supplemented by limited third country resettlement for individuals with specific needs.

6. Support for returns of those not in need of international protection

While many voyagers across the Bay of Bengal have international protection needs, many do not. Effective bilateral arrangements are already in place among some of the affected countries to facilitate the return of such individuals in conditions of safety and dignity. IOM manages several Assisted Voluntary Return and Reintegration programmes that provide additional capacity for the return of individuals who are found not to be in need of international protection. These programmes are already seeking to expand bilateral and regional arrangements, which waive administrative

penalties for vulnerable groups, to facilitate return to their country of origin. Support to this initiative could be significantly stepped up.

7. Reinforce the gathering, sharing, analysis and use of information related to movements by sea

A number of efforts are underway regionally on data gathering, sharing and analysis. Some, such as UNHCR's regional maritime movements monitoring unit, established in mid-2014, are focused on identifying protection risks. Others, such as the Ports Intelligence Unit project led by UNODC, are intended to gather, analyze and share data between States on movements by sea, with a view to disrupting criminal smuggling and trafficking networks. Staffed by multidisciplinary teams of immigration and criminal and maritime police and working with national maritime police, Port Intelligence Units have been established in Thailand, Indonesia and Cambodia. They assist in developing and responding to intelligence from international as well as national sources, border control units at land, sea and air entry points, and criminal police. The law enforcement officials working within the Port Intelligence Units have been trained and mentored on case development and management, referral to justice authorities, and referral of victims to protective and support services including for access to asylum procedures. They are supplemented by a range of activities administered by the Regional Support Office, including the development of a regional plan to combat people smuggling and human trafficking and a biometrics information-sharing initiative whose platform could be adapted to enhance other information and intelligence sharing by States in the region.



8. Capacity building in countries of transit and first asylum

A comprehensive approach to addressing irregular movements by sea recognizes the need to promote awareness and implementation of all relevant areas of law – maritime, migration, criminal and transnational crime, human rights and refugee law. While many countries in the region have not ratified the 1951 Refugee Convention, they are nevertheless bound as members of the community of nations to observe customary international law principles prohibiting the

return of individuals to places where their lives or freedom would be in danger as well as relevant international human rights law obligations. In addition, countries of the region are Parties to the UN Convention Against Transnational Organized Crime and the attached Protocol on Trafficking in Persons, and attached Protocol on Smuggling of Migrants by Land, Sea and Air, for which UNODC is the guardian and assists with implementation.

A training curriculum incorporating relevant areas of law has been developed under the auspices of the Regional Support Office and is being rolled out presently, as is the curriculum on standardized induction training for frontline border officials. It is supplemented by more focused training on, for example, border management and gathering intelligence on migratory flows, targeting key participants, such as law enforcement and immigration officers. A range of thematic briefs and training manuals have been or are being developed to share best practices in activities ranging from the rights of refugees in mixed migration movements to creating effective information campaigns. Policy Guides on protecting victims of trafficking and criminalizing migrant smuggling and trafficking in persons have also been produced. UNODC has also developed an extensive and contextualized series of related classroom and e-learning modules for law enforcement and criminal justice officials in national languages that are being implemented across the region including within academies and at operational locations. There is no shortage of tools for capacity-building in the region. They simply need to be better known and utilized. Together with the International Maritime Organization (IMO) and the International Chamber of Shipping (ICS), UNHCR has produced a SAR Guide in collaboration with the IMO and the ICS and this has a direct relevance for the region.

9. Expand legal alternatives to dangerous movements

The issuance of short-term but potentially renewable work permits assists host States in reducing the costs they bear for hosting individuals with international protection needs. Such an approach promotes the self-reliance of individuals who are generally keen to take part in it. Temporary work authorizations in host States could be supplemented by bilateral and multilateral agreements to increase legal options for migration. Freer movement for certain categories of individuals is already contemplated by ASEAN. The labour market needs of some States in the region, including States affected by the Bay of Bengal crisis, argue for regularization of work done by temporary migrants, whether or not those individuals have international protection needs. There is no reason to exclude those in need of international protection from opportunities as migrant labourers or other labour market activities as may be appropriate. With some flexibility towards documentation requirements, the family status of applicants and the place of application, regulatory hurdles to job placements could reasonably be overcome.

III. ADDRESSING ROOT CAUSES

10. Humanitarian, human rights and particularly development needs in source countries

Combatting, dismantling and prosecuting criminal people smuggling and trafficking networks is a valuable goal. As long, however, as people strive to free themselves from persecution and to better themselves economically they will seek to move. Whether they do so through lawful channels or irregularly depend on the options available to them and their situation in the country of origin. The source countries for the Bay of Bengal movement are just two States. There are similarities in the drivers of departure from the two countries but there are important differences as well. On the one hand, the lack of established citizenship status is a key driver of many of those moving and replication of the solutions that States in the region have found for analogous populations may offer ways forward in both the short and longer term. On the other hand, according to World Bank classifications, the source countries of the voyagers are low income and the destination countries are upper middle income. Once they are in the same bracket experience from elsewhere demonstrates that a significant proportion of the irregular movements will decrease. It is a collective responsibility over the long term to promote the transformation of the source countries into upper middle income countries. More immediately, greater and better targeted investment in areas of departure and on profiles of individuals departing may have an impact. Quick wins are not incompatible with longer term goals. Both must be pursued simultaneously, in conjunction with efforts to promote access to justice, basic services and full respect for the rights of all.