

Reference Paper for the 70th Anniversary of the 1951 Refugee Convention

The Forcibly Displaced in the Asia-Pacific Region: Dynamics of Solidarity and the Quest for Refuge and Beyond

Vitit Muntarbhorn, Professor Emeritus, Faculty of Law, Chulalongkorn University, Bangkok; KBE.

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Abstract:

The study examines the situation of “the forcibly displaced” in the Asia-Pacific region under the mandate of the UNHCR, bearing in mind the backdrop of the COVID-19 pandemic. It encompasses refugees, asylum-seekers, internally displaced persons and stateless persons, with a call for solidarity in sharing the responsibility to address not only temporary protection and durable solutions but also root causes of displacements. The study interlinks with various international instruments on these issues, in particular the 1951 Refugee Convention and its 1967 Protocol, together with key treaties to prevent and resolve statelessness. While noting the paucity of accessions by Asia-Pacific countries to these instruments, the study also identifies many constructive practices from the region, including from countries which are non-signatories, in the treatment of persons who are in need of international protection. The advent of the 2018 Global Compact on Refugees and the 2019 Global Refugee Forum provided opportunities for greater involvement of and commitment from a broad range of countries, irrespective of whether they have acceded to the instruments mentioned, as well as other stakeholders.

Some situations are protracted and invite greater focus to revitalize the range of solutions as part of shared responsibility. The two largest caseloads are Afghan refugees, the majority of whom are in the Islamic Republics of Iran and Pakistan, and stateless Rohingya refugees from Myanmar, the majority of whom are in Bangladesh. However, there is also a diversity of groups and individuals from other parts of the world who seek refuge in this region, most of whom are now in urban areas. Conversely, there are outflows from Asia and the Pacific to other regions of the world. The study tracks key responses from the Asia-Pacific region and then addresses various challenges, including the question of admission and temporary stay-cum-asylum; identification and status determination; basic necessities, self reliance and humane treatment; mode of travel; birth registration, nationality and statelessness; regional action; causation/root causes; and multi-faceted solutions.

The study singles out various developments (particularly during the past decade) which attest to the importance of international solidarity. They include the recent setting up of a Support Platform to assist a country or regional situation, a mechanism foreseen by the Global Compact on Refugees. There is now a Support Platform to galvanize broad based support to resolve the Afghan refugee situation; it provides a strong bridge between peace, humanitarian and development actors and actions, asylum countries, host communities and the potential of voluntary return to the country of origin and sustainable reintegration side by side with local communities, cognizant of the need to support access to services and livelihoods for all populations. The study also notes various pledges made by Governments and other stakeholders at the Global Refugee Forum, as well as good practices which are now being documented extensively. The analysis then leads to various preferred directions for the future, including to maximize a variety of entry points for national, regional and international cooperation in the spirit of responsibility-sharing. It underlines the dynamics of humane actions at the field and other levels, with the imperative of respect for international law, national inputs through a protection framework for persons who seek refuge, promotion of their self reliance, and a variety of solutions and complementary pathways, as well as checks and balances to protect “the forcibly displaced” in a multi-dimensional spectrum.

Introduction

While various corners of the Asia-Pacific region are havens of peace and prosperity, forced displacements have been a longstanding feature in many parts of this geographic kaleidoscope.¹ The situation is all the more challenging because of the vast terrain and spaces at stake, with some of the world's most populous nations, intermixed with varied social and political systems, ranging from authoritarian regimes to the biggest democracies numerically, in addition to different levels of economic development.

Today, the advent of the pandemic, Coronavirus or COVID-19, has added another quandary to the region in relation to its nexus with human mobility. People on the move are particularly affected by three interconnected crises: health, socio-economic and protection dilemmas, imposing more impediments and burdens on their vulnerabilities.² The closure of borders, quarantine, lockdowns, curfews and emergency rule in the name of public health and national security have fueled further complications; the forcibly displaced are potentially or actually affected by limitations on access to refuge or asylum, pushbacks at borders and at sea and forced return, increased xenophobia, and detention of foreigners, compounded regrettably by stranded cases and the threat of exploitation and violence *en route*. Often dependent upon informal work and daily wages, the forcibly displaced are among the populations most vulnerable to socio-economic shocks like those brought about by the pandemic.

Yet, amidst this scenario, there are also many humane responses which provide hope to assist and protect persons in need. As will be seen below, there are exemplary countries and other stakeholders which have been, for a long time, a guiding light to offer a comforting shelter to groups and persons who flee from persecution, armed conflicts and other disasters. Their sense of solidarity – acting in concert to share responsibility and show empathy – is at the heart of positive change of which the region can be proud.

Context

At the outset, it is worth noting that the region covered by this study consists of some 45 countries classified as “Asia-Pacific”, correlated with the scope and mandate of the Office of the United Nations High Commissioner for Refugees (UNHCR). It does not encompass various situations overlapping between Asia and the Arab/Middle Eastern region – particularly the world's largest group of refugees

¹ For general reading, see: Vitit Muntarbhorn, *The Status of Refugees in Asia* (Oxford: Clarendon, 1992); Vitit Muntarbhorn, “Persons in Need of Protection” and Migration in the Asia-Pacific Region: The Refugee Phenomenon and Beyond’, reprinted in Vitit Muntarbhorn, *Dimensions of Human Rights in the Asia-Pacific Region*, Chapter V (Bangkok: Office of the National Human Rights Commission of Thailand, 2002) 74-113; Angus Francis and Rowena Maguire (eds.), *Protection of Refugees and Displaced Persons in the Asia Pacific Region* (Aldershot: Ashgate, 2016); UNHCR, *Refugee Global Appeal 2020-2021* (Geneva: UNHCR, 2020) [http://reporting.unhcr.org/sites/default/files/ga2020/pdf/Global Appeal 2020 full lowres.pdf](http://reporting.unhcr.org/sites/default/files/ga2020/pdf/Global%20Appeal%202020%20full%20lowres.pdf) accessed 19 June 2020; UNHCR, *Global Report 2019* <https://www.unhcr.org/the-global-report.html>; UNHCR *Global Trends 2019* <https://www.unhcr.org/statistics/unhcrstats/5ee200e37/unhcr-global-trends-2019.html> accessed 4 July 2020; <https://www.unhcr.org/asia-and-the-pacific.html>.

² UN, *COVID-19 and People on the Move*, UN Policy Brief (New York: UN, 2020) 2.

currently – Syrians³ – and other key forced displacements such as in Yemen⁴ and Iraq⁵. The Palestinian refugee issue has been dealt with, for decades, by the UN Relief Works Agency (UNRWA)⁶. The region at stake here stretches from Central Asia to the Pacific region, replete with a range of small island nations. The list of countries can be found in the Table attached in the Annex which also interlinks with their commitment to key international treaties on refugees and statelessness.

Second, as a term of art, “Forcibly Displaced” refers (as a minimum) to refugees⁷ and asylum-seekers⁸ who are border-crossers - traditionally seen as fleeing from persecution and extended to cover flight from man-made disasters such as warfare, and internally displaced persons⁹ (IDPs) who are forcibly displaced but have not crossed borders. The forcibly displaced may include stateless persons¹⁰ who can also be refugees, asylum-seekers or IDPs, and this study includes the issue of statelessness more broadly, as consistent with UNHCR’s mandate. The coverage recognizes the complexity of forced displacement and mixed flows in a region where millions are also on the move for economic and at times - increasingly - environmental reasons interwoven with natural disasters and the threat of climate change. On occasions, Governments in the region do not make a clear-cut demarcation between the forcibly displaced and mass movements of migrant workers, giving rise to serious protection risks for the forcibly displaced and necessitating transparent analysis and status determination of their respective situations and protection needs.

Third, there have been for decades various international standards to help the various groups implied by the heading of “Forcibly Displaced”. The two key treaties on refugee protection are the 1951

³ <https://www.unhcr.org/syria-emergency.html> accessed 16 June 2020.

⁴ <https://www.unhcr.org/yemen-emergency.html> accessed 16 June 2020.

⁵ <https://www.unhcr.org/iraq-emergency.html> accessed 16 June 2020.

⁶ <https://www.unrwa.org/palestine-refugees> accessed 24 June 2020.

⁷ The term “refugee” is defined by Article 1(A)(2) of the 1951 Refugee Convention as a person who is unable or unwilling to return to the country of origin “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.” For text, see: Convention on the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137.

⁸ Asylum-seekers are “individuals who have sought international protection and whose claims for refugee status have not yet been determined”: *UNHCR Global Trends 2019* (n 1) 64.

<https://www.unhcr.org/statistics/unhcrstats/5ee200e37/unhcr-global-trends-2019.html> accessed 4 July 2020.

⁹ IDPs are defined by Article 2 of the UN Guiding Principles on Internal Displacement as: ‘persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situation of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border’. For text, see: UN Guiding Principles on Internal Displacement. E/CN.4/1998/53/Add.2 (11 February 1998).

¹⁰ Article 1 (1) of the 1954 Convention relating to the Status of Stateless Persons defines a stateless person as “a person who is not considered as a national by any State under the operation of its law” For text, see: Convention on the Status of Stateless Persons (adopted 28 September 1954, entered into force 6 June 1969) 360 UNTS 117. See also: Convention on the Reduction of Statelessness (adopted 30 August 1961, entered into force 13 December 1975) 989 UNTS 175.

Convention on the Status of Refugees¹¹ and its 1967 Protocol¹². The definition of “refugee” in this setting is related to persons having left their country of origin for a “well founded fear of persecution”. A range of rights in the civil, political, economic, social and cultural fields, including the right to “*non-refoulement*”¹³, guaranteeing that the refugee must not be pushed back to areas of danger, are stipulated in the Convention. For UNHCR and some States, this term “refugee” has been extended to cover victims of armed conflicts, and the latter interlinks with various treaties under the rubric of international humanitarian law.¹⁴

Some 20 countries from this region are parties to the refugee instruments, as seen in the Table attached, and member States of the Asian-African Legal Consultative Organization in 2001 adopted the 1966 “Bangkok Principles on Status and Treatment of Refugees”, which included the “extended” definition of a refugee, but was subject to several reservations on the definition.¹⁵ An intriguing question is: what could be some of the reasons for the paucity of accessions to the Refugee Convention and its Protocol by Asia-Pacific countries, as compared to other regions? Possibly they include the general hesitation of several countries from this region to accede to international instruments on human rights, the perception that accession to those instruments might internationalize local situations, broad claims of nation security and sovereignty anchored in the principle of non-interference in the internal affairs of a State, fear of mass influxes, and absence of national law on asylum. There is also a tendency on the part of some States to treat persons who seek refuge as illegal immigrants rather than as persons to be protected and exempted from the strictures of the national immigration law.¹⁶

Moreover, there are various UN standards on Internal Displacement, including the Guiding Principles on Internal Displacement¹⁷, while there are two key Conventions on statelessness and its reduction¹⁸; the paucity of accessions from this region can be seen in the Table mentioned. All persons also fall under general international law and human rights law, and the protection offered by the UN Charter related modalities, such as UN Special Procedures¹⁹ and Universal Periodic Review (UPR)²⁰, and the core international human rights treaties bear upon the plight of and safeguards for those who are forcibly displaced. Notably, all Asia-Pacific countries are parties to the 1989 Convention on the Rights of the Child (CRC)²¹, and it is salutary that an increasing number of countries are becoming parties to the 1966

¹¹ Convention on the Status of Refugees (n 7).

¹² Protocol relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267.

¹³ Article 33 of the Convention (n 7). *Non-refoulement* is also considered to be part of customary international law: <https://www.unhcr.org/4d9486929.pdf> accessed 4 July 2020.

¹⁴ This concerns the law of armed conflicts and the protection of victims, especially civilians. See further: https://www.icrc.org/en/doc/assets/files/other/what_is_ihl.pdf.

¹⁵ <http://www.aalco.int/final%20text%20of%20bangkok%20principles.pdf> accessed 4 July 2020.

¹⁶ See further: Muntarbhorn, *The Status of Refugees in Asia* (n 1).

¹⁷ UN Guiding Principles on Internal Displacement (n 9).

¹⁸ Convention on the Status of Stateless Persons and Convention on the Reduction of Statelessness (n 10).

¹⁹ <https://www.ohchr.org/EN/HRBodies/HRC/Pages/SpecialProcedures.aspx> accessed 16 June 2020

²⁰ See further: <https://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx>.

²¹ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.

International Covenant on Civil and Political Rights²² and the 1985 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment²³ which have various provisions related to refugee protection and also apply to IDPs and stateless persons.

With regard to global policy commitments, there are the near-universally accepted Sustainable Development Goals (SDGs) (2015-30)²⁴ which have enjoyed great buy-in from the region and which advocate the premise of “Leave No one Behind”, potentially with benefit to nationals and non-nationals including refugees, IDPs, asylum-seekers and stateless persons. However, fulfilment of those Goals is faced with difficulties, exacerbated by the spread of COVID-19.²⁵ Most recently, there are the two global Compacts on human mobility which act as a linchpin for the international community, whether or not countries are parties to the various treaties mentioned above. Most directly, the 2018 Global Compact on Refugees (GCR), embodying the Comprehensive Refugee Response Framework, provides means to achieve four key objectives: “ease pressure on host countries”; “enhance refugee self-reliance”; “expand access to third country solutions”; and “support conditions in countries of origin for return in safety and dignity”²⁶. This is complemented by the 2018 Global Compact on Safe, Regular and Orderly Migration (GCM) which covers a gamut of concerns relevant to migration²⁷. Although the GCM does not apply to refugees, it too helps to provide a value added, such as its call for alternatives to detention in regard to those who cross borders irregularly. The *raison d’être* behind both instruments, inspiring solidarity of actions from the global community, is encapsulated in this seminal sentence from the 2016 New York Declaration for Refugees and Migrants which was the source of the two Compacts: “Migration should be a choice and not a necessity”²⁸.

Fourth, there are influxes and outflows of different groups of persons who are forcibly displaced into and from many countries of the region. There are large numbers who fled *en masse* from the same country, such as Afghan and Myanmar refugees who are the second and fourth biggest groups of refugees in the world²⁹, contrasting with smaller arrivals of individuals and families from the Middle East and Africa. This is both an intra-regional phenomenon (within the region) and inter-regional phenomenon (between this region and other regions). At times, countries are concurrently countries of origin and asylum. In Asia, as globally, it is developing countries which have borne the brunt of hosting refugees and this invites a comprehensive reflection of how the global community, especially

²² International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

²³ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered force 26 June 1987) 1465 UNTS 85. For example, Article 3 of the Convention prohibits refoulement to areas where a person might be tortured.

²⁴ <https://sustainabledevelopment.un.org/sdgs> accessed 16 June 2020.

²⁵ UN Economic and Social Commission for Asia and the Pacific, *Asia and the Pacific SDG Progress Report 2020* (Bangkok: UN, 2020).

²⁶ <https://www.unhcr.org/the-global-compact-on-refugees.html> accessed 16 June 2020.

²⁷ <https://www.iom.int/global-compact-migration> accessed 16 June 2021.

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https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_71_1.pdf para.43. accessed 16 June 2020.

²⁹ <https://www.unhcr.org/afghanistan.html>; <https://www.unhcr.org/rohingya-emergency.html> accessed 16 June 2020.

developed countries, should respond more equitably as part of burden-cum-responsibility sharing, while not forgetting to address the problem at the source; in other words, how to implement the GCR. This concern epitomizes the needed spirit of international solidarity anchored in cause-and-effect. Ironically perhaps, some of the most forthcoming States - in terms of providing temporary stay or temporary protection to persons in need of international protection - are those countries which are not parties to the refugee instruments. Conversely, some of the countries which are parties to such instruments do not implement their obligations effectively and at times compromise the standards propounded. This paradox calls for the GCR's open-minded appreciation of the situation which moves beyond formal commitments to international treaties and which underlines a grounded approach premised on the realities at the local level. Yet, this should not downplay the fact that those treaties offer clarity and an element of certainty in relation to standard-setting which guide preferred practices, together with the spectrum of shared support and cooperation, evidencing a solidarity-based approach of universal import.

Fifth, the most directly relevant movements are of a protracted nature – usually sizeable groups who in their quest for refuge or relate protection have been/are in a limbo situation for at least five years or equivalent, due to a lack of options for durable solutions. This is predominantly due to continuing violence and insecurity and violations of human rights in places of origin, decreasing opportunities for resettlement to third countries and the fact that host countries do not permit legal local integration opportunities. Bearing in mind the variety of groups of concern to this study, estimates of persons and communities requiring international protection for lack of adequate national protection are as follows: per UNHCR's Global Trends 2019, there are about 9.5 million persons of concern to UNHCR in the Asia-Pacific region of whom there are some 1.4 million registered Afghan refugees still in the Islamic Republic of Pakistan, about 1 million registered Afghans still in Islamic Republic of Iran, and 1.1 million refugees from Myanmar, the vast majority Rohingyas who have sought refuge in neighbouring Bangladesh; about 3.2 million IDPs in various countries; and 2.3 million stateless persons in the region (many of whom are also refugees, such as the Rohingyas in Bangladesh, or IDPs)³⁰. The most protracted caseload is Afghan refugees – a situation of over forty years' duration, with over 6 million persons who sought refuge in the Islamic Republics of Pakistan and Iran and other countries at the height of the forced movement³¹. Meanwhile, the last five decades have seen significant forced displacements from Myanmar, into Thailand in the 1980s and 1990s and into Bangladesh in the late 1970s, early 1990s, and most recently from 2017 when over 700,000 ethnic Rohingya fled particularly acute violence and discrimination in Rakhine State³². In addition, there are intersectional challenges which should not be overlooked; in the quest for refuge, there are questions of women's rights, child rights, the rights of persons with disabilities, minority and indigenous issues and the demography of an expanding number of senior population in parts of the region, interlinking between countries of origin, first asylum countries and other countries.

Key Responses

How have Asia-Pacific countries responded to the varied situations of forced displacement? Past practices evidenced by the history of the region after the Second World War indicated many humane

³⁰ UNHCR, *Global Trends 2019* (n 1). See also: UNHCR, *Global Report 2019* (n 1) 108-123.

³¹ <https://www.refworld.org/pdfid/3ae6a9d110.pdf> accessed 16 June 2020.

³² <https://www.unhcr.org/rohingya-emergency.html> accessed 6 June 2020.

actions from countries, such as the grant of temporary refuge to millions of refugees and asylum-seekers from the Indochina region and nearby between the 1970s and 1990s. Often, this was based upon a policy response of Governments in Southeast Asia and beyond which dealt with particular groups of persons - Vietnamese, Lao and Cambodian – who had sought shelter in neighbouring countries such as Thailand, Malaysia, and Indonesia and were then granted temporary refuge or stay, pending resettlement in third countries or voluntary repatriation to the country of origin³³. The culmination of inter-State and inter-regional cooperation on this front was the 1989 Comprehensive Plan of Action (CPA) which interlinked between countries of origin, first asylum and resettlement³⁴. It introduced a commitment to temporary refuge for those who sought asylum and a screening process for persons in this position for whom resettlement was open if they were recognized as refugees. This was complemented by an information campaign in the countries of origin against clandestine departures.

Currently various responses from a range of countries acting in a laudable manner can be identified in regard to their treatment of the forcibly displaced. A prime example is Pakistan which, although not a party to the refugee instruments, has been providing a safe haven to the biggest caseload of refugees in the region - Afghans - for the past forty years³⁵. In Pakistan, refugees enjoy freedom of movement, access to education, health care and other basic necessities. Despite the fact that some 23 million Pakistani children are out-of-school³⁶, the authorities have been generous in providing refugee children with access to education. Afghan refugees also live side by side with local communities, increasingly in urban areas. They have access to SIM cards, can open bank accounts and own movable assets. A notable achievement was the large-scale biometric registration of Afghan refugees in 2006/7.³⁷ Registered Afghans were accorded a “Proof of Registration Card” assuring them temporary legal stay in the country³⁸. There is issuance of birth certificates with registration of children and the grant of an identification card depending on their age.³⁹ Whatsapp networks have also been employed to link up outreach volunteers, local leaders, communities and social media; these have proved useful to disseminate information on the pandemic. Refugees are included in the host country’s COVID-19 prevention and response programmes.

³³ Muntarhorn, *The Status of Refugees in Asia* (n 1).

³⁴ Muntarhorn, *ibid.* 47-52; Sten A. Bronee, ‘History of the Comprehensive Plan of Action’ 5(1993)4 *IJRL* 534-543.

³⁵ <https://www.un.org/sg/en/content/sg/statement/2020-02-17/secretary-generals-remarks-the-high-level-segment-of-the-international-conference-hosting-40-years-of-afghan-refugees#:~:text=For%20forty%20years%2C%20the%20people,refugee%20situation%20in%20recorded%20history> . accessed 18 June 2020.

³⁶ <https://www.unicef.org/pakistan/education> accessed 10 July 2020.

³⁷ In 2017/8, there was also registration of some 880,000 previously undocumented Afghan nationals. Although this was a different activity from the registration of Afghan refugees, it helped to make the cross border situation more transparent, thus regularizing the presence of irregular movements. See further: <https://www.gfmd.org/pfp/ppd/11538> accessed 4 July 2020.

³⁸ <https://reliefweb.int/report/pakistan/pakistan-afghan-refugees-registration-update-january-2020> accessed 18 June 2020.

³⁹ UNHCR Afghan Refugee Registration Update: 11 Jan-11 March 2020. See further: <https://data2.unhcr.org/en/situations/afghanistan>.

Assistance has been provided to host communities and refugee communities through the Refugee-Affected and Hosting Areas (RAHA) Initiative launched in 2009 by the Government of Pakistan in cooperation with UN agencies, benefiting to date some 12.4 million people⁴⁰. The inclusive process has benefited both stakeholders – host and refugee, predating and inspiring the call for support to host and refugee populations without discrimination in the GCR. This is complemented by the humane response of Islamic Republic of Iran which is a party to the refugee instruments⁴¹. In Iran all refugees are able to access education and health care, coupled with universal health insurance. The literacy rate among refugee children in this country has increased impressively; from 6 % to 68% over the past four decades⁴². Moreover, Afghan refugees are able to seek employment in a listed category of jobs. They are able to open bank accounts. More access to vocational training and income generating activities, as well as access to loans, is to be encouraged. The majority of refugees (97 per cent) also live in urban areas along with host communities, rather than being confined to refugee settlements.⁴³

The nexus between refuge and return has been reflected in constructive tripartite and quadripartite arrangements which are now further supported by commitments emanating from the recent Global Refugee Forum (GRF), convened pursuant to the GCR (with more details later in this study). The Solutions Strategy for Afghan Refugees (SSAR), a policy and operational framework among the two host countries- Pakistan and Iran, and Islamic Republic of Afghanistan, the country of origin, operational since 2012, with the UNHCR providing support, is based upon these tenets:

“

- 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”⁴⁴.

The commitment under this arrangement is to support voluntary repatriation, sustainable reintegration upon return to the country of origin, and assistance to host countries and communities. Since 2002, nearly 5.3 million registered Afghans refugees have returned home under UNHCR’s formal voluntary repatriation programme⁴⁵. Returning refugees currently receive a voluntary repatriation cash grant (of approximately USD 200 per person), while investment is being channeled to 20 Priority Areas of Return and Reintegration (PARRs) that are the main areas of origin of refugees and where benefits of

⁴⁰ UNHCR Global Focus 2020: Southwest Asia: Pakistan 3. <http://reporting.unhcr.org/node/35> accessed 18 June 2020.

⁴¹ UNHCR Global Focus 2020: Southwest Asia: Iran. <http://reporting.unhcr.org/node/2527> accessed 18 June 2020.

⁴² <https://un.org.ir/en/news-page/itemlist/tag/UNHCR.html> accessed 10 July 2020.

⁴³ <https://reporting.unhcr.org/node/2527> accessed 4 July 2020.

⁴⁴ *International Conference on the Solutions Strategy for Afghan Refugees to support Voluntary Repatriation, Sustainable Reintegration and Assistance to Host Countries* (Geneva: UNHCR, 2012) 12.

⁴⁵ UNHCR, *Solutions Strategy for Afghan Refugees: Update 2015-2016 Regional Overview*. <https://www.unhcr.org/542522922.pdf> accessed 18 June 2020.

such investment flow to local communities, IDPs and returnees, driven by what the GCR later called “whole of society” approach. There is also a National Policy Framework of Returnees and IDPs with emphasis on self reliance, access to documentation, access to land and shelter, education and livelihood, bolstered by a Presidential Decree on Land Allocation for Returnees 2018 in regard to access to land⁴⁶. The fact that children and youth constitute the majority of the Afghan population also invites great attention to enhance the provision of education and skills development with livelihood opportunities.

Those constructive actions were strengthened by the International Conference on 40 Years of Afghan Refugees held in Islamabad in February 2020, with a call to sustain support for Afghan refugees in the quest for solutions⁴⁷. The bridge with the needed political process and the aspiration of peace in the country of origin has been reinforced in the Support Platform for the Solutions Strategy for Afghan Refugees⁴⁸ discussed later.

In reality, with the changing global-regional environment, the positive practices above have had to adapt to new challenges, further elaborated below. In the past two years, the voluntary repatriation has been reduced to a trickle due to the volatile security situation, uncertainly surrounding the complex political transition and peace negotiations, and lack of absorptive capacity in Afghanistan, and was recently temporarily suspended because of the pandemic. Today COVID-19 poses a further test to the capacity of Pakistan and Iran, precisely because there are dire situations facing host communities with the downturn of the economy, and consequentially the host is greatly pressured to sustain accommodation of those who are the forcibly displaced, with few resources. Parallel to this, there have arisen new push factors - loss or decline of job opportunities and fear of the pandemic, together with the desire to reunite with families – leading to a number of spontaneous returns to Afghanistan particularly in 2020, bypassing official voluntary repatriation channels⁴⁹. There has been secondary migration within Afghanistan, as well as onward movements to Europe and beyond, with a marked rise in the number of women travelling with families⁵⁰.

Bangladesh’s intake of the massive refugee caseload from its Eastern neighbour is also to be lauded, and following from the larger caseload of Afghans above, it is the next biggest caseload in the Asia-Pacific region today. With regard to earlier influxes from Myanmar in the 1970s and 1990s, most of the Rohingya refugees displaced in those decades returned to Myanmar, with a residual group remaining in Bangladesh. Following the huge outflow into Bangladesh in 2017⁵¹, a bilateral agreement was concluded between Bangladesh and Myanmar concerning voluntary repatriation, but to date, the

⁴⁶ Islamic Republic of Afghanistan Ministry of Refugees and Repatriation, *Return and Reintegration Response Plan – 2018*. <https://www.refworld.org/pdfid/5b2a46f74.pdf> accessed 18 June 2020.

⁴⁷ <https://www.unhcr.org/admin/hcspeeches/5e4a29ed0/international-conference-40-years-hosting-afghan-refugees-pakistan-new.html> accessed 10 July 2020.

⁴⁸ <https://reliefweb.int/report/afghanistan/support-platform-solutions-strategy-afghan-refugees-ssar> accessed 4 July 2020.

⁴⁹ <https://reliefweb.int/report/afghanistan/return-undocumented-afghans-weekly-situation-report-08-14-march-2020> accessed 18 June 2020.

⁵⁰ <https://www.unhcr.org/news/briefing/2020/2/5e4272d64/four-decades-counting-urgent-need-rekindle-hope-millions-afghan-refugees.html> accessed 18 June 2020;
<https://www.unhcr.org/news/press/2020/7/5f034ea24/high-level-event-seeks-sustained-support-afghans-refugee-hosting-countries.html> accessed 10 July 2020.

⁵¹ See further: <https://www.unhcr.org/rohingya-emergency.html>.

various attempts by the two Governments on this front have not borne fruit.⁵² The main reason is that the various root causes of displacement in Myanmar have not been addressed, and key elements of the main blueprint to do so - the recommendations of the Advisory Commission on Rakhine State⁵³ - have not been implemented. Rohingyas remain denied citizenship, their freedom of movement remains constrained, and their homesteads have been erased. A separate internal armed conflict between the Myanmar military and the ethnic Rakhine Arakan Army further impedes the possibility of a safe and dignified return at present.

On the constructive front, by contrast with some other countries, Bangladesh (which is not a party to the refugee instruments) has admitted and registered 860,000 Rohingya refugees and has generally abided by the principle of *non-refoulement*, granting the new arrivals temporary stay and protection. These refugees are sheltered in various camps in the area known as Cox's Bazar. A key achievement has been biometric registration of the massive group and there is an inter-agency group providing assistance and protection.⁵⁴

Parallel to this, UNHCR has advocated the Solidarity-based approach to pursue solutions in Myanmar, including voluntary repatriation when the conditions are ripe to do so, as well as to assist IDPs in Myanmar return to their places of origin, mobilizing global support including through partnership with development actors⁵⁵. There is an interlink between refugee and statelessness related solutions in Myanmar, and between humanitarian assistance, environmental management and development financing on both sides of the border. Under a Memorandum of Understanding (MOU) between Myanmar authorities, UN Development Programme (UNDP) and UNHCR, various quick impact projects on basic necessities such as education and livelihoods are being implemented in Rakhine state, bearing in mind areas to which refugees and IDPs might return one day.

Progress in Central Asia has been witnessed in several countries in building an asylum system, even though actual access by persons who seek refuge is still difficult due to stringent border controls and conditions. Many countries of this region are parties to the refugee instruments, as seen in the Table attached. The setting is that these are countries which have emerged from the dissolution of the Soviet Union and have to deal with state succession problems, including in regard to how to address refugee situations and populations remaining from the Soviet era. Some members of the population are stateless and some went through large scale relocation of people during Soviet times. There are several examples of progress across asylum systems in the region⁵⁶. Turkmenistan has amended its law on refugees to accord more protection to unaccompanied minors and this now includes temporary protection and complementary protection⁵⁷. Kazakhstan has adjusted its law to have a fast track

⁵² The repatriation agreement was signed in 2017. See further:

http://reporting.unhcr.org/sites/default/files/2020%20JRP%20-%20March%202020_0.pdf accessed 18 June 2020.

⁵³ *Towards a Peaceful, Fair and Prosperous Future for the People of Rakhine: Final Report of the Advisory Council on Rakhine State (2017)*. <http://www.rakhinecommission.org/the-final-report/> accessed 18 June 2020.

⁵⁴ <https://www.unhcr.org/news/briefing/2019/8/5d4d24cf4/half-million-rohingya-refugees-receive-identity-documents-first-time.html> accessed 4 July 2020. See further: UNHCR, *Independent Evaluation of UNHCR's Emergency Response to Rohingya Refugees into Bangladesh August 2017-September 2018* (Geneva: UNHCR, 2018).

⁵⁵ UNHCR, *A Solidarity-Based Approach for the People of Rakhine State* (Geneva: 2019).

⁵⁶ <https://www.unhcr.org/centralasia/en/almaty-process-faq> accessed 18 June 2020.

⁵⁷ UNHCR, *Regional Strategy for Central Asia 2019-2021* (Geneva: UNHCR, 2019) 11.

process to help refugees acquire permanent resident status, a step towards naturalization⁵⁸. UNHCR has observer status in the asylum process of Kazakhstan and the national refugee law, in principle, permits access to asylum for applicants who do not possess identification documents or who cross the border irregularly⁵⁹. Kyrgyzstan has a new Criminal Code which does not penalize asylum-seekers for illegal border crossing⁶⁰. National processes for refugee status determination are gradually emerging in Kazakhstan, Kyrgyzstan, Tajikistan and Turkmenistan.

On other fronts, there are a plurality of persons and groups who seek refuge in many countries of the Asia-Pacific region. The arrivals are eclectic and not necessarily homogeneous. They face many of the challenges raised below.

In relation to IDPs, action is guided by the UN Guiding Principles on Internal Displacement and the gamut of human rights treaties and standards, with an interagency response; UNHCR is responsible for the protection cluster⁶¹. In Afghanistan, help is given in kind and in cash, with emphasis on medical access, legal assistance and self-reliance⁶². In Myanmar the ongoing challenge is the internal armed conflict in various parts of the country, from Rakhine and Chin States in the west to Kachin and Shan States in the north, which feeds the flow of IDPs⁶³. There is also a large number of IDPs in Mindanao, Philippines who require protection and assistance⁶⁴. It is worth bearing in mind that the situations causing such internal displacements can vary markedly between armed conflicts to local power struggles and related violence, development discrepancies and natural disasters, exacerbated by the impact of climate change. It also calls into play the role of local leaders and local authorities in attenuating the harm and inviting an equitable response to persons on the move.

On the issue of action to overcome statelessness, there are many examples of progress in the Asia-Pacific region. Central Asia has witnessed a wide range of positive developments in recent years, inspired partly by the SDGs which advocate birth registration for all and UNHCR's "I Belong" Campaign which aims to end statelessness by 2024⁶⁵. All the countries are parties to the CRC whose Article 7 calls for birth registration for all children without discrimination and enshrines the right to acquire a nationality. More than 79,000 cases of statelessness have found solutions since the beginning of the UNHCR campaign⁶⁶. Currently, Uzbekistan is the country with the largest number of stateless persons in the region: around 97,000⁶⁷. By the end of 2018, Kazakhstan had conferred citizenship on a number of stateless persons⁶⁸. In Kyrgyzstan, there is a campaign to register stateless people and by 2019, it had

⁵⁸ Ibid. 11.

⁵⁹ Ibid. 24.

⁶⁰ Ibid. 11.

⁶¹ <https://www.unhcr.org/4565a8302.pdf> accessed 18 June 2020.

⁶² UNHCR/Afghanistan and Ministry of Refugees and Repatriation, Afghanistan: Priority Areas of Return and Reintegration: A Synopsis, January 2020.

⁶³ <https://reporting.unhcr.org/node/2541> accessed 4 July 2020.

⁶⁴ <https://www.unhcr.org/ph/18507-apr2020-enews-mindanao.html> accessed 18 June 2021.

⁶⁵ <https://www.unhcr.org/centralasia/en/ibelong-campaign-to-end-statelessness> accessed 18 June 2020.

⁶⁶ UNHCR Global Focus Central Asia 2020. <http://reporting.unhcr.org/node/3412> accessed 18 June 2020.

⁶⁷ <https://www.unhcr.org/news/press/2020/3/5e70b9474/uzbekistan-end-statelessness-50000-people.html> accessed 4 July 2020.

⁶⁸ UNHCR, *Regional Strategy for Central Asia 2019-2021*(n 57)23.

resolved all known statelessness cases⁶⁹. In Tajikistan, solutions have been found for some 35,000 stateless persons since 2014⁷⁰. Meanwhile, Turkmenistan is the only country in the region which has acceded to both treaties on statelessness and it has a national plan to address the issue and to resolve all cases by 2024⁷¹. The UN's UPR process has also encouraged other countries of the region to accede to these treaties. Many countries in the region are also following up the pledges made at the High Level Conference on Statelessness held in Geneva in 2019.⁷²

Progress in tackling the issue of statelessness can also be found in other parts of the Asia-Pacific region. For example, Thai law guarantees birth registration for all, including those who have irregular status in the country⁷³. While the nationality law has faced constraints in recent decades, there are some openings to grant periodically Thai nationality to groups of persons born in Thailand. The Philippines has a national plan to end statelessness, and it is a party to one of the treaties on statelessness⁷⁴. Meanwhile, Malaysia has been reviewing stateless cases⁷⁵. Viet Nam has revised its nationality law to prevent loss of nationality by local women who marry foreigners⁷⁶.

The downside of the issue is that there is lack of adequate action in parts of the region. Suffice it to note here that the biggest group of stateless in the region is the Rohingya community from Myanmar. There are some 600,000 stateless Rohingyas who remain in Myanmar, 140,000 of whom are also IDPs, in addition to some one million Rohingya refugees registered in the region⁷⁷. Aptly, this leads to various challenges facing the region as a whole which invite solidarity of action geared to prevention, protection and remediation.

Challenges

- Admission and Temporary Stay-cum-Protection

Throughout the region, there has been variability of responses; some countries admit persons who seek refuge more easily than other countries do, thus enabling refugees to access safety at least temporarily. The good practices referred to above are matched at times by less open policies. Throughout the years, while there have been many exemplary national policies and practices from countries enabling massive influxes of persons who seek refuge, there have also been incidents of push backs, interdictions, interceptions and “deterrence” against persons who seek refuge, as well as outright

⁶⁹ Ibid. 25. <https://www.unhcr.org/news/press/2019/7/5d1da90d4/kyrgyzstan-ends-statelessness-historic-first.html> accessed 18 June 2020.

⁷⁰ Ibid.

⁷¹ Ibid.27.

⁷² <https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/> accessed 18 June 2020

⁷³ <https://www.unhcr.or.th/node/1151> accessed 18 June 2020.

⁷⁴ <https://www.unhcr.org/ph/16771-october-e-newsletter-statelessness.html> accessed 18 June 2020.

⁷⁵ <https://www.unhcr.org/ending-statelessness-in-malaysia.html> accessed 18 June 2020.

⁷⁶ <https://www.refworld.org/pd/54e75a244.pdf>; <https://www.refworld.org/docid/3ae6b5200.html> accessed 18 June 2020.

⁷⁷ <https://www.unhcr.org/5e4ff9357.pdf> accessed 4 July 2020; UNHCR Myanmar update (April 2020) .

deportation and instances of refoulement⁷⁸. In many countries, there is a close link with the claim of national security and the application of national immigration law which classifies persons entering irregularly as illegal immigrants, without distinguishing between refugees and migrants. Yet, from the angle of needed protection underpinned by International Law, there must be differentiation between the two groups; refugees seek entry because they lack protection from the country of origin, while migrants are still protected by their country of origin.

The ambivalent scenario is seen from some key country experiences. An example of extensive temporary stay in South Asia - which, for UNHCR, comprises India, Nepal and Sri Lanka - is the case of the refugees from Bhutan who found refuge in neighbouring Nepal. Even though the latter is not a party to the refugee instruments, being also a developing country with serious economic needs, it offered sustained refuge to those refugees for many years until the solution of resettlement was found from 2007 onwards⁷⁹. Sri Lanka, also a non signatory to the refugee instruments, had an armed conflict for many years, but it has also offered refuge to some persons who seek refuge⁸⁰. On a related front, with the advent of peace, it has witnessed the return of its own nationals who had left in search of refuge elsewhere. This is an ongoing process that picked up in 2017, with nearly 4,000 refugees having returned⁸¹.

Meanwhile, India, also a non signatory to the refugee instruments, has been a key country for a variety of people who have sought refuge, including Afghans, Sri Lankans and Tibetans⁸². Temporary stay has been accorded in regard to some groups. The policy is variable, and given that it is the local immigration law which applies to their entry, the situation remains precarious for persons who seek refuge, since they might be arrested as illegal immigrants subject to deportation. Other countries in South Asia lack a legal and administrative framework to ensure temporary stay, meaning that generally across the sub-region, refugees have only limited access to services and no assurance of access to work possibilities as an opening for self reliance and productive activity in the wait for a durable solution. UNHCR Global Focus 2020 estimates that there are some 258,000 persons of concern to UNHCR in the

⁷⁸ See, for example, UNHCR, *State of the World's Refugees 2000: Fifty Years of Humanitarian Action* (Oxford: Oxford University Press, 2000), especially Chapter 4; Vinit Muntarbhorn, 'Refugee Law and Practice in the Asia and Pacific Region: Thailand as a Case Study' <http://www.refugeelawreader.org/en/en/english/section-v-asian-framework-for-refugee-protection/v1-protection-challenges-in-asia/core-readings-140/9456-muntarbhorn-refugee-law-and-practice-in-the-asia-and-pacific-region-thailand-as-a-case-study-1/file.html> ; <https://www.unhcr.org/3ebf9bad0.pdf>; Kate Jastram, *Regional refugee protection in comparative perspective Lessons learned from the Asia-Pacific, the Americas, Africa, and Europe* (Sydney: Andrew Renata Kaldor Centre for International Refugee Law (Kaldor Centre), University of New South Wales, 2015).

⁷⁹ <https://www.unhcr.org/news/latest/2015/11/564dded46/resettlement-bhutanese-refugees-surpasses-100000-mark.html> accessed 18 June 2020.

⁸⁰ <http://reporting.unhcr.org/node/10315> accessed 22 July 2020. There are, for example, some Rohingya refugees in the country and there is increasing concern of xenophobia manifested by some groups against them.

⁸¹ Ibid.; <https://www.unhcr.org/4dfdbf550.pdf> accessed 18 June 2020 ; <https://reporting.unhcr.org/sites/default/files/UNHCR%20India%20factsheet%20-%20January%202020.pdf> accessed 22 July 2020.

⁸² <https://www.unhcr.org/50001ec69.pdf> accessed 18 June 2020.

South Asian region, with UNHCR providing help to some 54,000 in their capacity as refugees, persons seeking asylum and returnees⁸³, including through cash grants.

The biggest urban caseload in Southeast Asia today is in Malaysia (which is not a party to the refugee instruments) and it is the refugees from Myanmar who constitutes the bulk of this group⁸⁴. In reality, temporary stay is allowed to some extent but the door of asylum is not fully open. Some asylum-seekers are treated as illegal immigrants and are detained. Others manage to enter the country in the quest for refuge and settle side by side with local communities. However, they do not have access to work and access to other basic necessities is limited. The national authorities in 2018 indicated that there might be some policy changes and a move to regularize cases with the help of the UNHCR⁸⁵.

Nearby, Thailand (which is not a party to the refugee instruments) still has various rural camps with nearly 100,000 Myanmar of different ethnicities waiting for a durable solution⁸⁶. They are permitted temporary stay and the official approach has been to respect *non-refoulement*, but persons who seek refuge are unable to undertake legal employment. While a large number have already been resettled in third countries, the remainder await other options, including possibly voluntary repatriation to Myanmar or a labour pathway in Thailand, either through regularization of stay or a “U-turn” to and from Myanmar. In urban areas, there is a conglomeration of different nationalities, ranging from Asians to non-Asians from beyond the region, seeking refuge and without solutions to their situation.

Occasionally, there have been lapses where people who seek refuge have not been permitted to enter and or who are sent back to the country of origin, and the explanation of this practice is usually national security.

- Identification/Status Determination

The various countries which are parties to the refugee instruments should have various procedures to determine refugee status. However, the situation is not consistent. As a state party to the refugee instruments, the Philippines has a constructive procedure set up by the 2012 Department of Justice, Department Circular No 058, establishing the Refugee and Stateless Status Determination Procedure⁸⁷. Its aim is to create a fair, speedy, and non-adversarial procedure to identify and protect refugees and stateless persons. By contrast, the position of China deserves note. The main law affecting people who seek refuge is the 2012 Exit and Entry Administration Law which requires refugees and asylum-seekers to have an identity card issued by the authorities⁸⁸. In reality, this still needs to be complemented by a fair and effective procedure to screen cases and to assure asylum for those who pass the screening. Meanwhile, Japan has an asylum law and procedure, but cases recognized as refugees are not

⁸³ UNHCR Global Focus South Asia 2020 <http://reporting.unhcr.org/node/3410> accessed 18 June 2020.

⁸⁴ <http://reporting.unhcr.org/node/2532> accessed 18 June 2020.

⁸⁵ <https://reporting.unhcr.org/node/2532?y=2020#year> accessed 10 July 2020.

⁸⁶ <https://www.unhcr.or.th/en/about/thailand> accessed 18 June 2020.

⁸⁷ www.refworld.org/docid/5086932e2.html accessed 18 June 2020.

⁸⁸ <https://www.unhcr.org/protection/operations/5000187d9/china-fact-sheet.html> accessed 18 June 2020.

numerous⁸⁹. The Republic of Korea has a functioning national asylum system that the Government has committed to further capacitate through commitments made at the GRF, in addition to which it also has a mechanism affording humanitarian status.⁹⁰ Cambodia has a Refugee Department that conducts refugee status determination⁹¹, while Timor-Leste has refugee protection legislation but not an effective process for assessing asylum applications⁹².

It would be wise for non-signatories to the refugee instruments to also have a national screening procedure to differentiate between cases needing international or temporary protection and other entrants, as the procedure can offer a sense of fairness and certainty while also identifying those with specific protection needs. This should be transparent and comply with international standards, preferably with international monitoring. An innovative development is that at the end of 2019, Thailand introduced a law setting up a national screening procedure to identify “protected persons” or (depending upon the translation from Thai) “persons granted protection”⁹³. Those who fulfil the conditions of the procedure would be assured temporary stay, while those who fail the process would be considered as illegal immigrants, possibly subject to deportation.

In reality, in many countries, for the persons who seek refuge, much depends on access to UNHCR, its registration and refugee status determination procedures and classification of “Persons of Concern” which can help to protect them from arrest by the local law enforcers.

- Basic Necessities, Self Reliance and Humane Treatment

Where refuge is accorded to persons who seek admission, countries differ in terms of how much they enable access to basic necessities and the possibility of self reliance. The good practices referred to earlier in relation to access to education, health care and work are not necessarily paralleled by the practices of other countries with a refugee influx. For example, while some Southeast Asian countries generally allow access to basic education, food, shelter and health care, in several countries there is no access to employment opportunities and the potential for self reliance is limited.

Those good practices interface with various key challenges. For instance, beyond the camps in Bangladesh, there is no freedom of movement, and there is limited access to education, with most refugee children unable to access formal schooling, although Bangladesh has recently allowed the teaching of Myanmar national curriculum to Rohingya refugees⁹⁴. Camp conditions are very cramped and the camps are densely populated. The shelter is set up for the short term, threatened by the risk of cyclones and monsoons. Refugees are not allowed to work, and even stipends paid to camp volunteers were suspended recently due to a more securitized approach to camp existence, though they

⁸⁹ Less than 100 per year in recent years: <https://www.unhcr.org/japan.html>; <https://www.theguardian.com/world/2018/feb/16/japan-asylum-applications-2017-accepted-20> accessed 18 June 2020; <https://thediomat.com/2019/08/the-quiet-desperation-of-refugees-in-japan/> accessed 4 July 2020.

⁹⁰ See further: <https://www.unhcr.org/republic-of-korea.html>

⁹¹ <https://www.refworld.org/pdfid/5c52c9b74.pdf>; <https://www.unhcr.org/3e23eb5b6.pdf> accessed 10 July 2020.

⁹² <https://www.unhcr.org/3e23eb720.pdf> accessed 10 July 2020.

⁹³ <https://reliefweb.int/report/thailand/thailand-s-national-screening-mechanism-paves-way-better-refugee-protection> accessed 18 June 2020.

⁹⁴ <https://www.unicef.org/rosa/stories/expanding-education-rohingya-refugee-children-bangladesh> accessed 22 July 2020.

were later resumed.⁹⁵ There are health and hygiene issues interlinked with environmental issues in relation to refugees' use of local forests as fuel for cooking and habitation, and various projects now address the issue of deforestation and alternative energy sources.⁹⁶ The relationship between the forcibly displaced and local communities is tenuous at times, and from the end of 2019, conditions have been difficult.

Various constraints have emerged in regard to refugees in Bangladesh. A more security oriented approach has arisen in dealing with the group, and fencing has been placed around the camps, with difficulties concerning access to the internet. Meanwhile a proposed alternative camp on an isolated island in the Bay of Bengal, Bhasan Char, has not been well received by the refugee population. The Government has transferred recent boat arrivals to the island and will do so for any Rohingya now found outside the camps in Cox's Bazar. COVID-19 arrived in the camps in 2020 with various health-related guidelines such as social distancing extremely difficult to apply in these highly populated spaces.⁹⁷ A more tense atmosphere has thus emerged, with mental health needs far beyond the services available and an increase in psychological distress, child abuse, child abandonment, domestic violence, risks of child marriage and child labour, interpersonal disputes and aggressive behaviour among children. There is a need for a psychologically responsive approach which should aim at promoting a sense of reassuring calm and which should be geared to more human development rather than national security. Instead, the planning on the part of the authorities is based on the short term due to the insistence that return must materialize soon. Yet, given that voluntary repatriation should be seen more as a process than an event, there should be preparedness for longer-term planning and a more sustained response.

Even though international law prohibits inhumane treatment, including arbitrary detention, thus advocating alternatives to detention, a key concern in the Asia-Pacific region is detention of refugees when they are classified as illegal immigrants by the local law. This has led to a reappraisal of the detention situation in some settings. Thailand has now an MOU between the authorities not to detain children in refugee situations and to shift them to "reception" centres⁹⁸. Mothers also benefit from this new policy, though the split between men who are kept in detention and women cum children who are sent to welfare shelters runs counter to the principle of family unity inherent in the CRC. Wherever in the region, reception centres or other shelters are used to house refugees or asylum-seekers, they should be open settings with full facilities with learning opportunities for children, staffed by child sensitive and gender responsive personnel, and it is important that they are not a pseudonym for incarceration; shelters need to be well monitored transparently.

⁹⁵ See further: International Crisis Group, *A Sustainable Policy for Rohingya Refugees in Bangladesh*, Asia Report No.303 (27 December 2019).

⁹⁶ <https://reliefweb.int/report/bangladesh/bangladesh-refugee-emergency-factsheet-energy-and-environment-august-2018> accessed 18 June 2020.

⁹⁷ <https://reliefweb.int/report/bangladesh/coxs-bazar-refugee-camps-high-risk-covid-19> accessed 18 June 2020.

⁹⁸ <https://www.unhcr.or.th/en/news/general/pr/UNHCR-welcomes-RTG-commitment-release-detained-children-in-Thailand> accessed 18 June 2020; Vitit Muntarbhorn, 'The Global Compacts and the Dilemma of Children in Immigration Detention' 30(2018)4 *IJRL* 668-673.

Interestingly, some judicial interventions have also been helpful to nurture changes. For instance, in Thailand, a young asylum seeker from Africa was released from immigration detention by court judgement which rationalized that the child should be dealt with under the child/juvenile law (which opens the door to diversion options avoiding detention) rather than the detention implied by the immigration law⁹⁹. In Malaysia, a court ordered the release of Rohingya children from immigration detention by citing the child protection law as well as the CRC to which the country is a party¹⁰⁰. National human rights institutions can lend a helping hand. For instance, the National Human Rights Commission of Thailand has been providing bail money to ensure the release of persons who seek refuge¹⁰¹. Non-governmental organizations, civil society and *pro bono* lawyers have also mobilized help on this front, but there remains the issue that the money threshold set by the bail is still too high and that some ethnic or national groups are not allowed to be released on bail.

- Mode of Travel

Intriguingly, the mode of travel and arrival in or near the country of refuge may have impact on how persons who seek refuge are dealt with by the country interfacing with them. The key case here is Australia. The country has been a constructive partner with other countries in offering resettlement places to refugees from other regions, such as those coming from Southeast Asian countries during the 1980s (particularly with the CPA). However, the situation is different when refugees seek direct access to the country. Those arriving by air usually undergo the country's asylum procedures pursuant to the country's membership of the refugee instruments¹⁰². By contrast, in recent years the door has been closed to boat arrivals of people who seek refuge. The country has various bilateral arrangements to send these cases to offshore facilities – in Nauru and Papua New Guinea¹⁰³. Basically, seaborne arrivals are not allowed into the country and are sent to these two countries to be detained. Some of those held under the bilateral arrangements have been accepted recently for resettlement in the US¹⁰⁴, a rare instance of resettlement from a party to the Refugee Convention.

Australia has a bilateral arrangement with Cambodia, incentivized with some form of aid, to take cases of refugees kept by Australia in Nauru, but attempts to operationalize this faltered in practice¹⁰⁵. Even prior to the advent of offshore processing in Nauru and Papua New Guinea, Australia also had a tacit understanding with Indonesia that, through the International Organization for Migration, it would fund assistance to individuals intercepted by Indonesia while trying to reach Australia by boat.¹⁰⁶

⁹⁹ <https://www.reuters.com/article/us-thailand-refugees/in-milestone-case-thai-court-rules-to-protect-young-refugee-football-star-idUSKBN13R1OM> accessed 18 June 2020.

¹⁰⁰ <https://www.thestar.com.my/news/nation/2018/11/18/court-orders-release-of-seven-rohingya-minors-from-immigration-centre-in-kedah> accessed 18 June 2020.

¹⁰¹ <https://www.unhcr.org/news/latest/2011/6/4decc6e06/nearly-100-pakistani-refugees-freed-detention-bangkok.html> accessed 18 June 2020.

¹⁰² <https://www.unhcr.org/asylum-in-australia.html> accessed 18 June 2020.

¹⁰³ <https://www.kaldorcentre.unsw.edu.au/projects/offshore-processing>.

¹⁰⁴ <https://www.kaldorcentre.unsw.edu.au/publication/australia%E2%80%9393united-states-resettlement-arrangement> accessed 18 June 2020.

¹⁰⁵ <https://www.theguardian.com/australia-news/2015/aug/31/how-australias-deal-to-resttle-asylum-seekers-in-cambodia-deal-went-flat> accessed 18 June 2020.

¹⁰⁶ See further: <https://www.kaldorcentre.unsw.edu.au/publication/turning-back-boats-0>

While the individuals who sought to reach Australia by boat over the past decade have generally been from South and South-West Asia, significant numbers of Rohingya refugees as well as Bangladeshi migrants have separately crossed the Bay of Bengal and Andaman Sea over the past decade, including over 100,000 Rohingyas between 2012 and 2015, and several thousand more from 2018 to 2020.¹⁰⁷ While several Southeast Asian countries have declined to provide refuge to these boat people, resulting in a deadly standoff in 2015, Bangladesh, Indonesia and Malaysia have generally offered them shelter.

- Birth Registration, Nationality and Statelessness

States are bound to register all births on their territory and to assist the child to acquire a nationality under the CRC. The SDGs also set a timeframe to ensure that all births are registered. Many States are now registering births without exception, but some States in the Asia-Pacific region are still faced with a problem. This is partly racial, partly gender linked. For instance, the Republic of Korea does not register births of foreigners and transfers this responsibility to the Embassy of the concerned persons¹⁰⁸. In Indonesia and other countries, cultural barriers as well as parents lacking documentation make it difficult to register the birth of the child of an unwedded mother¹⁰⁹.

With regard to acquisition of nationality, the two treaties concerning statelessness underline non-discrimination and access to the basics of life, and in regard to the later treaty – the Convention on the Reduction of Statelessness, there is an obligation to confer nationality on a stateless person if born in the country which is a State Party – thus acquisition by birth on the territory or “*ius soli*”¹¹⁰. In essence, there are usually three ways of how to acquire a nationality or citizenship : by birth, by blood ties and or by naturalization. However, acquisition by birth might be inhibited because of a more constrained approach of the national law on the issue or because national security acts as an impediment. Even acquisition by blood ties sometimes witnesses discrimination against women, as national legislation makes it easier for a man to transfer his nationality to the child than a woman to transfer her nationality to the child in several countries in the region.

There may also be racial issues, intermixed with religious challenges, which impede acquisition of nationality. For instance, in Brunei Darussalam, the law is patrilineal and those who are of Chinese origin have difficulties in seeking nationality due to the law’s emphasis on “Malay races”¹¹¹. Recently, questions have been raised on the move to amend the citizenship law in India and its constraints on the pluralistic nature of society¹¹². The most glaring situation is that facing the Rohingya community in Myanmar who for decades have faced several obstacles in the quest for identity and citizenship. This has been rendered more complicated in the course of time by the variety of identity-related cards that Rohingyas have been compelled to seek and hold as a pre-requisite for – but far from guarantee of Myanmar citizenship : national verification cards, national registration cards, temporary registration

¹⁰⁷ For a recent example in 2020, see: <https://edition.cnn.com/2020/05/04/asia/refugees-stranded-rohingya-bangladesh-intl-hnk/index.html> accessed 18 June 2020.

¹⁰⁸ <http://www.koreaherald.com/view.php?ud=20190208000326> accessed 18 June 2020.

¹⁰⁹ https://www.ohchr.org/Documents/Issues/Children/BirthRegistration/PlanInternational2_birthRegistration.pdf

¹¹⁰ <https://www.refworld.org/pdfid/4cad866e2.pdf> accessed 18 June 2020.

¹¹¹ For Brunei nationality law, see:

<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/75132/78370/F545071112/BRN75132%202012.pdf> accessed 18 June 2020. See also UNHCR, Background Note on Gender, Equality, Nationality Laws and Statelessness (2016) 10.

¹¹² <https://www.bbc.com/news/world-asia-india-50670393> accessed 10 July 2020.

cards and citizenship scrutiny cards¹¹³. Even with one of these cards, in Rakhine state, Rohingyas still face major issues of lack of freedom of movement and poor access to health care and other basics of life. Even with one of the cards mentioned, there is no guarantee of citizenship, especially as the nationality law of the country omits Rohingyas from the listed category of recognized ethnic groups¹¹⁴.

- Regional Action

Looking back, one of the best examples of regional cooperation witnessed in the Asia-Pacific region was the CPA which helped to clear the regional caseload of refugees on the basis of regional-cum-international cooperation. It has been difficult to replicate its achievements, given the different context facing the region today. Yet, there may be a window of opportunity if a targeted approach is taken, particularly with regard to a partnership between different countries and stakeholders on specific issues.

In reality, regional action and cooperation are in a state of flux. While it is true that there is no intergovernmental human rights protection system at the Asian level, unlike developments in Europe, Africa and the Americas, there are various possibilities for raising human rights issues, including refugee protection, through some regional or sub-regional entry points. The Association of Southeast Asian Nations (ASEAN) is a cohesive group of 10 countries which collaborate well on many issues, but where human rights are concerned, there is still an attachment to a broad notion of national sovereignty and the principle of non-interference in the internal affairs of a State. Therefore, it tends to be reactive rather than proactive in addressing issues of forced displacement in the region. On the current Myanmar-related outflows, there are two initiatives of relevance. There is the Ad Hoc Support Team (under the Secretary-General) from ASEAN which is now dealing with the issue of repatriation capacity and provides support for preparations in Rakhine state¹¹⁵. Meanwhile, the ASEAN Coordinating Centre for Humanitarian Assistance on disaster management (AHA) has been helping assessing conditions in Rakhine state to prepare for possible returnees from Bangladesh¹¹⁶. On the normative side, there is also a regional treaty on human trafficking: the 2015 ASEAN Convention against Human Trafficking, particularly Women and Children (ACTIP)¹¹⁷. Yet, the tone of this treaty is anti-crime and ACTIP does not have a provision on refugee protection. The ASEAN Human Rights Declaration also has

¹¹³ *Towards a Peaceful, Fair and Prosperous Future for the People of Rakhine: Final Report of the Advisory Council on Rakhine State* (N 53). See also: Independent Rakhine Initiative (IRI), *Freedom of Movement in Rakhine State* (Yangon: IRI, 2020).

¹¹⁴ Per 1982 Citizenship Law. See also: <https://www.hrw.org/reports/2000/burma/burm005-02.htm> accessed 18 June 2020.

¹¹⁵ <https://www.thejakartapost.com/news/2019/11/04/asean-forms-new-team-monitor-rohingya-repatriation.html> accessed 18 June 2020.

¹¹⁶ <https://asean.org/storage/2020/03/13.-June-2019-Preliminary-Needs-Assessment-for-Repatriation-in-Rakhine-State-Myanmar-ad-hoc-AHA-Ctr.pdf> accessed 18 June 2020.

¹¹⁷ <https://asean.org/asean-convention-against-trafficking-in-persons-especially-women-and-children/> accessed 18 June 2020.

an ambiguous provision on the issue of asylum¹¹⁸. With regard to ASEAN's human rights mechanisms, there is the ASEAN Intergovernmental Commission on Human Rights and ASEAN Commission on the Rights of Women and Children. The latter has been promoting the right to a nationality¹¹⁹. Recently, on the issue of children, ASEAN adopted the Declaration on Children in the context of Migration which calls for alternatives to detention and respect for child rights and also acknowledges "the need to enhance the identification, referral and protection of, and assistance to all children in the context of migration, including those who have become victims of trafficking, refugees, asylum-seekers, and internally displaced children and all other children requiring protection and assistance."¹²⁰ This should open up more vistas for regional cooperation, whether through ASEAN and or other regional arrangements, at least in regard to the protection of specific groups such as women, children and persons with disabilities on the basis of non-discrimination. Particularly on the Rohingya dilemma, with shared political will, potentially there could be a partnership between this region and other regions to explore a variety of solutions and pathways on the basis of the protracted refugee situation, bridging between different countries and stakeholders, with lessons drawn from the CPA.

There is then the broader umbrella of the "Bali Process": Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime which started in 2002. It involves 45 Member States (and regions) and 4 UN agencies, including all ASEAN countries, and it is chaired by Indonesia and Australia. Its mandate is basically to tackle people smuggling, human trafficking and related transnational crime. Since its inception, the Bali Process has been oriented towards law enforcement rather than ensuring a comprehensive approach encompassing the protection of smuggled persons and victims of trafficking. It is not the equivalent of a protection mechanism for persons who seek refuge¹²¹.

In 2016 it propounded the Bali Declaration on People Smuggling, Trafficking in Persons and Related Transnational Crime which incorporated some aspects of refugee protection, with a promise to respect the principle of *non-refoulement*, the call for predictable disembarkation options (for those arriving at sea), temporary protection and local stay arrangements for asylum-seekers and refugees, and

¹¹⁸ The ambiguity is in the provision on asylum in the Declaration which provides a lot of leeway for the application of national immigration law (to the neglect of persons needing protection from classification and treatment as illegal immigrants):

"16. Every person has the right to seek and receive asylum in another State in accordance with the laws of such State and applicable international agreements"

https://www.asean.org/storage/images/ASEAN_RTK_2014/6_AHRD_Booklet.pdf accessed 18 June 2020.

¹¹⁹ <https://www.unhcr.org/th/en/news/general/statelessness> accessed 18 June 2020.

¹²⁰ Article 2 of the Declaration: <https://asean.org/storage/2019/11/4-ASEAN-Declaration-on-the-Rights-of-Children-in-the-Context-of-Migration.pdf> accessed 4 July 2020.

¹²¹ <https://www.baliprocess.net/> This was preceded by the Asia Pacific Consultations on Refugees, Displaced Persons and Migrants. For the Bali process' orientation towards the refugee issue, see: Carly Gordyn, 'The Bali Process and Refugee Protection in Southeast Asia', 22 October 2018: <http://ir.bellschool.anu.edu.au/news-events/news/6485/bali-process-and-refugee-protection-southeast-asia> accessed 18 June 2020.

alternatives to detention of vulnerable groups¹²². It also advocated civil registration to help establish people's identity, measures against human smuggling and trafficking which might impact on refugee flows, and noted durable solutions, such as resettlement and voluntary return. Two recent developments are of note. First, the Bali Process has supported the preparation of a civil registration assessment toolkit which interlinks well with the need for birth registration as a measure to help overcome statelessness¹²³. Second, in 2017 the Bali Process established a task force on planning and preparedness to encourage increased cooperation between States in the region on search and rescue, disembarkation and screening of persons with specific needs.¹²⁴ It should be equipped to address the incidents where some States have declined to let refugees in the Andaman Sea disembark, but the political nature of disembarkation has prevented operational cooperation through the Task Force or otherwise. As a result, refugees have found themselves stranded at sea, sometimes fatally, most recently in the first half of 2020, but also in 2015.¹²⁵

Finally, the adoption of the Asian-African Legal Consultative Organization's 1966 "Bangkok Principles on Status and Treatment of Refugees" in 2001 could also be a tool to develop a baseline understanding and agreement on the acceptable standards for the treatment of refugees in the region.¹²⁶

- Causation/Root Causes

The issue of root causes interplays inevitably with the plight of the forcibly displaced in its multi-faceted dimensions. The simple answer to prevent forcible displacements is to advocate that there should be guarantee of peace, protection of human rights, respect for democracy, and sustainable development as the environment behind and shaping forced movements. The realities are more complex in practice. The two major refugee populations – the forcibly displaced from Afghanistan and Myanmar - deserve more targeted actions. The same applies to the large number of IDPs in these countries. The plight of Afghans is much linked with the lack of peace and the presence of longstanding armed conflict and insecurity in the country of origin, as well as extreme poverty from decades of underdevelopment. There are some initiatives which can help to address those root causes and they await effective implementation today. There is the importance of the peace talks between the various protagonists, intra-Afghan dialogue and reconciliation¹²⁷. This would be complemented by the assurance of a democratic process. This would have to bear in mind various international adjustments, including reduction of US and NATO forces in the country¹²⁸.

¹²²

<https://www.baliprocess.net/UserFiles/baliprocess/File/Bali%20Declaration%20on%20People%20Smuggling%20Trafficking%20in%20Persons%20and%20Related%20Transnational%20Crime%202016.pdf> accessed 18 June 2020.

¹²³

<https://www.baliprocess.net/UserFiles/baliprocess/File/Bali%20Process%20Civil%20Registration%20Assessment%20Toolkit%20FINAL.pdf> accessed 18 June 2020.

¹²⁴ <https://www.baliprocess.net/UserFiles/baliprocess/File/TFPP5%20Co-Chairs%27%20Statement.pdf> accessed 18 June 2020.

¹²⁵ <https://www.unhcr.org/news/stories/2015/8/56ec1eabd/abandoned-at-sea.html> accessed 6 July 2020.

¹²⁶ See further: <http://www.aalco.int/39thsession/strcairoIV.pdf>

¹²⁷ <http://reporting.unhcr.org/afghanistan> accessed 18 June 2020. See further:

<https://www.worldbank.org/en/country/afghanistan/overview>.

¹²⁸ Ibid.

The dilemma of the Myanmar refugees and IDPs is much linked to human rights violations in regard to minorities, particularly the Rohingya but not forgetting other groups in the country¹²⁹. This is much linked with the statelessness issue, aggravated by violence, destitution and deprivation. There is inherently a nexus between the need to respect, protect and fulfil civil, political, economic, social and cultural rights in concert. There is the added dimension of armed conflict in various parts of the country which invites dialogue and space for peace. Fuller participation and stakeholdership are required to include all groups in the country, as well as refugees who hope to return, in the political process with emphasis on democratic, civilian rule. Accountability measures, such as through judicial action, may also have impact to prevent further violations¹³⁰, as well as to provide access to remedies.

- Multi-faceted Solutions

There is the short term and there is then the longer term. For the former, emphasis is needed on the call to admit persons who seek refuge - at least for a temporary stay/refuge/asylum and respect for *non-refoulement*. For the refugee, there is the cross-border aspect of temporary protection, while for the IDP, there is the dimension of cross-line or cross-locality guarantee of temporary protection within the country. With regard to both groups, there is the strong call for access to humanitarian assistance and aid, and for IDPs, the country in question - where IDPs are found in their internal displacement - should not refuse consent to such help arbitrarily.

In reality, whether for the refugee or IDP, temporary stay in the first asylum country or location can sometimes prove to be of long duration. In cross-border cases, the traditional durable solutions are voluntary repatriation, local integration and third country settlement. Yet, solutions have become more complicated due to the fact that in most of the Asia-Pacific region, protracted conflict and insecurity in countries of origin prevent return and host countries still reject long-term asylum or legal local integration; they are accustomed to calling for third country resettlement. Moreover, today third country resettlement is dwindling markedly¹³¹ despite past examples of successful resettlement from the region on a large scale. Beginning in the 2000s, Nepal and Thailand each witnessed the solution of third country resettlement for some 100,000 refugees from Bhutan¹³² and Myanmar¹³³ respectively. On another front, there is the possibility of voluntary repatriation of refugees to some countries of origin, and in the case of IDPs, voluntary return to the area of origin. Yet, this invites care to ensure safe return in dignity and with the person's volition, coupled with monitoring and assurance for sustainable reintegration, at times competing with the absorptive capacity of the country or locality of origin.

¹²⁹ A variety of groups were noted in the report: *Towards a Peaceful, Fair and Prosperous Future for the People of Rakhine: Final Report of the Advisory Council on Rakhine State* (n 53).

¹³⁰ Cases are now before both the International Court of Justice (ICJ) and the International Criminal Court. For the first phase of the former, see: APPLICATION OF THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE (THE GAMBIA v MYANMAR), January 2020 Order, ICJ Reports: <https://www.icj-cij.org/files/case-related/178/178-20200123-ORD-01-00-EN.pdf>.

¹³¹ <https://www.unhcr.org/5d1384047.pdf>. accessed 18 June 2020. US resettlement places for 2020 are about 18,000 persons. <https://www.unhcr.org/news/press/2019/11/5dbd87337/unhcr-troubled-latest-refugee-resettlement-cut.html> accessed 18 June 2020.

¹³² <https://www.unhcr.org/news/press/2019/11/5dbd87337/unhcr-troubled-latest-refugee-resettlement-cut.html> accessed 18 June 2020.

¹³³ <https://www.unhcr.or.th/en/about/thailand> accessed 4 July 2020.

There is also a need for adequate support targeting the home population, while not neglecting the host population prior to their return.

With the GCR, there have arisen other possibilities, including the vista of complementary pathways¹³⁴, such as allocations for family reunification, sponsorships, humanitarian visas, humanitarian corridors, student visas and scholarships, and labour mobility opportunities, including pathways for refugees to legally work in the asylum country to fill in manpower gaps. Japan, for example, has admitted Syrian refugees through education visas, together with their families. Although countries in the region have generally not taken an open approach to allowing refugees access to legal work, there could still be possibilities of changing gear and providing an option to transit from a sedentary refugee status to a status that permits employment. One way to do this is for the home country or country of origin to provide refugees with identification papers or passport in the host country so that they can apply to work like migrant workers¹³⁵. Needless to say, there is a need to reduce the paperwork and to ensure that the whole process is facilitative with good incentivization rather than bureaucratization.

Similar considerations apply to the issue of statelessness. Birth registration helps to establish the identity of the person, while access to one of the modalities for acquiring a nationality helps to solve the limbo status created by lack of nationality/citizenship. Flexible proof of residency should facilitate at least acquisition of nationality by naturalization. Acceding to the treaties on the issue also motivates respect for international standards, and this needs to be coupled with effective domestic legislation and implementation at the national and local levels, with minimal paperwork.

Ultimately, it should be realized that in the cross-border context, traditional durable solutions such as voluntary repatriation, local integration and third country resettlement are but some possibilities available and other pathways can be explored in the Asia-Pacific region. Whether cross-border or cross-line in relation to displacements and the issue of statelessness, the crux of the matter is the need for a durable political solution that is inclusive and that is anchored in peace, human rights, democracy and sustainable development.

Solidarity

Given the longstanding and often intractable problems facing the region in regard to forced displacements in the march of history, solidarity – with international, regional, and national dimensions - offers the basis of shared support to “recover better, together”¹³⁶. Thus it is encouraging that the GCR and GRF are a testament to international solidarity. With the recent GRF, there have been encouraging signs which help to drive humane actions to help those in need in a concerted manner between different stakeholders – State, civil society, business sector, a variety of organizations and refugees. At least three novelties propel the dynamics of change - with new bridges built through the GCR and GRF.

First, it should be recalled that under the GCR, it is possible to establish a Support Platform to assist a country or regional situation to interlink between various partners to provide support in the quest for

¹³⁴ <https://www.unhcr.org/complementary-pathways.html> accessed 18 June 2020.

¹³⁵ For lessons from Iran: <https://www.unhcr.org/ir/refugees-in-iran/> accessed 18 June 2020.

¹³⁶ *COVID-10 and People on the Move* (n 2) 21.

solutions¹³⁷. The SSAR pertaining to Afghanistan, Iran and Pakistan was chosen in 2019 as a key example by the GRF for the activation of a Support Platform involving support from a variety of stakeholders with these objectives:

“

- Enhanced international solidarity and burden sharing for the Afghan refugee situation;
- Additional investment and expanded partnerships for coherent humanitarian and development responses that increase absorption capacity for voluntary repatriation;
- Sustain reintegration in Afghanistan, while easing the burden of host communities in Iran and Pakistan;
- Sustained visibility for Afghan situation by linking SSAR to GCR and GRF.....”¹³⁸.

In practice, this would leverage humanitarian and development partners in the PARRs in building capacity for voluntary repatriation and sustainable reintegration. It would enhance conditions for possible voluntary repatriation, such as through shared data. It would mobilize more investment for the national public service delivery system in Iran and Pakistan, as well as promote programmes on basics such as education, health, vocational skills and social protection. A quadripartite steering committee between Afghanistan, Iran, Pakistan and UNHCR is complemented by an annual high level meeting to support the process. This complements also the GCR and GRF framework in that a support platform can also convene a Solidarity meeting to back up its operationalization¹³⁹.

Importantly, in early July 2020, there was a High Level Meeting on the SSAR Support Platform which brought together a large number of countries and organizations to galvanize the synergy between peace, humanitarian and development actors and actions.¹⁴⁰ This exemplified not only the “whole of government” approach (not forgetting the role of local authorities), but also the “whole of society” approach with international and local bridge-building. There is now a Core Group of States to help propel initiatives and to harness and diversify the support from a variety of sources, such as the World Bank and UNDP. The target is area-based humanitarian, development and peace investments - to generate confidence and support for the peace process, bearing in mind the key issue of much needed economic development. Conversely, the peace process itself should integrate the voices of refugees, returnees and other persons on the move as part of an inclusive approach based on solidarity and resiliency. There are positive implications for not only resource mobilization but also advocacy and shared responsibility, particularly to re-energize commitments which might have been fatigued by the four decades of uncertainties in Afghanistan. The iteration of key priorities is based on three components:

“ 1.Facilitating voluntary repatriation by i) sharing timely information on the development of the Priority Areas of Return and Reintegration (PARRs)with refugees in the host countries to ensure well-informed decisions on return; ii) supporting the Government of the Islamic Republic of Afghanistan in

¹³⁷ https://globalcompactrefugees.org/sites/default/files/2019-12/Support%20Platforms-%20conceptualization%20and%20operationalisation_1.pdf accessed 18 June 2020.

¹³⁸ UNHCR, Support Platform for the Solutions Strategy for Afghan Refugees (SSAR) to support voluntary repatriation, sustainable reintegration, and assistance to host countries: Concept Note. 27 November 2019.

¹³⁹ <https://www.unhcr.org/5c658aed4.pdf> accessed 18 June 2020.

¹⁴⁰ <https://www.unhcr.org/news/press/2020/7/5f034ea24/high-level-event-seeks-sustained-support-afghans-refugee-hosting-countries.html> accessed 10 July 2020.

distribution of land to returnees; iii) investing in the human capital, resilience and portable skills of refugees in host countries to enhance the potential for return and reintegration; iv) tailoring assistance to enable anchoring upon return; and v) assisting host governments in registration, data collection and documentation processes that support regulated border management and inform cross-border programmes on return and reintegration.

2) Enhancing capacity and creating conditions for sustainable reintegration in Afghanistan by leveraging human and development partnerships in the Priority Areas of Return and Reintegration. The 20 PARRs link short- and medium-term community-based projects to longer-term development programmes and encourage private sector investment. They are aligned with Afghanistan's National Peace and Development Framework and relevant National Priority Programmes, notably the Citizens' Charter, as well as the Displacement and Return Executive Committee's Policy Framework and Action Plan on Returnees and Internally Displaced Persons.

3) Channeling additional investments into the National Public Services in the Islamic Republics of Iran and Pakistan (education, health care, vocational skills development and social protection) to mitigate the impact on national systems and support the inclusive policies of the host governments, benefitting both host communities and refugees pending their return to the Islamic Republic of Afghanistan".¹⁴¹

Second, there were many pledges from different stakeholders at the GRF, and they attest to political and social will to tackle the issue of the forcibly displaced in different parts of the world. Many of the pledges from Governments are on education and protection and they emanate from all corners of the Asia-Pacific region¹⁴². For example, there are many pledges to support activities to help refugees, and these come not only from States parties to the refugee instruments but also other countries. They may interrelate with host communities and also communities in the countries of origin. The pledges come from not only governments, but also civil society, academic institutions and the business sector. There are a number of commitments to address the issue of birth registration and statelessness, including possible accession to the statelessness instruments, for instance, from both Central Asian and Southeast Asian countries.

Third, good practices have also been identified through the GRF and a myriad of examples can be accessed easily on the web: GCR Digital Platform. For example, in Bangladesh, there is a programme to train and support "barefoot" counsellors drawn from the local community to help in the Rohingya refugee emergency response¹⁴³. This acts as a bridge between host community and refugees, and the volunteers undertake home visits and provide referral services, especially as they speak the same language as the refugee community. They address the issue of domestic tensions, integrating gender based concerns, and raise awareness concerning gender-based violence, early marriage and human trafficking.

¹⁴¹ UNHCR, The Support Platform for the Solutions Strategy for Afghan Refugees: A Partnership for Solidarity and Resilience (Geneva: UNHCR 2020) 10. <https://reliefweb.int/report/afghanistan/support-platform-solutions-strategy-afghan-refugees-partnership-solidarity-and>

¹⁴² <https://www.unhcr.org/global-refugee-forum.html> accessed 18 June 2020 . See Digital Platform for the Global Compact on Refugees.

¹⁴³ <https://globalcompactrefugees.org/article/barefoot-counsellors-rohingya-refugee-response> accessed 18 June 2020 .

Another example is the Hub and Spokes Model in Pakistan. Basically, the programme is a “distribution of health care services into a network with a secondary care hospital (hub) at the centre, which is complemented by first level care facilities and mobile outreach units (spokes) offering less services.”¹⁴⁴ It responds to at least one of the objectives of the GRC: “ease pressure on the host community”, by helping to harmonize the health system with a supportive structure and shared access to health care by both the host community and the refugee population.

Imaginative and participatory programming is seen from various activities, including the “Welcome Football” activity offered by a non-governmental organization in Australia to welcome newly arrived refugee families and bridge-build with the local community¹⁴⁵. Local football clubs open the door to inclusive programming not only in regard to sports after school hours but also knowledge of local services and opportunities. Young volunteers are also chosen from the participants as “Community Champion” to connect with young refugees who arrived recently in the country.

Directions

With the challenges mentioned in mind, coupled with the window of opportunities opened by the GCR and GRF, the preferred directions for the future include the following measures, as part of the tapestry of needed actions from States in the Asia-Pacific region, in cooperation with other partners:

- Accede to the Refugee Convention and Protocol, and the Statelessness Conventions, with effective implementation;
- Apply well the UN Guiding Principles on Internal Displacement and utilize the range of human rights treaties and mechanisms to support protection and assistance for the forcibly displaced;
- Inclusively implement other international commitments, such as the SDGs and the Global Compacts, to mobilize humane action to help persons on the move and encourage fulfilment of pledges and good practices ;
- Maximize a variety of entry points for protection at the regional level, including with particular focus on the rights of specific groups such as women, children, persons with disabilities, victims of trafficking and minorities;
- Support strengthened regional action, cooperation and responsibility-sharing, such as through ASEAN and the Bali process, coupled with sub-regional arrangements such as bilateral or multi-partnered MOUs, to promote action on refugee protection and inclusion, for instance, on safe return and rescue at sea with accessible disembarkation channels, but also education for out-of-school children and youth, and parallel arrangements to help IDPs and stateless persons;
- Desist from applying draconian provisions of immigration laws, abide by *non-refoulement*, end the detention of persons who seek refuge, and reform national laws/policies/practices to cater to refugee protection and to address the plight of IDPs and stateless persons;
- Set up a legal and administrative framework guaranteeing at least temporary stay/asylum, establish national screening procedures to determine refugee status, accord protection in line with international standards, and involve the role of the UN in this regard;
- Protect the human rights of all persons without discrimination and violence, in conformity with International Law, and enable persons who seek refuge to be involved inclusively in productive

¹⁴⁴ <https://globalcompactrefugees.org/article/hub-spokes-model-pakistan> accessed 18 June 2020.

¹⁴⁵ For this and other good practices, see: <https://www.globalcompactrefugees.org/> via the Digital Platform for the Global Compact on Refugees.

activities fostering self reliance and resiliency, including skills development and work opportunities , especially for the large number of youth among the refugee population, sharing aid, assistance and development potential with host communities premised on the triple nexus between peace, humanitarian and development actors and actions ;

- Strengthen responsibility-sharing, geared to an array of short-and-longer-stay options and solutions, ranging from temporary stay/refuge to voluntary repatriation, third country resettlement, local integration, special humanitarian categories for resettlement, family reunion cases and scholarship and sponsorship programmes in the broader spectrum of complementary pathways, bolstered by equitable resource allocations, aid and assistance and the removal of barriers of access to these pathways, particularly lack of documentation;
- Encourage non-traditional stakeholders, such as the private sector, to facilitate employment pathways and access to labour markets;
- Explore incentives and accountability processes to address the root causes of forced migrations and promote peace, human rights, democracy and sustainable development;
- Reinforce checks and balances, such as pro-active judiciaries, civil society actors/human rights defenders, to leverage for compliance with international human rights standards, together with more education, research, training, data systematization and capacity-building on the issue of the forcibly displaced.

These are but some of the dynamics relevant to the Asia-Pacific region, inspired by inclusivity and welcoming solidarity, in its connectivity with the quest for refuge and beyond.

ANNEX

Table of Ratification of Asia-Pacific countries re Conventions relating to Refugees and Statelessness

Countries	1951 Refugee Convention	1967 Refugee Protocol	1954 Stateless Persons Conv.	1961 Reduction of Statelessness
East Asia				
China	24 Sep. 1982 a	24 Sep. 1982 a		
Japan	3 Oct. 1981 a	1 Jan 1982 a		
Mongolia				
Republic of Korea	3 Dec. 1992 a	3 Dec. 1992 a	22 Aug. 1962 a	
Southeast Asia				
Bangladesh				
Brunei Darussalam				
Cambodia	15 Oct. 1992 a	15 Oct. 1992 a		
Indonesia				
Lao People's Democratic Republic				
Malaysia				
Myanmar				
Philippines	22 Jul. 1981 a	22 Jul. 1981 a	22 Jun. 1955 s 22 Sep. 2011 r	
Singapore				
Thailand				
Timor-Leste	7 May 2003 a	7 May 2003 a		
Viet Nam				
South Asia				
Bhutan				
India				
Maldives				
Nepal				
Sri Lanka				
Southwest Asia				
Afghanistan	30 Aug. 2005 a	30 Aug. 2005 a		
Iran	28 Jul. 1976 a	28 Jul. 1976 a		
Pakistan				
Central Asia				
Kazakhstan	15 Jan. 1999 a	15 Jan. 199 a		
Kyrgyzstan	8 Oct. 1996 a	8 Oct. 1996 a		
Tajikistan	7 Dec. 1993 a	7 Dec. 1993 a		
Turkmenistan	2 Mar. 1998 a	2 Mar. 1998 a	7 Dec. 2011 a	29 Aug. 2012 a
Uzbekistan				
Pacific				
Australia	22 Jan. 1954 a	13 Dec. 1973 a	13 Dec. 1973 a	13 Dec. 1973 a
Cook Islands				
Fiji	12 Jun. 1972 d	12 Jun. 1972 d	12 Jun. 1972 d	
Kiribati			29 Nov. 1983 d	29 Nov. 1983 d

Countries	1951 Refugee Convention	1967 Refugee Protocol	1954 Stateless Persons Conv.	1961 Reduction of Statelessness
Marshall Islands				
Micronesia				
Nauru	28 Jun. 2011 a	28 Jun. 2011 a		
New Zealand	30 Jun. 1960 a	6 Aug. 1973 a		20 Sep. 2006 a
Niue				
Palau				
Papua New Guinea	17 Jul. 1986 a	17 Jul. 1986 a		
Samoa	21 Sep. 1988 a	29 No. 1994 a		
Solomon Islands	28 Feb. 1995 a	12 Apr. 1995 a		
Tonga				
Tuvalu	7 Mar. 1986 d	7 Mar. 1986 d		
Vanuatu				

Note:

1951 Refugee Convention – Convention Relating to the Status of Refugees, Geneva, 28 July 1951 (entry into force 22 April 1954).

1967 Refugee Protocol – Protocol Relating to the Status of Refugees, New York, 31 January 1967 (entry into force 4 October 1967).

1954 Stateless Persons Conv. – Convention Relating to the Status of Stateless Persons, New York, 28 September 1954 (entry into force 6 June 1960).

1961 Reduction of Statelessness – Convention on the Reduction of Statelessness, New York, 30 August 1961 (entry into force 13 December 1975).

a = Accession, *d* = Succession, *s* = Signature, *r* = Ratification

Source: Author's own table derived from UN sources.

(Vitit Muntarbhorn is a Professor Emeritus at the Faculty of Law, Chulalongkorn University, Bangkok. He has helped the UN in a variety of positions, including as a former UN Special Rapporteur, UN Independent Expert and member of UN Commissions of Inquiry on Human Rights. He would like to thank warmly the following persons for their kind assistance: Indrika Ratwatte, Bernard Doyle, Karen Gulick, Aurvasi Patel, Kristina Zitnanova, Keane Shum, Monique Sokhan, Bongkot Napaumporn , Art Paisit Pusittrakul and Poomrapee Bannakarn. All views expressed are those of the author. This study was prepared for the UNHCR. Completed: 22 July 2020. Copyrighted.)