



Australian  
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# Report from the Colloquium on Refugees, Regionalism and Responsibility

**22-23 August 2013**

Venue: Sir Roland Wilson Building, ANU

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## Introduction

1. This report broadly reflects the ideas and understandings that emerged from a colloquium on *Refugees, Regionalism and Responsibility* held on 22-23 August, 2013 at the Australian National University. With the exception of the opening address, the statements contained in this report do not necessarily represent the individual views of any participant or any organisation in attendance.
2. Participants at the colloquium included representatives from the United Nations High Commissioner for Refugees (UNHCR), the Association for Southeast Asian Nations (ASEAN) Intergovernmental Commission on Human Rights, the Embassy of Indonesia in Australia, the Asia Pacific Refugee Rights Network, government and NGO (non-governmental organization) experts, and national and international academics from a range of disciplinary backgrounds. A full list of participants can be found at the end of this report.
3. The purpose of the colloquium was to discuss the merits of regional arrangements for sharing responsibility for refugees. Questions considered included the following:
  - What does responsibility sharing for refugees mean? Who should be responsible, why and how?
  - How have regional arrangements for refugees developed? What sort of regionalism do they embody? Do they result in protection and durable solutions for refugees?
  - How should regional cooperation frameworks for refugee protection be developed in the future?
4. Professor Penelope Mathew and Mr Tristan Harley co-convened the colloquium and prepared a background paper to inform the discussion at the colloquium. Their research is supported by the Australian Research Council's Discovery Projects funding scheme (project number 120102224).
5. Mr Richard Towle, the UNHCR Regional Representative for Australia, New Zealand, Papua New Guinea and the Pacific delivered the opening address to the colloquium.

## Key Messages

6. Responsibility for refugees has its roots in many different legal traditions and religions. It is enshrined in several treaties, most importantly the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and in customary international law. The 1951 Refugee Convention is an effective, practical document that provides protection to millions of people.

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7. Responsibility sharing for refugees involves the demarcation of roles, responsibilities and accountabilities among states and should be framed in terms of clear international protection standards and human rights. Responsibility sharing should also be based on principles of equity, respect for sovereignty, reciprocity and solidarity between states in addressing the protection needs of asylum-seekers and refugees.
  8. Regional arrangements for sharing responsibility for refugees should complement rather than substitute for states' responsibilities for refugees. They should also seek to achieve a more equitable distribution of the responsibility among states. Deterrence, containment and deflection should not be the basis of regional arrangements. States seeking to physically relocate refugees, particularly in the form of transfers to purportedly safe countries of first asylum or safe third countries, need to guarantee 'effective protection'.
  9. Regional arrangements must consider the human dimension of why people are moving. While international law does not confer an unfettered right on the part of refugees to choose where they should receive asylum, refugees' preferences should be taken into account. The contributions of refugees should be acknowledged by host communities.
  10. It is important to establish measurable criteria for the fair and effective distribution of responsibility of refugee protection. Some ways of measuring equitable distribution include distribution based upon a state's capacity to absorb or protect refugees, and financial distribution of responsibility based upon a state's capacity to pay.
  11. Resettlement programs for refugees need to be expanded. However, resettlement can only play a small role in the protection of refugees and must be used 'strategically', in ways that actually benefit both refugees and the host states from which refugees are being resettled. States must not trade off their asylum obligations against increased resettlement places.
  12. Responsibility sharing should be prioritized in certain situations, such as rescue at sea emergencies. It is important to distinguish between interception at sea, which necessarily involves the responsibility of the intercepting state, and rescue at sea.
  13. Regional arrangements should make provision for local integration, or at least for legal status and rights such as work and education for asylum-seekers waiting to be resettled.
  14. Regional arrangements should monitor the safe return of persons found not to be in need of international protection.
  15. States should make ongoing financial commitments when implementing regional arrangements. States should also regularly engage with civil society when developing and implementing regional arrangements.
  16. Regional arrangements can benefit from strong leadership and by emphasising solidarity both towards refugees and among states.
  17. In the Asia Pacific region, cooperation should be developed through a soft-law approach that attempts to find a convergence of interests among participating states.

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## Opening Address

Mr Richard Towle, UNHCR Regional Representative for Australia, New Zealand, Papua New Guinea and the Pacific

18. In his opening address to the colloquium, Mr Richard Towle elaborated on some of the core elements of responsibility sharing with respect to the protection of refugees. He indicated that responsibility sharing involves the demarcation of roles, responsibilities and accountabilities among states on a pre-agreed basis and should be framed in terms of clear international protection standards and human rights. Protection standards were important in providing the objective benchmarks for assessing the integrity of the arrangements and in their implementation. UNHCR's view was that responsibility sharing mechanisms should build on and complement national asylum systems, not replace them, otherwise they may become instruments of containment not burden sharing. Mr Towle also stated that cooperation should be based on principles of equity, respect for sovereignty, reciprocity and solidarity between states in addressing the protection needs of asylum-seekers and refugees.
19. Mr Towle noted that comprehensive regional cooperation can and should accommodate the legitimate concerns of states (including security and border control) and protect asylum-seekers and refugees. It is important to find ways of demonstrating that, by addressing the humanitarian needs and protection of refugees, states can also solve other challenges they face. For example, registration of asylum-seekers helps states identify people who may already be in the host community and provides a system in which they can be processed and managed. Similarly, clearly defined protocols on rescue at sea and interceptions, that set out the roles and responsibilities of different states and other actors, can both reduce the risk of loss of life and also minimise misunderstandings and tensions between states. Regional frameworks for cooperation can provide a pragmatic, coherent but also principled basis through which the international community can provide support and assistance, including by offering resettlement places, funding and supporting the return of people found not to be in need of protection.
20. Mr Towle suggested that when developing responsibility-sharing arrangements at the regional level, states need to find a convergence of interests. States that tried to impose their own diagnosis and solutions on others would not attract the 'buy-in' and support of other states, particularly if the concerns of those states were not also addressed. Mr Towle also argued that deterrence, containment and deflection should not be the basis of regionalism. Noting that many states' language of engagement with each other is currently focussed on border control and security, he argued that there must be more creative ways of reconciling human security with state security. He referred to some of

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the positive developments in the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (Bali Process)<sup>1</sup> and the *Jakarta Declaration on Addressing Irregular Movement of Persons*,<sup>2</sup> in which states have acknowledged the need for protection-sensitive migration management.

21. Mr Towle presented six ways in which states such as Australia can contribute to responsibility sharing arrangements. These are:

- Continuing to provide financial support to assist refugees and UNHCR in other parts of the world;
- Contributing Australian nationals to humanitarian and refugee operations globally;
- Maintaining a strong and expanded resettlement programme that is based on UNHCR's global protection priorities, and not dictated by the narrower geo-political or strategic interests of the state;
- Maintaining strong and unequivocal support for asylum as a legitimate means for refugees to secure protection and to avoid the mischaracterisation of 'resettlement' as legitimate and the irregular movement and arrival of asylum as illegitimate;
- Demonstrating diplomatic and political leadership on the 'global stage' by providing positive contributions to the development of refugee doctrine, policy and humanitarian operations; and
- Providing leadership for the protection of the institution of asylum by, among other things, continuing to support and build on the 1951 Refugee Convention.<sup>3</sup>

22. Mr Towle expressed concern about recent developments in Australia with regard to asylum-seekers and refugees. Many of Australia's policies and approaches run the real risk of harming refugees, as well as undermining relationships with key actors in the region, whose support and cooperation will be fundamental if genuine regional cooperation is to be achieved. He noted that the so-called 'regional resettlement arrangements' between Australia and Nauru, and Australia and Papua New Guinea are problematic for two fundamental reasons: first, they do not provide an adequate level of protection for transferees that is consistent with international standards; second, they do not have the essential ingredients of burden and responsibility sharing. Nauru and PNG are not on the 'people movement' routes and their only exposure to these issues is through asylum-seekers and refugees who are forcibly transferred to their territories by Australia. The arrangements are, fundamentally, 'off shore processing' facilities under Australia's control. They can be seen as burden-shifting arrangements that may actually undermine efforts to develop a stronger level of regional cooperation with like-situated

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<sup>1</sup> Available at <http://www.baliprocess.net>

<sup>2</sup> Available at <http://www.unhcr.org/5214ae709.html>

<sup>3</sup> *Convention relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 150 (entered into force 22 April 1954).

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states and, if replicated elsewhere, could undermine the global asylum and refugee regime. The notion that a sovereign state may absolve itself of its legal protection responsibilities by transferring people to another state weakens international solidarity towards refugees.

23. Finally, Mr Towle reiterated the importance of considering the views of refugee communities and their societies when developing appropriate state responses. He stated that it is essential not to ignore the human dimension of why people are moving.

## SESSION I: The responsibility to protect refugees

24. In the first session, participants were asked to consider the philosophical and religious underpinnings for refugee protection, and whether there is global consensus that refugee protection is essential. Participants also addressed the barriers to universal adherence to the 1951 Refugee Convention and/or 1967 Protocol,<sup>4</sup> and considered whether there were stronger arguments which could be put forward to further build commitment to refugee protection.
25. The background paper for the colloquium noted that asylum has its roots in different traditions and religions. During the colloquium discussion, it was suggested that asylum as an ethical concept has its origin in religion and morality, which is reflected in law, and that there is general consensus among major religions regarding the treatment of the stranger. Participants indicated that there is value in recalling the moral and religious consensus around the concept of asylum, particularly given the suggestions in public discourse in some countries that the Refugee Convention is out of date and the fact that some countries which are not party to the Convention nevertheless do have a religious or moral commitment to asylum.
26. The colloquium noted the initiatives by UNHCR and others to develop a more thorough understanding of the links between faith and protection, particularly the 'Welcoming the Stranger' initiative.<sup>5</sup> This initiative presents for the first time the common ground on protection among the world's major faiths as a way of inspiring further protection, holding accountable faith leaders who promote violence and xenophobia, and preventing religion from being used as a tool of oppression and division.
27. Participants expressed differing views as to whether there is global consensus that refugee protection is essential. At the inter-state level, it was noted that three quarters of the international community are party to the 1951 Refugee Convention and/or its Protocol and that there is broad acceptance that *non-refoulement* (the obligation not to return a

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<sup>4</sup> *Protocol relating to the Status of Refugees*, opened for signature 31 January 1967, 606 UNTS 267 (entered into force 4 October 1967).

<sup>5</sup> See UNHCR, *Welcoming the Stranger: Affirmations for Faith Leaders* (UNHCR, 2013). Available at <http://www.unhcr.org/51b6de419.html>

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refugee to a place of persecution) is also customary international law, binding on all states, whether or not they are party to the relevant treaties.

28. However, other participants referred to the public discourse within some of the states which are party to the Convention and/or Protocol and the ways in which politicians have manipulated the issue of refugees for political gain, as evidence that there is no consensus. Concerns were also raised about the subjugation of the principle of asylum to migration and border security.
29. Some participants noted the ways in which the ideological conception of refugee protection has changed since the adoption of the 1951 Refugee Convention, noting the shift from the Cold War context in which refugees from communist countries were welcomed, to the situation today where the connection between protection needs and inter-state inequalities, such as poverty or lack of development, does not always serve to strengthen public support for refugee protection. However, there was general consensus that the 1951 Refugee Convention is still an effective, practical document that provides protection to millions of people all around the world.
30. Some participants suggested that arguments for grant of refugee protection could be strengthened by turning to international disaster law and the concept of responsibility to protect. However, there was no general consensus among participants on the merits of focussing on these areas of law.
31. Other participants noted the need to focus on refugee contributions to society and the heroism of refugees so as to change the perception that refugees are a burden on society.

## **SESSION II: Rationales and criteria for responsibility sharing**

32. During the second session, participants considered the most compelling reasons for sharing responsibility for refugees and the criteria which should be used for allocating responsibility among states.

### **Rationales**

33. Some of the motivations canvassed for sharing responsibility for refugees included the importance of establishing a more equitable distribution of responsibility among states; enhancing the protection of refugees; cooperation as a form of inter-state insurance to assist states in events of mass influx; economic efficiency; functional necessity (i.e., sharing responsibility promotes better protection outcomes); national self-interest; and avoiding dangerous secondary movement.
34. Participants discussed the role of national self-interest as a driving factor in encouraging international cooperation in the protection of refugees. Participants suggested that

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national self-interest has been a dominant motivation in the development of regional arrangements historically.

35. Some participants noted that the concept of security is sufficiently flexible to incorporate the concept of human security within its framework, and this may provide a platform for states to engage in collective action.

### **Criteria**

36. There was general agreement that it is important to establish measurable criteria for the distribution of responsibility of refugee protection. Some ways of measuring equitable distribution of responsibility for hosting refugees discussed in the background paper included distribution based upon a state's capacity to absorb refugees; financial distribution of responsibility based upon a state's capacity to pay; and distribution of responsibility based on a state's capacity to protect refugees.
37. Participants suggested that GDP alone is not a reliable way to measure a country's capacity to handle refugees, and that it is important to measure the quality of protection.
38. Participants suggested that the preferences of refugees should be taken into account. However, participants also acknowledged that international law does not confer an unfettered right on the part of refugees to choose where they should receive asylum.
39. It was also suggested that it is important to consider which actors - such as governments, UNHCR and civil society groups - are best placed to fulfil particular roles in the protection of refugees.

## **SESSION III: Mechanisms for responsibility sharing Part 1**

40. Session III of the colloquium focused on mechanisms to share responsibility for refugees. Some of the mechanisms discussed included development aid linked to local integration; twinning resettlement with local integration; refugee quotas; markets for refugee quotas; labour migration schemes; targeted development assistance; consumer-based mechanisms such as lotteries; and new funding models for UNHCR.

### **Development aid and local integration**

41. Participants suggested that while aid can be a useful international problem-solving tool, it can only ever be part of the solution. The ability of aid to stabilize a country is weak and the main effect of aid is primarily to act as a catalyst or an inducement for states to mobilize resources in a manner that prioritizes health and well-being of persons within its jurisdiction. For example, Australia's overseas development assistance for schools can be predicated on the assisted state's education spending commitments.

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42. One proposal suggested is that aid be provided on a 'safe-to-fail' basis, for example, in areas such as cross-border education opportunities. Safe-to-fail means that the individual beneficiaries receive something that is good for them as a result of aid, even if the greater objective is not necessarily achieved. For example, education opportunities are offered to refugees with a view to aiding local integration, but even if local integration does not eventuate, the refugees still have received an education. This should be done in a way that benefits both citizens and refugees, and pays attention to the situation on both sides of the border between a host country and a country of origin. For example, Afghan refugees in a Pakistani refugee camp should receive an education on the same terms as the Pakistani citizens in the region of the camp as well as the Afghan citizens on the other side of the border. This avoids pull factors and local resentment towards refugees.
43. Another issue addressed was the practical separation between humanitarian and development funding and the need to access development funding to aid refugee protection. The OECD Development Assistance Committee Guidelines might also need to be revised given the developments in Australia whereby assistance to onshore asylum-seekers is now categorised as overseas aid. Finally, it was noted that there needs to be better coordination among aid donors so that common objectives are achieved.

#### **Resettlement quotas**

44. Participants indicated that while resettlement programs need to be expanded, resettlement as a protection mechanism will only ever play a small role in the protection of refugees globally. Participants expressed concern that some states wish to trade off their asylum obligations against increased resettlement places. Participants also questioned how 'strategic' resettlement has been, noting that in some cases refugee protection has not improved in the host states from which refugees are being resettled.

#### **New funding models for UNHCR**

45. Participants affirmed the important work of UNHCR and stated that it was important to continue to evaluate whether its funding was sufficient and how it was funded. Funding for refugees in urban settings was mentioned as an area of particular concern. Participants also indicated that increased funding for UNHCR cannot be at the expense of state responsibility for protection.

#### **Leading by example**

46. Participants agreed that an important tool in the development of responsibility sharing is for states to lead by example. For example, some participants proposed that Australian ratification of the Convention on the Protection of the Rights of All Migrant Workers and

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Members of Their Families would be a positive sign of good-will and commitment to other countries in the Asia Pacific region, for whom migrant workers are a higher priority than asylum-seekers.

47. Finally, participants considered the types of inter-state collaboration that may take place and suggested that, based on the evidence drawn from attempts at burden sharing in climate change policy, it is better to prioritize bottom-up approaches (such as small regional approaches) as opposed to top-down approaches (such as global conferences).
48. Participants also added that 'minilateral' engagement may be the way forward. Minilateralism refers to establishing negotiations among the smallest number of states that are needed to achieve the greatest possible outcomes to a given problem.<sup>6</sup> It was noted that the key to success is to look for convergence and commonality of interests among states.

## SESSION IV: Mechanisms for responsibility sharing Part 2

49. In the fourth session of the colloquium, participants considered whether responsibility sharing should be prioritized in certain situations, such as in mass influx, protracted refugee situations, and rescue at sea emergencies. Another topic of discussion was whether certain prerequisites were required before physical relocation of refugees occurred.
50. There was general agreement that responsibility sharing should be prioritized in certain situations. However, the situations of mass influx and protracted refugee situations raised some difficult definitional issues.

### **Mass influx**

51. Participants suggested that the key question in relation to a mass influx was state capacity i.e., whether a state's ability to determine refugee status and provide protection was overwhelmed. It was noted that one of states' motivations in attempting to define a situation of mass influx was to put forward a case for derogating from refugee protection, rather than to use it as a basis for sharing responsibility for refugees.

### **Protracted refugee situations**

52. Participants noted the unsettled approach to defining a protracted refugee situation. For example, one participant indicated that the UNHCR definition focuses on a minimum number of refugees and requires that the refugees share the same nationality. It was suggested that it could be more productive to focus on a state's capacity to absorb

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<sup>6</sup> See Moisés Naím, 'Minilateralism' (2009) (173) *Foreign Policy* 136, 135 (sic); Robyn Eckersley, 'Moving forward in the climate negotiations: multilateralism or minilateralism?' (2012) 12(2) *Global environmental politics* 24, 32.

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refugees (i.e., whether there was a mass influx), as opposed to elements which highlighted the source of the refugee flow. Solidarity and cooperation to prevent protracted refugee situations were viewed as key.

### **Rescue at sea emergencies**

53. Participants suggested that there is growing awareness among states that there are limitations to unilateral action and no state can deal with this issue alone. There was agreement that responsibility sharing in rescue at sea emergencies should be prioritized. Participants referred to the *Regional Roundtable on Irregular Movements by Sea in the Asia-Pacific Region*, which suggests that states that agree to receive and disembark persons rescued at sea need guarantees that they will not be left on their own in dealing with the rescued persons following disembarkation.<sup>7</sup>
54. Participants discussed the need for clearer rules regarding the distribution of responsibility among states in rescue at sea emergencies. Participants were particularly focussed on the reception measures to be put in place once rescues at sea occur, as lack of clear guidance on these measures jeopardizes commitment to rescue at sea. It was noted that UNHCR has developed a *Model Framework for Cooperation following Rescue at Sea Operations involving Refugees and Asylum-Seekers*. This Model Framework demarcates possible roles and responsibilities for states, such as coordinating and carrying out search and rescue activities, providing places for disembarkation, processing and providing solutions to rescued persons, and providing financial support to affected states.<sup>8</sup>
55. It was noted that it was important to distinguish between interception and rescue at sea so that states do not invoke a need to share responsibility through disembarkation procedures when it is clear that the intercepting state should take responsibility for the refugees itself since it has exercised its jurisdiction over them.
56. Finally, the utility of the International Catholic Migration Commission's first aid, recovery and referral model in the Mediterranean was noted as a potential way of enhancing protection and inter-state cooperation in rescue at sea emergencies.<sup>9</sup>

### **Other priority situations**

57. Participants also considered other situations that may warrant the prioritization of responsibility sharing mechanisms. These situations included systemic failures to provide

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<sup>7</sup> UNHCR, *Co-Chairs' Summary: Regional Roundtable on Irregular Movements by Sea in the Asia-Pacific Region* (UNHCR, 18-20 March 2013). Available at <http://www.refworld.org/docid/51e3bcfe4.html>

<sup>8</sup> UNHCR, 'Summary Conclusions on Refugee and Asylum-Seekers in Distress at Sea - how best to respond?' (Djibouti, 8-10 November 2011). Available at <http://www.refworld.org/pdfid/4ede0d392.pdf>

<sup>9</sup> International Catholic Migration Commission, 'First aid, recovery and referral: Addressing gaps in response to migrant victims of violence or trauma within a distinct slice of time' (Paper presented at the UNHCR Annual Consultations with NGOs, Geneva, Switzerland, 25 June 2008). Available at [http://www.icmc.net/system/files/activity/first\\_aid\\_recovery\\_referral/10451\\_pdf\\_32054.pdf](http://www.icmc.net/system/files/activity/first_aid_recovery_referral/10451_pdf_32054.pdf)

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effective protection to refugees, and situations where states face warfare, civil warfare and/or political collapse.

### **Prerequisites for the physical relocation of refugees**

58. Participants agreed that where states seek to physically relocate refugees, particularly in the form of transfers to purportedly safe countries of first asylum or safe third countries, there should be limits to such actions. 'Effective protection' needs to be guaranteed. Participants referred to UNHCR's *Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers*, reiterating that asylum-seekers must be subject to procedural safeguards, protected from *refoulement*, able to access fair and efficient refugee status determination processes, treated in accordance with international standards and, if recognised as being in need of international protection, be able to enjoy asylum or to access a durable solution.<sup>10</sup>

## **SESSION V: Drawing lessons from past and present regional arrangements**

59. In Session V of the Colloquium, participants were asked to examine both past and present formal regional responsibility sharing arrangements that have been developed for the protection of refugees. Participants considered which of the regional arrangements were most useful as models and why, and whether there were particular elements from these arrangements that could be adopted on their own, or in combination, as part of a new arrangement.

60. The arrangements discussed included the Comprehensive Plan of Action for Indochinese Refugees (CPA), the International Conferences on Assistance to Refugees in Africa (ICARA I and II), the International Conference on Central American Refugees (CIREFCA), the Common European Asylum System (CEAS), the 2004 Mexico Declaration and Plan of Action to Strengthen International Protection of Refugees in Latin America (MPA), the Bali Process in the Asia Pacific and the Almaty Process on Mixed Migration in Central Asia.

61. During discussion, it was noted that some relevant questions for comparing and assessing the various regional arrangements included the following:

- Did the arrangement achieve lasting protection dividends?
- Did the arrangement result in the development of sustainable infrastructure?
- What kind of transformation did the regional arrangement bring about?
- Were all necessary actors engaged in the regional arrangement?

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<sup>10</sup> UNHCR, *Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers* (UNHCR, 2013). Available at <http://www.refworld.org/pdfid/51af82794.pdf>

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- Was there an enabling public or political discourse that went along with the arrangement? Did this discourse support or go against regional arrangements?
  - Were the compromises made in order to reach agreement acceptable from a protection point of view?

### **CPA**

62. Participants noted that the CPA succeeded in bringing states to the table to establish commitments to the protection of refugees in the region. However, at the same time, the CPA may have legitimized the idea that Southeast Asian states do not offer local integration to refugees and that refugees can be warehoused until they are provided with resettlement places. It was also noted that the assurances of temporary protection had not always been respected and on occasions *refoulement* occurred.
63. It was suggested that for this model to be pursued in the future, local integration should be considered as a solution. Alternatively, at a minimum, refugees should not be warehoused and their rights – to employment and education, for example – should be respected when they are in the country of first asylum. Participants also noted that the monitoring of returns that took place during the CPA was an indispensable protection tool and should be included in future arrangements.

### **CIREFCA**

64. The way that protection and reintegration were linked to peace building and economic development under CIREFCA was noted. Participants suggested that CIREFCA would not have worked without renewed financial commitments, such as Italy's contributions to the Development Programme for Displaced Persons, Refugees and Returnees in Central America (PRODERE), and that ongoing financial support in regional arrangements is crucial. The way in which CIREFCA's formal engagement with civil society stimulated other positive civil society processes in the region was also noted.

### **MPA**

65. Participants expressed their support for the explicit references to solidarity within the arrangement. Participants also discussed the potential for the cities of solidarity pillar of the MPA to be developed in cities in the Asia Pacific region.

### **Bali Process**

66. Participants suggested that the incremental steps that are occurring through the Regional Cooperation Framework agreed to under the auspices of the Bali Process are important. However, the use of 'code language' in the Bali Process has the potential for drift and unexpected turns. The difference between a regional cooperation framework and the

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bilateral regional resettlement arrangements entered into between Australia and Nauru, and Australia and Papua New Guinea was noted.

67. It was suggested that protection dividends may flow from the Bali Process, but these are likely to be by-products. The possibility of other processes, such as the 2013 Jakarta Declaration and ASEAN processes, contributing to refugee protection was also noted.
68. Participants underlined the important role of civil society in building consciousness within society about refugee issues. In particular, participants noted the important role of the Asia Pacific Refugee Rights Network (APRRN) in developing protection at the regional, sub-regional and national level.

### **General Conclusions**

69. Participants suggested that regional arrangements need to be multi-dimensional, and involve all relevant actors. It is unlikely that any one element of a past regional arrangement could be adopted on its own. It was suggested that regional arrangements need to be pragmatic in order for them to work and, in this regard, civil society plays an important role in acting as a counterweight to ensure that the compromises that are made are acceptable, even if not supported by everyone.
70. Participants also identified strong leadership as an important component of the success of regional arrangements. For example, the role of the USA and key UNHCR personnel such as Sergio Vieira de Mello in the development of the CPA was noted. Finally, participants suggested that in order for regional arrangements to work it is important to understand why people are moving. For example, it is not helpful to talk about 'mixed movements' if in fact the movement of people in a particular region is 90% refugee movement.

## **SESSION VI: Regional cooperation in the Asia Pacific**

71. During the sixth session, participants considered the barriers to regional cooperation in the Asia Pacific and what mechanisms could be used to promote cooperation in the Asia Pacific.
72. Participants suggested that some of the barriers to regional cooperation in the Asia Pacific include:
- The lack of an immediate crisis of the scale of the Indo-Chinese outflow of refugees.
  - Many Asian states not being party to the 1951 Refugee Convention and/or 1967 Protocol;
  - Different levels of capacity among states;

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- Different national interests and difficulty identifying common interests among states;
  - The fact that states perceive themselves as source, transit or destination countries and therefore have different views on what regional cooperation should achieve;
  - The wide range of religions, cultures and colonial histories in the region;
  - The lack of information about what programs for refugees are actually working well;
  - Difficulties for people in the region in accessing authorized migration channels; and
  - Unilateral action from states in the region trying to pass their responsibilities onto other countries.

73. Participants put forward proposals both to enhance regional action on refugee issues and to utilise regional cooperation mechanisms to enhance national responses to refugee protection.

74. Ideas put forward in relation to enhancing regional action on refugee issues in the Asia Pacific included incrementally building a normative culture through the development of commitments to soft-law instruments. There was consensus that the issue of third country transfers should be kept separate from capacity building. Participants suggested that it may be necessary to implement a legally binding document to deal with transfer arrangements to purportedly safe third countries or countries of first asylum, whereas a soft-law approach could be developed to promote regional cooperation.

75. Ideas for using regional action to enhance domestic protection mechanisms included promoting international support for Japan in the development of its pilot resettlement program; establishing more legal clinics in the region to assist refugees with their asylum applications; and highlighting positive achievements in the region such as the protection mechanisms developed in the Philippines.

## **SESSION VII: Future directions**

76. In the final session of the colloquium, participants were asked to consider how to develop an environment conducive to responsibility sharing. In particular, participants deliberated on whether altruism is enough to drive refugee protection, or whether it is important to find linked benefits in other areas of international concern. There was further discussion of the development of a soft-law approach to enhancing refugee protection, as opposed to a binding treaty.

77. There was general consensus that altruism and humanitarianism are primary reasons for providing protection to refugees, but that motivating states to protect refugees and share

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responsibility for refugee protection involves incorporating humanitarianism into the perceived national interest. It is important to identify issues such as economic, trade, political or social motivations that encourage states to work together to enhance protection to refugees. Participants suggested that in the Asia Pacific region there is room for developing refugee protection based on states' interest in responding to irregular maritime arrivals.

78. Participants also suggested that the situation of Burmese refugees in Southeast Asia raises the possibility of developing a caseload approach which could lead to internationally supported solutions for refugees. For example, the recent phenomenon of Rohingya boat arrivals is of concern to several states in the region and might provide the basis for agreement on matters such as disembarkation, resettlement offers and financial assistance. Participants noted that seeking to regularise the status of migrants to increase access to education, work and health services may be a way forward.
79. Participants agreed that in the Asia Pacific region the best way forward is through an organic, incremental soft-law process.
80. Some participants proposed the development of a 'second track dialogue' – a dialogue that brings together a broad group of experts, outside of government, such as academics, think tanks, business, trade unions and other civil society actors, to start developing ideas that could eventually gain state support.

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## Colloquium Participants

### **Mr Atem Atem**

Atem is a PhD student at the Freilich Foundation at the ANU. He is studying the settlement experiences of Sudanese refugees in Australia.

### **Mr Brian Barbour**

Brian is currently serving as Director of External Relations at the Japan Association for Refugees and he has been elected to his third term on the Steering Committee of the Asia Pacific Refugee Rights Network (APRRN). He is currently chairing the APRRN Legal Aid and Advocacy Working Group. Brian has extensive experience working with refugees in the Asia Pacific Region.

### **Mr Andrew Bartlett**

Andrew served in the Federal Parliament as a Senator for Queensland from 1997 to 2008, with a strong focus on refugee, immigration and social services issues. He has subsequently worked for a number of organisations on advocacy, policy and campaigning strategy, and has been a part-time Research Fellow for the Migration Law Program at ANU since 2008.

### **Ms Nabila Buhari**

Nabila is an intern at the UNHCR Regional Office in Canberra. She was a note-taker during the colloquium.

### **Mr Rafendi Djamin**

Rafendi is the Indonesian representative to the ASEAN Intergovernmental Commission on Human Rights. He is a specialist in human rights and democracy in Indonesia.

### **Ms Tamara Domicelj**

Tamara is the Regional Refugee Protection Advisor at Act for Peace. She is also the Deputy Chair of the Steering Committee of the Asia Pacific Refugee Rights Network.

### **Dr Elizabeth Ferris**

Elizabeth is the co-director of the Brookings-LSE Project on Internal Displacement and a senior fellow in Foreign Policy, where her work encompasses a wide range of issues related to internal displacement, humanitarian action, natural disasters and climate change.

### **Ms Marianne van Galen Dickie**

Marianne is the Sub-Dean of the Migration Law Program at the ANU. She is a qualified migration agent and has worked extensively in the migration field since 1993.

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**Ms Ellen Hansen**

Ellen is the Senior Protection Officer for UNHCR's Regional Office for Australia, New Zealand, Papua New Guinea and the Pacific.

**Mr Tristan Harley**

Tristan is a Research Associate at the Freilich Foundation at the ANU. His research with Penelope Mathew explores the merits of regional arrangements for sharing responsibility for refugees. Tristan is a co-convenor of the colloquium.

**Dr Susan Harris-Rimmer**

Susan is the Director of Studies at the Asia-Pacific College of Diplomacy at the ANU. Her research focuses on regional diplomacy, refugee and migration law, and gender and transitional justice.

**Ms Carina Hoang**

Carina is a PhD candidate at Murdoch University. Her research examines the 'cause and effect' of riots in detention camps in Hong Kong from the mid-1980s to the late-1990s. She is also the editor and publisher of *Boat people - Personal Stories from the Vietnamese Exodus 1975-1996*.

**Mr Khanh Hoang**

Khanh is a Legal Officer at the Australian Law Reform Commission (ALRC) and a lecturer in Migration Law at the ANU. His research interests include refugee law and law reform.

**Prof Stephen Howes**

Stephen is the Director of the Development Policy Centre and Director of International and Development Economics at the ANU. His research focuses on aid policy, the Pacific and PNG, and international climate change policy.

**Mr Peter Hughes**

Peter is a visitor at the Regulatory Institutions Network at the ANU. Peter has worked extensively in the development and implementation of Australian and international migration and refugee policies. He is a former Deputy Secretary of the Department of Immigration and Citizenship.

**Dr Kim Huynh**

Kim is a lecturer in refugee politics, political philosophy and international relations at the ANU. He is also the author of *Where the Sea Takes Us*, a biography of his parents which describes their escape from Vietnam in the late 1970s.

**Dr Fiona Jenkins**

Fiona is a senior lecturer in the School of Philosophy at the ANU. She teaches and researches on contemporary French philosophy, on Nietzsche, on film, and on aspects of democratic theory.

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**Dr James Jupp**

James is an Adjunct Associate Professor at the ANU. His research interests are in immigration, ethnicity and multicultural policies. In 2004, James was made a member of the Order of Australia for his service to multiculturalism and immigration.

**Prof Satvinder Juss**

Satvinder is Professor of Law at King's College, London. His research focuses on international refugee law, comparative constitutional law, human rights law and public law. He is also a refugee law judge.

**Mr Rezaur Rahman Lenin**

Rezaur is an Executive Director of Law Life Culture, a Dhaka-based organization that aims to protect and strengthen the rights of refugees in Bangladesh. He is also in charge of implementing a human rights capacity building program in four cities in Bangladesh.

**Ms Arja Keski-Nummi**

Arja is a fellow at the public interest think tank, the Centre for Policy Development. Arja has worked extensively with the Department of Immigration and Citizenship, including as First Assistant Secretary of the Refugee, Humanitarian and International Division.

**Prof Penelope Mathew**

Pene is the Freilich Foundation professor at the ANU. She has worked for and with refugees in many capacities over the last twenty years and her main area of research is refugee law. She is a co-convenor of the colloquium.

**Dr Victoria Mason**

Victoria is a lecturer on human rights and peace and conflict at the ANU. Her research focuses on conflict and conflict resolution in the Middle East, the Palestinian question and broader human rights and gender issues in the Middle East.

**Mr Malvino Aprialdy Mazni**

Aldy is the assistant to Rafendi Djamin, Indonesian representative to the ASEAN Intergovernmental Commission on Human Rights.

**Mr John Menadue**

John has worked extensively both in the private sector and the Public Service. He was Secretary of the Department of Immigration and Ethnic Affairs. He has also been, among other things, the Australian Ambassador to Japan and the Head of the Department of Trade.

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**Mr Kerry Murphy**

Kerry is an accredited specialist in immigration law and a partner of his law firm in Sydney. His experience also includes working for the Department of Immigration and the Australian office of the Jesuit Refugee Service.

**Dr Hitoshi Nasu**

Hitoshi is a Senior Lecturer in Law at the ANU. His research focuses on public international law, migration law, international peace and security law, international humanitarian law, UN law, and nanotechnology law and regulation.

**Ms Akiko Okudaira**

Akiko is a PhD candidate at the Asia-Pacific College of Diplomacy at the ANU. Her research examines the evolving notion of 'protection' in the international refugee regime.

**Mr Paul Power**

Paul is the CEO of the Refugee Council of Australia and the Deputy Chair of the Australian & Pacific Working Group of the Asia Pacific Refugee Rights Network.

**Prof Yasunobu Sato**

Yasunobu is a Professor in the Graduate Program on Human Security at the University of Tokyo. He has worked for several international organizations, such as UNHCR as a legal officer in Australia, UNTAC as a human rights officer in Cambodia and EBRD as counsel in London.

**Mr Supriyanto Suwito**

Supriyanto is the Third Secretary of the Political Section of the Indonesian Embassy. He covers political affairs between Australia and Indonesia, in matters such as refugees and people smuggling. Prior to joining the embassy, Supriyanto worked in the ASEAN division at the Indonesian Ministry of Foreign Affairs.

**Dr Savitri Taylor**

Savitri is the Director of Research in the School of Law at La Trobe University. Savitri researches refugee law and asylum policy at the national, regional and international level.

**Mr James Thomson**

James is the Assoc. Director of Advocacy and Policy at Act for Peace. He chairs the ACFID and ACT Alliance Protection Working Groups and the Sub-Committee on Regional Protection for the Asia Pacific Refugee Rights Network, which is developing APRRN's Vision for Regional Protection and a Plan of Action. He has been involved in refugee policy, advocacy and program work at the national, regional and global levels for the past 15 years.

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**Mr Richard Towle**

Rick is the UNHCR Regional Representative for Australia, New Zealand, Papua New Guinea and the South Pacific. He has held many senior positions in the United Nations. He has also been a Deputy Chair of the Hong Kong Refugee Status Review Board and a member of the New Zealand Refugee Status Appeals Authority.

**Ms Sarah Wardell**

Sarah is an intern at the UNHCR Regional Office in Canberra. She was a note-taker during the colloquium.

**Mr Matthew Zagor**

Matthew lectures in international refugee law at the ANU College of Law. His areas of research are refugee law and identity, judicial roles and rhetoric, humanity as a legal principle, and the principle of legality.