

**Economic and Social Commission for Asia and the Pacific**Asia-Pacific Regional Preparatory Meeting for the Global
Compact for Safe, Orderly and Regular Migration

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Item 3 (b) and (d) of the provisional agenda**

Thematic discussions on key issues in the Asia-Pacific region for facilitating safe, orderly and regular migration:**Addressing the drivers of migration, including adverse effects of climate change, natural disasters and human-made crises, through protection and assistance, sustainable development, poverty eradication, and conflict prevention and resolution****Regional cooperation and governance with regard to migration in all its dimensions, including at borders and during transit, entry, return, readmission, integration and reintegration****Mixed migration in Asia and the Pacific****Note by the secretariat***Summary*

Large movements of refugees alongside other groups of migrants who are vulnerable and require protection pose challenges to the migration management systems and legal frameworks in the Asia-Pacific region. These challenges relate to ensuring that the rights and needs of migrants within these flows are met, along with the need for tools and capacity to manage these large movements effectively.

In response to these challenges, the present document includes examples of such large movements in the Asia-Pacific region; discussions on how Governments have responded to them and conceptual issues relating to mixed flows; and guidance from international and regional sources to address the governance of mixed flows in line with international best practices, State sovereignty and human rights law.

This document is intended to guide the intergovernmental process in the Asian and Pacific region to develop inputs to the negotiations on the global compact for safe, orderly and regular migration by highlighting these issues of relevance and providing recommendations for consideration by meeting participants.

I. Introduction

1. Cross-border procedures are typically based on managing movement in non-emergency situations. When large numbers of persons arrive in a vulnerable situation, these procedures come under pressure, often resulting in uncertain, ad-hoc responses, with actors facing the need to implement complex bureaucratic

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** E/ESCAP/GCM/PREP/L.1.

procedures while lacking adequate resources and coordination mechanisms to do so. The result of these situations is that migrants are unable to access the support and services they need, and their rights may be violated.

2. The sudden increase of persons arriving at the borders of Europe in 2015 – along with the tragic loss of life at sea – highlighted this problem, and prompted the convening of the first-ever United Nations high-level plenary meeting on addressing large movements of refugees and migrants, on 19 September 2016. The meeting resulted in the New York Declaration for Refugees and Migrants in which 193 world leaders made bold commitments to address the issues related to large movements of refugees and migrants. In the Declaration, which referred to the adoption of the 2030 Agenda for Sustainable Development in 2015, the world leaders noted the positive contribution of migrants to inclusive growth but pointed out the complex challenges posed by forced displacement and irregular migration in large movements. As defined in the Declaration, “‘large movements’ may be understood to reflect a number of considerations, including the number of people arriving, the economic, social and geographical context, the capacity of a receiving State to respond and the impact of a movement that is sudden and prolonged”.¹ The term does not, for example, cover regular flows of migrants from one country to another. It may “involve mixed flows of people, whether refugees or migrants, who move for different reasons but who may use similar routes”.²

3. This outcome is drawn from a growing discussion on the concept of mixed migration, which has emerged to reflect the complex, large-scale and sudden migration scenarios that have arisen around the world and pose challenges for policymaking. Many countries are simultaneously, to varying degrees, countries of origin, transit and destination for migrants in mixed flows.³ Although definitions of mixed migration vary, they tend to share common features, such as: acknowledging the different types of migrants,⁴ their distinct needs; the use by migrants of irregular channels because of restricted legal pathways of gaining admission to another country; and concerns regarding the risks such movements pose to migrants. Some examples are as follows:

(a) The Office of the United Nations High Commissioner for Refugees (UNHCR) highlights the difference between refugees (who are forcibly displaced and need protection) and migrants (who move voluntarily), while also recognizing that both may resort to the use of smugglers (and traffickers): “Migrants are fundamentally different from refugees and, thus, are treated very differently under international law. Migrants, especially economic migrants, choose to move to improve their lives. Refugees are forced to flee to save their lives or preserve their freedom.”⁵ However, UNHCR further notes that while the

¹ In the report of the Secretary-General entitled “In safety and dignity: addressing large movements of refugees and migrants”, issued in 2016, the following is stated: “whether a movement is characterized as ‘large’ is less dependent on the absolute number of people moving than on its geographical context, the capacities of the receiving States to respond and the impact caused by its sudden or prolonged nature on the receiving country” (A/70/59).

² General Assembly resolution 71/1.

³ See A/70/59.

⁴ Unless otherwise indicated, the term migrants in this paper refers to international migrants. The Department of Economic and Social Affairs defines an international migrant as a person who is living in a country other than his or her country of birth. In the estimation of the stock of international migrants, refugees are a subset of the universe of international migrants.

⁵ UNHCR, *The 10-Point Plan in Action, 2016 Update* (Geneva, 2016). Available from www.unhcr.org/the-10-point-plan-in-action.html.

situations of migrants and refugees are different, they both “increasingly make use of the same routes and means of transport to get to an overseas destination. If people composing these mixed flows are unable to enter a particular State legally, they often employ the services of human smugglers and embark on dangerous sea or land voyages, which many do not survive.”⁶

(b) The International Organization for Migration (IOM) definition frames mixed migration in the context of irregular migration:⁷ “The principal characteristics of mixed migration flows include the irregular nature of and the multiplicity of factors driving such movements, and the differentiated needs and profiles of the persons involved. Mixed flows have been defined as ‘complex population movements including refugees, asylum seekers, economic migrants and other migrants’. Unaccompanied minors, environmental migrants, smuggled persons, victims of trafficking and stranded migrants, among others, may also form part of a mixed flow.”⁸ Furthermore, “people’s reasons for moving are mixed and they may fall into one or more categories, which also may change along the route and over time. In most cases, there is at least some degree of compulsion and vulnerability involved, whether it is as a result of the conditions in which they fled or due to the harsh conditions or exploitation and abuse suffered along the routes.”⁹

(c) The Regional Mixed Migration Secretariat for North Africa enumerates the different types of migrants who can be classified as part of mixed migration:

- “Irregular migrants (dislodged by a real and/or perceived inability to thrive (economic migrants) or motivated by aspirations, a desire to unite with other family members. Their movement is often organized and facilitated by smugglers, although some move independently)
- Refugees and asylum-seekers (forced migrants)
- Victims of trafficking (involuntary migrants)
- Stateless persons
- Unaccompanied minors and separated children and other vulnerable persons on the move”¹⁰

4. The different categories of mobile populations require specific forms of attention to ensure that their needs and rights are met; when they coexist in mixed migration flows, the concerns and challenges related to providing this support are magnified. Furthermore, the forms of transit used or routes followed that typically characterize mixed flows, including the use of smugglers and traffickers, raise significant safety concerns. Unlike regular migration in which categories of mobile populations are known and documented, the categories of people travelling in mixed migration flows are not readily evident or identifiable, including those in need of protection as determined by international law, such as

⁶ See www.mixedmigrationhub.org/member-agencies/what-mixed-migration-is/.

⁷ In document MC/INF/297, IOM is of the view that “[in] essence, mixed flows concern irregular movements, frequently involving transit migration, where persons move without the requisite documentation, crossing borders and arriving at their destination in an unauthorized manner”.

⁸ See MC/INF/294.

⁹ IOM, *IOM Response Plan for the Mediterranean and Beyond* (Geneva, 2015), p. 5. Available from www.iom.int/sites/default/files/press_release/file/IOM-Response-Plan-for-the-Mediterranean-and-Beyond-Oct2015.pdf.

¹⁰ See www.regionalmms.org/index.php/about-us/mixed-migration.

refugees and victims of trafficking, alongside other categories of migrants. As a result, refugees and asylum seekers, for example, may not be able to access international protection owed to them, with risks of being detained or deported in violation of the legal norms related to non-refoulement¹¹. In addition, those who may not be eligible for specific criteria required for international protection may nonetheless face human rights and other protection concerns relevant to their situation. Although the legal distinctions between such groups may be clear, they all exist on a continuum of vulnerability, requiring a human rights-centred approach to address their situation, while respecting the importance of State sovereignty. Finally, when such movements occur on a large, intensified scale, they represent a challenge for States with often-limited capacities to ensure adequate, human rights-based approaches.

5. The objective of the New York Declaration is to provide clarity on the way forward in addressing these movements. This includes the need for a comprehensive and international response and agreements on commitments, including: to protect the safety and rights of all refugees and migrants regardless of their status; to support countries rescuing, receiving and hosting large numbers of refugees and migrants; to integrate migrants; to fight xenophobia and racism against migrants; to develop, through a State-led process, non-binding principles and voluntary guidelines on the treatment of migrants in vulnerable situations; and to strengthen global migration governance. In pursuit of these goals, the world leaders have called for the development of a global compact on refugees, and a global compact for safe, orderly and regular migration. The global compact on refugees will be developed by UNHCR, building upon the comprehensive refugee response framework set out in annex I of the New York Declaration, including “specific actions needed to 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.”¹² The function of the global compact for safe, orderly and regular migration is to address all aspects of international migration, including the humanitarian, developmental, human rights-related and other aspects, and present a framework for comprehensive international cooperation on migrants and human mobility, to be developed through negotiations among member States supported by the United Nations system.

6. The present document includes a survey of key trends on mixed migration flows to serve as a reference material for the regional consultation in preparation for the global compact for safe, orderly and regular migration. It also includes a discussion of how countries in the region have addressed the challenges and opportunities of mixed migration and recommendations for countries of origin, transit and destination and key stakeholders towards the global compacts for migrants and refugees.

II. Mixed migration in Asia and the Pacific: case studies

7. The Asia-Pacific region has been experiencing increasing migration and diverse types of migration since the 1970s, including different forms of intra- and interregional migration. This includes large volumes of labour migration through regular channels and some permanent migration, but it included different forms of forced and involuntary migration. These forms of forced and involuntary migration have created challenges with regard to protecting the human rights of different populations involved in these movements, offering

¹¹ The practice of not forcing refugees or asylum seeker to return to a country in which they are liable to be subjected to persecution.

¹² See <http://refugeesmigrants.un.org/refugees-compact>.

services to meet their specific needs, and cooperating to provide durable solutions in line with international realities and obligations.

8. In response to the series of large-scale refugee movements from Viet Nam, Cambodia and the Lao People's Democratic Republic in the 1970s, and upon the urging of the Association of Southeast Asian Nations (ASEAN) member countries, the United Nations convened an international meeting, which adopted the Comprehensive Plan of Action. This solution involved: the right of individuals arriving to access refugee determination procedures; resettlement for those who were found to be refugees; return, subject to guarantees of security and non-retaliation for having migrated irregularly, and with reintegration support from UNHCR; streamlining of regular migration processes; and awareness-raising in countries of origin regarding the nature of the Plan. The process associated with the Plan engaged countries of origin and destination, as well as third-countries involved in resettlement.

9. Since this experience, movements have become complex with mixed drivers and, at times, large and/or intensified flows, which prove challenging for communities affected by these flows. UNHCR estimates that there are almost 13.1 million asylum seekers, refugees, internally displaced persons, stateless people and others of concern in the region.¹³ The need to extend international protection remains significant amid the persisting, renewed or new displacements, and questions about the distinction between “bona fide” refugees and economic migrants have raised concerns in countries of transit and destination.¹⁴ In addition, there is growing recognition of the complex nature of mixed migration flows, which may cause the movement of people who are not refugees but who nonetheless face similar vulnerabilities, as well as the growth of transnational networks willing to facilitate migration in an irregular fashion, often alongside increased restrictions on irregular migration.

10. The recent surge in the return of Afghan citizens from Pakistan provides insights into the dynamics shaping mixed migration in the region, and the diverse vulnerabilities faced by migrants. In 2016, the return of registered refugees and undocumented Afghan citizens from Pakistan increased by 108 per cent compared to the previous year because of a combination of factors.¹⁵ Many of those returning had lived outside of Afghanistan for decades, and needed support on arrival and as they sought to reintegrate in a country already struggling with widespread conflict and displacement. Despite their similar profiles and protection needs, treatment of registered refugees and undocumented returnees were different: while recognized refugees were eligible for a reintegration cash grant, undocumented returnees were only able to receive basic humanitarian assistance at the border. This disparity underscores the challenges faced by countries responding to large mixed migration flows in meeting the needs of diverse groups of migrants.

11. Elsewhere in the region, large migratory movements have been driven by a mixture of conflict and economic factors, as well as the existence of employment opportunities in rapidly developing neighbouring countries.

¹³ See www.unhcr.org/en-us/asia-and-the-pacific.html.

¹⁴ Although a country can be both origin, transit and destination simultaneously, the terms are used here to designate a country's main migratory status.

¹⁵ IOM, *Return of Undocumented Afghans from Pakistan and Iran: 2016 Overview* (Geneva, 2016). Available from http://afghanistan.iom.int/sites/default/files/Reports/iom_afghanistan_-_return_of_undocumented_afghans_from_pakistan_and_iran_-_2016_overview.pdf.

Migratory flows in South-East Asia and beyond, for example, included such mixed drivers.

12. The difficulty of addressing such situations was illustrated in May and June 2015, when approximately 5,000 persons from Myanmar and Bangladesh were stranded on boats, having been abandoned by smugglers. Several countries refused disembarkation, and at least 70 migrants died.¹⁶ Several meetings were held in response. The Government of Thailand convened a special meeting on irregular migration in the Indian Ocean on 29 May 2015 to discuss international cooperation to resolve the crisis, which produced 17 proposals and recommendations for the way forward, including:

- (a) The need to adopt a regional response;
- (b) Intensified search and rescue operations;
- (c) Exploration of identifying predictable disembarkation options and proper and harmonized reception arrangements for those rescued;
- (d) Access by UNHCR and IOM to migrants;
- (e) Screening to identify protection needs, with particular focus on vulnerable groups;
- (f) Strengthened information and intelligence sharing mechanism in support of rescue operations;
- (g) Establishment of a joint task force to support the response;
- (h) International support from donors;
- (i) Strengthened law enforcement to address smuggling and trafficking networks, including through focal points, operational activities, investigatory task forces and data sharing;
- (j) Developing transparent and efficient recruitment processes for migrant workers;
- (k) Information campaigns addressing irregular migration;
- (l) Enhancing legal, affordable and safe channels of migration;
- (m) Addressing drivers of migration, including with regard to economic development and promoting full respect for human rights and adequate access of people to basic rights and services.¹⁷

13. Taking advantage of the momentum created by the first special meeting, a second meeting was held on 4 December 2015. At the meeting, IOM, UNHCR and the United Nations Office on Drugs and Crime (UNODC) presented a joint proposal on immediate response to subsequent crises. This was incorporated into a simulation exercise convened by the Task Force on Planning and Preparedness created by the Bali Process in January 2017. ASEAN also held the Emergency ASEAN Ministerial Meeting on Transnational Crime Concerning Irregular Movement of Persons in Southeast Asia, held in Kuala Lumpur on 2 July 2015. An outcome of the Ministerial Meeting included the establishment of a trust fund to support the humanitarian and relief efforts. A regional response to mixed migration is thus taking shape to address this movement.

14. Mixed migration through Turkey to Europe provides another example of the challenges faced by countries of the region. The level of mixed migration

¹⁶ See <https://unhcr.atavist.com/mmm2015>.

¹⁷ See www.mfa.go.th/main/en/media-center/14/56880-Summary-Special-Meeting-on-Irregular-Migration-in.html.

along the route through Turkey has put immense pressure on the countries concerned. There was a marked increase in 2015 in the number of nationals from refugee-producing countries detected entering Europe irregularly through Turkey, from 43,500 in 2014¹⁸ to more than 856,732 in 2015, with nationals of Afghanistan, Iraq and the Syrian Arab Republic predominating; although the number of people transiting Turkey decreased in 2016, at more than 171,785,¹⁹ it remained high. Apart from the volume of persons, the mixed composition of the flows adds complexity. The migration flows included large numbers of families with children, unaccompanied and separated children, single women or pregnant women, older persons, and sick and injured migrants. These vulnerable groups, especially in mobile populations, often remain invisible during crises and cannot access assistance. Vulnerability persists throughout the migration process, from the origin, to transit (which can last significant periods of time), to the final destination. These prolonged processes delay solutions and create further challenges for migrants in limbo in relation to income and access to necessary services. Cooperation to address the situation of these people has resulted in the opening of resettlements for refugees in Turkey, albeit in exchange for the return of migrants in an irregular situation whose asylum claims have not been upheld in Greece.

15. Such complex flows are likely to increase. Climate change is an emerging issue that is likely to complicate migration flows and intensify pressures to migrate not only as a response to natural disasters, but also as a means of building resilience. This is a particular concern, for example, for the small islands and atolls in the Pacific.

16. Migrants caught up in crisis in their countries of destination, such as countries experiencing conflicts or disasters, are increasingly being highlighted as a further area of concern. For example, in 2011, efforts were required to evacuate and return Asia-Pacific migrant workers from Libya during the civil war in that country. The 2011 earthquake in Japan also highlighted the importance of assistance to migrant communities in the context of natural disaster.

Recurrent or emerging concerns?

17. Although migration-related institutions, laws and policies are in place in many parts of the region or in the process of being put in place in others, some challenges are recurrent. High levels of support have been extended by many countries to migrants in vulnerable circumstances, including hosting large refugee populations over several decades in many cases, along with increased levels of cooperation between States in response to mixed migration situations. However, despite this, the legal frameworks that would enable countries to address these flows effectively and in line with international best practice — including addressing the protection needs of specific identified groups, such as refugees and victims of trafficking, and ensuring a rights-based and rights-centred approach to all migrants regardless of status — are lacking. Ad hoc solutions are pursued, which may be appropriate to the specific context, but do not necessarily contribute towards developing a coherent body of practice.

¹⁸ UNHCR, *The sea route to Europe: The Mediterranean passage in the age of refugees* (Geneva, 2015). Available from www.unhcr.org/5592bd059.html.

¹⁹ UNHCR, *Dead and Missing at Sea* (Geneva, 2016). Available from <http://data2.unhcr.org/en/documents/download/56288>.

18. This reflects in part the lack of recognition in national laws in Asia and the Pacific of the Convention and Protocol Relating to the Status of Refugees. These instruments define refugee status and codify the key principle of non-refoulement for refugees. Although 25 countries of the region have ratified these documents, key countries dealing with mixed flows, such as Bangladesh, Indonesia, Malaysia, Pakistan and Thailand have not yet done so. In practice, these countries have often shown impressive levels of solidarity and have hosted refugees and other groups on a large scale, enabling them to access safety and providing them with prospects for long-term resettlement in third-countries. However, by not encoding the status of refugee into their national laws, the legal status of recognized refugees in these countries remains precarious. Similarly, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, which calls for protection of victims of trafficking, has been ratified by only 32 of the 53 ESCAP member States, limiting the applicability of these measures.

19. Given the lack of legal protection for the classes of people recognized in international law as having specific protection needs, migrants arriving in mixed migration flows often face detention and deportation. Aside from the limited deterrence value of deportations, the practice also raises questions about the consistency of these exercises with non-refoulement obligations and the challenge of reintegrating deported migrants in their home countries.

20. However, while limited application of existing frameworks for international protection of refugees and victims of trafficking is a challenge to responding to mixed flows, there is a growing recognition of the need to supplement these frameworks with greater efforts to protect all vulnerable migrants, including those who do not fall into these categories. Many of the migrants vulnerable to violence, exploitation and abuse fall outside of the existing definitions of refugees and trafficked persons. There is a lack of clarity on what is meant by the term “vulnerable migrant” and what protection and assistance might be afforded to such migrants and as a result a gap remains between protection afforded to recognized categories of migrants and those who are experiencing violence, exploitation, abuse and/or rights violations but are not within protected classes.

21. In recognition of this gap, efforts are being made to develop a more comprehensive understanding of vulnerability: one which complements the focus on protected categories of migrants, and migrant’s membership in a particular group with a more complete understanding of the factors that have contributed to the individual migrant’s or group of migrants’ vulnerability, the resources and capacities they themselves can mobilize to resist or recover from their vulnerability, which would apply at any stage of the migration process and in any context. In line with this, one suggested definition encompasses “vulnerability to violence, exploitation, abuse and rights violation during the migratory process (at departure, in transit and on arrival), not necessarily as a predetermined condition” but rather arising from the interplay of factors, such as individual capacities, wider social, economic, political context of countries of origin or transit, external factors that disrupt the migrants’ lives and the environment in which migrants are found. Such a broader understanding could help in structuring appropriate responses.²⁰

²⁰ Vincent Houver, Deputy Director Department of Operations and Emergencies of International Organization for Migration, “Setting the scene”, statement to International Dialogue on Migration 2017: Understanding migrant vulnerabilities: a solution-based approach towards a global compact that reduces vulnerabilities and empowers migrants, Geneva, 18 July 2017. Available from

22. The vulnerabilities of migrants in mixed, large-scale flows and arrivals means that they may often require significant humanitarian support, especially in cases in which the journey has been dangerous. In addition to the risk of fatality during sea and land crossings, migrants frequently live in difficult circumstances where intense exposure to environmental elements is compounded by severe limitations in access to basic survival needs; are often detained in poor conditions; may experience the effects of xenophobia; and may be subjected to violence, exploitation, abuse and even torture by migrant smugglers or human traffickers. Women and children are at a particularly high risk of gender-based violence and sexual abuse and exploitation.

23. These vulnerable migrants often require services, such as family tracing and shelter for unaccompanied migrant children, health services and referral for those with medical conditions, psychosocial support, and other forms of specialized assistance. The number of arrivals may further pose challenges for countries that do have refugee determination measures, requiring additional support to identify those with protection needs and direct them to relevant services. Finally, support is required to ensure that any returns of persons who do not have protection needs are carried out in a humane and orderly fashion, including the provision of support for reintegration and other solutions.

24. Those identified as having protection needs may face longer-term challenges in host States, including with respect to self-reliance. Access to health, social protection and employment is necessary to foster self-reliance, enable those concerned to exercise their talents and skills, and to contribute to their host countries, none of which is possible if they are unable to work legally.

III. Migration governance: addressing mixed migration flows

25. At this juncture, most countries in the Asia-Pacific region have a long history of international migration. In the process, many Governments have developed institutions and policies to govern different aspects of international migration. From a mostly national framework of migration governance, notable efforts towards more multilateral engagements have been emerging since the 1990s.

26. In developing their responses, Governments should refer to migration-related international instruments, either binding international conventions or non-binding guidance.

27. Human rights conventions are key texts in addressing mixed migration and the situations of vulnerable migrants. This emanates from the fact that all forms of protection found in human rights conventions include migrants, regardless of status. States are therefore bound to ensure that their responses are grounded in the promotion, protection and fulfilment of the rights of all migrants outlined under these conventions within these flows. Guidance towards this outcome includes the *Recommended Principles and Guidelines on Human Rights at International Borders* by the Office of the United Nations High Commissioner for Human Rights; and the report of the High Commissioner on promotion and protection of the human rights of migrants in the context of large movements.²¹

www.iom.int/sites/default/files/our_work/ICP/IDM/2017_IDM/setting%20the%20scene%20IDMDOE%20-%20final.pdf.

²¹ See A/HRC/33/67.

28. In response to mixed migration, UNHCR has produced a 10-point plan in action on refugee protection and mixed migration to serve as guidelines for Governments and other stakeholders on how to include protection in migration policies and how to improve their operational responses. Good practices and examples of how governments and organizations have applied the guidelines are illustrated in the *Refugee Protection and Mixed Migration: A 10-Point Plan of Action*. The 10-point plan provides suggestions in establishing the following:²²

- (a) Cooperation among key partners;
- (b) Collection and analysis of accurate and timely data;
- (c) “Protection-sensitive” entry systems;
- (d) Reception arrangements by a host country that ensure basic needs are met;
- (e) Mechanisms for screening and referral to identify asylum-seekers and others with specific needs;
- (f) Differentiated processes and procedures for different categories of people arriving in mixed movements;
- (g) Solutions for refugees, including traditional durable solutions; as well as additional pathways to access protection and solutions;
- (h) Addressing onward movements by strengthening protection capacities in first countries of asylum and harmonizing asylum procedures and protection, and improving cooperation;
- (i) Return arrangements for non-refugees and alternative migration options, with emphasis on respecting the principle of non-refoulement and return in safety and with dignity; promoting and assisting voluntary and sustainable return; providing reintegration assistance; and return of persons with specific needs who are not refugees (such as victims of trafficking, children);
- (j) Information strategy to educate and raise awareness concerning mixed movements.

29. The Migration Governance Framework, developed by IOM in 2015, offers Governments a similar blueprint for responding to complex, mixed migration flows by providing a comprehensive, concise and practical approach to migration governance. The Framework includes a concise view of an ideal approach to migration governance that allows a State to determine what it might need to govern migration well and in a way that fits its circumstances. It is comprised of three principles and three objectives that focus on good migration governance, building partnerships, fulfilment of migrants’ rights, and advancing the socioeconomic well-being of migrants and society.

30. The Migration Governance Framework is complemented by the Migration Crisis Operational Framework, developed in 2012, which combines humanitarian activities and migration management activities. Grounded in international humanitarian and human rights law, and humanitarian principles, this Framework is intended to support existing international systems, and is designed to fit in with the cluster approach of the Inter-Agency Standing Committee and the international refugee protection regime. Also in the Framework, opportunities and challenges related to migration in preparedness

²² Good practices from the Asia-Pacific are featured in the plan (Office of the United Nations High Commissioner for Refugees, *The 10-Point Plan in Action, 2016 Update* (Geneva, 2016). Available from www.unhcr.org/the-10-point-plan-in-action.html).

and resilience building, peacebuilding, security sector reform, and in the transition from post-crisis recovery to longer-term development are identified.

31. With regard to protracted displacement situations, which challenge the versatility of traditional durable solutions, IOM member States have adopted the Progressive Resolution of Displacement Situations Framework, which aims to frame and navigate the complexity of forced migration dynamics and support efforts to progressively resolve displacement situations. An inclusive, resilience-based approach and mobility strategies that support resolving displacement, while ensuring safety nets are in place to avoid potentially harmful mobility strategies are promoted in the Framework. Specifically, the main functions of the Framework are to: identify and strengthen coping capacities weakened because of displacement; foster self-reliance by responding to the longer-term consequences of displacement; and facilitate the creation of conducive environments by addressing the root causes of crisis and displacement.

32. In providing protection, IOM and UNHCR have established joint standard operating procedures to facilitate the protection of and provision of assistance to trafficked persons. The procedures also are used as a basis for cooperation between the two organizations on the referral of asylum seekers.

33. Additionally, in 2007, the International Federation of Red Cross and Red Crescent Societies embarked on a strategic initiative in humanitarian assistance and protection for migrants, irrespective of their legal status, with a view to adopting a global policy on migration for its National Societies.

34. The recurrence of crisis situations and more effective responses — and more importantly, preparedness to handle similar crises due to conflicts or natural disasters — has resulted in the joint efforts of the Philippines and the United States of America to spearhead the Migrants in Countries in Crisis Initiative. Based on consultations conducted beginning in 2014, the Initiative concluded in 2016 with non-binding and voluntary principles, guidelines, and practices in which the roles and responsibilities of different stakeholders (States, private sector employers, civil society organizations, and international organizations) vis-à-vis migrants in countries in crisis were identified and concrete guidance on preparedness was offered.

A. Regional consultative processes

35. Regional consultative processes, defined as “restricted information-sharing and discussion forums for States with an interest in promoting cooperation in the field of migration”,²³ have proliferated in the Asia-Pacific region since the 1990s, driven by shared interests and the need to address challenges for which national responses are not sufficient. In addition to bringing together Governments and international organizations, civil society organizations and other stakeholders have also been invited to participate in these forums.

36. As a platform oriented to migration issues, these processes are informal, non-binding discussions, which have contributed to networking and building trust and confidence among States that may otherwise be divided by their stance on migration, and building capacity to effect changes in laws and policies at the national and regional levels. Given the challenges posed by mixed migration

²³ IOM, “Regional Inter-State Consultation Mechanisms on Migration: Approaches, recent Activities and Implications for Global Governance of Migration”, IOM Migration Research Series, No. 45, (Geneva, 2013). Available from http://publications.iom.int/system/files/pdf/mrs45_en_10may2013.pdf.

across many States, they provide a particularly useful platform for discussion of relevant topics, as well as for catalysing action to respond to mixed flows.

37. For example, the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime is a forum for policy dialogue, information-sharing and practical cooperation to help the region effectively respond to the challenges of people smuggling, trafficking in persons and other transnational crimes involving 48 member States (almost all the ESCAP members, except those from North and Central Asia), observer countries and IOM, UNHCR and the UNODC. In 2016, the members of the Bali Process adopted a ministerial declaration in which they recognized the importance of irregular migration; the need for comprehensive responses “based on the principles of burden sharing and collective responsibility” and reaffirmed their commitment to their respective international legal obligations and encouraged members to identify and provide safety and protection to migrants, victims of human trafficking, smuggled persons, asylum seekers and refugees, while addressing the needs of vulnerable groups, including women and children, and taking into account prevailing national laws and circumstances, including through granting protection “for those entitled to it, consistent with relevant international legal instruments and in all cases, the principle of non-refoulement should be strictly respected”. They further called for identification of migrants with protection needs; access by international agencies to migrants; alternatives to detention of migrants in vulnerable groups; addressing drivers of mixed migration; law enforcement measures against traffickers and smugglers; comprehensive and long-term solutions for mixed migration flows; collective approaches to address the challenges associated with mixed migration flows; “timely, safe, dignified return of those found not to be entitled to international protection”; and legal pathways for labour migration.²⁴ In addition, through the Bali Process capacity-building support is extended to countries on such issues as the identification and protection of victims of trafficking through policy guides and training workshops.

38. The seven-country membership of the Almaty Process on Refugee Protection and International Migration is a regional consultative process established in 2013 to “address the multiple challenges resulting from complex migration dynamics and mixed migratory movements in Central Asia and the wider region, in a cooperative and coordinated manner.”²⁵ The Almaty Process promotes sustained dialogue and exchange of information on migration issues and on refugee protection challenges, such as irregular migration, human trafficking, migrant vulnerabilities, migrant integration, human mobility and human rights of migrants. The member countries are: Afghanistan, Azerbaijan, Kazakhstan, Kyrgyzstan, Tajikistan, Turkey and Turkmenistan. Other countries of the region and international organizations and civil society organizations are also invited to attend meetings of the Almaty Process on an ad hoc basis.

B. Regional organizations

39. ASEAN has several key migration items in its Community Vision 2025 across all pillars, including irregular migration, smuggling of migrants, trafficking in persons, labour migration, support for vulnerable migrants and addressing displacement in natural disaster contexts. Most recently, the ASEAN

²⁴ The Bali Process, Bali Declaration on People Smuggling, Trafficking in Persons and Related Transnational Crime. Available from www.baliprocess.net/UserFiles/baliprocess/File/Bali%20Declaration%20on%20People%20Smuggling%20Trafficking%20in%20Persons%20and%20Related%20Transnational%20Crime%202016%20%281%29.pdf.

²⁵ See www.iom.int/almaty-process.

Convention against Trafficking in Persons, especially Women and Children, was signed by the ASEAN leaders at the twenty-seventh ASEAN Summit in Kuala Lumpur in November 2015 and entered into force on 8 March 2017. Modelled on the 2000 United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, it is intended to, among other things, strengthen cooperation to prevent and combat trafficking and address the drivers of trafficking and protect victims of trafficking. The ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers is also significant as its main purpose is to provide a framework for action towards the promotion of the rights of migrants, although it is primarily focused on labour migrants. The following is written in the Declaration: “the receiving states and the sending states shall take into account the fundamental rights and dignity of migrant workers and family members already residing with them without undermining the application by the receiving states of their laws, regulations and policies.”²⁶ The Declaration also included a call for an ASEAN instrument on the protection and promotion of the rights of migrant workers, which is under negotiation.

40. In 2016, ASEAN member States further emphasized the need to protect and support victims of trafficking and other migrants in crisis in the East Asia Summit Declaration on Strengthening Responses to Migrants in Crisis and Trafficking in Persons. In the Declaration, the following is noted with serious concern, “the large global displacements of people caused by conflict and crises, including the high numbers of displaced women and children, as well as the tragic loss of life at sea and the abuse and exploitation of people, especially those who are in vulnerable situations, at the hands of people smugglers and perpetrators and accomplices of trafficking in persons.”²⁷ Also in the Declaration, increased cooperation and enhanced preparedness and response is called for in assisting victims of trafficking as well as migrants caught in countries experiencing conflicts or natural disasters .

41. The member States of the South Asian Association for Regional Cooperation (SAARC) adopted the SAARC Convention on Preventing and Combating the Trafficking in Women and Children in Prostitution in 2002 (entered into force in 2006). Although the regional trafficking convention was significant at the time, it is not consistent with broader efforts to address trafficking given its definitional limitations (delimiting the purpose of trafficking to prostitution and the lack of a rights-based approach and enforcement mechanism). More recently, the member States of SAARC adopted the “Kathmandu Declaration” aiming to strengthen cooperation on labour migration to protect migrant workers.

C. Mixed migration in the Asia-Pacific region: ways forward

42. The region’s stock of migration experiences and the landscape of migration governance foster facilitative factors and challenges in charting a way forward to address the challenges of mixed migratory movements. In many cases, States have shown exceptional solidarity with migrants in addressing mixed migration flows; countries, such as the Islamic Republic of Iran, Pakistan, Thailand and Turkey, have been hosting large numbers of migrants and refugees

²⁶ ASEAN, Declaration on the Protection and Promotion of the Rights of Migrant Workers. Available from www.ilo.org/dyn/migpractice/docs/117/Declaration.pdf.

²⁷ See www.interpol.int/Media/Files/INTERPOL-Expertise/EU-ASEAN-Programme/ASEAN-Convention-Against-Trafficking-in-Persons-2015.

with significant protection needs over long periods of time, in many cases beyond their obligations under international law.

43. Furthermore, the expanding lens of migration governance beyond the national framework and the inclusion of voices of non-State actors are encouraging developments. Countries, with the support of international organizations such as IOM and UNHCR, have jointly developed comprehensive responses to mixed migration situations. Civil society organizations have been important in advocating the protection of migrants' rights in various forums. Region-wide networks of civil society organizations have also developed over the years, including the Migrant Forum in Asia and the Asia-Pacific Refugee Rights Network, to provide programmes and services to migrants. The role of international organizations in supporting regional consultative processes is invaluable in bridging otherwise opposing stances between countries of origin and countries of destination.

44. However, challenges remain. In particular, respect for the principle of State sovereignty and State security concerns is not matched by respect for States' human rights obligations. As noted earlier, the region's record in the ratification of refugee-, migration- and labour-related international instruments is not encouraging, while there is a continued reluctance in many countries to recognize in law that all migrants, regardless of status, are entitled to the protection of their human rights.

45. States in the region have also been reluctant to establish a regional framework towards dealing with large movements of migrants, refugees and asylum seekers. The 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa is the first binding regional legal instrument on refugee matters in the developing world. Latin American countries have the non-binding 1984 Cartagena Declaration on Refugees for the protection of refugees. However, subregional organizations in Asia and the Pacific have not adopted similar agreements. For example, while ASEAN was able to engage the international community in formulating the Comprehensive Plan of Action for Indo-Chinese Refugees, this experience did not yield increased ratifications of the 1951 Convention Relating to the Status of Refugees, nor did it lead to the development of a broader framework for greater cooperation to address future crises. As a result, the situation of migrants and refugees in mixed flows is precarious, with risks of excessive detention and refoulement.

46. Except for the ASEAN and SAARC Conventions related to trafficking, cooperation among countries in the Asia-Pacific region is voluntary and non-binding. Bilateral agreements have been signed among countries in the region. In most of them, migrants' rights are not included in such agreements, rather, they primarily deal with access to the labour market by origin countries or access to labour supply by destination countries.

47. Annexes I and II of the New York Declaration include recommendations on the way forward to address the challenges of mixed migration flows and the complexities introduced by distinct, but also overlapping and intersecting, categories of people on the move. Moving towards the negotiations for the global compact for migration for safe, orderly and regular migration, the following recommendations may be considered with regards to mixed migration:

(a) A human rights-based approach must be at the heart of responses to mixed migration. In the context of a rights-based approach, assistance and protection must be afforded on a needs-first basis to all vulnerable migrants, regardless of their status, along migration routes. National and regional

cooperation as well as multilateral approaches for search and rescue (land and sea) are necessary to detect and assist lost, missing and injured migrants. Subsequently, life-saving assistance must be extended to those in need, ranging from basic survival assistance to complex health assistance to those who are critically ill and injured to expedited processing for those stranded for a viable solution;

(b) In conjunction with the above, the necessary procedures and legislation, infrastructure capacities, human resources and equipment to adequately respond to sudden movements of mixed migration flows must be established. This includes emergency procedures for registration/information/identity management; document verification; and the establishment and management of ad hoc camps at border points. Preparations must also be made for setting up foundations for infrastructure (roads, ad hoc camps/adequate shelter, buildings, office spaces and furnishings, electricity and, communications). Finally, human resources and training must be allocated for specialists in security, public and migration-specific health, trafficking/smuggling, human rights law, search and rescue, and passport/registration/passenger checking procedures;

(c) Greater access to safe, regular migration and mobility options are also necessary for safe, orderly and dignified human mobility. Governments should work to open adequate pathways for regular migration at all skill levels in line with destination countries' labour market and demographic needs; enhance options for family unification and education abroad; promote the establishment of alternatives to dangerous migratory movements; expedite processing; and provide clear and accurate information about the risks of irregular migration;

(d) Countries should ratify all relevant conventions, notably the Convention and Protocol Relating to the Status of Refugees; the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Sea and Air; and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and transpose their provisions into national laws;

(e) In the absence of a framework on refugees in the Asia-Pacific region, the comprehensive refugee response framework in annex I of the New York Declaration for Refugees and Migrants could constitute an important reference for the consideration of a refugee response framework for the region. Towards this collective reflection, it would be useful to identify points of convergence between practice and the guidelines of this document, and how to move forward, as well as points of contestation, which would require an examination of the factors that foster disagreement;

(f) Given the reality of irregular migration in the region, the recommendations in annex II of the New York Declaration for Refugees and Migrants concerning reducing the incidence and impact of irregular migration, and the consideration of policies to regularize the status of irregular migrants, reiterate recommendations suggested by earlier and existing initiatives in the region, such as regional entities or regional consultative processes, and therefore could be considered as a basis for further action;

(g) Governments should cooperate to address the drivers of mixed migration, including through strengthening the rule of law and human rights, addressing environmental degradation and promoting balanced and sustainable development, to ensure that migration is a choice, not a necessity;

(h) Governments in the region should commit to improving migration-related data and statistics to enhance their usefulness in policymaking and to

better monitor progress in meeting the Sustainable Development Goals. In particular, as a basis for policies that deal with the drivers of irregular and forced migration, further research and initiatives are essential to gather quantitative and qualitative data on the needs, profiles, expectations, vulnerabilities and intentions of vulnerable mobile populations. In addition, combatting drivers of irregular and forced migration needs to involve stabilization and development programmes in countries of origin and along migration routes. This could include efforts aimed at conflict prevention, transition, recovery, governance, resilience-building, social cohesion and disaster risk prevention;

(i) Governments in the region should build on the dialogue, exchange and cooperation promoted by regional consultative processes. Conducting a regular assessment of the regional consultative processes to chart achievements, to identify gaps, and to check the relevance of these forums in addressing present and emerging issues would be valuable. Regional consultative processes may consider adopting a long-term programme of initiatives to address persistent and difficult challenges, such as mixed migrations, stranded refugees and irregular migration;

(j) Further to the above, Governments and other relevant actors should work to establish an inclusive and integrated approach that fosters cooperation within and among countries of origin, transit and destination. Fair and balanced cooperation, including within existing regional or interregional consultative processes, is essential for establishing or reinforcing policy and operational platforms. A comprehensive range of concrete policies and actions to improve migration governance must be taken jointly by stakeholders in countries of origin, transit and destination;

(k) The trend towards a multilevel and multi-stakeholder approach to migration governance suggests a critical role for international organizations to convene different sectors and actors from the local to the global levels. Support of international organizations to facilitate the participation of non-governmental actors and institutions, including migrants' associations, in migration discussions will continue to be essential;

(l) To counter discrimination, xenophobia, and racism, all stakeholders – governments, civil society organizations, international organizations, academia, media – should work together to formulate an action plan for public education to promote a better understanding of migration, migrants' rights and the contributions of migrants to their origin and destination societies.
