

## **Crisis Management in the ASEAN + 3 countries**

### **Migration: In Search for Proper Management**

#### **Introduction**

A crisis is “specific, unexpected and non-routine events or series of events that create high levels of uncertainty or threat or perceived threat to an organisation’s high priority goals”.<sup>1</sup> For ASEAN (and + Three), the “high priority goals” are to create “an organisation that would help bring about a Southeast Asian region of peace, freedom and prosperity for our peoples”.<sup>2</sup> This reflects ASEAN’s “desire and collective will to live in a region of lasting peace, security and stability, sustained economic growth, shared prosperity and social progress, as well as promote ASEAN interests, ideals and aspirations”.<sup>3</sup> However, within ASEAN, there exist a number of “crises” and mini-crises” which arise from “highly complex circumstances”. Such crises tend to take place in a political space, where the level of states’ preparedness and responses are crucial. Many of these situations may be “intense, deadlocked, and extremely difficult to resolve” such as man-made and natural disasters, disputes over the South China Sea, mixed and forced migration, various health risks, etc. Some attract the attention of the international community such as the case of irregular movement in the Andaman Sea but, often times, interest has faded away until the crisis re-emerged. Such crises do not just affect neighbouring countries or regions, but they could become threats to the very purposes of the region and its dialogue partners themselves. Crisis management is the procedure through which states and organizations interact in striving to effectively react to an emergency that threatens the safety and well-being of the people.<sup>4</sup> Without proper management, the crises mentioned earlier will definitely hinder the “high priority goals” which are peace, security, prosperity and the social progress of ASEAN and beyond.

This paper is based on the discussion held in Bangkok, Thailand, on June 10, 2016 hosted by the Thai Ministry of Foreign Affairs, the Higher Education Commission, Thai Ministry of Education and the AUN Secretariat with additional research to ensure a solid academic quality for policy recommendations. Experts/Representatives from 8 ASEAN Member States namely Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Singapore, Vietnam, and Thailand as well as Plus 3 including China, Republic of Korea and

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<sup>1</sup> Management Association, Information Resources , ed, (2013), Crisis Management: Concepts, Methodologies, Tools, and Applications , p.812, [https://books.google.co.th/books?id=-R9HAgAAQBAJ&pg=PA812&lpg=PA812&dq=Crisis+management+is+the+process+by+which+an+organization+deals+with+a+major+event+that+threatens+to+harm+the+organization,+its+stakeholders,+or+the+general+public.&source=bl&ots=0NqiqBWjn&sig=TC9Aas9PohDalRQ\\_DgMmf9LxfJs&hl=en&sa=X&ved=0ahUKEwjM2sbW9uLKAhVUkY4KHcahANMQ6AEIPzAJ#v=onepage&q=Crisis%20management%20is%20the%20process%20by%20which%20an%20organization%20deals%20with%20a%20major%20event%20that%20threatens%20to%20harm%20the%20organization%2C%20its%20stakeholders%2C%20or%20the%20general%20public.&f=false](https://books.google.co.th/books?id=-R9HAgAAQBAJ&pg=PA812&lpg=PA812&dq=Crisis+management+is+the+process+by+which+an+organization+deals+with+a+major+event+that+threatens+to+harm+the+organization,+its+stakeholders,+or+the+general+public.&source=bl&ots=0NqiqBWjn&sig=TC9Aas9PohDalRQ_DgMmf9LxfJs&hl=en&sa=X&ved=0ahUKEwjM2sbW9uLKAhVUkY4KHcahANMQ6AEIPzAJ#v=onepage&q=Crisis%20management%20is%20the%20process%20by%20which%20an%20organization%20deals%20with%20a%20major%20event%20that%20threatens%20to%20harm%20the%20organization%2C%20its%20stakeholders%2C%20or%20the%20general%20public.&f=false) , accessed 13 January 2016.

<sup>2</sup> ASEAN, Kuala Lumpur Declaration on ASEAN 2025 : Forging Ahead Together, <http://www.asean.org/storage/2015/12/ASEAN-2025-Forging-Ahead-Together-final.pdf>, accessed 13 January 2016.

<sup>3</sup> Ibid.

<sup>4</sup> Management Association, Information Resources , ed, Ibid.

Japan have presented the papers and participated in the discussions. At the end of the Meeting, recommendations were made which are reflected in this report.

The paper serves as the summary of the rich discussions. It aims to understand the situation of mixed migration in the ASEAN context and how ASEAN has dealt with them so far. It also attempts to analyse the different responses, or lack thereof, of ASEAN (and the plus 3) to such highly complex situations in order to assess effectiveness of the existing policies and mechanisms in the region in addressing the issues in order to provide recommendations for a regional approach to migration. Ultimately, the purpose of this paper is to propose concrete recommendations and ways to manage and prevent the crisis.

As of 2015, the Association of Southeast Asian Nations (ASEAN) was home to approximately 630 million people.<sup>5</sup> The proportion of people's movements within the region is rapidly rising. Migration has become an important and integral component of development in the region and its dialogue partners. The causes of migration may vary from one country to another but more and more common problems are poverty, violent conflicts, discrimination, persecution and other forms of human rights violations. In addition, environmental migration and displacement through other causes are becoming increasingly prevalent in the region. Irregular and mixed migratory flows are also key trends in ASEAN. Irregular migration is the cross-border flow of people who enter a country without that country's legal permission to do so. Mixed migratory flows are complex population movements including both voluntary and forced ones. The most common forms of migration in the region are irregular labour migration, trafficking for labour and/or sexual exploitation. Unfortunately, people who flee from persecution, discrimination or armed conflict are, often times, also considered as migrants in irregular situation. Although migration has been always in the region, ASEAN has never had any comprehensive policy to deal with it. Most agreements and policies in ASEAN deal mainly with movements of skilled labour or professions.

Although the issue of migration is not new to ASEAN (and the Plus 3- China, Japan and South Korea), and despite an increasing number of maritime movement, the situation has not been recognized by ASEAN member states as a "crisis". This increase in maritime movements and a loss of life at sea which has added to the already flourishing people-smuggling and human-trafficking networks in the sub-region calls for proper solution and management. Unless migration is properly managed, it will have permanent and intensifying negative impacts on countries in the region. Forced migration, if not properly and consistently addressed, contributes directly to smuggling, trafficking and transnational crime. What is lacking in the region currently is a collective, comprehensive and coordinated response to challenges associated with both sudden and entrenched practices of displacement, regardless of causes.

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<sup>5</sup> Statistics Times 27 March 2015 at <http://statisticstimes.com/population/asian-countries-by-population.php> and Selected Basic ASEAN Indicators, August 2015. , [http://www.asean.org/images/2015/september/selected-key-indicators/table1\\_as%20of%20Aug%202015.pdf](http://www.asean.org/images/2015/september/selected-key-indicators/table1_as%20of%20Aug%202015.pdf), accessed 13 January 2016.

## Situation of mixed migration in ASEAN and plus 3.

### Intra-ASEAN Labor Migration

Out of around 625 to 630 million population in the 10 AMS, labour forces make up of around 285 million. The 2013 data showed that ASEAN labour movement made up of 4.1 % of the total world labour migration. The countries receiving most labour forces from within ASEAN are Singapore (18.1%); Malaysia (25.7%) and Thailand (53.3%). The countries sending most labour forces to within ASEAN include Myanmar (29.2%); Indo (18.3%); Malaysia (15.5%); Laos (13.7%); and Cambodia (11.4%).<sup>6</sup> Labour migration contributes significantly to economic development of ASEAN countries. For example, by 2011, 63% of labour forces of Singapore are foreigners. In Malaysia, 13% of labour forces is labour migration. Singapore is most dependent on foreign labour.<sup>7</sup> Despite their contribution, there are problems.

Uneven economic development within the region has facilitated intra-ASEAN labor migration. With different economies of scale, countries within ASEAN have drawn different types of workers into different sectors of their economies in accordance with their levels of economic development. In effect, this has led to an unlevel playing field where relatively richer countries are at the top, the medium income countries are located in the middle, and the poorest ones are relegated at the bottom. The situation has been aggravated when these migrant laborers have not been protected by legal frameworks of the receiving countries due to their lack of proper documents or those have been confiscated by recruitment agencies. There are also people who come from countries where state-imposed conflict is regarded as rather a norm than an exception. In effect, the different levels of economic development in line with certain political contexts has created the hierarchy of victims from least to worst.

It's important to reiterate that Singapore is the country which attracts the most highly skilled laborers from countries in ASEAN and outside of ASEAN. Thailand, Malaysia and Singapore are the top three countries in ASEAN which received large number of migrants from non-ASEAN countries. At the same time, Myanmar, Indonesia, Malaysia, Laos, and Cambodia are the top five states in ASEAN which export the largest number of workers to other ASEAN countries. These are relatively low skilled laborers. The case of domestic workers was highlighted in the presentation. It was found out that they have been subjected to abuses and exploitation. According to latest *FARSIGHT* Report, forty percent of the world's estimated fifty two millions domestic workers have worked in the Asia-Pacific. Within that forty percent, over two million laborers are from Indonesia and Philippines. Over sixty percent of domestic workers abroad have experienced exploitation.<sup>8</sup>

### ASEAN+3 Labor Movement:

In order to promote economic development and connectivity within the region, governments including Thailand, Cambodia and Myanmar have come up with Special Economic Zones (SEZs) geared towards building infrastructure and logistics systems. These projects have been strategically planned and put in place along regional "economic corridors," areas where the host countries have provided conducive policies for

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<sup>6</sup> Nguyen Huy Hoang, Migration in Southeast Asia, Problems and Solutions, Power Point Presentation made during the NEAT Working Group Meeting, Bangkok, 10 June 2016.

<sup>7</sup> Ibid.

<sup>8</sup> FARSIGHT. 2016. *Modern Slavery in East Asia: Protecting the Rights and Promoting the Autonomy of Domestic Migrant Workers from Indonesia and The Philippines*. Creative Commons. <http://un-act.org/publication/view/modern-slavery-in-east-asia-protecting-the-rights-and-promoting-the-autonomy-of-domestic-migrant-workers-from-indonesia-and-the-philippines/>, accessed 7 June 2016.

the purpose of attracting investment such as deregulating the labor market; tax-incentives; and longer leases for foreign investors. Towards the end of the day, SEZs along economic corridors can indirectly influence ASEAN's labor corridors, contributing distinctive characteristics such as the rise of irregular migration which can easily lead to all forms of abuses. This is especially true when there is uneven development in the region. For example, countries with enormous sums of capital such as China, Japan, and South Korea can easily invest in SEZs in GMS countries where the incentives for investment are provided.

Meanwhile, Northeast Asian countries, especially Korea, have become a large marriage market for migrants from Southeast Asia. Some of these are subject to exploitation or discrimination. At the same time, Japan has mostly adhered to the "isolationist policy" on migration though there has been a call for reform pertaining to migration policies among different sectors in society.<sup>9</sup> Migrant workers in Japan are not fully protected by the Japanese law. This is especially true when these migrants are temporary workers such as interns<sup>10</sup>.

### Trafficking in Persons in the context of ASEAN+3:

The definition of human trafficking was widely argued and discussed until the 'Palermo Protocol' where the first internationally agreed definition was made. Why do people engage in trafficking in Persons? The simple answer is that it makes a good business. According to the International Labor Organization 2014, money involved in TIPs is \$150.2 billion per year, and it has involved 20.9 million people. Perpetrators make on average \$4,000 per victim. In Asia, the profits (highest compared to other regions) made under the forced labor are \$51.8 billion annually. The Asia-Pacific is by far the most affected region in the world by absolute numbers of 11.7 million people.<sup>11</sup> Interestingly, within the Asia-Pacific, the most extensive flows of migration and TIPs can be found in the Greater-Mekong Sub-region (GMS: Cambodia, China, Lao PDR, Myanmar, Thailand and Vietnam).<sup>12</sup> Indeed, the key characteristics of migration within the Greater Mekong Sub-region are a "fast-growing migration flow within and outside the sub-region; irregularity of movement; labor exploitation and violation of human rights with minimal legal support services".<sup>13</sup> As a result, any irregular migrants can easily be the victims of TIPs. Nevertheless, most of the victims of TIPs tend to come from the countries in ASEAN.

TIPs in the GMS occurs for a wide range of purposes including "for forced labor in the fishing and seafood industries, in agriculture, construction, domestic servitude or begging; as well as for sexual exploitation or forced marriage".<sup>14</sup> This typology can be seen in the case of Cambodia in which Cambodian male migrants are mostly trafficked to Thailand for fishing industry, to Malaysia as domestic workers, and to China (females) for marriage.

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<sup>9</sup> Policy Brief from the Japan Meeting 23<sup>rd</sup> -24<sup>th</sup> January. 2016. *Integration of Migrants and Social Policy Issues: Reflection from Japan, Korea, and Thailand towards Creation and Inclusive Society*. Kobe University Research Center for Promoting Intercultural Studies (PROMIS). Kobe, Japan.

<sup>10</sup> Toko Sekiguchi, Wall Street Journal, April 14, 2015. "Japan Skirts Immigration Debate by Offering 'Internships' to Foreigners." <http://www.wsj.com/articles/japan-skirts-immigration-debate-by-offering-internships-to-foreigners-1429049533>, accessed 7 June 2016.

<sup>11</sup> Boll, Sebastian. 2014. *Workshop on Migration and Human Trafficking in Thailand's Lower North*. (March 17, 2015). [Workshop].

<sup>12</sup> United Nations Action for Cooperation against Trafficking in Persons (UN-ACT). 2014. *UN-ACT Project Brief*. UN-ACT.. <http://un-act.org/wp-content/uploads/2015/03/UN-ACT-Project-Brief.pdf>, Accessed 7 June 2016.

<sup>13</sup> Nguyen Anh, Dang. 2016. "Female Labor Migration in the Mekong." Paper presented at the 4<sup>th</sup> Mahidol Migration Center Regional Conference in the Era of Transnational Migration hosted by Institute for Population and Social Research (IPSR), Mahidol University. Nakhon Pathom, Thailand, 28-30 June 2016.

<sup>14</sup> United Nations Action for Cooperation against Trafficking in Persons (UN-ACT). 2014. *UN-ACT Project Brief*. UN-ACT. <http://un-act.org/wp-content/uploads/2015/03/UN-ACT-Project-Brief.pdf>, accessed 7 June 2016.

It is worth mentioning here that the issue of bride trafficking has become very pressing in the region. Faced with a mostly-male gender imbalance, countries such as China, Korea, and Taiwan are increasingly seeking to import brides from ASEAN countries. According to the study by Fang, there could be around 30 million bachelors in China by 2020.<sup>15</sup> In effect, many young women in countries such as Cambodia, Lao PDR, Myanmar, Vietnam have become vulnerable to be trafficked to China for forced marriage.

Despite an estimated 21 million people in conditions of forced labor, the 2015 US State Department's TIP report indicated that only 44,462 victims of trafficking were identified globally in 2014. In the same year, only 10,051 alleged traffickers were prosecuted, leading to only 4,443 convictions. What does this mean? It means that in most of the TIPs cases, the perpetrators tend to escape punishment. In addition, the number of victims identified are much less than the overall number of victims in reality.

### National and Regional Framework and Trafficking in Persons

Since the nature of migration itself involves transnational problems related to migration of a country, they can easily spill over to other countries. Where a state lacks a legal framework covering migration, this can affect the overall migration situation of the region. In other words, the problems regarding migration in one country have entangled neighboring countries such that it has become a regional problem. Thus, there is a need to call for both a national and regional framework to tackle this growing crisis.

In terms of a national framework, several countries in ASEAN have the TIPs law per se while China, Lao PDR do not have the TIPs law.<sup>16</sup> This becomes more problematic and complicated when the problem involves two countries: one with a country where the TIPs law exists and one where the TIPs law does not exist. This difficulty refers to the incompatibility of national legislation of the sending and receiving countries.

With regard to a regional framework, ASEAN recently adopted the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP) in 2015.<sup>17</sup> ACTIP has produced several positive aspects regarding TIPs. First, it has gotten all ASEAN members to recognize the significance of TIPs issues and their ramifications. Second, it is the first time that ASEAN has addressed this issue through a regional legal framework. Third, the Convention directly addresses the issues related to Trafficking in Persons per se. Fourth, it offers a clear definition of a Minor: "Child means any person under 18" (Article 2[d])." This can easily help prevent the case of Child Trafficking in the future. However, the Convention has some loopholes. These loopholes include a non-legally binding mechanism and prioritizing national sovereignty over regional concerns. These points can be seen in Article 4 of the Convention.

Article 4: Protection of Sovereignty

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<sup>15</sup> Fang, Lan. 2014. "The Jiangxi Township Doing a Brisk Trade in Cambodian Wives." *Caixin Online*, August 12.. <http://english.caixin.com/2014-08-12/100715994.html>, accessed 24 July 2016.

<sup>16</sup> Philippines "The Anti-Trafficking in Persons Act of 2003" (2003); Brunei "The Trafficking and Smuggling Persons Order" (2004); Myanmar "The Anti-Trafficking In Persons Law" (2005); Indonesia "The Eradication of the Criminal Act of Trafficking in person" (2007); Malaysia "Anti-Trafficking in Persons Act" (2007); Cambodia "The Law on Suppression of Human Trafficking and Sexual Exploitation" (2008); Thailand "The Anti-Trafficking In Persons Act, B.E. 2551" (2008); Vietnam "Anti Human Trafficking Law" (effective January 1, 2012); Singapore "Prevention of Human Trafficking Act" (2014). See Lim (2015) for further detail. Lim, Janina. 2015. "Looking back: First anti-trafficking law in Southeast Asia." *Rappler*, May 26. Accessed August 19, 2016. <http://www.rappler.com/newsbreak/iq/94362-looking-back-ph-first-anti-trafficking-law-asean>

<sup>17</sup> Association of Southeast Asian Nations (ASEAN). 2015. *ASEAN Convention Against Trafficking in Persons, Especially Women and Children*. Kuala Lumpur, Malaysia: 27<sup>th</sup> ASEAN Summit. <http://www.asean.org/wp-content/uploads/images/2015/November/actip/ACTIP.PDF>, accessed 7 June 2016.

1. The Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of **non-intervention in the domestic affairs** of other States.

2. Nothing in this Convention entitles a Party to undertake in the territory of another Party the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other Party by its **domestic laws**.

In effect, the ACTIP could be rendered ineffective since it has no enforcement instrument. In addition, it might not have any influence on TIPs as long as the domestic laws of a given country authorize the officials of that country to handle or resolve a given case unilaterally.

As can be seen from what was discussed earlier, ASEAN does not have policy and clear agenda on labour migration in general despite the ASEAN Mutual Recognition Agreements which limited to skilled workers only. And, in spite of the existence of the ASEAN Declaration on the Protection of the Rights of Migrant Workers, the violations of their rights and abuses are continuing. The ASEAN Intergovernmental Commission on Human Rights, the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children as well as the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection of the Rights of Migrant Workers, are not in the position, until now, to monitor their human rights situation.

As said, the ACTIP was adopted and open for ratification but not yet enter into force. This convention could have been a useful instrument to protect victims of trafficking if it was not subject to national legislation as it would have served as a regional standard to respond to issues of trafficking in persons. What is also problematic in ASEAN is about forced migration on which ASEAN does not have any common approach.

### Forced migration<sup>18</sup>

Whilst migrants choose to move not because of a direct threat of persecution or death, but mainly to improve their lives by finding work, or in some cases for education, family reunion, or other reasons, asylum seekers and refugees cannot safely return home<sup>19</sup> as they were forced to leave the country of origin because of persecution, discrimination, exploitation and human rights violations. In addition, in many countries of the region, there are also those stateless persons who are not recognized by any states.

In 2015, according to UNHCR, “(t)he Asia and the Pacific region is home to 7.7 million people of concern to UNHCR: they include 3.5 million refugees, 1.9 million internally displaced people (IDPs), and 1.4 million stateless people. The majority of the refugees originate from Afghanistan and Myanmar. The Afghan refugee population constitutes the largest protracted situation in the world. Up to 96 per cent of all Afghan refugees live in the neighbouring Islamic Republics of Iran and Pakistan, which have generously hosted them for over three decades. In Southeast Asia, the “Myanmar situation also remains a key operation. An estimated 500,000 refugees from different ethnic groups have been fleeing for several decades in search

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<sup>18</sup> Parts of this section were drawn from the paper jointly prepared by Sriprapha Petcharamesree and Francis Tom Temprosa, Intractable Human Rights Situations and the ‘Failed’ International Response to Crises: The Case of the Plight of Refugees and Refugee-like Situations in Asia and the Pacific, presented at the Global Class room, Venice, 8-13 May, 2016.

<sup>19</sup> UNHCR, Refugee or Migrants : Word choice matters, 11 July 2016, <http://reliefweb.int/report/world/unhcr-viewpoint-refugee-or-migrant-which-right-11-july-2016>, accessed 14 July 2016.

of protection from ethnic conflict and violence.”<sup>20</sup> This includes Karen and Karenni in Thailand, Chins in Malaysia, Rohingyas in Bangladesh and large urban populations in cities across the region.”<sup>21</sup> Over two thirds live outside camps, mainly in urban environments where they often find inadequate protection, leading to onward irregular movement by sea. Many of them are more vulnerable than those in camps and their protection needs are often inadequately addressed. Although not confined to the boundaries of a camp, the freedom of movement of these urban refugees is often limited. Many lack documentation and risk detention and deportation.”<sup>22</sup> The same report reveals further, “detention practices and other forms of restrictive asylum policies continue to spread, limiting refugees’ access to basic services and socio-economic rights. Lack of status and documentation prevents them from legally accessing the labour market and they become victims of exploitation, with women and adolescent girls particularly vulnerable to sexual exploitation.”<sup>23</sup> The cases mentioned above are known to the international community, and reports on issues are not lacking.

In East Asia and the Pacific, the 2015 UNHCR sub-regional operations profile shows that as at December 2015, an estimate of more than 350,000 refugees are found in the sub-region. Australia, Papua New Guinea, New Zealand, Japan, Republic of Korea, Nauru, and Hong Kong have, in different numbers, refugees in their territories. China alone is the origin of about 210,815 refugees while being the host of 301,057 refugees.<sup>24</sup> In Southeast Asia, according to the data compiled by UNHCR, as of 29 February 2016, a total of 13,829 persons of concern (refugees and asylum -seekers) are found in Indonesia. About 7,000 are from Afghanistan, the rest is from Myanmar, Somalia, Sri Lanka, Iran, Palestine, Pakistan, Iraq and others.<sup>25</sup>

In Malaysia, “asylum seekers and refugees generally reside in urban areas, with the vast majority originating from Myanmar. Other groups are from Sri Lanka, Iran, Pakistan, Syria, Iraq and Somalia. Approximately 40,000 people residing in Malaysia are considered stateless; the majority are ethnic Tamils formerly from India.”<sup>26</sup> The figures do not include those found in Sabah and Sarawak. According to the last count, around 80,000 Filipino refugees registered in Sabah, of which some 61% are documented and 39% are not.<sup>27</sup> It was further noted that as at June/August 2015, 63% of 153,880 ‘peoples of concern were classified as refugees while 35% as asylum seekers (applicants). A further 120,000 stateless and ‘various individuals’ are not included. Compared to the tens of thousands above, Refugee Status Determination and

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<sup>20</sup> United Nations High Commissioner for Refugees (UNHCR). (2015). UNHCR regional operations profile - Asia and the Pacific. Available at: <http://www.unhcr.org/pages/4a02d8ec6.html>, accessed 30 Jan. 2016.

<sup>21</sup> UNHCR, (2015), UNHCR Global Appeal 2015 Update, p.122, <http://www.unhcr.org/5461e5f7a.pdf>, accessed 20 August 2016.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> UNHCR. (2015a). UNHCR sub-regional operations profile - East Asia and the Pacific. Available at: <http://www.unhcr.org/pages/49e45b276.html>, accessed 20 June. 2016.

<sup>25</sup> UNHCR Country Profile, <http://www.unhcr.org/50001bda9.pdf>, accessed 9 Apr. 2016.

<sup>26</sup> CaLP, Country Profile : Malaysia, <http://www.cashlearning.org/downloads/poc-workshopcountry-profilemalaysia.pdf>, accessed 20 August 2016.

<sup>27</sup> (i) UNHCR Malaysia, ‘Figures at a Glance,’ April 2016. (ii) UNHCR, ‘UNHCR Factsheet – Malaysia,’ August 2015. (iii) UNHCR, ‘Malaysia – Statistical Snapshot,’ June 2015. (iv) UNHCR, ‘Malaysia – 2016 Plan Summary – Filipino Refugees in Sabah

Resettlement (as at August 2015) was only 6,116 and 7,257 respectively. These figures do not include undocumented migrants, who are believed to number from 2m-4m. Malaysia does not differentiate between the asylum seekers and undocumented workers; legally both are deemed 'illegal immigrants'.<sup>28</sup>

In Thailand, as of December 2015, there were in total 625,256 persons of concern to UNHCR including 110,372 Refugees, 8,166 Asylum Seekers and 506,197 Stateless Persons. Majority of asylum seekers and refugees are from Myanmar.<sup>29</sup>

Of these countries, Indonesia has the smallest cohort. Hundreds of asylum seekers from many countries other than Myanmar and Bangladesh keep arriving there as they are not deterred by Australia's Operation Sovereign Borders.

It is critical to note that figures of refugees, asylum-seekers, and those in refugee-like situation, in some cases, are difficult to verify. The figures may not themselves translate to intractability, but the lack of credible statistics and verifiable figures on refugee influx would contribute to intractability and eventually a crisis.

Despite the fact that the region has been, for over two decades, experiencing economic growth, a growing number of people are seeking asylum, and this trend is continuing; at the same time, international attention is decreasing, as these situations are not considered "crisis situations" when compared with what has been happening in Europe or Africa. However, one should not forget that this situation of forced migration around the region is a persistent and increasing regional phenomenon. Unless properly managed, it will have permanent and intensifying negative impacts on countries in the region. What is lacking in the region currently is a regional governance of migration as well as a collective, coordinated response to challenges associated with both sudden and ongoing episodes of displacement, regardless of cause. Forced migration, in whatever form, including refugees and stateless persons, if not properly and consistently addressed, contributes directly to, and can be exacerbated by, smuggling, trafficking, and transnational crimes.

Forced migration, as already stated, is not new in ASEAN states. It has, however, been kept 'below-the-radar', with little public disclosure and even less discussion.<sup>30</sup> The reasons for this include;

- It is not in the interests of states that are not party to the 1951 Refugee Convention and its 1967 Protocol to assume internationally binding legal responsibilities for "irregular" people movements;
- Any policies adopted by recipient states that are seen as welcoming of irregular migrants will encourage such flows, strengthen people smuggling and trafficking networks and further burden national systems;
- Governments recognise that irregular migrants are highly vulnerable to exploitation and can benefit their economies but wish to retain discretion as to if and when to remove them;

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<sup>28</sup> Ibid.

<sup>29</sup> UNHCR Country Profile , Thailand, 2015, Power Point presentation by Steven C.M.Wong, NEAT Working Group on Migration Forced Migration: The 'Not-So Silent' Crisis, Bangkok, 10 June 2016.

<sup>30</sup> Ibid.

- In certain cases, institutional linkages form between government officials and vested groups, such as private companies or even human smugglers/traffickers;
- Irregular migration can be a political and social liability to governments of the day.<sup>31</sup>

Wong, however, argued that “keeping forced migration quiet is becoming/has become untenable, especially with highly publicised incidents of people trafficking and international scrutiny”.<sup>32</sup>

The Andaman Sea crisis in May 2015 served as a wakeup call for ASEAN or at least some AMS directly affected by the crisis to deal with the situation. How the issues of forced migration have been dealt with by the region so far.

### Responses (or lack of responses) to forced migration.

It can be seen from the study above that despite some common characteristics, the responses to the issues have not been the same except the adoption of common notion of “irregular movement”, irregular migration” or “illegal migrants” subject to arrest and deportation. The responses (or lack thereof) to the forced migration in ASEAN and East Asia, as well as efforts made by the respective regional entities concerned, and the international community through the Bali Process are as follows;

#### ASEAN + 3

The world still recalls the influx of refugees called the ‘boat people’ from Indochina in the 1970s and early 1980s. The situation pushed the international community and ASEAN to find approaches to solve the problem. This initiative, known as the Comprehensive Plan of Action (CPA), was an agreement brokered by ASEAN with the UNHCR and resettlement states in the West, in response to ASEAN member states’ concerns. At that time, member states were providing refuge as countries of ‘first asylum’.<sup>33</sup> At the conclusion of the CPA, the Indochinese camps in Southeast Asia were all closed. The CPA brought an end to the exodus of Laotian and Vietnamese asylum-seekers, and provided the means for the continued resettlement of refugees and special immigrants, as well as the safe return of those found not to meet international refugee protection criteria.<sup>34</sup> The CPA was considered a ‘successful’ one, and there have been calls by the international community for a second CPA when ASEAN/South East Asia was facing the flows of another ‘boat people’ from Myanmar, Afghanistan, and Sri Lanka, many en route to Malaysia and now Indonesia. The CPA was launched despite the fact that, by that time, no country in South East Asia was a party to the 1951 Refugee Convention.

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<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

<sup>33</sup> Petcharamesree, Sriprapha. (2015). ASEAN and its approach to forced migration issues, *The International Journal of Human Rights*, 20(2), pp. 173-190.

<sup>34</sup> Robinson, 1998 cited by Petcharamesree, Ibid.

Table 1. Treaty parties at 1 April 2016 (No reservations nor Declarations are noted) <sup>35</sup>

	1951 Refugee Convention and/or Protocol	CAT	ICCPR
China	Yes	Yes	No
Hong Kong SAR (China)	No	Yes	Yes
Japan	Yes	Yes	Yes
North Korea	No	No	Yes (but purported withdrawal)
South Korea	Yes	Yes	Yes
Brunei	No	No (but signed on 22 September 2015)	
Burma (Myanmar)	No	No	No
Cambodia	Yes	Yes	Yes
Indonesia	No	Yes	Yes
Laos	No	Yes	Yes
Malaysia	No	No	No
Mongolia	No	Yes	Yes
Philippines	Yes	Yes	Yes
Singapore	No	No	No
Thailand	No	Yes	Yes
Viet Nam	No	Yes	Yes
Timor Leste	Yes	Yes	Yes

As shown in the Table, all Plus 3 (China, Japan, South Korea) are party to the 1951 Refugee Convention whilst only three countries in South East Asia are parties to the said convention, two of which are members of ASEAN (Cambodia and the Philippines). According to UNHCR, “most countries in South-East Asia do not have any legislation regulating the rights of asylum-seekers and refugees, and UNHCR conducts refugee status determination in the absence of a national asylum system”.<sup>36</sup> UNHCR further noted, “three countries in South-East Asia have national asylum systems at varying levels of development. One country has limited

<sup>35</sup> Compiled by Savitri Taylor, *The Diplomat*, 31 July 2015

<sup>36</sup> Petcharamesree, *Ibid.*

processing for certain groups under an ‘admissions board’ process. A number of States without national asylum systems generally consider refugees and asylum-seekers to be illegal migrants, who as such are susceptible to detention, expulsion, refoulement and other serious protection risks”.<sup>37</sup>

But, the sub-regional context has changed, and this determines the way ASEAN deals with the issues of refugee and refugee-like situations. The absence of a large-scale exodus, such as the one during the Indochina period, gives the false impression amongst ASEAN members that forced migration is not a significant problem. As such, ASEAN members do not yet see it as a problem that is at a point where ASEAN needs to act as a group.<sup>38</sup> Issues of forced migration, has never been discussed at the ASEAN high-level discussions. Even on a humanitarian basis, ASEAN could not find a common approach to address the issues, such as the irregular maritime movements. The situation was not considered by ASEAN as a “crisis”.

ASEAN as a group has failed to respond collectively to the Rohingya problem. However, the three affected members—Malaysia, Indonesia, and Thailand—have initiated regional discussions on the issue of ‘irregular movement of people’ into Indonesia, Malaysia, and Thailand in an effort to find “a solution to the crisis... and its serious impact on the national security of the affected countries.” Meanwhile, the Thai government organised a special meeting in Bangkok on Irregular Migration in the Indian Ocean on 29 May 2015, which aimed at generating a regional response to ‘the alarming rise in the irregular movement of persons in the Indian Ocean.’ The meeting adopted a number of ad hoc measures and agreed to share responsibilities, including engaging in further discussions and bilateral consultations in accordance with existing regional mechanisms and frameworks.<sup>39</sup>

As shown in the table, the Plus 3 countries are party to 1951 Refugee Convention. However, Japanese government has been criticized for their harsh refugee policy. To be noted that Japan is a major donor to UNHCR. The country has also accepted 11,000 Indochinese refugees after the late 1970s. In 2009, it has announced plans to become Asia’s first resettlement country when it began accepting Myanmar refugees from camps in Thailand under a pilot scheme in 2010.<sup>40</sup> However, the most recent record of refugee resettlement to Japan has not been positive. For example, in 2014, Japanese government granted refugee status to just 11 people, out of 5,000 applicants.<sup>41</sup> In 2015, only 27 applicants for refugee status/resettlement

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<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*

<sup>39</sup> Press Releases: Special Meeting on Irregular Migration in the Indian Ocean. (n.d.) [pdf], [http://www.europarl.europa.eu/meetdocs/2014\\_2019/documents/dase/dv/dase0610\\_4\\_pressrelease1\\_/dase0610\\_4\\_pressrelease1\\_en.pdf](http://www.europarl.europa.eu/meetdocs/2014_2019/documents/dase/dv/dase0610_4_pressrelease1_/dase0610_4_pressrelease1_en.pdf), accessed 15 July 2016.

<sup>40</sup> Yuki Moriya/Hye-Jeong Yoo, ed. Kitty McKinsey/Leo Dobbs, 18 May 2009, and “Welcome to Japan: first Asian country joins UNHCR’s resettlement programme”, <http://www.unhcr.org/news/latest/2010/9/4ca1dbe66/welcome-japan-first-asian-country-joins-unhcrs-resettlement-programme.html>, accessed 15 July 2016.

<sup>41</sup> Aljazeera, 24 January 2016, Japan rejected 99 percent of refugees in 2015 <http://www.aljazeera.com/news/2016/01/japan-rejected-99-percent-refugees-2015-160124070011926.html>, accessed 18 July 2016.

were granted out of 7,586 applications.<sup>42</sup> The policy towards refugees and asylum seekers of Japan is getting more limited despite its international obligations as party to 1951 Refugee Convention and commitment made in 2009 during the visit of the UNHCR's Assistant High Commissioner for Protection, Erika Feller<sup>43</sup> during which she noted, however, "that it can still be difficult for asylum seekers to enjoy basic rights and live decently in Japanese communities while waiting to be recognized as refugees. Feller stressed that detention practices needed to be reviewed".<sup>44</sup> To be noted further that Japan is one of very few countries in ASEAN + 3 to have a refugee system in place with the Refugee Recognition Act.

As for South Korea, in her visit made in 2009, Erika Feller also called for "more support from both government authorities and the Korean public to become a leading asylum country in the region".<sup>45</sup> "South Korea is a very important country in this region. It can offer very good examples to the rest of the region in terms of integrating protection cases. A lot of experience has been accumulated by helping North Koreans who came into South Korea," she said. "We hope that some of this experience will also be used to develop integration programs for third country nationals. South Korea which is also party to the 1951 Refugee Convention has asylum legislation called the Korean Refugee Act was adopted in 2012 and enter into effect in 2013, making the Republic of Korea the first Asian country to have an independent law for refugee protection."<sup>46</sup>

Just to recall, the Republic of Korea became a signatory of the Refugee Convention in 1992, shortly thereafter inserting just a few articles into its domestic immigration laws to adhere to the required procedures of refugee recognition under the Convention. By 2008, applications for refugee status had not exceeded 2,000, and the number of recognized refugees remained around 100. While it was undeniable that Korea had made steady progress in refugee protection, the pace was deemed unsatisfactory and public criticism was common.<sup>47</sup> South Korea started the pilot resettlement program for Refugees from Myanmar stranded in the camps in Thailand early 2016.

At least, as we could see, there is no lacking of refugee system in the Plus 3, but there is no system for asylum seekers and refugees put in place yet in ASEAN. However, some AMS such as Indonesia, Malaysia and Thailand, have been assisting those forced to migrate on humanitarian basis.

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<sup>42</sup> Ayako Mie, Japan Times, 20 May 2016, <http://www.japantimes.co.jp/news/2016/05/20/national/japan-take-150-syrians-exchange-students-criticism-harsh-refugee-policy/#.V5MwyqIXV3M>, accessed 18 July 2016.

<sup>43</sup> Yuki Moriya/Hye-Jeong Yoo, ed, Ibid.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> Judge Seongsoo Kim, One Year After the Korean Refugee Act, <http://www.reflaw.org/one-year-after-the-korean-refugee-act/#sthash.tjGn4DiN.dpuf>, accessed 18 July 2016.

<sup>47</sup> Ibid.

There is also other mechanism in ASEAN which could be considered as possible mechanism to respond to forced migration. In the paper presented by U Than Tun, Country Coordinator of NEAT Myanmar it was noted that “the 1997 ASEAN Declaration on Transnational Crime has since conducted biennially the ASEAN Ministerial Meeting on Transnational Crime (AMMTC) in the region. The Declaration, inter alia, discuss responses to the 8-category of transnational crime including trafficking in person and illegal migration. Since then APT Ministerial Meeting on Transnational Crime(AMMTC + 3) has been convened to discuss challenges to the same eight areas inclusive of the illegal migration of the APT framework. The ASEAN Regional Forum(ARF) is also addressing the migration issue as an official event of its framework”<sup>48</sup>

He further noted that in the ASEAN+ Plus Three Cooperation Work Plan 2007-2017, “the issue of illegal migration and human trafficking in the region have been raised for careful consideration . The transportation of illegal immigrants and human trafficking which are conducted on extended fishing boats and forged registry are rampant in the region. The NEAT Working Group on Maritime Cooperation Meeting held in August 2015 mentioned about opportunity for all the countries in the region to work together on this illegal migration issue. It also needs to create policy and legal infrastructure as well as legal enforcement mechanisms with more holistic approach to mitigate illegal migration in the region”.<sup>49</sup> It could be observed, however, that in the discussions forced migration was discussed in this framework as part of transnational crime and those who cross the borders regardless of causes are perceived as “ illegal migrants” and/or victims of trafficking.

Another forum that all 10 AMS and Plus 3 dealing with issues of migration (irregular) are part of is the Bali Process. Established in 2002, the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (otherwise called “Bali Process”) is a voluntary and non-binding regional consultative process co-chaired by the Governments of Australia and Indonesia, comprising over 45 member countries and organizations, with some observer countries and organizations (Regional Support Office to the Bali Process, 2014). Many states in Asia-Pacific are part of the process. The process, which is not an institutional response, was born after a series of high profile cases of people smuggling (which involved asylum-seekers) in the waters between Australia and Indonesia happened from 2000 to 2001, and the countries met in 2002 to discuss the problem, resulting in a ministerial conference that brought together almost 40 countries, and now continues with more ministerial conferences and issue-oriented workshops.<sup>50</sup> One of its aims is to promote adherence to the UN Convention against Transnational Organised Crime (Organised Crime Convention) and two of its supplementary protocols, the Protocol against the Smuggling of Migrants by Land, Sea and Air, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially

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<sup>48</sup> Than Tun, Migration (People Mobility): The Situation in the Bay of Bengal and Andaman Sea, paper presented at the NEAT Working Group on Migration, 10 June 2016, Bangkok.

<sup>49</sup> Ibid.

<sup>50</sup> Emmers, Greener-Barcham, & Thomas, 2006

Women and Children. It does not directly promote principles under the 1951 Refugee Convention and its Protocol.

The process began in 2002, but was reactivated only in 2009 when Australia experienced increases in the number of asylum-seekers, given the conflict in the Middle East and other places in Southeast Asia, and unfortunately, the discourse was increasingly ‘securitised’ and focused on transnational crime, restrictive for asylum-seekers .<sup>51</sup> The framing of the Process is related to trafficking and human smuggling, and not to refugee protection or asylum. This is despite the fact that asylum and refugee movements are at the nexus of trafficking and human smuggling concerns in the Asia-Pacific region. Alas, the region remained home to the oldest and biggest refugee populations. A possible repercussion of this approach is also the continued fragmentation of the issues between dichotomies of people smuggling-trafficking and asylum.

It is to be noted that UNHCR has tried to (re)introduce an agenda for refugee protection since 2009 in the Bali Process; however, the influence of Australia is heavy, emphasising the collective responsibilities of other countries in the region, who are not parties to the 1951 Refugee Convention, to prevent onward flows of asylum seekers to Australia and appealing to their mutual interest in preventing irregular migration.<sup>52</sup> So, on forced migration, Bali Process could be useful if it has been properly used and no politicization of the forced migration issues and not conflating them with smuggling and trafficking.

We can see that responses to issues of migration, voluntary or forced have been ad hoc and inadequate. Although 2 of the Plus 3 have the asylum system in place but policies and political will are still lacking. The AMS prefer to address the issues on bilateral basis. Any discussions which could be helpful for both states and peoples are yet to be concretised.

## **Recommendations**

### **A. For labour migration and trafficking**

- i. To adopt comprehensive and appropriate legal frameworks which combine preventive, protective, and prosecutorial measures in tackling the issues of irregular migration.
- ii. To actively and seriously engage in a discussion on migration at regional forums, such as ASEAN, using the Bali Process.
- iii. To develop a comprehensive regional data center of migrant workers who have worked in APT countries.
- iv. To enhance regional collaboration among APT countries regarding migrants. This can be done through the APT Migration Network where the participation of government officials, academics and migrants themselves becomes crucial to help tackle migrant-related problems.

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<sup>51</sup> Kneebone, 2014.

<sup>52</sup> Ibid.

- v. To encourage all AMS to ratify the ASEAN Anti-Trafficking Convention and make each state's national laws in line with regional and international standards.
- vi. To establish workable APT migrant welfare measures in order to guarantee the social and human security of migrant workers.
- vii. MOU regarding labor protection among ASEAN countries. Accelerating the process of drafting an ASEAN legally binding Instrument.

#### B. Forced Migration

- i. Implement status determination if not by countries concerned, UNHCR should be enabled to do so in a timely manner;
- ii. Closer cooperation between source countries and the countries of transit/destination to enable legal and voluntary take-backs of those that do not qualify for refugee status. Apart from bilateral government-to-government protocols, this should be accompanied by social development projects in source countries, possibly with ASEAN Plus Three assistance.
- iii. Signatories of the 1951 Refugee Convention and 1967 Protocol must be encouraged to measure up to their international obligations in terms of resettlement and mutual assistance. For this purpose, ASEAN and other Asian countries should collectively draft a resolution in the United Nations and engage in diplomatic overtures with recipient countries.
- iv. Countries which are facing labour shortage such as Brunei, Malaysia and Thailand can offer work rights to those that have acquired refugee status. Important to note that the offer of work rights, however, are not tantamount to naturalisation and more permanent solutions must be sought.
- v. Putting in place a system of registration which would be clearly advantageous from a national security point of view. A regional data centre should be considered and exchange of information should be strengthened.

#### C. Mechanisms

- i. Make full use of existing structures, such as forums like ASEAN and the Bali Process. Utilising existing frameworks will ensure that, generally, countries will be in a (much) better situation to broker more predictable and effective responses, and take preventative action.
- ii. Setting up an overall mechanism to facilitate and improve maritime search and rescue in the region. The focus of addressing forced migration should, first and foremost, be on the humanitarian protection of refugees.

iii. A regional monitoring and protection mechanism on migration. This multilateral mechanism also has to respond to regional crisis and seek for regional solutions.

iv. Addressing issue of citizenship which is becoming a trans-border issue. Lack of citizenship is finally a time bomb for all societies and could be a threat to national security. Birth registration is one of the most important measures to prevent statelessness.

v. A Forum for Policy Dialogue between Track II and the ASEAN leaders in order to come up with concrete recommendations.

vi. Sharing good practices of law enforcement and legal support between APT.