

## REGIONAL PERSPECTIVES ON REFUGEE PROTECTION

This panel was convened at 2:15 p.m., Friday, April 5, by its moderator, Guy S. Goodwin-Gill of Oxford University, who introduced the panelists: Anja Klug of the United Nations High Commissioner for Refugees; André Nollkaemper of the University of Amsterdam; Olivia Bueno of the International Refugee Rights Initiative; and Matthew Reynolds of the United Nations Relief and Works Agency for Palestine Refugees in the Near East.

### INTRODUCTORY REMARKS BY GUY S. GOODWIN-GILL\*

The regional dimension to refugee problems and to refugee protection is often lost in the global approach and in too great a focus on what seem to be the wonders of the universal. International lawyers, however, need to be tuned in to regional developments, to the specific refinements that come through in the practice of states, to the jurisprudence and doctrine emerging in the rulings of treaty supervisory mechanisms, and to the hint of new challenges to, or for, the regime of refugee protection.

The regional certainly influences the universal, though not necessarily in the interests of better protection or more durable solutions. Practices of interdiction or denial of access here, can be replicated there; and if these practices are mitigated by legal guarantees in one region, they may be lost when transposed to another. Equally, experience gained in facing up to “new” forms of persecution or reasons for flight can translated extraterritorially into stronger protection norms and a deeper understanding of what it is to be a refugee. African and Central American realities, over time, duly helped the wider world to come to terms with the need—indeed the obligation—to provide protection for many outside the confines of the 1951 Convention.

This panel brings together a wealth of relevant regional experience: Anja Klug, much of whose recent work has focused on the Asia-Pacific region and the Bali Process; André Nollkaemper, who works close to where many of the critical and much criticized developments in Europe have come into being; Olivia Bueno, who kindly stepped in at the last minute for Deidre Clancy and who looks at legal and policy developments in Africa and at sub-regional progress in the Great Lakes area; and Matthew Reynolds who, with his brief for Palestinian refugees, brings us back to one refugee problem which, in the late 1940s and early 1950s, was widely thought to be just a short-term phenomenon.

As can be seen from these contributions, the regional perspective puts both old issues and new challenges into enhanced relief. It reminds us of the critical importance of international action and cooperation on refugee questions, even in the absence of any obvious or coherent legal framework. International input can indeed pay dividends, not only in developing the body of relevant practice, but also in re-emphasizing the truism which the UN General Assembly identified back in 1946—that the refugee problem “is international in scope and nature.” As experience reminds us, many are involved and protection is *necessarily* a part of the solution.

International cooperation, of course, can be perceived as inimical to what some commentators still see as the paradigm of responsibility, namely, the obligations of the individual state. Surprisingly, traditionalist conceptions still seem to frustrate original and coherent thinking on the international law and principles which do, and should, apply to effective collective or regional action in the fulfillment of protection obligations.

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Nevertheless, in some theatres serious thought has clearly been given to the necessity for regimes that integrate (initially, in theory; in practice, we shall see) norms, political mechanisms, and programs of action and oversight in scenarios which engage multiple actors, each with its own area of responsibility and obligation. This context poses new and exciting opportunities, in which, as James Brierly once cautioned, international lawyers will need to beware the “tyranny of phrases.” For we must consider that failure to remove blinkers, to think beyond the rule, to kickstart political processes (repeatedly if necessary), can contribute to perpetuating the unresolved, and so leave the refugee and the displaced to the mercy of yet greater catastrophes.

## **ENHANCING REFUGEE PROTECTION IN THE ASIA-PACIFIC REGION**

*By Anja Klug\**

### **LACK OF A NORMATIVE PROTECTION FRAMEWORK**

Refugee protection in the Asia Pacific region presents unique challenges. Apart from the Middle East, this is the only region without much of a normative framework for the protection of refugees. Most countries are not party to the 1951 Convention relating to the Status of Refugees or its 1967 Protocol, and there is no regional refugee protection instrument. Accession to international human rights instruments has also been limited, and where countries have accepted treaty obligations, they are often not implemented. The Association of South East Asian Nations (ASEAN) succeeded in adopting an ASEAN Human Rights Declaration in November 2013, but experts have voiced concerns that this instrument, rather than advancing the human rights agenda in the region, is lowering international standards and introducing relativism.

Particularly in South/East Asia, the protection of refugees is based on a system developed during the Indo-China refugee crisis, which is based on voluntary and time-bound *de facto* contributions to refugee protection rather than on binding obligations: countries in the region provide temporary protection to refugees on their territory with the understanding that refugees will either be resettled or returned home by UNHCR. Most states continue to reject any responsibility for refugees beyond the provision of such time-bound protection. Refugees are considered a responsibility of UNHCR, and consequently, the region hosts UNHCR's largest refugee status determination and some of the largest resettlement operations.

The lack of practically any legal protection framework creates serious protection challenges. Due to this lack of predictability, it is not only unclear what rights refugees can claim and what obligations states have toward them, but it also makes it more difficult for UNHCR to work with governments. Each country in the region has different *de facto* protection standards, and access to effective protection is only guaranteed in few states. Prolonged refugee situations and disparate protection standards have provoked irregular secondary movements to middle-income or industrialized countries. These movements often take place under dangerous conditions across the sea at high human costs and are facilitated by thriving smuggling and trafficking networks which exploit the lack of asylum framework in the region for their own benefit. The lack of a regional protection framework is not only problematic from a protection perspective, however. The absence of proper cooperation and burden-sharing has also generated tensions between states.

\* Senior Policy Officer, United Nations High Commissioner for Refugees. The views expressed in this article are the views of the author and may not necessarily be shared by UNHCR or the UN.