This factsheet describes regional cooperation in the refugee protection context. The factsheet discusses why it is important, and what a proper regional cooperation framework would look like. The factsheet also includes a list of further reading.

Why is regional cooperation important?

The Asia-Pacific region currently hosts over 8.4 million persons of concern to UNHCR (a group that includes refugees, stateless persons and internally displaced persons). Of this population, 3.5 million are refugees, the largest number of refugees in any region in the world. The region also contains the world’s largest protracted refugee situation, with around 2.4 million registered Afghan refugees in prolonged exile in Iran and Pakistan.

Despite being the location of a large and enduring portion of the world’s displaced population, many countries in the Asia-Pacific region are not parties to the Refugee Convention or Protocol, and do not have the legal frameworks and/or technical and financial capacity to provide protection to refugees. Typically, these countries do not draw a distinction between refugees and illegal immigrants. Consequently, people seeking protection in these countries commonly find themselves in a ‘state of limbo’ – unable to work legally, unable to access education for their children, and liable to arrest and punishment for breach of immigration laws.

This combination of circumstances has created a difficult situation for refugees in the region, since it is not safe enough for them to return to their countries of origin, and they are unable to access protection in host countries. Although UNHCR operates in a number of countries in the Asia-Pacific region, not all people seeking protection are able to access UNHCR to register their status as refugees. Indeed, even those who are registered as refugees commonly lack access to protection because opportunities to resettle in a third country are scarce. At the global level, only one per cent of refugees are referred by the UNHCR for resettlement. And while UNHCR estimates that around 800,000 refugees are in need of resettlement each year, only around 80,000 resettlement places are offered worldwide.

There being few meaningful options for a durable solution, many refugees are compelled to seek protection in other ways, including by taking boat journeys to Australia. They come to Australia because it is currently one of the few countries in the Asia-Pacific region with the legal framework and technical and financial capacity to offer them effective protection.
They come to Australia by boat because there is a lack of other means: a person cannot come to Australia by plane without a valid visa, and Australian consulates and embassies abroad do not issue 'refugee visas'. Moreover, people seeking protection are unlikely to be able to obtain a tourist or work visa because of the presumption that they would apply for protection on arrival in Australia.

In light of this context, regional cooperation is crucial to providing effective protection to refugees. Regional cooperation can help to equitably distribute responsibilities across States, since countries that currently host the largest refugee populations in the region (such as Malaysia, Thailand and Indonesia) have limited capacity to provide protection. Regional cooperation also can help to improve conditions in host countries, thereby ensuring that refugees are better able to access protection across the Asia-Pacific region and reducing the need for them to take dangerous boat journeys. Moreover, regional cooperation may help to improve conditions in countries of origin, thereby addressing the root causes of displacement.

What would a proper regional cooperation framework look like?

A proper regional cooperation framework would be based on the objective of providing effective protection to those who have been displaced. It would address the conditions that cause people to take boat journeys to Australia, rather than simply seeking to 'stop the boats'. It would seek to ensure fair and timely resolutions to protection claims, so that asylum seekers and refugees would not feel that their own real option were to get on a boat. As UNHCR has stated:

> the ultimate test of success is how far any arrangements are able to improve and expand the asylum space available to asylum-seekers and refugees in the region, including here in Australia. If protection space can be increased across the region, then asylum-seekers and refugees will be able to find greater levels of safety and security, other than through dangerous and exploitative boat journeys.

To this end, a proper regional cooperation framework would ensure that asylum seekers have access to fair and efficient procedures that are consistent with international standards for the processing of their protection claims in host countries. This requires building the capacity of States in the region to conduct refugee status determination and/or increasing support for the UNHCR to provide such services. This also requires ensuring humane reception conditions for asylum seekers in host countries while processing is taking place, by ensuring that their presence is recognised as lawful under domestic laws and that they have rights to work and access essential services, such as education and health.

After processing, a proper regional framework would provide durable solutions for those seeking protection. This requires the timely resettlement of those who are found to be refugees and the safe repatriation of those who have been found not to be refugees. Currently, Australia and New Zealand are among the few countries in the Asia-Pacific region that are in a position to resettle refugees. It is therefore important that a regional framework equips other countries in the region with the capacity to resettle refugees. One way of
achieving this might be by increasing levels of development funding to countries in the region to strengthen their capacity to resettle refugees. At an international colloquium on refugees, regionalism and responsibility, hosted by Professor Penelope Mathew at the Australian National University in 2013, key messages included the need for responsibility-sharing to be ‘framed in terms of clear international protection standards and human rights’. Importantly, it should be ‘based on principles of equity, respect for sovereignty, reciprocity and solidarity between states in addressing the protection needs of asylum-seekers and refugees’, not ‘[d]eterrence, containment and deflection’. Regional arrangements should ‘complement rather than substitute for states’ responsibilities for refugees.’

Existing burden sharing arrangements in regions such as North America and Europe might be considered best practice schemes that Australia could emulate in the Asia-Pacific, given that they involve responsibility sharing between States which are all parties to the Refugee Convention, with reasonably comparable domestic systems of refugee law, and similar (if not identical) international human rights obligations.

However, they reveal the complexity of regional protection and why building something comparable in the Asia-Pacific will be a long-term process. Even in these relatively homogenous regions, serious problems have arisen and refugee recognition rates can vary widely.

A 2011 decision of the European Court of Human Rights found Belgium in violation of a number of its own human rights obligations for transferring asylum seekers to Greece (the country of first entry to the EU), given the inhuman and degrading circumstances in which they would be forced to live, and the absence of any effective legal remedies to assess the merits of their asylum claims in Greece. This was despite the fact that Greece had formally adopted common legal and procedural standards under both regional and international law.

By contrast to Europe, Australia is located in a region where very few States are parties to the Refugee Convention or have domestic systems of refugee law in place, and there is no regional human rights treaty. Any regional arrangement must therefore proceed with extreme caution and due regard to the inherent risks to the fundamental rights of refugees inherent in such a scheme.

Ultimately, a proper regional framework must involve genuine collaboration between refugee-hosting and resettlement countries, based on the sharing of responsibilities among States. Australia cannot reasonably expect its neighbours to do their part if it is regarded itself as seeking to shift or deflect responsibility for providing protection. Rather, Australia must provide strong leadership and lead by example if progress is to be made towards expanding the protection space for refugees in the region.
Further reading


McAdam, Jane, ‘Opinion: Australian Parties in “Race to the Bottom” on Asylum Seeker Policy’, *CNN*, 4 September 2013

McNevin, Anne, ‘How to Break the People Smugglers’ Real Business Model’, *Inside Story*, 25 July 2013


Menadue, John, Arja Keski-Nummi and Kate Gauthier, *A New Approach: Breaking the Stalemate on Refugees and Asylum Seekers* (Centre for Policy Development, August 2011)


*Report from the Colloquium on Refugees, Regionalism and Responsibility* (Australian National University, 22–23 August 2013)

Soutphommasane, Tim, ‘A More Ethical and Realistic Conversation: The Australian Debate about Asylum Seekers and Refugees’, *St James Ethics Centre Think Piece*, September 2011

Steketee, Mike, ‘Australia Has an Obligation to Refugees’, *The Drum*, 3 October 2013

United Nations High Commissioner for Refugees, *Bureau for Asia and the Pacific: Regional Update*, September 2013

Endnotes

1 UNHCR, Bureau for Asia and the Pacific: Regional Update, September 2013, 1 <http://www.unhcr.org/5000139a9.html>.

2 That is, compared to Africa, the Americas, Europe, and the Middle East and North Africa. See ibid; UNHCR, Where We Work <http://www.unhcr.org/pages/49c3646c206.html>.

3 UNHCR, above n 1, 1. A ‘protracted refugee situation’ describes a situation where refugees are in exile from their country of origin for 5 years or more after their initial displacement, without immediate prospects for implementation of durable solutions: Executive Committee Conclusion No 109 (LXI), Protracted Refugee Situations, 8 December 2009 <http://www.unhcr.org/4b332bca9.html>. For an outline of protracted refugee situations in the world, see UNHCR, Protracted Refugee Situations: High Commissioner’s Initiative (December 2008) <http://www.unhcr.org/4937de6f2.html>.

4 Convention relating to the Status of Refugees, opened for signature 28 July 1951, 189 UNTS 150 (entered into force 22 April 1954), read in conjunction with the Protocol relating to the Status of Refugees, opened for signature 31 January 1967, 606 UNTS 267 (entered into force 4 October 1967) (collectively, the ‘Refugee Convention’).


8 Ibid; McNevin, above n 5; Refugee Council of Australia, above n 6.

9 Refugee Council of Australia, above n 6.

10 See UNHCR, above n 1, 2.


12 Refugee Council of Australia, above n 6; Manderson, above n 7.


15 Refugee Council of Australia, above n 6.

16 McNevin, above n 5.


20 Refugee Council of Australia, above n 19.

21 Ibid.


24 Feller, above n 22.


27 Ibid; Manderson, above n 7.

28 McNevin, above n 26; Manderson, above n 7.


30 McNevin, above n 26.

31 Ibid.

32 Report from the Colloquium on Refugees, Regionalism and Responsibility (Australian National University, 22–23 August 2013), [7].

33 Ibid, [8].

34 Ibid.


36 MSS v Belgium and Greece, App No 30696/09 (21 January 2011).


38 Feller, above n 22.

39 Ibid.