



## **Joint Paper on the Occasion of the 20<sup>th</sup> Anniversary of the Bali Process**

### **UNHCR, IOM and UNODC**

**November 2022**

As the Bali Process celebrates its 20<sup>th</sup> anniversary, UNHCR, IOM and UNODC (“the Agencies”) would like to take the opportunity to reflect on the engagement of the Bali Process on issues and goals commonly shared, and provide recommendations on how, in the years to come, the Bali Process can continue to strengthen its mechanisms and enhance cooperation among its members to effectively respond to people smuggling, trafficking in persons and related transnational crime.

#### **Background**

One of the most noteworthy achievements in the last decade is the Bali Declaration, signed by Member States at the Sixth Ministerial Conference of the Bali Process. This was the Bali Process response to challenges posed by irregular migration in the region, including the 2015 Andaman Sea crisis, in which human smugglers abandoned hundreds of refugees and migrants at sea with nearly 300 people perishing. The crisis made abundantly clear that responses to transnational crimes, including human trafficking and migrant smuggling must utilize a comprehensive regional approach, incorporating not only law enforcement dimensions but also victim identification and protection. This approach was echoed by the Agencies in a joint paper calling for action that was shared with members. The Bali Declaration is an immensely progressive document which called for responses to irregular migration to be based on the principles of burden sharing and collective responsibility. The intention to implement the Bali Declaration was reaffirmed in the Co-Chair’s Statement of the Seventh Ministerial Conference in Bali in August 2018.

However, the goals expressed in the Bali Declaration are yet to be fully materialized and operationalized. This is especially relevant in the wake of the changing geo-political situation in the region, the Covid 19 pandemic and the impact it has had on trafficking and smuggling trends, including expanding the existing pool of vulnerable populations and creating new forms of exploitation. With respect to smuggling by sea, all the conditions that led to crises in the Andaman Sea in 2015 and 2020 remain in place. Irregular sea movements in 2022, often facilitated by smugglers, have already more than doubled since 2021 and additional political crises in the region have resulted in new, irregular and dangerous sea routes.

As we observe the Bali Process’s 20<sup>th</sup> Anniversary and recognize the considerable impact it has had to enhance cooperation in the region, the Agencies also recognize the importance that the Bali Process places on responses that are consistent with the principles of international law. This is evidenced not only directly in the language of the Bali Declaration, but in subsequent Co-Chair’s Statements and Ministerial Declarations which emphasize the importance of victim identification and protection. Thus, the Bali Process in the coming years would do well to continue to champion responses to smuggling, trafficking and related transnational crime that are consistent with international law.

### **Recommendation 1: Capacity-building for Proactive Responses to Transnational Crimes within the Bali Process's Mandate**

The post Covid-19 pandemic trends regarding human trafficking and people smuggling indicate that both crimes are occurring within a spectrum of organized transnational criminality, facilitated by highly organized criminal groups who are engaged in money laundering, corruption, kidnapping, extortion, and torture. One of the Bali Process's most powerful strengths is its ability to bring together Member States most affected by human trafficking, people smuggling and other transnational crimes under its mandate in the spirit of collaboration on issues of mutual interest. Capacity building activities for criminal justice practitioners and law enforcement officers from Bali Process members states should not only provide necessary skills to respond to these crimes, but also skills to initiate proactive and joint investigations of criminal networks exploiting migrants, refugees, and other vulnerable categories of persons. Importantly, increasing states' capacity to respond to transnational organized crimes should include the ability to address new emerging trends, such as trafficking to commit cybercrimes, especially prevalent in the context of the increased use of technology, and the most challenging areas such as smuggling by sea.

Victim centered and human rights-based approaches must of course be at the center of response strategies to these issues, as expressed in Goal 1 of the Strategy for Cooperation. The Agencies pledge their support in assisting Member States with these issues where relevant to their respective mandates. For the Agencies this means working with their government counterparts and partners to enhance general awareness around trafficking corridors and modus operandi as well as focusing on capacity-building initiatives to promote effective and coordinated law enforcement action. A shift in focus to longer-term investigations which target syndicate coordinators and disrupt the capacity to organize and conduct trafficking and smuggling operations is favored over investigations which only serve to prosecute individuals in the lower levels of the organization. In this regard, the recommendations in the Concept Note titled "Task Team to Dismantle Smuggling and Trafficking Networks" submitted by the Agencies in 2021 remain more relevant than ever as the region moves out of the pandemic and smuggling and trafficking routes resume, and even proliferate.

### **Recommendation 2: Maintaining a Focus on Victim Protection when responding to Human Trafficking and People Smuggling**

The Bali Process has consistently maintained a recognition of the importance of victim protection. In the recent Co-Chairs' Statement of the Foreign Ministers' Meeting of the Steering Group in February 2022, the Co-Chairs recognized the need to identify and support victims of trafficking and exploitation, noting with particular concern that women and children continue to be disproportionately affected by these crises. In the Strategy for Cooperation endorsed at the Seventh Ministerial Conference in August 2018, victim protection is listed as a goal hand-in-hand with migration management. It is essential to reiterate that victim protection also includes ensuring minimum human rights standards under international law, including the right of refugees not to be returned to countries where they would face persecution (*non-refoulement*) and the right to seek asylum. Victim protection services need to be provided to the full spectrum of possible victims of trafficking from victims exploited online, victims trafficked for the purpose of forced criminality to labour and understanding the varied needs of victims. Recognizing that labour migrants are three times as likely to experience instances of exploitation in comparison to non-migrant

workers,<sup>1</sup> targeted efforts to respond to the needs of trafficked and smuggled migrant workers is required. Further, many of those being smuggled by sea in the region are fleeing conflict and persecution and require a refugee specific response.

In the years to come, the Bali Process can make use of its unique capabilities to continue to capacitate Member States to implement comprehensive approaches that disrupt and prosecute perpetrators as well as protect victims.

### **Recommendation 3: Operationalizing the existing Bali Process Mechanisms to effectively Respond to Situation of People Smuggling by Sea**

Smuggling of refugees and migrants by sea is one of the most dangerous routes smugglers can choose, resulting in more deaths than in any other smuggling type, such as land and air. Causes of such tragic outcomes are multifaceted but oftentimes include slow or limited response from States when such vessels are in distress. In cases of smuggling by sea, in addition to the United Nations Protocol Against the Smuggling of Migrants, a particularly relevant source of international law surrounds search and rescue at sea. The 1982 United Nations Convention on Law of the Sea (UNCLOS), the 1974 International Convention on Safety of Life at Sea (SOLAS) and the 1979 International Convention on Maritime Search And Rescue (SAR Convention) enjoy high rates of accession among Member States. Each of these Agreements create a legally binding obligation to rescue persons and vessels in distress at sea, and the principle is so well-recognized as to place this obligation within customary international law as well. The Agencies highlight the importance of the imperative to conduct search and rescue and urge the Bali Process to ensure it remains a critical part of all discussions on responses to human smuggling and trafficking in persons by sea. The primacy of human life is a cornerstone principle that must continue to be afforded attention as States work together to prevent and disrupt smuggling of refugees and migrants. With this legal obligation highlighted, the Agencies urge that the Consultative Mechanism, a forum of Members to be convened in response to urgent irregular migration crises, is recognized as an instrument for effective dialogue. The Consultative Mechanism developed in the wake of the Andaman Sea crisis, was successfully convened in October 2017, and it can be utilized in the future.

Further, the Agencies suggest that the concept notes submitted to the Bali Process in 2021 be re-evaluated, with relevant modifications, in light of regional challenges as Member States move into a post-pandemic phase. While there was insufficient interest in a Regional Consultation on Safety of Life at Sea, a Regional Consultation on Responding to Smuggling of Migrants by Sea may instead be apt, given several incidents this year of refugee and migrant boats moving along new maritime routes. It would be important to integrate a Search and Rescue discussion within the broader discussion on law enforcement responses, given several maritime disasters this year affecting smuggling vessels, resulting in the loss of lives.

Similarly, a possibility of forming a Technical Advisory Group within the Task Force on Planning and Preparedness (TFPP), should be considered. The TFPP was established at the 11th Ad Hoc Group Senior Officials Meeting in November 2016 to develop early warning capabilities of officials and their capacity to coordinate action at an operational level in the event of a large influx of irregular migrants.

This does not only encompass search and rescue but also includes responses post-disembarkation. A Technical Advisory Group can include mobilizing material support for countries that take on a

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<sup>1</sup> Walk Free / ILO / IOM [Global Estimates of Modern Slavery Forced Labour and Forced Marriage 2022](#)

disproportionate share of an influx of irregular migrants or refugees. Since legal regimes exist to compensate private vessels for financial damages incurred while undertaking legal obligations to rescue persons in distress at sea, it is not difficult to advocate that Member States that expend resources to rescue and disembark persons in accordance with those same legal obligations, be supported in the spirit of solidarity. The Technical Advisory Group's TORs may also encompass brokering readmission arrangements among relevant Member States, which may be appropriate for refugees and migrants that move onward from one country to another by sea, provided the conditions are appropriate for readmission.

**Recommendation 4: Support a Solutions driven Discussion on Drivers of Trafficking and Smuggling.**

The recognition that the Bali Process needs to address the root causes of irregular movement of people was expressed in the Bali Declaration and reaffirmed in the Co-Chairs' Statement of the Seventh Ministerial Conference in 2018. While mobility drivers have continued to evolve over the past 20 years, there is little space in the Process to discuss the changing nature of drivers and their impact on responses. The Bali Process ecosystem is in a unique position to further facilitate the understanding around mobility drivers from climate change and conflict to technically driven recruitment platforms and online fraud, as well as provide a platform for exploring solutions.

To support this dialogue, the role of the Task Force on Planning and Preparedness could be expanded to discuss various emerging drivers of mobility and displacement as well as solutions. This would allow it to take on a more effective role in emerging trends such as the South East Asian online scamming crisis that is currently of concern to the countries of the region. It may also include regularization and amnesty programmes which reduce the net demand for irregular movement across borders and address some of the climate change driven mobility that will increasingly be a reality for the region.

**Recommendation 5: Strengthen the Connections Within the Bali Process Working Ecosystem, to set Inclusive Agendas and Drive Ownership of Emerging Issues**

On the Bali Process's tenth anniversary, the Co-Chairs "encouraged members to continue to move the Bali Process forward, *beyond information sharing to broader cooperative and practical approaches* to managing irregular migration and combating people smuggling and trafficking in persons syndicates". Over the past ten years the Regional Support Office of the Bali Process has made significant progress in providing practical and technical support and expertise to Bali Process Member States as part of this objective.

However, on the 20<sup>th</sup> anniversary broader cooperation remains a pressing need and steps should be taken to strengthen the overall impact of the Bali Process events and increase Bali Process Member States' participation and ownership of the overall Bali Process agenda. To achieve this, it is important to look at the existing structures and how further inclusion of members and coherence between discussions and meetings can be provided. Many of the required elements of enhanced cooperation are already in place, including active participation at working group level, strong technical capacity housed at the Regional Support Office and leadership from the Co-Chairs. However more can be done to connect the different workstreams under the Bali Process.

To further strengthen the operational relevancy of the platform, the following suggestions could be considered. The Co-Chairs could provide further clarity on agenda setting processes for the platform

including pathways to the workstreams and groups to elevate issues to Senior Official and Ministerial level. The existing workstreams and groups could go through a streamlining exercise re-establishing terms of reference, expected level of participation from Member States and links to other groups as well as the Co-Chairs and the agenda setting process. The expectations on the Co-Chairs of the working groups could also be clarified. The Regional Support Office role could be strengthened and resourced to further support the workstreams and the groups to communicate with the Co-Chairs and support in other secretariat functions providing a sense of continuity to the process and agenda setting. This would support improved connections from working level considerations that are aligned with Member State priorities to the higher-level agenda set by the Co-Chairs.

#### **Recommendation 6: Harness Private Sector Partnerships to deliver on the Bali Process commitments**

The latest Global Estimates on Modern Slavery indicate that 50 million people were living in modern slavery in 2021. Of these people, 28 million were in forced labour globally, over 15 million of which were in the Asia-Pacific region. Migrant workers are three times more likely to become victims of forced labour. Unfortunately, the number of people in modern slavery has risen significantly in the last five years, with business being responsible for 86 per cent of forced labour cases.

The Bali Declaration stresses the importance of engaging with the private sector to “expand legal and legitimate opportunities for labour migration and to combat human trafficking and related exploitation, including by promoting and implementing humane and non-abusive labour practices throughout the international supply chains.”

To further deliver on the Bali Process commitments, the following suggestions could be considered. Given the role of the private sector in modern slavery, harnessing private sector partnerships is key. This can be done through strengthening private sector capacities to address some of the root causes of trafficking, people smuggling and forced labour, through, among others; ethical recruitment, decent work, access to effective remedies in line with international labour and human rights standards such as the United Nations Guiding Principles on Business and Human Rights (UNGPs). In addition, Bali Process Member States can encourage their private sector actors to proactively identify, assess, address and communicate the human rights impact of their business operations through ongoing Human Rights Due Diligence (HRDD). This process can also be enhanced by creating stronger partnerships between the private sector and civil society to enhance access to better information and remedies for those most at risk of falling victim to human trafficking and related exploitation.